

# Afghan Women after the Taliban: Will History Repeat Itself?



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## **Executive Summary and Recommendations**

Throughout Afghanistan's conflict-ridden history, the struggle for women's rights has been an issue of contention, false promises and failed attempts to reform the deeply patriarchal system of relationship between women and men. With the fall of the Taliban regime in 2001, Afghan women have once again been striving to create opportunities for themselves to actively partake in the social and political developments in the country. Though Afghan women played a largely subordinate role in creating the new political system in post-Taliban Afghanistan during the first Bonn conference in December 2001, their achievements, such as the establishment of new institutions like the Ministry of Women Affairs (MOWA) and the Afghanistan Independent Human Rights Commission (AIHRC), were of historic importance.

Since then, despite the threats and challenges posed by the resurgent Taliban, local warlords as well as the large number of restrictions that Afghan culture place on women, there has been a significant increase of women's participation in almost all spheres of life. In part due to the heavy presence of the international community but also thanks to the tireless efforts of untold audacious Afghan women, the latter have been able to gradually expand their presence into such areas as civil society, political decision-making, education and legislation. One particularly emblematic example is Afghan women's numeric presence in the two legislative bodies, where they now constitute approximately one fourth of the Afghan Wolesi Jirga representatives. At the same time, it is important to emphasize that Afghan women's participation in political decision-making is still largely a top-down process, led by a small number of educated and economically privileged women who receive the support of national and international stakeholders, hoping to create a trickle-down effect that will eventually benefit all female Afghan citizens.

Unfortunately, because of a lack of authentic engagement with and understanding of ordinary women, the wide discrepancies between the lives of women in the city and those in rural areas as well as widespread insecurity, that strategy has not had the expected impact. As a result, the vast majority of Afghan women continue to live in unacceptable living conditions. Furthermore, the recent developments in the country paint an increasingly worrisome scenario. With the announced withdrawal of most foreign troops by 2014, an expected cut in international aid, and the growing possibility of a political compromise of the Afghan government and the international community with different extremist groups (e.g. the Taliban, the Haqqani Network and the militant wing of Hizb-e-Islami), most achievements relating to women's rights made over the last decade are in danger of being reversed.

The Afghanistan Human Rights and Democracy Organization (AHRDO) has attempted to make a contribution to address some of the aforementioned

challenges by promoting a new and innovative approach called Legislative Theatre.

Applied to the Afghan context, Legislative Theatre encourages women's participation in political decision-making and in the drafting of legislation from the bottom-up, using different participatory theatre techniques that create spaces for Afghan women to come together, discuss women's issues and initiate a search for women-led grassroots strategies for change. Acknowledging that the transformation of deeply entrenched attitudes and behaviors towards women in Afghanistan is by no means an easy task, AHRDO strongly believes that gender equality and women's rights remain a goal worth struggling for and that this struggle necessarily needs to involve a multiplicity of different, innovative approaches and corresponding stakeholders to authentically promote women as agents of change.

Hence, during the Legislative Theatre initiative, approximately 4,000 Afghan women from all walks of life were the main protagonists in the discussion of three fundamental women's rights issues: 1) Afghan women's political participation, 2) the strengthening of Afghan women's participation in law-making and 3) the identification and categorization of Afghan women's legal problems. These issues were discussed through a variety of means including twelve participatory theatre workshops, forty interactive forum theatre performances and six legislative referenda.

Some of the discussions that emerged during the activities included the affirmation that the resistance of conservative and religious forces to women's rights is a bitter and undeniable fact in the history of Afghanistan. Historically, the suppression of women led by such ruthless figures as Mullah Abdullah, also known as Mullah, the lame and Mullah Omar are symbols of a broader social, cultural and religious environment in which the preservation of Afghan male honor (ghairat) has always taken precedence over the rights of at least half of the Afghan population. Today this historical reality is continued by a new generation of conservative groups who have managed to monopolize the drafting of the Shiite Family Law while deliberately sabotaging some of the more progressive articles of the Law on the Elimination of Violence against Women (EVAW). As a matter of fact, without the powerful military, political, financial and ultimately restraining presence of the international community in Afghanistan, these conservatives would not hesitate to identify further mechanisms of returning Afghan women to their traditionally assigned roles as secluded wives, mothers and daughters.

What makes the post-Taliban era different from the reigns of Amanullah Khan, Zahir Shah, Daoud Khan and the various leftist governments is that the latter, to differing degrees, believed in more equal relationships of women and men and the need for a radical change in women's social situation. Today, however, the Afghan government and Afghan political leadership's espousal of women's rights is more subject to the logic of attracting financial support from the international

community than a credible expression of a genuine and wholehearted commitment to support Afghan women. In fact, at the expense of women's rights the current Afghan elites play a cynical political game that can be characterized as an attempt to strike a balance between continuing to receive much-needed financial support from the international community on the one hand and keeping the conservative forces of Afghan society happy on the other. In practice, the demands of extremist elements residing in the presidential palace, particularly those in the judicial bodies as well as the Afghan Ulema (Religious Scholars) Council, always outweigh those of the international community.

In these political games, Afghan women's rights activists are mainly absent. Not only have they not been recognized as relevant actresses in these interactions but the ruling elite has repeatedly attempted to cause fragmentation among different women's rights groups, while at times trying to make instrumental use of them as part of deliberately staged political orchestrations. The insignificant presence of women in the High Peace Council (HPC) is another proof of this sad reality. Moreover, Afghan women continue to encounter serious problems as a result of existing legislation. The legal discussions conducted as part of the legislative theatre consultations found a variety of Afghan laws, including some articles of the penal code, to be crime-generating. Besides, the use of highly ambiguous language such as "moral crimes", even in judicial proceedings, has led to widespread violations of women's rights.

Women's unawareness of judicial proceedings as well as a general lack of transparency and accountability in judicial processes are other factors that have rendered Afghan women vulnerable in the courts. Finally, a general culture of impunity widely prevails, leading to growing indifference and apathy towards frequent human rights violations such as the constant maltreatment and abuse of women by some senior managers in government agencies as well as in universities. Today, the sad truth is that flagrant human rights violations can be raised and investigated only with the political and legal backing of members of the international community.

Then again, it is worth reminding that female activists and women's rights organizations also contribute to this situation. They often suffer from weaknesses such as low analytical capacity, a lack of proper understanding of the all-pervasive nature of patriarchy in Afghanistan and a debilitating competition among different women's groups for money and influence that ultimately undermine the struggle for women's rights in Afghanistan. What is more, Afghan women active in the fields of politics and human rights are yet to fully acknowledge the extent and seriousness of the potential return to power of different Salafist groups and the Taliban.

Though it is clear that the latter's re-empowerment would jeopardize many recent positive developments, including the increased recognition of ethnic and religious minorities, many women leaders disregard this possibility with naive optimism. For example, when 2009 presidential candidate Shahla Atta was asked

about the prospects of potential negotiations with the Taliban and she responded that “I consider the Taliban my children and would be willing to invite them back home”. Of course, if such a statement were true, the Taliban would not continue to kill and stone their own mothers as was the case in Kandahar, Ghazni, Badghis and Kunduz in recent times. It is this trivialization of groups that not only ideologically oppose women's rights but openly reject the mere physical presence of women in the public sphere that is sadly representative for the often gullible perspectives held by many politicized Afghan women.

In summary, the combination of the premature withdrawal of the international community, the dubious, covert and non-transparent process of political negotiations with extremist groups, the resurgence of religious conservative circles, the unfortunate division and fragmentation among Afghan civil society groups as well as Afghan women's own shortcomings, present serious possibilities of a relapse into the past and a repetition of history that will once again turn back the clock for millions of Afghan women. In order to address these huge and increasing obstacles to women's political, legislative and legal participation, the following recommendations are made based on the analysis of the consultative legislative theatre activities:

### **A. Policy Recommendations**

1. The Afghan government should make all efforts to ensure the human security of women in the country. Human security includes ensuring a life free from fear, poverty and threats of all sorts.
2. The Afghan government should ensure the implementation of women's political rights by developing and enforcing specific policies to increase women's presence in government agencies as well as senior diplomatic and political positions.
3. To strengthen women's political participation, the registration of a political party with the Ministry of Justice should be conditioned on a substantial percentage of women's membership.
4. To create safeguards and promote women rights, the Afghan government should appoint qualified women to senior positions of security institutions, particularly the Ministry of Interior and the National Directorate of Security.
5. The Afghan government should develop a policy to reserve 50% of senior positions in the Afghan Supreme Court and the Attorney General office for women.
6. The Afghan government should provide the necessary opportunities for women to enjoy their right to higher education, particularly by providing

- scholarships in foreign Universities as well as private domestic institutes of higher education.
7. The Afghan government should develop measures to create a working environment free from discrimination, gender-based violence and female sexual harassment in the government as well as the private sector.
  8. The Afghan government should develop appropriate procedures to ensure equal employment opportunities for women in order to become financially self-reliant and independent.
  9. The Afghan government should be obliged to take all necessary measures for women to exercise their right to property, in correspondence with the law and in opposition to the continuous adherence to archaic and discriminatory property-relations.
  10. The Afghan government should not only defend women's rights but be obliged to develop coherent mechanisms and policies to enable women to practically exercise their clearly defined rights.
  11. The Afghan government should build appropriate sporting venues exclusively for women in order to ensure women's physical health and fitness. In the meantime, the existing venues should be provided to women and men equally and fairly and at separate times.
  12. The Afghan government should develop and implement specific mechanisms within rural health and educational centers to provide basic health, family and legal advice in order to reduce the number of health and family-related problems of rural women.

## **B. Legislative Recommendations**

13. Article 398<sup>1</sup> of the Afghan penal code is inherently crime-generating and provides space for the abuse and violence of women in society. It is recommended to the Afghan national assembly to urgently amend the article and thus ensure that the judicial institutions prosecute the accused, rather than his/ her relatives.
14. The police, prosecution office and courts should treat women suspected and/or accused of a crime according to the corresponding articles of the law and avoid the use of legally inexistent and judgmental terms such as “moral crimes”.
15. The Afghan government should develop and implement appropriate

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<sup>1</sup> Article 398 states that when a husband finds his wife in bed with someone else, the husband and /or his family are allowed to kill her without fear of prosecution.



mechanisms to promote public awareness for the reduction of the rate of forced and under-age marriages and to obliterate the phenomena of “*Bad*” (giving girls for settling disputes) and the exchange of daughters. In Afghan villages the awareness raising should be done through mosques and Mullah Imams.

16. Article 39 of EAW law grants the right of complaint to the victim, which deprives the justice and judicial institutions to initiate prosecution on their own. The government and national assembly of Afghanistan must amend this article by granting the right to the judicial institutions to initiate prosecution independent of complaint by any complainant;
17. Article 41 of the EAW law states that in addition to punishment, reparation must be given commensurate to a criminal act. The reparatory amount is unclear under this article. The government and the National Assembly must amend this law by clarify the reparatory amount for each criminal act;
18. The Afghan government, through the Ministry of Hajj and Charities, should develop guidelines based on relevant articles of the Law on the Elimination of Violence against Women and the Afghan civil law to foster and establish healthy marriages. These guidelines should be distributed widely among Mullah Imams and councils of mosques (Shura-ye Masajid).
19. The Afghan government, particularly the Ministry of Interior, should provide necessary capacity building for the Afghan National Police (ANP) regarding the Law on the Elimination of Violence against Women and ensure that the ANP acts in accordance with the law in cases of violence against women.
20. The Afghan government should develop new regulations requiring Afghan judicial agencies such as the Office of the Attorney General and the Supreme Court to give priority to cases of violence against women and promptly investigate these cases.
21. High ranking authorities in prosecution offices and the Supreme Court should be obliged to ensure that their subordinates enforce the provisions of the Law on the Elimination of Violence against Women, effectively guaranteeing the physical integrity of victims of violence in all phases of an investigation, including prosecution and trial, and prevent reprisals against the victims and their families by the alleged perpetrators.
22. The Afghan government should provide free legal assistance to female victims of violence so as to enhance their legal awareness of various legal procedures including legal defense, potential lawsuits and obtaining reparations.

23. The Afghan government, especially the Ministry of Justice, should submit the Sunni Family Draft Law to the National Assembly for approval at the earliest possible date.
24. To improve the rule of law, extend the power of the various judicial institutions, and avert judicial anarchy in the country, the Afghan government should not grant legal status and hence legitimacy to any decisions made by informal justice procedures such as traditional Jirgas.

## 1. METHODOLOGY

From 2010 to early 2012, the Afghanistan Human Rights and Democracy Organization (AHRDO) implemented Afghanistan's first ever Legislative Theatre project: "Legislative Theatre: Democratizing Women's rights".

The initiative focused on involving ordinary Afghan women in the elaboration of suggestions for legislation and public policies that promote and protect women's rights in the country.

Legislative Theatre (LT) is an example of using participatory theatre to promote active public involvement in relation to the elaboration of laws and public policy. The LT provides an opportunity for ordinary people to use the theatre to communicate with their political representatives and define civic law. It has been used in different countries to increase interest in local and national issues and developments, particularly among individuals or groups that are generally at the fringes of political participation. Additionally, Legislative Theatre is also an opportunity for elected officials and policy makers to listen, and then fashion solutions based on public input, consequently sharing the ownership in the shaping of public policy. Moreover, if a community has made suggestions which are then enacted in policy, it is much more likely to work wholeheartedly for the success of the policy - it is their policy, it came from their ideas. In the words of Augusto Boal, "Legislative Theatre does not accept that the elector should be a mere spectator to the actions of the elected official, even when these actions are right: it wants the electors to give their opinions, to discuss the issues, to put forward counter-arguments, to share the responsibility for what their elected official does...The legislator should not be the person who makes the law, but the person through whom the law is made<sup>2</sup>."

Concretely, the "Legislative Theatre: Democratizing Women's rights" project had three distinct but complementary theatrical elements: Playback Theater, Legislative Theatre Workshops and Legislative Forum Theatre performances.

The theatrical elements of the project were followed by further consultations, in which the recommendations collected throughout the conduct of the LT activities were shared and discussed with different state actors as well as civil society organizations, human rights activists and provincial council members. Besides, questionnaires focusing on legal and political aspects of women's problems were distributed, collected and analyzed. Finally, the recommendations that came out of the Forum Theatre performances were subjected to final approval as part of five legislative referenda in the five provinces of Afghanistan where the LT activities took place.

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<sup>2</sup> Augusto Boal, Legislative Theatre

The final project activity was the production of this legal report with the aim to document and analyze the project activities within the context of the history of women's rights in the country.

## **2. HISTORICAL BACKGROUND TO THE TRANSFORMATION OF WOMEN'S MOVEMENT IN AFGHANISTAN.**

### **A. From Amanullah Khan to Mullah Mohammad Omar**

The issue of women's participation in the Afghan public sphere is incredibly complex and often contradictory, with tremendous twists and turns over the course of Afghanistan's history. After centuries of almost complete social invisibility, women's participation received a major boost with the reform and modernization program undertaken under the reign of king Amanullah in the 1920s.

During those years, radical steps were taken to transform the social, political and cultural conditions that had marginalized Afghan women for centuries. Amanullah's regime focused on gender equality through compulsory education for women at primary school levels, freedom to choose one's husband, an increase in the minimum marriage age and the liberalization of women's veiling. The families of the king and the then elites acted as forerunners in executing the radical social reform programs and played central roles in empowering women and supporting their participation in different social arenas<sup>3</sup>

In order for these changes to have a stronger legal footing, a new marriage law was introduced in 1921. This law granted relatively greater freedom for Afghan women, banning child marriage and setting the minimum age for a girl to be married at 13 years<sup>4</sup> of age. At the same time, parallel to the various legislative developments, invaluable efforts were made to improve the social, political and educational situation of women for the first time in the history of Afghanistan. Schools were established for girls until secondary level and the Afghan Women Association was founded to work towards the consolidation and institutionalization of women's social freedoms.<sup>5</sup>

Furthermore, with the formulation of Afghanistan's first constitution and its endorsement by a Loya Jirga (Grand Council) in April of 1923, new laws and regulations related to the organization of other areas of public life in Afghanistan were also put in place.<sup>6</sup> At the time, the constitution was considered to be very

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<sup>3</sup> Hafizullah Emadi, *Politics of Development and Women in Afghanistan*, Pp. 36-37, Royal Book Company 2002

<sup>4</sup> Mohammad Hashim Kamali, *Law in Afghanistan*, p. 112.

<sup>5</sup> Hafizullah Emadi, *Politics of Development and Women in Afghanistan*, pp.37-40, Royal Book Company 2002.

<sup>6</sup> Nadjma Yasseri, (edited) *The Sharia in the Constitution of Afghanistan, Iran and Egypt-Implications for private law*, p.6, Max Plank-Institute.

modern and progressive. For instance, the religious perspective that prevailed was a macro-religious perspective, i.e. the constitution made reference not to any particular Islamic School of Law but to the religion of Islam in general.<sup>7</sup> Besides, despite the declaration of Islam as the official religion of the state, other religious minority sects such as Sikhs and Hindus were also granted the freedom to observe their religious rites and rituals.

As was to be expected, Amanullah's radical reform program in general and the social freedom granted to women in particular infuriated the religious and traditional sectors of society. As a result, Mullah Abdullah, also known as Mullah the Lame, initiated an unsuccessful rebellion against the king in 1924.<sup>8</sup> Following in Mullah Abdullah footsteps, Fazl Omar Mojaddedi, an influential Mullah established an anti-Amanullah front in the then British India. These religious and tribal uprisings were further fueled by frequent British interference, ultimately resulting in the downfall of Amanullah's reign in 1929.

With the fall of Amanullah's monarchy, the promotion of more social inclusion and public participation for women came to a halt. The new ruler, Nadir Khan, attempted to reverse the processes initiated under Amanullah in order to establish and consolidate his social and political power bases among the religious and tribal conservative forces. This break with the past and the shrinking of social and political spaces for women kept increasing throughout Nadir's rule until the mid-1950s.

Then, in September 1964, a new constitution was endorsed, enshrining the principle of equality among all the citizens of the country<sup>9</sup> and in spite of the apparent contradictions between Sharia Law and Secular law in this constitution, opportunities were provided for women's development in what came to be known as the “decade of democracy”. The family law improved further through slight amendments in the marriage age while precious legal avenues opened up for the legal defenses of Afghan women.<sup>10</sup> Exploiting these fresh opportunities in legal, social and political areas, many Afghan women, especially those who had linkages with the Afghan ruling elites, found avenues for participation in the parliament and in the cabinet of King Zahir Shah.<sup>11</sup>

A few years later, with the ascendance to power of the People's Democratic Party of Afghanistan (PDPA) in 1978, further legal reforms were introduced into women's affairs through the issuance of Decree Number 7. Under this decree, the

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<sup>7</sup> Ibid.

<sup>8</sup> Mir Mohammad Seddiq Farhang, *Afghanistan Dar Panj Qarni Akher*, p. 572, Intesharat-e Irfan, 1390

<sup>9</sup> Nadjma, (edited), *The Sharia in the constitution of Afghanistan, Iran and Egypt – implications for private law*, p.9, Max-Plank-Institute.

<sup>10</sup> Helena Malikyar, *Development of family law in Afghanistan: The roles of the Hanafi Madhab, customary practices and the power politics*, p. 394, Central Asian Survey, Department of Middle Eastern Studies, New York University, 13 September 2007

<sup>11</sup> Hafizullah Emadi, *Politics of development and women in Afghanistan*, p. 58, Royal Book Company 2002.

marriage age was increased to 16 years for girls and 17 years for boys, forced marriage was legally banned and the ceiling of the traditional dowry was set at a modest 300 Afghans. Most importantly, the spirit of this decree was premised on the juridical and legal equality of men and women.<sup>12</sup>

Under the leftist PDPA regime, women's participation in politics expanded in unprecedented ways, especially in terms of party politics, higher education as well as cultural and social activities. However, many ordinary Afghans considered these reforms too radical and in contradiction to tribal and religious codes, which in turn led to the rise of an armed, religiously-inspired, internationally-backed resistance movement to the PDPA regime, the Mujahedin. With the rise of the Mujahedin's influence and their territorial expansion, especially in rural areas, women's participation in the public sphere once again experienced a dramatic decline. This gradual disappearance from all echelons of public life further intensified after the ouster of president Najibullah in 1992 and the subsequent struggle for power among various Mujahedin factions, in what eventually turned into a devastating civil war with millions of victims.

The rise of Taliban and the ascendance of this extremist movement to power marked the death of the public sphere for women in Afghanistan. By mixing primitive tribal codes with an extremist understanding of a purely Sharia-based Islam, the Taliban deprived women of any meaningful presence in public life. With the capture of Kabul in September 1996, Mullah Mohammad Omar, the religious leader of the Taliban, banned women from working in public places and severely curtailed women's freedom of movement.<sup>13</sup> The new, openly anti-women policies of the Taliban were brutally enforced by the Taliban's religious police under the department for the promotion of virtue and the prevention of vice, depriving a generation of Afghan girls of the opportunity to receive an education and stalling women's development in Afghanistan for nearly a decade.

### **3. WOMEN AND THE POST-TALIBAN DEMOCRATIC PROCESS.**

The presence of Afghan women in the Bonn Conference, which gave shape to Afghanistan's post-Taliban political system, was small but their achievements in terms of institutional arrangements had far reaching implications. For instance, for the first time in Afghanistan's history, a Ministry of Women's Affairs was established<sup>14</sup> and Dr. Sima Samar as the first Afghan woman was appointed vice chairman to the interim administration<sup>15</sup>. What is more, following the

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<sup>12</sup>Val Moghadam, *The state, Islam and women: Gender politics in Iran and Afghanistan*, p.47, Social Text, No 22, Spring 1989

<sup>13</sup> Marry Anne Franks, *Obscene undersides: Women and evil between the Taliban and the Untied States*, pp. 139-40, *Hyptia*, Vol. 18, No 1, *Feminist Philosophy and the problem of evil*, winter 2003

<sup>14</sup> International Crisis Group, *Afghanistan: Women and Reconstruction*, p. 11, 14 March 2003

<sup>15</sup> Agreement on provisional arrangement in Afghanistan pending the re-establishment of permanent government institutions.

international intervention, women's political participation increasingly expanded in key processes that were fundamental in defining the future political trajectory of Afghanistan. In the Emergency Loya Jirga held in June 2002, there were nearly 200<sup>16</sup> female delegates among the 1,650 Jirga participants. In the same vein, in the constitutional Loya Jirga of the December 2003, of the total 500 delegates from across the country, 90 delegates were women<sup>17</sup>.

In general, women's participation in political processes was unprecedented. In the 2009 presidential elections, 41.3%<sup>18</sup> of the total of 10.57 million voters were Afghan women, with Masouda Jalal competing in 2005 and Frozan Fana and Shahla Atta competing in 2009 presidential elections<sup>19</sup>. Also, for a country that historically lacked a democratic parliament, the numeric presence of Afghan women in the legislative body was outstanding. During the 2005 parliamentary elections, in which 313 female candidates competed, 68 women were elected for the 249-seat legislative assembly. Simultaneously, 29 women got seats in the 102-member senate.<sup>20</sup> In the 2010 parliamentary elections, of the total 2,577 candidates<sup>21</sup>, 405 were female.<sup>22</sup> However, with mounting security and widespread electoral fraud, a mere 69 female MP's finally made their way to the lower house of the national assembly<sup>23</sup>. Nonetheless, comparing the 2010 parliamentary elections with those of 2005, the participation of women increased by 30%, thereby suggesting women's gradual movement from the margins of society into mainstream political participation.

In general, Afghan women's most meaningful representation has taken place within the newly established democratic institutions. These institutions have been less dependent on the orthodox centers of power and within these democratic settings, women have been able to moderately challenge the conservative and staunchly anti-women forces as well as negotiate and strike bargains with the Afghan government. This process marks a break both with the Taliban era and with the Mujahedin time where women had no meaningful presence in the public sphere.

However, it is important to emphasize that the strong presence of Afghan woman in democratic politics has largely resulted from a combination of internationally-backed legal arrangements, the introduction of a quota system and far-reaching

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<sup>16</sup> Hasina Sulaiman and Hasina Rasuli, Afghanistan: Women still silenced, Institute of War and Peace Reporting, No, 88, 18 December 2003

<sup>17</sup> Lauryn Oates and Isabel Helal, At the cross-roads of conflict and democracy: Women and Afghanistan's constitutional loya jirga, rights and Democracy, p. 25, May 2004

<sup>18</sup> International Crisis Group, Afghanistan: From presidential to parliamentary elections, p.3, 23 2004

<sup>19</sup> International Crisis Group, Afghanistan and the Crisis of Governance, p.2, 25 November 2009

<sup>20</sup> International Crisis Group, Afghanistan's New Legislature: Making Democracy Work, p.8, Asia Report, No 116, 15 2006

<sup>21</sup> International Crisis Group, Afghanistan's election stalemate, update briefing, p.8, 23 February 2011

<sup>22</sup> Fazl Ahmad Manawi, Chairman, IEC, Press Conference, June, 2010.

<sup>23</sup> FEFA Brief: Women and Afghanistan's 2010 parliamentary election, p.2

international assistance directed to women's political empowerment and development. Moreover, what distinguishes these undeniable advances in post-Taliban Afghanistan from those under the reign of Amanullah, Zahir Shah and the PDPA is that the ruling elites under the former regimes were authentically committed to radically transforming women's social standing while in post-Taliban Afghanistan it is the imperative of the international community rather than the policies of the Afghan government that has brought about changes in women's lives.

In fact, Afghanistan's current political elites with president Karzai in the lead have dealt with women's rights in accordance to their constantly shifting interests and priorities, trying to appease the religious and tribal conservatives under the leadership of Sayyaf and Mohseni on the one hand and snuggling up to the international community in order to obtain financial and political assistance, on the other hand. The concrete result of this balancing act has been a gradual strengthening of the extremist and conservative forces and especially the conservative elements within Afghanistan's Ulema Council. This self-serving and hypocritical approach by the Karzai administration has increasingly endangered women's legal and political achievements of the last decade, with Mohseni's monopoly over drafting the Shia personal status law and his fierce resistance against amending any of its repressive articles as well as Sayyaf's opposition to amendments in the Elimination of Violence Against Women Law (EVAW) representative of the new status quo. Another sad example of the diminishing importance of women in positions of power is their very limited presence in Afghanistan's High Council of Peace, set up to lead peace negotiations with Afghanistan's different insurgent groups.

Hence, it must be emphasized that it is due in large degree to the robust military and political presence of the international community that further outbursts by these conservative forces has been contained. With the international drawdown, and the negotiations with different extremist groups, the balance is likely to tilt in favor of forces that have historically demonstrated their fierce anti-women's rights credentials.

At the same time, one also needs to acknowledge that Afghan women have also played a part in the recent deterioration of women's rights in the country. For example, many local women's rights organizations suffer from inadequate organizational capacity, a lack of intellectual tools to properly analyze and understand the true nature of the Karzai administration's policies towards women as well as no genuine commitment to establishing a robust and effective nation-wide women's movement in the country.

#### **4. WOMEN LEGISLATION**

Afghanistan's new constitution was endorsed in January 2004 during a constitutional Loya Jirga. This Constitution recognizes the principle of equality



between and women. Article 22 of the constitution says: “Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man and women, have equal rights and duties before the law”. Besides, the Afghan government has also signed up to the Universal Declaration of Human Rights as well as different inter-governmental accords and international treaties. Provision one of article 7 says: “The state shall observe the United Nations charter, inter-state agreements, as well as international treaties to which Afghanistan has joined and the universal declaration of human rights”. The inclusion of these articles indicate significant legal achievements for all Afghan citizens and especially Afghan women.

At the same time, this constitution has been the outcome of a period characterized by a radical but inherently unstable and chaotic political transition and therefore reflects the contradictory tendencies and inclinations of such haphazard political transition processes. For instance, the role given to Islam in this constitution is greater than in the 1964 constitution, where secular laws enjoyed greater status than in the current one.<sup>24</sup> In addition, article three of the current constitution says: “No law shall contradict the beliefs and principles of the sacred religion of Islam”, thereby seriously challenging the aforementioned articles 7 and 22 of the constitution. It is these and other contradictions in the current constitution that have helped the conservative and religious forces to persistently find loopholes to threaten the achievements of the women of Afghanistan.

Apart from the new constitution, Afghan women have had a series of additional achievements in other legislative areas, namely the enforcement of the EVAW law, the Shia personal status law and the preparation of the draft of the Sunni family law.

**1. The Elimination of Violence against Women Law:** This law was promulgated by a presidential decree in July 2009. Since various forms of violence continue to be one of the fundamental problems faced by Afghan women today, the decree-based promulgation of this law is a major step toward containing all forms of violence against women. Concretely, the EVAW law criminalizes several forms of violence that are frequently committed across the country. Under article 5 of this law, 22 kinds of violence against women are identified and the perpetration of these forms of violence is criminalized and therefore subject to prosecution. Some of the types of violence include: sexual assault, self-immolation and suicide, injury and disability, beating, exchange, sell and purchase in context of marriage, forced marriage, deprivation from choice of marriage, under age marriage, use of bad language, insult, threat, harassment, prevention from education and work.

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<sup>24</sup> Nadjma, (edited), *The Sharia in the constitution of Afghanistan, Iran and Egypt-implications for private law*, p. 20

Though the EAW law is a very progressive law, there are still considerable ambiguities and flaws. One serious deficit is that the issue of elopement is not properly dealt with and that crimes originating from honor killings are not clearly defined.<sup>25</sup> Efforts were made to remove the flaws in this law by amending some of its problematic articles, yet unfortunately, these efforts reached a deadlock in Afghanistan's lower house of the parliament. What affected the amendment and final approval of this law was once more the mobilization of the conservative, religious and extremist circles in the parliament as well as a lack of cohesiveness and solidarity among the female members of the parliament. Debilitating competition among women actors both inside the parliament and among different civil society forums were other factors that contributed to the stalemate. As a result, the amendment and approval of this law through the parliament has been delayed indefinitely<sup>26</sup> and the law continues to be in force based on the original presidential decree.

Besides, the enforcement of this law has faced severe challenges. In spite of the fact that since its promulgation over 5000 cases of violence against women have been registered with the prosecutors offices, the process to address these cases has been very slow and most registered cases were dealt with in accordance with the criminal law instead of the EAW law<sup>27</sup>. Hence, this law has yet to turn into a source for legal redress within the various judicial institutions of Afghanistan.

**2. The Shia Personal Status Law:** Throughout the history of Afghanistan, the personal matters of its Shia population have been decided in accordance with the Sunni-based Hanafi School of law. As a result, Afghan Shias often faced restrictions and constraints in observing their religious rites and rituals in different phases of the history of Afghanistan.

One of the hard-gained achievements for Afghanistan's Shia minority in the post-Taliban Afghanistan is the constitutional recognition of the Jafari School of Law for the first time in the history of the country. Article 131 of the constitution states: "The courts shall apply the Shia jurisprudence in cases involving the personal matters of followers of the Shia sect in accordance with the provisions of the law". It further adds: "In other cases, if no clarification in this constitution and other laws exist, the court shall rule according to laws of this sect".

For many ordinary Shias, the process of drafting and approving this law was more important than the concrete details and technical aspects of the law since this process meant an official recognition of their religious beliefs for the first time in Afghanistan's history. Unfortunately, the religious and conservative Shia groups under the leadership of Mohammad Asef Mohseni Kandahari monopolized the process of preparing the draft of the law. As a consequence, the

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<sup>25</sup>United Nations Assistance Mission in Afghanistan, *Along way to go: Implementation of the Elimination of violence against women law in Afghanistan*, p.7, Kabul, November 2011

<sup>26</sup>Torunn Wimplemann Chauhdary, Orzala Ashraf and Astri Shuke, *Learning to build a sustainable peace, Afghanistan*, CMI, Report, p. 11

<sup>27</sup> *Ibid*, p. 9.

traditional and conservative interpretation of Shia jurisprudence was strengthened in this law at the expense of a more moderate reading. For instance, some articles of the law tacitly restricted the right to movement for women while women's obedience to their husbands and the fact that women must sexually satisfy their husbands were most controversial<sup>28</sup>.

What is more, contradicting the established mechanism of legislative debates which often involves article by article discussions on a legislative draft in a plenary sitting, the Wolesi Jirga hastily approved this law as a package on 30 January 2009. This removed any ground for technical scrutiny<sup>29</sup> into this draft law.

Luckily, the mobilization of civil society, including human rights and women rights activists caused the law to be amended following its promulgation by the president. The amended version of the law is much better but still has significant problems and requires substantive review.

**3. The Sunni Family Draft Law:** Afghan family affairs were first organized by a decree from King Abdul Rahman Khan in the late 19<sup>th</sup> century. Underage marriage, forced marriage as well as exorbitant marriage expenses were banned under the monarch's directives.<sup>30</sup> A few decades later, King Amanullah Khan crafted the marriage order, which was endorsed in 1923 following drastic trimming by conservative forces. Placing it in its historical context, this law was quite modern and progressive. For instance, Article 18 of the law criminalized underage marriage and misogamy was conditioned on the observance of the principle fairness and justice.<sup>31</sup> The family law was then incorporated into the framework of a new civil law in the 1970s, which was later promulgated by presidential decree in 1977.

Unfortunately, this new civil law contained many discriminatory passages against women. For instance, the law is very ambiguous about a woman's right to choose her husband. In addition, a demand for women's obedience to their husbands, unequal authority in the dissolution of marriage and an unjust inheritance system are further cases of discrimination against women.<sup>32</sup>

Recognizing the deficits vested in the civil law, the new Sunni Family Law was drafted with the technical assistance of an international organization and reflects tremendous improvements in comparison to the old family law in force within

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<sup>28</sup> Ibid, 3-4

<sup>29</sup> Lauryn Oates, A closer look: The policy and law-making process behind the Shiite personal status law, Afghanistan, Research and Evaluation Unit, P. 4, September 2009

<sup>30</sup> Helena Malikyar, Development of family law in Afghanistan: The roles of the Hanafi Madhab, customary practices and power politics, p. 391, Central Asian Survey, Department of Middle Eastern Studies, New York University, 13 September 2007

<sup>31</sup> Ibidn, P. 393.

<sup>32</sup> Abdul Wahid Zia Mobaligh, Senior Family Law Officer, Family Law in Afghanistan, Past experiences and future landscape, p.2, Rights and Democracy

the framework of the civil law: the traditional practice of Baad<sup>33</sup> is criminalized, marriage registration and medical check-ups before marriage have been made compulsory and the contentious issue of guardianship of the children is addressed.

The draft was submitted to the legislation department of the Ministry of Justice on 10 March 2010. However, to the dismay of millions of Afghan women, the legislation department of the Ministry of Justice rejected the need for any amendments to the original family law.<sup>34</sup> Despite various mobilizations by Afghan civil society organizations, the prospect for the amendment of this law appears dim at the moment of writing this report.

## **5. LEGISLATIVE THEATRE: PLAYBAK AND WORKSHOPS**

### Using an Arts-based Approach to Address Women's Issues in Afghanistan

Legislative Theatre is a highly innovative form of participatory theatre that aims to contribute to the involvement of ordinary people in public decision making in general and policy and law making in particular. The Afghan legislative theatre activities provided unique opportunities for Afghan women to actively share their various life experiences, discuss and analyse their problems and suggest and try out collective solutions for these problems.

The Afghan LT activities were implemented in five Regional Centres of the country (Kabul, Bamiyan, Nangahar, Herat and Balkh), taking into consideration cultural, social and regional differences in order to promote the best possible representation. The project was conducted from October 2010 to February 2012.

Concretely, the Afghanistan Human Rights and Democracy Organization (AHRDO), in close collaboration with other state and non state actors, used two different, interactive theatre methodologies, Playback Theatre and Forum Theatre.

Playback Theatre is a form of interactive, improvisational theatre in which different members from the audience share personal emotions, moments and stories from their lives and watch them enacted on the spot by a group of community, generally non-professional, performers. It is hence a way to validate and acknowledge people's life experiences, often with a focus on promoting the voices of marginalized and silenced groups. It is also a space for deep listening and the humanization of human relationships, with the final result often described in terms of individual and collective healing.

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<sup>33</sup> Baad is a traditional practice of settling disputes among Pashtun tribes in which a young girl is traded to settle a dispute for her older relatives.

<sup>34</sup> Cheshmak Farhoumd-Sims, Family Law in Afghanistan, Reflecting the past to understand the present and prepare for the future, "A Women's Place: Perspectives on Afghanistan's Evolving Legal Framework", p.20, Rights and Democracy, 2011.

Forum Theatre is an interactive form of participatory theatre in which a problematic scenario is presented and then replayed, with audience members (so-called spect-actors) encouraged to enter the action and attempt to positively change the outcome on the stage and then take what they have learned during the forum and apply it in their real lives. It is a rehearsal for future action, a unique opportunity to practice change in the safe space of the theatre.

The key objective of the Playback Theatre activities was to create a space for Afghan women to have their stories heard and acknowledged, and identify the most dominant forms of violence against women. During a total of twenty Playback Theatre performances, more than 100 women's stories were told and carefully documented by the AHRDO staff. At the outset of the performances, many women seemed to lack the trust and the confidence to tell their stories. However, gradually they overcame their fears and began speaking with energy and rigour, often telling stories about problems outside the family environment such as physical harassment and verbal abuse but also domestic violence such as forced marriage, gender-based violence and economic dependence.

Next, ten six-day community-based theatre workshops were conducted with women from all walks of life as a means to generate space for the in-depth discussion of some women's issues in the five states. These workshops resulted in five interactive forum theatre plays, one in each state, that were developed and performed by the workshop participants themselves based on their critical understanding of the conflicts faced by Afghan women today. These plays were performed a total of 39 times for approximately 4,000 high school and university students, members of different women organizations as well as the public at large. The objective of these public performances was to create spaces for awareness raising on women's issues and identify collective solutions in order for Afghan women to make concrete legislative recommendations that strengthen women's rights in the country and thereby become actively participating and critically reflecting citizens in the shaping of democracy in Afghanistan. In order for the legislative recommendations to materialize an Afghan legal expert was present at most performances to document and analyse the interventions and ideas that came from the audience and translate these desires into legal language and concrete suggestions for legislation.

Once the main recommendations were determined, AHRDO organized five so-called legislative referenda with the objective of promoting one final opportunity for the legitimization and democratization of the final legislative suggestions. During these referenda, the legislative suggestions and policy recommendations were presented to an audience consisting of some of the original female workshop participants and spectators, members of local provincial councils, civil society actors, local government agencies, local judicial institutions, legal experts, universities students as well as other interested women and men. During the referenda, the audience was invited to approve or reject the legislative

suggestions that made up the final legal report submitted to the Afghan parliament in February 2012.

The following table summarizes the different theatrical activities:

#	Type of activities	Methodology	Number Event	Participants		Total participants
				Male	Female	
1	Identifying, categorizing the dominant HR violations and assessing problems encountering women political, legislative participation	Playback Theatre	20	-	490	490
2	Legislative workshop	Participatory Theater workshop	5	-	102	102
3	Analyzing women legal problems and develop the play for the public performance	Play development workshop	5	-	35	35
4	Public gathering and dialogue on women issues	Public Performance	39	195	3167	3362
5	Public hearing and consultation	Referendum	4	147	374	521

## 6. ANALYSIS OF LEGISLATIVE THEATRE ACTIVITIES.

Empowering ordinary Afghan women to play an active role in the shaping of new public policy and law making was the primary objective of the theatrical and consultative activities. In addition, concerted efforts were made to explore the constraints in existing legislation and the limitations hampering women's participation in the public sphere. The qualitative impacts and outcomes of the activities can be summarized as follows:

### A. Legal Awareness

One of the main concerns of the legislative theatre activities was to generate opportunities for women from all walks of life to learn about and debate the various constraints that women face in their interaction with state institutions in terms of access to justice, security and the elaboration of legislation. The latter was an issue of great significance and was thus debated across the project activities. Regarding the former, the Shia personal status law, the law of elimination of violence against women and the crime-generating articles of the criminal law were regularly discussed as laws that most directly affect women in their everyday life.

In general, most women agreed, that flawed religious views were the strongest factor constraining Afghan women in their daily life. Local mullahs propagate their reactionary views, ideas and rumors with religious fervor while avoiding any meaningful discussions on how to improve the lives of ordinary women. According to many female participants, this flawed approach needs urgent correction.

So-called moral crimes in the judiciary was another frequently mentioned challenge. Moral crimes have yet to have a clear legal definition and legal references. They can include avoiding marriage, elopement and even sexual assault against women. Besides, some articles of the laws dealing with women's issues are crime-generating. Article 398 of the Penal Code falls under this category. This article convicts the perpetrator to a maximum of two years in prison. In addition, the other flaw in this article is that it grants the authority to punish the alleged perpetrator of moral crimes to the women's relatives instead of the judicial bodies. The result is judicial anarchy and the arbitrary punishment of women unjustly suspected of illicit sexual relations.<sup>35</sup>

In terms of positive developments, most female participants in the different theatrical activities considered the law on the elimination of violence against women (EVAW) as the most important legislative achievement of the last 10 years. They put particular emphasis on article 4 of the law, which says, "Violence is crime and nobody shall commit it in residence, private and public offices, public places, vehicles and other places". Furthermore, the participants

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<sup>35</sup> Dr.Haidar Allamah, Legal advisor, ARHDO, December 2011

expressed their satisfaction with the fact that the law criminalizes all forms of violence against women.

On the other hand, women's lack of legal awareness still remains a formidable problem. The theatre activities showed that most Afghan women do not know what rights they have within the existing legal frameworks. In fact, many of them were totally surprised when they heard that they have rights that are enshrined in officially recognized legal documents. For example, only one out of twenty women in Bamiyan had heard about the crucial EAW law. Besides, the majority of the female participants in all provinces did not have any understanding that they had the right to play an active role in public life. One woman from Jalalabad said, "I thought women must always stay at home but now I learnt that we have the right to do work outside the house".<sup>36</sup> In another example, a woman from Herat said, "I never knew that I have certain rights. That I am not only a housewife, a mother or a servant in the family but that I am also a human being". It is surprising and shocking examples like these that indicate women's general lack of legal awareness, abundant in all the places where the project was implemented.

Most importantly, once the women realized the existence of reasonably progressive legislature in their favor, they also understood that Afghanistan badly lags behind in enforcing these laws. One woman in Kabul said, "If there are laws that protect us, why are they not being implemented?" Discussing who should serve as educators for ordinary Afghan women, a number of women paradoxically insisted that it is the religious authorities that should play a more active role in informing women about their rights. Participants in Kabul and other provinces also emphasized the need for a more proactive government, especially the Ministry of Women's Affairs. The importance of the media was also emphasized in making women's cause heard at different levels.

Finally, time and again during the theatre activities, Afghan women stressed the need for educating Afghan men on women's rights. One woman from Mazar-e Sharif argued that "Men must recognize the rights and privileges legally granted to women and they must respect them in practice". Men's monopoly over women's legislature was also seriously questioned. Several women claimed that "The fundamental problem with law making in Afghanistan is that it is men who legislate for women." and that "This trend has to change. There are serious needs for female legislators and female judges. Female judges for female cases."

## **B. Participation and Dialogue**

Participation and dialogue are two of the fundamental principles in legislative theater. In the current initiative, arguably the most important form of participation was to support Afghan women from a wide range of educational and professional backgrounds to become actively engaged in transforming hitherto

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<sup>36</sup> AHRDO, Consultation Meeting, Shiwa district, Nangarhar, September 2011



top-down and male-dominated social, political, legislative and policy making processes. This was achieved through providing a physically and emotionally safe environment for marginalized women to engage in dialogue about various social, political, legal and legislative problems faced by Afghan women today. In fact, dialogue in this context was first and foremost an end in itself, serving as a new, often deeply transformative experience for countless Afghan women who had never been asked to comment on anything other than child rearing, let alone experienced any kind of public discussion in their lives.

Hence, the overwhelming majority of workshop and performance participants relished the opportunity to express their ideas:

- “I am quite pleased that I was able to finally share my life story with someone. I never thought that one day I would have the opportunity to share this very difficult aspect of my life. In fact, I thought I am the only the person who had suffered this much. Now I feel quite relaxed and consoled”<sup>37</sup>. (Mazar-e Sharif)
- “This is the first time that a non-governmental organization came to this district to work with women. Apart from being a wife and a mother, women have no other social activities. This program was really inspiring”<sup>38</sup>. (Nangarhar)
- “What I learned from this workshop is that we can express our idea wherever we want. Previously, I was thinking that people may not listen to me but now this kind of thinking is changed. Good communication always results into good understanding which this workshop thought me”. (Bamiyan)
- “Before this workshop, I was not able to talk in a meeting or in a gathering but now I can as these six days workshop gave me enough confidence to do so. I know now how to express my pain to the others instead of keeping it inside myself”. (Kabul)
- “This workshop changed my live. I have learned how to raise my voice now.” (Kabul)

### **C. Empowerment**

Over the last decade, the Afghan government and the international community have designed and implemented wide-ranging policies and program to empower Afghan women. By and large, these programs have improved the condition of women in Afghanistan but have often failed to trigger broader social, economic and cultural changes. In addition, given the security limitations and the more

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<sup>37</sup> AHRDO, Legislative Theater Workshop, Kabul May 2011.

<sup>38</sup> AHRDO, Women’s Affairs Department, Nangarhar 2011

conservative social realities in rural areas, most development programs aimed at improving the lives of Afghan women have focused on the great urban centers and in areas that were easily accessible. Consequently, it is urban women who have benefitted most from the various programs, resulting in the empowerment of a chosen few, effectively contributing to the formation of a women oligarchy that lives totally disconnected from the difficult lives of the vast majority of Afghan women.

What is more, most assessments and surveys conducted to measure change and development in the lives of the women in Afghanistan have been quantitative rather than qualitative. The focus has been on material benchmarks at the expense of looking at actual qualitative change in women's lives. As a result, all major stakeholders, both national and international, have emphasized the increased numbers of girls going to school, female representation in parliament, the number of women working in public sphere and/or the number of women attended a variety of workshops and trainings. Looking at these numbers alone, the lives of women in Afghanistan seems to have improved substantially. However, these mathematical exercises fail to prove the extent to which Afghan women actually feel empowered to make decisions for themselves.

Recognizing the need to complement quantitative indicators with more qualitative measures, AHRDO decided to use different theatrical techniques to focus on bottom-up, soft, qualitative and transformative aspects of women development and empowerment in Afghanistan. What plays a fundamental role in qualitative transformation is the generation of a conducive environment for the expression and incremental growth of their human potential. To put it more objectively, empowerment in this context means to change fear into friendship, despair into hope, suspicion into understanding, and individual efforts into collective power. Within such an empowerment framework, each individual woman who took part in the activities were viewed as potential agents of change.

The following examples illustrate some of the qualitative and endogenously stimulated change and empowerment resulting from the theatre activities:

- An elderly woman from Herat was initially reluctant to play a role in one of the public forum theatre plays. However, during the last day of the play development workshop, she suddenly changed her mind. When the facilitator reminded her that it was now too late for her to take part, the woman replied, "We spoke all week about women's rights and it is now my right to participate in this performance". She then continued to play an active role in all the subsequent performances, suggesting a powerful self-transformation.
- In Bamiyan province there was an illiterate workshop participant who never took part in any of the discussions that took place. During the course of the theatre workshop, she gradually overcame her initial isolation and started to speak about how to best raise her problems with her family,

something she had never done before. Eventually she started raising her voice more often, culminating in her publicly declaring that she had confronted her family at home and had managed to resolve her family problems. She also became one of the most active participants in the legislative theater performances. Finally, in the concluding stages of the project, during the legislative referendum with senior government and non-government actors present, she confidently gave a public speech about women's problems and women's rights.

- On one of the mornings of the theatre workshop in Jalalabad, one female participant sneaked out her house after her husband had left for work. Unfortunately, one of her male neighbors saw her leave the house and aggressively confronted her, prohibiting her from going to the workshop. However, once the woman had gone back inside, she waited for a little while and then “escaped” via the roof of her house, safely making it to the workshop.
- In Bamiyan, a woman realized her own participation in the abuse of women's rights in the country: “After seeing this girl acting out her own life of suffering, I realized how much I wronged my own daughter when I agreed to her being given away to a much older man.” Later the group learned that she visited her daughter and apologized for her mistake.
- In Jalalabad, the son of one of the workshop participants realized that his mother was not at home. When he called her mobile phone and ordered her to come back home immediately, the mother made it clear that he had no right to tell her what to do and that it was she who decided for herself what to do or not to do.
- During a legislative performance in Herat, a woman in the audience saw how the main female character was given away to an unknown man by her father, without consulting her. After the performance, the woman approached the AHRDO facilitator and confessed how her brother is currently doing the same thing to his daughter. She vehemently stated: “I will now talk to my brother to convince him to allow his daughter to first see her husband and then make a decision together.”
- During a theatre workshop in Mazar-e Sharif an elderly Uzbek Afghan Woman repeatedly affirmed that women will never be as strong as men. Yet, during one of the legislative performances, she intervened in the play and confronted the male character, letting him know in no uncertain words that men and women were born equal and should be treated as such.

## 7. KEY FINDINGS

### A. Social Cleavages

Afghanistan's value system, culture and established social practices are influenced by rigid social stratification. The main characteristics of this stratified system are that all social interactions are defined on the basis of age, sex, ethnic and local relations. Within the framework of this intricate system, women, youth and ordinary people have little to no impact on social events and processes since this traditional system better allows elders, clerics and the few educated women to represent their inferiors in the public sphere.

Conceptually, the application of the theatre methodology challenged this conventional top to bottom social leadership structure in general and the absence of women's leadership in particular. Concretely, Legislative Theatre allowed women from all walks of life to contribute to discussions related to women's problems, thereby weakening the monopolistic grip of a small number of educated women on these issues.

On the other hand, the debates generated during the referenda held in Kabul, Mazar-e Sharif, Herat, Nangarhar and Bamiyan revealed a clear divide between ordinary Afghan women and so-called educated women, suggesting that the majority of educated Afghan women perpetuate anachronistic views towards ordinary, rural women.<sup>39</sup> Over the course of the debates, many educated women demonstrated a sense of superiority vis-a-vis ordinary women, often bypassing them during the problem analysis and in some cases mistreating and abusing them verbally. In fact, many educated women behaved as if speaking about women problems falls exclusively under their jurisdiction. As a result, there were moments when ordinary women showed reluctance and intimidation to speak about their issues.<sup>40</sup>

The discussions and debates conducted during the public legislative theatre performances also suggested a huge divide between urban and rural women, especially in terms of their vastly different modes of thinking, way of life and a more urbane value system among urban women. Benefiting from better educational facilities, Afghan urban women enjoy greater presence and influence within the framework of international agencies, educational institutions, governmental bodies, the Afghan parliament as well as civil society organizations<sup>41</sup>. One of the result of this cleavage is that urban women appear to be very much disconnected from their rural compatriots, consequently lacking crucial support of the masses of rural women in order to make a more comprehensive case for more radical changes in the lives of Afghan women.

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<sup>39</sup> AHRDO, Legislative Workshop Report, Mazar-e Sharif, 29 August 2011

<sup>40</sup> AHRDO, Legislative Workshop Report, Kabul, 10 February 2011

<sup>41</sup> AHRDO, Legislative Workshop Report, Shewa district, Nanghar, 27 September 2011

In fact, during the last ten years, Afghan women have been incapable of creating a strong political movement. Today, this lack of a dynamic and powerful pressure group has further contributed to the gradual marginalization of women from major political processes and developments, thereby seriously affecting the prospects of consolidating women's achievements in the long term<sup>42</sup>.

## **B. Women and their Challenges in the Public Sphere**

Given the multi-dimensional problems of women in the private sphere, it must be emphasized that even after ten years of internationally-backed women's rights activities, Afghan women have yet to enjoy their most fundamental rights. They have been subject to ill-treatment, forced marriages, discrimination, rape, family violence and systematic exclusion, with national and international media coverage of famous cases such as Gulnaz in Kabul, Sahar Gul in Baghlan, Qamar Gul in Sar-e- Pul and Estorai in Kabul the most visible manifestation of the continued oppression of women in the private sphere.

In most areas of the country, the role of women is largely limited to the realm of the family. Hence, AHRDO's LT activities were designed to increase women's public profile and identify the problems that women face in this particular arena. The qualitative outcome of the artistic and consultative activities in different regions revealed that the majority of Afghan women are still denied their basic rights in the public sphere. Metaphorically speaking, the public sphere in Afghanistan has a male face and female attempts to become more active in the public sphere have been responded with threats and a variety of negative, often deadly social consequences for women. Generally speaking, their presence in the public sphere creates an unfavorable social perception of women, with most women working outside the private sphere constantly facing negative reactions in their community. Moreover, even searching for legal redress in the face of domestic violence discredits women in the eyes of the community, especially in rural areas<sup>43</sup>.

Given the religious nature of Afghan society, restrictions on women in the public sphere is often proposed and justified within the framework of religious teachings and concepts. In general, religious scholars have done little to offer a modern reading of religious concepts related to women's social roles. More importantly, religious understandings and interpretations in Afghanistan are heavily influenced by local and tribal norms and behaviors that are often inconsistent with the true nature of religious teachings. For this reason, during the debates and consultations, particularly in Kabul, it was concluded that many female problems are not rooted in religion but rather a deliberately false understanding of religious concepts. In order to solve these problems, many women consulted requested a review of these flawed religious interpretations. This can only be done by the various religious authorities, all of whom are of course male.

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<sup>42</sup> AHRDO, Legislative Workshop Report, Kabul, August 2011

<sup>43</sup> AHRDO, Legislative Workshop Report, Herat 10 February 2012

In general, networks of religious leaders and mosques in Afghanistan play an important role in shaping public opinion, especially in the area of women's issues. The role of religious leaders is particularly significant at grassroots levels, where local religious authorities are more concerned with the concrete ethical and moral aspects of the behavior, responsibilities and duties of Afghan women. According to these religious leaders, women's presence in the public sphere is incompatible with the protection of the fundamental principles of women's morality and virtue. Based on this understanding, the private sphere belongs to women and the public sphere belongs to men. Women's way out of this dilemma is hence extremely challenging and potentially very dangerous. Solving this problem requires a thorough and radical review of the dominant religious and tribal discourses. In theory, religious leaders have a great opportunity to promote constructive debates about women's fundamental rights through the local mosques and madrasas<sup>44</sup>. However, for this to happen, these leaders would have to undergo a thorough review of their mistaken interpretations of Islam.

### **C. Afghan Women, Legislation and Traditional and Religious Leaders**

Afghanistan's legislation process is exclusively dominated by the different state institutions. There are no formal mechanisms to involve the Afghan civil society, the Afghan public in general or even political parties in the legislative process. In addition, the "Taqnin" department of the Ministry of Justice deals with draft laws as confidential documents and the access to draft laws is extremely difficult and limited.

Greater inclusion of voices from Afghan civil society in the drafting of critical laws is absolutely vital for the deepening of the democratic process in the country. Afghan women in particular must be involved in the elaboration of legislature that is critical to women's development, with the most immediate result being laws that are more reflective of local realities while simultaneously promoting a sense of ownership that would ultimately contribute to the fostering of a culture of respect for the rule of law.

Afghan women now constitute an unprecedented 28% of Afghanistan's legislative assembly. This level of representation is historically unprecedented in Afghanistan, outweighing many other parliaments around the world. Unfortunately, Afghanistan's female legislators have failed to establish a coherent women caucus inside the parliament because of divided and complex loyalties, and a failure to understand that such an entity could help female legislators push for women-friendly legislation in a house dominated by Afghan conservative forces. An example in case is Afghan female MPs insignificant role in the approval and in the subsequent amendment of the Shia personal status law.

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<sup>44</sup> AHRDO Consultative Meeting, Bamiyan City 20 October 2011

Besides, in terms of government policy, the Karzai administration has consistently tried to keep Afghan women satisfied with an array of symbolic gestures when in reality a great deal of efforts were made to prevent them from becoming a truly powerful and challenging force, capable to transform the deeply unequal gender relations in the country. The selection of politically insignificant women to the High Peace Council is indicative of this policy<sup>45</sup>.

Apart from these challenging political realities, Afghan women face the aforementioned resistance against women in the public sphere by the religious, conservative and traditional forces in Afghan society. These forces have historically rallied against any form of legislative, political and economic development of women, thereby impeding the modernization process in Afghanistan under the rubric of defending Islam and Afghan traditions and values.

This resistance forms a consistent pattern throughout the history in this country. Mullah the Lame was the first person who rebelled against the marriage law in 1923, Mullah Omar used the most severe forms of violence against women who dared to ask for more freedoms for women during the Taliban time and in post-Taliban Afghanistan, it is ultraconservatives such as Sheikh Mohammad Asif Mohseni Kandahari and the fundamentalist Jihadi leader Abdul Rab Rasul Sayyaf that have demonstrated the most organized form of resistance against any form of legal advances for women in the country. Should the balance of power tilt further in favor of these forces and the Islamic insurgents groups such as Mullah Omar's Taliban in the future, the problems of Afghan women in the political, social and legislative sphere will not doubt increase to the extreme and the hard-gained achievements of the last ten years will be reversed.

#### **D. Afghan Women and the prospects for extremists gaining power**

Afghan women are extremely concerned at the prospect of extremist groups, especially the Taliban, returning to power. The Taliban insurgency over the last ten years has been as costly and devastating for Afghan women as their Islamic Emirate in mid-1990s. The majority of Afghan girls in areas under the control of the Taliban have been denied access to education while female students, teachers and employees of both the public and private sectors have been subject to Taliban's extreme violence and terror. Prominent Afghan female politicians and bureaucrats have been assassinated in the Taliban's extrajudicial "desert trials". In fact, in spite of their recently more moderate public statements, there are no reasons to believe that the Taliban's attitudes have changed in any major way. On the contrary, the Taliban's actions toward women over the course of the last ten years is indicative of an ever more radicalized perspective on women.

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<sup>45</sup> AHRDO Interview with an Afghan Political Analyst, January 2012

The current US and Afghan government-backed process of negotiating with extremist groups, and especially the Taliban, promises to increase the vulnerability of women in Afghanistan in the medium- to long-term. Any political deal with these forces means the selling out of women's hard-gained achievements in the last ten years while most likely incurring unbearable cost for Afghan women. As a result, Afghan women must become a credible party to any political process in order to ensure that women's rights as recognized in Afghanistan's constitution will not be traded.

## **8. CONCLUSION**

It is undeniable that the lives of millions of Afghan women have improved over the past decade. These improvements have been most tangible in the new democratic institutions, where the presence of women is unprecedented. In the legislative area, the enforcement of the law on elimination of violence against women (EVAW) is a big stride forward. On the other hand, it is important to emphasize that these significant changes have not yet had a trickle down effect, i.e. in many regions of Afghanistan; the lives of women have not undergone any fundamental changes. What is more, with the recent macro-political changes in favor of peace negotiations with extremist and conservative forces, the reversal of most of the recent achievements is looming on the horizon.

Apart from the likely return to power of extremist forces, the biggest dilemma is the fact that the various female state- and non-state actors have failed to transform into a nation-wide, effective and sustainable political movement. Afghan women's organizations are often unable to define their interests and defend and negotiate these interests in a context beset with an ever-changing changing social, security and political situation. Furthermore, the perspectives and needs of women living in rural areas have largely been neglected, thereby widening the gap between the rural masses and the minority urban-elite. Moreover, given that the support of the Afghan government for women's rights is an expression of financial and security interests rather than a genuine commitment to the women of Afghanistan, the situation of women in the country is heavily dependent on international pressure and assistance.

In terms of existing legislation, AHRDO's project findings indicate that some of the laws in force in the country are inherently problematic for women. For instance, using ambiguous terminology such as "moral crimes" in the judicial institutions have provided for massive violations against women. Furthermore, certain provisions of the Shia personal status law, the Afghan criminal law and the EVAW law are deliberately imprecise, consequently generating vast loopholes for abuse as well as the obstruction of the implementation of the law.

On the whole, a minimalist legal framework for the protection of Afghan women does exist but the implementation of the laws still face massive challenges, especially due to the presence of conservative, corrupt and extremist elements in the provincial and primary courts. Institutional deficits in the judiciary and the



law enforcement agencies are other central features. Finally, the patriarchic and sharia-oriented spirit of the laws and the legal system in the country create further problems for Afghan women, with the prospects of reform in these areas appearing increasingly quite dim.

In conclusion, “Legislative Theatre: Democratizing Women's rights” has been an attempt to use different forms of interactive theatre to involve Afghan women from all walks of life in the analysis and understanding of their problems as well as their constitutional and legal rights with the objective to promote spaces for women to identify solutions and potential public policy and/or laws that can promote and protect women's rights in the country. In total, almost 5000 women from different parts of the country took part in the various theatre activities, culminating in 24 recommendations for legislation. These recommendations for (see executive summary) were presented in the Afghan parliament in February of 2012 and have also been widely distributed among Afghan civil society organizations. Hence, Legislative Theatre has demonstrated to be an effective, inclusive and empowering bottom-up approach for women to make their voices and demands heard.

On the other hand, the state of women's rights in Afghanistan is at a monumental crossroads, with the gradual empowerment of the conservative forces over the last couple of years and the potential for a deal with the insurgent groups creating the greatest danger against the further development of women's rights in post-Taliban Afghanistan. Since women play no role in the progression of the negotiations and given that the insurgent groups continue to hold strong misogynist views, the risk that history may repeat itself, i.e. the likelihood of yet another setback for equal gender relations in Afghanistan is becoming ever more likely.

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## **About AHRDO**

*The Afghanistan Human Rights and Democracy Organization (AHRDO) is an independent, impartial and non-profit organization founded in 2009. AHRDO is registered with the Ministry of Economy of the government of Afghanistan. Promoting human rights and consolidating democratic values establish the core objectives of this organization.*

*This organization has adopted un-orthodox approaches to help internalize key concepts of human rights and democratic principles in the context of Afghanistan. The approach of this organization is best characterized by capitalizing on artistic, cultural, participatory and bottom up methodologies.*

*AHRDO has implemented several projects in different regions of the country over the past years. The projects were participatory in nature encouraging the marginalized social groupings to enter the mainstream developments. The establishment of the Network of the Afghan Young Women Leaders, the formation of the Social Council of the Victims, the compilation of the War Literature and Human Rights Literature through collecting war stories, and encouraging authors to write stories with human rights concepts, are some of the initiatives of the Afghanistan Human Rights and Democracy Organization in Afghanistan.*

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