

**IMPROVING AFGHANISTAN MATERNAL MORTALITY RATES  
DESPITE THE LACK OF THE RULE OF LAW**

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*“The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”*

– International Covenant on Civil and Political Rights

## I. INTRODUCTION

As the International Covenant on Civil and Political Rights (“ICCPR”) implies, the family unit is an essential component of society. A society that protects the family is not only providing continuity for itself but is also adding to the protection and continuity of the international human community. Thus, it is this reason, among others, that founds the importance of international legal instruments, such as the ICCPR, established for the protection of individual human rights, which results in protection of the rights of the more vulnerable members of the family – women and children.

The United States is a Party to the ICCPR and a Party or signatory to a number of other international human rights instruments that call for respecting and dignifying the human rights of others, as well as assisting in the protection of those rights. As such, the United States, notwithstanding its national interests, must nevertheless fulfill its international legal obligations and assist the most vulnerable of human beings – expectant mothers and infants. Additionally, the U.S.’ obligation extends not only to women and children in areas that are rising out of conflict and disaster, but also in areas still experiencing conflict, such as Afghanistan.

The document from which many of these instruments derive and, is thus, considered the fulcrum of the International Bill of Rights, is the Universal Declaration of Human Rights (“UDHR”), a declaratory but critical statement of the United Nations setting forth human rights principles with which the UN’s membership is in purported agreement. The two main principles encompassing the scope of this paper, which the UDHR affirm, are (1) that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and his family,” and (2) “[m]otherhood and childhood are entitled to special care and assistance.”<sup>1</sup>

The ICCPR is the second branch of the International Bill of Rights mandates protection of the family and further provides that “[e]very child shall have the right to such measures of protection as are required by his status as a minor on the part of his family, society and the State.”<sup>2</sup> Accordingly, to honor its international commitments to the ICCPR and the UDHR, the U.S. has an obligation to ensure these principles are effectuated and should fulfill its obligation by helping to protect the rights of vulnerable women and children.

The U.S.’s obligation with respect to the ICCPR – protecting the rights of women and children – has no temporal or geographical deadline and thus, is applicable to all international situations in which the U.S. is involved, irrespective of the predicted military outcomes, including Afghanistan. An analysis of current U.S. military strategy and operations in Afghanistan with respect to the country’s stabilization go beyond the extent of this paper. However, current events involving the U.S. military and Afghanistan’s government clearly indicate that this paper’s proposal may be successfully implemented as the proposal’s foundation is not predicated on military or political ideologies but on human rights. Consequently, this paper suggests that the investment in Afghanistan’s stabilization should, if continued, center not only on military operations, but also on efforts to accomplish a perceivably smaller but important benchmarks, such as decreasing the maternal mortality rate of Afghanistan mothers and newborns.

Arguably, the protection of Afghanistan women and children in rural communities is not as high a priority for Afghan men and possibly, its government because women and children hold perceivably little value. Nevertheless, there exists value, even in Afghanistan, in a growing population. Moreover, even if the benchmarks of decreasing maternal mortality rates and infant mortality rates are achieved, these objectives will have significant and lasting meaning to Afghanistan’s population in the long-run. As a result, irrespective of ideological differences, if women in Afghanistan’s rural areas have the tools to care

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<sup>1</sup> Universal Declaration of Human Rights, G.A. Res. 810/71 ¶ 3 U.N. Doc. A/RES/810/71 (Dec. 10, 1948). The International Bill of Rights consists of the Universal Declaration on Human Rights [hereinafter “UDHR”], the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. For purposes of this comment, the UDHR and the ICCPR are most applicable. International Covenant on Civil and Political Rights, G.A. Res. 52/16 ¶ 21, U.N. Doc. A/RES/52/16 (Mar. 23, 1976) [hereinafter “ICCPR”]; International Covenant on Economic, Social and Cultural Rights, G.A. Res. 49/16 ¶ 21 U.N. Doc. A/RES/49/16 (Jan. 3, 1976) [hereinafter “ICESCR”].

<sup>2</sup> ICCPR, Art. 24(1).

for themselves during pre- and post-natal periods, they will be able to illustrate to their families and their communities that they hold a higher value, thereby establishing a foundation for the respect and protection of their human rights.

The reasoning behind the “value” Afghan women actually have may be considered on its face as very paternalistic, that is, the women are considered more valuable because they are helping to sustain the lives of the children to whom they give birth. Feminists may also argue that this would be no more than considering women valuable from the perspective of birthing machines and child-care givers. However, studies have shown that small steps, such as these, create a widening berth for women in patrilineal societies, allowing women to evolve past the point of being considered mere chattel.<sup>3</sup> Achieving these benchmarks does not happen overnight or even in a year’s time, but it does happen. Therefore, this paper’s objective is to propose a program that will teach a relatively small fraction of Afghan women, who will then teach other Afghan women who are in pre- or post-natal conditions and residing in rural communities, rudimentary procedures for caring for their health and the health of their newborns.

Given the country’s conditions and the socio-economic value of Afghan women, it is critical to realize that this program’s success depends on three components:

1. Setting aside Western religious and feminist ideologies,
2. Acquiring concessions from the local community in which the women reside, which must include getting the males of the community to agree, and
3. Formulating a program that has minimal implementation costs and the ability to become self-sustaining.

Furthermore, this paper illustrates the affect of the intersection between current Afghanistan law and policy, which is devoid of the rule of law, and the rates of Afghan maternal mortality and infant deaths, undergirding the reasons why the espoused program is necessary.

The subsequent section provides discusses the context in which this issue should be considered: the international obligations with respect to children, and thereby motherhood; the government’s responsibility toward its people; and a synopsis of the historical and current political climates of Afghanistan. The third section reviews the reconstruction efforts and the challenges that emerged from the ongoing reconstruction period. How reconstruction efforts affected violence and the rule of law with respect to Afghan women and the struggle of Afghan women despite the political climates and extremist culture constitutes the fourth segment of the paper. The final section provides specific recommendations and conclusion, outlining the proposed program.

## II. BACKGROUND

As one of the most unstable areas in the world, a brief discussion of Afghanistan’s political and conflict-ridden background helps demonstrate the challenges confronting this proposed program. Afghanistan is an Islamic Republic; therefore, Islamic law, Sharía is the governing code of justice for most of Afghanistan, though a constitution is purportedly in place.<sup>4</sup> Islamic law, in simplistic terms, is a moral code based on the religion, Islam.<sup>5</sup> As an Islamic Republic, Afghanistan is fundamentally different

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<sup>3</sup> Sultan Barakat & Gareth Wardell, *Exploited by Whom? An Alternative Perspective on Humanitarian Assistance to Afghan Women*, 23 Third World Q. 909, 922.

<sup>4</sup> Ele Pawelski, *Defining Justice in Afghanistan: Development of a National Legal Aid System*, 27 Windsor Rev. Legal & Soc. 185, 190 (2009) (citing Ali Wardak, *Building a Post-War Justice System in Afghanistan*, 41 Crime, Law & Social Change, 319, 319-20 (2004)).

<sup>5</sup> Dr. Thomas J. Barfield, *On Local Justice and Culture in Post-Taliban Afghanistan*, 17 Conn. J. Int’l. 437, 437 (2001-2002); see Carol J. Riphenburg, *Post-Taliban Afghanistan: Changed Outlook for Women*, 64 Asian Survey 3, 401, 419 (2004).

from the U.S. democratic state, which professes a separation of church and state. This difference represents one of the largest challenges with respect to stabilizing or “restructuring” efforts. Another challenge is the fact that Afghanistan has been mired in conflict for more than thirty years, resulting in the displacement of millions, creating vast refugee populations in Pakistan and Iran.<sup>6</sup> While a large portion of these populations have returned and are continuing to return, Afghanistan’s government is ill-equipped to manage the demands of this refugee influx.<sup>7</sup> Afghanistan faces challenges involving not only the question of which form of government, if not both Sharía and republicanism, should rule the country, but also challenges involving the creation of an infrastructure that will support hundreds of thousands of individuals returning to its territory.

### A. Political Shadows of War-Torn Afghanistan

The former Soviet Union’s occupation of Afghanistan ended in 1989, leaving a country void of both governance and a basic legal system for the millions who, instead of fleeing during the occupation, remained.<sup>8</sup> Through this void the Taliban emerged, leading Afghanistan into even more chaos.<sup>9</sup>

When the United States invaded Afghanistan in the aftermath of September 11, the Taliban controlled approximately ninety-percent of the country.<sup>10</sup> Despite this control, the Taliban was not recognized as a legitimate government and, thus, the United States had tacit permission from the international community to oust the Taliban.<sup>11</sup> Once the Taliban’s power was arguably eliminated, UN member states, including the United States, met with Afghanistan leaders and established an interim agreement, the Bonn Agreement (“Agreement”), which established a central government and appointed a government leader until a constitution could be adopted and elections could be held.<sup>12</sup>

The first popularly elected president of Afghanistan following the “oust” of the Taliban and the implementation of the Bonn Agreement was Hamid Karzai, who is currently president of Afghanistan and whose government is officially recognized by the United States.<sup>13</sup> Karzai was re-elected in 2010, though the election results were highly criticized and he was compelled to agree to a second vote, which never took place.<sup>14</sup>

The fractious, tribal nature of Afghanistan, persisting through the governance void of the mid 1990’s and the subsequent Taliban regime, presented a challenge for President Karzai with respect to at least appearing impartial.<sup>15</sup> However, a more critical problem the current Afghan president faces is that his authority is considered almost illusory because of the very conservative local leadership.<sup>16</sup> The village

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<sup>6</sup> Global Report 2007 – Afghanistan, United Nations High Commissioner for Refugees [hereinafter “UNHCR Report-2007”], 2007, at 2; ICRC Annual Report 2007: Asia and the Pacific – Afghanistan, International Committee of the Red Cross [hereinafter “ICRC Report”], May 2008 at 182-83; Diderik van Halsema, *One Year On: Special Report from Kandahar*, Project Coordinator, Medecins Sans Frontieres [hereinafter “MSF”], October 7, 2002.

<sup>7</sup> UNHCR Report-2007, at 3-5.

<sup>8</sup> Sultan Barakat, *Setting the Scene for Afghanistan’s Reconstruction: the Challenges and Critical Dilemmas*, 23 Third World Q. 801, 805-07 (2002).

<sup>9</sup> *Id.* at 806, *cf.* Barfield, *supra* note 5 at 440 (stating that the lack of government was not only because of war, but because Afghanistan was never a colony; it never had a central government).

<sup>10</sup> *Id.* at 807.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 802.

<sup>13</sup> Joan Fitzpatrick, *Sovereignty, Territoriality, and the Rule of Law*, 25 Hastings Int’l & Compl. L. Rev. 303, 325 (2001-2002); BBC News, Profile: Hamid Karzai, <http://www.bbc.co.uk> (Nov. 21, 2008) [hereinafter “BBC News, Profile: Hamid Karzai”].

<sup>14</sup> CNNWorld, Karzai Declared Elected President of Afghanistan, <http://www.cnn.com/2009/WORLD/asiapcf/11/02/afghanistan.election.runoff/index.html>, (Nov. 2, 2009).

<sup>15</sup> BBC News, Profile: Hamid Karzai.

<sup>16</sup> Mark A. Drumbl, *Rights, Culture, and Crime: The Role of Rule of Law for the Women of Afghanistan*, 42 Colum. J. Transnat’l L. 349, 360-61 (2003-2004).

and tribal leaders are more aligned with the extreme fundamental Taliban ideology than with Karzai's moderate, political sensibilities.<sup>17</sup> Additionally, pervasive corruption in the government and the justice system has dulled the sense of hope that Afghans held in the beginning of the Karzai presidency.<sup>18</sup> Karzai also does not help matters by continually conceding to yet discounting the presence of corruption.<sup>19</sup> However, his reluctance to directly address corruption may be an attempt to maintain a strong visage for the recognized government as well as an acknowledgment of Western agencies that donate "billions of dollars" in assistance that is valuable to Karzai's administration.<sup>20</sup>

The U.S. government has also reported that the corruption in Karzai's government is symptomatic of a weakened Afghanistan government caused by the Taliban's insurgency, which occurred following its ouster.<sup>21</sup> Due process laws are available, but applied inconsistently.<sup>22</sup> For example, a corrupt governmental official was terminated from his position, but was never tried on corruption charges; in contrast, a university student who publicly disagreed with the treatment of Afghan women was sentenced to twenty years in prison.<sup>23</sup> Additionally, while a judiciary exists, judges are often pressured by the Taliban to hand down rulings per Taliban directives.<sup>24</sup> Moreover, the Taliban provides law in the rural areas and this law, based primarily on extreme Islamic ideology, severely impinges individual rights, especially the rights of women.<sup>25</sup> Still, notwithstanding the arguably deep differences between Sharīa and republican forms of government, commonalities between Islamic law and international humanitarian law do, in fact, exist that may provide a stronger foundation for the weakened government, thereby improving, at least incrementally, the standard of living for many Afghans, including Afghan women and children.

## **B. Afghanistan's Legal Obligations to Its People and to Motherhood**

As Afghanistan struggles, it has only two primary paths: It can either become enveloped in and controlled by the extreme fundamental Taliban ideology, or it can develop into an independent and relatively stable, moderate Islamic Republic that proactively protects women and children.<sup>26</sup> However, the path that Afghanistan takes and the country it develops or devolves into will be predicated on the progress of its people, and this progress will not be measured by the high technological, capitalist, secular benchmarks of industrial countries or forced democratization. Afghanistan's progress will be measured by the plain, simple benchmarks set by its people. These measures include, for example, quick, efficient, and equitable settlements of local disputes without having to bribe a judge or consult a Taliban mobile 'justice' clinic.<sup>27</sup> Even more on point with this paper's proposal is also the ability of aid workers to deliver services in safety. At this time, these measurements have been considered with much less emphasis than the benchmarks proposed by the U.S. and other NATO countries.

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<sup>17</sup> *Id.*

<sup>18</sup> Lyse Douce, *Afghan President Stands up to Critics*, BBC News <http://www.bbc.co.uk> (Nov. 14, 2008), <http://www.news.bbc.co.uk>.

<sup>19</sup> Sayed Salahuddin, *Karzai Gives More Power to Afghan Anti-Graft Body*, Reuters, <http://www.reuters.com> (Mar. 18, 2010).

<sup>20</sup> *Id.*; BBC News, *Karzai 'Impeding Drug War'*, <http://www.news.bbc.co.uk> (July 25, 2008).

<sup>21</sup> United States Department of State, *Afghanistan- Country Reports on Human Rights Practices – 2007*, Bureau of Democracy, Human Rights and Labor (Mar. 11, 2008) [hereinafter "U.S. Afghanistan Country Report"].

<sup>22</sup> *Id.*

<sup>23</sup> Soraya Sarhaddi Nelson, *Rough Road Ahead for Afghanistan Legal System*, NPR <http://www.npr.org> (Dec. 15, 2008).

<sup>24</sup> *Id.*

<sup>25</sup> Pawelski, *supra* note 4 at 192-93; Nelson, *supra* note 23; *see also* Drumbl, *supra* note 16 at 361 ("Islamic law in post-Taliban Afghanistan may continue to be applied on the ground through these norms of village life ... and given the ongoing fighting prevalent, many of these norms are deeply misogynistic.").

<sup>26</sup> Other examples of stable Islamic republics include Egypt, Senegal, and Malaysia.

<sup>27</sup> Nelson, *supra* note 23.

The United States has invested and continues to invest significant resources in an effort to stabilize Afghanistan with the realization that a more stable Afghanistan will be a safer Afghanistan, thereby contributing to the safety and stability of the international community and the region, including the population that comprises the country's future – women and children. Yet, the United States has and continues to set military benchmarks without also paying heed to the objectives it has agreed to through its Party and signatory affiliations in the international legal community. Ironically, these are the objectives, framed by international human rights law, which may prove more successful in terms of stabilizing Afghanistan and protecting its population. For example, in furtherance of establishing a framework that protects the world's most vulnerable population, the Convention on the Rights of the Child ("Children's Convention") states:

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance, [c]onvinced that the family, as the fundamental group of society and the natural environment for growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.<sup>28</sup>

While the United States is only a signatory to the Children's Convention, the principles set forth in the instrument reflect the commitment the United States previously made in signing the UDHR and becoming a Party to the ICCPR. Hence, the United States implicitly recognizes the importance of protecting vulnerable children and the mothers by whom these children are borne so that the children have an opportunity to survive and develop into beneficial members of the human community.

The expectant and new mothers of Afghanistan and their children, because of decades of conflict and tribal strife, confront possibly the harshest global conditions for survival and should be protected.<sup>29</sup> As discussed in a presentation to the Chicago Council on Global Affairs by Sakena Yacoobi, external assistance for Afghan women and children is extremely unlikely given the country's current level of violence and instability.<sup>30</sup> The Afghanistan capital of Kabul, which was beginning to stabilize immediately following the Bonn Agreement, has rapidly destabilized and as NATO forces try to secure southern Afghanistan, the Taliban have increased attacks in northern, southern, and eastern Afghanistan.<sup>31</sup> Nevertheless, the plight of Afghan citizens, especially the most vulnerable, must not be disregarded. The doctrines of international human rights law and, perhaps, the moral compass of the international legal community mandate such.

### III. RECONSTRUCTION CHALLENGES: INTERNATIONAL AND NATIONAL PERSPECTIVES, AND THE SCOPE OF HUMAN CAPACITY

Assuming *arguendo* that NATO forces ultimately secure Afghanistan so that reconstruction efforts may proceed along a relatively, consistently safe basis, reconstruction efforts should be re-evaluated to ensure that the results are, in fact, effective and sustainable. A reconstruction plan that is continuously undermined and interrupted cannot support the efforts of national or international programs directed at improving the welfare of underserved and at-risk populations. Even if this paper's proposed

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<sup>28</sup> Convention on the Rights of the Child, Nov. 20, 1989, 44 U.N.T.S. 25, Preamble [hereinafter "Children's Convention"].

<sup>29</sup> Barakat & Wardell, *supra* note 3 at 909, 912, 921, 926.

<sup>30</sup> Sakena Yacoobi, Founder and Executive Director, Afghanistan Institute on Learning, Advancing the Status of Women in Afghanistan, Address before the Chicago Council on Global Affairs (Feb. 22, 2009).

<sup>31</sup> Douce, *supra* note 18; Soraya Sarhaddi Nelson, *Taliban Courts Filling Justice Vacuum in Afghanistan*, National Public Radio [hereinafter "NPR"], (Dec. 16, 2008), <http://www.npr.org>; *Operation Moshtaak: Assault in Helmand Province*, BBC News, <http://www.bbc.co.uk> (Feb. 28, 2010).

program begins at a rudimentary level, as this paper suggests it should, the program will depend on the motivation of those individuals in the community in order to sustain and develop the program.

However, the lack of motivation in local Afghanistan people has been a problem reported by a number of professionals trying to service the country and implement reconstruction programs.<sup>32</sup> Additionally, the continued service from international organizations and Afghanistan organizations is critical to Afghanistan communities but, as of this writing, President Karzai's government has ordered the removal of private contractors, which aid workers often depend on for security, from the country within four months the safety.<sup>33</sup> This action while eventually necessary may be premature and clearly jeopardizes the lives of many personnel providing care to civilians, personnel whose safety was already dubious.<sup>34</sup> It further jeopardizes the lives of Afghan mothers and infants. So, the future of Afghanistan seemingly rests on a balance of stability and security *and* the impetus of its people, irrespective of its government, which is a formula of two elements, not just one.

### A. International Perspective on Afghanistan Stabilization

The Bonn Agreement sought to guide democratic stabilization in Afghanistan and aid in the country's reconstruction by establishing a multi-ethnic Afghan leadership alliance that would, subsequently, hold regular elections, and adopt a viable Afghan constitution.<sup>35</sup> This course of action was similar to that taken by the international community during the Cold War.<sup>36</sup> However, the Cold War spanned completely different political and legal scenarios, and the success of that course of action is also questionable.<sup>37</sup> Furthermore, the September 11 attacks on the United States fast-tracked the Bonn Agreement efforts in Afghanistan, an acceleration that compounded problems caused by non-cohesive and disparate aid programs which were in place before the agreement.<sup>38</sup> The push to rebuild Afghanistan was ambitious, and whether it was too ambitious is debatable. However, by not consulting with the country's communities regularly and building a consensus, slowly and solidly, the push to rebuild may have reinforced the same socio-economic problems that the process established by the Bonn Agreement attempted to eliminate.<sup>39</sup> As a result, Afghanistan's "reconstruction" is going to take much longer than what was anticipated by the Bonn Agreement and the larger NGO's involved in the country's rebuilding.

The fact that the work in Afghanistan is framed as 'reconstruction' is, itself, indicative of one of the larger challenges faced by those participating in the effort. Unlike many developing and underdeveloped countries, Afghanistan was never a colony; hence, "reconstruction" is perhaps a misnomer. Afghanistan's people have lived under Islamic and tribal law for centuries and, irrespective of what some scholars and aid providers may think, Afghans are a proud and strong people. To enter the country with an offer of aid in one hand and an offer of democracy – in what could be construed as a guide of "reconstruction" – in the other hand was an imprudent and erroneous strategy.

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<sup>32</sup> Country Cooperation Strategy for WHO and Afghanistan 2006-2009, World Health Organization [hereinafter "WHO Report"], (2006), 40 – 43; see also Communiqué from Dr. Mohammed Paya, Director of WHO Country Office in Kabul, Afghanistan.

<sup>33</sup> Joshua Partlow, "Karzai Wants Private Security Firms out of Afghanistan," Washington Post, accessed at [http://www.washingtonpost.com/wp-dyn/content/article/2010/08/16/AR2010081602041\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2010/08/16/AR2010081602041_pf.html), Aug. 18, 2010.

<sup>34</sup> "Aid Women Killed in Afghanistan", BBC News, [http://news.bbc.co.uk/2/hi/south\\_asia/7558076.stm](http://news.bbc.co.uk/2/hi/south_asia/7558076.stm), Aug. 13, 2010; Diderik van Halsema, Status Report, MSF, Apr. 25, 2003 (response to increased violence and murder of an International Committee of the Red Cross (ICRC) volunteer); see International Activity Report 2004, MSF, (explaining that MSF is discontinuing program in Afghanistan because five MSF staff members were murdered); see also Laura Grenfell, *Paths to Transitional Justice for Afghan Women*, 73 Nordic J. Int'l L. 505 (2004), 513 (discussing how the Afghan Independent Human Rights Commission ("AIHRC") experienced violent attacks for their work with women).

<sup>35</sup> Barakat, *supra* note 8 at 802.

<sup>36</sup> *Id.* at 802-03.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 808.

<sup>39</sup> *Id.* at 810.

According to some scholars, another problem inherent in the Bonn Agreement was the rush to democracy without recognizing and respecting the traditional Afghanistan framework of authority.<sup>40</sup> Scholars further contend that this rush to democracy may have been the reason for the escalating insurgency may be a result of this ambitious rush.<sup>41</sup> The expeditious nature of the Agreement to reconstruct Afghanistan was deemed necessary in part because of the inherent impatience in the international community's commitment and in part because of the country's rapid destabilization.<sup>42</sup> Yet, because the United Nations and Western countries were perceived as dominating the new Afghanistan government's decisions and direction, and these perceptions were not properly addressed, the Agreement's objectives and the potential democratic political process was critically undermined.<sup>43</sup> The fears of the international community preceding the Bonn conference became a self-fulfilling prophecy: The rural population of Afghanistan continues to doubt the veracity of the international community and the Bonn objectives.<sup>44</sup>

Additionally, at one point the allegiance of the rural Afghan population began shifting away from democracy and the central government led by Karzai and toward the extreme fundamentalism of the Taliban.<sup>45</sup> The Taliban, then, was presented with an ideological weapon as civilian casualties including women and children caused by Western forces mounted.<sup>46</sup> Ironically, the use of women and children by the Taliban as shields and weapons against NATO forces has swung the sentiments of the Afghanistan populace once again toward democratic forces.<sup>47</sup> Now, both the Taliban and NATO forces recognize civilian casualties undermine their efforts to establish a power base in Afghanistan, but the casualties and chaos seemingly increase.

## **B. Afghanistan's View of Its Own Stabilization**

Scholars and organizations have suggested that partitioning Afghanistan may be required to purge the insurgency and resolve the country's crisis. Yet, Afghanistan people, irrespective of tribal differences, do not favor this position.<sup>48</sup> Additionally, it has been suggested that not only is Karzai against partitioning the country, but that he also does not want to dramatically change the political structure of Afghanistan because instituting that type of change would result in escalating chaos.<sup>49</sup> President Karzai's argument also finds support in the consistent attacks in Kabul immediately preceding the visit to Afghanistan by a U.S. envoy to Afghanistan.<sup>50</sup> Still, Karzai's initiation of a corruption-fighting department, High Office of Oversight and Anti-Corruption, may be construed as a sign that he recognizes changes in the political structure are needed to stabilize his country.<sup>51</sup> Conversely, it could also be a toothless appeasement mechanism.

Finally, because of Afghanistan's strategic locus with respect to international terrorism in Asia, its destructive spiral should not be allowed to continue. To do so would continue the destruction of those

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<sup>40</sup> Richard Ponzio, *Transforming Political Authority: UN Democratic Peacebuilding in Afghanistan*, 13 *Global Governance* 255, 268 (2007) ("Democratic authority cannot be embedded in a society simply by signing a legal document that has been accorded international legitimacy.").

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 260.

<sup>43</sup> *Id.* at 260-63.

<sup>44</sup> *Id.* at 264.

<sup>45</sup> *Id.*

<sup>46</sup> BBC News, *Taliban 'Lining Up Human Shields'*, <http://www.bbc.co.uk> (Feb. 2, 2010).

<sup>47</sup> *Id.*

<sup>48</sup> Barfield, *supra* note 5 at 438.

<sup>49</sup> *Id.* at 441.

<sup>50</sup> Dexter Filkins, *Kabul Attack Shows Resilience of Afghan Militants*, *New York Times*, <http://www.newyorktimes.com> (Jan. 18, 2010); BBC News, *Attacks Send Kabul into Panic*, <http://www.bbc.co.uk> (Feb. 11, 2009).

<sup>51</sup> Salahuddin, *supra* note 19.

who are most vulnerable and erase the small, yet significant, steps toward stability and democratization that have been made by a number of Afghanistan groups.

### C. Afghanistan's Human Capacity

In his defense, Karzai argues that Afghanistan can become stabilized and remain a unified nation, but that the West has not committed enough to Afghanistan's human capacity.<sup>52</sup> Presuming that Karzai's argument is valid and NATO forces create a solid foundation for the Afghan forces that then sustain safety and security, the legal norms that shut the doors to the political process and to justice for Afghan women must also be addressed in order to alleviate the additional crisis confronting Afghan mothers and infants. In tandem with advancing justice, programs should be implemented that use the human capacity of the Afghan people in ways that are coherent to their culture and beneficial to its vulnerable populace. To that end, in recent years, the government and Afghan organizations have taken steps to elevate the role of Afghan women.<sup>53</sup> These steps focus on objectives such as educating young women, building skills, promoting legal and physical protection for women, and implementing gender policy development initiatives.<sup>54</sup> Women have also been placed in political positions in parliament and in local councils. Arguably, these appointments are token gestures, but women and girls consider their roles seriously and continue to visualize and move beyond the tokenism. The human capacity that Karzai espouses has support through the efforts of several organizations, externally and internally through some of the more unlikely champions.

In light of the above dynamics, reconstruction efforts must acknowledge the history and resilience of the Afghan people, and the fact that their resiliency can be and is being directed toward these efforts.<sup>55</sup> Equally important, the approach to reconstruction should be comprehensive and integrated, moving along two tracks simultaneously: developing the capacities of the country's infrastructure and developing the capacities of the Afghan people.<sup>56</sup> Reconstruction requires a long-term commitment and the international community must temper itself with patience and not press excessively for results, if strategies involving Afghanistan are going to succeed.<sup>57</sup> The country's legal systems, infrastructure, and socioeconomic mindset must reach a juncture where reconstruction efforts can be solidly implemented by way of critical institutions within the country eventually becoming resistant to fractious tribal infighting and finally obtaining buy-in from the rural areas.

## IV. CHALLENGES TO THE RULE OF LAW AND AFGHANISTAN MOTHERHOOD: CULTURAL RELATIVISM AND VIOLENCE AGAINST WOMEN

Afghanistan is a rural, tribal country with the largest portion of its population residing outside urban centers and, thus, outside the hub of the country's constitutional legal system.<sup>58</sup> Still, the government focuses primarily on implementing programs in urban areas, leaving the rest of the country wanting for basic necessities. Therefore, Afghanistan's rural populace is not only relatively ignorant of Afghanistan state law but also, charge the government for its challenges.<sup>59</sup>

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<sup>52</sup> Douce, *supra* note 18.

<sup>53</sup> National Reconstruction and Poverty Reduction – the Role of Women in Afghanistan's Future, World Bank (Mar. 2005), 8 – 9 (explaining that the Bonn Agreement resulted in the Ministry of Women Affairs "MoWA," whose purpose was to "lead[] and coordinat[e] government efforts to advance the role of women") [hereinafter "World Bank Report"].

<sup>54</sup> *Id.* at 9; *see* Yacoobi, *supra* note 30 (the Afghanistan Institute of Learning, "AIL," is one of the largest non-profit organizations in Afghanistan, servicing approximately 350,000 Afghan women).

<sup>55</sup> Barakat, *supra* note 8 at 812.

<sup>56</sup> *Id.* at 813.

<sup>57</sup> *Id.* at 811.

<sup>58</sup> UNHCR, *supra* note 6 at 1-2.

<sup>59</sup> Barfield, *supra* note 5 at 440.

Because Afghanistan's rural areas, where the rule of law is threadbare, encompass approximately eighty percent of the female Afghan population, women and children who reside in these areas are the most underserved and at-risk population of the country.<sup>60</sup> Most scholars and organizations assert that Afghan infants and mothers are not only the most at-risk in their country, but also represent part of the world's most at-risk population.<sup>61</sup> With approximately ninety-two percent of children born without trained health personnel and one of seven mothers dying in childbirth, the odds Afghan mothers and their newborns confront with respect to survival are grave. These facts are compounded by the patrilineal, collectivist nature of Afghan society.<sup>62</sup>

Empirical evidence is growing to support the fact that the marginalization of women and girls does more harm than good to developing and undeveloped countries.<sup>63</sup> And while not criticizing the collectivist nature of Afghanistan and, in fact, recognizing the importance of its culture, a *bona fide* criticism could be asserted against tribal practices that control and marginalize women and girls. Moreover, though women are appointed to Afghanistan government positions, there are no national or provincial laws prohibiting misogyny and the horrific acts, such as throwing acid in the face of "disobedient" women and girls, which are manifested by such disrespect and disdain for the female gender. So, ironically, while some women may hold positions within the field of government authority, that authority does not protect Afghan women, least of all women residing in rural areas.<sup>64</sup>

Yet, because of the influence Afghan women have in the home and their shared identity with their family, which is a central feature to most collectivist societies, this control to their detriment is obfuscated.<sup>65</sup> Additionally, because gender is so inextricably linked to the Afghan village, any policy or decision to change roles of women or a woman in the village must be communicated to the local village leaders ("jurgas") for advice and consent before implementation.<sup>66</sup> The collectivist nature of Afghan society combined with the extreme fundamentalist Islam creates a problematic paradox for most Afghanistan women: Afghan women are regarded valuable in terms of wifery and motherhood, but are nonetheless held in those positions unless permission is granted to do otherwise.

#### A. The Affect of Western Ideology and the Violent Afghanistan Regime on Motherhood

Notwithstanding the collectivism, the extremist ideology manifests itself explicitly through the violence perpetrated on vulnerable Afghan women, many of whom are mothers. This is not to say that violence against women is unique to Afghanistan because it is not. However, in developed countries, whether laws protecting women and children are applied as consistently and as effectively as needed, there are laws and norms that prohibit violence specifically targeted toward women. Furthermore, in the developed international system, laws are in effect on a state level and on an international level.<sup>67</sup> Thus, legal instruments and mechanisms are in place where the grievances of women can be heard, relief sought, and justice served. The same can be stated for children.<sup>68</sup> The same, however, cannot be stated

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<sup>60</sup> Riphenburg, *supra* note 5 at 401.

<sup>61</sup> World Bank Report, *supra* note 53 at 14-16;

<sup>62</sup> Riphenburg, *supra* note 5 at 405-13.

<sup>63</sup> Nicholas D. Kristof and Sheryl WuDunn, *Half the Sky*, Introduction, 19-21 (Knopf 2009).

<sup>64</sup> *Id.* at 411; *see also* World Bank Report, *supra* note 53 (explaining that during the pre-Taliban regime, women were often raped and sexually assaulted as a strike against another community's honor; women were, consequently, made to remain in the home for their safety). The Taliban used the lack of safety as an excuse to oppress women and caused women to become isolated and uneducated, and when women resisted, their safety and lives were threatened for disobeying.

<sup>65</sup> Barakat, *supra* note 8 at 918.

<sup>66</sup> World Bank Report, *supra* note 53 at 6.

<sup>67</sup> Violence Against Women Act, 42 U.S.C. § 13981 (2009) [hereinafter "VAWA"]; Convention on Elimination of all Forms of Discrimination against Women, G.A. Res. 34/46 ¶ 193 U.N. Doc. A/RES/34/46 (Sept. 3, 1981) [hereinafter "Women's Convention"]; ICCPR, *supra* note 1.

<sup>68</sup> ICCPR, *supra* note 1; Children's Convention, *supra* note 28.

for Afghanistan because, as in most undeveloped or developing countries, there are no such instruments or mechanisms in place.

Some argue that the lack of legal mechanisms for and violence against women in Afghanistan is predicated on the collectivist nature of the Afghan community, where the identities of women are not conceptually distinct from the family or community. Afghan women's relationships are in stark contrast to Western women whose identities are conceptually distinct from their families and communities. Still, respecting the collectivist nature of certain societies, because of the unequivocal mistreatment of Afghan women, even inside the community, it is difficult to argue that cultural relativism should not be set aside:

A girl was raped by her brother. A resulting pregnancy forced the girl to reveal the incident to her parents. To save the family's reputation, *the parents killed the girl by setting her on fire*. . . . Sixteen-year-old Nazia's forty-year-old husband cut off her ears and nose, [and] after months of torture, including breaking her teeth with stones . . . *there was no investigation*.<sup>69</sup>

Given such reported incidents as above and the fact that thousands of the same or similar incidents go unreported, it is difficult to argue against instituting a legal system predicated on Western ideology that is founded upon a democratic system and the rule of law as opposed to Sharía. Moreover, it is also difficult to advocate for maintaining an Islamic political society when many Islamic countries have been unable to establish sustained peace in most regions of the world.<sup>70</sup> However, cautious consideration of the treatment of Afghanistan women and children should be taken so as not to conflate collectivism with extreme Islamic fundamentalism.

Western democracies, whose policies and legal mechanisms are definitively founded on national interests and Westphalian notions of sovereignty and have, at times, been arguably extreme, for example the bombing of Dresden. However, the West has nonetheless maintained a system of global peace between nations for more than sixty years, and has additionally implemented legal mechanisms for addressing violence committed against women. Furthermore, within the borders of Western democracies, the maternal mortality rate and infant death rate is negligible compared to undeveloped, non-democratic societies. For example, the most vulnerable population of Afghanistan – mothers and infants – are dying daily, in numbers that most western nations have not seen in more than a century. Some argue that, for these reasons, Afghanistan's government should embrace democracy and forego Islam altogether. However, the proverbial “throwing out the baby with the bathwater,” rarely has been the most effective solution with respect to human rights issues.

In fact, pushing democratization on Afghanistan has purportedly resulted in increased violence toward Afghan women and children.<sup>71</sup> As the United Nations imposed sanctions on areas controlled by the Taliban, Afghan women and newborns suffered when international aid was reduced or severed in abeyance to sanctioning because Afghan men were given what little aid or resources were available first, and what remained of the aid, if anything, was then provided to women and infants.<sup>72</sup> So, in circularity, commentators have argued that Islamic law is the reason for this violence against Afghan women and thus, their alarmingly high maternal mortality rate.<sup>73</sup> However, Sharía, or Islamic law, is not the only culprit and, in fact, moderate Islam, followed by millions of Muslims internationally, should not be considered the reason at all. The argument of these commentators is conflating Islamic law with misogyny and, at its most simplistic and vile state, greed. The author contends that the solution to the Afghan maternal mortality rate and infant death rate requires extracting the problem from the political

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<sup>69</sup> U.S. Country Reports, *supra* note 21 (emphasis added).

<sup>70</sup> Drumbl, *supra* note 16 at 367-68

<sup>71</sup> Ian Pannell, “Afghan Civilian Toll Points to LSAF Mission Dilemma,” BBC News, <http://www.bbc.co.uk/news/world-south-asia-10928982?print=true>, Aug. 2010.

<sup>72</sup> Barakat & Wardell, *supra* note 3 at 916-17.

<sup>73</sup> Pawelski, *supra* note 4 at 195; Drumbl, *supra* note 20 at 376-77; World Bank Report, *supra* note 43 at 18-20.

realities, especially if those realities are a fast-tracked plan of democratization of the Bonn Agreement and working within the cultural realities of moderate Sharía.<sup>74</sup> Still, Sharía is also a political reality. Thus, the challenge confronting the international legal community is that Afghan law practiced in urban areas and larger villages is based on extreme fundamental ideology, creates pervasively corrupt political practices, resulting in random, inconsistent, episodes of peace, which are generally preferred to the proposed process of democratization.<sup>75</sup>

After the Taliban was ousted, which was followed by one such short-lived peace, in accordance with the Bonn Agreement, the task of rebuilding or constructing an Afghan legal system was delegated to Italy. However, only a handful of judges and lawyers were available at the time because most fled to escape the previous war.<sup>76</sup> Most of the judges were primarily from Kabul University whose knowledge and decision-making processes are based in the Taliban code.<sup>77</sup> As a result, the basis of legal education from which these judges rule is antithetical to democracy. Hence, decisions were often driven by bias and bribery, creating a judiciary prone to partiality and thus, no rule of law.<sup>78</sup>

Additionally, there was no security for judges. So, even members of the Afghanistan judiciary who understood and appreciated the necessity for impartial decision-making could not rule impartially for fear of their own safety.<sup>79</sup>

Conditions within the Afghanistan judiciary and practice of law have largely gone unchanged. Therefore, countries dedicated to building a democratic legal system in Afghanistan, per the Bonn Agreement, are doing so on precarious footing.

Given the considerations, *inter alia*, one may argue that the parties involved in reconstruction efforts should reassess the Bonn Agreement and devise a more reasonable schedule and method that would support a relatively peaceful Islamic republic, but a republic built with Afghan community consensus with respect to internationally recognized legal norms.<sup>80</sup> Furthermore, focusing solely on Islamic law for the purpose of this paper's proposal diverts attention from the genuine issue. The maternal mortality rate of Afghanistan is the second highest in the world with also one of the highest rates of death for infants under five years of age and these facts are contravening to the provisions of international human rights law regarding the welfare of families and children.<sup>81</sup> Nevertheless, recognizing and understanding Afghanistan's legal climate, which is predicated on Islamic law, and how this legal climate affects underserved, at-risk populations, such as mothers and children, is critical. Likewise, formulating a proper perspective of the variations within that legal climate in place is especially significant if the program is to be developed on an apolitical or minimally political foundation.

## **B. Afghanistan Community and its Current Cultural Dynamics as a Platform for Protecting Women's Rights**

Critiques of Afghanistan's legal regime, or lack thereof, are unquestionably valid, but the voices of Afghan women should nonetheless be given a forum in determining the paths by which they can progress within the current Afghanistan legal climate.<sup>82</sup> To wait until the system improves would be

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<sup>74</sup> Barakat, *supra* note 8 at 809-10.

<sup>75</sup> Nelson, *supra* note 31.

<sup>76</sup> *Id.*

<sup>77</sup> Nelson, *supra* note 27.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> While the Taliban insurgency is growing, it is growing because there is not buy-in from the tribes and villages. There is no buy-in because the need for buy-in from the tribes and villages was possibly too discounted or disregarded in the initial planning stages of the Bonn Conference. Thus, as the villages watched the Karzai administration to determine if the government could do any better and it did not; as a result, the villages returned to the only strong force that asserted itself in the country – the Taliban.

<sup>81</sup> UNIFEM Afghanistan: Afghan Women Fact Sheet 2008, <http://www.afghanistan.unifem.org> [hereinafter "UNIFEM Report"]; ICRC Report, *supra* note 6.

<sup>82</sup> Barakat & Wardell, *supra* note 3 at 910.

imprudent. Moreover, it is possible that opportunities for women in Afghan society and the solution to the maternal mortality rate and ,buses, need to be heard if they are to be helped.

### C. Respecting and not Projecting onto the Priorities of Afghan Women

Organizations working with Afghan women must understand that Afghan women may not necessarily be concerned with the same issues that women outside of their culture may consider important and may also consider their roles differently.<sup>83</sup> The West has selected token symbols, such as the burqa, to represent the ‘tragedy’ of the Muslim woman.<sup>84</sup> Conversely, for many Afghan women, donning a burqa is a relatively minor issue when compared to other challenges they face.<sup>85</sup> Yet, there is a great difference between Western and Afghanistan motherhood as indicated by fertility and maternal mortality rates. The maternal mortality rate is four to five deaths per one-, of safe drinking water and rudimentary pre-natal health care information are, in the very least, unacceptable conditions with respect to childbirth and the resulting conditions are no less devastating to the human dignity of women and children. Thus, while respecting the constraints of culture is a critical component, moving forward by circumventing or incrementally changing despite those constraints is equally important to save Afghanistan lives.

### D. Human Capital and Patriarchal Culture and Government

More than thirty years of conflict, on a civil and international scale, has resulted in a bloat of already impoverished villages as thousands of Afghan women became internally displaced or returned from refugee camps.<sup>86</sup> These women were even more vulnerable because the communities they joined often considered them a drain on resources. Additionally, as newcomers, these women no longer held the status they may have once held in their own villages.<sup>87</sup> However, a positive result from the refugee returnees is that the refugees were exposed to health care information and education while in refugee camps.<sup>88</sup> Therefore, Afghan women refugees in the rural areas and villages may be more amenable to participating in programs that help them continue to care for themselves and their families.

The collectivist, patriarchal cultural framework surrounding Afghan women existed long before the first international conflict ensued and continues today. It has resulted in harmful inequality for Afghan women throughout most segments of life: health, education, economic power, and political power. The Afghan government perpetuates this inequality; and if the government does not support the attainment of a certain amount of equality for women, the rest of the country is less likely to consider equal or decent health care for mothers essential.<sup>89</sup>

Commentators assert that illiteracy and poverty, in addition to cultural relativism, are critical factors relating to the Afghan maternal mortality rate and infant death rate.<sup>90</sup> While illiteracy and poverty

<sup>83</sup> Barakat & Wardell, *supra* note 3 at 917-20

<sup>84</sup> Drumbl, *supra* note 16 at 376-77.

<sup>85</sup> *Id.* at 377.

<sup>86</sup> MSF Report, October 7, 2002 (explaining that approximately 1.5 million refugees returned from Pakistan and Iran but basic necessities, such as food, water and shelter are in short supply because the influx of refugees caught Afghanistan off-guard); UNHCR Global Appeal 2008-2009 (explaining that the estimate of returning refugees has increased by approximately 26% since the Country Operations Plan for 2007 was published).

<sup>87</sup> Barakat & Wardell, *supra* note 3 at 910.

<sup>88</sup> *Id.* at 922; UNHCR Report, *supra* note 6.

<sup>89</sup> Barakat & Wardell, *supra* note 3 at 416-18 (discussing the fact that UNICEF had to implement and manage the organization’s own vaccine program and the fact that President Karzai considered progress as changing the “Promotion of Virtue and Prevention of Vice” division to the Department of Islamic Teaching, where 48 women were trained to teach other women about appropriate Islamic dress and makeup); U.S. Department of State Fact Sheet office of the Senior Coordinator for International Women’s Issues: Commitment to Afghan Women: The U.S.-Afghan Women’s Council, June 4, 2008. (explaining sexism involved in health care services) [hereinafter “U.S.-Afghan Women’s Council Report”].

<sup>90</sup> Drumbl, *supra* note 16 at 367; WHO Report, *supra* note 32 at 7.

are key factors in the health care problems experienced by Afghan women, the government has a responsibility to, at the very least, correctly weigh the basic needs, such as safe drinking water and proper waste disposal, of its most vulnerable population. By the government meeting those elemental needs, there is a greater likelihood of Afghan women emerging from illiteracy and poverty or at the very least, giving birth to healthy children. The Afghan government and countries committed to assisting in rebuilding Afghanistan must not ignore the evidence showing a direct correlation between maternal mortality rates and literacy because literacy is inherently linked to health care. Subsequently, health care measures are also directly linked to a growing and sustained Afghan population.

While respecting the challenges of Afghan women and respecting Afghan culture, one could assert that Afghan law must, nevertheless evolve. This evolution should take place not because Western international law has determined a set age for children, which may be contrary to Afghan culture, but because, as evidenced by the maternal mortality rate, the bodies of young girls cannot withstand the strain of childbirth, especially under the impoverished conditions that most mothers become impregnated under, let alone the birth rates currently existing in Afghanistan.<sup>91</sup> Admittedly, there is a strong moral argument to be made from feminine and Western jurisprudence against not only forced marriage but marrying girls of fourteen. However, as repugnant as the superficial rationale may be to feminist scholars, to save an Afghan girl's life, if it is more prudent to explain why girls should not marry or give birth at such short intervals with reasoning that is acceptable within the culture, such as the inability to continue propagating the village, then the moral argument should be temporarily set aside. At times, international human rights law must set its rationale within the parameters of the circumstances surrounding the situation at issue. International law cannot always frame the issue; sometimes the issue must be included in part of the framework. Thus, in accordance with the ICCPR, to help safeguard Afghan families within the current parameters of Afghan society, cultural relativism should be heeded and not disregarded as subjective, irrelevant theory.

Evidence of the significance of cultural recognition and respect is the fact that despite the lack of rule of law in the country and pervasive inequality of access to basic necessities, Afghan women continue striving toward elevating themselves and their families. Beginning with the Afghan Ministry of Women Affairs and in the field of health services, progress continues despite the escalating danger.<sup>92</sup> However, the programs that have been established are insufficient to handle the population in the densely populated areas and rarely reach the less densely populated areas of the country. Ironically, the less densely populated areas are where most Afghans reside, and thus, where the most assistance is needed.<sup>93</sup> Midwifery programs, such as provided through USAID and the Afghan Midwives Association, are providing significant help gains in territories where women and children are at risk but more assistance is needed because the maternal and infant mortality rates are still among the worst in the world as many of the more densely populated territories of the south are underserved.<sup>94</sup>

Many of the southern provinces are underserved by programs because of the ongoing conflicts and the control of the Taliban, which continually places Afghan women in danger of becoming victims of human rights violations.<sup>95</sup> Considering the severe circumstances through which these women must survive and the fact that not only have many survived but a number of Afghan women have even initiated self-help organizations and programs, the situation of the Afghan woman and her children is not hopeless

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<sup>91</sup> Children's Convention, *supra* note 28 at Article 1.

<sup>92</sup> UNIFEM Report, *supra* note 81 (explaining that the number of health care workers increased to 15,000 in 2007 and approximately 49.3% of these workers are women); *see also* "Aid Workers Killed in Afghanistan," *supra* note 34 (discussing death of aid workers in Afghanistan).

<sup>93</sup> World Bank Report, *supra* note 53 at 24 (stating that as of 2005, more than 50% of Afghanistan hospitals were in Kabul, which is north and densely populated).

<sup>94</sup> USAID Report: "Midwives Saves Mothers and Infants," Mar. 8, 2010, <http://afghanistan.usaid.gov/en/Article.1043.aspx>; Afghan Midwives Association, <http://www.internationalmidwives.org/AboutICM/MemberAssociations/AfghanMidwivesAssociation/tabid/382/Default.aspx>; "Maternal Health Needs More than Healthcare," IRIN, June 9, 2010, <http://www.irinnews.org/Report.aspx?ReportId=89419>.

<sup>95</sup> Pawelski, *supra* note 4 at 188.

and Afghan women are not helpless. Consequently, the input of Afghan women in program development is invaluable. Moreover, the pervasive inequality that currently exists with respect to Afghan women will require a delicate balancing of cultural respect and humanitarian effort if the program is going to succeed. Therefore, it is reasonable that Afghan women are consulted in the development of a program that will intimately affect their lives and the lives of their family.

## V. RECOMMENDATIONS AND CONCLUSION

The cultural mindset cultivated by extreme Islamic fundamentalism is inherently dangerous to Afghan women, requiring caution and a framework sensitive to that culture when implementing programs that assist Afghan women.<sup>96</sup> This framework is best developed within alliances with Afghan women. The U.S.-Afghan Women's Council is one such alliance and was established to "promote public-private partnerships between U.S. and Afghan institutions and mobilize private sector resources to help Afghan women."<sup>97</sup> The Council's focus is on four areas in particular: political leadership and legal awareness, economic empowerment, education, and health.<sup>98</sup> Because Afghan communities have been relatively open to women providing health services, and because women's health is a critical factor in a country's development, programs that "train the trainer" by teaching Afghan women health education so they may share this knowledge with others have a relatively good chance of withstanding community scrutiny.<sup>99</sup> Moreover, if these information sessions are provided in the homes of Afghan women, it is reasonable to presume that the safety of these women will be more assured and that their roles in the family and the village will not be considered a threat to the governing legal climate.

The most successful programs appear to combine a comprehensive approach that includes participants from the community that is going to be served and training the women of the community to provide care.<sup>100</sup> Moreover, programs that work with the community leaders and that are started by Afghan women, not only satisfy the requisite community and cultural protocols and assure there is approval but also provide a practical modicum of safety for program participants.<sup>101</sup>

A number programs aim at getting Afghan women out of the rural areas, but there should be an additional track of programs for Afghan women who are unable to leave the rural areas and villages.<sup>102</sup> In this way, by the time a program is able to reach a rural population, the concept of pre- and post-natal health care services will be a familiar concept to women and community of that particular area. Thus, the community may be more amenable to allowing women to leave the home or village for health care services.

By teaching rural community women about pre-natal and post-natal care, which can be shared with other women in their villages, the maternal mortality rates of Afghan women can be attacked on two tracks instead of one. If all programs waited until the cultural, structural, and political changes took place that would allow Afghan women to freely access their services, the maternal mortality rate might decrease but it would be indolent negligible rate.

The World Health Organization's ("WHO") former program, Rural Expansion of Afghanistan's Community-based Healthcare Program ("REACH"), serves as a model for the program proposed in this paper.<sup>103</sup> REACH used an integrated system to develop preventative care maternal services. The

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<sup>96</sup> Eva Herzer, *Afghan Women: A Time of Great Hope and Uncertainty*, 87 *Women Law J.* 8, 9 (2001-02); World Bank Report, *supra* note 43 at 16 (discussing Afghanistan men's resistance to health care services provided for women).

<sup>97</sup> U.S.-Afghan Women's Council Report, *supra* note 100.

<sup>98</sup> *Id.*

<sup>99</sup> UNIFEM Report, *supra* note 81 (stating that the Gender Development Index for Afghanistan is the second lowest in the world).

<sup>100</sup> WHO Report, *supra* note 32 at 30.

<sup>101</sup> Yacoobi, *supra* note 30.

<sup>102</sup> USAID Report: "Midwives Saves Mothers and Infants," *supra* note 105.

<sup>103</sup> REACH was implemented for 3 years from 2003 until 2006, supported by financing by USAID.

program was implemented from both micro and macro levels, extending into rural villages and expanding health facilities in urban areas.

Acknowledging the cultural and security challenges discussed *supra*, this proposal suggests a smaller program that can eventually expand, as government and program facilitators determine. By working within the parameters of the Afghan culture in implementing the program, there is a greater likelihood for success of the program. A successful program will create a foundation for larger programs and a healthier, more stable Afghan community.

The primary objectives of the program would be:

1. To incrementally decrease the maternal mortality rate of Afghan women in rural Afghanistan, particularly the southern and eastern regions; and
2. To incrementally lower the death rate of Afghan children less than five years of age.

The program would cover three phases of Afghan motherhood: pre-natal, childbirth, and post-natal. Women who participate but are at the preconception stage would cover a possible fourth phase. In detail, the program would encompass:

- “Teaching the teacher” by assembling an even-numbered group of ten or fewer Afghan women who have family in rural villages or who have respectful relationships with village leaders to lead the program.
- Coordinating meetings with the village leaders to introduce the program and to get their approval and support.
- Developing a program that Afghan women can share with each other in their homes.
  - This program would teach these women the most fundamental essentials of pre- and post-natal care. These essentials would include:
    - What to eat and grow that will help sustain a healthy pregnancy and post-natal health;
    - How to boil water in order to maintain a certain level of sanitation in the home and if water is scarce;
    - How to conserve it once obtained;
    - How to eliminate waste from the home;
    - How to prepare the home for childbirth and what basic materials will be needed;
    - How to help ease labor pains;
    - How to nurse and for how long; and
    - How to develop an emergency plan that can send for and obtain help quickly in the case of an obstruction.

- The program would also teach women to work in teams of two, sharing each other's work load, so that they would be able to nurse longer and care for their infants longer than normally.
  - It is very likely that these women would have to be related, given the collectivist nature of Afghan society. However, this can be advantageous to sustaining the program.

Implementing the program requires four stages:

1. Consulting and meeting with the necessary Afghanistan ministries and leaders to request their cooperation and address any concerns or questions they may have.
2. Working with health care organizations, such as WHO and Afghan Midwives Association, to create a detailed program that considers the challenges of scarce resources and lack of infrastructure found in Afghanistan and to successfully address these challenges in the program.
3. Bring together Afghanistan women who are willing and able to act as leaders and liaisons between the villages, the larger organizations, and the government ministries.
4. Monitoring the effectiveness of the program to address challenges, make necessary adjustments, and determine points of expansion.

Through its legal international agreements, the United States is committed to helping ensure the dignity of the family by helping safeguard the basic well-being of parents and children. Through programs previously funded and initiated, such as the U.S.-Afghan Council and via USAID's REACH, the United States started meeting its commitment to the at-risk families in Afghanistan. Furthermore, as one of the primary international actors involved with helping stabilize and rebuild Afghanistan, the United States should continue meeting this commitment by funding and implementing such a program as proposed. By doing so, not only does the United States maintain its integrity with respect to honouring its international human rights agreements, but the United States also continues to exemplify its global leadership on both political and civil fronts, even in areas such Afghanistan where the rule of law is yet only an ideal.

As a final note, some may question the relevance of maternal mortality rates with respect to human rights law and argue that the relationship I propose here is too tenuous and, instead, is a problem of public health not law. In response, the words of the late Dr. Allan Rosenfeld, founder of Averting Maternal Death and Disability ("AMDD"), seem applicable:

The technical solutions to reduce maternal mortality are not enough. . . . As a basic human right, women should be able to have a child safely and with good quality of care. The human rights 'system' – laws, policies, and conventions – must be used to hold states accountable for obligations undertaken pursuant to treaties.<sup>104</sup>

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<sup>104</sup> Kristof and WuDunn, *supra* note 71 at 105 (quoting Dr. Allan Rosenfeld).