



AMERICAN **BAR** ASSOCIATION

International Law Section

## **BROKEN FRAME, SHATTERED GLASS: RECOGNIZING CRIMES PERPETRATED AGAINST THE HAZARAS OF AFGHANISTAN**

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*The views expressed herein represent the opinions of the authors. They have not been reviewed or approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the position of the Association or any of its entities.*

The Hazaras are an ethnic group from Afghanistan known to reside mainly in Hazarajat (also referred to as *Hazaristan*), in the central highlands of Afghanistan. The Hazaras are a predominantly Shi'a Muslim group. Since the late 19<sup>th</sup> century, the Hazara people have been victims of unspeakable acts of violence and mass killings committed at the hands of different leaders who have come to power in Afghanistan.

This policy paper provides a brief overview of some key events that have contributed to the deteriorating human rights conditions of the Hazara people, which the authors suggest are tantamount to genocide. The authors seek to inform the American Bar Association (ABA) and the international community of the importance of a) recognizing the Hazara genocide by the U.S. State Department and the international community; b) encouraging the ABA to work closely with lawyers in Afghanistan, especially Hazara lawyers, to document and investigate crimes perpetrated against the Hazara community; c) calling upon the international community to stop and punish international crimes consistent with international treaties through avenues such as the International Criminal Court or Universal Jurisdiction; and d) calling upon the ABA to develop further policy regarding mass atrocity prevention.

### **I. Context and Background to International Crimes Perpetrated Against the Hazara**

Genocide prevention scholars focus on indicators to determine whether a genocide is being perpetrated against a specific group of people. The most commonly used indicators, known as “warning stages” or “warning signs” was developed by Dr. Gregory

Stanton. Dr. Stanton posits ten stages that are not linear but predictable in a genocide.<sup>1</sup> The authors submit that before the accession of Afghanistan to the Rome Statute of the International Criminal Court in February 2003,<sup>2</sup> all ten stages have been continuously present. The following events—the massacres under Abdur Rahman Khan, the Afshar Massacre, and the Mazir-i-Sharif massacre—are examples of the failure of the international community to respond quickly enough to stop the genocide that is now in progress.

#### *a. Abdur Rahman Khan*

The first documented instance of brutality against the Hazaras noted by historians was under Abdur Rahman Khan,<sup>3</sup> a Pashtun ruler from 1880-1901,<sup>4</sup> who massacred, enslaved, and forcibly displaced close to 60% of Hazaras, which caused them to flee to neighboring countries like Iran, India, Pakistan and central Asian countries.<sup>5</sup> As Khan classified the Hazara as “infidels” and as he raped, killed, and maimed Hazara people, he depopulated the Hazarajat, issued royal decrees to allow authorized use of Hazaras’ lands for grazing their livestock by Pashtun nomads.<sup>6</sup> The discrimination and dehumanization used by Khan to justify the persecution of the Hazara would be used again by the Taliban in the 1990s.<sup>7</sup> Between 1992 and late 2001, the Hazaras endured at least ten cases of massacres, of which the Taliban committed nine. Hazaras continued to face targeted killings under the government of Afghanistan. It is estimated that they have endured at least 294 incidents over the two decades between July 2002 and June 2022.<sup>8</sup>

#### *b. The 1993 Afshar Massacre*

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<sup>1</sup> The ten stages are classification, symbolization, discrimination, dehumanization, organization, polarization, preparation, persecution, extermination. Gregory Stanton, *The Ten Stages of Genocide*, GENOCIDE WATCH, 1996, <https://www.genocidewatch.com/tenstages>

<sup>2</sup> International Criminal Court, Afghanistan ICC-02/17, <https://www.icc-cpi.int/afghanistan>

<sup>3</sup> In his own words, Abdur Rahman Khan found the Hazara “troublesome” and justified acts of violence on the basis of potential rebellions and raids which had taken place while he was traveling. See Sultan Mohamed Khan, *The Life of Abdur Rahman Amir of Afghanistan*, (ed. Mir Munshi), London, John Murray 1900, [https://www.sas.upenn.edu/~cavitch/pdf-library/Rahman\\_Life\\_of\\_Abdur\\_Rahman\\_2vols.pdf](https://www.sas.upenn.edu/~cavitch/pdf-library/Rahman_Life_of_Abdur_Rahman_2vols.pdf)

<sup>4</sup> As one scholar writes: “The most significant event in the history of Hazaras and state formation in Afghanistan is the Hazara War of 1890–1893, which resulted in a prolonged period of systematic and deliberate killing, dispossession and enslavement that can constitute genocide under contemporary international law.” N. Ibrahim, “The state, identity politics and ethnic boundaries in Afghanistan: The case of Sunni Hazaras”, *NATIONS AND NATIONALISM*, 29(2), 669–685 (2023), <https://doi.org/10.1111/nana.12933>

<sup>5</sup> Minority Rights Group, “Hazaras” (December 2021), <https://minorityrights.org/minorities/hazaras/>

<sup>6</sup> Denise Phillips, “Hazaras’ Persecution Worsens: Will the New Government Show Leadership by Lifting the Suspension on Afghani Asylum Claims?” *AUSTRALIAN POLICY AND HISTORY* (November 13, 2017), <https://aph.org.au/2017/11/hazaras-persecution-worsens-will-the-new-government-show-leadership-by-lifting-the-suspension-on-afghani-asylum-claims/>

<sup>7</sup> See Mehdi J. Hakimi, “Relentless Atrocities: the Persecution of Hazaras,” 44 *MICH. J. INT’L L.* 157 (2023), <https://repository.law.umich.edu/mjil/vol44/iss2/2>

<sup>8</sup> See David Alton, et. al, “The Hazara Inquiry: The Situation of the Hazara in Afghanistan” Appendix A, 63-80 (August 2022), <https://www.hazarainquiry.com/>

From 1992-1993, an internal armed conflict between several factions took place in Afghanistan.<sup>9</sup> Human Rights Watch noted that throughout the period there was “compelling evidence” that factions “regularly and intentionally targeted civilians and civilian areas for attack, and recklessly and indiscriminately fired weapons into civilian areas.”<sup>10</sup> In February 1993, Jamiat-e Islami and Ittihad-e Islami forces captured the Afshar area to fight the Wahdat forces. Although the Wahdat forces reportedly fled the area, Jamiat and Ittihad groups attacked the Hazaras during the ground attack. Eyewitnesses reported, “Ittihad troops [would stop] Hazara families, separating men from their families and [arrest] them, and sometimes [beat] or [kill] them.”<sup>11</sup> Other reports indicated that elderly people, women, children, and even their dogs were beheaded and their bodies were stuffed in wells.<sup>12</sup> This is in addition to eyewitness reports of rape, torture, abductions, looting, and forced labor.<sup>13</sup> After the horrific events in Afshar, the Rabbani government set up a commission to “catalog the destruction, for the purposes of paying out some form of compensation.”<sup>14</sup> However, the final documents produced by the commission were destroyed by the Taliban in 1996.

### c. 1998 Mazar-i Sharif Massacre

Although the Hazara faced persecution under the Rabbani government (1992-1996), the resurgence of the Taliban posed tremendous problems for the safety of the group.

During an internal conflict in August 1998, Taliban forces strategically captured the city of Mazar-i Sharif, gaining control over northern and central Afghanistan. While the Taliban claimed the takeover of Mazar was purportedly met with some resistance,<sup>15</sup> eventually the Taliban had full control over the city. Polarizing announcements were made by the newly appointed Governor of Mazar, who indicated the Hazaras would be punished because of their religion and for allegedly attacking the Taliban troops the year before, although the claims of attacks by the Hazara against Taliban troops have been discredited.<sup>16</sup> Human Rights Watch documented attacks against women, arbitrary

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<sup>9</sup> Human Rights Watch, “Blood-Stained Hands: Past Atrocities in Kabul and Afghanistan’s Legacy of Impunity” (July 6, 2005) <https://www.hrw.org/report/2005/07/06/blood-stained-hands/past-atrocities-kabul-and-afghanistans-legacy-impunity>

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Michael Griffin, “A gruesome record”, THE GUARDIAN (November 15, 2001), <https://www.theguardian.com/world/2001/nov/16/afghanistan.terrorism2>

<sup>13</sup> Human Rights Watch, “Blood-Stained Hands: Past Atrocities in Kabul and Afghanistan’s Legacy of Impunity” July 6, 2005, <https://www.hrw.org/report/2005/07/06/blood-stained-hands/past-atrocities-kabul-and-afghanistans-legacy-impunity>

<sup>14</sup> *Id.*

<sup>15</sup> Human Rights Watch, “Afghanistan: The Massacre in Mazar-I-Sharif”, Vol 10, No. 7 (November 1998), [https://www.hrw.org/legacy/reports98/afghan/Afrep0r0-01.htm#P81\\_13959](https://www.hrw.org/legacy/reports98/afghan/Afrep0r0-01.htm#P81_13959)

<sup>16</sup> Kenneth J. Cooper, “Taliban Massacre based on Ethnicity”, WASHINGTON POST (November 28, 1998), <https://www.washingtonpost.com/archive/politics/1998/11/28/taliban-massacre-based-on-ethnicity/efe15f81-abad-4e57-96f1-046cc59d1d48/>

detentions based on Hazara identity,<sup>17</sup> and random acts of violence where it has been estimated that an estimated 2,000 to 5,000 civilians were “systematically and brutally executed.”<sup>18</sup> There were also reports of forced starvation.<sup>19</sup> Experts noted the violence was “an orgy of killing driven by racial and religious prejudice...”<sup>20</sup> International media was barred from entering Mazar, and the Taliban denied any wrongdoing.<sup>21</sup>

*d. The 2001 Yakaolang massacre*

On January 8, 2001, Taliban forces conducted search operations and detained 300 male civilians. The men were taken to certain assembly points and then shot by firing squad in public view. The Taliban intended these heinous actions as “collective punishment” for local residents who cooperated with opposing forces.<sup>22</sup> The Taliban “killed delegations of Hazara elders” who attempted to talk with them regarding the violence.<sup>23</sup> Witnesses reported to Human Rights Watch seeing “piles of bodies” in locations around Nayak.<sup>24</sup> Other killings by the Taliban reportedly took place outside leprosy and tuberculosis clinics. Mass graves were found at Bed Mushkin village.<sup>25</sup> The Taliban denied such a massacre took place.<sup>26</sup>

*e. Destruction of the Bamiyan and Mass Graves*

In the central part of the Hazarajat is the Bamiyan valley, which is home to the Bamiyan Buddhas, carved on the side of a cliff. The Hazaras have their own narratives regarding the statues of Salsal and Shahmama and their importance to the Hazara culture.<sup>27</sup> On February 26, 2001, the leader of the Taliban issued a decree “ordering the elimination of all non-Islamic statues and sanctuaries from Afghanistan.”<sup>28</sup> Many governments and organizations attempted to save the statues, but by March 2001, the Taliban used

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<sup>17</sup> Human Rights Watch, “Detention of Persons Trying to Leave” in “Afghanistan: The Massacre in Mazar-I-Sharif”, Vol 10, No. 7 (November 1998), [https://www.hrw.org/legacy/reports98/afghan/Afrepor0-01.htm#P81\\_13959](https://www.hrw.org/legacy/reports98/afghan/Afrepor0-01.htm#P81_13959)

<sup>18</sup> Rachel Limbu, “2023: the return of atrocities against Afghan women and the Hazara community?” PALATINATE (January 10, 2023), <https://www.palatinatate.org.uk/2023-the-return-of-atrocities-against-afghan-women-and-the-hazara-community/>

<sup>19</sup> Dexter Filkins, “Afghans Starve in Siege from Within” LA TIMES (May 8, 1998), <https://www.latimes.com/archives/la-xpm-1998-may-08-mn-47605-story.html>

<sup>20</sup> Cooper, *supra* note 16.

<sup>21</sup> *Id.*

<sup>22</sup> Human Rights Watch, “Massacres of Hazaras in Afghanistan” (February 1, 2001), <https://www.hrw.org/report/2001/02/01/massacres-hazaras-afghanistan>

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Amnesty International, “Afghanistan: Massacres in Yakaolang” (March 2001), <https://www.amnesty.org/en/wp-content/uploads/2021/06/asa110082001en.pdf>

<sup>27</sup> Nicole Gerard, “Hazara heritage and the uncertain future of the Buddhas of Bamiyan”, MINORITY RIGHTS GROUP INTERNATIONAL (July 12, 2016), <https://www.refworld.org/docid/5796080ec.html>

<sup>28</sup> Pierre Centlivres, “The Controversy over the Buddhas of Bamiyan”, SOUTH ASIA MULTIDISCIPLINARY ACADEMIC JOURNAL at 6 (December 18, 2003), <https://doi.org/10.4000/samaj.992>

dynamite to demolish the Bamiyan Buddhas and the statues kept in the Afghan National Museum in Kabul.<sup>29</sup>

The destruction of the Buddhas is alleged to be consistent with the Taliban's religious beliefs but also "an assertion of dominance over the Hazara and their homeland."<sup>30</sup> It was, moreover, purported to be a larger campaign by the Taliban to target and destroy the Hazara people's culture and rights, which included a ban on *Jashn-e-Nouroz* (New Year), forced land dispossession, continued anti-Shi'a propaganda, and restrictions on Hazara women.<sup>31</sup>

The situation in the Bamiyan province would continue to darken as a year after the destruction of the Bamiyan Buddhas, the United Nations was notified of mass graves, containing members of the Hazara community, close to the Bamiyan site.<sup>32</sup> Forensic scientists working for the United Nations reported evidence of "summary executions and death by suffocation" at several mass grave locations.<sup>33</sup> In 2017, other sets of mass graves were found in Mazar-i-Sharif and Sar-e-Paul, both of which were under Taliban control. Adults and children were allegedly killed, and in some instances beheaded, by both the Taliban and ISIS.<sup>34</sup> The UN Office of the High Commissioner for Human Rights began a mapping project on mass graves in Afghanistan, but the report was never published.<sup>35</sup>

## II. Continued Acts of Genocide

The situations highlighted above indicate that the intent to destroy the Hazara peoples through acts of violence and forced displacement which continue today. Since the time of Abdur Rahman Khan, many who have held power in Afghanistan, including the Taliban and newer factions like ISIS-K (ISIS-Khorasan Province) have perpetuated atrocities against the Hazara. Further, the Taliban has continued to destroy the cultural heritage of the Hazara and drive them from Afghanistan. Unfortunately, even in other countries, the Hazara are no longer safe and are at risk of violence and forced deportations by other governments in the region.

The gravity of the human rights situation towards the Hazara might be questioned on the grounds that the Taliban has made attempts to include Hazara in the government. In an interview conducted by European Union Agency for Asylum, one interviewee noted, "the

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<sup>29</sup> *Id.* at 6-7.

<sup>30</sup> Gerard, *supra* note 27.

<sup>31</sup> *Id.*

<sup>32</sup> Rory Carroll, "Pits reveal evidence of massacre by Taliban", THE GUARDIAN (April 7, 2022), <https://www.theguardian.com/world/2002/apr/08/afghanistan.unitednations>

<sup>33</sup> Ron Synovitz, "Afghanistan: UN Exhumes Taliban, Hazara Corpses from Mass Graves", RADIO FREE EUROPE (May 8, 2002), <https://www.rferl.org/a/1099645.html>

<sup>34</sup> Abdul Matin Sahak, "Afghan police discover mass graves after village attack" REUTERS (August 16, 2017), <https://www.reuters.com/article/idUSKCN1AW0PT/>

<sup>35</sup> Frankie Wong, "Justice for the Dead?: Mass Graves in Afghanistan", ACCESS ACCOUNTABILITY (October 2, 2019), <https://accessaccountability.org/index.php/2019/10/02/justice-for-the-dead-mass-graves-in-afghanistan/>

Taliban were keen to showcase the existence of Hazara representation to appease the international community, but he called it symbolic acts that has not translated into any real representation of Shia's or Hazaras, neither at the national level, nor the local level."<sup>36</sup> Another expert stated succinctly: "there is no meaningful political inclusivity or representation for Hazaras at any level. Since regaining control of Afghanistan last year, the Taliban have implemented overtly discriminatory policies."<sup>37</sup>

#### a. Land Rights (Grazing)

In 2023, the Food Agricultural Organization noted that "Afghanistan is an agricultural country, where more than 80 percent of the population depends on agriculture for their livelihoods. The livestock sector largely contributes to the livelihoods of the rural population and is a major source of income and food."<sup>38</sup> One critical area for grazing that has become a source of conflict is in Hazarajat, specifically Ghazni and Maidan Wardak, between the Kuchis (Pashtun nomads) and the Hazaras.<sup>39</sup>

As previously highlighted, the actions by Abdur Rahman Khan in confiscating land from the Hazara and giving it to the Kuchis through royal decree had a lasting traumatic impact on the Hazara community. Experts believe that the Taliban continues to exploit historical events in order to continue patterns of violence against the Hazara.<sup>40</sup> Between 2004 and 2008, while receiving a brief reprieve from government-sanctioned violence (but continuing to face discrimination), the Hazara were embroiled in conflict with the Kuchis over grazing in Hazarajat. In 2007 and 2008, the violence between the two groups led to the displacement of thousands of families.<sup>41</sup>

After taking control of the country in 2021, the Taliban reportedly set up mediation commissions to resolve the conflict between the two groups, but those were not seen as credible by the Hazara; even the Kuchi had some complaints.<sup>42</sup> Although the mediation

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<sup>36</sup> EUAA, "Afghanistan: Major legislative, security-related, and humanitarian developments" (November 4, 2022), 135, [https://coi.euaa.europa.eu/administration/easo/PLib/2022\\_11\\_Q35\\_EUAA\\_COI\\_Query\\_Response\\_Afghanistan\\_update\\_1\\_July\\_31\\_October\\_2022.pdf](https://coi.euaa.europa.eu/administration/easo/PLib/2022_11_Q35_EUAA_COI_Query_Response_Afghanistan_update_1_July_31_October_2022.pdf)

<sup>37</sup> Farkhondeh Akbari, "The Risks Facing Hazaras in Taliban – ruled Afghanistan", George Washington University Program on Extremism (March 7, 2022), [https://extremism.gwu.edu/sites/g/files/zaxdzs5746/files/Risks-Facing-Hazaras-in-Taliban-ruled-Afghanistan\\_Akbari\\_March-2022.pdf](https://extremism.gwu.edu/sites/g/files/zaxdzs5746/files/Risks-Facing-Hazaras-in-Taliban-ruled-Afghanistan_Akbari_March-2022.pdf)

<sup>38</sup> Food and Agriculture Organization of the United Nations, *Afghanistan: Cold Wave Assessment on Livestock - Data in Emergencies Impact Report* at 1 (July 2023), <https://www.fao.org/documents/card/en/c/cc7193en>

<sup>39</sup> Renard Sexton, "Natural Resources and Conflict in Afghanistan", AFGHANISTAN WATCH (July 29, 2012), , [https://www.rbf.org/sites/default/files/attachments/natural\\_resources\\_and\\_conflict\\_in\\_afg\\_-\\_sexton\\_august\\_2012.pdf](https://www.rbf.org/sites/default/files/attachments/natural_resources_and_conflict_in_afg_-_sexton_august_2012.pdf)

<sup>40</sup> Denise Phillips, "Hazaras' Persecution Worsens: Will the New Government Show Leadership by Lifting the Suspension on Afghani Asylum Claims?", AUSTRALIAN POLICY AND HISTORY (November 13, 2017), <https://aph.org.au/2017/11/hazaras-persecution-worsens-will-the-new-government-show-leadership-by-lifting-the-suspension-on-afghani-asylum-claims/>

<sup>41</sup> Renard Sexton, *supra* note 39 at 33-34.

<sup>42</sup> Fabrizio Foschini, "Conflict Management or Retribution? How the Taliban deal with land disputes between the Kuchis and local communities", AFGHANISTAN ANALYSTS NETWORK, <https://www.afghanistan->

commissions purportedly had a “general amnesty” granted to forge relationships between the Hazara and the Kuchi, local Taliban authorities have allowed for old complaints to resurface against the Hazara regarding claims of “human or animal losses.”<sup>43</sup> For example, Kuchis have complained of livestock theft by the Hazara. The Taliban has ordered the Hazara to pay a fine and have detained Hazara elders over the dispute.<sup>44</sup> Experts believe that these methods are meant to mete out “collective punishments” to local communities and force them into submission, thereby breaking Hazara resistance.<sup>45</sup>

### *b. Forced Evictions*

Forced evictions have become a common tool used by the Taliban against the Hazara. It is reported that thousands of Hazaras from Helmand, Kabul, Maidan Wardak, and Balkh provinces were forcibly evicted from their homes in the last three years.<sup>46</sup> In 2021, it is estimated over 2,500 Hazara families were forced to leave their homes and were given no legal recourse to challenge the orders.<sup>47</sup> Experts opine that this is a continuation of collective punishment and a way to reward those who support the Taliban’s power.<sup>48</sup> These acts are still perpetrated by the Taliban. In August 2023, in the Joy Naw area within the Uruzgan district, where a significant Hazara community once thrived, the remaining families that persisted in staying despite facing violence are now being compelled to leave. The Taliban cut down the only source of income for the families—fruit trees in the village—and burned homes and crops.<sup>49</sup>

As James Joseph notes, “displacement, loss of livelihood, and limited access to essential services have placed an enormous burden on these communities and hindered their ability to rebuild their lives.”<sup>50</sup> Further, forced evictions from traditional homelands hinder the ability of communities to “maintain and convey” their cultures to the next generations.<sup>51</sup>

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[analysts.org/en/reports/political-landscape/conflict-management-or-retribution-hoe-the-taliban-deal-with-land-disputes-between-kuchis-and-local-communities/](https://analysts.org/en/reports/political-landscape/conflict-management-or-retribution-hoe-the-taliban-deal-with-land-disputes-between-kuchis-and-local-communities/)

<sup>43</sup> *Id.*

<sup>44</sup> Kabul Now, “Taliban orders Hazaras to pay penalty to Kuchis for lost livestock” (September 2, 2023), <https://kabulnow.com/2023/09/taliban-orders-hazaras-to-pay-penalty-to-kuchis-for-lost-livestock/>

<sup>45</sup> Foschini, *supra* note 42.

<sup>46</sup> Human Rights Watch, “Afghanistan: Taliban Forcibly Evict Minority Shia” (October 22, 2021), <https://www.hrw.org/news/2021/10/22/afghanistan-taliban-forcibly-evict-minority-shia>

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Kabul Now, “Hundreds of Hazara families risk forced evictions in Khas Uruzgan district” (August 14, 2023), <https://kabulnow.com/2023/08/hundreds-of-hazara-families-risk-forced-eviction-in-khas-uruzgan-district/>

<sup>50</sup> The Duty Legacy, “The Urgent Need for Justice on Hazara Genocide Memorial Day 2023” (September 24, 2023), <https://thedutylegacy.com/publications-1/f/the-urgent-need-for-justice-on-hazara-genocide-memorial-day-2023>

<sup>51</sup> Lin Taylor, “Mass Killings, forced evictions threaten indigenous, minority groups to point of ‘eradication’: rights group” Reuters, July 11, 2016. <https://www.reuters.com/article/rights-indigenous/mass-killings-forced-evictions-threaten-indigenous-minority-groups-to-point-of-eradication-rights-group-idUSL8N19X20Q/>. Referring to Peter Grant, “State of the World ‘s Minorities and Indigenous Peoples 2016” Minority Rights Group, (July 2016), <https://minorityrights.org/resources/state-of-the-worlds-minorities-and-indigenous-peoples-2016/>

### c. Massacres, Abductions, and Bombings

There have been several reported extrajudicial killings against members of the Hazara community by the Taliban since 2021. Amnesty International has detailed extrajudicial executions in the Ghazni province in July 2021, the Daykundi province in August 2021, and in June 2022 in the Ghor province.<sup>52</sup>

Hazaras are also the target of abductions. “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.”<sup>53</sup> In his law review article, Mehdi J. Hakimi detailed various categories of attacks against Hazaras, including a series of over 200 abductions occurring first in 2015 and then continuing until 2020. After the Taliban takeover in 2021, perpetrators have continued to abduct Hazaras.<sup>54</sup>

While most of the acts discussed in this paper are perpetrated by the Taliban, ISIS-K also made clear its intent to “to exterminate Shi’a, including the Hazara.”<sup>55</sup> The terrorist group has claimed responsibility for several attacks and bombings, including on April 19, 2021, where there was a suicide bombing of a high school.<sup>56</sup> On September 30, 2022, another bombing took the lives of 54 Hazara girls who were taking exams at Kaaj Educational Center in Kabul. Over 100 were injured.<sup>57</sup>

The Hazara are also targeted in other countries by other terrorist groups. In Pakistan, the Hazara have been killed by extremist groups because of their faith or due to sectarian violence since 2013.<sup>58</sup> The Lashkar-e-Jhangvi, being one such group and banned in Pakistan in 2022, has fought alongside the Taliban and participated in the massacre in Mazar-i-Sharif in 1998.<sup>59</sup> In 2011 this group issued a threat to the Hazara community,

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<sup>52</sup> Amnesty International, “Afghanistan: Taliban torture and execute Hazaras in targeted attack – new investigation” (September 15, 2022), <https://www.amnesty.org/en/latest/news/2022/09/afghanistan-taliban-torture-and-execute-hazaras-in-targeted-attack-new-investigation/>

<sup>53</sup> Hakimi, *supra* note 7.

<sup>54</sup> *Id.*

<sup>55</sup> USMHM, “Museum Statement on the Hazara” (August 23, 2021), <https://www.usmhm.org/information/press/press-releases/museum-statement-on-the-hazara>. The USMHM also stated that the Hazara face a “risk” of genocide and crimes against humanity. However, it is clear from the circumstances that the Hazara are victims of both crimes under international criminal law.

<sup>56</sup> Human Rights Watch, “Afghanistan: ISIS Group Targets Religious Minorities” (September 6, 2022), <https://www.hrw.org/news/2022/09/06/afghanistan-isis-group-targets-religious-minorities>

<sup>57</sup> Palwasha Hassan & Zahra Yagana, “Preventing Another School Attack in Afghanistan: Urgent Actions To Protect Afghan Women, Girls, and Minorities”, GIWPS (December 16, 2022), <https://giwps.georgetown.edu/preventing-another-school-attack-in-afghanistan-urgent-actions-to-protect-afghan-women-girls-and-minorities/>

<sup>58</sup> Shah Meer Baloch, “Every year we dig mass graves”: the slaughter of Pakistan’s Hazara” (April 5, 2021), <https://www.theguardian.com/global-development/2021/apr/05/mass-graves-pakistan-shia-minority-hazara-slaughter-imran-khan>

<sup>59</sup> Human Rights Watch, “We are the Walking Dead”, (June 29, 2014), <https://www.hrw.org/report/2014/06/29/we-are-walking-dead/killings-shia-hazara-balochistan-pakistan>

indicating that it would make “Pakistan a graveyard of the Shi’ite Hazaras and their houses will be destroyed by bombs and suicide bombers.”<sup>60</sup>

*d. Discrimination and Persecution against women and girls*

The situation of Hazara women and girls is particularly precarious because of the intersectional nature of violence against this specific group: Hazara women and girls are subjected to heightened persecution because of their gender *and* their ethnicity.

The Taliban has enforced strict dress codes<sup>61</sup> and imposed mandatory hijab in areas where the Hazara reside. “In Daikundi and Bamiyan provinces, women's clothing has never included a burqa or a long black hijab, they had a local dress and a special clothing culture, but the Taliban have forced women, especially little girls who go to elementary school and study in the fourth and fifth grades, to wear a long black hijab.”<sup>62</sup> Shortly following this in 2022 the Taliban banned women from attending university.<sup>63</sup>

Hazara women have been documented being sold into slavery.<sup>64</sup> In 2020, it was reported that the maternity ward at Dasht-e-Barchi hospital was intentionally attacked, killing pregnant mothers and newborn children. Doctors Without Borders noted that “while the identities of the assailants remain unknown, this horrific crime appears to be part of a larger pattern of attacks targeting the ethnic Hazara community living in the area.”<sup>65</sup>

Further, allegations exist that sexual violence has been used as a tool of persecution against Hazara women and girls.<sup>66</sup>

*e. Hazara Refugees and non-refoulement*

In Pakistan, where the Hazara have sought refuge, they are no longer safe. Starting in January 2023, an estimated 600 Afghans were deported from the country, with hundreds more arrested, despite some having had valid visas to enter the country.<sup>67</sup> Organizations such as Amnesty International wrote to the government in Pakistan, indicating that this was a violation of the principle of non-refoulement under international refugee law, even

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<sup>60</sup> *Id.*

<sup>61</sup> Fatima Jafari, et. al, “Under the Veil of Oppression: The Agonizing Plight of Afghanistan’s Hazara Women” Wilson Center, January 31, 2024, <https://www.wilsoncenter.org/blog-post/under-veil-oppression-agonizing-plight-afghanistans-hazara-women>

<sup>62</sup> Masuma Mohammadi, “Human Rights Conditions for Hazaras in Afghanistan Under the Taliban Regime”, SJSU HUMAN RIGHTS INSTITUTE (February 7, 2023), [https://www.sjsu.edu/hri/docs/SJSU%20HRI%20REPORT\\_%20%20Human%20Rights%20Conditions%20for%20Hazaras%20in%20Afghanistan%20Under%20the%20Taliban%20Regime.pdf](https://www.sjsu.edu/hri/docs/SJSU%20HRI%20REPORT_%20%20Human%20Rights%20Conditions%20for%20Hazaras%20in%20Afghanistan%20Under%20the%20Taliban%20Regime.pdf)

<sup>63</sup> *Id.*

<sup>64</sup> Alton, *supra* note 8, 26, 55

<sup>65</sup> Zahra Koochizad, “Afghanistan: Massacre in a Maternity Ward” Doctors without Borders, August 21, 2020, <https://www.doctorswithoutborders.org/latest/afghanistan-massacre-maternity-ward>

<sup>66</sup> Alton, *supra* note 8, 52, 53

<sup>67</sup> Zofeen T. Ebrahim, “Pakistan sends back hundreds of Afghan refugees to face Taliban repression”, THE GUARDIAN (January 10, 2023), <https://www.theguardian.com/global-development/2023/jan/10/pakistan-sends-back-hundreds-of-afghan-refugees-to-face-taliban-repression>

though Pakistan is not a party to the 1951 UN Refugee Convention or accompanying Protocol.<sup>68</sup> Later in 2023, the government of Pakistan announced that all Afghan refugees were to leave the country by November 1<sup>st</sup> or otherwise face deportation to Afghanistan. Amnesty International documented the use of “holding centers” which extend no legal rights to those preparing to be deported.<sup>69</sup>

Iran has also forcibly deported, by their own estimates, 345,000 Afghans from the country.<sup>70</sup> Iran has also banned Afghan refugees from traveling, working, or living in 31 provinces in the country.<sup>71</sup>

Of course, forced deportations have caused a great amount of distress among the Hazara population which emphasize their fears of the ongoing genocide and land grabs leading to forced displacement by the Taliban.<sup>72</sup>

### III. International Crimes: Genocide

There are no official estimates of how large the Hazara population is, as a national census of the population has never been undertaken.<sup>73</sup> Scholars estimate that the Hazara community has declined significantly due to persecution. Further, in many areas recaptured by the Taliban, phone service has been cut off and visuals coming out of the country are screened.<sup>74</sup> The Taliban's severe media regulations, which prohibit reports that "are contrary to Islam" or "insult national figures," have resulted in the arbitrary detention and mistreatment of journalists.<sup>75</sup> Despite the lack of reports, the longstanding violence against the Hazara lays out the elements of genocide perpetrated by the Taliban and other groups, such as ISIS-K, that intend to remove the ethnic group from existence. Further, the Taliban's silence and complicity in allowing terrorist factions such as ISIS-K to inflict violence and terrorism against the Hazara community indicate its willingness to achieve its plan of extermination.

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<sup>68</sup> Agnes Callamard, “Re: Protecting Afghans in Pakistan” (December 16, 2022), ASA 33/6311/2022, <https://www.amnesty.org/en/documents/asa33/6311/2022/en/>

<sup>69</sup> Amnesty International, “Pakistan: Halt mass detentions and deportations of Afghan refugees” (November 10, 2023), <https://www.amnesty.org/en/latest/news/2023/11/pakistan-halt-mass-detentions-and-deportations-of-afghan-refugees/>

<sup>70</sup> Ayaz Gul, “Taliban: Iran Deports Almost 350,000 Afghans Within 3 Months”, VOICE OF AMERICA (December 11, 2023), <https://www.voanews.com/a/taliban-iran-deports-almost-350-000-afghans-within-3-months/7392705.html>.

<sup>71</sup> RADIO FREE EUROPE, “Afghans Banned from 16 Provinces in Iran As Forced Exodus Continues” (December 4, 2023), <https://www.rferl.org/a/iran-afghans-banned-provinces/32713320.html>.

<sup>72</sup> ARAB NEWS, “Going to a graveyard: Afghan Hazaras dread Pakistan expulsion” (October 27, 2023), <https://arab.news/9u2qc>

<sup>73</sup> Minority Rights Group, *supra* note 5.

<sup>74</sup> Amnesty International, “Afghanistan: Taliban responsible for brutal massacre of Hazara men – new investigation” (August 19, 2021), <https://www.amnesty.org/en/latest/news/2021/08/afghanistan-taliban-responsible-for-brutal-massacre-of-hazara-men-new-investigation/>

<sup>75</sup> See Human Rights Watch, “Afghanistan: Taliban Severely Restrict Media” (October 21, 2021), <https://www.hrw.org/news/2021/10/01/afghanistan-taliban-severely-restrict-media>

The United Nations Convention on the Prevention and Punishment of the Crime of Genocide (1951), Article II defines “genocide” as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

The Rome Statute (Article 6) of the International Criminal Court has adopted the same definition as found in the UN Convention. In August 2022, the UK Hazara Inquiry completed a mass atrocity risk analysis utilizing the UN Framework of Analysis for Atrocity Crimes and concluded a “genocide may be underway.”<sup>76</sup>

Based on the factors presented in this truncated report, in this situation the Taliban and other terrorist groups have shown their continued intent to destroy the Hazara, an ethnic group, by killing Hazara members, causing serious bodily or mental harm through acts such as murder, dispossession of lands, forced evictions, restrictions on their way of life, abductions, and open discrimination. The policy of extermination has been constantly underscored through the cycles of violence. Further, experts have noted that “the cycle of impunity” has allowed perpetrators to continue these horrific crimes “leaving the Hazara community vulnerable to future attacks.”<sup>77</sup>

While Afghanistan ratified the Rome Statute in 2003, no investigation has been specifically opened regarding the Hazara and focusing pointedly on the Hazara genocide.

#### **IV. Noting the Crime of Genocide**

State parties to the UN Genocide Convention are legally obligated to prevent and punish the crime of genocide.<sup>78</sup> The obligations imposed upon States to do so have been reiterated and emphasized by the International Court of Justice.<sup>79</sup> Further,

when governments look the other way or actively cover up genocide out of short-term self-interest, a signal is sent to would-be perpetrators that they can resolve political and social issues through massive destruction without danger of outside intervention and, through a continual denial of the

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<sup>76</sup> Alton, *supra* note 8, 42-45

<sup>77</sup> The Duty Legacy, “The Urgent Need for Justice on Hazara Genocide Memorial Day 2023” (September 24, 2023), <https://thedutylegacy.com/publications-1/f/the-urgent-need-for-justice-on-hazara-genocide-memorial-day-2023>

<sup>78</sup> See Payam Akhavan, *Reducing Genocide to Law*, Cambridge University Press, (2012).

<sup>79</sup> Melanie O’Brien, “The Ramifications of Recognition of Genocide”, AUSTRALIAN INSTITUTE OF INTERNATIONAL AFFAIRS, July 21, 2022, <https://www.internationalaffairs.org.au/australianoutlook/the-ramifications-of-recognition-of-genocide/>

atrocities, can expect the world to forget these events entirely.<sup>80</sup>

## **V. Conclusion: Considerations**

The situation confronting the Hazara warrants urgent action from organizations like the ABA to compel the international community to intervene and halt these atrocities. The ABA has previously adopted policy positions related to the prevention and punishment of genocide in Sudan (05M106 and 06A120B), Cambodia (87M8A), and, most recently, against the Rohingya (19A120 and 503). Similarly, the ABA and the international community should consider policies to address the human rights crisis facing the Hazara people of Afghanistan, with the specific aim to:

- a) Stop and prevent further acts of genocide perpetrated against the Hazara people and other persecuted minority groups in Afghanistan;
- b) Promote justice and accountability efforts to end impunity for genocide in Afghanistan, specifically through the International Criminal Court and through Universal Jurisdiction; and
- c) Advocate for strengthening national, regional, and international frameworks for preventing mass atrocities in Afghanistan and protecting at-risk groups like the Hazara, beginning with the recognition that the Hazara are victims of genocide.

The Hazara people have faced over a century of persecution and violence in Afghanistan at the hands of various rulers and regimes. The acts described in this policy paper provide strong evidence that the Hazara are victims of genocide which requires urgent action. The American Bar Association and the international community can play a pivotal role in bringing global attention to this horrific and desperate situation.

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<sup>80</sup> Roger W. Smith, "The Significance of the Armenian Genocide after Ninety Years", *GENOCIDE STUDIES AND PREVENTION: AN INTERNATIONAL JOURNAL*: Vol. 1: Iss.2: Article 2, I, (September 2006), <https://digitalcommons.usf.edu/gsp/vol1/iss2/2>