

UPDATE OF THE SITUATION IN AFGHANISTAN AND INTERNATIONAL
PROTECTION CONSIDERATIONS
-INTERNAL-

23/8-02

Note:

In view of the recent developments as well as changing and partially unstable political and security environment in Afghanistan, the following country of origin information and eligibility guidance on Afghan refugees and asylum-seekers is to be considered as work in progress. In terms of the political and security situation in Afghanistan, the current period, after the Emergency Loya Jirga held from 11 to 19 June 2002 - which succeeded to appoint the Transitional Authority foreseen by the Bonn Agreement, elected Hamid Karzai as President and approved the nomination of his cabinet - is considered crucial and one of the main benchmarks for the progress in the political process in Afghanistan. The outline of possible groups at risk referred to in this document is by no means an exhaustive or conclusive description due to the volatile and constantly changing developments on the ground. This paper is an attempt to provide available country of origin information, and to define, at a minimum, those Afghans who are clearly in need of international protection according to UNHCR's current information. In view of the changing circumstances, there might be other persons, outside the scope of the listed groups who could also be at risk upon return.

I. THE SITUATION IN AFGHANISTAN**1. General Background**

Afghanistan is a land-locked country of 647,500 square kilometres. It shares borders of 5,529 kilometres with six neighbouring states: Iran (936 km), Turkmenistan (744 km), Uzbekistan (137 km), Tajikistan (1,206 km), China (76 km) and Pakistan (2,430 km). The country is mountainous with only 12 % of arable land, 3 % of the land under forest cover and about 46% under permanent pastures.

The majority of the estimated 22,2 millions Afghans who live in Afghanistan reside in rural areas. Between 80 to 85% of the Afghan population depend directly or indirectly on agriculture. A large number of still almost 4 million Afghans live abroad, the majority in the two neighbouring countries Iran and Pakistan.

The country is administratively divided into 32 provinces and 329 districts¹. Based on the existing legal system, the administration is theoretically organised as follows:

- A **province** is the largest administrative unit lead by a Governor (*Wali*), generally appointed or confirmed by the central authority. At present, not all positions of governors are filled or appointments accepted by the local elders.
- **Districts** (*woluswali*) and municipal wards are the decentralised administrative units within a province, normally headed by district officers. Districts and municipal wards (as well as district centers without ward) are, according to the "Procedures for the elections of the members of the emergency *loya jirga*", the currently relevant electoral constituencies.

¹ This figure is from the Central Statistics Department of Afghanistan. There are unsettled decisions on additional districts that were created by Mujahhedin and Taliban regimes (around 10) as well as repartition of districts between provinces. Within the *Emergency Loya Jirga*, 380 district assemblies including city districts were used to represent the people of Afghanistan.



- **Villages** form the basic communities within every district. The social institutions at community level in Afghanistan vary from region to region in function and structure and are commonly referred to as *jirga* or *shura*. These are ad hoc groups of respected persons within a community, convened for functions such as resolution of disputes and organization of collective action. Such *shuras* or *jirgas* can also represent two or more communities or interact at district level with government authorities.

Official languages are Dari (Persian dialect), spoken by 50% of the population and Pashtu (spoken by an estimated 35% of the population). Hazargi, Uzbek, Turkoman and other Turkic languages as well as other dialects are spoken by about 11 % of the population.

The ethnic composition² of the people living in Afghanistan is as follows:

- The Pashtuns are the largest group (about 38%) and are divided into two main subgroups of the Durrani and Ghilzai (besides further sub-groups and tribes). While most of the Pashtuns are settlers, some of them, the Koochis, lead a semi-nomadic or nomadic life, based on animal husbandry.
- The Tajiks (about 25%) are Persian-speakers Afghans.
- Afghans of Hazara (about 19%), Turkmen, Aimaks and Baloch ethnicity and many other smaller ethnic groups (12%), and Uzbeks (about 6%)

The official religion in Afghanistan is Islam, practised by a majority of Sunni Muslims (84%). They are followed by the Shi'a (including a smaller group of Ismaili), comprising an estimated 15% of the population and by a small group of Hindus and Sikhs.

2. Political situation in Afghanistan

2.1. Main features prior to the Bonn Agreement of 5 December 2001

The overall political situation in Afghanistan was characterised by an ongoing military conflict in its 23rd year. On one side were the Taliban, an extreme Islamic movement predominantly comprised of Afghans belonging to the Pashtun ethnic majority (Sunni Muslims - Deobandi school), which had emerged in 1994, and on the other side a loose coalition of forces of the so-called United Front for the Salvation of Afghanistan, the UF, (previously the "Northern Alliance"). This group of opposition forces was headed by Burhanuddin Rabbani, leader of the *Jamiat-e-Islami*, who was elected interim President in 1992, and subsequently retained power in Kabul until it was captured by the Taliban in 1996. The main military player of the United Front was Ahmed Shah Massoud, a military commander from Panjshir valley and previously Minister of Defence under the (interim) government of President Burhanuddin Rabbani. Ahmed Shah Massoud, who was killed in early September 2001 and whose picture can be seen posted in Kabul, is considered, the "legendary leader of the Afghan resistance against terrorist groups".

Commanders and forces of the following political and military parties belonging to or being affiliated with the opposition under the umbrella of the United Front were the following: a) *Jamiat-e-Islami* (Islamic Society)³, b) *Hezb-e-Wahdat-e-Islami* (Islamic-Unity party)⁴,

² All percentages provided in the following paragraphs are to be treated as rough estimates and approximations, currently used by agencies operating in Afghanistan (Source: www.hic.org.pk).

³ *Jamiat-e-Islami*: Led by Burhanuddin Rabbani, predominantly Tajik and dominated by Dari (Persian) speakers; founded in 1973; significant player Ahmed Shah Massoud, who was heading a prominent group and



c) *Jonbesh-e-Melli-Islami* (National Islamic Movement of Afghanistan)⁵, d) *Ittehad-e-Islami* (Islamic Unity)⁶, e) *Harakat-e-Islami* (Islamic Movement of Afghanistan)⁷, f) *Shura-e-Mashriqi* (Council of the East).⁸ Many of the "warlords" of these factions and others in influential positions in these factions continue to play a significant role, de-facto or in official functions, in the current political setting in Afghanistan as observed during the Emergency Loya Jirga process.

2.2 Key developments since the Bonn Agreement of 5 December 2001

The effective collapse of the Taliban regime was brought about by a combination of Coalition-bombing and ground military action, which started on 7 October 2002, military support to Afghan factions and other commanders belonging to the Northern Alliance and the retreat or hand-over of power by the Taliban to local groups. By the end of November 2001, this development had created a power vacuum in many parts of Afghanistan. The entry into Kabul of the Northern Alliance forces constituted the de-facto occupation of the

party, the "Shura-e-Nazar"; another key player is Ismail Khan, the pre-Taliban and current governor of Herat. This faction is represented in the Islamic Transitional Authority of Afghanistan (ITAA) by Marshal M. Q. Fahim, Vice President and Minister of Defence, Dr. Abdullah Abdullah, Minister of Foreign Affairs, Younus Qanooni, Advisor to the President on Internal Security and Minister of Education, Enayatullah Nazari, Minister of Repatriation. Mirwais Saddiq, the Minister of Civil Aviation and Tourism represents not only the Jamiat-e-Islami but is the representative of his father, Ismail Khan.

⁴ *Hezb-e-Wahdat-e-Islami*: Principal Shi'a party in Afghanistan consisting mainly of Afghans of Hazara ethnic group; founded under Iranian sponsorship in 1988 as a union of 9 Shi'a parties, led by Abdul Ali Mazari until his death in Taliban custody in February 1995; split in 1993: Mohammad Karim Khalili leads the Hezb-e-Wahdat based in Bamyan/Yakawlong, while Mohammad Akbari closely affiliated with the government of Burhanuddin Rabbani, remained in Kabul until the arrival of the Taliban in 1996, in November 1998 Mohammad Akbari surrendered to the Taliban, while the other faction of the Hezb-e-Wahdat, led by Khalili and Haji Muhammed Mohaqeeq (representing the party in Mazar-i-Sharif) actively fought the Taliban in Hazarajat. Mr. Mohaqeeq was Minister of Planning and one of the five Vice-Chairmen in the Interim Administration of Afghanistan and continues to hold the position of Minister of Planning of the ITAA. Besides Mohaqeeq, this faction is represented in the ITAA by Abdul Karim Khalili, one of the five Vice-President, and Said Mustafa Kazemi, Minister of Commerce.

⁵ *Jonbesh-e-Melli-Islami* (National Islamic Movement of Afghanistan): Party of Northern Afghanistan's warlord, General Abdul Rashid Dostum - former leader of a militia allied with Najibullah; dominated by Uzbeks; in May 1997, Dostum's Deputy General Malik defects and helps the Taliban enter the north, resulting in General Dostum's escape from Afghanistan; General Dostum returns in September 1997 after the second Taliban assault on Mazar-e-Sharif, but remains unable to fully re-establish his power in the North; in August 1998 he is defeated and leaves again, later returns, fighting the Taliban in Northern Afghanistan. With the support of Coalition forces he re-captured and re-established himself in Mazar-e-Sharif and was appointed deputy head of the department of defence of the Interim Administration. Following the Emergency Loya Jirga, he holds no official position in the cabinet, and his faction is represented by Mr. Mohammad Alem Razm, Minister of Light Industry, Noor Mohammad QarQin, Minister of Social Affairs and Mr. Ahmad Saker Kargar, Minister of Water and Power. All of them are former PDPA members.

⁶ *Ittehad-e-Islami* (Islamic Unity): Led by Abdul Rab al-Rasoul Sayyaf; previously reported to be supported by Saudi Arabia; Anti Shi'a; allied with Jamiat-e-Islami; played a major role in the early fighting in Kabul in 1992-95, but has since faded as a military force; is reported to play an important role in financing the opposition. His faction is represented in the ITAA by Mr. Abdullah Wardak, Minister of Martyrs and Disabled.

⁷ *Harakat-e-Islami* (Islamic Movement of Afghanistan): Led by Ayatollah Muhammed Asif Muhsini; a Shi'a party with a mainly non-Hazara leadership; allied with Jamiat-i-Islami. This faction is represented in the ITAA by Mr. Said Hussain Anwari, Minister of Agriculture and Mr. Said Ali Jawid, Minister of Transportation.

⁸ *Shura-e-Mashriqi* (Council of the East): Regrouping of former pre-Taliban members of the Shura of Jalalabad under the leadership of the previous governor Haji Abdul Qadir, reported to be operating in Laghman and Kunar provinces with changing alliances of local commanders. Haji Abdul Qadeer was the governor of Nangarhar province during the Interim Administration and he has been appointed as the Vice-President and Minister of Public Works in the ITAA. He was assassinated in Kabul on 6 July 2002.



capital by a single group, the *Jamiat-e-Islami*, often referred to by Afghans as "*the Panshjiris*". However, under pressure from the international community, the Northern Alliance agreed to take part in planned talks, under UN-auspices, in Bonn (Germany) with other delegations, considered to represent segments of the Afghan population, in particular those involved in Afghan peace-initiatives and moots⁹.

The UN Talks in Bonn (Petersberg) which started on 27 November under the Chairmanship of the UN Secretary General's Special Representative for Afghanistan, Lakhdar Brahimi, brought together 23 Afghans, including two women, and resulted in the signing of the "Agreement on Provisional Arrangements in Afghanistan pending the re-establishment of permanent Government Institutions" by the delegations to the UN Talks and witnessed by Lakhdar Brahimi.¹⁰ The Agreement provided for the establishment of an Interim Authority with effect of 22 December 2001, upon the official transfer of power from the previous Afghan leader, Burhanuddin Rabbani, in Kabul. It provides the legal framework for an interim and transitional period and outlines the process towards a new constitution and permanent government structures in Afghanistan.

In accordance with the Agreement, an Interim Authority comprising an Afghan Interim Administration (AIA), presided over by a chairman, a Special Independent Commission for the convening of the Emergency *Loya Jirga*, as well as a Supreme Court of Afghanistan, and other relevant Courts were established.

The Interim Administration, the executive branch of Interim Authority was chaired by Hamid Karzai and functioned from 21 December 2001 to 21 June 2002, and included 28 other members (including two women), who each headed a Ministry.¹¹ As foreseen in the agreement, within one month of the establishment of the Interim Authority, a Special Independent Commission for the Convening of the Emergency *Loya Jirga* was established and organized the convening of the traditional assembly. The Emergency *Loya Jirga* was convened to establish and elect a new Transitional Authority to take over from the Afghan Interim Administration on 22 June 2002. A Constitutional *Loya Jirga* will be convened within 18 months of the establishment of the Transitional Authority to draw up a new constitution and organize free and fair elections.

During this interim and transitional period, the applicable legal framework in Afghanistan is the 1964 Constitution, in as far as it is consistent with the Agreement, except the provisions relating to the monarchy. Similarly, existing laws and regulations in as far as they are consistent with international agreements continue to be applicable.

The Security Council in its Resolution 1383 (2001) of 6 December 2001 endorsed the Agreement on provisional arrangements in Afghanistan pending the re-establishment of permanent governmental institutions.

The AIA has passed several major decrees. The first decree, "Decree No. 66, dated 16.11.1380" (06 January 02) by AIA Chairman Hamid Karzai, cancelled all decrees and legal

⁹ For further details on peace-initiatives and moots, please see quarterly reports of the UN Secretary General to the General Assembly "The situation in Afghanistan and its implications for international peace and security". These peace initiatives included the Rome-process initiated by the former king Zahir Shah to convene an "Emergency Loya Jirga" and the Cyprus moot.

¹⁰ A copy of the agreement was submitted by the UN Secretary General to the Security Council, S/2001/1154 of 5 December 2001;

¹¹ The heads of departments/Ministries were appointed by the Bonn Agreement, Annex IV: Composition of the Interim Administration.



documents passed by previous authorities which, under the terms of the Bonn Agreement, are to be considered inconsistent with the 1964 Constitution or with international obligations to which Afghanistan is a Party. The second decree banned the cultivation, production, processing, use and trafficking of illicit drugs. The third decree established a framework for the media within the respect of the freedom of the press. A fourth decree relates to the signature and ratification of international agreements.

The Chairman then issued "Decree No. 297, dated 13.03 1380 (03 June 02)" on the dignified return of refugees, which provides that "Afghans will be given the opportunity to decide freely to return to their country (preamble)". The Decree stipulates exemption from prosecution for criminal offences committed up to 01.10 1380 (22 December 01), except crimes against peace or humanity, or war crimes (Articles 3 and 4). It also guarantees the enjoyment by returnees of "the same human rights and fundamental freedom enjoyed by other citizens (Article 6)".

The AIA also issued a decree concerning the establishment of a national military force, which calls for male Afghan nationals between 22 and 30 years of age to join the military service voluntarily and on a contract basis for four years.

The Emergency *Loya Jirga*, held between 11 and 19 June 2002, comprised of almost 1,700 persons of which just over 1,000 were selected or elected in the 380 district and city assemblies across Afghanistan and the remaining chosen from among representatives of civil society institutions, credible individuals, religious scholars, intellectuals, women's representatives and religious minorities in Afghanistan and abroad. The meeting lasted longer than planned and ended with the en bloc approval of most of the cabinet of the ITAA, nominated by Chairman Hamid Karzai.

The Security Council welcomed the successful Emergency *Loya Jirga* and noted with particular satisfaction the large participation of women, as well as the representation of all ethnic and religious communities¹². The Security Council also welcomed the establishment of an independent Human Rights Commission and a Judicial Commission as called for by the Bonn Agreement. The establishment of the independent human rights commission was preceded by a national workshop on human rights which took place in Kabul on 9 March. It was chaired by Ms. Sima Samar in her capacity of Vice-Chairperson of the AIA and Head of the Department of Women's Affairs. The workshop established four working groups to: a) create an independent Human Rights Commission, b) develop a national program of human rights education, c) suggest approaches to human rights monitoring, investigation and remedial action and d) implement the rights of women. 11 Members were designated by the Interim Authority who further on elected Ms Sima Samar as chairperson. The Human Rights Commission will establish field offices in eight towns throughout Afghanistan.

2.3 International Security Assistance Force (ISAF)

The Bonn agreement, in its Annex I foresees that an UN-mandated international force would be deployed. It stipulates that "this force will assist in the maintenance of security for Kabul and its surrounding areas. Such a force could, as appropriate, be progressively expanded to other urban centers and other areas." As a result, the Security Council adopted resolution 1386 (2001) authorizing the establishment for six months of such a force, to help provide stability in Afghanistan, but not a formal United Nations peacekeeping force as such.

¹² UNSC Resolution 1419 (2002)



A "Military Technical Agreement" between the International Security Assistance Force (ISAF) and the Interim Administration of Afghanistan was concluded on 19 December 2001, following long negotiations, in particular with the Afghan Interim Defense Minister. In this agreement, the tasks of ISAF are defined as assisting in development of future security structures, in reconstruction and in the provision of training for future Afghan security forces. ISAF became fully operational on 18 February with over 4,800 troops.

Many Afghans (including the chairperson of the Interim Administration, Hamid Karzai) wish the ISAF to be deployed beyond Kabul, where there is serious ongoing lack of security, in particular on certain roads and in provinces. The Secretary General states that the force remains limited to Kabul "while the main threat to the Interim Administration emanates from the provinces" and therefore expresses his "hope that the Security Council will consider these factors and support the wish of the Afghan people for the expansion of the force".¹³ ISAF's mission was extended for a period of six months beyond June 2002, and to be led by Turkey, by Security Council Resolution 1413 (2002).

In view of the deteriorating situation in the North, many voices ranging from NGOs, to UN Special Representative of the Secretary General (SRSG) Lakhdar Brahimi and many Afghan personalities, have renewed their hope that ISAF's competence will be extended beyond Kabul.

3. Security Situation

Although overall improving on the surface, insecurity remains a major concern in certain regions. The situation, including in some of the cities, remains highly volatile, tense and unpredictable. The main features of the prevailing security situation are the following:

- (i) There are, reportedly, still pockets of resistance of al-Qa'idah and Taliban forces and indications that some Taliban forces might be regrouping, even if they are inactive and are not posing immediate threats. Military action in the context of the "war on terrorism" by Coalition forces in such areas continue to take place in the southeastern region, in parts of Khost, Paktia, Paktika, and notably in Kunar, as well as in the South, in Urozgan.
- (ii) Factional clashes, which lead to a short period of intra-ethnic (south) and continued inter-ethnic (north) violence have repeatedly erupted between rival Afghan political and military actors seeking regional influence. As a result large areas of the southern provinces of Helmand and Nimroz and parts of Farah provinces remained off limits and tense as fighting occasionally erupted between forces of Ismael Khan (*Jamiat-e-Islami*) and armed forces under local commanders. In the North, the rivalry between commanders (mainly of the *Hezb-I-Wahdat*, the *Jamiat-e-Islami* and the *Junbesh-e-Milli-Islami*) remains intense, leading to armed clashes, last in Sar-I-Pul, Sholgara, Dehdadi and Maimana. Three different military groups and commanders are competing over influence in some districts of Bamyan (Kahmard, Saighan) and Ghazni (Qarabagh) province, namely forces of the *Hezb-e-Wahdat* controlled by Ustед Khalili and Akbari, and forces of several ethnic Tajik commanders in control of certain districts of the province. Other inter-tribal conflicts are on-going in certain districts, for example in Laghman province, where a conflict between the Lamano and the Sardakhell tribes have resulted in the killing of 8 civilians and the displacement of 200 families.

¹³ See above.



In a letter addressed to Chairman Karzai on 15 June 2002, SRSG Brahimi, raised the situation in the north of the country and noted the continuing climate of insecurity there. In particular, he informed Chairman Karzai that UN staff are now reporting an alarming level of violence that is affecting both the personal security and confidence of local residents, and the ability of aid workers to assist them. The SRSG noted a number of armed attacks, robberies and beatings carried out against international aid organisations, the recent vicious gang rape of a female international aid worker and a recent incident in which a clinic run by an international aid organisation was fired on during functional fighting in Sholgara and another incident in Dehdadi district of Balkh province. He also reported concerns of increased harassment of Afghan internally displaced persons by various parties, including a number of worrying incidents targeting IDPs recently in Sar-I-Pul. Forcible recruitment of young men, forced labour, militia domination of the camps, and continued sexual violence, with members of ethnic minorities being especially vulnerable have been some of the serious patterns observed in the Northern region of Afghanistan. In the letter, the SRSG regretted that UN interventions with local authorities on these cases had not resulted in effective measures being taken to address the continuing abuses, and warned that many aid workers, noting the climate of fear and insecurity in the region, are considering reducing or discontinuing their work there – something that would clearly be to the detriment of the local population.

(iii) Another particular serious feature of the security situation are reports about serious human rights abuses against members of the Pashtun ethnic minority communities in the northern and western region of Afghanistan. According to these reports, members of Pashtun communities are subject to systematic and wide-spread harassment, intimidation and discriminatory treatment as well as acts of violence, banditry and persecution at the hands of local warlords and other members of northern Afghanistan's dominant ethnic groups. This led to general insecurity and large-scale displacement of Pashtuns particularly after the immediate period succeeding the fall of the Taliban. Although the situation has calmed down in certain regions, in particular in Badghis as well as in some Northern provinces, the situation of Pashtun communities remains seriously precarious in the Faryab province where harassment and persecution by local commanders, in particular in districts of Shirin Tagab and Dawlatabab, have not ceased and continue to lead to internal displacement of Pashtun communities. The continued abuses reported by Human Rights Watch, in its latest report of June 2002, included denial of access to agricultural lands, recurrent demands for money, kidnapping, and sexual violence against women and adolescent boys.¹⁴

In an attempt to prevent further persecution and displacement of Pashtun minorities in the north, a meeting was organised on 06.06.2002 at the UNAMA compound in Kabul by AACA¹⁵ and AIA between General Dostum and six leaders of Pashtun IDPs from Spin Boldak, Kandahar accompanied by the Mayor of Kandahar. Apparently, General Dostum gave assurances that security will be guaranteed for Pashtuns willing to go back to the north.¹⁶ Nevertheless, very recent reports seem to indicate that further fighting took place between Pashtun communities and Uzbek military commanders, as a result of on-going disputes regarding land, which resulted in the killing of eight Pashtuns in Shikka village, in Dawlatabad District.

¹⁴ Human Rights Watch Briefing Paper on the Precipice: Insecurity in Northern Afghanistan, June 2002.

¹⁵ Afghan Assistance Co-ordination Authority

¹⁶ Human Rights Watch Briefing Paper on the Precipice: Insecurity in Northern Afghanistan, June 2002.



(iv) The absence of systematic or unbiased de-commissioning and disarmament, the lack of law enforcement, coupled with the war economy, have given rise to banditry and criminality. Insecurity is high on several roads, including on some of the main road-links. Road travel has become more dangerous, with money being demanded by bandits and by individual commanders through the establishment of checkpoints or ambushes.

In a recent briefing to the Security Council, UN Under-Secretary General for Political Affairs, Kieran Prendergast, said that if the security situation continues to deteriorate in the North and as the army would not be able to provide security in the near future, the Council and nations contributing to the International Security Force (ISAF) might consider a limited expansion of that force to areas outside Kabul.¹⁸

4. Humanitarian situation

Humanitarian conditions remain extremely precarious in Afghanistan and the challenges of recovery and rehabilitation are enormous.¹⁹ Even after the June harvest, food shortages and high levels of food-insecurity persist. According to assessments by WFP and others, over 8 million Afghans, who have exhausted their coping mechanisms and are threatened by hunger, will remain dependent on food and other humanitarian assistance for their basic survival. A recent assessment on food-security in Afghanistan²⁰ concluded that although drought had eased in the north and west, it persists in the central and southern regions. However, with the snow pack that feeds rivers at an all time low, irrigation and drinking water problems will return to the north and west this summer while persisting at alarming levels elsewhere in the country until at least next spring. There is also a dire need for wage-labour and cash as an increasing number of Afghans are indebted and unable to buy food even when it is available.

The nutritional status of the population of Afghanistan remains extremely poor with a high prevalence of chronic malnutrition (45-59%), acute malnutrition between 6-12%, and infant and under five mortality rates among the highest in the world. Life expectancy at birth is as low as 45 for females and 44 for males. Access to safe drinking water is as low as 35% of the population in urban and 11% in rural areas and only 30 to 40% of the population have access to existing health services. About 75% of the population have no access to emergency obstetrics care – only 11 of the 33 provinces have the capacity to deliver emergency obstetrics care. A large proportion of illnesses and deaths are due to preventable communicable diseases, e.g. measles, cholera, tuberculosis, malaria, meningitis, hepatitis, typhoid, childhood respiratory infections and diarrhoea.

Health infrastructure and human resources, public and private, are now grossly inadequate for a population of 24 million. Physical facilities have been destroyed, the human resource base has been eroded and institutions have collapsed. There is a strong urban bias to the

¹⁸ Kieran Prendergast, UN Under-Secretary General for Political Affairs in an open briefing of the Security Council on 21 June 2002.

¹⁹ For further details, see "Immediate and Transitional Assistance Programme for the Afghan People 2002", UN, January 2002 as well as "Afghanistan – Preliminary Needs Assessment for Recovery and Reconstruction", ADB/UNDP/WB, January 2002. In addition, UNHCR is in the process of providing information relevant for Afghans considering to return in "district-profiles", which can be, together with other relevant information, be found on www.hic.org.pk

²⁰ "Qaht-e-Pool 'A cash famine'-Food Insecurity in Afghanistan 1999-2002" by Sue Lautze, Elisabeth Stites, Neamat Nojumi and Fazalkarim Najimi, Feinstein International Famine Center, Tufts University, for USAID, May 2002.



limited hospitals and clinics, with many of the facilities located in Kabul, while rural services are unevenly distributed. A survey of health facilities conducted by WHO, reveals that in the government and NGO sector only a small number of district, provincial or regional hospitals have any, let alone all of the following basic services: autoclave, laboratory equipment, EKG machine, blood-bank, ambulance, endoscopy or ultrasound. Private pharmacies are the main dispensers of medical treatment in many places. Persons with serious illness or chronic medical conditions cannot expect to find treatment available in Afghanistan.

There has been a huge resurgence in schooling since the fall of the Taliban, with many girls enrolling in the formal education system for the first time. However, school facilities are rudimentary. Class sizes at lowest primary levels have been reported as up to 150 pupils/class and schools can run on three shifts/day. Teachers in government schools are not being paid regularly – there are reports from remote provinces that teachers have salaries 11 months in arrears – and consequently have little motivation to work. In many rural areas, community or home based schools provide the only opportunity for children to learn. Secondary schools are limited to provincial and more populated district capitals. Girls are often unable to attend secondary schools because of cultural constraints on their movements. At the tertiary level, the University of Kabul has re-opened, but has had to turn away many potential students.

Many of the, mainly conflict-related IDPs, were able to return to their places of origin and efforts to facilitate the return of others, often drought-related IDPs, are currently ongoing, in an inter-agency effort. It is estimated that in addition to the 160,000 facilitated voluntary returns, some 400,000 IDPs returned during the last months of 2001 and first months of 2002. As at end June 2002, UNHCR estimated that some 700,000 Afghans remained displaced, most of them fully dependent on humanitarian assistance. A considerable number of Afghans will not be able to return to their homes in 2002, mainly Pashtuns from the North and other minorities that are suffering from ethnic discrimination, retaliation and persecution and former nomadic Kuchis who because of war and drought have lost their livelihoods.

Afghanistan is furthermore the most mine- and unexploded ordnance (UXO)- affected country in the world with 732 square kilometres of known mined area, of which an estimated 100 square kilometers are mined former frontline areas, and approximately 500 square kilometers of UXOs in contaminated battle areas²¹. The problem has been exacerbated by recent events with new areas contaminated by coalition UXOs. An estimated 3,000 cases of injuries from landmines and UXOs are reported every year and roughly 4-5% of the Afghan population are disabled, many by mines and UXOs.

5. Return of Afghans from neighbouring countries

²¹ See "Afghanistan – Preliminary Needs Assessment for Recovery and Reconstruction", ADB, UNDP, WB, January 2002.

²² For further details, see "Immediate and Transitional Assistance Programme for the Afghan People 2002", UN, January 2002 as well as "Afghanistan – Preliminary Needs Assessment for Recovery and Reconstruction", ADB/UNDP/WB, January 2002. In addition, UNHCR is in the process of providing information relevant for Afghans considering to return in "district-profiles", which can be, together with other relevant information, be found on www.hic.org.pk

²³ See "Afghanistan – Preliminary Needs Assessment for Recovery and Reconstruction", ADB, UNDP, WB, January 2002.



After a suspension of operations in September 2001, UNHCR has resumed – on a large scale and with a significantly increased capacity in Afghanistan – the facilitation of voluntary repatriation of Afghan refugees from Pakistan (on 1 March 2002) and Iran (on 9 April 2002). In a very positive development, since the resumption of the UNHCR assisted voluntary repatriation, over 1.1 million Afghans have returned to Afghanistan with UNHCR's assistance in the short period until the end of June alone, exceeding the original planning figure for the whole of 2002. Of these, over 1,016,000 persons (close to 195,350 families) returned from Pakistan and close to 85,000 persons from Iran. Smaller groups have been assisted to return from Tajikistan (border) and few from Turkmenistan and Khyrgyzstan. The largest groups of returnees return to the Central region (Kabul province) and to the province of Nangarhar in the East. Some 40% of returnees are, regardless their origins, moving into urban areas. Even though, most returns have been based on purely voluntary decisions, more recent interviews of returnees from Pakistan have shown that many of them decided to leave because of the harsh and hostile behaviour of local police authorities in urban areas like Islamabad, Rawalpindi and Karachi.

Meanwhile, negotiations on a tri-partite agreement between the Afghan Transitional Government, the government of Pakistan and UNHCR are ongoing, while a tripartite agreement, the so-called "Joint programme between the Government of the Islamic Republic of Iran, the Interim Authority of Afghanistan and UNHCR for the Voluntary Repatriation of Afghan Refugees and Displaced Persons" was signed in Geneva on 3 April 2002.

II. INTERNATIONAL PROTECTION NEEDS OF AFGHANS

1. General Considerations

At this point of time, while voluntary repatriation is taking place in mass to Afghanistan, there are nevertheless Afghans who are forced to leave their homes for fear of persecution.

In the current situation, many Afghans cannot be said to enjoy effective national protection in Afghanistan, thus continue to require international protection and humanitarian assistance. Certain groups of Afghans continue to have a well-founded fear of persecution for reasons outlined in Article 1 A (2) of the 1951 Geneva Convention Relating to the Status of Refugees. Others – originating from particularly affected parts of the country – might be in need of international protection because of indiscriminate effects of widespread violence and disorder.

In determining refugee status and protection needs of Afghans at present, the provisional and fragile nature of the current situation is important. The Government has just been established and the agreement on the current provisional arrangements only covers a period of 18 months until elections are held in 2004. Therefore, it is not known how the State (the central authorities) will act with regard to specific categories of individuals or groups and whether there will soon be a system of law and order which would be able to provide protection against actions of local authorities and other agents.

Given the fragmented nature of the current situation and the re-emergence of previous and new commanders and "warlords" in many parts of the country, it is all the more important, in determining the protection needs of Afghans, to obtain a full picture of the asylum-seeker's background and personal circumstances, as well as an analysis of the prevailing



situation in his or her area of origin or previous habitual residence in Afghanistan. Taking into account the specifics of the Afghan society, this assessment should include family and extended family links and community networks with a view to identify the possible traditional protection and coping mechanism vis-à-vis the current de-facto local authorities. It is also important to establish, for each case, the profile of family-members of the core and extended family, their location, their previous and current social status, and their political affiliations in Afghanistan or abroad.

As a principle, asylum-seekers waiting for a decision on their refugee status are of concern to UNHCR and they should be protected against forcible return during the period pending status determination. Despite the fluidity of the situation, UNHCR recommends that the processing of asylum claims should continue: Afghan asylum-seekers should be interviewed and their cases assessed as outlined above, taking carefully into account the changing situation in Afghanistan and needs, including new needs, as well as vulnerabilities of persons in particular groups or categories (see below). There might be circumstances in which protection needs require to be determined at the earliest possible stage, due to particular protection-related constraints. This might be the case, for example, when the asylum-seeker is facing a risk of *refoulement* or is in detention or the stay only "tolerated" pending status determination. There will be cases in which final decisions are anyway clear and can be taken quickly. In others, protection needs may not be able to be clearly determined. Exercising the necessary caution in this regard, final decision-taking should be delayed, pending clarification of the situation in Afghanistan and advice, as necessary, from Headquarters.

2. Considerations concerning Refugee Status on the basis of the 1951 Convention relating to the Status of Refugees

2.1 Convention refugee status according to Article 1 A (2)

With regard to agents of persecution ²⁴, in the present transition, partial fragmentation ("warlordism") into de-facto zones of influence, partial power vacuum or tensions due to the competition for influence between different actors and with the control of the appointed interim administration not extending to the whole of the Afghan territory, possible risks of persecution by non-state agents continue to require consideration. The record of human rights abuses perpetrated by the members of factions back in power (including of members of the *Jamiat-i-Islami*, the *Hezb-e-Wahdat* and *Junbesh-e-Milli-Islami*) indicate that such risks continue to exist.

Based on the currently available information on Afghanistan, there are indications that, among others, persons of the following profiles might be at particular risk of violence, harassment or discrimination:

(I) Persons associated or perceived to have been associated with the Communist regime as well as others who have campaigned for a secular state

²⁴ According to paragraph 65 of the Handbook on Criteria and Procedures for Determining Refugee Status – "persecution is normally related to action by the authorities of a country. It may also emanate from sections of the population that do not respect the standards established by the laws of the country concerned (...) Where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection."



Even though the Interim Administration issued a "Decree on the dignified return of Afghan refugees", the situation is yet unclear with regard to persons affiliated or associated with the former communist regime in Afghanistan, through membership of the People's Democratic Party of Afghanistan (PDPA) or as a result of their previous professional or other functions. Although not targeted by the central authorities, they may continue to face risks of human rights abuses. The degree of risk depends on a variety of factors, including the following: a) the degree of identification with the communist ideology, b) the rank or position previously held, c) family and extended family links, d) educational background and stay abroad.

In this context, it is noteworthy that the Transitional Authority, as well as regional and local authorities are dominated by former Mujahidin factions and some royalists from the pre-communist period, reportedly only five former members of PDPA.

The groups for whom a possible risk requires careful assessment include:

- High ranking members of the People's Democratic Party of Afghanistan (PDPA),²⁵, irrespective of whether they belonged to the Parcham or Khalq faction of the party. Most PDPA members lived in Kabul or other cities during the communist regimes. They will be at risk only if they are known by armed factions as such and this includes: (i) Members of Central, Provincial Cities and Districts Committees of PDPA and their family members; (ii) Heads and high ranking members of social organisations such as the Democratic Youth Organisation, Democratic Women Organisation at the level of country, province, city and districts.
- Former military officials, members of the police force and Khad (security service) of the communist regime also continue to be generally at risk, not only from the authorities but even more from the population (families of victims), given their identification with human rights abuses during the communist regime. When reviewing the cases of military, police and security service officials as well as high-ranking government officials of particular ministries it is imperative to carefully assess the applicability of exclusion clauses of Article 1 F of the 1951 Geneva Convention. To some extent, many of these previous Afghan officials were involved, directly or indirectly, in massive and widespread human rights violations.

(ii) Certain profiles of women

Mainly in the cities and particularly in Kabul, the arrival of the Taliban dramatically disrupted the lives of many women who had been working or studying, as well as the many women who were heading households in the absence of a male breadwinner. The atrocities suffered by women in Afghanistan have been thoroughly documented in a recent Human Rights Watch report, entitled "Afghanistan, Humanity Denied, Systematic violations of women's rights in Afghanistan", released in October 2001.

²⁵ The PDPA was founded in 1965 and split in to two factions in 1967: Khalq (The People), led by Nur Mohammed Taraki and Hafizullah Amin and Parcham (The Banner), led by Babrak Kamal. Khalq was more rural-based, mostly comprising of members of the Pashtun tribes. Parcham was more urban oriented and was dominated by Dari speakers. In 1977, the two factions reunited under Soviet pressure. In 1988 the name of the party was changed to Watan (Homeland) Party. The PDPA based government 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 Taliban troops entering Kabul in September 1996.



With the demise of the Taliban the decreed ban on employment and education and the imposition of strict behavioural norms by law on women were lifted. However, discriminatory and conservative traditions remain and the presence of armed factions will continue to pose risks and, possibly, give rise to persecution, of some women. There have been reported instances of rape by members of armed factions and, recently, threats have been circulating in Kabul against women and girls of school-age not covering themselves.

After a series of encouraging developments in favour of Afghan women particularly in urban areas, the intimidation campaign orchestrated by the *Jamiat-I-Islami* party –and other Islamic conservatives such as Abdul Rasaf Sayyaf - against the former Minister for Women Affairs, Ms Sima Samar, criticising her for allegedly saying she did not believe in the *Sharia*, or Islamic law. This campaign which intensified during the Emergency *Loya Jirga* led Ms Samar to reject an offer to be part of the new Karzai cabinet as Minister for Women's affairs.

Against this background, the following categories of women should be considered to be at risk and exposed to possible persecution, if they return to Afghanistan: - a) Single women without effective male and/or community support, and - b) Women perceived as or actually transgressing prevailing social mores.

(iii) Persons at risk of persecution on political grounds by groups now in control of their area of origin

As described, Afghanistan is progressing from a transitional administration towards a permanent government, but in a situation marked by the reappearance of warlords, reportedly re-arming and renewing de-facto power in their respective areas.²⁶ In this tense situation, reports about incidents of politically motivated arrests and detention and covert or open threats and intimidation are increasing, targeting persons with a different political affiliation than those in control.²⁷ Political opposition is a defining feature of persecution in some individual cases. The Under-Secretary-General, in his briefing on the *Emergency Loya Jirga* to the Security Council on 21 June stated that the United Nations Assistance Mission in Afghanistan (UNAMA) had documented several cases of intimidation prior and during the assembly, which had been brought to the attention of the Government, and stressed that it was vital that the authorities highlight and addresses instances where democratic rights had been abused by those who still equated power with force and violence. The situation of those members of the Emergency *Loya Jirga* who criticised the warlords or local commanders, as well as those who criticised the former Mujahedin regime or those who opposed the Islamic denomination of the Transitional Authority of Afghanistan, could face further intimidation particularly when returning to their respective constituencies.

(iv) Persons originating and returning to areas where they constitute an ethnic minority (In particular Afghans of Pashtun ethnic origin)

In some areas of Afghanistan, there have been reports of persecution of ethnic minorities by local commanders in the form of extortion, ill-treatment, detention and even killing. Such reports are confirmed for Afghans of Pashtun ethnic origin in areas where they constitute the minority in the North and parts of the Western region of Afghanistan, in particular in

²⁶ So Kieran Prendergast, UN Under-Secretary General for Political Affairs in an open briefing of the Security Council on 13 March 2002.

²⁷ See, for example, "Blood-drenched warlord's return", The Observer, 14 April 2002, see also footnote 13.



Faryab, Jawzjan, Baghlan, Kunduz, Takhar, Sar-I-Pul and Samangan. This is also the case in and around Herat, mainly among the displaced persons.

Pashtuns are overall Afghanistan's largest ethnic group, but are a minority in the north where Afghans of Tajik, Uzbek and partly Hazara ethnic origin are the majority and in control. The Pashtun presence in the North is mainly the result of a deliberate policy of settlement carried out last century as part of an attempt to increase the writ of the Pashtun dominated government of the day. The Pashtuns became successful landowners and established trade and business interests in towns like Kunduz and Baghlan. They also became prominent in money lending and, through borrower indebtedness, accumulated and appropriated more land. Since the demise of the Taliban, reports have emerged of Pashtun villagers and civilians facing harassment, intimidation and discriminatory treatment, as well as acts of violence, banditry and persecution at the hands of local warlords and other members of the factions controlling the North (*Jombesh-I-Milli-Islami*, *Hezb-e-Wahdat* and *Jamiat-I-Islami*).²⁸ Many Pashtuns have subsequently fled and sought refuge.

Factors behind the current treatment of the Pashtun minority groups are, among others, possible back-lash against the four year Taliban occupation of the North (1997-2001) and their treatment of the Uzbek, Tajik and Hazara population, compounded by the drought and displacement, which has increased competition for scarce resources (water, land) as well as inter-communal tensions, even within homogeneous ethnic groups.

As a first concrete step in reaction to the reports, the Interim Administration (Chairperson Karzai) sent an official mission to the North from Kabul (28 February to 5 March). It confirmed the reports and recommended the establishment of a commission against ethnic violence in the North, composed of officials from the Interim Administration and of the regional factions, including representatives of the affected Pashtun minority community. This commission is tasked to investigate reports of violence and encourage dialogue between the communities. The situation has, however, as yet not improved significantly.

(v) Persons who are perceived to have been associated with or supported the Taliban regime

The Taliban movement first appeared in Afghanistan in late 1994. The core of the Taliban were educated in madrassas (religious schools) in Pakistan which adhere to the Deobandi orthodox legal and state doctrine and promote *taqlid*, the obedience to the Koran in its original letter. The political aims of the Taliban were to re-establish security in Afghanistan, to create a truly Islamic State, to disarm the population and to implement a strict interpretation of Shari'a law throughout the country. The movement has been led by Mullah Mohammad Omar, the commander of the faithful (*Amir al Momineen*) and the country was ruled by a Supreme Council (*Shura*) in Kandahar under Mullah Omar's leadership. The Taliban were far from being a monolithic movement and included a wide spectrum of Afghans, ranging from relative moderates to extreme hard-liners. Decisions on the overall policy and military matters were taken within an exclusive circle at the top of the movement, which remained in close contact with Mullah Mohamed Omar in Kandahar, but implementation was different from one locality to another and from one period to another.

²⁸ Among the reprisals and abuses faced are the looting of villages and livestock, theft and confiscation of humanitarian assistance, ill-treatment and beating, extortion of money, arrest and detention and release following the payment of ransom, harassment (including rape) of women. Details can be found in the recently published report "Afghanistan: Paying for the Taliban's Crimes – Abuses against ethnic Pashtuns in Northern Afghanistan", Human Rights Watch, April 2002.



It is generally presumed that most of the "rank and file" Taliban have already returned to their communities of origin, either in Afghanistan or in Pakistan. Some hundreds of Taliban fighters have been released from detention by the Interim Administration, on grounds that they were conscripts and "innocent"²⁹. Nevertheless, there are reports of accusations, discrimination and threats against civilians who have worked in the administration during the Taliban regime. The likelihood that they could rise to the level of persecution is greater where rank and influence within the movement was more significant. At the same time, the possibility that exclusion clauses will apply is also greater (see below).

(vi) Converts

A serious risk of persecution continues to exist for Afghans suspected, or accused, of having converted from Islam to Christianity, or Judaism. Conversion is punishable by death throughout Afghanistan.

The newly appointed Chief Justice Fazul Hadi Shinwari - in an interview with Reuters on the 24 of January³⁰ - confirmed that criminals in Afghanistan will continue to face punishment, including amputations for theft, stoning for adultery and public execution for murder, as part of the interim government's drive to keep down crime. Proselytising Christians may face the death penalty and Muslims who drink alcohol could be given 80 lashes. "The main issue here is that infidels or Westerners protest against a hand being chopped for theft. But since the robber has committed a crime then he has to be punished for obvious and justified reasons - ridding society of crime." He also warned foreigners against trying to convert Afghans from Islam: "The Islamic government, according to *Sharia*, is bound to punish those who get involved in anti-Islamic activities," he said. "We can punish them for propagating other religions - such as threaten them, expel them and, as a last resort, execute them, but only with evidence." Nevertheless, at the time of writing of the report, no such harsh punishment was reported.

2.2 Exclusion on the basis of Article 1 F of the 1951 Convention relating to the Status of Refugees

Exclusion necessarily receives heightened attention in an environment of internal conflict marked by massive violations of human rights and humanitarian law and forced movements of both persecutors and their victims, such as in Afghanistan, particularly in the aftermath of the attacks of 11 September 2001. Guidance on the application of exclusion-clauses of Article 1 F of the 1951 Convention are elaborated in UNHCR's Guidelines on Exclusion of December 1996³¹ and further developed in the IOM/101/2001 - FOM/098/2001 on asylum policy considerations after 11 September 2001.

It is important, perhaps, to underline that the application of the exclusion clause to a head of family does not, per se, affect the possibility that her/his dependants may fulfil the refugee criteria. The family members should be given the opportunity to still establish independent refugee claims even when their fear of persecution is the result of their relationship to the perpetrator of the excludable acts and even if the facts presented to substantiate their refugee claims are linked to those presented by the excluded head of the family.

²⁹ Press reports of 9 February 2002 "Karzai frees 300 Taliban soldiers".

³⁰ The Daily Telegraph, Afghans to carry on stoning criminals. By Alex Spillius in Herat. 25 January 2002

³¹ Soon to be released in updated form.



There is a requirement, in cases of Afghans of specific profile, to carefully assess the applicability of exclusion clauses contained in Article 1 F of the 1951 Convention relating to the Status of Refugees.

Among these cases are:

(i) Members of military, security and police forces during the Taraki, Hafizullah Amin, Babrak Karmal, and Najibullah regimes

When reviewing the cases of military, police and security service officials, as well as those of high-ranking government officials of particular ministries during Taraki, Hafizullah Amin, Babrak Karmal, and Najibullah regimes, it is imperative to carefully assess the applicability of the exclusion-clauses in Article 1 F of the 1951 Geneva Convention. Many of these previous Afghan officials were involved in serious and widespread human rights violations. Violations of human rights took place during Najibullah's regime (1986-1992) as well, but in a less intense way during the tentative national reconciliation policy period of the regime.

(ii) Specific high ranking members or commanders of Afghan military and political factions and movements

During the history of the over 20 years of warfare in Afghanistan, members of factions including the *Junbesh-I-Melli*, *Jamiat-I-Islami*, *Hezb-I-Islami*, *Hezb-I-Wahdat* (both branches), *Harakat-e Islami (Mohseni)* and *Ittehad-e-Islami*, have, at times and in the context of particular military activities and battles, been accused of acts which would justify exclusion. Information is amply documented, including names of perpetrators, in available reports such as those of human rights organizations and numerous scholarly publications on the Afghan civil war.

(iii) Specific members and commanders of the Taliban movement

Similarly, the applicability of the exclusion clauses will come into play in relation to individual members and military commanders of the Taliban, where their participation in serious violations of human rights and humanitarian law or their involvement in terrorist activities can be sufficiently established. The pattern of deliberate attacks on civilians by Taliban forces, summary executions and massacres and the deliberate and systematic destruction of livelihoods through a "scorched earth" policy and forcible relocation are amply documented.

As regards the possibility of co-operation with national authorities on exclusion, UNHCR could in principle share with national authorities the names and other basic bio data of asylum seekers and refugees known to the Office, if the authorities are in a position to advise whether he or she has committed acts which may fall under one of the exclusion clauses. The Confidentiality Guidelines, contained in IOM/FOM 71/68 of 24 August 2001, provide guidance and need to be observed.

3. Considerations relating to complementary forms of protection

Even in those cases where refugee status under the refugee-definition of the 1951 Geneva Convention is denied, persons might, nevertheless, still be in need of international protection. Many states do provide other forms of stay, in recognition of the protection needs of persons outside their countries because of a serious threat to life, liberty or security in the country of origin, but for whom there may be no link to a specific Convention ground.



Given ongoing military activities and armed clashes and hostilities between Afghan commanders in certain parts of the country (see above under "Security Situation"), UNHCR considers that some Afghans who were forced to flee and are unable to return without serious threat to life or security as a result of armed conflict should receive a complementary form of international protection.

4. Humanitarian considerations

UNHCR considers that persons finding themselves in particularly vulnerable circumstances should not be required to return but rather should be allowed to prolong their stay on humanitarian grounds until special and co-ordinated arrangements can be put in place, on a case by case basis, to facilitate their safe and orderly return and appropriately receive them in Afghanistan. This includes individuals in the following categories:

- handicapped and ill individuals, or families with handicapped or ill members;
- female-headed households and women without effective male protection in Afghanistan;
- the unaccompanied elderly;
- unaccompanied minors;
- landless destitute Afghans, particularly those originating from food-insecure areas.

In addition, the claims of traumatised individuals, such as victims of torture or particularly egregious forms of violence (for example, ex-detainees, or women who may have suffered sexual abuse), or witnesses to crimes against humanity, will require special attention and will, in many cases, require international protection as they have compelling reasons arising out of previous persecution for which they are refusing to avail themselves of the protection of their country of origin.

5. Internal Relocation Alternative

UNHCR continues to advise against resort to the notion of an internal flight or relocation alternative in the Afghan context. This advice takes into account that the traditional family and community structures of the Afghan tribal system constitute the main protection and survival (coping) mechanism. The protection provided by families, extended families and tribes are limited to areas where family or community links exist, in particular in the place of origin or habitual residence.

UNHCR Geneva
July 2002

