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## A Decade's Legacy: Dashed Hopes for Gender Equality and the Status of Afghan Women in Light of the Ensuing Drawdown.

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## COMMENTS

### A DECADE'S LEGACY: DASHED HOPES FOR GENDER EQUALITY AND THE STATUS OF AFGHAN WOMEN IN LIGHT OF THE ENSUING DRAWDOWN

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After the fall of the Taliban everyone wanted to come and work for women's rights, they were proud to say they were here to help Afghan women. Slowly, slowly this disappeared. . . . Women are not a priority for our own government or the international community. We've been forgotten.

— Shinkai Karokhail<sup>1</sup>

## I. INTRODUCTION

As 2013 ended, the United Nations (U.N.) reported, “progress in obtaining justice for abused women in Afghanistan appear[s] to have stalled.”<sup>2</sup> According to the head of the U.N.'s human rights division in Afghanistan, there are disturbing signs that significant advances made for Afghan women's rights are already eroding as international support and assistance draws down.<sup>3</sup> Signs of this erosion include the ongoing difficulty facing abused women in obtaining justice, as well as the Afghan Parliament's repeated efforts at reducing rights for women.<sup>4</sup>

The 2004 Afghan Constitution afforded women and men equal legal status,<sup>5</sup> and some significant progress was made in improving the lives of Afghan women.<sup>6</sup> One woman, Fawzia Koofi, even became a prominent

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1. HUMAN RIGHTS WATCH, “WE HAVE THE PROMISES OF THE WORLD”: WOMEN'S RIGHTS IN AFGHANISTAN 2 (2009), available at [http://www.hrw.org/sites/default/files/reports/afghanistan1209web\\_0.pdf](http://www.hrw.org/sites/default/files/reports/afghanistan1209web_0.pdf). A staunch promoter of women's rights, Shinkai Karokhail was elected to the Afghan Parliamentarian in 2005. *Mrs. Shinkai Karokhail MP*, PARLIAMENTARIANS NETWORK FOR CONFLICT PREVENTION, <http://pnpc.net/members/mrs-shinkai-karokhail-mp> (last visited Mar. 17, 2014).

2. Alyssa J. Rubin, *Afghan Effort to Get Justice for Women Seems to Stall*, N.Y. TIMES, Dec. 9, 2013, at A4.

3. *Id.*

4. *Id.*

5. CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN, art. 22 (Jan. 26, 2004).

6. See Sami Yousafzai, *'Living Dead' No More*, NEWSWEEK (Oct. 10, 2004; 8:00 PM), <http://www.newsweek.com/living-dead-no-more-129969> (“Educated women are flourishing

Member of Parliament and launched her bid for President.<sup>7</sup> However, as the balance of power remains tenuous, President Karzai and a majority of those in power demonstrate a willingness to bargain away women's rights in order to maintain support from conservative factions and retain power.<sup>8</sup>

After allied entrance into Afghanistan following the 2001 terror attacks, some women once again experienced a more active role in society—a role denied under Taliban rule.<sup>9</sup> The 2004 Constitution included a provision guaranteeing rights for women, even reserving roughly two seats per province in the House of People.<sup>10</sup> It also stated, “The citizens of Afghanistan, man or woman, have equal rights and duties before the law.”<sup>11</sup> However, these rights are still not clearly defined and remain far from secure. In the face of an ensuing drawdown of Coalition forces, the young Afghan government is straining to preserve a tenuous peace.<sup>12</sup> This uncertainty not only affects who will occupy the seat of government but also whether girls will receive an education and whether women may leave their homes unveiled or unaccompanied by a male relative.

The cost of the past decade weighs heavily on both Afghans and citizens of allied countries that have invested billions of dollars and

as politicians, social activists, teachers, journalists, artists; there is even a tae kwan do [sic] champion.”).

7. Sophie McBain, *Fawzia Koofi, the Female Politician Who Wants to Lead Afghanistan*, NEWSTATESMAN (Dec. 18, 2013, 9:41 AM), <http://www.newstatesman.com/2013/12/just-ticket>.

8. See HUMAN RIGHTS WATCH, *supra* note 1 (“The Shia law, in which the previously moderate Karzai traded women’s rights for political support for his re-election, is only the most visible example of this trend. With the Prospect of deals with the Taliban and other insurgent groups firmly on the political agenda, fundamentalist actors may be able to expand their influence in coming years.”); see also Editorial, *The Women of Afghanistan*, N.Y. TIMES, Aug. 16, 2012, at A22 (discussing President Karzai’s sign-off on a decree from the religious council, which stated that “women were secondary to men”).

9. See Aryn Baker, *Afghan Women and the Return of the Taliban*, TIME, Aug. 9, 2010, at 20 (explaining, for some Afghan women, freedoms and rights after the Allied invasion rivaled those of more liberal eras, such as the 1970s).

10. CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN, art. 83 (Jan. 26, 2004); see generally Nusrat Choudhury, *Constrained Spaces for Islamic Feminism: Women’s Rights and the 2004 Constitution of Afghanistan*, 19 YALE J.L. & FEMINISM 155, 173-79 (2007) (describing the rights afforded to Afghan women under the 2004 Constitution).

11. *Id.* art. 22 (Jan. 26, 2004).

12. See Margherita Stancati, *Afghan Women Fear Rights Slipping Away*, WALL STREET J. (July 5, 2013, 6:13 PM) (asserting women’s rights continue to be stifled in Afghanistan because “[i]f you are having a dialogue between the Afghan government and the Taliban, you are actually having a dialogue between a group that hates women’s rights and a group that couldn’t care less about women’s rights”).

thousands of lives in this front to the War on Terror.<sup>13</sup> At the start of 2014, Coalition forces already lost over 3,000 lives in Afghanistan.<sup>14</sup> Part of the public, political rhetoric justifying the loss of lives and dollars invested in a continued presence in Afghanistan has been guaranteeing improved rights and freedoms for Afghan women.<sup>15</sup> A comprehensive evaluation of the legacy of Operation Enduring Freedom must therefore include the status of Afghan women as forces withdraw.<sup>16</sup>

In 2010, United States (U.S.) Secretary of State Hillary Clinton promised Afghan women the coalition would not abandon them, assuring them that their freedom and empowerment remained a priority.<sup>17</sup> Speaking to female Afghan officials in 2010, she said, “[W]e will stand with you always . . . [it is] essential that women’s rights and women’s opportunities are not sacrificed or trampled in the reconciliation process.”<sup>18</sup> However, many fear women’s rights are already being sacrificed in completing the scheduled 2014 drawdown.<sup>19</sup>

There is widespread fear among Afghans and allied partners that the drawdown in 2014 will create an opportunity for the Taliban to regain and impose a new reign of terror upon Afghan women.<sup>20</sup> The situation in Afghanistan is far from stable, with corruption running rampant in both

13. See Ernesto Londoño, *Iraq, Afghan Wars to Cost to \$4 Trillion to \$6 Trillion, Harvard Study Says*, WASHINGTON POST (Mar. 28, 2013), [http://www.washingtonpost.com/world/national-security/study-iraq-afghan-war-costs-to-top-4-trillion/2013/03/28/b82a5dce-97ed-11e2-814b-063623d80a60\\_story.html](http://www.washingtonpost.com/world/national-security/study-iraq-afghan-war-costs-to-top-4-trillion/2013/03/28/b82a5dce-97ed-11e2-814b-063623d80a60_story.html) (disclosing a Harvard study estimates the combined cost of the Iraq and Afghan wars between \$4 and \$6 trillion with the war debt incurred between 2001 and 2002 representing twenty percent of all American debt).

14. *Home and Away: Iraq and Afghanistan War Casualties*, CNN <http://www.cnn.com/SPECIALS/war.casualties> (last updated Mar. 22, 2014).

15. Carolyn A. Dubay, *Beyond Critical Mass: A Comparative Perspective on Judicial Design and Gender Equality in Iraq and Afghanistan*, 24 FLA. J. INT’L L. 163, 179 (2012); Sonali Kolhatkar, *The Impact of U.S. Intervention on Afghan Women’s Rights*, 17 BERKELEY WOMEN’S L. J. 12, 12 (2002). Kolhatkar cites President George W. Bush’s State of the Union Address on January 29, 2002: “The last time we met in this chamber, the mothers and daughters of Afghanistan were captives in their own homes, forbidden from working or going to school. Today women are free.” *Id.* at n.3.

16. See generally Karen Engle, “*Calling in the Troops*”: *The Uneasy Relationship Among Women’s Rights, Human Rights, and Humanitarian Intervention*, 20 HARV. HUM. RTS. J. 189 (2007) (analyzing how women’s rights advocates support the U.S. invasion of Afghanistan and the use of women’s rights to justify it).

17. See *Afghanistan: Don’t Trade Away Women’s Human Rights*, AMNESTY INT’L, <http://www.amnestyusa.org/our-work/countries/asia-and-the-pacific/afghanistan/afghanistan-don-t-trade-away-women-s-human-rights> (last visited Mar. 22, 2014) (asserting the importance of refusing to sacrifice women’s rights in order to pursue peace negotiations with the Taliban and other insurgent groups).

18. *Id.* (internal quotation marks omitted).

19. Editorial, *supra* note 8.

20. Rubin, *supra* note 2.

national and regional government circles.<sup>21</sup> As extremist Islamic philosophy infiltrates the legislation stemming from the recently created democratic structures, women and minority rights activists question the decision to withdraw at this juncture.<sup>22</sup> Research suggests a direct link between women's rights and lasting peace and stability in Afghanistan,<sup>23</sup> and the decision to abandon Afghan women is tantamount to sacrificing the regional security for which Coalition forces have fought and died. The inseparable relationship between women's rights and sustainable peace and development demands that women's rights remain a top priority in continued Afghan reconstruction.<sup>24</sup>

As the political and financial constraints on the mission in Afghanistan lead allied governments to rush the withdrawal of forces, many women feel they are being abandoned to face their previous fate under the Taliban<sup>25</sup>—or even worse, as the conservative Taliban retributively attack women to erase progress gained over the past decade. Many women who filled openings within the government now fear reprisal from the conservatives who continuously threatened them.<sup>26</sup> It is increasingly apparent that the Afghan National Army and police force cannot quell escalating violence against women, and women across the country fear their fate will be sealed once allied forces withdraw.<sup>27</sup> A recent escalation in the number of public murders of women under Taliban-interpreted Sharia

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21. See Cheryl Benard, *Caution Nation-Builders: Gender Assumptions Ahead*, 32 FLETCHER F. WORLD AFF. 25, 27 (2008) (“Today, it is well known that collaboration and inclusion of warlords has been one of the most detrimental obstacles to reconstruction in Afghanistan because it furthers a culture of corruption and general lawlessness.”).

22. See Rod Nordland & Alissa J. Rubin, *Karzai's Bet: U.S. Is Bluffing in Warning on Security Pact*, N.Y. TIMES (Nov. 26, 2013), <http://www.nytimes.com/2013/11/27/world/middleeast/karzais-bet-us-is-bluffing-on-warning-on-security-pact.html> (“Ahmad Behzad, an influential member of Parliament from Herat Province, said that a full withdrawal would mean the reversal of every significant achievement of the past [twelve] years of American presence.”).

23. See Benard, *supra* note 21 (“If a particular decision or compromise is bad for women, it will be bad for human security, bad for development, and detrimental to a genuine peace.”).

24. See generally VALERIE M. HUDSON ET AL., *SEX AND WORLD PEACE* (2012) (identifying women's security as a vital factor to a state's security).

25. Editorial, *supra* note 8.

26. See McBain, *supra* note 7 (“Koofi's greatest fear now is that, after international troops withdraw in 2014, the Taliban will regain the upper hand.”).

27. *Id.*

law indicates the influence of the Taliban is indeed spreading,<sup>28</sup> even as some Western partners advocate negotiations with the group.<sup>29</sup>

This Comment provides historical context for current challenges to women's rights in conflict-ridden Afghanistan, exploring legal structures that must be supported before the drawdown in order to ensure more substantial gender equality after allied forces have left. By focusing on cultural support for women's rights and embracing a more regionally focused justice system, this Comment suggests Afghan leaders can—and must—provide increased safety for women's rights to create and maintain security and growth in Afghanistan. Policy advisors and women's rights advocates should encourage more liberal interpretations of Sharia law, while acknowledging and working within the religious and ethnic traditions of Afghan culture. This must be accomplished with an understanding that no progress can be made or maintained without improvements in education for all Afghan children and access to justice for victims of violence.

Part II of this Comment considers the historical and legal background of the current state of women in Afghanistan. Part III briefly considers implications of the newly created Afghan State for centralization of the legal system. Part IV explores both international and domestic legal frameworks for the Afghan women's rights movement. Part V identifies certain Afghan-specific challenges to gender equality. Finally, Part VI argues the crucial elements for supporting women's rights in Afghanistan are: (1) conditioning international aid funding upon women's rights progress and policy; (2) focusing on education for both boys and girls; (3) increasing access to justice, as well as support for women's political and civic participation; and (4) increasing focus on promoting women's rights through more liberal Islamic discourse.

## II. HISTORICAL AND LEGAL BACKGROUND

### A. *Afghan Women's Rights Since the 1920s*

Studies show Afghanistan to be among the most dangerous places in the world to be a woman, based on factors such as violence against women, maternal mortality, access to healthcare and targeting of female

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28. *US, Afghan Officials Condemn Public Execution of Afghan Woman*, *World News*, NBC News (July 8, 2012, 12:05 PM), [http://worldnews.nbcnews.com/\\_news/2012/07/08/12627795-us-afghan-officials-condemn-public-execution-of-afghan-woman](http://worldnews.nbcnews.com/_news/2012/07/08/12627795-us-afghan-officials-condemn-public-execution-of-afghan-woman).

29. See Kevin Sieff, *Afghan Peace Negotiations Remain Uncertain*, *WASHINGTON POST* (July 4, 2013), [http://www.washingtonpost.com/world/asia\\_pacific/afghan-peace-negotiations-remain-uncertain/2013/07/04/c53fe4de-e405-11e2-bffd-37a36ddab820\\_story.html](http://www.washingtonpost.com/world/asia_pacific/afghan-peace-negotiations-remain-uncertain/2013/07/04/c53fe4de-e405-11e2-bffd-37a36ddab820_story.html) (detailing failed peace negotiations among U.S., Afghan, and Taliban leaders).

public officials, among other things.<sup>30</sup> However, women's rights in Afghanistan have varied significantly over the last century, depending on geopolitics, conflict cycles, and the nation's leadership at any particular time.<sup>31</sup> Women's rights always remained varied across this culturally and religiously complex country.<sup>32</sup>

In some ways, the Afghan women's rights movement parallels the women's rights movements in the U.S. and other liberal countries during the early twentieth century.<sup>33</sup> In fact, some Afghan women in the most liberal areas of the country enjoyed a remarkable amount of gender equality until the Soviet invasion and subsequent Taliban takeover.<sup>34</sup>

The Afghan women's rights movement dates back to the 1920s when Queen Souriya opened schools for girls, defying longstanding Afghan traditions.<sup>35</sup> Her husband King Amanulla imposed somewhat revolutionary developments that significantly improved the lives of women and girls in

30. See Jessica Pfisterer, *Letting the Pillar of Society\* Fall: Failing Health Care and Maternal Mortality in Afghanistan*, 12 *GEO. J. GENDER & L.* 61, 66 (2011) (recognizing Afghan maternal mortality and health rates have not significantly improved nearly a decade after the fall of the Taliban and the start of reconstruction); Owen Bowcott, *Afghanistan Worst Place in the World for Women, but India in Top Five*, *THE GUARDIAN* (June 14, 2011), <http://www.theguardian.com/world/2011/jun/15/worst-place-women-afghanistan-india> (reporting a 2011 global study by the Thompson Reuters Foundation that ranked countries according to a number of factors, such as rape, infanticide, sex trafficking, targeted violence, healthcare, and poverty); Lyse Doucet, *Afghanistan: Stark, Beautiful—and a Danger to Mothers*, *BBC NEWS MAG.* (Oct. 14, 2013, 3:18 PM), <http://www.bbc.co.uk/news/magazine-24526386> (referencing a 2009 statistic that at least one woman in Afghanistan died from maternal complications every twenty-seven minutes). *But see* Amie Ferris-Rotman, *Afghanistan No Longer the Worst Place for Mothers: Report*, *REUTERS* (May 8, 2012, 10:45 AM), <http://www.reuters.com/article/2012/05/08/us-afghanistan-mothers-children-idUSBRE8470O820120508> (describing remarkable but “fragile” gains in healthcare and education that removed Afghanistan’s title as “the worst place on earth to be a mother”).

31. See NEAMATOLLAH NOJUMI ET AL., *AFTER THE TALIBAN: LIFE AND SECURITY IN RURAL AFGHANISTAN* 83–84 (2009) (illuminating the variance of social change for women implemented by certain Afghan leaders from the 1920s to the 1990s); *see* Baker, *supra* note 9 (highlighting changing social norms in Afghanistan over the past forty years).

32. See NOJUMI ET AL., *supra* note 31, at 83–85 (highlighting differences between urban and rural Afghan women).

33. See generally Dubay, *supra* note 15, at 163 (paralleling the course of women's movements in the U.S. and Afghanistan, among other nations, through the twentieth and early twenty-first century).

34. See Ann Jones, *Remember the Women?*, *THE NATION*, Nov. 9, 2009, at 22 (“In the 1960s and ‘70s, before the Soviet invasion—when half the country’s doctors, more than half the civil servants and three-quarters of the teachers were women—a peaceful Afghanistan advanced slowly into the modern world through the efforts of all its people.”); *see also* Baker, *supra* note 9 (portraying an era when women in Kabul wore mini-skirts and women attended universities).

35. Kolhatkar, *supra* note 15 at 14.



Kabul and challenged gender norms across Afghanistan.<sup>36</sup> For example, he abolished child marriages and promoted universal education for all children.<sup>37</sup> He even imposed Western European dress codes within Kabul.<sup>38</sup> However, such widespread reforms inspired revolts in rural parts of the country and elicited a negative response from traditional clergy.<sup>39</sup> The tension eventually led to his deposition in 1929, and subsequent rulers refused similar reforms until the 1950s.<sup>40</sup>

In the 1950s, President Daoud made veils for women optional and Afghanistan sent a female delegate to the U.N. in New York.<sup>41</sup> King Zahir Shah's 1964 Constitution provided legal footing for these cultural and educational reforms.<sup>42</sup> Although grounded in Islamic tradition, this Constitution guaranteed equality to both men and women,<sup>43</sup> and Afghan women finally achieved suffrage in 1965.<sup>44</sup> Afghanistan experienced newfound peace during this period, remaining independent from the worldwide political upheavals precipitated by the First and Second World Wars.<sup>45</sup>

In the 1970s, conflict again disturbed the precarious peace existing since the colonial powers of Great Britain and Russia fought over this "buffer" to the rich and economically profitable colony of India.<sup>46</sup> In the Saur Revolution of 1978, the People's Democratic Party of Afghanistan (PDPA), led by President Taraki, seized control and infused a largely rural and traditional society with sweeping changes.<sup>47</sup> Such changes in-

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36. See NOJUMI ET AL., *supra* note 31 ("[I]n his drive to create a modern state in the 1920s, King Amanullah promoted education of girls, began a public campaign against the veil, banned child marriage, required a man to seek permission before taking a second wife, and declared Western dress mandatory in Kabul.")

37. *Id.* at 84.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. See Marzia Basel & Dana Michael Hollywood, *Under a Cruel Sun: My Life as a Female Judge and Underground Educator Under the Soviets, the Taliban, and the Americans*, 12 WM. & MARY J. WOMEN & L. 205, 210–11 (2009) (emphasizing King Zahir Shah's progressive reforms).

43. *Id.* at 211.

44. Kolhatkar, *supra* note 15, at 14.

45. See Basel & Hollywood, *supra* note 42, at 211 (recounting Afghanistan as "peaceful and independent; it was a country in which a girl could reasonably entertain dreams of going to school and college and serving her society as a lawyer").

46. See BARNETT R. RUBIN, *THE SEARCH FOR PEACE IN AFGHANISTAN: FROM BUFFER STATE TO FAILED STATE* 142–45 (1995) (discussing how international cooperation among imperial powers created the "buffer state" of Afghanistan); see also ANGELO RASANAYAGAM, *AFGHANISTAN: A MODERN HISTORY* 93 (2005) ("Afghanistan was thus to become the Soviet Union's Vietnam . . .").

47. NOJUMI ET AL., *supra* note 31, at 84.

cluded the controversial Decree Number Seven, which attempted to fundamentally alter the role of marriage in Afghanistan by abolishing the trade of brides for payment, raising the legal marriage age for both sexes, and requiring consent from both parties.<sup>48</sup> Inadvertently, these sweeping reforms created a destabilizing social unrest, inviting Soviet invasion and occupation.<sup>49</sup>

With the Soviet invasion, Afghanistan became a pawn in a greater geopolitical struggle as the Cold War generated devastating proxy wars in many parts of Asia.<sup>50</sup> Compulsory changes under Soviet rule such as co-educational schooling, prohibition of forced marriages, and the unveiling of women, defied longstanding Afghan traditions.<sup>51</sup> Many women functioned in the government and continued their education; some even entered law school and became judges.<sup>52</sup> However, the Soviet invasion and ensuing conflict nevertheless marked the beginning of a loss of rights for women.<sup>53</sup> These sweeping changes under occupation eventually provided the Taliban a stronger ideological platform when they came into power and enacted severe regressive reforms.<sup>54</sup>

#### B. *Loss of Women's Rights Under Taliban Rule*

Women's rights fell by the wayside during these violent, tumultuous years. When the American-armed Mujahideen finally succeeded in expelling the governing Soviet forces, their withdrawal left a vacuum of power in which tribal warlords vied for control.<sup>55</sup> In the mid-1990s, the

48. *Id.*

49. *Id.*

50. See generally DAVID LOYN, IN AFGHANISTAN: TWO HUNDRED YEARS OF BRITISH, RUSSIAN AND AMERICAN OCCUPATION (2009) (detailing how Afghanistan was a strategic prize to foreign empires for more than two hundred years); JEFFERY J. ROBERTS, THE ORIGINS OF CONFLICT IN AFGHANISTAN (2003) (examining the U.S.'s Afghanistan policy in the latter half of the twentieth century).

51. NOJUMI ET AL., *supra* note 31, at 84; see JONATHAN STEELE, GHOSTS OF AFGHANISTAN: HARD TRUTHS AND FOREIGN MYTHS 364 (2011) ("Violence against women has a long pedigree in all communities in Afghanistan, among the Hazara, Shias and the north Tajiks as well as the Pashtun Sunnis.").

52. See Basel & Hollywood, *supra* note 42, at 210 (discussing the status of women and the experience of a female judge who was born east of Kabul in 1968).

53. Caroline B. Fleming, "Even in Dreams, They Are Coming": Islamic Fundamentalism and the Education of Women in Afghanistan, 11 WM. & MARY J. WOMEN & L. 597, 599 (2005).

54. See *id.* at 599–600 (explaining the Taliban's rise to power in Afghanistan and the restrictions they enforced on women).

55. See LARRY P. GOODSON, AFGHANISTAN'S ENDLESS WAR: STATE FAILURE, REGIONAL POLITICS, AND THE RISE OF THE TALIBAN 105–06 (2001) (describing the power struggle in Afghanistan after the Soviet Union invaded).

Taliban seized this opportunity and consolidated power.<sup>56</sup> In what was referred to as “gender apartheid,”<sup>57</sup> they confined women to their homes or to a *burqa*<sup>58</sup>—a garment concealing a woman’s body in entirety.<sup>59</sup> Former female doctors, lawyers, and teachers suddenly found themselves without rights and subject to severe punishment for any slight offense to the Taliban.<sup>60</sup> The Taliban went so far as to strictly confine women to their homes,<sup>61</sup> requiring windows to be painted black so women could not be seen from outside.<sup>62</sup> For minor indiscretions—or sometimes without reason—the Taliban used violence to enforce its extreme ideology and rules.<sup>63</sup> One example of the many hardline rules enforced by the religious police was a prohibition against women making noise with their shoes while they walked.<sup>64</sup>

When the Taliban seized power, they immediately enforced radical new social standards on both men and women, including dress codes and codes of conduct.<sup>65</sup> The economic effects of pulling women from the

56. *See id.* at 92, 105 (“By the fall of 1994, Afghanistan had been free from communist rule for more than two years . . .”).

57. *See* Choudhury, *supra* note 10, at 157–58 (demonstrating the Taliban used extreme interpretations of Islamic Law to justify restrictions on women’s rights).

58. *Id.* at 157.

59. Lisa M. Ayoub, Comment, *The Crisis in Afghanistan: When Will Gender Apartheid End?*, 7 TULSA J. COMP. & INT’L L. 513, 520 (2000).

60. ANITA PRATAP, ISLAND OF BLOOD: FRONTLINE REPORTS FROM SRI LANKA, AFGHANISTAN, AND OTHER SOUTH ASIAN FLASHPOINTS 161 (2003) (“Kabulis did not feel the need to express their religiosity through beards and veils. Women were outgoing, they were educated and worked side by side with men in professions such as medicine and teaching . . . until the Taliban came along.”); Basel & Hollywood, *supra* note 42, at 222–24 (noting the ban on female employment and other restrictions, such as restrictions on female medical needs, had disastrous outcomes); Meghan Hallock, Note, *A Policy of Mediocrity: A Review of United States Policy Concerning the Women of Afghanistan*, 11 WM. & MARY J. WOMEN & L. 481, 498 (2005) (claiming before the Taliban came to power, women filled a crucial role in the workforce, “for example: [seventy] percent of teachers were women; [forty] percent of doctors were women; over half the university students were women; schools at all levels were co-educational; Afghan women held jobs as lawyers, judges, engineers, and nurses”).

61. Ayoub, *supra* note 59, at 534.

62. Marjon E. Ghasemi, Comment, *Islam, International Human Rights & Women’s Equality: Afghan Women Under Taliban Rule*, 8 S. CAL. REV. L. & WOMEN’S STUD. 445, 450 (1999).

63. *See generally* Shannon A. Middleton, Comment, *Women’s Rights Unveiled: Taliban’s Treatment of Women in Afghanistan*, 11 IND. INT’L & COMP. L. REV. 421 (2001) (detailing the violence used to enforce Taliban’s law, even for minor offenses, such as accidentally showing a minimal amount of skin would result in a public beating).

64. PHYSICIANS FOR HUMAN RIGHTS, THE TALIBAN’S WAR ON WOMEN: A HEALTH AND HUMAN RIGHTS CRISIS IN AFGHANISTAN 2, 30, 52 (1998).

65. *See* Middleton, *supra* note 63, at 422–23 (discussing the enforcement of Taliban’s laws and the effects the harsh standards had on women and men).

workforce devastated many families—especially those led by widows—and even forced some to flee the country.<sup>66</sup> Women were no longer allowed to work in health care or elsewhere, and, as a result, women in general had no access to health care because they were not allowed to see male healthcare providers.<sup>67</sup> Unfortunately, these are only a few examples of the countless atrocities inflicted upon women during Taliban rule.<sup>68</sup>

Under Taliban rule, damage and cultural shock extended far beyond the women who were confined to their homes; ethnic and religious discrimination and persecution further deteriorated relations between different ethnic and religious groups throughout the multi-cultural country.<sup>69</sup> It was in this context that the coalition partners entered a war-torn and devastated area and attempted to introduce democracy and functional rule of law. One scholar described Afghanistan as “a country shaped and molded by its experience with more than two decades of war.”<sup>70</sup> The Afghan War ranked among the deadliest conflicts of the second half of the twentieth century.<sup>71</sup> When the country was finally relieved of Taliban rule and internal conflict, over half of the indigenous population had been wounded, made homeless, or killed.<sup>72</sup> Women’s advocates struggled to express the importance of their cause throughout the incredibly difficult reconstruction process, in which security was, and still remains, the primary concern.<sup>73</sup> They also worry government leaders

66. See PETER MARSDEN, *THE TALIBAN: WAR, RELIGION AND THE NEW ORDER IN AFGHANISTAN* 89 (1998) (acknowledging economic effects resulting from banning women from working).

67. Pfisterer, *supra* note 30, at 63–66 (reviewing women’s health accessibility before and after Taliban rule).

68. See generally, e.g., Talya Friedman, Notes and Comments, *Cures to the Enigmatic Taliban Plague: Legal and Social Remedies Addressing Gender Apartheid in Afghanistan*, 23 *LOY. L.A. INT’L & COMP. L. REV.* 81 (2001) (reviewing legal remedies available for women in Afghanistan who are victims of gender apartheid); Alicia Galea, Note, *No Freedom for Afghan Women: The Taliban Hides Behind Religion to Control Its People*, 78 *U. DET. MERCY L. REV.* 341 (2001) (discussing the hardships women and girls in Afghanistan are faced with since September 1996 when the Taliban came into power); *Afghanistan: Few Changes for Women Outside Kabul*, *N.Y. TIMES*, Sept. 11, 2002, at 72 (describing the state of medical and educational professions for women in Afghanistan, before, during, and after Taliban rule).

69. See Galea, *supra* note 68, at 341–42 (revealing the cultural shock and outrage that arose from other nations after learning of the Taliban’s harsh laws and enforcement).

70. GOODSON, *supra* note 55, at 4.

71. See *id.* at 5 (illuminating the loss of life in this conflict).

72. See *id.* (estimating the number of casualties reaching as high as 22 million).

73. See Faiz Ahmed, *Afghanistan’s Reconstruction, Five Years Later: Narratives of Progress, Marginalized Realities, and the Politics of Law in a Transitional Islamic Republic*, 10 *GONZ. J. INT’L L.* 269, 294–95 (2007) (referencing a January 2005 Afghanistan Independent Human Rights Commission report that, based on interviews, definitively ranked se-

willing to strike deals with the Taliban to end conflict will possibly expose them to yet another reign of terror.<sup>74</sup>

### III. THE CREATION OF AN AFGHAN STATE AND COMPLICATIONS FOR WESTERN NOTIONS OF A CENTRALIZED LEGAL SYSTEM

#### A. *Historical Legacy*

Five years after the establishment of the Islamic Republic of Afghanistan and the beginning of the reconstruction process, one observer described the progress as “laden with covered-up failures and exaggerated praise of isolated success stories, and . . . little progress on the ground when it comes to improving ordinary Afghans’ lives, furthering Afghanistan’s self-sufficiency, or promoting accountability through local vehicles of law.”<sup>75</sup> In order to understand the challenges that have complicated reconstruction efforts and continue to frustrate progress for women’s rights, it is first necessary to consider the impact of Afghan history on its current legal and political structure. Because arbitrary, colonially imposed borders created a fractured State,<sup>76</sup> the functionality of a centralized legal system—ideal for enforcing constitutional standards and liberal national laws favoring gender equality—depends entirely upon cooperation and coordination across a host of ethnic and religious groups.<sup>77</sup>

The State of Afghanistan includes a wide variety of ethnic, linguistic, and religious groups whose members are just as likely to identify with their neighbors in another country as with their own countrymen.<sup>78</sup> For example, the Pashtuns, the dominant ethnic group, are as prominent on Pakistani side of the Afghan–Pakistani border as they are inside Afghanistan.<sup>79</sup> When drawing Afghanistan’s borders, colonial powers severed

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curity as the top civilian concern); *see also* GOODSON, *supra* note 55, at x (“[Afghanistan’s] role as the catalyst to the end of the Cold War is over, but now it has become the archetype of a failed state and a perfect example of how nonstate [sic] actors move into the vacuum created when a state fails. That this phenomenon is occurring in a volatile region amid other struggling states just makes more compelling our need to understand Afghanistan today.”).

74. *See* Editorial, *supra* note 8 (expressing concern the Karzai government and the U.S. will abandon support for women’s rights in favor of a peace agreement with the Taliban).

75. Ahmed, *supra* note 73, at 294.

76. *See* J. Alexander Thier, *Afghanistan: Minority Rights and Autonomy in a Multi-Ethnic Failed State*, 35 STAN. J. INT’L L. 351, 352 (1999) (discussing the haphazard creation of Afghanistan’s borders).

77. *See generally* Ahmed, *supra* note 73, at 288–91 (exploring complications and challenges to legal cooperation across Afghanistan).

78. *See* MARSDEN, *supra* note 66, at 9–10 (highlighting various ethnic groups in Afghanistan and their connections to other countries in Central Asia).

79. *Id.* at 9.

ethnic groups and combined warring tribes into one Afghan State—disregarding the complications this would create for peace and stability in both the State and region.<sup>80</sup>

Noted Afghan history scholar Larry P. Goodson wrote, “Afghanistan has never been a homogenous nation but rather a collection of disparate groups divided along ethnic, linguistic, religious, and racial lines and forced together by the vagaries of geopolitics.”<sup>81</sup> The legacy of this historical reality manifests in extraordinary tension between those holding power within these various groups and the central Afghan authority.<sup>82</sup> Beyond multicultural challenges, past authoritarianism and brutality have instilled in Afghans severe distrust of centralized government and a stubborn willingness to cling to their traditional local customs and laws.<sup>83</sup>

### B. *Afghan Legal Structure*

Visiting American legal analysts described the Afghan legal system as “a patchwork of differing and overlapping laws, elements of different types of legal systems, and an overall incoherent collection of law enforcement and military structures.”<sup>84</sup> Non-codified customary law governs most Afghans living outside of Kabul and other urban areas, with councils called *shuras* or *jirgas* applying a blend of Islamic Sharia law with *adaat* (local custom).<sup>85</sup>

Sharia law remains fundamental to Afghan society and, as a fixture in local Afghan law and culture, persists no matter how it is incorporated into the formal legal system.<sup>86</sup> Local custom maintains a large role in the Afghan legal system, as customs not clearly contradicting Islamic precept are incorporated into Sharia law.<sup>87</sup> In this context, Islamic law is flexible and ripe for interpretation—conceivably providing full equality for wo-

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80. See generally GOODSON, *supra* note 55, at 27–30 (specifying colonial powers created a fractured state).

81. *Id.* at 14; see also MARSDEN, *supra* note 66, at 9–10 (detailing the diverse Afghan population by ethnic group and location within the country).

82. See generally RASANAYAGAM, *supra* note 46 (providing background information Afghanistan’s creation and its modern implications).

83. See Ahmed, *supra* note 73, at 288–90 (explaining the existence and rationale for decentralized government throughout Afghanistan).

84. *Id.* at 289 (internal quotations omitted).

85. *Id.* at 289–90.

86. See Dana Cook-Milligan, Note, *What Is Really So Bad About a Different Rule of Law?: The Afghan Legal System Reanalyzed*, 41 HASTINGS CONST. L.Q. 205, 209 (2013) (discussing the importance of Sharia law in Afghanistan).

87. See Mark A. Drumbl, *Rights, Culture, and Crime: The Role of Rule of Law for the Women of Afghanistan*, 42 COLUM. J. TRANSNAT’L. L. 349, 381 (2004) (building upon Professor El Fadl’s observation that across the Muslim world, Islamic law is similar to a common law system and is “far more flexible and malleable than is commonly assumed”).

men through one interpretation yet demanding abject subrogation of women's access to society in another.<sup>88</sup>

The approach to constitutional building adopted in post-war Afghanistan has been to retain Islamic tradition while also incorporating Western notions of democracy, human rights and equality.<sup>89</sup> The codification movement necessary to strike this balance and effectively promote national women's rights law has met resistance from some of the conservative local religious leaders who traditionally held authority to interpret and apply Sharia law.<sup>90</sup> These leaders denounced codification as "imposing human limits on the law of the Divine,"<sup>91</sup> and this widespread opposition by local power-holders has strained the new dichotomous court system. In this context, an ongoing, pervasive struggle between the Afghan executive and the religious right impedes reconstruction efforts and frustrates women's ability to claim their right to equality.<sup>92</sup>

Traditional dispute resolution methods revolve around various forms of mediation and arbitration at the local level, and top-down efforts to codify and enforce international human rights standards often foolishly ignore traditional methods already entrenched in Afghan society.<sup>93</sup> For example, the criminal code adopted by the Afghan government is a product of drafting by foreign jurists, with nominal Afghan involvement and without consulting any Islamic jurists during the drafting process.<sup>94</sup> It should come as no surprise that mediation is culturally emphasized and remains the preferred method of dispute resolution, often carried on by police, courts, and even the Department of Women's Affairs on an *ad hoc* basis.<sup>95</sup> Therefore, forcing a centralized legal system upon an indigenous population accustomed to a traditionally local dispute resolution process may unwittingly sacrifice agency and sovereignty—two hallmarks of de-

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88. *See id.* (addressing the often overlooked dynamic and flexible nature of Islamic law); Fleming, *supra* note 53, at 601–02 (acknowledging different interpretations of the Qur'an can provide varying degrees of support for women's rights). *But see* Hallock, *supra* note 60, at 482–83 (warning of the dangers of "failing to prevent the rights of Afghan[ ] women from being subjected to gender-biased Islamic law").

89. Dubay, *supra* note 15, at 178–79.

90. *See* Ahmed, *supra* note 73, at 298–99 (describing the hesitancy of Afghan 'ulama to acquiesce to a codified legal system for Afghanistan).

91. *Id.* at 298.

92. *See* Cook-Milligan, *supra* note 86, at 213 (referencing difficulty with respecting a legal code and instead continuing to apply customary law across rural Afghanistan since the first national Constitution's inception).

93. *See id.* at 210–11 (recognizing reliance on mediation and arbitration in Afghanistan can be problematic).

94. Ahmed, *supra* note 73, at 287.

95. U.N. ASSISTANCE MISSION IN AFG., A WAY TO GO: AN UPDATE ON IMPLEMENTATION OF THE LAW ON ELIMINATION OF VIOLENCE AGAINST WOMEN IN AFGHANISTAN 5 (2013).

mocracy.<sup>96</sup> As a result, Afghanistan's legal structure remains unstable and inconsistent, rendering preservation of women's rights extremely difficult in the ensuing drawdown and beyond.

#### IV. LEGAL FRAMEWORK IN SUPPORT OF WOMEN'S RIGHTS

##### A. *Applicable International Law*

Following World War II, the international community quickened the creation and promotion of international law in an effort to fight atrocities like those committed by the Nazi regime.<sup>97</sup> Since that time, international law has evolved significantly in order to hold states accountable for human rights abuses.<sup>98</sup> Indeed, such laws are designed to mitigate the type of legacy of gender apartheid that continues to haunt and threaten Afghan women.<sup>99</sup> However, translating international law into tangible, enforceable rights for individuals is contingent upon successfully incorporating human rights into each nation's domestic law.<sup>100</sup>

The incorporation of international human rights law into Afghan law was one of the successes praised and highlighted under the Western media spotlight.<sup>101</sup> One scholar examining the impact of human rights law on Afghan maternal health commented, "The right to equality between the sexes and before the law is arguably universal and runs thematically through all of the instruments that the Afghan government has signed, endorsed, and/or taken part in creating."<sup>102</sup>

The international legal framework that underpins the 2004 Afghan constitution and infuses notions of equality and non-discrimination into newly codified Afghan law begins with the U.N. Charter's determination "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small . . . ."<sup>103</sup> The Afghan Constitution commits to "ob-

96. See Ahmed, *supra* note 73, at 293 (recommending more research to contextualize the implementation of human rights within indigenous populations).

97. Eve McCabe, Comment, *The Inadequacy of International Human Rights Law to Protect the Rights of Women as Illustrated by the Crisis in Afghanistan*, 5 UCLA J. INT'L L. & FOREIGN AFF. 419, 423 (2000).

98. See *id.* at 424 ("[I]nternational human rights law evolved to embrace the concept that every nation has an obligation to ensure the human rights of its citizens, and that other nations and the international community have a right and responsibility to protest if this obligation is not lived up to.").

99. See U.N. Charter, pmbl. (establishing a commitment among the U.N. to uphold equal rights for both men and women).

100. McCabe, *supra* note 97, at 424.

101. Jones, *supra* note 34.

102. Pfisterer, *supra* note 30, at 72.

103. U.N. Charter, pmbl.



serv[ing] the United Nations Charter, inter-state agreements, as well as international treaties to which Afghanistan has joined, and the Universal Declaration of Human Rights.”<sup>104</sup> The Universal Declaration of Human Rights details a host of specific rights that may not be denied on the basis of sex.<sup>105</sup> These rights include many of the rights denied under the Taliban, such as the right to freedom of movement, to marry, to own property, and to receive an education.<sup>106</sup>

Afghanistan is also party to covenants more specifically describing and promoting sex equality, including the International Convention on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>107</sup> The latter is often labeled the “international bill of rights for women”<sup>108</sup> and clearly defines discrimination against women.<sup>109</sup> CEDAW provides a requirement somewhat unique to international law, as it is not simply limited to governing state conduct; rather, it requires state action to eliminate discrimination against women by any individual or organization.<sup>110</sup> As such, this binding multilateral treaty—acceded to by Afghanistan on March 5, 2003—provides internationally recognized obligations for directing Afghan progress along with a tangible framework to support new, broad constitutional guarantees of gender equality.<sup>111</sup> Although CEDAW remains the most specific and substantial international law addressing challenges to gender equality in Afghanistan and extends international accountability to private matters between individuals, it still lacks any mechanism for effective enforcement and depends on the good faith par-

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104. CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN, art. 7 (Jan. 26, 2004).

105. Universal Declaration of Human Rights, G.A. Res. 217 (III), U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

106. *Id.* at arts. 13, 16, 17, 26.

107. Laura Belkner, Note, *The Secular and Religious Legal Framework of Afghanistan as Compared to Western Notions of Equal Protection and Human Rights Treaties: Is Afghanistan's Legal Code Facially Consistent with Sex Equality?*, 20 CARDOZO J. INT'L & COMP. L. 501, 522–23 (2012). See Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; and International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171, for the full requirements of those agreements.

108. McCabe, *supra* note 97, at 427.

109. Belkner, *supra* note 107, at 525.

110. McCabe, *supra* note 97, at 431.

111. Laura Grenfell, *The Participation of Afghan Women in the Reconstruction Process*, HUM. RTS. BRIEF, Sept. 2004, at 22, 22.

ticipation of the Afghan State for enforcement.<sup>112</sup> Therefore, CEDAW is a necessary but incomplete tool in improving Afghan women's rights.

### B. *Bonn Conference*

After the Taliban fell, the U.N. led stakeholder negotiations in Bonn, Germany on Afghanistan's ostensible democratic transition.<sup>113</sup> The resulting agreement, called the Bonn Agreement,<sup>114</sup> established a process by which a transitional government would govern until elections could produce a permanent government.<sup>115</sup> The Bonn Agreement's goals reflected active women's participation in the Bonn Conference, envisioning a "broad based, gender-sensitive, multi-ethnic and fully representative government."<sup>116</sup> Women's participation in the initial reconstruction process negotiations at Bonn represented an extraordinarily positive first step in achieving greater future participation.<sup>117</sup>

Women also participated in the Emergency Loya Jirga—the representative body created for choosing the transitional government—and the Constitutional Loya Jirga—the body with authority to formally approve a new constitution.<sup>118</sup> Tragically, warlord intimidation limited meaningful female participation, and one vocal female delegate even required security protection during and after the convention.<sup>119</sup> This discouraging level of female participation in the creation of government only foreshadowed challenges now facing female politicians in day-to-day policy-making.

### C. *2004 Constitution and Efforts to Improve Afghan Rule of Law*

During the constitutional drafting process, a nongovernmental organization called "Women for Afghan Women" drafted a Women's Bill of

112. McCabe, *supra* note 97, at 434. *But see* Ayoub, *supra* note 59, at 531 (citing examples where CEDAW was successfully used to improve domestic law of various countries in favor of women's rights).

113. Dubay, *supra* note 15, at 180–81.

114. Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions, Dec. 5, 2001, *available at* <http://www.un.org/News/dh/latest/afghan/afghan-agree.htm>.

115. Dubay, *supra* note 15, at 180–81.

116. Agreement on Provisional Arrangements, *supra* note 114; *see also* Grenfell, *supra* note 111, at 23 (internal quotation marks omitted) (quoting the agreement and its creation of political possibilities for women in Afghanistan).

117. *See generally* Fionnuala Ní Aoláin, *Political Violence and Gender During Times of Transition*, 15 COLUM. J. GENDER & L. 829 (2006) (considering the important practical trends common to conflict—such as the overwhelming presence of women in movements for peace and the dominance of men in negotiating peace agreements—and the practical implications on women's rights).

118. Dubay, *supra* note 15, at 181, 183.

119. Grenfell, *supra* note 111, at 23.

Rights for inclusion in the draft constitution.<sup>120</sup> Despite assurances from the Commission that they would incorporate suggestions, such as the criminalization of using women to compensate a family for a crime, many of these requests were ignored.<sup>121</sup> One important demand did, however, make it into the Constitution—quotas for women delegates to compromise twenty-five percent of the Wolesi Jirga (the Lower House of Parliament) and seventeen percent of the Meshrano Jirga (the National Assembly).<sup>122</sup> Some considered the 2004 Constitution moderately successful but dismissed hope for increased protection for gender equality as impractical Western expectations.<sup>123</sup> Other advocates of the gender quota system described such measures as enabling society to overcome a history of gender discrimination and develop improved rule of law.<sup>124</sup>

Beyond ensuring some female influence on decision-making within the parliamentary process, the new Afghan Constitution included several other substantive clauses supporting women's rights and guaranteeing gender equality.<sup>125</sup> Article Twenty-Nine prohibited punishment contrary to human dignity,<sup>126</sup> and Article Thirty-One mandated State appointed defense attorneys for the destitute.<sup>127</sup> One of the most important clauses bolstering women's rights reads, "The citizens of Afghanistan, man or woman, have equal rights and duties before the law."<sup>128</sup>

However, maintaining and developing these constitutional rights has proven difficult over the past decade. For example, most women are unaware of their right to an attorney's assistance, and the current number of State attorneys is insufficient for a wider appointment practice.<sup>129</sup> As the number of conservative representatives increases, the existing constitutional guarantees remain endangered.<sup>130</sup> In May 2013, the Wolesi Jirga

120. *Id.* at 22, 23.

121. *Id.*

122. *Id.*

123. See CHRIS JOHNSON & JOLYON LESLIE, *AFGHANISTAN: THE MIRAGE OF PEACE* 155 (2004) ("While there is undoubtedly a need to establish a functioning state, and for it to develop a minimal degree of legitimacy among its people, the fully-fledged liberal democracy envisaged as an outcome of the Bonn agreement was always a pipe dream.").

124. Dubay, *supra* note 15, at 165–66.

125. See *generally* Choudhury, *supra* note 10, at 155 (considering rights given and denied to women under the 2004 Afghan Constitution).

126. CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN, art. 29 (Jan. 26, 2004).

127. *Id.*

128. *Id.*

129. Benard, *supra* note 21, at 34.

130. See *Afghanistan: Escalating Setbacks for Women*, HUMAN RTS. WATCH (July 16, 2013), <http://www.hrw.org/news/2013/07/16/afghanistan-escalating-setbacks-women> (revealing the Afghan Parliament is in the process of stripping women's ability to press charges for certain crimes while also creating legal protection for those who abuse women).

passed a revised form of Afghan electoral law, completely eliminating the existing quota system for female access and participation in government.<sup>131</sup> The Meshrano Jirga, the upper house of Parliament, did not support revision and reinstated the quotas, thereby reserving a place for women on provincial councils.<sup>132</sup> However, in July 2013 the houses sadly compromised, reducing seats reserved for women from twenty-five percent to twenty percent.<sup>133</sup>

#### D. *Sharia Supremacy Clause*

It is crucially important to a discussion of Afghan women's rights to recognize that the 2004 Constitution guarantees no rights that may be interpreted as contrary to Sharia law.<sup>134</sup> Although Sharia law—an application of the Q'uran and other religious documents to everyday legal questions—can be interpreted in a way that positively influences women's rights,<sup>135</sup> many women are still frightened by vivid memories of the Taliban's tyrannical application of ideology to Afghan law under the guise of Sharia law.<sup>136</sup> The Sharia Supremacy Clause serves as an opportunity for advocates of a liberal, human-rights-focused interpretation of Sharia law. Yet as the Afghan court system develops, using this clause to normalize hardline conservative interpretations will prove disastrous for women.

### V. AFGHAN-SPECIFIC CHALLENGES TO UPHOLDING CONSTITUTIONAL GUARANTEES OF GENDER EQUALITY

#### A. *Widespread Political Corruption*

Reinforcing the constitutional guarantee of gender equality and strengthening the influence of liberal international law within Afghanistan requires cultural sensitivity but also a willingness to hold Afghan leaders accountable to their domestic and international commitments. Criticism surrounds the new Afghan government, with many claiming the Taliban's deposition merely replaced one group of oppressors with an-

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131. *Id.*

132. *Id.*

133. *Id.*

134. CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN, art. 3 (Jan. 26, 2004).

135. See Choudhury, *supra* note 10, at 158 (citing a 2004 reform in the Mudawana, the Moroccan Family Code, "which raised the legal age of marriage for both men and women to eighteen, granted both spouses status as legal heads of the family, and placed severe procedural constraints on men's ability to engage in polygamy").

136. *Id.* at 157–58.

other regime of corrupt and oppressive government officials.<sup>137</sup> Admonishing Northern Alliance leaders attending the Bonn Conference, the Revolutionary Afghan Women's Association—which certainly condemned the Taliban's oppressive actions—quipped, “The people of the world need to know that in terms of widespread raping of girls and women from seven to [seventy], the track record of the Taliban can no way stand up against that of these very same Northern Alliance associates.”<sup>138</sup>

One factor that has contributed to a culture of corruption and has fed these criticisms is the well intentioned but controversial National Stability and Reconciliation Law, which exacerbated corrupt practices by granting amnesty to Afghan commanders accused of war crimes over the last several decades.<sup>139</sup> In creating some semblance of “peace” the law actually strengthened an existing culture of impunity;<sup>140</sup> though it may have created peace, it has only detracted from Afghans' hope for justice.<sup>141</sup> Indeed, political corruption remains an overwhelming threat to peace and security as the nascent Afghan Republic loses critical international guidance and support in the wake of the allied drawdown.<sup>142</sup> However, this same corruption presents an opportunity for more moderate and liberal Islamic politicians to coalesce and garner support for improvements in the Afghan government, including better protections for women and girls. It is a prime opportunity for Afghan politicians to capitalize on an Afghan need for justice.<sup>143</sup>

### B. *Protection for Women Through Access to Justice*

Even with increased efforts to strengthen and improve a national Afghan justice system, poor access to justice across the country remains a major factor grossly perpetuating widespread abuse of women's rights in

137. Ahmed, *supra* note 73, at 274.

138. *Id.* at 277–78.

139. Nadia Khan, *Justice to the Extent Possible: The Prospects for Accountability in Afghanistan*, 23 TEMP. INT'L & COMP. L.J. 1, 8 (2009); *Afghanistan Says It Enacted Law to Pardon War Crimes*, REUTERS, Mar. 16, 2012, available at N.Y. TIMES, [http://www.nytimes.com/2010/03/17/world/asia/17kabul.html?\\_r=0](http://www.nytimes.com/2010/03/17/world/asia/17kabul.html?_r=0) (“Supporters of the amnesty law said that prosecuting old accusations would risk restarting years of civil war. But critics said that providing a blanket pardon for former warlords would allow them to retain their grip over Afghanistan's economy and public life.”).

140. *See id.* at 9 (recognizing a culture began when the Mujahideen declared self-amnesty following the overthrow of the Najibullah government).

141. *See id.* at 12 (recognizing the need for justice in order to establish lasting peace).

142. *See* McBain, *supra* note 7 (explaining the need for political change and accountability for corruption).

143. *See id.* (providing one example of a politician who campaigned on a platform committed to elimination corruption).

Afghanistan.<sup>144</sup> When women report violence against them, most cases are settled by mediation, often placing vulnerable women back in abusive situations.<sup>145</sup> All too often, however, reports of such situations are ignored. One prime example receiving international media attention occurred in November 2008, when men hurled acid in the faces of fifteen schoolgirls in Kandahar.<sup>146</sup> Despite guarantees from President Karzai, the perpetrators never faced justice.<sup>147</sup> Unsurprisingly, the U.N. Assistance Mission to Afghanistan described the situation as one in which “[w]omen are denied their most fundamental human rights and risk further violence in the course of seeking justice for crimes perpetrated against them.”<sup>148</sup>

### C. *Political Participation by Women*

In 2003, a majority of villagers surveyed agreed women in rural Afghanistan had “no voice in selecting village, area, or district leaders or any other form of public official . . .”<sup>149</sup> Although female political participation is more feasible in some urban areas, it nevertheless remains a challenge across Afghanistan. Indeed, women face both violence and peer pressure, with many political leaders suggesting they have no place in politics.<sup>150</sup> One female candidate recalled an encounter with local elders:

They were ashamed I was their representative, and that I am a woman. They humiliated me. They told me not to go to these types of meetings anymore. I didn't try to talk a lot with them . . . because if I made them nervous, they would kill me and no one would even know.<sup>151</sup>

Such accounts illustrate that even when some women engage in the political process, prevailing national sentiments frequently undermine meaningful female participation.

144. See Rubin, *supra* note 2.

145. *Id.*

146. Dexter Filkins, *Afghan Girls, Scarred by Acid, Defy Terror, Embracing School*, N.Y. TIMES, Jan. 14, 2009, at A1.

147. *Id.*

148. U.N. ASSISTANCE MISSION IN AFG., SILENCE IS VIOLENCE: END THE ABUSE OF WOMEN IN AFGHANISTAN, 3 (2009).

149. NOJUMI ET AL., *supra* note 31, at 85.

150. U.N. ASSISTANCE MISSION IN AFG., *supra* note 148, at 16.

151. Holly Taylor, *The Constitutions of Afghanistan and Iraq: The Advancement of Women's Rights*, 13 NEW ENG. J. INT'L & COMP. L. 137, 150 (2006) (internal quotation marks omitted) (quoting a Human Rights Watch special report).

#### D. *Law on the Elimination of Violence Against Women*

The most consequential legal effect given to the constitutional commitment to gender equality is the Law on the Elimination of Violence Against Women (EVAW).<sup>152</sup> This law includes twenty-two acts qualifying as violence against women.<sup>153</sup> It also requires active Afghan National Police enforcement by receiving and registering reports of violence and addressing with them according to the law.<sup>154</sup> Reporting and registration of violence against women has increased since EVAW's passage, due in part to a clear basis by which prosecutors may provide women greater access to justice.<sup>155</sup> However, the most immediate need remains court resources and support in applying the law rather than pushing registered cases back to mediation.<sup>156</sup>

A 2012 U.N. report described some success in the prosecution of rape, forced marriage, and domestic violence under EVAW; however, the timing of its issuance indicates the incomplete nature of success under EVAW. The report was issued immediately following the assassination of Najia Sediqi, a regional women's affairs department leader from Laghman province.<sup>157</sup> Sediqi herself accepted the position following the incumbent's assassination by bomb attack,<sup>158</sup> and her subsequent murder tragically demonstrates that progress in Afghan women's rights has often been accompanied by violent setbacks.

Still, EVAW remains one of the most effective tools for Afghan women's rights advocates, potentially serving as a strong legal basis for

152. Islamic Republic of Afghanistan Ministry of Justice, Official Gazette No. 989, Law on the Elimination of Violence Against Women (Aug. 1, 2009), *available at* [http://www.laoa.af/laws/law\\_on\\_elimination\\_of\\_violence\\_against\\_women.pdf](http://www.laoa.af/laws/law_on_elimination_of_violence_against_women.pdf); *see generally* U.N. ASSISTANCE MISSION IN AFG., *supra* note 95 (providing detailed evaluation of progress achieved in the implementation of EVAW).

153. U.N. ASSISTANCE MISSION IN AFG., *supra* note 95, at 1 n.4; *see* Ministry of Justice, *supra* note 152, at art. 5 (prohibiting abuse, sexual assault, burning, bearing, a myriad forced harmful acts, and a number of marriage related traditions, among other things).

154. U.N. ASSISTANCE MISSION IN AFG., *supra* note 95, at 1 n.4; *see* Ministry of Justice, *supra* note 152, at art. 7 (“(1) The victim of violence, by herself or her relatives, may complain in written to police, Huqooq Department, courts and other relevant authorities. (2) The institutions mentioned in paragraph (1) of this Article are obliged to register the received complaints and address them in accordance with the provisions of the law, and shall inform, in written, the Ministry of Women Affairs.”).

155. *See generally* U.N. ASSISTANCE MISSION IN AFG., *supra* note 95 (reporting these increases are clear among prosecution but not necessarily leading to resolution in the court system).

156. *Id.* at 3, 6.

157. *Afghanistan Women Still Frequently Abused in Spite of New Law, UN Report Finds*, CBS NEWS (Dec. 11, 2012, 10:56 AM), <http://www.cbsnews.com/news/afghanistan-women-still-frequently-abused-in-spite-of-new-law-un-report-finds>.

158. *Id.*

changing a culture that tolerated and sometimes condoned violence against women. In 2013, attempts to fully codify the law were met with fierce opposition from conservatives, who denounced provisions such as the prohibitions of child marriages, forced marriages, access to education, and rights to women's shelters as "un-Islamic."<sup>159</sup> The ongoing effort at weakening and effectively eliminating EVAW further exemplified current challenges facing women's rights advocates in Parliament, particularly female Parliamentarians who defend their rights as concordant with Islamic principles.

#### E. *Shiite Personal Status Law: The "Marital Rape Law"*

Another more obvious example of challenges facing Afghan women is the 2013 Shiite Personal Status Law. The Shiite Personal Status Law was quickly coined the "Marital Rape Law," with President Obama vehemently criticizing the "abhorrent" piece of legislation logrolled by the conservative Parliamentary majority over minority moderate legislators' objections.<sup>160</sup> The law essentially legalizes marital rape by allowing husbands to withhold food from their wives if they refused to provide sex at least once every four days.<sup>161</sup> It also legalizes forced marriage and forbids females to marry without permission.<sup>162</sup> Finally, the law "legalizes marriage to and rape of minors."<sup>163</sup> This law's operation devolves women's status from human to mere chattel; when a crime, such as rape, is committed against a woman, the perpetrator must provide restitution to the "owner"—the father or husband—rather than to the victim.<sup>164</sup> The law requires a husband's permission for a women to seek a doctor's appointment, analogous to historic Taliban prohibitions on women leaving the home.<sup>165</sup>

The passing of this law demonstrates that, though several political parties have used women to satisfy quota requirements, most elected women have found it difficult to actually occupy positions of responsibility and authority or affect substantive change for women's policy.<sup>166</sup> Progress toward achieving women's rights is understandably slow in light security concerns and established social mores; however, this law serves as a very clear warning that Afghanistan is embarking upon dangerous trajectory, potentially reverting to prior oppressive systems.

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159. U.N. ASSISTANCE MISSION IN AFG., *supra* note 95; Rubin, *supra* note 2.

160. Jones, *supra* note 34, at 24.

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. Pfisterer, *supra* note 30, at 67.

166. Taylor, *supra* note 151.



### F. *Widespread Cultural Practices that Continue to Harm Women*

Promoting women's rights also requires addressing and remedying the many widespread cultural practices that produce oppressive laws like the "marital rape law." For example, *baad* refers to the enshrined practice in many Afghan communities of providing young girls or women to families to satisfy a debt or restore family honor following a crime.<sup>167</sup> This custom developed as a method for ending the tribal custom of revenge killings.<sup>168</sup> A family could end a dispute and prevent future killings by offering a young girl as penance for a crime or insult—symbolically uniting the two families.<sup>169</sup> Official Afghan civil law and Sharia law forbid the practice, yet it persists as a common means of dispute resolution in certain parts of Afghanistan.<sup>170</sup>

Self-immolation of young brides seeking escape from abuse perpetrated by their husbands and their in-laws is tragically common in Afghanistan.<sup>171</sup> Abuse of women commonly comes from other women in a family entered through forced marriage.<sup>172</sup> A year after EVAW's passage, an activist in Herat recounted to the U.N. news service, "Self-immolation proves that the justice system for female victims is failing."<sup>173</sup> The article presented evidence that in just eleven months, one hospital registered over ninety self-immolation cases.<sup>174</sup> One young woman described her decision to self-immolate by stating, "I poured fuel over my body and set myself ablaze because I was regularly beaten up and insulted by my husband and in-laws."<sup>175</sup>

A recent inflation in bride prices has led to the sad observation, "Poverty may encourage fathers to get rid of their daughters, even when they are still small, and marriage becomes a transaction in which women are sold to the highest bidder."<sup>176</sup> Acutely informed by entrenched cultural

167. NOJUMI ET AL., *supra* note 31, at 108; *see* STEELE, *supra* note 51, at 365–66 (depicting different scenarios in which *baad* occurs).

168. NOJUMI ET AL., *supra* note 31, at 108; *see* STEELE, *supra* note 51, at 366 (quoting an Afghan woman who claims *baad* "is a good thing" that prevents "murder and revenge") (internal quotations omitted).

169. NOJUMI ET AL., *supra* note 31, at 108.

170. *Id.* at 108–09; STEELE, *supra* note 51, at 366.

171. Alissa J. Rubin, *For Afghan Wives, a Desperate, Fiery Way Out*, N.Y. TIMES, Nov. 8, 2010, at A1.

172. *See id.* (identifying mothers-in-law and sisters-in-law as prominent culprits of abuse leading to self-immolation).

173. *Afghanistan: Women's Rights Trampled Despite New Law*, IRIN (Mar. 8, 2010), <http://www.irinnews.org/report/88349/afghanistan-women-s-rights-trampled-despite-new-law>.

174. *Id.*

175. *Id.*

176. STEELE, *supra* note 51, at 368.

practice, basic market economics is perhaps the biggest obstacle for laws such as EVAW. Before female politicians may have an influential voice, attitudes toward the role of women in society must change.<sup>177</sup>

Highlighting Afghan attitudes toward rape, the U.N. Assistance Mission in Afghanistan's report further illustrates systemic, dangerous cultural attitudes toward women.<sup>178</sup> Cultural treatment of rape in Afghanistan clearly underscores a need for new attitudes toward women.<sup>179</sup> Instead of attaching shame to the perpetrator, Afghan society traditionally places shame on the victims, who often find themselves prosecuted for the crime of adultery.<sup>180</sup> These practices clearly necessitate legal reform so that Afghan law finally meets the bare minimum standard required by international obligations such as CEDAW.

### G. *Constitutional Review*

The Afghan Constitution established a nine-member Supreme Court vetted by both Presidential appointment and National Assembly consent.<sup>181</sup> Each justice sits for a non-renewable ten year term and must meet certain educational and ethical standards.<sup>182</sup> Supreme Court justices' general competency and religious interpretative tendencies dictate whether constitutional principles actually provide equal rights for women.<sup>183</sup> One scholar commented, "[W]ithout the express detailing of the key rights of women, these rights are left open to broad, fluctuating, and differing viewpoints of Islam and the role of women in society."<sup>184</sup> Banning women from television is the drastic result of one such interpretation of Islamic law.<sup>185</sup> The Afghan Cultural Minister lifted the ban; however,

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177. See generally Lynne L. Manganaro & Nicholas O. Alozie, *Gender Role Attitudes: Who Support Expanded Rights for Women in Afghanistan?*, 64 *SEX ROLES* 516, 524 (2011) (explaining commonalities in attitudes toward the role of women in Afghanistan).

178. See generally U.N. ASSISTANCE MISSION IN AFG., *supra* note 148, at 21–27 (exploring issues of rape in Afghanistan).

179. *Id.* at 2.

180. *Id.*; see also *Afghanistan: Don't Prosecute Sexually Assaulted Children*, HUMAN RTS. WATCH (Feb. 10, 2013), <http://www.hrw.org/news/2013/02/09/afghanistan-don-t-prosecute-sexually-assaulted-children> (discussing the widespread need for reforming laws that treat sexually assaulted children—especially boys—as criminals and recognizing this is the first time the word “rape” entered Afghan law).

181. CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN, art. 117 (Jan. 26, 2004).

182. *Id.*

183. Taylor, *supra* note 151, at 148.

184. Hallock, *supra* note 60, at 502.

185. Taylor, *supra* note 151, at 148.

the Supreme Court reinstated the ban only four days later under a very conservative Sharia interpretation.<sup>186</sup>

Due to a lost decade of women's access to legal education, there exists a deficit of women qualified to serve as a Supreme Court justice.<sup>187</sup> This deficit, combined with the ability for conservative clerics to qualify as justices, threatens the integrity of the court ultimately interpreting Afghan law and upholding constitutional protections for women.<sup>188</sup> Ensuring more qualified, moderate justices receive appointment to the bench is therefore vital in bolstering the constitutional guarantee of gender equality.<sup>189</sup>

## VI. RECOMMENDATIONS: THE CRUCIAL ELEMENTS

### A. *International Funding*

Articulating current trends in Afghan government, Human Rights Watch Asia Director Brad Adams demurred, "It's perverse that Afghanistan's parliament is devoting its time and energies to attacking women's hard-fought legal protections[.] . . . The international donors who bank-roll the Afghan government should serve notice that they will not underwrite legislative initiatives to victimize women."<sup>190</sup> The U.N. Assistance Mission in Afghanistan also reported, "[P]olice, prosecutors and courts need increased resources and technical and political support and direction from the highest levels of Government to deal adequately with the increase in reporting and registration of violence against women . . . ."<sup>191</sup> These observations bolster an argument for strategically channeling funding to programs supporting women's rights while also conditioning all funding upon preservation and support of gender equality.<sup>192</sup> Coalition partners have committed to financially helping the Afghan government maintain peace and continue the trajectory of development, and one of

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186. *Id.*

187. *See* Dubai, *supra* note 15, at 185 ("[B]y requiring judicial experience and education in law or Islamic jurisprudence, the pool of women who can meet these standards may be extremely small given the restrictions on women's education and employment under the Taliban."). *Cf.* Taylor, *supra* note 151, at 151 (recognizing even qualified female candidates are overlooked).

188. Dubai, *supra* note 15, at 185.

189. *See id.* at 185–86 (claiming the Afghan constitution does little to prevent conservative justices from making restrictive determinations).

190. HUMAN RTS. WATCH, *supra* note 130.

191. U.N. ASSISTANCE MISSION IN AFG., *supra* note 95, at 6.

192. *See* Graciana del Castillo, *Economic Reconstruction of War-Torn Countries: The Role of the International Financial Institutions*, 38 SETON HALL L. REV. 1265, 1266–67 (2008) (asserting international funding must be a critical and well-constructed aspect of post-conflict development).

the most effective means available to enforce the new Afghan government's compliance with the various forms of domestic and international law guaranteeing women's rights is to make funding contingent on compliance.<sup>193</sup>

The international community's methodology for supporting economic growth can further produce substantive changes in domestic gender law and norms in Afghanistan. International funding must be contingent upon measured progress in enforcing the ERAW and other practical measures aimed at ending violence against women.<sup>194</sup> The U.S. Government has allotted billions of dollars in Afghan aid following the 2014 security forces drawdown.<sup>195</sup> Just as the U.S. conditioned this aid upon acquiring signature on a long-term security agreement, it should similarly require the country to uphold certain women's rights standards for continued aid.

### B. *Education*

When men attacked fifteen schoolgirls in Kandahar with acid in 2008, ubiquitous posters emerged, warning "Don't Let Your Daughters Go to School,"<sup>196</sup> Despite overtly menacing messages and terrifying acts of violence, girls continued attending school<sup>197</sup> even though a full year later court officials were unaware of the case and still did not know the whereabouts of the alleged perpetrators.<sup>198</sup> The headmaster of the school where the girls were attacked aptly described the situation when recounting his encouragement to the parents of the students: "I told them, if you don't send your daughters to school, then the enemy wins[.] . . . I told them not to give in to darkness. Education is the way to improve our society."<sup>199</sup> Government leaders and international partners should focus on this message for a number of reasons. Increased education for women is directly linked to a decrease in deaths from easily treatable pregnancy

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193. See *Afghanistan: Defend Women's Rights*, HUMAN RTS. WATCH (June 28, 2013), <http://www.hrw.org/news/2013/06/28/afghanistan-defend-women-s-rights> (indicating some advocates cut funding over women's rights issues).

194. See U.N. ASSISTANCE MISSION IN AFG., *supra* note 95, at 8 (recommending donors "[i]mplement a joint monitoring framework with specific indicators to measure progress in these areas that includes incentives for sustained and increased financial support based on demonstrated measurable results by the Government in ERAW law enforcement and related measures to end violence against Afghan women and girls"); HUMAN RTS. WATCH, *supra* note 193 ("Donors should be clear that if Afghanistan doesn't defend women's rights, the money will no longer flow for the army or the police.').

195. Nordland & Rubin, *supra* note 22.

196. Filkins, *supra* note 146.

197. *Id.*

198. IRIN, *supra* note 173.

199. Filkins, *supra* note 146 (internal quotation marks omitted).

complications.<sup>200</sup> Increased male and female education correlates to support for women's rights such as voting and participating in public affairs.<sup>201</sup> Afghans can only overcome ignorant attitudes underpinning customs like *baad* and self-immolation through comprehensive education; in so doing, women can then realize more active and productive participation in Afghan society.

### C. Access to Justice and Civic Participation

Emphasizing full prosecution of violence against women, specifically through strengthening EVAW's application, is imperative for better protecting women and changing their status in Afghan society.<sup>202</sup> One practical way to increase access to justice for women is to increase awareness of the constitutional guarantee of representation while enabling the government to employ more attorneys for the specific purpose of providing indigent representation.<sup>203</sup> Another effective way to improve women's access to justice is increasing court resources for accepting a larger docket, thereby decreasing the number of reported violence against women cases referred to a less-than-effective mediation process.<sup>204</sup>

Violence and ongoing threats have obstructed Afghan women's political participation for the past decade, as running for office or even voting harbors profound risks.<sup>205</sup> The run-up period to parliamentary elections in 2005 alone included the murders of at least five female candidates.<sup>206</sup> In the face of this reality, many women still accept this risk in exchange for agency; they recognize that as women's political participation improves, they have the requisite agency for promoting peace and the authority needed to ensure the prosecution of perpetrators of violence.<sup>207</sup>

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200. Pfisterer, *supra* note 30, at 62.

201. See generally Manganaro & Alozie, *supra* note 177, at 516 (explaining results of a survey of 6,593 Afghan adults who considered gender role attitudes and documented which ecological and socio-demographic factors appeared to affect these attitudes).

202. See U.N. ASSISTANCE MISSION IN AFG., *supra* note 95, at 7 (recommending improvements to prosecution efforts for violence against women).

203. See Benard, *supra* note 21, at 34 (identifying lack of knowledge about rights to the assistance of an attorney and lack of access to practitioners as a clash between advances in human rights and Islamic law in Afghanistan).

204. See U.N. ASSISTANCE MISSION IN AFG., *supra* note 95, at 6, 13 (urging increased resources for "police, prosecutors, and courts" to address reports of violence against females and the end to the use of mediation in such cases).

205. See McBain, *supra* note 7 (describing an assassination attempt on the life of Member of Parliament, Fawzia Koofi).

206. Dubay, *supra* note 15, at 194.

207. See McBain, *supra* note 7 (divulging why one female politician continues to take risk to participate the civic sphere).

Incorporating women's perspectives into judicial systems that develop and interpret governing law fosters such empowerment.<sup>208</sup> Active civic participation in drafting laws and service as judges—in both formal and informal courts or councils—is a practical method of meaningfully incorporating women's perspectives.<sup>209</sup> Women and other women's rights advocates may then strengthen and apply the law in a more liberal fashion. As previously discussed, this participation may only be fully realized when more girls and women receive enough education to qualify for prominent positions.<sup>210</sup> Additionally, female participation throughout the government services sector, including the police force, could provide higher levels of success for women seeking relief from domestic abuse.<sup>211</sup>

Promoting expansion of the women's councils or *shuras* newly established in some areas of the country is another practical method of increasing women's civic participation and concomitant access to justice.<sup>212</sup> Although these councils' influence is subject to the prominence of all-male *jirgas*,<sup>213</sup> it nevertheless establishes an introductory public forum in which women may discuss and participate in local affairs. Some women's advocates have found, "bringing women together to exchange ideas and learn from each other will create an atmosphere in which women might be able to organize for change. This sharing and organization among women is an absolute necessity for developing the political participation and leadership capacity of rural women."<sup>214</sup>

#### D. *The Importance of Liberal Interpretations of Islamic Law in Favor of Women's Rights*

Members of both NGOs and the Afghan government agree, "[T]he best and only way to progress women's' rights is to work within the framework of Islam . . . ."<sup>215</sup> The Afghan Constitution provides both an Islamic supremacy clause and provisions allowing State action in protecting mothers and eliminating cultural family-related traditions contradicting Islamic principles.<sup>216</sup> Interpretive philosophy generally

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208. Dubay, *supra* note 15, at 168.

209. *Id.*

210. *See id.* at 195 (noting high illiteracy rates and lack of schools for girls in Afghanistan).

211. *See* U.N. ASSISTANCE MISSION IN AFG., *supra* note 95, at 7 (recommending recruiting women into every level of law enforcement).

212. *See* Grenfell, *supra* note 111, at 25 (noting the importance of *shurus* in the past and their important role in rebuilding areas under new regimes).

213. *Id.*

214. NOJUMI ET AL., *supra* note 31, at 87.

215. Dubay, *supra* note 15, at 184 (internal quotation marks omitted).

216. CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN, arts. 3, 54 (Jan. 26, 2004); Dubay, *supra* note 15, at 184–85.

determines whether courts use this broad language to empower or restrict women.<sup>217</sup> Women's rights advocates should therefore facilitate increased discussion of the Islamic history and legal interpretations empowering women as valuable members of the Afghan community.

## VII. CONCLUSION

President Karzai has not fulfilled his promise to lead Afghanistan into a new era of peace and cognizance of women's rights. In fact, his recent actions signal a willingness to sacrifice women's rights for peace, should the Taliban offer.<sup>218</sup> President Karzai reportedly asked Tom Malinowski, the Washington advocacy director for Human Rights Watch, whether it is more important to save a girl's life or send her to school.<sup>219</sup> Malinowski interpreted this question as meaning Karzai and many of his international supporters do not consider women's rights worthy of a fight.<sup>220</sup>

Many women's rights advocates accuse Karzai and most other Afghan government leaders of overt hostility toward women's issues.<sup>221</sup> Indeed, as the world focused on the 2010 election, Karzai approved the aforementioned 2009 Shiite Personal Status Law rammed through by conservatives in Parliament.<sup>222</sup> Now, as international focus shifts to maintaining security post-withdrawal, Coalition partners must not forsake women's progress in Afghanistan. Secretary of State Hillary Clinton promised the U.S. would stand with Afghan women.<sup>223</sup> Now is the time for the U.S. and allied partners to deliver on that promise with funding contingencies, as well as continued support for liberal education and good governance.

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217. See Dubay, *supra* note 15, at 185 (highlighting the conflicting constitutional provisions concerning women's rights and the court's role in choosing the method to interpret those provisions).

218. See Baker, *supra* note 9 (elucidating the government's willingness to compromise political agendas with the Taliban and women's fear that their rights will be a part of that compromise).

219. *Id.*

220. See *id.* (noting Karzia's reluctance to answer the question or even meaningfully address the topic).

221. See Jones, *supra* note 34 (detailing instances of Afghan leaders torpedoing or patronizing women's issues).

222. See *id.* (describing the fear and frustration felt by Afghan women after the Shiite Personal Status Law was passed).

223. See AMNESTY INT'L, *supra* note 17 (quoting former Secretary of State Clinton).