



# International Humanitarian Law in Context Webinars: Afghanistan

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## Executive Summary

When States become parties to the 1949 Geneva Conventions and their 1977 Additional Protocols, they commit themselves to disseminate the provisions of those instruments (international humanitarian law, or IHL) as widely as possible both in peacetime and in periods of armed conflict so that they are known to the armed forces and to the population as a whole. Although it is primarily the responsibility of the States to make these laws of war known, National Red Cross and Red Crescent Societies, such as Australian Red Cross, as well as the International Committee of the Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies (IFRC) have a mandate to assist States in this task and are encouraged to take initiatives to that effect.

For this reason, in 2021 and 2022, Australian Red Cross produced an online webinar series with partners in the humanitarian sector which explored the unfolding humanitarian crisis in Afghanistan through the lens of IHL. The first three webinars in the series were delivered in partnership with the [Centre for Humanitarian Leadership](#), while the other three webinars were delivered in partnership with the University of New South Wales (UNSW) [Australian Human Rights Institute](#).

The webinar series considered how IHL was relevant to the situation in Afghanistan and examined challenges to humanitarian access, the impact of sanctions, the protection of vulnerable people, including women, children, refugees and Internally Displaced Persons (IDPs), and the challenges of delivering healthcare in that context. Each session took the format of a chaired panel session with experts sharing their perspective on their area of specialisation or their personal experience in Afghanistan. The chairs and panellists included academic experts, leaders and operational staff of Australian, Afghan, and international humanitarian organisations and UN agencies, and IHL experts from within Australian Red Cross and ICRC. The series was developed for colleagues in the development and humanitarian sector, and attendance numbers were strong, illustrating the interest in IHL and the situation in Afghanistan in general.

This report summarises the presentations that were delivered in each of the sessions and the facilitated audience questions and discussions that followed these presentations.

Throughout the IHL in Context Webinars: Afghanistan series, a number of emerging and persisting issues were discussed by panellists and audience members. These issues included:

- 1) Although IHL and the humanitarian principles of impartiality, neutrality, and independence can be difficult to implement and enforce, particularly in complex and protracted situations like the situation in Afghanistan, IHL and the humanitarian principles can and do enable humanitarian action in certain circumstances. Although there is a need to continuously think about how to adapt the humanitarian principles in complex environments like Afghanistan, efforts to promote and enhance respect for IHL should continue.**
- 2) Local knowledge, systems, customs, and resources should be considered as vital elements to any humanitarian response and should be better leveraged when advocating for humanitarian access.**
- 3) Sanctions need to be designed and implemented in ways that do not impede impartial humanitarian access and action.**
- 4) Humanitarian needs globally have been increasing in the context of the pandemic and ongoing climate deterioration, and funding and resources to meet those humanitarian needs have been steadily decreasing. In particular, the situation in Afghanistan was increasingly bleak for women and children. Keeping a spotlight on the plight of women, children, and other vulnerable people in Afghanistan, and increasing support for the health and education systems, is vital.**

Red Cross would welcome the opportunity to explore these issues further in conjunction with the humanitarian sector and the Australian Government.

# International Humanitarian Law in Context: Afghanistan

## Session 1: A legal perspective on humanitarian space in Afghanistan

*Delivered in collaboration with the [Centre for Humanitarian Leadership](#) on 23 November 2021*

Moderated by: **Jules Frost**, Australian Civil Military Centre

Panel speakers:

- **Larry Maybee**, IHL National Manager, Operations, Australian Red Cross
- **Clementine Rendle**, Regional Legal Adviser, ICRC
- Representative of an organisation with operations in Afghanistan

The focus of the first webinar was to provide a general overview of how IHL was operating in the context of the situation in Afghanistan.

**Key insights:** Although IHL can be difficult to enforce and has its limitations in practice, particularly in complex and protracted situations like the situation in Afghanistan, IHL can and does enable humanitarian action.

**Larry Maybee**, Australian Red Cross' IHL National Manager, Operations, provided an overview of IHL and how it applied to the situation in Afghanistan. He noted that IHL seeks to limit the effects of armed conflict by restricting the means and methods of warfare but highlighted that it has limitations, particularly in complex conflict situations like the protracted situation in Afghanistan. A representative of an organisation with operations in Afghanistan, who did not wish to be identified, then spoke about how IHL had failed the many victims of conflict in Afghanistan, noting that limited enforcement and accountability measures meant there were few options for victims of the conflict to seek justice. **Clementine Rendle**, ICRC's Regional Legal Adviser, spoke about how IHL can and does enable humanitarian action, noting that ICRC's mission in Afghanistan has continued to operate and has been able to help the wounded and disabled, support local hospitals, visit detainees and advocate for IHL and humanitarian access.

Audience members discussed additional challenges to humanitarian action in Afghanistan, including having to operate in a context with a relatively complex rule of law and having to navigate a complex political system.

## Session 2: Understanding humanitarian access in Afghanistan

*Delivered in collaboration with the [Centre for Humanitarian Leadership](#) on 30 November 2021*

Moderated by: **Mary Ana McGlasson**, Director, Centre for Humanitarian Leadership

Panel speakers:

- **David Tuck**, Head of Mission, ICRC Australia
- **Dr Nouria Salehi**, founder and director of the Afghan Australian Development Organisation
- **Asuntha Charles**, National Director of World Vision Afghanistan
- **Jan de Waal**, Executive Director of Hagar Afghanistan

The focus of the second webinar was on humanitarian access in Afghanistan.

**Key insights:** Humanitarian principles of impartiality, neutrality, and independence are key tools to leverage for maintaining humanitarian access, though they can be challenging to implement in practice. For this reason, other means of access need to be considered as well. Local knowledge and resources are also vital elements to any response, as is finding ways to employ local legal systems and customs to support the argument for humanitarian access.

**David Tuck**, ICRC Head of Mission in Australia, spoke about ICRC's humanitarian action in Afghanistan over the years. He noted that the current regime views certain humanitarian actions as "Western propaganda", and that reduced funding from governments globally and concerns regarding the safety and security of humanitarians make it difficult to deliver assistance. **Dr Nouria Salehi**, founder and director of the Afghan Australian Development Organisation, highlighted the role that education plays in long term peace building, while noting the ability to deliver education programs was increasingly limited. **Asuntha Charles**, National Director of World Vision Afghanistan, described how World Vision was responding to the worsening situation for children and their communities in relation to food security, access to healthcare and education and protection. **Jan de Waal**, Executive Director of Hagar Afghanistan, described how humanitarian services were more necessary than ever, especially for women and children at risk of extreme abuses, but access has been impeded, not only by internal structures, but by a lack of support from governments around the world.

During the webinars, the following quotes from local actors consulted beforehand were presented:

*"Humanitarian needs [have] never been assessed [across] the whole country; assessments took place only in government accessed areas [throughout] 2018-2021, [which equated then to around] 30% of the territory or main cities. Now... media and humanitarian aid agencies [can] access those [other] areas... [which has] revealed that poverty and hunger is in the top level."*

*"The access was challenging in the past (before 15 August 2021) as humanitarian actors had to manage and gain access from different actors on the ground, for instance, [from] armed opposition groups, government and in some areas illegal armed groups. This was time consuming and complex. It was difficult to find the actors [and to] discuss and convince each of the actors. In addition, the movement and provision of humanitarian assistance was risky... Due to the recent development, physical access has been improved and humanitarian actors can reach remote districts and villages. Still, there are some complexities as different de-facto authorities are involved and they have kept their former structure of NGOs coordination [and] new governmental structure. Humanitarian actors need to coordinate and discuss with different authorities [and] de-facto authorities as well. The de-facto authorities in some areas are trying to avoid humanitarian principles and want to force NGOs to provide assistance as per their norms. This has delayed response and negatively impacted the overall response."*

Panellists and audience members discussed the relationship between IHL and local laws. Panellists noted that making the case for humanitarian access under local laws can strengthen the position of humanitarians but finding humanitarian practitioners with the necessary expertise can be challenging. Audience members also highlighted the link between local capacity and humanitarian action and the value in leveraging local knowledge from within the community, but similarly acknowledged that limited resources, the pandemic, and climate change, among other factors, continued to complicate this. However, it was agreed that accessing and leveraging local knowledge and resources could be a potential solution to some of these complex and interconnected issues.

## **Session 3: The Impact of Sanctions Regimes on Humanitarian Action**

*Delivered in collaboration with the [Centre for Humanitarian Leadership](#) on 7 December 2021*

Moderated by: **Clementine Rendle**, Regional Legal Advisor, ICRC

Panel speakers:

- **Pranamie Mandalawatta**, IHL Legal Advisor, Australian Red Cross
- **Adrian Prouse**, Head of International Humanitarian Partnerships, Australian Red Cross
- **Safi Taye**, Research Assistant, Deakin University
- **Simon Henderson**, Head of Policy, Save the Children Australia

The third webinar focused on the United Nations Security Council (UNSC) sanctions regime against Taliban entities and individuals (the Taliban Sanctions Regime) and the impact of Australia's implementation of this regime on humanitarian action in Afghanistan.

**Key insights:** Sanctions were further complicating humanitarian access in Afghanistan. Whilst sanctions can provide an accountability mechanism for violations, sanction safeguards remain unclear and impractical.

**Pranamie Mandalawatta**, Australian Red Cross IHL Legal Advisor, provided an overview of Australia's implementation of the Taliban Sanctions Regime to the situation in Afghanistan and explained how complicated sanction safeguards (at that point in time), like exemption permits, were not operating as they were intended to protect humanitarian organisations from sanctions and compliance risks.<sup>1</sup>

**Adrian Prouse**, Head of International Humanitarian Programs at Australian Red Cross, similarly highlighted that humanitarian organisations were struggling to ensure reasonable precautions and undertake due diligence, which was frustrating their ability to get aid into Afghanistan. **Safi Taye**, research assistant at Deakin University, explained the humanitarian repercussions of these sanctions and how they were worsening the humanitarian crisis. **Simon Henderson**, Head of Policy at Save the Children Australia, explored the benefits of autonomous sanctions regimes that target individuals who engage in 'egregious conduct' such as corruption, and serious violations of human rights and IHL (also known as Magnitsky-style sanctions).

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<sup>1</sup> Red Cross notes that humanitarian exemptions under UN Security Council Resolution 2615 were introduced in December 2021 and implemented into domestic law, which may have helped to mitigate this issue. It was noted in the audience discussion of a later webinar that sanctions hurdles have been somewhat reduced with the exemptions granted by the UN Security Council, and that some organisations were using systems like the 'hawala system' to get money to those in need. However, Red Cross will continue to explore the impact this change has had in practice with actors in the Australian Humanitarian Sector in the future.

During the webinars, the following quotes from local actors consulted beforehand were presented:

*“The current sanctions and freezing of Afghanistan’s foreign exchange reserves have severely constrained humanitarian actions. The subsequent restrictions on banks by the [de facto authorities] (due to freeze on Afghan exchange reserves) has complicated the operational environment for humanitarian organizations and constrained the supply chain of humanitarian aid commodities to Afghanistan. The freeze of funds in Afghan banks and limitation on financial transactions have affected the operations of humanitarian organizations. Most of the NGOs are facing difficulties with accessing project funding, staff salaries, disrupted supply chains, and restriction on financial transactions. The fact that many officials are on sanctions lists of the US and UN adds to the uncertainty as to whether working with the government ministries led by these officials will be feasible or not and what will be the consequences of this.”*

*“This is very challenging, the financial liquidity has been strongly impacted, it is not easy to pay vendors, implementing partners and beneficiaries. The vendors are not able to import agricultural and other inputs to the country due to the collapsed banking system, this has caused an increase in prices by 70-80%, and even the inputs are not available in some markets. In consequence it has been difficult to assist farmers on time and in full capacity.”*

Audience members noted that the issue of sanctions impacting humanitarian action is not unique to the situation in Afghanistan but speaks to a wider issue for humanitarians. It was noted that even though exemptions are often included in sanctions legislation aimed at facilitating humanitarian aid, the cautious interpretation by governments and financial institutions means that humanitarian aid is still often blocked.

## **Session 4: Protecting the vulnerable (women and children)**

Delivered in collaboration with the UNSW [Australian Human Rights Institute](#) on 16 March 2022 – viewable online [here](#).

Moderated by: **Dr Shireen Daft**, Macquarie University

Panel speakers:

- **Victor Moses**, Country Director for Afghanistan, CARE International
- **Semin Qasmi**, Program Advisor, Australian Red Cross (formerly with UN Women)
- **Asuntha Charles**, National Director, World Vision Afghanistan
- **Zola Maddison**, Humanitarian Policy and Advocacy Advisor, Save the Children Australia
- **Sitarah Mohammadi**, Legal Researcher with the Afghanistan Human Rights Democracy Organisation

The focus of the fourth webinar was the protection of vulnerable women and children.

**Key insights:** The situation in Afghanistan is increasingly bleak for women and children. Keeping a spotlight on the plight of women and children in the country is vital, as is using IHL and human rights law and other international mechanisms to negotiate commitments that benefit women and children.



**Victor Moses**, Country Director of CARE Afghanistan, highlighted the significant impact of the economic crisis on women and children in Afghanistan. **Semin Qasmi**, formerly with UN Women and currently with Australian Red Cross, spoke about the endemic and worsening issue of violence against women in Afghanistan, noting that despite growing needs, the ability to support services for survivors of violence had significantly declined after the Taliban's takeover. **Asuntha Charles** from World Vision Afghanistan provided a firsthand account of the impact of the economic crisis in Afghanistan on children, highlighting increased levels of human trafficking, reduced maternal health outcomes, and significant food scarcity issues. **Zola Maddison**, Humanitarian Policy and Advocacy Advisor, Save the Children Australia, similarly highlighted the impact of the crisis on children, noting that fewer children (and particularly girls) were attending school since the takeover of the Taliban. **Sitarah Mohammadi**, Legal Researcher, Afghanistan Human Rights Democracy Organisation and a former Hazara refugee from Afghanistan, provided a historical perspective on the situation in Afghanistan and noted her concerns that women's rights were being steadily eliminated under the current regime.

Audience members discussed what could be done to keep the spotlight on the challenges facing women and children in Afghanistan with all panellists noting the power of social media and how using our voices on those platforms such as this could be harnessed, such as by writing letters to Members of Parliament. It was also noted that the Taliban regime is looking for international recognition and legitimacy and the international community could ensure that such acceptance is tied to robust commitments and action on gender equality and protection issues.

## **Session 5: Protecting the vulnerable (refugees and Internally Displaced Persons (IDPs))**

*Delivered in collaboration with the UNSW [Australian Human Rights Institute](#) on 30 March 2022 – viewable online [here](#).*

Moderated by: **Susanne Schmiedl**, Fulbright Scholar at UNSW

Panel speakers:

- **Nai Jit Lam**, UNHCR Deputy Regional Representative in Canberra
- **Pranmie Mandalawatta**, IHL Legal Adviser, Australian Red Cross
- **Liza Beinart**, Migration Support Program State Lead for Western Australia, Australian Red Cross
- **Hamid Hussainzada**, Research Associate and former Communications Officer with ICRC's delegation in Afghanistan

The focus of the fifth webinar was the protection of refugees and IDPs in vulnerable situations.

**Key insights:** Many areas of international law are supposed to provide protection to refugees and IDPs and other civilians impacted by conflicts. However, the situation of people fleeing from conflict is often marked by uncertainty and danger, and more needs to be done to assist people in these circumstances. This could involve, among other things, greater promotion of and respect for IHL.

**Nai Jit Lam**, UNHCR Deputy Regional Representative in Canberra, spoke about the speed with which UNHCR had to respond after the takeover of the Taliban and how other issues, particularly the drought and ongoing security concerns, had caused further displacement and complicated the delivery of their services. **Pranmie Mandalawatta**, IHL Legal Adviser, Australian Red Cross, noted how IHL and other international laws provide protection to people fleeing conflict. **Liza Beinart**, Migration Support Program State Lead for Western Australia, Australian Red Cross, explained how Australian Red Cross worked quickly to ensure its Humanitarian Settlement Program was able to meet the needs of people evacuated from Afghanistan and deliver this program in compliance with COVID-19 restrictions.<sup>2</sup> **Hamid Hussainzada**, Research Associate and former Communications Officer with ICRC's delegation in Afghanistan, described his own traumatic experience of being evacuated from Afghanistan with his children to Australia.

Audience members noted that border closures had made it difficult for people to flee while instances of persecution on the basis of gender, sexual orientation, ethnicity, religion, and political opinions were continuing to increase. Laws regarding the protection of civilians were not always complied with and were difficult to enforce. The need for enhanced humanitarian assistance persisted.

## **Session 6: Healthcare in Afghanistan**

*Delivered in collaboration with UNSW [Australian Human Rights Institute](#) in 2022 on 13 April 2022 – viewable online [here](#).*

Moderated by: **Natasha Chabbra**, Humanitarian Policy Advisor, ACFID

Panel speakers:

- **Kylie Leach**, Acting Director of IHL, Australian Red Cross
- **Mahpekay Sidiqy**, Prosthetist/Orthotist with World Health Organisation Afghanistan
- **Chris Binks**, Managing Nurse and former Médecins Sans Frontières deployee in Afghanistan
- **David Heslop**, Associate Professor, School of Public Health, UNSW
- **Jamal Mahmood**, Trainer and Head of the Learning and Development Unit, ICRC Kabul

The focus of the sixth and final webinar in this series was healthcare in Afghanistan.

**Key insights:** The health care system in Afghanistan is in a fragile and critical state. Challenges to humanitarian access, detailed in earlier webinar sessions, were further complicated by the global COVID-19 pandemic. Other factors, including restrictions placed on female health workers and the general exodus of qualified staff, are further challenging a relatively weak and ill-equipped health system.

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<sup>2</sup> Australian Red Cross, as a Humanitarian Settlement Program provider funded by the Department of Home Affairs, has supported the resettlement of refugees and humanitarian entrants from Afghanistan in WA, ACT as well as Wollongong, Wagga Wagga and Albury in regional NSW.

**Kylie Leach**, Acting Director of IHL, Australian Red Cross, explained how IHL is relevant to the delivery of healthcare in conflict situations and that it provides protection to the wounded and sick as well as medical personnel, facilities and transport. Speaking from Afghanistan, **Mahpekey Sidiqy**, a prosthetist and orthotist working on World Health Organisation (WHO) programs, provided an update on the state of the healthcare system in Afghanistan, noting that a lack of funding, restrictions on female health professionals, and the COVID-19 pandemic were having a significant impact on the healthcare system. **Chris Binks**, former Médecins Sans Frontières (MSF) deployee, provided a personal account of his experience of responding to the COVID-19 pandemic with MSF in a COVID-19 Treatment Centre in Herat, noting that the fragile health system, limited funding, and limited number of health professionals remaining in the country had made it hard to continue to provide services. Similarly, **David Heslop**, Associate Professor, School of Public Health, UNSW, spoke about his experience as a Medical Officer with Australian forces deployed to Afghanistan. **Jamal Ahmad Mahmood**, former Trainer and Head of the Learning and Development Unit, ICRC's Kabul Delegation, gave an overview of the difficulties faced by ICRC to keep operations running during the COVID-19 pandemic.

Audience members considered that the issue of educated professionals leaving the country could be addressed by creating stronger education pathways for locals in humanitarian responses and continuing to find ways to operate and treat people who may often be excluded from healthcare, like women and people with disabilities. Others noted the link between nutrition and healthcare and helping communities to access better and more sustainable food sources could reduce some of the pressure on the health system.