

OCCASIONAL PAPER

4

The Politics of Gender and Reconstruction in Afghanistan

by Deniz Kandiyoti





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glossary of terms

<i>bad</i>	offering women as brides in reparation for offences
<i>burqah</i>	loose garment completely covering a woman's body and face
<i>Jam'iyat-e Islami</i>	Islamic League
<i>jihād</i>	holy war
<i>jirga</i>	tribal council (Pashtun)
<i>khan</i>	title used by landed elite
<i>Loya Jirga</i>	Grand Assembly
<i>madrassa</i>	religious school
<i>mahram</i>	close male relative with whom women are allowed to have contact
<i>Meshrano Jirga</i>	Upper House of Parliament
<i>mujahidin</i>	fighters in holy war
<i>mullah</i>	Muslim cleric
<i>shari'a</i>	Islamic law
<i>shura</i>	village council
<i>ulama</i>	religious scholars
<i>waqf</i>	pious or charitable foundation
<i>Wolosi Jirga</i>	Lower House of Parliament
<i>zina</i>	adultery

acronyms

ACBAR	Agency Coordinating Body for Afghanistan Relief
AIHRC	Afghanistan Independent Human Rights Commission
ANA	Afghan National Army
ANBP	Afghanistan New Beginnings Programme
ANSO	Afghanistan NGO Security Office
AREU	Afghanistan Research and Evaluation Unit
ASP	Afghanistan Stabilization Programme
ATA	Afghanistan Transitional Authority
ATTA	Afghan Transit Trade Agreement
AWN	Afghan Women’s Network
CDC	Community Development Committee
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CG	consultative group
CLJ	Constitutional Loya Jirga
DDR	disarmament, demobilization and reintegration
DOAW	Democratic Organization of Afghan Women
DRA	Democratic Republic of Afghanistan
ELJ	Emergency Loya Jirga
GAG	Gender Advisory Group
GLWG	Gender and Law Working Group
IDP	internally displaced people
IOM	International Organisation for Migration
ISAF	International Security Assistance Force
JEMB	Joint Electoral Management Body
JICA	Japan International Cooperation Agency
JRC	Judicial Reform Commission

MOWA	Ministry of Women's Affairs
MRRD	Ministry of Rural Rehabilitation and Development
NDF	National Development Framework
NGO	non-governmental organization
NSP	National Solidarity Programme
OSMOW	Office of the State Minister for Women
PDPA	People's Democratic Party of Afghanistan
PIP	Public Investment Programme
PRT	Provincial Reconstruction Team
RAWA	Revolutionary Association of the Women of Afghanistan
SF	Strategic Framework
SNTV	single non-transferable vote
SSR	security sector reform
UNAMA	United Nations Assistance Mission in Afghanistan
UNDP	United Nations Development Programme
UNIFEM	United Nations Development Fund for Women
WAW	Women for Afghan Women
WCF	Women's Community Forum
WDC	women's development centre
WFP	World Food Programme

summary résumé resumen

SUMMARY

The central objective of this paper is to put the discussion of women’s rights in Afghanistan in the context of the multiple transitions entailed by the process of post-conflict reconstruction: a security transition (from war to peace), a political transition (to the formation of a legitimate and effective state) and a socioeconomic transition (from a “conflict” economy to sustainable growth). These transformations do not occur in a social vacuum but build upon existing societal arrangements that condition and limit the range of available opportunities.

The first section contextualizes current attempts at securing women’s rights in the troubled history of state-building and state-society relations in Afghanistan. The latter were marked by tensions between a rentier state bolstered by foreign subsidies, which had a relatively weak engagement with society, and a rural hinterland that both resisted the incursions of the state and attempted to represent tribal interests within it. Attempts at modernization, including the expansion of women’s rights, were instigated by a male state elite whose bids to centralize power were thwarted at various junctures. The issue of women’s rights was used as a bargaining counter in contests between social forces whose geopolitical entanglements produced sharp swings of the pendulum between extremes such as the Soviet-backed socialist experiment under the People’s Democratic Party of Afghanistan (PDPA) and the Islamist policies of the Pakistani-backed Taliban. However, in a context where the state’s interface with local communities, whether in terms of the legal framework, revenue collection or service delivery, was always limited, attempts to analyse women’s rights with reference only to government policies suffer from serious shortcomings. It is, rather, to the profound transformations brought about by years of protracted conflict that one must look for a better appraisal of obstacles to and opportunities for more gender-equitable development in Afghanistan.

The second section discusses the implications of the far-reaching changes in social relations brought about by years of war and displacement following the Soviet invasion of Afghanistan. A predominantly rural country whose population achieved relatively self-sufficient livelihoods was transformed into a fragmented polity where a significant proportion of the economy is based on illicit, criminalized networks of trade in drugs (opium poppy, in particular) and commodities such as timber and emeralds, smuggling of goods and human trafficking. The central argument put forward in this section is that routine violations of women’s rights in Afghanistan are determined by analytically distinct but overlapping and mutually reinforcing sets of influences: the dynamics of gendered disadvantage, the erosion of local livelihoods and growing poverty, the criminalization of the economy, and insecurity due to the predations of armed groups and factions. Particular combinations of new pressures (such as poverty, indebtedness and predation by local strongmen) and existing practices (such as the early marriage of girls against the payment of brideprice) create outcomes that may easily be misidentified as unmediated expressions of local “culture”, thus detracting critical attention from the full nexus of influences that deepen the vulnerability of girls and women.

The third section focuses on processes of institutional development and reform since the Bonn Agreement in 2001. The national machinery set up for the advancement of women consists of: the Ministry of Women's Affairs (MOWA); the Office of the State Minister for Women (OSMOW), set up to provide policy guidance with particular reference to legislative and judicial reform processes; the Afghanistan Independent Human Rights Commission (AIHRC), tasked with the advancement of women's rights under one of its five programme areas; and the Gender Advisory Group (GAG), a donor-government co-ordination body that assists in formulating a national framework and budget for gender mainstreaming. The most tangible gains so far have been achieved in the area of legal rights, which were enshrined in the new Constitution of January 2004 and provide legal guarantees for women's equality as citizens and for their political representation. Many unresolved questions remain concerning the respective roles of Islamic and tribal laws and the stipulations of international treaties to which the government is a signatory (such as the Convention on the Elimination of All Forms of Discrimination Against Women/CEDAW which was ratified without reservations in March 2003). Without a process of consensus-building through political normalization and reconciliation, the risk that women's rights will be held hostage to factional politics remains high. The expansion of women's formal rights cannot, in any case, translate into substantive benefits in the absence of security and the rule of law. Moreover, women's formal rights to civic participation may have limited impact in a context where they remain wards of their households and communities and where their most basic entitlements to education and health continue to be denied.

The conclusion draws attention to crippling disjunctures between different facets of post-conflict transition. Legal and governance reforms have advanced at a faster pace than has been achieved in the security sector or the transition to sustainable livelihoods. There is also a disjuncture between, on the one hand, the time frames adopted and outputs expected by international actors driving the women's rights agenda, and on the other, the length of time required for non-cosmetic changes in societal relations to develop as a result of peace-building. Since the issue of women's rights continues to occupy a highly politicized and sensitive place in the struggles between contending political factions in Afghanistan, this disjuncture may itself produce unintended effects, with disempowering consequences for women.

Deniz Kandiyoti is a Reader in the Department of Development Studies at the School of Oriental and African Studies (SOAS), University of London, United Kingdom.

RÉSUMÉ

L'objet de cette étude est essentiellement de placer la discussion sur les droits des femmes en Afghanistan dans le contexte des transitions multiples qu'entraîne la reconstruction après conflit: transition sécuritaire (de la guerre à la paix), transition politique (menant à la formation d'un Etat légitime et performant) et transition socio-économique (d'une économie de "conflit" à une croissance durable). Ces changements ne s'opèrent pas dans un vide social mais s'appuient sur les mécanismes sociaux existants qui conditionnent et limitent l'étendue des options possibles.

La première section contextualise les efforts déployés actuellement pour garantir les droits des femmes dans l'histoire troublée de l'édification de l'Etat et des relations entre l'Etat et la société en Afghanistan. Celles-ci ont été marquées par des tensions entre un Etat rentier soutenu par des subventions étrangères, qui n'a avec la société que des rapports assez ténus, et un arrière-pays rural qui a à la fois résisté aux incursions de l'Etat et tenté de représenter les intérêts tribaux qu'il abrite. Une élite politique masculine, qui voulait la centralisation du pouvoir et a vu déjouer ses plans à diverses reprises, a été à l'origine des tentatives de modernisation, dont fait partie l'extension des droits des femmes. La question des droits des femmes a servi d'argument de négociation dans les luttes entre des forces sociales dont les complexes alliances géopolitiques ont fait pencher la balance entre les extrêmes, du passage à l'expérience socialiste, tentée avec le soutien russe sous la direction du Parti démocratique populaire afghan, aux politiques islamistes des talibans, qui opéraient avec l'appui du Pakistan. Cependant, dans un contexte où l'interface de l'Etat avec les collectivités locales, qu'il s'agisse du cadre légal, de la perception des impôts ou des services fournis, était très limité, une analyse des droits des femmes qui se placerait uniquement sous l'angle des politiques gouvernementales serait très lacunaire. Pour mieux apprécier les chances d'un développement plus équitable envers les femmes et ce qui y fait obstacle en Afghanistan, il faut plutôt prendre en compte les profondes transformations amenées par des années de conflit.

La deuxième section traite des conséquences des changements profonds que l'invasion de l'Afghanistan par l'Union soviétique et les années de guerre et de déplacement qui ont suivi ont opérés dans les rapports sociaux. Un pays essentiellement rural dont la population réussissait relativement bien à subvenir à ses propres besoins a été transformé en un Etat fragmenté dont l'économie repose en grande partie sur des réseaux illicites devenus criminels, qui se livrent au trafic de drogues (en particulier du pavot dont on fait l'opium), au commerce de marchandises telles que le bois et les émeraudes, à la contrebande et aux trafics d'êtres humains. Selon l'argument central de cette section, les violations ordinaires des droits des femmes en Afghanistan sont déterminées par plusieurs séries de facteurs qui, bien que distinctes, se chevauchent et se renforcent mutuellement: la dynamique du sexisme, qui désavantage les femmes, l'érosion des moyens d'existence locaux et la montée de la pauvreté, le basculement de l'économie dans la criminalité et l'insécurité due aux exactions des groupes et factions armés. La conjugaison de pressions nouvelles (la pauvreté, l'endettement et les exactions d'hommes forts locaux) et de pratiques existantes (telles que les mariages des filles à un très jeune âge contre le paiement du prix de la mariée) produit des résultats qu'il est facile de mal interpréter et de considérer comme de pures manifestations de la "culture" locale, ce qui détourne l'attention de toutes les influences qui aggravent la vulnérabilité des filles et des femmes.

La troisième section porte sur le développement et la réforme des institutions depuis l'Accord de Bonn de 2001. L'appareil national mis en place pour l'émancipation des femmes se compose du Ministère des affaires féminines, de l'Office du Ministre d'Etat pour les femmes, chargé de donner des orientations politiques, en particulier à la réforme législative et judiciaire, de la Commission indépendante des droits de l'homme en Afghanistan, qui a notamment pour mission de faire progresser les droits des femmes, l'un des cinq volets de son programme, et enfin, du Groupe consultatif pour l'égalité entre hommes et femmes, organe de coordination des gouvernements donateurs qui aide à établir un cadre national et un budget pour l'intégration des femmes. Les progrès les plus tangibles réalisés à ce jour l'ont été dans le domaine de la reconnaissance légale des droits des femmes, consacrés par la nouvelle Constitution de janvier 2004, et consistent à garantir dans la loi l'égalité des femmes comme citoyennes ainsi que dans la représentation politique. De nombreuses questions subsistent quant aux rôles respectifs de la loi islamique, des lois tribales et des dispositions des instruments internationaux signés par le Gouvernement (tels que la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes, qui a été ratifiée sans réserve en mars 2003). Si la normalisation et la réconciliation politiques ne débouchent pas peu à peu sur un consensus, la politique des factions risque fort de prendre en otage les droits des femmes. Sans sécurité ni Etat de droit, l'extension des droits qui leur sont reconnus ne peut se traduire en acquis réels. De plus, les droits civils des femmes risquent d'avoir peu d'impact dans un pays où elles restent sous la tutelle des hommes de leur famille et de leur communauté et se voient toujours dénier les droits les plus élémentaires à l'éducation et à la santé.

La conclusion attire l'attention sur les déséquilibres qu'il peut y avoir entre diverses facettes de la transition après conflit et qui font blocage. Les réformes du droit et de la gouvernance ont avancé plus rapidement que les progrès dans le secteur de la sécurité ou le passage à des moyens d'existence durables. Il y a aussi un déséquilibre entre, d'une part, les calendriers adoptés et les résultats attendus par les acteurs internationaux qui poussent à la réalisation des droits des femmes et, de l'autre, le temps nécessaire pour que s'opèrent des changements réels dans les rapports sociaux une fois la paix rétablie. Comme la question des droits des femmes est toujours très politisée et continue d'occuper une place très délicate dans les luttes entre factions politiques rivales en Afghanistan, ce déséquilibre peut lui-même produire des effets imprévus, et avoir des conséquences néfastes sur l'émancipation des femmes.

Deniz Kandiyoti est chargée d'enseignement au département des études du développement à la School of Oriental and African Studies (SOAS), Université de Londres, Royaume-Uni.

RESUMEN

El objetivo principal del presente trabajo es incluir los derechos de la mujer en Afganistán en el contexto de las múltiples transiciones que entraña el proceso de reconstrucción posconflicto: una transición para la seguridad (de la guerra a la paz), una transición política (hacia la formación de un Estado real y legítimo) y una transición socioeconómica (de una economía de “conflicto” hacia un crecimiento sostenible). Estas transformaciones no se concretan en un vacío social, sino que se desarrollan a partir de convenios societales que condicionan y limitan la gama de oportunidades disponibles.

La primera parte del documento contextualiza los esfuerzos actuales por garantizar los derechos de la mujer en la convulsa historia de la conformación de un Estado y de las relaciones entre el Estado y la sociedad en Afganistán. Estas últimas se caracterizaron por las tensiones que surgieron entre un Estado más rentista sostenido por los subsidios externos (y cuyo compromiso con la sociedad era relativamente débil) y las remotas áreas rurales que, al mismo tiempo, se oponían a las incursiones del Estado e intentaban, representar los intereses tribales dentro del Estado. Los intentos de modernización, incluida la expansión de los derechos de la mujer, fueron provocados por una élite masculina cuyos esfuerzos por centralizar el poder se vieron obstaculizados en diversas ocasiones. El tema de los derechos de la mujer se utilizó como carta de negociación entre fuerzas sociales cuyos enfrentamientos geopolíticos motivaron un vaivén entre posiciones extremas, tales como el experimento socialista del Partido Democrático Popular de Afganistán respaldado por los soviéticos y las políticas islámicas de los talibanes apoyados por Pakistán. Sin embargo, en un contexto en el cual la relación del Estado con las comunidades locales (ya sea jurídica, tributaria o de prestación de servicios) fue siempre limitada, los esfuerzos por analizar los derechos de la mujer únicamente en referencia con las políticas gubernamentales revelan serias deficiencias. El análisis debe orientarse más hacia las profundas transformaciones producidas tras largos años de conflicto, a fin de poder evaluar mejor los obstáculos y las oportunidades para alcanzar un desarrollo más equitativo desde el punto de vista del género en Afganistán.

En la segunda parte del trabajo se abordan las implicaciones de los grandes cambios y sus efectos que generaron años de guerra y desplazamiento tras la invasión de Afganistán por parte de la Unión Soviética. Un país predominantemente rural cuya población había alcanzado un nivel de subsistencia relativamente autosuficiente, se vio transformado en un Estado fragmentado donde una parte considerable de la economía se basaba en redes ilícitas y delictivas de comercio de drogas (en especial amapolas de opio) y productos primarios como la madera y las esmeraldas, el contrabando de mercancías y la trata de personas. El argumento fundamental presentado en esta sección es que la rutinaria violación de los derechos de la mujer en Afganistán obedece a una serie de influencias analíticamente diferentes pero parcialmente coincidentes y complementarias: la dinámica de las desventajas en razón del género, la merma de los niveles de subsistencia a nivel local y la creciente pobreza, la “criminalización” de la economía y la inseguridad causada por la conducta predatoria de las facciones y grupos armados. La particular combinación de estas nuevas presiones (como la pobreza, el endeudamiento y la depreciación por parte de los caudillos locales) y los usos y costumbres existentes (el casamiento temprano de niñas a cambio del pago de una dote) produce situaciones que bien pueden malinterpretarse como expresiones inmediatas de la “cultura” local, restándole crucial atención al complejo conjunto de influencias que profundizan la vulnerabilidad de las niñas y las mujeres.

La tercera parte se centra en los procesos de desarrollo institucional y reforma emprendidos desde el Acuerdo de Bonn de 2001. La maquinaria nacional que se puso en marcha para la promoción de los derechos de la mujer está conformada por: el Ministerio de Asuntos de la Mujer, el Ministro de Estado para la Mujer, posición creada para brindar orientación con especial énfasis en los procesos de reforma legislativa y judicial; la Comisión Afgana Independiente de Derechos Humanos, una de cuyas cinco áreas programáticas se encarga del fomento de los derechos de la mujer, y el Grupo Asesor sobre Cuestiones de Género, organismo de coordinación de los donantes y el gobierno que contribuye en la formulación de un marco nacional y un presupuesto para la incorporación de la perspectiva de género. Los avances tangibles hasta la fecha se han registrado en el ámbito de los derechos jurídicos, que fueron incluidos en la nueva Constitución de 2004 y que brindan garantías legales para la igualdad de las mujeres como ciudadanas y para su representación política. Quedan aún muchas cuestiones sin resolver en cuanto a las respectivas funciones de las leyes islámicas y tribales, y las estipulaciones de los tratados internacionales de los cuales el gobierno es signatario (como la Convención sobre la eliminación de todas las formas de discriminación contra la mujer, que fue ratificada sin reservas en marzo de 2003). Sin un proceso de construcción de consenso a través de la normalización política y la reconciliación, el riesgo de que los derechos de la mujer sigan sujetos a la política de las facciones, seguirá siendo alto. La expansión de los derechos formales de la mujer no puede en ningún caso traducirse en beneficios sustantivos de no haber seguridad y un estado de derecho. Más aún, los derechos formales de la mujer a la participación cívica podrían tener una limitada repercusión en un contexto en el cual las mujeres siguen atadas al cuidado de sus hogares y comunidades, y en el que se les sigue negando sus derechos fundamentales a la educación y la salud.

En la conclusión se hace mención de las debilitantes disyunciones entre las distintas facetas de la transición posconflicto. Las reformas que se han registrado en materia jurídica y de gobierno han avanzado a un ritmo más acelerado que en el sector de la seguridad o en la transición hacia una subsistencia sostenible. Existe también una disyunción entre, por una parte, los plazos adoptados y los resultados que esperan alcanzar los actores internacionales que impulsan la agenda de los derechos de la mujer y, por la otra, el tiempo que se requiere para que se concreten los cambios más profundos en las relaciones sociales como resultado de los esfuerzos de consolidación de la paz. Como el tema de los derechos de la mujer continúa siendo sumamente politizado y sensible en las luchas entre las facciones políticas en pugna en Afganistán, esta disyuntiva puede tener efectos imprevistos, con consecuencias negativas para el empoderamiento de la mujer.

Deniz Kandiyoti es profesora adjunta del Departamento de Estudios sobre Desarrollo, de la Escuela de Estudios Orientales y Africanos (SOAS) de la Universidad de Londres, Reino Unido.



introduction

Preoccupations with issues of gender justice and equity are seldom at the forefront of international concerns in war and conflict situations. Indeed, a recent UNDP report (2003) notes the marginalization of gender dimensions in conflicts and crises and a general failure to address

women's vulnerabilities and concerns. Afghanistan would, on the face of it, appear to constitute an exception to this rule if we are to go by the centrality accorded by the international community to women's oppression under the Taliban. The plight of women in Afghanistan was invoked, among other concerns, as a humanitarian crisis justifying military intervention in the aftermath of the 11 September 2001 attacks in the United States.¹ Reversing abuses of women's rights became an explicit policy goal, at least at the level of rhetoric.

However, debates among transnational feminist constituencies on an appropriate politics of solidarity with women in Afghanistan proved to be quite divisive. These exchanges followed the familiar tropes of women's rights as universal human rights versus "feminism-as-imperialism", reflected in a spate of articles in both the popular press and academic journals (with evocative titles such as "Feminism as imperialism", "Do Muslim women really need saving?" and "Imperial wars or benevolent interventions?").² Abu-Lughod highlighted a continuity in colonial meddling, warning that "we need to be wary when Lord Cromer in British-ruled Egypt, French ladies in Algeria and Laura Bush, all with military troops behind them, claim to be saving or liberating Muslim women" (2002:3). She also suggested that we need to accept the possibility that different women may have different conceptions of what constitutes justice or the good life, and that some may seek a feminist voice within Islam. Arat-Koc (2002) drew attention to the use of references to culture and religion as the cause of women's oppression; such references could serve both to justify a "humanitarian" war and to disown the limitations of war in effecting real change by invoking the workings of local culture. Moghadam (2002), while equally critical of the hypocrisy inherent in the discovery of Afghan women's plight only after the Taliban takeover of Kabul in 1996, was scathing in her condemnation of a cultural relativism that sanctions and condones all manner of patriarchal excesses in the name of culture, but proscribes the progressive policies of the Democratic Republic of Afghanistan (DRA) as somehow inappropriate to a Muslim society.

Charges of patronizing attitudes towards the women of Afghanistan, voiced by various authors, clearly originate from different types of concerns. For some, trivializing the worldviews of women whose understandings of women's rights do not fit neatly into categories that place feminism on the side of the West constitutes a major shortcoming. For others, delegitimizing the political choices and militancy of Afghan women who opted for "progressive" policies represents a form of political collusion that uses the notion of difference as a means of obfuscation.

Whatever the merits of these arguments and the undoubtedly significant role of international feminist platforms in lobbying for women's rights in Afghanistan,³ it is at the national level—in prospects for security and national consolidation and in struggles over constitutional and citizenship rights—that the most decisive outcomes are set to materialize. Molyneux and Razavi state quite unambiguously that "the central instrument for the protection

1 One year after the US intervention in Afghanistan, a newspaper columnist expressed this graphically by stating that: "The burqa was the battle flag of last year's brief war" (Toynbee 2002:2–3).

2 Viner 2002; Abu-Lughod 2002; Arat-Koc 2002.

3 For instance, Feminist Majority's "Campaign to stop gender apartheid in Afghanistan" scored some US political victories for Afghan women's rights. Through a series of petitions and lobbying activities, they played a significant role in 1998 in persuading the UN and the US to reject formal recognition of the Taliban. They also put pressure on US energy company Unocal to back out of a \$3 billion venture to put a pipeline through Afghanistan that would have given the Taliban \$100 million royalties.

of rights has been, and must remain, the state” (2002:24). How does this proposition sit in contexts where primary state functions such as the provision of basic social services are offloaded onto humanitarian and international aid organizations? Or, just as importantly, where the processes of state-building and peace-consolidation are themselves subject to blueprints that are laid out by international players, and which the internal political constituencies respond to with varying degrees of enthusiasm? The so-called “failed states” that emerge from conflict situations with weakened or vestigial institutions of governance present very specific challenges. These have to be taken fully on board before contemplating any meaningful discussion of how women’s rights may be promoted or safeguarded in the process of post-conflict reconstruction.

Donini, Niland and Wermester point out that since the early 1990s we have been witnessing the evolution of more robust and comprehensive external interventions, often led by UN peace operations in complex crises. The objectives of such interventions—peace, stability, development and accountable governance—have become “steadily more ambitious, wide-ranging and trusteeship-like than in the past” (2004:2). Afghanistan in the 1990s represented a high point in the quest for coherence and the integration of the various “regimes” of international action in response to complex crises. From the Strategic Framework (SF) experiment initiated in Taliban-ruled Afghanistan to the UN Assistance Mission in Afghanistan (UNAMA), which became operational in 2002 with the objective of supporting the implementation of the Bonn Agreement of December 2001, there has been a will to integrate and co-ordinate humanitarian, human rights, peace-building and economic development efforts. Nowhere have the workings of the institutions of global governance been more in evidence than in Afghanistan.

Nonetheless, as Clapham (2002) rightly points out, the international system’s need for states is greater than ever, since global order rests on the assumption that states will continue to perform a vital intermediary role. Indeed, international human rights instruments depend for their implementation on the existence of effective states that can be held accountable, and against which leverage may be exercised by other states and international organizations. Clapham further suggests that: “In situations of state collapse no such leverage can be exerted because the levers do not exist or simply snap in their would be users’ hands” (2002:777). Hence, the priority accorded to political transitions that expedite the (re)creation of central apparatuses of governance that can deliver the main elements of state functions: security, representation and welfare (Milliken and Krause 2002).

As far as women’s rights are concerned, contexts such as Afghanistan in the twenty-first century differ in significant ways from the period of post-colonial state-building in the aftermath of the wave of decolonization following the Second World War. In countries with Muslim majorities, as elsewhere in the South, modernizing reforms formed an intrinsic component of national consolidation and development, and the expansion of women’s citizenship rights was framed as an integral part of this process (Kandiyoti 1991b). The processes of political negotiation involved struggles between internal constituencies, against the more distant backdrop of the influence of former colonial powers and international organizations. In “failed states”, however, these have been superseded by direct negotiations or confrontations between powerful countries, institutions of international governance, emerging local state structures and political factions with different degrees of commitment to “state-building”. Women’s rights have always been highly politicized, and nowhere more so than in the Muslim world. The articulation of different conceptions of modernity, nationalism and cultural integrity singled out gender relations as a critical area for the expression of contending political visions (Kandiyoti 1991a; 2001). However, new and unprecedented levels of complexity are reached in societies where geopolitics and international aid take a more direct hand in the process of state-building.

A central objective of this paper is to avoid the facile dualities of Western impositions versus indigenous culture that are often invoked in discussions of women's rights in Afghanistan. Rather, the paper aims for a closer examination of evolving institutional frameworks and the various global and local actors implicated in setting the policy agenda in post-Taliban Afghanistan. The first section of the paper attempts to demonstrate that current efforts at redefining women's citizenship and legal rights in the reconstruction process in Afghanistan build upon a troubled history of state-formation that conditions and constrains the possibilities of the future. The second section discusses the implications of more than 20 years of conflict for the political economy of Afghanistan, and the social transformations, including those in gender relations, brought about by the war economy. The third section focuses on processes of institutional development and reform under way since the Bonn Agreement of 2001, with a view to identifying the potentials and obstacles in the way of addressing issues of gender justice and equity. The final section draws out some of the implications of the arguments developed in earlier sections.

II.

state-building in afghanistan: a troubled trajectory

Women's rights in Afghanistan are caught up in a turbulent history of state–society relations, marked by two attempts at radical reform instigated from above: one during the reign of King Amanullah between 1919 and 1928 and the other under the PDPA between 1978 and 1979. Both episodes were followed by bloody uprisings and a violent backlash targeting women's attire, movements and public presence, albeit under very different circumstances.

Invoking the opposition between so-called “modernists” and “traditionalists” is unhelpful and somewhat misleading in understanding the factors driving the political process in Afghanistan.⁴ Rubin explicitly states that the “traditionalism” and “localism” attributed to the Afghan polity, far from being survivals of ancient traditions, are rather a partial result of the particular way that the country became incorporated into contemporary state systems. Afghanistan's role in the colonial system was to block a Russian advance toward British India: hence the British supported the construction of a state “with a preponderance of coercive resources” (Rubin 1995:8). During the decades between decolonization and the end of the Cold War, Afghanistan exploited superpower rivalries to cash in on “locational rents” to finance the expansion of the state apparatus.⁵ Reliance on foreign subsidies rather than internally derived revenue gave Afghanistan the hallmarks of a rentier state with a relatively weak engagement with society.

The characteristics of society were also to determine the nature of the state. As Tapper (1983) points out, the origins of the modern Afghan state lie in the confederation of Pashtun tribes, now known as the Durrani, which developed into a dynastic state. The relations between tribe and state are paradoxical: on the one hand, the state requires a certain degree of unity to uphold the hierarchy required for indirect rule, while on the other, it exploits tribal cleavages and dissension to consolidate central power. Roy suggests that the tribes in Afghanistan saw the state as existing on the periphery, serving to administer land conquered by the tribal

4 The temptations to do so are considerable, since what appears to be at stake are the “progressive” policies of a state elite confronting a conservative *ulama* and tribal hinterland. Indeed, Barakat and Wardell (2002) couch their argument in these terms, while Dupree (1998b) draws our attention to an insulated, Westernized elite that was effectively cut off from the rural majority.

5 Between 1956 and 1978 Afghanistan received \$1,265 million in economic aid and about \$1,250 million in military aid from the Soviet Union (Rubin 1995:22).

confederation but redundant as far as their own internal administration was concerned. The historic mission of the Afghan state, he argues, was to reverse this relationship in order to pass from the periphery to the centre. However, the state was never to escape from the implications of the original principle that gave it legitimacy; “it was to remain tribal and Pashtun” (Roy 1986:14).

Given its origins in a tribal confederacy where the ruler was first among equals rather than an absolute monarch, Afghanistan could only evolve into a nation-state, according to Roy (1986), if it served as a buffer state that was able to impose its will on the tribes thanks to the financial subsidies and arms provided by the British between 1880 and 1919. Shahrani (1998) goes even further, arguing that the establishment of modern state apparatuses in Afghanistan was the direct result of colonial intrusions by the British, followed by the repressive Pashtunization policies of successive rulers; these redistributed resources in favour of the ruling group to the detriment of non-Pashtun ethnicities, which were subjected to a form of internal colonization. Nonetheless, the expansion of the Afghan state brought into existence a new stratum of bureaucracy which, although subject to the patronage of the officials’ tribe (*qawm*), was detribalized in a sociological sense; this was an urban-dwelling, Dari-speaking elite that was cut off from its tribal origins and without attachment to tribal codes. Since attempts at modernization, including reforms affecting the status of women, always emanated from this establishment, it is pertinent to trace its evolution.

II.A.

women’s rights: a contested terrain

Issues surrounding women’s civic and citizenship rights need to be placed in the context of evolving state–society relations in Afghanistan, where the place of Islamic law and practice has become central to political contestation. Both modernist measures and conservative reactions have

been instigated primarily by men contending for state power, with limited mobilization for social change among women. Most of the measures to expand, restrict and regulate women’s participation in Afghan society over the past two centuries may be attributed to “state actor efforts at expanding or limiting centralized state control” (Zulfacar, cited in Azarbaijani-Moghaddam 2004:95).

The history of formal rights for women in Afghanistan is often traced to the reign of Amir Abdurrahman Khan (1880–1901), who is considered the founder of the modern Afghan state.⁶ He passed legislation that forbade child and forced marriages, and supported inheritance and divorce rights for women in line with the provisions of the *shari’a*. The enforcement of *shari’a* represented a modernizing and centralist impulse in a context where customary tribal law prevailed. Abdurrahman’s recourse to the *shari’a* was accompanied by an attempt to integrate the clergy with the secular institutions of the state through control of the *madrassas* (religious schools) and the *waqf* (pious charitable foundations). As Roy (1986) points out, these reforms were of a pragmatic nature and, unlike some of his successors, Abdurrahman did not target the mores of society but sought legitimacy within the framework of the traditional exercise of power, sanctioned by the tribal council and the religious establishment.

At the turn of the century, Afghanistan was not immune to the reformist and nationalist currents that held sway in Turkey, Iran and Egypt. The currents of pan-Islamism, anti-colonialism and nationalism were imported by “Young Afghan” intellectuals such as Mahmud Tarzi, who returned from exile in Ottoman Turkey and went on

⁶ The “Iron Amir”, who made the first attempts at establishing a modern state, separated the public from the court treasury, introduced a system of public accounts and tax collection extending into the provinces, and rationalized a system of local administration more directly subject to royal authority.

to introduce a new press (his influential bi-weekly newspaper *Siraj al-Akhbar* appeared from 1911 to 1919). Like other contemporary Muslim reformers and modernists, Tarzi supported the cause of women's advancement and education because the welfare of future generations, and by extension the welfare of the Muslim community, depended on enlightened wives and mothers and their moral influence on youth. Tarzi and his followers also took it upon themselves to interpret religious texts in progressive ways, setting up a tension between the new intelligentsia and the clergy.

A key turning point came in 1919 with the accession to the throne of Abdurrahman Khan's grandson, King Amanullah, who was deeply influenced by "Young Afghan" ideology. By the late 1920s, Afghanistan had one of the most progressive bodies of legislation in the Muslim world, including a family law passed in 1921 banning child marriage, freeing widows from the domination of their husbands' families, requiring judicial permission before a man could take multiple wives and removing some family law questions from the jurisdiction of the *mullahs* (Muslim clerics). His wife, Queen Soraya, opened the first girls' school in Kabul and education was made compulsory for all Afghans. These reforms, however, had little effect beyond elite groups in Kabul, and quickly gave way to a backlash from the *ulama* and tribal groups. The overthrow of King Amanullah in a tribal insurrection led by Bacha Saqqao in November 1928 resulted in the total abolition of all progressive legislation and measures affecting women. Polygamy laws were reinstated, all modern schools were closed, female students abroad were recalled, libraries, laboratories, palaces and the royal museum in Kabul were ransacked and books burned. Although this government was short lived, it took almost 30 years for the strictures placed on women to relax.

The compromises Nadir Shah, cousin of King Amanullah, had to make to consolidate his rule after he quelled the insurrection are deeply significant. He made great concessions to the religious hierarchy, guaranteeing the complete autonomy of *shari'a* courts. By granting the *ulama* broad powers but reserving for the monarchy the right of final appeal, Nadir Shah made a deliberate though indirect attempt to use the powers of the religious establishment to extend the jurisdiction of the monarchy over the tribal territories (Gregorian 1969:305). Among the casualties of these compromises were women's rights. A major concession was made to anti-Amanullah forces in the 1931 constitution (which was in force until 1964), which omitted any mention of women or their rights.

Nadir Shah's son, Zahir Shah, put more progressive policies back on track by reopening girls' schools and declaring Kabul University co-educational. The government led by Prime Minister Mohammad Daoud (1953–1963) announced its support in 1959 for the voluntary removal of the veil and an end to seclusion. This served to legitimize women's public presence and increased their involvement in professional life. In 1964, a new secular constitution was passed which included principles of free speech, civil rights and, for the first time, universal suffrage.⁷ The first Afghan elections were held under this constitution in 1965. It is estimated that around 15–20 per cent of urban women voted in the election, and a few women were even elected although the overall participation of women remained extremely low.

The closing years of Zahir Shah's reign were a period of political ferment, and the PDPA was formed by a small group of the Afghan intelligentsia in 1965. Women activists were also part of this movement and founded the Democratic Organization of Afghan Women (DOAW).

7 The Bonn Agreement of 2001 endorsed the provisions of the 1964 Constitution until the ratification of the new Constitution in 2004.

Their demands included social guarantees such as the right to work, paid sickness and maternity leave, and equality for women.⁸ This was also a period of overt dissent when women were visible in protests.⁹

In 1973, a coup by Mohammad Daoud ousted Zahir Shah, forcing him into exile. This short-lived episode was followed by the PDPA's seizure of power in April 1978 (the Saur Revolution) and the establishment of the Democratic Republic of Afghanistan (DRA). The PDPA pushed through a number of radical reform measures, including land reform and a complete overhaul of family legislation.¹⁰ The use of heavy-handed tactics to implement literacy programmes for women by force (countless refugees pouring into Pakistan in the summer of 1979 cited these measures as a cause of their departure) were countered by the killing of government cadres who were seen as representatives of an unwanted revolution. Interpretations of women's involvement as PDPA activists have varied. Some critics suggest they were totally co-opted into or made party to what Dupree called "the purposeful manipulation of the women's movement as an appendage to national politics" (Dupree 1984:308). Nonetheless, this was a period that saw the emergence of politically powerful female cadres for the first time.

The United States, pursuing a policy of Cold War by proxy, provoked the Soviet invasion of Afghanistan in 1979 by financing the Islamic *mujahidin* uprising. After the PDPA regime invited the Soviet army to consolidate its threatened power, Afghanistan became an active theatre of civil war. The withdrawal of Soviet troops in 1989 was followed by a brief spell during which President Mohammad Najibullah, from the moderate faction of the PDPA, held on to power with Soviet backing until 1992. By this time, different *mujahidin* factions had captured large parts of the country and government troops had defected in large numbers. The period of factional fighting that followed was marked by gross abuses of human rights as various commanders killed, pillaged and raped with impunity. Niland (2004) notes that discrimination and violence against women (enshrined in decrees stipulating various restrictions on women's dress and mobility by the government led by President Burhanuddin Rabbani, whose forces took Kabul in 1992) went unnoticed, despite the fact that human rights violations were documented in various reports. These included abduction of women, rape, forcible marriage to commanders and being sold into prostitution. The Taliban's claim to be restoring law and order through the imposition of a strict variant of Islamic law was welcomed in some quarters because it rode on the back of excesses committed during the *mujahidin* regime. However, the harshness of Taliban rule quickly became apparent, and by the late 1990s became a concern for the international community, which had virtually ignored the plight of ordinary Afghans for decades.

The Taliban came to power with the backing of Pakistan and were the product of a generation of Pashtun refugee boys trained in exile in *madrassas* that schooled them in the conservative Deobandi tradition. The Taliban's mistreatment of women was made visible through the activities of the Office for the Enforcement of Islamic Virtue and the Prevention of Vice, which imposed a virtual state of curfew on women and enforced mandatory covering under the *burqah* (veil), with severe punishments for infractions.¹¹ The Islamic credentials of the regime, crucial to retaining the loyalty of fighting forces drawn from *madrassas*, could be best expressed through

8 This was taking place in a context where women's participation in paid work force was severely limited. According to World Bank figures, in 1975 only 8 per cent of girls had primary schooling (compared with 44 per cent of boys) and only 2 per cent had secondary education (13 per cent for boys). Other indicators were equally adverse, with a life expectancy of 37 years and infant mortality rates of 35 deaths per 1,000 births (World Bank 1988).

9 Hundreds of girls demonstrated in 1968 when conservative members of parliament proposed to enact a law prohibiting girls from studying abroad. In 1970, 5,000 girls took to the streets of Kabul in protest against two conservative *mullahs* who opposed women's public presence by shooting at the legs of women in Western dress and splashing them with acid (Dupree 1984).

10 The limitations of these measures and their reception in Afghan society are chronicled in Hyman (1984). On family reform see Nancy Tapper (1984).

11 Dupree 1998a; Marsden 1999; Rashid 2000.

the strictest control of women (Rubin 1997). The damage inflicted by Taliban decrees was extensive; whereas previously 70 per cent of teachers, almost half of civil servants and 40 per cent of doctors had been women, they were altogether banned from paid employment, including trade, and prohibited from leaving their homes without a *mahram* (an immediate male relative). For war widows who had become the sole breadwinners of their families, this meant levels of destitution that reduced many to begging or prostitution. By the time the Taliban were ousted in the aftermath of the 11 September 2001 attacks on the United States, the plight of Afghan women under their rule had become widely publicized as one of the humanitarian issues justifying intervention.

The Bonn Agreement of 2001 included a clearly stated commitment to mainstreaming gender issues and redressing past injustices. However, the limitations of these undertakings must be clear in a context where security continues to be extremely precarious, where viable governance structures are far from established, and where the contacts of the majority of women in Afghanistan with state apparatuses, markets and civil society organizations are limited to the point of being non-existent. The life options of women are conditioned by the fortunes of the communities and households in which their livelihoods and everyday lives are embedded.

Although the dislocations experienced over two decades of civil war, compounded more recently by a severe drought, have received detailed attention in studies of the political economy of conflict and livelihoods in Afghanistan,¹² the gender effects of these upheavals are poorly understood. The demographic landscape of war-torn societies displays declining male populations, changing structures and compositions of households, sharp increases in the number of widows and female-headed households, and a majority of women and children among the displaced in refugee camps. In Afghanistan, where there is a strong norm of male responsibility for the protection of women in the domestic domain, these dislocations may be experienced not merely as economic disasters and humanitarian tragedies but as normative and moral crises that demand regulation, sometimes through violent and ideological means. The contradictory effects of war and displacement on age and gender hierarchies in households and communities, both unsettling and reinforcing aspects of patriarchal control, have yet to be investigated.

12 Rubin 2000; Pain and Goodhand 2002; Pain and Lautze 2002; Bhatia et al. 2003; Cramer and Goodhand 2002.

III.

the legacies of conflict: is there a gender sub-text?

It has become commonplace to acknowledge that women and men experience conflict and war differently; they may be exposed to different types of hazard and vulnerability, and have different stakes in peace-building and stability.¹³ This acknowledgement is enshrined in UN Security Council Resolution 1325 on “Women, Peace and Security”, whose provisions are geared to mainstreaming gender into conflict prevention and resolution, peace-

building and reconstruction efforts. Integrating the provisions laid out in Resolution 1325 into peace-building efforts in Afghanistan appears, at present, to be a distant goal. Moreover, the implementation of these provisions first requires an adequate understanding of the effects of war in Afghanistan and their implications for women, men, the young and the old.

There are striking differences in the tone and content of writings on the political economy of conflict in Afghanistan and those dealing with gender relations and the status of women. The former demonstrate that the war economy in Afghanistan has brought about a profound transformation in social relations, changing a country with a predominantly rural economy based on subsistence agriculture and pastoralism into the world’s largest producer of opium, a centre for arms dealing and smuggling, whose criminalized economy funded local warlords, including the Taliban. Unlike writings on political economy that acknowledge change, writings on women and gender often presuppose a world of unchanging tradition and cultural stasis. Although the socio-demographic consequences of war are broadly acknowledged, the implications of these upheavals for gender relations remain largely unexplored. Even the excesses of the Taliban have at times been explained away with reference to some unchanging cultural tradition, briefly and aberrantly interrupted by the attempted reforms of an urban-dwelling elite. Some commentators went so far as to treat women’s subordination and lack of mobility in Afghanistan as endemic to local culture, and argued that Taliban policy was simply “the continuation of institutionalised structural and personal violence against women in Afghanistan” (Bill 2002:98). It is, therefore, worth rehearsing the main thrust of the socioeconomic transformations that took place between the Soviet invasion and the fall of the Taliban, with a view to teasing out some of their implications for social relations in general and gender relations in particular.

Rubin (2000) offers a useful periodization of the stages of the development of a war economy in Afghanistan that helps to shed some light on changing gender regimes. The pre-war economy of the 1970s was split between a largely subsistence rural sector and an urban economy dependent on a state that received most of its revenue from foreign aid (which in the 1960s accounted for over 40 per cent of the budget). When aid declined, other rentier incomes (such as exports of natural gas from northern Afghanistan to the Soviet Union) continued to finance nearly half the budget. Changes in the role of women, such as access to education and professional employment, had been entirely urban phenomena that depended on an expanding state sector. The eventual loss of legitimacy and collapse of the state eroded the already weak institutional support for women’s public roles. The period of upheaval and insecurity that followed not only reversed formal gains in women’s rights, which in any case had little purchase in the vast rural hinterland, but also produced profound changes in social relations.

During the Soviet occupation (1979–1989), the growing dependence on politically motivated humanitarian aid, the destruction of the rural economy through counter-insurgency operations, the forced displacement of rural populations to Afghan cities and to refugee camps in Pakistan and Iran, the creation of refugee-warrior

13 Moser and Clark 2001; Cockburn 1998; Jacobs et al. 2000; Rehn and Sirleaf 2002.

communities in the diaspora and a rapid monetization of the economy constituted significant landmarks in the transformation of society. Between 1979 and 1992, an estimated six million people—more than a fifth of the population—fled their places of origin to become refugees or internally displaced people (IDPs). The destruction of the rural infrastructure not only impoverished the rural population (with food production falling by between half and two-thirds) but also weakened the elites whose power depended on the control of rural resources. Roy (1986) chronicles some of the profound social changes brought about by the Afghan resistance, namely the decline of the political power of the *khans* (landlords), the growing influence of the *ulama*, and the rise of Islamist parties, local commanders and autonomous groups as key players. The infrastructure of support for the resistance funnelled cash into new social networks that skimmed off the profits to invest in smuggling and other businesses, most importantly those deriving from violations of the Afghan Transit Trade Agreement (ATTA) between Pakistan and Afghanistan. The transport infrastructure available for smuggling activities was also deployed for the arms and drugs trades. This led to the growth of new strata controlling the profits from these activities.

Much of the evidence about the condition of women during this period is derived from studies carried out in refugee camps.¹⁴ These studies point to contradictory trends. On the one hand, there was evidence of the reinforcement of patriarchal controls over women, partly due to the insecurities of life in exile and partly as a response to the ideology of the various *jihadi* parties that acted as gatekeepers for the distribution of international aid. On the other hand, for many, this was their first exposure to health, education and other social welfare services, which were largely absent in the rural areas from which they originated. Many women in these uprooted communities experienced new forms of service provision as recipients of humanitarian aid. Communities sending out male combatants also burdened women with new types of responsibilities in the day-to-day management of their households. Some became involved in income-generation projects run by non-governmental organizations (NGOs) in refugee camps. Meanwhile, the urban and literate women of the diaspora started forming women's NGOs during their years of exile. One of the best known and most controversial among these, the Revolutionary Association of the Women of Afghanistan (RAWA), was founded in 1977 and engaged in political campaigning and advocacy, alongside humanitarian assistance for women and children.¹⁵ The number of Afghan women's NGOs operating in the diaspora increased, establishing women as civil society actors. The limited mobilization of women during the periods of state-led modernization in Afghanistan received a new impetus through the experiences of displacement and exile.

The Soviet withdrawal in 1989 resulted in reduced external aid and a fall in revenues at a time when the Soviet-supported Najibullah government was engaged in an expensive policy of "national reconciliation", increasing the economic dependency of the population on the state. The government responded by increasing the money supply, leading to a rapid fall in the value of the afghani against the dollar and to soaring inflation. The destruction of agriculture and trading networks caused a food deficit that could only be palliated by reliance on either food aid or cash purchases at inflated prices. This produced unprecedented incentives for cash-producing activities, mainly smuggling of consumer goods and growing of opium. The latter became the principal expanding source of cash incomes, providing casual work for the landless and opportunities for credit and cash advances for smallholders and sharecroppers.

The fall of Najibullah in 1992 swept the mainly non-Pashtun *mujahidin* into power. Led by President Rabbani, the Islamic State of Afghanistan failed to establish control of most of the country's territory beyond the capital

14 Christensen 1984, 1988, 1990; Howard-Merriam 1987; Azarbaijani-Moghaddam 2001.

15 The Feminist Majority in the United States did a great deal to promote RAWA during the period of anti-Taliban mobilization. However, RAWA's exclusionary stance vis-à-vis other women's groups and Afghan women in the diaspora marginalized them at a time when the realpolitik of coalition tactics among different factions and ethnic groups required moderation (Thrupkaew 2002).

and its non-Pashtun ethnic base in the northeast. Regional warlords acted with impunity and perpetrated forms of predation and extortion that disrupted trade and the national market. Increasingly, the regions became disarticulated from the national economy and integrated with neighbouring foreign markets, creating a “regionalized” war economy (Cramer and Goodhand 2002). This period of lawlessness was witness to some of the worst human rights abuses and crimes against women, but failed to attract interest beyond Afghanistan—a situation that would be dramatically reversed after the coming to power of the Taliban. The legacy of fearfulness and insecurity of this period should not be underestimated.

After they emerged in 1994, at the height of the civil war, the Taliban gradually took over the country until by 1998 they controlled most of Afghanistan, including the main roads, cities, airports and customs posts. They implemented a transition “from localized predatory warlordism to weak rentier state power based on a criminalized open economy” (Rubin 2000:1793). They were backed by a variety of constituencies with an interest in ending predation, from foreign oil companies wanting to secure Afghanistan as a pipeline route to Afghan and Pakistani cross-border traders whose activities and profits were hit by growing insecurity (Rashid 2000). The Taliban promised to restore the rule of law, albeit through a particularly harsh application of *shar’ia* that owed as much to rural Pashtun mores as it did to Islam. The strictures that the Taliban placed on women might have been tolerable in the Pashtun southern belt, the heartland of the Taliban inner leadership, but this was certainly not the case in urban centres such as Herat and Kabul, which felt alienated from and brutalized by the new power holders.¹⁶ The “pious” image the Taliban tried to project was tainted by the atrocities they committed during the capture of Mazar and in the Central Highlands. The abduction and forced marriage of women by Taliban forces and the recruitment of young men as fighters, on pain of having to pay heavy levies to avoid being drafted, were among the various abuses visited on local communities.

The brutal gender regime imposed by the Taliban represented a major break with “traditional” forms of social control in various ethnic communities across Afghanistan. Decisions relating to the dress and mobility of women and to relations between the sexes, which had previously been monitored by households, kinship groups and community elders, could now be mandated by decree and enforced by groups of armed young men, sometimes with little regard for local hierarchies. This not only oppressed women but potentially disempowered non-Taliban men by robbing them of their prerogatives.

The important distinction Bourdieu (1977) makes between “doxa” as the unquestioned, self-evident premises that regulate social life and “orthodoxy” as an ideologized and therefore transformed reworking of these premises, requiring heavy-handed and violent forms of enforcement, would appear to apply to the rule of the Taliban. Misidentifying or misinterpreting what are, in effect, reactive behaviours of ordinary people by treating them as mere extensions of local custom is an ever-present danger in such contexts. To take but one example, the marriage of underage girls against the payment of brideprice, sometimes to much older men, is often invoked as a common and continuing violation of their rights. The ethnographic record suggests, however, that this type of exchange brings no honour to the bride-givers (Tapper 1991). Recent studies on asset depletion and poverty show that the marriages of girls as young as seven or eight years old to older men sometimes represent “distress” sales to secure food or cash (Lautze et al. 2002). Likewise, households sending young daughters away to marry a kinsman in another region have adopted this course of action as a protective strategy against the predations of young armed men who were forcibly taking brides.¹⁷ There is every reason to believe that particular combinations of new pressures with existing practices act in complex ways to produce grave outcomes that deepen women’s

¹⁶ For a vivid account of resistance to the Taliban, see Lamb (2002).

¹⁷ Interview with a family in Kandahar, September 2002.

(and children's) vulnerabilities.¹⁸ Rubin (2004), for instance, draws attention to the fact that warlords and drug traffickers who keep cultivators in debt bondage stimulate the resort to "giving" their daughters to traffickers as wives. The loss of personal and community autonomy in the context of the "commander system" that enmeshes clients in bonds of indebtedness and dependence also increases vulnerability to abuses of various kinds. In some contexts, heavy veiling by women may itself be a defensive response to predatory parties exercising *droit de seigneur* rather than an expression of religion or culture (Wood 2003). Indeed, interpreting these patterns as some unmediated expression of local culture only acts to conceal the complex nexus of influences that deepen the vulnerability of women and girls.

Despite the serious pressures women were subjected to, there is some evidence that women's solidarity networks and organizations, some of which operated clandestinely under the Taliban, acted as a medium of both political resistance and empowerment (Povey 2003). Organizations such as the Union of Afghan Women, the Women's Vocational and Training Centre and the Women's Association of Afghanistan, to name but a few, mobilized professional women who offered their services as doctors or teachers, offering literacy classes and skills training to numerous girls and boys in homes turned into clandestine schools. Indeed, Johnson and Leslie (2002) point out that the war years stimulated the demand for girls' education, partly due to exposure to schooling in refugee camps. Some UN agencies and NGOs endeavoured to safeguard humanitarian assistance projects targeting women and attempted to keep their female staff in employment. There was often a tension, however, between commitment to women's rights and the delivery of humanitarian assistance.¹⁹ Some successful programmes were, nonetheless, able to operate. For instance, bakeries staffed by women were set up by the World Food Programme (WFP) to assist widows and the poorest women by providing them with subsidized bread. The UN Habitat Community Fora, which were created through the "Rebuilding Communities in Urban Afghanistan" project to promote community initiatives, set up women's community fora (WCFs) to provide opportunities for income generation and to support women's community leadership roles. The WCFs operated in difficult conditions under the Taliban, including permanent surveillance and a degree of clandestinity. However, the fact that there were no other avenues for women's professional and community activities meant that women with high levels of education and skill devoted their energies to the fora, which served as training grounds for others. Paradoxically, when the demand for skilled personnel increased after the establishment of the Afghanistan Transitional Authority (ATA), the expansion of the activities of international organizations meant that the best talent was diverted to higher earning jobs in those organizations, diminishing the spirit of voluntarism that animated many women's civil society initiatives.

The fall of the Taliban was the result of Operation Enduring Freedom in the wake of 11 September 2001, which targeted the regime's Al Qaeda backers under the banner of the fight against international terrorism. This operation was carried out by a US-led international military coalition complemented by Afghan opposition factions, many of which had been involved in the devastating civil war of the early 1990s. The international community and the United Nations acted rapidly to bring these factions and the political leadership in the Afghan diaspora together to agree to interim power-sharing arrangements that led to the Bonn Agreement of December 2001.

18 A recent study by the International Organization for Migration (IOM) shows that there is a growing human trafficking problem in Afghanistan, with victims drawn from among the destitute, the displaced and the indebted. Young rural women (and children) are subjected to forced prostitution, forced labour and practices akin to slavery (abduction and forced marriage, exchange of women to settle disputes, or marriage in exchange for debt repayment) (IOM 2003).

19 Agencies like the World Food Programme (WFP) issued directives that at least half the beneficiaries of food-for-work projects had to be women; this resulted in a significant reduction in the food aid made available even to women. Some agencies discontinued their programmes altogether. Others adopted a more accommodating approach, negotiating concessions with respect to the employment of women (with 5,874 female personnel in the international assistance community).

In summary, the years of war and displacement following the Soviet invasion of Afghanistan brought about far-reaching changes in social relations, transforming Afghanistan from a predominantly rural country that provided hard-earned but relatively self-sufficient livelihoods to its population into a fragmented society where a sizeable and growing proportion of the economy is illicit and depends on criminalized networks of trade in drugs, in commodities such as timber and emeralds, smuggling of goods and human trafficking. The production of opium poppy is on the rise in Afghanistan (with a reported increase of 64 per cent in the area sown between 2003 and 2004); it generates over half as much as the country's legal GDP and 87 per cent of the world's illicit production of opium.²⁰

The dismantling of state institutions that underwrote women's formal rights and provided them with access to education and employment opportunities, although important, represents only one aspect of a much more complex set of problems. In a context where the state's interface with local communities, whether in terms of the legal framework, revenue collection or service delivery, has always been relatively limited, an analysis that privileges the policies of successive regimes as a means of explaining changes in women's rights must inevitably suffer from serious limitations.²¹ It must be recognized that the inroads that central administrations made into the inner workings of local communities, especially with respect to the enforcement of state laws, have always remained extremely weak. This has important implications for current attempts at legal and juridical reform that will be discussed later. Women have always been, and remain, wards of their families and communities. The notion of modern citizenship, based upon nationally defined political communities that establish the normative framework for rights and social membership, has limited purchase in a context where the tensions between a precarious centre and ethnically diverse peripheries continue to drive the political agenda. The domestic domain and the control of women are among the most jealously guarded areas in the reproduction of sub-national identities. The appeal of Islamic law to various power holders lies precisely in the possibility of overriding sub-national particularisms in the name of a code that carries universal legitimacy (despite the Sunni–Shi'a divide that singles out the Hazaras as a religious minority).

It does not follow, however, that gender relations have been insulated from the socioeconomic upheavals discussed above. The sociological effects of a war generation of uprooted male youths seeking employment and status as fighters or in the opium economy are poorly understood. In some regions of the country, the opium crop appears to be having a transformative effect on social relations through the creation of a new category of young men with significant financial resources obtained from the opium trade. This is resulting in strained father–son relationships, as well as altering household composition as young men with independent means are establishing separate households (Goodhand 2002). The effects of opium wealth on marriage payments and the incidence of polygamy are also worth exploring.

The scale of displacement occasioned by conflict also had significant consequences. It is in exile as refugees or internally displaced people that many Afghans, including women, have been exposed to urbanization and interfaces with humanitarian service providers, raising new expectations. These expectations now have to be met by an under-resourced state apparatus that is far from having established a monopoly of legitimate coercive power over its own territory, with assistance from a donor community that has so far fallen short of delivering adequate funding for Afghan reconstruction efforts. A women's NGO sector also emerged and flourished during

20 UNODC 2004.

21 Even the writ of the Taliban, who were ideologically committed to a particular version of women's modesty, did not run everywhere. They were most heavy-handed in urban areas, which they considered to be foci of immorality, while nomadic Kuchi women carried on unveiled. The imposition of *burqahs* could furthermore be perceived not so much as the enforcement of Islamic law but, in regions that practised different forms of veiling (such as the Iranian *siyah chador* which leaves the face uncovered), as an item of Pashtun custom forced on others.

the years of exile, and is continuing to play a role in lobbying for women's rights. New economic pressures have placed some women in breadwinning roles. Many have suffered the loss of male providers. Others have accessed jobs through contact with international aid agencies that provide new avenues of employment. Whereas previously the government was the principal employer of women in urban areas, aid-agency efforts to extend services to women at the rural and provincial levels have expanded the opportunities for educated provincial women to seek employment as health providers, educators or project staff (Azarbaijani-Moghaddam 2004). Although the longer-term impact of these changes is difficult to assess, the advantages of harnessing women's income-earning power in the service of household survival are lost on neither urban nor rural communities. The problem, however, is that women's low levels of education and skill, their restricted mobility and lack of access to markets make their income-generating activities subject to exploitative relationships that offer limited potential for empowerment.

Currently, routine violations of women's human rights in Afghanistan are over-determined by independent but partially overlapping and mutually reinforcing sets of influences: the gendered disadvantages inherent in the marriage, inheritance and daily social practices of various ethnic communities are aggravated by the loss of the cushioning effects of family ties and obligations, which have been eroded through poverty and displacement. When the most vulnerable are left to fend for themselves, they become easy prey to forms of exploitation ranging from debt *peonage* to human trafficking. The dynamics of gendered disadvantage, the erosion of local livelihoods, the criminalization of the economy and insecurity at the hands of armed groups and factions are analytically distinct phenomena, yet their effects combine seamlessly to produce extreme forms of female vulnerability. Issues of gender justice and equity cannot be adequately addressed unless they are put firmly in the context of the multiple transitions Afghanistan must undergo in the process of reconstruction: a *security* transition (from war to peace), a *political* transition (to the formation of a legitimate and effective state) and a *socioeconomic* transition (from a "conflict" economy to sustainable economic growth). In what follows, an attempt will be made to evaluate the efforts made to address these issues in the context of institution-building and peace-consolidation efforts initiated after the Bonn Agreement in 2001.

evolving institutional frameworks and women's rights: potentials and limitations

The post-Bonn policy agenda on gender mainstreaming and women's rights is evolving in a turbulent field of forces, involving global and local players that seek diverse and not always mutually compatible goals. Since the situation remains fluid, a necessarily limited attempt will be made to capture the broad outlines of developments in the period separating the Bonn Agreement in 2001 from the presidential election in October 2004.

The UN system and the international donor community have been inviting the government of Afghanistan to comply with international standard-setting instruments, including those that safeguard the rights of women, in a context where the internal political process necessitates numerous compromises between contending political factions. The most visible efforts at addressing gender equity issues have, so far, focused on women's civic rights and have centred on governance and legislative reforms. The political representation of women and the constitutional process have been particularly high-profile areas for advocacy and mobilization. The creation of a national machinery for the advancement of women, also a product of the Bonn Agreement, has provided a focus of donor activity and programmatic efforts at gender mainstreaming.

However, the vast majority of women in Afghanistan have limited direct contact with state, civil society or market institutions. Domestic legal frameworks and the judicial system are not geared to enforcing the standards set by international human rights instruments, nor do national frameworks necessarily have any purchase on communities and households at the local level.²² Furthermore, human development indicators such as health and education show that women in Afghanistan are among the most underprivileged in the world.²³ According to the UNDP Human Development Index (cited in Sedra and Middlebrook 2004), the level of poverty in Afghanistan is second only to Sierra Leone, with an average per capita income of \$300 (including opium profits) and an estimated non-drug related GDP of \$4 billion. The repatriation and resettlement of refugees and internally displaced people put further pressures on a weak infrastructure for service delivery and secure livelihoods. Only sustained, long-term investment in security, infrastructure and social services will have any appreciable impact on the most basic rights to human safety, food, water, adequate shelter, health and education.

At a conference in Berlin (31 March to 1 April 2004), the Afghan government presented the donor community with its plan for rebuilding the country, spelt out in a detailed policy document titled *Securing Afghanistan's Future: Accomplishments and the Strategic Path Forward* (Government of Afghanistan/International Agencies 2004). The level of aid required was estimated at \$27.5 billion over seven years. This would raise the level of per capita assistance from \$67 to \$182 per year, a figure still below allocations made to other post-conflict countries.²⁴ The stark scenario put before the Berlin conference was that without this injection of cash the vicious cycle of insecurity, the growth of the criminal economy and the slow pace of reconstruction would not be reversed, threatening descent into long-term instability and creating a haven for warlords and drug-traffickers (Care International and the Center on International Cooperation 2004).

22 Wardak (2004) argues that, in any case, the formal Afghan justice system was elitist, corrupt and involved long delays, so that most Afghans avoided contact with it and resorted to informal dispute resolution mechanisms through tribal *jirgas* and village *shuras*.

23 The province of Badakshan is reported to have the highest rate of maternal mortality in the world at 6,500/100,000. Literacy rates in Afghanistan continue to be among the lowest in the world. Only about 47 per cent of men and 15 per cent of women in Afghanistan can read.

24 The figure for January 2002 to March 2003 was \$67 per capita in Afghanistan, compared with \$249 in Bosnia-Herzegovina between 1995 and 1997, \$256 per capita for Timor (1999–2001), \$219 for the West Bank and Gaza (1994–2001) and \$98 for Rwanda (1994–2001).

This is the backdrop against which gender-mainstreaming efforts in the process of reconstruction and institutional reform in Afghanistan must be evaluated. An important caveat must be the recognition that focusing on government programmes and policies suffers from self-evident limitations in a context where the transition from war to peace is still incomplete and where the illicit economy, and those who profit from it, continue to command substantial resources and to fuel continuing instability. Nonetheless, despite the currently limited reach of the institutional framework created by the Bonn Agreement, there have been some successful attempts to put the issue of women's rights on the policy agenda. These attempts are discussed below.

IV.A.

landmarks in state-building: the Bonn agreement and the national development framework

Writing a year after the fall of the Taliban, Thier pointed to several intertwined strands of “intervention and entropy” in the political transformation of Afghanistan: the (re)creation of a central state, the continuing “war on terrorism”, and a relapse into division and conflict in the countryside (2004b:39). Three years on, these parameters broadly appear to hold. Nonetheless, the Bonn

Agreement laid out a framework and timetable for state-building and peace consolidation in Afghanistan. The agreement endorsed the establishment of “a broad-based, gender-sensitive, multi-ethnic and fully representative government”.²⁵ This was not a conventional peace agreement, however, since not all the warring parties were represented and it lacked specific and actionable clauses on disarmament, demobilization and reintegration (DDR) (Rubin 2003). Instead, it was an externally mediated power-sharing arrangement between the Northern Alliance and the international community, leading to a peace that was fragile because of both opposition from those who remained outside the nascent Bonn framework and the uneasy stalemate between the armed factions within it.

The Agreement laid the groundwork for several institutional developments with a direct bearing on the representation of women's interests:

- the creation of an interim authority with a life-span of six months, to be superseded by a transitional authority, chosen by an Emergency Loya Jirga (ELJ) to lead the country until such time as a government based on free and fair elections can come into being
- the drafting of a new constitution, to be approved by a Constitutional Loya Jirga (CLJ) that would be convened two years after the Bonn Agreement
- the establishment of a Ministry of Women's Affairs (MOWA) charged with mainstreaming gender into the policies and programmes of the line ministries to ensure that gender equity concerns are addressed.

By the time of the fall of the Taliban, Afghanistan's formal economy was entirely dependent on external resources. The Bonn Agreement created a concept of Afghan sovereignty that, in the absence of the most basic functions of statehood (fiscal management, internal security and social service provision), required a great deal of effort if it was to become a reality. One of the first priorities of the interim administration was to

25 The Bonn Agreement Preamble.

steer international aid into nationally owned programming mechanisms that would provide direct support to the state. In April 2002, on the occasion of the first donor conference held in Kabul, the government launched a National Development Framework (NDF) as a key instrument for attracting funds towards an “integrated” developmental approach. The NDF grouped its programmes under three main pillars: Humanitarian Assistance; Human and Social Capital, Physical Reconstruction and Natural Resources; and Private Sector Development—with gender as a cross-cutting theme.

After the Bonn conference, despite the donors’ public commitment to the government, a disproportionate share of assistance continued to be channelled through external mechanisms, particularly through UN agencies.²⁶ By late 2002, the government developed a new mechanism of consultative groups (CGs) to co-ordinate assistance around the priorities of the NDF.²⁷ This exercise brought donors more closely into the national policy and planning process and assisted in the preparation of Afghanistan’s annual budgets for presentation to international donors and creditors.

The October 2002 National Development Budget called for an effective institutional mechanism for mainstreaming gender and assuring co-ordination among ministries. In order to mainstream “cross-cutting” concerns (gender, environment, humanitarian affairs, human rights and monitoring and evaluation), the consultative group structure is supplemented by advisory groups that are responsible for putting their respective issues on the agenda for CG policy discussions.²⁸ The United Nations Development Fund for Women (UNIFEM) acted as the focal point of the Gender Advisory Group (GAG) and took on a lead role in capacity building for the Ministry of Women’s Affairs (MOWA).

IV.B.

gender mainstreaming and the role of national machinery

In 2002, MOWA was established as the first national machinery for the advancement of women in Afghanistan. Its mandate is to mainstream gender throughout government policies and programmes. The Ministry was allocated minimal resources for its own programmes in the national budget exercise, partly as a result of the govern-

ment’s policy of gender mainstreaming. It relied primarily on technical and financial assistance from the donor community for its support.

In addition to MOWA, the Office of the State Minister for Women (OSMOW) was established, reporting directly to the President, to provide policy guidance with particular reference to the legislative and judicial reform processes. The Afghanistan Independent Human Rights Commission (AIHRC), whose mandate is to promote and protect human rights, is also tasked with the advancement of women’s rights under one of its five programme areas. Finally, the Gender Advisory Group assists with gender mainstreaming, as a donor–government co-ordination body, through the CG mechanism.

²⁶ Many donors remained unconvinced that direct budgetary support would translate into efficient and accountable spending by a potentially corrupt administration with weak ties in the provinces.

²⁷ CGs, headed by a lead ministry, consist of working groups comprising ministerial staff, donors and NGOs.

²⁸ Advisory groups consist of ministerial staff, donors, UN agencies and civil society actors.

MOWA started out with various limitations. Situated in a compound occupied by the PDPA-era Women's Association, it initially absorbed a large proportion of that body's former, unspecialized staff, augmented by new political appointments. There was an understandable tension between the aim of providing jobs, however modestly paid, to women who had been denied opportunities under the Taliban, and the professionalism required of a new civil service that was meant to be equipped with budgetary expertise and planning resources. The wholesale absorption of highly qualified Afghan civil servants into aid agencies was noted, more generally, as part of a brain-drain that caused a critical shortage of English-speaking staff able to engage with the international community (Sedra and Middlebrook 2004). This was particularly acute among female cadres since the original pool of talent was even more restricted. The best qualified were attracted into better-paying jobs in international organizations, from NGOs to the UN system.²⁹

A related constraint was that MOWA staff, even at the most senior levels, lacked familiarity with the strategies for gender advocacy and planning deployed in other countries. Gender-training workshops conducted by UNIFEM aimed to increase their exposure to these strategies and to provide the necessary technical know-how. The workshops were also made available to gender focal points that were established in line ministries. Despite these focal points, however, there appeared to be relatively limited meaningful gender programming.³⁰ Afghan staff in the UN system, familiar with both the requirements of the international donor community and the political pressures on the Afghan administration, played a key role as intermediates between these different constituencies and in easing a steep learning curve.

MOWA is attempting both to develop a national gender-mainstreaming strategy and to implement donor-funded initiatives that target women through local partnerships with NGOs. It co-operated with the GAG to formulate its Public Investment Programme (PIP), entitled "Advocacy and Support for the Integration of Gender into the National Development Budget", with projects totalling \$892 million. This proposed PIP was passed and approved by the Ministry of Finance Budget Committee in January 2004. Several donors—including the UNDP, UNIFEM, the Japan International Cooperation Agency (JICA) and the Asian Development Bank—are providing support and technical assistance for the development of a gender-mainstreaming framework.

Part of MOWA's budget was devoted to the establishment of women's development centres (WDCs) in selected provinces to provide women with access to skills training, health, literacy and civic education. This meant that MOWA needed to establish linkages with NGOs and civil society partners at the local level. It is as yet too early to judge the effects of these initiatives. It would be important to monitor the degree of synergy in Ministry-NGO relations and to assess the extent to which women's civil-society initiatives are fostered (or otherwise) by the Ministry. In particular, it would be worth investigating the effects on the women's NGO sector of being redefined as subcontractors for government-sponsored programmes. There are no systematic evaluations to date that could shed light on these issues.

The establishment of a national machinery for the advancement of women is clearly in its early stages, with a strong donor focus on capacity building. It is, as yet, difficult to assess the outcome of these efforts. An area of relative success in which the international community, government bodies and women's civil society organizations

29 Alongside this brain drain, the reliance on a "second civil service" consisting of well-paid consultants, advisors and employees of international agencies and NGOs is presented as a major hindrance to state-building (World Bank 2004).

30 There were some notable exceptions. The Ministry of Foreign Affairs has created an Office of Human Rights, Health and Women's Affairs to monitor women's programmes. The Ministry of Commerce set up a department to help women establish their own businesses. The Ministry of Rehabilitation and Rural Development has also created a gender unit that informs the programmes implemented by the Ministry. There are plans to expand gender units in 11 key ministries.

have acted with some degree of synergy was evident in the process leading to the Constitutional Loya Jirga and the ratification of the new Constitution in January 2004. Afghanistan has emerged from this process with a new state structure based on a presidential democracy and supported by a bicameral national assembly (comprising a Lower House, *Wolesi Jirga*, and an Upper House, *Meshrano Jirga*) where the political representation of women has been enshrined in law.

IV.C.

from the emergency loya jirga to the new constitution: a step forward

The Emergency Loya Jirga (ELJ) held in June 2002 offered the first opportunity in the post-Taliban period to include a wide range of voices and constituencies in the political process. It called for seats for 1,501 delegates, of which 160 were reserved for women, although in fact more than 200 women participated. A woman candidate even ran

against Hamid Karzai for president. However, the ELJ did not set a good precedent for women's participation: there were widespread reports of intimidation of women delegates and their supporters, and many women delegates pointed out that they were not able to speak during the plenary session as their microphones were cut off, in clear violation of their right to freedom of expression.

The Constitutional Loya Jirga (CLJ) marked a clear advance in this respect and revealed a growing potential for mobilization and lobbying around women's rights issues.³¹ On 4 January 2004, a 502-member Loya Jirga approved the new constitution, following three weeks of heated debate.

Women were eligible to participate in the CLJ as delegates through both regular and special category elections, in which women electors gathered to vote for delegates.³²

A presidential decree on the composition of the Constitutional Loya Jirga (CLJ) contained a number of provisions to ensure that at least 19 per cent of the 500 seats went to women:

- Sixty-four delegates, two from each province of Afghanistan, would be women directly elected by female constituencies in special category elections.
- About six (15 per cent) of the 42 delegates elected by representatives of Afghan refugees in Pakistan and Iran, internally displaced persons, nomads, Hindu and Sikh would be women.
- Of the 50 presidential appointees, 25 would be women

31 All delegates to the CLJ attended orientation sessions in 26 groups that included between six and eight women delegates. The facilitators of these sessions had opportunities to meet the women separately and helped them to develop a common agenda.

32 Special category elections were held for women, refugees, internally displaced persons (IDPs), Kuchis, and Hindus and Sikhs. A National Advisory Committee for Women's Elections was created to advise the Secretariat of the Constitutional Commission, UNAMA and the Presiding Officer. Women's organizations submitted names of potential delegates to the CLJ prior to the women's elections themselves, where women delegates to the CLJ were chosen.

As a result, women constituted just under a fifth of the Loya Jirga delegates, and assumed some positions of authority in the CLJ itself.³³ Women delegates were also able to make their voices heard, despite some unfortunate incidents during the proceedings.³⁴

Prior to the CLJ, attempts were made to include women throughout Afghanistan in civic education outreach and public consultations on the constitution. However, the process of consultation drew some criticism. Major shortcomings that were singled out included the absence of a clear legal framework to guide its drafting, limited public education and consultation on the draft constitution, inadequate planning for security and a general lack of clarity about the process itself (International Crisis Group 2003).

There are marked differences in the civic education and participation opportunities available to educated, urban women and those for their non-literate, rural sisters. Women's NGOs were deployed to assist with the necessary outreach to close this gap. For instance, the Afghan Women's Network (AWN), comprising about 24 NGOs and over 1,000 individual members, was involved in civil society efforts to ensure that the constitution took women's views and interests into account. These new demands stretched the capacity of women's groups, however. The experience of involving AWN, along with several other groups, demonstrated that much more support is needed for groups asked to mobilize wider constituencies of women (ACSF/swisspeace 2003). Expanding their reach beyond urban centres to represent a more diverse female constituency and reaching out to both women and men remain significant challenges.

Furthermore, there were substantial delays in all parts of the process, due to the sensitivity of issues such as the balance of power both within the central government and between the centre and the periphery, the role of Islam and the rights of women. As a result, the participation of civil society groups, and women's groups in particular, was compromised as the process became bogged down in the politics of different political factions.

We get some indication of the type of circle the government was trying to square, given the powerful cross-currents of internal politics in Afghanistan, in the phrasing of the paragraph titled "gender" in the National Development Framework. It reads as follows:

... All programs must pay special attention to gender, and not include it as an afterthought. We have to engage in a societal dialogue to enhance the opportunities of women and improve co-operation between men and women on the basis of our culture, the experience of other Islamic countries, and the global norms of human rights

(National Development Framework 2002:96).

33 One of the four deputy chairs of the CLJ was a woman's rights activist, Ms Safia Sidiqi, two of the three secretaries to the CLJ were women, one of the 10 working committees was chaired by a woman, and 11 women served in the Reconciliation Committee out of a total of 40 members.

34 The most notable of these incidents centres around the furore created by Malalai Juya, a young woman delegate from Farah province, who made a speech accusing the *mujahidin* of human rights abuses and inviting them to take their share of responsibility for the destruction of the country. This resulted in a threat of expulsion from the Loya Jirga by the Chairman and furious outbursts by *mujahidin* representatives. Some gathered outside the women's dormitory at the Kabul Polytechnic Institute chanting "Death to Communists". Accusations flew in the *Mujahid* press organs that she was a member of RAWA and an *agent provocateur*. There were protests in the liberal press over her treatment and expressions of support. The UN stepped in to offer Malalai Juya protection and the threat of expulsion was stalled.

Despite an explicit reference to the concept of “mainstreaming”, there was considerable potential for incompatible interpretations of the three terms of the societal dialogue: (a) “our” culture, (b) the experience of other Islamic countries and (c) global norms of human rights. Indeed, when the draft Constitution was eventually released in October 2003, there was a lack of explicit commitment to women’s equality despite the promises made since the Bonn Agreement.

A Gender and Law Working Group (GLWG) was convened to address these issues in December 2002.³⁵ It produced a document released in November 2003 recommending that the draft constitution be amended to:

- refer to “securing equal rights for women and men and eliminating all forms of discrimination and violence against women, equality with respect to citizenship rights, property rights, legal rights”
- include fair and just working conditions
- promote women’s participation in all political, economic, social, cultural civil and other affairs
- provide special health services for mothers and children
- guarantee the rights of and acknowledge the need for assistance to female-headed households, and ensure freedom of choice in marriage and housing rights
- increase the quota of women in the *Wolesi Jirga* from one to two female delegates from each province as well as achieving a gender balance in all phases of the electoral process and laws for the participation of women in the local councils.³⁶

Under the umbrella of a National Advisory Committee on Women’s Elections in the CLJ, a subcommittee for the protection of women’s rights at the Loya Jirga was created to review the recommendations of the GLWG and of various other groups and to highlight common priorities, presented as a Platform for Action for incorporating women’s rights during the Constitutional Loya Jirga.

The pay-off of these efforts was evident in some amendments to the draft Constitution that were accepted and ratified. These were as follows:

- There was an explicit reference to equality between men and women before the law. Article 22 on “Basic Rights and Non-discrimination” which previously referred generically to “citizens” now reads “Citizens of Afghanistan—*whether man or woman*—have equal rights and duties before the law” (emphasis added).
- Article 83 on the “*Wolesi Jirga* and women’s participation” was amended to read that “at least *two* female delegates should be elected from each province” (rather than one in the original wording).

35 The Gender and Law Working Group was convened by the State Minister for Women and the Minister of Women’s Affairs with the support of UNAMA and UNIFEM. It consisted of representatives from the Judicial Reform Commission, the Afghan Independent Human Rights Commission, the Supreme Court, the Attorney General, the University Faculties of Law and *Shari’ah*, and national and international women’s legal and professional non-governmental organizations.

36 Gender and Law Working Group 2003.

- Two vice-presidents were to be elected, instead of one, to allow for greater ethnic representation in the executive branch. This increases the possibility of a woman acting as vice-president.
- There are articles specifically referring to rights of access to public services such as education and health.

There are, nonetheless, several areas that leave room for interpretation and contention. Article 7 of the Constitution requires that the state of Afghanistan “abide by the UN Charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights”. Not only are the mechanisms through which compliance may be monitored not specified, but there may be potential contradictions with other articles.

Article 3 on “Islam and Constitutionality” states that “In Afghanistan, no law can be contrary to the beliefs and the provisions of the sacred religion of Islam”, dropping the original wording in the draft referring to “the sacred religion of Islam *and* the values of the Constitution” (emphasis added). This article, along with its affiliate which declares Afghanistan an Islamic state, is not subject to amendment.³⁷ The Constitution gives the Supreme Court the authority to determine whether laws and treaties made by the government are in accordance with the Constitution, giving it the power to reject any law or treaty deemed un-Islamic. During the deliberations, *jihadi* groups proposed major changes that would have made the Supreme Court’s interpretation of Islam override most of the provisions of the constitution. Although these were largely defeated, Thier (2004a) cautions that a Supreme Court dominated by fundamentalists could become an unaccountable body controlling the legislature, executive branch and electoral system on the pretext of protecting Islam, in a manner reminiscent of the Council of Guardians in Iran.³⁸

These difficulties must be put in the context of the compromises made necessary by a central dilemma that threatened to stalemate the proceedings of the CLJ: the choice between a strong presidential system and a parliamentary system. The draft presented by the government proposed a pure presidential system, while the opposition from *jihadi* groups and non-Pashtun areas of the country favoured a parliamentary one. The CLJ saw the Pashtuns rally around a presidential system with a strong central government. This was countered by a power bloc of non-Pashtuns in northern and northeastern Afghanistan (Uzbeks, Tajiks, Turkmens and Hazaras) who found common ground around demands for more provincial autonomy and greater checks on presidential powers. The articles pertaining to official languages (Article 16) and to presidential powers (Article 64) reflect these tensions. Article 64 was amended to enhance parliamentary powers. Granting broader language and cultural rights to the various ethnic groups composing the nation and declaring Afghanistan an “Islamic republic” have been among the means of defusing the fundamental conundrum of politics in Afghanistan: the relations between the political centre and an ethnically diverse periphery that resists the overlordship of Pashtun state elites.

37 About a hundred delegates close to the *Jam'iyat-e-Eslami* (Islamic League) threatened that they would refrain from taking part in the meetings if the form of government were not specified before the 10 specialist committees commenced their work on the draft Constitution. Almost half of this group abstained from attending the meetings when deliberations on the Constitution began. It is therefore clear that the potential for dissent was enormous on this issue.

38 The test case for this type of concern came 10 days after the ratification of the Constitution when the performance of a pop singer, Salma, on Kabul television was deemed un-Islamic and therefore illegal by the Supreme Court. Both the Minister of Culture and MOWA have been quoted as pointing out that the actions of the Supreme Court were not in conformity with its legal mandate, and state television flouted the injunction. The incident underscores, nonetheless, both the value of an explicit Constitutional commitment to equal rights and the political obstacles that may lie in the way of its implementation. Political will at the highest level needs to be exercised in the appointment of Supreme Court judges to ensure that the egalitarian spirit of the Constitution is not diluted and rendered inoperative.

Women’s rights may have relatively low priority in a context where different ethnic and political constituencies are locked in struggles of representation in defence of their collective rights. Furthermore, women are not a homogenous category and may themselves mobilize as representatives of ethnic constituencies or diverse political tendencies. Given the factious nature of politics in Afghanistan, there is little *a priori* ground for making simplistic assumptions about women’s primary commitment to subscribing to a common agenda. Indeed, a report by Rights and Democracy claimed that “a majority of the female delegates at the CLJ were affiliated with violent, conservative factions and voted in line with their demands, dividing women in accordance with ethnic, religious and factional identities, rather than under their shared identity as women” (Oates and Solon Helal 2004:28).

Nonetheless, the experience of the CLJ also demonstrated that there is some potential for the emergence among women of civil society actors (such as professional associations and NGOs), alongside government cadres, that would actively uphold principles of equality within both secularist and Islamic frameworks. Such engagement, however, can exact high costs in Afghanistan. A Human Rights Watch report (2004) noted that several women participants in the CLJ subsequently faced retaliation in the form of harassment, dismissal from their jobs and transfers to less desirable positions. Others complained that local authorities and commanders harassed them through phone calls or in face-to-face meetings upon their return from the Loya Jirga. Methods of intimidation include “night letters” (*shabname*),³⁹ threatening phone calls, death threats, slander and physical attacks.

The scene seems to be set for the development of tensions between the “rights on paper” spelt out in the new Constitution and women’s actual opportunities to avail themselves of these rights. The amendment of Article 83 of the Constitution, stipulating that two women from each province are entitled to sit in the *Wolosi Jirga* of the National Assembly, ensures that women will constitute at least 25 per cent of the members, with other seats being equally open to the election of female representatives. The provision ensuring that 15 per cent of the *Meshrano Jirga* (Upper House) will consist of women, through the requirement that half the Presidential appointees to the body are women, is also enshrined in the Constitution. The question remains as to whether women will be in a position to turn these provisions into genuine opportunities for greater participation. Human Rights Watch (2004) provides a rather pessimistic assessment, suggesting that some women who had committed themselves to be candidates said they would not run because they were afraid for their own and their families’ safety. The report also points to cases where women are used as “fronts” by powerful political parties and told what to say and do. Clearly, any formal gains resulting from the new Constitution will have to be safeguarded against the continuing onslaughts of political factions whose pro-*shari’a* demands draw on the most conservative interpretation of Muslim law.

IV.D.

security and the rule of law: the missing pillars of substantive rights

Gains achieved in women’s formal rights are condemned to remain dead letters in the absence of security and the rule of law. Most commentators concur that, in contrast to political reforms, security sector reforms have moved at a frustratingly slow pace. In the immediate aftermath of the Bonn summit in 2001, the Coalition continued to

distribute arms and money to militia armies to assist them in the ongoing battle against Al Qaeda and the Taliban. This influenced the pace of disarming the factional militias and creating a national army. The assistance

³⁹ These are generally anonymous letters issuing warnings and threats that are put up overnight on the doors of organizations or individuals.

community in Afghanistan was faced with the new challenge of engaging with non-UN-mandated multinational forces that, alongside military and intelligence operations, undertook “hearts and minds” campaigns through the provision of humanitarian assistance in the form of medical services, food distribution and small infrastructure projects. Costy (2004) recorded some of the anxieties felt by the NGO community about the interface of military and humanitarian objectives and the problems of “militarized” aid.

At the end of 2002, US forces began to implement an expanded plan for nationwide military support for the reconstruction effort through the Provincial Reconstruction Teams (PRTs). Their objectives were to provide more secure conditions, to facilitate the recovery work of international agencies, to engage in the restoration of national infrastructure and to support the extension of the central government’s authority in the provinces. Originally only made up of units of US-led Coalition, they have been expanded to address some of the growing security concerns.⁴⁰ Acting on behalf of NGOs, the Agency Coordinating Body for Afghanistan Relief (ACBAR) recorded their concerns, which centred around the potential duplication of humanitarian and reconstruction efforts between PRTs and the assistance community, confusion in local communities about the distinction between military and civilian actors, and the lack of capacity to provide adequate security to enable others to undertake their work.

The government announced its plan for security sector reform (SSR) at the Tokyo meeting on Consolidation of Peace in February 2003. The SSR plan includes reform of the Ministries of Interior and Defence, and of the police and the juridical system, as well as the disarming, demobilizing and reintegrating of ex-combatants and the building of the Afghan National Army (ANA). This process is complicated by the multisectoral donor support scheme being insufficiently co-ordinated to facilitate international assistance properly.⁴¹ The concentration of resources on the capital has also meant that the provinces were left open to the depredations of anti-government spoiler groups, the narcotics trade, the entrenchment of regional power brokers and a rising incidence of banditry and crime (Sedra and Middlebrook 2004). The NATO-led International Security Assistance Force (ISAF) mission, which provided security in Kabul and its immediate environs, was authorized to expand its mandate in October 2003. However, this expansion has been slow, with member states yet to provide the requisite troops. The Afghanistan Stabilization Programme (ASP) is a major new initiative to build capacity at the provincial level that may assist in providing a security infrastructure, but is still in its early stages.

There is only a distant prospect of the Afghan national police force and national army developing the capabilities to take over the provision of security in the short term. The fledgling police force does not provide much recourse for the protection of citizens, least of all women. The police, sometimes recruited from among local commanders, are allegedly involved in arbitrary arrest, rape, sexual assault, kidnapping and extorting ransoms for the release of prisoners. Attempts to attract new women recruits into the police force have so far met with limited success, despite new incentives for training, special transport and concessions over attire (IRIN 2004).⁴²

The Afghanistan New Beginnings Programme (ANBP) is a three-year scheme for voluntary demobilization, disarmament and reintegration (DDR) overseen by the Ministry of Defence and implemented by UNDP with major financial support from Japan. Although 20,000 combatants have been demobilized, non-statutory armed forces continue to operate with impunity. A survey conducted by the Human Rights Research and Advocacy

40 PRTs are now operational in Kunduz, Bamyan, Mazar-e-Sharif, Kunduz, Gardez and Parwan.

41 Responsibilities for the five pillars of the reform process were divided between the United States (military reform), the United Kingdom (counter-narcotics), Germany (police reform), Japan (disarmament, demobilization and reintegration of ex-combatants) and Italy (judicial reform).

42 Most of the women in the police force are those who were active prior to the Taliban takeover and have chosen to return to their jobs. However, there are very few professional policewomen and more female recruits are desperately needed to interface with women victims of crime.

Consortium (2004) showed that 88 per cent of respondents wanted the government to act to reduce the power of commanders, and nearly two-thirds believed disarmament was the most important way to improve security. One of the most common indignities suffered at the hands of gunmen and their supporters is the illegal occupation of land and houses. In connection with security provisions for the presidential elections of October 2004, a Human Rights Watch (2004) report claimed that local power holders were involved in widespread attempts at intimidation designed to influence the election results. The lack of an adequately staffed professional police force and of a functioning justice system means that fear is a powerful factor in paralysing those who would want their voices heard.

It is against this background of halting and limited progress in security sector reforms that Afghanistan has become a signatory to several international conventions and treaties, including the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified on 5 March 2003.⁴³ Article 7 of the Constitution, which requires Afghanistan to abide by the international treaties and conventions to which it is a signatory, bolsters this commitment further. However, the compatibility in the Constitution between Articles 22 on equality and non-discrimination, Article 7 on compliance with international human rights law and Article 3 on Islamic “beliefs and provisions” is assumed rather than demonstrated. A great deal hinges on the willingness and ability of the judicial system to undertake a rights-based analysis of Islamic jurisprudence and to find ways of harmonizing the different sources of legislation referred to in the Constitution. Yet, alongside the continuing concerns over security spelt out above, the weakness of the judicial system and a legal reality marked by impunity make the aims of implementing domestic law and international legal obligations distant goals.

Aside from the institutional erosion of the formal legal and judicial system, various consequences flow from the fact that Afghanistan does not have a uniform legal system. Barfield (2003) draws attention to three competing components of the legal system: the state legal codes, Islamic religious law (*shari’a*) and local customary law. The relative weights of these components have waxed and waned through time. Until the formation of the modern Afghan state in the late nineteenth century, the *ulama* ran the legal system independently, providing both the system of laws and the judges to interpret it. This autonomy was progressively eroded by modernizing rulers who upheld the state’s prerogative to promulgate laws on its own and control the appointment of judges. The apex of state control occurred under the PDPA, who in 1978 removed all religious symbolism from government to create an overtly secular regime.⁴⁴ The Taliban’s rejection of this secularized state model marks a violent swing of the pendulum in favour of Islamic clerical influence. All national legal codes were rescinded on the grounds that the *shari’a* fulfils all the needs of an Islamic society.

Both the *ulama* and secular legal practitioners tend to distance themselves from customary laws, despite the fact that these have a more direct bearing on women’s rights through the daily practices of various tribal and rural communities. The majority of the population resort to informal arbitration and dispute-resolution mechanisms through village *shuras* or *jirgas*. These offer rapid and cost-effective responses to litigants, in contrast to the formal judicial system, which is seen as remote and elitist as well as costly and slow. There are genuine dilemmas, however, that present themselves with respect to tribal laws. On the one hand, overlooking tribal

43 Given the sensitivity of issues relating to women’s rights, which was quite evident in the proceedings of the CLJ, the process through which CEDAW was ratified without reservations is unclear. Further, CEDAW contains no provision for withdrawal, and it is no longer possible to enter reservations since these are only permissible at the point of ratification. The yearly report to the Secretary General due on 5 March 2004 was still outstanding at the time of writing.

44 This was a move they had to backtrack from rapidly, however, reintroducing the “conformity with Islam” formula in the hopes of winning broader support after the Soviet invasion in 1980.

law and informal dispute resolution mechanisms may threaten the very legitimacy of the legal reform process in the rural hinterland, and may appear top-down and undemocratic at a critical political juncture. On the other hand, some of the most discriminatory practices against women, such as the custom of *bad*—offering women as brides in reparation to an aggrieved party in cases of criminal offences—would be given an indefinite lease of life without reforms at the national level (Azarbaijani-Moghaddam 2003).

One strategy adopted by women activists is to separate tribal customs from Islamic laws, arguing that most discriminatory practices originate from customary laws giving themselves a (false) veneer of Islam. A conference organized by women, the Islamic Awareness Programme, invited male religious scholars to consider rethinking the issue of women's rights within an Islamic framework. This divided the scholars, with some supporting the spirit of the women's demands while others argued that women were not qualified to pass judgement on such issues.⁴⁵ Women legal experts will, no doubt, continue to endeavour to forge alliances with more progressive sections of the clergy.

Alongside the complications occasioned by these competing sources of legislation, the corpus of statutory laws presents itself in layers, each corresponding to particular periods of governance. Statutory laws were enacted under the Constitutions or Interim Constitutions of Afghanistan of 1964, 1977, 1980, 1987, 1990 and 1992. Lau (2001–2002) points out that deciding which particular laws will be applied or reformulated is primarily a political exercise, a view amply vindicated by the process of deliberation and compromise apparent in the initial drafting and amendments of the new Constitution.

After the Bonn Agreement, the Judicial Reform Commission (JRC) was charged with rebuilding the domestic justice system in accordance with Islamic principles, international standards, the rule of law and Afghan legal traditions. The JRC worked in close co-operation with the Constitutional Commission and the Afghanistan Independent Human Rights Commission (AIHRC). However, issues pertaining to the respective roles of statutory, Islamic and customary laws, and the place of informal law and dispute resolution mechanisms still remain unresolved. A recent report on Afghanistan's Millennium Development Goals acknowledged that addressing the social role of women will require "sensitive issues of prioritization and strategy" (UNDP 2004:26).

Against this background, the legal rights of women continue to represent an area of great uncertainty in Afghanistan. Most women detainees in Kabul prison seem to be there not for criminal acts but for offences related to family law: refusing to marry husbands chosen by their parents, refusing to live with abusive husbands, or running away from the parental or matrimonial home—offences which have no basis in law. Human rights abuses against women continue to occur with the "active support or passive complicity of state agencies, armed groups, families and communities" (Amnesty International 2003). Decisions taken by informal institutions such as the household or the community that might, in other contexts, be modified or contested through recourse to state laws are, more often than not, underwritten and endorsed by formal institutions such as the judiciary in Afghanistan. Amnesty International noted that female victims and defendants are being denied access to justice and discriminated against in both the formal and informal justice systems.⁴⁶

45 UNIFEM 2004. Note that such divisions among the clergy are not uncommon and have received a great deal of attention in the Islamic Republic of Iran.

46 Bribes may be paid to keep women in prison until they relent and fall in with their families' wishes. This results in the judiciary being used to discipline women by imposing custodial sentences for crimes that do not exist on the statute books (like running away).

The weakness of the judicial system and the gender bias within it has demonstrably negative consequences for women.⁴⁷ Even within the functioning criminal justice system (primarily in urban areas), women are severely under-represented as plaintiffs seeking redress and largely absent as employees. Discrimination on the part of male judges also manifests itself in a belief that women's role in the justice system should be limited to the family courts. Moreover, the legitimacy of the Afghan courts and the independence of the judiciary will continue to be undermined in areas of the country where the *de facto* rule of local commanders and armed groups persists. The continuing recourse to informal justice mechanisms will also have to be addressed by the newly established judicial organs.

Continuing insecurity, the use of force as a means of dispute settlement and the dislocation of communities make violence a pervasive social problem in Afghanistan. The issue of gender-based violence elicits particular unease in a country where the maintenance of family honour through women's appropriate sexual conduct is considered crucial across all ethnic communities. Sexual violence is considered a taboo subject that may not be spoken of, leading to a failure to investigate crimes against women in the family and community. The Criminal Procedure Law contains no provisions that criminalize violence against women. Moreover, the criminalization of consensual sex outside marriage leaves women who have been raped open to charges of *zina* (adultery), for which they risk prosecution if they fail to produce four male witnesses. This constitutes a powerful disincentive to reporting incidents.

Despite extensive documentation of violence against women, as a tool of war and within the home, both women and men are inclined to deny women's experience of physical insecurity and violence (UNHCR 2002:12). Rape—including a significant incidence of gang rape and the rape of women and girls from minority communities in the north and from nomadic groups, female aid workers and female members of aid workers' families—has been a common and recurrent manifestation of the current insecurity. In the southeast, incidents of rape by soldiers and commanders and of the abduction and sexual assault of women, girls and boys were reported. This has grave long-term consequences for a girl or woman's future because of the risk of permanent ostracism related to the loss of chastity and honour (Human Rights Watch 2003).

A security environment that fails to guarantee the most basic rights to physical safety presents a phenomenal obstacle in the way of women's mobility and access to services such as health and education. The overall environment for the education of girls in Afghanistan remains turbulent. Several attacks on schools, including girls' schools, have been reported (Human Rights Watch 2002)—and still continue. In the southeast, families prevent their daughters from going to school out of fear that they—particularly older girls—will be attacked or kidnapped or suffer harassment by the police (Human Rights Watch 2003). However, the demand for education is higher than ever, as are aspirations for a better future. The longer the gap between these legitimate aspirations and the ability of the government to deliver persists, the harder it will be for the political centre to establish legitimacy.

47 UNDP has started a scheme to refurbish judicial facilities at district level and train judicial officers in gender awareness. The aim is to improve the access to justice of vulnerable groups such as women, children and returned refugees. This project, piloted in the provinces of Herat, Balkh, Bamyan and Nangarhar, will eventually be extended throughout the country. It is hoped that this will enhance the creation of professionally trained judicial and law-enforcement institutions, without which victims have no legal recourse.

IV.E.

prospects for women's civic and political participation: citizenship postponed?

Women's community participation and leadership roles frequently go undetected in Afghanistan since they do not take place in the public arenas commonly associated with modern civil society. As Barakat and Wardell point out:

There is a tendency for outsiders unfamiliar with the nuances and complexities of Afghan culture to focus only on the visible, public arena and to neglect those private areas such as the household. It is in precisely these areas that Afghan women themselves claim to exercise the most political influence.

(Barakat and Wardell 2002:919)

Indeed, the politics of alliances and reputation plays a central role in tribal and village societies, and women participate in decision-making through important roles in matchmaking, gift exchange and participation in life-cycle rituals. Advancing age, religious learning and membership in powerful lineages may confer considerable authority on women.

Nonetheless, women are excluded from formal bodies of local governance, dispute settlement and arbitration such as tribal *jirgas* or village *shuras*, which tend to be all-male assemblies. Women's grievances are generally addressed through male representatives, and the loss of male protectors and mediators (fathers, husbands or brothers) may leave them without recourse. Women's citizenship status remains linked to their male relatives. In a sample of refugee and returnee women, it was found that proof of citizenship could only be obtained through a male relative, as most women were unclear about whether they possessed any official documents to identify themselves as individuals with citizenship rights (UNHCR 2002). Despite the removal of regulations barring women from studying, working, or going out without wearing a *burqah* or without a *mahram*, few women in south and southeast Afghanistan reported they were availing themselves of the opportunities that this relaxation of the law seemed to offer (Human Rights Watch 2003). The significant discrepancies between women's formal and substantive rights signal deep-rooted obstacles to women's political participation.

Educated urban women, particularly returnees from abroad, have a heightened awareness of the importance of their substantive participation in political processes, but there is a wide chasm between these women and their illiterate rural counterparts. A report based on a survey conducted by the Human Rights Research and Advocacy Consortium found that both women and men agreed that only educated women should participate in political decision-making, while no such strictures were placed on men's participation (2003:27). Likewise, intentions to vote in the national election were much lower among women than among men, especially in certain provinces (in Gardez only 27 per cent of women said they would vote in an election, compared with 65 per cent of men), and women surveyed were 20 per cent less likely than men to know about important national political developments (such as the constitution and the national elections).

A more encouraging development has been the revival of women’s role in journalism and the media since the overthrow of the Taliban. More than 20 newspapers have been launched by and for women in Kabul and several women’s radio stations have gone on the air in the capital and the provinces. The launch of the Afghan Women Journalists’ Forum⁴⁸ has provided both an organizational focus and a political voice⁴⁹ to women journalists, who have added their efforts to shaping public opinion in the crucial debates on the future of Afghanistan.

In terms of community participation, one of the most complicated and high-stakes social experiments in Afghanistan is the National Solidarity Programme (NSP), financed by the World Bank, managed by the Ministry of Rural Rehabilitation and Development (MRRD), and implemented by UN Habitat and international and national NGOs (Carlin 2003). The NSP will fund block grants of up to \$60,000 per community on the basis of funding of \$200 per family. The target is to reach 20,000 villages over a four-year period. The programme is based on a participatory approach to development at the local level through democratic and representative Community Development Committees (CDCs) at village level. These are tasked with developing one or more eligible sub-project proposals within the framework of the block grant allocation and the community’s own contributions. Elections to CDCs are meant to be inclusive and representative, a feature that presents a potential challenge to existing social hierarchies.

A study carried out in six districts of three provinces (Kabul, Baghlan and Jawzjan) provides valuable insights into the complex outcomes of attempts to include women in the NSP electoral process (Boesen 2004). It is worth noting, in particular, the discrepancies that arose between the “blueprint” of the programme (the *NSP Operations Manual*) and the pragmatic decisions taken at the local level. Voting for CDCs was based on the following principles: one person one vote, voting by secret ballot, eligibility of both men and women candidates, and at least 40 per cent of eligible voters having to vote for the election to be valid. This last rule makes possible the election of CDCs that include only men. Boesen notes that the political cost of excluding conservative communities that would not allow women to participate in the election was considered more critical than the potential exclusion of women that this rule allows, “since mandatory registration of and participation of women in the electoral process could provide ammunition for radical Islamic opposition to the central government” (2004:8).

It must be noted that elections did not necessarily take place on a level playing field for men either, since interference from local commanders, landlords and *mullahs* was reflected in the composition of CDCs. In some regions, CDCs appeared to be captured by members of the local elite. There were, on the other hand, also indications that CDCs drew on a broader constituency and included a younger age group with more extensive exposure to the outside world.

In most cases, separate elections were held for men and women, leading to parallel men’s and women’s CDCs or *shuras*. Women’s election practices included voting by hand-raising (or open voting) rather than secret ballot, since many perceived selection by open vote as fairer and easier to implement for illiterate voters. In any case, electoral clusters, normally comprising neighbourhoods, often corresponded to kinship groups; women in particular tended to vote for relatives even if they lived in different clusters. In villages where the population consisted mainly of interrelated families, women appeared to have greater mobility and opportunity to participate.

48 This co-ordinating group was formed with UNIFEM and USAID support under the auspices of the “Strengthening Information, Media and Communication in Afghanistan” programme, which began its implementation in October 2002.

49 A member of the Forum, Ms Shukria Barakzai, acted as a member of the Constitutional Commission that refined Afghanistan’s new draft Constitution. Two other members, Ms Jamila Mujahid and Ms Suraya Parlaka, were elected to the Constitutional Loya Jirga that ratified the Constitution.

Women needed the permission of men both to vote and to participate in the women's *shuras* or committees. This could prevent elected women from actually participating, and was indeed found to do so in some villages. In some districts the apparently high numbers of female members in CDCs did not reflect actual participation in joint decision-making with regards to project proposals and prioritization. Where there were joint committees, elected female members were often marginalized by the men and not invited to participate in CDC meetings.⁵⁰

A more encouraging finding was that attitudes to women's participation were not homogenous, with different levels of acceptance in different districts. A number of factors, such as levels of formal education, degrees of exposure to the outside world through experiences of displacement, and membership of different ethnic and confessional groups, appear to have an influence on women's levels of participation.⁵¹

A case study carried out in Panjao (Hazarajat) corroborates some of the findings about the effects of age and social status (deriving from property ownership or lineage) on participation at the household and community levels (Wakefield 2004). The belief that women lack the necessary "knowledge" to participate in decision-making (except in daily matters concerning their households) is often put forward as a justification for their exclusion.⁵²

These observations on women's community-level participation contain broader lessons for local and national electoral processes in Afghanistan. There were signs that women were being marginalized from voter-education projects because of both the logistic difficulties of reaching them and fears in some quarters that involving rural women could upset conservative sensibilities in the provinces and stall the process of reconstruction (ACSF/swisspeace 2003). An exclusive focus on civic education training may also miss elements that are essential to understanding the actual dynamics of women's access to the polls, which is routinely mediated by male gatekeepers who allow or disallow access.⁵³ It is therefore incumbent upon election planners and policy makers to devise more creative ways of engaging with male community leaders and elders so as to ensure that provisions for women's rights to political participation can translate from principle to reality.

Moreover, the sociocultural constraints that impede women from voting or standing as candidates are not amenable to change through the quick fix of training or civic education. Longer-term engagement with local communities and a thorough understanding of the types of patronage networks that operate among men, between men and women, and among women themselves are essential. A fact that is sometimes conveniently overlooked is that women, however marginalized, more often than not share the same political culture as the men in their communities (including views about women's appropriate place and conduct). In the absence of an adequate time frame to devise well thought out and locally appropriate strategies, the rush to include women may backfire and inadvertently produce a hardening of attitudes in some communities.

50 The most striking example offered was the case of a woman accountant who had been elected on the strength of her bookkeeping skills but was excluded from CDC meetings because they took place at the mosque. The choice of venue apparently led to her exclusion.

51 Women belonging to the Shi'a Ismaili communities were found to be participating actively in the joint election in Badakhshan province, whereas it was more difficult to include Sunni women. Similar experiences were reported regarding Hazaras in Bamiyan who are also Shi'as. Pashtun communities were found to be particularly resistant to women's participation.

52 This construction also has the quality of a self-fulfilling prophecy. To the extent that women—especially the unmarried and the young—are kept in seclusion, they lead a sheltered existence that cuts them off from any contacts except with their close kin. The restriction of their social horizons coupled with their lack of education is then invoked to explain their exclusion on grounds of "ignorance". With advancing age, both experience of life and a relaxation of strictures placed on mobility vests women with greater authority, especially within their own households.

53 An Asia Foundation (2004) public opinion poll reported in July 2004 that 87 per cent of women needed permission from their husbands to vote, and 18 per cent of husbands said they would not allow such participation.

Nonetheless, the process of voter registration for the presidential elections of 9 October 2004 undertaken by UNAMA and the Joint Electoral Management Body (JEMB) was hailed as a success despite the difficult conditions under which it took place.⁵⁴ A report for the Afghanistan Research and Evaluation Unit (Reynolds and Wilder 2004) noted, in particular, that the percentage of women voters registered (41.3 per cent women out of over 10.5 million voters by September) was impressive despite significant regional disparities (with the lowest registration levels in the south). In spite of security problems in the period leading to the polls, the election itself passed without incident, providing President Karzai with a sufficient majority to obviate the need for a run-off. Furthermore, other contenders decided not to contest the result, despite initial charges of electoral irregularities.⁵⁵ A clear pattern emerged of group voting along ethnic lines, with only President Karzai garnering some support across the ethnic divide.⁵⁶ It may be safely assumed that these voting patterns held across gender lines.

The parliamentary elections, projected for autumn 2005, present even more serious challenges because of the need to achieve consensus on such politically sensitive issues as apportioning seats to provincial constituencies on the basis of reliable population figures, achieving clarity on district boundaries and tying voters to those districts. This election also poses some troubling dilemmas concerning the representation of women. The electoral law of 2004 announced that the voting for parliamentary elections would be by a single non-transferable vote (SNTV) system, where ballots are cast for individuals rather than political parties. The SNTV, in combination with the gender provisions of the electoral law (which guarantee a certain percentage of seats to women), clearly appears to favour the electoral representation of women. Indeed, under this system female candidates may be elected to office even if they rank very low overall and lack a majority of the votes.

This, Reynolds and Wilder argue, “may well breed concentrated resentment against the election of female candidates who receive dramatically fewer votes than their male counterparts” (2004:14). There appears to be a tension here between affirmative action, on the one hand, and transparency and fairness in democratic representation, on the other. These authors suggest this dilemma may be resolved through resort to list proportional representation, a system frequently adopted for post-conflict elections in emerging democracies.

It will be important to monitor how these tensions eventually play out, given the general climate of fear and potential intimidation surrounding women’s electoral participation (Human Rights Watch 2004) Since women’s chances of establishing a substantial electoral base as independent candidates appear at present to be very slim, the degree of patronage they receive from powerful political factions and male patrons may be decisive. Whether the inclusion of women will represent a genuine challenge to the existing political culture of Afghanistan will need to be evaluated in the light of developments on the ground.

An even more daunting task than ensuring women’s civic and political participation will be securing their fundamental rights to education and health. It is these basic entitlements that constitute the bedrock of any amelioration of their condition and their capacity for participation. In a context where the majority are unable to read or write, risk their lives in childbirth, have no access to roads, schools or medical facilities, and are deprived of access to clean water sources, capabilities and rights are severely restricted. The Millennium Development Goals for Afghanistan set ambitious targets. The gross primary school enrolment rate is targeted to rise

54 The period leading up to the election was marked by a deteriorating security situation. Between 1 May and 20 August, 12 registration staff were killed and 33 injured. In August 2004 alone, there were 21 separate election-related security incidents.

55 These ranged from logistical problems such as a shortage of ballot boxes and other supplies to improperly trained staff and an excess of candidates’ agents at the polling stations “guiding” the voters’ choices.

56 The most important rival contenders were Yunis Qanouni who captured the Tajik vote (especially in the Panjsher region), Abdul Rashid Dostum who appealed to Uzbek voters in the north, and Haji Mohammed Mohaqiq, the only Hazara candidate, appealing to a constituency of Hazaras.

from 54 per cent (40 per cent for girls) to 100 per cent for boys and girls by 2015, the under-five mortality rate to decline from 172 to 130 per 1,000 live births, the infant mortality rate from 115 to 55 per 1,000 live births, and the maternal mortality rate from an estimated 1,600 per 100,000 live births to 205. These are goals that require long-term commitment and sustained investment. There is a problematic disjuncture between, on the one hand, the time frames adopted and outputs expected by the international actors driving the women's rights agenda, and on the other, the length of time required for non-cosmetic changes in societal relations to begin to take shape. This disjuncture may itself produce unintended consequences that may prove detrimental to women unless great care is taken to pay heed to local needs and priorities.

V.

conclusion

It has been argued throughout this text that issues of gender equity and women's rights in Afghanistan can only be meaningfully addressed in the context of the multiple transitions entailed by the process of post-conflict recon-

struction: a transition from conflict and insecurity to peace, a political transition to a legitimate and effective state, and a socioeconomic transition to sustainable economic growth. These transformations do not take place in a social vacuum but necessarily build upon existing political, market and domestic institutions that define both the constraints and opportunities for future developments.

There is, at present, a potentially disabling lag between the different facets of these transformations. Sustained efforts have been made by the international community, the government of Afghanistan and local women's NGOs to ensure that legal and governance reforms address gender equity issues and support the civic and political participation of women. A national machinery has been created to promote and monitor gender mainstreaming in national development efforts, and the constitutional development process has addressed the issue of women's political participation. However, the security and socioeconomic conditions have not kept pace with political and juridical reforms, resulting in a growing gap between women's formal rights and their actual ability to avail themselves of those rights.

Significant obstacles need to be overcome for the promises of reconstruction and national consolidation to materialize for women. As the historical record indicates, women's rights have always been a contested issue in Afghanistan, with periods of reform followed by violent backlash and curtailment of rights. There are continuing tensions between the stipulations of international human rights instruments (including CEDAW, to which the government of Afghanistan is a signatory), Islamic jurisprudence and Afghan customary law. These tensions can neither be addressed nor resolved without a political settlement that ensures stability and the rule of law. In the absence of a process of national consolidation and reconciliation, there is a growing risk that women's rights issues will remain hostage to factional struggles, and that Islam will be deployed as a political tool rather than a universal faith that enjoins believers to uphold ideals of social justice and equality.

Moreover, in a context where a wide chasm exists between a small urban literate population and a much larger rural and tribal hinterland that is fractured along religious and ethnic lines, women's formal rights have relatively little bearing on their rights and entitlements in practice. Despite significant upheavals in the normative order occasioned by years of conflict and displacement, including the unsettling of age and gender hierarchies, women continue to be wards of their communities and households and have little recourse to protection or justice outside these domains.

A central contention of this paper is that violations of women's rights in Afghanistan are over-determined by overlapping and mutually reinforcing sets of influences: the dynamics of gendered disadvantage, the erosion of local livelihoods and growing poverty, the criminalization of the economy and insecurity at the hands of armed groups and factions. Combinations of new pressures (such as poverty, indebtedness and predation by local strongmen) with existing practices (such as early marriage of girls against the payment of brideprice) create outcomes that may easily be misread as unmediated expressions of local "culture". Such misidentification detracts critical attention from the full nexus of influences that deepen the vulnerability of girls and women. Human development indicators such as levels of education, life expectancy, maternal and infant mortality, and access to education and health services place the women of Afghanistan among the most disadvantaged in the world. It will take years of sustained investment in infrastructure and services to ameliorate this situation.

The socioeconomic changes needed to make the transformation from a regionalized war economy to one where sustainable livelihoods are achievable through peaceful and licit means are extensive and will take a long time to materialize. Women whose labour is crucial in producing a number of commodities for export such as carpets, and in opium poppy production and the processing of dried fruits and nuts, occupy the lowest rungs of these commodity chains, working as unskilled, unpaid or low-paid labour (Lister and Pain 2004). Limited levels of skills and low demand for female labour lock women into a restricted range of income-generating activities, mainly in agriculture and handicrafts. The types of investment that can increase the demand for skilled and semi-skilled female labour in the industrial and service sectors, which are responsible for the growth of female employment worldwide, will only materialize in Afghanistan if there is a security environment conducive to the creation of new enterprises that generate employment.

In the struggles for voice and resources that are likely to mark this transition period, there are few fora where organized women's constituencies such as NGOs and professional networks can operate and reach out to more varied female publics. It is therefore incumbent upon the international community and the government of Afghanistan to equip the women of Afghanistan with the organizational capacity to form the broadest possible political alliances, to work creatively with opinion leaders and power holders in different regional contexts, and to exercise voice in the difficult times ahead.

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Palais des Nations

1211 Geneva 10

Switzerland

Phone: +41 (0)22 9173020

Fax: +41 (0)22 9170650

info@unrisd.org

www.unrisd.org

