



No Peace *without* Justice

BY MARILOU MCPHEDRAN

Afghanistan needs a centralized, credible and effective state if it is to accelerate economic development and poverty reduction, if it is to consolidate peace, and if it is to reduce the scope for extremes of brutality and exploitation in social and economic relations... In other words, without due attention to the real politics of Afghanistan, there is every danger that international aid supporting the state capacity will simply reproduce a state incapable of managing the conflicting interests passed down the generations and reshaped by two decades of war.¹

During the process of peacebuilding, fast-tracking democracy and capitalism during the post-conflict reconstruction will increase the likelihood of renewed conflict. Instead, the construction of effective institutions should be the priority. The “real politics” of today’s Afghanistan must include the actualization of women’s human rights in the private and public spheres, bringing meaningful change in their daily lives, so women can, in fact, live their rights. To achieve this, peacebuilding and peacekeeping have to be enhanced through gender inclusive governance and institutions.

Professor Roland Paris, a foreign policy advisor to the Canadian government, argues

for a strategy of incremental political and economic reform.² In “Towards more effective peacebuilding: institutionalization before liberalization,” the final chapter of his most recent book, he makes a compelling case for operational institutions of justice to be placed at the top of the security agenda in support of newly forming governments. Here, Paris is able to build on his earlier characterization of faulty fast-tracking as beleaguered by “Wilson’s Ghost.”³

More than 40 years before Paris’ writings, Secretary-General Dag Hammarskjöld, in his last Annual Report to the UN General Assembly—and just before his untimely disappearance—presented a choice to the UN’s

member states. The choice was between a model for the UN that he termed “a static conference machinery” and a model whereby the UN would become “a dynamic instrument of governments... forestalling conflicts and resolving them, once they have arisen, by appropriate diplomatic or political means, in a spirit of objectivity and in implementation of the principles and purposes of the [UN] Charter.” To this day, however, UN member states have yet to clearly take a stance.

This indecision is clear in Kabul where the lines between peace and war are blurred. I discovered this firsthand through my travels there, at the invitation of Canada’s

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Department of National Defence (DND). Our delegation, which included others visiting from various Canadian universities, was embedded in the Canadian military base, Camp Julien, in Kabul, part of NATO's unique International Security Assistance Force (ISAF) mandated by the UN Security Council.⁴ We arrived during a chilly Kabul rainstorm—clambering off a military “HERC” prop plane in our flak jackets and helmets—just days before the 7 December 2004 inauguration of Hamid Karzai, Afghanistan's first democratically elected president. Although the ISAF is not a combat operation by technical military standards, our briefings by Canadian soldiers made their perceived mandate clear. “This is a war,” we were told in a briefing, “there is a

Independent Human Rights Commission (AIHRC). This charismatic surgeon and controversial women's rights activist held the positions of deputy prime minister and minister for women's affairs in the first Karzai government, under the terms of the Bonn Agreement⁶ that stipulated an initial six month term, followed by a two year transitional government to be chosen at a Loya Jirga.⁷ In 2002, in the midst of that Loya Jirga, fundamentalist religious leaders issued a *fat-wah* against her, following allegations that she did not support Muslim Sharia law.⁸ She did not return to Karzai's cabinet. Nevertheless, Dr. Samar's message is a consistent one, reinforcing that military peacekeepers are essential at this stage of reconstruction in Afghanistan.

divides. This issue has been positively dealt with by the current UN Secretary-General, who affirms, “For generations, women have served as peace educators, both in their families, and in their societies. They have proved instrumental in building bridges rather than walls.”¹⁰ Furthermore, the words of Hunt and Posa clarify a vital point: “rather than motivated by gender fairness, this concept is driven by efficiency: women are crucial to inclusive security since they are often at the centre of non-governmental organizations (NGOs), popular protests, electoral referendums, and other citizen-empowering movements whose influence has grown with the global spread of democracy.”

This concept underscores the title for this article: “No Peace without Justice.” Additionally, it has provided the inspiration for the image that Dr. Samar has chosen, depicting the scales of justice held in the beak of a white dove. This image has been emblazoned on hundreds of napkins for distribution as gifts for luminaries arriving in Kabul for the presidential inauguration. These four words encapsulate a debate within academic and policy circles worldwide, as to when and whether limited peacebuilding resources can be spared, in order for financial and technical aid to bolster reform in the justice sector as an immediate and simultaneous priority.

FOLLOW THE MONEY...

Results from research completed in Afghanistan in late 2003 found that 43 percent of respondents identified security rights as the top priority among the “rights” categories.¹¹ Overall, 83 percent felt more secure than three years ago; however, regional differences were clearly distinguished with only 53 percent of respondents in Kandahar—from which many NATO troops, including Canadians, have been withdrawn—seeing improvements in security. Thirty-three percent felt that disarmament was the most important factor to improve security. Disarmament is a necessary precondition of holding free and fair elections and making significant progress on reconstruction. While these figures, for the most part, reveal a collective passion for peace, they do not help us understand the process in which Afghans prioritize the essential components of peace-



“There can be no peace without justice in Afghanistan. There must be accountability for human rights violations of the past and the present. Without accountability and without justice, the culture of impunity will never end.” Dr. Sima Samar (right) and Marilou McPhedran in Kabul.

declared enemy and we have chosen a side. We are here to support and protect the Government of Afghanistan.”⁵

EMBROIDERED LOBBYING

As crystalline as such a declaration seemed initially, it triggered a recurring question: exactly how are the constituent elements of the “Government of Afghanistan” defined? In terms of security, who is the recipient of funds and technical aid? These questions permeated my reunion with Dr. Sima Samar, the founding and current chair of the Afghan

assaults targeting newly established girls' schools. Despite these threats, Dr. Samar has warned that funnelling resources primarily to the military side of peacebuilding merely appears to achieve a form of security, but is *not* the means to attain sustainable peace. Ultimately, to be sustainable, security must be inclusive.

For “inclusive security” to exist, fundamental social changes are required in order to prevent renewed hostilities.⁹ The emphasis is on the notion that women have a unique ability to bridge seemingly insurmountable

building—for example, how they would allocate resources to arm and train soldiers versus staffing justice mechanisms such as the AIHRC. Undoubtedly, these make for tough choices in resource allocation; additionally, the use of force to build peace must always be scrutinized for rights abuses. But as Canadian reservist Lt. Alden Skidd commented concerning Afghanistan in a previous issue of the *McGill International Review*, “...for every dissenter, there is a shopkeeper who is thankful for the increase in local security. For every protester there is a young girl who is now able to go to school.”¹²

In this early period of rehabilitation and reconstruction, international experts differ in the selection and emphasis of priorities to be funded and implemented. Within that debate, the role of the UN and other international agencies is also questioned. Women’s leadership and the actualization of women’s rights are usually running beneath the centre-screen drama as subtext. For instance, a former UN High Commissioner for Human Rights, Mary Robinson, was at the World Bank itemising the huge economic costs of gender-based violence and demonstrating how an analysis of gender-based violence highlights the utility of rights-based approaches in aid, the very day of President Karzai’s inauguration.¹³ Although the AIHRC mandate is appropriately wider than women’s human rights alone, the role of the AIHRC can be explored as a means of making some observations on the tough choices generated when peacebuilding and peacekeeping policies differ in their emphasis on flowing resources to women’s and children’s human rights—as “lived rights.” As a first step, the platform from which the new human rights system is being constructed in Afghanistan is briefly described below.

BUILDING JUSTICE IN AFGHANISTAN TODAY

In a briefing provided by Canada’s ambassador to Afghanistan, Christopher Alexander, to our DND delegation at the Canadian Embassy in Kabul, the context for justice reform was summarized by the following facts: a) the 2004 UNDP Country Report confirms Afghanistan is in the bottom five on the UN Human Development Index; b) it is in the top three levels of infant mortality and child-birth deaths; c) it is now the number one



A difficult posting. Christopher Alexander, Canada’s Ambassador in Kabul. Photo: Marilou McPhedran.

opium producer in the world; and d) Afghanistan is home to the largest ever recorded return of refugees and diaspora, many of whom were professionals unable to practice since their escape. At the embassy briefing, I questioned former Ontario Deputy Attorney-General Larry Taman, retained by the UN to provide counsel to the justice minister of Afghanistan, on how an effective human rights regime in Afghanistan can be established. Taman argued for measures beyond constitutionalization of the existing commission, saying that the AIHRC needs a functional justice system, that cannot be created by decree alone, to sustain its “constitutional personality and longer term viability.”

THE 1964 AFGHAN CONSTITUTION AND THE 2001 BONN AGREEMENT

Three years before Karzai’s inauguration in December 2004, the UN convened talks on the reconstruction of peace in Afghanistan, which resulted in the Afghan Constitution of 1964 becoming the focal point of what is generally known as the Bonn Agreement. The agreement put in place a governance framework until such time as a new Afghan constitution could be developed and enacted.¹⁴ A few weeks later, the Interim Authority in

Afghanistan attempted to deal with confusion over what laws were in force by repealing anything inconsistent with the 2001 Bonn Agreement and the 1964 constitution. In strictly practical terms however, the Taliban’s destruction of all records of existing Afghan law reinforce the confusion which still remains.

The 1964 constitution was enacted under the auspices of the Afghan monarchy and contained guarantees considered essential by today’s constitution-building standards, such as the right to counsel, non-discrimination on the basis of sex, freedom of expression, and an independent judiciary. Furthermore, the Bonn Agreement clearly set out a vision for Afghan governance as “broad-based, gender-sensitive, multi-ethnic and fully representative.” They had only two years to construct the new Afghan Constitution—from November 2002, when the Constitutional Drafting Committee set up by the Bonn Agreement began its work, to its adoption in January 2004.

The AIHRC

As one of three commissions that the provisional Afghan government had to start and support under the Bonn Agreement,¹⁵ the predecessor to the current AIHRC was appointed by Presidential Decree in 2002, with a three-pronged mandate: “human rights monitoring; investigation of violations of human rights; and development of domestic human rights institutions.” Although the draft constitution submitted to the Constitutional Loya Jirga gave a relatively weak mandate to the Afghan Independent Human Rights Commission, delegates supported AIHRC proposals and voted in amendments to entrench the AIHRC¹⁶ and strengthen its mandate.¹⁷ In January 2004, permanent and constitutional status confirmed the future of the AIHRC.¹⁸

WOMEN’S LIVED RIGHTS IN AFGHANISTAN

The Afghan Bill of Rights pledges to abide by international human rights treaties, guaranteeing fair political representation and equal rights for women. However, Dr. Samar has flagged the tension between peacebuilding supported by armed forces under the limited rules of engagement and the peace envisioned by the new Afghan Constitution:

But the new Constitution and its promises will not become reality for most Afghans unless security in the country is significantly improved and the 'law of force' is replaced with the 'force of law'. Despite the progress of the past three years, Afghanistan remains a country in which the culture of war and rule of the gun have overshadowed the creation of a violence-free environment, where justice, peace, and development are the dominant features throughout the country. Violations of women's rights and human rights continue with impunity. Girls' schools are set on fire by fundamentalists. Trafficking of women and children continues. Tactics of intimidation are used to stop people and especially women from exercising their human rights. Prisons hold women and men illegally. The existence of private jails is another contributing factor to growing disappearances and arbitrary arrests. Rampant corruption and the absence of effective reform mechanisms in government institutions have caused

the loss of credibility of our legal and judicial systems in particular. In the face of forced marriages and hopelessness about their lives, young women are committing suicide by self-immolation.¹⁹

SECURITY COUNCIL RESOLUTION 1325

The month of October has become associated with the notion of gender inclusive security in the UN Security Council, especially since the passage of Resolution 1325 on 31 October 2000.²⁰ The President of the Security Council welcomed the *Report of the Secretary-General on Women, Peace and Security* at the 5066th UN Security Council meeting in October 2004. On behalf of the Council, "all violations of the human rights of women and girls in situations of armed conflict and the use of sexual exploitation, violence and abuse" were rightly condemned. It was asked of Secretary-General Kofi Annan to ensure that human rights monitors receive proper training in conducting human rights investigations regarding gender-based crimes "in a culturally sensitive manner favourable to the needs, dignity and rights of

the victims."²¹ Large strides were seemingly made regarding gender inclusive security. And overall, there does not appear to be much division on the policy question of UN and NATO engagement in peacebuilding that is more inclusive of community. Indeed, Colonel Garland H. Williams, of the U.S. Army, argues for a shift in the American approach toward a civil-military cooperation or (CIMIC) model that already has a relatively modest presence in the ISAF contingent. With Afghanistan as an example, Col. Williams illustrates the value of placing military engineering brigades at work in conjunction with peacekeeping contingents immediately after the end of a conflict in order to restore vital infrastructure and social institutions.²² That is what Canadians are doing in Kabul.

Unfortunately, in spite of the fact that the city is considered more secure for women than anywhere else in Afghanistan, my personal observations prevented a similar level of optimism for military and UN decision-making that will implement principles of gender inclusive security.²³ 🇺🇸

NOTES

1. Christopher Cramer and Jonathan Goodhand, "Try Again. Fail Again. Fail Better? War, the State and the 'Post-Conflict' Challenge in Afghanistan," *Development and Change* 30 (2002): 908-909.
2. Roland Paris, *At War's End - Building Peace after Civil Conflict* (Cambridge: Cambridge University Press, 2004).
3. Roland Paris, "Wilson's Ghost: The Faulty Assumptions of Post-Conflict Peacebuilding" in Chester A. Crocker, Fen Osler Hampson, and Pamela Aall, eds., *Turbulent Peace: The Challenges of Managing International Conflict* (USIP:2001).
4. Created by UN Security Council Resolution 1386 through the Bonn Agreement of December 2001, the ISAF has a "peace enforcement mandate" under Chapter VII of the UN Charter. As well, three UN Security Council Resolutions: 1386, 1413, and 1444, relate to the ISAF, but it is not a UN force, according to a Military Technical Agreement between the ISAF Commander and the Afghan Transitional Authority of January 2002. A NATO briefing note on Afghanistan, described the ISAF mandate as: "assisting the Afghan Transitional Authority in the maintenance of security in Kabul and its surrounding areas so that the Transitional Authority and UN personnel could operate in a secure environment." October 2003, NATO Public Diplomacy Division: natodoc@hq.nato.int
5. Capt. MacPherson of the Princess Patricia Canadian Light Infantry, out of Edmonton, personal briefing 7 December 2004 in Camp Julien, Kabul, Afghanistan.
6. Agreement on Provisional Arrangements in Afghanistan Pending Re-Establishment of Permanent Government Institutions signed in Bonn, Germany on 5 December 2001. It is known generally as "the Bonn Agreement."
7. "Jirga" means meeting or assembly. The Bonn Agreement modified the Loya Jirga, a traditional means of tribal assembly for governance in Afghanistan.
8. In the documentary *Daughters of Afghanistan* (Take Three Productions, 2003) Dr. Samar responded to Canadian journalist Sally Armstrong's questions on the fatwah by explaining that she had said she did not support the interpretations of Shari'a law by the Taliban regime that led to unprecedented oppression of women and girls.
9. Swanee Hunt and Cristina Posa, "Women Waging Peace," *Foreign Policy* 124 (May/June 2001): 38-47.
10. Kofi Annan, as quoted in *Women Waging Peace: Overview of the Initiative*, 2004 Policy Forum on Inclusive Security, Washington, DC, November 2004. See also, www.WomenWagingPeace.net
11. The Human Rights Research and Advocacy Consortium Survey 2003, as reported in Afghan Independent Human Rights Commission, *Annual Report, 2003-2004*.
12. Alden Skidd, "Long Time in the Remaking," *McGill International Review* 5, no. 1 (2004): 8.
13. Accessed online: <http://web.worldbank.org/gender/>
14. Agreement on Provisional Arrangements in Afghanistan Pending Re-Establishment of Permanent Government Institutions signed in Bonn, Germany on 5 December 2001. It is known generally as "the Bonn

Agreement.”

15. The Bonn Agreement also mandated a Constitutional Commission and a Judicial Reform Commission.
16. Afghan Independent Human Rights Commission, Annual Report, 2003-2004.
17. The Constitutional Loya Jirga mandated by the Bonn Agreement was adapted to include representation by citizens from the Afghan Diaspora as well as women and minorities.
18. Article 58 of the new Constitution states: “The State for the purpose of monitoring the human rights in Afghanistan, and their protection, shall establish the Independent Human Rights Commission of Afghanistan. Every person in case of violation of his human rights can submit a complaint to this Commission. The Commission can refer persons whose human rights have been violated, to legal authorities and assist defending their rights. The structure and functions of this Commission shall be regulated by law.”
19. Sima Samar, *AIHRC Annual Report*, 2003-2004.
20. UN Security Council S/PRST/2002/32, Proceedings of the SC Meeting 29 October 2003.
21. United Nations, *Report of the Secretary-General on Women, Peace and Security S/2004/814*.
22. Garland H. Williams, *Engineering Peace: The Military Role in Postconflict Reconstruction* (Washington, DC: USIP, 2004).
23. Let me offer a few practical suggestions for increasing laudable efforts to educate civilians on how soldiers build and keep peace in war-torn regions by making a stronger connection between sustainable peace and gender inclusion: 1) Women leaders, like Sima Samar, are essential to institution building; they merit support and appropriate protection

from UN and Canadian forces. 2) Soldiers, diplomatic personnel, aid workers and technical experts are primary sources of money in a cash-starved economy, but personal spending is often seen as strictly a private matter, thereby missing the ways in which foreigners reinforce the economic exclusion and exploitation of women. NATO announced a zero tolerance policy regarding trafficking in human beings by NATO forces and staff, adopted in June 2004 and endorsed by NATO Heads of State and Government at the Istanbul Summit. The NATO Policy On Combating Trafficking In Human Beings commits NATO and troop contributing nations to reinforce efforts to prevent and combat trafficking. Although the NATO website www.nato.int/issues/trafficking notes, “With this policy, Allies have agreed that all personnel taking part in NATO-led operations should receive appropriate training to make them aware of the problem and how this modern day slavery trade impacts on human rights, stability and security”, my questions as to awareness of this policy received consistently negative responses. This is not to say that ISAF troops are involved with or condone trafficking in humans, but the new policy would seem confined to headquarters and websites at this point. The Afghan Women’s Organization, based in Canada, with staff in Afghanistan, has indicated grave concerns about increased trafficking and prostitution of Afghan women and girls, due to economic and social exclusion (Personal communication with Adeena Niazi, president, Afghan Women’s Organization, December 2004). 3) Human rights policies, such as the new NATO anti-trafficking guidelines, are not sufficiently integrated with operational guidelines for troops and other ISAF staff. CIMIC projects and any economic exchanges, be they for de-mining or for the craft markets.

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