

# Michigan Journal of International Law

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Volume 44 | Issue 2

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2023

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### Recommended Citation

Mehdi J. Hakimi, *Relentless Atrocities: the Persecution of Hazaras*, 44 MICH. J. INT'L L. 157 (2023).  
Available at: <https://repository.law.umich.edu/mjil/vol44/iss2/2>

<https://doi.org/10.36642/mjil.44.2.relentless>

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## RELENTLESS ATROCITIES: THE PERSECUTION OF HAZARAS

*Mehdi J. Hakimi\**

### ABSTRACT

*As one of the main ethnic groups in Afghanistan, Hazaras are Farsi-speaking and mostly Shi'a Muslims in a predominantly Sunni Muslim country. They are also distinguishable by their Asiatic appearance. Throughout Afghanistan's history, Hazaras have suffered considerably under different regimes, enduring recurring massacres, enslavement, and forced displacement. Despite Afghanistan's accession to the Rome Statute in 2003, the plight of Hazaras has not improved. Indeed, the assaults on Hazaras have only intensified in recent years, impacting virtually every aspect of their lives.*

*This article argues that the recent and ongoing attacks against Hazaras constitute a crime against humanity. In particular, I show, element by element, that there is a reasonable basis to believe that the assaults on Hazaras amount to persecution based on ethnic and religious grounds pursuant to article 7(1)(h) of the Rome Statute. Accordingly, the International Criminal Court and the global community must take urgent actions to investigate the relentless atrocities against Hazaras and to hold the perpetrators accountable. Failure to do so, as warned by the U.S. Holocaust Memorial Museum, may lead to a full-blown genocide.*

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\* John Peters Humphrey Fellow at Harvard Law School; former Executive Director of the Rule of Law Program and Lecturer in Law at Stanford Law School. I am grateful for valuable feedback from participants at the Association of American Law Schools' annual conference, particularly the New Voices in International Human Rights panel, as well as helpful conversations with contributors to seminars and panels at the University of Houston Law Center, Cardozo Law School, Queen's University Faculty of Law, and National University of Ireland-Galway School of Law. I also owe thanks to the talented and thoughtful editors of the *Michigan Journal of International Law*, especially Avaskhan Assanaliyev, Matt Azzopardi, Grace Bruce, Jessica Carter, Nina Gerdes, Benjamin Lehman, Marcus Levy, Tyler Loveall, Erica Paul, Vishal Sharoff, and Victoria Walker. Views and errors are my own.

## INTRODUCTION

Afghanistan has been the scene of atrocities and mass violence for about four decades.<sup>1</sup> In 2020, in response to the country's mounting human rights abuses, the Appeals Chamber of the International Criminal Court ("ICC" or "Court") granted the Office of the Prosecutor's ("OTP" or "Prosecutor") request to investigate alleged violations of the Rome Statute ("Statute")<sup>2</sup> in Afghanistan.<sup>3</sup> The probe, however, was delayed by the Afghan authorities' deferral application.<sup>4</sup>

The OTP's request focused on certain war crimes and crimes against humanity allegedly committed by various actors in Afghanistan since May 1, 2003.<sup>5</sup> Perhaps the request's biggest omission was the crime of "[p]ersecution against any identifiable group or collectivity on...ethnic [and] religious...grounds."<sup>6</sup> In particular, the dearth of information regarding the widespread and systematic attacks against the Hazara population in the OTP's request was conspicuous.<sup>7</sup>

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1. See, e.g., PATRICIA GOSSMAN & SARI KOUVO, TELL US HOW THIS ENDS: TRANSITIONAL JUSTICE AND PROSPECTS FOR PEACE IN AFGHANISTAN 22–24 (2013), [http://www.afghanistan-analysts.org/wp-content/uploads/2013/06/2013-06\\_AAN\\_TransitionalJustice2.pdf](http://www.afghanistan-analysts.org/wp-content/uploads/2013/06/2013-06_AAN_TransitionalJustice2.pdf).

2. See Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute].

3. See Situation in the Islamic Republic of Afghanistan, Case No. ICC-02/17-138, Judgment on the Appeal Against the Decision on the Authorisation of an Investigation, ¶ 79 (Mar. 5, 2020). As a state party to the Rome Statute, the ICC's founding treaty, Afghanistan is subject to the Court's jurisdiction over crimes against humanity, war crimes, and genocide. For further background on the ICC investigation in Afghanistan, see Mehdi J. Hakimi, *The International Criminal Court's Afghan Dilemma: Complementarity and the Quest for Justice in Afghanistan*, 60 COLUM. J. TRANSNAT'L L. 315 (2022). See also Mehdi J. Hakimi, *The ICC and Afghanistan – Time to End Impunity?*, YALE J. INT'L L. F. (Aug. 31, 2018), <http://www.yjil.yale.edu/forum-the-icc-and-afghanistan-time-to-end-impunity>.

4. See Situation in the Islamic Republic of Afghanistan, Case No. ICC-02/17-139, Notification to the Pre-Trial Chamber of the Islamic Republic of Afghanistan's Letter Concerning Article 18(2) of the Statute, ¶ 2 (Apr. 15, 2020). The Afghan government claimed that it was willing and able to genuinely carry out the necessary investigations and prosecutions and, based on the principle of complementarity, the OTP should defer to Afghanistan's domestic proceedings.

5. See Situation in the Islamic Republic of Afghanistan, Case No. ICC-02/17-7-Red, Public Redacted Version of Request for Authorisation of an Investigation Pursuant to Article 15, ¶ 1 (Nov. 20, 2017), [http://www.icc-cpi.int/CourtRecords/CR2017\\_06891.pdf](http://www.icc-cpi.int/CourtRecords/CR2017_06891.pdf). These Rome Statute violations included the following war crimes: murder; intentionally directing attacks against the civilian population, humanitarian personnel, and protected objects; enlisting children under fifteen or using them in hostilities; and killing or wounding treacherously a combatant adversary. *Id.* ¶ 123. The Office of the Prosecutor ("OTP") also focused on the crimes against humanity of murder; imprisonment or other severe deprivation of physical liberty; and persecution against any identifiable group or collectivity on political and gender grounds. *Id.* ¶ 72.

6. Rome Statute, *supra* note 2, art. 7(1)(h).

7. See *infra* Part III.

One of the main ethnic groups in Afghanistan,<sup>8</sup> Hazaras are Farsi-speaking<sup>9</sup> and mostly Shi'a Muslims in a predominantly Sunni Muslim country.<sup>10</sup> Distinguishable by their Asiatic appearance,<sup>11</sup> Hazaras constitute a majority of the population in the central regions of Afghanistan (Hazara-jat) and comprise significant numbers in other key areas, such as Kabul and Balkh.<sup>12</sup> The history of Hazaras in Afghanistan is characterized by suffering. They have endured recurring massacres, enslavement, and forced displacement.<sup>13</sup> The recent escalation of assaults on Hazaras is particularly troubling in light of Afghanistan's accession to the Rome Statute in 2003.<sup>14</sup>

Emboldened by a longstanding culture of impunity, perpetrators have attacked Hazaras in a widespread and systematic manner in recent years. Besides frequent summary executions, abductions, and forced displacement, thousands of Hazara civilians have been killed and injured during assaults on hospitals, schools, places of worship, public transportation, work sites, weddings, sports clubs, markets, cultural events, social gatherings, and properties throughout Afghanistan.<sup>15</sup>

I argue that these recent and ongoing atrocities constitute a crime against humanity under the Rome Statute. Specifically, I show that there is a reasonable basis to believe that the attacks against Hazaras satisfy the elements of the crime of persecution based on ethnic and religious grounds under article 7(1)(h) of the Statute. Sustained failure to meaningfully address

8. The Hazaras were once the largest ethnic group in Afghanistan, constituting nearly two-thirds of the overall population before the 19th century. *See, e.g., Hazaras*, MINORITY RTS. GRP. INT'L (Dec. 2021), <http://minorityrights.org/minorities/hazaras>. The Hazara population, however, declined significantly as a result of forced migration, land grabbing, massacres, and persecution by Afghan state authorities. *Id.* Despite the absence of a recent and reliable national census, Hazaras are estimated to comprise around 20 percent of the population. *See, e.g.,* Tim Youngs, *Afghanistan: The Culmination of the Bonn Process 7* (U.K. House of Commons Libr., Research Paper No. 05/72, 2005), <http://researchbriefings.files.parliament.uk/documents/RP05-72/RP05-72.pdf>.

9. Hazaras speak a particular dialect of Farsi, known as Hazaragi, with a distinct accent.

10. *E.g.,* U.N. ASSISTANCE MISSION IN AFG., AFGHANISTAN: PROTECTION OF CIVILIANS IN ARMED CONFLICT MIDYEAR UPDATE: 1 JANUARY TO 30 JUNE 2021, at 5 n.12 (2021) [hereinafter UNAMA MIDYEAR REPORT 2021] ("Most Shi'a Muslims in Afghanistan are of Hazara ethnicity and form a minority of the primarily Sunni Muslim Afghan population.").

11. *See, e.g., Nomad Assault Fuels Afghan Disarray*, WIRED (May 27, 2010), <http://www.wired.com/2010/05/nomad-assault-fuels-afghan-disarray>; Abdul Karim Hekmat & Ben Doherty, *Resurgent Taliban Targets Afghan Hazara as Australia Sends Them Back*, THE GUARDIAN (Dec. 16, 2014), <http://www.theguardian.com/australia-news/2014/dec/17/resurgent-taliban-targets-afghan-hazara-as-australia-sends-them-back>.

12. *See Massacres of Hazaras in Afghanistan*, HUM. RTS. WATCH (Feb. 1, 2001), <http://www.hrw.org/report/2001/02/01/massacres-hazaras-afghanistan#2263>.

13. *See infra* Part I.

14. *See infra* Part III.

15. *See infra* Part III.

the increasingly perilous predicament of Hazaras will engender even more calamitous consequences and further erode trust in the international criminal justice system.<sup>16</sup>

The article proceeds in five parts. Part I contextualizes the discussion with a brief history of some earlier atrocities committed against Hazaras. Part II analyzes the crime against humanity of persecution under the Rome Statute and the requisite evidentiary standard for launching a formal probe. Part III examines the recent and ongoing attacks on Hazaras which fall within the Court's jurisdiction. Part IV applies the relevant legal framework to the situation of Hazaras and shows that the persecution of Hazaras has been, and continues to be, committed with impunity. Part V concludes.

### I. A BRIEF HISTORICAL CONTEXT

The persecution of Hazaras in Afghanistan is not a new development. Rather, it has been a grim reality for centuries. The Hazara people have been oppressed and marginalized under various regimes throughout Afghanistan's history.<sup>17</sup> This Part offers a historical backdrop to contextualize the ongoing atrocities perpetrated against this ethnic group. As discussed in this section, Hazaras were not only targeted with overtly violent acts such as massacres, but also forced displacement and starvation.

In the late nineteenth century, in a bid to consolidate his power, the Pashtun ruler Abdur Rahman Khan conducted a *pogrom* against the Hazaras.<sup>18</sup> Under Abdur Rahman Khan's brutal regime, approximately 60 percent of Hazaras were massacred, enslaved, or forced into exile from their lands.<sup>19</sup> Under a policy of forced displacement, which has been redeployed by subsequent Afghan rulers, Hazara lands were confiscated and given to Pashtun settlers and nomads from other parts of the country, forcing Hazaras to take shelter in the central mountainous region of the country.<sup>20</sup>

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16. The investigation of atrocities against Hazaras must also encompass relevant incidents outside Afghanistan including similar attacks on Hazaras in Pakistan. *See, e.g.*, Saroop Ijaz, *Pakistan's Hazara Community Under Attack*, HUM. RTS. WATCH (Apr. 30, 2018), <http://www.hrw.org/news/2018/04/30/pakistans-hazara-community-under-attack>; Mobeen Azhar, *'Hell on Earth': Inside Quetta's Hazara Community*, BBC NEWS (May 1, 2013), <http://www.bbc.com/news/world-asia-22248500>.

17. For an in-depth study of the Hazara people, see, for example, SAYED ASKAR MOUSAVI, *THE HAZARAS OF AFGHANISTAN: AN HISTORICAL, CULTURAL, ECONOMIC AND POLITICAL STUDY* (1997); NIAMATULLAH IBRAHIMI, *THE HAZARAS AND THE AFGHAN STATE: REBELLION, EXCLUSION AND THE STRUGGLE FOR RECOGNITION* (2017).

18. AUSTL. GOV'T DEP'T OF FOREIGN AFFS. & TRADE, *DFAT THEMATIC REPORT: HAZARAS IN AFGHANISTAN 3-4* (2017) [hereinafter *DFAT REPORT*].

19. *Id.* at 4.

20. *See, e.g.*, Yahia Baiza, *The Hazaras of Afghanistan and Their Shi'a Orientation: An Analytical Historical Survey*, 7 J. SHI'A ISLAMIC STUD. 151, 153 (2014); *see also* Kenneth J. Cooper, *Taliban Massacre Based on Ethnicity*, WASH. POST (Nov. 28, 1998), <http://www.washingtonpost.com/archive/politics/1998/11/28/taliban-massacre-based-on->

To survive the *pogrom*, many Hazaras were also forced to convert to Sunni Islam or emigrate to neighboring countries, including Pakistan and Iran.<sup>21</sup>

Hazaras continued to face significant social, economic, and political discrimination in the twentieth century.<sup>22</sup> Following the Soviet Union's withdrawal from Afghanistan in 1989, the country devolved into a vicious civil war.<sup>23</sup> The *mujahedeen*'s brief stint in power and the Taliban's subsequent rule led to further atrocities against Hazaras.

In February 1993, the militias of Jamiat-e Islami and Ittihad-e Islami attacked the predominantly Hazara-populated Afshar neighborhood in west Kabul.<sup>24</sup> From February 7-10, these militia forces launched artillery and rocket fire at civilian homes in Afshar.<sup>25</sup> The ground assault started on February 11 when "a massive barrage of rockets and artillery" hit residential homes.<sup>26</sup> The attackers even fired rockets into crowds of fleeing civilians.<sup>27</sup> Once inside Afshar, the militia forces quickly began arresting and killing unarmed Hazara civilians,<sup>28</sup> including women, children,<sup>29</sup> the disabled, and the elderly.<sup>30</sup>

During the assault, the militia forces explicitly confirmed the ethnic motivations behind their attacks on the Hazaras. For example, Hazara civilians who were tied up against a wall were told, "whether you are a civilian or not a civilian, you are Hazara," and "this is your graveyard."<sup>31</sup> A commander also told a fleeing Hazara family, "I'll teach you a lesson you'll never forget, for all of history" and then proceeded to later kill one family member and burn down their house.<sup>32</sup> While pillaging Hazara homes, the attackers told the residents, "You Hazaras . . . don't deserve these things.

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ethnicity/efe15f81-abad-4e57-96f1-046cc59d1d48 ("[A] Pashtun ruler conducted a pogrom against Hazaras and confiscated their farmlands, handing them to fellow Pashtuns.").

21. See, e.g., Baiza, *supra* note 20, at 153.

22. See, e.g., DFAT REPORT, *supra* note 18, at 3–4.

23. See, e.g., KRISTINA ALEKSEYEVA ET AL., AFG. LEGAL EDUC. PROJECT, STAN. L. SCH., AN INTRODUCTION TO THE LAWS OF AFGHANISTAN 89–90 (4th ed. 2017).

24. HUM. RTS. WATCH, BLOOD-STAINED HANDS: PAST ATROCITIES IN KABUL AND AFGHANISTAN'S LEGACY OF IMPUNITY 71, 73 (2005).

25. *Id.* at 75.

26. *Id.* at 76.

27. *Id.* at 80.

28. *Id.* at 78, 82–83, 95–96.

29. See, e.g., *id.* at 84–85, 88–89 (noting the stabbing to death of two women by militiamen in addition to other killings of women); see also, e.g., *id.* at 83, 86 (noting Ittihad gunmen randomly beating and killing Hazara boys at check posts); *id.* at 91 (referring to a small cemetery containing the corpses of eleven boys).

30. See, e.g., *id.* at 85, 87 (noting that gunmen beat and fired at a disabled Hazara man as well as beat, tortured, and decapitated an elderly Hazara).

31. *Id.* at 84.

32. *Id.* at 79.

We deserve these things.”<sup>33</sup> The militiamen also used disparaging terms against Hazaras.<sup>34</sup>

Another key feature of the attack on Afshar was the mutilation of civilians. Witnesses recounted seeing many corpses on the roads, some decapitated, dismembered, or with severed limbs.<sup>35</sup> The assailants even beheaded children and the elderly, and cut off genitals and placed them in the victim’s mouth.<sup>36</sup> Evidence of mutilations and torture were also confirmed by Hazaras who were ordered by the militia forces to “go and collect your corpses in Afshar, go collect your dead.”<sup>37</sup>

In some cases, the militiamen prevented the burial of decapitated and dismembered victims because they “wanted to leave some evidence of their crimes—to terrorize the local population.”<sup>38</sup> For instance, they refused to allow the burial of one woman saying, “[I]et her lie here. Let the other people learn from this, and fear us.”<sup>39</sup> On another occasion, they disallowed the burial of a young man, saying, “[t]here are many others like him, you can’t spend all your time burying people. . . . There are others who will be eaten by dogs, let him be eaten too.”<sup>40</sup>

The militia forces also systematically sought houses inhabited by Hazaras for the purpose of looting, harassment, and beating.<sup>41</sup> Assailants incorporated the victims in the abuse by forcing captured civilians to assist them in looting property as porters.<sup>42</sup> Items that were difficult to steal were destroyed.<sup>43</sup> Meanwhile, the militiamen played drums and appeared to enjoy their assault on defenseless Hazara civilians.<sup>44</sup>

The attackers also abducted Hazaras and coerced them into forced labor, essentially as slaves.<sup>45</sup> For example, one Hazara man was taken to Paghman where he was kept “as a slave, for the next three years,” working on

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33. *Id.* at 88.

34. *See, e.g., id.* at 79 (describing a commander calling a fleeing Hazara family “Qalfak Chapat,” a derogatory term for Hazaras referring to their Asiatic facial features).

35. *See, e.g., id.* at 81, 86–87.

36. *See, e.g., id.* at 87.

37. *See id.* at 86–87.

38. *Id.* at 89.

39. *Id.*

40. *Id.*

41. *See, e.g., id.* at 82, 85–86.

42. *See id.* at 86, 90.

43. *See, e.g., id.* at 90 (“They took everything valuable. What they couldn’t take, they broke into pieces—for instance, the refrigerators.”).

44. *See, e.g., id.* at 90–91 (Some witnesses “saw the troops walking by, playing on drums, laughing” during the pillage, and according to another witness who was severely beaten and detained, “they entered into houses, to search, or to shoot people. They were laughing, enjoying themselves.”).

45. *Id.* at 86.

the base of a militia commander.<sup>46</sup> This person was kept in a container along with thirty-nine other Hazaras,<sup>47</sup> including many children who later developed mental disorders.<sup>48</sup> The captives were forced to work during the day and thrown into the container at night<sup>49</sup> where they were “manacled . . . with chains on the legs, two of [them] to a chain.”<sup>50</sup> Some of the Hazaras died “due to disease” while in captivity.<sup>51</sup>

Because investigatory documents were destroyed, it is extremely difficult to accurately determine the extent of the carnage in the Afshar incident.<sup>52</sup> It is, however, estimated that approximately 1,000 Hazara civilians were killed, including women, children, and old men.<sup>53</sup> Additionally, around 800 Hazaras were abducted by the assailants, mostly men and boys between the ages of ten and thirty-five.<sup>54</sup> While some abductees were released after ransom payments, approximately 700 to 750 Hazaras never returned.<sup>55</sup> Moreover, about 5,000 homes were looted in the Afshar neighborhood.<sup>56</sup> According to Human Rights Watch, the assault on Afshar was “marked by widespread and serious violations of international humanitarian law” including “attacks on the civilian population and civilian objects, killings, torture and other inhumane treatment, rape, abductions and forced disappearances, forced labor, and pillage and looting.”<sup>57</sup>

The targeting of Hazaras continued under the Taliban regime. For example, in September 1997, the Taliban deliberately and arbitrarily killed approximately seventy Hazara civilians, including women and children, in Qezelabad village near Mazar-e Sharif, Balkh province.<sup>58</sup> The pattern of extreme brutality deployed in Afshar continued in this incident as well. For

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46. *Id.* at 92–93.

47. *Id.* at 93.

48. *See, e.g., id.* at 94–95 (noting that an eight-year-old boy was imprisoned by the militiamen for three years).

49. *Id.* at 93.

50. *Id.*

51. *Id.*

52. Documents produced by a commission mandated to investigate the attack were destroyed after Kabul fell to the Taliban in 1996. *Id.* at 96. The commission was formed after the Rabbani government faced pressure by Hazara community leaders to catalog the destruction in order to pay out some form of compensation. *Id.* at 95.

53. *See, e.g.,* Hannibal Travis, *Freedom or Theocracy?: Constitutionalism in Afghanistan and Iraq*, NW. J. INT’L HUM. RTS., Spring 2005, at 1, 11. Around seventy to eighty civilians were killed in the streets alone. HUM. RTS. WATCH, *supra* note 24, at 96.

54. HUM. RTS. WATCH, *supra* note 24, at 95–96. Relatively few abductees were released following ransom payments. *Id.* at 96.

55. *Id.*

56. *Id.*

57. *Id.* at 98.

58. AMNESTY INT’L, AFGHANISTAN: THE HUMAN RIGHTS OF MINORITIES 4 (1999), <http://www.amnesty.org/en/documents/asa11/014/1999/en>.



instance, the perpetrators decapitated some children, gouged out their eyes with bayonets, and broke their arms and hands with stones.<sup>59</sup>

In August 1998, the Taliban committed arguably the worst recorded ethnic massacre in Afghanistan's recent history in Mazar-e Sharif.<sup>60</sup> Within the first few hours of entering the city on August 8, the Taliban began a bid to terrorize the local population through a "killing frenzy."<sup>61</sup> They indiscriminately shot "anything that moved,"<sup>62</sup> including humans and animals,<sup>63</sup> and turned cars into weapons, racing over fallen victims.<sup>64</sup> Having closed the city to journalists, foreigners, and humanitarian relief organizations,<sup>65</sup> the Taliban methodically executed between 2,000 and 8,000 Hazara civilians.<sup>66</sup>

Searching house to house, the Taliban identified Hazaras and proceeded to slit their throats in front of their families while executing others by firing squad.<sup>67</sup> The victims included women, children, and the elderly, who attempted to flee.<sup>68</sup> Hazara girls and women were raped and abducted during the onslaught.<sup>69</sup> The Taliban also "took away young women as *Kaniz* (maid-servant)" for their militiamen.<sup>70</sup> Many Hazaras were detained and crammed

59. *Id.*

60. *See, e.g.,* Cooper, *supra* note 20.

61. *Afghanistan: The Massacre in Mazar-i Sharif*, HUM. RTS. WATCH (Nov. 1998), <http://www.hrw.org/legacy/reports98/afghan/Afrep00.htm>.

62. *Id.*

63. *See, e.g.,* Dexter Filkins, *Afghans Report Ethnic Massacre by Taliban*, L.A. TIMES (Sept. 18, 1998), <http://www.latimes.com/archives/la-xpm-1998-sep-18-mn-24021-story.html> ("[T]here was a kind of frenzied killing spree of everybody and anybody that was on the street, including animals.").

64. *See* Cooper, *supra* note 20.

65. *Afghanistan: The Massacre in Mazar-i Sharif*, *supra* note 61.

66. *See, e.g.,* Filkins, *supra* note 63 ("Taliban fighters focused exclusively on an ethnic minority known as the Hazaras, picked out by their distinctive Mongolian features." Indeed, "Taliban fighters were so obsessed with finding Hazara men that they lifted the veils of many women." According to the U.N., "as many as 6,000 Hazaras may have been killed by the Taliban . . ."); *see also* Hekmat & Doherty, *supra* note 11 ("In 1998 Taliban extremists drove Hazara in their thousands from the city into the surrounding Koh-e-baba mountains. Eight thousand were slaughtered, while others died in the cold of the hills."); Travis, *supra* note 53, at 12 ("The . . . Taliban slaughtered up to 8,000 civilians in a frenzy of killing and rape directly [sic] mostly at the Shia Hazara."); Press Release, Security Council, Security Council Concerned by Deteriorating Situation in Afghanistan, Supports Establishment of Unit to Deter Human Rights Violations, U.N. Press Release SC/6608 (Dec. 8, 1998), <http://www.un.org/press/en/1998/19981208.sc6608.html> (noting that testimonies received by U.N. agencies confirmed the "indiscriminate targeting of the Hazara community" and that "reports of mass killings of civilians belonging to the Hazara minority . . . were a cause for serious concern").

67. Cooper, *supra* note 20; *see also* AMNESTY INT'L, *supra* note 58, at 5 ("About 70 men were reportedly executed by having their throats slit in Mazar-e Sharif.").

68. *Id.* at 4.

69. *Afghanistan: The Massacre in Mazar-i Sharif*, *supra* note 61.

70. AMNESTY INT'L, *supra* note 58, at 5.

into tractor-trailers, where they perished from asphyxiation or heat stroke.<sup>71</sup> The dead bodies were hauled by trucks and dumped “in heaps like trash.”<sup>72</sup> Corpses were not allowed to be buried until they rotted and were devoured by stray dogs.<sup>73</sup>

The massacre of Hazaras was characterized as “an orgy of killing driven by racial and religious prejudice” in a country “teetering on the edge of . . . a genocide.”<sup>74</sup> Those Hazaras who survived the Taliban onslaught faced grim choices: (i) forsake their religion and become Sunni, (ii) leave Afghanistan, (iii) pay a special tax imposed on non-Muslims, or (iv) face death.<sup>75</sup> The Taliban tried to conceal the extent of the carnage by, *inter alia*, barring human rights investigators and journalists from visiting Mazar-e Sharif.<sup>76</sup> However, slowly emerging evidence, including speeches by senior Taliban officials like Balkh governor Mullah Manan Niazi, confirmed the Taliban’s intent to target Hazara civilians as part of an organizational policy.<sup>77</sup>

After this major incident, the Taliban continued to commit ethnic massacres against Hazaras. In May 1999, after capturing the Hazara-populated province of Bamiyan, the Islamist militants killed and abducted hundreds of Hazara civilians after a “disturbing pattern similar to the abuses committed in . . . Mazar-e Sharif.”<sup>78</sup> Moreover, as with the Afshar incident, the Taliban

71. Cooper, *supra* note 20.

72. *Id.*

73. *Id.*; see also Filkins, *supra* note 63 (describing that many corpses were unrecognizable because “[t]he dogs had begun to eat them”).

74. Cooper, *supra* note 20.

75. *Id.*; see also AMNESTY INT’L, *supra* note 58, at 3 (explaining that the Taliban informed the remaining Hazaras to “convert to Sunni Islam and to attend prayers five times a day, for their own sake, ‘unless they wanted to be treated like dogs and shot on the spot’”).

76. See, e.g., AMNESTY INT’L, *supra* note 58, at 4 (“Despite persistent reports that *Taliban* guards had deliberately and systematically killed thousands of ethnic Hazara civilians in the days following their military takeover of Mazar-e Sharif in August 1998, no journalists or independent monitors were allowed to go there.”); see also Cooper, *supra* note 20. The Taliban purport to have committed the pogrom in retaliation for an unsuccessful earlier assault on the city in May 1997, when many Taliban fighters were killed. However, those Taliban troops were *not* killed by Hazaras; rather, they were killed by ethnic Uzbeks. See *id.* Graves of Taliban fighters reportedly captured in the failed attack on Mazar were found in Shebarghan in the northern province of Jowzjan. See AMNESTY INT’L, *supra* note 58, at 4.

77. See, e.g., *Massacres of Hazaras in Afghanistan*, *supra* note 12 (noting that governor Mullah Manan Niazi “delivered public speeches in which he termed the Hazaras infidels and threatened them with death if they did not convert to Sunni Islam or leave Afghanistan”); see also Hekmat & Doherty, *supra* note 11 (“‘Hazaras are not Muslim. Killing them is not a sin,’ Mullah Manan Niazi, the Taliban governor of Mazar-e-Sharif, said in a public address to his followers.”). A core element of crimes against humanity concerns whether an attack was “widespread or systematic.” Rome Statute, *supra* note 2, art. 7(1). The systematicity of an attack may be inferred, *inter alia*, from the existence of an organizational policy. See *infra* Part IV.D.

78. AMNESTY INT’L, *supra* note 58, at 5.

systematically destroyed Hazara properties, burning more than 200 homes to the ground in various villages across Bamiyan.<sup>79</sup>

In addition, the Taliban also used violence to dispossess the Hazaras of their land. Using another familiar tactic from the playbook of prior Pashtun rulers, they confiscated Hazara lands and forced their displacement.<sup>80</sup> The Taliban encouraged Kuchis (Pashtun nomads) to settle on these lands.<sup>81</sup> Around 500 armed men under Kuchi leadership enforced the population transfer in various areas, including Sarcheshma, Laal, Dasht-e Navor, Panj Awe, and along the road between Panj Awe and Behsood.<sup>82</sup> Backed by the Taliban, Kuchis regularly attacked Hazara properties by, for example, “taking possession of the wheatfields from the Hazara farmers setting *Kuchi* flocks to graze there and treating the owners brutally if they raise[d] objection.”<sup>83</sup> The emboldened Kuchis even claimed compensation from Hazaras for past use of the newly confiscated land.<sup>84</sup> Such attacks on Hazara lands and properties persist to this day, denying them stable access to land and safety.<sup>85</sup>

In May 2000, the Taliban massacred Hazara civilians near the Robatak pass on the border between Baghlan and Samangan provinces.<sup>86</sup> At least thirty-one bodies were found at just one execution site,<sup>87</sup> and three additional gravesites were reportedly spotted near the Robatak pass.<sup>88</sup> The deceased civilians, who included village elders,<sup>89</sup> had been unlawfully detained for four months before being summarily executed.<sup>90</sup> As with prior incidents, many of the victims were tortured before their killings,<sup>91</sup> with many severely beaten with electric cables and forced to stand outside in sub-zero temperatures and snow, sometimes resulting in frostbite and amputations.<sup>92</sup>

In January 2001, the Taliban committed another massacre against Hazara civilians in Yakaolang district, Bamiyan province.<sup>93</sup> During a five-day

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79. *Id.* at 6.

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *See infra* Part III.N, III.P.

86. *See Massacres of Hazaras in Afghanistan, supra* note 12.

87. *Id.* The victims had their hands bound behind their backs and were tied together by their forearms in groups of three. The bodies were lying on the ground face down. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.* The Taliban also tried to manipulate the limbs of some victims as if they were marionettes. *Id.*

93. *Id.*

assault, the Taliban detained approximately 300 Hazara civilians,<sup>94</sup> herding them to multiple assembly points and then shooting them in public view with firing squads.<sup>95</sup> At least 170 people were confirmed dead, including employees of local hospitals and humanitarian aid organizations,<sup>96</sup> as well as delegations of Hazara elders who had tried to intercede.<sup>97</sup> As with the prior attacks, the Taliban engaged in extreme brutality and mutilations, even against children.<sup>98</sup> The carnage and abuse forced thousands of residents to flee Yakaolang and take refuge elsewhere.<sup>99</sup> Like in prior massacres of Hazaras, the Taliban blocked journalists from visiting Yakaolang, to conceal evidence of the atrocities committed.<sup>100</sup>

The Taliban also targeted Hazaras through policies designed to starve the population, prevent access to humanitarian relief, and cripple their local economy. For instance, the Taliban imposed blockades on Hazarajat, which sealed off supply routes and resulted in the starvation of civilians and hundreds of hunger deaths, including those of children and the elderly.<sup>101</sup> Efforts by international aid agencies to deliver food were violently thwarted by the Taliban, who resorted to bombing runways to prevent U.N. planes from airlifting food to Hazara areas.<sup>102</sup> To survive, Hazaras were forced to eat mountain grasses and suffered from health epidemics.<sup>103</sup> According to U.N. officials, “the Taliban blockade ha[d] shattered the fragile Hazara economy.”<sup>104</sup>

While the ICC lacks temporal jurisdiction over crimes committed before May 1, 2003, in Afghanistan, the aforementioned examples of recurring massacres and large-scale abuses against Hazaras provide an important historical backdrop to contextualize the recent and ongoing attacks targeting

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.* The Taliban also indiscriminately killed other Hazara civilians including herders that they encountered on their path. *Id.*

98. *See, e.g., id.* (“One of the bodies was that of a seventeen-year-old boy, Mir Ali, much of whose skin had been removed either prior to or after his death.”).

99. *Id.*

100. *Id.*

101. *See, e.g.,* Dexter Filkins, *Afghans Starve in Siege from Within*, L.A. TIMES (May 8, 1998), <http://www.latimes.com/archives/la-xpm-1998-may-08-mn-47605-story.html> (In 1998, U.N. officials received reports of 106 hunger deaths and “fear[ed] that the actual total [was] much higher.” According to the U.N. World Food Program, about 160,000 Hazaras faced starvation in 1998.).

102. *See id.* (“[W]hen the U.N. launched an airlift to bring food to the Hazara city of Bamian, Taliban planes bombed the runway. The planes stopped coming.” Relief workers faced an “extraordinary” challenge “because the Taliban ha[d] blocked all U.N. attempts to ferry in supplies.”).

103. *Id.* For instance, a measles epidemic due in part to malnutrition had degraded Hazara children’s immune systems. *Id.*

104. *Id.*

this group. Crucially, these attacks are not isolated incidents, but rather reflect a consistent “pattern of efforts to intimidate” and persecute Hazaras as part of a deliberate state or organizational policy.<sup>105</sup> The remainder of the article will examine the recent assaults on Hazaras in light of the Rome Statute, showing that, despite calls to prevent such incidents,<sup>106</sup> the atrocities amount to persecution on ethnic and religious grounds and, thus, constitute a crime against humanity.

## II. PERSECUTION UNDER THE ROME STATUTE

This Part analyzes the crime against humanity of persecution under the Rome Statute and the requisite evidentiary standard for commencing a formal investigation.

### A. Defining Persecution

Article 7(1)(h) of the Rome Statute, in conjunction with article 7(2)(g), defines the crime against humanity of persecution as “the intentional and severe deprivation of fundamental rights . . . by reason of the identity of the group”<sup>107</sup> based “on political, racial, national, *ethnic*, cultural, *religious*, gender . . . or other grounds.”<sup>108</sup> Persecution must be in connection with “any crime within the [Court’s] jurisdiction”<sup>109</sup> and must be “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”<sup>110</sup>

The ICC further clarifies the crime of persecution in the *Elements of Crimes*.<sup>111</sup> The *Elements of Crimes* was adopted pursuant to article 9 of the Rome Statute to “assist the Court in the interpretation and application of articles 6, 7 and 8”<sup>112</sup> and constitutes a core component of the ICC’s first tier

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105. *Massacres of Hazaras in Afghanistan*, *supra* note 12. According to Human Rights Watch, the massacres of Hazaras “have frequently been of such a scale and duration that they could not have been carried out without the knowledge and consent of senior Taliban commanders.” *Id.* These recurring incidents thus “raise grave concerns about the security of civilian populations in Taliban-administered areas, particularly Hazaras.” *Id.*

106. *See, e.g., id.* (evidencing Human Rights Watch calling upon the U.N. to investigate the massacres and large-scale abuses committed by the Taliban against Hazara civilians).

107. Rome Statute, *supra* note 2, art. 7(2)(g).

108. *Id.* art. 7(1)(h) (emphasis added).

109. *Id.*

110. *Id.* art. 7(1).

111. Preparatory Commission for the International Criminal Court, Finalized Draft Text of the Elements of Crimes, U.N. Doc. PCNICC/2000/1/Add.2 (Nov. 2, 2000) [hereinafter *Elements of Crimes*].

112. Rome Statute, *supra* note 2, art. 9(1).

of applicable law.<sup>113</sup> To establish criminal liability for persecution, the following six elements must be proved:

1. The perpetrator was severely deprived, contrary to international law, one or more persons of fundamental rights.
2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.
3. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law.
4. The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court.
5. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
6. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.<sup>114</sup>

The first four elements are unique to the crime of persecution. The fifth and sixth elements are contextual or common elements that apply to all types of crimes against humanity, including persecution. The two common elements “describe the context in which the conduct must take place.”<sup>115</sup> All six constituent elements of the crime of persecution will be further examined in Part IV, as they relate to the situation of Hazaras in Afghanistan.

### B. *The Evidentiary Standard*

With respect to the evidentiary requirement for launching an investigation, pursuant to article 53(1)(a) of the Rome Statute, the Prosecutor must consider whether “[t]he information available . . . provides a *reasonable basis to believe* that a crime within the jurisdiction of the Court has been or is being committed.”<sup>116</sup>

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113. Pursuant to the Rome Statute’s provisions governing “applicable law,” the ICC is required to apply “[i]n the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence.” *Id.* art. 21(1)(a) (emphasis added). As such, the Elements of Crimes takes priority over other applicable authorities such as relevant treaties, general principles and rules of law, and the Court’s prior jurisprudence. *Id.* art. 21(1)–(2).

114. Elements of Crimes, *supra* note 111, at 7.

115. *See id.* at 9. In particular, these two contextual elements “clarify the requisite participation in and knowledge of a widespread or systematic attack against a civilian population.” *Id.*

116. Rome Statute, *supra* note 2, art. 53(1)(a) (emphasis added).

Unlike other evidentiary standards in the Statute, which focus on the criminal responsibility of an individual,<sup>117</sup> the “reasonable basis to believe” standard has “a more limited scope and serves a different purpose.”<sup>118</sup> The standard is concerned with the “legality and appropriateness of the investigations”<sup>119</sup> and is meant to prevent “unwarranted, frivolous, or politically motivated investigations.”<sup>120</sup>

The “reasonable basis to believe” threshold is the lowest evidentiary standard in the Court’s statutory framework.<sup>121</sup> The information at this pre-investigative stage is “neither expected to be ‘comprehensive’ nor ‘conclusive,’ if compared to evidence gathered during the investigation.”<sup>122</sup> Put differently, the information “certainly need not point towards only one conclusion.”<sup>123</sup> All that is needed is “a sensible or reasonable justification for a belief that a crime falling within the jurisdiction of the Court ‘has been or is being committed.’”<sup>124</sup> Indeed, pursuant to the wording of article 53(1) and the object and purpose of the OTP’s assessment under this provision, the Prosecutor must consider all available information unless “that information is manifestly false.”<sup>125</sup>

At this preliminary stage of the proceeding, “judicial scrutiny bears on mere ‘information,’ as opposed to ‘evidence.’”<sup>126</sup> Moreover, the information is necessarily of “a limited and very general nature” given the absence of an opportunity to collect evidence and verify the facts as part of a

117. The Statute has three higher evidentiary standards at later stages of the proceedings that, unlike the article 53 standard, infringe upon individual rights: (i) “reasonable grounds to believe that the person has committed a crime” (to issue an arrest warrant under article 58); (ii) sufficient evidence to establish “substantial grounds to believe that the person committed each of the crimes charged” (to confirm charges under article 61(7)); and (iii) “beyond reasonable doubt” (to convict the accused at trial under article 66(3)). Situation in the Republic of Kenya, Case No. ICC-01/09-19-Corr, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation, ¶ 28 (Mar. 31, 2010).

118. *Id.* ¶ 32.

119. Situation in the Islamic Republic of Afghanistan, Case No. ICC-02/17-33, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation, ¶ 36 (Apr. 12, 2019).

120. Situation in the Republic of Kenya, Case No. ICC-01/09-19-Corr, ¶ 32.

121. Situation in the Islamic Republic of Afghanistan, Case No. ICC-02/17-33, ¶ 31; *see also* Situation in the Republic of Kenya, Case No. ICC-01/09-19-Corr, ¶ 27.

122. Situation in the Republic of Kenya, Case No. ICC-01/09-19-Corr, ¶ 27. This is due to the limited power of the Prosecutor at this early stage. *Id.*

123. *Id.* ¶ 34; *see also* Situation in Georgia, Case No. ICC-01/15-12, Decision on the Prosecutor’s Request for Authorization of an Investigation, ¶ 25 (Jan. 27, 2016).

124. Situation in the Republic of Kenya, Case No. ICC-01/09-19-Corr, ¶ 35 ; *see also* Situation in Georgia, Case No. ICC-01/15-12, ¶ 25.

125. *See* Situation in Georgia, Case No. ICC-01/15-12, ¶ 25; *see also* Situation on the Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia, Case No. ICC-01/13-34, Decision on the Request of the Union of the Comoros to Review the Prosecutor’s Decision not to Initiate an Investigation, ¶ 35 (July 16, 2015).

126. Situation in the Islamic Republic of Afghanistan, Case No. ICC-02/17-33, ¶ 36.

formal investigation.<sup>127</sup> The “reasonableness” of the basis-to-believe standard is assessed through the inherent quality of the available information (e.g., completeness, relevance, and consistency), as well as the authoritativeness of the source.<sup>128</sup>

To meet the “reasonable basis to believe” standard for a *proprio motu* investigation, the Prosecutor must provide a “statement of the facts” concerning the alleged crime.<sup>129</sup> According to Regulation 49(2), this statement of the facts must address the following three issues: (i) the location of the crimes as precisely as possible,<sup>130</sup> (ii) the time or time period of their commission,<sup>131</sup> and (iii) a description of the persons or groups involved.<sup>132</sup>

In assessing the Afghanistan situation, the ICC Pre-Trial Chamber found that the information provided by the Prosecutor in its request for authorizing the investigation (“Request”) established a reasonable basis to believe that the alleged crimes had occurred.<sup>133</sup> The OTP, however, did not make any reference to the persecution of Hazaras in its Request. This was a glaring omission by the Prosecutor. The remainder of this article will demonstrate that there is a reasonable basis for believing that the persecution of Hazaras has been, and continues to be, committed with impunity. We will first examine the evidence of the recent and ongoing attacks against Hazaras.

### III. RECENT ATTACKS ON HAZARAS

Afghanistan’s ratification of the Rome Statute in 2003 has not deterred the persecution of Hazaras.<sup>134</sup> Instead, attacks have substantially escalated, with thousands of civilians killed, injured, tortured, kidnapped, and forcibly displaced from their homes and villages across Afghanistan in the past few years alone.<sup>135</sup> The intensifying pattern of acute violence against this group has afflicted virtually every aspect of Hazara life. According to U.N. find-

127. *Id.* ¶ 39; Situation in the Islamic Republic of Afghanistan, Case No. ICC-02/17-138, Judgment on the Appeal Against the Decision on the Authorisation of an Investigation, ¶ 39 (Mar. 5, 2020).

128. Situation in the Islamic Republic of Afghanistan, Case No. ICC-02/17-138, ¶ 38; Situation in the Islamic Republic of Afghanistan, Case No. ICC-02/17-33, ¶ 38.

129. Int’l Criminal Court, Regulations of the Court, reg. 49(1)(a), U.N. Doc. ICC-BD/01-05-16 (Nov. 15, 2018) [hereinafter Regulations of the Court].

130. *Id.* reg. 49(2)(a).

131. *Id.* reg. 49(2)(b).

132. *Id.* reg. 49(2)(c).

133. Situation in the Islamic Republic of Afghanistan, Case No. ICC-02/17-33, ¶¶ 48, 60. The underlying information substantially emanated from U.N. agencies (e.g., United Nations Assistance Mission in Afghanistan) and national organs (e.g., Afghanistan Independent Human Rights Commission). *Id.* ¶ 47.

134. *The States Parties to the Rome Statute*, INT’L CRIM. CT., <http://asp.icc-cpi.int/states-parties> (last visited Nov. 19, 2022).

135. *See infra* Part III.A–P.



ings, “*the wide scope of these attacks beyond places of worship—at education centers, sports clubs, celebratory events and other social gatherings—directly impede their ability to carry out normal lives.*”<sup>136</sup> This Part provides an overview of the recent and ongoing attacks against Hazaras in Afghanistan.<sup>137</sup>

### A. Murders

Hazara civilians have been murdered in a widespread and systematic manner across Afghanistan.<sup>138</sup> As discussed in the subsequent sections of this article, Hazaras have been specifically targeted and killed in attacks on education centers,<sup>139</sup> health care facilities,<sup>140</sup> places of worship,<sup>141</sup> protests,<sup>142</sup> commemoration ceremonies,<sup>143</sup> sports halls,<sup>144</sup> cultural centers,<sup>145</sup> markets,<sup>146</sup> voter registration centers,<sup>147</sup> passenger and civilian transport vehicles,<sup>148</sup> weddings and celebratory events,<sup>149</sup> workers and work sites,<sup>150</sup> and property.<sup>151</sup>

While many incidents remain undocumented,<sup>152</sup> a cursory look at the number of civilian casualties in some of the recorded incidents in recent years further illustrates the scale of deliberate attacks on Hazaras in Afghanistan. For instance, in the first six months of 2021, the U.N. documented twenty incidents that targeted Hazaras and which resulted in 500 civilian casualties (143 killed and 357 wounded).<sup>153</sup> In 2020, the U.N. recorded ten incidents that resulted in 308 civilian casualties (112 killed and 196 wound-

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136. See, e.g., U.N. ASSISTANCE MISSION IN AFG., AFGHANISTAN: PROTECTION OF CIVILIANS IN ARMED CONFLICT ANNUAL REPORT 2018 29 (2019) [hereinafter UNAMA ANNUAL REPORT 2018] (emphasis added).

137. The recent attacks highlighted in this article are intended to be merely illustrative rather than exhaustive.

138. See *infra* Part IV.D.

139. See *infra* Part III.B.

140. See *infra* Part III.C.

141. See *infra* Part III.D.

142. See *infra* Part III.E.

143. See *infra* Part III.F.

144. See *infra* Part III.G.

145. See *infra* Part III.H.

146. See *infra* Part III.I.

147. See *infra* Part III.J.

148. See *infra* Part III.K.

149. See *infra* Part III.L.

150. See *infra* Part III.M.

151. See *infra* Part III.N.

152. See, e.g., UNAMA MIDYEAR REPORT 2021, *supra* note 10, at 13.

153. *Id.* at 5.

ed).<sup>154</sup> In 2019, the U.N. documented ten incidents resulting in 485 civilian casualties (117 killed and 368 wounded).<sup>155</sup> In 2018, the U.N. recorded nineteen incidents resulting in 747 civilian casualties (223 killed and 524 wounded).<sup>156</sup> In 2017, the U.N. documented eight incidents resulting in 418 civilian casualties (161 killed and 257 wounded).<sup>157</sup> In total, between January 1, 2017 and June 30, 2021, the U.N. documented sixty-seven incidents targeting Hazaras resulting in 2,458 civilian casualties (756 killed and 1,702 wounded).

In addition to being systematic and widespread, the assaults were extremely brutal, further reflecting the strategy to terrorize Hazaras across the country. The savagery of the assaults is evinced, *inter alia*, by the types of targets that were deliberately chosen, including maternity hospitals and girls' schools,<sup>158</sup> as well as the gruesome manner of the killings, such as beheadings, mutilations, and torture. For example, in June 2010, a police patrol in the Khas Uruzgan district of Uruzgan province discovered the bodies of eleven Hazara men with "their heads cut off and placed next to them."<sup>159</sup> According to a senior police official, "[t]his was the work of the Taliban" who "beheaded these men because they were ethnic Hazaras."<sup>160</sup> Similarly, on October 13, 2015, militants linked to the Islamic State – Khorasan Province ("Daesh/IS-KP"), the Afghan branch of Daesh or the Islamic State ("ISIS"), abducted seven Hazara civilians, including two women and three

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154. U.N. ASSISTANCE MISSION IN AFG., AFGHANISTAN ANNUAL REPORT ON PROTECTION OF CIVILIANS IN ARMED CONFLICT: 2020, at 55 (2021) [hereinafter UNAMA ANNUAL REPORT 2020].

155. U.N. ASSISTANCE MISSION IN AFG., AFGHANISTAN ANNUAL REPORT ON PROTECTION OF CIVILIANS IN ARMED CONFLICT: 2019, at 47 (2020) [hereinafter UNAMA ANNUAL REPORT 2019].

156. See UNAMA ANNUAL REPORT 2018, *supra* note 136, at 29.

157. U.N. ASSISTANCE MISSION IN AFG., AFGHANISTAN ANNUAL REPORT ON PROTECTION OF CIVILIANS IN ARMED CONFLICT: 2017, at 41 (2018) [hereinafter UNAMA ANNUAL REPORT 2017].

158. See, e.g., *Fifteen Mothers Confirmed Killed in Kabul Maternity Wing Attack*, MÉDECINS SANS FRONTIÈRES (June 3, 2020), <http://www.msf.org/mothers-shot-caught-crossfire-during-fighting-afghanistan> (maternity hospitals); Thomas Gibbons-Neff & Najim Rahim, *Bombing Outside Afghan School Kills at Least 90, With Girls As Targets*, N.Y. TIMES (May 8, 2021), <http://www.nytimes.com/2021/05/08/world/asia/bombing-school-afghanistan.html> (girl's school).

159. *Police Find 11 Beheaded Bodies in Afghan South*, REUTERS (June 25, 2010), <http://www.reuters.com/article/us-afghanistan-beheading-idUSTRE65O2ML20100625>.

160. *Id.*

children,<sup>161</sup> and later beheaded all seven by slitting their throats with metal wire.<sup>162</sup> Their decapitated bodies were not found until November 2015.<sup>163</sup>

Other examples are similar. On April 14, 2015, Taliban fighters abducted fourteen Hazara civilians in Ajristan district, Ghazni province, and later beheaded four of them.<sup>164</sup> Six others who were kidnapped by unidentified attackers were also found beheaded in Ajristan district.<sup>165</sup> On March 15, 2017, self-proclaimed Daesh/IS-KP gunmen “shot dead and subsequently beheaded three civilians of Hazara ethnicity as they travelled to a graduation ceremony” in Sayyad district, Sari Pul province.<sup>166</sup> On September 1, 2016, militants linked to the Taliban abducted five Hazara students in Dawlat Yar district, Ghor province and beheaded one of the them “after his family failed to pay a ransom.”<sup>167</sup>

On August 3, 2017, Taliban and Daesh/IS-KP fighters launched a joint attack against the Hazara-populated Mirza Olang village in Sayyad district, Sari Pul province.<sup>168</sup> During the three-day assault, the insurgents killed at least thirty-six civilians and persons *hors de combat*.<sup>169</sup> The majority of the

161. U.N. ASSISTANCE MISSION IN AFG., AFGHANISTAN ANNUAL REPORT ON PROTECTION OF CIVILIANS IN ARMED CONFLICT: 2015, at 49–50 (2016) [hereinafter UNAMA ANNUAL REPORT 2015].

162. Mujib Mashal & Taimoor Shah, *Afghan Fighters Loyal to ISIS Beheaded 7 Hostages, Officials Say*, N.Y. TIMES (Nov. 9, 2015), <http://www.nytimes.com/2015/11/10/world/asia/afghan-fighters-loyal-to-isis-beheaded-7-hostages-officials-say.html>.

163. Ishaan Tharoor, *The Beheading of a 9-Year-Old Girl Prompted Huge Protests in Afghanistan*, WASH. POST (Nov. 12, 2015), <http://www.washingtonpost.com/news/worldviews/wp/2015/11/12/the-beheading-of-a-9-year-old-girl-prompted-huge-protests-in-afghanistan>.

164. U.N. ASSISTANCE MISSION IN AFG., AFGHANISTAN MIDYEAR REPORT ON PROTECTION OF CIVILIANS IN ARMED CONFLICT: 2015, at 62 (2015) [hereinafter UNAMA MIDYEAR REPORT 2015]; see also Rod Nordland & Jawad Sukhanyar, *Taliban Are Said to Target Hazaras to Try to Match ISIS' Brutality*, N.Y. TIMES (Apr. 22, 2015), <http://www.nytimes.com/2015/04/23/world/asia/taliban-are-said-to-target-hazaras-to-try-to-match-isis-brutality.html>.

165. Nordland & Sukhanyar, *supra* note 164.

166. U.N. ASSISTANCE MISSION IN AFG., AFGHANISTAN MIDYEAR REPORT ON PROTECTION OF CIVILIANS IN ARMED CONFLICT: 2017, at 46, 49 (2017) [hereinafter UNAMA MIDYEAR REPORT 2017].

167. See U.N. ASSISTANCE MISSION IN AFG., AFGHANISTAN ANNUAL REPORT ON PROTECTION OF CIVILIANS IN ARMED CONFLICT: 2016, at 81 (2017) [hereinafter UNAMA ANNUAL REPORT 2016]; see also *Chahar mohassel ke dar ghoor gerawgan gerefteh shodeh boodand, raha shodand [Four Students Who Were Taken Hostage in Ghor Have Been Released]*, AZADI RADIO (Oct. 25, 2016), <http://da.azadiradio.com/a/28073298.html>.

168. U.N. ASSISTANCE MISSION IN AFG., UNAMA HUMAN RIGHTS SPECIAL REPORT: ATTACKS ON MIRZA OLANG, 3–5 AUGUST 2017, at 1 (2017) [hereinafter UNAMA MIRZA OLANG REPORT]; see also *Insurgents Kill up to 50 Afghan Villagers in Northern Province*, THE GUARDIAN (Aug. 6, 2017), <http://www.theguardian.com/world/2017/aug/06/insurgents-kill-up-to-50-afghan-villagers-in-northern-province>.

169. UNAMA MIRZA OLANG REPORT, *supra* note 168, at 1.

killings occurred while families were escaping,<sup>170</sup> with victims including children, women, and the elderly.<sup>171</sup> The assailants left the bodies of the slain on the ground in various locations for more than a day and “some of the bodies were in such condition that they could not be moved.”<sup>172</sup> The perpetrators also made disparaging sectarian statements, calling Hazaras “half-Muslims” and “infidels.”<sup>173</sup> The collaboration between the Taliban and Daesh/IS-KP in such attacks further demonstrates the acute vulnerability of Hazaras.<sup>174</sup>

On July 4-6, 2021, Taliban fighters massacred nine Hazaras in the Mundarakht village of Malistan district after seizing control of Ghazni province.<sup>175</sup> The insurgents shot dead six men and three others were “tortured to death, including one man who was strangled with his own scarf and had his arm muscles sliced off.”<sup>176</sup>

Such summary executions of Hazaras have continued across the country since the Taliban captured Kabul on August 15, 2021. For instance, on August 30, 2021, Taliban fighters in the Kahor village of Khidir district, Daykundi province, killed 13 Hazaras, including a seventeen-year-old girl.<sup>177</sup> In late September 2021, unidentified gunmen shot dead three civilians “for being ‘Hazaras’” in the city of Firuz Koh, Ghor province.<sup>178</sup> In late October 2021, unknown gunmen shot dead five civilians in an area between the Jaghori and Qarabagh districts of Ghazni province “just for being Hazaras.”<sup>179</sup>

### B. Attacks on Educational Centers

Hazaras have been increasingly attacked at educational centers in Afghanistan. For example, on May 8, 2021, as thousands of teenage school-

170. *Id.*

171. *Insurgents Kill up to 50 Afghan Villagers in Northern Province*, *supra* note 168.

172. UNAMA MIRZA OLANG REPORT, *supra* note 168, at 2.

173. *Id.* at 6.

174. According to the U.N. Assistance Mission in Afghanistan, the “cooperation and coordination between Taliban and local, self-identified Daesh has been observed for some time in Sayyad district and is believed to be based upon family and tribal connections.” *Id.* at 7.

175. *Afghanistan: Taliban Responsible for Brutal Massacre of Hazara Men – New Investigation*, AMNESTY INT’L (Aug. 19, 2021), <http://www.amnesty.org/en/latest/news/2021/08/afghanistan-taliban-responsible-for-brutal-massacre-of-hazara-men-new-investigation>.

176. *Id.*

177. *Afghanistan: 13 Hazara Killed by Taliban Fighters in Daykundi Province – New Investigation*, AMNESTY INT’L (Oct. 5, 2021), <http://www.amnesty.org/en/latest/news/2021/10/afghanistan-13-hazara-killed-by-taliban-fighters-in-daykundi-province-new-investigation>.

178. *3 People Killed in Ghor for Being Hazaras*, SALAM WATANDAR (Sept. 29, 2021), <http://swn.af/en/index.php/2021/09/29/3-people-killed-in-ghor-for-being-hazaras>.

179. *Shooting 5 Hazaras in Ghazni by Unknown Individuals*, ARIANA NEWS (Oct. 31, 2021), <http://ariananews.co/en/afghanistan/shooting-5-hazaras-in-ghazni-by-unknown-individuals>.

girls and young women were leaving the Sayed Ul-Shuhada high school in Kabul, multiple improvised explosive devices (“IEDs”) were detonated, including a car bomb parked in front of the school.<sup>180</sup> The attack killed at least eighty-five people and injured at least 216 other civilians.<sup>181</sup> The attack took place in Dasht-e Barchi, a Hazara-populated district in the western part of Kabul city,<sup>182</sup> and virtually “all of the victims belonged to the Hazara ethnic group and Shi’a Muslim religious minority.”<sup>183</sup> The then-Afghan government blamed the Taliban for the attack, but the group denied involvement.<sup>184</sup> No group claimed responsibility for the attack.<sup>185</sup>

On October 24, 2020, a suicide bomber detonated explosives near the exit of the pre-university education center Kawsar-e Danish, located in the Hazara-populated Dasht-e Barchi neighborhood of west Kabul.<sup>186</sup> The attack killed forty civilians and injured seventy-nine, mostly Hazara children and young adults between the ages of fifteen and twenty-six, who were students at the educational center.<sup>187</sup> Daesh/IS-KP claimed responsibility for the attack while using a disparaging term for the Hazara Shi’a community.<sup>188</sup>

On August 15, 2018, a suicide bomber detonated explosives inside a classroom of the college prep center Mowud, located in the Dasht-e Barchi district of Kabul.<sup>189</sup> The attack killed at least forty civilians and wounded at least sixty-seven others,<sup>190</sup> including children and women.<sup>191</sup> Daesh/IS-KP,

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180. See UNAMA MIDYEAR REPORT 2021, *supra* note 10, at 5; see also Gibbons-Neff & Rahim, *supra* note 158.

181. UNAMA MIDYEAR REPORT 2021, *supra* note 10, at 5.

182. *Kabul Attack: Families Bury Schoolchildren of Blast That Killed Dozens*, BBC NEWS (May 9, 2021), <http://www.bbc.com/news/world-asia-57046527>.

183. UNAMA MIDYEAR REPORT 2021, *supra* note 10, at 5.

184. *Kabul Attack*, *supra* note 182.

185. *Id.*

186. See UNAMA ANNUAL REPORT 2020, *supra* note 154, at 55; see also Patricia Gossman, *Afghanistan School Bombing Targets Minority Community*, HUM. RTS. WATCH (Oct. 26, 2020), <http://www.hrw.org/news/2020/10/26/afghanistan-school-bombing-targets-minority-community>.

187. *Id.*

188. See *Afghan Bombing: Kabul Education Centre Attack Kills at Least 24*, BBC NEWS (Oct. 25, 2020), <http://www.bbc.com/news/world-asia-54676319>.

189. See UNAMA ANNUAL REPORT 2018, *supra* note 136, at 30; see also Pamela Constable & Sharif Hassan, *‘It Was a Horror Scene’: Scores of Afghan Students Killed in Kabul Suicide Bombing Aimed at Minority Shiites*, WASH. POST (Aug. 15, 2018), [http://www.washingtonpost.com/world/suicide-bomber-kills-at-least-25-in-shiite-district-of-afghan-capital/2018/08/15/c404df6e-a08b-11e8-a3dd-2a1991f075d5\\_story.html](http://www.washingtonpost.com/world/suicide-bomber-kills-at-least-25-in-shiite-district-of-afghan-capital/2018/08/15/c404df6e-a08b-11e8-a3dd-2a1991f075d5_story.html).

190. *Id.*

191. UNAMA ANNUAL REPORT 2018, *supra* note 136, at 30.

which considers Hazaras as apostates, claimed responsibility for the attack.<sup>192</sup>

The assault on the Mowud university preparatory academy followed a similar attack in March 2018 that targeted yet another educational center in the Hazara neighborhood of Dasht-e Barchi.<sup>193</sup> That earlier incident also involved a suicide bomber who entered a classroom, failed to denotate his explosive vest, and threw a grenade instead.<sup>194</sup> That attack, which wounded six students, was also claimed by Daesh/IS-KP.<sup>195</sup>

The attacks on educational centers have not been confined to Kabul. On October 8, 2019, for instance, Daesh/IS-KP targeted Hazara Shi'a students by detonating an IED in a classroom at Ghazni University in Ghazni province.<sup>196</sup> The attack resulted in twenty-seven civilian casualties, including twenty female students.<sup>197</sup> This incident followed an earlier attack that involved a magnetic explosive device that targeted a minibus carrying students from the same university.<sup>198</sup> That assault killed the driver and wounded five students.<sup>199</sup>

### C. Attacks on Healthcare Facilities

On May 12, 2020, three men wearing Afghan military uniforms and armed with AK-47s and hand grenades stormed a hospital in the Dasht-e Barchi district of Kabul.<sup>200</sup> The hospital housed a maternity ward operated by Médecins Sans Frontières (“MSF”).<sup>201</sup> After killing the security guard at the entrance, the gunmen “headed directly to the maternity ward, moving systematically from room to room.”<sup>202</sup> They “fired on patients and threw hand grenades,” killing twenty-four people including nineteen women, an

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192. Ahmed Mengli, F. Brinley Bruton, & Reuters, *Afghanistan Bombing: Attack Kills 48 Hazara College Hopefuls in Kabul*, NBC NEWS (Aug. 15, 2018), <http://www.nbcnews.com/news/world/afghanistan-bombing-attack-kills-48-hazara-college-hopefuls-kabul-n900916>.

193. Constable & Hassan, *supra* note 189.

194. *Id.*

195. *Id.*

196. See UNAMA ANNUAL REPORT 2019, *supra* note 155, at 48; see also *Blast in Ghazni University Leaves 23 Students Wounded*, ARIANA NEWS (Oct. 8, 2019), <http://ariananews.af/blast-in-ghazni-university-leaves-23-students-wounded>.

197. UNAMA ANNUAL REPORT 2019, *supra* note 155, at 48.

198. Rahim Faiez, *Afghan Officials Say Raid Killed Top Al Qaeda Commander*, CTV NEWS (Oct. 8, 2019), <http://www.ctvnews.ca/world/afghan-officials-say-raid-killed-top-al-qaeda-commander-1.4629425>.

199. *Id.*

200. U.N. ASSISTANCE MISSION IN AFG., SPECIAL REPORT: ATTACKS ON HEALTHCARE DURING THE PANDEMIC, at 12–13 (2020) [hereinafter UNAMA HEALTHCARE ATTACKS REPORT]; see also Ehsan Popalzai Zamira Rahim, Emma Reynolds, & Rob Picheta, *Infants and Mothers Killed in Attack on Kabul Hospital*, CNN (May 12, 2020), <http://www.cnn.com/2020/05/12/asia/afghanistan-kabul-hospital-attack-intl/index.html>.

201. UNAMA HEALTHCARE ATTACKS REPORT, *supra* note 200, at 13.

202. *Id.* at 12–13.

MSF midwife, and three children.<sup>203</sup> Amongst the slain were fifteen mothers, five of whom “were in [labor] and were minutes, or at most hours, from giving birth” at the time of the attack.<sup>204</sup> The attackers also wounded twenty-three more civilians, “including [twelve] women, two children, and one newborn.”<sup>205</sup> No group claimed responsibility for the attack.<sup>206</sup> The U.N. Assistance Mission in Afghanistan stated that it was “deeply disturbed by the senseless violence perpetrated . . . against . . . pregnant women, women who had just given birth, and newborn babies – who should be protected the most from armed conflict.”<sup>207</sup> It indicated that “[t]his deliberate attack on healthcare services and civilian patients [was] a blatant violation of international law.”<sup>208</sup> Moreover, the organization emphasized the “urgent need for an effective, thorough and transparent investigation” particularly since no entity claimed responsibility for this incident.<sup>209</sup>

On June 15, 2020, MSF announced its decision to close the maternity ward and withdraw completely from the Dasht-e Barchi hospital “due to the insecure context and the fact that similar attacks may occur in the future.”<sup>210</sup> According to MSF, “[a]ll indications are that the attack targeted the maternity wing itself, and in particular mothers, in the hospital,” as “[t]he assailants systematically moved from one room to another, killing mothers in their beds.”<sup>211</sup> MSF also expressed concerns about the fact that, even one month after the incident, “we know very little [and] the attack remains unclaimed.”<sup>212</sup>

Moreover, MSF emphasized the heightened vulnerability of Hazaras. The organization viewed this incident as “a terror attack, aimed to terrorise a vulnerable community by targeting the maternity wing and systematically shooting pregnant women and babies.”<sup>213</sup> It further acknowledged that this was not an isolated incident and that “the Hazara people living in the area

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203. *Id.*; see also *Fifteen Mothers Confirmed Killed*, *supra* note 158.

204. *Fifteen Mothers Confirmed Killed*, *supra* note 158.

205. UNAMA HEALTHCARE ATTACKS REPORT, *supra* note 200, at 13.

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*; *MSF Withdraws from Dasht-e-Barchi Following Attack on Patients and Staff*, MÉDECINS SANS FRONTIÈRES (June 15, 2020), <http://www.msf.org/msf-withdraws-dasht-e-barchi-following-attack-afghanistan> [hereinafter *MSF Withdraws from Dasht-e-Barchi*].

211. *Fifteen Mothers Confirmed Killed*, *supra* note 158.

212. *MSF Withdraws from Dasht-e-Barchi*, *supra* note 210. Afghan authorities did not approach Médecins Sans Frontières (“MSF”) in the first three weeks after the incident, raising questions about the government’s seriousness in conducting a proper investigation. See UNAMA HEALTHCARE ATTACKS REPORT, *supra* note 200, at 13; see also *Fifteen Mothers Confirmed Killed*, *supra* note 158.

213. *Fifteen Mothers Confirmed Killed*, *supra* note 158.

have been subject to a series of attacks.”<sup>214</sup> According to MSF General Director Thierry Allafort-Duverger, “[w]e were aware that our presence in Dasht-e-Barchi carried risks, but we just couldn’t believe that someone would take advantage of the absolute vulnerability of women about to give birth to murder them and their babies.”<sup>215</sup>

In announcing the end of its activities in Dasht-e Barchi, MSF admitted that the attack had resulted in longer-term adverse consequences for the Hazara community. The closure of the Dasht-e Barchi maternity ward, one of MSF’s largest such projects globally,<sup>216</sup> “deprive[d] women and babies of lifesaving medical care.”<sup>217</sup> The organization noted that the area served by the maternity wing was “home to more than one million particularly vulnerable people, the majority of whom are Hazara.”<sup>218</sup>

In November 2018, the Taliban assaulted the Hazara-populated districts of Jaghori and Malistan in Ghazni province, killing civilians, destroying homes, setting fire to an ambulance, and kidnapping medical clinic staff.<sup>219</sup> In June 2011, Kuchis (Pashtun nomads) and the Taliban attacked thirty-six Hazara-populated villages of Nahoor district in Ghazni province, inflicting extensive destruction on the local residents’ properties, such as by damaging and looting the only operating medical clinic and ransacking a pharmacy in the area.<sup>220</sup>

Healthcare services in Hazara areas have been afflicted not just by violent attacks but also by government policies. For example, in November 2021, the Taliban reportedly planned to close one of the few remaining hospitals in Dasht-e Barchi.<sup>221</sup> According to the Taliban’s Ministry of Public Health, “it was decided to shift the hospital to another location.”<sup>222</sup> The decision has further alarmed the residents of Dasht-e Barchi over the practices that continue to adversely impact the Hazaras.<sup>223</sup>

214. *MSF Withdraws from Dasht-e-Barchi*, *supra* note 210.

215. *Id.*

216. *See id.* The Dasht-e Barchi maternity wing assisted with approximately 16,000 deliveries in 2019 alone. *Id.*

217. *Fifteen Mothers Confirmed Killed*, *supra* note 158.

218. *Id.*

219. *Id.*; *see, e.g.*, UNAMA ANNUAL REPORT 2018, *supra* note 136, at 19.

220. AFG. INDEP HUM. RTS. COMM’N, GOZARESH MONAZE’EH KOOCHI HA VA MARDOME MAHAL DAR WOLOSALI NAHOOR VELAYAT GHAZNI (1390/3/31 ELA 1390/4/4) [THE REPORT ON THE CONFLICT BETWEEN KUCHIS AND LOCAL PEOPLE IN THE NAHOOR DISTRICT OF GHAZNI PROVINCE (JUNE 21, 2011 UNTIL JUNE 25, 2011)] 3–6 (2011), <http://www.aihrc.org.af/media/files/Reports/Daily%20report%20Dari/Nahorreport.pdf>. [hereinafter AIHRC NAHOOR REPORT].

221. *See Concerns Raised Over Fate of 50-Bed Hospital in Western Kabul*, TOLO NEWS (Nov. 3, 2021), <http://tolonews.com/afghanistan-175289>.

222. *Id.*

223. *See id.* According to one patient at that hospital, for example, “[t]he people in the area only have this hospital [and it] should not be shifted anywhere else.” *See id.* A nurse from



#### D. Attacks on Places of Worship

Afghanistan's Shi'a Muslim religious minority, most of whom belong to the Hazara ethnic community, has been increasingly attacked at places of worship across Afghanistan.<sup>224</sup> As illustrated in this Section, Shi'a mosques and religious gatherings have been frequently targeted—in various provinces throughout the country including Kabul, Herat, Balkh, Kunduz, Ghazni, Paktia, and Kandahar—resulting in thousands of civilian casualties.

On October 20, 2017, a suicide bomber hit the Shi'a Imam Zaman Mosque in the Hazara-populated Dasht-e Barchi area of west Kabul.<sup>225</sup> The assailant first threw a grenade into the women's section of the mosque before detonating his suicide vest in the men's section,<sup>226</sup> killing sixty-nine civilians and wounding sixty more.<sup>227</sup> Daesh/IS-KP claimed responsibility for the attack.<sup>228</sup>

On October 8, 2021, a suicide bomber attacked the Shi'a Gozar-e-Sayed Abad Mosque in the northern city of Kunduz, Kunduz province.<sup>229</sup> The target was Hazara worshippers.<sup>230</sup> The explosion killed at least forty-six civilians and injured 143 others.<sup>231</sup> Daesh/IS-KP claimed responsibility for the blast.<sup>232</sup>

the same hospital also cautioned that moving the hospital to another location will adversely impact the residents of that area since “[t]he people cannot go a far distance.” *See id.*

224. *See, e.g.*, UNAMA ANNUAL REPORT 2017, *supra* note 157, at 41 (“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. . . . The increase in such attacks continued to raise grave concerns regarding the right to freedom of religion or belief and the protection of minorities.”); UNAMA ANNUAL REPORT 2020, *supra* note 154, at 51 (“Attacks on religious minorities that were claimed as such by ISIL-KP persisted in 2020, especially attacks targeting the Shi'a Muslim population, most of whom also belong to the Hazara ethnic group.”); Gibbons-Neff & Rahim, *supra* note 158 (“The Hazara are a mostly Shiite group in a country rampant with Sunni militants, and they have been frequent targets of Islamic State loyalists. The Hazara, too, are growing increasingly outraged at the violence against them and at the government's inability to protect them.”).

225. UNAMA ANNUAL REPORT 2017, *supra* note 157, at 9, 28; *see also* Hamid Shalizi, *Suicide Bombers Attack Two Afghan Mosques, at Least 72 Dead*, REUTERS (Oct. 20, 2017), <http://www.reuters.com/article/us-afghanistan-attack-idUSKBN1CP1UF>.

226. UNAMA ANNUAL REPORT 2017, *supra* note 157, at 9.

227. *Id.* at 9, 28.

228. *See id.* at 4, 9, 28.

229. Samya Kullab & Tameem Akhgar, *IS Bomber Kills 46 Inside Afghan Mosque, Challenges Taliban*, ASSOCIATED PRESS (Oct. 8, 2021), <http://apnews.com/article/afghanistan-prayer-religion-2b9d9863da38661ba6fa186a72ac5352>; *see also* Thomas Gibbons-Neff & Wali Arian, *ISIS Bomber Kills Dozens at Shiite Mosque in Northern Afghanistan*, N.Y. TIMES (Oct. 8, 2021), <http://www.nytimes.com/2021/10/08/world/asia/afghanistan-mosque-attack.html>.

230. Kullab & Akhgar, *supra* note 229.

231. *Id.*

232. *Id.*; Gibbons-Neff & Arian, *supra* note 229.

On October 15, 2021, multiple suicide attackers struck the Shi'a Imam Bargah Mosque in the southern city of Kandahar, Kandahar province.<sup>233</sup> The attack, which was claimed by Daesh/IS-KP,<sup>234</sup> killed at least fifty civilians and wounded 100 more.<sup>235</sup>

On November 21, 2016, a suicide bomber blew himself up among Shi'a worshippers in the Baqer-ul Ulum mosque in western Kabul during the religious ceremony of Arbaeen.<sup>236</sup> The explosion "killed at least 40 civilians [and] injured 74 others, including many children."<sup>237</sup> Daesh/IS-KP claimed responsibility for the attack while "using derogatory expressions and calling for violence against Shia Muslims."<sup>238</sup>

On August 1, 2017, two suicide attackers perpetrated a complex assault on the Shi'a Jawadieh Mosque in Herat city, Herat province.<sup>239</sup> The two assailants indiscriminately fired automatic weapons against the Shi'a congregation inside the mosque and threw grenades before detonating their suicide vests.<sup>240</sup> The assault killed thirty-nine civilians (including five children) and wounded sixty-five others (including four children).<sup>241</sup> Daesh/IS-KP claimed responsibility for the incident.<sup>242</sup>

On August 25, 2017, a suicide bomber detonated his explosive vest at the entrance of the Shi'a Imam Zaman Mosque in the Khair Khana area of Kabul as other gunmen stormed the building before opening fire on the worshippers inside the mosque.<sup>243</sup> The attack killed thirty-five civilians (including thirteen women and one child) and wounded sixty-five more (including

233. See Ezzatullah Mehrdad, Helier Cheung, & Susannah George, *Suicide Bombers Hit Shiite Mosque in Afghanistan Killing Dozens — The Second Such Attack in a Week*, WASH. POST (Oct. 15, 2021), <http://www.washingtonpost.com/world/2021/10/15/afghanistan-kandahar-mosque-explosion/>; Abdul Rauf Wafa & Emma Graham-Harrison, *Shia Mosque Bombing in Afghanistan That Killed at Least 47 Claimed by ISKP*, THE GUARDIAN (Oct. 15, 2021), <http://www.theguardian.com/world/2021/oct/15/casualties-explosion-hits-shia-mosque-afghanistan>.

234. Wafa & Graham-Harrison, *supra* note 233.

235. Mehrdad, Cheung, & George, *supra* note 233.

236. UNAMA ANNUAL REPORT 2016, *supra* note 167, at 34–35; see also *Afghanistan Kabul Mosque Suicide Attack Kills Dozens*, BBC NEWS (Nov. 21, 2016), <http://www.bbc.com/news/world-asia-38048604>.

237. UNAMA ANNUAL REPORT 2016, *supra* note 167, at 34.

238. *Id.* at 35.

239. UNAMA ANNUAL REPORT 2017, *supra* note 157, at 37; see also *Herat Mosque Blast: IS Says It Was behind Afghanistan Attack*, BBC NEWS (Aug. 2, 2017), <http://www.bbc.com/news/world-asia-40802572>.

240. UNAMA ANNUAL REPORT 2017, *supra* note 157, at 37; see also *Herat Mosque Blast*, *supra* note 239.

241. UNAMA ANNUAL REPORT 2017, *supra* note 157, at 37.

242. *Id.*

243. *Id.* at 28; see also *Suicide Attack on Kabul Shi'ite Mosque Kills at Least 30*, REUTERS (Aug. 25, 2017), <http://www.reuters.com/article/us-afghanistan-attack-idUSKCN1B511T>.

twenty-two women and one child).<sup>244</sup> Daesh/IS-KP said it was behind the attack.<sup>245</sup>

On August 3, 2018, two male suicide attackers disguised in women's clothing (full-length burqas) to hide their explosive vests and automatic weapons entered a Shi'a mosque in the eastern city of Gardez, Paktia province.<sup>246</sup> The assailants first fired at the Shi'a worshippers and then detonated their vests,<sup>247</sup> killing thirty-three civilians (including ten children) and wounding ninety-four others (including four children).<sup>248</sup> Daesh/IS-KP claimed responsibility for the attack.<sup>249</sup>

On October 11, 2016, the Day of Ashura (a significant commemoration for Shi'a Muslims), a gunman disguised in an official Afghan military uniform entered the Karte Sakhi Mosque in Kabul.<sup>250</sup> The assailant opened fire on Shi'a Hazara worshippers and threw a hand grenade, killing nineteen civilians and injuring sixty more.<sup>251</sup> The victims included four women and two children.<sup>252</sup> Daesh/IS-KP claimed responsibility via a "statement containing hate language targeting the Shia Muslim religious minority."<sup>253</sup>

On October 12, 2016, as crowds had gathered to commemorate one of Shi'a Islam's holiest days, a remote-controlled bomb exploded at the entrance of a Shi'a mosque in the Khojagholak area of the northern Balkh province.<sup>254</sup> The blast killed eighteen Hazara civilians and wounded sixty-

244. UNAMA ANNUAL REPORT 2017, *supra* note 157, at 28.

245. *Suicide Attack on Kabul Shi'ite Mosque*, *supra* note 243; *see also Afghanistan: Deadly Attack on Mosque a War Crime*, HUM. RTS. WATCH (Aug. 25, 2017), <http://www.hrw.org/news/2017/08/25/afghanistan-deadly-attack-mosque-war-crime>.

246. *See, e.g.*, UNAMA ANNUAL REPORT 2018, *supra* note 136, at 24; Farooq Jan Mangal & Fahim Abed, *Attackers in Burqas Kill Dozens at Shiite Mosque in Afghanistan*, N.Y. TIMES (Aug. 3, 2018), <http://www.nytimes.com/2018/08/03/world/asia/afghanistan-mosque-burqas-attack.html>; *Afghanistan Mosque Attack: At Least 29 Shia Worshippers Killed in Gardez*, BBC NEWS (Aug. 3, 2018), <http://www.bbc.com/news/world-asia-45059701>.

247. Mangal & Abed, *supra* note 246.

248. UNAMA ANNUAL REPORT 2018, *supra* note 136, at 24.

249. *Id.*

250. *See, e.g.*, UNAMA ANNUAL REPORT 2016, *supra* note 167, at 34; *see also Afghanistan's Shia Hazara Suffer Latest Atrocity*, HUM. RTS. WATCH (Oct. 13, 2016), <http://www.hrw.org/news/2016/10/13/afghanistans-shia-hazara-suffer-latest-atrocity>.

251. UNAMA ANNUAL REPORT 2016, *supra* note 167, at 34.

252. *Afghanistan's Shia Hazara Suffer Latest Atrocity*, *supra* note 250.

253. UNAMA ANNUAL REPORT 2016, *supra* note 167, at 34.

254. *Id.*; Pamela Constable, *Deadly Attacks Target Defiant Shiite Worshipers in Afghanistan Amid Security Fears*, WASH. POST (Oct. 12, 2016), [http://www.washingtonpost.com/world/deadly-blast-targets-shiite-worshipers-in-afghanistan-amid-widening-security/2016/10/12/a7b5dda2-907c-11e6-9c52-0b10449e33c4\\_story.html](http://www.washingtonpost.com/world/deadly-blast-targets-shiite-worshipers-in-afghanistan-amid-widening-security/2016/10/12/a7b5dda2-907c-11e6-9c52-0b10449e33c4_story.html).

seven others, including thirty-six children.<sup>255</sup> Daesh/IS-KP claimed responsibility for this incident as well.<sup>256</sup>

On May 12, 2017, another remote-controlled bomb exploded near a religious gathering of Shi'a worshippers in Herat city, Herat province.<sup>257</sup> The attack, which was claimed by Daesh/IS-KP, killed seven civilians and injured seventeen others.<sup>258</sup>

On June 15, 2017, several gunmen attacked the Shi'a al-Zahra Mosque in the Hazara-populated Dasht-e Barchi area of western Kabul.<sup>259</sup> A suicide bomber blew himself up outside the main prayer hall when he was confronted by a guard.<sup>260</sup> The assault, which was claimed by Daesh/IS-KP, killed at least six civilians and wounded ten others.<sup>261</sup>

On September 29, 2017, two days before the Shi'a holy day of Ashura, a suicide bomber blew himself up near the Shi'a al-Husseiniya Mosque in the Qala-e-Fatullah area of Kabul.<sup>262</sup> The assailant, who had disguised himself as a shepherd so as to approach the mosque, killed at least five civilians and injured twenty others.<sup>263</sup> Daesh/IS-KP said it was behind the attack.<sup>264</sup>

On July 5, 2019, a remote-controlled bomb was detonated inside the Shi'a Mohammadiyah Mosque in the Khak-e-Ghariban area of Ghazni city, Ghazni province.<sup>265</sup> The blast resulted in twenty-four civilian casualties (two killed and twenty-two wounded), most of whom were children.<sup>266</sup> Daesh/IS-KP claimed responsibility for the attack.<sup>267</sup>

255. See UNAMA ANNUAL REPORT 2016, *supra* note 167, at 34; *Afghanistan's Shia Hazara Suffer Latest Atrocity*, *supra* note 250.

256. *Afghanistan's Shia Hazara Suffer Latest Atrocity*, *supra* note 250.

257. UNAMA MIDYEAR REPORT 2017, *supra* note 166, at 46.

258. *Id.*

259. See "No Safe Place": *Insurgent Attacks on Civilians in Afghanistan*, HUM. RTS. WATCH (May 8, 2018), <http://www.hrw.org/report/2018/05/08/no-safe-place/insurgent-attacks-civilians-afghanistan>; *Kabul Mosque Attack Claimed by So-Called Islamic State*, BBC NEWS (June 15, 2017), <http://www.bbc.com/news/world-asia-40296509>.

260. "No Safe Place", *supra* note 259.

261. *Id.*

262. See *Suicide 'Shepherd' Bomber Kills Several People Near Kabul Mosque*, BBC NEWS (Sept. 29, 2017), <http://www.bbc.com/news/world-asia-41445289>; *Suicide Bomb Blast Near Kabul Mosque Kills Five*, AL JAZEERA (Sept. 29, 2017), <http://www.aljazeera.com/news/2017/9/29/suicide-bomb-blast-near-kabul-mosque-kills-five>.

263. *Suicide 'Shepherd' Bomber*, *supra* note 262.

264. *Id.*; *Suicide Bomb Blast Near Kabul Mosque*, *supra* note 262.

265. See UNAMA ANNUAL REPORT 2019, *supra* note 155, at 48; *Islamic State Says It Carried Out Attack at Shi'ite Mosque in Central Afghanistan*, REUTERS (July 6, 2019), <http://www.reuters.com/article/us-afghanistan-blast-idUSKCN1U109O>; *At Least 2 Killed in Bomb Blast at Afghan Mosque*, VOICE OF AM. (July 6, 2019), [http://www.voanews.com/a/south-central-asia\\_least-2-killed-bomb-blast-afghan-mosque/6171297.html](http://www.voanews.com/a/south-central-asia_least-2-killed-bomb-blast-afghan-mosque/6171297.html).

266. UNAMA ANNUAL REPORT 2019, *supra* note 155, at 48.

267. See *id.*; *At Least 2 Killed in Bomb Blast*, *supra* note 265.

On January 1, 2017, a bomb struck the Shi'a Imam Mohammad Baqir Mosque in Herat city, Herat province.<sup>268</sup> The blast caused six civilian casualties (one killed and five injured).<sup>269</sup> No group claimed responsibility for the attack.<sup>270</sup>

On November 22, 2016, a remote-controlled bomb hit the Shi'a Razaiya Mosque in Herat city, Herat province, wounding four civilians.<sup>271</sup> No group claimed responsibility for the attack.<sup>272</sup>

On December 6, 2011, which coincided with the Shi'a holy day of Ashura, two deadly attacks targeting Shi'a worshipers killed at least fifty-eight civilians, including children.<sup>273</sup> In the first incident in Kabul, a suicide bomber blew himself up near the Abul Fazal Abbas shrine, killing at least fifty-four civilians and injuring 150 others.<sup>274</sup>

In the second and near-simultaneous incident in the northern city of Mazar-e Sharif, Balkh province, an explosion near a Shi'a mosque resulted in at least twenty-one casualties (four killed and seventeen injured).<sup>275</sup> No group claimed responsibility for either attack.<sup>276</sup>

#### E. Attacks on Protests

On July 23, 2016, two suicide bombers attacked a peaceful demonstration by Hazaras in Deh Mazang Square of Kabul city.<sup>277</sup> The protest was triggered by the government's decision to scrap the implementation of a major power line project through the Hazara-populated regions.<sup>278</sup> The government's decision, which was viewed as discriminatory against Hazaras by

268. See UNAMA MIDYEAR REPORT 2017, *supra* note 166166, at 46; see also Islam Sajid, *Afghanistan Mosque Blast Hurts 6*, ANADOLU AGENCY (Jan. 1, 2017), <http://www.aa.com.tr/en/world/afghanistan-mosque-blast-hurts-6/718385>.

269. UNAMA MIDYEAR REPORT 2017, *supra* note 166, at 46.

270. *Id.*; Sajid, *supra* note 268.

271. UNAMA Annual Report 2016, *supra* note 167, at 42.

272. *Id.*

273. *Afghanistan Bombs Kill 58 in Kabul and Mazar-e-Sharif*, BBC NEWS (Dec. 6, 2011), <http://www.bbc.com/news/world-asia-16046079>; Press Release, Hillary Rodham Clinton, Secretary of State, Ashura Holy Day Suicide Bombings in Afghanistan (Dec. 6, 2011), <http://www.2009-2017.state.gov/secretary/20092013clinton/rm/2011/12/178393.htm>.

274. *Afghanistan Bombs Kill 58*, *supra* note 273; Clinton, *supra* note 273.

275. *Afghanistan Bombs Kill 58*, *supra* note 273.

276. *Id.*

277. See UNAMA ANNUAL REPORT 2016, *supra* note 167, at 40; *Kabul Explosion: IS 'Claims Attack on Hazara Protest'*, BBC NEWS (July 23, 2016), <http://www.bbc.com/news/world-asia-36874570>; Pamela Constable, *The Bomb that Killed 80 Hazaras in Kabul Also Upended Their Nonviolent Reform Effort*, WASH. POST (Aug. 4, 2016), [http://www.washingtonpost.com/world/asia\\_pacific/afghan-hazaras-mourn-bomb-victims-struggle-to-regroup/2016/08/03/025fe7ca-595f-11e6-82ea-8af882a4d163\\_story.html](http://www.washingtonpost.com/world/asia_pacific/afghan-hazaras-mourn-bomb-victims-struggle-to-regroup/2016/08/03/025fe7ca-595f-11e6-82ea-8af882a4d163_story.html).

278. See Mehdi J. Hakimi, *The ICC and Afghanistan – Time to End Impunity?*, YALE J. INT'L L. F. (Aug. 31, 2018), <http://www.yjil.yale.edu/forum-the-icc-and-afghanistan-time-to-end-impunity>.

depriving them of an important development project, ran counter to the recommendation of an independent German engineering firm tasked with evaluating potential routes.<sup>279</sup>

The blasts resulted in 498 civilian casualties (eighty-five killed and 413 others injured) and constituted the deadliest attack recorded at the time by the U.N. since 2001.<sup>280</sup> Nearly all victims were members of the Hazara ethnicity.<sup>281</sup> Daesh/IS-KP claimed responsibility for the assault.<sup>282</sup> In doing so, the group used language advocating hatred and incitement to violence against Hazaras and Shi'as.<sup>283</sup>

On January 29, 2021, government security forces led by Allahdad Fedae killed eleven civilians and wounded thirty-one others engaged in a protest in the Behsud district of Maidan Wardak province.<sup>284</sup> All victims were unarmed Hazara civilians.<sup>285</sup> The government first tried to cover up the massacre by falsely claiming that the victims were illegally armed militia members.<sup>286</sup> Investigations, however, revealed that all protestors, including the victims, were in fact unarmed civilians.<sup>287</sup> Despite these findings, instead of prosecuting the perpetrators, President Ghani appointed Allahdad Fedae as the police chief of Laghman province.<sup>288</sup>

279. *Id.*; see also Mirwais Harooni, *Thousands of Afghan Hazaras join power line protest in Kabul*, REUTERS (May 16, 2016), <http://www.reuters.com/article/us-afghanistan-protests/thousands-of-afghan-hazaras-join-power-line-protest-in-kabul-idUSKCN0Y70BW>.

280. UNAMA ANNUAL REPORT 2016, *supra* note 167, at 41.

281. *Id.*

282. *Id.*

283. U.N. ASSISTANCE MISSION IN AFG., AFGHANISTAN HUMAN RIGHTS AND PROTECTION OF CIVILIANS IN ARMED CONFLICT SPECIAL REP.: ATTACK ON A PEACEFUL DEMONSTRATION IN KABUL, 23 JULY 2016, ¶ 39 (Oct. 2016) [hereinafter UNAMA DEH MAZANG ATTACK REPORT].

284. *Reports of Civilian Casualties in Behsud*, AFG. INDEP. HUM. RTS. COMM'N (Feb. 8, 2021), [http://www.aihrc.org.af/home/research\\_report/9066](http://www.aihrc.org.af/home/research_report/9066).

285. *Id.*

286. See, e.g., *Ruydade Behsud: "Qorbaniyan Ghayre Nezami Budehand"; Wazifaye Farmandehe Polis be Ta'liq dar Amad [The Behsud Incident: "The Victims Were Civilians"; The Police Chief Has Been Suspended]*, BBC PERSIAN (Feb. 8, 2021), <http://www.bbc.com/persian/afghanistan-55976869> (The Ministry of Interior Affairs spokesman, Tariq Arian, for instance, falsely claimed that the protestors were illegally armed militiamen who had opened fire on the security forces and, as a consequence of the ensuing clash, several illegally armed militiamen were killed and wounded.); see also *Namayande Maidan Wardak dar Majles: Hokumat dar Talash ast keh Jenayat Behsud ra beh Hashiye Bebarad [Maidan Wardak Member of Parliament: The Government Is Trying to Marginalize the Behsud Crime]*, HASHTE SUBH (Feb. 8, 2021), <http://www.8am.af/maidan-vardak-mp-the-government-is-trying-to-marginalize-behsuds-crime> (noting that the Ministry of Interior Affairs had falsely claimed that the victims were all illegally armed militiamen).

287. See, e.g., *Reports of Civilian Casualties in Behsud*, *supra* note 284.

288. *Fedae, Who Was Accused of Killing Civilians, Appointed as Laghman Police Chief*, KABUL NOW (Mar. 17, 2021), <http://www.kabulnow.com/2021/03/fedae-who-was-accused-of-killing-civilians-appointed-as-laghman-police-chief>.

### F. Attacks on Commemoration Ceremonies

On March 6, 2020, attackers targeted a large gathering of Hazara people in the Dasht-e Barchi neighborhood of Kabul who were commemorating the death of Abdul Ali Mazari, a former Hazara leader who was imprisoned and killed by the Taliban in 1995.<sup>289</sup> The assailants killed thirty-three civilians and wounded seventy-nine others using rocket-propelled grenades and small arms fire.<sup>290</sup> Daesh/IS-KP claimed the incident.<sup>291</sup>

This was not the first time that such a commemoration ceremony had been attacked. Indeed, on March 7, 2019, attackers fired mortar rounds at another Hazara gathering commemorating the same event: the anniversary of Mazari's death while in Taliban captivity.<sup>292</sup> The rocket shelling, which again took place in the Hazara-populated Dasht-e Barchi area of western Kabul,<sup>293</sup> resulted in 115 civilian casualties (eleven killed and 104 wounded).<sup>294</sup> Daesh/IS-KP took responsibility for this incident as well.<sup>295</sup>

### G. Attacks on Sports and Recreational Activities

On September 5, 2018, a double suicide bombing targeted the Maiwand sports club in the Dasht-e Barchi district of Kabul.<sup>296</sup> After the first attacker detonated his suicide vest, a second bomber in a car packed with explosives attacked the emergency services responding to the incident.<sup>297</sup> The assault resulted in 136 civilian casualties (thirty killed and 106 injured).<sup>298</sup> No

289. See, e.g., UNAMA ANNUAL REPORT 2020, *supra* note 154, at 56; *Gunmen Kill at Least 29 People at Ceremony in Afghan Capital*, PBS NEWS HOUR (Mar. 6, 2020), <http://www.pbs.org/newshour/world/gunmen-kill-at-least-29-people-at-ceremony-in-afghan-capital>; *Dozens Killed in Kabul Ceremony Attack Claimed by ISIL*, AL JAZEERA (Mar. 6, 2020), <http://www.aljazeera.com/news/2020/3/6/dozens-killed-in-kabul-ceremony-attack-claimed-by-isil>.

290. UNAMA ANNUAL REPORT 2020, *supra* note 154, at 56.

291. *Id.*

292. See, e.g., UNAMA ANNUAL REPORT 2019, *supra* note 155, at 48; Abdul Qadir Sediqi, *Attack on Shi'ite Muslim Gathering in Afghan Capital Kills Three*, REUTERS (Mar. 7, 2019), <http://www.reuters.com/article/us-afghanistan-attacks/attack-on-shiite-muslim-gathering-in-afghan-capital-kills-three-idUSKCN1Q00S7>; *Death Toll Rises to 11 in Attack on Shia Gathering in Kabul*, AL JAZEERA (Mar. 8, 2019), <http://www.aljazeera.com/features/2019/3/8/death-toll-rises-to-11-in-attack-on-shia-gathering-in-kabul>.

293. *Death Toll Rises to 11 in Attack*, *supra* note 292.

294. UNAMA ANNUAL REPORT 2019, *supra* note 155, at 48.

295. Sediqi, *supra* note 292.

296. See, e.g., *Afghanistan Conflict: Bombers Kill 20 at Kabul Sports Club*, BBC NEWS (Sept. 5, 2018), <http://www.bbc.com/news/world-asia-45426467>; *At Least 20 People Killed in Separate Bombings at Kabul Wrestling Club*, THE GUARDIAN (Sept. 5, 2018), <http://www.theguardian.com/world/2018/sep/05/at-least-20-people-killed-in-separate-bombings-at-kabul-wrestling-club>.

297. *Afghanistan Conflict: Bombers Kill 20 at Kabul Sports Club*, *supra* note 296.

298. UNAMA ANNUAL REPORT 2018, *supra* note 136, at 21.

group claimed responsibility for the attack.<sup>299</sup> The Maiwand sports club has produced many star athletes, including at least four of Afghanistan's national wrestling champions.<sup>300</sup> All four champions, who were Hazaras, were killed in this attack.<sup>301</sup>

On April 1, 2022, a twin-bomb attack killed at least five civilians and injured twenty-five others who were playing a traditional game in the Hazara-populated Jibril area of Herat province.<sup>302</sup> The two bombs, which were planted in the playing field prior to the game, targeted mainly children and young men.<sup>303</sup> According to eyewitnesses, the death toll was ten.<sup>304</sup> No one claimed the attack.<sup>305</sup>

#### H. Attacks on Cultural Centers

On December 28, 2017, a suicide bomber blew himself up inside the Tebyan cultural center in a predominantly Hazara neighborhood of Kabul.<sup>306</sup> The building housed a media outlet and classes for young students.<sup>307</sup> The assailant detonated his suicide vest in a room packed with social activists, students, and rights defenders during an event marking the 38th anniversary of the Soviet invasion of Afghanistan.<sup>308</sup> After the initial blast, two further IEDs detonated against fleeing victims and first responders.<sup>309</sup> The attack resulted in 119 casualties (forty-two killed and seventy-seven injured), including women and children.<sup>310</sup> Daesh/IS-KP claimed responsibility, calling the cultural center “‘one of the main centres of Shi’itization by sending Afghan youth to Iran for academic studies’ and

299. *Afghanistan Conflict: Bombers Kill 20 at Kabul Sports Club*, *supra* note 296.

300. Rod Nordland & Fatima Faizi, ‘A Wrestler Never Dies.’ *Afghan Bomb Victims Live on in Legend*, THE IRISH TIMES (Sept. 20, 2018), <http://www.irishtimes.com/news/world/asia-pacific/a-wrestler-never-dies-afghan-bomb-victims-live-on-in-legend-1.3635789>.

301. *Id.*

302. Seda Sevensan, *Bomb Attack Kills 5 in Afghanistan*, ANADOLU AGENCY (Apr. 1, 2022), <http://www.aa.com.tr/en/asia-pacific/bomb-attack-kills-5-in-afghanistan/2553001>; *see also 2 Killed, 8 Injured in Car Bomb Blast in Western Afghanistan*, XINHUA (Apr. 1, 2022), <http://english.news.cn/20220401/87303209dd2748cba834a15d621a5cf8/c.html>; *Afghanistan: Bomb Blasts at Playing Field Kill Several in Herat*, DEUTSCHE WELLE (Apr. 2, 2022), <http://www.dw.com/en/afghanistan-bomb-blasts-at-playing-field-kill-several-in-herat/a-61337927>.

303. *Afghanistan: Bomb Blasts at Playing Field Kill Several in Herat*, *supra* note 302.

304. Sevensan, *supra* note 302.

305. *Id.*

306. UNAMA ANNUAL REPORT 2017, *supra* note 157, at 41; *Kabul Blast at Afghan Voice, Tebyan Centre Kills Dozens*, AL JAZEERA (Dec. 28, 2017), <http://www.aljazeera.com/news/2017/12/28/kabul-blast-at-afghan-voice-tebyan-centre-kills-dozens>.

307. UNAMA ANNUAL REPORT 2017, *supra* note 157, at 41.

308. *Id.*; *Kabul Blast at Afghan Voice*, *supra* note 306.

309. UNAMA ANNUAL REPORT 2017, *supra* note 157, at 41.

310. *Id.*



used common anti-Shi'a language while claiming killing more than 220 Shi'a persons."<sup>311</sup>

On December 21, 2017, a remote-controlled bomb was detonated outside a library in a predominantly Hazara neighborhood in Herat city, Herat province.<sup>312</sup> The blast resulted in fourteen casualties (four killed and ten injured), including women and children.<sup>313</sup> Daesh/IS-KP was behind the attack.<sup>314</sup>

### I. Attacks on Markets

On November 24, 2020, two radio-controlled bombs targeted a main bazaar in the center of Bamiyan city, Bamiyan province, which is populated by the Hazara community.<sup>315</sup> The two bombs, which were hidden at the side of a road,<sup>316</sup> were detonated in two separate locations in the Bamiyan Bazaar area during the evening rush hour when people were busy shopping.<sup>317</sup> The blasts resulted in seventy-eight civilian casualties (eighteen killed and sixty injured), including women and children.<sup>318</sup> No group seems to have assumed responsibility for this attack.

### J. Attacks on Voter Registration Centers

On April 22, 2018, a suicide bomber detonated his explosives outside the entrance of a voter registration center, where a large crowd of local residents had gathered, in the Dasht-e Barchi area Kabul.<sup>319</sup> The assault resulted in 198 civilian casualties (sixty killed and 138 injured) including dozens of

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311. *Id.*

312. *Id.*

313. *Id.*

314. *Id.*

315. See UNAMA ANNUAL REPORT 2020, *supra* note 154, at 55–56; *Twin Blasts in Afghan Province of Bamiyan Kill 14 People, Injure 45 – Officials*, REUTERS (Nov. 24, 2020), <http://www.reuters.com/article/afghanistan-blast-idUSKBN28429S>; *Two Bomb Blasts Kill at Least 14 in Afghanistan's Bamiyan*, AL JAZEERA (Nov. 24, 2020), <http://www.aljazeera.com/news/2020/11/24/two-bomb-blasts-kill-at-least-14-in-afghanistan-officials>.

316. *Twin Blasts in Afghan Province of Bamiyan*, *supra* note 315.

317. UNAMA ANNUAL REPORT 2020, *supra* note 154, at 55–56; *Two Bomb Blasts Kill at Least 14*, *supra* note 315.

318. UNAMA Annual Report 2020, *supra* note 154, at 55–56.

319. See UNAMA ANNUAL REPORT 2018, *supra* note 136, at 29–30; Haroon Janjua, *Dozens Dead in Bombing at Kabul Voter Registration Centre*, THE GUARDIAN (Apr. 22, 2018), <http://www.theguardian.com/world/2018/apr/22/dozens-dead-in-kabul-bombing-at-voter-registration-centre-afghanistan>; Sultan Faizy & Shashank Bengali, *63 People Killed in Attacks on Voter Registration Centers in Afghanistan*, L.A. TIMES (Apr. 22, 2018), <http://www.latimes.com/world/middleeast/la-fg-afghan-bombing-20180422-story.html>.

women and children.<sup>320</sup> Daesh/IS-KP claimed responsibility for the incident “explicitly citing a sectarian motive”<sup>321</sup> of targeting “apostates.”<sup>322</sup>

#### K. Attacks on Passengers and Civilian Transport Vehicles

Travelling inside Afghanistan is also a perilous undertaking for Hazaras. Besides the heightened risk of abductions,<sup>323</sup> Hazara civilians travelling by road have been frequently identified, tortured, and killed by the Taliban, Daesh/IS-KP, and other groups.<sup>324</sup> These perils have prohibited many Hazaras from travelling within the country, even for family visits.<sup>325</sup> Hazaras attempting to leave Afghanistan have also been assaulted by the Taliban.<sup>326</sup> Even citizens of western countries who belong to the Hazara community have been targeted.<sup>327</sup> This Section outlines some examples of deadly attacks on Hazaras travelling locally.

On July 25, 2014, Taliban gunmen methodically killed Hazara civilians who were travelling by road in the Bad Gah area, Chagcharan district, Ghor province.<sup>328</sup> The Taliban stopped two buses overnight and began checking

320. UNAMA ANNUAL REPORT 2018, *supra* note 136, at 29–30.

321. *Id.*

322. Janjua, *supra* note 319.

323. *See infra* Part II.O.

324. *See, e.g.,* Hekmat & Doherty, *supra* note 11 (“Another Hazara man . . . who returned home to see his grandchildren, was pulled off a bus at a similar illegal Taliban checkpoint, on a nearby road between Jaghori and Kabul. He was tortured before being shot and his body was dumped on the side of the road.”).

325. *See, e.g., id.* (noting the case of a Hazara man “stuck in Kabul, unable to get home, and feeling increasingly constricted in the capital. [He has] not seen [his] family in Jaghori for one-and-a-half years.”).

326. *See, e.g.,* Ben Doherty, ‘I Am an Australian Citizen’: Man Beaten by Taliban While Trying to Flee Afghanistan, THE GUARDIAN (Aug. 26 2021), <http://www.theguardian.com/australia-news/2021/aug/26/i-am-an-australian-citizen-man-beaten-by-taliban-while-trying-to-flee-afghanistan> (noting that “there have been regular reports that Hazaras have been singled out for violent mistreatment at Taliban checkpoints and refused access to the airport” during the August 2021 evacuation efforts); Ruchira Sharma, *Kabul Airport: Pregnant Hazara Woman and Husband Tell of Terrifying Taliban Beating as They Fled Afghanistan*, I NEWSPAPER (Aug. 24, 2021), <http://www.inews.co.uk/news/world/kabul-airport-pregnant-hazara-woman-husband-assaulted-taliban-flee-afghanistan-1163591> (describing the ordeal of a Hazara man and his pregnant wife who were threatened, beaten up, and told by the Taliban that, because of their Hazara ethnicity, they would not be allowed to access the Kabul airport).

327. *See, e.g.,* Doherty, *supra* note 326 (describing the case of an Australian citizen of Hazara descent who was beaten up and kidnapped by the Taliban as he tried to leave Afghanistan in August 2021).

328. *See, e.g.,* U.N. ASSISTANCE MISSION IN AFG., AFGHANISTAN ANNUAL REP. 2014: PROTECTION OF CIVILIANS IN ARMED CONFLICT 66 (Feb. 2015), <http://unama.unmissions.org/sites/default/files/2014-annual-report-on-protection-of-civilians-final.pdf>; *Afghan Conflict: 15 Killed in ‘Taliban Attack’ on Buses*, BBC NEWS (Jul. 25, 2014) <http://www.bbc.com/news/world-asia-28481282>; *Fourteen Civilians Shot Dead in Afghanistan*, AL JAZEERA (Jul. 26, 2014), <http://www.aljazeera.com/news/asia/2014/07/afghanistan-attack-201472553221541767.html>; Hekmat & Doherty, *supra* note 11.

everyone's face against their identification cards,<sup>329</sup> as Hazaras are easily distinguished by their Asiatic facial features.<sup>330</sup> The insurgents then separated fourteen Hazaras from thirty-two others, tied their hands, and shot them dead.<sup>331</sup> Among the fourteen Hazara victims were three women and one child.<sup>332</sup> The victims were traveling to Kabul for Eid, to celebrate the end of Ramadan with their families.<sup>333</sup>

Attacks targeting civilian transport vehicles used by Hazaras have risen in recent years. In May and June 2021 alone, the U.N. recorded at least eight bombings that "targeted buses or similar vehicles carrying members of the Hazara community."<sup>334</sup>

On June 1, 2021, two bombs in separate locations targeted two minivans in a Hazara neighborhood of west Kabul.<sup>335</sup> The explosions resulted in at least twenty-two civilian casualties (killed ten and wounded twelve).<sup>336</sup> Daesh/IS-KP claimed responsibility for the attacks.<sup>337</sup> This pattern of targeting civilian transport vehicles has continued.

On June 3, 2021, two bombs hit two minibuses in different locations in a Hazara neighborhood of west Kabul.<sup>338</sup> The blasts resulted in at least seventeen civilian casualties (eight killed and nine wounded).<sup>339</sup> Daesh/IS-KP was likely behind the attacks.<sup>340</sup>

On June 12, 2021, separate bombs struck two commuter minivans about two kilometers apart in a Hazara area of west Kabul.<sup>341</sup> The explosions resulted in at least thirteen civilian casualties (seven killed and six injured).<sup>342</sup> No group immediately claimed the attacks.<sup>343</sup>

329. *Fourteen Civilians Shot Dead in Afghanistan*, *supra* note 328; Hekmat & Doherty, *supra* note 11.

330. Hekmat & Doherty, *supra* note 11.

331. *Fourteen Civilians Shot Dead in Afghanistan*, *supra* note 328.

332. *Afghan Conflict: 15 Killed*, *supra* note 328.

333. Hekmat & Doherty, *supra* note 11.

334. See UNAMA MIDYEAR REPORT 2021, *supra* note 10, at 5.

335. Tameem Akhgar & Kathy Gannon, *Bombs in Afghan Capital Kabul Kill at Least 10, Wound 12*, ASSOCIATED PRESS (June 1, 2021), <http://www.apnews.com/article/islamic-state-group-kabul-ea33674c5db415c9a43d993e02fcfbba>.

336. *Id.*

337. *Seven Killed in Twin Van Bomb Blasts in Afghanistan's Kabul*, AL JAZEERA (June 12, 2021), <http://www.aljazeera.com/news/2021/6/12/seven-killed-twin-van-bomb-blasts-afghanistan-kabul> ("The local affiliate of ISIL (ISIS) has carried out similar bombings in the area, including four attacks on four minivans earlier this month that killed at least 18 people.").

338. *8 Killed in Double Afghan Minibus Blasts*, DAWN (June 3, 2021), <http://www.dawn.com/news/1627333/8-killed-in-double-afghan-minibus-blasts>.

339. *Id.*

340. See *Seven Killed in Twin Van Bomb Blasts in Afghanistan's Kabul*, *supra* note 337.

341. *Id.*

342. *Id.*

343. *Id.*

On November 13, 2021, a magnetic bomb targeted a passenger minibus on a busy commercial street in the Dasht-e Barchi district of Kabul.<sup>344</sup> The blast resulted in at least thirteen civilian casualties (six killed and seven wounded).<sup>345</sup> There was no immediate claim of responsibility.<sup>346</sup>

On December 10, 2021, two separate explosions, including a bomb targeting a minibus, hit the Dasht-e Barchi neighborhood of Kabul.<sup>347</sup> The blasts resulted in at least six casualties (two killed and four injured).<sup>348</sup> No one immediately claimed the attacks.<sup>349</sup>

On June 2, 2019, a magnetic bomb struck a bus carrying Hazara Shi'a students in a residential area of western Kabul.<sup>350</sup> About twenty minutes after the initial blast, two additional roadside bombs were detonated targeting first responders arriving at the scene.<sup>351</sup> The explosions resulted in eleven civilian casualties (one killed and ten wounded), including women.<sup>352</sup> Daesh/IS-KP said it was behind the attacks.<sup>353</sup>

Attacks on Hazara passengers and civilian transport vehicles carrying them have not been confined to Ghor and Kabul. On January 22, 2022, for instance, a sticky bomb attached to the fuel tank of a minivan detonated in the Hazara neighborhood of Haji Abas<sup>354</sup> in Herat city, Herat province.<sup>355</sup>

344. James Mackenzie, *Blast Hits Shi'ite Area of Afghan Capital Kabul*, REUTERS (Nov. 13, 2021), <http://www.reuters.com/world/asia-pacific/blast-hits-shiite-area-afghan-capital-kabul-residents-official-2021-11-13>; *Blast on Bus in Afghan Capital Kills 1 Person, Wounds 5*, ASSOCIATED PRESS (Nov. 13, 2021), <http://www.apnews.com/article/afghanistan-islamic-state-group-taliban-zabihullah-mujahid-kabul-33b4db398b7e8e0387272160e963f1b6>.

345. Mackenzie, *supra* note 344.

346. *Id.*

347. *Deadly Blasts Hit Afghan Capital Kabul*, AL JAZEERA (Dec. 10, 2021), <http://www.aljazeera.com/news/2021/12/10/bomb-blast-kills-two-civilians-on-minibus-in-afghanistans-kabul>; *2 Killed, 4 Injured in 2 Kabul Explosions*, TOLO NEWS (Dec. 10, 2021), <http://www.tolonews.com/afghanistan-175823>.

348. *Deadly Blasts Hit Afghan Capital Kabul*, *supra* note 347.

349. *Id.*

350. UNAMA ANNUAL REPORT 2019, *supra* note 155, at 48; Rahim Faiez, *Bombings in Afghan Capital Kill 2 People, Injure 2 Reporters*, ABC NEWS (June 2, 2019), <http://www.abcnews.go.com/International/wireStory/afghan-officials-bomb-blasts-capital-killed-63429614>; *Three Explosions Hit Kabul Killing One and Injuring 17*, AL JAZEERA (June 2, 2019), <http://www.aljazeera.com/news/2019/6/2/three-explosions-hit-kabul-killing-one-and-injuring-17>.

351. UNAMA ANNUAL REPORT 2019, *supra* note 155, at 48; *see also Three Explosions Hit Kabul*, *supra* note 350.

352. *Id.*

353. *See* UNAMA ANNUAL REPORT 2019, *supra* note 155, at 48.

354. *Seven Killed in an Explosion in Herat*, RUKHSHANA MEDIA (Jan. 22, 2022), <http://www.rukhshana.com/en/seven-killed-in-an-explosion-in-herat>.

355. *Several Killed in Bus Blast in Western Afghanistan*, AL JAZEERA (Jan. 22, 2022), <http://www.aljazeera.com/news/2022/1/22/bomb-on-bus-kills-seven-in-western-afghan-city-officials>.

The blast resulted in at least sixteen civilian casualties (seven killed and nine injured), including women.<sup>356</sup> Daesh/IS-KP claimed the attack.<sup>357</sup>

#### L. Attacks on Weddings and Celebratory Events

On August 17, 2019, a suicide bomber targeted a wedding ceremony, mainly attended by Hazaras, at Dubai City wedding hall in western Kabul.<sup>358</sup> The explosion resulted in 234 civilian casualties (ninety-one killed and 143 wounded), including dozens of women and children—the single most deadly incident in 2019.<sup>359</sup> The victims were members of the Hazara community.<sup>360</sup> Daesh/IS-KP claimed responsibility for the attack, but the Afghan government also blamed the Taliban.<sup>361</sup>

On March 21, 2018, a suicide bomber detonated his explosives near the Karte Sakhi shrine in west Kabul where Shi'a Muslims had gathered to celebrate Nowruz, the Persian new year festival.<sup>362</sup> The blast resulted in one-hundred civilian casualties (thirty-five killed and sixty-five injured), including children.<sup>363</sup> Daesh/IS-KP claimed the bombing, “explicitly citing a sectarian motive.”<sup>364</sup>

On January 13, 2022, the Taliban opened fire on a civilian vehicle carrying Hazara passengers who were returning from a wedding in Kabul.<sup>365</sup> The Taliban's assault resulted in the death of Zainab—a young woman who

356. *Id.*

357. *Islamic State Claims Responsibility for Attack in Herat, Afghanistan*, REUTERS (Jan. 23, 2022), <http://www.reuters.com/world/asia-pacific/islamic-state-claims-responsibility-attack-heart-afghanistan-2022-01-23>.

358. *Afghanistan: Bomb Kills 63 at Wedding in Kabul*, BBC NEWS (Aug. 18, 2019), <http://www.bbc.com/news/world-asia-49383803>; Rahim Faiez, *Dozens Dead or Hurt in Wedding Party Blast in Afghan Capital*, ASSOCIATED PRESS (Aug. 17, 2019), <http://www.apnews.com/article/kabul-international-news-asia-pacific-ap-top-news-afghanistan-90d5cd5874ea4b0991e17cd6f3d7aa2c>; Pamela Constable & Sharif Hassan, *Islamic State Claims Suicide Attack on Kabul Wedding that Killed 63*, WASH. POST (Aug. 18, 2019), [http://www.washingtonpost.com/world/asia\\_pacific/bloody-suicide-attack-on-kabul-wedding-kills-at-least-63/2019/08/18/ace5f0d4-c17d-11e9-a5c6-1e74f7ec4a93\\_story.html](http://www.washingtonpost.com/world/asia_pacific/bloody-suicide-attack-on-kabul-wedding-kills-at-least-63/2019/08/18/ace5f0d4-c17d-11e9-a5c6-1e74f7ec4a93_story.html); see UNAMA ANNUAL REPORT 2019, *supra* note 155, at 8, 48.

359. UNAMA ANNUAL REPORT 2019, *supra* note 155, at 8, 48.

360. Constable & Hassan, *supra* note 358.

361. *Id.*

362. See e.g., UNAMA ANNUAL REPORT 2018, *supra* note 136, at 29; *Kabul Sakhi Shrine: 'Dozens Dead' in New Year Attack*, BBC NEWS (Mar. 21, 2018), <http://www.bbc.com/news/world-asia-43484206>; Sharif Hassan & Pamela Constable, *'We Suffer More': Rising Violence on Shiite Targets Takes Toll on Afghanistan's Hazaras*, WASH. POST (Mar. 21, 2018), [http://www.washingtonpost.com/world/kabul-suicide-bomber-strikes-shiite-ceremony-killing-at-least-29/2018/03/21/e6e6e3ce-2cfa-11e8-b0b0-f706877db618\\_story.html](http://www.washingtonpost.com/world/kabul-suicide-bomber-strikes-shiite-ceremony-killing-at-least-29/2018/03/21/e6e6e3ce-2cfa-11e8-b0b0-f706877db618_story.html).

363. UNAMA ANNUAL REPORT 2018, *supra* note 136, at 29.

364. *Id.*

365. *Taliban Checkpoint Shot Dead a Young Woman in Kabul*, RUKHSHANA MEDIA (Jan. 15, 2022), <http://www.rukhshana.com/en/taliban-checkpoint-shot-dead-a-young-woman-in-kabul>.

was planning her own wedding in a month and was the sole breadwinner of her family.<sup>366</sup> The incident happened in the Dasht-e Barchi district of Kabul.<sup>367</sup>

#### M. *Attacks on Workers and Work Sites*

On June 8, 2021, masked gunmen targeted Hazara humanitarian mine clearance workers at a camp run by the HALO Trust, a British-American charity that has been clearing land mines in Afghanistan, near Shaikh Jalal village in Baghlan-e-Jadid district, Baghlan province.<sup>368</sup> The gunmen killed eleven deminers and injured fifteen others.<sup>369</sup> According to HALO Trust's CEO, "[a] group of armed men came to our camp and sought out members of the Hazara community, and then murdered them."<sup>370</sup> The assailants went "'bed to bed' shooting the workers 'in cold blood.'"<sup>371</sup> The ethnic motive behind the attack was also confirmed by the survivors.<sup>372</sup> Daesh/IS-KP claimed the attack.<sup>373</sup>

On March 3, 2021, a group of gunmen murdered at least seven Hazara laborers who worked at a plaster factory in the Sorkh Rod district of Nangarhar province.<sup>374</sup> The workers had their hands bound behind their backs when they were shot to death.<sup>375</sup> The Hazara victims had come from

366. *See id.*

367. *Taliban Arrest Fighter Who Shot Dead Hazara Woman at Checkpoint*, FRANCE 24 (Jan. 19, 2022), <http://www.france24.com/en/live-news/20220119-taliban-arrest-fighter-who-shot-dead-hazara-woman-at-checkpoint>.

368. *See, e.g.*, UNAMA MIDYEAR REPORT 2021, *supra* note 10, at 6; *Halo Trust: Afghanistan Mine Clearance Workers Shot Dead 'in Cold Blood'*, BBC NEWS (June 9, 2021), <http://www.bbc.com/news/world-asia-57410265>; Najim Rahim & Mike Ives, *Attack in Afghanistan Kills 10 From Charity That Clears Land Mines*, N.Y. TIMES (June 9, 2021), <http://www.nytimes.com/2021/06/09/world/asia/afghanistan-land-mines-halo-trust.html>.

369. UNAMA MIDYEAR REPORT 2021, *supra* note 10, at 6.

370. *Halo Trust: Afghanistan Mine*, *supra* note 368; *see also Joint Open Letter to the High Commissioner for Human Rights*, HUM. RTS. WATCH (July 2, 2021), <http://www.hrw.org/node/379132/printable/print> (reporting that "the attackers were seeking out members of the Hazara Shia community").

371. *Halo Trust: Afghanistan Mine*, *supra* note 368.

372. *See, e.g., id.* (noting that according to a survivor of the attack, "the gunmen had asked if any of them were from the Hazara minority community before opening fire"); *see also* Rahim & Ives, *supra* note 368 (reporting that "the attackers asked who among those in the camp were Hazaras").

373. *Halo Trust: Afghanistan Mine*, *supra* note 368.

374. *See, e.g., Seven Ethnic Hazaras Killed in Eastern Afghanistan*, RADIO FREE EUR./RADIO LIBERTY (Mar. 4, 2021), <http://www.gandhara.rferl.org/a/hazaras-jalalabad-execution-taliban-islamic-state/31133109.html>; Rahim Faiez, *Afghan Official: Gunmen Kill 7 Workers, Bomb Kills Doctor*, ASSOCIATED PRESS (Mar. 4, 2021), <http://www.apnews.com/article/religion-islamic-state-group-7e70ce339c7a33efa51833e4841e6ef5>.

375. *Seven Ethnic Hazaras Killed*, *supra* note 374.

various provinces, including Kabul, Bamyan, and Balkh, to work in that factory.<sup>376</sup> No one claimed responsibility for the incident.<sup>377</sup>

On January 6, 2017, anti-government elements targeted a bus carrying coal mine workers of Hazara ethnicity in the Tala wa Barfak district, Baghlan province.<sup>378</sup> The gunmen stopped the bus and opened fire on the Hazara miners, killing at least seven and injuring three others.<sup>379</sup> The workers were returning home to Daykondi province when they were ambushed.<sup>380</sup> The gunmen cited sectarian motives during their assault.<sup>381</sup> No one claimed the attack.

#### N. Attacks on Property

Hazara property has been attacked and plundered. A common and recurring pattern has been violent assaults by Kuchis on Hazara villages and neighborhoods in various provinces.<sup>382</sup> The Taliban have also been reportedly involved in such attacks on Hazaras.<sup>383</sup> This Section provides some examples of attacks on Hazara property.

From June 17-19, 2011, Kuchis and the Taliban attacked the Nahoor district of Ghazni province, which is inhabited by Hazaras. The Afghanistan Independent Human Rights Commission (“AIHRC”) conducted a fact-

376. Faiez, *supra* note 374.

377. *Id.*

378. See UNAMA MIDYEAR REPORT 2017, *supra* note 166, at 46.

379. *Id.*; see also Mujib Mashal & Fahim Abed, *Gunmen Attack Hazara Miners in Afghanistan, Killing at Least 9*, N.Y. TIMES (Jan. 6, 2017), <http://www.nytimes.com/2017/01/06/world/asia/afghanistan-hazara-miners-attack.html> (discussing that while most sources state nine casualties from the attack, there has been discrepancy regarding the total death toll).

380. *Id.*

381. See, e.g., Hamid Shirzai, *Baghlan Shooting Survivor Says Religion Was The Motive*, TOLO NEWS (Jan. 7, 2017), <http://tolonews.com/afghanistan/baghlan-shooting-survivor-says-religion-was-motive> (According to one of the survivors, the assailants “told us you belong to another religion and your death is allowed and then they started shooting us . . . the gunmen, who were masked, called [the victims] non-believers.”).

382. See, e.g., AIHRC NAHOOR REPORT, *supra* note 220, at 2 (noting that attacks by Kuchis are a regular occurrence, particularly in the districts of Behsud (Maidan Wardak province) and Nahoor (Ghazni province) resulting in civilian casualties, destruction of farmlands, plunder of properties, and forced displacement of the local population from their ancestral lands).

383. The Taliban’s support for Kuchis in attacks on Hazaras dates back to the militant group’s last stint in power in the late 1990’s. See, e.g., Fabrizio Foschini, *The Kuchi-Hazara Conflict, Again*, AFG. ANALYSTS NETWORK (May 27, 2010), <http://www.afghanistan-analysts.org/en/reports/war-and-peace/the-kuchi-hazara-conflict-again>. Such backing for fellow Pashtuns (Kuchis) is also perceived as “an ethno-nationalist cause.” *Id.* Indeed, the Hazaras’ distinct ethnic and religious identity “makes them an easy target for overwhelmingly-Pushtun Taliban seeking to rebuild support from Sunni Pashtun groups such as the kuchis.” IMMIGR. & REFUGEE BD. OF CAN., AFGHANISTAN: SITUATION AND TREATMENT OF THE HAZARA PEOPLE 3 (July 28, 2011).

finding investigation into this three-day assault.<sup>384</sup> The Taliban's direct involvement was confirmed by eyewitnesses, local government officials, and other evidence observed by AIHRC.<sup>385</sup> One day prior to the attack, the Taliban and the Kuchis damaged the telecommunication facilities to cut off external communication with Nahoor and blocked the road connecting Nahoor to the provincial center.<sup>386</sup>

The assailants systematically attacked thirty-six villages, severely damaging residential houses and burning twenty buildings.<sup>387</sup> Moreover, the perpetrators destroyed the residents' farms and crops (their main source of livelihood as subsistence farmers).<sup>388</sup> They also incinerated the villagers' storage of firewood and livestock food.<sup>389</sup> One civilian was killed and burned in the Garmak village.<sup>390</sup>

The attackers plundered the personal properties and possessions of the residents including household items and livestock.<sup>391</sup> Many cars and 120 motorcycles were stolen, and some were burned.<sup>392</sup> The assailants also ransacked many shops and a pharmacy,<sup>393</sup> in addition to damaging and looting schools and the only operating medical clinic in the area.<sup>394</sup> In total, approximately 782 families were victimized and forcibly displaced by the brutal three-day assault.<sup>395</sup>

AIHRC strongly criticized the Afghan government for various shortcomings, including its "continued negligence" in preventing such attacks,<sup>396</sup> its failure to provide humanitarian assistance to the victims who had suffered "irreparable harm,"<sup>397</sup> its disinterest in documenting such incidents, and its failure to hold the perpetrators accountable.<sup>398</sup>

In mid-May 2010, a similar large-scale, military-style attack had occurred in the Hazara-populated districts of Behsud and Daimirdad in Maidan Wardak province.<sup>399</sup> Kuchis, once again with suspected Taliban back-

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384. See generally AIHRC NAHOOR REPORT, *supra* note 220.

385. *Id.* at 2, 6. For instance, the Taliban's flag along with their heavy weaponry and vehicles were observed during the three-day assault. *Id.*

386. *Id.* at 2.

387. *Id.* at 5.

388. *Id.* at 5.

389. *Id.* at 2.

390. *Id.* at 5.

391. *Id.* at 5.

392. *Id.* at 6.

393. *Id.* at 4, 5.

394. *Id.* at 6.

395. *Id.* at 5.

396. *Id.* at 6.

397. *Id.* at 3, 6.

398. *Id.* at 7.

399. Foschini, *supra* note 383; see also *Nomad Assault Fuels Afghan Disarray*, *supra* note 11.



ing,<sup>400</sup> destroyed and plundered the locals' houses, goods, and livestock.<sup>401</sup> The attack killed at least eight local Hazara villagers.<sup>402</sup> Approximately 1,958 families were forcibly displaced due to the assault.

In November 2018, the Taliban attacked the Hazara-populated districts of Jaghori and Malestan in Ghazni province.<sup>403</sup> As in prior attacks, the Taliban destroyed the major telecommunication networks in both districts as part of their strategy.<sup>404</sup> According to the U.N., the people trapped in the affected areas faced "siege-like" conditions.<sup>405</sup> In addition to killing and wounding thirty-seven civilians and displacing thousands of families, the Taliban razed more than 3,000 homes.<sup>406</sup> The insurgents also set fire to an ambulance, abducted medical clinic staff, and damaged at least two mosques.<sup>407</sup>

During August 3-5, 2017, the Taliban and Daesh/IS-KP fighters conducted a joint attack against the Hazara-populated Mirza Olang village in Sayyad district, Sari Pul province.<sup>408</sup> In addition to killing dozens of Hazara civilians (including women, children, and the elderly), the insurgents torched thirty houses.<sup>409</sup>

Attacks on Hazara property have continued unabated since the Taliban's takeover of Afghanistan. In September 2021, for instance, armed Ku-

400. Eyewitnesses unanimously confirmed the heavy weapons and military tactics employed by Kuchis who were believed to have Taliban forces embedded within their ranks. Foschini, *supra* note 383. The witnesses also bemoaned the government's negligence in failing to stem the assault perpetrated by nearly "a thousand fighters with pickups, rockets and machine-guns." *Id.*

401. *Id.* Large numbers of Hazaras' stolen livestock were reportedly sold in the neighboring Ghazni province. *Id.*

402. *Id.*

403. See, e.g., UNAMA ANNUAL REPORT 2018, *supra* note 136, at 19; Mustafa Andalib & Abdul Qadir Sediqi, *Thousands Flee as Taliban Attack Afghanistan's 'Safe' Districts*, REUTERS (Nov. 14, 2018),

<http://www.reuters.com/article/us-afghanistan-attack-idUSKCN1NJ28K>.

404. Ali Yawar Adili & Martine van Bijlert, *Taliban Attacks on Khas Uruzgan, Jaghori and Malestan (I): A New and Violent Push into Hazara Areas*, AFG. ANALYSTS NETWORK (Nov. 28, 2018), <http://www.afghanistan-analysts.org/en/reports/war-and-peace/taliban-attacks-on-khas-uruzgan-jaghori-and-malestan-i-a-new-and-violent-push-into-hazara-areas>; see also Sharif Hassan, *These Afghan Villages Had Been Safe from Insurgents. Then a Deadly Taliban Assault Forced Thousands to Flee*, WASH. POST (Nov. 19, 2018) (noting that "cell-phone towers were destroyed"), [http://www.washingtonpost.com/world/asia\\_pacific/we-left-everything-behind-the-flight-of-the-talibans-victims-from-afghanistans-safe-districts/2018/11/19/bdc8ef02-eb3e-11e8-8b47-bd0975fd6199\\_story.html](http://www.washingtonpost.com/world/asia_pacific/we-left-everything-behind-the-flight-of-the-talibans-victims-from-afghanistans-safe-districts/2018/11/19/bdc8ef02-eb3e-11e8-8b47-bd0975fd6199_story.html).

405. Andalib & Sediqi, *supra* note 403.

406. UNAMA ANNUAL REPORT 2018, *supra* note 136, at 19; Andalib & Sediqi, *supra* note 403.

407. UNAMA ANNUAL REPORT 2018, *supra* note 136, at 19.

408. See, e.g., UNAMA Mirza Olang Report, *supra* note 168, at 1; see also *Insurgents Kill up to 50 Afghan Villagers*, *supra* note 168.

409. See *Insurgents Kill up to 50 Afghan Villagers*, *supra* note 168.

chis entered the Hazara-populated district of Nahoor in Ghazni province.<sup>410</sup> The nomads occupied the homes of some Hazara families who were forcibly evicted by the Taliban.<sup>411</sup> The assailants also broke down the gates of mosques and houses,<sup>412</sup> and stole the livestock of some villagers.<sup>413</sup> In addition to destroying parts of the locals' agricultural land and crops, Kuchis grazed their flocks on the farmlands of Hazara villagers.<sup>414</sup> The nomads also told the residents in some areas that they were not allowed to use the water dam.<sup>415</sup> Such attacks are especially consequential because, as subsistence farmers, agriculture is the sole source of income and livelihood for the villagers in Nahoor.<sup>416</sup> Backed by the Taliban, Kuchis threatened Hazara villagers who voiced objections with death.<sup>417</sup>

In November 2021, the Taliban and Kuchis reportedly destroyed fifteen houses in the Khairabad and Nawabad neighborhoods of the Dasht-e Barchi district of Kabul.<sup>418</sup> In addition, the assailants threatened approximately 500 other families living in these areas to abandon their homes.<sup>419</sup> Some families have already left their homes due to these threats and demolitions.<sup>420</sup>

#### O. Abductions

Various groups have targeted the Hazaras for abductions. The motives for such kidnappings are varied and include "holding hostages for ransom, exchange of detainees, suspicion of the hostages being members of the Afghan national security forces, and non-payment of illegal taxes. In some cases, the motive [is] unknown."<sup>421</sup> While many abductions go unreported,

410. Hussain Ali Haidari, *Kuchis Are Taking Advantage of Hazara Farmlands in Ghazni's Nawur District*, HASHTE SUBH (Sept. 20, 2021), <http://8am.af/eng/kuchis-are-taking-advantage-of-hazara-farmlands-in-ghaznis-nawur-district>.

411. *Id.*

412. *Id.*

413. Jalil Rownaq, *Bashandegan Nawur Ghazni: Kuchiha keshtzarha ra az bayn bordand va chizi baraye zemestan nadarim [Residents of Nawur, Ghazni: The Kuchis Destroyed the Farmlands and We Have Nothing Left for the Winter]*, ETILAAT ROZ (Sept. 19, 2021), <http://www.etilaatroz.com/131508/residents-of-nawur-ghazni-kuchis-destroyed-the-fields>.

414. *Id.*

415. Haidari, *supra* note 410.

416. *Id.*

417. Rownaq, *supra* note 413. The Taliban have also forced the locals to pay compensation to Kuchis for the alleged loss of the nomads' livestock that grazed Hazaras' farmlands. *Id.*

418. *Ede'aye takhrife 15 khana tavasote "taliban" va "kuchiha" dar gharbe kabol; taliban miguyad dorugh ast [Alleged Destruction of 15 Homes by Taliban and Kuchis in Western Kabul; Taliban Say This Is False]*, ETILAAT ROZ (Nov. 14, 2021), <http://www.etilaatroz.com/132869/alleged-destruction-of-15-houses-by-the-taliban-and-kuchis-in-western-kabul>.

419. *Id.*

420. *Id.*

421. UNAMA ANNUAL REPORT 2015, *supra* note 161, at 49.

a brief glance at some numbers of recorded incidents is instructive. In 2015, for instance, the U.N. documented twenty-six incidents in which “anti-government elements abducted 224 Hazara civilians” in various provinces including Ghazni, Balkh, Sari Pul, Faryab, Uruzgan, Baghlan, Maidan Wardak, Jawzjan, and Ghor.<sup>422</sup> In 2016, the U.N. recorded sixteen incidents involving the kidnaping of eighty-five Hazara civilians.<sup>423</sup>

In many cases, the attacks take the form of mass abductions of several Hazara civilians at once and, in several incidents, the abductees have been brutally killed. For example, on October 13, 2015, militants linked to Daesh/IS-KP abducted seven Hazara civilians, including two women, two boys, and one girl, that were travelling along the Kabul-Kandahar highway en route to Jaghori district, Ghazni province.<sup>424</sup> The civilians were held captive in Arghandab district, Zabol province.<sup>425</sup> Between November 6 and 8, 2015, the kidnapers beheaded all seven civilians, including three children, by slitting their throats with metal wire.<sup>426</sup> This prompted large protests in cities across Afghanistan, “demanding accountability and greater protection for the Hazara community.”<sup>427</sup> The decapitated bodies of the seven Hazaras were found in a rural town in the southern Zabol province.<sup>428</sup>

On April 14, 2015, Taliban militants abducted fourteen Hazara civilians in Ajristan district, Ghazni province, as a potential exchange for senior Taliban commanders arrested by the government.<sup>429</sup> On April 17, 2015, the Taliban beheaded four of the abductees, who were farmers, after the government rejected their demands.<sup>430</sup> In addition, six other Hazara civilians from Daikundi province who were kidnapped by unidentified assailants were also found slain in Ajristan district; they, too, were reportedly beheaded.<sup>431</sup>

On September 1, 2016, militants linked to the Taliban stopped two civilian vehicles carrying around forty passengers in Dawlat Yar district, Ghor province.<sup>432</sup> The gunmen subsequently identified and separated five Hazara civilians, who were students, from non-Hazara passengers and ab-

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422. UNAMA ANNUAL REPORT 2016, *supra* note 167, at 73; UNAMA ANNUAL REPORT 2015, *supra* note 161, at 49.

423. UNAMA ANNUAL REPORT 2016, *supra* note 167, at 73.

424. Mashal & Shah, *supra* note 162; UNAMA ANNUAL REPORT 2015, *supra* note 161, at 49–50.

425. Mashal & Shah, *supra* note 162; UNAMA ANNUAL REPORT 2015, *supra* note 161, at 49–50.

426. Mashal & Shah, *supra* note 162.

427. UNAMA ANNUAL REPORT 2015, *supra* note 161, at 49–50.

428. Tharoor, *supra* note 163.

429. *See, e.g.*, UNAMA MIDYEAR REPORT 2015, *supra* note 164, at 62; Nordland & Sukhanyar, *supra* note 164.

430. UNAMA MIDYEAR REPORT 2015, *supra* note 164, at 62.

431. Nordland & Sukhanyar, *supra* note 164.

432. *Four Students Who Were Taken Hostage in Ghor*, *supra* note 167.

ducted them.<sup>433</sup> The assailants beheaded one of the Hazara students “after his family failed to pay a ransom.”<sup>434</sup>

In September 2015, the Taliban abducted three Hazara civilians on the Sari Pul-Jawzjan highway and later killed them in a brutal manner.<sup>435</sup> According to local officials, the Taliban had increased their abductions of Hazara civilians on this particular route.<sup>436</sup>

On September 24, 2016, Daesh/IS-KP militants abducted and killed three Hazara civilians in Sari Pul province.<sup>437</sup>

On February 23, 2015, anti-government elements affiliated with the Taliban stopped two public buses in Shajoy district, Zabul province, whilst travelling from Herat to Kabul.<sup>438</sup> The masked gunmen then entered the two buses, collected the passengers’ identification cards and cellphones, and identified and separated Hazara males from the rest of the travelers.<sup>439</sup> The assailants then abducted thirty-one Hazara men and boys.<sup>440</sup> On May 11, the kidnappers released nineteen of the thirty-one Hazara abductees in exchange for a group of detainees held by the government.<sup>441</sup>

On June 1, 2016, Taliban militants stopped two vehicles in Sancharak district, Sari Pul province and kidnapped twenty-two Hazara civilians, including three women and one child.<sup>442</sup> The kidnapping was committed to “put pressure on the provincial government to release a Taliban commander held by the [g]overnment.”<sup>443</sup>

On August 23, 2016, Daesh/IS-KP militants abducted a Hazara civilian in Dawlat Yar district, Ghor province.<sup>444</sup> The abductee was released on September 17, 2016 after payment of a ransom.<sup>445</sup>

433. *Panj daneshjooye hazara dar velayate ghoor reboodeh shod [Five Hazara Students Were Abducted in Ghor]*, ATLAS PRESS (Sept. 1, 2016), <http://bit.ly/3IvGKnl>.

434. UNAMA ANNUAL REPORT 2016, *supra* note 167, at 81.

435. *Taliban seh gerawgane shia hazara sari pul ra be shekle faji’ koshtand [Taliban Killed Three Shia Hazaras from Sari Pul in a Brutal Manner]*, SHAFQA (Sept. 23, 2015), <http://af.shafaqna.com/FA/77475>.

436. *Id.*

437. UNAMA ANNUAL REPORT 2016, *supra* note 167, at 80.

438. *Afghanistan Kidnap: Gunmen Seize 30 Hazara Men in Zabul*, BBC NEWS (Feb. 24, 2015), <http://www.bbc.com/news/world-asia-31600476> (noting that “[d]istrict Governor Abdul Khaliq Ayoubi blamed the Taliban for the attack”); UNAMA MIDYEAR REPORT 2015, *supra* note 164, at 61.

439. Sudarsan Raghavan, *After Suffering Under the Taliban, An Afghan Minority Faces New Threats*, WASH. POST (Apr. 9, 2015), [http://www.washingtonpost.com/world/asia\\_pacific/after-suffering-under-the-taliban-an-afghan-minority-faces-new-threats/2015/04/08/035e1c4a-d71b-11e4-bf0b-f648b95a6488\\_story.html](http://www.washingtonpost.com/world/asia_pacific/after-suffering-under-the-taliban-an-afghan-minority-faces-new-threats/2015/04/08/035e1c4a-d71b-11e4-bf0b-f648b95a6488_story.html).

440. *Id.*

441. UNAMA MIDYEAR REPORT 2015, *supra* note 164, at 61.

442. U.N. ASSISTANCE MISSION IN AFG., AFGHANISTAN MIDYEAR REPORT 2016: PROTECTION OF CIVILIANS IN ARMED CONFLICT 66–67 (July 2016).

443. *Id.*

444. UNAMA ANNUAL REPORT 2016, *supra* note 167, at 81.

In June 2020, Taliban militants abducted approximately sixty Hazara civilians, including twenty-eight women and children, who were travelling on the Daikundi-Uruzgan road.<sup>446</sup> All the hostages were Hazara and residents of Daikundi province.<sup>447</sup> The Taliban kidnapped these civilians after a woman fled from a Taliban-controlled village in the neighboring Uruzgan province.<sup>448</sup>

The abductions of Hazara civilians have continued since the Taliban's takeover of Afghanistan. For example, in February 2022, the Taliban kidnapped a Hazara civilian in Jaghori district, Ghazni province and tortured him for eleven days.<sup>449</sup> The Taliban accused him of distributing humanitarian assistance to displaced victims of war following Taliban's attacks on Jaghori and Malistan districts in 2018.<sup>450</sup> The Taliban also threatened to kill the hostage's family members including his brother in Australia.<sup>451</sup> The abductee was released after paying a ransom of 500,000 Afs (roughly \$6,000 U.S. dollars).<sup>452</sup> The Taliban also stole the victim's vehicle.<sup>453</sup> The victim and twenty-four members of his family had to flee the country after this incident.<sup>454</sup>

#### P. Forced Displacement

Hazaras also continue to be unlawfully and forcibly displaced from their lands and homes in various provinces including, but not limited to, Maidan Wardak, Ghazni, Uruzgan, Daikundi, Helmand, Balkh, and Kabul.

For example, in May 2010, a large-scale and military-style attack by Kuchis and the Taliban on the Hazara-populated districts of Behsud and Daimirdad in Maidan Wardak province forcibly displaced about 1,958 fami-

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445. *Id.*

446. Orooj Hakimi & Abdul Qadir Sediqi, *Afghan Taliban Kidnap Dozens of Civilians Amid Peace Efforts, Officials Say*, REUTERS (June 21, 2020), <http://www.reuters.com/article/us-afghanistan-taliban-idUSKBN23S0GZ>; *Taliban 54 mosafar ra dar badal farar dokhtar wa pesar jawan be gerawgan gereftehand [Taliban Have Taken 54 Travelers Hostage in Exchange for the Escape of Young Girl and Boy]*, BBC PERSIAN (June 20, 2002), <http://www.bbc.com/persian/afghanistan-53121349>.

447. *Id.*

448. Hakimi & Sediqi, *supra* note 446.

449. Sam Anwari, *Taliban yek marde hazara ra be dalil fa'aliyathaye baradarash dar australia 'be sheday shekanja' kardeh and [Taliban 'Severely Tortured' a Hazara Man Due to His Brother's Activities in Australia]*, SBS DARI (Mar. 22, 2022), <http://www.sbs.com.au/language/dari/audio/australian-hazara-s-refugee-fundraising-sees-brother-severely-tortured-by-taliban>.

450. *Id.*

451. *Id.*

452. *Id.*

453. *Id.*

454. *Id.*

lies.<sup>455</sup> Most of the internally displaced people (“IDPs”) sought refuge in Kabul.<sup>456</sup>

During June 17-19, 2011, Kuchis and the Taliban attacked the Nahoor district of Ghazni province.<sup>457</sup> The brutal three-day assault victimized and forcibly displaced approximately 782 families,<sup>458</sup> as well as forcing the closure of seven schools where 2,030 students were enrolled.<sup>459</sup>

During October-November 2018, the Taliban attacked the Hazara-populated villages of Kondolan, Hussaini, Karez, and Gerdai Chaman in Khas Uruzgan district of Uruzgan province.<sup>460</sup> However, instead of acting swiftly to thwart the Taliban’s offensive, President Ashraf Ghani, who is an ethnic Pashtun, issued a decree calling the Taliban’s attack an “ethnic conflict” that needed to be “investigate[d] and resolve[d].”<sup>461</sup> President Ghani has unlawfully supported the Taliban, which is a predominately Pashtun militant group, on various occasions.<sup>462</sup>

Ghani’s decree effectively delayed the government response to the Taliban’s onslaught, resulting in more civilian casualties and displacement of the people.<sup>463</sup> In addition to killing around fifty-four civilians, the Taliban’s assault forcibly displaced approximately 500 families.<sup>464</sup> President Ghani’s ethnic characterization of the Taliban’s assault on the Hazara-populated villages, and consequent delay in repelling Taliban insurgents, elicited strong criticism by many including his own Vice-President Sarwar Danish and

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455. See, e.g., Foschini, *supra* note 383.

456. *Id.*

457. See generally AIHRC NAHOOR REPORT, *supra* note 220.

458. *Id.* at 5.

459. *Id.* at 6.

460. *Elamiye matbu’ati dar erteabat ba dargiriye mosalahane dar velayate uruzgan [Press Release Regarding the Armed Conflict in Uruzgan Province]*, AFG. INDEP. HUM. RTS. COMM’N (Nov. 5, 2018), [http://www.aihrc.org.af/home/press\\_release/7841](http://www.aihrc.org.af/home/press_release/7841).

461. Adili & van Bijlert, *supra* note 404.

462. For instance, President Ghani illegally ordered the payment of death benefits to the families of Taliban fighters killed in clashes with Afghan security forces. See Hakimi, *supra* note 3, at 366. Moreover, President Ghani also ordered the release of thousands of Taliban convicts in violation of Afghan and international laws. *Id.* at 333–55.

463. Adili & van Bijlert, *supra* note 404. Chief Executive Abdullah admitted that the government’s delay “had led to civilian casualties and displacement of the people.” *Id.* In addition, according to local officials, given President Ghani’s stance, the soldiers sent to the area “had not yet been allowed to carry out operations” against the Taliban which likely contributed to further civilian casualties, displacement, and property damage. *Id.*

464. *Id.*

Chief Executive Abdullah Abdullah.<sup>465</sup> The AIHRC also condemned the deliberate targeting of civilians and residential buildings.<sup>466</sup>

Emboldened by their devastating assault on the Khas Uruzgan district and the Afghan government's fecklessness, in November 2018, the Taliban launched offensive operations on the districts of Jaghori and Malistan in Ghazni province.<sup>467</sup> In addition to killing at least thirty-five Hazara civilians, destroying more than 3,000 homes, and shutting down schools and markets,<sup>468</sup> the Taliban's attack forcibly displaced large numbers of Hazaras from these two districts that faced "siege-like" conditions.<sup>469</sup> For instance, the number of IDPs who had fled to Bamyan, Kabul, and Ghazni alone was at least 4,785 families (33,495 individuals).<sup>470</sup> According to the U.N., the harsh winter conditions posed significant challenges in meeting the IDPs' basic needs.<sup>471</sup> Moreover, the displacement crisis heightened other concerns such as the rising cases of respiratory tract diseases amongst the IDPs, especially children.<sup>472</sup>

The forced displacement of Hazaras has intensified since the Taliban's takeover of Afghanistan in August 2021. Taliban officials have already forcibly evicted thousands of Hazara families in several provinces—including Daikundi, Uruzgan, Helmand, Balkh, and Kabul—distributing Hazara lands and property to their own supporters.<sup>473</sup> In September 2021, the Taliban forcibly evicted at least 2,800 Hazara residents (up to 2,000 families according to some reports) from fifteen villages in the Daikundi and Uruzgan provinces.<sup>474</sup> The displaced families, who were mostly subsistence farmers, were forced to leave most of their belongings and crops behind as the Taliban gunmen monitoring the eviction process "did not let anyone take even their

465. According to Vice-President Danish, "[t]hese people [referring to the besieged local Hazara residents] were under government rule and are supporters of the system and, for that very reason, have come under the Taleban's brutal attack." *Id.* Vice-President Danish censured his own government saying, "for whatever reason, no practical action has been taken by the local administration or our security institutions in [Kabul] to defend the people." *Id.*

466. *Press Release Regarding the Armed Conflict in Uruzgan Province*, *supra* note 460.

467. *See, e.g.*, Andalib & Sediqi, *supra* note 403; Hassan, *supra* note 404.

468. Andalib & Sediqi, *supra* note 403; Hassan, *supra* note 404.

469. Andalib & Sediqi, *supra* note 403.

470. U.N. OFF. FOR THE COORDINATION OF HUMANITARIAN AFFS., AFGHANISTAN: GHAZNI ARMED CLASHES – FLASH UPDATE NO. 3, at 1 (Nov. 21, 2018), [http://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/flash\\_update\\_-\\_ghazni\\_armed\\_clash\\_no.3.pdf](http://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/flash_update_-_ghazni_armed_clash_no.3.pdf).

471. *Id.*

472. *Id.*

473. *See, e.g.*, *Afghanistan: Taliban Forcibly Evict Minority Shia*, HUM. RTS. WATCH (Oct. 22, 2021), <http://www.hrw.org/news/2021/10/22/afghanistan-taliban-forcibly-evict-minority-shia>.

474. *Id.*; Tracey Shelton, *Despite Promises, Taliban Begin Evicting Afghanistan's Ethnic Hazaras from Their Land*, ABC NEWS (Oct. 15, 2021), <http://www.abc.net.au/news/2021-10-16/taliban-carrying-out-mass-eviction-shia-hazara-minority/100505874>.

crops with them.”<sup>475</sup> Some homes were “burned down or blown up with explosives” after the villagers’ departure.<sup>476</sup>

In late September 2021, the Taliban ordered at least 400 families in Naw Mish district, Helmand province, to leave their homes and land.<sup>477</sup> Due to the short notice, the families were unable to take their belongings or complete harvesting their crops.<sup>478</sup> The Taliban have been reportedly distributing the seized property among their own forces.<sup>479</sup>

In early October 2021, the Taliban and affiliated militias ordered approximately 4,000 Hazara families to leave their homes and land in Mazar-e Sharif’s Qubat al-Islam district in Balkh province within five days.<sup>480</sup> The Taliban warned the residents that the eviction order was final and “enforceable under any circumstances.”<sup>481</sup> Based on the order of the Taliban’s Balkh police chief, affiliated militias demolished the walls of some houses.<sup>482</sup> The evicted residents have reportedly owned the land since the 1970s.<sup>483</sup>

In November 2021, the Taliban and Kuchis reportedly destroyed fifteen houses in the Khairabad and Nawabad neighborhoods of the Dasht-e Barchi district of Kabul and threatened approximately 500 other families to abandon their homes in these areas.<sup>484</sup> Some families have already left their homes due to these threats and demolitions.<sup>485</sup>

The consequences of these forced evictions have been disastrous for Hazaras. For families who depend on their crops and livestock for survival, “leaving the[ir] land means leaving everything.”<sup>486</sup> In many cases, Taliban forces began immediately occupying Hazaras’ homes and seizing their harvests including grains, wheat, food, and livestock.<sup>487</sup> Many of the displaced families had no option besides heading to the mountains, “living in tents or sheltering under trees,” with winter fast approaching.<sup>488</sup>

475. *Afghanistan: Taliban Forcibly Evict Minority Shia*, *supra* note 473.

476. Shelton, *supra* note 474.

477. *Afghanistan: Taliban Forcibly Evict Minority Shia*, *supra* note 473.

478. *Id.*

479. *Id.*

480. See, e.g., *id.*; see also Afrade mosallah be “hemayate taliban” panj roz be hazara ha forsath dadand ke “qobat-ul-Islam” balkh ra takhliye konand [Armed Individuals with “Taliban’s Support” Gave Hazaras Five Days to Leave Balkh’s Qubat ul-Islam], ETILAAT ROZ (Oct. 11, 2021), <http://www.etilaatroz.com/132101/armed-men-supporting-taliban-give-hazaras-five-days-to-evacuate-qabat-ul-islam-balkh>.

481. *Id.*

482. *Id.*

483. *Afghanistan: Taliban Forcibly Evict Minority Shia*, *supra* note 473.

484. *Alleged Destruction of 15 Homes*, *supra* note 418.

485. *Id.*

486. Shelton, *supra* note 474.

487. *Id.*

488. *Id.*



These forced evictions have also entailed threats, unlawful detentions, beatings, and a lack of any due process. The Taliban's eviction orders, often issued with only a few days' notice, carried an ominous threat in case of non-compliance: "if they did not leave, the evictees had no right to complain about the consequences."<sup>489</sup> The Taliban have verbally threatened against any disobedience as well.<sup>490</sup> Hazaras who have objected to the eviction orders have been detained and beaten.<sup>491</sup>

Moreover, the Taliban have tried to conceal evidence of ongoing violations by beating those recording the evictions and confiscating mobile phones.<sup>492</sup> Even in the limited cases where Hazaras have sought judicial redress, the Taliban have warned the residents that eviction orders were final and "enforceable under any circumstances."<sup>493</sup> That warning has moved beyond mere words as Taliban forces have begun occupying lands, taking property, and in some cases demolishing houses.<sup>494</sup>

According to Human Rights Watch, "[t]he Taliban are forcibly evicting Hazaras . . . on the basis of ethnicity . . . to reward Taliban supporters."<sup>495</sup> Moreover, the organization has emphasized that "[t]hese evictions, carried out with threats of force and without any legal process, are serious abuses that amount to collective punishment," and "[t]he Taliban should cease forcible evicting Hazaras."<sup>496</sup>

#### IV. THE PERSECUTION OF HAZARAS

As discussed in Part III, the attacks on Hazaras have not abated, despite Afghanistan's adoption of the Rome Statute in 2003. Indeed, in recent years, Hazaras have been increasingly targeted based on their ethnic and religious identity with impunity. This Part will show, element by element, that there is a reasonable basis to believe that the relentless attacks targeting Hazaras constitute the crime against humanity of persecution based on ethnic and religious grounds pursuant to article 7(1)(h) of the Rome Statute.

489. *Id.*

490. *See, e.g., id.* ("Taliban officials gathered everyone to the town mosque and told them they must leave 'otherwise they would bomb our houses and destroy everything.'").

491. *See, e.g., Afghanistan: Taliban Forcibly Evict Minority Shia, supra* note 473 (stating, for instance, in Helmand, "the Taliban detained six men who tried to challenge the [eviction] order," and, in Daikundi and Uruzgan, some representatives "went to the district officials to ask for an investigation but around five of them have been arrested."); Shelton, *supra* note 474 ("When [a villager] tried to resist he was beaten with a rifle butt.").

492. *Afghanistan: Taliban Forcibly Evict Minority Shia, supra* note 473; Shelton, *supra* note 474.

493. *Armed Individuals with "Taliban's Support" Gave Hazaras Five Days, supra* note 480.

494. Shelton, *supra* note 474.

495. *Afghanistan: Taliban Forcibly Evict Minority Shia, supra* note 473 (emphasis added).

496. *Id.*

### A. Severe Deprivation of Fundamental Rights

The first element of the crime of persecution is the “severe deprivation of fundamental rights contrary to international law.”<sup>497</sup> The principle of legality helps identify deprivations of fundamental rights that are severe enough to be deemed persecution. Under this principle “the Prosecutor must charge particular acts amounting to persecution rather than persecution in general.”<sup>498</sup>

International law, however, does not support a narrow interpretation of persecution.<sup>499</sup> This is why, for instance, in line with the principle of legality, crimes against humanity include the catchall crime of “[o]ther inhumane acts of a *similar* character intentionally causing great suffering, or serious injury to body or to mental or physical health.”<sup>500</sup>

Moreover, in assessing the severity of the deprivation, the discriminatory acts should be “evaluated not in isolation but in context, by looking at their cumulative effect.”<sup>501</sup> In addition, persecutory acts may be termed inhumane, particularly if their overall consequences offend humanity to warrant such characterization.<sup>502</sup> Regarding the mental component of this particular element, it is not necessary for the perpetrator to personally complete a particular value judgement on the severity of the deprivation.<sup>503</sup>

Violation of rights enshrined in key international instruments, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, may constitute persecution including the rights to life, liberty, and security of person, the rights not to be subjected to slavery and torture, the rights to be free from cruel, inhuman, or degrading treatment, and the right to property.<sup>504</sup> Breaching the *jus cogens* norms of international law may also amount to persecution.<sup>505</sup> Persecution also entails

497. Rome Statute, *supra* note 2, art. 7(2)(g); *see also* Elements of Crimes, *supra* note 111, at 10.

498. Prosecutor v. Krnojelac, Case No. IT-97-25-T, Trial Judgment, ¶ 433 (Int’l Crim. Trib. for the Former Yugoslavia Mar. 15, 2002); *see also* Prosecutor v. Kupreki, Case No. IT-95-16-T, Trial Judgment, ¶ 626 (Int’l Crim. Trib. for the Former Yugoslavia Jan. 14, 2000).

499. *See* Prosecutor v. Kupreki, Case No. IT-95-16-T, ¶ 615.

500. Rome Statute, *supra* note 2, art. 7(1)(k) (emphasis added).

501. Prosecutor v. Kupreki, Case No. IT-95-16-T, ¶ 622.

502. *Id.*

503. Elements of Crimes, *supra* note 111, at 5.

504. The Universal Declaration of Human Rights enumerates several “fundamental human rights.” *See* G.A. Res. 217 (III) A, Universal Declaration of Human Rights, pmbl. (Dec. 10, 1948) [hereinafter UDHR]; *see, e.g.*, Prosecutor v. Ntaganda, ICC-01/04-02/06, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, ¶ 58 (June 9, 2014) (citing International Covenant on Civil and Political Rights arts. 6–8, Dec. 16, 1966, 999 U.N.T.S. 171).

505. For a discussion of the *jus cogens* doctrine, *see, for example*, Karen Parker & Lyn Beth Neylon, *Jus Cogens: Compelling the Law of Human Rights*, 12 HASTINGS INT’L & COMP. L. REV. 411 (1989). The *jus cogens* principle has been regarded “as the highest cat-

“a variety of other discriminatory acts [including] attacks on political, social, and economic rights”<sup>506</sup> and “encompasses not only bodily and mental harm and infringements upon individual freedom but also [other] acts . . . such as those targeting property.”<sup>507</sup> The ICC has held, for instance, that killings, displacement, rape, serious physical injuries, beating and intimidation, detention, acts causing serious mental suffering, destruction of property, and pillage constitute severe deprivations of fundamental rights.<sup>508</sup>

This element of the crime of persecution is satisfied in the case of Hazaras. The recent and ongoing attacks discussed in Part III violate many fundamental rights and target virtually every aspect of Hazara life.<sup>509</sup> They constitute severe deprivations of fundamental rights enshrined in international law including the rights to life, liberty, and security of person,<sup>510</sup> the rights to be free from torture or cruel, inhuman, or degrading treatment,<sup>511</sup> and the right to property.<sup>512</sup> In addition, these attacks have severely deprived Hazaras of the free exercise of many other fundamental rights including the right to education,<sup>513</sup> the right to freedom of religion,<sup>514</sup> the right to freedom of movement and residence,<sup>515</sup> the right to freedom of assembly and association,<sup>516</sup> the right to work,<sup>517</sup> the right to essential health care,<sup>518</sup> and the right to participate in the cultural life of the community.<sup>519</sup> The enduring and cumulative effect of these attacks, which show no sign of abating, along with the associated psychological trauma and widespread fear

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egory of customary international law” and entails, *inter alia*, the prohibition of genocide, the right to life, the prohibition of torture, and non-refoulement. *Id.* at 414, 430–37.

506. Prosecutor v. Kupreški, Case No. IT-95-16-T, Trial Judgment, ¶ 615 (Int’l Crim. Trib. for the Former Yugoslavia Jan. 14, 2000); *see also* Prosecutor v. Blaški, Case No. IT-95-14-T, Trial Judgment, ¶¶ 232–33 (Int’l Crim. Trib. for the Former Yugoslavia Mar. 3, 2000).

507. Prosecutor v. Blaški, Case No. IT-95-14-T, ¶ 233.

508. *See, e.g.*, Prosecutor v. Kenyatta, ICC-01/09-02/11, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, ¶ 283 (Jan. 23, 2012); *see also* Situation in Georgia, Case No. ICC-01/15-12, Decision on the Prosecutor’s Request for Authorization of an Investigation, ¶¶ 20, 31 (Jan. 27, 2016).

509. *See supra* Part III.

510. UDHR, *supra* note 504, art. 3. For examples of violations of Hazara people’s rights to life, liberty, and security of person, *see supra* Part III.A–M.

511. *Id.* art. 5. For examples of violations of Hazara people’s rights to be free from torture or cruel, inhuman, or degrading treatment, *see supra* Part III.O–P.

512. *Id.* art. 17. For examples of violations of Hazara people’s right to property, *see supra* Part III.N.

513. *Id.* art. 26; *see supra* Part III.B.

514. UDHR, *supra* note 504, art. 18; *see supra* Part III.D.

515. UDHR, *supra* note 504, art. 13(1); *see supra* Part III.K, O, P.

516. UDHR, *supra* note 504, art. 20; *see supra* Part III.E–F.

517. UDHR, *supra* note 504, art. 23; *see supra* Part III.M.

518. UDHR, *supra* note 504, art. 25; *see supra* Part III.C.

519. UDHR, *supra* note 504, art. 27; *see supra* Part III.H, L.

amongst the Hazara people further underscore the severity of the deprivation of their fundamental rights.

The recent and ongoing attacks against Hazaras are not isolated incidents, but rather the continuation of their longstanding persecution and suffering since at least the nineteenth century.<sup>520</sup> In *Prosecutor v. Kenyatta*, the Prosecution’s application for the issuance of summonses was based on violence during a two-month period in Kenya (December 27, 2007 - February 29, 2008).<sup>521</sup> The duration of the violence perpetrated against Hazaras is significantly longer than two months. Rather, it predates the ICC’s establishment—and has been escalating in recent years. Moreover, according to the Prosecution in *Kenyatta*, the violence resulted in, *inter alia*, approximately 1,100 deaths and 3,500 injuries.<sup>522</sup> Hazaras have experienced at least similar, if not greater, levels of casualties in recent years.<sup>523</sup>

### B. *Deprivation by Reason of Ethnic and Religious Identity*

The second and third elements of the crime of persecution focus on the evidence of a nexus with a group or collectivity. In particular, the severe deprivation of fundamental rights must be “by reason of the identity of the group or collectivity”<sup>524</sup> based on “political, racial, national, ethnic, cultural, religious, gender . . . or other grounds.”<sup>525</sup>

The crucial difference between persecution and other crimes against humanity is the discriminatory aspect of persecution. Persecutory acts target persons because of their identity based on various grounds including ethnicity and religion.<sup>526</sup> Persecution requires the intent to discriminate;<sup>527</sup> that is, the intent to “cause injury to a human being because [s/]he belongs to a particular community or group.”<sup>528</sup> It is not necessary to demonstrate perse-

520. See *supra* Part I.

521. *Prosecutor v. Kenyatta*, ICC-01/09-02/11-35-Red2, Prosecutor’s Application Pursuant to Article 58 as to Francis Kirimi Muthaura, Uhuru Muigai Kenyatta & Mohammed Hussein Ali, ¶ 10 (Dec. 15, 2010). The OTP alleged that the perpetrators committed several ICC crimes including persecution based on political affiliation under article 7(1)(h) of the Rome Statute. *Id.* ¶ 30.

522. *Id.* ¶ 9.

523. See *supra* Part III.A; see also *Afghanistan: Surge in Islamic State Attacks on Shia*, HUM. RTS. WATCH (Oct. 25, 2021), <http://www.hrw.org/news/2021/10/25/afghanistan-surge-islamic-state-attacks-shia> (noting that Daesh/IS-KP alone has killed at least 1,500 civilians belonging to the Hazara Shi’a community since 2015).

524. Rome Statute, *supra* note 2, art. 7(2)(g).

525. *Id.* art. 7(1)(h); see also *Elements of Crimes*, *supra* note 111, at 10.

526. See Rome Statute, *supra* note 2, art. 7(1)(h), (2)(g).

527. *Prosecutor v. Kordi*, Case No. IT-95-14/2-A, Appeal Judgment, ¶ 110 (Dec. 17, 2004); see also *Prosecutor v. Krnojelac*, Case No. IT-97-25-A, Appeal Judgment, ¶ 184 (Sept. 17, 2003).

528. *Prosecutor v. Kordi*, Case No. IT-95-14/2-A, ¶ 111.

cutory intent beyond a discriminatory intent.<sup>529</sup> For instance, it is not necessary to show that the perpetrator possessed a specific persecutory intent behind a broader persecutory plan or policy to target a particular group.<sup>530</sup> Indeed, the discriminatory intent element “does not require the existence of a discriminatory policy.”<sup>531</sup> Even if such a discriminatory policy is shown to exist, there is no requirement to show the perpetrator’s participation in the formulation of such discriminatory policy or practice.<sup>532</sup>

Discriminatory intent can be inferred from the general discriminatory nature of an attack against a particular population if the circumstances surrounding the commission of alleged persecutory acts substantiate the existence of such intent.<sup>533</sup> Such contextual circumstances include the systemic nature of the attack against a particular group and the “general attitude of the offence’s alleged perpetrator as seen through his behavior.”<sup>534</sup> Inferences of discriminatory intent are particularly appropriate in cases of leading political figures that operate as indirect perpetrators behind the direct perpetrators of the crimes.<sup>535</sup>

Pursuant to ICC jurisprudence, the group-nexus requirement can be met, *inter alia*, by showing evidence of an official policy to target a particular group,<sup>536</sup> as well as through evidence of a pattern of attacks against that group.<sup>537</sup> The nexus requirement for the crime of persecution is satisfied by

529. *Id.*; see also Prosecutor v. Blaškić, Case No. IT-95-14-A, Appeal Judgment, ¶ 165 (July 29, 2004).

530. Prosecutor v. Kordić, Case No. IT-95-14/2-A, ¶ 111; see also Prosecutor v. Blaškić, Case No. IT-95-14-A, ¶ 165.

531. Prosecutor v. Vasiljević, Case No. IT-98-32-T, Trial Judgment, ¶ 248 (Nov. 29, 2002). See also Prosecutor v. Stakić, Case No. IT-97-24-T, Trial Judgment, ¶ 739 (July 31, 2003).

532. Prosecutor v. Vasiljević, Case No. IT-98-32-T, ¶ 248; see also Prosecutor v. Krnojelac, Case No. IT-97-25-T, Trial Judgment, ¶ 435 (Mar. 15, 2002).

533. Prosecutor v. Krnojelac, Case No. IT-97-25-A, Appeal Judgment, ¶ 184 (Sept. 17, 2003); see also Prosecutor v. Kordić, Case No. IT-95-14/2-A, ¶ 110.

534. Prosecutor v. Krnojelac, Case No. IT-97-25-A, ¶ 184.

535. See Prosecutor v. Stakić, Case No. IT-97-24-T, ¶ 741. Indeed, in cases involving high-ranking politicians, requiring proof of discriminatory intent in relation to the persecutory acts committed “would lead to an unjustifiable protection of superiors and would run counter to the meaning, spirit and purpose” of such international criminal proceedings. *Id.* ¶ 742.

536. See, e.g., Prosecutor v. Ruto, Case No. ICC-01/09-01/11, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, ¶ 273 (Jan. 23, 2012) (The Pre-Trial Chamber found evidence of nexus on the basis of witness testimonies indicating that the Network’s leadership (including local leaders) gave speeches and instructions to target opposition political groups.); Prosecutor v. Ntaganda, Case No. ICC-01/04-02/06, Decision on the Prosecutor’s Application Under Article 58, ¶ 27 (July 13, 2012) (The Pre-Trial Chamber concluded that “there [were] reasonable grounds to believe that the [UPC/FPLC] organization promoted a policy aimed at targeting ‘non-originaires’ civilians of Ituri.”)

537. See, e.g., Prosecutor v. Harun, Case No. ICC-02/05-01/07, Decision on the Prosecution Application Under Article 58(7) of the Statute, ¶¶ 74–75 (Apr. 27, 2007) (The Pre-Trial Chamber found that there were “reasonable grounds to believe” that “attacks [by the Sudanese

both indicia of a policy to target Hazaras as well as evidence of a pattern of attacks against this group.

Various factors indicate the existence of a policy to deliberately target Hazaras. These include official public statements accepting responsibility for attacks against Hazaras, the use of disparaging expressions and inciteful rhetoric vis-à-vis Hazaras, the methodical identification and separation of Hazaras from non-Hazaras in perpetrating attacks, and various key organizations' acknowledgement of the targeting of Hazaras "by reason of" their ethnic and religious identity.

First, numerous attacks on purely civilian Hazara targets such as hospitals, schools, and mosques have been expressly claimed by extremist militant organizations including Daesh/IS-KP.<sup>538</sup> The express, voluntary act of accepting responsibility for attacking numerous blatantly Hazara civilian targets, wherein many of the victims have been women and children, suggests a policy to deliberately target Hazaras.

Second, many attacks on Hazara civilians have been accompanied by the perpetrators' deliberate use of disparaging terms in reference to Hazaras while calling for further violence against this group. For instance, in justifying a deadly attack on a peaceful demonstration by Hazaras in 2016 in Kabul, Daesh/IS-KP stated that the victims "were undisputed infidels and... whoever doubts this or the right to kill them are, in turn, apostates."<sup>539</sup> A U.N. special report into this incident found that "[t]he attack appears to have *deliberately targeted persons belonging to a specific ethnic and religious community* and the claim of responsibility used *language that advocates religious hatred and incitement to violence.*"<sup>540</sup>

Similar derogatory expressions and inciteful rhetoric have been deployed in other deadly incidents targeting Hazaras as well including attacks on schools,<sup>541</sup> mosques,<sup>542</sup> weddings,<sup>543</sup> cultural events,<sup>544</sup> voter registration centers,<sup>545</sup> civilian transport vehicles,<sup>546</sup> and laborers.<sup>547</sup>

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Armed Forces and the Militia/Janjaweed] against specific localities believing that they were predominantly inhabited by the Fur population" constituted persecution.).

538. See *supra* Part III.

539. See *Afghanistan: Surge in Islamic State Attacks on Shia*, *supra* note 523.

540. See UNAMA DEH MAZANG ATTACK REPORT, *supra* note 283, ¶ 39 (emphasis added).

541. See, e.g., *Afghan Bombing: Kabul Education Centre Attack*, *supra* note 188 (The assailant "detonated an explosives vest among a gathering . . . while using a disparaging term for the religious community.") (emphasis added).

542. See, e.g., UNAMA ANNUAL REPORT 2016, *supra* note 167167, at 34–35 ("Daesh/ISKP claimed responsibility for this attack using derogatory expressions and calling for violence against Shia Muslims, as it called in earlier statements.") (emphasis added).

543. See, e.g., Constable & Hassan, *supra* note 358 ("[T]he Islamic State claimed responsibility in a statement" and it "had attacked a gathering of 'rejecter polytheists,' as the group describes followers of Shiite Islam.").

Third, in many incidents, the perpetrators have methodically sought out, specifically identified, and exclusively attacked Hazaras, including by separating Hazaras from non-Hazaras before killings or abductions. Examples of such incidents include the Taliban's attacks on public buses and civilian vehicles in the Chagcharan district, Ghor province, in 2014,<sup>548</sup> the Shajoy district, Zabul province, in 2015,<sup>549</sup> and the Dawlat Yar district, Ghor province, in 2016.<sup>550</sup> Daesh/IS-KP has also used similar discriminatory tactics in targeting Hazaras, for instance, in the assault on humanitarian mine clearance workers in the Baghlan-e-Jadid district, Baghlan province, in 2021.<sup>551</sup>

Fourth, the targeting of Hazaras "by reason of" their ethnic and religious identity has been underscored by various key organizations. For example, the United Nations has acknowledged the "increasing pattern of deliberate" attacks against the Hazara ethnic group in Afghanistan.<sup>552</sup> According to findings by the United Nations Assistance Mission in Afghanistan ("UNAMA"), the pattern of targeted attacks against Hazaras "marks a continuation of extreme harm to civilians from this community documented by UNAMA. UNAMA remains gravely concerned about the safety and security of this minority group and the negative impact of these attacks on their freedoms of religion and movement and quality of life."<sup>553</sup>

The U.N. Security Council, in reference to the 2021 attack on HALO Trust's humanitarian mine clearance workers in Afghanistan, acknowledged the Hazara identity of the victims and "underlined the need to hold perpetrators, organizers, financiers and sponsors of these reprehensible acts of ter-

544. See, e.g., UNAMA ANNUAL REPORT 2018, *supra* note 136, at 29 ("Daesh/ISKP claimed responsibility for the attack [on Hazara Shias who had gathered to celebrate Nowruz], explicitly citing a sectarian motive.").

545. See, e.g., Janjua, *supra* note 319 ("Isis claimed responsibility in a statement . . . saying it had targeted Shia 'apostates.'" (emphasis added)).

546. See, e.g., Faiez, *supra* note 374.

547. See, e.g., Shirzai, *supra* note 381 (According to one of the survivors, the assailants "told us *you belong to another religion and your death is allowed* and then they started shooting us . . . . The gunmen, who were masked, *called [the victims] non-believers.*") (emphasis added).

548. See *Fourteen Civilians Shot Dead*, *supra* note 328; Hekmat & Doherty, *supra* note 11.

549. See *Afghanistan Kidnap: Gunmen Seize 30*, *supra* note 438 ("District Governor Abdul Khaliq Ayoubi blamed the Taliban for the attack"); UNAMA MIDYEAR REPORT 2015, *supra* note 164, at 61.

550. See *Four Students Who Were Taken Hostage in Ghor*, *supra* note 167; UNAMA ANNUAL REPORT 2016, *supra* note 167, at 87.

551. See UNAMA MIDYEAR REPORT 2021, *supra* note 10, at 6; *Halo Trust: Afghanistan Mine*, *supra* note 368; Rahim & Ives, *supra* note 368.

552. See, e.g., UNAMA ANNUAL REPORT 2017, *supra* note 157, at 41.

553. UNAMA ANNUAL REPORT 2019, *supra* note 155, at 47 (emphasis added).

rorism accountable and bring them to justice.”<sup>554</sup> The Security Council further “urged all States, in accordance with their obligations under international law, . . . to cooperate actively with . . . all other relevant authorities in this regard.”<sup>555</sup> Other top U.N. officials also called for a probe into this “heinous” attack.<sup>556</sup> Moreover, the European Union has called for an end to the targeting of Hazaras and the need to investigate attacks against them.<sup>557</sup>

Various human rights organizations have echoed the ethnic and religious motives behind the attacks against Hazaras as well. In an open letter to the U.N. High Commissioner for Human Rights, for instance, several prominent human rights organizations supported the request by the AIHRC for an international fact-finding mission to investigate “the underlying patterns of abuse, such as systematic discrimination, including targeting of the Hazara-Shia . . . that amount to violations and abuses of international human rights law and international humanitarian law.”<sup>558</sup>

According to Human Rights Watch, Daesh/IS-KP “has repeatedly carried out devastating attacks that appear designed to spread terror and inflict maximum suffering particularly on Afghanistan’s Hazara community.”<sup>559</sup> The organization has underlined that “[t]he numerous attacks targeting Hazaras amount to crimes against humanity, and those responsible should be brought to justice.”<sup>560</sup> Human Rights Watch has also noted the Taliban’s targeting of Hazaras on the basis of ethnicity.<sup>561</sup>

Amnesty International has also underscored the ethnic and sectarian “hatred” motivating the targeting of Hazara civilians.<sup>562</sup> Moreover, following the 2020 attack on a maternity hospital in the Dasht-e Barchi district of Kabul, MSF stated that the assault “aimed to terrorise a vulnerable community by . . . systematically shooting pregnant women and babies,” resulting in

554. Press Release, Security Council, Security Council Press Statement on Attack against Humanitarian Mine Clearance Workers in Afghanistan, U.N. Press Release SC/14548 (June 11, 2021), <http://www.un.org/press/en/2021/sc14548.doc.htm>.

555. *Id.*

556. Rahim & Ives, *supra* note 368.

557. See, e.g., *EU: The Targeted Murder of Hazaras Must Stop*, ARIANA NEWS (June 6, 2021), <http://ariananews.co/en/afghanistan/eu-the-targeted-murder-of-hazaras-must-stop>.

558. *Joint Open Letter*, *supra* note 370.

559. *Afghanistan: Surge in Islamic State Attacks on Shia*, *supra* note 523.

560. *Id.*; see also Gossman, *supra* note 186 (ISIS-K “has claimed responsibility for many such bombings and has long singled out Afghanistan’s Hazara Shia community for attack.”).

561. See e.g., *Afghanistan: Taliban Forcibly Evict Minority Shia*, *supra* note 473 (“The Taliban are forcibly evicting Hazaras . . . on the basis of ethnicity . . . to reward Taliban supporters.”).

562. See e.g., *Afghanistan: Student Massacre is a War Crime*, AMNESTY INT’L (Aug. 16, 2018), <http://www.amnestyusa.org/press-releases/afghanistan-student-massacre-is-a-war-crime> (observing that the deadly assault on the Mowud college prep center in the Hazara-populated Dasht-e Barchi area of western Kabul “appears to have been an attack that was motivated by sectarian hatred”).



shutting down MSF operations and thus depriving Hazara women and babies of “lifesaving medical care.”<sup>563</sup>

Finally, in addition to the aforementioned indicia of a policy to target Hazaras, the pattern of acute violence against this group<sup>564</sup>—which has attacked virtually every aspect of Hazara life—also satisfies the nexus element of the crime of persecution.

### C. *In Connection with a Crime within the Court’s Jurisdiction*

The fourth element of the crime of persecution is that the persecutory conduct be “in connection with *any* act referred to in [article 7(1) of the Rome Statute] or *any* crime within the jurisdiction of the Court.”<sup>565</sup>

This element is also established in the case of the persecution of Hazaras. Multiple article 7(1) acts are connected to the persecutory conduct vis-à-vis Hazaras including murder,<sup>566</sup> deportation or forcible transfer of population,<sup>567</sup> imprisonment or other severe deprivation of physical liberty,<sup>568</sup> torture,<sup>569</sup> enforced disappearance of persons,<sup>570</sup> and other inhumane acts intentionally causing great suffering or serious mental or physical injury.<sup>571</sup>

Moreover, besides article 7(1) acts, the persecution of Hazaras is connected to other “crime[s] within the jurisdiction of the Court” including willful killing,<sup>572</sup> unlawful and wanton destruction and appropriation of property,<sup>573</sup> taking of hostages,<sup>574</sup> intentionally directing attacks against the civilian population or civilian objects,<sup>575</sup> intentionally directing attacks against personnel or installations involved in humanitarian assistance,<sup>576</sup> pillage,<sup>577</sup> and committing outrages upon personal dignity.<sup>578</sup>

563. *Fifteen Mothers Confirmed Killed*, *supra* note 158.

564. *See supra* Part III.

565. Rome Statute, *supra* note 2, art. 7(1)(h) (emphasis added); *see also* Elements of Crimes, *supra* note 111, art. 7(1)(h)(4).

566. Rome Statute, *supra* note 2, art. 7(1)(a); *see supra* Part III.A.

567. Rome Statute, *supra* note 2, art. 7(1)(d); *see supra* Part III.P.

568. Rome Statute, *supra* note 2, art. 7(1)(e); *see supra* Part III.O.

569. Rome Statute, *supra* note 2, art. 7(1)(f); *see supra* Part III.A.

570. Rome Statute, *supra* note 2, art. 7(1)(i); *see supra* Part III.O.

571. Rome Statute, *supra* note 2, art. 7(1)(k).

572. Rome Statute, *supra* note 2, art. 8(2)(a)(i); *see supra* Part III.A.

573. Rome Statute, *supra* note 2, art. 8(2)(a)(iv); *see supra* Part III.N, P.

574. Rome Statute, *supra* note 2, art. 8(2)(a)(viii); *see supra* Part III.O.

575. Rome Statute, *supra* note 2, art. 8(2)(b)(i)-(ii); *see supra* Part III.

576. Rome Statute, *supra* note 2, art. 8(2)(b)(iii); *see, e.g., Halo Trust: Afghanistan Mine*, *supra* note 368; *Fifteen Mothers Confirmed Killed*, *supra* note 158.

577. Rome Statute, *supra* note 2, art. 8(2)(b)(xvi); *see supra* Part III.N.

578. Rome Statute, *supra* note 2, art. 8(2)(b)(xxi).

#### D. *Widespread or Systematic Attack against a Civilian Population*

The Rome Statute defines “crime against humanity” as any act specified in article 7(1)(a)-(k) “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”<sup>579</sup> This definition establishes two contextual or common elements that apply to all crimes against humanity, including persecution. The first common element is “a widespread or systematic attack directed against any civilian population.”<sup>580</sup> The second common element is the mens rea requirement of “knowledge of the attack,” which will be addressed in the subsequent Section.

It is important to note the disjunctive nature of article 7(1)’s first common element: the attack must be either widespread *or* systematic. As such, these two features are alternative conditions.<sup>581</sup>

The ICC has held that “widespread” refers “to the large-scale nature of the attack and the number of targeted persons.”<sup>582</sup> The “large-scale” nature of the attack means that the acts are directed against a multiplicity of victims.<sup>583</sup> A widespread attack can encompass “an attack carried out over a large geographical area or an attack in a small geographical area, but directed against a large number of civilians.”<sup>584</sup> An attack may be widespread by the “cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude.”<sup>585</sup> The “widespreadness” requirement, however, excludes an isolated act by a person “acting on his own initiative and directed against a single victim.”<sup>586</sup>

579. *Id.* art. 7(1).

580. *Id.*; see also *Elements of Crimes*, *supra* note 111, at 9. Article 7(2)(a) defines an “attack directed against any civilian population” as “a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.” Rome Statute, *supra* note 2, art. 7(2)(a). “[M]ultiple commission of acts” means the occurrence of “more than a few isolated incidents or acts as referred to in article 7(1) of the Statute.” See, e.g., *Prosecutor v. Gombo*, Case No. ICC-01/05-01/08, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, ¶ 81 (June 15, 2009). The “acts” under Article 7(2)(a) need not constitute a military attack. See *Elements of Crimes*, *supra* note 111, at 3.

581. For a discussion of the origins of these two alternative requirements, see, for example, *Prosecutor v. Tadi*, Case No. IT-94-1-T, Trial Judgment, ¶¶ 646–47 (May 7, 1997).

582. See, e.g., *Prosecutor v. Ntaganda*, Case No. ICC-01/04-02/06, Decision on the Prosecutor’s Application Under Article 58, ¶ 19 (July 13, 2012); see also *Prosecutor v. Tadi*, Case No. IT-94-1-T, ¶ 648.

583. See, e.g., *Prosecutor v. Tadi*, Case No. IT-94-1-T, ¶ 648.

584. *Prosecutor v. Katanga*, Case No. ICC-01/04-01/07, Decision on the Confirmation of Charges, ¶ 395 (Sept. 30, 2008).

585. See, e.g., *Prosecutor v. Blaškić*, Case No. IT-95-14-T, Trial Judgment, ¶ 206 (Mar. 3, 2000).

586. See, e.g., *Prosecutor v. Tadi*, Case No. IT-94-1-T, ¶ 648.

In the case of *Laurent Gbagbo*, the ICC Pre-Trial Chamber found that an attack that killed and injured 316 members of the political opposition in four incidents in less than five months constituted a “widespread” attack.<sup>587</sup> In doing so, the PTC deemed that such an attack was “large-scale in nature” because it “(i) involved a large number of acts; (ii) targeted and victimised a significant number of individuals; (iii) extended over a time period of more than four months; and (iv) affected the entire city of Abidjan, a metropolis of more than three million inhabitants.”<sup>588</sup>

The attacks on Hazaras fulfill the criteria for a “widespread” attack. Indeed, in the case of attacks targeting Hazaras, the number of acts and incidents, the number of targeted persons, and the time period of the attacks significantly exceed those in *Laurent Gbagbo*. Thousands of Hazara civilians have been killed and wounded in numerous incidents over the past few years alone.<sup>589</sup> In the first six months of 2021, for instance, the U.N. documented twenty incidents targeting Hazaras, resulting in 500 civilian casualties.<sup>590</sup> Additionally, the attacks on Hazaras have not been limited to one specific city or province, but have been perpetrated in various provinces in the central, eastern, western, northern, and southern parts of Afghanistan.<sup>591</sup>

The term “systematic,” the other alternative element, means “the organized nature of the acts of violence and the improbability of their random occurrence.”<sup>592</sup> Systematicity may be inferred from the existence of a state or organizational policy.<sup>593</sup> Moreover, systematicity can be expressed through “patterns of crimes” or the “non-accidental repetition of similar criminal conduct.”<sup>594</sup> It has been held that “the precise identification of tar-

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587. Prosecutor v. Laurent Gbagbo, Case No. ICC-02/11-01/11, Decision on the Confirmation of Charges Against Laurent Gbagbo, ¶¶ 204, 211 (June 12, 2014).

588. *Id.* ¶ 224.

589. See *supra* Part III. For example, while many attacks remain unreported, between January 1, 2017 and June 30, 2021, the U.N. documented sixty-seven incidents targeting Hazaras resulting in 2,458 civilian casualties. See *supra* Part III.A. Moreover, according to Human Rights Watch, Daesh/IS-KP attacks on Hazaras over a six-year period have “killed more than 1,500 civilians and wounded over 3,500, primarily by bombing civilian facilities.” See *Afghanistan: Surge in Islamic State Attacks on Shia*, *supra* note 523.

590. See UNAMA MIDYEAR REPORT 2021, *supra* note 10, at 5.

591. See *supra* Part III.

592. See, e.g., Prosecutor v. Ntaganda, Case No. ICC-01/04-02/06, Decision on the Prosecutor’s Application Under Article 58, ¶ 19 (July 13, 2012); Prosecutor v. Harun, Case No. ICC-02/05-01/07, Decision on the Prosecution Application Under Article 58(7) of the Statute, ¶ 62 (Apr. 27, 2007); Prosecutor v. Kunarac, Case No. IT-96-23-A & IT-96-23/1-A, Appeal Judgment, ¶ 94 (June 12, 2002).

593. See, e.g., Prosecutor v. Ntaganda, Case No. ICC-01/04-02/06, ¶ 19.

594. See Prosecutor v. Kunarac, Case No. IT-96-23-A & IT-96-23/1-A, ¶ 94.

gets [...] is indicative of the planned and systematic nature of the [attack].”<sup>595</sup>

The attacks against Hazaras also satisfy the alternative “systematic” element, which can be deduced from the existence of a policy as well as through a pattern of targeting Hazara civilians. The policy to attack Hazaras is evinced, *inter alia*, through official acknowledgments of responsibility for such attacks (particularly by Daesh/IS-KP), employing derogatory and inflammatory language against Hazaras, distinguishing between Hazaras and non-Hazaras during assaults, and several organizations’ statements concerning the persecutory nature of the attacks against this group.<sup>596</sup>

In addition, the “systematic” nature of the attacks is illustrated by the pattern of acute violence against this group, which has bedeviled numerous facets of Hazara society.<sup>597</sup> Pursuant to U.N. findings, “*the wide scope of these attacks [on Hazaras] beyond places of worship—at education centres, sports clubs, celebratory events and other social gatherings—directly impede their ability to carry out normal lives.*”<sup>598</sup> Moreover, according to Human Rights Watch, “[t]he consistent nature of the attacks [on Hazaras] over a six-year-period indicates a pattern, if not a methodical plan, and supports the conclusion that these attacks are systematic.”<sup>599</sup>

#### E. *The Mens Rea Requirement*

The second contextual common element for crime against humanity is the mens rea or the mental component of the crime. Pursuant to article 7(1) of the Rome Statute, the underlying act of persecution requires “knowledge of the attack.”<sup>600</sup> The *Elements of Crimes* requires that “[t]he perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.”<sup>601</sup>

The mens rea element, however, does not require that the perpetrator be aware of all characteristics of the attack or the precise details of the state or organization’s plan or policy.<sup>602</sup> It has been held that “[t]he perpetrator must be aware that a widespread attack directed against a civilian population is taking place and that his action is part of the attack,”<sup>603</sup> “or at least [he took]

595. See Prosecutor v. Kenyatta, Case No. ICC-01/09-02/11, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, ¶ 176 (Jan. 23, 2012).

596. See *supra* Part IV.B.

597. See *supra* Part III.

598. See, e.g., UNAMA ANNUAL REPORT 2018, *supra* note 136, at 29 (emphasis added).

599. See *Afghanistan: Surge in Islamic State Attacks on Shia*, *supra* note 523.

600. Rome Statute, *supra* note 2, art. 7(1).

601. Elements of Crimes, *supra* note 111, at 10 (emphasis added).

602. *Id.* at 9.

603. Prosecutor v. Gombo, Case No. ICC-01/05-01/08, Judgment Pursuant to Article 74 of the Statute, ¶ 167 (Mar. 21, 2016); see also Prosecutor v. Katanga, Case No. ICC-01/04-01

the risk that his acts were part of the attack.”<sup>604</sup> Willful blindness to the context of a widespread and systematic attack is not an excuse. The mens rea will be established if the perpetrator, “through the functions he willingly accepted,” “knowingly took the risk of participating in the implementation of that context.”<sup>605</sup> The mental component will be present if the perpetrator’s “behavior fitted into the plan of persecution” and that while “his intent was only to harm this one individual, it was closely related to the general mass persecution” of the specific group.<sup>606</sup>

With respect to the situation of Hazaras, knowledge or awareness of a widespread or systematic attack against this group can be established by both a policy and a pattern of targeting Hazaras. For instance, in the case of Daesh/IS-KP, the perpetrators of attacks on Hazaras very likely knew about the organization’s policy of targeting Hazaras through, *inter alia*, Daesh/IS-KP’s numerous official public statements accepting responsibility for attacks on Hazara civilians along with the organization’s use of disparaging expressions and inciteful rhetoric vis-à-vis Hazaras.<sup>607</sup> As such, both high-level and mid-level officials and commanders of Daesh/IS-KP, through the functions they willingly accepted in devising or administering the organizational policy to attack civilians, very likely possessed the requisite awareness or intention that their actions would be part of a widespread or systematic attack against the Hazaras.<sup>608</sup>

Furthermore, in the absence of an explicit policy, the mens rea element may be inferred from the behavior of an organization or official organs particularly in light of the enduring pattern of targeted attacks against Hazara civilians.<sup>609</sup> Many incidents in recent years have also been attributed to the

/07, Judgment Pursuant to Article 74 of the Statute, ¶ 1125 (Mar. 7, 2014); Prosecutor v. Kunarac, Case No. IT-96-23-A & IT-96-23/1-A, Appeal Judgment, ¶ 102 (June 12, 2002).

604. Prosecutor v. Kunarac, Case No. IT-96-23-A & IT-96-23/1-A, ¶ 102.

605. Prosecutor v. Blaškić, Case No. IT-95-14-T, Trial Judgment, ¶ 251 (Mar. 3, 2000).

606. Prosecutor v. Tadić, Case No. IT-94-1-T, Trial Judgment, ¶ 658 (May 7, 1997).

607. See *supra* Part IV.B.

608. For example, the current leader of Daesh/IS-KP, Sanallah Ghafari, also known as Shahab al-Muhajir, fulfills the mens rea requirement since he is “responsible for approving all [Daesh/IS-KP] operations throughout Afghanistan and arranging funding to conduct operations.” *Rewards for Justice – Reward Offer for Information on ISIS-K Leader Sanallah Ghafari and Kabul Airport Attack*, U.S. DEP’T OF STATE (Feb. 7, 2022), <http://www.state.gov/rewards-for-justice-reward-offer-for-information-on-isis-k-leader-sanallah-ghafari-and-kabul-airport-attack>.

609. In the case of command responsibility, for instance, the Rome Statute allows for liability based on a lesser form of fault than intent and knowledge. Under article 28(a), a commander will be criminally responsible for crimes committed by forces under his or her control where the commander “owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes” and the commander “failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission.” Rome Statute, *supra* note 2, art. 28(a) (emphasis added). For an in-depth discussion of mens rea in international criminal law, see, for example, Johan D. Van der

Taliban,<sup>610</sup> who have at times collaborated closely with Daesh/IS-KP in jointly attacking Hazaras.<sup>611</sup> The Taliban's longstanding record of committing massacres against Hazaras,<sup>612</sup> their prior public declarations of intent to kill Hazaras,<sup>613</sup> and their ongoing assaults, as Afghanistan's current *de facto* authorities, on Hazaras further warrant a formal probe of the Taliban's role in the persecution of this community.<sup>614</sup>

## V. CONCLUSION

The ongoing attacks on Hazaras signify the continuation of the centuries-long atrocities committed against the group in Afghanistan. Besides summary executions, abductions, and forced displacement, the escalating incidents in recent years have targeted virtually every aspect of Hazara life—from maternity hospitals to schools, places of worship, public transportation, work sites, weddings, sports clubs, markets, cultural events, social gatherings, properties, and beyond—and underline the extremely precarious situation of this community. Afghanistan's accession to the Rome Statute in 2003 has so far failed to stem this relentless pattern of bloodshed.

The *raison d'être* of the ICC is “to put an end to impunity” and to ensure that “the most serious crimes of concern to the international community as a whole [do] not go unpunished.”<sup>615</sup> There is a reasonable basis to believe that the attacks on Hazaras constitute the crime against humanity of persecution based on ethnic and religious grounds under the Rome Statute. A formal investigation into these recurring incidents is long overdue. The ICC and the international community must cease watching from the sidelines. As echoed by the U.S. Holocaust Memorial Museum, failure to act with urgency may lead to further atrocities against Hazaras, including a full-blown genocide.<sup>616</sup>

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Vyver, *The International Criminal Court and the Concept of Mens Rea in International Criminal Law*, 12 U. MIAMI INT'L & COMP. L. REV. 57 (2004).

610. See *supra* Part III.

611. See, e.g., UNAMA MIRZA OLANG REPORT, *supra* note 168, at 7.

612. See *supra* Part I.

613. See, e.g., *Massacres of Hazaras in Afghanistan*, *supra* note 12 (observing that the Taliban's governor for Balkh province, Mullah Manan Niazi, “delivered public speeches in which he termed the Hazaras infidels and threatened them with death if they did not convert to Sunni Islam or leave Afghanistan.”).

614. See, e.g., *Afghanistan: Taliban torture and execute Hazaras in targeted attack – new investigation*, AMNESTY INT'L (Sept. 15, 2022), <https://www.amnesty.org/en/latest/news/2022/09/afghanistan-taliban-torture-and-execute-hazaras-in-targeted-attack-new-investigation/> (according to Amnesty International, “[t]hese violent deaths are further shocking proof that the Taliban continue to persecute, torture and extrajudicially execute Hazara people.”).

615. Rome Statute, *supra* note 2, pmbl.

616. *Museum Statement on the Hazara*, U.S. HOLOCAUST MEMORIAL MUSEUM (Aug. 23, 2021), <http://www.ushmm.org/information/press/press-releases/museum-statement-on-the-hazara>.

