

# SENATE STANDING COMMITTEES ON FOREIGN AFFAIRS DEFENCE AND TRADE

## REPLY TO QUESTIONS ON NOTICE

Her Excellency Hasina Safi, Ms Azadah Raz Mohammad, Prof Felicity Gerry QC<sup>1,2</sup>

### CONTENTS

1. INTRODUCTION.....	2
2. QUESTION REGARDING INTERNATIONAL AID .....	2
2.1 The Committee's question .....	2
2.2 Our oral testimony .....	3
2.3 Further submissions.....	3
3. QUESTION REGARDING CONCRETE STEPS.....	6
3.1 The Committee's question .....	6
3.2 Our oral testimony .....	6
3.3 Further submissions.....	7
4. CONCLUSION AND RECOMMENDATIONS.....	16

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<sup>1</sup> In consultation with Ms Atika Hussain, Ms Metra Mehran, Ms Karin M Frodé, Ms Anna McNeil and Ms Simone Abel and with research support from students at the Monash Afghanistan Support Clinic: Giti Alizada, Reza Azimi, Piper Crothers, Sarah Hellyer, Victor Organero and Arman Riazati.

<sup>2</sup> We acknowledge the research and assistance in compiling this Reply provided by students at the Monash Afghanistan Support Clinic: Giti Alizada, Reza Azimi, Piper Crothers, Sarah Hellyer, Victor Organero and Arman Riazati.

## 1. INTRODUCTION

We are grateful to the Committee for the opportunity to give **oral testimony** pertaining to the issues raised in our written submission on 15 November 2021. This testimony was provided to the Committee by her Excellency Ms Hasina Safi, Ms Azadah Raz Mohammad and Prof Felicity Gerry QC.

We do not repeat our submissions to the Committee but, in answering questions on notice, we hope the following is useful.

We remind the Committee that women's rights in Afghanistan are facing their greatest challenge since the Taliban last held power more than 20 years ago. Our **written submission** to the Senate Standing Committees on Foreign Affairs Defence and Trade ('the Committee') dated 22 October 2021 sought to highlight these challenges and the fallout for women and girls following the withdrawal of NATO and allied forces from Afghanistan. It detailed the dangers of overt gender-based violence, discrimination and segregation now faced by those left behind.

The following constitutes a **reply to questions taken on notice** during the oral testimony. It is structured around the questions asked by the Senators at the hearing, our speakers' answers to those questions, as well as a more detailed elaboration upon those answers developed through additional consultation with two other experts on the rights of women and girls from Afghanistan, Ms Atika Hussain and Ms Metra Mehran.<sup>3</sup> Broadly, this Reply to Questions on Notice focuses upon the ways in which Australia can play its role in preserving the progress of women's rights in Afghanistan and the concrete steps that can be taken in this regard both internationally and domestically. We maintain our submissions that the two core issues are the importance of visibility of women in positions of power and responsibility, and the importance of understanding women's issues, particularly around safety, health and education.

## 2. QUESTION REGARDING INTERNATIONAL AID

### 2.1 The Committee's question

At the oral hearing with her Excellency Ms Safi, Ms Raz Mohammad and Prof Gerry QC, the Committee asked how the international community can go about delivering aid given the deteriorating situation in the country, particularly to women, without it being pilfered/skimmed and ensuring it reaches the people.

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<sup>3</sup> Ms Atika Hussain is an Australian migration agent who has been actively involved in advocacy in Australia around issues arising out of the Taliban takeover. Ms Metra Mehran is an activist from Afghanistan with extensive experience of promoting the rights of women and girls both inside and outside of Afghanistan.

## 2.2 Our oral testimony

At the hearing, Ms Safi underlined the need for international aid aimed at supporting women. Although the Ministry for Women's Affairs which Ms Safi oversaw before the Taliban takeover no longer exists, she noted an existing 'NGO Directory' within the Ministry of Economy through which formal communication could be organised. Ms Safi suggested forming an aid monitoring mechanism with three limbs:

- a. An international tier for central decision-making that coordinates which geographical areas require the most support and ensures that efforts are not duplicated;
- b. An interior national board that involves women and monitors the allocation of aid on the ground – this interior national board can be facilitated by international organisations such as United Nations ('UN') entities (eg United Nations Children's Fund ('UNICEF'), United Nations High Commissioner for Refugees ('UNHCR') and the World Food Programme ('WFP'); and
- c. A tier of local social workers and grassroots initiatives run by women and people involved in humanitarian programs who can play a role in monitoring the movement of aid and report the effectiveness of delivered aid on the ground.

## 2.3 Further submissions

### 2.3.1 What Australia can do internationally

#### *I. Actively engage in discussions to open a humanitarian corridor*

***Recommendation A:** We suggest that the Committee call upon the Australian Government to engage actively in discussions with relevant stakeholders and the international community to open a humanitarian corridor to enable support for Afghans at risk.*

Given the humanitarian crisis unfolding in Afghanistan, and the fact that the Taliban does not have the capacity, governance or will to deliver emergency aid to civilians, the international community should be actively engaging in discussions to open a humanitarian corridor to support Afghans at risk.

Civilians are increasingly at risk of starvation as the winter approaches.<sup>4</sup> The WFP reports that food security has deteriorated to the extent that only 5 per cent of the population have adequate consumption.<sup>5</sup> Unsurprisingly, a disproportionate impact falls on women:

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<sup>4</sup> World Food Programme, *Situation Report* (Report, 30 September 2021) 1.

<sup>5</sup> Ibid.

recent surveys suggest that households headed by women are skipping meals and reducing their consumption significantly to save food for their families.<sup>6</sup> Australia should take steps to establish a path for humanitarian assistance to Afghans through United Nations bodies such as the World Food Programme and the United Nations Development Project. This recommendation is made as a suggested addition to supporting the International Red Cross Committee in Afghanistan.

In relation to concerns of ‘skimming’ of funds, mechanisms should be adopted by Australia, or by the organisations through which any aid is channelled, to ensure the integrity of the aid program. Aid providers, including in particular multilateral development banks, have robust whistle-blower mechanisms and other internal procedures for guarding against corruption.<sup>7</sup> The Committee may also consider supporting Afghanistan with investment or remittances: although Australia should be wary about providing the institution of the Taliban with infrastructure, there would be the opportunity for the provision of aid to be more tightly controlled. Given the likelihood of regional and other actors offering developmental investment,<sup>8</sup> which poorer countries are more inclined to accept,<sup>9</sup> Australia and the broader international community should proactively explore development and investment proposals it can consider, which align with their objectives in Afghanistan. Medical aid should be considered; Australia can support and expand beyond efforts already made by NGOs to establish nationwide programs for coronavirus and polio vaccinations in Afghanistan.<sup>10</sup>

### 2.3.2 What Australia can do at home

#### II. *Adopting a feminist foreign policy framework*

**Recommendation B:** *We encourage the Committee to call upon the Australian Government to adopt a feminist foreign policy framework when structuring and organising their delivery of international aid to Afghanistan and to engage with the international community on similar processes.*

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<sup>6</sup> Ibid.

<sup>7</sup> MG Quibria, ‘Foreign Aid and Corruption: Anti-Corruption Strategies Need Greater Alignment with the Objective of Aid Effectiveness’ (2017) 18(2) *Georgetown Journal of International Affairs* 10, 13.

<sup>8</sup> See, eg, Don Xing, ‘The Taliban is Persuading China to Invest in Afghanistan, but It Is Not an Easy Task’ *ABC* (online, 29 August 2021). <<https://www.abc.net.au/news/2021-08-29/the-taliban-trying-to-persuade-china-to-invest-in-afghanistan/100408696>>.

<sup>9</sup> ‘Foreign Aid: Misplaced Charity’ *International, The Economist* (London, 11 June 2016).

<sup>10</sup> See Claire Parker, ‘United Nations Ramps Up Coronavirus Vaccinations in Afghanistan with Taliban Permission’ *Washington Post* (online, 21 October 2021); Haroon Janjua, ‘Afghanistan to Restart Polio Vaccination Programme with Taliban Support’ *The Guardian* (online, 19 October 2021).

Feminist foreign policy is not merely a label: it is a strategic, structural approach to securing the rights of women, whereby the needs of women are central to all policy considerations and aid initiatives, and women are meaningfully engaged at all levels of political and policy decision-making.<sup>11</sup> Both Canada and Sweden have adopted feminist foreign policies which guide their delivery of international aid in Afghanistan. For example, Ann Bernes, the Director and Special Advisor on Women, Peace and Security at Sweden's Ministry for Foreign Affairs, has said that Sweden's feminist foreign policy is about moving gender equality from being an issue that competes amongst other priorities to being 'the absolute core and DNA of ... everything we do'.<sup>12</sup> The rights and resources of women in Afghanistan has been a key focus of Swedish feminist foreign policy, with Afghanistan being the largest recipient country of Swedish development assistance since 2013.<sup>13</sup>

Similarly, Canada's Feminist International Assistance Policy, which was introduced in 2017, significantly informs Canada's international aid funding.<sup>14</sup> Significantly, the Canadian government has pledged that by '2021-2 at the latest, at least 95 percent of Canada's bilateral international development assistance investments will either target or integrate gender equality and the empowerment of women and girls'.<sup>15</sup> Within the 95 percent of funds allocated, 15 percent of assistance is to be invested towards gender equality and the empowerment of women and girls, and 80 percent is to be invested in improving and increasing the integration of gender equality and the empowerment of women and girls across all international assistance efforts.<sup>16</sup> The Australian Government should adopt a similar feminist donor approach to their international aid delivery in Afghanistan, looking to countries such as Canada and Sweden as examples of how feminist foreign policy can inform aid initiatives.

In Australia there is considerable expertise on this issue. We have already recommended the Elgar publication edited by Susan Harris Rimmer (Griffith University) and Kate Ogg

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<sup>11</sup> 'Feminist Foreign Policy', *Centre for Feminist Foreign Policy* (Web Page, 11 October 2021) <<https://centreforfeministforeignpolicy.org/feminist-foreign-policy>>.

<sup>12</sup> Jessica Abrahams, 'Towards a Real Feminist Foreign Policy' *Prospect Magazine* (online, 31 August 2021) <<https://www.prospectmagazine.co.uk/world/towards-a-real-feminist-foreign-policy>>.

<sup>13</sup> Ministry of Foreign Affairs, 'Sweden's engagement in Afghanistan' Government Offices of Sweden (Web Article, 27 August 2021) <<https://www.government.se/articles/2021/08/swedens-engagement-in-afghanistan/>>.

<sup>14</sup> Abrahams (n 12).

<sup>15</sup> Global Affairs Canada, *Canada's Feminist International Assistance Policy* (Report, 2017) 71 <[https://www.international.gc.ca/world-monde/issues\\_developpement-enjeux\\_developpement/priorities-priorites/policy-politique.aspx?lang=eng](https://www.international.gc.ca/world-monde/issues_developpement-enjeux_developpement/priorities-priorites/policy-politique.aspx?lang=eng)>.

<sup>16</sup> Ibid.

(ANU), *Research Handbook on Feminist Engagement with International Law*,<sup>17</sup> in which Rimmer states that

one of the most important changes to modern diplomacy is the increased participation of women, both as foreign policy elites and in wider transnational networks. If this most fundamental aspect of diplomacy is human interactions, then the representation of women ... in the practice of diplomacy since the mid-twentieth century should have ... a profound impact ...<sup>18</sup>

Whilst the “business model” of diplomacy has been resistant to transformation’, she states that the ‘creation of thematic ambassadors focused on gender equality’ in Australia shows transformative potential.<sup>19</sup>

We submit that the situation in Afghanistan requires a recognition and practical application of this effort. The world needs to see that the women of Afghanistan have not been abandoned but that the international community is determined to protect women’s rights, promote women’s issues, and include women as professionals and in roles of leadership, particularly women with experience in Afghanistan and women with experience in international law and diplomacy.

### **3. QUESTION REGARDING CONCRETE STEPS**

#### **3.1 The Committee’s question**

The Committee asked her Excellency Ms Safi, Ms Raz Mohammad and Prof Gerry QC, what – given the lack of safety for women – concrete first steps could and should be taken by Australia to ensure the rights of women and girls.

#### **3.2 Our oral testimony**

Afghanistan has a strong existing legal system, which provides for many constitutional and legislative protections for women. One important step is to recognise and understand the value of the existing laws and structural progress, and to prevent these protections from being lost.

The Taliban does not have a proper system of governance. Ms Safi suggested that NGOs should be used as means of dissemination and organisation. For example, even currently, there are many women waiting for an organised effort to rally around and in which to have a sense of confidence and trust.

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<sup>17</sup> Susan Harris Rimmer and Kate Ogg (eds), *Research Handbook on Feminist Engagement with International Law* (Edward Elgar Publishing, 2019).

<sup>18</sup> Susan Harris Rimmer, ‘Women as Makers of International Law: Towards Feminist Diplomacy’ in Susan Harris Rimmer and Kate Ogg (eds), *Research Handbook on Feminist Engagement with International Law* (Edward Elgar Publishing, 2019) 26, 27–8.

<sup>19</sup> Ibid 28.

The other recommendation is to focus on economic empowerment of women. Given there are many families in Afghanistan in which women are the head of the house, economic empowerment of women will greatly help them. There is a clear link between women's economic empowerment and supporting the prosperity of the Afghan people.<sup>20</sup>

The next step would be working closely with the Taliban to deliver aid as a response to the humanitarian crisis, as well as using this opportunity to monitor their conduct. In this way, the Taliban can be pressured to identify their position with respect to women as well as being held accountable for their actions. However, pressuring corrupt or undemocratic governments do not always have the intended effect of bringing them to a negotiating table — often they are content to bear the brunt of economic hardship, which is in reality borne by the people of the country.<sup>21</sup> Even if many states coordinated economic pressure, other actors would also see an opportunity to inject their own funds and establish their own influence in the area.<sup>22</sup> As such, careful steps are necessary to ensure that any such actions do not adversely affect the people which the international community intends to support.

### 3.3 Further submissions

#### 3.3.1 What Australia can do at home

##### I. Abolish TPVs and SHEVs

**Recommendation C:** We suggest that the Committee recommend to the Australian Government that the current Temporary Protection Visas (TPVs) and Safe Haven Enterprise Visas (SHEVs) be abolished and that the right to apply for a Permanent Protection visa be reinstated.

We recognise that immigration is a complex topic in Australia, but this is an extraordinary crisis that requires a coordinated and humanitarian approach. As the Committee will be aware, these visa categories do not allow family reunion, which will have a negative impact upon the mental health and psychological wellbeing of these visa holders in

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<sup>20</sup> See, eg, Richard Eves and Joanne Crawford, 'Do No Harm: The Relationship between Violence against Women and Women's Economic Empowerment in the Pacific' (In Brief Series No 3/2014, Department of Pacific Affairs, Australian National University, 2014).

<sup>21</sup> 'Why Sanctions Do Not Always Work' *The Economist* (online, 27 May 2021) <<https://www.economist.com/the-economist-explains/2021/05/27/why-sanctions-do-not-always-work>>.

<sup>22</sup> Ibid.

Australia.<sup>23</sup> This in turn may hinder their ultimate integration because of the lack of support structures.<sup>24</sup> The return of the Taliban has affected the Afghan-diaspora in Australia and has hit hard at those that do not have the option of family reunion. Most of the Afghan-national TPV/SHEV-holders have their immediate family members still inside Afghanistan and live in fear that if they are discovered by the Taliban, they may face harm. In the short- and long-term, temporary visa holders fear kidnappings and ransom money demands of their family members by the Taliban. There is precedent in past years, where individuals with ties to western countries – mostly Hazara populated areas - were kidnapped and their families extorted for ransom money.<sup>25</sup> With the return of the Taliban such actions are likely to increase, and we have already received reports from families in Australia that their relatives in Afghanistan are being subjected to this practice.

## II. *Abolish Ministerial Direction 80*

**Recommendation D:** *We call upon the Committee to recommend that the Australian Government revoke or amend Ministerial Direction 80 to allow family reunion applications to be processed at the same priority as other family applications.*

Currently, Direction 80 specifically targets persons who arrived in Australia by boat. It does so by placing their applications to sponsor family members in the category of ‘lowest processing priority’, automatically behind applications made by refugees who did not arrive by boat.<sup>26</sup> This direction has resulted in many refugees being in Australia for at least five years without being given the chance to reunite with loved ones.<sup>27</sup> Indeed, after conducting extended consultation with refugee communities, the Refugee Council of Australia (‘RCOA’) has found that separation from family has severe social, psychological and financial impacts on those awaiting to be reunited with their families.<sup>28</sup>

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<sup>23</sup> Sahar Okhovat, Refugee Council of Australia, *With Empty Hands: How the Australian Government Is Forcing People Seeking Asylum into Destitution* (Report, June 2018) <<https://www.refugeecouncil.org.au/with-empty-hands-destitution/2/>>.

<sup>24</sup> Ibid.

<sup>25</sup> See Abdul Karim Hekmat and Ben Doherty, ‘Resurgent Taliban Targets Afghan Hazara as Australia Sends Them Back’ *The Guardian* (online, 17 December 2014) <<https://www.theguardian.com/australia-news/2014/dec/17/resurgent-taliban-targets-afghan-hazara-as-australia-sends-them-back>>.

<sup>26</sup> ‘Denying Family Reunion for Refugees: Impact of Direction 80’, *Refugee Council of Australia* (Web Post, 15 April 2020) <<https://www.refugeecouncil.org.au/direction-80/>>.

<sup>27</sup> Ibid.

<sup>28</sup> Asylum Seeker Resource Centre, *Permanent Protection: Policy Statement* (2018) 1 <[https://www.asrc.org.au/wp-content/uploads/2013/04/ASRC-Policy-Paper-Permanent-Protection\\_formatted.pdf](https://www.asrc.org.au/wp-content/uploads/2013/04/ASRC-Policy-Paper-Permanent-Protection_formatted.pdf)>.

### III. Increase number of humanitarian visas

**Recommendation E:** We suggest that the Committee recommend that the Australian Government provide a minimum of an additional 20,000 humanitarian visas to Afghan nationals. A particular emphasis must be put on vulnerable individuals including women human rights defenders, and women as journalists, members of the police force, civil servants and the judiciary, leaders in secular spheres such as science, the humanities, the arts, medicine, and other areas, and persecuted minorities.

The rapid political and security changes in Afghanistan demand substantial and significant responses from the Australian government and its allies. Australia's provision of aid and its military engagement in Afghanistan over the past two decades have created moral and ethical obligations not to leave behind individuals who supported our presence and initiatives and promoted development and progress in Afghanistan. By increasing the refugee intake, the Australian Government can reduce the number of Taliban atrocities against the *most vulnerable* groups mentioned earlier, particularly women and girls.<sup>29</sup>

### IV. Add special category of women at risk visa

**Recommendation F:** We urge the Committee to consider calling on the Australian Government to add a special category of protection for women at risk regardless of whether they have 'a male relative to protect'.

Currently Women at Risk Visa Subclass 204 focuses on the 'harassment, persecution, abuse or victimisation on the basis of gender without any male relative to protect'. The majority of women's rights defenders with work history of over a decade are at direct risk from the Taliban, as are their partners by virtue of their association.<sup>30</sup> These women have often been the breadwinners of their families and have long accounts of combatting and rebelling against societal taboo and traditional practices. This includes, for example, women in law enforcement (eg police and the military). These women were at risk already before 15 August by virtue of their being women in male-dominated professions.

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<sup>29</sup> See Refugee Council of Australia, 'Why Additional Places Are Needed for Australia's Refugee Intake from Afghanistan', (Media Release, 22 September 2021) <<https://www.refugeecouncil.org.au/afghanistan-resettlement-brief/>>.

<sup>30</sup> See 'Afghanistan: Taliban Target Journalists, Women in Media', *Human Rights Watch* (Web Page, 1 April 2021) <<https://www.hrw.org/news/2021/04/01/afghanistan-taliban-target-journalists-women-media#>>.

Australia and other allied forces promoted women in law enforcement and ought to recognise the heightened risk which these women face due to this work.

To recognise the risk for this particular group of women, a special category of women at risk visa regardless of 'male relative to protect' should be introduced. 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. It is important to make sure that women are not neglected and abandoned as they were during the peace process. A comprehensive gender-based approach is needed that is designed for women who belong to a distinct group. These women are highly educated and knowledgeable and would be a great asset to Australian society.

V. *Amend the instrument 'Specification of a Class of Persons – IMMI 12/127'*

**Recommendation G:** *We suggest that the Committee recommends that the Australian Government amends instrument 'Specification of a Class of Persons – IMMI 12/127' to remove the need for Afghans to first flee to a third country, a prerequisite of most Australian humanitarian visa sub-classes.*

In light of the circumstances in Afghanistan and the difficulty for many Afghans to flee the country, particularly without a valid visa for a third country, we suggest that the Committee reviews the instrument 'Specification of a Class of Persons - IMMI 12/127'. This instrument makes it necessary for Afghans to flee to a third country in order to be eligible for the majority of Australia's humanitarian visas. Doing so would represent a more targeted approach tailored to the situation at hand.

VI. *Establish a specific visa type for Afghans*

**Recommendation H:** *We suggest that the Committee asks the Australian Government to consider establishing a specific visa type for Afghans.*

Given the dire situation in Afghanistan which we consider to be comparable to large historic refugee crises, such as the situation in the former Yugoslavia, we suggest that the Committee considers recommending to the Government the establishment of a specific visa type for Afghans. Such a move would be similar to what Australia did in the context of such other prior conflicts to reduce administrative barriers which delay the process and leave persons at grave risk of harm while waiting for visas to process. Examples that the Committee may wish to point to include the visa types for minorities in the former USSR and citizens of former Yugoslavia.

VII. *Establishing tailored support services for newly arrived Afghan refugees*

**Recommendation I:** *We suggest that the Committee recommend to the Australian Government the establishment of dedicated services tailored to support newly arrived Afghan refugees.*

This is especially important given the situation on the ground in Afghanistan, most individuals would have likely experienced very traumatic incidents. Therefore, a tailored support program must have the capacity to not only support in ensuring a smooth transition into Australian society, but also mental health support programs and other services targeted to the needs of impacted individuals.

VIII. *Convene an internal advisory committee of Afghan women*

**Recommendation J:** *We urge the Committee to recommend that the Government establishes an internal advisory committee of Afghan women to provide input into the implementation of the Committee's recommendations.*

To ensure that the recommendations which the Committee will give to the Government are implemented adequately, we believe it to be essential for the Government to receive ongoing expert advice from Afghan women, located both inside and outside of Australia. Ensuring the situation of women and girls is adequately considered and featured into all steps taken to implement the recommendations made is crucial. Only Afghan women can develop, deliver and monitor effectively measures taken which may otherwise have unintended consequences. The situation on the ground in Afghanistan, as well as the situation of the Afghan communities across Australia are complex and the Government needs to meaningfully engage, on an ongoing basis, key Afghan stakeholders.

The Committee has had the benefit of hearing directly from several Afghans, including Afghan women, at the oral hearings. We hope that the engagement with Afghan women does not end with these hearings but that the Committee urges the Government to ensure ongoing engagement and participation of Afghan women in their implementation of the recommendations received from the Committee. An internal advisory committee of Afghan women would be a key way in which the Government can establish meaningful engagement. While our contributions to this process focus upon the involvement of women, such engagement should extend to other key stakeholder groups as well.

### 3.3.2 What Australia can do internationally

#### I. Support grassroots movements

**Recommendation K:** *We recommend that the Committee call upon the Australian Government to acknowledge the value of informal grassroots movements by communicating and supporting individuals and movements on the ground, as well as processes and work done to consult with women across Afghanistan prior to the Taliban takeover.*

Despite the difficult circumstances which continue to worsen each day, there are still grassroots activists and movements both inside and outside Afghanistan. The work and strength of these networks have grown over the past two decades. Australia should continue to support the work by these movements and individual activists which it supported during these past decades. This can be done by continuing communication and support to these individuals and movements.

Ms Safi suggests that Australia's role in this process could be one of collaboration with those at grassroots level, having the effect of reinforcing previous work by the former Afghan Government. Due to obvious constraints posed by the Taliban, influencing the continuation of certain progressive laws and provisions will not be immediately possible, however research and consultations with women across the country done by Ms Safi's former Ministry for Women's Affairs can be used as a resource upon which to build and guide international efforts to enable governance for the benefit of women that are in line with international law.

#### II. Call for an international women's committee/task force

**Recommendation L:** *We recommend that the Committee call upon the Australian Government to suggest and promote to the international community the establishment of an international women's task force led by women, particularly Afghan women with experience in positions of power and responsibility, to coordinate international efforts around issues pertaining to women and women's rights within Afghanistan and connected to Afghanistan.*

Australia and other allied forces should recognise the importance of women's visibility and voices for the future of Afghanistan. Such recognition must also lead to actual and meaningful involvement in the implementation of the recommendations suggested in this Reply. Whilst women's participation was noted with regards to the peace process, it did sadly not translate into meaningful engagement of women in the negotiations.

Similar to the internal advisory committee recommended to be established within Australia to support the Australian Government, an international women's task force is vital to ensure the implementation of recommendations at the international level in a

manner which takes into account and actively enhances gender equality and women's rights. It would also recognise the need to engage women experts on these women's issues. Military or security efforts which do not involve women are unlikely to be successful in achieving peace and security.

### III. Engage with existing international mechanisms

**Recommendation M:** We encourage the Committee to call upon the Australian Government to utilise existing mechanisms at the international level and to call for the strengthening of such mechanisms so obviously necessary.

There are various existing mechanisms with which Australia ought to engage on issues pertaining to Afghanistan, particularly the situation of women and girls. One such mechanism is the United Nations Special Rapporteur on Afghanistan. However, Australia must call for the strengthening of this mandate to ensure that it can meaningfully carry out its functions. For example, this mandate should not be a nominal position but should have executive powers in order to be able to securely visit Afghanistan and conduct on-site investigation and reporting, particularly with respect to the alleged killings of Hazaras in Daikundi,<sup>31</sup> the reported Hazara forced displacements<sup>32</sup> and the numerous reported extrajudicial killings<sup>33</sup> of former civil servants, security forces, activists, women and human rights defenders and other individuals targeted by the Taliban.<sup>34</sup> The Special Rapporteur should also investigate and report on the closure of girls schools.<sup>35</sup> Therefore, the Special Rapporteur on Afghanistan should be properly supported by Australia and its allies in order to ensure that its mandate extends to investigations, not just to reporting of alleged violations.

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<sup>31</sup> 'Afghanistan: Taliban responsible for brutal massacre of Hazara men - new investigation', *Amnesty International* (Web Page, 19 August 2021) <<https://www.amnesty.org/en/latest/news/2021/08/afghanistan-taliban-responsible-for-brutal-massacre-of-hazara-men-new-investigation/>>.

<sup>32</sup> Emma Graham-Harrison, 'Taliban "forcibly evicting" Hazaras and opponents in Afghanistan', *The Guardian* (online, 23 October 2021) <<https://www.theguardian.com/world/2021/oct/23/taliban-forcibly-evicting-hazaras-and-opponents-in-afghanistan>>.

<sup>33</sup> 'Afghanistan: Rights groups accuses Taliban of "extrajudicial executions"', *DW* (online, 5 October 2021) <<https://www.dw.com/en/afghanistan-rights-group-accuses-taliban-of-extrajudicial-executions/a-59415912>>.

<sup>34</sup> Amanda Hodge, 'Female activists killed after Taliban protests' *The Australian* (online, 6 November 2021) <<https://www.theaustralian.com.au/world/female-activists-killed-after-taliban-protests/news-story/54069dc478c8820150b88fc06c53e8de>>.

<sup>35</sup> 'A Harsh New Reality for Afghan Women and Girls in Taliban-Run Schools' *The New York Times* (online, 20 September 2021) <<https://www.nytimes.com/2021/09/20/world/asia/afghan-girls-schools-taliban.html>>.

Australia should also engage with other UN experts such as the Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions in order to make representations about the prevalence of executions and extrajudicial killings as a political tool in Afghanistan. Any diplomacy with neighbouring states and any support or assistance to the Special Rapporteur with respect to this issue falls within Australia's wider diplomatic efforts including its ambitious and impactful *Strategy for Abolition of the Death Penalty*,<sup>36</sup> and should be prioritised given the numerous violations of right to life and other human rights associated with Taliban-sanctioned killings in Afghanistan.

Australia should utilise the state party complaint avenues available under the various human rights treaties to complain about violations of treaties that Afghanistan has ratified, although it should note in any complaints that this does *not* amount to recognition by Australia of the Taliban as the legitimate government of Afghanistan. Rather, the complaints arise on account of the state of Afghanistan having formerly ratified such treaties. For example, art 21 of the *Convention against Torture* sets out a procedure under which the Committee Against Torture itself can consider complaints from one State party which considers another State party to be in breach of the Convention.<sup>37</sup> Articles 11–13 of the *International Convention for the Elimination of All Forms of Racism* ('ICERD'),<sup>38</sup> arts 41–3 of the *International Covenant on Civil and Political Rights* ('ICCPR'),<sup>39</sup> and art 29 of the *Convention on the Elimination of All Forms of Discrimination against Women*<sup>40</sup> set out more elaborate procedures for the resolution of disputes between States parties over a State's fulfilment of its obligations under the relevant Convention/Covenant through the establishment of an ad hoc Conciliation Commission or submission to arbitration.

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<sup>36</sup> Department of Foreign Affairs and Trade, Australian Government, *Australia's Strategy for Abolition of the Death Penalty* (June 2018) <<https://www.dfat.gov.au/international-relations/themes/human-rights/Pages/australias-strategy-for-abolition-of-the-death-penalty>>.

<sup>37</sup> *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987)

<sup>38</sup> *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969)

<sup>39</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976)..

<sup>40</sup> *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 1 March 1980, 1249 UNTS 13 (entered into force 3 September 1981)

#### IV. Careful implementation of sanctions to promote accountability

**Recommendation N:** We suggest that the Committee asks the Australian Government to underline the need for continued (and careful) use of sanctions by Australia and its allies.

While the Department of Foreign Affairs and Trade still has the Taliban on its sanctions list,<sup>41</sup> Australia should emphasise the continued use of sanctions, both at the domestic level and also by the international community, through domestic sanctions lists and the UNSC,<sup>42</sup> as well as regional sanctions lists (e.g. the European Union).

Targeted sanctions will be impactful in promoting accountability for serious human rights abuses and ensuring that the actions of the Taliban as a group, as well as the individuals within their ranks who have committed serious rights abuses, are not legitimised/recognised as a group that has taken de facto control of Afghanistan through violence and terrorism and by sidelining peace negotiations.

Such sanctions must be carefully implemented to ensure that they do not adversely impact upon the general population, including women and girls, by inhibiting humanitarian aid.

#### V. Continued evacuation of vulnerable groups, in particular women at risk

**Recommendation O:** We ask the Committee to call upon the Australian Government to ensure the continued evacuation of women at risk in line with its National Action Plan on Women, Peace and Security to ensure the safety of women including those who were trained by Australia and allied forces to work in the Afghan police and military forces.

As set out in our original submission, the emergency evacuation of vulnerable groups from Afghanistan following the Taliban takeover did not sufficiently prioritise women at risk and Australia's National Action Plan on Women, Peace and Security 2021–31 ('National Action Plan').<sup>43</sup> There are at least 1500 women who were formerly in the

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<sup>41</sup> Department of Foreign Affairs and Trade, Australian Government, *The Taliban Sanctions Regime* (2021) <<https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/the-taliban-sanctions-regime>>.

<sup>42</sup> 'Sanctions', *United Nations Security Council* (Web Page, 2021) <<https://www.un.org/securitycouncil/sanctions/information>>.

<sup>43</sup> Department of Foreign Affairs and Trade, Australian Government, *Australia's National Action Plan on Women, Peace and Security 2021–2031* (2021) <<https://www.dfat.gov.au/publications/australias-national-action-plan-on-women-peace-and-security-2021-2031>>.

Afghanistan National Security Forces, most of whom remain at grave risk and currently in hiding in the country.

Australia should continue supporting the evacuation of such groups at risk, in particular women from the security forces and women activists. Where women are at risk because of their association, training, or other links to Australia and its National Action Plan, then these women should be supported through emergency visas in order to be able to evacuate Afghanistan to safety in Australia.

#### **4. CONCLUSION AND RECOMMENDATIONS**

Once more we express our gratitude to the Committee for the opportunity to bring our expertise to this important inquiry. We reiterate that women and girls of Afghanistan, both inside and outside the country, must play a major role in the formation and implementation of recommendations to guide Australia's response to the Taliban takeover. This document, in addition to our original submission, sets out multiple key recommendations of concrete steps which Australia can take both at home and internationally to ensure that women's rights and gender equality is at the forefront.

**The recommendations that we specified in this Reply for this purpose are:**

##### At home

- **Recommendation B:** *We encourage the Committee to call upon the Australian Government to adopt a feminist foreign policy framework when structuring and organising their delivery of international aid to Afghanistan and to engage with the international community on similar processes.*
- **Recommendation C:** *We suggest that the Committee recommend to the Australian Government that the current Temporary Protection Visas (TPVs) and Safe Haven Enterprise Visas (SHEVs) be abolished and that the right to apply for a Permanent Protection visa be reinstated.*
- **Recommendation D:** *We call upon the Committee to recommend that the Australian Government revoke or amend Ministerial Direction 80 to allow family reunion applications to be processed at the same priority as other family applications.*
- **Recommendation E:** *We suggest that the Committee recommend that the Australian Government provide a minimum of an additional 20,000 humanitarian visas to Afghan nationals. A particular emphasis must be put on vulnerable individuals including women human rights defenders, and women as journalists, members of the police force, civil servants and the judiciary, leaders in secular spheres such as science, the humanities, the arts, medicine, and other areas, and persecuted minorities.*

- **Recommendation F:** We urge the Committee to consider calling on the Australian Government to add a special category of protection for women at risk regardless of whether they have 'a male relative to protect'.
- **Recommendation G:** We suggest that the Committee recommends that the Australian Government amends instrument 'Specification of a Class of Persons – IMMI 12/127' to remove the need for Afghans to first flee to a third country, a prerequisite of most Australian humanitarian visa sub-classes.
- **Recommendation H:** We suggest that the Committee asks the Australian Government to consider establishing a specific visa type for Afghans.
- **Recommendation I:** We suggest that the Committee recommend to the Australian Government the establishment of dedicated services tailored to support newly arrived Afghan refugees.
- **Recommendation J:** We urge the Committee to recommend that the Government establishes an internal advisory committee of Afghan women to provide input into the implementation of the Committee's recommendations.

#### Internationally

- **Recommendation A:** We suggest that the Committee call upon the Australian Government to engage actively in discussions with relevant stakeholders and the international community to open a humanitarian corridor to enable support for Afghans at risk.
- **Recommendation K:** We recommend that the Committee call upon the Australian Government to acknowledge the value of informal grassroots movements by communicating and supporting individuals and movements on the ground, as well as process and work done to consult with women across Afghanistan prior to the Taliban takeover.
- **Recommendation L:** We recommend that the Committee call upon the Australian Government to suggest and promote to the international community the establishment of an international women's task force led by women, particularly Afghan women with experience in positions of power and responsibility, to coordinate international efforts around issues pertaining to women and women's rights within Afghanistan and connected to Afghanistan.
- **Recommendation M:** We encourage the Committee to call upon the Australian Government to utilise existing mechanisms at the international level and to call for the strengthening of such mechanisms so obviously necessary.

- **Recommendation N:** *We suggest that the Committee asks the Australian Government to underline the need for continued (and careful) use of sanctions by Australia and its allies.*
- **Recommendation O:** *We ask the Committee to call upon the Australian Government to ensure the continued evacuation of women at risk in line with its National Action Plan on Women, Peace and Security to ensure the safety of women including those who were trained by Australia and allied forces to work in the Afghan police and military forces.*

We hope that the Committee find these answers and recommendations useful and stand ready to provide any further support or elaboration upon any of the below should it be helpful to the Committee in the development of its Report.

**Her Excellency Ms Hasina Safi**  
**Ms Azadah Raz Mohammad**  
**Prof Felicity Gerry QC**