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# The Participation of Afghan Women in the Reconstruction Process

by Laura Grenfell

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**D**ESPITE AFGHANISTAN'S GREAT STRIDES TO EMERGE from two decades of war and oppression, the country still has a long way to go before it achieves peace and stability. Of particular concern are the significant barriers women still face to full participation in the political reconstruction process. A 2003 report of the UN High Commissioner for Human Rights observed that "Women suffer continued violence and discrimination in the rehabilitation and reconstruction process. Therefore, their needs are seldom taken into consideration in the programs and their voices are seldom heard." The UN Commission on the Status of Women's 2003 report on post-conflict peace building has made a number of recommendations, including the need to ensure "gender balance in the composition of ... delegations in [peace] negotiations . . . [and] adherence to gender balance in appointments to senior government administration and judiciary positions." In order for Afghanistan's reconstruction to be truly successful, Afghan women must participate in every stage of the process.

On March 5, 2003, Afghanistan acceded to the Convention on the Elimination of Discrimination Against Women (CEDAW) without reservation. CEDAW, a binding multilateral treaty, requires that women be granted equal participation to men in the political forum. Although accession to CEDAW in itself will not fix the problems Afghanistan faces in ensuring women's participation in the reconstruction process, it does provide a framework and a set of internationally recognized obligations to guide the process.

The obligations under CEDAW are particularly important because now is the time for Afghanistan to address women's issues and to develop effective means for women's future political participation. Within the past year, Afghanistan adopted a new constitution and elected a president for the first time. It will hold its first post-conflict municipal elections within the next few months. Thus, the political climate is ripe for effecting reform in the country's political processes.

This article will analyze Afghan women's recent political participation under the framework of CEDAW. It will also propose means by which Afghanistan may address gaps in women's participation under the CEDAW framework. This article argues that despite the measures Afghanistan has taken to ensure women's participation, and taking into account the limited capacity of the government in absence of the rule of law, Afghanistan has already missed significant opportunities to fulfill its obligation under CEDAW to ensure women's full participation in the burgeoning political process.

## BACKGROUND

AFGHAN WOMEN WERE THE MOST VULNERABLE CLASS of society during the 23-year conflict that claimed an estimated one million lives. During this prolonged war, various factions targeted women on the basis of their gender and ethnicity. Women suffered systematic human rights abuses such as sexual assault, abduction, and forced marriage. In the last six years of the conflict, from 1994 to 2001, the Taliban controlled most of Afghanistan. This regime marked a highpoint of persecution against Afghan women. The Taliban's decrees stripped Afghan women of almost all their rights, severely restricting their liberty. For example, they forbade women

to leave home without the escort of a close male relative, prohibited women from working in the public sphere (except in the area of health care), and banned girls over eight years old from attending school. Religious police enforced these laws, publicly threatening and beating women for minor infractions.

Although the Taliban is no longer in power, women still face serious hurdles to participation in the fledgling democratic process. Oppressive cultural attitudes and security risks still hinder women from speaking publicly about their needs, prevent them from participating fully in the reconstruction, and often prohibit them from accessing education, health care, employment, and other basic freedoms.

## AFGHANISTAN'S OBLIGATIONS UNDER CEDAW

AFGHANISTAN'S ACCESSION TO CEDAW IS A COMMITMENT to follow the treaty's framework and ensure women's full political rights. With regard to this commitment, Afghanistan has taken important steps towards the full participation of women in the country's political reconstruction process in line with its CEDAW obligations. For example, it has declared its commitment to compliance with international law in Article 7 of the 2004 Constitution, 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."

Article 2(a) of CEDAW requires that states "embody the principle of the equality of men and women in their national constitutions . . . and to ensure, through law and other appropriate means, the *practical realization* of this principle." Afghanistan has taken the first step towards compliance with this requirement. Article 22 of Afghanistan's 2004 Constitution states, "[t]he citizens of Afghanistan – whether man or woman – have equal rights and duties before the law." This equality provision is a great step towards fulfilling Article 2 of CEDAW, but its "practical realization" remains a significant challenge.

Afghanistan has not, however, taken the next step to ensure the observation of those rights and duties as its newly elected government begins to take shape. Article 7 of CEDAW provides the specifics for the realization of women's rights in the political arena. It stipulates that State Parties shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government . . ."

Additionally, Article 5(a) of CEDAW requires states "[t]o modify the social and cultural patterns of conduct" so as to eliminate traditional stereotypes of gender roles. Article 4 requires that states take special temporary measures to reach the goal of equality more quickly.

Under CEDAW, the Government of Afghanistan has the responsibility to lead all sectors of society to support the full and effective participation of women in the public sphere. Although women are now legally able to participate in the political forum, as required by Article 7 of CEDAW, Afghanistan must identify and

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implement other measures to ensure that women are able to fully exercise their rights. The fulfillment of its responsibilities under Article 7 of CEDAW will likely require the country to adopt Article 4's "temporary special measures" and modify the "social and cultural patterns of conduct" that discriminate against women, outlined in Article 5.

Despite Afghanistan's basic recognition of gender equality under the law, fulfillment of its obligations under CEDAW may be threatened by Article 3 of the 2004 Constitution. This article states, "No law can be contrary to the beliefs and provisions of the sacred religion of Islam." While Islam *per se* is not inimical to women's rights, this provision has the potential to undermine women's rights in Afghanistan because its interpretation by a conservative judiciary could invalidate the rights recently gained by women. Because Afghanistan made no reservation to CEDAW with regard to this provision, Afghan courts will have to reconcile Articles 3, 7, and 22 of the Constitution in the future in order to avoid possible conflict.



Jeanine Borland

An Afghan woman holds up her new voter registration card (February 2004).

### WOMEN'S PARTICIPATION IN RECENT POLITICAL CONSULTATIONS

THE STEPS TAKEN BY AFGHANISTAN TOWARDS FULFILLING its obligations under CEDAW may be examined by looking at the participation of Afghan women in the recent reconstruction processes, starting with the Bonn Agreement in late 2001.

#### WOMEN AND THE BONN CONFERENCE 2001

The Bonn Conference in December 2001 followed the collapse of the Taliban regime and heralded the beginning of the country's transitional period by establishing the interim Afghan Government. Two out of the twenty-three listed delegates were Afghan women, and a number of other women attended as observers. Article III (3) of the Bonn Agreement states that the delegates selected the members of the Interim Administration "with due regard to ... the importance of the participation of women." The Agreement was meant to create a "broad based, gender-sensitive, multi-ethnic and fully representative government" by 2004, thus opening up the possibility of women's participation in the new political order.

#### WOMEN AND THE EMERGENCY LOYA JIRGA 2002

The Emergency Loya Jirga of 2002 also tried to ensure women's participation. Out of the approximately 1500 delegates attending this meeting, 220 were women. Unfortunately, warlords and commanders dominated the conversation, drowning out the voices of women. Although the Jirga elected the new head of state, Hamid Karzai, many other issues, such as accountability for the past, were not addressed.

#### WOMEN AND THE DRAFTING OF THE 2004 CONSTITUTION

Women's participation at the Constitutional Loya Jirga, held in late 2003, was greater than ever before; approximately 20 percent of the 500 delegates were women (and seven out of the 35 members of the Constitutional Commission were women). In contrast, only four women were involved in the Loya Jirga to draft the 1964 Constitution, and only twelve women participated in a similar process in 1977. Despite these statistics, women's meaningful participation at the Constitutional Loya Jirga, as with the Emergency Loya Jirga, was limited by warlord intimidation. One female delegate, Malalai Joya, required special security during and after the convention because of her vocal criticism of warlord dominance. While Joya's ability to participate and the protection given to her are indications of change, the fact remains that most women are unable or unwilling to take such serious risks in order to enjoy their right to free and equal participation in political life, as required by Article 7 of CEDAW.

In the months leading up to the Constitutional Loya Jirga, Women for Afghan Women (WAW), a nongovernmental organization, organized 35 women from all over Afghanistan to draft a Women's Bill of Rights. Under tight security, the women drafted the Bill, which outlined twenty principle rights. These rights included "mandatory education for women through secondary school," "up-to-date health services for women," and "the prevention and criminalization of . . . 'bad blood price' [the use of women as compensation for crimes by one family against another]" – all vital measures towards Afghanistan's fulfillment of its CEDAW obligations. Women for Afghan Women then presented a copy of the Bill of Rights to President Karzai and the Constitutional Commission. Both the President and the Commission assured the women that all the demands would be included in the draft constitution, with the exception of a provision relating to the legal age of marriage.

Unfortunately, when the first draft of the Constitution was released a few weeks later, many of WAW's demands were left out. Those that were included provide women with equal rights and duties before the law as men, 25 percent of seats in the Lower House (Wolesi Jirga), and 17 percent of the appointed seats in the Upper House (National Assembly). Additionally, the Constitution mandates that "[t]he state shall provide and implement effective programs for [the] balancing and promoting of education for women," and "the execution of [a] penalty cannot affect another person," which may be interpreted to regulate the remedy of "bad blood price." The 2004 Constitution, however, missed a vital opportunity to include women's assessment of their needs. The few demands that were adopted into the final draft provide women with important rights and greater political access, but do not go far enough. The inclusion of other provisions from the Women's Bill of Rights, such as "full inclusion of women in the judiciary system," would have proved Afghanistan's commitment to include women in the political process and follow through on its CEDAW obligations.

## WOMEN AND THE ELECTIONS IN 2004 AND 2005

The latest effort to boost the participation of Afghan women in the public sphere has been voter registration for Afghanistan's first presidential election on October 9, 2004, and the upcoming parliamentary and local elections in 2005. The UN's registration teams organized the registration of hundreds of thousands of women as part of their bid to register approximately 10.5 million Afghan voters. According to official tallies, 41 percent of those registered for the October 9th election were women, although the statistics are much lower in some of the southern provinces. Nagging security concerns, however, have hampered voter registration. In late June 2004, a bomb exploded in a mini-bus carrying female election registration workers in Jalalabad, killing two Afghan women and wounding many others.

In addition to security concerns, cultural attitudes have also prevented women from fully participating in the elections. The Asia Foundation's July 2004 survey, entitled "Voter Education Planning Survey: Afghanistan 2004 National Elections" found that 88 percent of men and 85 percent of women believed that women need their husband's permission to vote. Furthermore, over four-fifths of the men surveyed stated that women need a man's advice on for whom to vote. This highlights the necessity, under Article 5 of CEDAW, for Afghanistan to take all appropriate measures to modify such cultural views that are clearly based on stereotypical roles for Afghan men and women.

In what can be heralded as a small success, one female candidate, Masooda Jala, stood against seventeen male competitors in the presidential elections of 2004. She was reportedly prevented, however, from speaking and campaigning at various locations, including a university campus and a district of Kabul, while permission was given to the other candidates.

### ANALYSIS AND RECOMMENDATIONS

In reviewing the statistics, it appears that Afghanistan has made great strides in providing women a place at the political table. The country, however, has not yet taken the steps necessary to ensure that their voices are heard. The mere participation of women in the political process does not meet Afghanistan's CEDAW obligations, nor will it help to add women's valuable voices to the political forum.

To address the issue of meaningful inclusion of women in the political process and to give full effect to CEDAW's Article 7, Afghanistan should consider using "temporary special measures" under Article 4 of CEDAW. For example, such special measures could be used to assist female political candidates in gaining access to campaign venues or to give women opportunities to speak when others have drowned out their voices. Afghanistan's constitutional quotas for women representatives are perhaps an example of such measures already undertaken, but they will not be effective until the government can ensure an election free of discrimination and insecurity. Without these measures, only token women put up by warlord factions may be appointed to Parliament in 2005.

The Afghan Government also must meet its Article 5 CEDAW obligations to ensure that cultural attitudes do not block women from meaningful political participation. Special measures under Article 4 of CEDAW could be used to establish campaigns to educate men that they do not have the right to decide whether and how their wives cast their votes. These campaigns are especially important in the lead up to the parliamentary and local elections in 2005. Furthermore, education regarding women's rights and CEDAW should be incorporated into the training of judges and

prosecutors, a measure which is currently not being performed. A possible body to oversee this education is the Afghan Independent Human Rights Commission.

### THE AFGHAN INDEPENDENT HUMAN RIGHTS COMMISSION

THE AFGHAN GOVERNMENT CREATED the Afghan Independent Human Rights Commission (AIHRC) in June 2002 to develop "a national plan of action for human rights in Afghanistan." Its mandate is "to monitor the situation of human rights throughout the entire country, to investigate allegations of violations of human rights, and to develop recommendations for the building and strengthening of national human rights capacities and institutions." Additionally, it is charged with ensuring that domestic law is in compliance with human rights treaties to which Afghanistan is a party. The AIHRC now has permanent status under Article 58 of the 2004 Constitution.



Five hundred women walk along the streets in Kabul, Afghanistan to register to vote (February 2004).

The AIHRC is comprised of eleven Commissioners, five of whom are women, including the Chair, Dr. Sima Simar. Some of its priorities are to promote and ensure women's rights, to monitor the situation of women in Afghanistan, and to make efforts to eliminate or reduce the discriminatory attitudes towards women in Afghan society. The AIHRC's Women's Rights Unit (WRU) is responsible for undertaking this process.

The WRU has a number of focus areas, including the "Clean reflection of CEDAW and equal rights for all citizens including [m]en and [w]omen in the new constitution" and "active involvement of women in the reconstruction process of the country." As such, the WRU has conducted workshops with court officials, assessed women's participation in government offices, and made recommendations to the Afghan Judicial Reform Commission on the need to amend discriminatory laws.

Despite the significant efforts made by the WRU, Afghanistan will not fully realize women's participation in the political reconstruction process until gender issues and perspectives are mainstreamed into other human rights and transitional justice initiatives. One area in which greater inclusion of women's perspectives is needed is the AIHRC's Transitional Justice Unit (TJU).

The TJU was formed to document human rights abuses that took place during the 23-year conflict and to undertake a consultation to study how Afghan people feel those abuses should best be addressed. To this end, the TJU has undertaken a consultation process during which it has conducted more than 4,000 individual interviews and 200 focus groups in various parts of Afghanistan. Most of the interview questions were broadly posed. For example, the TJU asked, “which would you trust the most to hold a fair trial for war criminals: a) a court with Afghan judges; b) a court with international judges; or c) a court with both international and Afghan judges?”

## ANALYSIS AND RECOMMENDATIONS

Although the TJU consultation process has been expressly inclusive of Afghan women, both as participants and interviewers, it has not included questions to address the specific hardships that women face as a result of their particular oppression under the Taliban. Missing are questions for female participants on how abuses specific to women would be best addressed by transitional justice measures. For example, women are not asked whether they would feel safe speaking publicly about sexual violence and, if not, how this could be remedied. Nor are women asked about the type of forum in which they would feel safe testifying. Afghan women deserve a forum to address the injustices they suffered and continue to suffer. By addressing concerns particular to women solely through the WRU and not including a gender perspective in other reconstruction mechanisms such as the TJU consultation process, the AIHRC has failed to provide women with important opportunities to participate in the reconstruction process and address abuses specific to women.

Although the establishment of the AIHRC promises to lead Afghanistan towards CEDAW compliance, the human rights body must reexamine its efforts to ensure that women’s perspectives are included in all reconstruction measures. The aim of the AIHRC’s consultation process is to achieve broad public participation in questions of national significance, but it has not yet focused sufficiently on the specific needs of women.

## WOMEN’S REPRESENTATION ON LOCAL JIRGAS AND SHURAS

MANY AFGHANS, PARTICULARLY THOSE IN RURAL AREAS, rely on local dispute resolution mechanisms known as *jirgas* (among Pashtuns) or *shuras* (among non-Pashtuns), which operate by consensus and deal primarily with community problems. A tradition of women’s councils, known specifically as women’s *shuras*, also function in some parts of Afghanistan. The Afghan Government is currently promoting the use of women’s and men’s *shuras* as part of the National Solidarity Program to assist in rural development. Recent funding and support has enabled women’s *shuras* to be involved in the establishment of a range of community initiatives, such as the construction of girls’ schools.

These councils offer a forum for women to participate in local public affairs. There are, however, serious obstacles to their full participation. In many cases, women are still not adequately protected from manipulation and threats by warlords. Additionally, despite their potential, these councils often pose a number of problems for women in practice. Firstly, women do not participate in *jirgas*. These councils are composed entirely of men and women rarely appear before them. Secondly, these mechanisms apply local customary law, which is often discriminatory against women. The most obvious example of such discrimination is the remedy of “bad blood price.”

## ANALYSIS AND RECOMMENDATIONS

Indigenous mechanisms such as the *shuras* and *jirgas* are important parts of the reconstruction process due to their legitimacy at the local level. To fulfill its obligations under CEDAW, however, in particular Article 7, the Afghan Government must ensure that *jirgas* are inclusive of women and must prohibit the use of discriminatory remedies such as “bad blood price” to solve community problems. To accomplish this, the government should supervise *jirgas* so that their continuation is contingent upon their inclusiveness and rejection of discriminatory practices. In addition, the government should impose and enforce serious sanctions on those who threaten or intimidate women’s *shuras*. It is only with measures such as these that Afghanistan will be able to ensure the “practical realization” of women’s participation in public life.

## CONCLUSION

IT WILL TAKE TIME FOR AFGHANISTAN to fully meet its CEDAW obligations. Indeed, the Afghan government has already missed a number of opportunities to mainstream women’s issues and institutionalize women’s rights. To ensure equal rights for men and women, as guaranteed by the 2004 Constitution, Afghanistan must implement both short and long-term measures. The main challenge for Afghanistan, in particular the AIHRC, is to localize and solidify CEDAW standards. This is admittedly a tall order, as the security situation appears to be stalling any real progress. Nevertheless, such measures are vital to ensure women’s participation in the political process and the establishment of a truly democratic foundation in Afghanistan.

HRB