



ВКБООН

Агенцията на ООН
за бежанците

НАСОКИ НА ВКБООН ЗА ОПРЕДЕЛЯНЕ НА КРИТЕРИИТЕ ПРИ ОЦЕНКА НА НУЖДАТА ОТ МЕЖДУНАРОДНА ЗАКРИЛА НА ТЪРСЕЩИ ЗАКРИЛА ЛИЦА ОТ АФГАНИСТАН

Върховен комисариат на ООН за бежанците (ВКБООН)

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ЗАБЕЛЕЖКА

Службата на ВКБООН издава настоящите *Насоки за определяне на критериите*, за да подпомогне лицата, които вземат решения, включително персонала на ВКБООН, държавните служители и специалистите от частния сектор, при оценката на нуждата от международна закрила на лицата, търсещи международна закрила. Насоките са юридическо тълкуване на критериите за определяне на статут на бежанец по отношение на конкретни профили, основани на социалните, икономическите и хуманитарните условия, както и на ситуацията в областта на сигурността и правата на човека в съответната страна/територия на произход. Направен е обстоен анализ на съответните потребности от международна закрила и са представени препоръки относно връзката на разглежданите молби с приложимите принципи и критерии на международната правна уредба за бежанците, по-специално Устава на ВКБООН, Конвенцията за бежанците от 1951 г. и Протокола към нея от 1967 г., както и съответните регионални документи, в това число Декларацията от Картахена, Конвенцията на ОАЕ от 1969 г. и Квалификационната директива на ЕС. Препоръките може да засягат, където е уместно, режимите за допълваща или субсидиарна закрила.

ВКБООН издава *Насоките за определяне на критериите* с цел да насърчи правилното тълкуване и прилагане на горепосочените критерии за бежанците в съответствие с надзорните си функции, определени в параграф 8 от Устава на ВКБООН, във връзка с член 35 от Конвенцията от 1951 г., член II от Протокола към Конвенцията от 1969 г. и придобития през годините опит по въпросите на критериите за оценка и определянето на статут на бежанец. Изразява се надежда, че напътствията и информацията, съдържащи се в *Насоките*, ще бъдат обстойно разгледани от изпълнителната власт и съдебните органи при вземането на решения по молбите за предоставяне на международна закрила. *Насоките* са разработени въз основа на задълбочени изследвания, информация, предоставена от световната мрежа на представителствата на ВКБООН, и материали от независими специалисти по страни, изследователи и други източници след строга проверка за надеждност. *Насоките* са публикувани на уебсайта Refworld на ВКБООН: <http://www.refworld.org>.

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Списък на съкращения

МАА	Мрежа на анализаторите на Афганистан
АГП	Афганистанска гранична полиция
АПЕ	Антиправителствени елементи
НКПЧА	Независима комисия по правата на човека на Афганистан
АМП	Афганистанска местна полиция
АНА	Афганистанска национална армия
АНПГР	Афганистанска национална полиция за граждански ред
АНП	Афганистанска национална полиция
НССА	Национални сили за сигурност на Афганистан
ЗПОА	Звено за проучване и оценка на Афганистан
ЕОВ	Експлозивни остатъци от войната
ЗПНСЖ	Закон за премахване на насилието срещу жените
BCM	Върховен съвет за мир
ВРЛ	Вътрешно разселени лица
СВУ	Самоделно взривно устройство
МХП	Международно хуманитарно право
МСПС	Международни сили за подпомагане на сигурността
ИДИЛ	Ислямска държава в Ирак и Сирия
НСК	Неофициални селища в Кабул
НАТО	Организация на Североатлантическия договор
НДС	Национална дирекция за сигурност
НПО	Неправителствена организация
ПНЕ	Правителство на националното единство
ОАЕ	Организация за африканско единство (наследена от АС)
СКХВ	Служба на ООН за координация на хуманитарните въпроси
СВКПЧ	Служба на Върховния комисариат на ООН по правата на човека
МРП	Мисия за решително подпомагане
ООН	Организация на обединените нации
UNAMA	Мисия на ООН за подпомагане в Афганистан
ПРООН	Програма на ООН за развитие
ВКБООН	Върховен комисар на ООН за бежанците
УНИЦЕФ	Детски фонд на ООН

I. Резюме

Настоящите насоки заместват *Насоките на ВКБООН за определяне на критериите при оценка на нуждите от международна закрила на лица от Афганистан, търсещи закрила от 2016 г.*¹ Издадени са на фона на продължаващата загриженост за сигурността в някои части на Афганистан и ширещите се нарушения на правата на човека. Насоките съдържат информация относно конкретните профили, за които може да възникне потребност от международна закрила при сегашните условия в Афганистан.

В тези насоки ВКБООН е включил най-актуалната информация от различни видове източници, налична към момента на съставянето им.² За анализа в Насоките е използвана публично достъпна информация, както и сведения, събрани и получени от ВКБООН при неговите операции в Афганистан и на други места, както и от други органи на ООН и партньорски организации.

Всички молби, подадени от търсещи закрила лица, следва да бъдат разглеждани с оглед на индивидуалните им основания, в съответствие със справедливи и ефективни процедури за предоставяне на статут и въз основа на актуална и относима информация за страната на произход. Това важи независимо дали молбите се оценяват въз основа на критериите за статут на бежанец по Конвенцията за статута на бежанците от 1951 г. („Конвенцията от 1951 г.“)³ и Протокола към нея от 1967 г.,⁴ мандата на ВКБООН, регионалните инструменти за бежанците или въз основа на пошироки критерии за международна закрила, включително допълващи форми на закрила.

1. Статут на бежанец по Конвенцията от 1951 г.

Хората, които бягат от Афганистан, може да са изложени на риск от преследване по причини, свързани с продължаваща военен конфликт в страната или поради тежки нарушения на правата на човека, които не са в пряка връзка с конфликта, или заради комбинация от двете. ВКБООН счита, че лицата със следните един или повече профили може да се нуждаят от международна закрила в зависимост от индивидуалните обстоятелства във всеки случай:

- (1) Лица, които са свързани с правителството и международната общност, включително международните въоръжени сили, или се възприемат като поддръжници на същите;
- (2) Журналисти и други професионалисти от медиите;
- (3) Мъже в наборна възраст и деца, които са малолетни и непълнолетни и са подложени на принудително мобилизиране;
- (4) Цивилни, заподозрени в подкрепа на антиправителствените елементи (АПЕ);
- (5) Членове на малцинствени религиозни групи и лица, за които се смята, че нарушават законите на шериата;
- (6) Лица, за които се смята, че нарушават тълкуването на исламските принципи, норми и ценности;
- (7) Жени с определен профил или в конкретни обстоятелства;
- (8) Жени и мъже, за които се смята че нарушават обществения морал;
- (9) Лица с увреждания, включително с умствени увреждания и лица, страдащи от психични заболявания;

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

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

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

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

- (10) Деца с определен профил или в конкретни обстоятелства;
- (11) Лица, преживели трафик на хора или принудителен труд, и лица, застрашени от трафик на хора или принудителен труд;
- (12) Лица с различна сексуална ориентация и/или сексуална идентичност;
- (13) Членове на (малцинствени) етнически групи;
- (14) Лица, въвлечени в кървави вражди;
- (15) Бизнесмени, други състоятелни хора и членове на семействата им.

Списъкът не е непременно изчерпателен и е изготвен на базата на информацията, налична във ВКБООН към момента на съставяне. Следователно, молбата не трябва автоматично да се определя за неоснователна единствено заради това, че не попада в някой от разгледаните тук профили. В зависимост от специфичните обстоятелства на случая, членове на семействата или домакинствата на лица с гореизброените профили може също да се нуждаят от международна закрила поради връзката им с лица в риск.

Афганистан продължава да е засегнат от немеждународен военен конфликт.⁵ Възможно е хората, които бягат от посегателства или заплахи от посегателства заради този конфликт, да отговарят на критериите за статут на бежанец по член 1(A)(2) от Конвенцията от 1951 г. За да е изпълнено това условие, трябва да има разумна вероятност лицето да понесе тежки посегателства, равнозначни на преследване по причини, свързани с основанията, изложени в член 1(A)(2).

Нарушения на правата на человека и други последствия от подлагането на насилие могат да съставляват преследване по член 1(A)(2) както самостоятелно, така и кумултивно. При афганския конфликт относимите фактори при оценката за нарушения на правата на человека или други тежки посегателства, чието настъпване е реално възможно за едно лице, включват: (i) контрол върху цивилното население от страна на антиправителствени елементи (APE), включително чрез налагане на паралелни структури за правосъдие и незаконни наказания, както и чрез заплахи и сплашвания на цивилни, ограничение на свободата за придвижване, изнудване и налагане на незаконни данъци; (ii) принудително военизиране; (iii) въздействие на насилието и несигурността върху хуманитарната ситуация, изразяващо се в липса на продоволствена сигурност, бедност и унищожаване на поминъка; (iv) големи мащаби на организирана престъпност и възможност местни главатари, военни вождове и корумпирани правителствени служители да действат безнаказано; (v) систематични ограничения на достъпа до образование и основно здравно обслужване; (vi) систематично ограничаване на участието в обществения живот, особено на жените.⁶

За да се приеме, че лице, което бяга от посегателства или заплаха от посегателства в резултат от въоръжения конфликт в Афганистан, отговаря на критериите за статут на бежанец по член 1(A)(2) от Конвенцията от 1951 г., преследването трябва да произтича от насилие, представляващо причина за признаване на основание по Конвенцията от 1951 г. В случая с Афганистан примери за обстоятелства, при които цивилни са подложени на насилие, съставляващо основание по Конвенцията от 1951 г., включват ситуацията на целенасочено насилие в райони, населени предимно от цивилни със специфични етнически, политически или религиозни профили, или на места, където се събират най-вече цивилни с такива профили (включително пазари, джамии, училища или големи социални събирания, като сватби). За да отговаря на изискванията за статут на бежанец, не е задължително лицето лично да бъде известно на агента (агентите) на преследването или лично да е

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

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

търсено от тези агенти. Възможно е и цели общности да имат основателен страх от преследване, за да е налице едно или повече основания по Конвенцията от 1951 г.; няма изискване дадено лице да понася вреда във форма или степен, различна от вредата, понасяна от други лица със същия профил.⁷

2. По-широки критерии по мандата на ВКБООН, регионални инструменти и допълнителни форми на закрила

Конвенцията от 1951 г. е крайъгълният камък на режима за международна закрила на бежанците. Критериите за статут на бежанец по Конвенцията от 1951 г. следва да се тълкуват така, че лицата или групите лица, които отговарят на критериите, да бъдат надлежно признати и защитени по този инструмент. Само ако се установи, че търсещото закрила лице не отговаря на критериите по Конвенцията от 1951 г., може да се разглеждат по-широките критерии за международна закрила по мандата на ВКБООН и регионалните инструменти, включително за субсидиарна закрила.⁸

Лицата, бягащи от ситуации на насилие, при които няма връзка с основанията по Конвенцията от 1951 г., обикновено не попадат в приложното поле на Конвенцията от 1951 г. Независимо от това те може да отговарят на по-широките критерии по мандата на ВКБООН или на критериите, установени в регионални инструменти.

В мандата на ВКБООН попадат лицата, които отговарят на критериите за бежанец по Конвенцията от 1951 г. и Протокола към нея от 1967 г., но е разширен с последователни резолюции на Общото събрание на ООН и ЕКОСОС, като обхваща различни други ситуации на насилиствено разселване, произтичащи от повсеместно насилие или нарушения на обществения ред.⁹ В светлината на такова развитие компетентността на ВКБООН за предоставяне на международна закрила на бежанци се разпростира и върху лицата, намиращи се извън страната им на произход или обичайно местожителство, които не могат или не желаят да се върнат поради сериозни заплахи за живота, физическата неприкосновеност или свободата, произтичащи от генерализирано насилие или събития, сериозно нарушаващи обществения ред.¹⁰

По отношение на Афганистан показателите за оценка на заплахата за живота, физическата неприкосновеност или свободата, произтичащи от повсеместно насилие, включват: (i) брой цивилни жертви поради действия на безогледно насилие, включително бомбардировки, въздушни удари, самоубийствени нападения, взривявания на СВУ и сухопътни мини (виж раздел II.B.1); (ii) брой свързани с конфликта инциденти със сигурността (виж раздел II.B.2) и (iii) брой лица, които са разселени насилиствено в резултат на конфликта (виж раздел II.E). Тези съображения обаче не се ограничават с прякото въздействие на насилието. Те включват и дългосрочните, по-косвени последствия от свързаното с конфликта насилие, които – самостоятелно или кумулативно – пораждат заплаха за живота, физическата неприкосновеност или свободата.

При изключителните обстоятелства на Афганистан приложимите съображения за преценка на заплахата за живота, физическата неприкосновеност или свободата поради събития, сериозно нарушаващи обществения ред, включват факта, че в редица части на страната правителството фактически е загубило контрол за сметка на АПЕ и не е в състояние да осигури защита на цивилното население. Наличната информация показва, че контрол върху редица ключови аспекти от живота на

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

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

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

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

хората в тези райони се упражнява чрез репресии, насилие и подкопаване на обществения ред, основан на зачитането на върховенството на закона и човешкото достойнство. Тези ситуации се характеризират със системно използване на заплахи и насилие, насочено срещу цивилното население, в условия на ширещи се нарушения на правата на човека.

Афганистанци и други лица със страна на произход Афганистан, които търсят международна закрила в държави страни по Конвенция за регулиране на специфичните аспекти на бежанските проблеми в Африка (Конвенцията на ОАЕ от 1969 г.),¹¹ и за които е установено, че не отговарят на критериите на Конвенцията от 1951 г., може да получат статут на бежанци по член I(2) от Конвенцията на ОАЕ от 1969 г. В частност ВКБООН смята, че лица, произхождащи от райони на Афганистан, засегнати от активни конфликти като част от продължаващата борба за контрол между проправителствените сили и АПЕ, както и от райони на Афганистан, които са под ефективния контрол на АПЕ, може да имат нужда от международна закрила съгласно условията на член (2) от Конвенцията на ОАЕ от 1969 г. на основание, че са били принудени да напуснат местата на обичайното си пребиваване поради заплахи за живота, свободата или сигурността им в резултат на събития, които сериозно нарушават обществения ред.¹²

Лица от Афганистан, които търсят международна закрила в една от страните, въвели Картахенската декларация за бежанците („Картахенската декларация“)¹³ в националното си законодателство, могат да отговарят на изискванията за статут на бежанец при условията на Картахенската декларация. В частност ВКБООН смята, че лицата с произход от райони на Афганистан, засегнати от активен конфликт между проправителствените сили и АПЕ или между различни АПЕ, или от райони под ефективния контрол на АПЕ, и за които е установено, че не отговарят на критериите на Конвенцията за бежанците от 1951 г., могат да се нуждаят от международна закрила при условията на Картахенската декларация въз основа на това, че техният живот, безопасност или свобода са застрашени от обстоятелства, при които сериозно е нарушен общественият ред.

Афганистанците, търсещи международна закрила в държави членки на Европейския Съюз (ЕС), за които е установено, че не са бежанци по Конвенцията от 1951 г., може да отговарят на изискванията за субсидиарна закрила по член 15 от Директива 2011/95/EU („Квалификационната директива“), ако има сериозни основания да се счита, че ще са застрашени реално от тежки посегателства в Афганистан.¹⁴ В светлината на наличните доказателства, представени в раздел II.C на тези насоки, кандидатите могат, в зависимост от индивидуалните обстоятелства на случая, да се нуждаят от международна закрила по член 15, параграф (а) или параграф (б) на основание, че ще са застрашени

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

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

¹³ Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984, <http://www.refworld.org/docid/3ae6b36ec.html>. Although the Cartagena Declaration is included in a non-binding regional instrument, the Cartagena refugee definition has attained a particular standing in the region, not least through its incorporation into 15 national laws and State practice. For guidance on the interpretation of the refugee definition in the Cartagena Declaration, see: UNHCR, *Guidelines on International Protection No. 12: Claims for Refugee Status Related to Situations of Armed Conflict and Violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees and the Regional Refugee Definitions*, 2 December 2016, HCR/GIP/16/12, <http://www.refworld.org/docid/583595f4.html>, paras 61-85.

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

реално от съответните форми на тежки посегателства (смъртно наказание¹⁵ или екзекуция, изтезание или нечовешко или унизително отношение) или от страна на държавата или нейни агенти, или от страна на АПЕ.¹⁶ По същата логика предвид обстоятелството, че Афганистан продължава да бъде засегнат от немеждународен въоръжен конфликт, и в светлината на доказателствата, представени в раздели II.B, II.C, II.D и II.E на тези насоки, кандидатите, които произхождат или преди са живели в засегнатите от конфликта райони, могат, в зависимост от индивидуалните обстоятелства на случая, да се нуждаят от субсидиарна закрила по член 15, параграф (в) на основание, че ще са застрашени от тежки и лични заплахи срещу живота или личността поради безогледно насилие.

Предвид променливия характер на конфликта в Афганистан молбите от афганистанци за международна закрила по мандата на ВКБООН и по дефинициите в регионалните инструменти следва да се разглеждат внимателно в светлината на доказателствата, представени от кандидата, и друга актуална и надеждна информация за ситуацията в Афганистан, придавайки нужната тежест на това, че по своя характер преценката на потребностите от закрила е ориентирана към бъдещето.

3. Алтернатива за вътрешно бягство или преместване (АВБ/АВП)

В светлината на наличните данни за сериозни и повсеместни нарушения на правата на човека от АПЕ в зоните под техен контрол, предвид неспособността на държавата на осигури защита срещу такива нарушения в тези райони, **ВКБООН счита, че не е налице АВБ/АВП в районите на страната, които се контролират ефективно от АПЕ**, като е възможно изключение за лица с установени в миналото връзки с лидери на АПЕ в предложения район на преместване.

ВКБООН счита, че АВБ/АВП не е налице и в райони на страната, засегнати от активни военни действия между проправителствени сили и АПЕ или между различни АПЕ.

За подробни насоки относно оценката за възможност на АВБ/АВП в отделни райони на Афганистан, които нито са под контрола на АПЕ, нито са засегнати от активни битки, моля вижте раздели III.C.1 (анализ за относимост) и III.C.2 (анализ за разумност) на тези насоки.

Що се отнася конкретно до Кабул като предложен район за АВБ/АВП, ВКБООН предлага следните насоки (вж. раздел III.C.4). За да се оцени **относимостта** на Кабул като предложена АВБ/АВП и, по-специално, рисъкът за кандидата от тежки посегателства, включително сериозен риск за живота, свободата или здравето, или рисък от сериозна дискриминация, вземащите решения лица трябва да обърнат дължимото внимание на отрицателните тенденции във връзка със сигурността за цивилните в Кабул. От особено значение е годишният доклад от февруари 2018 г. относно защитата на цивилни лица, в който Мисия на ООН за подпомагане на Афганистан (UNAMA) посочва, че през 2017 г. „е продължила да регистрира най-високите равнища на жертви сред цивилните в провинция Кабул най-вече в резултат от безразборни атаки в град Кабул. От 1 831 цивилни жертви (479 загинали и 1 352 ранени), 88 процента са причинени от самоубийствени и комплексни атаки от енти-правителствени елементи в град Кабул.“¹⁷ UNAMA съобщава, че през 2017 г. броят на цивилните жертви в град Кабул в резултат от самоубийствени и комплексни атаки представлява 70 процента от общия брой цивилни жертви през 2017 г. в Афганистан поради такива атаки.¹⁸ ВКБООН посочва, че цивилните

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

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

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

¹⁸ *Ibid.*, p. 29

граждани, които осъществяват икономически и социални дейности в Кабул, са изложени на рисък да станат жертва на повсеместно насилие, обхванало града.¹⁹ Сред тези дейности са придвижване до и от работното място, придвижване до болници и клиники или придвижване до училище; дейности за осигуряване на прехраната по улиците на града като търговия на сергия; както и посещения на пазари, джамии и други места, където се събират хора.

При оценката на **разумността** на Кабул като предложена АВБ/АВП трябва да се установи, че в Кабул кандидатът ще има достъп до:

- (i) подслон;
- (ii) основни услуги като питейна вода и канализация, здравеопазване и образование;
- (iii) възможности за прехрана или доказана сигурна подкрепа, която да осигури адекватен стандарт на живот.

Относимата информация, която във връзка с това следва да отчитат вземащите решения лица, включва сериозната загриженост от страна на организации за хуманитарна помощ и развитие относно предела на капацитета на Кабул за приемане на лица. След падането на предишния режим на талибаните през 2001 г. в региона на град Кабул се регистрира най-голямото увеличение на населението в Афганистан. Официалните данни за броя на населението показват, че до началото на 2016 г. регионът на град Кабул е имал 5 млн. жители, от които 60 процента в град Кабул.²⁰ Освен това, както се посочва в раздел II.Е, през 2016 г. са се завърнали повече от един милион афганистанци от Иран и Пакистан, а през 2017 г. е имало още 620 000 завърнали се. Кълстерът за защита в Афганистан посочва още през април 2017 г. след завръщанията през 2016 г., но преди повечето през 2017 г.: „Огромният прилив на завърнали се [от Пакистан и Иран] доведе до огромен стрес за вече изчерпващия се капацитет за прием в главните провинциални и областни центрове на Афганистан, тъй като много афганистанци се присъединиха към огромните групи ВРЛ, които не могат да се върнат в районите си на произход поради изострилия се конфликт. [...] В ситуация на ограничени възможности за работа, липса на мрежи за социална защита и лоши условия за настаняване разселените лица не само са застрашени от по-големи рискове в ежедневието си, но са принудени да прибягват до вторично разселване и отрицателни стратегии за оцеляване като детски труд, ранни бракове, намалено количество и качество на храната и др.“²¹

Според Проучването за условията на живот в Афганистан 2016-2017 година 72,4 процента от градското население в Афганистан живее в бордеи, неофициални селища или неадекватни жилища.²² Международният център за растеж посочва през януари 2018 г.: „През последните три десетилетия в Кабул се наблюдава бърза урбанизация. Нарастването на населението в града надвишава

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

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

²¹ Protection Cluster, Afghanistan, April 2017, http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Afghanistan/files/factsheets/201704-protection-cluster-factsheet_en.pdf, p. 2.

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

капацитета на града да осигури необходимата инфраструктура, услуги и работа на гражданите, което води до спешна нужда от появата на неофициални селища, в които се смята, че живее 70% от населението на града.²³

На фона на нарастващата загриженост за все по-голяма бедност в Афганистан с увеличение на дела от населението, което живее под националния праг на бедност, от 34 процента през 2007-2008 г. на 55 процента през 2016-2017 г.²⁴ проучването на фондация „Азия“ за 2017 г. на афганистанското население показва, че възприятието за влошаващо се финансово положение е най-характерно за централния регион на Кабул – 43,9%.²⁵ През януари 2017 г. данните сочат, че 55 процента от домакинствата в неофициалните селища на Кабул са сериозно засегнати от продоволствена несигурност.²⁶

Прегледът на хуманитарните потребности на Службата на ООН за координация по хуманитарни въпроси (ОЧНА) за 2018 г. поставя Кабул сред 10-те провинции (от общо 34 провинции), които са „най-силно засегнати от конфликта“.²⁷ Освен това в Прегледа на хуманитарните потребности се отбелязва, че „нуждите са най-силно изразени в големите градски центрове, сред които Кабул и Джалаабад, където и ВРЛ, и завърналите се се обединили в търсенето на възможности за доходи и прехрана, както и на достъп до основни услуги. Хуманитарните потребности в тези две провинции засягат 42 процента от лицата, свързани с вътрешното разселване и трансграничните потоци.“²⁸

С оглед на съображенията, свързани с анализа за относимост и разумност за Кабул като предложен район за АВБ/АВП, и предвид цялостната ситуация с конфликта и нарушенията на правата на човека, както и отрицателното въздействие от това върху по-широкия социално-икономически контекст, **ВКБООН счита, че като цяло в Кабул няма АВБ/АВП.**

4. Съображения за изключване

В светлината на тежките посегателства върху правата на човека и нарушения на международното хуманитарно право през дългата история на военни конфликти в Афганистан, съображения за изключване по член 1F от Конвенцията от 1951 г. могат да възникнат във връзка с отделни молби от афганистански лица, търсещи международна закрила. По-конкретно, необходимо е внимателно да се разгледат следните профили:

- (i) бивши членове на въоръжените сили, разузнаването и апарата за сигурност, включително агенти на КхАД/УАД, както и бивши официални лица на комунистическите режими;
- (ii) бивши членове на въоръжени групи и милиции, действали по времена комунистическите режими и след тях;
- (iii) (бивши) членове и командири на АПЕ;
- (iv) (бивши) членове на Афганистанските национални сили за сигурност (HCCA), включително Дирекцията за национална сигурност (ДНС), Афганистанска национална полиция (АНП) и Афганистанска местна полиция (АМП);

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

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

²⁵ The Asia Foundation, *Afghanistan in 2017: A Survey of the Afghan People*, November 2017, https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf, p. 67; see also pp. 7, 29, 30, 32.

²⁶ REACH, *Informal Settlement Food Security Assessment: Afghanistan*, January 2017, http://fscluster.org/sites/default/files/documents/reach_afg_report_informal_settlement_food_security_assessment_january_2017.pdf, pp. 3-4.

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

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

- (v) (бивши) членове на паравоенни групи и милиции; и
- (vi) (бивши) членове на групи и мрежи, въвлечени в организирана престъпна дейност.

II. Преглед на положението в Афганистан

A. Главни събития в Афганистан

В Афганистан не стихва немеждународният въоръжен конфликт, в който сблъсъкът е между Националните сили за сигурност на Афганистан (НСА), подпомагани от международните въоръжени сили, и антиправителствени елементи (АПЕ).²⁹ Според Генералния секретар на ООН Афганистан продължава да е изправен пред огромни предизвикателства в политиката, икономиката и сферата на сигурността.³⁰ Съобщава се, че като цяло ситуацията със сигурността отбележва влошаване³¹ в условията на така описания „разрушителен застой“³².

1. Развитие, свързано с конфликта в Афганистан

Данните сочат, че НСА са доказали като цяло способността си да отбраняват провинциални столични градове и основни градски центрове, но са отстъпили значителни територии на талибаните в селските райони. Има обаче сведения, че НСА страдат от непреодолимо изхабяване и спад в духа.³³

Към 31 януари 2018 г. талибаните контролират или оспорват 43,7 процента от всички райони в Афганистан.³⁴ Талибаните за засилили атаките си в Кабул и други главни градски зони и са демонстрирали все по-голямо внимание към нападения срещу афганистанските сили за сигурност с причиняване на многобройни цивилни жертви.³⁵ През ѝзялата 2017 година талибаните са предприели множество мащабни операции с цел завладяване на районни административни центрове и са успели да надделят и временно да контролират няколко такива центъра.³⁶ Същевременно талибаните са

³⁰ UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 56; UNSG, *Special Report on the Strategic Review of the United Nations Assistance Mission in Afghanistan*, 10 August 2017, A/72/312-S/2017/696, <http://www.refworld.org/docid/599301c49.html>, para. 9.

³¹ UN Secretary-General (UNSG), *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>, pp. 1-10.

³² Human Rights Watch (HRW), “No Safe Place” Insurgent Attacks on Civilians in Afghanistan, 8 May 2018, https://www.hrw.org/sites/default/files/report_pdf/afghanistan0518_web_1.pdf, pp. 8-11; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>, para. 17. “The Security Council reiterates its concern over the continuing threats to the security and stability of Afghanistan posed by the Taliban, including the Haqqani network, as well as by Al-Qaida, ISIL (Da’esh) affiliates and other terrorist groups, violent and extremist groups, illegal armed groups, criminals, and those involved in the production, trafficking or trade of illicit drugs.” UNSC, *Statement by the President of the Security Council*, 19 January 2018, S/PRST/2018/2, http://www.securitycouncilreport.org/atf/cf%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF99%7D/s_prst_2018_2.pdf, pp. 1-2. See also, HRW, *World Report 2018: Afghanistan*, 18 January 2018, <http://www.refworld.org/docid/5a61eeac4.html>; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 September 2017, A/72/392-S/2017/783, <http://www.refworld.org/docid/59c3a9f64.html>, para. 20; UNSG, *Special Report on the Strategic Review of the United Nations Assistance Mission in Afghanistan*, 10 August 2017, A/72/312-S/2017/696, <http://www.refworld.org/docid/599301c49.html>, para. 14; Pajhwok Afghan News, *Rebel Groups in Afghanistan: A Run Through*, 11 April 2017, <http://peace.pajhwok.com/en/armed-group/rebel-groups-afghanistan-run-through>.

³³ Security Council Report, *March 2018 Monthly Forecast*, 28 February 2018, http://www.securitycouncilreport.org/monthly-forecast/2018-03/afghanistan_24.php. “The overall security situation has deteriorated over the past few years, as the Taliban have been able to influence and, to some extent, control ever larger parts of the country. [...] The situation has been described as an eroding stalemate in which the Taliban have increased the territory they are able to contest and, in some areas, have begun to consolidate their hold.” UNSG, *Special Report on the Strategic Review of the United Nations Assistance Mission in Afghanistan*, 10 August 2017, A/72/312-S/2017/696, <http://www.refworld.org/docid/599301c49.html>, para. 14.

³⁴ The RSM and the ANDSF have reportedly developed a four-year plan to build the capacity of the ANDSF, including with a view to initiating decisive counteroffensives in 2018 and 2019. UNSG, *Special Report on the Strategic Review of the United Nations Assistance Mission in Afghanistan*, 10 August 2017, A/72/312-S/2017/696, <http://www.refworld.org/docid/599301c49.html>, para. 15.

³⁵ Special Inspector General for Afghanistan Reconstruction (SIGAR), *Quarterly Report to the United States Congress*, 30 April 2018, <https://www.sigar.mil/pdf/quarterlyreports/2018-04-30qr.pdf>, p. 86.

³⁶ HRW, “No Safe Place”, *Insurgent Attacks on Civilians in Afghanistan*, 8 May 2018, <https://www.hrw.org/report/2018/05/08/no-safe-place-insurgent-attacks-civilians-afghanistan>, pp. 1, 14-26. “For some years already, insurgents have used increasingly sophisticated equipment and, in some places, engaged Afghan forces in direct – as opposed to asymmetric – confrontation.” ICG, *A Dangerous Escalation in Afghanistan*, 31 January 2018, <https://www.crisisgroup.org/asia/south-asia/afghanistan/dangerous-escalation-afghanistan>.

³⁷ UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>, para. 16; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 December 2017, A/72/651-S/2017/1056, <http://www.refworld.org/docid/5a56465c4.html>, paras 18-19; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 September 2017, A/72/392-S/2017/783, <http://www.refworld.org/docid/59c3a9f64.html>, para. 17; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 June 2017, A/71/932-S/2017/508, <http://www.refworld.org/docid/5a2563924.html>, para. 15.

укрепили контрола си върху по-голяма част от селската територия, което им е дало възможност за повече нападения най-вече в северен Афганистан.³⁷

През февруари 2018 г. Генералният секретар на ООН съобщава, че е постигнат слаб напредък по отношение на мирните преговори.³⁸ Ефективността на Върховния съвет за мир (BCM) е ограничен в усилията си за постигане на помирение с талибаните поради постоянните заплахи за сигурността и целенасочените нападения на АПЕ.³⁹ На 6 декември 2017 г. BCM съобщава, че афганистанското правителство иска да започне мирни преговори.⁴⁰ На 28 февруари 2018 г. президентът Гани приканва талибаните на преки официални мирни преговори, без предварителни условия и с признаване на ролята на талибаните в афганистанската политика.⁴¹ На 25 април 2018 г. обаче талибаните предприемат годишната си пролетна офанзива, наречена „Операция Ал-Кандак“, с което демонстрират отхвърляне на мирния процес.⁴² Въпреки че сред членовете на BCM има жени, те остават изолирани от мирните преговори въпреки множеството призови за участие от страна на активистки за правата на жените.⁴³

На 7 юни 2018 г. президентът Гани обявява едностренно и временно спиране на огъня с талибаните от 12 до 19 юни 2019 г., което съвпада с края на Рамазана.⁴⁴ Въпреки че отговарят с обявяването на тридневно спиране на огъня с HCCA,⁴⁵ на 12 юни талибаните извършват нападение в югоизточната

³⁷ AAN, *Battle for Faryab: Fighting Intensifies on One of Afghanistan's Major Frontlines*, 12 March 2018, <https://www.afghanistan-analysts.org/battle-for-faryab-fighting-intensifies-on-one-of-afghanistans-major-frontlines/> ; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>, para. 16; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 December 2017, A/72/651-S/2017/1056, <http://www.refworld.org/docid/5a56465c4.html>, paras 18-19; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 September 2017, A/72/392-S/2017/783, <http://www.refworld.org/docid/59c3a9f64.html>, para. 16. In 2017, the ICRC was forced to close its operations in northern parts of Afghanistan due to a series of targeted attacks on staff and health facilities. ICRC, *Afghanistan: ICRC Reduces its Presence in the Country*, 9 October 2017, <https://www.icrc.org/en/document/afghanistan-icrc-reduces-its-presence-country>.

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

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

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

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

⁴² Salaam Times, *Religious Scholars From 3 Nations Meet in Jakarta, Urge Taliban to Seek Peace*, 11 May 2018, http://afghanistan.asia-news.com/en_GB/articles/cnmi_st/newsbriefs/2018/05/11/newsbrief-03 ; Salaam Times, *Afghan Forces Redouble Resolve as Blasts, Gun Battles Rock Kabul*, 9 May 2018, http://afghanistan.asia-news.com/en_GB/articles/cnmi_st/features/2018/05/09/feature-01 . опълчени събръсъци разприсах Кабул, 9 May 2018, http://afghanistan.asia-news.com/en_GB/articles/cnmi_st/features/2018/05/09/feature-01 .

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

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

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

провинция Газни.⁴⁶ Въпреки това нападение на 16 юни 2018 г. президентът Гани продължава едностренното примире с 10 дена, като заявява, че афганистанското правителство е готово за обстойни преговори с талибаните.⁴⁷ Талибаните обаче отказват удължаването на примирето;⁴⁸ на 20 юни убиват 30 членове на афганистанските сили за сигурност.⁴⁹

На 15 юли 2018 г. се съобщава за желанието на Съединените щати да участват в преки преговори с талибаните и има сведения за провеждането на такива.⁵⁰ Същевременно президентът Гани потвърждава ангажимента си за мирни преговори с талибаните.⁵¹

Исламска държава⁵² запазва гъвкавостта си въпреки засилените международни и афганистански операции и продължава участието си в сблъсъци и срещу афганистанското правителство, и срещу талибаните, като „се предполага, че групировката е разширила географския си обхват и е укрепила присъствието си извън източната част на страната.“⁵³ Исламска държава е извършила нападения срещу военни и чуждестранни военни цели и цивилно население, сред които най-вече религиозни обекти, лидери и поклонници, шиити, журналисти и медийни организации, както и атаки, които свидетелстват за насоченост срещу международната общност.⁵⁴ Сектантското естество на тези нападения се определя като „зловещо развитие във въоръжения конфликт в Афганистан“.⁵⁵

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

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

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

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

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

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

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

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

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

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

За проправителствените въоръжени групировки⁵⁶ също има сведения, че уронват авторитета на правителството в районите си на влияние и се свързват с нарушения на правата на човека.⁵⁷

През септември 2016 г. афганистанското правителство подписва мирно споразумение с Хезб-е-ислами Гулбудин (ХИГ) за спиране на военната му дейност и пълно спазване на законите на Афганистан.⁵⁸

На 1 януари 2015 г. Международните сили за подпомагане на сигурността (МСПС) прекратяват бойната си дейност и НССА поемат пълната отговорност за сигурността в страната.⁵⁹ Остава силно намалено международно военно присъствие с Мисията на НАТО за решителна подкрепа (МРП) – невоенна мисия с насоченост към обучение, консултации и помощ за НССА.⁶⁰ Освен това Съединените щати запазват в страната отделна и допълваща анти-терористична мисия.⁶¹

2. Развития в сферата на политиката и икономиката

Правителството на националното единство (ПНЕ) продължава да е работи под натиска на етнически разделения, напрежения в резултат от политически влияния, и вътрешни неразбирателство по ключови стратегически въпроси.⁶² Тревогите, произтичащи от влошаващата се сигурност, уронва доверието на населението в правителството.⁶³

След многократни отлагания на парламентарните избори, които първоначално са запланувани за 2015 г., през април 2018 г. правителството обявява, че парламентарни и местни избори ще се

[kabul-iskp-tries-to-bring-sectarianism-to-the-afghan-war/](#).

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

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

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

⁵⁹ NATO, *ISAF Flag Returns to NATO Headquarters from Kabul, As NATO Commitment to Afghanistan Endures*, 15 January 2015, http://www.nato.int/cps/en/natohq/news_116550.htm.

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

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

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

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

проводат на 20 октомври 2018 г.,⁶⁴ а президентските са запланувани за 2019 г.⁶⁵ През септември 2016 г. е приет нов изборен закон и през ноември 2016 г. е сформирана нова Независима избирателна комисия (НИК).⁶⁶ Съгласно този закон НИК трябва да осигури балансирано разпределение⁶⁷ на избирателните секции на територията на страната, включително в контролираните от АПЕ райони.⁶⁸ UNAMA изразява загриженост по отношение на нарастващата несигурност и ескалацията на свързаното с изборите насилие, насочено срещу цивилни и граждански обекти на този ранен предизборен етап – тенденция, която е отражение на модела на насилие по време на президентските избори през 2014 г.⁶⁹

Статистическите данни на афганистанското правителство показват влошаване на икономическото положение след 2013-2014 г. на фона на силна несигурност и неустойчиво висок ръст на населението.⁷⁰ Въпреки че общото икономическо положение отбелязва слабо подобрене през 2017 в сравнение с 2016 година, в земеделския сектор, който наема повече от 60 процента от афганистанската работна сила, се наблюдават ограничения поради лошите атмосферни условия.⁷¹ Делът на населението, който живее под националната линия на бедност, бележи увеличение от 38,3 процента през 2011-2013 г. на 55 процента през 2016-2017 г.⁷² Икономиката се състои най-вече от неофициални и незаконни дейности, сред които търговия с наркотични вещества, което допълнително влошава нестабилността.⁷³ Според Проучването за условията на живот в Афганистан

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

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

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

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

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

⁶⁹ UNAMA, *Protection of Civilians in Armed Conflict: Election-Related Attacks and Abuses During the Initial Voter Registration Period*, 10 May 2018, https://unama.unmissions.org/sites/default/files/protection_of_civilians_-_special_report_-_election-related_attacks_and_abuses_may_2018_english.pdf.

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

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

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

⁷³ World Bank, *The World Bank in Afghanistan: Overview*, 10 April 2018, <http://www.worldbank.org/en/country/afghanistan/overview>; UNSC, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165,

за 2016-2017 г. процентът на безработица нараства на 24 процента от 22 процента през 2013-2014 г., като трябва да се отбележи, че само за 13 процента от афганистанското население може да се каже, че има „прилична работа“ (т.е. хора, чиято работа не е нито с прекалено ниски доходи, нито е несигурна или при лоши трудови условия).⁷⁴ Според резултатите от общонационално проучване през юни 2017 г. 58,1 процента от респондентите съобщават, че през предходната година възможностите им за трудова заетост са се влошили. Също така 33,5 процента от респондентите съобщават, че се е влошило финансовото състояние на техните домакинства, а 20,3 процента от респондентите съобщават за обедняване.⁷⁵ Тези развития трябва да се разглеждат на фона на повсеместна корупция, трудности при установяването и поддържането на властта на правителството, продължаваща загриженост по отношение на слабости във върховенството на закона и неефективна съдебна система, висока престъпност,⁷⁶ повсеместни нарушения на правата на човека и обща атмосфера на безнаказаност.⁷⁷ Към това се добавя тревогата, че нестихващото насилие и влошаващата се икономическа ситуация отежняват положението с психичното здраве и употребата на наркотици.⁷⁸

В. Положението със сигурността в Афганистан: отражение на конфликта върху цивилните

Положението със сигурността в Афганистан остава непредсказуемо, като цивилните продължават да носят товара на конфликта.⁷⁹ След оттеглянето на чуждестранните въоръжени сили през 2014 г.

<http://www.refworld.org/docid/5ae879b14.html>, para. 49; COFACE, *Afghanistan: Major Macro Economic Indicators*, January 2018, <http://www.coface.com/Economic-Studies-and-Country-Risks/Afghanistan>. “Potential opium production was estimated at 9,000 tons in 2017, an increase of 87% from its 2016 level (4,800 tons).” United Nations Office on Drugs and Crime (UNODC) and Afghanistan Ministry of Counter Narcotics, *Afghanistan Opium Survey 2017: Cultivation and Production*, November 2017, https://www.unodc.org/documents/crop-monitoring/Afghanistan/Afghan_opium_survey_2017_cult_prod_web.pdf, p. 6.

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

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

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

⁷⁷ See Section II.C.

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

⁷⁹ UNSG, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, 27 February

се наблюдава влошаване на положението със сигурността и засилване на военния конфликт в Афганистан.⁸⁰ Съобщенията сочат, че талибаните продължават да завоюват контрол върху все повече райони,⁸¹ а Исламска държава показва все по-големи способности да разширява географското покритие на влиянието си, което още повече дестабилизира положението със сигурността.⁸²

Конфликтът продължава да засяга всички части на страната.⁸³ След решението на правителството да отбранява места с концентрация на население и стратегически селски райони се засилват въоръжените сблъсъци между АПЕ и НСА.⁸⁴ Според сведенията АПЕ са предприели все повече нападение, насочени специално към цивилни, особено самоубийствени атентати със самоделни взривни устройства (СВУ) и комплексни атаки.⁸⁵ АПЕ продължават да извършват мащабните нападения в Кабул и други градове⁸⁶ и да укрепват контрола си в селските райони.⁸⁷ Изразява се загриженост относно капацитета и ефективността на НСА за гарантиране на сигурност и стабилност на територията на Афганистан.⁸⁸

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

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

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

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

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

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

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

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

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

⁸⁸ The Economist, *Afghanistan's Fragile Government Picks a Dangerous Fight*, 1 March 2018 <https://www.economist.com/asia/2018/03/01/afghanistans-fragile-government-picks-a-dangerous-fight>; Washington Post, *Afghans, Fearing More Insurgent Violence, Feel Abandoned by Struggling Government*, 11 February 2018 https://www.washingtonpost.com/world/asia_pacific/afghans/

Следващите два подраздела представят подробна информация за редица цивилни жертви и броя на инцидентите, свързани със сигурността в Афганистан. Трябва обаче да се отбележи, че макар и общият брой на цивилните жертви и броят на инцидентите със сигурността да са важни показатели за интензивността на продължаващия конфликт в Афганистан, те представляват само една страна на прякото отражение върху цивилните на произтичащото от конфликта насилие. За правилното разбиране на пълното въздействие на конфликта върху цивилното население, трябва да се вземат под внимание и последствията от насилието, които са по-дългосрочни и косвени, включително отражението на конфликта върху ситуацията с правата на човека и степента, до която конфликтът препятства способността на държавата да защитава правата на човека (вж. раздел II.B). От гледна точка на конфликта в Афганистан факторите, които имат значение в това отношение, са:

- (i) Контрол върху цивилното население от страна на АПЕ, включително чрез упражняване на паралелно правосъдие и налагане на незаконни наказания, както и чрез средства на заплаха и принуда на цивилни лица, ограничения на свободата на движение и използване на изнудване и незаконно облагане с данъци (вж. раздел II.B);
- (ii) Принудително военизиране (вж. раздел III.A.3);
- (iii) Отражение на насилието и несигурността върху хуманитарната ситуация, която се проявява чрез несигурността на прехраната, бедността и разрушаването на поминъка (вж. раздел II.G);
- (iv) Високи равнища на организирана престъпност и способност на местни главатари, военни вождове и корумпириани държавни чиновници да действат безнаказано (вж. раздел II.B);
- (v) Системни ограничения на достъпа до образование и елементарно здравеопазване в резултат на несигурността; и
- (vi) Системни ограничения на участието в обществения живот, особено на жените (вж. раздели III.A. 1.i и III.A.7).

1. Цивилни жертви

UNAMA започва да проследява цивилните жертви (сред които убити и ранени в резултат на конфликта и други форми на насилие) през 2009 г. Броят на цивилните жертви нараства всяка година между 2009 и 2017 г., като не се взема предвид намалението от 4% през 2012 г. в сравнение с 2011 г. деветпроцентният спад през 2017 г. в сравнение с 2016 г. Въпреки слабото намаление през 2017 г. през тази година е регистрирано най-високото ниво на цивилни жертви – общо 10 453 (3 438 убити и 7 015 ранени).⁸⁹ Високото ниво на жертви сред цивилното население характеризира и първата половина на 2018 г. - UNAMA е регистрирала 5 122 цивилни жертви за периода между 1 януари и 30 юни 2018 г., сред които 1 692 убити (най-големият брой от началото на проследяването им през 2009 г.) и 3,430 ранени.⁹⁰

През 2017 г. UNAMA е документирала най-големия брой цивилни жертви от комбинирани тактически способи със СВУ (самоубийствени СВУ и не-самоубийствени СВУ).⁹¹ В резултат от използването на комбинирани тактически способи със СВУ от АПЕ, особено „безогледното и

[fearing-more-insurgent-violence-feel-abandoned-by-struggling-government/2018/02/09/29196310-0b50-11e8-998c-96deb18cca19_story.html](http://www.refworld.org/docid/29196310-0b50-11e8-998c-96deb18cca19_story.html) ; ICG, *The Cost of Escalating Violence in Afghanistan*, 7 February 2018, <http://www.refworld.org/docid/5a9d1f864.html> ; Tolo News, *Psychologists Claim Attacks Creating Fear among the Public*, 29 January 2018 <https://www.tolonews.com/afghanistan/psychologists-claim-attacks-creating-fear-among-public> ; The Diplomat, *Decoding Afghan Security Forces' Failures*, 23 June 2017, <https://thediplomat.com/2017/06/decoding-afghan-security-forces-failures/> ; United Nations Meetings Coverage and Press Releases, *Afghanistan's Government Must Work to Improve Trust in Security Sector Amid Rising Tensions, Terrorist Attacks, Special Representative Tells Security Council*, 21 June 2017, <https://www.un.org/press/en/2017/sc12882.doc.htm>.

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

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

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

незаконно използване на СВУ като коли-бомби и импровизирани сухопътни мини на места с цивилно население“ има 4 151 жертви, от които 40 процента от общия брой цивилни жертви е през 2017 г.⁹² Използването на СВУ от АПЕ продължава да е главната причина за цивилните жертви през първите шест месеца на 2018 г., когато съчетаното използване на самоубийствени и несамоубийствени СВУ причинява почти половината (45 процента) от всички цивилни жертви.⁹³

През първата половина на 2018 г. продължава горепосочената тенденция, документирана от UNAMA през 2017 г. и повечето от жертвите на СВУ са в резултат от самоубийствени и комплексни атаки, които водят до „рекордно голям брой жертви“ (427 убити и 986 ранени).⁹⁴ Това идва след увеличение от 17 процента през 2017 г. на цивилните жертви в резултат от самоубийствени и комплексни атаки в сравнение с 2016 г.; според сведенията 70 процента от общия брой цивилни жертви, причинени от такива атаки през 2017 г., са в град Кабул.⁹⁵

Въоръжените сблъсъци са втората водеща причина за цивилни жертви през първите шест месеца на 2018 г. (360 убити и 1 134 ранени), на следващо място са целенасочените и преднамерени убийства, въздушните операции и експлозивните военни остатъци.⁹⁶ Въоръжените сблъсъци са на втора позиция като причина за цивилни жертви и през 2017 г. с 3 484 цивилни жертви (823 убити и 2 661 ранени) или 33 процента от общия брой цивилни жертви, като преобладаваща част от тях са при боеве между проправителствени сили и АПЕ.⁹⁷ Въоръжените сблъсъци продължават да са главната причина за вреди, причинени на жени и деца.⁹⁸

Според UNAMA 67 процента от всички цивилни жертви през периода от 1 януари до 30 юни 2018 г. са в резултат от действията на АПЕ: 3 413 цивилни жертви (1 127 убити и 2 286 ранени), от които 42 процента са причинени от талибаните, 18 процента – от Исламска държава и 7 процента – от неидентифицирани АПЕ.⁹⁹ Според UNAMA 65 процента от всички цивилни жертви са причинени от АПЕ: 6 768 цивилни жертви (2 303 убити и 4 465 ранени), което представлява увеличение с три процента спрямо 2016 г.¹⁰⁰ през 2017 г. Талибаните са отговорни за 42 процента от общия брой

⁹² Ibid.

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

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

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

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

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

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

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

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

жертви през 2017 г., Исламска държава – за 10 процента (броят цивилни жертви, причинени от ИД, е нараснал с 11 процента спрямо 2016 г.)¹⁰¹ и „неопределени и други [АПЕ] – 13 процента от жертвите.¹⁰²

През първата половина на 2018 г. UNAMA е регистрирала „обезпокойтелно нарастване“ на броя на цивилните жертви от самоубийствени и комплексни атаки на АПЕ, от които повече от половината се приписват на Исламска държава.¹⁰³ През първата половина на 2018 г. броят на цивилните жертви в резултат от самоубийствени и комплексни атаки е 1 413 (427 убити и 986 ранени), което е увеличение с 22 процента в сравнение със същия период на 2017 г.¹⁰⁴ През първата половина на 2017 г. също има увеличение с 28 процента на броя на цивилните жертви от нападения на АПЕ „предимно поради рязко нарастване на броя на цивилните жертви, причинени от нападения срещу цивилната правителствена администрация и свързани с изборите инциденти.“¹⁰⁵ АПЕ продължават и атаките на други обществени места, сред които молитвени храмове, центрове за регистрация за гласуване, оживени пазари, джамии, цивилни правителствени сгради, социални събирания като сватби и погребения, събирания на племенни вождове, религиозни водачи и вярващи в нарушение на международното хуманитарно право.¹⁰⁶ През 2017 г. 37 нападения срещу молитвени места и вярващи са причинили 499 цивилни жертви (202 убити и 297 ранени), което представлява увеличение с 32 процента на общия брой цивилни жертви при такива нападения в сравнение с 2016 г. (двойно повече убити и тройно повече атаки).¹⁰⁷ UNAMA изразява загриженост и по отношение на свързаното с изборите насилие през 2018 г., при което прицел на АПЕ са цивилни лица и обекти.¹⁰⁸ За първите шест месеца на 2018 г. UNAMA приписва на проправителствените сила 1 047 жертви (20 процента

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

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

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

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

¹⁰⁵ Ibid., pp. 4-5.

¹⁰⁶ UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 27. “In 2017, civilian casualties decreased in 22 of Afghanistan’s 34 provinces. In the remaining 12 provinces, increased suicide and IED attacks in civilian-populated areas by Anti-Government Elements were the main cause for the increase in casualties, though a few also increased from ground fighting.” Ibid., p. 4. “UNAMA, *Protection of Civilians in Armed Conflict: Attacks Against Places of Worship, Religious Leaders and Worshippers*, 7 November 2017, <http://www.refworld.org/docid/5a0b0b534.html>, pp. 1-2. See also, UNAMA, *Statement by the Secretary-General’s Special Representative on Attacks Against Those Working for Peace*, 5 June 2018, <https://unama.unmissions.org/statement-secretary-general%20%99s-special-representative-attacks-against-those-working-peace>. “On some occasions, the Taliban have sought to justify attacks against civilians by claiming that anyone working for the government of Afghanistan, including civil servants, is a valid military target.” HRW, *No Safe Place: Insurgent Attacks on Civilians in Afghanistan*, May 2018, <http://www.refworld.org/docid/5afaee8d4.html>, p. 14. See also, Al Jazeera, *Afghanistan: 63 Dead in Attacks on Voter Registration Centres*, 22 April 2018, <https://www.aljazeera.com/news/2018/04/afghanistan-deaths-attack-id-voter-registration-centre-kabul-180422063114761.html>; RFE/RL, *Three Tribal Elders, Nine Police Killed in Afghanistan*, 20 February 2018, <https://www.rferl.org/a/afghanistan-jalalabad-blast-elders-killed/29050660.html>; RFE/RL, *Five Killed in Afghan Market Attack*, 16 January 2018, <https://www.rferl.org/a/afghanistan-faryab-bomb-attack-market-5-dead/28978972.html>; New York Times, *Suicide Bomber Kills at Least 17 at Funeral in Afghanistan*, 31 December 2017, <https://www.nytimes.com/2017/12/31/world/asia/afghanistan-suicide-bomber-funeral.html>; The Guardian, *Why Deadly Kabul Bombing Is Crisis for All of Afghanistan*, 1 July 2017, <https://www.theguardian.com/world/2017/jun/01/kabul-bombing-crisis-afghanistan-civilian-society-government>.

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

¹⁰⁸ UNAMA, *As Afghans Search for Democracy, New Challenges and a Healthy Debate*, 31 May 2018, <https://unama.unmissions.org/afghans-search-democracy-new-challenges-and-healthy-debate>; UNAMA, *Protection of Civilians in Armed Conflict: Election-Related Attacks and Abuses During the Initial Voter Registration Period*, 10 May 2018, https://unama.unmissions.org/sites/default/files/protection_of_civilians_-_special_report_-_election-related_attacks_and_abuses_may_2018_english.pdf.

от всички цивилни жертви) – почти същия брой както през съответния период на 2017 г.¹⁰⁹ През 2017 г. проправителствените сили са отговорни за 2 108 цивилни жертви или 20 процента от общия брой (745 убити и 1 363 ранени); това представлява спад с 23 процента спрямо 2016 г. Повече от половината цивилни жертви, причинени от проправителствени сили, са в резултат от въоръжени сблъсъци с АПЕ.¹¹⁰

В резултат от промяна в американската стратегия¹¹¹ в Афганистан през 2017 г. нарастват съществено въздушните операции, което води до голям брой цивилни жертви.¹¹² През 2017 г. въздушните операции на международните въоръжени сили и на афганистанските военновъздушни сили причиняват 631 цивилни жертви (295 убити и 33 ранени), което е 18-процентно увеличение спрямо 2016 г.¹¹³ Тази тенденция продължава през първата половина на 2018 г., като UNAMA е регистрирала 353 цивилни жертви (149 убити и 204 ранени) от въздушни нападения, което е увеличение с 52 процента спрямо същия период на 2017 г.¹¹⁴ Жените и децата продължават да са повече от половината от цивилните жертви от въздушни нападения; при децата жертви увеличението е с 64 процента в сравнение с първата половина на 2017 г.¹¹⁵

През 2017 г. жертвите от мини, експлозивни остатъци от войната и взривни устройства, активирани от жертвите, са средно 170 на месец, което е увеличение спрямо 2016 г., когато са средно 162. Разчетите показват, че все още има 3 227 минни полета, 315 бойни полета и 35 заразени обстрелни зони, от което са засегнати 1 423 общности.¹¹⁶

Значително се увеличават трансграничните обстрели през 2017 г., като продължават да засягат предимно райони в източната част на Афганистан. През 2017 г. са регистрирани 29 инцидента с трансгранични обстрели, при които има 71 цивилни жертви (23 убити и 48 ранени), което е трикратно увеличение на инцидентите и повече от четирикратно нарастване на броя на цивилните жертви в сравнение с 2016 г.¹¹⁷

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

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

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

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

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

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

¹¹⁵ *ibid.*

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

¹¹⁷ UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 19. See also, Khaama Press, *Cross-Border Shelling Continues in Kunar Province of*

2. Инциденти, свързани със сигурността

През 2017 г. UNAMA е регистрирала общо 23 744 инцидента със сигурността – това е най-високият регистриран брой до този момент (макар и малко по-висок от броя инциденти през 2016 г.). Най-големият брой инциденти през 2017 г. е свързан с въоръжени сблъсъци (14 998), инциденти с използването на СВУ, а въздушните нападения също отбелязват високи нива (960 въздушни нападения през 2017 г. или увеличение с 67,6 процента спрямо 2016 г.). Районът с най-много инциденти е източният, следван от южния, като в тези два региона са регистрирани 55 процента от общия брой инциденти със сигурността.¹¹⁸

С. Положение с правата на човека

Независимо от заявления ангажимент на афганистанското правителство да спазва националните и международните си задължения в областта на правата на човека, практиката му в защита на правата на човека остава непоследователна. Значителни слоеве на населението, включително жени, деца, етнически малцинства, задържани лица и др., според сведенията, продължават да са подложени на нарушения на правата на човека от страна на различни субекти.¹¹⁹

1. Нарушения на правата на човека

Според съобщенията нарушения на правата на човека на цивилното население има във всички части на страната, независимо кой контролира ефективно дадения район. В зоните под контрола на правителството нарушения от страна на държавата и нейни субекти очевидно се извършват редовно.¹²⁰ В районите, където проправителствените въоръжени групировки упражняват (частичен) контрол, тези групировки безнаказано нарушават правата на човека.¹²¹ По подобен начин в районите, контролирани от АПЕ, има повсеместни нарушения на правата на човека, включително чрез налагането на паралелно правораздаване.¹²² Освен това нарушения на правата на човека се извършват както от държавни, така и от недържавни субекти извън районите, които те съответно контролират.¹²³ Сведенията сочат, че тежките нарушения на правата на човека са особено

Afghanistan, 22 March 2018, <https://www.khaama.com/cross-border-shelling-continues-in-kunar-province-of-afghanistan-04699/>; Pajhwok Afghan News, End Cross-Border Shelling, Kabul Asks Islamabad, 2 December 2017, <https://www.pajhwok.com/en/2017/12/07/end-cross-border-shelling-kabul-asks-islamabad>.

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

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

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

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

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

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

разпространени в оспорваните райони, където продължават сраженията.¹²⁴

a) *Нарушения на правата на човека от държавни субекти*

Редица представители на правителството са обвинявани, че извършват сериозни нарушения на правата на човека. Според сведенията служители на службите за сигурност извършват незаконни убийства и сексуални посегателства и експлоатация на деца.¹²⁵ Правителствени чиновници, службите за сигурност, центровете за задържане и полицията използват мъчения или жестоко, нечовешко или унизително отнасяне или наказание (вж. по-долу).¹²⁶ Съобщенията сочат, че нарушенията на правата на човека, извършвани от всеки един от тези държавни субекти, повсеместно остават безнаказани.¹²⁷

В редица доклади UNAMA е документирала широко разпространеното използване на мъчения и малтретиране на лица, задържани в резултат на конфликта от Националната дирекция за сигурност (НДС), Афганистанската национална полиция (АНП), Местната полиция на Афганистан (АМП) и Афганистанската национална армия (АНА).¹²⁸ Според сведенията задържаните лица нямат достъп до механизми за защита на правата им и до адвокати.¹²⁹ Малтретирането и мъченията на задържани лица се извършват в неофициални центрове за задържане, ръководени от силите за сигурност, които са недостъпни за независими наблюдатели.¹³⁰ Няма публични статистики данни за броя на задържаните лица вследствие на конфликта извън регламентираната система на затворите.¹³¹ През юни 2017 г. Комитетът на ООН за предотвратяване на изтезанията изразява съществена загриженост относно общата култура на безнаказаност, като извършителите на военни престъпления и тежки нарушения на правата на човека все още заемат или са номинирани за официални длъжности, включително в правителството.¹³² Комитетът изразява тревогата си, че това от своя страна допринася за всеобщо приемане и легитимиране на изтезанията в афганистанското общество.¹³³

Системата на затворите, управлявана от Централната дирекция за затворите, страда от пренаселеност и лоши хигиенни условия.¹³⁴ Продължава повсеместното произволно и

Security, 15 September 2017, A/72/392-S/2017/783, <http://www.refworld.org/docid/59c3a9f64.html>, paras 17, 20; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 June 2017, A/71/932-S/2017/508, <http://www.refworld.org/docid/5a2563924.html>, paras 15-16.

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

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

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

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

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

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

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

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

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

¹³³ *Ibid.*, para. 7.

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

незаконосъобразно задържане.¹³⁵ Правоприлагашите ведомства използват изтезания, за да изтрягнат признания от затворниците, особено от затворниците, свързани с конфликта.¹³⁶ Има сведения за подлагането на затворнички на сексуално насилие и злоупотреба.¹³⁷

Продължават да будят тревога нарушенията на правата на човека, извършвани от АПЕ срещу цивилно население.¹³⁸ Повод за тревога са фактът, че няма отчетност за офицерите от АПЕ за минали и настоящи нарушения направата на човека, и съобщенията за служители на АПЕ, които са под контрола на местни посредници.¹³⁹ През 2017 г. UNAMA е документирала 114 цивилни жертви, сред които офицери от АПЕ – 27 убити и 87 ранени (в сравнение с 25 убити и 40 ранени през 2016 г.).¹⁴⁰ Най-честите нарушения, приписвани на АПЕ, са целенасочени и умишлени убийства на цивилни граждани, жестоки побои, разрушаване на собственост, сплашване и тормоз.¹⁴¹

UNAMA продължава да регистрира инциденти с участието на силите за сигурност, които оказват отрицателно въздействие върху достъпа до образование; повечето от тях са свързани с окупиралието на училищни сгради, които се използват като бази за бойните операции, понякога временно. Подобно използване на училища на практика ги превръща от защитени гражданска сгради в легитимни военни мишени и има сериозно отражение върху безопасността на децата, сигурността и достъпа до образование.¹⁴²

UNAMA отбележва също така безпокойството си във връзка с инцидентите, свързани с конфликта, които се приписват на афганистанските сили за сигурност, при които се поразяват болници, клиники и здравни работници.¹⁴³ В края на 2017 г. претърсвания на здравни заведения, приписвани на

<https://www.sigar.mil/pdf/quarterlyreports/2018-04-30qr.pdf>, p. 141.

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

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

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

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

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

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

¹⁴¹ *Ibid.*, pp. 49-50.

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

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

афганистанските сили за сигурност, причиняват цивилни жертви и са съпроводени с арестуването и тормоза на здравни работници, увреждане на медицинско оборудване и блокиране на здравната помощ.¹⁴⁴

Сведенията сочат, че държавни субекти ограничават правото на свобода на изразяване и използват насилие и сплашване срещу журналисти и медийни организации.¹⁴⁵

b) Нарушения на правата на човека от проправителствени въоръжени групировки

Проправителствените въоръжени групировки, според съобщенията, носят отговорност за широкоразпространени нарушения на правата на човека, включително преднамерени убийства, нападения, изнудване, сплашване и кражби на собственост.¹⁴⁶ През 2017 г. UNAMA е документирала 92 цивилни жертви (26 убити и 66 ранени) на такива групировки в сравнение със 185 жертви (52 убити и 133 ранени) през 2016 г.¹⁴⁷ Повечето от убитите и ранените през 2017 г. са, на първо място, в резултат от сухопътни сражения, и на следващо – от целенасочени убийства на цивилни.¹⁴⁸

UNAMA отбелязва, че съществуването на проправителствени въоръжени групировки не е законосъобразно.¹⁴⁹ Сред тези групировки има мощнни старейшини и милиции, които са антажирани от афганистански сили за сигурност за сраженията срещу АПЕ, но въпреки това те остават извън командването на НСА и не са отговорни пред тях.¹⁵⁰ Според сведенията безнаказаността за нарушения на правата на човека от проправителствени въоръжени групировки е широко разпространена.¹⁵¹

c) Нарушения на правата на човека от антиправителствени елементи

Според сведенията АПЕ извършват извънсъдебни екзекуции, изтезания и малтретиране и не позволяват на цивилните да упражняват правата си на свободно движение, свобода на словото, политическо участие, както и на достъп до образование и здравеопазване и правото на ефективна

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

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

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

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

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

¹⁴⁹ *Ibid.*, p. 52.

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

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

правна защита. През 2017 г. UNAMA е документирала 6 768 цивилни жертви (2 303 убити и 4 465 ранени), причинени от АПЕ, като при 4 385 инцидента (1 547 убити и 2 811 ранени) публично е заявлена отговорност от талибаните или им се приписват, а при 1 000 инцидента (399 убити и 601 ранени) публично е заявлена отговорност от Исламска държава или й се приписват.¹⁵²

АПЕ, според сведенията, се възползват от липсата на правителствени механизми или услуги за правораздаване, за да наложат свои паралелни „съдебни“ структури предимно, но не само, в районите, които контролират.¹⁵³ UNAMA отбелязва, че „всички наказания чрез паралелни съдебни структури на недържавни въоръжени групировки са незаконни по законите на Афганистан, представляват престъпления и може да съставляват военни престъпления.“¹⁵⁴ През 2017 г. UNAMA е документирала 23 инцидента с наказания чрез паралелни съдебни структури (12 убити и 12 ранени), което е намаление с 12 процента в сравнение с 2016 г.¹⁵⁵ Сред наказанията чрез паралелни съдебни структури са убийство с камъни и разстрел, бой и линчуване, както и ампутация.¹⁵⁶ АПЕ също така налагат незаконни данъци в районите, където се опитват да наложат паралелни системи на управление.¹⁵⁷

Според сведенията АПЕ въвеждат ограничения на правото на свобода на словото. Цивилните, които говорят срещу АПЕ или в полза на правителството, както и цивилните, които се обвиняват от АПЕ в шпионаж в полза на правителството, рискуват да бъдат подложени на съд по бързата процедура, подобно на паралелните незаконни съдебни процедури, използвани от АПЕ; наказанието за такива предполагаеми „престъпления“ обикновено е екзекуция (вж. раздел III.A.1.g).¹⁵⁸ Талибаните и Исламска държава използват заплахи, сплашване и извършват насилиствени нападения срещу медийни компании и журналисти, за които се смята, че са критично настроени срещу тях.¹⁵⁹ В резултат от това журналистите си налагат авто-цензура поради опасения за безопасността си (вж. раздел III.A.2).¹⁶⁰

Има сведения и за това, че АПЕ ограничават правото на свобода на политическо участие. От началото на регистрацията на гласоподавателите на 14 април 2018,¹⁶¹ АПЕ са извършили нападения срещу места за регистрация на гласоподаватели и центрове за раздаване на *таџира* (национални лични карти) посредством целенасочени убийства, отвличания, заплахи, сплашване и тормоз на свързани с изборите служители и сили за сигурност.¹⁶² АПЕ са предупреждавали афганистанците да

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

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

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

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

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

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

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

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

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

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

¹⁶² UNAMA, *Afghanistan: Mid-Year Update on the Protection of Civilians in Armed Conflict: 1 January to 30 June 2018*, 15 July 2018,

не се регистрират за предстоящите избори и също така са глобявили граждани и/или са конфискували личните карти на тези, които вече са се регистрирали.¹⁶³ За периода между 14 април 2018 г. и 10 май 2018 г. UNAMA е потвърдила 23 свързани с изборите инцидента със сигурността, които са довели до 271 жертви (86 убити и 185 ранени).¹⁶⁴

Има и сведения, че АПЕ ограничават правото на свобода на движение чрез незаконни контролни пунктове и употребата на СВУ.¹⁶⁵ Докато през 2017 г. е отбелян спад в броя на цивилните жертви в резултат от несамоубийствени СВУ и целенасочени убийства в сравнение с 2016 г., UNAMA е документирала нарастване на тази бройка в резултат от комплексни¹⁶⁶ и самоубийствени атаки¹⁶⁷ (605 убити и 1 690 ранени; увеличение със 17 процента спрямо 2016 г.); броят на цивилните жертви от целенасочени и умишлени убийства остава приблизително на същото ниво както за 2016 г.¹⁶⁸ Цивилните жертви, в резултат от самоубийствени и комплексни атаки, приписвани на талибаните, бележат намаление с 22 процента спрямо 2016 г., а тези в резултат от такива атаки, за които е поела отговорност Исламска държава, са се увеличили с 18 процента.¹⁶⁹ СВУ, заложени в цивилни земеделски зони, пътеки, обществени пътища и други обществени места, възпрепятстват достъпа до здравеопазване, образование и източници на препитание и създават атмосфера на страх и несигурност, в която цивилните живеят в постоянен страх от смърт, осакатяване, тежки наранявания и разрушаване на собствеността.¹⁷⁰ Според сведенията цивилните в град Кабул продължават да са засегнати в по-голяма степен от самоубийствени и комплексни атаки; за 2017 г. UNAMA е регистрирала нарастване със 17 процента на броя на цивилните жертви в Кабул в резултат от самоубийствени атаки в сравнение с 2016 г.¹⁷¹ През 2017 г. UNAMA за първи път съобщава за самоубийствени и комплексни атаки на Исламска държава извън Нангархар или Кабул, в провинция Херат.¹⁷²

В публичните си заявления талибаните продължават да подчертават своята подкрепата за

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

¹⁶³ UNAMA, *Protection of Civilians in Armed Conflict: Election-Related Attacks and Abuses During the Initial Voter Registration Period*, 10 May 2018, https://unama.unmissions.org/sites/default/files/protection_of_civilians_-_special_report_-election-related_attacks_and_abuses_may_2018_english.pdf, p. 1; Tolo News, *Taliban Rejects Ghani’s Call For Them to Take Part in Elections*, 16 April 2018, <https://www.tolonews.com/afghanistan/taliban-rejects-ghani%E2%80%99s-call-them-take-part-elections>.

¹⁶⁴ 75 per cent of these incidents reportedly occurred at schools or mosques used for election purposes. UNAMA, *Protection of Civilians in Armed Conflict: Election-Related Attacks and Abuses During the Initial Voter Registration Period*, 10 May 2018, https://unama.unmissions.org/sites/default/files/protection_of_civilians_-_special_report_-election-related_attacks_and_abuses_may_2018_english.pdf.

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

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

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

¹⁶⁸ *Ibid.*, pp. 26, 28.

¹⁶⁹ *Ibid.*, p. 28.

¹⁷⁰ *Ibid.*, pp. 28-33.

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

¹⁷² *Ibid.*, pp. 1-2, 29.

образованието и да заявяват, че насърчаването на образованието в страната е една от главните им цели.¹⁷³ Има обаче сведения, че както талибаните и Исламска държава използват училища и медресета като места за индоктриниране и набиране на деца за бойци и за помощници в бойните действия.¹⁷⁴ Талибаните също така се намесват или се опитват да контролират учебната програма с оглед на спазване на одобрените от тях критерии¹⁷⁵.

Продължават съобщенията от всички региони на страната за инциденти на насилие, породено от конфликта, което се отразява на достъпа до образование.¹⁷⁶ Огромното мнозинство от съобщени инциденти за 2017 г. се приписват на АПЕ, сред които талибаните, и включват опожаряването на училища, целенасочени убийства и сплашване на учители и персонал, СВУ в училища или в околностите им, ракетни атаки срещу образователни заведения и затваряне на училища, особено девически.¹⁷⁷ През юли 2018 г. UNAMA изразява тревогата си във връзка с очертаващата се тенденция АПЕ да насочват атаките си към училища и персонала в тях в отговор на операциите на проправителствените сили.¹⁷⁸ Има съобщения също за завзети училища и използването им за военни цели, което нарушива защитения им статут по международното хуманитарно право и лишава децата от достъп до образование.¹⁷⁹ Освен това много училища в Афганистан остават затворени поради преобладаващите условия, свързани със сигурността, в съответния район.¹⁸⁰

Съобщава се също, че по подобен начин АПЕ ограничават достъпа до здравеопазване.¹⁸¹ През 2017 г. UNAMA е документирала 75 инцидента (31 убити и 34 ранени), при които АПЕ са нападали

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

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

¹⁷⁵ HRW, "I Won't Be a Doctor, and One Day You'll Be Sick" - Girls' Access to Education in Afghanistan, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html> , pp. 69-70; Landinfo, *Afghanistan: Taliban's Organization and Structure*, 23 August 2017, https://landinfo.no/asset/3589/1/3589_1.pdf, p. 22; Tolo News, *Daesh Threatens to Replace Curriculum in Jawzjan's District*, 5 July 2017, <https://www.tolonews.com/afghanistan/daesh-threatens-replace-curriculum-jawzjan%20%80%99s-district> ; The Diplomat, *The Schools of the Taliban*, 3 November 2016, <https://thediplomat.com/2016/11/the-schools-of-the-taliban/>

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

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

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

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

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

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

болници и здравни работници в сравнение със 120 инцидента през 2016 г. (10 убити и 13 ранени).¹⁸² Освен това АПЕ са наложили забрана върху кампанията за ваксинация за полиомиелит в някои части на страната, а ваксиниращите нямат достъп до други части поради условията на несигурност.¹⁸³

Правото на свобода на религията, според съобщенията, също е обект на все повече атаки от страна на АПЕ, включително нападения срещу религиозни храмове, религиозни лидери и вярващи; освен това АПЕ сплашват и нападат отделни лица и общности, които се възприемат като противоречащи на тълкуването на АПЕ на исламските принципи, норми и ценности.¹⁸⁴

2. Способност и желание на държавата да защитава цивилните от нарушения на правата на човека

Дори когато законодателството предвижда защита на правата на човека, изпълнението на задълженията на Афганистан по националното и международното право да спазва и защитава тези права на практика често остава проблематично. Управлението на Афганистан и придръжането към върховенството на закона се смятат за особено слаби.¹⁸⁵

Способността на правителството да защитава правата на човека се подкопава в много райони от несигурността и големия брой нападения от страна на АПЕ. Селските и нестабилните райони, според съобщенията, страдат от като цяло слаба официална съдебна система, която не е способна ефективно и надеждно да решава граждански и наказателни дела.¹⁸⁶ Назначените от правителството съдии и прокурори често не могат да се задържат в тези райони поради несигурност.¹⁸⁷ Комитетът на ООН за предотвратяване на изтезанията изразява загриженост по отношение на липсата на адекватни мерки на правителството за защита на правозащитници и журналисти срещу отмъщения за работата им.¹⁸⁸

Високото равнище на корупция, трудностите с ефективното управление и атмосферата на безнаказаност се съобщават от наблюдателите като фактори, които отслабват върховенството на закона и подкопават способността на държавата да осигури защита срещу нарушения на правата на човека.¹⁸⁹ Отговорността за нарушенията на правата на човека остава слаба, като е налице малка или

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

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

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

¹⁸⁵ UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 25; Freedom House, *Freedom in the World 2017: Afghanistan*, 2 June 2017, <http://www.refworld.org/docid/5936a46d13.html>. In the annual Rule of Law Index for 2017 compiled by the World Justice Project, Afghanistan ranks 111rd out of 113 countries. World Justice Project, *Rule of Law Index 2017-2018*, 2018, https://worldjusticeproject.org/sites/default/files/documents/WJP_ROLI_2017-18_Online-Edition_O.pdf. See also, FIDH, *Update for the 1st European Union (EU)-Afghanistan Special Working Group on Human Rights, Good Governance and Migration: 5 May 2018, Kabul, Afghanistan*, undated, https://www.fidh.org/IMG/pdf/20180503_eu-afghanistan-dialogue_bp.pdf.

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

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

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

¹⁸⁹ Freedom House, *Freedom in the World in 2018: Afghanistan*, 2018, <https://freedomhouse.org/report/freedom-world/2018/afghanistan>; RFE/RL,

никаква подкрепа за въвеждане на преходни правораздавателни механизми.¹⁹⁰ Както беше отбелязано по-горе, редица представители на държавата, на които е възложено спазването на правата на човека, включително АНП и АМП, самите те безнаказано извършват нарушения на правата на човека в някои части на страната.

Според сведенията корупцията е засегнала много части от държавния апарат на национално, провинциално и местно равнище.¹⁹¹ Афганистанските граждани трябва да плащат подкупи, за да получат публични услуги от служби като областната управа, общината и митницата.¹⁹² Смята се, че в полицията корупцията е вътрешно присъща, както и злоупотребите с власт и изнудването.¹⁹³ Съдебната система също е проядена от повсеместна корупция.¹⁹⁴

В някои райони местните общности изглежда, че предпочитат структурите на паралелното правосъдие, като съдилища под ръководството на талибаните, за уреждане на гражданска спорове.¹⁹⁵ Въпреки това UNAMA отбелязва, че тези структури обикновено се налагат на общностите и че наказания като екзекуции и ампутации, които се раздават от тях, представляват криминални престъпления според афганистанското право.¹⁹⁶

D. Хуманитарна ситуация

Съществуващият конфликт в Афганистан продължава да има изключително тежко отражение върху хуманитарната ситуация в страната.¹⁹⁷ В резултат на общото засилване на несигурността,¹⁹⁸ включително увеличението на инцидентите, засягащи хуманитарните работници,¹⁹⁹ е ограничен

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

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

¹⁹¹ IWPR, "Unbearable" Corruption in Afghan Province, 12 February 2018, <https://www.ecoi.net/en/document/1424557.html>; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 December 2017, A/72/651-S/2017/1056, <http://www.refworld.org/docid/5a56465c4.html>. In 2017, 83.7 per cent of Afghan (respondents) stated that corruption is a major problem in Afghanistan as a whole, with 69.8 per cent saying corruption is a major problem in their daily life. Asia Foundation, *A Survey of the Afghan People: Afghanistan in 2017*, 14 November 2017, https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf, p. 10; Freedom House, *Freedom in the World 2017: Afghanistan*, 2 June 2017, <http://www.refworld.org/docid/5936a46d13.html>. Afghanistan came 177th out of 180 countries in the 2017 Corruption Perceptions Index: Transparency International, *2017 Corruption Perceptions Index*, https://www.transparency.org/news/feature/corruption_perceptions_index_2017. For information on the Government's anti-corruption strategy, see also: UNSC, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>; UNAMA, *Afghanistan's Fight Against Corruption*, March 2017, https://unama.unmissions.org/sites/default/files/afghanistans_fight_against_corruption_the_other_battlefield_-april_2017-english_2.pdf.

¹⁹² Asia Foundation, *A Survey of the Afghan People: Afghanistan in 2017*, 14 November 2017, https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf, p. 100.

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

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

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

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

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

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

¹⁹⁹ "Constraints on humanitarian access continued, with a total of 39 incidents affecting United Nations and aid workers from 15 December to 31 January. In 2017, a total of 388 incidents were reported, compared with 200 in 2016. The higher number can be attributed partly to the protracted nature of the conflict in certain areas of the country as well as to improved reporting. In 2017, 21 aid workers were killed, 33 injured and 149

достъпът до засегнатото население за оказване на хуманитарна помощ.²⁰⁰ До края на 2017 г. от общо 34,5 млн. население 14 млн. живеят в най-силно засегнатите от конфликта райони.²⁰¹ Ограничено присъствие на хуманитарни работници в засегнатите от конфликта райони засяга особено силно възможността за предоставяне на животоспасяваща помощ за най-уязвимите афганистански жители.²⁰²

Десетилетията на конфликт и постоянни природни бедствия са довели афганистанското население до състояние на силна уязвимост, като механизмите за справяне на много хора са изчерпани. Продължаващият конфликт допълнително засилва тези уязвимости чрез разрушаване на поминъка и загуба на домашни животни, нарастващо разпространение на заразни болести, засилване на разселването, постоянни нарушения на правата на човека и все по-високо равнище на престъпност.²⁰³ Също така проточилият се конфликт, лошото управление и слабите и корумпирани институции са довели до положение, при което механизмите на готовност за бедствия, намаляване на риска и бърза реакция са слаби или липсват.²⁰⁴ В резултат на това природните бедствия, включително наводнения, свлачища, земетресения, суши и сурови атмосферни условия през зимата са допълнителна причина за уязвимостта на хората, които вече не могат да се справят.²⁰⁵ Съответно към 3,3-те млн. афганистанци, за които в края на 2017 г. е установено, че ще се нуждаят от хуманитарна помощ през 2018 г., се добавят още 8,7 млн. афганистанци с хронични хуманитарни потребности, изискващи дългосрочни систематични действия.²⁰⁶ Хуманитарната ситуация в Афганистан е усложнена още повече от страшна суша, за която се съобщава, че е засегнала най-вече северните и западните части на страната.²⁰⁷

Хуманитарните показатели са критично ниски в Афганистан. Според съобщенията над 1,6 млн. деца страдат от остро недохранване, а детската смъртност е сред най-високите в света: 70 на 1 000 новородени.²⁰⁸ Според Централната статистическа организация на Афганистан делът на

abducted. In December [2017], 19 incidents against health workers or health facilities were recorded, bringing the total to 143 such incidents for the entire year. Incidents against health workers and facilities represented 38 per cent of all recorded incidents against humanitarian workers in 2017.” UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ad73b254.html>, para 44. See also, for example, The Guardian, *Isis Claims Attack on Save the Children Office in Afghanistan*, 24 January 2018, <https://www.theguardian.com/world/2018/jan/24/explosion-attack-save-the-children-office-jalalabad-afghanistan>.

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

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

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

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

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

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

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

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

²⁰⁸ OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html>, p. 5; UN Inter-Agency Group for Child Mortality Estimation (UN IGME), *Levels & Trends in Child Mortality – Report 2017*, 19 October 2017, http://www.childmortality.org/files_v21/download/IGME%20report%202017%20child%20mortality%20final.pdf, p. 24; UNICEF, *Country Statistics: Afghanistan*, <http://data.unicef.org/countries/AFG.html>. OCHA also reported that more than one third of Afghan children have been

населението, което живее под националната линия на бедност, е нараснал на 55 процента през 2016-2017 г. от 33,7 процента през 2007-2008 г. и 38,3 процента през 2011-2012 г.²⁰⁹ 1,9 млн. афганистанци живеят в пълна несигурност за прехраната си.²¹⁰ Според разчетите само 45 процента от населението има достъп до питейна вода.²¹¹ Афганистан остава най-бедната страна в региона, като се нарежда на 169 място от 188 страни в Индекса на ООН за човешкото развитие за 2016 г.²¹²

Продължаващият конфликт има особено сериозни последствия за достъпа до здравеопазване, включително в резултат от преките нападения срещу здравни работници и здравни заведения, но също и поради това, че общата несигурност препятства достъпа до здравни заведения, особено в районите под контрола или влиянието на АПЕ.²¹³ Съобщава се, че 4,5 млн. души нямат достъп до елементарна здравна помощ.²¹⁴

E. Разселване, предизвикано от конфликта

Конфликтът и несигурността продължават да са главните двигатели за вътрешното разселване в Афганистан, което засяга всички части на страната.²¹⁵ Има оценки, че към края на 2017 г. повече от 1,8 млн. афганистанци живеят като вътрешно разселени лица (ВРЛ) в резултат от конфликта или насилието.²¹⁶ Разчетите сочат още 474 000 новоразселени през 2017 г., което е намаление спрямо оценката за 653 000 през 2016 г., но увеличение спрямо броя на разселените лица, съобщени за 2015 г. (около 335 000 души).²¹⁷ Според сведенията за периода между 1 януари и 20 май 2018 г. има

exposed to psychological distress due to loss of family and community members and the constant risk of death and injuries. OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html>, p. 5

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

²¹⁰ OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html>, p. 5. See also, IFRC, *Information Bulletin, Afghanistan: Drought*, 16 May 2018, <https://reliefweb.int/sites/reliefweb.int/files/resources/BAFdr160518.pdf>.

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

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

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

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

²¹⁵ “31 of 34 provinces produced IDPs in 2016, and all 34 provinces hosted verified IDP populations.” Protection Cluster Afghanistan, *Afghanistan*, April 2017, https://reliefweb.int/sites/reliefweb.int/files/resources/2017_04_protection_cluster_factsheet_en.pdf. According to the UN Secretary-General, “Internal displacement has affected 30 of the 34 provinces, with Baghlan and Kunduz in the north, Nangarhar in the east and Uruzgan and Kandahar in the south experiencing the highest levels of displacement. While there was an overall reduction in the number of people displaced compared with the same period in 2016 [mid-June to mid-August], the deteriorating security situation has left many displaced communities in an increasingly precarious situation, with no immediate prospect of returning to their areas of origin.” UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 September 2017, A/72/392-S/2017/783, <http://www.refworld.org/docid/59c3a9f64.html>, para. 38. “The World Bank and UNHCR published a policy brief in 2016 that described an increase in secondary displacement among returnees in Afghanistan. It highlighted a two-fold increase in the incidence of internal displacement among returnees since 2013, when compared with return flows in 2002. As the pace of repatriations increases while the country struggles with simultaneous security and economic crises, the report warns of the risks of displacement upon return. The brief prompted the focus of the research for this report on the refugee-returnee-IDP nexus and the need to recognise the prevalence of multiple displacement in Afghanistan. Many of the households surveyed for this study reported experiencing repeated displacement. Of the returnee-IDPs interviewed, 72 per cent of their households had been displaced twice and 27 per cent displaced three times. Our [research] revealed that returnees and IDPs share the same vulnerabilities, and as such responses should be cohesive and cover all subgroups of the country’s displaced population.” NRC/IDMC and Samuel Hall, *Escaping War: Where to Next?*, January 2018, <http://www.refworld.org/docid/5ac7874f4.html>, p. 17; see also, *ibid*, pp. 13-14.

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

²¹⁷ IDMC, *Global Internal Displacement Database: Afghanistan*, 31 December 2017, <http://www.internal-displacement.org/countries/afghanistan>. “This figure consists of the newly displaced population due to conflict between 1 January 2017 and 31 December 2017 [...] Our estimate is based on the number of displaced households whose petitions to the government for registration and assistance have been accepted and validated, as

114 995 новоразселени лица.²¹⁸ Трудно е да се получат данни за общия брой ВРЛ в страната: официалните цифри за общия брой на ВРЛ може да занижават действителния машаб на проблема с разселването в Афганистан, тъй като вероятно изключват някои ВРЛ, разпръснати в градските райони, както и разселените в селски райони и засегнати от конфликта части, които са недостъпни за хуманитарните работници.²¹⁹ Според сведенията към края на 2017 г. повече от 50 процента от лицата, разселени поради конфликта в Афганистан, са се разселявали два или повече пъти в сравнение с едва 7 процента преди пет години.²²⁰

Националната политика за вътрешно разселените лица, чието прилагане започва през февруари 2014 г., обхваща разселването в резултат от конфликта и от природни бедствия и урежда правата на ВРЛ, както и ролите и отговорностите на различните министерства в правителството, а също така и ролята на хуманитарните и други партньори.²²¹ Според съобщенията обаче проблеми с капацитета на правителството продължават да пречат на изпълнението на политиката.²²² ВРЛ остават сред най-уязвимите групи в Афганистан;²²³ много от тях – особено тези в засегнатите от конфликта селски райони – остават извън обхвата на хуманитарните организации.²²⁴ Особено уязвими сред ВРЛ са жените, децата, възрастните хора и хората с увреждания.²²⁵

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

²¹⁸ Actual Displacements between 1 January 2018 and 20 May 2018. OCHA, *Afghanistan: Conflict Induced Displacements (as of 27 May 2018)*, 27 May 2018, <https://www.humanitarianresponse.info/en/operations/afghanistan/idps>. See also, OCHA Afghanistan, HDX Dataset, <https://data.humdata.org/organization/ocha-afghanistan>; OCHA, *Afghanistan Weekly Field Report*, 21-27 May 2018, https://reliefweb.int/sites/reliefweb.int/files/resources/20180528_afghanistan_weekly_field_report_21 - 27 may 2018.pdf.

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

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

²²¹ World Bank, UNHCR, *Afghanistan's Forced Displacement Legal & Policy Framework Assessment*, 20 September 2017, <http://documents.worldbank.org/curated/en/11726151556309980/Afghanistan-s-forced-displacement-legal-and-policy-framework-assessment>, pp. 33-34. See also, The Government of the Islamic Republic of Afghanistan, *National Policy On Internally Displaced Persons*, 25 November 2013, <http://www.refworld.org/docid/5b06ceae4.html>; UNHCR, *UNHCR Welcomes Afghanistan's New IDP policy*, 11 February 2014, <http://www.unhcr.org/52fa062a9.html>.

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

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

²²⁴ IDMC, *Global Report on Internal Displacement 2018*, May 2018, <http://www.internal-displacement.org/sites/default/files/publications/documents/201805-final-GRID-2018.pdf>, pp. 36-37. "People living in inaccessible areas are likely to be among the most vulnerable, but information is lacking. Humanitarians do not know the extent of displacement in areas not under government control. Nor are they aware of IDPs' protection priorities in these areas, or how they differ from those elsewhere. Almost all profiling exercises and other data collection on IDPs take place in accessible areas, meaning that analyses which inform programming are inherently biased." NRC/IDMC and Samuel Hall, *Escaping War: Where to Next?*, January 2018, <http://www.refworld.org/docid/5ac7874f4.html>, p. 14. see also, ICRC, *Afghanistan: ICRC Reduces its Presence in the Country*, 9 October 2017, <https://www.icrc.org/en/document/afghanistan-icrc-reduces-its-presence-country>.

²²⁵ Protection Cluster Afghanistan, April 2017, http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Afghanistan/files/factsheets/201704-protection-cluster-factsheet_en.pdf; OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html>, pp. 12-13; Protection Cluster Afghanistan, *Protracted Conflict: Increasing Protection Outcomes for Population Affected by the Conflict in*

Като част от по-общата тенденция за продължаващ урбанизация в Афганистан, много ВРЛ се озовават в големи градски центрове, които са с ограничен капацитет за нови жители и където достъпът до основни услуги остава силно затруднен.²²⁶ Липсата на ефикасно градоустройствена политика и регуляторна рамка, както и слабото и неефективно управление са допринесли за задълбочаване на бедността и неравенството в градските зони.²²⁷ Голяма част от афганистанските градски домакинства със средни и ниски доходи живеят в неофициални селища, които са с лошо разположение и без услуги.²²⁸ Според Проучването за условията на живот в Афганистан за 2016-2017 г. 72,4 процента от градското население в Афганистан живее в бордери, неофициални селища или неадекватни жилища.²²⁹ Според сведенията бедността сред градските домакинства е повсеместна и икономическото положение на тези домакинства се е влошило значително през последните години.²³⁰

Липсата на подходяща земя в градските райони и липсата на жилища на достъпни цени често принуждават новите и дълговременните ВРЛ да живеят в незаконни селища без адекватен стандарт на живот и ограничен достъп до вода и канализация.²³¹ Съобщава се за остарели политики на

Afghanistan, August 2017,
http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Afghanistan/files/afg_2017_summary_of_background_paper_-increasing_protection_outcomes_in_afghanistan.en.pdf, p. 3; REACH, *Informal Settlement Food Security Assessment: Afghanistan*, January 2017, http://fscluster.org/sites/default/files/documents/reach_afg_report_informal_settlement_food_security_assessment_january_2017.pdf, p. 12.

²²⁶ According to the Protection Cluster in Afghanistan, key protection concerns include “Severe strains on existing absorption capacity and infrastructure”. The Protection Cluster notes, “The enormous surge in returns [from Pakistan and Iran] resulted in extreme stress on the already overstretched absorption capacity in Afghanistan’s main provincial and district centres, as many Afghans joined the legions of IDPs unable to return to their areas of origin due to the worsening conflict. [...] 70% of IDPs reside in urban areas, like Kabul, Herat, Mazar-i-Sharif and Jalalabad. With limited job opportunities, no social protection nets and poor shelter conditions, displaced people not only face increased protection risks in their daily life, but are also forced into secondary displacement and negative coping strategies, like child labour, early marriage, reducing quantity and quality of food etc.” Protection Cluster Afghanistan, April 2017, http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Afghanistan/files/factsheets/201704-protection-cluster-factsheet_en.pdf, p. 2. See also, NRC/IDMC, *Escaping War: Where to Next?*, January 2018, <http://www.refworld.org/docid/5ac7874f4.html>, pp. 20, 25; IOM, *Displacement Survey Shows 3.5 Million Internally Displaced, Returnees from Abroad in 15 Afghan Provinces*, 8 May 2018, <http://afghanistan.iom.int/press-releases/displacement-survey-shows-35-million-internally-displaced-returnees-abroad-15-afghan>; OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html>, p. 11; Protection Cluster Afghanistan, Central Region Update, May 2017, http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Afghanistan/files/factsheets/20170621_cr_may_factsheet.pdf; Cordaid, *Responding to the Plight of Displaced and Returning Families*, 26 February 2018, <https://reliefweb.int/report/afghanistan/responding-plight-displaced-and-returning-families>.

²²⁷ Afghan Research and Evaluation Unit (AREU) and German Federal Ministry of Economic Cooperation and Development, *Issues Paper: Urban Governance in Afghanistan: Assessing the New Urban Development Programme and its Implementation*, June 2017, <https://areu.org.af/wp-content/uploads/2017/06/1716E-Urban-Governance-in-Afghanistan-assessing-the-new-urban-development-programme-and-its-imple.pdf>, p. 12.

²²⁸ International Growth Centre, *Policy Options for Kabul’s Informal Settlements*, January 2018, <https://www.theigc.org/wp-content/uploads/2018/01/Policy-options-for-Kabuls-informal-settlements-19.01.188.pdf>, p. 2; OCHA, *Afghanistan: Informal Settlement Mapping and Profiling*, November 2017, https://reliefweb.int/sites/reliefweb.int/files/resources/reach_afg_map_informal_settlement_province_density_nov2017.pdf. See also, Government of the Islamic Republic of Afghanistan, *The State of Afghan Cities 2015*, September 2015, <http://unhabitat.org/books/soac2015/>, pp. 10, 86.

²²⁹ The estimate is based on the criteria to determine slum households used in the Millennium Sustainable Development Goal indicator 11.1.1 for sustainable cities and communities. “The definition of slum- and inadequate housing includes components of durability of housing, overcrowding, access to drinking water and sanitation, and security of tenure.” Central Statistics Organization, *Afghanistan Living Condition Survey 2016-2017: Highlights Report*, 2018, [http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight\(1\).pdf](http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight(1).pdf), pp. 2, 10.

²³⁰ “The latest poverty figures imply that close to 16 million Afghans lived in poverty.” The proportion of the population living below the national poverty line reportedly increased from 34 per cent in 2007-2008 to 55 per cent in 2016-2017. Central Statistics Organization, *Afghanistan Living Condition Survey 2016-2017: Highlights Report*, 2018, [http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight\(1\).pdf](http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight(1).pdf), pp. 6-7. Around 80 per cent of IDPs surveyed by NRC/IDMC and Samuel Hall reported holding high levels of household debt and almost 20 per cent of IDP families sent at least one child out to work. NRC/IDMC and Samuel Hall, *Escaping War: Where to Next?*, January 2018, <http://www.refworld.org/docid/5ac7874f4.html>, p. 10. “Perception-based indicators of economic health have worsened since last year (figure 3.2). One-third of respondents (33.5%) report that the financial well-being of their household has declined compared to last year, while 20.3% report improvement, and 46.0% report no change. By comparison, in 2012, almost half of respondents (49.8%) reported improvement compared to the previous year, and only 6.9% reported being worse off.” The Asia Foundation, *Afghanistan in 2017: A Survey of the Afghan People*, November 2017, https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf, pp. 66-67. See also, WFP, FAO, Food Security Cluster, *Seasonal Food Security Assessment: Afghanistan*, 2017, <https://reliefweb.int/sites/reliefweb.int/files/resources/post20harvest20fsfa20201720report20by20fsac.pdf>.

²³¹ 63 per cent of IDPs surveyed by NRC/IDMC and Samuel Hall rated their housing conditions as either poor or very poor, with varying levels depending on the region. The same research found that “IDPs’ inability to afford decent housing, particularly in urban areas, leads them to recur to substandard shelter solutions such as overcrowded informal settlements and slums in order to be closer to services and jobs.” NRC/IDMC and Samuel Hall, *Escaping War: Where to Next?*, January 2018, <http://www.refworld.org/docid/5ac7874f4.html>, pp. 25 and 53. See also, The Johanniter, *Afghanistan: “Need for Food and Wood” in Settlements of Kabul*, 12 December 2017, <http://www.johanniter.de/die-johanniter/johanniter-unfall-hilfe/start/news/afghanistan-need-for-food-and-wood-in-settlements-of-kabul/>; Multi-Cluster Needs Assessment,

владение на земята и липсата на сигурност на владението, поради което ВРЛ и другите жители на неофициални селища са уязвими за постоянни заплахи от изселване и вторично разселване.²³² Заграбването на земя, включително на земя, определена за бежанци или ВРЛ, е допълнителна пречка.²³³

F. Бежанци и завърнали се лица

Пакистан и Иран продължават да приемат огромното мнозинство (според оценките 90%) от афганистанските бежанци, което възлиза на 2,35 млн. души.²³⁴ През 2017, повече от 620 000 афганистанци са се завърнали от Иран и Пакистан, като тази брой през 2016 г. е била 1 млн.²³⁵

Поради сложността на положението в Афганистан, което засяга региона като цяло, исламските републики Иран, Афганистан и Пакистан предприеха през 2011 г. с помощта на ВКБОН

Afghanistan: *Shelter and WASH in Informal Settlements*, November 2017, https://reliefweb.int/sites/reliefweb.int/files/resources/reach_afg_report_multi-cluster_needs_assessment_wash_and_esnfi_november2017_0.pdf , pp. 21-25. "The food security situation was found to be severe across the two provinces, with 68% of households being severely food insecure, and especially in Nangarhar where 70% of households were considered severely food insecure, and only 9% were food secure. In Kabul, 55% were found to be severely insecure – an increase of seven percentage points since November 2015. However, in Kabul, food secure households had risen very slightly by 0.8 percentage points, possibly indicating greater inequality within the settlements." REACH, *Informal Settlement Food Security Assessment: Afghanistan*, January 2017, http://fscluster.org/sites/default/files/documents/reach_afg_report_informal_settlement_food_security_assessment_january_2017.pdf, pp. 3-4.

²³² USAID, *Country Profile: Afghanistan*, May 2018, <https://www.land-links.org/country-profile/afghanistan/>; IRIN, *As Conflict Spreads, Chronic Displacement Becomes a Powderkeg in Afghanistan*, 9 April 2018, <https://www.irinnews.org/feature/2018/04/09/conflict-spreads-chronic-displacement-becomes-powderkeg-afghanistan>; Housing, Land and Property Task Force Afghanistan, *Afghanistan*, April 2017, http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Afghanistan/files/factsheets/201704-hlp-factsheet_en.pdf;

International Growth Centre, *Policy Options for Kabul's Informal Settlements*, January 2018, <https://www.theigc.org/wp-content/uploads/2018/01/Policy-options-for-Kabuls-informal-settlements-19.01.188.pdf>, pp. 11-12. "A new Land Management Law was issued by presidential decree on 4 March 2017. The law makes the administration of public land more efficient and transparent and reduces institutional vulnerabilities to corruption. In April, a revised land allocation law was drafted [...] The aims of the law are to streamline processes, increase transparency and reduce institutional vulnerabilities to corruption in the allocation of public land. The law is awaiting presidential endorsement." UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, <http://www.refworld.org/docid/5ad73b254.html>, p. 20. An Executive Decree on Land Allocation was reportedly approved by the Cabinet in March 2018. OCHA, *Afghanistan: Humanitarian Response Plan, Year-End Report, January – December 2017*, 1 December 2017, <http://www.refworld.org/docid/5b082ef77.html>, p. 11. "[A] priority point on reform and implementation of land allocation schemes and restitution and compensation regulations is needed to ensure that both IDPs and returnees are given adequate opportunities to achieve durable solutions. The revision of presidential decree 104 has established a set of guidelines and technical procedures, currently awaiting approval from the president's office. The guidelines lay out basic requirements for land selection and a bank of all suitable government land, with distribution planned to start in 2018." NRC/IDMC and Samuel Hall, *Escaping War: Where to Next?*, January 2018, <http://www.refworld.org/docid/5ac7874f4.html>, p. 54.

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

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

²³⁵ An estimated 1.4 million Afghan refugees are in Pakistan, and an estimated 950,000 Afghan refugees are in Iran. UNHCR, *Global Report 2017*, http://reporting.unhcr.org/sites/default/files/gr2017/pdf/GR2017_English_Full_lowres.pdf , p. 97. In addition, an estimated 2.3-3 million Afghans are reportedly living in Pakistan and Iran. There are an estimated 800,000 to 1 million undocumented Afghans in Pakistan and according to the Government of Iran there are 1.5 to 2 million undocumented Afghans in the Islamic Republic of Iran. 'Undocumented' in Pakistan refers to Afghans who do not hold a Proof of Registration card. In Iran 'undocumented' refers to Afghans who reside irregularly in the country (i.e. without Amayesh cards or valid visa; the designation as 'undocumented' does not refer to the possession of civil documentation in Afghanistan such as Tazkera and/or passports). UNHCR, IOM, Returns to Afghanistan in 2017, 28 February 2018, https://www.iom.int/sites/default/files/press_release/file/joint_returnee_report_iom_unhcr_final.pdf , p. 4.

четиристранен процес на консултации за намиране и прилагане на трайни решения за афганистанските бежанци в региона. Разработена е *Стратегия за решаване на въпроса за подкрепа на доброволното депатриране на афганистанските бежанци, устойчива реинтеграция и подпомагане на приемащите страни* (SSAR), която предлага всеобхватна и интегрирана рамка за съвместни действия, насочени към запазване на пространство за убежище на афганистански бежанци в съседните страни и подпомагане на устойчивата реинтеграция на афганистанците, които желаят да се завърнат доброволно в Афганистан.²³⁶ Последната е особено важна, тъй като според сведенията много афганистанци, които са се завърнали през предишните години, не са могли да се реинтегрират в общностите, от които произхождат.²³⁷ Завърналите се изпитват сериозни затруднения да възстановят живота си в Афганистан.²³⁸ Сведенията сочат, че те са изключително уязвими – със силно ограничен достъп до препитание, храна и подслон.²³⁹ Сред пречките пред завръщането както на ВРЛ, така и на завръщащи се бежанци са продължаващата несигурност в родните им места; загубата на поминък и имоти; липсата на достъп до здравеопазване и образование и трудности да си върнат земята и собствеността.²⁴⁰

ВКБОН признава правото на всички лица да се завърнат в страната си на произход, дори и при неблагоприятни обстоятелства. Поради това ВКБОН поддържа готовността си да подпомага афганистанците, които са регистрирани бежанци в съседни на Афганистан страни и които, бидейки напълно информирани за положението в родните си места, решават доброволно да се завърнат в Афганистан. Въпреки усилията на правителството и международната общност завърналите се

²³⁶ This includes 60,000 registered refugees who returned from Pakistan, 100,000 undocumented returnees from Pakistan, and over 450,000 undocumented returnees from the Islamic Republic of Iran. UNHCR, IOM, *Returns to Afghanistan in 2017*, 28 February 2018, https://www.iom.int/sites/default/files/press_release/file/joint_returnee_report_iom_unhcr_final.pdf, p. 4. See also, UNHCR Afghanistan, *Afghan Voluntary Repatriation 2018*, 4 June 2018, <https://data.humdata.org/dataset/afghan-voluntary-repatration-2018>; OCHA, *Pakistan: Afghan Refugees and Undocumented Afghan Repatriation (06 - 12 May 2018)*, 17 May 2018, https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/afghan_returns_20180512.pdf; Refugees International, *The Return of Thousands of Afghans from Turkey back to Afghanistan Is Cause for Alarm*, 7 May 2018, <https://www.refugeesinternational.org/advocacy-letters-1/afghanrefugeesinturkey>.

²³⁷ “The Solutions Strategy for Afghan Refugees (SSAR) remained a vital regional platform for solutions in 2017. Since its adoption in 2012, it has continued to pave the way for the UNHCR-assisted voluntary repatriation of more than 660,000 Afghan refugees. In 2017, some 58,800 refugees, mostly from Pakistan, chose to return home. Despite a decrease from the year before, this was still globally the third largest number of voluntary returns from one country in that period.” UNHCR, *Global Report 2017*, http://reporting.unhcr.org/sites/default/files/gr2017/pdf/GR2017_English_Full_lowres.pdf, p. 97. See also, *Conclusions of the 29th Tripartite Commission Meeting Between the Government of the Islamic Republic of Afghanistan and Pakistan and UNHCR*, 20 November 2017, <https://data2.unhcr.org/en/documents/download/61184>; Conclusions of the Fifth Meeting of the Quadripartite Steering Committee, *Solutions Strategy for Afghan Refugees to Support Voluntary Repatriation, Sustainable Reintegration and Assistance to Host Countries*, 1 December 2017, <https://data2.unhcr.org/en/documents/download/61185>; UNHCR, *Solutions Strategy for Afghan Refugees to Support Voluntary Repatriation, Sustainable Reintegration and Assistance to Host Countries*, May 2012, <http://www.unhcr.org/pages/4f9016576.html>; UNHCR, *Afghan Conference: Delegates Urged to Support New Solutions Strategy*, 2 May 2012, <http://www.unhcr.org/4fa0e8319.html>.

²³⁸ IRIN, *Afghanistan: Where Home is a Battlefield*, 1 May 2018, <https://www.irinnews.org/feature/2018/05/01/Afghanistan-Pakistan-returnees-refugees-conflict>. “[T]he existing capacity to absorb new arrivals in country is under significant strain and negative coping mechanisms such as remigration are increasingly prevalent. [...] Returns are taking place against a backdrop of increased internal displacement and high civilian casualties due to persisting instability in several regions of Afghanistan. During 2017, over 500,000 individuals were newly displaced, while over 674,000 individuals were displaced in 2016. The continuing insecurity and limited capacity to absorb returning Afghans and those displaced within Afghanistan could lead to secondary displacement and onward movement.” UNHCR, IOM, *Returns to Afghanistan in 2017*, 28 February 2018, https://www.iom.int/sites/default/files/press_release/file/joint_returnee_report_iom_unhcr_final.pdf, p. 4.

²³⁹ UN News, *Returning Home, Afghans Continue to Face Challenges in Rebuilding Their Lives – UN Agencies*, 12 April 2018, <https://news.un.org/en/story/2018/04/1007131>; NRC/IDMC and Samuel Hall, *Escaping War: Where to Next?*, January 2018, <http://www.refworld.org/docid/5ac7874f4.html>, p. 10; IDMC and Samuel Hall, *The Invisible Majority: Going “Home” to Displacement, Afghanistan’s Returnee-IDPs*, December 2017, <http://www.internal-displacement.org/sites/default/files/inline-files/20171214-idmc-afghanistan-case-study.pdf>, pp. 5-7.

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

продължават да се сблъскват с различни затруднения при интеграцията им. По-общо, доброволното депатриране и принудителното връщане на търсещи закрила лица, получили отказ на молбите си, са напълно различни процеси, свързани с различни отговорности на участниците. Ето защо ангажментът на ВКБООН към афганистанците, решили доброволно да се завърнат в Афганистан, не трябва да се възприема като оценка от страна на ВКБООН на сигурността и другите аспекти на положението в Афганистан за лицата, подали молба за международна закрила в страните на убежище.

Сред лицата, подали молба за закрила в 22 страни в Европа, Северна Америка, Океания и Азия между януари и април 2018 г., търсещите закрила лица от Афганистан са най-голямата група с повече от 30 000 молби.²⁴¹ В световен план през първата половина на подадените от афганистанци молби са около 52 000, което представлява съществено намаление спрямо същия период на 2016 г. (124 000).²⁴² През 2017 г. Афганистан е сред страните на произход с най-голям брой молби за закрила, подадени пред ВКБООН – общо 149 824.²⁴³

III. Критерии при определяне на нуждата от международна закрила

Хората, бягащи от Афганистан, може да са застрашени от преследване по причини, свързани с продължаващия военен конфликт в Афганистан, или поради сериозни нарушения на правата на човека, които не са пряко свързани с конфликта, или от съчетание на двете.

Според ВКБООН лицата, които се вписват в един или повече от рисковите профили, посочени в настоящия раздел, може да се нуждаят от международна закрила в зависимост от индивидуалните обстоятелства на всеки случай. Посочените тук профили обаче не са непременно изчерпателни; те се основават на информация, известна на ВКБООН по време на изготвянето на настоящия материал. Не трябва дадена молба автоматично да се определя като неоснователна само защото не попада в нито един от описаните тук профили.

В зависимост от конкретните обстоятелства на случая, членове на семейството или други членове на домакинството на лица от тези профили може също да се нуждаят от международна закрила поради връзката им със застрашените лица.

Афганистан продължава да бъде засегнат от немеждународен военен конфликт.²⁴⁴ Лицата, които бягат от насилие или заплаха от насилие поради този конфликт, може да отговарят на критериите за статут на бежанец съгласно член 1(A)(2) от Конвенцията от 1951 г. С оглед на това опасенията от преследване вследствие на насилието трябва бъдат по причина на някое от основанията по Конвенцията от 1951 г. В случая с Афганистан примерите за обстоятелства, когато цивилни лица са подложени на насилие по някоя от причините, посочени в Конвенцията от 1951 г., включват ситуации, когато насилието е насочено към области, където живеят предимно цивилни с конкретни етнически, политически или религиозни характеристики, или на места, където се събират цивилни предимно с такива характеристики (включително пазари, джамии, училища или големи публични събирания като сватби). За да отговаря на условията за статут на бежанец, няма изискване лицето

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

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

²⁴³ http://popstats.unhcr.org/en/asylum_seekers.

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

лично да е познато на субектите на преследването или лично да се издирва от тях. По същия начин цели общности може да изпитват основателен страх от преследване на едно или повече основания по Конвенцията от 1951 г.; няма изискване дадено лице да е пострадало от посегателство, чиято форма или степен да е по-тежка от посегателствата спрямо други лица със същите характеристики.²⁴⁵

За да попаднат бягащите от насилие цивилни в обхвата на член 1(A)(2) от Конвенцията от 1951 г., въздействието на насилието трябва да бъде достатъчно сериозно, за да съставлява преследване. Риск от редовно излагане на насилиствено поведение или на последствията от такова поведение може да съставлява преследване съгласно член 1(A)(2) на Конвенцията от 1951 г. или отделно, или кумултивно. В условията на конфликта на Афганистан относими съображения за определяне дали последствията от насилие за цивилните са достатъчно сериозни, за да съответстват на прага на преследването, са броят на цивилните жертви и броят на инциденти със сигурността, както и наличието на сериозни нарушения на международното хуманитарно право, които застрашават живота или свободата, или друго сериозно посегателство. Тези съображения обаче не са ограничени само до прякото въздействие на насилието, но обхващат и последствията от насилието, които са по-дългосрочни и косвени, включително отражението на конфликта върху положението с правата на човека и степента, до която той препятства способността на държавата да опазва правата на човека. От гледна точка на конфликта в Афганистан факторите, които са важни в това отношение, са:

- (i) контрол върху цивилното население от страна на АПЕ, включително чрез налагане на паралелно правосъдие и раздаване на незаконни наказания, както и чрез средства на заплаха и принуда на цивилни лица, ограничения на свободата на движение и използване на изнудване и незаконно облагане с данъци;
- (ii) принудително военизиране;
- (iii) отражение на насилието и несигурността върху хуманитарната ситуация, което се проявява чрез несигурност на прехраната, бедност и разрушаване на поминъка;
- (iv) високи равнища на организирана престъпност и способността на местни главатари, военни вождове и корумпирани държавни чиновници да действат безнаказано;
- (v) системни ограничения на достъпа до образование и елементарно здравеопазване в резултат на несигурността; и
- (vi) системни ограничения на участието в обществения живот, включително в частност на жените.²⁴⁶

Всички молби, подадени от търсещи закрила лица, трябва да се разглеждат по същество посредством справедливи и ефикасни процедури за определяне на статут и отчитане на актуална и надеждна информация за страната на произход, независимо дали се оценяват на базата на критериите за бежанец в Конвенцията от 1951 г., определението за бежанец в регионалните инструменти, мандата на ВКБООН или допълнителните форми на закрила на основата на по-широки международни критерии за закрила. Някои молби от търсещи закрила лица от Афганистан може да изискват проверка за евентуално изключване от статута на бежанец (вж. Раздел III.Г.).

Предоставен статут на бежанец следва да се преразглежда само ако са налице признания, че в съответния случай има основания за:

- (i) анулиране на статут на бежанец, който първоначално е бил предоставен погрешно;
- (ii) отнемане на статут на бежанец основание член 1F от Конвенцията от 1951 г.; или

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

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

(iii) прекратяване на статут бежанец на основание член 1C(1-4) от Конвенцията от 1951 г.²⁴⁷ ВКБООН смята, че сегашното положение в Афганистан не дава основание за прекратяване на статут на бежанец на основание член 1C(5) от Конвенцията от 1951 г.

A. Рискови профили

1. Лица, свързани със или за които се смята, че подкрепят правителството и международната общност, включително международните военни сили

Според съобщенията АПЕ системно набелязват цивилни, които са свързани със или се възприемат като поддръжници на афганистанското правителство, проправителствени военни групировки, афганистанското гражданско общество и международната общност в Афганистан, включително международните въоръжени сили и международните хуманитарни организации и организациите за развитие.²⁴⁸ До такова свързване с тези субекти или възприемането за връзка с тях може да се стигне поради предишно работно място или семейни връзки.²⁴⁹ Сред цивилните на прицел са районни и областни губернатори, бивши полицаи и такива, които в момента не са на служба, племенни старейшини, религиозни учени и водачи, жени общественички, учители и други цивилни държавни служители, цивилни, които се възприемат като противопоставящи се на ценностите на АПЕ, активисти за правата на човека, служители на хуманитарни организации и такива за развитие.²⁵⁰

От януари до 31 декември 2017 г. UNAMA приписва на АПЕ 570 целенасочени нападения с 1 032 цивилни жертви (650 убити и 382 ранени), които съставляват 10 процента от всички цивилни жертви през годината.²⁵¹ Броят на тези инциденти, извършени от АПЕ, нараства от 483 през 2016 г. на 570 през 2017 г., а броят на убитите при тях цивилни се повишава с 13 процента.²⁵²

През януари 2018 г. талибаните предприемат три отделни нападения в Кабул, при които са убити над 150 цивилни и са ранени повече от 300.²⁵³ В публично изявление на 28 януари 2018 г. по повод

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

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

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

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

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

²⁵² *Ibid.*, pp. 33-34.

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

на една от тези атаки, срещу Министерството на вътрешните работи, талибаните заявяват, че „на прицел е бил врагът и истинските последствия са понесени и от служители в министерството.“²⁵⁴ На 25 април 2018 г. талибаните обявяват началото пролетната си офанзива, „Операциите Ал Кандак Джихади“.²⁵⁵ Както и през предишните години, в съобщението се посочва, че офанзивата е насочена към „чуждестранните оккупационни сили техните вътрешни поддръжници“.²⁵⁶ Въпреки заявеното от талибаните намерение да обърнат специално внимание на „защитата на живота и собствеността на цивилните хора“,²⁵⁷ все още има сведения за това, че талибаните и АПЕ взимат на прицел цивилни и обекти, защитени по международното хуманитарно право.²⁵⁸ Освен целенасочените убийства, според съобщенията, АПЕ използват заплахи, сплашване и отвличания, за да сплашват цели общности и отделни лица и по този начин да разширяват влиянието и контрола си, като се прицелват в тези, които оспорват властта и идеите им.²⁵⁹

a) *Правителствени чиновници и държавни служители*

През 2017 г. UNAMA документира продължаващ модел на нападения, при които мишена са цивилни правителствени служби и други сгради, най-вече от страна на талибаните.²⁶⁰ Като цяло през 2017 г. броят на цивилните нападения срещу цивилни правителствени служители се увеличава „в съответствие с политиката на талибаните за целенасочени атаки срещу правителствени обекти.“²⁶¹ Сходни са атаките и на Исламска държава, при които мишена са отделни цивилни, свързани с правителството, както и такива, за които смятат, че предоставят „оперативни данни на правителството“.²⁶² АПЕ насочват нападенията си срещу политици и правителствени служители на

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

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

²⁵⁶ Ibid.

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

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

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

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

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

²⁶² Ibid., p. 39.

местно, областно и национално равнище, включително депутати²⁶³, членове на ВСМ²⁶⁴, както и областни и районни губернатори и членове на местни съвети.²⁶⁵

Обект на атаки са специално назначени от правителството съдии и прокурори, като UNAMA съобщава за четири такива атаки от страна на талибаните между 1 януари и 31 декември 2017 г.²⁶⁶ Според съденията АПЕ са насочвали атаките си и срещу здравни работници и здравни заведения, като са принуждавали клиники „да затварят временно, опитвайки се често да ги използват изцяло за медицински грижи за своите бойци“.²⁶⁷ През 2017 г. UNAMA е документирала 75 инцидента от страна на АПЕ, които са били насочени към и/или са засегнали здравни заведения и работници и са причинили 65 цивилни жертви (31 убити и 34 ранени).²⁶⁸

Множество целенасочени нападения е имало и срещу учители, охранители в училища и служители на Министерството на образованието²⁶⁹, както и срещу ученици, особено момичета²⁷⁰.

b) Цивилни полицейски служители (включително членове на АНП и АМП²⁷¹) и бивши членове на HCCA

Силите за сигурност на Афганистан, в частност АНП, продължават да бъдат обект на целенасочени кампании.²⁷² Членове на Афганската местна полиция (АМП) също често са обект на чести

²⁶³ Pajhwok Afghan News, *Lawmaker Stanikzai Survives Armed Attack*, 22 December 2017, <https://www.pajhwok.com/en/2017/12/22/lawmaker-stanikzai-survives-armed-attack>; Reuters, *Islamic State Claims Attack on House of Afghan Lawmaker*, 30 August 2017, <https://www.reuters.com/article/us-afghanistan-attack/islamic-state-claims-attack-on-house-of-afghan-lawmaker-idUSKCN1BA0X4>; Reuters, *Taliban Attack near Afghan Parliament Kills more than 30*, 10 January 2017, <https://www.reuters.com/article/us-afghanistan-blast/taliban-attack-near-afghan-parliament-kills-more-than-30-idUSKBN14U1DL>; Euronews, *Afghan MP Survives Bomb Attack in Kabul*, 28 December 2016, <http://www.euronews.com/2016/12/28/afghan-mp-survives-bomb-attack-in-kabul>; BBC, *Afghanistan Taliban: Eight Dead in Attack on MP's House*, 22 December 2016, <http://www.bbc.com/news/world-asia-38399751>.

²⁶⁴ The Telegraph, *More than 95 Dead and 158 Wounded in Kabul Bombing Claimed by Taliban*, 27 January 2018, <http://www.telegraph.co.uk/news/2018/01/27/huge-blast-rocks-centre-kabul>; UNAMA, *Statement by Tadamichi Yamamoto on Attack near High Peace Council Facility in Kabul*, 27 January 2018, <https://unama.unmissions.org/statement-tadamichi-yamamoto-attack-near-high-peace-council-facility-kabul>; Pajhwok Afghan News, *Afghan Diplomat, HPC Official Killed in Attack on Intercontinental Hotel*, 21 January 2018, <https://www.pajhwok.com/en/2018/01/21/afghan-diplomat-hpc-official-killed-attack-intercontinental-hotel>.

²⁶⁵ UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017*, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, p. 45.

²⁶⁶ UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 68.

²⁶⁷ UNSG, *The Situation in Afghanistan and Its Implications for International Peace and Security*, 15 December 2017, A/72/651-S/2017/1056, <http://www.refworld.org/docid/5a56465c4.html>, para 48. See also New York Times, *Afghan Province, Squeezed by Taliban, Loses Access to Medical Care*, 23 September 2017, <https://www.nytimes.com/2017/09/23/world/asia/afghanistan-taliban-oruzgan-hospitals.html>; RFE/RL, *Taliban Targets Medical Clinics in New Afghan Insurgency Strategy*, 27 September 2017, <https://www.rferl.org/a/afghanistan-taliban-targets-hospitals-strategy/28760791.html>; Dawn, *Doctors and Hospitals in Afghanistan Among Taliban Casualties of War*, 26 September 2017, <https://www.dawn.com/news/1360177>; Watchlist on Children and Armed Conflict, *"Every Clinic Is Now on the Frontline": The Impact on Children of Attacks on Health Care in Afghanistan*, 6 March 2017, <http://watchlist.org/wp-content/uploads/2213-watchlist-field-report-afghanistan-lr.pdf>.

²⁶⁸ In 2017 UNAMA documented the temporary closure of at least 147 health facilities following threats issued by AGEs, compared to 20 such closures in 2016. The forced closure of the health facilities affected a catchment area of close to 1.4 million people. UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 14.

²⁶⁹ In July 2017, a senior education official was killed in the Tagab district of central Kapisa province by a relative who was a member of Taliban. Pajhwok Afghan News, *Taliban Gun Down Kapisa Education Official*, 1 July 2017, <https://www.pajhwok.com/en/2017/07/01/taliban-gun-down-kapisa-education-official>; Khaama Press, *Kapisa Education Official Shot Dead By Own Brother Affiliated With Taliban* 1 July 2017, <https://www.khaama.com/kapisa-education-official-shot-dead-by-own-brother-affiliated-with-taliban-03054>. On 24 May 2017, a staff member of the school authority of southeastern Ghazni province was killed in a bomb attack. The following day, a teacher was killed and nine pupils were injured in northeastern Kunduz when a grenade hit launched by Taliban insurgents hit a school. Germany: Federal Office for Migration and Asylum, *Information Centre Asylum and Migration Briefing Notes*, 29 May 2017, <http://www.refworld.org/docid/5942468e4.html>.

²⁷⁰ HRW, *War Is Driving Girls out of School*, 27 November 2017, <https://www.hrw.org/news/2017/11/27/war-driving-girls-out-school>; HRW, *"I Won't Be a Doctor, and One Day You'll Be Sick" - Girls' Access to Education in Afghanistan*, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html>. See also, UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017*, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, p. 13; Huffington Post, *'Hopeless': Children under Attack in Afghanistan*, 19 April 2016 (updated 6 December 2017), https://www.huffingtonpost.com/beth-murphy/hopeless-children-under-attack-in-afghanistan_b_9721470.html.

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

²⁷² Reuters reported that during the first four months of 2017, 2,531 Afghan security forces were killed and 4,238 wounded. Reuters, *Afghan Forces Lose 2,531 Killed from Jan 1-May 8 Says Report*, 1 August 2017, <https://www.reuters.com/article/us-afghanistan-casualties/afghan-forces-lose-2531-killed-from-jan-1-may-8-says-report-idUSKBN1AH33P>. See also, RFE/RL, *At least 11 Afghan Police Killed in Taliban Attack*, 17 December 2017, <https://www.rferl.org/a/afghanistan-police-killed-helmand-attack/28923010.html>; Security Council Report, *December 2017 Monthly Forecast*, 30 November 2017, http://www.securitycouncilreport.org/monthly-forecast/2017-12/afghanistan_23.php; Reuters, *Taliban Attack Afghan Checkpoints, Killing more than 20 Police*, 14 November 2017, <https://www.reuters.com/article/us-us-afghanistan-taliban/taliban-attack-afghan-checkpoints-killing-more-than-20-police-idUSKBN1AH33P>.

нападения²⁷³ Тъй като членовете на АМП често са разположени в по-неспокойни райони, според оценките при тях броят на жертвите е три пъти повече в сравнение с другите членове на НСА.²⁷⁴ Служители и на АНП, и на АМП са нападани както когато са на служба, така и когато не са.²⁷⁵ Според съобщенията АПЕ набелязват и служители на другите полицейски сили в Афганистан²⁷⁶, както и бивши членове на НСА.²⁷⁷

Както е посочено в раздел II.B.1.c, от началото на регистрация на гласоподавателите на 14 април 2018 г. АПЕ са насочили атаки и срещу свързани с изборите служители, сред които работещи на пунктовете за регистрация и служители на Афганската национална полиция, включително чрез целенасочени убийства, отвличания, заплахи, сплашване и тормоз.²⁷⁸

c) *Цивилни, които са свързани с НСА/проправителствените сили или се смятат за техни поддръжници*

Има множество съобщения, че АПЕ набелязват цивилни, които са подозирани, че сътрудничат със или „шпионират“ за проправителствените сили, включително НСА²⁷⁹.

[afghan-checkpoints-killing-more-than-20-police-idUSKBN1IDE0IV](#); New York Times, *Taliban 'Red Unit' with Night Vision Kills Dozens of Afghan Officers*, 14 November 2017, <https://www.nytimes.com/2017/11/14/world/asia/afghanistan-taliban-attack-police.html>; The Guardian, *Wave of Taliban Suicide Attacks on Afghan Forces Kills at Least 74*, 17 October 2017, <https://www.theguardian.com/world/2017/oct/17/attack-afghan-police-training-centre-gardez-taliban>; CBS News, *Dozens Killed in Trio of Taliban Attacks Targeting Police*, 17 October 2017, <https://www.cbsnews.com/news/taliban-attack-afghanistan-police-paktia-ghazni-farah/>; Security Council Report, *June 2017 Monthly Forecast*, 31 May 2017, http://www.securitycouncilreport.org/monthly-forecast/2017-06/afghanistan_21.php.

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

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

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

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

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

²⁷⁸ UNAMA, *Afghanistan: Mid-Year Update on the Protection of Civilians in Armed Conflict: 1 January to 30 June 2018*, 15 July 2018, <http://www.refworld.org/docid/5b5047137.html>, pp. 3-4; UNAMA, *Protection of Civilians in Armed Conflict: Election-Related Attacks and Abuses During the Initial Voter Registration Period*, 10 May 2018, https://unama.unmissions.org/sites/default/files/protection_of_civilians_-special_report_-election-related_attacks_and_abuses_may_2018_english.pdf; Reuters, *Kabul Blast Highlights Risk to Long-Delayed Afghan Vote*, 23 April 2018, <https://www.reuters.com/article/us-afghanistan-blast/kabul-blast-highlights-risk-to-long-delayed-afghan-vote-idUSKBN1HU1X3>; New York Times, *'So Many Bodies': Bomber Kills Dozens Signing Up to Vote in Kabul*, 22 April 2018, <https://www.nytimes.com/2018/04/22/world/asia/suicide-bomber-afghanistan-elections.html>; Al Jazeera, *Afghanistan: 63 Dead in Attacks on Voter Registration Centres*, 22 April 2018, <https://www.aljazeera.com/news/2018/04/afghanistan-deaths-attack-id-voter-registration-centre-kabul-180422063114761.html>.

²⁷⁹ “In the event of the Taliban looking for culprits of spying in the government’s favour, anybody suspected of having gone to the authorities would be at great risk.” Landinfo, *Afghanistan: Taliban’s Intelligence and the Intimidation Campaign*, 23 August 2017, <http://www.refworld.org/docid/5a86ff4d4.html>, p. 17. “The Taliban impose control over population movement, because they are afraid of spying activity against them in areas where they are in control. Anybody visiting a remote area, or moving from a Taliban held area towards a government

d) Цивилни, които са свързани с международните въоръжени сили или се смятат за техни поддръжници

АПЕ, според сведенията, заплашват и нападат цивилни, които работят за международните въоръжени сили като преводачи или в друго цивилно качество.²⁸⁰ Има също съобщения, че АПЕ набелязват бивши служители на международните сили и правителството.²⁸¹

e) Хуманитарни работници и лица, които работят за организации за развитие

Съобщава се, че АПЕ набелязват цивилни, които работят за международни или афганистански хуманитарни организации, включително афганистански граждани, работещи за организации на ООН; служители на международни агенции за развитие и служители на национални международни неправителствени организации (НПО);²⁸² също така шофьори на камиони, строителни работници и

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

²⁸⁰ Since the withdrawal of the US troops from Afghanistan in 2014, the Taliban has increasingly threatened and killed the civilian interpreters who worked for the international, and specifically American military forces. In an interview in 2016 Taliban spokesman Zabihullah Mujahid called the interpreters "national traitors". Smithsonian Magazine, *The Tragic Fate of the Afghan Interpreters the U.S. Left Behind*, November 2016, <https://www.smithsonianmag.com/history/tragic-fate-afghan-interpreters-left-behind-180960785/> . "The Taliban in Afghanistan is actively targeting [...] Afghan interpreters." Politico, *Save the Visa Program for Afghan Interpreters*, 31 May 2016, <https://www.politico.com/agenda/story/2016/05/congress-should-save-visa-program-for-afghan-interpreters-000135> . Civilian contractors have also been targeted in deliberate attacks by AGEs. See for example, Reuters, *Gummen Kill Two Afghan Women Contractors at Air Base near Kabul*, 9 August 2017, <https://www.reuters.com/article/us-afghanistan-attack/gummen-kill-two-afghan-women-contractors-at-air-base-near-kabul-idUSKBN1AP20R> ; Reuters, *Taliban Claim Suicide Attack on Contractor Camp in Kabul*, 4 January 2016, <https://www.reuters.com/article/us-afghanistan-blast/taliban-claim-suicide-attack-on-contractor-camp-in-kabul-idUSKBN0U10FT20160104> .

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

²⁸² In January 2018 Save the Children temporarily suspended its programmes in Afghanistan following an attack by Islamic State militants on its offices in Jalalabad in which three staff members and one soldier were killed. BBC, *Afghanistan Attack: Save the Children Suspends Programmes*, 24 January 2018, <http://www.bbc.com/news/world-asia-42808342> . In 2017 the ICRC downsized its operations in Afghanistan due to the security threats to its staff. Al Jazeera, *Red Cross 'Drastically Reduces' Presence in Afghanistan*, 9 October 2017, <https://www.aljazeera.com/news/2017/10/red-cross-drastically-reduces-presence-afghanistan-171009113546225.html> . See also, Khaama Press, *Attack on UN Staff Member in Kabul*, 22 January 2018, <https://www.khaama.com/attack-on-un-staff-member-in-kabul-04317/> . Between 1 January and mid-December 2017, 17 aid workers were killed, 15 injured and 43 abducted. In the same period of 2016, 13 aid workers were killed, 22 wounded and 110 abducted. UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 December 2017, A/72/651-S/2017/1056, <http://www.refworld.org/docid/5a56465c4.html> , para 48. According to ACAPS, "Incidents involving humanitarian staff [...] increase[ed] throughout 2017 with 305 reported incidents by October, representing an 80% increase compared to the same period in 2016". ACAPS, *Humanitarian Overview - An Analysis of Key Crises Into 2018*, 30 November 2017, https://www.acaps.org/sites/acaps/files/products/files/acaps_humanitarian_overview_analysis_of_key_crises_into_2018.pdf . Compared to other countries, Afghanistan had the second highest number of attacks on aid workers in 2016, with "kidnapping remain[ing] the principal form of violence

лица, участващи в минни проекти и други проекти за развитие.²⁸³ Лица с тези характеристики са били убивани, отвлечани и сплашвани.

f) *Правозащитни активисти*

Според съобщенията АПЕ набелязват правозащитни активисти, като те са убивани или ранявани при целенасочени нападения.²⁸⁴ Жените правозащитници на правата на човека са изложени на особено голям рисков.²⁸⁵

affecting aid workers.” Humanitarian Outcomes, *Aid Worker Security Report 2017*, August 2017, <https://aidworkersecurity.org/sites/default/files/AWSR2017.pdf> , p. 2. “Civil society actors continued to face intimidation and threats by anti-government elements and also experienced a lack of cooperation by local authorities in relation to those threats.” UNSG, *The Situation in Afghanistan and Its Implications for International Peace and Security*, 15 September 2017, A/72/392-S/2017/783, <http://www.refworld.org/docid/59c3a9f64.html> , para. 31. On 11 September 2017, an ICRC staff member was killed in Mazar-i-Sharif in Balkh Province. Reuters, *Spanish Red Cross physiotherapist Killed in Afghanistan*, 11 September 2017, <https://www.reuters.com/article/us-afghanistan-red-cross/spanish-red-cross-physiotherapist-killed-in-afghanistan-idUSKCN1BM0YM> . On 9 September 2017, a deminer working for an NGO was shot and killed in Nangarhar Province. UNSG, *The Situation in Afghanistan and Its Implications for International Peace and Security*, 15 December 2017, A/72/651-S/2017/1056, <http://www.refworld.org/docid/5a56465c4.html> , para 48. In February 2017, ICRC temporarily suspended its activities in Afghanistan following an attack by AGEs in which six aid workers were killed. Al Jazeera, *Afghanistan: ICRC Halts Operations After Workers Killed*, 9 February 2017, <http://www.aljazeera.com/news/2017/02/afghanistan-icrc-halts-operations-workers-killed-170209062643029.htm> 1; The Guardian, *Six Red Cross Workers in Afghanistan Killed in Ambush*, 8 February 2017, <https://www.theguardian.com/world/2017/feb/08/six-red-cross-workers-in-afghanistan-are-shot-dead-in-attack> . According to Freedom House, “During 2016, the Economy Ministry counted as active 1,971 local NGOs and 279 international NGOs [...] Threats and violence by the Taliban and other actors, especially a pattern of kidnappings, have curbed the activities of many NGOs and have hampered recruitment of foreign aid workers.” Freedom House, *Freedom in the World 2017: Afghanistan*, 2 June 2017, <http://www.refworld.org/docid/5936a46d13.html> . According to a report by Watchlist, between January 2015 and November 2016, 441 attacks were carried out against aid workers; 81 aid workers were killed, 113 were injured, and 268 were abducted. Watchlist on Children and Armed Conflict, *“Every Clinic is Now on the Frontline”: The Impact on Children of Attacks on Health Care in Afghanistan*, 6 March 2017, <http://watchlist.org/wp-content/uploads/2213-watchlist-field-report-afghanistan-lr.pdf>. See also Deutsche Welle, *Why Are Afghan Militants Targeting Aid Workers?*, 18 September 2017, <http://www.dw.com/en/why-are-afghan-militants-targeting-aid-workers/a-40558657> .

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

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

²⁸⁵ “Women human rights defenders continued to face threats and intimidation by both state and non-state actors across Afghanistan. Most cases were not reported to police because of lack of trust in the security agencies, which consistently failed to investigate and address these threats. Some who did report threats were not given support or protection.” Amnesty International, *Amnesty International Report 2017/18: Afghanistan*, 22 February 2018, <http://www.refworld.org/docid/5a99395da.html> . “Civil society actors, including human rights defenders, specifically women human rights defenders and activists, and journalists faced threats, acts of intimidation and harassment and, at times, deadly attacks.” UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 21 February 2018, A/HRC/37/45, <http://www.refworld.org/docid/5b03e25e4.html> , para. 82. UNAMA reports that women activists have been “disproportionately affected” by threats or intimidation by AGEs, “mainly because of violent extremist ideologies propagated by Anti-Government Elements in conflict-affected areas that reject the participation of women in public life and the promotion of women’s rights.” UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2016*, February 2017, <http://www.refworld.org/docid/58bd20104.html> , p. 32. “In the current conservative and insecure environment, women HRDs [human rights defenders] are in a particularly difficult situation: they are not only targeted for the work they do, but also for who they are and for challenging social and religious patriarchal norms, which may result in stigmatization, isolation and various forms of threats and violence [...] Women HRDs attempting to report violations are stigmatized or even blamed for causing the violations themselves.” European External Action Service, *EU+ Local Strategy for Human Rights Defenders in Afghanistan 2014 – Revised 2016*, 15 January 2017, https://eeas.europa.eu/sites/eeas/files/170115_final_eu_local_strategy_for_hrd_in_afghanistan.pdf , p. 4.

g) *Племенни старейшини и религиозни лидери*

Според сведенията АПЕ набелязват местни традиционни лидери като племенни старейшини, които се смятат за поддръжници на правителството или на международната общност или за които се смята, че не подкрепят АПЕ.²⁸⁶

Съобщенията показват увеличаване на броя на религиозните лидери, срещу които е имало атаки от АПЕ.²⁸⁷ Като цяло за 2016 и 2017 година UNAMA е документирала последователен модел на убийства, отвличания, заплахи и сплашване на религиозни лидери от страна на АПЕ, което се дължи на „способността на религиозните лидери да променят обществената нагласа посредством посланията си или предполагаемата им подкрепа за правителството.“²⁸⁸ Освен това след 2016 г. има съобщения за няколко инцидента с убийства от АПЕ на религиозни лидери, които „публично са оспорвали законността на квази-правителствените функции на АПЕ и които са изразявали загриженост относно военните операции и насилието“.²⁸⁹ Талибаните са се опитвали публично да оправдаят убийствата на религиозни личности, като ги представят като правителствени шпиони, които се стремят да „преразгледат исламските правила в полза на правителството“.²⁹⁰

h) *Жените в публичната сфера*

Макар и жените да са постигнали известна ръководна роля в афганистанското правителство и в гражданското общество след 2001 г., включително като съдии и депутати, жените в обществения живот и заемащите държавни длъжности продължават да са подложени на заплахи, изнудване и насилиствени нападения.²⁹¹ Има сведения за често набелязване на жени в обществения живот, включително жени парламентаристки, членове на провинциални съвети, държавни служители, учителки, правозащитни активистки и служители в международни организации.²⁹² Те се набелязват от АПЕ²⁹³, местни традиционни и религиозни властелини, членове на обществото и държавните

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

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

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

²⁸⁹ *Ibid.*

²⁹⁰ *Ibid.*

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

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

²⁹³ “Women and girls have been deliberately attacked by the Taliban and their affiliates to prevent them from studying, teaching, working or participating in public affairs, through intimidation, death threats, abductions and killings.” ICC, *Situation in Afghanistan: Summary of the Prosecutor’s Request for Authorisation of an Investigation Pursuant to Article 15*, 20 November 2017, <http://www.refworld.org/docid/5a2a74314.html>, para. 20. “The Taliban oppose any public role for women in Afghan society and have targeted

власти.²⁹⁴ Жените, които се стремят да се ангажират в обществения живот, често се възприемат като прекрачващи социалните норми, осъждат се като „неморални“ и се набелязват за сплашване, тормоз или насилие, включително убийства.²⁹⁵

Според сведенията правоприлагашите органи не могат да се справят с безнаказаността за тормоза и нападенията срещу жените в обществения живот.²⁹⁶

i) *Лица, възприемани като „прозападни“*

Има сведения за лица, завърнали се от западни страни, които са били сплашвани, изтезавани или убивани от АПЕ поради това, че се смята, че са приели свързани с тези страни ценности или са станали „чужденци“, или че са шпиони за западна страна или са нейни поддръжници.²⁹⁷ Често завърналите се възприемат подозително от местната общност, както и от държавни служители, което ги подлага на дискриминация и изолация.²⁹⁸ Лица, които имат други характеристики, като

women's organizations in Kunduz". USIP, *Afghan Women Defend Their Rights Against the Taliban*, 9 May 2017, <https://www.usip.org/publications/2017/05/afghan-women-defend-their-rights-against-taliban>. "Anti-Government Elements targeted women human rights defenders and women active in public life, as well as women employed in non-traditional sectors such as policing and security, limiting their ability to participate in these areas due to fear of reprisal." UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2016*, February 2017, <http://www.refworld.org/docid/58bd20104.htm> l, p. 17.

²⁹⁴ The Australian, *War on Women*, 2 September, 2017, <https://www.theaustralian.com.au/life/weekend-australian-magazine/why-war-in-afghanistan-has-failed-to-liberate-women/news-story/a8444d36173c622950ff757ccb8b6872>.

²⁹⁵ A study published by the AIHRC in December 2017 found that 20.4 per cent of the 579 female respondents in the ANP had experienced sexual harassment in the workplace. Similarly of the 18.3 per cent of 60 female respondents in the ANA and 16.7 per cent of the 12 female respondents in the NDS had faced sexual harassment. AIHRC, *Situation of Women Employed in Defense and Security Sectors*, 9 December 2017, <http://www.refworld.org/docid/5a4f76654.html> , pp. 8, 20. The NGO Working Group on Women, Peace and Security reported in October 2017 that "over the last year there was a 25% increase in targeted and deliberate killings of women in public roles including human rights defenders, teachers and politicians who are seen to be failing to conform to prevailing social gender norms." NGO Working Group On Women, Peace And Security, *Open Letter to Permanent Representatives to the UN: Recommendations on the Security Council Open Debate on Women, Peace and Security*, 16 October 2017, <http://www.womenpeacesecurity.org/resource/open-letter-unsc-wps-anniversary-october-2017> . In September 2017, Masooma Muradi, the governor of the province of Daikundi and Afghanistan's only female provincial governor, was replaced by a man after "encounter[ing] strong opposition to the idea of a woman holding a powerful position in the conservative and patriarchal country." The Independent, *Afghanistan's Only Female Governor Has Been Replaced by a Man*, 28 September 2017, <http://www.independent.co.uk/news/world/middle-east/afghanistan-female-governor-replaced-by-man-masooma-muradi-daikundi-sexism-resistance-gender-a7972166.html> . See also, IWPR, *Afghanistan: Female Reporters Hide Their Identities*, 8 March 2018, <https://iwpr.net/global-voices/afghanistan-female-reporters-hide-their> ; IWPR, *Afghan Women Hounded out of the Media*, 26 February 2018, <https://iwpr.net/global-voices/afghan-women-hounded-out-media> ; Huffington Post, *Being a Female Police Officer in Afghanistan Can Be Dangerous. But Here They Are*, 7 September 2017, https://www.huffingtonpost.com/entry/female-police-officers-afghanistan_us_5966771ae4b0d51cda5f9c0a ; Reuters, *Gunmen Kill Two Afghan Women Contractors at Air Base near Kabul*, 9 August 2017, <https://www.reuters.com/article/us-afghanistan-attack/gunmen-kill-two-afghan-women-contractors-at-air-base-near-kabul-idUSKBN1AP20R>; Reuters, *Women in Afghan Army Overcome Opposition, Threats*, 4 November 2016, <https://www.reuters.com/article/us-afghanistan-women-army/women-in-afghan-army-overcome-opposition-threats-idUSKBN1Z05W> . "[Female] MPs, members of the provincial councils, civil servants, journalists, lawyers, police officers, teachers, human rights activists and women working for international organisations faced frequent intimidation, threats and violence. They are seen as immoral because they are contravening social norms. The central authorities are scarcely able to offer them any protection against these problems." The Netherlands: Ministry of Foreign Affairs, *Country of Origin Report on Afghanistan*, November 2016, <http://www.refworld.org/docid/5a60d67d4.html> , p. 81. For further information on the treatment of women perceived as transgressing social norms, see Section III.A.8.

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

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

²⁹⁸ The Swedish Network of Refugee Support Groups reports that returnees from western countries are a small group, marginalized in comparison to the vast amount of Afghans who have arrived from neighbouring countries, mainly Pakistan. They are generally not accepted, and are seen as fraudulent or failures. After several years in the West, they stand out through their appearance and clothing. Swedish Network of Refugee Support Groups (FARR), *Utvision Till Afghanistan Trots Nya Larm – Men Många Räddades*, 9 October 2017, <http://farr.se/en/aktuellt-a-press/notiser/1495-grupputvisning-till-afghanistan-trots-nya-larm> . The Danish Refugee Council reports that suspicion of returnees from Europe or "the west" more generally is greater the longer the returnee has stayed outside Afghanistan and the further away the returnee has been. Furthermore, young returnee boys and men are at particular risk of recruitment by extreme groups or criminal networks as a result of their high visibility in rural areas, social isolation and lack of social networks and income. Danish Refugee Council, *Tilbagevenden til Afghanistan*, October 2017, <https://flygtning.dk/media/3886281/tilbagevenden-til-afghanistan-2017.pdf> , p. 16. "[S]tate authorities perceive young male returnees as a security threat as the lack of education or job opportunities mean that they can easily turn to drug trafficking or are considered soft targets for recruitment by armed non-state actors." Asylos, *Afghanistan: Situation of Young Male 'Westernised' Returnees to Kabul*, August 2017, <https://asylos.eu/wp-content/uploads/2017/08/AFG2017-05-Afghanistan-Situation-of-young-male-Westernised-returnees-to-Kabul-1.pdf> , p. 18. "In terms of westernized lifestyle and religious issues, they [returnees] aren't perceived very well. It has been very easy to recognize a person if someone has been to Europe from the way of style, haircut and clothes. [...] [T]here are times they are excluded from the society. [...]. For someone who has been in Europe for 5 or 6 years and he has been away from religious issues, [...] it is very difficult to reintegrate into the family and society. [T]here have been cases that returnees were marginalized by the family because they are too westernized and they can create problems for their brother, their

профил 1.e. (хуманитарни работници и служители на организации за развитие) и профил 1.i (жени в обществения живот), може по подобен начин да бъдат обвинени от АПЕ, че са възприели ценности и/или външен вид, свързани със западните страни, и поради тази причина може да бъдат набелязани.

j) *Други цивилни, възприемани като поддръжници на правителството или международната общност*

Според съобщенията АПЕ преднамерено отвличат²⁹⁹ и убиват³⁰⁰ цивилни, за да ги накажат за това, че подкрепят правителството, като целта на убийствата е да служат като предупреждение за другите.³⁰¹ АПЕ също така използват различни механизми, за да предупредят цивилните да не подкрепят правителството, включително текстови съобщения, местни радиопредавания, социалните медии и „нощи писма“ (*shab nameha*).³⁰² На местата, където не са успели да спечелят обществена подкрепа, АПЕ тормозят и заплашват местните общности и раздават наказания на местното население за това, че подкрепя или се смята, че подкрепя правителството или конкурентни АПЕ.³⁰³ Цивилните, обвинени в „шпионаж“ за правителството, според съобщенията, се подлагат на съд по съкратената процедура успоредно с паралелните и незаконни съдебни процедури, използвани от АПЕ; наказанието за такива твърдени „престъпления“ обикновено е екзекуция.³⁰⁴

a) *Членове на семейства, които се свързват с правителството или международната общност или се възприемат като техни поддръжници*

sister and parents, so they tell them don't come to the area and stay away from us.” *Ibid.*, pp. 37-38. “[T]here is a clear rejection of those who have changed when abroad [...] Society fears returnees as they are perceived as intoxicated by western values; some of the youngest ones even picked up an accent when speaking Dari or Pashto, making them foreigners in their own home country. There is a clear rejection of those who have changed when abroad: for example, some might have embraced secularism or might have turned towards another religion; others might have discovered their sexuality and became homosexuals. Such behaviours will be rejected and will cause rejection if not death.” *Ibid.*, p. 39. “[M]any [...] young people wanted to hide the fact that they had been in the UK [...] When traveling in Taliban-held areas in particular, they would not want to be heard speaking English or to be seen to have international contacts on their phone”. E. Bowerman, *Risks Encountered after Forced Removal: The Return Experiences of Young Afghans*, February 2017, <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/resettlement/bowerman.pdf>, p. 79.

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

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

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

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

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

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

Има съобщения, че АПЕ набелязват членове на семействата на лица с горните характеристики както като акт на възмездие, така и на основание „виновни по асоциация“.³⁰⁵ В частност роднини, включително жени и деца, на държавни служители и служители в НСА са подложени на тормоз, отвличания, насилие и убийства³⁰⁶.

b) *Обобщение*

На основата на гореизложеното анализ ВКБОН смята, че в зависимост от индивидуалните обстоятелства на всеки отделен случай, лицата, свързани със или за които се смята, че подкрепят правителството или международната общност, включително международните въоръжени сили, може да се нуждаят от международна закрила на базата на основателни опасения от преследване от страна на недържавни субекти по причина (приписвани) политически убеждения или други основания по Конвенцията в съчетание с общата неспособност на държавата да осигури защита срещу това преследване. Сред тези лица са:

- a) правителствени чиновници и държавни служители;
- b) членове на АНП и АМР и бивши членове на НСА;
- c) цивилни, свързани със или за които се смята, че подкрепят НСА/проправителствените сили;
- d) цивилни, свързани със или за които се смятат за поддръжници на международните въоръжени сили;
- e) хуманитарни работници и служители на организации за развитие;
- f) правозащитници;
- g) други цивилни, за които се смята, че подкрепят правителството или международната общност;
- h) племенни старейшини и религиозни лидери;
- i) жени в публичната сфера;
- j) лица, заподозрени като „прозападни“; и
- k) членове на семействата на лица, свързани със или за които се смята, че подкрепят правителството или международната общност.

2. *Журналисти и други представители на медиите*

Конституцията гарантира правото на свобода на словото и правото да се печата и публикува без предварително представяне на материала на държавните власти, като Законът за медиите от 2009 г. забранява цензурана и гарантира правото на гражданите да получават информация.³⁰⁷ Според Закона

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

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

³⁰⁷ Freedom House, *Freedom of the Press 2016: Afghanistan*, 18 October 2016, <http://www.refworld.org/docid/582ac6e313.html>; Freedom House, *Freedom of the Press 2015: Afghanistan*, 4 September 2015, <http://www.refworld.org/docid/55f001263d.html>. Article 34 of the Constitution

за достъп до информация от декември 2014 г. цялата информация, с която разполага правителството, би трябвало да е на разположение на обществото, освен когато това може да застраши националната сигурност на Афганистан, да доведе до нарушение на личното пространство или наказателно разследване.³⁰⁸ Въпреки Президентския указ от 31 януари 2017 г., чиято цел е да подобри прилагането на свързаните с медиите закони, все още има тревога по отношение на свободата на изразяване и достъпа до информация.³⁰⁹ Законът за медиите от 2009 г включва разпоредба с подробен текст, в която се забранява създаването, възпроизвеждането, отпечатването и публикуването на материали, които противоречат на ислама или са обидни за други религии и секти.³¹⁰

Според съденията разпоредбата за клевета в Закона за медиите понякога се използва като претекст за потискане на критиката от държавни служители, като политици, служители по сигурността и други на влиятелни позиции са арестували, заплашвали или тормозили журналисти заради техни публикации, в частност такива, чието съдържание е критично за правителството и влиятелни местни фигури.³¹¹ През януари 2015 г. правителството създава нова Комисия за разследване по свързани с медиите жалби и нарушения; данните сочат, че властни лица, предимно държавни служители, използват комисията като средство за сплашване на журналисти и принуждаване да мълчат.³¹² В някои случаи медии са били затваряни от местните власти заради публикации по въпроси, които властите смятат за чувствителни, като търсения за корупция.³¹³ Има съобщения, че журналистите

qualifies the right to print and publish without prior submission to State authorities by means of the phrase “according to provisions of law”. Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>.

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

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

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

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

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

³¹³ “Media outlets routinely cover stories that are critical of the government, including reporting on human rights abuses and serious crimes against women and children. However, on occasion authorities have reportedly threatened journalists and forced the closure of media outlets for reporting on official corruption and other sensitive topics.” Australian Government: Department of Foreign Affairs and Trade, *Country Information Report Afghanistan*, 18 September 2017, https://www.ecoi.net/en/file/local/1419296/4792_1512554335_country-information-report-afghanistan.pdf, p. 19. See also, Freedom House, *Freedom of the Press 2016: Afghanistan*, 18 October 2016, <http://www.refworld.org/docid/582ac6e313.html>.

прияват до автоцензура поради страх от репресии.³¹⁴ Според сведенията насилието срещу журналисти буди сериозна загриженост, като случаите на насилие нарастват³¹⁵ и държавните власти са отговорни за мнозинството от инцидентите на насилие и сплашване през 2017 г.³¹⁶ Жените журналистки са особено застрашени от тормоз и заплахи.³¹⁷ Много журналистки директно са били нападани,³¹⁸ принуждавани да напуснат работата си или подлагани на косвен натиск да преустановят дейността си или дори да избягат от страната.³¹⁹ Извършителите на насилие над журналисти, според

Journalists are also reported to have difficulties accessing information and accessing combat zones where illegal activities were suspected of taking place. IWPR, *Afghanistan: All Sides Violating Human Rights*, 27 July 2017, <http://www.refworld.org/docid/5979fd054.html>.

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

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

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

³¹⁷ “Women in the media are particularly frequent victims, in part because they have public profiles, and often use social media with their real identities. That often attracts men who hurl sexual abuse at them with abandon – often not even bothering to disguise their names. The abuse frequently includes sexually explicit photographs.” The New York Times, *Harassment All Around, Afghan Women Weigh Risks of Speaking Out*, 10 December 2017, www.nytimes.com/2017/12/10/world/asia/afghan-metoo-women-harassment.html. “Those who report abuse – from simple harassment to severe beatings and rape – risk retribution and often more violence, sometimes including murder, for speaking out.” UNAMA, *Afghan Women Reporters, Seizing on Global Trends, Empower Voices Against Abuse and Violence*, 25 November 2017, <https://unama.unmissions.org/afghan-women-reporters-seizing-global-trends-empower-voices-against-abuse-and-violence>. “The findings of the Female Journalists Support Center in Afghanistan indicate that in recent years, particularly in the past two years, the presence of women journalists in media outlets has been decreasing day by day in the country. This is more tangible in provinces. The spreading out of war and an increase in the level of insecurity are the main reasons behind the reduction. Female journalists are more prone than male journalists to insecurity both in their work place as well as outside of their work”, Center for The Protection of Women Journalists in Afghanistan, *The Continuation of Insecurity Is the Main Cause of Decline in the Number of Women Journalists in Afghanistan*, 20 November 2017, www.cpawj.org/en/2017/11/20/the-continuation-of-insecurity-is-the-main-cause-of-decline-in-the-number-of-women-journalists-in-afghanistan/. See also, Gandhara, *Violence Threats Forcing Afghan Women to Abandon Journalism*, 14 May 2017, <https://gandhara.rferl.org/a/afghanistan-women-journalists/28487199.html>. Based on a survey of 100 female journalists in Kabul, Nengarhar, Kandahar, Balkh, Kunduz, Herat, and Khost on different aspects of the work of female journalists in Afghanistan, the AJSC reported: “Since media work by nature takes place in public spaces, female journalists were subjected to sexual harassment in many contexts. Sixty-nine percent of the participants reported that they had been subjected to sexual harassment within their workplaces.” AJSC, *The Reporting Heroes – A Study on the Condition of Afghan Female Journalists*, 14 April 2016, <http://ajsc.af/wp-content/uploads/2016/04/women-in-media-pdf>, p. 6; see also *ibid.*, pp. 8, 10-11. “Relatives, acquaintances and extremist religious groups that are opposed to women working outside the house are the most commonly responsible parties for these threats and intimidation. Female journalists are furthermore subjected to moral accusations that often negatively affect their personal lives, such as the opportunity to get married.” *Ibid.*, p. 12.

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

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

сведенията, често остават ненаказани и журналистите обвиняват правителството за неспособността му да ги защитава.³²⁰

Увеличил се е броят на инцидентите с насилие и сплашване на журналисти и медии от страна на недържавни субекти³²¹, като, според сведенията, за преобладаващата част от убийствата на журналисти през 2017 г. са отговорни недържавни субекти.³²² Прицел на талибаните са били регионални и частни медии при поредица техни атаки, сред които заплахи, побои, отвличания, изнудване и целенасочени убийства.³²³ Нараснал е и броят на нападенията на Исламска държава, която е поела отговорност за няколко атаки срещу медии през 2017 г.³²⁴ През април 2018 г. са убити девет журналисти при двойна координирана самоубийствен атентат на Исламска държава в Кабул; според сведенията вторият атентатор е бил дегизиран като журналист.³²⁵

В светлината на горепосоченото ВКБООН смята, че журналисти и други професионалисти в медиите, които критично отразяват въпроси, които се смятат за чувствителни, независимо дали от държавни или недържавни фактори, може да имат нужда от международна закрила на базата на основателни опасения от преследване от страна на недържавни субекти по причина (присвавани) политически убеждения или други основания по Конвенцията в съчетание с общата неспособност на държавата да осигури защита срещу това преследване. В зависимост от индивидуалните обстоятелства на всеки отделен случай членовете на семействата на лица с тези характеристики може също да имат нужда от международна закрила на основание, че са свързани със застрашени лица.

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

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

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

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

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

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

3. Мъже в наборна възраст и непълнолетни деца, които се мобилизират принудително

Твърди се, че е широко разпространена практика да не се съобщава за случаи на принудително мобилизиране на деца.³²⁶ За цялата страна обаче има сведения, че се наблюдава набиране и използване на деца от всички страни в конфликта както в помощна, така и в бойна роля.³²⁷

a) Принудително мобилизиране от АПЕ

Според сведенията в районите, където упражняват ефективен контрол върху територията и населението, АПЕ използват най-разнообразни механизми за набиране на бойци, включително стратегии чрез принуда.³²⁸ Лицата, които се противопоставят на мобилизирането, и членовете на семействата им рискуват да бъдат убити или наказани.³²⁹

АПЕ продължават да набират деца³³⁰ както момчета, така и момичета за самоубийствени атентати и

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

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

³²⁸ Insurgent groups forcibly recruit and use children as suicide bombers. The Taliban indoctrinate children using religious and military education and teach children to use small arms and deploy improvised explosive devices. Some families receive cash payments or protection in exchange for sending their children to the Taliban-run schools. Children from impoverished and rural areas, particularly those under Taliban control, are especially vulnerable to recruitment.” US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>. In October 2017, France 24 reported that 77 men from various villages in Kunduz province were “captured by the Taliban and forced to join their ranks.” Reportedly, “[w]hen the Taliban take over a region, the men who haven’t managed to run away are forced to either join the Taliban or get killed”. France 24, *Did 77 Members of the Afghan Security Forces Really Join the Taliban*, 20 October 2017, <http://observers.france24.com/en/20171020-afghan-security-forces-taliban-kunduz-video>. In July 2017, Radio Free Europe reported that a human trafficking ring kidnapped 25 children aged between 4 and 14 and tried to smuggle them into Pakistan, where they were to be trained as suicide bombers for the Afghan Taliban. RFE/RL, *Afghan Police: Children Kidnapped to Be Suicide Bombers for Taliban*, 10 July 2017, <https://www.rferl.org/a/afghan-police-children-kidnapped-by-taliban-to-be-suicide-bombers/28606744.html>. In March 2017, IOM reported that the local population of Nangarhar “is threatened by abductions and forced recruitment, as well as reprisal violence”. IOM, *Baseline Mobility Assessment: Afghanistan*, March 2017, https://afghanistan.iom.int/sites/default/files/Reports/iom_dtm_afg_baseline_assessment_round1_summary_results.pdf, p. 10. “[I]n many villages there was a well-established agreement within the tribe on mobilisation of fighters. Large families usually contribute two fighters [to Taliban]. In case of emergency, for example when facing an imminent attack, refusing this mobilisation would be difficult. It can be avoided by the family paying a ‘fine.’” B. Osman, analyst with the AAN, as quoted in EASO, *Country of Origin Information Report: Afghanistan: Recruitment by Armed Groups*, September 2016, <http://www.refworld.org/docid/57e145c44.html>, p. 15. See also, VOA, *Unemployment Leads Dozens of Youths to Join IS Ranks in Eastern Afghanistan*, 4 March 2018, <https://www.voanews.com/a/unemployment-leads-dozens-of-youths-to-join-is-in-eastern-afghanistan/4280056.html>; The Local, *How I Fled from a Taliban Training Centre to Sweden*, 19 September 2017, <https://www.thelocal.se/20170919/how-i-fled-from-a-taliban-training-centre-to-sweden>; Hindustan Times, *Poverty Drives Child Soldiers into Afghanistan’s Endless War*, 6 September 2017, <https://www.hindustantimes.com/world-news/poverty-drives-child-soldiers-into-afghanistan-s-endless-war/story-MUgQGDKjPqojsJsd2ZQO.html>.

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

³³⁰ In the first half of 2018, UNAMA verified the recruitment and use of 22 boys and documented credible allegations of the recruitment and use of seven boys by parties to the armed conflict. Of the total of 29 boys, UNAMA attributed the recruitment and use of 24 boys to AGEs. UNAMA, *Afghanistan: Mid-Year Update on the Protection of Civilians in Armed Conflict: 1 January to 30 June 2018*, 15 July 2018,

като човешки щит, както и за да участват в активни бойни действия, да поставят СВУ, да пренасят тайно оръжия и униформи и да действат като шпиони, охранители и разузнавачи.³³¹

b) *Принудително мобилизиране на непълнолетни от проправителствените сили*

Въпреки усилията на правителството да се бори срещу мобилизирането на деца, сведенията сочат, че продължава набирането на деца за военни действия нота НСА, по-специално на АМП и НПА, и от проправителствена милиция.³³² През януари 2011 г. ООН и правителството подписват план за действие за предотвратяване на набирането на непълнолетни деца.³³³ През юли 2014 г. правителството одобрява пътна карта за изпълнение на плана за действие.³³⁴ През февруари 2015 г.

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

³³¹ UNAMA, *Afghanistan: Mid-Year Update on the Protection of Civilians in Armed Conflict: 1 January to 30 June 2018*, 15 July 2018, <http://www.refworld.org/docid/5b5047137.html>, p. 3. According to the UN Country Taskforce on Monitoring and Reporting on Children and Armed Conflict, underage recruits are “mainly used for planting improvised explosive devices, transporting explosives, conducting suicide attacks, and spying.” UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 21 February 2018, A/HRC/37/45, <http://www.refworld.org/docid/5b03e25e4.html>, para. 32. See also, Salaam Times, *Weakened ISIS Stoops to Brainwashing Children to Carry out Terror Attacks*, 13 April 2018, http://afghanistan.asia-news.com/en_GB/articles/cnmi_st/features/2018/04/13/feature-02; The Telegraph, *Suicide Bomber Thought to Be as Young as 12 Kills Five in Kabul's Diplomatic Zone*, 31 October 2017, <https://www.telegraph.co.uk/news/2017/10/31/motorcycle-suicide-bomber-kills-three-kabuls-diplomatic-zone>; Salaam Times, *New ISIS in Afghanistan Video: Children Executing Children*, 20 July 2017, http://afghanistan.asia-news.com/en_GB/articles/cnmi_st/features/2017/07/20/feature-01; Euronews, *Afghan Children 'Abducted for Training as Suicide Bombers'*, 11 July 2017, <http://www.euronews.com/2017/07/11/afghan-children-abducted-for-training-as-suicide-bombers>; 1TV News, *Afghan Boy, 11, Surrenders Before Suicide Bombing*, 20 June 2017, <http://www.1tvnews.af/en/news/afghanistan/29859-afghan-boy-11-surrenders-before-suicide-bombing>.

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

³³³ UNSG, *Report of the Secretary-General on Children and Armed Conflict*, 15 May 2013, A/67/845-S/2013/245, <http://www.refworld.org/docid/51b9864e4.html>, para. 33; UN General Assembly / Security Council, *The Situation in Afghanistan and its Implications for International Peace and Security*, A/66/728 – S/2012/133, 5 March 2012, <http://www.refworld.org/docid/4fbf60732.html>, p. 23; UN General Assembly, *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Afghanistan and Technical Achievements in the Field of Human Rights*, A/HRC/19/47, 18 January 2012, <http://www.refworld.org/docid/4f391a772.html>, para. 23. Afghanistan has acceded to the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. The Protocol prohibits the compulsory recruitment of children (defined as persons under the age of 18) into a State’s armed forces (Article 2). Voluntary recruitment of children above the age of 16 into national armed forces is allowed under certain conditions (Article 3), but children may not take direct part in hostilities (Article 1). The recruitment of children or their use in hostilities by non-State armed groups is prohibited in all circumstances (Article 4). UN General Assembly, *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, 25 May 2000, United Nations Treaty Series, Vol. 2173, p. 222, <http://www.refworld.org/docid/47fdb180.html>.

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

президентът Гани одобряват закон, приет от парламента и сената през 2014 г., който криминализира набирането на непълнолетни в НСКА.³³⁵ Новият Наказателен кодекс, който влиза в сила на 15 февруари 2018 г., съдържа разпоредби, които забраняват и криминализират мобилизирането и използването на непълнолетни от въоръжени сили.³³⁶ Сведенията показват обаче, че въпреки усилията на правителството да изкорени мобилизирането на непълнолетни деца, все още има трудности, сред които нестандартизирани процеси на набиране на военна служба, неефикасни процедури за установяване на възрастта и липсата на отговорност за мобилизирането на непълнолетни.³³⁷ През август 2017 г. Генералният секретар на ООН отбелязва, че въпреки напредъкъ по укрепване на процедурата за оценка на възрастта в центровете за мобилизация на АНП, липсата на такива процедури при набирането на военна служба в АМП, както и това, че все още се разчита на проправителствени милиции, при които няма надзор върху механизмите на мобилизация, продължават да са източник на тревога.³³⁸

Проправителствените групировки, според сведенията, също принуждават местните жители да изпращат младежи за включване в борбата срещу талибаните и други АПЕ.³³⁹

c) *Обобщение*

В светлината на гореизложеното ВКБООН смята, че в зависимост от индивидуалните обстоятелства на всеки отделен случай мъжете в наборна възраст и децата, живеещи в райони под ефективния контрол на АПЕ, или в райони, където проправителствените сили, АПЕ и/или свързани с ИДИЛ въоръжени групировки водят борба за контрол, може да имат нужда от международна закрила на базата на основателни опасения от преследване от страна на недържавни субекти по причина (приписвани) политически убеждения или други основания по Конвенцията в съчетание с общата неспособност на държавата да осигури защита срещу това преследване. В зависимост от индивидуалните обстоятелства на всеки отделен случай, мъжете в наборна възраст и децата, живеещи в райони, където командирите на АМП имат достатъчно силни позиции, за да мобилизират принудително членове в АМП, също може да имат нужда от международна закрила като бежанци на основание на принадлежността им към конкретна социална група или други релевантни основания.

Мъжете в наборна възраст и децата, които се съпротивляват на принудителната мобилизация, също може да имат нужда от международна закрила по причина (приписвано им) политическо мнение или на други относими основания.

2015, http://www.child-soldiers.org/user_uploads/pdf/childsoldiersinternationalafghanistanbriefingjune2015final7404027.pdf.

³³⁵ UNICEF, *Afghanistan Parliament Approves Draft Law To Ban Recruitment Of Child Soldiers*, 3 November 2014, https://www.unicef.org/afghanistan/protection_9042.html; Pajhwok Afghan News, *UN Hails Draft Law Against Child Soldiers' Recruitment*, 5 November 2014, <https://www.pajhwok.com/en/2015/03/10/un-hails-draft-law-against-child-soldiers%2E%80%99-recruitment>; UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2014*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 19.

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

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

³³⁸ *Ibid.*

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

В зависимост от конкретните обстоятелства на случая членовете на семействата на лица с тези характеристики може също да имат нужда от международна закрила по причина (приписвани) политически убеждения или други относими основания.

Молбите за закрила от деца трябва да бъдат оценявани внимателно и в съответствие с насоките на ВКБООН за молби за закрила от деца, включително във връзка с проверката на евентуални съображения за изключване за бивши деца войници.³⁴⁰ Когато деца, свързани с въоръжени групировки, според твърденията са извършили престъпления, е важно да се има предвид, че може да са жертви на нарушения на международното право, а не само извършители.³⁴¹

4. Цивилни, заподозрени в подкрепа на антиправителствените елементи (АПЕ)

Конституцията предвижда, че никой не може да бъде арестуван или задържан без справедлив процес, и съдържа абсолютна забрана за използването на изтезания.³⁴² Прилагането на изтезания е криминализирано в Наказателния кодекс³⁴³, а суворите наказания на деца са забранени в Кодекса за малолетните³⁴⁴. Освен това през януари 2018 г. горната камара на Народното събрание прие консолидирания текст на нов закон против изтезанията.³⁴⁵

Въпреки тези законови гаранции съществува загриженост за използването на изтезания и жестоко, нечовешко или унизително отношение срещу задържани лица, особено такива, свързани с конфликта, обвинени за подкрепа на АПЕ, в местата за задържане, управлявани от НДС, АНП (включително Афганистанската национална границна полиция, АНГП), АНА и АМП.³⁴⁶ През 2017 г. UNAMA съобщава, че използването на изтезания е било „системно или редовно и преобладаващо“ в обекти на АНП или АНГП в пет провинции³⁴⁷, като има достатъчно достоверни

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

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

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

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

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

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

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

³⁴⁷ “The high levels of torture and ill-treatment by NDS in Kandahar and Farah suggest the systematic use of torture and ill-treatment in these facilities. UNAMA found indications of the regular and prevalent use of torture by NDS in Herat, Nangarhar, and in NDS 241 (Counter Terrorism Department) in Kabul.” UNAMA, *Treatment of Conflict-Related Detainees*, April 2017, p. 24. According to UNAMA, especially the “treatment of detainees by NDS in Kandahar remains a major concern. UNAMA found that 60 per cent of those interviewed who were detained at the NDS provincial facility in Kandahar gave credible and reliable accounts of having experienced torture or other forms of ill-treatment prohibited under international law. This indicates a worrisome return to the systematic use of torture and ill-treatment by NDS Kandahar, which was last documented by UNAMA in 2011-2012.” *Ibid.* Similarly, in June 2017 the UN Committee Against Torture expressed deep concern especially regarding the situation in Kandahar province following numerous reports on “(a) the worrisome number of detainees of the National Directorate of Security and the national police who have allegedly experienced torture or ill-treatment, including suffocation, crushing of the testicles, water forcibly pumped into the stomach and electric shocks; and (b) the allegations that the national police have been responsible for incommunicado detention, enforced

и надеждни сведения за изтезания в НДС, документирани в други провинции и звена на НДС на територията на страната“.³⁴⁸ UNAMA съобщава също така за „системно използване на изтезания и малтретиране“ в местата за задържане на АНП или АНГП в провинциите Кандахар и Нангархар³⁴⁹, както и „за нарушения в други 20 провинции, с особена тревога за третирането на задържаните лица от страна на АНП в провинциите Фарах и Херат“.³⁵⁰

Сред задържаните лица, за които е било установено, че са били измъчвани, е имало и деца.³⁵¹

UNAMA съобщава и за случаи на извънсъдебни убийства и принудително изчезване на задържани лица под контрола на АНП и АМП.³⁵² Според съдебните съдилища обичайно ги използват изтезания като средство за изтъргване на признания, а наказателните съдилища обичайно ги използват като доказателства.³⁵³ Въпреки усилията на НДС за подобряване на вътрешните механизми за надзор, продължава „посеместната нагласа за безнаказаност“.³⁵⁴

Продължават да възникват беспокойства и във връзка с произволно задържане.³⁵⁵ Освен това през септември 2015 г. са одобрени изменения на Наказателния кодекс, които „позволяват на служителите по сигурността да задържат лица, заподозрени в терористични престъпления и престъпления срещу вътрешната и външната сигурност до 70 дни, без да е необходимо повдигане на обвинения през този срок“, което прави заподозрените още по-увязими на малтретиране.³⁵⁶ Според

disappearances, mass arbitrary detention and extrajudicial killings, during counter-insurgency operations.” UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.htm> l, para. 15.

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

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

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

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

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

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

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

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

³⁵⁶ UNAMA, *Treatment of Conflict-Related Detainees*, April 2017, p. 11; see also, AAN, *Torture as Prevalent as Ever: New UN Report Finds No End to Impunity for Afghan Torturers*, 24 April 2017, <https://www.afghanistan-analysts.org/torture-as-prevalent-as-ever-new-un-report-finds-no-end-to-impunity-for-afghan-torturers/> ; UNAMA/OHCHR, *Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Afghanistan and on the Achievements of Technical Assistance in the Field of Human Rights in 2015*, 11 February 2016, A/HRC/31/46, <http://www.refworld.org/docid/56f171fc4.html> , paras 52-54; AAN, *Casting a Very Wide Net: Did Ghani Just Authorise Interning*

сведенията задържаните лица нямат достъп до механизми за правна защита, независими медицински прегледи и грижи, както и пълноценен достъп до адвокат, особено по време на разследването и продължителен период на задържане, особено в отдалечени обекти за задържане.³⁵⁷ Служители на АМП и НССА, както и членове на проправителствени въоръжени групировки, според съобщенията, също използват заплахи, изнудване и физическо насилие срещу цивилни, заподозрени, че подкрепят АПЕ³⁵⁸, като в някои случаи цивилни са били убивани³⁵⁹, включително членове на семействата на мобилизираните в АПЕ бойци³⁶⁰.

В районите, където присъстват въоръжени групировки, свързани с ИДИЛ, цивилните, заподозрени, че подкрепят талибаните, според съобщенията, са заплашвани и убивани от тези групировки.³⁶¹

В светлината на гореизложеното ВКБООН смята, че цивилните, заподозрени, че подкрепят АПЕ, може да имат нужда от международна закрила поради основателен страх от преследване от държавата по причина, че се обвиняват за тяхното (приписвано им) политическо мнение, или на други релевантни основания по Конвенцията в зависимост от индивидуалните им характеристики или обстоятелствата по случая.

Предвид необходимостта да се поддържа цивилният и хуманитарният характер на убежището, бившите въоръжени елементи трябва да се разглеждат като търсещи закрила лица само ако е установено, че наистина искрено и постоянно са се отказали от военни действия³⁶². Молбите от бивши въоръжени елементи може освен това да породят нуждата да се провери възможно изключване от статута на бежанец. Предвид особените обстоятелства и уязвимостта на децата, до прилагане на клаузи за изключване на деца трябва да се прибегва много предпазливо.³⁶³ Когато за деца, свързани с въоръжени групировки, се твърди, че са извършили престъпления, е важно да се има предвид, че може да са жертва на нарушения на международното право, а не само извършители на такива.³⁶⁴

Afghans Without Trial?, 21 January 2016, <https://www.afghanistan-analysts.org/casting-a-very-wide-net-did-ghani-just-authorise-interning-afghans-without-trial/> ; HRW, *Afghanistan: Reject Indefinite Detention Without Trial*, 15 November 2015, <http://www.refworld.org/docid/564b4a124.html> .

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

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

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

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

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

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

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

³⁶⁴ The Paris Principles state: "Children who are accused of crimes under international law allegedly committed while they were associated with

5. Членове на малцинствени религиозни групи и лица, възприемани като напушаващи законите на шериата

Конституцията предвижда, че последователите на други религии освен ислама са „свободни в рамките на закона да упражняват религиозните си права.“³⁶⁵ Конституцията обаче заявява също така, че исламът е официална религия на държавата³⁶⁶ и че „никой закон не може да противоречи на принципите и разпоредбите на светата религия ислам в Афганистан.“³⁶⁷ Конституцията предвижда също, че съдилищата трябва да следват школата Ханафи в юриспруденцията, характерна за две трети от мюсюлманския свят, в случаите, когато няма насоки нито от Конституцията, нито от други закони.³⁶⁸ Афганистанските юристи и държавни служители са критикувани, че дават предимство на исламските закони пред задълженията на Афганистан по международното право за правата на човека³⁶⁹ в ситуации, когато има противоречие между задълженията по Конституцията по двата вида законодателство, в частност по отношение на правата на афганистанците, които не са мюсюлмани сунити, и на жените.³⁷⁰

a) Малцинствени религиозни групи

Немюсюлманските малцинствени групи, в частност християни, хиндуисти и сикхи продължават да са подложени на дискриминация по закон.³⁷¹ Както е посочено по-горе, в ситуации, когато Конституцията и законите на Афганистан не дават насоки, Конституцията препраща към сунитското право Ханафи. Това се отнася за всички граждани на Афганистан, независимо от религията им.

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

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

³⁶⁶ *Ibid.*

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

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

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

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

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

Единственото изключение е по въпросите на личното право, когато всички страни са шиити, като в този случай се прилага Шиитският закон за личния статут. Няма отделни закони за другите религиозни малцинства.³⁷²

В Наказателния кодекс от 2017 г. урежда „престъплениета с обида срещу религиите“, като определя като закононарушение преднамерените обиди срещу религия или нарушаването на нейните ритуали или разрушаването на разрешените за нея места за молитви или всякакви символи, зачитани от последователите на дадена религия.³⁷³ Освен това се счита за престъпление да нападнеш последовател на дадена религия, който извършва религиозни ритуали чрез публични средства, или да накърняваш или изопачаваш идеите или повелите на исляма.³⁷⁴ Освен това за престъпление се определя и подстрекаването на дискриминация на основание религия.³⁷⁵

Независимо от това, според съобщенията, немюсюлманските малцинствени групи продължават да са подложени на обществено притеснение, а в някои случаи – на насилие.³⁷⁶ Членовете на религиозни малцинства като бахаите и християните, според съведнията, избягват да заявяват публично своите вярвания или да се събират открито за богослужения поради страх от дискриминация, малтретиране, произволно задържане или смърт.³⁷⁷ Жените, които не са мюсюлманки, се чувстват принудени да носят бурки или други шалове за закриване на лицето, за да са по-сигурни на обществено място и да не предизвикват напрежение в обществото.³⁷⁸

През периода от 1 януари 2016 г. до 7 ноември 2017 г. UNAMA „е документирала 51 инцидента: атаки срещу религиозни храмове и лица, които упражняват правото си на богослужение, наблюдение и практикуване на религията, и целенасочени убийства, отвлечания и сплашване на религиозни учени и религиозни водачи, предимно от страна на АПЕ. В резултат от тези инциденти има 850 цивилни жертви (273 убити и 577 ранени), което е почти два пъти повече от цивилните жертви при такива нападение през целия седемгодишен период от 2009 до 2015 година.“³⁷⁹ През 2016 г. и 2017 г., според съведнията, религиозни лидери са били постоянно и все повече обект на убийства, отвлечания, заплахи и сплашване, предимно от страна на АПЕ.³⁸⁰ Има също случаи, в които обект

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

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

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

³⁷⁵ *Ibid.*, Article 256.

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

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

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

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

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

на нападенията на АПЕ са били религиозни учени, а проправителствени сили са насочвали нападенията си срещу имаме в джамии, за които се счита, че подкрепят АПЕ.³⁸¹

Анализаторите изразяват тревога, че определени разпоредби в новия проектозакон за свободата на събиране ще ограничат по-специално правата на религиозните малцинства; проектозаконът определя като незаконни протести „събирания, стачки, демонстрации и седящи демонстрации във връзка с етнически, религиозни и регионални искания.“³⁸²

Бахай

През май 2007 г. Генералната дирекция по фетвите и счетоводството на Върховния съд на Афганистан постановява, че всички мюсюлмани, които са преминали в бахайската вяра, са апостаси и че всички вярващи бахай са неверници.³⁸³ Според сведенията след това решение бахаите живеят скрито.³⁸⁴

Християни

Отношението на обществото към християните, според сведенията, остава открыто враждебно, като на практика християните са принудени да крият вярата си.³⁸⁵ В Афганистан не са останали публични църкви, а християните се молят сами или на малки групи в частни домове.³⁸⁶ През 2013 г. четириима депутати са призовали за екзекуция на приелите християнството.³⁸⁷

Шиити

Според шиитските депутати броят на шиитите на държавни длъжности не е пропорционален на общия процент на шиитите сред населението.³⁸⁸ Докато някои източници съобщават, че откритата дискриминация на сунитите срещу шиитската общност е намаляла³⁸⁹, други съобщават, че тази дискриминация продължава в някои части на страната.³⁹⁰ АПЕ гледат на шиитите като на „неверници“, „апостаси“ или „полу-мюсюлмани“.³⁹¹ Нещо повече, от 2016 г. са се засилили

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

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

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

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

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

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

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

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

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

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

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

насилиствените нападения от страна на АПЕ срещу шиитското население.³⁹² Сред атаките на АПЕ са изчезване на хора, отвличания, целенасочени убийства, вземане на прицел на шиити в места за молитва или села, както и комплексни и самоубийствени атентати.³⁹³ Трябва да се отбележи, че в Афганистан етническата принадлежност и религията често са неразделно свързани, особено в случая с хазарите, които са предимно шиити.³⁹⁴ В резултат на това невинаги е възможно да се направи ясно разграничение между дискриминацията и лошото отношение на основата на религията и дискриминацията и лошото отношение на основата на етническа принадлежност.³⁹⁵

Сикхи и хиндуисти

Макар и да няма достоверни данни за сегашния размер на общностите на сикхите и хиндуистите в Афганистан, смята се, че голям брой сикхи и хиндуисти са напуснали Афганистан в резултат на сериозните трудности, пред които са били изправени.³⁹⁶ Малкият брой сикхи и хиндуисти, които са останали в Афганистан, са станали още по-увязвими за малтретиране, особено от полицията и от екстремистки елементи в мюсюлманската общност.³⁹⁷ На 1 юли 2018 г. при самоубийствен бомбен

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

³⁹³ Reuters, *Suicide Bomb Kills at Least Seven at Shi'ite Gathering in Kabul*, 9 March 2018, <https://www.reuters.com/article/us-afghanistan-blast/suicide-bomb-kills-at-least-seven-at-shiite-gathering-in-kabul-idUSKCN1GL0W1> ; UNAMA, *Protection of Civilians in Armed Conflict: Attacks Against Places of Worship, Religious Leaders and Worshippers*, 7 November 2017, <http://www.refworld.org/docid/5a0b0b534.html> , p. 2. US Department of State, *2016 Country Reports on Human Rights Practices: Afghanistan*, 3 March 2017, <http://www.refworld.org/docid/58ec8a7fa.html>. See also, Reuters, *Afghanistan's Shi'ites Call for Protection After Latest Mosque Attack*, 26 August 2017, <http://news.trust.org/item/20170826094946-qqwqk/> ; HRW, *Afghanistan: Deadly Attack on Mosque a War Crime*, 25 August 2017, <https://www.ecoi.net/en/document/1405914.html> . UNAMA, *Human Rights and Protection of Civilians in Armed Conflict: Special Report Attacks in Mirza Olang, Sari Pul Province: 3-5 August 2017*, August 2017, <http://www.refworld.org/docid/5a534e764.html> , pp. 1, 6, 7; Hazara International Network, AIHRC: *Attacks Against Hazaras in Afghanistan*, 30 May 2017, <http://www.hazarapeople.com/2017/05/30/aihrc-attacks-against-hazaras-in-afghanistan-.html> .

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

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

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

³⁹⁷ In late December 2016, a prominent Sikh leader was reportedly shot by unidentified gunmen in Kunduz; he later died as a result of his injuries.

атентат в Джалалабад, за който поема отговорност Исламска държава, са убити 19 души и 20 са ранени; 17 от убитите са сикхи и хиндуисти.³⁹⁸ Според сведенията високопоставени държавни служители са казали на сикхите, че „не са от Афганистан“, че са „индийци“ и че „мястото им не е тук“.³⁹⁹ Въпреки че на общностите на сикхите и хиндуистите е разрешено да упражняват религията си публично, те според сведенията продължават да се сблъскват с дискриминация от страна на държавата, включително когато става дума за достъпа им до правосъдие, политическо участие и държавни служби.⁴⁰⁰ Според сведенията те продължават да се сблъскват с обществена дискриминация и заплахи.⁴⁰¹ И двете общности съобщават за трудности при извършването на погребения в съответствие с обичаите им поради тормоз и дискриминация.⁴⁰² Макар и да се съобщава, че полицията оказва закрила на сикхските и хиндуистките общности по време на погребални ритуали, членовете на двете общности съобщават, че се чувстват незаштитени от държавните власти в други отношения, включително във връзка с поземлени спорове.⁴⁰³ Сикхите и хиндуистките общности се въздържат да искат реституция чрез Съда поради страх от възмездие.⁴⁰⁵ Останало е само едно държавно училище за сикхски деца, а много от частните училища за сакхси са затворени; тъй като няма отделно училище за хиндуисти, някои хиндуистки деца са записани в

In October 2016, another Sikh individual was abducted and killed by suspected militants. Hindustan Times, *Afghanistan: Head of Sikh Community in Kunduz Shot Dead by Unknown Gunmen*, 30 December 2016, <https://www.hindustantimes.com/world-news/afghanistan-sikh-community-head-of-kunduz-shot-dead-by-unknown-gunmen/story-bqmG9cC441LUB2LJ6K1JeO.html> ; RFE/RL, *Afghanistan's Sikh, Hindu Minorities Demand Probe into Sikh Killing*, 30 December 2016, <http://www.refworld.org/docid/5975a3cf3.html> ; Pajhwok Afghan News, *Sikh Man's Killing Sparks Protest in Jalalabad*, 1 October 2016, <https://www.pajhwok.com/en/2016/10/01/sikh-man%20%80%99s-killing-sparks-protest-jalalabad> .

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

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

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

⁴⁰¹ “Members of the Hindu community said they continued to face fewer incidents of harassment than Sikhs, ascribing the difference to their lack of a distinctive male headdress. Despite the differences between the groups, many Afghans reportedly continued to use the terms Sikh and Hindu interchangeably. Because religion and ethnicity are often closely linked, it was often difficult to categorize many incidents as being solely based on religious identity.” US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html> . See also, The National, *Afghan Hindus and Sikhs Celebrate Diwali Without 'Pomp and Splendour' Amid Fear*, 19 October 2017, <https://www.thenational.ae/world/asia/afghan-hindus-and-sikhs-celebrate-diwali-without-pomp-and-splendour-amid-fear-1.668735> ; Freedom House, *Freedom in the World 2017: Afghanistan*, 2 June 2017, <http://www.refworld.org/docid/5936a46d13.html>; IWPR, *Afghan Hindus and Sikhs Still Struggling*, 30 November 2017, <https://iwrp.net/global-voices/afghan-hindus-and-sikhs-still-struggling> ; Al Jazeera, *The Decline of Afghanistan's Hindu and Sikh Communities*, 1 January 2017, <https://www.aljazeera.com/indepth/features/2016/12/decline-afghanistan-hindu-sikh-communities-161225082540860.html>

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

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

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

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

сикхски училища. Сиксите и хиндуистките деца, които посещават държавните училища в Кабул, са подложени на тормоз и заплахи от другите ученици.⁴⁰⁶

Суфити

Според сведенията привържениците на суфизма – школа в ислама, която се разглежда като еретическа от последователите на други исламски школи – се набелязват от АПЕ.⁴⁰⁷

b) *Преминаване от ислама в друга религия*

Преминаването от ислама в друга религия се смята за апостазия; според тълкуването на Съда на исламските закони то се наказва със смърт.⁴⁰⁸ Макар че афганистанският Наказателен кодекс не споменава изрично апостазията като престъпление, а Конституцията предвижда, че никое действие не се смята за престъпление, ако не е определено като такова в закон, Наказателният кодекс предвижда, че очевидни престъпления, включително апостазията, трябва да се наказват в съответствие с ханафското право на исламския закон⁴⁰⁹ и да се разглеждат от службата на Главния прокурор. Мъжете над 18 години или жените над 16 години със здрав разум, които преминат от ислама в друга религия и не се откажат от преминаването в срок от три дни, рискуват браковете им да се анулират и да бъдат лишени от цялата им собственост. Те също така може да бъдат отхвърлени от семейството и членовете на обществото и да загубят работа.⁴¹⁰ Лицата, преминали от ислама в друга религия, се страхуват за физическата си целост.⁴¹¹

Прозелитизирането с цел преминаването на лица от ислама в друга религия също е незаконно според юриспруденцията на школата Ханафи и подлежи на същото наказание като апостазията.⁴¹² Според сведенията общественото мнение е настроено враждебно към лица и организации, които обръщат в друга вяра (прозелитизират).⁴¹³ Адвокати, които защитават лица, обвинени в апостазия (отстъпничество), може сами да бъдат обвинени в апостазия и рискуват да получат смъртни

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

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

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

⁴⁰⁹ Afghanistan, *Penal Code*, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR), Article 2(2); see also Library of Congress, *Laws Criminalizing Apostasy*, undated, <http://www.loc.gov/law/help/apostasy/> , accessed 4 April 2018; Verfassungsblog on Matters Constitutional, Adeel Hussain: Afghanistan's Constitution Between Sharia Law and International Human Rights, 22 May 2017, <https://verfassungsblog.de/afghanistans-constitution-between-sharia-law-and-international-human-rights/> .

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

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

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

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

заплахи;⁴¹⁴ обвинените лица обикновено нямат достъп до адвокат или други процесуални гаранции.⁴¹⁵

c) *Други деяния, противоречащи на шериатското право*

Освен разпоредбите в Наказателния кодекс от 2017 г., които криминализират деянията на обида или изкривяване на ученията на исламската религия, афганистанските съдилища разчитат на исламското право по отношение на богохулството.⁴¹⁶ Според тълкуването на исламското право от Съдилищата богохулството е углавно престъпление; мъжете над 18 годишна възраст и жените над 16 годишна възраст със здрав разсъдък и обвинени в богохулство може да бъдат осъдени на смърт. Както и с отстъпничеството, обвинените в богохулство лица имат три дни да се отрекат; според сведенията няма ясна процедура за отричане по шериатския закон.⁴¹⁷

Освен това лицата, обвинени в извършване на престъпления срещу шериатския закон, като отстъпничество, богохулство, доброволни хомосексуални отношения или прелюбодейство (*zina*), са заплашени не само от съдебно преследване, но и от обществено отхвърляне и насилие от страна на техните семейства, други членове на обществеността и талибаните и другите АПЕ.⁴¹⁸

d) *Обобщение*

На основата на предходния анализ ВКБОН счита, че лицата, за които се смята, че противоречат на шериатския закон, включително лицата, обвинени в богохулство и преминали от ислама към друга религия, както и лицата, принадлежащи към малцинствени религиозни групи, може да имат нужда от международна закрила поради основателен страх от преследване от държавни и недържавни субекти по причина религия и други относими основания по Конвенцията, в съчетание с общата неспособност на държавата да осигури защита срещу такова преследване, когато е от страна на недържавни субекти.⁴¹⁹

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

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

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

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

⁴¹⁸ “With regard to non-believers and apostates, very few incidents are recorded, though this probably means that many converts and dissenters from Islam generally are simply too afraid to speak out.” International Humanist and Ethical Union, *The Freedom of Thought Report: Afghanistan*, 1 November 2016, <http://freethoughtreport.com/countries/asia-southern-asia/afghanistan/>. See also, Star Tribune, *The Latest: UN Chief Condemns Attack on Afghan Vote Center*, 22 April 2018, <http://www.startribune.com/the-latest-12-killed-57-wounded-in-afghanistan-bombing/480482101/>; CTV News, *ISIS Claims Responsibility for Afghan Mosque Attack*, 21 October 2017, <https://www.ctvnews.ca/world/isis-claims-responsibility-for-afghan-mosque-attack-1.3642887>; US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>; UNAMA, *Human Rights and Protection of Civilians in Armed Conflict: Special Report Attacks in Mirza Olang, Sari Pul Province: 3-5 August 2017*, August 2017, <http://www.refworld.org/docid/5a534e764.html>, p. 6; Washington Post, *It Was a Brutal Killing that Shocked Afghanistan. Now, the Outrage Has Faded*, 28 March 2017, https://www.washingtonpost.com/world/asia_pacific/it-was-a-brutal-killing-that-shocked-afghanistan-now-the-outrage-has-faded/2017/03/27/e3301f5a-109c-11e7-aa57-2ca1b05c41b8_story.html. It should be noted that both men and women may be at risk on the grounds of accusations of engagement in “moral crimes”, including adultery (*zina*) and other sexual relations outside wedlock. For further analysis of the treatment of women and men accused of moral crimes, please refer to Section III.A.8. For further analysis of the treatment of persons perceived as contravening Sharia law, please refer to Sections III.A.6 and III.A.12.

⁴¹⁹ For further guidance on religion-based asylum claims, see UNHCR, *Guidelines on International Protection No. 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, HCR/GIP/04/06, 28 April 2004, <http://www.refworld.org/docid/4090f9794.html>. The risk that Christian converts may face in Afghanistan has been recognized in national jurisdictions. For example, the UK Asylum and Immigration Tribunal held that a Christian convert from Islam would be at real risk of serious ill-treatment amounting to persecution on return to Afghanistan; see *NM (Christian Converts)* CG [2009] UKAIT 00045, 13 November 2009, <http://www.refworld.org/docid/4af6a8d2.html>. Similarly, the Verwaltungsgericht in Germany has held that Hindus from Afghanistan had a well-founded fear of persecution on the grounds of their religion; see Case No. K 103/09.KS.A, Verwaltungsgericht (VG) Kassel, judgment of 27 July

6. Лицата, за които се смята, че противоречат на тълкуването на АПЕ на исламските принципи, норми и ценности

Според сведенията талибаните убиват, нападат и заплашват лица и общности, за които се смята, че се противопоставят на тълкуването от страна на талибаните на исламските принципи, норми и ценности.⁴²⁰

В районите, където талибаните се опитват да спечелят сърцата и умовете на местното население, според сведенията, те смекчават позицията си.⁴²¹ Щом обаче районите попаднат под ефективния им контрол, талибаните налагат строго тълкуване на исламските принципи, норми и ценности.⁴²² Съществуват съобщения, че служители на талибанското Министерство за насърчаване на добродетелите и предотвратяване на пороците, които патрулират по улиците, задържат хора за това, че са обръснали брадите си или че употребяват тютюн.⁴²³ На жените се позволява да напускат дома си само ако са придружавани от членове на семейството – мъже и само за малък брой позволени цели, като посещение при лекар⁴²⁴; жените и мъжете, които нарушават правилата, според сведенията, се наказват с публично бичуване или дори със смърт.⁴²⁵

В районите, контролирани от групировки, свързани с ИДИЛ, се налага пуритански начин на живот

2010, http://www.asyl.net/fileadmin/user_upload/dokumente/17462.pdf; and Case No. 7 K 746/09.F.A, Verwaltungsgericht (VG) Frankfurt/Main, Judgment of 11 February 2010, http://www.asyl.net/fileadmin/user_upload/dokumente/18127.pdf.

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

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

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

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

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

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

със строги указания и наказателни действия.⁴²⁶ Според сведенията спрямо жените се налагат строги правила, включително начин на обличане и ограничение на свободата на придвижване.⁴²⁷

На основата на представените по-горе данни ВКБООН счита, че лицата, за които се смята, че противоречат на тълкуването на АПЕ на исламските принципи, норми и ценности, в зависимост от индивидуалните обстоятелства на случая, може да имат нужда от международна закрила поради основателен страх от преследване от недържавни субекти на основание религия, тяхното (приписвано им) политическо мнение или други относими основания от Конвенцията, в съчетание с общата неспособност на държавата да осигури защита срещу такова преследване.

7. Жени с определен профил или в специфични обстоятелства⁴²⁸

От 2001 г. насам правителството предприема важни стъпки за подобряване на положението на жените в страната⁴²⁹, включително предприемането на мерки за засилване на политическото участие на жените⁴³⁰ и създаването на Министерство за въпросите на жените⁴³¹. Включването обаче в

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

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

⁴²⁸ For further guidance on claims for international protection by women, see UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/01, <http://www.refworld.org/docid/3d36f1c64.html>; and UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 32 on the Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women*, 5 November 2014, CEDAW/C/GC/32, <http://www.refworld.org/docid/54620fb54.html>.

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

⁴³⁰ "Since the ousting of the Taliban in 2001, and the adoption of the Afghan constitution in 2004, many gains have been made in public attitudes toward women's role in politics and leadership. More than 78,000 women have been appointed to government positions since 2001, and over 8,000 women currently hold government offices. However, many areas of progress for women have stagnated. The reality today is that Afghanistan continues to be one of the most dangerous countries in the world for women." The Asia Foundation, *In Afghanistan, Gender Not Always Indicator of Support for Women's Rights*, 13 December 2017, <https://asiafoundation.org/2017/12/13/afghanistan-gender-not-always-indicator-support-womens-rights/>. Little or no progress has been made in the provision of concrete opportunities for women to influence the political agenda at higher levels. In its 2018 World Report (covering events of 2017), HRW noted that, "A long-promised plan by the Afghan government to implement UN Security Council Resolution 1325, which calls for women's equal participation in issues surrounding peace and security, was further delayed during the year. The Kabul Process peace talks in June [2017] included only two women among 47 government and international representatives." HRW, *World Report 2018: Afghanistan*, 18 January 2018, <http://www.refworld.org/docid/5a61eeac4.html>.

The presence of women in political roles is stronger than has previously been the case: for example, in 2015 women held 26.5 per cent (18 of 68) of the seats in the upper house (Mesherano Jirga) of the National Assembly of Afghanistan. Inter-Parliamentary Union, *Women in National Parliaments*, 1 April 2018, <http://archive.ipu.org/wmn-e/classif.htm>. The Afghan Constitution of 2004 provides that women are to be included in both houses of the National Assembly. Article 83 states that “at least two females shall be elected members of the House of the People [lower house] from each province.” Similarly Article 84 establishes that fifty per cent of the members of the House of Elders (upper house) are women. Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>. These requirements are reiterated in articles 51 and 54 of the Election Law of 2016. Afghanistan: *Election Law* (2016), 25 September 2016, <http://www.refworld.org/docid/5adf31924.html>. However, in December 2017, members of the Wolesi Jirga (lower house) rejected the nomination of Nargis Nehan, the only female ministerial candidate, for the new Constitutional Cabinet. AAN, *Afghanistan Has Now a Constitutional Cabinet: Eleven Minister Candidates Received Votes of Confidence*, 9 December 2017, <https://www.afghanistan-analysts.org/afghanistan-has-now-a-constitutional-cabinet-eleven-minister-candidates-received-votes-of-confidence/>; Pajhwok Afghan News, ‘*Misogynic Lawmakers Denied Trust Vote to Nehan*’, 4 December 2017, <https://www.pajhwok.com/en/2017/12/04/%E2%80%99misogynic-lawmakers-denied-trust-vote-nehan%E2%80%99>; Tolo News, *Nehan Rejected due to Discrimination, Say Women*, 5 December 2017, <https://www.tolonews.com/afghanistan/nehan-rejected-due-discrimination-say-women>; Khaama Press, *Afghan MPs Approve 11 Cabinet Picks, Rejects the Only Female Minister-Designate*, 4 December 2017, <https://www.khaama.com/afghan-mps-approve-11-cabinet-picks-rejects-only-female-minister-designate-03919/>; Tolo News, *MPs Approve 11 Ministers But Reject Female Candidate*, 4 December 2017, <https://www.tolonews.com/afghanistan/mps-approved-security-minister-ghanji%E2%80%99s-cabinet>.

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

националното законодателство на международни стандарти за защита на правата на жените постоянно е подложено на трудности. Законът за премахване на насилието срещу жени (ЗПНСЖ) е одобрен с президентски указ през 2009 г., но продължава да се сблъска с опозиция от страна на консервативни депутати и други консервативни активисти.⁴³² Измененият наказателен кодекс на Афганистан, приет с президентски указ на 4 март 2017 г., първоначално включва всички разпоредби на ЗПНСЖ и засилва дефиницията на изнасиливането.⁴³³ В отговор на опозицията от консерваторите обаче през август 2017 г. президентът Гани разпорежда на Министерството на правосъдието да изведи главата с ЗПНСЖ от Наказателния кодекс⁴³⁴. Въпреки че новият наказателен кодекс влиза в сила през февруари 2018 г., в президентския указ от 3 март 2018 г. се посочва, че ПСНЖ от 2009 г. продължава да е в сила като отделен закон.⁴³⁵

Като цяло подобрението на положението на жените и момичетата остава незначително.⁴³⁶ Според фондация „Азия“ „ограниченият достъп до обучение и здравни грижи, ограниченията на свободата на движение, несправедливите наказания за „морални престъпления“, неравнопоставеното участие в правителството, принудителните бракове и насилието“ остават главните предизвикателства за жените и момичетата в Афганистан.⁴³⁷ Според съдебните съвети застяват депресиите сред

⁴³² The 2009 EVAW Law criminalizes various forms of violence against women. The text of the law in English is available at <http://www.refworld.org/docid/5486d1a34.html>. While the law was approved by President Karzai by decree in 2009, after which the law was enacted, it technically remains pending parliamentary approval. Women and Children's Legal Research Foundation, *Identifying the Causes and Solutions for Sexual Harassment against Women in Afghanistan*, 2015, <http://harassmap.af/wp-content/uploads/Identify%20the%20cause%20on%20sexual%20harassment%20women%20and%20children%20in%20afghanistan.pdf>, p. 28. The Constitution of Afghanistan guarantees equal rights to women and men; see Article 22 of the Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>. In addition, Afghanistan ratified the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) in 2003. The Government also adopted a *National Action Plan for the Women of Afghanistan* (NAPWA), 2008-2018, <http://mowa.gov.af/en/page/6686>, and, on 30 June 2015, a *National Action Plan on Security Council Resolution 1325 (2000) on Women and Peace and Security for 2015-2022*, https://unama.unmissions.org/sites/default/files/wps-afghanistan_national_action_plan_1325_0.pdf.

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

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

⁴³⁵ The text of the presidential decree is on file with UNHCR. “In early March 2018, the Cabinet of Ministers approved the amendment to the Penal Code, which would exclude the EVAW Law from being affected by the provisions of article 7(2) and 8 of the Penal Code. The amendment was issued shortly thereafter in a presidential decree on 3 March 2018.” UNAMA, *Injustice and Impunity: Mediation of Criminal Offences of Violence Against Women*, May 2018, <http://www.refworld.org/docid/5b1a749f4.html>, p. 17. See also, UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 December 2017, A/72/651-S/2017/1056, <http://www.refworld.org/docid/5a56465c4.html>, para 42; UNAMA, *UNAMA Welcomes Afghanistan's New Penal Code – Calls for Robust Framework to Protect Women Against Violence*, 22 February 2017, <https://unama.unmissions.org/unama-welcomes-afghanistan%20%80%99s-new-penal-code-calls-robust-framework-protect-women-against-violence>. In addition, while a law on the elimination of harassment of women and girls was approved by the Lower House of Parliament (*Wolesi Jirga*) on 9 November 2016, women's rights activists argued that the law was “incomplete, replete with errors and largely unenforceable” and petitioned the President not to ratify the law. Medica Afghanistan, *Petition Not to Ratify the Anti-Sexual Harassment Law Dated 19 Akrab 1395 / 9 November 2016 Pursuant to the Afghanistan Constitution*, 19 February 2017, <http://www.medicaafghanistan.org/medica/index.php/en/petition-not-to-ratify-the-anti-sexual-harassment-law-dated-19-akrab-1395-9-november-2016-pursuant-to-the-afghanistan-constitution/>. See also, Women and Children Legal Research Foundation, *Research Report on Role of EVAW Commissions in addressing Sexual Harassment*, December 2017, <http://harassmap.af/eng/wp-content/uploads/2017/12/Research-Report-on-Role-of-EVAW-Commissions-in-addressing-Sexual-Harassment.pdf>, pp. 7-8; AAN, *Harassment of Women in Afghanistan: A Hidden Phenomenon Addressed in Too Many Laws*, 2 April 2017, <https://www.afghanistan-analysts.org/harassment-of-women-in-afghanistan-a-hidden-phenomenon-addressed-in-too-many-laws/>; IWPR, *New Afghan Law Targets Sexual Harassment*, 8 March 2017, <https://iwp.net/global-voices/new-afghan-law-targets-sexual-harassment>; UNSG, *The Situation in Afghanistan and Its Implications for International Peace and Security*, 3 March 2017, A/71/826-S/2017/189, <http://www.refworld.org/docid/58c276634.html>, p. 25; Tolo News, *Senate Approves Anti-Harassment of Women and Children's Act*, 25 December 2016, <http://www.tolonews.com/afghanistan/senate-approves-anti-harassment-women-and-childrens-act>.

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

⁴³⁷ Asia Foundation, *Afghanistan in 2017: A Survey of the Afghan People*, 14 November 2017, <a href="https://asiafoundation.org/wp-

афганистанските жени поради домашно насилие и други нарушения на правата на човека⁴³⁸, като жените извършват 80 процента от самоубийствата в Афганистан, а други прибавят до жертвоприношение.⁴³⁹

НКПЧА отбележва, че насилието срещу жени остава „повсеместна, обичайна и безспорна действителност“,⁴⁴⁰ като жените в нестабилните провинции, както и в селските райони на Афганистан са особено уязвими на насилие и малтретиране.⁴⁴¹ Според съденията безнаказаността във връзка с такова насилие е обичайна.⁴⁴² Остават широко разпространени сексуалният тормоз и дълбоко вкоренената дискриминация срещу жените.⁴⁴³

Смята се, че жените продължават да се сблъскват със сериозни трудности пред пълното ползване на своите икономически, социални и културни права.⁴⁴⁴ Въпреки напредъка бедността, неграмотността

content/uploads/2017/11/2017_AfghanSurvey_report.pdf, p. 30.

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

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

⁴⁴⁰ AIHRC, *Press Release on Violence against Women: The Causes, Grounds, and Situation of Violence against Women in Afghanistan*, 25 November 2017, p. 2. See also, AIHRC, *Summary of the Report on Violence against Women: The Causes, Context, and Situation of Violence Against Women in Afghanistan*, 11 March 2018, <http://www.refworld.org/docid/5ab132774.html> , p. 1; Pajhwok Afghan News, *Violence Against Women 30pc up in Southeast*, 19 December 2017, <https://www.pajhwok.com/en/2017/12/19/violence-against-women-30pc-southeast> ; Tolo News, *AGO Records Soaring Rates of Violence Against Women*, 28 November 2017, <http://www.tolonews.com/afghanistan/ago-records-soaring-rates-violence-against-women> ; Afghan Times, *Sharp Rise In Violence Cases Against Women*, 26 November 2017, <http://afghanistantimes.af/sharp-rise-in-violence-cases-against-women/> ; The Australian, *War on Women*, 2 September 2017, <http://www.theaustralian.com.au/life/weekend-australian-magazine/why-war-in-afghanistan-has-failed-to-liberate-women/news-story/a8444d36173c622950ft757cbb8b6872> ; UNSG, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/71/932-S/2017/508, 15 June 2017, <http://www.refworld.org/docid/5a2563924.html> , para. 28; Amnesty International, *Report 2016/17: Afghanistan*, 22 February 2017, <http://www.refworld.org/docid/58b034294.html> ; Telesur, *Afghan Women Face Unprecedented Levels of Violence: UN Report*, 11 February 2017, <https://www.telesurtv.net/english/news/Afghan-Women-Face-Unprecedented-Levels-of-Violence-UN-Report-20170211-0023.html> ; Gandhara, *Violence Against Women on the Rise in Afghanistan*, 6 February 2017, <https://gandhara.rferl.org/a/afghanistan-violence-against-women/28284751.html>. “Gender-based violence is a pervasive problem in Afghanistan. It stems from complex inequalities and cultural practices which, when aligned with poverty and lack of awareness, subordinate women to men and prevent them from acting on or receiving support. Studies suggest that 87 percent of Afghan women experience at least one form of physical, sexual or psychological violence, and 62 percent experience multiple forms.” UNFPA Afghanistan, *Gender-Based Violence*, undated, <http://afghanistan.unfpa.org/en/node/1523> .

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

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

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

⁴⁴⁴ According to IWPR, 56 per cent of Afghan women do not hold identity cards and are consequently denied access to a wide range of services, including access to basic facilities from medical care, education and banking to employment and voting. According to IWPR the most common reason for the lack of IDs is the denial of permission to apply for ID card by the woman’s family. IWPR, *Afghan Women Denied Identity Cards*, 27 March 2017, <https://iwpr.net/global-voices/afghan-women-denied-identity-cards>. See also, AIHRC, *Press Release on Violence against Women: The Causes, Grounds, and Situation of Violence Against Women in Afghanistan*, 25 November 2017, p. 4; Foreign Policy, *Afghanistan Ranks Among the Worst Places for Girls to Get an Education*, 17 October 2017, <http://foreignpolicy.com/2017/10/17/afghanistan-ranks-worst-places-girls-to-get->

и лошото здравеопазване продължават да засягат жените непропорционално.⁴⁴⁵

Наблюдателите отбелязват, че прилагането на законодателството за защита на правата на жените остава бавно, особено прилагането на ЗПНСЖ.⁴⁴⁶ Законът криминализира 22 насилиствени акта и вредни традиционни практики срещу жени, включително детски бракове, принудителни бракове и актове на насилие срещу жени като изнасилване и домашно насилие; той също така определя наказания за извършителите.⁴⁴⁷ Властите нямат обаче политическа воля за прилагане на закона и не го изпълняват изцяло, особено в селските райони.⁴⁴⁸ Според съдебните достъпът до правосъдие за жените продължава да е ограничен.⁴⁴⁹ Огромното мнозинство от случаите, включително сериозни престъпления срещу жени, все още се решават чрез медиация с традиционните механизми за решаване на спорове, вместо да се преследват съгласно предвиденото в закона.⁴⁵⁰ НПА,

[an-education-africa](https://www.boell.de/en/2017/08/07/food-discrimination-against-women-afghanistan) ; Heinrich Boell Foundation, *Food Discrimination Against Women in Afghanistan*, 7 August 2017, <https://www.boell.de/en/2017/08/07/food-discrimination-against-women-afghanistan>. There are reports of families who bring up their daughters as sons, in part because of the higher social status of sons compared to daughters; however, once these children reach puberty, they usually must return to being girls. This practice is known as *Bacha Posh*. The News Minute, *Bacha Posh: An Afghan Social Tradition Where Girls are Raised as Boys*, 2 March 2018, <https://www.thenewsminute.com/article/bacha-posh-afghan-social-tradition-where-girls-are-raised-boys-77301> ; National Geographic, *Inside the Lives of Girls Dressed as Boys in Afghanistan*, 2 March 2018, <https://www.nationalgeographic.com/photography/photo/2018/march/bacha-posh-gender-afghanistan/>.

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

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

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

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

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

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

прокуратурите, както и институциите по ПСНЖ продължават да отнасят много случаи, включително сериозни престъпления, до джиргите (племенните съвети) и шура (съвещания) за съвет или решаване, като по този начин подкопават прилагането на закон за ЗПНСЖ и усилват вредните традиционни практики.⁴⁵¹ Постановените по тези механизми решения поставят жените и момичетата пред рисък от по-нататъшна експлоатация и остракизъм.⁴⁵²

Шиитският закон за личния статут⁴⁵³, който урежда въпросите на семейното право като брак, развод и наследствени права за членовете на шиитската общност, съдържа редица разпоредби, които дискриминират жените, по-специално във връзка с попечителството, наследството, браковете на малолетни и ограниченията на движението извън дома.⁴⁵⁴

Макар изложените в този раздел проблеми във връзка с правата на човека да засягат жените и момичетата в цялата страна, положението в районите под ефективния контрол на АПЕ, според съобщенията, предизвиква особена загриженост.⁴⁵⁵ В районите под тяхен контрол АПЕ са ограничили силно правата на момичетата и жените, включително правото им на придвижване и политическо участие.⁴⁵⁶ Освен това в районите под ефективния контрол на АПЕ е вероятно жените да се сблъскват с особени трудности при достъпа до правосъдие и ползването на ефективни правни средства за защита при евентуални нарушения на правата им предвид това, че структурите на паралелното правосъдие, управявани от АПЕ в районите под тяхен контрол, редовно нарушават

<https://www.newsdeeply.com/womenandgirls/community/2017/03/09/without-ids-afghan-women-remain-invisible-justice-system> .

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

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

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

⁴⁵⁴ The controversial provision requiring a wife to provide for the sexual enjoyment of her husband was removed from the Law following domestic and international pressure. However, Afghan legal experts are of the view that Article 162 of the amended Law could be used by a husband to effectively deny maintenance to a wife if she refuses him what he perceives as his conjugal rights; see UN Committee on Economic, Social and Cultural Rights (CESCR), *Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Afghanistan*, E/C.12/AFG/CO/2-4, 7 June 2010, <http://www.refworld.org/docid/4c1732dc2.html> . Other concerns have also been raised. “[The Committee] is concerned that despite the amendments to the Shia Personal Status Law, discriminatory provisions remain, such as the requirement of the husband’s authorization for his wife to leave home”. Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding Observations on the Combined Initial and Second Periodic Reports of Afghanistan*, 23 July 2013, CEDAW/C/AFG/CO/1-2, <http://www.refworld.org/docid/51ff5ac94.html> , para. 42. “The Shiite Personal Status law recognizes marriages for boys and girls ‘at puberty’ but it also refers to marriage as permissible ‘prior to the mentioned ages’ by a guardian before the court. This provision removes the power of the court to rule against early marriage, rendering the law ineffective.” UNICEF, *Children and Women in Afghanistan: A Situation Analysis 2014*, November 2014, <http://www.refworld.org/docid/5a2eb4e14.html> , pp. 38-39. See also, NRC/IDMC, *Strengthening Displaced Women’s Housing, Land and Property Rights in Afghanistan*, November 2014, <http://www.refworld.org/docid/5486c4684.html> , pp. 47-48

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

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

правата на жените.⁴⁵⁷

a) *Сексуално насилие и основано на пола насилие*

Сексуалното насилие и основаното на пола насилието в Афганистан, според съденията остава широко разпространено: въпреки че се съобщава за все повече случаи, се счита, че действителният брой е много по-висок отколкото броя в съобщенията.⁴⁵⁸ През март 2018 г. НКПЧА определя насилието срещу жени като „едно от най-сериозните предизвикателства по отношение на правата на човека в Афганистан“.⁴⁵⁹ Проявите на това насилие са „убийства на честта“⁴⁶⁰, отвлечания, изнасилвания, сексуален тормоз, принудителни аборти и домашно насилие.⁴⁶¹

Тъй като в афганистанското общество се смята, че сексуалните актове извън брака обезчествяват семейството, жертвите на изнасилване извън брака рискуват да бъдат отлъчени, да бъдат принудени да абортят, да бъдат затворени или дори убити.⁴⁶² Обществените табути и страхът от заклеймяване

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

⁴⁵⁸ “UNAMA notes the widespread under-reporting of violence against women cases to the formal justice system [...] In Afghanistan, the underlying cultural norm of viewing sexual and domestic violence as ‘private family matters’ contributes to under-reporting. Studies have shown that Afghan women in general are less likely than men to report violence outside of their families.” UNAMA, *Injustice and Impunity: Mediation of Criminal Offences of Violence Against Women*, May 2018, <http://www.refworld.org/docid/5b1a749f4.html> I, p. 25. The number cases of violence against women recorded by the AIHRC rose from 2,046 cases in 2016 to 4,340 cases in 2017. AIHRC, *Summary of the Report on Violence Against Women: The Causes, Context, and Situation of Violence Against Women in Afghanistan*, 11 March 2018, <http://www.refworld.org/docid/5ab132774.html> , p. 1. The actual number of cases is thought to be far higher: “Chronic instability, combined with impunity, discriminatory cultural practices, and access constraints contribute to the underreporting of sexual violence across Afghanistan.” UNSC, *Report of the Secretary-General on Conflict-Related Sexual Violence*, 15 April 2017, S/2017/249, <http://www.refworld.org/docid/5a4fa3374.html> , para 16. See also, Pajhwok Afghan News, *Above 1500 Violence Against Women Cases Recorded in Northeast*, 9 March 2018, <https://www.pajhwok.com/en/2018/03/09/above-1500-violence-against-women-cases-recorded-northeast> ; The Outlook Afghanistan, *Afghanistan: Violence Against Women*, 19 February 2018, http://www.outlookafghanistan.net/topics.php?post_id=2021 ; Gandhara, *Violence Against Women on the Rise in Afghanistan*, 6 February 2017, <https://gandhara.rferl.org/a/afghanistan-violence-against-women/28284751.html>; The Kabul Times, *Increasing Violence Against Women Concerning*, 23 January 2018, <http://thekabultimes.gov.af/index.php/opinions/social/16128-increasing-violence-against-women-concerning.html> . “[T]he Committee remains deeply concerned by the high prevalence of violence against women in the State party, in particular domestic violence, rape, battery, laceration, crimes committed in the name of so-called ‘honour’ and cases of stoning.” UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html> , para. 37. Out of the 1,530 women interviewed by AIHRC in 2017, 1,307 women stated that they had been harassed, representing 85.4 per cent of the total number of interviewees. AIHRC, *Summary Report Survey of Harassment of Women and Children in Afghanistan*, 11 March 2018, <http://www.refworld.org/docid/5ab132f74.html> , p. 1. A study published in December 2017 found that 90 per cent of the 346 women and girls interviewed had experienced sexual harassment in public places, 91 per cent in educational environments, and 87 per cent at work. Women and Children Legal Research Foundation, *Research Report on Role of EVAW Commissions in addressing Sexual Harassment*, December 2017, <http://harassmap.af/eng/wp-content/uploads/2017/12/Research-Report-on-Role-of-EVAW-Commissions-in-addressing-Sexual-Harassment.pdf> , p. v.

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

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

⁴⁶¹ In 2017 AIHRC recorded 277 murders of women, of which 136 were ‘honour killings’; 1,420 cases of physical violence; 228 cases of sexual violence; 1317 cases of verbal violence; 749 cases of economic violence; and 749 cases of other types of violence, including forced marriages, forced engagements, polygamy, denial of access to education, denial of access to healthcare, selling and buying of women under the pretext of marriage and trafficking. AIHRC, *Summary of the Report on Violence Against Women: The Causes, Context, and Situation of Violence Against Women in Afghanistan*, 11 March 2018, <http://www.refworld.org/docid/5ab132774.html> . See also, Afghanistan Ministry of Women Affairs, *Fifth Report on Implementation of EVAW Law, March 2016 – March 2017*, January 2018, <http://mowa.gov.af/Content/files/Englisg.pdf> , p. 17; Women and Children Legal Research Foundation, *Research Report on Role of EVAW Commissions in Addressing Sexual Harassment*, December 2017, <http://harassmap.af/eng/wp-content/uploads/2017/12/Research-Report-on-Role-of-EVAW-Commissions-in-addressing-Sexual-Harassment.pdf> , pp. 3-4; Newsweek, *Rape, Underage Sex, Forced Marriage, Abuse. That’s the Plight of Too Many Afghan Girls*, 26 December 2017, <http://www.newsweek.com/rape-underage-sex-abuse-forced-marriage-thats-plight-too-many-ghan-girls-758341> ; New York Times, *Brought Together by Pain, 3 Girls Forced into Marriage Have New Dreams*, 6 October 2017, <https://www.nytimes.com/2017/10/06/world/asia/afghanistan-child-brides-marriage.html> ; New York Times, *Years after Acid Attack, an Afghan Story of Survival Takes a Dark Turn*, 13 August 2017, <https://www.nytimes.com/2017/08/13/world/asia/afghanistan-womens-rights-acid-attack.html> ; AIHRC, *Press Release: On Recent Awful Incidents in the Country*, 4 July 2017, http://www.aihrc.org.af/home/press_release/6436# ; France 24, *The Place in Afghanistan Where It’s “Easy To Kill Women”*, 13 April 2017, <http://observers.france24.com/en/20170413-place-afghanistan-where-it%20E2%80%99-E2%80%9Ceasy-kill-women%20E2%80%9D> .

⁴⁶² Pajhwok News reports that in 2017 “nearly 40 women were killed in the name of honor and other issues.” Pajhwok Afghan News, *Nearly 40*

и репресии, включително от страна на членовете на собственото семейство, често възпират жертвите да съобщят за сексуално насилие и за насилие на основа пол⁴⁶³.

Новият Наказателен кодекс на Афганистан, в сила от февруари 2018, криминализира „прегледа за девственост“ без съгласието на жената.⁴⁶⁴ Въпреки това в Афганистан продължава да е широко разпространена практиката на „тестване за девственост“ на жените, които са обвинени в прелюбодеяние или са жертва на сексуални престъпления, сред които изнасилване и сексуални посегателства.⁴⁶⁵ Тази практика е описана като „сексуално посегателство и изтезание“.⁴⁶⁶ Новият Наказателен кодекс криминализира зината (полов акт между извънбрачни двойки).⁴⁶⁷ Член 636 от новия Наказателен кодекс съдържа „по-ясна и подробна дефиниция на изнасилването, което не произтича от зината“.⁴⁶⁸

Мъжете, отговорни за домашно насилие или принудителни бракове, според сведенията, почти винаги остават безнаказани.⁴⁶⁹ Освен това тъй като жените обикновено са икономически зависими

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

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

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

⁴⁶⁵ “While noting the delegation’s statement that the practice of virginity tests is part of the local culture and has no legal ground, the Committee remains deeply concerned that the conduct of such a practice is routinely required by police officers and prosecutors for women fleeing domestic violence and consequently suspected of moral crimes, such as adultery.” UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.htm>. “In the course of our forensic capacity building work in Afghanistan, we learned that the Legal Medicine Directorate and some hospitals routinely performs “virginity tests” in cases where women and girls are suspected of adultery (*zina*) under article 427(1) of Afghanistan’s penal code, attempted adultery (*qasd zena*), or running away from home (*faraar az khana*). These examinations are purportedly undertaken to establish whether a woman has had sexual intercourse or can be considered a ‘virgin’.” Afghanistan Forensic Science Organization, *Virginity Testing*, undated, <http://fsos.org.af/en/virginity-testing/>. See also, BBC, *The Shame of Afghanistan’s Virginity Tests*, 29 December 2017, <http://www.bbc.com/news/world-asia-42112827>; HRW, *Raped, then Assaulted by the Afghan Justice System*, 13 December 2017, <https://www.hrw.org/news/2017/12/13/raped-then-assaulted-afghan-justice-system>; IWPR, *Afghanistan: The High Price of Virginity*, 11 January 2017, <https://iwpr.net/global-voices/afghanistan-high-price-virginity>; Medium, *Virginity Testing is Still Present in Afghanistan*, 11 January 2017, <https://medium.com/@sunnyeom/virginity-testing-in-afghanistan-is-still-present-e5ef538fe83a>; Global Citizen, *The Humiliating Test Women Must Undergo in Afghanistan After Sexual Assault*, 9 January 2017, <https://www.globalcitizen.org/en/content/the-humiliating-test-women-must-undergo-in-afghan/>; New York Times, *Despite Ban, Invasive Virginity Tests Remain Prevalent in Afghanistan*, 6 January 2017, <https://nytlive.nytimes.com/womenintheworld/2017/01/08/invasive-virginity-tests-still-happening-in-afghanistan-despite-ban>.

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

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

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

⁴⁶⁹ “[T]he risk of incrimination for *zina* seems to serve as a strong deterrence against reporting a case of rape, especially in the absence of family support. It is rare for women to independently approach authorities with a claim, perhaps with the exception of instances where a rape has led to pregnancy.” T. Wimpelmann, *Adultery, Rape, and Escaping the House: The Protection and Policing of Female Sexuality in Afghanistan*, CMI

от извършителите на домашното насилие, много жени на практика не могат да подадат оплакване; те нямат друг избор освен да продължат да живеят в такова положение на малтретиране.⁴⁷⁰

Достъпът до правосъдие на жени, които се опитват да съобщят за насилие, се препятства допълнително от факта, че жените полицаи съставляват по-малко от 2% от всички полицейски служители в страната⁴⁷¹ поради повсеместното стигматизиране на жените полицаи.⁴⁷² Освен това самите жени полицаи са застрашени от сексуален тормоз и нападения на работното място, включително изнасилване от колеги мъже.⁴⁷³ Изложени са и на риск от насилиствени нападения от страна на АПЕ.⁴⁷⁴

Съобщава се освен това, че продължава безнаказаността за актове на сексуално насилие поради това, че в някои области на страната предполагаемите извършители са влиятелни командири или членове на въоръжени групировки или криминални банди, или имат връзки с такива групировки или влиятелни лица, които ги защитават от арестуване и съдебно преследване.⁴⁷⁵

b) *Вредни традиционни практики*

В Афганистан продължават да са широко разпространени вредните традиционни практики,⁴⁷⁶ които се прилагат в различна степен както в селските, така и в градските райони в цялата страна и сред всички етнически групи⁴⁷⁷. Вкоренени в дискриминационните възгледи за ролята на жените в

Working Paper Number 9, December 2017, <https://www.cmi.no/publications/file/6404-adultery-rape-and-escaping-the-house.pdf>, p. 12. “A culture of impunity had thus effectively encouraged sexual abuse and other forms of violence [...] nearly 600 instances of so-called honour killings had been registered with the [Afghanistan Independent Human Rights] Commission over the last five years. Most perpetrators had either evaded justice or received a lenient sentence at trial [...] the real figure was likely to be much higher, because of the culture of shame surrounding such cases.” IWPR, *Afghanistan’s Domestic Violence Loophole*, 16 January 2017, <https://iwpr.net/global-voices/afghanistans-domestic-violence-loophole>. United States Department of State, 2016 *Country Reports on Human Rights Practices - Afghanistan*, 3 March 2017, <http://www.refworld.org/docid/58ec8a7fa.html>; AIHRC, *Elimination of Violence against Women* 1394, 30 November 2015, <http://www.refworld.org/docid/5694bfa04.htm>; UNAMA, *Justice through the Eyes of Afghan Women: Cases of Violence against Women Addressed through Mediation and Court Adjudication*, April 2015, <http://www.refworld.org/docid/55814b3c4.html>, p. 29. See also for example NYT, *Rebelling against Abuse, Afghan Women See Signs of Change*, 27 May 2014, <http://www.nytimes.com/2014/05/28/world/asia/rebelling-against-abuse-afghan-women-see-signs-of-change.html>. As also noted in Section III.A.8 on “Women and men perceived as contravening social mores”, the authorities in some instances seek to justify the detention of women as a “protective measure” against further abuse or retaliation by family members.

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

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

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

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

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

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

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

⁴⁷⁷ Specific concerns have been expressed in relation to the Shi’ite Personal Status Law. The law was adopted pursuant to Article 131 of the

афганистанското общество, вредните традиционни практики засягат непропорционално жените и момичетата. Тези практики включват различни форми на принудителни бракове⁴⁷⁸, включително бракове на деца⁴⁷⁹; принудителна изолация у дома; и „убийства на честта“⁴⁸⁰. Насилствените форми на брак в Афганистан включват:

- (i) „платен“ брак, когато жените и момичетата се продават за определено количество стоки или пари или за изплащане на дълг на семейството;⁴⁸¹

Constitution of Afghanistan and regulates family law matters (e.g. marriage, divorce and inheritance rights) of the Shi'ite community in Afghanistan: Shi'ite Personal Status Law, March 2009, <http://www.refworld.org/docid/4a24ed5b2.html>. While the law was welcomed by some prominent Shi'ites and Shi'ite groups for officially recognizing Shi'ite jurisprudence, the law in its initial form was the subject of domestic and international criticism for its failure to protect women's rights. The criticisms led to amendments of the law, but the law retains some of the contentious provisions, including discriminatory provisions regarding guardianship, inheritance, under-age marriages, and limitations on movements outside the home. The controversial provision requiring a wife to provide for the sexual enjoyment of her husband was removed. However, Afghan legal experts are of the view that Article 162 of the amended Law could be used by a husband to effectively deny maintenance to a wife if she refuses him what he perceives as his conjugal rights; see UN CESCR, *Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Afghanistan*, E/C.12/AFG/CO/2-4, 7 June 2010, <http://www.refworld.org/docid/4c1732dc2.html>. The UN High Commissioner for Human Rights denounced the law as legitimizing harmful traditional and customary practices that disadvantage women and called for its repeal; UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Afghanistan and on the Achievements of Technical Assistance in the Field of Human Rights*, A/HRC/13/62, 11 January 2010, <http://www.refworld.org/docid/4bc2c8d62.html>, paras 4 and 21-23.

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

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

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

⁴⁸¹ “High bride prices can lead to debt for grooms and their families and early marriage to unsuitable men for the daughters of poor men; fathers of many daughters, however, may benefit from the practice. [...] Bride price also drives child marriage in Afghanistan [...] Getting a high bride price was a major reason given by parents for marrying their girls off young. Other economic factors also counted, including giving girls in lieu of debts and exchanging girls, so that neither family had to pay the bride price.” AAN, *The Bride Price: The Afghan Tradition of Paying for Wives*, 25 October 2016, <https://www.afghanistan-analysts.org/the-bride-price-the-afghan-tradition-of-paying-for-wives/>. See also IWPR, *Afghanistan: Betrothed in the Womb*, 22 March 2017, <https://iwpr.net/global-voices/afghanistan-betrothed-womb>. Opium-farming families are reported to sell their children to settle debts with opium traffickers. US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>. “Children are given opium to keep them quiet, sent out to beg, turned over to orphanages or sold

- (ii) *baad dadan*, племенна форма на уреждане на спорове, при която семейството дължник предлага момиче за брак на „засегнатото“ семейство, например за уреждане кръвен дълг;⁴⁸²
- (iii) *baadal*, когато две семейства си разменят дъщерите, за да намалят разходите по брака;⁴⁸³
- (iv) принуждаването на вдовици да се омъжват за мъж от семейството на починалия им съпруг.⁴⁸⁴

Икономическата несигурност и продължаващият конфликт, произтичащото от това разселване, загубата на имущество и обединяването на семействата благоприятстват продължаващата практика с детските и принудителните бракове, като тя често се приема като единственото средство за оцеляване на момичето и неговото семейство.⁴⁸⁵

ЗПНСЖ криминализира няколко вредни традиционни практики, включително купуването и продаването на жени за брак, предлагането на жени за решаването на спорове според *baad*, и детските и принудителните бракове.

c) *Обобщение*

В зависимост от индивидуалните обстоятелства по случая ВКБООН смята, че жените, които попадат в следните категории, е вероятно да имат нужда от международна закрила:

into marriage to pay for drugs.” Washington Post, *Opium Use Booms in Afghanistan, Creating a ‘Silent Tsunami’ of Addicted Women*, 19 June 2017, https://www.washingtonpost.com/world/asia_pacific/opium-use-booms-in-afghanistan-creating-a-silent-tsunami-of-addicted-women/2017/06/19/6c5b16f2-3985-11e7-a59b-26e0451a96fd_story.html.

⁴⁸² “When families in some parts of Afghanistan fall out over serious matters, one way of avoiding an escalating blood feud is for the offending party to hand over a woman to the other side. Known as “*baad*”, the custom involves an arranged marriage between the woman and someone from the injured family [...] *Baad* is an ancient tradition in Afghanistan, dating back to the days when no central legal authority existed, and conflicts were settled through the tribal system. [...] When a man kills, rapes, or has sexual relations with someone other than his wife, a local council can step in to mediate. Lesser offences can usually be settled by the exchange of money, perhaps a few sheep or a cow. But the standard penalty for a serious crime is for the offender’s family to part with a girl, who is given to the victim’s family. While face is saved, the woman, or often a young girl, finds herself forced into marriage, and her in-laws often take out lingering resentments on her. Campaigners say the practice is a major cause of domestic violence.” IWPR, *Hope for Afghan Women Traded to End Feuds*, 17 January 2017, <https://iwp.net/global-voices/hope-afghan-women-traded-end-feuds>. “*Baad*, or the giving of a girl to another family to settle a dispute, is a common practice, particularly in the more remote and rural areas of Afghanistan. Girls who are given in *baad* often face a lot of violence and hostility from their new families. A survivor of *baad* from Nangarhar told AAN: “From the day a girl is given as *baad*, she is given into slavery and is never treated like a normal member of the family. She is often abused and beaten by the in-laws.” AAN, *Reality Check: No Justice for Women in Ghor Province*, 4 December 2016, <https://www.afghanistan-analysts.org/reality-check-no-justice-for-women-in-ghor-province>.

⁴⁸³ “*Baddal* refers to the exchange of daughters in marriage between families. This is often, but not always, a form of forced marriage, and may have economic implications (e.g., there is generally no bride price involved).” Asia Foundation, *Afghanistan in 2017: A Survey of the Afghan People*, 14 November 2017, https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf, p. 140 According to the *Pashtunwali* code if a man dies, his wife is part of the inheritance. “She [the widow] must be married to her brother-in-law, or her husband *Tarboor* (cousin). Such a woman is called *Kunda* (widow).” Austrian Country of Origin Information Department (*Bundesamts für Fremdenwesen und Asyl*), *AfPak: Principles of the Tribal & Clan Structure*, 5 April 2017, https://coi.easo.europa.eu/administration/austria/PLib/ANALY_AfPak_tribal_and_clan_structure_2017_04_05.pdf, p. 48. Widows who reject such marriages are likely to lose custody of their children, due to discriminatory provisions in the Afghan Civil Code on child custody. They may also be at risk of sexual and gender-based violence at the hands of the deceased husband’s male relatives. See UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2015*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 18. Widows who run away from home to avoid the forced marriage or to keep their children may be prosecuted for “moral crimes” or could be at risk of “honour killings”; see also Section III.A.8.

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

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

- a) Жертвите и заплашените от свързано с пола насилие;
- b) Жертвите и заплашените от вредни традиционни практики; и
- c) Жените, за които се смята, че противоречат на обществения морал (вж. Раздел III.A.8).

В зависимост от индивидуалните обстоятелства по случая те може да се нуждаят от международна закрила поради основателен страх от преследване от държавни или недържавни субекти по причина принадлежност към определена социална група, (приписваните) им политически убеждения или други относими основания по Конвенцията в съчетание с общата неспособност на държавата да осигури защита срещу такова преследване, когато извършителите са недържавни субекти.

8. Жени и мъже, за които се смята, че противоречат на обществения морал⁴⁸⁶

Въпреки усилията на правителството да насърчава равенството между половете, жените продължават да се изправени пред всепроникваща социална, политическа и икономическа дискриминация поради упоритите стереотипи и обичайни практики, които ги маргинализират.⁴⁸⁷ Жените, за които се смята, че престъпват социалните норми, продължават да са обект на социално заклеймяване, обща дискриминация и заплахи за сигурността им, особено в селските райони под контрола на АПЕ.⁴⁸⁸ Тези норми включват стриктни норми за облеклото⁴⁸⁹ и изисквания които ограничават свободата на придвижване на жените, като това да бъдат придружавани от роднина от мъжки пол, когато се появяват на публично място.⁴⁹⁰

Жените без мъжка подкрепа и защита, включително вдовици и разведени жени,⁴⁹¹ са особено

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

⁴⁸⁷ "Women and girls in Afghanistan continue to face severe and persistent discrimination, violence, street harassment, forced and child marriage, severe restrictions on working and studying outside the home and limited access to justice." Bertelsmann Stiftung, *BTI 2018: Country Report Afghanistan*, 2018, <https://www.bti-project.org/en/reports/country-reports/detail/itc/AFG/>. See also USCIRF, *Annual Report 2018 (Tier 2 Countries): Afghanistan*, 25 April 2018, http://www.uscirf.gov/sites/default/files/Tier2_AFGHANISTAN.pdf, p. 4; UN General Assembly, *The Situation of Human Rights in Afghanistan: Report of the United Nations High Commissioner for Human Rights*, 21 February 2018, Advance Edited Version, A/HRC/37/45, <http://www.refworld.org/docid/5a562b9d4.html>, para. 55; RFE/RL, *Hundreds of Women March in Kabul for International Women's Day*, 8 March 2018, <https://www.rferl.org/a/afghanistan-womens-day-kabul-march-rights-/29086799.html>; Reuters, *Afghanistan's Female Lawyers Risk Danger to Help Women Branded 'Cheap and Filthy'*, 4 July 2017, <https://www.reuters.com/article/us-afghanistan-women-lawyers/afghanistans-female-lawyers-risk-danger-to-help-women-branded-cheap-and-filthy-idUSKBN19P0L4>; Tolo News, *Women's Rights Still Sadly Lacking in Afghanistan*, 11 April 2017, <http://www.tolonews.com/afghanistan/women%2080%99s-rights-still-sadly-lacking-afghanistan>; IWPR, *Afghanistan: The Shame of Having Daughters*, 20 January 2017, <https://iwpr.net/global-voices/afghanistan-shame-having-daughters>; UN Women Asia and the Pacific, *UN Women Afghanistan*, undated, <http://asiapacific.unwomen.org/en/countries/afghanistan>.

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

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

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

⁴⁹¹ See sources quoted in ACCORD, *Query Response on Afghanistan: Rights of Single Mothers (Widows and Divorced Women): Legislation and*

застршени.⁴⁹² Те обикновено нямат средства за оцеляване, имайки предвид съществуващите обществени норми, които налагат ограничения на самотните жени, включително ограничения на свободата им на движение и способността да си осигуряват прехраната.⁴⁹³

Съобщава се, че задържането за нарушаване на обичайното или шериатското право засяга непропорционално жените и момичетата⁴⁹⁴, включително задържане на основание предполагаеми „морални престъпления“⁴⁹⁵, като неправилно придрожаване⁴⁹⁶, отказ от омъжване⁴⁹⁷ или „бягство от дома“⁴⁹⁸ (включително при домашно насилие).⁴⁹⁹ Значителна част от момичетата и жените,

Practices, 2 June 2017, <https://www.ecoi.net/en/document/1406983.html>; see also, New York Times, *'I Feel Like a Divorced Woman Is Up For Grabs'*, 17 April 2017, <https://www.nytimes.com/2017/04/17/world/asia/afghan-women-divorce.html>.

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

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

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

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

⁴⁹⁶ “In some parts of the country, a woman who appeared to be travelling alone or in the company of an unrelated male could be apprehended by the police and arrested. Typically, she would be subject to a forced “virginity” test. If she was unmarried and failed the test, she would be charged with *zina* as well as with running away.” T. Wimpelmann, *Adultery, Rape, and Escaping the House: The Protection and Policing of Female Sexuality in Afghanistan*, CMI Working Paper Number 9, December 2017, <https://www.cmi.no/publications/file/6404-adultery-rape-and-escaping-the-house.pdf>, p. 8. “Authorities sometimes treated male and female victims [of trafficking] as criminals simply for being unchaperoned or for having committed moral crimes”. US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>. “Improper accompaniment” is considered a crime according to Hanafi jurisprudence; see UNAMA, *Arbitrary Detention in Afghanistan: A Call for Action, Volume I - Overview and Recommendations*, January 2009, <http://www.refworld.org/docid/49d0f272.html>, p. 7.

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

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

⁴⁹⁹ “Women who seek help to escape violence often face indifference or criminal sanctions for committing moral crimes.” Bertelsmann Stiftung, *BTI 2018: Country Report Afghanistan*, 2018, <https://www.bti-project.org/en/reports/country-reports/detail/itc/AFG/>. In June 2017 the UN Committee against Torture stated that it “remain[ed] deeply concerned that the conduct of [virginity testing] is routinely required by police officers

задържани в страната, са обвинени за „морални престъпления“.⁵⁰⁰ Жените затворници често са подложени на физическо насилие, както и на сексуален тормоз и малтретиране.⁵⁰¹ Тъй като обвиненията за прелюбодейство и други „морални престъпления“ може да предизвикат „убийства на честта“⁵⁰², в някои случаи властите се стремят да оправдаят задържането на жена, обвинена за такива актове като мярка за закрила.⁵⁰³

Мъжете, за които се смята, че действат противно на преобладаващите обичаи, също може да са изложени на риск от малтретиране, особено в ситуации на обвинения в прелюбодейство и сексуални отношения извън брака.⁵⁰⁴

В областите под ефективния контрол на талибаните и другите АПЕ жените и мъжете, обвинени в

and prosecutors for women fleeing domestic violence and consequently suspected of moral crimes, such as adultery.” UN Committee against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para 37. In August 2010, the High Council of the Supreme Court instructed prosecutors on how to handle “runaway” cases, by invoking article 130 of the Constitution (Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>). According to the instruction, courts should assess whether women who have run away are single or married, the cause and motive for running away and the place to which the woman has run. If a woman has run away to escape harassment by family members and goes to a relative’s house, the house of a legitimate mahram (unmarriageable kin) or if she seeks help from the authorities, then this shall not be regarded as a crime under Sharia law. However, according to the instruction, if a woman goes to a stranger’s house, even if it is to escape ill-treatment at home, she exposes herself to crimes such as “adultery and other associated offences”, which are considered illegal under Sharia law. UNAMA, *Still a Long Way to Go: Implementation of the Law on Elimination of Violence against Women in Afghanistan*, December 2012, <http://www.refworld.org/docid/50c72e0d2.html>, p. 22. A copy of the Supreme Court decree (in Dari), dated 1 August 2010, is on record with UNHCR. UNAMA noted that while the instruction was initially viewed as a way to stop the common practice of arresting girls who had run away by qualifying that a woman who flees to a relative’s house or a justice institution should not be arrested, in practice the instruction was in fact used to legitimize a traditional practice that restricts women’s freedom of movement. *Ibid.*, pp. 22-23. Later instructions on the correct handling of “runaway” cases have been issued by the Attorney General’s Office, which requested units for the elimination of violence against women to issue instructions to all prosecution offices not to press charges against women for “running away” or “attempted zina” (“attempted adultery”), as these are not actual codified crimes under Afghan law. In December 2012 the Supreme Court sent a letter to the Attorney General’s Office stating that running away from home to escape domestic violence and seeking assistance from justice institutions, legal aid organizations or relatives was not a crime and should not be prosecuted. UN Human Rights Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Addendum: Mission to Afghanistan*, 12 May 2015, A/HRC/29/27/Add.3, <http://www.refworld.org/docid/5583f8224.html>, para. 38. In December 2015 the Supreme Court issued a decision “banning the imprisonment of women for running away from their families, [but] the ban was limited to cases in which the women went to a medical provider, the police, or the house of a close male relative.” HRW, *World Report 2017: Afghanistan*, 12 January 2017, <http://www.refworld.org/docid/587b586111.html>. “[T]here is a particularly troubling relationship between the criminalization of various forms of female transgressions—zina, attempted zina, and running away—and a lack of protection against the form of sexual violence by far most prevalent in Afghanistan—forced marriage.” T. Wimpelmann, *Adultery, Rape, and Escaping the House: The Protection and Policing of Female Sexuality in Afghanistan*, CMI Working Paper Number 9, December 2017, <https://www.cmi.no/publications/file/6404-adultery-rape-and-escaping-the-house.pdf>, p. 12.

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

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

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

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

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

неморално поведение, рискуват да бъдат съдени от паралелните структури на тези АПЕ и да им бъдат издадени жестоки присъди, включително удари с камшик и смърт.⁵⁰⁵

В светлината на гореизложеното ВКБООН преценява, че лицата, за които се смята, че нарушават обществения морал, в зависимост от конкретните обстоятелства на случая, може да имат нужда от международна закрила поради основателен страх от преследване от държавни или недържавни субекти по причина религия, (приписано им) политическо мнение, принадлежност към определена социална група или на други относими основания по Конвенцията в съчетание с общата неспособност на държавата да осигури защита срещу такова преследване, когато извършителите са недържавни субекти.

9. Лица с увреждания, по-специално умствени увреждания, и лица с психични заболявания

Според сведенията лица с увреждания, сред които по-специално умствени увреждания, и лица, с психични заболявания са подложени на малтретиране от обществото, включително от членове на собствените им семейства, поради това, че техните заболявания или увреждания са наказание за грехове, извършени от тях или родителите им.⁵⁰⁶ Лицата с увреждания се сблъскват с дискриминация и ограничения при достъпа до трудова заетост, образование и адекватни здравни грижи.⁵⁰⁷

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

⁵⁰⁶ The Kabul Times, *Disabled People and Their Challenges in Afghanistan*, 6 December 2017, <http://thekabultimes.gov.af/index.php/opinions/social/15685-disabled-people-their-challenges-in-afghanistan.html> . “Returnees suffering from mental health disorders can sometimes be abandoned by their families: shame is often associated with mental health troubles as disorders are thought to be the result of demons (djinn) that have taken over an individual. As a result, some families chase the family member suffering from mental health issues or lead him to be chained in front of a shrine. Others are left to beg in the streets. In such circumstances, returnees become extremely vulnerable, as not only do they suffer from mental health issues; they are also unable to provide for themselves. They then become prey for drug traffic, prostitution, human smugglers, warlords or the Taliban.” Dr. Anicée Van Engeland, written Expert Opinion, 11 June 2017, in Asyls, *COI Compilation - Afghanistan: Situation of Young Male ‘Westernised’ Returnees to Kabul*, August 2017, <https://asylos.eu/wp-content/uploads/2017/08/AFG2017-05-Afghanistan-Situation-of-young-male-Westernised-returnees-to-Kabul-1.pdf> . According to the Asia Foundation, persons with disabilities “face a severe social stigma. When you ask Afghans how they perceive those who are blind, for example, some will say they see them as an incomplete person or blindness a “punishment from God.” This stigma makes it challenging for them to overcome obstacles and contribute to their family’s welfare.” Asia Foundation, *Overcoming Stigma Against Disabilities in Afghanistan*, 2 November 2016, <https://asiafoundation.org/2016/11/02/overcoming-stigma-disabilities-afghanistan/>. “[A]ncient superstitions prevail, with many across Afghanistan still attributing mental illnesses to being possessed by demons. An afflicted person can be locked up in a cage or left chained at a shrine for days on end.” AP News, *After Years of War, Afghans Wary to Talk of Mental Health*, 18 August 2016, <https://apnews.com/14df828eb00b4adfa48123751f089186> . See also, NPR, *Afghanistan’s Lone Psychiatric Hospital Reveals Mental Health Crisis Fueled by War*, 14 February 2018, <https://www.npr.org/2018/02/14/585494599/afghanistans-lone-psychiatric-hospital-reveals-mental-health-crisis-fueled-by-wa> ; BBC World Service, *Assignment: Madness of War*, 11 February 2018, <https://www.bbc.co.uk/programmes/w3csvp02> .

⁵⁰⁷ For a detailed description on the human rights situation of persons with disabilities, including education, employment, and health care see: Afghanistan Independent Human Rights Commission (AIHRC), *Human Rights Situation of Person with Disabilities In 1394- 1395*, 10 December 2017, <http://www.aihrc.org.af/media/files/human%20rights%20situation%20of%20%20pwda%20for%20pdf.pdf> . Research by the AIHRC showed that many persons with disabilities do not have an identity certificate, which is necessary to attain citizenship and access to social services. Reportedly, 75.8 per cent of the 944 interviewees reported not having an ID card. *Ibid.*, pp. 11-12. 55.2 per cent of interviewed persons with disabilities were illiterate. *Ibid.*, p. 9. “Concerning the problems of PwDs [persons with disabilities], while the Law on the Rights and Privileges of PwDs has provided for the employment of 3% of PwDs in government departments, but unfortunately, no people with disability has, so far, been employed in government departments.” *Ibid.*, p. 19. For further information on reasons for unemployment see *ibid.*, pp. 23-24. See also, National Public Radio, *Afghanistan’s Lone Psychiatric Hospital Reveals Mental Health Crisis Fuelled By War*, 14 February 2018, <https://www.npr.org/2018/02/14/585494599/afghanistans-lone-psychiatric-hospital-reveals-mental-health-crisis-fueled-by-wa> ; BBC, [Video] *Inside Afghanistan’s Only High Security Mental Institution*, 8 February 2018, <http://www.bbc.com/news/av/world-asia-42980461/inside-afghanistan-s-only-high-security-mental-institution> ; The Lancet: Global Health, *Assessment of Progress Towards Universal Health Coverage for People With Disabilities in Afghanistan: a Multilevel Analysis of Repeated Cross-Sectional Surveys*, August 2017,

ВКБОН смята, че в зависимост от конкретните обстоятелства на случая, лицата с увреждания, сред които по-специално лицата с душевни увреждания, и лицата с психични заболявания може да имат нужда от международна закрила поради основателен страх от преследване от държавни или недържавни субекти по причина принадлежност към конкретна социална група или други относими основания от Конвенцията в съчетание с общата неспособност на държавата да осигури защита срещу такова преследване, когато извършителите са недържавни субекти.

10. Деца с определен профил или в специфични обстоятелства⁵⁰⁸

Децата може да попадат в редица други рискови профили, посочени в настоящите насоки.⁵⁰⁹ Децата обаче може да са застрашени и от специфични за тях форми на преследване, в това число мобилизиране на малолетни, търговия с деца, отвличане, принудителен или опасен детски труд, домашно насилие срещу деца, принудителни или ранни бракове, детска проституция и детска порнография и системно лишаване от образование.⁵¹⁰

a) Принудителен или опасен детски труд

Според Трудовия закон на децата под 14 години е забранено да работят при каквото и да било обстоятелства. Децата на 15- и над 15-годишна възраст може да извършват „лека работа“, но не може да се занимават с трудови дейности, които може да застрашат здравето им или да причинят увреждане.⁵¹¹ Законът за борба с престъплението на трафик на хора и контрабанда на мигранти от 2017 г. определя престъплението трафик като притежаването на дете с цел „експлоатация“, което включва принудителен труд, просия и заробване.⁵¹² Наказателният кодекс от 2017 г. криминализира мобилизирането на деца в условията на тежък физически, нездравословен или подмолен труд.⁵¹³

Въпреки тези законови защити детският труд остава широкоразпространен.⁵¹⁴ Според сведенията

[http://www.thelancet.com/journals/langlo/article/PIIS2214-109X\(17\)30251-6/fulltext](http://www.thelancet.com/journals/langlo/article/PIIS2214-109X(17)30251-6/fulltext); Washington University in St. Louis, *Study in Lancet: Afghans With Disabilities Lack Access to Quality Health Care*, 14 July 2017, <https://source.wustl.edu/2017/07/afghans-disabilities-dont-access-quality-health-care/>; The Embassy of Afghanistan & Afghan Disability Rights Conference, *Final Report, Afghan Disability Rights Conference, From Policy to Programming*, 23 & 24 May 2017, https://www.afghanembassy.us/contents/2017/05/documents/Afghan-Disability-Rights-Conference-Report_final.pdf, p. 6; IWPR, *Afghanistan: Fighting for Disability Rights, Disabled People Say They Face Social Prejudice and Government Inaction*, 6 April 2017, <https://iwpr.net/global-voices/afghanistan-fighting-disability-rights>.

⁵⁰⁸ For guidance on claims for international protection by children, see UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08, <http://www.refworld.org/docid/4b2f4f6d2.html>; see also UN Committee on the Rights of the Child (CRC), *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, <http://www.refworld.org/docid/42dd174b4.html>.

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

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

⁵¹¹ Afghanistan, *Labour Law*, 15 January 2007, <http://www.refworld.org/docid/5b0691664.html>, Articles 13 and 120. Afghanistan has also ratified two key international treaties related to child labor: International Labour Organization (ILO) Convention No. 182 on the Worst Forms of Child Labor, and Convention No. 138 on the Minimum Age of Employment: http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102945.

⁵¹² Afghanistan, *Penal Code*, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR), Article 510. See also, US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>. See also Section III.A.11.

⁵¹³ Afghanistan, *Penal Code*, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR), Article 613. In 2016 the President's cabinet began drafting a Child Protection Act to address some of the worst forms of child labour. US Department of Labor, *2016 Findings on the Worst Forms of Child Labor: Afghanistan*, 30 September 2017, <http://www.refworld.org/docid/5a00215c0.html>, p. 4. See also Section III.A.11.

⁵¹⁴ Save the Children, *Knowledge, Attitudes and Practices on Violence and Harmful Practices Against Children in Afghanistan: A Baseline Study*,

проявленията на детския труд в Афганистан включва най-лошите форми на детски труд, като заробване за дългове и други форми на принудителен труд⁵¹⁵, използването на деца в незаконни дейности, включително търговия с наркотици, както и използване на децата за проституция.⁵¹⁶ Децата участват в опасен труд, който може да увреди здравето, безопасността или морала им, като работа във въгледобивни мини или на тухлени пещи.⁵¹⁷ Много деца работници стават жертва на сексуални посегателства, малтретиране и насилие.⁵¹⁸ Слабият институционен капацитет според сведенията остава сериозна пречка пред ефективното прилагане на Трудовия закон, включително недостатъчни ресурси за проверки и налагане на санкции за нарушения.⁵¹⁹

Уличните деца са сред най-изложените и уязвимите групи в Афганистан с малко или изобщо без достъп до държавни услуги. Бедността и недостигът на храна са основната причина семействата да изпращат децата си на улицата да просят храна и пари.⁵²⁰

b) *Насилието срещу деца, включително сексуално насилие и основано на пола насилие*⁵²¹

Съобщава се, че посегателствата срещу деца е широко разпространено;⁵²² обичайните форми на насилие са физическо малтретиране, сексуално насилие, изоставяне и общо пренебрегване.⁵²³ Някои форми на домашно насилие срещу деца, според сведенията, се извършват в името на дисциплината.⁵²⁴ Докато повечето от децата, които са жертви на сексуални посегателства, особено момичетата, са жертви на членове на семейството⁵²⁵, момчетата и момичетата също така са

August 2017, <http://www.refworld.org/docid/5a5dd34a4.html>, pp. 3, 8. “[M]ore than 73 per cent of child workers had their first work experience between the ages of 5 and 11, according to our previous research. [...] Reports suggests that child labour in Afghanistan increased by 50 per cent in a decade before 2009, with at least 60,000 working in Kabul alone. Given the rapid growth of the population in the capital since 2009, including internally displaced, the number is perhaps much higher today.” The National, *Afghans Need to Stand up for the Rights of Street Working Children*, 12 April 2017, <https://www.thenational.ae/opinion/afghans-need-to-stand-up-for-the-rights-of-street-working-children-1.84117>. In February 2014, the Ministry of Labor, Social Affairs, Martyrs and Disabled released a list of hazardous jobs and/or working conditions prohibited for children, such as mining, agricultural production, begging and garbage collection; work in blast furnaces, waste-processing plants, and large slaughterhouses; work with hospital waste; drug-related work, such as processing of narcotics; working for more than 4 hours in the carpet sector; security guard services; bonded labour and work related to war. US Department of Labor, *2014 Findings on the Worst Forms of Child Labor: Afghanistan*, 30 September 2015, <http://www.refworld.org/docid/560e3e180.html>, p. 3.

⁵¹⁵ US Department of Labor, *2016 Findings on the Worst Forms of Child Labor: Afghanistan*, 30 September 2017, <http://www.refworld.org/docid/5a00215c0.html>, p. 1; US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>.

⁵¹⁶ For further analysis on the use of children in illicit activities, including the drug trade and child prostitution, see Section III.A.11.

⁵¹⁷ “According to Khair Mohammad Akhterzada, the deputy governor of Samangan, more than 1,000 of some 5,000 people working in these mines [in the Dara-e Suf district of Samangan province] are underage. He said that the government only controlled four out of the hundreds of mines currently operational in the region.” IWPR, *Child Labour in Afghan Coal Mines*, 5 April 2017, <https://iwpr.net/global-voices/child-labour-afghan-coal-mines>. See also, IWPR, *Afghanistan’s Modern Day Slave Labourers*, 24 January 2017, <https://iwpr.net/global-voices/afghanistans-modern-day-slave-labourers>; Mail Online, *Held in Bonded Labour, Afghan Returnee Children Make Bricks for a Living*, 2 November 2016, <http://www.dailymail.co.uk/wires/reuters/article-3897816/Held-bonded-labour-Afghan-returnee-children-make-bricks-living.html>. See also Section III.A.11.

⁵¹⁸ According to an investigation by the Afghan Human Rights Research and Advocacy Organisation, between four and five children out of every ten child labourers working in districts in Balkh province had suffered abuse. IWPR, *Afghan Child Labourers Exposed to Abuse*, 5 December 2017, <https://iwpr.net/global-voices/afghan-child-labourers-exposed-abuse>.

⁵¹⁹ US Department of Labor, *2016 Findings on the Worst Forms of Child Labor: Afghanistan*, 30 September 2017, <http://www.refworld.org/docid/5a00215c0.html>.

⁵²⁰ Daily Outlook, *Winter – The Hell of the Poor*, 19 December 2017, http://outlookafghanistan.net/topics.php?post_id=19697; Afghanistan Times, *Invisible Afghan Children*, 31 July 2017, <http://afghanistantimes.af/invisible-afghan-children/>; IWPR, *Afghanistan’s Child Beggars: Impoverished Parents and Organised Gangs Routinely Exploit Children for Profit*, 27 February 2017, <https://iwpr.net/global-voices/afghanistans-child-beggars>.

⁵²¹ For further analysis on the situation of girls subject to harmful traditional practices and sexual and gender-based violence, see Section III.A.7.

⁵²² Save the Children concluded from a 2017 study that sexual abuse against children is very likely underreported. Save the Children, *Knowledge, Attitudes and Practices on Violence and Harmful Practices Against Children in Afghanistan: A Baseline Study*, August 2017, <http://www.refworld.org/docid/5a5dd34a4.html>, p. 47.

⁵²³ Article 612 of the 2017 Penal Code criminalizes the act of beating a child, as well as physically or mentally disciplining a child, and the mistreatment of a child. Afghanistan, *Penal Code*, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR), Article 612.

⁵²⁴ IWPR, *Afghan Boys Still Beaten at School: Ban on Corporal Punishment Continues to Be Widely Ignored*, 15 March 2018, <https://iwpr.net/global-voices/afghan-boys-still-beaten-school>; Save the Children, *Save the Children Calls for End to Corporal Punishment in Afghanistan After Death of a High School Student*, 8 November 2017, <https://www.savethechildren.net/article/save-children-calls-end-corporal-punishment-afghanistan-after-death-high-school-student>; IWPR, *Afghanistan: Spare the Rod, Spoil the Child: Children Face Routine Beatings Both at Home and at School*, 27 March 2017, <https://iwpr.net/global-voices/afghanistan-spare-rod-spoil-child>.

⁵²⁵ Save the Children, *Knowledge, Attitudes and Practices on Violence and Harmful Practices Against Children in Afghanistan: A Baseline Study*, August 2017, <http://www.refworld.org/docid/5a5dd34a4.html>, p. 27; AIHRC, *Summary Report Survey of Harassment of Women and Children in Afghanistan*, 11 March 2018, <http://www.aihrc.org.af/media/files/Research%20Reports/summary%20report%20on%20harassment%20of%20women.pdf>, p. 4; IWPR,

застршени от проправителствените сили, АПЕ и обикновени членове на обществото⁵²⁶. Въпреки действията на правителството срещу тази практика, младите момчета продължават да са изложени на рисък от *bacha bazi* – практика, при която момчета се издържат от влиятелни лица, които ги карат да танцуваат в женски дрехи за мъжка аудитория и ги използват за сексуална експлоатация.⁵²⁷ Безнаказаността за сексуално насилие срещу деца остава проблем: повечето насилици не се арестуват и има съобщения за деца, изнасилени безнаказано от служители на силите за сигурност и полицията.⁵²⁸ Някои деца, които са съдени за „морални престъпления“, са жертви на насилие, а не извършители на престъпления; след като са съобщили за случаи на сексуални посегателства, те се възприемат като посрамили семейството си и трябва да бъдат наказани.⁵²⁹

c) *Системен отказ на достъп до образование*

Според сведенията децата се сблъскват със съществени пречки за достъпа до образование. Изразява се беспокойство от факта, че официалната правителствена статистика за посещаемостта на училище може би значително надценява броя на децата, които ходят на училище в страната⁵³⁰, както и качеството на образоването, което се предлага.⁵³¹ Посещаемостта на училище от момичетата продължава да бъде значително по-ниска от момчетата, като в селските райони е повече вероятно момичетата да не посещават училище⁵³². Важен фактор за затруднения достъп до

Afghanistan: The High Price of Virginity, 11 January 2017, ARR 563, <http://www.refworld.org/docid/587783564.html>.

⁵²⁶ UNAMA, Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 13. See also, IWPR, Afghan Child Labourers Exposed to Abuse, 5 December 2017, <https://iwrp.net/global-voices/afghan-child-labourers-exposed-abuse>; IWPR, Afghanistan: Insurgents Prey on Teenage Boys, 31 July 2017, <https://iwrp.net/global-voices/afghanistan-insurgents-prey-teenage-boys>; US Department of State, 2017 Trafficking in Persons Report: Afghanistan, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>; SIGAR, Child Sexual Assault in Afghanistan: Implementation of the Leahy Laws and Reports of Assault by Afghan Security Forces, June 2017, <https://www.sigar.mil/pdf/inspections/SIGAR%2017-47-IP.pdf>; IWPR, Boys Sold for Sex in Afghan Province, 2 March 2017, <http://www.refworld.org/docid/58bd641b4.html>; UN General Assembly, The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights, 11 January 2017, A/HRC/34/41, <http://www.refworld.org/docid/5a562b9d4.html>, para. 32; UNSG, Children and Armed Conflict, 24 August 2017, A/72/361-S/2017/821, <http://www.refworld.org/docid/59db4a194.html>, para. 27.

⁵²⁷ The practice of *Bacha Bazi* is criminalized by the 2017 revised Penal Code which entered into force on 15 February 2018. Afghanistan, *Penal Code*, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR), Chapter Five: “Leading Children to Moral perversions” (Articles 653-667). See also, UNAMA, *UNAMA Welcomes Afghanistan’s New Penal Code – Calls for Robust Framework to Protect Women Against Violence*, 22 February 2017, <https://unama.unmissions.org/unama-welcomes-afghanistan%E2%80%99s-new-penal-code-calls-robust-framework-protect-women-against-violence>; UNAMA, Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 13, footnote 58; UNSG, *Children and Armed Conflict*, 24 August 2017, A/72/361-S/2017/821, <http://www.refworld.org/docid/59db4a194.html>, para. 22. According to the US Department of State, some government and security officials reportedly engaged in the practice of *bacha baazi*. The US Department of State also reported that some victims of this practice were referred to juvenile rehabilitation centres on criminal charges. US Department of State, 2017 Trafficking in Persons Report: Afghanistan, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>. See also, UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 35; IWPR, Afghanistan: Insurgents Prey on Teenage Boys, 31 July 2017, <https://iwrp.net/global-voices/afghanistan-insurgents-prey-teenage-boys>.

⁵²⁸ SIGAR, Child Sexual Assault in Afghanistan: Implementation of the Leahy Laws and Reports of Assault by Afghan Security Forces, June 2017, <https://www.sigar.mil/pdf/inspections/SIGAR%2017-47-IP.pdf>; AIHRC, *Summary Report Survey of Harassment of Women and Children in Afghanistan*, 11 March 2018, <http://www.aihrc.org.af/media/files/Research%20Reports/summary%20report%20on%20harassment%20of%20women.pdf>, pp. 5-6. IWPR quotes Saleh Mohammad Khaliq, Balkh’s director of information and culture, as saying, “Due to the fact that that powerful people who break the law are not prosecuted and punished, and because of the inability of the judicial services to implement the law, pederasty and sex with young boys has increased in Afghanistan.” Balkh police chief Syed Kamal Sadat reportedly stated that “powerful local officials also had a record of supporting and defending such criminals, going as far as preventing police officers from arresting them and even sheltering suspects in their own homes. [...] Even when perpetrators are brought to justice, their victims face a troubled future. There have been many cases in which the boys themselves have been prosecuted, and experts say that the psychological effects of abuse are long-lasting.” IWPR, *Boys Sold for Sex in Afghan Province*, 2 March 2017, <http://www.refworld.org/docid/58bd641b4.html>.

⁵²⁹ IWPR, Afghanistan: The High Price of Virginity, 11 January 2017, ARR 563, <http://www.refworld.org/docid/587783564.html>.

⁵³⁰ HRW, “I Won’t Be a Doctor, and One Day You’ll Be Sick” - Girls’ Access to Education in Afghanistan, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html>, pp. 7-8, 37-40; AAN, *A Success Story Marred by Ghost Numbers: Afghanistan’s Inconsistent Education Statistics*, 13 March 2017, <https://www.afghanistan-analysts.org/a-success-story-marred-by-ghost-numbers-afghanistans-inconsistent-education-statistics/>. The Ministry of Education (MOE) “counts students who have been absent for up to three years as enrolled because it says they might return to school. The MOE acknowledged a large number of children are out of school, but is unaware of how many, who or where they are, or their backgrounds.” SIGAR, *Quarterly Report to the United States Congress*, 30 July 2016, <https://www.sigar.mil/pdf/quarterlyreports/2016-07-30qr.pdf>, p. 185.

⁵³¹ HRW, “I Won’t Be a Doctor, and One Day You’ll Be Sick” - Girls’ Access to Education in Afghanistan, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html>, pp. 87-90.

⁵³² IWPR, *Girls Denied Education in Afghan Province: Locals Complain that Minimal Resources and Poor Security Are Excluding Female Students*, 24 November 2017, <https://iwrp.net/global-voices/girls-denied-education-afghan-province>. “Analysis by the World Bank shows wide variation from province to province in the ratio of girls versus boys attending school, with the proportion of students who are girls falling in some provinces,

образование е високото равнище на несигурност.⁵³³ Друг повод за беспокойство е използването на училищата за военни цели както от АПЕ, така и от проправителствените сили.⁵³⁴

Според сведенията АПЕ също така продължават да извършват преки нападения на училища, учители и ученици⁵³⁵, особено по отношение на образоването на момичетата.⁵³⁶ Докато мнозинството от

such as Kandahar and Paktia. These disparities are mirrored in literacy statistics. In Afghanistan, only 37 percent of adolescent girls are literate, compared to 66 percent of adolescent boys. Among adult women, 19 percent are literate compared to 49 percent of adult men." HRW, "I Won't Be a Doctor, and One Day You'll Be Sick" - Girls' Access to Education in Afghanistan, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html> , p. 8; see also p. 40. "Harmful gender norms mean that, in many families, boys' education is prioritized over girls', or girls' education is seen as wholly undesirable or acceptable only for a few years before puberty." *Ibid.*, p. 12. The World Bank analysis is based on the Afghanistan Living Conditions Survey 2013-2014, 2011-2012, and on the Risk and Vulnerability assessment 2007-2008. World Bank, Afghanistan Poverty Status Update, Progress at Risk, 14 February 2017, <https://openknowledge.worldbank.org/handle/10986/26668> , p. 29. UNICEF reported in 2015 that 42.7 per cent (equal to 4.2 million children) of primary school-age children were out of school. UNICEF also noted that in this age range, around 50 per cent more girls than boys were out of school. UNICEF, *Educate All Girls and Boys in South Asia*, August 2015, http://www.unicef.org/education/files/EducateAllGirlsandBoys-UNICEF_ROSA.pdf , pp. 6, 8.

⁵³³ IWPR, *Girls Denied Education in Afghan Province: Locals Complain that Minimal Resources and Poor Security are Excluding Female Students*, 24 November 2017, <https://iwp.net/global-voices/girls-denied-education-afghan-province> ; HRW, "I Won't Be a Doctor, and One Day You'll Be Sick" - Girls' Access to Education in Afghanistan, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html> , pp. 13, 17. "More than 400,000 children in Afghanistan – over 1,100 per day – are expected to drop out of school this year due to growing instability and a spike in forced returns from Pakistan, Save the Children analysis has shown. The stark projection comes on the first day of the new school year in Afghanistan, when almost a third of all children across the country – 3.7 million – are unable to go to school, leaving them at increased risk of child labor, recruitment by armed groups, trafficking, early marriage and other forms of exploitation." Save the Children, *More Than 1,100 Afghan Children a Day Expected to Drop out of School in 2017, Putting Them at Risk of Exploitation, Save the Children Warns*, 23 March 2017, <http://www.savethechildren.org/site/apps/nlnet/content2.aspx?c=8rKLIXMGl4E&b=9506655&ct=14988181¬oc=1> . See also, IWPR, *School Closures Hit Afghan Province: A Lack of Security in Districts Means that Boys and Girls Can Simply Not Learn*, 27 February 2017, <https://iwp.net/global-voices/school-closures-hit-afghan-province>

⁵³⁴ "Both the ANSF and the Taliban continued to occupy or use schools for military purposes in contested areas, affecting the access to education of thousands of children, especially girls." HRW, *World Report 2018: Afghanistan*, 18 January 2018, <http://www.refworld.org/docid/5a61eeac4.html> . "While the decrease in the number of security incidents affecting educational facilities and personnel is encouraging, it is unacceptable that schools continue to be used by armed forces and groups." UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 December 2017, A/72/651-S/2017/1056, <http://www.refworld.org/docid/5a56465c4.html> , para. 62. "Both government security forces and Taliban fighters sometimes occupy schools, driving students away and making the school a military target." HRW, "I Won't Be a Doctor, and One Day You'll Be Sick" - Girls' Access to Education in Afghanistan, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html>, p. 17. "Verified attacks on schools and education personnel decreased to 77 incidents [in 2016], compared with 132 in 2015. Intensive fighting between the Afghan National Defence and Security Forces and the Taliban led to schools being hit in crossfire." UNSG, *Children and Armed Conflict*, 24 August 2017, A/72/361-S/2017/821, <http://www.refworld.org/docid/59db4a194.html> , p. 5, para. 28. "In a positive development, in 2016 the Ministry of Education promulgated two directives instructing the Afghan National Defence and Security Forces to stop using schools for military purposes." *Ibid.*, para. 30. See also, VOA News, *Afghan Schools Used as Military Bases by Government, Taliban*, 26 January 2017, <https://www.voanews.com/a/afghanistan-schools-used-as-military-by-government-taliban/3694992.html> ; UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 11 January 2017, A/HRC/34/41, <http://www.refworld.org/docid/5a562b9d4.html> , para. 28; HRW, "Education on the Front Lines" - Military Use of Schools in Afghanistan's Baghlan Province, 17 August 2016, <http://www.refworld.org/docid/57b874d74.html> , p. 2. The militarization of schools in situations of conflict can amount to persecution within Article 1(A)(2) of the 1951 Convention. See UNHCR, *Summary Conclusions on International Protection of Persons Fleeing Armed Conflict and Other Situations of Violence; Roundtable 13 and 14 September 2012, Cape Town, South Africa*, 20 December 2012, <http://www.refworld.org/docid/50d32e5e2.html> , para. 11; and see also UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles I(A)2 and I(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08, 22 December 2009, <http://www.refworld.org/docid/4b2f4fd2.htm> , para. 36.

⁵³⁵ IWPR, *Taleban Impose Changes on Afghan Curriculum - Courses on Islamic Subjects Replace Lessons on Culture and Counter-Terrorism*, 13 January 2018, <https://www.ecoi.net/en/document/142229.html> . The UN Secretary-General reported that in 2016, 77 attacks against schools were verified. "Of the verified incidents, 51 were attributed to the Taliban, 7 to ISIL-KP and 12 to undetermined armed groups; 23 incidents directly targeted girls' education; 4 incidents were attributed to the Afghan National Defence and Security Forces (3 to the Afghan National Army, 1 undetermined); and 1 incident was jointly attributed to the Afghan National Army and the Taliban." UNSG, *Children and Armed Conflict*, 24 August 2017, A/72/361-S/2017/821, <http://www.refworld.org/docid/59db4a194.html> , para. 28. In July 2017, a senior education official was killed in the Tagab district of central Kapisa province by a relative who was a member of the Taliban. Pajhwok Afghan News, *Taliban Gun Down Kapisa Education Official*, 1 July 2017, <https://www.pajhwok.com/en/2017/07/01/taliban-gun-down-kapisa-education-official> ; Khaama Press, *Kapisa Education Official Shot Dead by Own Brother Affiliated with Taliban*, 1 July 2017, <https://www.khaama.com/kapisa-education-official-shot-dead-by-own-brother-affiliated-with-taliban-03054> . On 25 May 2017, a teacher was killed and nine pupils were injured in north-eastern Kunduz when a grenade hit launched by Taliban insurgents hit a school. Germany: Federal Office for Migration and Asylum, *Information Centre Asylum and Migration Briefing Notes*, 29 May 2017, <http://www.refworld.org/docid/5942468e4.html> . In 2016, 1000 schools were reportedly closed in Afghanistan, with 300 schools destroyed between August and October 2016 by the Taliban. Theirworld, *1000 Schools in Afghanistan Closed as Taliban Strike at Education*, 30 November 2016, <http://theirworld.org/news/security-risks-force-1000-afghan-schools-to-close> . The Taliban are listed as a party to the conflict responsible for specific grave violations against children in the UN Secretary-General's Report on Children and Armed Conflict for 2015. The violations include recruitment and use of children, killing and maiming of children, and attacks against schools and/or hospitals. UNSG, *Children and Armed Conflict: Report of the Secretary-General*, 5 June 2015, A/69/926-S/2015/409, <http://www.refworld.org/docid/557abf904.html> , p. 48.

⁵³⁶ In November 2017, HRW reported attacks and intimidation (including acid attacks, kidnappings and "night letters" threatening students and teachers) by the Taliban in Nangarhar Province. HRW, *War Is Driving Girls out of School*, 27 November 2017, <https://www.hrw.org/news/2017/11/27/war-driving-girls-out-school> . "The Taliban and other armed groups sometimes target girls' schools, female students and their teachers for attack." HRW, "I Won't Be a Doctor, and One Day You'll Be Sick" - Girls' Access to Education in Afghanistan, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html> , p. 17. In February 2017 AGEs issued verbal threats directly to girls' schools in several villages in Farah district, Farah province, resulting in the closure of six schools for 10 days. UNAMA, *Afghanistan: Mid-Year Report on the*

нападенията се приписват на талибаните, свързани с ИДИЛ групировки също затварят принудително училища и заплашват учители.⁵³⁷ Заплахи за престъпления и малтретиране от страна на престъпни банди принуждават родителите да държат децата, особено момичетата, вкъщи.⁵³⁸ Други пречки за образованието на момичетата включват в частност бедността, ранните или принудителните бракове, липсата на помощ от страна на семейството, недостиг на учители жени, липсата на санитарни съоръжения, липсата на документи за самоличност и големите разстояния до най-близкото училище.⁵³⁹

d) *Отвличания, наказания и репресии от страна на НССА и АПЕ*

Според сведенията НССА и АПЕ отвличат деца с различна цел, включително за репресии и наказания на членовете на семействата на жертвите⁵⁴⁰. Съобщава се и за отвличане на деца, които впоследствие да бъдат екзекутирани, осакатени или изнасилини на основата на обвинения, че се помагали на противната страна.⁵⁴¹

e) *Обобщение*

В зависимост от индивидуалните обстоятелства по случая, ВКБООН смята, че децата, които попадат в следните категории е вероятно да имат нужда от международна закрила като бежанци:

- a) Деца от области, където или АПЕ, или елементи на НССА прилагат мобилизация на малолетни;⁵⁴²
- b) Оцелели и заплашени от насилие деца (включително сексуално насилие и насилие на основата

Protection of Civilians in Armed Conflict 2017, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, p. 13. See also, UNSG, *Children and Armed Conflict*, 24 August 2017, A/72/361-S/2017/821, <http://www.refworld.org/docid/59db4a194.html>, para. 28; Afghanistan Times, *Negotiating with the Taliban for Girl's Education*, 27 June 2017, <http://afghanistantimes.af/negotiating-with-the-taliban-for-girls%20%20%20B2-education/>.

⁵³⁷ "Halima Sadaf, a member of Jawzjan provincial council, said that the number of schools closed in the province is more than 70, adding the militant group would even behead those who try to study individually. He added that more than 30,000 students cannot attend schools due to the ban. Azizi said that only four schools that are located in the areas under government control are open." 1TV News Afghanistan, *Daesh Closes Dozens of Schools in North Afghanistan: Local Officials*, 9 December 2017, <http://www.1tvnews.af/en/news/afghanistan/32477-daesh-closes-dozens-of-schools-in-north-afghanistan--local-officials>. According to officials in Jawzjan province, Islamic State burnt down a girl's school and destroyed 11 other schools in Darzab district. The group reportedly warned locals not to send their daughters to school. They also reportedly sent out announcements where they said schools in Darzab must be closed. Tolo News, *Daesh Threatens to Replace Curriculum in Jawzjan's District*, 5 July 2017, <https://www.tolonews.com/afghanistan/daesh-threatens-replace-curriculum-jawzjan%20%20%2099s-district>. See also, UNSG, *Children and Armed Conflict*, 24 August 2017, A/72/361-S/2017/821, <http://www.refworld.org/docid/59db4a194.html>, para. 28. In 2017 HRW reported ISIS-affiliated attacks on teaching personnel. HRW, "I Won't Be a Doctor, and One Day You'll Be Sick" - Girls' Access to Education in Afghanistan, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html>, p. 69; see also, Huffington Post, 'Hopeless': Children under Attack in Afghanistan, 19 April 2016 (updated 6 December 2017), https://www.huffingtonpost.com/beth-murphy/hopeless-children-under-attack-in-afghanistan_b_9721470.html. See also Section III.A.1.a.

⁵³⁸ HRW, "I Won't Be a Doctor, and One Day You'll Be Sick" - Girls' Access to Education in Afghanistan, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html>, p. 17; AIHRC, *Summary Report Survey of Harassment of Women and Children in Afghanistan*, 11 March 2018, <http://www.aihrc.org.af/media/files/Research%20Reports/summary%20report%20on%20harassment%20of%20women.pdf>, p. 4.

⁵³⁹ IWPR, *Girls Denied Education in Afghan Province: Locals Complain that Minimal Resources and Poor Security Are Excluding Female Students*, 24 November 2017, <https://iwpr.net/global-voices/girls-denied-education-afghan-province>; HRW, "I Won't Be a Doctor, and One Day You'll Be Sick" - Girls' Access to Education in Afghanistan, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html>, pp. 12, 17, 20-22, 25. "Afghanistan's government provides fewer schools for girls than boys at both the primary and secondary levels. In half the country's provinces, fewer than 20 percent of teachers are female – a major barrier for the many girls whose families will not accept their being taught by a man, especially as they become adolescents. Many children live too far from a school to attend, which particularly affects girls. About 41 percent of schools have no buildings, and many lack boundary walls, water, and toilets – disproportionately affecting girls." HRW, *Afghanistan: Girls Struggle for an Education*, 17 October 2017, <https://www.hrw.org/news/2017/10/17/afghanistan-girls-struggle-education>. See also, HRW, "Education on the Front Lines" - Military Use of Schools in Afghanistan's Baghlan Province, 17 August 2016, <http://www.refworld.org/docid/57b874d74.html>, p. 2. For further information on the practice of early and forced marriage in Afghanistan, see Section III.A.7.

⁵⁴⁰ "UNAMA documented 18 incidents involving the abduction of 42 children (40 boys and two girls) by Anti Government-Elements. For instance, on 2 November [2017], in Bilchiragh district, Faryab province, Taliban abducted four boys, aged between four and 10 years, to force their fathers, both commanders of pro-government armed groups, to withdraw from the area and stop fighting. In addition, UNAMA attributed the abduction of one boy, on 25 March, in Samangan province, to a pro-Government armed group." UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, pp. 12-13.

⁵⁴¹ UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 11 January 2017, A/HRC/34/41, <http://www.refworld.org/docid/5a562b9d4.html>, paras 31, 32. On 1 January 2017, in Sholgareh district, Balkh province, pro-Government armed group member shot dead a civilian boy as he returned from taking food to an injured AGE fighter. UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017*, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, p. 60.

⁵⁴² For further analysis on the issue of under-age recruitment, see Section III.A.3.

на пол), включително деца от социална среда, където се практикува такова насилие;⁵⁴³

- c) Деца от социална среда, където се практикува принудителен или опасен детски труд;
- d) Деца в училищна възраст, особено момичета;⁵⁴⁴ и
- e) Деца, срещу чиито родители НССА или АПЕ искат да извършват репресии и деца, които са обвинени от НССА или АПЕ, че помагат на противната страна.

В зависимост от конкретните обстоятелства на случая, те може да имат нужда от международна закрила поради основателен страх от преследване от държавни или недържавни субекти по причина принадлежност към конкретна социална група, религия, (приписвано им) политическо мнение или на други относими основания по Конвенцията в съчетание с общата неспособност на държавата да осигури защита срещу такова преследване, когато извършителите са недържавни субекти.

Молбите за закрила от деца трябва да бъдат оценявани внимателно и в съответствие с насоките на ВКБООН за молби за закрила от деца, включително във връзка с проверката на евентуални съображения за изключване за бивши деца войници⁵⁴⁵.

11. Лица, преживели трафик на хора или принудителен труд, и лица, застрашени от трафик на хора или принудителен труд

Афганистанските мъже, жени и деца са обект на трафик на хора с цел принудителен труд, сексуална експлоатация и по отношение на момичетата – за принудителни бракове.⁵⁴⁶ Според сведенията, трафикът на афганистанци се извършва в Афганистан, Близкия Изток и Южна Азия, но трафикът в рамките на Афганистан преобладава над трансграничния.⁵⁴⁷ Мнозинството от афганистанците, жертва на трафик на хора, са деца. Целта може да бъде трудова експлоатация в отрасли на икономиката като селско стопанство, търговия с тухли, минно дело, строителство, тъкане на килими, домашни работи и услуги. Те може да бъдат експлоатирани и в незаконни сектори като контрабанда и производство на наркотици, други криминални дейности, принудително участие в боеве и други форми на насилие, и просия.⁵⁴⁸ Децата може да са жертва на трафик и с цел сексуална експлоатация и принудителни бракове.⁵⁴⁹ Децата са обект на трафик и от страна на талибаните с цел мобилизиране в армията, обучение и използване при военни операции, в това число като самоубийствени атентатори.⁵⁵⁰ Афганистанските жени, момичета и момчета, са особено уязвими на трафик с цел

⁵⁴³ For further analysis on the issue of harmful traditional practices, see Section III.A.7.b.

⁵⁴⁴ For further guidance see UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, 22 December 2009, <http://www.refworld.org/docid/4b2f4f6d2.html> , paras 34-36; UNHCR, *Guidelines on International Protection No. 2: "Membership of a Particular Social Group" Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, <http://www.refworld.org/docid/3d36f23f4.html> .

⁵⁴⁵ UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08, 22 December 2009, <http://www.refworld.org/docid/4b2f4f6d2.html> .

⁵⁴⁶ US Department of Labor, 2016 *Findings on the Worst Forms of Child Labor: Afghanistan*, 30 September 2017, <http://www.refworld.org/docid/5a00215c0.html> ; US Department of State, 2017 *Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html> .

⁵⁴⁷ US Department of State, 2017 *Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html> .

⁵⁴⁸ US Department of State, 2017 *Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>; Tolo News, *Concerns Rise over Human Trafficking Increase*, 31 October 2017, <https://www.tolonews.com/afghanistan/concerns-rise-over-human-trafficking-increase> ; IWPR, *Child Labour in Afghan Coal Mines - Underage Workers Routinely Endure Hot, Dusty and Dangerous Conditions*, 5 April 2017, <https://www.ecoi.net/en/document/1397959.html>; IWPR, *Afghanistan's Child Beggars: Impoverished Parents and Organised Gangs Routinely Exploit Children for Profit*, 27 February 2017, <https://iwpr.net/global-voices/afghanistans-child-beggars> . For more detailed information on hazardous child labour in Afghanistan see: HRW, "They Bear All the Pain" - Hazardous Child Labor in Afghanistan, 13 July 2016, <http://www.refworld.org/docid/57878e374.html> .

⁵⁴⁹ US Department of State, 2017 *Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>; Pajhwok Afghan News, *Forced and Early Marriages: A Form of Trafficking in Person*, 29 March 2017, <https://www.pajhwok.com/en/2017/03/29/forced-and-early-marriages-form-trafficking-persons> ; Pajhwok Afghan News, *Forced Marriage: a Cultural Dimension of Human Trafficking*, 1 March 2017, <https://www.pajhwok.com/en/2017/03/01/forced-marriage-cultural-dimension-human-trafficking> ; Pajhwok Afghan News, *Standing up Against Slavery as a Form of Trafficking*, 25 February 2017, <https://www.pajhwok.com/en/2017/02/25/standing-against-slavery-form-trafficking> .

⁵⁵⁰ AP News, *Young Afghans Trafficked to Study Under Taliban*, 1 August 2017, <https://www.apnews.com/590be9a02ef14617b6caceeba036c827/Officials-Young-Afghans-trafficked-to-study-under-Taliban> ; RFE/RL, *Afghan Police: Children Kidnapped to Be Suicide Bombers for Taliban*, 10 July 2017, <https://www.rferl.org/a/afghan-police-children-kidnapped-by-taliban->

сексуална експлоатация; при момчетата това включва практиката *bacha bazi*, при която влиятелни мъже използват млади момчета за сексуални забавления.⁵⁵¹ Децата понякога се продават от семействата им с цел финансова облага или уреждане на дългове.⁵⁵² Афганистанските мъже и жени са жертва на трафик в чужбина и се подлагат на принудителен труд и заробване за дългове като домашни слуги, в земеделието и строителството.⁵⁵³ Някои афганистански семейства, включително деца, са заклещени в цикли на принудителен труд на различни места, в това число в тухларни.⁵⁵⁴

През януари 2017 г. правителството приема нов закон за трафика на хора, който криминализира трафика и експлоатацията на хора, контрабандата на мигранти и изрично криминализира *bacha bazi*.⁵⁵⁵ Разпоредбите на този закон са подсилени с включването в новия Наказателен кодекс от 2017 г. на престъпленията трафик и експлоатация на хора, в това число *bacha bazi*,⁵⁵⁶ както и контрабандата на мигранти.⁵⁵⁷ В Наказателния кодекс от 2017 г. е криминализирано и набирането на деца за тежък, нездравословен труд, включително на места под земята.⁵⁵⁸ Освен това ЗПНСЖ от 2009 г. криминализира продаването, купуването или посредничеството за продаване или купуване на жена с цел женитба.⁵⁵⁹ Както е посочено по-горе обаче, наказателните разпоредби от ЗПНСЖ не са включени в новия Наказателен кодекс от 2017 г.⁵⁶⁰

[to-be-suicide-bombers/28606744.html](#).

⁵⁵¹ “*Bacha bazi* is a practice where boys and intersex children are kept usually by wealthy or powerful men, including military and political leaders, for entertainment, particularly dancing and sexual activities. It is considered a harmful practice and violates a number of human rights, including the prohibition of sexual abuse and exploitation of children, sale of children, human trafficking, forced labor and slavery, recruitment and use of children, and confinement and the right to education.” UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 13, footnote 58. The revised Penal Code, which entered into force on 15 February 2018, criminalizes the practice of *bacha bazi* and imposes prison sentences of up to three years. Afghanistan, *Penal Code*, published in Official Gazette No. 1260, 15 May 2017, Chapter Five, Articles 653-667. (English unofficial translation on record with UNHCR.) Nevertheless, the UN Committee Against Torture noted that, “The Committee remains deeply concerned that, the new legal framework notwithstanding, the practice may remain widespread in Afghanistan, including among State officials, as evidenced by the involvement of Shah Mirza Panjsheri in a *bacha baazi* case.” UN CAT, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 37. According to reports from the US embassy in Kabul, in 2016 the President’s Cabinet began drafting a Child Protection Act to address some of the worst forms of child labour, including *bacha bazi*. US Department of Labor, *2016 Findings on the Worst Forms of Child Labor: Afghanistan*, 30 September 2017, <http://www.refworld.org/docid/5a00215c0.html>. See also, US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>; IWPR, *Afghanistan: Insurgents Prey on Teenage Boys*, 31 July 2017, <https://iwpr.net/global-voices/afghanistan-insurgents-prey-teenage-boys>; IWPR, *Boys Sold for Sex in Afghan Province*, 2 March 2017, <http://www.refworld.org/docid/58bd641b4.html>; The Express Tribune, *Kabul to Set Penalties for Subculture of Boy Sex Slaves*, 22 February 2017, <https://tribune.com.pk/story/1335200/kabul-set-penalties-subculture-boy-sex-slaves/>; France: Office français de protection des réfugiés et apatrides (OFPRA), *Afghanistan : La pratique du bachabazi*, 14 November 2016, <http://www.refworld.org/docid/59317cf4.html>. See also Section III.A.10, *Children with Specific Profiles or in Specific Circumstances*.

⁵⁵² US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>; US Department of Labor, *2016 Findings on the Worst Forms of Child Labor: Afghanistan*, 30 September 2017, <http://www.refworld.org/docid/5a00215c0.html>. “Child marriages are usually aimed at strengthening ties with rival families and tribes, as part of deals or to settle debts and disputes. Poor families often end up selling daughters for large dowries from wealthy people and the husbands are usually much older. The decisions to sell off girls for marriage are made by men, and wives, mothers, sisters and the girls themselves having little or no say.” UNFPA Afghanistan, *Child Marriage*, undated, <http://afghanistan.unfpa.org/node/15233>.

⁵⁵³ US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>.

⁵⁵⁴ Daily Outlook Afghanistan, *Many Bonded Child Laborers Work in Takhar Salt Mine*, 28 December 2017, http://www.outlookafghanistan.net/national_detail.php?post_id=19767; US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>; US Department of State, *2016 Country Reports on Human Rights Practices: Afghanistan*, 3 March 2017, <http://www.refworld.org/docid/58ec8a7fa.html>; IWPR, *Afghanistan’s Modern Day Slave Labourers*, 24 January 2017, <https://iwpr.net/global-voices/afghanistans-modern-day-slave-labourers>; Mail Online, *Held in Bonded Labour, Afghan Returnee Children Make Bricks for a Living*, 2 November 2016, <http://www.dailymail.co.uk/wires/reuters/article-3897816/Held-bonded-labour-Afghan-returnee-children-make-bricks-living.htm>; HRW, “They Bear All the Pain” - Hazardous Child Labor in Afghanistan, 13 July 2016, <http://www.refworld.org/docid/57878e374.html>, pp. 8-13.

⁵⁵⁵ Afghanistan, *Law to Combat Crimes of Trafficking in Persons and Smuggling of Migrants*, 2017, Articles 3, 11, 20-23. (English unofficial translation on record with UNHCR.) The 2017 law repealed the 2008 *Law Countering Abduction and Human Trafficking/Smuggling*. See also, US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>. Forced labour is prohibited under Article 49 of the Constitution, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>.

⁵⁵⁶ Afghanistan, *Penal Code*, published in the Official Gazette No. 1260, 15 May 2017, Articles 510-512, 516, 518. (English unofficial translation on record with UNHCR.) See also, US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>.

⁵⁵⁷ Afghanistan, *Penal Code*, published in the Official Gazette No. 1260, 15 May 2017, Articles 521-528. (English unofficial translation on record with UNHCR).

⁵⁵⁸ *Ibid.*, Article 613.

⁵⁵⁹ Afghanistan, *Law of 2009 on Elimination of Violence against Women (EVAW)*, 1 August 2009, <http://www.refworld.org/docid/5486d1a34.html>, Article 24.

⁵⁶⁰ See Section III.A.7: “Women with Certain Profiles or in Specific Circumstances”.

Според сведенията усилията за укрепване на законовата уредба за трафика на хора се възпрепятстват поради липсата на информираност и разбиране относно трафика сред правоохранителните и съдебните служители;⁵⁶¹ корупцията и липсата на политическа воля за наказване на извършителите; както и обвинения срещу държавни служители за съучастничество в трафика на хора.⁵⁶²

Правителството арестува, затваря и наказва по друг начин лицата, които са станали жертва на трафик, като наказва такива лица за престъпления като проституция или „морални престъпления“.⁵⁶³

В светлината на гореизложеното, ВКБООН смята, че хората, особено жените, в конкретни социално-икономически обстоятелства, които създават уязвимост за трафик или принудителен труд, може да имат нужда от международна закрила поради основателен страх от преследване от държавни или недържавни субекти по причина принадлежност към конкретна социална група или други относими основания по Конвенцията в зависимост от индивидуалните обстоятелства в съчетание с общата неспособност на държавата да осигури защита, когато извършителите на такова преследване са недържавни субекти. Сред лицата, които попадат в рисковия профил, са жертви на трафик или принудителен труд, които може да са в положение на по-голяма уязвимост към повторен трафик или повторно подлагане на принудителен труд.⁵⁶⁴

Освен това ВКБООН счита, че лицата, които вече са жертви на трафик, може да се нуждаят от международна закрила поради основателен страх от преследване от държавата по причина принадлежност към конкретна социална група или други относими основания по Конвенцията в зависимост от индивидуалните обстоятелства на случая.

12. Лица с различна сексуална ориентация и/или полова идентичност

Според афганистанския Наказателен кодекс в Афганистан сексуалните отношения на лица от същия пол по взаимно съгласие са незаконни и се наказват с лишаване от свобода до две години.⁵⁶⁵ Според

⁵⁶¹ Ambiguity around the Dari term for trafficking has reportedly led to confusion around trafficking concepts and undermined the effectiveness of the law. US Department of State, 2017 *Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>

⁵⁶² US Department of State, 2017 *Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>; UN CAT, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 37. For a detailed review on the rule of law in Afghanistan see: USIP, *Rule of Law, Governance and Human Rights in Afghanistan 2002-2016*, 29 August 2017, <https://www.usip.org/sites/default/files/PW130-Rule-of-Law-Governance-and-Human-Rights-in-Afghanistan-2002-to-2016.pdf>.

⁵⁶³ US Department of Labor, 2016 *Findings on the Worst Forms of Child Labor: Afghanistan*, 30 September 2017, <http://www.refworld.org/docid/5a00215c0.html>; US Department of State, 2017 *Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>; UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 37; SIGAR, *Child Sexual Assault in Afghanistan: Implementation of the Leahy Laws and Reports of Assault by Afghan Security Forces*, June 2017, <https://www.sigar.mil/pdf/inspections/SIGAR%2017-47-IP.pdf>, p. 19; IWPR, *Boys Sold for Sex in Afghan Province*, 2 March 2017, <http://www.refworld.org/docid/58bd641b4.html>; IWPR, *Afghanistan: The High Price of Virginity*, 11 January 2017, <http://www.refworld.org/docid/587783564.html>; HRW, *Afghanistan: End 'Moral Crimes' Charges, 'Virginity' Tests*, 25 May 2016, <http://www.refworld.org/docid/574696bb4.html>. See also Section III.A.7.a: "Women with Certain Profiles or in Specific Circumstances: Sexual and Gender-Based Violence".

⁵⁶⁴ UNHCR, *Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked*, 7 April 2006, HCR/GIP/06/07, <http://www.refworld.org/docid/443679fa4.html>.

⁵⁶⁵ Afghanistan, *Penal Code*, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR), Articles 646 and 647. During the Universal Periodic Review for Afghanistan in 2014, Afghanistan did not accept a recommendation from Norway to "ensure non-discrimination on the basis of sexual orientation and gender identity and repeal the provisions of the penal code which criminalise sexual relations between consenting adults of the same sex." See UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Afghanistan*, 4 April 2014, <http://www.refworld.org/docid/539064f14.html>; UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Afghanistan Addendum*, 16 June 2014, <http://www.refworld.org/docid/5671934a4.html>. It should be noted that in certain segments of Afghan society, sexual acts between men are reportedly not uncommon. However, men are reported to make a distinction between engaging in sexual acts with other men and feeling love for another man, the latter of which is considered a sin in Islam and punishable under Sharia law. See, for example, Afghanistan Human Terrain Team, *Pashtun Sexuality: Research Update and Findings (Unclassified)*, 2009, <http://info.publicintelligence.net/HTT-PashtunSexuality.pdf>; Shivananda Khan, *Everybody Knows, But Nobody Knows: Desk Review of Current Literature on HIV and Male-Male Sexualities, Behaviours and Sexual Exploitation in Afghanistan* (London: Naz Foundation International), September 2008, http://www.aidsdatahub.org/dmdocuments/Everybody_knows_but_nobody_knows_Afghan_Review.pdf.pdf, pp. 22, 29; and S. Khan, *Rapid Assessment of Male Vulnerabilities to HIV and Sexual Exploitation in Afghanistan* (London: Naz Foundation International), 30 March 2009, http://www.aidsdatahub.org/dmdocuments/Rapid_Assessment_of_Male_Vulnerabilities_to_HIV_and_Sexual_Exploitation_in_Afghanistan_2009

законите на шериата максималната присъда за сексуални отношения с лица от същия пол е смъртно наказание⁵⁶⁶, но няма съобщения за издадени от съдебната власт смъртни присъди за сексуални отношения на лица от същия пол след падането на талибаните.⁵⁶⁷

Социалните табута около хомосексуалността остават силни.⁵⁶⁸ Хомосексуалните мъже и момчета и тези, които се смятат за хомосексуални, според сведенията, се сблъскват с дискриминация и насилие, включително от страна на властите, семейството и членове на обществото, както и АПЕ. Хомосексуалните мъже и момчета и тези, за които се смята, че са хомосексуалисти, са с ограничен достъпът до здравни услуги и ги уволняват от работните места заради сексуалната им ориентация.⁵⁶⁹ Лицата с различна сексуална ориентация и полова идентичност се сблъскват с дискриминация и насилие, включително от страна на властите, членове на семейството и общността, както и АПЕ.⁵⁷⁰ Като цяло „хомофобските настроения и насилието срещу групата на ЛГБТ в Афганистан са повсеместни“.⁵⁷¹ Според сведенията полицията не предоставя защита на лицата с различна сексуална ориентация и полова идентичност; вместо това полицейските служители ги подлагат на тормоз, насилие (включително изнасилване) и арестуване и задържане на основание тяхната реална или предполагаема сексуална ориентация.⁵⁷² Организациите, посветили се на защитата на правата на лица с различна сексуална ориентация, остават нелегални, тъй като не могат да се регистрират

.pdf.pdf f, pp. 17, 63.

⁵⁶⁶ International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), *State-Sponsored Homophobia: A World Survey of Laws Prohibiting Same Sex Activity between Consenting Adults*, May 2017, http://ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf, p. 121.

⁵⁶⁷ “Under Sharia, or Islamic law, the punishment for sex outside marriage could be a death sentence. Because the evidentiary requirements of this law are difficult to meet, this punishment hasn’t been applied by Afghan courts since 2001.” HRW, *Afghan LGBT Asylum Seekers in UK among Most Vulnerable*, 26 February 2017, <https://www.hrw.org/news/2017/02/26/afghan-lgbt-asylum-seekers-uk-among-most-vulnerable>.

⁵⁶⁸ “Homosexuality is a taboo topic in Afghanistan, a socially and religiously conservative country. Many consider homosexuality un-Islamic and immoral, and gay men can be imprisoned by the state or killed by their family members in so-called honor killings”. RFE/RL, *Fake Life’: Being Gay in Afghanistan*, 12 December 2017, <https://www.rferl.org/a/afghanistan-being-gay-fake-life/28731934.htm> I. “The Director of the [SOGI] organization, [...] stated that: ‘Killing of homosexuals is common in Afghanistan and is increasing day by day’, he further stated that he has heard of cases from reliable sources that ‘men are being lured into dating and are being killed’. However, you never hear about it because it is highly taboo.” Open Democracy, *‘I Am Not Safe’: On the Run as a Gay Man in Afghanistan*, 3 March 2017, <https://www.opendemocracy.net/5050/ritu-mahendru/i-am-not-safe-on-run-as-gay-man-in-afghanistan>. “[H]omosexual acts are utterly taboo in Afghan society, as well as being illegal under both Sharia and Afghan law. Homosexuality is generally categorised as a form of deviance and associated with prostitution and pedophilia.” IWPR, *Boys Sold for Sex in Afghan Province*, 2 March 2017, <https://iwrp.net/global-voices/boys-sold-sex-afghan-province>. See also, BBC, *Afghanistan LGBT Community Living under Threat of Death*, 7 October 2016, <http://www.bbc.com/news/world-asia-36884732>.

⁵⁶⁹ “There are credible reports of individuals being dismissed from their jobs, disowned by their families, restricted from accessing health services, being robbed, pressed for sexual favours, or raped because of suspicions that they are homosexual.” Australian Government: Department of Foreign Affairs and Trade, *Country Information Report: Afghanistan*, 18 September 2017, <http://dfat.gov.au/about-us/publications/Documents/country-information-report-afghanistan.pdf>, p. 22. See also, The Diplomat, *Defying Holy Orders: Afghanistan’s LGBT Community*, 30 January 2017, <https://thediplomat.com/2017/01/defying-holy-orders-afghanistans-lgbt-community>; Open Democracy, *‘I Am Not Safe’: On The Run as a Gay Man In Afghanistan*, 3 March 2017, <https://www.opendemocracy.net/5050/ritu-mahendru/i-am-not-safe-on-run-as-gay-man-in-afghanistan>; BBC, *Afghanistan LGBT Community Living under Threat of Death*, 7 October 2016, <http://www.bbc.com/news/world-asia-36884732>.

⁵⁷⁰ “Members of the LGBT community in Afghanistan can only hope to escape abuse if they deny and suppress their sexual identities, marry as arranged by their families, have sex only with spouses, have children, and never have a sexual relationship outside that norm. But if they do, they risk arrest, prosecution, and violence from their families, the larger community and the government.” HRW, *Afghan LGBT Asylum Seekers in UK among Most Vulnerable*, 26 February 2017, <https://www.hrw.org/news/2017/02/26/afghan-lgbt-asylum-seekers-uk-among-most-vulnerable>. “Kabul’s underground LGBT network faces daily discrimination, intimidation, and abuse, including from authorities.” The Diplomat, *Defying Holy Orders: Afghanistan’s LGBT Community*, 30 January 2017, <https://thediplomat.com/2017/01/defying-holy-orders-afghanistans-lgbt-community/>. “Persons identifying as LGBT, and who are open about their sexuality or gender identity, are likely to be ostracised by their family and may face becoming a victim of an “honour” killing. LGBT people also face violence, assault, rape, and arrest.” Rutgers, *Fact Sheet: Sexual and Reproductive Health and Rights in Afghanistan*, December 2016, <https://www.rutgers.nl/sites/rutgersnl/files/PDF/Factsheet%20Afghanistan%20Eng.pdf>, p. 2. See also, Open Democracy, *‘I Am Not Safe’: On the Run as a Gay Man in Afghanistan*, 3 March 2017, <https://www.opendemocracy.net/5050/ritu-mahendru/i-am-not-safe-on-run-as-gay-man-in-afghanistan>; BBC, *Afghanistan LGBT Community Living under Threat of Death*, 7 October 2016, <http://www.bbc.com/news/world-asia-36884732>; RAWA News, *Afghanistan: While Pedophilia Is Culturally Sanctioned, LGBT Adults Fear for Their Lives*, 11 November 2016, <http://www.rawa.org/temp/runews/2016/11/11/afghanistan-while-pedophilia-is-culturally-sanctioned-lgbt-adults-fear-for-their-lives.html>; AP News, *Fear, Secrecy and Danger a Way of Life for Afghan Gays*, 5 November 2016, <https://apnews.com/456fa1a71d004d539edce40eff6efb46/fear-secrecy-and-danger-way-life-afghan-gays>.

⁵⁷¹ Open Democracy, *‘I Am Not Safe’: On the Run as a Gay Man in Afghanistan*, 3 March 2017, <https://www.opendemocracy.net/5050/ritu-mahendru/i-am-not-safe-on-run-as-gay-man-in-afghanistan>.

⁵⁷² “[T]here have been frequent credible reports that individuals perceived to be homosexual (almost exclusively males) have continuing difficulties with the police, including harassment and/or arrest (usually on spurious charges) [...] LGBTI individuals face a high risk of official discrimination, including by entrapment, arrest, harassment and mistreatment by police.” Australian Government: Department of Foreign Affairs and Trade, *Country Information Report: Afghanistan*, 18 September 2017, <http://dfat.gov.au/about-us/publications/Documents/country-information-report-afghanistan.pdf>, p. 22. “There is no legal protection for LGBT (lesbian, gay, bisexual and transgender) people, who face societal disapproval and abuse by police.” Freedom House, *Freedom in the World 2017: Afghanistan*, 2 June 2017, <http://www.refworld.org/docid/5936a46d13.html>.

официално.⁵⁷³

При преобладаващите социални табути, свързани с отношенията със същия пол, няма много информация за отношението към лицата с различна сексуална ориентация в Афганистан. Оскъдната информация, която съществува, се отнася до хомосексуалните мъже; положението на лесбийките и бисексуалните лица в голяма степен не е документирано. По подобен начин се знае малко за положението на транссеексуалните лица в Афганистан.⁵⁷⁴ Липсата на информация не трябва да се смята, че означава, че няма риск за лицата с различна сексуална ориентация и/или полова идентичност.

В светлината на криминализирането на отношенията със същия пол, както и силните социални табути, ВКБООН смята, че лицата с различна сексуална ориентация и/или полова идентичност е вероятно да имат нужда от международна закрила поради основателен страх от преследване от държавни или недържавни субекти по причина принадлежност към конкретна социална група, тъй като те не се съобразяват и не възнамеряват да се съобразяват с преобладаващите правни, религиозни и обществени норми. Те може да имат нужда от международна закрила на други относими основания по Конвенцията. За лицата, за които се смята, че са с различна сексуална ориентация и/или полова идентичност, също е вероятно да имат нужда от международна закрила на същите основания.

Трябва да се има предвид, че от лицата с различна сексуална ориентация и/или полова идентичност не може да се очаква да променят или скрият идентичността си, за да избегнат преследване.⁵⁷⁵ Освен това съществуването на значителни наказателни санкции за отношения със същия пол представлява пречка за защитата от страна на държавата на лицата с различна полова идентичност, включително когато извършители на преследването са недържавни субекти като семейството или членове на обществеността.⁵⁷⁶

13. Членове на (малицинствени) етнически групи

Населението на Афганистан включва редица различни етнически групи, които традиционно запазват голяма степен на автономия по отношение на централното правителство.⁵⁷⁷ В резултат на различни

⁵⁷³ “No organisations publicly advocate improved rights for lesbian, gay, bisexual, transgender or intersex (LGBTI) people.” Australian Government: Department of Foreign Affairs and Trade, *Country Information Report: Afghanistan*, 18 September 2017, <http://dfat.gov.au/about-us/publications/Documents/country-information-report-afghanistan.pdf>, p. 22. “Despite the fact that so far no organisation among NGOs is openly and publicly providing support to LGBT community, if persons belong to this community, particularly women, contact organisations working on women’s health and protection, they receive such services. Often the sexual orientation and identity of the person is kept confidential within the organisation to protect both the person as well as the organisation from public reactions.” Independent Chief Inspector of Borders and Immigration, *Inspection of Country of Origin Information - November 2016 Report*, February 2017, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/614322/Inspection-of-Country-of-Origin-Information-November-2016.pdf, p. 31. See also, Open Democracy, ‘*I Am Not Safe*: On the Run as a Gay Man in Afghanistan, 3 March 2017, <https://www.opendemocracy.net/5050/ritu-mahendru/i-am-not-safe-on-run-as-gay-man-in-afghanistan>.

⁵⁷⁴ Reports describe lesbian and transgender Afghans living in fear. See for example, InfoMigrants, ‘*Had I Stayed in Afghanistan, I Would Have Been Killed*’, 22 February 2018, <http://www.infomigrants.net/en/post/7714/had-i-stayed-in-afghanistan-i-would-have-been-killed>; KBR, *Living A Double Life as a Transgender Woman In Afghanistan*, 6 March 2017, http://kbr.id/english/03-2017/living_a_double_life_as_a_transgender_woman_in_afghanistan_89024.htm; Huffington Post, *Transgender Refugees in Pakistan Fear Death Upon Return Home to Afghanistan*, 26 January 2017, https://www.huffingtonpost.com/entry/transgender-refugees-afghanistan-pakistan_us_5887d4e9e4b0441a8f7194b7; BBC, *Afghanistan LGBT Community Living under Threat of Death*, 7 October 2016, <http://www.bbc.com/news/world-asia-36884732>. “The situation of gender division and the oppression of women are obstacles for all genders, but especially lesbian women, to find spaces to live freely.” Swedish International Development Cooperation (SIDA), *The Rights of LGBTI Persons in Afghanistan*, November 2014, <https://www.sida.se/globalassets/sida/eng/partners/human-rights-based-approach/lgbti/rights-of-lgbt-persons-afghanistan.pdf>, p. 1.

⁵⁷⁵ See for example, Court of Justice of the European Union, *X, Y, Z v Minister voor Immigratie en Asiel*, C-199/12 to C-201/12, 7 November 2013, <http://www.refworld.org/docid/527b94b14.html>.

⁵⁷⁶ For further guidance on applications for refugee status from individuals of diverse sexual orientations and/or gender identities, see UNHCR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 23 October 2012, HCR/GIP/12/01, <http://www.refworld.org/docid/50348afc2.htm>. See also Court of Justice of the European Union, *A, B, C v. Staatssecretaris van Veiligheid en Justitie*, C-148/13 to C-150/13, 2 December 2014, <http://www.refworld.org/docid/547d943da.html>.

⁵⁷⁷ Maley, William, *The Afghan Wars*, 2002, New York, Palgrave Macmillan, pp. 8-9: “The population of Afghanistan has never been counted in a complete census, but the results of a partial census in 1979, adjusted to take account of other relevant data, suggested a population of approximately 13.05 million, including around 800,000 nomads (Eighmy, 1990: 10). This population was in no sense homogeneous, and indeed it is something of

принудителни и доброволни движения на населението в миналото някои членове на етнически групи в момента живеят извън областите, където традиционно са представлявали мнозинство.⁵⁷⁸ Поради това лицата, принадлежащи към една от най-големите етнически групи в цялата страна, може фактически да са малцинствена етническа група в района, където живеят, и съответно да са подложени на дискриминация или малтретиране в родния си край поради етническата си принадлежност.⁵⁷⁹ И обратно, член на малцинствена етническа група или клан, може да не е подложен на дискриминация на основание етническа принадлежност в области, където тази етническа група представлява местното мнозинство.

Трябва да се отбележи също, че различните етнически групи не са непременно хомогенни общности. Сред пушуните, например, силното съперничество между различни подгрупи може да е причина за напрежение и конфликти.⁵⁸⁰

Освен това етническата принадлежност и религията често са неразделно свързани, особено в случая с хазарите, които са предимно шиити. Това води до невъзможност винаги да се направи разграничение между религията и етническата принадлежност като първичен елемент зад някои инциденти и напрежения.⁵⁸¹ Също така, тъй като политическата привързаност често се ръководи от етническата принадлежност, (приписаното) политическото мнение и етническата принадлежност

a misnomer to talk of "Afghan society", for the term suggests a degree of coherent structure which was never really present. Rather, Afghanistan has encompassed a kaleidoscopic collection of 'micro-societies' (often identified by the label qawm, or 'network'), with porous and flexible boundaries. One scholar even went so far as to dub Afghanistan a 'Nation of Minorities' (Jawad, 1992). Ethnicity, religion, occupation, and gender have historically offered to Afghans a range of bases upon which they may seek to identify with their fellows, and while some of these are effectively ascriptive – that is, unchangeable, or changeable only at enormous social cost – the relative emphasis given to one over another is frequently a matter of strategic choice. (...) Afghanistan is first of all a multiethnic country." As noted by William Maley in the quote above, no population census has been conducted in the country since the partial census 1979, which itself was not completed due to the Soviet invasion. Based on an extrapolation of the data from the 1979 census, the current population of Afghanistan is estimated at 34.1 million. See US Central Intelligence Agency, *CIA Factbook: Afghanistan*, <https://www.cia.gov/library/publications/the-world-factbook/geos/af.html>. The CIA Factbook notes that "current statistical data on the sensitive subject of ethnicity in Afghanistan is not available, and ethnicity data from small samples of respondents to opinion polls are not a reliable alternative". *Ibid.* See also, Asia Foundation, *Afghanistan in 2017: A Survey of the Afghan People*, November 2017, https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf, p. 200; Swedish Committee for Afghanistan, *The Afghan Population*, 22 August 2016, <https://swedishcommittee.org/afghanistan/population>; Civil-Military Fusion Centre, *Afghanistan Ethnic Groups: A Brief Investigation*, August 2011, <http://reliefweb.int/report/afghanistan/afghan-ethnic-groups-brief-investigation>. A detailed map showing the geographic distribution of Afghanistan's ethnic groups can be found in Congressional Research Service, *Afghanistan: Post-Taliban Governance, Security, and U.S. Policy*, 13 December 2017, <https://fas.org/sgp/crs/row/RL30588.pdf>, p. 74, Figure 2: "Map of Afghan Ethnicities". The Constitution of Afghanistan provides that, "The nation of Afghanistan shall be comprised of Pashtun, Tajik, Hazara, Uzbek, Turkman, Baluch, Pachaie, Nuristani, Ayrnaq, Arab, Qirghiz, Qizilbash, Gujur, Brahui and other tribes." Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>, Article 4.

⁵⁷⁸ As an example, Abdur Rahman Khan (who ruled Afghanistan between 1880 and 1901) transported troublesome Pashtuns of the Duranni and Ghilzai tribes to Uzbek- and Tajik-populated areas in the north, where their dispersion amongst non-Pashtun groups made them dependent on Rahman's central government. Rahman also enrolled tens of thousands of Pashtun warriors in a Muslim jihad against Shi'ite Hazaras in the Hazarajat and against animist tribes in Kafiristan (today's Nuristan). The Pashtun warriors were rewarded with plunder and land grants in the regions they conquered. A second wave of Pashtun migration into settled Tajik, Uzbek and Hazara areas followed in the second quarter of the 20th century, when the government transported thousands of landless Pashtun Ghilzai families to the north, depriving the northern minorities of valuable agricultural and pasture land that they had occupied for centuries. See, for example, Peter Tomsen, *The Wars of Afghanistan*, New York: Public Affairs, 2011, pp. 42, 53, 80.

⁵⁷⁹ An example are the Pashtuns in northern Afghanistan, the descendants of Pashtuns who were relocated by the government in the nineteenth and twentieth centuries to areas traditionally settled by Uzbeks and Tajiks. Following the fall of the Taliban in 2001, large numbers of Pashtuns from northern Afghanistan, who constitute an ethnic minority there, were forcibly displaced due to ethnic violence directed against them due to their (perceived) association with the Taliban regime. For some of the displaced reclaiming land and property has remained a challenge. IDMC, *Afghanistan: Durable Solutions Far From Reach Amid Escalating Conflict*, 16 April 2012, <http://www.refworld.org/docid/511e50cd2.html>; Minority Rights Group International, *Pashtuns*, undated; <http://minorityrights.org/minorities/pashtuns/>; HRW, *Paying for the Taliban's Crimes: Abuses Against Ethnic Pashtuns in Northern Afghanistan*, 9 April 2002, <http://www.refworld.org/docid/3cb2ad007.html>. See also CORI, *Afghanistan: COI Relating to Pashtuns*, 20 January 2015, <http://www.refworld.org/docid/54f9c87e4.html>; CORI, *Afghanistan: The Situation of Pashtuns in Areas of Afghanistan Where They Form a Minority*, 20 January 2015, <http://www.refworld.org/docid/559a8aad4.html>; Secure Livelihoods Research Consortium (Adam Pain), *Livelihoods, Basic Services and Social Protection in Afghanistan*, July 2012, <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7718.pdf>, p. 4.

⁵⁸⁰ See for example Minority Rights Group International, *Afghanistan: Pashtuns*, undated, <http://minorityrights.org/minorities/pashtuns/>; CORI, *Afghanistan: COI Relating to Pashtuns*, 20 January 2015, <http://www.refworld.org/docid/54f9c87e4.html>; Civil-Military Fusion Centre, *Afghanistan Ethnic Groups: A Brief Investigation*, August 2011, <http://reliefweb.int/report/afghanistan/afghan-ethnic-groups-brief-investigation>; Tribal Analysis Center, *Pashtun Tribal Dynamics*, October 2009, <http://www.tribalanalysiscenter.com/PDF-TAC/Pashtun%20Tribal%20Dynamics.pdf>.

⁵⁸¹ See for example, Reuters, *Who Is an Afghan? Row Over ID Cards Fuels Ethnic Tension*, 8 February 2018, <https://www.reuters.com/article/us-afghanistan-politics/who-is-an-afghan-row-over-id-cards-fuels-ethnic-tension-idUSKBN1FS1Y0>; US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/5967d8f4a.html>; Civil-Military Fusion Centre, *Afghanistan Ethnic Groups: A Brief Investigation*, August 2011, <http://reliefweb.int/report/afghanistan/afghan-ethnic-groups-brief-investigation>.

може да са неразрывно свързани с елементи в конфликтите и напреженията между различните групи.⁵⁸²

Етническите разделения в Афганистан остават силни. Индексът „Хора под заплаха“, съставен от Международната група за права на малцинствата, посочва Афганистан като петата най-опасна страна в света за етническите малцинства, особено заради целенасочените нападения срещу лица на основание тяхната етническа принадлежност и религия. Индексът посочва по-специално хазарите, пущуните, таджиките, узбеките и белуджите като етнически малцинства, изложени на рисък.⁵⁸³ Конституцията гарантира „равенство на етническите групи и племената“.⁵⁸⁴ Членовете на някои етнически групи обаче се оплакват от дискриминация от държавата, включително под формата на неравен достъп до постове в местното самоуправление и здравеопазване в областите, където са малцинство.⁵⁸⁵

a) Кучи

Номадските народи в Афганистан обикновено са известни като кучи; те представляват маргинализирана група.⁵⁸⁶ Докато мнозинството от кучите са етнически пущуни⁵⁸⁷, кучите са „поскоро социална, а не етническа група, въпреки че имат някои черти на отделна етническа група.“⁵⁸⁸ След падането на режима на талибаните през 2001 г. показателите за човешкото развитие на кучите изостават след тези на другите етнически групи; те са и сред най-бедните хора в Афганистан.⁵⁸⁹ Традиционно кучите са номади, но според сведенията мнозинството от тях сега са се установили в

⁵⁸² See, for example, Z. Warren, *First I Am my Tribe: An Investigation of Ethnic Identity in a National Sample of Afghans*, 1 December 2015, https://repository.library.georgetown.edu/bitstream/handle/10822/1040764/Warren_georgetown_0076D_13167.pdf?sequence=1, pp. 25, 27-30; Congressional Research Service, *Afghanistan: Politics, Elections, and Government Performance*, 12 January 2015, <http://www.fas.org/sgp/crs/row/RS21922.pdf>, p. 2; ICG, *Afghanistan's Political Transition*, 16 October 2014, <http://www.refworld.org/docid/543f9dfc4.html>, p. 26. Further analysis of corresponding risk profiles can be found in Sections III.A.1 and III.A.5.

⁵⁸³ Minority Rights Group International, *Peoples under Threat 2017*, 19 July 2017, <http://minorityrights.org/wp-content/uploads/2017/07/Peoples-under-Threat-2017.pdf>, p. 5. It should be noted that not all observers agree on the classification of certain violent incidents as being ethnically motivated. Thus the Congressional Research Service states, “There have been few incidents of ethnic-based violence since the fall of the Taliban, but clashes sometimes do result from jealousies and historic disputes between the different ethnic communities. All ethnic groups are represented at all levels of the central government and each group has a large measure of control over how government programs are implemented in their geographic regions. Although Afghanistan’s President has the power to appoint provincial and district governors, in practice there is an informal understanding not to appoint governors of a different ethnicity than the majority of residents of particular provinces.” Congressional Research Service, *Afghanistan: Politics, Elections, and Government Performance*, 12 January 2015, <http://www.fas.org/sgp/crs/row/RS21922.pdf>, p. 2.

⁵⁸⁴ Article 6 of the Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>.

⁵⁸⁵ According to a national inquiry undertaken by the AIHRC in 2017, 63 per cent of respondents reported having experienced ethnic discrimination at health centres. AIHRC, *National Inquiry Report Situation of the Right to Access Quality Health Services*, April 2017, <http://www.aihrc.org.af/media/files/Research%20Reports/english/health%20report%201.pdf>, pp. 7, 29, 38, 40. See also, Reuters, *Leaked Memo Fuels Accusations of Ethnic Bias in Afghan Government*, 21 September 2017, <https://www.reuters.com/article/us-afghanistan-politics/leaked-memo-fuels-accusations-of-ethnic-bias-in-afghan-government-idUSKCN1BW15U>; News in Asia, *Ethno-Religious Conflict Has Plagued Afghanistan for Long*, 24 July 2016, <https://newsin.asia/ethno-religious-conflict-has-plagued-afghanistan-for-long/>; Minority Rights Group International, *Afghanistan: Governance*, undated, <http://minorityrights.org/country/afghanistan/>; Nahid Soleman, *Ethnic Discrimination in Afghanistan*, undated, http://www.intermedia.org.pk/pdf/pak_afghan/Naheed_Soleman_Ethnic_Discrimination_in_Afghanistan.pdf.

⁵⁸⁶ In recognition of this fact, ten seats in the lower house of the national assembly are reserved for Kuchis and two seats in the upper house. AAN, *New Building, Old MPs: A Guide to the Afghan Parliament*, 4 February 2016, <https://www.afghanistan-analysts.org/new-building-old-mps-a-guide-to-the-afghan-parliament/>. AREU notes that, “The provision for Kuchi has been hotly contested among parliamentarians since the 2005 elections.” AREU, *The A to Z Guide to Assistance in Afghanistan*, 2015, <http://www.refworld.org/docid/5507ebe94.html>, p. 76. See also, RFE/RL, *Kuchi Nomads: Struggling and Stateless in War-Torn Lands*, 9 February 2016, <https://www.rferl.org/a/afghanistan-pakistan-kuchis/27539195.html>. There are no reliable statistics for the total number of Kuchis in Afghanistan. Minority Rights Group International estimates the total number of Kuchis in Afghanistan to be approximately 30,000. Minority Rights Group International, *Afghanistan: Kuchis*, undated, <http://minorityrights.org/minorities/kuchis/>. Other estimates vary from 800,000 to 2.4 million. See: Reuters, *Afghan Nomads Trapped, Hungry as Pakistan Blocks Access to Grazing Land*, 19 February 2018, <https://www.reuters.com/article/us-afghanistan-conflict-migration/afghan-nomads-trapped-hungry-as-pakistan-blocks-access-to-grazing-land-idUSKCN1G31UJ>; UN Department of Economic and Social Affairs, *World Population Prospects: The 2017 Revision – Afghanistan*, 21 June 2017, https://esa.un.org/unpd/wpp/DVD/Files/4_Other%20Files/DataSources.pdf, p. 1.

⁵⁸⁷ “Ethnically, the vast majority of kuchi are Pashtun. The kuchi also count Baloch, Arab, as well as Tajik and Uzbek in the north, among their numbers”. M Ker and J. Locke, “Singing in the Wilderness: Kuchi Nomads in Modern Afghanistan”, *Cornell International Affairs Review*, Vol 3(2), 2010, <http://www.inquiriesjournal.com/articles/1260/singing-in-the-wilderness-kuchi-nomads-in-modern-afghanistan>, pp. 1-2. Minorities of Kuchi include Aimaq, Baluch, Arabs, Kirghiz, Turkmen and Uzbeks. Richard Tapper, “Who are the Kuchi? Nomad Self-Identities in Afghanistan”, *Journal of the Royal Anthropological Institute (N.S.)*, Vol. 14, 2008, pp. 97-116, http://www.nomadsed.de/fileadmin/user_upload/redakteure/Dateien_Intern/Archiv_AG_1/Tapper_Kuchi_2008.pdf, pp. 99-100. See also Minority Rights Group International, *Afghanistan: Kuchis*, undated, <http://minorityrights.org/minorities/kuchis/>.

⁵⁸⁸ Minority Rights Group International, *Afghanistan: Kuchis*, undated, <http://minorityrights.org/minorities/kuchis/>.
⁵⁸⁹ “Instability in Afghanistan has left [Kuchis] among the poorest groups in the country.” Minority Rights Group International, *Afghanistan: Kuchis*, undated, <http://minorityrights.org/minorities/kuchis/>. See also, Samuel Hall Consulting, *State of Afghan Cities 2015 – Vol. 1*, September 2015, http://samuelhall.org/wp-content/uploads/2015/09/State-of-Afghan-Cities-2015-Volume_1.pdf, p. 21.

градове, села или в околностите на големи градове⁵⁹⁰, което е довело до засилено напрежение между кучите и други етнически групи.⁵⁹¹ Социално-икономическите условия на установилите се кучи са дори по-лоши, отколкото тези на кучите номади.⁵⁹² Конституцията предвижда държавата да предприеме мерки за подобряване на препитанието на номадите и на достъпа им до образование (Член 44).⁵⁹³ Кучите обаче продължават да са „в неравностойно положение по отношение на достъпа до образование, здравеопазване или възможности за препитание“.⁵⁹⁴

b) Хазари

Сведенията сочат, че хазарите продължават да се сблъскват с дискриминация в обществото, както и че са набелязани за изнудване чрез незаконно облагане с данъци, принудително мобилизиране и принудителен труд, физическо малтретиране и лишаване от свобода.⁵⁹⁵ Хазарите, които са

⁵⁹⁰ “With reduced access to the shrinking pastures, the nomads either end up in the cities or grab whatever piece of land they find. As nomadic life becomes difficult to practice, some of them have no easily viable option to settle down somewhere, except as cheap labour in the cities. Those who can are keen to avoid that fate, and try to seize some land.” AREU, *Typologies of Nomad-Settler Conflict in Afghanistan*, January 2018, <https://areu.org.af/wp-content/uploads/2018/01/1801E-Typologies-of-nomad-settler-conflict-in-Afghanistan.pdf>, p. 22. Reportedly, the process of Kuchis becoming sedentary, caused partially by social, economic, environmental and demographic change, “accelerated dramatically” after 2001, especially in Kabul Province. AREU, *Mapping Nomad-Farmer Conflict in Afghanistan*, July 2017, https://www.ecoi.net/en/file/local/1404589/1226_1500886126_1714e-mapping-nomad-farmer-conflict-in-afghanistan.pdf, pp. 6-7. Estimates about the number of Kuchis who still live nomadic lives vary. “Many Kuchis have relocated to settled areas because of war, drought, and dwindling access to land. Only around one-third still lead nomadic lives.” RFL/RE, *Afghanistan’s Kuchi Nomads Forced to Settle*, 18 September 2015, <https://www.rferl.org/a/afghanistan-society-nomads/27241125.html>. In contrast, the AIHRC reported that over 80 per cent of Kuchis have permanently settled in towns or villages, while close to 18 per cent is semi-nomadic: they have settled but still move with their animals at certain times of the year. According to the AIHRC, only about two per cent of Kuchis are still fully nomadic, with no permanent place of residence. AIHRC, *Fifth Report: Situation of Economic and Social Rights in Afghanistan*, December 2011, <http://www.refworld.org/docid/511e58cf0.html>, p. 113. See also, AAN, *The Social Wandering of the Afghan Kuchi*, November 2013, http://www.afghanistan-analysts.org/wp-content/uploads/2013/11/20131125_FFoschini-Kuchis.pdf. Many of these settlements occur in so-called “irregular residential areas” that are unsuitable for human habitation due to lack of urban planning or characteristics of the land. Samuel Hall Consulting, *State of Afghan Cities 2015 – Vol. 1*, September 2015, http://samuelhall.org/wp-content/uploads/2015/09/State-of-Afghan-Cities-2015-Volume_1.pdf, p. 76.

⁵⁹¹ “In the absence of a government programme to settle the Nomads [Kuchis] in specific areas, they either end up in the cities or grab whatever piece of land they find. Few nomads have the resources to buy land, so one of the options they have is to occupy pastureland where they can. [...] As a result of competition for the exploitation of pastureland, communities that never before objected to Kuchis accessing the pastures turned against them [...] The total absence of policing in rural areas [...] results in relatively minor incidents escalating rapidly into violence.” AREU, *Mapping Nomad-Farmer Conflict in Afghanistan*, July 2017, https://www.ecoi.net/en/file/local/1404589/1226_1500886126_1714e-mapping-nomad-farmer-conflict-in-afghanistan.pdf, p. 8. “There have [...] been increasing ethnic tensions and incidents of violent clashes between Hazaras and nomadic Kuchis over access to land in recent years.” BBC, ‘God Forgot Afghanistan’, 30 July 2016, <http://www.bbc.com/news/blogs-trending-36925169>. See also Pajhwok Afghan News, *Khost Lakan Tribe Seeks End to Land Dispute with Kuchis*, 31 July 2017, <https://www.pajhwok.com/en/2017/07/31/khost-lakan-tribe-seeks-end-land-dispute-kuchis>.

⁵⁹² “It would appear that sedentary Kuchis tend to be poorer than nomadic Kuchis and that most settled Kuchis become daily workers.” AREU, *Mapping Nomad-Farmer Conflict in Afghanistan*, July 2017, https://www.ecoi.net/en/file/local/1404589/1226_1500886126_1714e-mapping-nomad-farmer-conflict-in-afghanistan.pdf, p. 6. Kuchis often settle in the areas around large cities, especially Kabul, where they lack access to services, including drinking water, and are negatively perceived by the local population. Minority Rights Group International, *State of the World’s Minorities and Indigenous Peoples 2015: Afghanistan*, 2 July 2015, <http://www.refworld.org/docid/55a4fa6915.html>.

⁵⁹³ Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>, Articles 14 and 44.

⁵⁹⁴ Action Contre la Faim, *200,000 Kuchis Nomads Trapped in Afghanistan in Need of Assistance*, 11 February 2018, <https://reliefweb.int/report/afghanistan/200000-kuchis-nomads-trapped-afghanistan-need-assistance>. Kuchis are isolated from health services, and vaccination rates for Kuchi children are much lower than for other groups of children, whether urban or rural. As a result, Kuchis are particularly vulnerable to polio. UNICEF, *A Family Affair: Transforming a Community to Eradicate Polio in Afghanistan*, 22 February 2018, <https://www.unicef.org/afghanistan/stories/family-affair>. Afghanistan’s Central Statistics Organization reported in 2016 that only 42.6 per cent of Kuchi women have access to prenatal care, the lowest level among all Afghan ethnic groups. Central Statistics Organization, *Women and Men in Afghanistan* 2017, <http://cso.gov.af/Content/files/Publications/Women%20in%20men/Women%20and%20Men%20In%20Afghanistan%20English%202016.pdf>; p. 32. See also Reuters, *Afghan Nomads Trapped, and Hungry as Pakistan Blocks Access to Grazing Land*, 19 February 2018, <https://www.reuters.com/article/us-afghanistan-conflict-migration/afghan-nomads-trapped-hungry-as-pakistan-blocks-access-to-grazing-land-idUSKCN1G31UJ>.

⁵⁹⁵ December 2017, Freedom House, *Freedom in the World 2017: Afghanistan*, 2 June 2017, <http://www.refworld.org/docid/5936a46d13.html>. “Afghan Hazaras [...] have been forced to migrate multiple times as a result of deep-seated discrimination. [...] Hazaras [...] continue to experience specific aspects of religious or ethnic discrimination.” Minority Rights Group International, *No Escape from Discrimination: Minorities, Indigenous Peoples and the Crisis of Displacement*, December 2017, http://minorityrights.org/wp-content/uploads/2017/12/MRG_Displacement_Report_Dec17.pdf, pp. 3, 17. “Members of the Shia Hazara minority group were victims of forced labor.” US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>. “Several other attacks against the ethnic group in recent years have been attributed to the Islamic State, touching off large protests in Kabul by Hazaras, who say too little is done to protect them.” New York Times, *Hazaras Protest after an ISIS Attack Kills 10 in Kabul*, 9 March 2018, <https://www.nytimes.com/2018/03/09/world/asia/suicide-attack-kabul-hazaras.html>. “Hazara activists say the government does not protect the interests of the Hazaras. Parts of central Afghanistan, like Bamiyan, the unofficial Hazara capital, are among the country’s poorest, often lacking basic facilities and electricity.” Al Jazeera, *Afghanistan: Who Are the Hazaras?*, 27 June 2016, <https://www.aljazeera.com/indepth/features/2016/06/afghanistan-hazaras-160623093601127.html>. See also, The Geopolitics, *The Agony of the Hazaras and the Indifference of the Afghan State*, 18 May 2018, <https://thegeopolitics.com/the-agony-of-the-hazaras-and-the-indifference-of-the->

преобладаващо шиити, исторически са били маргинализирани и дискриминирани от сунитското мнозинство⁵⁹⁶. Макар и според съдържанието да са постигнали съществен икономически и политически напредък след падането на талибанския режим през 2001 г.⁵⁹⁷, в по-ново време има значително нарастване на тормоза, сплашването, отвличанията и убийствата от страна на талибаните, Исламска държава и други АПЕ.⁵⁹⁸

c) Членове на етническата група на общностите джат, включително джоги, чори фроши, гормат и мосул

Сред най-маргинализираните общности в Афганистан са тези на етноса джат, който обхваща

[afghan-state/](#) ; The Globe Post, *Attacks on Hazara Community Killing Political Efficacy in Afghanistan*, 14 May 2018, <https://www.theglobeandmail.com/2018/04/29/afghanistan-hazara-community/> ; Reuters, *Who Are the Hazaras and What Are They Escaping?*, 22 September 2016, <https://in.reuters.com/article/europe-migrants-hazaras/who-are-the-hazaras-and-what-are-they-escaping-idINKCN11S0Z6> ; The Diplomat, *TUTAP Power Project Reopens Old Wounds in Afghanistan*, 4 August 2016, <https://thediplomat.com/2016/08/tutap-power-project-reopens-old-wounds-in-afghanistan/>; Reuters, *Thousands of Afghan Hazaras Join Power Line Protest In Kabul*, 16 May 2016, <https://www.reuters.com/article/us-afghanistan-protests/thousands-of-afghan-hazaras-join-power-line-protest-in-kabul-idUSKCN0Y70BW>.

⁵⁹⁶ “The Hazaras are a long-oppressed minority in Afghanistan whose members tend to be Shiite.” New York Times, *Hazaras Protest after an ISIS Attack Kills 10 in Kabul*, 9 March 2018, <https://www.nytimes.com/2018/03/09/world/asia/suicide-attack-kabul-hazaras.html> . “[W]hile all Afghans have been affected, ethnic and religious minorities have been particularly at risk. This is especially the case for Afghanistan’s Hazaras, a community who have long faced persecution and discrimination for their faith as Shi’a Muslims and their Asiatic features. In their long history in Afghanistan, Hazaras have suffered persecution, social ostracization and mass killings, with thousands murdered under the Taliban.” Minority Rights Group International, *No Escape from Discrimination: Minorities, Indigenous Peoples and the Crisis of Displacement*, December 2017, http://minorityrights.org/wp-content/uploads/2017/12/MRG_Displacement_Report_Dec17.pdf , p. 17. See also, Global Village Space, *Afghanistan: The Growing Ethnic Tension Has its Roots in History*, 23 February 2018, <https://www.globalvillagespace.com/afghanistan-growing-ethnic-tension-roots-history>; Daily Times, *Hazara Genocide*, 21 November 2017, <https://dailytimes.com.pk/144056/hazara-genocide/>; Australian Policy and History, *Hazaras’ Persecution Worsens: Will the New Government Show Leadership by Lifting the Suspension on Afghani Asylum Claims?*, 13 November 2017, <http://aph.org.au/hazaras-persecution-worsens-will-the-new-government-show-leadership-by-lifting-the-suspension-on-afghani-asylum-claims/> ; Minority Rights Group International, *State of the World’s Minorities and Indigenous Peoples 2016 - Case study: Hazara Heritage and the Uncertain Future of the Buddhas of Bamiyan*, 12 July 2016, <http://www.refworld.org/docid/5796080ec.html> ; Al Jazeera, *Afghanistan: Who are the Hazaras?*, 27 June 2016, <https://www.aljazeera.com/indepth/features/2016/06/afghanistan-hazaras-160623093601127.html> ; Minority Rights Group International, *Afghanistan: Hazaras*, undated, <http://minorityrights.org/minorities/hazaras/> .

⁵⁹⁷ “Since 2001, the traditionally marginalized Shiite Muslim minority, which includes most ethnic Hazaras, have enjoyed increased levels of political representation and participation in national institutions.” Freedom House, *Freedom in the World 2017: Afghanistan*, 2 June 2017, <http://www.refworld.org/docid/5936a46d13.html> . See also Australian Government: Department of Foreign Affairs and Trade, *Thematic Report: Hazaras in Afghanistan*, 18 September 2017, <http://dfat.gov.au/about-us/publications/Documents/country-information-report-hazaras-thematic.pdf> , p. 4; Landinfo, *Afghanistan: Hazaras and Afghan Insurgent Groups*, 3 October 2016, <http://www.refworld.org/docid/5ae1ea974.html> , p. 12; Minority Rights Group International, *Afghanistan: Hazaras*, undated, <http://minorityrights.org/minorities/hazaras/> .

⁵⁹⁸ “Nationwide, insurgent attacks on Shiite and Hazara targets have claimed more than 300 lives and left more than 700 people wounded in the past two years. Most have been claimed by or are believed to have been carried out by the Islamic State.” Washington Post, ‘We Suffer More’: *Rising Violence on Shiite Targets Takes Toll on Afghanistan’s Hazaras*, 21 March 2018, [https://www.washingtonpost.com/world/kabul-suicide-bomber-strokes-shiite-ceremony-killing-at-least-29/2018/03/21/e6e6e3ce-2cfa-11e8-b0b0-f706877db618_story.html](https://www.washingtonpost.com/world/kabul-suicide-bomber-strikes-shiite-ceremony-killing-at-least-29/2018/03/21/e6e6e3ce-2cfa-11e8-b0b0-f706877db618_story.html) . “Throughout 2017 UNAMA noted an increasing pattern of deliberate sectarian-motivated attacks against the Shi’a Muslim religious minority, most of whom also belong to the Hazara ethnic minority, nearly all attributed to and claimed by Daesh/ISIL-KP.” UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html> . “During [2016-2017], Shi’a Muslims, especially ethnic Hazaras, fell victim to multiple violent and deadly attacks, as well as abductions that often ended in death. The attacks were overwhelmingly claimed by or attributed to [...] terrorist groups, including the Taliban and ISIS.” US Commission on International Religious Freedom, *Annual Report: Afghanistan*, April 2017, <https://www.uscirf.gov/sites/default/files/Afghanistan.2017.pdf> , p. 3. “The ISKP publicly claimed responsibility for attacks killing over 100 members of the Shia community. In July [2016] a suicide bombing targeted a protest attended primarily by members of the Shia-majority Hazara community, killing at least 97 and injuring more than 260. In October [2016] gunmen entered the Karte-Sakhi mosque and opened fire on worshippers gathering to mark the Shia holiday of Ashura, killing 17 worshippers and wounding 58, including women and children. The ISKP claimed responsibility for both attacks. The Taliban were responsible for a number of kidnappings of Shia Hazaras and continued to threaten clerics with death for preaching messages contrary to the Taliban’s interpretation of Islam. They warned mullahs not to perform funeral prayers for government security officials.” US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html> . See also, New York Times, *Hazaras Protest after an ISIS Attack Kills 10 in Kabul*, 9 March 2018, <https://www.nytimes.com/2018/03/09/world/asia/suicide-attack-kabul-hazaras.html> ; NPR, *ISIS Claims Responsibility for Deadly Attack Aimed at Afghan Hazaras*, 9 March 2018, <https://www.npr.org/sections/thetwo-way/2018/03/09/592210383/isis-claims-responsibility-for-deadly-attack-aimed-at-afghan-hazaras> ; Amnesty International, *Amnesty International Report 2017/18: Afghanistan*, 22 February 2018, <http://www.refworld.org/docid/5a99395da.html> ; HRW, *World Report 2018: Afghanistan*, 18 January 2018, <http://www.refworld.org/docid/5a61eeac4.html> ; Pajhwok News, *Taliban out to Foment Ethnic Trouble in Ghazni: Governor*, 13 January 2018, <https://www.pajhwok.com/en/2018/01/13/taliban-out-foment-ethnic-trouble-ghazni-governor>; AIHRC, *Attacks Against Hazaras in Afghanistan*, 2017, http://www.aihrc.org.af/media/files/A%20Short%20Report%20On%20Attack%20against%20Hazaras_English_Final.pdf ; The Guardian, *Insurgents Kill up to 50 Afghan Villagers in Northern Province*, 6 August 2017, <https://www.theguardian.com/world/2017/aug/06/insurgents-kill-up-to-50-afghan-villagers-in-northern-province> ; RFE/RL, *Islamic State Proving Resilient in Afghanistan in Face of Targeted Campaign*, 4 August 2017, <http://www.refworld.org/docid/5a9fb779a.html> ; Huffington Post, *Why ISIS Have Declared War on the Hazara Shias of Afghanistan*, 26 June 2017, https://www.huffingtonpost.in/syed-zafar-mehdi/why-isis-have-declared-war-on-the-hazara-shias-of-afghanistan_a_22504421/ ; Landinfo, *Afghanistan: Hazaras and Afghan Insurgent Groups*, 3 October 2016, <http://www.refworld.org/docid/5ae1ea974.html> , pp. 25-26; Al Jazeera, *Afghanistan: Who Are the Hazaras?*, 27 June 2016, <https://www.aljazeera.com/indepth/features/2016/06/afghanistan-hazaras-160623093601127.html> .

общностите джоги, чори фрош, гормат и мосул.⁵⁹⁹ Според сведенията социалната и институционната дискриминация представлява основна пречка за членовете на тези общности, като Министерството на вътрешните работи отказва да смята членовете на етническите групи джоги и мосул за граждани на Афганистан.⁶⁰⁰ Това от своя страна означава, че на тях не им се издават карти за гражданство *tazkira (тескере)*, резултат от което имат ограничен достъп до социални услуги, държавни училища, работа и собственост на земя.⁶⁰¹

d) *Спорове за земя с етнически или племенни измерения*

Земевладението в много случаи е трудно да бъде установено и в резултат на това в Афганистан споровете са нещо обичайно; при тях често се стига до насилие.⁶⁰² Според сведенията заграбването на земя е широко разпространено, често включващо влиятелни играчи с връзки с правителството, както и държавни чиновници.⁶⁰³ Всички механизми за регистрация, разпределение и решаване на спорове за земя са засегнати от корупция.⁶⁰⁴ За да се ограничи корупцията, е приет нов Закон за

⁵⁹⁹ RFE/RL, *Afghanistan's Marginalized Minority Fights Stateless Status*, July 2015, <http://gandhara.rferl.mobi/a/27100409.html>; Samuel Hall Consulting, *Jogi and Chori Frosh Communities: A Story of Marginalization* (for UNICEF), November 2011, <http://samuelhall.org/REPORTS/JOGI%20and%20CHORI%20FROSH%20Communities.pdf>, p. 15. The total number of Jogi, Jat, Gorbat and Chori Frosh individuals is estimated to be around 30,000, mostly in the cities of Jalalabad (Jat), Mazar-e-Sharif (Jogi and Chori-Frosh), Kabul (Jogi and Jat), Kunduz (Jogi and Chori Frosh), and Herat (Gorbat); ILO, *Afghanistan: Time to Move to Sustainable Jobs: Study on the State of Employment in Afghanistan*, May 2012, <http://www.refworld.org/docid/5124c39f2.html>, p. 39. Similarly to the Kuchis, these groups are abandoning their traditional lifestyle to move to urban areas. Samuel Hall Consulting, *State of Afghan Cities 2015 – Vol. 1*, September 2015, http://samuelhall.org/wp-content/uploads/2015/09/State-of-Afghan-Cities-2015-Volume_1.pdf, p. 21. Afghanistan also has a small Kyrgyz community of about 1,500 individuals in northern Badakhshan province, who have expressed concerns about the very survival of their community in Afghanistan. By 2012, their efforts to be relocated to Kyrgyzstan were reported to have remained unsuccessful. EurasiaNet, *Kyrgyz Community in Afghanistan Looking for a Way Out*, 7 May 2012, <http://www.eurasianet.org/node/65369>

⁶⁰⁰ "Jogi and Chori Frosh communities are discriminated against on account of their ancestral origins and related social and economic practices, including high levels of female labour participation rates, for which they are considered 'outsiders'. This has contributed to their economic, social, and political marginalization, a situation exacerbated by the frequent denial of recognition of their citizenship." Minority Rights Group International, *Afghanistan: Jogi and Chori Frosh*, undated, <http://minorityrights.org/minorities/jogi-chori-frosh/>.

⁶⁰¹ IWPR, *Afghan Gypsies Wait for Recognition*, 27 March 2017, <https://iwpr.net/global-voices/afghan-gypsies-wait-recognition>; AFP, *Living on A Knife Edge*, 18 March 2018, <https://www.thephuketnews.com/living-on-a-knife-edge-66377.php>; TRT World, *Afghanistan's Jogi Minority Seeks Citizenship*, 17 March 2018, <https://www.trtworld.com/life/afghanistan-s-jogi-minority-seeks-citizenship-15980>; The Times of India, *Afghanistan's Forgotten Gypsies Seek Legal Recognition*, 8 March 2018, <https://timesofindia.indiatimes.com/world/middle-east/afghanistans-forgotten-gypsies-seek-legal-recognition/articleshow/63221731.cms>; Minority Rights Group International, *Afghanistan: Jogi and Chori Frosh*, undated, <http://minorityrights.org/minorities/jogi-chori-frosh/>. See also V. Jain, *Ethnological and Legal Study of Jogis*, Journal of Social Sciences Research (2016) 2(3) 43, 49.

⁶⁰² 1TV News, *More Than 26,000 Acres of Usurped Land Reclaimed in One Year: Justice Ministry*, 23 April 2018, <http://www.1tvnews.af/en/news/afghanistan/34256-more-than-26000-acres-of-usurped-land-reclaimed-in-one-year-justice-ministry>; Tolo News, *500 Land Ownership Certificates Handed Out In Herat*, 24 February 2018, <https://www.tolonews.com/business/500%C2%A0land-ownership-certificates-handed-out%C2%A0herat>; Pajhwok Afghan News, *In Nangarhar, Big-Time Land-Grabbers Remain at Large*, 10 December 2017, <https://www.pajhwok.com/en/2017/12/10/nangarhar-big-time-land-grabbers-remain-large>; 1TV News, *President Ghani Warns He Will 'Crush Heads' of Land Grabbers*, 3 August 2017, <http://www.1tvnews.af/en/news/afghanistan/30582>; TKG, *Thousands Acres of Usurped Land Reclaimed in Paktika*, 13 June 2017, <http://tkg.af/english/2017/06/13/thousands-acres-usurped-land-reclaimed-paktika/>; Pajhwok Afghan News, *Logar Residents Take to the Streets Against Land Grab*, 24 May 2017, <https://www.pajhwok.com/en/2017/05/24/logar-residents-take-streets-against-land-grab>; Pajhwok Afghan News, *650,000 Acres of Govt Land Usurped Nationwide*, 15 March 2017, <https://www.pajhwok.com/en/2017/03/15/650000-acres-govt-land-usurped-nationwide>; Afghanistan Times, *Land Grabbing: A Lucrative Black Business*, 11 March 2016, <http://afghanistantimes.af/land-grabbing-a-lucrative-black-business>.

⁶⁰³ "Impunity and the lack of rule of law contribute greatly to the land usurpation problem. [...] A report provided by the Directorate [of Discovering Economic Crimes] indicated that in total 1,247,981 jeribs of government and private land have been usurped by 15,831 usurpers in 30 provinces. MEC's findings reveal that most private and government land was usurped by those who have, or have had, a significant presence in the government. Law enforcement agencies have been ineffective in investigating and prosecuting land usurpation cases." Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC), *MEC's Impact Analysis*, October 2016, [http://www.mec.af/files/MEC_Impact_%20FINAL%20\(English\).pdf](http://www.mec.af/files/MEC_Impact_%20FINAL%20(English).pdf), p. 9. "Abusive strongmen were sometimes legitimized and empowered through their appointments to positions of authority and responsibility by President Hamid Karzai. [...] These men repressed rival groups and ordinary citizens through illegal land grabs, economic marginalization, and human rights violations." Special Inspector General for Afghanistan Reconstruction (SIGAR), *Corruption in Conflict*, September 2016, <https://www.sigar.mil/pdf/lessonslearned/SIGAR-16-58-LL.pdf>; p. 11. See also Pajhwok Afghan News, *Above 14,000 Acres of Land Usurped in Baghlan*, 27 January 2018, <https://www.pajhwok.com/en/2018/01/27/above-14000-acres-land-usurped-baghlan>; Pajhwok Afghan News, *Large Swaths of State Land 'Usurped' East of Kabul*, 12 December 2017, <https://www.pajhwok.com/en/2017/12/12/large-swaths-state-land-usurped-east-kabul>; The Kabul Times, *Land Grabbing Still a Major Challenge*, Minister, 5 November 2017, <http://thekabultimes.gov.af/index.php/newsnational/15330-land-grabbing-still-a-major-challenge-minister.html>; Pajhwok Afghan News, *650,000 Acres of Govt Land Usurped Nationwide*, 15 March 2017, <https://www.pajhwok.com/en/2017/03/15/650000-acres-govt-land-usurped-nationwide>.

⁶⁰⁴ According to SIGAR, the main challenges to land reform in Afghanistan include include political and judicial corruption; an underdeveloped legal system and lack of enforcement mechanisms to support land laws and property rights; and a lack of Afghan government technical capacity, including the ability to use land administration information technology systems. SIGAR, *Land Reform in Afghanistan: Full Impact and Sustainability of \$41.2 Million USAID Program Is Unknown*, February 2017, <https://www.sigar.mil/pdf/audits/SIGAR-17-27-AR.pdf>, p. 3. "Law enforcement agencies have been ineffective in investigating and prosecuting land usurpation cases." Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC), *MEC's Impact Analysis*, October 2016, [http://www.mec.af/files/MEC_Impact_%20FINAL%20\(English\).pdf](http://www.mec.af/files/MEC_Impact_%20FINAL%20(English).pdf), p. 9.

поземлено управление с президентски указ от 4 март 2017 г.⁶⁰⁵ Освен това новият Наказателен кодекс, влязъл в сила на 15 февруари 2018 г., криминализира заграбването и присвояването на земя.⁶⁰⁶

Конфликтите около собствеността и ползването на земята често имат етническо измерение, отчасти в резултат от движението на населението.⁶⁰⁷ Афганистанците, които се стремят да си възстановят земята след завръщането от разселване, може да са особено уязвими от поземлени спорове с етническо измерение.⁶⁰⁸

В провинциите Вардак и Газни годишната миграция на номадите кучи в търсене на пасища за животните си в области, населени с хазари, предизвиква периодично битки между кучите и хазарите.⁶⁰⁹ Въпреки усилията на правителството да се справи с тези конфликти, насилието продължава да води до убийства и наранявания сред двете групи и разселване на хазарските селяни.⁶¹⁰

⁶⁰⁵ UN Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>, p. 20.

⁶⁰⁶ Afghanistan, *Penal Code*, published in the Official Gazette No. 1260, 15 May 2017, Article 715. (English unofficial translation on record with UNHCR.)

⁶⁰⁷ “Growing demographic pressure is an obvious source of nomad-farmer conflict and is often mentioned by interviewees and confirmed by officials [...] [A]nother deep cause underpinning the rise in conflicts over pastureland is the expansion of urban and peri-urban settlements. This trend has, in some cases, pushed up the value of grassland previously used by the nomads, causing local villagers, returnees from Pakistan and powerbrokers to try and seize control over pastureland for the purpose of building on it or of selling it. It does not help that the authorities play little or no role in trying to channel urban expansion towards dry areas, as opposed to pastures and agricultural land.” AREU, *Typologies of Nomad-Settler Conflict in Afghanistan*, January 2018, <https://areu.org.af/wp-content/uploads/2018/01/1801E-Typologies-of-nomad-settler-conflict-in-Afghanistan.pdf>, p. 21. “Widespread poverty and a scarcity of productive land generate intense competition for access to and management of land and natural resources among people and communities, which often leads to intracommunal and intercommunal conflict. For example, disputes over access to pastoral land have been at the heart of interethnic tensions between the Shia Hazaras and the Sunni Kuchis for over a century, tensions that have frequently flared into violence”. The Asia Foundation, *The State of Conflict and Violence in Asia: Afghanistan*, 11 October 2017, <https://asiafoundation.org/wp-content/uploads/2017/10/Afghanistan-StateofConflictandViolence.pdf>, p. 17. The causes of some of the conflicts about land go back to the deliberate efforts in the 19th and early 20th century by Afghanistan’s Pashtun rulers to relocate mostly Pashtun Afghans into areas not previously settled by Pashtuns, in an attempt to gain control over these parts of the country. See for example Landinfo, *The Conflict between Hazaras and Kuchis in the Beshud Districts of Wardak Province*, 6 June 2011, <http://www.refworld.org/docid/5124c5142.html>; Cooperation for Peace and Unity (CPAU), *Fractured Relationships: Understanding Conflict between Nomadic and Settled Communities in Wardak’s Pastureland*, October 2010, <http://www.cpaau.org.af/images/publications/CPAU%20Report%20-%20Fractured%20Relationships.pdf>.

⁶⁰⁸ “There are serious concerns about (potential) incidents related to disputes [between returnees and host communities] over land and property, which could escalate into violence. [...] Access to land seems to be a particular concern when connecting the returnee phenomenon with conflict.” Oxfam, *Returning to Fragility: Exploring the Link between Conflict and Returnees in Afghanistan*, January 2018, <https://www.oxfam.org/en/research/returning-fragility-exploring-link-between-conflict-and-returnees-afghanistan>, p. 17. “Contestation and conflict over land is common and widespread in Afghanistan and significantly affects returnees. Successive waves of internal and external displacement have forced many to vacate land and housing. In some cases, their lands have been occupied by IDPs or other returnees and in other cases by local power brokers [...] Displacement and other factors have eroded traditional mechanisms for resolving tenancy disputes, and it is difficult for owners to claim their properties without an original title or deed. Tensions between returnees and tenants often end with violence or the threat of violence among the disputing parties.” USIP, *The Forced Return of Afghan Refugees and Implications for Stability*, Peace Briefing 199, January 2016, <https://www.usip.org/sites/default/files/PB199-The-Forced-Return-of-Afghan-Refugees-and-Implications-for-Stability.pdf>, p. 3.

⁶⁰⁹ “Land disputes between Hazaras and Kuchis often erupt each summer but have worsened in the last few years since Kuchis have begun arriving in the Behsud and Daimirdad districts in Maidan Wardak province, heavily armed for conflict.” Australian Policy and History, *Hazaras’ Persecution Worsens: Will the New Government Show Leadership by Lifting the Suspension on Afghani Asylum Claims?*, 13 November 2017, <http://aph.org.au/hazaras-persecution-worsens-will-the-new-government-show-leadership-by-lifting-the-suspension-on-afghani-asylum-claims/>

Reportedly, the conflict between the Kuchis and Hazaras also has a political dimension with “political parties and factions mobilis[ing] support by supporting their constituencies and even encouraging [Kuchis] to challenge other communities over land and access issues [...] At present, [...] the conflict is limited to a few passages on the Kuchis’ migration route that block access to the pasturelands of the Hazarajat. Overall, “[c]onflict between nomads and farmers affects not only Hazara farming communities, but also Tajiks and Pashtuns. Also in these cases, the involvement of political parties and politicians is reported.” AREU, *Mapping Nomad-Farmer Conflict in Afghanistan*, July 2017, https://www.ecoi.net/en/file/local/1404589/1226_1500886126_1714e-mapping-nomad-farmer-conflict-in-afghanistan.pdf, pp. 3, 5. According to AREU, “[t]he conflict has deep historical origins in the use made by the nascent Afghan state in the late 19th nineteenth century of the nomads to subjugate the Hazaras.” AREU, *Typologies of Nomad-Settler Conflict in Afghanistan*, January 2018, <https://areu.org.af/wp-content/uploads/2018/01/1801E-Typologies-of-nomad-settler-conflict-in-Afghanistan.pdf>, p. 9. The Kuchis maintain that decrees issued by the Rahman regime at the end of the 19th century means they are entitled to use certain tracts of land as farmland and summer pastures. The Hazaras contest this, arguing that the decrees are invalid. Landinfo, *The Conflict between Hazaras and Kuchis in the Beshud Districts of Wardak Province*, 6 June 2011, <http://www.refworld.org/docid/5124c5142.html>. See also, AREU, *Typologies of Nomad-Settler Conflict in Afghanistan*, January 2018, <https://areu.org.af/wp-content/uploads/2018/01/1801E-Typologies-of-nomad-settler-conflict-in-Afghanistan.pdf>; Pajhwok Afghan News, *Khost Lakan Tribe Seeks End to Land Dispute with Kuchis*, 31 July 2017, <https://www.pajhwok.com/en/2017/07/31/khost-lakan-tribe-seeks-end-land-dispute-kuchis>; BBC, ‘God Forgot Afghanistan’, 30 July 2016, <http://www.bbc.com/news/blogs-trending-36925169>.

⁶¹⁰ See, for example, Australian Policy and History, *Hazaras’ Persecution Worsens: Will the New Government Show Leadership by Lifting the Suspension on Afghani Asylum Claims?*, 13 November 2017, <http://aph.org.au/hazaras-persecution-worsens-will-the-new-government-show-leadership-by-lifting-the-suspension-on-afghani-asylum-claims/>; World Hazara Council, *A Human Rights Situational Analysis of Ethnic-Hazaras in Afghanistan and Pakistan*, 22 October 2016, <http://worldhazaracouncil.org/en/wp-content/uploads/Brief-report-on-Human-rights-of-Hazaras-Oct-2016.pdf>, pp. 2-3.

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Обобщение

На основата на гореизложеното ВКБООН смята, че лицата, които принадлежат към една от етническите групи в Афганистан, особено в районите, където не представляват етническо мнозинство, може да имат нужда от международна закрила поради основателен страх от преследване от държавни или недържавни субекти по причина националност или етническа принадлежност/раса или други относими основания по Конвенцията в зависимост от конкретните обстоятелства на случая в съчетание с общата неспособност на държавата да осигури защита срещу такова преследване, когато извършителите са недържавни субекти. Сред относимите съображения за оценка на относимите основания са положението на относителна сила на етническата група в родната област на кандидата и историята на междуетническите отношения в този район.

Лица, които принадлежат към една от доминиращите етнически групи в Афганистан, може също да имат нужда от международна закрила поради основателен страх от преследване от държавни или недържавни субекти по причина етническа принадлежност/раса или други относими основания по Конвенцията в зависимост от конкретните обстоятелства на случая. Сред относимите съображения са дали етническата група също представлява мнозинство в района на произход или е малцинство.

Нуждите от международна закрила на основание етническа принадлежност/раса може да се припокрива с тези, основани на религия и/или (приписвано) политическо мнение. Трябва надлежно да се прецени и дали по отношение на засегнатото лице не са приложими други рискови характеристики, посочени в настоящите насоки.

14. Лица, участващи в кръвни вражди

По принцип кръвната вражда предполага членовете на едно семейство да убиват членове на друго семейство като актове на ответна реакция или отмъщение, които се извършват съгласно древен кодекс на честта и поведението.⁶¹¹ В условията на Афганистан, макар кръвните вражди да са предимно пушчунска традиция с корени в пушчунската система на обичайното право, според сведенията съществуват и сред други етнически групи.⁶¹² Кръвните вражди може да бъдат отключени от убийства, но и от други престъпления като нанасяне на постоянно сериозно нараняване, отвличане или насиливане на омъжени жени или нерешени спорове за земя, достъп до водни ресурси или собственост.⁶¹³ Кръвните вражди може да предизвикат дълги цикли на ответно

⁶¹¹ See UNHCR, *UNHCR Position on Claims for Refugee Status under the 1951 Convention relating to the Status of Refugees Based on a Fear of Persecution Due to an Individual's Membership of a Family or Clan Engaged in a Blood Feud*, 17 March 2006, paras 5-6 and 16-20, <http://www.refworld.org/docid/44201a574.html>.

⁶¹² "Blood feud and private revenge taking also occurs but is less common among non-Pashtun groups." Country of Origin Research and Information (CORI), *Thematic Report Afghanistan: Blood Feuds*, February 2014, <http://www.refworld.org/docid/53199ef64.html>, p. 4. See also Landinfo, *Afghanistan: Blood Feuds, Traditional Law (Pashtunwali) and Traditional Conflict Resolution*, 1 November 2011, <http://www.refworld.org/docid/5124c6512.html>, p. 9. The Landinfo report provides further analysis of the concepts of honour and revenge as central elements of Pashtunwali. The Landinfo report notes that while blood feuds are primarily a Pashtun tradition, blood feuds and private revenge also occur among non-Pashtun groups in Afghanistan, especially in areas where historically there has been a mix of Pashtun and other ethnic groups, and where common norms have taken root over time. Blood feuds are, however, less common among non-Pashtun groups, where there is a greater willingness to use the formal justice system for dispute settlement. *Ibid.*, pp. 15-16. Blood feuds may also involve members of different ethnic groups. See for example Pajhwok Afghan News, *2 Dead as Hazara-Kuchi Feud Resurfaces in Wardak*, 22 June 2015, <https://www.pajhwok.com/en/2015/06/22/2-dead-hazara-kuchi-feud-resurfaces-wardak>, concerning blood feuds between Kuchi and Hazara communities. See also, *Refugee Appeal No. 76355*, 5 November 2009, <http://www.refworld.org/docid/4b3c8bb42.html>, where the New Zealand Refugee Status Appeals Authority held that the appellant, a Tajik who was perceived to have violated the family honour of a Pashtun family, was at risk of persecution on the ground of a particular social group.

⁶¹³ Gandhara, *Rural Afghan Girls Continue to Fall Victim to 'Baad' Marriages*, 28 July 2015, <https://gandhara.rferl.org/a/afghanistan-baad-marriages-rural-girls/27157104.html>; Landinfo, *Afghanistan: Blood Feuds, Traditional Law (Pashtunwali) and Traditional Conflict Resolution*, 1 November 2011, <http://www.refworld.org/docid/5124c6512.html>, p. 13. "Causes of disputes in Afghanistan vary widely and often include land, water, family and criminal matters [...] Blood feuds are triggered by personal violence, sometimes deliberate, sometimes unplanned, that arises out of a dispute. In other words it is not the dispute itself but actions arising from it that start blood feuds." CORI, *Thematic Report Afghanistan: Blood Feuds*, February 2014, <http://www.refworld.org/docid/53199ef64.html>, p. 10. Blood feuds may also be triggered, or fueled, by business rivalries: see, for example, AAN, *Finding Business Opportunity in Conflict: Shopkeepers, Taleban and the Political Economy of Andar District*, 2 December 2015, <https://www.afghanistan-analysts.org/finding-business-opportunity-in-conflict-shopkeepers-taleban-and-the-political-economy-of-andar-district/>.

насилие и отмъщение.⁶¹⁴ Според Pashtunwali по принцип отмъщението трябва да е насочено срещу извършителя, но при някои обстоятелства брат на извършителя или друг роднин по бащина линия може да стане мишена за отмъщение. Като цяло въпреки че отмъщението не се извършва срещу жени и деца⁶¹⁵, практиката на *baad* – племенна форма на уреждане на спорове, при която нанеслото обида семейство предлага момиче за жена в ощетеното семейство – се използва за уреждане на кръвни вражди, особено в селските райони.⁶¹⁶ Когато семейството на жертвата не може да си отмъсти, кръвната вражда може да остане латентна до момента, когато семейството на жертвата сметне, че може да отмъсти. Така че отмъщението може да дойде години или дори поколения след първоначалното деяние, изискващо отмъщение.⁶¹⁷ Осъждането на извършителя в официалната съдебна система не изключва непременно насилиствена реакция от семейството на жертвата; ако не е постигната договорка да се прекрати кръвната вражда чрез традиционните механизми за решаване на спорове, според сведенията от семейството на жертвата ще се очаква да отмъсти на извършителя, след като е излежал присъдата си.⁶¹⁸

В светлината на гореизложеното, ВКБООН смята, че лицата, участващи в кръвни вражди, в зависимост от обстоятелствата на конкретния случай може да имат нужда от международна закрила поради основателен страх от преследване от недържавни субекти по причина принадлежност към конкретна социална група или други относими основания по Конвенцията.⁶¹⁹ Молбите от лица, участващи в кръвни вражди, обаче може да предизвикат необходимост да се разгледа възможността за изключване от статут на бежанец. В зависимост от конкретните обстоятелства на случая, членове на семейството, партньори или други лица, зависими от лицата, участващи в кръвни вражди, може също да имат нужда от международна закрила на основание на връзката им със застрашените лица.

15. Бизнесмени, други състоятелни хора и членове на семействата им

⁶¹⁴ See for example TOLO News, *Eshchi And Dostum 'At Odds for over 30 Years'*, 27 May 2017, <https://www.tolonews.com/index.php/afghanistan/eshchi-and-dostum-%E2%80%98-odds-over-30-years%E2%80%99>; New York Times, *An Afghan Feud Reignites, Putting Police Families at Odds*, 27 August 2016, <https://www.nytimes.com/2016/08/28/world/asia/afghanistan-daku-shomali-feud.html>; Pajhwok Afghan News, *Warring Ghor Tribes End Feud That Has Killed 300 People*, 29 December 2015, <https://www.pajhwok.com/en/2015/12/29/warring-ghor-tribes-end-feud-has-killed-300-people>, concerning a blood feud which lasted for 40 years and killed 300 people; Pajhwok Afghan News, *In Kapisa, 60-Year-Old Dispute Resolved on Amicable Note*, concerning a blood feud which lasted for 60 years and killed 60 people; Pajhwok Afghan News, *Foreign Hands Fuel Nuristan Tribal Feud*, 9 March 2015, <http://www.pajhwok.com/en/2015/03/10/foreign-hands-fuel-nuristan-tribal-feud-governor>, concerning a blood feud that lasted 16 years and killed 400 people.

⁶¹⁵ Landinfo, *Afghanistan: Blood Feuds, Traditional Law (Pashtunwali) and Traditional Conflict Resolution*, 1 November 2011, <http://www.refworld.org/docid/5124c6512.html>, p. 10.

⁶¹⁶ "When families in some parts of Afghanistan fall out over serious matters, one way of avoiding an escalating blood feud is for the offending party to hand over a woman to the other side. Known as "baad", the custom involves an arranged marriage between the woman and someone from the injured family." IWPR, *Hope for Afghan Women Traded to End Feuds*, 17 January 2017, <https://iwrp.net/global-voices/hope-afghan-women-traded-end-feuds>. "The ancient practice of *baad*, the forced marriage of a girl to an antagonized family to settle a feud, is still prevalent in rural Afghanistan. When a villager kills a member of a rival clan in a fight, the elders of the community forms a *jirga*, or council, to mediate the conflict and prevent further bloodshed. The *jirga* typically chooses a young woman from the perpetrator's family and orders her to marry a man from the victim's clan." Gandhara, *Rural Afghan Girls Continue to Fall Victim to 'Baad' Marriages*, 29 July 2015, <https://gandhara.rferl.org/a/afghanistan-baad-marriages-rural-girls/27157104.html>. See also CORI, *Thematic Report Afghanistan: Blood Feuds*, February 2014, <http://www.refworld.org/docid/53199ef64.html>, pp. 22-29. For further information see Section III.A.7 on "Women with Certain Profiles or in Specific Circumstances".

⁶¹⁷ Landinfo, *Afghanistan: Blood Feuds, Traditional Law (Pashtunwali) and Traditional Conflict Resolution*, 1 November 2011, <http://www.refworld.org/docid/5124c6512.html>, p. 10. See also CORI, *Thematic Report Afghanistan: Blood Feuds*, February 2014, <http://www.refworld.org/docid/53199ef64.html>, pp. 34-37.

⁶¹⁸ "Punishment by a government court does not erase the obligation to take revenge: a victim's family is expected to kill the murderer once he is released from prison unless there is a settlement to end the feud before that time." CORI, *Thematic Report Afghanistan: Blood Feuds*, February 2014, <http://www.refworld.org/docid/53199ef64.html>, p. 39. See also Landinfo, *Afghanistan: Blood Feuds, Traditional Law (Pashtunwali) and Traditional Conflict Resolution*, 1 November 2011, <http://www.refworld.org/docid/5124c6512.html>, p. 9.

⁶¹⁹ For further guidance see UNHCR, *UNHCR Position on Claims for Refugee Status Under the 1951 Convention relating to the Status of Refugees Based on a Fear of Persecution Due to an Individual's Membership of a Family or Clan Engaged in a Blood Feud*, 17 March 2006, paras 5-6 and 16-20, <http://www.refworld.org/docid/44201a574.html>; and UNHCR, *Guidelines on International Protection No. 2: "Membership of a Particular Social Group" Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, <http://www.refworld.org/docid/3d36f23f4.html>.

Афганистанците продължават да са загрижени за широкоразпространената корупция, изнудвания и измами.⁶²⁰ В редица райони АМП искат плащане на неофициални данъци и използват насилие на полицейските пропускателни пунктове срещу лица, които не са платили.⁶²¹ Според съобщенията проправителствени въоръжени групировки също подлагат цивилното население на незаконно облагане с данъци и тормозят, сплашват или дори убиват цивилни, които не си плащат незаконните данъци, наложени от тези групировки.⁶²² Например, цивилни са били мишена на такива действия в провинция Кундуз от страна на проправителствена милиция, „чието препитание сега зависи предимно от изнудвания, отвличания и убийства“.⁶²³ Освен това проправителствена милиция набелязва фермери и търговци с цел изнудване.⁶²⁴

Силите за сигурност на Афганистан, според съведнията, използват тайни пропускателни пунктове, за да изнудват пътуващите за пари и стоки.⁶²⁵ Талибаните извличат огромни печалби от незаконни дейности, сред които изнудване и отвличане за откуп.⁶²⁶ По подобен начин бойците на Исламска държава подлагат населението на заплахи, отвличания и изнудване.⁶²⁷ Освен това до сблъсъци между

⁶²⁰ Afghanistan is ranked 177th out of 180 countries on Transparency International's 2017 Corruption Index. Transparency International, *Afghanistan*, undated, <https://www.transparency.org/country/AFG#>. In the 2017 edition of the annual *Survey of the Afghan People* (for which 10,012 Afghans were interviewed in July 2017), 69.8 per cent of respondents stated that corruption was a problem in their daily life, while 83.7 per cent stated that corruption is a major problem in Afghanistan as a whole. The Asia Foundation, *Afghanistan in 2017*, November 2017, https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf, p. 10. In addition, 19 per cent of respondents stated that they or a family member had suffered from racketeering or extortion in the past year. The Asia Foundation, *ibid.*, pp. 7, 49, 161.

⁶²¹ IWPR, *Afghan Local Police Accused of Extortion*, 15 January 2018, <https://iwpr.net/global-voices/afghan-local-police-accused-extortion>; Modern War Institute, *Dress Like Allies, Kill Like Enemies: An Analysis of 'Insider Attacks' in Afghanistan*, 4 April 2017, <https://mwi.usma.edu/wp-content/uploads/2017/04/Dress-Like-Allies-Kill-Like-Enemies.pdf>, p. 13.

⁶²² “Pro-Government armed group abuses also took place in Jawzjan, Samangan, Daikundi, Khost, Paktya, Kunduz, Helmand, and Balkh provinces, and included the deliberate killing of relatives of those perceived to be Taliban members, killing of civilians who objected to the armed groups’ activities, and killing, threatening and/or harassment of civilians who failed to pay illegal taxation imposed by the groups.” In 2017 UNAMA documented 10 cases where pro-Government armed groups deliberately killed civilians following personal disputes or civilians’ refusal to pay illegal taxation to members of the groups. UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 52.

⁶²³ Gandhara, *Armed Anti-Militant Bands Hound Civilians in Restive Afghan Province*, 25 January 2018, <https://gandhara.rferl.org/a/Afghanistan-anti-taliban-armed-bands/28998464.html>.

⁶²⁴ New York Times, *Abundant Afghan Harvest Wilts amid Violence and Extortion*, 4 September 2017, <https://www.nytimes.com/2017/09/04/world/asia/kabul-afghanistan-fruit-taliban-harvest-kabul-fruit-market.html>.

⁶²⁵ FDD’s Long War Journal, *Taliban Blockade of Ghazni-Paktia Highway Enters Second Month*, 9 June 2018, <https://www.longwarjournal.org/archives/2018/06/taliban-blockade-of-ghazni-paktia-highway-enters-second-month.php>. “Besides taxing the opium trade imperatives, the terror groups also levy self-sustaining taxes on traffic movement, government programs, cell phone operators and movement of other natural resources.” Millennium Post, *Kidnapping in Afghanistan*, 14 May 2018, <http://www.millenniumpost.in/opinion/kidnapping-in-afghanistan-299482>. See also, Wall Street Journal, *In Afghanistan, U.S. Attacks Taliban’s Source of Funds*, 30 May 2018, <https://www.wsj.com/articles/in-afghanistan-u-s-attacks-talibans-source-of-funds-1527672601>; DID Press, *Hezb-e Islami Commander Behind Murder and Robbing Cases: Baghlan Residents*, 26 March 2018, <http://didpress.com/en/?p=6335>; Khaama Press, *9 Taliban Insurgents Killed in Baghlan Operations*, 25 February 2018, <https://www.khaama.com/9-taliban-insurgents-killed-in-baghlan-operations-04541>; VOA, *Taliban Rebels Impose Taxes on Media Outlets in Restive Ghazni*, 21 February 2018, <https://www.voanews.com/a/taliban-rebels-impose-taxes-on-media-outlets-in-restive-ghanzi/4264402.html>; Salam Watandar, *HI Men Blamed for Extortion in Baghlan*, 4 January 2018, <https://salamwatandar.com/english/Article.aspx?a=36809>; Salaam Times, *Taliban Extortion Money From Farah Used to Buy Russian Weapons*, 21 December 2017, http://afghanistan.asia-news.com/en_GB/articles/cnni_st/features/2017/12/21/feature-02; VOA, *Residents of Kunduz in Afghanistan Fear Another Taliban Attack*, 21 October 2016, <https://www.voanews.com/a/residents-of-kunduz-in-afghanistan-fear-another-taliban-attack/3563477.html>; New York Times, *Abundant Afghan Harvest Wilts amid Violence and Extortion*, 4 September 2017, <https://www.nytimes.com/2017/09/04/world/asia/kabul-afghanistan-fruit-taliban-harvest-kabul-fruit-market.html>; Wall Street Journal, *Taliban Broaden their Reach in Villages Across Afghanistan*, 8 May 2017, <https://www.wsj.com/articles/taliban-broaden-their-reach-in-villages-across-afghanistan-1494235804>.

⁶²⁶ “[T]he Taliban relies on taxing, kidnapping, drug trafficking, donation from local populations, extortion, foreign donations, commercial business of mine, smuggling, poppy cultivations and larger companies in Afghanistan have started paying taxes to the Taliban to allow them to operate without threat in the areas under the control of Taliban.” Eurasia Review, *How the Taliban Has Succeeded in Financing their Eighteen Years of War – OpEd*, 1 May 2018, <https://www.eurasiareview.com/01052018-how-the-taliban-has-succeeded-in-financing-their-eighteen-years-of-war-oped/>. See also, New York Times, *When the Taliban Are at the Gates, a City Has One Choice: Pay Up*, 7 May 2018, <https://www.nytimes.com/2018/05/07/world/asia/afghanistan-taliban-ghazni.html>; VOA, *Taliban Looking for New Means to Support Insurgency in Southern Afghanistan*, 7 January 2018, <https://www.voanews.com/a/taliban-looking-for-new-means-to-support-insurgency-in-southern-afghanistan/4197161.html>; DVIDS, *Elder Refused to Fund Terrorists, Freed from Taliban Prison*, 19 December 2017, <https://www.dvidshub.net/news/259386/elder-refused-fund-terrorists-freed-taliban-prison>; Pajhwok, *Taliban Collecting Taxes from All in Ghani*, 18 December 2017, <https://www.pajhwok.com/en/2017/12/18/taliban-collecting-taxes-all-ghanzi>; Wall Street Journal, *Taliban Broaden their Reach in Villages across Afghanistan*, 8 May 2017, <https://www.wsj.com/articles/taliban-broaden-their-reach-in-villages-across-afghanistan-1494235804>; 1TV News, *Taliban Set up Customs, Forcing People to Pay Extortion in Zabul*, 5 April 2017, <http://www.1tvnews.af/en/news/afghanistan/28763-taliban-set-up-customs-forcing-people-to-pay-extortion-in-zabul>; SIGAR, *High-Risk List*, January 2017, https://www.sigar.mil/pdf/spotlight/2017_High-Risk_List.pdf, p. 39.

⁶²⁷ Gandhara, *Civilians Recount IS Atrocities in Northern Enclave*, 28 December 2017, <https://gandhara.rferl.org/a/afghanistan-is-atrocities/28943556.html>. “Analysts say the group [Islamic State] has sustained itself thanks to extortion, kidnapping and funds from Islamic State’s central leadership.” LA Times, *Islamic State Has Fewer than 1,000 Fighters in Afghanistan. So Why Did Trump Drop the ‘Mother of all Bombs?’*,

талибаните и Исламска държава се е стигнало поради засилено съперничество между групировките за „заграбване на пари и друга собственост от цивилните“.⁶²⁸

През 2017 г. UNAMA е документирала 255 инцидента с отвличане на 1 005 цивилни от АПЕ, в резултат от което има 76 убити 17 ранени.⁶²⁹ Според UNAMA АПЕ „отвличат цивилни поради подозрения, че имат връзки с Правителството или работят за него, но и за финансова облага, като условието за освобождаването е плащането на голяма сума като откуп“.⁶³⁰ Според UNAMA при повечето инциденти на отвличане от АПЕ се е стигнало до освобождаването на похитените цивилни в резултат на посредничеството на местни старейшини или плащането на откуп.⁶³¹ Бизнесмени, които притежават или се смята, че притежават финансови средства, все повече стават прицел на бандите за отвличания.⁶³²

Практиката на незаконно облагане с данък и изнудване, нито пък други форми на престъпления обикновено не достигат до степента на преследване. Някои методи на изнудване обаче може да достигнат степента на преследване, включително отвличане срещу откуп, докато други форми на изнудване може да допринесат за достигането на тази степен на кумулативна база. Когато лица са набелязани за изнудване или отвличане срещу откуп заради приписаното им политическо мнение (например, тъй като са (се смятат) свързани с правителството),⁶³³ или заради тяхната раса/етническа принадлежност или религия,⁶³⁴ въпросното лице може, в зависимост от конкретните обстоятелства на случая, да има нужда от международна закрила на тези основания. В други случаи за лице, заплашено от отвличане за откуп, може да се установи, че е било набелязано като принадлежащо към дадена социална група, и в зависимост от конкретните обстоятелства на случая може да има нужда от международна закрила на това основание.

ВКБООН смята, че отделни съображения се прилагат спрямо членовете на семейството на лица,

14 April 2017, <http://www.latimes.com/world/asia/la-fg-afghanistan-islamic-state-explainer-20170414-story.html>. See also, AAN, *The Islamic State in 'Khorasan': How it Began and Where it Stands now in Nangarhar*, 27 July 2016, <https://www.afghanistan-analysts.org/the-islamic-state-in-khorasan-how-it-began-and-where-it-stands-now-in-nangarhar/>. “Islamic State fighters have also engaged in kidnapping and extortion, collected taxes, and smuggled timber into Pakistan to fund their operations.” Middle East Institute, *The Islamic State in Afghanistan: Examining its Threat to Stability*, May 2016, https://www.mei.edu/sites/default/files/publications/PF12_McNallyAmiral_ISISAfghan_web.pdf, p. 8.

⁶²⁸ Central Asia News, *Central Asia Watches as Taliban, ISIS Clash over Money, Territory in Afghanistan*, 26 May 2017, http://central.asia-news.com/en_GB/articles/cnmi_ca/features/2017/05/26/feature-02.

⁶²⁹ UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict* 2017, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 34.

⁶³⁰ UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict* 2017, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 34. For example, on 5 May 2017, in Lash-e-Juwain district, Farah province, the Taliban abducted three civilian men and released the abductees four to five days later after receiving a ransom payment. In another incident, on 8 April 2017, Taliban abducted a former ANP officer in Ab Kamari district, Baghlan province and released him on 15 April after payment of a ransom and mediation by local elders. *Ibid.*, p. 43. On 22 May 2017, in Chahr Asyab district, Kabul province, AGEs reportedly motivated by potential ransom possibilities abducted four employees of a de-mining organization in an area bordering Maidan Wardak province. *Ibid.*, p. 21. In July 2017 the Taliban carried out a mass kidnapping, abducting 70 people in Kandahar province. While the motive for the kidnappings remained unclear, reportedly “[i]slamist militants usually abduct government officials and security personnel for ransom or to bargain for the release of detained jihadis”. Deutsche Welle, *Taliban Carry out Mass Kidnapping in Afghanistan's Kandahar Province*, 23 July 2017, <http://www.dw.com/en/taliban-carry-out-mass-kidnapping-in-afghanistans-kandahar-province/a-39805761>.

⁶³¹ UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict* 2017, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 43.

⁶³² Between December 2017 and January 2018, approximately 60 traders and investors were reportedly abducted in Khost, Paktiya, Kandahar and Kunduz provinces, or on average one abduction per day. IWPR, *Kidnapping Terrify Afghan Investors*, 8 February 2018, <https://iwrp.net/global-voices/kidnapping-terrify-afghan-investor> s. “[E]xtortion and kidnappings by low-level criminal networks have increased in some areas of Afghanistan.” US Department of Defense, *Enhancing Security and Stability in Afghanistan*, June 2017, https://www.defense.gov/Portals/1/Documents/pubs/June_2017_1225_Report_to_Congress.pdf, p. 18. See also, Millennium Post, *Kidnapping in Afghanistan*, 14 May 2018, <http://www.millenniumpost.in/opinion/kidnapping-in-afghanistan-299482>; Ariana News, *Businessman Son Abducted in Balkh Province*, 27 February 2018, <https://ariananews.af/businessman-son-abducted-in-balkh-province>; France24, *Afghans Live in Fear as Kidnapping Soar*, 21 July 2017, <http://www.france24.com/en/20170721-video-reporters-afghanistan-kidnapping-criminal-gangs-torture-police-kabul>; TV1 News, *Police Rescue Kidnapped Son of Businessman in Kabul*, 1 May 2017, <http://www.1tvnews.af/en/news/afghanistan/29132-police-rescue-kidnapped-son-of-businessman-in-kabul>; TOLO News, *Businessmen Concerned over Rise in Kidnapping*, 26 March 2017, <https://www.tolonews.com/afghanistan/businessmen-concerned-over-rise-kidnapping>; The National, *Afghan Capital Plagued by Kidnapping and Extortion of Locals*, 10 March 2017, <https://www.thenational.ae/world/afghan-capital-plagued-by-kidnapping-and-extortion-of-locals-1.11053>.

⁶³³ See Section III.A.1.

⁶³⁴ See Sections III.A.5 and III.A.13.

които са или които се смятат за свързани с правителството, както и членовете на семейството на лица, които имат или се смята, че имат богатство. Когато членове на семейството, включително деца, са заплашени от отвличане за откуп поради това, че са свързани с такива лица, те може, в зависимост от конкретните обстоятелства на случая, да имат нужда от международна закрила на основание принадлежност към определена социална група или други относими основания по Конвенцията в съчетание с общата неспособност на държавата да осигури защита срещу такова преследване.

В. Статут на бежанец според по-широките критерии на мандата на ВКБООН или регионални инструменти или критерии за допълнителни форми на закрила

Конвенцията от 1951 г. представлява крайъгълният камък за международния режим на закрила на бежанците. Критериите за статут на бежанец в Конвенцията от 1951 г. трябва да се тълкуват по такъв начин, че лицата или групите лица, отговарящи на тези критерии, надлежно да се признават и закрилят по този инструмент. Само когато се установи, че лицето, търсещо закрила, не отговаря на критериите за бежанец според Конвенцията от 1951 г., трябва да се разгледат по-широките критерии, съдържащи се в мандата на ВКБООН и регионалните инструменти, включително субсидиарна закрила.⁶³⁵

Този раздел са представени насоки за определянето на критериите при оценка на нуждата от международна закрила на търсещи закрила лица от Афганистан, за които е установено, че не отговарят на критериите в член 1(A) от Конвенцията от 1951 г. Лица, които не отговорят на критериите, определени в Конвенцията от 1951 г., може въпреки това да имат нужда от международна закрила. В частност лица, бягащи от ситуации на насилие, които нямат връзка с основание по Конвенцията от 1951 г., може да се сметне, че попадат в обхвата на мандата на ВКБООН или критериите, определени в регионални инструменти.⁶³⁶

Предвид променливия характер на конфликта в Афганистан, молбите от афганистанци за международна закрила по по-широките критерии на мандата на ВКБООН и дефинициите в регионалните инструменти или за форми на допълнителна закрила, включително субсидиарна закрила по член 15 на Квалификационната директива от 2011 г., следва да се разглеждат внимателно в светлината на доказателствата, представени от кандидата, и друга актуална и надеждна информация за ситуацията в Афганистан.

1. Статут на бежанец според по-широките критерии на мандата на ВКБООН и регионалните инструменти

a) Статут на бежанец според по-широките критерии на мандата на ВКБООН

Мандатът на ВКБООН обхваща лица, които отговарят на критериите за бежанец по Конвенцията от 1951 г. и Протокола към нея от 1967 г.,⁶³⁷ но е разширен чрез редица резолюции на Общото Събрание

⁶³⁵ See UNHCR Executive Committee, *Conclusion on the Provision on International Protection Including through Complementary Forms of Protection*, No. 103 (LVI) – 2005, 7 October 2005, <http://www.refworld.org/docid/43576e292.html>.

⁶³⁶ As regards regional instruments, see the refugee definitions contained in the 1969 OAU Convention, Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention")*, 10 September 1969, 1001 U.N.T.S. 45, <http://www.refworld.org/docid/3ae6b36018.html> and in the Cartagena Declaration, *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America*, Mexico and Panama, 22 November 1984, <http://www.refworld.org/docid/3ae6b36ec.html>. Complementary forms of protection include subsidiary protection under Article 15 of the 2011 Qualification Directive. European Union, *Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 13 December 2011, <http://www.refworld.org/docid/4f197df02.html>.

⁶³⁷ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series, Vol. 189, p. 137,

на ООН и ИКОСОС до редица други ситуации на насилиствено разселване в резултат на безразборно насилие или обществени безредици.⁶³⁸ В светлината на това развитие правомощията на ВКБООН да предоставя международна закрила на бежанци се разпростират върху лица, които са извън страната си на произход или обичайно местоживееше и които не могат или не желаят да се върнат там поради сериозни заплахи за живота, физическата неприкосновеност или свободата в резултат на общо насилие или събития, които сериозно нарушават обществения ред.⁶³⁹

В условията на Афганистан показателите за оценка на заплахата за живота, физическата неприкосновеност или свободата в резултат на общо насилие включват: (i) броя на цивилните жертви в резултат на безразборни актове на насилие, включително бомбени атентати, въздушни удари, самоубийствени атентати, използване на самоделни взривни устройства (СВУ) и мини (вж. Раздел II.B.1); (ii) броя на инцидентите, свързани със сигурността в резултат на конфликта (вж. Раздел II.B.2); и (iii) броя на хората, които са били разселени принудително поради конфликта (вж. Раздел II.E).

Такива съображения обаче не се ограничават до прекия резултат от насилието. Те включват също така дългосрочните по-косвени последствия от свързаното с конфликта насилие, които самостоятелно или съвкупно водят до заплахи за живота, физическата неприкосновеност или свободата. В това отношение относимите елементи включват информацията, представена в раздели II.C и II.D, свързана с (i) контрола над цивилното население от страна на АПЕ, включително чрез налагането на структури на паралелно правосъдие и прилагането на незаконни наказания, както и чрез заплахи и сплашване на цивилните, ограничаване на свободата на придвижване и използването на изнудване и незаконно облагане с данъци; (ii) принудително мобилизиране; (iii) въздействието на насилието и несигурността върху хуманитарната ситуация, проявяващо се чрез несигурност на прехраната, бедност, разрушаване на поминъка и загубата на собственост; (iv) високи нива на организирана престъпност и способността на местни главатари, военни вождове и корумпирани държавни чиновници да действат безнаказано; (v) системни ограничения на достъпа до образование и елементарно здравеопазване в резултат на несигурността; и (vi) системни ограничения на участието в обществения живот, особено на жените.⁶⁴⁰

При изключителните обстоятелства на Афганистан съответните съображения за оценка на заплахата за живота, физическата неприкосновеност или свободата, които са резултат на събития, сериозно нарушаващи обществения ред, включват факта, че в някои части на страната правителството е загубило ефективен контрол в полза на АПЕ и не може да оказва закрила на цивилни. Наличната информация сочи, че упражняването на контрол върху ключови страни на живота на хората в тези райони е репресивно, насилиствено и подкопава обществения ред, основан на зачитането на върховенството на закона и човешкото достойнство. Такива ситуации се отличават със системното използване на заплахи и насилие, насочени към цивилното население, в обстановка на повсеместни нарушения на правата на човека.

На този фон ВКБООН смята, че лицата, които произхождат от райони, силно засегнати от активни конфликти между проправителствените сили и АПЕ, или от райони под ефективния контрол на АПЕ, както са описани по-горе, може, в зависимост от конкретните обстоятелства на случая, да имат

<http://www.refworld.org/docid/3be01b964.html> and UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations Treaty Series, Vol. 606, p. 267, <http://www.refworld.org/docid/3ae6b3ae4.html>.

⁶³⁸ UNHCR, *Providing International Protection Including Through Complementary Forms of Protection*, 2 June 2005, EC/55/SC/CRP.16, available at: <http://www.refworld.org/docid/47fdb49d.html>; UN General Assembly, *Note on International Protection*, 7 September 1994, A/AC.96/830, <http://www.refworld.org/docid/3f0a935f2.html>.

⁶³⁹ See for example UNHCR, *MM (Iran) v. Secretary of State for the Home Department - Written Submission on Behalf of the United Nations High Commissioner for Refugees*, 3 August 2010, C5/2009/2479, <http://www.refworld.org/docid/4c6aa7db2.html>, para. 10.

⁶⁴⁰ UNHCR, *Guidelines on International Protection No. 12: Claims for Refugee Status Related to Situations of Armed Conflict and Violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees and the Regional Refugee Definitions*, 2 December 2016, HCR/GIP/16/12, <http://www.refworld.org/docid/583595ff4.html>.

нужда от международна закрила. Тези, за които се установи, че не отговарят на критериите на Конвенцията от 1951 г., може да имат право на международна закрила по по-широкия мандат на ВКБООН на основание сериозна заплаха за живота, физическата неприкосновеност или свободата в резултат на общо насилие или събития, сериозно нарушаващи обществения ред.

b) *Статут на бежанец по член I(2) от Конвенцията на ОАЕ от 1969 г.*

Афганистанци и другите лица, произходящи от Афганистан, които търсят международна закрила в държави, които са страни по Конвенцията на ОАЕ от 1969 г., може да отговорят на изискванията за статут на бежанец по член I(2) от този правен акт на основание, че са били принудени да напуснат обичайното си местоживееене поради събития, които сериозно нарушават обществения ред в част от или в целия Афганистан, за да потърсят закрила извън Афганистан.⁶⁴¹

В контекста на Конвенцията на ОАЕ от 1969 г. фразата „събития, които сериозно нарушават обществения ред“ включва ситуации на конфликт или насилие, които заплашват живота, свободата или сигурността на цивилни, както и други сериозни нарушения на обществения ред.⁶⁴² Поради същите причини като горепосочените ВКБООН смята, че районите на Афганистан, засегнати от активни конфликти като част от продължаващата борба за контрол между проправителствените сили и АПЕ, както и районите на Афганистан под ефективния контрол на АПЕ трябва да се разглеждат като области, засегнати от събития, които сериозно нарушават обществения ред. Следователно ВКБООН смята, че лица, които произхождат от такива райони и за които е установено, че не отговарят на критериите за бежанец на Конвенцията от 1951 г., може да имат нужда от международна закрила при условията на член I(2) от Конвенцията на ОАЕ от 1969 г. на основание, че са били принудени да напуснат обичайното си местоживееене поради заплаха за живота, свободата или сигурността си в резултат на събития, които сериозно нарушават обществения ред.

c) *Статут на бежанец по декларацията от Картахена*

Афганистанци, търсещи международна закрила в някоя от страните, които са въвели Декларацията за бежанците от Картахена („Декларацията от Картахена“) в националното си законодателство, може да отговарят на изискванията за статут на бежанец на основание, че техният живот, безопасност или свобода са застрашени от общо насилие, вътрешен конфликт, масово нарушавано на правата на човека или други обстоятелства, които сериозно нарушават обществения ред⁶⁴³

Следвайки съображения, подобни на тези за по-широките критерии на мандата на ВКБООН и Конвенцията на ОАЕ от 1969 г. (Раздели III.B.1.a и b), ВКБООН смята, че лицата с произход от райони на Афганистан, засегнати от активен конфликт между проправителствените сили и АПЕ или

⁶⁴¹ Organization of African Unity, Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention"), 10 September 1969, 1001 U.N.T.S. 45, <http://www.refworld.org/docid/3ae6b36018.html>. The definition of the term "refugee" as contained in Article I of the 1969 OAU Convention has been incorporated into Article I of the Bangkok Principles on the Status and Treatment of Refugees (Bangkok Principles). See Asian-African Legal Consultative Organization (AALCO), Bangkok Principles on the Status and Treatment of Refugees (Final Text of the AALCO's 1966 Bangkok Principles on Status and Treatment of Refugees, as adopted on 24 June 2001 at the AALCO's 40th Session, New Delhi), <http://www.refworld.org/docid/3de5f2d52.html>.

⁶⁴² On the meaning of the phrase "events seriously disturbing public order" in the 1969 OAU Convention, see Marina Sharpe, *The 1969 OAU Refugee Convention and the Protection of People Fleeing Armed Conflict and Other Situations of Violence in the Context of Individual Refugee Status Determination*, January 2013, <http://www.refworld.org/docid/50fd3edb2.html>; Alice Edwards, "Refugee Status Determination in Africa", *14 African Journal of International and Comparative Law* 204-233 (2006); UNHCR, *Extending the Limits or Narrowing the Scope? Deconstructing the OAU Refugee Definition Thirty Years On*, April 2005, ISSN 1020-7473, <http://www.refworld.org/docid/4ff168782.html>.

⁶⁴³ Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984, <http://www.refworld.org/docid/3ae6b36ec.html>, Section III.3. Although the Cartagena Declaration is included in a non-binding regional instrument, the Cartagena refugee definition has attained a particular standing in the region, not least through its incorporation into 15 national laws and State practice. For guidance on the interpretation of the refugee definition in the Cartagena Declaration, see: UNHCR, *Guidelines on International Protection No. 12: Claims for Refugee Status Related to Situations of Armed Conflict and Violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees and the Regional Refugee Definitions*, 2 December 2016, HCR/GIP/16/12, <http://www.refworld.org/docid/583595ff4.html>, paras 61-85.

между различни АПЕ, или от райони под ефективния контрол на АПЕ, и за които е установено, че не отговарят на критериите за бежанец в Конвенцията от 1951 г., могат да се нуждаят от международна закрила при условията на Картагенската декларация на основание, че техният живот, безопасност или свобода са застрашени от обстоятелства, при които сериозно е нарушен общественият ред, или под формата на преки или косвени последствия от свързано с конфликт насилие, или в резултат на сериозни и широко разпространени нарушения на правата на человека, извършвани от АПЕ в районите под тяхен ефективен контрол.

2. Критерии за субсидиарна закрила по Квалификационната директива на ЕС

Афганистанци, които търсят международна закрила в държави членки на Европейския съюз и за които е установено, че не са бежанци според Конвенцията от 1951 г., може да отговарят на критериите за субсидиарна закрила по член 15 от Квалификационната директива от 2011 г., ако има достатъчно основания да се смята, че ще бъдат застрашени от реален риск от сериозни посегателства в Афганистан.⁶⁴⁴ В светлината на информацията, представена в Раздел II. В на тези Насоки, кандидатите могат, в зависимост от индивидуалните обстоятелства на случая, да се нуждаят от субсидиарна закрила по член 15 (а) или член 15 (б) на основание реален риск от съответните форми на тежки посегателства (смъртно наказание⁶⁴⁵ или екзекуция, изтезание или нечовешко или унизително отношение или наказание) от страна на държавата или нейни представители или от АПЕ.⁶⁴⁶

По същата логика в светлината на факта, че Афганистан продължава да е засегнат от немеждународен военен конфликт и в светлината на информацията, представена в Раздели II.В, II. С, II.Д и II.Е от тези Насоки, кандидатите, които произхождат или преди са живели в засегнати от конфликта райони, могат, в зависимост от индивидуалните обстоятелства на случая, да се нуждаят от субсидиарна закрила по член 15(с) на основание тежки и индивидуални заплахи за живота или личността поради безогледно насилие.

В контекста на военния конфликт в Афганистан сред факторите, които трябва да се отчетат, за да се оцени заплахата за живота или личността на кандидата поради безогледно насилие в конкретна част на страната, са броят на цивилните жертви, броят на свързаните със сигурността инциденти, както и наличието на сериозни нарушения на международното хуманитарно право, които представляват заплахи за живота или физическата неприкосновеност. Тези съображения обаче не са ограничени само до прякото въздействие на насилието, но обхващат и последствията на насилието, които са по-дългосрочни, включително отражението на конфликта върху положението с правата на человека и степента, до която конфликтът препятства способността на държавата за защитава правата на человека. В това отношение относимите елементи включват информацията, представена в Раздели II.С и II.Д, свързана с (i) контрола над цивилното население от страна на АПЕ, включително чрез налагане на структури на паралелно правосъдие и прилагането на незаконни наказания, както и чрез заплахи и

⁶⁴⁴ Serious harm for the purposes of the Qualification Directive is defined as (a) the death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict. European Union, *Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 13 December 2011, <http://www.refworld.org/docid/4f197df02.html>, arts 2(f), 15.

⁶⁴⁵ Article 170 of Afghanistan's revised Penal Code, which entered into force on 15 February 2018, lists the crimes which can incur the death penalty. Afghanistan, *Penal Code*, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR). In addition, in accordance with Article 2 of the Penal Code, those found guilty of *hudood* crimes are to be punished in accordance with the principles of Hanafi jurisprudence of Sharia law; *hudood* punishments include execution and stoning to death. See also, Hossein Gholami, *Basics of Afghan Law and Criminal Justice*, undated, <http://www.auswaertiges-amt.de/cae/servlet/contentblob/343976/publicationFile/3727/Polizei-Legal-Manual.pdf>; Cornell Law School, *Death Penalty Database*, <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Afghanistan>

⁶⁴⁶ It should be noted that where applicants face a real risk of such treatment for reason of a 1951 Convention ground, they should be accorded refugee status under the Convention (unless they are to be excluded from the benefit of protection under the Refugee Convention under Article 1.F); only where there is no nexus between the risk of serious harm and one of the Convention grounds should the applicant be accorded subsidiary protection.

сплашване на цивилните, ограничаване на свободата на придвижване и използването на изнудване и незаконно облагане с данъци; (ii) принудително мобилизиране; (iii) въздействието на насилието и несигурността върху хуманитарната ситуация, проявяваща си чрез несигурност на прехраната, бедност, разрушаване на поминъка и загубата на собственост; (iv) високи нива на организирана престъпност и способността на местни главатари, военни вождове и корумпирани държавни чиновници да действат безнаказано; (v) системни ограничения на достъпа до образование и елементарно здравеопазване в резултат на несигурността; и (vi) системни ограничения на участието в обществения живот, включително в частност на жените.⁶⁴⁷

За тези фактори – самостоятелно или кумулативно – може да се установи, че водят до ситуация в отделни части на Афганистан, която е достатъчно сериозна за целите на член 15 (с), без да е необходимо кандидатът да приведе отделни фактори или обстоятелства, засилващи риска от посегателства.⁶⁴⁸ Когато, след като се преценят всички относими доказателства, се установи, че случаят не е такъв в част от Афганистан, откъдето произхожда кандидатът, следва да се преценява дали индивидуалните характеристики на кандидата са такива, че сочат конкретни уязвимости, които, съчетани с естеството и степента на насилието, могат да доведат до сериозна и лична заплаха за живота или личността на кандидата.

С. Алтернатива за вътрешно бягство, преместване или закрила

Подробна аналитична рамка за оценка на наличието на Алтернатива за вътрешно бягство или преместване (АВБ/АВП), наричана понякога „Алтернатива за вътрешна закрила”,⁶⁴⁹ се съдържа в *Насоките на ВКБООН за международна закрила № 4: „Алтернативата за вътрешното бягство или преместване в контекста на член 1A(2) от Конвенцията от 1951 г. и/или Протокола от 1967 г. относно статута на бежанците”*.⁶⁵⁰

Оценката за наличие на алтернатива за преместване (АВБ/АВП) изисква оценка на относимостта и разумността на предлаганата АВБ/АВП.⁶⁵¹ В случаите, когато е установен основателен страх от преследване в някоя отделна част на страната на произход, решението дали мястото на евентуалното вътрешно бягство или преместване е подходяща алтернатива за въпросното лице изисква оценка във времева перспектива, при която да се вземат под внимание не само обстоятелствата, предизвикали опасенията и бягството от мястото на произход, но също така дали евентуалното място предлага безопасна и смислена алтернатива в бъдеще. Личните обстоятелства на кандидата и условията на мястото на преместване трябва също да се преценят.⁶⁵²

⁶⁴⁷ See, UNHCR, *Guidelines on International Protection No. 12: Claims for Refugee Status Related to Situations of Armed Conflict and Violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees and the Regional Refugee Definitions*, 2 December 2016, HCR/GIP/16/12, <http://www.refworld.org/docid/583595ff4.html>.

⁶⁴⁸ See Court of Justice of the European Union, *Elgafaji v. Staatssecretaris van Justitie*, C-465/07, 17 February 2009, <http://www.refworld.org/docid/499aae52.html>, where the Court of Justice of the European Union held (at para. 43) that the existence of a serious and individual threat to the life or person of an applicant “can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place [...] reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat.”

⁶⁴⁹ European Union, *Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 13 December 2011, <http://www.refworld.org/docid/4f197df02.html>, Article 8.

⁶⁵⁰ UNHCR, *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>.

⁶⁵¹ In relation to applications for international protection in EU Member States, Article 8 of the 2011 Qualification Directive applies. It includes both a relevance and reasonable test. 2011 Qualification Directive, Article 8.

⁶⁵² UNHCR, *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, para. 7. In relation to applications for international protection in EU Member States, see also Article 8(2) of the 2011 Qualification Directive, which provides that “Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant”.

Ако в производството за закрила се разглежда АББ/АВП, трябва да се определи конкретен район за предложеното преместване, както и да се установят, доколкото е възможно, и да се вземат предвид всички относими общи и индивидуални обстоятелства във връзка с относимостта и разумността на предложния район на преместване за съответния кандидат. На кандидата трябва да му се даде подходяща възможност да реагира на преценката за релевантност и разумност на предложената АББ/АВП.⁶⁵³

Насоките в този раздел важат за оценката за оценката за международна закрила по член 8 от Квалификационната директива.⁶⁵⁴

В раздели III.C.1 и III.C.2 има общи насоки за прилагането на критериите за относимост и разумност спрямо предложен район за АББ/АВП в Афганистан, а раздел III.C.3 съдържа насоки конкретно за Кабул като предложена район за АББ/АВП.

Съображението за възможно вътрешно преместване като цяло не е относимо към определянето на статут на бежанец по член I(2) от Конвенцията на ОАЕ.⁶⁵⁵

1. Анализ на относимостта

I. Части на Афганистан, където няма АББ/АВП

В светлината на наличните доказателства за сериозни и повсеместни нарушения на правата на човека от страна на АПЕ в районите под техния ефективен контрол, както и неспособността на държавата да осигури защита срещу такива нарушения в тези райони, ВКБООН счита, че няма АББ/АВП в райони на страната, които са под ефективния контрол на АПЕ, като е възможно изключение за лица в установени в миналото връзки с лидерството на АПЕ в предложения район за преместване. ВКБООН счита, че няма АББ/АВП и в райони на страната, засегнати от активни боевые между проправителствените сили и АПЕ или между различни АПЕ.

II. Оценка дали кандидатът ще бъде изложен на първоначалния рисков от преследване в предложения район за АББ/АВП

Предложен район за АББ/АВП няма да бъде относим, ако кандидатът би бил изложен на първоначалния рисков от преследване в този район.

1. Когато кандидатът има основателен страх от преследване от държавата или нейни агенти, съществува презумпция, че не е относимо разглеждането на АББ/АВП.⁶⁵⁶
2. Когато кандидатът има основателен страх от преследване от член на обществото в резултат от вредни традиционни практики и религиозни норми, за които е присъщо преследване (вж. като например профили 7, 10 и 12 в раздел III.A), приемането на такива норми и практики от голяма част от обществото и силни консервативни елементи на всички правителствени нива следва да се вземе предвид като фактор, който е в противовес на относимостта на АББ/АВП. ВКБООН счита, че заедно със сведенията, представени в раздел

⁶⁵³ UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, para. 6.

⁶⁵⁴ European Union, *Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 13 December 2011, <http://www.refworld.org/docid/4f197df02.html>, article 8.

⁶⁵⁵ UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, para. 5. Article I(2) of the 1969 Convention extends the refugee definition to "every person, who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality" [emphasis added]. The same considerations apply to individuals coming within the refugee definition as contained in Article I(2) of the Bangkok Principles, which is identical to the refugee definition of the 1969 OAU Convention.

⁶⁵⁶ UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, paras 7.I.b, 13-14.

II.C във връзка с ограниченията за възможността на държавата да осигури защита срещу нарушенията на правата на човека, **съществува презумпция, че не е относимо разглеждането на АББ/АВП.**

3. В случаите, когато **субектите на преследването са АПЕ**, при оценката на относимостта на предложената АББ/АВП трябва да се вземат предвид различни елементи.⁶⁵⁷

- Когато субектите на преследването са АПЕ, трябва да се прецени дали е вероятно този субект да преследва кандидата в предложения район за преместване. Предвид широкия географски обхват на възможностите за действие на някои АПЕ, сред които талибаните и Исламска държава, може да няма устойчива АББ/АВП за лица, застрашени да бъдат мишена на такива групировки.
- Освен това сведенията, представени в раздел II.C, следва да се вземат под внимание във връзка със способността на държавата да осигури защита срещу нарушения на правата на човека от страна на АПЕ в резултат от неефективно управление и висока степен на корупция.

III. Оценка дали кандидатът ще бъде изложен на нови рискове от преследване в предложения район за АББ/АВП или на други форми на тежки посегателства

Освен горепосочените съображения във връзка с първоначалната форма на преследване в района на произход на кандидата, вземащият решението трябва също така да установи, че кандидатът няма да бъде застрашен от нова форма на преследване в предложения район за АББ/АВП, нито на други сериозни посегателства, в това число безогледно насилие.⁶⁵⁸

Както ВКБООН посочва в своите Насоки за международната закрила № 4: „Алтернатива за вътрешно бягство или преместване“:

„за лице с установлен страх от преследване по някоя от причините в Конвенцията от 1951 г. в дадена част на страната не може да се очаква да бъде преместено в друг район на страната. Ако кандидатът би бил изложен на нов риск от сериозно посегателство, включително риска за живота, безопасността, свободата или здравето, или риска от сериозна дискриминация, не се поставя въпросът за алтернатива на вътрешно бягство или преместване независимо дали има връзка с някое от основанията в Конвенцията. Следователно оценката на новите рискове трябва да отчете и сериозните посегателства, посочени при [по-широките критерии за бежанец или] допълнителните форми на закрила.“⁶⁵⁹

Оценката трябва да се основава на актуална информация за положението със сигурността в предложения район за АББ/АВП, по-специално отражението на конфликта в Афганистан върху цивилните.

IV. Оценка дали предложеният район за АББ/АВП е достъпен реално, безопасно и законно

В случаите, когато за район в Афганистан е определено, че не е изключен като относима АББ/АВП на базата на съображенията по горните точки I и II, **ще трябва въпреки това да се оцени дали предложеният район за АББ/АВП е достъпен реално, безопасно и законно за лицето.**⁶⁶⁰ В условията на Афганистан това изискване предполага оценка на конкретните перспективи за безопасен достъп до предложения район, включително чрез оценка на рисковете, свързани с

⁶⁵⁷ Ibid. paras 7.I.c, 15-17.

⁶⁵⁸ UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, para. 20.

⁶⁵⁹ Ibid.

⁶⁶⁰ Ibid., para. 7.

широкоразпространената употреба на СВУ и наличието на сухопътни мини и експлозивни остатъци от войната (ЕОВ) на територията на страната; нападения и боевете по пътищата; както и ограничения върху свободата на движение, наложени от АПЕ.⁶⁶¹

2. Анализ на разумността

a) Лични обстоятелства на кандидата

Дали АББ/АВП е разумна трябва да се определи за всеки конкретен случай, като се вземат под внимание личните обстоятелства на кандидата, включително възраст, пол, здравословно състояние, увреждане, семейно положение и връзки, както и образование и професия.⁶⁶²

Конкретните обстоятелства на децата, както и законовите задължения на държавите по Конвенцията за правата на детето – по-специално задължението да се осигури най-добрият интерес на детето е водещо съображение при взимането на всички решения, свързани с деца, и да се отдаде нужната тежест на виждането на детето в светлината неговата възраст и зрялост – следва да се вземат под внимание при оценката на разумността на АББ/АВП, в която участват деца.⁶⁶³ Вземащите решенията следва да отчетат подобаващо факта, че това, което се счита просто за неудобно за един възрастен, може да представлява неприемливо изпитание за едно дете.

Тези съображения придобиват още по-голямо значение по отношение на непридружениите и разделените деца.⁶⁶⁴ Що се отнася до непридружени и разделени деца от Афганистан, ВКБОН счита, че освен изискването за смислена подкрепа за собственото (широко) семейство на детето или по-широката етническа общност в района на предстоящото преместване, при оценката на наличността на АББ/АВП за детето водещо съображение трябва да бъде висият интерес на детето в съответствие с член 3 (1) от Конвенцията за правата на детето.⁶⁶⁵ Връщането на непридружени и разделени деца в Афганистан подлежи също така на минималната гаранция, посочена в *Паметна записка: Специални мерки, приложими към връщането на непридружени и разделени деца в Афганистан от 2010 г.*⁶⁶⁶

За да се определи разумността на предложена АББ/АВП за лица със специални нужди, в това число лица с увреждания и възрастни хора, е особено важно да се установи, че членове на тяхното (широко) семейство или членове на тяхната по-голяма етническа общност в района на предстоящото

⁶⁶¹ Many areas of Afghanistan are not safely accessible as a substantial number of main roads are considered insecure. Adjudicators must carefully consider current country conditions and risks in this regard. See, for example, UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 32; UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017*, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, p. 36. See also, EASO, *Afghanistan Security Situation*, December 2017, <http://www.refworld.org/docid/5ac603924.html>, Section 1.9.4, “Road Security”, and sources quoted therein.

⁶⁶² UNHCR, *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, paras 25-26.

⁶⁶³ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations Treaty Series, Vol. 1577, p. 3, <http://www.refworld.org/docid/3ae6b38f0.html>. See also UNHCR, *Special Measures Applying to the Return of Unaccompanied and Separated Children to Afghanistan*, August 2010, <http://www.refworld.org/docid/4c91dbb22.html>.

⁶⁶⁴ UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08, 22 December 2009, <http://www.refworld.org/docid/4b2f4f6d2.html>, paras 53-57. See also AA (*unattended children*) *Afghanistan v. Secretary of State for the Home Department*, CG [2012] UKUT 00016 (IAC), United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 6 January 2012, <http://www.refworld.org/docid/4f293e452.html>, where the Upper Tribunal found that “the background evidence demonstrates that unattached children returned to Afghanistan may, depending upon their individual circumstances and the location to which they are returned, be exposed to a risk of serious harm, inter alia from indiscriminate violence, forced recruitment, sexual violence, trafficking and a lack of adequate arrangements for child protection.” (*Ibid.*, para. 92). See furthermore Catherine Gladwell and Hannah Elwyn, “*Broken Futures: Young Afghan Asylum Seekers in the UK and on Return to their Country of Origin*”, *UNHCR, New Issues in Refugee Research, Research Paper No. 246*, October 2012, <http://www.unhcr.org/5098d2679.html>.

⁶⁶⁵ UNHCR, *Special Measures Applying to the Return of Unaccompanied and Separated Children to Afghanistan*, August 2010, <http://www.refworld.org/docid/4c91dbb22.html>.

⁶⁶⁶ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, U.N.T.S. Vol. 1577, p. 3, <http://www.refworld.org/docid/3ae6b38f0.html>, Article 3(1); UN Committee on the Rights of the Child (CRC), *General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration* (Art. 3, Para. 1), 29 May 2013, CRC/C/GC/14, <http://www.refworld.org/docid/51a84b5e4.html>, paras 75-76.

преместване имат желание и способност да им осигурят трайна подкрепа за удовлетворяване на потребностите на въпросното лице по устойчив и, когато е нужно, по траен начин.

С оглед на сериозното положение с правата на човека по отношение на жените в Афганистан (вж. раздел III.A.7), както и социалните норми, ограничаващи придвижването на жените (вж. раздел III.A.8), и общо ниския процент на трудова заетост за жените в Афганистан, ВКБООН счита, че АВБ/АВП не е разумна за жени, които са глава на домакинство и които нямат или за които се смята, че нямат мъжка защита посредством членове на семейството си.

b) Безопасност и сигурност

Предложен район за АВБ/АВП би бил разумен, ако кандидатът може да живее в предложения район в условия на безопасност и сигурност, без опасност и риск от посегателства.⁶⁶⁷ Тези условия трябва да бъдат трайни, а не илюзорни или непредвидими.⁶⁶⁸ Във връзка с това трябва да се вземе предвид променливият и колеблив характер на въоръженния конфликт в Афганистан. Информацията, представена в раздел II.B на тези насоки и надеждната, актуална информация за ситуацията със сигурността в предложения район на преместване са важни елементи при оценката на разумността на приложената АВБ/АВП.

c) Зачитане на правата на човека и икономическо оцеляване

За да може предложена АВБ/АВП да бъде разумна, кандидатът трябва да може да упражнява основните си човешки права в района на преместване; и кандидатът трябва да има възможности за икономическо оцеляване по достоен начин.⁶⁶⁹ В връзка с това при оценката на разумността на предложена АВБ/АВП трябва специално да се вземат под внимание:

- (i) достъп до подслон в предложения район на преместване;
- (ii) наличност на основна инфраструктура и достъп до базисни услуги в предложения район на преместване като питейна вода и канализация, здравеопазване и образование;
- (iii) наличието на възможности за прехрана, в това число достъп до земя за афганистанците от селски райони; или в случая с кандидати, за които не може да се очаква да си изкарват прехраната сами (например, възрастни кандидати) – доказана и устойчива подкрепа за осигуряване на адекватен жизнен стандарт.⁶⁷⁰

С оглед на (i) – (iii) по-горе, в конкретните условия на Афганистан, има много материали по въпроса за важността на наличието и достъпа до социални мрежи, наличието на членове на широкото семейство на кандидата или на етническата му група.⁶⁷¹ Във връзка с това присъствието на лица със същия етнически произход като кандидата в предложения район на преместване не може само по себе си да се счита за доказателство, че кандидатът ще може да получи смислена подкрепа от страна

⁶⁶⁷ UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, para. 27.

⁶⁶⁸ Ibid.

⁶⁶⁹ UNHCR, *ibid.*, paras 28-30.

⁶⁷⁰ Afghans originating from rural areas, with few marketable professional skills beyond agriculture and animal husbandry, may have more difficulty reintegrating elsewhere. They are likely to have few or no savings and no property (because property has been destroyed, looted or left behind during displacement), no social support networks in the places of relocation and perhaps even communications difficulties, due to language or dialect limitations.

⁶⁷¹ See, for example, Refugee Support Network, *After Return: Documenting the Experiences of Young People Forcibly Removed to Afghanistan*, April 2016, http://www.refugeesupportnetwork.org/sites/default/files/files/After%20Return_RSN_April%202016.pdf; Oeppen, C. and Majidi, N., *Can Afghans Reintegrate after Assisted Return from Europe?*, Peace Research Institute Oslo (PRIO), 22 May 2015, http://file.prio.no/publication_files/PRIORoeppen%20%20Can%20Afghans%20Reintegrate%20after%20Assisted%20Return%20from%20Europe.%20PRIORoeppen%20Policy%20Brief%207-2015.pdf.

See also for example, Ordinary Court of Rome, 5 June 2018, No. 58068/2017, <http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/decisione%20art.%202017%20Reg.%20Dub.%20%282%29.pdf>.

на такива общности; по-скоро, за такава подкрепа по принцип е необходимо преди това да са съществували отношения, свързващи кандидата с отделни членове на въпросната етническа група.⁶⁷² Освен това, дори и когато преди това е имало такива отношения, трябва да се извърши оценка дали членовете на тази общност желаят и могат в действителност да предоставят подкрепа на кандидата предвид особено трудната хуманитарна ситуация в Афганистан, ниските показатели за развитие, както и икономическите ограничения, засягащи големи групи сред населението.⁶⁷³ Освен това степента, в която кандидатите могат да разчитат на семейни мрежи в предложенията район на преместване, също следва да се вземе предвид в светлината на сведенията за стигматизация и дискриминация по отношение на тези, които се връщат в Афганистан след няколко години в чужбина.⁶⁷⁴

На този фон ВКБОН смята, че предвидената АВБ/АВП е разумна само когато лицето има достъп до (i) подслон; (ii) елементарни услуги като хигиена, здравеопазване и образование; и (iii) възможности за поминък. Освен това ВКБОН смята, че вътрешното бягство или преместване може да е разумна алтернатива само ако лицето има достъп до традиционна мрежа за подкрепа от членове на неговото семейство и роднините или неговата по-широва етническа общност в района на евентуалното преместване, които желаят и могат да осигурят на практика истинска подкрепа на кандидата.

ВКБОН смята, че единственото изключение от изискването за външна подкрепа са неженените физически здрави мъже или брачни двойки в работна възраст без описаните по-горе специфични уязвимости. Такива лица при определени обстоятелства могат да се издържат без подкрепа от семейството или общността в градски или полуградски райони, които имат необходимата инфраструктура, предлагат възможности за прехрана и задоволяване на основните житейски

⁶⁷² For example, in an expert opinion provided by William Maley, Professor of Diplomacy at the Asia-Pacific College of Diplomacy at The Australian National University, on the return to Afghanistan of Hazaras, Prof. Maley made the following observations. “[...] an Hazara returned from abroad with no ties in areas they can safely access would be in an even more perilous position [compared to someone who has ties to persons in the region to which he or she is returned]. This ties in directly with the issue of livelihood opportunities. Again, serious research in this area highlights the importance of social relations. A recent study by Kantor and Pain emphasises the centrality of relationships to livelihoods in rural Afghanistan, and the points they make apply equally to urban areas (Paula Kantor and Adam Pain, Securing Life and Livelihoods in Afghanistan: The Role of Social Relationships (Kabul: Afghanistan Research and Evaluation Unit, December 2010). The mere fact that there may be people of similar ethnic background living in a potential relocation destination does not overcome this problem, since ethnic identities do not in and of themselves give rise to the ties of personal affinity and reciprocity that arise from family connections. (Indeed, one mistake that observers — even Afghan observers — on occasion make is to underestimate the degree of differentiation amongst groups such as the Hazaras, including distinctions between elite and non-elite figures, distinctions based on district of origin and tribe, and distinctions based on values and ideology.) An Hazara who is returned to a region in which he lacks strong social connections is likely to end up destitute, or be exposed to gross exploitation or criminal predation. The simplistic and superficial conclusion that Kabul offers a safe or meaningful ‘relocation’ option for Hazaras should be avoided.” Professor William Maley, View on the Return of Hazaras to Afghanistan, 5 December 2016, <http://worldhazaracouncil.org/en/professor-william-maley-view-on-the-return-of-hazaras-to-afghanistan/>, para. 6. More generally, adjudicators should take into account that the various ethnic groups in Afghanistan are not necessarily homogenous communities. Among Pashtuns, for example, strong rivalries between different sub-groupings may be a cause of tensions and conflicts. See for example Civil-Military Fusion Centre, *Afghanistan Ethnic Groups: A Brief Investigation*, August 2011, <http://reliefweb.int/report/afghanistan/afghan-ethnic-groups-brief-investigation>; Tribal Analysis Center, *Pashtun Tribal Dynamics*, October 2009, <http://www.tribalanalysiscenter.com/PDF-TAC/Pashtun%20Tribal%20Dynamics.pdf>.

⁶⁷³ See Sections II.A and II.D above.

⁶⁷⁴ Support from family networks may be withdrawn if the returnee is perceived to bring shame to the family, including because the returnee is perceived to have come under the influence of Western culture. Schuster, L. & Majidi, N., *What Happens Post-Deportation? The Experience of Deported Afghans*, 2013, Migration studies, 1(2), pp. 221-240, <http://openaccess.city.ac.uk/4717/1/2013%20Schuster%20Majidi%20.pdf>. According to PRIO, returnees from Europe reportedly face a general assumption that they have become ‘westernized’ or ‘anti-Islamic’ in Europe, while many also feel that they have disappointed their family and become a drain on the family’s resources. PRIO, *Can Afghans Reintegrate after Assisted Return from Europe?*, July 2015, http://file.prio.no/publication_files/PRIO/Oeppen%20-%20Can%20Afghans%20Reintegrate%20after%20Assisted%20Return%20from%20Europe.%20PRIO%20Policy%20Brief%207-2015.pdf. See also, Washington Post, *Europe is Rejecting Thousands of Afghan Asylum Seekers a Year. But what Awaits them Back Home?*, 28 May 2018, https://www.washingtonpost.com/world/europe-is-rejecting-thousands-of-afghan-asylum-seekers-a-year-but-what-awaits-them-back-home/2018/05/28/62494144-1593-11e8-930c-45838ad0d77a_story.html. According to long-term research by the Refugee Support Network (RSN) tracking a group of young men returned from the United Kingdom to Afghanistan, “The simple existence of family in Afghanistan does not equate to protection for the returnees. Some young people are not welcomed by family as they have returned from the UK without having met family expectations of their initial migration, while, for others families’ resources are too limited for them to provide for a returning young person.” The RSN also noted that the majority of those tracked struggle to re-establish contact with their families upon return, find it impossible to continue their education and to obtain sustainable employment, and experience mental health difficulties and a lasting deterioration in their emotional well-being. RSN, *After Return: Documenting The Experiences of Young People Forcibly Removed to Afghanistan*, April 2016, https://refugeesupportnetwork.org/sites/default/files/files/After%20Return_RSN_April%202016.pdf, pp. 6, 22.

потребности и са под ефективния контрол на правителството.

3. Алтернатива за вътрешно бягство или преместване в градове на Афганистан

В съответствие с насоките в раздели III.C.1 и III.C.2 оценката за възможността за преместване в даден град изисква оценка както на относимостта, така и на разумността на преместването в предложения град за конкретния кандидат. Освен това, ако в производствата за закрила се разглежда АББ/АВП в конкретен град, трябва да се установят, доколкото е възможно, и да се вземат предвид всички относими общи и лични обстоятелства, свързани с относимостта и разумността на този град като район за преместване за конкретния кандидат. На кандидата трябва да се даде адекватна възможност да реагира на установената относимост и разумност по отношение на съответния град, предложен за АББ/АВП.⁶⁷⁵

Във връзка с оценката за разумност вземащият решението следва да оцени дали съответният град е достъпен реално и в условия на безопасност за кандидата.⁶⁷⁶ За това е нужна оценка на наличието на въздушен превоз до най-близкото летище и на безопасността на по-нататъшния сухопътен превоз до крайната точка.⁶⁷⁷

ВКБООН обръща внимание, че много малко градове в Афганистан са пощадени от нападения на АПЕ, чито мишени са цивилни. ВКБООН отбелязва, че точно цивилните, които участват в ежедневните икономически и социални дейности в градските зони, са изложени на риска да станат жертви на такова насилие.⁶⁷⁸ Сред тези дейности са пътуването до и от работното място, пътуване до болници и клиники или пътуване до училище; дейности по осигуряване на прехраната, извършвани на улиците, като продаване на сергии; както и придвижване до пазари, джамии и други места, където се събират хора.

Във връзка с оценката за разумност ВКБООН обръща внимание на общото наблюдение на Прегледа на хуманитарните нужди за 2018 на Службата на ООН за координиране на хуманитарната дейност г., че „Като цяло понастоящем в провинциалните центрове в Афганистан са съсредоточени повече от 54 процента от ВРЛ, което засилва още повече натиска върху вече обременените услуги и инфраструктура и изостря съперничеството за ресурси между разселените лица и местните общности“.⁶⁷⁹ Освен това, както е посочено в раздел II.D, северната и западната част на Афганистан са засегнати от най-страшната суша от десетилетия, което е пагубно на земеделието поради липсата на достатъчно дъжд няколко поредни години. Сред най-тежко засегнатите провинции за Балх, Гор, Фаряб, Багдис, Херат и Джаузджан.⁶⁸⁰

Освен това, както е посочено в раздел II.F, през 2016 г. повече от един милион афганистанци са се завърнали от Иран и Пакистан, а през 2017 г. е имало още 620 000 завърнали се. Кълстерът за защита в Афганистан посочва още през април 2017 г. след завръщанията през 2016 г., но преди повечето през 2017 г.: „Огромният прилив на завърнали се [от Пакистан и Иран] доведе до огромен стрес за вече изчерпващия се капацитет за прием в главните провинциални и областни центрове на

⁶⁷⁵ UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, para. 6.

⁶⁷⁶ *Ibid.*, paras 10-12.

⁶⁷⁷ See for example, EASO, *Afghanistan Security Situation*, December 2017, <http://www.refworld.org/docid/5ac603924.html>, Section 1.9.4 and sources quoted therein.

⁶⁷⁸ 68

⁶⁷⁹ OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html>, p. 11.

⁶⁸⁰ The Telegraph, *Afghanistan Faces Worst Drought in Decades, as UN Warns 1.4 Million People Need Help*, 22 July 2018, <https://www.telegraph.co.uk/news/2018/07/22/afghanistan-faces-worst-drought-decades-un-warns-14m-need-help/>; see also, SOFREP, *Drought in Afghanistan: Worst in Recent History*, 31 July 2018, <https://sofrep.com/106550/drought-in-afghanistan-worst-in-recent-history/>; New York Times, *Drought Adds to Woes of Afghanistan, in Grips of a Raging War*, 27 May 2018, <https://www.nytimes.com/2018/05/27/world/asia/afghanistan-drought-war.html>.

Афганистан, тъй като много афганистанци са се присъединили към огромните групи ВРЛ, които не могат да се върнат в районите си на произход поради изострилия се конфликт. [...] В ситуация на ограничени възможности за работа, липса на мрежи за социална защита и лоши условия за настаняване разселените лица не само са застрашени от по-големи рискове в ежедневието си, но са принудени да прибягват до вторично разселване и отрицателни стратегии за оцеляване като детски труд, ранни бракове, намалено количество и качество на храната и др.⁶⁸¹

Според Проучването за условията на живот в Афганистан 2016-2017 година 72,4 процента от градското население в Афганистан живее в бордеи, неофициални селища или неадекватни жилища.⁶⁸² Освен това сведенията сочат, че бедността в Афганистан се засилва, като дельт на населението, който живее под националния праг на бедност, е нараснал от 34 процента през 2007-2008 г. на 55 процента през 2016-2017.⁶⁸³

4. Алтернатива за вътрешно бягство или преместване в Кабул

Освен общите насоки в раздели III.C.1 и III.C.2 по-горе и с оглед на допълнителната информация в раздел III.C.3, ВКБООН предлага следните конкретни насоки във връзка с двете линии на оценка на АВБ/АВП за Кабул. В съответствие с насоките в раздели III.C.1 и III.C.2 оценката за възможността за преместване в Кабул изисква оценка на относимостта и на разумността на този предложен район на преместване. Освен това, ако в производството за закрила се разглежда АВБ/АВП в Кабул, трябва да се установят, доколкото е възможно, и да се вземат предвид всички относими общи и лични обстоятелства, свързани с относимостта и разумността на Кабул като район за преместване за конкретния кандидат.⁶⁸⁴

a) Относимост на Кабул като АВБ/АВП

За да се оцени относимостта на Кабул като предложена АВБ/АВП и, по-специално, рисъкът за това кандидатът да бъде реално застрашен от сериозни посегателства, в това число риск за живота, безопасността, свободата или здравето, или сериозна дискриминация, вземащите решенията трябва да вземат под внимание отрицателните тенденции във връзка със ситуацията със сигурността за цивилните в Кабул. UNAMA е документирала 993 цивилни жертви (321 убити 672 ранени) в

⁶⁸¹ Protection Cluster Afghanistan, Afghanistan, April 2017, http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Afghanistan/files/factsheets/201704-protection-cluster-factsheet_en.pdf f. p. 2. See also, NRC/IDMC, *Escaping War: Where to Next?*, January 2018, <http://www.refworld.org/docid/5ac7874f4.html> , pp. 20, 25; IOM, *Displacement Survey Shows 3.5 Million Internally Displaced, Returnees from Abroad in 15 Afghan Provinces*, 8 May 2018, <http://afghanistan.iom.int/press-releases/displacement-survey-shows-35-million-internally-displaced-returnees-abroad-15-afghan> ; OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html> , p. 11; Protection Cluster Afghanistan, Central Region Update, May 2017, http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Afghanistan/files/factsheets/20170621_cr_may_factsheet.pdf ; Cordaid, *Responding to the Plight of Displaced and Returning Families*, 26 February 2018, <https://reliefweb.int/report/afghanistan/responding-plight-displaced-and-returning-families> .

⁶⁸² The estimate is based on the criteria to determine slum households used in the Millennium Sustainable Development Goal indicator 11.1.1 for sustainable cities and communities. “The definition of slum- and inadequate housing includes components of durability of housing, overcrowding, access to drinking water and sanitation, and security of tenure.” Central Statistics Organization, *Afghanistan Living Condition Survey 2016-2017: Highlights Report*, 2018, [http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight\(1\).pdf](http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight(1).pdf) , pp. 2, 10. See also, International Growth Centre, *Policy Options for Kabul’s Informal Settlements*, January 2018, <https://www.theigc.org/wp-content/uploads/2018/01/Policy-options-for-Kabuls-informal-settlements-19.01.188.pdf> , p. 2; OCHA, *Afghanistan: Informal Settlement Mapping and Profiling*, November 2017, https://reliefweb.int/sites/reliefweb.int/files/resources/reach_afg_map_informal_settlement_province_density_nov2017.pdf ; Government of the Islamic Republic of Afghanistan, *The State of Afghan Cities 2015*, September 2015, <http://unhabitat.org/books/soac2015/> , pp. 10, 86.

⁶⁸³ Central Statistics Organization, *Afghanistan Living Condition Survey 2016-2017: Highlights Report*, 2018, [http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight\(1\).pdf](http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight(1).pdf) , pp. 6-7. “Perception-based indicators of economic health have worsened since last year (figure 3.2). One-third of respondents (33.5%) report that the financial well-being of their household has declined compared to last year, while 20.3% report improvement, and 46.0% report no change. By comparison, in 2012, almost half of respondents (49.8%) reported improvement compared to the previous year, and only 6.9% reported being worse off.” The Asia Foundation, *Afghanistan in 2017: A Survey of the Afghan People*, November 2017, https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf, pp. 66-67. See also, WFP, FAO, Food Security Cluster, *Seasonal Food Security Assessment: Afghanistan 2017*, 3 December 2017, <https://reliefweb.int/sites/reliefweb.int/files/resources/post20harvest20fsa20201720report20by20fsac.pdf> .

⁶⁸⁴ UNHCR, *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html> , para. 6.

провинция Кабул през първите шест месеца на 2018 г.⁶⁸⁵ През 2017 г. UNAMA „е продължила да регистрира най-високите равнища на жертви сред цивилните в провинция Кабул най-вече в резултат от безразборни атаки в град Кабул. От 1 831 цивилни жертви (479 загинали и 1 352 ранени), 88 процента са причинени от самоубийствени и комплексни атаки от анти-правителствени елементи в град Кабул.⁶⁸⁶ Както е посочено също така в раздел II.B.1 по-горе, UNAMA е документирала, че през 2017 г. броят на цивилните жертви в град Кабул в резултат от самоубийствени и комплексни атаки представлява 70 процента от общия брой цивилни жертви през 2017 г. в Афганистан поради такива атаки.⁶⁸⁷

ВКБООН отбелязва, че цивилните, които участват в ежедневните икономически и социални дейности в градските зони, са изложени на риска да станат жертви на общото насилие, обхванало града.⁶⁸⁸ Сред тези дейности са пътуването до и от работното място, пътуване до болници и клиники или пътуване до училище; дейности по осигуряване на прехраната, извършвани на улиците, като продаване на сергии; както и придвижване до пазари, джамии и други места, където се събират хора.

b) Разумност на Кабул като АВБ/АВП

В съответствие с насоките в раздел III.C.2 по-горе, за да се оцени дали Кабул представлява разумна АВБ/АВП, трябва да се установи дали в Кабул кандидатът ще има достъп до:

- (i) подслон;
- (ii) основни услуги като питейна вода и канализация, здравеопазване и образование;
- (iii) възможности за прехрана или доказана сигурна подкрепа, която да осигури адекватен стандарт на живот.

Относимата информация, която следва да се има предвид от вземащите решенията в това отношение, включва сериозната загриженост, изразена от хуманитарните организации относно границите на

⁶⁸⁵ UNAMA, *Afghanistan: Mid-Year Update on the Protection of Civilians in Armed Conflict: 1 January to 30 June 2018*, 15 July 2018, <http://www.refworld.org/docid/5b5047137.html> , p. 2.

⁶⁸⁶ UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html> , p. 4. See also, EASO, *Afghanistan: Security Situation - Update*, May 2018, <http://www.refworld.org/docid/5b3be4ad4.html> , Section 2.1; and EASO, *Afghanistan Security Situation*, December 2017, <http://www.refworld.org/docid/5ac603924.html> and sources quoted in both reports. See also, PRI, *Violence in Kabul Is so Extreme, Citizens Are Carrying Around 'In Case I Die' Notes*, 31 January 2018 <https://www.pri.org/stories/2018-01-31/violence-kabul-so-extreme-citizens-are-carrying-around-case-i-die-notes> .

⁶⁸⁷ UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html> , p. 29.

⁶⁸⁸ The European Asylum Support Office (EASO) has assessed that “indiscriminate violence is taking place in the province of Kabul, including the capital city.” EASO, *Country Guidance: Afghanistan*, June 2018, <https://www.easo.europa.eu/sites/default/files/easo-country-guidance-afghanistan-2018.pdf> , p. 83. EASO’s conclusion is based on: EASO, *Afghanistan: Security Situation: Update*, May 2018, <http://www.refworld.org/docid/5b3be4ad4.html> , Section 2.1 (pp. 25-34); EASO, *Afghanistan Security Situation*, December 2017, <http://www.refworld.org/docid/5ac603924.html> , Section 2.1 (pp. 69-74) and Section 2.15 (pp. 153-157). See also, Administrative Court of Appeal of Lyon, 13 March 2018, *Nos 17LY02181 – 17LY02184*, <http://www.asylumlawdatabase.eu/en/case-law/france-administrative-court-appeal-lyon-13-march-2018-nos-17ly02181-%E2%80%93-17ly02184#content> , where the Court found that an internal armed conflict prevails throughout the territory of Afghanistan, and that the situation in the Kabul region and Kabul city constitutes indiscriminate violence resulting from this internal armed conflict. See also, Administrative Court of Nantes, 8 June 2018, *Nos 17NT03167 and 17NT03174*, <http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/CAA%20Nantes%20-%202018%20juin%202018%20-%202017NT03167-74%20-%2020Dubin%20Belgique%20ricochet%20afghanistan%20%281%29.pdf> , where the Court came to the same conclusion in respect of the situation in Kabul city. See further, Washington Post, ‘*Worse Than The Civil War’: Kabul Violence Makes Afghans Fearful of Unseen Enemies — And Each Other*’, 21 May 2018, https://www.washingtonpost.com/world/asia_pacific/worse-than-the-civil-war-kabul-violence-makes-afghans-fearful-of-unseen-enemies-and-each-other/2018/05/19/46ba7ad4-547b-11e8-a6d4-ca1d035642ce_story.html ; Carnegie Endowment for International Peace, *ISIS Kabul Bombings Target Journalists, Government Ahead of Elections*, 30 April 2018, <https://carnegieendowment.org/2018/04/30/isis-kabul-bombings-target-journalists-government-ahead-of-elections-pub-76222> ; New York Times, ‘*So Many Bodies’: Bomber Kills Dozens Signing Up to Vote in Kabul*’, 22 April 2018, <https://www.nytimes.com/2018/04/22/world/asia/suicide-bomber-afghanistan-elections.html> ; International Crisis Group, *The Cost of Escalating Violence in Afghanistan*, 7 February 2018, <https://www.crisisgroup.org/asia/south-asia/afghanistan/cost-escalating-violence-afghanistan> ; Public Radio International, *Violence in Kabul Is so Extreme, Citizens Are Carrying Around 'In Case I Die' Notes*, 31 January 2018, <https://www.pri.org/stories/2018-01-31/violence-kabul-so-extreme-citizens-are-carrying-around-case-i-die-notes> ; Deutsche Welle, *Kabul Residents in Shock after Wave of Violence*, 31 January 2018, <https://www.dw.com/en/kabul-residents-in-shock-after-wave-of-violence/a-42392793> ; Democracy Now, “*Unprecedented Level of Violence*” in Heart of Kabul as Taliban Sends “Clear Message” to Trump, 29 January 2018, https://www.democracynow.org/2018/1/29/unprecedented_level_of_violence_in_heart ; New York Times, *Why Attack Afghan Civilians? Creating Chaos Rewards Taliban*, 28 January 2018, <https://www.nytimes.com/2018/01/28/world/asia/afghanistan-taliban-kabul-attacks.html> ; National Post, *Kabul Violence Rages on as 11 Afghan Troops Die in ISIL Military Academy Attack*, 28 January 2018, <https://nationalpost.com/news/world/gunbattle-said-to-be-occurring-near-afghan-military-academy> ; New York Times, ‘*It’s a Massacre’: Blast in Kabul Deepens Toll of a Long War*’, 27 January 2018, <https://www.nytimes.com/2018/01/27/world/asia/afghanistan-kabul-attack.html> .

капацитета на Кабул да приема презаселени лица. От падането на предишния режим на талибаните през 2001 г. регионът на град Кабул отбелязва най-голямото нарастване на населението в Афганистан. Официалните разчети за броя на населението показват, че до началото на 2016 г. в региона на град Кабул е имало 5 млн. жители, от които 60 процента – в град Кабул.⁶⁸⁹ Населението на града се увеличава много бързо от началото на мащабното завръщане в Афганистан на хора от Иран и Пакистан (вж. раздел II.F).⁶⁹⁰

През януари 2018 г. Международният център за растеж посочва: „През последните три десетилетия в Кабул се наблюдава бърза урбанизация. Нарастването на населението в града надвишава капацитета на града да осигури необходимата инфраструктура, услуги и работа на гражданите, което води до спешна нужда от появата на неофициални селища, в които се смята, че живее 70% от населението на града.“⁶⁹¹

На фона на нарастващата загриженост за все по-голяма бедност в Афганистан⁶⁹² проучването на фондация „Азия“ за 2017 г. на афганското население показва, че възприятието за влошаващо се финансово положение е най-характерно за централния регион на Кабул – 43,9%.⁶⁹³ През януари 2017 г. данните сочат, че 55 процента от домакинствата в неофициалните селища на Кабул са сериозно засегнати от продоволствена несигурност.⁶⁹⁴

Прегледът на хуманитарните нужди за 2018 на Службата на ООН за координиране на хуманитарната дейност наредява Кабул сред 10-те провинции (от общо 34 провинции), които са „най-силно засегнати от конфликта“.⁶⁹⁵ Освен това в него се посочва, че „нуждите са особено силно изразени в големите градски центрове, в това число Кабул и Джалаабад, където както ВРЛ, така и завърналите се лица търсят възможности за препитание, както и достъп до основни и елементарни услуги. Хуманитарните нужди в тези две провинции [Кабул и Нангхар] съставляват 42 процента от всички потребности, свързани с вътрешното разселване и трансграничните потоци.“⁶⁹⁶

c) Заключения относно наличието на АВБ/АВП в Кабул

⁶⁸⁹ UN Habitat and Government of the Islamic Republic of Afghanistan, *Atlas of Afghan City Regions 2016*, 15 July 2016, <https://unhabitat.org/atlas-of-afghan-city-regions-2016/#>, p. xvii.

⁶⁹⁰ Protection Cluster Afghanistan, *Afghanistan, April 2017*, http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Afghanistan/files/factsheets/201704-protection-cluster-factsheet_en.pdf, p. 2. See also, NRC/IDMC, *Escaping War: Where to Next?*, January 2018, <http://www.refworld.org/docid/5ac7874f4.html>, pp. 20, 25; IOM, *Displacement Survey Shows 3.5 Million Internally Displaced, Returnees from Abroad in 15 Afghan Provinces*, 8 May 2018, <http://afghanistan.iom.int/press-releases/displacement-survey-shows-35-million-internally-displaced-returnees-abroad-15-afghan>; OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.htm> l, p. 11; Protection Cluster Afghanistan, *Central Region Update, May 2017*, http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Afghanistan/files/factsheets/20170621_cr_may_factsheet.pdf; Cordaid, *Responding to the Plight of Displaced and Returning Families*, 26 February 2018, <https://reliefweb.int/report/afghanistan/responding-plight-displaced-and-returning-families>.

⁶⁹¹ International Growth Centre, *Policy Options for Kabul's Informal Settlements*, January 2018, <https://www.theigc.org/wp-content/uploads/2018/01/Policy-options-for-Kabuls-informal-settlements-19.01.188.pdf>, p. 2. The International Growth Centre is directed by the London School of Economics (LSE) and the University of Oxford.

⁶⁹² Central Statistics Organization, *Afghanistan Living Condition Survey 2016-2017: Highlights Report*, 2018, [http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight\(1\).pdf](http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight(1).pdf), pp. 6-7.

⁶⁹³ The Asia Foundation, *Afghanistan in 2017: A Survey of the Afghan People*, November 2017, https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf, p. 67; see also pp. 7, 29, 30, 32.

⁶⁹⁴ REACH, *Informal Settlement Food Security Assessment: Afghanistan, January 2017*, http://fscluster.org/sites/default/files/documents/reach_afg_report_informal_settlement_food_security_assessment_january_2017.pdf, pp. 3-4. See also, World Food Programme, *Afghanistan Country Brief, February 2018*, <https://docs.wfp.org/api/documents/766832236a7a4a1cbf8c4d24f87037b7/download/>, p. 1; NRC/IDMC and Samuel Hall, *Escaping War: Where to Next?*, January 2018, <http://www.refworld.org/docid/5ac7874f4.html>, pp. 25 and 53; The Johanniter, *Afghanistan: "Need for Food and Wood" in Settlements of Kabul*, 12 December 2017, <http://www.johanniter.de/die-johanniter/johanniter-unfall-hilfe/start/news/afghanistan-need-for-food-and-wood-in-settlements-of-kabul/>; REACH, *Afghanistan: Multi-Cluster Needs Assessment, Shelter and WASH in Informal Settlements*, November 2017, https://reliefweb.int/sites/reliefweb.int/files/resources/reach_afg_report_multi-cluster_needs_assessment_wash_and_esnfi_november2017_0.pdf, p. 3.

⁶⁹⁵ OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html>, p. 18.

⁶⁹⁶ Ibid. For further information on access to shelter, essential services and livelihood opportunities in Kabul, see European Asylum Support Office (EASO), *Country of Origin Information Report Afghanistan: Key Socio-Economic Indicators, State Protection, and Mobility in Kabul City, Mazar-e Sharif, and Herat City*, August 2017, <http://www.refworld.org/docid/59a527ca4.html> and sources quoted therein.

ВКБООН счита, че предвид настоящата хуманитарна ситуация, както и ситуацията със сигурността и правата на човека в Кабул, като цяло АВБ/АВП не е налична в този град.

D. Изключване от международна закрила

В светлината на сериозните нарушения на правата на човека и на международното хуманитарно право, през дългата история на въоръжените конфликти в Афганистан в отделни искания от търсещи закрила лица от Афганистан може да възникнат съображения за изключване по член 1F от Конвенцията от 1951 г. Съображенията за изключване се активират, ако има елементи в молбата на кандидата, които подсказват, че лицето може да е било свързано с извършването на престъпления в приложното поле на член 1F. Като се имат предвид потенциално сериозните последствия от изключването от международна закрила на бежанци, клаузите за изключване трябва да се тълкуват ограничено и да се прилагат внимателно. Във всички случаи се изисква пълна оценка на обстоятелствата по конкретния случай.⁶⁹⁷

В условията на Афганистан може да се повдигнат съображения за изключване в случаи на търсещи закрила лица с определена предистория и характеристики, в частност такива, участвали в революцията през април 1978 г., при която идва власт Народнодемократичната партия на Афганистан (НДПА) и която е последвана от брутално смазване на последващите въстания; и участвалите във военните конфликти в Афганистан от 1979 до наши дни, т.е. (i) немеждународният военен конфликт между правителството на НДПА и въоръжените му противници, подкрепени от местните елити, от лятото на 1979 г. до съветското нашествие на 24 декември 1979 г., (ii) десетилетието на международния военен конфликт, започнал със свалянето на 27 декември 1979 г. на тогавашното афганистанско правителство, и последващата окупация на Афганистан от Съветския съюз до завършването на изтеглянето на съветските войски през февруари 1989 г.;⁶⁹⁸ (iii) последващият немеждународен военен конфликт, при който силите на муджахидините, ръководени от различни командири, се борят срещу правителството и проправителствените въоръжени групировки, докато талибаните поемат контрола над Кабул през септември 1996 г.; (iii) немеждународният военен конфликт между талибаните и Обединения фронт, известен също като Северен съюз, между 1996 г. и изгонването на талибаните през 2001 г.; (iv) международният военен конфликт, започнал с интервенцията на 6 октомври 2001 г., водена от Съединените щати, която завърва с избирането на афганистанско правителство през юни 2002 г. след период на окупация от падането на талибанския режим⁶⁹⁹ и (v) немеждународният военен конфликт между правителството и талибаните и други въоръжени групировки, който продължава до наши дни.⁷⁰⁰

Когато се разглеждат молби от лица, участвали в гореизброените събития и военни конфликти, от особено значение е член 1F(a). Когато кандидат може да е бил свързан с действия, извършени във връзка с военен конфликт, отправната точка за анализа за изключване е да се провери дали тези действия са били в нарушение на действащите правила на международното хуманитарно право и

⁶⁹⁷ Detailed guidance on the interpretation and application of Article 1F of the 1951 Convention can be found in UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/03/05, 4 September 2003, <http://www.refworld.org/docid/3f5857684.html>; and *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.htm>.

⁶⁹⁸ For an overview of the events leading up to the Soviet invasion in 1979 and a discussion of the applicable rules of international humanitarian law (IHL), see Michael Reisman and James Silk, "Which Law Applies to the Afghan Conflict?", *Faculty Scholarship Series*, Paper 752, 1988, http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1745&context=fss_papers.

⁶⁹⁹ See ICRC, *International Law and Terrorism: Questions and Answers*, 1 November 2011, <http://www.icrc.org/eng/resources/documents/faq/terrorism-faq-050504.htm>.

⁷⁰⁰ UNSC, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>; UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 56; HRW, "No Safe Place": *Insurgent Attacks on Civilians in Afghanistan*, May 2018, <http://www.refworld.org/docid/5afaae8d4.html>, p. 8; Amnesty International, *Amnesty International Report 2017/18: Afghanistan*, 22 February 2018, <http://www.refworld.org/docid/5a99395da.html>.

съответните разпоредби на международното наказателно право, и следователно може да представляват военни престъпления съгласно член 1F(a).⁷⁰¹ Когато въпросните престъпления представляват основно нехуманни деяния, извършени като част от широкоразпространено или системно нападение срещу цивилното население, може също да е относимо престъпление срещу човечество като основание за изключване по член 1F(a).⁷⁰² Деяния, за които се съобщава, че са извършени от страните по различните военни конфликти в Афганистан, включват, освен другото, отвличания и насилиствени изчезвания, безразборни нападения срещу цивилни, принудителни разселвания, мъчения и друго жестоко нечовешко и унизително отношение, включително политически убийства, масови убийства, извънсъдебни екзекуции по бързата процедура и насилиствена мобилизация за военна служба и/или труд, включително на деца.⁷⁰³

Според сведенията редица действащи лица са ангажирани със сериозни престъпления, включително незаконна търговия с наркотици, незаконно данъчно облагане, контрабанда на оръжие и трафик на хора.⁷⁰⁴ Сред тези действащи лица не са само организирани криминални мрежи, но и главатари и АПЕ. Въпросните престъпления може да са свързани с военните конфликти в Афганистан.⁷⁰⁵ В такъв

⁷⁰¹ War crimes are serious violations of IHL which entail individual responsibility directly under international law. The applicable rules of IHL and corresponding provisions of international criminal law differ, depending on whether the armed conflict is international (including situations of occupation) or non-international in character. For more detailed guidance, see UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>, paras 30-32. In the context of a non-international armed conflict, the notion of "war crimes" may be applied to serious violations of the relevant rules of IHL (i.e. Common Article 3 of the 1949 Geneva Conventions, certain provisions of Additional Protocol II and rules of customary international law) from the early 1990s onwards. The International Criminal Tribunal for the former Yugoslavia (ICTY) held that by that time, violations of IHL applicable to non-international armed conflicts could be considered to entail criminal responsibility under customary international law; see *Prosecutor v. Dusko Tadic aka "Dule"*, *Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction*, IT-94-1, 2 October 1995, <http://www.refworld.org/docid/47fdb520.html>, para. 134. Serious violations of the aforementioned rules of IHL that occurred earlier could not be considered "war crimes", but they may fall within the scope of "serious non-political crimes" (Article 1F(b)) or, depending on the circumstances, "crimes against humanity" (Article 1F(a)).

⁷⁰² For more detailed guidance, see UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>, paras 33-36.

⁷⁰³ For an overview of various violations of international human rights and humanitarian law in Afghanistan, see, for example, HRW, *Afghanistan: Insurgent Attacks on Civilians Escalate*, 8 May 2018, <http://www.refworld.org/docid/5afaee34.html>; HRW, "No Safe Place": *Insurgent Attacks on Civilians in Afghanistan*, May 2018, <http://www.refworld.org/docid/5afaee8d4.html>; AIHRC, *Summary of the Report on Civilian Casualties in Armed Conflict in 1396*, April 2018, <http://www.refworld.org/docid/5b1a77a4.html>; UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>; UNSC, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>; Amnesty International, *Amnesty International Report 2017/18: Afghanistan*, 22 February 2018, <http://www.refworld.org/docid/5a99395da.html>; HRW, *Kabul Hotel Attack a War Crime*, 22 January 2018, <http://www.refworld.org/docid/5a8eb0c84.html>; HRW, *Afghanistan: ICC Prosecutor Asks to Open Inquiry*, 20 November 2017, <http://www.refworld.org/docid/5a13e5894.html>; Amnesty International, *Forced Back to Danger: Asylum-Seekers Returned from Europe to Afghanistan*, 5 October 2017, <http://www.refworld.org/docid/59d5d8e4.html>; HRW, *Afghanistan: Proposed Militia a Threat to Civilians*, 15 September 2017, <http://www.refworld.org/docid/59bbeeaa4.html>; HRW, *HRW Submission to the Committee Against Torture: Afghanistan*, March 2017, <http://www.refworld.org/docid/5908b2784.html>. For additional information, see Section II.

⁷⁰⁴ See for example, Reuters, *Human Trafficking on the Rise in Afghanistan Despite New Laws*, 29 March 2018, <https://www.reuters.com/article/us-afghanistan-humantrafficking-laws/human-trafficking-on-the-rise-in-afghanistan-despite-new-laws-idUSKBN1H52U8>; Gandhara, *Armed Anti-Militant Bands Hound Civilians in Restive Afghan Province*, 25 January 2018, <https://gandhara.rferl.org/a/afghanistan-anti-taliban-armed-bands/28998464.html>; UNODC, *Afghanistan Opium Survey 2017*, 15 November 2017, https://www.unodc.org/documents/crop-monitoring/Afghanistan/Afghan_opium_survey_2017_cult_prod_web.pdf, p. 7; Business Insider, *Heroin Is Driving a Sinister Trend in Afghanistan*, 30 October 2017, <http://uk.businessinsider.com/taliban-control-of-heroin-drug-production-trafficking-in-afghanistan-2017-10?r=US&IR=T>; New York Times, *Afghan Taliban Awash in Heroin Cash, a Troubling Turn for War*, 29 October 2017, <https://www.nytimes.com/2017/10/29/world/asia/opium-heroin-afghanistan-taliban.html>; The Diplomat, *War, Drugs, and Peace: Afghanistan and Myanmar*, 14 September 2017, <https://thediplomat.com/2017/09/war-drugs-and-peace-afghanistan-and-myanmar/>; The National, *From Poppy to Heroin: Taliban Move into Afghan Drug Production*, 8 August 2017, <https://www.thenational.ae/world/asia/from-poppy-to-heroin-taliban-move-into-afghan-drug-production-1.617836>; US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>.

⁷⁰⁵ "Insurgency in Afghanistan continues to be closely interlinked with illicit drug production and trafficking, activities that reached record levels during 2017." Security Council Report, *June 2018 Monthly Forecast: Afghanistan*, 31 May 2018, http://www.securitycouncilreport.org/monthly-forecast/2018-06/afghanistan_25.php. "[O]pinium poppy cultivation and drug production chain generate huge profits, supporting criminality and insurgency, and ultimately resulting in greater insecurity", UNODC, *UNODC, Afghanistan Partner to Strengthen Drug Control and Promote Economic Development in the Country*, 5 December 2017, <http://www.unodc.org/unodc/en/frontpage/2017/December/unodc--afghanistan-partner-to-strengthen-drug-control-and-promote-economic-development-in-the-country.html>. "The significant levels of opium poppy cultivation and illicit trafficking of opiates will probably further fuel instability, insurgency and increase funding to terrorist groups in Afghanistan". UNODC, *Afghanistan Opium Survey 2017*, 15 November 2017, https://www.unodc.org/documents/crop-monitoring/Afghanistan/Afghan_opium_survey_2017_cult_prod_web.pdf, p. 7. See also, Pajhwok Afghan News, *Taliban Annually Earn \$200m from Drug Trade: Nicholson*, 20 November 2017, <https://www.pajhwok.com/en/2017/11/20/taliban-annually-earn-200m-drug-trade-nicholson>; USIP, *Illegal Mining in Afghanistan: A Driver of Conflict*, July 2017, <https://www.usip.org/sites/default/files/2017-07/pb226-illegal-extraction-of-minerals-as-a-driver-of-conflict-in-afghanistan.pdf>; Brookings Institution, *How Predatory Crime and Corruption in Afghanistan Underpin the Taliban Insurgency*, 18 April 2017, <https://www.brookings.edu/blog/order-from-chaos/2017/04/18/how-predatory-crime-and-corruption-in->

случай те трябва да бъдат оценени в сравнение с действащите правила на международното хуманитарно право и може да попаднат в обхвата на военните престъпления, посочени в член 1F(a), ако са извършени от началото на 1990–те години насам.⁷⁰⁶ В противен случай такива престъпления може да са основание за изключване като сериозни неполитически престъпления по смисъла на член 1F(b) от Конвенцията от 1951 г.⁷⁰⁷

В някои случаи може да възникне въпросът дали член 1F(c) от Конвенцията от 1951 г. е приложим спрямо действия, извършени от кандидати от Афганистан. Според становището на ВКБООН тази разпоредба за изключване може да се отнася само до престъпления, които поради своя характер и тежест имат международно въздействие в смисъл, че може да нарушият международния мир и сигурност или приятелските отношения между държавите.⁷⁰⁸

Съображенията за изключване може да възникнат също по отношение на лица, които може да са били свързани с действия, за които се смята, че имат „терористичен“ характер. Според становището на ВКБООН такива престъпления може да попадат във всяко от основанията за изключване, предвидени в член 1F, ако са удовлетворени съответните критерии. В много такива случаи член 1F(b) би бил приложим, тъй като насилиствените актове на тероризъм е вероятно да удовлетворят прага на сериозност за прилагането на тази разпоредба и да не преминат проверката, използвана за определяне дали престъплението е политическо.⁷⁰⁹ При някои обстоятелства такива действия може да попадат под член 1F(a), като престъпление срещу човечеството или като военно престъпление, ако въпросният акт е извършен по време на военен конфликт и ако представлява сериозно нарушение на съответните разпоредби на международното хуманитарно право и международното наказателно право.⁷¹⁰ При някои обстоятелства деяния, за които се смята, че имат терористичен характер, може да предизвикат изключване на основание на член 1F(c). Това би било приложено, когато въпросните актове представляват военни престъпления и/или престъпление срещу човечеството по смисъла на член 1F(a),⁷¹¹ но също по отношение на престъпления, забранени по международни конвенции и протоколи, отнасящи се до тероризма, ако те се характеризират с гореспоменатите сериозни характеристики от гледна точка на въздействието им в международен план.⁷¹²

[afghanistan-underpin-the-taliban-insurgency/](http://www.refworld.org/docid/4f33c8d92.html) ; UN University Centre for Policy Research, *Afghanistan Affections: How to Break Political-Criminal Alliances in Contexts of Transition*, April 2017, <https://iunu.edu/media/cpr.unu.edu/attachment/2442/Afghanistan-Affections-How-to-Break-Political-Criminal-Alliances-in-Contexts-of-Transition.pdf>.

⁷⁰⁶ As noted in footnote 575 above, where such acts were linked with a non-international armed conflict and took place from the early 1990s onward, they may give rise to exclusion under Article 1F(a) – “war crimes”. Serious violations of the rules of IHL applicable to a non-international armed conflict before that time may result in exclusion based on Article 1F(b) – “serious non-political crimes committed outside the country of refuge prior to admission to that country as a refugee” – or Article 1F(a) – “crimes against humanity”.

⁷⁰⁷ For more detailed guidance, see UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>, paras 37-45.

⁷⁰⁸ For more detailed guidance, see UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>, paras 46-49.

⁷⁰⁹ For exclusion based on Article 1F(b) to apply, the geographic (‘outside the country of refuge’) and temporal (‘prior to admission to that country as a refugee’) criteria under this provision must also be met; see UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>, paras 41 and 81.

⁷¹⁰ IHL does not provide a definition of terrorism. However, it prohibits, during armed conflict, most acts that would commonly be considered terrorist if they were committed in peacetime. The decisive question is whether a particular conduct satisfies the material and mental elements required to establish a war crime under IHL. Those acts or threats of violence, the primary purpose of which is to spread terror among the civilian population, are specifically prohibited in Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II to the 1949 Geneva Conventions. In its Commentary to Article 13 of Additional Protocol II, the ICRC notes that “attacks aimed at terrorizing are just one type of attack, but they are particularly reprehensible.” See ICRC, *Commentary to Article 13 of Additional Protocol No. II of 1977*, <http://www.icrc.org/ihl.nsf/COM/475-760019?OpenDocument>, para. 4785. More detailed information on terrorism and the law of armed conflict can be found on the website of the ICRC, at <http://www.icrc.org/eng/resources/documents/faq/terrorism-faq-050504.htm>. See also ICTY, *Prosecutor v. Galic*, Case No. IT-98-29A, Appeal Chamber judgment of 30 November 2006, <http://www.refworld.org/docid/47fdb565.html>, paras 98 and 102-104.

⁷¹¹ There is an overlap between these two exclusion grounds, as acts which fall within Article 1F(a) are also “contrary to the purposes and principles of the United Nations”; see UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, <http://www.refworld.org/docid/4f33c8d92.html>, para. 162.

⁷¹² Rather than focus on the “terrorism” label, a more reliable guide to the correct application of Article 1F(c) in cases involving a terrorist act is the extent to which the act impinges on the international plane – in terms of its gravity, international impact, and implications for international peace and security. In UNHCR’s view, only terrorist acts that are distinguished by these larger characteristics may qualify for exclusion under this provision. For more detailed guidance, see UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951*

За да бъде оправдано изключването, трябва да се установи лична отговорност във връзка с престъпление в приложното поле на член 1F. Такава отговорност произтича от това, че лицето е извършило престъпление или е участвало в неговото извършване по начин, който поражда наказателна отговорност, например чрез заповядване, подстрекаване, подпомагане и поощряване или чрез оказване на съдействие за извършване на престъпление от група лица, действащи с обща цел. За лица на властови позиции във военна или цивилна йерархия лична отговорност може да възникне и на основата на отговорност командир/началник. Прилага се защита по наказателна отговорност, ако има такава, както и съображения, свързани с пропорционалността. Във връзка с това трябва да се вземат под внимание доказателства за практиката на насилиствено мобилизиране, особено на деца.

Принадлежността към правителствените въоръжени сили, полицията, апарата на разузнаването и сигурността или към въоръжена група или милиция не е сама по себе си достатъчно основание за изключване на дадено лице от статута на бежанец. Същото се отнася за правителствените чиновници и държавните служители. Във всички такива случаи е необходимо да се прецени дали въпросното лице лично е участвало в действия, заслужаващи изключване, или е участвало в извършването на такива действия по начин, който дава основание за лична отговорност по съответните критерии на международното право. Изиска се внимателна оценка на обстоятелствата по всеки отделен случай.⁷¹³

През 2007 г. правителството приема Закон за национална стабилизация и помирение,⁷¹⁴ който дава амнистия от съдебно преследване на всички, участвали във военен конфликт преди създаването на временната администрация в Афганистан през декември 2001 г.⁷¹⁵ Според становището на ВКБОН

Convention relating to the Status of Refugees, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>, paras 46-49. See also UNHCR, *Yasser al-Sirri (Appellant) v. Secretary of State for the Home Department (Respondent) and DD (Afghanistan) (Appellant) v. Secretary of State for the Home Department (Respondent): UNHCR'S Composite Case in the Two Linked Appeals*, 23 March 2012, <http://www.refworld.org/docid/4f6c92b12.html>.

⁷¹³ These considerations would apply to applicants who held official functions as government officials or civil servants in the Afghan Interim Administration between December 2001 and July 2002, the Afghan Transitional Administration between July 2002 and October 2004, or the Government of Afghanistan since the formation of the first Government led by President Karzai in late 2004. For more detailed guidance, see UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>, paras 50-73 and paras 76-78.

⁷¹⁴ “[T]he Afghan parliament passed a general amnesty in 2007, which entered into force in 2009. The amnesty law provides legal immunity to all belligerent parties including ‘those individuals and groups who are still in opposition to the Islamic State of Afghanistan,’ without any temporal limitation or any exception for international crimes.” International Criminal Court: Pre-Trial Chamber III, *Situation in the Islamic Republic of Afghanistan*, ICC-02/17, 20 November 2017, https://www.icc-cpi.int/CourtRecords/CR2017_06891.PDF, p. 135. “In March [2010], President Hamid Karzai publicly confirmed that in 2009 his government had quietly enacted into law a blanket pardon for war crimes and crimes against humanity that took place before 2001. The National Stability and Reconciliation Law was enacted in spite of Karzai’s earlier promises that he would not sign the measure when it was passed by parliament in 2007.” Project Ploughshares, *Afghanistan (1978 –first combat deaths)*, 1 December 2017, http://ploughshares.ca/pl_armedconflict/afghanistan-1978-first-combat-deaths/. “Despite advocacy and pressure by international human rights organizations and civil and human rights activists, in 2008 the Afghan National Assembly (Parliament), which is dominated by many warlords and former leaders accused of human rights violations, passed an amnesty law called the Law on National Reconciliation, Public Amnesty and National Stability (Amnesty Law). This law grants amnesty to those who have committed even massive violations of human rights and war crimes. It also provides amnesty to perpetrators of ongoing crimes who are presently embroiled in conflict, provided they reconcile with the government.” A. M. Hazim, “Toward Cooperation between Afghanistan and the International Criminal Court”, *George Washington International Law Review*, Vol. 49 (No. 3), 615, at p. 624. See also, Reuters, *Afghanistan Confirms Blanket Pardon for War Crimes*, 16 March 2010, <https://www.reuters.com/article/us-afghanistan-amnesty/afghanistan-confirms-blanket-pardon-for-war-crimes-idUSTRE62F2LU20100316>; AAN, *After Two Years in Legal Limbo: A First Glance at the Approved ‘Amnesty Law’*, 22 February 2010, <https://www.afghanistan-analysts.org/after-two-years-in-legal-limbo-a-first-glance-at-the-approved-amnesty-law/>.

⁷¹⁵ The adoption of the law drew widespread national and international criticism as well as continuous calls for its repeal; see, for example, UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 8(a). “A Victims’ Jirga (Council or Assembly) convened in Kabul in 2010 produced a concluding statement calling for, inter alia, ending the culture of impunity and immediately nullifying the Amnesty Law; investigating perpetrators of crimes against humanity and war crimes including those presently on-going; and for the international community to support the transitional justice process in Afghanistan [...] Fifteen civil society organisations in Afghanistan signed a joint letter to the Prosecutor in November 2012, calling for immediate action by the ICC to address the situation in their country.” International Criminal Court: Pre-Trial Chamber III, *Situation in the Islamic Republic of Afghanistan*, ICC-02/17, 20 November 2017, https://www.icc-cpi.int/CourtRecords/CR2017_06891.PDF, pp. 178-179. “Although the legislature passed the Amnesty Law, a study conducted by the Afghanistan Independent Human Rights Commission in 2005 shows that the overwhelming majority of Afghan people support the prosecution of the alleged perpetrators of past atrocities.” A. M. Hazim, “Toward Cooperation between Afghanistan and the International Criminal Court”, *George Washington International Law Review*, Vol. 49 (No. 3), 615, at p. 625. See also, The Diplomat, *Afghanistan: Choosing Peace over Justice*, 20 July 2017, <https://thediplomat.com/2017/07/afghanistan-choosing-peace-over-justice/>; Pajhwok Afghan News, *TJCG Calls for Repeal of Amnesty Law*, 29 April 2015, <http://archive.pajhwok.com/en/2015/04/29/tjcg-calls-repeal-amnesty-law>; Pajhwok Afghan News, *Govt Asked to Repeal Amnesty Law*, 29 January 2014, <https://www.pajhwok.com/en/2014/01/29/govt-asked-to-repeal-amnesty-law>.

това не означава, че не може да се приложи изключване, когато преди тази дата са извършени престъпления, попадащи в обхвата на член 1F. Като се има предвид ужасният характер на престъпленията, извършени от различни действащи лица в Афганистан през последните десетилетия, ВКБООН счита, че законът за амнистия няма отношение към проверката за възможно прилагане на клаузите за изключване по член 1F.⁷¹⁶

В условията на Афганистан трябва да се разгледат внимателно следните характеристики:

- (i) Бивши служители на въоръжените сили и разузнавателния апарат и службите за сигурност, включително агенти на Афганската разузнавателна служба/Министерството на вътрешните работи, както и бивши служители на комунистическия режим;
- (ii) Бивши членове на въоръжени групи и милиции по време и след комунистическия режим;
- (iii) (Бивши) членове и командири на АПЕ;
- (iv) (Бивши) членове на НССА, включително НДС, АНП и АМП;
- (v) (Бивши) членове на паравоенни групи и милиции; и
- (vi) (Бивши) членове на групи мрежи, занимаващи се с организирана престъпност.

По-подробна информация за сериозни нарушения на правата на човека и на международното хуманитарно право от членове на първите горепосочени пет групи са дадени по-долу.

1. Комунистическите режими: Бивши членове на въоръжените сили и апарат на разузнаването/сигурността, включително агенти на KhAD/WAD (Държавната разузнавателна служба/Министерството на вътрешните работи), както и бивши длъжностни лица

Членове на армията, полицията и службите за сигурност, както и високопоставени правителствени чиновници по времето на режимите на Тараки, Хафизула Амин, Барак Кармал и Наджибула,⁷¹⁷ са участвали в операции, които са подлагали цивилни на арести, изчезвания, мъчения, нечовешко и унизително отношение и наказание и извънсъдебни екзекуции.⁷¹⁸ Това включва масовите убийства след преврата през 1978 г. и репресиите срещу съпротивата на указите за поземлени реформи, издадени по време на режима на Хафизула Амин. Освен това добре документирани са инциденти на преднамерено набелязване на цивилни по време на военни операции.⁷¹⁹

В този контекст следва да се отдели сериозно внимание на случаите на бивши служители на

[asked-repeal-amnesty-law](https://www.reuters.com/article/idUSSGE62O08V) ; Reuters, U.N. Calls For Repeal Of Afghan Amnesty Law, 25 March 2010, <https://www.reuters.com/article/idUSSGE62O08V> ; HRW, Afghanistan: Repeal Amnesty Law, 10 March 2010, <https://www.hrw.org/news/2010/03/10/afghanistan-repeal-amnesty-law>.

⁷¹⁶ UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html> , para. 75. Such amnesty from prosecution would be incompatible with the duty of States to investigate and prosecute crimes under IHL and violations of non-derogable human rights law ; see Rule 159 (Amnesty) of the ICRC, *Customary International Humanitarian Law*, Cambridge: Cambridge Univ. Press, 2005, reprinted 2009, http://www.icrc.org/customey-ihl/eng/docs/v1_rul_rule159 . Several international jurisdictions have stated that that war crimes and serious human rights violations may not be the subject of amnesty; see, for example, *Prosecutor v. Anto Furundzija (Trial Judgement)*, IT-95-17/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 10 December 1998, <http://www.refworld.org/docid/40276a8a4.html> ; and *Case of Barrios Altos v. Peru*, Inter-American Court of Human Rights, 14 March 2001, http://www.corteidh.or.cr/docs/casos/articulos/seriec_75_ing.pdf .

⁷¹⁷ This period of recent Afghan history started with a military *coup d'état* on 27 April 1978 that brought to power a Government dominated by the PDPA, continued during the Soviet occupation that started on 27 December 1979, and lasted until the fall of the Najibullah Government on 15 April 1992.

⁷¹⁸ See, for example, UN Commission on Human Rights, *Report on the Situation of Human Rights in Afghanistan prepared by the Special Rapporteur, Mr. Felix Ermacora, in accordance with Commission on Human Rights Resolution 1985/38, E/CN.4/1986/24*, 17 February 1986, <http://www.refworld.org/docid/482996d02.html> ; HRW, "Tears, Blood and Cries" Human Rights in Afghanistan since the Invasion 1979 – 1984, US Helsinki Watch Report, December 1984, <http://hrw.org/reports/1984/afghan1284.pdf> ; and Amnesty International, *Violations of Human Rights and Fundamental Freedoms in the Democratic Republic of Afghanistan*, ASA/11/04/79, September 1979.

⁷¹⁹ HRW, *The Forgotten War: Human Rights Abuses and Violations of the Laws of War since the Soviet Withdrawal*, 1 February 1991, <http://www.hrw.org/reports/1991/afghanistan/> ; and HRW, *By All Parties to the Conflict: Violations of the Laws of War in Afghanistan*, Helsinki Watch/Asia Watch report, March 1988, <http://hrw.org/reports/1988/afghan0388.pdf> .

Khadamate Ettelaate Dowlati (KhAD), Държавната информационна служба, която по-късно става *Wezarat-e Amniyat-e Dowlati* (WAD), или Министерство на държавната сигурност.⁷²⁰ Въпреки че функциите на KhAD/WAD с течение на времето се развиват, като достигат кулминационна точка в координацията и изпълнението на военни операции след изтеглянето на съветските войски през 1989 г., те включват също неоперативни (помощни) дирекции на централно, провинциално и районно равнище.⁷²¹ Информацията, с която разполага ВКБООН, не свързва помощните дирекции с нарушения на правата на человека по същия начин както оперативните дирекции. Така че само фактът, че човек е бил служител на KhAD/WAD, не води автоматично до изключване, като се има предвид, че ВКБООН не е в състояние да потвърди, че в KhAD/WAD е имало политика на системна ротация.⁷²² Оценката за индивидуално изключване трябва да вземе предвид ролята, ранга и функциите в организацията на отделното лице.

В случаите на кандидати, заемали официални постове по време на комунистическите режими, е необходимо да се проверят характерът на техните функции и задачите и поверените им отговорности. Когато се проверява възможното прилагане на изключване по член 1F спрямо бивш служител на тези режими се изисква индивидуализирана оценка, за да се определи дали кандидатът е бил свързан с престъпления в обхвата на член 1F по начин, който да дава основание за лична отговорност. Изключването на такива лица само на основание принадлежност към държавната администрация без доказателства, че са извършили престъпления, които заслужават изключване, или са участвали в тяхното извършване чрез един от начините, които да дават основание за лична отговорност, установена от международното право, не би било съвместимо с международното бежанско право.

2. Бивши членове на въоръжени групировки и милиции по време на комунистическите режими и след тях

Дейността на членовете на въоръжени групировки и милиции⁷²³ по време на периода на въоръжена съпротива срещу комунистическите режими и съветската окупация – от 27 април 1978 г. до падането на Наджибула през април 1992 г. – може да предизвика опасения за изключване. Примерите за съответните действия включват политически убийства, репресии и извънсъдебни убийства, изнасиливания, включително на цивилни, поради такива причини като работа за правителствените институции и училища или погазване на исламските принципи и норми. Други престъпления на въоръжени групировки, за които се съобщава, включват извънсъдебни екзекуции на военнопленници и нападения на цивилни цели.⁷²⁴ Военният конфликт между 1992 г. и 1995 г. в

⁷²⁰ In 1986, the KhAD was upgraded to ministry level and from then on was known as WAD (*Wezarat-e Amniyat-e Dowlati* or Ministry of State Security). For detailed information on (i) the origins of the KhAD/WAD; (ii) its structure and staffing; (iii) linkages between these services and the Afghan military and militias; (iv) the distinction between operational and support services; and (v) rotation and promotion policies within the KhAD/WAD, see UNHCR, *Note on the Structure and Operation of the KhAD/WAD in Afghanistan 1978-1992*, May 2008, <http://www.refworld.org/docid/482947db2.html>.

⁷²¹ These directorates included administration and finance, personnel, propaganda and counter-propaganda, logistics, telecommunications and decoding. See UNHCR, *Note on the Structure and Operation of the KhAD/WAD in Afghanistan 1978-1992*, May 2008, <http://www.refworld.org/docid/482947db2.html>, paras 15-17.

⁷²² UNHCR, *Note on the Structure and Operation of the KhAD/WAD in Afghanistan 1978-1992*, May 2008, <http://www.refworld.org/docid/482947db2.html>. In this Note, UNHCR observes that “UNHCR is not able to confirm that there was a systematic rotation policy inside KhAD/WAD. Sources consulted by UNHCR affirmed that rotations within the KhAD/WAD structures were largely based on expertise and experience. In emergency situations, staff may have been shifted to work on a given operation, but within its area of expertise. Military personnel operated within its rank and levels of expertise. One expert [...] stated that, in his view, there was no mandatory rotation; he believes that people could change jobs within the KhAD/WAD, but that it was not a rule or requirement. In the view of that source, such a rotation policy would have gone against any sense of professionalism within the institution. Other sources state that the activities of KhAD/WAD officers were regulated by a number of principles, one of which was confidentiality. For this reason, they believe that the KhAD/WAD could not resort to a general rotation policy, as this would have risked disclosure of information from one Directorate to another.” Ibid., para. 24.

⁷²³ Applicants whose applications require careful scrutiny include commanders and members of the following Islamic parties with armed factions: Hezb-e-Islami (Hekmatyar and Khalis), Hezb-e-Wahdat (both branches or all nine parties that formed Hezb-e-Wahdat), Jamiat-e-Islami (including Shura-e-Nezar), Jonbesh-e-Melli-Islami, Ittehad-e-Islami, Harkat-e-Inqilab-e-Islami (led by Mohammad Nabi Mohammadi) and Harkat-e-Islami.

⁷²⁴ HRW, *The Forgotten War: Human Rights Abuses and Violations of the Laws of War since the Soviet Withdrawal*, 1 February 1991, <http://www.hrw.org/reports/1991/afghanistan/>; and HRW, *By All Parties to the Conflict: Violations of the Laws of War in Afghanistan*, Helsinki Watch/Asia Watch report, March 1988, <http://hrw.org/reports/1988/afghan0388.pdf>.

частност се характеризира със сериозни нарушения на международното право за правата на човека и международното хуманитарно право, включително бомбардирането на градски центрове от всички страни в конфликта.⁷²⁵

3. Членове и командири на АПЕ

Елементи от бившия режим на талибаните, съчетани с нови наемници, започват да предприемат въоръжени операции в Афганистан още през 2002 г. Приложимостта на клаузите за изключване е относима по отношение на бивши членове и военни командири на талибаните по време на тяхната власт и след свалянето им в случаите, когато има достатъчно доказателства в подкрепа на заключенията за сериозни причини, за да се смята, че са били свързани със сериозни нарушения на правата на човека и на хуманитарното право. Както бе отбелоязано в раздел II.C.1.b, има широко разпространени съобщения за преднамерени нападения срещу цивилни от силите на талибаните, екзекуции по бързата процедура и незаконни наказания, раздавани от структури на паралелно правосъдие, налагани от талибаните. Някои от тези действия може да представляват военни престъпления.⁷²⁶

Приложимостта на тези клаузи за изключване трябва също да се разгледа по отношение на отделни членове и военни командири на други АПЕ, включително *Ал-Кайда*⁷²⁷, *Исламска държава* и членове

⁷²⁵ See, for instance, HRW, *Blood-Stained Hands: Past Atrocities in Kabul and Afghanistan's Legacy of Impunity*, 7 July 2005, <http://www.refworld.org/docid/45c2c89f2.html> ; Amnesty International, *Afghanistan: Executions, Amputations and Possible Deliberate and Arbitrary Killings*, ASA 11/05/95, April 1995, <http://www.refworld.org/docid/48298bca2.html> ; and Amnesty International, *Afghanistan: The Human Rights Crisis and the Refugees*, ASA 11/002/1995, 1 February 1995, <http://www.refworld.org/docid/3ae6a9a613.html>.

⁷²⁶ See, for example, Al-Jazeera, *Afghanistan: Taliban Resume Fighting as Eid Ceasefire Ends*, 18 June 2018, <https://www.aljazeera.com/news/2018/06/afghanistan-taliban-resume-fighting-eid-ceasefire-ends-180618044536196.html> ; Al-Jazeera, *Afghanistan: Who Controls What*, 5 June 2018, <https://www.aljazeera.com/indepth/interactive/2016/08/afghanistan-controls-160823083528213.htm> ; American Foreign Policy Council, *World Almanac of Islamism: Taliban*, last updated 27 April 2018, <http://almanac.afpc.org/taliban> ; BBC, *Taliban Threaten 70% of Afghanistan*, BBC Finds, 31 January 2018, <https://www.bbc.com/news/world-asia-42863116> ; NBC News, *The Taliban Is Gaining Strength and Territory in Afghanistan*, 30 January 2018, <https://www.nbcnews.com/news/world/numbers-afghanistan-are-not-good-n842651> ; NATO Parliamentary Assembly, *Special Report: Afghanistan*, 7 October 2017, <https://www.nato-pa.int/download-file?filename=sites/default/files/2017-11/2017%20-%2020164%20DSC%2017%20E%20bis-%20%20AFGHANISTAN.pdf>, p. 5; SciencesPo, *Taliban and Daesh: Religious Creed and Militant Groups in Afghanistan*, November 2017, <https://www.sciencespo.fr/eneumondial/fr/odr/taliban-and-daesh-religious-creed-and-militant-groups-afghanistan> ; Stanford University, *The Taliban*, last updated 15 July 2016, <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/367> ; US National Counterterrorism Center, *Afghan Taliban*, undated, https://www.dni.gov/nctc/groups/afghan_taliban.html.

⁷²⁷ See, for example, Accord, *Incremental Peace in Afghanistan*, Issue 27, 1 June 2018, <http://www.cfr.org/downloads/Incremental%20Peace%20in%20Afghanistan.pdf> , p. 149; Counter Extremism Project, *Afghanistan: Extremism & Counter-Extremism*, 9 May 2018, https://www.counterextremism.com/sites/default/files/country_pdf/AF-05092018.pdf f. 5; US Department of State, *Country Reports on Terrorism 2016 - Foreign Terrorist Organizations: Al-Qa'ida (AQ)*, 19 July 2017, <http://www.refworld.org/docid/5981e3f013.html> ; American Foreign Policy Council, *World Almanac of Islamism: Al Qaeda*, last updated 15 December 2017, <http://almanac.afpc.org/al-qaeda> ; Brookings Institution, *Afghanistan's Terrorism Resurgence: Al-Qaida, ISIS, and Beyond*, 27 April 2017, <https://www.brookings.edu/testimonies/afghanistans-terrorism-resurgence-al-qaida-isis-and-beyond/>; Council on Foreign Relations, *The Taliban*, 17 August 2017, [https://www.cfr.org/interactives/taliban?cid=marketing_use-taliban_infoguide-012115](https://www.cfr.org/interactives/taliban?cid=marketing_use-taliban_infoguide-012115#/taliban?cid=marketing_use-taliban_infoguide-012115) ; The Heritage Foundation, *Afghanistan in Crisis: Why Is the Region Still a Hotbed of Terrorism and Violence?*, 3 August 2017, <https://www.heritage.org/middle-east/commentary/afghanistan-crisis-why-the-region-still-hotbed-terrorism-and-violence> ; Pajhwok Afghan News, *Rebel Groups in Afghanistan: A Run-through*, 11 April 2017, <http://peace.pajhwok.com/en/armed-group/rebel-groups-afghanistan-run-through>; Tolo News, *20 Terrorist Groups Fighting Against Afghan Government*, 26 February 2017, <https://www.tolonews.com/afghanistan/20-terrorist-groups-fighting-against-afghan-government> ; Middle East Institute, *A Resilient Al-Qaeda in Afghanistan and Pakistan*, August 2016, https://www.mei.edu/sites/default/files/publications/PF18_Weinbaum_AQinAFPAK_web_1.pdf ; Stanford University, *Al Qaeda*, last updated 18 August 2015, <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/21> .

на групировки, които претендират да са свързани с Исламска държава,⁷²⁸ мрежата Haqqani⁷²⁹, Hezb-e-Islami (Партия на ислама)⁷³⁰, Исламското движение на Узбекистан,⁷³¹ Съюза Исламски

⁷²⁸ See, for example, Jinnah Institute, *Daesh in Afghanistan*, 2018, <http://jinnah-institute.org/wp-content/uploads/2018/01/The-Afghanistan-Essays-Zahid-Hussain-5.pdf> f; PressTV, *Daesh Becoming a Real Challenge in Afghanistan*, 17 Jun 2018, <https://www.youtube.com/watch?v=5owsXD9796Y> [video] ; Accord, *Incremental Peace in Afghanistan*, Issue 27, 1 June 2018, <http://www.c-r.org/downloads/Incremental%20Peace%20in%20Afghanistan.pdf> , p. 149; Counter Extremism Project, *Afghanistan: Extremism & Counter-Extremism*, 9 May 2018, https://www.counterextremism.com/sites/default/files/country_pdf/AF-05092018.pdf , p. 6; PressTV, *Despite Presence of Foreign Troops, Daesh Growing in Afghanistan*, 22 April 2018, <http://www.presstv.com/Detail/2018/04/22/559353/Afghanistan-Daesh-terrorists-US-NATO-Russia-Iran> ; Pajhwok Afghan News, *Daesh Operating Military Base in Jalalabad, Claims Hazrat Ali*, 20 April 2018, <https://www.pajhwok.com/en/2018/04/30/daesh-operating-military-base-jalalabad-claims-hazrat-ali> ; UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 21 February 2018, A/HRC/37/45, <http://www.refworld.org/docid/5b03e25e4.html> , p. 2, footnote 1; Tolo News, *The Rise and Fall of Daesh's Caliphate*, 19 January 2018, <https://www.tolonews.com/opinion/rise-and-fall-daesh%E2%80%99s-caliphate> ; Bonn International Center for Conversation (BICC), *Making Sense of Daesh in Afghanistan: A Social Movement Perspective*, Working Paper No 6, 2017, https://www.bicc.de/uploads/tx_bicctools/BICC Working Paper 6 2017.pdf ; SciencesPo, *Taliban and Daesh: Religious Creed and Militant Groups in Afghanistan*, November 2017, <https://www.sciencespo.fr/enjeumondial/fr/odr/taliban-and-daesh-religious-creed-and-militant-groups-afghanistan> ; NATO Parliamentary Assembly, *Special Report: Afghanistan*, 7 October 2017, <https://www.nato-pa.int/download-file?filename=sites/default/files/2017-11/2017%20-%2020164%20DSC%2017%20E%20bis-%20%20AFGHANISTAN.pdf> , p. 6; US Department of State, *Country Reports on Terrorism 2016 - Foreign Terrorist Organizations: Islamic State's Khorasan Province (ISIS-K)*, 19 July 2017, <http://www.refworld.org/docid/5981e3d513.html> ; Brookings Institution, *Afghanistan's Terrorism Resurgence: Al-Qaida, ISIS, and Beyond*, 27 April 2017, <https://www.brookings.edu/testimonies/afghanistans-terrorism-resurgence-al-qaida-isis-and-beyond/> ; Pajhwok Afghan News, *Rebel Groups in Afghanistan: A Run-through*, 11 April 2017, <http://peace.pajhwok.com/en/armed-group/rebel-groups-afghanistan-run-through> ; Tolo News, *20 Terrorist Groups Fighting Against Afghan Government*, 26 February 2017, <https://www.tolonews.com/afghanistan/20-terrorist-groups-fighting-against-afghan-government>.

⁷²⁹ The Haqqani Network, while enjoying a large measure of tactical autonomy, is reported to share many of the Taliban's political and ideological objectives. See Jinnah Institute, *The Haqqani Question*, 2018, <http://jinnah-institute.org/wp-content/uploads/2018/01/The-Afghanistan-Essays-Rahimullah-6.pdf> ; Accord, *Incremental Peace in Afghanistan*, Issue 27, 1 June 2018, <http://www.c-r.org/downloads/Incremental%20Peace%20in%20Afghanistan.pdf> , p. 149; Counter Extremism Project, *Afghanistan: Extremism & Counter-Extremism*, 9 May 2018, https://www.counterextremism.com/sites/default/files/country_pdf/AF-05092018.pdf , p. 7; Central Intelligence Agency (CIA), *Terrorist Groups - Foreign Based: Afghanistan*, last updated 11 April 2018, https://www.cia.gov/library/publications/the-world-factbook/fields/print_2265.html; US Department of State, *Country Reports on Terrorism 2016 - Foreign Terrorist Organizations: Haqqani Network (HQN)*, 19 July 2017, <http://www.refworld.org/docid/5981e3dfc.html> ; UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 21 February 2018, A/HRC/37/45, <http://www.refworld.org/docid/5b03e25e4.html> , p. 2, footnote 1; The Japan Times, *Afghanistan's Most Feared: Taliban-Affiliated Haqqani Network Behind Kabul Blast that Killed at Least 95*, 29 January 2018, <https://www.japantimes.co.jp/news/2018/01/28/asia-pacific/haqqani-network-haqqanis-afghanistans-feared-insurgents/> ; LA Times, *Many Americans Have Never Heard of the Haqqani Network, One of the World's Most Lethal Terror Groups*, 6 January 2018, <http://www.latimes.com/world/la-fg-haqqani-network-20180105-story.html> ; Stanford University, *Haqqani Network*, last updated 8 November 2017, <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/363> ; Deutsche Welle, *Militant Haqqani Network: A Brief History*, 17 October 2017, <http://www.dw.com/en/militant-haqqani-network-a-brief-history/g-4098389> ; Washington Post, *A Much-Feared Taliban Offshoot Returns from the Dead*, 19 July 2017, https://www.washingtonpost.com/world/asia_pacific/ruthless-taliban-branch-is-center-stage-in-us-pakistan-tensions/2017/07/18/dc03b2b4-5a89-11e7-aa69-3964a7d55207_story.html ; Tolo News, *20 Terrorist Groups Fighting Against Afghan Government*, 26 February 2017, <https://www.tolonews.com/afghanistan/20-terrorist-groups-fighting-against-afghan-government> ; US National Counterterrorism Center, *Haqqani Network*, undated, https://www.dni.gov/nctc/groups/haqqani_network.html ; Global Security, *Haqqani Network (HQN)*, undated, <https://www.globalsecurity.org/military/world/para/haqqani.htm>.

⁷³⁰ See, for example, Accord, *Incremental Peace in Afghanistan*, Issue 27, 1 June 2018, <http://www.c-r.org/downloads/Incremental%20Peace%20in%20Afghanistan.pdf> , p. 148; Counter Extremism Project, *Afghanistan: Extremism & Counter-Extremism*, 9 May 2018, https://www.counterextremism.com/sites/default/files/country_pdf/AF-05092018.pdf f, p. 8; Tolo News, *Freed Hezb-e-Islami Prisoners "Fighting Alongside Taliban"*, 7 May 2018, <https://www.tolonews.com/afghanistan/hezb-e-islami-members-fight-alongside-taliban-kandahar> ; Global Security, *Hezb-i-Islami*, 2 September 2017, <https://www.globalsecurity.org/military/world/para/hezbi-islami.htm> ; AAN, *Charismatic, Absolutist, Divisive: Hekmatyar and the Impact of His Return*, 3 May 2017, <https://www.afghanistan-analysts.org/charismatic-absolutist-divisive-hekmatyar-and-the-impact-of-his-return/> ; Institute for the Study of War, *Hezb-i-Islami Gulbuddin (HIG)*, undated, <http://www.understandingwar.org/hezb-i-islami-gulbuddin-hig> ; US National Counterterrorism Center, *Hezb-e-Islami Gulbuddin (HIG)*, undated, https://www.dni.gov/nctc/groups/hezb_e_islami.html ; TRAC, *Hezb-i-Islami Gulbuddin (HIG)*, undated, <https://www.trackingterrorism.org/group/hezb-i-islami-gulbuddin-hig> .

⁷³¹ "Uzbek fighters have become deeply embedded in ISIS and have fought alongside the Taliban in Afghanistan [...] The Islamic Movement of Uzbekistan was the most prominent Central Asian group active in Afghanistan and Pakistan". International Institute for Counter-Terrorism, *Central Asian Jihadists in the Front Line*, 4 September 2017, <http://www.ict.org.il/Article/2075/CentralAsianJihadists#gsc.tab=0> . See also, Counter Extremism Project, *Afghanistan: Extremism & Counter-Extremism*, 9 May 2018, https://www.counterextremism.com/sites/default/files/country_pdf/AF-05092018.pdf , p. 8; UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 21 February 2018, A/HRC/37/45, <http://www.refworld.org/docid/5b03e25e4.html> , p. 2, footnote 1; Sputnik News, *'We Are Surrounded': 21 Terrorist Organizations Active in Afghanistan*, 15 February 2018, <https://sputniknews.com/asia/201802151061674094-afghanistan-terror-groups-pakistan/> ; US Department of Defense, *U.S. Forces Strike Taliban, East Turkestan Islamic Movement Training Sites*, 7 February 2018, <https://www.defense.gov/News/Article/Article/1435247/us-forces-strike-taliban-east-turkestan-islamic-movement-training-sites/> ; US Department of State, *Country Reports on Terrorism 2016 - Foreign Terrorist Organizations: Islamic Movement of Uzbekistan (IMU)*, 19 July 2017, <http://www.refworld.org/docid/5981e3d7a.html> ; Tolo News, *20 Terrorist Groups Fighting Against Afghan Government*, 26 February 2017, <https://www.tolonews.com/afghanistan/20-terrorist-groups-fighting-against-afghan-government>; Pajhwok Afghan News, *Rebel Groups in Afghanistan: A Run-through*, 11 April 2017, <http://peace.pajhwok.com/en/armed-group/rebel-groups-afghanistan-run-through> ; Global Security, *Islamic Movement of Uzbekistan (IMU)*, undated, <https://www.globalsecurity.org/military/world/para/imu.htm>

джихад,⁷³² *Lashkar-e-Taiba* (Армия на праведните),⁷³³ *Lashkar-e-Jhangvi*,⁷³⁴ *Therik-e Taliban Pakistan* (TTP),⁷³⁵ *Jaish-e- Mohammad*,⁷³⁶ *Maulvi Nazir Group*,⁷³⁷ *Tora-Bora Nizami Mahaz* (Tora-Bora Военен

⁷³² The Islamic Jihad Union is reported to be a splinter group of the Islamic Movement of Uzbekistan and is affiliated with Al-Qaeda. See, Global Security, *Islamic Jihad Union*, undated, <http://www.globalsecurity.org/military/world/para/jiu.htm>. See also Accord, *Incremental Peace in Afghanistan*, Issue 27, 1 June 2018, <http://www.c-r.org/downloads/Incremental%20Peace%20in%20Afghanistan.pdf>, p. 148; UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 21 February 2018, A/HRC/37/45, <http://www.refworld.org/docid/5b03e25e4.html>, p. 2, footnote 1; US Department of State, *Country Reports on Terrorism 2016 - Foreign Terrorist Organizations: Islamic Jihad Union (IJU)*, 19 July 2017, <http://www.refworld.org/docid/5981e3d8a.html>; Pajhwok Afghan News, *Rebel Groups in Afghanistan: A Run-through*, 11 April 2017, <http://peace.pajhwok.com/en/armed-group/rebel-groups-afghanistan-run-through>; Jamestown Foundation, *Unrest in Northern Afghanistan Heralds Regional Threats*, 7 January 2016, <http://www.refworld.org/docid/569f501c4.htm>.

⁷³³ See, for example, Central Intelligence Agency (CIA), *Terrorist Groups - Foreign Based: Afghanistan*, last updated 11 April 2018, https://www.cia.gov/library/publications/the-world-factbook/fields/print_2265.html; American Foreign Policy Council, *World Almanac of Islamism: Lashkar-e Taiba*, last updated 11 April 2018, <http://almanac.afpc.org/lashkar-e-taiba>; UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 21 February 2018, A/HRC/37/45, <http://www.refworld.org/docid/5b03e25e4.html>, p. 2, footnote 1; Sputnik News, 'We Are Surrounded': 21 Terrorist Organizations Active in Afghanistan, 15 February 2018, <https://sputniknews.com/asia/201802151061674094-afghanistan-terror-groups-pakistan/>; US Department of State, *Country Reports on Terrorism 2016 - Foreign Terrorist Organizations: Lashkar-e-Tayyiba (LeT)*, 19 July 2017, <http://www.refworld.org/docid/5981e3ccc.html>; Pajhwok Afghan News, *Rebel Groups in Afghanistan: A Run-through*, 11 April 2017, <http://peace.pajhwok.com/en/armed-group/rebel-groups-afghanistan-run-through>; Tolo News, 20 Terrorist Groups Fighting Against Afghan Government, 26 February 2017, <https://www.tolonews.com/afghanistan/20-terrorist-groups-fighting-against-afghan-government>; US National Counterterrorism Center, *Lashkar-e-Tayyiba (LT)*, undated, <https://www.dni.gov/nctc/groups/lt.html>; Stanford University, *Lashkar-e-Taiba*, last updated 30 January 2016, <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/79>; Global Security, *Lashkar-i-taiba (LeT)*, undated, <https://www.globalsecurity.org/military/world/para/let.htm>.

⁷³⁴ See, for example, Central Intelligence Agency (CIA), *Terrorist Groups - Foreign Based: Afghanistan*, last updated 11 April 2018, https://www.cia.gov/library/publications/the-world-factbook/fields/print_2265.html; Pajhwok Afghan News, *Rebel Groups in Afghanistan: A Run-through*, 11 April 2017, <http://peace.pajhwok.com/en/armed-group/rebel-groups-afghanistan-run-through>; Tolo News, 20 Terrorist Groups Fighting Against Afghan Government, 26 February 2017, <https://www.tolonews.com/afghanistan/20-terrorist-groups-fighting-against-afghan-government>; Gandhara, *Pakistani Extremists Carve a Sanctuary in Southern Afghanistan*, 23 January 2017, <https://gandhara.rferl.org/a/afghanistan-zabul-lashkar-e-jhangvi/28251900.html>; Australian National Security, *Lashkar-e Jhangvi*, 3 March 2018, <https://www.nationalsecurity.gov.au/listedterroristorganisations/pages/lashkar-e-jhangvi.aspx>; Geo TV, *Suspected LeJ Terrorists Escaped to Afghanistan: CTD*, 14 September 2017, <https://www.geo.tv/latest/158083-suspected-lej-terrorists-escaped-to-afghanistan-ctd>; Stanford University, *Lashkar-e-Jhangvi*, last updated 7 July 2015, <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/215>; US National Counterterrorism Center, *Lashkar-e-Jhangvi (LJ)*, undated, <https://www.dni.gov/nctc/groups/lj.html>.

⁷³⁵ See, for example, Jinnah Institute, *Enemy at the Gates: The TTP in Afghanistan*, 2018, <http://jinnah-institute.org/wp-content/uploads/2018/01/The-Afghanistan-Essays-Zamir-Akram-8.pdf>; Accord, *Incremental Peace in Afghanistan*, Issue 27, 1 June 2018, <http://www.c-r.org/downloads/Incremental%20Peace%20in%20Afghanistan.pdf>, p. 150; Stanford University, *Tehrik-i-Taliban Pakistan*, last updated 6 August 2017, <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/105>; US Department of State, *Country Reports on Terrorism 2016 - Foreign Terrorist Organizations: Tehrik-e Taliban Pakistan (TTP)*, 19 July 2017, <http://www.refworld.org/docid/5981e3bd26.html>; Pajhwok Afghan News, *Rebel Groups in Afghanistan: A Run-through*, 11 April 2017, <http://peace.pajhwok.com/en/armed-group/rebel-groups-afghanistan-run-through>; Tolo News, 20 Terrorist Groups Fighting Against Afghan Government, 26 February 2017, <https://www.tolonews.com/afghanistan/20-terrorist-groups-fighting-against-afghan-government>; US National Counterterrorism Center, *Tehrik-e Taliban Pakistan (TTP)*, undated, <https://www.dni.gov/nctc/groups/ttp.html>; Global Security, *Tehrik Taliban-i Pakistan (TTiP)*, undated, <https://www.globalsecurity.org/military/world/para/ttp.htm>.

⁷³⁶ See, for example, Central Intelligence Agency (CIA), *Terrorist Groups - Foreign Based: Afghanistan*, last updated 11 April 2018, https://www.cia.gov/library/publications/the-world-factbook/fields/print_2265.html; UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 21 February 2018, A/HRC/37/45, <http://www.refworld.org/docid/5b03e25e4.html>, p. 2, footnote 1; Sputnik News, 'We Are Surrounded': 21 Terrorist Organizations Active in Afghanistan, 15 February 2018, <https://sputniknews.com/asia/201802151061674094-afghanistan-terror-groups-pakistan/>; US Department of State, *Country Reports on Terrorism 2016 - Foreign Terrorist Organizations: Jaish-e-Mohammed (JeM)*, 19 July 2017, <http://www.refworld.org/docid/5981e3d413.html>; Pajhwok Afghan News, *Rebel Groups in Afghanistan: A Run-through*, 11 April 2017, <http://peace.pajhwok.com/en/armed-group/rebel-groups-afghanistan-run-through>; Tolo News, 20 Terrorist Groups Fighting Against Afghan Government, 26 February 2017, <https://www.tolonews.com/afghanistan/20-terrorist-groups-fighting-against-afghan-government>; Stanford University, *Jaish-e-Mohammed*, last updated 25 June 2015, <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/95>; Global Security, *Jaish-e-Mohammed (JEM)*, undated, <https://www.globalsecurity.org/military/world/para/jem.htm>.

⁷³⁷ See Pakistan Forward, *Clashes Erupt in South Waziristan Between Maulvi Nazir Militants and PTM*, 4 June 2018, http://pakistan.asia-news.com/en_GB/articles/cnmi_pf/newsbriefs/2018/06/04/newsbrief-01; Tolo News, 20 Terrorist Groups Fighting Against Afghan Government, 26 February 2017, <https://www.tolonews.com/afghanistan/20-terrorist-groups-fighting-against-afghan-government>; Sputnik News, 'We Are Surrounded': 21 Terrorist Organizations Active in Afghanistan, 15 February 2018, <https://sputniknews.com/asia/201802151061674094-afghanistan-terror-groups-pakistan/>.

фронт)⁷³⁸, *Jundallah*,⁷³⁹ *Harkat ul-Jihad-i-Islami* (HuJI),⁷⁴⁰ *Harkat ul-Mujahideen* (HuM),⁷⁴¹ и Източно тюркистанско исламско движение (ETIM).⁷⁴²

4. Членове на силите за сигурност на Афганистан, включително НДС, АНП и АМП

Приложимостта на клаузите за изключване трябва да се разгледа във връзка с членовете на НССА в случаите, когато има признания, че те може да са били свързани със сериозни нарушения на правата на човека и/или на хуманитарното право. Както бе отбелязано в раздел II.C.1.a, елементи на НССА са извършили сериозни нарушения на правата на човека, включително незаконни убийства, мъчения и жестоко, нечовешко или унизително отношение или наказание, сексуални насилия, включително изнасилвания на задържани лица и сексуална експлоатация на деца.

5. Членове на проправителствени паравоенни групировки и милиции

Приложимостта на клаузите за изключване трябва да се разгледа във връзка с членовете на проправителствените паравоенни групировки и милиции в случаите, когато има признания, че те може да са били свързани със сериозни нарушения на правата на човека и/или на хуманитарното право. Както бе отбелязано в раздел II.C.1.b, паравоенните групировки и милиции са извършили сериозни нарушения на правата на човека, включително незаконни убийства, нападения и изнудване.

⁷³⁸ The *Tora-Bora Nizami Mahaz* is reported to be an offshoot of the *Hezb-e-Islami (Khalis)* (HiK). The faction reportedly broke away from HiK following the death of the HiK leader Maulvi Yunis Khalis and the subsequent power struggle between Anwarul Haq Mujahid, the son of Khalis, and Haji Din Mohammad. The group has openly declared its opposition to US-led forces and in 2016 the group reportedly swore allegiance to the Taliban. See, The Long War Journal, *Influential Taliban Commander Pledges to New Emir*, 12 March 2018, <https://www.longwarjournal.org/archives/2016/08/influential-taliban-commander-pledges-to-new-emir.php>; Naval Postgraduate School, *Nangarhar Provincial Overview*, last updated March 2017, <https://my.nps.edu/web/ccs/nangarhar>; AREU, *The Devil Is in the Details: Nangarhar's Continued Decline into Insurgency, Violence and Widespread Drug Production*, February 2016, <http://www.refworld.org/docid/56c2eaa34.html>, p. 4.; TRAC, T

⁷³⁹ Since its inception in 2003, Jundallah reportedly operates primarily in the province of Sistan va Balochistan of Iran, and the Baloch areas of Pakistan and Afghanistan. Jundallah's stated goals are to secure recognition of Balochi cultural, economic, and political rights from the Government of Iran, and to spread awareness of the plight of the Baloch people. US Department of State, *Country Reports on Terrorism 2016 - Foreign Terrorist Organizations: Jundallah*, 19 July 2017, <http://www.refworld.org/docid/5981e3d04.html>.

⁷⁴⁰ Harkat-ul Jihad Islami (HUJI) reportedly seeks the annexation of the state of Jammu and Kashmir and the expulsion of Coalition Forces from Afghanistan, and has supplied fighters to the Taliban in Afghanistan. See Central Intelligence Agency (CIA), *Terrorist Groups - Foreign Based: Afghanistan*, last updated 11 April 2018, https://www.cia.gov/library/publications/the-world-factbook/fields/print_2265.html; US Department of State, *Country Reports on Terrorism 2016 - Foreign Terrorist Organizations: Harkat ul-Jihad-i-Islami (HUJI)*, 19 July 2017, <http://www.refworld.org/docid/5981e3de11.html>; Stanford University, *Harkat-ul-Jihadi al-Islami*, last updated 11 July 2016, <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/217>; UN Security Council ISIL and Al-Qaida Sanctions Committee, *Harkat-Ul Jihad Islami*, 3 February 2015, https://www.un.org/sc/suborg/en/sanctions_list/summaries/entity/Harakat-ul-jihad-islami; Global Security, *Harkat-ul-Jihad-al-Islami (HuJI)*, undated, <https://www.globalsecurity.org/military/world/para/huji-b.htm>.

⁷⁴¹ Harkat ul-Mujahideen (HUM) reportedly seeks the annexation of the state of Jammu and Kashmir and the expulsion of Coalition Forces from Afghanistan. See Central Intelligence Agency (CIA), *Terrorist Groups - Foreign Based: Afghanistan*, last updated 11 April 2018, https://www.cia.gov/library/publications/the-world-factbook/fields/print_2265.html; Stanford University, *Harkat-ul-Mujahideen*, last updated 8 August 2017, <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/219>; US Department of State, *Country Reports on Terrorism 2016 - Foreign Terrorist Organizations: Harkat ul-Mujahideen (HUM)*, 19 July 2017, <http://www.refworld.org/docid/5981e3dc13.html>.

⁷⁴² The group is also known as Turkistan Islamic Party (TIP) or the Turkistan Islamic Movement (TIM). "The Islamic Movement of Eastern Turkestan established in the 80s of last century in Chinese Xingjian was later renamed into the Turkestan Islamic Party [TIP] and since 1997 it has been known to be based in Afghanistan. Since then, TIP is actively cooperating with terrorist groups al Qaeda and Taliban. In 1998, the leader of TIP, Hasan Mahsum, received a passport from the Taliban in Kabul [...] Close cooperation with Al Qaeda and the Taliban in Afghanistan has radicalized the ideology of the TIP and jihadism has become a key element of the party platform." Modern Diplomacy, *China and the Turkestan Islamic Party: From Separatism to World Jihad*, 9 December 2017, <https://moderndiplomacy.eu/2017/12/09/china-and-the-turkestan-islamic-party-from-separatism-to-world-jihad/>. See also, The Long War Journal, *Turkistan Islamic Party Highlights Joint Raids with the Afghan Taliban*, 12 March 2018, <https://www.longwarjournal.org/archives/2018/03/turkistan-islamic-party-highlights-joint-raids-with-the-afghan-taliban.php>; Reuters, *U.S. Forces in Afghanistan Attack Anti-China Militants*, 8 February 2018, <https://www.reuters.com/article/us-afghanistan-usa-china/u-s-forces-in-afghanistan-attack-anti-china-militants-idUSKBN1FS23S>; Afghan Biographies, *East Turkestan Islamic Movement (ETIM)*, 15 February 2018, http://www.afghan-bios.info/index.php?option=com_afghanbios&id=3883&task=view&total=3673&start=883&Itemid=2; International Centre for Counter-Terrorism, *Uighur Foreign Fighters: An Underexamined Jihadist Challenge*, November 2017, <https://icct.nl/wp-content/uploads/2017/11/ClarkeKan-Uighur-Foreign-Fighters-An-Underexamined-Jihadist-Challenge-Nov-2017-1.pdf>; The Diplomat, *Central Asia's Stake in Afghanistan's War*, 20 July 2015, <https://thediplomat.com/2015/07/central-asias-stake-in-afghanistans-war/>; Afghan War News, *East Turkestan Islamic Movement*, undated, <http://www.afghanwarnews.info/insurgency/east-turkestan-islamic-movement-etim.htm>.