



Submission to the  
**Senate Standing Committee on Foreign Affairs, Defence and  
Trade's inquiry into Australia's engagement in Afghanistan**

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Submitted by  
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## **About Amnesty International**

Amnesty International is a global movement of 10 million people standing up for justice, freedom and equality. We work to free people unjustly jailed, bring torturers to justice and change oppressive laws. We shine a light on great wrongs by exposing the facts others try to suppress. We lobby governments, and the powerful to make sure they keep their promises and respect international law. Together, our voices challenge injustice and are powerful enough to change the world.

## 1. Summary

- 1.1 After the terrorist attacks against the United States on 11 September 2001, Australia joined the US-led International Coalition against Terrorism (the Coalition) by committing military assets and personnel to Coalition operations in Afghanistan.<sup>1</sup>
- 1.2 From 2001 to 2021, more than 26,000 Australian military personnel served in Afghanistan.<sup>2</sup>
- 1.3 On 15 April 2021 the Australian Government announced the Australian Defence Force (ADF) withdrawal from Afghanistan, stating

*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. This includes our diplomatic presence, development cooperation program, and continued people-to-people links, including through our training and scholarship programs. Australia remains committed to helping Afghanistan preserve the gains of the last 20 years, particularly for women and girls.*<sup>3</sup>
- 1.4 All ADF personnel had reportedly withdrawn from Afghanistan by mid-June 2021.
- 1.5 As Australia and the Coalition withdrew from Afghanistan, the Taliban rapidly recaptured much of the country, captured its capital Kabul on 15 August 2021, and overthrew the civilian government.
- 1.6 The 20-year war is estimated to have taken the lives of at least 47,245 civilians with many more injured, in addition to over 66,000 Afghan national military and police, 51,191 Taliban and other fighters, 72 journalists, and 444 aid workers.<sup>4</sup>
- 1.7 This submission outlines human rights issues related to Australia's engagement in the war in Afghanistan, and the human rights issues currently affecting Afghanistan due to the takeover by the Taliban.

## Recommendations

**Recommendation 1:** That the Australian Department of Defence delivers all recommendations of the Inspector-General of the Australian Defence Force Afghanistan Inquiry as soon as possible and delivers 6-monthly reports on their progress, and, post-implementation, annual reports on their success.

**Recommendation 2:** That the Australian government develops a permanent international crime mechanism resourced to provide effective access to justice for victims.

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<sup>1</sup> Nicole Brangwin and Ann Rann, 2010, 'Australia's military involvement in Afghanistan since 2001: a chronology', available at:

[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BN/1011/MilitaryInvolvementAfghanistan](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/1011/MilitaryInvolvementAfghanistan)

<sup>2</sup> Clare O'Neill, 2015, *The dichotomy of hope*, available at:

<https://web.archive.org/web/20150923173856/http://www.army.gov.au/Our-future/Blog/Articles/2015/04/Dichotomy-of-hope>

<sup>3</sup> Hon. Scott Morrison, Senator the Hon. M Payne, and Hon. Peter Dutton, 2021 *Australian troops to drawdown in Afghanistan*, available at:

<https://www.minister.defence.gov.au/minister/peter-dutton/media-releases/australian-troops-drawdown-afghanistan>

<sup>4</sup> Ellen Knickmeyer, 2021. 'Costs of the Afghanistan war, in lives and dollars', available at:

<https://apnews.com/article/middle-east-businessafghanistan-43d8f53b35e80ec18c130cd683e1a38f>

**Recommendation 3:** That the Australian government ensure appropriate compensation is made to all those in Afghanistan affected by breaches of human rights carried out by Australian forces, and compensation is not limited to cases of unlawful killings, and that compensation is also not limited to cases identified in the Australian Defence Force Afghanistan Inquiry Report.

**Recommendation 4:** That the Australian government include family representatives and survivors in the design and implementation of further reparation and provide a space for human rights and civil society organisations input into the process

**Recommendation 5:** That the Australian government consider all Afghan women and girls as prima facie refugees, on the grounds of high risk of gender-based persecution upon return to Afghanistan.

**Recommendation 6:** That all states party to the Rome Statute must cooperate, and press Afghanistan's government to cooperate with the International Criminal Court (ICC) and its investigation into war crimes and crimes against humanity, including crimes committed by the Taliban and affiliated forces.

**Recommendation 7:** That the Australian government suspend visa requirements and/or expediting humanitarian visas to at-risk groups – including those who worked with Australian forces, journalists, members of civil society, human rights defenders, in particular, women human rights defenders, and other women who worked in security, justice and judicial sectors, members of the LGBTQI community and members of minority ethnic and religious groups.

**Recommendation 8:** That the Australian government allocate at least 20,000 humanitarian places, in addition to the existing program, to Afghan nationals fleeing Afghanistan.

**Recommendation 9:** That the Australian government immediately reform the Community Sponsorship Programme, including by making it more affordable and in addition to the government's humanitarian intake, so that it is easier for people to sponsor refugees from countries such as Afghanistan.

**Recommendation 10:** That the Australian government provide certainty to those from Afghanistan already in Australia on temporary visas that they will be safety ensured safety and protection in Australia, and provide them with permanent protection visas.

**Recommendation 11:** That the Australian government continues to provide aid to Afghanistan and demand a commitment from the Taliban to uphold human rights treaties, ratified and binding upon Afghanistan.

**Recommendation 12:** That the Australian Government supports the United Nations Human Rights Council (HRC) to establish a fact-finding mission or similar independent investigative mechanism, with a multi-year mandate to:

1. Investigate all alleged violations and abuses of international human rights law, international humanitarian law, and other serious human rights violations and abuses, including any gendered dimensions of such violations and abuses, by all parties to the conflict in Afghanistan;
2. Contribute to efforts to bring all those suspected of criminal responsibility for crimes under international law to justice in fair trials before ordinary civilian courts and without recourse to death penalty, including by identifying those suspected of criminal responsibility, collecting and preserving evidence for future prosecutions, and making recommendations on necessary measures to end impunity and ensure accountability for serious crimes.
3. Make recommendations for concrete action to protect the rights of the people of Afghanistan, to ensure access to justice, truth and reparations for victims and survivors, and to prevent further atrocities.

4. Report regularly, including inter-sessionally, to the HRC, as well as to the General Assembly, the UNSC, and other relevant UN organs and bodies

**Recommendation 13:** That the Australian government urges the President of the United States of America to drop the charges against Julian Assange who contributed to publishing evidence of war crimes in Afghanistan.

**Recommendation 14:** That the Australian government respond to the Senate Standing Committee on the Environment and Communications Inquiry into Press Freedom as soon as possible.

**Recommendation 15:** That the Australian government enshrine the principle of freedom of the press in legislation, and, subject to reasonable and proportionate limits, enshrine the right to freedom of opinion and expression contained in Article 19 of the ICCPR.

**Recommendation 16:** That the Australian government urges the President of the United States of America to close Guantanamo Bay.

## 2. International Human Rights Framework

- 2.1 International human rights law, including civil, cultural, economic, political and social rights, applies both in peacetime and during armed conflict and is legally binding on states, their armed forces and other agents. Key treaties include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC).<sup>5</sup>
- 2.2 The International Court of Justice, as well as the UN Human Rights Committee, has affirmed that international human rights law applies in times of armed conflict as well as peacetime.<sup>6</sup>
- 2.3 Of particular relevance to this submission are Afghanistan and Australia's international human rights law obligations related to the right to health,<sup>7</sup> the rights to equality and non-discrimination for women and girls, the prohibition of torture and other ill-treatment, the right to liberty and security of person,<sup>8</sup> and the right to seek refuge.<sup>9</sup>
- 2.4 Armed conflicts are governed principally by international humanitarian law, which is also known as the laws of war.
- 2.5 International humanitarian law provides fundamental guarantees for civilians as well as fighters or combatants who are captured, injured or otherwise rendered unable to fight. Between them, Common Article 3 of the 1949 Geneva Conventions and customary international humanitarian law include the following rules: murder (for example, the killing of detainees) is prohibited; humane treatment is required; discrimination in the application of the protections of international humanitarian law is prohibited; torture, cruel or inhuman treatment and outrages on personal dignity – particularly humiliating and degrading treatment – are prohibited, as are enforced disappearances, the taking of hostages, and arbitrary detention. No one may be convicted or sentenced except pursuant to a fair trial affording all essential

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<sup>5</sup> Amnesty International, 2017, *Human Slaughterhouse: Mass hangings and extermination at Saydnaya Prison, Syria*, p. 41

<sup>6</sup> United Nations Office of the High Commissioner for Human Rights, 2011, *International legal protections of human rights in armed conflict*, p. 93

<sup>7</sup> ICESCR, Article 12

<sup>8</sup> ICCPR, Articles 2, 6, 7, 9, 10, 16 and 26

<sup>9</sup> Convention and Protocol related to the protection of refugees

judicial guarantees. Depending on the particular rule in question, many or all acts that violate these rules will also constitute war crimes<sup>10</sup>

### 3. Human rights violations during Australia's engagement in Afghanistan

- 3.1 Human rights in Afghanistan have been threatened, and violated, since Australia began its engagement there in 2001.

#### *Report of the Inspector-General of the Australian Defence Force Afghanistan Inquiry*

- 3.2 Amnesty International welcomed the release of the 2020 report of the Inspector-General of the Australian Defence Force Afghanistan Inquiry, led by Justice Paul Brereton, into alleged war crimes by Australian special forces in Afghanistan.
- 3.3 The report found evidence of grave human rights violations by Australian special forces soldiers, including the alleged executions of 39 Afghan civilians and prisoners, deliberate cover-ups and abuse. It made 143 recommendations, including that 53 incidents involving 19 soldiers be referred to the Office of the Special Investigator for criminal investigation, and that the families of the victims be compensated. It also made numerous recommendations aimed at transforming the "warrior-hero" culture and accountability mechanisms within the SAS, including strengthening reporting mechanisms and protections for whistleblowers.
- 3.4 The Australian Department of Defence accepted all findings of the report, and committed to addressing all recommendations. In August 2021 it launched the Afghanistan Inquiry Reform Plan that set out the Defence strategy for responding to the Inquiry and established the Afghanistan Inquiry Reform Program to coordinate and drive this work.
- 3.5 The Afghanistan Inquiry Reform Plan is planned to be delivered by the end of 2025.

**Recommendation 1:** That the Australian Department of Defence delivers all recommendations of the Inspector-General of the Australian Defence Force Afghanistan Inquiry as soon as possible and delivers 6-monthly reports on their progress, and, post-implementation, annual reports on their success.

- 3.6 In the lead up to the release of the Inspector-General of the Australian Defence Force Afghanistan Inquiry Report, the Government announced that a separate body, acting under the powers of the Australian Federal Police Commissioner will be led by an eminent person with experience in the criminal justice system and in international law: the Office of the Special Investigator (OSI).<sup>11</sup>
- 3.7 It was announced that the OSI would be staffed with experienced investigators, legal counsel and support personnel. The Government recognised that international cooperation is necessary because of the complexity of these types of investigations. The OSI will investigate allegations of crimes, gather evidence and where appropriate refer briefs for consideration of prosecution to the Commonwealth Director of Public Prosecution.

<sup>10</sup> ICRC Customary International Humanitarian Law Study, Rule 156, pp. 590-603

<sup>11</sup> Hon. Scott Morrison MP, 2020, *Statement on IGADF Inquiry*, available at: <https://www.pm.gov.au/media/statement-igadf-inquiry>

3.8 The functions of the OSI are to: review the findings of the Inspector-General of the Australian Defence Force Afghanistan Inquiry; work with the Australian Federal Police (AFP) to investigate the commission of criminal offences under Australian law arising from or related to any breaches of the Laws of Armed Conflict by members of the Australian Defence Force in Afghanistan from 2005 to 2016; and to develop briefs of evidence in respect of any offences that are established, for referral to the Commonwealth Director of Public Prosecutions.<sup>12</sup>

3.9 Advocates have said:

*... the OSI should become a permanent mainstay of Australia's justice landscape. This is an important opportunity to consolidate the build up of this body's expertise in investigating these crimes. This should also be the time to develop a national strategy and program for Australia to join the global fight to end the impunity enjoyed by perpetrators of atrocity crimes, and assist victims and survivor communities in their struggle for justice and accountability.*<sup>13</sup>

**Recommendation 2:** That the Australian government develops a permanent international crime mechanism resourced to provide effective access to justice for victims.

### *Reparations*

3.10 International human rights law stipulates that reparation should be provided to victims of gross violations of international human rights law or serious violations of international humanitarian law and that such reparation be adequate, effective and prompt.<sup>14</sup>

3.11 The Department of Defence Tactical Payment Scheme was legislated on 1 July 2009, under sections 123H and 123J of the Defence Act 1903. The scheme was introduced in 2009–10 to provide a means for making expeditious non-liability payments resulting from military actions by deployed forces.<sup>15</sup>

3.12 Over \$200,000 has been paid to Afghan civilians under the Tactical Payment Scheme.<sup>16</sup>

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<sup>12</sup> Australian Government, 2020, *Order to Establish the Office of the Special Investigator as an Executive Agency*, available at: <https://www.legislation.gov.au/Details/C2020G01030>

<sup>13</sup> Australian Centre for International Justice, 2020, *The establishment of the Office of the Special Investigator is welcome and should be made permanent*, available at: <https://acij.org.au/media-release-the-establishment-of-the-office-of-the-special-investigator-is-welcome-and-should-be-made-permanent/>

<sup>14</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, GA Res 60/147, UN Doc A/RES/60/147

<sup>15</sup> Department of Defence, 2020, *Annual Report 2019-20*, ch. 4, available at: <https://www.transparency.gov.au/annual-reports/department-defence/reporting-year/2019-20-30>

<sup>16</sup> The Guardian, 2020, 'Calls for Australia to establish new redress scheme for Afghan victims of alleged war crimes by special forces', available at: <https://www.theguardian.com/australia-news/2020/nov/18/calls-for-australia-to-establish-new-redress-scheme-for-afghan-victims-of-alleged-war-crimes-by-special-forces>



- 3.13 Advocates have criticised the Tactical Payment Scheme, stating that “previous attempts at compensation to victims in Afghanistan were made “arbitrarily and hastily and they would have been inadequate”.<sup>17</sup>
- 3.14 The Inspector-General of the Australian Defence Force Afghanistan Inquiry recommended that in cases where it has found that there is credible information that an identified or identifiable Afghan national has been unlawfully killed, Australia should now compensate the family of that person.<sup>18</sup>
- 3.15 The Inspector-General of the Australian Defence Force Afghanistan Inquiry does not recommend compensation for all violations of international law as outlined in its report.<sup>19</sup>

**Recommendation 3:** That the Australian government ensure that compensation is not limited to cases of unlawful killings, and that compensation is not limited to cases identified in the Australian Defence Force Afghanistan Inquiry Report.

- 3.16 Amnesty International also supports the calls from advocates for the Australian government to build on its promises of reparations by consulting with survivors and their communities about other forms of reparation that could be provided. This could potentially include, for example, assistance with the provision of psychosocial support for survivors as well as contributions towards education funds and collaboration on the establishment of memorials.<sup>20</sup>

**Recommendation 4:** That the Australian government include family representatives and survivors in the design and implementation of further reparation and provide a space for human rights and civil society organisations input into the process

#### 4. The human rights situation in Afghanistan since the fall of Kabul

- 4.1 Afghanistan entered a new chapter on 15 August 2021, when the Taliban captured its capital Kabul, and overthrew the civilian government.<sup>21</sup> With President Ashraf Ghani fleeing hours after the Taliban entered Kabul, the city effectively fell under the rule of the Taliban armed group that 20 years before had been ousted by the United States and its allies.<sup>22</sup>
- 4.2 Amnesty International, the International Federation for Human Rights and the World Organisation Against Torture released a briefing, *The fate of thousands hanging in the*

<sup>17</sup> *Ibid.*

<sup>18</sup> Inspector-General of the Australian Defence Force, 2020, *Inspector-General of the Australian Defence Force Afghanistan Inquiry Report*, p. 173

<sup>19</sup> *Ibid.* p. 96

<sup>20</sup> Australian Centre for International Justice, 2021, *Letter on full, effective and prompt reparation to Afghan victims*, available at: <https://acij.org.au/joint-submission-letter-on-full-effective-and-prompt-reparation-to-afghan-victims/>

<sup>21</sup> AP News, 2021. ‘Taliban sweep into Afghan capital after government collapses’, available at: <https://apnews.com/article/afghanistan-taliban-kabul-bagram-e1ed33fe0c665ee67ba132c51b8e32a5>

<sup>22</sup> The Hindu, 2021, ‘Afghan President Ghani flees Kabul in helicopter stuffed with cash: reports’, <https://www.thehindu.com/news/international/afghan-president-ghani-flees-kabul-in-helicopter-stuffed-with-cash-reports/article35940674.ece>

*balance: Afghanistan's fall into the hands of the Taliban*,<sup>23</sup> in September 2021 that documents incidents of human rights violations that have taken place in Afghanistan since the takeover by the Taliban on 15 August.

- 4.3 This submission will summarise some of these human rights violations as recorded and encourages the Committee to accept the above report as part of this submission.

### *Women's rights*

- 4.4 Under pressure from journalists and the broader international community since their takeover of Afghanistan on 15 August, Taliban leaders and spokespersons have repeatedly addressed the issue of women's rights, and to an extent, have attempted to provide reassurances that their policies in that regard have changed since they were in control in the late 1990s. However, despite promises that women's rights would be respected under the Sharia law, the space for women's rights has already begun to rapidly shrink, and the hard-won gains of the past two decades have started to dissipate.<sup>24</sup>
- 4.5 A key concern is whether the Taliban will allow women to work, given that from 1996 to 2001, except for female medical providers and widows, women were forbidden from working outside of their homes.<sup>25</sup> Worrying reports about women being barred from their workplaces or sent home have surfaced from different parts of the country, and it is not yet known if these were isolated incidents or are part of a wider pattern. For example: nine women were ordered to leave their offices at Azizi Bank in Kandahar; they were escorted home and told that they would be replaced by their male relatives. And, in Herat, soon after the Taliban claimed the city on 12 August, many women were barred from their workplace, including some from their jobs at the Industrial Park, where 300 factories producing food and construction supplies have employed many local women in recent years.<sup>26</sup>
- 4.6 The Taliban announced their 'caretaker government', without a single woman in a cabinet post. This is a regression from the previous cabinet and undermines women's rights to political participation. The Women's Affairs Ministry no longer exists in the 'government' appointed by the Taliban, despite the important role it played in improving women's rights in Afghanistan in previous years.<sup>27</sup>
- 4.7 Women who were in government prior to the Taliban's takeover have by and large fled the country; however, there have already been several instances of reprisals against their employees, colleagues, and family members who have stayed in Afghanistan.<sup>28</sup> For example: Zarifa Ghafari, the female mayor of Maidan Shar in Wardak Province, told the BBC that the Taliban had confiscated her car and beat up her guards.<sup>29</sup> Other examples are outlined in the report.

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<sup>23</sup> Amnesty International, 2021, *The fate of thousands hanging in the balance: Afghanistan's fall into the hands of the Taliban*, available at: <https://www.amnesty.org/en/documents/asa11/4727/2021/en/>

<sup>24</sup> *Ibid.*, p. 7

<sup>25</sup> Windy Brown & Laura Grenfell, 2003, *The International Crime of Gender-based Persecution and the Taliban*, 4 MELB. J. INT'L L., 347, <http://classic.austlii.edu.au/au/journals/MelbJIL/2003/1.html#Heading49>

<sup>26</sup> Amnesty International, 2021, *The fate of thousands hanging in the balance: Afghanistan's fall into the hands of the Taliban*, p. 8

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*, p. 9

<sup>29</sup> BBC, 2021. "Amid violent reprisals, Afghans fear the Taliban's 'amnesty' was empty", available at: <https://www.bbc.com/news/world-asia-58395954>

4.8 Despite the myriad threats now presented to women's rights, women across the country have been holding protests to demand that the Taliban respect women's rights and implement a more inclusive government that reflects the country's diversity. While some protests were allowed to continue peacefully, some were violently repressed by the Taliban using force that was not necessary or proportionate in the circumstances. Protests were violently dispersed using unlawful and disproportionate force against peaceful protestors by the Taliban in several cities including the capital Kabul where they beat protestors with batons, used tear gas, threatened them with guns and aerial firings.<sup>30</sup> Further examples are outlined in the report.

**Recommendation 5:** That the Australian government consider all Afghan women and girls as prima facie refugees, on the grounds of high risk of gender-based persecution upon return to Afghanistan.

### *LGBTQIA+ rights*

4.9 LGBTI people and groups are at high risk of being harmed in Afghanistan under the Taliban rule. Amnesty International is concerned that under the strict interpretation of Sharia law by the Taliban, anyone accused of same sex relations could face the death sentence or extra judicial executions. In September, one person had reported to the media that his boyfriend was beheaded by the Taliban after they came into Kabul.<sup>31</sup>

### *Human rights defenders*

4.10 Systematic death threats, attacks, and killings of human rights defenders have been rampant across Afghanistan even prior to the withdrawal of US troops. This includes those working in civil society organisations or NGOs - that is, anyone who individually or with others act to promote or protect human rights in a peaceful manner. Since the capture of Kabul by the Taliban on 15 August 2021, the lives of thousands of women and men who had risked their safety to promote and defend human rights, gender equality, rule of law, and democratic freedoms in their country are now, more than ever, hanging by a thread.<sup>32</sup>

4.11 It is now almost impossible to carry out any human rights work in Afghanistan. Attacks on human rights defenders are on the rise. Since 15 August, the Taliban and armed groups have engaged in large-scale door-to-door searches, forcing human rights defenders into hiding, and moving clandestinely from one place to another.<sup>33</sup> Details of threats against human rights defenders are provided in the report.

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<sup>30</sup> Amnesty International, 2021, *The fate of thousands hanging in the balance: Afghanistan's fall into the hands of the Taliban*, p. 10

<sup>31</sup> ABC News, 2021, 'LGBT Afghans are on the run, afraid they could be stoned to death under Taliban law', <https://www.abc.net.au/news/2021-09-02/afghans-lgbt-community-face-stoning-under-taliban-law/100412330>

<sup>32</sup> Amnesty International, 2021, *The fate of thousands hanging in the balance: Afghanistan's fall into the hands of the Taliban*, p. 12

<sup>33</sup> BBC, 2021. 'Afghanistan: Taliban carrying out door-to-door manhunt, report says', <https://www.bbc.com/news/world-asia-58271797>

### *Extrajudicial killings and targeting ethnic and religious minorities*

- 4.12 Amnesty International has documented and verified instances of the Taliban targeting ethnic and religious minorities, and carrying out extrajudicial killings.
- 4.13 An Amnesty International investigation found that Taliban forces unlawfully killed 13 ethnic Hazaras, including a 17-year-old girl, in Afghanistan's Daykundi province after members of the security forces of the former government surrendered.<sup>34</sup>

### *Freedom of expression, dissent and journalists*

- 4.14 Since August 15, journalists have been beaten, obstructed from carrying out their duties, and their homes searched. The report outlines several incidents of attacks on freedom of expression, dissent and journalists.<sup>35</sup>

**Recommendation 6:** That all states party to the Rome Statute must cooperate, and press Afghanistan's government to cooperate with the International Criminal Court (ICC) and its investigation into war crimes and crimes against humanity, including crimes committed by the Taliban and affiliated forces.

### *Obstacles to fleeing the country*

- 4.15 Afghan people have been prevented from fleeing and seeking asylum abroad either because the Taliban prevented people from accessing Kabul airport, or because land borders have been closed. Some men and women have even been tortured or ill-treated when they attempted to leave the country.<sup>36</sup>

### *Refugees and the right to asylum*

- 4.16 The right to seek and enjoy asylum from persecution in other countries is enshrined in international law.<sup>37</sup>
- 4.17 Countries are actively trying to stop Afghan people seek refuge. Iranian authorities announced that they will deny entry to Afghan refugees. Borders with Tajikistan, and Turkmenistan have been closed, and Uzbekistan closed its main crossing point with Afghanistan. Even though Tajikistan announced it will accept thousands of Afghan asylum seekers, it too has kept its border closed. Turkmenistan has not allowed Afghan asylum seekers in since the Taliban took control of districts on the Afghanistan-Turkmenistan border in July 2021. New construction is visible along the Turkey border with Iran which will hinder

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<sup>34</sup> Amnesty International, 2021, '13 Hazara killed by Taliban fighters in Daykundi province – new investigation', available at: <https://www.amnesty.org.au/afghanistan-13-hazara-killed-by-taliban-fighters-in-daykundi-province/>

<sup>35</sup> Amnesty International, 2021, *The fate of thousands hanging in the balance: Afghanistan's fall into the hands of the Taliban*, p. 15-19

<sup>36</sup> *Ibid.*, p. 21

<sup>37</sup> Universal Declaration of Human Rights, Article 14; Convention relating to the status of refugees, Protocol relating to the status of refugees.

the crossing of Afghan refugees coming from Iran. At the Poland-Belarus border, Afghan nationals are among refugees who are at risk of push back by Polish authorities.<sup>38</sup>

- 4.18 An additional obstacle for Afghan people seeking to flee abroad seems to be the lack of passports. According to the Afghan researcher who spoke to Amnesty International, Afghan authorities currently do not deliver passports and Afghan people are not allowed to cross borders without passports.<sup>39</sup>

**Recommendation 7:** That the Australian government suspend visa requirements and/or expediting humanitarian visas to at-risk groups – including those who worked with Australian forces, journalists, members of civil society, human rights defenders, in particular, women human rights defenders, and other women who worked in security, justice and judicial sectors, and members of minority ethnic and religious groups.

- 4.19 Australia has announced that an initial 3,000 humanitarian places will be allocated to Afghan nationals within Australia's 13,750 annual program.<sup>40</sup> Amnesty International is deeply concerned that this does not meet the need presented by the unfolding crisis in Afghanistan.
- 4.20 While vague indications have been made that 3000 places will be the "floor", there is still no confirmation of what the total commitment will be. When the Syrian crisis escalated in 2015, Australia committed to a humanitarian intake of 12,000 refugees. Canada recently committed to taking 40,000 refugees from Afghanistan and the UK to 20,000.<sup>41</sup>
- 4.21 If Australia's Community Sponsorship Programme was better, it would be playing an important role in bringing fleeing Afghans to Australia right now. However, it is expensive, cumbersome and it takes away places from the humanitarian intake. A fair and just community sponsorship programme would not take places away from others, limit costs, provide adequate support and services, and allow community, family and businesses to act as sponsors.<sup>42</sup>

**Recommendation 8:** That the Australian government allocate at least 20,000 humanitarian places, in addition to the existing program, to Afghan nationals fleeing Afghanistan.

**Recommendation 9:** That the Australian government immediately reform the Community Sponsorship Programme, including by making it more affordable and in addition to the

<sup>38</sup> Amnesty International, 2021, *The fate of thousands hanging in the balance: Afghanistan's fall into the hands of the Taliban*, p. 24

<sup>39</sup> *Ibid.*, p. 25

<sup>40</sup> Hon. Alex Hawke MP, 2021, '3000 humanitarian places for Afghanistan', available at:

<https://minister.homeaffairs.gov.au/AlexHawke/Pages/3000-humanitarian-places-for-afghanistan.aspx>

<sup>41</sup> Amnesty International Australia, 2021, 'Australia still silent as rest of the world comes together to provide further protection for people fleeing afghanistan', available at:

<https://www.amnesty.org.au/australia-still-silent-as-rest-of-the-world-comes-together-to-provide-further-protection-for-people-fleeing-afghanistan/>

<sup>42</sup> Amnesty International Australia, 2021, 'Review of Australia's Community Sponsorship Programme', available at:

[https://www.amnesty.org.au/wp-content/uploads/2020/11/Amnesty-submission\\_Community-Support-Program-review\\_Oct-2020.pdf](https://www.amnesty.org.au/wp-content/uploads/2020/11/Amnesty-submission_Community-Support-Program-review_Oct-2020.pdf)

government's humanitarian intake, so that it is easier for people to sponsor refugees from countries such as Afghanistan.

**Recommendation 10:** That the Australian government provide certainty to those from Afghanistan already in Australia on temporary visas that they will be offered ongoing safety and protection in Australia, and provide them with permanent protection visas.

### *Humanitarian aid*

4.22 Australia will contribute \$100 million in humanitarian assistance for Afghanistan. This includes \$65 million in immediate life-saving assistance and support to displaced people and refugees from Afghanistan. Australia has also committed at least \$35 million in ongoing humanitarian assistance to 2024.<sup>43</sup>

**Recommendation 11:** That the Australian government continues to provide aid to Afghanistan and demand a commitment from the Taliban to uphold human rights treaties, ratified and binding upon Afghanistan.

### *United Nations*

4.23 The United Nations Human Rights Council held a special session on the serious human rights concerns and situation in Afghanistan on 24 August 2021. While the session called on the Taliban not to resort to violence against civilians, abide by international law, grant access for humanitarian actors and facilitate and allow the safe and orderly departure of those who wish to leave the country Amnesty International was deeply disappointed by the outcome of the Special Session. This initial failure must be remedied at the 48th session of the Human Rights Council session.

**Recommendation 12:** That the Australia supports the United Nations Human Rights Council (HRC) to establish a fact-finding mission or similar independent investigative mechanism, with a multi-year mandate to:

1. Investigate all alleged violations and abuses of international human rights law, international humanitarian law, and other serious human rights violations and abuses, including any gendered dimensions of such violations and abuses, by all parties to the conflict in Afghanistan;
2. Contribute to efforts to bring all those suspected of criminal responsibility for crimes under international law to justice in fair trials before ordinary civilian courts and without recourse to death penalty, including by identifying those suspected of criminal responsibility, collecting and

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<sup>43</sup> Senator the Hon. Marise Payne, 2021, *Speech: UN High-level Ministerial meeting on the Humanitarian situation in Afghanistan*, available at: <https://www.foreignminister.gov.au/minister/marise-payne/speech/un-high-level-ministerial-meeting-humanitarian-situation-afghanistan>



preserving evidence for future prosecutions, and making recommendations on necessary measures to end impunity and ensure accountability for serious crimes.

3. Make recommendations for concrete action to protect the rights of the people of Afghanistan, to ensure access to justice, truth and reparations for victims and survivors, and to prevent further atrocities.

4. Report regularly, including inter-sessionally, to the HRC, as well as to the General Assembly, the UNSC, and other relevant UN organs and bodies.

## 5. Consequent human rights issues due to engagement in Afghanistan

### *Development of human rights issues in other countries*

- 5.1 It has been asserted that Australia's engagement in Afghanistan strengthened its diplomatic ties to the United States of America in a way that diverted attention away from "China's rise over the critical years when there was still time to respond to it effectively".<sup>44</sup>
- 5.2 White states that prior to the war in Afghanistan, "China's economy was only one-tenth the size of America's. Its share of world trade was just a fraction of what it is today. It could only dream of challenging America's domination of key new technologies. And its air and naval forces posed no threat at all to America's military supremacy in the Western Pacific. All that has now changed. Today America confronts the most formidable rival it has ever faced, in a contest over which of them will be the dominant power in the world's most dynamic region".
- 5.3 China's human rights record is worsening. 2020 was marked by harsh crackdowns on human rights defenders and people perceived to be dissidents, as well as the systematic repression of ethnic minorities. The beginning of the year saw the start of the COVID-19 outbreak in Wuhan, which killed more than 4,600 people in China. People demanded freedom of expression and transparency after authorities reprimanded health professionals for warning about the virus. At the UN, China was strongly criticized and urged to allow immediate, meaningful and unfettered access to Xinjiang. Stringent restrictions on freedom of expression continued unabated. Foreign journalists faced detention and expulsion, as well as systematic delays to and refusals of visa renewals. Chinese and other tech firms operating outside China blocked what the government deemed politically sensitive content, extending its censorship standards internationally. China enacted its first Civil Code, which received thousands of submissions by the public calling for the legalisation of same-sex marriage. Hong Kong's National Security Law led to a clampdown on freedom of expression.<sup>45</sup>
- 5.4 China's increased power has resulted in less of an ability for other countries, including Australia, to call it out on its human rights record. Concerningly, as China's influence has grown, they have increasingly challenged human rights norms at the Human Rights Council,

<sup>44</sup> The Monthly, 2021, *War of Error*, available at:

<https://www.themonthly.com.au/issue/2021/october/1633010400/hugh-white/war-error#mtr>

<sup>45</sup> Amnesty International, 2021, 'China', available at:

<https://www.amnesty.org/en/location/asia-and-the-pacific/east-asia/china/report-china/>

opposing the universality of human rights, characterising human rights as "Western values," and seeking to replace accountability for human rights violations with a commitment to dialogue. This effort, aimed at silencing criticism of China's human rights abuses on the world stage, presents a real risk to the victims of human rights abuses, in China and around the world.<sup>46</sup>

### *Freedom of expression: Julian Assange*

- 5.5 Julian Assange is an Australian who founded WikiLeaks, a non-profit organisation that publishes leaked materials from a wide range of sources. Assange rose to prominence in 2010 when WikiLeaks published a series of leaks by Chelsea Manning, a former US Army soldier.
- 5.6 In the US, Assange faces 18 charges, 17 of them under the Espionage Act; and one under the Computer Fraud and Abuse Act. The US is seeking his extradition from the UK. If extradited, he would also face a real risk of serious human rights violations due to detention conditions that could amount to torture or other ill-treatment, including prolonged solitary confinement.<sup>47</sup>
- 5.7 The charges against Julian Assange stem directly from the publication of disclosed documents - including those that expose possible war crimes committed by the US military and coalition forces in Afghanistan - as part of his work with Wikileaks. This activity, in and of itself, should not be punishable and mirrors conduct that investigative journalists undertake regularly in their professional capacity.<sup>48</sup>
- 5.8 Amnesty International's Europe Director said: "The US government's unrelenting pursuit of Julian Assange for having published disclosed documents that included possible war crimes committed by the US military is nothing short of a full-scale assault on the right to freedom of expression. The potential chilling effect on journalists and others who expose official wrongdoing by publishing information disclosed to them by credible sources could have a profound impact on the public's right to know what their government is up to. All charges against Assange for such activities must be dropped."
- 5.9 More than 107,300 people in Australia, and over 400,000 people internationally, have signed the Amnesty International petition to call on the US to drop the charges.

**Recommendation 13:** That the Australian government urges the President of the United States of America to drop the charges against Julian Assange.

### *Freedom of the press*

- 5.10 In July 2020, the Australian Federal Police referred a brief of evidence to the Commonwealth Director of Public Prosecutions (CDPP) to consider laying charges against journalist Dan

<sup>46</sup>Amnesty International/urgewald, 2021, 'What China Says', available at:

<https://whatchinasays.org/wp-content/uploads/2021/09/WhatChinaSays.pdf>

<sup>47</sup> Amnesty International Australia, 2021, 'Morrison, call on trump and Biden to drop Assange's charges', available at:

<https://www.amnesty.org.au/wp-content/uploads/2021/01/20210106-Klintworth-to-Morrison-Julian-Assange.pdf>

<sup>48</sup> Amnesty International Australia, 2020, 'Drop charges and halt extradition of Julian Assange', available at:

<https://www.amnesty.org.au/us-uk-drop-charges-and-halt-extradition-of-julian-assange/>



Oakes, for his reporting of allegations of war crimes by Australian special forces in Afghanistan.<sup>49</sup>

- 5.11 Oakes was not prosecuted, despite “a reasonable chance of securing a conviction ... over the leaked classified documents that he used to form the basis of his reporting”, due to there being “no public interest in pursuing a prosecution”.<sup>50</sup>
- 5.12 The Oakes case, and the execution of “two search warrants at the home and offices of several well-known and widely respected Australian journalists ... News Corp Australia journalist (Ms Annika Smethurst) and the second at the Australian Broadcasting Corporation (ABC) head office in Sydney” led to the referral of an inquiry into press freedom to the Senate Standing Committee on the Environment and Communications.<sup>51</sup>
- 5.13 Amnesty International notes that the Australian government has not responded to the Senate inquiry's report.
- 5.14 Amnesty International notes that the Senate inquiry found that there is no express protection of the freedom of the press in Australia.<sup>52</sup>

**Recommendation 14:** That the Australian government respond to the Senate Standing Committee on the Environment and Communications Inquiry into Press Freedom as soon as possible.

**Recommendation 15:** That the Australian government enshrine the principle of freedom of the press in legislation, and, subject to reasonable and proportionate limits, enshrine the right to freedom of opinion and expression contained in Article 19 of the ICCPR.

### *Guantanamo Bay*

- 5.15 Guantánamo Bay was established by the United States in January 2002 as a place for the U.S. authorities to hold people perceived to be ‘enemy combatants’ in the wars in Afghanistan and Iraq. The first detainees were transferred to the prison camp, on 11 January 2002. Guantánamo is based in Cuba, as the US government sought to hold detainees in a place neither US nor international law applied. The facilities at Guantánamo have become emblematic of the gross human rights abuses perpetrated by the U.S. government in the name of terrorism.<sup>53</sup>
- 5.16 The detention facility at Guantánamo continues to hold 40 Muslim men indefinitely, most without charge, and many of whom were tortured by the US government. None has received

<sup>49</sup> Canberra Times, 2020, ‘Afghan Files: AFP refers allegations against ABC's Dan Oakes to prosecutors’, available at: <https://www.canberratimes.com.au/story/6817299/disappointing-and-disturbing-afp-refers-allegations-against-abc-journalist-to-prosecutors/>

<sup>50</sup> ABC News, 2020, ‘ABC journalist Dan Oakes will not be prosecuted over Afghan Files leak’, available at: <https://www.abc.net.au/news/2020-10-15/dan-oakes-afghan-files-prosecution-decision/12771304>

<sup>51</sup> Environment and Communications Reference Committee, 2021, *Freedom of the press*, p. 1, available at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/PressFreedom/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/PressFreedom/Report)

<sup>52</sup> *Ibid.*, p.123

<sup>53</sup> Amnesty International Australia, 2017, ‘Guantanamo Bay: 15 years of injustice’, available at: <https://www.amnesty.org.au/guantanamo-bay-15-years-injustice/>

a fair trial. The treatment and imprisonment in Guantánamo are glaring human rights violations that the Biden administration must end now.

**Recommendation 16:** That the Australian government urges the President of the United States of America to close Guantanamo Bay.