

# **Enforcing Afghan Women's Right to Development: Who is Responsible?**

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## **Introduction**

Before, during, and after the conflict situation in Afghanistan, women have been markedly marginalized. Before the conflict, they were boxed in their traditional roles at home, with very limited rights. During conflict, they struggled to survive in the absence of the men who went to fight in the battlefield. After the conflict, they either found themselves widowed and alone or returned to their pre-conflict situation. Even during the Transition, their situation leaves much to be desired.

To be sure, many reforms have been implemented to improve the status of women. In addition to the International Convention on Civil and Political Rights and the International Convention on Economic, Social, and Cultural Rights,<sup>1</sup> Afghanistan is now a Party to the Convention on the Elimination of Discrimination Against Women which it ratified in 2003. Further, its new Constitution provides for the equality of men and women and guarantees women's right to education. Yet, all these seem to continue to fall short as Afghan women still ail from the wounds of war and history. The legal framework advancing women's rights struggles against culture and tradition that relegates women to a lower status. Until 2014, Special Rapporteur Rashida Manjoo still observed that women remained victims

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<sup>1</sup> Afghanistan ratified both instruments on January 24, 1983.

of violence and that meaningful women's participation in political and peace processes remains a concern.<sup>2</sup>

In conflict and post-conflict situations, expedited recovery of the nation is undoubtedly important. It must not be forgotten, however, that the surviving population who bears the burden of carrying recovery forward consists mostly of women. It is therefore essential that women's rights are recognized, protected, and actively advanced. Crucial among these rights is women's right to development. With the sufferings that women go through during conflict, they need greater assistance to overcome the terrors of war and rise above the challenges of post-conflict reconstruction. As women's right to development encompasses a host of other rights, it plays a pivotal role in women's post-war recovery.

There is no doubt that the State of Afghanistan is responsible for protecting women's rights, including right to development. However, where its efforts prove insufficient, who else can the Afghan women turn to? Or is there no hope for them? Are the protections provided under the international human rights instruments limited by the capacities of the specific state of which a woman is a citizen?

This paper proposes that women's right to development in post-/conflict reconstruction situations is an effective means of protecting and advancing women's rights—by other States. In the case of Afghanistan, “third party” States which have directly charted the reconstruction and transition process after the conflict and successful invasion of the territory by the United States in 2001, these “third party” States share in the responsibility of the Government of Afghanistan in protecting women's rights.

This paper will navigate through the situation of women in Afghanistan, their historical status in society, their role in post-conflict reconstruction, the Government's response to women's rights and the inadequacies of these responses. It then proceeds to pose the theory that “third party” States who have directed and participated in the reconstruction-transition-transformation process of Afghanistan have an

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<sup>2</sup> United Nations, General Assembly, *The Situation in Afghanistan and its implications for international peace and security: report of the Secretary-General*, A/69/647-S/2014/876 (9 December 2014), available from undocs.org A/69/647-S/2014/876.

enforceable obligation to protect, promote, and advance the rights of Afghan women, especially the right to development. As it discusses the legal framework to support this theory, this paper is interested in finding out whether the assistance that these “third party” States have been rendering to the State of Afghanistan are to be viewed as discretionary altruistic aid that can be withdrawn at anytime or enforceable international obligations that must be fulfilled.

### **I. Retracing the Steps of Women in Post-Conflict Societies: The Women of Afghanistan**

Afghanistan has had a history characterized by internal strife that has left it with scars that is still in the process of healing. For two decades since the 1980s, Afghanistan was marred by civil war which only ended upon the defeat of the Taliban forces in 2001. Extremely affected by the atrocities were the women, who, to begin with, were already struggling with the impositions of Afghan society even during peace. Women in Afghanistan are bound by notions of honor and shame that are linked to the national destiny. As such, Afghan women were under the strict watch of society, restricting their movements to preserve the values of modesty and purity. They were subjected to *pardah* (seclusion and veiling) and confined to the home.<sup>3</sup>

When the civil war ensued, women were exposed to further vulnerability. Left by their husbands to fight in the war, women ended up begging in order to survive. Widows found themselves at a quandary as to how to live in a male-dominated war-stricken society.<sup>4</sup> When the Taliban forces came into power, Afghan women were systematically deprived of their rights. Aside from raping and sexually assaulting women, the Taliban enforced discriminatory edicts against women, perpetuating a strong belief that women had no role outside the family.<sup>5</sup> Beginning with

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<sup>3</sup> World Bank, *Afghanistan: National Reconstruction and Poverty Reduction – The Role of Women in Afghanistan's Future*, March 2005.

<sup>4</sup> G.A. *Human Rights Questions: Human Rights Situations and Reports of Special Rapporteurs*, ¶ 71-72, 49<sup>th</sup> Sess., U.N. Doc. A/49/650 (November 8, 1994).

<sup>5</sup> World Bank, *Afghanistan: National Reconstruction and Poverty Reduction – The Role of Women in Afghanistan's Future*, March 2005.

the reinstatement of the *burqa* dress code,<sup>6</sup> the Taliban regime restricted women's access to education and work opportunities, freedom of expression, and participation in government.<sup>7</sup> Women were permitted very limited movement, requiring them to have a male relative accompany them whenever they left the house or they would be liable to harassment and public beating.<sup>8</sup> This imposed hardship on widows as they could not go out to get food.<sup>9</sup> Women were excluded from all public activity.<sup>10</sup> As if these were not enough, women were also given limited access to resources like food and water. These bans resulted in lower enrolment rates of girls, dropping to as low as 9.6% and almost non-existent in 1999<sup>11</sup>, decrease of women in employment, increased health risks and mortality rate, and extreme poverty.<sup>12</sup> The United Nations Children's Fund (UNICEF) reported maternity deaths of 15,000 every year and high malnutrition, with women giving up their food allowance in favor of men. Women became

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<sup>6</sup> Office of the Special Adviser on Gender Issues and Advancement of Women, *Report of the UN Interagency Gender Mission to Afghanistan* (November 12-24, 1997).

<sup>7</sup> The Secretary General, *Report of the Secretary General on the situation of women and girls in the territories occupied by Afghan armed groups*, delivered to the Sub-Commission on the Promotion and Protection of Human Rights, U.N. Doc. E/CN.4/Sub.2/2001/28 (August 2, 2001).

<sup>8</sup> Office of the Special Adviser on Gender Issues and Advancement of Women, *Report of the UN Interagency Gender Mission to Afghanistan* (November 12-24, 1997).

<sup>9</sup> U.N. Econ. & Soc. Council [ECOSOC], Comm. on Human Rights, *Question of the Violation of Human Rights and Fundamental Freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories: Final Report on the Situation of human rights in Afghanistan*, ¶ 73, U.N. Doc. E/CN.4/1996/64 (February 27, 1996) (prepared by Special Rapporteur Mr. Choong-Hyun Paik).

<sup>10</sup> The Secretary General, *Report of the Secretary General on the Discrimination Against Women and Girls in Afghanistan*, delivered to the Comm. on the Status of Women, U.N. Doc. E/CN.6/2002/5 (January 28, 2002).

<sup>11</sup> U.N. Econ. and Soc. Council [ECOSOC], Comm. on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *The Implementation of Human Rights with Regard to Women: Report of the Secretary-General on the situation of women and girls in Afghanistan, submitted in accordance with Sub-Commission resolution 1998/17*, U.N. Doc. E/CN.4/Sub.2/1999/13 (July 14, 1999).

<sup>12</sup> World Bank, *Afghanistan: National Reconstruction and Poverty Reduction – The Role of Women in Afghanistan's Future*, March 2005.

liable to extreme depression such that 65 per cent considered suicide and 16 per cent attempted to commit suicide.<sup>13</sup>

Religion was invoked to justify these policies so that a violation of permissible social behavior of women visited the honor and sanctity of the family itself.<sup>14</sup> In truth, these policies were political tactics.<sup>15</sup> Needless to say, these restrictions seriously hampered women's rights and ability for self-development, making them extremely dependent on men and powerless to seek changes in their situation. These further excluded women from any kind of progress or development envisioned by the Taliban for Afghan society.

Nonetheless, women achieved some gains during the war. The war taught women to find ingenious means of survival, unintentionally empowering women in a way that they have not felt in times of peace. By force of circumstance, women took over the roles of the males who went off to war or died.<sup>16</sup> Women then discovered the extent of their capacities, which exceeded what they have been traditionally made to believe. Skilled women converted their homes into secret schools for the girls in the neighborhood to earn even a modest amount. Women's organizations continued in clandestine operation, enjoying full trust of the community.<sup>17</sup> Although subsequently kept out, women were enlisted in medical care and education out of wartime necessities. This did not have great impact in

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<sup>13</sup> U.N. *Women, Peace and Security: Study submitted by the Secretary General pursuant to Security Council Resolution 1325 (2000) citing Physicians for Human Rights, Women's health and human rights in Afghanistan: A population-based assessment* (2002), at 19.

<sup>14</sup> World Bank, *Afghanistan: National Reconstruction and Poverty Reduction – The Role of Women in Afghanistan's Future*, March 2005.

<sup>15</sup> The Secretary General, *The Implementation of Human Rights with Regard to Women: Report of the Secretary-General on the situation of women and girls in Afghanistan, submitted in accordance with Sub-Commission resolution 1998/17*, delivered to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, U.N. Doc. E/CN.4/Sub.2/1999/13 (July 14, 1999).

<sup>16</sup> Afghanistan's Millennium Development Goals: Report 2005, Vision 2020.

<sup>17</sup> U.N. Econ. & Soc. Council [ECOSOC], Comm. on Human Rights, *Question of the Violation of Human Rights and Fundamental Freedoms in any part of the world: Report on the Situation of human rights in Afghanistan*, U.N. Doc. E/CN.4/2003/39 (January 13, 2003) (prepared by Special Rapporteur Mr. Kammal Hossain).

terms of changing societal perception of the female gender<sup>18</sup> but it was nevertheless both an acknowledgment and an opportunity to show women's abilities.

Through international interventions, women would have limited participation in labor but most of them worked only in agriculture and the health sector. In regions where female participation in international aid projects was not limited by Taliban edicts, women were able to work in small shops and related domestic industries such as tailoring, embroidery, carpet weaving and bakery schemes. However, these still reinforced traditional skills and did not provide a viable source of income as to equip women for wider market participation in the future.<sup>19</sup> There was no room for real and lasting development. Any liberty enjoyed was short-term; women were preoccupied with simply trying to survive. While men were also faced with challenges for survival, women had to struggle much harder than men because of the initial disadvantage brought by sponsored discrimination as well as their unique vulnerabilities. Thus, to talk of development was far beyond the sphere of imagination.

The 23-year conflict ended with the intervention of the United States which defeated the Taliban forces. Afghanistan found itself in shambles and the Afghans overcome by hunger, poverty, unemployment, and destruction. Women were especially ailing from the wide deprivation of their basic rights—the physical and psychological bruises of violence, isolation, and loss.<sup>20</sup> The war left 45,000 destitute widows responsible for an average of six dependents.<sup>21</sup>

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<sup>18</sup> G.A. *Human Rights Questions: Human Rights Situations and Reports of Special Rapporteurs*, ¶ 75, U.N. Doc. A/50/567 (October 16, 1995).

<sup>19</sup> Office of the Special Adviser on Gender Issues and Advancement of Women, *Report of the UN Interagency Gender Mission to Afghanistan* (November 12-24, 1997).

<sup>20</sup> U.N. Econ. & Soc. Council [ECOSOC], Comm. on Human Rights, *Question of the Violation of Human Rights and Fundamental Freedoms in any part of the world: Report on the Situation of human rights in Afghanistan*, U.N. Doc. E/CN.4/2003/39 (January 13, 2003) (prepared by Special Rapporteur Mr. Kammal Hossain).

<sup>21</sup> World Bank, *Afghanistan: National Reconstruction and Poverty Reduction – The Role of Women in Afghanistan's Future*, March 2005, p. 70.

To address the myriad of problems attached to the reconstruction of Afghanistan, the Bonn Agreement was signed on 5 December 2001 by various Afghan groups. Among other things, this agreement expressly recognizes human rights as essential for reform and prioritizes the restoration of all human rights deprived by the Taliban regime—especially women's rights.<sup>22</sup> There is emphasis on the undeniable role of women in reconstruction. Accordingly, it established the Ministry of Women's Affairs (MoWA) which was mandated to advance the role of women. Further, it adopted a new Constitution that provided for equality of men and women. Women's right to education and employment were restored with the reopening of schools and return of women to their jobs.<sup>23</sup> In 2003, Afghanistan ratified the Convention on Elimination of Discrimination Against Women (CEDAW). International aid poured in to assist in implementing various reforms to advance and protect women's rights. Since 2001, the United Nations Commission on the Status of Women has been monitoring the status of Afghan women's rights more closely. In 2002, the United Nations came up with a set of recommendations to ensure that gender is mainstreamed in the process of reconstruction and guarantee women's participation.<sup>24</sup> The Security Council also established

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<sup>22</sup> U.N. Econ. & Soc. Council [ECOSOC], Comm. on Human Rights, *Question of the Violation of Human Rights and Fundamental Freedoms in any part of the world: Report on the Situation of human rights in Afghanistan*, U.N. Doc. E/CN.4/2003/39 (January 13, 2003) (prepared by Special Rapporteur Mr. Kammal Hossain).

<sup>23</sup> Office of the Special Adviser on Gender Issues and Advancement of Women, *Report of the UN Interagency Gender Mission to Afghanistan* (November 12-24, 1997).

<sup>24</sup> (a) To ensure full support for the participation of women in the Special Commission to convene the Emergency *Loya Jirga* and in the *Loya Jirga* itself;  
(b) To support fully the activities of the Ministry for Women's Affairs;  
(c) To ensure that all line ministries employ women, develop capacity to mainstream a gender perspective in their programmes, and that an inter-ministerial machinery is established to that end;  
(d) To ensure that women are well represented as members of the Judicial Commission, the Civil Service Commission and the Human Rights Commission, and that a gender perspective is taken into consideration when developing the mandates of these commissions;  
(e) To ensure that the work of the Human Rights Commission is underpinned by international human rights standards, including the Convention on the Elimination of All Forms of Discrimination against Women, and integrates

the United Nations Assistance Mission in Afghanistan (UNAMA), a political mission, to assist in laying the foundations for sustainable peace and development in the country. At the 2002 Tokyo International Conference on Reconstruction Assistance to Afghanistan, the Afghan Interim Authority (AIA) reaffirmed its determination to pursue the process of reconciliation, reconstruction and development of Afghanistan, according to the Bonn Agreement. The Conference emphasized the centrality of restoring the rights and addressing the needs of women, which should be fully reflected in the reconstruction process. The international donor community then expressed its political support for this process, coupled with “conditional” promises of assistance.<sup>25</sup>

In 2004, Afghanistan approved its new Constitution and held a presidential election. These are positive developments in terms of advancing the rights of women. The Constitution provided for the political participation of women. In fact, 41 per cent of the 10.5 million Afghans who registered to vote were women. One woman ran for president and two

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women’s rights in its mandate;

- (f) To ensure a safe environment free from violence to facilitate women’s participation and the return of refugees;
- (g) To take urgent measures to repeal all edicts and orders that discriminate against women and to end all forms of discrimination against women;
- (h) To study and analyse the impact on women and girls of the existing legal system, including with regard to family law, divorce, property and inheritance rights;
- (i) To apply temporary special measures, including targets and quotas, targeted at Afghan women to accelerate the de facto equality of women and men in decision-making;
- (j) To take steps towards ratifying the Convention on the Elimination of All Forms of Discrimination against Women, in accordance with the Beijing Platform for Action and the outcome document of the twenty-third special session of the General Assembly;
- (k) To ensure the full participation of women in the assessment of short-, medium- and long-term priorities in all sectors.

U.N. Econ. & Soc. Council [ECOSOC], Comm. on Human Rights, *Question of the Violation of Human Rights and Fundamental Freedoms in any part of the world: Report on the Situation of human rights in Afghanistan*, U.N. Doc. E/CN.4/2003/39 (January 13, 2003) (prepared by Special Rapporteur Mr. Kammal Hossain).

<sup>25</sup> Tokyo Conference on Afghanistan, [http://www.mofa.go.jp/region/middle\\_e/afghanistan/tokyo\\_conference\\_2012/index.html](http://www.mofa.go.jp/region/middle_e/afghanistan/tokyo_conference_2012/index.html).

others were vice-presidential candidates.<sup>26</sup>

Still, the status of Afghan women left much to be desired. Strong social and cultural norms continued to limit women's public role and deny women's rights. Vital health and educational services were unevenly and insufficiently available. Although five out of eleven members of the Afghan Human Rights Commission were women, women still suffered from discrimination.<sup>27</sup> In the following years, women continued to face serious restrictions in the exercise of their rights, obstacles to education, widespread discrimination, violence, restrictions on movement, and access to justice. In 2005, the independent expert reported that Afghan women's rights continued to be violated, with women suffering from poverty, health risks, illiteracy, violence, exclusion from government participation, and injustice from both the customary and the formal legal system.<sup>28</sup> Whereas women had comparable participation in labor, their wage was only a fraction of what is paid to male counterparts. Men retained monopoly of resources and property rights.<sup>29</sup> Women had no right to inheritance and no access to assets, which severely hampered their ability to compete in economic activities. Women were still entrenched in their assigned role in the family.<sup>30</sup>

As of 2010, the UNAMA reported that harmful traditional practices such as child and forced marriage, the giving away of girls to settle disputes, exchange marriages, forced isolation in the home and

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<sup>26</sup> United Nations, General Assembly, *The Situation in Afghanistan and its implications for international peace and security: report of the Secretary-General*, A/59/581-S/2004/925 (7 March 2006), available from undocs.org A/59/581-S/2004/925.

<sup>27</sup> U.N. Econ. & Soc. Council [ECOSOC], Comm. on Human Rights, *Question of the Violation of Human Rights and Fundamental Freedoms in any part of the world: Report on the Situation of human rights in Afghanistan*, U.N. Doc. E/CN.4/2003/39 (January 13, 2003) (prepared by Special Rapporteur Mr. Kammal Hossain).

<sup>28</sup> U.N. Econ. & Soc. Council [ECOSOC], Comm. on Human Rights, *Advisory Services and Technical Cooperation in the Field of Human Rights*, U.N. Doc. E/CN.4/2005/122 (March 11, 2005) (prepared by M. Cherif Bassiouni).

<sup>29</sup> World Bank, *Afghanistan: National Reconstruction and Poverty Reduction – The Role of Women in Afghanistan's Future*, March 2005, p. 64.

<sup>30</sup> World Bank, *Afghanistan: National Reconstruction and Poverty Reduction – The Role of Women in Afghanistan's Future*, March 2005, p. 71.

“honour” killings remained pervasive in Afghanistan.<sup>31</sup> In 2014, Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, still observed that women remained victims of violence. Meaningful women’s participation in political and peace processes requires continued attention.<sup>32</sup> Early this year, UNAMA and the Office of the United Nations High Commissioner for Human Rights launched a report entitled “*Justice through the eyes of Afghan women: cases of violence against women addressed through mediation and court adjudication*,” which tackled recommendations for reforms to improve women’s access to justice.<sup>33</sup>

## II. Women’s Right to Development in Post-conflict Reconstruction

### A. The Need for Women’s Right to Development

Women suffer terribly during armed conflict. Their already traditionally disadvantaged position worsens during conflict.<sup>34</sup> The necessities as well as the strategies of war often result in the curtailment of rights and the first to be affected are women’s rights for several reasons.

First, society has sadly been accustomed to according fewer rights to women so it is not out of the ordinary to take back any additional rights that were not originally there in the first place. Second, given the previous state of things, there is less risk of public dissent and even lesser risk of reaction or retaliation from the affected population. Third, women tend to be viewed as a liability to a state fighting a war. Thus, there is an interest

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<sup>31</sup> UNAMA Press Release (December 2010), available from <http://unama.unmissions.org/Default.aspx?tabid=12267&language=en-US>.

<sup>32</sup> United Nations, General Assembly, *The Situation in Afghanistan and its implications for international peace and security: report of the Secretary-General*, A/69/647–S/2014/876 (9 December 2014), available from [undocs.org A/69/647–S/2014/876](http://undocs.org/A/69/647–S/2014/876).

<sup>33</sup> United Nations, General Assembly, *The Situation in Afghanistan and its implications for international peace and security: report of the Secretary-General*, A/69/929-S/2015/422 (10 June 2015), available from [undocs.org A/69/929-S/2015/422](http://undocs.org/A/69/929-S/2015/422).

<sup>34</sup> Elisabeth Rehn and Ellen Johnson Sirleaf, *Women, War, Peace: The Independent Experts’ Assessment on the Impact of Armed Conflict on Women and Women’s Role in Peace-Building*, Progress of the World’s Women 2002, Vol. 1, United Nations Development Fund for Women [UNIFEM] 123 available at [http://www.unifem.org/resources/item\\_detail.php?ProductID=17](http://www.unifem.org/resources/item_detail.php?ProductID=17).

on the part of the state to control the women and restrict their movement on one hand, and no incentive to empower them on the other. Not very different from a superhero leaving his lady in a safe cave with instructions to stay put and not do anything until he comes back, the state is only concerned with protecting women by keeping them inside the house while it is fighting the war. Whether the women can actually survive inside the cave without basic supplies and any right to try to procure these supplies is almost left to divine intervention.

Unfortunately, there is no assurance that every woman's superhero will in fact return after the battle. Indeed, war often leaves widows and hungry mouths to feed. After being deprived of basic rights with the promise that they will be taken care of later, women emerge out of the war with nobody to rescue them except themselves. On the other hand, for women who are able to find empowerment during the war as they discover their capacities in their struggle for survival, they end up yielding their empowered status in the family upon the return of the "rightful" head.<sup>35</sup>

Yet again, women scramble to gather up what they have left from the war and try to reinsert themselves in society as it undergoes reconstruction. Women's loss from armed conflict is therefore two-fold: actual loss of loved ones and property and displacement from society. These consequences necessitate the definition of women's right to development in the context of reconstruction.

In post-conflict reconstruction, women can be easily forgotten, thus the need to bring them to the foreground. Development during reconstruction often focuses on the entire nation rather than the individual. The state is preoccupied with moving the country forward as a whole, which may result in policies that fail to consider women's individual rights.

Moreover, there is a tendency for post-conflict society to restore women to their former or default status. Whereas the rest of the members of society are trying to rebuild by moving forward, women are regressing. Instead of using the post-war period as a way to begin with a clean slate and pursue individual development, women are forced to stay in the background and refrain from being "obstacles" to the collective's

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<sup>35</sup> GENDER, CONFLICT, AND DEVELOPMENT 92 (Tsjead Bouta, Georg Frerks, & Ian Bannon eds. 2005).

development. Yet, having been personally devastated by the conflict, women have to overcome more hurdles than the average citizen in order to cope with the aftermath of war. They have as much need to participate in the process of reconstruction and development. In addition, women are in need of ways to cement whatever gains they achieved during the armed conflict towards self-development.

To address all these issues, women's right to development must be advanced. As this right encompasses other rights such as right to public participation, education, employment, and health, fulfillment thereof is crucial for women in post-/conflict societies. It is the right that restores all other rights of women that have been lost to the conflict.

## A. The Evolution of the Right to Development

### 1. General Right to Development

The first to recognize the right to development was the African Charter on Human and Peoples' Rights in 1981.<sup>36</sup> Then, on 4 December 1986, the United Nations General Assembly adopted Resolution 41/128, the Declaration of the Right to Development. The Declaration recognized right to development as an inalienable human right of individuals and peoples to participate in, contribute to, and enjoy economic, social, cultural and political development.<sup>37</sup> It placed the human being at the center of development, as the participant as well as beneficiary of development.<sup>38</sup> Development includes: economic, social, cultural, political, technological, and sustainable development.<sup>39</sup> Its *raison d'être*

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<sup>36</sup> Art. 22. "1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development."

<sup>37</sup> Declaration on the Right to Development, G. A. Res. 41/128, Annex, U.N. Doc. A/RES/41/128 (December 4, 1986) art. 1.

<sup>38</sup> Declaration on the Right to Development, G. A. Res. 41/128, Annex, U.N. Doc. A/RES/41/128 (December 4, 1986) art. 2.

<sup>39</sup> U.N. Commission on Human Rights, *Question on the Realization of the Right to Development: Report of the Working Group on the Right to Development on its first session*, ¶ 35, U.N. Doc. E/CN.4/1994/21 (December 13, 1993).

lies in participation in all spheres of development.<sup>40</sup> The right to development is universal in two senses: it knows no geographical or cultural limits; and it is relevant to both developing and developed countries.<sup>41</sup> As affirmation, Agenda item 21 of the United Nations Conference on Environment and Development states broad popular participation as a prerequisite for sustainable development.<sup>42</sup> Likewise, the Vienna Declaration Programme of Action adopted in 1993 reaffirmed the right to development.

Essentially, the right to development is a marriage of human rights and development that provides a holistic and multidimensional perspective to both issues. It provides a balance between obligations and right to participation while participation “strengthens the sense of ownership, develops human capacity and personality, and increases the level of people’s control over their lives.”<sup>43</sup> As such, it carries a bundle of rights guaranteed in other international human rights instruments that are interdependent and indivisible and necessary for development.<sup>44</sup>

As a collective right, the right to development includes the right to self-determination, which is also guaranteed by both the International Covenant on Civil and Political Rights (ICCPR)<sup>45</sup> and the International Convention on Economic, Social, Cultural Rights (ICESCR)<sup>46</sup> and affirmed by the Vienna Declaration and Programme of Action. This

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<sup>40</sup> The Secretary General, *Report of the Secretary General, Question on the Realization of the Right to Development: Concrete proposals for the effective implementation and promotion of the Declaration on the Right to Development, delivered at U.N. Econ. and Soc. Council [ECOSOC], Commission on Human Rights, U.N. Doc. E/CN.4/1993/16 (January 6, 1993).*

<sup>41</sup> U.N. Econ. & Soc. Council [ECOSOC], Comm. on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, *The Legal Nature of the Right to Development and Enhancement and Its Binding Status*, ¶ 21, U.N. Doc. E/CN.4/Sub.2/2004/16 (June 1, 2004).

<sup>42</sup> Chap. 23.

<sup>43</sup> U.N. Econ. & Soc. Council [ECOSOC], Comm. on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, *The Legal Nature of the Right to Development and Enhancement and Its Binding Status*, ¶ 18, U.N. Doc. E/CN.4/Sub.2/2004/16 (June 1, 2004).

<sup>44</sup> Declaration on the Right to Development, G. A. Res. 41/128, Annex, U.N. Doc. A/RES/41/128 (December 4, 1986) art. 9.

<sup>45</sup> International Covenant on Civil and Political Rights (ICCPR) art. 1.

<sup>46</sup> International Covenant on Economic, Social, Cultural Rights (ICESCR) art. 1.

protects the right of a people to “determine their political status and freely pursue their economic, social and cultural development.”<sup>47</sup> The interrelationship of these rights is immediately obvious. Like the right to development, the right of self-determination is essential to the observance and promotion of individual human rights.<sup>48</sup>

As an individual right, the right to development includes realization of the right to effective participation in all aspects of development and at all stages of the decision-making process; the right to equal opportunity and access to resources; the right to a fair distribution of the benefits of development; the right to respect for civil, political, economic, social and cultural rights, and the right to an international environment in which all these rights can be fully realized.<sup>49</sup> For purposes of this paper, the relevant individual rights are the rights to equality, participation in public life, education, employment, and health. These rights are in turn guaranteed by other international instruments. Right to equality is guaranteed by the ICCPR,<sup>50</sup> the ICESCR,<sup>51</sup> and the CEDAW.<sup>52</sup> Right to participation in public life is guaranteed by the ICCPR<sup>53</sup> and the CEDAW.<sup>54</sup> Right to education is likewise guaranteed by ICESCR<sup>55</sup> and the CEDAW.<sup>56</sup> Right to employment is guaranteed by ICESCR<sup>57</sup> and CEDAW.<sup>58</sup> Right to health is guaranteed by ICESCR<sup>59</sup> and CEDAW.<sup>60</sup> As a necessary corollary of these interdependent guarantees, violation of

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<sup>47</sup> ICCPR art. 1(1); ICESCR art. 1(1).

<sup>48</sup> *ICCPR General Comment No. 12: The right to self-determination of peoples* (Art. 1) 13/03/84.

<sup>49</sup> U.N. Commission on Human Rights, *Question on the Realization of the Right to Development: Report of the Working Group on the Right to Development on its first session*, ¶ 33, U.N. Doc. E/CN.4/1994/21 (December 13, 1993).

<sup>50</sup> Arts. 2(1) & 3.

<sup>51</sup> Art. 2(1).

<sup>52</sup> Arts. 2 & 3.

<sup>53</sup> Art. 25.

<sup>54</sup> Arts. 7 & 8.

<sup>55</sup> Art. 13.

<sup>56</sup> Art. 10.

<sup>57</sup> Arts. 6-8.

<sup>58</sup> Art. 11.

<sup>59</sup> Art. 12.

<sup>60</sup> Art. 13.

any of these rights is a violation of the right to development as well.<sup>61</sup> At the same time, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights.<sup>62</sup> It is important to understand that although the right to development is intertwined with other rights, it is a separate right in itself. Thus, although the foregoing rights are guaranteed by the separate human rights instruments, there is still a need to protect the right to development per se of individuals.

## 2. Women's Right to Development

As an individual right, the right to development may take different hues. More specifically, the right to development of women may entail things different from that of men, given their particular needs and situation in society. In the same way that some rights in the two main human rights instruments are also guaranteed in the Convention on Elimination of Discrimination Against Women because of the different hue that these rights take when it comes to women, the right to development also takes on a twist for women. Owing to the special circumstances of women brought about by traditional discrimination and inequality, fulfillment thereof requires more action.

Historically, women have been assigned the role of homemaker, wife, and mother. Consequently, any conceivable or acceptable development of women-if at all-would be related and limited to their performance of these roles. Thus, women would need assistance in the process of shedding off traditional restrictions and expanding their roles. In many societies, women remain underprivileged economically, socially, and politically. Economic rights are still very much tied to the males so that women are largely financially dependent on their husbands or parents. In certain cultures, inheritance rights belong to the eldest son. Where women are able to take part in labor, their wages and benefits tend to be less than those given to men. Access to capital and credit is either reserved to the male head of the family or conditioned on his consent. In rural areas, for instance, only a small percentage of women are able to avail of

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<sup>61</sup> U.N. Commission on Human Rights, *Question on the Realization of the Right to Development: Report of the Working Group on the Right to Development on its first session*, ¶ 91, U.N. Doc. E/CN.4/1994/21 (December 13, 1993).

<sup>62</sup> Vienna Declaration and Programme of Action (June 25, 1993).

credit facilities.<sup>63</sup> Both formal and semi-formal financial institutions still do not serve poor rural women. In spite of legal equality, women still find difficulty in gaining access to finance. Where women are able to access credit, the amount is usually smaller than what would be loaned to men. Worse, there is a tendency towards resentment among men that lead them to divert the money from income-generating activities.<sup>64</sup> In addition, inheritance laws, property rights and matrimonial property rules make it even harder.

Women's status in society is still far from being truly equal. Although international instruments and laws around the world expressly provide for the equality of men and women, vestiges of discrimination survive. The female stereotype lives and women are still viewed as adjuncts of their husbands. A testament to this is the World Summit for Social Development Programme of Action's recognition of the need to foster an equitable partnership between men and women so that men could take full responsibility in family life. It further stressed the necessity of replacing the existing social gender paradigm with a new generation of women and men working together to create a more humane world order.<sup>65</sup>

Politically, women are slowly gaining greater participation but find themselves having to work harder when competing with men in public life. The number of women in politics worldwide has no doubt increased but the ratio of men to women in public office still reveals partiality towards men.

#### *Vulnerabilities due to culture and religion*

Culture and religion have proven to be the two most potent and durable foil to women. Deeply embedded in everyday life of each social unit—the family, the community, and the nation—is an age-old concept of womanhood. This concept is accompanied by social penalties ranging from social ostracism to religious condemnation, from social judgment to

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<sup>63</sup> International Fund for Agricultural Development, *Women and Credit* available at [http://www.ifad.org/evaluation/public\\_html/eksyst/doc/lle/1040cree.html](http://www.ifad.org/evaluation/public_html/eksyst/doc/lle/1040cree.html)

<sup>64</sup> International Fund for Agricultural Development, *Sector-specific Approaches: Rural Finance* available at [http://www.ifad.org/pub/gender/engl\\_5.pdf](http://www.ifad.org/pub/gender/engl_5.pdf).

<sup>65</sup> U.N. World Summit for Social Development, *Programme of Action of the World Summit for Social Development*, Chapter 1, U.N. Doc. A/CONF.166/9 (March 14, 1995).

actual physical punishment. This gives men immense power over women who are then forced to conformity, submission and subservience because the social sanctions far outweigh any potential benefits of violating social norms. Even as women are finding their voice and place in modern society, cultural and religious constructs continue to be the voice in their head which often hold them back. Given this push-pull situation with which women constantly struggle in every step they take away from cultural and religious ideals, women require external inertia to give them that heavy push.

### *Health*

Women have a different physiological make-up from men that requires special attention and health protection. Unfortunately, traditional medical teaching used the male as reference point and regarded women as exceptions. As a result, women's health has also been subjected to gender discrimination.

Vulnerability of women to diseases is closely linked to their status in society. Poor women are vulnerable because of their low nutritional status, restricted access to education and gainful employment, and heavy workloads. Further, social stigma attached to communicable diseases results in a decrease in life opportunities, including marriage. It also inspires concealment and delay in seeking medical attention. Infected women resort to self-treatment because of gender-based constraints, including domestic responsibilities, caring for others and the cost of travel and treatment. Once treatment is sought, women are relegated to an even lower social status and lower priority.<sup>66</sup>

At the core of women's health needs is sexual and reproductive health: life expectancy at birth, infant and child mortality, maternal mortality, contraceptive prevalence rate, access to safe water and sanitation, and food needed for the minimum nutritional requirements. Low-income and rural women as well as adolescents are especially vulnerable to risks related to reproductive health which affect them even

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<sup>66</sup> The Secretary General, *Report of the Secretary General, Follow-up to the Fourth World Conference on Women: implementation of strategic objectives and action in the critical areas of concern, delivered to the U.N. Econ. and Soc. Council [ECOSOC], Comm. on the Status of Women, U.N. Doc. E/CN.6/1994/4* (December 9, 1998).

beyond the age of reproduction. Aside from this, women are also in want of protection from tuberculosis, malaria, HIV, and disability.<sup>67</sup> As women are entering the labor force, their overlapping roles at home and at work also expose them to multiple health risks such as musculoskeletal disorders. Pregnant women working in factories are liable to expose the fetus to chemicals.

Thus, the Beijing Platform for Action emphasized the right of women to development, stating that women's empowerment and full participation in all spheres of society including participation in the decision-making process are fundamental to development and that social justice requires the involvement of women in economic and social development, equal opportunities and the full and equal participation as agents and beneficiaries of people-centered sustainable development. It also stressed the need for gender-sensitive development policies and programs.<sup>68</sup> Even the Rio Declaration on Sustainable Development stated that women's full participation is essential to achieve sustainable development.<sup>69</sup>

Subsequently, delegations in the Open-Ended Working Group on the Right to Development in 2001 called attention to women's right to development. Noting the key role played by women in development, the delegations identified priority areas: poverty alleviation; satisfaction of basic needs such as health and education; access to goods and services such as loans and property; improved access to contraception; improved working conditions of women; gender equality, and good governance.<sup>70</sup> This concept was reiterated in the 2002 meeting of the Open-Ended

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<sup>67</sup> The Secretary General, *Report of the Secretary General, Follow-up to the Fourth World Conference on Women: implementation of strategic objectives and action in the critical areas of concern, delivered to the U.N. Econ. and Soc. Council [ECOSOC], Comm. on the Status of Women*, U.N. Doc. E/CN.6/1994/4 (December 9, 1998).

<sup>68</sup> Fourth World Conference on Women, September 15, 1995, *Beijing Declaration and Programme of Action*, ¶ 13-19, U.N. Doc. A/CONF.177/20 and A/CONF.177/20/Add.1.

<sup>69</sup> Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/26 (Vol.1) (August 12, 1992), Principle 20.

<sup>70</sup> U.N. Econ. and Soc. Council [ECOSOC], Comm. on Human Rights, *Right to Development: Report of the Open-Ended Working Group on the Right to Development*, ¶ 60, U.N. Doc. E/CN.4/2001/26 (March 20, 2001).

Working Group where a participant pointed out that women should not only be beneficiaries of development but must also be participants in the decision-making process. Access to land, paid services and education were identified as ways to promote the right to development of women and ratification of the International Convention on the Elimination of Discrimination against Women and its Optional Protocol as an immediate means of advancing the right.<sup>71</sup> Thus, the Working Group recognized the role and the rights of women and the application of a gender perspective as a cross-cutting issue in the process of realizing the right to development. It further noted the positive relationship between women's education and their equal participation in civil, political, economic, social and cultural activities of the community, and the promotion of the right to development.<sup>72</sup>

Accordingly, the General Assembly "affirm[ed] the need to apply a gender perspective in the implementation of the right to development, inter alia, by ensuring that women play an active role in the development process," and "emphasiz[ed] that the empowerment of women and their full participation on the basis of equality in all spheres of society is fundamental for development."<sup>73</sup> Likewise, the Commission on Human Rights called for the equal participation of women in all fields of the realization of the right to development.<sup>74</sup> This kind of discourse has since

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<sup>71</sup> U.N. Econ. and Soc. Council [ECOSOC], Comm. on Human Rights, *Right to Development: Report of the open-ended Working Group on the Right to Development on its third session*, ¶ 65, U.N. Doc. E/CN.4/2002/28/Rev.1 (April 11, 2002), p. 23.

<sup>72</sup> U.N. Econ. and Soc. Council [ECOSOC], Comm. on Human Rights, *Right to Development: Report of the open-ended Working Group on the Right to Development on its third session*, ¶ 105, U.N. Doc. E/CN.4/2002/28/Rev.1 (April 11, 2002), p. 36.

<sup>73</sup> The Right to Development, G.A. Res. 55/108, U.N. Doc. A/RES/55/108 (March 13, 2001).

<sup>74</sup> 14. Affirms the role of women in the process of the realization of the right to development, including their role as active actors in and beneficiaries of development, and that further actions in this context are needed to ensure the participation of women on equal terms with men in all fields in the realization of the right to development;

15. Also affirms the promotion of gender equality and the empowerment of women as effective means to combat poverty, hunger and disease and to stimulate sustainable development, as well as the importance of equal rights and opportunities for women and men, including property rights for women

been reiterated in succeeding working groups on the right to development. Full and active participation of women was ensured in the formulation of the Millennium Development Goals and gender perspective in the implementation of the right to development was advanced.

### 3. Binding nature of the Declaration on the Right to Development

Where there are rights and guarantees, the question of the legal status of the instrument granting such rights always arises. With regard to right to development, the monumental question therefore, is, what is the nature of the Declaration on the Right to Development? The ICCPR, ICESCR, and the CEDAW are all treaties which States have ratified of their own accord yet women still strive for their rights under these instruments. How can a mere Declaration help women advance their right to development and its bundle of rights?

The Declaration on the Right to Development is in the form of a resolution by the General Assembly<sup>75</sup> which was adopted upon vote of majority of the Members. Clearly, it is not a treaty and therefore does not fall under what is generally considered as “hard law.” However, it has more binding effect than what is called as “soft law.”<sup>76</sup> Though not binding per se, a resolution may prescribe principles of international law which may clarify and develop customary law. Where it refers to a subject under existing international instruments, it may be considered as an authoritative interpretation of such instrument. Where it refers to a new legal issue, it may be considered as a crystallization of the developing practice of states.<sup>77</sup> Thus, there is a consensus that “General Assembly

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and their access to bank loans, mortgages and other forms of financial credit, taking into account the best practices of micro-credit in different parts of the world;” Commission on Human Rights resolution 2001/9, 62nd meeting, 18 April 2001.

<sup>75</sup> Declaration on the Right to Development, G. A. Res. 41/128, Annex, U.N. Doc. A/RES/41/128 (December 4, 1986).

<sup>76</sup> U.N. Econ. & Soc. Council [ECOSOC], Comm. on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, *The Legal Nature of the Right to Development and Enhancement and Its Binding Status*, ¶ 38, U.N. Doc. E/CN.4/Sub.2/2004/16 (June 1, 2004).

<sup>77</sup> I. Brownlie, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 698-701 (Oxford, Clarendon Press, 4th ed., 1990). Also cited in U.N. Econ. & Soc. Council [ECOSOC], Comm. on Human Rights, Sub-Commission on the Promotion and

resolutions, especially those that directly link to the letter and spirit of the Charter of the United Nations, like resolution 41/128, have some appreciable legal authority that “bind” States.”<sup>78</sup>

Furthermore, the Declaration may be said to codify norms or rules of customary international law, which constitute a source of international law under Article 38 of the Statute of the International Court of Justice. Although some of the contents of the Declaration may be debatable as expressions of customary international law, it is generally accepted that participation in the process of development promotes human development.<sup>79</sup> As customary international law, the Declaration is binding on all States, even on those that may have not voted in favor of the resolution.

### C. State Responsibility

Having established the existence of the right to development and the binding nature of the Declaration of the Right to Development, it is now necessary to turn to the obligations of States. The Declaration on the Right to Development expressly obligates states to advance the right to development of every citizen by taking steps “to ensure the full exercise and progressive enhancement of the right to development, including the formulation, adoption and implementation of policy, legislative and other measures at the national and international levels.”<sup>80</sup> The responsibility of States under the Declaration is two-pronged: national level and international level. On the national level, States have the duty “to formulate appropriate national development policies that aim at the

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Protection of Human Rights, *The Legal Nature of the Right to Development and Enhancement and Its Binding Status*, ¶ 38, U.N. Doc. E/CN.4/Sub.2/2004/16 (June 1, 2004).

<sup>78</sup> U.N. Econ. & Soc. Council [ECOSOC], Comm. on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, *The Legal Nature of the Right to Development and Enhancement and Its Binding Status*, ¶ 39, U.N. Doc. E/CN.4/Sub.2/2004/16 (June 1, 2004).

<sup>79</sup> U.N. Econ. & Soc. Council [ECOSOC], Comm. on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, *The Legal Nature of the Right to Development and Enhancement and Its Binding Status*, ¶ 40, U.N. Doc. E/CN.4/Sub.2/2004/16 (June 1, 2004).

<sup>80</sup> Declaration on the Right to Development, G. A. Res. 41/128, Annex, U.N. Doc. A/RES/41/128 (December 4, 1986), Art. 10.

constant improvement of the well-being of the entire population and of all individuals;”<sup>81</sup> and undertake all necessary measures for the realization of the right to development and ensure that women have an active role in the development process.<sup>82</sup>

On the international level, States have the duty to: co-operate with each other in ensuring development and eliminating obstacles to development;<sup>83</sup> take steps collectively to formulate international development policies with a view to facilitating the full realization of the right to development;<sup>84</sup> co-operate with a view to promoting, encouraging and strengthening universal respect for and observance of all human rights and fundamental freedoms for all without any distinction as to race, sex, language or religion.<sup>85</sup> The inclusion of State obligations on the international plane implies that international cooperation is key to the implementation of the right to development. At the 2002 meeting of the Working Group on the Right to Development, participants were convinced that “international cooperation was not only an act of solidarity but also an obligation.”<sup>86</sup> This means that States have duties not only to their own citizens but also to all peoples.

### III. Enforcing Afghan Women’s Right to Development Against “Third Party” States

*“As long as women and girls are subject to practices that harm, degrade and deny them their human rights, little meaningful*

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<sup>81</sup> Declaration on the Right to Development, G. A. Res. 41/128, Annex, U.N. Doc. A/RES/41/128 (December 4, 1986) art. 2(3).

<sup>82</sup> Declaration on the Right to Development, G. A. Res. 41/128, Annex, U.N. Doc. A/RES/41/128 (December 4, 1986) art. 8(1).

<sup>83</sup> Declaration on the Right to Development, G. A. Res. 41/128, Annex, U.N. Doc. A/RES/41/128 (December 4, 1986) art. 3(3).

<sup>84</sup> Declaration on the Right to Development, G. A. Res. 41/128, Annex, U.N. Doc. A/RES/41/128 (December 4, 1986) art. 4(1).

<sup>85</sup> Declaration on the Right to Development, G. A. Res. 41/128, Annex, U.N. Doc. A/RES/41/128 (December 4, 1986) art. 6(1).

<sup>86</sup> U.N. Econ. and Soc. Council [ECOSOC], Comm. on Human Rights, *Right to Development: Report of the open-ended Working Group on the Right to Development on its third session*, ¶ 31, U.N. Doc. E/CN.4/2002/28/Rev.1 (April 11, 2002).

*and sustainable progress for women's rights can be achieved in Afghanistan. Ensuring rights for Afghan women – such as their participation in public life, including in the peace, reconciliation and reintegration process and equal opportunities in education and employment – requires not only legal and constitutional safeguards on paper, but more importantly, speedy and adequate enforcement.”*

- Georgette Gagnon, Director of Human Rights for UNAMA

As elucidated above, the right to development of women is an essential, and not merely desirable, component of post-conflict reconstruction. While it is acknowledged that the Government of Afghanistan has laid down the legal groundwork that recognizes women's rights, it remains a challenge to see actual, genuine, cross-cutting and consistent implementation that transcends politics, religion, tradition and culture. Understandably, though not necessarily justifiable, the Government of Afghanistan, composed of Afghans who grew up in the tradition of Afghan society, struggles in finding some acceptable, if not at least forgivable, compromise between complying with the human rights reforms in the various international treaties as well as the instruments borne from the international conferences in Bonn, London, Berlin, Chicago, and Tokyo on Afghanistan, and the values and traditions that form part of their identity. It has been observed that it will take many years before human rights practices and institutions can recover from the aftermath of Taliban rule and decades of war, as abuses continue in certain areas.<sup>87</sup>In a situation such as this, external intervention usually becomes imperative. The question, therefore, is whether the women of Afghanistan have anyone else to turn to where their own Government falls short in protecting and promoting their rights? Can they seek external intervention and if so, where?

It is the thesis of this paper that the right to development—with all its accompanying rights—of women in Afghanistan can be claimed against the “third party” States directing and participating in the post-conflict reconstruction-transition-transformation process being implemented in Afghanistan since 2001.

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<sup>87</sup> “Afghanistan: Abusive Strongmen Escape Justice,” Human Rights Watch, March 3, 2015. [www.hrw.org/news/2015/03/03/afghanistan-abusive-strongmen-escape-justice](http://www.hrw.org/news/2015/03/03/afghanistan-abusive-strongmen-escape-justice).

As discussed above, the right to development is an obligation of States not only to their own citizens but also to all peoples. The various provisions in the Declaration on the Right to Development expressly provide for the obligations of States in the international level. The preamble so begins:

“Bearing in mind the purposes and principles of the Charter of the United Nations relating to the achievement of *international co-operation* in solving *international problems* of an economic, social, cultural or humanitarian nature, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.” (Italics supplied)

Articles 3, 4, and 6 then provide for the specific duties of international cooperation. The duties therein imposed are articulated well in Article 3: “The realization of the right to development requires full respect for the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations.” Both the preamble and this provision identify the source of the international duties of States relating to the right to development, and that is the Charter of the United Nations. Since the Declaration is a resolution binding on all States, States have international duties under the Declaration in accordance with the Charter of the United Nations. Articles 55<sup>88</sup> and 56<sup>89</sup> of the Charter of the United Nations declare the international obligations of States toward each other.

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<sup>88</sup> Article 55. With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

<sup>89</sup> Article 56. All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

Following this reasoning, States have an obligation to promote the right to development of individuals and peoples other than their own. As the right to development must be advanced without distinction as to sex, States have the duty to promote the right to development of women. As women's right to development entails fulfillment of other rights such as right to public participation, employment, education, and health, States have the duty to advance these rights if it is to fulfill its obligation towards promoting women's right to development. Based on this, States have a general international obligation to protect the rights of women of Afghanistan. This obligation is further reinforced by the circumstances in Afghanistan.

It is worth revisiting that the United States invaded Afghanistan in 2001 with the support of Europe. Since then, the international community has come in to shepherd and participate in the post-conflict reconstruction of Afghanistan, lending its support during the so-called Transition decade. Afghanistan and "third party" States met in various international conferences which led to various "agreements" for the implementation of reforms in exchange for financial assistance.

In 2001, the Agreement On Provisional Arrangements In Afghanistan Pending The Re-Establishment Of Permanent Government Institutions provided for an Interim Authority and the subsequent establishment of a Transitional Authority. In 2006, The Islamic Republic of Afghanistan and the "third party" States, through the Afghanistan Compact, affirmed their shared commitment to continue, in the spirit of the Bonn, Tokyo and Berlin conferences, to work toward a stable and prosperous Afghanistan, good governance, human rights protection, and rule of law. The Afghan Government committed to realize this shared vision of the future and in turn, the "third party" States committed to provide resources and support to realize said vision. The Government and the "third party" States mutually committed to improve the effectiveness and accountability of international assistance. The parties agreed upon targets and deadlines and created a Joint Coordinating and Monitoring Board to monitor progress. The Afghanistan Compact was followed by the 2008 Afghanistan National Development Strategy and the 2010 London and Kabul Conferences.

At the December 2011 Bonn Conference, the "third party" States affirmed the special status of Afghanistan to receive donor assistance from

Transition through Transformation (2015-2024). The Afghan Government and the “third party” States reaffirmed their mutual commitments and renewed their partnership in the areas of governance, security, peace process, economic and social development, and regional cooperation.

At the Tokyo Conference in 2012, the “third party” States and Afghanistan entered into the Tokyo Mutual Accountability Framework (“TMAF”), a framework of mutual commitments and accountability which included a mechanism for regular monitoring and review. In the TMAF, Afghanistan committed to implement goals and indicators for specific areas including governance, rule of law and human rights. In turn, the “third party” States committed to provide financial assistance amounting to over 16 billion US Dollars. As Afghanistan entered the Transformation Decade, the TMAF emphasized progress in areas that underpin sustained economic growth and development, especially for women and girls, such as education, health and other basic services, as well as strengthened respect for human rights.

It can be seen that at every step, from Transition to the present, the “third party” States have been key movers. The “third party” States have taken an active role in ensuring implementation of reforms agreed upon, and have not just been passive aid donors. The concept of mutual accountability permeates the partnership between Afghanistan and the “third party” States. Financial assistance is conditioned on the implementation of priority reforms, *i.e.* “hard deliverables.”<sup>90</sup> The direction that Afghanistan has been taking since 2001 has largely been plotted and dictated by the “third party” States. This is coupled with the close monitoring of progress through the periodic international conferences as well as the reports of the UNAMA. Indeed, there is scope to argue that the only difference between the “third party” States in this scenario and an occupying State is the lack of actual physical occupation of the territory. In all other respects, the “third party” States are the invisible but potent “members” of the Government of Afghanistan. In a situation such as this, it is submitted that the participating “third party” States have a real and enforceable obligation to the citizens of Afghanistan. The responsibility to the citizens--to the women of

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<sup>90</sup> Trent Ruder, “Lessons and Opportunities from the Tokyo Mutual Accountability Framework,” United States Institute of Peace, Special Report 378 (September 2015).

Afghanistan--has become as much a responsibility of the “third party” States as of the Government of Afghanistan. Through the “agreements” containing mutual “hard” commitments, the “third party” States incurred international obligations to the people, the women, of Afghanistan. These commitments are no longer in the nature of a voluntary financial aid of a donor that can be withdrawn or diminished at will. Rather, the “third party” States have an obligation to see the reforms through the Transformation Decade, including ensuring that the right to development of Afghan women is protected and promoted. The Government actions required under the Beijing Platform for Action are as much a responsibility of the “third party” States as of Afghanistan. Accordingly, the women of Afghanistan should be able to demand and enforce their right to development not only against Afghanistan but also against these “third party” States.

The TMAF is the latest instrument containing the mutual commitments of the Afghan Government and the “third party” States which includes the program of reform for human rights, gender, and rule of law. It is therefore as binding to the “third party” States as it is to the Afghan Government. “Third party” States cannot simply watch, review, and evaluate if the Afghan Government is delivering on its commitments. Rather, they have an obligation to ensure that the reforms are carried through. It equally falls upon the “third party” States to safeguard the implementation of felt and lasting reforms in women’s rights.

Measured against the TMAF goals, actual implementation of these reforms by the Afghan Government has been slow, narrow, and shallow.<sup>91</sup> Clearly, the Afghan women cannot solely and fully rely on their own Government. They need the “third party” States to realize these reforms and it is the obligation of the “third party” States to respond to this need.

As Afghanistan enters into the Transformation Decade and “third party” States review the TMAF, their commitments, and budget for aid, it is important for the “third party” States to appreciate the nature of their responsibility in implementing the reforms for women’s rights. As illustrated above, their responsibility towards Afghan women is an enforceable obligation that they cannot simply walk away from at will. By

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<sup>91</sup> Trent Ruder, “Lessons and Opportunities from the Tokyo Mutual Accountability Framework,” United States Institute of Peace, Special Report 378 (September 2015).

virtue of their own acts, the “third party” States have made it their obligation to ensure the protection and promotion of the rights of the women of Afghanistan in the post-conflict rebuilding of the nation. It therefore behooves upon them to do whatever it takes so that the Afghan Government and Afghan society in general will observe, support, promote, and protect women’s right to development and truly improve the plight of women in Afghanistan.