

**AFGHANISTAN:
DEMOCRATIZATION AND HUMAN RIGHTS ON THE
EVE OF THE CONSTITUTIONAL LOYA JIRGA**

JOINT HEARING
BEFORE THE
SUBCOMMITTEE ON THE MIDDLE EAST
AND CENTRAL ASIA
AND THE
SUBCOMMITTEE ON
INTERNATIONAL TERRORISM, NONPROLIFERATION
AND HUMAN RIGHTS
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WEDNESDAY, NOVEMBER 19, 2003

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE MIDDLE EAST,
AND CENTRAL ASIA,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Subcommittees met, pursuant to call, at 2:03 p.m. in Room 2172, Rayburn House Office Building, Hon. Ileana Ros-Lehtinen [Chairwoman of the Subcommittee on the Middle East and Central Asia] presiding.

Ms. ROS-LEHTINEN. The Subcommittee will come to order. We are very happy to have with us—where is Maurice Shutmargo? Did he sneak out? Our former staff director who is now a big shot in the Department of Justice, who has joined us here for just a brief second. Timing is everything, Maurice. Welcome back. It is a pleasure to see you.

And Yleem Poblete of our Subcommittee, I am sorry to say, is going to be leaving her staff director's post to join Secretary John Bolton, uncovering the weapons of mass destruction single-handedly over in Iraq, so we wish her much success, but we will have more to do with that a little later.

But thank you so much, Mr. Ackerman, as always, for being here. Thank you to all the witnesses. Sorry that just as we were about to start we got a series of votes. But what a wonderful day of a great Subcommittee hearing, and it is personally gratifying for me to be here today to discuss the process of rebuilding democracy and building democratic institutions in Afghanistan, and the path toward the constitutional Loya Jirga.

A little over 2 years ago, on October 31st, in my previous capacity as Chair of the Subcommittee on International Operations and Human Rights, we held a hearing entitled "Afghan People vs. the Taliban: The Struggle for Freedom Intensifies."

Friends and colleagues such as Assistant Secretary Craner, who joins us today, and T. Kumar, who will testify today as well, along with a cross-section of exiled Afghans, detailed the deplorable conditions of human rights under the Taliban regime, the barbaric practice of beatings, of torture, rape, executions carried out by the Taliban's Department of Promotion of Virtue and the Prevention of Vice. Yikes, what a title.

The shroud of misery placed on the people of Afghanistan when the Taliban captured Kabul in 1996 was removed and, today, Afghans are rebuilding their nation and preparing to usher in a new era of representative democracy in their homeland.

While all is not perfect, the situation has changed dramatically.

This progress was encapsulated by the International Crisis Group in a statement issued on March 14th of this year.

The ICG statement said:

“The creation of a Ministry of Women’s Affairs, significant donor commitment, and the return of women to universities, schools and government offices heralded a new day for women in Afghanistan.”

And it continued:

“There is little reason to doubt the commitment of the Karzai administration and its international partners to address discrimination against women and improve their access to civic life.”

For many, this commitment is reflected in the draft constitution where in article 22 it states:

“Any kind of discrimination and privilege between the citizens of Afghanistan are prohibited,”

and

“The citizens of Afghanistan have equal rights and duties before the law.”

Articles 44, 83, and 84 of the Constitution mandate the promotion of women’s education and the elimination of illiteracy, while establishing requirements that seek to ensure female representation throughout the government.

However, women’s rights advocates still have serious concerns regarding the rights of female Afghan citizens, as currently stipulated in the draft constitution.

Masooda Jalal, a former female presidential candidate in 2002, was quoted as saying that, after reading the draft document, she was not sure whether the constitution was supporting fundamental principles or liberalist, but would wait to see what the Loya Jirga discussions produced before making a final decision.

Others focus on the context in which these provisions will be implemented, highlighting that women are often subject to physical and psychological harm, which has limited their ability to participate in civil society.

Just last week, an Afghan Information Agency reported that, in two provincial districts, the election of women to the constitutional Loya Jirga was suspended, after opposition from Sunni sect religious scholars. This was reportedly confirmed by a member of the Constitution Commission of Afghanistan.

These concerns increase as, according to some, the conservative religious tendencies of Afghan society are enshrined in the constitution and could, in its practical application, empower extremist elements in the country.

For example, article 2 of the draft constitution begins by affirming:

“Followers of other religions are free to perform their religious ceremonies,”

yet it ends by placing this guarantee,

“ . . . within the limits of the provisions of law.”

This is followed by article 3, which highlights that:

“In Afghanistan, no law can be contrary to the sacred religion of Islam and the values of the constitution.”

So we look forward to hearing from Ambassador Hanford on the state of religious freedom in Afghanistan and how these and other articles in the constitution are reconciled to provide for and protect the fundamental freedoms of conscience and belief.

Ultimately, as one member of the Constitution Commission has said,

“The draft aims to balance modern needs with those of a Muslim-majority nation”

The Vice President and the head of the Constitution Commission during a news briefing following the release of the text, said that the draft document aims to unite Afghanistan’s often divided ethnic groups and promote the basic human rights so often abused during more than 20 years of war.

The preamble and numerous articles clearly establish the parameters within which the Afghan government will operate, and those are according to the Universal Declaration of Human Rights.

They detail, as in article 24, that:

“Liberty and the dignity of human beings are inviolable,”

and that:

“The state has the duty to respect and protect the liberty and dignity of human beings.”

The draft document contains prohibitions on torture and inhumane forms of punishment; on crimes against humanity; and on forced labor.

Concurrently, there are articles that protect freedom of expression; freedom of movement; and provide for due process of rights such as the presumption of innocence; guaranteed legal representation; protection against arbitrary arrests and detention; protection against unlawful search and seizure; and many others.

With respect to the political process, article 35 articulates the right of all Afghans to form political parties, while requiring that the organizational structure and financial resources be made public; that its aims and structures not be military or paramilitary in nature; and that it has no ties to foreign political parties or foreign influences.

This section seeks to prevent tribalism by prohibiting the formation and functioning of a party based on ethnicity, language, religion or region.

Some would argue, however, that this article is internally contradictory, given that the formation of political parties is allowed, provided that:

“The program and charter of the party are not contrary to the principles of the sacred religion of Islam.”

The balance between Afghanistan’s deep-rooted Islamic traditions and its aspirations for democratic rule, between protecting fundamental human rights and civil liberties of its citizens and its ability to govern, are among the issues that Assistant Secretary Craner and our distinguished private panel will effectively address.

Also, given that article 149 of the draft constitution says that amendments to the “fundamental rights of the people are permitted only in order to make them more effective,” we would welcome recommendations from our witnesses on areas they believe should be modified or clarified.

We hope that our witnesses will also address other concerns that have been raised by Afghans and other international observers alike, such as:

Does the constitution truly provide equal access to all Afghans, regardless of faith, gender, or belief, or ethnic background?

Will a Loya Jirga of 500 delegates be able to articulate the views of millions of Afghans?

Are the Afghan people adequately prepared and educated on the process to make an informed decision on the constitution and their future system of government?

And do they have the necessary resources?

Looking to the future, and to place it in the broader context, we would like Assistant Secretary Rocca to address such matters as:

What are the long-term ramifications of a democratic Afghanistan, for regional stability and for counter-terrorism efforts?

How do we see the draft constitution addressing the conditions leading to extremism?

And what about reports about Pakistan’s and Iran’s efforts to use their contributions to the reconstruction efforts in Afghanistan to influence the process and therefore gain control?

As President Bush noted at the signing ceremony of the supplemental appropriations bill on November 6th:

“The strategy of our enemies . . . is to intimidate newly free men and women who are trying to establish democracy.”

The Afghan people will not let these elements succeed. The Afghan people are determined to take steps to ensure Afghanistan’s survival as a free nation. We have faith in their determination and their commitment to freedom and to their country.

As President Karzai said in January 2002 at a gathering of Afghans and friends of Afghanistan:

“The Afghan people are tough cookies.”

Indeed they are, and the United States stands ready to continue helping them in their efforts.

And now I yield to Ranking Member, my good friend Mr. Ackerman of New York.

[The prepared statement of Ms. Ros-Lehtinen follows:]

PREPARED STATEMENT OF THE HONORABLE ILEANA ROS-LEHTINEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA, AND CHAIRWOMAN, SUBCOMMITTEE ON THE MIDDLE EAST AND CENTRAL ASIA

It is personally gratifying for me to be here today to discuss the democratization process in Afghanistan and the path toward the Constitutional Loya Jirga.

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For many, this commitment is reflected in the draft constitution where, Article 22, states: "Any kind of discrimination and privilege between the citizens of Afghanistan are prohibited," and "The citizens of Afghanistan have equal rights and duties before the law."

Articles 44, 83, and 84 of the Constitution, mandate the promotion of women's education and elimination of illiteracy, while establishing requirements that seek to ensure female representation throughout the government.

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These concerns increase as, according to some, the conservative religious tendencies of Afghan society are enshrined in the Constitution and could, in its practical application, empower extremist elements in the country.

For example, Article Two of the draft Constitution begins by affirming that: "Followers of other religions are free to perform their religious ceremonies," yet it ends by placing this guarantee ". . . within the limits of the provisions of law."

This is followed by Article Three, which highlights that: "In Afghanistan, *no law can be contrary to the sacred religion of Islam* and the values of the Constitution."

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Ultimately, as one member of the Constitution Commission has said, "the draft aims to balance modern needs with those of a Muslim-majority nation . . ."

The Vice President and head of the Constitution Commission, during a news briefing following the release of the text, said that the draft document aimed to *unite Afghanistan's* often fractious ethnic groups and *promote the basic human rights* so often abused during 21 years of war.

The preamble and numerous articles clearly establish the parameters within which the Afghan Government will operate, and these are *according to the Universal Declaration of Human Rights*.

They detail, as in Article 24, that: “Liberty and dignity of human beings are inviolable” and that “The State has the *duty to respect and protect the liberty and dignity of human beings.*”

The draft document contains prohibitions on *torture and inhumane forms of punishment*; on *crimes against humanity*; and on *forced labor*.

Concurrently, there are articles that protect freedom of *expression*; freedom of *movement*; and provide for due process rights such as *presumption of innocence*; guaranteed legal representation; protection against *arbitrary arrest and detention*; protection against *unlawful search and seizure*; among others.

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- Will a Loya Jirga of 500 delegates be able to articulate the views of millions of Afghans?
- Are the Afghan people adequately prepared and educated on the process, to make an informed decision on the Constitution and their future system of government?
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- What are the long-term ramifications of a democratic Afghanistan, for regional stability and our counter-terrorism efforts?
- How do we see the draft Constitution addressing the precursor conditions leading to extremism?
- What about reports about Pakistan’s and Iran’s efforts to use their contributions to the reconstruction effort in Afghanistan to influence the process and gain control?

As President Bush noted at the signing ceremony of the Supplemental Appropriations bill on November 6th, “the strategy of *our enemies . . . is to intimidate newly free men and women who are trying to establish democracy.*”

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As President Karzai said in January 2002 at a gathering of Afghans and friends of Afghanistan: “The Afghan people are *‘tough cookies.’*”

Indeed they are, and *the U.S. stands ready to continue helping them in their efforts.*

Mr. ACKERMAN. I thank the Chairwoman for her leadership as well as for scheduling this hearing together with Chairman Gallegly.

The drafting and adoption of a constitution in Afghanistan is the next major step for the Bonn Agreement, and given Afghanistan’s recent history, a crucial one for both Afghans as well as the inter-

national community. But it is also crucial for Afghans to own both the substance of the document and the process by which it is drafted and adopted. Ultimately, the constitution must be written by and for Afghans.

The writing of a constitution forces Afghans, or any society for that matter, to confront the most basic questions about how people want to organize themselves and how they want to relate to their government.

These questions lay bare the most fundamental conflicts faced by Afghans: What is the relationship of the central government to the local governments? What is the role of Islam in government? How are the rights of minorities and women best protected?

The draft constitution that was released 2 weeks ago answers the questions to some degree, and, of course, not to the satisfaction of everyone. The proposal attempts to establish a strong presidency and does not contain the earlier idea of having a prime minister; thus avoiding a replay of the power struggles that characterize Afghan governments in the early and mid nineties, yet there remains the danger of concentrating too much power in one individual.

The role of religion is somewhat more problematic. Articles 1, 2 and 3 deal with this question, proclaiming Afghanistan as an Islamic republic, establishing Islam as the religion of Afghanistan, and thirdly, stating that:

“In Afghanistan, no law may be contrary to the sacred religion of Islam.”

But the question of who gets to decide whether law is contrary to Islam is an open and difficult one.

The role and rights of women in Afghanistan is also an issue that requires close attention. Some commentators have described the draft constitution as protecting women’s rights implicitly through the use of “gender-neutral” language. I think the historic treatment of women in Afghanistan indicates that such protections are clearly insufficient.

Last week there were media reports that religious leaders in certain district of Bamyan Province were preventing women from participating in the election process for the constitutional Loya Jirga. Clearly, the treatment of women in Afghanistan has not changed that much since the removal of the Taliban.

Because of the nature of these questions, the process by which they are answered comes just as important as the answers themselves, and the process is where there is a big problem.

The incident of denying women the right to vote is but one example. The selection of delegates for the upcoming Loya Jirga is taking place against a backdrop of continued insecurity.

As the recent U.N. Security Council Mission to Afghanistan noted, and I quote:

“Such insecurity also poses a direct challenge to the full implementation of the Bonn Agreement as it constitutes the political space necessary for national political processes and blocks access to many areas threatening to disenfranchise parts of the population, notably in Pushtin majority areas.”

While the coalition forces have stepped up their efforts against the Taliban and al-Qaeda, the insecurity throughout the countryside stems as much from the continued existence of rival warlords with their private armies as it does from the resurgence of Taliban elements.

The DDR, or disarmament demobilization and reintegration, difficult tasks in any context, are particularly so in Afghanistan where rival commanders continue to fight each other. The DDR efforts have already run into opposition in the Poptia Province from Pasha Kahn Zadran. Active United States involvement in DDR is going to be required to get recalcitrant warlords to put down their guns.

Madam Chair, Afghanistan has had nine constitutions over the last 80 years. It is imperative that the Afghans get this one right.

Of course, this is but one imperative on a long list when it comes to Afghanistan, but only in a secure environment will Afghans be able to freely make the difficult decisions that lie ahead of them.

I thank you, Madam Chair, and I look forward to hearing from today's witnesses.

Ms. ROS-LEHTINEN. Thank you so much, Mr. Ackerman.

Mr. Janklow.

Mr. JANKLOW. Thank you very, very much, Madam Chairwoman, for holding this meeting and for your comments. Mr. Ackerman, I am going to be extremely brief.

As I come here today, I am, frankly, enthralled with the concept that people are still drafting constitutions. You know, it is not really important that it be modeled after ours. We did not get it right the first time either. We have got a lot of great things in our constitution when it was written after the Articles of Confederation failed, but things like slavery, things like universal sufferance, there were things that we did not have figured out yet either. It took us awhile.

One of the great things about life is that, Sante-Anna once said, "A nation that doesn't know history is fated to repeat it."

The Afghans, God willing, should not have that problem. The free-flow of ideas, the ability of people to debate their lives and the lives of others, the ability of individuals to speak out, the right of every human being to worship or not worship according to their own desire, the right of people to peaceably assemble, to come talk to their government, these are things that we as a world community have figured really are incredibly important to human beings.

A constitution when it is written will just be words. That is all it will be. But what it represents is that fundamental concept of ideas and thought around which a society agrees they will comport themselves as a people. That is incredibly important.

You know, as Harry Truman once said, he said:

"My mom always told us that the louder some people publicly shout Amen the faster we wanted to count the silverware."

There is a lot of philosophy in that, an awful lot of philosophy in that.

When our constitution was written, we created that Bill of Rights because of the evils which we perceived we had visited upon us from Mother England. We did not like the idea of people coming

into our homes and rummaging around, and staying there, or taking our property and leaving without any writ or permit.

We did not like the idea of going to debtor's prisons. We did not like the concept that we were not able to speak out and participate in our government.

The Afghan constitution does not have to be like ours, but it is incredibly important, and they are headed in the right direction. I am not going to criticize any of what they have done.

I can only say that a constitution for any country that does not guarantee absolute fundamental equal rights for all cannot survive. A constitution for any country that does not guarantee fundamental rights for all people with respect to all religions at all times cannot survive. And a constitution or a society who has as its basic laws the failure to recognize that all men and all women, that all people of all colors and all persuasions are equal in the eyes of that society can truly not survive.

And so these are—if I was an Afghanistani, this would be an incredibly exciting times for me, because I would have the opportunity to participate in the creation of the fundamental documents around which my country can go forward into the future.

And so, Madam Chairwoman, this is a great hearing you have, and it is a great group of panelists that you have brought forward here today, and I look forward to the testimony. Thank you.

Ms. ROS-LEHTINEN. Thank you so much, Mr. Janklow.

As we know, this is a joint Subcommittee with the Subcommittee on International Terrorism, and Human Rights, and Chairman Gallegly, who could not be with us, asked that his statement be inserted into the record, and I would ask unanimous consent for that.

[The prepared statement of Mr. Gallegly follows:]

PREPARED STATEMENT OF THE HONORABLE ELTON GALLEGLY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRMAN, SUBCOMMITTEE ON INTERNATIONAL TERRORISM, NONPROLIFERATION AND HUMAN RIGHTS

I would like to thank Ms. Ros-Lehtinen for taking the lead on today's hearing on the human rights situation in Afghanistan and the process of establishing a workable, democratic constitution in that country.

Recently, the Afghan government unveiled the draft of a new constitution. There is much to support in the document. For example, one provision states that Afghanistan will abide by Universal Declaration on Human Rights and the United Nations Charter. It also promises democratic rule, prohibits torture and protects freedom of expression and property rights.

On the other hand, as the witnesses have pointed out in their written statements, questions remain as to the implementation of these provisions and whether the draft constitution goes far enough in protecting the rights of women and religious minorities.

However, my most immediate concern goes beyond the specific language of the draft constitution. In my view, unless the U.S. and its allies improve the security situation in Afghanistan, even the best-written, most democratic constitution will fail to bring freedom to the Afghan people.

Almost two years ago, in response to the attacks of September 11, our armed forces successfully ousted the Taliban from power. However, there are growing indications that the Taliban is reemerging as a powerful force in the southern and eastern regions of the country. They are being aided by remnants of Al Qaeda that fled to Pakistan during the war with the United States.

Added to this problem is the growing power of warlords and the sharp increase in opium cultivation in Afghanistan. The millions of dollars going to the drug traffickers will, in turn, lead to greater violence and undermine the ability of the central government to enforce laws or protect even the most basic human rights. If one looks at other countries that have become major sources of illicit drugs, we clearly

see the corrosive effects that narco-trafficking has on public safety, human rights and the rule of law.

I yield back the balance of my time.

Ms. ROS-LEHTINEN. And with that I would like to recognize the Ranking Member of that Subcommittee, Mr. Sherman of California.

Mr. SHERMAN. And flying our Subcommittee flag proudly.

I want to thank you, Chairwoman Ros-Lehtinen, the absent but ever present Chairman Gallegly, Ranking Member Ackerman, for holding these hearings.

It seems that we have put virtually all of our available national treasure, our military power, our will, and all of our diplomatic efforts into Iraq, and I am glad that we are holding these hearings to remember that the threats to America do not emanate exclusively between the Tigris and Euphrates Rivers.

And we must remember that right now, as far as we know, not one planned or actual terrorist attack against the United States emanated from Iraq, whereas Afghanistan was the headquarters of al-Qaeda, which, of course, is responsible for September 11th.

This exposes the fiction behind one of the rationals behind the Iraqi mission, which was to ensure that Saddam did not provide a safe haven for terrorists. Saddam was not providing a safe haven to those terrorists who were actively plotting against America, but we do know where there is a safe haven, where there was a safe haven to plot September 11th, the East Africa Embassy attacks, the USS Cole, and that is Afghanistan, which continues to have outside of Kabul plenty of areas that can only be described as safe havens for terrorists, and substantial Taliban support.

We cannot expect a perfect democracy in Afghanistan, but we can expect one in which we and the central government have enough influence to prevent the emergency of terrorism and to stop the cultivation of the opium poppy, and Afghanistan could only move forward in terms of its human rights and treatment of women.

I may disagree with the gentleman from South Dakota in terms of how high we should aim in this process. I, too, would like to see all the things that he mentioned in the Afghan constitution, but would settle for quite a bit less.

Unfortunately, we have in many places in Afghanistan all of the safe haven that al-Qaeda needs. We have to do more. We have to get the Pakistanis to do more, particularly in the border area.

To expect this government to exert its authority in eastern and southern Afghanistan, with the additional problem of having terrorist and other force moving back and forth over the border into Pakistan, is to expect the impossible.

The lack of security remains perhaps the largest obstacle to not only a democratic Afghanistan, but to any economic progress as well, and, of course, you have the vicious circle, lack of security leads to economic stagnation and decline, which leads to a decline of lack of security.

We ought to take a look at our trade policies. We ought to take a look at taking away some of the textile quota assigned to China, and assigning it to Afghanistan as well.

Now, I realize that those quotas will only be with us for a short time, but that and other opportunities to shift economic advantage

to the products of Afghanistan, not at the disadvantage of American workers, but to the disadvantage of those who repeatedly run enormous trade surpluses with the United States ought to be our focus. Unfortunately, I doubt that will occur under this Administration.

Recent news reports of how the NGOs, the international aid groups have curtailed or eliminated their efforts can only bring us sorrow. The U.S. High Commissioner for Refugees began pulling staff out of southern and eastern regions of the country in response to the death of a staff member at the end of militants, terrorists if you will.

If these aid groups are not able to carry out their work, that downward spiral that I mentioned would continue. So I hope that we can hear from our witnesses how, with so much of America tied down in Iraq, we can provide the resources and the strategy to assist the Afghan government in achieving at least the limited aims I have outlined.

And I yield back.

Ms. ROS-LEHTINEN. Thank you so much, Mr. Sherman.

Mr. Rohrabacher, California?

Mr. ROHRABACHER. Thank you very much.

I think that this hearing is really at a pivotal moment, and there has been several pivotal moments in these last 10 years that America has just either missed or just totally screwed up. And the result of us and our folly at those moments of decision have cost the United States dearly, both in lives and in treasure.

This is, however, one of those moments again. We have had an opportunity which I think is we have not exploited for the benefit, but we can turn that around now, I believe, and I hope that optimism is shared by the panel. We need to make sure that whatever comes out of this constitution is a positive, is a very positive element of the future of Afghanistan and that region.

In order for that to happen, we have got to provide leadership. We cannot expect the people of Afghanistan who are relatively unsophisticated to have the knowledge base and the expertise to put together the type of constitutional government that will secure their liberty and prosperity in the future.

We need to provide leadership. Unfortunately, from what I have seen, Madam Chairman, our government is not now providing that leadership, and I hope that this panel will tell me that I am wrong when I say that. I hope they will show me that I am actually underestimating the type of effort that is being put into Afghanistan today.

We need to have in the constitution a declaration of freedom of religion. I will be very interested to see if there is a specific declaration of freedom of religion. We need a specific declaration in the constitution that women have equal rights, and that it is spelled out, and that it is not ambiguous. We need to make sure that the people there have freedom of press

If we do not have guarantees for the freedom in the constitution, and push for that now, we cannot expect Afghanistan to be a free country 5 years from now, and 5 years from now Afghanistan will continue to be a major threat to the stability of that region and the security of the free world.

The other thing, of course, we need to worry about our drugs, which this Administration has, again I will hope to hear good things about the drug effort, as we keep complaining about it, and from my perspective and what I have seen, that drug production is out of control in Afghanistan, and it is being used to finance exactly the wrong elements, the worst of all people.

Hekmaktyar Gubadeen is back in the country. He is allied with the Taliban now, which is a catastrophe, that alliance is a catastrophe.

So, Madam Chairman, I am very interested in hearing this presentation today, and I would hope that these people have some answers for us about the constitution and the leadership for providing it. If they do not, they should have explanations of why.

Thank you very much.

Ms. ROS-LEHTINEN. Thank you, Mr. Rohrabacher.

Ms. Harris of Florida.

Ms. HARRIS. Thank you, Representative Rohrabacher. Thank you, Madam Chair.

I wish also to express my appreciation to our Subcommittee Chairs for conducting this hearing on the reconstruction of Afghanistan. I also wish to thank the distinguished members of today's panel.

As we enter the next stage of the process of the 2001 Bonn Agreement, we will encounter a number of landmark challenges including the adoption of the constitution. While the development of a stable and enduring democracy cannot be our exclusive focus obviously, we must ensure that Afghanistan also concentrates on securing basic human rights protections, unifying war infractions, and preparing the people of Afghanistan for the burdens and responsibilities of self-government in a manner that remains consistent with their cultural history.

And while I recognize that we are being open and sensitive to their cultural historic background, I am very sensitive to that, with their orientation toward strong leaders and their tribal background, that we be able to provide something that they will relate to, not just a democratic institution, which is foreign.

And also, in addition, while they can vote, and I believe before they had about 1,500 members in their organization, they are bringing it down to 500, and it is not their selection, it is the U.N. Again, I am concerned about that kind of self-determination from those tribes if it is going to be effective.

And then certainly, finally, with 95 percent of illiteracy, how are people really going to be able to govern justly and know who their leaders that they are choosing truly are until we really improve that? Just the basic needs of food, clothing and shelter, how can people begin to think about a republic or a democracy when they can barely survive?

So there are such critical issues in addition to the constitution.

I am really pleased with the focus on the rights of women. It is very exciting that women are not just receiving the guarantee of the right to vote, but the assurances regarding the significance of their role in government and in society in general.

Our nation's interest in Afghanistan has always rested upon the development of a viable and independent state that can remain free

from terrorist influence. Nevertheless, persistent violence and a slow reconstruction process have combined to undermine the authority of the Karzai provisional government, producing on occasion an environment of chaos and instability.

Obviously, with the opportunity to have that kind of strong man monarchy or other type of—prime minister relationship with Karzai, I think that could actually help to guarantee even more stability if that is what the Afghans so determine.

But in particular, the absence of sufficient security plagues the majority of the country, especially in the regions that remain susceptible to widespread opium cultivation and trafficking as well as the influence of the Taliban.

While I believe that the adoption of a constitution will serve as a watershed in the history of this oppressed nation, we must direct our energy as well to creating the reality rather than just the appearance of a prosperous free and secure Afghanistan.

And I look forward to the continued discussion of this vital component of the war on terror. Thank you.

Ms. ROS-LEHTINEN. Thank you, Ms. Harris.

And now I am very pleased to introduce our distinguished panel. I would like to welcome once again Assistant—well, this time, Assistant Secretary Christian Rocca. Ms. Rocca was sworn in as Assistant Secretary of State for South Asian Affairs on May 31, 2001, and prior to this appointment she served as foreign affairs advisor to Senator Brambach, specializing in issues related to South Asia and Central Asia, and the Middle East. She also served as an intelligence officer with the CIA from 1982 to 1997. We thank you so much, Secretary Rocca, for being with us.

Ms. ROCCA. Thank you.

Ms. ROS-LEHTINEN. And we want to welcome back an old friend, Assistant Secretary Lorne Craner. Mr. Craner was sworn in as Assistant Secretary of State for Democracy, Human Right and Labor on June 4, 2001. He coordinates U.S. foreign policy and programs that support the promotion and protection of human rights and democracy worldwide. Prior to his appointment, he served as the President of the International Republican Institute from 1995 until assuming his current position. We welcome you back.

And also want to welcome Ambassador John Hanford III. Mr. Hanford was sworn in as Ambassador-at-Large for International Religious Freedom on May 2, 2002. He serves as a principal advisor to the President and the Secretary of State on issues of religious freedom worldwide. From 1987 to 2002, the Ambassador served on the staff of Senator Richard Lugar as an expert on international religious freedom. In 1998, Mr. Hanford was instrumental in the drafting and guiding of the International Religious Freedom Act through Congress, and he is a good friend of our Subcommittee as well.

And as a reminder to our witnesses, opening statements should be limited to no more than 5 minutes, and I am sure that we will have many questions for the panelists, and your entire statement will be made a part of the record.

Ambassador Rocca, we will begin with you. Thank you.

**STATEMENT OF THE HONORABLE CHRISTINA B. ROCCA, AS-
SISTANT SECRETARY, BUREAU OF SOUTH ASIAN AFFAIRS,
DEPARTMENT OF STATE**

Ms. ROCCA. Thank you, Madam Chair, Mr. Sherman. Thank you very much for giving me the opportunity to come and talk about ongoing commitment to success in Afghanistan.

I am pleased to be able to report to you that progress to date has been good, and that it is accelerating. Afghanistan has been making rapid progress in its reconstruction, and the United States has been working closely with international organizations, our NATO allies, and members of the international community, to help that country take its place among the world community of moderate democracies.

It has been 2 years since the liberation of Kabul and the defeat of the Taliban regime. Under the Taliban, 20 percent of the population lived as refugees, and 200,000 had been disabled by mines. Roads, irrigation and other infrastructure were barely usable, and few Afghans had access to health care and education.

Today, this is changing. Afghans enjoy restored liberties and opportunities that were unheard of in recent memory. An internationally recognized government is in power. Schools have reopened. A new banking law is in place. Businesses are blossoming around the country. And most importantly, there is hope for a better future.

It is also important to point out that challenges remain before us; most importantly, the threat to security posed by resurgent Taliban and al-Qaeda attacks. These challenges can be overcome with continued support, we are confident, and we remain committed to success in Afghanistan.

The Congress's recent approval of \$1.7 billion in supplemental funds will allow us to build on our successes to date, and help the Afghans establish a government that is moderate and democratic, stable and at peace with its neighbors, and representative of all the Afghan people, and that it will never again be a haven for enemies of the United States.

The supplemental includes \$69 million for support to democracy and governance. Additional funds will support security sector development that will help train Afghan police and military in the run-up to the election.

On December 5, 2001, various Afghan groups came together under U.N. guidance and signed the Bonn Agreement, which you are all familiar with. In accordance with that agreement, an emergency Loya Jirga took place in June 2002, electing a transitional government, and since then the transitional government has continued to implement the Bonn Agreement.

In October 2002, President Karzai established a nine-member constitutional drafting commission which produced a draft constitution, and in April 2003, a larger constitutional commission of 35 members began revisions of the draft, and public consultations throughout the provinces and among refugee populations.

Afghanistan will soon mark its next important political milestone. In December, 500 delegates will convene a constitutional Loya Jirga to ratify a final constitution. It will represent a broad spectrum of Afghan society, including 90 women delegates. For the

first time in almost 40 years the Afghan people will have an opportunity to define the future of their country.

The draft constitution unveiled on November 3 represents a genuine effort on the part of Afghans to reclaim their rightful place in the community of nations.

The draft constitution establishes a democratically elected government with a system of checks and balances. A President is to be elected for a 5-year term, with at least 50 percent of votes nationwide. A single Vice President is announced by each presidential candidate before elections, but does not stand for election.

The legislature resides in a bicameral national assembly. The lower house is directly elected for a 5-year term. The number of lower house members is proportionate to the population of each region and will range between 220 and 250 members.

The upper house is elected in three divisions. The provincial councils elect one-third of its members for a 4-year term. The district councils elect the second third of members for a 3-year term, and the President appoints the remaining third for a 5-year term.

The draft constitution dictates that at least one woman will be elected to the lower house from each of the 32 provinces, and half of the President's appointments to the upper house must be women.

Under the draft constitution, the judicial branch is composed of a single supreme court, and two layers of appellate courts. There is no provision for a separate constitutional court or religious court. The draft also provides for a Loya Jirga, the traditional assembly of Afghan leaders, which can be convened for decisions on changes to the constitution and other serious issues.

In addition to provisions on government structure, the draft constitution establishes protections for human rights. It provides for basic rights and freedoms, and specifically cites Afghanistan's obligation to abide by international human rights treaties.

The draft also recognizes the important role of Islam in Afghanistan, without prohibiting practice of other religions.

The draft constitution also sets a time line for elections. Presidential elections are to be held first, currently planned for June 2004, in keeping with the Bonn time line, and legislative elections will then be held within 1 year of presidential elections.

The United Nations Assistance Mission to Afghanistan, UNAMA, will begin registration for the elections in December, and UNAMA estimates the total cost will be \$78.2 million. The United States has already contributed \$15 million to UNAMA for registration, and other donors have contributed \$27.2 million thus far.

Throughout the drafting process, the United States has fulfilled its role as a friend to Afghanistan by providing resources and expertise to the drafting commission, and giving counsel to the government of Afghanistan.

The drafting of the constitution must be an Afghan process. As such, it is important to remember that the draft constitution is just that, it is a draft, and there will be no final constitution until one is approved by the constitutional Loya Jirga. Until then, the U.S. will continue to support the constitutional process and offer our counsel where appropriate.

Our objective is to bring lasting peace and stability to a country that has experienced very little of either in the last quarter century, and I am confident that with your continued support we will succeed.

Thank you.

[The prepared statement of Ms. Rocca follows:]

PREPARED STATEMENT OF THE HONORABLE CHRISTINA B. ROCCA, ASSISTANT
SECRETARY, BUREAU OF SOUTH ASIAN AFFAIRS, DEPARTMENT OF STATE

Madame Chairman, Mr. Chairman, Mr. Ackerman, Mr. Sherman, distinguished members, thank you for inviting me to speak on the United States' ongoing commitment to success in Afghanistan.

I am pleased to be able to report to you that progress to date has been good—and that it is accelerating. Afghanistan has been making rapid progress in its reconstruction, and the United States has been working closely with international organizations, our NATO allies and members of the international community to help that country take its place among the world community of moderate democracies.

It has been two years since the liberation of Kabul and the defeat of the Taliban regime. Under the Taliban, twenty percent of the population lived as refugees and 200,000 had been disabled by mines. Roads, irrigation, and other infrastructure were barely usable, and few Afghans had access to healthcare and education.

Today, this is changing. Afghans enjoy restored liberties and opportunities that were unheard of in recent memory. An internationally recognized government is in power; schools have reopened; a new banking law is in place; businesses are blossoming around the country; and, most importantly, there is hope for a better future. It is also important to point out the challenges that remain before us, most importantly the threat to security posed by resurgent Taliban and Al Qaeda attacks. These challenges can be overcome with continued support, and we remain committed to success in Afghanistan. Your recent approval of over \$1.2 billion in supplemental funds will allow us to build on our successes and help the Afghans establish a government that is moderate and democratic, stable and at peace with its neighbors, representative of all Afghan people, and that will never again be a haven for enemies of the United States. The supplemental includes \$69 million for support to democracy and governance. Additional funds will support security sector development, which will help train Afghan police and military in the run up to elections.

On December 5, 2001, various Afghan groups came together under U.N. guidance to sign the Bonn Agreement, laying the groundwork for democratic development in Afghanistan. In accordance with the Agreement, an Emergency Loya Jirga took place in June 2002, electing a transitional government (TISA) under President Hamid Karzai. Since then, IISA has continued to implement Bonn. In October 2002, President Karzai established a nine-member Constitutional Drafting Commission, which produced a preliminary draft constitution. In April 2003, a larger Constitutional Commission of thirty-five members began revisions of the draft and public consultations throughout the provinces and among refugee populations.

Afghanistan will soon mark its next important political milestone. In December, 500 delegates will convene a Constitutional Loya Jirga to ratify a final constitution. The Loya Jirga will represent the broad spectrum of Afghan society, including over 90 women delegates. For the first time in almost forty years, the Afghan people will have an opportunity to define the future of their country. The draft constitution unveiled on November 3 represents a genuine effort on the part of Afghans to reclaim their rightful place in the community of nations.

As with our own Constitution, the Constitution of Afghanistan is meant to be a document of the people, by the people, and for the people of Afghanistan. It must establish a democratic government in keeping with the unique cultural values of the Afghan people. Overall, the draft constitution is a good step toward these goals.

The draft constitution establishes a democratically elected government with a system of checks and balances. A president is to be elected for a five-year term with at least fifty percent of the votes nationwide. A single vice president is announced by each presidential candidate before elections, but does not stand for election.

The legislature resides in a bicameral national assembly. The Wolesi Jirga, or lower house, is directly elected for a five-year term. The number of Wolesi Jirga members is proportionate to the population of each region and will range between 220 and 250 members. The Meshrano Jirga, or upper house, is elected in three divisions. The provincial councils elect one third of its members for a four-year term. The district councils elect the second third of the members for a three-year term. And, the President appoints the remaining third for a five-year term. The draft con-

stitution dictates that at least one woman will be elected to the Wolesi Jirga from each of the 32 provinces, and half of the President's appointments to the Meshrano Jirga must be women.

Under the draft constitution, the judicial branch is composed of a single Supreme Court and two layers of appellate courts. There is no provision for a separate Constitutional Court or a Religious Court. The draft also provides for a Loya Jirga, the traditional assembly of Afghan leaders, which can be convened for decisions on changes to the constitution and other serious issues.

In addition to provisions on government structure, the draft constitution establishes protections for human rights. It provides for basic rights and freedoms and specifically cites Afghanistan's obligation to abide by international human rights treaties. The draft also recognizes the important role of Islam in Afghanistan without prohibiting the practice of other religions.

The draft constitution also sets a timeline for elections. Presidential elections are to be held first, currently planned for June 2004 in keeping with the Bonn timeline. Legislative elections will then be held within one year of presidential elections. The United Nations Assistance Mission to Afghanistan (UNAMA) will begin registration for the elections in December, and UNAMA estimates the total cost will be \$78.2 million. We have already contributed \$15 million to UNAMA for registration and other donors have contributed \$27.2 million thus far.

Throughout the drafting process, the United States has fulfilled its role as a friend to Afghanistan by providing resources and expertise to the drafting commission and giving counsel to the government of Afghanistan. The drafting of the constitution must be an Afghan process. As such, it is important to remember that the draft constitution is just that, a draft, and there will be no final constitution until one is approved by the Constitutional Loya Jirga. Until then, the United States will continue to support the constitutional process and offer our counsel when appropriate.

Our objective is to bring lasting peace and stability to a country that has experienced very little of either in the last quarter century. I am confident that with your continued support we will succeed.

Thank you.

Ms. ROS-LEHTINEN. Thank you, Ambassador Rocca.
Secretary Craner.

STATEMENT OF THE HONORABLE LORNE W. CRANER, ASSISTANT SECRETARY, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, DEPARTMENT OF STATE

Mr. CRANER. Thank you, Madam Chairman, Madam Chair Ros-Heltinen, Chairman Gallegly, and Members of both Subcommittees. Thank you for holding this joint hearing on the human rights situation and the upcoming constitutional Loya Jirga in Afghanistan.

Thanks to the efforts of the United States and our international partners, the people of Afghanistan enjoy more freedom and equality, greater security, and better opportunities than they have in decades.

Troubles remain. In-fighting among various Afghan factions, along with the Taliban resurgence in the south and east have created a precarious security situation. The country continues to suffer from poverty, illiteracy, and health problems. Thousands of refugees have yet to be resettled. Societal discrimination continues against women, and trafficking of women and children, especially in rural areas, continues.

We believe we are already creating a positive see-change in the human rights situation in Afghanistan. The Bonn Agreement established the Afghan Independent Human Rights Commission as a national institution mandated with defining the human rights agenda in Afghanistan.

In addition to providing it with the necessary political support, the U.S. has already committed \$1 million to the human rights

commission. The recent supplemental you passed includes another \$5 million.

I spent a great deal of time with the Afghan Human Rights Commission during my visit to the country in July, and my bureau sent one of its senior level officers for 4 months to Afghanistan to meet with the human rights commission and to serve on one of our PRTs.

There has been a sea-change for the status of women in Afghanistan over the last 2 years. Girls' enrollment in school is now at an all-time high for Afghanistan, with well over 1 million girls in school. Women enjoy greater freedom and movement, and are beginning to return to work.

The Afghan government has established a Ministry of Women's Affairs. The ministry is creating a network of women's resource centers throughout the country to support women's rights and economic empowerment.

The Ministry of Public Health is also headed by a woman. The Ministry of Foreign Affairs has set up a division dealing with women's issues, and the Ministry of Commerce set up a department to help women launch businesses.

Finally, President Karzai has decreed that women will comprise 89 of the 500 constitutional Loya Jirga delegates. The draft constitution also sets aside a number of legislative seats for women in both the upper and the lower chamber.

Secretary Powell made our position on these issues clear awhile back when he said, "The rights of women in Afghanistan will not be negotiable." The United States is following up on this commitment by incorporating women's issues in many assistance programs. In the economic sector, the U.S. is providing training and funding women's projects.

The draft constitution is an Afghan product crafted by the Afghans for the Afghans. The draft establishes a democratically elected government, and includes broad human rights protections. It recognizes Afghanistan's international human rights obligations, including references to international human rights instruments. The preamble specifically recognizes the importance of the role of civil society in a democracy and equal rights before the law.

Article 24 elaborates, stating that liberty and dignity of human beings are inviolable.

The constitution also prohibits torture, freedom from being illegal arrested or detained, the right to expression, and the right of association.

The draft constitution is also encouraging in that it guarantees significant female representation in the legislature. It makes particular provisions for the needs of women in education. It provides for the state to render necessary assistance to women without caretakers, and for the physical and psychological supportive families, including a child and mother.

However, some have pointed out that while the rights of citizens are mentioned, more specifics are necessary. I will leave it to my colleagues, John Hanford, for a discussion of the portions of the constitution dealing with religion, but let me note some other issues.

Though the draft makes wide provisions for the equal rights of all citizens before law, some have stated that it does not include a definition of who is a citizen, and does not state that both men and women are citizens.

Many are also concerned with the rights of women. They suggest that more specifics need to be mentioned such as outlawing discrimination against women, forcing underage marriages, full rights of marriage, divorce, and inheritance.

We are confident that Afghan leaders and delegates to the Loya Jirga will work to ensure that the constitution will be faithful to the highest aspirations of the Afghan people, and that these rights will be safeguarded and protected within Afghanistan's obligations under international law.

The people of Afghanistan face continued struggles in the rebuilding of their country. As I noted, there are many human rights concerns, such as the fact that treatment of women varies from one part of Afghanistan to another. President Bush has made clear that our nation has special responsibilities toward Afghanistan that we intend to honor. We will work with Congress to ensure that Afghans are protected by internationally recognized human rights standards. Our goal is to help Afghanistan become a peaceful, democratic, and prosperous nation that contributes to regional stability, and we again pledge to you today to work toward that end.

Thank you again for holding this hearing.

[The prepared statement of Mr. Craner follows:]

PREPARED STATEMENT OF THE HONORABLE LORNE W. CRANER, ASSISTANT SECRETARY, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, DEPARTMENT OF STATE

Madame Chair Ros-Lehtinen, Chairman Gallegly, and Members of both Subcommittees, thank you for holding this joint hearing on the human rights situation in Afghanistan. Given the November 3 release of the draft Constitution by Afghanistan's Constitutional Commission, and the upcoming Loya Jirga, this is certainly an appropriate time to focus on Afghanistan.

On November 3rd, President Bush issued two public statements related to Afghanistan. In one, he noted the release of the draft Constitution, calling it an "important milestone in Afghanistan's political development." In the other, he thanked and "commended Congress for providing vital funds to support our mission and our troops deployed in Afghanistan. . . ." He said that the funds, "will be used to enable us to continue our efforts to help Afghanistan become a peaceful democratic and prosperous nation that contributes to regional stability."

The United States remains committed to a stable, democratic, and prosperous Afghanistan. Our continuing involvement and reconstruction efforts in Afghanistan, as well as the recent accelerated funding package of almost \$1.6 billion in fiscal year 2004, attests to our commitment. Assisting the Afghans and helping them create an environment in which civil society, the rule of law, and human rights can flourish are amongst our highest priorities.

We have seen the devastating effects that the Soviet invasion, political instability, civil war, and repressive Taliban rule have wreaked on the lives of innocent Afghan civilians. We are also aware of the egregious human rights abuses committed by the Taliban, specifically against women and ethnic and religious minorities.

Thanks to the efforts of the United States and our international partners, the people of Afghanistan enjoy more freedom and equality, greater security, and better opportunities than they have in decades. Yet some troubles remain. In-fighting among various Afghan factions, along with the Taliban resurgence in the south and east, have created a precarious security situation.

The country continues to suffer from poverty, illiteracy, and health problems. Thousands of refugees have yet to be resettled. Unexploded, unmarked landmines from decades of war pockmark the countryside. Discrimination continues against women in the form of limited opportunities for participation in public life, domestic violence, rape, forced marriages, child marriages, trafficking of women and children,

and honor killings, especially in the rural areas. We are aware and concerned about these problems and our efforts at assisting the Afghan people in their recovery are directed at addressing them. We believe we are already creating a positive sea change.

One of the initial steps in creating the framework for a stable democracy was the Bonn Agreement, in which the international community, the United States, and important Afghan leaders agreed to the establishment of three important commissions: the Constitutional Commission, the Judicial Commission, and the Independent Human Rights Commission. The Agreement also provided a timeline for the holding of elections.

The Bonn Agreement established the Afghan Independent Human Rights Commission (AIHRC) as the national institution mandated with defining the human rights agenda in Afghanistan. The United States supports the AIHRC in its important work and encourages it to actively promote and protect human rights, including the rights of women and minorities as well as religious freedom, within a framework that recognizes the particular historical, cultural, religious and social conditions in Afghanistan.

In addition to providing it with necessary political support, the United States has committed \$1 million to the AIHRC, of which the Bureau of Democracy, Human Rights, and Labor's (DRL) Human Rights and Democracy Fund (HRDF) has provided \$250,000. The recent supplemental includes \$5 million that will be used for the AIHRC's important mandate of establishing adequate commission capacity to formulate, develop, and manage its functions of processing petitions and complaints. My bureau sent one of its senior-level officers for four months to Afghanistan in order to meet with the AIHRC and serve on one of our five Provincial Reconstruction Teams. Provincial Reconstruction Teams combine military and civil aspects allowing for increased reconstruction in certain areas and assist in the expansion of central authority, rule of law, and civil society.

One of the biggest human rights issues in Afghanistan is the treatment of women and girls. Although Afghan women still face many hurdles, the U.S. and its international partners have made significant efforts to improve women's human rights. Many girls are beginning formal education, which was banned under the Taliban. Girls' enrollment in school is now at an all-time high for Afghanistan with well over 1 million girls in school. Women enjoy greater freedom and movement and are beginning to return to work.

The Afghan government has established a Ministry of Women's Affairs, headed by a woman, Habiba Sorabi, and created branch offices in most provinces. The Ministry is creating a network of Women's Resource Centers throughout the country to support women's rights and economic empowerment. The United States government will fund construction of women's centers in 14 provincial locations across Afghanistan to provide health education, daycare, and job skills training to Afghan women. Construction has already begun in several of these provinces. In addition, the Ministry of Women's Affairs has established an anti-trafficking technical working group to assist the Ministry in strengthening coordination between relevant ministries, donors and other parties and is working to draft anti-trafficking legislation.

The Ministry of Public Health is also headed by a woman Minister, Suheila Siddiq. The Ministry of Foreign Affairs has set up a division dealing with women's issues, and the Ministry of Commerce set up a department to help women launch businesses.

Women are also represented in other positions of responsibility, as evidenced by Sima Samar who heads the Afghan Independent Human Rights Commission. In addition, President Karzai has decreed that women will comprise nearly 90 of the 500 Constitutional Loya Jirga delegates, who will convene next month to adopt a new constitution for Afghanistan. The draft constitution also sets aside a number of legislative seats for women in both the upper and lower chamber of its bicameral parliament. Outside of government, women's access to public life, health care, education, and employment is improving.

Women, however, remain targets of opportunity for those who wish to prevent the emergence of a tolerant, democratic Afghanistan. Resurgent anti-government forces have singled out women by attacking girls' schools, and women still face social barriers, threats from hard-liners, domestic violence, trafficking, and forced and child marriages in private life. This is a serious concern. Secretary Powell made our position clear a while back when he said, "The rights of women in Afghanistan will not be negotiable." To address these issues, the United States Government is conducting domestic violence awareness campaigns and training for the police and the judiciary.

The U.S. is also addressing women's concerns by incorporating women's issues in many assistance programs, including health clinics, schools, and market centers. In

addition to support for the Ministry of Women's Affairs, the U.S.-Afghan Women's Council is forging bi-national, public-private partnerships to address women's issues. In the economic sector, the U.S. is providing training and funding women's projects, including the production of traditional carpets and cloth, garden projects, day care centers, bakeries, and micro-finance loans to help women start their own businesses.

These rights will only be protected in the context of a clear and precise constitution that creates the foundation for a solid democracy and protects the fundamental rights of all citizens, regardless of gender or ethnic, linguistic, and religious background.

The draft constitution is an Afghan product drafted by the Afghan people for the Afghan people. This draft establishes a democratically-elected government and includes broad human rights protections. It recognizes Afghanistan's international human rights obligations, including references to international human rights instruments such as the Universal Declaration of Human Rights, the UN Charter, and the international treaties and conventions that Afghanistan has signed.

The preamble specifically recognizes the importance of the role of civil society in a democracy and equal rights before the law. Article 24 elaborates, stating that "Liberty and dignity of human beings are inviolable." The constitution also prohibits torture, freedom from being illegally arrested or detained, the right to expression and the right of association, all within provisions of the law. These are freedoms that must be enshrined and preserved for all democracies in order to ensure security, stability, and equality; and we applaud these efforts.

The constitution also establishes the Afghan Independent Human Rights Commission to serve, monitor, and protect human rights, including reference to legal authority when rights have been violated. However, some have pointed out that while the rights of citizens are mentioned, more specifics are necessary in order to prevent possible extremist elements from imposing an unfavorable interpretation of the constitution. They point to the fact that the draft only mentions freedom for followers of other religions as "free to perform their religious ceremonies within the limits of the provisions of the law" and that no law "can be contrary to Islam." They note that while Shar'ia is not addressed, Hanafi law and jurisprudence is to be applied except in cases related to the Shi'a minority. The new Supreme Court, which is given the power to interpret the constitution, is to be composed of a mix of judges trained either in secular law or Islamic jurisprudence. Furthermore, although freedom of expression is "inviolable" it is also regulated by the law. In the Afghan context, it remains to be seen what this law will be and how these provisions will be interpreted.

Though the draft makes wide provisions for the equal rights of all citizens before the law, the draft does not include a definition of who is a citizen, and does not state that both men and women are citizens. Many groups concerned with the rights of women also suggest that more specifics need to be mentioned, such as outlawing discrimination against women, forced and underage marriages, full rights of marriage, divorce, and inheritance for women so that their rights are preserved and protected from possible extremist interpretations. Specifically, if these issues are treated as personal or within family law, then Shar'ia law could take precedence, and certain law codes could prevail.

Yet the draft constitution is also encouraging in that it guarantees significant female representation in the legislature (specifying that at least one woman from each province will be directly elected in the lower house and that half of the third appointed by the president to the upper house must be women). It also makes particular provisions for the needs of women in education, noting the state's responsibility to devise and implement effective programs for promoting education for women (Article 44). It provides for the state to render necessary assistance to women without caretakers (Article 53) and for the physical and psychological support for families, including the child and mother. Indeed, article 54 states, "The state adopts necessary measures to ensure physical and psychological well-being of the family, especially of the child and mother." We are confident that Afghan leaders and delegates to the Loya Jirga will work to ensure that the constitution will be faithful to the highest aspirations of the Afghan people and that these rights will be safeguarded and protected within Afghanistan's obligations under international law.

The supplemental funding legislation makes clear Congress' resolve to encourage a broad-based representative government in Afghanistan that promotes and safeguards the rights of all. Congress has called upon the Administration to promote a high level of participation by women in legislative bodies and ministries and to ensure that women have access to credit, property and other economic opportunities.

The people of Afghanistan face continued struggles in the rebuilding of their country. There are still human rights concerns, such as the fact that the treatment of women varies from one part of Afghanistan to another. There have been reports of reprisals based on ethnicity, and some elements want to re-impose some Islamic restrictions. But, President Bush has made it clear that our nation has special responsibilities towards Afghanistan that we fully intend to honor. In this endeavor, we will work with Congress to ensure that Afghans are protected by internationally recognized human rights standards. Our goal is to help Afghanistan become a peaceful, democratic and prosperous nation that contributes to regional stability. Thank you, again, for holding this important hearing.

Ms. ROS-LEHTINEN. Thank you so much.
Ambassador Hanford.

**STATEMENT OF THE HONORABLE JOHN V. HANFORD III, AM-
BASSADOR-AT-LARGE, OFFICE OF INTERNATIONAL RELI-
GIOUS FREEDOM, DEPARTMENT OF STATE**

Mr. HANFORD. Thank you. Madam Chair, Mr. Ackerman, Mr. Sherman, and Members of the Subcommittees, 3 years ago few would have conceived that the people of Afghanistan would today be in the process of creating and adopting a constitution. In the short time, Afghanistan has come a long way, but there is still a ways to go.

Let me frame my comments today with two preliminary observations.

First, we must always keep in mind that this constitution belongs to the people of Afghanistan. The United States has and will continue to support the process and lend our expertise, but the constitution itself is not ours, it is theirs.

At the same time, we know that no nation is an island, that conditions in one country can have profound consequences for other nations, and that universal human rights transcend political and geographic borders.

Afghanistan's recent history offers a compelling illustration in this regard. While much of the international community paid little attention to the woeful conditions in Afghanistan under the tyranny of the Taliban, the United States found partners in two groups which persistently sounded the alarm: Women's rights advocates and religious freedom advocates.

Religious freedom is not a gratuitous ideal or luxury for a constitution. It is indispensable to restoring stability in Afghanistan, and one need look no further than those who seek to undermine stability in Afghanistan today by reimposing rule by religious extremists.

So it is also with promoting democracy, of which religious freedom is a cornerstone, religious freedom by its nature encompasses several other democratic freedoms, including freedoms of conscience, speech and assembly, all of which form an interwoven and mutually reinforcing foundation for democracy to take hold.

Turning now to the specific provisions in the draft constitution that pertain to religious freedom, let me highlight some of the positive aspects, and then comment on areas that could be further improved.

First, and in many ways most importantly, the draft explicitly affirms international human rights standards. The universal declaration of human rights, and the international covenant on civil and political and civil rights to which Afghanistan is a party, both con-

tain robust guarantees of religious freedom as a fundamental and universal human right.

Second, though the drafters have come under pressure to impose Shari'a law, the draft does not explicitly codify Shari'a as the law of the land.

Third, the draft acknowledges followers of other religions, and affirms their right to worship.

However, there are some areas of the draft constitution that we believe could be improved.

First, the draft does not explicitly guarantee or even mention religious freedom. Though the clause on non-Muslims affirms a qualified right to "perform religious ceremonies," full religious freedom, of course, encompasses much more than that.

Second, the draft language is ambiguous on which standard holds the highest legal authority. Some rights, such as freedom for non-Muslims to perform ceremonies as well as the basic freedom of expression, are conditions are an undefined "law." Elsewhere the draft states that no law can be contrary to the sacred religious of Islam.

Taken alongside the commitment to abide by international standards, these three standards, the religion of Islam, an undefined law, and international standards, are left in apparent tension and even conflict.

Third, the draft still privileges one particular interpretation of Islamic jurisprudence, potentially undermining the religious freedom of other Afghan Muslims. It states that in issues not expressly addressed by the constitution or laws, judges shall follow the Hanafi school of jurisprudence. We would recommend instead that the Afghan constitution guarantee equal rights and treatment for all Muslims.

In conclusion, let me note that many scholars have observed that at least two components are especially vital to the constitutional process in countries emerging from severe trauma and conflict, such as Afghanistan.

The first is that the new constitution must specifically address the particular problems that had afflicted that society. In South Africa, it was racial apartheid. In Afghanistan, it was religious extremism and intolerance.

Second, as many citizens as possible must embrace the new constitution. Its efficacy will rest on its popular acceptance.

Now, these two factors not surprisingly often come into tension with each other. As the people of Afghanistan prepare to enter the next phase of this process with the constitutional Loya Jirga, we will continue to encourage language affirming religious freedom written not only in the text of the constitution, but written in the hearts of the people as well.

Thank you for holding this important hearing, and I look forward to continuing to work with the Committee to advance religious freedom around the world.

[The prepared statement of Mr. Hanford follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN V. HANFORD III, AMBASSADOR-AT-LARGE, OFFICE OF INTERNATIONAL RELIGIOUS FREEDOM, DEPARTMENT OF STATE

Madame Chair Ros-Lehtinen, Chairman Gallegly, Mr. Sherman, Mr. Ackerman and Members of the Subcommittees, three years ago, few would have conceived that

the people of Afghanistan would today be in the process of creating and adopting a Constitution. Three years ago, few would have imagined that the people of Afghanistan would be preparing to elect their own government and leaders. Few could even picture the people of Afghanistan beginning to enjoy protection of fundamental human rights and liberties. In a short time, Afghanistan has come a long way. But there is still a ways to go.

My particular focus is on religious freedom, and here today I will briefly lay out some thoughts on the accomplishments made in Afghanistan thus far, areas still needing improvement, and the broader connections between religious freedom, democracy, and stability.

We see the stakes here as very high. Afghanistan's constitutional process provides a profound opportunity to not just engage in but begin to answer the prevailing debate: is Islam compatible with democracy? We and our Afghan partners believe that the answer is and can be "yes." With this constitutional draft, the Afghan people have begun the process of answering that question in the affirmative.

Let me frame my comments today with a few preliminary observations. First, we must always keep in mind that this constitution belongs to the people of Afghanistan. Obvious though this may be, it bears emphasizing. The United States has and will continue to support the process, help create conditions in which it can go forward, and lend our expertise and input as appropriate. But the constitution itself is not ours, it is theirs.

At the same time, while the Constitution belongs to the people of Afghanistan, we hardly need reminding that no nation is an island, that conditions in one country can have profound consequences for other nations, and that universal human rights transcend geographic and political borders.

Afghanistan's recent history offers a compelling illustration in this regard. While much of the international community paid little attention to the woeful conditions in Afghanistan under the tyranny of the Taliban in the late 1990s, the United States found partners in two groups which persistently and passionately sounded the alarm: women's rights advocates and religious freedom advocates. As with so much else, this also changed after September 11. With our efforts to rid Afghanistan of the terrorists that lived with impunity in Afghanistan, the world had an opportunity to heed the call of these great advocates, and to provide the women, children and men of Afghanistan with a brighter future. It was an opportunity to highlight for the international community that oppression of individual rights at home threatens international security abroad, and religious persecution often inspires religion-based terrorism.

In some respects, there are close connections between women's rights and religious freedom. Much of the oppression of women was driven by the Taliban's religious intolerance. Today, some of the same voices who seek to restrict Afghan women also seek to deny religious freedom to the Afghan people, including Afghan women. In turn, promoting religious freedom is vital to promoting the rights and welfare of women.

Religious freedom is not a gratuitous ideal or luxury. It is indispensable to restoring stability in Afghanistan, and anywhere there is instability or conflict. One need look no further than those who seek to undermine stability in Afghanistan by re-imposing rule by religious extremists. So it is also with promoting democracy, of which religious freedom is a cornerstone. Religious freedom includes several other democratic freedoms, including freedoms of conscience, speech, and assembly, all of which form an interwoven and mutually-reinforcing foundation for democracy to take hold.

Another hallmark of democracy is openness, and in this respect I was encouraged by the public release of the draft text of the proposed Afghan Constitution. Making it available not only to the people of Afghanistan but the entire world will inspire confidence, as the draft continues to be debated, refined, improved, and embraced.

Turning now to the specific provisions in the draft that pertain to religious freedom, let me first highlight some of the positive aspects, and then comment on some areas that could be further improved.

First, and in many ways most importantly, the draft explicitly affirms international human rights standards. Chapter 1, article 7 says that "the state shall abide by the UN Charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights." Article 18 in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights, to which Afghanistan is a party, both contain a very robust guarantee of religious freedom as a fundamental and universal human right. In the words of the Universal Declaration, this means "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and

in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” That the Afghan Constitution would reiterate Afghanistan’s fidelity to such standards is a very significant step, both for religious freedom as well as for Afghanistan’s commitment to the rule of law.

Second, though the drafters have come under some pressure to do so, the draft does not explicitly codify Shari’a as the law of the land. Some interpretations of Shari’a law, particularly those followed by Islamic extremists, pose significant threats to religious freedom for both Muslims and non-Muslims. Though the draft affirms in several ways the significance of Islam and Islamic principles in Afghanistan, it avoids invoking Shari’a, and thus avoids in this way undermining religious freedom.

Third, the draft acknowledges followers of other religions, and affirms their right to worship. Given Afghanistan’s past dominance by Islamic extremists and its small population of non-Muslims, this provision should not be overlooked or underappreciated. In the words of chapter 1, article 2, “Followers of other religions are free to perform their religious ceremonies within the limits of the provisions of law.” This guarantee of a place for non-Muslims in Afghanistan marks a positive step towards pluralism and religious tolerance.

There are some aspects that we believe could be improved. First, the draft does not explicitly guarantee religious freedom. Though the clause on non-Muslims affirms a qualified right to “perform religious ceremonies,” full religious freedom encompasses much more. As religious liberty scholar Paul Marshall has commented in this regard, “this is a right merely to ceremonies, and there is no religion whose practice is limited merely to ceremonies.” If this article on followers of other faiths is to meet international religious freedom standards such as Article 18, it will need to be strengthened considerably.

Second, the draft language is ambiguous on which standard holds the highest legal authority. Some rights, including the aforementioned freedom for non-Muslims to perform religious ceremonies, as well as freedom of expression in Article 34, Chapter 2, Article 13, are conditioned on or subject to an undefined “law.” Elsewhere, the draft states that “no law can be contrary to the sacred religion of Islam.” Taken alongside the commitment to abide by international standards, these three standards (the “sacred religion of Islam,” an undefined “law,” and international standards) are left in apparent tension and even conflict. Many observers fear that, absent an explicit commitment that nothing in Afghanistan’s constitution and laws will violate international standards, the potential exists for extremist judges or officials to enforce their own policies or interpretations that violate religious freedom.

Third, the draft still privileges one particular interpretation of Islamic jurisprudence, potentially undermining the religious freedom of other Afghan Muslims. Article 130, chapter 7, Article 15 states that in issues not explicitly addressed by the Constitution or laws, judges shall follow the Hanafi school of jurisprudence. Such instances could violate the religious freedom of Afghan Sunnis who do not adhere to the Hanafi school, or of Afghan Shi’a involved in a dispute with Afghan Sunnis. We would recommend instead that the Afghan Constitution guarantee equal rights and treatment for all Muslims.

There are some who seem to believe that religious freedom is a concern only for the very small percentage of Afghan residents who are non-Muslims. Nothing could be less true, or more worrisome. Religious freedom is and will be of concern to all Afghans, including Muslims of all kinds. Afghan Muslims suffered greatly under the Taliban’s religious intolerance. These extremists abused religion for political gains. Leveraging the power of the state to enforce their own intolerant interpretation of Islam, they silenced and repressed other Muslim voices.

But today, Afghan Muslims are leading the effort to rebuild their country, their society, and their institutions. Islam has a rich and diverse history and a rich and diverse array of traditions and interpretations. Religious freedom is vital to ensuring that Sunni and Shi’a, and the several different schools of jurisprudence and traditions of Islam, are all protected, and all have a voice.

Many scholars and observers have concluded that at least two components are especially vital in the constitutional process in countries emerging from severe traumas or conflicts, such as Afghanistan. The first is that the new constitution must specifically and directly address the particular problems that had previously afflicted the society. In South Africa, this was racial apartheid. In Afghanistan, it was religious extremism and intolerance. Second, as many citizens as possible must embrace the new constitution. Not only its efficacy but its very legitimacy will rest in many ways on its popular acceptance. These two factors, not surprisingly, often come into tension with each other, and Afghanistan is no exception. This is why we speak of the constitutional process. As the people of Afghanistan prepare to enter the next phase of this process with the Constitutional Loya Jirga, we will continue

to encourage language affirming religious freedom written not only in the text of the Constitution, but written in the hearts of the people as well.

Thank you for holding this important hearing. I look forward to continuing to work with the Committee to advance religious freedom around the world.

Ms. ROS-LEHTINEN. Thank you so much, and I thank all of the panelists for going under the radar there with the time. Thank you so much. We appreciate it because then we have more time for questions.

I have one question for all of you if you would like to answer, and we had been discussing it in all of your testimonies.

Article 17 as proposed would require the Afghan government to adopt necessary measures for organizing and improving the conditions of madrassas, schools. Given the recent history of the Saudi and Pakistani-sponsored madrassas functioning as breeding grounds for terrorist violence, anti-semitic acts, anti-American sentiment, this article is potentially worrisome.

So how is the United States Government interpreting these provisions? What discussions have we undertaken with the Afghan officials and members of the constitutional commission on how these provisions will actually be implemented, and in what way might the Afghan government organize and improve the madrassas?

Mr. CRANER. Madam Chair, I would say two things.

Number one, we are spending a great deal of money and effort and time trying to enhance the educational system in Afghanistan so that it is not purely about religion, to the extent of issuing millions of textbooks, ensuring, I think, we have now trained 3,500 teachers, rehabbing schools.

But the second part of the answer will be I do not think that the Afghan people are going to have a tolerance for people from any other country coming to begin their schools.

There is a belief in Afghanistan that the ravages of the Taliban were visited, I understand, by Afghans, but they believe that the control of other countries, including some of the countries you mentioned, and there is very little tolerance in Afghanistan for allowing that kind of thing to begin again or to continue. They have already seen the results of that once.

Ms. ROS-LEHTINEN. Ambassador Rocca.

Ms. ROCCA. I would just add that the central government support and eventually coordination of the education system is going to help address the problems with madrassas, and their funding in Afghanistan as well.

Ms. ROS-LEHTINEN. Ambassador.

Mr. HANFORD. And I would point out how much encouragement comes from certain polls that had been conducted with the Afghan people. It is really remarkable that such a high majority oppose Shari'a law, or the imposition of anything coming close to what the Taliban implemented. And I think it is going to be important for the government to be vigilant in conducting safeguards to keep radical Imams and others from taking hold.

I just got back from Saudi Arabia, and even there the government is starting an aggressive campaign to root out this sort of thing, having, of course, recently suffered with the consequences.

Ms. ROS-LEHTINEN. Thank you. And Ambassador Craner, just one last question for you.

Please discuss the types of programs that are being directed at Afghan women for voter education. How informed are the Afghan women about the constitution, about the Loya Jirga process in various regions?

We understand that the Afghan women's ministry is establishing a separate registration program for women, run by women. Do you believe that this will effectively address some of the challenges faced by women in Afghanistan, and ensure female participation in the political process at all levels? How optimistic are you that this is going to be a success story for the plight of Afghan women who have had a long and difficult time of it?

Mr. CRANER. I think the efforts by the ministry, I think the efforts by the United States, I think the efforts by the U.N. are going to enable women to understand their rights in the new Afghanistan, not only in terms of voting in a democratic election, but in terms of being able to stand for office in a democratic election, which is something, a luxury, it has been a luxury in Afghanistan that has not existed for many decades.

So I am confident that by the time the election occurs, and during this winter, that word is going to reach out more and more. Even with the high levels of the illiteracy, there are good plans, especially with radio, to get the message out to people, and there are plans to go almost from village to village to get that message out.

Ms. ROS-LEHTINEN. Well, thank you so much.

We passed a resolution this morning on the Floor regarding this very issue as well. Thank you.

Mr. Sherman.

Mr. SHERMAN. Thank you, Madam Chairman.

What is Pakistan doing to prevent the Taliban and al-Qaeda from using its territory to launch attacks into Afghanistan?

In a report published today, I believe it was, in *The Washington Post*, the soon-to-be Ambassador from Pakistan suggested that Pakistan could and should do more. Will they?

Ms. ROCCA. Congressman, we have seen notable progress over the last couple of months on the Taliban issue and on the border issue. This is something which—in terms of working with Pakistan.

As you know, we have had phenomenal—I think that was in that same article—phenomenal cooperation on al-Qaeda. We are now working with them also to encourage them to prevent Taliban from crossing the border, and preventing Taliban from reorganizing and having a platform from which to reorganize within Pakistan.

We have seen them conduct some operations where they are starting to arrest Taliban. We have seen some reorganization within the ministry so that they have more efficient operational capabilities. They started building a fence. There is a lot to do. It is an area which—

Mr. SHERMAN. A fence, so the Administration does not oppose border fences everywhere, just some places? It is good to note that for the record.

Please go on.

Ms. ROCCA. We also have a fair amount of support for the Taliban—

Mr. SHERMAN. That is a really good fence then. Go ahead.

Ms. ROCCA. There is also a fair amount of support for the Taliban and for what the Taliban believe in in the federally administered tribal areas, and what we have—

Mr. SHERMAN. And there is substantial support for the Taliban ideology in the security service of Pakistan. Has there been a—have the supporters of that ideology in that intelligence service been removed or converted?

Ms. ROCCA. There is a number of answers to that, and some which I could not answer in this forum. But the programs that we have going in the federally administered tribal areas are very much aimed at exactly this problem.

Mr. SHERMAN. I look forward to talking to you about that later, but I want to shift to another topic, and that is, we have two models. We have an Iraq where apparently the only choices being given to us are cut-and-run, or Jeffersonian democracy, a situation in which AID workers can work in every corner of the country where Americans patrol every corner of the country.

Afghanistan offers a middle road between that. Let us face it, we have not tried to have security throughout Afghanistan. We are experiencing very few casualties in Afghanistan, not because Afghanistan is safer, but just because American troops and European troops and allied troops are in fewer places, and are trying to achieve a less sophisticated goal.

Why does the Administration believe that we have to bring security peace and progress to every corner of Iraq even if that takes the amount of effort we are putting in, and well over 130,000 American troops, but that it is sufficient to have security only in Kabul in influence over the rest of Afghanistan?

Why is Afghani security progress in the rural areas outside the capitol so much less important to us?

Ms. ROCCA. Congressman, I am not qualified to talk about Iraq, but in Afghanistan, I think security is the most important issue to the United States at this moment.

Mr. SHERMAN. But we are simply settling for less security. We do not have thousands of troops in every province in Afghanistan, do we?

Ms. ROCCA. No, but we have 7,000 troops in the ground.

Mr. SHERMAN. We have 7,000 troops, and we accept a low-level of security in most areas as compared to 130,000 troops where we try to patrol even the most dangerous areas.

Ms. ROCCA. We are going at it systematically. We have the PRTs that are moving out to the provincial regions. We have got ISAF taking over and currently NATO is having a debate on expanding it. This is—we are going about it systematically, and I think it is—I just want to reiterate that it is the most important—

Mr. SHERMAN. But there are lots of places in Afghanistan even less accessible to AID workers, less secure than Faluja.

Ms. ROCCA. Those areas is where you probably would find the U.S. soldiers now, sir, in the southeastern areas where we continue to conduct Operation Enduring Freedom.

Mr. SHERMAN. I do not know if your other Administration colleagues have any response, but clearly, these countries have roughly equivalent populations, and we are able to have 7,000 troops in one, and we need 130,000 troops in the other. Is that because Af-

ghanistan is just a safer, quieter, more organized place with less opposition, or is that because we are accepting a lower standard of security and a lower level of achieving that security throughout the country?

I wonder if anybody can respond to that question.

Ms. ROCCA. I cannot, but I have got one more thing I would like to add.

Mr. SHERMAN. But you are not ready to tell me that Afghanistan is only—I am doing the math in my head—about 4 or 5 percent as dangerous a place as Iraq, and that is why we only need 5 percent as many troops?

Ms. ROCCA. We are also very busy building up an Afghan national army, and we have got a good—

Mr. SHERMAN. And we are doing that in Iraq as well. We have over 100,000 people under arms in Iraq. Are we doing any better in Afghanistan?

Ms. ROCCA. I cannot compare with Iraq, sir.

Mr. SHERMAN. Well, how many troops do we have, how many security personnel get their pay checks from Mr. Karzai, President Karzai?

Ms. ROCCA. Well, we hope to have over 10,800 by the election next year.

Mr. SHERMAN. We hope to have. So we have 100,000 on our payroll in Iraq, and I think it is up to 150 actually, plus 130,000 troops. We have well over 20 times the security effort in Iraq than we do in Afghanistan, and that is not because Afghanistan is a quieter, safer place. It is not the Arlington of the Middle East.

I yield back. First, let me ask whether—

Ms. ROS-LEHTINEN. Go right ahead.

Mr. SHERMAN [continuing]. If either of you have any response to that. Going once. I yield back.

Ms. ROS-LEHTINEN. Thank you. Mr. Janklow.

Mr. JANKLOW. Thank you very much.

You see, we are all military experts just because we get elected.

Let me ask you, Ms. Rocca, if I can for a moment, is Afghanistan a NATO operation or a United States operation?

Ms. ROCCA. Well, security in Kabul is NATO. It is run by ISAF which at the moment controlled by NATO. We, the United States have some PRTs out in the field, and we also have the ongoing Operation Enduring Freedom.

Mr. JANKLOW. So really the structure, the force structure is different in Iraq and in Afghanistan, is it not, as far as you know?

Ms. ROCCA. As far as I know.

Mr. JANKLOW. And with respect to the neighbors of Afghanistan, and the neighbors of Iraq, do you know whether or not Pakistan is more helpful to us than Syria, for example, which is next to Iraq, or Iran is next to Iraq?

Ms. ROCCA. I cannot make any comparison.

Mr. JANKLOW. And with respect to the selection of this constitutional commission, and I am asking all three of you, my understanding is they were appointed; is that correct?

And this appointed group has not had a lot of public discussion at this point. When does that come?

Mr. HANFORD. There has been a great deal of public discussion of the principles of this constitution. When I was there——

Mr. JANKLOW. Throughout the entire country?

Mr. HANFORD. Yes. Yes.

Mr. JANKLOW. Okay.

Mr. HANFORD. When I was there in July, members of the government, including members that were drafting a draft of the constitution, had just been out in every corner of Afghanistan basically, not with copies of the constitution as it then existed, but with the ideas and the principles and some of the thoughts and some of the provisions that are in the constitution to get ordinary peoples' opinions of where they were going.

Mr. JANKLOW. Are our NATO allies and are other countries assisting in this constitutional drafting process, or is this something we have taken a primary role in?

Mr. HANFORD. It is the Afghans that have taken the primary role in it. You have to remember many of them——

Mr. JANKLOW. No, I am talking about assisting in the process.

Mr. HANFORD. Assisting in the process?

Mr. JANKLOW. Do we assist in the process?

Mr. HANFORD. The U.N. in particular has assisted in the process. We have had a role. But ultimately this is an Afghan product.

Mr. JANKLOW. Agreed.

Mr. HANFORD. There has been some help, sir. I know there is a prominent French constitutional scholar who has helped, prominent American constitutional scholar has also been involved in this.

Mr. JANKLOW. I have been furnished a copy of draft articles 118. In part it says that:

“The members of the supreme court should have higher education in law or Islamic jurisprudence . . .”

It is an “or.”

“. . . and should have enough expertise and experience in the judicial system of Afghanistan.”

And then it goes on to say in the notes I have:

“Additionally, members of the supreme court must take an oath to support justice and righteousness in accordance with the provisions of the sacred religion of Islam and the provisions of the constitution and other laws of Afghanistan.”

Now, is this something that is under serious discussion in the country or is this particular set of provisions probably a fait accompli at this point in time?

Mr. HANFORD. One of the problems is that they do not have an adequate pool of persons trained outside of the religious milieu, at least as adequate as we would like, and this needs to be a top priority for instituting and training and legal reform.

Right now the Italian government possesses primary responsibility on the ground for setting up training judicial, lawyers and the system, but we need to be involved with that as much as we can, but it is an issue of real concern.

Mr. JANKLOW. But my guess is, and that is all it is, that given the nature of the country we are dealing with, it is history both historical and contemporary with respect to the predominant reli-

gion in the country. I realize there is different sects, but the predominant religion in the country, it would appear to me this would not be a particular provision around which you would have lots of people throughout the country in the public discussions say we need to get this out of there or change it dramatically.

So what is the odds it is going to change in any material way? Do you have any guesstimate? I hope you understand what I am trying to get at.

Mr. HANFORD. I am sorry. What was that last question?

Mr. JANKLOW. Do you have any guesstimate as to what the odds are that this is going to change in any material way?

Mr. HANFORD. I think it will change slowly because illiteracy, as you know, is such a serious problem. And so just having a pool of literate people that can be trained to be judges is a challenge.

We are concerned. You see quotes, for example, from the Chief Justice of the Supreme Court that would strike us at times as extreme. When you see ambiguities in the constitution, we have to wonder how are these ultimately going to be interpreted.

Mr. JANKLOW. One last question if I could, Madam Chairman.

We understand, at least I do, about how they are going to select the head of the country, the chief executive, and, you know, assuming the draft constitution is successful or passes, how they are going to set up the legislative. How is the supreme court going to be selected under the draft constitution?

Ms. ROCCA. By the President.

Mr. JANKLOW. By the President?

Ms. ROCCA. Yes.

Mr. JANKLOW. Any other people in the process and for how long?

Ms. ROCCA. Yes, the lower house confirms the President's nominations.

Mr. JANKLOW. And for how long, ma'am?

Ms. ROCCA. Ten years, I believe, but let me check.

Mr. JANKLOW. Thank you, Madam Chairman.

Ms. ROS-LEHTINEN. Thank you so much.

A loyal Member of our Subcommittee, Ms. Watson

Ms. WATSON. Thank you, Madam Chair, for your courtesy.

I have been really concentrating not only in Afghanistan but in Iraq on how we go about helping them draft a constitution. I think we could all agree that at the current time these are—in the recent past, these governments were theocracies. I just had staff look up theocracy: Government of a state by the immediate direction or administration of God or whatever their supreme being is.

And I think about the history of these countries. I am going to ask the Ambassador, how certain are we that we can have them write or draft a constitution that fulfills our need for a democratic model when we know that these countries are steeped in their religion and their religion-controlled government, their religious thought, their ideology?

And as I was reading through the notes in preparation, it says that:

“To satisfy Afghanistan’s conservative clerics, there will be a stipulation that laws should not contradict Islamic law.”

How are we going to deal with that? Can you help on this?

Mr. CRANER. This is not the only country in the world, the only Islamic country in the world——

Ms. WATSON. Exactly.

Mr. CRANER [continuing]. That is going to become a democracy. You have examples from Bangladesh to Indonesia to elsewhere, where this is an issue that has come up. It is not the case that—other than in the very recent past it was not the case that Afghanistan was a theocracy.

And so we are going to see the kind of thing we talked about elsewhere in the region, in the Middle East and elsewhere. We are going to see the interplay of Islam and democracy.

Now, as I have said, you have seen that in countries that I think can fairly be described as democracies

Ms. WATSON. Well, I would like to stick with Afghanistan.

Mr. CRANER. Okay.

Ms. WATSON. And maybe Iraq, and I understand that the authority will be in the hands of judges educated in Islamic law rather than civil law.

Mr. CRANER. Just to clarify, the oath that they will take, it does talk about in accord with the provisions of the sacred religion of Islam, but it then goes on:

“ . . . and the provisions of this constitution and other laws of the Afghanistan.”

So my point is you are going to see the interplay of the two, of Islam and of laws here that we would recognize as protecting civil and political and other human rights. The two are not—I guess my point is the two are not necessarily contradictory.

Ms. WATSON. I think in some cases they will be if we are expecting as a goal. So my question really goes to, and I am putting Afghanistan and Iraq together here, what is it that we expect, if we are the force that is kind of moving them toward a draft constitution modeled after, and this is what I have been hearing, modeled after western style democracy, is our goal to have a mix where there is a confluence between Islamic and civil law as we—well, civil law as we know it, or will we accept something less?

I just do not know what we are expecting out of these two countries.

Mr. CRANER. Our goal is to see—in both countries is to see a system where internationally protected, international human rights, internationally recognized human rights are protected. We do not have western style democracies in many countries in Asia or Africa.

Ms. WATSON. No, no, I know. Just stick with my two countries here because I really want to know what is it that we are looking for.

Mr. CRANER. That is what we are looking for in both states, internationally recognized human rights are protected.

Ms. WATSON. Now, I am troubled, because having traveled in these countries and lived very close to them, I really see a difficult time on the part of people whose history we can read, that goes back thousands of years, accepting our civil law as a model. Will we have to accept something less than our western model? That is my question.

Ms. ROCCA. Well, it is going to be a constitution that is put together by the Afghans for the Afghans, so I am sure it will not be an exact model or exact duplicate of ours, nor should it be because it has got to conform to—

Ms. WATSON. Islamic law.

Ms. ROCCA [continuing]. Local customs and traditions as well

Ms. WATSON. Well, maybe I should clarify my question. If the people who sit on the bench are educated in Islamic law, are we going to have to reeducate them in civil law? Is this our goal?

I am just trying to find out what is our plan. You are know, where are we going with it? Are we going to turn it over to them, and say, we have done our part? I just want to know where we are going.

Mr. CRANER. I hesitate to use other examples again, but there are countries that—

Ms. WATSON. No, no.

Mr. CRANER [continuing]. Operate under Islamic law where international human right are protected

Ms. WATSON. No, I am not going to let you skirt around this. What are we looking for in Afghanistan?

Mr. CRANER. We are looking for a country that has Islamic law where international human rights are recognized, and those rights exist for all the citizens. The two are not contradictory. They need not be contradictory

Ms. WATSON. And are we going—

Mr. JANKLOW [presiding]. The lady's time has expired for over a minute, so go ahead if you have one final question.

Ms. WATSON. Just one last question. Thank you for indulging me, because this is—

Mr. JANKLOW. Go ahead.

Ms. WATSON [continuing]. Very important for us to think this through. You know, if we really want to see that we leave them with a constitution, you know, are they going to draft it? Are we going to say, this is unacceptable? I mean, what is our role going to be and what is our goal?

Mr. CRANER. Again, our goal has been to have international human rights accepted. You could have interpretations of Islam as the Taliban did where international human rights would not be protected. You could have interpretations where there are the latter is our goal.

Ms. WATSON. Thank you. I will stop there.

Mr. JANKLOW. Mr. Rohrabacher.

Mr. ROHRABACHER. Thank you very much.

Who can tell me, where does it say in the constitution that the women have a right to vote? Maybe you can read the section to me that says women have the right to vote.

Ms. ROCCA. It does not state it explicitly. It talks about citizens having the right to vote.

Mr. ROHRABACHER. Right. Thinking maybe that we should be explicit about that considering the history of the country?

Mr. CRANER. It is clear that women and men are citizens of Afghanistan, and citizens have the right to vote.

Mr. ROHRABACHER. Considering the history of the country, you do not think that we should demand a little bit more specificity

simply because they have been through this horror story of the Taliban, and radical Islam, which treated women as chattel?

Ms. ROCCA. Congressman, there is a presidential decree that states specifically that women are equal to men; that women are citizens and have the right to vote.

Mr. ROHRABACHER. Well, I would suggest, if we are trying to give them some guidance, that we might want to insist that it specifically state in the constitution that women have the right to vote. Okay, just a thought, you know.

Ms. ROCCA. Okay.

Mr. ROHRABACHER. Okay?

Ms. ROCCA. Could I rephrase what I said? Excuse me. I think I misspoke. I think I said that women are equal to men. That is not what the decree says. It says that women have the right to vote. I just want to correct the record. Excuse me.

Mr. ROHRABACHER. All right. How does this constitution, for example, in talking about things like women, specifically the right to vote, other things, how does it compare with the 1973 constitution that was kicked out when the King was overthrown? That is the last constitution I know about in Afghanistan.

Do you have a comparison at all?

Mr. CRANER. I think it compares favorably with both the 1973 and the 1964 constitutions. If you put them side by side and go article by article, it is definitely an improvement.

Mr. ROHRABACHER. Okay. In terms of the 1973 constitution, of course, provided some role for the royal family. Is there anything for the royal family in this constitution?

Ms. ROCCA. There is a clause that says that the current King remains the father of the nation.

Mr. ROHRABACHER. The current King.

Ms. ROCCA. The current King.

Mr. ROHRABACHER. Right.

Ms. ROCCA. It does not—

Mr. ROHRABACHER. So after the current—

Ms. ROCCA. And then it moves to a democracy.

Mr. ROHRABACHER [continuing]. Who is, you know, 90 years old—

Ms. ROCCA. Right.

Mr. ROHRABACHER [continuing]. Disappears, which everybody has told me was going to be, you know, within a few days, for the last 20 years the King is going to die within the next 2 or 3 days, I have been told that for 20 years, but when he passes on, then this institution that is created stability in Afghanistan and what most of us would think is a positive stability, at least for half a century, that institution will disappear, right?

Ms. ROCCA. According to the current draft.

Mr. ROHRABACHER. Right. Okay. We did not have any influence on that at all?

Ms. ROCCA. We have been working very closely, as the UN, to get as good a possible draft as possible and something that represents the desires of the Afghan people.

Mr. ROHRABACHER. You know, I do not want to, you know, throw my weight around in terms of understanding what is going on in Afghanistan. I have studied the issue a little bit. And it is my read-

ing that the royal family and the King has more respect than any other political institution in Afghanistan. Am I incorrect in that?

Ms. ROCCA. The draft as it stands is the result of review by—extensive review throughout the country with ideas and inputs that came from over half a million people in writing alone, not to mention those that they got verbally.

Mr. ROHRABACHER. Sure, but somebody has got to in the end say, well, we are going to put this in, we are going to take this out, and you do not think that people from the outside were pressuring anybody to leave the royal family out of the constitution?

Ms. ROCCA. No, I cannot comment.

Mr. ROHRABACHER. Let me just again say that I have studied the issue a little bit, and I am very disappointed that the one institution in Afghanistan society that has maintained the respect of almost all factions and all of these ethnic groups, you know, we have a lot of things that tie us together as Americans, commitments to various freedoms and rights, and concepts that have been passed on to us, but in Afghanistan, really outside of Islam the only other factor that I have seen that has united the Afghan people has been the royal family and this King. And he seems to be totally out of the equation.

And Madam Chairman, let me note that for those of us who have been watching the policy of the United States State Department for the last 10 years, that this is no surprise, and I would hope that this reflects what the Afghan people want, which I doubt, rather than what the whims are of some people in our own State Department. And maybe you can—you are shaking your head. Please correct me.

Mr. CRANER. We have addressed a number of issues with different members of the government and with different members of the group writing this constitution, and trying to take down the King has never been one of them.

Mr. ROHRABACHER. Well, I would hope that the royal family continues to play a role even if they are not officially endowed by this constitution, and I would think that the royal family today has actually more support than does the government of Mr. Karzai in various parts of the country, but I am just guesstimating that.

One last thing about Turkish troops. The State Department or somebody—

Ms. ROS-LEHTINEN [presiding]. Could you make that brief there?

Mr. ROHRABACHER. Yes, I will. Somebody was—

Ms. ROS-LEHTINEN. We do not have time.

Mr. ROHRABACHER [continuing]. Talking about sending Turkish troops to Iraq, which has got to be the most hair-brained idea I have never heard of in my life. I would think, just to note that it is my understanding, and actually having talked to people that actually—Turks are a lot more respected in Afghanistan than they are in Iraq.

Do you think maybe it might be a good idea to ask some of the Turks to come over and help stabilize the situation in Afghanistan rather than sending them to Iraq where they are hated? I will leave it as a question.

Ms. ROCCA. As far as I know, we have not asked them.

Mr. ROHRABACHER. Okay, thank you.

Ms. ROS-LEHTINEN. We will leave that one for tomorrow's Iraq hearing.

Mr. ROHRABACHER. Okay, thank you very much.

Ms. ROS-LEHTINEN. Thank you. We thank all of the Ambassadors for being here today. Thank you very much; wonderful panelists, great questions from our Committee Members as well, and thank you so much. We look forward to working with each and everyone of you as this movement toward democracy and a constitutional form of government take place in Afghanistan. We wish all of you well, and the people of Afghanistan as well.

I would now like to call upon our second panel. Our first witness appearing on behalf of the National Endowment for Democracy is Ms. Barbara Haig. Ms. Haig is NED's Vice President for Programs, Planning and Evaluation, and has worked for NED since 1985. Ms. Haig and her staff are responsible for the program development, monitoring and evaluation of the endowment's international grants program which covers six regions of the world. From 1981 to 1985, she was Special Assistant to the Associate Director of Programs, and then to Director of the United States Information Agency.

Thank you, Ms. Haig, for being with us today.

Next, we will hear from Ms. Marian Nawabi, Advisor to the Constitutional Drafting Commission of Afghanistan, and a litigation associate in town. Ms. Nawabi was selected by the United Nations to serve as a legal advisor for the legal affairs working group of the Afghanistan Reconstruction Project. She currently serves as the coordinating attorney for the Afghanistan transitional commercial law project. She has participated in conferences at the U.S. headquarters and in Germany on women's rights in the new constitution.

Thank you so much for being with us, Marian.

And our next witness then will be Mr. T. Kumar. Mr. Kumar is the Advocacy Director for Asia and the Pacific for Amnesty International. Welcome back. He has served as the human rights monitor throughout Asia. Mr. Kumar was imprisoned for 5 years in Sri Lanka for his human rights activities, and while in prison he studied the law and later became an attorney. Welcome again.

And we are pleased to have our good friend Mr. Mark Schneider, Senior Vice President of the International Crisis Group, and head of the Washington office. Mr. Schneider was also the past Director of the Peace Corps, and prior to his leadership of the Peace Corps, he also served as the Assistant Administrator of USAID.

Thank you, Mark, for being here. It is good to have such a distinguished panel before the Committee on International Relations. We welcome you all, and we look forward to hearing your testimony. And again, your full text will be made a part of the record, and we hope that you limit your opening statements to more than 5 minutes following the wonderful example of the panel before you.

Thank you, Ms. Haig.

STATEMENT OF BARBARA HAIG, VICE PRESIDENT, PROGRAMS, PLANNING AND EVALUATION, NATIONAL ENDOWMENT FOR DEMOCRACY

Ms. HAIG. Thank you, Madam Chairman, Members of the two Subcommittees sponsoring this hearing.

I welcome the opportunity to be here today to comment on democratization efforts in Afghanistan. In the interest of time, I will offer brief remarks that will reflect what is at the heart of my written statement.

There are two fundamental elements to the United States and international involvement in Afghanistan. One is to eliminate the threat of the Taliban and al-Qaeda. The second is to create an enabling environment in which Afghans, with the help of the international community, can pursue and succeed in the difficult task of building a secure and stable nation.

The second element is the one that most relates to the business of the National Endowment for Democracy. There are today some 13 or so multifaceted programs being funded by NED to help advance that goal. But what I most want to emphasize today is the degree to which these two elements are interdependent.

It is now nearly 2 years after the Bonn Agreement was brokered, and with national elections only 7 months away, much of Afghanistan is still dominated by warlords. In addition, remnants of the former Taliban regime, as well as al-Qaeda, haunt the southern provinces. Terrorism in Afghanistan is linked to drug production and trafficking, which also pays for the personal militias of local commanders.

Thus, while the details of organizing and educating for human rights and free elections move forward, we must not get lost in the weeds; although I very much think that it is in the grass roots where much can be accomplished, and I can speak to more of this in the question period.

Distinguished Members of the Committee, the questions I think we came here to examine—such as are the Afghans prepared to participate in a constitutional Loya Jirga? Can there be free and fair national elections by June? Can Bonn succeed in helping set Afghanistan on the road to development and democratization?—these can only be answered in the affirmative if there is greater security. And if the answer is no, what are the alternatives?

I think President Karzai is very aware that his mandate and that of his government runs out on June 22nd. In addition, the government as currently formed is really constantly working against itself and can take only modest steps to improve security, which are often reversed by competing elements within the government's own ranks.

This cannot be changed in any fundamental way without elections. The current draft of the constitution calls for holding elections for President and Vice President in June, with elections for the legislature to come later. In my view, this is the only way Afghanistan will be able to put into place the necessary building blocks for free and fair elections at all levels. And whatever final version of the constitution emerges will really be meaningless if there are no institutions capable or willing to enforce and implement it.

But if sufficient security is established, I have little doubt that the Afghan people will carry through on the rest. Through our programs we have learned over the past 19 years how really durable, innovative and dogged Afghans can be. And even as outside organizations refrain from carrying out programs in areas where security

risks are high, or roads too dangerous, for the Afghans with a mission this is their country and they find a way.

Most Afghans are really quite moderate and yearn for peace and security and a chance to live without fear. They are willing to work for that.

So what can be done? In order to improve conditions for activities related to both the constitutional Loya Jirga and national elections, the international community must commit greater security forces and pair them with the fledgling Afghan National Army and Police.

The PRTs from the coalition forces and NATO-led ISAF, both should be utilized for this purpose, in coordination with the U.N. and the Afghan Election Commission.

And on an urgent basis, the United States should deploy PRTs in Kandahar and Uruzgan, while the Europeans could take over from all American PRTs in the north.

The United States and the United Nations should insist that all parts of the Pakistani government immediately cut off all forms of support to Taliban and al-Qaeda leaders who are operating from Pakistan.

Drug trafficking is an enormous source of support for warlords and terrorists, undermining all aspects of economic and political development. Immediate and well publicized efforts to shut down a few of the known drug processing labs would send a strong message to their operators and sponsors, and would serve as a great encouragement for the Afghan people.

There are, of course, great needs for increased numbers of international observers during all phases of the registration, campaigning and voting periods, as well as training, production and dissemination of voter information, rules about political parties, and much more. These are all things that international donors and their grantees are planning for and working on, but the recommendations listed above are, in my view, among the most critical things that must happen if the remainder of the Bonn Agreement is to be successfully implemented.

Madam Chairman and Members of the Committee, I thank you for your time, and look forward to any questions.

[The prepared statement of Ms. Haig follows:]

PREPARED STATEMENT OF BARBARA HAIG, VICE PRESIDENT, PROGRAMS, PLANNING
AND EVALUATION, NATIONAL ENDOWMENT FOR DEMOCRACY

Madam Chairman and members of the two subcommittees sponsoring this joint hearing,

I welcome the opportunity to be here today to comment on democratization efforts in Afghanistan.

As many of you know, the National Endowment for Democracy (NED) does not fund governmental institutions, but aims to help build the social and institutional capacity of citizens to contribute to the political life of the country. Most Endowment support focuses on countries where the greatest needs are 1) the establishment or reform of institutions of governance to make them more accountable and responsive to the citizens they are meant to serve; and 2) the fostering of ideas, values and habits that will help ensure that free market democracy can emerge and endure.

These are ambitious objectives, and there is never any guarantee that any amount of effort on our part, or that of others, will succeed. Nonetheless, it is the mission of the Endowment to reach out to moderate, democratically inclined forces, no matter how marginalized they may be, and help to broaden their base and strengthen their prospects in the face of tyranny, repression, and violent conflict.

Before discussing the implementation of the Bonn Agreement, let me offer a few comments about the environment in which the Agreement exists. The Bonn Agree-

ment was intended to put Afghanistan on the path to stability by mapping out a political process that calls for the drafting and ratification of a new constitution by a national Constitutional Loya Jirga by October 2003; promulgation of political party and election laws; organization of a census and voter registration, and finally, democratic elections by June 2004. Now, nearly two years since the Agreement was brokered, and with national elections only seven months away, much of Afghanistan is still dominated by regional warlords. Armed remnants of the former Taliban regime, as well as al-Qaeda, haunt the southern provinces, and economic reconstruction outside of Kabul is barely visible to the general public.

The power of the warlords, who still command their own heavily armed militias, was greatly strengthened by their role in the 2001 war against al-Qaeda. Ever since Bonn, they have succeeded in sidelining both the people and the central government, in large part by putting themselves ostensibly at the forefront of the antiterrorism campaign and the reconstruction process. In reality, these warlords and their private armies have taken the country and the state hostage and are putting Afghanistan's future in jeopardy. Their gunmen are intimidating journalists and political opponents as well as robbing, detaining, and assaulting ordinary Afghans with impunity.

At the same time, coalition efforts conducted in cooperation with regional leaders have not succeeded in eliminating the Taliban and al-Qaeda, especially in the south and east of the country. The Taliban and al-Qaeda are reemerging as the biggest threats to overall security in the country. Terrorism is linked with drug trafficking, which also pays for the personal militias of local commanders. Furthermore, the lack of security in places such as Kandahar has ominous implications for the rest of Afghanistan since it is the heartland of the majority Pashtun ethnic group and tribal confederation that ruled Afghanistan for the past three centuries, and is where the Taliban began its rise to power in the late 1990s. Progress simply cannot be made in the rest of the country if the Pashtun south is lawless, which would mean more Taliban and al-Qaeda.

IMPLEMENTATION OF BONN

Madam Chairman,

You have likely heard already about the delays which have occurred in the *constitutional consultative process* and the unclear and imperfect manner in which the first phase was conducted.

I was in Afghanistan in the second half of June and early July as the consultations were underway and had the opportunity to discuss with some participants from both Kabul and Kandahar their experiences and views of the sessions. Although a network of Afghan civil society organizations was formed in May under the leadership of the international NGO Swisspeace and the Constitutional Secretariat to support nationwide public education on the constitutional process, it was clear that many of those who attended the consultations mistakenly expected to receive a draft of the constitution in the first round, and to have some discussion of the issues that need to be considered. Instead, they listened to small presentations on topics such as women's rights, and were handed questionnaires to fill out and return. The reactions ranged from cynical and suspicious (mostly in Kabul), to simply confused. Nonetheless, as planned, many participants, especially women's groups, teachers and NGOs did reach out to others and formed groups to further distribute and jointly complete the confusing questionnaire. I have heard reports that representatives of the Constitutional Review Commission attended somewhere between 555 and 800 public meetings, at which a cumulative total of 35,503 people were present, and distributed 484,450 questionnaires.

Next, the new *political parties law* bars parties that have links to armed groups from being registered. Some of the larger armed factions might easily form front parties that claim no links to their sponsors, but at least the marker has been laid down. The successful implementation of this law will be critical to a credible election process and Afghanistan's future. Another important feature of the law is the requirement for parties to disclose their financing. This will be nearly impossible to enforce, but again, the marker is laid.

We also know that the *Constitutional Loya Jirga* was delayed two months, until December 10. While the delay is good in terms of the constitutional process, it complicates even further what is already a nearly impossible task of organizing and implementing national elections by June 2004. As far as I know, the security situation has made contemplating a national census impossible for now. Thus, I expect that voter registration will go forward on the basis of a pre-census. The decree on voter registration was issued, but the lack of security has pushed back deployment of registration teams to at least December 1.

The *Constitutional Loya Jirga (CLJ) Delegate Voter Registration and Elections* were scheduled to occur to determine 450 delegates to the Loya Jirga, with another fifty to be appointed by President Karzai. Registration for CLJ delegate elections began September 21 and was completed on November 5. Elections for the Provincial Delegates of the 32 provinces will take place in the 8 regional capitals (Kabul, Bamyan, Mazar-I Sharif, Kunduz, Kandahar, Gardez, and Jalalabad). There are 42 seats for Afghan refugees, internally displaced persons and minorities, and 15 percent must be women. As of November 9, UNAMA reported that all electors had been chosen, and they will elect the candidates in the coming weeks. Sixty-four delegates are being elected by and for women among all 32 provinces. Two women are to be elected from each province; 15 provincial elections for women were complete as of November 9.

Although preparations for the CLJ are progressing, there are likely problems still ahead. Human Rights Watch has already warned in an October 29 letter to President Karzai, that "a climate of fear exists in every region of the country, and many representatives and former loya jirga participants are afraid to be involved in the forthcoming constitutional loya jirga." We are also just hearing the tragic news of the murder of a UNHCR refugee worker in Ghazni.

Distinguished members of the Committee,

Afghanistan is quickly approaching what may be the last chance it has for many, many years to establish enough stability for political and economic development to be able to proceed. The questions we came here today to examine—Are the Afghans ready to participate in the Constitutional Loya Jirga? Can there be reasonably free and fair elections by June? Can Bonn succeed and help set Afghanistan on the road to development and democratization?—can only be answered in the affirmative if there is greater security.

President Karzai is very aware that his mandate, and that of his government, runs out on June 22. Furthermore, the government as currently formed is constantly working against itself and can make only modest steps to improve security, which are often rapidly reversed by elements within its own ranks. This cannot be changed in any fundamental way without elections.

The current draft of the constitution calls for holding an initial election for President and Vice President in June, with elections for the legislature to come later, but still within 2004. In my view, this is the only way Afghanistan will be able to put into place the necessary building blocks for free and fair elections at all levels. While it will, and should, be the subject of debate until a final version is passed, the draft constitution is an amazing document to have come out of Afghanistan only two years after the end of the national nightmare that culminated with Taliban rule. But whatever final version emerges will be meaningless if there are no institutions capable or willing to enforce and implement it.

And yet, if sufficient security is established, I have little doubt that the Afghan people will carry through on the rest. Through our programs, we have learned how durable, innovative, and dogged Afghans can be. Even as outside organizations refrain from carrying out programs in areas where security risks are too high, or that require traveling dangerous roads, for Afghans with a mission, this is their country, and they find a way. Most Afghans are actually quite moderate, and yearn for peace and security and a chance to live without fear. They are willing to work for that.

WHAT IS BEING DONE IN CIVIL SOCIETY?

NED has been involved in supporting programs for Afghanistan since 1984. As a result, as soon as the war of 2001 settled down and Bonn was negotiated, and with the help of many of our longstanding Afghan friends, our two party institutes, IRI and NDI, traveled to the region and into Afghanistan to begin planning their programs. A third core grantee of NED, the Center for International Enterprise (CIPE), also started early to develop and implement programs to help organize the business community to strengthen its leadership role and to build greater awareness within society of market and democratic values.

A range of Afghan groups is also receiving NED funding with programs that are reaching a cross-section of society—including teachers, local councils of elders, and religious leaders—with human rights, women's rights and, basic democracy education; as well as training in leadership methods, conflict mediation, and democratic processes. Much of this work is being carried out in the very heart of village communities, with some programs using respected figures local traditional structures to serve, in effect, as local level "democracy multipliers."

Through NDI, newly emerging political groupings are being exposed to the arts of coalition-building, platform development, and organizing. IRI's partners are providing professional reporting on ongoing political and reconstruction efforts through-

out the country through the Erada newspaper, and a coordination bureau for Afghan NGOs has drawn in 275 NGOs which link thousands of Afghans to the government, the international community, and each other.

Nearly all NED grantees working in Afghanistan are implementing community outreach, training and advocacy programs, and are producing informational materials on the substance and procedures of each phase of the Bonn Agreement. When I visited Afghanistan last June and July, IRI, NDI, and CIPE were still able to operate only on the funding provided by NED, and the International Foundation for Electoral Systems, which has no NED funding, was functioning at a minimal level with funding from the Canadian government. AID funds began to flow to those organizations in late summer.

I could go on highlighting program activities, but I must take a moment to put such activities into context. In the best of times, these programs have reached into probably one-half of the territory of Afghanistan, leaving swaths of central and southeastern Afghanistan untouched. But being present in a province may only mean a few small workshops in the capital of a province and a few villages. All of our grantees and their partners have had to postpone or even cancel office openings, hold training sessions, or seminars because of security or because they could not get the approval of local officials, often the governor/warlord himself, which is absolutely necessary in Afghanistan. While some of the Afghan groups conducting programs are surprisingly skilled and sophisticated in the ways they plan, organize, and adapt their programs and organizations, some are nascent, mission-driven groups whose efforts show their lack of experience and training, and are unlikely to have great impact. However, in Afghanistan, even the weakest groups can help serve simply to transmit information and identify good people, who might otherwise be completely out of touch with the democratization process. A number of the groups we support make important internal decisions by voting, including deciding who will go to represent their interests at important meetings, or before key government officials. But most important, they are working with elements at the local level who wish to help restore security in their locales; fight corruption, drug production and trafficking and misuse of reconstruction resources; and serve as avenues through which citizen rights may be protected and local views are represented in political decision-making processes.

WHAT CAN BE DONE?

- In order to improve conditions for activities related to both the Constitutional Loya Jirga and national elections, the international community must commit greater security forces and pair them with the National Army and Police. PRTs from the Coalition Forces and NATO-led ISAF both should be utilized for this purpose, in coordination with the UN and the Afghan Election Commission.
- On an urgent basis, the United States should deploy PRTs in Kandahar and Uruzgan, while the Europeans should take over from all American PRTs in the north.
- The United States and the United Nations should insist that all parts of the Pakistani government immediately cut off all forms of support to Taliban and al Qaeda leaders who are operating from Pakistan.
- Drug trafficking is an enormous source of support for warlords and terrorists, who are undermining all aspects of economic and political development. Immediate and well publicized efforts to shut down a few of the known drug processing labs would send a strong message to their operators and sponsors, and would serve as a great encouragement for the Afghan people.

There are, of course, great needs for increased numbers of international observers during all phases of the registration, campaigning and voting periods, as well as training, production and dissemination of voter information, rules about political parties, and much more. These are all things that international donors, including USAID, the United Nations Mission to Afghanistan, IFES, NDI, IRI, NED and its grantees are all planning for and working on, but the recommendations listed above are, in my view, among the most critical things that must happen of the remainder of the Bonn Agreement is to be successfully implemented.

Madam Chairman and Members of the Committee, I thank you for your time, and look forward to any questions you may have. I have available some printed materials on NED programs.

Ms. ROS-LEHTINEN. Thank you so much.

Now I would like to have our next panelist, Ms. Nawabi.

**STATEMENT OF MARIAM A. NAWABI, ESQ., ADVISOR TO THE
CONSTITUTIONAL DRAFTING COMMISSION OF AFGHANIS-
TAN, ASSOCIATE, DECHERT, LLP**

Ms. NAWABI. Thank you, Madam Chairwoman and Members of this Subcommittee.

My name is Marian Nawabi, and I am here to testify today regarding the status of political and civic participation of women in Afghanistan as the country approaches historic constitutional deliberations. I will represent a summary of my views. These represent my personal views and not those of my firm.

Today, we are seeing two very different images of Afghan women 2 years after the fall of the Taliban. The first images of women returning to school and work, serving as ministers and commissioners, and having greater freedom than they did earlier.

The second image is of women still wearing the Burkah due to fear of personal security, women being harassed and intimidated, women imprisoned for alleged crimes such as running away from abusive homes, without any representation or due process.

So how do we reconcile these two very different images? The answer is that both are realities today in Afghanistan, but unfortunately, the second image is still more prevalent than the first.

From the past 2 years in Afghanistan, we have learned that gains made for women's rights are still only being enjoyed by a very small percentage of the population, and the majority of Afghan women still live under terrible conditions.

As we know, a successful democracy cannot be built without the active participation of all its members, including women. In Afghanistan, due to the loss of thousands of men, women now make up approximately 60 percent of households, and many of them are widows. Their participation is thus even more critical to democratization efforts.

However, Afghan women continue to face extraordinary obstacles to social and economic development. In order to increase their political participation, the environment in which they live must be dramatically improved. Afghan women are looking for basic rights, and to have their basic needs met first, especially in the areas of health care, education, and economic opportunities.

The baseline in Afghanistan right now is so low that ignoring these basic needs will only lead, I believe, to a failure to realize any gains in their political participation. Also, the needs of Afghan women cannot be seen uniformly. There is a difference between the needs of the rural women and the urban women, as well as literate versus illiterate women, and programs to be designed to address these specific needs.

The program for the reconstruction of Afghanistan as a whole must be comprehensive and long term if there are to be advancements in women's rights. The reconstruction activities that have taken place so far have not effectively reached the rural areas.

Rural Afghanistan is the backbone of the country, and economic underdevelopment and lack of education there has hindered advancement.

It is crucial to recognize that security, education, economic opportunities, and health care, again, are intertwined with the prospects for women's political participation. It is sad, though, to see that the

hopes of many women have diminished 2 years after the fall of the Taliban. To date, many of the changes have been symbolic, but not substantive.

Girls can now attend schools, but there is a lack of teachers, supplies, and textbooks. Women are now allowed to work, but they lack skills and economic opportunities. Women still face restrictions in their every day life, and in some areas they are still being bartered to settle tribal disputed and to earn money for their families.

Given all these issues, what is the status right now of their civil and civic participation? Before the Soviet invasion, Afghan women participated in public life, but it was mainly the urbanized women. During the Soviet occupation, women inside the country and in refugee camps became active in humanitarian response activities, and now that has given them some skills to participate in democratic institutions.

However, most of the Afghan women NGOs that I know of still are not receiving direct adequate funding to fund their activities, and are not able to have a big impact on women's economic development.

Overall, there is representation of women in civil society, but there still are not many women leaders represented in these organizations.

And what is happening with regards to political participation? We have heard about some of the positive achievements that have been realized in the past year, including women in the government, in the Loya Jirga and the commissions, but although achievements are made at these higher governmental offices, a lot of times due to international pressure, the majority of Afghan women still continue to be marginalized.

And what can be done to address this? Again, we come back to the issues of security, health care and education, but other proactive measures could be taken that could assist in this effort.

First is participation and voting in the election process. The current climate of intimidation and harassment reported by women's organizations shows that there are real threats for women to actually be involved in the process. Special attention also needs to be focused on women in remote and rural areas to actually go out and reach out to them and make sure they are registered, and that they understand the process.

As preparations are underway for this constitutional Loya Jirga, I think there is some valuable learning lessons from the Loya Jirga that took place last year. During that process there was a quota that was mandated for the number of women delegates, and women who participated were actually some of the most vocal and important part of that process. One woman even ran for President, and she came in second ahead of two men.

However, the learning lessons were also that the women who actually did speak out against the inclusion of human rights violators at the proceedings did not lead to any change, and they were left to fend for their own security after the proceedings.

Many participants, both men and women, were harassed, attacked or even there were few reports of people being killed after

those proceedings due to voicing their opinion. Open debate cannot take place in this type of environment.

The requirement that two women from Afghanistan's 32 provinces be elected to the constitutional Loya Jirga is a step in the right direction, but it is only a beginning. This is illustrated by the fact that, although women have been chosen at women-only elections throughout the country, election organizers continue to be threatened and some women are not even showing up for the proceedings.

An important aspect related to women's political and civil participation that we have discussed is the role of Islam law. Due to the use of Islam law to wrongly hinder women's rights in the past, I believe that progressive Islamic education really needs to be supported in Afghanistan, otherwise we are leaving a vacuum that can only be filled by the extremists.

Modern Islamic leaders and teachers from within Afghanistan and from other countries can be brought to Afghanistan to discuss women's rights issues, not only with women, but also with the clergy who play such an important role in the country's judiciary and political system.

A topic of great interest is the new constitution and what rights it will provide to women. Many Afghans hope that the constitution will provide the framework for national reconciliation and progress.

Previous panels spoke about some of the progress that was made in this new constitution, but as past Afghan history has proven, it is not the language of the constitution that will drive the reforms and implementation, but it is the capacity and willingness of other institutions such as the judiciary, to support and guarantee those rights, what public support those rights get, and backing from the clergy who again wield immense power in many communities.

Even if Afghanistan were to pass a perfect constitution, it would be meaningless because at this point the institutions and support system that are needed to implement the constitution have not been built up since the Bonn Agreement.

Currently, women have little recourse to justice because of social barriers, and even when women are able to approach the police or the courts, they face extreme discrimination.

So unless attention is paid to rebuilding the judicial system as a whole, these problems will worsen as the gap between the law and implementation widens. It should be noted that Afghanistan actually was a signatory to the convention on the political participation of women in 1953, so they did have the right to vote, and there are many other conventions and laws that existed, so that we can see through time that it wasn't the laws that made the difference, but it was the social conditions that existed and the institutions that made the difference.

Thank you.

[The prepared statement of Ms. Nawabi follows:]

PREPARED STATEMENT OF MARIAM A. NAWABI, ESQ., ADVISOR TO THE CONSTITUTIONAL DRAFTING COMMISSION OF AFGHANISTAN, ASSOCIATE, DECHERT, LLP

WOMEN'S PARTICIPATION IN CIVIL SOCIETY AND THE POLITICAL SPHERE IN AFGHANISTAN

A successful democracy cannot exist without the active participation of all its members, including women. Women are key players in bringing their communities together and in nation building. Women are powerful peace builders, as recognized by UN Resolution 1325 signed by the U.S.

Gender inequality is linked to poverty, insecurity, and lack of education. In Afghanistan, due to the loss of thousands of men to conflict, women now make up approximately 60% of the population, many of whom are heads of households and widows. Their participation is thus even more critical to democratization efforts.

However, Afghan women continue to face extraordinary obstacles to social and economic development. In order to increase women's political participation in Afghanistan, the environment in which they live must be dramatically improved. Afghan women are looking for basic rights and to have their basic needs met, especially in the areas of education, health care, and economic opportunities. Increasing women's access to basic services is key. Reconstruction efforts in the areas of water and energy resources, education and health care are essentially gender issues because women's lives are most affected by the presence or absence of these essential services.

The baseline in Afghanistan currently is so low that ignoring the basic needs of Afghan women will lead to failure to realize any sustainable gains in the political participation of women. However, the needs of Afghan women cannot be seen uniformly. The challenges that urban women face can be very different than those of rural women and different approaches need to be taken to increase political participation in these distinct areas. In addition, the needs of literate women to become more politically involved are very different than those of illiterate women. Thus, programs designed to increase the participation of Afghan women in the political process must address the needs of each of these segments of society in order to be effective.

It is thus crucial to recognize that *security, education, economic opportunities and health care* are intertwined with the prospects for women's civic and political participation. It is sad, though, to see that the hopes of many women have diminished two years after the fall of the Taliban. To date, many changes in their post-Taliban world have been more symbolic than substantive. Girls can now attend school but lack appropriate facilities, properly trained teachers, textbooks, and other supplies. Women are now allowed to work, but most lack marketable skills and job opportunities. Women still face restrictions in their everyday life. In some areas, women are bartered to settle tribal disputes or purely to earn money for their families or first husbands.

A recent UN Security Council mission to Afghanistan reported that terrorism, drug-related crime, and factional fighting threaten rebuilding efforts. The report noted frequent death threats against women's rights activists and a high rate of suicide among women. The report states that lack of security had "affected the entire Afghan peace process."¹ This would jeopardize gains made in the country over the past two years and the most vulnerable victims again would be women and children.

I. Historic Context

In order to understand the present challenges facing the inclusion of Afghan women in the political process and democratization, one must understand the context and history from which these challenges are derived.

Many of the women's rights reforms that took place in Afghanistan throughout the 20th century resulted from a top-down effort to modernize Afghanistan rather than a real grassroots women's movement. Because of a connection between emancipation and modernization, the movement toward full female emancipation has been hindered by the views that associate emancipation with foreign interference. This in turn mobilizes religious and community leaders against reform efforts. That is why reconstruction efforts that benefit the whole nation are important to show that modernity is not being imposed and is not meant to change Afghan culture or values. Men must be included and feel part of that process.

In addition to the origination of reform efforts, the urban-rural divide must also be considered. Rural Afghanistan is the root of tribal powers that have frequently

¹ Report of the Security Council Mission to Afghanistan, 31 October to 7 November 2003, S/2003/1074.

opposed Kabul-based modernization efforts.² Any legislation enhancing women's status by separating her from her family and community historically has not only met with resistance from tribal leaders, but also led to the overthrow of the political regimes sponsoring such legislation.³ Thus, empowering women must be done in the context of the family and community.

Before the Soviet invasion, Afghan women participated in public life, but the number of these women was relatively small and they were mostly from urban backgrounds. During the Soviet occupation of Afghanistan (1979–89), Afghan women inside the country and in refugee settings became active in humanitarian response activities. As a result of this involvement, more and more Afghan women's groups began to emerge, particularly in Pakistan, in the early 1990s. Numerous women-led non-governmental organizations (NGOs) operated across the Afghan-Pakistan border through bases in Pakistan. Women gained expertise through working in United Nations agencies and international NGOs as administrative staff and as implementers of assistance programs. This has provided many women with new skills and opportunities, who can now serve as role models and teachers for other women.

Most importantly, due to the past use of Islamic law to hinder women's rights in Afghanistan, progressive Islamic education must be supported. Otherwise, one is leaving a vacuum to be filled only by extremists. Moderate Islamic leaders and teachers from within Afghanistan and from other countries should be invited to discuss women's rights and other issues and to exchange ideas not only with Afghan women, but also with the clergy who play such a powerful role in the country's judiciary and political system.

II. Importance of Reconstruction of Afghanistan to Women's Advancement

For women's status to improve in Afghanistan, the area that needs immediate attention is rural reconstruction. Rural Afghanistan makes up the majority of the country and economic underdevelopment and lack of information and education has hindered advancement in these areas. Thus, education, skill training and employment of women in rural areas, coupled with physical and institutional reconstruction that benefits local communities will provide more sustainable change.

Strengthening the national government is also an important step in achieving not only women's rights, but due process rights for everyone across the country, but the national government faces many hurdles, including no working court system, no rule of law in the country, and a limited national army.

Congress has shown support for the participation of Afghan women in the reconstruction process. On November 28, 2001, after the Taliban had been ousted from power, the Senate passed Concurrent Resolution 86, expressing the sense of Congress that women from all ethnic groups in Afghanistan should participate in the economic and political reconstruction of Afghanistan. However, the words of these resolutions, including the Senate Concurrent Resolution 86, have not become a reality two years after they were passed.

Support for the reconstruction of Afghanistan as a whole is needed for there to be long-term advancement of women and democratic governance in the country. Although the U.S. government has stated its commitment to stay the course with Afghanistan, events in Iraq for the past year have taken the attention away from Afghanistan. The recent spending for Iraq's reconstruction is 20 times more than Afghanistan's, despite the fact that the two countries are the roughly the same size and population and even though Afghanistan has suffered more destruction over 23 years of war.

President Bush's original request this year for \$87 billion to help rebuild Iraq and Afghanistan made no mention of programs for women. It took a determined stand by women lawmakers to earmark \$65 million for that purpose in Afghanistan. We cannot expect change in the social conditions that Afghan women face without taking concrete steps to help them in their daily struggle to live as human beings.

Even though reconstruction efforts in Afghanistan have been a multilateral effort, funding shortfalls from international donors and governments are enormous and even those funds that are pledged are in many cases never distributed. According to a CARE/CIC report, only a tiny fraction of pledged funding had resulted in completed reconstruction projects by May 2003.⁴ Without continued international assistance, Afghanistan risks falling back to lawlessness.

² Ahmed-Ghosh, Huma. *A History of Women in Afghanistan: Lessons Learnt for the Future*. Journal of International Women's Studies, Vol. 4, #3, May 2003.

³ Id.

⁴ CARE and Center for International Cooperation, *Afghanistan Policy Brief: Good Intentions Will Not Pave the Road to Peace*, Sept. 15, 2003.

III. Political and Civil Society Participation

In assessing the current status of Afghan women's participation in civil society and the political sphere, it is necessary to understand the context in which such participation takes place. Positive achievements for women's role in the public sphere have been realized in the past year:

- 2 women were ministers in Afghan Interim Authority out of 30 members.
- 3 members of the Special Independent Commission for the Convening of the Emergency Loya Jirga were women.
- 11% of Loya Jirga seats were guaranteed to women.
- 200 women were elected to the Loya Jirga (14%).
- All Loya Jirga delegates had a 3-hour training session on gender sensitivity.
- 2 women are currently ministers in the Transitional Administration out of 28 members.
- A woman heads up the Human Rights Commission and several women are members.
- A Ministry of Women's Affairs has been created.
- 7 of the 30 members of the Constitutional Review Commission were women.
- Several women are members of the Judicial Reform Commission.
- 34 seats out of 500 are reserved for women delegates from each province for the Constitutional Loya Jirga.

Although achievements were made in higher government office and elected bodies, the majority of Afghan women continue to remain marginalized. Afghan women are active members of many small civil society groups and participate at the micro level in the economy, but they remain out of positions of influence and power within larger civil society groups and at the macro level and in policy planning.⁵

A. Afghan Women Leaders and NGOs

Afghan women NGOs are an important civil society tool for the advancement of women as they provide a platform for Afghan women to work, learn and build leadership skills. However, most of these groups receive small grants that limit their activities to vocational training, literacy programs and other activities that do not have a big impact on women's economic empowerment.⁶ Overall, women's representation in broader civil society organizations is still relatively limited. Major Afghans NGOs have women members involved in community mobilization but not in positions of leadership.⁷

Positive developments in the last year include networking, conferences and other fora organized by Afghan women. Some of these have been supported by the U.S. and other donors and continued assistance with these types of initiatives will help strengthen women's participation in civic society. For example, more than 170 Afghan women from different refugee camps, delegations from Kabul and representatives of NGOs attended a Women's Jirga and expressed their point of view on the political, social and economic condition of the country. The Jirga was convened to review political changes in Afghanistan and the role of Afghan women in the current political scenario of the country. The Jirga expressed concern over the prevailing fragile security situation in many parts of the country and demanded of the government to eradicate warlord culture from the society.⁸

B. Voting

Voting is an important tool to get women involved in the political process. The elections next year will mark the first time that women will be registered to vote in Afghanistan. However, the current climate of intimidation, harassment and exclusion from social, economic and political activities reported by women's organizations and civil society groups to the UN Security Council during its visit to Afghanistan this month shows that there are real threats against the opportunity for women to take part in those elections.

⁵ Moghaddam, Sippi. *Including Marginalised Groups in the Legal system: State Reconstruction and International Engagement in Afghanistan*, Center for Development Research, Bonn, May 30–June 1, 2003.

⁶ International Crisis Group, *Afghanistan: Women and Reconstruction*. ICG Asia Report N. 48, Mar. 14, 2003.

⁷ International Crisis Group, *Afghanistan: Women and Reconstruction*. ICG Asia Report N. 48, p. 17, Mar. 14, 2003.

⁸ Dawn, Jan. 27, 2003

In addition to security which overrides all developments for women in Afghanistan, special attention needs to be focused on reaching out to women in remote and rural areas. Merely setting up voting booths in larger cities or towns and expecting women to participate will not empower women to go through the important mechanisms of democratic government.

Registration of all voters, especially women, remains a daunting task with limited resources committed by donors at this point. Currently, it is estimated that only 2% of women in Afghanistan have identity cards, a requirement to prove citizenship.⁹ This shows the enormous challenge that lies ahead to register women voters in the country.

Women's rights activists are hopeful that their increased participation through voting will increase their "value" as voters in the long run and promote changes in the tribal system and giving them more say in future policies.¹⁰ However, without continued and committed international support, Afghan women will not be able to sustain their participation at any level.

C. Political Processes

A woman in one province stated that although women constitute a larger number than men in the city government's civil organs, they were dissatisfied with the present atmosphere in the province. "Women are allowed to work, but are indirectly suppressed [so as] not to develop and not to have a say in ongoing affairs." She noted that all the key posts in the government organs were occupied by ex-combatant commanders, most of whom were from one specific area.¹¹

The past election for the Loya Jirga in June 2002 provided valuable learning lessons on increasing women's role in the democratic process. A quota mandated the minimum number of women that had to participate and women were vocal and important parts of the process. One woman even ran for president and came in second, ahead of two male competitors. However, the learning lessons were also that women speaking out against the inclusion of human rights violators at the proceedings did not lead to any changes and women were left to fend for their own security during and after the proceedings. Many participants, both men and women, were harassed, attacked, or even killed after speaking openly against various groups or factions at the June 2002 Loya Jirga.¹²

The current process to select the 500 delegates for the Constitutional Loya Jirga to take place in December 2003 is underway and attention needs to be focused on providing security for delegates both before, during and after the proceedings. The positive development is that two women from Afghanistan's 32 provinces must be elected to the Constitutional Loya Jirga. Women can also be chosen in the general elections and by President Karzai, who will appoint 50 delegates.

Although women have been chosen at women-only elections throughout the country, election organizers continue to be threatened and in some provinces, no women have showed up due to fears of security and condemnation since some mullahs have reportedly announced that women cannot participate in the elections.¹³

D. Recommendations

- Women's rights must remain a high priority for all actors in Afghanistan during the reconstruction process. The August 2002 Report of the Special Rapporteur on Human Rights in Afghanistan cited the need to incorporate a rights-based and gender-sensitive methodology in all programming pertaining to Afghanistan, so that women can exercise their basic human right to fully participate at all levels of political and civil reconstruction.
- Donor agencies should set aside funds for projects directed exclusively to meet women's needs, including long term development. Targets and indicators on gender equality should be established at the outset of program design and donors should report on the impact of spending on the promotion of gender equality and meeting women's human rights.
- Initiatives to teach women how to vote, advocate, manage, and govern by serving as elected and appointed officials must be supported. Programs should educate women on the importance of voting and political participation, while others should

⁹ UNIFEM, *Women's Leadership Role in the Reconstruction of Afghanistan*, located at <http://www.unifem.undp.org/afghanistan>.

¹⁰ Tohid, Owais. *Christian Science Monitor*, Aug. 25, 2003.

¹¹ IRIN News, April 17, 2003

¹² Human Rights Watch Report, *Killing You is a Very Easy Thing for Us*, pp. 46–59. Vol. 15, No. 5(c), July 2003.

¹³ Prusher, Ilene. *Afghan Women Make Political Gain*. *Christian Science Monitor*, Nov. 14, 2003.

train women candidates on running campaigns and mobilizing female membership in political parties.

- Concrete measures must be taken to ensure women have the logistical means of equal and full participation. Providing for women-only election stations, designing election ballots to allow illiterate women to participate, and conducting information campaigns to educate women on the importance of voting and taking part in the process are a few examples.
- Security of voting places and confidentiality of votes must be provided. In Afghanistan's present political climate, the provision of appropriate security will make the difference between whether a woman can attend and participate in the Loya Jirga and elections or not.
- The establishment of women's shuras at different levels should be supported since traditional shuras exclude women.
- Women must be involved as decision makers in social and economic reconstruction at the national and local level.
- Training for Afghan women in areas such as rights, administration, leadership and advocacy should be provided so that they are able to participate fully in political processes—as voters, candidates in elections at all levels and politicians.
- Funding for local women's organizations should be provided to support local women's needs and interests.
- Human rights and, particularly, women's rights should be monitored and reports on how Afghan women are benefiting from the distribution of donor funds should be completed.
- Accurate data on which to base needs assessments, for example the numbers and roles of women in education and employment, should be collected.

IV. Security

When referring to “security,” both *national* security and *personal* security are important for women to be able to participate in civil society and the political sphere. Women are the primary victims of insecurity, which limits their access to public life. Violence, political intimidation and attacks on women and girls have been discouraging political participation and endangering gains in women's rights seen since the fall of the Taliban in late 2001. Unless far more is done to establish security in the many areas where it is still lacking, there can be no economic and political revival and no hopes for a sustained democracy.

A. Main Sources of Insecurity

The recent UN Security Council report states that although some progress has been made in reconstruction and economic stabilization, the three main sources of insecurity are threat from factional forces, terrorism and the rapid growth of drug production and trafficking.¹⁴

The militarization of society has led to increasing numbers of abductions. Often families marry off girls at the youngest possible age to use the bride price for family survival and reports indicate this practice is now increasing.

B. Types of Problems Encountered

The Afghan Human Rights Commission has documented over 2,000 human rights violations in the past 15 months, including illegal detentions, forced evictions, rapes, kidnapping, trafficking, and attacks on girls' schools.

Rape, honor crimes, sexual assault, forced prostitution, and forced marriage, are widespread and reports of forced prostitution and domestic violence in particular are increasing. Rules preventing women from receiving education and restricting their employment have been relaxed, but human rights groups say women continue to be harassed, abused and threatened throughout the country, especially in the provinces.

In Kabul, things on the surface have gotten better. However, outside of Kabul, the situation has not changed much. Many attribute this to the fact that regions outside of Kabul are controlled by men with guns and drug kingpins.

The warlords have been brought into the current Afghan government in an effort to get them to buy into the importance of national unity, but they still hold a lot of power in the regions. For example, last year, a Loya Jirga delegate who campaigned for more open, accountable government was imprisoned and beaten for two days and nights in Herat. A leading female doctor in Herat held a meeting for 120

¹⁴ Report of the Security Council Mission to Afghanistan, 31 October to 7 November 2003, S/2003/1074.

women to discuss women's issues. The following day, her private office was searched, locked and put under armed guard, her private practice effectively closed for two months. Fighting her case only brought more armed men to her house and four hours of interrogation. "Now is the time for democracy and modernization in Afghanistan," she said. "But in Herat there is a Taliban-like lack of democracy. If anyone tries to make any step towards democracy they are denounced."¹⁵

In March 2003, a journalist for Radio Free Afghanistan was beaten and briefly jailed for asking questions about human rights—at the opening of a regional office for the Afghan Independent Human Rights Commission. "This kind of incident sends a signal to the population at large," said one UN official. "People must feel there are fora for debate."¹⁶ The UN also cites cases of arbitrary detentions, extortion and torture, common in many parts of Afghanistan where soldiers remained unpaid for months at a time.

Although the Provincial Reconstruction Teams were meant to provide security and small scale reconstruction assistance, many aid workers are strongly opposed to the blurry line that is created between military and aid operations. One UN workers has stated that PRTs are not the answer and if we want troops or soldiers in Afghanistan, they must be able and willing to provide security, not try to do humanitarian projects that jeopardize the rest of the aid community. UNHCR has already suspended activities in some areas and the presence of the UN as a whole is endangered.

C. Effects of Insecurity

Professor Mahbuba Hoquqmal, State Minister of Women's Affairs, said the lack of security across Afghanistan could hamper women's participation in the Loya Jirga, which meets from December 10 to finalize the constitution.¹⁷ It could also affect the number of women taking part in presidential elections scheduled for next June.

Simply stated, without national and personal security for Afghan women, civic and political participation will not increase, but will deteriorate.

D. Recommendations

- A larger international peacekeeping force that can displace the power of the warlords and strengthen the central government is needed. The ISAF mandate does not extend beyond Kabul, despite a clear need and desire from the Afghan people for its expansion until domestic infrastructure is created to ensure security. The result has been a violent environment where warlords and factions dominate and women are particularly vulnerable, giving rise to a vicious cycle where, because of insecurity, women are unable to participate in reconstruction and public life and their rights are further eroded.
- The size of the current peacekeeping force led by NATO is only 5,500 and remains limited to Kabul. Plans to send peacekeepers outside of Kabul for the first time is deficient—it only includes about 500 peacekeepers being sent to one city in the north. In order to allow women to meaningfully participate in the political process in Afghanistan, an expansion in the size, range, and mandate of international peacekeeping forces in Afghanistan must be immediately implemented.
- Enhanced assistance is needed to accelerate training for the national policy and army.
- Disarmament, demobilization and reintegration ("DDR") are essential. Also, the professional police force, to include women officers, must be trained and equipped to address women's special security needs.
- Public education campaigns on the rights of women to physical security need to be developed and launched.
- Initiatives to end violence against women, and particularly sexual violence, must be supported and sexual harassment prohibited.

V. Constitution

The draft constitution has been the focus for the past year, with many Afghans hoping that it will provide the framework for national reconciliation and progress. The issue of women's rights and individual rights and liberties has been closely followed. However, as past Afghan history has proven, it is not the language of the constitution that will drive reforms and implementation, but the capacity and willingness of judicial and other institutions to implement and guarantee those rights,

¹⁵ Bahrain Tribune, May 31, 2003.

¹⁶ Id.

¹⁷ Collett-White, Mike. Reuters, Nov. 2003.

public support for reforms, and backing from the clergy who wield immense influence over many communities.

A. Constitutional Provisions Affecting Women's Rights

The 1964 constitution included a broad "equality clause" that provided that "All the citizens of Afghanistan, without any discrimination or privilege, have equal rights and obligations before the law."¹⁸ However, during the same time that this constitution existed, civil laws and practices that unfairly discriminated against women continued.

While the draft constitution that was released this month does contain provisions guaranteeing human rights, equal rights, and non-discrimination for all Afghan citizens, it lacks language that women's rights and human rights advocates have urged explicitly defining "citizens" as both women and men.

The positive aspects of the new constitution are that it requires that specific programs be enacted for the balance and promotion of women's education. Another step in the right direction is that the president is required to nominate women to 50% of the presidentially appointed seats in the upper house of parliament, which amounts to 1/3 of the delegates. Although these are improvements to the 1964 Constitution, the majority of Afghan women's rights activists have stated that the important provisions are still vague and open to interpretation by conservative elements in the judiciary.

While specificity in the language related to women's rights is important, the provisions of the Constitution providing that "no law can be contrary to the sacred religion of Islam" can pose problems as its meaning is vague. There is also a lack of proper training on Islamic law in the country and the dilemma of who gets to decide what it is in conformity with Islam will exist. If it is the legislative body, then what role does the judiciary have to override that will?

B. Participation of Afghan Women in the Consultative Process

Women have been involved in the consultative process that took place before the draft constitution was released. Other grassroots efforts also provided a forum for women to share their views on the constitution.

In September 2003, a conference organized by Women for Afghan Women in Kandahar brought together 45 grassroots women's rights activists from cities and provinces throughout the country to discuss the constitution. These women of different ethnicities, languages, educational levels, and economic backgrounds, and with varying religious convictions, crafted the Afghan Women's Bill of Rights. Mindful of the severe violations and abuses of women's human rights in Afghanistan, the Kandahar participants demanded that specific constitutional rights be secured for women, particularly to ensure women's security and well being in both the public and private realms. The provisions of this Bill of Rights, however, were not implemented in the draft constitution that was released.¹⁹ Afghans for Civil Society also hosted a law conference of Afghan women in which comments on Afghanistan's constitution were documented.

Recently, a "Gender and Law Working Group," comprised of leading Afghan women lawyers, judges and activists organized through the Ministry of Women's Affairs, shared their concerns regarding the constitution and the present status of women. This Working Group is in addition to Afghan women's NGOs that are currently commenting upon the draft constitution.

The Working Group has stated that physical abuse of women, the lack of employment opportunities, forced or arranged marriages and the high rate of deaths during childbirth are major problem areas. Members of the working group stress the need for a new school curriculum focusing on both sexes rather than just men. They also call for at least two women to be elected from each province to the House of People, one of two parliamentary chambers, rather than one as outlined in the draft constitution.

Although there has been some debate about the draft constitution, the current climate of intimidation and fear around the country threatens to hinder the Constitutional Loya Jirga process—especially with regards to the freedom of women delegates to participate and voice their opinions. Open debate must be allowed and can only be ensured by guarantees of security. Otherwise, it allows one side—the side with the guns and power—to decide upon the provisions of the constitution.

¹⁸ Art. 25, Constitution of Afg. of 1964.

¹⁹ WAW Press Release, November 4, 2003, www.waw.com.

VI. Judicial Reform

Afghanistan is obligated to reform its judicial system as part of the Bonn Agreement creating provisional guidelines for steering the country toward democratic elections in 2004. But Afghan lawyers and human rights activists have complained that little progress has been made toward reforming the country's judicial system.

This is in large part due to the lack of funding, resources, human capacity and attention that the Judicial Reform Commission has received in comparison to the Constitutional Commission. Even if Afghanistan were to pass a perfect constitution, it would be meaningless as the institutions and support system needed to fairly implement the constitution have not been built since the Bonn Agreement. This affects not only the rights of women, but endangers due process rights, inalienable freedoms, and the prospects for an independent judiciary.

A. Access to Justice

Women's rights protections cannot be meaningfully established without the rule of law. Women have little recourse to justice because of social barriers. Even when a woman is able to approach the police or the courts, she faces extreme discrimination. The current criminal justice system has not addressed issues of violence against women and it is more likely to violate the rights of women than to protect them. Unless attention is paid to rebuilding the judicial system, these problems will worsen as the gap between laws and realities widens.

Laws discriminating against women continue to be implemented. Most imprisonment of women is according to unwritten customary law for acts such as running away from home and adultery. Women have continued to receive harsh punishments without due legal process. Where there are laws that could protect women, they are not enforced.

Mohammad Farid Hamidi, a member of the Afghan Independent Human Rights Commission has stated that defense lawyers in the country are virtually powerless to aid defendants. Hamidi says the Afghan judicial system is also vulnerable to economic and political pressure and can come under the influence of factional commanders and regional governors. "In Afghanistan, trials do not take place in accordance with law. In provinces, warlords are the law, the judge, the government."²⁰

B. Support for Judicial Education and Training

Another major hurdle to a functioning judicial system that is able to implement the rights enshrined in the new constitution is training and education for lawyers, judges and prosecutors. Many graduates of madrassahs, or Islamic religious schools, were appointed as judges during the five-year Taliban regime. Many of these judges are still working in the country's judicial system despite the fact that they are not properly qualified. Donor countries need to contribute financial and technical resources to train judges, prosecutors, criminal defense lawyers, and other legal professionals if there is to be hope that the gap between laws and their implementation can be narrowed.

C. Recommendations

- Resources should be made available for women to pursue legal remedies when their rights are violated.
- Support mechanisms for women whose rights have been violated, including medical and counseling services, should be provided.
- The area of family law should be rehabilitated and reformed.
- Judges and lawyers should be trained in gender issues and international law.
- Research of customary laws should be undertaken in order to determine if they are in compliance with the civil codes.

VII. Education

Only 10% of Afghan women are literate, presenting huge obstacles in the way of civic and political participation of women. 90% of the female population cannot be ignored and only support for education, capacity building and training will provide women with the basic skills they need to participate in the political process and democratization.

²⁰ Najibullah, Farangis. RFE/RL, Mar. 12, 2003.

A. Challenges in Education

While there are over a million girls enrolled in school, millions more are not due to lack of access and fear of being attacked.²¹ Qualified and trained teachers are lacking in many schools.

Violent attacks against girls' schools continues. On August 25, 2003, a girls school 24 km away from Kabul was set on fire and leaflets were left demanding that people keep their girls away from school. The fire would have burnt down the entire school if hundreds of villagers had not come to the rescue. Despite such attacks, there has been a 30% increase in enrollment of students since last year as communities are eager and want their children to go to school.²²

While there has been progress in getting more girls in primary school, there has been almost no assistance for higher education. The Minister of Higher Education has made improving access for women a priority, however, there has been little support from the U.S. and other donors. Although women have been attending universities in Kabul, Kandahar University still has only six women.²³

Unless women have access to higher education, there will be a limit on their ability to assume leadership positions. In addition, given the increase in primary education enrollment, there is a tremendous need for more teachers and education administrators. Investing in teachers colleges would help alleviate some of those shortages.

According to Tajwar Kaker, a former deputy minister of women's affairs, illiteracy rates are the root cause of women's problems in the provinces. "We need a country-wide public-awareness campaign through clergy, tribal elders and others to enlighten the minds of the men who still follow old concepts and prejudice," Kaker asserted.²⁴

B. Recommendations

- Massive and immediate teacher training and refresher training courses needs to be provided.
- Existing primary, secondary and high school textbooks should be revised from a gender-perspective.
- Primary and secondary schools must be properly equipped throughout the country.
- Girls must have full access to schools.
- Adult education courses should be available for all young women who were unable to complete their schooling.
- Vocational adult education courses should be provided for women, especially for those that are the main income earners of their families.
- Courses in business skills, such as management, accounting and marketing should be available to women.
- Micro-lending options should be available to women.

VIII. Health

Health is a prerequisite for the full and active participation of women in society. Ignoring the extremely poor health care conditions facing Afghan women results in the risk that Afghan women will view donors as not caring about their well-being, but simply in their symbolic participation in the political process or the public sphere. In addition, it is not realistic to expect women who are facing severe health issues to be able to physically or psychologically participate in the political process.

The health care statistics in Afghanistan are evidence that this sector is not receiving the attention and support needed to foster women's growth and development. For example, for every 100,000 pregnancies in Afghanistan, about 1,700 Afghan women die in childbirth compared to nine deaths for every 100,000 pregnant women in the United States. Over 50 women die a day related to pregnancy-related deaths, which experts say are preventable.

Mental health is an area that seems to be overshadowed or ignored and yet it is a dominating obstacle in the way of women's full participation and voice in all aspects of their lives. A 2001 study by Physicians for Human Rights found that

²¹ Human Rights Watch Report, *Killing You is a Very Easy Thing for Us*, p. 13. Vol. 15, No. 5(c), July 2003.

²² IRIN News, Aug. 25, 2003.

²³ Monakhov, Yola. Taipei Times, Oct. 14, 2003.

²⁴ IRIN News, Oct. 21, 2003.

more than 70% of Afghan women suffered from major depression, nearly two-thirds were suicidal and 16% had already attempted suicide.²⁵

Without support for basic health services for Afghan women, success cannot be achieved long term in other secondary spheres.

A. Recommendations

- Medical equipment and medicines must be provided to women on an urgent basis.
- Refresher and new courses at the community level to train women in health services, including health-education and maternal care, must be provided.
- Gender-sensitive trauma counseling and support for women's psycho-social health care must be available.
- Easily-accessible quality reproductive health and family planning services must be available.
- Medical training must be provided to Afghan women.

IX. Conclusion

Experience shows that if implementation of women's rights and gender equality commitments is deferred until 'later', gender inequality is worsened. The promotion of gender equality and the empowerment of women are critical to the positive growth of civil society and the political sphere in Afghanistan and gender-equitable development strategies are essential foundations for sustainable development and reconstruction.

Mr. JANKLOW [presiding]. The next gentleman we will hear from is Mr. Kumar.

STATEMENT OF T. KUMAR, ADVOCACY DIRECTOR FOR ASIA AND PACIFIC, AMNESTY INTERNATIONAL, U.S.A.

Mr. KUMAR. Thank you very much, Mr. Chairman.

Amnesty International is extremely pleased to be here to testify and express our concern about the new constitution that is being drafted for the last 3 or 4 months.

Before I start my testimony, I would like to appreciate the Committee, and especially Chairwoman, who chaired until a couple of weeks ago, for the leadership she provided all these years in addressing the women's rights issues in Afghanistan.

I also want to recognize Congressman Rohrabacher for your years of fight for Afghans. I still remember, Congressman Rohrabacher, when no one was talking about Afghanistan, before Taliban, you was the single voice. So we appreciate and we compliment you on that.

Coming to the issue of what is the situation now, what we as human rights organizations are concerned with something I would like to address very quickly because I have only 5 minutes. That Loya Jirga, the constitutional Loya Jirga is going to meet in December 10th. I mean, I think that is the date. Yes, December 10th. It is only 20 days left. So whatever we want to do should be done within this 20-day period.

It is a challenging time, and we have to make every effort to make sure the concerns we have on these issues are being debated and brought into attention to the delegates there so that they can have a new vibrant constitution that can lead the country to peaceful existence in the future.

Before I go and list the concerns we have, I would like to talk about the process per se. Amnesty International is concerned that during the last 3 or 4 months of the process the Constitutional

²⁵ Physicians for Human Rights, *Afghan Recovery Report*, N. 44, January 17, 2003, cited in Institute for War and Peace Reporting available at <http://www.iwpr.net>.

Loya Jirga Commission did not consult with all the segments of the societies in the country.

Even human rights advocates were sidelined. They were consulted, but they were sidelined. Civil society folks were sidelined. So what we are seeing is a group of people who are going around talking to different Afghan society individuals, and coming up with the draft. While we comment on the draft, let me say what our concerns are:

First concern, women's rights. It is shocking, to be honest with you, it is shocking to see there is no mention, no specific mention of women's rights in this constitution. There are vague references of women and men will be treated alike, all the rest of it.

But given the history of Afghanistan, given what the women of Afghanistan have gone through and going through now, there is no specific mention of the women's rights issue.

On that note, I would like to point—bring the attention to the Committee that Afghanistan actually ratified CEDAW, even U.S. did not ratify CEDAW, but they have ratified, but they did not take any steps to incorporate what is in CEDAW in the constitution. That is what is expected of.

Second is children's rights. Again, there is no explicit reference to rights of children in this constitution. Just for your information, even before Taliban came into the scene almost half a million children were killed due to war. We are talking about killed. Thousands of children, we do not know how many thousands became disabled because of land mines and other issues, and thousands and thousands became child soldiers.

Women and girls were treated like spoils of war. But in this new constitution, which is supposed to be written by the Afghans who know the pain and suffering of Afghans, did not even care to mention about child's rights in their constitution.

The third is the human rights commission. We are extremely happy to note that the current human rights commission is moving ahead and they are making progress with all the limited resources they have, but in this constitution, even though they were made part of the statutory body there, there is no teeth given to them.

That is our worry is. Since Afghanistan had such a violent and painful experience in human rights, we are surprised, to say the least, that human rights commission did not have enough power to implement its proposals and investigation, and all the rest of it.

Quickly I jump to the very important issue, the issue of emergency, powers that has been given—that can be given under then we constitution.

Every country had the right to declare emergency in civil strife, but in this constitution, draft constitution, there are a lot of loopholes left there. It could be the President, it could be somebody else, can use that to basically become a dictator of that country. That is something this Committee and the international community should look into that.

I was surprised when the Administration was testifying here. They did not mention all these disturbing developments there. They were painting a rosy picture of what is happening there. Unfortunately, that is not the reality of what is happening there for this constitution, the draft constitution.

So we appeal to this Committee to take this 20-day time period to make sure at least some of the basic requirements like women's rights, children's right, human rights commission's power, and breaks in the emergency regulations are being implemented through different channels. U.S. counsel do not have influence. Bush Administration is sending advisors to every cabinet office, every cabinet office to give them advice, so they cannot say they do not have influence. Let them use their influence. Let them use our influence through human rights community and human rights issues.

Mr. JANKLOW. Sir, I am going to have to ask you to wrap up quickly.

Mr. KUMAR. Okay.

Mr. JANKLOW. We are going to have a vote that is scheduled at 3:45, and I have got to get to Mr. Schneider.

Mr. KUMAR. Okay, I am—

Mr. JANKLOW. And then questions.

Mr. KUMAR. Quickly.

Mr. JANKLOW. Please.

Mr. KUMAR. Finally, I will say U.S., just the money part between Iraq and Afghanistan, it is 20 to 1 that was given to Afghanistan, \$20 to \$1 to Afghanistan. That is something that is disturbing to everyone who does work on Afghanistan and human rights issues.

Thank you very much, Chairman. Thank you very much to everyone.

[The prepared statement of Mr. Kumar follows:]

PREPARED STATEMENT OF T. KUMAR, ADVOCACY DIRECTOR FOR ASIA AND PACIFIC,
AMNESTY INTERNATIONAL, U.S.A.

Thank you Madam chair and distinguished members of this committee. Amnesty International is pleased to testify at this important hearing.

Amnesty International has worked extensively on Afghanistan for over 20 years and has documented and advocated for the human rights of Afghans. In 1995, even before the Taliban came to power, Amnesty International launched a major international campaign entitled "World's Largest Forgotten Tragedy," to highlight the suffering of the Afghan civilians. By then, over 400,000 children had died due to war, and over five million people had fled to Pakistan and Iran as refugees. With the exception of only a few members of this Congress, the world completely ignored the plight of Afghans at that time. Amnesty International continued the campaign after the arrival of the Taliban in 1996, when Afghan women lost basic rights. Only after the tragedy of 9/11 was newfound attention brought to Afghanistan. Currently, we are focusing on incorporating human rights in the reconstruction of Afghanistan, including in the new Constitution. We hope that the new Constitution and the elections in June 2004 will bring some relief to the Afghan civilians.

THE DRAFT CONSTITUTION

After a series of delays, the draft of the new Afghan constitution was finally made public on 3 November 2003. This draft will be presented to a Constitutional Loya Jirga (General Assembly) in December 2003, which will debate the draft and approve the text of a new constitution for Afghanistan.

The Bonn agreement provided for the creation of a Constitutional Commission (CC). The 35 member CC was established in April 2003 and has conducted public consultation on the constitution through meetings and through written and audio questionnaires. However, the CC has been widely criticized for failing to carry out its mandate in a transparent and inclusive manner. In particular, it has failed to conduct a meaningful public consultation with a broad cross-section of the population, including members of civil society and human rights advocates.

While we appreciate that many of the reforms we are calling for in the criminal justice system are long-term projects, it is vital that the highest possible standards are set out in the Constitution as something to work towards in the future. A con-

stitution in and of itself can never be sufficient to prevent human rights violations. However, a constitution that includes strong guarantees for the protection of fundamental human rights and freedoms can be a powerful tool in preventing human rights abuses, as a set of instructions to public servants, judges, leaders and citizens, on how to protect human rights within their national constitutional context.

AI appreciates the huge challenge presented by this crucial stage in the Bonn process but stresses that unless difficult choices are made now impunity and injustice will continue, and there will be no lasting peace.

FOLLOWING ARE SOME OF OUR CONCERNS AND RECOMMENDATIONS:

Women

Amnesty International is disappointed that there is no mention of women's rights in the current draft of the Constitution. Members of the Afghanistan Transitional Authority (ATA) have repeatedly expressed their commitment to improving the lives of Afghan women but this is not reflected in the current draft of the constitution. If women are to realize their rights, the constitution must enshrine the principle of equality of women and men and prohibit all forms of discrimination against women. The language in the current draft does not provide for the specific protection and promotion of women's rights. AI welcomed Afghanistan's ratification of CEDAW without reservations earlier in the year, but is concerned that the current draft fails to incorporate many of the obligations to which the ATA has committed itself by ratifying this treaty.

Amnesty International considers the following points to be of particular importance:

- women should have the right to choose a spouse freely: this includes forbidding of child marriage
- women should have the same rights and responsibilities as men in marriage and at the termination of marriage
- the same rights and responsibilities for mothers and fathers in the raising of their children.

Amnesty International recommends that Article 54 and Article 131 of the draft Constitution reflect these points as required by the CEDAW treaty whose provisions the ATA has recently made a legal commitment to uphold.

The lack of clarity over the definition of citizen may also affect women's right to vote and stand for political office. The term "citizen" must be clearly defined as referring to both male and female Afghans to ensure that they have equal access to their rights.

Children

Amnesty International notes that there is no reference in the draft Constitution to the special rights of children, and urges that the rights of children according to the Convention on the Rights of the Child become part of the Afghan Constitution.

Afghan Independent Human Rights Commission (AIHRC)

Amnesty International welcomed the establishment of the AIHRC in the Bonn agreement and is encouraged that the AIHRC has been given constitutional status in the current draft. The AIHRC has made remarkable progress and has already made significant contribution to the improvement of the human rights situation in Afghanistan. However there are serious concerns that the current draft of the clause on the AIHRC (Article 58) does not grant the AIHRC the powers it needs to allow it to fully protect human rights.

Amnesty International urges that the commission's powers to investigate and remedy abuses are strengthened, including by providing it with the powers to receive and independently investigate individual complaints and issue decisions providing redress. The commission should also be empowered to initiate cases in Afghanistan's courts to remedy human rights violations. The current draft specifies that in case of a violation of a persons "fundamental rights" they can make a complaint to the commission. Amnesty International recommends that "fundamental rights" be clearly defined as understood in international law.

The AIHRC should also have a mandate to ensure that new and existing legislation fully complies with Afghanistan's international treaty obligations and protects human rights. Currently the Supreme Court carries out this function, but AIHRC staff have more expertise in this area. If the AIHRC concludes that any Afghan legislation does not comply with human rights standards, they should have the authority to challenge the legislation in court.

Freedom of religion

Amnesty International welcomes the provision in the draft that followers of religions other than Islam are “free to perform their religious ceremonies” (Article 2). However the article states that this is permitted “within the limits of the provisions of law” which may present an opportunity for restrictions to be placed on religious minorities in other domestic laws at a later date.

Education

Amnesty International notes the state’s obligations to provide education to Afghans (Articles 43 to 46), and particularly welcomes the provision to promote education for women. Amnesty International asks the Constitutional Loya Jirga to note the definition of education according to international law. Amnesty International would also urge that education on human rights is included in the school curriculum to ensure that Afghans are made aware of their rights and how to realize them.

Citizenship

A fundamental concern is that there is no clear definition of “citizen” in the current draft. The constitution should clearly define “citizen” to mean every Afghan man, woman and child to ensure that the rights set out in the constitution apply equally to all people in Afghanistan, male and female.

Afghanistan’s International Human Rights Obligations

Amnesty International welcomes the commitment made in the constitution to abide by the international conventions to which Afghanistan is a state party (Article 7). Afghanistan has signed following human rights treaties and these should be made a more explicit part of the constitution, by name:

- the International Covenant on Economic Social and Cultural Rights
- the International Covenant on Civil and Political Rights
- the Convention on the Elimination of All Forms of Racial Discrimination
- the Convention on the Elimination of All Forms of Discrimination Against Women
- the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment
- the Convention on the Rights of the Child
- and the Rome Statute of the International Criminal Court.

Article 7 should not only require the government not to violate human rights treaties, but also require it to take active, effective and immediate steps to make human rights a reality for every Afghan man, woman and child.

The requirements of Afghanistan’s human rights treaty obligations should also be included in the article on guiding laws and values (Article 3) and in the list of the main tasks of the government of Afghanistan (Article 5).

Procedures for enforcing rights

An important omission in the draft constitution is the establishment of an accessible complaints procedure for all Afghan citizens can turn if their rights under the constitution are not respected. It is most effective and accessible for these complaints to be made through the ordinary courts. It is important for a powerful institution like the courts to be given responsibility to protect the enforcement of the Constitution, if it is to be respected.

Article 56 should be extended to allow citizens to make a complaint about breaches of any of their rights under the constitution in any court, and to empower the courts to give a full remedy for all breaches. Lawyers should be able to help citizens to make their complaint, without charge where necessary. However the procedure should be simple, allowing citizens to bring complaints themselves where there is no lawyer available to assist them.

Death Penalty

Amnesty International is extremely concerned that the current draft allows for the imposition of the death penalty, although it does not specify for which crimes (Article 129). In Amnesty International’s view, the death penalty is a violation of the most fundamental right of every human being—the right to life. It is therefore not possible for any country fully to respect human rights and, at the same time, sentence people to death or execute them. This is of particular concern in Afghanistan, where the courts do not have the capacity to operate within the most basic minimum standards for fair trial. The UN Commission on Human Rights this year called on the ATA to “declare a moratorium on the death penalty in the light of pro-

cedural and substantive flaws in the Afghan judicial system.” Amnesty International has noted your personal commitment that Afghanistan would not authorize any executions until the court system was “perfect”. We urge you to uphold this conviction and further to remove the provision for capital punishment from the draft constitution.

Discrimination

Through ratifying various human rights treaties successive governments of Afghanistan have made legal agreements to make sure that every man woman and child in Afghanistan would not be subject to discrimination on the grounds of tribe, ethnicity, class, religion, sex, or age. This is reflected in Article 22 of the draft, but could be strengthened by the explicit incorporation of the definition as defined in international law.

Economic, Social and Cultural Rights.

Given the overwhelming lack of access to economic, social and cultural rights faced by most Afghans, particularly problems of lack of access to shelter and employment, Amnesty International urges that the rights in the International Covenant on Economic, Social and Cultural Rights (ICESCR) be incorporated into the draft constitution to provide a strong framework for the protection of these rights in the future.

Torture and Cruel, Inhuman or Degrading Treatment or Punishment

Amnesty International warmly welcomes the prohibition of torture and “punishment contrary to human integrity” in the draft constitution. To strengthen these prohibitions further, Amnesty International suggests that explicit reference to the definition of torture under Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment be made. We also urge that torture and ill-treatment be made a crime and that those found to be guilty of such crimes should be brought to justice. Amnesty International also recommends strongly that explicit reference to Article 6 of the International Covenant on Civil and Political Rights, relating to the right to life, also be part of this provision in the Constitution, to make it clear that everyone has the right to life, and no-one should be unlawfully deprived of their life.

Fair Trial

One of the cornerstones of the rule of law is the notion of the right to fair trial. AI’s recent reports on the criminal justice system in Afghanistan document extremely serious and widespread violations of the right to a fair trial and urge that the constitution fully incorporate Afghanistan’s international legal obligations related to the right to a fair trial.

AI is encouraged that some of these obligations are reflected in the current draft including the rights to life, liberty and dignity. The organization also welcomes that the draft upholds the presumption of innocence, and that it defines crime as a personal action, stating that the resulting penalties can not affect another person.

The current wording should be strengthened to include the following provisions:

- judges must rule on the legality of detention within 24 hours, and detainees must have a separate right to challenge the legality of detention with the help of a lawyer (Article 9 (3) (4) ICCPR).
- information about charges should be given immediately.
- individuals should not be refouled to a country where they might be tortured.

Judiciary and Courts

Amnesty International recommends that the only law that should be applied is that specifically codified, written and distributed widely, to avoid the problem of ad hoc interpretations. This would also help to address the problem of individuals being detained for customary crimes, for example the crime of “running away from home” which is used regularly to detain women and girls who flee domestic violence or forced marriage but has no basis in statutory law.

Amnesty International is concerned that the provisions on the judiciary in the draft are not sufficient to deal with the current problem of unqualified judges. Judges should be trained in and familiar with all aspects of Afghan law, not only religious law, and should receive special training in human rights law.

The prohibition in the current draft of judges being members of political parties during their tenure is positive but other forms of corruption, for example accepting bribes, are not specifically mentioned. The prohibition of all forms of corruption should be made more explicit and should be included in the oath or rules governing

the conduct of the judiciary. The establishment of a judicial services commission would help to ensure effective oversight of judges and prosecutors.

Freedom of expression

Amnesty International welcomes the commitment to the freedom of speech in Article 34, however would urge that a guarantee be included in this article that no one will be imprisoned for peacefully expressing their beliefs.

State of emergency

The draft permits the declaration of a state of emergency if “war, threat of war, serious rebellion, natural disasters, or situations similar to these” threatens the independence or survival of the nation. In this event, the rights contained in the following articles would be suspended:

- no person can be pursued, arrested or detained but in accordance with the provisions of the law
- the citizens of Afghanistan have the right to un-armed demonstrations, for legitimate peaceful purposes
- the state does not have the right to inspect personal correspondence and communication unless authorized by the provisions of the law
- other than the situations and methods indicated in the law, no one, including the state, are allowed to enter or inspect a private residence without prior permission of the resident or holding a court order

Given the ongoing instability in the country, it could be argued that present conditions fulfill the above criteria. The powers granted to the authorities by the state of emergency provision to suspend the important rights named above could potentially be open to huge abuse.

Impunity

Amnesty International is extremely concerned at the continuing climate of impunity in Afghanistan. Despite the enormous scale of the war crimes, crimes against humanity and other serious human rights violations committed in Afghanistan, justice continues to be denied. In Amnesty International's experience, if people reasonably suspected of committing gross human rights violations are allowed to escape criminal responsibility and continue to hold positions of authority as is currently the case in Afghanistan, human rights violations are likely to continue to be committed.

Amnesty International therefore welcomes the provision in the current draft that people who have been convicted by a court for committing a crime, specifically mentioning crimes against humanity, are prohibited from holding public office. However given the current state of the judicial system in Afghanistan, and the lack of any progress in ensuring accountability for past human rights violations, this provision is at the present time meaningless as no one has yet been tried by a competent court for crimes committed during the war.

This makes the need for reform and reconstruction of the criminal justice system even more pressing, and Amnesty International continues to call on the international community to assist and support the ATA as a means of developing national capacity for ending impunity and re-establishing the rule of law.

This would help to ensure that perpetrators of human rights abuses are no longer able to hold positions of power whereby they can commit further human rights violations.

CURRENT HUMAN RIGHTS CONCERNS

Two years after the international military intervention in Afghanistan, the security situation in the country remains precarious and human rights violations continue to be committed on a vast scale. More and more regions in Afghanistan are considered “no-go” areas for aid staff and UN personnel. Afghans face continuing threats to their safety and security both from a general rise in crime and from criminal activities and human rights abuses by armed groups who remain in control of much of the country. The criminal justice system is too weak to offer effective protection of human rights and itself subjects Afghans to abuse.

Over the past year, Amnesty International has conducted research into the state of the criminal justice system in Afghanistan, focusing in particular on policing, prisons, the courts, and women's access to justice. The findings of our research show that the criminal justice system remains ineffective and is more likely to be the source of human rights violations than a mechanism for providing justice to those whose rights have been violated. Wealth and connections to those with power can gain an individual impunity; those without access to these resources can be arbi-

trarily trapped within the system. Security is a pre-condition for the rule of law and it is essential for creating an environment in which human rights are respected and human rights violators are brought to justice.

Security

The International Security Assistance Force (ISAF), currently led by NATO, is credited with increasing security in Kabul. However, in the rest of Afghanistan, factional fighting continues between rival armed groups. In early October, fighting in the North between two rival commanders, both nominally allied to the central government, served as a reminder of how quickly regional tensions can degenerate into large-scale fighting. Moreover, ISAF does not have a mandate to intervene in conflicts involving human rights violations without a request from the government.

US-led forces continue military operations in various parts of the country, particularly in the south and east. As part of these operations, US-led forces engage in arbitrary arrests and detentions. There have also been some incidents of bombings by US-led forces that reportedly have resulted in civilian casualties. In addition, as part of a “hearts and minds” campaign, and promoted as an expansion of the “ISAF effect”, Provincial Reconstruction Teams (PRTs), which are part of the US-led coalition have been deployed to some provinces to engage in civil-military and humanitarian activities, including the reconstruction of schools, clinics and bridges, and the training of police]. PRTs, consist of relatively small numbers (50–100 personnel) and do not have orders to intervene in conflicts between factions or to protect civilians. PRTs are engaged in activities that include reconstruction of schools, clinics and bridges.

Women’s access to justice

Amnesty International is gravely concerned by the extent of violence faced by women and girls in Afghanistan. The risk of rape and sexual violence by members of armed factions and former combatants is still high. Forced marriage, particularly forced marriage of girl children, and violence against women in the family are widespread in many areas of the country, affecting many women. These crimes of violence continue with the active support or passive complicity of state agents, armed groups, families and communities.

The criminal justice system is at present unable to protect women’s right to life and physical security and itself exposes them to discrimination and the risk of abuse. Prosecution for violence against women, and protection for women at acute risk of violence, is virtually absent. Those women who overcome powerful barriers and seek to access justice are unlikely to have their complaints considered, or their rights defended.

Key donors (Germany, Italy and others) supporting reform of the police and judiciary have failed to ensure that their intervention will support protection of women’s rights. In both planning and implementation, donors funding the reconstruction of the justice system have displayed an alarming lack of attention to the specific needs of women who come into contact with the justice system, as well as to violence against women.

The UN Security Council has expressed its commitment to giving gender equality a central place in post-conflict reconstruction and peace operations through the adoption of UN Security Council Resolution 1325 on “Women Peace and Security”. The particular need for law enforcement activities and judicial and legal reform to ensure protection of women’s rights is detailed in the UN study on implementation of Resolution 1325. The international community’s involvement in Afghanistan is an important test case for seeing whether the will and resources to ensure such commitments are in fact implemented.

Judiciary / Rule of law

Currently, the Afghan courts lack legitimacy and there is a perception among the Afghan people that the judicial system is unable to properly serve the interests of justice. The lack of public confidence in the court system is compounded by a history of reliance on informal judicial mechanisms in Afghanistan. Where courts have been established, they are fragile and lack the basic facilities necessary to ensure the administration of justice. The international community’s promised program of judicial assistance lacks strategic direction and has been delayed in its commencement. As a result, the Afghan courts are still without basic facilities such as premises, furniture and copies of legal texts.

The judiciary has not received the support necessary to ensure that it is able to resist the pressures upon it. The failure of the international community to provide effective security and bring an end to the influence of armed groups has left the judiciary extremely vulnerable. Furthermore, the current lack of arrangements for the protection of courts, judicial officers, witnesses and victims undermines the ca-

capacity of the judiciary to assert its independence. As a result, certain individuals remain above the law because of their place in the community or because they are able to use threats, intimidation and other forms of pressure to influence judicial proceedings. In addition, economic influences have led to a widespread problem of corruption.

The rights of defendants are currently not being protected by the criminal justice system. Defendants, including children, are being denied the right to a fair trial. There is also a widespread problem of arbitrary detention. In addition, many judges and prosecutors lack the qualifications and training necessary to properly apply domestic laws, let alone relevant international law.

Police

Police in Afghanistan are not capable of protecting human rights and are often human rights violators. Lack of pay, training, proper command and control structures and effective oversight mechanisms contribute to a situation in which violations continue to be perpetrated with impunity. Insufficient support for the police has left them responsible for a vital job without the qualifications or the resources to carry out their duties effectively. The police are desperately short of even the most basic equipments. Amnesty International saw police officers with no boots, no pens and paper, no uniforms, no transport and no communications equipment.

Torture and arbitrary detention at the hands of the police are common, often for the purpose of extracting a confession or money. Amnesty International has talked to many men and children who have alleged ill-treatment and torture by the police, predominantly during interrogation. Common methods of torture include beating with an electric cable or a metal bar, electric shocks, and hanging detainees from the ceiling by their arms, sometimes for several days.

Much of the police force consists of former Mujahideen, who have extensive military experience but little or no professional police training or experience. Their loyalties rest with the powerful regional commanders and not the central government.

Prisons

Prisons, an essential component of the criminal justice system, are crumbling after years of neglect and lack trained and qualified staff. While donor attention is focused elsewhere, prison staff are struggling to accommodate thousands of people who are being held for long periods in poor conditions, in violation of basic international human rights standards relating to the treatment of detainees. Prisoners are being held for months in overcrowded cells, some of them shackled, with inadequate bedding and food. Many staff members have received no training and have gone for months without pay. In addition, prisoners and detainees are not being held in safety, with some suffering ill-treatment and torture.

Separation of prisoners is another major problem, with pre-trial and convicted prisoners being held together. In addition, there are often no separate facilities for juveniles or women. These groups are sometimes held in rooms within adult male facilities, putting them at greater risk of sexual and other abuse. Amnesty International has also received many reports indicating that "private prisons" exist across the country.

U.S. POLICY

Current U.S. engagement in Afghanistan was shaped after the September 11 attacks on the World Trade Center and the Pentagon. The United States and its allies launched a military intervention which, following a UN sponsored conference in Bonn, Germany, installed President Hamid Karzai. Currently, an estimated 9,000 U.S. troops are in the mainly Pashtun areas of eastern and southern Afghanistan battling mainly Taleban and Al Qaida forces, with the help of local warlords and the new Afghanistan National Army. The United States pledged to rebuild the country and often mentioned a "Marshall Plan" to achieve that goal. But the rhetoric that followed 9/11 has not been matched by the resources provided by the US and international community for reconstruction, especially in comparison to the allocations for Iraq reconstruction.

WHERE IS THE MARSHALL PLAN? RECONSTRUCTION'S DOUBLE STANDARD

The Bush Administration's recent emergency supplemental request for Iraq and Afghanistan contains a stark disparity between funds allocated to each country. Of the \$87 billion, an estimated 1% is allocated for Afghanistan. The \$20 billion request for Iraq reconstruction funding is 25 times as large as the Afghanistan request. The disparity exists despite the fact that Afghanistan has approximately the same population as Iraq. Moreover, Afghanistan is poorer and has suffered the de-

struction of 23 years of war. These realities argue for more—not fewer—reconstruction funds.

In Iraq, the Bush Administration has proposed spending \$2.1 billion for public safety, \$2.1 billion for national security, \$919 million for the judicial system, \$5.7 billion for the electrical system, \$2.1 billion for the oil system, \$4.6 billion for water and sanitation, \$470 million for housing, \$835 million for transportation and communications, and \$850 million for health care.

But for Afghanistan there are virtually no funds allocated for badly needed water and sanitation systems, housing construction, communications, or electrical systems. Even the funding for Afghanistan in other areas is very low—a mere \$30 million for health care, only \$10 million for the judicial system, and just \$105 million for road construction.

The transitional government in Afghanistan estimates that between \$20–30 billion is needed over the next five years. In other post-conflict settings, an average of \$250 per person was spent per year in aid. But in Afghanistan, donors spent only \$64 per person in 2002.

Given these realities, one wonders what happened to the talk of a Marshal plan to rebuild Afghanistan after the fall of the Taleban regime. The Bush Administration and the international community seem to be neglecting Afghanistan. Suffering of Afghan civilians continues and conditions for women and girls have only modestly improved.

Funds are urgently needed to rebuild Afghanistan, particularly in the areas of education, health care, roads, housing, water and sanitation, electrical systems, judicial reform, and women's rights and human rights generally.

RECOMMENDATIONS

- The Bush Administration should increase its financial assistance to rebuild Afghanistan;
- Money should be earmarked for those Afghan institutions like the Ministry of Women's Affairs, the Human Rights Commission, the Judicial Service Commission;
- Women should be integrated into the judicial and security institutions, including the Afghanistan National Army.

Security

- The international community must take immediate steps to institute measures to ensure an effective level of security and human rights protection in Afghanistan, particularly outside Kabul;
- International Security Assistance Force's (ISAF) mandate (and the mandate of any additional security assistance or peace-keeping troops that may be deployed in the future) should be amended to include the duty to protect human rights. An independent mechanism to ensure ISAF's compliance with international human rights and humanitarian law should be established;
- An amended ISAF mandate (and the mandate of any additional security assistance or peace-keeping troops that may be deployed in the future) should also include specific provisions for
- the protection of women and girls who continue to be at high risk of rape and sexual assault by armed groups.

Criminal justice system

- The international community must provide sufficient technical and financial support to the ATA to enable it to reconstruct the criminal justice system with human rights at its core. A functioning criminal justice system that adheres to international law and standards involves the effective operation of all interlinking sectors, including policing, prisons and courts. Unless all aspects are addressed and the appropriate reforms are initiated and carried out, the system will never be successful.
- *Judicial system:* The international community pledged to support judicial reconstruction as a means of facilitating peace and security in Afghanistan. The international community must ensure that it provides long-term financial assistance to ensure the re-establishment of the rule of law. In the current financial year, there is a \$15 million shortfall for rule of law-related projects in Afghanistan. Donor governments who have pledged to provide financial assistance must deliver these funds as a matter of urgency.
- *Women and girls:* Measures to protect the rights of women must be built into legal and constitutional reform, and integrated into policing and criminal justice

processes. The international community and the Afghan Transitional Administration must act with urgency to protect women from violence.

- *Police*: The police force must be trained in professional policing skills and human rights throughout Afghanistan. Adequate funding must be made available for salaries, equipment and appropriate facilities for police. Oversight and accountability mechanisms must be established. The use of torture to extract confessions must be stopped immediately.
- *Prisons*: Resources must be provided to ensure that prisons can be rebuilt to conform to conditions set out in international law and standards. Training must be provided to prison staff, and funds must be made available to ensure the regular payment of salaries. Ill-treatment, particularly the use of leg irons, must be outlawed.

Thank you for inviting Amnesty International for this important hearing.

Mr. JANKLOW. Thank you very much, sir.

Mr. Schneider, please make your presentation. And when you are done, sir, the Chair is going to go to Mr. Rohrabacher, and then the lady from California, and try and get at least their questions in before the vote.

STATEMENT OF MARK SCHNEIDER, SENIOR VICE PRESIDENT, INTERNATIONAL CRISIS GROUP

Mr. SCHNEIDER. Thank you very much, Mr. Chairman, Members of the Committee.

I want to express our appreciation for the opportunity to testify on behalf of the International Crisis Group on current conditions in Afghanistan, the status of the effort to construct a democratic government after 23 years of war.

I was asked to discuss the broader context in which the constitutional process is taking place. I just want to note that on the eve of the constitutional Loya Jirga we continue to believe that the major failure of the post conflict effort in Afghanistan was the refusal to support the extension of ISAF, International Security Assistance Force, beyond Kabul, as the United Nations, the government of President Karzai, and many NGOs have pushed from the outset.

I was in Kabul last week. I met with the USAID and State Department officials in a compound that, as you know, is tightly regulated and heavily restricted. The security environment has sharply limited the mobility and the number of AID workers, officials and contractors and thus has slowed the pace of reconstruction and transition.

We have dedicated soldiers, diplomats, USAID and NGO workers there, and they are risking their lives trying to help the Afghan build a nation free of al-Qaeda, Taliban and warlords, yet the attacks are becoming more and more frequent.

Security concern is really the reason why the constitutional Loya Jirga in fact was postponed from September when it was initially planned to December 10th, and I think that it should be realized that even that date is somewhat tenuous since the copies of the draft constitution had not reached all provinces a week ago when I was there.

In fact, whether the eight regional elections which are planned to elect the delegates to the Loya Jirga can be held without violence is still an open question.

Holding a new presidential elections next June will likely prove even more challenging, and the election of a parliament, which is crucial as you know to a functioning democracy, may even slip until 2005.

Democracy requires participation, open campaigning without intimidation, and public discussion. They all require a minimum of stability and security, and that simply is not there yet in Afghanistan.

Afghanistan faces three fundamental threats to its security still, and to the constitutional process: Taliban and al-Qaeda, the warlords and their armed militias, and a massive renewal of drugs cultivation and trafficking.

First, with respect to the frequency of Taliban and al-Qaeda attacks on coalition forces, civilians and NGOs, that frequency has spiked upwards in the past several months. Whatever the reason, the attacks on civilian aid workers rose from approximately one per month earlier this year to an average of one every day last month.

In September, six local aid workers were killed, more than in any month since Bonn. As a result of the latest incidents, particularly the murder of a young French woman who worked for UNHCR, that agency yesterday withdrew all staff from four southeastern provinces, essentially closing the regional center at Gardez, where I met many of them barely a week ago.

I think it should be emphasized that those attackers for the most part are coming from Pakistan. And while Pakistan law enforcement has pursued al-Qaeda, the military government generally has been reported as either complacent or negligent when it comes to the Taliban. It is the general consensus—I stopped in Pakistan—that President Musharaff's government maintains an insurance policy of sorts with the Taliban in the event that the west were to abandon Afghanistan as it did a decade ago.

Clearly, we have tremendous influence on Pakistan, and we really should demand an end to the de facto sanctuary for Taliban leaders. Hopefully the recent crackdown on extremist forces will be followed by more aggressive moves against the forces on the border.

Secondly, warlords and regional militias still pose an immediate threat. They have generally claimed land resources and property, and used their armed militias to maintain those claims. As you know, NATO has agreed now finally to extend its support protection outside Kabul, but NATO is far from getting the kind of commitment of troops and equipment from member countries that they need to meet their requirements.

And finally, the entire nation-building effort in Afghanistan, and it is nation building, is threatened by the reappearance of the narcotics industry. You should, I think, know that there is nearly \$1.2 billion from drugs going to the farmers, another \$1.2 billion to traffickers, equal to about half of Afghanistan's economy.

The potential for corruption of the political process is enormous. What is even worse, what reminds me more of Colombia than anything else, is that it is the warlords and the mid level militia commanders who are reaping the benefits of the drug industry at this point.

Clearly, a fundamental issue is the disarmament and demobilization of those militia, and there needs to be an extension of ISAF immediately in order to permit that to be carried out.

The good news is that the U.S. Government has shifted its policy in support of that. However, now there needs to be a diplomatic effort to gain the kinds of troop contributions from its European allies to make that commitment good.

Finally, with respect to the constitution, we have significant concerns. We issued a report on this a couple of months ago. There simply, in terms of procedures, has not been a broad enough or representative enough process for drafting the constitution, or for debating it.

And the procedures for governing the Loya Jirga in a month remain very opaque, as to how it is going to be conducted. And substantively, as has been mentioned, we have concern with respect to human rights—

Mr. JANKLOW. Sir, we are going to have to wrap up.

Mr. SCHNEIDER [continuing]. Of the rights of women, and the absence of checks and balances, and particularly the potential for conflict and the lack of clarity between the powers of the center and provincial local authorities.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Schneider follows:]

PREPARED STATEMENT OF MARK SCHNEIDER, SENIOR VICE PRESIDENT,
INTERNATIONAL CRISIS GROUP

I want to express my appreciation to the Subcommittees on the Middle East and Central Asia and on International Terrorism, Nonproliferation and Human Rights for the opportunity to testify on behalf of the International Crisis Group (ICG) on current conditions in Afghanistan and the status of the effort to construct a democratic government after 23 years of war.

ICG has been in Afghanistan since 2001, publishing our first report on "Priorities for Reconstruction and Development" a few weeks before the Bonn Conference. Since then we have published eight additional reports, including the last two on "Peacebuilding in Afghanistan" and "Disarmament and Reintegration" over the past few weeks, and an earlier report on "Afghanistan's Flawed Constitutional Process".

On eve of the Constitutional Loya Jirga, we continue to believe that the major failure of the post conflict effort in Afghanistan was the refusal to support the extension of the International Security Assistance Force beyond Kabul—as ICG, the UN and the Government of Hamid Karzai pushed for from the outset. The Bush Administration did not relent on their opposition to a broader security force until this summer, and such a policy has yet to be fully implemented.

By failing to get security right, the international community has had its hands tied in trying to bring about reconstruction, humanitarian relief, disarmament and reintegration (DR) and the broader political transition. I met with USAID and State Department officials in Kabul last week. They live and work in a tightly restricted and heavily guarded compound. Security concerns have limited the number and mobility of aid officials, NGOs, and contractors and slowed Afghanistan's attempt to get back on its feet.

The Afghan government, the UN and the U.S. and coalition forces all are committed to the Bonn schedule and to building democratic institutions. Dedicated soldiers, diplomats, USAID, UN and non-governmental aid workers are risking their lives trying to help Afghans build a nation free of Al Qaeda, Taliban, and renegade warlords. The murder of a young UN refugee worker this past weekend in Ghazni, a car bomb last week outside the UN office in Kandahar and a rocket attack on the UN disarmament event days after I left Gardez are some of the latest examples of the terror strategy Taliban and al Qaeda have used to attack the soft target of international civilian agencies and NGOs and derail reconstruction and the political transition.

Nevertheless, much has been accomplished: more than 2 million refugees have returned since 2001 (although several million more still remain outside Afghanistan);

the Karzai government has established basic administration and ended flagrant government abuse of human rights (although abuses by warlords still persist); and immunizations have reached some 90% of children, many of whom have the chance to go to school for the first time.

However, a lack of security has made more sweeping progress impossible. It forced postponement of the Constitutional Loya Jirga (the traditional national assembly) from September to December 10. Even that date is extremely tenuous since the copies of the draft Constitution still had not reached all provinces until a week ago. Holding Presidential elections next June will likely prove even more challenging. The election of a Parliament, crucial to establishing a functioning democracy, is likely to slip until 2005. Democracy requires participation, open campaigning without intimidation and public discussion, all of which require a minimum of stability.

Nearly two years after Bonn, Afghanistan remains beset by three fundamental threats to its security and stability.

—First the Taliban and al Qaeda still are able to strike at coalition forces, Afghan civilians, and international aid workers on a daily basis. The frequency of such attacks has spiked upward in recent months. Attacks on aid agencies rose from one per month earlier in the year to one every other day. In September, six aid workers were killed, more than in any month since Bonn. The NATO/ISAF deputy military commander stated that more attacks had occurred in the previous ninety days than in the entire prior period since Bonn. The most recent deaths resulted in the UNHCR pulling its entire staff from southeastern Afghanistan.

The US military and its allies brought a speedy end to Taliban and al Qaeda control over the state apparatus in November 2001; but plans for postwar Afghanistan stalled as Taliban forces and significant elements of al Qaeda escaped to Pakistan. Although Pakistan law enforcement has acted against al Qaeda, the Pakistan military government—whose security service have long and deep ties to the Taliban—remains passive or negligent when it comes to the Taliban. There is virtual consensus among diplomats, press and others that the Pakistan government of President Pervez Musharraf maintains an “insurance” policy of sorts with the Taliban in the event the west were to abandon the country as it did a decade ago, and a radical Taliban government were to return to power.

It is these same religious extremists who govern the Northwest Frontier Province and rule, in coalition with the pro-Musharraf central government, in Baluchistan. These are the two provinces bordering Afghanistan where the Taliban and al Qaeda operate. The former are visible in the key cities of those provinces. With \$3 billion aid being sought by the Bush Administration for the Musharraf government in Pakistan, it is clear that the Administration has enormous leverage to demand that Pakistan put an end to de facto sanctuary for Taliban leaders. Hopefully the recent roundup of extremist Islamic forces also will be followed by a more aggressive move against both Taliban and al Qaeda encampments along the border.

—Secondly, warlords and regional militia pose an immediate threat. Some originally were financed and allied with US forces in the fight against al Qaeda after 9/11. A few have appeared willing to identify their futures with a new national Afghan government; but most have claimed land, resources and property and used their armed militias to maintain those claims. They also have used those forces to intimidate, threaten and pursue their own stake in the process leading up to the constitutional *Loya Jirga*.

President Karzai only recently has been able to change governors and military commanders in Kandahar and to dampen at least temporarily the battles in Mazar-e-Sharif in northern Afghanistan between local commanders loyal to Abdul Rashid Dostum and Muhammad Atta. Dostum, an ethnic Uzbek, is head of the National Islamic Movement and was awarded a military adviser role by Karzai. Atta, his regional challenger, is an ethnic Tajik and a commander of the Islamic Society group, aligned with the Panjshiris in Karzai's administration who have their eyes set on national power.

NATO Secretary General Lord George Robertson, in his letter to Kofi Annan of October 2, asserted NATO's willingness to play an expanded role in Afghanistan. He noted that one of the crucial tests for an exit strategy for NATO/ISAF would be the “removal or significant modification of the behavior of warlords.” Until that happens, the path forward will be littered with grave obstacles.

—Finally, the entire nation-building endeavor in Afghanistan—and make no mistake—it is a nation-building venture, is threatened by the appearance of a hydra-headed narcotics industry. President Karzai should be commended for identifying the threat from drugs more than a year ago, but thus far the international response has been minimal.

A coherent, concerted international strategy for helping the Afghans control narcotics is desperately needed. Although the UK is the titular leader, its alternative development program has had severe problems. But without law enforcement, interdiction, eradication and military muscle, even an effective alternative development program is unlikely to succeed. Since Europe is the market for most Afghan heroin, the US has willingly taken a back seat on the issue.

The UNODC identified \$1.2 billion going to farmers for their poppies and a similar amount going to traffickers, nearly equal to half Afghanistan's legal economy. This means that there is an enormous amount of money available to corrupt the political process. More than 3,600 metric tons of opium poppies were produced last year, and it is estimated that the yield will rise to 3800 tons in 2004. Drugs also threaten efforts to produce a functioning judicial system.

In a too close approximation to Colombia, it is the warlords and mid-level regional commanders in particular who are acquiring the revenues from the narcotics trade. That financial windfall inevitably makes them spoilers to counterdrug programs or attempts to political stability based on effective law enforcement institutions.

Despite these three security challenges, only 6,500 new soldiers have graduated into the Afghanistan National Army (ANA). Barely 10,000 new police are in uniform. The judicial system remains in the hands of the most conservative sectors of society. The disarmament and demobilization process has just begun, and in Konduz and Gardez, where some 1,200 soldiers and officers have started a DR process, there were Lee Enfields from the 19th century turned in by some as their "weapons" and some of the heavy weapons looked like World War I vintage.

The real tests are whether the military forces of General Fahim and his Northern Alliance colleagues in Kabul will be removed and begin to disarm before the Constitutional Loya Jirga, whether DR will be fully completed in the provinces before registration and the Presidential and Parliamentary electoral campaigns begin and whether NATO/ISAF will be deployed fast enough and have the mandate to guarantee the success of disarmament, demobilization and reintegration. Currently the DR process is called "voluntary." That is largely because there is no one to force reluctant warlords to accept involuntary disarmament. It is remarkable that the UN has been able to negotiate even the start of disarmament—at times with the careful assistance of international military forces, which just happen to be around.

The good news is that the Administration has shifted its policy to support extending ISAF beyond the Afghan capital and the UN Security Council has authorized its expansion. How NATO will implement its new mandate remains undecided. The United States appears to believe that simply increasing the number of Provincial Reconstruction Teams (PRTs), small combined military and civil affairs units, with embedded USAID and State advisors, now working in four areas, will suffice. This plan would include other governments, and under US planning some 12 international PRTs could be in place by next year. However, the ICG, CARE and the IRC have talked with NATO's supreme northern European commander as well as the field commanders in Afghanistan about this issue. All believe it would be unwise to limit the ISAF expansion to simply multiplying the PRTs.

NATO military commanders believe a much larger force is needed than the one there today. They look for a force level between 12–20,000 when fully deployed. It would include one PRT in each province, operating under ISAF. At least three battalion-sized quick strike forces also would be located regionally to let local militia commanders know that this fighting force will be deployed against them if they continue to force farmers to grow poppies, refuse to disarm and demobilize when told, and impede free and fair elections.

Those forces are required to carry out the scenario Lord Robertson envisioned for NATO if it wants to count its ISAF role a success—from dealing with warlords, to assisting DR, to helping build the Afghan National Army and the police, to supporting reconstruction.

NATO sees what needs to be done. The bad news is that the member countries have not begun to offer troops or the resources to do the job. If they do not produce a robust NATO force to be deployed beyond Kabul quickly, then NATO will fail and so too will Afghanistan.

Lord Robertson said on Nov. 11, "First, Afghanistan must be a success. If we fail, we will find Afghanistan on all our doorsteps. Worse still, NATO's credibility will be shattered, along with that of every NATO government. Who will stand with us in the war against terror if we take on a commitment such as this and then fail to deliver?"

ICG believes:

1. A full NATO/ISAF force of 12–20,000 should be deployed as fast as possible.

2. The disarmament and demobilization of militias in Kabul should take place before the start of the Constitutional Loya Jirga.
3. The Loya Jirga should be delayed if the elections of delegates are distorted by local military pressure or if the fullest dissemination of the draft Constitution cannot be assured with sufficient time for public discussion prior to the Loya Jirga.
4. There should also be an urgent commitment by all parties to support a coordinated counter-drug strategy, knowing that the real focus has to be on stopping next year's planting. Resources, as a senior US official privately said, have to be ten times current levels for alternative income-generation strategies.
5. There needs to be an immediate effort to more fully include the Pashtun population into the political transition, with a coherent provincial strategy that combines security, governance, and rural development.
6. The new US supplemental funding is crucial to help the Germans to accelerate the training and deployment of national police.
7. The PRTs, wherever possible, should shift the focus of their reconstruction efforts to build security and public administration-related infrastructure and support training of Afghan security forces. They should be deployed to areas of greatest insecurity. This would allow NGOs and civilian agencies to concentrate on health, education, microenterprise and rural development. These efforts should be targeted on the Pashtun south and southeast region as much as security concerns will allow.

Finally, Mr. Chairman, let me briefly comment about the Constitution draft now circulating in Afghanistan and the plans for the Loya Jirga. Without going into detail, we have one major procedural concern and four major substantive concerns.

Procedurally, there simply has not been a broad representative body to draft the Constitution nor a broad participatory process to debate it. Also, the operating procedures for the Constitutional Loya Jirga remain opaque. Substantively, while this process always has to be viewed as a decision of the Afghan people, we have the following concerns about the draft in terms of the ultimate goal of peace, stability and democracy:

- Power is concentrated in the executive with very little clarity as to balance of power or mechanisms for accountability.
- the definition of basic human rights, guaranteed under international humanitarian conventions to which Afghanistan is party, are specifically made conditional on subsequent law. In addition, certain freedoms appear to be conditioned on compatibility with an ambiguous statement of Islamic principles. And there is no clear statement assuring equal rights for women.
- the overly dominant role of Islamic law, although not absolute, is a concern.
- the current draft provides for a unitary state, in a country where local and regional autonomy historically have been supreme, and there is no statement as to the authority or powers of the directly elected local, district and provincial councils which are created.
- this Constitution is acknowledged as the product of a provisional and less than fully representative government. It would help ease the situation if the Constitution's provisions were to be reviewed by an elected national assembly.

The people of Afghanistan deserve the continued support of the international community in their journey toward democracy as they contend with radical Taliban and al Qaeda enemies outside and warlords inside trying to destroy their future.

Mr. JANKLOW. Thank you very much, and I apologize to you two gentlemen for having to speed you up.

The Chair recognizes the gentleman from California.

Mr. ROHRABACHER. Thank you very much. There has been some very important points that have been made. Let me not Ms. Haig's observation that most Afghans are moderate people. I think it is important for us to keep that in the back of our minds.

Ms. HAIG. Yes, sir.

Mr. ROHRABACHER. And to express that as often as possible because the imagine that most—that the world has of Afghanistan and its people is totally different from what those of us who know

the Afghan people in a personal way. These are moderate people. They have a devout faith in Islam, but they are not fanatics, and kooks who want to go out and kill people in the name of their religion.

The Taliban was an importation from Saudi Arabia, and not a native religion of Afghanistan, and so it is important for us to keep that in mind. Otherwise, people might have some sort of animosity toward the Afghans.

I personally see the Afghan people as the victims and not the perpetrators. Most of the violence that has been occurring in that part of the world, and thus deserve our wholehearted help, and not the way we would treat people who are monstrous and some kind of fanatical people, because that is not them at all. They are very good-hearted, loyal people with a sense of honor that I have seen among very few people in this world.

I note some other things. We do hear, as the gentleman just said, admonitions about warlords. I think that there is an admonition they have about admonitions about warlords. Let us keep in mind that the warlords, what some often are called warlords are really ethnic leaders who have emerged over the years as just representing their ethnic group who by the nature of reality in Afghanistan have to also be military leaders, and that many of the warlords were the people who helped us drive the Taliban and al-Qaeda out of Afghanistan.

If we start talking about the warlords as being our enemies and include in it the Northern Alliance, what we are doing at a time when the Taliban seems to be resurging across the border to the south is leaving Afghanistan open to a horrible new round of conflict.

So let us not weaken people who helped us defeat the Taliban until we are sure the Taliban are never coming back.

Am I wrong in that there seems to be a new alliance that seems to be threatening Afghanistan with people like Hekmati, who were not in the Taliban, now in alliance with them, and the drug lords who—this is a whole new potential threat; is it not?

Mr. SCHNEIDER. Without any question.

Mr. ROHRABACHER. Okay. And so let us not go up and demand that all of these folks who helped us, General Dostum and the rest of them, who are very imperfect people, let us not be rushing to take all the weapons out of the hands of those people when you have got this threat to the south, and please feel free to jump in on that.

Mr. SCHNEIDER. I think the issues which you raised earlier, that is, that you want to build an Afghan national army and police is right. You need a lot more than the 6,500 now trained. If you can extend the international security presence, you could begin to disarm and demobilize those individual militias, and that is really the—

Mr. ROHRABACHER [continuing]. Assured that the Afghan army was—there has been a lot of concern about who Mr. Karzai is and how he ended up on top of the heap, all right? And as I say, my reading of the situation is that the royal family was about the only people, who people in Afghan trusted who happened to be pushed as well.

Let me note that the admonitions, Mr. Chairman, about the terrorism being financed by drugs, that is absolutely the case. It has been a grievous disservice to the people of Afghanistan to permit this drug-based economy to emerge, because that is all the choices they had.

But let us note that the growing areas, and I went to Vienna and went to the United Nations to talk to them about that, areas that are most profoundly covered with poppies, where you could just see it for mile to mile, happened to be in those areas that are the southern parts of the country that were most prominently supportive of the Taliban, meaning the Pushtin areas, and let us note that.

So if we are going to prevent the Taliban and al-Qaeda from re-surfing back into that country, we have got to handle it very delicately in terms of pushing for a centralization of power when the decentralized power groups were the ones who helped us beat the Taliban. I am happy, just for the record, and then I will give up to the Chairman here, that the constitution does state that there will be free elections in the provinces for their provincial—their provincial whatever we call them, I guess, parliaments or governing bodies.

Ms. HAIG. Councils.

Mr. ROHRABACHER. Councils. It is very good that they will have free elections to determine that in their local areas, and that will in the end help ensure a balance there once we do have a situation where the central army and the central government will be the major force in the society.

Thank you very much, Mr. Chairman, for indulging me, and thanks again. We have all worked together and keep our eye on the basic human rights of the people there, and then if they do that, they will succeed as long as their rights, because they are very brave and courageous people. Thank you.

Mr. JANKLOW. Thank you very much, Mr. Rohrabacher, and I would like to thank all of you panelists for coming. I apologize for the procedures we had, but we have to go forward, and so I am going to adjourn these proceedings.

I would like to state for the record, though, that we are going to leave the record open for 5 days to give—not leave the record open, but give Members 5 days to submit questions, those Members that had to leave, submit questions that they have to any of you panelists if you would be willing to respond to them.

And thank you very, very much for coming here today. It certainly is appreciate, and it sure contributes to the knowledge base that we have to have to try and make some kind of sensible decisions. Thank you.

[Whereupon, at 4:07 p.m., the Subcommittees adjourned.]

