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**“Afghan Women and Girls:
Building the Future of Afghanistan”**



Thank you, Senator Boxer and Senator Casey, for the invitation to testify at this important and timely hearing.

I have been working on Afghanistan since 2006, and living there for most of the last three years. For the past year much of my focus has been on women's rights – including authoring a report, "*We Have the Promises of the World: Women's Rights in Afghanistan*," published in December 2009. The report details emblematic cases of ongoing rights' violations in five areas—attacks on women in public life; violence against women; child and forced marriage; access to justice; and girls' access to secondary education. I've just flown in from Kabul, where for the past few weeks I've been asking women leaders about the prospect of the Taliban's reintegration and reconciliation with the government. Most women I've spoken to say they want:

- *peace with justice*
- *transparency and inclusion*
- *no illusions about "moderate Taliban"*

The last eight years have seen much progress for women and girls in Afghanistan. Thanks to a constitutional guarantee of women's political participation, a quarter of the parliament is female. There have been real gains in education, with more than 2 million girls in school, though only 4 percent of secondary school age girls reach grade 10. The US government has provided essential assistance in key areas of women's development and empowerment, including more than \$150 million allocated for Afghan women and girls this year. The support from Secretary of State Hillary Clinton at January's London conference was much needed and welcomed by the women leaders who participated. The efforts of the ambassador-at-large of the Office of Global Women's Issues, Melanne Verwee, and individual members of Congress, such as Senator Boxer, who have gone to great lengths to promote Afghan women's rights, have been critical.

Afghanistan's women leaders and human rights defenders are themselves the greatest hope for women and girls in Afghanistan. I have had the privilege to

work closely with many impressive women who work fearlessly to continue to try to push the boundaries and achieve greater rights and freedoms.

Unfortunately, the trend for women's rights is now negative in many areas. While the oppression of women and girls under the Taliban was cited as a justification for the 2001 invasion, the Afghan government and its international backers have not always treated women's rights as a high priority. Recent years have been marked by a number of disturbing developments, such as the passage of the Shia Personal Status Law in 2009 with the support of parliament and President Hamid Karzai, unpunished assassinations of women leaders, and the consolidation of power by fundamentalist factions in government, parliament, and the courts. This month President Karzai sought to issue a decree that would have decreased the number of reserved seats for women in parliament – just the latest in a series of worrying moves by President Karzai to prioritize the demands of conservative factions at the expense of women (at the time of writing the decree's final wording was still unclear). Sadly, it is no longer clear what commitment President Karzai has to women's rights.

The Afghan government, often with the support of the Bush administration, has empowered current and former warlords, providing official positions to some and impunity to the rest. Backroom deals with extremist and abusive commanders profoundly undermine the rights and security of Afghan women. As political power has gradually coalesced around former warlords and hardliners, women have been further marginalized, with those who speak up for their rights – including women members of Parliament -- coming under threat. This threat may increase if women articulate their fears about the political re-emergence of the Taliban, whose leaders are accustomed to threatening and killing those who criticize or oppose them. We are deeply concerned that, with discussions of some form of political settlement with the Taliban and other insurgent groups now part of the strategy of the government and NATO, further backroom deals will be made, rather than an inclusive reconciliation process. If this is the case then the risk of further compromise of women's rights seems high.

It is important not to engage in wishful thinking. US military and civilian officials are now keen to stress what is portrayed as the non-ideological nature of large numbers of Taliban fighters and other insurgents and are minimizing the differences in world views. This is being done to create the political space for

deals and reintegration to be more palatable to their domestic audiences. Emphasis is placed on economic incentives for insurgents, and on reference to the so called “moderate” or “pragmatic” Taliban. While poverty and local grievances are clearly factors in the insurgency, this perspective tends to disregard the long history of misogyny within the Taliban and the serious abuses that women are suffering today at the hands of insurgent groups. There may be many insurgent commanders who are not ideologically committed to the subjugation of women and could accept the Afghan constitution, but it is important not to overstate the size of this group or to understate the threat facing women should those committed to extremist ideologies be given power at the local, provincial or national levels.

The role of the United States in helping to ensure the long-term promotion and protection of women's rights in Afghanistan is crucial. The gains made over the past eight years are being threatened daily. US development and military assistance, political support, and reintegration and reconciliation efforts all need to be conducted giving full consideration to their impact on the women and girls of Afghanistan.

The legacy of almost a decade of US involvement in Afghanistan should not be the restoration of rights-abusing extremist groups. It is not only the women and girls of Afghanistan who expect support from the US. The reaction of the US public and the international media to the Taliban-style Shia Personal Status law in 2009 showed the deep empathy that still exists in the United States and around the world for Afghan women and girls.

Reintegration, Reconciliation and Women's Rights

Human Rights Watch and partners have conducted a series of interviews in Kabul and in districts where insurgent groups are strong in recent weeks, asking women about their hopes and fears for reintegration and reconciliation. Most women living in areas where insurgent groups have become more powerful over the last two or three years say they have seen the brief freedom they enjoyed after the fall of the Taliban disappear. Many have been told to stop working through phone calls, received threatening “night letters” (written messages left overnight), or been intimidated by aggressive groups of armed men. Communities have been warned not to allow girls to go to school. Women have also told us that elders come under pressure from insurgent groups to enforce

their demands to restrict freedom of movement and the right to work. Policy makers should have a proactive strategy to deal with this pattern of intimidation and abuse of women and girls as they work to achieve reintegration and reconciliation.

I have also recently discussed these issues with two former Talibs, including Mullah Abdul Salam Zaeef, a founding member of the Taliban movement and the former ambassador to Pakistan. Both echoed the claims of the Taliban government while it was in power that restrictions on women, including the closing down of girls schools, were merely due to lack of resources. Mullah Zaeef said that the freedom to work and study that women had enjoyed in recent years (specifically in mixed offices and classrooms) had resulted in their “moral corruption.”

Unsurprisingly, all of the women we interviewed say they want peace: women are paying a heavy price in the current conflict. But all are concerned about the potential consequences of deals with insurgents for their basic rights -- even those who are barely able to exercise these rights today. Most women describe what could be considered “non-negotiables.” These include:

- Access to education
- Access to health care
- Freedom to work
- Freedom to participate in political life
- Maintaining the constitutional protection of these rights

Many of the women expressed frustration that there is little transparency about the government's reintegration and reconciliation plans. They are well aware that initiatives and policies are currently being drawn up that will have enormous impact on them, but they have not been kept informed, let alone consulted. Women want to be included in a serious manner while they still have a chance to make recommendations and influence decisions. They also want to be represented in large numbers if a peace jirga takes place by women who will advocate their views and rights - not by what they fear may be compliant and token delegates.

In response to the London Communiqué, a group of women leaders drew up their own list of demands.¹ We urge the US to support their recommendations (which we endorse). The following recommendations are largely drawn from their demands:

- Prioritizing women's inclusion at every stage of planning for reintegration and reconciliation.
- Prioritizing women's inclusion in decision making bodies.
- Ensuring that women who participate in decision making bodies and the peace jirga are representative of women civil society activists (ideally they should be nominated by the Afghan Women's Network and Afghanistan Independent Human Rights Commission).
- Ensuring that those who broker deals do so in a transparent and inclusive way.
- Ensuring that the government of Afghanistan offers guarantees of women's constitutional rights, including basic freedoms such as access to education, right to work, access to health, access to justice, freedom of speech and freedom of movement.
- Ensuring that a proportion of the financial incentives to communities to support reintegration should be used to support women's empowerment and development.
- Ensuring that mechanisms are in place to protect the rights of women and girls in reintegration and reconciliation plans through rigorous monitoring and mechanisms of redress.
- Devoting a significant proportion of international donor assistance (including funds going through the Afghanistan Reconstruction Trust Fund) to women's needs in the areas of reconstruction, rule of law, and access to formal justice.

Traditional Dispute Resolution

Part of the reintegration package being considered involves efforts to strengthen or create traditional dispute resolution mechanisms. While in the abstract this sounds sensible in a country where the court system is hardly functional and does not reach isolated areas, traditional dispute resolution can be very dangerous for women. It is already widely practiced and routinely involves "settlements" harmful to women, including the use of *baad* (providing women or girls as compensation for a crime or civil dispute, including in rape cases) and honor killings. The Ministry of Women's Affairs, the Afghanistan Independent Human Rights Commission, and the Afghan Women's Network have all expressed strong

¹ These can be found at <http://peacewithjustice4afghanistan.blogspot.com/2010/02/kabul-press-conference-reactions-from.html>

concerns about measures that might bring added legitimacy to these customary practices. Their intervention has resulted in significant improvements in the new policy guidelines on paper, but they maintain valid fears about their practical implementation, particularly at the village level and in more conservative areas of the country.

Support for this initiative from the United States appears to be driven by counter-insurgency objectives, to address concerns among Afghans that the court system is too corrupt or weak or absent in rural areas to address or resolve disputes. This has been exploited by the Taliban, which in some areas has been quick to provide forms of dispute resolution through its own processes. Yet informal justice initiatives are unlikely to make the protection of women's rights a priority while the motivation for these initiatives is counter-insurgency rather than justice and rights.

We urge that the US insist that any policies or programs on traditional dispute resolution:

- Make the protection of women's rights a principal objective, not to be traded to obtain other goals.
- Help ensure that women's constitutional rights are protected in any judicial or dispute resolution system.
- Ensure that *baad* and honor killings are never used in criminal or civil cases and that those who continue to engage in these practices are prosecuted.
- Do not result in resources being diverted away from strengthening the formal justice system, particularly at local levels, and women's access to justice through the courts.

Attacks on Women in Public Life

One of the great advances since 2001 is the possibility for Afghan women to be active in politics, government, civil society and other spheres of public life. Yet women in public life are subject to routine threats and intimidation. Several high-profile women have been assassinated in recent years, and their killers have not been brought to justice. Women in insurgent-controlled areas are often threatened and intimidated into retreating to their homes. Every time a woman in public life is killed, her death has a multiplier effect, as women in her region or profession will think twice about their public activities.

Women in parliament and on provincial councils face challenges that their male counterparts do not, and require specific training, support and protection. Without a strong platform in government and society from which to lobby for their rights, women's advancement in Afghanistan will grind to a halt. We urge the United States to:

- Press the Afghan government to investigate and prosecute attacks on women in public life.
- Encourage President Karzai to maintain the reservation of 25 percent of seats for women in parliament and extend this to all sub national forms of government.
- Work towards the implementation of the demand from women leaders at the London conference that women be allocated 25 percent of positions in all government bodies, particularly in decision-making positions, the peace jirga, and civil service, including senior positions in the civil service.
- Work with the government to provide protection for women facing personal threats.
- Develop specific training programs on law, rights and governance for women in parliament, provincial councils, and all sub national forms of government.
- Support programs of gender awareness for men at all levels public life to discourage discrimination and an atmosphere of hostility and intimidation.

Violence Against Women

Violence against women in Afghanistan is endemic. A nationwide survey by Global Rights of 4,700 women, published in 2008, found that 87.2 percent had experienced at least one form of physical, sexual, or psychological violence or forced marriage in their lifetimes. The Elimination of Violence Against Women (EVAW) law, which came into force in July 2009, was a notable achievement on the part of women's rights defenders, despite weaknesses in the law. The law strengthens sanctions against various forms of violence against women; including making rape a crime for the first time under Afghan law. Because it was passed by decree, it can be amended by parliament, where powerful conservative factions are trying to weaken it. President Karzai and the international community should act to ensure this does not happen.

The support of the US government in working with the legal department of the Ministry of Women's Affairs and the Ministry of Justice is appreciated by women activists, as are commitments to expand short training programs on gender

awareness and the mentoring and training for Family Response Units. However, there are concerns that additional pressure this year to rapidly expand the Afghan police and army will result in the continued prioritization of counter-insurgency capacity, and the reduction of training time, which may result in the further reduction of training components that deal with women's rights and human rights, as well as basic law enforcement duties.

To address violence against women, we urge the United States to:

- Press the Afghan government to vigorously investigate and prosecute all crimes of violence against women, including sexual violence.
- Work with the government to implement a nationwide and sustained campaign to ensure that rape is understood to be a criminal offense by law enforcement agencies, judges, parliament, civil servants, and the Afghan public. The campaign should also aim to reduce the stigmatization of victims of rape.
- Ensure that expansion of the Afghan National Army and the Afghan National Police is accompanied by efforts to ensure the security forces have the protection of women as one of their main functions.
- Provide long-term support to the government to embark on a training program for prosecutors, police, and judges to ensure that the Elimination of Violence Against Women law is implemented.

Justice and Accountability

Human Rights Watch is deeply troubled by the recent discovery that the Afghan government secretly gazetted the controversial amnesty law, the National Stability and Reconciliation Law, that had been passed in 2007 but never made official. This law was pushed through parliament by warlords and their supporters to give them immunity for human rights abuses, including war crimes and crimes against humanity, committed over the long period of armed conflict in Afghanistan. In response to international outrage, including by the US government, President Karzai had privately reassured the Afghanistan Independent Human Rights Commission and civil society groups in 2007 that he would not sign the law.

This law is deeply offensive to Afghans, and in contravention of international human rights and humanitarian law. A major opinion survey by the Afghanistan Independent Human Rights Commission found widespread support for bringing those responsible for serious past crimes to justice.

Women have played a leading role in the emerging victims groups demanding accountability for past crimes. Many of the women leaders we have interviewed have expressed deep concerns about the amnesty law. Its revival at this time is seen by some as connected to the current moves towards reintegration and reconciliation.

The amnesty law abdicates the responsibility of the state to investigate and prosecute past crimes. Defenders of the law say it still allows individuals to seek prosecutions on their own. But this is an unreasonable and likely impossible burden – few Afghans are going to take the risk of standing up alone to a warlord or other powerful abuser. To place such a burden on women who have been victims of sexual violence as a weapon of war is particularly egregious and insulting.

It should be the policy of the US government to work for the repeal of this law. It has been a great disappointment to Human Rights Watch and Afghan activists that the Obama administration and other key actors in the international community have failed to react more strongly. It is our understanding that the US is satisfied with the provision allowing individuals to bring claims, despite the impracticality of the provision, and the abdication of state responsibility.

Afghanistan has an international legal obligation to investigate and prosecute as appropriate those who have committed serious violations of human rights, war crimes and crimes against humanity. The United States should press hard with Afghanistan's other supporters to see that this obligation is met.

But this isn't just a moral and legal issue; there are strong pragmatic arguments against betraying the victims of these crimes. Accountability for serious human rights abuses is an important part of a sustainable peace process. The alternative – peace without justice or accountability – is at best likely to result only in temporary calm. The fact that there are already many human rights abusers in government should not be used as an excuse to introduce more, but it frequently is. At a time when the US and other allies of the Afghan government are trying to exert pressure on the government to increase its legitimacy in the eyes of its citizens, further appeasement of people who large numbers of Afghans see as war criminals would be a major step backwards.

We urge the US to:

- Press the Afghan government to repeal the amnesty law and to take steps to uphold its obligation to investigate and prosecute as appropriate serious human rights violations, war crimes, and crimes against humanity, including deliberate and indiscriminate attacks on civilians, unlawful killings, enforced disappearances, and rape and other sexual violence.
- Make clear that accountability is integral to the reintegration and reconciliation process and that serious human rights abusers should be excluded from amnesties provided through this process.

Conclusion

As the United States increases its troop commitments and political engagement in Afghanistan, it is important to recognize that the threat to women's rights comes from the Afghan government as well as former warlords, the Taliban, and other armed groups. Too often, politics trumps justice when women's rights are at stake. President Karzai's efforts to reach out to Taliban leaders cannot be an excuse to appease fundamentalist demands to oppress women.

Afghan women were deeply disappointed that President Obama's December 2009 speech outlining a new US strategy for Afghanistan did not mention women. Similarly, women and girls were largely missing from the Afghanistan and Pakistan Stabilization Strategy released by the Office of the Special Representative for Afghanistan and Pakistan in January 2010. Women were also an afterthought at January's London conference, though thanks to the tenacity of Afghan women and the support of Secretary of State Clinton they were able to have their voices heard.

Despite the talk of Afghan leadership in the reintegration and reconciliation process, the reality is that the US will play a serious and potentially decisive role in its outcome. Consequently, Afghan women and girls, who have not forgotten the promises made by the US government when it ousted the Taliban in 2001, will look to the US to ensure that their rights and freedoms are not traded away as the US seeks to reduce its troop commitments in Afghanistan. The US should not only help to create space for women to raise their concerns, but also articulate where the red lines must be drawn: serious human rights violators should not be

put into positions of power, and the fundamental freedoms enshrined in the Afghan constitution should not be sacrificed.

Without pressure on President Karzai and a commitment from the US and international community to respect the basic rights of women and girls, the hard-won freedoms of the last few years can be quickly unraveled. The trend is already negative. Afghan women will continue to fight to defend their freedoms, but President Obama and the US can do much more to let them know through words and deeds that the United States will support them rather than abandon them in a scramble for deal-making. Women's rights must at all times be central to US policies and goals in Afghanistan.