



**Follow-up Report: Severe Persecution and Violence under the  
Taliban's Veil**

*War Against Women as Crimes Against Humanity*

December 13, 2003

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## Executive Summary

Afghanistan has witnessed progress in some areas over the last two years, albeit slow but hopeful. Especially in the education sector, which has had some positive developments and should remain a high priority as education carries the potential to eradicate ignorance, prejudice and stigma against women. Unfortunately, discrimination at universities continues. The work situation for women has also witnessed significant changes. Although opportunities are extremely limited, many women are now officially permitted to work outside their homes, mainly as public servants. Regrettably, few are employed in the private sector. However, a key challenge remains women's political participation. Now as ever, very few women hold governmental or decision-making positions thereby placing them at a disadvantage.

Health conditions for women and children are still desolate. Due to poor access to trained health care providers, clinics, and emergency obstetric care, maternal as well as infant and child mortality remain a vital concern. Particularly in the health sector Afghanistan is heavily dependent on international financial support in order to provide adequate care.

The security situation for women and girls remains dire. In urban as well as rural areas they are still victims of daily violence. Incidents include harassment for not wearing the burqa, kidnappings, rape, trafficking and even chastity examinations.

*De jure* women are granted most rights. But the ratification of respective international human rights treaties *per se* will not change the situation, because most of the treaties are not being enforced. Implementation of these rights into national laws and *de facto* compliance are vital to protect women from physical and mental harm and severe gender persecution. Despite all efforts, a lot still remains to be done in the area of women's rights. The international community, thus, must stay involved to help Afghan women move forward.

## Introduction

This report analyzes women's human rights and status in Afghanistan since Survivors' Rights International, Inc.'s (SRI's) last report in February 2002.<sup>1</sup> A preliminary examination of news and NGO reports confirms that there has been progress since SRI's last report.<sup>2</sup> Most women corroborated that their lives had improved, but at the same time realized that the road to gender equality is full of obstacles. They still encountered numerous challenges in their daily lives in terms of physical violence, repression, harassment, denial of equal rights in education and work or adequate access to health facilities.

Under Taliban rule women were severely persecuted as state policy and targeted based on gender as a group for destruction through severe deprivations of fundamental rights that were life threatening and subjections to cruel and inhumane treatment. Certainly, progress in urban areas has evolved much quicker than in rural areas. But establishing gender equality to the point where women feel secure in their persons and free from physical and mental violence will be a long and slow process. This is in part because Islamic law and Afghan traditions are still being misused by radical factions and individuals under false pretenses to deny women many human rights and physical protections.

This report discusses different aspects of society that affect the status of women such as education, work and health care. It assesses how UN organizations and other NGOs seek to improve the lives of Afghan women, and what challenges they have to overcome. This report furthermore examines the treatment of women in Afghanistan under international law and under national laws after the fall of the Taliban.

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<sup>1</sup> Survivors' Rights International and Women's Alliance for Peace and Human Rights in Afghanistan, *Severe Persecution and Violence Under the Taliban's Veil: War Against Women as Crimes Against Humanity*, February 8, 2002, available at [http://www.srintl.org/sri\\_news/SEVEREPE.pdf](http://www.srintl.org/sri_news/SEVEREPE.pdf).

<sup>2</sup> See Stephen Kaufman, *U.S.-Afghan Women's Council Promotes Female Education, Empowerment*, July 24, 2003, available at <http://www.reliefweb.int/w/rwb.nsf/0/7eb9f9eac7e2a41d85256d6d006cc420?OpenDocument>.

## I. Education

### *a) Positive Developments*

In March 2002, the Ministry of Education, supported by UNICEF, launched a “back-to-school” campaign which proved quite successful. Approximately 3 million children returned to school out of which 30% were girls.<sup>3</sup> Many news articles reported that the quota of children returning to school in rural areas was much lower than in urban areas. However, this was not accurate. Rather, the situation differed from region to region. Provinces in North and Central Afghanistan such as Balkh, Jowzjan, and Bamyan, including even remote villages, witnessed parents who eagerly sent their daughters back to school.<sup>4</sup> However, other regions were faced with a range of diverse difficulties such as infrastructural limitations, which prevented children from attending school. Several schools had insufficient or inaccessible spaces and structures which forced teachers to hold classes outdoors.<sup>5</sup>

UNICEF followed-up on its spring-campaign in September 2002 by providing additional school materials for the fall term and supplying tents which served as temporary classrooms. In addition, the Ministry of Education appealed for \$874 million to rebuild the nation’s school system which was totally destroyed during the war.<sup>6</sup> The World Food Program (WFP) and the United Nations Development Program (UNDP) were also active in Afghanistan. WFP used its feeding programs for school children as an incentive for parents to

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<sup>3</sup> U.N. ESCOR, 47<sup>th</sup> Sess., U.N. Doc. E/CN.6/2003/4. *See also* UNICEF, *Afghanistan: Back to School & Children’s Health*, February 2002, available at <http://www.unicef.org/afghanistanbacktoschool.pdf>.

<sup>4</sup> Farangis Najibullah and Amin Tarzi, *Afghan Women Still Struggling for Right to Education*, Work, RADIO FREE EUROPE/RADIO LIBERTY, June 5, 2003, available at <http://www.reliefweb.int/w/rwb.nsf/480fa8736b88bbc3c12564f6004c8ad5/14daa7ece57327e8c1256d3c00582af6?OpenDocument>.

<sup>5</sup> Department of State, *Report to Congress on U.S. Support for Afghan Women, Children, and Refugees* (June 2003), at 25.

<sup>6</sup> Associated Press, *Afghan Girls’ Schools Struck by Attacks* (Oct. 30, 2002), available at <http://www.rawa.org>.

send their daughters to school.<sup>7</sup> UNDP built a school in the Bagrami District with funds from the Japanese government.<sup>8</sup> The United States, through USAID and the State Department, with support of various NGOs and UN partners also implemented a number of projects, which for example, aimed at training women teachers and at improving access roads and buildings for girls' schools.<sup>9</sup>

The right to education is now also firmly anchored in the Afghan Draft Constitution, which is still subject to approval by the *loya jirga*.<sup>10</sup> Article 43 guarantees education up to the secondary level free of charge and Article 46 mandates the state to establish institutions for higher education. The state also wants to devote special attention to the promotion of women's education, which is a very positive and necessary development. The state is further called upon to devise and implement effective programs by establishing a well-balanced allocation of schools throughout the country and thus eliminating the divide between urban and rural areas to ensure that all Afghans have the opportunity to benefit from the state's education programs. Particularly in rural areas, parents are more inclined to send their children to work to earn money for the family, which is desperately needed, rather than provide them with an education which is not believed to have any short-term advantages.

### ***b) Setbacks and Deficits***

Opponents of girls' education tried to thwart above-mentioned efforts. In October 2002, several girls' and coed schools became the target of arson and rocket attacks.<sup>11</sup> Those

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<sup>7</sup> United Nations World Food Programme, World Hunger Afghanistan, at [http://www.wfp.org/country\\_brief/index.asp?country=004](http://www.wfp.org/country_brief/index.asp?country=004).

<sup>8</sup> United Nations Development Program, Boys and Girls in Bagrami Built Their Own School, May 27, 2003, at <http://www.undp.org.af/archive/2003/Kamari%20School%2027%20may%2003.htm>.

<sup>9</sup> Department of State, *Report to Congress on U.S. Support for Afghan Women, Children, and Refugees*, *supra* note 5, at 25.

<sup>10</sup> See Speech of Dr. Abdullah, Foreign Minister of Afghanistan, on November 13, 2003 at the Carnegie Endowment, transcript available at <http://www.ceip.org/files/events/events.asp?EventID=654>.

<sup>11</sup> Associated Press, Afghan Girls' Schools Struck by Attacks, *supra* note 6.

attacks were later linked to fundamentalist groups whose power were, and still are on the rise.<sup>12</sup> Consequently, parents were afraid of sending their daughters to school.<sup>13</sup> This fear was especially prevalent deep in Herat and in Kandahar, where the Taliban still strongly influences policy. In Herat, girls returned to school, yet they were faced with a number of discriminatory restrictions. One Herati woman, who was interviewed by Human Rights Watch, phrased it as follows: “Only the doors to the schools are open. Everything else is restricted.”<sup>14</sup> Girls, for example, were banned from taking classes in sports or music. Local governor Ismail Khan himself explicitly prohibited girls from playing sports because he believes this is inappropriate.<sup>15</sup>

Many women took entry exams to attend university. Now they make up one fifth of all university students.<sup>16</sup> All of them are highly enthusiastic to attend university for the first time in five years again.<sup>17</sup> Unfortunately, they are still discriminated against. At Herat University female and male students are required to study separately as a result of edicts issued by the local governor.<sup>18</sup> According to the deputy head of Herat’s educational department it is deemed illegitimate and contrary to Islamic law for men to teach women.<sup>19</sup> Such edicts have a severe impact on girls’ education, particularly in areas like engineering or computer literacy

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<sup>12</sup> Zama Coursen-Neff & John Sifton, *Falling Back to Taliban Ways with Women*, THE INTERNATIONAL HERALD TRIBUNE ONLINE, January 21, 2003, at <http://www.iht.com/cgi-bin/generic.cgi?template=articleprint.tpl&ArticleId=83949>.

<sup>13</sup> Farangis Najibullah and Amin Tarzi, *Afghan Women Still Struggling for Right to Education*, *supra note 4*.

<sup>14</sup> Human Rights Watch, *We Want to Live as Humans: Repressions of Women and Girls in Western Afghanistan*, December 2002, Vol. 14, No. 11 (C), available at <http://www.hrw.org/reports/2002/afghnwmn1202/Afghnwmn1202.pdf>.

<sup>15</sup> *Id.*

<sup>16</sup> WOMANKIND Worldwide, *Taking Stock Update: Afghan Women and Girls Sixteen Months On*, available at <http://www.womankind.org.uk/documents/afghanistan%20-%20taking%20stock.pdf>.

<sup>17</sup> See Natasha Walter, *Bare faced Resistance*, THE GUARDIAN, July 20, 2002, available at <http://rawa.fancymarketing.net/report.htm>.

<sup>18</sup> WOMANKIND Worldwide, *Taking Stock Update: Afghan Women and Girls Sixteen Months On*, *supra note 16*.

<sup>19</sup> See Zama Coursen-Neff & John Sifton, *Falling Back to Taliban Ways with Women*, *supra note 12*. See also Feminist Daily News Wire, *Afghan Women Face New Educational Restrictions* (January 17, 2003), available at <http://www.feminist.org/news/newsbyte/uswirestory.asp?id=7443>.

where female teachers are scarce. Current statistics show that only 16.7% of all professors are women.<sup>20</sup> In the 1970's 70% of schoolteachers were women. Today, they make up only 28%.<sup>21</sup> One may conclude that the number of professors dropped accordingly due to the destructive and violent policy of persecution by the Taliban.

Although students in other Afghan universities study together, female students do not enjoy equal access with men. It is for example, inappropriate for a woman to be the only female student in a class full of men.<sup>22</sup> Women are therefore forced to change their subjects in these cases. They are also prevented from participating in study exchange programs as opposed to men.<sup>23</sup>

### ***c) Concluding Remarks***

Restrictions in the educational system for women limit their professional opportunities, thus remaining an impediment to gender equality. Discriminatory employment policies logically discourage girls from pursuing an education, consequently forcing them into a vicious circle. The Ministry of Education acknowledged this problem by publicly announcing its commitment to increase girls' enrollment in school.<sup>24</sup> Mass education of the entire population is central to eradicating the prevailing ignorance, prejudice and stigma against women. Only an educated population has the potential to take Afghanistan forward.

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<sup>20</sup> WOMANKIND Worldwide, Taking Stock Update: Afghan Women and Girls Sixteen Months On, *supra note* 16.

<sup>21</sup> *Id.*

<sup>22</sup> Human Rights Watch, We Want to Live as Humans: Repressions of Women and Girls in Western Afghanistan, *supra note* 14.

<sup>23</sup> *Id.*

<sup>24</sup> Department of State, *Report to Congress on U.S. Support for Afghan Women, Children, and Refugees*, *supra note* 5, at 24.

## II. Work

### *a) Improvements*

Women are now officially permitted to work outside their homes, unlike under the Taliban regime. But opportunities are limited, because the Taliban deprived women and girls of the right to education during their reign.<sup>25</sup> The draft Constitution guarantees the right to work; its language is clear and does not leave any room for misleading interpretations. *Every* Afghan has the right to work according to Article 48, meaning there are no distinctions to be made between men and women.<sup>26</sup>

As of today, most women are mainly employed as public servants or in NGOs. Acceptable professions include positions in health care, teaching, administration, and engineering design.<sup>27</sup> In January 2003, the Kabul police forces re-opened their doors to women and reintroduced female cadets after completion of a six months training program.<sup>28</sup>

Few women are employed in the private sector. Although they are still prevented from working in the media, there has been encouraging progress with interesting projects. With support of UNESCO a network of professional associations of women journalists was established in Kabul in February 2002.<sup>29</sup> Since October 2002, the network publishes a monthly magazine dedicated to women outside of Kabul. UNESCO and the French group AINA also sponsored “The Voice of Afghan Women”, the first Afghan radio station for

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<sup>25</sup> U.N. ESCOR, 47<sup>th</sup> Sess., U.N. Doc. E/CN.6/2003/4.

<sup>26</sup> The Constitution of Afghanistan *available at* <http://www.constitution-afg.com/resrouces/Draft.Constitution.pdf>.

<sup>27</sup> WOMANKIND Worldwide, Taking Stock Update: Afghan Women and Girls Sixteen Months On, *supra note* 16.

<sup>28</sup> Feminist Daily News Wire, *Afghan Women to Join Kabul's Police Force, Country Still in Shambles* (January 3, 2003) *available at* <http://www.feminist.org/news/newsbyte/uswirestory.asp?id=7407>.

<sup>29</sup> U.N. ESCOR, 47<sup>th</sup> Sess., U.N. Doc. E/CN.6/2003/4.

women.<sup>30</sup> Programs focus on women's issues and provide guidance. Support for female presence in the media sector also came from a major news broadcast corporation. In January 2003, the BBC World Service Trust launched the Afghan Women's Empowerment Project encouraging women to form their own journalism associations and to mentor female journalism students.<sup>31</sup>

In addition, several projects run by humanitarian organizations and the U.S. Department of State employed women in the private sector.<sup>32</sup> The UNDP Recovery and Employment Afghanistan Project aimed at setting up vocational training centers in Kabul. Women were trained in tailoring, design and embroidery. Other projects employed women in bakeries.

The Ministry of Women's Affairs (MOWA), which was created when the new government was organized in December 2001 was also very active. MOWA expanded beyond Kabul and established ministry branch office presence almost throughout Afghanistan.<sup>33</sup> It also set up various women's centers. In Kabul alone, twelve such centers provide literacy classes, vocational training, health and counseling services.<sup>34</sup> One of the schools is located on the grounds of MOWA, along with a tailoring project for 200 women. The school offers classes in fine arts and painting and has a resource center. Finally, Afghan

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<sup>30</sup> UNESCO, Afghan Women's Radio on Air, *available at* [http://portal.unesco.org/en/ev.php@URL\\_ID=10307&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php@URL_ID=10307&URL_DO=DO_TOPIC&URL_SECTION=201.html).

<sup>31</sup> BBC World Service.com, *Annual Review 2002/2003: A Year in Review: Reconstruction of Afghanistan – One Year on*, BBC WORLD SERVICE.COM, *available at*

[http://www.bbc.co.uk/worldservice/us/annual\\_review/2002/afghanistan.shtml](http://www.bbc.co.uk/worldservice/us/annual_review/2002/afghanistan.shtml). *But see* Human Rights Watch, *We Want to Live as Humans: Repressions of Women and Girls in Western Afghanistan*, *supra note 14* (In Herat neither women nor girls can be employed by TV stations or work as journalists.)

<sup>32</sup> Department of State, Report to Congress on U.S. Support for Afghan Women, Children, and Refugees, *supra note 5*, at 17-18; U.N. ESCOR, 47<sup>th</sup> Sess., U.N. Doc. E/CN.6/2003/4; USAID, Success Story, *Rebuilding Afghanistan: Women Bakers Working Again*, *available at* [http://www.usaid.gov/locations/asia\\_near\\_east/afghanistan/ss-bakery.pdf](http://www.usaid.gov/locations/asia_near_east/afghanistan/ss-bakery.pdf).

<sup>33</sup> Department of State, Report to Congress on U.S. Support for Afghan Women, Children, and Refugees, *supra note 5*, at 14.

<sup>34</sup> Women's Commission for Refugee Women and Children, *Emerging Challenges: Closing Gaps in the Protection of Afghan Women and Girls* (March 2003), *available at* [http://www.womenscommission.org/pdf/af\\_0303.pdf](http://www.womenscommission.org/pdf/af_0303.pdf).

women began establishing their own organizations to provide education and job skills such as computers, tailoring and animal husbandry.<sup>35</sup>

## ***b) Remaining Obstacles***

### 1. Women & Politics

Khan strictly refuses to appoint women to key government posts, thus preventing them from taking active part in developing a policy of gender equality.<sup>36</sup> Given the intense, pervasive and negative nature of societal attitudes towards women it is unlikely that the current local government, dominated by an all male staff, will implement a policy favorable to women. Some men are probably in favor of gender equality, but due to social pressure and fear of reprisals from conservative forces still ruling Herat, they dare not to come forward.

With exception of the Ministry of Women's Affairs, the overall national picture still shows an under-representation of women.<sup>37</sup> Women's political participation in governmental agencies, particularly in the legal field, is essential. Women must be admitted to key governmental positions where they will be able to actively change policies involving gender equality.

Unfortunately, the draft Constitution does not seem to take adequate care of this desolate situation either. Art. 50 states that state service positions are given to applicants based on their qualification. Yet, this does not take into account lost education and possibilities when women were persecuted by the Taliban for being women. Thus, women are

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<sup>35</sup> Department of State, Report to Congress on U.S. Support for Afghan Women, Children, and Refugees, *supra* note 5, at 4. *See also* Women's Commission for Refugee Women and Children, Emerging Challenges: Closing Gaps in the Protection of Afghan Women and Girls (March 2003), *supra* note 34.

<sup>36</sup> Human Rights Watch, We Want to Live as Humans: Repressions of Women and Girls in Western Afghanistan, *supra* note 14.

<sup>37</sup> WOMANKIND Worldwide, Taking Stock Update: Afghan Women and Girls Sixteen Months On, *supra* note 16, at 9. U.N. ESCOR, 47th Sess., U.N. Doc. E/CN.6/2003/4.

less likely to become state servants. Instead, the government should introduce quotas to ensure women's participation.

## 2. Other Problems

Numerous warnings from former Taliban forces and warlords attempted to undermine progress in the employment sector. They disseminated pamphlets among the population warning of reprisals for sending women to work and spreading indecency and vulgarity.<sup>38</sup>

Herat's local governor, Ismail Khan, still severely restricts women's freedoms to choose their jobs. In various public speeches he pressured women not to work for NGOs or the UN. At least one woman was arrested for contact with foreign men while working for an international organization.<sup>39</sup> Khan equally exerted pressure on police, army and intelligence forces. He encouraged everyone to forbid their wives to work in foreign offices and emphasized his admonitions by offering to double the salary paid by international organizations.<sup>40</sup>

Restrictions in Herat also include provisions regarding speech, dress and behavior.<sup>41</sup> Naturally, criticizing the government is prohibited. Women need to observe a strict dress code and be completely covered, otherwise known as *hijab*. And, as already mentioned above, they must avoid any contact with foreigners. They may not shake their hands, ride in cars with them or visit them in their guesthouses. These rules make the work of humanitarian organizations futile, as Afghan women are essential for carrying out their humanitarian

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<sup>38</sup> Jennifer Seymour Whitaker, Editorial, *Women at Risk in Afghanistan*, BOSTON GLOBE, July 30, 2002, available at <http://rawa.fancymarketing.net/report.htm>.

<sup>39</sup> Evelyn Leopold, *Post-Taliban Warlords Oppress Afghan Women*, REUTERS, December 17, 2002, available at <http://rawa.fancymarketing.net/report.htm>.

<sup>40</sup> Human Rights Watch, *We Want to Live as Humans: Repressions of Women and Girls in Western Afghanistan*, *supra note 14*.

<sup>41</sup> *Id.*

missions and goals. These organizations and their women workers are usually the only bridge to provide necessary aid for women in need. Without them, international organizations often cannot fulfill their mandates.

In addition to these social obstacles, women are also faced with infrastructural deficits. In many regions women are prevented from working due to the lack of transportation facilities.<sup>42</sup> The public transportation system in Herat for example is basically non-existent. This not being enough, women are moreover not allowed to drive cars. The government in Herat refuses to issue driver licenses for women, thus leaving them no other choice than to take a taxi to go to work. Yet, even this can be a dangerous undertaking, as women are not supposed to ride in cars with men who are not closely related to them.<sup>43</sup>

### III. Health Care

#### *a) Health Condition of Afghan Women*

Maternal mortality serves as another gauge of the status of a woman in Afghan society.<sup>44</sup> Studies concerning maternal mortality revealed shocking results. The overall health care situation for women is very poor with the primary barrier being the lack of access to trained health care providers, clinics and emergency obstetric care.<sup>45</sup> Furthermore, restrictions and laws aggravate the situation. Women are prohibited to drive cars and require their husbands' approval to see a doctor.<sup>46</sup>

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<sup>42</sup> WOMANKIND Worldwide, Taking Stock Update: Afghan Women and Girls Sixteen Months On, *supra note* 16 at 15.

<sup>43</sup> Human Rights Watch, We Want to Live as Humans: Repressions of Women and Girls in Western Afghanistan, *supra note* 14.

<sup>44</sup> U.N. ESCOR, 47<sup>th</sup> Sess., U.N. Doc. E/CN.6/2003/4.

<sup>45</sup> Department of State, Report to Congress on U.S. Support for Afghan Women, Children, and Refugees, *supra note* 5, at 19-20.

<sup>46</sup> WOMANKIND Worldwide, Taking Stock Update: Afghan Women and Girls Sixteen Months On, *supra note* 16, at 16. Human Rights Watch, We Want to Live as Humans: Repressions of Women and Girls in Western Afghanistan, *supra note* 14. *But cf.* Feminist Daily News Wire, *Afghanistan: Women Learn How to Drive, US to*

A study by UNICEF and the United States Center for Disease Control and Prevention (CDCP) in collaboration with the Ministry of Health revealed that Afghanistan has one of the highest rates of maternal mortality in the world.<sup>47</sup> The survey – the largest of its kind – was carried out in four Afghan provinces (Kabul, Laghman, Kandahar, and Badakhshan) disclosing an astounding average of 1,600 maternal deaths per 100,000 live births. Yet, the differences between rural and urban areas are even more outrageous. The Badakhshan rate was as high as 6,500 deaths per 100,000 live births as opposed to the “low” Kabul rate of 400 deaths. The study also documented that 87% of those deaths were preventable, if women had access to skilled birth attendants.<sup>48</sup>

Shortly after publication of the UNICEF report, an Afghan health official called for substantive international aid to combat maternal mortality.<sup>49</sup> UNICEF continued its programs on improving prenatal, natal and post-natal care coverage by establishing at least one obstetric care facility in every province of the country.<sup>50</sup> Other UN agencies concentrated on education programs involving basic health issues or repairing maternity hospitals and providing them with necessary equipment, ambulances and clinics.<sup>51</sup>

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*Help Fund Maternal and Child Health Programs* (Jan. 27, 2003), available at <http://www.feminist.org/news/newsbyte/uswirestory.asp?id=7463>.

<sup>47</sup> UNICEF, *At a Glance: Afghanistan*, available at <http://www.unicef.org/infobycountry/afghanistan.html> (updated Aug. 19, 2003). See also UN Office for the Coordination of Humanitarian Affairs, *Afghanistan: Shocking Maternal Mortality Rates Revealed by UNICEF*, IRINNEWS.ORG (Nov. 7, 2002), available at [http://www.irinnews.org/report.asp?ReportID=30819&SelectRegion=Central\\_Asia&SelectCountry=AFGHANIS\\_TAN](http://www.irinnews.org/report.asp?ReportID=30819&SelectRegion=Central_Asia&SelectCountry=AFGHANIS_TAN). See also Physicians for Human Rights, *Maternal Mortality in Herat Province, Afghanistan: The Need to Protect Women’s Rights* (2002), available at [http://www.phrusa.org/research/pdf/maternal\\_mortality.pdf](http://www.phrusa.org/research/pdf/maternal_mortality.pdf).

<sup>48</sup> U.N. ESCOR, 47<sup>th</sup> Sess., U.N. Doc. E/CN.6/2003/4. See also UN Office for the Coordination of Humanitarian Affairs, *Afghanistan: Shocking Maternal Mortality Rates Revealed by UNICEF*, *supra* note 47.

<sup>49</sup> Feminist Daily News Wire, *Afghanistan: Women Learn How to Drive, US to Help Fund Maternal and Child Health Programs* (Jan. 27, 2003), available at <http://www.feminist.org/news/newsbyte/uswirestory.asp?id=7463>.

<sup>50</sup> UNICEF, *At a Glance: Afghanistan*, *supra* note 46. See also UN Office for the Coordination of Humanitarian Affairs, *Afghanistan: Shocking Maternal Mortality Rates Revealed by UNICEF*, *supra* note 47.

<sup>51</sup> U.N. ESCOR, 47<sup>th</sup> Sess., U.N. Doc. E/CN.6/2003/4 (UNFPA for example provided crucial basic health-care services, such as safe delivery, prenatal and post-natal care etc.).

Governments were also active.<sup>52</sup> The U.S. Health and Human Services (HSS) helped restore the damaged and ill-equipped Rabia Balkhi Women's Hospital in Kabul. The hospital reopened after the completion of a six-month renovation project. Moreover, the HSS announced that it will dedicate \$5 million in the financial year 2004 budget to Afghan maternal and child programs. Additionally, the State Department announced that \$25 million, originally intended for the United Nations Population Fund, will be directed to maternal, reproductive, and child health programs in Afghanistan.<sup>53</sup>

### ***b) Children's Health Conditions***

An infant's chance to survive after its mother's death is minimal. Most of these infants die within the first month from acute malnutrition due to lack of breast milk.<sup>54</sup> Infant and child mortality are a big concern in Afghanistan. 165 infants per 1,000 live births die and 257 children out of 1,000 will not even reach the age of five.<sup>55</sup>

UNICEF, USAID, CDCP, and the World Health Organization (WHO) conducted several projects involving immunization.<sup>56</sup> USAID immunized 5 million children against polio. As a result only one polio case occurred in 2002, compared to eleven cases in 2001.<sup>57</sup> USAID further intends to immunize 6 million children against measles. UNICEF wants to achieve and sustain 80% coverage for the six major vaccine-preventable childhood diseases.

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<sup>52</sup> See Department of State, Report to Congress on U.S. Support for Afghan Women, Children, and Refugees, *supra note 5*, at 20-21 (for a list with a range of projects).

<sup>53</sup> Feminist Daily News Wire, *Afghanistan: Women Learn How to Drive, US to Help Fund Maternal and Child Health Program*, *supra note 49*.

<sup>54</sup> Reuters, *Afghan Women Die Giving Birth at Staggering Rate* (Nov. 6, 2002), available at <http://rawa.fancymarketing.net/report.htm>.

<sup>55</sup> UNICEF, *At a Glance: Afghanistan*, *supra note 47*.

<sup>56</sup> *Id.* See also Department of State, Report to Congress on U.S. Support for Afghan Women, Children, and Refugees, *supra note 5*, at 26.

<sup>57</sup> USAID, Success Story, *Rebuilding Afghanistan: Eliminating Polio*, available at [http://www.usaid.gov/locations/asia\\_near\\_east/afghanistan/ss-polio.pdf](http://www.usaid.gov/locations/asia_near_east/afghanistan/ss-polio.pdf).

## IV. Violence against Women and Girls

### *a) Dress Code*

Security remains one of women's biggest concerns. The lack of security affects them in many different ways. Women and girls in urban as well as rural areas are victims of daily violence.<sup>58</sup> Many women thus avoid leaving their houses alone because they are afraid of harassment and physical attacks. They consequently live through similar conditions as during the Taliban era when they were prohibited from leaving their houses.

Initial reports in which women took off their burqas after the Taliban's ousting are outdated. Women and girls are again harassed for showing their faces or other inconspicuous parts of their bodies such as wrists or ankles. Soldiers, government officials, employers, and even boy squads sponsored by the local governor of Herat, continue to pursue and enforce radical rules that deny women fundamental rights and target them with severe repercussions for not wearing the burqa.<sup>59</sup>

Even women in Kabul, one of - if not the - most liberal place in Afghanistan, witnessed a return to the Taliban dress code. Extremist factions began painting slogans on Kabul's walls urging women to appear completely covered in public.<sup>60</sup> These slogans were signed by "Afghanistan's mujaheddin". It remains unclear, though, if the mujaheddins really were behind the propaganda. Government forces or private individuals could also be potential authors, given the broad support particularly among the radical male population.

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<sup>58</sup> See WOMANKIND Worldwide, Taking Stock Update: Afghan Women and Girls Sixteen Months On, *supra* note 16, at 6.

<sup>59</sup> Human Rights Watch, "Killing you is a very easy thing for us": Human Rights Abuses in Southeast Afghanistan, July 2003, Vol. 15, No. 05 (C), *available at* <http://www.hrw.org/reports/2002/afghnwmn1202/Afghnwmn1202.pdf> [http://www.hrw.org/reports/2003/afghanistan0703/8.htm#\\_Toc46287013](http://www.hrw.org/reports/2003/afghanistan0703/8.htm#_Toc46287013). Human Rights Watch, We Want to Live as Humans: Repressions of Women and Girls in Western Afghanistan, *supra* note 14; Leopold, *supra* note 39.

<sup>60</sup> Judith Huber, *Afghanistan: the Taliban's Smiling Face*, LE MONDE DIPLOMATIQUE, Mar. 2003, *available at* <http://rawa.fancymarketing.net/report.htm>.

A more moderate form of policing women's dress behavior – and maybe the trigger for above-mentioned actions - was conducted by the Ministry of Islamic Education, which basically replaced the Taliban's Ministry for the Promotion of Virtue and Suppression of Vice. Last summer, Ministry officials began urging women to wear the proper national attire with headscarf and long dark coat or skirt to cover the entire body, including wrists and ankles.<sup>61</sup>

Given the hostile environment, many women admitted to wearing the burqa out of fear and as a measure of protection, and not because they were free to choose to wear it. They simply tried to avoid being harassed, insulted or threatened in public.<sup>62</sup> Sanctions for violating the dress code were usually reprimands, but more severe sanctions included dismissals from work. For example, in November 2002 the Afghan Supreme Court dismissed a female judge for not wearing a headscarf at a meeting with President Bush in the U.S.<sup>63</sup> The Deputy Chief Justice and Vice President of the Supreme Court claimed to be unaware of her dismissal, but conceded to support the idea of women obeying the dress code at home as well as abroad.

### ***b) Kidnappings***

Outside Kabul women had to endure far more serious attacks. Regular reports from provinces noted several incidents of physical violence involving rape and kidnappings.<sup>64</sup> Various troops kidnapped girls and women to forcibly marry them in other villages. The victims were only released after receipt of a significant ransom, thus making the kidnappings a profitable income. These actions should be immediately and seriously investigated and the

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<sup>61</sup> Id.

<sup>62</sup> See Women's Commission for Refugee Women and Children, *Emerging Challenges: Closing Gaps in the Protection of Afghan Women and Girls*, *supra* note 33. Human Rights Watch, "Killing you is a very easy thing for us": Human Rights Abuses in Southeast Afghanistan, *supra* note 58. Human Rights Watch, *We Want to Live as Humans: Repressions of Women and Girls in Western Afghanistan*, *supra* note 14.

<sup>63</sup> Reuters, *Afghan Woman Fired for Meeting Bush Uncovered*, (November 2, 2002), available at <http://rawa.fancymarketing.net/report.htm>.

<sup>64</sup> Human Rights Watch, "Killing you is a very easy thing for us": Human Rights Abuses in Southeast Afghanistan, *supra* note 58; Huber, *supra* note 60.

perpetrators held accountable by legitimate forms of justice supported by the international community.

## V. Crimes against the Sexual Autonomy

### **a) Rape**

Rape occurs on a frighteningly widespread scale. Women are either not protected or cannot be protected, like in Imam Sahib, a city of 400,000 where 123 police officers with only one police car are assigned to protect its inhabitants.<sup>65</sup> This is nothing but a farce. Even more frustrating is, however, that perpetrators generally are not held accountable for their acts. One of Kabul's senior female police investigators stated that rape was physically impossible and did not exist (sic!).<sup>66</sup> She does not believe that a man could force himself upon a woman if she really tries to struggle. Convictions like these prevent developments of civilized society and greater justice and accountability necessary to physically protect women from serious and violent harm, and seriously impede efforts to establish and uphold fundamental human rights.

### **b) Chastity Examinations**

In Herat, another degrading and inhuman practice was instituted by its local governor. Police are following people around the city to monitor their behavior. Women and girls naturally are their prime targets. If they catch them *in flagranti* acting improperly, which includes talking to a man in front of the house, walking with a man on the street, or riding in cars with men who are not related to them, they can be arrested.<sup>67</sup> The women or girls are

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<sup>65</sup> Anna Badkhen, Widespread abuse, restrictions on freedom continue almost year after fall of Taliban, S.F. CHRON., Oct. 14, 2002, available at <http://rawa.fancymarketing.net/report.htm>.

<sup>66</sup> Robyn Dixon, Afghan Women Still Languish Rights: Despite Western pressure for greater attention, many laws have not changed since the Taliban left, and jails are refilling, BALTIMORE SUN, Jul. 27, 2002, available at <http://rawa.fancymarketing.net/report.htm>.

<sup>67</sup> Human Rights Watch, We Want to Live as Humans: Repressions of Women and Girls in Western Afghanistan, *supra* note 14.

brought to a medical facility where chastity examinations are conducted. These gynecological examinations are carried out by a doctor with two female nurses present. These standard procedure examinations take place in a coercive setting and without medical justification. They are degrading, inhuman in nature and unjustified.

### ***c) Trafficking In Persons***

Trafficking in women and girls remains a serious problem as well. Women are trafficked domestically and to neighboring countries in the Persian Gulf for marriage, sexual exploitation and forced labor.<sup>68</sup> This issue was not addressed adequately in the past. Yet, the Office to Monitor and Combat Trafficking in Persons at the U.S. Department of State is funding a survey to be conducted by the International Organization for Migration.<sup>69</sup> The survey will help assess the scope of the trafficking in persons problem in Afghanistan.

One of the key challenges to fighting trafficking is the porous Afghan borders. Foreign Minister Dr. Abdullah confirmed that the government had taken steps to counter that problem.<sup>70</sup> President Karzai also spoke out against this odious crime. He signed a decree pursuant to the United Nations Convention against Transnational Organized Crimes and its Protocols in April 2003 and set up a Joint Ministerial Commission to battle trafficking in persons.<sup>71</sup> The main activities of the Commission will include:

- launching nationwide public awareness campaigns,

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<sup>68</sup> WOMANKIND Worldwide, Taking Stock Update: Afghan Women and Girls Sixteen Months On, *supra note* 16, at 8. See also Agence France Press, *Afghans Nabbed in Iran Brothel Swoop*, Nov. 25, 2002, available at <http://www.humantrafficking.com/humantrafficking/client/view.aspx?ResourceID=399> (Nine Afghans have been arrested in the Iranian capital on charges of running a brothel).

<sup>69</sup> Department of State, Report to Congress on U.S. Support for Afghan Women, Children, and Refugees, *supra note* 5, at 14.

<sup>70</sup> Statement by H.E. Dr. A. Abdullah Minister of Foreign Affairs of the Transitional Islamic State of Afghanistan, presented at “The Second Bali Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime”, Bali, Indonesia, Apr. 28-30, 2003, available at <http://www.afghanistan-mfa.net/pressrelease/statement05022003.html>.

<sup>71</sup> Id.

- facilitating collective, integrated and comprehensive national, regional and international efforts,
- assisting victims of people smuggling,
- legislating the arrangements for dignified and sustainable repatriation of smuggled Afghan nationals,
- conducting legislative review and national law enforcement on people smugglers,
- studying a draft set of regional and international operational standards and its implementation within Afghanistan,
- addressing the root causes of the illegal movement of people in Afghanistan,
- seeking assistance from the international community in emergency aid, development assistance, direct support programs for displaced persons and for capacity building programs,
- exploring ways of improving technical capacity and initiate bilateral and multilateral programs,
- paving the way for a possible future workshop or conference on people smuggling in Kabul.

## V. Legal Process

### ***a) Afghan Law vs. Afghan Traditions***

Afghan law is built on a dual system encompassing Islamic law (Sharia) as well as parts of the civil code. The influence of Islamic law is predominant and even more so is the influence of traditional tribal norms and rules.<sup>72</sup> These tribal traditions usually entail discriminating practices and are very unfavorable to women. Islamic law and Afghan traditions often clash because of contradicting provisions or rules. In these cases, Afghans generally resort to traditional tribal rules, thus disregarding Islamic law and consequently disregarding the official rule in Afghanistan.

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<sup>72</sup> International Crisis Group, Afghanistan: Women and Reconstruction, Mar. 14, 2003, *available at* [http://www.crisisweb.org/library/documents/report\\_archive/A400919\\_14032003.pdf](http://www.crisisweb.org/library/documents/report_archive/A400919_14032003.pdf). WOMANKIND Worldwide, Taking Stock Update: Afghan Women and Girls Sixteen Months On, *supra note* 16, at 11.

A very common example involves the choice of spouse. Sharia grants each man and woman free choice.<sup>73</sup> Nonetheless the practice of selling one's daughter into marriage is on the growing rise, although it is explicitly forbidden by the civil code and Islamic law.<sup>74</sup> The practice has an especially strong cultural basis in southern Afghanistan, where prospective husbands have always paid a dowry for their wives-to-be.<sup>75</sup> This custom, however, has perverted into a market for selling girls even as young as two or three years old. Many families are forced to resort to such illegal measures because they desperately need the money to survive. Unfortunately, many families are of the belief that there is no place to consider the welfare of their daughters.

Free choice of spouse was also severely restricted during the Taliban rule. People were executed for falling in love without their parents' approval. Those executions have ceased, instead women and girls today are jailed for falling in love with the "wrong" person. Basically, the situation remains the same - only the punishment has changed. The new Constitution seems to take notice of this problem with Art. 54 calling upon the state to adopt necessary measures to eliminate traditions, which are contrary to the principles of Islam.

### ***b) The Fight for Freedom***

Shortly after the Taliban left, the women's jail in Kabul was emptied, only to witness the imprisonment of other women and girls a few months later for having committed the same acts that would have landed them a prison term as crimes under the Taliban regime.<sup>76</sup> So in effect, the laws have not changed and one cannot seriously purport to any real improvement of

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<sup>73</sup> See Noreen S. Ahmed-Ullah, *Afghan Laws Still Repress Women: Refusing Suitor, Leaving Husband Bring Jail Time*, CHIC. TRIB., Apr. 28, 2002, available at <http://rawa.fancymarketing.net/report.htm>. See also Dixon, *supra* note 66.

<sup>74</sup> Huber, *supra* note 59; Dixon, *supra* note 66.

<sup>75</sup> Marc Kaufman, *Afghan Poor Sell Daughters as Brides*, WASH. POST, Feb. 23, 2003, available at <http://rawa.fancymarketing.net/report.htm>.

<sup>76</sup> See Ahmed-Ullah, *supra* note 73.

the situation of women. The amnesty granted to twenty imprisoned women by President Karzai in November 2002 is nothing more than a drop in the bucket.<sup>77</sup>

The reasons for arrest range from seeking to marry the man of their choice, attempting to divorce their husbands, or criticizing their husbands.<sup>78</sup> Even more outrageous was the case of a woman, who was sentenced to three years in prison for prostitution. In reality, she had been raped by a group of men who had been invited by her own mother-in-law.<sup>79</sup>

### ***b) The Impact of International Law***

*De jure* women are granted most rights. But the ratification of respective international treaties granting equal rights or prohibiting any form of discrimination and severe life-threatening persecution such as the Convention on the Political Rights of Women or the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has not improved women's situation, as domestic law does not show evidence of implementing or legitimately codifying and enforcing those international law treaty rights and norms.<sup>80</sup> Although Afghanistan did not enter any reservations to the CEDAW, it failed to ratify the Optional Protocol, thus preventing women from enforcing their rights pursuant to the treaty.<sup>81</sup>

The Afghan Independent Human Rights Commission and the Ministry of Women's Affairs both made several recommendations aimed at improving the status of women.<sup>82</sup>

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<sup>77</sup> See Feminist Daily News Wire, *Karzai Grants Jailed Afghan Women Amnesty*, Nov. 11, 2002, available at <http://www.feminist.org/news/newsbyte/uswirestory.asp?id=7264>.

<sup>78</sup> WOMANKIND Worldwide, *Taking Stock Update: Afghan Women and Girls Sixteen Months On*, *supra note* 16, at 11.

<sup>79</sup> Feminist Daily News Wire, *Afghanistan: Injustices Against Women and Girls Persist*, Mar. 6, 2003, available at <http://www.feminist.org/news/newsbyte/uswirestory.asp?id=7597>.

<sup>80</sup> International Crisis Group, *Afghanistan: Women and Reconstruction*, *supra note* 72.

<sup>81</sup> Convention on the Elimination of all Forms of Discrimination against Women, New York, Dec. 18, 1979, available at <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty10.asp>.

<sup>82</sup> Feminist Daily News Wire, *Afghanistan: Constitution in the Works, Fighting Persists*, Apr. 4, 2003, available at <http://www.feminist.org/news/newsbyte/uswirestory.asp?id=7691>.

Fortunately, the 35 member commission reviewing the draft constitution included seven women.<sup>83</sup> The language of the draft Constitution is clear: citizens of Afghanistan have equal rights and duties before the law and any form of discrimination is prohibited (Article 22). Other provisions also do not distinguish between men and women, thus making them equal objects before the law. Yet, it remains to be seen whether the government will comply. Thus far, the likelihood of near-future de facto compliance with these laws looks bleak. Conservative powers opposing equal rights are still very authoritative. In order to convince conservative powers that must adhere to and protect fundamental human rights norms, particularly for women, it may be essential to find arguments based in Islamic law that counter their discriminatory policies since Islamic law is of significant importance to much of the Afghan population.<sup>84</sup>

### ***c) The Impact of Non-governmental Organizations***

NGOs play a significant role in changing and improving the status of women. UNIFEM for example, supports the process of ensuring women's legal representation. It funded and helped establish the Afghan Women Lawyers Council, the Afghan Women Lawyers and Professional Association, the Afghan Women Judges Association and the Afghan Women Legal Research Association.<sup>85</sup> Unfortunately, women's rights advocates are faced with a number of problems. Human Rights Watch interviewed several women who had been intimidated, threatened, attacked and assaulted for speaking publicly and promoting women's rights.<sup>86</sup>

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<sup>83</sup> Id.

<sup>84</sup> See also International Crisis Group, *Afghanistan: Women and Reconstruction*, *supra* note 72.

<sup>85</sup> Women's Commission for Refugee Women and Children, *Emerging Challenges: Closing Gaps in the Protection of Afghan Women and Girls*, *supra* note 34.

<sup>86</sup> Human Rights Watch, "Killing you is a very easy thing for us": Human Rights Abuses in Southeast Afghanistan, July 2003, Vol. 15, No. 05 (C), *supra* note 59.

Another aspect, which NGOs should more fervently focus on, is the role of men and re-education initiatives regarding fundamental human rights as recognized by civilized and developed countries and as under Islamic Law, in connection to women's value in society as capable and equal persons in Afghanistan's society. Every woman interviewed by journalists or NGO workers pledged for equal rights with men. But it is men who fear gender equality and humane protections for women as a threat to their power structure, particularly those comprising patriarchal radical factions and/or Taliban supporters who are endorsing or carrying out policies of severe persecution, violence and discrimination against women that are serving as obstacles to *de facto* adherence and enforcement of any rule of law that is not in their interest. As a result of radical factions' policy of rule by terror, a lack of adequate and sufficient education of the male population, and a lack of an independent judiciary or just accountability, many men are opposed to any notion of gender equality. Thus, they must be re-educated regarding women's role and status in society and they must be held accountable for crimes committed against women. Men must be educated and re-educated on civilized society norms, the value of women as people and as an important and vital part of society, and on legal systems that protect the rights of individuals void of institutionalized discrimination and severe persecution on any identifiable characteristic such as gender. Once that process has begun a path may be paved to ensure the protection of women from persecution and physical and mental harm that also violates international law and Islamic law.

## VI. Conclusion

Legal and political reforms are ineffective in a country that lacks the most basic features: security and stability. As long as Afghanistan is not a secure country and lacks the rule of law, then all efforts of international organizations – governmental and non-

governmental - seem futile as well as ratifications of international treaties granting women equal rights.

Security is the core problem in Afghanistan and the reason the process of attaining gender equality has been so terribly slow. Strict Taliban orders are still haunting women and making them unsafe. The poor legal system, which in some parts of the country is completely lacking, worsens the situation.<sup>87</sup> The International Security Assistance Force (ISAF) must expand beyond Kabul's borders to ensure security in the provinces, where the security situation is desolate and <sup>88</sup>these forces should be increased in number as well. The U.S. should take the lead within the international community to attain adequate *de facto* security measures within Afghanistan and to instill the rule of law through donating more troops to ISAF and through assisting ISAF to speed up its efforts to enable Afghanistan to create its own legitimate and credible national security institutions.<sup>89</sup> Therefore, Afghanistan's and the U.S.'s priority should be to establish stability and the rule of law through adequate support.

Another major problem for reconstructing Afghanistan involves the funds donated to international and non-governmental organizations. Instead of giving the money to NGOs and international organizations, the international community should empower Afghan NGOs and the Afghan government to a greater extent than has been done thus far. The lack of money affects the work of the Afghan government in numerous ways. For example, the government is not able to pay its employees, such as teachers of who are mostly women. Teachers then see themselves as "forced" to abandon their jobs and join international organizations and NGOs, where they earn substantially more money. Under-funding has extensive and

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<sup>87</sup> See WOMANKIND Worldwide, Taking Stock Update: Afghan Women and Girls Sixteen Months On, *supra* note 16, at 10.

<sup>88</sup> See *id.*

<sup>89</sup> Speech of Dr. Abdullah at the Carnegie Endowment, *supra* note 10.

numerous negative effects on Afghanistan's overall development, with education being a key component to progress.

The Afghan government should be in charge of reconstructing its own country with the support and financial help of the international community once security, stability and the rule of law have been successfully established with observable concrete and permanent results. Yet, this does not mean that international organizations should only donate the money and then abandon the country. Rather, an umbrella of reputable international organizations should monitor the implementation of projects with the UN acting as an advisor. This would also reduce the current problem of overlapping projects. As of now, there is no coordination between various international organizations and NGOs, which is very problematic because money is wasted on duplicating projects. The funds should be more wisely used for projects covering the entire spectrum of development, security and the rule of law.

Afghanistan is undoubtedly on a better path than it was under the Taliban. There has been much progress within the last year in some areas, and even now Afghanistan is steadily marching forward towards a better future. However, many difficulties still have to be overcome and it is going to take a considerable amount of time before Afghanistan will be able to adequately protect women's rights and security in their persons absent considerable increases in financial and military support from the U.S. and the international community.