

Canada's Criminal Code and Humanitarian Assistance to Afghanistan

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Current Situation in Afghanistan

Food Insecurity

Since the Taliban's brutal takeover of Afghanistan in August 2021, the country is facing severe economic, security, and humanitarian challenges. Over half the population – around 23 million Afghans – currently face extreme hunger due to food insecurity and economic downturn.¹

According to a report by World Vision, 22.8 million people are facing food insecurity.² Moreover, 47% of those facing food insecurity are women and girls. In a statement issued to the Special Committee on Afghanistan, 8.7 million people were in IPC Phase 4 which is the highest absolute number in the world. This has left roughly 97% of the population without enough food to eat and roughly 5 million children on the brink of famine.³

This widespread food shortage is largely the result of a larger economic collapse that the country has been facing since the Taliban's takeover. The country has experienced the loss of millions of dollars in income, spiking prices, and a near total collapse of the banking sector. Decisions by the United States and other governments to cut off Afghanistan's Central Bank from the international banking system have left the country in desperate need of financial resources.⁴ The Biden Administration in particular has frozen Afghanistan's funds being held in the U.S. to the tune of \$7.1 billion USD. Biden agreed to split those funds in half, with half going towards humanitarian assistance and the other half reserved for victims of terrorist attacks, specifically victims of 9/11.⁵ This decision has been met with resistance from the local population and from human rights organizations. Freezing Afghanistan's assets and cutting them off from the international banking sector has resulted in a liquidity crisis and nationwide shortages of banknotes.

Women in Danger

The situation for women in Afghanistan has become increasingly dangerous. The country has seen an increase in domestic violence, increased numbers of women fleeing their homes to shelters (shelters that have inadequate resources to provide for them), increased rates of suicide, and a severe loss of education and social and political freedoms.

Within Afghanistan, anyone speaking out against the Taliban, including Afghan human rights defenders, civil society members, and young activists face arrest, and in some cases torture and death. Those human rights defenders who managed to flee the country are fighting hard to help their

colleagues and family left behind, as well as simply survive in temporary exile, but have limited resources and support.

Afghanistan is in dire need of more humanitarian assistance. However, due to current Canadian legislation many vital resources and aid are unable to reach the people in Afghanistan who need it the most.

Canadian Legislation Hindering Humanitarian Support

The Complexity of Canada's Criminal Code

The specific legislation that hinders the ability for Canadian aid agencies working in Afghanistan can be found in Canada's Criminal Code, paragraph 83.03(b). This provision states that:

Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years who, directly or indirectly, collects property, provides or invites a person to provide, or makes available property or financial or other related services:

- (a) Intending that they be used, or knowing that they will be used...for the purposes of facilitating or carrying out any terrorist activity...
- (b) Knowing that, in whole or in part, they will be used by or will benefit a terrorist group.⁶

The Taliban is classified as a terrorist entity by the Canadian government therefore providing any funding to the Taliban violates Canadian criminal law. This paragraph has been interpreted to mean that Canadian organizations are strictly prohibited from using any Canadian funding (either 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."⁷ Because the Taliban is recognized as the de facto government of Afghanistan, paying any sort of taxes to the Afghan government would be benefitting a known terrorist organization.

This interpretation means that Canadian aid agencies working in Afghanistan are now unable to help anyone who has official dealings with the Afghan government such as those paying rent or taxes. A group of 10 Canadian aid organizations in a report they sent to the Special Committee elaborated on the trouble with this particular legislation, noting that by not paying taxes, aid organizations are opening themselves up to increased organizational risk, diminished "ability to operate and carry out programs, and [impede] access to required work permits, visas and documentation."⁸ One organization in particular,



World Vision Canada, had two containers of ready-to-use therapeutic food that would help treat children that are facing malnutrition and starvation. However, the organization was unable to ship these containers to Afghanistan because of the Canadian Criminal Code. These containers would have helped more than 1,800 children. The reality is that many humanitarian assistance programs for which Canadian organizations are the only funder will be forced to halt operations entirely.⁹

The Canadian government has acknowledged the complexity of the situation and has said that they are looking at what they can do to create more flexibility and mirror some of the strategies that other countries have implemented, however they will not remove the Taliban from the list of terrorist entities under which paragraph 83.03(b) applies. One official noted that “The U.S. currently can do more work than us, at least have the options to do more things there. We are looking at similar exemptions we can create as long as we can keep up the pressure on the Taliban, as it is a terrorist entity.”¹⁰ Furthermore, in the House of Commons report, they recognize that the Taliban should not be supported by Canadian actors, but at the same time Canada does have a duty to provide relief to the most vulnerable Afghan people and this duty should not be hindered directly or indirectly. While Canada will not budge on its current legislation surrounding the situation in Afghanistan, the rest of the international community has taken strides to adjust to the stark reality of what is happening on the ground and the immediate need for humanitarian support.

UN Resolution 2615

The UN Security Council passed resolution 2615 (2021) which specifies that providing humanitarian assistance to Afghanistan “does not constitute a violation of paragraph 1(a) of resolution 2255 (2015), and permits the processing of payments of funds, other financial assets, economic resources, and provisions of goods and services needed to support humanitarian aid delivery.”¹¹

A year after the Taliban takeover, Canada is the only country who has not yet figured out a way to send humanitarian aid to Afghanistan. Within a week of the Taliban takeover in August 2021 the U.S. Treasury Department assured humanitarian organizations that they would be able to continue their work despite US sanctions. According to an article issued by The New Humanitarian, after a month the US Treasury further authorized “specific transactions between humanitarian organizations

and the Taliban, and later expanded the exemption to include all transactions related to humanitarian work.”¹² The European Union made similar alterations to its Afghanistan sanctions in February 2022 and so did the UK and Australia.

Obstacles to Humanitarian Efforts

Canada is still sending humanitarian assistance to Afghanistan, however this aid is being sent through the UN and the ICRC. Canada has allocated \$156 million to Afghanistan since August 2021. Programs and organizations such as UNICEF and the World Food Programme receive aid from the Canadian government, but Canada’s funding of those programs is contingent on them providing assurances that their work complies with Canada’s anti-terrorism laws. This restricts how those organizations are able to use Canadian money. These programs however are limited in their reach and scope – current legislation has forced almost all Canadian NGOs working in Afghanistan to shut down their work at a very pivotal and crucial time for Afghanistan.

The problem goes beyond Canadian humanitarian organizations not being able to continue their work in the region – for some NGOs this law creates the possibility that banks could drop NGOs altogether or freeze their accounts. It also leaves employees working in Afghanistan vulnerable to facing criminal charges upon their return to Canada.¹³

Recommendations

Some recommendations have been put forward on what Canada should do in order to ensure that humanitarian assistance can resume in Afghanistan. Most notably NGOs as well as legislators are urging the Canadian government to immediately implement UN Resolution 2615 as other countries have done. Other recommendations include allocating some funding towards United Nations humanitarian appeals for Afghanistan, providing carve-outs or exemptions to Canadian aid organizations so that they can deliver humanitarian assistance to Afghanistan without fear of prosecution for violating Canadian anti-terrorism laws, and relatedly, reviewing the anti-terrorism financing provisions and taking legislative steps to allow for legitimate humanitarian action in Afghanistan. These are all ways in which Canada can continue to condemn the Taliban and its actions while not turning its back on the growing humanitarian crisis in Afghanistan.

Endnotes

- 1 Welt, Hunger, Lifestyle Press Release (June 2021) Afghanistan: The Humanitarian Situation is Rapidly Deteriorating, Hunger and Poverty on the Rise in Afghanistan
- 2 World Vision (April 2022), *Afghanistan Crisis: Hunger in the land*
- 3 Canadian Humanitarian Organizations’ Submission to the Special Committee on Afghanistan (Feb. 2022)
- 4 Human Rights Watch (March 2022), *Afghanistan: Economic Roots of the Humanitarian Crisis: Questions and Answers on Human Costs of Sanctions, Banking Restrictions*
- 5 Harb, Ali (Feb. 2022), “Theft’: Advocates decry US decision to withhold Afghan funds,” *Aljazeera*
- 6 Criminal Code (R.S.C., 1985, c. C-46) para 83.03(b) Financing of Terrorism
- 7 Dhaliwal, Sukh, (2022) *Honouring Canada’s Legacy in Afghanistan: Responding to The Humanitarian Crisis and Helping People Reach Safety*, Report of the Special

- Committee on Afghanistan, House of Commons, Canada
- 8 Canadian Humanitarian Organizations’ Submission to the Special Committee on Afghanistan (Feb. 2022)
- 9 Dhaliwal, Sukh, (2022) *Honouring Canada’s Legacy in Afghanistan: Responding to The Humanitarian Crisis and Helping People Reach Safety*, Report of the Special Committee on Afghanistan, House of Commons, Canada 41
- 10 Woolf, Marie (July 2022), “More Flexibility could be added to anti-Taliban law to help Afghans: minister,” *Global News*
- 11 UNSC S/RES/2615(2021)
- 12 Sparks, Riley (July 2022), “A year after Taliban return, Canadian anti-terror law still bars NGOs,” *The New Humanitarian*
- 13 Sparks, Riley (July 2022), “A year after Taliban return, Canadian anti-terror law still bars NGOs,” *The New Humanitarian*