

February 7, 2022

Canadian Humanitarian Organizations' Submission to the Special Committee on Afghanistan

Action Against Hunger Canada; Canadian Foodgrains Bank; Canadian Red Cross; CARE Canada; Cooperation Canada; Human Concern International; Islamic Relief Canada; Presbyterian World Service & Development; Save the Children Canada; World Vision Canada

As Canadian humanitarian organizations, we are gravely concerned about the deteriorating humanitarian situation in Afghanistan. We commend the Special Committee on Afghanistan for undertaking a study to examine *Humanitarian Assistance for the Afghan People*.

Canadian humanitarian and development organizations have been working in Afghanistan for decades, working alongside local partners and the government to improve the lives of communities and families. This work was done with large amounts of support from the Canadian Government through international assistance funding and from everyday Canadians who donated millions of dollars to support efforts.

And despite conflict, Afghanistan's people had seen improvements in key areas including education, health and gender equality. From 2001-2017 enrollments in secondary education increased from 13% to 54% meaning 8.2 million more children were able to receive an education. Maternal mortality rates were more than halved from 2002-2018 and 142 more children survived past their first birthdays for every 1000 births. Women were also increasingly represented in the public service and politics. Around 27 percent of parliamentary seats were held by women, higher than the average for low-income countries.¹

Unfortunately, before the escalation of violence and mass displacement in 2021, the humanitarian situation for the people of Afghanistan was already dire, not only due to insecurity but also due to drought and the economic fallout from COVID-19. The situation in 2022 continues to deteriorate. Currently, more than half of the population of Afghanistan (18 million people) is dependent on life-saving and essential assistance. For children it is even worse, with two in three - or more than 13 million - children in Afghanistan in desperate need of life-saving aid.² That's an increase of more than a third since the start of 2021.³

¹<https://openknowledge.worldbank.org/bitstream/handle/10986/33209/Afghanistans-Development-Gains-Progress-and-Challenges.pdf?sequence=5&isAllowed=y>

²<https://openknowledge.worldbank.org/bitstream/handle/10986/33209/Afghanistans-Development-Gains-Progress-and-Challenges.pdf?sequence=5&isAllowed=y>

³<https://reliefweb.int/report/afghanistan/afghanistan-humanitarian-response-plan-2022-january-2022#:~:text=In%202022%2C%20humanitarian%20organisations%20have,%2Dsaving%20multi%2Dsectoral%20assistance.&text=People's%20survival%20depends%20on%20the,sufficient%20financial%20resources%20to%20deliver>

Initially those in need of aid were primarily internally displaced persons, children and women-headed households; now, almost all people are in need of support due to the severe economic downturn and the collapse of public services. Professionals and civil servants like teachers and government officials have not been paid since August 2021, are unemployed and are looking for daily wage jobs. We are also seeing needs escalate with the onset of the harsh winter season, for families cannot afford fuel and supplies to stay warm. At the same time, heavy rainfall and snowfall have been impeding access to people in need of urgent assistance. The drought combined with the spike in high food prices partly caused by the liquidity crisis are also driving an unprecedented food crisis.

As a consequence, hunger is rife in Afghanistan. In Afghanistan, 22.8 million people (47% of whom are women and girls) are projected to be facing acute food insecurity (IPC Phase 3 or above) by the start of 2022. This includes 8.7 million people in 'emergency' food insecurity (IPC Phase 4) – the highest absolute number in the world. Every province in Afghanistan is affected. 98% of families do not have enough to eat and 5 million children are on the brink of famine.

In response, the 2022 Humanitarian Response Plan (HRP) for Afghanistan was launched on January 22, 2022 with a total ask of US 4.4. Billion USD, making it the largest HRP in history⁴.

Canada has a crucial role to play to ensure Afghanistan's people receive the support they need through increased humanitarian assistance. Canada must urgently remove current Canadian legislative barriers to humanitarian assistance, which currently inhibits Canadian organizations from delivering aid in Afghanistan.

Recommendation 1: Canada immediately remove barriers to Canadian humanitarian assistance.

Canadian humanitarian organizations are deeply concerned by the impact of Canada's counter terrorism framework on humanitarian action and the humanitarian space, especially in Afghanistan where an urgent crisis is unfolding.

It is imperative that neutral, impartial and independent humanitarian assistance is not impeded by sanctions and counter-terrorism measures. Sanctions regimes and counter-terrorism measures can have negative impacts on those most in need of humanitarian protection and assistance and on the provision of neutral, impartial, independent humanitarian assistance that alleviates human suffering. It is the collective responsibility of the international community, including Canada, to ensure that there is no negative humanitarian consequence of any political decision or action including sanctions, on the people of Afghanistan and to enable humanitarian organizations to provide crucial life-saving assistance.

Current sanctions and domestic legislation arguably prohibit and most certainly discourage Canadian humanitarian organizations' operations. Specifically, Canada's Criminal Code

⁴<https://www.humanitarianresponse.info/en/operations/afghanistan/document/afghanistan-humanitarian-response-plan-2022>

(paragraph 83.03(b)) and related provisions make it a criminal offense to 'make available property or financial or other related services... knowing that... they will be used by or will benefit a terrorist group'. The initial interpretations provided by Global Affairs Canada indicated that Canadian organizations are thus arguably prohibited from using any Canadian funding (governmental or non-governmental) to directly or indirectly pay ordinary and incidental taxes linked to humanitarian work, including taxes on rent, salaries, vendors or imports in Afghanistan as the Taliban is perceived to be equivalent the de facto government. The Taliban as an entity is on the Anti-Terrorism Act's list of terrorist entities, and thus the view is that payment of taxes would benefit an organization classified as a terrorist entity by the Canadian government, in violation of Canadian criminal law.

Not paying taxes and not complying with other statutory obligations under NGO and other relevant laws is not an option. Non-payment of taxes would increase organizational risk, impede the ability to operate and carry out programs, and access required work permits, visas and documentation.

With regard to sanctions, the Regulations Implementing the United Nations Resolutions on Taliban, ISIL (Da'esh) and Al-Qaida (SOR/99-444), section 2, under the United Nations Act, prohibits providing any financial or related services to or for the benefit of the Taliban which is on the Anti-Terrorism Act's list of terrorist entities. While Canada's sanctions regulations (Regulations Implementing the United Nations Resolutions on Taliban, ISIL (Da'esh) and Al-Qaida (SOR/99-444) has a provision that permits organizations to request an exemption from the applicability of those sanctions, this exemption is not specifically concerning humanitarian action and does not mitigate the risk under other legal requirements, such as Canadian charities law and the Canadian Criminal code.

At this crucial moment, where Afghanistan is a country is on the verge of collapse with millions of lives at stake, we welcome the passing of UNSC Resolution 2615 (2021) which provides a humanitarian 'carve-out' for the UNSCR 1988 sanctions regime designating individual members of the Taliban. In the wake of the adoption of this resolution, institutional funders with similar laws have recently made exemptions and/or guidelines in order to get aid into Afghanistan, or have adopted a more pragmatic and flexible approach. The majority of the humanitarian programming funded by the US, the EU, Germany, and Australia has resumed.

This is not the case for Canada. Indeed, at this time, to our knowledge there are no exemptions from the Canadian government that would entirely eliminate risk for Canadian organizations to authorize the prohibited activities. Due to these current regulatory and legal barriers in Canada's Criminal Code, funding from Canada committed to Afghanistan programs – including the announcement of \$56 million in December 2021- is currently not being implemented by Canadian humanitarian organizations nor by local or national Afghan NGOs and vital humanitarian services are not being provided. This includes women-led organizations already facing a very difficult situation given their mandates and composition, and who are critical to reaching vulnerable populations, This is despite an enormous humanitarian imperative to intervene and an even deadlier crisis looming as winter continues.

We ask that Canada take the additional steps toward the domestic implementation of UNSC Resolution 2615 (2021), which would rescind some of the obstacles currently existing under Canadian law regarding the provision of humanitarian aid to Afghanistan.

RECOMMENDED ACTIONS FOR THE CONTINUATION OF CANADIAN HUMANITARIAN ASSISTANCE

1. Immediate:

Allow Canadian humanitarian organizations to meet their humanitarian imperative in Afghanistan without transferring the risk to them by:

- Removing exposure to criminal liability under the related provisions in the Canadian Criminal Code.
- Expressly and explicitly recognize the ‘carve outs’ provided for activities of neutral and impartial humanitarian action, including the provision of humanitarian goods and services, within the current Canadian sanctions regime in accordance with UNSC Resolution 2615 and in alignment with the rules of international humanitarian law safeguarding human life.
- Be more explicit with, and provide guidance to, humanitarian actors institutions on what is permissible within the current regulatory regimes, such as fundamental humanitarian aid including lifesaving health assistance, medical equipment, all relief items including food, non-food goods and services, cash and liquidity, payment of statutory obligations for NGOs to operate (including taxes), with a low risk of diversion to be instrumentalized or weaponized.

2. Long Term:

- Ensure that all legislation which implements sanctions as well as efforts to counter terrorism do not undermine the delivery of neutral, impartial humanitarian assistance.
- Ensure that all applicable domestic law allows for what is permitted under international law, including IHL. This includes the Criminal Code, the sanctions regime, the Special Economic Measures Act (SEMA) and any other related regulatory frameworks.

Principled humanitarian response aims to reach all people in need, regardless of gender, age, or other characteristics. Canada’s [Feminist International Assistance Policy \(FIAP\)](#) acknowledges that undertaking certain risks is fundamental in order to achieve its vision of meaningful social change, and therefore more responsive and accountable international assistance “also requires more efficient and effective funding mechanisms and approaches. We need to be willing to take responsible risks, with decisions based on evidence and learning.” Without this, the policy itself acknowledges that its objectives cannot be achieved.

Recommendation 2: Canada scale up its international assistance to Afghanistan and advocate for humanitarian access.

Continued support to Afghan citizens through humanitarian assistance and work to protect democratic and human rights, including for women, girls and minorities are indicated in the

mandate letter of the Minister of International Development. Canada has long invested significantly in Afghanistan, including recent commitments of CAD \$50 million in August 2021 and CAD \$56 million in December 2021 for humanitarian response. Canada should work to ensure increased commitments in 2022 reflect the drastically escalating needs. Leaving life-saving services without adequate resources will make this situation even more desperate and deadly. Canada must join other international donors to ensure the 2022 Humanitarian Response Plan is fully funded and immediately release flexible funding to NGOs present on the ground and ready to respond to urgent needs.

With the vision and objectives of Canada's [Feminist International Assistance Policy](#) (FIAP) being to eradicate poverty and build a more peaceful, more inclusive and more prosperous world, Canada has articulated a firm belief that promoting gender equality and empowering women and girls is the most effective approach to achieving this goal.

In the context of Afghanistan, the risks to the well-being, dignity and safety of women and girls grow daily. Afghanistan is ranked 156 out of 156 countries measured in the 2021 [Global Gender Gap report](#).⁵ Conflict has displaced more than half a million people in Afghanistan in 2021, and at least 80% of those displaced internally are women and children.⁶ Displacement, movement restrictions and financial pressures as a result of COVID-19 have increased gender-based violence risks, and most women have limited or no access to basic services. To ensure that all humanitarian interventions are needs-based and adapted to meet the distinct needs of people of all ages, abilities, and genders, adequate needs assessments must include women and girls, and not risk their being further marginalized. Donors should allocate resources for the conduct of multi-agency and country-wide gender analysis.

Canada must actively push for important gains made on gender equality to be preserved, to guarantee that women and girls can meaningfully participate in Afghan society. Canada must ensure that the safe and active participation of women in humanitarian action is protected and promoted, including as first responders to address the challenges that disproportionately affect them and their communities; that targeted interventions for gender equality and the empowerment of women and girls receives increased investments; and that GBV (gender based violence) prevention, response and risk mitigation programming is scaled-up.

The children of Afghanistan are facing a humanitarian crisis resulting from decades of conflict, climate change, drought, food insecurity, displacement, and COVID-19. They face starvation, malnutrition, water shortages and hunger/water driven diseases. They are vulnerable, displaced, and are at risk of violence and harm. The rights of girls and boys as equals are at risk, with girls' rights and access to education severely restricted. They are facing an acute hunger crisis, as well as severe health threats as health systems and support are limited or damaged in the current climate. The UN estimates that one million children are at risk of starvation if assistance is not

⁵ https://www3.weforum.org/docs/WEF_GGGR_2021.pdf

⁶ <https://www.unhcr.org/afghanistan-emergency.html>

urgently reaching them. Afghanistan's children are among the world's poorest and most vulnerable and they urgently need support.

The worsening humanitarian situation in Afghanistan is creating a deepening child protection crisis. Parents and families are increasingly relying on negative coping mechanisms such as child labour, child marriage and other forms of child exploitation. Girls are at huge risk of violence, abuse and exploitation due to the economic distress caused by COVID-19, conflict, and drought. Significant progress had been made on child marriage in Afghanistan, and gains must be protected before it is too late. In line with Canada's core commitment to the empowerment of women and girls, and specific commitments to invest in tackling gender-based violence including early forced child marriage, it is vital that Canada contribute to continue this progress. This can help break the inter-generational cycle of poverty and give girls and women opportunities to engage and participate fully in their society.

Building on the Charlevoix Declaration (from the 2019 G7 Summit), Canada must increase investment in quality education, and push to ensure all learners and teachers – including girls and women – feel and are safe to go to school, and are actively protected in returning to school. Significant budget shortfalls were already hampering even basic expenditures of teachers' salaries and maintenance of existing infrastructure. In particular, for all schools and universities to remain open for all children – girls and boys – qualified teachers – female and male – who regularly receive their salaries and are supported in their teaching, are urgently needed.

In summary, vital areas where Canada can make a difference with increased support include health, nutrition, child protection and education, with overarching considerations for gender equality and analysis.

Complementary to increased humanitarian assistance it is critical that Canada should push for all parties to facilitate rapid, safe, unimpeded humanitarian relief operations and ensure the protection of humanitarian workers so that humanitarian actors can reach populations in need. While possible in some provinces, the full participation of women humanitarian staff in the response remains limited, which risks leaving women and girls and marginalized people behind. Canada should support humanitarian actors to cover additional costs to ensure the safety of NGO staff, including women humanitarian staff (e.g. separate office space, separate travel, etc.)



