

AUSTRALIA'S RESPONSIBILITY TO PROTECT THE HUMAN RIGHTS OF WOMEN IN AFGHANISTAN

CASTAN CENTRE FOR HUMAN RIGHTS LAW



MARCH 2022



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Co-funded by the
Erasmus+ Programme
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This report was prepared by the Castan Centre for Human Rights Law (**Castan Centre**), based in the Faculty of Law at Monash University. The centre is a world-renowned research, education and policy centre which aims to create a more just world where human rights are respected and protected, allowing all people to flourish in freedom and with dignity.

The Centre has a long history of defending and promoting the realisation of human rights in Australia. It was founded in 2000 by a group of academics and human rights advocates and was named in honour of the world-renowned human rights advocate, Ron Castan AM QC.

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Editing of this publication was co-funded by the European Union under the [Erasmus+ Programme - Jean Monnet Activities](#) (599660 EPP-1-2018-1-AU-EPPJMO-NETWORK). The Network Partners are: The University of Melbourne; Deakin University; Monash University; Bologna University; University of Geneva; University of Gothenburg.

We also extend our sincere gratitude to the following individuals and organisations for their important insight and feedback on this report:

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TABLE OF CONTENTS

TABLE OF CONTENTS	3
PREFACE	5
EXECUTIVE SUMMARY	6
GLOBAL RESPONSES TO THE CRISIS	7
AUSTRALIA: DIRECT INVOLVEMENT, EXPRESSED COMMITMENT BUT INADEQUATE ACTION	8
PART I: WOMEN’S RIGHTS IN AFGHANISTAN	11
WOMEN IN AFGHANISTAN	11
HUMAN RIGHTS VIOLATIONS UNDER THE TALIBAN	11
Taliban Control (1996–2001)	11
War in Afghanistan (2001–2021)	12
Taliban Resurgence (2021–Present)	14
Resistance by Afghan Women	18
The Refugee Crisis in Afghanistan	19
PART II: AUSTRALIA’S OBLIGATIONS UNDER INTERNATIONAL LAW	20
CONVENTION ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN	20
THE REFUGEE CONVENTION	21
UNHCR Policies and Guidelines	22
CEDAW Committee Recommendations	22
SUSTAINABLE DEVELOPMENT GOALS	23
INTERNATIONAL SOLIDARITY	23
PART III: AUSTRALIA’S COMMITMENT TO ADVANCING GENDER EQUALITY	24
A PILLAR OF AUSTRALIAN GOVERNMENT POLICY	24
PART IV: AUSTRALIA’S COMMITMENTS AND ACTION ON AFGHANISTAN	27
AUSTRALIA’S COMMITMENT TO WOMEN IN AFGHANISTAN	27
EVACUATION SUPPORT AND HUMANITARIAN ASSISTANCE	27
AUSTRALIA’S OFFSHORE HUMANITARIAN PROGRAM	28
AUSTRALIA IS FAILING TO MEET THE HUMANITARIAN NEED OF AFGHAN WOMEN AND GIRLS	29
Inadequate Humanitarian Response	29
Shortcomings of Australia’s Humanitarian Visa Program	30

PART V: INTERNATIONAL COMPARISONS	32
CANADA	32
Feminist Foreign Policy	32
Afghanistan Evacuation and Humanitarian Response	32
Avenues to Resettlement for Afghan Women and Girls	32
Shortcomings of the Canadian Approach	34
UNITED KINGDOM	34
Afghanistan Evacuation and Humanitarian Response	35
Avenues to Resettlement for Afghan Women and Girls	35
Shortcomings of the UK Approach	36
THE UNITED STATES	36
Afghanistan Evacuation and Humanitarian Response	37
Avenues to Resettlement for Afghan Women and Girls	37
Shortcomings of the US Approach	38
ITALY	39
Afghanistan Evacuation and Humanitarian Response	39
Shortcomings of Italy's approach	40
PART 5: CONCLUSIONS AND RECOMMENDATIONS	41

PREFACE

I am proud to present this report on Australia's obligation to protect Women in Afghanistan on behalf of the Castan Centre for Human Rights Law at Monash University.

The genesis of this report was a concern that myself and others held about the gaps in Australia's humanitarian and refugee protection response to the resurgence of the Taliban in Afghanistan in 2021. In recognition of these concerns, the Castan Centre convened a panel discussion to analyse the current situation in Afghanistan and Australia's moral and legal obligation to assist Afghan citizens. This event, held in August 2021, featured presentations by key experts on Afghanistan including Emeritus Professor William Maley, Australian National University, Sitarah Mohammadi, Deputy Chair, Asia Pacific Refugee Rights Network (APRRN); and Evan Jones, Coordinator, Asia Displacement Solutions Platform.

The observations and insights from this event were then built upon by the Castan Centre in convening a clinic on Women in Afghanistan where a group of law students were guided in developing a policy paper on Australia's obligations in this context. This is part of the Castan Centre's mission to shape and mentor the new generation of human rights law scholars and advocates.

Castan Centre staff then edited that report and worked with our external civil society partners to ensure that our analysis reflected the current needs of the situation, making sure that the paper grounded in practice and will have an impact in the field.

This report represents the Centre's long engagement in advocating for change in Australia's refugee policy and our developing research expertise on gender. We hope this paper can contribute an evidence-based agenda for improving the way in which Australia's refugee policy addresses the need for protection of a particularly vulnerable cohort of the global refugee population: Women in Afghanistan.



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March 2022

EXECUTIVE SUMMARY

The Taliban takeover of Afghanistan, catalysed by the withdrawal of foreign forces from the country following a protracted conflict that spanned over two decades,¹ has given rise to a serious and immediate humanitarian crisis.

Women and girls are among the tens of thousands of at-risk people that are evacuating the country every week.² Former women leaders, judges, lawyers and human rights advocates have faced death threats and violence against themselves and their families.³ Women and girls throughout the country are also experiencing the rapid erosion of their freedoms, and violation of their fundamental rights⁴ as the Taliban systematically unravels gains made by women and girls since 2001.⁵ Since their return to power, the Taliban have been pursuing a campaign of silencing women in the form of abducting human rights defenders, particularly women activists who have participated in protests demanding for their rights in Kabul and Mazar-i-Sharif.⁶ Poverty, famine and exploitation are on the rise as the country grapples with continued violence, economic collapse and the spread of COVID-19.⁷

The crisis has given rise to a significant wave of refugees from the conflict, with the United Nations High Commissioner for Refugees (UNHCR) reporting that over half a million people have been displaced by the conflict since the start of 2021.⁸ In light of the crisis, United Nations (UN) Secretary-General, António Guterres has called for States around the world to cooperate to achieve stability in Afghanistan:⁹

“Together, let us act with determination – and without delay – to help the people of Afghanistan and to secure a better future for all.”

António Guterres,
UN Secretary-General (2021)

¹ Nicole Brangijn and Thea Gellerfy, ‘Background to the Afghanistan Withdrawal: a Quick Guide’ (Research Paper, Parliamentary Library, Parliament of Australia, 26 August 2021) <https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/8141357/upload_binary/8141357.pdf>.

² Former employees of the Government of Afghanistan, western-backed organisations and foreign forces, as well as members of ethnic and religious minority groups in Afghanistan are also at-risk. See ‘Thousands of Afghans Seeking Refuge in Regional Countries: UNHCR’, UNHCR (online, 23 September 2021) <<https://www.aljazeera.com/news/2021/9/23/afghanistan-refugees-pakistan-iran-unhcr>>.

³ See eg, Steve Cannane, ‘When the Taliban Came After Afghanistan’s Judges, a Daring Escape Plan was Hatched’, *ABC News* (online, 29 December 2021) <<https://www.abc.net.au/news/2021-12-29/inside-the-daring-plan-to-spirit-brave-judges-out-of-afghanistan/100714310>>; David Zucchino, ‘Afghan Women Who Once Presided Over Abuse Cases Now Fear for Their Lives’, *New York Times* (online, 20 October 2021) <<https://www.nytimes.com/2021/10/21/world/asia/afghan-judges-women-taliban.html>>.

⁴ Including limits to their freedom of movement, employment, and participation in civil society and public and political life, as well as access to healthcare, education, support services for survivors of violence, and justice. See ‘Gender Alert No. 1: Women’s Rights in Afghanistan, Where are We Now?’, *UN Women* (Report, December 2021) <<https://www.unwomen.org/sites/default/files/2021-12/Gender-alert-Womens-rights-in-Afghanistan-en.pdf>> (‘Gender Alert 2021’).

⁵ Zucchino (n 3). This includes progress towards greater political participation, stronger rights, better access to healthcare and education, and improvements of socio-economic conditions for many women. See eg, John R. Allen and Vanda Felbab-Brown, ‘The Fate of Women’s Rights in Afghanistan’, *Brookings Institute* (Blog, September 2020) <<https://www.brookings.edu/essay/the-fate-of-womens-rights-in-afghanistan/>>.

⁶ ‘Woman human rights defenders Zahra Mohammadi and Mursal Ayar abducted’, *Front Line Defenders* (online, 9th February 2022, <<https://www.frontlinedefenders.org/en/case/woman-human-rights-defenders-zahra-mohammadi-and-mursal-ayar-abducted>>).

⁷ Emma Batha, ‘FACTBOX-Afghanistan’s Hunger and Poverty crisis in Numbers’, *Reuters* (online, 11 January 2022) <<https://www.reuters.com/article/afghanistan-hunger-crisis-idUKL8N2T05PX>>.

⁸ United Nations High Commissioner for Refugees, *Afghanistan Situation Regional Refugee Response Plan* (Report, January-December 2022) <<https://data2.unhcr.org/en/situations/afghanistan>>. See also United Nations High Commissioner for Refugees, *Afghanistan Situation: Emergency Preparedness and Response in Iran* (Situation Update, 8 February 2022) <<https://data2.unhcr.org/en/documents/details/90903>> (‘Afghanistan Update (8 February)’).

⁹ ‘Act Swiftly and with Determination on Afghanistan, UN Chief Urges’, *UN News* (online, 27 October 2021) <<https://news.un.org/en/story/2021/10/1104102>>.

Global Responses to the Crisis

Numerous countries have taken swift and decisive action to respond to the immediate humanitarian need of the people of Afghanistan and engage in responsibility-sharing with respect to the evolving refugee situation.

The Government of Canada, for example, deployed troops to Afghanistan to support the evacuation of over 3,700 individuals from the conflict in August-September 2021.¹⁰ The government announced humanitarian aid contributions totalling \$133 million (approx. \$145 million AUD) for 2021-2022.¹¹ Canada is set to resettle over 40,000 at-risk Afghan nationals¹² through both a dedicated Special Immigration Program for Afghans who assisted the Canadian Government, and a humanitarian program.¹³ Women leaders and human rights defenders are among those eligible for resettlement through the Special Immigration Program.¹⁴ Canada has also launched a dedicated Government-Assisted Refugee Program for human rights defenders, enabling up to 250 human rights defenders and their families to resettle in the country per year.¹⁵

The Government of the UK similarly deployed 600 troops¹⁶ to facilitate the evacuation of an estimated 15,000 people out of Afghanistan between 15-31 August 2021, including an estimated 8,000 at-risk Afghans.¹⁷ The UK doubled its humanitarian aid to Afghanistan to £286 million (over AUD \$540 million),¹⁸ and committed to resettling 5,000 Afghan refugees between August 2021-2022, with priority given to women and girls, among other key groups at risk of human rights abuses.¹⁹ The resettlement scheme is set to settle up to 20,000 Afghan refugees over the next 5 years.²⁰

¹⁰ Immigration, Refugees and Citizenship Canada, 'More than 3,000 Evacuees Arrive in Canada from Afghanistan', *Government of Canada* (Statement, 3 September 2021) <<https://www.canada.ca/en/immigration-refugees-citizenship/news/2021/09/more-than-3000-evacuees-arrive-in-canada-from-afghanistan.html>>.

¹¹ 'Canada Announces \$56 Million in Urgent Humanitarian Assistance for People of Afghanistan', *Government of Canada* (News Release, 21 December 2021) <<https://www.canada.ca/en/global-affairs/news/2021/12/canada-announces-56-million-in-urgent-humanitarian-assistance-for-people-of-afghanistan.html>>; 'Canada Announced Additional Humanitarian Assistance to Afghanistan and Neighbouring Countries', *Government of Canada* (News Release, 26 August 2021) <<https://www.canada.ca/en/global-affairs/news/2021/08/canada-announces-additional-humanitarian-assistance-to-afghanistan-and-neighbouring-countries.html>>.

¹² Marc Garneau, 'Address by the Honourable Marc Garneau, PC, MP, Minister of Foreign Affairs of Canada at the General Debate of the 76th United Nations General Assembly - In Our Hands' (Speech, Global Affairs Canada, 27 September 2021) <<https://www.canada.ca/en/global-affairs/news/2021/09/address-by-the-honourable-marc-garneau-pc-mp-minister-of-foreign-affairs-of-canada-at-the-general-debate-of-the-76th-united-nations-general-assembly.html>>.

¹³ '#WelcomeAfghanistan: Key Figures', *Government of Canada* (Web Page) <<https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/afghanistan/key-figures.html>>.

¹⁴ 'Supporting Afghan Nationals: About the Special Programs', *Government of Canada* (Web Page) <<https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/afghanistan/special-measures.html>> 'Supporting Afghan Nationals: About the Special Programs'.

¹⁵ 'Minister Mendicino launches a dedicated refugee stream for human rights defenders', *Government of Canada* (Web Page) <<https://www.canada.ca/en/immigration-refugees-citizenship/news/2021/07/minister-mendicino-launches-a-dedicated-refugee-stream-for-human-rights-defenders.html>>.

¹⁶ Ben Wallace, Ministry of Defence and Foreign, Commonwealth and Development Office, 'UK Steps Up Support to Help British Nationals Leave Afghanistan', *UK Government* (Media Release, 12 August 2021) <<https://www.gov.uk/government/news/uk-steps-up-support-to-help-british-nationals-leave-afghanistan>> ('UK Steps Up Support to Help British Nationals Leave Afghanistan'); Ministry of Defence, 'Military Operation Established to Support the Drawdown of British Nationals from Afghanistan', *UK Government* (Media Release, 13 August 2021) <<https://www.gov.uk/government/news/military-operation-established-to-support-the-drawdown-of-british-nationals-from-afghanistan>>.

¹⁷ 'Afghanistan: How Many People has the UK Evacuated?', *BBC News* (online 7, December 2021) <<https://www.bbc.com/news/uk-58245684>>.

¹⁸ 'UK Doubles Aid to Afghanistan', *Government of the United Kingdom* (Press Release, 19 August 2021) <<https://www.gov.uk/government/news/uk-doubles-aid-to-afghanistan>>.

¹⁹ Home Office, Boris Johnson and Priti Patel, 'Bespoke Resettlement Route for Afghan Refugees Announced', *Government of the UK* (Media Release, 18 August 2021) <<https://www.gov.uk/government/news/ bespoke-resettlement-route-for-afghan-refugees-announced>>.

²⁰ Ibid.

The US Government also committed 6,000 troops to support emergency evacuations out of Afghanistan,²¹ airlifting an estimated 120, 000 people out of the country (including tens of thousands of Afghans at-risk) between 14-31 August 2021.²² The US also made two significant announcements of humanitarian aid, amounting to USD \$574 million (more than AUD \$796 million).²³ US President Joe Biden has further raised the refugee resettlement ceiling to 125, 000 persons for 2021-2022, to support responses to humanitarian crises such as in Afghanistan.²⁴ The US currently operates two dedicated Special Immigrant Visa programs to provide targeted support to Afghan refugees.²⁵

Some countries have also found practical pathways to support at-risk Afghans to leave Afghanistan. For example, the Government of Italy evacuated 4, 890 Afghan nationals (including 1, 301 women) out of Afghanistan between 14-31 August 2021 through its 'Aquila Omnia' program.²⁶ Italy has also committed to establishing humanitarian corridors for Afghan refugees, which will 'create a legal channel of entry into Italy for 1, 200 Afghan citizens refugees'.²⁷

Australia: Direct Involvement, Expressed Commitment but Inadequate Action

Australia played a direct role in the protracted conflict in Afghanistan, as the largest non-NATO contributor (and 10th largest contributor overall) to the International Coalition Against Terrorism.²⁸

Australia has also made the promotion of gender-equality a central pillar of its foreign policy, emphasising a 'steadfast commitment to women and girls' empowerment' and positioning itself as a

21 Joseph Biden, 'Remarks by President Biden on Afghanistan (Speech, 16 August 2021) <<https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/16/remarks-by-president-biden-on-afghanistan/>>; Joseph Biden, 'Remarks by President Biden on Evacuations in Afghanistan' (Speech, 20 August 2021) <<https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/20/remarks-by-president-biden-on-evacuations-in-afghanistan/>>.

22 Joseph Biden, 'Remarks by President Biden on the Ongoing Evacuation Efforts in Afghanistan and the House Vote on the Build Back Better Agenda' (Speech, 24 August 2021) <<https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/24/remarks-by-president-biden-on-the-ongoing-evacuation-efforts-in-afghanistan-and-the-house-vote-on-the-build-back-better-agenda/>>; Joseph Biden, 'Remarks by the President on the End of the War in Afghanistan' (Speech, 31 August 2021) <<https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/31/remarks-by-president-biden-on-the-end-of-the-war-in-afghanistan/>>. It is estimated that 70,700 of these were at-risk Afghan nationals: Human Rights First, 'Next Steps After Evacuation of 70,000 Afghans Must Include Access to Counsel, Pathway to Legal Permanent Residency', (Media Release, 22 October 2021).

23 'The United States Provides More Than \$266 million in Humanitarian Assistance for the People of Afghanistan', *US Aid* (Media Release, 4 June 2021) <<https://www.usaid.gov/news-information/press-releases/jun-4-2021-united-states-provides-more-266-million-humanitarian-assistance>>; 'USAid Announces More than \$308 Million in Additional Humanitarian Assistance for the People of Afghanistan', *US Aid* (Media Release, 11 January 2022) <<https://www.usaid.gov/news-information/press-releases/jan-11-2022-usaid-announces-308-million-humanitarian-assistance-afghanistan>>.

24 Joseph Biden, 'Memorandum for the Secretary of State on Presidential Determination of Refugee Admissions for Fiscal Year 2022' (Statement, 8 October 2021) <<https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/08/memorandum-for-the-secretary-of-state-on-presidential-determination-on-refugee-admissions-for-fiscal-year-2022/>>. See also explainer: Michael D. Shear, 'The Biden Administration Will Raise the Cap on Refugee Admissions to 125,000', *New York Times* (online, 20 September 2021) <<https://www.nytimes.com/2021/09/20/us/politics/biden-refugee-cap.html>>.

25 See 'Special Immigrant Visas for Afghans - Who Were Employed by/on Behalf of the U.S. Government', *U.S. Department of State, Bureau of Consular Affairs* (Web Page) <<https://travel.state.gov/content/travel/en/us-visas/immigrate/special-immg-visa-afghans-employed-us-gov.html>>; 'Special Immigrant Visas for Iraqi and Afghan Translators/Interpreters', *U.S. Department of State, Bureau of Consular Affairs* (Web Page) <<https://travel.state.gov/content/travel/en/us-visas/immigrate/siv-iraqi-afghan-translators-interpreters.html>>.

26 'Operation Aquila Omnia', *Ministero Della Difesa* (Web Page, 27 October 2021) <https://www.difesa.it/OperazioniMilitari/op_intern_corso/Op_Aquila_Omnia/Pagine/default.aspx>; 'Evacuation of Afghan Nationals to EU Member States', *European Parliament* (Briefing Paper, 2021) 3 <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698776/EPRS_BRI\(2021\)698776_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698776/EPRS_BRI(2021)698776_EN.pdf)>.

27 'Signing of Protocol for humanitarian corridors from Afghanistan', *Ministero Degli Affari Esteri e della Cooperazione Internazionale* (Media Release, 11 November 2021) <https://www.esteri.it/en/sala_stampa/archivionotizie/comunicati/2021/11/firma-del-protocollo-per-i-corridoi-umanitari-dallafghanistan/>.

28 Senate Foreign Affairs, Defence and Trade References Committee, 'Australia's engagement in Afghanistan' (Interim Report, Parliamentary Library, Parliament of Australia, January 2022) [2.6] <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Afghanistanengagement/Interim_Report> ('*Australia's Engagement in Afghanistan*').

‘global leader on Women, Peace and Security’.²⁹ Accordingly, it made clear that the advancement of the rights of women and girls was a key focus of its work Afghanistan, with Australia’s Global Ambassador for Women stating that ‘in the broad story of Australia’s efforts [on gender equality], our involvement in Afghanistan is an important chapter’.³⁰ Notably, since its withdrawal from Afghanistan, Australia has reiterated its commitment to women and girls, emphasising that:³¹

“Afghan women and girls deserve to live in safety, security and dignity... Australia stands in solidarity with the Afghan people. We will play our part and respond to those most in need.”

Marise Payne, Minister for Foreign Affairs, Minister for Women (2021)

The above notwithstanding, the Australian Government’s efforts to support at-risk persons in Afghanistan fall far below those of its international counterparts.

While Australia facilitated the evacuation and safe travel of more than 3, 294 Afghans from Afghanistan following the Taliban takeover,³² the Australian evacuation efforts was criticised for being ‘too slow’, and has left thousands trapped in the country, including individuals who worked directly with the Australian Government and armed forces, and other Afghans facing serious threats to their life and human rights.³³

Australia also announced \$100 million in aid to Afghanistan delivered over four years (2021-2024), much of which is a reallocation of existing bilateral aid commitments.³⁴ This commitment is patently inadequate, particularly considering the rapidly deteriorating situation in Afghanistan, and the significantly more generous commitments of other states including the US, UK and Canada.³⁵

Australia has further committed to providing 15,000 places to Afghan nationals within the existing humanitarian and migration programs over four years: 5, 000 places for Afghan nationals within existing migration programs between 2021-2022,³⁶ and 10, 000 places within existing places in the refugee program in the years up to 2024.³⁷ This resettlement response has been labelled a ‘bitter

²⁹ Australian Government, *Australian National Action Plan on Women, Peace and Security 2012–2018* (2012) 1-2 (*National Action Plan 2012-2018*).

³⁰ See eg, Penny Williams, ‘The Role of Afghan Women in the Peace, Reconciliation and Transition Processes and the Future for Afghan Women Post-2014’ (Speech, Welcome address to the Afghan Australian Development Organisation (AADO) Roundtable, 2013) <<https://www.dfat.gov.au/news/speeches/Pages/the-role-of-afghan-women-in-the-peace-reconciliation-and-transition-processes-and-the-future-for-afghan-women-post-2014>>.

³¹ Marise Payne, ‘Humanitarian Situation in Afghanistan’ (Speech, UN High-level Ministerial Meeting on the Humanitarian Situation in Afghanistan, 13 September 2021) <<https://www.foreignminister.gov.au/minister/marise-payne/speech/un-high-level-ministerial-meeting-humanitarian-situation-afghanistan>>.

³² Senate Foreign Affairs, Defence and Trade References Committee, *Australia’s Engagement in Afghanistan* (n 28) [5.65], [6.6].

³³ See eg, Daniel Hurst and Ben Doherty, ‘Australian Government Accused of Being Too Slow to Organise Evacuation Mission to Afghanistan’, *The Guardian* (online, 16 August 2021) <<https://www.theguardian.com/australia-news/2021/aug/16/coalition-accused-of-being-too-slow-to-organise-evacuation-mission-to-afghanistan>>; Ben Doherty and Daniel Hurst, ‘Australian Citizens and Visa Holders turned back from Kabul Airport Despite Having Evacuation Letters’, *The Guardian* (25 August 2021) <<https://www.theguardian.com/australia-news/2021/aug/25/australian-citizens-and-visa-holders-turned-back-from-kabul-airport-despite-having-evacuation-letters>>.

³⁴ ‘Afghanistan: Humanitarian Assistance’, *Australian Government Department of Foreign Affairs and Trade* (Web Page) <<https://www.dfat.gov.au/geo/afghanistan>>.

³⁵ See eg, Daniel Hurst, ‘Living Hell: Australia Urged to Ramp up Afghanistan Aid as Humanitarian Crisis Unfolds’, *The Guardian* (online 2 February 2022) <<https://www.theguardian.com/australia-news/2022/feb/02/living-hell-australia-urged-to-ramp-up-afghanistan-aid-as-humanitarian-crisis-unfolds>>.

³⁶ ‘Afghanistan Update’, *Australian Government Department of Home Affairs* (Web Page) <<https://www.homeaffairs.gov.au/help-and-support/afghanistan-update>>. On 21 January 2022, the Australian Government announced it will provide 15,000 places for Afghan nationals, through its Humanitarian and Family Visa programs over four years. The announcement states that this ‘allocation includes 10,000 offshore Humanitarian Program places over four years to Afghan nationals. This number includes 5,000 places in the 2021-22 program year.’

³⁷ Australian Government, *Afghanistan Update* (n 36).

disappointment' and 'hopelessly inadequate' to meet the serious humanitarian need in Afghanistan,³⁸ with Australia already having received applications from over 145, 000 Afghans since August 2021.³⁹ Australia's current commitment also falls far short of historical refugee intake in response to humanitarian crises in the past.⁴⁰

This report highlights the serious and immediate threats to Afghan women and girls' human rights under Taliban rule (**Part I**). It also emphasises Australia's obligations under international human rights law (**Part II**) and Australia's stated commitments promoting gender-equality as a top policy priority (**Part III**). The report then goes on to examine Australia's action to support women and girls in Afghanistan since the Taliban takeover in August 2021 (**Part IV**), contrasting this action, which has been extensively criticised, with more decisive and effective approaches adopted by international counterparts the US, UK, Canada and Italy (**Part V**). The report concludes by providing clear and tangible recommendations to strengthen Australia's response to the crisis in Afghanistan, and adhere to its moral duty and policy commitments to protect the Afghan women and girls at-risk in the violent conflict.

³⁸ 'Australia's Afghan Resettlement Response a Bitter Disappointment', *Refugee Council* (Media Release, 21 January 2022) <<https://www.refugeecouncil.org.au/australias-afghan-resettlement-response-a-bitter-disappointment/>>. See also '15,000 places for Afghan nationals over four years: Why Australians are disappointed', *Refugee Council*, 28 February 2022, <<https://www.refugeecouncil.org.au/15000-places-for-afghan-nationals-over-four-years-why-australians-are-disappointed/>>.

³⁹ Alex Hawke, 'Commitment to Afghanistan Increased', *Australian Government* (Media Release, 21 February 2022) <<https://minister.homeaffairs.gov.au/AlexHawke/Pages/commitment-to-afghanistan-increased.aspx>>.

⁴⁰ Lisa Visentin, 'Afghan Advocates Condemn Federal Government's 'Insulting' Refugee Intake Pledge', *The Sydney Morning Herald* (online, 22 January 2022) <<https://www.smh.com.au/politics/federal/afghan-advocates-condemn-federal-government-s-insulting-refugee-intake-pledge-20220122-p59qct.html>>.

PART I: WOMEN'S RIGHTS IN AFGHANISTAN

Women in Afghanistan

Afghan women are not a homogenous group. Instead, they 'represent multiple ethnicities, tribes, geographies, languages, levels of education and socioeconomic status, and varied concerns and priorities.⁴¹ Afghan women have made invaluable contributions to Afghan society throughout Afghanistan's history. Many have actively resisted oppressive regimes, advocated for human rights and women's empowerment, and engaged in peacebuilding.⁴² As emphasised by Afghan women scholars Wazhman Osman and Helena Zeweri:

“Afghan women are not and never have been passive victims who need to be saved. They have a rich history of resistance and political dissent”

Wazhman Osman and Helena Zeweri (2021)

Women in Afghanistan have however experienced acute gender-based discrimination, violence, and the violation of their rights under international human rights law, particularly at the hands of the Taliban between 1996-2001, and again since August 2021.⁴³ The threat to Afghan women and girls' lives and exercise of fundamental rights under the Taliban cannot be understated. The international community must understand and acknowledge the historical and current experiences of women in Afghanistan, and recognise their resilience, agency and expertise, in order to develop effective, gender-sensitive, and lasting legal and policy responses to the rapidly evolving crisis.⁴⁴

The below section overviews the impacts of the decades-long conflict in the country on Afghan women, particularly in the areas of women's education, employment, participation in politics and public life. It illustrates that the Taliban has a proven history of extreme discrimination and abuse of women and girls, and highlights that this approach is increasingly being repeated under the present-day Taliban rule.

Human Rights Violations under the Taliban

Taliban Control (1996–2001)

The Taliban are a fundamentalist politico-religious ethno-centric movement and military organisation.⁴⁵ The group controlled most of Afghanistan between 1996-2001,⁴⁶ wherein they

⁴¹ Special Inspector General for Afghanistan Reconstruction, *Support for Gender Equality: Lessons from the US Experience in Afghanistan* (Report, 2021) 6.

⁴² Marjan Nahavadi, 'Here's What Afghan Women Have to Say About Peace and Extremism', *United States Institute of Peace* (Blog, 5 September 2019) <<https://www.usip.org/blog/2019/09/heres-what-afghan-women-have-say-about-peace-and-extremism>>. See eg, Emma Graham-Harrison, 'Armed Afghan Women Take to Streets in Show of Defiance Against Taliban', *The Guardian* (online, 8 July 2021) <<https://www.theguardian.com/world/2021/jul/07/armed-afghan-women-take-to-streets-in-show-of-defiance-against-taliban>>; Alia Shaib, 'Meet the Afghan Women Defying the Taliban. "The More They Try to Scare Us, the More Fearless We Become"', *Business Insider* (online, 5 September 2021) <<https://www.businessinsider.com.au/meet-the-afghan-women-fighting-for-their-rights-under-taliban-rule-2021-9>>.

⁴³ See generally UN Women, *Gender Alert 2021* (n 4).

⁴⁴ See Hind Elhinnawy, 'Afghanistan: the West Needs to Stop Seeing Women as in Need of "Saving"', *The Conversation* (online, 28 October 2021) <<https://theconversation.com/afghanistan-the-west-needs-to-stop-seeing-women-as-in-need-of-saving-170731>>.

⁴⁵ Australian Department of Foreign Affairs and Trade, *Country Information Report: Afghanistan* (Report, January 2022) 7 <<https://www.dfat.gov.au/sites/default/files/country-information-report-afghanistan.pdf>> ('Country Information Report: Afghanistan').

⁴⁶ Abdoul G Noury and Biagio Speciale, 'Social Constraints and Women's Education: Evidence from Afghanistan under Radical Religious Rule' (2016) 44 *Journal of Comparative Economics* 821, 825.

applied an extreme interpretation of *Sharia* (Islamic law) which comprehensively and unequivocally excluded women and girls from public life.⁴⁷

The Taliban imposed heavy restrictions on women's freedom of movement, including the requirement for women to be accompanied by a *mabram* (chaperone, i.e., male family member) when in public.⁴⁸ This acutely affected single women and widows without adult male relatives,⁴⁹ and was described to the UN as amounting to 'virtual imprisonment'.⁵⁰

The Taliban closed schools for girls,⁵¹ and banned education for girls and women.⁵² Women's employment was also prohibited in most sectors.⁵³ The Taliban further prescribed and violently enforced strict dress codes for women,⁵⁴ which further deterred women from working or accessing public spaces.⁵⁵ Mental and physical health deteriorated rapidly for many women,⁵⁶ and access to healthcare was severely undercut by shortages in female medical staff, and the prohibition on women seeing male physicians.⁵⁷

The Taliban established the Ministry of 'Vice and Virtue', which 'ruthlessly enforced restrictions'.⁵⁸ Non-compliance with the Taliban's directives was brutally punished, including by way of beatings, lashings, public stoning, executions and other grievous violence.⁵⁹ The Taliban also perpetrated countless other 'egregious acts of violence against women', including rape, abduction and forced marriage.⁶⁰

Even in the most dangerous and harmful circumstances, many Afghan women resisted Taliban oppression, facilitating education in secret, producing and exchanging goods and services, promoting women's issues and raising awareness about human rights abuses to international audiences.⁶¹

War in Afghanistan (2001–2021)

The situation in Afghanistan took a turn following the terrorist attacks on 11 September 2001, which catalysed the US Government to lead a coalition of states, the International Coalition Against Terrorism (**Coalition**) into Afghanistan as part of 'Operation Enduring Freedom'.⁶² Australia's

47 Australian Department of Foreign Affairs and Trade, *Country Information Report: Afghanistan* (n 45) 34. See eg, Seran de Leede, International Centre for Counterterrorism, *Afghan Women and the Taliban: An Exploratory Assessment* (Policy Brief, April 2014) 4.

48 Choong-Hyun Paik, *Report of the Special Rapporteur on the Human Rights Situation in Afghanistan: Final Report*, UN Doc E/CN.4/1997/59 (20 February 1997) appendices I-II; Juan R I Cole, 'The Taliban, Women and the Hegelian Private Sphere' (2003) 70(3) *Social Research* 771,798.

49 Ibid; Cole (n 48) 798.

50 Paik (n 48) para 83.

51 Paik (n 48) para 77; Cole (n 48) 797.

52 Noury and Speciale (n 46) 825. See also para 26.

53 Note that prior to the Taliban takeover in 1996, women constituted a significant part of the workforce in a number of areas including teaching (70%), civil service (50%) and medical work (40%): Paik (n 48) paras 69-72.

54 Paik (n 48) paras 26-27, 41, 61, 84, 86, appendix I. See also Cole (n 48) 797-799.

55 Ibid.

56 Paik (n 48) paras 85, 102; Cole (n 48) 800, 804.

57 Paik (n 48) para 27; Cole (n 48) 797-798.

58 Heather Barr, 'For Afghan Women, the Frightening Return of 'Vice and Virtue': Situation Worsening Every Day', *Human Rights Watch* (29 September 2021) <<https://www.hrw.org/news/2021/09/29/afghan-women-frightening-return-vice-and-virtue> ('Return of Ministry of 'Vice and Virtue')>.

59 Paik (n 48) paras 27, 41-48, 62; Cole (n 48) 800-802.

60 'Report on the Taliban's War Against Women', *US Department of State* (Web Page) <<https://2001-2009.state.gov/g/drl/rls/6185.htm>>. See also Elahe Rostami Povey, 'Women in Afghanistan: Passive Victims of the Borgia or Active Social Participants?' (2003) 13 *Development and Practice* 266, 268; Paik (n 48) paras 56-57.

61 See eg Povey (n 60) 269-271. See also Wazhmah Osman and Helena Zeweri, 'Afghan Women Have a Long History of Taking Leadership and Fighting for their Rights', *The Conversation* (online, 11 October 2021) <<https://theconversation.com/afghan-women-have-a-long-history-of-taking-leadership-and-fighting-for-their-rights-167872>>.

62 See Authorization for the Use of Military Force, SJ Res 23, 107th Congress (2001). See also explainer: 'The U.S. War in Afghanistan 1999-2021', *Council on Foreign Relations* (Report, 2022) <<https://www.cfr.org/timeline/us-war-afghanistan>>; Nicole Brangwin and Ann Rann, 'Australia's Military Involvement in Afghanistan Since 2001: A Chronology' (Research Paper, Parliamentary Library, Parliament of Australia, 16 July 2010) ('Australia's Military Involvement 2001-2010').

military contributions to this effort commenced in October 2001 and continued (albeit evolving) until 2021.⁶³ As mentioned above, Australia was the largest non-NATO contributor and the 10th largest contributor overall to Coalition.⁶⁴

Following the overthrow of the Taliban in most parts of the country, some significant gains for women's rights were made.⁶⁵ With the facilitation of the West, an interim government was installed, followed by the formation of institutions and eventually, the conducting of elections. Where the Government of Afghanistan was reinstated, restrictions on education, employment and access to healthcare were lifted.⁶⁶ In 2003, the government ratified the *Convention on the Elimination of Discrimination Against Women (CEDAW)* without reservation.⁶⁷ In 2004, Afghanistan's new Constitution established numerous guarantees in relation to women's rights, including equality,⁶⁸ as well as the rights to education,⁶⁹ work,⁷⁰ and political representation.⁷¹

“The citizens of Afghanistan, whether man or a woman, have equal rights and obligations before the law.”

Article 22, Constitution of the Islamic Republic of Afghanistan (2004)

In 2009, the former Republic Government in Afghanistan established the *Law on Ending Violence Against Women (EVAW)*, which created criminal offences for 22 acts including rape and forced marriage.⁷² In June 2015, the government also enacted a National Action Plan to implement UN Security Council Resolution 1325 on Women, Peace and Security (adopted by the UN in 2000).⁷³

The conflict was however far from over. More than 46, 000 Afghan civilians were killed amid the fighting.⁷⁴ It should also be noted that Australian Defence Force (ADF) personnel were accused of

⁶³ Ibid.

⁶⁴ Senate Foreign Affairs, Defence and Trade References Committee, 'Australia's engagement in Afghanistan' (Interim Report, Parliamentary Library, Parliament of Australia, January 2022) [2.6] <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Afghanistanengagement/Interim_Report> ('Australia's Engagement in Afghanistan').

⁶⁵ Special Inspector General for Afghanistan Reconstruction, United States Government, *Support for Gender Equality: Lessons from the US Experience in Afghanistan* (Report, February 2021) IX. See also Human Rights Watch, 'I Had to Run Away: The Imprisonment of Women and Girls for "Moral Crimes" in Afghanistan' (Report, 2012) 1-2 ('Imprisonment of Women and Girls for Moral Crimes').

⁶⁶ Human Rights Watch, *Imprisonment of Women and Girls for 'Moral Crimes'* (n 65) 1.

⁶⁷ 'Ratification Status for CEDAW - Convention on the Elimination of All Forms of Discrimination Against Women', *United Nations Human Rights Treaty Bodies* (Web Page) <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en>. See also discussion in Laura Grenfell, 'The Participation of Afghan Women in the Reconstruction Process' (2004) 12(1) *Human Rights Brief* 1.

⁶⁸ *The Constitution of the Islamic Republic of Afghanistan 2004* art 22 ('*Constitution of Afghanistan 2004*'). See also Mohammad Hashim Kamali, 'References to Islam and Women in the Afghan Constitution' (2008) 22(3) *Arab Law Quarterly* 270, 300.

⁶⁹ *Constitution of Afghanistan 2004* art 44.

⁷⁰ *Constitution of Afghanistan 2004* art 48.

⁷¹ The Afghan National Assembly (bicameral) consists of the *Wolesi Jirga* (House of People) and *Mesbrano Jirga* (House of Elders). *The Constitution of Afghanistan 2004* provides that: 2 female delegates from each province (on average) be elected in the *Wolesi Jirga* (68 of 249 delegates in total) and that 50% of the President's appointees to the *Mesbrano Jirga* be women (1/6th of total upper house). See *Constitution of Afghanistan 2004* arts 83 and 84. See also Kamali (n 68) 300-301.

⁷² Human Rights Watch, 'I Thought Our Life Might Get Better': *Implementing Afghanistan's Elimination of Violence against Women Law*, (Report, 5 August 2021), <<https://www.hrw.org/report/2021/08/05/i-thought-our-life-might-get-better/implementing-afghanistans-elimination>>.

⁷³ Afghanistan Ministry of Foreign Affairs, Directorate of Human Rights and Women's International Affairs, Afghanistan's National Action Plan on UNSCR 1325 Women, Peace and Security, (Report, June 2015) <https://unama.unmissions.org/sites/default/files/wps-afghanistan_national_action_plan_1325_0.pdf>.

⁷⁴ Neta C. Crawford, 'Calculating the Costs of the Afghanistan War in Lives, Dollars and Years', *The Conversation* (online, 1 September 2021) <<https://theconversation.com/calculating-the-costs-of-the-afghanistan-war-in-lives-dollars-and-years-164588>>. See also 'Costs of War', *Watson Institute for International and Public Affairs, Brown University* (Web Page) <<https://watson.brown.edu/costsofwar/figures/2021/WarDeathToll>>.

committing war crimes in Afghanistan. An inquiry by the Inspector-General of the Australian Defence Force into these claims found ‘credible information’ of numerous incidents of unlawful killings and cruel treatment.⁷⁵

The Taliban gradually regained control over parts of Afghanistan.⁷⁶ In these areas, armed groups targeted women and girls, subjecting many to physical and sexual violence.⁷⁷ The prevalence of kidnapping, rape, armed robbery and extortion, among other violence, severely restricted the ability of women and girls ‘to leave home, seek education, access healthcare, visit family members, buy food or do anything else in public spaces.’⁷⁸ Domestic violence, child marriages and other forced marriages remained prevalent.⁷⁹

Significant barriers to education persisted for women and girls. Armed groups attacked educational institutions,⁸⁰ and Taliban leaders often limited the age for girls education,⁸¹ excluded them from studying, or closed schools altogether.⁸² Further challenges included prevalent discriminatory attitudes, child and forced marriages, poverty, child labour, and the dearth of teachers, especially female teachers.⁸³

Access to justice was extremely limited for Afghan women.⁸⁴ In Taliban-controlled areas, a parallel justice system was implemented which strictly applied an extreme interpretation of *sharia*.⁸⁵ The system operated outside of statutory judicial mechanisms, had limited judicial guarantees, and meted out brutal punishments.⁸⁶ Many women faced trial and punishment for committing what the Taliban considered to be ‘immoral activities’, such as speaking to non-relative men over the telephone and being outside their homes without the accompaniment of a male relative.⁸⁷ In government-controlled areas, an ongoing scarcity of female judges, particularly outside Kabul, also severely undercut access to justice for many women.⁸⁸

Taliban Resurgence (2021–Present)

On 29 February 2020, the ‘Agreement for Bringing Peace to Afghanistan’ was made between the US, under the administration of former US President Donald Trump, and the Taliban.⁸⁹ A slow drawdown of US troops ensued,⁹⁰ and on 14 April 2021, current US President Joe Biden announced

⁷⁵ Inspector-General of the Australian Defence Force, *Afghanistan Inquiry Report* (2020) [15].

⁷⁶ Human Rights Watch, *Killing You is a Very Easy Thing for Us: Human Rights Abuses in Southeast Afghanistan* (Report, July 2003) 96 <<https://www.hrw.org/sites/default/files/reports/afghanistan0703.pdf>> (‘Human Rights Abuses in Southeast Afghanistan’).

⁷⁷ Human Rights Watch, *Human Rights Abuses in Southeast Afghanistan* (n 76) 12. See also Human Rights Watch, *You Have No Right to Complain: Education, Social Restrictions and Justice in Taliban-Held Afghanistan* (Report, 30 June 2020) <<https://www.hrw.org/report/2020/06/30/you-have-no-right-complain/education-social-restrictions-and-justice-taliban-held>> (‘Education, Social Restrictions and Justice in Taliban-Held Afghanistan’).

⁷⁸ Human Rights Watch, *Human Rights Abuses in Southeast Afghanistan* (n 76) 73. See also generally 74–88.

⁷⁹ See generally Global Rights: Partners for Justice, *Living with Violence: A National Report on Domestic Abuse in Afghanistan* (Report, March 2008) <<https://www.humanitarianresponse.info/en/operations/afghanistan/document/living-violence-national-report-domestic-abuse-afghanistan-global>>.

⁸⁰ Human Rights Watch, *Education, Social Restrictions and Justice in Taliban-Held Afghanistan* (n 77).

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ Vasja Badalič, ‘Executions, Amputations, and Lashings: Civilian Victims of the Afghan Taliban’s Parallel Justice System’ in *The War Against Civilians: Victims of the “War on Terror” in Afghanistan and Pakistan* (Palgrave Macmillan, 2019) 238.

⁸⁶ See eg Badalič (n 85) 240–245 (crimes), 245–251 (limited judicial guarantees).

⁸⁷ See eg *Ibid.* 240–245.

⁸⁸ ‘Afghanistan’s Female Judges Discuss Challenges in Justice Delivery’, *UNAMA* (Web Page, 4 September 2013) <<https://unama.unmissions.org/afghanistan%E2%80%99s-female-judges-discuss-challenges-justice-delivery>>.

⁸⁹ *Agreement for Bringing Peace to Afghanistan between the Islamic Emirate of Afghanistan which is not recognized by the United States as a state and is known as the Taliban and the United States of America*, signed 29 February 2020 <<https://www.state.gov/wp-content/uploads/2020/02/Agreement-For-Bringing-Peace-to-Afghanistan-02.29.20.pdf>>.

⁹⁰ Congressional Research Service, *U.S. Military Drawdown in Afghanistan: Frequently Asked Questions* (Report, 4 February 2020) 1 <<https://sgp.fas.org/crs/natsec/R46670.pdf>>.

the official withdrawal of US troops from Afghanistan (commencing 1 May 2021).⁹¹ International partners in the conflict followed suit, including Australia, which announced its withdrawal on 15 April 2021, stating:⁹²

“While our military contribution will reduce, we will continue to support the stability and development of Afghanistan through our bilateral partnership, and in concert with other nations...Australia remains committed to helping Afghanistan preserve the gains of the last 20 years, particularly for women and girls.”

Scott Morrison (Prime Minister), Marise Payne (Minister for Foreign Affairs/
Minister for Women), Peter Dutton (Minister for Defence) (2021)

The Taliban subsequently launched a military offensive across the country, quickly gaining control over most districts before ultimately seizing the country’s capital, Kabul, on 15 August 2021.⁹³ The group has since assumed de facto control of the country.

Holding their first official news conference on Tuesday 17 August 2021,⁹⁴ the Taliban indicated their intention to implement *Sharia* across Afghanistan with a greater respect for women’s rights. Taliban spokesman, Zabihullah Mujahid, announced that women would be allowed to work and study and would ‘be very active in society but within the framework of Islam’.⁹⁵ A general amnesty was declared across Afghanistan, and senior member of the Taliban cultural commission, Enamullah Samangani, called on women to join its government.⁹⁶

That same day however, Mujahid advised women and girls in Afghanistan to remain at home ‘temporarily’, a measure he claimed was necessary because Taliban soldiers ‘keep changing and are not trained’ to respect women.⁹⁷ Since that time, women’s rights have continued to rapidly deteriorate in the country.

For example, Afghan Higher Education Minister Abdul Baqi Haqqani has set out new educational policies.⁹⁸ Universities are to be segregated by gender and Islamic dress is compulsory.⁹⁹ The Taliban

⁹¹ Joseph Biden, ‘Remarks by President Biden on the Way Forward in Afghanistan’ (Speech, 14 April 2021) <<https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/04/14/remarks-by-president-biden-on-the-way-forward-in-afghanistan/>>.

⁹² Scott Morrison, Marise Payne, Peter Dutton, ‘Australian Troops to Drawdown in Afghanistan’, *Australian Government Department of Defence* (Media Release, 15 April 2021) <<https://www.pm.gov.au/media/australian-troops-drawdown-afghanistan>>.

⁹³ ‘How the Taliban stormed across Afghanistan in ten days’, *BBC News* (online, 16 August 2021) <<https://www.bbc.com/news/world-58232525>>.

⁹⁴ ‘Transcript of Taliban’s First News Conference in Kabul’, *Al Jazeera* (online, 17 August 2021) <<https://www.aljazeera.com/news/2021/8/17/transcript-of-talibans-first-press-conference-in-kabul>>.

⁹⁵ ‘Taliban Pledge Peace and Women’s Rights under Islam as They Strike Conciliatory Tone’, *Reuters* (online, 18 August 2021) <<https://www.reuters.com/world/asia-pacific/evacuation-flights-resume-kabul-airport-biden-defends-us-withdrawal-2021-08-17/>>.

⁹⁶ Maroosha Muzaffar, ‘Taliban Urges Women to Join its Government in Afghanistan’, *The Independent* (online, 17 August 2021) <<https://www.independent.co.uk/asia/south-asia/afghanistan-women-taliban-government-amnesty-b1903880.html>>.

⁹⁷ Rob Picheta and Zahid Mahmood, ‘Taliban Tell Afghan Women to Stay Home from Work Because Soldiers are ‘Not Trained’ to Respect Them’, *CNN World* (online, 25 August 2021) <<https://edition.cnn.com/2021/08/25/asia/taliban-women-workplaces-afghanistan-intl/index.html>>. ‘Afghanistan: Taliban Tell Working Women to Stay at Home’, *BBC News* (online, 24 August 2021) <<https://www.bbc.com/news/world-asia-58315413>>.

⁹⁸ ‘Taliban Says Women in Afghanistan Can Study in Universities in Gender-segregated Classes’, *ABC News* (online, 13 September 2021) <<https://www.abc.net.au/news/2021-09-13/taliban-afghanistan-women-university-gender-segregation/100456206>>.

⁹⁹ ‘Afghanistan: Taliban Announce New Rules for Female Students’, *BBC News* (online, 12 September 2021) <<https://www.bbc.com/news/world-asia-58537081>>.

also informed female teachers that they are prohibited from teaching men.¹⁰⁰ Secondary schools reopened for boys, but closed for most teenage girls.¹⁰¹ Where education for girls has recommenced, the segregation of classes, shortage of teachers, and threats to safety have deterred many girls from attending.¹⁰² While the Taliban has since announced that girls schools will ‘hopefully’ reopen by late March 2022, serious doubts remain as to whether they will follow through on this promise.¹⁰³ At the time of writing, the Taliban had indicated that they would open up schools for boys and girls.¹⁰⁴ However, it appears that attendance by girls will have extremely restrictive conditions, including segregation of classes and teachers by gender. It is unclear whether the reopening will occur nationally and if the rules which require gender segregation will effectively preclude girls from being able to attend school in practice.¹⁰⁵ Therefore, we would query the practical improvement this will make for the position of women and girls in Afghanistan.

Furthermore, the Taliban has prohibited most female employees in the government¹⁰⁶ and banking sectors.¹⁰⁷ Women professionals were told to ‘stay at home’ because the Taliban’s security forces are ‘not trained in how to deal with women’.¹⁰⁸ No women have been included in the interim Cabinet,¹⁰⁹ and the Ministry of Women’s Affairs was abolished and replaced by the returning Ministry for Propagation of Virtue and Prevention of Vice (**Ministry**) which was responsible for some of the gravest human rights abuses in the previous period of Taliban control.¹¹⁰ Barriers to employment have made women among the hardest hit by the rapidly escalating economic crisis in Afghanistan.¹¹¹

¹⁰⁰ Emma Graham-Harrison and Akhtar Mohammad Makoi, ‘Evidence Contradicts Taliban’s Claim to Respect Women’s Rights’, *The Guardian* (online, 4 September 2021) <<https://www.theguardian.com/world/2021/sep/03/afghanistan-women-defiant-amid-taliban-crackdown>>.

¹⁰¹ Hugo Williams and Ali Hamedani, ‘Afghanistan: Girls’ Despair as Taliban Confirm Secondary School Ban’, *BBC News* (online, 8 December 2021) <<https://www.bbc.com/news/world-asia-59565558>>.

¹⁰² See eg Christina Goldbaum, ‘Taliban Allow Girls to Return to Some High Schools, but With Big Caveats’, *The New York Times* (online, 27 October 2021) <<https://www.nytimes.com/2021/10/27/world/asia/afghan-girls-school-taliban.html>>. See also ‘Afghan Universities Reopen with Small Number of Women Attending’, *Aljazeera* (online, 2 February 2022) <<https://www.aljazeera.com/news/2022/2/2/afghan-universities-reopen-with-small-number-of-women-attending>>.

¹⁰³ ‘Taliban Says all Afghan Girls will be Back in School by March’, *Aljazeera* (online, 17 January 2022) <<https://www.aljazeera.com/news/2022/1/17/taliban-says-will-open-all-schools-for-girls-across-country>>.

¹⁰⁴ Charlotte Greenfield, ‘Taliban to open high schools for girls next week, official says’, *Reuters* (online, 18 March 2022) <www.reuters.com/world/asia-pacific/taliban-open-high-schools-girls-next-week-official-says-2022-03-17/>.

¹⁰⁵ A number of media sources have discussed these problems. For instance, The New York Times have reported that ‘New rules segregating classes and teachers by gender have exacerbated a severe teacher shortage and threaten to eliminate higher education opportunities for girls. Many parents have kept their daughters home, afraid to send them to school with armed Talibs lining the streets. Others no longer see the value of educating daughters who would graduate into a country where job opportunities for women seemed to disappear overnight’: Christina Goldbaum, ‘Taliban Allow Girls to Return to Some High Schools, but With Big Caveats’, *The New York Times* (online, 27 October 2021) <<https://www.nytimes.com/2021/10/27/world/asia/afghan-girls-school-taliban.html>>. See also, Goldbaum (n 102).

¹⁰⁶ ‘Afghanistan: Taliban Announce New Rules for Female Students’, *BBC News* (online, 12 September 2021) <<https://www.bbc.com/news/world-asia-58537081>>. See also Hira Humayun and Helen Regan, ‘About the Only Job Women can do for the Kabul Government is Clean Female Bathrooms, Acting Mayor Says’, *CNN* (online, 20 September 2021) <<https://edition.cnn.com/2021/09/19/asia/afghanistan-women-government-jobs-intl-hnk/index.html>>.

¹⁰⁷ Rupam Jain, ‘Afghan Women Forced from Banking Jobs as Taliban Take Control’, *Reuters* (online, 15 August 2021) <<https://www.reuters.com/world/asia-pacific/afghan-women-bankers-forced-roles-taliban-takes-control-2021-08-13/>>.

¹⁰⁸ ‘Afghanistan: Taliban Tell Working Women to Stay at Home’, *BBC News* (online, 24 August 2021) <<https://www.bbc.com/news/world-asia-58315413>>.

¹⁰⁹ Emma Graham-Harrison and Akhtar Mohammad Makoi, ‘Taliban name all-male Afghan cabinet including minister wanted by FBI’ *The Guardian* (online, 8 September 2021) <<https://www.theguardian.com/world/2021/sep/07/taliban-name-afghanistans-new-government>>; ‘Hardliners get key posts in new Taliban government’ *BBC News* (online, 7 September 2021) <<https://www.bbc.com/news/world-asia-58479750>>.

¹¹⁰ Barr, Return of Ministry of ‘Vice and Virtue’ (n 58); Heather Barr, ‘From Taliban to Taliban: Cycle of Hope, Despair on Women’s Rights’, *Inter Press Service* (online, 29 October 2021) <<https://www.hrw.org/news/2021/11/01/taliban-taliban-cycle-hope-despair-womens-rights#>>.

¹¹¹ See eg, ‘Afghan Women Losing Jobs Fast as Economy Shrinks and Rights Curtailed’, *Reuters* (online, 20 January 2022) <<https://www.reuters.com/world/asia-pacific/afghan-women-losing-jobs-fast-economy-shrinks-rights-curtailed-2022-01-20/>>; Arwa Ibrahim and Mohsin Khan Momand, ‘Afghan Women Face Hardship as Taliban Struggles to Revive Economy’, *Aljazeera* (online, 12 January 2022) <<https://www.aljazeera.com/features/2022/1/12/afghan-women>>.

In December 2021, the Taliban released their so-called ‘decree on women’s rights’ which makes no mention of women’s right to education of work and has been dismissed by Afghan women and experts as ‘proof that the militant group [is] uninterested in upholding basic freedoms for millions of Afghan women.’¹¹² They also announced a ban on long-distance travel for women unaccompanied by a male relative.¹¹³

While no mandatory dress code has yet been implemented, the Ministry has commenced a campaign to ‘encourage’ women to wear the *burqa* (full body covering) or hijab.¹¹⁴ Experts have warned however that the lack of clarity around the non-compulsory nature of the campaign, and the absence of clear guidelines for fighters, may lead to harsh policing of dress codes.¹¹⁵ Ahmadullah Wasiq, the Deputy Head of the Taliban’s cultural commission has also banned women from sport, claiming that women’s sport is unnecessary, and presents a risk of women being ‘exposed’ contra Islamic dress codes.¹¹⁶

The current conflict has given rise to ‘an increased risk of exploitation of women and girls, including trafficking for the purposes of child and forced marriage, as well as sexual exploitation and forced labour’.¹¹⁷ This exploitation has been exacerbated by the escalating conflict, widespread poverty,¹¹⁸ worsening food crisis,¹¹⁹ uncertainty around girls’ education, and the COVID-19 pandemic.¹²⁰ As explained by UNICEF Executive Director Henrietta Fore:¹²¹

“The extremely dire economic situation in Afghanistan is pushing more families deeper into poverty and forcing them to make desperate choices, such as putting children to work and marrying girls off at a young age.”

Henrietta Fore, UNICEF Executive Director (2021)

The Taliban have also reportedly committed sexual and other violence against Afghan nationals. In the city of Mazar-e-Sharif, 8 women were reportedly captured and gang-raped by Taliban fighters.¹²² The Australia Muslim Women’s Centre for Human Rights also reports that in some parts of the country, ‘summary executions are already taking place’.¹²³

¹¹² Eliza Mackintosh, ‘Taliban Decree on Women’s Rights, Which Made no Mention of School or Work, Dismissed by Afghan Women and Experts’, *CNN* (online, 4 December 2021) <<https://edition.cnn.com/2021/12/03/asia/afghanistan-taliban-decree-womens-rights-intl/index.html>>.

¹¹³ ‘Afghanistan’s Taliban Ban Long-distance Road Trips for Solo Women’, *BBC News* (online, 27 December 2021) <<https://www.bbc.com/news/world-asia-59800113>>.

¹¹⁴ Arwa Ibrahim and Mohsin Khan Momand, ‘In Afghanistan, Taliban Diktat Sparks Debate about Women’s Attire’, *Aljazeera* (online, 26 January 2022) <<https://www.aljazeera.com/news/2022/1/26/holdafghan-women-denounce-talibans-burqa-campaign>>.

¹¹⁵ Ibrahim and Momand (n 11).

¹¹⁶ Adrian Arciuli, Anna Henderson, Abdullah Alikhil, ‘Taliban Say Women Won’t be Allowed to Play Sport’, *SBS News* (online, 8 September 2021) <<https://www.sbs.com.au/news/taliban-say-women-won-t-be-allowed-to-play-sport/3d58c3c9-9ffd-4f13-98e7-b1ecfe9ce2df>>.

¹¹⁷ ‘Experts Decry Measures to ‘Steadily Erase’ Afghan Women and Girls from Public Life’, *UN News* (online, 17 January 2022) <<https://news.un.org/en/story/2022/01/1109902>>.

¹¹⁸ Ibid.

¹¹⁹ Food and Agricultural Organization of the United Nations and World Food Programme, ‘Half of Afghanistan’s Population Face Acute Hunger as Humanitarian Needs Grow to Record Levels’ (Media Release, 25 October 2021) <<https://www.fao.org/newsroom/detail/FAO-WFP-half-of-afghanistan-s-population-face-acute-hunger-251021/en>>.

¹²⁰ Henrietta Fore, ‘Girls Increasingly at Risk of Child Marriage in Afghanistan’, *UNICEF* (Statement, 12 November 2021) <<https://www.unicef.org/press-releases/girls-increasingly-risk-child-marriage-afghanistan>>. See eg, Anna Coren, Jessie Yeung and Abdul Basir Bina, ‘She was Sold to a Stranger so her Family Could Eat as Afghanistan Crumbles’, *CNN* (online, 1 November 2021) <<https://edition.cnn.com/2021/11/01/asia/afghanistan-child-marriage-crisis-taliban-intl-hnk-dst/index.html>>.

¹²¹ Fore (n 120).

¹²² Mia Bloom, ‘Afghan Women Face Increasing Violence and Repression under the Taliban after International Spotlight Fades’, *The Conversation* (online, 5 February 2022) <<https://theconversation.com/afghan-women-face-increasing-violence-and-repression-under-the-taliban-after-international-spotlight-fades-176008>>.

¹²³ Senate Foreign Affairs, Defence and Trade References Committee, *Australia’s Engagement in Afghanistan* (n 28) 28.

Women leaders, judges, lawyers, journalists, former government workers and human rights activists are particularly at risk. Many have been killed, kidnapped, threatened and harassed since the Taliban takeover.¹²⁴ Female judges have reported direct threats from men they imprisoned, after the Taliban set hundreds of prisoners free in Kabul.¹²⁵ Vanessa Ruiz, of the International Association of Women Judges has explained that such prisoners ‘would be angry at a judge who sentenced them, but that a woman had official authority, and sat in the judgment of a man, is rage of a completely different order’.¹²⁶ In addition to fearing for their safety and their families, Afghan female judges are mourning the loss of their hard-earned careers.¹²⁷

“A day or two after the Taliban arrived in Kabul, my personal number was called and I was threatened with revenge, threatened with murder.”

Nabila, female judge

“We haven’t slept well, we haven’t eaten well. We just wait, we have stopped living like a normal human being... [the Taliban] feel like it’s their right to find me, to hit me, to kill me, they don’t have anyone to be afraid of.”

Bibi, female judge

“Imagine you have a personality, a career, respect, a home, a car, a life and everything, and suddenly you leave in one set of clothes on your body and leave the country – now how would you feel?”

Experienced female judge

The United Nations High Commissioner for Human Rights, Michele Bachelet, told the Human Rights Council that her office received word of multiple allegations of the Taliban are ‘conducting house-to-house searches looking for specific government officials and people who cooperated with US security forces and companies’.¹²⁸ Many women have been forced to seek emergency evacuation from the country.¹²⁹

Resistance by Afghan Women

Many Afghan women have continued to actively resist the Taliban restrictions, even under constant threats and violence from Afghanistan. This includes by way of public protests,¹³⁰ online campaigns

¹²⁴ See eg Emma Graham-Harrison, ‘We are Struggling’: Two Former Officials at Afghan women’s Affairs Ministry’, *The Guardian* (online, 17 January 2022) <<https://www.theguardian.com/world/2022/jan/16/we-are-struggling-two-former-officialsafghan-women-affairs-ministry>>.

¹²⁵ See eg, Zucchini, (n 4); Claire Press, ‘Female Afghan judges Hunted by the Murderers They Convicted’, *BBC* (online, 28 September 2021) <<https://www.bbc.com/news/world-asia-58709353>>; Rebecca Wright, Anna Coren and Abdul Basir Bina, ‘Afghanistan’s women judges are in hiding, fearing reprisal attacks from men they jailed’, *CNN* (online, 19 September 2021) <<https://amp.cnn.com/cnn/2021/09/19/asia/afghanistan-women-judges-hnk-dst-intl>>

¹²⁶ Wright, Coren and Bina (n 125).

¹²⁷ Ibid.

¹²⁸ Michelle Bachelet, ‘Oral Update on the Situation of Human Rights in Afghanistan’, *United Nations High Commissioner for Human Rights* (Statement, 13 September 2021) <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=27445>>.

¹²⁹ Zucchini (n 4). See also Ewelina U Ochab, ‘British Lawyers Evacuate 103 Women At Risk From Afghanistan’, *Forbes* (online, 3 November 2021) <<https://www.forbes.com/sites/ewelinaochab/2021/11/03/british-lawyers-evacuate-103-women-at-risk-from-afghanistan/?sh=2cc378fa129f>>

¹³⁰ See eg, Guy Davies, ‘We Do Not Have to Stay Silent’: Afghan Women Vow to Protest Against Taliban as Humanitarian Crisis Looms’, *ABC News* (online, 5 September 2021) <<https://abcnews.go.com/International/stay-silent-afghan-women-vow-protest-taliban-humanitarian/story?id=79829636>>; Weeda Mehran, ‘Afghanistan: Women are at the Forefront of Protests Against the Taliban’, *The Conversation* (online, 14 September 2021) <<https://theconversation.com/afghanistan-women-are-at-the-forefront-of-protests-against-the-taliban-167669>>.

and other advocacy.¹³¹ The Taliban has however responded violently, with reports emerging of women activists and human rights defenders being beaten, tortured, detained and even killed.¹³²

The Refugee Crisis in Afghanistan

The ongoing violation of the rights of women and girls in Afghanistan has led many Afghan women and girls to leave Afghanistan. Some thousands were able to depart on foreign government and privately arranged evacuation flights out of Kabul Airport, including Afghans who had been granted visas due to their work supporting coalition military forces of foreign funded programs.¹³³ A smaller number were able to board planes as refugees.¹³⁴ Most evacuation flights however ended after an attack at Kabul Airport which killed at least 170 Afghans, and 13 US Service members.¹³⁵ leaving many thousands more trapped in the country. Since that time, limited flights have resumed, some borders have closed, and border crossing points are at risk of terrorist attacks.¹³⁶

It is important to note that women and other activists can in fact leave Afghanistan if they are given the appropriate level of support and coordination by settlement countries like Australia. This means that if a female judge, for instance, has a passport and an Australian visa, they could get commercial flights relatively easily at the moment. We therefore remind policymakers that with a little effort, they could rescue women at risk in Afghanistan.

Afghan women face considerable challenges to obtaining protection as refugees. Beyond the limitations to their freedoms from within Afghanistan, Taliban checkpoints, closed consulates and the destruction of personal documents for information security reasons present barriers to using traditional visa pathways.¹³⁷ Further, many countries do not have effective refugee programs that provide priority protection for women at risk.¹³⁸

¹³¹ See eg Stefanie Glinksi. '#DoNotTouchMyClothes: Afghan women's Social Media Protest Against Taliban', *The Guardian* (online, 15 September 2021) <<https://www.theguardian.com/global-development/2021/sep/15/donottouchmyclothes-afghan-womens-social-media-protest-against-taliban>>.

¹³² See eg, Zahra Nader and Amie Ferris-Rotman, 'They Stayed to Fight the Taliban. Now the Protesters are Being Hunted Down', *The Guardian* (4 November 2021) <<https://www.theguardian.com/global-development/2021/nov/04/they-stayed-to-fight-the-taliban-now-the-protesters-are-being-hunted-down>>; Yogita Limaye and Aakriti Thapar, 'Afghanistan: Women Beaten for Demanding their Rights', *BBC* (online, 8 September 2021) <<https://www.bbc.com/news/world-asia-58491747>>. Zahra Nader and Amie Ferris-Rotman, 'Women's Rights Activist Shot Dead in Northern Afghanistan', *The Guardian* (online, 6 November 2021) <<https://www.theguardian.com/world/2021/nov/05/womens-rights-activist-shot-dead-in-northern-afghanistan>>.

¹³³ 'What's Next for Afghans Fleeing the Taliban? Questions and Answers' *Human Rights Watch* (online, 9 September 2021) <<https://www.hrw.org/news/2021/09/09/whats-next-afghans-fleeing-taliban>> ('What's Next').

¹³⁴ See eg, Michael D Shear, Lara Jakes and Eileen Sullivan, 'Inside the Afghan Evacuation: Rogue Flights, Crowded Tents, Hope and Chaos', *New York Times* (online, 3 September 2021) <<https://www.nytimes.com/2021/09/03/us/politics/afghanistan-evacuation.html>>.

¹³⁵ 'Afghanistan: Events of 2021', *Human Rights Watch* (Web Page) <<https://www.hrw.org/world-report/2022/country-chapters/afghanistan>>; Jim Garamone, United States Department of Defence, 'U.S. Central Command Releases Report on August Abbey Gate Attack', *DOD News* (online, 4 February 2022) <<https://www.defense.gov/News/News-Stories/Article/Article/2924398/us-central-command-releases-report-on-august-abbey-gate-attack/>>.

¹³⁶ Australian Government, 'Afghanistan', *Smartraveller* (Web Page) <<https://www.smartraveller.gov.au/destinations/asia/afghanistan>>.

¹³⁷ Human Rights Watch, What's Next (n 133).

¹³⁸ Ibid.

PART II: AUSTRALIA'S OBLIGATIONS UNDER INTERNATIONAL LAW

“The human rights of women and girls are an inalienable, integral, and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social, and cultural life, at the national regional, and international levels, and the eradication of all forms of discrimination on the grounds of sex, are priority objectives for the international community.”¹³⁹

Vienna Declaration and Programme of Action (July 1993)

Australia is a party to key international human rights and refugee protection treaties, which create binding obligations on Australia to promote and ensure the equal enjoyment of human rights by women and girls, and to recognise and respect the fundamental right of refugees escaping persecution.

Here we discuss our international obligations to demonstrate two matters. First, that Australia has obligations to women from Afghanistan who come to Australia to obtain protection. Second, that Australia's human rights obligations under the international treaties which it has signed should inform the way in which it operates its humanitarian and refugee program.

The following section provides an overview of these instruments and obligations, and highlights key guidance provided by UN bodies on how to promote gender-equality and address the needs of refugee women and girls in particular.

Convention on the Elimination of Discrimination against Women

Australia is a State party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),¹⁴⁰ which ‘provides a gender-sensitive interpretation of human rights law and protects women from sex- and gender-based discrimination with regard to all the human rights contained in the Universal Declaration of Human Rights and other human rights instruments’.¹⁴¹

The CEDAW obligates State parties to take measures to end discrimination against women in law, policy, and practice in their national laws,¹⁴² in areas including political and public participation,¹⁴³ education,¹⁴⁴ employment,¹⁴⁵ family relations,¹⁴⁶ equality before the law, and freedom of movement.¹⁴⁷ Appropriate measures include amending existing laws and policies and adopting gender-sensitive laws and policies.¹⁴⁸

¹³⁹ *Vienna Declaration and Programme of Action* GA Res 48/121, UN Doc A/CONF.157/23 (12 July 1993) para 18.

¹⁴⁰ Committee on the Elimination of All Forms of Discrimination against Women (‘CEDAW Committee’), *General Recommendation No 28: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, 47th sess, UN DOC CEDAW/C/GC/28 (16 December 2010) para 7.

¹⁴¹ CEDAW Committee, *General Recommendation No 32: The Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women*, UN Doc, CEDAW/C/GC/32 (15 November 2014) para 5 (‘General Recommendation No 32’).

¹⁴² Convention on the Elimination of All Forms of Discrimination against Women, opened for signature 19 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 2.

¹⁴³ *Ibid* art 7.

¹⁴⁴ *Ibid* art 10.

¹⁴⁵ *Ibid* art 11.

¹⁴⁶ *Ibid* art 16.

¹⁴⁷ *Ibid* art 15.

¹⁴⁸ ‘The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): Sex Discrimination – International Activities’, *Australian Human Rights Commission* (Web Page) <<https://humanrights.gov.au/our-work/sex-discrimination/convention-elimination-all-forms-discrimination-against-women-cedaw-sex>>.

As put by the Australian Human Rights Commission:¹⁴⁹

“In signing CEDAW, Australia committed itself to being a society that promotes policies, laws, organisations, structures and attitudes that ensure women are guaranteed the same rights as men.”

Australian Human Rights Commission

The Refugee Convention

The right of everyone ‘to seek and to enjoy asylum in other countries from persecution’ has long been recognised in international human rights law.¹⁵⁰ The Convention relating to the Status of Refugees 1951 (commonly known as the **Refugee Convention**) is the main international treaty concerning the protection of refugees.

The Refugee Convention defines a refugee as a person outside of their country of nationality or residence, who has a ‘well-founded fear of being persecuted’ on the basis of race, religion, nationality, membership of a group or political opinion, and is unable or unwilling to receive protection from that country or return there for fear of persecution.¹⁵¹ It further ‘outlines the rights of refugees, as well as the legal obligations of States to protect them’.¹⁵²

The Refugee Convention is supplemented by the 1967 Protocol relating to the Status of Refugees, which expands the scope of the Convention, making it applicable all over the world.

The Refugee Convention also underpins the operation of the United Nations High Commissioner for Refugees (**UNHCR**) which supervises and cooperates with States to enable the implementation of international conventions on the protection of refugees.¹⁵³ The UNHCR works to end ‘the cycle of displacement’ for refugees through three ‘durable solutions’:¹⁵⁴ voluntary repatriation, local integration and resettlement.¹⁵⁵

Australia is credited for involvement in drafting the Refugee Convention, and voluntarily entered into obligations under the Convention when it acceded to the treaty on 22 April 1954¹⁵⁶ and under the Protocol on 13 December 1973.¹⁵⁷

¹⁴⁹ Ibid.

¹⁵⁰ *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948) art 14. Although we note that the UDHR is soft law, not a binding treaty.

¹⁵¹ *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954) art 1A(2) (‘Refugee Convention’).

¹⁵² ‘1951 Refugee Convention’, UNHCR (Web Page) <<https://www.unhcr.org/en-au/1951-refugee-convention.html>>.

¹⁵³ Refugee Convention (n 151) preamble.

¹⁵⁴ UNHCR, *Framework for Durable Solutions for Refugees and Persons of Concern*, UN Doc 2003, EC/53/SC/INF.3 (16 September 2003) <<http://www.unhcr.org/refworld/docid/4ae9ac93d.html>>.

¹⁵⁵ Voluntary repatriation allows refugees to return to their country of origin ‘in safety and with dignity...to re-avail themselves of national protection’. Local integration refers to the legal, economic and social integration into a host country, under the protection of a host government. Resettlement takes place where ‘refugees are selected and transferred from the country of refuge to a third State which has agreed to admit them as refugees with permanent residence status’. See UNHCR, ‘Chapter 1: Resettlement within UNHCR’s Mandate: International Protection and the Search for Durable Solutions’ in *UNHCR Resettlement Handbook* (4 November 2014) 28 <<https://www.unhcr.org/3d464b239.html>>.

¹⁵⁶ ‘Treaties: Convention relating to the Status of Refugees’, *United Nations* (Web Page) <<https://treaties.un.org/Pages/showDetails.aspx?objid=080000028003002e&clang=en>>.

¹⁵⁷ ‘Treaties: Protocol relating to the Status of Refugees’, *United Nations* (Web Page) <<https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280048bb8&clang=en>>.

Notably, gender is not explicitly referred to in the Convention as a protected characteristic.¹⁵⁸ However, in consideration of the particular circumstances that women as refugees face, various UN bodies have turned their attention to the particular protection required for women refugees.¹⁵⁹

UNHCR Policies and Guidelines

The 1990 UNHCR *Policy on Refugee Women and the 1991 Guidelines on the Protection of Women (Guidelines)*, while not legally binding, set out the organisation's position with respect to 'the handling of gender-based claims to refugee status'.¹⁶⁰ The Guidelines recognise that women seeking asylum may flee gender-based persecution including honour killings and domestic violence.¹⁶¹ They identify specific issues and risks that refugee women face, and outline measures to improve the protection of refugee women.¹⁶² Notably, the Guidelines urge States to:¹⁶³

Promote acceptance in the asylum adjudication process of the principle that *women fearing persecution or severe discrimination on the basis of their gender should be considered a member of a social group for the purposes of determining refugee status*. Others may be seen as having made a religious or political statement in transgressing the norms of their society.

Promote acceptance of the notion that *sexual violence against women is a form of persecution* when it is used by or with the consent of acquiescence of those acting in an official capacity to intimidate or to punish.

Promote recognition that there may be a basis for granting refugee status where a government cannot or will not protect women who are subject to abuse for transgressing social standards. The government need not itself have been the instigator of the abuse.

CEDAW Committee Recommendations

The Committee on the Elimination of Discrimination against Women (**CEDAW Committee**), which monitors the implementation of the CEDAW, has also provided guidance on the obligation of State parties to the Refugee Convention and the Protocol in the context of their interrelated obligations under the CEDAW.¹⁶⁴

In particular, the CEDAW Committee provides authoritative guidance on the particular gender-related forms of persecution 'that are directed against a woman *because she is a woman or that affect a woman disproportionately*' in its General Recommendation No 32.¹⁶⁵ The CEDAW Committee has also raised the importance of taking an intersectional approach to gender-related claims to asylum, and has cautioned against 'treat[ing] the claims of women through the lens of male experiences, which can result in [women's] claims to refugee status not being properly assessed or being rejected'.¹⁶⁶

Notably, the CEDAW Committee has recommended that

States parties should interpret the definition of a refugee in the [Refugee Convention] in line with obligations of non-discrimination and equality; fully integrate a gender-sensitive approach while interpreting all legally recognized grounds; reclassify gender-related claims

¹⁵⁸ Refugees Convention (n 151) art 1(A). We note that the ground of 'particular social group' has been recognised as encompassing gender claims in many jurisdictions, see eg *Minister for Immigration & Multicultural Affairs v Khawar* (2002) 210 CLR 1. <https://www.refworld.org/cases/AUS_FC_3ae6b6f80.html>.

¹⁵⁹ Susan F Martin, 'Gender and the Evolving Refugee Game' (2010) 29(2) *Refugee Survey Quarterly* 104, 104.

¹⁶⁰ *Ibid* 105.

¹⁶¹ United Nations High Commissioner for Refugees, *Guidelines on the Protection of Refugee Women*, UN Doc E.SCP/67 (1 July 1991) para 54 (emphasis added)

¹⁶² *Ibid* para 16 (emphasis added)

¹⁶³ *Ibid* para 71.

¹⁶⁴ CEDAW Committee, *General Recommendation No 32* (n 141).

¹⁶⁵ *Ibid* para 15 (emphasis added)

¹⁶⁶ *Ibid* para 16.

under the ground of membership of a particular social group, where necessary; and consider adding sex and/or gender, as well as the reason of being lesbian, bisexual or transgender, and other status to the list of grounds for refugee status in their national asylum legislation.¹⁶⁷

Sustainable Development Goals

Gender equality is also one of the seventeen Sustainable Development Goals (SDGs) adopted by the UN and recognised by Australia as a universal call to action to ensure that all people enjoy peace and prosperity by 2030.¹⁶⁸

Amongst the 17 goals and 169 targets, Goal 5 seeks to achieve gender equality and empower all women and girls and Target 5.2 seeks to eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.¹⁶⁹ The UN has emphasised that ‘ending all discrimination against women and girls is not only a basic human right, but is crucial for a sustainable future. Empowering women and girls will encourage economic growth and development.’¹⁷⁰

International Solidarity

The deepening humanitarian and refugee crisis in Afghanistan is a global challenge that requires a coordinated global response based on the fundamental principle of solidarity. As stated in the UN Millennium Declaration:

*Global challenges must be managed in a way that distributes the costs and burdens fairly in accordance with basic principles of equity and social justice. Those who suffer or who benefit least deserve help from those who benefit most.*¹⁷¹

While appeals to solidarity are frequent in refugee crises – notably in the refugee crisis in Europe – the meaning and content of solidarity as it is used in this context is somewhat unclear.¹⁷² Despite this, solidarity can be understood as a concept which connects peoples and governmental action across time and place ‘beyond national borders’ to foster a sense of international community around which to promote, organise, and carry out action in response to global challenges.¹⁷³

¹⁶⁷ Ibid para 38. See further, CEDAW Committee, *Statement on the Committee on the Elimination of Discrimination against Women (CEDAW) on the Refugee Crises and Protection of Women and Girls*, 62nd sess, UN Doc CEDAW/STA/7845_E (20 November 2015).

¹⁶⁸ ‘Sustainable Development Goals’, *United Nations Development Programme* (Web Page) <<https://www.undp.org/sustainable-development-goals>>.

¹⁶⁹ Department of Foreign Affairs and Trade (Cth), *Safe Homes and Safe Communities: Australia’s commitment to ending all forms of violence against women and girls* (Report, January 2016), 12 <<https://www.dfat.gov.au/sites/default/files/safe-homes-and-safe-communities.pdf>> (‘Safe Homes and Safe Communities’).

¹⁷⁰ ‘Goal 5: Gender Equality’ *United Nations Development Programme* (Web Page) <<https://www.undp.org/sustainable-development-goals#gender-equality>>.

¹⁷¹ *United Nations Millennium Declaration*, GA Res 55/2, UN Doc A/RES/55/2 (18 September 2000) para 6.

¹⁷² Óscar García Agustín and Martin Bak Jørgensen, *Solidarity and the ‘Refugee Crisis’ in Europe* (2019, Palgrave MacMillan) 25.

¹⁷³ Ibid 25.

PART III:

AUSTRALIA'S COMMITMENT TO ADVANCING GENDER EQUALITY

“The Australian Government is committed to advancing gender equality and the rights of women and girls at home, in our region and through broader international engagement.”¹⁷⁴

Department of Foreign Affairs and Trade

A Pillar of Australian Government Policy

Advancing gender-equality is a long-standing pillar of the Australian Government policy. This focus has been reflected in the Australian Government's international engagement with the UN, is clearly set out key policy documents and action plans, and has been continually emphasised by successive Australian leaders, particularly in the area of foreign policy, over the last two decades.

For example, in 2000, a year before Australia joined the War in Afghanistan, Australia supported the landmark UN Security Council Resolution 1325 (**Resolution 1325**), which recognises women and girls as among the most adversely impacted by armed conflict, and emphasises their essential role in the ‘prevention and resolution of conflict and in peace-building’.¹⁷⁵ Australia's efforts to protect women and girls in conflict continued between 2008, when it co-sponsored UN Security Council Resolutions 1820,¹⁷⁶ 1888,¹⁷⁷ 1889¹⁷⁸ and 1960¹⁷⁹ which further supported Resolution 1325, and sought to condemn and prevent sexual violence in armed conflict.¹⁸⁰

The Australian Government later announced their *National Action Plan on Women Peace and Security 2012-2018* (**NAP 2012-2018**), which established a clear commitment to ‘promote women, peace and security implementation internationally’.¹⁸¹ Notably, the plan detailed practical actions to undertake in pursuit of this objective, including delivering humanitarian assistance and recovery programs that ‘respect applicable international human rights and refugee law in regards to women and girls’, and responding to gender-based violence in crisis situations.¹⁸²

In 2013, Australia's former Minister for Foreign Affairs, Julie Bishop, emphasised to the UN General Assembly Australia's position ‘at the forefront of defending human rights globally’, in particular through advocating for equality and fundamental freedoms for women and girls ‘through equal access to employment, resources, education and health services’.¹⁸³

¹⁷⁴ ‘Gender Equality’, *Australian Government Department of Foreign Affairs and Trade* (Web Page) <<https://www.dfat.gov.au/international-relations/themes/gender-equality>>.

¹⁷⁵ SC Res 1325, UN Doc S/Res/1325 (31 October 2000) preamble.

¹⁷⁶ SC Res 1820, UN Doc S/Res/1325 (19 June 2008).

¹⁷⁷ SC Res 1888, UN Doc S/Res/1888 (30 September 2009).

¹⁷⁸ SC Res 1889, UN Doc S/Res/1889 (5 October 2009).

¹⁷⁹ SC Res 1960, UN Doc S/Res/1960 (16 December 2010).

¹⁸⁰ Australian Government, *National Action Plan 2012-2018* (n 29)

¹⁸¹ Ibid 23-25.

¹⁸² Ibid-25.

¹⁸³ Julie Bishop, ‘United Nations General Assembly High Level Debate – Building global security and prosperity’ (Speech, 27 September 2013) <<https://www.foreignminister.gov.au/minister/julie-bishop/speech/united-nations-general-assembly-high-level-debate-building-global-security-and-prosperity>>.

In 2015, Bishop recognised that ‘violence has a profound and devastating impact on women, their families and their communities’.¹⁸⁴ She voiced Australia’s clear position that ‘violence against women and girls is unacceptable anywhere, anytime and in whatever form it takes’.¹⁸⁵ Bishop further announced the Australian Government’s intention to prevent violence and threats of violence against women and girls, both at home and abroad.¹⁸⁶

“Living free of violence and from the fear of violence is a basic human right for women and girls. The Federal Government will continue to provide leadership on this issue, within Australia, in our region and globally.”

Julie Bishop, Minister for Foreign Affairs (2015)

The following year, Bishop reiterated Australia’s commitment to ‘advocate for greater rights for women and girls across the world’, adding that ‘Australia’s commitment to human rights *goes to the core of who we are*, and our respect for human dignity in all aspects of life – it is about basic morality, justice and integrity’.¹⁸⁷ She firmly centred on gender equality as a key aspect in Australia’s human rights work abroad, and their bid for an election to the UN Human Rights Council:

“I cannot emphasise enough the critical connection between peace, security and gender equality...A woman’s right to live free from fear and violence is integral to the genuine protection of human rights. That is why promoting gender equality is a strong theme in our human rights work around the world.”¹⁸⁸

Julie Bishop, Minister for Foreign Affairs (2016)

In 2017, Australia was elected to a seat on the UN Human Rights Council for the 2018-2020 term,¹⁸⁹ (notwithstanding considerable criticism of its offshore refugee processing system).¹⁹⁰

That same year, the Australian Government released its *Foreign Policy White Paper*, a document setting out the ‘clear direction’ for Australia’s future international engagement.¹⁹¹ The White Paper establishes gender equality as a central component of Australia’s foreign policy, going so far as to describe ‘the empowerment of women as a top priority’.¹⁹² The paper also reiterated Australia’s commitment to promote the 2030 Sustainable Development Agenda, including through advancing gender equality.¹⁹³

In 2019, Bishop’s successor, current Minister for Foreign Affairs and Minister for Women, Marise Payne, also emphasised to the UN that gender equality was one of the five pillars and priorities of

¹⁸⁴ Julie Bishop, ‘International Day for the Elimination of Violence Against Women’, (Media Release, 25 November 2015) <<https://www.foreignminister.gov.au/minister/julie-bishop/media-release/international-day-elimination-violence-against-women-0>>.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

¹⁸⁷ Julie Bishop, ‘Human Rights Speech’ (Speech, 12 December 2016) <<https://www.foreignminister.gov.au/minister/julie-bishop/speech/human-rights-speech>>.

¹⁸⁸ Ibid.

¹⁸⁹ ‘Australia: member of the United Nations Human Rights Council 2018-2020’, *Australian Government, Department of Foreign Affairs and Trade* (Web Page) <<https://www.dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/Pages/australias-membership-unhrc-2018-2020>>.

¹⁹⁰ Ben Doherty and Paul Karp, ‘Australia Elected to UN Human Rights Council’, *The Guardian* (online, 17 October 2017) <<https://www.theguardian.com/world/2017/oct/17/australia-elected-to-un-human-rights-council>>.

¹⁹¹ Australian Government, *Foreign Policy White Paper* (2017) 2,11 (emphasis added).

¹⁹² Ibid 93.

¹⁹³ Ibid 88.

Australia's advocacy during their time on the Human Rights Council.¹⁹⁴ The following year, she reiterated that Australia 'consistently advocated for the rights of women and girls' during their term on the Council, particularly in working towards 'an end to gender-based violence and discrimination, the promotion of women's economic empowerment, and women's meaningful participation in decision-making'.¹⁹⁵

Building upon the National Action Plan 2018-2020, the Australian Government committed to a second *National Action Plan on Women, Peace and Security 2021-2031* (**National Action Plan 2021-2031**).¹⁹⁶ In it, the government affirms its 'steadfast commitment to women and girls' empowerment' and its place as a 'global leader on Women, Peace and Security'.¹⁹⁷ The plan aims to deliver the following four key outcomes over the next 10 years:¹⁹⁸

1. Supporting women's meaningful participation in peace processes;
2. Reducing sexual and gender-based violence;
3. Supporting resilience, crisis and security, law, and justice efforts to meet the needs and rights of all women and girls; and
4. Demonstrating leadership and accountability for women, peace, and security.

Notably, one of the key principles underpinning this strategy is a 'human rights-based approach, which the government plans to implement by 'aligning our efforts with human rights mechanisms, protecting the human rights of women and girls, supporting women and girls to know their right and claim them, and support their meaningful participation in peace and security decision-making processes'.¹⁹⁹

¹⁹⁴ Marise Payne, 'UN Human Rights Council' (Speech, 25 February 2019) <<https://www.foreignminister.gov.au/minister/marise-payne/speech/un-human-rights-council>>.

¹⁹⁵ Marise Payne, 'Dignitary address to the 45th Regular Session of the United Nations Human Rights Council' (Speech, 14 September 2020) <<https://www.foreignminister.gov.au/minister/marise-payne/speech/dignitary-address-45th-regular-session-united-nations-human-rights-council>>. See also 'Australia will work towards advancing the rights of women and girls' *Department of Foreign Affairs and Trade* (Web Page) <<https://www.dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/pillars-and-priorities/Pages/australia-will-work-towards-advancing-the-rights-of-women-and-girls>>.

¹⁹⁶ Australian Government, *Australian National Action Plan on Women, Peace and Security 2021-2031* (Report, 2021) <<https://www.dfat.gov.au/sites/default/files/australias-national-action-plan-on-women-peace-and-security-2021-2031.pdf>> (*National Action Plan 2021-2030*).

¹⁹⁷ Ibid 1-2.

¹⁹⁸ Ibid 8.

¹⁹⁹ Ibid 14.

PART IV: AUSTRALIA'S COMMITMENTS AND ACTION ON AFGHANISTAN

Australia's Commitment to Women in Afghanistan

Australia has expressly recognised the threats to women and girls' rights in Afghanistan. In August 2021 for example, Australia issued a joint statement on women's and girls' rights in Afghanistan (in conjunction with 68 other countries).²⁰⁰ The statement condemned the serious human rights violations around Afghanistan, particularly the erosion of freedoms for Afghan women and girls. It further read:²⁰¹

“We strongly condemn all forms of violence against women and girls. We call on those in power and authority to guarantee women's and girls' rights to education, work, health and freedom of movement, to achieve inclusive and sustainable peace in Afghanistan. We will closely monitor the protection and enjoyment of all human rights. Afghan women and girls deserve to live in safety, security and dignity. We stand ready to amplify their voices and ensure their concerns are heard.”

-

Marise Payne, Minister for Foreign Affairs, Minister for Women,

Less than a month later, Payne delivered a speech to the UN High-level Ministerial Meeting on Afghanistan, in which she declared that 'Australia stands in solidarity with the Afghan people'. We will play our part and respond to those most in need'.²⁰² She further emphasised that the 'international humanitarian response must ensure that we pay particular attention to the most vulnerable, including displaced women and children who face the challenges of drought, conflict and social exclusion'.²⁰³

Evacuation Support and Humanitarian Assistance

Australia's military air operation in August 2021 facilitated the evacuation of 3,294 Afghans on 32 flights out of Kabul Airport.²⁰⁴ DFAT has also reportedly supported the safe evacuation of a further 1,000 individuals from Afghanistan since.²⁰⁵

Australia has also announced a contribution of \$100 million over a period of four years (2021-2024) to respond to the unfolding crisis in Afghanistan.²⁰⁶ According to the Department of Foreign Affairs and Trade, the humanitarian assistance will 'focus on providing support for women and girls'.²⁰⁷ DFAT has explained that this funding will do so by providing 'food and shelter, health clinics,

²⁰⁰ Joint Statement on Afghanistan Women's and Girls' Human Rights, *Minister for Foreign Affairs, Minister for Women* (Statement, 24 August 2021) <<https://www.foreignminister.gov.au/minister/marise-payne/media-release/joint-statement-afghanistan-womens-and-girls-human-rights>>.

²⁰¹ Ibid.

²⁰² Marise Payne, 'Humanitarian Situation in Afghanistan' (Speech, UN High-level Ministerial Meeting on the Humanitarian Situation in Afghanistan, 13 September 2021) <<https://www.foreignminister.gov.au/minister/marise-payne/speech/un-high-level-ministerial-meeting-humanitarian-situation-afghanistan>>.

²⁰³ Ibid.

²⁰⁴ Senate Foreign Affairs, Defence and Trade References Committee, *Australia's Engagement in Afghanistan* (n 28) [5.65].

²⁰⁵ Ibid.

²⁰⁶ 'Afghan Humanitarian Assistance', *Australian Government Department of Foreign Affairs and Trade* (Web page) <<https://www.dfat.gov.au/geo/afghanistan>>

²⁰⁷ Ibid.

education, reproductive services and protection of women and girls'.²⁰⁸ As regards to the delivery of the funding, \$65 million will be provided in the 2021-2022 financial year (2021/22 FY), and the remaining \$35 million is allocated in the years that follow (2022-2024).²⁰⁹ \$4.5 million of this is to be dedicated to 'gender services and research'.²¹⁰

Australia's Offshore Humanitarian Program

The Australian Government has set the overall annual intake ceiling for its Humanitarian Program at 13,750 for 2020-21.²¹¹ This is 5000 places less than the previous two years.²¹²

Australia has announced that it will provide a total of 15,000 places within in its existing humanitarian program for Afghan nationals over the next four years.²¹³ This includes 5,000 places in the 2021-2022 program year.²¹⁴ The Australian Government has indicated that priority will be given to women and girls, ethnic minorities, LGBTIQ+ and other identified minority groups, among others.²¹⁵

Australia's offshore humanitarian visa program comprises of Refugee category visas, Special Humanitarian Program visas, and community-based programs for resettlement.

Refugee Program

The Refugee program includes four subclasses of visa: Refugee (UNHCR referrals to Australia), In-country Special Humanitarian (for those still in their country of origin and unable to leave), Emergency Rescue (for UNHCR referrals considered to be in immediate danger) and Woman at Risk (for women at-risk without the protection of a partner/relative) (**WaR**).²¹⁶

Eligibility for these visas is dependent on applicants meeting certain criteria, which may include: being outside of Australia, being subject to persecution in their country of origin, meeting the 'compelling reasons' criterion, and fulfilling health, character and national security requirements.²¹⁷

²⁰⁸ Senate Foreign Affairs, Defence and Trade References Committee, *Australia's Engagement in Afghanistan* (n 28) 204-205.

²⁰⁹ Ibid 205.

²¹⁰ Ibid 205.

²¹¹ Note that asylum seekers who *arrive in Australia* with a valid visa and subsequently seek protection as a refugee are subject to what is known as the 'Refugee Status Determination process'. Alternatively those outside of Australia can apply for protection through Australia's offshore humanitarian programs. Given the numerous challenges Afghan women face, many in this cohort are not able to reach our shores, and thus this report will focus on offshore programs. 11,750 of the current annual intake is dedicated to this offshore component: see Australian Government, Department of Home Affairs, *Summary of Consultations regarding the 2021-22 Humanitarian Program* (Report, February 2022) <<https://www.homeaffairs.gov.au/reports-and-pubs/files/2021-22-summary-humanitarian-program-consultation.pdf>>; Australian Government, Department of Home Affairs, *Discussion Paper Australia's Humanitarian Program 2021-22* (Report, 2021) <<https://www.homeaffairs.gov.au/reports-and-pubs/files/2021-22-discussion-paper.pdf>>.

²¹² Claire Higgins, 'How Australia's Federal Budget 2020-21 Impacts Refugees and Asylum Seekers', *Kaldor Centre for International Refugee Law* (Blog, 7 October 2020) <<https://www.kaldorcentre.unsw.edu.au/news/how-australia%E2%80%99s-federal-budget-2020-21-impacts-refugees-and-asylum-seekers>>. See Australian Government, Department of Home Affairs, *Australia's Offshore Humanitarian Program: 2018-19* (Report, 2019) 1 <<https://www.homeaffairs.gov.au/foi/files/2019/fa-190801794-document-released.PDF>>; and Australian Government, Department of Home Affairs, *Australia's Offshore Humanitarian Program: 2019-20* (Report, 2020) 1 <<https://www.homeaffairs.gov.au/research-and-stats/files/australia-offshore-humanitarian-program-2019-20.pdf>> ('*Australia's Offshore Humanitarian Program Report: 2019-20*').

²¹³ 'Afghanistan Update', *Australian Government, Department of Home Affairs* (Web Page, 24 January 2022) <<https://www.homeaffairs.gov.au/help-and-support/afghanistan-update>> .

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ 'Refugee and Humanitarian Visas: Refugee Visas', *Australian Government Department of Home Affairs* (Web Page, 15 July 2019) <<https://immi.homeaffairs.gov.au/what-we-do/refugee-and-humanitarian-program/refugee-visas>> ('Refugee and Humanitarian Visas: Refugee Visas'). Note that in 2019, the Australian Government committed to allocating 'at least 20 percent' of places within its offshore humanitarian program to 'vulnerable women and children', including women at-risk, as well as those resettled through in-country and split family visas. See Australian Government, *Australia's Offshore Humanitarian Program Report: 2019-20* (n 212) 1.

²¹⁷ 'Refugee and Humanitarian Visas: Refugee Visas' (n 216).

Priority is given to applicants who have been assessed as refugees by the UNHCR *and* have either been referred to Australia for resettlement or have been proposed by an immediate family member who holds a Refugee category visa.²¹⁸ The Refugee Program also includes 'split family' provisions which allow 'immediate family member[s]' to propose visa applications.²¹⁹

Special Humanitarian Program

The Special Humanitarian Program (**SHP**) is for persons outside of Australia, living outside their home country, who have been 'subject to substantial discrimination in [their] home country amounting to a gross violation of [their] human rights'.²²⁰ Applicants for an SHP must be proposed by an Australian citizen, permanent resident, eligible New Zealand citizen or an organisation based in Australia.²²¹ Proposers are expected to settle applicants in Australia.²²²

Community-based Resettlement Programs

In addition to these above programs, the government has introduced a community model of refugee sponsorship – the Community Support Program (**CSP**).²²³ This allows individuals, businesses and community organisations to support the resettlement of a refugee in Australia.²²⁴ Specific eligibility criteria applies including being aged between 18-50 years old, meeting English language requirements, and demonstrating a job offer in Australia 'or skills to enable [the applicant] to get a job quickly'.²²⁵

The Australian Government also recently announced a new pilot program, the Community Refugee Integration and Resettlement Pilot (CRISP), which is set to commence in 2022.²²⁶ The program will facilitate community sponsorship of humanitarian applicants 'with no link to Australia' to enhance Australia's community-based resettlement program.²²⁷

Australia is Failing to Meet the Humanitarian Need of Afghan Women and Girls

Australia's current efforts to protect women in Afghanistan at-risk are insufficiently gender-aware, and broadly inadequate. They do not take into consideration the obstacles and barriers faced by women leaving Afghanistan, and challenges when applying for a visa, including restrictive eligibility requirements, cultural and language barriers, extended waiting periods and ongoing uncertainty and distress.

Inadequate Humanitarian Response

The Australian Government has been criticised by political leaders, human rights groups and members of the Afghanistan diaspora in Australia for its slow organisation of the evacuation mission.²²⁸

218 Ibid.

219 Note however that conditions apply, and those deemed as 'Illegal Maritime Arrivals' who arrived 13 August 2012 or later are not permitted to propose applications: 'Refugee and Humanitarian Visas' (n 216)

220 'Special Humanitarian Program', *Australian Department of Home Affairs* (Web Page, 11 December 2018) <<https://immi.homeaffairs.gov.au/what-we-do/refugee-and-humanitarian-program/the-special-humanitarian-program>> ('Special Humanitarian Program').

221 'Special Humanitarian Program'(n 220).

222 Ibid.

223 'Community Support Program (CSP)', *Australian Department of Home Affairs* (Web Page, 11 December 2018) <<https://immi.homeaffairs.gov.au/what-we-do/refugee-and-humanitarian-program/community-support-program>>.

224 Ibid.

225 Ibid.

226 Alex Hawke, 'Enhanced Support for Refugee Settlement and Integration', *Australian Government* (Media Release, 17 December 2021) <<https://minister.homeaffairs.gov.au/AlexHawke/Pages/enhanced-support-for-refugee-settlement-and-integration.aspx>> ('Enhanced Support for Refugee Settlement and Integration').

227 Ibid.

228 Daniel Hurst and Ben Doherty (n 33). See also Ben Doherty and Daniel Hurst, 'Australia Will Not Be Able to Rescue All Afghans Who Served Alongside Military, Scott Morrison Says', *The Guardian* (online, 17 August 2021) <<https://www.theguardian.com/australia-news/2021/aug/17/australia-will-not-be-able-to-rescue-all-afghans-who-served-alongside-military-scott-morrison-says>>.

Australia's current aid contributions are also considered by many to be insufficient, particularly in light of rising poverty and famine in the harsh winter in Afghanistan.²²⁹ The Australian Council of International Development (ACFID) has for example emphasised that 'far greater assistance is needed, and it is needed urgently'.²³⁰ ACFID has highlighted that the 'repositioning' of Australia's existing aid commitment effectively means that Australia has only pledged \$20 million in *new funding* for 2021-2022 since the Taliban takeover.²³¹ World Vision Australia has further highlighted that Australia's current aid contributions to Afghanistan are significantly lower than in prior years (i.e. as high as \$165 million between 2011-2012).²³²

Australia's humanitarian aid commitments also fall far below those of our international counterparts, in particular those who played a direct role in the decades long war in Afghanistan. By comparison, the UK has pledged £286 million (approx. \$528 million AUD),²³³ Canada has committed \$56 million (approx. 61 million AUD),²³⁴ and the US has promised \$308 million (approx. \$429 million AUD)²³⁵ for 2021/2022. Although we recognise that these countries may have larger economies, we would argue that Australia's commitment remains significantly under what would be expected of an industrialised, developed country of Australia's size and economic strength.

Shortcomings of Australia's Humanitarian Visa Program

Australia's commitment with respect to intake of Afghan refugees has been labelled 'hopelessly inadequate', given the rapidly deteriorating situation in Afghanistan, and the fact that that over 145,000 Afghan nationals have already submitted applications for refugee and humanitarian visas since the Taliban took control in August 2021.²³⁶ Australia's current commitment has also been contrasted with historical approaches to refugee crises, including for example the announcement of 12,000 *additional* places (on top of the annual allocation) for refugees from Syria and Iraq in September 2015.²³⁷

Women at Risk Program

While the WaR program is designed specifically for women and may be a potentially viable option for some Afghan women, the focus of this visa class (which is women without a 'male relative to protect') is unduly restrictive. Indeed, many women human rights defenders, women professionals *and* their partners and families are at direct risk from the Taliban. Australian Barrister Felicity Garry

²²⁹ See eg Daniel Hurst, 'Living hell': Australia Urged to Ramp Up Afghanistan Aid as Humanitarian Crisis Unfolds', *The Guardian* (online, 2 February 2022) <<https://www.theguardian.com/australia-news/2022/feb/02/living-hell-australia-urged-to-ramp-up-afghanistan-aid-as-humanitarian-crisis-unfolds>>. See also Tom Stayner and Shuba Krishnan, 'Calls for Australia to Increase Aid to Afghanistan Amid Warning of a Major Humanitarian Crisis', *SBS News* (online, 1 September 2021) <<https://www.sbs.com.au/news/calls-for-australia-to-increase-aid-to-afghanistan-amid-warning-of-a-major-humanitarian-crisis/af7697e9-75a1-498f-bae7-61390350d1d4>>.

²³⁰ Senate Foreign Affairs, Defence and Trade References Committee, *Australia's Engagement in Afghanistan* (n 28) 205.

²³¹ Senate Foreign Affairs, Defence and Trade References Committee, *Australia's Engagement in Afghanistan* (n 28) 205.

²³² *Ibid* 207.

²³³ 'Aid to Taliban-controlled Afghanistan', *UK Parliament, House of Commons* (Briefing 8 February 2022) <<https://commonslibrary.parliament.uk/research-briefings/cbp-9343/>>.

²³⁴ 'Canada Announces \$56 Million in Urgent Humanitarian Assistance for People of Afghanistan', *Government of Canada* (News Release, 21 December 2021) <<https://www.canada.ca/en/global-affairs/news/2021/12/canada-announces-56-million-in-urgent-humanitarian-assistance-for-people-of-afghanistan.html>>.

²³⁵ 'USAID Announces More than \$308 Million in Additional Humanitarian Assistance for the People of Afghanistan', *USAID* (Media Release, 11 January 2022) <<https://www.usaid.gov/nTews-information/press-releases/jan-11-2022-usaid-announces-308-million-humanitarian-assistance-afghanistan>>.

²³⁶ Claire Higgins and Regina Jeffries, 'With Australia Reopening its Borders to tourists, Why are Thousands of Refugees Still Waiting for Entry?', *The Conversation* (online 16 February 2022) <<https://theconversation.com/with-australia-reopening-its-borders-to-tourists-why-are-thousands-of-refugees-still-waiting-for-entry-175319>>. Hawke, 'Commitment to Afghanistan Increased' (n 39).

²³⁷ Julie Bishop, 'The Syrian and Iraqi Humanitarian Crisis', *Minister for Foreign Affairs* (Joint Media Release, 9 September 2015) <<https://www.foreignminister.gov.au/minister/julie-bishop/media-release/syrian-and-iraqi-humanitarian-crisis>, <https://www.theguardian.com/australia-news/2015/sep/09/australia-to-accept-an-extra-12000-syrian-refugees-and-will-join-us-led-air-strikes>>.

QC and PhD Candidate Azadah Raz Mohammed have accordingly called for a special category of the WaR visa that applies regardless of a ‘male relative to protect’ requirement: ‘Such category would enable Australia to provide an avenue through which these women could be brought to safety as a distinct group based on their employment history at the national and international level’.²³⁸

Community Support Program

There are also various shortcomings of the CSP program. Firstly, the CSP is limited to 1000 places, which are deducted from Australia’s overall annual intake.²³⁹ The Refugee Council of Australia has cautioned against the Australian Government shifting responsibility for refugee resettlement on to private individuals and organisations.²⁴⁰ Community organisations have indicated that ‘additionality’ for this program, that is to say CSP program places *in addition to* Australia’s existing program, is necessary, and would bring the Australian program into line with similar programs abroad.²⁴¹

In addition, the eligibility criteria for the CSP are unduly restrictive, and may prevent many women experiencing vulnerability in Afghanistan from receiving protection through this avenue. As made clear by the Kaldor Centre for International Refugee Law, ‘Community sponsorship programs – whether as a tool to support resettlement or as a complementary pathway – should take into account refugees’ protection needs’.²⁴² The CSP program has also in the past been described as ‘prohibitively’ expensive, with minimum costs ranging in the tens of thousands of dollars.²⁴³ Accordingly, the Australian Government has recently announced a reduction in visa application charges to encourage community-supported resettlement.²⁴⁴

²³⁸ Senate Foreign Affairs, Defence and Trade References Committee, *Australia’s Engagement in Afghanistan* (n 28) 175.

²³⁹ Alison Larkins, *Findings of the Review of the Community Support Program* (Report, 2021) 3 <<https://www.homeaffairs.gov.au/reports-and-pubs/files/csp-review-findings.pdf>>; Kaldor Centre for International Refugee Law, *Complementary Refugee Pathways: Private and Community Refugee Sponsorship* (Report, June 2020) <https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Factsheet_Private%20Community%20Sponsorship_Feb19.pdf> (‘Complementary Refugee Pathways’).

²⁴⁰ Refugee Council of Australia, *The Community Support Program: Providing Complementary Pathways to Protection or Privatising the Humanitarian Program?* (Report, 26 January 2019) <<https://www.refugeecouncil.org.au/community-support-program-brief/>> (‘The Community Support Program’).

²⁴¹ See eg, Canada, which is considered by many to be the ‘gold standard’ for this kind of refugee resettlement. Ben Doherty, ‘Community Sponsorship Could Transform Refugee Resettlement – and Australia’, *The Guardian* (online, 22 September 2018) <<https://www.theguardian.com/australia-news/2018/sep/22/community-sponsorship-could-transform-refugee-resettlement-and-australia>>; Refugee Council of Australia, *The Community Support Program* (n 240); Kaldor Centre for International Refugee Law, *Community Refugee Pathways* (n 239).

²⁴² *Ibid.*

²⁴³ Refugee Council of Australia, *The Community Support Program* (n 240).

²⁴⁴ Alex Hawke, ‘Enhanced Support for Refugee Settlement and Integration’ (n 226).

PART V: INTERNATIONAL COMPARISONS

It is clear that Australia's current approach to protecting women and girls at risk in Afghanistan is inadequate and ineffective. This in mind, the following section looks to the approaches adopted by other key States involved in the long conflict in Afghanistan, with a view to determining the lessons learned from international experience and developing practical recommendations for the reform of Australia's humanitarian response to the crisis in Afghanistan.

Canada

Feminist Foreign Policy

Canada has adopted a feminist international assistance program with six action areas, of which the first and core action area is gender equality and the empowerment of women and girls.²⁴⁵ An action area for this program is delivering 'gender-responsive humanitarian action', including by way of increasing support for women and girls in humanitarian response efforts and providing flexible funding on a multi-year basis.²⁴⁶ Canada's stated vision to achieve this aim is:²⁴⁷

“Canada is adopting a Feminist International Assistance Policy that seeks to eradicate poverty and build a more peaceful, more inclusive and more prosperous world. Canada firmly believes that promoting gender equality and empowering women and girls is the most effective approach to achieving this goal.”

Marie-Claude Bibeau
Minister of International Development and La Francophonie

Afghanistan Evacuation and Humanitarian Response

The Government of Canada deployed troops to Afghanistan to support the evacuation of over 3,700 individuals from the conflict between August-September 2021.²⁴⁸ The Canadian Government has also announced humanitarian aid contributions totalling \$133 million (approx. \$145 million AUD) for 2021-2022.²⁴⁹

Avenues to Resettlement for Afghan Women and Girls

In response to the crisis in Afghanistan in particular, the Canadian government has committed to resettling over 40,000 vulnerable Afghan nationals in Canada through two dedicated special

²⁴⁵ *Government of Canada*, 'Canada's Feminist International Assistance Policy' (Web Page) <https://www.international.gc.ca/world-monde/issues_developpement/priorities-priorites/policy-politique.aspx?lang=eng>.

²⁴⁶ Ibid.

²⁴⁷ Ibid.

²⁴⁸ Immigration, Refugees and Citizenship Canada, 'More than 3,000 Evacuees Arrive in Canada from Afghanistan', *Government of Canada* (Statement, 3 September 2021) <<https://www.canada.ca/en/immigration-refugees-citizenship/news/2021/09/more-than-3000-evacuees-arrive-in-canada-from-afghanistan.html>>.

²⁴⁹ 'Canada Announces \$56 Million in Urgent Humanitarian Assistance for People of Afghanistan', *Government of Canada* (News Release, 21 December 2021) <<https://www.canada.ca/en/global-affairs/news/2021/12/canada-announces-56-million-in-urgent-humanitarian-assistance-for-people-of-afghanistan.html>>; 'Canada Announced Additional Humanitarian Assistance to Afghanistan and Neighbouring Countries', *Government of Canada* (News Release, 26 August 2021) <<https://www.canada.ca/en/global-affairs/news/2021/08/canada-announces-additional-humanitarian-assistance-to-afghanistan-and-neighbouring-countries.html>>.

programs.²⁵⁰ These are the Special Immigration Program (**SIP**) for ‘Afghan nationals, and their families, who assisted the Government of Canada’, and the Special Humanitarian Program (**SHP**) for persons identified by the Canadian government as ‘vulnerable’.²⁵¹ A special family reunification program also exists for family members of interpreters who assisted the Canadian Government in Afghanistan.²⁵² Canada has already welcomed 7, 550 Afghan nationals under all streams since August 2021.²⁵³

The eligibility criteria for the SIP requires applicants to be Afghan nationals whose ‘employment involved a significant and/or enduring relationship with the Government of Canada’, including interpreters for Canadian Armed Forces and local staff at the Canadian Embassy.²⁵⁴ The SHP requires applicants to be Afghan nationals, outside of Afghanistan, without a durable solution in a third country. Notably, the SHP program *specifically focuses* on women leaders, human rights defenders, persecuted religious or ethnic minorities, LGBTI individuals and journalists who helped Canadian journalists.²⁵⁵

Other avenues also remain available for Afghan women to seek protection in Canada. For example, Canada’s general Government-Assisted Refugee Program²⁵⁶ includes the Assistance to Woman at Risk Program (**AWRP**).²⁵⁷ This program allows the government to resettle and expedite processing for women at risk who may not have the protection of family.²⁵⁸ In addition, the Urgent Protection Program (**UPP**) exists to swiftly resettle those who are subject to violence, sexual assault, and torture among other dangers.²⁵⁹

Afghans may also be able to obtain protection through the Community Sponsors (**CS**) program, which allows community organisations in Canada to sponsor refugees recognised by the UNHCR or a foreign state.²⁶⁰ Sponsors undertake to provide refugees with ‘care, lodging, settlement assistance and support for the duration of the sponsorship period’ (normally 12 months).²⁶¹ The Canadian CS

250 Marc Garneau, ‘Address by the Honourable Marc Garneau, PC, MP, Minister of Foreign Affairs of Canada at the General Debate of the 76th United Nations General Assembly - In Our Hands’ (Speech, Global Affairs Canada, 27 September 2021). See also Canadian Government, ‘#WelcomeAfghans: Key Figures’ (Web Page) <<https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/afghanistan/key-figures.html>>; Anna Mehler Paperny, ‘Canada to Resettle Female Afghan Judges, Families Living in Limbo’, *Reuters* (online, 2 January 2022) <<https://www.reuters.com/world/canada-resettle-female-afghan-judges-families-living-limbo-2021-12-31/>>.

251 ‘Supporting Afghan Nationals: About the Special Programs’ (n 14)

252 ‘Permanent Residence for Extended Family of Former Afghan Interpreters: Who Can Apply’, *Government of Canada* (Web Page) <<https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/afghanistan/permanent-residence-extended-family/eligibility.html>>.

253 ‘#WelcomeAfghans: Key Figures’, *Government of Canada* (Web Page) <<https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/afghanistan/key-figures.html>>.

254 ‘Immigration Program for Afghans who Assisted the Government of Canada’, *Government of Canada* (Web Page) <<https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/afghanistan/special-measures/immigration-program.html>>.

255 ‘Humanitarian Program for Afghan Nationals in Need of Resettlement: About the Program’, *Government of Canada*, (Web Page) <<https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/afghanistan/special-measures/about-humanitarian-program.html>> (‘Humanitarian Program for Afghan Nationals in Need of Resettlement: About the Program’).

256 ‘Government-Assisted Refugees Program’, *Government of Canada* (Web Page) <<https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/help-outside-canada/government-assisted-refugee-program.html>>.

257 Immigration, Citizenship and Refugees Canada, *2020 Departmental Results Report: Gender-based Analysis Plus*, (Report, March 2020).

258 Ibid.

259 Ibid. Note that between 2019-20, 446 women have been settled under the AWRP, while only 78 women have been settled under the UPP.

260 ‘Community Sponsors: About the Process’, *Government of Canada* (Web Page) <<https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/help-outside-canada/private-sponsorship-program/community-sponsors.html>>.

261 ‘Private Sponsorship of Refugees Program’, *Government of Canada* (Web Page) <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/guide-private-sponsorship-refugees-program/section-2.html>>.

program has been praised as ‘highly effective’, having facilitated the resettlement of more than 370,000 refugees since its establishment in 1979.²⁶² Importantly, under the Canadian model, private sponsorship of refugees *supplements* Canada’s other humanitarian intake places.²⁶³

Shortcomings of the Canadian Approach

To qualify as a government-assisted refugee, applicants must be referred by the UNHCR or other referral partner organisations such as Frontline Defenders and Protect Defenders.²⁶⁴ While the UNHCR has limited presence in Afghanistan and is not involved in evacuating citizens out of the country, both Frontline Defenders and Protect Defenders have a presence in Afghanistan.²⁶⁵ Importantly, however, only those people seeking asylum who fall into the category of ‘human rights defenders’ may be referred by these two organisations, meaning that women leaders and journalists, among other accepted categories of persons, face barriers to protection through Canada’s humanitarian program.²⁶⁶ Partnership with a broader range of organisations is necessary to ensure women leaders have equal chance of being identified and processed on the ground.

Additionally, SHP²⁶⁷ applicants must be outside of Afghanistan in order for processing to begin.²⁶⁸ This poses a problem as the Taliban has seized control of the borders in Afghanistan, and accordingly it is immensely difficult for women to undertake the treacherous journey required to seek refuge in a third country.²⁶⁹ This has the potential to drive women in Afghanistan to resort to people smugglers or other dangerous measures in order to escape the country. A program which requires these individuals to leave the country in order to qualify threatens to create greater risk.

Finally, while Canada’s prioritisation of women leaders, and members of other key groups should be commended, the Taliban’s increasingly restrictive policies in Afghanistan are seriously impacting upon many women and girls beyond these key groups. Accordingly, the approach would be improved by also including the prioritisation of women and girls as a group more broadly.

United Kingdom

The UK is committed across aid and foreign policy to the empowerment of women and girls and gender equality and holds itself out to be a leader in this field along with countries like Australia.²⁷⁰ *The International Development (Gender Equality) Act 2014* for example creates an obligation for the Government of the UK to promote gender equality in the delivery of development and humanitarian assistance abroad.²⁷¹ The UK Department for International Development has also ‘committed to putting girls and women at the heart of our development assistance’ including by way of providing access to education, and preventing violence against women and girls.²⁷² The Foreign Secretary and Minister for Women and Equalities has stated:

²⁶² ‘What is the Private Sponsorship of Refugees?’, UNHCR Canada (Web Page) <<https://www.unhcr.ca/in-canada/other-immigration-pathways-refugees/private-sponsorship-refugees/>>.

²⁶³ ‘Five Questions: On Canada’s Refugee Sponsorship Program’, Kaldor Centre for International Refugee Law (Web Page, 2 March 2018) <<https://www.kaldorcentre.unsw.edu.au/news/five-questions-canada%E2%80%99s-refugee-sponsorship-program>>.

²⁶⁴ ‘Humanitarian Program for Afghan Nationals in Need of Resettlement: About the Program (n 255).

²⁶⁵ Ibid.

²⁶⁶ Ibid.

²⁶⁷ This should not be confused with Australia’s Special Humanitarian Program, which has the same name and acronym.

²⁶⁸ *Supporting Afghan Nationals: About the Special Programs* (n 14).

²⁶⁹ Council on Foreign Relations, ‘The Taliban in Afghanistan’, (Web Page, 15 September 2021) <<https://www.cfr.org/backgrounder/taliban-afghanistan>>.

²⁷⁰ UK Aid, ‘Gender Equality’ (Web Page) <<https://www.ukaidirect.org/learning/gender/>> ; Liz Truss, ‘Preventing Sexual Violence in Conflict’ (Speech, G7 Gender Equality Advisory Council Reception, 17 November 2021) <<https://www.gov.uk/government/speeches/foreign-secretary-speech-on-preventing-sexual-violence-in-conflict>> .

²⁷¹ See *International Development (Gender Equality) Act 2014* (UK) 1.

²⁷² Government of the UK, Department for International Development, *A New Strategic Vision for Girls and Women: Stopping Poverty Before It Starts* (Policy Paper) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/67582/strategic-vision-girls-women.pdf>.

“The UK is a fierce champion of freedom and the rule of law, and ending violence suffered by women around the world is a personal priority for me. We will continue to do all we can to help at-risk Afghans leave the country.”

Liz Truss, Foreign Secretary and
Minister for Woman and Equalities (2021)

Afghanistan Evacuation and Humanitarian Response

The Government of the UK deployed 600 troops²⁷³ to facilitate the evacuation of an estimated 15,000 people out of Afghanistan between 15-31 August 2021 (including approx. 8,000 at-risk Afghans).²⁷⁴ The UK has also doubled its humanitarian aid to Afghanistan, committing £286 million (over AUD \$540 million) to addressing the need arising from the crisis.²⁷⁵

Avenues to Resettlement for Afghan Women and Girls

In response to the crisis in Afghanistan, the UK government has introduced schemes which will provide protection for up to 20,000 Afghan nationals in the coming years in addition to the 15,000 the government has already evacuated.²⁷⁶ The UK offers resettlement through two programs: the Afghan Relocations and Assistance Policy (**ARAP**) and the Afghan Citizens Resettlement Scheme (**ACRS**).²⁷⁷

The ARAP assists any current or former locally employed staff of the UK Government who are assessed to be under “serious threat to life”.²⁷⁸ Significantly, the ARAP allows applicants to apply from *within* Afghanistan,²⁷⁹ making it available to women not yet able to travel across borders. Applicants are eligible regardless of ‘their employment status, rank or length of time served’,²⁸⁰ with eligibility instead divided into four criteria: high risk, eligible for relocation by default, not eligible for relocation and special cases.²⁸¹ Those classifying as ‘high-risk’ are offered assistance for urgent relocation.²⁸² Those newly granted ARAP visas receive indefinite leave to remain in the UK, and those already in the UK under this program, are able to convert their temporary leave into indefinite leave.²⁸³

The ACRS, announced in August 2021, prioritises two groups: those who have assisted the UK’s efforts in Afghanistan and ‘and stood up for values such as democracy, women’s rights and freedom of speech, rule of law’; and ‘vulnerable groups’.²⁸⁴ The first group encompasses women judges,

²⁷³ Ben Wallace, Ministry of Defence and Foreign, Commonwealth and Development Office, ‘UK Steps Up Support to Help British Nationals leave Afghanistan’(n 16) Ministry of Defence, ‘Military Operation Established to Support the Drawdown of British Nationals from Afghanistan’, *UK Government* (Media Release, 13 August 2021) <<https://www.gov.uk/government/news/military-operation-established-to-support-the-drawdown-of-british-nationals-from-afghanistan>>.

²⁷⁴ ‘Afghanistan: How Many People has the UK Evacuated?’, *BBC News* (online 7, December 2021) <<https://www.bbc.com/news/uk-58245684>>.

²⁷⁵ ‘UK Doubles Aid to Afghanistan’, *Government of the United Kingdom* (Press Release, 19 August 2021) <<https://www.gov.uk/government/news/uk-doubles-aid-to-afghanistan>>.

²⁷⁶ UK Visas and Immigration and Home Office, *Afghanistan Resettlement and Immigration Policy Statement*, (Policy Report, 13 September 2021) 8 (*Afghanistan Resettlement and Immigration Policy Statement*).

²⁷⁷ *Ibid* 3.

²⁷⁸ UK Ministry of Defence, ‘Afghan Relocations and Assistance Policy: Further Information on Eligibility Criteria, Offer Details and How to Apply’, *UK Government* (Web Page) <<https://www.gov.uk/government/publications/afghan-relocations-and-assistance-policy/afghan-relocations-and-assistance-policy-information-and-guidance>> (‘Afghan Relocations and Assistance Policy’).

²⁷⁹ *Ibid*.

²⁸⁰ *Ibid* 4.

²⁸¹ *Ibid*.

²⁸² *Ibid* 4.

²⁸³ UK Ministry of Defence, ‘Afghan Relocations and Assistance Policy’ (n 278).

²⁸⁴ UK Visas and Immigration and Home Office, *Afghanistan Resettlement and Immigration Policy Statement* (n 276) 8.

women's rights activists, academics and journalists'.²⁸⁵ The second group includes women and girls at risk, LGBT individuals and other minorities,²⁸⁶ a category that offers avenues for protection to other women affected by the Taliban rule.²⁸⁷ Spouses, partners and dependent children of identified eligible individuals may also be resettled under the scheme.²⁸⁸ The ACRS can also be applied for either within Afghanistan or within a third country,²⁸⁹ which is significant for women who lack the resources or ability to journey to bordering countries. The government has committed to resettling 5,000 people in the program's first year, and up to 20,000 people over the coming years.²⁹⁰ Those resettled through the ACRS receive indefinite leave to enter or remain in the UK and will be able to apply for British citizenship after five years in the UK.²⁹¹

Shortcomings of the UK Approach

Groups such as the Scottish Refugee Council have criticised the UK government for counting those already living in the UK within its 5,000-place target for the ACRS.²⁹²

The implementation of the Afghan refugee resettlement schemes in the UK has also been the subject of concern. A particular issue is the lack of suitable long-term accommodation for individuals and families to be resettled under the scheme. Overall, an estimated 12,000 Afghan refugees remained in temporary hotel accommodation as of December 2021.²⁹³ Only an estimated 4,000 individuals evacuated out of Afghanistan by the UK have been, or are currently being, resettled in homes in the UK.²⁹⁴ In February 2022, the UK Home Office stated that it was spending approximately £4.7 million per day on the cost of housing Afghanistan refugees and other people seeking asylum in hotels, which were noted by Home Office officials to be 'unacceptable'.²⁹⁵ The Home Office urged local authorities to work with the government in making available suitable housing for use for refugee resettlement purposes.²⁹⁶

The United States

The US is committed to the empowerment of women and girls to assist in developing and maintaining peace and security as a core element of its foreign policy agenda.²⁹⁷ Indeed, US Congress has passed legislation requiring the US Department of State to incorporate a focus on women and

²⁸⁵ Ibid.

²⁸⁶ Ibid.

²⁸⁷ Ibid.

²⁸⁸ Ibid 9.

²⁸⁹ Ibid 9.

²⁹⁰ UK Government, 'Afghan Citizens Resettlement Scheme: Guidance', *Refugees, Asylum and Human Rights* (Web Page, 6 January 2022) <<https://www.gov.uk/guidance/afghan-citizens-resettlement-scheme>> .

²⁹¹ Ibid.

²⁹² Scottish Refugee Council, 'Here's Why We're Worried About Afghan Resettlement' (Web Page, 7 January 2022) <<https://www.scottishrefugeecouncil.org.uk/afghan-citizens-resettlement-scheme-update/>>. See also Rajeev Syal, 'Home Office 'failing to prioritise most vulnerable Afghans' in resettlement scheme', *The Guardian* (online, 7 January 2022) <<https://www.theguardian.com/politics/2022/jan/06/home-office-failing-to-prioritise-most-vulnerable-afghans-in-resettlement-scheme>>.

²⁹³ Helen Pidd and Diane Taylor, '12,000 Afghan Refugees to Start New Year Stuck in UK Hotels', *The Guardian* (online, 28 December 2021) <<https://www.theguardian.com/uk-news/2021/dec/28/12000-afghan-refugees-to-start-new-year-stuck-in-uk-hotels>>.

²⁹⁴ Diane Taylor, 'Thousands of Afghans Stuck in UK Hotels as Resettlement Plan Stalls', *The Guardian* (online, 15 February 2022) <<https://www.theguardian.com/uk-news/2022/feb/15/thousands-of-afghans-stuck-in-uk-hotels-as-resettlement-plan-stalls>>.

²⁹⁵ Amelia Gentleman, 'Home Office Criticised for Not Housing Asylum Seekers Properly as Hotel Costs Mount', *The Guardian* (online, 4 February 2022) <<https://www.theguardian.com/world/2022/feb/03/government-spending-47m-hotels-asylum-seekers-home-refugees>>.

²⁹⁶ Ibid.

²⁹⁷ Antony J Blinken, United States Secretary of State, 'The First National Strategy on Gender Equity and Equality' (Media Release, 4 November 2021) <<https://www.state.gov/the-first-national-strategy-on-gender-equity-and-equality/>>. See also 'Women, Peace and Security', *US Department of State* (Web Page) <<https://www.state.gov/women-peace-and-security/>>.

gender equality as part of its foreign policy agenda.²⁹⁸ US Secretary of State, Anthony Blinken, has emphasised that the US is poised to support vulnerable persons in Afghanistan, including ‘women, children, journalists, human rights defenders, persons with disabilities, LGBTQI+ individuals, and members of minority groups’.²⁹⁹

Afghanistan Evacuation and Humanitarian Response

The US Government committed 6,000 troops to support emergency evacuations out of Afghanistan,³⁰⁰ airlifting an estimated 120,000 people out of the country (including tens of thousands of Afghans at-risk) between 14-31 August 2021.³⁰¹ The US also made two significant announcements of humanitarian aid, amounting to USD \$574 million (more than AUD \$796 million).³⁰²

Avenues to Resettlement for Afghan Women and Girls

Since 2013, US Congress has authorised the issuance of Special Immigration Visas (**SIV**) to Afghan nationals who meet certain requirements and were employed in Afghanistan by the US Government or by the International Security Assistance Force (**ISAF**) as an interpreter for US military personnel outside of US military bases for a minimum of two years.³⁰³ In 2021, this program was amended to reduce this latter requirement to one year, and added that applicants must also ‘have experienced or be experiencing an ongoing serious threat as a consequence of their employment’.³⁰⁴ This extension of the program authorised a further 8,000 SIVs, bringing the total number of visas allocated to this program since 19 December 2015 to 34,500.³⁰⁵

In addition, the Department of State has also announced Priority 2 designation (**P-2 Program**) granting certain Afghan nationals and eligible family members access to the US Refugee Admissions Program (**USRAP**).³⁰⁶ Applicants who do meet the one-year minimum requirement for SIVs; those who have worked for the US Government, ISAF, US-Government funded programs, or US-based media organisations, as well as family members of such nationals are eligible for the P-2 program.³⁰⁷

²⁹⁸ *Women, Peace and Security Act of 2017*, Pub L No 115-68, 131 Stat 1202.

²⁹⁹ Anthony J Blinken, ‘The United States Announces Additional Humanitarian Assistance for the People of Afghanistan’, *US Department of State* (Press Statement, 28 October 2021) <<https://www.state.gov/the-united-states-announces-additional-humanitarian-assistance-for-the-people-of-afghanistan-2/>>.

³⁰⁰ Joseph Biden, ‘Remarks by President Biden on Afghanistan’ (Speech, 16 August 2021) <<https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/16/remarks-by-president-biden-on-afghanistan/>>; Joseph Biden, ‘Remarks by President Biden on Evacuations in Afghanistan’ (Speech, 20 August 2021) <<https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/20/remarks-by-president-biden-on-evacuations-in-afghanistan/>>.

³⁰¹ Joseph Biden, ‘Remarks by President Biden on the Ongoing Evacuation Efforts in Afghanistan and the House Vote on the Build Back Better Agenda’ (Speech, 24 August 2021) <<https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/24/remarks-by-president-biden-on-the-ongoing-evacuation-efforts-in-afghanistan-and-the-house-vote-on-the-build-back-better-agenda/>>; Joseph Biden, ‘Remarks by the President on the End of the War in Afghanistan’ (Speech, 31 August 2021) <<https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/31/remarks-by-president-biden-on-the-end-of-the-war-in-afghanistan/>>. It is estimated that 70,700 of these were at-risk Afghan nationals: Human Rights First, ‘Next Steps After Evacuation of 70,000 Afghans Must Include Access to Counsel, Pathway to Legal Permanent Residency’, (Media Release, 22 October 2021).

³⁰² ‘The United States Provides More Than \$266 million in Humanitarian Assistance for the People of Afghanistan’, *US Aid* (Media Release, 4 June 2021) <<https://www.usaid.gov/news-information/press-releases/jun-4-2021-united-states-provides-more-266-million-humanitarian-assistance>>; ‘USAid Announces More than \$308 Million in Additional Humanitarian Assistance for the People of Afghanistan’, *US Aid* (Media Release, 11 January 2022) <<https://www.usaid.gov/news-information/press-releases/jan-11-2022-usaid-announces-308-million-humanitarian-assistance-afghanistan>>.

³⁰³ *Afghan Allies Protection Act 2009* s 602(b); ‘Special Immigrant Visas for Afghans Who Were Employed by/on Behalf of the US Government’, *Travel.State.Gov* (Web Page) <<https://travel.state.gov/content/travel/en/us-visas/immigrate/special-immg-visa-afghans-employed-us-gov.html>> (‘Special Immigrant Visas for Afghans Who Were Employed by/on Behalf of the US Government’).

³⁰⁴ ‘Special Immigrant Visas for Afghans Who Were Employed by/on Behalf of the US Government’ (n 303)

³⁰⁵ ‘Special Immigrant Visas for Afghans Who Were Employed by/on Behalf of the US Government’ (n 303)

³⁰⁶ Office of the Spokesperson of the US Department of State, ‘US Refugee Admissions Program Priority 2 Designation for Afghan Nationals’ (Fact Sheet, 2 August 2021) <<https://www.state.gov/u-s-refugee-admissions-program-priority-2-designation-for-afghan-nationals/>>.

³⁰⁷ *Ibid*

The US Government is also utilising its Humanitarian Parole Authority to evacuate further Afghan refugees.³⁰⁸ This process allows persons inadmissible or ineligible for admission into the US ‘to be in the United States for a temporary period for urgent humanitarian reasons or significant public benefit’.³⁰⁹ Individuals found to meet the criteria can enter and remain in the US for a two-year period without any other visa.³¹⁰

The US intends to evacuate 50, 000 Afghans through the humanitarian parole process.³¹¹ According to US media reports, there has been a significant increase in humanitarian parole applications from Afghan nationals, with 50, 000 requests for humanitarian parole received from Afghan nationals outside the US as at 15 February 2022.³¹² Reportedly, only 160 have been conditionally approved, and 960 have been denied.³¹³

Once individuals have arrived in the US under the humanitarian parole scheme, they are temporarily shielded from deportation and, in some cases, allowed to apply for work authorization.³¹⁴ While asylum proceedings can be incredibly difficult without adequate support, parolees are soon transferred to the care of refugee resettlement agencies across the country.³¹⁵ Parolees are not entitled to public benefits, however, resettlement agencies are supporting these Afghans through private donations.³¹⁶

Shortcomings of the US Approach

Neither the SIV nor P-2 offers particular protection to women or other groups identified as being targeted by the Taliban regime such as human rights defenders and members of the LGBTQI+ community. Further, processing times under these visa programs often take years which is a significant period of time in the context of potentially urgently needed protection.³¹⁷

Afghan nationals seeking humanitarian parole may file a request for humanitarian parole within Afghanistan.³¹⁸ However, as the US Embassy in Kabul is closed and all normal consular services in Afghanistan have been suspended, these individuals may still need to travel to a third country for processing.³¹⁹ The US Government has acknowledged this as an issue and has advised that, ‘if we determine that you may be eligible for humanitarian parole, we will issue a notice informing you that you must arrange your own travel to a U.S. embassy or consulate outside of Afghanistan.’³²⁰ The need to access a US embassy from within a third country undermines the program’s intended purpose to swiftly remove Afghans from danger zones.

The US Government recently published additional advice stating, ‘[i]f you go to a third country for

³⁰⁸ National Immigration Forum, *Explainer: Humanitarian Parole and the Afghan Evacuation* (Web Page) <<https://immigrationforum.org/article/explainer-humanitarian-parole-and-the-afghan-evacuation/>>.

³⁰⁹ US Citizenship and Immigration Services, ‘Humanitarian Parole’ (Web Page) <<https://www.uscis.gov/forms/explore-my-options/humanitarian-parole>>.

³¹⁰ Ibid.

³¹¹ ‘DOD Building Capacity to Support up to 50,000 Afghan Evacuees’, *US Department of State* (Web Page) <<https://www.defense.gov/News/News-Stories/Article/Article/2754008/dod-building-capacity-to-support-up-to-50000-afghan-evacuees/>>.

³¹² Aline Barros, ‘US Inundated with Humanitarian Parole Requests from Afghans’, *VOA News* (online, 15 February 2022) <<https://www.voanews.com/a/us-received-overwhelming-number-of-humanitarian-parole-requests-from-afghans-/6441411.html>> .

³¹³ Ibid.

³¹⁴ Ibid.

³¹⁵ Ibid.

³¹⁶ Ibid.

³¹⁷ ‘Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms by Fiscal Year’, *US Citizenship and Immigration Services* (Web Page) <<https://egov.uscis.gov/processing-times/historic-pt/>>.

³¹⁸ ‘Information for Afghan Nationals on Requests to USCIS for Humanitarian Parole’, *US Citizenship and Immigration Services* (Web Page) <<https://www.uscis.gov/humanitarian/humanitarian-parole/information-for-afghan-nationals-on-requests-to-uscis-for-humanitarian-parole/>>.

³¹⁹ Ibid.

³²⁰ Ibid.

further processing as a potential humanitarian parole beneficiary... you should be prepared to remain there for several months.³²¹ The US government has advised that it may also require applicants in third countries to undergo medical screening at their own cost before a humanitarian parole request can be approved.³²² Requiring refugee women to spend a number of months in a third country without financial support is incredibly challenging, and requiring procedures to be funded by the applicant, creates a significant barrier to protection for those who need it most.

Italy

Afghanistan Evacuation and Humanitarian Response

The Government of Italy evacuated 4, 890 Afghan nationals (including 1, 301 women) out of Afghanistan between 14-31 August 2021 through its 'Aquila Omnia' program.³²³

In recognition of the fact that border controls and visa restrictions may present barriers to obtaining protection,³²⁴ the Italian Government has also sought to establish 'humanitarian corridors', which create legal channels out of Afghanistan for 1, 200 Afghan nationals at risk.³²⁵ Italy's Interior Minister, Luciano Lamorgese, announced that the program will support Afghan refugees 'in clear need of international protection,' removing them safely from danger.³²⁶

Such corridors are typically established through memoranda of understanding between government and civil society organisations and provide a 'route out of the conflict for civilians and non-fighters'.³²⁷ Civil society organisations within these corridors provide protection from fighting, access to humanitarian support and essential services, and facilitate 'complementary pathways' to resettlement known as 'protected entry procedures'.³²⁸ These procedures are made available within the country of origin, and support individuals to obtain travel authorisation to cross borders to countries for resettlement.³²⁹ The costs of humanitarian corridors are predominantly borne by civil society organisations as 'sponsoring organisations'.³³⁰

Under Italian 'Corridoi Umanitari' program, the Italian Ministry of Interior has agreed to pay the

³²¹ Ibid.

³²² Ibid.

³²³ 'Operation Aquila Omnia', *Ministero Della Difesa* (Web Page, 27 October 2021) <https://www.difesa.it/OperazioniMilitari/op_intern_corso/Op_Aquila_Omnia/Pagine/default.aspx>; 'Evacuation of Afghan Nationals to EU Member States', *European Parliament* (Briefing Paper, 2021) 3 <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698776/EPRS_BRI\(2021\)698776_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698776/EPRS_BRI(2021)698776_EN.pdf)>.

³²⁴ Claire Higgins, 'Safe Journeys and Sound Policy: Expanding Protected Entry for Refugees', *Kaldor Centre for International Refugee Law* (Policy Brief 8, November 2018) <https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Policy_Brief_8_Protected_Entry.pdf>.

³²⁵ 'Memorandum of Understanding Signed at the Interior Ministry for the Construction of Humanitarian Corridors for Afghan Citizens', *Italian Ministry of Defence* (Web Page <<https://www.interno.gov.it/it/notizie/firmato-viminale-protocollo-dintesa-realizzazione-dei-corridoi-umanitari-cittadini-afghani>>). Italy Ministry of Foreign Affairs and International Cooperation, 'Signing of Protocol for Humanitarian Corridors from Afghanistan' (Media Release, 11 November 2021) <https://www.esteri.it/en/sala_stampa/archivionotizie/comunicati/2021/11/firma-del-protocollo-per-i-corridoi-umanitari-dallafghanistan/>.

³²⁶ Francesco Bongarra, 'Italy seeks humanitarian corridors for Afghan refugees', *Arab News*, 3, <<https://www.arabnews.com/node/1943806/world>>.

³²⁷ Asylum, Migration and Integration Fund of the European Union, *Humanitarian Corridors: Implementation Procedures for their Extension on a European Scale* (Report, December 2021) <https://www.humanitariancorridor.org/wp-content/uploads/2019/12/REPORT_ENG_WEB.pdf> (*Humanitarian Corridors: Implementation Procedures for their Extension on a European Scale*); Geoff Gilbert and Anna Magdalena Rüsç, Kaldor Centre for International Refugee Law, *Creating Safe Zones and Safe Corridors in Conflict Situations: Providing Protection at Home or Preventing the Search for Asylum?* (Policy Brief, June 2017) <https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Policy_brief_Creating_safe_zones_and_safe_corridors.pdf>. See also '3 Things to Know About Getting Afghan Refugees to Safety', *Kaldor Centre for International Refugee Law* (Web Page) <<https://www.kaldorcentre.unsw.edu.au/3-things-know-about-getting-afghan-refugees-safety>>.

³²⁸ Gilbert and Rüsç (n 372) 9-10; Higgins (n 324) 2.

³²⁹ Higgins (n 324) 2.

³³⁰ Asylum, Migration and Integration Fund of the European Union, *Humanitarian Corridors: Implementation Procedures for their Extension on a European Scale* (n 327) 24-27.

travel costs of those accepted for the program.³³¹ Potential beneficiaries are selected by NGOs on the ground and referred to the Ministry of the Interior (**Ministry**) seeking a humanitarian limited territorial validity visa.³³² The potential beneficiaries of these existing schemes are persons in vulnerable conditions due to sex, age or state of health.³³³ This includes women, single mothers and victims of torture.

Reports indicate that numerous Afghans qualifying for the corridor travelled to Iran, Pakistan and other transit countries, before being transferred to Italy.³³⁴ Upon arrival, those with already recognised refugee status are able to participate in an 'integration' program run by the ministry, while others are supported by sponsoring organisation to apply for asylum.³³⁵ Sponsoring organisations also provide people seeking asylum housing, legal aid and language classes and integration pathways aimed at fostering autonomy.³³⁶

Humanitarian corridors were previously established from Lebanon to Italy to protect Syrian refugees.³³⁷ In 2015, a Memorandum of Understanding was signed between the Italian foreign and interior ministries, the Community of Sant'Egidio, the Federation of Italian Evangelical Churches and the Waldensian Church.³³⁸ The agreement established the first privately funded humanitarian corridors in Europe which, in less than four years, brought more than 2,000 people seeking asylum safely to Europe while they apply for asylum.³³⁹

Italy's humanitarian corridor program comprehensively addresses several challenges that Afghan women currently face. The program proves critically advantageous as it prioritises women as a vulnerable group. In doing so, the scheme recognises the disproportionate and urgent dangers Afghan women face within Afghanistan and in bordering countries. Further, as the situation in Afghanistan escalates, migratory pressure will inevitably increase as vulnerable Afghans resort to desperate measures to seek asylum. However, humanitarian corridors have proven to effectively curtail the influx of boat arrivals in a manner that is still consistent with countries' obligations under the Refugee Convention.³⁴⁰

Shortcomings of Italy's approach

Despite a number of benefits to this system, however, humanitarian corridors are unable to support extensively large numbers of people seeking asylum. This is due to the fact that the program depends on the availability of civil society funding. In 2019, the scheme provided for the arrival of around 600 people seeking protection in Italy.³⁴¹ However, humanitarian corridors are intended to supplement, not replace, existing government processes for refugee protection. When analysed in this light, humanitarian corridor schemes provide a practical way to get the most vulnerable Afghan nationals out of immediate danger while they wait on visa processing.

331 Emma Wallis, 'First Afghans Arrive via Humanitarian Corridor in Italy since August', *InfoMigrants* (online, 10 December 2021) <<https://www.infomigrants.net/en/post/37131/first-afghans-arrive-via-humanitarian-corridor-in-italy-since-august>>.

332 Reshaping Attention and Inclusion Strategies for Distinctively vulnerable people among the forcibly displaced', *Humanitarian corridors in Italy a legal and safe alternative* (Web Page) <<https://raisd-h2020.eu/project/humanitarian-corridors-in-italy-a-legal-and-safe-alternative/>>.

333 Directive 2013/33/EU of the European Parliament and of the Council, [2013] OJ, L, 180/96, art 21.

334 Wallis (n 331).

335 'Humanitarian Corridors', *Sant'Egidio* (Web Page) <<https://www.santegidio.org/pageID/30112/langID/it/CORRIDOI-UMANITARI.html>>.

336 Asylum, Migration and Integration Fund of the European Union, *Humanitarian Corridors: Implementation Procedures for their Extension on a European Scale* (n 327) 24-27.

337 Asylum, Migration and Integration Fund of the European Union, *Humanitarian Corridors: Implementation Procedures for their Extension on a European Scale* (n 327) 7.

338 Ibid.

339 Ibid 7.

340 Pedro Gois, 'The third way. Humanitarian corridors in peacetime as a (local) civil society response to a EU's common failure' (2017) 25(51) *Revista Interdisciplinar da Mobilidade Humana*, 59.

341 See, Asylum, Migration and Integration Fund of the European Union, *Humanitarian Corridors: Implementation Procedures for their Extension on a European Scale* (n 327).

PART 5: CONCLUSIONS AND RECOMMENDATIONS

“It is essential that the hard-won rights of Afghan women and girls are protected.”

António Guterres, UN Secretary-General (2021)³⁴²

Women in Afghanistan are a diverse group of people that represent a broad collection of ethnicities, languages, socioeconomic backgrounds and priorities. Afghan women have also made extraordinary contributions to the society in Afghanistan and have played active support in defending human rights in Afghanistan and resisting the erosion of the rights of the people of Afghanistan under the de facto Taliban government.

However, women in Afghanistan have experienced and currently experience gendered discrimination, violence and human rights violations perpetrated by the Taliban de facto government between 1996-2001 and again since August 2021. While the Taliban has promised greater respect for women’s rights, the group’s actions since the takeover of Afghanistan in August 2021 directly contradict this claim.

Under the Taliban, women and girls face regressive violations of their human rights in every area of their life. These violations include barriers to education and employment, as well as the exclusion of women from most aspects of public life. Afghan women leaders and human rights defenders have also been threatened with and suffered reprisal attacks at the hands of the Taliban, including abductions. There is also credible evidence that the Taliban are committing summary and arbitrary executions, perpetuating forced marriages of girls, and widespread gendered violence with impunity. It appears to be increasingly likely that the Taliban will continue to directly violate the fundamental human rights of women and girls, as it has done in the past.

Australia has consistently committed itself as a global leader on gender-equality. Indeed, the deep commitment to the advancement and human rights of women and girls has been repeatedly emphasised by Australian foreign policy leaders and cemented in Australian policy. The Australian Government’s most recent *National Action Plan on Women, Peace and Security 2021-2031* affirms Australia’s enduring commitment to the empowerment of women and girls.

Australia’s direct involvement over two decades in the war in Afghanistan further gives rise to a moral duty to protect the ‘hard won’ rights of women and girls in Afghanistan. Australia already joined global leaders in condemning the violations of the rights of women and girls by the Taliban and has expressed its solidarity with the people in Afghanistan, promising to do its part to protect Afghan nationals, including women and girls.

However, these obligations and commitments stand in direct contrast to Australia’s demonstrated action to support women and girls in Afghanistan. Australia’s evacuation efforts were criticised for their delays, leaving thousands – including those who directly worked with the Australian Government and armed forces in Afghanistan – stranded. Australia’s humanitarian aid commitments fall millions of dollars below that of its international counterparts.

Moreover, while States abroad seek to respond to the refugee crisis by increasing their intake of

³⁴² ‘UNHCR Warns Afghanistan’s Conflict Taking the Heaviest Toll on Displaced Women and Children’, *UNHCR* (Web Page) <<https://www.unrefugees.org.au/our-stories/unhcr-warns-afghanistan-s-conflict-taking-the-heaviest-toll-on-displaced-women-and-children/>>.

refugees and developing innovative pathways to support Afghan women and girls to resettle abroad, Australia remains stuck operating within already restrictive refugee intake ceilings, and inflexible resettlement pathways that are insufficiently gender responsive. In stark contrast to Australia's vocal commitment to the rights of women and girls on the international stage, its response to Afghanistan has been described as a 'bitter disappointment'.

Drawing on international responses is essential for Australia to maintain its position as a leader in respecting, protecting, and fulfilling the rights of women and girls. By learning from the responses of Canada, the UK, the US and Italy to the refugee resettlement needs of Afghans, we can consider opportunities to strengthen Australia's own response and to ensure that it is responsive to the situation in Afghanistan and the needs of Afghan women and girls.

In order for Australia to maintain its reputation as a global leader in protecting the rights of women and girls, Australia must seek to implement changes to its policy responses to the refugee crisis in Afghanistan. This includes by way of:

Recommendation 1: Increase Australia's humanitarian aid to Afghanistan

Australia's humanitarian aid commitments should be increased on a multi-year basis, *in addition to* existing bilateral aid commitments. We note that ACFID has called for \$100 million per year on a multiyear basis to address the root causes of the crisis in Afghanistan.³⁴³ We endorse that proposal. Our recommendation to increase aid is in recognition of the rapidly deteriorating economic and humanitarian situation, widespread poverty and famine, and the humanitarian commitments of other key states involved in the war in Afghanistan. Additionally, it is important for the Australian government to consider an outreach strategy for aid delivery beyond the major cities, such as Kabul, for humanitarian aid and support to reach more remote and underdeveloped parts of the country.

See Canada, US and UK humanitarian aid commitments.

Recommendation 2: Increase Australia's intake of refugees from Afghanistan.

Australia should commit to a special humanitarian intake in response to the crisis in Afghanistan, in addition to Australia's existing humanitarian intake ceiling. This should include:

- At least 20,000 dedicated places for Afghan nationals in 2021-2022.³⁴⁴
- An additional 5,000 places in the longer term (2023-2028). Women and girls from Afghanistan should be prioritised under such an additional program.

See Australia's humanitarian response to crises in Syria and Iraq, and humanitarian response of Canada and UK in response to crisis in Afghanistan.

³⁴³ The Australian Council for International Development (ACFID), 'Afghanistan Faces an Unprecedented Humanitarian Crisis, Australia Must Step Up' (Media Release, 23 January 2022) <<https://acfid.asn.au/media-releases/afghanistan-faces-unprecedented-humanitarian-crisis-australia-must-step-up>>

³⁴⁴ This is also in line with several other recommendations by civil society bodies and religious organisations in Australia such as Action for Afghanistan, Refugee Council of Australia, Australian Red Cross and leading religious organisations. See Action for Afghanistan, 'Morrison Government Must Increase Humanitarian Refugee Intake after Months of Inaction on Afghanistan: Senate Inquiry Hears' (Media Release, 8 November 2021) <<https://www.actionforafghanistan.com.au/media-releases/morrison-government-must-increase-humanitarian-refugee-intake-after-months-of-inaction-on-afghanistan-senate-inquiry-hears>>; Australian Red Cross, 'Australian Red Cross Calls for Intake Boost of 20,000 Refugees from Afghanistan' (Media Release, 2 February 2022) <<https://www.redcross.org.au/media/releases/2022/calls-for-intake-boost-from-afghanistan/>>; Refugee Council, 'How Restoring 20,000 Lost Refugee Visas Could Save Lives at Risk in Afghanistan' (Media Release, 3 November 2021) <<https://www.refugeecouncil.org.au/how-restoring-20000-lost-refugee-visas-could-save-lives-at-risk-in-afghanistan/>>; Peter Theodosiou, 'This is Who We Are': Australian Church Leaders Demand Afghan Refugee Intake Increase to 20,000, *SBS News* (online, 29 August 2021) <<https://www.sbs.com.au/news/article/this-is-who-we-are-australian-church-leaders-demand-afghan-refugee-intake-increase-to-20-000/cdmztpwq6>>.

Recommendation 3: Establish a special humanitarian program for women and girls at risk

Australia should establish a special humanitarian program for Afghans at risk. This should include priority for:

- Individuals who support democracy, women's rights, freedom of speech and rule of law; and
- Persons experiencing vulnerability, including on the basis of their gender and ethnicity, prioritising Shia Hazaras, Afghan Sikhs and Afghan Hindus. It is also important that this category considers women and girls in the most rural, undeveloped and marginalised parts of Afghanistan, i.e. provinces, such as Bamyan, Daikundi, Maidan Wardak, Ghor and Ghazni, as women and girls in these parts of Afghanistan have limited rights and lack opportunities to apply for protection, in comparison to women in larger cities such as Kabul, Herat, Mazar-i-Sharif and Kandahar, who are often more educated and thus able to access more opportunities.

See UK Afghan Citizens Resettlement Scheme (ACRS) program.

Recommendation 4: Reform the Woman at Risk visa class

Australia should amend the eligibility criteria for the Woman at Risk visa to remove the requirement for 'no male relative to protect'. This will allow for the provision of protection to women facing persecution and their partners and families.

Recommendation 5: Strengthen Community Sponsored Resettlement Pathways

Australia should reform its Community Support Program (CSP) and Community Refugee Integration and Resettlement Pilot (CRISP) programs to bring these into line with best practice from overseas. This should include:

- Providing for CSP or CRISP intake in addition to the places set for Australia's other humanitarian pathways for resettlement; and
- Extending the eligibility criteria and establishing support programs for refugees upon resettlement.
- Lift the resettlement ban on Afghan refugees registered with UNHCR in Indonesia, as many have immediate family in Australia who can sponsor them through these programs.³⁴⁵

See Canada's Community Sponsorship Program.

³⁴⁵ Since July 2014, Australia has placed a resettlement ban on refugees registered with UNHCR in Indonesia, which prevents them from reuniting with their immediate family members in Australia. Out of the roughly 14,000 registered refugees there, more than half are Afghan refugees. See Scott Morrison, 'Changes to Resettlement Another Blow to People Smugglers', *Parliament of Australia* (Web Page, 18 November 2014) <<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22media/pressrel/3514311%22>> . See also Sitarah Mohammadi and Sajjad Askary, 'Refugees Live in Destitution in Indonesia: Years of Limbo and Suffering Leads Refugees to Protests for Many Weeks Now for Resettlement', *Refugee Council of Australia* (Web Page) <<https://www.refugeecouncil.org.au/refugees-live-in-destitution-in-indonesia/>>.

Recommendation 6: Establish Humanitarian Corridors

Australia should collaborate with international governments and Australian civil society organisations to establish humanitarian corridors. This can support the safe passage of Afghans at risk out of Afghanistan, including in particular women and girls.

See Italy's Corrodoi Umanitari Program.

Recommendation 7: Grant permanent protection visas to refugees from Afghanistan already in Australia

Over 5,000 refugees from Afghanistan, who arrived in Australia by boat seeking asylum, have since been found to be refugees by the Australian government. This cohort of refugees have been living in Australia on temporary visas for the past 8 – 12 years, and unable to reunite with their families, due to the policies of the government. Almost all of them have families, including their sisters, daughters and wives, who remain at great risk under the patriarchal Taliban rule in Afghanistan, without any male protection. This means that they are at risk of sexual assault, rape and forced marriage to Taliban forces. Given the deteriorating situation in Afghanistan, refugees will not be able to return under a Taliban controlled Afghanistan. It is therefore crucial that the Australian government grants permanent protection visas to the over 5,000 refugees from Afghanistan living in Australia on temporary visas. A permanent visa will open the pathway for them to apply for visas for their families from Afghanistan. This will save the lives of their young families.

