



OUR SECURE FUTURE

Women Make the Difference

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The Special Responsibility of the United States to Female Afghan Security and Police Officers Seeking Protection

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KEY MESSAGE

In no other country since World War II did the United States act as a quasi-government either directly or by proxy as it did in Afghanistan during its 2001-2021 civil and military engagement there. Female Afghan police and military personnel were recruited, retained, trained, equipped and paid because the United States legislated, funded, and implemented programs in accordance with U.S. national security priorities. The U.S. initiated programs and created this special group of female Afghan combatants, for whom the United States continues to have a special responsibility.

The U.S. Congress and the Administration have recognized the unique American protection responsibilities toward other vulnerable Afghan groups through the creation and implementation of the Special Immigrant Visa (SIV) Program and the extension of P1 and P2 refugee status protections, as well as allocations under the humanitarian parole program based on special U.S. interest. Yet, former female Afghan soldiers or police officers were largely left behind, facing Taliban retaliation alone. This, even though under the Geneva Conventions Principle of Distinction, female security officers and police are still guaranteed continued protections as former combattants, Yet, they cannot avail themselves of these protections against brutal retaliation and harassment by the Taliban, unless the US acts urgently to protect this group of combatants if they seek U.S.protection. In January 2022 U.N. Secretary General Antonio Guterres warned that retaliation by the Taliban continued, despite an alleged general amnesty announced by the Taliban in 2021.

RECOMMENDATIONS

The U.S. has a special responsibility for female Afghan soldiers and police officers seeking protection, a responsibility the U.S. Congress and the Administration have recognized for other sensitive categories by the creation and implementation of the Special Immigrant Visa (SIV) Program, P1 and P2 refugee categories extensions, and the humanitarian parole program based on special U.S. interest.

1. To the US Department of Defense and US Department of State: We urge that the female police and military officers remaining in Afghanistan who are seeking U.S. protection are deemed eligible at least on the same level as other vulnerable categories for the SIV Program, P1 and P2 refugee categories, or the humanitarian parole program, and are provided with safe passage (evacuation and resettlement to the US).
2. To the Afghanistan War Commission created by the FY 22 NDAA (P.L. 117 - 81): We recommend that the Commission take the following three actions:
 - Safely undertake the identification of all female security officers (police and military personnel), and determine their desire to seek US protection.
 - Document these cases and their current status, and identify if an urgent humanitarian intervention is warranted or necessary.
 - Employ gender and WPS experts to document the implementation of the WPS law and National WPS Strategy during US withdrawal from Afghanistan with regard to these female officers.

ANALYSIS OF THE SITUATION

Background

Using authorities granted by the U.S. Congress, President Bush used military force against those responsible for the 9/11 attacks, and ordered the invasion of Afghanistan at the end of 2001. The goal set forth in the congressional authorization – to use force against those who perpetrated or harbored the perpetrators of the 9/11 attacks and to make future attacks impossible -- was achieved rather quickly. The Taliban regime fell at the end of November 2001, and in December, a new interim government was installed. As the just authorized Afghanistan War Commission (NDAA FY 2022, Public Law 117-81) will examine in greater detail, the original mission changed significantly. For the next 20 years, the United States was involved in an ultimately futile attempt to create a functioning democracy in Afghanistan. This included almost immediately trying to stand up a National Army and National Police Force capable of enforcing its laws and defending this fledgling democracy ultimately without the protective umbrella of the U.S. military command structure and guidance, constant military training, equipment, financial support for salaries, and the physical presence of U.S. or international soldiers in Afghanistan. This included the integration of female soldiers and police officers in the Afghan security sector. Along the way, Afghanistan and the United States, as well as the NATO allies laid out their visions in formal security agreements.

The Problem

Afghan women, particularly former combatants, have faced extraordinary difficulties during the utterly chaotic U.S. evacuation and the ensuing collapse of the Afghan security forces. With the collapse of the economy, and the onset of winter, the humanitarian situation has only further deteriorated, as has the situation of Afghan women leaders. Without providing any special protection categories for female former combatants, the U.S. simply left these Afghan security officers behind. According to the Third Geneva Convention and the Principle of Distinction between Combatants and Civilians, the US created a group of female combatants in Afghanistan by paying for their recruitment, their salaries, training and equipment. While men have a long history as combatants in Afghan conflicts, women traditionally were not considered appropriate recruits for the Army or the National Police Force. Yet, with the US and Allies' support, Afghan women proudly wore the Afghan Army uniform, held clearly designated ranks and wore unit insignias, and trained on and used weapons – in other words, they were full combatants under International Humanitarian Law, or IHL.

The SIGAR Report states:

“Despite the enormous obstacles to women who seek to join and progress within the ANDSF, Afghan women continue to volunteer and serve in the Afghan National Army, Afghan Air Force, and Afghan National Police—often at great personal risk—forging a path for the women who will join after them.” In addition, the report finds that: “Afghan women must overcome a range of significant barriers to serve in the security forces, including cultural resistance, threats to their personal safety, and pervasive harassment and discrimination.”

US Appropriations and Authorizing Language on Female Afghan Security Officers Since 2013

There are several NDAA and Appropriations laws that specifically established and funded programs to recruit, train, integrate and retain female Afghan soldiers and security personnel, who served in the ANDSF as combatants. These combatants joined the fight in Afghanistan because of U.S. programs and jointly pursued important U.S. security priorities. The United States cannot abandon this class of combatants it has created.

Specific funding and authorizations were provided in:

Funding: Consolidated Appropriations Act FY 2021 (P.L. 116-260); Consolidated Appropriations Act, 2020 (P.L. 116-93); Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019 (P.L. 115-245); Consolidated Appropriations Act, 2018 (P.L. 115-141); Consolidated Appropriations Act, 2017 (P.L.115-31); Consolidated Appropriations Act, 2016 (P.L. 114-113); Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235); Consolidated Appropriations Act, 2014. (P.L. 113-76)

Authorizations: National Defense Authorization Act (NDAA) FY 2021 (P.L. 116-283); NDAA FY 2020 (P.L. 116-92), NDAA FY 2019 (P.L. 115-232); NDAA FY 2018 (P.L. 115-91); NDAA FY 2017(P.L. 114-328); NDAA FY 2016 (P.L. 114-92); NDAA FY 2015 (P.L. 113-291); NDAA FY 2013 (P.L. 112-239)

Female Afghan Security Officers Are Combatants Under IHL and US Legislation

More than 6,300 women served in the former Afghan National Defense and Security Forces (ANDSF) until its collapse in 2021. Retaliation by the Taliban particularly against this group of combatants based on their gender is expressly prohibited in International Humanitarian Law (IHL), including in the Third Geneva Convention, which ensures that women: “shall in all cases benefit by treatment as favorable as that granted to men” (Art. 14, C. III). The United States owes a special responsibility to this defined group of former combatants at least on the same level it has accepted for other groups, such as interpreters, scouts, or Afghan nationals who have worked for or on behalf of the United States in Afghanistan - most of them men. Since the Consolidated Appropriations Act for FY 2014 (P.L. 113-76), Congress formally appropriated annual funds specifically focused on the recruitment, training and retention of Afghan women into the ANDSF. The Afghan Security Forces Fund (ASFF) was first authorized in the National Defense Authorization Act FY 2005, so there could have been funds used under more general provisions to implement these specific policy goals prior to 2014. The level of appropriations reflect the importance the United States had attached to this critical national security priority.

According to a 2021 Report by the Special Inspector General for Afghanistan Reconstruction (SIGAR) on gender equality in Afghanistan:

“The recruitment of women did not become a U.S. priority until closer to 2010. U.S. support for women’s recruitment, retention, and progress within the ANDSF was shaped by the objectives set out in UN Security Council Resolution 1325. Between fiscal years 2014 and 2021, the Congress authorized up to \$240.6 million from the Afghanistan Security Forces Fund for the recruitment, retention, integration, training, and treatment of female security personnel. Ultimately, \$110 million was appropriated in those years for these activities.”

Most recently, the Consolidated Appropriations Act for FY 2021 (P.L. 116-260) provided funds to maintain and expand an Afghan force of female combatants within the ANDSF:

“Provided further, That of the funds provided under this heading, not less than \$20,000,000 shall be for recruitment and retention of women in the Afghanistan National Security Forces, and the recruitment and training of female security personnel: Provided further, That funds appropriated under this heading and made available for the salaries and benefits of personnel of the Afghanistan Security Forces may only be used for personnel who are enrolled in the Afghanistan Personnel and Pay System.”

The same is true for programmatic authorizations contained in the annual National Defense Authorization Acts (NDAAs). Similar to earlier NDAA laws, the NDAA for FY 2021 (P.L. 116-283) defined the funded programs and activities under “Security of Afghan Women” as focused on:

“(A) the recruitment, integration, retention, training, and treatment of women in the Afghan National Defense and Security Forces; and (B) the recruitment, training, and contracting of female security personnel for future elections.” In particular, U.S. legislators authorized these “Types of programs and activities. --Such programs and activities may include-- (A) efforts to recruit and retain women into the Afghan National Defense and Security Forces, including the special operations forces; (B) programs and activities of the Directorate of Human Rights and Gender Integration of the Ministry of Defense and the Office of Human Rights, Gender, and Child Rights of the Ministry of Interior Affairs of the Government of Afghanistan; (C) development and dissemination of gender and human rights educational and training materials and programs within the Ministry of Defense and the Ministry of Interior Affairs of the Government of Afghanistan; (D) efforts to address harassment and violence against women within the Afghan National Defense and Security Forces; (E) improvements to infrastructure that address the requirements of women serving in the Afghan National Defense and Security Forces, including appropriate equipment for

female security and police forces, remediation, renovation, and protection of facilities used by women, and transportation for policewomen to their station; (F) support for Afghanistan National Police Family Response Units; (G) security provisions for high-profile female police and military officers; (H) programs to promote conflict prevention, management, and resolution through the meaningful participation of Afghan women in the Afghan National Defense and Security Forces, by exposing Afghan women and girls to the activities of and careers available with such forces, encouraging their interest in such careers, or developing their interest and skills necessary for service in such forces; and (I) enhancements to Afghan National Defense and Security Forces recruitment programs for targeted advertising with the goal of increasing the number of female recruits.”

Female Afghan Security Officers are Combatants Under IHL

IHL definition of combatants (Third Geneva Convention)

According to the Third Geneva Convention, combatants are:

1. Members of the armed forces of a party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces (GCIII Art. 4.a.1); or
2. Members of regular armed forces, even those that profess allegiance to a government or authority not recognized by the adverse power (GCIII Art. 4.a.3); or
3. Members of other militias and members of volunteer corps, including those of organized resistance movements belonging to a party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfill the following conditions:
 - A. That of being commanded by a person responsible for his subordinates;
 - B. That of having a fixed distinctive sign recognizable at a distance;
 - C. That of carrying arms openly; and
 - D. That of conducting their operations in accordance with the laws and customs of war (GCIII Art. 4.a.2).
4. Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war (GCIII Art. 4.a.6).

US Legislation Female Afghan Police and Security Officers

Based on the programs outlined in the referenced provisions in US law, Afghan women who served in the National Army and Police Forces were:

1. Female Afghan security officers were trained, uniformed, equipped, and paid salaries by the US and Allied Forces and professed allegiance to the Afghan Government.
2. Female Afghan security officers and police were specifically recruited, trained and employed based on the referenced programs outlined in US law, fulfilled the following conditions:
 - A. They were commanded by a person responsible for his/her subordinates;
 - B. They had a fixed distinctive sign recognizable at a distance;
 - C. They carried arms openly; and
 - D. They conducted their operations in accordance with the laws and customs of war.

Gender perspectives improve security outcomes



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