

7. Exclusion

COMMON ANALYSIS
Last update: June 2026

For general guidance on Exclusion, see 'EUAA, *Practical Guide: Exclusion*, January 2017' and 'EUAA, *Practical Guide on Exclusion for Serious (Non-Political) Crimes*, December 2021'.

For general guidance on the country guidance approach to this section, see 'EUAA, Exclusion in *Country Guidance: explained*, February 2026'.

The analysis below is based on the following EUAA COI products: Country Focus 2026, 2.1., 2.2.3., 2.3.; COI Update 2024, 4.; Country Focus 2023, 1.2.3., 2.2.1., 2.2.2., 4.1.2., 4.1.3., 4.3.2.; COI Update 2022, 3.; Targeting 2022, 1.1.4.(e), 1.1.4.(f), 1.1.4.(g), 1.2.2., 2.1., 2.7., 3.1., 6.5.2., 7.2., 8.2., 9.1.2.; KSEI 2022, 8.2.; Security 2022, 2.1.2, 2.2.2., 3.2., 4.3.1., 4.12.1.; Security June 2021, 1.1.1.; Security 2020, 1.1.1.; Anti-government elements, 2.4.1., 2.5., 2.6.1., 2.6.2., 3., 3.2., 3.4., 3.5., 3.6., 3.6.3., 4.1.; Criminal law and customary justice, 1.8.; Taliban strategies – Recruitment, 1.1., 1.2., 1.3.; Syria - Actors 2019, 2.3.4.. Country Guidance should not be referred to as a source of COI.

In the context of Afghanistan, various circumstances may require consideration of the potential applicability of exclusion grounds. The QR does not set a time limit for the application of the grounds for exclusion. Applicants may be excluded in relation to events which occurred in the current as well as in past conflicts.

Proper consideration should be paid to relevant ongoing situations - such as those involving Taliban *de facto* security forces, resistance armed groups and ISKP, on the one hand, and Taliban *de facto* security forces and Pakistani security forces, on the other hand - as well as to situations which have ended. For example relevant situations from the past could include, the Taliban-led insurgency against the former Afghan government (2001), the Taliban regime and conflict between the Taliban and the Northern Alliance (1996 – 2001), the Afghan 'Civil War' (1992 - 1996), the Soviet Union invasion (1979) and the armed conflict between the Afghan government (supported by Soviet troops) and the '*mujahideen*' (e.g. secret services of the People's Democratic Party of Afghanistan (PDPA) regime, commanders or fighters from the anti-Soviet jihad *tanzeem*) (1979 - 1992), the 'Saur' Revolution of 1978, subsequent purges and the 1979 crackdown of the uprising. Afghan nationals have also been involved in conflicts outside Afghanistan, such as via the *Fatemiyoun* Brigade in Syria, which may be of relevance in the examination of exclusion grounds.

In terms of qualifying the relevant acts as war crimes, armed conflicts[27] in Afghanistan can be characterised as follows:

- armed conflict between the Taliban and Pakistani forces (ongoing): international;
- armed conflict between the Taliban and NRF and AFF (2021 – ongoing): non-international [28];
- armed conflict between the Taliban and ISKP (2015 – ongoing): non-international;
- Taliban-led insurgency against the (former) Afghan government (after 11 September 2001 – August 2021): non-international with the continued involvement of the US-led coalition[29] ;
- armed conflict between the Taliban and the United Front (1996-2001): non-international;
- armed conflict between *'mujahideen'* forces and the government (1989-1996): non-international;
- Soviet-Afghan War from December 1979 until February 1989: international;
- armed conflict between PDPA government and armed opponents from the summer of 1979 until the Soviet invasion on 24 December 1979: non-international.

More specifically, the need to examine possible exclusion issues in the context of Afghanistan may arise, for example, in cases of applicants being former or current members of the groups cited below. This list is non-exhaustive:

- the former Afghan government and pro-government forces;
- the Taliban;
- the ISKP;
- other non-State armed groups (e.g NRF, AFF and ALM, the Turkestan Freedom Tigers, the National Resistance Council, the National Liberation Front of Afghanistan (NLFA), the Unknown Soldiers of Hazaristan, the allegedly Hazara-centred Freedom and Democracy Front and the Freedom Corps etc);

Other groups such as the Haqqani Network and Al Qaida are often linked with either the Taliban or ISKP and it is sometimes difficult to distinguish their acts from those of the Taliban or ISKP.

Given the serious consequences that exclusion may have for the individual, the exclusion grounds should be interpreted restrictively and applied with caution.

The examples mentioned in this chapter are non-exhaustive and non-conclusive. Each case should be examined on its own merits.

○ Exclusion based on the commission of international crimes

The analysis below is based on the following EUAA COI reports: Country Focus 2026, 1.1., 4.4.1.; Anti-government elements, 2.5., 2.6.1., 2.6.2.; Criminal law and customary justice, 1.8.; 2.3.3.; KSEI 2022, 8.2.; Country Guidance should not be referred to as a source of COI.

The ground **crime against peace** is not found to be of particular relevance in the cases of applicants from Afghanistan.

According to COI, Taliban, members of the ISKP and other armed groups, former ANDSF and militias affiliated with the former government, as well as civilians in Afghanistan, can be implicated in acts that would qualify as **war crimes** or **crimes against humanity**. Reported violations of international humanitarian law by parties in the conflicts in Afghanistan could amount to war crimes.

It can be noted that, in November 2017, the Prosecutor of the ICC requested authorisation from Pre-Trial Chamber III to initiate an investigation into alleged war crimes and crimes against humanity in relation to the situation in Afghanistan since 1 May 2003. The preliminary examination focused on crimes listed in the Rome Statute allegedly committed in the context of the armed conflict between pro-government forces and anti-government forces. It includes the **crimes against humanity** of murder and imprisonment or other severe deprivation of physical liberty, and the **war crimes** of murder, cruel treatment, outrages upon personal dignity, the passing of sentences and carrying out of executions without proper judicial authority, intentional attacks against civilians, civilian objects and humanitarian assistance missions, and treacherously killing or wounding of an enemy combatant. The preliminary examination also focused on the existence and genuineness of national proceedings in relation to these crimes. On 31 October 2022, Pre-Trial Chamber II of the International Criminal Court (ICC) authorised the Prosecution to resume investigation, following a previous request for deferral by the (former) government of Afghanistan30. On 23 January 2025, ICC Prosecutor announced that his Office filed two applications for warrants of arrest for the **crime against humanity of persecution on gender grounds**, under article 7(1)(h) of the Rome Statute, against the Supreme Leader of the Taliban, Haibatullah Akhundzada, and the Chief Justice of the “Islamic Emirate of Afghanistan”, Abdul Hakim Haqqani. The warrants of arrest were subsequently issued by Pre-Trial Chamber II on 8

July 2025.

○ Exclusion based on the commission of a serious (non-political) crime

The analysis below is based on the following EUAA COI reports: Country Focus 2026, 1.2.8., 2.4., 2.5., 4.4.7.; Country Focus 2024, 2.5.; Country Guidance should not be referred to as a source of COI.

In the context of Afghanistan, widespread criminality and breakdown in law and order make the ground of 'serious (non-political) crime' particularly relevant. Violence against women and children (for example, in relation to the practice of *bacha bazi*, in the context of child marriage, child recruitment, honour killings, sexual violence or some forms of domestic violence, etc.), which is widespread in Afghanistan, could also potentially amount to a serious (non-political) crime. Moreover, in addition to murder related to family and other private disputes, some examples of particularly relevant serious crimes may include drug trade and trafficking, trafficking in arms, trafficking in human beings, corruption, embezzlement and other economic crimes, illegal taxation, illegal extraction, trade or smuggling of minerals, gemstones, archaeological artefacts, etc.

Some serious (non-political) crimes could be linked to an armed conflict (e.g. if committed in order to finance the activities of armed groups) or could amount to fundamentally inhumane acts committed as a part of a systematic or widespread attack against a civilian population, in which case they should instead be examined under Article 12(2)(a)/Article 17(1)(a) QR.

In relation to exclusion from refugee status, a crime could fall under the ground of a serious (non-political) crime if committed in Afghanistan or any third country (for example, while the applicant resided in Pakistan or Iran, or in countries of transit, etc.). In relation to subsidiary protection, serious crimes committed by Afghan applicants in the host country may also lead to exclusion.

○ Exclusion based on acts contrary to the purposes and principles of the United Nations

In the context of Afghanistan, (former) membership in the Taliban or in armed groups such as the ISKP, could trigger relevant considerations and require an examination of the applicant's activities under Article 12(2)(c)/Article 17(1)(c) QR in addition to the considerations under Article 12(2)(a)/Article 17(1)(a) QR or Article 12(2)(b)/Article 17(1)(b) QR.

Membership alone is not sufficient to substantiate exclusion, however, participation in the activities of a terrorist group, undertaken with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group, should be given significant weight in the exclusion assessment31. The application of exclusion should be based on an individual assessment of the specific facts in the context of the applicant's activities within that organisation. The position of the applicant within the organisation would constitute a relevant consideration and a high-ranking position could justify a (rebuttable) presumption of individual responsibility. Other engagement with a group, such as the aforementioned, could also trigger exclusion considerations. Nevertheless, it remains necessary to examine all relevant circumstances before an exclusion decision can be made.

Where the available information indicates possible involvement in crimes against peace, war crimes or crimes against humanity, the assessment would need to be made in light of the exclusion grounds under Article 12(2)(a)/Article 17(1)(a) QR.

○ Exclusion based on constituting a danger to the community or to national security

In the examination of the application for international protection, the exclusion ground under Article 17(1)(d) QR (danger to the community or to national security) is only applicable to persons otherwise eligible for subsidiary protection.

Unlike the other exclusion grounds, the application of this provision is based on a forward-looking assessment of risk. Nevertheless, the examination takes into account the past and/or current activities of the applicant, such as association with certain groups considered to represent a danger to the security of the Member States or criminal activities of the applicant.

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  Note that the assessment under Article 12(2)(a) QR and Article 17(1)(a) QR refer to the relevant international instruments defining the terms. Therefore, the assessment of whether or not an armed conflict takes place, as well as its nature, is based on international humanitarian law and may differ from the assessment in the context of Article 15(c) QR as defined in the Diakité judgment of the CJEU.

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  For non-international armed conflicts in Afghanistan, see WAR WATCH - World Assessment and Tracking of Civilian Harm.

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  Armed conflicts in Afghanistan - WAR WATCH.

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  For further information, see ICC, Afghanistan.

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  Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA

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