

UNHCR POSITION ON RETURNS TO AFGHANISTAN

August 2021

Introduction

1. In the wake of the withdrawal of international troops from Afghanistan, there has been a rapid deterioration in the security and human rights situation in large parts of the country.¹ The Taliban has taken control of a rapidly increasing number of districts, with their advance accelerating in August 2021, to capture 26 out of 34 of Afghanistan's provincial capitals in the space of ten days, ultimately taking control of the presidential palace in Kabul.² The upsurge of violence has a serious impact on civilians, including women and children.³ UNHCR is concerned about the risk of human rights violations against civilians, including against women and girls and against Afghans who are perceived by the Taliban to have a current or past association with the Afghan government or with the international military forces in Afghanistan or with international organizations in the country.⁴

¹ CNN, *Intelligence Assessments Warn Afghan Capital Could Be Cut Off and Collapse in Coming Months*, 12 August 2021, <https://edition.cnn.com/2021/08/11/politics/afghanistan-intelligence-assessments-kabul-taliban/index.html>; New York Times, *Could the Taliban Take Over Afghanistan? Here's What We Know.*, 11 August 2021, www.nytimes.com/2021/08/11/world/asia/taliban-afghanistan-troops-explainer.html; UN Office for the Coordination of Humanitarian Affairs (OCHA), *Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator Martin Griffiths Statement on Afghanistan*, 9 August 2021, <https://reliefweb.int/report/afghanistan/under-secretary-general-humanitarian-affairs-and-emergency-relief-coordinator>.

² AP, *Taliban Sweep into Afghan Capital after Government Collapses*, 16 August 2021, <https://apnews.com/article/afghanistan-taliban-kabul-bagram-e1ed33fe0c665ee67ba132c51b8e32a5>; Aljazeera, *Taliban Says Afghanistan War Over as President Flees: Live*, 16 August 2021, www.aljazeera.com/news/2021/8/16/taliban-says-afghanistan-war-over-as-president-diplomats-flee; Aljazeera, *Afghanistan: Mapping the Advance of the Taliban*, 15 August 2021, www.aljazeera.com/news/2021/8/15/afghanistan-mapping-the-advance-of-the-taliban-interactive; CNN, *Taliban Takes Control of Kabul's Presidential Palace*, 15 August 2021, <https://edition.cnn.com/world/live-news/afghanistan-taliban-us-troops-intl-08-15-21/index.html>; Aljazeera, *Afghanistan: Mapping the Advance of the Taliban*, 15 August 2021, www.aljazeera.com/news/2021/8/15/afghanistan-mapping-the-advance-of-the-taliban-interactive; Reuters, *Timeline: The Taliban's Rapid Advance across Afghanistan*, 16 August 2021, www.reuters.com/world/timeline-talibans-rapid-advance-across-afghanistan-2021-08-15/.

³ UNHCR, *UNHCR Warns Afghanistan's Conflict Taking the Heaviest Toll on Displaced Women and Children*, 13 August 2021, www.unhcr.org/news/briefing/2021/8/611617c55/unhcr-warns-afghanistans-conflict-taking-heaviest-toll-displaced-women.html; BBC, *Afghanistan War: At Least 27 Children Killed in Three Days, UN Says*, 10 August 2021, www.bbc.com/news/world-asia-58142983; UNICEF, *At Least 27 Children Killed and 136 Injured in Past 72 Hours as Violence Escalates in Afghanistan*, 9 August 2021, www.unicef.org/press-releases/least-27-children-killed-and-136-injured-past-72-hours-violence-escalates. Between 1 January and 30 June 2021, UNAMA documented 5,183 civilian casualties (1,659 killed and 3,524 injured), representing an increase of 47 per cent compared with the first half of 2020. UNAMA reported a steep increase in the number of civilian casualties toward to end of this period: between 1 May and 30 June 2021, UNAMA recorded 2,392 civilian casualties, nearly as many as were documented in the entire four preceding months. UNAMA, *Afghanistan Protection of Civilians in Armed Conflict - Midyear Update: 1 January to 30 June 2021, July 2021*, https://unama.unmissions.org/sites/default/files/unama_poc_midyear_report_2021_26_july.pdf.

⁴ See for example, Sky News, *Afghanistan: 'They Are in Grave Danger' - Fears for Influential Women Who 'Spearheaded Change' in Country*, 16 August 2021, <https://news.sky.com/story/afghanistan-they-are-in-grave-danger-fears-for-influential-women-who-spearheaded-change-in-country-12382778>; NBC, *Afghan Women Fear 'Dark' Future, Loss of Rights as Taliban Gain Ground*, 15 August 2021, www.nbcnews.com/news/world/afghan-women-fear-dark-future-loss-rights-taliban-gains-ground-n1276636; National Geographic, *As the Taliban Return, Afghanistan's Past Threatens its Future*, 15 August 2021, www.nationalgeographic.com/history/article/as-the-taliban-rise-again-afghanistans-past-threatens-its-present; ABC, *Taliban Fighters Executing Surrendering Troops, Which Could Amount to War Crimes, U.S. Officials Say*, 12 August 2021, <https://abcnews.go.com/Politics/us-warning-taliban-fighters-committing-atrocities-amount-war/story?id=79424000>; Wall Street

2. It is estimated that since the beginning of 2021 over 550,000 Afghans have been internally displaced by conflict within the country, including 126,000 new IDPs between 7 July 2021 and 9 August 2021.⁵ While there are as yet no precise figures about the number of Afghans who have fled the country due to the hostilities and human rights violations, sources indicate that tens of thousands of Afghans have crossed international borders in recent weeks.⁶

Access to the Territory and International Protection

3. As the situation in Afghanistan remains fluid and uncertain, UNHCR calls on all countries to allow civilians fleeing Afghanistan access to their territories and to ensure respect for the principle of non-refoulement at all times. UNHCR notes the imperative to ensure that the right to seek asylum is not compromised, that borders are kept open and that people in need of international protection are not consigned to areas inside their country of origin that could potentially be dangerous. In this context, it is important to bear in mind that states have obligations, including under customary international law, to preserve cross-border access for civilians fleeing conflict and not to return forcibly refugees. The principle of non-refoulement includes non-rejection at the frontier.
4. All claims of nationals and former habitual residents of Afghanistan seeking international protection should be processed in fair and efficient procedures in accordance with international and regional refugee law. UNHCR is concerned that recent developments in Afghanistan are giving rise to an increase in international protection needs for people fleeing Afghanistan, whether as refugees under the 1951 Convention or regional refugee instruments, or as beneficiaries of other forms of international protection.⁷ The same applies to those who were already in countries of asylum before the recent escalation of violence in Afghanistan. In light of the volatile situation in Afghanistan, UNHCR welcomes steps taken by some countries of asylum to suspend decision-making on international protection needs of nationals and former habitual residents of Afghanistan, until such time as the situation in the country has stabilized and reliable information about the security and human rights situation is available to

Journal, *Afghans Tell of Executions, Forced 'Marriages' in Taliban-Held Areas*, 12 August 2021, www.wsj.com/articles/afghans-tell-of-executions-forced-marriages-in-taliban-held-areas-11628780820; USA Today, *'No Possible Life' Under Taliban Rule: Afghan Women Fear Murder, Oppression after US Withdrawal*, 5 August 2021, <https://eu.usatoday.com/in-depth/news/world/2021/08/05/afghanistan-withdrawal-taliban-takeover-leaves-women-constant-risk/7426022002/>; Human Rights Watch (HRW), *Afghanistan: Advancing Taliban Execute Detainees*, 3 August 2021, www.hrw.org/news/2021/08/03/afghanistan-advancing-taliban-execute-detainees; HRW, *Afghanistan: Threats of Taliban Atrocities in Kandahar*, 23 July 2021, www.hrw.org/news/2021/07/23/afghanistan-threats-taliban-atrocities-kandahar; ABC News, *Afghanistan's Embassy Says Videos Show Afghan Civilians Being Tortured, Murdered by Taliban*, 16 July 2021, www.abc.net.au/news/2021-07-16/taliban-militants-afghanistan-civilian-torture/100300730; Wall Street Journal, *A Generation of Afghan Professionals Flees Ahead of Taliban Advance*, 7 July 2021, www.wsj.com/articles/a-generation-of-afghan-youth-afghanistan-american-troops-pullout-taliban-biden-11625667435.

⁵ OCHA, *Afghanistan: Conflict Induced Displacements*, accessed 16 August 2021, www.humanitarianresponse.info/en/operations/afghanistan/idps. See also, UNHCR, *Afghan Refugees Reach Iran as Violence Escalates*, 9 August 2021, www.unhcr.org/news/press/2021/8/611141ec4/afghan-refugees-reach-iran-violence-escalates.

⁶ The Independent, *Iran Sets Up Refugee Camps along Border as Afghans Flee Taliban Rule*, 16 August 2021, www.independent.co.uk/asia/south-asia/iran-afghanistan-refugee-camps-taliban-b1902953.html; Sky News, *Afghanistan: Chaos as Crowds Descend on Pakistan Border after Fleeing Taliban*, 13 August 2021, <https://news.sky.com/video/afghanistan-chaos-as-crowds-descend-on-pakistan-border-after-fleeing-taliban-12380717>; New York Times, *As Fears Grip Afghanistan, Hundreds of Thousands Flee*, 31 July 2021 (updated 9 August 2021), www.nytimes.com/2021/07/31/world/asia/afghanistan-migration-taliban.html; Gandhara, *'We Don't Have A Choice': Thousands Of Afghans Fleeing Abroad Daily As Taliban Violence Soars*, 26 July 2021, <https://gandhara.ferl.org/a/afghan-refugees-taliban-violence/31378092.html>. "The irregular entry of Afghans into Iran is currently estimated by the Government of Iran at approximately 5,000 per day, or up to three times the previously estimated daily average of 1,400-2,500." UNHCR, *Afghanistan Situation: Emergency Preparedness and Response in Iran*, 20 July 2021, <https://bit.ly/3IWZaG0>.

⁷ Applicable frameworks include that of the 1951 Refugee Convention and its 1967 Protocol; the EU 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)* ("Qualification Directive"), 13 December 2011, www.refworld.org/docid/4f06fa5e2.html]; or other applicable regional frameworks, including the 1969 OAU Convention and the Cartagena Declaration [Cartagena Declaration on Refugees, *Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, www.refworld.org/docid/3ae6b36ec.html].

assess the international protection needs of individual applicants. In view of the volatility of the situation in Afghanistan, UNHCR does not consider it appropriate to deny international protection to Afghans and former habitual residents of Afghanistan on the basis of an internal flight or relocation alternative.

5. For individuals whose claim had been rejected prior to recent events, the current situation in Afghanistan may give rise to changed circumstances, which need to be considered if a new asylum claim is submitted.
6. There may be individuals who have been associated with acts that bring them within the scope of the exclusion clauses contained in Article 1F of the 1951 Convention.⁸ In such cases, it will be necessary to examine carefully any issues of individual responsibility for crimes which may give rise to exclusion from international refugee protection. In addition, to preserve the civilian character of asylum, States would need to assess the situation of arrivals carefully so as to identify armed elements and separate them from the civilian refugee population.⁹

Non-Return Advisory

7. As the situation in Afghanistan is volatile and may remain uncertain for some time to come, coupled with an unfolding humanitarian emergency in the country,¹⁰ UNHCR calls on States to suspend the forcible return of nationals and former habitual residents of Afghanistan, including those who have had their asylum claims rejected. A moratorium on forced returns to Afghanistan would need to stay in place until the situation in the country has stabilized, pending an assessment of when the changed situation in the country would permit return in safety and dignity. The bar on forcible return serves as a minimum standard and needs to remain in place until such time as the security, rule of law, and human rights situation in Afghanistan has significantly improved to permit a safe and dignified return of those determined not to be in need of international protection.
8. In line with the commitment by UN Member States under the Global Refugee Forum to the equitable sharing of responsibility for international refugee protection, UNHCR also considers that it would not be appropriate to forcibly return nationals or former habitual residents of Afghanistan to countries in the region, in view of the fact that countries such as Iran and Pakistan have for decades generously hosted the vast majority of the total global number of Afghan refugees.¹¹
9. UNHCR will continue to monitor the situation in Afghanistan with a view to assessing the international protection needs arising out of the current situation.

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⁸ UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention Relating to the Status of Refugees*, 4 September 2003, CR/GIP/03/05, www.unhcr.org/refworld/docid/3f5857684.html.

⁹ See UNHCR, *Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum*, September 2006, www.refworld.org/docid/452b9bca2.html.

¹⁰ UNHCR, UNHCR Warns of Imminent Humanitarian Crisis in Afghanistan, 13 July 2021, www.unhcr.org/news/briefing/2021/7/60ed3ba34/unhcr-warns-imminent-humanitarian-crisis-afghanistan.html.

¹¹ By the end of 2020, there were 2,215,445 registered Afghan refugees in Iran and Pakistan. UNHCR, *Data Portal: Afghanistan Situation*, <https://data.unhcr.org/en/situations/afghanistan> (accessed 12 August 2021).