

Flygtningenævnets baggrundsmateriale

| | |
|---------------------------------|---|
| Bilagsnr.: | 1300 |
| Land: | Afghanistan |
| Kilde: | UNHCR |
| Titel: | Guidance note on the international protection needs of people fleeing Afghanistan |
| Udgivet: | februar 2022 |
| Optaget på baggrundsmaterialet: | 23. februar 2022 |

GUIDANCE NOTE ON THE INTERNATIONAL PROTECTION NEEDS OF PEOPLE FLEEING AFGHANISTAN

February 2022

Introduction

1. This Guidance Note supersedes UNHCR's *Position on Returns to Afghanistan* of August 2021 and the *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan* of August 2018.¹
2. Civilians in Afghanistan have been gravely affected by the developments in the country leading up to and following the ousting of the previous government by the Taliban on 15 August 2021. While levels of indiscriminate violence have diminished, and humanitarian access to many parts of the country has improved, conditions in Afghanistan remain highly unpredictable, with widespread concerns about targeted violence and human rights violations.
3. In addition, Afghanistan is confronted with widespread economic collapse and a humanitarian crisis of unprecedented proportions. More than half the Afghan population, or 22.8 million people, face acute food insecurity.² UNDP forecasts that the Afghan economy will contract by 20 per cent within a year of the Taliban's takeover,³ and it has warned that by mid-2022, 97 per cent of the Afghan population may sink below the poverty line.⁴
4. Some 3.5 million Afghans are internally displaced by conflict, including an estimated 702,000 persons who have been newly displaced since the beginning of 2021.⁵ In addition, nearly 160,000 Afghans in need of international protection have newly arrived in neighbouring countries (Pakistan, Iran, and Tajikistan) since 1 January 2021.⁶ As some aspects of the previously prevailing security situation in Afghanistan stabilized after 15 August 2021 and new elements of volatility emerged, an estimated 170,000 IDPs returned to their places of origin between September and mid-December 2021.⁷

International Protection Needs

5. UNHCR continues to call on all countries to allow civilians fleeing Afghanistan access to their territories, to guarantee the right to seek asylum, and to ensure respect for the principle of non-refoulement at all

¹ UNHCR, *UNHCR Position on Returns to Afghanistan*, August 2021, www.refworld.org/docid/611a4c5c4.html; UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 30 August 2018, www.refworld.org/docid/5b8900109.html.

² WFP, *Half of Afghanistan's Population Face Acute Hunger as Humanitarian Needs Grow to Record Levels*, 25 October 2021, www.wfp.org/news/half-afghanistans-population-face-acute-hunger-humanitarian-needs-grow-record-levels.

³ UNDP, *Afghanistan Socio-Economic Outlook 2021-2022: Averting a Basic Needs Crisis*, 1 December 2021, www.undp.org/publications/afghanistan-socio-economic-outlook-2021-2022-averting-basic-needs-crisis, pp. 1, 9-10.

⁴ UNDP, *97 Percent of Afghans Could Plunge into Poverty by Mid-2022, Says UNDP*, 9 September 2021, www.undp.org/press-releases/97-percent-afghans-could-plunge-poverty-mid-2022-says-undp.

⁵ From 1 January to 22 November 2021, 697,885 individuals are reported to have fled their homes due to conflict. OCHA, *Afghanistan: Conflict Induced Displacements*, accessed 2 February 2022, www.humanitarianresponse.info/en/operations/afghanistan/idps.

⁶ See <https://data2.unhcr.org/en/situations/afghanistan> (data as of 28 January 2022).

⁷ UNHCR, *Afghanistan Situation External Update - 15 January 2022*, 25 January 2022, <https://data2.unhcr.org/en/documents/details/90588>.

times.⁸ UNHCR calls on States to register all arrivals who seek international protection and to issue documentary proof of registration to all individuals concerned.

6. Based on available reports about widespread human rights violations in Afghanistan,⁹ including accounts provided by Afghans in flight and those already abroad as part of UNHCR broad monitoring,

⁸ UNHCR, *Afghans Struggle to Seek Safety as Borders Remain Shut to Most*, 1 December 2021, www.unhcr.org/news/press/2021/12/61a72ed34/news-comment-unhcr-afghans-struggle-seek-safety-borders-remain-shut.html.

⁹ On **women and girls**, see: BBC, *Afghanistan: Taliban Takes Another Women's Rights Protester*, 4 February 2022, www.bbc.com/news/world-asia-60239525; UN News, *'We Cannot Abandon the People of Afghanistan' Guterres Tells Security Council*, 26 January 2022, <https://news.un.org/en/story/2022/01/1110622>; UNHCR, *Afghanistan Situation External Update - 15 January 2022*, 25 January 2022, <https://data2.unhcr.org/en/documents/details/90588>; The Guardian, *Taliban Stop Afghan Women Using Bathhouses in Northern Provinces*, 7 January 2022, www.theguardian.com/global-development/2022/jan/07/taliban-stop-afghan-women-using-bathhouses-in-northern-provinces; ANI, *Taliban Bans Women from Sports Activities*, 6 January 2022, www.aninews.in/news/world/asia/taliban-bans-women-from-sports-activities20220106094549/; Aljazeera, *No Long-Distance Travel for Women Without Male Relative: Taliban*, 26 December 2021, www.aljazeera.com/news/2021/12/26/afghanistan-long-distance-travel-women-without-male-escort-taliban; OHCHR, *Oral Update on the Situation of Human Rights in Afghanistan: Statement by Nada Al-Nashif, UN Deputy High Commissioner for Human Rights*, 14 December 2021, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27960&LangID=E; BBC, *Afghanistan: Girls' Despair as Taliban Confirm Secondary School Ban*, 8 December 2021, www.bbc.com/news/world-asia-59565558; Amnesty International, *Afghanistan: Survivors of Gender-Based Violence Abandoned Following Taliban Takeover – New Research*, 6 December 2021, www.amnesty.org/en/latest/news/2021/12/afghanistan-survivors-of-gender-based-violence-abandoned-following-taliban-takeover-new-research/; Human Rights Watch (HRW), *From Taliban to Taliban: Cycle of Hope, Despair on Women's Rights*, 1 November 2021, www.hrw.org/news/2021/11/01/taliban-taliban-cycle-hope-despair-womens-rights; European External Action Service, *UN Human Rights Council Adopts EU-Led Resolutions on the Human Rights Situation in Afghanistan and Burundi*, 7 October 2021, <https://eeas.europa.eu/headquarters/headquarters-homepage/105266/un-human-rights-council-adopts-eu-led-resolutions-human-rights-situation-afghanistan-and-en>; Center for Strategic and International Studies (CSIS), *The Future of Women and Girls in Afghanistan*, 30 September 2021, www.csis.org/events/future-women-and-girls-afghanistan. On **Afghans associated with the former government or with the international community in Afghanistan, including former embassy staff and employees of international organizations**, see: Mirror, *'My Family Went into Hiding in Afghanistan after the Taliban Came Looking for Me'*, 23 November 2021, www.mirror.co.uk/news/world-news/my-family-went-hiding-afghanistan-25517818; Global News, *Fearing Taliban, Employees of Canadian NGOs Try to Flee Afghanistan*, 29 October 2021, <https://globalnews.ca/news/8333577/fearing-taliban-canadian-ngos-afghanistan/>; The Guardian, *Former British Embassy Driver Badly Beaten in Kabul*, 5 October 2021, www.theguardian.com/world/2021/oct/05/former-british-embassy-driver-badly-beaten-in-kabul. On **former members of the Afghan National Security Forces and Afghans associated with the former international military forces in Afghanistan**, see: ABC News, *Afghan Air Force Pilots Trapped in Afghanistan Plead for Evacuation*, 18 December 2021, <https://abcnews.go.com/International/afghan-air-force-pilots-trapped-afghanistan-plead-evacuation/story?id=81793796>; OHCHR, *Oral Update on the Situation of Human Rights in Afghanistan: Statement by Nada Al-Nashif, UN Deputy High Commissioner for Human Rights*, 14 December 2021, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27960&LangID=E; Al Jazeera, *US, EU and 20 Nations Condemn Taliban over 'Summary Killings'*, 5 December 2021, www.aljazeera.com/news/2021/12/5/us-eu-and-20-nations-condemn-taliban-over-summary-killings; Amnesty International, *No Escape: War Crimes and Civilian Harm During the Fall of Afghanistan to the Taliban*, December 2021, www.ecoi.net/en/file/local/2065273/ASA1150252021ENGLISH.pdf, pp. 13-20; HRW, *"No Forgiveness for People Like You": Executions and Enforced Disappearances in Afghanistan under the Taliban*, 30 November 2021, www.hrw.org/report/2021/11/30/no-forgiveness-people-you/executions-and-enforced-disappearances-afghanistan. On **journalists and media workers**, see The Independent, *Afghan Journalists 'Facing Death Threats' and Harsh Rules, with Female Reporters Hit Hardest*, 23 November 2021, www.independent.co.uk/asia/south-asia/afghanistan-journalists-death-threats-taliban-b1962772.html; Committee to Protect Journalists (CPJ), *Journalists Shot, Beaten, and Detained in Afghanistan*, 2 November 2021, <https://cpj.org/2021/11/journalists-shot-beaten-and-detained-in-afghanistan/>; Aljazeera, *Watchdog: 30 Recent Cases of Violence against Afghan Journalists*, 28 October 2021, www.aljazeera.com/news/2021/10/28/afghanistan-journalists-watchdog-violence-taliban-media; HRW, *Taliban Severely Restrict Media: Journalists Arbitrarily Detained, Beaten*, 1 October 2021, www.hrw.org/news/2021/10/01/afghanistan-taliban-severely-restrict-media. On **human rights defenders**, see: OHCHR, *Oral Update on the Situation of Human Rights in Afghanistan: Statement by Nada Al-Nashif, UN Deputy High Commissioner for Human Rights*, 14 December 2021, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27960&LangID=E; The Guardian, *Women's Rights Activist Shot Dead in Northern Afghanistan*, 5 November 2021, www.theguardian.com/world/2021/nov/05/womens-rights-activist-shot-dead-in-northern-afghanistan; The Guardian, *They Stayed to Fight the Taliban. Now the Protesters Are Being Hunted Down*, 4 November 2021, www.theguardian.com/global-development/2021/nov/04/they-stayed-to-fight-the-taliban-now-the-protesters-are-being-hunted-down; OHCHR, *Afghanistan: Human Rights Defenders Living under "Climate of Fear" – UN Expert*, 3 November 2021, www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=27762&LangID=E. On **ethnic and religious minority groups**, see OHCHR, *Oral Update on the Situation of Human Rights in Afghanistan: Statement by Nada Al-Nashif, UN Deputy High Commissioner for Human Rights*, 14 December 2021, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27960&LangID=E; Radio Free Europe/Radio Liberty (RFE/RL), *Taliban Accused Of Forcibly Evicting Ethnic Uzbeks, Turkmen In Northern Afghanistan*, 9 December 2021, <https://gandhara.rferl.org/a/taliban-evictions-uzbeks-turkmen/31601904.html>; Aljazeera, *Why the Hazara People Fear Genocide in Afghanistan*, 27 October 2021, www.aljazeera.com/opinions/2021/10/27/why-the-hazara-people-fear-genocide-in-afghanistan;

UNHCR is concerned that recent developments are giving rise to an increase in the need international refugee protection for people fleeing Afghanistan.¹⁰ All claims of nationals and former habitual residents of Afghanistan seeking international protection should be processed in fair and efficient procedures in accordance with international and regional refugee law and other relevant legal standards.

7. In view of the volatility of the situation throughout Afghanistan, UNHCR does not consider it appropriate to deny international protection to Afghans and former habitual residents of Afghanistan on the basis of an internal flight or relocation alternative.
8. The unprecedented humanitarian crisis affecting Afghanistan must not be allowed to obscure the situation of widespread threats to human rights in the country. Afghans fleeing the country may refer in the first instance to their immediate needs for survival as the reason for their flight. With reference to the shared burden of proof, UNHCR calls on decision-makers to ensure that asylum applicants are given an opportunity to provide a full and complete account of the reasons that forced them to flee, including possible fears of persecution upon return.
9. There is every possibility that individuals who have been associated with acts that bring them within the scope of the exclusion clauses contained in Article 1F of the 1951 Convention will be found among Afghan nationals seeking asylum.¹¹ In such cases, it will be necessary to examine carefully any issues of individual responsibility for crimes which may give rise to exclusion from international refugee protection. In addition, to preserve the civilian character of asylum, States would need to assess the situation of arrivals carefully so as to identify those involved in military activities and separate them from the civilian refugee population.¹²

Suspension of All Decisions on Applications for International Protection other than Recognition of 1951 Refugee Status

10. Since its takeover of the country, the Taliban is governing by decree, side-lining the parliamentary process. To date, this governance has been characterized by uncertainty, arbitrariness and disregard for the rule of law. There is no clarity yet as to whether the Taliban considers Afghanistan's legislative framework, including the Constitution, to be in force. The formal justice system is not currently functioning, while a number of reports indicate that the Taliban intends to apply corporal punishments

HRW, *Afghanistan: Taliban Forcibly Evict Minority Shia Hazaras, Former Civil Servants Targets of Collective Punishment, Land-Grabbing*, 22 October 2021, www.hrw.org/news/2021/10/22/afghanistan-taliban-forcibly-evict-minority-shia; NBC News, *Minority Hazara Population Face Persecution under Taliban Rule in Afghanistan — Again*, 10 October 2021, www.nbcnews.com/news/world/minority-hazara-population-face-persecution-under-taliban-rule-afghanistan-again-n1281160.

On **Afghans of diverse sexual orientations and gender identities**, see: Thomson Reuters Foundation News, *LGBT+ Afghans Fear Being Forgotten 100 Days since Taliban Takeover*, 23 November 2021, <https://news.trust.org/item/20211125171448-owr14/>; France24, *The Taliban Has a Hit List for the Afghan LGBT Community, NGO Says*, 2 November 2021, www.france24.com/en/asia-pacific/20211102-the-taliban-has-a-kill-list-for-the-afghan-lgbt-community-ngo-says; BBC, *'I Feel Free' - LGBT Afghan Refugees Arrive in UK*, 30 October 2021, www.bbc.com/news/world-asia-59102411; CNN, *Angry and Afraid, Afghanistan's LGBTQ Community Say They're Being Hunted Down after Taliban Takeover*, 18 September 2021, <https://edition.cnn.com/2021/09/17/middleeast/afghanistan-lgbtq-evacuation-intl-hnk-dst/index.html>. On **family members and others closely associated with persons at risk of persecution**, see HRW, *Afghanistan: Taliban Kill, 'Disappear' Ex-Officials: Raids Target Former Police, Intelligence Officers*, 30 November 2021, www.hrw.org/news/2021/11/30/afghanistan-taliban-kill-disappear-ex-officials; Mirror, *'My Family Went into Hiding in Afghanistan after the Taliban Came Looking for Me'*, 23 November 2021, www.mirror.co.uk/news/world-news/my-family-went-hiding-afghanistan-25517818; Foreign Policy, *Afghan Crime Wave Adds to Taliban Dystopia*, 29 October 2021, <https://foreignpolicy.com/2021/10/29/afghanistan-crime-poverty-taliban-economic-collapse-humanitarian-crisis/>; RFE/RL, *Afghan Pilots Who Fled To Tajikistan Say Taliban Is Threatening Relatives Back Home*, 23 October 2021, www.rferl.org/a/afghan-pilots-taliban-threatening-families/31525887.html.

¹⁰ This includes, among other groups, Afghan women and girls; Afghans associated with the former government or with the international community in Afghanistan, including former embassy staff and employees of international organizations; former members of the Afghan National Security Forces and Afghans associated with the former international military forces in Afghanistan; journalists and media workers; human rights defenders; ethnic and religious minority groups; and Afghans of diverse sexual orientations and gender identities. Family members and others closely associated with persons at risk of persecution are frequently at risk themselves.

¹¹ UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention Relating to the Status of Refugees*, 4 September 2003, CR/GIP/03/05, www.unhcr.org/refworld/docid/3f5857684.html.

¹² See UNHCR, *Guidance Note on Maintaining the Civilian and Humanitarian Character of Asylum*, December 2018 www.refworld.org/docid/452b9bca2.html.

and the death penalty as part of the imposition of Sharia law. A pattern of extrajudicial killings, including of individuals suspected to be members of the Islamic State in Khorasan Province (ISKP), has been reported.¹³ The extent to which the Taliban intends to respect the rights of ethnic and religious minorities in Afghanistan is also unclear for the time being. The Taliban leadership in Kabul has issued a number of statements intended to reassure vulnerable segments of the population that their rights will be respected, however some of these have been lacking in clarity (such as assurances that the Taliban will respect the rights of women under Sharia law),¹⁴ have addressed human rights concerns only in part (such as a Taliban decree on women's rights which does not address the rights of women to work and education),¹⁵ have been contradicted directly by the actions of Taliban members on the ground (such as assurances that former government employees would benefit from an "amnesty"),¹⁶ or have yet to be implemented (such as assurances that girls of secondary-school age will be allowed to return to school).¹⁷

11. The current situation in Afghanistan poses a number of obstacles to the gathering of comprehensive information concerning the human rights situation in different parts of the country. Such obstacles include:

Constraints on Afghan media organizations: According to the Afghanistan National Association of Journalists, since the Taliban takeover 70 per cent of Afghan media outlets have stopped working, due to a combination of financial difficulties and threats and intimidation, violence and even killings.¹⁸ In addition, the Taliban are reported to have imposed wide-ranging restrictions on freedom of the media, with some of the new directives so broadly formulated that journalists are self-censoring for fear of transgressing the rules.¹⁹ A number of Afghan journalists have been arbitrarily detained and mistreated in other ways.²⁰

Inability of the Afghanistan Independent Human Rights Commission (AIHRC) to carry out its functions: The AIHRC reported in September 2021 that all its buildings have been occupied by the

¹³ OHCHR, *Oral Update on the Situation of Human Rights in Afghanistan: Statement by Nada Al-Nashif, UN Deputy High Commissioner for Human Rights*, 14 December 2021, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27960&LangID=E.

¹⁴ HRW, *Afghanistan: Taliban 'Vice' Handbook Abusive*, 29 October 2021, www.hrw.org/news/2021/10/29/afghanistan-taliban-vice-handbook-abusive; BBC, *Afghan Girls Are 'Left in Darkness' by the Taliban*, 18 October 2021, www.bbc.com/news/av/world-58950282; Swisspeace, *US Withdrawal and the Taliban Regime in Afghanistan: Future Policy Directions*, 7 September 2021, https://reliefweb.int/sites/reliefweb.int/files/resources/PB_5_2021_US-withdrawal-and-the-Taliban-regime-in-Afghanistan.pdf; ABC, *The Taliban Say They Will Preserve Women's Rights under Sharia Law. But What Does that Mean?*, 19 August 2021, www.abc.net.au/news/2021-08-19/womens-rights-and-sharia-law-under-the-taliban/100386350; VOA, *Taliban Vow to Respect Women's Rights 'Within Islamic Law'*, 17 August 2021, www.voanews.com/a/south-central-asia_taliban-vow-respect-womens-rights-within-islamic-law/6209664.html.

¹⁵ CBS News, *Taliban Declares Women "Free," But Rights Activists See Little Cause to Celebrate*, 6 December 2021, www.cbsnews.com/news/afghanistan-taliban-declares-women-girls-rights-free-but-no-work-education/; CNN, *Taliban Decree on Women's Rights, Which Made No Mention of School or Work, Dismissed by Afghan Women and Experts*, 4 December 2021, <https://edition.cnn.com/2021/12/03/asia/afghanistan-taliban-decree-womens-rights-intl/index.html>.

¹⁶ HRW, *"No Forgiveness for People Like You": Executions and Enforced Disappearances in Afghanistan under the Taliban*, 30 November 2021, www.hrw.org/report/2021/11/30/no-forgiveness-people-you/executions-and-enforced-disappearances-afghanistan.

¹⁷ BBC, *Afghanistan: Girls' Despair as Taliban Confirm Secondary School Ban*, 8 December 2021, www.bbc.com/news/world-asia-59565558.

¹⁸ OHCHR, *Oral Update on the Situation of Human Rights in Afghanistan: Statement by Nada Al-Nashif, UN Deputy High Commissioner for Human Rights*, 14 December 2021, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27960&LangID=E; The Guardian, *Switched Off: Afghan Media Struggle to Survive under Taliban Rule*, 27 November 2021, www.theguardian.com/tv-and-radio/2021/nov/27/radio-silence-afghan-stations-are-one-more-casualty-of-the-taliban; Khaama Press, *70% of Afghan Media Outlets Stopped Working since Taliban Takeover*, 3 October 2021, www.khaama.com/70-of-afghan-media-outlets-stopped-working-since-taliban-takeover-4574575/.

¹⁹ HRW, *Afghanistan: Taliban Severely Restrict Media*, 1 October 2021, www.hrw.org/news/2021/10/01/afghanistan-taliban-severely-restrict-media; Al Jazeera, *Transcript of Taliban's First News Conference in Kabul*, 17 August 2021, www.aljazeera.com/news/2021/8/17/transcript-of-talibans-first-news-conference-in-kabul.

²⁰ ANI, *TV Anchor Attacked by Unknown Armed Men in Kabul*, 21 November 2021, www.aninews.in/news/world/asia/tv-anchor-attacked-by-unknown-armed-men-in-kabul20211121221429/; DID Press Agency, *Afghan Journalists Have No Safety: ANJU*, 13 November 2021, www.didpress.com/en/2021/11/13/afghan-journalists-have-no-safety-anju/; HRW, *Afghanistan: Taliban Severely Restrict Media*, 1 October 2021, www.hrw.org/news/2021/10/01/afghanistan-taliban-severely-restrict-media and links to sources provided therein.

Taliban. This situation coupled with fear of persecution among its staff have rendered the AIHRC unable to fulfil its mandate under the Constitution to protect and monitor human rights in Afghanistan.²¹

Limitations on human rights monitoring: The Protection Cluster in Afghanistan has identified wide-ranging challenges to human rights monitoring.²² In addition to impediments relating to monitoring the human rights of the Afghan population more broadly, a number of challenges specifically relate to monitoring the human rights situation of women and girls:

- a. Since the imposition of discriminatory restrictions on the right to work, the absence of female staff engaged in community-based protection monitoring hampers data collection in relation to the specific situation of women;
 - b. Due to concerns about data collection on gender-based violence (GBV), as well as the recording and storage of such data, limited real-time information is available on GBV;
 - c. Confronted with the impact of the rapidly worsening humanitarian crisis, respondents to protection surveys in rural communities often cite daily survival needs as their most immediate challenge. Their overriding sense of desperation impedes detail and accuracy with respect to the human rights violations that they face. As a result, human rights violations, including restrictions on the rights of women and girls, are difficult to monitor.
12. Given current uncertainties including disregard for the rule of law, the fear and uncertainties related to authoritarian governance, and the lack of comprehensive information about the human rights situation in Afghanistan as outlined above, in UNHCR's assessment it is not currently possible to issue comprehensive guidance on the international protection needs of people fleeing Afghanistan. While UNHCR considers that in many cases it will be possible to establish, based on the profile of the applicant and the evidence available to date about the situation in Afghanistan, that the applicant is a refugee within the terms of the 1951 Convention, the reverse does not hold true. UNHCR considers that presently it is not possible to determine with the requisite degree of certainty that an Afghan asylum-seeker is not in need of international refugee protection. For this reason, UNHCR calls on States to suspend the issuance of decisions to individual applicants in all cases where it cannot be determined that the person in question is a refugee within the meaning of the 1951 Convention. The suspension should remain in place until such time as the situation in Afghanistan has stabilized and reliable information about the security and human rights situation is available to make a full assessment of the need to grant refugee status to individual applicants.
 13. In countries of asylum where the rights attached to refugee status are more comprehensive than the rights attached to other forms of international protection, UNHCR recommends the suspension of all decisions other than grants of refugee status, unless beneficiaries of other forms of international protection are able to lodge a claim for full refugee status once the situation in Afghanistan has sufficiently stabilized and the necessary information is available to make informed decisions on the need for international refugee protection.

Changed Circumstances as a Ground for Fresh or Subsequent Applications

14. UNHCR calls on asylum States to ensure that Afghans whose claim for international protection was rejected prior to the takeover of Afghanistan by the Taliban are able to lodge a fresh or subsequent claim, on the basis that the current situation in Afghanistan amounts to changed circumstances that may give rise to a need for international protection as refugees or otherwise.
15. In light of the primacy of the 1951 Refugee Convention, UNHCR calls on asylum States to allow Afghans who, prior to 15 August 2021, received complementary forms of international protection, including subsidiary protection under EU law, that are not equivalent in terms of legal status and access to rights

²¹ Afghanistan Independent Human Rights Commission, *Statement on the Status of the Afghanistan Independent Human Rights Commission*, 18 September 2021, www.aihrc.org.af/home/press-release/91138.

²² Protection Cluster Afghanistan, *Afghanistan Protection Analysis Update*, October 2021, www.globalprotectioncluster.org/wp-content/uploads/AFG_Protection-Analysis-Update_Q3_Final.pdf, p. 3.

as refugee protection, to lodge a new claim for refugee protection in light of the changed circumstances in Afghanistan.

16. UNHCR also calls on asylum States to ensure that Afghan applicants who lodged their claim prior to 15 August 2021 but who had not yet received a decision by that time, are able to provide additional information to support their claim in light of the changed circumstances in Afghanistan
17. Where decision-making on Afghan claims is suspended, or in situations where Afghan asylum-seekers lodge fresh or subsequent claims based on the changed circumstances in Afghanistan, they should be provided with appropriate access to shelter, support with basic needs, and access to basic health care, as well as access to the labour market on the same basis as all other asylum-seekers until they have received a decision on their claim.

Temporary Protection

18. In countries without functional asylum systems, UNHCR calls on States to ensure that all Afghans are protected from *refoulement* in line with their obligations under international and regional law. UNHCR encourages States to provide a legal basis of stay to Afghans, such as forms of temporary protection or other stay arrangements, with appropriate safeguards, until such time it can be determined, on the basis of an objective assessment, that the human rights and security situation in Afghanistan has durably improved and, in the absence of international protection needs, voluntary return is reasonable and can be carried out in safety and dignity.²³

Family Reunification

19. UNHCR continues to urge States to facilitate and expedite family reunification procedures for Afghans whose families are left behind in Afghanistan or who have been displaced across the region. The principle of family unity is protected under international law and in binding regional legal instruments.²⁴ Family reunification is often the only way to ensure that the right to family life and family unity of refugees is respected. In light of the current situation in Afghanistan, UNHCR is concerned that many Afghan refugees may face considerable administrative barriers in realizing this legal right. With many embassies and consulates currently closed in Afghanistan, UNHCR is also urging countries to take into account the constraints that refugees may face in being able to meet taxing administrative and documentation requirements for these admissions. It proposes that a more pragmatic and flexible approach be taken, including through the use of innovative processing methods and remote interviews. UNHCR encourages States to apply liberal and humane criteria in identifying qualifying family members under these schemes, taking into account diverse family compositions and structures.²⁵

Non-Return Advisory

20. As the situation in Afghanistan is volatile and may remain uncertain for some time to come, coupled with a large-scale humanitarian emergency in the country, UNHCR continues to call on States to suspend the forcible return of nationals and former habitual residents of Afghanistan, including those who have had their asylum claims rejected. The bar on forcible return serves as a minimum standard and needs to remain in place until such time as the security, rule of law, and human rights situation in Afghanistan has significantly improved to permit a safe and dignified return of those determined not to be in need of international protection.

²³ UNHCR, *Guidelines on Temporary Protection or Stay Arrangements*, February 2014, www.refworld.org/docid/52fba2404.html.

²⁴ UNHCR, *The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition Applied*, January 2018, 2nd edition, www.refworld.org/docid/5a9029f04.html (see in particular Ch. 2); UNHCR, *Summary Conclusions on the Right to Family Life and Family Unity in the Context of Family Reunification of Refugees and Other Persons in Need of International Protection*, Expert Roundtable, 4 December 2017, www.refworld.org/docid/5b18f5774.html (see in particular para. 3 and references to regional legal instruments provided therein).

²⁵ UNHCR, *UNHCR Calls on States to Expedite Family Reunification Procedures for Afghan Refugees*, 15 October 2021, www.unhcr.org/news/briefing/2021/10/616935614/unhcr-calls-states-expedite-family-reunification-procedures-afghan-refugees.html.

21. In line with the commitment by UN Member States under the Global Refugee Forum to the equitable sharing of responsibility for international refugee protection, UNHCR also considers that it would not be appropriate to return forcibly nationals or former habitual residents of Afghanistan to countries in the region, since countries such as Iran and Pakistan currently host large numbers of Afghans and have for decades generously hosted the vast majority of the total global number of Afghan refugees.²⁶
22. UNHCR recognizes individuals' fundamental human right to return to their country of origin. Any assistance provided by UNHCR to refugees to return to Afghanistan aims at supporting individuals who, being fully informed of the situation in their places of origin or an alternative area of their choice, choose voluntarily to return. Any action by UNHCR to support the voluntary repatriation to Afghanistan, including efforts aimed at sustainable reintegration for returnees and IDPs in Afghanistan, should not be construed as an assessment by UNHCR of the safety and other aspects of the situation in Afghanistan for individuals who have sought international refugee protection in countries of asylum. Voluntary repatriation and forced return are processes of a fundamentally different character, engaging different responsibilities on the parts of the various actors involved.
23. UNHCR will continue to monitor the situation in Afghanistan with a view to assessing the international protection needs of Afghans.

²⁶ By 31 August 2021, there were 2,221,828 registered Afghan refugees in Iran, Pakistan, Tajikistan, Uzbekistan, and Turkmenistan. UNHCR, *Data Portal: Afghanistan Situation*, <https://data.unhcr.org/en/situations/afghanistan> (accessed 7 December 2021). See also, UNHCR, *Pakistan Concludes 'Drive' to Issue Smartcards to Registered Afghan Refugees*, 4 January 2022, www.unhcr.org/news/briefing/2022/1/61d419634/pakistan-concludes-drive-issue-smartcards-registered-afghan-refugees.html.