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WHAT WILL THE FUTURE OF
AFGHAN WOMEN BE AFTER 2014?

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WHAT WILL THE FUTURE OF AFGHAN WOMEN BE AFTER 2014?

Abstract:

The progress made on human rights regarding women and girls in Afghanistan in the last decade is undeniable. However, due to the imminent completion of the transfer of power, there is a generalized fear that the withdrawal of most International troops will lead to a loss of these improvements. This document analyses the improvement of women's situation, taking into account the progress accomplished regarding the legal framework as well as in relevant areas. Nevertheless, it also presents some examples of the voices that rise about the expected worsening of their situation in January 1, 2015.

Resumen:

Son innegables los avances en materia de derechos humanos que ha experimentado la condición de las mujeres y de las niñas en Afganistán en la última década. No obstante, ante la inminente finalización del proceso de transferencia de poder, existe un temor generalizado a que la retirada de la mayor parte de las tropas extranjeras conlleve la pérdida de estos avances. En este documento se analiza la situación de mejoría de las mujeres, atendiendo a los avances en el marco legal y otras áreas destacadas, pero también se exponen algunos ejemplos de las muchas voces que se alzan advirtiendo del más que posible empeoramiento de su situación a partir del 1 de enero de 2015.

Keywords:

Afghanistan, women, girls, gender, EAW Law, sharia.

Palabras clave:

Afganistán, mujeres, niñas, género, Ley EAW, sharía.

In 2011, NATO began the transference of liability from the Afghanistan Security to the Afghan Government. This process must be done by the end of 2014. Despite NATO negotiations with the Afghan Government about the presence of international troops in such country after that date and its status, there is a generalized fear about the consequences that Taliban negotiations and the withdrawal of foreign troops may produce. Among other consequences¹, that situation may result in the loss of the advances reached in social and legal conditions of women.

ADVANCES FOR WOMEN

It is an undeniable fact that advances on human rights have been made regarding women's and girls' conditions in this country in the last decade. Little by little, especially in the biggest cities, progress has been made, fighting women's abuses and restrictions imposed by Taliban people.

The Taliban regime established what was called at the time a "gender apartheid". This term, also used by scholars², was used by feminist associations and by women's rights advocates to point out that the experience of the violation of the fundamental rights of Afghan women was not so different, in substance, from the one experienced by the black people of the apartheid in South Africa.

Today's situation is completely different. Among many other advances, during the last ten years, girls' access to education has increased, women have more access to health services, they enjoy greater representation in Parliament, they have achieved the same legal status as men (as they have the right to vote), they have joined the police and the army and there is also a ministry for women development and empowerment³ and a specific act for the

¹ Difficulties are feared for the security maintenance and also the very possible institutions instability, the collapse of the economy, social regression, etc. Recommended reading:

VV.AA. *Prospects for Afghanistan in 2014*". Council on Foreign Relations, December 2013. Available at: <http://www.cfr.org/afghanistan/prospects-afghanistan-2014/p32094> date of access: December 2013.

Seth G. Jones and Keith Crane article mentions, among other risks, the expansion of al-Qaeda and its members, the regional instability, the increase of radicalisation in Pakistan, and the perception of allies and enemies as well as the engagement of the U.S. as something untrustworthy. JONES, Seth G., CRANE, Keith, *Afghanistan After the Drawdown*, Council Special Report 67, Council on Foreign Relations, November 2013. Available at: <http://www.cfr.org/afghanistan/afghanistan-after-drawdown/p31944> Date of access: January 2014.

² Some authors that make references to gender apartheid:

AHMED, SAMINA, "Don't sacrifice Afghan women for a deal with the Taliban". The Christian Science Monitor, November 2013

SKAINE, Rosemarie, "The Women of Afghanistan Under the Taliban". McFarland, 2002

INTERNATIONAL CRISIS GROUP, "Women and Conflict in Afghanistan". Asia Report, 252. October 2013. P. 4.

³ MOWA: Ministry of Women's Affairs. <http://mowa.gov.af/en>

elimination of violence against women. The action started strongly, now the fear probably is a setback.

THE INAPPLICABLE INTERNAL LEGAL FRAMEWORK

The Constitution

The Constitution of the Islamic Republic of Afghanistan⁴, ratified in January 2004, represents one of the major legal steps made in favour of equality between men and women, together with the Elimination of Violence Against Women Law (EVAW) of 2009.

In its preamble, the Constitution recognizes the observance of the *United Nations Charter* and the *Universal Declaration of Human Rights* and it states that both men and women have the same rights (Art. 22), such as education (Art. 43) and the right to work (Art. 48). Moreover, other articles insist on the ban of common practices against women, Article 29 particularly clarifies that punishments against human dignity are forbidden.

In the light of these articles, how do we have to interpret the news about the brutal and increasing violence against women experienced in 2003?⁵ We can find the answer in the Article 3 of the Constitution, which subjects all the other articles to “the principles and provisions” of Islamic religion in Afghanistan. As it does not specify what the Islamic principles are, the Constitution itself leaves the door wide open for the imposition of the interpretations and versions of this religion made by the head of the country for the moment.

Therefore, under this article, women’s rights are subject to a constant change. A clear and controversial example is the Ulema Council⁶ Decree issued on the Women’s Day in 2012, which openly stated that “men are essential and women are minor”. It is also indicated that

⁴ The *Constitution of Afghanistan*. January, 3rd 2004. Available at:

http://supremecourt.gov.af/content/media/documents/constitution2004_english241201294958325553325325.pdf Date of access: January 2014

⁵ Some examples of recent articles alarming about the increase of the violence against women:

DONATI, Jessica, “Violence against Afghan women more frequent, brutal in 2013 - official”. Reuters. 04/01/2014 Available at:

<http://uk.reuters.com/article/2014/01/04/uk-afghanistan-women-idUKBREA0307Q20140104> Date of access: January 2014

RAWA. “Two tales of brutality to women in Afghanistan”. 28/12/2013 Available at: <http://www.rawa.org/temp/runews/2013/12/18/two-ales-of-brutality-to-women-in-afghanistan.html> Date of access: January 2014

LATIFI, Ali M. “Domestic violence on the rise in Afghanistan”. Al Jazeera. 25/12/2013 Available at: <http://www.aljazeera.com/indepth/features/2013/12/domestic-violence-rise-afghanistan-20131221125614213962.html> Date of access: January 2014

⁶ A religious council appointed by the President of the Republic.

“jokes, abuses and beating against women, without a Sharia compliant reason, are forbidden.”⁷

Sharia, according to the Koran, which refers to this term once, is the right path for religion. As one might expect, the correct or incorrect path is subject to human interpretation, therefore, it has a “non-divine” nature.⁸

The Penal Code,⁹ which has been in force in Afghanistan since 1976, includes crimes such as physical damages, forced marriage and murder, yet it does not make explicit reference to domestic violence or against wives or under-age people. Following the Constitution articles, the first law which defends women’s rights is the EVAW Law of 2009.

Elimination of Violence Against Women Law¹⁰ (EVAW)

As this law categorically indicates that “violence against women is a crime”¹¹, it implies an essential progress for their individual rights. Its purpose is to protect women from traditions and practices against them and, at the same time, to increase public consciousness and prosecution of the perpetrators of those kind of violent acts. The cases that are considered as to be violent acts against women are listed in Article 5:

1. Rape;
2. Forced prostitution;
3. Record and publicise the identity of a victim;
4. Setting into flames, pouring chemicals or other dangerous substances;

⁷ Official declaration by the National Ulema Council of Afghanistan, March 2nd 2012.

The unofficial translation in English is available at:

<http://afghanistanaanalysis.wordpress.com/2012/03/04/english-translation-of-ulema-councils-declaration-about-women/>

⁸ In this regard it is recommended the reading of section II. The Inherent Ambiguity of Islamic Law en KHAN, H., OMAR, M., KUEHNAST K., HAYWARD, S., “Fostering Synergies for Advancing Women’s Rights in Post-Conflict Islamic States: A Focus on Afghanistan, Egypt, and Libya”. Brookings. November 2013

⁹ Available at:

<https://www.unodc.org/tldb/showDocument.do?documentUId=2100&country=AFG&language=ENG> Date of access: January 2013

It is possible to read articles such as number 61 which explains that murder is permitted in case of “defence against the act of adultery, homosexuality or threat to either.”

¹⁰ It is important to take into account that for this law, as it is said in Art. 3, the term women includes also girls. For this reason the aim of the law is the elimination of violence against women and girls.

¹¹ The English version is available in the web site of the organization *Legal Aid Organization of Afghanistan*:

http://www.laoa.af/laws/law_on_elimination_of_violence_against_women.pdf

In the website of the Ministry of Women’s Affairs, in January 2014. The document cannot be found in the window of the resources.

5. Forcing a woman to commit self-immolation or suicide or to ingest poison or other dangerous substances;
6. Causing injury or disability;
7. Beating or lacerating;
8. Selling a women for the purpose of marriage;
9. *Baad*¹²
10. Forced marriage;
11. Prohibiting the right to marriage;
12. Marriage before the legal age (16 years old);
13. Abuse, humiliation or intimidation;
14. Harassment or prosecution;
15. Forced isolation;
16. Forced drug consumption;
17. Denial of inheritance rights;
18. Denial of the access to personal properties;
19. Denying the right to education and work;
20. Forced labour;
21. Marrying more than one wife without observing Article 85 of the Civil Code;¹³
22. Denying family relationship;¹⁴

This list of crimes, especially the ones deeply rooted in tradition, and the establishment of the penalties for each of them represent an important change in the fight to enhance the situation of Afghan women. However, the most important point is that EAW indicates that it prevails over other provisions or laws that may contradict it. This law “tries to correct bad interpretation of the provisions of the Koran and of the Prophet’s words which some of the members of the society use to justify physical and mental abuses against women and to deny women and girls education and labour and property access”.¹⁵

Although the legal framework has improved women’s condition and, in a less extent, the protection that the State can offer, these measures are modest and, most important of all,

¹² The *Baad* is a Pashtun traditional practice to settle disputes in Pakistan and in Afghanistan. According to Article 3 of the EAW itself it consists in “marry a women so that families are less likely to continue a blood feud and to promote harmony between the families after a murder, rape or other circumstances related to wrong customs and traditions.”

¹³ This article indicates that polygamous marriage is a crime unless it does not provoke injustices between the wives; the man is able to provide nourishment, clothes, an adequate house and health care to each wife; and if the first wife suffers an incurable disease or if she is not able to have children.

¹⁴ This practice is carried out to avoid the right to access to property, inheritance or other rights to women.

¹⁵ Know your rights and duties: The Law on the Elimination of Violence against Women [Kabul]: International Development Law Organization (IDLO), 2010. P. 2. Available at: <http://www.idlo.int/Publications/EAW%20ENGLISH.pdf>

Date of access: December 2013

reversible. The validity of the law is in danger as it contradicts traditional attitudes supported by religious interpretations.



Picture 1: A group of women covered with the traditional burka at the entrance of a shop in the city of Qala-i-Naw. Author: Pepe Díaz.

SITUATION OF WOMEN IN 2013

Slow application of EAW Law

Besides being one of the milestones of the fight for Afghan women's rights, this law is being implemented really slowly. According to the UN report: "A way to go: An Update on Implementation of the Law on Eliminations of the Violence against Women in Afghanistan¹⁶", presented on 8th December 2013, even if Afghan authorities have registered an increasing number of violent acts against women and girls –an increase of 28 % from

¹⁶ United Nations, "A way to go: An Update on Implementation of the Law on Elimination of Violence against Women in Afghanistan", 2013 Available at: http://unama.unmissions.org/Portals/UNAMA/Documents/UNAMA%20REPORT%20on%20EAW%20LAW_8%20December%202013.pdf Date of Access: December 2013

October 2012 to September 2013–, prosecutions and sentences under this law are still limited –they increased only by 2% in the same period.

Moreover, in most cases incidents are not denounced, especially in rural areas, due to the rules and the social and cultural restrictions that block the access to justice to women. In other places, most of the cases were solved through informal administration mechanisms: notable elders' councils, called *jirgas* and *shuras*. It is estimated that in rural areas these councils deal with the 95 % of the cases. This system often violates the Afghan law, and especially women's and girl's rights. They are excluded from the decision-making process and are treated as a property with a monetary value, which is given to the family's victim in exchange for the marriage as a payment or compensation.¹⁷

EVAW Law in the Parliament

The parliamentary debate for the ratification of the EVAW Law on 18 May 2013 can be considered as a failure and a serious warning about the hard times for women. The most conservative parliamentary members considered this law as opposite to the sharia, since it destroys family life. They also questioned the opinion of President Karzai when he passed this law as a presidential decree.

The debate ended after 15 minutes, when some parliamentary members asked for a law's reform in order to eliminate the girl's minimum age to get married, to close refuges and to abolish criminal penalties for rape and domestic violence. Since the EVAW Law was already a law, even without the Parliament ratification, some people¹⁸ consider that presenting it before that Chamber has meant putting it at risk. The parliamentary member, Fawzia Koofie, is directly pointed as the responsible of creating this risky unnecessary situation.

¹⁷ GIL RUIZ, Jose Luis, "El género en las operaciones". En *El papel de la mujer y el género en los conflictos*. -- [Madrid]: Ministry of Defense, Technical Secretary General, 2012. -- (Cuadernos de Estrategia; 157). -- P. 204

¹⁸ <http://www.smh.com.au/comment/women-betrayed-by-their-champion-20130518-2it82.html#ixzz2ThShriTO>



Picture 2: Tweet of Samira Hamidi, President of the Afghan Women’s Network, where she indicates that she asked Fawzia Koofi to not jeopardize the law.



Picture 3: Twitter account of the Afghan parliamentary member, candidate for the country’s Presidency, Fawzia Koofi. There she posted her impressions after the debate: “Conservatives try to block efforts for women progress in Afghan parl, an alert for not only women rights, but also societal transformation in Afg”.

Education

According to Article 43 of the Afghan Constitution, education is a right for every citizen and it must be free, in public centres until the university level. However, it is a right that not all girls are able to exercise for different reasons.

Nevertheless, girl's access to education, even if it is precarious and depends completely on external aid, is without any doubt one of the major success on *gender* in Afghanistan.¹⁹



Picture 4: A teacher with her female students. Author: PIO Herat

In its 12th edition, the *Report on Progress Toward Security and Stability in Afghanistan*, written by the United States Ministry of Defence, speaks about both sides of the coin of the school's reality of girls. Although in September 2013 40 % of school-aged girls –3 million girls approximately– attended school, this figures do not increase, mainly due to poverty and a lack of security.

"I have always wanted to go to school but for a long time my father wouldn't let me because he said we couldn't afford it. He said: "We are poor, I can't afford getting you books, notebooks, and pens. It has no sense". But boys don't usually have any problem. People treat girls and boys in different ways. Families don't mind boys being educated but many have problems with girls going to school."

¹⁹ GIL RUIZ, Jose Luis, "El género en las operaciones". In *El papel de la mujer y el género en los conflictos*. -- [Madrid]: Ministry of Defense, Technical Secretary General, 2012. -- (Cuadernos de Estrategia; 157). -- P. 216

Testimony of Meena Amri, 17-year-old student of Mazar-e-Sharif of the North of Afghanistan.)²⁰

Regarding insecurity, we can understand that the Reports highlights that the lack of female teachers is the main reason for the school dropout. There are about 2007.000 teachers, many of them with poor qualification, and only 70.300 of them are women.



Picture 5: Girls in Afghanistan. Author: PIO Herat

The NGO Oxfam International²¹ provides also similar information: although schooling rate increases, there still exist many obstacles, such as poor quality education, the lack of facilities and teachers and the difficulty for girls to attend school regularly. The thing is that school-aged girls are one of the most vulnerable groups of the country: they experience insecurity, they are forced to get married at an early age, they suffer from malnutrition and poverty and they also live under serious gender inequality in the country. Cases of violence against students, for example the one of the Pakistani girl Malala Yousafzai, who was shot for defending her right to education, often happen in the neighbouring country. The media speaks about some of these cases, but obviously there are a lot more.

²⁰ Testimony by Intermon. Available at: <http://www.oxfam.org/en/campaigns/health-education/afghanistan-girls-education-risk> where it is possible to read other interesting testimonies, for example the one of the female head of school and the one of a teacher.

²¹ OXFAM INTERNATIONAL: "High Stakes: Girls' Education in Afghanistan", 2011, Available at: <http://www.oxfam.org/en/policy/high-stakes-girls-education-afghanistan> Date of access: December 2013.

Access to health care

Afghan health care system has experienced important improvements during the last years, today nearly 80 % of the population has access to basic health care. This number is impressive if we compare it to the 8 % of 2001.²²

Nevertheless, a woman dies every 29 minutes when she gives birth. It is the second highest maternal mortality rate in the world. Country's physical and climate conditions make medical intervention extremely hard. According to Severine Caluwaerts, who worked in Afghanistan for Doctors without Borders (MSF), besides the advances, there is still a lot to do for women and their children, as mortality rates are still unacceptable.

Investment in obstetrics and nursery schools could be a way of getting a meaningful impact, because, in her opinion, there is a lack of qualified health-care professionals, especially within the rural areas, and a shocking lack of female nurses and doctors.²³

Women with social and political responsibilities

There are committed women enrolled in the army or in the police force. Most of them work in Kabul and in other big cities, but none of them are sent to rural areas, where the worst practices against women are more frequent. Being a policewoman, an activist, a female politician, soldier and, most important of all, being a woman are dangerous conditions. The proof is the increasing number of women that are being murdered because they have jobs considered to be for men, or just because they go to work.

Nevertheless, thousands of Afghan women are active in the social and political field. There are female ministers, such as the Health Minister and the Minister of Women's Affairs, and the President of the Afghan Independent Human Rights Commission is also a woman. The Afghan Parliament continues to have one of the highest feminization rates, more specifically a 27 %. However, will these rates that, thanks to international pressure, "force" institutions to have a female presence be respected after 2014?

²² Haidari, M. Ashraf. "Afghan women as a measure of progress". Foreign Policy. 18/03/2013 Available at: http://southasia.foreignpolicy.com/posts/2013/03/18/afghan_women_as_a_measure_of_progress date of access: January 2014

²³ ASIA SOCIETY, "Interview: MSF Doctor on Afghanistan's Steep Challenges to Women's Health". 01/10/2013. Available at: <http://asiasociety.org/blog/asia/interview-msf-doctor-afghanistans-steep-challenges-womens-health> Date of access: January 2014



Picture 6: Women walking in Herat (notice the high heels detail). Author: PIO Herat.

VOICES OF CONCERN

Advances reached regarding women's conditions during the last decade are undeniable.²⁴ However, without a serious engagement by Afghan women who still live in their country, and also by the ones who emigrated, and, most important of all, without a continuous external help and pressure, all these advances can disappear every time our eyes turn to other more recent media conflicts or matters.

There are lots of voices that speak up about this concern. The International Crisis Group collects interviews²⁵ to Afghan women that reflects the fear they have that the promise done in 2010 by the US Secretary of State of that time, Hilary Clinton, — “We will not

²⁴ For further information on the improvements reached we recommend the reading: AFGHANISTAN RESEARCH AND EVALUATION UNIT. “**Women's Rights, Gender Equality, and Transition: Securing gains, moving forward**”. September 2013. Available at: <http://www.areu.org.af/Uploads/EditionPdfs/women%20and%20Transition.pdf> Date of access: December 2013

²⁵ INTERNATIONAL CRISIS GROUP, “Women and Conflict in Afghanistan”. Asia Report, 252. October 2013. P. 37.

abandon you, we will stand with you always”—²⁶ could be forgotten during negotiations (where there is barely female presence).

Local NGO's representatives, such as Afghan Women's Network, an organisation that gathers together 84 similar organisations, also speak up: "We all want stability and peace, but not at the price of women's rights." (Afifa Azim, Afghan Women's Network coordinator.)²⁷



Picture 7: Afghan women wearing burka. Author: PIO Herat.

Also senior members of international organisations have showed their concern. This is the case of Navi Pillay, High Commissioner for Human Rights at the UN, who spoke intensively in the press conference during her visit to Afghanistan in September 2013:

"I urge an extra effort by the President and his Government to ensure that the human rights gains of the past 12 years are not sacrificed to political expediency during these last few months before the election.

²⁶ "We will not abandon you, we will stand with you always... [it is] essential that women's rights and women's opportunities are not sacrificed or trampled in the reconciliation process." US Secretary of State, Hillary Clinton speaking to female Afghan officials in 2010

²⁷ Testimony available at: <http://www.amnestyusa.org/our-work/countries/asia-and-the-pacific/afghanistan/afghanistan-don-t-trade-away-women-s-human-rights>

Afghanistan needs to brace itself to ensure that the tumultuous changes that will take place before the end of 2014 do not trigger a serious deterioration in the human rights of any segments of the population, especially women.”²⁸

In this regard, the Government of the United States, who started the fight against terrorism by taking up the women’s cause, also speaks up on it. In fact, in 2001, Laura Bush said: “The fight against terrorism is also a fight for the rights and dignity of women”.²⁹ In this spirit, Hilary Clinton and her successor, John Kerry, also spoke up.³⁰

In January 8, 2014, the NGO Human Rights Watch divulgated a letter, addressed to the High Representative of the European Union and to the Ministries Foreign Affairs of the Member States, where it claimed a stronger engagement by the European Union on the Afghan women’s rights, which are not very stable in this period.

In this letter there are some examples considered as a regression of women’s human rights, such as the draft policy of November 25, (the International Day for the Elimination of Violence Against Women), which proposed the re-establishment of the traditional penalty of the *Taliban era* of executing women accused of adultery by stoning. Even if the Government did not approve the draft, this proposal reflects the fragility of the goals reached by Afghan women.

In the letter of Human Rights Watch there are also examples of attacks against women in public functions and/or in a senior position. These not only show the risks that women may have to face by accepting Afghan public life responsibilities, but also the failure of the Government in taking specific measures to protect women in danger.³¹

As this letter aimed at the European Union, other worries regarding the immediate future of the Afghan women brings up a claims for engagement for the future. The last part of Chapter 4 of the 12 Edition of the *Report on Progress Toward Security and Stability in Afghanistan* mentioned before also claims for that. This bi-annual report covers all the

²⁸ PILLAY, Navi, “Opening remarks by UN High Commissioner for Human Rights Navi Pillay at a press conference during her visit to Afghanistan”. Kabul, 17 September 2013. Available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13734&LangID=E>

²⁹ BUSH, Laura. “Taliban Oppression of Women” 17/11/2001 Radio address. Transcript available in the Washington Post website:

http://www.washingtonpost.com/wp-srv/nation/specials/attacked/transcripts/laurabushtext_111701.html

Date of access: January 2014

³⁰ HENNEBERGER, Melinda. “Laura Bush, Hillary Clinton, John Kerry fear U.S. will forget Afghan girls after troops leave.” The Washington Post. 16/11/2013. Available at:

http://www.washingtonpost.com/politics/laura-bush-hillary-clinton-john-kerry-fear-us-will-forget-afghan-girls-after-troops-leave/2013/11/15/d987c04c-4e27-11e3-ac54-aa84301ced81_story.html Date of access:

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³¹ HUMAN RIGHTS WATCH, Op. cit.

period between 1st April and 30th September 2013 and it includes for the first time the worries about women's and girls' future in Afghanistan. It insists on the fact that these concerns must be taken into account seriously and it stands up for the engagement in their future, one of its main priorities.

CONCLUSIONS

The titles of the documents consulted turn out to be perfect for the elaboration of this text. First, the UN report "A way to go (...)" and second the title of M. Ashraf Haidari's³² article "Afghan women as a measure of progress".

However, these sentences must be completed with other nuances, such as the fact that women are fundamental for progress and not a simple unit to measure it. Moreover, the way forward will be long and expensive. The voices of concern that we have mentioned could remain just in theory. Progress and development in Afghanistan, and therefore our security, must pass through the empowerment of women that requires both human and material investments.

Women's rights must not only be accomplished during peace negotiations, but it is also important to continue making pressure, as the international community has done until today, in order to consolidate the progress made and to not allow one single step back. Among others professionals, a greater number of teachers, policewomen, doctors, politicians and jurists is needed. It is also a question of convenience. If we do not maintain the investment, we will have lost a great quantity of human and material resources.

In the same sense of the letter of Human rights Watch,³³ we underline that the solution to these necessities requires a deeply and long-lasting engagement with women. Irreversible progress will only occur if it goes together with international control and pressure over future Afghan Governments and Administrations, so they can continue advancing regarding the respect of women's rights.

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³² M. Ashraf Haidari is the second responsible of the Afghan Embassy in India.

³³ HUMAN RIGHTS WATCH, Op. cit.