



Committee Secretary  
Foreign Affairs, Defence and Trade References Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

BY ELECTRONIC SUBMISSION

8 October 2021

Dear Committee Secretary,

**Committee inquiry into Australia's engagement in Afghanistan**

As members of the Kaldor Centre for International Refugee Law at UNSW, we welcome the opportunity to make this submission to the Committee's inquiry.

The Kaldor Centre is the world's first and only research centre dedicated to the study of international refugee law. It was established in October 2013 to undertake rigorous research to support the development of legal, sustainable, and humane solutions for displaced people, and to contribute to public policy involving the most pressing displacement issues in Australia, the Asia-Pacific region and the world.

Our submission responds to the Committee's terms of reference by considering two complementary measures through which the Australian Government can respond to recent displacement within and from Afghanistan: a special humanitarian intake, and a pathway for safe and orderly departure.

If we can provide any further information, please do not hesitate to contact us at [kaldorcentre@unsw.edu.au](mailto:kaldorcentre@unsw.edu.au).

Yours faithfully

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## **Australia's response to displacement from and within Afghanistan**

The Taliban takeover of Afghanistan in August 2021 has exacerbated the displacement of people from and within Afghanistan. The UN refugee agency, UNHCR, estimates that more than half a million Afghans may be forced to flee into neighbouring countries by the end of 2021.<sup>1</sup> Around 630,000 people have been displaced within the country since the beginning of 2021, adding to a total of more than 3.5 million internally displaced.<sup>2</sup>

There are currently more than 4,000 Afghans who have already sought protection in Australia and are living in this country on temporary visas, faced with the threat of deportation and prevented by the terms of these visas from reuniting with family members. There are also around 55 Afghan nationals held in closed immigration detention, some of whom, as the Australian Human Rights Commission has noted, 'have faced extensive periods of detention'.<sup>3</sup> While the Australian Government has announced that no Afghan visa holder who is currently in Australia will be returned to Afghanistan 'while the security situation there remains dire', this essentially temporary response needlessly obstructs refugees' stability, which is crucial to a meaningful solution and the ability of refugees to build a life in Australia.<sup>4</sup> There are also several thousand Afghan refugees who have been stuck in limbo in Indonesia for many years, with a limited chance of resettlement in a third country, after Australia ceased resettling refugees who had registered with UNHCR in Indonesia after 1 July 2014.<sup>5</sup>

In addition to noting the above, in this submission we detail two complementary measures through which the Australian Government can better respond to displacement from Afghanistan. These are: a special humanitarian intake for the resettlement of Afghan refugees, and a pathway for safe and orderly departure from Afghanistan for people at risk of persecution or other serious harm.

Australia's resettlement of Afghan refugees is a unilateral response that is best coordinated with the actions of others. Solidarity clearly means that, to be effective, resettlement quotas must be decided on as a matter of policy and implemented in practice in consultation with UNHCR and other States. This, in turn, will require a measure of collaborative and cooperative working, taking account of the recognized categories of resettlement need, the relations between Australia and those seeking or in need of a lasting solution, and the potential for alternative pathways.

### **A special humanitarian intake for Afghan refugees**

1. Countries with comparable resettlement programs to Australia have significantly increased their capacity to admit Afghan refugees. In September 2021, the Canadian Government announced a special humanitarian intake of 40,000 Afghan refugees, an intake that will be additional to Canada's existing annual humanitarian resettlement

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<sup>1</sup> UNHCR, [Afghanistan Situation Regional Refugee Preparedness and Response Plan: Summary & Inter-agency Funding Requirements July-December 2021](#), 27 August 2021.

<sup>2</sup> UNHCR, [UN High Commissioner for Refugees completes three-day visit to Afghanistan](#), press release, 15 September 2021; UNHCR, ['After the airlift'. News Comment attributable to UN High Commissioner for Refugees Filippo Grandi](#), press release, 30 August 2021.

<sup>3</sup> Australian Human Rights Commission, [Commission statement on Australia's response to Afghanistan crisis](#), 27 August 2021

<sup>4</sup> Australia. Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, [Afghanistan Statement](#), 17 August 2021.

<sup>5</sup> Mixed Migration Centre, [A Transit Country No More: refugees and asylum seekers in Indonesia](#), MMC Research Report, May 2021, 7, 10.

program.<sup>6</sup> On 20 September 2021, the United States Government announced a Refugee Admissions Program (USRAP) ceiling of 125,000 for the 2022 fiscal year. Within this expanded intake, Afghans who are both outside and still within their country are designated as priority cohorts for resettlement in the United States. In planning for the 2022 USRAP, the United States Government has recognised the resettlement needs of Afghan refugees who have fled to host countries within the Middle East, Europe, and the Asia Pacific.<sup>7</sup>

2. As of 8 October 2021, the Australian Government has not offered an additional intake of Afghan refugees, but rather has only pledged to allocate around 3,000 existing places *within the nation's 2021-22 resettlement program* (which is capped at 13,750 places) to people fleeing Afghanistan. While welcome, this is not enough; what is needed now are places additional to existing programs. The Australian Government has a demonstrated capacity to offer an additional special humanitarian intake of Afghan refugees. In 2015, Australia offered a special humanitarian intake of 12,000 places for Syrian and Iraqi refugees, which was in addition to the annual humanitarian program (set at 13,750 for 2015-16).
3. By expanding access to protection through a special humanitarian intake for Afghan refugees, the Australian Government can help to relieve the pressure on 'front line' States such as Pakistan and Iran, which are hosting 1.4m and 800,000 Afghan refugees respectively.<sup>8</sup> As noted in the Kaldor Centre's Principles for Australian Refugee Policy, safe and orderly pathways to protection 'are also a critical form of international solidarity and responsibility-sharing among States'.<sup>9</sup>
4. A special humanitarian intake for Afghan refugees should be guided by principles of refugee protection. As noted by the Kaldor Centre, this includes ensuring that Australian Government resettlement processes operate with transparency and consistency, and focus 'on identifying refugees with the greatest protection needs' and do not discriminate based on irrelevant factors.<sup>10</sup> To this end, a special humanitarian intake must be undertaken with the consultation and cooperation of the United Nations refugee agency, UNHCR. The agency is best placed to identify and refer refugees who are most in need and best suited to resettlement to Australia.<sup>11</sup>
5. In providing protection for Afghan refugees, whether those who are resettled through the annual humanitarian program or a special humanitarian intake, or those who have sought – or who may seek in future – protection directly through Australia's national asylum procedures, the Australian Government must provide a pathway to permanency for the refugees concerned. A permanent, durable solution can allow displaced people to enjoy long-term security and the opportunity to rebuild their lives within the Australian community. Research consistently shows that refugees make considerable economic, demographic, cultural and civic contributions to Australian society.<sup>12</sup>

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<sup>6</sup> Canada. [Address by the Honourable Marc Garneau](#), PC, MP, Minister of Foreign Affairs of Canada at the General Debate of the 76<sup>th</sup> United Nations General Assembly, 27 September 2021.

<sup>7</sup> United States. Department of State. [Report to Congress on Proposed Refugee Admissions for Fiscal Year 2022](#), 20 September 2021.

<sup>8</sup> UNHCR, [Afghanistan Situation Regional Refugee Preparedness and Response Plan](#) (n 1).

<sup>9</sup> Kaldor Centre for International Refugee Law, [Principles for Australian Refugee Policy](#), July 2019, 14.

<sup>10</sup> Tamara Wood and Claire Higgins, *Special humanitarian intakes: Enhancing protection through targeted refugee resettlement*, [Policy Brief no. 7](#), Kaldor Centre for International Refugee Law (December 2018), 2, 22

<sup>11</sup> *Ibid.*

<sup>12</sup> Kaldor Centre for International Refugee Law, [Factsheet: the cost of Australia's refugee and asylum policy: a source guide](#), May 2020.

## A pathway for safe and orderly departure

6. The UN High Commissioner for Refugees, Filippo Grandi, has noted that of the more than 3.5 million internally displaced Afghans, most 'have no regular channels through which to seek safety'.<sup>13</sup>
7. The establishment of such channels for people who are at risk of persecution or other serious harm has been identified as a priority by the international community. On 16 August 2021, Australia issued a joint statement calling for the 'safe and orderly departure of foreign nationals and Afghans who wish to leave the country'. On 30 August 2021, in Resolution 2593 (2021), the United Nations Security Council reiterated the importance of 'the safe, secure, and orderly departure from Afghanistan of Afghans and all foreign nationals'.<sup>14</sup>
8. Orderly departure programs, also known as 'in-country processing', can constitute one such channel. The purpose of an orderly departure program is to help displaced people to cross international borders safely and avoid taking potentially dangerous or exploitative journeys to access protection in another country.
9. As foreign governments concluded evacuation efforts in August 2021, international non-government organisations such as Refugees International, the World Refugee and Migration Council, and the Asia Pacific Refugee Rights Network called on States to ensure that Afghan nationals can continue to depart Afghanistan and access protection abroad in a safe and orderly way, without having to risk clandestine cross-border journeys.<sup>15</sup>
10. The Australian Government has an existing visa mechanism to facilitate orderly departure, known as the In-Country Special Humanitarian Visa (subclass 201). The subclass 201 was one of two visa classes used in the Locally-Engaged Employee program, through which the Australian Government has previously provided access to protection for Afghan nationals who were employed by, or worked with, the Australian Defence Force in Afghanistan.
11. In 2016, the United Nations General Assembly unanimously adopted the New York Declaration for Refugees and Migrants, resolving to expand the number and range of safe and orderly pathways 'available for refugees to be admitted to or resettled in third countries'.<sup>16</sup> In 2018 Australia was among 180 States to adopt a landmark agreement on the protection of refugees, the Global Compact on Refugees (GCR). The GCR holds that a larger number of States should offer safe pathways through which refugees can access protection abroad, and make these pathways 'available on a more systematic, organized and gender-responsive basis' with 'appropriate protection safeguards'.<sup>17</sup>

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<sup>13</sup> UNHCR, 'After the airlift': [News Comment attributable to UN High Commissioner for Refugees Filippo Grandi](#) (n 2).

<sup>14</sup> United Nations Security Council, [Res 2593 \(30 August 2021\)](#) UN Doc SC/14620.

<sup>15</sup> Eric Schwartz, [Letter to President Biden Urges Immediate Action to Protect Afghans at Risk](#), Refugees International, 16 August 2021; World Refugee and Migration Council, [Confronting the Crisis in Afghanistan: Eight Priorities for the International Community](#), 22 August 2021; Asia Pacific Refugee Rights Network, [Urgent Statement: APRRN calls for concerted efforts to ensure protection during displacement in and from Afghanistan](#), 22 August 2021.

<sup>16</sup> [New York Declaration for Refugees and Migrants](#), UN GAOR, 71st sess, Agenda Items 13 and 117, UN Doc A/RES/71/1 (3 October 2016) 14 [77].

<sup>17</sup> UNHCR, Report of the United Nations High Commissioner for Refugees: Part II—[Global Compact on Refugees](#), UN GAOR, 73rd sess, Supp No 12, UN doc A/73/12 (13 September 2018) 18 [94].

12. As the Kaldor Centre has noted, orderly departure programs must be additional to other avenues to protection (such as the right to seek asylum directly through national asylum procedures, and existing annual resettlement programs).<sup>18</sup>
13. Orderly departure must have transparent and flexible application criteria and processes, to ensure that individuals who are at risk of persecution or other serious harm can make an informed decision about whether they can apply and safely wait for their application to be finalized. Procedures should be flexible enough to allow individuals to move into another country, and back again if necessary, while their application is in progress. Protection safeguards include the ability of unsuccessful applicants to know the reason for their rejection, to appeal and, if their circumstances change, to apply again.<sup>19</sup>
14. Orderly departure must be based on a multi-year commitment by the Australian Government and other States, to provide predictability for individuals who need to flee, as well as for partner organisations and support services in the destination country, to better plan for the housing, support services, educational and employment needs of refugees upon arrival.<sup>20</sup>

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<sup>18</sup> Claire Higgins, *Safe Journeys, Sound Policy: expanding protected entry for refugees*, [Policy Brief no. 8](#), Kaldor Centre for International Refugee Law (November 2019) 17.

<sup>19</sup> *Ibid*, 18.

<sup>20</sup> *Ibid*, 17.