

The More Things Change, the More They Stay the Same:

The Plight of Afghan Women Two Years After the Overthrow of the Taliban

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I. INTRODUCTION

Two years have passed since the ousting of the Taliban, and yet, in many respects, Afghan women have neither seen nor experienced the type of liberty and freedom that was promised to them. For instance, in November 2003, the director of the Afghan Women's Network reported that "[m]ost of the women outside of Kabul, in the villages, are still oppressed, still wearing burkas [sic] and still are afraid."¹ In March 2003, a student at Kabul University admitted, "Yes, people are afraid of what would happen from the gunmen if they allowed their girls to go to school. Of course they are afraid of men with guns or other groups."² No one disputes the truth of the aforementioned statements or that Afghan women have suffered and continue to be victims of egregious human rights abuses. For example, in blatant disregard for women's rights, Afghanistan's Chief Justice declared that equality of the sexes should not be a part of Afghanistan's Constitution.³

The purpose of this recent development piece is to highlight the continual plight of Afghan women. Specifically, this piece will focus on the current lack of Afghan women's security and mobility, as well as their access to education and employment. This piece will also discuss Afghan women in the context of the newly ratified constitution.⁴

II. BRIEF HISTORY OF AFGHAN WOMEN BEFORE THE TALIBAN REGIME

Afghanistan was ruled by a monarch, Zahir Shah, until the Soviet invasion in 1978.⁵ After the invasion, Afghanistan was ruled by a Soviet-installed government from 1979 to 1992.⁶ During the Soviet reign in the 1980s, women were legally entitled to equal rights.⁷ The Afghanistan Socialist Constitution ("ASC") guaranteed fundamental rights to women.⁸ Women were afforded greater protection under the ASC, such as the right to healthcare, education, employment, and travel.⁹ The ASC made no distinction with regard to the education of men and

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1. Anastasia Hendrix, *Afghan Women Soldier On*, S.F. CHRON., Nov. 17, 2003, at A1.
 2. HUMAN RIGHTS WATCH, NO. C1505, "KILLING YOU IS A VERY EASY THING FOR US": HUMAN RIGHTS ABUSES IN SOUTHEAST AFGHANISTAN 3 (2003), available at <http://hrw.org/reports/2003/afghanistan0703/>.
 3. Preeta D. Bansal & Felice D. Gaer, *Silenced Again in Kabul*, N.Y. TIMES, Oct. 1, 2003, at A27.
 4. See Carlotta Gall, *World Briefing/Asia: Afghanistan: Constitution Is Law*, N.Y. TIMES, Jan. 27, 2004, at A11 (reporting the ratification of Afghanistan's Constitution on January 4, 2004).
 5. Alicia Galea, Note, *No Freedom for Afghan Women: The Taliban Hides Behind Religion to Control Its People*, 78 U. DET. MERCY L. REV. 341, 342-43 (2001).
 6. Shannon A. Middleton, Note, *Women's Rights Unveiled: Taliban's Treatment of Women in Afghanistan*, 11 IND. INT'L & COMP. L. REV. 421, 423 (2001).
 7. *Id.*
 8. Galea, *supra* note 5, at 343.
 9. *Id.* at 345-47.

women and required that the state provide everyone with a free education.¹⁰ Similarly, under the ASC, women were able to work and take advantage of a wide variety of jobs.¹¹ Women held positions as teachers, physicians, and government workers.¹² Lastly, the ASC provided for greater mobility of women, allowing women to travel throughout cities, provinces, and even abroad.¹³ Without these restrictions, women were able to attend schools and hold employment throughout Afghanistan.¹⁴

III. THE PLIGHT OF AFGHAN WOMEN UNDER THE TALIBAN REGIME

The Taliban's reign of terror began in 1994 with its capture of Kandahar.¹⁵ The Taliban capture of the capital city, Kabul, in 1996, marked the beginning of the end of human rights for Afghan women.¹⁶ Immediately after the Taliban gained control of Afghanistan, it declared that the country would be ruled strictly according to their interpretation of Shari'ah law.¹⁷ This section will highlight the Taliban's torture and oppression of Afghan women. Specifically, this section will discuss the Taliban's cruel practices against women with respect to their mobility and access to education and employment.

A. Brief History of How the Taliban Gained Control of Afghanistan

The Taliban signaled its mission to gain control of Afghanistan in 1994 when it captured Kandahar.¹⁸ In September 1996, the Taliban gained a decisive victory by capturing the capital of Afghanistan, Kabul.¹⁹ By 2001, the Taliban controlled more than 97% of the country.²⁰ Immediately after capturing Kabul, the Taliban declared that Afghanistan would be ruled in accord with Shari'ah law.²¹ It forbade women from working outside the home, banned their education, and introduced harsh dress code requirements—namely the burqa, or chadari.²² In the ensuing years, the Taliban continued to impose new restrictions on

10. *Id.* at 345.

11. *Id.* at 346.

12. *Id.*

13. *Id.*

14. *Id.*

15. See Middleton, *supra* note 6, at 425.

16. See *id.*

17. Shari'ah refers to Islamic law. NEAMATOLLAH NOJUMI, THE RISE OF THE TALIBAN IN AFGHANISTAN: MASS MOBILIZATION, CIVIL WAR AND THE FUTURE OF THE REGION 126 (2002). "The Taliban enforced numerous law decrees according to their interpretation of Shari'ah." *Id.* at 154.

18. Middleton, *supra* note 6, at 425.

19. *Id.*

20. *Id.* at 426.

21. See NOJUMI, *supra* note 17, at 154.

22. ROSEMARIE SKAINE, THE WOMEN OF AFGHANISTAN UNDER THE TALIBAN 8 (2002). The burqa/chadari/chadori is a tent-like garment that covers a woman from head to toe, with a small embroidered area designed for seeing and breathing. *Id.* at 22.

women, including the requirement that they travel alongside a male relative.²³ Women were severely punished for violating any of the Taliban decree. Punishments ranged from whipping to public stoning.²⁴

B. Women's Security and Mobility Under the Taliban Regime

The burqa was the most visible restriction imposed by the Taliban.²⁵ A heavily pleated and tent-like garment, the burqa made physical movement very cumbersome.²⁶

Moreover, not all women could afford to buy a burqa, an expense that would cost a woman two months of wages if she were allowed and able to work.²⁷ As a result, women would often share a burqa with other female members of their households.²⁸ Without a burqa, many poor women could not safely or legally leave their home and thus, were unable to receive such much-needed services as medical care.²⁹

The male relative escort requirement also effectively confined women to their homes.³⁰ Decades of war had left many women without any male relatives, so these women had no choice but to "remain at home behind windows that must be painted."³¹ Furthermore, women could not drive or ride in cars without a male relative.³² Also, women could only ride the few buses designated for women, which, due to a lack of resources, resulted in a lack of transportation and ultimately, mobility for Afghan women.³³

C. Women's Access to Education Under the Taliban Regime

Once in power, the Taliban prohibited women and girls from attending school.³⁴ Humanitarian organizations tried to counterbalance this prohibition by establishing schools in private homes, but the Taliban closed more than 100 of these schools in 1998.³⁵ Subsequently, the Taliban issued rules that prohibited

23. *Id.* at 63. The Taliban restrictions were not limited to requiring women to wear a burqa and to be accompanied by a male relative in public. The restrictions also included a prohibition on wearing flared pants underneath their burqas and wearing shoes that made any noise. Women suffered severe consequences for not following these decrees as well. *Id.* at 157.

24. *Id.* at 62.

25. *See id.* at 63.

26. Anastasia Telesetsky, Recent Development, *In the Shadows and Behind the Veil: Women in Afghanistan Under Taliban Rule*, 13 BERKELEY WOMEN'S L.J. 293, 296 (1998).

27. *Id.*

28. *Id.*

29. Lisa M. Ayoub, Comment, *The Crisis in Afghanistan: When Will Gender Apartheid End?*, 7 TULSA J. COMP. & INT'L L. 513, 520 (2002).

30. SKAINE, *supra* note 22, at 64.

31. *Id.*

32. Ayoub, *supra* note 29, at 521.

33. *Id.*

34. SKAINE, *supra* note 22, at 65.

35. *Id.*

the education of girls over the age of eight and restricted instruction to the Koran.³⁶ Moreover, in 2000, the United Nations Educational, Scientific and Cultural Organization ("UNESCO") reported that Afghanistan had the third-highest illiteracy rate among women in the world, estimating that 79.2% of girls could not read.³⁷ The ban on education was especially devastating given that, prior to the civil wars and Taliban control, 50% of students and 60% of teachers in schools were women.³⁸

D. Women's Access to Employment Under the Taliban Regime

The Taliban announced on May 24, 1997, that women were banned from working in the public sphere.³⁹ Foreign agencies were instructed not to employ Afghan women.⁴⁰ Eventually the Taliban announced that women could only be employed as nurses or physicians.⁴¹ Statistics revealed that in Kabul alone, women's employment rate dropped from 62% before the Taliban takeover to 20%.⁴² The prohibition on employment had such a devastating effect that by 1998, researchers "saw a city of beggars—women who had once been teachers and nurses now moving in the streets like ghosts under their enveloping burqas, selling every possession and begging so as to feed their children."⁴³ In some cases, destitute women without male providers turned to prostitution in order to provide for their families.⁴⁴ Some widows had no choice but to send their children to work. With limited jobs and opportunities for children to earn a family income, many of these jobs forced children to dig up and sell human remains.⁴⁵

IV. AFGHAN WOMEN UNDER THE TRANSITIONAL GOVERNMENT OF AFGHANISTAN: THE PLIGHT CONTINUES

In October 2001, the world observed as the United States of America began its bombing campaign in Afghanistan and waged a "war on terror."⁴⁶ As part of reconstruction, the United States made a promise to Afghan women who had bitterly endured five years of unimaginable oppression and violence.⁴⁷ On one occasion U.S. Secretary of State Colin Powell declared, "The recovery of Af-

36. *Id.*

37. *Id.* at 67.

38. Ayoub, *supra* note 29, at 518.

39. Galea, *supra* note 5, at 352.

40. *Id.*

41. *Id.*

42. SKAINE, *supra* note 22, at 70.

43. *Id.* at 68-69.

44. *Id.* at 69; *see also* Middleton, *supra* note 6, at 449.

45. Middleton, *supra* note 6, at 449.

46. Sonali Kolhatkar, Commentary, *The Impact of U.S. Intervention on Afghan Women's Rights*, 17 BERKELEY WOMEN'S L.J. 12, 12 (2002).

47. *See* AMNESTY INTERNATIONAL, AFGHANISTAN: 'NO ONE LISTENS TO US AND NO ONE TREATS US AS HUMAN BEINGS': JUSTICE DENIED TO WOMEN 1 (2003), available at <http://www.web.amnesty.org/library/Index/ENGASA110232003?open&of=Eng-AFG>.

ghanistan must entail the restoration of the rights of Afghan women. Indeed, it will not be possible without them. The rights of the women of Afghanistan will not be negotiable.”⁴⁸ Such statements from the U.S. government, combined with the overthrow of the Taliban, breathed hope and optimism into Afghanistan for the first time in over two decades. Afghan women stood to benefit significantly from U.S. efforts to liberate Afghanistan.

The U.S. efforts to liberate Afghanistan and Afghan women from the Taliban started when it set out to purge Afghanistan of the Taliban government and pursue a manhunt for the infamous Osama Bin Laden.⁴⁹ In December 2001, after the United States succeeded in its effort to oust the Taliban, representatives of anti-Taliban forces and several other Afghan parties and groups signed the Bonn Agreement, establishing a provisional government pending the re-establishment of a permanent one.⁵⁰ The Bonn Agreement was to serve as a guide in the ultimate establishment of a “broad-based, gender-sensitive, multi-ethnic and fully representative government.”⁵¹

The Bonn Agreement, “unlike a peace treaty that distributes power, envisaged a three-year phased process of political transformation.”⁵² The “transformation” was overseen by an interim administration that was succeeded by a transitional administration, selected in June 2002 by an emergency Loya Jirga (grand counsel) “with ‘free and fair’ elections to occur no later than June 2004.”⁵³ The Bonn Agreement mentioned a new constitution and “gave only skeletal guidance . . . , leaving sufficient flexibility to accommodate changes in the political landscape.”⁵⁴

The Bonn Agreement laid out the basic rules for the development of women’s roles and pledged “to include them in political life, particularly by participation in the Loya Jirga and the interim administration.”⁵⁵ Moreover, the Bonn Agreement required the transitional government “[t]o respect and protect the human rights of Afghan women and girls.”⁵⁶ The Agreement further required the transitional government to ensure equal access for women to education and healthcare and “their full participation in all spheres of Afghan life.”⁵⁷ To aid the transitional government in fulfilling its requirements to include women in the re-

48. *Id.*

49. Kolhatkar, *supra* note 46, at 12, 19.

50. AMNESTY INTERNATIONAL, *supra* note 47, at 3.

51. *Id.*

52. INTERNATIONAL CRISIS GROUP, NO. 56, AFGHANISTAN’S FLAWED CONSTITUTIONAL PROCESS 11 (2003), available at <http://www.crisisweb.org/home/index.cfm?id=1639&l=1>.

53. *Id.* (citing The Agreement on Provisional Arrangements in Afghanistan, Pending the Re-establishment of Permanent Government Institutions, Dec. 5, 2001, available at <http://www.uno.de/frieden/afghanistan/talks/agreement.htm>).

54. *Id.*

55. INTERNATIONAL CRISIS GROUP, NO. 48, AFGHANISTAN: WOMEN AND RECONSTRUCTION 11 (2003), available at <http://www.crisisweb.org/home/index.cfm?id=1637&l=1>.

56. U.N. Comm’n H.R. Res. 2003/77, U.N. ESCOR, 59th Sess., Supp. No. 3, at 280, U.N. Doc. E/2003/23-E/CN.4/2003/135 (2003).

57. *Id.*

construction process, international donors pledged that "women's rights would be respected in the rebuilding of Afghan institutions and government."⁵⁸

More than two years have elapsed since the Bonn Agreement was signed, and yet, despite the Agreement's requirement that the government protect and ensure the rights of women, Afghan women continue to suffer egregious human rights violations.⁵⁹ Women still feel compelled to wear their burqas, and the lack of public security prevents them from attending school and work.⁶⁰ The lack of security in much of Afghanistan has also kept women from meaningfully participating in the reconstruction process.⁶¹ Thus, even after more than two years, judging from the lives of Afghan women, it looks as though the Taliban still occupy and control Afghanistan.

A. Women's Security and Mobility Under the Transitional Government

Two years have elapsed since the U.S. intervention in Afghanistan, and yet in most parts of Afghanistan women do not enjoy enough security to walk alone in public and feel compelled to wear a burqa when doing so.⁶² WOMANKIND Worldwide ("WW")⁶³ reported in July 2002, six months after the overthrow of the Taliban, that Afghan women had yet to experience the type of security and mobility for which they had hoped.⁶⁴ It was apparent almost immediately after the ousting of the Taliban that women were "unable to participate in reconstruc-

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58. INTERNATIONAL CRISIS GROUP, *supra* note 55, at 11. It is important to note that in addition to the Bonn Agreement, the transitional government remains responsible for bringing Afghanistan in compliance with international treaties that call for improvement in women's rights. As a signatory to the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), Afghanistan is required to "recognize the right of everyone to education." International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, art. 13, 993 U.N.T.S. 3, 8 (entered into force Jan. 3, 1976). Additionally, the Convention on the Elimination of All Forms of Discrimination Against Women requires Afghanistan to "take all appropriate measures to eliminate discrimination against women in order to ensure them equal rights with men in the field of education." Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Dec. 18, 1979, art. 10, 1249 U.N.T.S. 13, 17 (entered into force Sept. 3, 1981). Also, according to the Convention on the Rights of the Child, Afghanistan is required to "respect and ensure the rights set forth . . . to each child within their jurisdiction without discrimination of any kind, irrespective of the child's . . . sex." Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, art. 2, 1577 U.N.T.S. 44, 46 (entered into force Sept. 2, 1990). Unfortunately, the government has failed in these respects.
59. See WOMANKIND WORLDWIDE, TAKING STOCK: AFGHAN WOMEN AND GIRLS SIX MONTHS ON 6 (2002), available at <http://www.reliefweb.int/library/documents/2002/wk-af-3jul.pdf>.
60. See *id.* at 6-7.
61. See *id.* at 6.
62. See *id.*
63. WOMANKIND Worldwide coordinates the Working Group for the Rights of Afghan Women, a United Kingdom inter agency network initially set up by Amnesty International, Oxfam, and WOMANKIND Worldwide in November 2001. Its objective is to ensure that the voices of Afghan women are heard and that their rights and needs are addressed in the reconstruction and development of Afghanistan. *Id.* at 18.
64. See *id.* at 6.

tion and public life and their rights [were] further eroded.”⁶⁵

By January 2002, the failure of the International Security Assistance Force (“ISAF”) to extend its reach beyond Kabul resulted in a lack of security in the rest of the country.⁶⁶ The power vacuum created at the ousting of the Taliban had been quickly “replaced by the banditry and lawlessness.”⁶⁷ WW reported a “violent environment where warlords and factions dominate[d] and women [were] particularly vulnerable.”⁶⁸ Afghan women expressed overwhelming anxiety about personal security outside of and even in some parts of Kabul.⁶⁹ Almost immediately after the interim government assumed its post, Afghan women became vulnerable to rape, other sexual abuse, and acid attacks.⁷⁰

Moreover, both pro-Taliban and anti-Taliban warlords and groups enforced Taliban-like restrictions.⁷¹ For instance, early in 2003, one human rights group noted, “Outside the capital [Kabul], 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.”⁷² Furthermore, in some areas of Afghanistan, the Taliban police force for the Protection of Virtue and the Prevention of Vice were still patrolling and beating women with metal rods for violating the Taliban decree.⁷³ In addition, Afghan women were threatened into wearing their burqas and raped for not doing so by Northern Alliance members, the same group who fought to oust the Taliban.⁷⁴

Women’s security did not improve over the subsequent months. Additional human rights abuses and violence against women were reported, especially in Mazar-i Sharif.⁷⁵ Although women in Kabul gained greater freedom to participate in public life, even in Kabul “many Afghan women still face[d] constant threats to their personal security from other civilians or armed men belonging to various political factions.”⁷⁶ Outside of Kabul, “acute general lawlessness and insecurity” continued because of ISAF’s absence.⁷⁷ Human rights groups repeatedly called for “greater efforts in disarmament, security sector reform and the weakening of local warlord power,”⁷⁸ without which they concluded, “secu-

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. INTERNATIONAL CRISIS GROUP, *supra* note 55, at 11.

73. WOMANKIND WORLDWIDE, *supra* note 59, at 6.

74. *Id.* at 6-7.

75. HUMAN RIGHTS WATCH, BRIEFING PAPER: TAKING COVER: WOMEN IN POST-TALIBAN AFGHANISTAN 1 (2002), available at <http://www.hrw.org/backgrounder/wrd/afghan-women-2k2.htm>.

76. *Id.*

77. *Id.*

78. INTERNATIONAL CRISIS GROUP, *supra* note 55, at 11.

rity is unlikely to be achieved.”⁷⁹

After the fall of the Taliban, Mazar, the largest city in northern Afghanistan, fell into the hands of three rival factions—all competing for the same territory.⁸⁰ Despite the fact that all three factions signed a U.N.-backed agreement in February 2002, establishing a 600-person multi-ethnic security force, the city was plagued by lawlessness and insecurity.⁸¹ Pashtun women throughout northern Afghanistan experienced sexual violence.⁸² Although Pashtun women were specifically targeted for rape and other sexual abuse, women and girls of other ethnicities in Mazar also suffered sexual offenses.⁸³ Women repeatedly reported living in constant fear and thereby feeling “compelled to limit their movement, expression, and dress to avoid becoming targets of such violence.”⁸⁴ The absence of an official repeal of Taliban edicts contributed to the perpetual fear of Afghan women, despite the interim government’s public endorsement of women’s rights to education and employment.⁸⁵

A pattern of violence against women, similar to that in northern Afghanistan, also existed in western Afghanistan, particularly in Herat.⁸⁶ Women and girls’ freedom of movement was severely restricted in Herat City.⁸⁷ Similar to life under the Taliban, women and girls still had to wear the burqa when leaving their homes.⁸⁸ Likewise, women were prohibited from walking or riding in a car with a nonrelated male or from driving cars or riding bicycles.⁸⁹ The government routinely arrested women caught walking with nonrelated men on the street, riding with men in cars, and residing alone with men in private homes, and subjected them to abusive gynecological examinations in search of evidence of recent sexual intercourse.⁹⁰ Arresting women was official government policy, “not unsanctioned acts of individual police.”⁹¹

The situation was also dismal in southeast Afghanistan, the most densely populated region of the country.⁹² Human Rights Watch accounted, “A climate

79. *Id.*

80. HUMAN RIGHTS WATCH, BRIEFING PAPER, *supra* note 75, at 1-2.

81. *Id.* at 2.

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. HUMAN RIGHTS WATCH, NO. C1411, “WE WANT TO LIVE AS HUMANS”: REPRESSION OF WOMEN AND GIRLS IN WESTERN AFGHANISTAN 6-7 (Dec. 2002), available at <http://www.hrw.org/reports/2002/afghnwmn1202/>.

87. *Id.* at 19.

88. *Id.*

89. *Id.*

90. *Id.* at 20.

91. *Id.*

92. HUMAN RIGHTS WATCH, *supra* note 2, at 10. In its report, Human Rights Watch noted that more than one-third of Afghanistan’s population resides within southeast Afghanistan, which includes Kabul, Wardak, Ghazni, Logar, Paktia, Paktika, Laghman, Nangarhar, and Kunar provinces. *Id.* at 18.

of fear exists in much of southeast Afghanistan.”⁹³ Rape was a continuing problem in many of the provinces there. In West Kabul, this included rapes perpetrated by armed soldiers who also committed robberies, often at the same time.⁹⁴ “While women [were] specifically targeted for abuse by soldiers and police because of their sex, they also experience[d] a wide range of discriminatory treatment, much of it reminiscent of the Taliban era.”⁹⁵

Subsequent reports released in late 2003 have not only confirmed the ongoing insecurity and violence against women outside the home, but they have catalogued numerous other acts of violence against women.⁹⁶ For instance, “[t]wo years after the ending of the Taleban [sic] regime, the international community and the Afghan Transitional Administration (ATA), led by President Hamid Karzai, have proved unable to protect women.”⁹⁷ Among the abuses perpetrated by armed groups against women were abduction and forced underage marriage.⁹⁸ According to a report by Amnesty International, “In parts of Afghanistan, women have stated that the insecurity and the risk of sexual violence they face make their lives worse than during the Taleban [sic] era.”⁹⁹

B. Women’s Access to Education Under the Transitional Government

After the fall of the Taliban, more than 1.6 million children were being educated out of a possible 4.4 million.¹⁰⁰ On the positive side, WW reported huge enthusiasm for education.¹⁰¹ By July 2002, however, the reality was that Afghan women were still kept in the dark with respect to their right to an education. The opportunity for primary education was limited to 39% for boys and only 3% for girls.¹⁰² Also, only 16% of women over fifteen years of age are lit-

93. *Id.* at 20.

94. *Id.* at 27.

95. *Id.* at 70.

96. *E.g.*, AMNESTY INTERNATIONAL, *supra* note 47.

97. *Id.* at 1.

98. *Id.* at 18. Amnesty International noted that the “exact extent and prevalence of such abuses remains unclear owing to the reluctance of most victims to speak out and the limited capacity for monitoring.” *Id.*

99. *Id.* at 19. The Amnesty International report also highlighted the problem of domestic violence. For instance, Amnesty International noted, “Women and girls in Afghanistan are threatened with violence in every aspect of their lives, both in public and private, in the community and the family.” *Id.* at 10. Because the women fear reprisal, few cases of domestic violence are actually reported to the authorities. *Id.* at 11. “The extent of the problem emerges more clearly in hospitals than in any other state institution, when severely injured women seek treatment.” *Id.* A physician interviewed by Amnesty International stated, “[D]omestic violence and physical violence are normal practice—we have a lot of cases of broken arms, broken legs and other injuries.” *Id.* at 12. Indeed, the Afghan women were not free from violence even in their homes.

100. WOMANKIND WORLDWIDE, *supra* note 59, at 13.

101. *Id.*

102. *Id.* WOMANKIND Worldwide noted an absence of official data on education of women and girls. *Id.*

erate.¹⁰³ There is an overwhelming shortage of teachers. An estimated 100,000 teachers were needed in 2002, and teaching conditions were extremely poor.¹⁰⁴ In some parts of Afghanistan, some men were reluctant to allow women and girls access to education and were forbidding girls to go to school.¹⁰⁵

In western Afghanistan, women and girls returned to school in large numbers by December 2002.¹⁰⁶ Girl students, however, still faced restrictions not imposed on boy students.¹⁰⁷ School administrators required and enforced a strict dress code for female students.¹⁰⁸ In addition, schools disallowed girls from participating in sports or studying music.¹⁰⁹ Moreover, restrictions on freedom of movement, including the lack of general security, prevented many girls from reaching schools in the first place.¹¹⁰ Lastly, the discrimination women faced in employment provided few incentives for girls to pursue an education.¹¹¹

By July 2003, women and girls still faced numerous obstacles in obtaining an education. About 32% of girls had gone back to school in Afghanistan,¹¹² but there were still millions of girls not in school.¹¹³ Older girls¹¹⁴ were more likely to face greater obstacles in obtaining an education, as they were more likely to be targets and victims of sexual violence.¹¹⁵ Also, both "men and women singled out the threat of physical violence by armed men as a significant impediment to sending girls to school."¹¹⁶ Moreover, the policy of strict sex segregation and limited resources made it very difficult to provide the same facilities for boys and girls.¹¹⁷

Furthermore, from August 2002 to June 2003, there had been more than thirty fundamentalist attacks on girls' and boys' schools in which educational facilities and materials were either burned or bombed.¹¹⁸ The attacks on schools were preceded by anonymous pamphlets warning parents not to send girls to school.¹¹⁹ Human Rights Watch stressed that security problems:

Can be a source of ongoing violations of women's and girls'

103. *Id.*

104. *Id.*

105. *Id.*

106. HUMAN RIGHTS WATCH, *supra* note 86, at 42.

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.* at 43.

112. HUMAN RIGHTS WATCH, *supra* note 2, at 76.

113. *Id.* at 76-77.

114. According to its visit of large households, Human Rights Watch found that girls over the age of twelve were not permitted to attend school. In some villages, girls as young as ten were not permitted to attend school. *Id.* at 77.

115. *Id.*

116. *Id.* at 79.

117. *Id.* at 77-78.

118. *Id.* at 82.

119. *Id.*

right to education: first, because they keep children from going to school, and second, because they allow a discriminatory system to exist, one in which it is harder for women and girls to go to school than it is men and boys.¹²⁰

C. Women's Access to Employment Under the Transitional Government

In 2002, although women were officially permitted to work outside the home, employment opportunities remained limited.¹²¹ Positive indicators such as the public operations of organizations and facilities for women, including magazines, newspapers, and beauty salons, did exist.¹²² Overall, however, many women were confined to their homes because of a lack of security.¹²³

Women in western Afghanistan, namely in Herat, had little public employment opportunities outside of teaching.¹²⁴ The local government leader of Herat, Ismail Khan, instituted various social restrictions on women, including a "refusal to appoint women to key government posts."¹²⁵ Human Rights Watch noted that although "cultural attitudes play a role in restricting opportunities for women, these do not excuse additional burdens imposed by the government."¹²⁶ Women faced increased pressure not to work for international nongovernmental organizations ("NGOs") or the United Nations, organizations that provided opportunities for Afghan women to aid other women.¹²⁷ Local police harassed women working for international aid organizations and specifically targeted those women seen shaking hands or speaking with foreign men.¹²⁸

Regrettably, by July 2003, little progress on women's right to work had been made. The "[t]argeting of women by police and soldiers for sexual violence and the accompanying restrictions on their freedom of movement and access to education also greatly impede[d] women's ability to find work. Even where women [were] not in direct physical danger, they face[d] discrimination by employers, including government officials."¹²⁹ Although the "International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Afghanistan is a party, establishes a right to work and to be free from discrimination in the enjoyment of this right,"¹³⁰ the government has also failed women in this respect.

120. *Id.* at 83.

121. WOMANKIND WORLDWIDE, *supra* note 59, at 13.

122. *Id.*

123. *Id.* WOMANKIND Worldwide again reiterated the absence of official data relating to women's employment. *Id.*

124. HUMAN RIGHTS WATCH, *supra* note 86, at 39.

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.* at 41.

129. HUMAN RIGHTS WATCH, *supra* note 2, at 87.

130. *Id.* at 88.

V. WHAT CAN BE DONE TO IMPROVE THE LOT OF AFGHAN WOMEN?

The continuous oppression of Afghan women since the fall of the Taliban has generated numerous recommendations from various international human rights organizations. There is widespread consensus among international organizations such as Human Rights Watch and Amnesty International that the Afghan government must not only do its best to comply with the international human rights treaties to which it is a signatory, but also to improve security throughout the country. To achieve this goal, the human rights organizations have called upon the international community and the United States to expand its security forces beyond the borders of Kabul.

While these recommendations will likely improve the lot of Afghan women in some ways, they do not address the larger problem of successfully integrating Afghan women in the reconstruction process and ensuring their rights in the future. The newly adopted Afghan Constitution is crucial to ensure that women will not continue as second-class citizens. Although the new Constitution looks very promising in some respects, it still fails Afghan women. The language of the Constitution remains predominantly gender-neutral and does not specifically address women's rights or provide the means for women to enforce their rights.¹³¹ Without specifically addressing women and providing the mechanism for women to enforce their constitutional rights judicially,¹³² the Constitution remains without teeth.

A. Recommendations from Prominent Human Rights Organizations

Prominent human rights organizations, such as Amnesty International and Human Rights Watch, have made several explicit recommendations to the Afghan government, the United States, and the rest of the donor countries. Their recommendations are practical and based on extensive field work and interviews with Afghan women and the NGOs involved in the reconstruction process. Human rights organizations propose a number of suggested reforms to improve Afghan women's welfare.

First, increasing security throughout Afghanistan, including an expansion of the International Security Assistance Force ("ISAF") beyond Kabul, would protect women and girls from rape and sexual assault.¹³³ Second, the ISAF forces now controlled by the North Atlantic Treaty Organization should insist on the implementation of the Bonn Agreement requiring the demilitarization of Kabul and the removal of political forces loyal to warlords.¹³⁴ Third, the Afghan Transitional Administration ("ATA") should respond to cases of violence against

131. AMNESTY INTERNATIONAL, OPEN LETTER TO PRESIDENT HAMID KARZAI ON HUMAN RIGHTS PROTECTION AND THE DRAFT CONSTITUTION (2003), at <http://web.amnesty.org/library/index/engasa110282003>.

132. *Id.*

133. AMNESTY INTERNATIONAL, *supra* note 47, at 21.

134. HUMAN RIGHTS WATCH, *supra* note 2, at 89.

women with full force of the law.¹³⁵ Fourth, the Afghan president, Hamid Karzai, should support “the right of women and girls to equality in all aspects of their public and private lives, including explicit support for their rights to freedom of expression, association, and movement and the rights to work, education, privacy and bodily integrity.”¹³⁶ Fifth, the ATA should develop plans for improving security for girls traveling to school and should investigate and prosecute attacks on girls’ schools.¹³⁷ Sixth, the United States should assist the ATA in its efforts to remove warlords and other abusive officials from positions of authority.¹³⁸ Seventh, the United States should include protection of human rights in its mandate for military forces deployed in Afghanistan and should intervene in cases where necessary.¹³⁹ Lastly, the Afghan Constitution “should enshrine the principle of equality of women and men and prohibit all forms of discrimination against women.”¹⁴⁰

B. Recommendation to Strengthen and Protect the Rights of Women in the Afghan Constitution

Afghanistan has a crucial opportunity to lay the building blocks for a more egalitarian society. Equality of both sexes must not only be specifically rooted in the Constitution, but must be uniformly enforced throughout the various provinces in Afghanistan. For instance, Afghan women attending a conference on women’s rights have noted that “the law and the constitution are one thing on paper, and practices around the country . . . are quite another.”¹⁴¹ Entrenching women’s rights in the Constitution is especially important given the upcoming 2004 elections, after which the leaders who will shape Afghanistan’s future will

135. *Id.* at 90.

136. *Id.* at 91.

137. *Id.*

138. *Id.* at 92.

139. *Id.*

140. AMNESTY INTERNATIONAL, *supra* note 47, at 29. Amnesty International further suggested:

The Afghan Constitution should provide for equal protection before the law for women and men. This requires the law to protect women according to their needs and to protect them from violence and harm specific to their gender. The Constitution should include specific provisions which enshrine the right to bodily and psychological integrity and the right of women and men to live free from violence. The right of the state to take affirmative action and protective measures to promote the rights of women, which enable discrimination to be tackled effectively, should also be included in the Constitution. . . . The means of enforcement of constitutional rights through a Constitutional Court with clearly defined powers is essential. The right to bring proceedings, by relevant people and groups under the Constitution, should also be included.

Id. at 29-30.

141. Carlotta Gall, *Women Gather in Afghanistan to Compose a Bill of Rights*, N.Y. TIMES, Sept. 28, 2003, at 1, 16.

lead the new government.

Early in November 2003, the ATA released an unofficial draft constitution modeled after the 1964 Constitution of Afghanistan.¹⁴² After months of debating various issues, one of which was the rights of Afghan women, delegates at a special constitutional loya jirga, or grand council, approved the new Constitution on January 4, 2004.¹⁴³ Although the “United Nations, U.S. and Afghan government officials quickly hailed the agreement as an historic milestone—an inspiring story of Afghans overcoming years of political chaos and war to charter a new government,”¹⁴⁴ with respect to women’s rights, the much-anticipated Constitution is a disappointment. Instead of explicitly preserving, protecting, and promoting women’s rights, the Constitution remains virtually gender-neutral. After debating the draft constitution for months, the resulting victory with respect to women’s rights, though hailed as a significant milestone, is still unimpressive.

The discussion of women’s rights in the new Constitution begins with Chapter I, Article 7, which provides that “[t]he state shall abide by the UN charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights.”¹⁴⁵ Even though it does not specifically mention women, this provision requires the government to comply with the many international treaties to which Afghanistan is a signatory, including the Convention on the Elimination of All Forms of Discrimination Against Women and ICESCR, both of which have a direct impact on the rights of women. Chapter II, Article 22, however, does specifically mention women and states that “[a]ny kind of discrimination and privilege between the citizens of Afghanistan are prohibited. The citizens of Afghanistan—whether man or woman—have equal rights and duties before the law.”¹⁴⁶ With respect to education, the Constitution reverts back to a gender-neutral mode and provides that “[e]ducation is the right of all citizens of Afghanistan, which shall be provided . . . free of charge by the state. The state is obliged to devise and implement effective programs for a balanced expansion of education all over Afghanistan, and to provide compulsory intermediate level education.”¹⁴⁷ Chapter II, Article 44 is another provision that specifically mentions women: “The state

142. See AFG. CONST. (Proposed Unofficial Draft 2003), available at <http://www.constitution-afg.com/resrouces/Draft.Constitution.pdf>. Under the Bonn Agreement, the draft constitution was to encompass the legal framework of the 1964 Constitution to the extent that its provisions were not inconsistent with the Bonn Agreement. UNITED NATIONS, SECURITY COUNCIL, LETTER DATED 5 DECEMBER 2001 FROM THE SECRETARY-GENERAL ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL, U.N. Doc. S/2001/1154 (2001).

143. HUMAN RIGHTS WATCH, AFGHANISTAN: CONSTITUTIONAL PROCESS MARRED BY ABUSES (Jan. 8, 2004), at <http://www.hrw.org/english/docs/2004/01/07/afghan6914.htm>.

144. John Sifton, *Afghanistan: Flawed Charter for a Land Ruled by Fear*, INT’L HERALD TRIB., Jan. 6, 2004, at 6, available at <http://www.hrw.org/english/docs/2004/01/06/afghan6911.htm>.

145. AFG. CONST. ch. 1, art. 7 (Unofficial Translation 2004), available at http://www.oefre.unibe.ch/law/icl/af00000_.html.

146. *Id.* at ch. 2, art. 22 (emphasis added).

147. *Id.* at ch. 2, art. 43.

shall devise and implement effective programs for balancing and promoting of education for women, improving of education of nomads and elimination of illiteracy in the country.”¹⁴⁸ Lastly, with regard to employment, the Constitution again articulates in gender-neutral terms that “[w]ork is the right of every Afghan,” and “[c]hoice of occupation and craft is free within the limits of law.”¹⁴⁹ The Constitution does not explicitly acknowledge the right of Afghan women to work in any field or occupation of their choice. In all, women are specifically referenced only twice in the entire Constitution.

Where they appear, the gender-neutral terms of the Constitution on their face technically grant equal rights to both men and women; however, much more is needed in order to make equality of the two sexes a reality for Afghan women. With a checkered women’s rights history and the years of almost unmentionable horror experienced by women during the Taliban regime, the Constitution should acknowledge the abuses women have suffered in its establishment of equal rights to education, employment, and freedom from other discrimination. Without acknowledging the human rights abuses against women, the Constitution does not send a strong enough message about the importance of women’s rights.

Furthermore, the Constitution should incorporate explicit safeguards for women. For instance, on September 5, 2003, women from all over Afghanistan and various women’s rights groups met in Kandahar to demand that the Constitution secure the Afghan Women’s Bill of Rights.¹⁵⁰ The Bill of Rights contained twenty-one demands that included mandatory education through all secondary school, protection and security for women, freedom of speech, equal pay for equal work, the right to participate fully and to the highest levels in the economic and commercial life, and equal representation in the government of Afghanistan.¹⁵¹ Although this Bill of Rights was presented to President Hamid Karzai, it was not included in the Constitution. Despite the demands in the Women’s Bill of Rights, the Constitution remains largely gender-neutral. Gender-neutral language is more effective in a country where that language is reflected by democratic practices. In other words, if Afghan women enjoyed some degree of autonomy and liberty before the drafting of the Constitution, it would lend credibility to the assumption that both men and women were equal in the eyes of the law and, as such, both felt secure enough to assert their rights.

In Afghanistan, however, this has not been the case. Afghan women were absent from the political process for several years and had been effectively shut out of virtually every aspect of the public life. Without explicit rights-creating language uniquely tailored to Afghan women in the Constitution, it will take years for women to assert their rights to equality, if they ever do. For women to

148. *Id.* at ch. 2, art. 44.

149. *Id.* at ch. 2, art. 48.

150. GLOBAL FUND FOR WOMEN, AFGHAN WOMEN’S BILL OF RIGHTS (2003), at <http://www.globalfundforwomen.org/4news/news/grantee-news/afghan-women-bill-of-rights.html>.

151. *Id.*

be a part of the reconstruction process and the ultimate formation of a democratic Afghanistan, the Constitution should have done more than pay lip service to the abstract notion of equality. The Constitution should have explicitly mentioned women's rights to equality in education, employment, and other areas.

Lastly, to protect the rights of all Afghan women throughout the thirty-two provinces of Afghanistan, the Afghan government must ensure the uniform enforcement of the rights granted in the Constitution. Presently the governmental structure and practice is different in different parts of the country.¹⁵² Often the local military leaders enforce whichever laws they deem fit, and thus there is little consistency between provinces; some provinces respect women's rights more than others.¹⁵³ The Constitution must be accessible to all Afghan women in order to minimize regional abuse, and the government must ensure the equality granted in the Constitution.

VI. CONCLUSION

It is tempting to indulge in wishful thinking and assume that all is well for Afghan women now that the Taliban government is gone. Sadly, the end of the Taliban in Afghanistan did not lead to the end of suffering for Afghan women. The recently adopted Afghan Constitution has generated much optimism for reconstruction hopefuls. Without continued financial and other support from the United States and the international community, however, Afghanistan might once again fall into the hands of fundamentalist warlords. As evidenced by the pressures already asserted by warlords who are currently participating in the reconstruction process, Afghanistan's new system of government is already failing women. The predominantly gender-neutral Constitution has not acknowledged the atrocities that Afghan women have suffered and continue to suffer. In addition, the Afghan Constitution fails to provide the means for women to assert and enforce their human rights in any way. Moreover, the Afghan government has not addressed the extraconstitutional problems of security and mobility for Afghan women. Instead of only mentioning them twice in the entire constitution, the Afghan Constitution should have better entrenched women's rights in its journey toward women's liberation.

152. See HUMAN RIGHTS WATCH, *supra* note 2, at 16. After the Taliban troops and officials left, government offices, from police stations to trash collection departments, were available for the taking by any group with adequate military power. *Id.* Accordingly, there was no uniform takeover of government offices. See *id.*

153. See *id.* at 74 (describing the differences in the security and mobility of women in different provinces).