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GUIDANCE NOTE ON THE INTERNATIONAL PROTECTION NEEDS OF PEOPLE FLEEING AFGHANISTAN – UPDATE I

February 2023

Introduction

1. This Update supersedes UNHCR's *Guidance Note on the International Protection Needs of People Fleeing Afghanistan* of February 2022.¹
2. Civilians in Afghanistan continue to be gravely affected by the security, human rights and humanitarian crises in the country.² By the end of 2022, activities by armed opposition groups were reported to have intensified, with the UN Assistance Mission in Afghanistan (UNAMA) recording 22 armed groups claiming to operate in 11 of Afghanistan's 34 provinces.³ Between 17 August and 13 November 2022, the UN recorded 1,587 security-related incidents, a 23 per cent increase compared to the same period in 2021.⁴ The provinces with the highest number of security incidents were Kabul, Herat and Kandahar.⁵ A total of 530 civilian casualties were reported (124 civilians killed and 406 wounded).⁶
3. The Taliban de facto authorities are reported to have committed serious human rights violations, including extrajudicial killings, arbitrary arrest and detention, torture and other forms of ill-treatment.⁷ In addition, the de facto authorities have imposed restrictions on the rights of Afghans to freedom of opinion, freedom of speech, and freedom of assembly, in violation of Afghanistan's obligations under international human rights law.⁸ There has been widespread condemnation of the growing curtailment by the de facto authorities of the human rights of Afghan women and girls.⁹
4. Afghanistan faces significant economic challenges and a grave humanitarian crisis. The World Bank estimates that Afghanistan's economy contracted by a cumulative 30-35 per cent over 2021 and 2022.¹⁰ While the World Bank forecasts Afghanistan's GDP to grow by between 2 and 2.4 per cent over the 2023-2024 period, it warns that this will not lead to an improvement of per capita income, due to

¹ UNHCR, *Guidance Note on the International Protection Needs of People Fleeing Afghanistan*, February 2022, www.refworld.org/docid/61d851cd4.html.

² UN, *General Assembly Voices Deep Concern over Volatility in Afghanistan since Taliban Takeover, Unflinching Commitment to Afghans, Adopting Resolution by Vote*, 10 November 2022, <https://press.un.org/en/2022/ga12469.doc.htm>. In January 2023, the Organisation of Islamic Cooperation (OIC) stated that it was "[g]ravely concerned about the worsening humanitarian and human rights situation in Afghanistan". OIC, *Final Communiqué of the Extraordinary Meeting of the OIC Executive Committee on "The Recent Developments and the Humanitarian Situation in Afghanistan"*, 11 January 2023, www.oic-oci.org/topic/?t_id=38201&t_ref=26143&lan=en.

³ UN Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, 7 December 2022, S/2022/916, www.ecoi.net/en/file/local/2084394/N2273222.pdf, para. 19.

⁴ Ibid., para. 18.

⁵ Ibid.

⁶ Ibid., para. 34.

⁷ Ibid., paras 35-36.

⁸ Ibid., para. 37.

⁹ OHCHR, *Afghanistan: Latest Taliban Treatment of Women and Girls May Be Crime Against Humanity, Say UN Experts*, 25 November 2022, www.ohchr.org/en/statements/2022/11/afghanistan-latest-taliban-treatment-women-and-girls-may-be-crime-against; Human Rights Council, *Enhanced Interactive Dialogue on the Situation of Women and Girls in Afghanistan*, 12 September 2022, <https://media.un.org/en/asset/k1n/k1n0mksr4n>; Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan*, 9 September 2022, <https://undocs.org/en/A/HRC/51/6>.

¹⁰ World Bank, *The World Bank in Afghanistan: Overview*, undated (last updated 7 October 2022), www.worldbank.org/en/country/afghanistan/overview; World Bank, *Afghanistan's Economy Faces Critical Challenges as it Adjusts to New Realities*, 18 October 2022, www.worldbank.org/en/news/press-release/2022/10/18/afghanistan-s-economy-faces-critical-challenges-as-it-adjusts-to-new-realities.

Afghanistan's high population growth.¹¹ Over 90 per cent of the Afghan population is estimated to be food insecure, with 19.9 million Afghans facing acute food insecurity.¹² In October 2022, UNDP reported that almost the entire Afghan population now lives below the poverty line.¹³

5. As of 30 June 2022 some 3.4 million Afghans were internally displaced by conflict, while an estimated 32,424 Afghans were newly displaced in 2022.¹⁴ Also as of 30 June 2022, the total number of Afghan refugees around the world stood at 2.84 million.¹⁵ An estimated 232,306 IDPs returned to their places of origin in 2022,¹⁶ while 6,424 Afghan refugees voluntarily returned to Afghanistan in 2022.¹⁷

International Protection Needs

6. 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 times. UNHCR calls on States to register all arrivals who seek international protection and to issue documentary proof of registration to all individuals concerned.
7. 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.
8. The unprecedented humanitarian crisis affecting Afghanistan must not be allowed to overshadow the situation of widespread human rights violations 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.¹⁸ This should not preclude a thorough assessment of the international protection needs of Afghan applicants for asylum. 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.

International Protection Needs of Women and Girls

9. In light of the wide range of increasingly restrictive measures imposed by the de facto authorities on women and girls in Afghanistan in violation of their human rights, UNHCR considers Afghan women and girls are likely to be in need of international refugee protection under the 1951 Refugee Convention. In December 2022 the UN Secretary-General observed that women's rights in Afghanistan remain "severely curtailed".¹⁹ In September 2022, the UN Special Rapporteur on the situation of human rights in Afghanistan expressed "grave concern about the staggering regression in women and girls' enjoyment of civil, political, economic, social and cultural rights since the Taliban took power. In no

¹¹ Ibid.

¹² UN Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, 7 December 2022, S/2022/916, www.ecoi.net/en/file/local/2084394/N2273222.pdf, paras 47, 57; WFP, *Afghanistan Emergency*, undated (accessed 31 January 2023), www.wfp.org/emergencies/afghanistan-emergency; WFP, *One Year Since the Transition in Afghanistan*, August 2022, https://docs.wfp.org/api/documents/WFP-0000143650/download/?_ga=2.51808044.464891061.1670236685-756071759.167023668, p. 2.

¹³ UNDP, *One Year in Review: Afghanistan since August 2021*, 5 October 2022, www.undp.org/afghanistan/publications/one-year-review-afghanistan-august-2021, pp. 4, 11; 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.

¹⁴ UNHCR, *Operational Data Portal: Afghanistan (Islamic Republic of)*, accessed 31 January 2023, <https://data.unhcr.org/en/country/afg>.

¹⁵ UNHCR, *Mid-Year Trends 2022*, 27 October 2022, www.unhcr.org/statistics/unhcrstats/635a578f4/mid-year-trends-2022.

¹⁶ UNHCR, *Operational Data Portal: Afghanistan (Islamic Republic of)*, accessed 31 January 2023, <https://data.unhcr.org/en/country/afg>.

¹⁷ See <https://data2.unhcr.org/en/situations/afghanistan> (data as of 31 December 2022).

¹⁸ For example, in October 2021 the Protection Cluster in Afghanistan observed: "Protection monitoring focuses on rural communities, whose preoccupations are related to daily survival, resulting in human rights violations, including in relation to restrictions on women and girls, being difficult to monitor." Protection Cluster Afghanistan, *Afghanistan Protection Analysis Update*, October 2021, www.globalprotectioncluster.org/wpcontent/uploads/AFG_Protection-Analysis-Update_Q3_Final.pdf, p. 3.

¹⁹ UN Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, 7 December 2022, S/2022/916, www.ecoi.net/en/file/local/2084394/N2273222.pdf, para. 3.

other country have women and girls so rapidly disappeared from all spheres of public life, nor are they as disadvantaged in every aspect of their lives.”²⁰

10. Restrictions on the rights of women and girls in Afghanistan include limitations on their freedom of movement, notably due to the requirement for women travelling further than 78 kilometres to be accompanied by a *mahram* and to wear the hijab outside their homes.²¹ Restrictions on women's freedom of movement have a direct impact on other human rights, including access to health care, with reports of women being unable to travel to clinics even for emergency medical care when they cannot arrange to be accompanied by a *mahram*, or being turned away or denied treatment by healthcare centres when they are not accompanied by a *mahram*.²² Women's right to access to healthcare has been further impacted by the fact that only female doctors are allowed to treat female patients.²³
11. Despite an announcement by the de facto authorities that secondary schools for girls would open on 23 March 2022, the schools were ordered to close hours after opening across the country.²⁴ There are reportedly a few private secondary schools for girls open in some provinces; however, public schools remained closed as of December 2022 and the vast majority of girls are unable to attend secondary school.²⁵ In December 2022 the de facto authorities announced furthermore that women would no longer be allowed to attend university.²⁶

²⁰ UN General Assembly, *Situation of Human Rights in Afghanistan*, 9 September 2022, A/HRC/51/6, www.ecoi.net/en/file/local/2078445/G2248343.pdf, para. 21.

²¹ UNAMA, *Human Rights in Afghanistan 15 August 2021 – 15 June 2022*, July 2022, www.ecoi.net/en/file/local/2075723/unama_human_rights_in_afghanistan_report_-_june_2022_english.pdf, pp. 32-33; UN Women, *Statement on Afghanistan*, by Ms Sima Bahous, UN Women Executive Director, 9 May 2022, www.unwomen.org/en/news-stories/statement/2022/05/statement-on-afghanistan-by-ms-sima-bahous-un-women-executive-director. In August 2022 the Country Representative a.i. for UN Women in Afghanistan stated: “Women spoke of how the *mahram* requirement is impacting every aspect of their lives, from their freedom to go to buy bread and meet the basic needs of their family, to their ability to influence decision-making in the home. [...] Some women told me they still go to the market without a *mahram*, but they live in fear that one day they will be stopped and beaten for the act of buying groceries without a man.” UN Women, *Update: The Situation of Women and Girls in Afghanistan*, 8 August 2022, www.unwomen.se/update-the-situation-of-women-and-girls-in-afghanistan/. On 10 November 2022, the de facto Ministry for the Propagation of Virtue and the Prevention of Vice announced that women would no longer be given access to public parks across the country. UN Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, 7 December 2022, S/2022/916, www.ecoi.net/en/file/local/2084394/N2273222.pdf, para. 40. See also, Amnesty International, *Death in Slow Motion: Women and Girls under Taliban Rule*, 27 July 2022, www.ecoi.net/en/file/local/2076021/ASA1156852022ENGLISH.pdf, pp. 35-38; Aljazeera, *Shrinking Public Space for Afghan Women as Taliban Expands Curbs*, 6 April 2022, www.aljazeera.com/news/2022/4/6/are-the-taliban-returning-to-their-harsh-ruling; HRW, *Afghanistan: Taliban Deprive Women of Livelihoods, Identity*, 18 January 2022, www.hrw.org/news/2022/01/18/afghanistan-taliban-deprive-women-livelihoods-identity.

²² UN Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, 7 December 2022, S/2022/916, www.ecoi.net/en/file/local/2084394/N2273222.pdf, para. 41; The Guardian, *‘I Daren’t Go Far’: Taliban Rules Trap Afghan Women with No Male Guardian*, 15 August 2022, www.theguardian.com/world/2022/aug/15/taliban-rules-trap-afghan-women-no-male-guardian.

²³ “Some women health workers have been unable to travel to work because they are not accompanied by a Mahram [...], and some said the restrictions have forced them to leave their jobs. A lack of women doctors, nurses, and medical staff will severely limit the access of women and girls to healthcare”. ACAPS, *Afghanistan Spotlight on Social Impact: July-October 2022*, 13 December 2022, www.acaps.org/sites/acaps/files/products/files/20221230_acaps_afghanistan_analysis_hub_thematic_report_social_impact_monitoring_july_to_october_2022.pdf, p. 3. See also, UN Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, 7 December 2022, S/2022/916, www.ecoi.net/en/file/local/2084394/N2273222.pdf, para. 41. See also, The Guardian, *‘I Daren’t Go Far’: Taliban Rules Trap Afghan Women with No Male Guardian*, 15 August 2022, www.theguardian.com/world/2022/aug/15/taliban-rules-trap-afghan-women-no-male-guardian; PBS, *What’s the Status of Healthcare for Women in Afghanistan Under the Taliban?*, 9 August 2022, www.pbs.org/wgbh/frontline/article/healthcare-women-afghanistan-under-taliban/.

²⁴ Afghan Witness, *Afghanistan’s Education Sector under the Taliban*, 16 August 2022, www.afghanwitness.org/reports/afghanistan-s-education-sector-under-the-taliban; Aljazeera, *The Taliban Closes Afghan Girls’ Schools Hours after Reopening*, 23 March 2022, www.aljazeera.com/news/2022/3/23/taliban-orders-girls-schools-shut-hours-after-reopening.

²⁵ UN, *Women Literally Being Erased from Public Life in Afghanistan, Speaker Tells Security Council, Sounding Alarm over Country’s Dire Situation*, 20 December 2022, <https://press.un.org/en/2022/sc15153.doc.htm>; Salaam Times, *Resalat Private High School in Herat Offers Hope to Hundreds of Girls*, 29 September 2022, https://afghanistan.asia-news.com/en_GB/articles/cnmi-st/features/2022/09/29/feature-01.

²⁶ BBC, *Afghanistan: Taliban Ban Women from Universities Amid Condemnation*, 21 December 2022, www.bbc.com/news/world-asia-64045497; RFE/RL, U.S., *Britain Condemn Taliban’s Ban On Women Attending University In Afghanistan*, 20 December 2022.

12. UNAMA noted in July 2022, “The steps taken by the de facto authorities to date [...] have significantly restricted women’s participation in the workforce”.²⁷ UN News reported in August 2022 that women were “mostly restricted from working outside the home”.²⁸ On 24 December 2022, the de facto authorities announced that women could no longer work for NGOs.²⁹
13. The de facto authorities have imposed limitations on women’s freedom of expression, with the de facto authorities having harassed and physically attacked women who participated in peaceful protests.³⁰ In addition, the Special Rapporteur on the Situation of Human Rights in Afghanistan noted in September 2022 that the impact of the restrictions imposed by the de facto authorities on the media “has been far worse for women”.³¹ According to Reporters Without Borders, 84 per cent of female journalists have lost their jobs since the takeover by the Taliban on 15 August 2021.³² Women human rights defenders are reported to be at particular risk of violence and intimidation.³³
14. Women and girls in Afghanistan also face restrictions on their right to access to justice, including in relation to gender-based violence.³⁴ In October 2021, the Global Protection Cluster estimated that about

2022, www.ecoi.net/en/document/2084346.html. In a January 2023 communiqué, the Organisation of Islamic Cooperation “[e]mphasize[d] that education is a fundamental human right which all individuals must enjoy on the basis of equal opportunity and in a non-discriminatory manner, and not be deprived of” and “[u]rge[d] the de facto Afghan authorities to allow women and girls to exercise their rights and contribute to the social and economic development of the Afghan society in accordance with the rights and responsibilities as guaranteed to them by Islam and international human rights law”. OIC, *Final Communiqué of the Extraordinary Meeting of the OIC Executive Committee on “The Recent Developments and the Humanitarian Situation in Afghanistan”*, 11 January 2023, www.oic-oci.org/topic/?t_id=38201&t_ref=26143&lan=en.

²⁷ UNAMA, *Human Rights in Afghanistan 15 August 2021 – 15 June 2022*, July 2022, www.ecoi.net/en/file/local/2075723/unama_human_rights_in_afghanistan_report_-_june_2022_english.pdf, p. 33.

²⁸ UN News, *UN Agencies Recommitment to Women, Girls in Afghanistan One Year after Taliban Takeover*, 15 August 2022, <https://news.un.org/en/story/2022/08/1124662>. See also, UN General Assembly, *Situation of Human Rights in Afghanistan*, 9 September 2022, A/HRC/51/6, www.ecoi.net/en/file/local/2078445/G2248343.pdf, para. 38; see also, Amnesty International, *Death in Slow Motion: Women and Girls under Taliban Rule*, 27 July 2022, www.ecoi.net/en/file/local/2076021/ASA1156852022ENGLISH.pdf, pp. 28-30.

²⁹ UN News, *Afghanistan: Top UN Delegation Tells Taliban to End Confinement, Deprivation, Abuse of Women’s Rights*, 20 January 2023, <https://news.un.org/en/story/2023/01/1132677>; Aljazeera, *Afghan Women on NGO Work Ban: ‘My Heart Will Burst from the Pain’*, 28 December 2022, www.aljazeera.com/news/2022/12/28/afghan-women-on-ngo-work-ban-my-heart-will-burst-from-the-pain; BBC, *Afghanistan: Taliban Ban Women from Working for NGOs*, 25 December 2022, www.bbc.com/news/world-asia-64086682. UNHCR noted that this new measure would drastically affect humanitarian programmes, as it would prevent over 500 women working with UNHCR’s local NGO partners from carrying out their duties. UNHCR, *UN High Commissioner for Refugees Calls to Reverse Ban of Women Humanitarian Workers in Afghanistan*, 29 December 2022, www.unhcr.org/news/press/2022/12/63ad6f484/un-high-commissioner-refugees-calls-reverse-ban-women-humanitarian-workers.html.

³⁰ UN Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, 7 December 2022, S/2022/916, www.ecoi.net/en/file/local/2084394/N2273222.pdf, para. 37; Amnesty International, *Death in Slow Motion: Women and Girls under Taliban Rule*, 27 July 2022, www.ecoi.net/en/file/local/2076021/ASA1156852022ENGLISH.pdf, pp. 37-40, 82-83.

³¹ Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan*, 9 September 2022, <https://undocs.org/en/A/HRC/51/6>, para. 79.

³² Reporters Without Borders, *Afghanistan*, undated (accessed 31 January 2023), <https://rsf.org/en/country/afghanistan>.

³³ Freedom House, *Afghan Human Rights Defenders: On the Run and Still at Risk*, 19 January 2023, <https://freedomhouse.org/article/afghan-human-rights-defenders-run-and-still-risk>; Amnesty International, *Afghanistan: Women Human Rights Defenders Arrested by the Taliban Must Be Immediately Released*, 14 November 2022, www.amnesty.org/en/latest/news/2022/11/afghanistan-women-human-rights-defenders-arrested-by-the-taliban-must-be-immediately-released/.

³⁴ Amnesty International, *Death in Slow Motion: Women and Girls under Taliban Rule*, 27 July 2022, www.ecoi.net/en/file/local/2076021/ASA1156852022ENGLISH.pdf, pp. 41-47; UNAMA, *Human Rights in Afghanistan 15 August 2021 – 15 June 2022*, July 2022, www.ecoi.net/en/file/local/2075723/unama_human_rights_in_afghanistan_report_-_june_2022_english.pdf, p. 34. Under the previous Afghan government, there were an estimated 1,500 women defence lawyers; however, the de facto authorities have excluded women from being licensed as defence lawyers. UN Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, 7 December 2022, S/2022/916, www.ecoi.net/en/file/local/2084394/N2273222.pdf, para. 12, see also para. 16. See also, Jurist, *Afghanistan Dispatch: ‘Female Lawyers Are at Risk and There Is a Possibility of Losing Them’*, 15 August 2022, www.jurist.org/news/2022/08/afghanistan-dispatch-female-lawyers-are-at-risk-and-there-is-a-possibility-of-losing-them/.

90 per cent of all women in Afghanistan have experienced gender-based violence, the majority through intimate partner violence.³⁵

15. In addition, while in December 2021 the de facto authorities issued a decree forbidding forced marriage,³⁶ there has been a sharp rise in the rate of forced and child marriage across Afghanistan due to poverty and a worsening humanitarian and economic situation, combined with the lack of other opportunities for girls as a result of the restrictions on women's rights.³⁷

Other Profiles with Increased International Protection Needs Since 15 August 2021

16. Based on available reports about widespread human rights violations in Afghanistan, including accounts provided to UNHCR by Afghans in flight and those already abroad as part of UNHCR monitoring activities, many Afghans will have international protection needs. As described in paragraphs 20-25 below, there are serious limitations on information gathering in Afghanistan, which make it difficult to obtain a comprehensive understanding of the treatment of Afghans of different profiles across Afghanistan. However, UNHCR is concerned about an increase in international refugee protection needs for people fleeing Afghanistan since the takeover by the Taliban. In addition to the situation of women and girls as described above, other profiles with increased refugee protection needs compared to the situation prior to the events of 15 August 2021 include:
 - (i) Afghans associated with the former government or with the international community in Afghanistan, including former embassy staff and employees of international organizations;³⁸
 - (ii) Former members of the Afghan national security forces and Afghans associated with the former international military forces in Afghanistan;³⁹

³⁵ Global Protection Cluster, *Afghanistan Protection Analysis Update*, October 2021, www.globalprotectioncluster.org/old/wp-content/uploads/AFG_Protection-Analysis-Update_Q3_Final.pdf, p. 6. See also, UN Women, *Afghanistan Crisis Update: Women and Girls in Displacement*, 28 February 2022, <https://data.unwomen.org/publications/afghanistan-crisis-update-women-and-girls-displacement>, p. 5.

³⁶ Aljazeera, *Taliban Bans Forced Marriage of Women in Afghanistan*, 3 December 2021, www.aljazeera.com/news/2021/12/3/taliban-bans-forced-marriage-calls-for-equal-rights-for-women.

³⁷ UN General Assembly, *Situation of Human Rights in Afghanistan*, 9 September 2022, A/HRC/51/6, www.ecoi.net/en/file/local/2078445/G2248343.pdf, para. 31; Aljazeera, 'I'll Be Sacrificed': The Lost and Sold Daughters of Afghanistan, 14 August 2022, www.aljazeera.com/features/2022/8/14/ill-be-sacrificed-the-lost-and-sold-daughters-of-afghanistan. "According to Amnesty International's research, corroborated by national and international organizations operating in Afghanistan, local activists and other experts, the rates of child, early and forced marriage in Afghanistan are surging under Taliban rule. This increase is due to several interrelated drivers, many of which are attributable to the actions and policies of the Taliban and its members since they seized control. The most common drivers include the economic and humanitarian crisis; the lack of educational and professional prospects for women and girls; families' perceived need to protect their daughters from marriage with a Taliban member; families forcing women and girls to marry Taliban members; and Taliban members forcing women and girls to marry them." Amnesty International, *Death in Slow Motion: Women and Girls under Taliban Rule*, 27 July 2022, www.ecoi.net/en/file/local/2076021/ASA1156852022ENGLISH.pdf, p. 9, see also pp. 57-58.

³⁸ On 15 January 2023, former MP Mursul Nabizada was killed in her home in Kabul. The BBC noted that she "was one of the few female MPs who stayed in Kabul after the Taliban seized power in August 2021." BBC, *Mursal Nabizada: Gunmen Kill Former Afghan MP at Home in Kabul*, 16 January 2023, www.bbc.com/news/world-asia-64285789. On former government officials, see UN Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, 7 December 2022, S/2022/916, www.ecoi.net/en/file/local/2084394/N2273222.pdf, paras 3, 35. UNAMA noted in its July 2022 report, "It is evident that individuals who did not hold 'official' or senior roles within the former government and ANDSF – such as, former pro-government militia members, bodyguards to former government officials and relatives of former ANDSF and government officials – are also being targeted by the de facto authorities." UNAMA, *Human Rights in Afghanistan 15 August 2021 – 15 June 2022*, July 2022, www.ecoi.net/en/file/local/2075723/unama_human_rights_in_afghanistan_report_-_june_2022_english.pdf. On the situation of former judges and former prosecutors, see UN General Assembly, *Situation of Human Rights in Afghanistan*, 9 September 2022, A/HRC/51/6, www.ecoi.net/en/file/local/2078445/G2248343.pdf, para. 90.

³⁹ UN Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, 7 December 2022, S/2022/916, www.ecoi.net/en/file/local/2084394/N2273222.pdf, paras 3, 35; UN General Assembly, *Situation of Human Rights in Afghanistan*, 9 September 2022, A/HRC/51/6, www.ecoi.net/en/file/local/2078445/G2248343.pdf, para. 56.

- (iii) Journalists and other media professionals; human rights defenders and activists, as well as defence lawyers supporting them;⁴⁰
- (iv) Members of minority religious groups and members of minority ethnic groups, including the Hazaras;⁴¹
- (v) Afghans of diverse sexual orientations, gender identities and/or gender expression.⁴²

This list does not presume to be an exhaustive enumeration of all profiles of Afghans who may have a well-founded fear of persecution. Each application for international protection should be assessed on its merits, taking into account the evidence provided by the applicant as well as all relevant country of origin information to the extent available. UNHCR notes that family members and others closely associated with persons at risk of persecution are frequently at risk themselves.⁴³

Availability of Protection

17. In light of the available information about widespread human rights violations committed by the de facto authorities, UNHCR does not consider that the de facto authorities are willing or able to provide protection to Afghans at risk of persecution, including societal forms of persecution at the hands of family members and other members of the community.

⁴⁰ UN Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, 7 December 2022, S/2022/916, www.ecoi.net/en/file/local/2084394/N2273222.pdf, paras 37-39, 77; UN General Assembly, *Situation of Human Rights in Afghanistan*, 9 September 2022, A/HRC/51/6, www.ecoi.net/en/file/local/2078445/G2248343.pdf, paras 78, 80, 82-83.

⁴¹ In September 2022, the Special Rapporteur on the situation of human rights in Afghanistan stated: "These attacks [against Hazaras], frequently claimed by ISIL-K, and the historical persecution of Hazaras and other minorities noted above, appear to be systematic in nature and reflect elements of an organizational policy, thus bearing hallmarks of international crimes, including crimes against humanity." UN General Assembly, *Situation of Human Rights in Afghanistan*, 9 September 2022, A/HRC/51/6, www.ecoi.net/en/file/local/2078445/G2248343.pdf, para. 67. A September 2022 report by the Hazara Inquiry – a joint effort of cross-party Parliamentarians from both Houses of the UK Parliament and supported by experts focusing on the situation of the Hazara in Afghanistan since 2021 – "finds that Hazara in Afghanistan, as a religious and ethnic minority, are at serious risk of genocide at the hands of the Taliban and Islamic State-Khorasan Province (IS-K)." Hazara Inquiry, *The Situation of the Hazara in Afghanistan*, 3 September 2022, www.hazarainquiry.com/. On 15 August 2022, the Afghanistan Independent Human Rights Commission stated, "Over the last year, vulnerable and marginalized Hazara-Shia populations have not only lost their status as citizens in the eyes of ruling authorities, but they have also been subjected to a clear, serious, and terrible genocide. Our Sikh and Hindu countrymen were forced to flee their native homeland. The Achakzai tribe's members have been subjected to a great deal of harm and harassment in the country's southwestern provinces for a variety of reasons." AIHRC, *Analysis and Assessment of International Human Rights and Humanitarian Law Situation Following Taliban's Retake of Afghanistan*, 15 August 2022, www.aihrc.org.af/home/annual-reports/1854463. See also, Ehsan Qaane, "The Situation of Marginalised Groups Including Hazaras", in: Danish Refugee Council, *Afghanistan Conference: The Human Rights Situation after August 2021*, 30 December 2022, <https://asyl.drc.ngo/media/13vhsf1b/drc-afghanistan-conference-report-28nov2022.pdf>, pp. 27-37; National Geographic, *Hazara in Afghanistan: Neues Kapitel der Angst*, 1 December 2022, www.nationalgeographic.de/geschichte-und-kultur/2022/11/hazara-voelkermord-afghanistan-verfolgung-minderheit; Barnett R. Rubin, *Afghanistan Under the Taliban: Findings on the Current Situation*, 20 October 2022, www.stimson.org/2022/afghanistan-under-the-taliban-findings-on-the-current-situation/; Atalayar, *Afghanistan: Hazaras Fear a New Genocide by the Taliban*, 7 October 2022, <https://atalayar.com/en/content/afghanistan-hazaras-fear-new-genocide-taliban>; Program on Extremism at George Washington University, *The Risks Facing Hazaras in Taliban-Ruled Afghanistan*, 7 March 2022, <https://extremism.gwu.edu/risks-facing-hazaras-taliban-ruled-afghanistan>.

⁴² Radio Free Europe / Radio Liberty, *'They Torture And Kill Us': Gay Afghan Men Fear For Lives Under The Taliban*, 7 November 2022, www.rferl.org/a/torture-murder-gay-afghan-men-lgbt-taliban/32119338.html; The Guardian, *Gay Afghan Student 'Murdered by Taliban' as Anti-LGBTQ+ Violence Rises*, 18 October 2022, www.theguardian.com/global-development/2022/oct/18/gay-afghan-student-murdered-by-taliban-as-violence-against-lgbtq-community-rises; Foreign Policy, *Millions of Afghans Want to Flee. LGBTQ Afghans Have To.*, 5 May 2022, <https://foreignpolicy.com/2022/05/05/afghanistan-taliban-lgbtq-danger/>; Foreign Policy, *What the Taliban Mean for Queer Afghans*, 20 April 2022, <https://foreignpolicy.com/2022/04/20/what-the-taliban-means-for-queer-afghans/>; HRW and Outright Action International, *"Even If You Go to the Skies, We'll Find You": LGBT People in Afghanistan after the Taliban Takeover*, 26 January 2022, www.hrw.org/report/2022/01/26/even-if-you-go-skies-we'll-find-you/lgbt-people-afghanistan-after-taliban-takeover; 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.

⁴³ Freedom House, *Afghan Human Rights Defenders: On the Run and Still at Risk*, 19 January 2023, <https://freedomhouse.org/article/afghan-human-rights-defenders-run-and-still-risk>; Thomas Ruttig, "Rule of the Taliban", in: Danish Refugee Council, *Afghanistan Conference: The Human Rights Situation after August 2021*, 30 December 2022, <https://asyl.drc.ngo/media/13vhsf1b/drc-afghanistan-conference-report-28nov2022.pdf>, pp. 17-18; UNAMA, *Human Rights in Afghanistan* 15 August 2021 – 15 June 2022, July 2022, www.ecoi.net/en/file/local/2075723/unama_human_rights_in_afghanistan_report_-_june_2022_english.pdf, pp. 14-15.

Internal Flight or Relocation Alternative

18. In view of the volatility of the situation throughout Afghanistan, coupled with the grave economic and humanitarian situation in the country, 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.

Exclusion Considerations

19. Among Afghan nationals seeking asylum there may be 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.⁴⁴ 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.⁴⁵

Constraints on Assessing International Protection Needs

20. Since its takeover of the country, the de facto authorities have been governing by decree, side-lining the parliamentary process.⁴⁶ To date, this governance has been characterized by uncertainty, arbitrariness and disregard for the rule of law.⁴⁷ The de facto authorities are converting Afghanistan's legal framework and its justice system to Sharia law.⁴⁸ In December 2022, the UN Secretary-General reported that "[t]he de facto authorities have still not addressed persistent ambiguities over the parameters of the political and legal system" and that "[n]o moves have been made to formally define the decision-making roles within the de facto authority, which continues to operate on an interim basis according to the Taliban's own description."⁴⁹ The UN Secretary-General expressed his "concerns over the prevailing ambiguity regarding applicable laws."⁵⁰ In October 2022 the Taliban spokesperson, Zabihullah Mujahid, stated that efforts to draft a new Constitution were ongoing.⁵¹ In November 2022

⁴⁴ 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.

⁴⁵ See UNHCR, *Guidance Note on Maintaining the Civilian and Humanitarian Character of Asylum*, December 2018 www.refworld.org/docid/452b9bca2.html.

⁴⁶ In November 2022 it was reported that for the first time de facto authorities published a legislative decree approved by the Taliban's Supreme Leader in the Official Gazette of the Ministry of Justice. The decree was entitled Regulation on Prevention of Usurpation of Lands and Restitution of Usurped Lands. Under the previous government, both Parliament and the President were required to approve laws, while the Cabinet approved regulations. While the de facto authorities are yet to clarify the mechanisms for approving laws and regulations, the November 2022 regulation was approved by the Taliban's Supreme Leader only. Jurist, *Afghanistan Dispatch: Taliban Publish First Legislative Decree in Official Gazette*, 28 November 2022, www.jurist.org/news/2022/11/afghanistan-dispatch-taliban-publish-first-legislative-decree-in-official-gazette/.

⁴⁷ For example, Amnesty International reported: "Taliban policies on women and girls have often been communicated in decrees issued by the Ministry for the Propagation of Virtue and Prevention of Vice (Ministry of Vice and Virtue). Women and girls interviewed by Amnesty International said the Taliban's policies are also regularly communicated via other channels, including traditional media sources, social media platforms and visits by Taliban members to public settings. Several of the women and girls interviewed by Amnesty International said the many channels of communication used by the Taliban make it difficult to decipher their latest rules. For instance, Yasamin, a 27-year-old NGO worker based in Kabul, said, '[The Taliban] will send a letter to the TV station, post on Facebook and in other media outlets... It's difficult to keep track.'" Amnesty International, *Death in Slow Motion: Women and Girls under Taliban Rule*, 27 July 2022, www.ecoi.net/en/file/local/2076021/ASA1156852022ENGLISH.pdf, p. 16.

⁴⁸ "The conversion of the former Republic judiciary and legal framework continued [...]. On 21 August [2022], the de facto Attorney General instructed prosecutors to transfer ongoing investigations to de facto courts; the Deputy Chief Justice for Administration of the de facto Supreme Court informed UNAMA that judges would also perform investigative functions under sharia law." UN Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, 7 December 2022, S/2022/916, www.ecoi.net/en/file/local/2084394/N2273222.pdf, para. 11.

⁴⁹ Ibid., paras 4-5.

⁵⁰ Ibid., para. 11. See also, Thomas Ruttig, "Rule of the Taliban", in: Danish Refugee Council, *Afghanistan Conference: The Human Rights Situation after August 2021*, 30 December 2022, <https://asyl.drc.ngo/media/13vhsflb/drc-afghanistan-conference-report-28nov2022.pdf>, p. 21; UNAMA, *Human Rights in Afghanistan 15 August 2021 – 15 June 2022*, July 2022, www.ecoi.net/en/file/local/2075723/unama-human-rights-in-afghanistan-report-june-2022-english.pdf, p. 35.

⁵¹ Tolo News, *Efforts Underway to Form New Constitution: Mujahid*, 22 October 2022, <https://tolonews.com/afghanistan-180415>.

the Taliban's Supreme Leader made the application of punishments under Sharia law compulsory, including public executions and corporal punishments.⁵²

21. 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 the media in Afghanistan, as well as on civil society and human rights defenders. The UN Special Rapporteur on the Situation of Human Rights in Afghanistan noted in September 2022 that "since 15 August [2021], access to information has become increasingly challenging, and journalistic independence and freedom of expression has been significantly curtailed."⁵³ The Special Rapporteur stated:

"Lack of revenue and halting of foreign funding, lack of access to information, self-censorship and constant pressure and warnings from the de facto authorities have contributed to the closure of or reduction in media activities. Some journalists have quit their jobs or gone into hiding after receiving serious threats to their lives from the General Directorate of Intelligence. Journalists and media outlets outside major urban areas are particularly affected. There is no local media in at least 4 provinces; in 15 provinces, between 40 and 80 per cent of outlets have closed."⁵⁴

22. In May 2022, the de facto authorities dissolved the Afghanistan Independent Human Rights Commission (AIHRC), the Independent Commission for Overseeing the Implementation of the Constitution, and the Afghanistan Independent Bar Association.⁵⁵ While in August 2022 the AIHRC nevertheless produced a report on the human rights situation in Afghanistan since the takeover by the Taliban, the Commission emphasized that it could not claim the report to be complete and comprehensive, "since we know that dozens of continuing human rights violations have been left out owing to a lack of [human rights monitoring] facilities."⁵⁶ Similarly, in its July 2022 report, UNAMA stated: "UNAMA HRS [Human Rights Service] does not claim that the data presented in this report – regarding either human rights violations or civilian casualties – are complete and acknowledges possible under-reporting of both given the limitations inherent in the operating environment."⁵⁷
23. The Protection Cluster in Afghanistan has identified wide-ranging challenges to human rights monitoring in the country.⁵⁸ In November 2022 the Cluster noted that the collection and storage of data on human rights violations were a particular concern, "capable of putting both clients and service providers at

⁵² The Guardian, *Afghan Supreme Leader Orders Full Implementation of Sharia Law*, 14 November 2022, www.theguardian.com/world/2022/nov/14/afghanistan-supreme-leader-orders-full-implementation-of-sharia-law-taliban.

Following the Supreme Leader's order, later the same month 19 people were subjected to public floggings in Takhar province, and 12 people, including three women, were publicly flogged in a stadium in Logar province. BBC, *Three Women among Dozen Publicly Flogged in Afghanistan - Taliban Official*, 23 November 2022, www.bbc.com/news/world-asia-63736271.

⁵³ Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan*, 9 September 2022, <https://undocs.org/en/A/HRC/51/6>, para. 77. In the World Press Freedom Index maintained by Reporters Without Borders, Afghanistan dropped from 122nd place out of 180 in 2021 (with its media environment classified as "difficult") to 156th place in 2022 (with its media environment classified as "very serious"). Reporters Without Borders, *World Press Freedom Index*, <https://rsf.org/en/index>.

⁵⁴ Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan*, 9 September 2022, <https://undocs.org/en/A/HRC/51/6>, para. 80. 15. In December 2022, the UN Secretary-General stated that "many civil society and media actors reported maintaining a low profile or having discontinued their activities for fear of retribution." UN Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, 7 December 2022, S/2022/916, www.ecoi.net/en/file/local/2084394/N2273222.pdf, para. 37.

⁵⁵ AIHRC, *The AIHRC's Position Regarding the Dissolution of the Commission by the Taliban*, 26 May 2022, www.aihrc.org.af/home/press_release/1854449; Reuters, *Taliban Dissolve Afghanistan's Human Rights Commission, Other Key Bodies*, 16 May 2022, www.reuters.com/world/asia-pacific/taliban-dissolve-afghanistans-human-rights-commission-other-key-bodies-2022-05-16/.

⁵⁶ Afghanistan Independent Human Rights Commission, *Analysis and Assessment of International Human Rights and Humanitarian Law Situation Following Taliban's Retake of Afghanistan (from August 15, 2021 to August 15, 2022)*, 15 August 2022, www.aihrc.org.af/home/annual-reports/1854463.

⁵⁷ UNAMA, *Human Rights in Afghanistan 15 August 2021 – 15 June 2022*, July 2022, www.ecoi.net/en/file/local/2075723/unama_human_rights_in_afghanistan_report_-_june_2022_english.pdf, p. 5.

⁵⁸ "The range of security challenges and operational constraints, including movement restrictions imposed by the Taliban administration while negotiations continued, made it difficult for people in need to reach services and impeded the capacity of protection monitoring partners to collect high quality data and to provide equitable protection." Protection Cluster Afghanistan, *Afghanistan Protection Analysis Update: Q1 2022, 15 August 2022*, www.globalprotectioncluster.org/publications/384/reports/protection-analysis-update/afghanistan-protection-analysis-update.

risk”.⁵⁹ The Cluster reported that monitoring the human rights situation of women and girls in Afghanistan, including in relation to gender-based violence, has become especially difficult due to the restrictions imposed by the de facto authorities on female staff.⁶⁰

24. Given the obstacles to information gathering and reporting in Afghanistan, UNHCR calls on decision-makers on asylum applications by Afghan nationals to refrain from drawing adverse inferences from the absence of verified country of origin information to support and corroborate all aspects of the evidence provided by the applicant. In the current context in Afghanistan, it will frequently be the case that human rights violations and abuses remain undocumented and unreported. The lack of country of origin information describing particular incidents or patterns of violations and abuse should therefore not in itself be a reason to doubt the applicant’s credibility where the applicant’s statements are otherwise coherent and consistent.
25. In addition, UNHCR calls on decision-makers to give due weight to the uncertainty and unpredictability inherent in the modalities adopted by the de facto authorities for issuing decrees, coupled with the ongoing uncertainties regarding the applicability of Afghanistan’s previous legal framework. UNHCR considers that these circumstances render it particularly difficult to evaluate a future risk of persecution based on the currently available information on the human rights situation in Afghanistan, and in particular to conclude with the requisite level of confidence that an Afghan asylum applicant would not face a real risk of persecution upon return to the country of origin.

Changed Circumstances as a Ground for Fresh or Subsequent Applications or for Sur Place Claims

26. UNHCR calls on asylum States to ensure that Afghan applicants who lodged their claim prior to 15 August 2021 but who have not yet received a decision, are able to provide additional information to support their claim in light of the changed circumstances in Afghanistan and the new or heightened risks they may face as a result. Similarly, UNHCR calls on asylum States to ensure that Afghans who were already outside Afghanistan prior to 15 August 2021 but who had until that point no need to apply for asylum are able to lodge a sur place claim based on the new risks they may face in Afghanistan due to the changed circumstances in the country.
27. UNHCR also calls on asylum States to ensure that Afghans whose claim for international protection was rejected prior to 15 August 2021 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.
28. 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 as refugee protection, to lodge a new claim for refugee protection in light of the changed circumstances in Afghanistan.

Temporary Protection

29. In countries without functional asylum systems, or where States face challenges in adapting existing asylum systems to the need to determine potentially large numbers of claims for international refugee protection by Afghan nationals, UNHCR continues to call 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 as it can be determined, on the basis of an objective assessment, that the human rights and security situation in Afghanistan has

⁵⁹ Protection Cluster Afghanistan, *Afghanistan Protection Analysis Update: Q2 2022*, 4 November 2022, www.globalprotectioncluster.org/publications/654/reports/protection-analysis-update/afghanistan-protection-analysis-update, p. 2.

⁶⁰ *Ibid.*, pp. 1, 2, 13.

durably improved and, in the absence of international protection needs, voluntary return is reasonable and can be carried out in safety and dignity.⁶¹

Family Reunification

30. 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, including in binding regional legal instruments.⁶² 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 continuing to be 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.⁶³

Non-Return Advisory

31. 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.
32. 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.⁶⁴
33. 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.

⁶¹ UNHCR, *Guidelines on Temporary Protection or Stay Arrangements*, February 2014, www.refworld.org/docid/52fba2404.html.

⁶² 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).

⁶³ 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.

⁶⁴ By 31 December 2022, there were 2,042,657 registered Afghan refugees in Iran, Pakistan, Tajikistan, Uzbekistan, and Turkmenistan. UNHCR, *Data Portal: Afghanistan Situation*, <https://data.unhcr.org/en/situations/afghanistan> (accessed 31 January 2023).

34. UNHCR will continue to monitor the situation in Afghanistan with a view to assessing the international protection needs of Afghans.