

GENDER JUSTICE AT POST-CONFLICT RECONSTRUCTION:
IMPLEMENTATION OF WOMEN'S POLITICAL RIGHTS
AT ELECTION PERIODS
IN THE CASE OF POST-CONFLICT AFGHANISTAN

by
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Submitted to the Graduate School of Arts and Social Sciences
in partial fulfillment of the requirements for the degree of
Master of Conflict Analysis and Resolution

Sabancı University
June 2006

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DATE OF APPROVAL: June 16, 2006

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ABSTRACT

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Aslı Şahin. MA Thesis, 2006.

Thesis Supervisor: Dr. İbrahim Al-Marashi

Keywords: Post-conflict, women’s political rights, positive discrimination, elections

In conflict environments, women are often denied justice. This situation is being challenged for post-conflict environments with the initiations on gender-equal approaches. The integration of human rights language, specifically women’s rights, into post-conflict reconstruction, paves the way for gender-equal environments. The commitments to gender equality and women's empowerment on a wider context of transformative possibilities have converted the post-conflict settings as “opportunity spaces” for women.

Concerns for the inclusion of women in post-conflict reconstruction, backed by the United Nations Security Council Resolution 1325, is an important contributing cause for the integration of human rights and gender equal language into post-conflict Afghanistan. The unique opportunities exist for women to participate in developing constitutional, legislative and judicial structures for gender equality in the phase of transitional justice with affirmative action inputs.

The collaborations and disagreements in between United Nations’ and Government’s agencies and national commissions are studied in order to show the effectiveness of the practical implementations on political rights of women in these two election periods: Presidential and Parliamentary. The research was based on whether practical issues for the implementation women’s political rights, such as freedom of expression, freedom of movement, and principle of non-discrimination, principle of non-intimidation, had been the source of disagreement due to an ideological difference between the UN units, national commissions, and related ministries. The approaches taken by these units as the main focus, reaches conclusions on whether the affirmative action stated with the constitutional reform and electoral laws, besides the related international conventions signed by Islamic Republic of Afghanistan, for the political representation of Afghan women, have been implied effectively and have been successful so the “opportunity space” for women in Afghanistan has become a truth.

ÖZET

ÇATIŞMA SONRASI YENİDEN YAPILANMADA CİNSİYET ADALETİ: ÇATIŞMA SONRASI AFGANİSTAN ÖRNEĞİNDE, SEÇİM DÖNEMLERİNDE KADINLARIN POLİTİK HAKLARININ UYGULANMASI

Aslı Şahin. Master Tezi, 2006.

Tez Danışmanı: Dr.İbrahim Al-Marashi

Anahtar Kelimeler: Çatışma sonrası, kadınların siyasi hakları, pozitif ayrımcılık, seçimler

Çatışma çevrelerinde, kadınlar adaletten sıklıkla mahrum edilir. Çatışma sonrası çevrelerde, cinsiyet-eşit yaklaşımlar ile, bu duruma meydan okunur. İnsan hakları dilinin, özellikle de kadınların haklarına entegrasyonu, çatışma sonrası çevrelerde, cinsiyet-eşit çevrelere hazırlık yapar. Cinsiyet eşitliğine ve kadınların yetkilerinin güçlendirilmesine yönelik taahhütler, daha geniş bağlamdaki dönüşümcü olanaklar üzerinden, çatışma sonrası ortamları, kadınlar için 'fırsat alanları'na çevirir.

Birleşmiş Milletler Güvenlik Konseyi Yasa Tasarısı 1325 ile desteklenip himaye edilmiş, kadınları çatışma sonrası yapılanmaya dahil etmeye yönelik endişeler, insan haklarını ve cinsiyet eşitliği taşıyan dilin çatışma sonrası Afganistan'a taşınmasında önemli katkıda bulunan etmenlerdendir. Geçiş dönemi adaleti evresinde, pozitif ayrımcılık girdileri ile, kadınların gelişen anayasal, yaşamaya ilişkin ve hukuki yapılara katılımında bulunmaları için eşi benzeri bulunmayan fırsatlar vardır.

Birleşmiş Milletler'in, Hükümet birimlerinin ve ulusal komisyonların arasındaki işbirliği ve anlaşmazlıklar, iki seçim döneminde: başkanlık ve parlamento, kadınların politik haklarına yönelik pratikteki uygulamaların verimliliğini göstermek amaçlı çalışılmıştır. Bu araştırma, kadınların politik haklarının gerçekleştirilmesi için pratikte uygulamaya alınması gereken meselelerin; örneğin ifade özgürlüğü, hareket özgürlüğü, ayrımcılık yapmama prensibi, yıldırma yapmama prensibi gibi hakların, Birleşmiş Milletler birimleri, ulusal komisyonlar ve ilgili bakanlıklar arası idelolojik farklılıkların, aralarında oluşan anlaşmazlıkların kökeni olup olmadığı temeline dayandırılmıştır. Araştırmanın temel odağı, bu birimler tarafından uygulanan yaklaşımlara yönelik sonuçlara ulaşarak; Afganistan İslam Cumhuriyeti tarafından imzalanmış ilintili uluslararası konvansiyonların yanında, anayasal reformda ve seçim yasalarıyla, Afgan kadınlarının politik temsili için bu yaklaşımların verimli uygulanıp uygulanmadıklarını, başarılı olup olmadıklarını, böylece Afganistan'daki kadınlar için 'fırsat ortamı' nın gerçekleşip gerçekleşmediği irdelenmiştir.

Mücadelelerinin fark edilişii ile, insanların sevgi sınırlarını aştıran, tüm Afgan halkına ve özellikle kadınlarına...

To the whole Afghan society and especially to the Afghan women, by the realization of their struggle, who made people cross the borders of love...

ACKNOWLEDGMENTS

First, I thank my supervisor Ibrahim Al-Marashi, for his continuous support in the process of writing my thesis with his insightful feedback; he was always there to listen and to give advice, additionally, his knowledge of Afghanistan helped me substantially. I thank Ayse Gül Altınay for sharing her experience in women's studies, introducing me to a new perspective and a frame to best fit my research, and for reminding me that this research will be academically useful. This thesis work could not have begun without Nimet Beriker's intellectual support throughout my MA years and her belief in me. Lastly, I thank all my advisors for encouraging and challenging me throughout my writing of this thesis.

I sincerely appreciate the unconditional support of my interviewees, both Afghan national and international, for their willingness of giving a considerable amount of time for the interviews. And special thanks to those who reserved long hours from their extremely tight schedule, even in the very early mornings on work days and holiday times in order to enlighten me about their work, and sharing honest information with me. The willingness of Afghan nationals to share information with me particularly gave me a constant encouragement and belief in the validity of my research.

The inspiration for conducting this research came mostly from Afghan nationals who showed me their enthusiasm and dynamic work for the future of their war-torn country, and their continuous appreciation of me for conducting research in their country. The energy, enthusiasm, and belief of Afghan women's courage to participate in elections for peace was breathtaking.

The moral support of Hikmet Çetin and his continuous help for making it easier to me getting involved with Afghan government high-level representatives, his continuous interest in this research and the honest friendship I always felt from him during my some tough time in Afghanistan is unforgettable.

Last, but not least, I thank my family for their unconditional support in my education and research, even though it was not easy for them to understand my enthusiasm to do field research in Afghanistan.

Thank you all!

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LIST OF ABBREVIATIONS and ACRONYMS

| | |
|--------------|--|
| AGG | Advisory Group on Gender |
| AIHRC | Afghanistan Independent Human Rights Commission |
| AIL | Afghan Institute of Learning |
| ANA | Afghanistan National Army |
| ANP | Afghanistan National Police |
| AREU | Afghanistan Research and Evaluation Unit |
| AIA | Afghanistan Interim Administration |
| ATA | Afghanistan Transitional Administration |
| AWN | Afghan Women Network |
| AWRC | Afghan Women Resource Center |
| CAT | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment |
| CCPR | Convention of Civil and Political Rights |
| CEDAW | Convention on Elimination of Discrimination Against Women |
| CESCR | International Covenant on Economic, Social and Cultural Rights |
| CG | Consultative Group |
| CLJ | Constitutional Loya Jirga |
| CNP | Candidate Nomination Period |
| CRC | Convention on the Rights of the Child |
| DED | German Development Service (Deutscher Entwicklungsdienst) |
| ECC | Election Complaints Commission |
| ELJ | Emergency Loya Jirga |
| ETF | Election Task Force |
| FEFA | Free and Fair Elections Foundation |
| FES | Friedrich Ebert Stiftung |

| | |
|---------------|--|
| GTZ | German Technical Cooperation: Deutsche Gesellschaft für Technische Zusammenarbeit |
| HRAG | Human Rights Advisory Group |
| HRs | Human Rights |
| HRW | Human Rights Watch |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| INGO | International Non Governmental Organization |
| ICERD | International Convention on the Elimination of All Forms of Racial Discrimination |
| ICG | International Crisis Group |
| IDEA | International Institute for Democracy and Electoral Assistance |
| IDPs | Internally Displaced Persons |
| IEC | Independent Election Commission |
| IFES | International Foundation for Election Systems |
| ILAC | International Legal Assistance Consortium |
| IOM | International Organization for Migration |
| ISAF | International Security Assistance Force |
| IPU | Inter Parliamentary Union |
| JEMB | Joint Electoral Management Body |
| JEMBS | Joint Electoral Management Body Secretariat |
| MoA | Ministry of Agriculture |
| MoFA | Ministry of Foreign Affairs |
| MoE | Ministry of Education |
| MoI | Ministry of Interior |
| MoJ | Ministry of Justice |
| MoRRD | Ministry of Rural Rehabilitation and Development |
| MoWA | Ministry of Women’s Affairs |
| NATO | North Atlantic Treaty Organization |
| NDI | National Democratic Institute for Afghan Affairs |
| NWFP | North-West Frontier Province of Pakistan |

| | |
|---------------|---|
| PEP | Post Election Period |
| PESG | Post Election Strategy Group |
| SEAL | Support to the Establishment of the Afghan Legislature |
| SRSG | Special Representative of the Secretary General of the UN |
| TISA | Transitional Islamic State of Afghanistan |
| UN | United Nations |
| UNAMA | United Nations Assistance Mission in Afghanistan |
| UNDP | United Nations Development Programme |
| UNIFEM | United Nations Development Fund for Women |
| UNFPA | United Nations Population Fund |
| UNMIK | United Nations Interim Administration Mission in Kosovo |
| UNOPS | United Nations Office for Project Services |
| UNSC | United Nations Security Council |
| VRUP | Voter Registration Period |

CHAPTER 1

1.1. Introduction

Following the collapse of the Taliban¹ regime at the end of 2001, Afghan factional leaders came together at a UN sponsored conference in Bonn², Germany, and signed the Bonn Agreement³ which was preceded by over two decades of war and devastation in Afghanistan. The Bonn Agreement set a timetable of two and a half years, for re-establishing permanent government institutions in Afghanistan, and the Afghan Interim Administration (AIA)⁴ was appointed.⁵ The AIA was replaced with the Afghan

¹ Taliban originally means “student” in its plural form meaning student who study Qur’an. As a radical religious and Pashtun nationalist movement, which came into power in 1996 in order to bring order after the civil war period between competing warlords in the aftermath of the fall of the Soviet-backed Democratic Republic of Afghanistan, from southern Afghanistan, the area called Kandahar, the region where there was really no government after 1992 and mainly from North-West Frontier Province (NWFP) of Pakistan.

Barnett Rubin. *The Fragmentation of Afghanistan*. Yale University Press, 1995

Pashtun: The Pashtuns are an ethno-linguistic group mainly living at eastern and southern regions of Afghanistan and at the NWFP. Pashtuns make up the largest ethnic group in Afghanistan. Though there are no current census records, 38% of the Afghan population is Pashtun. Embedded in the legal history of Afghanistan the tribal codes of the Pashtun or Afghan tribes, are called Pahtunwali, as the code of honor, and they are widely practiced as a component of customary law, especially in rural Pashtun majority areas. Palwasha Kakar. ‘Tribal Law of Pashtunwali and Women’s Legislative Authority’, *Harvard Human Rights Journal*, 2004.

² On December 5th, 2001, with the participants of the United Nations sponsored talks on Afghanistan, the Bonn Agreement was signed.

On December 6th, 2001, the Security Council adopted resolution 1383, declaring its willingness to support the interim institutions established by the Agreement and to support implementation of the Agreement and its annexes. The Resolution called on all bilateral and multilateral donors, in coordination with the Special Representative of the Secretary General, United Nations and all Afghan groups to reaffirm, strengthen and implement their commitment to assist with the rehabilitation, recovery and reconstruction of Afghanistan.

³ In the wake of the US-led military campaign in Afghanistan that resulted in the collapse of the Taliban regime, the Bonn Agreement of December 2001 was signed among the representatives of Northern Alliance warlords, pro-Zahir Shah (former King of Afghanistan) technocrats/intellectuals, and two other small Afghan groups that were mainly based in Pakistan and Iran. Although the four anti-Taliban groups did not consult (or represent) the people of Afghanistan, the Bonn Agreement which was signed in a rush, did open the possibility of a new participatory political order for Afghanistan.

Ali Wardak. “Building Post-War Justice System in Afghanistan”. Introduction in *Crime Law and Social Change*. University of Glamorgan. UK. 2004.

⁴ The acts that the Interim Administration was designed to carry out, can be viewed at:

Jamal Benomar, Senior Advisor, UNDP. The United Nations, Office of the Special Representative of the Secretary General for Afghanistan report on “Strategy for Justice System Reform and Rule of Law in Afghanistan”. 2002.

⁵ The Agreement established an Interim Authority that took office on December 22, 2001. The Interim Authority consists of an Interim Administration, a Special Independent Commission for the Conveying of an Emergency Loya Jirga and a Supreme Court of Afghanistan, and some courts may be established by the Interim Administration.

Transitional Authority (ATA)⁶ by the decision of the Emergency Loya Jirga⁷ (ELJ)⁸, the Afghan Grand Council. The ELJ elected Hamid Karzai as the head of the state and also made the President as the head of the government in the absence of a legislature, of the Transitional Islamic State of Afghanistan (TISA). The Bonn Agreement has provided a framework of state formation processes that aimed at the eventual creation of “broad-based, multi-ethnic and fully representative” government by 2004.

A new constitution⁹ was promulgated on January 4th, 2004 which provides for an elected president along with two vice presidents to be nominated and a national assembly comprising of two houses,¹⁰ “The House of the People (Wolesi Jirga) and the House of Elders (Meshrano Jirga).¹¹ The ATA remained in power until the country’s first national presidential elections were held on October 9th, 2004 and ATA left its place to the new

⁶ The composition of the ATA can be viewed from - CIA: “Chiefs of State and Cabinet Members: Afghanistan” report dated back August 26th, 2002. It was composed of 29 ministers, 4 Vice Presidents and the President.

⁷ The word is from the Pashto language : *loya* means "great" or "grand" and *jirga* means "council". The council, organized by Pashtuns on the village and regional levels, is the legislative authority in Pashtunwali. The councils decide matters by consensus and their decisions are binding on the parties involved. Pashtuns who sit on the council must be known for their honor, which means that they must practice Pashtunwali.

Akbar Ahmed, ‘Millennium and Charisma among Pathans. A Critical Essay in Social Anthropology’. London: Routledge and Kegan Paul, 1976, p.83.

⁸ Karzai had served six months as interim prime minister of the U.N.-organized government that took power after the fundamentalist Taliban regime was driven from power in December. He was overwhelmingly elected head of state, by this loya jirga, in June 13th, 2002.

The ELJ of 2002 was composed of 2,000 delegates, 1,051 elected members; there were guaranteed seats for 160 women, 53 seats for current government, 100 seats for Afghan refugees and six for internally displaced Afghans, and 25 seats for nomads.

⁹ The signatories of the Bonn Agreement agreed that the Constitution of 1964 shall apply on an interim basis until the adoption of a new Constitution. It was also agreed that judicial power shall be vested in a Supreme Court of Afghanistan and that the Interim Administration shall establish, with the assistance of the United Nations, a Judicial Commission to rebuild the justice system in accordance with international standards, the rule of law and Afghan legal traditions.

¹⁰ AREU (Afghan Research and Evaluation Unit). “The Government of Afghanistan”. *The A to Z Guide to Afghanistan Assistance*. 3rd Edition. August, 2004. p.65

¹¹ Andrew Wilder, Anne Evans, Nick Manning, Yasin Osmani, Anne Tully, *A Guide to Government in Afghanistan*. “Post Taliban Rule”. AREU and World Bank. 2004. p.7

The new constitution provides for an elected president (along with his/her nominated two vice presidents) and a national assembly comprising two houses – the *Wolesi Jirga* (the House of People) and *Meshrano Jirga* (House of Elders). Members of the Wolesi Jirga are to be elected by the people in free and fair elections. Members of the Meshrano Jirga are to be elected or appointed as follows: each provincial council elects one member for a period of four years; from among the district councils in each province one member is elected for a period of three years; and the president appoints the remaining one third of the members for a period of five years from experts and persons of appropriate stature (including two representatives representing the disabled and impaired and two representatives from the Kuchis), with 50% of these to be women.

government. A presidential decree dated December 23rd, 2004 announced the new appointments to the Cabinet of the Islamic Republic of Afghanistan.¹²

The Bonn Agreement, which was adopted by the UN (United Nations) General Assembly after talks from November 27th to December 2001, came up with a plan for reconstructing the war-torn nation. Specifically, it was a plan for state building with a political roadmap, and was succeeded by the “Bonn II” conference, which was held in Berlin on March 31st and April 1st, 2004. The Berlin Conference was held in order to further develop Afghanistan’s reconstruction, picking up from where the Bonn Agreement left off. The major challenge of the Bonn process was the holding of free and fair elections.

The first significant development announced by President Karzai on March 28th, 2004 was the date for the simultaneous presidential and parliamentary elections that would be held in September, three months later than stipulated in the Bonn Agreement.¹³ The main reason for the delay was the absence of a tight security strategy for the elections, and the concerns of United Nations Assistance Mission in Afghanistan (UNAMA) and the donor agencies’ that the voter and political party registrations would be at low levels.¹⁴ Lakhdar Brahimi as the Special Representative to Afghanistan, at the Bonn conference in the end of March, stated that the presidential elections would not be postponed to 2005. This statement showed no signs for any delay and indicated the international communities’ intention for early elections.¹⁵ Even though the elections were scheduled for June 2004, in July the presidential election date was pushed further to October 2004, and the parliamentary elections would be postponed until at least April 2005. This decision was made by the Joint Electoral Management Body (JEMB)¹⁶,

¹² Pres Release. Presidential Palace, Kabul. December 23rd, 2004

¹³ The Bonn Agreement called for free and representative national elections to be held within 2 years of ELJ, which would conclude Afghanistan’s transitional stage.

¹⁴ “Elections and Security in Afghanistan”. International Crisis Group. Asia Briefing. Kabul/Brussels. 30 March 2004.

¹⁵ Paul Goel. *Too Much, Too Soon: Afghanistan is not Ready for Elections*. Centre for Peace Research and Strategic Studies, Leuven. June, 2004.

The author of this book also doesn’t agree the delaying of simultaneous presidential and parliamentary elections until June 2004 was not enough. He argues this decision is made in order to fit into the American domestic election timetable.

¹⁶ JEMB as the coordinating agency for the elections, the Afghan-UN electoral watchdog. The Bonn Agreement provided for the conduct of elections as an important and concluding component of the transition era. The Joint Electoral Management Body (JEMB) and its Secretariat (JEMBS) are the two

believing that: at the time of the decisions made to hold the elections, there were no reliable population statistics, no agreed upon electoral boundaries, no developed civilian political parties, and continued insecurity, and that conducting the national elections would therefore be a huge challenge for the scheduled July 2004 date.¹⁷

It was apparent that the democratic transition of Afghanistan required not only the regular conduct of elections, but also sustained international attention and meaningful support for a stable and sustainable transitional period. The elections held great importance in the sense that the long term legitimacy of electoral politics and democratic governance in Afghanistan would be highly affected by how the elections are held, whether they would meet the international standards for free and fair elections or they would be held just for the purpose of answering to the US pressure to hold the elections, so the country would have start her path on democracy. There were various debates on the election time table. The idea behind postponing the elections to a much further date comes from the belief that the country could not witness free and fair elections when security was lacking, as well as logistics, political and financial challenges, and educating the society as a whole. This idea came with the consideration that the pre-requisite of democracy formation not only comes with “elections.” “Free and fair elections” requires transparency of the election mechanisms, familiarizing the people with the election process and the electoral candidates.

In “post-conflict Afghanistan”, there were various international and national organizations dealing with elections related work, preparing for the up-coming parliamentary elections¹⁸, the second major challenge after the first national election held

institutions created by the Afghan government and the United Nations to organize the 2004 and 2005 elections. One critical step was taken successfully with the presidential election 2004. Afghan National Assembly and Provincial Council Elections will take place in September 18th, 2005.

¹⁷ AREU. *The A to Z Guide to Afghanistan Assistance*. National Elections. 3rd edition. August, 2004. p.81.

¹⁸ The elections on September 18th, as the National Assembly's lower house, or Wolesi Jirga: People's Council, and Shura-e Welayati: Provincial Council.

Two elections set to be held in the same day, and the District Council to provide an important part of the bicameral National Assembly's Meshrano Jirga as Council of Elders were postponed indefinitely, in large part due to disagreements over jurisdictional limits and numbers of districts.

National Assembly, which according to the constitution is the country's "highest legislative organ" and the "manifestation of the will" of the Afghan people, will remain incomplete. Since the still-unscheduled District Council elections will take place separately from the Wolesi Jirga and Provincial Council polls, the National Assembly must be formed without a fully represented Meshrano Jirga. Article 84 of the Constitution prescribes that members of the Meshrano Jirga be taken one-third each from the Provincial and District councils, with the remaining one-third of members appointed by the president "from among

in October 2004. Other task includes developing post-election strategies in order to ensure the efficiency of the first Afghan parliament.

The notion of UN involvement in post-conflict settings is a process of certain converging issues in international relations and it is a developmental discourse. It is challenging to start a path to democratic status as the most transitory investment for the new way of government at a post-conflict environment.

The main issues at the post-settlement environments in general are disarmament, restoration of order, repatriation of refugees, election monitoring, and the protection of human rights. In the case of Afghanistan, the element of post-conflict settlement and the restoration of order is the core pre-requisite for the protection of human rights. This restoration of order will not be a quick-fix, and may take decades to reach stability. The implementation of human rights comes with law enforcement and the necessary mechanisms to implement these rights over the long term, and this stage can be termed the “transitional justice¹⁹ period.”

The implementation of human rights that has to be done in parallel with the restoration of order in this state which is on a reformation stage and this reformation is mainly bound to the success of the political procedures, such as the integration of the local and international norms in the case of Afghanistan. Afghanistan has been without continuous law and order for so long, and was under the authoritarian religious rule before the fall of Taliban. It is not an easy task for human rights institutions to start from “scratch” but this does not have to mean that the investments for a complete passage to sustainable democratic settlement can not be given a chance.

The human rights intervention has to be bound to what the history of the state carried on to the current time period, so that they can work effectively and build a

experts and experienced personalities" -- including two representatives from the disabled and impaired and two representatives from the kuchis. Half of the presidential appointees must be women, under the constitution. No clear plan had emerged yet for dealing with the absence of one-third of the Meshrano Jirga.

RFE/RL *Afghanistan* Report. 4: 25. September 2nd, 2005.

¹⁹ “Transitional justice” describes the interim legal arrangements which come to the fore as states enter into transition from violent conflict to peace and democracy, or undertake profound international rearrangement to facilitate new political and constitutional imperatives. Such arrangements can acutely re-order existing legal structures, and act as tools that spur political accommodation and compromise.

<<http://www.transitionaljustice.ulster.ac.uk/>>

sustainable humanitarian-peace environment that is acceptable by the nature of the state and its for so long suppressed society. In the area of human rights, as in many other areas, the primary problem is the continuing power of Afghanistan's warlords. When the U.S. confirmed its commitment to the future of Afghanistan, the priority would be given to democratization and human rights. Yet these commitments are not fulfilled with full effort as promised. The employment of the warlord-strategy in order to help the security gap is another problematic element for implementing human rights responsibilities.

The Bonn Agreement was notable from an human rights perspective as it specifically established a national Human Rights Commission²⁰ to monitor and investigate human rights conditions in Afghanistan. Many Afghans, non-governmental organizations (NGO) officials, and UN staff expected donors to take full advantage of this provision and significantly strengthen human rights protection by directing resources to building up the capacity on the human rights development. Much has been accomplished since the Bonn Agreement within the last four years for Afghanistan; the London conference in the beginning of 2006 signifies the end of Bonn process and lays down a five year plan for Afghanistan's path in governance, security, and human rights development.

1.2. The Subject, Significance and Aim of the Study

The Subject of the Study

This is a study on the main international, national, and governmental human rights units operating in Afghanistan. These units are UN agencies, AIHRC and related Afghan ministries this thesis focuses on their inter-organizational relationships in regards to how they implement the human rights mechanisms. I examine the interaction and activities of these units on the implementation of human rights at the “post-conflict” stage of Afghanistan.

The level of implementation of human rights can not totally be dependant on the ideas of decision makers within these administrative and operational units, because there are other elements affecting the decisions given by these units. Women's rights were non-

²⁰ This national human rights commission is AIHRC (Afghan Independent Human Rights Commission)

existent during the religious authoritarian rule of Taliban regime between 1996-2001, due to their interpretation of Islam in the country that is deeply reflected by the traditions and culture of the society. This study will give a clear idea how these human rights related units and government ministries make decisions when they are a part of the decision mechanisms on implementation of human rights. The decisions taken and their implementation reveals how they communicate, cooperate, co-ordinate, collaborate, disagree, agree on their either conflicting or compatible strategies.

Both the collaboration and disagreement between these units will be laid out in relation to the practical implementations and outcomes of the election periods for the political rights of women. The approaches taken during the election periods are the main focus.

This paper was researched and written in the context of the situation in Afghanistan from the period of political campaigning prior to the presidential elections held on October 9th, 2004 until the end of the first week of August 2005. The developments continued until the parliamentary elections scheduled for September 18th, 2005. This study continued with personal observations of the parliamentary elections through the viewpoint of an international election observer as a part of the Afghan election observation commission, Free and Fair Elections Foundation (FEFA) which gave the chance of active observation during the elections process as well.

The Significance of the Subject

The specific focus on human rights for this research is related to the fact that implementing the rights of women is one of the major challenges for Afghanistan. This research deals with the discrimination of women on the political level. The reason of this specific concern is the governmental elections that the country has passed through. This valuable experience as the first official democratic elections held in the country on October 9th, 2004, became a laboratory for researching the level of implication of political rights of women. The forthcoming parliamentary elections set for September 18th, 2005 allowed for examining the developments after the problems experienced during the presidential elections.

I chose this focus because elections carry a defining characteristic of democratic politics and “free and fair elections” that also should do its best to carry out the political rights of women; one of the main ingredients of democratic formation in this transitional stage for the Afghan state. A central issue in this study will be to assess the degree of compatibility of human rights units examined with the focus on women rights and specifically the political rights of women. The women of Afghanistan can not be perceived as passive spectators. It is crucial that they be part of every phase of designing and shaping the future of their country as well as their own. Women also took part in the electoral process both as voters and candidates, and the success of their participation is the reflection of human rights implementation.

The Aim of the Study

The research question of the thesis is what are the disagreements and areas of collaboration in decision making between the UN agencies, the Afghan Independent Human Rights Commission and human rights departments within the government ministries regarding the implementation of women’s political rights during the period from the presidential elections until the parliamentary elections in Afghanistan, and how do these processes affect Afghan women?

Changing the basic policy discourses about women’s status and giving rise to new policy instruments such as gender mainstreaming became a new area of focus for post-conflict states. These changes at the state level in the institutional arrangements and in the policy discourse are the result of international pressures. The effectiveness of these policies is dependent on the political will of the state, with the establishment of mechanisms, legislative, judicial and administrative, for reconstruction of post-conflict states. Integrating gender equality policies is a way for building a constructive alternative for these states.

The aim of this study is to observe and analyze the level of integration of gender equality policies by studying the work, communications, collaboration and disagreements of related human rights and gender units carrying out the mission of gender equality in Afghanistan.

Since the UN units such as UNIFEM, UNDP, and national commissions such as AIHRC are both legally bound by the Bonn Agreement, they are tasked to carry out a mission of implementing this international treaty that will lead Afghanistan toward a transition to peace and equity. One of the main factors that can carry Afghanistan to this transition is gender equity. By observing the communication of gender related units charged with working for a peaceful and democratic Afghanistan, can determine whether their work integrates the stipulations of Security Council Resolution 1325, and international human rights treaties, to which Afghanistan is a party. This study offers original insight to the post-conflict transformation of Afghanistan from the viewpoint of human rights and gender units based on two major election timelines, in the period in between presidential and parliamentary elections.

1.3. Methodology

Table # 1: Unit of Analysis Table 1

| UNIT OF ANALYSIS |
|---|
| UNITED NATIONS (UN) |
| UNITED NATIONS ASSISTANCE MISSION in AFGHANISTAN (UNAMA) Human Rights Office, Gender Office, Elections Task Force JOINT ELECTORAL MANAGEMENT BODY (JEMB) Gender and Human Rights Focal Points, External Relations Body ELECTION COMPLAINTS COMMISSION (ECC) UNITED NATIONS DEVELOPMENT FUND FOR WOMEN (UNIFEM) UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP) |
| AFGHAN INDEPENDENT HUMAN RIGHTS COMMISSION (AIHRC) |
| GOVERNMENT UNITS — MINISTERIES with Human Rights/Gender Departments |
| Ministry of Women’s Affairs (MoWA) Legal and Planning Departments, Department of Women’s Education Ministry of Justice (MoJ) Ministry of Foreign Affairs (MoFA) Ministry of Education (MoE) |

Sources of Information

The research is based on multiple source of information for data collection, the main sources of information is semi-structured interviews conducted with about 50 (49+10) number of interviewees, with a fairly open framework on some set of prepared questions which allow for focused, conversational, two-way communication. Not all of the questions were designed and phrased before the interviews, some of the questions were created during the interviews, allowing both the researcher and the interviewee the flexibility to probe for details and discuss issues. This way interviews not only provided answers, but also reasons to the answers.

Mainly formal level interviews with appointments used besides some informal level ones²¹ without previous appointments and have been conducted in a natural sense. These interviews have been designed to question and complement the information that was obtained via the study of the official documents and reports released by these units. Also the meetings with these representatives would help to obtain access to minutes records of their previous meetings but these kinds of documents are rarely kept by all these units in Afghanistan. So, in order to reach the necessary information, the personal interviews in the field became crucial to complete this study.

The other types of sources are bilateral joint declarations by some of these units, recommendation letters written by the representatives of these units to the others, briefing papers, and minutes from related meetings. The legal texts examined are the international conventions ratified by the Islamic Republic of Afghanistan on human rights and gender discourses, the current constitution and electoral law of Afghanistan.

²¹ Interviews conducted with women parliamentary elections candidates, who has nominated themselves but drew from candidacy due to some reasons in which the reasons of their personal withdrawals can only be discovered via face to face interviews, since the reasons of the withdrawals either not shared with election officials or not explained publicly.

Conducting Research in Afghanistan

Access to the Field and Information

I conducted two field trips to Afghanistan, first from April 26th to May 19th, 2005 and the second from July 14th 2005 to August 15th, 2005. The second trip covered the pre-election period of parliamentary elections that were to held on September 18th. The observation of the elections' procedures through my participation in Afghan national electoral observation commission, FEFA for the parliamentary elections, gave me the chance to observe what is being implemented on the Election Day itself.

Since most of the representatives of my unit of analyses mainly work in the capital and have their central offices in Kabul, I conducted most of my research in Kabul.

I had been following news related to Afghanistan on a daily basis through Afghan and world news agencies and reviewing the related reports on human rights and women's rights, and already had a list of people among global agencies, ministries, national commissions and researchers in my hand to be interviewed. Before flying to Kabul from Ankara, most of the interviews have been arranged by personal phone conversations and e-mail correspondences to these representatives.

After arriving in Kabul, with the help of personal networks, and meetings with high level officials at the ministries, I received assistance from Mr. Hikmet Cetin's, the Senior Civilian Representative of NATO in Afghanistan. Getting involved with the Ministry of Women's Affairs, which was one of the core units of my research, was not difficult and could be arranged by myself via phone call and also by sending my set of interview questions about ten days before the actual interview. Due to the busy schedule of the Women's Affairs Minister, the amount of time that I interviewed Masooda Jalal was not enough and she agreed to a phone interview later, showing the importance that she gives to my efforts of being there in order to have an interview with her and with the other units under the Ministry at her lead.

The number of interviewees increased after arriving there, since I couldn't get to know the necessary people I should be interviewing beforehand, and with the help of the growing networking of myself by being present in the field, and since the most crucial information can be reached through lower level representatives, I tried to have interviews

as much as possible and the hours of the days were not enough for conducting the interviews during the day time, dealing with further interview arrangements and writing down the transcripts of the interviews saved on a voice recorder.

In general, arranging the interviews was not too difficult since those I interviewed appreciated my efforts in being there and the Afghan representatives have been very hospital since this research might be helpful for furthering their own fields and they did not hesitate to reserve significant periods of their time from their busy work schedules.

I approached these people with respect to their culture. For instance I chose to keep my head scarf on if any woman interviewee also had a head scarf on even though we were only two women alone in her own office. At my following visits to Afghanistan, I decided not to wear a head scarf believing that I should carry a mission of representing a modern young woman from a secular state and a Muslim society, by also balancing on the thin line in between showing respect to the culture, traditions and showing respect to my own beliefs and personality as well. After getting to know the people by my own observations, which can never be the same reliable observations by reading from books or seeing from photos, I started to feel more comfortable and figured out my own limits on clothing and behaving within the public and started to feel like becoming a part of the Afghan society. The feeling of being like a complete foreigner to everything in there started to fade away and at that point I started to adopt my own limits to theirs.

The Set of Questions Used During the Interviews

The set of questions varied depending on the gender and position of my interviewees. The range of interviewees varied from high level UN representatives, some Ministers of the Government at the time, representatives of Women and human rights units under the Ministries, parliamentary elections candidates, former presidential election candidates, researchers, NGO workers, commissioners of national commissions and institutions, secretaries, and regular citizens of the Afghan society, and thus the set of questions accommodated their positions.

While interviewing the women candidates, I mainly asked what kind of hardships they have faced as woman candidates in regards to the freedom of speech, freedom of

movement and principles of non-discrimination, if they have asked for any specific assistance from the state or from an international organization, if they have ever felt threatened by any warlord faction or the Taliban, what their stance is on the integration and expansion of women's rights into state policies, the level of adaptation of the society to these changes, the level of awareness of the public in general of these new rights and responsibilities, and what kind of suggestions they have made to the related authorities.

While interviewing the Ministers and high level representatives at the Ministries²², I mainly questioned their previous policies and used strategic questions in order to figure out their level of coordination and cooperation with other related women's units under other ministries, always asked them to share their previous correspondences from other units to their suggestions to further the gender equal practices for the implementation of political rights of women already existing regulations on paper, at these questions I focused on specific needs of women, whether their policies should lean towards only to women or to both men and women when the point is raising the gender equality.

During the interviews at UN agencies, I always tried to expand the answers to my open ended questions to the implementation of the international conventions that Afghanistan is a party to, their future policies on implementing the gender equal language existing in all these legal texts, which strategies they use for their programs, what else could have been done more, or can't be done, what their limitations are, what kind of policies they are against or for, their level of independence, their main rules for the implementation of gender equal policies. And we always discussed the past, current and future of Afghanistan in terms of women's rights.

²² The set of questions I have sent via e-mail attachment to the Secretary of Women's Affairs Minister Masooda Jalal to be viewed by the Minister herself ten days prior to the interview date, in order to arrange the interview, can be viewed at the Appendix A.5.

These set of questions that i have combined under six main questions, actually include many other sub-questions, so the number of questions i directed to my interviewee was much more than six. Since I wrote down all of the interviews' transcripts out of a voice recorder i have used during the interviews (I always asked for permission in order to use the voice recorder), and if i wasn't able to use the voice recorder due to a technical problem (non of my interviewees refused to be interviewed when the voice recorder was on, but at some parts of the conversations i was asked to turn the recorder off for some personal comments) then i wrote down everything that stayed clear in my mind on my computer right after the actual interview, by following the interview notes that i have taken during the actual interview time. The transcripts can be requested through my personal contacts (aslisahin@su.sabanciuniv.edu).

Limitations

The regulation of all these interview meetings have been challenging, depending on the security situation of the country in which it is becoming more vulnerable in election periods due to the threats arise from oppositional forces. The first research trip to the field had to be suspended due to the tight security situation related to kidnappings of foreigners.

Lack of the ability of speaking one of the official languages, Dari, spoken by the majority of the Afghans in Afghanistan caused loss of some information and some less productive interviews conducted mainly at the ministerial level even though Afghan national interpreters were present for these interviews.

There is also a limitation of the literature review because of the fact that this is a research conducted for the recent processes happening in the case of Afghanistan. The newly written books for the examination of current situation of Afghanistan and what should be done, are mainly in draft formats, and there are many manuals existing for the implementation of women's rights in general that can also include some elements related to the political rights of women. The main type of political right elements being worked on this period in Afghanistan, is "what should be done, after the women get into the Parliament", and not "what should be done before they get into the Parliament" meaning that there is not much formal attention given on women to empower them in the political sense so that they manage to be in the parliament.

Not being able to observe enough attention and energy given to creative thinking to practical matters on political rights of women, proved frustrating. I was expecting more considerations for the implementation of women's rights during the pre-election period, and at some point I started to feel like a women's rights activists but due to the fact that I should keep the identity as a neutral researcher, mainly I was limited to ask why these necessary practices and mechanisms were never seriously thought to be implemented.

The necessity of examining the sources of barriers to women's development with human rights discourse at post-conflict states received much more scholarly attention mainly in the beginning of 21st century. Increased opportunities for women with state regulations, gender sensitive policies that have been fostered through global governance and whether new state instruments imposed with the existence of global governance can deal with the barriers of culture and tradition exist in post-conflict states became a sensitive argument.

The discussions from "Gender Myths and Feminist Fables" workshop²³ included an "internal" critique of how various concepts and approaches generated in the course of scholarly engagement with gender and development issues have fared in practice, with an evaluation of how changing global economic and political conjunctures are modifying the very terms of the debates feminist scholars engage in.

According to Kandiyoti²⁴, the trinity of democratization, good governance and women's rights can be turned into poisoned gifts under new forms of global administration. Because the 'failed states'²⁵ are now augmented, in the case of Iraq, by

²³ Marjorie Mbilinyi, HakiElimu. 'Globalization Hurts Women more than Men, Summary Report. 2003 Paper prepared for the International Workshop *Feminist Fables and Gender Myths: Repositioning Gender in Development Policy and Practice*. Institute of Development Studies, Sussex. 2-4 July 2003.

²⁴ Deniz Kandiyoti is from Department of Development Studies at University of London and chairing Centre of Contemporary Central Asia and the Caucasus, and working for London Middle East Institute.

²⁵ By the term 'Failed States' she refers to war-torn societies with collapsed, decayed or vestigial apparatuses of governance whose political economies are driven by the arms trade, drug trafficking or other forms of illegal trade in primary commodities such as diamonds, oil or cocaine, at this text.

The term "failed" State does not denote a precisely defined and classifiable situation but serves rather as a broad label for a phenomenon which can be interpreted in various ways; the way that I will be referring to failed state at this work deals with the political aspect of the state's nature, namely the internal collapse of law and order and the functional aspect related to it, namely the absence of bodies capable to exercise law and order in an effective and legally binding way.

According to 'The Fund for Peace, Promoting Sustainable Security', 'Failed States' Index of 2006, the criterias used are:

- Mounting Demographic Pressures
- Massive Movement of Refugees and Internally Displaced Persons(IDPs)
- Legacy of Vengeance - Seeking Group Grievance
- Chronic and Sustained Human Flight
- Uneven Economic Development along Group Lines

the casualties of a new policy of armed democratization and regime change, concerning the effects of September 11th attacks and the subsequent wars in Afghanistan and Iraq in that sense.

Now the need to include women in post-conflict reconstruction is backed by UN Security Council Resolution 1325²⁶. Kandiyoti undoubtedly welcomes the recognition of both the suffering of women caught up in conflicts and their potential as vital actors for a transition to peace. However, she also thinks this new attention to women is likely to open itself to the types of criticism, in the absence of consistent policies to transform war economies into sustainable livelihoods offering minimal standards of security.

The idea of women's rights expansion needs to be backed with examinations in different contexts due to the intended and unintended effects of some interventions such as the donor interventions which are crucial in post-conflict environments. The large amount of aid money spend on elections in Afghanistan is doubted by Kandiyoti because she has suspicions that in both Afghanistan and Iraq, elections are most likely to entrench the power of Islamist forces that will resist an expansion of women's rights along the lines mandated by standard-setting instruments such as the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). According to

--Sharp and/or Severe Economic Decline
--Criminalization or Delegitimization of the State
--Progressive Deterioration of Public Services
--Widespread Violation of Human Rights
--Security Apparatus as "State within a State"
--Rise of Factionalized Elites
--Intervention of Other States or External Actors
<<http://www.fundforpeace.org/>>

²⁶ On October 31st, 2000, the United Nations Security Council unanimously adopted Resolution 1325 on women, peace and security which was preceded by numerous international documents, treaties and statements. The founding documents of UNSC Resolution 1325:

- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979
- Beijing Declaration and Platform for Action, 1995
- ECOSOC agreed conclusions on gender mainstreaming, 1997
- Security Council Presidential Statement (Bangladesh), March 8th, 2000.
- Windhoek Declaration and the Namibia Plan of Action on Mainstreaming a Gender Perspective in Multidimensional Peace Support Operations, May 2000
- Outcome doc. of the UN General Assembly Special Session Women 2000: Gender Equality, Development and Peace for the 21st Century - Beijing +5

her, in the real world of politics national sovereignty, rule of law, democratic governance and women's rights do not necessarily come together²⁷.

Some thoughts considering "Feminism as Imperialism"²⁸, "Do Muslim Women Really Need Saving? And Imperial Wars or Benevolent Interventions?" do not exactly suggest that global feminist mobilization has been totally without effect, but its results were often mixed. The role of the international actors can be more successful when the rights at the legal level materialized at the national level. Global governance units, mainly UN in the sense of human rights, demands agreement with the various international conventions of human rights, on the other hand there can be various uncompromising factions on the matter of culture, tradition, and in the case of Afghanistan, the Islamic law, and these will keep opposing the changes in women's status. This is mainly reflected in the new constitution of Afghanistan seeing that no law can be in contradiction with the holy religion of Islam by giving the Supreme Court the right to revoke any law deemed to be so, while integrating international conventions to which Afghanistan is a signatory, and granting equal citizenship rights to men and women.

Due to the uncompromising factions on the matter of culture and traditions and the situation of the society and government representatives as not ready to digest quick changes, representatives of the global institutions may follow light policies without pushing hard for change. The other scholarly idea on the other edge of these feminist light policies comes from Ignatieff²⁹. He uses the term "nation-building lite" meaning the weak interventions involving minimum cost and risk inadvertently exposed by "feminism lite" policies as the absence of commitment of donors, UN agencies and NGOs while they compete for their share in the gender market with their packages for women's empowerment which can lead them to miss their target in a context where the vast majority of women have limited contact with the institutions of the state, market or civil society.

²⁷ Deniz Kandiyoti. "Gender Myth: Post-conflict Reconstruction, "Democratization" and Women's Rights". *Institute for Development Studies (IDS)*. 35: 4. October, 2004. pp. 134-136.

²⁸ Susie Jolly. "Gender Myths". *Gender and Development in Brief*. Bridge research and information service of IDS. September, 2004.

This source includes parts of presentations from the 'Feminist Fables Gender Myths' Conference, July 2003, held at the Institute of Development Studies, UK. Most are available on www.siyanda.org

²⁹ Michael Ignatieff. Professor of the Practice of Human Rights Director Carr Center for Human Rights Policy. Harvard University. John F. Kennedy School of Government and Policy.

Some scholars labels and explains the new international order focused on post conflict states as “a rational framework for democratization by force and also for the revision of understanding of human rights”³⁰. A new international order is emerging, as Western powers, led by the United States (US), to rebuild state order in war-torn societies for the sake of global stability and security. This international phase carries characteristics of both imperialism and humanitarianism. On one hand, the humanitarian agencies may work with the dilemma of how to keep their programs from being suborned to imperial interests, on the other hand it was American air-power that made an uneasy peace and humanitarian reconstruction possible, first in Bosnia, then in Kosovo and finally in Afghanistan. And now it is questioned by academic scholars how to help people in war-torn societies enjoy the essential right to rule themselves³¹.

Throughout the 1990s, the language and practices of foreign policy have been transformed with the heightening of international activism that has led to an upsurge in initiatives in the realms of international law, democratization and peace-keeping throughout these means. A new international framework is emerging by international institutions on human rights. Chandler³² takes a critical look at the way in which human rights issues have been brought to the front in international policy-making. He attacks the human rights rationale for interventionism speaking out; ‘there is no mechanism to make the actions of the worlds’ most powerful states accountable to the citizens of the states they choose to intervene in’³³.

The positive opportunities of these military interventions become more apparent with the legality of new possibilities and promises come along with the UNSC Resolution

³⁰ Laurie Taylor. Professor at Department of Politics and Sociology at Birkbeck College, University of London.

³¹ Michael Ignatieff. *Empire Lite: Nation-Building in Bosnia, Kosovo and Afghanistan*. Vintage Publication. 2003.

³² David Chandler. *From Kosovo to Kabul: Human Rights and International Intervention*. Pluto Press. London, Sterling, Virginia. 2002.

David Chandler has written widely on human rights, democracy and inter-national relations. He is the author of *Bosnia: Faking Democracy After Dayton* (Pluto Press, 1999). He is the reviews editor of *International Peacekeeping*, works at the Center for the Study of Democracy (CSD), University of Westminster. His research interests are in post-Cold War transformations of the international sphere at the level of both ideas and institutional practice. He is currently working on a book on the problems of state-building and editing a book and special issue of the journal *International Peacekeeping* on Bosnia since Dayton, learning the lessons from a decade of state-building.

³³ David Chandler. 2002. p.76.

1325. Cohn defines UNSC Resolution 1325 as a landmark resolution that evokes a host of the promise of radical change from politics-as-usual³⁴.

The key commitments made in UNSC Resolution 1325 were; gender parity at all levels of decision-making, protection of and respect for human rights of women and girls; gender perspective in post-conflict processes, gender perspective in peacekeeping. This resolution calls; respect for international law as applicable to women and girls, special measures to protect women and girls from gender-based violence and other forms of violence in situations of armed conflict and post conflict environments³⁵.

It opens the way for the integration of the particular needs of women and girls into the design of their governance by challenging the absence of mechanisms for monitoring and reporting on implementation.

The adoption of UNSC resolution 1325 means the Security Council set ambitious goals for itself, but also reminded governments for the “gender equality”³⁶ standards still remain unmet³⁷. The legality of this resolution became a drive for protective legislation for women with the policies which are aimed particularly at women, and policies which deal with relations between men and women, with the increasing attention on this protective legislation which can be titled as “state feminism”³⁸. The dynamics of various

³⁴ Carol Cohn. “Feminist Peacemaking: In Resolution 1325, the UN requires the inclusion of women in all peace planning and negotiation”. 2004.

³⁵ “Where are the women?” United Nations Security Council Resolution 1325 on Women, Peace and Security Three Years On. 2003

³⁶ Gender equality means equal participation for females and males in all relevant fields of social life, equal status, equal opportunities to be entitled to their rights and make use of their individual skills for the development of the society and equal benefit from the results of such development.

Taken from, On Gender Equality in Kosovo. UNMIK. Law No. 2004/2. Section 2, Definitions.

³⁷ Klara Banaszak, Felicity Hill, Aina Iiyambo and Maha Muna. “Women, Peace and Security: UNIFEM Supporting Implementation of Security Council Resolution” 1325. October 2004.

³⁸ State Feminism in basic sense can be defined as the capacity of the state to respond and act in favor of women’s movement goals. (Joyce Outshoorn and Johanna Kantola. State Feminism and Women’s Movements: Assessing Change of the Last Decade in Europe. Workshop number: 18. University of Granada. 14-19 April 2005).

And it ties to a specific social democratic state form and ideology of gender equality. It portrays democratic political processes which combine “mobilization from below” with “integration politics from above”. State feminism might be seen as one version of a strong nation building theme in descriptions of Scandinavian political history. This has largely been a story of broad movements fighting for access to and control of the state apparatus, and of ongoing transformations of state citizen relationships based on movement politics such as the peasant movement; the labor movement; the feminist movement. (Hege Skjeie, University of Oslo, State Feminism and the New Public Duties, Gender Studies Conference, 19-22 November 2002)

State Feminism refers in its broadest sense to attempts by actors to improve women’s status through public policy. As several scholars point out, however, the term state feminism has been employed by researchers to denote at least three distinct and even contradictory phenomena: alliances between women in political

post-conflict states are re-shaped with gender equal constituents. Movement from the state as gendered hierarchy towards the state as gender equal turned the post conflict settings into “opportunity spaces” for women.

The passage of SC Resolution 1325 strengthens programs and strategies to focus on gender justice through administrative, constitutional, legislative, judicial and electoral reform in conflict-affected areas because the given importance of strengthening the legal foundations of a post-conflict society is a cornerstone of peace-building.

The facilitation of women’s equal participation in decision-making through these administrative, constitutional, legislative and judicial processes and institutions needed strengthened programs and strategies to be followed. The promotions by UN gender specific agencies, such as enabling environments for the participation of women through training and civic education; provision of information and policy research analyses regarding women’s rights; capacity-building programs for civil society and women’s organizations; support to national women’s machineries and governmental bodies seeking to attain gender justice; and initiatives to encourage women to become candidates for leadership positions, became a trend in some post-conflict states.

This re-shaping of post-conflict states brings the discussions back to the phenomenon of “state feminism”. The political opportunity structures in post-conflict states affected the global institutions to work on new policies integrating gender equal policies in state structures. Various post-conflict states have state institutions to threat women’s concerns and the political representation of women is being enhanced.

World has been witnessing significant institutional and discursive shifts in the political opportunity structures mainly within the last ten years, new opportunities are being provided to expand the theories on state feminism, but in different contexts now, not within the welfare states such as Sweden in which state feminism started from.

office and women in state bureaucracies to create a ‘women-friendly’ polity, efforts by predominantly male politicians to bestow new rights on women to gain internal and external legitimacy for a modernizing regime, and work by feminists inside the state apparatus to integrate gender and promote women’s interests when devising public policy (Mazur 2002; Randall 1998; Stetson and Mazur 1995; Threlfall 1998).

While there is more and more literature on gender and politics, there is little which links the analysis of gender, politics and the state³⁹ until the end of 1990s, and there is pressing need to do so for post-conflict states. The majority of feminist analyses focus on the liberal democratic state in the first world while comparatively little attention has been paid to the gendered analysis of the post-colonial and third world state⁴⁰. Bringing the state back to feminist analyses in the context of post-conflict develops with state feminism and democratization.

Tammy analyses state feminism and democratization⁴¹ and states that one of the most important feminist interventions into the discipline of political science has been to expand scholars' definition of the 'political' beyond the institutions of the state to include other political terrain such as NGOs, and social movements. Mackinnon⁴² states that feminism has no theory of the state⁴³. But rather than feminism having no theory of the state, more realistically, the problem seems to be the lack of a theoretically practical approach to the state.

Stetson and Mazur⁴⁴ have questioned whether the institutional changes in governments resulted in policies that reduce gender-based inequities and whether such changes led to the creation of state feminism. If state feminism exists, opposing the previous stance of Mackinnon, also variations exist in the abilities of state structures to promote feminist political agendas in the contexts of the different political, social, and cultural traditions of various countries. These academicians come up with a comparative study, describing the state structures responsible for promoting women's positions and rights but mainly in advanced industrial societies. The explorations made as the extent to which these state offices achieve goals within the social, political, and historical contexts

³⁹ Georgina Waylen. "An Overview: Gender, Feminism and the State". *Gender Politics and the State*. London and New York. 1998

⁴⁰ Afshar 1996, Charlton 1989, Rai and Lievesley 1996.

⁴¹ Tammy Findlay. *State Feminism and Democratization: Theorizing the Canadian State*. A dissertation which combines Canadian Politics and Women and Politics, gender and public policy, gender and democracy and feminist political economy, presented at Canadian Political Science Association (CPSA) annual conference. 2003.

⁴² Dr. Catharine Alice MacKinnon is an American feminist, scholar, lawyer, teacher, and activist. She is the Elizabeth A. Long Professor of Law at the University of Michigan Law School and is also a long-term Visiting Professor of Law at the University of Chicago.

⁴³ Catherine A. Mackinnon. *Toward a Feminist Theory of the State*. Cambridge. Harvard University Press. 1989.

⁴⁴ Dorothy McBried Stetson & Amy Mazur. *Comparative State Feminism*. London. Sage Publications.. 1995. Stetson and Mazur are from Florida Atlantic University.

of each nation-state with the combination of political and social factors can be integrated into post-conflict states' opportunity spaces. Some of their discussions are on the nature of symbolic reform which can be considered as true for various post-conflict states because it is also being discussed whether the actions for gender equity are symbolic, and only a "soft" element legitimizing the presence of foreign states in post-conflict states.

European scholars such as Kantola⁴⁵ put forward the discussions around the state policies towards gender equity. In a number of recent empirical studies⁴⁶ it has been established that 'state feminism' is possible. These studies mainly focused on Europe, stressed on the developments in the women's movements since the early 1970s into the 1990s and their ineffectiveness to change dominant discourses. By looking at case studies from Europe, discussions with comparative politics and social movement theory, it will be possible to examine in how far the concepts developed and tested in the literature on state feminism and on women's movements thus far are applicable to the new democratic states and how they can be adjusted for the post conflict states can be placed on academic agenda.

Changing the basic policy discourses about women's status and giving rise to new policy instruments such as "gender mainstreaming"⁴⁷ became part of legal regulations and reforms at post-conflict states. These changes at the state level, in the institutional arrangements and in the policy discourse, are the result of international pressures. The effectiveness of these policies are so much depended on the political will of the state with the construction of all mechanisms on legislation, judicial system and administration especially for the reconstructed states in the aftermath of long years of conflict. Integrating gender equal policies is a way for building a constructive alternative for the post conflict states.

Gender mainstreaming, has been adopted at the UN Fourth World Conference on Women in Beijing⁴⁸ to forward the gender equality agenda within development

⁴⁵ Johanna Kantola has works on Gender and the Construction of State at University of Helsinki.

⁴⁶ Mazur 2001, Stetson 2001; Mazur and Stetson 1995; Outshoorn 2004.

⁴⁷ UNDP defines gender mainstreaming as "Taking account of gender concerns in all policy, program, administrative and financial activities, and in organizational procedures, thereby contributing to a profound organizational transformation.

⁴⁸ UN 4th World Conference on Women: Action for Equality, Development and Peace. Beijing, China. September, 1995.

institutions. It began to receive attention in Sweden and other Nordic countries in the late 1980s and was carried on for developing states and critically for post-conflict states as well with key policy concerns and goals that reflect a feminist heritage. The humanitarian agendas for post-conflict societies, integrated gender mainstreaming, have been experiments for development institutions. And gender mainstreaming has been an aspect of the feminist engagement with development. According to Mukhopadhyay⁴⁹; “gender in development policy” has been repositioned and the “political project of gender equality” is being normalized in the development business as an ahistorical, apolitical, decontextualised and technical project that leaves the prevailing and unequal power relations intact. She suggests that in repositioning gender in development policy and practice we need to consider how to get back to the political project while not abandoning the present mode of engagement with development institutions. Commitments to gender equality and women's empowerment exist now, and how the diverse elements of these commitments and promises are being studied by reviewing its achievements in transformative possibilities and as well with modest expectations by Subrahmanian⁵⁰ as well.

The academic discussions and published books are more on “gendering the state in the age of globalization”, and previous works are on mainly post industrialized states, than post conflict states. But gender in post conflict is a highly valued subject to study, and one of the indication for that is the high number of seminars organized calling for papers on this theme.

State interests or economic factors are the dominant influences shaping international relations according to the traditional and the study of world politics have neglected gender as an explanatory variable. In recent years, a growing number of scholars, especially feminist scholars, have challenged the traditional approaches to the study of world politics. According to these scholars, gender, conceived of as socially constructed notions of masculinity and femininity, fundamentally shapes world politics⁵¹.

⁴⁹ Maitrayee Mukhopadhyay. “Mainstreaming Gender or “Streaming” Gender Away: Feminists Marooned in the Development Business”. *IDS Bulletin*. Volume 35. Number 4. October 2004. pp. 95-103.

⁵⁰ Ramya Subrahmanian. “Making Sense of Gender in Shifting Institutional Contexts: Some Reflections on Gender Mainstreaming”. *IDS Bulletin*, Volume 35. Number 4. October 2004. pp. 89-94.

⁵¹ Debra L. DeLaet. Assistant Professor, Department of Politics and International Relations. Drake University.

Cynthia Enloe is one of these scholars with her books “In Bananas, Beaches and Bases”, “The Morning After: Sexual Politics at the end of the Civil War”, “Maneuvers: The International Politics of Militarizing Women's Lives”, had explored the roles of women with numerous roles to a central position in the study of international relations. Gendered institutions and gendered interventions has been one of the research areas of her, as she examined the post-war Bosnia-Herzegovina at women’s organizations’ context⁵². In the case of Yugoslavia, as a socialist society, women’s emancipation was officially has been achieved through education and equal paid employment on equal terms with men⁵³. These equal terms coming along with economic independency, did not exist at home where men retains authority. Legislation was unable to resist the old values in the private sphere⁵⁴. Cockburn had questioned whether the continuous changes of post-war turmoil would also lead to a gender order different from the socialist patriarchy. The suspicions for the dominant characteristic of culture and traditions⁵⁵ with the Islamic background exist in Afghanistan, in a different context carry some similar patterns with post-war Bosnia. How far can the post-conflict transitions lead to a successful reorganization of gender values in where the standards for economic independency, education and social activities have been mainly blocked for long years? If the gender mainstreaming policies imposed from global institutions that integrate into state policies of Afghanistan can not touch to the ground level of the society, the post-conflict justice may not go any further.

The needs and requirements for achieving gender justice in post conflict societies with the theme “Peace Needs Women and Women Needs Justice” have been discussed at

⁵² Cynthia Cockburn. “Women’s Organizations in the Rebuilding of Bosnia-Herzegovina”. *The Postwar Moment: Militaries, Masculinities and International Peacekeeping: Bosnia and Netherlands*. London. Lawrence and Wishart..2002.

⁵³ Cynthia Cockburn. “Women’s Organizations in the Rebuilding of Bosnia-Herzegovina”. p.69

⁵⁴ Mirjana Morokvasic. “Being a Woman in Yugoslavia: Past, Present and Institutional Equality”. *Women of the Mediterranean*. New Jersey. Zed Books Ltd. 1986. p.122.

⁵⁵ The cultural and traditional values that are sometimes at odds with the teachings of Islam, for instance the Pashtuns as Sunni Muslims, but their Islamic beliefs and behavior have often been tempered, and distorted, by cultural values, as in their treatment of women under Taliban rule. Distinctive tribal customs and traditions form an integral part of the Pashtun society. Pashtun cultural values are reflected in a code of ethics—called simply *Pashto* in Pashto, and *Pashtunwali* (‘the way of the Pashtun’) by non-Pashtuns. Pashtunwali is followed religiously, and it includes the following practices: *badal* (the right of blood feuds or revenge), *nunawati* (the right of a fugitive to seek refuge and acceptance of his bona fide offer of peace), *melmastya* (hospitality and protection to every guest), *tureh* (bravery), *sabats* (steadfastness), *imamdari* (righteousness), *isteqamat* (persistence), *ghayrat* (defense of property and honor), and *mamus* (defense of one’s female relatives). <<http://www.culturalorientation.net/afghan/apeop.html>>

It is a mistake to think that all Pashtuns are conservative towards women, or that non-Pashtuns are less so.

a conference organized by UNIFEM and International Legal Assistance Consortium (ILAC) in 2004⁵⁶. Women in key judicial positions from 12 conflict affected countries such as Afghanistan, Burundi, Democratic Republic of the Congo, Haiti, Iraq, Kosovo, Liberia, Namibia, Rwanda, Sierra Leone, South Africa, and Timor East came together. Critical gender justice concerns and requirements in their countries and implementation of measures needed; best practices that have emerged in the gender justice area in their countries; and how potential international partners could best assist with such implementation action needed were stressed on. The points on the necessity of attention given to family and civil laws as well as the requirement of the principle of justice should be integrated into all relevant constitutional clauses, reaffirming the principles of non-discrimination, equality, affirmative action, freedom and security. The public and private spheres need coordination in order to generate a gender order on equal terms.

The attention towards the gender issues in a new geopolitical context, post-conflict settings, where armed interventions assists for governance underwritten by global institutions exist. The gender issues are becoming politicized, and intervening in gender issues is backed by UNSC Resolution 1325⁵⁷, is becoming legalized in positive terms. Afghanistan is an ultimate test case for the implementation of 1325⁵⁸. SC Resolution 1325 has started many conversations, meetings and publications and Women, Peace and Security highlighted the importance of gender becoming not just an occasional issue, but a routine component of all processes and institutions of the UN, academia and activist efforts. Post September 11th actions taken on the developmental discourse, has renewed the international peace-building focus on post-conflict countries.

The point about post-conflict and transitional states is that it provides a unique opportunity to rewrite the rules of the game. Ballington⁵⁹ from International Institute for

⁵⁶ Fact Sheet “Peace Needs Women and Women Need Justice”. Conference on Gender Justice in Post-Conflict Situations. September 15th-17th, 2004, New York. <www.womenwarpeace.org>

⁵⁷ Security Council resolution 1325 on women, peace and security, adopted in October 2000, calls on Member States "to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict" (para. 1). It also calls upon actors to "ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary" (para. 8c). <www.ipu.org>

⁵⁸ NGO Working Group on Women Peace and Security. *Resolution 1325: Two Years on Report*. October 31st, 2002 <<http://www.peacewomen.org/un/UN1325/NGOreport.html>>

⁵⁹ Julie Ballington has researched quota systems.

Democracy and Electoral Assistance (IDEA)⁶⁰ believes everything is up for grabs in post-conflict states, so is easier to include quota laws than in those where the laws are already written and entrenched. In South Africa, Mozambique, Bosnia-Herzegovina, Kosovo and Rwanda quota systems have been included and this has had a spin-off effect for other post-conflict states, like for Afghanistan, where 25% of the seats in the new parliament have been reserved for women. The percentage of women elected for Rwanda's lower house at 2003 elections is 48.8. And the percentage of women elected/appointed for the upper house is 30%⁶¹. Election Law Quota or Regulation for the national parliament also exists⁶² all these came along with the process of engendering a new constitution for Rwanda one of the key considerations for the preparation of a gender-sensitive constitution was CEDAW.

A dramatic change has taken place recently on female political representation. Rwanda, Mozambique and South Africa, as a result of quota provisions, are placed very high in the world rank for female political representation⁶³. Electoral gender quotas are being introduced today in nations where women have been almost entirely excluded from politics. The introduction of effective quota systems⁶⁴ represents equal opportunities. In Afghanistan, quotas became as a "fast track"⁶⁵ to equal representation for women as opposed to an "incremental track"⁶⁶. A new international discourse on gender equal

Kathleen Knox. "More Countries Using Quotas to Boost Number of Women in Politics". *RFE/RL*. February 18th, 2004.

⁶⁰ One of the thematic priority areas of IDEA's work for the next three years is: democracy building and conflict management, electoral processes, and political parties, with gender as a cross-cutting concern. <www.idea.int>

⁶¹ Article 9 (4): The State of Rwanda commits itself to ensuring that women are granted at least 30% of posts in decision making organs and Article 82: The Senate shall be composed of 26 members of whom 30% are women.

⁶² Rwanda's 80 members of the Chamber of Deputies are elected as follows: 53 members elected in closed List PR; 24 women with two from each province and from the city of Kigali (by an electoral college with a women only ballot); 2 members elected by the youth council; 1 disabled representative. <www.ipu.org>

⁶³ The five Nordic states, Denmark, Finland, Iceland, Norway and Sweden, which for a long time were virtually alone at the top of the ranking table, are now being challenged.

⁶⁴ The real push for quotas came after the UN Women's Conference in Beijing in 1995.

"Women In Politics, Overview". IDEA. <<http://www.idea.int/gender/upload/Women.low.pdf>>

⁶⁵ Drude Dahrelup & Anja Taarup Nordlund. "Gender Quotas: A Key to Equality: A Case Study of Iraq and Afghanistan". Stockholm University. 2004. <www.ipu.org>

⁶⁶ Denmark, Norway and Sweden are on the incremental side of the quota presentation scale to equal political representation for women and men.

It took approximately 60 years for Denmark, Norway and Sweden to exceed the 20% threshold and 70 years to reach the 30%.

politics is the factor behind the introduction of quotas and reserved seats⁶⁷. Reserved seats is an approach which may guarantee numbers of women to the government and parliament, but it is not guaranteed to be effective in giving status to the reserved seat members related to the other factors such as culture and tradition of the state in transition. Some of the success examples of mainstreaming gender through constitutional and electoral law changes or re-writing in post-conflict states are Rwanda and East Timor, and Afghanistan is showing progress as well.

There are three main areas in which the question of women's participation in the electoral process addressed with the question of voice and citizenship; the question of representation and women representatives; and the question of women's capacity to engage in decision-making roles in the electoral and political process.

Knowing the fact that electoral politics is a competition for and not a competition between equals⁶⁸ in the gender sense for post-conflict societies, the rules of the process has to be set as fair with the implementation of innovative and creative thoughts and mechanisms.

The situation of women from post-conflict situations related to their participation in electoral processes carry out similarities such as inequality of resources, discriminatory cultural patterns, direct or indirect discrimination and the lack of clear rules or the rules not implemented, all of which reduce women's participation. These issues can also occur in elections everywhere but there are more specific differences on election processes from the post-conflict environments that have more negative impacts on women's participation. Even though high level of interest for post-conflict elections exist, a

The surprisingly rapid new developments in countries such as Argentina, Costa Rica, South Africa, which are typical what is referred to fast track. Today quotas are being introduced in countries where women only constitute a small minority in parliament, and the world is witnessing historical leaps in women's representation, for example the sudden jump to 49% women in parliament in Rwanda in 2003, which propelled Rwanda to the top of the world ranking of parliaments according to women's share of parliamentary seats. <www.ipu.edu>

⁶⁷ Diana Opar, Regional Gender Advisor, UNIFEM. "The inclusion of principles of gender equality and women's human rights for a gender sensitive constitution" from "Enhancing Women's Full Participation in Electoral Processes in Post-Conflict Countries: A Compilation of Resources". Prepared by the UN Office of the Special Advisor on Gender Issues and Advancement of Women, Department of Economic and Social Affairs. April, 2004. p.10

⁶⁸ Mr. Sean Dunne of the Electoral Assistance Division of the Department of Political Affairs presented a statement on behalf of Ms. Carina Perilli, Director of the Electoral Assistance Division, at Expert Group Meeting on "Enhancing women's participation in electoral processes in post-conflict countries". New York. January 19th-22nd, 2004.

considerable amount of understanding, dissemination and implementation with specific attention to different contexts are needed.

In post-conflict electoral settings, due to the fact that institutional development is limited, there may be a high possibility of history of human rights violations, and the judiciary may be weak, or non-existent in where women's ability to obtain proper protection of their legitimate rights is likely to be severely limited. Public campaigning is not easy for women. Intimidation, fraud and corruption are widespread, because of the fact that women are generally disempowered so they are not able to resist pressures of such. Women are mainly the disadvantaged group due to the higher illiteracy level among them, and electorate contains a substantial illiterate component. The access requirements in registration and polling procedures, as well as by lack of awareness of ballot secrecy or that the individual has a right to vote without being pressured to vote along family lines are disadvantages for women voters and candidates. Limited access of women to election media may occur.

The general agreement that gender balance is important has not always been reflected in practice of international observation teams. The evaluation of gender issues hasn't been a mainstream observation task. Observation reporting has been distinctly patchy: some missions report on gender issues in some depth, while others remain completely silent on the issue. Tight time constraints, often leads underestimation of necessary instruments for women's effective participation. The challenge is; when "hard choices" have to be made because of lack of funds in order to hold the elections, to ensure that women's participation is seen as a core activity of the post-conflict mission, and not merely as a desirable soft option to be cut⁶⁹.

Many states seem to be standing with one foot in the authoritarian past and one in a democratic future, trying to decide in which direction to go⁷⁰ as Kurt Gaubatz states while analyzing the election dynamics and war⁷¹. In the case of Afghanistan, the decision for which direction Afghanistan should move is already determined by the international

⁶⁹ Expert group meeting on "Enhancing women's participation in electoral processes in post-conflict countries," jointly organized with the Department of Political Affairs of the United Nations. EGM/ELEC/2004/ REPORT. February 20th, 2004.

⁷⁰ Kurt T, Gaubatz. *Elections & War : The Electoral Incentive in the Democratic Politics of War & Peace*. Stanford, CA, USA. Stanford University Press. 1999. p.15

⁷¹ Kurt T, Gaubatz. p. 22.

community. It is not certain how much long-term commitment is necessary for Afghanistan to become a fully democratic state yet, depending on the success of reforms in various segments as crucial elements for democracy transformation. Main questioning is; how effective level of democracy will be placed in these countries on the path to democracy and development. In the case of Afghanistan, this question is transferred as: how efficient and not only symbolic mechanisms can be placed so its democratic movement can be sustainable.

Besides the main international actors involved in Afghanistan reconstruction, development and path to democracy, the position of UN institutions, is not always welcomed since they can become the main targets of radical elements within the Afghan society. When it comes to how well can UN institutions place themselves and not be considered as outside forces, depends on the level of understanding of the local paradigms functioning all over the country, considering the social and cultural and including the religious elements effective. The factors influencing the effectiveness of the UN human rights institutions are the political, social and ethical dimensions for persuasion to be accepted in the fields that UN works⁷². The political context of the country is also a part of its cultural, ethnic and religious background, and it is highly interconnected with the traditions, in Afghan case it is Pashtunwali⁷³. The justice system consists of Shari'a and jirga/shura in which jirga/shura⁷⁴ comes from customs and Pashtunwali traditions. Whether the previous justice system⁷⁵ has to be eradicated totally or be integrated with the new democratic systems, on the process to be implemented when the necessary mechanisms and instruments can place themselves well with the completion and expansion of these instruments and mechanisms, is critical. Afghanistan

⁷² Flood, P.James. *The Effectiveness of UN Human Rights Institutions*. Praeger Publishers. London. 1998.

⁷³ Pashtunwali : the indigenous pre-Islamic honor code and religion of the ethnic Afghan people

⁷⁴ Carter and Connor (1989: 9) operationally define shura in this way: 'A shura is a group of individuals which meets only in response to a specific need in order to decide how to meet the need. In most cases, this need is to resolve a conflict between individuals, families, groups of families, or whole tribes.' This description would seem to indicate that shura and jirga are fundamentally very similar Afghan informal (non-state) mechanisms of conflict resolution that operate in varying social and tribal contexts.

⁷⁵ The justice system consists of Shari'a and shura/jirga that are closely related to each other, in which jirga/shura comes from customs and Pashtunwali traditions.

Shari'a is an Arabic word, which means 'the path to follow'; it is also used to refer to legislation, legitimacy, and legality in modern Arabic literature. However, shari'a in a jurisprudential context means Islamic Law. The primary sources of shari'a are the quran and the sunnah. The first refers to the holy book of Islam, and the second to the statements and deeds of the Prophet Mohammad.

is a unique case with its past and all the fractions, mainly ethnical and religious, that will carry on these fractions because these all belong to Afghanistan that what composes Afghanistan.

A theoretical study on the integration of international norms on human rights in post-conflict settings is missing. There are unique cases that this implementation is working quite sustainable, but the situation of Afghanistan does not have an equivalent case to compare with because of the nature of past conflicts experienced in the country and the current political situation of the territory that flows without the completed justice and security reform⁷⁶ even though now it has an elected president and a parliament with a functioning constitution in the end of the completion of the Bonn process.

⁷⁶ “Security sector reform” departs from the notion that security and development are interdependent - the concept that without security, development can not be secured; and that without development, neither can social peace, democratization and justice.
David M. Law. “The Post-Conflict Security Sector”. 2

CHAPTER 3

Gender Justice in Afghanistan

A. Recent History of Gender Justice Situation of Afghanistan

3.1. Early Reforms

Reforms in the area for women rights began in Afghanistan in the 1880s, when Amir Abdur Rahman Khan ascended the throne. The next king, Amir Habibullah Khan, ruled from 1901-1919 and continued the previous king's reform agenda, by putting a ceiling on the extravagant expenses during marriages and abandoning the veil for his wives, who were publicly seen in western clothes.

In the 1920s, King Amanullah Khan introduced the most liberalizing reforms⁷⁷ of the time in the area of women's rights, influenced by the reforms of Kemal Ataturk. He allowed his wife, to take an active role in civil society and governance in an era when women were absent from the Afghan political scene. Queen Soraya openly challenged the traditionalists in a public address at a gathering of women in the 7th Independence Anniversary in 1926. She stated, "Do not think, however, that our nation needs only men to serve it? Women should also take their part as women did in the early years of Islam."⁷⁸

King Amanullah's sweeping reforms were a part of broader efforts to modernize Afghanistan, he even declared Afghanistan a secular state. The government quickly brought about reforms with regards to women's rights at a time when socio-economic and cultural institutions were unprepared and conservatives who sought to keep control of

⁷⁷ Amanullah attempted to implement an ambitious program of modernization, including education for girls as well as boys, and worked to end the seclusion and the veiling of women. He also drew up the first constitution; guaranteed civil rights; established a legislative assembly; rationalized the tax structure; and introduced a new currency. However, all these reforms inspired mostly by Kemal Ataturk's reforms in Turkey encountered great resistance from the religious and tribal leaders of what was and still is a largely tribal, Moslem, society. This resistance led to an alliance between the mullahs and the tribal chiefs, supported by the army. Together, they brought about the fall of Amanullah who fled the country in January 1929 and settled in Italy.

Anna M. Cienciala. "Nationalism and Communism in Africa, the Middle East and Afghanistan" in *The Rise and Fall of Communist Nations 1917-1994*. Department of History, University of Kansas. Lawrence, Kansas. 1996. pp.616-646.

⁷⁸ Mariam A. Nawabi. "Women's Rights in the New Constitution of Afghanistan". 2003. p.8.

the status quo looked upon these institutions with disfavor. When King Amanullah raised the age of marriage for women to 18 and for men to 21 and abolished polygamy, tribal leaders opposed the reforms and eventually forced the King to reverse some of his policies. These reforms shook the entire traditional tribal society; the most affected ones were the mullahs. The spread of women's education threatened their social position too. They together with the feudal lords formed the nucleus of reaction with the support of British imperialism that ultimately brought about the downfall of Amanullah⁷⁹. It would not be until the 1950s that reform of women's rights would progress as they did during this period.

During the 1950s, social and economic changes led to reforms in women's rights. "A need was perceived for women to be economically active to help Afghanistan achieve its targeted development goals."⁸⁰ In 1959, members of the royal family appeared unveiled in public and the government encouraged women to abandon the veil; the government also curtailed marriage expenses and encouraged women to participate in the economy. It was during this time that Afghanistan became one of the first states to sign the Convention on the Political Participation of Women, giving Afghan women equal rights as men to run, hold, and be elected for public office. This was before women in Switzerland had the right to vote.

The Constitution of 1964, promulgated under the leadership of Mohammed Zahir Shah, contained a broad "equality clause," which provided the people of Afghanistan with equal rights and obligations before the law. Significantly, the Constitution was interpreted in the 1960's and early 1970's as providing gender equality and it was during this time that women in urban areas advanced in politics, education, medicine, law, and other fields.

During the early 1970s, Afghanistan began to experience a socialist reform agenda. The Soviet Union continued to strengthen its economic aid, assisted in training the Afghan army, and offered scholarships to young Afghans to study at Soviet universities. This influence was later exerted in the area of women's rights. Although the laws and legal system during the communist regimes provided more explicit

⁷⁹ Doctor Zayar. "Afghanistan, An Historical Overview: In Defense of Marxism. 2001
<www.marxist.com/Asia_afghanistan_historical_overview.html>

⁸⁰ Human Ahmed Ghosh, "Feminist Perspective: September 11th and Afghan Women". 2001.

protection for women's rights, these regimes violated other individual rights and liberties and were harshly opposed by most Afghans. Thus, many Afghans perceive reforms in women's legal rights as part of a communist agenda, even though such reforms had been indigenous to Afghanistan and had begun fifty years earlier.⁸¹

Even though all these rights have been placed in the Constitutions and reforms were attempted, the real story for the Afghan women was different. Since the 1920s, progress on women's rights in Afghanistan has faced almost overwhelming opposition from religious fundamentalists and those who have promoted their own understandings of the country's traditions. Under the consideration of the Afghan society as a male dominated one, most of the Islamic verdicts and rules that could benefit women have been misinterpreted by Mullahs, the Islamic clerics, and other religious figures in various communities.

The formal justice system of Afghanistan has been influenced, to varying degrees, by Western, mainly French, legal thought and moderate Islam, radical Marxism, and by radical interpretations of Islam. In the 1950s and 1960s, the justice system was modernized and state law, rather than shari'a, became the primary source of the justice system. After the military coup in 1978, the Marxist government attempted to introduce a Soviet-style judicial system. However, since the Marxist regime was at odds with both Islam and Afghan traditions, the whole system of governance and its judicial reforms (decrees) were rejected en masse before they took root⁸². The subsequent mujahideen⁸³ regime of 1992–96 declared shari'a as the basis of the state, and this was further entrenched by the Taliban's regime⁸⁴.

The policies of the Taliban regime towards women had made the situation of women become miserable and their acts can be synonymously considered as brutal, and

⁸¹ Mariam A. Nawabi. "Women's Rights in the New Constitution of Afghanistan". pp.8-9.

⁸² Chris Johnson, William Malley, Ali Wardak. "Afghanistan's Political and Constitutional Development". January 2003.

⁸³ Afghanistan has been largely at war since 1978, throughout that period, most of the fighters considered themselves to be mujahideen, or "holy warriors". Mujahideen is a plural form of mujahid. Afghan mujahideen have fought against the Soviet invasion of Afghanistan between 1979 and 1989, and then fought against each other in the following civil war in the 1990s.

Barnett Rubin. 'The Forgotten War: Afghanistan'. Carnegie Council, The Voice of Ethics in International Policy. 2006.

⁸⁴ Ali Wardak. "Building Post-War Justice in Afghanistan". Introduction. University of Glamorgan. UK. 2004.

unfortunately the policies of this regime, set back the tentative progress by decades, which was made under the monarchy in giving the Afghan women an appropriate role in national life.

It is crucial to state that, there exists a women's progress before 2001 intervention. The long years of war from 1979 until 2002 interrupted this gradual development: The Soviet occupation took some progressive steps, then the lawlessness of the civil war restricted women's movement, and the Taliban suppressed women's rights altogether. The emergence from the war after the defeat of Taliban in 2001 has led to some positive changes.

3.2. Present Status

The situation of Afghan women became a measurement tool of social change in Afghanistan. Significant positive developments have taken place in Afghanistan but unfavorable socio-political environment⁸⁵ inhibits women from taking initiatives as fear, rather than a sense of confidence, prevails⁸⁶.

The Afghan Independent Human Rights Commission (AIHRC) was set up in June 2002, with a mandate to investigate and monitor all human rights violations. The Judicial Reform Commission (JRC) was established in November 2002 with a mandate to "rebuild the domestic justice system in accordance with Islamic principles, international standards, the rule of law and Afghan legal traditions". However, as a creation of the Bonn Agreement, JRC has no formal role in the administration of justice and women are subjected to human rights abuses as a result of the practice of jirga. Ministry of Women's

⁸⁵ The socio-political environment has witnessed recent as November 2005, Nadia Anjuman, an Afghan poetess killed in November 2005, and April 2005, Amina of Badakhshan, a young woman reportedly stoned to death for having an extra-marital affair.

And Malalai Joya, who became an MP from one of the most conservative south-western province of Farah receiving the second place in the province by popular support, is under death threats. Because she has condemned the presence in the parliament of "criminal warlords" whose hands are stained with the blood of the people in the first session of the new Parliament.

She says "Every democrat must be ready to die for truth and freedom," and "I am not better than any of the others, but I am young and energetic and the women of Afghanistan need me."

⁸⁶ GA A/58/421

Report of the Special Rapporteur of the Commission on Human Rights on violence against women, its causes and consequences, on the situation of women and girls in Afghanistan. Situation of women and girls in Afghanistan. October 6th, 2003.

Affairs has been established to promote the participation of women in the reintegration and reconstruction process.

The most important of these positive developments is, on March 2003, the ratification⁸⁷, of the “bill of rights for women”: Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). It provided initiatives for domestic legislative reforms and actions to promote and protect the rights of women in Afghanistan, particularly in addressing discrimination in such vital areas as education, employment, health care and family relations. National policies prohibiting female education and work have been abandoned.

Women participated to Emergency⁸⁸ and the Constitutional Loya Jirga⁸⁹ in June 2002 and December 2003. With the eligibility to vote and to be elected, women participated in presidential and parliamentary elections. The 25% women’s quota for the parliament became a significant opportunity for women to participate in politics, meaning 68 seats for the 246 seat in the Wolesi Jirga, the lower house of parliament, are guaranteed for women, and 121 seats are secured in the provincial councils which have a total of 420 members.

Whatever legal guarantees are created, a gap is likely to remain in implementation. In order to encourage the acceptance and implementation of rights for women, these rights should be realistically crafted. The situation of women between Kabul and the rest of the country, as well as between the conditions in rural and urban areas carry on great disparities. Cultural differences and the divide of rural urban areas mean that there is significant regional variation. In both the private and the public spheres authoritarian attitudes and discriminatory traditional practices sustain gender

⁸⁷ Ratification without any reservation

⁸⁸ 160 seats were guaranteed to women, a representation of 11%.

⁸⁹ from the text of presidential decree on Constitutional Loya Jirga (CLJ):

The Loya Jirga to approve the constitution should have 500 members. Of these 450 are elected members and 50 will be selected.

According to Article 5 of this decree, 42 members will be elected by representatives of Afghan refugees in Iran and Pakistan, displaced people in the country, nomads, Hindu and Sikh minorities, 15% of whom must be women.

Representatives of women in 32 provinces must elect 64 women members

According to Article 6 of this decree, the head of the Transitional Islamic State of

Afghanistan will select 50 members, the head of the Afghan government will select 50 members of the Loya Jirga to approve the constitution, 25 of which will be eligible women.

injustices. Tradition and the conservative interpretation of Islam have long prevented women from enjoying social, economic and political rights⁹⁰. Indeed, many women even in Kabul still feel the need to wear the burqa, in part due to the self defense to the conservative fractions within the society.

3.2.b. The Role of Afghan Women's Groups in Afghanistan for the Expansion of Gender Justice

There are a number of women's organizations in Afghanistan, but most of them do not have the same working ground. Some are positioned as counter active against the radical forces violating women's rights in all aspects by making these violations become more visible to the world's attention such as the Revolutionary Association of the Women of Afghanistan (RAWA)⁹¹, and some more focused on healing strategies for needy women and empowering them with kind of strategies and give basic assistance such as shelters and health care, and some of these women's groups are in coordination with international peers for technical expertise such as the Women's Rights in Afghanistan Fund (WRAF)⁹² working in cooperation with 'Rights and Democracy'⁹³, and some active for the advancement of political rights of women as well but who only exist on an elite level since they are well educated women already invisibly active in politics by having a close blood relation to a current politician and some of them even have their own NGOs working on women's rights.

⁹⁰ Chris Johnson et al. "Afghanistan's Political and Constitutional Development". Overseas Development Institute. London. January 2003.

⁹¹ the oldest women's humanitarian and political organization in Afghanistan

⁹² Rights & Democracy established the WRAF, with funding from the Canadian International Development Agency (CIDA) in 2002, with the aim of supporting women's human rights and peacebuilding efforts. Projects supported by the Fund are: Women's rights educational projects, including legal education, Leadership training for women, Women's participation and mobilization in political processes, such as Loya Jirgas, democratic elections, and constitutional or judicial reforms.
<<http://www.wraf.ca>>

⁹³ Rights & Democracy is a non-partisan, independent Canadian institution created by an Act of Parliament in 1988 to promote, advocate and defend the democratic and human rights set out in the International Bill of Human Rights. In cooperation with civil society and governments in Canada and abroad, Rights & Democracy initiates and supports programs to strengthen laws and democratic institutions, principally in developing countries.

There is not a national body of a women's NGO exist in Afghanistan similar to Association of Supporting and Education Women Candidates (KA-DER) of Turkey.⁹⁴ Afghanistan's current parliament has reserved more than 25% of the seats to women and they have been active participants in the parliamentary elections of September 2005 but not a similar kind of an NGO like KA-DER exists in Afghanistan to further the political rights of women in general. Women's groups are not focused on the matter of political representation yet. Also enhanced communication and interaction between these women's organizations, the preparation of the grounds for collaboration, and thus, to contribute to the empowerment of women by these ways is non existent.

B. Gender Justice in Afghanistan's Legal Framework

3.3. Afghan Women and Current Constitution

The Interim Authority has made a good start in reviving the role of women members in the interim cabinet and protection of equality before the law and nondiscrimination for women have been considered as crucial for the Emergency Loya Jirga with the participation of women in decision making and for the Constitutional Loya Jirga for the formation of the new constitution. Massouda Jalal⁹⁵ who is the current women's affairs minister, challenged and lost to President Karzai in the 2002 race for ELJ presidency. Women composed 7 out of the 35 members of the Constitutional Commission set up before the CLJ⁹⁶.

The Constitutional Commission was picked by the president based on recommendations from civil society and other groups, and women's groups became engaged at the recommendation level. However, the advocates also needed to be careful about how they presented women's rights claims. It was clear that if women's rights were

⁹⁴ a Turkish NGO specializing in support to women in politics, founded in 1997 aiming to reflect women's ideas to the local governments and to the parliament, increase the level of participation of women as decision makers to the political life in Turkey.

Turkey is still far from claiming gender equality in politics, where there is a major problem of gender representation, such as women currently hold only 24 seats in the 550 member parliament indicating women are grossly under-represented in political decision-making in Turkey. KA-DER's works are crucial in Turkey in that regard.

⁹⁵ She belongs to the Tajik ethnic group

⁹⁶ Country Reports on Human Rights Practices. 2004. US Department of State. Bureau of Democracy, Human Rights, and Labor. p.10. February 28th, 2005.

to be widely accepted and realized, they must not be perceived as imposed by foreign interests.

Once women were at the negotiating table and engaged in the drafting process, as was required by the Bonn Agreements, it became clear that in some cases the words used to describe the rights to be protected were just as important as the rights themselves. Women were keenly aware that they might be denied rights equal to men if the final language was at all vague, therefore, women delegates pushed for including the word “women” in most of the provisions and articles of the new Constitution⁹⁷. There were many sensitive issues that need to be tackled by the new constitution. While the reformists would want a secular system, the “conservative religious fundamentalists”⁹⁸ insist on mainly the Islamic law, the Shari’a, to be recognized as the only legal system⁹⁹.

The new constitution of Afghanistan ratified on January 2004¹⁰⁰, calls for men and women to have "equal rights and duties before the law," it also asserts that "no law shall be contrary to the beliefs and practices of Islam." It remains unclear how the newly granted women’s rights will clash with the fundamentalist interpretations of Islamic law by some fractions within the society.

⁹⁷ Horia Mosadiq. “The New Afghan Constitution: How Women Succeeded in Ensuring Certain Rights and What Challenges Remain”. *Critical Half: Gender and Constitution Building: From Paper to Practice*. Vol. 3 No. 1 Summer 2005. p.31

Critical Half is a bi-annual journal of Women for Women International devoted to the exchange of ideas and insight encountered as practitioners in the field with women, development and post-conflict societies. Each issue of Critical Half focuses on a particular topic within the field of gender and development.

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⁹⁸ Islamic fundamentalists are not just trying to have their voices heard in the debates that are going on about education and about the constitution. They are actually imposing themselves on the political scene in an attempt to become very powerful and take over the political apparatus of Afghanistan.

Two of the most powerful Islamic fundamentalists in Afghanistan are: Jamiat-e Islami leader Burhanuddin Rabbani and Itihad-e Islami leader Abdul Rasul Sayyaf.

⁹⁹ Dr. G. Rauf Roashan. “ Reformists, Fundamentalists and the New Afghan Constitution”. April 4th, 2003.

¹⁰⁰ The Bonn Agreement established a very tight timeline for the drafting and approval of Afghanistan’s constitution. Under the Agreement, a Constitutional Commission was to be set up within two months of the establishment of the ATA to draft a new constitution. Within 18 months, a Constitutional *loya jirga* (CLJ) was to be convened to approve it.

Chris Johnson, et al. “Afghanistan’s political and constitutional development”. p.15.

In the Article 83 of the 1382 Constitution, it is stated that two females from each 32 Provinces will be elected as members of the Wolesi Jirga, the House of the People. As for the Meshrano Jirga, the House of Elders, 50% of the all the members will be appointed by the President and 25% of whom will be women. Article 83¹⁰¹, the last paragraph says:

The election law shall adopt measures to attain, through the electoral system, general and fair presentation for all of the people of the country, and proportionate to the population of every province, on average, at least two females shall be elected members of the House of People from each province. And the President shall appoint one third of the House of Elders and 50% of these individuals amongst women¹⁰².

The rights of women to be in the national assembly and in the provincial councils are already given to them with the reserved seats¹⁰³, which may have the chance of establishing symbolic base for the empowerment of women for politics. Even they come into the parliament and provincial council, if people can observe these women work efficient, and feel that these parliamentarian women know what they are doing, nobody can be saying “we let you in”.

¹⁰¹ The whole Article 83: Members of the House of People shall be elected by the people through free, general, secret and direct balloting.

The work period of the House of People shall terminate, after the disclosure of the results of the elections, on the 1st of Saratan of the fifth year and the new parliament shall commence work.

The elections for members of the House of People shall be held 30-60 days prior to the expiration of the term of the House of the People. The number of the members of the House of People shall be proportionate to the population of each constituency, not exceeding the maximum of two hundred fifty individuals.

Electoral constituencies as well as other related issues shall be determined by the elections law.

The elections law shall adopt measures to attain, through the electorate system, general and fair representation for all the people of the country, and proportionate to the population of every province, on average, at least two females shall be elected members of the House of the People from each province.

¹⁰² According to the Article 84, members of the House of Elders shall be elected and appointed as follows: From amongst each provincial council members, one individual shall be elected by the respective council for a four year term; From amongst the district councils of each province, one individual, elected by the respective councils, for a three year term; The remaining one third of the members shall be appointed by the President, for a five year term, from amongst experts and experienced personalities, including two members from amongst the impaired and handicapped, as well as two from nomads.

¹⁰³ Definition of reserved seats by Pippa Norris as the constituencies for elected office that can be contested only by women candidates, distributed either by appointment (by another body), or by direct election (by popular vote). The Constitution of Afghanistan, however, requires that all members of the Wolesi Jirga be directly elected.

These reserved seats have been a debate due to the questioning of the education level of women throughout the country, whether they will have the proper background to work as a part of the national assembly and the provincial councils. Also, during the presidential elections, it has not been easy to find women candidates to run for the elections. For the presidential elections, there was only one woman presidential candidate¹⁰⁴, and two woman vice-presidential candidates who failed to be elected. Also there was the possibility of not enough women nominating themselves for the Wolesi Jirga and Provincial Council Elections. As Mr.Nadery tells about his observation:

For the Emergency Loya Jirga that happened actually. In the province called Uruzgan, which is a very remote and very conservative province, which Taliban has a lot of influence, the level of literacy is very low among male, and you can find very few educated female. For the Emergency Loya Jirga we were looking for women to be a part of it, and there were no women. In Kandahar the same situation happened as well. We had a helicopter, going from village to village, finally we could find a woman, and she was working as a nurse in one of the health centers. And we asked her to come to the Emergency Loya Girga”¹⁰⁵.

It is the realities of Afghanistan, women do not have political networks like men have, and it is not easy for them to be involved in these networks as Afghan men. Afghan women have been left out of social life for years under the harsh rules under Taliban and former warlords limited women’s participation in social life as well. Women were exempted to take education, the ones who already were educated and had professions were not allowed to work and to be out on the streets. Afghan women have passed through a period in which they had the most inferior positioning within the society.

An Afghan-American women’s rights activist put the situation in words:

¹⁰⁴ Masuda Jalal, who is the current Minister of Women’s Affairs.

¹⁰⁵ Interview with Ahmed Nader Nadery. Kabul. May, 2005.

Mr.Nadery is one of the commissioners at Afghanistan Independent Human Rights Commission (AIHRC). He is a qualified lawyer and a political analyst. He was actively involved in civil society initiatives in Afghanistan and represented the Afghan Civil Society in the Bonn Conference (UN Talks on Afghanistan). He is a founding member to Afghan Civil Society Forum and a board member of directors of the Foundation for Civil Society and Culture. Before joining to the Commission, he worked respectively as programme co-ordinator with the International Human Rights Law Group and spokesman of the Emergency Loya Jirga. He recently honored the Reebok Human Rights award.

In the West, you are able to say your name in proud. But in Afghanistan, even saying your name can be shameful. This is extremely sad. There are huge obstacles to overcome. How come these women run for politics? It is a huge step.”¹⁰⁶

The fact that the women are being elected and not appointed is a plus for Afghan women’s empowerment. It gives women the chance to represent themselves before getting into the parliament that they represent the nation, they gain experience in campaigning for the elections. This way the level of confidence they have and their legitimacy and accountability towards their voters arise.

Unfortunately the majority of women candidates did not have any political background or knowledge¹⁰⁷. They might have been directed by influential people in their community with the aim of transferring their own agenda through women representatives. Even this way, it is a huge gain for women by being in the parliament because they obtain the chance to learn politics in practice.

Similar experiences have been reported by Loya Jirga delegates. Many of them complained that the majority of female delegates were sent and instructed by parties of former Mujahideen for merely symbolic purposes¹⁰⁸. While these kinds of factors prevented women from actively working together for women’s rights, successes were achieved: Equal rights were explicitly guaranteed for men and women and 25% quota for women in parliament is guaranteed¹⁰⁹. The initial constitutional draft only provided for 12,5%.

¹⁰⁶ Interview with Homira Nassery. July, 2005.

Homira Nassery is one of the women rights activists in Afghanistan. She used to work at World Bank, later at Ministry of Rural Rehabilitation and Development (MoRRD), currently she is working at Rebuilding Agricultural Markets Program (REMB) department at Ministry of Agriculture (MoA).

¹⁰⁷ There are also women from the elite class with networks, and women who have their husbands’ supports in politics, but these women can not be generalized to the whole society.

¹⁰⁸ Some women held speeches written for them without understanding their meaning. As one woman from the FES women’s network put it, “most women were not there by interest, they were sent by jihadis. They were told what to vote for. They will not work for women’s rights.” For example, some women reportedly brought in a draft law for the hijab (full body veil with eyes uncovered) to be made compulsory in the constitution. They also reportedly voted against the quota for women in parliament and even beat up one woman who did vote in favor of the quota.

Friederike Böge. “Former warlords limit women’s participation in politics”. Friedrich Ebert Stiftung (FES). Kabul. September 5th, 2004. <<http://www.fes.org.af/reportkunduz.html>>

¹⁰⁹ The initial constitutional draft only provided for 12,5%.

Afghanistan's history has not always been unfair to women, this is not the first time that they are granted with these rights¹¹⁰, and there have been reforms that aimed to place women in equal standards with men. In this period of time, at the post-Taliban era, considering the sensitivity of the issue of women's rights in a deeply conservative society, Afghan women need to set and lead the agenda; it should not be seen as an imposed agenda by the international community. There should be strong international support for Afghan initiatives and with the fact that Afghanistan's new Constitution provides that "the citizens of Afghanistan - whether man or woman - have equal rights and duties before the law", concerted action needs to be taken to give effect to these rights¹¹¹. Although the constitutional protection of certain women rights were ensured, significant challenges remain for Afghan women in terms of implementing the constitutional provisions and reconciling the more conservative and male dominated aspects of Afghan society with culturally pragmatic conceptions of gender equality.

3.4. Afghan Women and the Ratified International Conventions

This research became an analysis for the implementation of constitutional rights in the way that how much consideration these rights receive in depth on gender issues related to elections matters, for the implementation of political rights of women, so the related parts at ratified international conventions is necessarily being analyzed.

¹¹⁰ Women were a part of the commission that drafted the constitution of 1964, and women's rights were a central theme in the two key *loya jirgas* of 1928 and 1964. Many articles of the Constitution of 1964 support gender equality. These articles:

Article 25 : "The people of Afghanistan, without any discrimination or preference, have equal rights and obligations before the law"

Article 26: "Liberty is the natural right of the human being" and The liberty and dignity of the human being are inviolable and inalienable. The State has the duty to respect and protect the liberty and dignity of the individual"

The Constitution of 1974 had several articles protecting the equal rights of women:

Article 27: "All the people of Afghanistan, both women and men, without discrimination and privilege, have equal rights and obligations before the law."

the Constitution of 1987¹¹⁰:

Article 28: Citizens of the Republic of Afghanistan, both men and women, have equal rights and duties before the law, irrespective of their national, racial, linguistic, tribal, educational and social status, religious creed, political conviction, occupation, wealth, and residence. Designation of any illegal privilege or discrimination against rights and duties of citizens are forbidden";

and the Constitution of 1990 as well:

Article 28 from the 1987 constitution was kept the same.

¹¹¹ Isobelle Jacques. "Afghanistan: Beyond Bonn". Wilton Park Paper Report based on Wilton Park Conference WPS05/28. May 12th-14th, 2005. p.12.

Article 7 of the Constitution of Afghanistan states: “the State shall abide by the UN charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Right.”, and ratifying a human rights treaty imposes a number of obligations on the State as the treaty must be implemented in law and in practice.

In general, and pertaining to women in particular, due to a weak mutual understanding and biased interpretation of Islam, there is a clash in the religious discourse on rights among the different schools of interpretation of Islam on one hand, and the secular discourse on rights considered as derived from international law on the other hand. Many round table workshops¹¹² have been organized by United Nations Development Fund for Women (UNIFEM) based on “Convention of Elimination and Discrimination Against Women (CEDAW) and the Human Rights of Women”, hoping that the considered distance between falsely constructed divide between the two discourses can be bridged. The main aim is harnessing the divergent interpretations of the issue of women’s rights, and integrating them into the fundamental principle of universality of human rights. The conclusions reached at these workshops, with the participants of professionals, intellectuals, gender experts, scholars of Islam, human rights activists from Islamic countries, and representatives from UN and CEDAW Committees, it has been mainly concluded that there is a significant compatibility and similarity between the rights of women in Islamic law and the CEDAW, and focus should be made on awareness programs in order to inform women of their rights, to enable them to link rights given to them under Islamic legislation with those existing under international instruments, and to highlight compatibility between Islamic legislation and international law¹¹³.

In the light of the fact that international law is founded on the idea of interconnection, coexistence and mutual understanding, and that international law is a living reflection of the needs of every historical phase with the aim of meeting specific social objectives, the CEDAW and its general recommendations have proved to be

¹¹² One of the first roundtable workshops of such on Afghanistan dates back to October 1999 by UNIFEM/Western Asia Regional Office (WARO).

¹¹³ Report of the Round Table Workshop: CEDAW and Islam and the Human Rights of Women. UNIFEM/WARO. Amman. October, 1999. p.14

effective in establishing women rights, with a view to improving the status of women and eliminating gender discrimination¹¹⁴.

CEDAW

CEDAW was adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. The agenda for equality is specified in fourteen subsequent articles. In its approach, the Convention covers three dimensions of the situation of women. Civil rights and the legal status of women are dealt with in great detail. In addition, and unlike other human rights treaties, the Convention is also concerned with the dimension of human reproduction as well as with the impact of cultural factors on gender relations.

The Convention of the Political Rights of Women since its adoption in 1952, the concern for the political rights of women remains. The related provisions also exist at CEDAW, mainly in the position of restatement at Article 7 of the Convention, at where its provisions, therefore, are restated in article 7 of the present document, whereby women are guaranteed to vote, to be voted and hold public offices.

Legal Bindings for CEDAW

Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations. Afghanistan as a ratified state to this Convention¹¹⁵, has not submitted any report yet. When the reasons why any report hasn't been submitted yet, were questioned, it was stated by the related officers that: They have missed the deadline of the required date for the first submission, and now instead of focusing for the assessment report for CEDAW,

¹¹⁴ Ibid.. pp.5-6, 18-19.

¹¹⁵ Afghanistan signed the CEDAW first on August 14th, 1980, and the date of accession is March 5th, 2003. <<http://www.un.org/womenwatch/daw/>>.

United Nations Division for the Advancement of Women. Department of Economic and Social Affairs. Feb 10th, 2005.

the Ministry of Foreign Affairs, chose to come up with a report for the Convention of Civil and Political Rights (CCPR) because they have more progress for the implementation of this Convention, so the priority must be given to this assessment report, and the date for the completion and submission of the assessment report for CEDAW is not certain yet¹¹⁶.

The project on Capacity Building for Sustained Human Rights Treaty Reporting in Afghanistan was signed on June 19th and was officially launched on November 27 by Foreign Minister Abdullah Abdullah and SRSG Jean Arnault. In turn, the agreement on the implementation of the project was signed by the Government of Afghanistan and the UNDP on August 4, 2005 with a lifetime of 15 months. Dr. Abdullah stated that Afghanistan had an obligation to implement the international human rights treaties it had become a party to and that his country had to report to the UN treaty bodies on the state of implementation and stressed that it is important that they take action towards meeting their obligation to the international human rights treaty bodies by developing a program that builds capacity within the government for treaty reporting. He expressed confidence that capacity building at the key ministries and other government agencies would promote human rights awareness and education throughout the Government. He also said this would lead to a more human rights focused approach in policy-making. Minister of Justice, Mr. Sarwar Danish said Afghanistan had effectively recognized the supremacy of the international human rights treaties by undertaking in its Constitution to observe and protect the internationally recognized fundamental human rights and that the article 7 of the Constitution was a guarantee of the State's commitment to human rights¹¹⁷.

Even with the lack of assessment reports, it is important to recognize that, in spite of the evidence, treaties probably do have important positive effects on state behavior. It is the reality that human rights practices are no better than expected in Afghanistan as an accessory or ratified state to all human rights treaties¹¹⁸, this situation can still push for

¹¹⁶ Interview with Zohra Rasekh. Director of the Office of Human Rights and Women's International Affairs. Ministry of Foreign Affairs. Kabul. August 2005.

¹¹⁷ UNDP Afghanistan News. Human Rights Treaty Reporting Project officially launched. November 28th, 2005 Kabul .<http://www.undp.org.af/media_room/>

¹¹⁸Office of the United Nations High Commissioner for Human Rights. Status of Ratifications of the Principal International Human Rights Treaties. June 9th, 2004. Afghanistan is a party to these following human rights treaties:

improvements because the state is expected to cat complying with these treaties. Because the state parties to the Convention accepts that "...the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields”

It is crucially necessary to have a stronger system of independent expert monitoring, which would be more likely to expose governments' failures to comply with their treaty commitments. A central key to implement the potential of the international human rights treaty system would be to increase global awareness of countries' human rights practices. Because not all of the human rights treaties have strong enforcement mechanisms, nations that join human rights treaties can fail to abide by them and these are often hiding behind a shield of ignorance. In the case of Afghanistan, the state is hiding behind the shield of practical limitations¹¹⁹.

When it comes to the applications of CEDAW specifically; by accepting the Convention, states commit themselves to undertake a series of measures to end discrimination against women in all forms, including:

- to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
- to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and

the International Covenant on Economic, Social and Cultural Rights (CESCR), which is monitored by the Committee on Economic, Social and Cultural Rights (accession)

the International Covenant on Civil and Political Rights (CCPR), which is monitored by the Human Rights Committee (accession)

the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which is monitored by the Committee on the Elimination of Racial Discrimination (accession)

the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which is monitored by the Committee on the Elimination of Discrimination against Women (ratification)

the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which is monitored by the Committee against Torture (ratification)

the Convention on the Rights of the Child (CRC), which is monitored by the Committee on the Rights of the Child (ratification)

the Optional Protocol to the Convention on the Rights of the Child (CRC-OP-AC) on the involvement of children in armed conflict (ratification)

the Optional Protocol to the Convention on the Rights of the Child (CRC-OP-SC) on the sale of children, child prostitution and child pornography (accession)

¹¹⁹ Oona Hathaway. "Making Human Rights Treaties Work: Global Legal Information & Human Rights in the 21st Century". March 1st, 2003. <www.thepolitic.org>

- to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

The state parties to the Convention accepts that "...the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields". It is crucial to stress that, neither traditional, religious or cultural practice nor can incompatible domestic laws and policies justify violations of the Convention.

Article 2 is central to the objects and purpose of the Convention. States parties which ratify the Convention do so because they agree that discrimination against women in all its forms should be condemned and that the strategies set out in article 2, should be implemented by States parties to eliminate it¹²⁰.

Article 5, clause (a) is also related for the implementation of political rights of women considering that one of the main obstacles that let to the lack of proper and full practice of women their political rights is the customary laws existing throughout the country. This article states:

States Parties shall take all appropriate measures:

- (a) to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereo-typed roles for men and women. States parties are therefore obliged to

¹²⁰ States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

work towards the modification of social and cultural patterns of individual conduct in order to eliminate prejudices and customary and all other practices.

The Convention provides the basis for realizing equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life, including the right to vote and to stand for election, as well as education, health and employment.

Article 7 of CEDAW relates specifically to political and public life and it states following: States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) to participate in non-governmental organizations and associations concerned with the public and political life of the country.

According to Article 17 of CEDAW, there has to be a committee established in order to follow the progress made for the implementation of the Convention¹²¹. At least every four years, the States parties are expected to submit a national report to the Committee, indicating the measures they have adopted to give effect to the provisions of the Convention. During its annual session, the Committee members discuss these reports with the Government representatives and explore with them areas for further action by the specific country. The Committee also makes general recommendations to the States parties on matters concerning the elimination of discrimination against women.

¹²¹ This article consists 9 clauses.

For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

The international committee of CEDAW has never conducted a visit to Afghanistan yet. They were supposed to arrive on May 23rd, 2005 in order to have meetings with related ministries which have Human Rights Bodies within their administration,¹²² in order to examine how these government bodies coordinate among themselves, and monitor the progress made since the ratification of the Convention by the State. This visit would only be about a week, but they couldn't come due to the security situation in Kabul. On May 16th, due to the kidnapping of an international worker, and related to the United Nations' security rules, they cancelled their visit, and there is no new plan of coming before October-November probably since the period of elections is also considered as not safe, still to set of dates have been declared for their delayed visit to Afghanistan¹²³. Considering that, this committee hasn't visited Afghanistan yet, I wanted to question if there was any other reason for them not coming here, besides the security situation, and such as this visit scheduling could be taken slowly by the related government ministries since they can not be ready to show proper progress on any achievement for implementation of the Convention. MoFA responsible unit has responded to my suspicions that this visit cancellation is only related to the UN rules for security and it was the Commission's decision to cancel the meetings¹²⁴. Even though the MoFA's related unit which is the responsible unit for assessment report writing for CEDAW, hasn't started to write the assessment report for CEDAW, told that they were ready to meet with this international commission for their meetings with the other ministries, and the MoWA would be the head of the coordination of these meetings.

Considering that by accepting the Convention, states commit themselves to undertake a series of measures to end discrimination against women in all forms of discrimination. Since CEDAW relates specifically to political and public life, for state parties to take all appropriate measures to eliminate discrimination against women in the

¹²² These ministries mentioned which have the human rights bodies existing under their administrations are: Ministry of Women's Affairs, Ministry of Foreign Affairs, Ministry of Internal Affairs, Ministry of Education, Ministry of Information and Culture.

¹²³ This information was reached from Shabbir Ahmad Pardesi who is the Executive Secretary to the Minister of Women's Affairs, and this information also was confirmed by Zohra Rasekh who is the Director of the Office of Human Rights and Women's International Affairs at Ministry of Foreign Affairs in Afghanistan.

¹²⁴ Interview with Zohra Rasekh. Director of the Office of Human Rights and Women's International Affairs. Ministry of Foreign Affairs. Kabul. August, 2005.

political and public life closely relates ensuring a realistic mainstreaming of gender into the society. The unit established in order to follow the progress made for the implementation of women's human rights and reporting these progresses of lack of progresses, as a part of the MoFA, kept delaying their activities due to the lack of funding and technical expertise and also the international committee of CEDAW from Geneva kept delaying their field visit to Afghanistan that also delayed the exploration of implementation gaps that could have been laid out by their own observation. In order to ensure a realistic mainstreaming of gender in the country by implementing the tools required for women's political rights, could not be much monitored by the necessary units bound to CEDAW. This Convention signed by the Islamic Republic of Afghanistan even without any reservations became a part of the current Afghan Constitution but is not well integrated into implementation mainly due to the lack of effectiveness of the official monitoring units from the international and national offices. So the women of Afghanistan in short term, meaning the time period in between the presidential to parliamentary elections, have been effected negatively, because the lack of implementation was not officially observed by the related units.

ICCPR

The MoFA, as the responsible ministry for the assessment reports for ratified treaties and conventions, is first going to write the assessment report for the International Covenant on Civil and Political Rights (ICCPR). There are practical and desirable limits of international treaty assessment reports depending on the basic political structure.

Article 25 of the ICCPR provides for the right of citizens, without distinctions based on such criteria as race, sex, religion and political opinion,

(a) to take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the elections;

(c) to have access, on general terms of equality, to public service in his country.

The nondiscrimination norm which is the main element in human rights language, informs clearly about the necessity of electoral democracy.

Article 2 of the ICCPR, provides persons whose rights are violated shall have an effective remedy and that the state is to develop the possibilities of judicial remedy. This article is the most crucial that puts the other articles into practice due to the fact that it enforces the implementation. It asks for functioning for the existence of violation of these rights. If these rights are not protected, the political rights related to the elections lose their significance and legitimacy. The importance is not just holding the elections that are the milestone for the practice side of democracy, but the importance is holding the elections with a quality. The notion of democracy is not only limited to the “free and fair” elections, but a reasonably fair elections, that the implementation of human rights in which women’s rights is a major component in the Afghanistan case for the elections, is the requirement of democracy.

The non-discrimination norm strongly existing in the ICCPR, leads the way to improve the situation of historically discriminated groups including the ones based on sex discrimination. Elections, as the democracy’s trademark mode of participation, has to become fair by putting human rights instruments into practice aiming to protect the possibilities of political participation through facilitative rights, but what about the quality or significance of that participation¹²⁵. The issue of quality of participation, meaning at which level of success the elections witness fair participation without any limitations and restrictions.

The political rights special to elections as is the core of this research, the right to take part also imposes corresponding duties to the state to facilitate that right. A government could be required not only to respect and protect the right but also to promote it and assist in its realization. Reform could encourage greater access to electoral processes by facilitative movements. “States must take effective measures to ensure that all persons are entitled to vote”.

ICCPR as one of the Afghanistan’s international human rights obligations, and the non-discrimination norm strongly existing in the ICCPR specifically dealing with

¹²⁵ Henry J. Steiner. “Do Human Rights Require a Particular Form of Democracy?” in ch.10: The Quality of Political Participation in *Democracy, the Rule of Law and Islam*. School of Oriental and African Studies. Kluwer Law International. University of London. 1999.

political rights, will show its effects in the long-term. Even though the Convention does not stress on women specifically, in order to conduct the non-discrimination norm, by dealing with both men and women, as most of the UN agencies agree, the language used at ICCPR does more fit with the mentality of the society in general. As similar to what happened with the follow up reports for CEDAW, the same necessary measures were non-existent for ICCPR so the women of Afghanistan in short term, meaning the time period in between the presidential to parliamentary elections, have been effected negatively, because the lack of implementation was not officially observed by the related units.

3.5. Affirmative Action Language at CEDAW and ICCPR

The terms affirmative action and positive discrimination can sometimes be used interchangeably, in fact affirmative action usually comes in the form of quotas in order to balance the previous inequality matters in which the length of the period for quota practice may change, even though it is a transitory practice.

Non-discrimination provisions are fundamental to major international human rights norms in which some of these norms force for affirmative action¹²⁶. As the United Nations Human Rights Committee declared, “non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights¹²⁷.”

¹²⁶ Global Rights. “Affirmative Action: A Global Perspective”. 2005

Global Rights is a human rights advocacy group that partners with local activists to challenge injustice and amplify new voices within the global discourse. With offices in countries around the world, we help local activists create just societies through proven strategies for effecting change.

- They seek justice for victims of human rights abuses.
- They work to promote racial and gender equality and help people and communities feel empowered to change their societies.
- They work through field offices, partnering with local human rights advocates to strengthen their effectiveness in combating abuses in their countries
- They focus on developing the skills of local activists that are essential to addressing human rights concerns and promoting justice such as: documenting and exposing abuses; conducting community education and mobilization, advocating legal and policy reform in countries and internationally; and using the courts to increase access to justice for disadvantaged persons.
- They help local activists to engage with the international community, including the United Nations, to further their human rights objectives at home in Asia, Africa, Latin America, Europe, and the United States.

¹²⁷ U.N. Doc. HRI/GEN/1/Rev.p.1. paragraph 1. Human Rights Committee, General Comment 18. 1994.

Important regional treaties and universal norms like the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) repeatedly emphasize the importance of non-discrimination. These and other norms also affirm the need to take measures to make this obligation effective.

The ones related to the case of Afghanistan, for the implementation of political rights of women is the ICCPR. Articles 2, 25, and 26, among others, contain specific non-discrimination provisions. Article 2, clause 1, prevents discrimination, Article 25 mandates the right to political participation absent discrimination and Article 26 establishes equality before the law without discrimination.

And the party states are obliged to take actions: Article 2, clause 2, of the ICCPR affirms that these norms require state action¹²⁸.

CEDAW also establishes that affirmative action measures are an integral part of combating discrimination. Article 1 of CEDAW defines discrimination, while Article 2 requires states to “pursue by all appropriate means and without delay a policy of eliminating discrimination against women.” The remaining provisions of Article 2 make clear that the end goal is to abolish discriminatory “laws, regulations, customs and practices...against women by any person, organization or enterprise.” Article 3 notes that measures toward this end be taken in “political, social, economic and cultural fields¹²⁹”.

In the articles 11 and 13, CEDAW states that “adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination.” CEDAW committee also specifically recommends that “temporary special measures such as positive action, preferential treatment or quota systems to advance women’s integration into education, the economy, politics and employment. It further suggests that: “despite progress already achieved,

¹²⁸ Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant

¹²⁹ Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept 3rd, 1981.

there is still a need for action to be taken to implement fully the Convention by introducing measures to promote de facto equality between men and women.¹³⁰

All these measures for affirmative action includes: recruitment, financial assistance, education and training of women candidates, developing campaigns that all target women specifically in order to eradicate the previous discrimination.

The continuity of the previous discriminations may exist if 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 without any reservations. As Kandiyoti states, 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 high¹³¹.

The expansion of women's formal rights can not translate into substantive benefits in the absence of a mutual understanding of the previous informal practices of rule of law and the language of the positive law carrying on specifically the women friendly language of the international law.

Due to the fact that Afghanistan does not have a uniform legal system¹³², on top of the institutional incapability of the formal legal and judicial system, the informal grounds of rules needs to adopt the gender equal language existing at the international conventions because the majority of the population use informal arbitration and dispute-resolution mechanisms through village shuras and jirgas.

When the recent history of gender justice situation in Afghanistan and the placement of gender justice in legal framework have been analyzed, the ratification of CEDAW seems a major development for Afghanistan. By signing the Convention, without any reservations, Afghanistan received the responsibility to commit herself to address and implement women's rights in political, social, cultural, spheres with all its legal bindings. It is vital to place legal and constitutional measures in order to protect the

¹³⁰ U.N. Doc. HRI/GEN/1/Rev.1 at 73. Committee on the Elimination of Discrimination against Women, General Recommendation 5 (Seventh session, 1988), Temporary Special Measures. 1994 & U.N. Doc. A/52/38. Committee on the Elimination of Discrimination against Women, General Recommendation 23 (16th Session, 1997) Art. 7 (Political and Public Life).

¹³¹ Deniz Kandiyoti. 'The Politics of Gender and Reconstruction in Afghanistan'. United Nations Research Institute for Social Development. February 2005. p. vii.

¹³² 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.

rights of women which is challenging and should be met. The State should move forward with the intentions to protect women from violations of their rights.

The state of women in Afghanistan was one of the most recent and visible examples of why the world's women need the protection of this Convention. Since it includes provisions on areas of discrimination such as political and public life, especially ensuring women's human rights during the rebuilding of a nation's constitution and legislation which have been very effective in the sense that Afghan women were largely participatory at these stages. When it is fully implemented, the gender equal language and implications can be placed in all aspects of women's lives with the concept of women's participation in all aspects on an equal footing with men at which all the other aspects contribute to an increase for the political representation of women since they all are advancing the women's position as healthy functioning members of the state.

Gender Justice and Afghanistan's Post-Conflict Elections

4.1. Current Electoral Law of Afghanistan and the Political Rights of Women at Election Periods

The Electoral Law itself doesn't have any specific provisions to enforce the implementation for the political rights of women. Even though it deals with technical matters, it doesn't touch to the practical matters related to women's political rights. "Post-conflict election" means an expensive expenditure and these practical matters can be ignored due to budget limitations, but these rights to be implemented can not be left aside considering the financial limitations. These practical matters related to the political rights of women would only be actualized if an effective approach that doesn't consider women's rights as one of a "soft issue", then "free and fair elections" is realized.

The Electoral Law, under Chapter IX, at Article 53 states the "Electoral Complaints and Offences"¹³³, clause 3 which states: "Impeding anyone, including accredited observers and agents, from participating in the electoral process", is an efficient clause for preventing the violation of human rights, so a complaint mechanism exists for everyone including women. On the other hand, complaints mechanisms can't become effective if women are not educated well to know what to do when their rights

¹³³ a. Providing false information to the Commission, any commission established by the Commission, or the Electoral Complaints Commission; b. Threatening, intimidating or attacking the dignity of a voter or candidate or a journalist covering the election in any way; c. Impeding anyone, including accredited observers and agents, from participating in the electoral process; d. Committing fraud in voting or vote counting; e. Offering or receiving a payment or other benefit for the purpose of influencing the electoral process; f. Possessing, or attempting to obtain, more than one voter registration card; g. Voting or attempting to vote using a forged or altered card or the card of another person; h. Changing, replacing, stealing, or destroying electoral documents without legal authorization; i. Manufacturing false voter registration cards, ballots, or official forms; j. Obtaining a voter registration card under false pretences; k. Attempting to vote more than once in an election; l. Interfering with election materials or ballot boxes without due authority; m. Interfering with electoral officials in the performance of their duties; n. Violating the Code of Conduct for Political Parties, Candidates and Agents, or the Code of Conduct for Electoral Officials; o. Making use of funds originating from illegal activities; p. Making use of foreign funds for the purpose of influencing the electoral process; q. Inciting or provoking other persons to commit an Electoral Offence; r. Violating provisions of this Law or other legal instrument governing the electoral process; and s. Failing to comply with any order of the Commission, the ECC, or the MC.

are violated. Again, having the right on paper and not putting into practice is related to the level of dissemination of this very important information.

The Islamic Republic of Afghanistan has witnessed its first presidential and parliamentary elections. After the experience of the presidential elections, the level of importance given to these rights became much more crucial because the level of complexity for the parliamentary elections is obviously higher which was held September 18th, 2005. From the level of attention has been given to what has been experienced since the presidential elections, is the core of this research. What was lacking, and seen necessary to come up with new and necessary in order to change the situation in a positive and progressive way is laid out. None of the new language on women rights matters if it exists only on paper. In order to give meaning to these rights, they should be implemented in light of the social and cultural context.

Achieving gender equality in the stage of elections requires a countrywide effort involving government officials, international organizations, and civil society members and women activists. Considering that, in Afghanistan, where the literacy rate is very low, and lower among women, especially at the rural areas, asking the women to stand for their rights by themselves is not realistic. First of all they, both women and the men in their households and local community, need to become aware of their rights. Widespread civic education programs are existent, mainly organized by the “Public Outreach Department”¹³⁴ at JEMB. The success and sustainability of these civic education activities on elections, depends on the amount of time spent on educational sessions and repetitions made. Short fixed periods for civic education activities right before the elections can only remain superficial.

¹³⁴ The JEMB Secretariat Departments are External Relations, Legal Services and JEMB Support, Public Outreach, Support, Program Management, Communications and IT, Security, Training and Capacity Building, and Field Operations.

The Bonn Agreement provided for the conduct of elections as an important and concluding component of the transition era. One critical step was taken successfully with the presidential election 2004. Afghan National Assembly and Provincial Council Elections will take place in 2005. The JEMB and its Secretariat are the two institutions created by the Afghan government and the UN to organize the 2004 and 2005 elections.

The Public Outreach Department of the JEMBS is responsible for informing the Afghan public of the upcoming wolesi jirga and provincial council elections. <<http://www.jemb.org/eng/jembsecretariat.html>>

Civic education is one of the main important activities in raising awareness among women about their rights and about how important it is to ensure their rights for their own. Once women are aware of their rights, they can choose to actively participate in the political affairs of the country. They can change the situation for other women and girls who are suffering from a lack of awareness of their own rights.

The importance given only to the awareness of women for their rights is not enough. Besides teaching them about their rights, they should also be thought how to deal with the violation of their rights, what can be done once their rights are being violated, which is one of the main element lacking for the political rights of women at election periods in Afghanistan. Regarding the gender equality, there are set of issues on the women's rights agenda related to the election periods, and these should be seriously considered especially for the pre and post election periods besides the actual election days.

There are some basic human rights principles exist that must "translate effectively at the level of the voters and the candidates. One of the main one of these principles is the Freedom of Expression. The widely known definition for the freedom of expression is the right to speak without censorship or restraint by the government and the right to express information, ideas, and opinions free of government restrictions.

The philosopher Alexis de Tocqueville observed that people may be hesitant to speak freely not because of fear of government retribution but because of social pressures. When an individual announces an unpopular opinion, he or she may face the disdain of their community or even be subjected to violent reactions. While this type of suppression of speech is even more difficult to prevent than government suppression, there are questions about whether it truly falls within the ambit of freedom of speech, which is typically regarded as a civil liberty¹³⁵, or freedom from government action.

¹³⁵ Civil liberties are protections from the power of governments. Examples include the right to life, freedom from torture, freedom from slavery and forced labor, the right to privacy, the right to a fair trial, freedom of speech and freedom of assembly, and the right to marry and have a family. These are usually guaranteed and protected by a constitution or by adherence to an international treaty. Most western democracies (as well as many other countries) have constitutions that protect civil liberties. The following sections of this article present a few examples.

Political and legal definitions. <www.answers.com>

Freedom of speech is a form of freedom of expression. In democratic countries, freedom of speech is taken for granted, though the exact degree of freedom varies between countries and jurisdictions. This freedom generally includes: the right to criticize the political system and political leaders, even those in power; the right to criticize public and corporate policies; and the right to criticize religious and political ideas. Still, in no country is freedom of speech absolute.

When it comes to the case of Afghanistan, and to the situation of women who participated in the September parliamentary elections, who has experienced what was like to be involved in politics of their new state, freedom of expression was limited due to various reasons.

The presidential elections happened to be one of the first arenas that women would have the chance for expressing their own beliefs and political agendas as candidates, and what they want to come up with for the future of their country. They also had the right to criticize political ideas of others. Afghan women who wished to actively participate in the presidential elections, as candidates, have faced some discrimination related to their right of freedom of expression.

Habiba Sarabi¹³⁶ who is the only women governor¹³⁷ in Afghanistan believes Afghanistan is a male-dominated country where the gun still rules the country so makes women's participation in the political process difficult and the political violence against women can be clearly seen¹³⁸. Masooda Jalal¹³⁹, who was the only women candidate in the 2004 presidential elections, as one of the other 18 candidates, ended up receiving

¹³⁶ She is an ethnic Hazara.

Ethnic Groups: The main ethnic groups are Pashtun, 42% ; Tajik, 27%; Hazara, 9%; Uzbek, 9%; Aimak, 4%; Turkmen, 3%; and Baloch, 2%. The largest remaining nomadic group is the Kuchis, a Pashtun group whose population has dwindled to about 1.5 million since 1979. The Pashtuns are the major ethnic group of the south and the east, the Tajiks in the northeast. The predominant groups in north-central Afghanistan are the Hazaras, Tajiks, and Uzbeks.

from Library of Congress – Federal Research Division Country Profile: Afghanistan. February, 2005.

¹³⁷ She is the current governor of Bamiyan. She had the post of Minister of Women's Affairs before Masooda Jalal.

¹³⁸ "Afghanistan: Getting more women into politics". Irin News. March 24th, 2005. <www.irinnews.org>

¹³⁹ She belongs to the Tajik ethnic group.

With the exception of Karzai, who received significant numbers of Tajik votes, as well as Jalal, the female candidate who attracted some women from all ethnicities, most candidates received few votes outside their ethnic bases.

Kenneth Katzman, "Afghanistan: Presidential and Parliamentary Elections". CRS Report for Congress. July 7th, 2005.

1.1 % of the votes¹⁴⁰, as she has experienced some level of limitations. Even though she did not mention any of the hardships she has experienced during her candidacy period¹⁴¹, there are some reports declaring how she was not allowed to make her political campaign at a university¹⁴². She also expressed, in some occasions she wanted to talk, the organizers were governmental at some districts, and they didn't want her to talk because her stance falls against their political agendas. This situation actually falls within the violation of the principle of non-discrimination. She was not allowed to give speeches at some organizations because there were some people who were already required at the government positions who wouldn't like her to run her political campaign successfully.

When the situation for the freedom of expression for the other only two vice-presidency candidates¹⁴³ was questioned during this research, not an important incident had happened were mentioned¹⁴⁴. These two women were women who already were a part of some political party networks, so they were not in the situation of Afghan women who would like to try to be a part of politics for the first time and need support from the beginning.

Throughout the campaigning period, the Afghan national and international press included news related to the intimidation and threatening of Afghan women, including

¹⁴⁰ Karzai received about 4.4 million votes, or 55.4% of the total, more than the 50% needed to avoid a runoff. Qanooni finished second with 1.3 million (16.3%); Mohaqiq — 935,000 (11.7%); Dostum — 800,000 (10%); and Masooda Jalal — 91,000 (1.1%).

¹⁴¹ Interview with Masooda Jalal. Minister of Women's Affairs. Kabul. April, 2005.

She was not mentioning the powerful individuals and groups who have their own political agenda. She was talking about the general perception of the Afghan public while she was traveling all around the country. But she strongly emphasized that, as a woman she never faced any problem. The explanation she gives to this situation is her being a medical doctor, a civil citizen and a mother so Afghan society listened her peacefully and relaxed.

She also expressed, in some occasions that she wanted to talk, the organizer of the program at that time it was governmental and they didn't want me to talk because I was in a position

¹⁴² In March 2004, Habibullah Habib, the dean of Balkh University, prevented Jalal from speaking at the university. She was also barred from speaking at an Afghan New Year celebration at the central shrine in Mazar-e Sharif, the Rowza Hazrat Ali, although government officials and other potential political candidates spoke, including Defense Minister Mohammed Fahim and General Rashid Dostum. Jalal has also reported that police in the first district of Kabul prevented her from campaigning.

¹⁴³ 2 women who were nominated for vice presidency (every presidency candidate nominated 2 vice presidency candidates) are Nelab Mobarez running with Aasifi and Safiqa Habibi running with Dostum.

¹⁴⁴ Masooda Jalal adds that she doesn't remember if the two women vice-presidency candidates have attempted to come up with speeches for their political campaigns. They were able to talk in public radio, but didn't make public speeches among people.

their lack of ability to use some public spaces like mosques for their speeches as a part of their political campaigns¹⁴⁵.

Freedom of movement, which is a human rights concept mainly asserting that a citizen of a state generally has the right to leave that state, travel wherever the citizen is welcome, and, with proper documentation, return to that state at any time; and also, of equal or greater importance, having the right to travel to, reside in, and/or work in, any part of the state the citizen wishes without interference.

In the case of Afghanistan, for the period of elections, freedom of movement is blocked due to the fear of traveling. Especially for women, this right is quite limited due to the pre-positioning of women under the religious and cultural elements. This limitation also relates to the economic situation of women. As voters, women can not easily afford the public transportation for the actual voting day. As candidates, they do not have enough money to cover their traveling expenses either for the basic registration and formal matters for their candidacy, or for their political campaigns.

The freedom of movement is highly related to the security situation because women would like to feel secure if they are going to travel around the country or within their province to introduce themselves and campaign for their candidacy. Their protectors of women voters from their family¹⁴⁶ may block their freedom of movement if they do not feel that the streets for their women are safe enough¹⁴⁷. Beside the lack of security, the lack of economic independency of women limits their freedom of movement. Many women's rights activists¹⁴⁸ have noted that, many women who would like to nominate themselves for parliamentary elections came up and asked for jobs so that they can fund their travel expenses for their political campaigns.

When it comes to the Principal of Non-Discrimination, it is basically covering the other women's rights mentioned on this research including the gender-freedom for political campaign and the allowance of access for women to all kinds of public spaces

¹⁴⁵ Masooda Jalal said she was allowed to use the mosques.

¹⁴⁶ Mahram: a male relative from the family who accompanies women when they are out of home.

¹⁴⁷ Interview with Aykut Tavsel who is the media representative of the JEMB. April 2005.

He told about the request of a male voter for the presidential elections who was questioning the security situation of his wife for the actual election day. This man have asked if his wife dies on her way to give her vote, the JEMB would be able to compensate the money he has paid for his wife before marriage.

¹⁴⁸ Homira Nassery and Nasrine Gross were two of these women rights activists in Afghanistan who expressed the similar experiences.

which men have easy access to. This principal also includes the Principal of Non-Intimidation, because during the political rivalry atmosphere, due to their sex difference, women can be subject to threats, to draw back from candidacies and women voters also are subject to various kinds of intimidation by family members, candidates, and also by warlords¹⁴⁹ and radical Islamist factions who aim to disrupt the elections processes.

If people feel safe and secure they will take part in the political process as voters and candidates. Besides this core element that is the security, being aware of the political rights and encouragement to take part, can give a real meaning to this opportunity for getting involved in politics, either as candidates or as voters.

The general atmosphere in the country on women's side was also similar to what men have been experiencing. It was no surprise women were worried about their security, with warlords and human rights abusers on the final candidate lists, and it was also not a surprise observing men candidates to feel threatened since all men candidates were fighting for the same seats, and women candidates were fighting for a 25% separate portion. Regarding the security and election law, women were more protected by the law since their seats were separate and they were not racing for the same seats with men. The quota system recognized and implemented by the electoral law became a success and eased women's participation in country's political decision making so has been a success in implementation, but on the other hand, lack of any attention given to major details for integrating the gender equity in politics and into the parliament effects women still be in fear for speaking out their ideas.

¹⁴⁹ The current situation of warlordism affecting the political participation of women is not so bright. Warlords and their private militias are still exercising their arbitrary rule limiting the society. The DDR program designed to disarm, demobilize and reintegrate former militia fighters couldn't eradicate the whole regions. The central government has not managed so far to extend its authority to all provinces. These militias have direct links to political parties that are actively taking part in the government as well as in the elections. Their presence in politics is seriously hindering women's participation in politics, and some of them follow radical Islamist ideologies and they are disrupting the preparations for the elections. Friederike Böge. "Former warlords limit women's participation in politics". Friedrich Ebert Stiftung (FES). Kabul. September 5th, 2004. <<http://www.fes.org.af/reportkunduz.html>>

4.2. Obstacles for the Implementation of Political Rights at Elections

4.2.1. Presidential Elections

According to a Human Rights Watch (HRW) Report from October 2004¹⁵⁰, at the time of the presidential elections, the situation of women's ability to vote was characterized by continued threats and insecurity, in combination with logistical and funding failures.

The Afghan women's participation in the presidential election was not only described as a measure of whether they can vote, but to assess improvements in women's ability and willingness to assert their fundamental human rights. The civic education programs, the female election workers recruited for special polling stations for women, women being allowed to have voter registration cards without having the obligation of taking their burqas off, and the publishing gender based registration figures in order to encourage women to participate were all positive measures applied by UNAMA, the JEMB, international donors, and NGOs. The final positive outcome was reflected in 41% of all registered voters being women. There was also the dark side of this successful number in that 1.5 million women who have registered didn't show up for voting on the actual voting day.

Women had to face threats from local fractions, warlords and also from the Taliban and other insurgent forces. The lack of security and the attacks to civic educators and election workers made it increasingly difficult to recruit an appropriate number of female election workers, which caused another problem that women as voters didn't feel comfortable enough to go and vote where they would have to contact with male election workers, a situation where their husbands and male members of their families in rural areas didn't let them go and vote as well. The male members of the family usually check the environment of the polling stations in order to see if it is proper for their wives, daughters and sisters to vote in those places. The great plan of mobile registration teams that would go from door to door, which would be the most effective registration method

¹⁵⁰ "Between Hope and Fear Intimidation and Attacks against Women in Public Life in Afghanistan" HRW Briefing Paper. October, 2004.

to be used in the most rural and conservative areas, was blocked due to the lack of security for these mobile election teams. So what happened to those 1.5 million women? There can be several factors explaining this number: the main ones are the fear of violence and inadequate logistical arrangements such as not having adequate number of female election workers working at the polling stations, in which some elder men respected by their community were placed instead of female workers due to the shortfall of females.

A recent survey by the Asia Foundation found that 87% of Afghans stated women would need to obtain permission from their husband or the head of the family to vote. 18% of men surveyed said they would not let their wives vote at all, and in the south, almost one out of every four men surveyed felt this way¹⁵¹.

Trying to integrate women's political rights at a country where lack of education highly exists, and trying to teach men to let their female members of their families to vote and to become political leaders, needs high level of coordination with the Ministry of Education that I could not observe the Education Ministry's reforming policies as a part the elections period. Considering that the lack of education is one of the main obstacles for women's integration into politics related to the educational backwardness of the society in general, and specifically related to men not letting women to participate and women who do not know their capabilities to participate, if women were given more opportunities to serve in more than one ministry after the presidential elections, involving more women in the cabinet would definitely ease the struggle of women to be elected to the parliament and to the current cabinet after the parliamentary elections, because these women would become role models and if they could have taken these posts at powerful ministries, then the society would learn to give trust to women from the beginning. The process of the presidential elections, encouraged women to participate in the upcoming parliamentary elections, because they have experienced one election behind and became aware of what the process is like, but in terms of the outcomes of the presidential elections, the society in general and women in specific could have benefited in a better way if more number of women were placed into the cabinet.

¹⁵¹ Voter Education Planning Survey: Afghanistan 2004 National Elections. Asia Foundation report, based on a public opinion poll. August, 2004. <http://www.asiafoundation.org/pdf/afghan_voter-ed04.pdf>

4.2.2. Parliamentary Elections

The Chief Electoral Officer of Afghanistan and the Chairman of the JEMB¹⁵² have described the September 2005 parliamentary elections day as follows:

The full spectrum of irregularities seen in post-conflict election environments was certainly present, including the attempted use of fraudulent voter registration cards, double voting, proxy voting, misapplied procedures, intimidation and disruptions by agents. However, there was no indication of any systemic problems, and the irregularities did not significantly undermine the legitimacy of the results¹⁵³.

The parliamentary elections were affected negatively with the conditions of warlords and commanders still with too much influence, and under these circumstances it might not be possible to ensure a free and fair process. On the other hand, these elections helped some for the exposition of warlords and potential spoilers by popular will. Through each stage of the Bonn Process, the people have gained increasing confidence and the spoilers have steadily lost ground.

HRW interviewed dozens of Afghan women considering running for office in the 2005 parliamentary elections, and almost all of them expect warlords and dominant political factions to intimidate them through violence, workplace harassment, or threats if they decide to run for office¹⁵⁴. Some of the women who run as candidates for the parliamentary election interviewed during this research¹⁵⁵, have come up with their own protection mechanisms such as: Instead of having their own political campaigns by themselves, they ask for assistance from some men¹⁵⁶ to introduce the political agendas on behalf of these women candidates so they face less intimidation. They will also recruit some young men, around the number of 15 or as much as they can afford, and these young men will be dealing with disseminating political campaign materials such as posters all around the provinces because they will have less problem for traveling around the country.

¹⁵² Peter Erben and Bissmillah Bissmil

¹⁵³ JEMB. National Assembly and Provincial Council Elections, Final Report. 2005.

¹⁵⁴ "Between Hope and Fear Intimidation and Attacks against Women in Public Life in Afghanistan". HRW. p.29.

¹⁵⁵ Interviews with women parliamentary candidates. Kabul. August 2005.

¹⁵⁶ These men mainly are the elderly and respected men who also have respect on the new political position of women.

These women may carry the fear for their own families even though they have the courage to run for their own candidacy; because if they are supported by the rest of their family members then family members are under threat as well. This is also a sign that besides educating women on how to deal with the violation of their rights, men must also be made aware of these violations, and the social concepts should also be deeply dealt with in local groups so the local communities as a whole should be given attention. Security assurance is directly related with the effective educational importance given to the society specifically both to women and to the society as a whole. It is not only women who face problems of security for elections because the threat is correlated with political repression as a whole.

Female candidates have been threatened verbally or by arms and persuaded to resign, some female candidate's houses have been rocketed, and they have been wounded¹⁵⁷. It is not only lack of security that is discouraging female politicians. In many rural areas, women voters can not even attend public meetings, so female candidates have to meet women inside their homes if they wish to campaign. Female candidates also can not attend gatherings and show themselves to the people in rural areas. This is very bad in the south and east of the country.

4.3. The level of cooperation and coordination¹⁵⁸ in respond to special needs of women: UN, AIHRC, and the Ministries

Effective peace support and post-conflict stability operations require an incredible amount of cooperation and coordination. In post-conflict Afghanistan, cooperation and coordination are essential on many levels, for inter and intra relationships. Then a smooth transfer of planning, programming and implementation can become real.

¹⁵⁷ A female candidate in the southeastern province of Paktia said on condition of anonymity "I have been threatened and persuaded to resign," due to the threat of the local and religious conservatives. Meanwhile local officials in the central province of Wardak said a female candidate's house was rocketed in early June by unknown armed men but that the motive remains unclear. Another female candidate was wounded when she was shot by an unidentified gunman in Qalat in June¹⁵⁷. In another incident, armed men set fire to the house of a female candidate in the village of Porak¹⁵⁷, according to the state-run Kabul Times newspaper

¹⁵⁸ Cooperation: working together to the same end

Coordination: bringing various parts together into a proper or required relation to ensure harmony or effective operation

Definitions from Susan Allen Nan who has developed the term Track One and a Half Diplomacy.

4.3.1. UNAMA, JEMB, Advisory Group on Gender (AGG) and Election Task Force (ETF)

One of UNAMA's tasks is to coordinate and facilitate the activities of UN agencies in assisting the government respond to the special needs of women. Since 2002, UNAMA has been facilitating the information and knowledge sharing among gender focal points from twelve UN agencies. As part of its support to the network¹⁵⁹, UNAMA has been providing technical assistance to individual agencies in the areas of training, gender analysis of staffing and activity reporting.

In addition there is an "Advisory Group on Gender" (AGG) that was established in December 2002 following the government's decision to establish advisory groups for crosscutting issues such as human rights, humanitarian affairs and the environment. The aim of the AGG is to promote the integration of gender equality and the advancement of women into each national priority programme. It provides policy, strategy and programming advice to the government ministries and consultative groups.

The AGG also functions as a support structure to the MoWA and provides technical assistance to the Ministry on a variety of tasks, including project design and budgeting. Membership of the AGG, chaired by the Minister of Women's Affairs,

¹⁵⁹ Gender Focal Points at UN Agencies in Afghanistan:
FAO, Community Development and Gender Consultant
ILO, Program Officer
UNAMA, Gender Adviser and National Gender Officer
UNDP/Ministry of Women's Affairs (MoWA), Project Manager
UNDP/Ministry of Rural Rehabilitation & Development (MRRD), Advisor to Sr. Women in Management
UNDP/ANBP, Sr. Program Assistant
UNEP, Assistant Program Officer
UNESCO, Senior Program Specialist (Education)
UNFPA, National Program Officer
UN-HABITAT, Chief Technical Advisor, National Solidarity Program
UNHCR, Associate Gender Officer
UNICEF, Head of Child Protection
UNIDO, Program Officer
UNIFEM, Program & Operational Specialist
UNMACA, National Development Program Officer
UNODC, Gender Focal Point
WFP, Program Assistant, Monitoring & Evaluation Unit
WHO, Program Manager (Women and Reproductive Health)
IOM, Programme Manager

consists of international and national NGOs, professional women's associations, representatives from the donor communities and the UN.

The AGG holds meetings once or two every month and the minutes of meetings, proves the discussions on various election matters even though the election matters are only considered two months ahead of the actual election timetables. In the Group's meetings mainly from the period of August and July 2005, as the pre-election period, JEMB, MoWA with its provincial representatives (DoWA), UNDP, UNIFEM representatives, held discussions for improvements, made recommendations and updated each other for parliamentary elections tasks.

In March 2004, the AGG established a subgroup, called the Election Task Force (ETF)¹⁶⁰ which is a working group of gender advisors and is made up of the representatives of the ministries, donors, other UN agencies, and civil society groups working on gender. Chaired by UNAMA, it monitors the participation of women in the electoral process. The ETF contributed to the increase in female registered voters through regular consultations with the JEMBS¹⁶¹.

The general idea received from JEMB interviews¹⁶² were, there was a clash in between the national commissioners which compose the Independent Election Commission (IEC), some of them were satisfied with the outcome of the presidential elections and do not specifically look for anything new to be named as progress, and some of them consider the current situation of women's political participation as in need of much progress with specific considerations for women.

A gender section at JEMBS has been created to address issues of women's participation in the electoral process, as candidates, voters, electoral officials and JEMBS staff. This section consisted of an international senior focal point and three national

¹⁶⁰ ETF is under the Human Rights Advisory Group (HRAG) at UNAMA.

¹⁶¹ http://unama-afg.org/about/_gender/Gender.htm

¹⁶² Najila Ayubi and Momina Yari as national members of JEMB were interviewed.

Interview with Najila Ayubi. JEMB office. Kabul. April 2005. & 2nd interview at British Embassy. Kabul. August, 2005.

Informal interview with Momina Yari. British Embassy. Kabul. August, 2005.

Interview with Marilyn Evans. Previous Gender Focal Point at JEMB. Kabul. May, 2005.

Informal interview with Lisa Yaseen, who is the replacement of Marilyn Evans. British Embassy. Kabul. August 2005.

Interview with Enayatullah Nabel. Deputy Head, External Relations Department. JEMBS. Kabul. May 2005.

officers. Information, statistics and resources were provided by the Gender Section for departments within the JEMBS, the AGG, the MoWA, local and international NGOs, media outlets and other groups working on gender-related topics. These groups engaged in weekly press briefings and various presentations and meetings in which the Gender Section represented the JEMBS and addressed and promoted issues of women's participation¹⁶³. This gender section was sufficient in reporting the overall gender picture in the electoral process, but since JEMB is more concerned with the operational success of the elections, than the substantial matters, the gender issues were in the second place, and the negative elements affecting women were considered normal for a post-conflict elections environment.

Since the principle functions of JEMB are: legislative, advisory to the President through the Special Representative and Secretary General (SRSG) of UN, hearing complaints, and investigating irregularities in accordance with the Electoral Law; JEMB and JEMBS can not come up with any suggestions officially, this is not their responsibility. The commissioners can give advices but these should go to the right place.

JEMB receives recommendations from UNAMA frequently, UNAMA¹⁶⁴'s mandate includes promoting national reconciliation; fulfilling the tasks and responsibilities entrusted to the United Nations in the Bonn Agreement, including those related to human rights, the rule of law and gender issues; and managing all UN humanitarian, relief, recovery and reconstruction activities in Afghanistan in coordination with the Afghan Administration. All UN programs lend support to the Afghan transition process and recognize the lead role played by the Afghan Administration.

There are Human Rights Focal Points and Gender Focal Points under the mandate of UNAMA and the ETF Mission is also chaired by the same director of the Gender Focal Point, which is an advantage for the implementation of political rights of women. The UNAMA is the central agency for the commitment to a broad based, gender sensitive, multi-ethnic and fully representative government, and women's political participation should carry an important place as a part of its missions. Since UNAMA's priorities include strengthening Afghan institutions and building the capacity of the

¹⁶³ Final Report on Parliamentary Elections. JEMB. Gender Section. 2005.

¹⁶⁴ UNAMA was established through the UNSC resolution 1401 from March 28th, 2002.

Afghan Administration at all levels, including the development of institutions of good governance, of law and order, and of security, UNAMA is the core coordination unit.

Through the inter-agency coordination to respond to special needs of women under the task of UNAMA, the coordination and facilitation of the activities of UN agencies as a respond to the special needs of women takes place. In addition, the AGG promotes the integration of gender equality and the advancement of women into each national priority program. It provides policy, strategy and programming advice to the government ministries and consultative groups. The AGG also functions as a support structure to the MoWA and provides technical assistance to the Ministry on a variety of tasks, including project designs.

UNAMA agencies believe they do not have any fundamental difference in terms of human rights concepts that can create a lack of effective performance. Human rights unit under UNAMA has the policy to strengthen the AIHRC, and support the MoWA so that they can do their own job professionally. UNAMA Human Rights unit and MoWA do investigations together, and UNAMA give assistance to empower the ministries. When it comes to the report writing, each organization has their own reports, and UNAMA does correction reports to the government. When it comes to the prevention mechanisms for the violation of human rights, in which women's rights is a part of, in relation with the elections, AIHRC and UNAMA human rights units work together grandly on prevention mechanisms. The "A Call for Justice"¹⁶⁵ report, which was a national consultation on past human rights violations in Afghanistan, was supported by UNAMA.

UNAMA human rights unit representatives¹⁶⁶ believe that the participation of women in politics is a question related to the social structure of the society and this situation can not overcome in a couple of months but the awareness programs will have a

¹⁶⁵ This report is an extensive report that has been written in 2003 by AIHRC.

The report can be viewed at <http://www.aihrc.org.af>

Based on interviews and focus groups with more than 6000 Afghan people, it is the first national public consultation conducted in Afghanistan for decades. Study participants showed a profound lack of trust for government and public servants, as well as the international community, and reported that serious abuses are continuing in the context of an entrenched culture of impunity. Not surprisingly, those consulted stressed the urgent need for a break with the past, for an end to ongoing abuses, and for measures designed to bring about justice and the rule of law in Afghanistan.

¹⁶⁶ Interview with Nezam Katawazi. Human Rights Officer. UNAMA. Kabul. April, 2005.

positive effect. Due to the fact that the gender issues are a part of human rights unit as well, twice in a month human rights unit meets with the AGG and there is no ideological differences existing among these representatives even though some of them are internationals and some are Afghan nationals.

These representatives have gone through the law and made recommendations to IEC and JEMB¹⁶⁷. Regarding these recommendations, the gender adviser of UNAMA was expecting regulations that women can be able to vote and nominate themselves with better access to public spaces, and the regulation of the voter sites and access to public information by women. While the gender unit of UNAMA is looking for more regulations on practical matters, the human rights unit concentrates on limitations to these regulations even though it has been stated that there is not an ideological difference existence in between the different units operating under UNAMA.

All these either elections or gender specific units under UNAMA such as ETF and AGG in corporation with JEMB, could not help women's NGOs to fully coordinate with each other. These units have been successful at inter-agency coordination, they have been brainstorming and displaying problems but not recommending solutions to these gaps and problems with a strong language in order not to oppose with the government. In terms of coordinating related women units' activities under the ministries, besides the MoWA, they couldn't organize listening other women units' aims, problems and needs in an effective way also due to the lack of practical expertise of these women units which do not tend to follow up each other's works and tend to work independently instead.

4.3.2. Partnerships and Networking of UNIFEM

UNIFEM's goal in Afghanistan is to increase options and opportunities for women through program activities that transform the overall development of Afghanistan into a more equitable and sustainable process. For the realization of women's human rights, it gives support to the MoWA.

¹⁶⁷ Interview with Corey Levine. Chairperson of the ETF, and the head of the Gender Advisory Group under UNAMA which doesn't have a basis in any office. UNAMA compound. Kabul. April, 2005.

UNIFEM is a key partner of the MoWA. With UNDP, UNIFEM provides capacity building support to the Ministry and also participates in the AGG, which has been formed to mainstream a gender perspective in the Consultative Group (CG) mechanism of other Ministries. Working in coordination with other donors and partners of MoWA, UNIFEM supports for further strengthening of MoWA's capacity and focus on mainstreaming gender in other ministries and develops strong partnerships with wide ranging constituencies, including NGOs. It strengthens MoWA with gender justice initiatives, including those focused on engaging women in constitutional and election processes.

UNIFEM monitors trends and issues affecting women in Afghanistan for a strategic response to opportunities and challenges, and UNIFEM's core focus areas in Afghanistan are: support to women's leadership within and outside of the government and support to women's NGOs for ensuring women's participation in the rebuilding process, gender justice, economic empowerment, media advocacy and women's human rights including confronting violence against women. UNIFEM is also responsible for inter-agency coordination on gender issues.

UNIFEM works with the Women's Political Participation Committee, this committee works with National Democratic Institute (NDI), Friedrich Ebert Stiftung (FES)¹⁶⁸, which work with political parties. UNIFEM works in collaboration with various international project groups and donors and also with Gender in Law Working Group and all do advocacy and lobbying for enabling the environment for women to participate, but UNIFEM does not directly work with AIHRC.

¹⁶⁸ FES involves with Conflict Monitoring in Afghanistan. FES in Afghanistan is based on a "Conflict Analysis", conducted in 2002 in cooperation with the German Technical Corporation (GTZ). This included the systematic analysis of different levels of conflict, national and local actors, as well as possible future scenarios. Potential impacts of the project activities on the conflict situation are at all times taken into consideration and this approach is conveyed to the partners of FES, who are encouraged to act conflict sensitive. Therefore, the FES is currently setting up a conflict monitoring system as part of its project activities and at the same time is conducting a project related impact monitoring of its projects in Afghanistan. In this regard a system is being developed, which enables the FES to frequently assess the development and dynamics of the conflict situation, the conflict sensitivity of FES project activities, and the impact that project activities have on the conflict situation. Based on these findings the project planning as well as the activities will be adjusted accordingly.

UNIFEM as a multi-donor supported program in Afghanistan seeks to advance Afghan women's human rights and promote gender equality; building Afghan women's capacities and leadership to enable them effectively participate in social, economic and political re-building of their country. In partnership with UNIFEM's three main constituents – the government, women's groups/NGOs, and the UN system – one of the UNIFEM's program priorities in Afghanistan is: the capacity building of government and NGOs to influence the priorities, policies and programs. It expands capacity to ensure the full realization of women's human rights and gender equality in the process of Afghanistan's rebuilding and strengthens the MoWA to mainstream gender equality.

UNIFEM's activities in Afghanistan didn't have a specific focus on political rights even though it works for the general transformation towards the democratization of the country. By being an inter-agency coordinating unit on gender issues, being a partner to MoWA, and working with various international project groups, it is successful in advancement of women's leadership but the policies implemented are long-term only, and the ignorance of short-term policies slows down the general transformation for the democratization of the country.

4.3.3. Partnerships with Ministries and Inter-Ministry Coordination

Cooperation and coordination between the UN agencies and their corresponding Afghan ministries are through the “twinning of UN agencies with Afghan ministries”. Most of the ministries, arguably functioning, have human rights or/and gender offices under their administration.

The MoWA is the lead ministry for women's advancement, and its mandate is to advocate, catalyze, coordinate, support, and monitor the development and implementation of national policies and international treaties on women's rights, and its mandate also includes assisting government ministries in ensuring their policies, programs, projects and services responding to the needs of their women constituents. The MoWA is lacking most of these qualities at the moment and some UN bodies such as UNDP, UNIFEM have representatives within the ministry in order to give technical and informational assistance to the ministry. Besides gender mainstreaming, the inter-

ministerial collaboration is a part of the MoWA's core strategies which is not taking place.

In March 2005, The Afghan government has launched a massive consultation with different authorities to work out a national plan on protecting and ensuring women's rights in the post-conflict country. The MoWA launched a three-month consultative process with government ministries and Afghan NGOs on generating a National Plan of Action for the Women of Afghanistan¹⁶⁹.

The MoWA holds "Gender Consultation Meetings"¹⁷⁰ between Afghan officials, international agencies and NGOs that have conducted research on women in Afghanistan. The aim of the consultations, which were supported by UNIFEM, is to compile existing data on women with a view to building a common database for Afghanistan. Much of the data is already in the hands of various institutions which have agreed, during the meeting, to hand over their information to the MoWA. Gender data compilation is viewed as a vital element in the development of gender policies and programmes¹⁷¹. Speaking at one of the consultations, the Minister of Women's Affairs, Dr. Masooda Jalal said, "Women have been absent in many spheres of national life. If they are absent in research and statistics, they will be invisible to decision makers. If women are not counted, they will not be counted in the development process. They will be forever marginalized, neglected and missed."

The MoWA and UNDP works in close cooperation for the institutional capacity development of the Ministry, with a particular focus on the nation-wide training and advocacy activities. UNDP Project on institutional capacity development¹⁷² has been also

¹⁶⁹ "Afghanistan to work out national plan on women's rights". Xinhua News Agency. Kabul. March 27th, 2005.

¹⁷⁰ Ariane Quantier. Press Briefing by Senior Public Information Officer and United Nations Agencies in Afghanistan. Talking Points. March 30th, 2005.

¹⁷¹ The Minister of Women's Affairs, Dr. Masouda Jalal, speaking at one of these consultations said, "Women have been absent in many spheres of national life. If they are absent in research and statistics, they will be invisible to decision makers. If women are not counted, they will not be counted in the development process. They will be forever marginalized, neglected and missed."

¹⁷² The main activities include:

- Capacity building for gender mainstreaming in the areas of gender awareness, gender and development, gender analysis and gender mainstreaming, and in the area of gender advocacy.
- Capacity building for institutional functioning in the areas of public administration, financial management.
- Establishment of a gender training institute.

expanded to reach other ministries in support of its strategic approach to institutionalize the gender mainstreaming process and raise awareness on gender and development through strengthening inter-ministerial collaboration, as well as functions of DoWAs in 34 provinces of Afghanistan. The MoWA seeks to influence national policies developed by other ministries and this strategic plan is supported by its strong partners, UNIFEM and UNDP¹⁷³.

The MoFA's "Office of Human Rights and Women's International Affairs", as the responsible unit for international treaties' progress report writing who has responsibility to report to the UN treaty bodies, initiated the Human Rights Treaty Reporting Project. The agreement on the implementation of the project was signed by the Government of Afghanistan and the UNDP on August 4, 2005, and this project has a life time of 15 months. The head of MoFA's Office of Human Rights and Women's International Affairs had complained about the lack of technical expertise to start and carry on this project, and was not considering any support available from the AIHRC due to the fact that an independent commission shouldn't deal with a government unit's engagement of such¹⁷⁴. The initiation of this project, hopefully, will receive enough technical from UNDP even though this late timing is mainly due to the lack of interest and following un-coordination with related agencies of UN.

The integration of gender component to the MoFA also brings activities into the Ministry to work with the MoWA such as organizing and attending international seminars and workshops. The expected outcome of the gender component at the MoFA is to act as an improved institutional mechanism that promote and protect the rights of women advance gender equity. The presence of gender component at the MoFA has also a symbolic value because it shows the national priority on gender.

The creation of gender components at the ministries, having a specific unit focusing on gender, if start working efficiently, is one of the greatest policies in

-
- Institutional capacity building at the provincial level.
 - Institutionalizing gender mainstreaming through outreach to other ministries and provinces.
 - Coordination with the Minister as part of her core Gender Advisory Group.

¹⁷³ Draft country programme document for Afghanistan. United Nations Population Fund. New York. Sept 6th-9th, 2005

¹⁷⁴ This information is from an interview with Zuhre Rosekh, the head of MoFA's Office of human rights and Women's International Affairs. Kabul. July, 2005.

advancement of gender equity. One of these departments under the MoFA, in coordination with the MoWA, is an initial success. But since MoJ and MoE are the crucial ministries regarding women issues, they haven't been a part of the coordination circle effecting the implementation of women's political rights in a negative way.

4.3.4. Partnerships and Networking of the AIHRC

As a permanent national institution under the 2004 Constitution, AIHRC¹⁷⁵ is one of UNAMA's external partners. Together with UNAMA, the Commission (AIHRC) is implementing a political rights verification program. The two organizations have developed mechanisms through which the principles of freedom of speech, non-discrimination and political participation are monitored and investigated. With UNAMA, the AIHRC actively monitors the electoral process and publish regular reports of their findings.

The government does not consult with the AIHRC, and they do not have the right not to consult with the AIHRC. The AIHRC makes recommendations, and publish reports frequently and shouldn't be ignored by the ministries¹⁷⁶ because government needs this commission as much as the commission needs the government for implementation. Since the government has the executive power, they should be in more collaboration with this national commission. The AIHRC considers herself absolutely moving on a different path than the government ministries and also with JEMB on election matters¹⁷⁷ and with the Election Task Force under UNAMA as well. UNAMA was considered as conservative with respect to governmental issues. No strong criticism on government, and concerning government issues, comes from UNAMA. For instance, UNAMA is hesitant to raise the issue of warlords¹⁷⁸. Due to the fact that the AIHRC is not an executive body, she can only make recommendations, offer advisory work, make observations, and pressure any unit to fulfill their responsibilities by reports. The AIHRC

¹⁷⁵ AIHRC has seven regional offices, and three provincial offices, and the Kabul head office. Every office has five departments on Monitoring and Investigation, Transitional Justice, Women's Rights, Children Rights, Human Rights Education.

¹⁷⁶ Comment made by the Chairwoman of the AIHRC, Sima Samar during an interview. Kabul. April 2005.

¹⁷⁷ A direct answer given by Simar Samar during an interview. Kabul. April 2005.

¹⁷⁸ Interview with Mohammad Farid Hamidi, as one of the commissioners at AIHRC. Kabul. May 2005. Mr. Hamidi was also one of the members to the ELJ; he is the responsible commissioner for developing rules and regulations for elections.

is a national and independent commission, but independence doesn't mean that there is no cooperation because there can be mutual respect and understanding. The AIHRC is not a threat to the government because it makes positive recommendations. However, though they are working with the government, the AIHRC is not always welcomed by the related government ministries. For instance, the human rights unit under the MoFA is in need of technical assistance for the assessment report writing for the ratified conventions Afghanistan has become a party to¹⁷⁹. Even though the AIHRC has offered technical assistance from their very qualified commissioners¹⁸⁰, the head of this unit doesn't see proper receiving this kind of support from an independent body because they are representing the government and government shouldn't be directed from a national independent body. It is true that the AIHRC is not the implementing body of the government, but AIHRC needs the government as much as the government needs the AIHRC.

The AIHRC is also a part of NDI and Afghan Civil Society Forum, and has been a part of the unofficial monitoring efforts of the Domestic Election Monitoring Body, in this role, the AIHRC has been helping to mobilize and organize the participation of civil society organizations in election monitoring. As well, the Commission has played a leading role in setting up an NGO, FEFA. Composed of several different Afghan civil society groups including AIHRC itself¹⁸¹, FEFA lobbies for reform of the election legislation, raises awareness about various election issues, monitors and observes the electoral processes starting from the campaigning period. The AIHRC is also working in collaboration with JEMB on public education around the elections and makes recommendations to JEMB on elections related civic education activities¹⁸².

¹⁷⁹ Zohra Rosakh has mentioned about the lack of technical assistance for their Human Rights and Gender Unit.

¹⁸⁰ Sima Samar has mentioned that at least 2 times, they have reached to the Human Rights and Gender Unit under MoFA in order to offer technical assistance, but they have never received any reply from MoFA.

¹⁸¹ Nader Nadery as one of the commissioner at AIHRC is also the Chairperson of FEFA, and one of the founders of FEFA.

¹⁸² Press conference on the third report, AIHRC-UNAMA joint verification of political rights. Talking Points - September 15th, 2005. One significant recommendation made is: introducing voting at elections as a right rather than a duty. <http://www.aihrc.org.af/mon_inv.htm>

All these units are engaged in both short-term and now in more long-term activities. In the post-crisis phase it was necessary to agree on emergency short-term programmes, and now the approach is towards engagement in long-term projects on gender. Because societal change is something can not be achieved with short-term programs, the dimensions of change need to be foreseen and engagement with those changing dimensions requires better and long-term coordination and cooperation strategies in between the gender and human rights' units of Afghanistan. The nature of engagement of global institutions into the national ones has to be stronger and will be more important.

AIHRC as a permanent national institution officially initiated under the 2004 Constitution which also has a legal binding in international terms deriving from the Bonn Agreement, mainly partnered with UNAMA on elections. Since it was considered as an independent body by some of the ministries such as the MoFA's gender related unit, and not considered as one of the main partners, this misunderstanding of the legality of the Commission effect the coordination activities of the Commission in a negative way which has been reflected negatively towards women as well. AIHRC has more trust than the ministries have gained from the society, with a very professionally working and dynamic professionals of the Commission, and by trying to fill the gap of the state in terms of law and order, even though the Commission can not take a legal action, being by the side of the individuals and listening and supporting them by directing them to the official units, this trust outcome is expectable. By pushing for a better election complaint mechanism and initiating a national elections working body covering the pre-elections and post-elections period for the parliamentary elections with the support of NDI, AIHRC has been the most successful unit working for the advancement of women's political rights by being fully aware of the practical issues and by knowing the social and cultural dynamics of the country of their own. A better recognition of the Commission's activities and considering their recommendations by the ministries would help to further the positive dynamism of the Commission.

4.3.5. Coordination for Post-Election Strategies and ECC

A Post Election Strategy Group (PESG)¹⁸³ was mandated and established by the UNAMA and the Independent Electoral Commission (IEC), which is composed of JEMB members, Afghan Commissioners from IEC and JEMB, UNDP, UNOPS, UNAMA, a representative from Government's Office, and the Chief Technical Advisor on Elections to the Special Representative of Secretary General (SRSG), and it aims to develop a comprehensive post-election strategy for the electoral institution. One of the main aspects¹⁸⁴ of this strategy is policy and legal framework and operational concept.

The capacity building of an electoral system and electoral administration was aimed to be sustainable in all of its dimensions: political and legal, institutional, technical and financial. It is stated at this preliminary report of PESG that, the period after the 2005 Elections is an opportunity to review and harmonize all the electoral legislation, including the Electoral Law, since this law was intended to apply only during the Bonn Agreement period¹⁸⁵. As a part of the recommendations made from PESG, a review of the Electoral Law is necessary and the Election Law will be legally mandated¹⁸⁶, but none of the elements related to the full implementation of women's political rights were mentioned as part of the suggestions made for Election Law reforms. Due to the fact that the present electoral legislation was initially drafted for the 2004 presidential election, the provisions concerning the election are spread over different legal instruments, such as the Constitution, the Electoral Law, the Political Parties Law and the Municipal Election Law, in which all these require a harmonization with the 2004 Constitution¹⁸⁷.

The Elections Complaints Commission¹⁸⁸'s revision was one of the necessary issues to be coordinated by elections related units. Right after the presidential elections,

¹⁸³ Post-Election Strategy Group. Preliminary Report. July 25th, 2005.

¹⁸⁴ The strategies listed for PESG other than the two mentioned above are: structuring of a post-election electoral administration and voter registry, budgets, retention and capacity building staff, civic engagement, physical infrastructure, involvement of donors and partners

¹⁸⁵ PESG Preliminary Report. p.6. July, 26th 2005.

¹⁸⁶ Ibid. p.9.

¹⁸⁷ Ibid. 1.2 Reviewing the Electoral Legislation. Issues to be Addressed. p.15.

¹⁸⁸ Electoral Law-Electoral Complaints and Offences

Article 52 Electoral Complaints Commission (from Constitution of the Islamic Republic of Afghanistan)

(1) In order to deal with electoral offences, complaints and challenges, an Electoral Complaints Commission (ECC) shall be established with the following composition:

the AIHRC came up with a press release on elections and made recommendations on what was missing and not fairly done for the elections¹⁸⁹:

JEMB failed to set up a proper complaint handling procedure, the AIHRC strongly urges JEMB, UNAMA and the international community to establish a transparent and appropriate mechanism to address electoral complaints coming from both the voters and the candidates to increase the trust of people and candidates in the election process. It further calls upon them to launch thorough, fair and comprehensive investigations into the election offences and make their results known to the public. The AIHRC, according to Article 58 of the Constitution of Afghanistan, reiterates its readiness to cooperate with the relevant authorities in devising and addressing election complaints mechanisms in order to raise more confidence in the electoral process.

These recommendations have been considered, and the September 18th Elections', ECC became relatively but arguably efficient. The ECC of parliamentary elections composes of two national and three international commissioners. The Commissioners are supported in their work by a staff of legal advisors and investigators as well as other administrative personnel. The ECC is headquartered in Kabul but operates throughout Afghanistan¹⁹⁰, and is an independent body established in the Electoral Law to adjudicate all complaints concerning the electoral process. Any person who has a valid interest in the electoral process and who claims that there has been a violation of the law regarding

a. One member appointed by the Supreme Court; b. One member appointee c. d by the Afghan Independent Human Rights Commission; and d. Three International members appointed by the Special Representative of the Secretary General in Afghanistan.

(1) The ECC shall elect one of its members as the Chairperson of the ECC.

(2) The ECC shall have the jurisdiction to consider and adjudicate the following:

a. Complaints relating to electoral offences, including violations of the law in the conduct of the electoral process, provided that the complaint has been received prior to the certification of the results of the election; and b. Challenges to the list of candidates or to the eligibility or qualifications of a candidate raised during the electoral process.

(4) The ECC shall develop and implement its own procedures for considering and adjudicating complaints.

(5) The ECC may consider matters otherwise within its jurisdiction on its own initiative and in the absence of a formal complaint or challenge.

(6) Decisions of the ECC shall be final.

(7) The ECC shall discontinue its work no later than 30 days following the certification of results.

(8) In order to deal with complaints arising in the provinces, the ECC may delegate its authority to commissions at provincial level, which commissions shall consider complaints within their jurisdiction and in accordance with the procedures established by the ECC.

¹⁸⁹ AIHRC's Press Release on Elections. October 10th, 2004.

¹⁹⁰ The Islamic Republic of Afghanistan. The Electoral Complaints Commission. <<http://www.ecc.org.af/>>

the conduct of the electoral process has the right to file a complaint with the ECC. This means that any registered voter, candidate, observer and political party official, among others, may file a complaint. The ECC may take cases on its own initiative.

The voter registration period (VRUP)¹⁹¹, which marks the end of the second key faze in the operational plan for the 2005 Wolesi Jirga and Provincial Council Elections; followed the Candidate Nomination Period (CNP), which ended on May 19th, and preceded the Polling Period and Counting and Post-Election Period (PEP). ECC was already active from the beginning of the nomination period.

The election complaint mechanism that existed for the presidential elections wasn't an efficient one¹⁹². It was composed of the ministry of interior, the ministry of justice, the attorney general and one UNAMA representative, in total comprising of seven people serving as a committee in the center, Kabul. It is believed that they were ignoring some complaints, if they were in their own alliance, and the mechanism was not taken seriously¹⁹³.

The AIHRC was questioned concerning a special complaint mechanisms for women only, and due to the fact that the complaint commission constructed for the presidential elections was only in Kabul, the people at other provinces could not come

¹⁹¹ "Voter Registration Update Period, End of Period Report". JEMBS. June 25th -July 21st 2005. p.3.

The Voter Registration Update Period was an addition to the comprehensive registration process conducted for the 2004 presidential election, and therefore registration facilities during this period were not as extensive as during the previous registration period. Particular groups of Afghans were encouraged to use the registration services, namely those who needed to amend the province of registration stated on their card, those who have reached the age of 18 since the last election, those who have returned to Afghanistan since the voter registration last year and those who have lost their cards.

Approximately 1.7 million Afghans visited registration facilities in order to obtain new cards or correct existing ones. Of the total number of new registrants, men account for 56%, while women account for 44%. Kuchis made up 9% of the total number of registrants. The percentage of women registering this year is higher nationally than the percentage that registered last year (41.5%), and the number of women registering in more traditional areas of Afghanistan was considerably higher, particularly in the South and Southeastern regions.

In Ajrestan District of Ghazni Province, where no women registered last year, almost 15,442 women registered during this year's registration process. In Desho District of Helmand Province, in which only one woman registered in the eight months of last year's registration, 1,361 women have come forward to register.

¹⁹² Interview with Sima Samar.. Kabul. May, 2005

As Mrs. Samar expressed: "There was not a proper complaint commission during the presidential election. The complaints went to JEMB and JEMB decided on their own, without proper transparency, they didn't even chair the complaints, they were not accountable, and they didn't share the complaints with AIHRC.

¹⁹³ Interview with Sima Samar. Kabul. May 2005.

Sima Samar is the chairperson of AIHRC. She is the first Women's Affairs Minister.

and complaint. Especially the women, since they can not travel, there was no way for them that they could practice their right to make a complaint. Also, the complaint mechanism was very complicated as nobody knew where they should go, and the ECC didn't even have the executive committee that existed in the CLJ.

The suggestions from the AIHRC for the improvement of the ECC sensitive to the gender issues ECC were: "There should be small complaint mechanisms in each province, and this time there will be three people in each province, one will be at least woman". One from AIHRC, one from UNAMA and one from the governor of each province forms the commission. If the issue is not solved at the province level, then they are referred to the center. In the center as five people, composed of three international, one person from AIHRC and one from the Chief of Justice composes the parliamentary elections ECC. These suggestions that are taking reality for the parliamentary elections were partially from AIHRC in collaboration with UNAMA. They have come up with these kind of suggestions that ask for a more clear, transparent and efficient mechanism so that practical issues can be implemented. It was clearly stated that UNIFEM was not a part of these suggestions, the suggestions came from AIHRC and from the Fair and Free Election Foundation for Afghanistan (FEFA)¹⁹⁴, and then UNAMA and AIHRC discussed the mechanism in detail.

The AIHRC believed that certain issues need to be explained more clearly to the Afghan public for the role of the ECC. "Many people believe it is a court, where you can bring any problem with justice. The ECC is not a court of justice. It is simply tasked with adjudicating complaints relevant to the electoral process"¹⁹⁵.

The post-election strategies are crucial as much as pre-election periods, since post-election strategies focus on what strategies would work best for Afghanistan, what has been lacking, and what could have been implemented in a better way so the country would benefit out of these strategies for gender equity in political scene, as the core questions gathered around as a part of the post election period meetings. The reformation

¹⁹⁴ FEFA: a national NGO operating in Afghanistan, lobbies for reform of the election legislation, raises awareness about various election issues; it monitors and observes the electoral process from the campaign to counting. AIHRC is also a part of this NGO.

¹⁹⁵ Statements given by Sima Samar. Press conference on the third report, AIHRC-UNAMA joint verification of political rights. September 15th, 2005.

of ECC also came out of post presidential election meetings, and recommendations for how to turn the previous ECC effective have reached to the necessary units who have the authority to reform, and definition of ECC has changed as a part of the electoral law. Unfortunately, working principles and rules of ECC couldn't inherit any women friendly language and couldn't adopt any women specific strategy so couldn't help in easing women's participation at election periods.

4.4. An Overall Picture on Political Rights of Women related to Parliamentary Elections, From Joint Declarations and Recommendations on Political Rights

AIHRC and UNAMA together published three Joint Political Verification Reports¹⁹⁶ related to the presidential elections and political rights in general, and three for the parliamentary elections on the same theme, in order to help create an environment conducive to the holding of free and fair elections. All of these reports pay special attention to women's political rights.

Related to the September 18th elections, the first report of AIHRC and UNAMA joint analysis and declarations covers the period of nomination¹⁹⁷, the second for the period of additional correctional measures, nomination and general environment, at which the specific focus is on women participation, and the third one is right before the elections based on the campaigning period which came out a week before the elections. Related to the "Freedom of Movement" the report states:

¹⁹⁶ 1st joint report: June 23rd 2004 2nd joint report: July 8th– August 24th, 2004; 3rd joint report: August 24th– September 30th, 2004.

¹⁹⁷ 1st one covers the period from April 19th till June 3rd, 2nd report covers June 4th till August 16th, and the 3rd August 17th till September 13th.

Methodology of the 1st report is as follows:

75 staff from the eight UNAMA and eleven AIHRC regional offices monitored the environment and actively collected information in order to assess conditions for the exercise of political rights. Verification efforts included formally registering complaints submitted by the population, verifying cases, undertaking field missions to all the provinces to assess the general environment, monitoring the press and collecting information about general perceptions and trends through interviews conducted with local actors, such as government authorities, political parties, prospective candidates, elders, civil society, the media, and the JEMB. In total 102 incidents were recorded by the Joint Verification Unit. Many of these reports could not be fully verified for a variety of reasons, including incomplete information; lack of witnesses; and an unwillingness by complainants to disclose the full details of the incident reported due to fear of retaliation. There were also a number of reported cases that were found to be irrelevant for the purposes of this report as they were unrelated to the exercise of political rights or were well outside the reporting period. In addition, upon further verification a number of allegations were found to be baseless.

People residing in remote areas were disadvantaged in accessing the campaign centers, and candidates from remote districts had to travel days long to register themselves at the provincial centers. A number of concerns have also been raised about the role that some local officials might play in limiting the movement of candidates whom they oppose. The escalated traveling fears served to constrain movement in these areas and had an impact on candidates' ability to extend their campaign period¹⁹⁸.

Second, in regards to the "Principle of Non-Intimidation" it states:

Female candidates, particularly in remote and more conservative areas, have also voiced concerns about their security. In some areas women only registered in the last days of the nomination process to avoid security threats including a couple of death threats to female candidates, and the shooting of a member of the Afghan Solidarity Party and an employee of the local office of the National Security Directorate (NSD) in Lashkargah who was working closely with the Department of Women's Affairs (DoWA) in establishing a women's association.

Third, related to the "Principle of Non-Discrimination",¹⁹⁹ the report states:

On the whole, the number of female candidates is less than what could have been expected given the level of participation of women in the presidential election. Several factors may account for this situation. Foremost among these is the fact that, while women were mobilized and encouraged to register by their communities and families to support candidates in the presidential election, a degree of ambivalence continued to exist in Afghan society regarding women serving as public figures. Women to a large extent internalize these norms and fear bringing dishonor to their families if they expose themselves to public critique by standing as candidates. Moreover, women have limited access to money and resources restrict the ability of female candidates²⁰⁰. Women also cite limited access to information about the nomination criteria and the election, as

¹⁹⁸ AIHRC-UNAMA, Joint Verification of Political Rights, Wolesi Jirga and Provincial Council Elections, First Report. April 19th - June 3rd, 2005. pp. 5-6.

¹⁹⁹ *ibid.* p.10

²⁰⁰ These lacks of financial resources particularly affect the independent candidates, due to the fact that 4,000 Afghans required for registration.

Some female candidates linked to powerful elements - including political parties, government authorities and commanders have received financial and political support from their affiliates.

well as mobility restrictions, as factors contributing to low female participation in the candidacy process. Despite the fact that the JEMB civic education efforts geared towards women were positive in urban centers, women in some remote areas have received very little information regarding the electoral process. It is therefore unsurprising that the largest percentage of registered female candidates came from provincial centers, particularly the Kabul province, where there are greater public outreach activities and where the environment is more conducive for women's participation.

Finally, related to the "Freedom of Speech"/"Freedom of Expression", no incident was been reported²⁰¹.

At the parliamentary elections, women accounted for 44% of the new registrants²⁰², although it is accepted that there was some proxy registration, particularly in the South and Southeast. A total of 6,102 Afghan men and women filed nomination papers to run as candidates for all elections. In the 34 provinces, a total of 2,835 people nominated themselves as Wolesi Jirga candidates, including 66 Kuchis²⁰³ and 344 women, of whom seven were Kuchis. A total of 3,201 Afghans came forward as candidates for Provincial Councils, including 285 women²⁰⁴. Afghan electoral law requires that at least 68 seats in the general assembly be reserved for women.

These joint verification reports came out from AIHRC and UNAMA, helped in the realization of gender related gaps in political rights. Especially the publishing of these reports in quite enough numbers from the two officially recognized units, one being the UN main coordination activities in Afghanistan and the other as the only independent national commission as deriving its power from the constitution, was a good strategy to make the observations and analysis as legitimate. These observations have been a route

²⁰¹ This is mainly due to the fact that the political campaign period was not a part examined in this report. On the other hand, there has been no report that women were not allowed to express themselves on TV or radio, has been reported.

²⁰³ Kuchis are a tribe of Pashtun nomads in Afghanistan. They represent an estimated six million of Afghanistan's 25 million people. The group is singled out by the United Nations Assistance Mission in Afghanistan (UNAMA) as one of the largest vulnerable populations in the country. Hasmat Ghani Ahmadzai is their ethnic leader. Provisions are written into the Afghanistan Constitution (Article 14) aimed at improving the welfare of Kuchis, including provisions of housing, representation and education.

²⁰⁴ JEMB final report on parliamentary elections. 2005.

map for UN but not to the ministries due to the lack of coordination depending on the power issues in between AIHRC and the ministries. These reports could have made more use out of them, admitting that they have been a great source to my research.

4.5. Similarities and Differences on Priorities and Preferences of UN, AIHRC and Afghan Ministries on women's political rights, and the Reasons Behind

4.5.1. Possibility for Special Security Protection Mechanisms for Women

The MoI is the primary decision maker unit which can place additional security mechanisms for women. Ministry could only implement general security only for the Election Day.

The MoFA²⁰⁵ agrees for the hardships about the security situation that it is both for men and women but especially for women.

Implementation of political rights of women is something we are already doing. But 100% of implementation is very hard here like in any other country. This is also the case for most institutionalized democracies. Societies evolve, and in Afghanistan, this is a revolutionary thing so implementation of women's rights needs time, for now we are mainly building the capacity for doing the implementation.²⁰⁶

The safety and security for the parliamentary elections, is the most important element that should addressed because it is bound to the full effectiveness of the elections. The security stake holders are paying attention to this very important factor for having a successful parliamentary election that is already taken into consideration, but regarding the regulations and procedures, in parliamentary elections, the MoWA have already made an intervention, to the election commission, to make it possible and easier for women to take part. Also, in the complaints hearing part of the law, we have made our impasses that a positive discrimination should be given to women relative to men. The accessibility to the polling stations should be more strengthened for women as a positive discrimination while registering and while voting, particularly in places where there are

²⁰⁵ Ministry of Foreign Affairs is not much part of coordination in the business of elections but when it comes to coordination, when MoFA presence and support is asked, then they are involved in election affairs, and the recommendations made to the Election Task Force under UNAMA and JEMB are not on practice level, MoFA is not a part of their frequent meetings.

²⁰⁶ Interview with Foreign Affairs Minister, Dr. Abdullah Abdullah. Kabul. July 2005.

mother and child clinics, girl's schools, those places could be better chosen for women since they usually go to these centers.

Security situation of the country is highly related to the culture and traditions of the society as well. Even though Afghan culture is establishing a positive change in terms of women, the religious factors are deeply ingrained into the culture, so empowerment of women also means dealing with religious and cultural elements. During the Taliban era, discrimination of women was the state policy²⁰⁷ and empowerment of women will not happen within a couple of years and it will come along with education, employment, and creating economic opportunities for women. Mr. Abdullah has stated that "Men also should be empowered in the sense that they can deal with intimidation, because intimidation takes against men as well, and to overcome these challenges will take time"²⁰⁸. MoWA has suggested to the election commission, to make it possible and easier for women to take part in the elections. Also for ECC structure, MoWA we has made their impasses for a positive discrimination mechanism to be given to women, so their complaints for intimidation would be taken care more effective. Instead of setting up mobile teams for registration and voting, MoWA suggests for more polling stations which are strengthened for women. Particularly in places where there are mother and child clinics, girl's schools, those places could be better chosen for women since they usually go to these centers.

At an AGG meeting²⁰⁹ two month before the parliamentary elections the possibilities for specific security mechanisms for women was clearly stated by JEMB officials as follows:

²⁰⁷ The Taliban limited the right of women to work in public places. The Taliban believed women should stay home in order that their children did not have to grow up in the care of another, and believed that work is the duty of the male. The education of girls in Afghanistan has extensively decreased during Taliban era, there was a 65 per cent drop in their enrollment. In schools run by the Directorate of Education, only 1 per cent of the pupils are girls. The percentage of female teachers, too, has slid from 59.2 per cent in 1990 to 13.5 per cent in 1999. Women were also obliged to wear the burqa/chadori when appearing in public, and failure to do so could attract a public beating. The Taliban stated that women were obliged to wear the burqa due to Islamic teachings which state that women must cover up her body in front of non-mahram men.

²⁰⁸ Interview with Dr. Abdullah. Kabul. July, 2005.

²⁰⁹ AGG Meeting. MoWA conference room. Kabul. July 27th, 2005.

First of all let me tell you that security situation is the same for both male and female and secondly security protection is not our responsibility it is the responsibility of MoI.

Also the possibility of some other measurements like dispatching mobile teams house to house for registering women considering that they have been facing registration problems due to the lack of security were rejected by JEMB officials in these words:

In my points of view this time registration process was much better and successful than last time for presidential election and our achievements were also more than last time. For example in presidential election in one of the district of Bamiyan province, we had only one person registered, however this time the number of registered people increased.

The fact of 50 female candidates who have been dropped from candidates' list and the measurements must be taken to prevent similar cases was directly forwarded as the responsibility of MoI. Unfortunately MoI only promised for security protection on Election Day and not for a kind of women only specific mechanism.

UNIFEM put forward security as one of the main issues and suggested MoWA in cooperation and coordination with JEMB office have to discuss this issue with Ministry of Interior. But JEMB has already talked with MoI but they had said that it's very difficult for them to protect all voters and all candidates individually. UNIFEM also agreed providing bodyguards for all candidates is impossible but also reminded JEMB that they were working in cooperation and coordination with security organizations then in this case what JEMB's measurements for women candidates were, and it would be better if both parties set together and plan for security. MoI, in 34 provinces have working groups dispatched for advocacy activities and these groups convey Minister's messages to governors of those provinces regarding security of women and it was hoped to affect positive on election process, and these groups would also talk to leaders of those areas.

UNDP representatives²¹⁰ do not agree the physical threat does not differentiate the women and men in terms of accessibility, if the polling stations are organized in a way that women would feel more comfortable and going and voting which is being into

²¹⁰ Afghan women representatives working at UNDP, Kabul office.

consideration with some other practical arrangements such as women have separate boots should be enough. But the idea of having special security for women was not accepted with the idea behind that if there is threat for people it would be for all even though the vulnerable position of women is definitely recognized. The key affirmative action comes with security isn't considered as proper but having women as specific targets on awareness, so that women would have courage to go out and vote is considered as the key idea for progress.

When the security situation for the elections was discussed at JEMB members individually, the logic goes like this: "if we protect one, then the other one will ask "why" or why not me! Security support is very difficult"²¹¹, also the security situation is described as: "Security for all elections is totally in the head of the Ministry of Interior, Ministry of Defense, coalition forces and ISAF. There won't be any certain specific protection for any group, whether for any specific ethnic group, nor women. There will be protection for all"²¹².

MoI as the core implementing unit of security mechanisms for the country in general and for the election specific updates, coordination with the Ministry and persuading them for adopting short term women friendly mechanisms could have managed by the international agencies which didn't happen because of the differences in priorities of these UN units and mainly the general mentality for security of these UN agencies had always been the security for all.

4.5.2. Assistance for Secure Transportation and Campaigning

Considering that specific transportation for women is also a part of the security element, because it may take even a half day to travel from one village to another, there could be some sort of initiatives, if there are areas that transportation is the main problem, then there should be additional consideration, and Ministers of MoWA, MoFA are in favor of specific consideration for women in that sense. On the other hand, candidates were prohibited, by the government, from providing transportation for voters, but there

²¹¹ Interview with Aykut Tavsel. Media Relations Representative of JEMB.Kabul. April, 2005.

²¹² Interview with Najila Ayubi. JEMB compound. Kabul. April, 2005.

was no alternative provided for voter transportation, because allowing candidates to transport voters would clearly benefit richer candidates.

When it comes to the security of women candidates during their political campaigns, women need some specific places which are commonly used public spaces. MoWA believes; if the candidate is trusted enough, then there is no need for a woman to feel insecure because she/he is welcomed by the community and have access to all public spaces. Mosques can be one of the best public spaces for political campaigns, but in Afghanistan mosques are mainly used to worship by men, religious practice by women in the mosques is not widely practiced, so women do not have an easy access to mosques. Women can use women's clinics in order to introduce themselves to their community. However, they are left with the possibility of reaching voters only through this way, while in reality they are also in need of introducing themselves at where the whole community can listen them. Schools could be one of the best places to speak at, except the schooling hours, but this year the Ministry of Education (MoE) forbid the usage of any educational environment for disseminating knowledge related to the elections. Besides forbidding any kind of political material on schools, permission to the candidates to make their political speeches was blocked. This is a big disadvantage, especially so for women as they would feel more secure at schools to speak up and since they have few public places to give their speeches.

At a post-election debrief on women's participation²¹³, the campaigning problems have been discussed and summarized as: Women had greater difficulties in campaigning, specifically lack of access to spaces and inability to travel. In addition, women did not have the same venues available for campaigning (i.e. mosques) as the male candidates. Some JEMB officials believed, they should be careful not to politicize certain institutions, such as schools and women parks, and some disagreed that it was acceptable to use schools after class time and if they are open to all.

JEMB spokesman also agrees that women in conservative rural areas can put up a weaker campaign compared to their male counterparts. "But with the help of the MoWA we will try to get their messages out through female school teachers, women gatherings

²¹³ Post-Election Debrief on Women's Participation. Meeting Notes. JEMB compound. Kabul. October 13th, 2005.

and other local events,” Mr. Baheen says. And he stresses that there can’t be any additional specific help since women enjoy the same privileges and support as men do.

The AGG meetings²¹⁴ has also covered the issue of special services and facilities for women candidates when Dr. Jalal, Minister of Women’s Affairs, called the attention of AGG and JEMB participants to look at possibilities to help women candidates during their campaign mainly with their need in transportation and media. JEMB promised to assist the women candidates in media through Radio and TV. It was said that JEMB would provide one minute opportunity for each women candidate to introduce themselves to the public through TV or Radio, which became true.

The UN and MoWA has been calling Afghan political parties to promote and support female candidates for the parliamentary elections, which can help women not to be left alone by their male colleagues. Asking political parties to support women can both have a positive and negative effect for the implementation of political rights of women, in the sense that political parties are also aware of the seats reserved for women, and these seats won’t be filled by anyone else but women. However, support from political parties for women candidates may not fully mean that they really support the positioning of women in the parliament. The necessity of women for political party networks work against the empowerment of women, because women can either be supported to nominate themselves symbolically, or they may be forced for partisanship for a political ideology that is not familiar and not representative to them which is also a violation of political rights that is the “Principle of Non-Partiality”. When this possibility of abusing the situation of women having the reserved seats at the parliamentary and provincial council levels was discussed with a political party representative²¹⁵, the image given to the Afghan women as uneducated was not accepted: “what is being reflected is, women are not educated and not capable of giving education. No, this is not true. This is what you hear from the ladies sitting in their offices in front of their computers”. When

²¹⁴ AGG meeting. MoWA Conference Room. Kabul. August 19th, 2005.

²¹⁵ Interview with Sayyed Ishaq Gailani. Kabul. May, 2005.

He is the head of the National Solidarity Movement of Afghanistan (*Nazhat-e Hambastagi-ye Melli-ye Afghanistan*). Mr. Gailani was one of the 18 presidential candidates in 2004 elections. He pulled back his candidacy because: as he expressed, he has thought if he supports Hamid Karzai, the international community would give more support because of Karzai. Depending on the reports from UNAMA, 13.5% of Karzai’s votes were from Mr. Gailani’s side.

the situation of educated women is questioned, it was agreed that women do not receive any financial support to be in politics in Afghanistan, but this financial support was expressed as not possible²¹⁶ in any country.

Security is closely related to law enforcement, and due to law enforcement shortcomings by the central authority such as the lack of state prisons, trials and state instruments to run the punishment mechanisms, the threatening fractions for the elections will be less hesitant to plan and use violent acts including bombings and threats to candidates and voters. As the Ministry of Justice (MoJ) stresses, the ongoing initiations and progress for building enough justice units such as courts and prisons in each province is a form of improvement. The Supreme Court is also a part of the ECC for the September 18th Elections related issues which is important in the sense that the complaints mechanism for the elections won't just be run by international actors and the national justice unit is a part of this complaint mechanism.²¹⁷

4.5.3. Financing possibilities

There had been an idea to establish a trust fund to support female candidates, but this proved difficult to implement. This trust fund could have been good to mainstream funding of campaigns and could have also supported less advantaged candidates. The challenge is that donors are unable to give funds directly to candidates. There was no mechanism for those who wanted to fund women's campaigns and therefore an opportunity was lost for those who wanted to support female candidates. This needs to be in the form of a fund for female candidates as transparent, open to all, inclusive of training as well. Candidates suffered from lack of funding. At a post elections strategy meeting at JEMB²¹⁸, it was agreed that the IEC needs to enforce campaign finance regulations and laws as women are affected here as much more than men.

²¹⁶ Mr. Galiani also mentions about his wife, who is a women's rights activists willing to run in politics but as one of those educated women who is not able to receive any financial support for her nomination. Mrs. Galiani has many international human rights awards, and she was also under threat during the rule of Taliban era with death threats.

Mr. Galiani stated that his party would come up with 30 candidates and 12 will be ladies, and he considers this number for women as a good number.

²¹⁷ Interview with Minister of Justice, Sarwer Danish. Kabul. May, 2005.

²¹⁸ Post-election Debrief on Women's Participation. Meeting notes. October 13th, 2005.

Direct financial support by any government or UN body is missing to women. Indirect financial support, to women's rights projects and training programs for women candidates in the provinces and women's voter education programs, is also missing. The necessary amount of money for the elections, in order to facilitate the full participation of women voters and candidates is missing at JEMB and UNAMA. Lack of money has been an excuse for not coming up with necessary facilitation for the full participation of women political actors. Women's rights can be left aside as a soft issues and not given the priority at Afghanistan's post-elections.

Since women haven't been working for so long, the economic situation of women is relatively much worse than men, so the level of eligibility for candidacy is automatically less than men. These are the realities of the country, but when it comes to any financial support specifically to women who will be running for the upcoming elections, Ministries do not consider this assistance on individual bases.

I can agree for financial support which helps women to overcome some of these hardships, under some conditions, just to help them, but there are men as well in the same situation. There were some young women from this ministry, who wanted to run for elections, and they do not have money as well. There are women and men who have a lot of money as well. This would be a discrimination against somebody else, even though it is gender based. There has to be a boundary for it, the political rights of somebody else should not be discriminated while you are giving support for the implementation of political rights to someone. In general terms, there has to be a lot more facilities so women in different parts of the country can benefit from that but when it comes to the specific individual financial support to specific people, this is discrimination²¹⁹.

The possibility of financing the women political candidates can be considered as a political investment from un-trusted channels, but when it questioned if the money for this kind of financial support so that women can become capable of becoming candidates, the ministries would consider this money to be spent on for other beneficial things, in order to change other things for better.

²¹⁹ Interview with Mr. Abdullah.

The ministries do not see this approach as effective because of the possibility that this money goes to someone who doesn't need it. If any support becomes possible in financial terms, this is considered both for men and women as was the situation for the presidential elections. There was only one woman presidential candidate for the last elections, and she received the same amount of money as the other seventeen candidates which was not enough money to finance full campaigning.

When the issue of financial support for women was discussed at the AIHRC, the possibility of finding the women in need to become active in politics was a crucial criteria, so the women who already have financial support from political parties or from their families can be eliminated to be eligible for this funding. There were several ideas stated²²⁰ that make any kind of possible direct funding ineffective, and if this support exists how it may affect the whole picture for the empowerment of women in a negative way.

First, women who do not have any previous political network are no good for the society, such as if one woman decides to participate in politics as a candidate over night. She should be investing for this position at least for a year, and she should arrange this financial support earlier. So any financial support to women who doesn't have any education and any kind of political support can be a waste anyways.

Second, if donors or government start financing women candidates, then there will definitely be some women who will run for candidacy just because of this money and not due to the will for political participation for her community.

Third, women can be competing against each other for this money instead of spending their energy for their political campaign which is one of the main empowerment to women, knowing how to represent herself by raising her voice in front of her society. So, it may not be fully possible to find out the women in order to support in financial terms: the women who are educated, who can serve well for their community, and who are already being involved with projects and expanding networks for their political position for being powerful candidates for the up-coming elections and also in need of money to be a candidate.

²²⁰ These ideas were discussed in details with Ahmed Nader Nadery during a second interview. The non-possibility of effective funding specific to women is the main perception received during the interview. August, 2005. Kabul.

The current Executive Director of UNIFEM²²¹ is strongly against the direct funding of women candidates for instance due to the fact that this would be a direct political investment by non-neutral channels, she also doesn't believe in the special transportation and security arrangements for women at election days would work efficiently and become sufficient. According to her, the "freedom of movement" is not only limited to the dates that you go and vote, it is also women's ability to go to the market, to walk your child to school, to be able to visit an organization. For the election days, if it is financially possible implementing special mechanisms for women due to the fact that election is very important and it is the land mark for democracy and transitional justice. Having more number of polling stations and polling stations being situated where women can go and vote, separate polling stations for women are kind of mechanisms already being implemented, and the lessons that are learned from the last elections inform the organizations. Because many of the people worked on the last elections were also working for parliamentary elections as well. She says, "There can be "mahram" given to women for special occasions like this, but the nurse women also needs male assistance on her way to the clinic, this can also be done, but for how long you will keep doing this, how many resources you do have to spend on this, how long you can sustain this kind of things. You will always be operating with limited budget". UNIFEM's executive director believes financing women for their participation in elections is a short-term solution; she is in favor of long term and indirect mechanisms.

4.5.4. Programs for the Whole Nation or Women Only? Do Afghan Women Have Specific Needs?

There used to be a consensus on the idea that gender programs have been considered as women's programs only but now men are not being neglected in gender programming. Since the gender relations are the determinants of positive social change in Afghanistan, the society has a long way to go. Afghan society is experiencing a process of transformation on gender identities, and the meaningful adaptation of these roles can

²²¹ Meryem Aslan is the Project Coordinator/Executive Director of UNIFEM, Afghanistan Country Office.

only be considered successful in the long term since interfering in culture, tradition, integrated with religious background, is not a quick fix process even though Afghanistan's political developments after the fall of Taliban regime are, arguably, the fastest in recent history.

Supporting women was not “about understanding social dynamics. It wasn't about understanding the culture. It wasn't about the causes of poverty. It was very superficial. Many of the development agencies were appalled with what is happening with women. But then we never did look at it from a gender perspective. It was women under *burqa*. It was never about men in *shalwar kameez*”²²².

UNIFEM representatives believe, all the expenses spent for free and fair elections, all should be for the whole nation. UNDP, Democratization and Civil Society Empowerment Unit²²³, also believes in equal investments for both men and women, without believing women do have specific needs. The voting procedure, the democratic process, the parliament, these will all change the lives of Afghans, all these issues are all new to all Afghans.

Related to the “parliamentary development”, UNDP has the mandate of working on voter registration and elections and also as a part of its mandate as the “Access to Justice and Human Rights” it has projects on “Women in Governance” and “Women's Advancement and Equal Opportunities in the Afghan Civil Service” which are also related elements to the Afghan women to succeed in participation in elections and beyond.

There have been some important projects, not specifically for women but projects that also affect women positively, by UNDP²²⁴ for instance named as “Support to the

²²² Expressed by the head of an international organization during one of Lina Abirafteh's interviews for her research on “Lessons from Gender-focused International Aid in Post-Conflict Afghanistan ...Learned?”. July 2005. p.14

Lina Abirafteh conducted this research with this title “Gender and Post-Conflict Reconstruction: Lessons Learned from Afghanistan” emerging from a conference of the same name held in Paris in July 2003.

And Shalwar is a sort of loose pyjama-like trousers. The legs are wide at the top, and narrow at the bottom. The kameez is a long shirt or tunic. *Shalwar kameez* is the traditional dress worn by various peoples of south-central Asia. It is the national dress for both men and women in Pakistan and Afghanistan.

<www.wikipedia.org>

²²³ The Assistant Country Director at Democratization and Civil Society Empowerment Unit interview. UNDP, Afghanistan. Miss Sitara. Kabul. April 2005.

²²⁴ SEAL projects have been discussed at a UNDP interview

Establishment of the Afghan Legislature”: “SEAL²²⁵”, that only focus on the education of women after they obtain seats in the Parliament, but not any specific programs for how to be empowered in order to become a part of the political system. The women who will run for the elections should be given education in the way that people can say “This woman really knows what she is talking about”²²⁶; instead of just giving them reserved seats in the national assembly and at the provincial councils. There are also some current projects coming up from World Bank such as training sessions for women who will obtain seats in the parliament, but not again what should be done to get them in the parliament in a more fair way and with empowerment, not just because they have these reserved seats already given to them at the constitution.

The task force for Women and Elections²²⁷ that is chaired by the Gender Focal Point at UNAMA basically coordinates the activities all over the country on women and elections, because there is a specific need to target women for elections. There have been various programs from UNDP in collaboration with MoWA for specific designs on civic awareness for women, but civic education should also be supplemented by practical effective measures for elections. UNDP stresses more on the lack of legal awareness and

Interview with Thusitha D. Pilapitiya. Consultant, Support to the Establishment of the Afghan Legislature Project. UNDP Kabul Office. April, 2005.

²²⁵ The objective of SEAL is to ensure the timely establishment of the Afghan Parliament and support to its functioning. SEAL, a two year project starting in January 2005, will contribute to finally putting in place stable democratic foundations for Afghanistan by assisting the Afghan authorities in three areas: (1) ensure the setting-up of an effective coordination and programming mechanism for all activities related to the support to the Parliament (2) building the capacities of administrative and technical staff as well as members of the Parliament to ensure a smoother and efficient function of the Parliament; (3) ensure the establishment of the necessary legal environment to enable the first session of the Parliament; (4) ensuring proper linkage and complementarities between physical infrastructures, information services and information and communication technologies (ICT) tools to provide assistance to members, staff, media and public; (5) allowing for parliament outreach and the design of an effective public information and awareness strategy; (6) parliament set-up and basic running cost met during first year of activity; (7) an effective project management team fully operational throughout the duration of SEAL project activities. Partnerships with the Inter-parliamentary Union (IPU) and other institutions will be established to ensure specialized training. SEAL will be implemented in two phases: I - 6 months up to the establishment of the Parliament; II -18 months, up to the end of 2006. Activities have already started in 2004 under a preparatory assistance (PA). Together with the Government of Afghanistan, UNAMA, and UNDP, France (as the Lead Nation for parliamentary support) and other donors are expected to play a key role in this project. Funded of the total estimated budget of USD 13.9 M will be ensured through cost-sharing arrangements, with an initial contribution of Euro 1.5 M contribution from the Government of France and UNDP core resources. February 2005.

²²⁶ Interview with Nasrine Gross. Kabul University, National Center for Policy Research. Kabul. July 24th, 2005.

²²⁷ Election Task Force (ETF) under UNAMA, chaired by Corey Levine.

the lack of functioning of the judicial system to proper legal protection. All these elements stressed are not just related to awareness, they start with awareness, but it is not just related to awareness. The real dimension is when Afghan women have other systems outside that will ensure protection and those are really difficult thing to tackle.

4.5.5. Election Specific or Broader Projects?

Understanding what one's rights are and participating in civil life takes time. Working on women's human rights in Afghanistan means long-term commitment. The awareness of rights is one thing, and the implication of those rights have bigger issues, much more complex according to UNDP representatives, and UNDP is more in favor of broad projects. Because, it takes time for a society to internalize, accept and believe in the change, it may take to understand the value of all these positive steps.

Main focus of UNIFEM is also long-term projects rather than short-term strategies when it is related to the women's rights during the election periods.

“How fast you can push the changes in a country, if the society is not ready, the change will be very slow. We are planting the seeds at the moment. The laws should be there, and then you can push for the implementation of them, but Afghanistan is not being able to keep up with the pace that international organizations are pushing”²²⁸.

The executive director of UNIFEM does not believe that they should try for short term means for elections when it comes to the rights of women, she is more for long-term means such as educating the political parties and both men and women in the society so that in the long-term they will be directing these investments for the implementation of political rights of women. ²²⁹ I agree on the necessity of long term means and furthering the gender mainstreaming through focusing on both men and women but I can't under value the importance of short term means that will also carry the gender equality to a more healthy, strong and sustained level at the far future. If the women are not given support enough and are left to struggle with the barriers in front of them alone then they will be discouraged from participating in politics, and so loose their interest in becoming

²²⁸ Interview with Meryem Aslan, the Executive Director of UNIFEM. Kabul. May, 2005.

²²⁹ *ibid.*

involved in decision-making of their own state governing their own society and be left out from the beginning. Easing their situation for struggling to become a part in politics encourages them to take a lead in all aspects which would sustain the equal participation so the democratization in long term.

It is true as an Afghan human rights activist briefly puts the time dimension for possibility of changes, in words: “If you want change...a change of a way of life needs another lifetime. You can’t change everything all of a sudden. If you do, it will be a surface change. It will not be accepted. Changing the mentality takes a long time”. On the other hand, change doesn’t come by itself, it needs to be pushed and activated, and dynamism existent at the women fragment of the society for change has to be valued, and made use out of it for the benefit of future generations.

4.6. Summary of Disagreements, Agreements, Options and Alternatives of Units

4.6.1. Table # 2: Unit of Analysis Table 2

| | | | | UNAMA | UNDP | UNIFEM | JEMB | AIHRC | MoWA | MoFA | MoE | Mol |
|---|-----------------------------------|---|--|-------|------|--------|------|-------|------|------|-----|-----|
| POSITIVE DISCRIMINATION in terms of... | | | | | | | | | | | | |
| | OPTIONS | specific options | | | | | | | | | | |
| ...EDUCATION | CIVIC EDUCATION & PUBLIC OUTREACH | WOMEN SPECIFIC on top of education for all WOMEN EMPOWERMENT through broader projects only for BOTH "MEN and WOMEN" | | A | D | D | A | A | A | D | A | |
| | | | | A | A | A | A | A | A | A | A | |
| | | | | D | A | A | D | D | D | A | | |
| ...FINANCIAL ASSISTANCE | REGISTRATION FEES | | | A | D | D | D | NU | A | D | | D |
| | TRANSPORTATION EXPENSES | | | A | D | D | D | NU | A | D | | D |
| | CAMPAIGN MATERIALS | | | A | D | D | D | NU | A | D | | D |
| ...SECURITY ASSISTANCE | for VOTERS | TRANSPORTATION ELECTION DAY | | A | A | D | D | A | A | D | | D |
| | | | | A | A | A | A | A | A | A | | A |
| | for CANDIDATES | CAMPAIGN | | A | A | D | D | A | D | D | | D |

Specific Alternatives, to the options listed on the table, are explained in the following page

All the options and specific options given above are election specific

The areas specified for positive discrimination above, are all example areas for the implementation of women's political rights at election periods

This table is formed based on interviews conducted in the field

D indicates **Disagreement** with the option

A indicates **Agreement** with the option

N U, indicates **No Unity** meaning, the director and the commissioners do not approach to the issue with the same idea.

(ex: The chairperson of AIHRC believes financial assistance is necessary while some commissioners can't see any possibility for implementing fair and effective financial assistance so they disagree)

Not all the **Ds** and **As** mean that, all these units representatives agree on the same idea, but it is the reflection of the general idea received by the researcher.

4.6.2. Alternative Affirmative Action Practices Discussed

The gender quota was recognized as a successful measure to promote women's participation in politics. In fact, on the practical side, there was much more to do for gender units in order to promote and provide in terms of affirmative action for women's participation. This was also the general idea in discussions of the post-election strategy groups on gender so the situation of "Women Campaigning and Voting Against Fear" can be helped.

Alternative ideas provided, at the meetings held at JEMB, by gender focal points of various UN agencies, as UNAMA being the coordination unit, during post presidential election period, on the way to parliamentary elections have been existed. For instance:

- increasing the number of the female voting centers, and registration centers, in order to face with the freedom of movement in positive terms, has been the most considered and favored alternative to female candidates registration problems, and female voters' transportation problems,
- for better participation at campaigning period, by giving women extra time on the "Sponsored Ad Campaign"²³⁰ through media outlets such as TV and radio.
- establishment of a trust fund in order to reach candidate women in need of financial support, even though proved difficult to implement
- in terms of the challenges and constraints that the election environment presented, disseminating information to women candidates²³¹, and support them on idea level on how to cope with these negative elements, this may help to decrease in number of self-censored cases,

²³⁰ The Sponsored Ad Campaign (SAC) was well used by women and this idea could be explored further. Both women and men candidates had been given a specific set of time to introduce themselves to the public however the length and frequency was quite low.

During and interview with Rebecca Cox, in post-election period, the percentage of women who had access to those campaigns and participated is 77%, and stressed on the fact that women used the SAC more than men.

The JEMB decision on campaigning was not clear because most of the candidates thought there was one month limit to all campaigning when it was actually only for media campaigning and for the use of SAC.

²³¹ Organizations working with female candidates found it difficult to reach them, because JEMB was unable to share contact information of individual candidates. The candidate nomination forms inclusion of a contact information box may help in future elections.

- within the elections educational frame, introducing political rights of women (being able to elect and to be elected) as a “right” rather than a “duty”²³². Through this way, women can also learn more on how to protect themselves at situations their rights are violated.
- supporting links between the party leadership and women at the grassroots level to enhance mutual understanding of election-related issues recommended, by Office of the Special Adviser on Gender Issues and Advancement of Women, Department of Political Affairs²³³ for post-conflict countries in general, may not perfectly suit to Afghanistan post-conflict case, since the political parties are labeled not trustable by the Afghan public and political parties may take advantage of using the criteria of women quotas for party individualist purposes.
- a female quota²³⁴ for election workers and observers could have helped to create a more reliable election environment, and helped women to feel better concerned since women observers would be more sensitive on gender issues.
- mobile teams for the registration period of candidates and also mobile teams for voters on election day has been considered to put in place in order to face with security issues that create an environment lacking freedom of movement, which never became true.

The conditions to have an election environment that people could be more eager to participate in elections have not been provided well. The government and its international partners haven't done enough to create such a secure election environment by preventing rights abusers from dominating Afghanistan's political space. HRW report, “Afghanistan on the Eve of Parliamentary and Provincial Elections”²³⁵, documents an underlying climate of fear among many voters and candidates, especially in remote, rural areas, an atmosphere that has negatively impacted the political environment in the lead up to the elections.

²³² AIHRC has made this recommendation to MoE and JEMB in order to advance the public outreach and civic education activities.

²³³ EGM/ELEC/2004/ REPORT. “Enhancing women's participation in electoral processes of post-conflict countries”. Office of the Special Adviser on Gender Issues and Advancement of Women Department of Political Affairs. February 20th, 2004. p.19.

²³⁴ This may be quite difficult to implement since election workers and observers are supposed to be voluntary.

²³⁵ “Afghanistan on the Eve of Parliamentary and Provincial Elections”. HRW. 2004.

I analyzed the level of coordination, collaboration for the implementation of political rights of women at election periods at my research and carried out arguments about the affectivity of the level of these co-ordinations and collaborations.

In terms of coordination, progress made in women's political participation since the presidential elections especially at the pre-parliamentary elections era, the new mechanisms succeeded in the coordination between women's rights related units and were already being applied such as the reformed ECC aiming to better function for the specific needs of the parliamentary elections even though the effectiveness of ECC was again questionable by AIHRC.

Empowering men and women rather than marginalizing women as a separate faction of the society was concluded as a better strategy for dealing with inequitable representation and participation of women by the international community. Specific responsibilities to put gender equality and the rights of women at the heart of post-conflict reconstruction of Afghanistan apply to the state, and since the state is weak for implementing these strategies by herself, especially apply to the international community. The adoption of UNSC Resolution 1325 reflected the concerns rose over the failures of previous international interventions to take the needs of women at conflict into account but not address the specific needs for women in post-conflict situations of a state adopting functional state institutions and the sustainable placement of women into these. Women in post-conflict Afghanistan managed to become a part at most of these institutions from government to NGOs and IGOs, and females have been encouraged to apply for taking place at international organizations as well but when it comes to the participation for representing the state itself, the placement hasn't managed to become effective. The current 25 member cabinet of Afghanistan which is the first approved cabinet by the new parliament includes no women minister not even the Minister of Women's Affairs even though the Parliament includes over 25% women. The previously given power to women through the seats of the Parliament, are being taken back by the current Parliament itself and President Karzai does not consider any necessity to interfere in this unfortunate situation. The initial placement of women into the Parliament was a success in terms of placing the quotas and has received great enthusiasm but a following

failure came in terms of adoption of women's new placements as citizens further sharing the power structures.

A continued absence of women's voices in governance would put Afghanistan's adoption of democracy at stake since equal representation requires getting over the complex relationship between power and participation, which needs to take international communities attention for new strategies applied in collaborate support and harmony.

Findings and Conclusions

5.1. Symbolic or Effective?

A sustained and systematic effort to integrate women into all aspects of national life in Afghanistan will be challenging, mainly for the protection of women's rights in all spheres including the political. Providing Afghan women with special attention for their needs in social life to supplement their new positioning in the political sphere needs long-term investment. On one side, the 'illusion of success' in which political right matters related to women seem on track; on the other side, voices for what should be done to help them get into Parliament, by considering the existing practical hardships based on social and cultural matters, remains silent. All the attention towards Afghan women deserves to become more effective than is that of the current position, as what has been promised by the international community and the Afghan state.

The rights of Afghan women have reflected internal and external tensions and been positively linked to the attempts of foreign nations to interfere in Afghanistan as well as legitimized the presence, acts, and policies of international actors in the country. Rather than allowing the reforms to grow from within, foreign influences are seen as the catalyst for reform in women's right. These foreign interests have been successful in hampering developments in women's rights but the changes should be long-lasting.

The legacy of war, poverty, and religious fanaticism has particularly affected Afghan women, who have suffered from both cultural and structural inequalities and violence in Afghan society for centuries. The persistence of this situation over the past quarter of a century has produced a culture of human rights abuses²³⁶. Afghan women remain severely disadvantaged in all aspects, while the position of some women in Afghanistan, politically and culturally, has improved since the Bonn Agreement. Afghanistan's new Constitution provides that "the citizens of Afghanistan - whether man

²³⁶ Ali Wardak. "Building Post-War Justice System in Afghanistan". In Chapter IV: Fundamental Principles of Human Rights and Transitional Justice. *Crime Law and Social Change*. University of Glamorgan. UK. 2004. pp. 319-41.

or woman - have equal rights and duties before the law", but concerted action needs to be taken to give effect to these rights²³⁷. "What are mostly spoken at all different international platforms been mainly about the burqa, democracy in general terms... all the same things"²³⁸, and there are much more issues than that: one of them is the political rights of women including democracy through women's effective participation.

UNSC Resolution 1325 affects this attention because Afghanistan is a test case for the practicability of this Resolution. This attention couldn't create an environment where Afghan state and global actors can/do give effective support to women in these necessary practical matters. The cultural and traditional nature of the state with its religious elements in the background, and the common dynamics of a post-conflict environment are the main excuses of the international community for not effectively integrating gender justice policies into the new women's rights dimensions introduced to the society.

The international community is congratulating the Afghan Government's commitment to the full enjoyment of all human rights and fundamental freedoms by women and girls, the restoration of the active participation of Afghan women in political, economic, and social life, the education of girls, the opportunity for women to work outside the home; as well as the provisions of the new Constitution; the ongoing security sector reform processes; the peaceful and successful presidential elections October 2004; the candidacy of Afghan women to the parliamentary elections²³⁹.

On the other side of the presidential elections, however, neither the political rights of Afghans have been properly protected or promoted for the October 9th, presidential election²⁴⁰ because the election process had been highly affected by various threats, intimidation, mainly due to the lack of security and proper mechanisms; furthermore many voters could not freely enjoy their rights to vote, and many candidates chose not to run for parliamentary elections due to the security situation and lack of various necessary mechanisms that make an election "free and fair".

²³⁷ Isobelle Jacques. "Afghanistan: Beyond Bonn". Wilton Park Paper Report based on Wilton Park Conference WPS05/28. 12th-14th, 2005. p.12

²³⁸ Interview with Nasrine Gross. Kabul. July 24th, 2005.

²³⁹ "Commission on Status of Women Adopts 10 Wide-Ranging 10 Wide Resolutions, but Fails to Conclude Current Session". Economic and Social Council Meetings Coverage. Department of Public Information, News and Media Division. March 11th, 2005.

²⁴⁰ "The Rule of the Gun Human Rights Abuses and Political Repression in the Run-up to Afghanistan's Presidential Election". HRW. September, 2004.

Actualizing the rights to vote and be elected turn subjects into citizens. Having the right to political participation via elections means participating in decision making that affect the community so the individuals. The level of fair participation of women in elections process is a factor of the state's level of sensitivity and maturity on the democracy scale, since free and fair elections is one of the main ingredient of democracy. And the level of importance given by the international community and the state on gender-elections issues is also a determining factor of the honesty and significance of global attentions.

Whether symbolic or not, whatever has been done and is being done in terms of gender equal policies in regards to the participation of women in decision making at the political representation level, is a success. Afghan women's story is an ongoing story with hope that has been partially answered with all the legislative regulations have been done and some of them waiting to be actualized, initiations for bringing democracy even though it is symbolic currently, is the start of a success story. Even though not all the necessary policies are being implied to strengthen women as voters, candidates, representatives, leaders, governors of their own society; a considerably good number of women are now sitting next to their male peers at the Parliament and already learning how to represent and administer their own state, hopefully they will become positive role models and open the minds of their future women colleagues to struggle and further the participation of Afghan women.

5.2. Lack of Will or Lack of Resources?

The elections were the first parliamentary elections in Afghanistan in decades and mark the end of the transitional period as well as the birth of a fully self-governed country. It was important to be culturally sensitive but the use of culture as an excuse to challenging the status quo is still the main reasoning behind not implementing various gender sensitive mechanisms. Further progress hasn't been compromised for the sake of traditional culture and Afghanistan was not considered ready for the full implementation of these rights.

Conflict can be seen as transformation: "Wars are sites of innovation, leading to new forms of legitimacy and protection"²⁴¹. The post conflict phase may constitute a brief window of opportunity for adopting and implementing radical reforms, when it comes to government as well as other structures. The post-conflict phase also represents a window of opportunity for gender issues. War and conflict not only imply increased vulnerability for women, but also a mobilization of female resources. Wars and conflicts do universally increase women's responsibilities in society in general. This is also true in the specifics of Afghanistan²⁴².

Observers and women's rights activists were concerned that low public awareness of the parliamentary election, the influence of warlords in rural areas and the strongly patriarchal traditional culture in the country would result in women being poorly represented in the new parliament. Some politicians explain the lack of women in politics by arguing that the high rate of female illiteracy means female members of parliament would lack the ability to defend women's rights and engage in meaningful political debate. What should be done to get women fairly into the parliament and how to prevent the existing hardships that try to block the ambitions of women haven't been the matters of concern. Many capable women who could be MPs were receiving threats and being intimidated. However, if they chose to withdraw, that decision implied their inability to deal with the violation of their political rights or awareness of the lack of protection and support by the state, so they withdrew in order not to further face these hardships and violations.

Lack of will of the international community and lack of resources discriminate against women and block their ability to effectively participate to elections. The government and the JEMB do not allocate special assistance and facilities for female candidates; for instance, a balanced election campaign for men and women is not provided since there was no need to afford women candidates any additional help. According to the statement of a JEMB spokesman: "Women enjoy all the privileges and

²⁴¹ UNDP Human Development Report. 2004. p.97.

²⁴² Espen Lindbaeck, Camilla Rie Hoe, Norad and Liss Schanke. "Status of Women in Afghanistan in Programs Supported by Norway in Afghanistan: Post conflict as window of opportunity". April 4th, 2005. p.9.

supports the men do and no exceptional assistance can be considered”²⁴³. In reality, it is questionable how well women enjoy the same privileges and support.

The core problem is how to make the given political rights of women become effective and implemented in all spheres of the nation-- in social, cultural, economic and political. The political sphere is especially challenging in that it completely connects to the other spheres because if a woman wants to participate in politics, she needs to have her own economic independence to run her own political campaign and spend money for related political participation expenses such as the candidacy registration fee; she needs to be treated as equal within the society so that she can have equal access to public spaces for her political campaign and lobby for herself within society by talking to the people of her nation, both to men and women; she needs to be treated with equality in the cultural sphere so that her culture can absorb her new positioning as a politician as a part of her Afghan culture. It is essential for the eventual and long term reconstruction and development of Afghanistan that civil and political rights not be analyzed in isolation from economic, social and cultural rights. The situation of women in Afghanistan illustrates how norms generally classified as “civil and political rights” and “social, economic and cultural rights” are entirely interdependent²⁴⁴.

It is questionable how much the social, cultural, economic and political background of the country was considered while these gender equality laws were put in the Constitution. Because once these rights exist there, then the State has the obligation to implement them. If the state does not have the power and necessary mechanisms to implement these laws, then how much the international organizations located in Afghanistan with the mission of implementing these rights, consider actualizing these current rights in the Constitution, remains important. Unfortunately, technical matters precede over substance at the JEMB functioning system, so the level of importance given to these women’s rights concerns by the international community remains highly questionable.

²⁴³ JEMB spokesman, Sultan Ahmad Baheen.

²⁴⁴ “Indivisibility and Interdependence of Women’s Economic, Social, Cultural, Civil and Political Rights in the Afghan Context: Women’s Health and Human Rights in Afghanistan, A Population-Based Assessment” Report by Physicians for Human Rights. 2003. p.15.

5.3. Conclusion

Affirmative action is recognized and being implemented with existing quotas for the parliament, the gender equality exists in the Constitution, the necessary instruments are forced with ratified conventions; however, in order to actualize what exists on paper, Afghanistan has not adopted policies to integrate affirmative action to the practice level yet even not by the international community working for women's political rights in there.

Afghan experience has shown that there is a set of guiding principles emerging with regard to gender equality related to the election periods. The difference in the level of importance given to these issues by human rights and gender units is the main reason that blocks the implementation of these rights.

The disparities exist among the different levels operating for the human rights mission of which women's rights and political rights of women are a part. These levels I researched for this thesis carry out some differences; mainly due to the lack of coordination, they are far from unification on the implementation of political rights of women. From the words of a senior gender advisor at an international organization: "It's almost embarrassing to say, but there is no coordination. There is very little capacity for coordination. There is so much infighting between institutions. The institutions that are here and that are supposed to have a shared goal, they do not get along"²⁴⁵.

The units under the umbrella of UNAMA and JEMB as the head for the implementation of the election matters do have close coordination as the recommendations come from UN units operating only under UNAMA, since JEMB does not have the authority to make suggestions and can't be a part of the decision mechanism. The main national commission effective on election matters is the AIHRC with its joint declarations together with UNAMA on election matters for the violations of the political rights of women and the fair implementation of these rights. Due to the independent nature of AIHRC, this commission carries a more critical stance but does not have the power of implementation and UNAMA is more hesitant to criticize the Afghan

²⁴⁵ taken from Lina Aburafeh's interviews. "Lessons from Gender-focused International Aid in Post-Conflict Afghanistan ...Learned?". July, 2005. p.22.

government when the necessary considerations for mechanisms on practice level is not the priority of the government. Additionally, because of the structure of the government as one body with smaller sections, as the ministerial sub units, as the women's rights units within the most of the ministries which have the mission of carrying out the women's rights, can not specifically focus on the political rights; thus, the focus on the promotion of political rights of women through the political participation of women is totally missing.

Furthermore, the ministers themselves do not believe in the possibility for the full implementation of the political rights of women and are also hesitant to use the state sources for any instrument and mechanisms specific to women; these ministers mainly believe men also face the same hardships even though they recognize the worse situation of women.

UNIFEM and UNDP specifically focus on women but are in favor of long-term projects rather than focusing on political rights of women on election periods, because this has been considered as a short-term investment, and by focusing on both men and women, the fair positioning of women including their political rights, in the long-term will take place. These international units also keep in mind that they have to remain neutral and consider the principle of non-discrimination in order to be fair to all women, and in order to be fair to both men and women, to the society as a whole as well.

The UN units do not speak with one voice, but when it comes to the political rights of women, UNIFEM which should have the leading role and necessary funds refrains from dealing with the political rights in practical sense for the election periods. Disparities exist within the same units, as intra-unit disagreements, but the high level representatives of these UN units have the power to approve projects.

While my starting point of this research was to see whether the interconnecting social, religious and cultural context of the country, as in the case of Afghanistan, have been considered by the representatives of these human rights units when deciding how to implement the political rights of women for elections, unfortunately this same social, cultural and religious context of the country was shown as the main block for implementing such rights; the Afghan case was thus shown as greatly limited in finance, justice, religion, and traditions. Therefore, the general idea behind the lack of

implementation becomes visible with this reasoning, which is the main point in which all these units agree in some sense, but the degree of involvement on this fact/assumption differs. These units' visions for the time period of social change differs so the policies they adopt to implement women's political rights also differs in regards to their assumptions for social change implying the readiness of the society to adopt and integrate.

The success or failure of the elections depends to the extent in which the Afghan society as voters and candidates view the electoral process as credible and accept the legitimacy of the election results. There election environments are challenging, but Afghans deserve elections that deserve international standards. Giving the Afghan women the rights to vote and become candidates are not enough, if these rights are not complemented by necessary mechanisms, instruments and additional assistances to the challenging electoral environment, Afghan women's enthusiasm for the system of elections can fade and thus decrease the legitimacy of attempts for the new democratic instruments in the country which after more than a quarter-century has been devastated by war.

As Kandiyoti mentions the trinity of democratization, good governance and women's rights can be turned into poisoned gifts under new forms of global administration and stresses on the increase of the number of the failed states. I do not consider the current Islamic Republic of Afghanistan as a failed state because the existence of law and order and the functional aspects of them are newly put in place with all of the regulations done since after the September 11 attacks, law and order are expanding and placing themselves in various areas including with the state regulations towards women's rights in that aspect. The placement of law and order are in process, growing and expanding out of over 30 years wars and chaos, so it is not the right time to question whether Afghanistan has a label as a failed state since the stages of democratization, good governance and women's rights as a part of both these two are currently being implemented and need long term assessment.

The uncompromising factions on the matter of culture and traditions and the situation of the society and government representatives as not ready to digest quick changes, in the case of Afghanistan is true in the way that representatives of the global

institutions follow light policies without pushing hard for change while the new regulations in law and reforms related to gender equality such as the implementation of an election law which includes gender quotas for the Parliament, and the augmentation of 'Gender Affairs Units' almost within all the ministries of the State itself. There is not much coherence in between the new regulations of the State that are the outcomes of the international community's efforts, and the international community agencies'- INGOs and IGOs- intentions to push for feminist policies as Ignatieff has described as 'nation-building lite' with feminist light policies meaning the weak interventions and willingness to confront the culture and traditions by involving minimum cost and risk.

The UNSC Resolution 1325, as representing the legality of new possibilities and promises for the international community to apply gender equal policies by also involving in environments that the positive opportunities out of the military interventions become apparent, has not evoked unique discussions for the Afghan state and society yet. When some of the key commitments made in this landmark resolution reviewed, such as the gender parity at all levels of decision making, gender perspective in post-conflict processes, respect for international law as applicable to women and girls, on the legal level the application of major elements of this Resolution seem well done, on the other side of the coin, the matter of culture and traditions in terms of the nature of the society in general and the representatives of the state as not being ready to digest changes, are missing at this Resolution's literature, how to make possible the integration of new international norms in terms of women's rights, a road map in order the post-conflict states to digest all of these new elements have not been considered. Various numbers of roundtables entitled 'Peace Support Operations: Consolidating Progress and closing Gaps in the implementation of UNSC Resolution 1325' happened using the framework of the '3 Letter P': the Principles of conflict prevention, the Participation of women in peace and security, and the Protection of civilians with consideration to the specific needs of women, men, girls and boys aiming to develop practical tools for advancing the effective implementation of Resolution 1325. The contribution of Afghan women in peace-building and reconstruction efforts in post-Taliban Afghanistan as the women peace-builders has proved the capability of this Resolution's some major elements applicability and success,

but the further strategies for the time period at which whether the society digest or not. It is highly questionable whether the government representatives in Afghanistan will keep up with further strategies of gender equal policies integrate this gender equal mentality into their state policies and further the state feminism without international involvement, which needs further strategies to make it become true. The stage named as the opportunity space for women specific to post-conflict states, should not fade away just because some necessary policies towards gender equality have been initiated, existing enthusiasm and popularity and dynamism have to be furthered.

Based on lessons learned from the 2004 presidential and 2005 parliamentary Elections, the state and the international organizations managing the mission of free and fair elections lack the willingness to coordinate the practical matters of implementing the political rights of women. The priority of such organizations is not free and fair elections with full female participation, but the experience of elections with limitations. Even though these limitations do exist and the world can not expect short-term change, even a minimal level of success that manages to have women become a part of the political scene fairly, represents enormous progress for the entire society in the long-run.

APPENDIX

A.1. MAPS OF AFGHANISTAN

Geographical Map of Afghanistan



(Source: Afghanistan Research and Evaluation Unit)

Ethnic Divisions Map of Afghanistan



(Source: National Geographic)

Table #3 Major Ethnic Groups in Afghanistan²⁴⁶

| Ethnic Group | % of Total Population | Native Language | Comments |
|--------------|-----------------------|-------------------|--|
| Pashtuns | 38% | Pashto (Iranian) | Also inhabit the Northwest Frontier Province |
| Tajiks | 25% | Dari (Iranian) | Also inhabit Tajikistan; one of the original Central Asian peoples |
| Hazara | 19% | Dari (Iranian) | One of the original Central Asian peoples |
| Uzbek | 6% | Uzbek (Altaic) | Also inhabit Uzbekistan |
| Turkmen | 12% | Turkmen (Altaic) | Also inhabit Turkmenistan |
| Aimaq | | Dari (Iranian) | Central Asian people |
| Beluchi | | Beluchi (Iranian) | Also inhabit northern Pakistan |
| Others | | Variety | |

²⁴⁶ The table above summarizes information on the major ethnic groups in Afghanistan.
 <<http://www.culturalorientation.net/afghan/apeop.html>>

A.2. CHRONOLOGY OF²⁴⁷ POLITICAL DEVELOPMENTS IN AFGHANISTAN (1919-POST TALIBAN ERA)

August 19th, 1919

Independence from British colonial rule

1926-1929

First Shah, Amanullah Khan Ghazi

1924 First Constitution

The first Afghan constitution approved by the 1,052 members of the Loya Jirga, the grand assembly of the country's leaders, defining the general legal framework for an unprecedented revolution in administrative, judiciary, military, and fiscal affairs

1930-1933

Kingdom of Mohammad Nader Shah

1933-1973

Kingdom of Mohammad Zaher Shah

August 17th, 1940

Mohammed Zahir Shah declared Afghanistan's neutrality in World War II and remained neutral during the Cold War.

1953-1963

Government of Prime Minister Mohammad Dauod

March 29th – April 1st, 1955

Crisis of territorial dispute with Pakistan

Political demonstrations in Kabul against the Pakistani government severing diplomatic relations

May 29th, 1963

Re-establishment of relations with Pakistan

1963

First Civilian Government

1965

New Constitution Adopted by Loya Jirga, it granted freedom of speech, religion

²⁴⁷ “Chronology of Afghanistan” taken from <http://www.afghanmodelschool.org/> and edited from various sources

1965

First Parliamentary Election.

Wolesi Jirga (House of Representatives) and Meshrano Jirga (Senate)

January 1st, 1965

People's Democratic Party of Afghanistan (PDPA), followed by many other leftists, nationalists and conservative groups and parties

July 17th, 1973

First President of a Republican Regime

Installment of Dr. Mohammad Daoud declaring a new Republic of Afghanistan, ousting the monarch government of Mohammed Zaher Shah in a bloodless coup d'etat.

April 1978

PDPA arrested and lead to an uprising of leftist army officers who were PDPA members

April 27th, 1978

Saour (April) Revolution.

Mohammad Daoud's 5 year regime ended by a leftist coup d'etat.

Dec. 27, 1979

Soviet Military Intervention. Invasion and start of anti-Soviet war by Mujahideen

1985

New Constitution

Granted a multiparty system adopted in Loya Jirga

July 20th, 1987

Meeting of Afghan and Soviet leaders to discuss withdrawal

Afghan President Najibullah met with Soviet President Mikhail Gorbachev.

November 30th, 1987

President Najibullah became the first recognized President after Soviet withdrawal

June 7th, 1988

President Najibullah addressed the UN General Assembly for peace solution of crisis in Afghanistan

February 15th, 1989

Soviet troops pull out

September 3rd, 1990.

Najibullah participated in UN conference at Paris, paid courtesy to French minister of foreign affairs

November 19th, 1990

Geneva Meeting. President Najibullah arrived in Switzerland for discussions with Afghan personalities.

Switzerland in mediator role for formation of coalition government in Afghanistan.

April 25th, 1992

Resignation of President Najibullah.

The Afghan President resigned from the power in order to form a broad-based government according to the UN agreement.

1992

Afghan Civil War

Mujaheedin leaders seized Kabul, then formed factions fighting each other

1992-1994

Human Right abuses and failed cease fire agreements

Bitter factional fighting killed at least 50,000 in Kabul, mostly civilians. Various warring groups signed four peace agreements, but fighting resumed.

September, 1994

Taliban Pakistan aligned with and supported an army of former Islamic seminarians who enter the fray.

September, 1996

Taliban took Kabul & executed the current president Najibullah

August 8th, 1998

Genocide and Ethnic Cleansing²⁴⁸, Massacre of Taliban Militia after the capture of Mazar-e Sharif by Taliban.

August 15th -20th, 1998

Russian troops assisted Northern Alliance defending against Taliban. Taliban began attack on northern provinces of Afghanistan.

²⁴⁸ "The Massacre in Mazar-i Sharif". *Human Rights Report*, Amnesty International. Vol. 10, No. 7. November, 1998.

August 18th 1998

Taliban captured the large city of Mazar-e Sharif. The situation became intensive at the border with Tajikistan.

August 20, 1998

US Embassy Bombings in Kenya and military response to Al Qaeda

US air strikes in Khost, Afghanistan targeting Al Qaeda camps. Approximately, 80 missiles launched into the Afghan territory.

March 12th, 2001

Buddhist history destroyed. The Taliban regime demolished the two giant statues of Buddha in Bamian Valley in spite of huge resistance of international communities.

August, 2001

The first consultative conference of Afghans held in London. The conference discussed the possibility of future activities of peace in Afghanistan.

July, 2001

Taliban arrested Christian aid workers, 8 international workers indicting for propaganda of Christianity in Afghanistan.

Sept. 9th, 2001

Leader of opposition Northern Alliance, Ahmad Shah Massoud, critically injured in Panjshir.

September 11th, 2001

World Trade Centers & Pentagon Attack. Hijackers crashed airliners into US symbols of power, collapsing and killing more than 6,000.

September 12th, 2001

New US policy: Bush made a broad declaration of war against terrorist and the states which harbor them

September 15th, 2001

Ahmad Shah Massoud died as results of injuries by assassins

September 20th, 2001

US Demands Bin Laden & Al Qaeda Leaders. Bush demanded the Taliban regime hand over the suspected terrorists without condition

October 7th, 2001

US attacked Afghanistan, America air raids in Afghanistan.

October 18th, 2001

US Special Forces American ground troops deployed in Afghanistan

A.3. CHRONOLOGY OF KEY POLITICAL DEVELOPMENTS IN AFGHANISTAN AFTER THE OUST OF TALIBAN²⁴⁹

November, 2001

the United Nations organized a meeting Bonn, concluded on December 5th, adopted the Bonn Agreement on provisional arrangements in Afghanistan pending the re-establishment of permanent government institutions

December, 2001

Security Council resolution 1386 (2001) authorized the establishment of an International Security Assistance Force (ISAF) to help the Authority maintain security in Kabul and its surrounding areas. The initial mandate of the force was for a period of six months. On 23 May 2002, the mandate was renewed for a further six months by Council resolution 1413 (2002). (In January 2004, ISAF expanded its reach beyond Kabul.)

June, 2002

The Emergency Loya Jirga (ELJ) elected Hamid Karzai, as the President of the Afghan Transitional Administration (ATA).

January, 2004

The Constitutional Loya Jirga (CLJ) was successfully concluded with a nearly unanimous agreement among the 502 delegates on the final draft. In view of the many controversial issues that emerged and nearly paralyzed the assembly in its final days, this agreement represented a significant achievement

October, 2004

The presidential election, which was contested by 18 candidates, including one woman, was held on schedule on October 9th, 2004

²⁴⁹ Various sources used, mainly Irin News, UNAMA website, BBC News

February, 2005

After a decade of a lack of reliable information, Afghanistan launched its first-ever National Human Development Report (NHDR)

April, 2005

A key meeting between the Afghan government and international donors ended with renewed commitment from wealthy nations to reconstruction and Kabul calling for more attention on what it called “neglected infrastructure building.” Donor countries got the chance to talk directly to authorities about progress in reconstruction at the third Afghanistan Development Forum (ADF).

And the Afghan authorities have called for strengthening of the justice system in Afghanistan saying that more than 50% of Afghans do not have access to judicial and legal services in the post-conflict country.

June, 2005

Election worker killed in the 2005 parliamentary election process.

A new tripartite agreement was signed Iran, Afghanistan and the office of the United High Commissioner for Refugees (UNHCR), facilitating the voluntary repatriation of Afghan refugees from Iran.

July, 2005

Violence against women remains a huge problem in Afghanistan, a visiting United Nations official Yakin Erturk, Special Rapporteur of the United Nations Commission on Human Rights on violence against women, declared.

September 18th, 2005

Parliamentary elections were held

The following day, the turnout in parliamentary and provincial polls in Afghanistan is estimated at around 50% of the electorate, considerably lower than last year's presidential poll where 70% of the electorate voted, participation was considered by Peter Erben, Chief Electoral Officer (CEO) at the Joint Electoral Management Body (JEMB), as quite satisfactory in the context of a post-conflict situation.

November 24th, 2005

The results of September's landmark legislative elections in Afghanistan have been finalized. The results were initially scheduled to be released in October, but have been repeatedly delayed by inquiries into widespread electoral fraud across the country.

December, 2005

Kabul has welcomed the North Atlantic Treaty Organization's (NATO) decision to expand its peacekeeping mission, NATO foreign ministers approved mission for an expanded Afghan peacekeeping force for 2006, which Washington hopes will allow it to reduce US troop levels in the country. The agreement makes NATO's Afghanistan mission its biggest ever operation outside Europe.

December 20th, 2005

Members of Afghanistan's first parliament after more than three decades of conflict were sworn, marking a major milestone towards the fledgling state's future peace and stability. Afghanistan has had no elected parliament since 1973.

A.4. LIST OF INTERVIEWS CONDUCTED (49+10)

JEMB

- Aykut Tavsel, Media Relations Representative
- Belquis Ahmadi, Senior Advisor to Peter Erben (Chief Executive of JEMB)
- Enayatullah Nabel, Deputy Head External Relations Department
- Lisa Yaseen, replacement to Marilyn Evans
- Marilyn Evans, gender focal point
- Momina Yari, IEC
- Najla Ayubi, Gender focal point for presidential elections, one of the national commissioners at IEC as well
- Oliver Vick—registration officer-Kabul
- Rebecca Cox, International Commissioner
- Sheila Farooq, head of external relations

UNAMA

- Corey Levine—Gender Focal Point & Chairman of the Election Task Force
- Karl-Alexaneder Wohlgemuth— Brigadier General, Military Advisor to the SRSG
- Nezam Katawazi—human rights officer

UNIFEM

- Ahmad Sulieman Hedayat—Project Assistant on MoWA capacity building
- Ermelita V. Valdeavilla—Institutional Capacity Building Expert
- Meryem Aslan—Programme Director
- Najia Zewari—Senior National Program Officer (Gender and Justice Unit)

UNDP

- Fulya Vekiloglu—Programme Manager

Institutional Capacity Building Programme (MoWA)

- Hiroko Takagi— Programme Officer

Anti Corruption, Democratization & Citizens Participation, Afghan Elections,
Establishment of Afghan legislature

- Sitara—Assistant Country Director

Democratization and Civil Society Empowerment

- Thusitha D. Pilapitiya—Consultant

Support to the Establishment of the Afghan Legislature Project

MoWA

- Beryari—Contact person of UNIFEM at MoWA—monitoring expert, consultant

- Fevziye—Head of Legal Department

- Massouda Jalal—Minister

- Mohammad Mahqiq—Legal Advisor to Women’s Affairs

- Monema Mausoor—deputy minister

- Noria Haqnigar—Head of Training department

- Ormi—CEDAW

- Shabir Ahmad Pardesi—Program Assistant

- Safia Sadiki—Gender advisor to MRRD

- Shekila Afzalyar—Legal Department, deputy head

MoFA

- Dr. Abdullah Abdullah

Minister

- Zohra Rosekh

Director

Office of Human Rights and Women’s International Affairs

MoJ

- Sarwer Danish—Minister

Italian Embassy

- Vincenzo Lattanzi—Justice Reform Program Director

AIHRC

- Ahmad Fahim Hakim--Deputy Chairman

- Ahmad Nader Nadery—Commissioner

- Mohammad Farid Hamidi—Commissioner

- Sima Samar—Chairperson

Women's Rights Activists

- Homira Nassery—previously Support to Senior Women in Development-WB MoRRD

- Nasrin Gross—Kabul University

- Paul Greening—previously IOM, currently UNFPA

AIL

- Sakena Yacoobi—director

Agha Khan Foundation

- Kaja Borchgrevink—Programme Grant Officer

NDI

- Talibert Laoc—Senior Program Manager

Domestic Election Monitoring

EU Election Observation Mission for the Parliamentary Elections

- Emma Bonino—head of the EU mission

- Myriam Gaume

- Serana di Matteo

some parliamentary elections' candidates (#10)

A.5. THE SET OF QUESTIONS FOR THE WOMEN'S AFFAIRS MINISTER²⁵⁰

The aimed research questions are about the political rights of Afghan women such as:

Freedom of expression

Freedom of movement

Principle of non-discrimination

Principle of non-partiality

I would like to conduct an open-ended interview with Dr.Masooda Jalal, and I can assure you that I will be fully respectful to her thoughts and considerations on how her knowledge will be conducted under this research, since I am trying to come up with a research in order to make a contribution for the situation of women's human rights in Afghanistan.

The questions aimed to be asked during this interview are:

- During the past Presidential elections some changes have been tried to be implemented in order to implement the political rights of women. Even where direct restrictions may have eased, the continuation of the unfavorable socio-political environment inhibits women from taking initiatives as fear, rather than a sense of confidence. Was this situation considered while procedures in order to implement free and independent elections to be flourished in Afghanistan? And what kind of prevention mechanisms were aimed to be implemented from your Ministry; and after the experience of the latest elections, what kind of future prevention mechanisms are being aimed to be implemented?
- As one of the main dimension for the implementation Afghan women's political rights, the education of women has a crucial place. The abandoning of previous policies prohibiting female education and work is a big step for the advancement of women, what will be the future steps aiming to prevent the restrictions from the communities and families on the behavior, movement and activities of Afghan women and girls? Does the

²⁵⁰ After introducing myself to the Ministry, which university/nationality I represent clearly with one phone and a couple of e-mail communication with the Secretary, I have sent this set of questions to the Secretary of the Minister. The Secretary have requested to view my set of questions in order to set up an interview with the Women's Affairs Minister. I also gave a brief explanation of my focus on the interview and my aims for conduction this interview as a part of this text.

Ministry of Women's Affairs work in complete collaboration with the Ministry of Education or with any elections focused national/international organization on such matters? How does your ministry approach to the society in general in order to integrate education policies teaching women's political rights? Do you focus on women only education or on men and women both?

- On what level do the MoWA need support and resources to develop its capacity to coordinate the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which was ratified on March 2003, as the main political will and commitment to end the gender discrimination?
- How does your Ministry consider the coordination in between the organizations working for women's rights such as AIHRC, UNICEF, special representative of HR Commission under UNAMA, and UNAMA gender focal points? Even though all these units work in the field in a supportive environment for each other, do you believe if there is a lack of coordination in between these organizations, and also in between the MoWA and any of these organizations? (such as any differences on operations in order to implement the human rights, the way that these rights are aimed to be implemented, any priority differences, any differences on the understanding of women's political rights)
- In the cases of lack of coordination, differences on the understandings of human rights concepts, and different priorities given on the implementation related to the political rights of women for election periods, what kind of coping mechanisms should be used by the Ministry of Women's Affairs in order to overcome these lack of coherences?
- As one of the 2004 Presidential Elections candidates, and as being the only women among the 18 candidates, I would like to hear about your own personal hardships? Since you are not part of a political party, how did you support your election campaign and traveling in financial terms? Have you ever been prevented to give your campaign speech in anywhere of the country? Have you refrained from traveling in any regions of the country due to the general security situation? Have you received any life threats?

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