

**AFGHANISTAN:**  
**WOMEN AND RECONSTRUCTION**

14 March 2003



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## AFGHANISTAN: WOMEN AND RECONSTRUCTION

### EXECUTIVE SUMMARY AND RECOMMENDATIONS

The establishment of an Interim Administration for Afghanistan during the Bonn talks in December 2001 was heralded as offering Afghan women a chance to claim their place in public life and participate in the country's development after systemic exclusion under the Taliban. Creation of a Ministry of Women's Affairs, the commitment of substantial donor assistance to programs targeting women, and, most critically, the return of women to universities, schools, and government offices all portended a new day.

Lost in the initial euphoria, however, was attention to the critical factors that had made past reform on women's rights unsustainable and to the task of identifying strategies for mainstreaming gender issues in the development process as a whole. Without a coherent policy regarding gender and development on the part of both the international community and the Karzai government, donor assistance is being channelled to projects likely to prove at most symbolic.

The Ministry of Women's Affairs is the logical vehicle for developing strategies to embed gender in the planning activities of the line ministries. It has, however, been hobbled by lack of professional capacity and a hierarchical structure that impedes collaboration between its departments. This stems in part from its absorption of a communist-era women's association, whose vocational training mission is ill suited to current challenges. In the words of a gender specialist in Kabul, the ministry is "functioning as a relatively large NGO". The steps needed to make it more effective include re-staffing to develop research, program development, and budgeting capabilities; creation of links between its departments; and establishment of health, education, and gender advocacy and training departments.

The mechanisms established to improve coordination between ministries and between the government and donors have significant structural defects. Although the government has requested all ministries to name gender focal points, most have appointed lower-level officials who have little authority to shape planning and policies.

To improve budgetary policy formation through early public and international input, the administration has also developed an internal structure of policy coordination bodies, called "consultative groups", as well as a Gender Advisory Group that includes donor participation. Twelve budgetary program areas have been divided between seventeen consultative groups, or working groups of ministries, donors, and NGOs headed by a lead ministry. To date, these have failed to incorporate gender effectively into the national budget or the policy calculations of the line ministries.

Donor assistance, both to government and civil society, has been directed toward quick-impact, high visibility projects. Relatively little research has been done into their sustainability and their accessibility to women, particularly in rural areas. The Ministry of Women, assisted by the United Nations Development Fund for Women (UNIFEM) and funded by a U.S.\$2.5 million grant from the U.S. Agency for International Development (USAID), plans to establish community development centres in fourteen provincial capitals, with a goal of expanding them to cover all 32 provinces.

Gender and development specialists in Kabul are sharply divided on the utility of these centres. Some argue that the international community should have first directed resources to studying local modes of organising and conducting broader consultations with women in the provinces. Other donor-supported

activities, including sewing centres and women's shelters, have similarly been established without detailed research.

The barring of women by the Taliban from most employment and secondary school education paradoxically galvanised Afghan women activists. The underground schools and literacy programs they established have given rise to many of the NGOs now active in Kabul. Many, however, are dependent on donor support, channelled through large international NGOs. The small grants that they receive restrict their capacity for growth and limit their activities to vocational training, literacy programs, and other activities that have marginal impact on women's economic empowerment.

Woman activists, particularly those who attempt to educate and mobilise women around issues related to political participation, also operate in a difficult environment. Some interviewed by ICG recounted threats they have received. A renewed and expanded international commitment to security is urgently needed if the limited gains women have made in Kabul are to be institutionalised and emulated in other Afghan cities.

Ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 5 March 2003, as Afghanistan is in the midst of ambitious constitution-drafting and judicial and legislative reform, creates an historic opportunity and obligation to incorporate the treaty protections into national laws and institutions. The constitutional process is also an opportunity to incorporate women into political processes through broad-based consultations.

If gender equality is to obtain significant public support, arguments and idioms are required that draw upon Islamic notions of equity and social justice. Progressive legal and constitutional developments in other Islamic countries, such as Iran's family courts, should be examined as possible models for Afghanistan.

## **RECOMMENDATIONS**

### **To Afghanistan's Transitional Administration:**

1. Request the Ministry of Women's Affairs to study options for, and adopt, an administrative structure that streamlines its functioning and

establishes crosscutting links within its departments.

2. Ensure that all ministries name as gender focal points officials with at least the rank of deputy minister or department head and link those gender focal points to the Gender Advisory Group, so that policy recommendations can be disseminated within the government.
3. Appoint permanent managerial and technical support staff to the Gender Advisory Group and other bodies that are meant to mainstream gender policy in line ministries.
4. Appoint the members of the civil service commission, give it a professional secretariat and use employment selection criteria it develops as a basis for appointment to government posts and review of existing appointments, including within the Ministry of Women's Affairs.
5. Develop methods of ensuring that gender policy concerns are incorporated within budgetary allocations of line ministries.
6. Establish family courts in each provincial centre, with jurisdiction over all matters related to divorce, compulsory marriage, child custody and inheritance, and ensure that judges presiding over the courts are fully conversant with the civil code and applicable international treaties to which Afghanistan is a party.
7. Incorporate women with experience in public life and advocacy into the Constitutional Commission to ensure visible and meaningful gender balance.
8. Ensure that input from the public consultation process, particularly with women, is reflected in the final draft of the constitution presented to the Constitutional Loya Jirga.
9. Ensure that the selection process facilitates women's participation in the Constitutional Loya Jirga.

### **To the Judicial Reform Commission:**

10. Incorporate the Convention on the Elimination of Discrimination against Women (CEDAW) into the revised civil and criminal codes, in particular with respect to family law.
11. Identify appropriate progressive Islamic statutory systems, including those of Tunisia and Malaysia, that could be sources for revision

of the civil and penal codes consistent with Afghan norms.

**To the international community:**

12. Include capacity building in programming and budgeting in the aid given to the Ministry of Women's Affairs.
13. Support creation of micro-credit loan programs and training in loan management for women.
14. Ensure that gender and development assistance is based on field research and consultations with Afghan women, including market research into income-earning opportunities, women's mobility in the target areas, and accessibility of services.
15. Help the Ministry of Education develop curricula that explain women's rights under the civil code and CEDAW in terms accessible to both male and female students.

16. Support financially a consultation process on the constitution that gives women a genuine voice and identify and support initiatives to develop a constituency for women's rights within and outside the government in the run-up to the Constitutional Loya Jirga.

**To the United Nations:**

17. Refocus UNIFEM's efforts on effective needs assessments, appropriate income generation projects with the necessary auxiliary training, and projects that build women's capacity to participate in the political process.

**To the states participating in ISAF:**

18. Extend ISAF or an equivalent mission to additional areas of the country, beyond Kabul, especially major urban centres, so that Afghan women activists can operate there effectively.

**Kabul/Brussels, 14 March 2003**

## AFGHANISTAN: WOMEN AND RECONSTRUCTION

### I. INTRODUCTION

The October 2001 international intervention in Afghanistan was justified in part by evocations of the Taliban's systematic mistreatment of women.<sup>1</sup> The international community thus heralded the Bonn Agreement of 5 December 2001 as a promise of unprecedented freedoms and opportunities for Afghan women. The United Nations and the U.S. government convinced the four Afghan groups at that conference to include women in their delegations. The subsequent agreement included specific provisions on the participation of women in both the interim administration and the Emergency Loya Jirga,<sup>2</sup> and reinstated Afghanistan's 1964 Constitution, which declares that all Afghans have equal rights and obligations before the law,<sup>3</sup> universal free education<sup>4</sup> and the right to work.<sup>5</sup> In the allocation of ministerial responsibilities at Bonn, a women's ministry, the first in Afghan history, was established under the leadership of Dr. Sima Samar.

The promise of an Afghan government committed to gender equality is so far more aspiration than fact. This gap between objectives and practices has

several causes, including absence of effective governmental structures through which gender policy can be crafted and implemented; failure to acknowledge the deep social structures that incorporate inequitable gender norms; and absence of broad public support for such reforms.

Critically, in spite of considerable efforts by a committed core of Afghan and international actors, there is no effective way to articulate and implement gender policy across the spectrum of decisions taken by the Transitional Islamic State of Afghanistan. Moreover, modes of decision-making and codes of social conduct shared by Afghans for centuries contain significant impediments to women's social and economic freedoms.

Traditional norms have had more impact on women's position in society than formal norms in either constitutions or statutes. The former have persisted because of the failure of the Afghan monarchy, throughout the nineteenth and most of the twentieth century, to subordinate traditional structures through measures like taxation, conscription, and administrative regulation.<sup>6</sup> At village and sub-district levels, authority is grounded in tribal structures and exercised through village councils (shuras) traditionally open only to men. Therefore, even if the new Afghan administration, in particular the commissions tasked with creating a new constitution and legal codes, produce a reasonably progressive constitution and body of law, the norms will be impossible to enforce without governmental mechanisms to ensure serious consideration of gender policy.

Finally, the impact of inequitable social structures has been compounded by the damage wrought by 23 years of war. At the close of the main phase of

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<sup>1</sup> Laura Bush and Cherie Booth (Blair), the wives of the U.S. president and the British prime minister, for example, decried Taliban abuses during Operation Enduring Freedom. Alice Thomson, "Lifting the Veil on what Afghan Women really want", *The Daily Telegraph*, 23 November 2001.

<sup>2</sup> "The Interim Authority and the Special Independent Commission for the Convening of the Emergency Loya Jirga will ensure the participation of women as well as the equitable representation of all ethnic and religious communities in the Interim Administration and the Emergency Loya Jirga." Section V of the Agreement on Provisional Arrangements in Afghanistan, Pending the Re-establishment of Permanent Government Institutions. Available at: <http://www.uno.de/frieden/afghanistan/talks/agreement.htm>.

<sup>3</sup> Constitution of Afghanistan (1964), Article 25.

<sup>4</sup> Ibid, Article 34.

<sup>5</sup> Ibid., Article 37.

<sup>6</sup> Vartan Gregorian, *The Emergence of Modern Afghanistan: Politics of Reform and Modernisation, 1880-1946* (Stanford, 1969), pp. 393-394.

Operation Enduring Freedom, about 3.7 million people were refugees and a million were internally displaced.<sup>7</sup> Civilian casualties over the years included many women and children.

Women also suffered financially from the deaths of male breadwinners. The loss of men and boys from households and communities due to war increased the burden on women and girls to provide for family security and well being, a problem exacerbated when economic and educational opportunities for women remain limited. Experience from other post-conflict situations shows that exclusion from formal employment pushes women into illegal activities, like drug trafficking, to support themselves and their families.<sup>8</sup>

Women, like male civilians, also remain vulnerable to many risks in the aftermath of conflict. Injury from landmines, the loss of livelihood as a result of destruction of agricultural resources, and forced displacement are ongoing concerns.

The war's legacy extends to psychological damage as yet unaddressed. A 2001 study by Physicians for Human Rights found that "more than 70 per cent of Afghan women suffered from major depression, nearly two-thirds were suicidal, and 16 per cent had already attempted suicide".<sup>9</sup>

Any serious attempt to address women's rights questions will have to reckon with all these factors. Previous attempts by the Afghan state to change women's social and economic status, mostly failures, contain valuable lessons. In particular, they show the importance of dealing with traditional social structures, from village to tribal level, and the need to find culturally appropriate justifications for reform that can mobilise supportive constituencies.

## II. BACKGROUND

The development of the Afghan state has been intimately linked with elite attempts to improve the social and economic standing of women. From the first substantial attempt to bring the territory of present-day Afghanistan under a single administration at the end of the nineteenth century until the abortive Communist reforms that precipitated revolt against the regime, the promotion of women's rights has been central to the state's notion of modernity. Those efforts, at least until the 1970s, were stymied by the state's limited fiscal base and its military dependence on tribal structures. By the 1970s, state reliance on internal revenue sources had been replaced by foreign aid, permitting the communist government to impose its ideologically driven modernisation on an unprepared rural populace.<sup>10</sup>

### A. THE MONARCHIC STATE AND MODERNITY (1747-1978)

From the founding of the Durrani dynasty by Ahmed Shah Abdali in 1747 until its overthrow in 1978, Afghanistan was, with a nine-month interregnum in 1929, a state with a Pashtun-headed monarchy<sup>11</sup> that relied militarily upon Pashtun tribes to sustain its control and authority. Even under the authoritarian rule of Amir Abdur Rahman Khan, Pashtun tribes retained at least partial tax exemptions.<sup>12</sup>

Until 1880, monarchs justified their rule in part through use of tribal institutions like the jirga and a commitment to *Pashtunwali*, the Pashtun tribal code.<sup>13</sup> *Pashtunwali* "is at one and the same time an ideology and a body of common law", with its "own sanctions and institutions."<sup>14</sup> It reflects themes of hospitality, bravery, and honour.<sup>15</sup> But it also vests

<sup>7</sup> U.S. Committee for Refugees, "Pakistan: Afghan refugees shunned and scorned", 28 September 2001.

<sup>8</sup> "Report of the Secretary General on Women Peace and Security", 16 October 2002, pp. 1-2.

<sup>9</sup> Cited in: Institute for War and Peace Reporting, "Afghan Recovery Report", N°44, 17 Jan 2003. Available at: <http://www.iwpr.net>.

<sup>10</sup> Barnett R. Rubin, *The Fragmentation of Afghanistan: State Formation and Collapse in the International System*, 2<sup>nd</sup> edition (New Haven, 2002), p. 112.

<sup>11</sup> Ahmed Shah Abdali belonged to the Saddozai clan of the Popalzai tribe of the Abdali (later renamed Durrani) Confederation.

<sup>12</sup> Gregorian, op. cit., pp. 160-61.

<sup>13</sup> Asta Olesen, *Islam and Politics in Afghanistan* (Richmond, Surrey, 1995), pp. 33-34.

<sup>14</sup> Olivier Roy, *Islam and Resistance in Afghanistan* (Cambridge, 1986), p. 35.

<sup>15</sup> Louis Dupree, *Afghanistan* (Princeton, 1980), p. 126. *Pashtunwali* includes concepts such as *badal* (blood

tremendous symbolic significance in women's chastity, upon which notions of honour and disgrace rest.<sup>16</sup> Although the monarchy manipulated differences between Pashtun tribes and sub-tribes to extend its authority,<sup>17</sup> Pashtuns also were the main beneficiaries of state largesse. A combination of ideological and military reliance on the tribes thus limited Afghan monarchs' fiscal base, narrowed their ideological room, and inevitably stymied many reform efforts.

Women, even in rural areas at the dawn of the monarchical period, were not bereft of social standing. An early British visitor observed in 1810 that in rural areas, women went unveiled, and "are under no other restraint, among people of their own camp or village, than what is imposed by the general opinion, that it is indecent to associate with men".<sup>18</sup> In contrast, women in urban areas "are always wrapped in a large white sheet", although they could attend public events and social gatherings.<sup>19</sup> The regime imposed by the Taliban was not a reflection of women's position within Afghan society at any time or place, but rather "the values of the village as interpreted by refugee camp dwellers or madrasa students who typically had not known normal village life".<sup>20</sup>

The first monarch to implement serious reforms was Amir Abdur Rahman, who between 1880 and 1901, tried to transform Afghanistan into a modern, centralised state. As he gradually expanded state institutions and structures, he also embarked on a modest series of reforms to benefit women. These

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revenge); *nang* (honour), *ghayrat* (defence of property and honour); *namus* (defence of the honour of women); and *meranah* (manhood, chivalry).

<sup>16</sup> Olesen, op. cit., p. 137.

<sup>17</sup> Durrani Pashtuns were favoured over the Ghilzai (also known as Ghalji), the other major Pashtun tribal confederation. Rahimullah Yusufzai, "Influence of Durrani-Ghalji Rivalry on Afghan Politics", in *Afghanistan: Past, Present and Future* (Islamabad, 1997), pp. 76-116; Gregorian, op. cit., p. 77.

<sup>18</sup> Mountstuart Elphinstone, *An Account of the Kingdom of Caubul* (Karachi, 1992), v.1, pp.242-243. Nancy Hatch Dupree confirms that this remains true. See Nancy Hatch Dupree, "Afghan Women under the Taliban", William Maley, ed., *Afghanistan and the Taliban: the Rebirth of Fundamentalism* (London, 2001), p. 160.

<sup>19</sup> Elphinstone, op. cit., pp. 242-243.

<sup>20</sup> William Maley, *The Afghanistan Wars* (New York, 2002), p. 223.

included a civil code and state appointments of the clergy, which reduced the independence of mullahs.<sup>21</sup>

Customary practices that bound widows to remarry next of kin were forbidden, and a child promised in marriage before puberty was given the right to refuse when she achieved majority.<sup>22</sup> Laws permitting women to sue husbands for alimony and request divorce in cases of cruelty and non-support were enacted.<sup>23</sup> Abdur Rahman's reforms were incrementally extended by his son, Habibullah, who tried to limit the practice of taking more than four wives by officially banning the keeping of concubines and "female slaves".<sup>24</sup>

Abdur Rahman's grandson, Amir Amanullah (1919-1929), deepened reform efforts as part of a more systematic program of modernisation that sought a new intellectual basis in Afghan nationalism and pan-Islamism.<sup>25</sup> Gender equality became a political issue as a consequence of pressure from King Amanullah's advisor, Mahmud Tarzi, and his followers, the Young Afghans. They argued in one of Afghanistan's first newspapers, *Siraj al-Akbar Afghaniyah*, for gender equality because only educated women could be good wives and mothers, and polygamy undermined the solidarity of the royal family.<sup>26</sup>

The consequent reform program promoted the socio-economic position of women. Amanullah's wife, Queen Sorayya, opened the first girls school in Kabul, Essmat (renamed Malalai), and by 1928, approximately 800 girls attended classes in Kabul.<sup>27</sup> The 1923 constitution made education compulsory for all Afghans, although outside Kabul little was done to implement this.<sup>28</sup> Daughters of the elite were sent to Turkey and Switzerland for higher education. While Amanullah did not legislate on the veil, he began a public campaign against it in 1928, and

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<sup>21</sup> Barnett R. Rubin, "Lineages of the State in Afghanistan", *Asian Survey* (N°11, Vol. 28, November 1988), pp. 1194-1195.

<sup>22</sup> Gregorian, op. cit., p. 139.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid., p. 198.

<sup>25</sup> Ibid., pp. 162-163, 174-178.

<sup>26</sup> Olesen, op. cit., pp. 116.

<sup>27</sup> Ibid. at p. 243.

<sup>28</sup> The right to education was included in Amanullah's constitution. Article 14, Constitution of Afghanistan (1923).



instigated regulations requiring Western dress in Kabul.<sup>29</sup>

Amanullah's 1923 constitution only referenced equality generically, with no mention of gender.<sup>30</sup> Alongside that constitution, however, he created new criminal and civil administrative codes (*nizamnama*).<sup>31</sup> Drafted by liberal ulema when there was not a single secularly trained lawyer in the country,<sup>32</sup> these included a 1921 family code that substantially improved the legal standing of women. It banned child marriage, required judicial permission before a man took more than one wife, and removed some family law questions from mullahs' jurisdiction.<sup>33</sup> Amanullah relied explicitly on Islamic principles to justify bans on child marriage and intermarriage between close kin. He also reiterated Abdur Rahman's rules concerning a widow's right to choose her next spouse.<sup>34</sup>

Amanullah did not assume these reforms would be self-executing, or the justice system, then as now principally staffed by men with religious training, would be amenable. In addition to the substantive reforms, therefore, he instigated magistrates courts, composed of "honourable and honest men," as a first step to secularise the formal justice system.<sup>35</sup>

However, these far-reaching reforms lacked adequate popular support or a fiscal base. When opposition inevitably arose among former elites whose authority was threatened, Amanullah lacked the authority to quell it.

Moreover, Amanullah's reforms in favour of women proved potent symbols around which opposition could rally even though they were never extended to the tribal areas where the revolt originated.<sup>36</sup> The

provisions of the 1921 *nizamnama* were a focus of opposition at the 1924 Loya Jirga, called by Amanullah to address mounting criticism of his reforms. The January 1925 revolt of the Mangal tribe in Khost was catalysed by mullah protests against the liberal *nizamnama*.<sup>37</sup> Although it was suppressed, a revolt in November 1928 among the Shinwari tribe in Nangarhar Province led to Amanullah's fall. Among its grievances were the liberal regulations concerning the position of women, including the "sending of grown up girls to Europe" and "the discarding of the chaddar of the women and keeping naked their arms and breasts".<sup>38</sup>

Before he was driven from Kabul by Bacha-i-Saqao, Amanullah was compelled to cancel his social reforms.<sup>39</sup> What limited progress had been made in access to education, at least in Kabul, crumbled as girls schools were closed, and women studying abroad were instructed to return. Subsequent legal codes announced under Nadir Shah were based wholly on narrow interpretations of Islamic law, and justice was again administered by religious courts.<sup>40</sup> A *Jamiat-ul-Ulama* (Society of Learned Muslim Interpreters of the Law) was formed to ensure consistency of laws with Islamic norms.<sup>41</sup>

The pace of modernisation accelerated during the long reign of Nadir Shah's successor, Zahir Shah (1933 to 1973). In the 1930s and 1940s, progress was limited, with contemporary commentators noting the failure of courts to enforce the legal rights of women in divorce, marriage, and property disputes.<sup>42</sup> But gradually, girls schools were reopened. In 1959, Kabul University became co-educational. The same year, despite an unsuccessful tribal revolt in Paktya, Prime Minister Mohammad Daoud Khan reintroduced voluntary observance of *pardah* (seclusion).

At the 1959 *Jashn*, a ceremony commemorating independence from the British, wives of the royal family, the cabinet, and other high-ranking officials appeared without veils.<sup>43</sup> Daoud replied to a

<sup>29</sup> Olesen, op. cit., pp. 131-132.

<sup>30</sup> Constitution of 1923, Article 16.

<sup>31</sup> Olesen, op. cit., p. 130.

<sup>32</sup> Ibid.

<sup>33</sup> Olesen, op. cit., p. 138; Gregorian, op. cit., p. 244; Mohammad Hasim Kamali, *Law in Afghanistan: A Study of the Constitutions, Matrimonial Law and the Judiciary* (Leiden, 1985), p. 38.

<sup>34</sup> Gregorian, op. cit. p. 241.

<sup>35</sup> Olesen, op. cit., p. 130.

<sup>36</sup> In traditional Afghan society, men view women "as the repository of their honour" and hence retain the right to respond to threats to that honour, such as sexual misconduct, by harsh punishments, "death among some groups, ostracism among others". Rubin, *Fragmentation*, op. cit., p. 24. According to Olesen, "women in Afghan society, and

particularly among the Pashtuns, is a figure loaded with symbolic significance". Olesen, op. cit., pp. 136-137.

<sup>37</sup> Gregorian, op. cit., p. 255.

<sup>38</sup> Quoted in Olesen, op. cit., p. 152.

<sup>39</sup> Gregorian, op. cit., p. 264.

<sup>40</sup> Ibid. p. 299.

<sup>41</sup> Olesen, op. cit., p. 194; Gregorian, op. cit., p. 299.

<sup>42</sup> Gregorian, op. cit., p. 350.

<sup>43</sup> Martin Ewans, *Afghanistan: A New History* (Richmond, 2001), p. 115; Olesen, op. cit., p. 195.

delegation of protesting mullahs by agreeing to reintroduce compulsory veiling if they could find “incontrovertible justification for the purdah and veil in Islamic law”.<sup>44</sup> Not only did they fail to produce such evidence, but their subsequent attempt to stir public agitation fizzled with their arrest.<sup>45</sup> Daoud extracted a concession that purdah was voluntary for families in exchange for their release.<sup>46</sup> Crucial to the state’s new confidence was its accrual of greater military strength, as tested during the Safi rebellion (1945-46) and the Mangal uprising (1959).<sup>47</sup>

Within the limited political space of this period, some women found public roles. In 1958, Afghanistan sent its first woman delegate to the United Nations in New York.<sup>48</sup> In 1965, women participated in elections for the first time. From 1965 to 1969, Qubra Nurzai was Minister of Public Health. Shafiq Ziai was Political Advisor to the Prime Minister in 1971-72. Homeira Seljuqi and Aziza Gardezi were nominated to the Senate. Upper and middle class women found positions within Kabul academic institutions and the legal system. Paid employment severed connections to the tribal and family milieu and thus loosened some traditional gender constraints.<sup>49</sup> Even these limited reforms nevertheless inspired some violent reactions, including acid attacks on unveiled women students at Kabul University.

Growing opportunities in urban centres had impact in rural contexts.<sup>50</sup> A majority of the population continued to earn subsistence living from licit activities like agriculture, horticulture, or livestock rearing, or illicit activities such as cross border smuggling.<sup>51</sup> Educated women in rural areas had few means to escape from traditional authority and life patterns.<sup>52</sup> They also suffered from the regime’s inability to deal with rural crises, like the famine of 1972.<sup>53</sup> As a result, except for a privileged few, Afghan women had no access to education or health

care, let alone opportunities for political mobilisation and participation.<sup>54</sup>

The monarchy ended in 1973, when Daoud, with the help of the Parcham faction within the Afghan communist People’s Democratic Party of Afghanistan (PDPA), overthrew the king, abolished the monarchy, and declared Afghanistan a republic and himself its President.<sup>55</sup> Despite denouncing the previous regime as “pseudo-democratic”, Daoud did not implement a more open regime.<sup>56</sup> No parliament existed for the first five years of his rule. He also increasingly relied on coercion to consolidate his position.<sup>57</sup>

Although Daoud denied political freedoms to Afghan citizens, he was more willing to extend social rights to women, or at least the privileged few, who posed little threat to his authority but lent credence to his claims of modernisation. Thus, he included women in his twenty-member Constitution Advisory Committee, and women (four elected, the rest nominated) were fifteen per cent of his constitutional Loya Jirga. Women were also granted in the constitution “equal rights and obligations under law” (article 27), and the rights to education (article 10) and employment (articles 9,41 and 42).<sup>58</sup> Again, middle and upper class women were the main beneficiaries.

## B. COMMUNIST RULE

On 27 April 1978, Daoud was overthrown and killed by military sympathisers of the Khalq faction of the PDPA, reacting to his arrest of a large part of its leadership.<sup>59</sup> The PDPA promptly embarked on a gamut of radical reforms, most importantly redistribution of land.<sup>60</sup>

<sup>44</sup> Olesen, op. cit., p. 195.

<sup>45</sup> Ibid.

<sup>46</sup> Ewans, op. cit. p. 115.

<sup>47</sup> Gilles Dorronsoro, *La révolution afghane* (Paris, 2000), p.56.

<sup>48</sup> Peter Marsden, *The Taliban: War and Religion in Afghanistan* (London, 2002), p. 95.

<sup>49</sup> Rubin, *Fragmentation*, op. cit., p. 79.

<sup>50</sup> Ibid., p. 80.

<sup>51</sup> Almost 90 per cent of the population depended on agriculture, horticulture or livestock rearing for a living. Gregorian, op. cit., pp. 319-320.

<sup>52</sup> Ibid.

<sup>53</sup> Maley, *Afghanistan Wars*, op. cit., p. 16.

<sup>54</sup> In the 1960s, less than 10 per cent of the population was literate. Only 2 per cent of women could read or write. Rubin, *Fragmentation*, op. cit., pp.70, 76.

<sup>55</sup> Leftist elements, including the Parcham wing of the PDPA and its sympathisers in the armed forces, helped Daoud overthrow Zahir Shah only to be purged soon after from government circles and the military. Formed in 1965, the PDPA splintered into the Khalq and Parcham factions in 1967.

<sup>56</sup> Olesen, op. cit., p. 221.

<sup>57</sup> Daoud, for instance, constructed the largest prison in Asia at Pul-e Charkhi, on Kabul’s outskirts. Maley, *Afghanistan Wars*, op. cit. p. 17.

<sup>58</sup> Constitution of 1977.

<sup>59</sup> Maley, *Afghanistan Wars*, op. cit., pp. 25-27.

<sup>60</sup> Roy, op. cit., p. 85.

The PDPA also promised radical revision of the civil and social rights of women.<sup>61</sup> Decree N°7 of 17 October 1978, for example, supported equal rights in the civil law and opposed “unjust patriarchal feudalistic relations between husband and wife”. It prohibited the forced marriages of girls and widows and banned arranged marriages. Minimal threshold marriage ages were also introduced: sixteen for females, eighteen for males.<sup>62</sup> Bride price was abolished, although *mahr* was retained, the distinction justified by Islamic norms.<sup>63</sup> Marriage practices were thus decoupled from the system of economic and social exchange that tied sub-tribes and tribes together, a direct attack on traditional social fabric.<sup>64</sup> Through the introduction of compulsory female education, mullahs were excluded from the education system.<sup>65</sup>

The PDPA government thus encouraged women to remove veils, be more active in society and work outside the home. Despite a lack of political experience or ideological preferences, hundreds of mostly middle class, urban women responded by joining government-sponsored organisations such as the Democratic Council of the Women of Afghanistan. Women also participated more directly in government through membership in the PDPA’s central committee and in ministries.

In the countryside, however, the PDPA’s revolutionary changes resulted in disaffection of traditional power holders.<sup>66</sup> Particularly antagonising were efforts to implement coeducational adult literacy classes: party cadres used force and

humiliation to compel the attendance of tribal elders.<sup>67</sup> Although more suffering resulted from the land reform, which collapsed the agrarian economy because of the failure to reform simultaneously credit and water supply arrangements, it was often the literacy classes that sparked active resistance. Olivier Roy cites the example of the Ghalmin Valley, near Chaghcharan, Ghor Province, where communist teachers were killed after abusing an old man who refused to attend, triggering a broader revolt.<sup>68</sup>

The regime’s reforms also were the catalyst for development of seven Pakistan-based parties and Iranian-based Shia resistance groups that channelled assistance to Islamic commanders and leaders within Afghanistan. This tilted the balance of domestic power in favour of a clergy committed to political Islam, a move with profound implications for refugee women.

PDPA reforms were implemented with an insensitivity to cultural context that almost guaranteed failure. Brutal and unprecedented state intervention at the village level through literacy programs and land reform precipitated a revolt that “was as much anti-state as anti-communist”.<sup>69</sup> The government, under the guidance of Soviet advisors, used terror to eliminate resistance.<sup>70</sup> An early instance of this policy was the massacre in the village of Kerala, in Kunar, in April 1979.<sup>71</sup>

Soon, most of the country was out of the government’s control, and resistance, through mujahidin parties and tribal formations, was on the rise. After the December 1979 Soviet invasion, counter-insurgency accelerated to the point where up to 100,000 Soviet troops were deployed,<sup>72</sup> and scorched earth tactics were used.<sup>73</sup> This wave of modernisation and reform of the status of women came to a close in a state of war from which the nation is only now emerging.

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<sup>61</sup> PDPA included social and political equality for women as an objective in its 1965 manifesto. Rahimullah Yusufzai, “PDPA: Khalq-Parcham Struggle for Power”, in *Afghanistan, Past, Present and Future*, op. cit., pp. 133-134.

<sup>62</sup> Ewans, op. cit., p. 139.

<sup>63</sup> Olesen, op. cit., p. 257. Traditionalists saw the regulation of the dowry as a repudiation of morality and an attack on the stability of the family. However, this issue did not become a catalyst of popular dissent because *mahr*, the provision of a monetary guarantee paid to the bride mandated by Islamic law, was retained, and because young unmarried men welcomed the reduction in the cost of marriage. Roy, op. cit., p. 95.

<sup>64</sup> Rubin, *Fragmentation*, op. cit., p. 116. See also Ewans, op. cit., p. 140.

<sup>65</sup> Marsden, op. cit., p. 93; Rasul Bakhsh Rais, *War without Winners* (Oxford, 1997), pp. 55-56; and Rubin, *Fragmentation*, op. cit., p. 116.

<sup>66</sup> Bhabani Sen Gupta, *Afghanistan Politics, Economics and Society: Revolution, Resistance, Intervention* (Boulder, 1986), p. 49.

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<sup>67</sup> Roy, op. cit., p. 94.

<sup>68</sup> Ibid., p. 107.

<sup>69</sup> Ibid., p. 95.

<sup>70</sup> David B. Edwards, *Before Taliban: Genealogies of the Afghan Jihad* (Berkeley, 2002), pp. 145-146.

<sup>71</sup> Ibid., p. 145; Ewans, op. cit., p. 143.

<sup>72</sup> Dorronsoro, op. cit., p. 208.

<sup>73</sup> Maley, *Afghanistan Wars*, op. cit. pp. 49-50.

### C. THE END OF COMMUNIST RULE AND CIVIL WAR

Mohammad Najibullah, the chief of the Khad intelligence agency, was named head of the PDPA and president of Afghanistan, succeeding Babrak Karmal, in 1986. His rule was characterised by progressively greater accommodation to Islamic sensibilities and even unsuccessful overtures to sections of the armed opposition as a new Soviet leadership signalled its intention to withdraw unilaterally from the country.

Despite the climate of instability and continued armed conflict within which it existed, the Najibullah regime nevertheless instituted a number of significant measures concerning women's access to government structures, education, and employment. These included family courts to handle such matters as divorce and inheritance, a judicial association that attempted to mediate family disputes before referring them to the court, and a women's association that provided professional and vocation training.<sup>74</sup>

The April 1992 resignation of Najibullah triggered a new phase of civil war, when Gulbuddin Hikmatyar, the leader of the Hizb-i Islami (Hikmatyar) Party, sought to seize Kabul before a political accord had been reached between the seven Peshawar-based mujahidin parties.<sup>75</sup> During the next several years, the authority of the state, represented initially by Sibghatullah Mujadidi, of the National Liberation Front and subsequently by Burhanuddin Rabbani, of Jamiat-e Islami, was restricted to sections of Kabul and the Northeast, while various mujahidin factions and the formerly PDPA-backed militia of General Abdul Rashid Dostum controlled the remainder of the country.

The tentative power-sharing agreement between the mujahidin parties in Kabul collapsed into acrimony

and internecine fighting when President Rabbani refused to step down on the conclusion of his term of office. A shifting set of alliances saw former allies turn on each other. Indiscriminate attacks upon as well as systematic depredations against civilian populations were a common occurrence.

Women became targets of sexual violence linked to factional fighting. One of the most notorious incidents involved the entry of Jamiat-e Islami and Ittihad-e Islami forces into the Shia Hazara district of Afshar in West Kabul on 11 February 1993. According to a scholar's account, the occupying forces embarked on a 24-hour period of killing, rape, burning of homes, and abduction of young boys and girls. President Rabbani subsequently condemned the Afshar massacre (as it came to be known among Hazaras), as a "mistake" by government forces but the troops involved were never prosecuted.<sup>76</sup>

Despite the progressive evisceration of Kabul, parts of the country – particularly the North and West, where Jamiat-e Islami commander Ismail Khan and General Dostum respectively established de facto states – enjoyed a measure of stability. In Herat, where Ismail Khan now paradoxically presides over a regime that has sharply restricted women's personal freedoms, roughly half the 45,000 children in the city's schools were girls.<sup>77</sup>

Nonetheless, Afghanistan had by 1995 the highest infant mortality rate in the world; less than 30 per cent of the population had access to health care and 1,700 women out of 100,000 died in childbirth. Life expectancy for women was 43 to 44 years, and 90 per cent of girls were illiterate.<sup>78</sup> "Women have to cope with no food and malnutrition for their children," said the then Save the Children Fund's Director, Sofie Elieussen. In Kabul, she added, they "suffer from hysteria, trauma and depression because they don't know when the next rocket attack will come".<sup>79</sup> Although the social regulations enacted by the Mujahidin groups varied, many implemented regimes of social control that were notably less gender-friendly.<sup>80</sup> Thus, during this

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<sup>74</sup> ICG interviews with Afghan and international legal and development experts, February and March, 2003. Many from the women's association staff, as well as its physical infrastructure in Kabul, have now been absorbed by the Ministry of Women's Affairs.

<sup>75</sup> The entry into Kabul of Jamiat-e Islami forces under Commander Ahmad Shah Massoud in April 1992 has been characterised by a leading scholar of Afghanistan as an attempt to pre-empt a military takeover by Hikmatyar before the Peshawar alliance had appointed a government. Ahmed Rashid, *Taliban: The Story of the Afghan Warlords*, 2<sup>nd</sup> ed. (London, 2001), p. 21. See also Maley, *Afghanistan Wars*, op. cit., p. 193.

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<sup>76</sup> Sayed Askar Mousavi, *The Hazaras of Afghanistan*, (London, 1998), pp. 198-199.

<sup>77</sup> Rashid, op. cit., pp. 38-39.

<sup>78</sup> Ibid., p.107.

<sup>79</sup> Ibid., p.109.

<sup>80</sup> Edwards' informant, Samiullah Safi, noted the erosion of traditional norms, which accounted for context and values like courage, by mechanist application of Islamic norms that

period, only around 3 per cent of girls received primary school education.<sup>81</sup>

While women had better physical security in the refugee camps of Pakistan and Iran, mujahidin control there was repressive. Unlike professional Afghans, most of whom joined the diaspora in the West or relocated to Pakistani cities, women refugees lacked social and economic mobility and were vulnerable to the dictates of camp leaders.<sup>82</sup>

In 1990, a group of mullahs in Peshawar, Pakistan, representing the seven mujahidin parties, issued *fatwas* restricting the social and economic mobility of women refugees. These ranged from explicit insistence on strict seclusion to vague injunctions calling upon women to follow an Islamic code of life. Restrictions were also initially imposed on education but were flouted by women refugees who took advantage of the educational and vocational opportunities made available by NGOs.

Not surprisingly, liberal Afghan intellectuals, Afghan women activists and Western aid workers were critical of and hence targeted by the mujahidin parties in the camps and in cities such as Peshawar.<sup>83</sup> Threats against NGOs and Afghan women's organisations, like the Revolutionary Association of the Women of Afghanistan (RAWA), also increased. In 1987, RAWA leader, Mina was assassinated in Quetta, Pakistan, her murder attributed by her organisation to Gulbuddin Hikmatyar.<sup>84</sup>

#### D. THE TALIBAN REGIME (1994-2001)

In October 1994, another domestic contender for power emerged in the southern province of Kandahar. The Taliban were a Pashtun group with origins in madrasas in Pakistan's Baluchistan and Northwest Frontier Province. With Pakistani military and political support, the Taliban, headed by Mullah Muhammad Omar, made rapid gains.<sup>85</sup>

The rise and popularity of the Taliban has been explained by their clamp down on violence by regional militias, particularly against women. For instance, the Taliban's 1994 execution of a commander responsible for abducting and raping two girls in Kandahar Province is often cited as a seminal moment for the movement.<sup>86</sup> But this foundational myth obscures the part played by an underlying presence: Pakistan.<sup>87</sup> Its agenda focused initially on clearing direct land routes with the Central Asian republics, and later on establishing a favourable Pashtun regime in Afghanistan.<sup>88</sup>

By September 1996, the Taliban had captured Kabul, ousting the Rabbani government and establishing the Islamic Emirate of Afghanistan. The Taliban's declared objectives included restoring peace, collecting weapons, and implementing Shari'a law.<sup>89</sup>

Once in power, the Taliban enacted a series of repressive decrees in accordance with their interpretation of the Shari'a, the brunt of which were borne by women.<sup>90</sup> Women and girls were denied access to education; even home schools were forbidden, although girls up the age of nine were allowed religious education.<sup>91</sup> According to the head of the Taliban religious police, Mawlawi Kamaluddin, restrictions on education and employment were to remain in place until arrangements were made for sexually segregated transportation, educational institutions and offices. The resumption of educational activities would also depend on revisions of the curriculum.<sup>92</sup>

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"had nothing to do with knowledge, understanding, ethnics, nothing". Edwards, op. cit., pp. 167-169.

<sup>81</sup> Institute for War and Peace Reporting, "Afghan Recovery Report", N°25, 30 August 2002, <http://www.iwpr.net>.

<sup>82</sup> Of 276 Kabul university professors, only 27 were refugees in Peshawar and two in Iran. Olesen, op. cit., p. 282.

<sup>83</sup> Marsden, op. cit., p. 36.

<sup>84</sup> RAWA was founded in Kabul in 1977.

<sup>85</sup> Nojumi, op. cit., p. 115.

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<sup>86</sup> Rashid, op. cit., p. 25.

<sup>87</sup> Maley, *Afghanistan Wars*, op. cit. p. 220. See also Anthony Davis, "How the Taliban Became a Military Force", in William Maley, ed., *Afghanistan and the Taliban: the Rebirth of Fundamentalism* (London, 2001).

<sup>88</sup> Rashid, op. cit., pp. 26-29

<sup>89</sup> Official Taliban handout, 1997. Cited in Kamal Matinuddin, *The Taliban Phenomenon: Afghanistan 1994-1997*, 4<sup>th</sup> edition (Oxford, 2002), p. 43.

<sup>90</sup> For texts of Taliban decrees, see "Final Report on the Human Rights of Afghanistan", submitted by Mr. Choong-Hyun Paik, Special Rapporteur, in accordance with Commission on Human Rights resolution 1996/97 (United Nations: E/CN.4/1997/59), 20 February 1997.

<sup>91</sup> In 1996, the Taliban closed all schools in Kabul, depriving 103,000 girls of education and 7,800 teachers of employment. Nancy Hatch Dupree, "Afghan Women under the Taliban", in Maley, *Afghanistan and the Taliban*, op. cit., pp. 153-154.

<sup>92</sup> Nojumi, op. cit., p. 181.

Women were denied freedom of association and movement, and also restricted from working, except in the health sector. "If a woman wants to stay away from home and work with men, then that is not allowed by our religion and our culture", said Taliban Justice Minister Mullah Noorudin Turabi in May 2000.<sup>93</sup> Women were not permitted to leave their homes unless accompanied by a *mahram* (immediate male relative). They were also forbidden from travelling in vehicles unaccompanied by a *mahram* or in the company of a foreigner.<sup>94</sup> Widows could only be provided assistance by male relatives.

Perhaps the best-known Taliban decree was the mandatory veiling of all young girls and women in the all-enveloping *burka*.<sup>95</sup> Shopkeepers were threatened with arrest for selling goods to unveiled women as were taxi drivers who picked up unaccompanied female passengers, and the women themselves.

The damage inflicted by these decrees was enormous. Before the Taliban take-over women comprised 70 per cent of all teachers, around half of all civil servants, and 40 per cent of Afghanistan's doctors.<sup>96</sup> Denied the right to paid employment, including trade, many of the 40,000 war widows in Kabul, the sole income earners of their families, were reduced to begging or prostitution.<sup>97</sup> Access to health care declined as women in the capital could use only one designated hospital. The religious police of the Department for the Promotion of Virtue and the Prevention of Vice were responsible for

enforcing the decrees. They manned checkpoints and either beat or flogged female violators.<sup>98</sup>

Unwilling to oppose Pashtun tribal chiefs who favoured girls' education, the Taliban overlooked the ban on female education in six southern Pashtun provinces, where enrolment of females in schools run by the Swedish Committee for Afghanistan actually increased in 1997.<sup>99</sup> But the Taliban were far more willing to suppress women's rights in the non-Pashtun provinces. In Balkh, for instance, urban women had retained social and economic rights in a liberal environment. There was female education up to the university level in Mazar-e Sharif in that province, and women had participated actively in public life, working within and outside government.<sup>100</sup>

In Herat, too, where the urban population was less conservative than its rural counterpart, public schools for girls operated, and more than half the medical doctors were women.<sup>101</sup> In Bamiyan, an educated professional Hazara leadership had rejected and subsequently replaced the Hizb-i-Wahdat party's Islamic injunctions with a more liberal social order. Women were included in the party's Central Council, worked in UN agencies and benefited from liberal literacy, health care, and education policies. Female professors who had fled Kabul set up a university in Bamiyan.<sup>102</sup> Even in rural Hazarajat, social values and controls were far less restrictive than in Pashtun-dominated areas.

By September 1998, however, Herat, Bamiyan and Mazar were all under Taliban control, and women were not only subjected to the Taliban's Islamic restrictions but also to an alien Pashtun tribal code.

Taliban policies towards women were strongly condemned, but without effect, by the UN, the U.S,

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<sup>93</sup> "An Eye for an Eye". Interview with Afghanistan's Justice Minister, *Time*, 22 May 2000.

<sup>94</sup> Rashid, *op. cit.*, pp. 105-106.

<sup>95</sup> Announcing the punishment of 225 women for violating these decrees, a Taliban spokesperson said "As the dignity of a Muslim woman is ensured by observing *hejab* (seclusion from society) as requested by the Shari'a, all honourable sisters are strongly asked to completely observe *hejab* ... This can only be achieved if our dear sisters wear *burqas*, because full *hejab* cannot be achieved by wearing only a *chador* (a shawl that covers the body but leaves the face uncovered)". Quoted in Marsden, *op. cit.*, p. 63.

<sup>96</sup> Maley, *Afghanistan Wars*, *op. cit.*, p. 238. See also UN Special Rapporteur of the Commission of Human Rights, "Mission to Pakistan and Afghanistan", submitted by Ms. Radhika Coomaraswamy, Special Rapporteur on violence against women, in accordance with Commission resolution 1997/4 (E/CN.4/2000/68/), 13 March 2002.

<sup>97</sup> Maley, *Afghanistan Wars*, *op. cit.*, p. 238.

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<sup>98</sup> "Report of the Secretary-General on the situation of women and girls in Afghanistan", submitted in accordance with Sub-Commission resolution 1999/14, (E/Cn.4/Sub.2/2000/18), 21 July 2000.

<sup>99</sup> Michael Keating, "Dilemmas of Humanitarian Assistance in Afghanistan", in Maley, *Afghanistan and the Taliban*, *op. cit.*, *op. cit.*, p. 139.

<sup>100</sup> 1800 women attended Balkh University in Mazar. Rashid, *op. cit.*, p. 57. See also Smith, *op. cit.*, p. 16.

<sup>101</sup> At the time of the Taliban take-over, the school population consisted of 21,663 girls and 23,347 boys. However, in rural areas of the province, there were 1,940 girls and 74,620 boys. Marsden, *op. cit.*, p. 47.

<sup>102</sup> There were twelve women in Hezb-e Wahdat's 80-strong Central Council. Rashid, *op. cit.*, p. 69; Nojumi, *op. cit.*, p. 142, pp. 169-170.

the EU and women's organisations in the West.<sup>103</sup> Change came only in the last months of 2001, with Operation Enduring Freedom. The Bonn Agreement, following the successful military campaign, resulted in formation of an interim administration headed by Hamid Karzai.

## E. INTERNATIONAL REACTION TO THE TALIBAN

Gender policies of Afghan regimes had never been an international concern, despite abuse of women's rights by the Mujahidin among others.<sup>104</sup> Initially, the Taliban met with the same reaction. Indeed, after their take-over of Kabul, the acting spokesperson for the U.S. State Department indicated that "the United States finds nothing objectionable in the policy statements of the [Taliban] government, including its move to impose Islamic law".<sup>105</sup> But in response to pressure and lobbying by U.S. women's organisations, the Clinton administration grew increasingly critical. In November 1997, Secretary of State Madeleine Albright called Taliban policy towards women "despicable".<sup>106</sup>

The U.S. moved beyond rhetoric only when the Taliban, who had granted sanctuary to Osama bin Laden and his al-Qaeda associates in 1996, refused to extradite him after the terrorist attacks on U.S. embassies in Kenya and Tanzania in August 1998.<sup>107</sup> Following the 11 September 2001 attacks, the U.S. and British governments launched a public campaign

against Taliban repression of women in an effort to mobilise sentiment behind a military campaign.<sup>108</sup>

On the ground, however, the commitment to women's rights came into conflict during the Taliban years with the principles of humanitarian operation, most importantly the neutral distribution of aid on the basis of need. Bodies like the World Food Programme (WFP), for example, issued directives that at least half of all beneficiaries of food-for-work projects had to be women, even in projects involving rehabilitation activities that comprised manual labour, where this policy was unworkable.<sup>109</sup> The consequence of the WFP policy was "a significant reduction in the scale of food aid that could be provided", even to women.<sup>110</sup> Other agencies, including Save the Children Fund, Oxfam, the International Committee of the Red Cross, and UNICEF also suspended some projects in Afghanistan.<sup>111</sup> There is little evidence that the compromise of delivery of much-needed humanitarian aid in fact altered the Taliban's policies.

On the other hand, agencies that continued operations during the Taliban's period of power, adopting a pragmatic, non-confrontational approach to the regime, succeeded in negotiating some mitigation of gender policies, including employment of 5,874 women in the international assistance community, and nullification of a Taliban edict that restricted women's direct access to humanitarian assistance.<sup>112</sup>

In an unfortunate number of cases, "many within the assistance community ... used the plight of Afghan women under the Taliban to pursue their own philosophical and developmental agendas . . . whether or not their approach met with the support of most Afghan women themselves".<sup>113</sup> It remains to be seen whether similar mistakes will be made in the post-Bonn era.

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<sup>103</sup> In October 1996, the UN Security Council issued a resolution condemning Taliban discriminatory policies towards women and advocating adherence to international human rights standards. Dismissing international criticism, the Taliban Voice of Sharia radio station noted: "There are dozens and even hundreds of states in the world that do not comply in any way with genuine standards of human rights followed by people in the West ... Not only is no serious objection made against such states but the countries of the so-called supporters of human rights support these states in various ways". Marsden, op. cit., p. 122.

<sup>104</sup> Hatch Dupree, op. cit., pp. 153-154.

<sup>105</sup> Maley, *Afghanistan Wars*, op. cit., p. 227. A former State Department official, Zalmay Khalilzad (currently the Bush administration's Special Representative to Afghanistan and Iraq) recommended State Department assistance to the Taliban on the grounds that their brand of Islam countered that of Iran. Richard Mackenzie, "The United States and the Taliban," in Maley, *Afghanistan and the Taliban*, op. cit., p. 90; Nojumi, op. cit., p. 199.

<sup>106</sup> Macenzie, op. cit., p. 91.

<sup>107</sup> Maley, *Afghanistan Wars*, op. cit., pp. 248-249.

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<sup>108</sup> Alice Thomson, "Lifting the Veil on what Afghan Women really want", *The Daily Telegraph*, 23 November 2001.

<sup>109</sup> Chris Johnson and Jolyon Leslie, "Afghans have their memories: a reflection on the recent experience of assistance in Afghanistan", *Third World Quarterly*, (N°23, Vol. 5, October 2002), p. 866.

<sup>110</sup> Ibid.

<sup>111</sup> Sultan Barakat and Gareth Wardell, "Exploited by whom? An alternative perspective on humanitarian assistance to Afghan women", *Third World Quarterly*, (N°23, Vol. 5, October 2002), p. 916.

<sup>112</sup> Ibid., pp. 916, 929.

<sup>113</sup> Ibid.

### III. GENDER POLICY IN POST-BONN AFGHANISTAN

The Bonn Agreement laid out basic guidelines for the development of women's roles. It pledged to include them in political life, particularly by participation in the Loya Jirga and the interim administration. Donors also pledged that women's rights would be respected in the rebuilding of Afghan institutions and government. Important progress has been made. For example, more than three million children, including 921,290 girls, have returned to school.<sup>114</sup>

To address the structural impediments to women's rights and the manifold effects of the war, women's interests will need to be incorporated into all areas of policy-making. The development of effective institutions of government and a substantial role in civil society will also be necessary if constitutional protections are to be more than paper promises, as in the past. While the text of the Bonn Agreement did not reference a ministry committed to gender concerns, an annex provided that a Ministry of Women's Affairs would be created, initially under the leadership of Dr. Sima Samar.

The United Nations Development Fund for Women (UNIFEM) has invested significant resources in program development in Kabul. The commitment of donor nations is further illustrated by the substantial funds they have committed and by creation of a donor-government policy coordination body, the Gender Advisory Group.

Yet, prior to reviewing the efficacy of these efforts, one threshold concern requires mention. In any analysis of gender policy for Afghanistan, physical security must be an overarching concern. Despite pleas from President Hamid Karzai and UN Secretary General Kofi Annan for its expansion and the extension of its geographic mandate, however, the International Security Assistance Force (ISAF) remains limited to Kabul. Outside the capital, the security situation and the treatment of women depend on local military leaders, and the levels of sexual violence and women's access to resources remain largely unknown.

Security is essential if women are to make any headway. In the short term, security is unlikely to

<sup>114</sup> Rapid Assessment of Learning Spaces (RALS), undertaken by the Afghan Ministry of Education and UNICEF in 2002.

be achieved without greater efforts in disarmament, security sector reform and the weakening of local warlord power. Measures like the training of women police, who have been observed to operate only in Kandahar, are also critical.<sup>115</sup> These efforts will require substantial, long-term commitments from the Afghan government and the international community.

#### A. THE MINISTRY OF WOMEN'S AFFAIRS

Created at Bonn in December 2001, the Ministry of Women's Affairs operated during its first few months under conditions that were difficult even by the standards faced by other government departments: the absence of an office until temporary lodgings were secured, a crippling lack of funds, and scant recognition or support from senior officials. The first minister, Dr. Sima Samar, was replaced after the June 2002 Emergency Loya Jirga by Habiba Sorabi, creating managerial discontinuities.

Today, the ministry has on the surface achieved something much closer to parity with other ministries; it is a major recipient of international donor assistance, has an influential partner agency in UNIFEM, and is gradually establishing provincial offices. A closer look, however, reveals that many of these changes have been cosmetic and that a much more profound transformation is needed – in the ministry and in the international approach – if it is to begin addressing gender issues in a real and sustainable way.

In an effort to provide it with infrastructure, the Karzai administration assigned the ministry a large compound in Kabul's Shahr-e Nau district formerly occupied by the PDPA-era women's association – essentially a very large vocational training centre. The ministry also absorbed much of the association's workforce and organisational structure.<sup>116</sup> This has left the ministry with two significant, and debilitating, legacies.

The first is the presence of a large, but unspecialised staff, swollen by recent hires. As one ministry official put it, "We have a lot of people with little expertise".<sup>117</sup> Gender specialists working in Kabul

<sup>115</sup> Amnesty International, "Afghanistan: Police reconstruction essential for the protection of human rights", London, 12 March 2003, p. 21.

<sup>116</sup> ICG interview with official in the Ministry of Women's Affairs, Kabul, 20 February 2003.

<sup>117</sup> Ibid.



say there is a general lack of familiarity within the ministry, even at senior levels, with gender analysis and strategies used by women in other developing countries to address inequalities. The ministry suffers at all levels from severe human capital deficiencies, which have caused it to focus on literacy and vocational training projects rather than on making women's issues part of all policymaking throughout the government. The ministry is also without budgetary expertise or planning resources; its initial draft budget for fiscal year 2003-2004 was reportedly rejected by the Cabinet and redrawn with considerable technical assistance from members of the international community.<sup>118</sup>

The second legacy is the lack of horizontal linkages between departments and units. The ministry is divided into seven thematic departments, which are in turn subdivided into units tasked with specific projects. The largest department, "Thoughts Illumination", includes units focused on professional and vocational training, literacy training, widows, and "social organising". The inherited hierarchic management structure has also, according to staff, left the institution paralysed when the minister is away.

The ministry's legal department has a more innovative structure, with units focused on legal protection, women's rights, and family counselling, as well as its own research unit. It is at present the only department with a capacity for program development, but it reports directly to the minister, bypassing the two deputies who supervise the other departments. Within the ministry, there is now discussion of adopting a more streamlined structure with crosscutting links between different offices. Such a structure would entail a shift away from project implementation, while strengthening research capacity and establishing departments focused on health, education, and gender advocacy and training.

A critical challenge will be reducing size – there are 1,466 full-time and 522 temporary employees<sup>119</sup> – and recruiting staff with the managerial, research, and training skills needed for a redefined mission. Under the Bonn Agreement, criteria for government service

were to be developed by a Civil Service Commission, which has not been established. "I was hoping that the civil service commission would set guidelines for us so that we would have justification to reshuffle, hire, or fire", said a Ministry official. "Otherwise we have to start with training at a very basic level – for example, what it means to work every day."<sup>120</sup>

The absence of consideration for gender issues in government planning is not the fault of the women's ministry alone. Other ministries have been slow to prioritise these issues. Each was requested to appoint gender focal points, and nineteen such persons have participated in gender training workshops conducted by UNIFEM. But the capacity of most of these individuals to influence planning within their ministries is questionable; of those who participated in the UNIFEM workshops, only two held the rank of deputy minister or department head.<sup>121</sup> Most lacked significant administrative responsibility, such as teachers or engineers, or were the designated representatives of women working within their respective ministries.

## **B. THE INTERNATIONAL COMMUNITY AND THE MINISTRY'S STRATEGY**

A combination of factors – including its own lack of capacity and the lack of priority given to gender issues within the cabinet as a whole – has left the Ministry of Women's Affairs particularly reliant on the international community for technical and financial support. This has meant that its emphasis on project implementation has been reinforced by donor preferences for high-visibility, quick impact projects. Within the international community, however, sharp differences have emerged over whether such projects are the most effective use of funds, or indeed, whether they are sustainable.

A major component of the proposed ministry budget is for establishing community development centres in fourteen provinces. Funded by a U.S.\$2.5 million grant from USAID, the centres are intended to provide women access to skills training, health education, literacy, and accelerated learning. They will be established in the provincial capitals, with an

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<sup>118</sup> There is a risk that donors will infer from the competent and professional presentation of the gender budget a level of professional and managerial capacity within the Ministry of Women's Affairs that in fact must be developed in the near future.

<sup>119</sup> Figures provided by the Ministry of Women's Affairs, February 2003.

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<sup>120</sup> ICG interview with official in the Ministry of Women's Affairs, Kabul, 20 February 2003.

<sup>121</sup> The two are Woranga Safi, Deputy Minister of Education, and Khoja Hassan Siddiqi, who holds the rank of Head of Department within the Ministry of Higher Education.

eventual goal – not covered by the current grant – of establishing a centre in all 32 provincial capitals. Such centres have already been set up in Kandahar and Parwan.<sup>122</sup>

One Kabul-based gender and development specialist argues that the emphasis on targeting illiteracy, both within the ministry and among Afghan women's NGOs, is misplaced. Instead, she says, greater emphasis should be directed toward those women who had partial access to education during Taliban rule:

There are a lot of women who attained literacy during the Taliban through home study, but don't have sciences or maths. A lot of women want to study medicine, pharmacy, and civil engineering – these are the areas that [educated] women traditionally went into.<sup>123</sup>

Accelerated learning is presented by centre proponents as a way to reintegrate women into the educational system. According to a USAID official, the intention is to close the education gap for women and girls between the ages of 12 and 20 that developed under the Taliban; in collaboration with the Ministry of Education, the Ministry of Women's Affairs will design special classes to allow women to obtain primary school certification.<sup>124</sup> What is left unclear in the submitted budget is whether accelerated learning will be followed by tutorials and other support for those entering or re-entering secondary schools. Otherwise, particularly for the older beneficiaries, there will be a high risk of attrition.

The broader debate over the centres, however, involves their accessibility to women and whether they are the most appropriate forum for their intended functions. "The centres are disconnected from how women organise themselves, and how they utilise their power in villages and rural areas," says a development specialist with extensive field experience in Afghanistan.<sup>125</sup> The same specialist argues that the international community should first direct resources to study local modes of organising

and conduct broader consultations with women in the provinces. A second development specialist asked: "Without access and transport will women come there [to the centres]?"<sup>126</sup>

An alternative that has proven successful in other male-dominated rural societies, for example in the Balkans, is identification of families within communities who are more amenable to women's rights and who are willing to host the activities within their own homes. Another alternative strategy proposed by some development specialists was to develop mobile services. According to a member of the Gender Advisory Group, however, mobile health and education promotion units were considered and dropped. The principle opposition came from the health minister, General Suheila Seddiqi, one of two women ministers. She reportedly argued that allocating funds for such a purpose would lead to inconsistent provision of services and that it would be more sustainable to attract doctors and midwives to rural areas.<sup>127</sup>

The commitment of funds to the women's centres without prior research or consultations is mirrored by other donor programs. One development specialist cited the example of sixteen small centres in Kabul, funded by a Western development agency, that employ women to sew school uniforms. Reportedly, no assessment was done of market demand for school uniforms – a critical omission in view of the limited purchasing power of the targeted communities.<sup>128</sup>

The significance of this project is not limited to the sixteen centres. Several Afghan women's NGOs interviewed by ICG have sewing projects, as does the Ministry of Women's Affairs through its vocational training unit. Other development experts are careful not to discount the utility of sewing centres, provided that the objective is carefully defined. "Using sewing centres strategically can be effective, if you use them to take women out of the house in a way that's non-confrontational, or to connect women and get them to talk to each other", says a gender and development specialist. What sewing centres do not teach, she emphasises, is business skills. Education about small-scale loan management, a model used in Bangladesh and other

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<sup>122</sup> Interview with Homa Sabri, Senior Program Officer, UNIFEM, Kabul, 26 February 2003.

<sup>123</sup> ICG interview with a gender and development specialist, Kabul, 23 February 2003.

<sup>124</sup> ICG interviews with a USAID official, Kabul, 21 February 2003, and with an official in the Ministry of Women's Affairs, Kabul, 20 February 2003.

<sup>125</sup> ICG interview with a gender and development specialist, Kabul, 18 February 2003.

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<sup>126</sup> ICG interview with a gender and development specialist, Kabul, 20 February 2003.

<sup>127</sup> ICG interview with a member of the Gender Advisory Group, 21 February 2003.

<sup>128</sup> ICG interview with a gender and development specialist, 20 February 2003.

developing societies, has generally yet to be linked to vocational training in Afghanistan. Development workers in Kabul say that many women incur debts without understanding that they must be repaid.

Economic planning fundamentals also appear to elude much of the donor community. Sewing centres, according to a development specialist, can have a per capita cost as high as U.S.\$3,000. The Kabul women's shelter, the only item to survive from the original budget presented by the Ministry of Women's Affairs, is enormously costly (as are shelters generally). U.S.\$500,000 was requested for a shelter intended to house only 80 women at a time. The experience of a private shelter run by the respected Shuhada NGO in Kabul (and led by Dr. Sima Samar, the head of the Afghan Independent Human Rights Commission and former Minister of Women's Affairs), suggests that shelters often become permanent accommodations, thereby reducing the pool of potential beneficiaries and failing to provide durable solutions to their social and economic needs.

One gender specialist views the ministry's shelter request as avoiding the issue of domestic violence. "The Ministry's approach is to build a shelter", she told ICG, but she recommended instead that "there should be monitoring by the Ministry of Public Health of women in clinics to look for signs of domestic violence, to get a handle on the problem".<sup>129</sup> Monitoring, however, is less visible assistance than physical infrastructure projects and consequently less appealing to many donors.

The lead UN agency for gender and development in Afghanistan is UNIFEM. It is represented on the Gender Advisory Group and closely coordinates with major donors such as USAID as well as the Women's Ministry. Some observers contend that UNIFEM in fact guides the ministry's development planning. UNIFEM's detractors fault the agency for failing to carry out field research on the ministry's community development centres project. According to one development expert, UNIFEM initiated donor meetings for the centres by presenting a package of standardised services, including health, income generation, gynaecology, legal counselling, psycho-social services, and literacy. She said her agency

opposed the proposal because it was not based on field assessments.<sup>130</sup>

In an interview with ICG, a UNIFEM staff member in Kabul acknowledged the need to prioritise women's economic empowerment and to address the critical lack of primary research. She reiterated UNIFEM's desire to support NGOs that had the capacity to help women in business and said it was researching the market viability of goods made by women and other opportunities.

The gap between UNIFEM's awareness of the steps that need to be taken to address gender inequalities and its record in actually taking those steps may be explained by lack of program experience. It typically assumes a consultative role and has relatively modest experience as a field-based implementation agency. Speculating on the reason for this shift of approach in Afghanistan, a Kabul-based gender specialist said, "UNIFEM is operational in Afghanistan because of the symbolism. In a way it's a flagship. If a UN fund for women can't be visible in a country that's universally known for violations of women's rights, then what are they?"<sup>131</sup>

### C. GOVERNMENT-DONOR COORDINATION

The Karzai government has developed a structure of policy coordination bodies, called the "consultative groups", to improve budgetary policy formation through early public and international input. Twelve budgetary program areas have been divided between seventeen consultative groups,<sup>132</sup> or working groups of ministries, donors, and NGOs headed by a lead ministry. At monthly consultative group meetings, budgets are to be designed, policies monitored, and problems identified. A standing committee with representatives from all consultative groups is to meet to discuss macro policy on the first Thursday of each month. Every March, donors and the Afghan administration are to meet at an Afghan Development Forum (ADF) to sign off on an annual budget and donor funding commitments.

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<sup>129</sup> ICG interview with a gender and development specialist, Kabul, 18 February 2003.

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<sup>130</sup> ICG interview with a gender and development specialist, 20 February 2003.

<sup>131</sup> ICG interview with a gender and development specialist, Kabul, 23 February 2003.

<sup>132</sup> The Security and Rule of Law program area is divided into six sub-groups: national army; disarmament, demobilisation, and reintegration; national police; anti-narcotics; justice; and demining.

The October 2002 draft of the National Development Budget identified “a need to put in place [an] effective institutional mechanism . . . for mainstreaming gender, and [promoting] coordination” among ministries.<sup>133</sup> To mainstream crosscutting concerns like gender, the consultative group structure contains five “Advisory Groups” – on gender, environment, humanitarian affairs, human rights, and monitoring and evaluation – that are tasked with weaving their respective issues into consultative group policy discussions. Advisory Groups also comprise governmental entities, donors, UN agencies, and civil society actors. The focal point for the gender Advisory Group, initially, was to be UNIFEM.<sup>134</sup>

Consultative groups have failed to incorporate crosscutting concerns like gender effectively into the national budget or line ministry policy calculations. During preparations for the first ADF, only some consultative groups met, and most that did failed to hold substantive policy discussions.

At present, then, the gender Advisory Group has no functioning policy coordination structures to address. Even if such structures existed, mainstreaming of gender issues via the Advisory Group would not be imminent. Even if all consultative groups were operational, no institutional mechanisms exist for Advisory Groups to feed them policy suggestions, and to monitor their implementation.<sup>135</sup> Policy mainstreaming must be ad hoc, via personnel overlap between an Advisory Group and consultative groups, or via the Standing Committee. In lieu of meaningful gender programming in line ministries, the Ministry of Women’s Affairs has developed a free-standing budget for submission to the Ministry of Finance. This initiative, while potentially meritorious, fails to identify flaws in programming by other ministries that will impact women to a far greater extent than a collection of disparate initiatives with some link to the Ministry of Women’s Affairs.<sup>136</sup>

Further, relationships between the de facto loci of decision-making and the consultative groups are unclear. Although the Afghan Assistance Coordination Authority (AACA) has suggested that consultative groups are “somewhere between a consultative and a legislative structure”,<sup>137</sup> it appears that decision-making remains within ministerial control. Advisory Groups are thus mere advisors to advisors. At two removes from actual decision-making, such bodies, tasked with mainstreaming an unfamiliar concern like gender, are unlikely to be effective.

Finally, one member of the Advisory Group noted that mainstreaming gender is an enormous task well beyond the capacity of the group as constituted. “You don’t need gender advisors. You need capacity to make things run, bureaucrats really”, she noted.<sup>138</sup> The Advisory Group’s initial moves in regard to its capacity give little cause for optimism: an early act was to expel all foreign NGOs, but then to readmit some.

In practice, then, the Gender Advisory Group has yet to mainstream gender concerns. Nevertheless, and despite its birth pangs, it remains an opportunity to translate donor commitment into pressure on all sectors of the Afghan administration to account for gender concerns in their areas of responsibility. It is further an opportunity to move beyond projects with limited showcase appeal, begin to address the structural imbalances within Afghan society, and start to build the foundations of public support for gender equality through measures with broad appeal.

#### D. CIVIL SOCIETY DEVELOPMENT

Women’s participation in civil society since Bonn should be seen from the perspective both of the development of NGOs working specifically on gender issues as well as in regard to the broader representation of women in NGOs, civic forums, and other associations. By either measure, women remain marginalised. The obstacles they face include

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<sup>133</sup> Ministries of Planning, Reconstruction, and Finance, Working Draft Plan and Budget, National Development Program, 58, 10 October 2002.

<sup>134</sup> Afghan Assistance Coordinating Authority, The Establishment of Consultative Groups for Furtherance of the National Development Process, 5 December 2002.

<sup>135</sup> ICG interview with a gender and development specialist, Kabul, 23 February 2003.

<sup>136</sup> For example, the training of traditional birth attendants, auxiliary midwives, midwives and female physicians is of critical importance in a nation that may have the highest

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maternal mortality ration in the world. Ronald Waldman and Homaira Hanif, “The Public Health System in Afghanistan”, Kabul, AREU, May-June 2002, pp. 4-5. An effective Gender Advisory Group would identify issues of this kind and advocate for policy solutions and necessary fiscal allocations.

<sup>137</sup> ICG interview with AACA staff, November 2002.

<sup>138</sup> ICG interview with a gender and development specialist, Kabul, 23 February 2003.

resource limitations, gender discrimination, and though seldom openly discussed, security threats.

While commonly understood as a period when educated Afghan women faced unprecedented restrictions on freedom of movement and association, Taliban rule paradoxically laid the groundwork for much of the women's activism in evidence today. The Asia Women Organisation, an NGO that publishes the *Women's Mirror* periodical and administers health, education, and handicrafts programs, is an example. According to its director, Shukriya Barakzai Dawi, it was established in July 1999 and initially attempted to counter Taliban limitations on women's access to employment and education by providing educational and vocational training courses in private homes.<sup>139</sup> Another example of the paradoxical effect of war was the "steady increase in demand for girls' education by Afghan communities", in part because of families' experience in refugee camps.<sup>140</sup>

Women's NGOs in Kabul remain relatively few, however, and their activities tend to be duplicative. Tailoring and small-scale handicrafts projects, literacy courses, and workshops on rights awareness are common. The limited range and reach of these activities is attributable in part to the reliance of most women's NGOs on grants channelled through international NGOs. A gender and development specialist who has worked closely with these women's NGOs described their predicament succinctly:

Even well established [women's] NGOs are relying on international NGOs for funds, rather than mainstream funders. They have to manage small funds and are losing staff to the UN. How can they develop capacity? They stick to computer training and literacy, and don't grow.<sup>141</sup>

The limited value of some of these activities is not lost on the women's NGOs, some of whom express a desire to carry out more ambitious projects. An Afghan lawyer working with one of them told ICG that the participants in her workshops were usually educated women already aware of their rights under law. Effective strategies, she said, could include discussing the civil code on radio and television, and

educating both boys and girls in provincial schools about women's rights.<sup>142</sup> Dawi said the Asia Women Organisation had planned projects in reconstruction, agriculture, animal husbandry, and environmental protection but was unable to carry them out for lack of funds.<sup>143</sup>

The experience of other post-conflict societies suggests that education and vocational training are indeed key to economic independence and participation in political and decision-making processes.<sup>144</sup> Labour shortages caused by the lengthy conflict can translate into opportunities for women to participate much more fully in the economy. Women in post-conflict environments seek employment outside the home, often for the first time. An enormous constraint on their economic (and political) participation is lack of access to education and training. A huge proportion of Afghan women are simply not equipped with the skills to participate more fully. Their systematic exclusion from the education system under the Taliban makes this problem even more acute and urgent.

As well as access to education and training, women need access to employment opportunities. In many cases micro-credit has provided opportunities for women – particularly widows and displaced women – to establish their own businesses or co-operatives in agriculture, animal farming and home-based enterprises. Micro-finance has also been linked with education in innovative ways. Programs in Rwanda and Uganda that successfully combined lending with training in public health or vocational and business skills offer useful examples.<sup>145</sup>

Small business projects for women in Afghanistan must focus on local needs, for example the market for *pattoos*, a multi-purpose towel and prayer mat

<sup>139</sup> ICG interview with Shukriya Barakzai Dawi, Asia Women Organisation, Kabul, 23 February 2003.

<sup>140</sup> Johnson and Leslie, op. cit., p. 870.

<sup>141</sup> ICG interview with a gender and development specialist, Kabul, 18 February 2003.

<sup>142</sup> ICG interview with a member of an Afghan woman's NGO, Kabul, 21 February 2003.

<sup>143</sup> ICG interview with Shukriya Barakzai Dawi, Asia Women Organisation, Kabul, 23 February 2003.

<sup>144</sup> "On every continent, in rural and urban areas, and across all affiliations, women pleaded for education – for themselves and for their daughters. The displaced women we met in Colombia, the farmers in Central Africa and the prostitutes in Cambodia all saw education and training as their key to economic independence and [political] participation..." Elisabeth Rehn and Ellen Johnson Sirleaf, "Women War and Peace: The Independent Expert's Assessment", UNIFEM, October 2002, p. 133.

<sup>145</sup> Ibid., p. 128.

used in the Northeast.<sup>146</sup> Although there are some indications that rural women have a relatively sophisticated knowledge of issues like currency, there is a need for training in marketing and accounting to ensure that projects do not become mere showcases.<sup>147</sup>

A further area in which civil society groups could be supported is the development of gender sensitivity among Afghan men. One Afghan legal expert noted that there would be “a crisis in the family structure if men remain in the same position. They should come to know that it is good for them and for Afghanistan if women come to enjoy freedom”.<sup>148</sup> In other post-conflict situations, for example the Balkans, civil society groups identified men who were sympathetic to gender concerns, praised and trained them to work with other men to shift pervasive stereotyped attitudes.

Other groups have created forums for women to articulate political grievances and aspirations so as to influence the political process. In the immediate aftermath of the collapse of the Taliban, and prior to the Bonn Conference, the All Afghan Women Union demonstrated for recognition of women’s rights in different parts of Kabul. Although the demonstrations reportedly passed without incident, the group was subsequently denied permission to repeat them on three separate occasions by then Interior Minister Yunus Qanooni, who said security could not be ensured.<sup>149</sup>

The *Women’s Mirror* convened a conference on 3-4 February 2003 that brought together a significant number of women representatives from the Emergency Loya Jirga, built on that experience, and produced a final statement directed in part at the constitutional drafting and judicial reform processes.<sup>150</sup>

Somalia offers a useful example of the combination of gender-sensitive economic development and political work. A coalition of grassroots women’s

organisations from a variety of clans and ethnic groups came together there to provide – with international support – schools, health clinics, water and sanitation to communities across the country. It established police units, pressured elders to use their influence to halt conflicts,<sup>151</sup> and organised civil society peace-building efforts – including studies on women and Islam, educating women about their rights under Shari’a law and developing strategies that promoted women’s political participation.<sup>152</sup> This won respect from their communities – and a place at the Djibouti peace conference.<sup>153</sup> In August 2000, 25 women became members of the briefly promising Somali Transitional National Assembly.

In Afghanistan, however, women’s representation in broader civil society organisations is still relatively limited. “The space for women to excel is very narrow”, says an international foundation representative in Kabul. The major Afghan NGOs have women members involved in community mobilisation but not in positions of leadership.<sup>154</sup>

One exception is the Association of Civic Institutions of Afghanistan, a predominantly Hazara group based in West Kabul, whose members meet periodically to discuss social and political issues. It recently elected as its head Khadijeh Bahari, a woman orthopaedist and the director of an educational centre that offers courses to adult women, girls, and boys in physics, chemistry, biology and other subjects.<sup>155</sup> A submission to the Constitutional Drafting Commission produced by the Association recommends that the constitution protect the political and civil rights of all citizens without gender discrimination or privilege and “clearly and distinctly ensure the removal of all kinds of discrimination and injustice against women”.<sup>156</sup>

The capacity of women civil society actors to secure their own rights and to educate and organise

<sup>146</sup> Sippi Azarbaijani-Moghaddam, *Report of the EC Rapid Reaction Mechanism Assessment Mission*, April 2002, p. 27.

<sup>147</sup> Ibid.

<sup>148</sup> ICG interview with Adila Fasihi, Legal Advisor, Rowzana, 21 February, 2003.

<sup>149</sup> ICG interview with Suraya Parlika, Director, All Afghan Women Union, Kabul, 22 February 2003.

<sup>150</sup> ICG interview with Shukriya Barakzai Dawi, Asia Women Organisation, Kabul, 23 February 2003. “B&C conference ended with a final statement”, *Women’s Mirror*, 9 February 2003.

<sup>151</sup> Press Briefing on Security Council Debate on Women and Peace, Security, 24 October 2000, Available at:

<http://www.un.org/womenwatch/news/articles/pressconfsc.html>.

<sup>152</sup> Coalition for Grassroots Women’s Organisations. <http://www.csiw.org/SIHAorg.htm>.

<sup>153</sup> See Laura Flanders, “Let’s Not Reinvent the Peacemaking Wheel”, *S.A.L.S. Journal*, November 2001, p. 9.

<sup>154</sup> ICG interview with an international foundation representative, Kabul, 16 February 2003.

<sup>155</sup> ICG interview with Dr. Khadijeh Bahari, Director, Establishment Rehabilitation Center, Kabul, 27 February 2003.

<sup>156</sup> “Suggestion of the Association of Civic Institutions of Afghanistan to the Constitution Drafting Commission of Afghanistan”, Articles 1 and 12.

other women is limited by profound security considerations. Even in private conversations, few women are willing to report openly the threats they face in the ordinary course of their work. The following comments from a woman NGO activist, while characteristically oblique, articulate these concerns:

In a traditional society such as Afghanistan, to admit women as active members is very difficult. Even men who have a higher education are unwilling to let their women leave the house, and therefore we face manifold problems. In a society where ministers who have security forces to protect them are killed in front of their ministry or in airports, what is the protection for women who lack any security force? There is the possibility of any event at any moment.<sup>157</sup>

A prominent Afghan woman activist recounted receiving a series of threatening phone calls in November 2001 after she stated in an interview broadcast to an Afghan audience that the violation of women's rights in Kabul began not with the Taliban but with the arrival of the mujahidin forces in 1992. She subsequently disconnected her local phone line. She told ICG in late February 2003 that she had recently been receiving suspicious knocks on the door of her apartment, at dusk when most neighbours were in the mosque for prayers. The visitor invariably refused to identify himself, and the activist in turn refused to open the door. "If I do, anything may happen, she said".<sup>158</sup>

The same activist described the experience of a colleague, who, she said, had established a literacy course for women in Kabul's Kart-e Nau district under the Taliban and was well known there as an activist. Following the collapse of the Taliban, the colleague organised a meeting of women, which had to be moved outdoors when the participants exceeded the capacity of the compound. Shortly thereafter, an unidentified man began following her regularly; about ten days after the women's meeting, he approached her on a bus, admonished her that she was a Muslim and ordered her to "obey hijab" (the veil).<sup>159</sup>

## IV. CONSTITUTIONAL AND LEGAL PROTECTIONS

### A. BACKGROUND

Afghan law is deeply Islamic and traditional, despite having drawn on French and Turkish models at different times. According to a professor at Kabul University's Law Faculty, the civil and penal codes enacted pursuant to the 1964 constitution are codifications of the school of Sunni jurisprudence called Hanafi.<sup>160</sup> Even the modest benefits for women under Hanafi law often go unrealised because local decision-making bodies like shuras apply less favourable traditional norms, including Pashtunwali. For example, Pashtunwali precludes women's land ownership, restricts marriage and inheritance rights, and permits exchange of women to resolve disputes.<sup>161</sup>

Afghanistan has ratified a number of international conventions related to gender, including the Convention on the Political Rights of Women, the Convention Concerning the Equal Remuneration for Men and Women Workers for Work of Equal Value, and the Convention Concerning Discrimination in Respect of Employment and Occupation.<sup>162</sup> No trace of these international standards appears in domestic law. On 5 March 2003, Afghanistan acceded to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), apparently without reservations. An important project for the Transitional Administration, and in particular the Judicial Reform Commission that is tasked with reviewing and revising the corpus of statutory law, will be the incorporation of CEDAW norms into new penal and civil codes.

### B. THE NEW CONSTITUTION

Of Afghanistan's five constitutions since 1931, the 1964 document is the least favourable to gender equality. Equality clauses in the 1977, 1980, and

<sup>157</sup> ICG interview with an Afghan woman NGO activist, Kabul, February 2003.

<sup>158</sup> ICG interview with an Afghan woman NGO activist, Kabul, February 2003.

<sup>159</sup> Ibid.

<sup>160</sup> ICG interview with professors at Kabul University Law Faculty, 16 December 2002.

<sup>161</sup> ICG interview with Mahbooba Hoquqmal, Minister of State for Women, 5 November 2002.

<sup>162</sup> Mariam Nawabi, *Ensuring Gender Equity in the Laws of Afghanistan* (Washington D.C., 2002), p. 3.

1990 constitutions all specifically mention gender.<sup>163</sup> Nevertheless, the 1964 constitution, which speaks only generically of “equal rights and obligations before the law”,<sup>164</sup> is presently part of Afghan law pursuant to the Bonn Agreement. It has also been the point of departure for the constitutional drafting commission. According to human rights activists in Kabul, its equality clause was not generally applied to women because judges required anyone seeking redress under Article 25’s promise of equality to demonstrate citizenship through production of a state-issued identity card that few women possessed.<sup>165</sup> In subsequent parliamentary debates about the 1971 marriage law, conservatives evoked clauses in the 1964 constitution incorporating Shari’a to block reforms. The equality clause was ignored.<sup>166</sup> The 1964 constitution’s contribution to gender equality thus foundered because it was never translated into Islamic terms.

The Bonn Agreement provides for a constitutional commission to prepare a draft document for consideration by a Constitutional Loya Jirga that is to begin prior to January 2004.<sup>167</sup> In November 2002, the Transitional Administration established a nine-person “Drafting Committee of the Constitution Commission”. The commission is led by Vice President Neamatullah Shahrani, a graduate of Al-Azhar University and recipient of a U.S. masters degree. It includes two women, Asifa Kakar and Mukarama, both former students of Vice President Shahrani at Kabul University.<sup>168</sup> The drafting committee will be expanded in March 2003 to 30 persons to debate, engage in public consultations, and finalise a draft to forward to the Constitutional Loya Jirga, which is now slated for October 2003. Women’s involvement in previous such loya jirgas

has been limited. The 1964 Loya Jirga contained four women,<sup>169</sup> the 1977 version twelve.<sup>170</sup>

Vice President Shahrani indicated at a 11 January 2003 meeting with donors that no draft would be issued in the immediate future. The only indication of progress in equality norms came in a recent public statement by Mr. Shahrani: “We believe in social justice, no discrimination against anyone, everybody gets equal rights”.<sup>171</sup> The history of Afghan constitutionalism, however, demonstrates that general clauses with that kind of language do not translate into statutory change in favour of women without popular support. Notwithstanding Mr. Shahrani’s statement, therefore, continued popular mobilisation is a precondition to an effective gender equity clause.

The new constitution raises two opportunities for women. First, Afghanistan presently enjoys a relatively high degree of international attention, both financially and in the media. Gender equality is of special importance for many donors. There is an opportunity to exploit international pressure to use the constitutional process as a way of becoming more engaged in politics.

Secondly, a new constitution is a fresh opportunity to entrench legal protections for gender equality into law. This can only be exploited, however, if the attempt is pitched in an idiom commensurate with Afghan legal traditions. This entails finding arguments for women’s rights – particularly Islamic law arguments – that progressive Afghans can deploy in debates against conservatives. Further, a broad constituency for gender equality, even among women, requires a campaign carefully phrased in culturally sensitive terms.<sup>172</sup> Without this kind of language, the attempt to incorporate functional protection for women into statutory and constitutional law is unlikely to succeed.

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<sup>163</sup> Constitution of 1977, Article 27; Constitution of 1987, Article 38; Constitution of 1990, Article 38.

<sup>164</sup> Constitution of 1964, Article 25.

<sup>165</sup> ICG interview with human rights activists, 31 October 2002.

<sup>166</sup> Kamali, *op cit.*, p.48.

<sup>167</sup> Agreement on Provisional Arrangements in Afghanistan, Pending the Re-establishment of Permanent Government Institutions. See <http://www.uno.de/frieden/afghanistan/talks/agreement.htm>.

<sup>168</sup> ICG interview with Mahbooba Hoquqmal, Minister of State for Women, 5 November, 2002. As previously noted, the commission that prepared President Daoud’s 1977 constitution also contained two women, one of whom is presently Minister of State for Women.

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<sup>169</sup> Nighat Mehroze Chisti, *Constitutional Development in Afghanistan* (Karachi, 1998), p. 90.

<sup>170</sup> ICG interview with Mahbooba Hoquqmal, Minister of State for Women, 5 November, 2002.

<sup>171</sup> Sanjeev Miglani, Reuters, 23 February 2003.

<sup>172</sup> Nor is such a broad coalition impossible. A public opinion survey facilitated by the National Democratic Institute prior to the June 2002 Loya Jirga found that: “Men and Women alike fluently recite Koranic scripture to explain that equal rights are fully consistent with Islam”. Thomas O. Melia, “Afghan Perspectives on Democracy”, Washington D.C., National Democratic Institute for International Affairs, 28 May 2002, p. 18.



Both these opportunities require a meaningful process of public education and consultation in which women would play a significant role. In this process, gender issues could, for example, be approached through discussion of access to health and education services.

Efforts to involve women more broadly in the constitutional process have so far been ad hoc and uncoordinated. Consistent with the trend in other advocacy and development efforts, they have been restricted almost exclusively to Kabul. Two governmental institutions, the Afghan Independent Human Rights Commission and the Ministry of Women's Affairs, have organised groups of professional women in the capital to prepare formal written suggestions for the Constitutional Drafting Commission concerning women's rights.

In January 2003, the Afghan Independent Human Rights Commission twice convened women from Kabul and Mazar who work in courts, prosecutor's offices, and legally oriented NGOs. This group developed recommendations that were presented to the Constitutional Drafting Commission at the end of the month, including a guarantee of gender equality and compulsory identity cards for both women and men, to surmount the barrier to legal equality faced by women after 1964. A member of the Commission suggested that these cards could gain acceptance in rural areas if possession was required in order to receive education and health benefits.<sup>173</sup> The Commissioner said that although the group had discussed allocation of seats in each geographical region that could only be filled by women as a way of encouraging more political participation, that idea was not forwarded.<sup>174</sup>

Beginning in December 2002, the Ministry of Women's Affairs and UNIFEM convened a different group of women legal professionals to produce a second set of recommendations. This group sought and obtained independent input about how women's rights are addressed in the constitutions of other Islamic countries. Its recommendations ranged broadly, from endorsing a bicameral parliamentary system to calling for those "who break the law" to be punished.

The ministry itself proposed the constitution include a gender equality clause and, evoking the 1923 precedent, that it make secondary education compulsory for both sexes. Its submission also condemned disparities in retirement ages, gender imbalances on the Supreme Court, and "inappropriate customary practices" that violate Shari'a and international law.

Critically, neither the Ministry of Women's Affairs nor the Afghan Independent Human Rights Commission makes a compelling case in Islamic law terms for a gender equality provision though previous reforms have been successfully resisted precisely because their opponents were able to label them un-Islamic. Both the 1924 Loya Jirga debate about Amanullah's marriage code and the 1971 parliamentary debate on the marriage law were phrased in Islamic terms.<sup>175</sup> Because the debate in the October 2003 Loya Jirga is also likely to be grounded in Islamic ideas, ideas that in their basic outline are accepted by the majority of Afghans, the absence of Islamic arguments for women's rights renders these submissions less politically effective than they could be.

International efforts to press women's rights have not been effective. A portion of a 1 December 2002 conference in Bad Honnef (Germany) hosted by the German Foreign Office and attended by members of the drafting commission focused on these issues. But the argument made by a women professor of law from Berlin's Humboldt University was phrased in terms of international law standards and only noted in passing the legal situation in other Islamic countries.<sup>176</sup> It is unlikely that this kind of argument will, on its own, have a significant effect on the Afghan debate. Importantly, no expert has been asked to testify before the drafting commission about progressive Islamic traditions on gender equality, although UNIFEM says it plans to bring such experts to Kabul in late March 2003.

Efforts to identify means for bringing women into the consultation process are still at an early stage. Initial drafts of a plan for consultation on the constitution indeed identify women as one group to be constituted for public meetings to obtain input. How this can be implemented in rural Afghanistan

<sup>173</sup> ICG interview with a member of the Human Rights Commission, Kabul, January 2003.

<sup>174</sup> Ibid.

<sup>175</sup> Olesen, op cit, p. 138; Kamali, op cit. p. 48.

<sup>176</sup> Susanne Baer, "A Constitution for Afghanistan: Women's Rights: Equality as a Constitutional Goal", paper delivered at Bad Honnef Conference, December 2002.

has yet to be specified. While a handful of villages have women's shuras,<sup>177</sup> in many areas women have little mobility outside the home. A strategy is needed for communicating to such women about the constitution, or for obtaining their attendance at public meetings.

Such a strategy requires educational materials couched in terms familiar to rural women and mechanisms for getting the materials to women, who most often do not play a role in communal decision-making. Radio and television, which may be more accessible to women, should also be explored. A Ministry of Women's Affairs representative suggested the provincial women's centres could be used. Each will have a television-VCR. Pre-recorded programs about the constitution could be used as a basis for civic education and discussion.

There is, in sum, need to coordinate disparate initiatives to ensure effective dissemination of information to women and facilitate their access to the constitutional process.

### C. ACCESS TO JUSTICE

For most Afghan women, as for men, the primary forums for dispute resolution remain communal institutions – a reflection both of the historically limited reach of the state and the increased importance of solidarity groups<sup>178</sup> in areas where formal governance structures have broken down. Even where courts function and are theoretically accessible, financial constraints, lack of familiarity with legal process, mobility limitations, and social imperatives to settle disputes within the community encourage women to seek justice through traditional mechanisms. There are positive incentives as well: “Women know how to lobby influential men, such as village heads or mullahs”, says a gender specialist who has done extensive fieldwork. “There are socio-cultural means for doing this sort of thing —

individual relations, rather than through ‘knowledge of system’”.<sup>179</sup>

Afghan women who approach courts do so mainly for divorce, child custody, inheritance or other matters that are commonly categorised as family law. Most Afghan women lawyers interviewed by ICG see this as the area of law most urgently in need of rehabilitation and reform. A primary concern is the absence of functioning family courts. Established under the Najibullah administration and retained by the Rabbani government, they were dismantled by the Taliban.<sup>180</sup> Family courts were, however, the judicial institutions with which women were most familiar and where they were most likely to encounter other women as judges.

Family law is itself largely a codification of Shari'a and Hanafi jurisprudence (*fiqh*). Few Afghan women lawyers are interested in challenging the Islamic basis of the civil code, but many contend that custom and restrictive interpretations of Shari'a operate to the detriment of women. Inheritance is a case in point. Under the civil code a woman inherits one-eighth of her husband's estate.<sup>181</sup> “We must consider the real situation of women at present”, said a senior governmental official. “Shari'a has said one-eighth, but it hasn't said ‘not more than that.’”<sup>182</sup>

According to a senior government official, concepts of equity and social justice should also govern child custody. Under the civil code, a divorced woman is entitled to custody of her male children below the age of seven and female children below the age of nine; older children remain with their father in the event of a divorce.<sup>183</sup> “If a woman had older children and was divorced, she was kicked out of the house, without rights to inheritance, possessions and property, without considering if she had a father or brother”, the official said. “The next constitution should have a clear article on this”.<sup>184</sup>

Deficient record keeping also militates against justice for women in court. The great majority of marriages

<sup>177</sup> Chris Johnson, William Maley, Alexander Thier, and Ali Wardak, “Afghanistan's political and constitutional development”, ODI, 20 January 2003.

<sup>178</sup> The Dari term is *qaum*, the precise meaning of which varies according to context. It can refer to a unit as small as a particular village or kin group, or to one as large as an entire ethnicity. Olivier Roy, *Afghanistan, From Holy War to Civil War* (Princeton, 1995), pp. 21-22.

<sup>179</sup> ICG interview with a gender and development specialist, Kabul, 18 February 2003.

<sup>180</sup> ICG interviews with UNAMA and Afghan NGO officials, March 2003.

<sup>181</sup> Civil Code, Article 2007.

<sup>182</sup> ICG interview with a senior government official, February 2003.

<sup>183</sup> Civil Code, Article 249.

<sup>184</sup> ICG interview with a senior government official, February 2003.

and divorces are not recorded, and in the absence of records, courts are likely to accept a man's testimony. During a recent visit to the Kabul women's prison, for example, members of the Afghan Independent Human Rights Commission interviewed a woman who had been detained for adultery because she had been unable to prove the dissolution of her first marriage. According to the Commission, her husband had divorced her orally (a form of divorce known as *talaq* and sanctioned under Shari'a) seven years earlier and then emigrated to Iran. She had remarried but upon return her first husband accused her of adultery while telling her privately he would withdraw the charge if she paid him.<sup>185</sup>

For Afghan women educated in Iran, the experience of Iranian women in securing their rights within an Islamic legal framework has powerfully affected their own aspirations. "Part of the success women have had in Iran is learning about Shari'a and *fiqh* and using this to argue their way into and out of divorce cases", says a gender specialist in Kabul.<sup>186</sup>

"Iran is a hundred years ahead of us", an Iranian-educated woman lawyer in Kabul told ICG. "We fought, they thought". She cited in particular the establishment of family courts in Iran and a series of progressive rulings that have emanated from them. These included adding an article to the civil code allowing women the right to obtain a divorce whenever they wanted; granting divorced women custody of their children; requiring fathers to pay child support; entitling women to *mahr* (a nuptial gift from the husband, to which a woman is entitled if her husband divorces her) even when she initiates the divorce; and questioning Islamic law provisions making the testimony of one man equivalent to that of two women, or allowing two women to be given to a murder victim's family in "compensation".<sup>187</sup>

According to Shahjehan Begzad, an official in the Ministry of Justice, that ministry has taken steps to improve legal protections for women. She cited in particular an amendment to the labour law that entitled women public servants on maternity leave to continue receiving a daily stipend of 60 Afghanis

(U.S.\$1.20), a significant sum in a context where many civil servants receive approximately U.S.\$40 per month.<sup>188</sup> The larger task of reviewing laws for consistency with treaty obligations, including the newly ratified CEDAW, rests with the Judicial Reform Commission. In addition, the Afghan Independent Human Rights Commission has hired Fatima Gailani, an Afghan woman activist and authority on Islamic law, to review with judicial officers laws and procedures they follow with women.<sup>189</sup>

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<sup>185</sup> ICG interview with Hangama Anwari, Commissioner, Afghan Independent Human Rights Commission, Kabul, 19 February 2003.

<sup>186</sup> ICG interview with a gender and development specialist, Kabul, 18 February 2003.

<sup>187</sup> ICG interview with Afghan lawyer, February, 2003.

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<sup>188</sup> ICG interview with Shahjehan Begzad, 25 February 2003.

<sup>189</sup> ICG interview with Hangama Anwari, Commissioner, Afghan Independent Human Rights Commission, Kabul, 19 February 2003.

## V. CONCLUSION

There is little reason to doubt the commitment of the Karzai administration and its international partners to address sources of discrimination against women and enable them to resume their due place in civic life. Ratification of CEDAW is evidence of this, as is the extensive financial and technical support given by donors to the Ministry of Women's Affairs. What is lacking, rather, is a pragmatic, coherent strategy for integrating gender into all aspects of the reconstruction process.

Sustainable gender mainstreaming must recognise that Afghan women cannot be disaggregated from the communities in which they live. Past attempts at legal and institutional reform, under King Amanullah during the 1920s and the PDPA in the late 1970s, failed in part because they did not enjoy a base of community support; they drew instead on poorly understood models that were not adapted to the political and social realities of Afghanistan. There is a risk that today's reform will prove equally ephemeral. The international community's approach to gender has been guided not so much by Afghan history and its own accumulated experience in community development, but by a desire for immediate, visible signs of progress in woman's education and economic empowerment.

The relevant indices are not only the tally of those enrolled in literacy programs or training courses – still the major focus for both the Ministry of Women's Affairs and Afghan women's NGOs – but also projects that build constituencies for women's rights, that identify and build upon meaningful economic opportunities and provide educated or partially-educated women the support they need to pursue higher education and help guide the reconstruction of the country.

Educating Afghan males about women's participation in public and economic life is a critical starting point. So is visible support for those men who cooperate with gender and development programs in local communities, particularly in rural areas. Committing resources to research how women influence decision-making at a local level, even indirectly, and their channels for communication is also important. If carried out properly, the results will help Afghan authorities and the development community devise strategies to make health

education, judicial institutions, and political participation accessible to women.

As in previous reform eras, there is significant risk that gender equality provisions in the constitution can become a catalyst around which discontent with the political status quo mobilises. Constitutional consultations should, therefore, engage diverse society leaders in discussions that approach gender equity in terms that build upon the rights guaranteed women in Islam.

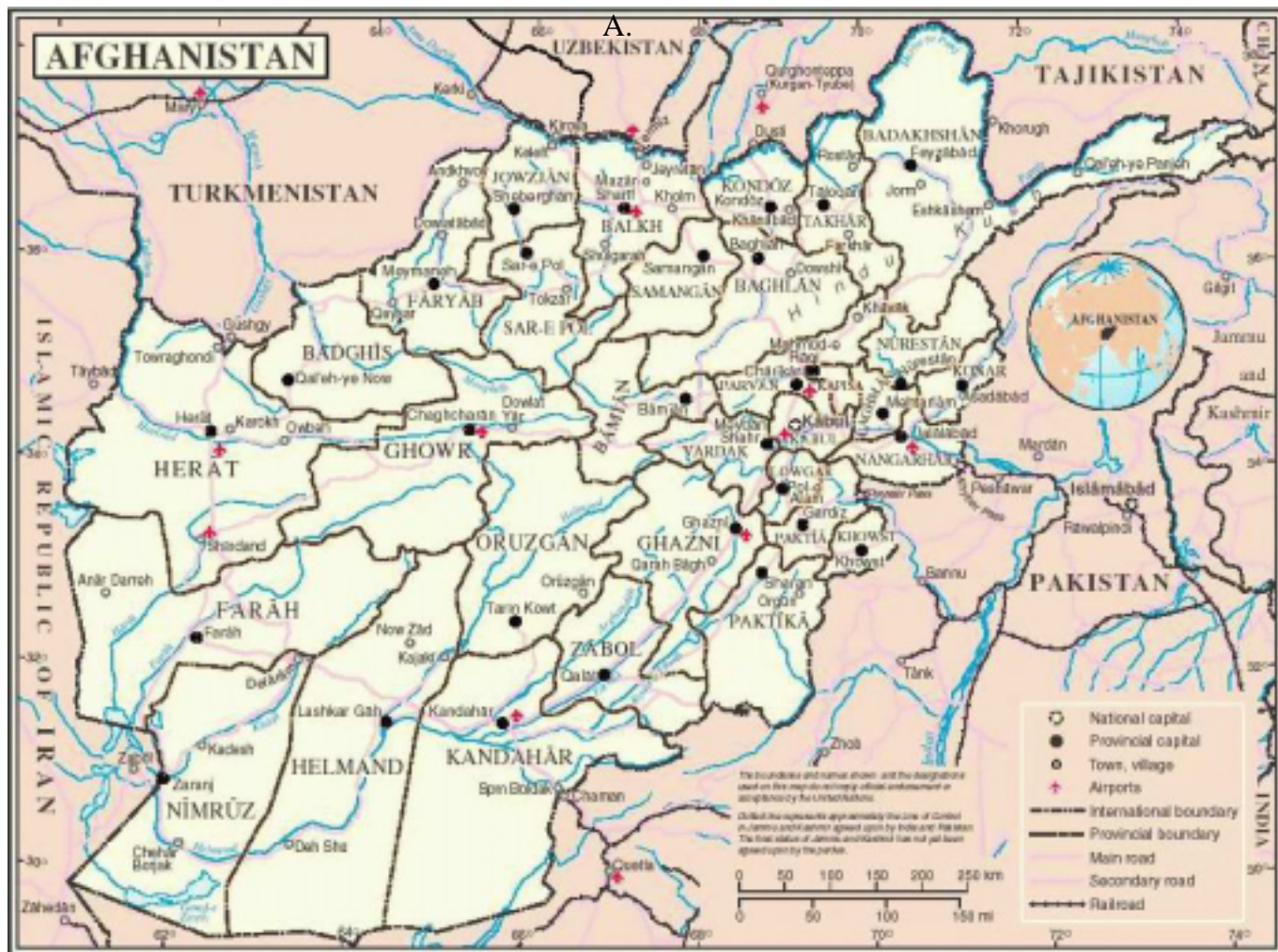
The reestablishment of family courts should be a key component of donor support for judicial reform. This will not only create a legal institution responsive to women, but may also provide a forum for progressive interpretations of Shari'a that draw upon Islamic concepts of social justice and modernising jurisprudence from elsewhere in the Islamic world.

Under any circumstance, however, the meaningful participation of women in public life – including the political processes outlined in the Bonn Agreement – will not be possible without an international commitment to better security. The presence of ISAF in Kabul has created a narrow space within which women journalists, lawyers, and NGO activists have been able to raise issues. Outside the capital, women's participation in civil society is severely limited by fear of retribution, even in cities such as Herat and Mazar-e Sharif with long traditions of support for women's education and a significant presence of women in the local intelligentsias.

**Kabul/Brussels, 14 March 2003**

## APPENDIX A

### MAP OF AFGHANISTAN



Map No. 3658 Rev. 2 UNITED NATIONS  
November 2002

Department of Public Information  
Cairo/Beirut/Noor/Kabul