



**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 from a given country. They are authoritative legal interpretations of the refugee criteria in respect of specific groups on the basis of objectively assessed social, political, economic, security, human rights and humanitarian conditions in the country of origin concerned. The pertinent protection needs are analyzed in detail and recommendations made as to how the applications in question should be decided upon in line with the relevant principles and criteria of refugee law as per, notably, the 1951 Convention and its 1967 Protocol, the UNHCR Statute and relevant regional instruments such as the Cartagena Declaration, the 1969 OAU Convention and the EU Asylum Directives. The recommendations may also touch upon, as relevant, complementary or subsidiary protection regimes.

UNHCR issues its *Eligibility Guidelines* pursuant to its responsibility to promote the accurate interpretation and application of the above-mentioned refugee criteria as envisaged by Article 8 of its Statute, Article 35 of the 1951 Convention and Article II of its 1967 Protocol and based on the expertise it has developed over several years in eligibility and refugee status determination matters. It is expected that the positions and guidance contained in the *Guidelines* should be weighed heavily by the relevant decision-making authorities in reaching a decision on the asylum applications concerned. The *Guidelines* are researched strictly and are written based on factual evidence provided by UNHCR's global network of field offices and information 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

AALCO	Asian-African Legal Consultative Organization
AIHRC	Afghan Independent Human Rights Commission
ANA	Afghan National Army
ANAP	Afghan National Auxiliary Police
ANP	Afghan National Police
ACBAR	Agency Coordinating Body for Afghan Relief
ANSO	Afghanistan NGO Safety Office
AWN	Afghan Women Network
AREU	Afghanistan Research and Evaluation Unit
CIA	Central Intelligence Agency
DDR	Disarmament, demobilization and reintegration
EU	European Union
FAO	United Nations Food and Agricultural Organization
FATA	Federally Administered Tribal Areas
HIG	<i>Hezb-e Eslami (Gulbuddin)</i>
HRCSN	Human Rights and Civil Society Network
ISAF	International Security Assistance Force
ICRC	International Committee of the Red Cross
MP	Member of Parliament
NATO	North-Atlantic Treaty Organization
NGO	Non-governmental Organization
NDS	National Directorate for Security
NWFP	North-West Frontier Province
OAU	Organization of African Unity
OEF	Operation Enduring Freedom
PDPA	Popular Democratic Party of Afghanistan
PRT	Provincial Reconstruction Team
RAWA	Revolutionary Association of the Women of Afghanistan
SAARC	South Asian Association for Regional Cooperation
TTP	<i>Tehreek-e Taleban</i>
UK	United Kingdom
UN	United Nations
UNAMA	United Nations Assistance Mission for Afghanistan
UNDSS	United Nations Department for Security and Safety
UNHCR	United Nations High Commissioner for Refugees
US	United States
USD	United States dollar

I. Introduction

These Guidelines provide guidance for use by UNHCR and State adjudicators in properly deciding on claims lodged by Afghan asylum-seekers, and in otherwise understanding and responding appropriately to their protection needs.¹ The Guidelines supersede and replace the UNHCR *Eligibility Guidelines for Assessing the International Protection Needs of Afghan Asylum-Seekers*,² issued in December 2007, and the 2008 *Afghanistan Security Update Relating to Complementary Forms of Protection*.³

The Guidelines are divided into five sections including this Introduction (Part I). Part II contains a brief overview of background information on the country to set the broad context for understanding the claims being lodged currently by Afghan nationals, and includes information on the current political and security situation and the country's legislative framework. In Part III, an outline is provided of recent Afghan asylum trends and their underlying reasons. Part IV summarizes the approach being advised by UNHCR as to how the claims should be dealt with and elaborates the relevant facts in further detail, including the relevant country of origin information and the accompanying refugee law analysis for purposes of inclusion and exclusion from refugee status. The most common types of claims including: (i) persons perceived as contravening Sharia law and members of minority religious groups; (ii) ethnic minority groups; (iii) persons associated with or perceived as supporting the Government, including civil society members; (iv) actual or perceived supporters of armed anti-Government groups; (v) journalists; (vi) persons associated with the People's Democratic Party of Afghanistan or other left-aligned political parties; (vii) women; (viii) children; and (ix) persons at risk of becoming victims of blood feuds. Guidance is provided on how international protection needs should be determined in these cases, and how to assess the availability of an internal flight or relocation alternative and the applicability of the exclusion clauses. Furthermore, human rights considerations are addressed in Part V, while issues relating to return and internal displacement are considered in Parts VI and VII, respectively.

¹ These Guidelines are based on information available up to March 2009.

² UNHCR, *UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Afghan Asylum-Seekers*, 31 December 2007, available at <http://www.unhcr.org/refworld/docid/477ce70a2.html>.

³ UNHCR, *Afghanistan Security Update Relating to Complementary Forms of Protection*, 6 October 2008, available at <http://www.unhcr.org/refworld/docid/48ea34872.html>.

II. Background information and developments

Afghanistan has been embroiled in armed conflict since 1979. The current confrontation has its origin in the civil war of 1994 – 2001, when the *mujahideen* (veterans from the anti-Soviet resistance many of whose leaders now hold public office) fought the Taliban movement, and in the aftermath of the 11 September 2001 attacks in the United States. Operation Enduring Freedom (OEF) was launched by the US and UK on 7 October 2001 as a result of the attacks of 11 September 2001. The initial objectives of OEF included the destruction of terrorist training camps and infrastructure within Afghanistan, the capture of al Qaeda leaders, and the cessation of terrorist activities in Afghanistan.⁴

The International Security Assistance Force or ISAF was originally mandated by the Security Council in December 2001, as envisaged by the Bonn agreements, to:

*“assist the Afghan Interim Authority in the maintenance of security in Kabul and its surrounding areas, so that the Afghan Interim Authority as well as the personnel of the United Nations can operate in a secure environment.”*⁵

In August 2003 NATO assumed authority for the ISAF mission, and in October 2003 the Security Council authorized the expansion of the NATO mission outside Kabul⁶. Expansion was completed in October 2006.⁷ The mandate of ISAF was last authorized by Security Council resolution 1776 of 19 September 2008, until 13 October 2009.

The current situation in Afghanistan can be characterized as one of an intensifying armed conflict accompanied by serious and widespread targeted human rights violations. The Government and its international allies, the International Security Assistance Force (ISAF) and Operation Enduring Freedom (OEF)⁸ (US led forces serving under the banner “Operation

⁴ Statement to the Nation by the President of the United States of America, available at <http://www.globalsecurity.org/military/library/news/2001/10/mil-011007-usia01.htm> [accessed 27 September 2005].

⁵ UN Security Council, *Security Council resolution 1386 (2001) on the situation in Afghanistan*, S/RES/1386 (2001), 20 December 2001, available at <http://www.unhcr.org/refworld/docid/3c4e94571c.html>.

⁶ UN Security Council, *Security Council resolution 1510 (2003) on ISAF, Afghanistan*, S/RES/1510 (2003), 13 October 2003, available at <http://www.unhcr.org/refworld/docid/3f8d30c54.html>.

⁷ ISAF troops (placemat); see ISAF, *International Security Assistance Force and Afghan National Army strength & laydown*, 3 April 2009, available at http://www.nato.int/isaf/docu/epub/pdf/isaf_placemat.pdf.

⁸ Operation Enduring Freedom (OEF) was launched by the US and UK on 7 October 2001 as a result of the attacks of 11 September 2001. The initial objectives of OEF included the destruction of terrorist training camps and infrastructure within Afghanistan, the capture of al Qaeda leaders, and the cessation of terrorist activities in Afghanistan. See Statement to the Nation by the President of the United States of America, 7 October 2001, available at <http://www.globalsecurity.org/military/library/news/2001/10/mil-011007-usia01.htm>. In the immediate aftermath of the attacks on the United States on 11 September, the Security Council in its resolution 1368 considered the events as “a threat to international peace and security.” See UN Security Council, *Security Council resolution 1368 (2001) Threats to international peace and security caused by terrorist acts*, S/RES/1368 (2001), 12 September 2001, available at <http://www.unhcr.org/refworld/docid/3c4e94557a.html>. See also UN Security Council, *Security Council resolution 1373 (2001) [on threats to international peace and security caused by terrorist acts]*, S/RES/1373 (2001), 28 September 2001, available at <http://www.unhcr.org/refworld/docid/3c4e94552a.html>, where the Security Council expressed “its determination to take all necessary steps in order to ensure the full implementation of [the] resolution, in accordance with its responsibilities under the Charter.” Subsequent Security Council resolutions acknowledged the existence of the coalition and called for co-ordination between ISAF and OEF. It should be noted, however, that the OEF operates without a formal mandate by the United Nations. OEF is managed from the United States Central Command, and its forces are based at Bagram Air Base north of Kabul. General David Petraeus was appointed as

Enduring Freedom”), are pitted against groups of insurgents including the Taliban, the *Hezbe Eslami* and Al-Qaeda. A complex array of legal and illegal armed groups and organized criminal groups also play an important role in the conflict.

Despite efforts at reform, Afghanistan is still faced with widespread corruption, lack of due process and an ineffective administration of justice. Human rights violations are rarely addressed or remedied by the justice system and impunity continues to be pervasive. The progressive strengthening of religious conservatism has pressured the Government and Parliament into curtailing fundamental rights and freedoms. Journalists and civil society activists have been the most impacted by these developments. Lack of legal and enforcement mechanisms continue to hamper efforts to curb pervasive exploitative and discriminatory practices against women, particularly sexual and gender based violence (SGBV) and forced and child marriages.

Several factors have led to the current human rights and humanitarian situation. These include the dramatic rise in the price of food, weak or non-existent social services, and the increased number of civilian casualties in the context of armed conflict, as a result of direct targeting, excessive use of force, other serious violations of international humanitarian law and the drastic reduction of humanitarian access by the UN and various organizations bearing a protection or assistance mandate.

Threats and violence against journalists were also on the rise in 2008.⁹ Criticism from journalists, local NGOs and advocacy groups on issues of corruption, mismanagement and abuse of power, has led to heightened risk of targeting of these individuals by former warlords, local power brokers and conservative elements within the Government. In 2007, both houses of Parliament passed a new bill on the mass media, which was returned by President Karzai to the Lower House for further consideration. While the current draft of the law represents a positive development, its provisions are open to interpretations that would curtail the freedom of expression. For instance, media freedom, according to the media law, must be interpreted in accordance with Islamic principles, and written materials that are deemed “immoral” are prohibited.¹⁰

The situation of women has not improved in a significant way since the 2007 Guidelines. Little progress has been made in eliminating gender discrimination, such as forced and child marriages; facilitating access to justice for victims of gender and domestic violence, and punishing honour killings; abolishing vague morality offences and severe restrictions on freedom of movement. Incidents of self-immolation, mainly triggered by forced marriages and domestic violence, are reportedly increasing in Western Afghanistan.¹¹ While the Ministry of Women Affairs took initiatives in drafting legislation for the elimination of violence against women, and prevention of forced and child marriage, this is awaiting approval by Parliament.¹² Meanwhile, a personal status law for the Shi’a community was

a Commander on 23 April 2008. See CNN, *Petraeus picked to lead Central Command*, 23 April 2008, available at <http://edition.cnn.com/2008/POLITICS/04/23/petraeus/index.html>.

⁹ UN Human Rights Council, *Report of the High Commissioner for Human Rights on the situation of human rights in Afghanistan and on the achievement of technical assistance in the field of human rights*, A/HRC/7/27, 21 February 2008, p. 13, available at <http://www.unhcr.org/refworld/docid/47cfb4b22.html> (hereafter: “2008 Report of the High Commissioner for Human Rights”).

¹⁰ *Ibid.*

¹¹ *Self-immolation among women increase in Afghan west – radio*, compiled by BBC Monitoring from Radio Afghanistan, Kabul, 5 August 2008 (subscription service).

¹² *Afghan women’s affairs minister trying to tackle “misguided” traditions*, quoted by BBC Monitoring from the Voice of the Islamic Republic of Iran External Service, Masshad, 14 March 2008 (subscription service).

passed by Parliament and signed by the President, which severely restricts the rights of Shi'a women. The President has committed to reviewing the law, which has not yet been implemented.¹³ There has been some progress in raising public awareness on gender issues by the Ministry of Women Affairs, civil society and the international community. This, however, could be offset by the expansion of territorial control by armed anti-Government actors and the accompanying pervasive gender discrimination in these areas.

Civilian casualties in 2008 increased almost 40 percent more than in 2007. Armed clashes frequently occur near or in inhabited areas, such as those in Musa Qala in Helmand in December 2007 and in Arghandab near Kandahar in June 2008, and have led to extensive loss of civilian life. On occasion, air strikes by NATO or OEF aircraft,¹⁴ some of them allegedly disproportionate,¹⁵ have also caused significant numbers of civilian deaths. According to reports, the number of Afghan civilians killed by air strikes has gone from 116 in 2006 and 321 in 2007 to 552 in 2008.¹⁶ The total number of civilian casualties, caused by all sides to the conflict in 2008 was 2118,¹⁷ with the majority resulting from attacks by anti-Government elements.

¹³ *Shiite Personal Status Law* (unofficial English translation), March 2009, available at <http://www.unhcr.org/refworld/docid/4a24ed5b2.html>. See also, No Peace Without Justice, *Afghanistan's Shi'a Personal Status Law, Analysis*, 21 April 2009, available at [http://www.npwj.org/resources/documents/Uploaded-Files/Analysis of Shia Personal Status Law FINAL.pdf](http://www.npwj.org/resources/documents/Uploaded-Files/Analysis%20of%20Shia%20Personal%20Status%20Law%20FINAL.pdf).

¹⁴ See, in general for air strikes conducted by pro-government forces in Afghanistan, Afghan Independent Human Rights Commission, *From Hope to Fear, an Afghan Perspective on Operations of Pro-government Forces in Afghanistan*, December 2008, available at <http://www.unhcr.org/refworld/docid/4a03f60e2.html>.

¹⁵ See, for example, Human Rights Watch, *"Troops in Contact": Airstrikes and Civilian Deaths in Afghanistan*, September 2008, available at <http://www.unhcr.org/refworld/docid/48c6251d2.html> (hereafter: "HRW, *Troops in Contact*").

¹⁶ UN Assistance Mission in Afghanistan (UNAMA), *Afghanistan: Annual Report on Protection of Civilians in Armed Conflict, 2008*, January 2009, page 15, available at <http://www.unhcr.org/refworld/docid/499abd892.html> (hereafter: "UNAMA, *2008 Annual Report on Protection of Civilians in Armed Conflict*").

¹⁷ UNAMA, *2008 Annual Report on Protection of Civilians in Armed Conflict*, above footnote 16.

III. Trends and types of Afghan asylum claims

Millions of Afghans have been externally displaced as a result of the decades of conflict which have been waged in the country. The greater part of those refugees fled to and was hosted for years in Iran and Pakistan. While over 5.7 million persons have returned to Afghanistan since 2002, increasing the country's population by 20 percent, over 2.7 million still live outside the country. Despite still representing the largest voluntary return operation globally, the rate of voluntary returns has nonetheless slowed significantly since 2005. In 2007, 7,300 Afghans returned from the Iran and 350,000 from Pakistan. In 2008, over 274,000 more Afghans returned from Pakistan and some 3,600 from the Iran.¹⁸

Approximately 1.7 million registered Afghans remain in Pakistan and 935,000 in the Iran.¹⁹ Thus, one out of every four refugees in the world is from Afghanistan. While present in 69 countries, the overwhelming majority of Afghan refugees are located in Pakistan and Iran.

According to UNHCR's analysis of the asylum claims lodged by Afghans and information provided by the States concerned, four main trends can be identified. First, a significant number of Afghan nationals are fleeing on account of persecution on grounds of (i) political opinion, either real or imputed. Secondly, Afghans are also seeking asylum due to persecution on the basis of (ii) ethnicity and/or (iii) religion. Finally, there are Afghans fleeing the country on account of (iv) gender-related persecution. These are the main groupings according to which the analysis and guidance in these Guidelines is organized.

With 18,500 asylum applications submitted by Afghans in 2008, in industrialized countries, the number is at its highest since 2002 (29,400 claims) and is almost double the figure of the year before (10,000 claims). This made Afghanistan the fourth most significant source country of asylum-seekers in the industrialized world. The deteriorating security situation in Afghanistan is a significant factor in many cases. The top 15 destination countries of Afghan asylum-seekers in 2008 recorded an increase in numbers compared to 2007, with the highest numbers reported for the United Kingdom (3,700 claims), Turkey (2,600), Greece (2,300), and Italy (2,000). In South and South-East Asia, 1,617 Afghan asylum-seekers arrived in 2008 compared to 900 in 2007. They arrived almost exclusively in India, Malaysia, Indonesia and now Australia. Additionally, in Tajikistan, 2008 arrivals almost doubled over 2007, totaling 1,360 individuals.²⁰

In addition to those seeking international protection, there are large numbers of Afghans leaving the country due to socio-economic concerns. Such movements to and through Pakistan and Iran are decades long, and include seasonal migration and in some cases multiple trips in either direction. Currently, an average of 40,000 persons transit daily official crossing points with Pakistan in either direction with minimal if any formal processing. They include Afghans registered as refugees in Pakistan, persons seeking employment, medical care or engaging in family visits as well as those in need of protection. In addition, it is thought that over 4,000 Afghans, without entry visas, cross each day into Iran, often with the assistance of smugglers. With regard to those illegal arrivals who would want to seek protection, it should be noted that neither country has national refugee status adjudication

¹⁸ UNHCR, *Protracted Refugee Situations – High Commissioner's Initiative*, December 2008, available at <http://www.unhcr.org/refworld/docid/496f041d2.html>.

¹⁹ *Ibid.*

²⁰ UNHCR, *Asylum Levels and Trends in Industrialized Countries 2008: Statistical Overview of Asylum Applications Lodged in Europe and Selected Non-European Countries*, 24 March 2009, <http://www.unhcr.org/49c796572.html>.

procedures, and that UNHCR's statutory role in conferring refugee status is not recognized by Iran.

IV. Eligibility for international protection

1. General approach

In view of the serious and widespread human rights violations and ongoing armed conflict in many parts of the country, UNHCR considers that a significant number of Afghan asylum-seekers are in need of international protection. In relation to countries which are signatories to the 1951 Convention²¹ and/or its 1967 Protocol,²² or relevant regional instruments,²³ such as the Convention Governing the Specific Aspects of Refugee Problems in Africa and the Cartagena Declaration, applications by Afghan asylum-seekers should be determined on an individual basis, according to fair and efficient refugee status determination procedures, including the right of appeal. Favourable consideration should be given to the specific groups identified in these Guidelines, including, but not limited to (i) persons perceived as contravening Sharia law and members of minority religious groups; (ii) ethnic minority groups; (iii) persons associated with or perceived as supporting the Government, including civil society members; (iv) actual or perceived supporters of armed anti-Government groups; (v) journalists; (vi) persons associated with the People's Democratic Party of Afghanistan and or other left-aligned political parties; (vii) women; (viii) children; and (ix) persons at risk of becoming victims of blood feuds. UNHCR considers that an internal flight or relocation alternative (IFA/IRA) is not available within certain parts of Afghanistan due to a number of factors. These include the overall ability of agents of persecution to perpetrate acts of violence with impunity, the widespread violence caused by armed conflict, serious and targeted human rights violations, risks associated with travel throughout the country, and the hardship faced by Afghans in ensuring basic survival, evidenced by the social, political and economic upheavals plaguing the country. In general, IFA/IRA will also not be available if the persecution feared originates from State actors. With regard to persecution feared from non-State actors, there is a strong likelihood that non-State agents of persecution could extend their reach beyond the areas they control. If, however, the availability of an IFA/IRA must be assessed as a requirement in a national eligibility procedure, it should be examined carefully and on a case-by-case basis, in light of the requisite relevance and reasonableness analyses, taking into account the individual circumstance of the case, and bearing in mind the cautions in these Guidelines. Even in those exceptional cases where relocation to an accessible area might be considered as viable to eliminate the existing threat, such area can only be a reasonable alternative in cases where the claimant has strong family, social or tribal links in the area of displacement, permitting relocation without undue economic and social hardship.

In light of serious human rights abuses and violations of humanitarian law in the last three decades in Afghanistan, the applicability of the exclusion clauses is a relevant consideration in the context of refugee protection. An individualized assessment is needed based on all relevant facts in each case in relation to those Afghans with certain backgrounds and profiles, as set out in these Guidelines. Acts which may bring an applicant within the scope of the

²¹ *Convention Relating to the Status of Refugees*, 28 July 1951, UN Treaty Series, Vol. 189, p. 137, available at <http://www.unhcr.org/refworld/docid/3be01b964.html>.

²² *Protocol Relating to the Status of Refugees*, 30 January 1967, UN Treaty Series, Vol. 606, p. 267, available at <http://www.unhcr.org/refworld/docid/3ae6b3ae4.html>.

²³ *Convention Governing the Specific Aspects of Refugee Problems in Africa* ("OAU Convention"), 1001 U.N.T.S. 45, 10 September 1969, available at <http://www.unhcr.org/refworld/docid/3ae6b36018.html>; and *Cartagena Declaration on Refugees*, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984, available at <http://www.unhcr.org/refworld/docid/3ae6b36ec.html>. Several South American States have implemented the Cartagena Declaration in their national legislation.

exclusion clauses could have occurred during the Communist regime, the period of civil war, the Taleban regime and its ouster, and the current conflict. Exclusion is warranted where the individual responsibility of the asylum-seeker for a crime under the exclusion clauses is established.

Afghanistan has experienced a general worsening of conflict-related violence. Specifically, the intensity and geographical extension of the ongoing armed conflict have on the whole increased. Afghan asylum-seekers originating from such areas may, thus, warrant protection under an extended / broader refugee definition, including, where applicable, under regional instruments, such as the OAU Convention and the Cartagena Declaration. Claims made by Afghan asylum-seekers on the basis of a fear of serious and indiscriminate harm arising from the armed conflict in Afghanistan should be assessed individually on their merits, in light of the evidence presented by the applicant and other current and reliable information on the place of origin. Afghans originating from areas affected by the armed conflict who do not meet the 1951 Convention criteria or an extended/broader refugee definition, but nevertheless demonstrate other needs for which a complementary form of protection²⁴ would be appropriate, the adequate response should be assessed accordingly. In this regard, States' obligations under international human rights law remain unaffected.

In cases where Afghan asylum-seekers find themselves in countries where there is no national legislative or administrative framework for refugee status determination, UNHCR urges the States concerned to permit them, particularly those originating from areas affected by the armed conflict, entry, lawful stay and residence, if only on a temporary basis, according to an appropriate framework which facilitates this and allows access to essential protection measures.

Given the ongoing situation of armed conflict and the significant protection role of traditional family and community structures in Afghanistan, UNHCR advises against the return of persons to areas other than their places of origin or previous areas of residence where they do not have effective family or tribal links and support. UNHCR also advises against return of Afghan asylum-seekers to countries they may have transited or in which they may have been previously afforded protection, but from which there is a risk of *refoulement* or deportation.

2. Inclusion for refugee status under 1951 convention criteria

Article 1A(2) of the 1951 Convention provides that the term “refugee” should apply to any person who

“owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

This definition applies in situations of peace as well as armed conflict, whether international or non-international in character. While the 1951 Convention does not explicitly refer to those who

²⁴ The term “complementary form of protection” is used in these Guidelines to refer to the range of mechanisms which have been adopted by States to complement the protection accorded under the 1951 Convention, in particular to extend protection to individuals who, while not meeting the criteria in Article 1 A(2) of the 1951 Convention, are outside of their country of nationality or habitual residence and are unable to return there owing to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order. See also: UNHCR, *UNHCR Statement on Subsidiary Protection under the EC Qualification Directive for People Threatened by Indiscriminate Violence*, January 2008, <http://www.unhcr.org/refworld/docid/479df7472.html>.

are compelled to leave their country of origin or habitual residence in the context of armed conflict, such persons are eligible for refugee status if they have a well-founded fear of persecution for reason of one or more of the 1951 Convention grounds. There is no need for the applicant to have been singled out or individually targeted, nor is there a requirement that he or she suffers from a risk or impact which is different than for other persons. It is also irrelevant whether the group affected is large or small. Whole communities may risk or suffer persecution for Convention reasons. The fact that all members of the community are equally affected does not in any way undermine the legitimacy of any particular individual claim.

The refugee definition of the 1951 Convention contains both a subjective and an objective element. The former refers to an individual's fear of harm in the event of return to his/her country of origin. The objective element refers to the applicant's fear being well-founded, which means that there is a reasonable possibility that the harm feared or some other form of harm would occur upon return.²⁵ The well-founded fear of persecution must relate to one or more of the 1951 Convention grounds, i.e. "race", "religion", "nationality", "political opinion" or "membership of a particular social group". The Convention ground must be a relevant contributing factor, though it need not be the sole, or dominant, cause.²⁶

In the present case, whether or not an individual's fear is well-founded must be assessed in the context of the situation in Afghanistan, taking into account the personal profile, experiences and activities of the individual which could put him or her at risk. While having been subjected to persecution or mistreatment in the past would normally be an indicator of the risk of some form of harm in the future, this is not a precondition for recognition as a refugee.²⁷ The experiences of others who have a similar profile or are otherwise associated with the asylum seeker can also be an indicator of the harm that could await him or her.²⁸ Fear of persecution will be well-founded if there is a *reasonable possibility* that an individual will experience persecution if he or she returns or is returned to Afghanistan.²⁹

The 1951 Convention does not define the term "persecution". It may, however, be inferred that a threat to life or freedom, other serious harm or serious violations of human rights, on account of race, religion, nationality, political opinion or membership of a particular social group, would constitute persecution.³⁰ Moreover, persecution is not limited to acts which cause physical harm. Severe discrimination could also amount to persecution, in particular where livelihood is threatened. Measures which restrict one's ability to earn a living so that survival is threatened would thus amount to persecution. Discriminatory measures that are not of a serious character by themselves may amount to persecution on a cumulative basis.³¹

Regular exposure to measures such as security checks, raids, interrogation, personal and property searches, and restrictions on freedom of movement may, in some cases, result in undue hardship for the persons affected and cumulatively amount to persecution. Additionally, the human rights violations have contributed to a prevailing sense of insecurity

²⁵ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, 1 January 1992, paras. 37-41, available at <http://www.unhcr.org/refworld/docid/3ae6b3314.html> (hereafter "UNHCR Handbook").

²⁶ See, for instance, UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/02/01, 7 May 2002, para. 20, available at <http://www.unhcr.org/refworld/docid/3d36f1c64.html>.

²⁷ UNHCR Handbook, above footnote 25, para. 45.

²⁸ UNHCR Handbook, above footnote 25, para. 43.

²⁹ UNHCR Handbook, above footnote 25, para. 42.

³⁰ Article 33(1) of the 1951 Convention.

³¹ UNHCR Handbook, above footnote 25, paras. 54-55.

and may compound the impact of these measures upon certain individuals. These factors should be taken into consideration when assessing whether the treatment to which an individual may be subjected amounts to persecution.

3. Main categories of claims

Bearing these considerations in mind, Afghans considered particularly at risk in view of the security, political and human rights situation in the country, and from which most of those who have fled the country and applied for asylum have originated, are examined below. It should be noted that the claims analyzed below are not exhaustive.

(a) Persons perceived as contravening Sharia law and members of minority religious groups

Observers estimate that 80 percent of the Afghan population is Sunni Muslim, 19 percent Shi'a Muslim and other religious groups make up less than one percent of the population.³² There is a small Christian community,³³ a small Sikh and Hindu community³⁴ and approximately 400 Afghans followers of the Baha'i faith predominantly based in Kabul.

Although the Constitution of Afghanistan declares Islam to be the religion of the State and affirms that “no law can be contrary to the beliefs and provisions of the sacred religion of Islam”,³⁵ it also states that “followers of other religions are free to exercise their faith and perform their religious rites within the limits of the provisions of the law”.³⁶

The Afghan Constitution is silent on issues of conversion from Islam to Christianity or other faiths, and while calling for respect of human rights and fundamental freedoms, defers to Sharia law for matters not explicitly stipulated in the Constitution. Conversion from Islam is considered apostasy and is punishable by death according to some interpretations of Shari'a. As in the case of blasphemy, an Afghan citizen who has converted from Islam (if a male over age 18 or a female over age 16, who is of sound mind) has three days to recant his or her conversion and could otherwise be subject to death by hanging.³⁷ Individuals can also be stripped of all their property and possessions and have their marriage declared invalid. In recent years, the death penalty for conversion has reportedly not been carried out.³⁸ Converts from Islam face, thus, a risk of persecution on account of their religion.

In one case highlighting the extreme sensitivities surrounding religious belief and freedom in Afghanistan, Abdul Rahman was imprisoned in March 2006 for converting to Christianity from Islam and was threatened with the death penalty. While this case generated significant media attention, it is not an isolated case. Following international outcry, he was eventually

³² See for instance, US Central Intelligence Agency, *World Factbook – Afghanistan*, last updated 23 April 2009, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/af.html> (hereafter: “CIA Factbook”).

³³ Estimates range between 500 and 8,000 individuals. See, for instance US Department of State, *2008 Report on International Religious Freedom – Afghanistan*, 19 September 2008, available at <http://www.unhcr.org/refworld/docid/48d5cbf4c.html> (further: “US Department of State, *Religious Freedom Report 2008*”).

³⁴ *Ibid.* It is estimated that 3000 Sikhs and Hindu believers live in Afghanistan.

³⁵ Article 3 of the *Constitution of Afghanistan*, 3 January 2004, available at <http://www.unhcr.org/refworld/docid/404d8a594.html> (hereafter: “Constitution”).

³⁶ Article 2 of the Constitution.

³⁷ According to most interpretations of Sharia law, conversion from Islam is punishable by death; see US Department of State, *Religious Freedom Report 2008*, above footnote 33.

³⁸ US Department of State, *Religious Freedom Report 2008*, above footnote 33.

released after an Afghan court found him mentally incompetent. He fled Afghanistan shortly thereafter and found asylum abroad.³⁹

Given the May 2007 ruling by the General Directorate of Fatwas and Accounts of the Supreme Court declaring the Baha'i faith distinct from Islam and a form of blasphemy, Afghans converting to the Baha'i faith face a risk of persecution similar to that of Christian converts.⁴⁰

Converts are likely to be viewed by family members and other traditional structures (such as clans and tribes) as a source of shame and embarrassment and are, thus, very likely to face isolation and strong pressure to recant. In case of refusal to recant, converts risk threats, intimidation, and, in some cases, serious physical harm from family and community members. As a result, they are forced to conceal their faith and are unable to worship in public.⁴¹

Although not strictly forbidden by law, proselytizing is viewed by the authorities and society in general negatively, particularly where done with a view of converting Muslims to another faith. As such, it is not practiced overtly.⁴² In August 2006, 1,000 members of a South Korean Christian aid group were deported from Afghanistan after Islamic clerics accused them of trying to convert Muslims to Christianity.⁴³

While there are no formal restrictions on the import of religious texts, the commonly held view is that the import of religious texts related to other religions is prohibited since the Government considers all citizens as Muslim. Furthermore local Government officials reportedly prohibit music, movies, and television broadcasts on religious grounds.⁴⁴

³⁹ M. Knust, *The case of an Afghan apostate – The Right to a fair Trial between Islamic law and Human Rights in the Afghan Constitution*, Max Planck UNYB, Vol. 10, 2006, p. 591 & ff., available at http://www.mpil.de/shared/data/pdf/knust_case_of_an_afghan_apostate.pdf.

⁴⁰ US Department of State, *International Religious Freedom Report 2007 – Afghanistan*, 14 September 2007, available at <http://www.unhcr.org/refworld/docid/46ee679d5a.html>. In addition, the report states that: “[w]hile the ruling is unlikely to affect foreign-national Baha'is in Afghanistan, it could potentially create problems for the country's small Afghan Baha'i population, particularly on the question of marriage. Many Afghan Baha'is are married to Afghan Muslims, but the ruling could be used by courts to invalidate marriages between Baha'is and Muslims. This would create a noteworthy distinction between how the courts view the Baha'i faith vis-à-vis Christianity and Judaism, as Jewish and Christian women (but not Baha'i women) can be legally married to Muslim men. (Muslim women can only be married to Muslim men.) Afghan citizens who convert from Islam to the Baha'i faith face a risk of persecution, similar to that of Christian converts. It remains to be seen how the government will treat second-generation Baha'is who technically have not converted, as they were born into families of Baha'i followers, but may still be viewed as having committed blasphemy.”

See also US Department of State, *2008 Country Reports on Human Rights Practices – Afghanistan*, 25 February 2009, available at <http://www.unhcr.org/refworld/docid/49a8f1b0c.html> (hereafter: “US, 2008 Report on Human Rights Practices”).

⁴¹ See, for instance, United States Commission on International Religious Freedom, *USCIRF Annual Report 2009 – Afghanistan*, May 2009, available at <http://www.uscirtf.gov/images/AR2009/afghanistan.pdf> (hereafter: “USCIRF, 2009 Annual Report”).

⁴² US, 2008 Report on Human Rights Practices, above footnote 40.

⁴³ *Ibid.* See also BBC, *Kabul to deport Korean Christians*, 3 August 2006, available at http://news.bbc.co.uk/2/hi/south_asia/5243448.stm; and R. Synovitz, *Kabul Cancels Christian Group's Event, Expels Organizers*, Radio Free Europe/Radio Liberty, 4 August 2006, available at <http://www.rferl.org/featuresarticle/2006/08/f8a9e931-ebb3-4843-9e62-53c83c3db93f.html>.

⁴⁴ US Department of State, *Religious Freedom Report 2008*, above footnote 33. In October 2007, Parwez Kambakhsh was arrested for allegedly downloading and distributing an article from the Internet that excoriated Islam's policies regarding women. On 22 January 2008, Balkh primary court sentenced Kambakhsh to death for “insolence to the Holy Prophet”. The death sentence was commuted to 20 years' imprisonment by a Kabul appeals court, and subsequently upheld by the Supreme Court of Afghanistan.

Persons accused of committing crimes against Sharia law, such as blasphemy, apostasy, homosexuality and adultery, are at risk not only of social rejection and violence at the hands of family or community members,⁴⁵ but also of formal prosecution. For example, journalist Parviz Kambakhsh was initially sentenced to death by a Primary Court in Balkh on charges of insulting religious values, for downloading from the Internet and distributing among fellow students an article criticizing polygamy in Islam.⁴⁶ In February 2008, the sentence was commuted to 20 years by the Afghan Supreme Court.⁴⁷ Like apostasy, homosexuality is punishable by death, as a *Hudood* crime,⁴⁸ according to most interpretations of Sharia law, although there were no sexual orientation-related executions reported during 2008. Overt homosexual relations are, strictly speaking, not tolerated.

Women continue to be prosecuted for adultery (*zina*) including in instances of rape, thus deterring them from reporting such crimes. Detention on the ground of vague “morality crimes,” such as running away from home (often escaping domestic violence), or refusing marriage, also occurs. Both adultery and “morality crimes” may elicit honour killings, and on occasion authorities claim that the detention of women accused of these acts is to protect them from being killed.

The Afghan Constitution recognizes the applicability of Sharia law in a number of cases. In Article 3, it states that “no law shall contravene the tenets and provisions of the holy religion of Islam.” Article 130 recognizes the applicability of *Hanafi* jurisprudence to cases where statutory law is silent.⁴⁹ Court cases on family issues are dealt with under a civil code based on the *Hanafi* school of Sunni Islam, which applies regardless of whether the person is Sunni or Shi’a. In April 2009, a Shiite Personal Status Law was passed by Parliament and signed by President Karzai. The law sanctioned, *inter alia*, marital rape and the inability of Shiite women to leave home without their husbands’ permission, except in emergencies. The Law, which had not come into force, is set to be reviewed for compliance with the Afghan

See, for instance, Institute for War and Peace Reporting, *Kambakhsh to Fight On*, 23 October 2008, available at <http://www.unhcr.org/refworld/docid/494fa5821e.html>; Reporters Without Borders, *World Report 2009 – Afghanistan*, 1 May 2009, available at <http://www.unhcr.org/refworld/docid/49fea989c.html>; and US, *2008 Report on Human Rights Practices*, above footnote 40. The Supreme Court of Afghanistan upheld the commuted sentence on 11 February 2009; see Human Rights Watch, *Afghanistan: 20-Year Sentence for Journalist Upheld*, 10 March 2009, available at <http://www.unhcr.org/refworld/docid/49b8e0341e.html>.

⁴⁵ For example, in April 2009, two Afghan teenagers accused of having premarital sex were reportedly killed by the Taliban in the western Nimroz Province; see Radio Free Europe/Radio Liberty, *Young Afghan couple killed by Taliban*, 14 April 2009, available at <http://www.unhcr.org/refworld/docid/49edb5f123.html>.

⁴⁶ See BBC, *Afghan ‘blasphemy’ death sentence*, 23 January 2008, available at http://news.bbc.co.uk/2/hi/south_asia/7204341.stm. A further case was reported where a Government press aide was arrested and almost lynched for circulating a translation of the Qor’an in the Dari language that had not been approved by senior religious scholars. See United States Commission on International Religious Freedom, *USCIRF Annual Report 2008 – Afghanistan*, 1 May 2008, available at <http://www.unhcr.org/refworld/docid/4855699b46.html>.

⁴⁷ Human Rights Watch, *World Report 2009 – Afghanistan*, 14 January 2009, available at <http://www.unhcr.org/refworld/docid/49705faf5a.html> (hereafter: “HRW, *World Report 2009*”).

⁴⁸ The *Hudood* establish the conditions under which Islamic Law can be applied for certain crimes. *Hudood* (singular: “*hadd*” meaning limit) punishments carry mandatory sentences, unlike the *ta’zir* punishments. When the particular conditions cannot be fulfilled then the *ta’zir* punishments defined by the Penal Code are applied. The *Hudood* punishments cover, *inter alia*, *zina*, murder, theft and robbery. See, for instance, UN Office on Drugs and Crime, *Afghanistan: Female prisoners and their social reintegration*, March 2007, available at <http://www.unhcr.org/refworld/docid/49997af32.html>.

⁴⁹ Hanafi, together with Hanbali, Maliki, Ja’fari and Shafii is one of the four traditional Sunni Islamic schools of thought. Shi’a Muslims, including in Afghanistan, follow mostly the Ja’fari school. Hanafi jurisprudence is prevalent in most of Asia.

Constitution following international outcry.⁵⁰ Although the existence of such discriminatory laws will not normally in itself constitute persecution, they will constitute an important, even if only indicative, factor.⁵¹

The Afghan legal system, therefore, lacks the mechanisms to protect individuals from harsh punishment for exercising fundamental rights and liberties. Moreover, in most cases the punishment is decreed and enforced by the State. Persons accused of blasphemy or apostasy may be at risk of persecution on the ground of their religion,⁵² whilst women accused of *zina* crimes and homosexuals may be at risk of persecution as a particular social group.⁵³

In addition, pro-Government religious leaders continue to be targeted by militia groups. In 2008, the Taleban killed at least ten clerics and committed several acts of violence inside mosques.⁵⁴

Although allowed to practice their faith publicly, members of the Hindu and Sikh communities reportedly face discrimination in seeking employment in the local and national Government, as well as societal hostility and harassment.⁵⁵ For instance, Sikh and Hindu children attending regular schools have reportedly suffered harassment at the hands of students of other faiths. The Government took limited steps to protect these children, such as opening the first-ever Government-sponsored school for Sikh and Hindu children in

⁵⁰ See, for instance, European Parliament, *Resolution on 24 April 2009 on women's rights in Afghanistan*, 24 April 2009, available at <http://www.unhcr.org/refworld/docid/4a043dfd2.html>; and USCIRF, *2009 Annual Report*, above footnote 41. For further details on the discriminatory provisions in the Shiite Personal Status Law, see Afghanistan Independent Human Rights Commission, *AIHRC Press release on codification of the Shiite Personal Status Law*, 7 April 2009, available at http://www.aihrc.org.af/pre_shiite.htm; and No Peace Without Justice, *Afghanistan's Shi'a Personal Status Law, Analysis*, 21 April 2009, available at http://www.npwj.org/resources/documents/Uploaded-Files/Analysis_of_Shia_Personal_Status_Law_FINAL.pdf.

⁵¹ 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*, 28 April 2004, para. 18, available at <http://www.unhcr.org/refworld/docid/4090f9794.html> (hereafter: "UNHCR, *Religion-Based Refugee Claims Guidelines*").

⁵² UNHCR, *Religion-Based Refugee Claims Guidelines*, above footnote 51.

⁵³ See UNHCR, *Guidelines on International Protection No. 2: "Membership of a Particular Social Group" Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, available at <http://www.unhcr.org/refworld/docid/3d36f23f4.html> (hereafter: "UNHCR, *Membership of a Particular Social Group Guidelines*"); and UNHCR, *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, available at <http://www.unhcr.org/refworld/docid/48abd5660.html>. See also UNHCR, *Advisory Opinion by UNHCR to the Tokyo Bar Association*, September 2004, available at <http://www.unhcr.org/refworld/docid/4551c0d04.html>:

"Sexual orientation is also now generally understood as an innate and unchangeable characteristic or so fundamental to identity or human dignity that change should not be compelled. There is no requirement that the group be "cohesive", that is, an applicant need not show that the members of a particular group know each other or associate with each other as a group. The relevant inquiry is whether there is a common element that group members share. It is also not necessary either, to demonstrate that all members of the putative group are at risk of persecution in order to establish the existence of a particular social group. Taking these elements in consideration, in UNHCR's view, homosexuals can be within the ambit of a social group category, either as a group sharing a common characteristic or because they are perceived as a cognizable group in the society. This is widely accepted in practice of various jurisdictions". [para. 4]

⁵⁴ Freedom House, *Freedom in the World 2008 – Afghanistan*, 2 July 2008, available at <http://www.unhcr.org/refworld/docid/487ca1eac.html>. See also US, *2008 Report on Human Rights Practices*, above footnote 40; and Alastair Leithhead, *Gunmen attack Afghanistan mosque*, BBC, 10 October 2007, available at http://news.bbc.co.uk/2/hi/south_asia/7037310.stm.

⁵⁵ See, for instance, USCIRF, *2009 Annual Report*, above footnote 41.

Ghazni.⁵⁶ Furthermore, Sikh and Hindu communities continue to face problems with land confiscation by local authorities and commanders as well as obtaining land for cremation.⁵⁷ At least one case of forced relocation of a group of Sikh families within an urban area has been reported to UNHCR by Sikh communities' representatives.

Religious-based discrimination may amount to persecution where it seriously restricts the applicant's enjoyment of fundamental human rights. Examples of discrimination amounting to persecution include, but are not limited to, discrimination with consequences of a substantially prejudicial nature for the person concerned, such as serious restrictions on the right to earn a livelihood, or to access normally available educational institutions and/or health services.⁵⁸

In light of the widespread application of strict Shari'a law in Afghanistan and widely held conservative religious views, Afghan asylum-seekers claiming a fear of persecution on grounds of contravening normative provisions or as members of minority faiths, may be at risk of persecution depending on the individual circumstances of the case.

(b) Minority ethnic groups

According to the Constitution, the nation of Afghanistan is comprised of the following ethnic groups: Pashtun, Tajik, Hazara, Uzbek, Turkmen, Baluch, Pashai, Nuristani, Aymaq, Arab, Qirghiz, Qizilbash, Gujur, Brahwui and others:⁵⁹

- Pashtuns are the largest group (about 42 percent) and are divided into two main subgroups: Durrani and Ghilzai, themselves divided into sub-groups and tribes. While most of the Pashtuns are settlers, some of them, the Kuchis, lead a semi-nomadic or nomadic life based on animal husbandry;
- Tajiks (about 27 percent);
- Hazaras (about nine percent), Uzbeks (about nine percent), Turkmen, Baluch, Pashai, Nuristani, Aymaks, Arab, Qirghiz, Qizilbash, Gujur, Brahwui and other smaller groups (13 percent).⁶⁰

Generally, asylum-seekers originating from areas where they are an ethnic minority are at heightened risk if they attempt to reclaim land and property. For instance, one of the groups affected are the Pashtuns, who have been uprooted in large numbers by ethnic violence in the North and the West of the country following the collapse of the Taleban regime.⁶¹ Pashtuns throughout northern Afghanistan, where they constitute an ethnic minority,⁶² have since been

⁵⁶ US, 2008 Report on Human Rights Practices, above footnote 40.

⁵⁷ *Ibid.* See also The Hindu, *Sikhs seek cremation grounds in Afghanistan*, 19 September 2007, available at <http://www.hindu.com/2007/09/19/stories/2007091961651500.htm>; P. Chauhan, *Life is hellish for Afghan Sikhs*, The Tribune, 27 September 2007, available at <http://www.tribuneindia.com/2007/20070928/main5.htm>; and The Tribune, *Angry Afghan Sikhs take coffin to UN HQ: Say Muslims opposing cremation*, 17 September 2007, available at <http://www.tribuneindia.com/2007/20070918/world.htm#3>.

⁵⁸ UNHCR, *Religion-Based Refugee Claims Guidelines*, above footnote 51, para. 17.

⁵⁹ Article 4 of the Constitution.

⁶⁰ Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), *Country Report Afghanistan*, 11th European Country of Origin Information Seminar (Vienna, 21-22 June 2007), November 2007, p. 2, available at <http://www.unhcr.org/refworld/docid/473451a31e.html>. See also CIA Factbook, above footnote 32.

⁶¹ Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples – Afghanistan: Pashtuns*, 2008, available at <http://www.unhcr.org/refworld/docid/49749d6745.html>.

⁶² Pashtuns are Afghanistan's largest ethnic group, but are a minority in the north. The Pashtuns' presence in the north is mainly the result of a deliberate policy of settlement carried out in earlier centuries. Since the demise of the *Taleban*, reports have continued to reach UNHCR of Pashtun villagers and civilians facing

targeted after being associated with the Taleban regime, whose leadership consisted mostly of Pashtuns from southern Afghanistan. As such, Pashtuns have faced abuses including killings, sexual violence, beatings, extortion, and looting.⁶³ In addition, formerly displaced Pashtuns may be unable to recover their land and property upon return to their area of origin.⁶⁴ Similarly, while most Afghan Gujurs from Baghlan were able to return, Afghan Gujurs from Takhar continue to face serious difficulties.

Land disputes, particularly when ethnic differences are involved or claims are made against persons in positions of authority, may be resolved violently or with some measure of threatened force. A recent case in point involves 77 Pashtun families returning to their villages of origin in Takhar province, where a thousand people from the local Tajik and Uzbek communities started demonstrating violently against their return the day after their arrival.⁶⁵ In January 2008, a local community in Sar-e Pol province complained that several families had become internally displaced because of land confiscations and armed violence by local commanders, and that local authorities were unable to address the problem.⁶⁶ In many of these cases, land occupiers may be local commanders with relationships to political parties in Parliament. In case restitution is being pursued, the rightful owners may be at risk if they do not have political, tribal or family protection, and the authorities are unable or unwilling to protect their rights – including the enforcement of a court decision.⁶⁷ The rightful owners risk ill-treatment, arrest and detention by local militia leaders or security officials.

Social discrimination against the Hazaras⁶⁸ continues to be reported, including being asked to pay bribes at border crossings where Pashtuns were allowed to pass freely. Despite significant efforts by the Government to address historical tensions affecting the Hazara community, including preferential employment, some Hazaras community leaders accused President Karzai of providing preferential treatment to Pashtuns to the detriment of other minorities, particularly the Hazaras.⁶⁹ Furthermore, the rising power of warlords is also a concern for the Hazaras as they may pose a direct threat to the Hazara community given the absence of State presence and rule of law in many areas.⁷⁰

harassment, intimidation and discriminatory treatment, and acts of violence, banditry and persecution at the hands of local militia commanders and other members of the factions controlling the north.

⁶³ See, for instance, Human Rights Watch, *Paying for the Taliban's Crimes: Abuses Against Ethnic Pashtuns in Northern Afghanistan*, 9 April 2002, available at <http://www.unhcr.org/refworld/docid/3cb2ad007.html>.

⁶⁴ It was reported, for example, that in September 2008, clashes occurred between residents and repatriated Pashtuns following their resettlement in Khowja, Bahawodeed district of Takhar province; see US, *2008 Report on Human Rights Practices*, above footnote 40. See also Integrated Regional Information Networks (IRIN), *Afghanistan: Ethnic antagonism spurs land disputes in north*, 11 September 2008, available at <http://www.unhcr.org/refworld/docid/48ce1d6ec.html>.

⁶⁵ According to UNHCR field observations.

⁶⁶ BBC Monitoring, *Elders in Afghan north say commanders grabbing their land by force*, compiled by BBC Monitoring from Ariana TV, Kabul, 2 January 2008 (subscription service).

⁶⁷ UNHCR interviews with Returnees, 2007.

⁶⁸ Once the largest Afghan ethnic group, the Hazaras represent today about nine percent of the country's population and live principally in Hazarajat, the central mountainous core of Afghanistan, or the Badakhshan mountains. See Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples – Afghanistan: Hazaras*, 2008, available at <http://www.unhcr.org/refworld/docid/49749d693d.html> (hereafter: "Minority Rights Group International, *Hazaras*").

⁶⁹ See US, *2008 Report on Human Rights Practices*, above footnote 40; and Minority Rights Group International, *Hazaras*, above footnote 68.

⁷⁰ Minority Rights Group International, *Hazaras*, above footnote 68.

Despite constitutional guarantees of “equality among all ethnic groups and tribes”⁷¹ and Government’s attempts to address the problems faced by ethnic minorities, discrimination and ethnic clashes, particularly in relation to land ownership disputes, still occur.⁷² Severe discrimination against ethnic minorities in some areas is also reported, most commonly in the form of denial of access to education and other services and political representation. As such, members of ethnic groups may be at risk of persecution on the ground of their ethnicity/race, in areas where they constitute a minority.⁷³ In this respect, the fear of being persecuted need not always extend to the whole territory of Afghanistan.

(c) Persons associated with or perceived as supporting the Government including Government officials and civil society members

There is a widespread and systematic campaign by armed anti-Government groups to target civilians associated with or perceived as supporting the Government or the international community.⁷⁴ According to United Nations statistics, 2008 was the most violent year in Afghanistan since 2001, with 31 percent more incidents than 2007.⁷⁵ The attacks, which ranged from intimidation, assassinations, abductions and stand-off attacks, to use of improvised explosive devices and suicide attacks, increasingly targeted civilians, including Government officials and civil servants, Government-aligned tribal leaders, Ulema Council members, religious scholars, doctors, teachers, human rights and civil society activists,

⁷¹ Article 6 of the Constitution.

⁷² In June 2008, for example, violent clashes took place between Hazaras and Kuchis, mainly ethnic Pashtun nomads, in the district of Behsud, Wardak province, over access to grazing land. The clashes resulted in at least 23 deaths, the displacement of more than 6,000 families and destruction to property, including mosques. As similar clashes took place in 2007, Afghan human rights organizations feared that the two groups would resort to widespread violence as neither side believed the Government could resolve the issue. See, for instance, UN Human Rights Council, *Report of the 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/10/23, 16 January 2009, para. 37, available at <http://www.unhcr.org/refworld/docid/49a2688e2.html>; Radio Free Europe/Radio Liberty, *Ethnic Hazaras protest in Kabul in feud with Afghan nomads*, 22 July 2008, available at <http://www.unhcr.org/refworld/docid/4889d087c.html>; IRIN, *Afghanistan: Threat of ethnic clashes over grazing land*, 7 April 2008, available at <http://www.unhcr.org/refworld/docid/47fcca351a.html>. Ethnic tensions over grazing land remain a concern; see IRIN, *Afghanistan: UNAMA supporting efforts to end dispute over grazing land*, 13 May 2009, available at <http://www.unhcr.org/refworld/docid/4a0bdbcac.html>.

⁷³ UNHCR Handbook, above footnote 25, paras. 68-70. See also *RRT Case No. 071852303* [2008] RRTA 17, 25 January 2008 (Refugee Review Tribunal of Australia), available at <http://www.unhcr.org/refworld/docid/482047422.htm>, where the Tribunal held that the applicant, a Hazara, would at risk of persecution upon return to Afghanistan on the basis, *inter alia*, of his ethnicity. The Tribunal further held that Hazaras were, generally, at risk particularly in areas where the population was dominantly Pashtun. See also *RRT Case No. 071246761* [2007] RRTA 147, 9 July 2007 (Refugee Review Tribunal of Australia), available at <http://www.unhcr.org/refworld/docid/47f379342.htm>; and *RRT Case No. 060627969* [2006] RRTA 183, 30 October 2006 (Refugee Review Tribunal of Australia), available at <http://www.unhcr.org/refworld/docid/47a708080.html> regarding the absence of effective protection for Hazaras in Afghanistan.

⁷⁴ For detailed information on human rights violations committed by the insurgency in the context of the armed conflict in Afghanistan, please refer to Afghanistan Independent Human Rights Commission, *Insurgent Abuses Against Afghan Civilians*, December 2008, available at <http://www.unhcr.org/refworld/docid/4a03f7a82.html> (hereafter: “AIHRC, *Insurgent Abuses Against Afghan Civilians*”).

⁷⁵ UN General Assembly, *The situation in Afghanistan and its implications for international peace and security: report of the Secretary-General*, A/63/751-S/2009/135, 10 March 2009, paras. 19, available at <http://www.unhcr.org/refworld/docid/49be2c142.html> (hereafter: “UN Secretary-General, *March 2009 Report*”). According to the latest UN Secretary-General report, the security situation in has continue to deteriorate in the last three months; see UN General Assembly, *The situation in Afghanistan and its implications for international peace and security: report of the Secretary-General*, A/63/892-S/2009/323, 23 June 2009, paras. 18-24, available at <http://www.unhcr.org/refworld/docid/4a4c72c52.html>.

humanitarian workers, and workers on reconstruction projects.⁷⁶ Civilian deaths reportedly caused by anti-Government elements rose from 700 in 2007 to 1160 in 2008, an increase of over 65 percent.⁷⁷

The increased targeting of civilians can be viewed as part of an effort by armed anti-Government groups to gain control over territories and populations. Local inhabitants are coerced into supporting anti-Government groups, through threats of or use of force, which are compounded by the reduced confidence in the capacity of the Afghan Government and the international forces to maintain security and provide basic services.⁷⁸

The intimidation tactics used by armed anti-Government groups against the civilian population include individual or community warnings or threats, often in the form of “night letters” (*shab nameha*), to stop working for, or supporting, the Government or international forces, upon pain of death.⁷⁹ For example, in Kunar threatening night letters were delivered to female staff of Government and international institutions.⁸⁰ Threatening phone calls, verbal harassment as well as physical aggression and even the burning of houses and other properties, such as small shops, have also been reported as different forms of intimidation by armed anti-Government actors.

Taliban militants reportedly executed 30 civilians in Chora district, Uruzgan province, in June 2007, allegedly on account of civilians’ refusal to join them in a battle against NATO and ANA forces.⁸¹ At checkpoints manned by the Taliban, passengers are systematically searched for possession of dollar bills, or mobile telephones with contacts in English, all of which may be considered as proof of working for the Government or the international community at large.⁸²

Numerous reports indicate that persons suspected of “spying” on behalf of the Afghan military or the international forces risk execution at the hands of the armed anti-Government groups. In several cases these persons, including women and children, have been summarily executed by the insurgents.⁸³ Reports also exist of Afghans being executed by the Taliban in

⁷⁶ See AIHRC, *Insurgent Abuses Against Afghan Civilians*, above footnote 74; and UN Secretary-General, *March 2009 Report*, above footnote 75, para. 21.

⁷⁷ UNAMA, *2008 Annual Report on Protection of Civilians in Armed Conflict*, above footnote 16, p. 26.

⁷⁸ Most districts in the south, south-west, south-east, east and large swathes in the central regions of Afghanistan, encompassing about 50 percent of the country, are classified as “an extreme risk, hostile environment” for U.N. operations and often offer limited access to unarmed government civil servants; see UNDSS security maps and regional analysis.

⁷⁹ According to information available to UNHCR. These letters are distributed not only in rural areas but also in important cities: reports exist for varied locations throughout the country, such as Nimruz, Farah, Herat, Badghis, Kabul, Balkh, Nangarhar, Kunar, and Laghman. AIHRC also documented cases of intimidation in numerous districts in Khost, Paktia, Paktika, Kandahar, Zabul, Kunar, Helmand, and Nangahar; see AIHRC, *Insurgent Abuses Against Afghan Civilians*, above footnote 74.

⁸⁰ According to information available to UNHCR.

⁸¹ See HRW, *Troops in Contact*, above footnote 15.

⁸² According to UNHCR field observations in 2007.

⁸³ On 12 December, a 60-year old woman and her 17 year-old grandson were executed by Taliban at a roadblock in Uruzgan province, accused of “spying for the Afghan Government and American forces”, after they found a dollar bill in the boy’s pocket; on 20 December, two young men accused of spying for the Government were hanged in Kajaki district, Helmand province; on 7 December, a 12-year old boy was hanged by Taliban in Sangin district, Helmand province. See, for example, Moore, M., *NATO confronts surprisingly fierce Taliban*, The Washington Post, 26 February 2008, available at http://www.washingtonpost.com/wp-dyn/content/article/2008/02/25/AR2008022503089_pf.html. The AIHRC has documented a case where 16 policemen were detained and sentenced to death by Taliban-run Islamic courts in Taleban-controlled areas; see AIHRC, *Insurgent Abuses Against Afghan Civilians*, above footnote 74.

Pakistan, for alleged spying activities.⁸⁴ Afghan civilian personnel working for PRTs (Provincial Reconstruction Teams) or, in general, the international military are also at a very high risk of being targeted.

Government officials at all levels are at increased risk of being targeted in areas that are under the control of the armed anti-Government groups or in any area where such groups operate. The UN has recorded 30 Government officials (excluding members of the security forces) killed from 1 January to 30 August 2008.⁸⁵ Officials linked to the territorial or security administration, including Governors and officials of the ministries of the Interior, Defence and Justice, and other security officials, are at a heightened risk of being killed.⁸⁶

In February 2009, the Justice and Education ministries were attacked in Kabul in a coordinated operation killing at least 26, reflecting the Taliban's ability to target well-guarded civil servants and public buildings even in the capital.⁸⁷ Other members of the general administration, including the ministries of Women Affairs, Information and Culture and officials involved in social services, have also been targeted.⁸⁸ Lower level Government officials are reportedly more likely to be expelled from their districts or provinces than be targeted for assassination.⁸⁹ The available information confirms that women working for the Government are targeted more than their male counterparts.⁹⁰ Family members of Government officials or security forces are also reportedly targeted by anti-Government elements.⁹¹

⁸⁴ The BBC reported on June 2008 that Taliban had publicly executed two Afghans "before thousands of cheering supporters", accusing them of passing information to US troops that led to an aerial strike in Bajaur in the western tribal belt that claimed 14 fatalities. See BBC, *Pakistan Taliban 'execute spies'*, 27 June 2008, available at http://news.bbc.co.uk/2/hi/south_asia/7477238.stm.

⁸⁵ According to UN sources consulted in Kabul, September 2008.

⁸⁶ Interview with local NGO personnel in Kabul, September 2008. Some relevant cases include: the killing of MP Habibullah Jan in Zhari district of Kandahar province, on 5 July 2008 (see BBC, *Gunmen kill Afghan MP in Kandahar*, 5 July 2008, available at http://news.bbc.co.uk/2/hi/south_asia/7491069.stm); the assassination of the Governor of Guzara district in Herat province, in February 2008; the killing of a policewoman in Herat (see BBC, *Afghan policewoman is shot dead*, 24 June 2008, available at http://news.bbc.co.uk/2/hi/south_asia/7471906.stm); a failed assassination attempt on the Governor of Logar in July 2008, who was killed a few weeks later in another attack (see BBC, *Afghan provincial governor killed*, 13 September 2008, available at http://news.bbc.co.uk/2/hi/south_asia/7613888.stm); an ambush against the Governor of Ghazni in August (see Jason Burke, *Three western aid workers killed in Afghanistan ambush*, 13 August 2008, available at <http://www.guardian.co.uk/world/2008/aug/13/afghanistan.usa>); and two assassination attempts on the Governor of Nimruz since 2007 (see Al Jazeera, *Deadly bomb targets Afghan governor*, 2 July 2008, available at <http://english.aljazeera.net/news/asia/2008/07/200872145744957335.html>).

⁸⁷ Radio Free Europe/Radio Liberty, *Coordinated Taliban attacks kill at least 26 in Kabul*, 11 February 2009, available at <http://www.unhcr.org/refworld/docid/499e98d6c.html>.

⁸⁸ BBC, *Suicide attack at Afghan ministry*, 30 October 2008, available at http://news.bbc.co.uk/2/hi/south_asia/7699111.stm.

⁸⁹ According to one UN source interviewed in Kabul.

⁹⁰ For example, Sitara Achikzai, a female politician, was killed in Kandahar in April 2009; see UN News Service, *Afghanistan: UN condemns 'cowardly' killing of female politician in Kandahar*, 13 April 2009, available at <http://www.unhcr.org/refworld/docid/49fab9e71e.html>. Lieut.-Col. Malalai Kakar, Afghanistan's most senior female police officer, was killed by gunmen while leaving her house in September 2008; see BBC, *Top Afghan policewoman shot dead*, 28 September 2008, available at http://news.bbc.co.uk/2/hi/south_asia/7640263.stm. Another police woman, Bibi Hoor, 26-years old, was similarly killed in Herat in June 2008; see, for example, The Straits Times, *Top Afghan woman officer dead*, 28 September 2008, available at http://www.straitstimes.com/Breaking%2BNews/World/Story/STIStory_283633.html.

⁹¹ For instance, the nephew of an official from the National Directorate of Security was killed in Kapisa by insurgents, according to UN sources. UNHCR also interviewed in November 2007 one family in Shaidaiee IDP camp in Herat, expelled by the Taliban from Muqur district in Badghis, because their son was a police

Educational facilities, students and staff are increasingly the target of direct attacks by anti-Government elements.⁹² According to UNICEF, in 2008, attacks on schools and educational facilities rose by 24 percent (to 293) in the previous year. Female teachers are specifically targeted and higher bounties are offered for killing them.⁹³ On 12 November 2008, in one widely reported attack in Kandahar city, attackers threw acid onto female students and teachers, severely injuring 16, including four female teachers.⁹⁴

There are increasing reports of anti-Government groups targeting local traditional leadership figures, such as tribal elders, *mullahs* and *pirs*.⁹⁵ Such persons may be perceived as allies of the Government or the international community, or simply viewed as non-supportive of anti-Government elements.⁹⁶ Important cases include the killing of a respected *pir* in Uruzgan in May 2008,⁹⁷ and the subsequent assassination of Malim Akbar Khakrezwal in Arghandab district north of Kandahar.⁹⁸ Twenty clerics were assassinated between the summers of 2005 and 2006,⁹⁹ and at least ten pro-Government clerics were reportedly killed by insurgents in 2008.¹⁰⁰

It is important to note the religious differences that may exist between the views of local *mullahs* or *pirs* and those of the Taleban. *Wahabbist* and *salafist* tendencies are an integral part of the Taleban's ideology as espousing a more globalized and radical political Islam,

officer. According to Professor Philip Alston, “[w]omen are also threatened or targeted for assassination by the Taleban and other anti-government elements for a range of reasons. These reasons include having sons working for the ANP or ANA, working for the Department of Women’s Affairs, or for advocating for their basic rights”; see Alston, P., *Statement by Professor Philip Alston, Special Rapporteur of the United Nations Human Rights Council on Extrajudicial, Summary or Arbitrary Executions*, Kabul, 15 May 2008, available at <http://www2.ohchr.org/SPdocs/Press/Finalstatement.doc>. See also AIHRC, *Insurgent Abuses Against Afghan Civilians*, above footnote 74.

⁹² See, for instance, UNAMA, *2008 Annual Report on Protection of Civilians in Armed Conflict*, above footnote 16.

⁹³ According to internal Taleban regulations distributed by the media, “[i]t is forbidden to work as a teacher under the current puppet regime, because this strengthens the system of the infidels. True Muslims should apply to study with a religiously trained teacher and study in a Mosque or similar institution. Textbooks must come from the period of the Jihad or from the Taleban regime. (...) Anyone who works as a teacher for the current puppet regime must receive a warning. If he nevertheless refuses to give up his job, he must be beaten. If the teacher still continues to instruct contrary to the principles of Islam, the district commander or a group leader must kill him.” According to *layeha* or book of rules for the Taleban, published by Die Weltwoche, 16 November 2006, English translation available at <http://www.signandsight.com/features/1071.html>. The *layeha* is considered authentic by well-informed security sources consulted in Kabul in October 2008.

⁹⁴ See, for instance, UNAMA, *2008 Annual Report on Protection of Civilians in Armed Conflict*, above footnote 16; and BBC, *Acid attack on Afghan schoolgirls*, 12 November 2008, available at http://news.bbc.co.uk/2/hi/south_asia/7724505.stm.

⁹⁵ A *pir* (elder, sometimes equivalent in use to the Arabic *sheikh*) is a mystic who acts also as a teacher and mentor of Islamic mysticism or Sufism to a group of followers. In most of the cases, *pirs* belong to one of the main Sufi brotherhoods or *tariqat*. In Afghanistan, *pirs* may be well recognised persons carrying significant social and political weight. The main *tariqat* in Afghanistan are the Qadiriya, Chestiya and Naqshbandiya, although many other smaller orders may exist. See in general Annemarie Schimmel, *Mystical Dimensions of Islam*, The University of North Carolina Press, 1978, pp. 228-258.

⁹⁶ Source: UN agencies in Kabul.

⁹⁷ *Ibid.*

⁹⁸ Xinhua, *Gunmen kill pro-gov't tribal leader in S Afghanistan*, 6 June 2008, available at http://www.afghanemb-canada.net/en/news_bulletin/2008/june/06/index.php. Other example is the killing of a mullah in Bala Morghab district of Badghis in 2008. Taleban insurgents broke his hand as punishment for his issuance of traditional written blessings to the local population. After he continued with this practice, they hung him (source: UNHCR).

⁹⁹ See Antonio Giustozzi, *Koran, Kalashnikov, and Laptop: The Neo-Taliban Insurgency in Afghanistan 2002-2007*, C Hurst & Co Publishers Ltd, 2007, p. 46 (hereafter: “Giustozzi”).

¹⁰⁰ US, *2008 Report on Human Rights Practices*, above footnote 40.

which is naturally suspicious of traditional and popular views of religion prevalent among some local *mullahs*, the majority of *pirs*, and other religious leaders.¹⁰¹ Whilst targeting of moderate religious leaders may be viewed as religious persecution, such targeting may also be due to efforts by anti-Government elements to control certain areas. Thus, political opinion is also a ground for persecution of religious leaders, particularly those whose position of leadership is perceived as a threat to anti-Government elements.

Other groups at risk are Afghans working or associated with international organizations or security forces, humanitarian workers and civil society activists in areas where there are insurgent activities or infiltration by *Taleban* and/or *Hezb-e-Islami* forces. The increased targeting of such persons is based on their perceived association with the central Government. A number of incidents have been reported between 2006 and 2008 in Kandahar, Helmand and Kunar against Afghans accused of working for international military forces.¹⁰² The main targets of such attacks were civilian workers, such as truck drivers or construction workers. Since 2007, kidnappings, including of individuals linked, or perceived to be linked, to the Government or the international community, particularly in the south, south-east, east and west regions, have also been on the rise both for political and criminal objectives.¹⁰³

Furthermore, some national human rights NGOs have lost access to parts of Ghazni, Kapisa, Wardak, Kandahar, Helmand, Uruzgan and Zabol provinces.¹⁰⁴ It is also reported that human rights and civil society activists have to travel without their mobile phones, to avoid disclosure of contacts with the international community, and without any material referring to human rights.

As a result of the armed conflict, many areas that were once accessible are now out of reach for most humanitarian organizations.¹⁰⁵ Humanitarian workers are increasingly at risk of being targeted.¹⁰⁶ The UN Department for Safety and Security recorded over 198 attacks and

¹⁰¹ For the general ideological origins of the *Taleban*, see Rashid, A., *Taleban: Militant Islam, Fundamentalism and Oil in Central Asia*, Yale: Yale University Press, 2001; for the structural opposition between salafism and wahabbism, and traditional and popular forms of Islam, see Roy, O., *Globalized Islam: the Search for a New Ummah*, Columbia University Press, 2006. Giustozzi offers a summarized but very precise analysis of the relationships between the *Taleban*, clerical networks, sufi *pirs* and tribal leaders, above footnote 99, pp. 43-52.

¹⁰² *2008 Report of the High Commissioner for Human Rights*, above footnote 9. See also UN Human Rights Council, *Report of the 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*, Human Rights Council, A/HCR/4/98*, 5 March 2007, available at <http://www.unhcr.org/refworld/docid/46237f882.html>.

¹⁰³ See, for instance, US Department of State, *Country Reports on Terrorism 2008 – Afghanistan*, 30 April 2009, available at <http://www.unhcr.org/refworld/docid/49fac6a7c.html>; and UNAMA, *2008 Annual Report on Protection of Civilians in Armed Conflict*, above footnote 16.

¹⁰⁴ UNHCR-conducted interview with HRCSN (Human Rights Civil Society Network) personnel in Kabul, September 2008.

¹⁰⁵ According to a UN Secretary-General report, as of December 2008, 231 of Afghanistan's 400 districts were considered completely beyond the Government's control and access to 165 remained difficult or problematic; see UN Secretary-General, *March 2009 Report*, above footnote 75, paras. 24 and 71.

¹⁰⁶ Some examples of attacks are: two local NGO deminers were executed in Kunduz at the beginning of April 2008 (source UNHCR Field); two French NGO workers were kidnapped in July in Daikundi province, in the first ever kidnapping incident of humanitarian workers in the Central Highlands (source UNHCR); four workers of the International Rescue Committee, one Afghan and three from the USA, were assassinated on 13 August 2008 in Logar by *Taleban* insurgents (see Al Jazeera, *Aid workers killed in Afghanistan*, 13 August 2008, available at <http://english.aljazeera.net/news/asia/2008/08/20088139251345245.html>); in the same month, *Taleban* abducted four de-miners working for a local NGO, who were later released (source UNHCR); a vehicle of an international NGO was ambushed and fired upon in Balkh province (source UNHCR); in April 2008, a suicide bomber targeted a team of Indian road workers in Nimruz province, killing two Indian civilian engineers and one Afghan worker (Noor Khan, *Afghan police kill*

incidents of intimidation against aid workers in 2008, which resulted in the killing of 38 staff and the kidnapping of an additional 147.¹⁰⁷ The Ministry of Public Health announced in May 2008 that 40 health workers have been killed or kidnapped while delivering health services in the past two years.¹⁰⁸ All indications point to a general threat to local and international humanitarian workers, without distinguishing between UN, NGOs and other humanitarian actors. Family members of humanitarian workers may also be targeted, particularly if they live in areas which aid is delivered.¹⁰⁹ The great majority of NGOs staff targeted has been Afghan nationals.¹¹⁰

There is growing evidence that persons implementing, or perceived as implementing Government projects, as well as NGOs or civilian contractors with real or perceived links to the international military, run a very high risk of being targeted by anti-Government elements.¹¹¹ In some cases, these links may be assumed by insurgents from the mere fact of an NGO implementing immediate emergency assistance to victims of an air strike by ISAF or OEF, or to victims of regular hostilities between the parties to the conflict.¹¹² In geographical terms, the threat is present wherever armed anti-Government groups have a presence or a minimum operational capacity. The Afghanistan NGO Safety Office (ANSO) has drawn attention to the significant increase of attacks on NGOs in the Western and Northern areas of the country.¹¹³

Humanitarian workers and their family members may, thus, be at risk of persecution on account of their imputed political opinion, stemming from the perceived alliance to the Government and/or the international community. A blanket imputation of political opinion can be found in the text of the regulations of the self-proclaimed Islamic Emirate of Afghanistan (Taleban). In its so-called “book of rules”, the Taleban states that

“[t]hose NGOs that come to the country under the rule of the infidels must be treated as the government is treated. They have come under the guise of helping people but in fact are part of the regime. Thus we tolerate none of their activities, whether it be building of streets, bridges, clinics, schools, Madrases (schools for Koran study) or other works. If a school fails to heed a warning to close, it must be burned. But all religious books must be secured beforehand.”¹¹⁴

(d) Actual or perceived supporters of armed anti-Government groups

Some civilian casualties are attributed to the Afghan and international military forces, particularly as a result of air strikes but also in the course of ground operations.¹¹⁵ Aside from

9 Taliban fighters in Kandahar, Associated Press, 22 April 2008, available at <http://www.afghanistannewscenter.com/news/2008/april/apr222008.html>.

¹⁰⁷ UNDSS statistics, not counting construction workers, engineers, or journalists, quoted in UNAMA, 2008 Annual Report on Protection of Civilians in Armed Conflict, above footnote 16, p.34.

¹⁰⁸ IRIN, Afghanistan: over 360,000 affected by reduced health services, 14 May 2008, available at <http://www.irinnews.org/report.aspx?ReportId=78185>.

¹⁰⁹ According to a reputable NGO source in Kabul.

¹¹⁰ ANSO, ANSO Quarterly Data Report (Q.3-2008), 20 September 2008, available at [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/DA93DE98DBE6A870C12574EC0047F65B/\\$file/ANSO+Q+3+Data+Report++2008+\(2\).pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/DA93DE98DBE6A870C12574EC0047F65B/$file/ANSO+Q+3+Data+Report++2008+(2).pdf) (hereafter: “ANSO Quarterly Data Report”).

¹¹¹ ANSO Quarterly Data Report, above footnote 110.

¹¹² According to a reputable NGO source in Kabul.

¹¹³ ANSO Quarterly Data Report, above footnote 110.

¹¹⁴ Newsweek, Afghanistan: The Taliban’s Book of Rules, 12 December 2006, available at <http://www.newsweek.com/id/44121>.

¹¹⁵ UNAMA, 2008 Annual Report on Protection of Civilians in Armed Conflict, above footnote 16. According to UN statistics, about 39 percent of the total of 2,118 civilian casualties in 2008 were caused by

collateral damage from air strikes, casualties are, in some instances, the result of mistakenly targeting civilians. These attacks are attributed to incorrect intelligence provided to international or Afghan Government forces, or to the presence of insurgent forces in civilian locations.¹¹⁶

In some instances, Afghan civilians accused of collaborating with armed anti-Government groups have faced detention or been abused by international or Afghan armed forces.¹¹⁷ Ill-treatment of detainees has been reported in detention facilities managed by the US under OEF.¹¹⁸ In 2008, a journalist was reportedly detained for 11 months for allegedly having contacts with the Taliban, and allegedly mistreated.¹¹⁹ In June 2008, the ICRC reported to be regularly visiting approximately 600 persons detained in Bagram,¹²⁰ but the AIHRC and UNAMA had very limited access to the facility. The US Government stated that in April 2008, 10 juveniles were detained in that military facility.¹²¹

There are also reports of mistreatment during detention of persons accused of crimes against national security, particularly when the National Directorate for Security (NDS) is involved. The NDS operates under an undisclosed Presidential decree, and is in charge of detention and prosecution of those accused of crimes against national security.¹²² No improvements in this situation have been noted, as access by humanitarian and human rights organizations to persons detained by NDS continues to be very limited. In November 2007, Amnesty International reported that at least five ISAF countries have agreements with the Afghan Government to transfer detainees to Afghan authorities, with NDS taking custody of many of them. The same source reports at least six cases of torture or ill-treatment of persons

international and national Afghan forces; see UN Secretary-General, *March 2009 Report*, above footnote 75, para. 66.

¹¹⁶ For air strikes conducted by pro-Government forces in Afghanistan in general, see Afghan Independent Human Rights Commission, *From Hope to Fear, an Afghan Perspective on Operations of Pro-government Forces in Afghanistan*, December 2008, available at <http://www.unhcr.org/refworld/docid/4a03f60e2.html>.

¹¹⁷ UNAMA, *2008 Annual Report on Protection of Civilians in Armed Conflict*, above footnote 16.

¹¹⁸ See Human Rights Watch, *USA: By the Numbers: Findings of the Detainee Abuse and Accountability Project*, 26 April 2006, available at <http://www.unhcr.org/refworld/docid/45c2c7e52.html>; and Lasseter, T., *Day 2: US abuse of detainees was routine in Afghanistan bases*, McClatchy Washington Bureau, 16 June 2006, available at <http://www.mcclatchydc.com/259/story/38775.html>. See also Physicians for Human Rights, *Broken Laws, Broken Lives: Medical Evidence of Torture by US Personnel and Its Impact*, June 2008, available at <http://brokenlives.info/>.

¹¹⁹ Reporters Without Borders, *Fixer released after being held arbitrarily and mistreated by US military for 11 months*, 24 September 2008, available at <http://www.unhcr.org/refworld/docid/48dc86afc.html>.

¹²⁰ International Committee of the Red Cross (ICRC), *Questions relatives aux personnes détenues par les États-Unis pour des raisons liées aux événements du 11 septembre 2001 et à leurs conséquences – le rôle du CICR*, 30 June 2008, available at <http://www.icrc.org/web/fre/sitefre0.nsf/htmlall/usa-detention-update-121205>.

¹²¹ UN Committee on the Rights of the Child (CRC), *Written replies by the Government of the United States of America concerning the list of issues (CRC/C/OPAC/USA/Q/1) to be taken up in connection with the consideration of the initial report of the United States of America under article 8, paragraph 1 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (CRC/C/OPAC/USA/1)*, CRC/C/OPAC/USA/Q/1/Add.1/Rev.1, 2 June 2008, available at <http://www.unhcr.org/refworld/docid/4885cfb20.html>. UNAMA has also documented numerous cases of men and boys being arrested by ISAF, who are then handed over to Afghan Government authorities (most notably the NDS) where they are detained for extended periods of time, without being afforded the required minimum due process guarantees and frequently without informing their relatives; see UNAMA, *2008 Annual Report on Protection of Civilians in Armed Conflict*, above footnote 16.

¹²² *2008 Report of the High Commissioner for Human Rights*, above footnote 9, p. 16. See also, UNAMA, *2008 Annual Report on Protection of Civilians in Armed Conflict*, above footnote 16, p. 23.

transferred by Canadian troops to Afghan authorities.¹²³ Canada stopped transferring detainees to Afghan authorities in 2007 amidst allegations of ill-treatment, but transfers were resumed in 2008. A further eight detainees have allegedly been ill-treated by NDS since.¹²⁴ Thus, Afghan asylum-seekers claiming persecution by Afghan authorities on account of their actual or perceived support of armed anti-Government groups may be at risk of persecution on the ground of their (imputed) political opinion, depending on their individual profile and circumstances. In these cases, Article 1(F) analysis may be warranted to determine if the claimant had committed excludable acts.

(e) Journalists

Freedom of expression and the right to print and publish without prior clearance by State authorities is guaranteed by law.¹²⁵ The new Media Law, which supersedes the 2006 Mass Media Law¹²⁶ and was passed by Parliament in September 2008, has yet to be signed by President Karzai. Much controversy exists as to whether the law is actually in force.¹²⁷ Since, under the new media law, the Government allowed some independence to Radio Television Afghanistan (RTA), the State-run media outlet, observers raise concerns about a “level playing field” ahead of August elections.¹²⁸ Furthermore, it is feared that the new law contains some ambiguous provisions that could be used to block political discussion.¹²⁹

Curbs on the media continue to be reported.¹³⁰ Reports of intimidation, harassment and violence against journalists have increased.¹³¹ A growing number of journalists has been arrested by Afghan authorities as a result of their activities. Journalists also face threats or harassment by politicians, security services, and others in positions of power.¹³² Threats and

¹²³ Amnesty International, *Afghanistan: Detainees transferred to torture: ISAF complicity?*, 13 November 2007, available at <http://www.unhcr.org/refworld/docid/473969ab2.html>.

¹²⁴ Smith, G., *Canada resumes Afghan detainee transfers*, *The Globe and Mail*, 29 February 2008, available at <http://www.theglobeandmail.com/news/world/article669955.ece>.

¹²⁵ Article 34 of the Constitution. Approximately 650 print publications, 55 private radio stations, 15 television networks, and 10 news agencies operated during the year. There were 150 private printing houses and 145 media and film production companies across the country. The two largest TV stations are Tolo TV, part of the Moby Media conglomerate, which has a 60 percent market share, and Ariana TV, which has a 35 percent market share; see US, *2008 Report on Human Rights Practices*, above footnote 40.

¹²⁶ *Mass Media Law of Afghanistan*, 2006, available at <http://www.mfa.gov.af/Documents/massmedialaw.pdf>

¹²⁷ Since the law was passed with two-thirds majority vote by Parliament, some argue that it is technically in force, whilst the Government officials insist that the law becomes enforceable upon publication. See, for instance, Institute for War and Peace Reporting, *Media Law Wrangling Leaves Journalists in Limbo*, 24 February 2009, available at <http://www.unhcr.org/refworld/docid/49a79e04c.html>.

¹²⁸ See, for instance, Reuters, *Afghan media: Law delay raises fears over fair poll*, 9 April 2009, available at <http://www.reuters.com/article/worldNews/idUSISL37174320090409>; Institute for War and Peace Reporting, *Media Law Wrangling Leaves Journalists in Limbo*, 24 February 2009, available at <http://www.unhcr.org/refworld/docid/49a79e04c.html>; and US, *2008 Report on Human Rights Practices*, above footnote 40.

¹²⁹ UN Secretary-General, *March 2009 Report*, above footnote 75, para. 62.

¹³⁰ UN Human Rights Council, *Report of the 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*, Human Rights Council, A/HCR/4/98*, 5 March 2007, paras. 46-52, available at <http://www.unhcr.org/refworld/docid/46237f882.html>.

¹³¹ UN Security Council, *The situation in Afghanistan and its implications for international peace and security: report of the Secretary-General*, A/63/372–S/2008/617, 23 September 2008, available at <http://www.unhcr.org/refworld/docid/48e32d142.html>; and US, *2008 Report on Human Rights Practices*, above footnote 40.

¹³² Freedom House, *Freedom in the World 2008 – Afghanistan*, 2 July 2008, available at <http://www.unhcr.org/refworld/docid/487ca1eac.html>. In January 2008, unknown people (witnesses report traces of army boots) ransacked the office of Bostaan newspaper in Kunduz; see BBC Monitoring, *Afghan journalists' union asks government to examine media rights cases*, 30 January 2008 (subscription service).

intimidation of journalists covering issues considered as sensitive, such as the armed conflict, corruption and drug trafficking have increased. In many cases, it is extremely difficult to ascertain who is responsible for such targeting. Powerful militia leaders, organized criminal groups, corrupt Government officials, armed anti-Government groups or a combination of several of these actors may be responsible.¹³³ In June 2008, Abdul Samad Rohani, a BBC reporter covering the illegal poppy cultivation and trade, was killed in Helmand province. The Taliban denied responsibility and the local media reported that suspicions fell on organized criminal gangs possibly with connections to local authorities.¹³⁴ The Institute for War and Peace Reporting (IWPR) indicated that “most [of the journalists] in Helmand have been threatened and some are in hiding”.¹³⁵

Armed actors subjecting journalists to serious violations of basic human rights may be motivated by ideological opposition, attribution of a political opinion contrary to their own, or attribution of active or passive support to enemy armed groups. At risk on the same basis are those civil society groups and persons publicly active on issues of transitional justice. According to the UN Secretary-General, “[w]hile civil society groups are increasingly active on transitional justice, those who are calling for justice and investigating or reporting on human rights abuses are often harassed, threatened or censored”.¹³⁶ Observers also note that journalists are extremely cautious and fearful when writing or broadcasting stories related to drug trafficking or Government corruption.¹³⁷

Furthermore, journalists and other media professionals expressing views publicly on Islam may be at risk of prosecution. In a much publicized case, Sayed Perwiz Kambakhsh, a student at Balkh University and a journalist for Jahan-e Naw (New World) daily, was arrested in October 2007 on charges of blasphemy for having downloaded and distributed an article about the role of women in Islam. His death sentence was commuted to 20 years’ imprisonment on appeal.¹³⁸

In April 2008, a journalist was reportedly beaten up by an Army soldier and detained by the Police in Kabul; see BBC Monitoring, *Afghan TV official reportedly beaten by army officer*, 12 April 2008 (subscription service). In April 2008, a prominent female journalist in Herat was attacked with a hand grenade, in the second attack in one week; see Afghan Press, *Attack on Home of Female Radio Journalist Khadija Ahadi*, 15 April 2008, available at <http://www.afghan-press.com/release/attack-on-home-of-female-radio-journalist-khadija-ahadi/>. In July 2008, a prominent TV presenter was detained by the National Department of Security on orders from the Ministry of Information and Culture, after he had aired criticism of Government officials; see BBC Monitoring, *Afghan media workers express concern over detention of private TV journalist*, 29 July 2008 (subscription service). In June 2008, a BBC reporter disappeared in Helmand while investigating illegal poppy cultivation and was later found dead; see R. Synovitz, *Afghanistan: Death Threats, Intimidation Part of Journalists’ Daily Lives*, RFE / RL, 10 June 2008, available at <http://www.rferl.org/articleprintview/1144585.html>.

¹³³ See for example, Amnesty International, *Freedom of expression in Afghanistan faces increasing threats*, 13 March 2009, available at <http://www.unhcr.org/refworld/docid/49be0a0699.html>.

¹³⁴ R. Synovitz, *Afghanistan: Death Threats, Intimidation Part of Journalists’ Daily Lives*, RFE / RL, 10 June 2008, available at <http://www.rferl.org/articleprintview/1144585.html>.

¹³⁵ J. Mackenzie, *Afghan Recovery Report: Project Highlights*, Institute for War and Peace Reporting, June 2008, available at http://www.iwpr.net/?p=arr&s=f&o=345834&apc_state=henparr.

¹³⁶ UN General Assembly, *The situation in Afghanistan and its implications for international peace and security: report of the Secretary-General*, A/62/722–S/2008/159, 6 March 2008, available at <http://www.unhcr.org/refworld/docid/47d4f0c32.html>.

¹³⁷ Human Rights Watch, *Open Letter from Human Rights Watch to the International Afghanistan Support Conference on June 12, 2008*, 10 June 2008, available at <http://www.hrw.org/english/docs/2008/06/10/afghan19086.htm>.

¹³⁸ According to Reporters without Borders, around ten other journalists, bloggers and intellectuals have been arrested, prosecuted, jailed and – in several cases – forced to leave the country for religious-related offences; see Reporters Without Borders, *Afghanistan. What gains for press freedom from Hamid Karzai’s*

Thus, journalists reporting on sensitive issues, including but not limited to the armed conflict, political corruption and drug trafficking are at risk of persecution on the ground of their (imputed) political opinion at the hands of both State and non-State actors.

(f) Persons associated with the former People's Democratic Party of Afghanistan and other left-aligned political parties

The People's Democratic Party of Afghanistan (PDPA) was formed in 1965 by Nur Mohammad Taraki on Marxist/Leninist ideology due to domestic discontent and the absence of political freedoms. It believed in a one-party, heavily secularized state, and was particularly intolerant of political opposition from its Islamist rivals. The PDPA eventually split into the *Khalq* (People) and *Parcham* (Flag) branches. After the *Khalq* faction of the PDPA deposed the ruling party through a coup carried out by its supporters in the military in 1978 (the Saur Revolution), it formed a government that was violently intolerant of political opposition. The Soviet-supported PDPA government's attempts at forcible reform of polity and society resulted in a surge of support for its Islamist rivals, who attempted to oust it with Pakistani support. In 1977, the two factions reunited under Soviet pressure and its name was changed to *Watan* (Homeland) Party. It collapsed in 1992 when, following the Peshawar Accords, Mujaheddin troops entered Kabul and the last President of a communist government in Afghanistan, Mohammed Najibullah (previously head of the secret service *KhAD*) had to seek refuge in a UN-building in Kabul where he stayed until he was killed by *Taleban* troops entering Kabul in September 1996.

In late 2003, a congress of the People's Democratic Party of Afghanistan (PDPA) took place in Afghanistan, which led to the creation of *Hezb-e-Mutahid-e-Mili* (National United Party), a party registered in 2005 then comprising 600 members. Former PDPA members have also reportedly founded several other parties.¹³⁹ Most recently, a new parliamentary group, the United National Front,¹⁴⁰ was inaugurated on 12 March 2007 as a broad coalition of former and current militia leaders, commanders from the anti-Soviet resistance, ex-Communist leaders, and various representatives of social and ethnic groups.¹⁴¹

Significant numbers of the former People's Democratic Party of Afghanistan (PDPA) – subsequently renamed *Watan* (Homeland) – members and former security officials, including the Intelligence Service (*KhAD/WAD*),¹⁴² are working in the Government.¹⁴³

While many former PDPA members and officials of the communist government, particularly those who enjoy the protection of and have strong links to influential factions and individuals

seven years as president?, 16 March 2009, available at <http://www.unhcr.org/refworld/docid/49c38f742.html>.

¹³⁹ For a comprehensive list of the registered political parties, see Islamic Republic of Afghanistan Ministry of Justice, List of "Licensed Political Parties", available at <http://www.moj.gov.af/polpartieslist.html> [accessed on 14 December 2007].

¹⁴⁰ For more in depth information on the United National Front, see <http://www.afgha.com/?q=node/2472>.

¹⁴¹ Agence France Press, *Afghan strongmen form 'united front'*, 3 April 2007, available at <http://www.afghanistannewscenter.com/news/2007/april/apr32007.html#3>; see also Ron Synovitz, *Afghanistan: New Political Bloc Unites Old Adversaries*, Radio Free Europe/Radio Liberty, 5 April 2007, available at <http://www.rferl.org/featuresarticle/2007/04/d0dfc5f9-e7de-4027-a98b-022e279abbe3.html>.

¹⁴² *KhAD* stands for *Khadimat-e Atal'at-e Dowlati*, i.e. State Information Service; *WAD* stands for *Wezarat-e Ammiyat-e Dowlati*, i.e. Ministry for State Security. *KhAD* was the main intelligence organization of the Communist regime from 1980 to 1986. In 1986, it was upgraded to a ministry and renamed *WAD*. See in general, UNHCR, *Note on the Structure and Operation of the KhAD/WAD in Afghanistan 1978-1992*, May 2008, available at <http://www.unhcr.org/refworld/docid/482947db2.html> (hereafter: "UNHCR, *Note on the Structure and Operation of the KhAD/WAD*").

¹⁴³ SocialistWorld.net, *Mafia, warlords and ex-Jihadi win elections*, 8 November 2005, available at <http://socialistworld.net/eng/2005/11/08afghanistan.html>.

in the current Government, are generally not at risk, some high-ranking members of the PDPA continue to face a risk of persecution. Such risk depends on the individual's personal circumstances, including family background, professional profile, political links, and whether he or she has been associated, or perceived to be associated, with the human rights violations of the communist regime in Afghanistan between 1979 and 1992.

Former PDPA high-ranking members without factional protection from Islamic political parties, tribes or persons in a position of influence, who may be exposed to a risk of persecution, include the following:

- high-ranking PDPA members, irrespective of whether they belonged to the *Parcham* or *Khalq* faction of the party may be at risk if they are known and had a public profile. These encompass high-ranking members of Central and Provincial PDPA Committees and their family members and secretaries of PDPA's Committees in public institutions; and
- former security officials of the communist regime, including *KhAD* members, also continue to be at risk, in particular from the population – e.g. families of victims of *KhaD* ill-treatment – given their actual or perceived involvement in human rights abuses during the communist regime.

Former PDPA high-ranking members, or those associated with the commission of human rights violations during the former Communist regime, may also be at risk of persecution by *mujaheddin* leaders, and armed anti-Government groups.

The emergence and formation of political parties in Afghanistan has a long and complex history. Since 2002, the political party system is in almost continuous mutation. Older and more stable parties coexist with new tendencies, and alliances are volatile. Current leftist tendencies (other than those with former links with the PDPA) include underground movements with roots in the sixties, movements already existing during the Taleban period that have recently adopted a moderate agenda, and youth movements supporting Western-style social-democracy.

Of the underground movements, the most important is the *Hezb-e Komunist (Mao'ist)-e Afghanistan*, or Communist (Maoist) Party of Afghanistan, funded in 2004 as a merger of four groups.¹⁴⁴ The antecedents of this Maoist party are to be found in the *Jerian-e Demokratik-e Newin*, or New Democratic Current, founded in 1968 by Abdulrahim Mahmudi, Abdulhadi Mahmudi, Akram Yari and Sediq Yari. Its members were known as *shola'i*, after its publication *Shola'ye jawid* or eternal flame. This group split in 1972 into numerous smaller groups.¹⁴⁵ The well known NGO RAWA (Revolutionary Association of Women of Afghanistan) has roots in the Maoist movements of the sixties.¹⁴⁶ The *Sazman-e Raha'ibakhsh-e Khalqha-ye Afghanistan* or *Raha'i* (Organization for the Liberation of Afghan Peoples) was founded in 1979, inspired by the Iranian *Mojaheddin-e Khalq*, and may still have support in Western Afghanistan.¹⁴⁷ The *Sazman-e Azadibakhsh-e Mardom-e Afghanistan* (Organization for the Freedom of the People of Afghanistan) or SAMA, founded

¹⁴⁴ See the Communist (Maoist) Party of Afghanistan's website: <http://www.sholajawid.org>.

¹⁴⁵ T. Ruttig, *Islamists, Leftists – and a Void in the Center. Afghanistan's Political Parties and where they come from (1902 – 2006)*, Konrad Adenauer Stiftung, Kabul, 2008, pp. 7 and 10, available at http://www.kas.de/wf/doc/kas_9674-544-2-30.pdf (hereafter: "Ruttig").

¹⁴⁶ According to information available to UNHCR.

¹⁴⁷ Ruttig, above footnote 145, p. 38.

in 1979 by Maoist leaders, but with a broader base, is reported to have a clandestine following abroad.¹⁴⁸

Some more recent and mainstream left-of-centre parties, not currently assessed to be at particular risk, include the *Payman-e Kabul*, an alliance formed in 2004 aiming at uniting the left.¹⁴⁹ The *Payman* included among its leaders Dadfar Spanta, the current Foreign Minister, who later joined the *Hezb-e Hambastegi-ye Afghanistan*, or Solidarity Party of Afghanistan.¹⁵⁰

Persons who currently identify themselves as, or are perceived as, Communists or Maoists, may face risk arising from their ideology, regarded by Taleban and large sectors of the population as infidel and anti-Islamic. Therefore, they may well be at an equal or higher risk of persecution, as compared to former PDPA members. Having an ideology viewed as leftist or “western” may be an additional risk factor for persons belonging to other groups at risk described in these Guidelines, particularly in areas under the control of armed anti-Government groups. Women perceived as left-leaning may be at increased risk of ill-treatment not only by insurgents but also by mainstream conservative elements.¹⁵¹

(g) Women

Women are at particular risk of ill-treatment if perceived as not conforming to the gender roles ascribed to them by society, tradition and even the legal system. Ill-treatment occurs in a variety of forms and may be inflicted by several actors, including family members. Such treatment includes domestic violence, excessive custodial sentences and degrading and inhuman treatment. While there is a limited number of women holding public office, women’s rights continue to be curtailed, restricted and systematically violated. In April 2009, for instance, a Shiite Personal Status Law was passed by Parliament and signed by President Karzai. The law requires, *inter alia*, women to comply with their husbands’ sexual requests, and to obtain permission to leave the home, except in emergencies.¹⁵² The code has yet to be implemented and is currently under review as a result of international pressure.¹⁵³

Cases of physical violence perpetrated against women and girls in Afghanistan have increased by about 40 percent in the period from March 2007 to March 2008. Existing figures indicate that currently up to 80 percent of Afghan women are affected by domestic violence.¹⁵⁴ Human rights organizations report an overall increase of cases of self-

¹⁴⁸ Ruttig, above footnote 145, p. 38.

¹⁴⁹ International Crisis Group, *Political Parties in Afghanistan*, 2 June 2005, p. 11, available at <http://www.unhcr.org/refworld/docid/49997ae51f.html> (hereafter: “ICG, *Political Parties in Afghanistan*”).

¹⁵⁰ Ruttig, above footnote 145, p. 38.

¹⁵¹ See BBC, *Afghan MP says she will not be silenced*, 27 January 2006, available at http://news.bbc.co.uk/2/hi/south_asia/4606174.stm.

¹⁵² See Article 132(4) and 177 of the Shiite Personal Status Law.

¹⁵³ See, for instance, European Parliament, *Resolution on 24 April 2009 on women’s rights in Afghanistan*, 24 April 2009, available at <http://www.unhcr.org/refworld/docid/4a043dfd2.html>; and USCIRF, *2009 Annual Report*, above footnote 41. For further details on the discriminatory provisions in the Shiite Personal Status Law, please see Afghanistan Independent Human Rights Commission, *AIHRC Press release on codification of the Shiite Personal Status Law*, 7 April 2009, available at http://www.aihrc.org/af/pre_shiite.htm.

¹⁵⁴ According to UNIFEM figures confirmed by AIHRC recorded cases; see Afghanistan Independent Human Rights Commission, *Economic and Social Rights Report in Afghanistan III*, December 2008, p. 36, available at <http://www.unhcr.org/refworld/docid/4a03f56b2.html> (hereafter: “AIHRC, *Economic and Social Rights Report III*”). See also IRIN, *Afghanistan: Sharp rise in reported cases of violence against women*, 8 March 2008, available at <http://www.irinnews.org/Report.aspx?ReportId=77156>.

immolation and other forms of suicide.¹⁵⁵ The phenomenon of female self-immolation is commonly linked to the pervasive societal discrimination against women.¹⁵⁶ Survivors of sexual violence generally lack basic support mechanisms such as trauma counseling and medical treatment, as well as judicial capacity for forensics analysis. The social stigma attached to the reporting of gender-based violence in Afghanistan often prevents victims from seeking physical or psychological treatment.¹⁵⁷

Afghan women, who have adopted a less culturally conservative lifestyle, such as those returning from exile in Iran or Europe, continue to be perceived as transgressing entrenched social and religious norms and may, as a result, be subjected to domestic violence and other forms of punishment ranging from isolation and stigmatization to honour crimes for those accused of bringing shame to their families, communities or tribes. Actual or perceived transgressions of the social behavioral code include not only social behavior in the context of a family or a community, but also sexual orientation, the pursuit of a professional career, and mere disagreements as to the way family life is conducted.

Unaccompanied women or women lacking a male “tutor” (*mahram*) continued to face limitations on conducting a normal social life. They include divorced women, unmarried women who are not virgins, and women whose engagements to be married have been broken. Unless they marry, which is very difficult given the social stigma associated with these women, social rejection and discrimination continue to be the norm.¹⁵⁸ Many Afghan women are prevented from leaving the family compound without a *burqa* and a male companion, who has to be a husband or a close relative.¹⁵⁹ Women without male support and protection generally lack the means of survival, given the social restrictions on women living alone, including the limitations on their freedom of movement. This is reflected in the absence of solutions available to the few women able to access domestic violence shelters. Unable to live independently, they face years of quasi-detention, prompting many to return to abusive family situations. The results of such “reconciliation” are generally not monitored and abuse or honor crimes committed upon return are often done with impunity.

Forced and child marriages continue to be widely practiced in Afghanistan, and can occur in a variety of forms.¹⁶⁰ Statistics show that nearly 60 percent of girls in Afghanistan are married before they reach 16 years old.¹⁶¹ Most marriages continued to be arranged by

¹⁵⁵ In 2008, the AIHRC recorded 72 cases of self-immolation; see US, *2008 Report on Human Rights Practices*, above footnote 40. See also BBC Monitoring, *Self-immolation among women increase in Afghan west – radio*, 5 August 2008 (subscription service). Between March and August 2008, at least 47 self-immolation cases have been recorded by Herat city hospital alone, of whom seven were saved but 40 died. See IRIN, *Afghanistan: Self-immolation on the rise among women*, 9 September 2008, available at <http://www.unhcr.org/refworld/docid/48ce1d6dc.html>.

¹⁵⁶ Medica Mondiale, *Dying to be heard*, 2007, available at http://www.peacewomen.org/resources/Afghanistan/Dying_to_be_heard_Oct07.pdf.

¹⁵⁷ See Womankind Worldwide, *Taking Stock: Afghan Women and Girls Seven Years On*, February 2008, pp. 27-28, available at <http://www.womankind.org.uk/upload/Taking%20Stock%20Report%2068p.pdf>. See also BBC, *Afghan foetus ‘aborted by razor’*, 8 January 2008, available at http://news.bbc.co.uk/2/hi/south_asia/7815896.stm.

¹⁵⁸ See Womankind Worldwide, *Taking Stock Update: Afghan Women and Girls Seven Years On*, February 2008, p. 25, available at <http://www.womankind.org.uk/upload/Taking%20Stock%20Report%2068p.pdf>.

¹⁵⁹ HRW, *World Report 2009*, above footnote 47.

¹⁶⁰ Afghan law sets the legal age of marriage at 16 for girls and 18 for boys. Although both forced or child marriages are prohibited by law, there are no known cases of prosecution for such practices. For marriage practices in Afghanistan and links between violence in the family and particular marriage practices, see Afghanistan Research and Evaluation Unit, *Decisions, Desires and Diversity: Marriage Practices in Afghanistan*, February 2009, available at <http://www.unhcr.org/refworld/docid/4992cc722.html>.

¹⁶¹ AIHRC, *Economic and Social Rights Report III*, above footnote 154, p. 36.

families. However, more coerced forms include ‘sale’ marriage i.e. girls sold for a fixed quantity of goods, cash or simply to settle a family debt; *bad dadan*, a tribal form of dispute-settling in which the offending family offers one girl for marriage into the wronged family, for instance to settle a blood debt;¹⁶² and *badal*, when two families exchange their daughters in an attempt to minimize marriage costs.¹⁶³

Furthermore, women’s rights activists face threats and intimidation, particularly if outspoken about women’s rights, the role of Islam or the behaviour of commanders.¹⁶⁴ In areas under the control of armed anti-Government groups, there are growing indications that women face systematic societal discrimination. For example, a significant number of female medical graduates is systematically refusing to work in rural areas, due to the fear of being targeted by insurgents.¹⁶⁵ These developments affect women’s access to health in a disproportionate way.¹⁶⁶

Access to education for girls is also severely curtailed.¹⁶⁷ According to the Ministry of Education and aid agencies over five million school-age children (three million of them girls) have been deprived of education as a consequence of conservative customs,¹⁶⁸ poverty, lack of education facilities and a culture of gender discrimination.¹⁶⁹

The deterioration of the security situation has also had a detrimental effect on education. Armed anti-Government groups have continued their systematic attacks on schools, teachers, pupils (particularly schoolgirls) and parents. According to the Afghan Ministry of Education (MoE), more than 600 primary, secondary and high schools closed due to such attacks. Up to 80 percent of schools are closed in the four southern provinces of Helmand, Kandahar, Zabul and Urozgan, with Helmand Province having only 54 schools, primarily for boys, functioning, compared to 223 schools open in 2002. Consequently, between 230,000 to 300,000 students have been deprived of an education in 12 provinces, according to MoE

¹⁶² See for example the case of a two-year old girl who has been traded away in *baad*, to make up for the sexual misconduct of her uncle; see Institute for War and Peace Reporting, *Afghan Girls Suffer for Sins of Male Relatives*, 26 March 2009, available at <http://www.unhcr.org/refworld/docid/49dc4b201c.html>.

¹⁶³ See, for instance, AIHRC, *Economic and Social Rights Report III*, above footnote 154, pp. 34-35. See also Institute for War and Peace Reporting, *Afghanistan’s Frustrated Singles*, 26 April 2009, available at <http://www.unhcr.org/refworld/docid/49f7ff541e.html>.

¹⁶⁴ Human Rights Watch, *Campaigning against Fear Women’s Participation in Afghanistan’s 2005 Elections*, August 2005, available at <http://hrw.org/backgrounder/wrd/afghanistan0805/afghanistan081705.pdf>.

¹⁶⁵ *Ibid.*

¹⁶⁶ According to the Ministry of Public Health, over 600,000 persons lack basic healthcare services due to attacks on healthcare facilities and health workers – a figure that has doubled since 2007. See IRIN, *Afghanistan: Growing number of Afghans lack health care – Ministry*, 7 April 2009, available at <http://www.unhcr.org/refworld/docid/49ddfa68a.html>.

¹⁶⁷ Under the Afghan law, education is mandatory up to the secondary level and free up to the college level. Article 44 of the Constitution further stipulates the necessity of positive discrimination to facilitate equal access to education for women and Kuchis.

¹⁶⁸ According to the AIHRC, “[i]t is unlikely that parents would allow their girls, often very young, to walk unaccompanied for two hours to reach the school. Other contributing factors to limiting access of girls to school include the lack of female teachers and of separate girls’ school after the primary level.”; see AIHRC, *Economic and Social Rights Report III*, above footnote 154, p. 60. See also IRIN, *Afghanistan: Five million children not in school*, 21 April 2009, available at <http://www.unhcr.org/refworld/docid/49f012b91c.html>.

¹⁶⁹ IRIN, *Afghanistan: Five million children not in school*, 21 April 2009, available at <http://www.unhcr.org/refworld/docid/49f012b91c.html>. According to the AIHRC, however, about one million girls have no access to education in Afghanistan due to the lack of education facilities; see AIHRC, *Economic and Social Rights Report III*, above footnote 154, p. 60.

officials.¹⁷⁰ Girls' schools are increasingly a target of attacks. Some 50 percent of security incidents at schools across the country were specifically directed against girls' schools despite the fact that they represent only 14.8 percent of the total number of primary, secondary and high schools in the country.¹⁷¹ Furthermore, female teachers are specifically targeted and higher bounties are offered for killing them.¹⁷² In November 2008, in a widely reported attack in Kandahar, 12 students and four teachers, all female, were sprayed with acid and suffered severe injuries.¹⁷³

Given the pervasive societal discrimination and the widespread sexual and gender based violence, Afghan women and girls, particularly those living in areas affected by the armed conflict or under the *de facto* control of armed anti-Government groups, may be at risk of persecution depending on their individual profile and circumstances. Failure to conform to conventional roles or transgression of social and religious norms may expose women and girls to violence, harassment or discrimination in Afghanistan. As such, women with particular profiles, including, but not limited to victims of domestic violence or other serious forms of violence, unaccompanied women or single heads of household, women with visible social or professional roles, such as journalists, human rights activists and community workers, may be at risk of persecution on the ground of membership of a particular social group.¹⁷⁴ Where non-conformity with traditional roles is perceived as opposing traditional power structures, the risk of persecution may be linked to the ground of religion and/or political opinion.¹⁷⁵ Furthermore, measures which restrict one's ability to earn a living so that survival is threatened, or severe limitations to accessing education or health services, may also amount to persecution.¹⁷⁶

¹⁷⁰ See UNAMA, *2008 Annual Report on Protection of Civilians in Armed Conflict*, above footnote 16; and IRIN, *Afghanistan: Attacks deprive 300,000 students of education*, 22 September 2008, available at <http://www.irinnews.org/report.aspx?ReportID=80506>. UNICEF reported that in the period from January 2007 to June 2008 there were 311 confirmed attacks on schools, resulting in 84 deaths and 115 injuries to schoolchildren, teachers and other school staff; see US, *2008 Report on Human Rights Practices*, above footnote 40.

¹⁷¹ According to data by UNAMA, September 2008. See also IRIN, *Afghanistan: Attacks deprive 300,000 students of education*, 22 September 2008, available at <http://www.unhcr.org/refworld/docid/48e085ea1e.html>.

¹⁷² According to internal Taleban regulations distributed by the media, “[i]t is forbidden to work as a teacher under the current puppet regime, because this strengthens the system of the infidels. True Muslims should apply to study with a religiously trained teacher and study in a Mosque or similar institution. Textbooks must come from the period of the Jihad or from the Taleban regime. [...] Anyone who works as a teacher for the current puppet regime must receive a warning. If he nevertheless refuses to give up his job, he must be beaten. If the teacher still continues to instruct contrary to the principles of Islam, the district commander or a group leader must kill him.” According to a *layeha* or book of rules for the Taleban, published by Die Weltwoche, 16 November 2006, English translation available at <http://www.signandsight.com/features/1071.html> [accessed 15 September 2008]. The *layeha* is considered authentic by well-informed security sources consulted in Kabul in October 2008.

¹⁷³ UNAMA, *2008 Annual Report on Protection of Civilians in Armed Conflict*, above footnote 16.

¹⁷⁴ See UNHCR, *Membership of a Particular Social Group Guidelines*, above footnote 53. See also *Islam (A.P.) v. Secretary of State for the Home Department; R v. Immigration Appeal Tribunal and Another, Ex Parte Shah (A.P.)*, Session 1998-1999, 25 March 1999 (United Kingdom House of Lords), available at <http://www.unhcr.org/refworld/docid/3dec8abe4.html>, where women in Pakistan (at risk of domestic violence) were considered to constitute a particular social group. The Court found that State protection was not available as discrimination against women was partly tolerated and partly sanctioned by the State.

¹⁷⁵ See UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/02/01, 7 May 2002, paras. 25-26, available at <http://www.unhcr.org/refworld/docid/3d36f1c64.html>.

¹⁷⁶ UNHCR Handbook, above footnote 25, para 54.

(h) Children¹⁷⁷

Children are reportedly being killed, exploited and ill-treated in ever-increasing numbers in Afghanistan as the violence across the country worsens. Allegations of recruitment of children by armed groups, including those associated with the Taliban, have been received from all regions, particularly from the south, south-east and east. Recruitment is also reported to be prevalent in areas with high concentrations of returnees or IDPs, particularly in the south and south-eastern provinces. Recently, allegations were received of children living in the southern border areas that were being approached and offered money to carry out activities on behalf of armed groups. A study conducted by the United Nations Assistance Mission in Afghanistan (UNAMA) also documented cases of children being used by the Taliban to carry out suicide attacks.¹⁷⁸ There are also concerns that due to inadequate age-verification procedures in its recruitment processes, children have been found in the ranks of the Afghan National Police.¹⁷⁹

Children have been captured, arrested and detained by Afghan law enforcement agencies and international military forces because of their alleged association with armed groups.¹⁸⁰ There is evidence of children being ill-treated,¹⁸¹ detained for long periods of time¹⁸² by the National Directorate of Security and prevented access to legal assistance, in contravention of the provisions of the Afghan Juvenile Code and international standards on juvenile justice. In

¹⁷⁷ For information on forced and child marriages and girls' access to education in Afghanistan, please refer to the Section on Women.

¹⁷⁸ UNAMA, *2008 Annual Report on Protection of Civilians in Armed Conflict*, above footnote 16, p. 28. For more information on and examples of incidents of grave violations against children in Afghanistan, see UN Security Council, *Report of the Secretary-General on children and armed conflict in Afghanistan*, S/2008/695, 10 November 2008, available at <http://www.unhcr.org/refworld/docid/492bbeb62.html> (hereafter: "*Report of the Secretary-General on children and armed conflict*").

¹⁷⁹ *Report of the Secretary-General on children and armed conflict*, above footnote 178, para. 24.

¹⁸⁰ The exact number of children who have been captured and arrested by Afghan law enforcement agencies and international military forces on account of their alleged association with armed anti-Government groups is unknown. According to information from the Ministry of Justice and protection organizations, from October 2007 to July 2008 at least 28 children were detained on charges related to national security; all were male, the majority between 15 and 17 years of age at the time of their arrest, the youngest a 12-year-old. See *Report of the Secretary-General on children and armed conflict*, above footnote 178, para. 26.

¹⁸¹ According to AIHRC, at least 48 percent of children experienced physical abuse or torture in the juvenile justice system. The use of physical force, abuse and torture were reportedly common during arrest and questioning of juveniles – 48 percent reported being beaten by police personnel during arrest; 62 percent reported being handcuffed during arrest; and many reported the use of 'shackles' during detention to prevent escape at night, during transportation or even as a form of punishment. See UNICEF & Afghanistan Independent Human Rights Commission, *Justice for children. The situation of children in conflict with the law in Afghanistan*, 26 June 2008, available at <http://www.unhcr.org/refworld/docid/47fdfae50.html>.

¹⁸² Pursuant to the Juvenile Code the maximum amount of time a juvenile can be detained from arrest to completion of trial is 40 days. However, a UNICEF-AIHRC study revealed that only 16 percent of those interviewed had spent less than one month in the juvenile rehabilitation centres, while 46 percent of them reported having been detained in the centre for a period of 1-6 months. In total 30 percent had spent more than six months in the juvenile rehabilitation centres. Moreover, the Juvenile Code provides for reduced sentences for children in the 12-15 years and 6-17 age groups and states that deprivation of liberty should only be used as a last resort and for the shortest time possible. Only about 50 percent of the total 114 of the number of juveniles who had been tried were aware of the duration of their sentence. The majority of juveniles had been sentenced to more than 1 year detention (71 percent), despite the fact that over one third of cases were property-related (theft or robbery) and a significant number were 'moral cases'. See UNICEF & Afghanistan Independent Human Rights Commission, *Justice for children. The situation of children in conflict with the law in Afghanistan*, 26 June 2008, pp. 10 and 22, available at <http://www.unhcr.org/refworld/docid/47fdfae50.html>.

November 2007, a 17-year-old boy arrested by the National Directorate of Security in relation to the murder of the head of the Department of Women's Affairs by the Taleban in Kandahar was detained with no charge until August 2008 and was allegedly severely beaten and deprived of food and sleep. He was later transferred to National Directorate of Security detention in Kabul, tried and sentenced to 15 years' imprisonment in Pul-i-Charki adult prison.¹⁸³

Reports of child casualties due to the conflict have been reported from all across Afghanistan. Children are caught between opposing sides in the ongoing conflict in the southern and eastern region. Between January and December 2008, 73 children were killed and 91 injured in the eastern region. 100 were killed and 116 injured in the southern region. Children have also been victims of asymmetric attacks, which have included suicide bombings, vehicle-borne improvised explosive devices, body-borne improvised explosive devices, and attacks by anti-Government elements including the Taleban, in the north-east, west and central regions, which primarily target national and international security forces, governmental infrastructure and personnel. For example, on 20 October 2008, a suicide bomber blew himself up in the vicinity of an international forces checkpoint in Kunduz Province, killing five children and seriously injuring two more. Furthermore, a total of 106 children (94 boys and 12 girls) were killed and 409 children (354 boys and 55 girls) injured from landmines and unexploded ordnance in the reporting period, mainly in the Baghlan, Kabul and Kandahar provinces.¹⁸⁴

There has been an escalation of incidents affecting the education sector, including attacks on schools, students and teachers.¹⁸⁵ According to the Ministry of Education and aid agencies over five million children (three million of them girls) have been deprived of education as a consequence of conservative customs, poverty, lack of education facilities and a culture of gender discrimination.¹⁸⁶ A particularly disturbing incident occurred on 12 November 2008, when Taleban militants attacked a group of girls en route to school by throwing acid on their faces. They were reportedly paid 100,000 Pakistani rupees for each girl they were able to burn. Schools have also been damaged in artillery exchanges with anti-Government elements and international military forces.¹⁸⁷

Incidents of sexual violence against children and cases of impunity of perpetrators have increased since December 2007. In March and April 2008, both the AIHRC and the Afghan Women Network (AWN) reported an increase in child rape and.¹⁸⁸ According to the Institute of War and Peace Reporting, the abduction of children for sexual exploitation has continued to increase, particularly in the North.¹⁸⁹ In this respect, it is worth mentioning the practice of

¹⁸³ For more information, see *Report of the Secretary-General on children and armed conflict*, above footnote 178, paras. 25-31.

¹⁸⁴ For more information, see *Report of the Secretary-General on children and armed conflict*, above footnote 178, paras. 32-38.

¹⁸⁵ For more information on attack on education facilities, students and teachers, please refer to the Section on Women in these Guidelines.

¹⁸⁶ IRIN, *Afghanistan: Five million children not in school*, 21 April 2009, available at <http://www.unhcr.org/refworld/docid/49f012b91c.html>.

¹⁸⁷ For more information, see *Report of the Secretary-General on children and armed conflict*, above footnote 178, paras. 40-43. See also Thalif Deen, *Rights: Recruiters of Child Soldiers Defy U.N. Pressure*, IPS News, 29 April 2009, available at <http://ipsnews.net/news.asp?idnews=46669>.

¹⁸⁸ BBC Monitoring, *Afghan rights official says child rape cases increasing*, 26 March 2008 (subscription service); BBC Monitoring, *Afghan Women's Network condemns sexual violence against children*, 17 April 2008 (subscription service).

¹⁸⁹ US Department of State, *2007 Country Reports on Human Rights Practices – Afghanistan*, 11 March 2008, available at <http://www.unhcr.org/refworld/docid/47d92c5db9.html>. According to a UN source, two police officers arrested in a southeastern province arrested for sexually abusing a 15-year old boy were released

bacha bazi (boy play), i.e. keeping young boys for sexual pleasure, particularly by older and powerful men. This is a practice that has a degree of social acceptance and may be a flaunted symbol of status, as boys (known as *halekon* in the South of the country, and *bacha bi reesh*, “boys without beards” in other areas)¹⁹⁰ are sometimes shared with other men at parties and gatherings. Children subjected to this practice need to be considered by adjudicators as victims and survivors of rape, rather than persons freely exercising a sexual preference. In most of the cases, children are driven into this practice by poverty, coercion or force.¹⁹¹

Reports of children being sexually abused and exploited by members of armed forces and groups were also documented. Although some incidents were investigated and perpetrators sentenced to imprisonment, in most incidents they are not officially reported for fear of retaliation and only a few reach the prosecution stage.¹⁹² Nevertheless, a few cases of influential leaders of armed groups using young boys for sexual purposes were prosecuted.¹⁹³

As regards child labour, large numbers of children are reportedly dropping out of school to work, often in hazardous and difficult conditions.¹⁹⁴ According to the International Labour Organization, 92.5 percent of child labourers aged 12 to 17 years work for more than 42 hours per week, and the majority are exposed to hazardous working conditions, such as a polluted environment or use of dangerous equipment.¹⁹⁵ A study by the Afghanistan Research and Evaluation Unit (AREU), focusing on Kabul, determined that the lack of a male earner is not the sole determining factor in child labour, with other issues such as low income or income insecurity also playing an important role.¹⁹⁶ Although no specific research is available, the dramatic hike in food prices in 2008 is likely to have a deep impact in the prevalence of child labour.

Afghanistan is not a party to the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, or the *South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution*. The Government is currently drafting a law to combat kidnapping and trafficking in persons, and has created a Committee to Counter Child Trafficking and a Plan of Action. The coordination mechanism is, however, no longer active, and children continue to be a potential target for trafficking.¹⁹⁷ Moreover, an increasing number of reports

after reportedly bribing the authorities. In the North, a 16 year old boy reportedly recruited by the Army by providing false documents was sexually abused by two soldiers.

¹⁹⁰ *Halek* (pl. *halekon*) is a Pashto word meaning “boy”, which on occasion and depending on context may be used as meaning sexual partner. The Dari expression *bacha bi reesh* alludes more explicitly to the latter meaning.

¹⁹¹ See Reynolds, Maura, *Kandahar’s Lightly Veiled Homosexual Habits*, Los Angeles Times, 3 April 2002, reproduced in <http://tornafghanistan.tripod.com/id28.html>. A more contemporary account, focusing in northern Afghanistan, is to be found at Reuters, *Afghan boy dancers sexually abused by former warlords*, 18 November 2007, available at <http://www.reuters.com/articlePrint?articleId=USISL1848920071119>.

¹⁹² For example, two police officers in a south-eastern province who were arrested after the intervention of child protection actors for sexually abusing a 15-year-old boy were released after allegedly bribing the authorities; see *Report of the Secretary-General on children and armed conflict*, above footnote 178, paras. 48-49.

¹⁹³ See, for instance, *Report of the Secretary-General on children and armed conflict*, above footnote 178, para. 50.

¹⁹⁴ *2008 Report of the High Commissioner for Human Rights*, above footnote 9, p. 5.

¹⁹⁵ ILO/ Altai Consulting, *A Rapid Assessment of Child Labourers in Kabul*, January 2008.

¹⁹⁶ Afghanistan Research and Evaluation Unit, *Factors Influencing Decisions to Use Child Labour: A Case Study of Poor Households in Kabul*, April 2008, available at <http://www.unhcr.org/refworld/docid/48030f231.html>; see also Afghanistan Research and Evaluation Unit, *Confronting Child Labour in Afghanistan*, May 2009, available at <http://www.unhcr.org/refworld/docid/4a26585e2.html>.

¹⁹⁷ IOM, *Trafficking in Person in Afghanistan, Field Survey Report*, June 2008, pp. 5-6, available at http://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/countries/docs/afghanistan/iom_report.

refer to impoverished families selling their children in order to buy food or taking their children out of school to work.¹⁹⁸

In order to assess the gravity of the possible harm, the acute vulnerability of children needs to be taken into account. An act that by its gravity does not necessarily constitute persecution for an adult may well be persecutory when inflicted upon a child.¹⁹⁹ The psychological and physical impact of labour under harsh conditions, forcible recruitment, or trafficking, may be devastating and life-threatening for a child. In most of these cases, as shown above, the State is simply unable or unwilling to prevent these situations. In other situations, criminal groups such as traffickers may have protection from some elements inside the State.

Unaccompanied and separated children²⁰⁰ represent one of the most vulnerable groups in Afghanistan, in terms of the potential risks, and the weakness of social and legal protection networks. Addressing issues such as trafficking has not improved, with UNHCR aware of cases of severe mistreatment and even torture of children being smuggled and subsequently falling into the hands of human traffickers and other criminals. Whatever progress has been achieved towards enforcement of children's rights is threatened by the worsening humanitarian situation, the intensifying armed conflict, and the reduction in access and humanitarian assistance. Vulnerable children, include, but are not limited to, those at risk of forced recruitment (including use as suicide bombers), sexual violence, child labour in exploitative conditions, and trafficking. Such children are at risk of persecution as a particular social group.²⁰¹ Forcible recruitment of children for the purposes of sexual exploitation is a form of gender-related violence, which may constitute persecution. Trafficked children can be particularly susceptible to serious reprisals by traffickers after their escape and/or upon return, as well as to a real possibility of being re-trafficked or of being subjected to severe family or community ostracism and/or severe discrimination.²⁰² In the case of child soldiers,

[trafficking_afghanistan.pdf](#). Although the study could not confirm trafficking for purposes of organ removal, anecdotal evidence is reported.

¹⁹⁸ IRIN, *I sold my daughter to feed the rest of my family*, May 2008, available at <http://www.irinnews.org/HOVReport.aspx?ReportId=78276>.

¹⁹⁹ UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, February 1997, para. 8.6, available at <http://www.unhcr.org/refworld/docid/3ae6b3360.html>.

²⁰⁰ These definitions are taken from the *Inter-agency Guiding Principles on Unaccompanied and Separated Children*, prepared by the ICRC, IRC, Save the Children (UK), UNICEF, UNHCR and World Vision and published by the ICRC in Geneva in 2004, p. 10, available at <http://www.unhcr.org/refworld/docid/4113abc14.html>. They are considered as authoritative in the humanitarian community. The concept of separated children, as a vulnerability category distinct from unaccompanied children, is particularly important in that it signals that children that have lost touch with their parents may still be in danger even if accompanied by other persons or relatives. Cases have been identified where adults accompanying a child asylum seeker and posing as relatives or caretakers have been found as being involved in trafficking. See also UNHCR, *Refugee Children: Guidelines on Protection and Care*, 1994, available at <http://www.unhcr.org/refworld/docid/3ae6b3470.html>.

²⁰¹ See UNHCR, *Membership of a Particular Social Group Guidelines*, above footnote 53; and UNHCR, *Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked*, HCR/GIP/06/07, 7 April 2006, available at <http://www.unhcr.org/refworld/docid/443679fa4.html>. As regards children forcibly recruited in armed forces/groups, see also *Lukwago v. Ashcroft, Attorney General*, No. 02-1812, 14 May 2003 (US Court of Appeals for the 3rd Circuit), available at <http://www.unhcr.org/refworld/docid/47a7078c3.html>, where the Court of Appeal held that former child soldiers who have escaped the Lord's Resistance Army captivity could constitute a particular social group.

²⁰² UNHCR, *Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked*, HCR/GIP/06/07, 7 April 2006, paras. 19, 20, 38 and 39, available at <http://www.unhcr.org/refworld/docid/443679fa4.html>. See also *SB (PSG – Protection Regulations – Reg 6)*

issues such as age, mental and emotional maturity, voluntariness of service, and treatment by other military personnel, all factor heavily in determining whether exclusion from refugee protection is appropriate.²⁰³

(i) Blood feuds

Women and men may be at risk of becoming victims of a blood feud in Afghanistan. In Afghan tradition, blood feuds are conflicts between opposing families, tribes and armed factions. Blood feuds are often initiated in reaction to perceived violations to the honour of women, property rights, and land or water issues. In accordance with the norms of the *Pashtunwali* code the causes of blood feuds are the violation of “*zar, zan, zamin*” – gold, women and land.

Blood feuds in Afghanistan can be long-running conflicts, with a cycle of retaliatory violence between parties. This violence often targets individuals by association with the family or tribe of the person seen as wrongdoer. In such situations, the victim’s tribe or family members seek revenge by killing, physically injuring or publicly shaming the perpetrator or persons related by family or tribe. This is a practice well recognized as part of the traditional moral code of the Pashtuns or Pashtunwali. However, this tradition has also entered the practices of other ethnic groups. The fact that a dispute has been solved through a formal justice mechanism does not normally put an end to a blood feud. Particularly among Pashtuns, blood feuds can be initiated through a formal decision of a *jirga*, an all-male community based decision making body. A dispute can be prevented from spiraling into a blood feud by finding a peaceful compromise, for instance through *bad dadan* marriages.²⁰⁴

“A violation of the right to life, which includes the right not to be arbitrarily deprived of one’s life or of the right to freedom from torture, will always constitute persecution.”²⁰⁵ In the context of blood feuds, several factors should be taken into consideration in determining the risk upon return, including the nature of the blood feud, the experiences of other members of the family or clan engaged in the feud (e.g. whether any family members have been killed or injured by the opposing family or clan), and the cultural context. Since family membership falls within the ambit of the “membership of a particular social group”, in blood feud cases, it would be possible to define the particular social group, for instance, as “family members involved in a blood feud” or “family members targeted because of an ancient code”, or “male members of a family targeted under a traditional blood feud canon”.²⁰⁶ As in other cases,

Moldova CG [2008] UKAIT 00002, 26 November 2007 (UK Asylum and Immigration Tribunal), available at <http://www.unhcr.org/refworld/docid/47837c902.html>, where the Tribunal held that “former victims of trafficking” and “former victims of trafficking for sexual exploitation” could be members of a particular social group because of their shared common background or past experience of having been trafficked.

²⁰³ UNHCR, *Advisory Opinion From the Office of the United Nations High Commissioner for Refugees (UNHCR) Regarding the International Standards for Exclusion From Refugee Status as Applied to Child Soldiers*, 12 September 2005, available at <http://www.unhcr.org/refworld/docid/440eda694.html>.

²⁰⁴ According to UNHCR knowledge and field observations.

²⁰⁵ 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, para. 4, available at <http://www.unhcr.org/refworld/docid/44201a574.html>.

²⁰⁶ 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*, 7 March 2006, paras. 5-6 and 16-20, available at <http://www.unhcr.org/refworld/docid/44201a574.html>. See also UNHCR, *Membership of a Particular Social Group Guidelines*, above footnote 53; and UNHCR, *In the Matter of Michelle Thomas et al. (in Removal Proceedings). Brief of the Office of the United Nations High Commissioner for Refugees as Amicus Curiae*, A-75-597-033/-034/-035/-036, 25 January 2007, available at <http://www.unhcr.org/refworld/docid/45c34c244.html>.

consideration will need to be given to the gravity of the threat, the willingness and ability of the State to protect, and the possibility of an internal flight alternative.

4. Eligibility under an extended/broader refugee definition and/or complementary forms of protection

Persons fleeing their country or origin in situations of armed conflict may have a well-founded fear of persecution based on one or more of the 1951 Convention grounds.²⁰⁷ This is particularly relevant where, as in Afghanistan, the internal armed conflict is rooted in religious, ethnic and/or political disputes, and where specific groups are targeted. Given the widespread human rights violations against individuals with specific profiles in many parts of Afghanistan, it can be expected that many asylum-seekers from Afghanistan, including those originating from areas where the armed conflict is being waged, will be eligible for refugee protection under the 1951 Convention.

When examining the link to a 1951 Convention ground in the claims of persons who are fleeing a situation of armed conflict, there is no requirement that the individual be known to, and sought personally by the agent(s) of persecution. Whole communities may risk or suffer persecution for 1951 Convention reasons, and there is no requirement that an individual suffer a form or degree of harm which is different than that suffered by other individuals with the same profile. Furthermore, many ordinary civilians may be at risk of harm from bombs, shelling, suicide attacks, and improvised explosive devices. As noted above, these methods of violence may be used against targets or in areas where civilians of specific ethnic or political profiles predominantly reside or gather, and for this reason, may be linked to a 1951 Convention ground.

It should be noted that the 1951 Convention and 1967 Protocol form the cornerstone of international protection for refugees and, therefore, provide the basic framework for such protection and should be rigorously and properly applied as a precursor to all other protection mechanisms.²⁰⁸ The criteria for refugee status in the 1951 Convention should be interpreted in such a manner that individuals or groups of persons who fulfill these criteria are duly recognized and protected under that instrument.²⁰⁹ When an asylum-seeker is found not to meet the refugee criteria in the 1951 Convention, extended/broader refugee definitions should be examined where available and applicable, and subsequently, complementary forms of protection.

In this section of the Guidelines, analysis is provided to assist in the determination of eligibility of Afghans fleeing areas of conflict in Afghanistan and where they do not meet the refugee criteria under the 1951 Convention.

²⁰⁷ UNHCR Handbook, above footnote 25, para. 164.

²⁰⁸ UNHCR, *Conclusion on the Provision on International Protection Including Through Complementary Forms of Protection*, No. 103 (LVI) – 2005, 7 October 2005, available at <http://www.unhcr.org/refworld/docid/43576e292.html>.

²⁰⁹ The term “complementary protection” is used in these Guidelines to refer to the range of mechanisms which have been adopted by States to complement the protection accorded under the 1951 Convention, in particular to extend protection to individuals who, while not meeting the criteria in Article 1 A(2) of the 1951 Convention, are outside of their country of nationality or habitual residence and are unable to return there owing to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order. See also: UNHCR, *UNHCR Statement on Subsidiary Protection under the EC Qualification Directive for People Threatened by Indiscriminate Violence*, January 2008, <http://www.unhcr.org/refworld/docid/479df7472.html>.

In accordance with resolutions of the General Assembly²¹⁰ and with the strong support of the Executive Committee and of the international community as a whole, it has been the regular and consistent policy and practice of UNHCR to provide international protection, mobilize humanitarian assistance and seek solutions for refugees fleeing from armed conflicts UNHCR has interpreted the term “refugee” in the broader sense in which it is used in regional refugee instruments, such as the OAU Convention and the Cartagena Declaration, to denote persons outside their countries who are in need of international protection because of a serious threat to their life, liberty or security of person in their country of origin as a result of generalized violence or events seriously disturbing public order.²¹¹

Generalized violence is characterized by continuous, general and sustained levels of violence in a country or region.²¹² Where the level of violence is sporadic or isolated, the situation cannot be described as one of generalized violence.²¹³

Afghanistan has experienced a significant worsening and widening of armed conflict related violence in 2008 and into 2009.²¹⁴ Increasing insecurity and violence resulting from the

²¹⁰ UN General Assembly, *Report of the United Nations High Commissioner for Refugees*, A/RES/3143, 14 December 1973, available at <http://www.unhcr.org/refworld/docid/3b00f1c610.html>. Other resolutions refer to, e.g. “refugees for whom [the High Commissioner] lends his good offices” (UN General Assembly, *Report of the United Nations High Commissioner for Refugees*, 18 December 1961, A/RES/1673, available at <http://www.unhcr.org/refworld/docid/3b00f1d454.html>); “refugees who are of [the High Commissioner’s] concern” (UN General Assembly, *Continuation of the Office of the United Nations High Commissioner for Refugees*, A/RES/2294, 11 December 1967, available at <http://www.unhcr.org/refworld/docid/3b00f05d0.html>); “refugees and displaced persons, victims of man-made disasters” (UN Economic and Social Council (ECOSOC), *Report of the United Nations High Commissioner for Refugees*, E/RES/2011 (LXI), 2 August 1976, available at <http://www.unhcr.org/refworld/docid/3ae69ef418.html>); “refugees and displaced persons of concern to the Office of the High Commissioner” (UN General Assembly, *Report of the United Nations High Commissioner for Refugees*, A/RES/36/125, 14 December 1981, available at <http://www.unhcr.org/refworld/docid/3b00f0284b.html>); “refugees and externally displaced persons” (UN General Assembly, *Humanitarian assistance to refugees and displaced persons in Djibouti: resolution / adopted by the General Assembly*, A/RES/44/150, 15 December 1989, available at <http://www.unhcr.org/refworld/docid/3b00efe85b.html>); “refugees and other persons to whom the High Commissioner’s Office is called upon to provide assistance and protection” (UN General Assembly, *Office of the United Nations High Commissioner for Refugees*, A/RES/48/116, 20 December 1993, available at <http://www.unhcr.org/refworld/docid/3b00f2151c.html>). See also UNHCR, *Providing International Protection Including Through Complementary Forms of Protection*, EC/55/SC/CRP.16, 2 June 2005, available at <http://www.unhcr.org/refworld/docid/47fdfb49d.html>.

²¹¹ UNHCR, *Note on International Protection (submitted by the High Commissioner)*, A/AC.96/830, 7 September 1994, available at <http://www.unhcr.org/refworld/docid/3f0a935f2.html>. Signatories to certain regional refugee instruments, including the 1984 Cartagena Declaration, the 1969 OAU Convention and the 1966 Bangkok Principles on the Status and Treatment of Refugees have adopted a broader definition of refugee and formally extended international refugee protection to victims of indiscriminate violence in certain contexts. In other regions, the 1951 Convention refugee definition has not been extended, but rather complemented through the establishment of specifically tailored mechanisms to offer a form of international protection to persons who are considered to be in need of international protection but who fall outside the scope of the 1951 Convention. In the European Union, for example, “subsidiary protection” is available to asylum-seekers who are at risk of serious harm by reason of indiscriminate violence in situations of international or internal armed conflict.

²¹² See for example *A.L.N. v. Switzerland*, CAT/C/20/D/090/1997, 19 May 1998 (UN Committee Against Torture), para 5.7, available at <http://www.unhcr.org/refworld/docid/3f58see1e.html>.

²¹³ ICRC, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 1125 UNTS 609, 8 June 1977, Article 1(2), available at <http://www.unhcr.org/refworld/docid/3ae6b37f40.html>.

²¹⁴ The ICRC continues to qualify Afghanistan as an armed conflict situation. In its Key Document on Afghanistan, the ICRC states that the armed conflict in Afghanistan is intensifying and affecting more areas of the country. It goes further to state:

fighting between anti-Government groups and pro-Government forces continue to cause population displacement for a significant part of the country.²¹⁵ In at least 170 districts out of a total of 400 in Afghanistan, accessibility is impaired or nonexistent, hampering humanitarian and development efforts. The conflict has spread from Afghanistan's southern, south-eastern and eastern regions to areas that had been relatively stable in the recent past, including Kabul's surrounding central provinces as well as parts of the northern and western regions.²¹⁶

2008 was the most violent year in Afghanistan since 2001, with 31 per cent more incidents than in 2007. The second half of 2008 saw an average of 857 incidents per month, against 625 per month during the first six months. There were 42 per cent more incidents in December 2008 than in December 2007, and 75 per cent more in January 2009 than in January 2008.²¹⁷ In the period January to May 2009 civilian deaths due to the conflict, increased by 24 percent from the same period in 2008.²¹⁸

“Regular fighting between armed groups and national and international forces take place regularly in more than half of Afghanistan's territory. Also in provinces not thus affected by open armed confrontations, roadside bombs and suicide bombings occur on a regular basis. While the south and the south-east remain the most conflict-affected region, the eastern provinces have also seen deterioration in the security situation.”

See ICRC in Afghanistan, *Key Document*, 2009, <http://www.icrc.org/Web/eng/siteeng0.nsf/html/afghanistan>. See also ICRC, *Afghanistan: 30 years of suffering*, 3 March 2009, <http://www.icrc.org/Web/eng/siteeng0.nsf/html/afghanistan-press-article-270309>. See also UN Secretary-General, *March 2009 Report*, footnote 75. See in particular para. 59 (“intensifying armed conflict”); para. 69 (“Children continue to be victims of the escalating conflict.”). On the intensification of the violence, see also paras. 19 & ff:

“According to United Nations statistics, 2008 ended as the most violent year in Afghanistan since 2001, with 31 per cent more incidents than in 2007. The second half of 2008 saw an average of 857 incidents per month, against 625 per month during the first six months. A mild winter has provided an environment for high levels of violence at a time that traditionally sees a decrease in hostilities. Specifically, there were 42 per cent more incidents in December 2008 than in December 2007, and 75 per cent more in January 2009 than in January 2008.”

“23. Insurgents continued to expand their presence in previously stable areas [...].”

“24. Throughout the reporting period, freedom of movement of unarmed civil servants was reduced by the intensified fighting and the increased campaign of intimidation and assassination.”

“25. There are currently no indications that the security situation will improve before the summer of 2009. Insecurity will potentially continue to rise, and as asymmetric attacks increase, together with armed clashes, the safety of aid personnel will further deteriorate [...].”

See also UN General Assembly, *The situation in Afghanistan: resolution / adopted by the General Assembly*, A/RES/63/18, 27 January 2009, available at <http://www.unhcr.org/refworld/docid/49997adc27.html>. See also *GS (Existence of Internal Armed Conflict) Afghanistan v. Secretary of State for the Home Department*, CG [2009] UKAIT 00010, 23 February 2009 (United Kingdom Asylum and Immigration Tribunal), available at <http://www.unhcr.org/refworld/docid/49a3b4242.html>, in which the Secretary of State conceded that as at 7 January 2009 for the purposes of International Humanitarian Law (IHL) there is an internal armed conflict in Afghanistan extending to the whole of the territory of Afghanistan.

²¹⁵ UN Secretary-General, *March 2009 Report*, above footnote 75.

²¹⁶ Radio Free Europe/Radio Liberty, *Taliban blamed for attacks in Afghanistan's north, west*, 21 March 2009, available at <http://www.unhcr.org/refworld/docid/49ccca9b23.html>.

²¹⁷ UN Secretary-General, *March 2009 Report*, above footnote 75.

²¹⁸ IRIN, *Afghanistan: 800 civilians killed in conflict in January-May – UN report*, 28 June 2009, available at <http://www.unhcr.org/refworld/docid/4a4885d61f.html>.

Hostilities frequently occur near or in inhabited areas and have predictably led to extensive loss of civilian life. On several occasions, aerial bombings by NATO or OEF aircraft have reportedly caused high numbers of civilian deaths.²¹⁹

2,118 Afghan civilians were killed in the armed conflict in 2008 according to UN data.²²⁰ This is the highest figure registered since the fall of the Taleban in 2001 and marked a 40% increase from 2007.²²¹ Civilian casualties resulted from the actions of both anti-Government and pro-Government elements, roughly evenly split.²²² Civilian suffering is aggravated by the fact that on many occasions insurgents take cover in residential areas or civilians are mistaken for insurgents during aerial attacks by international forces.²²³ Insurgent attacks routinely take the form of suicide attacks, IEDs and bombings carried out with disregard to civilian casualties.²²⁴ The increasing use by insurgents of more sophisticated asymmetric attacks has been accompanied by an increasing disregard for the lives of civilians.²²⁵

However, due to the fluid and volatile nature of the conflict, lack of comprehensive monitoring and reporting from all conflict areas and variations in terms of numbers of civilian casualties reported, UNHCR is not in a position to designate specific conflict areas of Afghanistan in which there is a serious and indiscriminate threat to the life, physical integrity or freedom of Afghans as a result of generalized violence or events seriously disturbing public order. As such, claims made by Afghan asylum-seekers on the basis of a fear of serious and indiscriminate harm arising from the armed conflict in Afghanistan should be assessed individually on their merits, in light of the evidence presented by the applicant and other current and reliable information on the place of origin.

Regions in Afghanistan currently experiencing conflict related violence are described below. It should be noted that the levels of violence affecting these regions are not necessarily the same.

(a) Southern, south-eastern and eastern regions

The south and south-east continued to bear the brunt of combat. In the southern region, the provinces of Helmand²²⁶ and Kandahar²²⁷, where the Taleban mostly operate, have seen

²¹⁹ See in general Human Rights Watch, “Troops in Contact”: Airstrikes and Civilian Deaths in Afghanistan, September 2008, available at <http://www.unhcr.org/refworld/docid/48c6251d2.html>.

²²⁰ IRIN, *Afghanistan: Civilian deaths up 40 percent*, 25 February 2009, available at <http://www.unhcr.org/refworld/docid/49a660d8c.html>. Cf. AFP, *Afghan unrest killed 4,000 civilians in 2008: report*, 21 January 2009, available at http://www.google.com/hostednews/afp/article/ALeqM5jin59v7_ci05Cs9KtqexpO_1NxKA.

²²¹ IRIN, *Afghanistan: Civilian deaths up 40 percent*, 25 February 2009, available at <http://www.unhcr.org/refworld/docid/49a660d8c.html>.

²²² UN News, *Number of Afghan civilian deaths in 2008 highest since Taliban ouster, says UN*, 17 February 2009, available at <http://www.un.org/apps/news/story.asp?NewsID=29918&Cr=Afghan&Cr1=civilian+rights>.

²²³ UNAMA, *2008 Annual Report on Protection of Civilians in Armed Conflict*, above footnote 16, p. 3.

²²⁴ UNDSS report, 146 suicide attacks, an additional 93 failed attempts; 1,297 detonated IEDs and further IEDs discovered prior to detonation, in 2008. See also Amnesty International, *Afghanistan: Civilians suffer the brunt of rising suicide attacks*, ASA 11/006/2008, 5 June 2008, available at <http://www.unhcr.org/refworld/docid/4858b8602.html>; and UNAMA, *2008 Annual Report on Protection of Civilians in Armed Conflict*, above footnote 16, p. 27.

²²⁵ UN Secretary-General, *March 2009 Report*, above footnote 75.

²²⁶ See for example, Radio Free Europe/Radio Liberty, *Suicide bomber kills 11 in south Afghanistan*, 16 March 2009, available at <http://www.unhcr.org/refworld/docid/49c26a96c.html>; Radio Free Europe/Radio Liberty, *Double suicide strike on Afghan police kills five*, 10 May 2009, available at <http://www.unhcr.org/refworld/docid/4a099425c.html>; Radio Free Europe/Radio Liberty, *Suicide bomber kills 12 in southern Afghanistan*, 7 May 2009, available at <http://www.unhcr.org/refworld/docid/4a099421c.html>.

fierce hostilities. The conflict in the southern, south-east and eastern regions of the country has caused population displacements and a number of civilian casualties.²²⁸ Apparently indiscriminate acts of violence, particularly in and around Khost have been reported.²²⁹

Armed conflict has continued in the south-eastern and eastern provinces, with the presence of the Taleban (particularly the Haqqani network), Al-Qaeda, and the Hezb-e Eslami (Gulbuddin), with the latter featuring prominently in Nangarhar, Kunar and Nuristan.²³⁰ In addition, suicide bombings have also taken a toll on the civilian population, despite targeting mostly law enforcement and military targets.²³¹ There are also several reports of civilian casualties during military operations in these regions either as a result of airstrikes or fire-fights between anti-Government and pro-Government forces.²³²

(b) Kabul and the central region

The most dramatic change in the armed conflict has occurred in the central provinces surrounding Kabul, in Wardak,²³³ Logar²³⁴ and Kapisa²³⁵. The number of security incidents in the central region has increased from 485, in the period January to August 2007, to 806 in

²²⁷ Radio Free Europe/Radio Liberty, *At least nine killed in Kandahar suicide attack*, 30 March 2009, available at <http://www.unhcr.org/refworld/docid/49e4432dc.html>.

²²⁸ Radio Free Europe/Radio Liberty, *Five children killed in Afghan shoot-out with Taliban*, 13 February 2009, available at <http://www.unhcr.org/refworld/docid/499e98dc8.html>. Radio Free Europe/Radio Liberty, *Bombs kill three U.S. troops, 10 Afghans, two police*, 9 January 2009, available at <http://www.unhcr.org/refworld/docid/49676e9d5.html>.

²²⁹ AFP, *Six die in fresh outbreak of Afghan violence*, 23 April 2009, available at http://www.google.com/hostednews/afp/article/ALeqM5jf8dtWazFbG_6yi5CXpAnfaz6FbA.

²³⁰ See, for example, Radio Free Europe/Radio Liberty, *Afghan villagers say air strike killed civilians*, 13 April 2009, available at <http://www.unhcr.org/refworld/docid/49edb5ef28.html>, detailing civilian casualties resulting from air strikes by international forces targeting Taleban.

²³¹ Radio Free Europe/Radio Liberty, *Suicide bomber kills 11 in south Afghanistan*, 16 March 2009, available at <http://www.unhcr.org/refworld/docid/49c26a96c.html>. See also Radio Free Europe/Radio Liberty, *Five police die in attack on Afghan governor's compound*, 25 April 2009, available at <http://www.unhcr.org/refworld/docid/49fb10f7c.html>; Radio Free Europe/Radio Liberty, *At least nine killed in Kandahar suicide attack*, 30 March 2009, available at <http://www.unhcr.org/refworld/docid/49e4432dc.html>. See also Associated Press, *Suicide attacks in Afghan city spark street battle*, 12 May 2009, available at <http://www.google.com/hostednews/ap/article/ALeqM5hvWEqwj3CrRvaQCmt21MfoYhjZJOD984N9F8>, Teams of suicide bombers and insurgents attacked government buildings in eastern Afghanistan on Tuesday, sparking running gun battles in a major Afghan city, officials said. Armed insurgents took Government workers hostage and ambushed an American quick-reaction force. See also AFP, *Seven killed in twin Afghan suicide attacks: officials*, 10 May 2009, available at http://www.google.com/hostednews/afp/article/ALeqM5iKTdzCbV_IOyK7t6CVhfsA4XsZEG.

²³² RAWA.org, *NATO soldier, over dozen civilians killed in Afghanistan (Roundup)*, 24 January 2009, available at <http://www.rawa.org/temp/runews/2009/01/24/nato-soldier-over-dozen-civilians-killed-in-afghanistan-roundup.html>.

²³³ See for example, AFP, *Foreign forces 'kill two' Afghan civilians*, 13 May 2009, available at http://www.google.com/hostednews/afp/article/ALeqM5gCIFRfstI3dREVRnUX_Hh7YfHtDg. Reliefweb, *More than 20 killed in violence across Afghanistan*, 12 May 2009, available at <http://www.reliefweb.int/rw/rwb.nsf/db900SID/KHII-7RZ846>.

²³⁴ AP, *Karzai asks NATO to explain civilian deaths*, 19 April 2009, available at http://news.yahoo.com/s/ap/20090419/ap_on_re_as/as_afghanistan_23.

²³⁵ Reuters, *Probe sought after chemical strike burns Afghan girl*, 9 May 2009, available at <http://in.reuters.com/article/southAsiaNews/idINIndia-39513320090509>. See also RAWA, *Locals Claim US led Coalition killed 25 civilians in Kapisa*, 20 January 2009, available at <http://www.rawa.org/temp/runews/2009/01/20/locals-claim-us-led-coalition-killed-25-civilians-in-kapisa.html>.

the same period in 2008. Attacks are on the rise inside Kabul as well.²³⁶ Taliban's operational access has also increased in Ghazni province, where arbitrary executions committed by the insurgency have been reported as well as civilian killings at the hands of pro-Government elements.²³⁷ Insurgents are increasingly able to hold ground, stage attacks on international forces, infiltrate and disrupt travel in and out of the capital.²³⁸ In 2008 and 2009, several suicide attacks took place in Kabul, such as the ones on the Serena Hotel and the Indian embassy as well as the 11 February 2009 multiple suicide attacks simultaneously launched by opposition armed actors against the Ministry of Justice, the national Corrections Department as well as the Ministry of Education.

(c) Northern region

The North has experienced a deteriorating security and progressive infiltration by Taleban and Hezb-e Eslami (Gulbuddin).²³⁹ Currently, the insurgency has two main areas of activity in the region: one in the north-east, around the provinces of Kunduz, Baghlan²⁴⁰ and Takhar, and a second one in the north-west, in Badghis and Faryab. In August 2008, there were reports of harassment of local populations in Badghis by Taleban insurgents, particularly – but not limited to – non-Pashtuns and heavy taxes on harvests, resulting in the forced displacement of several families to Faryab. Several reported attacks carried out in the North by the Taleban have claimed lives of law enforcement, Government officials and civilians.²⁴¹

The north-western province of Badghis and the neighbouring province of Faryab became a battleground through the winter, with a significant increase in insurgent action. For example, in the ambush and near-total destruction of an Afghan military and police convoy in November 2008 in the district of Bala Murghab, in Badghis, 40 Afghan security forces personnel were killed and over a dozen abducted. This increase in insurgent presence severely hampered humanitarian and development efforts in previously accessible areas.²⁴² Total civilian casualty figures for the northern region, however, remain relatively low compared to other regions in Afghanistan.²⁴³

(d) Western region

In the western region, insurgent activities and conflict have progressively increased during the last year, fuelled by a close relationship with powerful organized criminal groups, particularly those involved in the drug trade through Iran, and a certain level of support from local communities. The provinces most affected are Nimruz,²⁴⁴ Farah²⁴⁵ and Badghis.

²³⁶ Radio Free Europe/Radio Liberty, *Coordinated Taliban attacks kill at least 26 in Kabul*, 11 February 2009, available at <http://www.unhcr.org/refworld/docid/499e98d6c.html>.

²³⁷ RAWA.org, *Civilian deaths spark anti-coalition protest in Ghazni*, 4 August 2008, available at <http://www.rawa.org/temp/runews/2008/08/04/civilian-deaths-spark-anti-coalition-protest-in-ghazni.html>.

²³⁸ Salahuddin, S., *Taleban kill 10 French troops in Afghanistan*, Reuters, 19 August 2008, available at <http://www.afghanistannewscenter.com/news/2008/august/aug192008.html#1>.

²³⁹ The Guardian, *Five MPs among up to 50 killed as insurgents switch focus from military to civilian targets*, 7 November 2007, available at <http://www.guardian.co.uk/world/2007/nov/07/afghanistan.international>.

²⁴⁰ Xinhua, *Taliban set fire on district HQ in N Afghan province*, 27 April 2009, available at http://news.xinhuanet.com/english/2009-04/27/content_11266377.htm; Online – International News Network, *Afghan Governor Assassinated in Baghlan*, 7 May 2009, available at <http://www.onlinenews.com.pk/details.php?id=144998>.

²⁴¹ Radio Free Europe/Radio Liberty, *Taliban blamed for attacks in Afghanistan's north, west*, 21 March 2009, available at <http://www.unhcr.org/refworld/docid/49ccca9b23.html>.

²⁴² UN Secretary-General, *March 2009 Report*, above footnote 75.

²⁴³ UNAMA, *2008 Annual Report on Protection of Civilians in Armed Conflict*, above footnote 16.

²⁴⁴ ABC News, *3 US troops, 10 civilians killed in Afghan bombings*, 9 January 2009, available at <http://www.abc.net.au/news/stories/2009/01/09/2462836.htm>.

The south-western Nimruz province, which was relatively calm in 2006, has seen a dramatic increase in suicide attacks and targeting of infrastructure workers. In Farah, particularly in the Western and Southern area, Taleban fighters have continued their practice of taking control of districts for a few days or hours. However, they have a permanent presence in areas such as Bala Buluk district. The Taleban are maintaining capacity to disrupt traffic in the Helmand to Herat road, and increasing attacks against the army, police and international forces.²⁴⁶ Several reported attacks carried out in the western region by the Taleban have claimed the lives of law enforcement, Government officials and civilians.²⁴⁷ Action by US-led forces against the Taleban, including in the form of air strikes have taken a toll on civilians as well.²⁴⁸

5. Exclusion from international refugee protection

In light of the history of serious human rights violations and transgressions of international humanitarian law in Afghanistan's long history of armed conflict, exclusion considerations under Article 1F of the 1951 Convention may well arise in individual claims for refugee status.

The exclusion clauses contained in Article 1F of the 1951 Convention provide for the denial of refugee status to individuals who would otherwise meet the refugee definition set out in Article 1A of the 1951 Convention, but who are deemed not deserving of international protection on account of the commission of certain serious acts.²⁴⁹ Detailed guidance on the interpretation and application of Article 1F of the 1951 Convention can be found in UNHCR's relevant Guidelines and Background Note on Exclusion.²⁵⁰ Given the possibly serious consequences of exclusion from international refugee protection, it is important to apply the exclusion clauses with great caution and only after a full assessment of the individual circumstances of the case.

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 the person having perpetrated or participated in the commission of a criminal act, or on the basis of command/superior responsibility for persons in positions of authority. In this regard, the fact

²⁴⁵ AFP, *Evidence shows Taliban killed some civilians: US military*, 9 May 2009, available at <http://www.google.com/hostednews/afp/article/ALeqM5h-ZnATK6THmDvD3cXB4oWRAsJEO>.

²⁴⁶ W. Rahmani, *Farah Province: The New Focus of the Taleban Insurgency*, Terrorism Monitor, Jamestown Foundation, Volume 5, Issue 23 (December 10, 2007), available at <http://www.jamestown.org/terrorism/news/article.php?articleid=2373844>. Also based on information available to UNHCR.

²⁴⁷ Radio Free Europe/Radio Liberty, *Taliban blamed for attacks in Afghanistan's north, west*, 21 March 2009, available at <http://www.unhcr.org/refworld/docid/49ccca9b23.html>.

²⁴⁸ Radio Free Europe/Radio Liberty, *ICRC: Dozens of civilians died in Afghan air strikes*, 6 May 2009, available at <http://www.unhcr.org/refworld/docid/4a014aa1c.html>. See also Institute for War and Peace Reporting, *Coalition Forces Admit Civilians Killed in Herat Strike*, 23 February 2009, available at <http://www.unhcr.org/refworld/docid/49a3a7d01a.html>.

²⁴⁹ Article 1F stipulates that “the provisions of the 1951 Convention shall not apply to any person with respect to whom there are serious reasons for considering that he [or she] (a) has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; b) has committed a serious non-political crime outside the country of refuge prior to his [or her] admission to that country as a refugee; c) has been guilty of acts contrary to the purposes and principles of the United Nations.”

²⁵⁰ 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, available at <http://www.unhcr.org/refworld/docid/3f5857684.html> (hereafter: “UNHCR, *Guidelines on Exclusion*”); 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, para. 107-111, available at <http://www.unhcr.org/refworld/docid/3f5857d24.html> (hereafter: “UNHCR, *Background Note*”).

that a person was at some point a senior member of a repressive regime or a member of an organization involved in unlawful violence does not in itself entail individual liability for excludable acts. Moreover, individual responsibility is not established if any defences to criminal responsibility apply.²⁵¹ In that respect, several jurisdictions have recognized the availability of the defense of duress in cases involving Article 1F.²⁵²

The standard of proof for findings of fact related to exclusion on the basis of Article 1F is that of “*serious reasons for considering*”. For this standard to be met, credible and reliable information is required.²⁵³ The burden of proof lies, in principle, on the decision maker, although in certain circumstances which give rise to a presumption of individual responsibility for excludable acts, a reversal of the burden of proof may be justified.²⁵⁴

A number of issues which are particularly relevant in the Afghanistan context are highlighted below. However, decision makers should always refer to UNHCR’s Guidelines and Background Note on Exclusion when considering the applicability of Article 1F.²⁵⁵ Exclusion considerations may be triggered in any individual case if there are elements in the applicant’s claim that suggest that he or she may have been associated with criminal acts that fall within the scope of Article 1F.

It is against this doctrinal background that the following categories of cases are described, which require a careful individual assessment of the applicability of exclusion clauses. The exclusion categories that follow are not intended to be exhaustive; individual cases outside the scope of these descriptions may warrant scrutiny under the exclusion clauses.

(a) Members of the security forces, including KhAD/WAD agents and high-ranking officials of the communist regimes

Afghanistan has been at war since April 1978. During this period, which included; (i) the revolution of April 1978 that brought to power the PDPA and its radical reform measures and followed by the brutal crackdown on the later uprisings; (ii) the Soviet invasion and occupation of December 1979 and counterinsurgency war; (iii) the Soviet withdrawal and the ensuing civil war; (iv) the repressive rule of the Taleban, and (v) finally in the U.S. led intervention ending Taleban rule, crimes against humanity and serious war crimes were committed.²⁵⁶

When reviewing the cases of military, police and security services officials, and those of high-ranking Government officials during the Taraki, Hafizullah Amin, Babrak Karmal, and

²⁵¹ Detailed guidance in applying the exclusion clauses can be found in UNHCR *Guidelines on Exclusion and Background Note*, above footnote 250.

²⁵² See, for example, *SRYYY v. Minister for Immigration and Multicultural and Indigenous Affairs*, [2005] FCAFC 42, 17 March 2005 (Federal Court of Australia), available at <http://www.unhcr.org/refworld/docid/42d1211a4.html>; *Gurung v. Secretary of State for the Home Department* [2003] EWCA Civ 654, 1 May 2003 (England and Wales Court of Appeal), available at <http://www.unhcr.org/refworld/docid/403e4ac42.html>; *Refugee Appeal No. 2142/94*, 20 March 1997 (New Zealand Refugee Status Appeals Authority), available at <http://www.unhcr.org/refworld/docid/49997b001a.html>.

²⁵³ UNHCR, *Background*, above footnote 250, paras. 107-111.

²⁵⁴ UNHCR, *Background*, above footnote 250, paras. 105-106.

²⁵⁵ UNHCR, *Background*, above footnote 250, para. 107-111.

²⁵⁶ The Afghanistan Justice Project, *Casting Shadows: War Crimes and Crimes against Humanity: 1978-2001 Documentation and analysis of major patterns of abuse in the war in Afghanistan*, 2005, available at <http://afghanistanjusticeproject.org/warcrimesandcrimesagainsthumanity19782001.pdf>.

Najibullah regimes,²⁵⁷ it is important to carefully assess the applicability of the exclusion clauses in Article 1F of the 1951 Convention. This includes cases of former members of KhAD (*Khadamate Ettelaate Dowlati*), the State Information Service.²⁵⁸ Officially created in January 1980,²⁵⁹ the KhAD/WAD comprised several directorates, including military and police branches responsible for “counter-intelligence and prevention of infiltration by enemies of the regime”.²⁶⁰ Although the functions of KhAD/WAD evolved over time, culminating with coordination and undertaking of military operations following the withdrawal of Soviet troops in 1989, it did also include non-operational (support) directorates at central, provincial and district levels.²⁶¹ Information available to UNHCR does not link the support directorates to human rights violations in the same manner as the operational units. Thus, mere membership to KhAD/WAD would not automatically entail the applicability of exclusion clauses, and the individual exclusion assessment should take into consideration the individual’s role, rank and functions with the organization.²⁶²

For individual cases of military officers of the Ministries of Defense and Interior and security services, it is relevant to assess their involvement in operations in which civilians have been subject to arrest, disappearances, torture, inhuman and degrading treatment and punishment, persecution and extrajudicial executions,²⁶³ such as, for example, the mass killings after the 1978 *coup* and the reprisals against resistance to the decrees on land-reforms issued under Hafizullah Amin’s regime. In addition, the role of these officials in military operations requires a close assessment as some have violated international humanitarian law by deliberately targeting civilians.²⁶⁴

²⁵⁷ This period of recent Afghan history started with a military *coup* on 27 April 1978, which brought to power a Government dominated by the PDPA, continued during the Soviet occupation, which started on 27 December 1979 and lasted until the fall of the Najibullah Government on 15 April 1992.

²⁵⁸ In 1986, KhAD was upgraded to ministry level and from then on was known as WAD (*Wezarat-e Amniyat-e Dowlati* or Ministry of State Security). For detailed information on (1) the origins of the KhAD/WAD; (2) its structure and staffing; (3) linkages between these services and the Afghan military and militias; (4) the distinction between operational and support services; and (5) rotation and promotion policies within the KhAD/WAD; see UNHCR, *Note on the Structure and Operation of the KhAD/WAD*, above footnote 142.

²⁵⁹ Henry S. Bradsher, *Afghan Communism and Soviet Intervention*, Oxford, 1999, p. 137.

²⁶⁰ UNHCR, *Note on the Structure and Operation of the KhAD/WAD*, above footnote 142, paras. 5-9.

²⁶¹ These included: administration and finance, personnel, propaganda and counter-propaganda, logistics, telecommunications and decoding, etc. See UNHCR, *Note on the Structure and Operation of the KhAD/WAD*, above footnote 142, paras. 15-17.

²⁶² UNHCR, *Note on the Structure and Operation of the KhAD/WAD*, above footnote 142. In *MH (Syria) v. Secretary of State for the Home Department; DS (Afghanistan) v. Secretary of State for the Home Department* [2009] EWCA Civ 226, 24 March 2009 (England and Wales Court of Appeal), available at <http://www.unhcr.org/refworld/docid/49ca60ae2.html>, where the applicant, a Tajik who worked as *Khad* agent, claimed to be at risk of persecution by non-State agents, i.e. a senior commander of the Northern Alliance. The Court dismissed the asylum appeal holding that since the applicant had been a member of an organization engaged in large-scale torture and had known about the abuses, he was excludable from refugee protection. See also *Judgment of the Hague District Court in the Case concerning a KhAD/WAD member from Afghanistan*, 20 May 2008 (Netherlands, Hague District Court), available at <http://www.unhcr.org/refworld/docid/49997af9d.html>.

²⁶³ Amnesty International, *Violations of Human Rights and Fundamental Freedoms in the Democratic Republic of Afghanistan*, ASA/11/04/79, and September 1979. See also 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, available at <http://www.unhcr.org/refworld/docid/482996d02.html>; Human Rights Watch, “*Tears, Blood and Cries*” *Human Rights in Afghanistan since the Invasion 1979 – 1984*, US Helsinki Watch Report, December 1984, available at <http://hrw.org/reports/1984/afghan1284.pdf>.

²⁶⁴ Human Rights Watch, *By All Parties to the Conflict: Violations of the Laws of War in Afghanistan*, Helsinki Watch/Asia Watch report, March 1988, available at <http://hrw.org/reports/1988/afghan0388.pdf>;

(b) Members and commanders of armed groups and militia forces during the communist regimes

The activities of members of armed groups 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 acts include political assassinations, reprisals and extrajudicial killings, and rape, including of Afghan civilians for reasons such as working for Government institutions and schools, or transgressing Islamic social mores. Other violations included extra-judicial executions of prisoners of war and attacks on civilian targets.²⁶⁵

The human rights and security situation in Afghanistan, at the time, had deteriorated markedly, even before the interim Government, headed by Sebghatullah Mojaddedi, was established in Kabul, as agreed in the Peshawar Accords of 26 April 1992. The power conflict in Kabul and elsewhere in Afghanistan had begun between the various factions. The period between 1992 and 1996 was characterized by armed conflict, including the shelling of urban centres and other serious violations of international human rights law and humanitarian law.²⁶⁶

Hence, specific commanders and members of the Islamic parties with armed factions require careful scrutiny, *inter alia*: *Hezb-e-Islami*, (*Hekmatyar* and *Khalis*), *Hezb-e-Wahdat* (both branches/or all nine parties that formed *Hezb-e-Wahdat*), *Jamiat-e-Islami* (including *Shura-e-Nezar*), *Jonbesh-e-Melli-Islami*, *Ittehad-e-Islami*, *Harakat-e-Inqilab-e-Islami* (lead by Mohammad Nabi Mohammadi) and *Harakat-e-Islami*.

(c) Members and commanders of the Taleban, Hezb–e-Islami Hikmatyar and other armed anti-Government groups

The Taleban is a fundamentalist Islamist group founded in 1994. Its current objectives are to expel international troops, oust the current Government, and establish a regime following their strict interpretation of Islamic law.²⁶⁷ Its ideology is believed to be deeply influenced by the Deobandi school of Islamic thought, originating from the Indian subcontinent. This ideology was transmitted to Afghan refugees in Pakistan through a well-organized network of *madrassas*, funded and managed by Pakistani Islamist political parties. However, the movement has, since the 1990s, been under the growing influence of the more radical Wahhabi and Salafist ideologies originating from the Persian gulf.²⁶⁸ The Taleban are largely composed of Pashtuns and their most important area of influence is in the Pashtun region along the Pakistani border. However, several analysts believe that the movement is defined through ideology rather than ethnicity, attachment to tribal structures or cultural and social

see also Human Rights Watch, *The Forgotten War: Human Rights Abuses and Violations of the Laws of War since the Soviet Withdrawal*, 1 February 1991, available at <http://www.hrw.org/reports/1991/afghanistan/>.

²⁶⁵ Human Rights Watch, *By All Parties to the Conflict: Violations of the Laws of War in Afghanistan*, Helsinki Watch/Asia Watch report, March 1988, available at <http://hrw.org/reports/1988/afghan0388.pdf>; see also Human Rights Watch, *The Forgotten War: Human Rights Abuses and Violations of the Laws of War since the Soviet Withdrawal*, 1 February 1991, available at <http://www.hrw.org/reports/1991/afghanistan/>.

²⁶⁶ See for instance Amnesty International, *Afghanistan: The human rights crisis and the refugees*, ASA 11/002/1995, 1 February 1995, available at <http://www.unhcr.org/refworld/docid/3ae6a9a613.html>; see also, Amnesty International, *Afghanistan: Executions, amputations and possible deliberate and arbitrary killings*, ASA 11/05/95, April 1995, available at <http://www.unhcr.org/refworld/docid/48298bca2.html>.

²⁶⁷ *Ibid.*

²⁶⁸ See O. Roy, *The Taleban movement: from the tribe to the ummah*, unpublished paper, 2007, p. 12 (hereafter: “Roy”).

tradition such as the *Pashtunwali* traditional code of the Pashtuns.²⁶⁹ It is important to note that in some areas, the Taleban rely on the support of local Tajik or Uzbek ethnic communities.²⁷⁰

Elements from the former **Taleban** regime, combined with new recruits, started to mount armed operations in Afghanistan as early as 2002, in the east and south-east of Afghanistan. The militia, which refers to itself as the Islamic Emirate of Afghanistan, has since regrouped and expanded to pose a significant threat to the Government of Afghanistan and the international forces operating in the country.²⁷¹

The Taleban are led by Mullah Mohammad Omar, with the counsel of a 33-member *shura* (the *rahbari shura* or leadership council) reportedly based in Quetta, Pakistan. However, despite a degree of ideological consistency, legitimacy of the leadership, and unity of strategic command characterizing the movement, several analysts point out the relatively loose organizational structure of the group which allows tactical autonomy for field commanders.²⁷² The Taleban have divided their main areas of influence into regional commands but there is debate as to their exact numbers and locations.²⁷³

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

The applicability of the exclusion clauses will also need to be considered in relation to individual members and military commanders of the *Taleban*, *Hezb-e-Islami Hikmatyar*,²⁷⁴

²⁶⁹ Roy, above footnote 268; see also Rubin, Barnett. R., *Across the Borderline: Pashtun and Taleban in Two States*, internet posting to the [brrafghan], mailing list at www.yahoo.com; Giustozzi, above footnote 99, pp. 12-15.

²⁷⁰ Roy, above footnote 268.

²⁷¹ *Jane's Terrorism Intelligence Centre Country Briefing: Afghanistan*, Jane's, 24 July 2008 (subscription service).

²⁷² Giustozzi, above footnote 99, p. 84; Ron Synovitz, *Taleban evolves into network of groups*, RFE / RL Afghanistan, 26 April 2008, available at <http://www.unhcr.org/refworld/docid/4815d19a16c.html>.

²⁷³ One study in *Military Review* presents 6 regional commands: Farah, Kandahar-Uruzgan-Helmand, Ghazni-Paktika-Paktia, Zabul, Nangarhar-Kunar-Laghman, Wardak-Kapisa-Parwan-Kabul. See S. Afshar, C. Samples and T. Wood, *The Taleban: an Organisational Analysis*, *Military Review*, May-June 2008. Giustozzi, however, proposes four commands: South, South-eastern, Kabul region, and Eastern. See Giustozzi above footnote 99, p. 92.

²⁷⁴ Human Rights Watch, *The Human Cost: The Consequences of Insurgent Attacks in Afghanistan*, Volume 19 No. 6(C), April 2007, available at <http://www.hrw.org/reports/2007/afghanistan0407/>. *Hezb-e-Islami* (Islamic Party) was founded by Gulbuddin Hekmatyar in 1975 and was subsequently one of the main *mujahideen* parties fighting the Soviet army in Afghanistan. The *Hezb-e Eslami* was heavily involved in 1992-1996 in the confrontation between *mujahideen* parties for control of Kabul during which the city was shelled, and after the Taleban takeover in 1996 Hekmatyar went into exile to Iran. Hekmatyar was not invited to the December 2001 Bonn conference and chose to oppose the Karzai Government, stating as his objectives to drive foreign forces out of Afghanistan and establish an Islamic regime in the country. The original *Hezb-e Eslami* suffered a number of splits and the branch currently led by Hekmatyar is commonly known as *Hezb-e Eslami* (Gulbuddin) or *HIG*. The power base of the *HIG* is the non-tribalized Pashtuns from Eastern and North-Eastern Afghanistan. See Roy, above footnote 268. According to an UNDSS internal document, Hekmatyar is currently believed to be based in Eastern Afghanistan or Western Pakistan. The *HIG* operates in what has been described as a loose alliance of convenience with the Taleban, while keeping full strategic and operational independence. See *Jane's Terrorism Intelligence Centre Country Briefing*, p. 27. In 1979, a faction led by Yunus Khalis separated from the mainstream *Hezb-e Eslami* and became known as *Hezb-e Eslami* (Khalis). Yunus Khalis supported the Taleban in the

Tora-Bora Nizami Mahaz (Tora-Bora Military Front),²⁷⁵ Al-Qaeda,²⁷⁶ *Jaish-i Khorassan al-Islami* (Army of Islamic Khorassan),²⁷⁷ *Arbakai*,²⁷⁸ militias (with alleged links to the Government²⁷⁹ or to local commanders²⁸⁰), and other criminal elements²⁸¹ currently involved

nineties and went underground after the fall of the regime in 2002. He declared *jihad* against the US in 2003 and died in 2006. In 2004, more than one hundred HIG commanders, under the leadership of Khaled Farooqi, declared allegiance and support to the presidential candidacy of Hamed Karzai, and after his election many entered his administration. Later, this faction was registered as a political party with the name of *Hezb-e Eslami*, led by Abdul Hadi Arghandiwal. Doubts remain as to which extent this faction continues to have links with HIG. See M. Tahir, *Gulbuddin Hekmatyar's Return to the Afghan Insurgency*, Terrorism Monitor, Volume 6, Issue 11, 29 May 2008, available at <http://www.jamestown.org/terrorism/news/article.php?articleid=2374199>; ICG, *Political Parties in Afghanistan*, above footnote 149, p. 8; M. Ayestaran, *Hizb Islami, la vuelta de Afganistán al Islamismo*, post in the blog *Salam, agur*, ABC, 23 June 2008, available at <http://participacion.abc.es/salamagur/post/2008/06/23/hizb-islami-vuelta-afganistaan-al-islamismo>; BBC, *Leader of Afghan Mujahideen dies*, 24 July 2006, available at http://news.bbc.co.uk/2/hi/south_asia/5211604.stm.

²⁷⁵ The *Tora-Bora Nizami Mahaz* is an offshoot of the *Hezb-e Eslami* (Khalis), led by his son Anwarul Haq Mujahid, with a base in eastern Afghanistan. The group is reported to be allied with the Taleban. See R. Yusufzai, *New Taleban Group Named after Tora-Bora*, The News International, 26 February 2007, available at http://www.thenews.com.pk/top_story_detail.asp?Id=6140.

²⁷⁶ Al-Qaeda (Arabic for “the base”) is a transnational armed organization with close links with many radical Islamist armed anti-Government groups in Pakistan and Afghanistan. It was founded by Osama bin Laden in the 1980s in order to channel the participation of foreign Islamist fighters in the Afghan resistance against the Soviet Union. Its declared objectives are to overthrow regimes it deems “non-Islamic” and expulsion of Westerners and non-Muslims from Muslim countries. See Council on Foreign Relations, *Backgrounder Al-Qaeda*, 18 April 2008, available at <http://www.cfr.org/publication/9126/>; and Terrorism Research Centre, *Al-Qaeda: Group profile*, available at www.terrorism.com (subscription service), updated June 2008. There are reports that the leader of Al-Qaeda in Afghanistan is Uthman Abu al-Yazid, an Egyptian who has been a close associate of Osama bin Laden since the eighties. Abu al-Yazid has declared that he would focus on helping the insurgency manage the overall war effort, by providing funds and technical training. See M. Scheuer, *Al-Qaeda's New Leader in Afghanistan: A Profile of Abu al-Yazid*, Terrorism Monitor, Jamestown Foundation, Volume 4, Issue 21, 3 July 2007, available at <http://www.jamestown.org/terrorism/news/article.php?articleid=2373518>.

²⁷⁷ The *Jaish-i Khorassan al-Islami* (Army of Islamic Khorassan) claimed in June 2008 to be comprised of Afghan and foreign fighters, based in South Waziristan in Pakistan and in southern Afghanistan, with the objective of fighting US troops in Afghanistan. See J. Hashimzada, *New armed group vows to fight Afghan, foreign forces*, Pajhwok Network, 2 July 2008, available at <http://clearinghouse.infovlad.net/showthread.php?t=14896>.

²⁷⁸ The *Arbakai* are tribal militias, present in the South-eastern and Eastern areas where traditional Pashtun tribal society is prevalent, an area named Loya Paktia (Great Paktia) including the provinces of Paktia, Paktika and Khost. *Arbakai* are charged with maintaining security and defending the interests of the tribe. They can best be described as an enforcing element of formal tribal decisions reached through a *jirga*. As such, they can sometimes be raised on a purely ad-hoc basis. They tend to operate only in areas where tribes maintain a degree of autonomy both from the Government and the insurgency, and to maintain loyalty exclusively to their own tribe (based on UNHCR's analysis and field observations). See also C. Schetter, *Beyond Warlordism: the Local Security Arrangement in Afghanistan*, Internationale Politik und Gesellschaft, Issue 2, June 2007, available at <http://www.afghanconflictmonitor.org/2007/10/beyond-warlordi.html>.

²⁷⁹ The Northern Alliance, the main *mujaheddin* organization responsible for bringing down the Taleban regime in 2001, was composed of the armed militias of three political parties: *Jonbesh-e Melli-ye Eslami* (National Islamic Movement, predominantly ethnic Uzbek and led by Abdulrahim Dostum, until February 2008 the Chief of Staff to the Commander of the Armed Forces), *Jamiyyat-e Eslami* (mostly ethnic Tajik and led by Burhanuddin Rabbani, former president of Afghanistan 1992-1996), and *Hezb-e Wahdat-e Eslami-ye Afghanistan* (Party of Islamic Unity of Afghanistan, mostly ethnic Hazara and led by Abdul Karim Khalili, currently second Vice-President), which were influential mostly in the northern and north-eastern regions and the central highlands of Afghanistan. See ICG, *Political Parties in Afghanistan*, above footnote 149. An important splinter of the *Hezb-e Wahdat* is the *Hezb-e Wahdat-e Eslami-ye Mardom-e Afghanistan* (Party of Islamic Unity of the People of Afghanistan), led by Mohammad Mohaqqueq, currently a member of Parliament. Most of these militias merged in 2002 into a transitional army called the

in Afghanistan's insurgency where their participation in serious violations of human rights and humanitarian law can be sufficiently established. Since early 2006, *Taleban, Hezb-i-Islami Hikmatyar* and other armed groups in Afghanistan have carried out an increasing number of armed attacks that either target civilians, or are launched without regard for the impact on civilian life.²⁸² The pattern of deliberate attacks on civilians by *Taleban* forces includes shooting ambushes, bombings and other violent attacks.²⁸³

6. Internal flight/relocation alternative

A detailed analytical framework for assessing the availability of an internal flight alternative or internal relocation alternative (IFA/IRA), is contained in UNHCR's 2003 "*Guidelines on International Protection: the "Internal Flight or Relocation Alternative" within the context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*".²⁸⁴

Afghan Militia Forces, under command of the Ministry of Defense. Later, with firm plans to build a national army from scratch, and under growing accusations of supporting warlords, the Karzai Government decided to formally disband these militias under the Disarmament, Demobilization and Reintegration (DDR) process. See Giustozzi, above footnote 99, pp. 166-169. There have been numerous reports, especially for the Northern region, of some commanders maintaining armed forces, and even seeking to rearm, citing discrimination concerns related to the arming of the Auxiliary Police in the South and skepticism of the capacity of the Afghan Government to stop *Taleban* infiltration in the North. See, for example, Ron Synovitz, *Afghanistan: Armed Northern Militias Complicate Security*, RFE / RL, 4 November 2007, available at <http://www.eurasianet.org/departments/insight/articles/pp110407.shtml>; BBC, *Arming the Taleban*, 18 September 2008, available at http://news.bbc.co.uk/2/hi/south_asia/7623496.stm; and Amnesty International, *Afghanistan: arms proliferation fuels further abuse*, Public Briefing, 3 April 2008, available at <http://www.amnestyusa.org/all-countries/afghanistan/document---afghanistan-arms-proliferation-fuels-further-abuse/page.do?id=1551013>. Many of the most relevant *mujaheddin* commanders currently hold public office especially in Parliament or as governors in the North, or remain powerful political figures in the Northern region or at national level. In political terms, most have coalesced around the opposition United National Front, led by Burhanuddin Rabbani.

²⁸⁰ With or without Government recognition or financing, Governors, former governors and strongmen in the Center, South and West of the country have established or maintained militia for self-defense and counterinsurgency operations. See Giustozzi, above footnote 99, pp. 170-173. It was reported that in 2008 there were approximately 1,800 illegal armed groups throughout the country. See Amnesty International, *Afghanistan: arms proliferation fuels further abuse*, Public Briefing, 3 April 2008, available at <http://www.amnestyusa.org/all-countries/afghanistan/document---afghanistan-arms-proliferation-fuels-further-abuse/page.do?id=1551013>. In some areas, such as Kandahar and Helmand, tribal allegiances can be important to define the composition and loyalties of these groups. However, these groups are not typical tribal militias and cannot be equated to the *arbakai* which remain loyal only to their tribe. Some of these militia are reported to maintain links with Islamist political parties. According to UNHCR field observations; see also The Economist, *In the dark*, 31 January 2008.

²⁸¹ Several armed groups active in narcotics trafficking, kidnapping, and trafficking of persons exist throughout Afghanistan. These groups, and particularly those dedicated to narcotics trafficking, may have client based relations with the armed groups cited above, based on the exchange of armed protection or impunity for a share in criminal trade. According to interviews with local NGOs, Kabul, September 2008. See also: M. Tahir, *Fueling the Taleban: Poppies, Guns and Insurgents*, Terrorism Monitor, Volume 6, Issue 14, 10 July 2008, available at <http://www.jamestown.org/terrorism/news/article.php?articleid=2374293>.

²⁸² For more general information on human rights violations committed by the insurgency in the context of the armed conflict in Afghanistan, please refer to AIHRC, *Insurgent Abuses Against Afghan Civilians*, above footnote 74.

²⁸³ AIHRC, *Insurgent Abuses Against Afghan Civilians*, above footnote 74.

²⁸⁴ See in general UNHCR, *Guidelines on International Protection: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, available at <http://www.unhcr.org/refworld/docid/3f2791a44.html> (further: "*UNHCR, Internal Flight or Relocation Alternative Guidelines*").

As provided in the Guidelines, in order to assess the possibility of applying an IFA/IRA, two main sets of analyses should be undertaken, namely whether internal relocation is (i) **relevant** and, if so, whether it is (ii) **reasonable**. In assessing a refugee claim in which 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 in the particular case requires an assessment over time, taking into account not only the circumstances that gave rise to the persecution feared, and that prompted flight from the original area, but also whether the proposed area provides a meaningful alternative. The personal circumstances of the individual applicant and the conditions in the country of origin need to be considered.²⁸⁵

Persecution by non-State actors may well give rise to valid claims to refugee status under the 1951 Convention in cases where the State is unwilling or unable to provide protection. In most cases related to the conflict, this inability is reflected by the extent of insurgent activity, on the one hand, and the declared powerlessness of the Afghan Government to reduce civilian deaths by the international military on the other. With regard to criminal groups, adjudicators need to take into account that in some cases these groups have extensive links and influence over public officials. Finally, in cases of persons suffering from the application of legal, social or religious norms of a persecutory nature (such as victims of forced marriage, homosexuals, or persons accused of committing religious crimes), it must be considered that the existence and applicability of these norms is endorsed by large segments of society and by powerful conservative sectors in the public administration and Parliament.

To the extent that the harm feared is from non-State actors, State protection is on the whole not available in Afghanistan. Moreover, State agents are themselves accused of carrying out violence and other forms of human rights transgressions. Consequently, an Afghan asylum-seeker should not be expected to seek the protection of the authorities, and failure to do so should not be the sole reason for doubting credibility or rejecting the claim.

With regard to the “relevance” of an internal flight or relocation alternative, it is of particular importance to assess the willingness and the ability of the State to protect from risks emanating from non-State actors. Some Local commanders and armed groups act as agents of persecution in the Afghan context, both at the local and central levels.²⁸⁶ In some cases, they are closely associated to the local administration, while in others they may be linked to and protected by more powerful and influential actors, including at the central level. As a result, they largely operate with impunity, with the State authorities being unable to provide protection against risks emanating from these actors. The links to other actors may, depending on the circumstances of the individual case, expose a person to risk beyond the zone of influence of a local commander, including in Kabul. Even in a city like Kabul, which is divided into neighborhoods (*gozars*) where people tend to know each other, the risk remains, as news about a person arriving from elsewhere in the country or from abroad may reach potential agents of persecution.

The area of relocation has to be practically, safely, and legally accessible to the individual. Many areas of Afghanistan are not safe and, even if they are, they may not be accessible as a substantial number of main roads are considered insecure in Afghanistan. Adjudicators must

²⁸⁵ UNHCR, *Internal Flight or Relocation Alternative Guidelines*, above footnote 284, p. 3.

²⁸⁶ UN Human Rights Council, *Report of the 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/10/23, 16 January 2009, available at <http://www.unhcr.org/refworld/docid/49a2688e2.html>.

carefully consider current country conditions and risks in this regard. The number of roadside bomb attacks increased in 2008 by 30 percent over 2007.²⁸⁷

To determine whether the agent of persecution is clearly local and incapable of entering other areas in pursuit of such persons requires further case specific analysis. For cases where the agent of persecution is, or acts on behalf of the State, the threat may exist throughout the country. For those with a public profile and who risk targeting by insurgents, the geographic extent of the threat may be the whole country and therefore, there may be no internal flight alternative for them. In cases where there is an element of retribution behind the threat, or a condemnation by, for instance, the Taleban, the extent of the threat will likely be widespread.

It is particularly important to note that the operational capacity of the Taleban (including the Haqqani network), the Hezb-e Eslami (Gulbuddin) and other armed groups in Kabul, are not only evidenced by high-profile attacks, such as suicide bombings, but also through more permanent infiltration in some neighbourhoods and the regular distribution of threatening “night-letters”. In addition, the above mentioned groups have, at the time of writing, regrouped and taken control of large areas of the districts of Surobi, Khak-e Jabar, Musayee, Chahar Asyab and Paghman around Kabul, where Government officials do not travel without armed escorts.²⁸⁸

In the context of Afghanistan, determining the agents of persecution is a complex task. In many cases, the agents of persecution, particularly criminal groups,²⁸⁹ irregular or paramilitary outfits or illegal militias, but not excluding the Taleban and the *Hezb-e Eslami* (Gulbuddin), will have some connection to State actors at the local and national level. In these circumstances, the geographical extent of the threat maybe extended by such relations between non-State agents of persecution and State actors. The inability or unwillingness of the State to otherwise provide protection further diminishes any possibility of an internal flight alternative.

In the absence of a risk of persecution or other serious harm upon relocation, it must also be reasonable for a claimant to relocate. Such an assessment must take into account the elements of safety and security, human rights standards and options for economic survival in order to evaluate if the individual would be able to live a relatively normal life without undue hardship in the area of relocation given his or her situation.²⁹⁰

The traditional extended family and community structures of Afghan society continue to constitute the main protection and coping mechanism. Afghans rely on these structures and links for their safety and economic survival, including access to accommodation and an adequate level of subsistence. Furthermore, the protection provided by families and tribes is limited to areas where family or community links exist. As documented in studies on urban vulnerability, the household and the extended family remain the basic social network in Afghanistan and there are indications that existing traditional systems of sharing and redistribution are less effective in the extended urban family.²⁹¹ It is, therefore, unlikely that

²⁸⁷ See for example, The New York Times, *Bomb Kills 9 on Minibus in Afghanistan*, 25 March 2009, available at <http://www.nytimes.com/2009/03/26/world/asia/26afghan.html>.

²⁸⁸ According to one UN source consulted in Kabul in September 2008.

²⁸⁹ For example, since 2005, well-organized and equipped criminal networks consisting of Afghans and foreigners operate in Afghanistan with alleged involvement from the police, other Government structures including ministries, and even the banking system. These groups have in recent years focused on kidnapping.

²⁹⁰ UNHCR, *Internal Flight or Relocation Alternative Guidelines*, above footnote 284, p. 3.

²⁹¹ Stefan Schutte, *Urban Vulnerability in Afghanistan: Case Studies From Three Cities*; Working Paper Series, Afghanistan Research and Evaluation Unit, May 2004, at p. 3, available at http://www.areu.org.af/?option=com_docman&Itemid=&task=doc_download&g.

Afghans will be able to lead a relatively normal life without undue hardship upon relocation to an area to which he or she is not fully protected by his/her family, community or tribe, including in urban areas of the country.²⁹² This is particularly true for unaccompanied women and children, and women single head of households with no male protection. In addition, relocation may also be unavailable for ethnic groups to areas where they would constitute a minority.

Furthermore, persons originating from a rural area, with little marketable professional skills beyond agriculture and animal husbandry, may have more difficulty reintegrating elsewhere as they have little savings and 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.²⁹³

Regarding social and economic conditions in Kabul, it can be said that they have deteriorated in the course of the last two years. Increasing numbers of IDPs and growing economic migration are putting increased pressure on labour markets and resources such as construction, land and potable water, the latter aggravated by persistent drought, which has led to an increase in waterborne diseases. Widespread unemployment and underemployment limit the ability of a large number of people to meet their basic needs. The economic situation has also been aggravated by hikes in prices of basic commodities and food staples. The limited availability of humanitarian assistance has generally not changed this situation in any structural way. Aid may help poor families and individuals to survive, especially during winter, but generally does not bring them above the poverty line.

As regards housing conditions, most individuals are not able to afford the average cost of USD 200 – 250/month for a one or two room apartment in urban centres such as Kabul to where they might internally flee, due to unemployment and low wages. The minimum salary to absorb these costs together with other normal expenses is around USD400, which is out of reach for the vast majority of Afghans, with the exception of the very few jobs available with the international community. In these cases, however, growing insecurity and targeting by

²⁹² Action Contre la Faim, *Kabul Vulnerability Mapping*, January 2004, available at http://www.aah-usa.org/news/Kabul_report.pdf. The report indicates that some specific parts of the city, notably the Central Bazaar area, experience an extremely high housing density, with 51 percent of the families there living in a single room. It also illustrates that families have to deal with a very high level of insecurity at the household level, as 33.48 percent of the main income earners relied on daily wage. The irregularity of their income, and therefore ability to pay rent, constitutes a main source of concern. In Kabul and its surroundings, rents vary from an average of USD50 dollars rent, for a basic one room without any facilities, to USD3000 in the prominent areas of Kabul, such as Wazir Akbar Khan. Recently, Kabul prices have escalated to an average of rental at 300 percent of professional monthly income, even in the outskirts of the city. In rural areas, it is not possible to rent. People own their homes; war and increased family size means that most houses are over-populated, and land free of encumbrances – landmines, clear ownership rights – is extremely rare.

²⁹³ Little concrete data or research exist in this field. However, the majority of persons being currently displaced because of generalized violence, particularly from the South, are Pashtuns. Their proficiency in Dari is variable and women and children are not likely to know it well. The choice of a *lingua franca*, that is a language of common communication among different ethnic communities, is a complex issue in Afghanistan. In general, Dari and Pashto are the nationwide official languages and likely to be used as *lingua franca*. The rule of thumb for particular areas is that the language of the majority in the wider region is chosen, especially when this majority is perceived as “originally” from the region. As an example, in Nuristan Nuristanis and Pashtuns will communicate in Pashto, which is seen as the “majority language” in the Eastern region. In the case of the capital and the region around Kabul, Pashto is of course spoken by a number of people, but Dari is definitely the *lingua franca*, and people are generally expected to understand and be able to communicate in it as many people do not understand Pashto well. This represents an obstacle to local integration, which affects disproportionately women and children. In particular, children who are not Dari speakers will have difficulties integrating in the educational system.

kidnappers has to be taken into account. Recently, a kidnapping of an Afghan NGO worker in northern Afghanistan led to the resignation of a further 19 national staff from that NGO.

In this context, UNHCR generally considers internal flight as a reasonable alternative where protection is available from the individual's own extended family, community or tribe is available in the area of intended relocation.²⁹⁴ Even in these situations a case by case analysis is necessary, given the breakdown in the traditional social fabric of the country caused by 30 years of war, massive refugee flows, and growing internal migration to urban areas.

²⁹⁴ See, for instance, *Refugee Appeal No. 76191*, 12 August 2008 (New Zealand Refugee Status Appeals Authority), para. 56, available at <http://www.unhcr.org/refworld/docid/48c0f8392.html>, where the Tribunal held that no viable IFA to Kabul was available to the applicant because of the lack of family support, coupled with the fact “that the current upswing in the insurgency since 2006 has increased the numbers of internally displaced persons (IDPs) coming to Kabul which, in turn, has placed strain on the city’s capacity to provide them with basic levels of social welfare.” See also, *Refugee Appeal No. 76190*, 3 July 2008 (New Zealand Refugee Status Appeals Authority), available at <http://www.unhcr.org/refworld/docid/489828312.html>, which states that IFA/IRA is not available for an applicant with very limited family protection.

V. Further human rights considerations

1. Access to Health Care

The average life expectancy in Afghanistan for both men and women is 42 years which is among the lowest in the world. Maternal and infant mortality rates are among the highest in the world and stand at 1600 for 100,000 births and at 210 for 1000 live births, respectively. Less than 15 percent of births are attended by trained health workers.²⁹⁵ A report published in September 2006 concludes that there have been some improvements in maternal health indicators but the disparity between rural and urban areas remains significant.²⁹⁶

Early pregnancy resulting from under-age marriages increases the risk of death during childbirth. It is estimated that 16 percent of Afghan girls are married before the age of 15, and 52 percent are married before their eighteenth birthday.²⁹⁷ Less than 40 percent of Afghan children receive life-saving vaccinations.

In terms of access to healthcare, Afghanistan's poor healthcare system has a very strong urban bias in its existing infrastructure. Overall, there are only 210 health facilities with beds to hospitalize patients. With the exception of four provinces, the current ratio of doctors per patient stands at one doctor per 10,000 patients. Many Afghan women are reluctant to be, or may be prevented from being, treated by male health workers. At the same time, due to the reduction of available health facilities, women in rural areas are obliged to walk much longer distances to access health care, and frequently will not do so because they do not have a male relative ready to accompany them, or because of fear of insurgents. Women from rural areas are at an even greater risk of dying during childbirth. Such areas average fewer than six doctors, seven nurses and four midwives for every 100,000 women. In Panjshir province, for example, there are seventeen health centres. Each employs only one female doctor and one midwife to serve 30,000 to 60,000 people.²⁹⁸

While important progress in healthcare has been made through the Government's expansion of the basic package of health services, health infrastructure in Afghanistan is reported to be

²⁹⁵ United Nations Development Programme (UNDP), *Afghanistan National Human Development Report 2004 – Security with a Human Face: Challenges and Responsibilities*, 21 February 2005, p. 27, available at <http://www.undp.org/dpa/nhdr/af/AfghanHDR2004.htm>. According to the findings from Human Rights Field Monitoring interviews conducted in 2006 by the AIHRC and UNHCR, only 34.2 percent of interviewees stated that a doctor/nurse (12.9 percent) or a midwife/trained birth attendant (21.3 percent) were present at birth of their children.

²⁹⁶ Johns Hopkins University, *Afghanistan Health Sector Balance Scorecard – National and Provincial Results*, Bloomberg School of Public Health, Indian Institute of Health Management Research, September 2006, available at http://www.jhsph.edu/refugee/response_service/afghanistan/Afghanistan_Balanced_Scorecard.pdf.

²⁹⁷ The development vision of the Afghan Government is expressed in both the Afghanistan Compact and the 2005 Millennium Development Goals Report (Vision 2020). The "Afghanistan Compact" was adopted at the London Conference On Afghanistan, London 31 January – 1 February 2006, available at <http://www.ands.gov.af/ands/I-ANDS/ands-documents.asp?page=883736&numbpar=c&lang=eng&cont=right&class=dari>, and Islamic Republic of Afghanistan, *Millenium Development Goals, Country Report 2005 – Vision 2020*, 2005, available at http://www.ands.gov.af/src/src/MDGs_Reps/MDGR_2005.pdf. According to the findings from Human Rights Field Monitoring interviews conducted in 2006 by the AIHRC and UNHCR, 12.3 percent of interviewees stated that children in their families married before 16 years of age. Among the children who married before 16 years of age, 84.7 percent (1314) of them were girls whilst 15.3 percent of them were boys. Afghanistan Independent Human Rights Commission, *Economic and Social Rights in Afghanistan II*, 1 August 2007, p. 31, available at <http://www.unhcr.org/refworld/docid/471f4a5b0.html>.

²⁹⁸ UNICEF, *Midwife training programme aims to reduce maternal mortality in Afghanistan*, 13 January 2009, available at http://www.unicef.org/infobycountry/afghanistan_47120.html.

damaged and poorly maintained, lacking trained and skilled workers and medical supplies. Some observers claim that the health services are not able to meet the basic health needs of a majority of the population. The United Nations reports that the basic package of health services now covers 82 per cent of the population.²⁹⁹ There are 900 clinics and approximately 40 percent of the population has access to healthcare.³⁰⁰ According to the Ministry of Public Health, over 600,000 persons lack basic healthcare services due to attacks on healthcare facilities and health workers – a figure that has doubled since 2007.³⁰¹ The overall quality of health services in Afghanistan has however been improved. According to Fahim, “the infant mortality rate has reduced by 26 percent and now 80,000 fewer infants are dying each year compared to during Taleban rule.”³⁰²

First-aid is available at the district level but emergency transport is lacking; trauma care and continuing care are limited to a few hospitals in major cities and can be of poor quality and expensive.³⁰³

2. Rule of Law

Despite Constitutional guarantees against arbitrary and unlawful detention,³⁰⁴ Afghans are reportedly often detained without a legal basis, including for so-called ‘moral crimes’, breaches of contractual obligations, for family disputes, or to pressure a relative or associate into confession. There are also indications that Afghans have been detained in order to deny them fundamental rights, particularly that of freedom of expression and many of the fundamental rights of women.³⁰⁵ Despite improvements, Afghans may still be detained for breaches of civil law or contractual obligations, for which detention is not permitted under applicable law, including: housing, land and property disputes; arguments over debt; and family disputes, including over marriage. Furthermore, individuals may be arbitrarily detained for acts which do not constitute crimes under Afghan law, including breaches of customary or Sharia law, and misapplication of the law to criminalize an individual. Detaining relatives or associates of suspects *in lieu* of the suspect or accused or in order to pressure the suspect or accused to surrender to the authorities have also been reported. Occasionally, Courts have convicted relatives in place of the accused.³⁰⁶

²⁹⁹ UN General Assembly, *The situation in Afghanistan and its implications for international peace and security: report of the Secretary-General*, A/62/722–S/2008/159, 6 March 2008, available at <http://www.unhcr.org/refworld/docid/47d4f0c32.html>.

³⁰⁰ UK Foreign & Commonwealth Office (FCO), *Afghanistan Country Profile*, reviewed in January 2008, available at <http://www.fco.gov.uk/en/about-the-fco/country-profiles/asia-oceania/Afghanistan>.

³⁰¹ IRIN, *Afghanistan: Growing number of Afghans lack health care – Ministry*, 7 April 2009, available at <http://www.unhcr.org/refworld/docid/49ddfa68a.html>.

³⁰² IRIN, *Afghanistan: Insurgency, insecurity threaten health progress*, 23 July 2008, available at <http://www.unhcr.org/refworld/docid/488f180b19.html>.

³⁰³ UK Home Office, *Country of Origin Information Report – Afghanistan*, 29 August 2008, available at <http://www.unhcr.org/refworld/docid/48da2b042.html>.

³⁰⁴ The Constitution stipulates that a person’s liberty can be restricted if his/her liberty is “affecting others’ freedoms as well as the public interest” and only when “regulated by law” (Article 27(1)). No one, the Constitution continues, can be detained “without due process of law.” (Article 27(2)).

³⁰⁵ UNAMA, *Arbitrary Detention in Afghanistan: A Call For Action, Volume I – Overview and Recommendations*, January 2009, available at <http://www.unhcr.org/refworld/docid/49d07f272.html>; and UN Assistance Mission in Afghanistan (UNAMA), *Arbitrary Detention in Afghanistan: A Call For Action, Volume II – A Practical Guide to Understanding and Combating Arbitrary Detention Practices in Afghanistan*, January 2009, available at <http://www.unhcr.org/refworld/docid/49d07fc42.html> (hereafter: “UNAMA *Arbitrary Detention in Afghanistan*”).

³⁰⁶ For example, in Nahrin district of Baghlan province, two men were detained in 2007 because their sons were suspected of committing a crime but had allegedly fled the jurisdiction. In June 2005, four men were also reportedly detained in the Sholgara district in Balkh province because their relatives were accused of

Detention for breaches of customary or Sharia law disproportionately affects women and girls.³⁰⁷ Women and girls are arrested and imprisoned for committing uncodified ‘moral crimes’, including for perceived misbehaviour such as running away³⁰⁸ or being improperly accompanied.³⁰⁹ Victims of rape (female and male), domestic violence, trafficking, forced marriages or other violence against women are often detained on criminal charges. Charging female rape victims with adultery or *zina* (sex outside of marriage) is reportedly standard practice.³¹⁰ Women are often returned to male offenders when reporting violence.³¹¹ Sentencing by judges of females convicted of sexual offences such as adultery is often disproportionately harsh as opposed to male offenders who often are released or enjoy much lighter sentences.³¹²

Furthermore, basic procedural guarantees, such as the right to legal representation, are reportedly not observed.³¹³ Detainees are routinely held for months without charge or appearances before a judge, and rarely receive legal representation. Moreover, they are unable to challenge the legality of their detention before an impartial judge, and do not enjoy the presumption of innocence before being tried in a court of law. A study of some 2,000 cases between 2006 and 2008 found that unlawful detentions are most often the result of poor awareness and understanding of the law and the rights of detainees, along with procedures and a legal framework that are inadequate to safeguard those rights. Some were caused, in addition, by corruption, abuse of power, and disregard for the law by responsible authorities.³¹⁴

While access to legal aid has improved in major urban centres, the number of practicing lawyers remains extremely limited. In October 2006, only 223 lawyers countrywide were registered and licensed with the Ministry of Justice. The legal aid department of the Supreme Court comprises only 19 lawyers, despite the fact that both the Constitution and the Interim Criminal Procedure Code provide for free legal representation for indigent defendants in criminal cases.

having burned a harvest. In October 2007, the father of an individual accused of kidnapping an 18-year-old woman was sentenced to six years’ imprisonment; the court’s decision was overturned on appeal following UNAMA’s intervention. See UNAMA *Arbitrary Detention in Afghanistan, Volume I*, above footnote 305.

³⁰⁷ UNAMA *Arbitrary Detention in Afghanistan, Volume I*, above footnote 305.

³⁰⁸ For example, in Heart province, UNAMA identified a case on 15 July 2008 in which a woman was forcibly married to her brother-in-law after her husband died. After she complained to the Police, and obtained a divorce, she was charged and convicted of ‘running away’ and sentenced by the Appeals Court to 7 months’ imprisonment; see UNAMA *Arbitrary Detention in Afghanistan, Volume I*, above footnote 305.

³⁰⁹ *2008 Report of the High Commissioner for Human Rights*, above footnote 9. In Pul-i-kumri in Baghlan province for example, a pregnant widow was convicted for being in a room with a male family friend subsequent to her husband’s death; see UNAMA *Arbitrary Detention in Afghanistan, Volume I*, above footnote 305.

³¹⁰ For instance, in January 2007, a 20-year-old rape victim from Surkroad district, Nangahar, was charged with adultery after reporting being raped. A 15-year-old girl in Samangan province was detained, charged, and convicted of *zina* after she complained to police of having been raped by her uncle, and as a result become pregnant. In Achin district, Nangarhar, a 22-year-old woman was charged with adultery after she was apparently kidnapped, forcibly married to another man and her child killed. See UNAMA *Arbitrary Detention in Afghanistan, Volume I*, above footnote 305.

³¹¹ *2008 Report of the High Commissioner for Human Rights*, above footnote 9.

³¹² *2008 Report of the High Commissioner for Human Rights*, above footnote 9.

³¹³ *2008 Report of the High Commissioner for Human Rights*, above footnote 10. For a full overview of arbitrary detention in Afghanistan, see UNAMA *Arbitrary Detention in Afghanistan, Volume I and Volume II*, above footnote 305.

³¹⁴ UNAMA *Arbitrary Detention in Afghanistan, Volume I*, above footnote 305.

3. Prison Conditions

There are prisons in 34 provinces of Afghanistan administered by the Ministry of Justice, and 30 active rehabilitation centers for juveniles.³¹⁵ Prison conditions in most facilities remain below minimum international standards.³¹⁶ There are reports of over-crowding, inadequate food and water, poor sanitation facilities, and where available, infirmaries are under-equipped. Contagious and mentally ill prisoners are reportedly rarely separated from the general prison population, whilst children of women prisoners live with their mothers, particularly where they have no other family. There is no gender segregation.³¹⁷

There are also reports that Government officials, local prison authorities, police chiefs, and tribal leaders practiced torture and abuses included pulling out fingernails and toenails, burning with hot oil, beatings, sexual humiliation, and sodomy.³¹⁸

³¹⁵ US, *2008 Report on Human Rights Practices*, above footnote 40.

³¹⁶ *2008 Report of the High Commissioner for Human Rights*, above footnote 9.

³¹⁷ US, *2008 Report on Human Rights Practices*, above footnote 40.

³¹⁸ US, *2008 Report on Human Rights Practices*, above footnote 40.

VI. Return

1. Return to Afghanistan

During 2008 alone, UNHCR has facilitated the return of some 278,000 Afghans, predominantly from Pakistan (274,000) and Iran (some 3,600). During the 2009 repatriation season, up to 3 June, a further 29,400 have returned from Pakistan and 1,240 from Iran. Half of such recent returns are to the eastern province of Nangarhar or Kabul, while 25 percent indicate the northern region as their destination and only 4 percent provide the south, south east and central highlands as their place of intended return. According to the latest statistical information, nearly 2.6 million Afghans continue to reside in neighboring countries; 1.7 million in Pakistan and 935,000 in Iran.³¹⁹ In 2008, there was little voluntary repatriation from non-neighbouring countries, including European States, although an increasing number of Afghans were deported, sometimes under the guise of repatriation programmes deemed “voluntary” under national legal and administrative frameworks.³²⁰ Furthermore, deportees known or suspected of returning with substantial amounts of cash, particularly from European countries, have been targeted by non-State actors. At least two such cases were reported in 2008. In one of them, an Afghan deported from Sweden escaped from a failed kidnapping attempt and took to living on the streets out of fear, until the Ministry of Refugees and Repatriation on a humanitarian and exceptional basis found temporary accommodation for him. In another case, a deportee from Britain was kidnapped and a ransom of several thousand dollars was demanded.³²¹

The traditional family and community structures of the Afghan social and tribal system constitute the main protection and coping mechanism for returning Afghan refugees. The support provided by families, extended families and tribes is limited to areas where family or community links exist, in particular in the place of origin or habitual residence. Those who may face particular difficulties upon return include, but are not limited to, unaccompanied women and single heads of household; unaccompanied children; unaccompanied elderly persons; victims of serious trauma, including sexual and gender based violence; physically or mentally disabled persons; and persons requiring medical assistance (whether long or short-term), particularly women. Return to places other than places of origin or previous residence, may therefore expose Afghans to insurmountable difficulties, not only in sustaining and re-establishing livelihoods but also to security risks. Security risks may include, *inter alia*, arbitrary detention and arrest, targeted killings based on ethnic rivalries and family-based conflicts, besides the increasing risks being posed by the ongoing armed conflict, as detailed above.

Finally, reintegration needs continue to be immense and urban centres continue to be faced with numbers of returnees, which are difficult to absorb. Afghanistan, despite being impoverished and war-torn, has, since 2002, seen a return of approximately 20 percent of its population.

In this regard, given the differences particular to the situation in Afghanistan, UNHCR advises against the return of persons to areas other than their places of origin or previous

³¹⁹ During the period from 2 March 2002 until 31 December 2008 a total of 4,369,086 Afghans have been assisted by UNHCR to voluntary return to Afghanistan.

³²⁰ According to the Afghan Ministry of Refugees and Returnees, at least 560 unsuccessful asylum seekers were deported back from European States and a further 545 such persons came back under frameworks for voluntary return.

³²¹ Based on UNHCR information.

areas of residence where they do not have effective family or tribal links and support, unless these returns are voluntary in nature.³²²

2. Return to Iran and Pakistan

UNHCR notes that some States have sought to return Afghan asylum-seekers to Iran and Pakistan on the basis that protection had been afforded, sometimes for long-periods. Unless in possession of a valid entry visas, such Afghans will, however, be denied re-entry, restoration of residency rights and be subject to forced return to Afghanistan.

With regard to Pakistan, a joint UNHCR/Pakistan registration exercise took place in late 2006 to February 2007, resulting in the registration and documentation of 2.15 million Afghans residing in Pakistan. The registration was primarily, though not exclusively, based on a census undertaken in February 2005. Registration card holders currently have the right to reside in Pakistan until December 2009, although Pakistan authorities have signaled their intention to extend this period to the end of 2012. In relation to registered Afghans who exit Pakistan, length of prior stay and documentation previously held, such as the registration card, are not relevant considerations with regard to the right to return to and reside in Pakistan. Afghans without a valid passport and visa, regardless of prior length of stay in Pakistan, can not enter Pakistan legally and would be subject to deportation under Article 14.3 of the Pakistan Aliens Act. Arrests for illegal stay, and subsequent imprisonment, fines and deportations of illegally staying Pakistanis are a daily occurrence with several hundred being deported to Afghanistan every month. Finally, it should be noted that Pakistan is not a signatory to the 1951 Convention and there is no national asylum framework.

Iran also has a sizeable population of registered Afghans, with approximately 935,000 maintaining registration and documentation at the end of May 2009. While a Convention signatory, Iran has made reservations to the Convention with regard to the freedom of movement and employment. Temporary work permits have recently been made available for eligible registered Afghans who have paid their municipal taxes and a 500 USD fee. It remains to be seen how many such persons receive a work contract from employers. The Iranian authorities have declared 23 Provinces in whole or in part off-limits for foreign residents, including refugees, with Hormozgan province the most recently declared “no go” area in May 2009. Some 140,000 refugees are affected, and have to choose between internal relocation or return to Afghanistan. Afghans who depart Iran without specific permission and an exit visa would not be able to legally re-enter or be returned to Iran in the absence of both an Afghan passport and an Iranian visa, regardless of prior legal and possibly long-term stay, or even birth, in Iran. Those Afghans who attempt to enter or are returned without meeting these requirements may be subject to arrest, detention and forcible return to Afghanistan.

There are also several tens of thousands of unregistered Afghans in Iran. Over 405,000 such persons were deported in 2008 and a further 178,000 from January to 3 June 2009. Over 80 percent of deportees originate from the northern provinces or the western region. Over 97 percent of those deported are single males, presumed to have entered Iran for its livelihood opportunities. Opportunities to seek international protection is limited for such arrivals as, though a signatory to the 1951 Convention, there is no apparent national refugee status adjudication system in Iran. Moreover, the Government does not recognize UNHCR’s refugee status determination mandate.

³²² See UNHCR, *Voluntary Repatriation*, No. 40 (XXXVI) – 1985, 18 October 1985, available at <http://www.unhcr.org/refworld/docid/3ae68c9518.html>; and UNHCR, *Conclusion on the return of persons found not to be in need of international protection*, No. 96 (LIV) – 2003, 10 October 2003, available at <http://www.unhcr.org/refworld/docid/3f93b1ca4.html>.

VII. Internal Displacement

In 2002, an estimated 1.2 million Afghans were internally displaced. The majority of them returned spontaneously. A total of 489,525 internally displaced persons (IDPs) have been assisted by UNHCR from 2002 to October 2007 to return. According to existing UNHCR statistics, there are approximately 270,000 IDPs in Afghanistan as of February 2009.³²³ The majority of identified IDPs form part of a protracted caseload, but a significant and increasing number of IDPs has been recently displaced mainly due to the armed conflict.³²⁴ Furthermore, the deteriorating security situation, landlessness, and limited livelihood opportunities are reportedly factors preventing the reintegration of IDPs. Appropriation of land by warlords and local commanders has also been a contributing factor for non-return to the place of origin.

Discrimination against IDPs exists, but it is generally due to their ethnicity or place of origin in Afghanistan, not their status as IDPs. For example, Pashtun IDPs in the west and north are, in some instances, viewed with suspicion by Tajik and Uzbek residents, who may associate them with elements of the insurgency.

Access to individual and civil status documentation is one of the most serious protection problems which IDPs face. Nationally recognised identification is generally required to access education and health services, obtain a passport, acquire a driving license, or qualify for land allocation schemes under Decree 104.³²⁵ Obtaining identification poses particular problems for Kuchis (typically nomadic), who have difficulties establishing their place of origin and, as a general matter, face discrimination.

In light of the above, Afghans generally avail themselves of the protection and assistance afforded by family, tribe and ethnic group in their place of origin. IDPs often lose this source of protection and support, particularly if they are an ethnic minority in the place of displacement.

³²³ UNHCR, *Joint Press Release: Ministry of Refugees and Repatriation and UNHCR: First national IDP report reveals complex challenges for internally displaced*, 15 December 2008, available at <http://www.unhcr.org/49b8e91c2.html>; and UNHCR, *National Profile of Internal Displaced Persons (IDPs) in Afghanistan*, 11 November 2008, available at <http://www.unhcr.org/49ba33a02.html>.

³²⁴ See, for instance, Internal Displacement Monitoring Centre, *Afghanistan: Increasing hardship and limited support for growing displaced population*, 28 October 2008, pp. 12-13, available at <http://www.unhcr.org/refworld/docid/490711f52.html>.

³²⁵ Decree 104 on Land Distribution for the Housing of Eligible Returnees and IDPs (2005).

