

PROPOSAL TO PROTECT AFGHAN AND IRAQI WOMEN AND GIRLS WHO HAVE SUFFERED SEVERE GENDER-BASED VIOLENCE¹

Summary

This proposal is to request that the Secretary of State, in consultation with the Secretary of Homeland Security, designate as Priority 2 refugees of special humanitarian concern including women and girls from Iraq and Afghanistan who fled severe gender-based violence and are trapped in shelter or other facilities for protection.

Rationale

Women and girls in Iraq and Afghanistan who flee from severe forms of gender-based violence may be placed in protective custody in shelters or other facilities for protection, such as detention centers. If a case cannot be solved legally, including through customary informal justice mechanisms, the victims find themselves detained indefinitely. Harmful laws, impunity for perpetrators, tribal and cultural factors, and persistent conflict all contribute increased rates of violence against women and girls, as well as reduced legal and social protections.

In Afghanistan where US forces and coalition forces withdraw, sheltered women and girls risk being targeted by the Taliban, or returned to their families where they will face persecution including killings. There are 28 shelters throughout Afghanistan, all created and funded with support from the U.S. and other international donors that have assisted on average, 2,000 women and girls annually.² In Iraq there are five government run shelters, two privately run shelters in the Kurdistan Region and several unofficial shelters in Baghdad.

President Biden's³ administration has demonstrated its commitment to responding to and preventing violence against women domestically and internationally as reflected in support for the Women, Peace and Security (WPS) agenda⁴ and priorities of the recently established Gender Policy Council. Furthermore, the Department of State's recommendations for refugee admissions for 2021 include, "[i]ndividuals persecuted on the basis of sexual orientation, gender identity, or sex characteristics."⁵ Creating access to refugee protection for women and girls in Iraq and Afghanistan who face gender-based persecution, including conflict related sexual violence and so called 'honor-based' violence aligns with this administration's priorities and advances US foreign policy, security, and humanitarian interests.

Defining Group of Special Humanitarian Concern

The group would include:

- 1) Women, girls and those who identify as LGBTI;
- 2) Are nationals of Iraq or Afghanistan who have suffered persecution or have a well-founded fear of persecution on account of gender-based violence either as members of a particular social group and/or other protected grounds such as religion, political opinion, race, and nationality;

¹ For a detailed examination into this issue see: S. Minwalla, *Trapped Between Borders: A Proposal to Apply International Legal Protections to Persecuted Women and Girls Who Are Unable to Flee*, UC Davis Journal of International Law & Policy (Oct. 2020), found at <https://jilp.law.ucdavis.edu/issues/Volume-26-1/26.1-MINWALLA.pdf>.

² "Support for Gender Equality: Lessons From the U.S. Experience in Afghanistan," Special Inspector General for Afghanistan Reconstruction (Feb. 2021), found at: <https://www.sigar.mil/interactive-reports/gender-equality/index.html>.

³ The Gender Policy Council, established in March 2021, has expressed its commitment to ending all forms of gender-based violence at home and abroad, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/03/08/executive-order-on-establishment-of-the-white-house-gender-policy-council/>.

⁴ "Statement of President Joseph Biden on Women, Peace and Security Report," White House Press Release, June 29, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/01/statement-by-president-joseph-biden-on-the-women-peace-and-security-report/>. See, "USG Women, Peace, and Security (WPS) Congressional Report, Line of Effort 2, Protection and Access aims to, "promote safety from violence, abuse, and exploitation around the world."

⁵ <https://www.state.gov/proposed-emergency-presidential-determination-on-refugee-admissions-for-fy21/> (page 13)

- 3) Have sought assistance and are trapped in a shelter, jail, detention center, or other ostensibly safe place.

In aligning with other P-2 designations, such as “certain former Soviet nationals” or “Iraqis associated with the United States,” the criteria would be simple, but would also include certain parameters to ensure the group designation is not overly broad. Other considerations include a determination that there is no durable solution available to them as in-country, and that individuals are unable to safely return to their families. Government protection, such as a lifetime in a government-run protective shelter, would not qualify as a durable solution. Furthermore, survivors of conflict related sexual violence who meet these requirements could qualify where the above stated conditions are met, such as those who had children born through rape in captivity.

In-country processing is the appropriate means of addressing this population given the special circumstances tying long-term U.S. interests with the internally displaced populations in both Afghanistan and Iraq. 8 U.S.C. 1101(a)(42)(B) allows for in-country processing of certain populations, and given that the U.S. has utilized in-country processing in Iraq, it should continue to do so under this proposal. Considerations for in-country processing in Afghanistan may be more challenging given the changing situation on the ground, and the U.S. could work through key actors in-country to identify and screen cases. The US could also evacuate high risk cases to a third country for processing, while considering the need to potentially segregate women and girls from a predominantly male population in process for the Special Immigrant Visa who are being considered for evacuation to continue with visa processing safely.

Numerical Targets

This proposal recommends up to 1,000 refugee admissions for each country.

Working with partners in Iraq and Afghanistan

In order to identify, evaluate and process cases, the following organizations can contribute:

- 1) United Nations High Commission on Refugees (UNHCR) which has presence in both countries, and / or the International Office on Migration (IOM) to support refugees to gather documents, evaluate eligibility, and assist with travel;
- 2) Government agencies that provide shelter, civil documentation including travel documents, or other essential services;
- 3) NGOs (international and domestic) in Iraq and Afghanistan that provide legal and social services to victims and survivors of gender-based violence that can assist with identifying and referring women and girls who might qualify for refugee status as well as providing legal and social services to help them while their cases are processed.
- 4) Resettlement NGOs and women’s shelter organizations in the US that can assist with resettlement services, prioritizing those able to provide culturally appropriate services.⁶

Encouraging Allies to Admit Eligible Women and Girls

Encourage other Coalition members and refugee receiving countries to review their refugee policies and procedures to admit and resettle an appropriate number of women and girls facing persecution who are unable to flee their country of origin.

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⁶ Apna Ghar, for example, serves women facing gender-based violence through its shelter and culturally competent services. Apna Ghar has supported women from Iraq and Afghanistan in its shelter. For more information see <http://www.apnaghar.org/>.