SCRATCHING THE SURFACE:
DEMOCRACY, TRADITIONS, GENDER

Edited by Jennifer Bennett

HEINRICH BÖLL FOUNDATION

Scratching the Surface: Democracy, Traditions, Gender

Acknowledgements

Foreword

In recent years, one has witnessed an all-time increase in the number of countries embracing democracy, without much interruption. Simultaneously, one has also seen a growing of disarray, discontent and marginalization and disempowerment of the people at large, leading to violent crime and social disorder. Such a situation speaks volumes about the very basics of democracy, which in its original and literal term means, 'rule by the people'. It connotes democratic forms of governance and politics, with the notion that, democratic rule promotes civil and political freedoms: equitability, people's political participation and power, thereby ensuring human rights and the much desired social and personal security to its citizens. As well, it aims at reducing political uncertainty and instability. But reality has evaded the common man's expectations. This evasiveness harbours on multifarious reasoning which are intricately linked to the complexity of the entire notion of democracy.

Democracy is not a single-structured phenomenon. Neither should it be, given the differing hierarchy of the legitimation, socio-cultural, economic, and political standings and environs particular to each country. That is to say, there are different forms and methods of political systems, subject to the specificities of a country, considering that many states are not culturally and ethnically homogeneous. However, within this framework of varied concepts and definitions, there are certain sets of institutions and procedures, such as, the act of citizenship, the ruling of a constitution, and the laws and policies which, by and large, lead such democracies. And it is within these formations, that apparent and inevitable structural deficiencies inhabit, which create a space for play, leaning democracies to manipulative politics. Over-arching practices, that trigger further political manipulations and adversely impact a common man include, the predominance of the greater political parties, the tendencies of openly manipulating elections, leaders altering constitutions, weak legislatures and judiciaries and other forms of subterfuge. The ultimate façade of the entire concept of democracy stands stark with military dictatorships, which are now the standard origin of democratic political systems. Thus, autocracy, authoritarian or dictatorial regimes reign, under the garb of democracy, where the concerns are generally political

and not humanitarian. Under such conditions, people are marginalized, resulting in alienation and hostility. These are the faltering pointers in the equation of 'the rulers and the ruled' as citizens do not really rule themselves unless they directly decide laws and policies.

Needless to mention that democracy, so far, is subject to inter and intra national boundaries, and the much needed and desired global democratization is far fetched. And in its absence, the scaling up of the multi-national corporatization, among other forces, is fast depleting the boundary-bound democratic values and its core principles. Consequently, it is striking back the hegemonistic global designs, which inevitably will and is quelling the poor man's desire for a decent life, based on self-choices and popular participation.

Effective democratic governance, therefore, is not yet a reality. However, in spite of its weaknesses, and in the absence of a better alternative, it is sufficiently functioning, and is a prime pro-people political governing system. It is indeed workable, with large margins for innovation, steered by deeper thinking and commitment, geared toward coming up to the expectations of a common man and ensuring civil and political rights.

This book*, Scratching the Surface: Democracy, Traditions, Gender* provides an inside to the multi-faceted nature of democracy and its complex demands. It looks into greater detail, the conceptual anomalies, the structural inequalities and ethical defects, especially in the context of South Asian countries. It deliberates on how institutions and power are structured and distributed, and how these, as a process, have denied the real voices and spaces to the people. It of course, also dwells on the dire need of holding the powerful accountable.

Dr. Jennifer Bennett

Introduction

The work of the Heinrich Böll Foundation in South Asia, over the last twelve years, has been marked by efforts to support and strengthen participation, pluralism and the rule of law in the region. The Foundation was motivated to do so by relying on advice and strong alliances with the local partners, ranking from social activists, civil society organizations and academic institutions.

Moreover, the Heinrich Böll Foundation believes in, and is deeply committed to, working on the promotion of democratic ideas and values, as it is named after the German novelist and Noble Literature Laureate Heinrich Böll (1917 – 1985). Besides being a writer, he served humanity as a social activist and as a strong advocate for Human Rights.

Therefore, introducing a book, is not only an honour and privilege, but falls within the spirit of intellectual openness, which Heinrich Böll lived for.

The Foundation in Lahore, considers it, as its role and mandate, to provide a platform for the exchange of ideas, as well as, supporting sustainable projects, for deepening the mutual knowledge, on issues emanating from within the respective societies.

This book reflects various aspects of democracy, traditions and gender. It builds scholarship, and thereupon, hopefully, will generate more discussion and debate.

We leave it to the esteemed readers to take this debate forward.

Mr. Gregor Enste

on behalf of the team of
Heinrich Böll Foundation
Pakistan / Afghanistan

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TRADITIONAL SOCIETIES AND DEMOCRACY WITH A CITIZENSHIP APPROACH TO DEVELOPMENT

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Since the time of the early Greeks, the concept of citizenship has been discussed in philosophical and political thinking. More recent literature delineates the debates into three main categories: (a) the liberal notions of individuality and equality, including a set of universally guaranteed rights; (b) the communitarian concept, centring on the community and the importance of the common good, as the basis for an individual's understanding of self and belonging; and (c) the civic republican ideas of the importance of care, responsibility and collective action. The very basic meaning of citizenship identity describes the relationship between individuals and the state, and between individual citizens within a community. It is especially in liberal and civic republican thought, that citizenship is identified, within the framework of a nation-state[1].

For development theory and practice, definitions of citizenship became important when, on the one hand, the concept of participatory development, in the mid-1990's, moved towards a focus on people's participation, in the political arena of decision-making and, on the other, when, as a more recent development, the good governance agenda started to turn towards a broader involvement of local government and accountability to citizens, and their needs and priorities[2]. What evolved at this juncture, is also described as, the concept of "participatory democracy".

Following Werbner and Yuval-Davis, citizenship is also to be seen as enclosing "historically inflected, cultural and social assumptions, about similarities and differences"[3]. Negotiations of these similarities and differences, according to them, might lead to "different practices, institutional arrangements, modes of social interaction and future orientation"[4]. Jones and Gaventa go further in describing a time and spatial dimension of citizenship: citizenship becomes

recognized, along people's lives, on personal / home, local / national and global levels[5]. Involving people's identities and agency, and including details of people's everyday life experiences, the concept of citizenship becomes relevant for the debate on development.

Based on these views, the current feminist writings on citizenship revolve around the concept's contested and contextualized notions. Accordingly, citizenship can be defined as a status of civil, political and social rights, as general or as political obligations. And, perceiving citizenship as the "right to voice and be listened to", citizenship rights, can be conceptualized as "dialogical and relational"[6] and can lead to the emergence of *human agency*. Lister also writes: "citizenship, as participation, represents an expression of human agency in the political arena, broadly defined citizenship as rights enables people to act as agents"[7]. Citizenship, therefore, is perceived as both, an outcome and as a process.

Through adopting human agency as a central point, the concept of citizenship relates to the possibilities and the rights to make a choice, articulate needs and interests, and build up a sense of political competence. Besides being a status, including rights and obligations, then, citizenship becomes an active process and practice[8].

The following section of this book focuses on the aspects of citizenship, while analyzing the relation between traditional societies and democratic development. The contributions provide insights to different aspects of citizenship, as the defining principle for people's agency, voice and participation. Contributions from Pakistan and Afghanistan sketch the markers for citizenship, within the respective social and historical contexts, while defining the politics of belonging.

Notes and Reference

1.   See for example: Jones Emma and Gaventa John, *Concepts of citizenship: a review'*, IDS Development Bibliography 19, (Brighton: Institute of Development Studies, 2002); Lister Ruth, *Citizenship – Feminist Perspectives,* (New York: Palgrave Macmillan, 2nd edition, 2003); Werbner Pnina and Yuval-Davis Nira, 'Women and the New Discourse of Citizenship', in Women, Citizenship and Difference, Ed. Werbner Pnina and Yuval-Davies Nira, 1-38, (New York: Zed Books, 1999).

2.   Jones Emma and Gaventa John. Concepts of citizenship.

3.   Werbner Pnina and Yuval Davis Nira. Women and the New Discourse.

4.   Werbner Pnina and Yuval Davis Nira. Women and the New Discourse, 3.

5.   Jones Emma and Gaventa John. Concepts of citizenship, 19.

6.   Lister Ruth, Citizenship. 36.

7.   Lister Ruth, Citizenship. 37.

8.   Mueller Marion Regina. The Culture of Constitutionalism – Feminist Perspectives on Citizenship in Post-Conflict Afghanistan, Unpublished Paper, (Brighton: Institute of Development Studies, 2004).

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        Difference*, ed. Yuval-Davis, Nira and Werbner, Pnina. 1-38,
        New York: Zed Books, 1999.

Intersectionality, Citizenship and Contemporary Politics of Belonging*

Nira Yuval-Davis

In this paper, I'm going to examine the effects of intersecting social divisions on constructions of multi-layered citizenships in Britain. My argument is, however, that focusing on issues of citizenship in the contemporary political context is somewhat misleading. That we need to situate citizenship in the wider context of contemporary politics of belonging which encompass citizenships, identities and the emotions attached to them.

The paper engages with some conceptual clarifications of the notions of citizenship, belonging and intersectionality. It examines more specifically some gendered notions of citizenship and how intersectional analysis should be applied to development work on women's citizenship.

National and Multi-Layered Citizenships

The notion of citizenship has been contested and debated, both in political and sociological theory, and has also come to occupy centre stage in feminist debates during the last fifteen or twenty years (Hall & Held, 1989; Evans, 1993; Lister, 1997; Turner,1993; Yuval-Davis & Werbner, 1999). One focus of the debate has been the extent to which citizenship needs to be seen as an individual relationship between the person and the state, as liberal theory has tended to see it. Or whether the relationship has to be seen as mediated by the (national) community, as republican and communal theorists have claimed in their different ways (Sandel, 1982; Oldfield, 1990; Avineri & Shalit, 1992). Related to this debate is the extent to which citizenship needs to be seen as an abstract category of "the citizen" or as an embodied category, involving concrete people, who are differentially situated in terms of gender, class, ethnicity, sexuality, ability, state in the life cycle etc. Feminists and anti-

racists, who have worked on the question of citizenship, have tended to emphasize the latter and, thus, dehomogenized the notion of citizenship (Pateman, 1996; Kymlicka, 1995; Lister, 1997).

Another related debate has been the extent to which citizenship needs to be seen as a relationship between people and nation-states at all. As Jean Cohen (1999) has argued, the notion of citizenship was originally conceived in a different political context – in the Greek Polis, the city-state. Here, citizenship meant the reciprocal relationship of "rule and being ruled". In contrast to this participatory model of citizenship, another polity, the Roman Empire, developed citizenship to be a form of legal status, with specific rights and responsibilities. Jean Cohen argues that in the nation-state, these two different meanings of citizenship have come together. However, this has been a specific historical development within a specific historical moment. Many would argue that in these days of globalization, citizenship has, once again, diverged from the liberal model of citizenship in a nation-state. Yasmin Soysal (1994), for instance, has discussed the notion of a regional European citizenship; David Held (1995) has discussed citizenship of a world government; and Mary Kaldor (2003) has considered citizenship in a global civil society.

In my previous work, I have developed the notion of the "multi-layered citizen" (1997; 1999a). Rather than viewing citizenship as attached or not to the nation-state, I have pointed out that these days – and probably this has always been the case – people are citizens simultaneously in more than one political community. Following T. H. Marshall's (1950) definition of citizenship of "full membership in the community with all its rights and responsibilities", I have argued that people's lives are shaped by their rights and obligations in local, ethnic, religious, national, regional, transnational and international political communities. This is true for all people, although the lives of migrants, refugees and people of ethnic minority origins are probably affected by this multiplicity of citizenships even more than those of people who belong to hegemonic majorities. In other words, people's

citizenships are both formal (i.e. in relation to particular states) and substantive as related above (Castles & Miller, 1998).

People's citizenships, in their different layers of citizenship, affect and are affected by their citizenships in other layers, of state and non-state polities, as collectively, they have differential political powers and often differential hegemonic political projects. However, it is also important to remember that people's citizenships are also affected by their locations within each polity, as they are constructed (often in unstable and contested ways) by other intersecting social divisions, such as gender, class, stage in the life cycle etc. In this sense, the notion of multi-layered citizenship is firmly attached to those who view citizenship as embodied. Similarly, while multi-layered citizenship does not give monopoly to citizenship in nation-states, it recognizes that while states' roles might be changing in today's globalized world, they are definitely not withering away, as some wishful thinking, of some cosmopolitan theorists, would like us to believe. With the growing securitization of today's borders and boundaries (Bigo, 2002; Yuval-Davis, 2005), with the growing impossibility to gain refugee status in any straightforward legal way, and with the threat that in the future, even if it is gained, it would not be constructed as a permanent status and could be withdrawn at any time the state sees fit – such a view would be dangerously naive.

It is for this reason that I would like to turn now, to examine the notions of belonging and the politics of belonging, and to explain the ways in which they can enrich and clarify our discussions of contemporary citizenships.

Belonging and the Politics of Belonging

The difference between citizenship and belonging can be demonstrated by "the cricket test" of Norman Tebbit, who was a minister, under the Conservative government of Margaret Thatcher in Britain during the 1980's. He claimed that if people watch a cricket match between Britain and the team of the country from which their family originated, like

Pakistan, and cheer the latter team, this means that these people do not really "belong" to Britain. Tebbit used the cultural marker of team sports. Enoch Powell, was expelled from the Conservative party about ten years earlier, for predicting "rivers of blood" to flow in British cities, unless all those who do not belong there would be returned to their "proper" countries. He argued that "the West Indian does not by being born in England, become an Englishman" (quoted in Gilroy, 1987:46). Powell used the racial marker to differentiate between citizenship and belonging. Tebbit and Powell were both dealing, not only with people who have formal British citizenship, but also many of those who were born and brought up and educated in Britain, but both in their own ways, prioritized politics of belonging over politics of citizenship.

In this politics of belonging, unlike that of citizenship, identification – of self and especially of "the other" – is crucial. People who are constructed to be members of other ethnic, racial and national collectivities, are not considered "to belong" to the nation-state community, even if formally they are entitled to. Adrian Favell (1999) defined the politics of belonging as being about "the dirty work of boundary maintenance". Where legacies of Empire, civil law and international law step in to open boundaries for people born elsewhere to settle in the territory of the nation-state, those who are concerned about the "authenticity" of the national community would be anxious to limit the number and the circumstances under which such an entry would be granted. In the "banal nationalism" (Billig, 1995) common sense, there can be only a certain number and no more, who would undergo the process of "naturalization" (the official name for the legal process via which those who are granted citizenship in a state in which they had not been born) before the imaginary fixed natural / authentic nature of the national community would be irretrievably damaged.

The anxieties and fears experienced – and advocated - by nationalist gate-keepers point to the second crucial difference between citizenship and belonging – which is the emotional dimension that is so crucial to the politics of

belonging. People **love** their people and their country, they **hate** the enemy and they **fear** invasion and pollution of their "culture and tradition". Belonging is taken for granted, until it seems threatened, and then, its articulation plays a central role in the various discourses of the politics of belonging. These discourses appear not only in popular racialized and nationalist exclusionary discourses. The importance of belonging – to the family, to the community, to the nation – is constructed as the major focus of much of both psychological and sociological theories. Weakening and disintegration of "the community" is seen to play a destructive role for the individual and for the collectivity. But, of course, the role of emotion in the politics of belonging is not limited to the well-being of the members of the polity. It is also what motivates people to be willing to, both kill and to die, for the sake of the nation.

When I say "people", however, this is somewhat misleading. Although, women always constituted an integral part of the militaries, and when there was no differentiation between the battle front and home front, they also participated in the killing, it was not until the late 20th century that formal prohibitions on their combat roles started to disappear. I have no space to discuss this here (see Yuval-Davis, 1997 ch. 5). However, the different constructions of women in the military, is only one of the signifiers of the gendered character of citizenships and their rights and duties.

Generally, women belong to and are identified as members of the collectivity in the same way that men are. Nevertheless, there are always rules and regulations – not to mention perceptions and attitudes – specific to women. Such constructions involve a paradoxical positioning of women as both symbols and "others" of the collectivity. On the one hand, women are seen as signifiers of the collectivity's honour ((Yuval-Davis & Anthias, 1989; Yuval-Davis, 1997), in the defence of which nations go to war "for the sake of women and children", to use Cynthia Enloe's (1990) term). On the other hand, and at the same time, they are a non-identical element within the collectivity, and subject to various forms of control in the name of "culture and tradition". However, such a

formulation reifies the notions of "culture and tradition" and homogenizes them, often, under hegemonic formulations. Cultures and traditions are always contested, as well as, constantly shifting and changing. One of the major debates in the arena of "human rights" (which, in the 1994 UN Human Rights Conference in Vienna, has been termed as the debate on "Asian values" (Ignatief, 2001; Herman, 2002), has been, to what extent communities have the right to keep their collective cultural traditions, even if they are in conflict with accepted rights of individual men and women in those communities. Often, the debate is formulated in such reified terms that any recognition of women's rights is equated, by those who support collective cultural rights, with westernization and secularization. However, as feminists from all over the world have pointed out, the real debate is generally about the right of particular patriarchal leadership to keep its power political project, and the acquisition of women's rights often means, more changes in the communal power relations, than anything else. The freezing of cultures in a highly selective manner, beneficial to them, is frequently one of the major tactics of fundamentalist leaderships.

It is important to note, however, that not all women are situated in the same way vis-à-vis their national "roles". Some women, for example, are considered to be more "suitable" mothers – as a result of their ethnicity, class, religiosity, ability, stage in their life cycle – than others. Somewhat similar characteristics can also be found, when we examine other dimensions of citizenship rights and duties, from political participation to welfare benefits. That is why, no discussion of citizenship and belonging can be complete, without applying to it an intersectional analysis. But what kind of intersectional analysis?

Intersectionality

Some of us (Hooks, 1981; Bryan *et al.*, 1985; Anthias & Yuval-Davis, 1983; 1992; Harding, 1991) have been working on / with intersectional analysis since the late 1970's and early 1980's. However, as far as we know, the first one to actually use the term "intersectionality" was Kimberley

Crenshaw, a Law professor in Columbia, who first used the term in 1989, when she wrote about American Black women and work.

In terms of public policy discourse, several discussion documents on intersectionality (such as that of the Working Group on Women and Human Rights, at the Center for Women's Global Leadership in Rutgers University, and of the Women's International League for Peace and Freedom, (WILPF) UK Section in 2001) point out to the Beijing Platform for Action, as including the core elements of an intersectional approach. It calls for governments

> "to intensify efforts to ensure equal enjoyment of all human rights and fundamental freedoms, for all women and girls, who face multiple barriers to their empowerment and advancement because of such factors as their race, age, language, ethnicity, culture, religion or disability or because they are indigenous people".

However, it was in the Expert Meeting on Gender and Racial Discrimination that took place in Zagreb, in November 2000, as part of the preparatory process to the UN WCAR (World Conference Against Racism), that a more specific analysis and a proposal for specific methodology for intersectionality had been attempted. The attempts to explain intersectionality in the reports that came out of this meeting are confusing, however. The imagery of crossroads and traffic, as developed by Crenshaw, occupies a central space.

> "Intersectionality is what occurs when a woman from a minority group... tries to navigate the main crossing in the city…The main highway is "racism road". One cross street can be Colonialism, then Patriarchy Street… She has to deal not only with one form of oppression but with all forms, those named as road signs, which link together to make a double, a triple, multiple, a many

layered blanket of oppression" (Patel in WILPF (Women's International League for Peace and Freedom), UK).

Later on, in the paper, I expand upon the various ways in which this imagery has been interpreted by different working parties and NGOs, and some of the methodological issues that emerge out of them. Here, I want only to point out two central issues crucial to the utilization of the notion of intersectionality in analysis of citizenship and belonging.

Firstly, is the debate between the additive and the mutually constitutive interpretations of intersectionality. The crossroads imagery is inherently additive, constructing each discriminatory / disadvantage power vector as autonomous. Although, more sophisticated and inclusive of more multiple causes of discrimination / disadvantage, it basically echoes the "triple oppression" approach of organizations like Organization for Women of African and Asian Descent (OWAAD) (Bryan *et al.,* 1985) that saw gender, race and class as accumulatively oppressing Black women. Floya Anthias and I argued against this in our (1983) article (also see Anthias 2002; Yuval-Davis, 2005), pointing out that although each of these vectors has a separate ontological basis, in any concrete reality, the intersecting oppressions are mutually constituted by each other. There is no meaning to the notion of "Black", for instance, which is not gendered and classed, no meaning for the notion of "woman" which is not ethnocized and classed etc.

This is a very important point when we discuss issues of citizenship and belonging, because so much of the discussion on these issues, inspired by identity politics, attempts to homogenize the differential meanings of such identity notions such as Blacks or women etc.

The reason this is possible, within the discursive framework of identity politics, lies in the second central issue of any theorization of an intersectional analysis. It concerns the fact that some of the approaches to intersectional analysis do not differentiate between the analytical levels of social

locations, identities and political values. In this way, identities become reified by references to uni-dimensional fixed locations, and political debates become constrained by "political correctness".

Only an intersectional analysis of citizenship and belonging, which does not homogenizes citizenship, and does not construct it against other citizenships, but in correspondence with them, and can differentiate between locations, identities and political values, would have any chance of becoming genuinely non racist and – not incidentally – non sexist.

Intersectional Analysis and Development Work

When discussing issues of intersectional and women's citizenship and politics of belonging, it is important to note the ways intersectional analysis has been introduced to human rights and development discourse, as part of gender mainstreaming. Overall, this has been a progressive step, as the intersectional analysis has been introduced for "the full diversity of women's experiences" to be considered, and in order "to enhance women's empowerment" (Center for Women's Global Leadership, 2001:111). As the background briefing paper, of the Working Group on Women and Human Rights on intersectionality, of the Center for Global Leadership claims, "developing of new and augmenting of existing methodologies, to uncover the ways multiple identities converge to create and exacerbate women's subordination", are critical.

> "These methodologies will not only underline the significance of the intersection of race, ethnicity, caste, citizenship status for marginalized women etc. but serve to highlight the full diversity of women's experiences" (Center for Women's Global Leadership, 2001:1).

The methodology suggested by the working group has four distinct components:

Data collection, which depends on the availability of desegregated data of various social, legal and identity categories of women. The need for desegregated data was highlighted during the UN World Conference Against Racism (UN WCAR) in several forums, including by Mary Robinson, the UN High Commissionaire for Human Rights, at the time, who organized the WCAR.

Contextual analysis, which would probe "beneath the single identity to discover other identities that may be present and contribute to the situation of disadvantage".

Intersectional review of policy initiatives and systems of implementation, in terms of their efficacy in addressing the problem faced by different intersectional identities.

Implementation of intersectional policy initiatives based on the above.

This policy methodology seems very impressive, and a step forward, to much that is being carried out in the field. However, it also raises some very difficult and complex empirical, as well as, analytical questions. The problems would start with the construction of categories of the desegregated data. They, by definition would be unambiguous and mutually exclusive to each other, in contradiction to what the situation often is in the field. As Ashish Nandy (1983) points out, even such an apparently simple category of ascription, as membership in a religious community, is often ambiguous and multiplex. This is so, because people in many parts of the world may associate with more than one religion, at the same time and / or worship in completely different ways, and along different lines of religious authority, under the same nominal religion. Ben Anderson (1991) has pointed out the devastating effects, the introduction of census categories – which are mutually exclusive - have had on colonial societies, in which, often,

peaceful co-existence of communities usually depended on categorical opaqueness. Also, there is no differentiation in these categories, between categories, of positionality and social identities. This could render invisible, the crucially important political struggles, that are being carried out in many parts of the world. These struggles, problematize and contest boundaries of social collectivities that are being naturalized, by specific hegemonic political projects, in order to exclude and marginalize certain people in their societies. The point of intersectional analysis is not to probe, so as to find "several identities under one" – as the suggested above methodology suggests. This brings back the fragmented additive model of oppression, and essentializes specific social identities. The point is to analyze the differential ways, in which different social divisions are concretely enmeshed and constructed by each other, and how they relate to the political and subjective construction of identities.

This means, that the field methodology should carefully separate analytically, and examine separately, the different levels in which social divisions operate in the communities where they work, and which were discussed earlier in the paper, that is – institutionally, inter-subjectively, representationally, as well as, in the subjective constructions of identities. Only when such a contextual analysis would be carried out, can there be an intersectional review of policy initiatives and systems of implementation. Such a review should involve, in addition to the policy makers, as many people on the ground as possible. The differential positioning of the participants in such a dialogue, from which they gaze at the situation should be acknowledged, while they should not be considered as representatives of any fixed social grouping. This is the only way in which intersectional analysis can successfully be integrated into development work, which intends to enhance women's citizenship democratically.

Conclusion

In the post 9/11 (and now 7/7) times, "strangers" are seen not only as threat for the cohesion of the political and cultural community, but also as potential terrorists, especially, the young men among them. And who is "a stranger", is continually being modified and contested as well, with growing ethnic, cultural and religious tensions, as well as, in between societies and states. The politics of belonging has come to occupy the heart of the political agenda, almost everywhere on the globe, even when reified assumptions about "the clash of civilizations (Huntington, 1993) are not necessarily applied.

Engaging in the politics of belonging might seem a distraction, when there are so many other urgent local and global issues, from poverty to HIV / AIDS to global warming, and when so much of "glocal" power relations are market related. This has been, however, the traditional mistake of the Left. In equating emotionality with irrationality, and therefore, as irrelevant to the "real" important political issues, they have left the field open for the Right to (mis)use and benefit from.

Going back to the point made earlier in the article, we need to separate analytically – and therefore also politically, between the three levels of: social and economic locations; identities and emotional attachments; and ethnical and political value systems. Recognizing the crucial importance of identities and emotional attachment to people's intersected individual and collective lives, does not mean that the related political projects have to condone essentialist constructions of such identities and attachments. But without a serious and respectful engagement in people's politics of belonging, fundamentalists of all kinds will continue to excerpt more and more domination in "glocal" arenas. We cannot afford this.

*   Parts of this paper are based on my forthcoming article, "Human rights, human security and contemporary gendered politics of belonging", Current Sociology.

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Citizenship and the Nuanced Belonging of Women

Farida Shaheed

In this paper, I examine the concept of citizenship and what this means to differently situated groups of citizens, with particular reference to Pakistan. I start from the premise that citizenship is essentially about belonging, and, therefore, about collective identity. And that the belonging conferred by state-citizenship is far from being the only collective identity of the state's citizens. People's lives are situated within, and modulated by their *simultaneous* belonging to multiple sub-state collective identities[1] that impact the state-citizenship relationship. This applies to both men and women. But the implications are dissimilar, since women, more than men, are made the repositories of a community's culture, which is the manifestation of collective identity. I argue that in countries like Pakistan, women are severely disadvantaged, when negotiating their state-citizen relationship, because the institutions of sub-state collective identities to which they belong, interpose themselves between women and the state. Intermediary collective identities impact the quality of citizenship to such an extent that it calls for a re-thinking of the notion of a single homogenous concept of "citizenship". It is in this respect that I use the term "nuanced belonging", in a manner, similar to the concept forwarded by Nira Yuval-Davis (this volume) of a multi-layered concept of citizenship[2].

Of Belonging and Collective Identity

At its simplest, citizenship is the conferring of official belonging to a state. As an official stamp of "paid up" membership to a collective entity, citizenship gives an identity. Additionally, it provides a status that implies certain rights and entitlements. In its role of conferring belonging, citizenship is about *both* inclusions *and* exclusions: about who belongs and is a citizen but equally – and simultaneously - who is not a citizen, and, therefore, does not belong.

Belonging is quintessentially about collective identity. It is always accompanied by, and intrinsically linked to notions of self. As such, collective identity plays a central role in concepts and processes of inclusion / exclusion that define who we are and who we are not; what we can do and what we cannot do. Neither identity nor belonging are permanent features, however. These are evolving and contested notions. Every "collective identity" is in a constant state of flux: being defined and re-defined in response to external factors and internal reflection. Collective identity, thus, entails contestations over definitions, linked to the underlying structures and dynamics of power, in a given situation that stem from access to and control over economic, political, and cultural resources. Collective identity is pivotal for women, their spaces, their rights and their lives. All societies have to address three incontrovertible facts of life: birth, death and the existence of two sexes (at least). Consequently, all societies are obliged to construct gender systems defining the roles, responsibilities and rights of girls / women and boys / men. Whether of great inequality or more equality, the constructs of gender play a central role in people's self-definition as a social collectivity.

In existential terms, there simply is no plural of "I"; no two people are identical, not even identical twins, since each individual is a unique combination of existential experience and life choices. Consequently, whenever people speak of a collectivity – in other words, whenever people elect to use the pronoun "we" – they select certain markers of identity that link them with others. But at no point are all the markers of a person's identity selected. A collectivity can be as transient as the people gathered at a bus stop for a few minutes, as happenstance, to more conscious identities of professional affiliations, class, ethnic or linguistic identities. Regardless of how permanent or transient this collective identity may be, it is always about selections and negotiation. This is not to imply that people divide themselves into different selves, but to emphasize that people do select and forward different aspects of their selves, depending on the situation at hand.

The conferring of belonging is not to be confused with the conferring of equality, however. Belonging, to a distinct group identity, does not equalize all people within that collectivity. Just as not all the members of a given community or family are equal, so too, not all citizens are equal. I have argued elsewhere that two important myths relating to nation-states have immediate implications for women and their rights, as citizens[3]. The first misconception is that equal citizenship and rights for all was a fundamental principle in the creation of nation-states. In fact, the concept of all citizens being entitled to rights, by virtue of citizenship, is a relatively new and evolving concept of the 20th century. Today, "citizenship" is located squarely within the framework of nation-states, while the term "citizen" derives from city and grew from city-states. In any event, neither in the historical city-states nor in contemporary nation-states, has citizenship ever meant equality of all people within that state's boundaries. After all, "democracy" in ancient Greece was limited to some male patricians, excluding most of the population. Similarly, the 1789 Declaration of the Rights of Man and the Citizen of the French Revolution, taken as the reference point for the contemporary concept of citizens' rights, excluded all women and various categories of men. A distinguishing feature may be that while city-states and ancient Greek democracy promised no equality or inclusion of all, the "liberty, equality, and fraternity" of the 1789 Declaration erroneously suggested a promise of being inclusive of and applicable to all citizens.

Nation-states actually started with exclusions: of slaves, gypsies, and Jews, of Protestants in Catholic majority states and Catholics in Protestant states and, of course, the exclusion of all women everywhere. Ironically enough, the 1789 Declaration took away women's rights. Their exclusion from the charter of human rights was so complete that Olympes de Gourges, a Dutch woman, drafted a Declaration of the Rights of Woman and the Citizen in 1791. For this, de Gourges was castigated, called hysterical, irrational, unreasonable, and generally lacking in character. Indeed, de Gourges paid the ultimate price for daring to speak of women's rights as citizens. In 1793, "accused of wanting to be

a statesman, and forgetting the virtues suitable to her sex", de Gourges was guillotined[4]. Women have, therefore, always had to negotiate their inclusion in the collectivity of citizens. As Pnina Werbner notes, the historical paradox of modernity is that women's reification occurred at the very moment of male emancipation[5].

The second myth is the proposal that by virtue of conferring belonging, the nation-state would have a direct relationship with its citizens in all matters, exclusive of any other collectivity. Even though every state has intermediary institutions, none are considered "legitimate" for purposes of negotiations and interaction with the state except those sanctioned by the state itself. In theory, all aspects relating to an individual's life are meant to be administered through the state's instruments or institutions, that is, the bureaucracy, judiciary, the elected tiers of government etc. Likewise, the theory is that grievances, demands and opposition should be expressed and resolved exclusively through those channels designated as legitimate by the state, such as, the political process, collective bargaining processes and the judiciary. Theoretically, therefore, there are no intervening structures between the state and its citizens that are not somehow integrated into state-erected structures. The reality bears little resemblance to the theory, and even theoretically, the state has always accorded a special status to the family. Not only is the family accepted as a legitimate sub-state entity, in this sub-state collectivity, the state exceptionally delegates rights to persons outside the formal state structures, that is, to the family males and in particular to male heads of household. This attitude is in keeping with the original concept of citizens which was restricted to the male "and his family", in which women and children were essentially considered non-persons[6].

Colonial States and Belonging

Sub-state collectivities, with determining power over people's lives, are even more pronounced in colonized societies, where the trajectory to independent statehood did not follow the evolutionary pattern characteristic of western

European states. In colonized societies, the process of modernity was inseparable from the process of colonization, resulting in fractured and fragmented societies, in which the disconnection between subjects and the ruling authority became more complex[7]. Colonial rule in India, for example, did not displace pre-existing forms of self-governance. Such systems – e.g. village elders, tribal leaders etc. – continued to exist parallel to the formal state institutions. They were neither integrated into the state nor were they significantly displaced, in many spheres of people's lives, during colonial rule or even after independence. Hence, these structures of power continue to mediate the state-citizen relationship, in addition to whatever constraints are imposed by family structures.

Further complicating future state-citizen relations, the colonial state itself formally differentiated between people. During the transition period from colonial rule to self-governance, for instance, the Government of Indian Act of 1919 (and later, the Government of Indian Act of 1935) bifurcated citizens-in-waiting into "general voters" and "others". The "general" voter in fact was a Hindu male. The "others" were all those other people who were deemed significant enough to be accommodated in the state's decision-making process. Women were finally acknowledged in 1935, and were added as the last "grouping" to the category of "others", which included, Muslims, Sikhs, commerce and trade, and landlords. In distinction to male voters, women were clearly a sub-category of a male-defined collectivity, be it the "general Hindu male voter" or any other group. They were notably not considered in any other capacity than their female identity, such as, traders or landlords, regardless of their actual work / economic status.

In the 19th and 20th centuries, the ability to vote became, in many ways, a litmus test of the belonging conferred by citizenship. When women started demanding the vote during the suffragette movement, they were, in fact, demanding a re-negotiation of the rules of belonging to the state, a redefinition of the collective identity embodied in or implied by citizenship. The overt demand for inclusion in the state's decision-making process, through the vote, implicitly

demanded a readjustment of the parameters of the state's collectivity and redefinitions of citizenship. This is evident in the famous slogan "no taxation without representation" coined by British suffragettes that contested the rules for state-citizenship relations.

Pakistan's Constitutional Exclusions

Many feminists point to the frequent contradictions between constitutional equality clauses, on the one hand, and *de jure* inequality of sub-constitutional laws (especially in personal law matters), that render citizens unequal, on the other. But exclusionary boundaries within the citizenry are often indicated by, and included within, the constitutional provisions themselves. Not infrequently, constitutions indicate what the state considers to be acceptable exclusion (by reserving certain rights or offices) and what is unacceptable, and to be removed through, for example, affirmative actions. The Constitution of Islamic Republic of Pakistan implicitly recognizes factors of social exclusion in the clauses, aiming to safeguard non-discrimination between citizens, and in its provisions, for affirmative actions for specific groups of people. These include gender, religion, race and language, geographical disparities (both in terms of province and rural-urban divides within provinces), and, of course, class. Even before the innumerable (and damaging) amendments introduced after 1979, the Constitution contained the basis for excluding non-Muslims. Article 2 declares Islam to be the state religion; Article 41 reserves the office of head of state (President) for Muslims. Inequality on the basis of religious affiliation – or group belonging - was further confirmed by virtue of subsequent amendments that introduced separate elections for non-Muslims[8]. Article 31 requires the state to ensure that Muslims are able to live according to Islam, and Part IX provides measures, for ensuring that all laws are in keeping with Islam and the modalities for achieving this. No similar provisions exist to safeguard the rights of other religious collectives of citizens, making this a sphere of state sanctioned exclusions, of nuanced belonging.

Even when formal equality in the law exists, huge gaps separate *de facto* and *de jure* rights of citizens. For example, universal franchise was agreed upon, in principle, at independence in 1947. Yet, Pakistani citizens (men and women alike) of the Federally Administered Tribal Areas (FATA) were not formally accorded voting rights, until as recently as 1996. Amongst other things, this resulted in a lack of popular representation within the parliament, and a local system that privileged the conservative local elite, while simultaneously, strengthening their hold over that collectivity of citizens. The net consequence for women has been, to enmesh them in a gender system, which is far more severe and controlling, than even the rest of the country.

Starting in the late 1970's, with the military *coup d'état* of General Zia-ul-Haq, Pakistan underwent an aggressive reshaping of a unitary collective identity. This unitary identity gave primacy to a particular definition of "Muslim-ness", and a referencing to Islam, in all political and social discourses; Islam became the cultural approval tag for all citizens, regardless of their personal beliefs and faith; belonging nuanced by the state's version of Islamic requisites. The military regime sought to forcibly impose, its new version of a collective identity, on all citizens. Much has already been written about this, and it is not possible to go into the details in this paper. However, suffice to say, that making the male Muslim the reference point for being a bona fide citizen, leaves non-Muslim men and women – together the majority of the state's citizens - unable to ever achieve the status of a "fully paid up" member of that collective identity, even on a *de jure* basis. While all citizens negotiate their belonging in ways intended to influence the collectivity, the ability to reshape collective identities is dependent on the capacity to exercise influence in negotiations. This ability derives from the resources a group disposes of within the existing structures, systems and balances of power. Developments, since the late 1970's, have made it exceedingly difficult for the majority of the state citizens (females and non-Muslim males) to negotiate belonging, in a manner, that could reshape the concept of a national collectivity, to be more inclusive of their particular reality and priorities. At the same time, failure to

successfully renegotiate the contours of "Pakistani identity", will leave these citizens permanently handicapped, with an impaired belonging.

Negotiations, at the very least, entail some form of interaction with others. In Pakistan, the basic question is how women can negotiate and reshape the state's collectivity, when they hardly interact with the state's agents, be they, the administrative bureaucrats, or officials responsible for law and justice or political representatives.

Women Citizens and the State in Pakistan

A national study conducted by Shirkat Gah – Women's Resource Centre – indicated that, women's interaction with state institutions is so minimal, as to beg the question of whether women's citizenship is more imagined than real[9]. The study triangulated data from a nationally representative survey of over 1,600 female respondents, focus group discussions, and in-depth interviews[10].

The issue of whether women's citizenship was more imagined than real, arose due to the study's revelation of the extremely limited interaction of female citizens with the state. This applied, whether in terms of political participation, as a means of exercising some inputs into state decision-making; in terms of accessing development and regulatory institutions; or in terms of the judiciary. For example, while 60 percent of the women respondents had exercised their right to vote in some election or the other (compared with over 80 percent of the men), an overwhelming 96 percent had never attended any type of political event of any sort, be it a meeting, a rally, briefing session etc. In contrast, over half the male respondents had, not only voted, but had attended some other manner of political event.

Since independence, women have been mobilized as vote-banks in the electoral process. But they have rarely been included in the ranks of decision-makers as candidates, members of the executive committees of the political parties, or even as general party members. Party membership

records are poorly maintained in Pakistan. The available information shows, that even amongst the political parties considered to be more liberal or progressive, including on issues pertaining to women, female membership is not more than 20 percent (e.g. the Awami National Party and the Pakistan People's Party). Moreover, several political parties that define their agendas in religious terminology, formally exclude women, such as the *Jamiat-e-Ulema-Islam*. Women's representation in party executive committees is even lower, peaking at some 14.3 percent in the Pakistan People's Party, headed by a woman, Benazir Bhutto[11].

Women's presence in the assemblies has been low. Starting with two women members of the Constituent Assembly in 1947 - both already elected to the Central Constituent Assembly of India in 1946[12]. After fifty years of independence, the assembly of 1997-99 had seven women, representing less than 3 percent of the total 217 seats. As a count, this is an increase of one woman per decade of independence. In between, thanks to affirmative action and reserved seats for women, the highest number was 24 when four directly elected women joined those on women's reserved seats. Since then, new affirmative actions in 2002 have bolstered women's political representation significantly, and their presence now accounts for some 20 percent of the houses of parliament[13]. Additionally, in 2001, the "Devolution of Power Plan" massively increased women's presence, in the local government system, by reserving seats for women (and other disadvantaged groups). Quotas of between 25 and 33 percent brought in almost 40,000 women, into the local political process, in the first round of elections. Interestingly enough, the ratio of male to female contestants indicates, how belonging to sub-state collectivities impacts women's participation in state political processes. Women from non-Muslim communities have fared better, for instance, with a 15:1 ratio of male to female candidates, compared with the overall 70:1 ratio in the 1970-97 period. But collectivities other than religion bear influence. For example, the Sindh province has a better record of women candidates in the political process than other provinces, pointing to the influence of ethnic / provincial belonging (in 1988 the male-female

candidates' ratio was 5:1). Indeed, the *Imagined Citizenship* study revealed such severe provincial differentiation, that consolidated national survey results submerged all rural-urban differences, which only became apparent after disaggregating data by province.

An interesting insight was that women's disinterest in politics was a function of their defining politics. For instance, who stands for the political office and wins or loses elections, was a process not of interest, because no matter who wins, it had little or no impact on their lives. Indeed, only 11 percent of the respondents could name their provincial or national assembly representative compared with a majority of the male respondents. On the other hand, women said they were interested in and frequently discussed the conflicts in Bosnia, Kashmir and Afghanistan, for example, but did not define this as "politics".

Equally startling, is the paucity of interaction between women and state institutions. With the exception of the departments of health and education (where some 66 percent women had, at some point, met or interacted with some official state representative or the other), only a maximum one-third of these female citizens had ever had any dealings with a state representative of any other department. This also includes the Social Welfare Departments, which have one of the government's most extensive outreach programmes[14]. The figures dropped dramatically to insignificant numbers, when it came to representatives of the state's law and justice departments. For most women, the outer limit of their access to forums for redress and resolution of problems is the extended family. And, though still a minority, more women are able to access informal dispute resolution forums than the state institutions. It is with respect to access to justice that the obstructive nature of sub-state collective identity, interposed between women and the state, which is perhaps most striking. It also reflects the state's failure to reach its citizens, male or female, since the majority view the police as part of the problem rather than the solution, and see the justice system, as inefficient and inaccessible. Many city women stated that procedural obtuseness blocks access to state

institutions, reducing the importance these have in their lives, and negating any potential benefits the state may offer.

Whether the issue is one of political participation, of development benefits or of justice, women respondents identified two basic hurdles to accessing the state. The first is family men, who operate within the given patriarchal structures and culture; the second consists of the local power elite (*Sardar, Chaudhry* or *Wadera* for example) that dominate, both the non-formal and formal institutions in their immediate community.

It is also worth noting, that women expressed less interest in exercising decision-making in community or state processes than in decision-making power over their own lives: at a personal level and within their families. In prioritizing this level of decision-making, they demonstrate an instinctive understanding of the multiple and complex layers of "belonging" (that start from the immediate personal life) and how this can block, distort, or mediate belonging to the larger collectivity defined by the state, nuancing their citizenship status. The personal everyday is where citizenship gets defined on a day to day basis; where rules of exclusion and inclusion prevail which determine your ability to interact and negotiate with different players in the field - whether social or cultural, political or economic, formal or non-formal. To a large extent, personal status law matters define "citizenship", and who you are, starting, for instance, with the basic possession – or lack of – a national identity card, that confers official belonging within the state boundaries, and is often a pre-requisite for accessing state benefits, such as voting, obtaining a bank loan etc. Personal status laws, that have the effect of converting women into legal minors, prevent their full belonging in the state collectivity. It is through the dynamics and rules set for the immediate everyday life, that the gendered division of rules and spaces operate, to lock women (and men of less powerful sub-sets of citizens) out of – sometimes negating – the rights and entitlements, technically due to citizens, by virtue of their citizenship.

Conclusion

I have argued that citizenship is essentially about belonging to a collective identity. But that this belonging is nuanced for different groups of citizens, by virtue of the multiple other collectivities to which they belong, such as family, clan and tribe, but also, gender, religion, class and geographical location within the state. The result is a nuanced belonging that differentiates between groups of citizens, both as an official policy (e.g. in constitutional and legal provisions and state policies) and through the effect of co-existing processes and structures of self-governance, that are not integrated into the state system. My contention is that all collective identities are constructed, and, therefore, in a constant state of negotiation. For women, their affiliation and membership of different sub-state collectivities determines their spaces and rights. The related dynamics are interposed between women citizens and the state, mediating their relationship with the state: whether and the extent to which interaction exists, as well as, the nature and quality of the interaction(s) a particular citizen has with the state's organs. This has relevance to development practitioners, as well as, academics, since various, and sometimes conflicting impact of multiple collective identities, modulates what development benefits a person can access. Unless the issues presented by these sub-state collective identities are addressed, women's capacity to negotiate belonging, in ways that reshape the collective identity to accommodate their experiences, their needs and their dreams will remain minimal.

Notes and References

13.   Collective identities may also be supra-state, but my concern here is with the sub-state entities.

14.   See also Pnina Werbner and Nira Yuval-Davis: *"Women and the New Discourse of Citizenship"*. pp. 1-38, in *Women, Citizenship and Difference* Eds. Nira Yuval-Davis and Pnina Werbner. Zed Books. London & New York: 1999.

15.   Farida Shaheed. "Women, State and Power: The Dynamics of Variations & Convergence Across East and West", pp. 53-78, in Engendering the National State. Vol.1. Eds. Neelum Hussain, Samiya Mumtaz, Rubina Saigol. Simorgh: Lahore, 1997.

16.   Agnes Callamard, 1997. "Qu'y a T' II Dans Un Mot? What's in a Word". First Draft August 11, 1997. p. 4.

17.   Pnina Werbner. "Political Motherhood and the Feminization of Citizenship: Women's Activism and the Transformation of the Public Sphere", pp. 221-245, in Women Citizenship and Difference. Zed Books. London & New York: 1999 p. 224.

18.   Richard J. Evans. The Feminists, Croom Helm. London: 1977, Margaret Stacey & Marion Price. "Women and Power", pp. 33-52, Feminist Review, Vol. 5. 1980, Agnes Callamard op. cit.

19.   Farida Shaheed. Women, State and Power… op cit. 1997.

20.   This was finally overturned in 2000. Nevertheless, the electoral ballots continue to be separated for a minority sect declared non-Muslim under General Zia-ul-Haq.

21.   Farida Shaheed. Imagined Citizenship: Women, State & Politics in Pakistan. Shirkat Gah. Lahore: 2002.

22.   The study also used a small control sample of men in the survey.

23.   Shahla Zia & Farzana Bari. Baseline Report in Women's Political Participation in Politics and Public Life in Pakistan. Aurat Publication and Information Service. Islamabad: 1999.

24.   The two women were Begum Jahanara Shahnawaz and Begum Shaista Surawardhy Ikramullah.

25.   Newsheet, 2002, Vol XIV, No. 4, Shirkat Gah - Women's Resource Centre/WLUML, page 1. There are 60 reserved seats in the national Assembly, 128 in the four provincial assemblies and 17 in the Senate. Ministry of Women Development, Social Welfare & Special Education, Government of Pakistan, Implementation Matrix Pakistan's

National Policy for Development & Empowerment of Women. pp. 27.

26.   The study checked for interaction with the departments of: health, education, finance / banking, railways, telecommunications and social welfare.

27.   CALLAMARD, Agnes. 1997. "Qu'y a T' II Dans Un Mot? What's in a Word" First Draft August 11, 1997.

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34.   WERBNER, Pnina and Nira Yuval-Davis. "Women and the New Discourse of Citizenship". pp. 1-38, in Women, Citizenship and Difference Eds. Nira Yuval-Davis and Pnina Werbner. Zed Books. London & New York: 1999.

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36.   Newsheet, Vol. XIV, No. 4, 2002. Shirkat Gah - Women's Resource Centre/WLUML.

Women's "Empowerment" in Post Conflict Afghanistan

Palwasha Hassan

This paper focuses on, the intricacies of women's "empowerment" in the public domain as "citizens", in the post-war reconstruction scenario in Afghanistan, exploring the complexities of "power" structure in a traditional society. The paper[1] is build around women's experiences and agency for change, and their perception of the international community as facilitators of the process of the "power" transfer. It is an outcome of a two-month research, through interviewing women, and studying various literatures on Afghan women.

This paper first explores the definitions of "power" and "empowerment" in traditional Afghan society. It then discusses the impact of war and post-war reconstruction, and further, the role of external (international community) and internal actors (women groups) on the process of power "transfer".

Power, Empowerment and Citizenship

After decades of war, among the many challenges of post-war reconstruction in Afghanistan, is women's "empowerment". But what does "Empowerment" mean?

"Empowerment" is a very dynamic and context dependent concept. It can be conceived on different levels and domains, as debated by different development agents and feminists (Afshar, 1998). However, in feminist discourse, "power" is defined in a more relational form. It is not defined in isolation but in consideration of the role and relationship of women with women, men and the wider community. The emphasis is not on the "power over", as observed by Rowland (1998), which is a more traditional interpretation of "empowerment". Rowland reflects on different interpretations of "power", with the most possible different connotations,

which change the terms of women's "empowerment" out of its usual interpretation of being threatening to the power of the opposite sex. Some of the other interpretations, instead of "power over", that she uses are: "power with"; "power to"; and "power within". The interpretations in these other cases are in a more generic form, such as, "power with" refers to the collective action of tackling a problem together, "power to" as generative or productive power, which creates new possibilities and actions.

For the sake of this paper, I take Kabeer's (2004) definition of "empowerment", which relates to "human agency" in definition of "goals and the ability of acting upon it". I, then, have tried to link it to Lister's (2003:37) reflection on citizenship, discussing human agency in a political arena.

> Citizenship, as participation, represents an expression of human agency in the political arena. Broadly defined citizenship as rights enables people to act as agents.

Before I go further into women's emancipation and their participation in social and political life of the country as citizens, it is important to look at the power structure in a traditional society. What does women's "empowerment" mean in a country where the question of "women" has been part of clashes between the modernists and the traditionalists, throughout the history?

Considering the complexity of the "power" structure within the Afghan society and women's status within the family, community / tribe and finally the state, this research highlights the fact that women's "empowerment" cannot be discussed in terms of individuality, but, according to a feminist definition "in relation to men, women" and the community, not in isolation (Rowland, 1998).

Afghan women are not a homogenous class. There are a number of significant socio-economic factors, which contribute to the diversity of women's emancipation in the Afghan society, such as, age; educational level; and, the

urban-rural divide. However, in general, Afghanistan is a traditional society where the notion of power is embedded in the patriarchal nature of the culture: reinforcing male supremacy and control over women to uphold family "honour" with conformity to accepted "behavioural norms", which limits women's life choices (Dupree, 1998).

As in other contexts, women's empowerment in Afghanistan cannot be discussed in a void, but should develop, through an understanding of the complexity of power and control structures in different layers around women.

Family / Community

Women's "empowerment" is inherently seen as threatening by men, with the assumption that there will be some kind of a reversal of power relations, in the society. Usually, in every society, but especially in traditional societies, where men are the dominant and inherent decision-makers in social and domestic life, the fear of losing control is an obstacle to women's "empowerment" (Afshar, 1998).

For Afghan women, at least three layers of these power hierarchies exist, starting from home, community / tribe to state, in which the discourse of individual verses family and tribal identity could be discussed. Women's status in the family and tribe is central to family honour and status. This, not only places her in a special restrictive position at home, but also imposes strict division of labour and mobility restrictions. Such values are reinforced by the institution[2].

Such values are reflected and reinforced by the institution. A further issue is the agency of women in coping with these "power over" structures and negotiating, and in some instances, fighting these hierarchies to forge their way to an independent existence.

Having commented on the subtleties of the status of women within the patriarchal family, there are also instances of power and wielding of "power", in the family and community, by both men and women, especially older women, such as taking part in decision making at home and

even at the community / tribe level like "peace brokery" (Barakat & Wardell, 2002). There are different factors which impact women's status in the family and community, such as, age, experiences, giving birth to a male child, that change women's status in the family to more "power" wielding positions. However, in post-war Afghanistan, the impact of migration, awareness raising on women's rights, by various women groups to the communities, search for employment in urban centres by males in the families, and the impact of education on males and females cannot be ignored, in positively impacting women.

The State / Conflict

To understand the concept of women's empowerment in post-war reconstruction in Afghanistan, it is important to analyze the socio-political and historical context of the state and the conflict, which is intertwined with the history of women's emancipation. As we see through the historical account, women's agenda was always associated with other state reforms. This made certain groups of the society lose their power, who in turn exploited people, causing deterioration in the status of women and their "empowerment".

Based on the historical and current conflict mutations, I argue that women's "empowerment" has been politicized by the elite, that have controlled the agenda throughout the Afghan history. Women's emancipation has been lacking a fostering, and a broad popular base and environment. Such a top down process has been counter productive and has had a debilitating affect on women's emancipation in Afghanistan, and has repeatedly been exploited the by protagonists. This situation has been further exacerbated by the external actors, supporting the conflict.

However, for the purpose of this paper, it is important to see the impact of the conflict, on women's position, in the various phases of the current conflict; how the short-term gain of "real politic", played by these players, has further subordinated women's position in the Afghan society.

The Afghan conflict, like other contemporary complex emergencies, has mutated over time. It has devastated the state and the civil society institutions, and has affected all Afghans. But women's experiences of war were particularly worse because of their social positioning and the limiting male dominant tradition.

The sequence of events, and the rise and fall of the Alliance, in the Afghan conflict show that the role of external actors, fighting the Soviet and Kabul regime, has been on supporting more perceived radical Islamist groups, such as, *Hizb Islamic Hikmatyar* and *Jamiat Islami*. The support of such groups has been more on the strategic interests of the external state, such as Pakistan, on the settlement of the disputed issues like Pashtunistan (Tomsen, 2001).

The limited space which women have gradually reached, has been constrained in the contemporary conflict through the traditional backlash, making women's emancipation and empowerment regress to the previous century. This is specially indicated in Moghadam's (1994) account of women's emancipation in Afghan history: the reforms which were foreseen by King Abdul Rahman Khan; Ammanulah Khan on the customary law issues around family code or depicted in the PDPA period in different degrees, almost a century later (1880-1979).

The review of the literature on the historical account of women's emancipation shows, that the politicization of women's empowerment and considering women as a vehicle of change in the Afghan society has been counter productive, regardless of whether it was the state modernization reforms of King Ammanullah Khan in the early 19th century or the Sovietization of the state through social reforms of the communist regime in the 21th century.

The state instability, due to it being a weak state and its dependence on the tribal power structure, has weakened the process of women liberalization, in both the contemporary and old history. In many cases, the state opponent elite have been able to capitalize on the sentiments of the expandable

population for gaining political power, using the women's agenda.

What happened in the end was that there were compromises on the position of women's status, as we observed in the Najib government changes of the State Constitution or the Ammanullah regime, cutting back on the wide education programme for women. Both the cases show the weak public base for policy, that is ill-informed, in the social context of the country, which fails women's agenda for progress and inclusion.

The New Era of Post-War Reconstruction and Women's "Empowerment"

Reconstruction in Afghanistan is a new opportunity, in many ways, for women's "empowerment", where the country is in the process of developing new norms, rules and establishing new institutions (Sweetman, 2005). The Bonn Agreement has laid the initial roadmap for women's inclusion in the nation-building agenda. This has been initiated with the formation of the women's ministry, and women's participation in the country's political institutions, after years of their systematic exclusion from the public arena.

In the post-war era, women's emancipation comes through the top down process. However, one can argue that this period can be distinguished with a more wider public base, and a new conscious raising among women and communities, compared to any other period in the history of women "empowerment" in Afghanistan. Such an argument can be associated to migrations, flourishing of NGOs, emergence of women groups, and finally, the failure of the radical conservative traditionalist groups, such as, that of *Taliban*.

However, these opportunities can be less productive due to several factors: the pace of time-scale of the processes; the fragile peace and growing insecurity; and the practical socio-economic realities. Afghanistan needs more time to take more tangible steps towards real ownership. That

is, by giving adequate training, capacity building, with affirmative action towards women's participation at all levels of the reconstruction process, in order to make as steady a headway as possible, towards women's "empowerment" in the future.

Women's rights and status is very much embedded in the country's needs and security, in its broadest sense. However, for women to exercise full participation in the reconstruction and political process, there is a need for more gender sensitive lenses to consider the complexity of issues surrounding women, and the pursuance of women's "empowerment" in the Afghan society.

Afghan women are aware of the slow and steady changes, which should come through addressing the basic needs of the society, through wider education and promotion of skills training. However, what is really needed is a more coordinated effort from the international community, in facilitating and enabling the environment, for development and women's empowerment.

Women and Political Processes

The transition to democracy and state-building in Afghanistan has created an opportunity structure for women, to move their interests onto the political agenda, where previously it was subordinated to national liberation struggle. A number of factors which contribute, besides the change of international politics, even justifying war on Afghanistan as liberating women, include increased consciousness and mobilization among women, at least the urban educated elite. Afghan women have been previously sidelined, either by elite men, controlling the politics of *Jihad*, or their own conscious efforts not to indulge in highly controversial, and, in many cases, impossible issues which stopped their mobility and working outside home, during the years of *Jihad*.

The role of the NGOs, and awareness raising and mobilization by women groups and other civil society organizations cannot be ignored. The efforts of a small number of women in the constitution-making process, where

inspite of a high number of men out numbering women, helped secure 25 percent quota seats in the Parliament's lower house for women. This is besides bringing the article of quality of men and women to the Constitution (Afghan Constitution, 2003).

As well, the high number of women registration in the election, comparably in some districts, exceeded the number of men. The JEMB notes that more than 40 percent women were registered for presidential election (JEMB, 2005).

While there are still many issues related to the full participation of women in the political process and their recognition as citizens, there is reason for cautious optimism. For instance, among the total number of women registered, how many, really and consciously, cast their votes.

Women are not immune from the ethnic, linguistic and political divide, which is drawn up by the factional leadership. A number of women, who came to the Constitution Loya *Jirga,* (Grand Constitutional Council) were also backed by the hard-line Islamist leaders For example, lobbying for the Islamic *Hijab*[3], in addition to intimidation of other female members. While there are efforts, on the part of the very young women's movement, to address such divisions collectively, these divides still continue to surface from time to time. When I was talking to women activists and leaders in Kabul, this divide was recognized by them as a salient issue, and as an obstacle to women's collective action.

> We don't have a proper networking system among women to empower all women equally; we have ethnic, linguistic and political interests which have closed the door to impartial women.
>
> *Women's rights activist, Kabul*

This has, consequently, decreased the internal trust and support among women, who are as fragmented as the entire Afghan society at large. There are two points which I believe effect such fragmentation among women: collective

identity and life style. While women are part of the same culture and collective family lifestyle, this is affected by the thoughts, decisions and attitudes of men and the communal polity.

Although, an increasing number of women are taking part in politics, politicking in the country is still drawn on traditional values and interests. This is well shown in both the presidential and parliamentarian elections, where the election results have been seen on the ethnic demographics, in many part of the country. So, women still need the vote and support of men, who identify to women on the basis of ethnic, linguistic characteristics rather than on conscious political affiliation. This aspect has been played upon by the political leaders who have no other social development agenda to raise in their constituencies.

Women and Civil Society

While conflict brought devastation to human life, and breakdown of the social and tradtional systems of support, many women believe that it also brought new skills, knowledge and raised awareness through experiencing hardships. And this exposure has led to women seeking an alternative. One such alternative initiative has been women's groups and NGOs, which mostly started working as small Community Organziations in the late 1980's.

> War has been an awakening for many women. Women's awareness about their rights has increased more than at any time; they started their own projects like education, health and politics.
>
> *M. Haqooqmal*
> *State Minister of Women's Affairs, Kabul, 22, April, 05*

Through the creation of these women's groups, women forged new spaces within the limited choices they had, within the patriarchal society. They have also learned new skills, including negotiation, management and running of groups, and considering the essentials for the safety of their work. Most importantly, the exercise of "power with"

developed their "power within" and enhanced their feeling of self-worthiness and self-confidence, in both contexts, through their experiences with other women and those in higher management positions (Zapata, 1999:92).

In Afghanistan today, many women in the government and the parliament come from these women's groups. Working in such groups has helped develop a good reputation within the community, allowing them more social political space within the male community as well.

> Working with the community on education programmes in Paktia, I had the chance of meeting with the male tribal *Shura* leaders. They have encouraged me to elect myself for the upcoming election.
> *Interview 11, Kabul May 18, 05*

There is continuous transformation within these groups, from goal orientation to strategic orientation. Although, the transformation process from "feminine" to "feminist", as Waylen (1992) terms it, is based on the development and socio-political approaches to women's issues, it is rather slow in Afghanistan, compared to women's groups in the neighbouring state of Tajikistan. This is so because of other important factors affecting such transfers like, high skills, better education and a more educated society, whose attitudes towards women's communal development is far more receptive as compared to Afghanistan.

The women's groups have their limitations, caused by, among other things, competition over resources, lack of adequate capable staff, which are, in most cases, lost to the international and UN organizations. And the general socio-political environment, which has been the reason for the fragmentation of the Afghan society along ethnic or linguistic lines. These mitigating factors are considered by women as the major obstacles blocking the way towards full cooperation with each other, and need to be addressed through more sustainable and protracted programmes.

Although, women belonging to these groups comprise a limited number of educated women within the Afghan society, their role as a bridge and as a means to reach thousands of other women through their previous experiences is vital, as a source of "empowerment". Based on these findings, it is inferred that women's groups can be one of the best avenues for women's "empowerment", which could be achieved through longer term investment, capacity building and full involvement in the reconstruction processes.

Conclusion

Reconstruction in Afghanistan, as else where in the world, is a new opportunity, where women's status as citizens and "empowerment" in the public domain can be consolidated through formation and reformation of new roles and laws.

Where historically, top-down state changes, which associated women's emancipation agenda with state polity, has failed in Afghanistan. In such cases, because the state was not able to foster a strong public base, it established a stronger bully around its territory to avoid expandability of its citizens. This led to interference in the form of internal and external extremism, taking the state back to regression, or any progress made to bring women in public life.

However, the institutional changes in the post-war era can be distinguished, as having a more wider public base, and new conscious raising among women and communities as compared to any other period in the history of women's "empowerment" in Afghanistan. These new changes and breakthrough can be associated with migrations, flourishing of NGOs, emergence of women's groups, and, finally the space and emergence of diversity of the Afghan civil society, and the voice of progressive women and men.

In order to ensure women's "empowerment" and their status as citizens, in the post-war reconstruction in a traditional society, such as Afghanistan, it is important for policy-makers and development interlocutors to consider the

diversity of the Afghan society. As well, to recognize, the breakthrough in the complex power structure and traditional values around women. This specifically refers to women's groups and the civil society structure, besides the institutional changes, which foster such environment and involve women in the political and policy related issues.

Notes and References

37.   This paper is an extract from the author's MA in Post-war Recovery studies from the York University.

38.   The Afghan Constitution (2003) value is family as "basic the cell of society".

39.   The veil Muslim women wear to cover their heads and the curves of the body.

40.   AFGHAN Constitution (2003), *article, 22, 24, 44, 5, 84.3* available on http://www.af/constitution/index.html.

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Aspects of Citizenship in the Special Context of Afghan Refugees and Return and Reintegration in Afghanistan

Katharina Lumpp[1]

Aspects of citizenship or nationality are intrinsically linked to the work of the United Nations High Commissioner for Refugees (UNHCR). Citizenship or nationality, the two terms which are interchangeably used in the international law, not only provides people with a sense of identity, it entitles individuals to the protection of a State, and to many civil and political rights. Citizenship has often been described as "the right to have rights"[2].

Aspects of Citizenship and International Protection

UNHCR's core mandate functions entail the provision of international protection and the pursuit of permanent (durable) solutions for the problem of refugees[3]. A refugee is a person in need of international protection and is defined, in international law, as any person who is outside his or her country of nationality. Or, not having a nationality, his or her country of former habitual residence and is unable or unwilling to return there, either because of a well-founded fear of persecution for reasons of race, nationality, religion, political opinion or particular social group[4]. Or because of serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order. The 1951 Convention, relating to the Status of Refugees, its 1967 Protocol, as well as, regional refugee instruments are aimed at providing a set of rights to persons, who cannot, for reasons of persecution or other serious harm, benefit from the rights of their country of nationality or habitual residence, and are, thus, in need of international protection as refugees.

In the light of the close link between the loss or denial of national protection, suffered by refugees, and the loss and denial of nationality, suffered by stateless persons, the United Nations General Assembly designated UNHCR, also, as the agency responsible for overseeing the prevention and reduction of statelessness[5]. A stateless person is defined as a person who is not considered as a national by any State under the operation of its law[6] (*de iure* stateless) or a person, unable to demonstrate that he or she is *de iure* stateless, who has no effective nationality and does not enjoy national protection by any State (*de facto* stateless).

While refugees, outside their country of nationality or habitual residence, are unable or unwilling, because of a fear of persecution or harm, to benefit from effective national protection, stateless persons do not enjoy national protection by any State.

Aspects of Citizenship and Durable Solutions

The link, between UNHCR's mandate and aspects of citizenship and nationality, is similarly pertinent with regard to durable solutions. Durable solutions are voluntary repatriation, local integration and resettlement of refugees[7].

Voluntary repatriation is the return, based on a free and informed decision, of refugees to their country of nationality or habitual residence, in safety and with dignity. In international human rights law, the right to return to one's own country is firmly established[8]. This is crucial, in that, it provides the underlying human rights basis for voluntary repatriation by requiring states to readmit their own people. In international refugee law, the 1951 Convention stipulates that refugee status ceases if refugees voluntarily re-establish themselves in the country of origin. Furthermore, numerous agreements on voluntary repatriation have been signed over the years between States (as countries of asylum or countries of origin) and UNHCR. These agreements[9] set out the respective duties and responsibilities, as well as, the rights of refugees and returnees. Given their binding nature, such agreements reinforce the legal underpinnings of voluntary repatriation. International human rights law and standards are

relevant, more generally, since they provide the yardstick against which to measure the restoration of national protection in the country of origin. From UNHCR's perspective, the core of voluntary repatriation is return in and to conditions of physical, legal and material safety, with full restoration of national protection, the end product.

Local integration in a country of asylum offers refugees residence, including permanent residence, with the possibility of eventual citizenship. It is a durable solution, recognized both in the 1951 Convention relating to the Status of Refugees, as well as, in UNHCR's Statute[10]. Local integration is a gradual process with a legal, economic and social and cultural dimension. As a legal process, refugees are granted a progressively wider range of rights, similar to those enjoyed by citizens of the host country, leading eventually, to permanent residence and perhaps citizenship. Economically, refugees become gradually less dependent on aid from the host country and international aid agencies, and are increasingly self-reliant and in a position to support themselves and contribute to the local economy. Another important dimension of local integration is a social and cultural process, by which interaction between refugees and the local community in a host, enables their participation in social life without fear of discrimination or hostility.

Resettlement is the permanent movement of a refugee from a country of first asylum to a third country, which is willing to admit the refugee on a permanent basis, and resettle and integrate him or her there. While resettlement benefits a comparatively small number of refugees, it has important functions: it is a protection tool for refugees facing protection problems in a country of first asylum; it is a durable solution for refugees; and, it is a mechanism of burden and responsibility sharing among countries hosting refugees.

It is against this background that UNHCR's approach to citizenship, within the context of its mandate, is one primarily determined by law, that is international law, both international refugees, as well as, human rights law. It is within this legal framework, in which UNHCR supports the provision of international protection to Afghan refugees in

Pakistan, as well as, the voluntary repatriation and reintegration of returning refugees in Afghanistan. The focus is on the parameters[11], activities and experience of UNHCR, in addressing the many challenges posed by one of the organization's largest voluntary repatriation operations. Afghans were, and continue to constitute, the largest single group of persons under UNHCR's mandate, as refugees, asylum-seekers and as returnees for over two decades.

Context and Legal Framework for Voluntary Repatriation of Afghan Refugees from Pakistan

Pakistan is not a signatory of the 1951 Convention, relating to the Status of Refugees, and there is no national asylum framework. Nonetheless, Pakistan has agreed that for non-Afghan asylum seekers, UNHCR may conduct refugee status determination, on the understanding that recognized refugees will be provided with an appropriate durable solution (either voluntary repatriation or resettlement). The situation and status of Afghans arriving in Pakistan from 1979 to 1999, has been addressed on an exceptional basis, outside the legal framework governing the entry and stay of foreigners in Pakistan set out in Pakistan's Foreigners Act 1946. Until 1999, Afghans arriving in Pakistan were, in principle, granted a *prima facie* protected status, based on a statement by the government that "temporary asylum" would be provided on "humanitarian grounds", regardless of whether they were documented or not. From 1999, this status was no longer accorded to new arrivals, but voluntary repatriation agreements continue to provide some form of legal protection against forcible return.

Pakistan has also engaged in tripartite negotiations and agreements to facilitate the voluntary return of refugees to Afghanistan. The first agreement, concerning the return, was a bilateral agreement between the Republic of Afghanistan and the Islamic Republic of Pakistan "on the voluntary return of refugees", which dates back to the 14th April 1988, when it was hoped that the Geneva Accords would enable a peaceful resolution of the Afghan crisis and enable the return of refugees. In this, as in the later agreement, Pakistan committed itself to voluntary, orderly and

peaceful repatriation. The bilateral agreement between the two countries, complemented by an agreement between Afghanistan and UNHCR, stipulates that "at the request of the Governments concerned, the United Nations High Commissioner for Refugees will co-operate and provide assistance in the process of voluntary repatriation of refugees …..". A further, this time, tripartite "Agreement between the Government of the Islamic State of Afghanistan, the Government of the Islamic Republic of Pakistan, and the United Nations High Commissioner for Refugees for the Repatriation of Afghan Refugees in Pakistan" was signed on 17th August 1993. It establishes a tripartite commission mechanism and has, as its principle objective, the facilitation of safe, orderly and voluntary repatriation of Afghan refugees and their successful reintegration.

After the changes in late 2001 and the establishment of the interim administration in Afghanistan, UNHCR assisted voluntary repatriation, particularly from Pakistan, resumed at exceptionally high numbers during 2002, while negotiations of a new tripartite repatriation framework between Afghanistan, Pakistan and UNHCR were ongoing. Given the lack of systematic registration of Afghan refugees in Pakistan and the change in government policy on newly arriving Afghans, negotiations on the scope of the agreement proved difficult. These initial difficulties, however, could be settled and an agreement was signed between the three parties, the Islamic Republic of Pakistan, the Transitional Islamic State of Afghanistan and UNHCR, in Brussels on 17th March 2003[12]. The agreement affirms the voluntary character of repatriation, at the freely expressed wish for "*Afghan citizens who have sought refuge in Pakistan*", thereby providing for a very broadly formulated inclusion of Afghans, irrespective of their status in Pakistan. The initial time-frame for the agreement and the commitment to assisted voluntary repatriation was for three years (i.e. March 2006) and has meanwhile been extended. Article 6 of the Tripartite Agreement provides that the return of Afghan citizens "who have sought refuge in Pakistan" shall take place only on a voluntary basis for the duration of the Agreement. This effectively provides legal protection against forced return for all Afghan citizens until March 2007. The tripartite agreement stipulates the

commitment of the parties that Afghan citizens be assisted to return to their final destinations in Afghanistan, in safety, freedom and with dignity (Article 8). It provides for the recognition, by Afghanistan of the legal status, including changes thereto, of Afghan citizens, including birth, deaths, adoptions, marriage and divorce, as well as, the recognition, as appropriate and in accordance with Afghan national law, of the equivalency of academic, vocational skills, diplomas and certificates obtained by Afghan citizens while in Pakistan (Article 9), and generally provides the legal framework based on which assisted repatriation is carried out todate. Since the signing of the tripartite agreement, Tripartite Commission meetings with Pakistan take place with regular intervals, to review progress and address problems identified in implementing the voluntary repatriation programmes.

Another important element in the legal framework for the return of Afghan refugees, including from Pakistan, is the Decree on Dignified Return of Refugees, issued by Hamid Karzai on 13.03.1380 (3 June 2002). The Decree, in nine articles, warmly welcomes Afghan nationals who were compelled to leave the country and assures them of non-discrimination, freedom from persecution and protection by the State. The Decree stipulates exemption from prosecution, irrespective of political affiliation, for criminal offences against the internal and external security of Afghanistan, committed up to 01.10.1380 (22 December 2001), except crimes against peace or humanity, or war crimes (Articles 3 and 4). It stipulates that the recovery of immovable and movable property will be affected through relevant legal organs (Article 5) and guarantees the enjoyment by returnees of "*the same human rights and fundamental freedoms enjoyed by other citizens*" (Article 6). This Decree, thereby, lays the basis for the restoration of national protection, as Afghan citizens, for returning refugees.

Monitoring the Return and Reintegration Process

Based on the tripartite agreement between Afghanistan, Pakistan and UNHCR, as well as, in Afghanistan, the Decree on Dignified Return, UNHCR, is

permitted unhindered access to all Afghan citizens in Pakistan, along with free and unhindered access to returnees in Afghanistan. UNHCR is allowed to "monitor the treatment of returnees in accordance with humanitarian and human rights standards, including the implementation of commitments contained in this (the tripartite) Agreement and in the Decree No. 297"[13]. In Afghanistan, UNHCR has therefore, for the past years, regularly been undertaking systematic returnee monitoring, both at encashment and transit centres, through which assisted returnees pass on their way to final destinations, as well as, in areas of return, to identify and address obstacles to the safe return and reintegration of returning refugees across the country.

The **monitoring at encashment - and transit centres**, which is undertaken jointly with the Afghan Ministry of Refugees and Repatriation, with a view to ensuring that the return takes place voluntarily and in a safe and dignified manner, in the light of provisions of the tripartite agreement. Random interviews with returnees are aimed at understanding the reasons for returns and its circumstances and to analyze trends and patterns of return. The monitoring also serves to identify returnees with special needs (extremely vulnerable individuals) and to provide advice, as needed. Where interviews indicate problems, interventions, both with the authorities of the host country or in Afghanistan, are undertaken, as well as, raised within the tripartite mechanisms. In late 2005, many Afghan returnees, subject to camp-closures in the Federally Administered Tribal Areas (FATA) of Pakistan, reported that they were not informed of relocation options within Pakistan or not given time to make use of these, and therefore, felt compelled to return to Afghanistan. These concerns about the voluntary nature of their return were documented through monitoring and could be addressed in a Tripartite Commission Meeting, in which – for any future camp-closures – some parameters, including viable relocation options for the Afghans concerned, were agreed between the Parties. Generally, however, the majority of the Afghans returning from Pakistan, who are interviewed at encashment- and transit-centres, provide as their main reasons for return, the improvement in the political and security situation in Afghanistan, their wish to participate in

the reconstruction process (including in the parliamentary elections in 2005), as well as, reasons related to more difficult economic conditions in Pakistan. Only a few cite any direct or indirect pressure to return.

In **monitoring the situation of returnees at their places of origin and return**, one of the most relevant findings has been that there are few physical or legal safety issues which affect only returnees. The majority of the issues identified as challenges to return and reintegration, are of a general nature, affecting most Afghans in a particular area or community. They are general human rights and development challenges. No pattern of discrimination against returnees, because of their having been abroad, has been identified.

In the light of these findings of returnee monitoring conducted by UNHCR and as a result of the discussions, UNHCR and the Afghanistan Independent Human Rights Commission[14] entered into a Partnership Agreement in February 2005, for human rights field monitoring, which establishes a shared methodology for monitoring, documenting and taking action to address violations or abuses of human rights, affecting Afghans, including returnees. It was agreed to monitor jointly a set of civil, political, economic and social rights, which were jointly identified as particularly critical in the current context of Afghanistan, including, for example, the right to property, the right to water and the principle of freedom from discrimination.

From April to December 2005, Human Rights Field Monitoring missions were conducted in 29 provinces and 164 districts in Afghanistan. A total of 7,929 interviews were carried out in villages throughout the districts covered. In 2006, coverage continues to be high, despite limitations placed by the security situation. Of identified cases of human rights violations, identified through monitoring, the largest number concerns the right to property. Other cases include the right to physical integrity and freedom of marriage. In many of the identified cases, lack of an effective remedy through State mechanisms lead to violation.

Based on the findings of monitoring in 2005, the Afghanistan Independent Human Rights Commission released a "Report on Economic and Social Rights in Afghanistan" in May 2006. Among the key findings of the interviews, with Afghans across the country, 74 percent of whom were returnees, are the following:

- Half of all interviewees do not have access to safe drinking water, and more than a quarter use a water source that is shared with animals.

- Although health care facilities are available for 75.4 percent of all interviewees, more than half do not use the facilities due to difficulties with access and concerns over quality.

- 40.6 percent of all interviewees have problems with the habitability of their housing and over 10 percent have disputes over tenure.

- Almost half of all interviewees have at least one child less than 15 years in their family who works; in almost 20 percent of the families, all the children work.

- Only 55.2 percent of girls who start primary school finish grade 6, compared to close to 90 percent of boys who start primary school and complete grade 6.

- 54.5 percent of interviewees use customary justice mechanisms to solve their problems compared to just 38.4 percent who rely on formal justice mechanisms.

In addition to monitoring the return and reintegration process and addressing obstacles and problems identified through monitoring, returnees have access to **information and legal aid** upon return. The Norwegian Refugee Council (NRC) has established and maintains, in close consultations and with the support of UNHCR, eight Information and Legal Aid Centres (ILACs). The ILACs are located in Kabul, Mazar-

i-Sharif, Pul-i-Khumri, Maimana, Bamyan, Jalalabad and Herat. The majority of the legal aid cases concern land and property disputes and restitution. Cases are solved either through representation in the Courts or, in most cases, through mediation between the opposing sides, using the traditional Afghan mechanisms of *Jirga* or *Shura.*

Legal Safety Issues in the Context of Return to Afghanistan

Over the years of experience by UNHCR and its partners with voluntary repatriation operations, a number of legal safety issues, which are particularly relevant in the context of return and reintegration have been identified[15]. While they vary in relevance in a given situation, they are generally all included in agreements on voluntary repatriation, and have been in the Afghan context. Issues are, among others, the need for amnesties and guarantees for returnees, documentation and personal status, effective nationality, recognition of equivalency of educational and other academic and professional certificates, as well as, land and property issues.

In the context of return to Afghanistan, some of these issues have arisen, but are not specifically related to difficulties with return or a lack of commitment to return and reintegration by the Afghan authorities, but to the overall situation in the country, emerging from over two decades of war. The country continues to be characterized by weak rule of law, including of traditional conflict resolution mechanisms which, in many parts of the country are unable to reach fair and equitable settlement of conflicts due to external pressures, limited control by central government authorities, and a lack of capacity of both administrative and judicial structures. The situation, concerning with the most pertinent aspects of nationality and citizenship, presents itself as follows:

With regard to **effective nationality**, which forms the basis for individuals exercising their basic civil, political and economic rights, specific problems with regard to loss of

nationality or unclear nationality status, for example, of foreign-born children of Afghan nationals, have generally not arisen. The exception are a few cases of Afghan returnees, who have faced difficulties in obtaining national identification documents due to their inability to trace any male relatives, as required under the procedures for the issuance of national identification cards, after return. For this purpose, a co-ordination mechanism to address these few cases has been established.

In terms of nationality, the Law of Citizenship in Afghanistan, dating back to 16 *Aqrab* 1315, requires to be reviewed and reformed, in the light of the provisions of the new Afghan Constitution. The necessary reform notwithstanding, under the present, only partially implemented the law; a child is an Afghan national, irrespective of the place of birth, if one of his or her parents ("born to Afghan mothers and fathers") is an Afghan citizen (Article 2). In order to address the problem potentially caused by dual nationality, and to ensure the possibility of former Afghan refugees to return to Afghanistan, an understanding was reached – until the adoption of a new citizenship law - that Afghans holding the nationality of another country can return, without having to renounce their new nationalities. They will, in principle, enjoy the rights enjoyed by all Afghan citizens. Two limitations on the rights of Afghans holding another nationality can be found in the provisions of the Afghan Constitution. Article 62 (1) stipulates that presidential candidates should be "citizens of Afghanistan, Muslim and born of Afghan parents, and should not have citizenship of another country". Similarly, Article 72 provides that government ministers "must only have the citizenship of Afghanistan" and should a nominee also hold citizenship of another country, the Parliament has the right to confirm or reject the nomination. Problems of statelessness (*de facto* or *de iure*) have not arisen in Afghanistan.

The Afghan authorities are also committed to accept and recognize changes in the **personal status** of Afghans while abroad, including birth, deaths, adoptions, marriage and

divorce "in accordance with Afghan law"[16]. UNHCR is not aware of any major difficulties, which, however, may be due to the fact, that in large parts of rural Afghanistan, documentation or the lack thereof does, generally, not seem to be an issue for many Afghans. During monitoring in 2005, questions related to personal documentation were raised. Interviewees were asked to report refusal of documentation, the types of documents which were refused, as well as, if applicable, what they considered as the reasons for refusal of documentation. These questions were asked to understand if interviewees have access to documentation and, therefore, to make an assessment of their enjoyment, limited to this very specific aspect, of their right to nationality.

The findings show that only 4 percent of all, close to 8,000 interviewees across Afghanistan, reported that some forms of documentation had been refused to their family. The types of documents were in particular, the national identification card (*Tazkera*), some passports and a few education certificates. The main reasons indicated by the interviewees for the documentation being refused were bribe (49.2 percent), being *Kuchi* (14.7 percent) and Internal Displacement People (IDPs) (10.2 percent).

Indeed, *Kuchis* (Afghan nomads and former nomads), as well as, Afghans who are unable to establish their identity (for example, because they had left the country as orphaned children during the conflict), at times, face difficulties in accessing Afghan identification documents (*Tazkeras*), even if their Afghan nationality is not in question. The procedures and rules on national identification cards are governed by the Law on Population Registration[17]. Article 11 of the Law stipulates that a *Tazkera* is issued based on the "verification of a person's identity". At present, identification cards are mandatory only for male Afghans. According to Article 18 of the Law, the necessary details for the national identification cards are outlined, among them, as legal requirements, the father's and grandfather's name of a person, the village and district of origin of the person, and, references to the *Tazkera* of the person's father, or if unavailable, the elder brother or the brother of the father.

For persons who are not known or cannot be identified in that manner (*Majhul-ul-Hoya*), the Law on Population Registration stipulates in Articles 13, the following: "Whose identity cannot be established in the relevant area, can obtain a *Tazkera* from the Population Registration Department, when two Afghans or an official institution provide confirmation, based on the provisions of Article 11 of the law". In the few cases, in which without knowledge of family background or place of origin, where even this verification procedure proves difficult, there is readiness to look into ways in which access to identification documentation can be enabled through the cooperation of several actors, including the Ministry of Refugees and Repatriation and UNHCR.

With regard to *Kuchis*, the problems are more related to implementation of the legal provisions than the law itself, which contains clear provisions addressing their specific situation, as Afghans who do not have a permanent place of residence. Article 25 of the Law on Population Registration stipulates that *Tazkeras* are issued to *Kuchis*, based on the places of residence during summer or winter. Records of the *Tazkera* are to be kept by the departments of their winter locations and copies to be sent to the department of their summer location, as well as, the central department in Kabul. The *tazkeras* issued to *Kuchis*, therefore, contained and continue to contain both places.

In terms of establishment of identity, importance is placed on the confirmation by the tribal leader *(Sarkhil)* and the identification card features the name of the tribe and the name of the tribal leader (Article 28). For *Kuchis*, who no longer fall under the definition (see Article 8, Para.2) of "not having a permanent place of residence and immovable property and based on the climate move from one place to another", the provisions covering settled Afghans apply (Article 29).

With regard to **documentation** for return purposes, returnees, in particular, male or female heads of families, returning with UNHCR's assistance to Afghanistan are issued a Voluntary Repatriation Form (VRF) which contains relevant

bio-data on returnees and is recognized, by the Afghan authorities, as a valid identity and travel document for the purpose of return to final destinations in Afghanistan, irrespective of the possession or not of other documents (UNHCR or government registration cards, old identification cards and others). For return from non-neighbouring countries, Afghan embassies and consulates issue travel documents and, upon UNHCR's request, the Ministry of Foreign Affairs agreed to instruct its embassies abroad, to issue travel documents free of charge for those Afghans wishing to return, and who cannot afford the financial costs of renewing their passports.

More difficult, in terms of documentation, is the **recognition of equivalency of educational and academic certificates** obtained by Afghan refugees abroad. As the educational curriculum in Afghanistan comprises both main languages of the country, *Dari* and *Pashtu*, students returning from Pakistan have had difficulties being accepted into classes of the corresponding grade upon return, because of their weakness in *Dari*. Unless they attended schools following the Afghan curriculum, in which *Dari* classes were included and they were at a level of mastering the language, similar to their class-mates of the same age. The same is the situation of Afghan students returning from Iran, if they return to areas in which education is primarily in *Pashtu*. Some returning high school graduates have also reported that they were unable to secure admission to university, owing to a very long and bureaucratic procedure, involving certification by the Ministry of Foreign Affairs through embassies and consulates in the country of asylum and the Ministry of Education in Kabul.

Similarly complicated and, for many returning teachers impossible to obtain, is the recognition of teacher diplomas obtained while abroad. For teachers who have not previously taught in Afghanistan, but in countries of asylum, the procedure for recognition of their documentation requires confirmation through the Afghan representations abroad or, in the absence thereof, a test on their educational record in Kabul, at the Ministry of Education. Only then can they seek employment as a teacher in Afghanistan.

Recently, a Commission has been established under the auspices of the Ministry of Education, involving the Ministry of Refugees and Repatriation, as well as, UNHCR, to work on addressing these problems in a systematic manner.

Considering the scope of challenges faced by Afghanistan and its people, legal aspects pertaining to nationality and citizenship in the context of return and reintegration are comparatively unproblematic. There is generally a readiness, on the side of the Afghan authorities, to find ways in which to address the practical difficulties, as and where they arise.

Notes and Reference

1. The article summarizes a presentation at the workshop on "Traditional Societies and Democracy with a citizenship approach to development", organized by the Heinrich Böll Foundation, Lahore, 18 and 19 November 2005. The author is a protection officer with UNHCR in Afghanistan. The views expressed in this article are those of the author and do not necessarily reflect the views of the United Nations.

2. "Nationality and Statelessness – A Handbook for Parliamentarians", UNHCR, IPU, 2005.

3. Statute of the Office of the High Commissioner for Refugees - General Assembly Resolution 428 (v) of 14 December, 1950.

4. The most important international refugee law instrument is the 1951 Convention and 1967 Protocol relating to the Status of Refugees, which has been complemented by regional instruments. According to these international instruments, for which UNHCR has a supervisory function, the personal scope of UNHCR's mandate extends primarily to refugees.

5.   The two relevant international legal instruments are the 1954 United Nations Convention relating to the Status of Stateless Persons and the 1961 United Nations Convention on the Reduction of Statelessness.

6.   See 1954 Convention relating to the Status of Stateless Persons.

7.   For more details on each of the durable solutions, please see the following UNHCR background notes for the Global Consultations: "Voluntary Repatriation" (EC/GC/02/5) of 25 April 2002, "Local Integration" (EC/GC/02/6) of 25 April 2002 and "Strengthening and Expanding Resettlement Today: Challenges and Opportunities (EC/GC/02/7) of 25 April, 2002.

8.   See Article 13(2) of the Universal Declaration of Human Rights; Article 12(4) of the International Covenant on Civil and Political Rights; and Article 5(d)(ii) of the Convention on the Elimination of all Forms of Racial Discrimination.

9.   A sample Tripartite Agreement can be found in Annex 5 of the Handbook, voluntary repatriation: international protection, UNHCR, 1996.

10.   See Article 34 of the 1951 Convention relating to the Status of Refugees.

11.   UNHCR background note on voluntary repatriation for the Global Consultations (EC/GC/02/5 of 25 April 2002) as well as Executive Committee Conclusion No.101 (LV), 2004 on "Legal Safety Issues in the Context of Voluntary Repatriation of Refugees".

12.   Agreement between the Government of Islamic Republic of Pakistan, the Transitional Islamic State of Afghanistan and the United Nations High Commissioner for Refugees Governing the Repatriation of Afghan Citizens in Pakistan, Islamabad, 17 March, 2003.

13. These commitments in the specific situation of the return of Afghan refugees from Pakistan is based on conclusions of the Executive Committee of the UNHCR Programme, which, for example, in its Conclusion No.40 (XXXVI) considers as inherent in UNHCR's mandate that the organization "be given direct and unhindered access to returnees so that (it) is in a position to monitor fulfilment of the amnesties, guarantees or assurances on the basis of which refugees have returned".

14. According to Article 58 of the 2004 Constitution of Afghanistan, the Independent Human Rights Commission of Afghanistan was established with the purpose of 'monitoring the observation of human rights in Afghanistan, to promote their advancement and protection'.

15. See Executive Committee Conclusion No.101 (LV), 2004 on "Legal Safety Issues in the Context of Voluntary Repatriation of Refugees".

16. This undertaking is stipulated in the provision on "Juridical Status and Equivalency" of the tripartite agreement with Pakistan.

17. Law on Population Registration, Official Gazette of the Ministry of Justice of Afghanistan, 2000.

SECTION – II

CULTURAL VIOLENCE, LEGAL PLURALISM AND WOMEN RIGHTS

Introduction Section - II

Saima Jasam

The nature of politics and democracy in many developing and traditional societies is complex. The complexity is embedded in the traditional ethics, norms and practices of the societies, which, in the contemporary world, pit directly against the forces of modernity and its ruling ethics.

Exemplifying Pakistan and Afghanistan, the complexity is seen to deepen further, with specific reference to women, where cultural and customary practices, followed by legal pluralities and other structural arrangements have robbed women of their rights at all levels, reducing them to non-entities with an inhuman face.

This introductory note to Section II of the book, attempts to analyze this complexity by providing some of the theoretical concepts and explanations expounded by different scholars, which highlight certain aspects of patriarchy, power and violence, considered to directly impact women's lives through the abovementioned organized structures and agencies. In-depth analyses and concrete examples, other than those in this section, are, however, reflected throughout, in all the sections of this book.

The Concept of Patriarchy: The concept theorized by Kandiyoti[1], explains the different practices that operate in the classical patriarchal societies. One of them is *Purdah* which actually means veiling. In Pakistan and Afghanistan, this *Purdah*, operates as a system and is a source of respect and honour for men: it is one of the overarching factors, on which, is premised, the whole notion of exclusion and inclusion, of private and public spheres, and the man and woman divide.

Such segregations also create division of labour, demarcation of *Purdah*-based boundaries, and ultimately, the ascribed roles. Women in this framework are completely under the control and submission of men and their virginity is the source of respect for the families. Thus, if a woman breaks the ethos of the prescribed conduct or honour, she is liable to be punished, and with its extremity, extended to death.

The Concept of Power: Different theorists have defined the concept of power in different ways. Layder describes the disciplinary power of Foucault as "disciplinary power moved the focus of control to individuals themselves. By this, they were constantly under surveillance and begin to oversee themselves; to regulate their own behaviour in the light of its assumed visibility to others"[2].

Smart while quoting Foucault explains "It is a power whose model is essentially juridical, centred on nothing more than the statement of the law and the operation of taboos. All the modes of domination, submission, and subjugation are ultimately reduced to an effect of obedience"[3].

Where as Gramsci's theory of hegemonic power gives, yet another, perspective. He argues that the domination of the capitalist class could not be secured by economic factors alone but required political force and much more important, an ideological apparatus, which secured the consent of the dominating classes. In capitalist societies, these apparatuses are effectively the institution of civil society, the church, and the family and even trade unions[4].

The importance of Gramsci theory is that it helps us understand how hegemonic power is created and practiced. He explains about the structures and tells us how force, negotiations, and consent create hegemony, based on which discourses are developed.

The Concept of Cultural Violence: Any culture or traditional structure, by itself, is not to be seen as a negative phenomenon, though there are aspects within a culture and

the traditional structures that may be violent by their very nature, and which need to be addressed.

According to Galtung, cultural violence is a phenomenon that can be used to legitimize violence in its direct or structural form. Symbolic cultural violence is an abstract notion and does not, in reality, kill or maim. It legitimizes actual physical acts of direct violence and allows for the perpetuation of structural violence within institutional structural frameworks. According to Galtung, violence always works in a triangular relationship but the image produced is different. Direct violence is an event, structural violence is a process and cultural violence is an invariant permanence[5]. However, before any act actually takes place, there is always a collusion of institutions, cultural sanctions through people's behaviours, which allow for a particular event.

Legal Pluralism: According to Arif Ali a parallel legal system is defined as: functioning parallel to the ordinary courts. Stated simply, it is a complete hierarchy of forums, established through a special law, under which particular persons or classes of persons are tried or have their civil disputes adjudged under special laws to the exclusion of the ordinary courts of the country… a dual system of justice may actually be required in reverse discrimination and affirmative action measures taken in the interest of the less advantaged sections of the society. A parallel judicial system may, thus, be justifiable on the grounds that are for a valid legal object, aimed at facilitating the administration of the justice[6].

However in Pakistan and Afghanistan, the parallel judicial systems (both tribal feudal and legal systems) have served no purpose other than further weakening the already disadvantaged. In fact, it has created more difficulties in the functioning of the ordinary courts of the land. However, the worst fate is meted out by women who, under the parallel judiciary, are subjected to cruel treatment and judgments or at best, are left with no room for justice for them. The selective use of religion and patriarchy, which interplay in the institution of family, and the endorsement of it by the parallel judiciary systems provide a license to men to inflict violence and murder on their spouses / sisters / daughters in the name of

honour, not only on grounds of "illicit relations" but for multiple other reasons.

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Overlapping Discursive Terrains of Culture, Law and Women's Rights: An Exploratory Study on Legal Pluralism at Play in Pakistan.

Shaheen Sardar Ali[*]

This paper argues that plural regulatory frameworks ("laws" broadly defined) including religion, culture, customs, tradition, as well as, "formal" law (national and international) informing women's human rights, collude to create and perpetuate gender hierarchies. Whilst "informal" norms of culture, custom and tradition expressly advance this position, gender neutral laws adopted by the state and her institutions are suspect, as these too, operate within a male socio-legal and political environment. Using the example of Pakistan, the paper attempts to present the contours of an analytical framework for mounting a challenge to plural legal systems from the perspective of women's lived experiences and realities of their being.

Culture, Law and Human Rights: Some Conceptual and Definitional Debates

Of the three inter-connected norms: culture, law and human rights, conceptualizing and defining culture, presents the greatest difficulty from a feminist perspective in post-colonial and plural legal systems. Historically, culture is an evolutionary process of our "beings" and "doings". It is an intricate tapestry that both reflects and detracts from collusions and resistances (individual and / or collective), to dominant behavioural norms in society at various points in our histories. Culture, therefore, is not a static, stagnant phenomenon. Whilst there remain some defining moments in histories of cultural norms, evolution, with the passage of time, is an integral element of all cultures. In attempting to define what norms constitute "culture", it is important to remind ourselves of the highly political nature of this defining project: Who has the power to define culture determines whose voices are being heard and represented in this

undertaking? Whose perspectives does a certain culture and custom represent? Is it inclusive of the "being" and "doing" of the vulnerable and the marginalized groups? What sections of the society and communities become allies in this project and who constitutes the adversary / adversaries? At what moment, in our various histories, does a custom become a customary "law"? Potential responses to these questions form the beginnings of a counter-discourse on what is often portrayed as a rigid, inflexible, normative framework, that is, culture.

        Within the context of Pakistan, it is relevant to include the narrative of "formalization" and fossilization of culture, custom and tradition of the "natives" by British colonizers. This is evident from the Gazetteers of various regions of the sub-continent of India. In order to make sense of the multiplicity of cultural norms, informing the lives of the colonized, the British decided to "write" down and "record" culture in the form of Gazetteers. Officials travelled the length and breadth of the country, from village to village, gathering people to question them on what their culture was, and compiling notes later, published (as Gazetteers). The crucial question to pose here is: who were the participants and informants in these culture-gathering meetings? It was no doubt, the male elite, excluding working classes, minority groups and women. Women's concerns were obviously not taken into account. For months, men would continue to record what they thought constituted culture and it was this particular version of culture that became embedded in structures of the colonial state. Thus, the "Gazetteer" became the new bible. The colonial state was obviously informed by its own Euro-centric and formalistic black letter approach to what constitutes a regulatory norm. Black letter law, derived from lived experiences of *some* people at a *certain* time in history, is totally incongruous with culture as a live, evolving and breathing organism growing with society through the ages. This crucial fact appeared to elude the rulers.

        Different sections of a society view custom, culture and laws based thereon differently; hence the importance of challenging and destabilizing the notion of fossilized culture. We must ponder upon the motive of the colonial agenda,

whether it is Asia or Africa, where the indigenous cultures were undermined and communities encouraged to abandon these in favour of "modern" legal constructs. For example, in rural Pakistan, the popularly accepted public space for women was the village well, stream or river known as the "*Gudar*"[1] (source of water collection undertaken by women). In the early afternoon, most women in the village would set out from their homes, with earthen water containers, to collect water from the village well or spring / river nearby. Men would simply keep away from the routes taken by these women, thus, providing them with an opportunity to venture out into the public space with propriety and legitimacy. It also opened up spaces of socialization for women who would otherwise remain confined within the four walls of their homes. This important "women's space" was not recorded as a legitimate cultural norm and remained absent from colonial recordings of culture. On the contrary, what found a place in histories of culture was that women stayed indoors and never ventured into the public space.

Formal Law as a Regulatory Norm for Women's Lives

Laws are informed by culture, custom, religion and tradition, and, more recently, by globalization and international human rights norms. The objective of laws is, to achieve justice and equity, equally and without discrimination for all human beings irrespective of class, sex, colour, creed etc. On paper and in theory, this is what appears to be the wording of most legislation. Reality belies this objective because the effect of supposedly gender-neutral laws may not always be gender-neutral and equally favourable to all sections of a society. I suggest that law is easy to manipulate and is often appropriated by the powerful in the society and applied to their advantage. Experiences of male and elitist sections of a society are reflected and represented in formal law and this is evident in numerous laws, in fact too numerous to recount. A few examples will suffice here. In the employment sector, a 9 a.m. to 5 p.m. job is a very male-oriented job construction and objective. Women, who are shouldering the responsibilities of caring for children and the

elderly, as well as, other household tasks, thus become excluded. If they wish to enter the formal job market, they have to "behave" like a man and leave the house in the morning and return in the evening. Connected to this point, is the fact, that many women with caring responsibilities try to engage with the market by accepting part time jobs. But as is too well known, part time jobs are less well paid, bring little or no job security and no pension and holiday entitlements. This is an example of formal law, as a spillover from the cultural framework, and a product of the society and its socio-economic priorities.

A further point to bear in mind is the fact that formal law once adopted, develops an entrenched legitimacy and becomes difficult to dislodge and challenge. Periodic review of the effect of laws is hardly ever undertaken. Laws' violence is camouflaged under a mask of neutrality. (See discussion in sections below on *Hudood*, *habeas corpus* etc.). We must, therefore, refrain from romanticizing the law and be prepared to critique it in a robust manner. Law, as experienced by most women, is neither gender-neutral nor is it value free. It is informed by other regulatory norms and these may not always be women friendly. Even if a law is framed in a gender-neutral manner, its application and enforcement is not gender-sensitive. Law is, thus, a contested terrain and a discursive site for women's rights and struggles. But abandoning law is also not a preferred option. Law after all, commands legitimacy and power and can be used as an effective tool for women's empowerment and visibility.

The third concept for exploration in this paper is the human rights discourse. This concept, seen by some, as a panacea for all ills, is also problematic when employed for women in non-western, developing economies. Human rights treaties, as well as, formal laws including constitutional documents etc., call for all rights to be extended on the basis of equality and non-discrimination. Enforceability of these rights is dependent on effective institutional mechanisms for implementation. Whilst these frameworks are generally in place in developed economies of the western hemisphere, developing countries lack these or where present, are weak and ineffective. In the context of our present discussion, two

issues arise: The first is the extent to which human rights law accord formal as opposed to substantive equality? It is assumed that human rights are a linear concept, when in practice and application, there are vertical and circular factors encompassing it. For instance, to imagine that a right to vote comes automatically and equally to both men and women as soon as it is placed in a formal law, is far from reality. Women require access to the election debates, as well as, the candidates they will choose from. Their male family members, along with the wider communities, need to "permit" women to leave the home and to the polling stations to cast their vote. The right to vote is, therefore, not as easy for women as it is for men (although for men from marginalized communities and the landless and economically vulnerable, it is also difficult to exercise this right independently and autonomously).

Secondly, the hierarchical nature of human rights and its impact on women's human rights, especially in plural legal systems. Every human right inscribed in human rights treaties and / or other documentation is not situated in a straight line, equal in priority, importance and enforceability. Human rights are hierarchical - one set of rights can cancel the other. For example, I have argued elsewhere[2] that there exists a normative conflict, arising from the right to equality and non-discrimination as stated in UDHR, ICCPR, ICESCR, CEDAW and other human rights treaties, and the right to freedom of religion and belief as enunciated in the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief (the Religious Tolerance Declaration)[3]. International human rights discourse appears to present both sets of rights as being at par, yet the practical implications are very different. Equality among the sexes can be perceived by many, as diametrically opposed to the right to practice one's religion as one perceives it. Thus, where religious traditions have been interpreted to create gender hierarchies, the right to freedom of religion is said to legitimize these inequalities. Yet, women's human rights under CEDAW pronounce complete equality among the sexes. A further complication arises due to the interface between customary norms and religious injunctions, often resulting in the

application of the most patriarchal and non-egalitarian face of religion. How do the constitution, law and courts, in a legally pluralist jurisdiction such as Pakistan, confront and address the dilemma of human rights hierarchies? Is this a normative conflict-defying resolution or can the two be reconciled?

Women's human rights, as set out in CEDAW, are based on a predominantly Western liberal feminist discourse that insists on individual rights of women to the exclusion of the multiplicity of her identities. Several writers argue that this approach is premised on a combination of law, modernization theory, and Western liberal feminist jurisprudence[4]. The assumption is that there is an identifiable human nature which is at the heart of recognizing appropriate rights to develop, protect and contain elements of this core human identity. Further, that underdevelopment and gender inequality in the Third World are caused by traditional values and traditional social structures. The prescription for attaining equality for women is, therefore, to address the human rights of women without reference to the cultural embeddedness of these rights in the Western liberal States. However, the question that is being posed by women around the world is: To what extent are the concepts of equality and non-discrimination, cast within the Western liberal framework, equally beneficial for all women? For example, the point has been made that in the African and Asian contexts, most women rely on entitlements embodied in the family and community relationships that do not relate to the "equal rights" language. Similarly, religion forms an important part of many women's identity. They are not comfortable with being asked to frame their identities within a discourse that is avowedly secular. Is the monolithic and individualistic concept of abstract equality able to meet the everyday needs of such women? Thus, despite its holistic approach toward questions of women's empowerment through human rights, CEDAW is not entirely successful in providing a clear methodology to resolve these conflicting rights.

CEDAW is undoubtedly a huge milestone in attaining equality for women. The Convention, nevertheless, has it weaknesses, and its substantive provisions are emasculated by a range of reservations – many of these based on the

apparent incompatibility with religious norms and beliefs. Islamic States have relied upon their construction of the *Sharia* to enter reservations to the Convention, although there are inconsistencies and contradictions in these practices. Thus, some Islamic States accept the provisions of the Conventions, whereas, others have objected to several provisions on the basis that these conflict with the *Sharia.*

A balance may be achieved by going beyond a mechanical reading of equal rights for women in international human rights law, assessing critically, the evolutionary journey traversed by the concept of "equality" and "non-discrimination" since it was first introduced into the international human rights documents. In the initial stages of application, "equality" and "non-discrimination" were generally interpreted in formal legalistic terms on the premise that by making that statement in law, "equality" and "non-discrimination" would follow in practice. This interpretation and manifestation of the concept was flawed on a number of counts. Equality was perceived and defined as being like a man. As Catherine Mackinnon writes, "man has become the measure of all things." Over the decades and with inputs from human rights scholars, activists, human rights treaty bodies and domestic courts, the non-discrimination norm and equality has achieved a more nuanced and sophisticated position. It now includes, within its meaning, the interconnectedness of various human rights to give it a substantive content. Equal rights to health, employment and education may imply different and unequal measures – in order to arrive at equal access for all. Where the norm remains to be developed and firmed up is in the area of allocation of resources, both human and material. Most importantly, measures such as gender budgeting need to be introduced as an integral component of any planning, monitoring and evaluation aspects of government projects.

Men and women start the race for equal rights from totally different starting points. There prevails a deep inter-connectivity and inter-relation between civil and political rights (the issue of non-discrimination and equal access, both as women belonging to majority and minority communities), with

economic, social, and cultural rights (safe transport for women to access an educational institution, a health facility and the workplace or simply access to a toilet within the public space)[5]. Women's disadvantages are often based on structural injustice and, rethinking human rights through innovative applicatory mechanisms, may afford opportunities to address those structural injustices and make women's human rights a reality.

Plural Legalities and Gendered Realities: Legal Pluralism in Action

Within this complex and fluid environment, there is evidence of evolving plural legalities and gendered realities and a glimmer of hope for women. For example, in the public sphere in employment cases, there appears a robust articulation of the equality and non-discrimination norm. A string of cases from the superior courts of Pakistan depict this trend.

In a legally pluralistic jurisdiction, such as in Pakistan, norms informing the legal system are varied, and, at times, in conflict. The first and foremost issue in our discussions of the equal rights provisions in the Constitution, therefore, is the concept of equality itself and its interpretation by courts. The superior judiciary in Pakistan has applied Article 25 to promote equality between men and women, as well as, by using it in conjunction with other provisions of the Constitution to advance this equality[6]. Litigation in the area has arisen due to a literal and narrow interpretation of affirmative action measures, mitigating against the equality Article (25) of the Constitution[7].

The case of *Shrin Munir v. Government of Punjab*[8]*,* is a major landmark in the area. The petition arose when girl students, applying to medical colleges in Punjab, were denied admission to these institutions on the basis that seats reserved for them, as an affirmative action measure, were filled up. Therefore, even though on merit, these girl students were entitled to places, the same were given to male students on the plea that girl students were only entitled to seats reserved for them and no more. The girls' plea was that this

was a violation of Article 25 of the Constitution, as well as, a misapplication of the affirmative action measures outlined in the Constitution. Their Lordships declared in very clear terms that:

> "Clause (2) of Article 25 prohibits distinction on the basis of sex alone. However, the very next clause (3) controls the rest of Article 25 by providing that "nothing in this article shall prevent the State from enacting any special provision for the protection of women and children." It implies, therefore, that while the difference on the basis of sex can be created and maintained, it shall be done only in those cases where it operates favourably as a protective measure for and not against women and children. The field of prohibition, of adopting sex, as criteria for making a distinction, is thereby reduced to only that category wherein sex is adopted as a standard for discriminating against females generally and against males only if it is not as a measure protective of females....... In interpreting the Constitution and also in giving effect to the various legislative measures, one distinction has to be consistently kept in view and it is that classification based on reasonable considerations is permissible and not violative of the principle"[9].

The *Shrin Munir* case had, as its precursor, the case entitled *Mussarat Uzma Usmani etc. v. Government of Punjab*[10]. This was similar in nature to the *Shrin Munir* case and A. S. Salaam, J., as he was then, while declaring restrictions placed upon girl students to compete on open merit seats as illegal / invalid, interpreted Article 25 of the Constitution of Islamic Republic of Pakistan in the following words:

> "The provision is clear, categorical and unambiguous altogether. It laid down that all

are equal, there shall be no discrimination on the basis of sex alone and that the State may make law for the protection of women. All are equal, man and woman, neither man nor woman shall be discriminated against; laws may be made for the protection of women - not against them. How are the (girls) petitioners being treated equally when they were being denied admission even though they have nearly hundred marks more than the boys? Are they not being discriminated against only because they are girls? If they were boys with these marks they would have been given admission...."[11].

Naseem Firdous v. Punjab Small Industries Corporation[12], tested the application of the equality norm laid out in Article 25 of the Constitution of Islamic Republic of Pakistan in conjunction with Article 27 that safeguards against discrimination in services. In this case, the petitioner, already employed by the Punjab Small Industries Corporation in 1977 and promoted to the position of Assistant Director (Design) in 1983, was prevented from applying for the position of the designer in the same department as the advertisement was restricted to "male only" applicants. The plea of the employers was that the position of designer was essentially a "male" job; this statement was made regardless of the fact that the petitioner, a woman, was already performing that very job for close to a decade. The court declared the justification of Article 27 as conflicting with the equality article of the Constitution, and, hence invalid / illegal.

In the *Shirin Dokht* case, the Sindh High Court was approached by an Air Hostess who challenged Regulation 25 of the Pakistan International Airlines Corporation Employees (Service and Discipline) Regulations 1985. Under this provision, an Air Hostess was to retire on attaining the age of thirty five years, extended from time to time to forty five, whereas their male colleagues in pay groups I to IV would retire at the age of sixty. The Sindh High Court declared this provision *ultra vires* of the Constitution of Islamic Republic of Pakistan and decided in her favour[13]. The Court held that the

action of respondents was in clear violation of Articles 25 and 27 of the Constitution, as both the articles guarantee equal protection and equality before law, irrespective of sex and provide safeguard against discrimination in services. Despite this decision (confirmed on appeal by the Supreme Court of Pakistan), Regulation 25 continued to be in operation until it was struck down again by the Supreme Court in *Pakistan International Airlines Corporation through Chairman and others v. Samina Masood and others*[14]. The Supreme Court upheld equality for women in the workplace by stating:

> "What we are practically confronted with is proved, rather admitted situation, that cabin crew consisting of male stewards and female Air Hostesses are in one and the same group performing exactly the same duties. Though belonging to the same category, yet being differently treated, is not a distinction based on intelligible differential but clearly is a distinction based on sex. In the same functional group performing the same duties and belonging to the same pay group, the retirement age of Air Hostesses being fixed differently is nothing but discrimination resorted to for the only reason that they are females. What learned counsel for the petitioner called an intelligible differentia is nothing but a differentia based on sex, glaringly offending the provisions of Article 25 (2) of the Constitution. We believe, nothing could be a discrimination based on sex, better than what we have found in the present case. . . ." (p. 841).

Compared to the positive and women friendly judgment in employment cases identified above, cases in the area of family law or personal status have experienced a tortuous and chequered course. For instance, the *Saima Waheed* case and others where customary practices and prevalent social norms appeared to rule the courtroom environment. An inflexible interpretative discourse, based on

the religious text, coloured by a patriarchal and misogynist perspective, was clearly visible.

Saima Waheed, an adult Muslim woman[15], contracted a marriage without the knowledge or approval of her parents in the beginning of 1996, though she continued to reside with her parents. Her father, on hearing of the clandestine union, strongly disapproved, returned the *Nikahnama*, or marriage certificate and purported to cancel it. Saima Waheed, in defiance of her family's wishes to end what they considered an undesirable match, however, left the family home and took up residence in a women's refuge managed by a non-governmental organisation. Her father immediately filed criminal charges against the refuge, alleging that his daughter had been abducted, and also argued that Saima's marriage was void *ab initio*, since he, the *Wali*, had not given his consent.

Saima, in turn, petitioned the court for a declaration upholding her marriage. The case attracted intense and widespread media attention, both at home and internationally. During the pendency of the petitions, the Chief Justice of the Lahore High Court referred the case to a larger bench of the Lahore High Court. Issues raised in the petition included, *inter alia*:

(i) whether parents have a right to be obeyed, and whether this right of obedience is judicially enforceable; (ii) whether marriage in Islam is a civil contract or not; and (iii) whether permission of the *Wali* is or is not one of the main conditions of a valid *Nikah* (contract of marriage).

The case not only re-opened a debate that one believed to have been well-settled for centuries, at least among *Hanafi Sunni* Muslims, it also called into question the entire legal personality of a Muslim woman and the rights accorded to her in Islam. The *Saima Waheed* case illustrates the wide ranging controversies surrounding the institution of marriage, and by extension, the position of women in Islam. Legal issues raised in the petition were subsumed in and discussed more in the light of the prevailing customary norms than legal reasoning. The case was decided by the majority

decision, in favour of Saima. The dissenting Judge, Ihsan-ul Haq Chaudhary, presented a number of reasons, according to his view of Islamic society, for holding that marriage in Islam was indeed a sacrament and not a civil contract; that rights of parents, in this regard, were legally enforceable and; that an adult Muslim woman could not enter into a valid contract of marriage without the intervention of her male guardian. A prime example of this line of argument presents itself in His Lordship's judgment when commenting upon Dr. Tanzeelur Rehman's Code of Muslim Personal Laws, Vol. I. Dr. Rehman argues that "A major Muslim male or female can marry without intervention of the guardian". To this His Lordship responds in a rather harsh tone:

> "We are national judges, and, as such, custodians of the morals of the citizens, therefore, it is not possible to subscribe to the opinion expressed by Dr. Tanzeel-ur Rehman"[16], inferring, therefore, that Dr. Tanzeelur Rehman by accepting the right of a Muslim woman to contract marriage was somehow promoting immoral views. In fact[17], the learned judge appeared to be making out a strong case for accepting customary practices as the overriding sources of law. To this end, His Lordship laid out the social ceremony of marriage in great detail and presented it as a substitute for legal requirements of marriage. Thus, he appears to believe that as an essential to a valid marriage, the woman's family must arrange an assembly for the *Nikah* ceremony to which friends and family must be invited. That the proposal and acceptance (*Ejab-o-Qabool*) must be made in this assembly convened by the woman's family, that with the permission of the *Wali*, the woman will give her consent and, the contracting party to the marriage will be the *Wali* and not the woman herself. His Lordship placed marriage in Islam in the category of *Ibadaat*, a *Sunnah* of the Prophet

Mohammed (PBUH), and at best, as a social contract. He also denied that dower was a consideration for the marriage but that it was a gift of free will to the wife. He also argued that *Ejab-o-Qabool* does not constitute a valid contract of marriage[18].

In response to this description, I suggest that marriage ceremonials and rituals vary from one society to another. What is important is the legal requirements constituting a valid contract of marriage. Losing sight of this reality, in the maze of diverse societal norms, will not bode well either for legal development in Islamic jurisprudence, or the position accorded to women in Islam. While making the above statements, one wonders whether His Lordship was aware of a centuries old Pukhtun custom where *Nikah* assembly is gathered at the bridegroom's home, and *Nikah* itself is solemnized after the bride (yet unwed in legal terms), is taken to her new home.

The above examples of judicial perceptions on women's status and rights, in the light of culture and religious frameworks, is what I would describe as "fractured modernity" of the post-colonial schizophrenic personality of the state and her institutions. It presents an image of equality through the constitution and most other formal laws. But as we move down the continuum of laws impacting our lives, the fractured lines appear and we can see patriarchal norms, undermining women's rights. There is no clear line dividing these plural legal systems; they merge and mesh with each other. The constitutional equality presented to women, as their unqualified right, is undermined by the *Hudood* Laws framed in the name of religion as do the inheritance rights of women in Islam. The pretence of equality for all becomes progressively dimmer and more ambiguous as we negotiate the jagged lines of this fractured modernity. By the time we arrive at our destination on the ground i.e. within communities, patriarchal culture reigns supreme. Holding a mirror to communities in the name of the Constitution of Islamic Republic of Pakistan or other legalities that offer space for women's rights, becomes remote and irrelevant.

Legacies of Common Law: Alliances of Colonial and Post-colonial Law and Laws

Violence on Women

A stark manifestation of the fractured modernity of post-colonial states is evident in the alliances between a variety of formal laws, both secular and "religious". Laws, irrespective of their source and origin, are manipulated by private persons and facilitated by the state and her institutions to control women's sexuality and autonomy. I share here, lessons from a survey of case-law under the *Hudood* Ordinance (relating to *Zina*), and the writ of *habeas corpus* meant to safeguard illegal arrest and detention.

In the pre-*Hudood* law (prior to 1979), the writ of *habeas corpus* was used to seek the support of the State to recover persons (mostly women). This law was used in conjunction with criminal law provisions addressing abduction, kidnapping, rape. Factually, these cases were either to recover a woman, who had exercised her choice of marriage with a man, not agreeable to her natal family, or where married women had ran away from home with a man of their choice. (Genuine kidnappings and abductions are not being ruled out here, but the point being made is that the vast majority of cases of *habeas corpus* consisted of relatives seeking rebellious women back into the family fold). The state, despite its acceptance of adult women's right to marry men of their choice, colluded with customary norms and the dominant voice of culture to undermine other regulatory norms, recognizing women as *sui juris.*

The post-*Hudood* scenario is no different. Here, *habeas corpus* continues to provide a supporting hand to the *Hudood* laws. There has not been a single case where the *Hudood* law has not been invoked in conjunction with habeas corpus. "Culture" is now being carried out in the legitimate space of the courtroom. However, a more encouraging picture is emerging since the 1990's, where the judiciary, has handed

down judgments that clearly tried to undermine collusion of *Hudood* and *habeas corpus*. Killing in the name of honour has now far less validity as an argument.

The single most startling "revelation" of this research has been the fact that the vast majority of cases registered under *Hudood* laws of *Zina* and *Zina bil Jabr*, are based on personal and ulterior motives of near relatives. First Investigation Reports (FIRs) are usually fabricated and meant to achieve personal objectives. In most cases, evidence is doctored and constructed, in collaboration with investigation agencies (in this case, invariably local police). These cases are indicative of laws' violence, in the hands of individuals and groups, who appropriate and employ them in playing out "battles" of often "localized" power relations. Case-law is reflective of how the religious text is abused and misused without any qualms of conscience. The distinction between employing "secular" laws and religious law is completely blurred. Some examples of this approach are presented below:

Mst. Humaira Mehmood v. The State PLD 1999 Lah 494, is a case of alleged *Zina* and abduction, registered by a father against the husband of his daughter, as she had married a man of her own choice. The father knew, at the time of his complaint, that his daughter and the accused are lawfully married but went ahead and filed a case of *Zina,* implicating his daughter and her husband, as a result of which they had to flee their home to avoid being arrested. Details are as follows:

> Humaira, a 30-year old woman married Mehmood Butt, against the wishes of her parents. Her father was a sitting member of the Provincial Legislature. The couple, apprehensive of their lives and safety, fled to Karachi and sought refuge in Edhi Centre[19]. The brother chased them and filed a First Information Report (FIR) to the effect that his sister had had a row with her mother and left home and he may be given her "possession". There was no mention of an existing

marriage of Humaira to another man or her alleged abduction by her husband Mehmood. The family, on "recovering" Humaira, went through a "false" marriage ceremony, which they documented on video film, and later produced in the court as testimony of a prior marriage to a person of the family's choice. The case, through the support of human rights activists made it to the High Court of Lahore, invoking the writ jurisdiction under the Constitution of Islamic Republic of Pakistan (Article 199). The judgment by the Honourable Justice, Jillani, is a landmark decision and important in more ways than one. It draws strength from a combination of Islamic law, the Constitution of Islamic Republic of Pakistan and international human rights instruments, emanating both from the UN human rights regime and comparable documents from Islamic forums. What is also crucial in developing a women-friendly and, indeed, human friendly interpretative strategy for securing human rights, is the complementary manner in which these three different legal frameworks are used. (Pages 512 –513 of the judgment sum up this argument and approach rather well).

His Lordship emphasizes the duty of the State institutions in respecting, protecting and promoting fundamental rights of everyone. He States that:

"Coming to the role of the State functionaries in this case, I find that, the police officials who handled this case passed orders and acted in a manner which betrayed total disregard of law and the land and mandate of their calling. Articles 4 and 25 of the Constitution of the Islamic Republic of Pakistan guarantee that everybody shall be treated strictly in accordance with law. Article 35 of the

> Constitution provides that the State shall
> protect the marriage, the family, the mother
> and the child. As Member of the international
> Comity of Nations, we must respect the
> International Instruments of Human Rights to
> which we are a party."

His Lordship reminds the parties that Pakistan is a Member of the United Nations and is a signatory to the Convention of the Elimination of all Forms of Discrimination Against Women. He especially draws attention to Article 16, which enjoins all member states, to respect rights of women to family life on a basis of equality with men. Justice Jillani also refers to Article 5 of the Cairo Declaration on Human Rights in Islam, to reinforce his argument of women's human rights within an Islamic framework. He condemned, in no uncertain language, the "alliance" of the State, society and family to undermine women's human rights by stating that:

> "The police officials are guardians of the
> lives, liberties and the honour of the citizens.
> They owe their place in society to the taxes
> which are paid by citizens. If these guards
> become poachers then no society and no
> State can have even a semblance of human
> rights and rule of law."

Likewise, in *Muhammad Siddique v. The State* court, upheld the conviction of a father who had murdered his daughter, her husband and their infant child, to teach his daughter a lesson for marrying of her own free choice. The court severely criticizes such tendencies and social trends. Justice Jilani in his judgment states thus:

> "These killings are carried out in an
> evangelistic spirit. Little do these zealots
> know that there is nothing religious about it
> and nothing honourable either. It is male
> chauvinism and gender bias at their worst.
> These prejudices are not country specific,
> region specific or people specific. The roots
> are rather old and violence against women

has been a recurrent phenomenon in human history…… Notwithstanding the *Quranic* commandments and the penal law of the land, the incidents of violence against women remain unabated. . . . This is a typical example of misuse and misapplication of the *Hudood* laws in the country. . . A murder in the name of honour is not merely the physical elimination of a man or woman. It is at a social-political plane, a blow to the concept of a free dynamic and egalitarian society. In great majority of cases, behind it at play, is a certain mental outlook, and a creed which seeks to deprive equal rights to women i.e. *inter alia*, the right to marry or the right to divorce, which are recognized not only by our religion but have been protected in law and enshrined in our Constitution."

The above judgments sum up the argument regarding fractured modernity in post-colonial states. In this plural legal system, human rights treaties appear to be invoked by the judiciary as effortlessly as customary and Islamic norms, as well as, constitutional provisions of equality and non-discrimination.

Unpacking Legal Pluralism: Looking Forward

The discussion in this paper advances the view that in plural legal systems, multiple regulatory norms operate under the overarching umbrella of the state and her institutions. We operate in societies where devolution of power to communities on the one hand, and globalization on the other, work in tandem with highly centralized state structures and institutions. In a discussion of women's rights, this development too, needs to be problematized. The state is an abstract entity but governments universally articulate a complex ideology and presence, informed by a range of norms including custom, culture, religion, as well as, formal laws. In Pakistan, the State is essentially a post-colonial state which encompasses within it, the colonial legacy of common

law, as well as, other norms identified above. But, in this environment of fractured modernity, cultural violence or religious norms are not being inflicted within informal communities. On the contrary, legitimacy for cultural practices, adverse to women, and in violation of fundamental rights of the constitution and human rights treaties is achieved through and within the state institutions. There exists, therefore, the need to appropriate the human rights discourse and make it one's own by contributing women's concerns into the debate and strategy.

It is also noted that a structural and institutional embeddedness, of unequal gender relations within the public and private sphere, makes it difficult for women to engage in public discourse of life. This institutional embeddedness is such that it is not prepared, either physically or psychologically, to accommodate women's bodies in the public sphere. We have been told for centuries that women's bodies in the public sphere are the problem. It is the invisible visibility of this problematic that is a huge issue for women and the society, and is part of our psyche. The state is supposed to be neutral but it is not prepared to be so. For example, in public transport, women have only two small seats in front, next to the driver. All men occupy seats in the back which automatically become the domain of the male. Women are never seen sitting in the back seats and this shrinks the "acceptable" public space for women.

Formal law of equal treatment is held hostage to informal law, be it in the public domain of the market space, in offices and education and health facilities or in the courtroom.

Conclusion

I would emphasize the need to raise these issues and connect them to the norms of the society we live in, as well as, the norms of democracy. We need to pose the questions: are women's voices being heard as part of the democracy we aspire to usher? With the revival of the local government, have women's voices been included or have their voices and

concerns been muffled by customary and elitist norms of silencing the vulnerable? Has devolution strengthened patriarchal norms, rejuvenated caste / class / *Jirga* / *Panchayat* hold or, has women's presence in these institutions, challenged an all male enunciation of culture, law and women's rights? We require documentation of cases and scenarios, as well as discourses. How are communities responding? Is the transition towards democracy women friendly? What sort of democracy are we moving towards, if at all? In other words, has women's participation in local and national political structures changed the discourse and challenged the *status quo*? These questions require exploration and resolution at the level of our communities. Otherwise, substantive equality will continue to evade the millions of women of our region.

Notes and References

1.   Professor of Law University of Warwick and Professor II, University of Oslo, Norway. Formerly, Professor of Law, University of Peshawar, Pakistan.

2.   '*Gudar*' (Pushto/Pukhto word) meaning a stream, river or other water source where women went to collect water.

3.   S. S. Ali & J. Rehman, "Freedom of Religion versus Equality in International Human Rights law: Conflicting Norms or Hierarchical Human Rights? (A case-study of Pakistan)" (2003), 21 *Nordic Journal for Human Rights*, p. 404-429.

4.   UN G. A. Res. 36/55, 36 UN GAOR Supp (No. 4) at 171, UN Doc. A/36/51 (1981).

5.   See, e.g., H. Charlesworth, C. Chinkin and S. Wright: "Feminist Approaches to International Law" (1991), 85 *American Journal of International Law* p. 613; and A. Hellum, *Women's Human Rights and Legal*

Pluralism in Africa (1999), Oslo: Tano Aschehoug p. 412.

6.   S. S .Ali, "Where is the Toilet? Getting Down to Basics in Accessing Women's Rights", in A. Hellum, S. S. Ali, J. Stewart & A. Tsanga (eds.) *Paths are Made By Walking* (forthcoming 2006).

7.   In addition to article 25, there exist a number of other constitutional provisions permitting the State to adopt affirmative action measures assisting women to achieve meaningful equality with men. These include, *inter alia*, articles 26; 27; 32; 34; and 37.

8.   For example, where 'special' quota of seats were reserved for female students in medical colleges, and female applicants exceeded this quota and were able to get places in 'open' competition with their male colleagues, a narrow interpretation resulted in denying the female applicants places beyond the fixed quota.

9.   PLD 1990 SC 295.

10.   Shrin Munir v. Government of Punjab, PLD 1990 SC 295 at p. 309.

11.   PLD 1987 Lah. 178.

12.   Ibid.

13.   PLD 1995 Lah. 584.

14.   Shirin Dokht v. Government of Pakistan 1995 PLC (C.S)251

15.   PLD 2005 SC 831

16.   And an undergraduate student at the Government College for Women, Lahore (Pakistan).

17.   At p. 54 A of judgement.

18.   *Ibid.*, at p. 10-12.

19.   *Ibid.*, p. 8.

20.   CATHERINE A. Mackinnon, Feminism Unmodified: Discourses on Life and Law, 32–33, 44 (1987).

21.   The Edhi Trust is a national welfare organization. Abdus Sattar Edhi established his first welfare centre and then the Edhi Trust with a mere Rs. 5000 (less than 50 pounds sterling). What started as a one-man show operating from a single room in Karachi is now the Edhi Foundation, the largest welfare organisation in Pakistan. The foundation has over 300 centres across the country, in big cities, small towns and remote rural areas, providing medical aid, family planning and emergency assistance. They own air ambulances, providing quick access to far-flung areas.

22.   P. Baxi, S. M. Rai and S. S. Ali, Legacies of Common Law: "Crimes of Honour" in India and Pakistan (2006), Vol. 27 *Third World Quarterly.*

23.   S. S. Ali, & J. Rehman, "Freedom of Religion versus Equality in International Human Rights law: Conflicting Norms or Hierarchical Human Rights? (A case study of Pakistan)" (2003) 21 *Nordic Journal of Human Rights* 404.

24.   H. Charlesworth, C. Chinkin & S. Wright, "Feminist Approaches to International Law" (1991) 85 *American Journal of International Law* 613.

25.   A. Hellum, Women's Human Rights and Legal Pluralism in Africa (1999) Oslo: Tano Aschehoug.

26.   S. S. Ali, "Where is the Toilet? Getting Down to Basics in Accessing Women's Rights" in A. Hellum, S. S. Ali, J. Stewart & A. Tsanga (eds.) *Paths are Made By Walking. Intersecting Plural Legalities and Gendered Realities* (2006) Weaver Books (forthcoming).

27.   S. S. Ali, Gender and Human Rights in Islam and International Law. Equal Before Allah, Unequal before Man? (2000) The Hague: Kluwer Law International.

28.   Shrin Munir v. Government of Punjab PLD 1990 SC 295 *Mussarat Uzma Usmani v. Government of Punjab* PLD 1987 Lah. 187.

29.   Naseem Firdous v. Punjab Small Industries Corporation PLD 1995 Lah. 584.

30.   Shirin Dokht v. Government of Pakistan 1995 PLC (C.S.) 251 Pakistan International Airlines Corporation through Chairman and others v. Samina Masood and others PLD 2005 SC 831.

31.   Mst. Humaira Mehmood v. The State PLD 1999 Lah. 494.

Legal Pluralism in Pakistan and Its Implications on Women's Rights

Nasira Iqbal

Laws are a major tool in promoting and protecting human rights and play a vital role in the well-being of any society. Just as fair laws can dispense justice equally, unfair laws can lead to grave violations, turning the justice delivery system into a travesty of itself[1]. On the other hand, a legal system in any society is itself, a product of the existing economic system and social conditions. It simultaneously mirrors the socio-economic realities, political attitudes / institutions, as well as, sexual and ethical codes of conduct of its members[2].

Violence against women is commonplace in Pakistan[3], a phenomenon arising out of a culture of patriarchy, obsolete indigenous tribal practices, and misinterpretation of Islam. For centuries, Pakistani women have been severely discriminated and disadvantaged, subjected to parental suppression, marital violence, Honour Killings, and other barbaric customs. Poverty, leads to treatment of women as property, chattel, objects of sale and negotiation, in arriving at settlements and exchange marriages, with wide age and attitude disparities. They are denied education[4], proper nutrition, legal and social rights, and deprived of taking very personal decisions regarding marriage or divorce, size of family and other family matters. Women are trafficked[5], forced into marriage, prostitution, exploitative labour, mentally and physically tortured, and sexually abused. Domestic, government and corporate employees alike are discriminated, underpaid and face violence and harassment at the workplace. Their role in the public sphere remains marginalized.

Honour killings, *Swara* and *Vani* (where women are given to victims' families to compensate for crimes), illiteracy and helplessness of women, family discrimination in rearing of

the girl child, engender violence against women. Greed of male members of the family leads to marriage of women to Holy *Quran* to withhold property. Lack of education, sexual repression, segregation of sexes, causes frustration in males. Media attention to horrific details of heinous crimes, obscene videos, movies, and pornographic literature lead to copycat occurrences. Under-age marriages and marriages without girls' consent result in marital rape. Dowry disputes lead to wife burning. Excessive burden of work on girls and women is followed by sexual harassment and inadequate compensation for labour at home and workplace.

The Constitution of Islamic Republic of Pakistan provides a framework for legislation to empower women. It declares that all citizens enjoy the protection of law and are to be treated in accordance with law[6]. That any law, custom, or usage, having the force of law, which is inconsistent to the fundamental rights conferred by the Constitution, shall be void[7]. It guarantees women the right to work and adopt a lawful business, trade or profession[8]. Article 25 guarantees gender equality and affirmative action for women's empowerment. The Principles of Policy protect marriage, the family, mother and child and envisage full participation of women in national development[9]. Ignorance impedes women from benefiting from these constitutional provisions and progressive laws like The Child Marriage Restraint Act, Muslim Law *Shariat* Application Acts, The Muslim Family Laws Ordinance and the Family Courts Act. It also makes them victims of customs and unilaterally imposed draconian laws, such as the *Hadood* Ordinances, the *Qanoon-e-Shahadat* and various provisions of the *Diyat* and *Qisas* Ordinance.

At present, there are three parallel formal and informal legal systems prevalent in Pakistan. All these systems collude to subjugate and oppress women who are physiologically weaker than men. Women comprise 50 percent of the world population. They do two-thirds of the world's work, earn one-tenth of the world's income and own 1 percent of the world's property. These figures are even more dismal if we examine the Pakistani data.

Pakistan has inherited the Common Law system of civil and criminal laws from the British. Its penal system operates on the salutary principle that an accused is deemed innocent till proved guilty. Civil law operates on the presumption that if a woman has executed a contract, which inures to her manifest disadvantage, she must have entered the contract through duress, coercion or undue influence. The burden of proving that she executed it of her own free will, without any external compulsion, lies on the person claiming some benefit under the contract. This system is still in force, and judges are expected to decide cases on the principles of Justice, Equity and Good Conscience.

However, Section 300 Pakistan Penal Code (PPC) Exception 1, provides that: "Culpable homicide is not murder, if the offender whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident". This provision was exploited by men to get rid of their enemies, by murdering their female relatives and "suspected" paramours, secure in the knowledge that male judges would let them off with minor sentences, (usually the imprisonment undergone till the conclusion of the trial).

The provisions of *habeas corpus* (produce the body) contained in Section 100 of the Code of Criminal Procedure, 1898, were abused by parents, husbands and other relatives of women, who had fled oppression, by either marrying of their own choice or by leaving cruel husbands. The court would issue a direction for the production of such hapless women from the custody of the persons with whom they had sought refuge. These women were usually returned to the custody of their parents or husbands, through exercise of undue influence, by their relatives and the adjudicating officers.

General Ziaul Haq added Islamic Law to this system, by making the Objectives Resolution, a substantive part of the Constitution. He established the Federal *Shariat* Court which examines all existing laws and ensures that any law repugnant to Islamic injunctions is repealed. The Federal

Shariat Court also has jurisdiction to decide cases arising out of *Hadood* Laws, such as the *Zina* Ordinance. Thus, Zia established a parallel hierarchy of civil and criminal jurisdiction, alongside the ordinary court system, which can result in contradictory judgments.

The *Quran* makes women legal entities in their own right. But women have been most adversely affected by the promulgation of so called Islamic Laws, including the *Zina* Ordinance, the *Diyat* and *Qisas* Ordinance, and the *Qanoon-e-Shahadat* Ordinance. These Ordinances have been passed without reference to any competent legislature by a stroke of a pen, of a dictator[10]. They lean heavily on fundamentalist interpretations of religious dogma, which serve to exaggerate the punitive aspects of the *Fiqh* (Islamic Jurisprudence), without following its emphasis on welfare legislation. The vision of the Founders of Pakistan to create a modern, Islamic welfare state has foundered on the rocks of fundamentalism. The lives of Pakistani women are still dominated by men in a patriarchal society.

The *Hudood* Ordinances, 1979, penalize theft, drunkenness, fornication, adultery, rape and defamation. They require the testimony of four male Muslim witnesses to impose maximum punishment. The *Qanoon-e-Shahadat* Order has reduced the witness of a woman to half that of a man in financial matters, creating hurdles for women bankers and corporate executives. The *Zina* Ordinance does not recognize women as witnesses at all, thus, exposing a woman complainant to punishment of stoning to death or imprisonment, if she cannot prove her allegation of *Zina bil Jabr* (Rape) by producing four male Muslim adult witnesses.

This Ordinance is abused by registration of bogus cases with police, particularly when a woman marries against her family's wishes or leaves the house of her husband. It has become a tool of oppression against women in public parks, colleges, hotels, hostels and even in the homes of friends or family members, where an innocent and victimized woman seeks shelter. The number of women prisoners has increased manifold since the enforcement of the *Zina* Ordinance[11].

Although, they may be ultimately acquitted, there can be no recompense for the years of incarceration, during which, many of them bear children who have no knowledge of the outside world. Male rapists have benefited since women cannot produce four adult male Muslim witnesses to establish the charge of rape. Gang Rape is punishable by death under Section 10(4) of *Zina* Ordinance. No lesser punishment is prescribed. Therefore, men go scot free, increasing the incidence of gang-rape. (Sentences of life imprisonment, fine or castration as *Qisas* may act as strong deterrents.)

The definition of an adult female in the *Zina* Ordinance is a girl, who has crossed the age of puberty, which may occur even at the age of nine years in some cases. Such a girl would be deemed an adult for purposes of consent to *Zina* and could be punished, if she is raped and cannot prove the charge. Marital rape, even with a pubert girl, is no longer an offence and frequently takes place where women are sold or bartered in marriage, in gross violation of the Child Marriage Restraint Act.

The recent amendments in Chapter XVI of PPC (dealing with Offences Affecting the Human Body, which was earlier amended by the *Diyat* & *Qisas* Ordinance), regarding Honour Killings, still allows compounding of murders of female family members with the permission of the Court. Section 338-F PPC gives the courts, wide powers, to interpret the provisions of the entire chapter in accordance with their own understanding or interpretation of the injunctions of Islam. The courts have virtually restored the grounds of "grave and sudden provocation", available in the British version of PPC, by giving it an Islamic or cultural justification. Murderers, thus, get away with minimal sentences by claiming the defence of family honour.

Sections 306 and 307 PPC provide that offenders are not liable to "*Qisas*"[12], or punishment of "*Qisas*" cannot be enforced against them, because of their relationship to the victim or victim's *Wali*(s). For example, a man who murders his wife cannot be sentenced to death because he is the father of her children. Amended Sections 302, 308 and 311 restrict the broad discretionary powers of the Courts regarding

punishment for "*Qatl-e-Amd*"[13] not liable to "*Qisas*". But the courts still have the power to decide the form and quantum of punishment to be given. Ten years imprisonment is the minimum penalty, which can be substantially reduced, by computing remissions for public holidays etc.

Section 309 provides for waiver of the right of "*Qisas*" by a "*Wali*"[14] of the victim, while Section 310 provides for compounding offence of *Qatl-i-Amd* (intentional murder) by acceptance of some mutually agreed compensation. Section 338-F further gives courts, the power to decide, whether the offender is to be acquitted thereafter or awarded any "*ta'zir*"[15] penalty. These provisions in the law have privatized the crime of murder, with a disastrous impact, in situations where women are murdered by their family members. If the relatives agree, the offender can go scot free even after committing a grave and heinous crime like murder[16].

The formal legal system is not applied in all areas of Pakistan. In the rural areas, where sixty per cent of the population resides, the *Jirga / Panchayat* system prevails, whereby the feudal elite of the village pass judgment in disputes among village residents. Their judgments are based on customary practices, and are often illegal on the standard of Common law and *Sharia* Law principles, especially on issues related to the control of women's sexual and moral lives. The *Jirg*as consider women as commodities, to be exchanged and murdered, to settle disputes or to earn money and respect for the family.

The *Jirga / Panchayat* system was developed by the British, who made alliances with the tribal / feudal elite. In return, for their loyalty and allegiance, they granted them absolute power over the lives of their people. All decisions regarding criminal conflicts, civil, property and other disputes, financial transactions and trade were made by the local lords. Ritual killing of women in the name of honour, after accusing them of moral corruption, became common practice. This custom was labelled as *Sia-Kari* in Balochistan, *Karo-Kari* in Sindh and Southern Punjab, and *Tora-Tor* in the North Western areas of today's Pakistan. The common factor

behind the deadly custom was the unchecked power of the *Jirga / Panchayat* during the British period[17].

Even today, a variety of issues and disputes are put before *Jirgas*; including women's immorality, property or land disputes, water conflicts, theft of money or animals, murder and arbitration between two warring parties. In some tribes of Balochistan and Punjab, the *Jirga* or *Panchayat* makes the accused walk on hot coals to prove his innocence. All the participants of the *Jirga / Panchayat* are exclusively men of the community.

No appeal is allowed against the verdict of a *Jirga / Panchayat*, and no poor person can afford to reject it, as it is bound to be followed by persecution of his family, by criminals and police, at the instance of the tribal / feudal lord, who will also enforce their social boycott in the village. These tribal courts flourish with the blessings of the local police and civil administration personnel, who are happy that the crimes are not put on their record. Feudal lords, politicians, police officers, the bureaucracy and parliamentarians, all join hands to keep the tribal justice system alive and flourishing. This is because all collectively and individually benefit from such a system. The losers and sufferers are the women who are not allowed to attend the *Jirga* meetings. They may only be represented by male relatives. In case of charges of adultery, women are called to hear the punishment decided by the *Jirga*.

The following chart shows the parallel formal and informal legal systems in Pakistan[18].

Parallel Legal Systems in Pakistan
Nature and Mechanism

Formal Laws		Informal Laws	
Statute Laws	Enacted Sharia Law	Customary Laws	Tribal Laws
Implementation through Civil & Criminal Courts Lower, High, Supreme	Implementation through Federal Shariat Court		Implementation through Jirga or Panchayat
Enforcement through State Police Department	Enforcement through State Police Department		Enforcement through Agents of Tribal Leaders, Feudal Lord's Henchmen

Yet, another parallel legal system functions in the Federal Administered Tribal Areas (FATA). Justice is administered according to the Frontier Crime Regulations (FCR). The Constitution of Islamic Republic of Pakistan recognizes that the legal system operative in the rest of Pakistan does not extend to these tribal areas. Women here were not allowed to contest or vote during the last local bodies elections, showing the extent of their exclusion from public life.

Women are the main victims of the contradictions arising out of the enforcement of the above parallel legal systems, within the same society. A prime example is the case of Mukhtaran Mai, who was gang raped in Mirawali village in June 2002, on the orders of the *Panchayat* of elders of the powerful Matsoi tribe, as punishment for the alleged affair of her twelve year old brother with a Matsoi girl. The Supreme Court of Pakistan directed that the offenders be arrested and brought to trial. The Sessions Court convicted the rapists and sentenced them to death. The High Court, in

appeal, acquitted five convicts and reduced the sentence of the sixth to life imprisonment. The Appeal in this case is still pending before the Supreme Court, where the fate of the accused will finally be decided.

Why is the outmoded tribal *Jirga / Panchayat* system still followed? The courts are burdened with a huge backlog of cases, and physical access to the courts is extremely limited for those who live in the urban slums, semi-urban, rural and remote areas. Women are further impeded by poverty, inequalities and social taboos that expect women to endure rather than rise against injustice. If a woman seeks legal redress against usurpation of her rights, the family feels disgraced and the family honour is perceived to be tarnished. So every device, including emotional blackmailing, is used to prevent her from resorting to litigation[19]. Moreover, the basic structure of the dual formal legal system is biased in favour of the affluent and politically powerful, and the law enforcement agencies suffer from lack of credibility.

All the three legal systems are interpreted by judges or legal decision-makers (tribal, or religious leaders), according to their own cultural and social biases, and gender perceptions. Legal discrepancies in the penal codes facilitate compromises, leading to minimal penalties for male perpetrators. Such compromises are made through the judges and law enforcers, either through bribery or due to their own personal gender bias and belief in women's lower status. Male Judges of the subordinate courts are biased against female litigants. They are reluctant to grant them divorce. They condone "Honour Killings" and death sentence has not been executed against any rapist. Female judges are few since, they are not given proper facilities or protection, and are often transferred to remote areas and not given maternity privileges.

To ensure impartial justice and to see that the rights of all women, men and children are respected equally, it is necessary to ensure that the laws themselves are impartial, free of gender bias and discrimination. Existing laws need to be subjected to a process of review and critique from time to time, and reformed to respond to changing requirements.

Justice is subverted if archaic, patriarchal, or discriminatory laws and practices are adhered to.

The hold of *Jirga* and *Panchayat* in the rural areas is continuing, although their judgments frequently, unjustly, victimize women, because women rarely have access to any other judicial forum. The Supreme Court of Pakistan has taken *suo moto* notice of oppressive customs like *Vani* and *Swara* and direct the law enforcement agencies to prevent such practices. The District and Sessions Judges, in each district, should also be empowered and trained to take *suo moto* notice and prevent gender discriminatory, criminal practices from taking place. The Sindh High Court declared in 2005 that *Jirgas* and *Panchayats* were illegal. However, the executive branch of the government tried to nullify this judgment. Injustices will prevail, unless and until, holding of *Jirgas* and *Panchayats* is declared illegal and made punishable by law.

How can we ransom these female hostages to customs, and how will the vulnerable sections of the society receive justice, in those areas where the *Panchayat / Jirga* system now functions? The *Musalihat Anjuman* (MA), consisting of two men and one woman, is established in every Union Council under the Local Government Ordinance 2001. It can prove to be an invaluable replacement for *Jirgas* and *Panchayats*, by resolving disputes outside the court through conciliation. It can also act as a forum of referral from overburdened courts. Thus, resolution of disputes through MA reduces the burden on the already congested courts and provides speedy redressal of grievances to the rural population, free of charge, at their doorstep. MA mechanisms are based on the principle that parties should reach a mutually acceptable solution rather than spend time, energy and money in courts by encouraging amicable settlement of disputes[20]. We have to take care that these *Musalihat Anjumans* provide effective relief to women and do not degenerate to the level of traditional *Jirgas* and *Panchayat*.

All discriminatory laws such as *Hudood* Ordinances, *Diyat* & *Qisas* Ordinance require repeal. Three official Commissions have recommended that the *Hudood* Laws be

repealed[21]. In January 2006, the advisor to the Prime Minister for Women's Development announced that the *Zina* Ordinance will be repealed. However, one has to be careful that all draconian laws are repealed in entirety, since it is impossible to effectively amend a bad law. If they are replaced by subsequent legislation, it should take place after full debate inside and outside the parliament. Gender proactive civil society organizations should prepare appropriate drafts, and coordinate with the law ministry, to ensure that these laws can withstand the test of scrutiny on the touch stone of human rights standards.

Islam raises women to a status of equality with men. It also enjoins justice and equity in decision-making[22]. Men do not enjoy the sole right to interpret the *Sharia*, women possess the same right. A community which denies half its members their rights, cannot progress. Islamization of laws should be conducted in a manner so as to reconcile them with the needs and requirements of modern times. *Ijtehad* is the recognition of the factor of change, the principle of movement in the social structure of Islam[23]. *The* Parliament must enact laws which are compatible with Millennium Development Goals[24].

Pakistan is a signatory to the UN Convention on the Elimination of All Forms of Discrimination Against Women. The Vienna Convention on the Law of Treaties clarifies that domestic laws cannot be used as a justification for not conforming with the treaty commitments. Standard setting, according to the international human rights norms is important to satisfy the preliminary step of putting the domestic law and legal controls, on violence against women, in place. Significant areas of family law, criminal law and procedure must be reformed in order to create a consistent legal value system on violence against women. If this cannot be done because of core limitations set by reservations and declarations to treaties, it is impossible to even begin to address the more complex issues of law enforcement and implementation[25]. However, we need indigenous solutions to our problems of law enforcement and implementation, since foreign models may not always suit our requirements.

Legislation should be enforceable due to its acceptability and public appeal.

Law can never be a single solution. It is one of a range of initiatives that must be combined for achieving an effective response to violence against women. Gender sensitive training on the legal norms and their purposive enforcement must be broad-based enough to reach the family, the community, concerned professionals like doctors and family counsellors, lawyers, judges and law enforcement personnel. It is often the lack of understanding and resources for effective law enforcement that has encouraged violence or trivialized it, and entrenched gender insensitive values. A pluralistic and multi-disciplinary approach to the problem of violence against women must not undervalue the significance of law and legal controls[26].

A gendered vision is vital within the criminal justice system, law enforcement agencies and the media. The electronic media and the elected local body representatives should work together, to bring about a change in attitudes, by portraying women as strong decision-makers rather than weak victims of violence. A change in the climate of ideas can engender a change in our behaviour. There is also a need for the language of rights, to be understood by those who need to exercise the rights, and by those who need to respect and promote them.

Notes and References

1.   Violence, Law and Women's Rights in South Asia Ed. by Savitri Goonesekere, Saga Publications India (Pvt.) Ltd. Delhi 2004. p. 7.

2.   Tahira S. Khan; Beyond Honour—A Historical Materialist Explanation of Honour-related Violence. Oxford University Press, 2006. p. 242.

3.   31,000 crimes against women were reported in the last five years throughout Pakistan. These included murder, rape,

torture, honour killings, burning, abduction, police torture, suicide and trafficking. 4,770 women were killed in the name of honour: 617 in 2000, 736 in 2001, 803 in 2002, 1,261 in 2003, and 1,353 in 2004. In the last five years, 1,570 women were burnt: nine in 2000, 311 in 2001, 240 in 2002, 380 in 2003, and 310 in 2004. There were 6,519 other murders during the last five years: 386 were murdered in 2000, 1,422 in 2001, 1,583 in 2002, 1,636 in 2003 and, 1,492 in 2004. In the same period, 557 bodies of women were found: 107 in 2000, 98 in 2001, 120 in 2002, 129 in 2003, and 103 in 2004. The statistics revealed that 3,722 women were raped during the last five years: 404 were raped in 2000, 576 in 2001, 984 in 2002, 1,030 in 2003, and 728 in 2004. It showed that 6603 women were tortured during the last five years: 317 were tortured in 2000, 1,195 in 2001, 1,570 in 2002, 1,920 in 2003, and 1,601 in 2004. There were 536 cases of police torture against women during the same period: 53 in 2000, 64 in 2001, 97 in 2002, 140 in 2003, and 182 in 2004. Abduction cases totalled 6,505 during the last five years: 690 were abducted in 2000, 1,255 in 2001, 1,404 in 2002, 1,759 in 2003, and 1,397 in 2004. During the last five years, 218 women were reported victims in trafficking cases: 53 in 2000, 36 in 2001, 28 in 2002, 84 in 2003, and 67 in 2004. During the same period, 5,542 women committed suicide: 638 committed suicide in 2000, 1,053 in 2001, 1,112 in 2002, 1,412 women in 2003, and 1327 in 2004. Lawyers for Human Rights and Legal Aid (LHRLA), a Karachi based NGO quoted in the Daily Times Lahore. Tuesday March 8, 2005.

4.   School enrolment for boys is 82% and for girls it is 61 percent. Boys complete an average of 5 years of school while girls complete only 2 1/2 years. The overall female literacy rate is 24% while in parts of Balochistan it is only 2 percent. Pakistan ranks 120 out of 146 countries in gender related development and 92 in gender empowerment. (UNDP Statement on gender in Pakistan 2001).

5.   Pakistan was declared to be a source, transit and destination country for trafficked persons. The report stated women and girls were trafficked to Pakistan from

Bangladesh, Afghanistan, Iran, Burma, Nepal and Central Asia for forced commercial sexual exploitation and bonded labour. Within the country, girls and women from rural areas were trafficked to urban centres for commercial sexual exploitation and labour. Women trafficked from East Asian countries and Bangladesh to the Middle East often transited through Pakistan. Pakistan was placed on a watch list for trafficking in 2004. June 2004 report by the US Office to Monitor and Combat Trafficking in Persons. 2005 Pakistan remained a major destination, transit and source country for trafficking, with both cross-border and internal trafficking reported. (HRCP Report). See also Mahe Nau Haider, Pakistan Position Paper on Human Trafficking, IOM, 2005.

6.   Article 4 of the Constitution of Islamic Republic of Pakistan, 1973.

7.   Article 8, ibid.

8.   Article 18, ibid.

9.   The Principles of Policy are subject to the availability of resources and are non-justifiable.

10.   They were subsequently sanctified by the restoration of the Constitution Order 1985. The Parliament made a trade off with General Zia by granting protection to his Ordinances in exchange for the restoration of democracy.

11.   A 1980 study of criminal justice in Pakistan documented only some 70 female convicts in the entire country. In 1983, a minimum of 1,682 women faced trial for offences solely under the Hudood Ordinances. That number increased to 1,843 in 1984 and has continued to rise ever since. Estimated, in 1990 there were a total of 4,500 women prisoners (both convicts and pre-trial) in the entire country. *Double Jeopardy.* Report of Police Abuse of Women in Pakistan written by Dorothy Q. Thomas, Human Rights Watch & Patricia Gossman, Asia Watch 1991.

12.   *Qisas*: Punishment by causing similar hurt to the convict as he caused to victim, or by causing his death if he has committed *Qatl-i-Amd*.

13.   *Qatl-i-Amd*: Intentionally causing death of a person.

14.   *Wali*: A person entitled to claim *Qisa*s. In case of death, the heirs of the victim, not including a person accused of committing *Qatl-i-Amd* in the name of Honour.

15.   *Ta'zir*: Any punishment other than *Hadd.*

16.   Violence Against Women: The Legal System and Institutional Responses in Pakistan. Hina Jilani and Eman M. Ahmed. Violence, Law and Women's Rights in South Asia, Ibid. p, 149-205.

17.   Beyond Honour— P. 245-247. Ibid.

18.   Chart Reproduced from Tahira S. Khan; Beyond Honour— A Historical Materialist Explanation of Honour-related Violence. Oxford University Press, 2006. Ch. 9. Pg. 244.

19.   Selected Proceedings of TA 3433-PAK, Strengthening of Institutional Capacity for Judicial and Legal Reform, January 2003. ADB.M/o LJ and HR, Government of Pakistan. Pg.356.

20.   Chapter XI of Local Government Ordinance 2001 *Musalihat Anjuman* Section 102. Constitution of *Musalihat Anjuman:-* (1) In each Union, a *Musalihat Anjuman* shall be constituted consisting of a panel of three *Musaleheen* (Conciliators) one of whom shall be a female to be elected from amongst the residents of the Union who are publicly known to be persons of integrity, good judgment and command respect. Disputes which may be brought to the *Musalihat Anjuman*:- Domestic violence; Matrimonial disputes; Property disputes; Child abuse, vagrancy and compelling children, females and disabled persons to beg; Exclusion of females from inheritance; Marriage to *Quran, Watta Satta* (exchange marriage), *Walwar, Swara* (giving women in marriage to settle disputes); *Zhagh* (asserting ownership over women of

the enemy tribe); Forced marriage & human trafficking; Forced labour; Public insult, assault and degradation of females; Sexual harassment at the workplace; Related matters.

21.   These commissions headed by Begum Zari Sarfaraz, Justice Nasir Aslam Zahid and Justice Majida Rizvi, former Chair of the National Commission of the Status of Women, recommended repeal of *Hudood* Ordinance in 1986, 1997 and 2004 respectively. In 2004, General Musharraf declared that he will set up another commission to examine these laws which never materialized.

22.   The *Quran* says: "I will deny no man or women among you the reward of their labour. You are the offspring of one another" (*Quran* 3:195). It further says: "The true believers, both men and women, are friends to each other. They enjoin what is just and forbid what is evil: they attend to their prayers and pay the alms-tax and obey *Allah* and His Prophet. On these *Allah* will have mercy. He is "Mighty, Wise". (Quran 9:71).

"For Muslim men and woman, for believing men and women; for devout men and women, for men and women who are patient; for men and women who humble themselves, for men and women who give charity; for men and women who fast; for men and women who guard their chastity; and for men and women who remember *Allah* much for them all has God prepared forgiveness and a great reward". (*Quran* 33:35)

23.   Muhammad Iqbal, The Reconstruction of Religious Thought in Islam, Lahore, Sheikh Muhammad Publishers, 1982, p.148.

24.   Millennium Development Goals have been agreed by UN member states including Pakistan, as the commonly accepted framework for measuring progress. Goal 3 requires Promotion of gender equality and empowerment of women.

25.   Violence, Law and Women's Rights in South Asia, Ibid   p. 14-15.

26.   Violence, Law and Women's Rights in South Asia, Ibid. p.

Legal Pluralism and Women's Rights in Afghanistan

Hangama Anwari

Most contemporary legal systems – in developing countries and industrialized states – contain parallel and often contradictory regulations of social, economic and political organization. These are based on different legitimating sources like the international law, state law, religious law, customary law and new forms of self-regulation. This type of legal complexity is designated by the term "legal pluralism". Under certain circumstances, constellations of legal pluralism can be a source of considerable legal insecurity, and of social and political conflict.

Strengthening negotiated approaches to women's rights is a priority for research and action. Legal reform should be grounded in the understanding of the complexity of how women's rights could be inter-linked with religion, customary practices, legal reform, as well as, human rights. Meanwhile, we should keep in mind the issue of women's rights as an international, national and community issue.

In looking at the issue of traditional societies and democracy, in the context of Afghanistan, one needs to have an overview of the overall situation in the country:

Afghanistan is a country inhabited by a population of over 30 million. With the majority being Muslim believers, Islam is the main practicing religion which governs much of the personal, political and legal aspects of the lives of the people.

It is a vast country, as a result of which, it has a rich mix of ethnicities and tribes of Pashtun, Tajik, Hazara, Uzbek, Aimak, Turkmen, Baloch and others.

By definition, Afghans by the age of 15 years should be able to read and write. However, in practice, only 36 percent of the population, with 51 percent males and 21 percent females, can do so[1].

The family is the single most important unit in the Afghan culture. Men and women's roles are much more defined along traditional lines. Women are generally responsible for household duties, whereas, men will be the bread-winners. In the cities, professional women do exist, but they still need to practice their basic duty of being a household manager. Families commonly arrange marriages for their children. Factors such as tribe, status, network, and wealth are the major factors forming any choice. The majority of the families prefer to give there daughters for marriage to the people from there own tribe or family. Marriage with a stranger is experienced rarely; only when and where wealth or status is the main concern. It should, however, be mentioned that forced marriages take place either because of the above mentioned reasons or other reasons, purely based on factors, such as, political or military power.

Honour in Afghan culture defines the reputation and worth of an individual, as well as, those they are associated with. The head male of a family is responsible for protecting the honour of the family. The issue of honour drives much of the behaviour surrounding the protection of women, modes of dress, social interaction, education and economic activity.

If someone's honour has been compromised, they are shamed and will look for a way to exact revenge for themselves, their family or group.

Legislative Body in Afghanistan

On the legislative side; the new Constitution of Afghanistan was drafted in the period 14th December 2003 – 4th January 2004; and signed on the16[th] January 2004. According to the new Constitution, no law should be "contrary to Islam". The State is obliged to create a prosperous and progressive society based on social justice, protection of human dignity, protection of human rights, realization of

democracy, and to ensure national unity and equality among all ethnic groups and tribes; the State shall abide by the UN charter, international treaties, international conventions that Afghanistan signed[2], and the Universal Declaration of Human Rights. Other laws should become in line with those principles recorded in the Constitution. Thus, there is a need to revise laws and by-laws approved prior to the approval of the new Constitution.

The bi-cameral National Assembly consists of the Wolesi *Jirga* or House of People (no more than 249 seats), directly elected for a five-year term, and the Meshrano *Jirga* or House of Elders (102 seats), comprise one-third elected from provincial councils for a four-year term, one-third elected from the local district councils for a three-year term – provincial councils elected as temporary members to fill these seats until district councils are formed, and one-third presidential appointees for a five-year term; the presidential appointees include two representatives of Kuchise (nomad) and two representatives of the disabled; half of the presidential appointees being women.

On rare occasions, the government may convene a Loya *Jirga* (Grand Council) on issues of independence, national sovereignty, and territorial integrity; it can amend the provisions of the Constitution and prosecute the president; it is made up of members of the National Assembly and chairpersons of the provincial and district councils. E*lections:* last held on 18th September 2005; next to be held for the Wolesi *Jirga* by September 2009; for the provincial councils to the Meshrano *Jirga* by September 2008.

The Constitution establishes a nine-member *Stera Mahkama* or Supreme Court (its nine justices are appointed for a 10-year term by the president with the approval of the Wolesi *Jirga*) and subordinates High Courts and Appeals Courts (note – nine supreme court justices were appointed in the interim in January 2005; pending is the National Assembly selection of the Constitutionally mandated justices); there is also a Minister of Justice; a separate Afghan Independent Human Rights Commission, established under the Bonn

Agreement, and now empowered by the Constitution. It is charged with investigating human rights abuses and war crimes, promotion and protection of human rights. Inspite of these existing structures, the judiciary in Afghanistan is a very poor institution, both in terms of quality and quantity. The judiciary is not accessible to everybody, especially women and the minorities. People living in the remote areas do not have proper access to Justice; female judges are not available in the provinces; and, the judiciary structures at the provincial level do not have a proper or a strong influence or existence.

From what has been said and told, we can see that the traditional principle of *Jirga* and community councils are deeply rooted in the history and in the legislative body of the country, which can also encourage local councils and tribal councils to act as decision-makers at the community level.

Afghanistan also has a religious council at the State, level, and provincial religious councils at the provincial level. Although, these structures are not part of the formal judiciary system, their voices and point of view have a strong influence in mobilizing thoughts around particular issues. They can and do influence the judiciary and the government, as the majority of the judges at the Supreme Court level are also members of the religious council. They have their own interpretation of Islam, and they also meet the president occasionally, with regard to different aspects and issues, may they be social or cultural for example, and advice him accordingly.

Legal Pluralism and Women's Rights

After the fall of the *Taliban* regime, it was hoped that the common laws of Afghanistan, related to women's rights, would quickly develop and be revised according to the principles of human rights. And, as security would increase, respect for "rule of law" will also be developed and expanded all over country.

Unfortunately, this has not happened. The judiciary reform has moved very slowly, preferring to re-adopt existing laws than to develop new laws. As an example, one of the top

priorities and needs raised to the judicial reform commission was revising the civil code of Afghanistan, which did not take place. The major actions, with regard to judicial reform, remain focused on building some premises for courts in the provinces and some training programmes. All, but not revising laws and adopting them to the international commitments of Afghanistan, as well as, to the new Constitution of Afghanistan.

The blame does not lie entirely with the judicial reform but also with the security measures and the implementation of laws at the community level, as most of the community structures continue to practice informal justice system or customary norms.

Security has a major impact on the quality of work of the judicial system. Places in the country, which are less secure, the power of the warlords jeopardizes the work of the judiciary, as well as, the appointments of the judiciary staff.

On the other hand, traditional informal structures at the community level, that act as judiciary, also undermine women's access to justice. *Jirgas* and other tribal structures that exist, mainly in the villages or countryside, invariably have a stronger influence on the lives of the people than the formal judiciary system. These *Jirgas* or tribal structures comprise only male members, who are influential, powerful and wealthy.

Overall, there has been a very slight change in the legal affairs of Afghanistan with regard to women's rights. This change is primarily confined to establishing the family court which operates only in Kabul. Further, the Supreme Court lacks the presence of women judges at the judicial council level, and women at the community level, continue to suffer as a result of lack of female staff in the courts and the judiciary offices.

Other important factors which debar or discourage communities to approach the courts or simply reject them include: the endemic corrupt practices operative within the

courts; the traditional sensitivities by which it is considered inappropriate for people to look up to a court as an option; and the fact that it takes ages for any case to be solved and receive a judgement. These factors further create barriers for women to knock the doors of the courts to seek justice. A woman who goes to the court against the will of the family means that she will not be able to return home, as such an act will be considered as one against the honour of the family.

Afghanistan has, since long, wrestled with the problems of pluralism. This fact is intricately related to the multi-ethnic nature of Afghanistan as a country. In fact, it is very challenging to see how such diverse and disparate ethnic and cultural groups, formed by the majority of the illiterate people, collectively ignore the international norms and laws, yet how the single notion of "honour" promotes a sense of unity, brotherhood and nationhood amongst them.

These realities, henceforth, make it imperative, to review the structure, as well as, the content of the plural legal system in Afghanistan, and more specifically, its impact on women. The following are some of the major structures reviewed:

Structures

The Supreme Court: is the only institution that influences and implements judicial measures. The body, as mentioned, is responsible for enforcing and translating laws. The legislation is partly drawn from the *Sharia* and partly from the laws of other modern Islamic countries and some from the Human Rights treaties. It makes decisions according to *Sharia* and Afghan legislation. The Supreme Court also has its branches, as provincial courts, all over the country. It has functioning district courts only in some parts of the country.

The Council of Islamic Scholars: exist at the state and provincial levels. Although, these structures are not part of the formal judiciary system, its voice and point of view, has a strong influence in mobilizing thought around particular issues, and have a strong advocacy role in changing rules

and practices. In that sense, it can greatly influence the judiciary and the government, as the majority of judges at the Supreme Court are also members of the religious council. These members have the powers to insert their own interpretation of Islam. They have the right to meet the president to discuss issues of concern and advice him accordingly. In practice, people mainly refer to them if there is a dispute rather than referring to a court.

The Parliament: is a newly established structure and is the main legislative body that passes laws and by-laws. Its overall responsibility is to review the implementation of laws and approving Afghanistan's partnership to the international treaties and conventions.

Community Councils: exist at the state and provincial levels all over the country in one form or another. The members in these councils comprise community elders, community influential, land lords, religious leaders, individuals ruling the community, and the likes. The norms and regulations applied and used in such structures originate always from the unwritten sources, and these may not be directly linked with religion, but more so with the individual's or community's understanding of Islamic rules. Further, the norms, applied in the community councils differ from council to council, and the only common thread that runs through all these councils is the entire absence or gross representation of women. By and large, women in these community councils are treated as exchangeable goods or someone's property. The most common decisions taken in these structures relate to dealing with settlement of disputes, and the most desirable solution is to exchange or give away a woman, as compensation to the victim's family, in order to bring back peace to the community. Women almost never resist such a decision; they must obey as this is the only option they can resort to.

Content

The abovementioned structures, involved with the legal issues, formally and informally, are also affected by its

content which materializes their actions. The following section reviews some of the main challenges, in terms of content, with regard to legal pluralism:

Legal Pluralism and International Treaties

Afghanistan is a signatory to a large number of treaties and conventions, including those related to women like CEDAW. The Afghanistan Constitution clearly mentions that it is obliged to remain committed to the international treaties signed and the reporting of its implementation. Recently, a project lunched at the MFA, is endeavouring to prepare and submit a report on the implementation of the international treaties. Meanwhile, the Afghan Parliament has established a working group / committee on international affairs. This working group is also to deal with the Afghanistan international commitments. A recent statement from the Parliament reveals that there are plans to review the commitments made by Afghanistan to the international treaties, as one of the main priorities.

The challenge ahead is to see how the projects developed by the international community will strengthen the role of Human rights and its principles, especially with regard to the issue of women's rights, in such a traditional society. This is crucial considering that the religious community, which has a recognizable power over the judiciary, is trying to strengthen the religious / traditional aspect of the women's rights agenda. Opposition to the law reform is very strong within the judiciary, which is gaining momentum even in the parliament now. Unfortunately, women in the parliament form the minority, especially when it comes to voting (as decisions are taken according to the majority vote), as women's movement has been questioned several times in the Parliament, insisting that women should be accompanied by the male members of their families while travelling.

Meanwhile, the differences between the Constitutional provisions and other laws implemented clearly show that there is an urgent need for bringing these laws in the same line. Moreover, the signing of the UN treaties by

Afghanistan brings in more confusion when it comes to the implementation of laws. Not to mention, the weak capacity of the law enforcement officials and the paucity of their knowledge on laws, especially those related to women's rights, and how they are to be implemented in practice.

Legal Pluralism and Islamic Rules

There is no doubt that most Muslims see Islam as a comprehensive system of norms and laws that affect many, if not all, aspects of their daily lives. The argument put forth by the human rights activists, in Islamic countries, is that there is less or almost no difference in the fundamental principles of Human rights and Islam.

In Afghanistan, as mentioned, religion has a very strong rooting in Jurisdiction, and most parts of the laws, especially civil law, originate from Islam, as a religion.

But, we should recognize that religion poses another major challenge towards attaining a uniform legal system in Afghanistan. While religion, according to the Afghan Constitution, plays a major role in forming the judiciary, it must be borne in mind that other than the majority of the *Sunnis*, there are a minority of *Shias* along with a number of Hindus and other non-Muslims constituting the total population of the country.

Although, the Constitution of Afghanistan has tried to solve the problem by providing rights to the *Shia* Muslims, who are to be treated according to their own beliefs. But in practice, the issue of women's rights, in the context of religion, is far more complex: where the Constitution guarantees equal rights for men and women, there are a number of issues in the common laws, originating from *Sharia*, which are contradictory to the provisions of the Constitution, such as, age at marriage, polygamy, the right to divorce, child custody, *inter alia*.

One of the main obstacles, while talking of women's rights in the context of religion, is the family law, which is part

of the civil law. The family law originates purely from *Sharia*, and the *Sharia* law is an integral part of Islam. Islam has its own standards for certain civil issues - divorce, marriage, child custody, heritage, etc. which can be viewed very differently from the international standards point of view. Now that Afghanistan has ratified most of the international standards and also clearly mentions, in its Constitution, the power of Islam in any part of the jurisdiction, the difficult question that arises and remains is how will it balance the two and, for that matter, which one of the two will be practiced. In all likelihood, only those who stand for gender equality, irrespective of the religious provisions, would accept the codes based on international standards. But a vast majority of the people from the religious community will, in all probability, reject it. In all eventualities, a doable solution to the problem of gender discrimination, as given in the laws, has to be grappled with, and for that it is imperative to bring about suitable changes and enact reforms geared at removing gender discrimination so embedded in these laws.

For example, the age at marriage, according to the Afghan civil law, is 18 years for boys and 16 years for girls. A girl, according to this law, can be married off, on the decision of her father or grandfather, at this minimum age and not younger. In reality, however, girls as young as 7 or 9 years of age are married off and this is a widely practiced norm. The provision of this law is clearly discriminatory and against the international conventions, mainly CRC, which states that a child is a person under 18 years of age.

As far as religious Muslim law is concerned, there are two main problems: oral or triple divorce; and legality of polygamy and child custody. The Muslim law board must seriously look into these aspects and bring about the desired changes within the existing Islamic framework. Triple divorce, for example, is not a *Quranic* injunction. The Holy Prophet (PBUH) has very strongly disapproved of this form of divorce. The *Quran* has, in fact, prescribed the most modern way of divorce through arbitration (4:35). It is highly unfortunate that Muslims in Afghanistan ignore such a clearly stated *Quranic* injunction, and instead practice a form of divorce which is actually disapproved by the Holy Prophet (PBUH). Moreover,

Hanbali, *Maliki, Ahl-e-Hadith* and *Shia* Muslims do not accept the validity of triple divorce. Thus, it should be abolished and replaced with the *Quranic* form of divorce or by *Talaq-i-Sunnah*, which is very fair to women. Triple divorce is not practiced in most of the Islamic countries. Even Pakistan and Bangladesh have changed their laws in this respect.

Similarly, as far as polygamy is concerned, the *Quran* has given permission for it in very specific circumstances, and most reluctantly. And if the two verses on polygamy, that is, 4:3 and 4:129 are read together, it becomes impossible to practice polygamy. It is wrong to think that the *Quran* has permitted polygamy without any conditions. Its conditions are most rigorous and very difficult to fulfil, and hence, even in the earlier Islamic period, the *Mu'tazila* believed that it was as good as banned.

The Muslim women hardly suffer other disabilities i.e. widow re-marriage, property rights, inheritance etc. and are much better off than other women.

Legal Pluralism and Customary Practices

Each village, district and tribe is a separate and an autonomous entity, with its own customs and its own processes for enforcing norms and resolving disputes, or for that matter, with its own law. Although, the political will of the State is to bring all Afghan citizens under the same umbrella of civil law, but the communities believe and expect that their neighbours will continue to practice their own customs and adhere to their own values and beliefs. For example, community members still continue to prefer settlement of disputes amongst themselves, within the village, using customary norms and processes rather than going to the police and processing it through the court system.

Thinking about women's rights, in the context of customary practices, requires analyzing what women's rights actually mean in practice. Thus, the first point of departure in defining "women's rights" requires us to identify women's rights within the ambit of the traditional society and its

thinking; the inclusion of the related traditional codes in the formal state laws; and the informal norms and codes practiced at the community level. This is important because, on the one hand, women are severely subjected to the traditional and customary norms and codes, practiced at the community level. On the other hand, their rights are now being considered and viewed under the new formal State laws, which incorporate, codes and norms, derived from the international human rights laws. Complexity and a stalemate is feared because, a large number of the members of the judiciary and law-making, those who are pro-traditional, are influencing the legal and judicial system in the country. This means that that part of the judiciary reform, which is linked with revising the legal documents, is heavily influenced by how these people in-charge: interpret legal reforms; the need for them, as they see it; and what direction these changes will take. In principle, however, legal pluralism should offer a rich source of ideas and information, enabling the legislative body to critically look at the existing laws and revise them within the perspective of human rights, and according to the best practices that can be applied.

The government and the judiciary recognize the customs, based on which they provide the term of "social acceptable norms". But this term remains to be vague, in the absence of a concrete, well articulated, proper definition, along with the fact that there are no clearly spelt out procedures to verify the "social acceptable norms".

The characteristics of customary norms used in Afghanistan are:

- Customary norms are accepted as one source of Islam.

- In cases of dispute, even if the two parties refer to the court, they are encouraged by the court to settle the dispute through mediation and local councils (but there is no official framework provided for mediation and local councils).

- Often, the content of dispute settlement is not registered, nor is it enquired by the judiciary, once the two parties confess that they have reached an agreement.

- The structure of the community councils are not defined and there are no conditions on who can participate, which makes wider participation more difficult (in most of the cases, it is only the landlords, or the local commander who decides on what is to be done).

- There is no restriction on what kind of cases should be handled by the traditional structures, and

- The norms of traditional structures are not written.

Any description of customary practices and arrangements, however brief, would be incomplete without reference to the rights of women in traditional societies, as the way in which traditional practices and norms affect women, is a matter of grave human concern.

Other than such cultural and traditional practices, which are positioned negatively toward women's rights, women are not at par to consider any other choice, based on informed decisions, and in all eventualities, have to succumb to what is offered to them. For example, in a situation where women living in a district, with no access to a court, or those living in a city, with weak and distrusted courts, can do nothing but refer back to or depend on the traditional norms. This means that in all likelihood, she would be given as compensation for the crimes committed by the male relatives of the family; or be given in exchange for a loan that the father has to pay back, or be given by force to a local commander to keep peace in the neighbourhood.

The major problem, at the moment, is that the law partially approves the customs and partially rejects them in

doses rather than setting a clear, well defined law, based on which it could consider a case which is being dealt with under customary practices. There have been enough cases where the judges and magistrates used traditional customs to settle a family dispute or even a civil or criminal affair. In such cases, the consent of both the parties to the decision taken by the community council was considered enough. No evidence or proof was called for by the judiciary. Moreover, the judiciary did not even bother to get to know the content of such resolutions. Women, who, in the majority of the cases, are the content of the agreement among the two parties, are not even considered worth asking if she agrees to such a decision. In other words, a woman is never asked if the agreement taken is acceptable to her. Women are taken for granted and handled as chattel.

There are a number of organizations and individuals who, in a sustained way, still continue to believe that custom is not law, and that customary practices are not equitable. Yet, the practice of these customs has been allowed for long enough now, to dominate the judiciary proceedings and the legal system.

Limits put on recognition of the customary practices, in criminal and civil cases, could help women's rights to be protected. Meanwhile, registering the content of consent of the parties, as the decision of the council in the court, could also provide a means of monitoring how traditional practices are implemented at the community level.

Recommendations

- To bring positive changes to the legal framework of Afghanistan, in favour of women, there is an urgent need to conduct more in-depth studies on the nature of customary practices, as well as, legal pluralism, through supporting existing organizations.

- The involvement of the international community in the law reform process, in

Afghanistan, should also develop advocacy tools to address law reforms effectively. These tools should mainly be used when working with the parliament.

• Women and Human Rights organizations' capacities, as part of the civil society network, should be enhanced for using advocacy tools and negotiation skills.

• The international organizations, working in Afghanistan for the advancement of women's rights, should also consider providing opportunities to the Afghan civil society members to learn from the experiences of other countries with similar backgrounds.

Notes and References

1.   http://www.infoplease.com/ipa/A0107264.html

2.   Article 7th of the Afghan Constitution

NOTE: Author's personal experiences of participating in various workshops, discussions, and debates are also reflected in the paper. For any further information or clarification author could be approached. Heinrich Böll Foundation, therefore, will not be in the position to respond.

Making of Crime, Custom and Culture: The Case of *Karo Kari* Killings of Upper Sindh

Nafisa Shah

The presentation of honour killing phenomenon as a socio-cultural one, with its basis in the remnants of a feudal tribal culture, is deceptive, and masks an understanding of why these killings persist. The discourse presenting these killings, as occurrences outside the framework of the law, is often ethno-centric and does not problematize law itself. Legal pluralism, as an analytical tool, can help us understand the multiple legal spaces within which crime represented as customary practice occurs. However, this method of analysis does not help us to understand why such crimes occur or even why they take on cultural symbols. In this paper, the legal framework, within which such killings are analyzed, is historical. Law, whether codified or not, is presented as a historical and cultural process. I will contextualize these killings within the political and legal history of Pakistan which, I argue has provided both a legal and social space for this practice. *Karo Kari* killings, therefore, exist in a formal legal space and not outside it, as is commonly presented.

Honour killings, called *Karo Kari* in Upper Sindh in Pakistan, are presented in the dominant discourses as a form of cultural violence. While communities themselves proudly explain this form of violence as their tradition, we must receive this idea with caution.

The term "cultural violence", based in an age old tradition, implies that culture is as an intractable solid entity, whereas cultures are fluid social formations produced through mechanics of power in historical, and geo-political contexts. So this approach is problematic, because it essentializes the killings in a customary mould that allows other stereotypes of race, class, gender and ethnicity, which then have other political repercussions to set in. It constructs the peripheral nationalities as the uncivilized other, and the same narrative

applies in the western world where then, such killings are perceived as having travelled from the home country – which is a simplistic assumption itself.

Secondly, the approach of understanding *Karo Kari,* as a custom, does not help because it places it in a timeless, a historical category. In fact, such a presentation prevents us from addressing the problem of violence and the larger political processes that shape it. If honour killings are a part of cultural value system, then the argument is closed and does not leave room for change. The appropriate question then should be how, when and why such forms of violence take on a "cultural face".

Since customs are presented as societal laws, the next question to follow is whether such forms of violence are resisted by the formal laws of the country or not. Legal pluralism helps us see the multiple legal contradictory faces of the laws, codes and practices in the country and how this complicates provision of and access to justice. But this analytical category still does not explain the articulation of *Karo Kari* killings, since one can easily generalize and say that all societies are legally plural.

It is essential then to move away from both these ideas, both politically and theoretically, in order to unmask the phenomena of honour killings in Pakistan and to devise effective responses towards them.

To address these questions, we need to take a closer look at Pakistan's political and legal history, which I argue has enabled the making of both a "culture" and a legal space within which the *Karo Kari* killings are born, nourished, legitimized and normalized.

The Cultural Face of *Karo Kari*

Now, Upper Sindh alone accounts for more than one-fourth of the accounted cases of honour killings. Most of the 1200 or so cases recorded from Sindh took place in this area,

in districts of Naushero Feroz, Khairpur, Larkana, Sukkur, Ghotki, Shikarpur, Kandhkot and Kashmore.

We all frame *Karo Kari* killings as part of the tradition. But the people of the area do it as well. I will first examine how the intractable solid culture of honour killings is constructed and presented in Upper Sindh, in the everyday world of the people.

In the mid-90's, in Larkana, in the village of Gul Mohammd Brohi, a man Suleiman and a woman Zarina were killed as *Karo* and *Kari*. Investigating this issue, I went to the village head, Gul Mohammad Brohi, who would not openly speak of the incident out of shame, and then went to Zarina's family and spoke to them about the cause of the two killings.

> "They saw them, and they killed them", said Zarina's mother whose sons Ali Hasan, and others had killed their sister and the alleged paramour. I asked the mother who sat there like a matriarch whether she felt sad about her daughter who had been killed by her own sons: "*Ama Ghairat mein dukh kon thindo ahai*", she said, with a stone-faced expression, and a smile on her lips. "There is no grief in *Ghairat*. It was *Haq*, a right. And so it was right to kill. They saw them together, they killed them. Otherwise, who would do this to one's own flesh and blood". Three of her sons were in the lock up and she was terribly concerned about them. In fact, she, along with the other women in the family, kept pointing at the women and the children who were affected by the sons' arrest. "Tell them to release them. See how our poor children are suffering".
>
> "Our *Riwaj* is only *Ghairat*. We have no television and no radio". They kept saying when asked if they would bring their views on the film.

Similar language was expressed in a different village we went to, Warah in Larkana. In the village of the Gurget, an 18-year old Aminat was killed along with Azizullah, who was a year or two older, just a few days ago.

Aminat's mother-in-law arrived theatrically beating her chest, proudly showing us the spot where Amina had been hacked to death by her three sons and Aminat's brothers-in-law: "Look, it was here she was killed. We were all here. We saw them together all the time. Now I saw him scaling the wall, now I saw him entering the house, wherever I looked I saw him. I have been robbed, my honour has been robbed, I have been violated. This was a *Zulum* against me. So I axed her", says the mother-in-law of Aminat.

In the lock up, Saifal who had been hit by an axe while he killed Aminat's paramour Azizullah also expressed the logic of his killing in a similar manner. "Yes I did it, father said he saw them, I did it for *Ghairat*. It was my right".

An identical script plays and replays within the logic of the perpetrators.

The point to note is how cultural values, which inform such killings, are presented as fundamental, pure and moral. And like the law itself, cold and impersonal. Hence, here the informal laws seem to be transposed on people's lives and lifestyles, almost as rigid texts. The moral value of honour is presented as a value that contains in it a whole system of life, which is stronger even than religion, for many tenets of the religion are violated in the process.

The British imperialists narrativised, defined and codified custom and formalized the informal. Colonial literature constructed the Baloch, and Pushtoons as ferocious

tribes. Pakhtoon *Wali* was scripted but so was the Balochi *Mayar*. Some of the features of the Balochi *Mayar*, to quote a colonial officer, who compiled the Sibi gazette while writing on the Baloch are: "To avenge blood; to fight to death for a person who has taken refuge with him. The refugee is always maintained by his protector, so long as he remained under the latter's roof. An adulterer was, however, generally refused protection; to defend to the last the property entrusted to him; to be hospitable and to provide for the safety of the person; to pardon an offence on the intercession of the woman of the offender's family, a *Syed* or a *Mullah*, an exception in the case of adultery and murder; to refrain from killing a man who had entered the shrine of a *Pir* so long as he remained within its precincts; and also a man who, whilst fighting put down his arms; to cease fighting when a *Mullah*, a *Syed* or a woman bearing *Quran* on his or her head intervened; to punish an adulterer with death"[1].

However, the voluminous baggage of honour, described both by the practitioners above and the imperialists, are exploded everyday in Upper Sindh. Stealth, lying, cheating betrayal, are justified in the fight for honour, but honour accusations are creative innovations, thriving on the politics of blame. There is a vast gap in what is stated and what is done. For instance, if *Mayar* or *Riwaj* is part of the Balochi tribal system, then why do Sindhis, Abras, Soomras, Manganhars kill men and women for honour. And why do Balochis of lower Sindh not do it? Honour accusations draw huge fines, and an exchange economy thrives within the politics of honour. People's pension's, house-building loans, advances of government officers' salaries, traders' returns, fresh acquisitions of property, are all redistributed through honour accusations and threats of violence. Tribes competing for resources articulate these competitions through the ideology of honour. In fact, killings themselves perpetuate exchanges of fines, often from the victims to the killers. Honour ideology is then used to settle scores, to avenge killings, to capture resources of the weak, and to exact protection money from the rich.

Honour then is far from the solid, moral notion that it is presented to be. It is more often a term within which a

whole universe of actions, reactions, and negotiations, often strategic, are hidden and these ideologies and symbols change with time. Since this is the dominant idiom in the lives of the people of Upper Sindh, all and nothing is articulated through this idiom.

So *Karo Kari* killings are crimes protected in the domain of the moral. When we call them custom, or *Riwaj* or *Mayar*, are we not playing into a semantic politics devised by the perpetrators of violence? As researchers, it should be a primary job to unbundle the semantic web that communities weave as defences. Beyond *Karo Kari* as custom, are other stories that need to be told. The one that I will tell is about this region's geo-political history, which I argue has created a space providing new contexts for old idioms, and, therefore, renewing them.

The Politico-Legal Context

A historical perspective into the political and legal history will provide a structural approach to the phenomenon of honour killings in Pakistan. Political history is a liminal category in Pakistan, and history is not about the times past but about the times trapped into recurring historical events. In this territory, it was almost as if history had become ahistorical – with cycles of recurrent crisis allowing repetitive history.

Societies and social phenomena can only be understood within a historical context. Louis Dumont (1970) had summarised that "History is the movement by which a society reveals itself as what it is". Nowhere could this be more relevant than in the case of the social life in Pakistan. In the 1980's then, Marshal Sahlins was talking about the inevitability of historical analysis: "If society is the institutional form of historical events, there is no way to analyze it outside history". Historical analysis challenges assumptions, revises theories and revitalises knowledge. As Sahlins (1986), puts it, the new problem now was "to explode the concept of history by the anthropological experience of culture", and then to take it a step further, to explode the concept of culture and structure by a historical experience.

In order to explode the concept of culture by historical experience, let us have a cursory look at the history of power politics in the region. Political rule in Pakistan has come to mean armed forces parading in and overthrowing civilian power, military-bureaucracy inventing legitimacy of governance through extra-constitutional methods, and a collusion between large foreign powers and local power hungry generals, each serving their own interests.

Laws are processes and they only reflect or echo the political process of the country. In Western democracies, especially the British political system, the powerful political construct "the rule of law" is a metaphor, in which supremacy of law is established. Power in Western democracies is impersonal and objective and has been formalized into its legal system. In Pakistan, law is both subjective and embodied, often in the very person through which law is enacted. Laws here, are therefore, made to give a moral face to perverse and illegal appropriations of power. The laws have, first and foremost, been used to lay down a perverse structure of power of, by and for the military-bureaucracy elite of Pakistan. The rest of the law is to keep the people in check by indirect means, as I will explain below.

Successive military rules perpetuate British colonial space in a decayed form. The British colonial space, as I have discussed elsewhere in earlier work, in what is now called Pakistan. It was created as a vast and vague frontier territory, where middlemen were created to be metaphoric vigilantes, while the British used this space to guard the colony and to expand its boundaries at the same time. This policy was termed the indirect rule, and was lauded because it allowed normative everyday worlds of the communities to be ruled, to persist. This led to the creation of oppressive forms of power, to keep people in check through the local elite. In Upper Sindh, especially in the region called Upper Sindh Frontier, the British both chased the tribes and tamed them, by giving tribal chiefs their *Jirgas*, in order that they be loyal to the British. So, a legal structure of self-help was established and formalized in the 19th century in this area. Although, there are no political agencies here, the district administrations have

always provided a space for mediations for tribal disputes, thereby, ensuring that more tribal disputes occur.

The larger political process and the political struggles of Pakistan are illusory, and were not able to change colonial frameworks of fragmented legal spaces. In the fifty seven years of history, almost all democratically elected leaders have been dismissed, deposed, exiled, hanged, and the country has seen less than a decade of democracy, and that too interrupted by military rules. Mythological histories of national security, of protecting borders have fed into the near sacred status of the armed forces, which are more superior than the law itself. The country has already lost the majority of its population in the aftermath of the 1971 war, and in what is left of it, faces significant nationalist movements in at least, three of the four provinces, armed insurgencies in Balochistan and chronic and scattered forms of tribal warfare in Upper Sindh. The only consistent history is the undiluted force of the army and a colluding elite's perpetual resource capture.

This country has seen seven army generals taking over the helm of affairs in different historical periods. Of those, two generals were the medium through which power was transferred to elected representatives – but only after serious crisis had developed and the early army administrators had either been killed or deposed. Ironically, generals are both power takers and the mediators of democracy. Three generals, namely General Ayub, General Zia, and General Musharraf, had / have political ambitions. They subverted democracy and perpetuated army rule through a political government cobbled together in unique ways.

All three generals perpetuated the same cycle, derailing law, constructing new law, creating a coterie of elite and middlemen, at the local level, to stifle dissent and control the people. They all rigged elections, and all of them used moral metaphors through which they captured legitimacy. And all of them, to varying degrees, made seductive advances to the west, and sold the country's soul to give their own power a new lease of life.

Ayub Khan hinged his morality on the very new ideology of modernity, ridding the country of corruption and setting it on the road to modernization, General Zia hinged his morality on Islamic law, Musharraf, his moral power, on an imagined war on terrorism and an arbiter in mediating new regional relationships in which he was supported by the United States. Meanwhile, the Constitution of Islamic Republic of Pakistan has been subjected to structural attacks, to provide the military legitimacy in political roles. Laws (Continuance in force) Order was put in place by Iskandar Mirza and Ayub Khan to legitimize their military rule. A doctrine of necessity was drafted for General Zia, and a Legal Framework Order, was prepared for General Musharraf. These strange creations fixed law to suit the Generals' framework of power. The apex courts in that they have upheld such legal violations, have abetted in this subversion of democratic system.

It took us about a decade to draft a Constitution in 1956, which was suspended in two years time, replaced by another Constitution, of 1962, until a third Constitution was drafted and passed by an elected parliament in 1973. The 1973 Constitution has been suspended twice, and amended twice, to benefit military rules. All incursions into the law have been to perpetuate generals' tenure in power.

Interestingly, the generals have survived by creating a political process by moulding law, and have used language as a tool to juggle words that will provide a legal cover to their actions. Iskander Mirza, who sacked the Constituent Assembly, used the word "controlled democracy", Ayub coined the word "basic democracy", and Musharraf used the word "tailored democracy (Khan, 2001)". At the same time, the strengthening of civil-military alliance, in capture of resources, weakened political parties and political systems (Jalal, 1990).

Two parallel processes are created and nurtured in these dictatorships: first creating a legal material for perpetuation of anti-people power and second, strengthening of retrogressive middlemen – largely feudal and tribal elite through subversion of political system - through which the

people are kept in check. Military rules regulate and filter authority through middlemen, tribal chiefs, feudal, and have, what I argue, encouraged regulation by proxy. Since the military-bureaucracy nexus has always had a crisis of legitimacy, they have preferred an Indirect Rule, not as organized as that imposed in the Frontier territories of the British times, but more dispersed, more dislocated, more diverse. On the one hand, it has constructed leaderships that are *status-quo* and self-serving elite perpetuating ritualization, and traditionalization of the society and stifling change. On the other hand, it infuses traditions that empower them into the legal frameworks.

When the army is in power, and has to look for legitimacy, it has often grounded it within religion, custom and morality. Both religion and custom provide the rulers with the moral power, thereby, making their illegal incursions of the law, moral and, therefore, above the law. Hence, the laws that are created are often done through presidential ordinances, along with pleasing the religious and customary constituencies. The army top brass have always had deep connections with religious fundamentalists, especially since the 1980's – the military-*Mullah* nexus. This has complicated the secular, liberal face of Pakistan as it has, over the years, infused it with laws that are framed in a religious discourse.

General Ayub strengthened a group of families through his industrialization policy which came to be called the famous 22 families. General Zia created a class of neo-feudals and General Musharraf, through his local government system, has transferred local power in these elections, by clear design, to mafioso style feudals in Upper Sindh, which mediate crime and criminals between the State and the society. The state patronage to these middlemen is absolute, to the extent that they service them, and through them, the people.

In the process, the State, through its laws, has taken on tribal character. Increasingly, the laws that have bundled on top of one another, have come out of a systematic campaign by the military-bureaucracy nexus, to place the so-

called citizens, in living conditions that are liminal, tribal, feudal, mediated through middlemen.

For this paper, I show an inter-legal space between the mediations following honour crimes and mediations allowed by *Qisas* and *Diyat* Ordinance.

Deregulation of Legal System

As argued before, the political context provided above has provided a vast imaginary and imaginative legal space – a space where law is subjective, inventive and personalized. When both law and law-making is embodied in persons, rather than institutionalized, it becomes a power source. Since, the law-makers have been generals of the armed forces rather than parliaments, they are contradictory and take different conceptual sources.

Laws exist differently in different classes, in cities, in rural areas. In addition to pluralism complicating justice, contexts complicate them even further. Laws are interpreted differently also. The multiple and contradictory laws in rural Sindh take a feudal and tribal face. And legal procedures, in the absence of state commitment to justice, become subjective methods of implementation of private power.

Anthropologists have argued that centralization of law that the state professes to create, is a myth. Law is seen as a function of promoting state ideology (Merry, 1992:360). Legal pluralism, the co-existence and interconnection of different legal norms, has been seen to reflect the social heterogeneity, where different layers of social structure assert their own legal and moral values (Griffiths, 1986: 38-39). Legal pluralism has generally been seen as a positive development because it allows for a co-existence of multiple laws, providing opportunity for local systems of justice to co-exist with dominant and hegemonic ones (Merry, 1982). It also challenges state monopoly for regulation and law-making. Rouland says that it is only when central authority attacks legal pluralism that dictatorship arises (Rouland, 1994: 43).

But as Harris argues, it would be romantic to idealize customary morality as an alternative to the state law (Harris, 1996: 8).

Although, pluralism in law allows for an elastic social field in which power relations are contested, the plural legal space also allows for contradictory usages and interpretations of law. Theoretically, therefore, I am turning away from the conventional approach of looking at law as rigid code, used for social engineering, to understand law as a flexible social field of negotiation led by strategic power interests.

The contradictory legal spaces that are created, has ruthlessly complicated interpretation of crime and in imparting justice, since a person's jurisdiction enters different legal domains in different territories on the one hand, and different justice systems on the other. Frequent shake up of the law to appropriate power has resulted in multiple laws juxtaposing religion, custom, and normative, everyday justice. As a consequence, Islamic *Sharia*, English Common law, tribal and customary values are all simultaneously used. And this vast range of possibilities in interpretation allows power to play into justice, in strong ways, often resulting in judgments that implicate the victim and protects the perpetrator of the crime.

The communities can use the jurisdictions of different courts, Islamic, Family courts, or even tribal chief's mediation, to attain the justice that best suits them. Even within Islam, different legal traditions are spelt out and people can choose a justice of their liking, almost in an opportunistic manner. So Hindu women become Muslim if they want to remarry, *Sunnis* become *Shias* when they want to evade the mandatory *Zakat* payments, Roman Catholics may become Muslim when seeking a divorce. Justice then becomes subservient to power and negotiation, and punishments or acquittals can be bought and sold, increasing the corruption of the system. And this vast pluralism encourages social mobility.

The multiple and contradictory legalities provide, judges and law-enforcers, with an infinite range of interpretations, within which personal biases and culturally

informed ideas enter the discourse in the garb of law. In fact, the increasing use of mercenary power, buying power, has allowed money to enter the interpretations as well.

However, I find that legal pluralism, as a conceptual tool, does not help us understand why *Karo Kari* killings persist. Most con-temporary legal systems – in developing countries and industrialized states – contain parallel and often contradictory regulations, based on international law, state law, religious law, customary law and innovations.

The problem is a deregulation of state law and its legal system rather than a presence of plural traditions. In fact, I would argue that the nature, content, and discourse of the plural laws is relative to the state laws, since in the gradation of power, it is the state that scores the highest, and therefore, has the power against which other forms are to be measured. All other faces of law are in the lower pecking order. Almost resonating with the overarching neo-liberal deregulation of economy, a deregulation of power, and of the law, takes place here, in the backwaters of the world. This deregulation of law runs parallel to deregulation of authority, by creating tribal and feudal chiefs as watchdogs of society.

An example of the deregulation of the law can be seen, most clearly, in law regulating crimes of the body.

Qisas and *Diyat*, and the Criminal Law Amendment Act, 2004 or the *Karo Kari* Bill

In normative everyday justice, *Karo Kari* killings are justified within the moral value of honour. Called "*Ghaira"*, this honour provides the perpetrators with moral power to kill those who damage the honour. Hence, custom makes victims of the crime, as accused, and the accused, the killer. The two opposing interpretations of the accused and the victim present two different value systems. Until the eighties, the State law deriving from the Anglo-Saxon code condoned such killings on the pretext of "grave and sudden provocation". This bit of the law was deleted when the bodily crime and hurt section was replaced with the *Qisas* and *Diyat* ordinance.

The law of *Qisas* and *Diyat* was decreed in 1980's, but came into force in 1990, and it replaces the laws concerning injury, murder and manslaughter. *Qisas* and *Diyat* uses Islamic traditions of retribution and blood money, in cases of murder and bodily hurt to resolve disputes (Shah, 1998). The recent amendments, which the government made, present to the nation, its commitment to legally eliminate *Karo Kari* killings.

This law has, in effect, erased the differences between the private tribal normative codes and the State laws. For instance, in the tribal value system, retribution or punishment is codified in revenge, in the ideology of killing and dying for honour. If honour is damaged, say if a woman has transgressed sexual or social boundaries of the family or tribe, it is justified to kill her. Or, the ideology of feuding allows everlasting revenge killings between tribes. Retribution, therefore, is private and this is often settled by a group of elders in a faislo - settlement – often through imposition of fines (Shah, 1998).

The law now allows the ideology of revenge and retribution in equal measure. An eye for an eye, a tooth for a tooth, a nail for a nail and a hair for a hair, can be extracted by the victim. The State, for instance, can remove a tooth of a person who has removed a tooth of a perpetrator by surgical means, or commute it to *Diyat* or a system of fines.

It has also changed the entire definition of murder or homicide. Murder now has become normative, subjective, and crime against a person, in most cases, the complainant instead of the State. The State relegated its mediatory role back to the community, thereby, distancing itself from regulating and ordering a society.

In this way, murder becomes not simply an offence against the State but one against the heirs of the victim. In one judgement, a judge explains the changed relationship between the State, victim and the accused:

"Under the Anglo-Saxon jurisprudence, society represented by the State holds a direct control over serious offences concerning the person and property. The launching of the prosecution, reprieve and pardon, after conviction and sentence by the State, and its functionaries are all manifestations of this feature. The victim of the crime of his heirs has no say in the matter. In Islam, the individual victim or his heirs retain, from the beginning to the end, entire control over the matter including the crime and the criminal. They may not report it, they may not persecute the offender. They may abandon prosecution of their free will. They may pardon the criminal at any stage before the execution of the sentence. They may accept monetary or other compensation to the purge, the crime and the criminal. They may compromise. They may accept *Qisas* from the criminal. *The State cannot impede but must do its best to assist them in achieving their object and in appropriately exercising their rights*"[2]. (my italics).

The entire retribution of the murderer now hinges on the *Wali* - an Islamic legal term denoting the heir of the deceased or the victim.

This is the deregulation of regulation, a transferring of legal recourse to the private domain – of parent, as *Wali,* of family as *Wali* and of tribe as *Wali*. Therefore, although repeated statements, both by the judiciary and by the political elite, saying that *Karo Kari* killings are murders, they infact, theoretically now, occur within the scope of the law. The *Qisas* and *Diyat,* in bestowing private power to mediate, shifted the domain of justice from the State, the courts to the family.

It is important to understand, that rhetoric to the contrary, Pakistani law allows such a power to the people – both to kill and to die for honour. For if killing can be

mediated, being killed is an occurrence in a legal space and not outside it.

On 25th October 2004 the National Assembly passed the Criminal Law (Amendment) Act 2004, providing severe punishments for those involved in *Karo Kari / Siyah Kari*. This Bill amends the earlier Pakistan Penal Code and the Criminal Procedure code.

After passing the Bill, the Adviser to the Prime Minister, Nilofer Bakhtiar, said: "We have passed a law that must be a matter of pride for women. We must have courage to redefine the word' honour and go for effective implementation of this law"[3].   However, it seems that the Minister neither understood nor read the law. The law simply made no intrinsic difference to the existing *Qisas* and *Diyat* ordinance.

This law failed to address the issue of the *Wali*, as the arbitrator of the murder. The *Wali*, though now not the accused, continued to be the central lynchpin of justice and retribution. This law is careful in disturbing the middlemen, the tribal chiefs that the military has strengthened. The over-arching *Walis* remain central mediators of crime. And so, murders continue to be condoned by the law.

The amended law increased the punishment to 25 years, instead of earlier 14 years, and provides for punishment to those who give female in marriage or otherwise in *Badal Isulh,* and extends rigorous imprisonment which may extend up to 10 years. The law has further disallowed the killer to be the *Wali*.

So now, while the killer himself cannot negotiate a private settlement, anyone in the vast web of blood relations can. Most marriages in Pakistan are still organized within the kinship patterns, cousins, cross cousins, parallel cousins, getting married. Therefore, there are plenty of walis available who would negotiate a settlement.

Since the passing of this law, several more women and men have been killed and proverbial, *Walis*, feudals, tribals, or next of kin to the victims of the crime, have made settlements by taking fines, properties, heads of cattle and what not.

In the process, the State law is penetrated by honour codes, and tribalized, since it encourages self-help mechanisms and renewed affiliations of identity. This ambiguous space reinforces competitions over resources and power to assert themselves. With such close ideological proximity between the normative honour and the State laws, the justice system is becoming fast redundant. Since 1980's, a proliferation of local mediation and mediators has taken place, increasing the scope and allowing for the articulation of crime in a language that the traditional mediations follow. Hence, violence finds a space in traditionalized moral values in the new contexts, and the State has once against given a new context for the traditions to be articulated.

The Inter-Legal Space Between State Law and the Informal One

So when formal law is deregulated, the state law becomes informalized and privatized, and the informal one is the one vested with the final authority. This deregulation sets up two parallel developments: honour value system solidifies; and law fragments into subjective private concern of the family, tribe, landlord, and parent.

Mediation leads to closure, as the judges themselves, having passed their judgment or having gone through the trial process, vest this informal mediation with a formal nod.

During my four years as mayor in Khairpur, I realized that, more often than not, I was used as a negotiating card by the victims who would raise the stakes of the case by involving my interventions.

There are countless cases where women would come and ask me to help in registration of cases in crimes of honour. But once that would be done, these women would

vanish, and I would hear from somewhere that settlement had been done, and a *Khairat* had been organized. Later, I even began to take oaths from women – taking promises that they would not negotiate settlements. They would promise but then vanish again. In one case, a councillor's daughter was killed. I struggled with her for one year, and without informing me, she and the community elders settled by taking a fine of Rs. 1,00,000. The increasing use of conciliation, arbitration and mediation, shifts the issues, from that of provision of justice to settlement of conflicts, with often serious repercussions. And various anthropologists and sociologists have pointed out this problem (Abel, 1982; Roberts, 1983; Bottomley, 1985). Also, the collective will of the society, family value finds favour over the individual will and choice

Of course, mediation opens up and creates an energetic culture – of feuding, vengeance, of retribution, of killing, being killed for honour.

Karo Kari killings are both encouraged and established in a legal space, that is formally informal, an outcome of fragmented processes of law-making due to extreme political instability, and deliberate strategic partnerships between military-bureaucratic-feudal elite. When sanctioned by the State, informal settlements are formalized. By legalizing family arbitrations even for murder, the Pakistani justice has legalized informal settlements.

Conclusion

We see that in a legal system, where it is possible to make laws illegally, law is not a system to create a sense of order, or in the Foucauldian sense to discipline and punish, but as a tool for both construction and sustenance of larger mechanics of power. And law is embodied, in the men dressed in military uniforms at the national level, in the men donning turbans and moustaches at the local level, in tandem. The institutionalization of honour as a system is presented, created and set up as a project of the state. It is within this

formalized informal world that makes possible to kill, and to die, for honour.

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Advocates on Trial

Roya Rahmani

This paper gives a snapshot of Afghan women's lives and struggles, who are working for the promotion of women's situation in their country. It discusses some cultural values, norms and practices which affect women's lives in various forms.

The fact remains that the majority of women's rights violations are intricately related to the absence of a functional judicial system, and the use of customary practices, as a substitute. Hence, the struggle is mainly against the social change and conduct, which requires commitment, patience and support for the advocates fighting for this cause. This paper is entirely based on the reflection of life experiences of women, who were interviewed, whose names were promised to be kept confidential, for the sake of "honour" and "security", from different perspectives. I would like to thank them all for sharing their experiences and giving me the time, despite their busy schedules.

A Peek into Roots

Afghanistan is a diverse nation, with many ethnic groups, that are divided over many important issues. However, one of the common bonds between these groups is their attitude and reaction to the immediate and extended family. There exists a shared value, among the various ethnic groups, about the relationship and dependency of their families. Because of the importance of the family unit among the Afghan people, the 2004 Afghanistan Constitution specifically states in Article 54 that, "family is the fundamental unit of society and shall be protected by the state…" The multi-decades of war, and lack of a cohesive and capable government and infrastructure, left the Afghan society to return to, and adhere to, their traditional tribal customary laws and practices, to keep the sanctity of their family system.

As with many traditional societies, using cultural and customary laws can be an efficient and easy way to handle matters. However, history teaches us that this system may not always be sensitive to individual needs and differences, especially women's needs, and may even violate the rights of the vulnerable and minorities. In traditional patriarchal societies, women have always been kept away from public spheres, and it is in these public male-dominated spheres where many customary laws and norms are prepared. Too often, decisions, even about women's lives, are made without the consent or the approval of women. To this effect, women are severely affected by the cultural norms and standards, set by men, without their input.

Although Afghanistan is trying to develop its administrative institutions, to justly address the needs of its society at large, for the time being, culture and tradition continue to dominate the very foundation of the important unit of Afghanistan – the family. Women are the pawns of this system.

Afghanistan's patriarchal tribal system is cruel to its women. From the day a woman is born, to the day that she dies, an Afghan woman carries the burden of her family and society on her shoulders. Her silent voice is evident in the unjust laws relating to: her upbringing; of learning to be subservient and obedient, to all the men in her life; selling her as a child to take care of the family's financial crisis; giving her away in *Bad* (woman used as settlement for blood feud between families or tribes) for the crimes of her father, her brother or any other men-folk in her kin; and given in *Badal* (exchange of women as bride-price).

Analyzing emergence, life span and function of this informal justice is out of the scope of this paper. This paper argues, with the assumption, that cultural practices and customary laws affect only the dependent, submissive and / or illiterate rural women. However, we find that the very women (referred to as activists), fighting against these injustices, are trapped by the same violations and restrictions. Additionally, these activists carry the burden of stress and responsibility, not only for their own personal struggles with

the injustices, but simultaneously, trying to fight against the system as a whole.

Historically, the *Jirgas* (councils of elders) have served as the informal court system in the Afghan society. The decision-making process in these councils, primarily depend on the majority rule of the elders, who sit among themselves, without any unified codes of laws to follow, and derive decisions from consensus. Even today, *Jirga* is the recognized and legitimate system of dispute settlement in Afghanistan. Although, traditionally, *Jirgas* did not include women, today, under the influence of the international community's demand, the Afghan government has secured a quota for the inclusion of women in this public forum. However, with the quota of only 25 percent representation and lack of experience in such public forums, women's voices generally are unheard and their presence unseen.

Afghanistan has a Constitution which clearly states in Article 22 that, "Any kind of discrimination and privilege between the citizens of Afghanistan are prohibited. The citizens of Afghanistan – both man and woman – have equal rights and obligations before the law". Additionally, Afghanistan is a signatory of CEDAW (Convention of Elimination of all forms of Discrimination Against Women), and had ratified the Convention on 5th March 2003. However, the implementation of these obligations has yet to be realized.

In addition to the institutional biases, against women in Afghanistan, the lack of capacity, resources, access and awareness make work even more challenging.

Picking the Battle

Women's rights advocates in Afghanistan are severely incapacitated by their cultural values and norms. The patriarchal society asserts a great amount of pressure on their daily lives. In a society, where family is the paramount of life, activists often find themselves at odds, with their families, and their mission to fight against the very patriarchal family values in Afghanistan.

Because the notion of activism is a new concept to Afghanistan, the activist women, on the one hand, are encouraged and trained to stand up for the rights of their sisters, in unjust societies and, on the other hand, they are bound to keep intact with their own families and societies, and not attract uninvited attention to herself and her family. The activist mission is viewed by the traditional Afghan society, as a foreign invasion of the societal and cultural norms, and it is thus rejected on all fronts.

In Afghanistan, the line between public life and private life is very clear and defined. A good respected family's personal problems are never to be disclosed or discovered in the public. A family's honour solely depends, on keeping a good name in the community, and women have to carry the burden of keeping that name. Because women are the carriers of the "honour", they must pay close attention to their every action outside of their home. When outside of the home, women are not only bound by the general patriarchal rules of their society, but also by the specific rules that their families place on them, which they must abide by. Women's shoulders are heavily burdened with carrying the weight of their entire society's requirements. This attitude is not reserved for the rural class alone. The most educated and well to do families might be the worst perpetrators of such cultural norms.

Women, in the educated and urban societies, bear doubly, the brunt. They feel that if they, in spite of the education attained, economic liberties and exposure to other societies, are trapped in such environments, how must the poor women of rural Afghan be living their daily lives? Sometimes, they find that contrary to their assumptions about rural societies, the women in the rural areas are quite open to publicly discuss their personal problems. A woman activist confessed that she was astonished to see how women in a village could easily vocalize their personal problems in the public. She said "I can never tell anyone what is going on in my life, since for a woman, who lives in a well-respected and well-educated family, it is a shame and dishonour to open her personal life affairs to the public - even if it is to other women!"

In a society, where family is the paramount of life, without marriage, this paramount can never be reached. This emphasis makes marriage in Afghanistan a must, especially for women. A woman's identity is defined by her father when she is born, and by her husband when she is married. From the day a girl is born, the family is reminded to "protect" her from all evils, as she is the *Amanat* (deposit) of her husband. She must be handed to him in the perfect purest form. The society gives no room or respect for those women who choose not to marry. Often, this exclusion also forces women to marry for the sake of just being accepted by the larger community.

We must also note that marriage, in Afghanistan, is not only a personal and an individual matter, but it is one of the most important duties to be performed by the families involved. Most marriages in Afghanistan are family-marriages, where the interest of the couple to marry is not even taken into consideration. The practice of *Bad* is evident in this case, where families use women to settle their disputes – in the traditional sense. However, we are unfolding a new form of *Bad* today, where women are pressurized to get married for the name of their family.

Because marriage is a family matter, the families of girls are always targets of their societies' scrutiny. If a girl does not marry by the identified age at marriage determined by her society (in Afghanistan this can range, in the rural areas from 12 to 17 years; and in the cities, from 16 to 25 years), her family is questioned. The society sees it as a duty to put enough pressure on the family to marry daughters as soon as they can. If a girl is "unlucky" and is not married by the identified age, then the problem is extended to the family – "something must be wrong with the girl or the family, that the girl is not getting any proposals for marriage!" It is out of this fear that most families often force their daughters into marriage.

With the changes that Afghanistan has recently been faced with, there are now plenty of opportunities for women, especially the educated, to come out and participate in the public space and contribute to the rebuilding of their country.

Coming out and working has its price for women. For many young, unmarried, educated women, the only permission for work is marriage itself. Once married, they are expected to be the perfect wives, perfect daughters in-law, perfect sisters in-law, perfect mothers and perfect providers. The economic situation of the nation is such, that many families, no longer can depend on a single income of the head of the household. And with the opportunities for women, many families cannot resist the temptation of additional income. However, many active and working women find that, they are caught between two worlds, and feel that they are hypocritical in their work. An activist says "I feel like a hypocrite, I tell women to stand up for their rights and fight for injustice within their households, when I cannot do it for myself! I am faced with injustice in my home and abused by my husband, and I cannot do anything about it. I am scared that if I report it, the case will become too big, and if I end up with a divorce, then I won't have my children. The law is on my husband's side, and besides, I do not want the title of an immoral woman". The mobility of women, within her and within her life, is extremely restricted.

Thus, the Afghan women have very little room for mobility inside their already marginalized lives. The ones who are working, and whose families are enjoying the financial benefits, even they must abide by their restricted cultural norms. Capable women, especially in the field of women's rights and human rights, would like to give more than 100 percent of themselves and their time, to the cause, to be able to see results of their hard work. However, because women cannot live on their own, they must abide by their families' and cultures' rules, even when working. The power of money does not take precedence in this case. "When I get home and when I get out, is strictly monitored by our neighbours. As soon as the sound of the office car is heard, in our unpaved dusty lane, someone's head comes out of one of the neighbour's window, someone comes to the gate, and some even send their kids to carry the news of my arrival and departure home. I feel extremely restricted in my movement and know that every second of my life is judged by other people" says one activist.

Working women or women activists in Afghanistan, have no privacy and space of their own. Even a few women, who may find the luxury of support of their families for their work, find that when there is a desire for a personal space, there is never a positive response from the family. A great example of this is when guests come to the house of any Afghan, everyone in the house must attend to the guests. Even if there is an extremely important job to complete with a due date, all the women of the house must attend to the guests, regardless of whether they are needed for the household chores and other errands. Although, women are now working outside of their homes, their duty towards household responsibilities is not to be forgotten, and they must prioritize their family issues before their work – often time impossible with the requirements of office attendance and work. Women are void of their space, their autonomy and control of their lives and their time.

One may ask why do women oblige themselves to live such miserable lives? The answer simply is, that women who chose to go against the norms and traditions, put themselves at either great risks or must accept to live solitary lives. Further, if a woman steps out of her generally perceived notion of being submissive, timid and quiet, and tries to be assertive in her actions, the society is ready to stamp her as a loose woman, and hence, trigger unwanted harassment. In a society without any support groups, simple labelling and stereotyping, can damage the social image of activists, which holds a high value in their societies. Some of the labelling that hurts women activists is "agents of the West", "aggressive", "deviant", "envious", "irresponsible", *Bad-naam* (a person whose self-image is destroyed because of immoral behaviour), and even "prostitute". Since, activists are best functional in the heart of their communities, they have to walk on egg shell, within their own lives, to be able to live within their community.

Many activist women feel extremely lonely in their societies. There is no support system from the families or friends, because in their opinion, the activists are going against their cultural values, and hence, they do not relate to the accepted practices of their society.

Activists do not feel part of the bigger culture and society, where every other woman seems to belong, and just because they think differently, does not buy them the identity of an International either! Among the activists, the number of advocates, on behalf of women in Afghanistan, is already low and because of their differences– family standards, language, ethnicity, location, personal values, etc – and the diversity of their priorities, it further divides them. We realize how lonely each woman is. One such activist explains that "I grew up in America and returned to Afghanistan to help with the reconstruction process, but somehow I am not allowed to be who I am in Afghanistan – I am expected to be a "good Afghan woman" and that impedes my work and progress".

Cause and Effect

By internalizing the reactions against their work and against their agencies, many Afghan women activists often deny the very women that they are fighting for. Because the activists are going through their own struggles, in a way that they cannot define with many others, that often creates a gap between the women they are trying to represent and themselves. Somehow, the violations that the majority of Afghan women face, on a daily basis, become oblivious to the women activists claiming to fight against them. Subconsciously, the activists prioritize their struggles, over that of their sisters, and subsequently, see themselves and their problems superior to those of others.

Extreme lack of support from their families, relatives, society and even from other activists, who fight the same battle, makes one extremely vulnerable to external forces of attraction. Lack of support and the burden of financial responsibility for their families, make activists inclined and subject to manipulation by politicians, political parties, and external and internal donors, who sugar-coat their own agendas by a gender equality touch. When an activist makes a conscious decision to cooperate with such agencies, they earn themselves the label of being "sold" - especially when the alliance is made with politicians or the political parties.

The overall image of women activists in the society, and their lifestyle is not inviting for many young women, who might want to walk the same path. Firstly, there is no collaboration of effort or interest on the activists' part, to invite young women, to join and cooperate on issues of interest. Secondly, the perception of an activist, in a typical Afghan family, is nothing glorious that can be perceived as a role model for the younger ones. And lastly, but more importantly, the scandals about the activists personal lives, and its affects on the name of their family, makes it a very un-inviting effort to follow. When the burden of the family name is placed on the actions and the thoughts of women, and knowing that there is no support available for them, the question is: should they leave their families? Most women opt to suppress their inner call to do something against the injustices around them, and keep away from any public action that might bring harm to the honour and reputation of their family.

Women activists in Afghanistan have multiple layers of struggle to fight, which severely affects the progress of the women's movement in Afghanistan. The overall number of women is low to begin with, and with the personal problems in the way, the activists become confused about the reason for their struggle. In one activist's own confession, she "feels like a player in a drama – acting up on a script. The script for me is my work, which as soon as I am done with, I will return to my "real life", and that is being home, where I have to live by and within certain standards and limits. But the difference is that the drama is what I believe in and is the reality – but the reality is not my real self".

Realizing the problems of the activist women in Afghanistan, it is fair to conclude that they are burdened with the demands of international standards of deliverables, as well as, trying to manage their own lives in their patriarchal and cultural societies. In order for activists to be successful in Afghanistan, two things must happen simultaneously: Firstly, the activists need to recognize that their personal struggles are part of the overall battle that they are fighting, and expand their horizon of understanding of the injustices in their societies, in order to increase the number of women in their communities to stand up against the injustices. Secondly, the

international community must recognize that the few activists, who are already dealing with a lot of pressure, cannot move this cause forward, without the assistance of other Afghan women. In order to do this, we must invest in the capacity building efforts of more Afghan women, who could join in the effort for change.

This movement is about the social and cultural change, not a change of system, which demands time and commitment over longer periods.

SECTION – III

LOCAL STRUCTURES
AND
DECISION-MAKING

Introduction Section - III

Marion R. Mueller

It is believed that democracy is essentially based on the principles of (a) popular control, or the accountability of rulers to those who they govern and (b) political equality, based on a system of citizenship in which all have a stake. However, democracies do not only vary widely in their key institutional arrangements, such as electoral systems, relationship between government institutions, etc., but they also have different impacts on the prospects of certain parts of society, such as, women, minorities or ethnic groups, for gaining representation and influencing policy decision-making[1]. It is also in this context that the question on the appropriateness and structure of the so-called informal or traditional institutional arrangements, that predominantly prevail at a local level, arises. Overall, experience shows, that without including traditional forms of society in the national development process, the project of constructing more inclusive forms of democracy remains meaningless. At the same time, the construction of alternative forms to liberal democracy - based on grassroots empowerment of ordinary citizens - has not proved sustainable, in the absence of a focus on including formal democratic institutions.

While locating traditional structures, within a democratization project, signifies dealing with several policy dilemmas[2]. It often means to choose between western liberal democracy models and alternative models of democratic practise or traditional democracy. This means the development of alternative democratic spaces, dialogue and the possibility of transforming change agents or the actual closing of political spaces to shut out "spoilers". In turn, and as some of the examples of the following section show, this sometimes might mean to undergo the balancing act between an empowerment of civil and political society, and the danger of dealing with warlords, ethnic nationalists, religious extremists and representatives of patriarchal structures, that

opt for a system that does not include the values of human or women's rights. Discussion of a theme like "Traditional Societies and Democracy" needs to carefully recognize these dilemmas. It is, therefore, necessary to identify a working strategy that is sound, not only at the policy level but also at the level of practical implementation.

Thereupon, what are the main determining factors to take into account when analyzing local decision-making structures and representation at the local level? The following section of this book identifies these markers, while discussing the theoretical aspects and characterization of the experiences, within the socio-cultural context, of countries like Afghanistan, Bangladesh, India and Pakistan.

Notes and References

1. Luckham Robin, Goetz Anne Marie, Kaldor Mary (2003), 'Democratic Institutions and Democratic Politics', in *Can Democracy be designed?*, Ed. Bastian Sunil, Luckham Robin, (London: Zed Books), 14-60.

2. See: Luckham, Robin, *Lecture Notes for the Course on Politics and Political Economy in Development*, Unpublished, Brighton: Institute of Development Studies, 2003/2004.

Some Considerations on Local Democracy and Traditional Societies

Hamish Nixon

Engagement with traditional, customary or informal institutions is a part of the layers of governance in local spaces, and the interaction of those institutions with formal state structures is increased in circumstances of state-building and decentralization processes. The management of these interactions can take many forms, and must not be reduced to a simple division between "working with" or "ignoring" traditional society. Rather, careful consideration of variations across functional domains, space, and time of these institutions must inform how the state approaches the traditional. At the same time, the interaction must be informed by a clear sense of the functions and purpose of the state in different governance domains, such as security, health or justice. This process is complex in all settings. But in Afghanistan, special challenges face a society disrupted by conflict, and featuring many varied layers of traditional, customary and informal institutions, and a state that is weak, formally centralized, and with a historically adversarial relationship with forms of local power. Some of the broad trends influencing the relationship between democracy and traditional societies are outlined next.

Democratization and Decentralization

An increased international consensus and domestic drivers (whether normative or pragmatic) towards democratization, and democratic decentralization, quickly raises questions regarding representation, participation and citizenship at local levels. This local level is also the one at which traditional, customary and informal governance activity is most prevalent, immediately making their relationship to the state an important issue in reform agendas. This process also raises questions about the democratic basis of these structures, their responsiveness, opportunities for

participation by marginalized groups and especially women. Related to this is the universalization of international human rights norms.

Changing Conceptions of the State's Responsibilities

Related to the general tendencies towards decentralization just mentioned, are specific changes to the conception of what a state should do, in both the developed and developing world. Part of this process is embodied in the spread of market mechanisms, but it also includes a wider and more varied conception of who provides services and in what configurations. Traditional, customary and informal systems arise as one of many potential parts of a more diffuse set of actors (including also NGOs, the private sector), that can potentially play a role in the planning and delivery of services. In some cases, the lack of resources of the state can contribute to this "looking again" at traditional societies.

Globalization

The expansion of market-oriented systems, the spread of communications and information, and international and domestic migration all tend to increase interactions between "traditional" societies and other parts of both national and international communities. With increasing interaction comes increasing potential for conflict, misunderstanding, and complexity in governance processes. While this tendency increases the need to address issues between different systems, it also can increase the complexity of doing so by breaking down geographic, economic and functional differences between different "systems".

Recognition / Preservation

Beyond the trends just outlined, there is also a considered interest, by many, in learning from, preserving, and empowering groups with distinct socio-cultural identities and ways of living. Recognition and integration of traditional societies, within democratic systems, through conceptions of

minority protections, group rights, and cultural autonomy is an increasing feature of reform, in both the North and South. Related to this question is the role of such recognition in preventing, managing or resolving conflict.

Statebuilding and Peacebuilding

Increasingly this relationship is becoming relevant through efforts to construct or reconstruct state structures, particularly after conflict. The non-state institutions, in this context, may be traditional, but probably also involve informal institutions that have grown up either to try to cope with conflict, or to substitute for activity that the state (embattled or collapsed) is unable to provide.

In this context of changing global approaches, it is important to stress that the reasons why relationships with traditional, customary and informal societal structures become important are varied. This means that the answers to these questions will also be varied in different circumstances, making the adoption of an international "best practices" model inappropriate. Ways of mediating the relationship between the state and traditional societies must always be considered in light of the context and the specific trends, which are contributing to the intensification of that relationship.

The second important point to note, by way of introduction, is that the relationship between traditional societies and democracy cannot be separated in practice from the question of local governance and decentralization, and the attendant concepts of participation, representation, and complex notions of citizenship. That means that answering questions about traditional, customary or informal structures also requires answers to questions about the state itself: what are the functions of different levels of the state, how does it relate to non-state actors, what are its capacities, and how is representation and participation to be structured, in pursuit of the goals of the state and the society? In these settings, one cannot discuss democracy or traditional society in isolation, but rather must focus on the relationships between them.

Conceptualizing Democracy, Decentralization and "Traditional" Societies

By posing the question of the relationships between democracy and traditional society in this manner, there is a danger of positing two distinct "systems" that, previously existing apart, must now be brought together. In its extreme form, this formulation leads us to a juxtaposition of traditional with modern, including a range of imputed characteristics for each model. We must be cautious about the suggestion that the modern or the traditional constitute uniform or exclusive categories. The reality is much messier, where both sides of the coin have diverse foundations, varying degrees of "democraticness" or institutionalization, and often co-exist and interact already, in given geographic or functional spaces.

Decentralization in Theory and Practice

At root decentralization is based on the theoretical principle of subsidiarity, which suggests that efficiency and responsiveness in the provision of public goods are better served by moving decision-making and resources closer to recipients. The decentralization discourse is largely taken up with technical consideration of the best way to do this, and to imbue the resulting structures with the characteristics of "good governance":

- Legitimate: people who are governed must accept the decisions of the authorities as legitimate.

- Rights-based: respects and protects basic human rights through the rule of law.

- Participatory: promotes social inclusion, empowerment, and equal voice.

- Effective, responsive, transparent and accountable.

In ideal-typical schemes of "good governance", these characteristics are considered to work in a "virtuous circle", each in turn contributing to the others. Decentralization is, thus, a state-centred perspective on local governance, focusing on the changes to state structures needed to generate desired outcomes (it is important to note that the international evidence for decentralization, producing these outcomes – equal participation or increased development – is actually quite mixed, and depends on many other factors).

This state decentralization can occur along different dimensions: the political (decision-making), administrative (public goods delivery, staffing) and fiscal (resource allocation). It may also take different forms: in *deconcentration,* responsibility and resources are moved to local levels of central units, while retaining accountability relationships with the centre; *devolution* involves the transfer of authority and resources, over some areas of activity, to sub-national units (e.g. in federal systems); and *delegation* involves the allocation of functions outside state structures (e.g. to NGOs and Quangos, or in some cases, of interest for this paper, traditional or customary structures). While these dimensions allow for a great diversity in formal state structures, there are some general principles that determine "good" and "bad" decentralization.

There should, for example, be a broad match between responsibilities, resources and accountability, so that authorities can implement decisions, and citizens can hold them accountable for failures to do so. For example, decentralizing resource allocations in education to districts, for example, should be accompanied by secure revenue streams (through taxes or transfers) to allow planning, and accountability relationships with users (through voice, exit through competition, or election of responsible officials). The configuration of resources, responsibilities and accountability should reinforce incentives for efficiency and responsiveness, not undermine them.

While the technical decentralization agenda is thus consistent in theory, in practice life is more complicated. There are many reasons for this, but two political

considerations are particularly important. The first is that decentralization is a political process and it may happen for political reasons, as well as normative / technical ones. For example, decentralization may be driven by politicians trying to capitalize on its effects on growth or stability; there may be pressure exerted by sub-national politicians or actors, including a struggle over revenues; a legislature may push decentralization as a way to control the executive branch in the short term. It is useful to recall here that historically decentralization can occur in more top-down or bottom-up paths, and there are significant differences in the political process involved, revolving around the sources of the pressures to decentralize and the balance between forces for and against it in a society. It is notable that local government in Northern Europe and North America developed and made demands upwards, while in much of the world, the movement is from a central state downwards.

A second complication for decentralization theories is that decentralization does not occur in a vacuum. At root, decentralization involves changes in power, and therefore, will generate changing patterns of support and resistance. It involves the interests of different state levels and actors, but also those of non-state actors, including NGOs, private sector entities, and perhaps, most importantly at the local level, traditional, customary and informal authorities. These political dynamics are especially important when the state begins from a position of weakness, and significant resources that remain outside its control are at stake. They are also important when there are potential contradictions between the organizing principles of the decentralization discourse just discussed and those existing in social structures: this is the case of the "traditional society". It is crucial to consider these political dimensions of decentralization, and the process of developing relationships between the state and other structures, following Bismarck's[1] observation that "politics is the art of the possible".

Traditional, Customary and Informal Social Structures

Defining what we mean by traditional society is not easy, and can generally be approached in two ways. The first is to locate "traditional" society as bearing a certain relationship to the past. For example, definitions of indigenous groups, in international treaties, refer to societies that have maintained their social practices from pre-colonial times. This approach has problems because it requires a judgement over the relative value of practices that may have emerged, changed, or multiplied over time. Communities are governed by overlapping, sometimes contradictory sets of structures that may operate in different functional areas or be based on different, even conflicting sources of legitimacy. One must be very cautious about assuming a unitary and consistent set of social structures, fixed in nature and rooted in some distant past. Such assumptions lead to deterministic and culturally-based judgements that are not borne out by the historical record of societal change in many settings across the world.

A second way of approaching defining traditional societies is through juxtaposition with some purported modernity, an approach that has its Western roots in the work of Max Weber[2]. In this view, modern states and traditional leadership have different sources of legitimacy. In traditional leadership, legitimacy is rooted in history and culture, often combined with religious references. Legitimacy of leadership, in modern societies, is based on elections and embedded in constitutional and legal procedures and rules. This approach also presents problems, in that it assumes that non-modern social structures do not also enjoy legitimacy through other means, such as consensus, effectiveness, and in some cases, even election or at least selection. It is also a danger to assume that the modern is congruent with the democratic, or that it necessarily enjoys legitimacy.

In fact, attempting an all-encompassing definition of traditional society may be counterproductive in trying to cope with questions about its relationship to democracy, precisely because of the contextual factors already introduced above. An alternative approach implies that a comprehensive

definition of a traditional society is impossible, but that, at the same time, individual cases can be characterized and acted upon. This approach means drawing policy, as much as possible, from accurate understandings of what different social structures and authorities actually do, how they emerged, and how they change.

Local Governance and Decision-Making

Rather than try to characterize the totality of social structures as either traditional, modern, formal, informal, or otherwise, it may be more productive to adopt a perspective, based on a broad definition of governance. At this level, governance can be defined as "*the process whereby societies or organizations make important decisions, determine whom they involve and how they render account*"[3]. Analysis of governance does not only cover the decisions that are made, or the structures within which this takes place, but also how they are made, who is involved in making them, and who is responsible for implementing them. All governance analysis, therefore, involves questions of *process, participation, and accountability*. This definition allows governance to encompass different types of structures, both state and non-state, and focuses on the types of decisions and how they are made. Compare this definition with another in use by the UNDP: local governance comprises a set of institutions, mechanisms and processes, through which, citizens and their groups can articulate their interests and needs, mediate their differences and exercise their rights and obligations at the local level[4].

While both do not limit what kinds of institutions count as governance, the second definition perhaps can be seen as a destination. It expresses the governance system in terms of citizenship, implying that these institutions, mechanisms and processes should link to and serve the purpose of building a democratic state-citizen relationship. Both are valid, but one is more empirical and the other a shade more normative. The difference expresses, in part, the challenge of integrating governance into the state, while maintaining openness to non-state governance structures.

Starting then, with this first definition, one can relate the various elements of this topic here. Essentially, what we are talking about is decisions. What kinds, who takes them, and how they take them? In this picture, local communities may have a range of structures that make different kinds of important decisions, involve different people, and use different decision-making processes. Some or all of these may have characteristics we associate with the traditional, customary or informal. The first challenge in answering questions about the relationship between democracy and a given community is, thus, to characterize existing governance arrangements. To do this, it is necessary to pay attention to certain issues that are particularly relevant to the interaction between existing social structures, and the democratic or democratizing state.

Governance Functions

There are a range of different domains in which governance takes place – since, essentially, governance involves any decisions of public importance. Different functions appear in different places, and not all in all places. Some functions that may be associated with traditional, informal or customary structures include: security; dispute resolution / justice; regulation of social life and norms; small-scale community development projects or maintenance; natural resource management; social protection of the most vulnerable. The important thing is that different functions may operate under different governance principles – for example, a local commander may provide security and dispute resolution, however illegitimately, while older structures of kinship and religious authority might regulate personal behaviour and social reproduction. Equally, other functions, such as, registration of births and deaths, justice, security, health or education provision, may lie with the state, a mixture of state and non-state actors, or civic organizations.

Capacity of Governance Arrangements

These functions may be carried out effectively or not, and legitimately or not. Consideration of the capacity of the

current arrangements, in a given domain, can inform strategies for relating these with the state – weak non-state structures may be better replaced, while strong ones might effectively substitute for weak state structures.

Origins of Structures

Traditional, customary and informal structures may have grown up in very different circumstances. It may be important to distinguish between structures that precede the state and carry out functions outside its purview, and structures that may have arisen in response to state weakness, conflict, and failure.

Actors, Structures and Processes

Who is important in each of these domains, how do they make their decisions, what is the basis of their claim to do so? What are the principles that determine this selection, process and outcomes. Are they in potential or actual conflict with the imperatives of the state, such as its monopoly on coercive force, or its adherence to human rights norms? Rather than referring to a traditional society, we can refer to a specific mode of governance of land tenure, for example, or dispute resolution, and characterize it.

Relationships Between the "Traditional" and the State

Engagement with traditional, customary or informal institutions is a necessary part of understanding the layers of governance in local spaces, and the interaction of those institutions with formal state structures is increased in circumstances of state-building and decentralization processes. The management of these interactions can take many forms, and must not be reduced to a simple division between "working with" or "ignoring" traditional society. Instead, what is required is the development of a division of responsibilities between the state and these other structures, that are seen as legitimate and effective. This division of responsibilities may in itself be dynamic, with customary

structures gaining functions, or ceding them to the state as the capacity of one or the other grows. In fact, one purpose of the interaction may be to stabilize the governance arrangements in a given domain, for example, by removing the influence of armed groups.

One way (of many) to consider the various functions, that generally occur at a local level, is the breakdown into three categories of regulatory, distributive / redistributive and administrative functions. Very roughly speaking, there is a continuum from more to less involvement of non-state structures as one moves from regulatory through distributive to administrative.

Functional Domains of Local Governance[5]

Policy area	Governance Domain	Governance Arrangements
Regulative policies	• Regulation of the social, economic and often religious structures and norms • Conflict and dispute settlement, policing, justice • Local development and planning • Natural Resource management • Land tenure	• Often occur in traditional, customary or informal structures • High degree of interdependence in these functions at the local level; complicated to divide responsibilities and may come into conflict with each other – e.g. planning and NRM – or between state and non-state actors – justice • Governance issues that may be more closely linked to collective identity, so additionally sensitive • These areas likely to involve more complete integration – traditional authority governs – or separation between the authorities
Allocative, distributive and re-distributive policies	• Allocation of communal land • Infrastructure (such as roads, bridges, electricity, water etc.) • Basic Services (Health, Education etc.) • Implementation of other national policies • Tax and revenue collection	• Some are often managed outside the state, especially communal land, small-scale infrastructure, and some social protection • Others are more often linked to state • Many of the functions can be potentially shared, complementary, or co-produced. • Integration of non-state with

Policy area	Governance Domain	Governance Arrangements
	• Social protection	state could take a variety of forms depending on the capacity of structures to deal with different tasks
Administrative policies	• Administration of citizens, voter registration, issuance of birth and death certificates, land registration, etc.	• Typically considered state responsibilities, especially if requiring some technical capacity • But, may in fact be easy tasks to share or transfer in legitimizing or integrating local non-state structures

Even within each of these policy areas, individual domains will find themselves in different governance arrangements, or in some cases none at all. The arrangements for a given domain may also change over time.

It is important to consider if the relationship between the formal and the traditional, customary or informal is aimed at transferring existing functions, creating or assigning new ones, or simply abolishing old ones. In this sense, the division of responsibility at the functional level must also come to reflect a broader vision of the state in society, a vision which may be different in different circumstances of geography, culture, fiscal base, or economy. However, as noted above, the formulation and achievement of that vision is a political process, and it may be that considering the sequencing of whatever changes to local governance arrangements take place can help in the development of that vision and its acceptance by stakeholders. For example, it may be easier to integrate traditional authorities into structures providing new public goods, such as improved healthcare, before attempting integration in domains previously and largely governed by traditional, customary or informal structures, such as justice.

So far, there are three general conclusions to be drawn from this discussion. First, planning the relationship between a democratizing or decentralizing state and its traditional, customary or informal social structures requires an understanding of both together – important considerations include the function, capacity, origins and shape of different governance arrangements. Secondly, the question of this

relationship may have different answers in different functional domains of local governance, and knowing the arrangements in these domains is more important than classifying a society as traditional per se. In general, allocative functions may have a positive sum nature, and, thus, be easier to create new relationships through complementarity, than regulative functions that may express themselves in a competitive or substitutive relation to the state. Finally, since some domains may be easier to integrate or create relationships with than others, and legitimacy may spill-over from one to another domain, sequencing may be important across domains.

Patterns of Relationships

Given this plea for recognition of the diversity of local governance arrangements, it is important to give a sense of the diversity possible, in relationships between these arrangements and the state. Some of these are presented schematically below[6].

Customary, Traditional or Informal Structures Act as the Local Government

These bodies provide enough representation, responsiveness, accountability, and effectiveness across a wide enough set of domains, that it makes more sense for them to act as government, reporting upwards to formal structures, than to replace or integrate them into parallel structures. This implies strong non-state structures, and probably, considerable state weakness at the local level. This configuration also implies variation in constitutional design, between areas with strong structures and those without, for example, between urban and rural. It also requires relative geographic coherence of the populations using these structures. A crucial question may also be how to introduce changes to these strong structures to deal with conflicts, for example, over principles of justice.

Parallel Structures

A clear and unambiguous division of responsibility exists, with traditional functions fulfilled outside of the formal

state, but given recognition through parallel structures. The particular division of responsibilities determines if this is likely to be a contested process, as in some cases it amounts to co-optation and dissolution of the power of traditional, customary and informal authorities. However, traditional authorities may advise local government on its functions and participate in implementation. This aspect may work best with complementary functions where co-production is a possibility in place of substitutive or competitive relationships (e.g. local development).

Formalization of Traditional Authorities in the State System

As formal state governance decentralizes, traditional, customary and informal authorities have reserved seats or positions in the state structure. A variation encourages participation in electoral processes, or uses traditional selection for part of the representative process.

Informal involvement in particular development programmes, through Community Driven Development, for example: Customary authorities may be given a role in specific programmes, without wider recognition. This model may lead to expanded or contracting interaction over time.

The discussion up until now has artificially suggested a situation where the division of responsibilities and the forms of integration of the different systems can be decided on, mainly through technical considerations. As noted earlier in relation to decentralization processes, this is a political process and for that reason attention to the existing governance arrangements has been emphasized.

However, it is also important to remember that, rarely do these systems work in isolation from each other, before consideration of reform. Often, forms of integration do already exist, and these will shape the available paths for reform. Two examples from Afghanistan may illustrate this point. The first is the successful, but not sustainable, effort to eradicate poppy in Nangarhar during 2005. An approximate 95 percent

reduction in area under poppy was achieved largely through the use of traditional and customary authorities in growing regions as government interlocutors. However, the reduction was not sustainable. One reason was that the form of integration (effectively option 1, using the traditional authorities as local government in the domain of controlling poppy cultivation) posited a contractual relationship between the state and these authorities. When the state was not seen to come good on its promises to provide economic relief and alternative crops, the relationship was considered null again by many traditional and customary leaders. By adopting this form of integration, the state may have limited its options to pursue other forms, while at the same time undermined a sub-contracting form of option 1.

A second example is the justice system. Rather than existing as two separate systems, there is, in much of Afghanistan, some degree of integration between the courts, district governors, and traditional dispute resolution mechanisms. The main form of this integration is the referral by formal authorities of disputes to informal ones. This happens due to normative and capacity reasons, and to some degree of unwillingness on the part of state authorities to do their job. By creating, in essence, a system of integration already, local authorities may have influenced the available paths to integrate the formal and informal justice sector in the future, or made it more difficult for either system to adapt its practices to different principles and norms.

The point is that one cannot consider the technical and political possibilities for integration on a "blank slate" – in many cases, forms of integration already occur that may or may not fit an ideal pattern. These two examples also bring us to a discussion of conditions in Afghanistan.

Issues in Afghanistan Over the Formal / Informal Interface

Afghanistan presents some fairly specific challenges when considering the interface between the democratizing

state and traditional society. The first of these, concerns our initial requirement that consideration of the traditional and the state sector, especially decentralization, go hand in hand. There are a number of reasons why it is difficult to consider both sides of the formal-informal equation in Afghanistan.

The formal structures in Afghanistan remain highly centralized and local government extraordinarily weak. There is no provision at the district level for a budget that could correspond to development plans, no control over appointments at the local level, or other systems of accountability. Virtually no non-salary spending reaches district ministerial branches, and all reporting and staffing is vertically organized within ministries. Neither do sub-national units (except municipalities) have revenue raising powers. As such, the distribution of functions to formal structures, even nominally, is still undeveloped in Afghanistan, making it that much more difficult to create a vision for the relationship with non-state structures. There are powerful political reasons for this centralization which profoundly affect the technical considerations outlined in this paper.

Secondly, there are a wide range of different customary, traditional and informal governance configurations in the country. In some areas they are weak, in others strong – or indeed a mixture of both in different domains. In most parts of the country, governance arrangements in different domains, persist from different eras and potentially embody different principles – for this reason the term "traditional" may only apply to some circumstances. So the former state-appointed *Maliks* remain key actors in some places, when resolving disputes, and are irrelevant in others. *Jirgas* or *Shuras* remain an important means of solving problems in many areas, whereas, in others, armed commanders produced by the war influence or supplant these structures[7]. Even *Shuras*, some argue, are a recent introduction to local governance, though consensus-based councils, in general, and especially *Jirgas* have a longer history. Some structures have been strengthened by conflict and the failure of the state to govern the country: for example, tribe as a provider of public goods. The situation is complicated further by

migration, associated with millions of returning refugees and internally displaced persons (IDPs), who may or may not be included in existing governance arrangements, as well as pre-existing differences in the degree of local cultural homogeneity.

Many of the governance domains in which local non-state governance is strongest in Afghanistan (i.e. dispute resolution, security) are also the areas where the potential conflict with the state is highest, due to considerable incompatibilities in the governance principles at work. Justice and security are particular examples. In the areas where complementarity, co-production, and thus, easier integration is more likely, (i.e. provision of allocative, distributive and redistributive goods like health or social protection) are areas where the state remains very weak, and so, cannot provide a blueprint or backbone for integration.

Finally, the state's authority to control Afghanistan is violently contested in some parts of the country. Thus, relations with local societal structures need to consider legitimacy carefully, and be designed to contribute to acceptance of the state's authority. This necessity may conflict with technical or normative considerations about the right form of integration between systems.

Recent developments, however, may cast these conditions into slightly new light. In January of 2006 both the Interim Afghanistan National Development Strategy (I-ANDS) and the Afghanistan Compact were adopted in London. Both of these documents aim to reframe the process of stabilization and development that is occurring in the country. Without going into the details of these agreements, there are two broad features of this transition that are important to consider in respect to the topic of this paper.

Subnationalization

Recognition, that macro-level, and largely centrally oriented, political reform processes must be expanded to

improve governance at sub-national levels, but leaving considerable ambiguity about the way that will happen and towards what end-state.

Afghanization

Recognition that continued state-building will have to involve more integration and involvement of the Afghan state in all aspects of development, through increased on-budget activities, better development planning, including increased sub-national inputs, and increased representation and participation towards improved service delivery. In pursuing this goal, thought will more naturally begin to be given to the long-term functions of different levels of government and their sustainability.

Up until now, discussions of integrating state and non-state structures in Afghanistan, have focused on specific issue areas, such as, participation in development projects (Option 4 above), and justice (which has seen woeful little action, because it is essentially beginning with the hardest problem in terms of integration). In combination, these two tendencies in Afghanistan's "strategy" will tend to focus attention on questions of governance at the local level and non-state provision of public goods, due to the extreme fiscal limitations of the state into the future. It may be that opportunities for discussing the vision of state-non-state relations in Afghanistan will increase.

Conclusion

This paper outlined some of the theoretical considerations, important in discussing the relationships between these different local governance arrangements – in some sense, providing a menu. However, the reality of arriving at a plan, and then implementing it, to deal with these relationships is considerably more complicated. Some issues that may be of use to consider in such a plan follow here:

- How can relationships of accountability be established that will support the effective exercise of functions by non-state authorities? Should they be accountable to the state, the citizenry, or both? If so, how – through elections, through voice, through exit? What sort of institutions will support this – in particular, how should local representation (elections) be organized from the village to the district, and is constitutional change required?

- How can conflicts over principles be best approached? In particular, customary justice systems in Afghanistan rely largely on restorative principles rather than retributive, and emphasize collective means of restoration and punishment that contravene certain international norms. Can justice be constructed in an integrated way, while altering some of the biggest problem areas in the non-state systems. Is the best approach to that alteration one that deals with specific issues, such as, protection of women, or through broad issues, such as, collective punishment (the family should not be punished for the individual's actions)?

- What are the reasons people do not use state systems? For example, rejection of formal courts due to corruption and inefficiency implies different policy responses, than rejection due to normative belief in the appropriateness of traditional systems. How elastic are these choices?

- Does the existence, of different kinds of governance functions, and their different implications for ease of integration, suggest any strategic considerations, such as sequencing some areas of responsibility first?

- What kind of legal frameworks can cope with the diversity of traditional, customary and informal arrangements in Afghanistan?

- How can these challenges, be met in a way, that does not reproduce the troubled history of confrontation between an assertive but weak centre, and the various local power structures in the rest of Afghanistan, but rather replaces it with relations that contribute to the legitimacy of the state, the stability of the country, and the democratization of the life of its people?

- Who are the actors that need to participate in answering these questions – not only the creation of ideas, but the communication and advocacy of them.

Notes and References

2. Otto Von Bismarck (1815–1898), Prussian statesman. Remark, Aug. 11, 1867. Quoted in Complete Works, vol. 7 (1924).

2. See, for example, Max Weber. 'Politics as a Vocation'. In *From Max Weber: Essays in Sociology*. Eds. H. H. Gerth and C. Wright Mills (New York: Oxford University Press, 1946).

3. Tim Plumptre, "What is governance", available at www.iog.ca.

4. UNDP (2004). Decentralised Governance for Development: A Combined Practice Note on Decentralisation, Local Governance and Urban/Rural Development, United Nationals Development Programme.

5.   Adapted from Lutz, G. and W. Linder (2004). Traditional Structures in Local Governance for Local Development. Berne, World Bank Institute/CESI/University of Berne: 53.

6.   Adapted from Lutz and Linder (2004).

7.   *Shura* and *Jirga* denote communal decision-making bodies in Afghanistan, consisting of elders or other almost exclusively male notables. *Shura* generally refers to a body that persists through time, and handles ongoing issues in a community, whereas a *Jirga* is typically convened to deal with a specific issue. These bodies have different characteristics and importance according to geographic, ethnic, and historical considerations in Afghanistan.

Informal Structures and Approach of Tribal Liaison Office[1]

Masood Karokhail

Paktia of Afghanistan is still deeply embedded in tribal traditions, with its social organization stringently regulated by the customary law, known as the Pashtunwali. Paktia today is most likely the leading Pashtun province in terms of a highly formalized tribal society that is most heavily organized along the Pashtun governance system and institutions. In the tribal society of Paktia, tribes are traditionally the largest permanent political and social unit, and local elites and notables, who obey traditional structures, still hold immense power at the grassroots, the tribe and sub-tribe levels. Especially, the South-eastern provinces of Loya Paktia (compared to the South and East), with a majority Pashtun population, continues to have a cohesive and well-functioning tribal structure that has survived the damaging impact of the Soviet invasion, and the years of war and factional in-fighting. Even the *Taliban* were never able to fully introduce their interpretation of *Sharia* laws into this region, since Pashtun tribes remain strongly focused on their own laws – the *pashtunwali.*

Pashtun tribes in Loya Paktia also have a historic record of contributing to the formation of national politics. They played a major role in bringing the monarchy (the Mohmadzai dynasty) back to power in 1929. As a consequence, King Nadir Shah gave a privileged status to these tribes in Paktia, Khost and Paktika, rewarding them with honorary military titles, property, tax exemption, advisory roles and exclusion from military service. The ruling family maintained a very close relationship with the local tribal *Khans* and *Maliks*, and the tribal elite, in turn, maintained close ties with the political centre. These facts, supports the argument, that a successful state needs to be relevant, for elite actors, within the territory it tries to govern.

Yet, most important for a participatory approach to state-building, is the fact that security at the district and provincial levels in Loya Paktia is still guaranteed by agreements among tribes, and between the tribes and the government. Due to these reasons, human security (e.g. the taking of land by force and social injustices) of Afghans is generally guaranteed in this area – even though outside views may differ here in terms of human rights. Tribes also have the power to make new laws (a good example here is an edict on banning poppy / cannabis cultivation in the Southeast), and impose sanctions against those who break the law[2]. In addition, the provincial police rely on tribal *Shuras* to provide community policing (*Arbakee*) for law-enforcement purposes. Thus, security (an important function of any state) in Loya Paktia, still strongly depends on the consent and participation of traditional elders. Security in the Southeast is important, due to the geo-politically important positioning of Paktia for Afghanistan, as it once served as part of the frontier that separated British India from Afghanistan (now Pakistan-Afghan border).

Main Institutions of Governance

Tribal Leadership

Tribal leadership in the Pasthun areas is divided among the following positions: *Khan, Malik, Wakeel, Spin Giri, and Syeds.* These traditional leaders usually hold jurisdiction within tribal territory which tends to rarely coincide with modern state boundaries. In order to collaborate with modern structures, however, tribes have begun to adapt to administrative boundaries created by the state. Thus, in addition to tribal councils, district and provincial councils have been created within the jurisdiction of the district, representing the tribes living in them. Thus, he influence of the tribes and tribal elders, extends across administrative boundaries of districts, and sometimes, provincial boundaries. Thus, each district or village, has several important *Spin Giri* (white beards), that represent not only their respective tribe, but also the administrative divisions set by the government. However, overall decision-making power (especially on important

issues), that affects the tribe as a whole, is taken by the overall heads of each tribe, such as a *Khan*, *Malik* or *Wakeel*.

There is often a competition between elders, wishing to achieve prominence within their tribe, or holding a more supreme position. Even though, there is generally a recognized group of influential elders who are most influential at the tribal or sub-tribal level (especially if tribes extend over several districts and even provinces), one single elder is usually chosen to represent the tribe with outsiders, such as other tribes, government and international actors. This can commonly lead to rivalry among elders as to who will hold this specific position.

Leadership among tribes tends to be inherited within an elite family (thus, the most influential titles are passed down by birth to male off-springs of male family members). Only if male off-spring is not able to take on the leadership role, a replacement outside the family will be chosen. Furthermore, if an influential tribal elder is associated too closely with a regime that goes out of power, a new tribal elder may replace him as a new regime arises.

Aside from birth rights and inheritance, power among tribal elders is usually associated with:

- **Networking and access to government resources:** Good connections with the local and central government.

- **Land:** To possess land is important to be seen as a "real Pashtun".

- **Economic power and ability to entertain guests:** Economic resources are needed to be independent from daily work. Thus, influential people need the freedom to spend as much time as they want on tribal issues, and must literally "feed" their constituency. In the old days (before drug trafficking), this rule usually acted as a power equalizer, as those rising to prominence,

had to spend increasingly large sums on hospitality, and could not necessarily maintain that level of expenses.

- **Local and tribal knowledge:** To know the different customs (*Narkh*) of the *Pashtunwali,* including experiences, with its various applications, in order to cope with the different cases of a *Jirga*.

- **Wisdom, negotiating and mitigation skills:** Ability to solve tribal disputes and represent the tribe *vis-à-vis* outsiders.

Oratory skills are also particularly important as the Pasthun society, similar to other Afghan ethnic groups, relies primarily on an oral tradition, and as all Pasthun leaders are expected to be able to speak well and with authority in public. The art of public speech and eloquence is, therefore, a very important skill that Pashtun elders seek to cultivate.

Jirga

The traditional decision-making body in Pashtun Afghanistan is the *Jirga*. The *Jirga* is the main *tribal* forum that is called on an *ad hoc* basis, to take a decision with regard to a certain problem. In a *Jirga,* different opinions are taken into account and discussed until a consensus is reached, often in the form of negotiated compensation.

The mechanism of *Jirga* survived the war, and is, once again, being used as the main mechanism of local dispute resolution. Due to the weaknesses of a functioning system of formal justice, *Jirgas* are used for solving disputes and problems faced by common people. The current weaknesses and corruption of the government judicial system, ensures that *Jirgas* are currently considered as the most reliable system for solving conflicts and disputes.

Thus, in rural areas, *Jirgas* today are important parallel institutions to the official governmental judicial system, which in many cases, legitimizes their decision or

refers cases to them. Even difficult issues, such as, land conflicts and tribal conflicts, among tribes or the state against a tribe can be tackled through *Jirgas*. *Jirgas* are usually held in private places, such as, guest houses, gardens or private compounds.

It is important to note that, as a rule, Mullahs do not take part in *Jirgas* as full-scale members (unless they are also regarded as elders in their community). Rather, the *Jirga* will often seek their expert advice on the matter being discussed. Although, this advice is respected, the *Jirga* is not always bound by it, and usually takes decisions based on the *Pashtunwali,* which may contradict the *Sharia*. This shows the important interplay, between the traditional tribal structure and religious Islamic structures, in rural Pashtun Afghanistan. In case the *Jirga* cannot reach a solution, it may rely upon the decision of the religious figures, for taking a decision on the basis of *Shariat*, but only if it is acceptable to the opposing side.

Shuras / Councils

The *Shura* is a rather new decision-making structure, at the tribal level, in Afghanistan. It was introduced by the *Mujahidi during the 1980's* who utilized provincial or district military *Shuras*. Today, the *Shuras* are composed of a body of permanent tribal representatives who meet frequently. Today, most tribes (Pasthun and non-Pashtun) maintain their own *Shuras*. The *Shuras*, in this sense, are rather long-term decision-making structures. Every tribe endeavours to solve its problems through its own *Shura*, with outside assistance being sought or accepted, only when the tribal *Shura* is unable to solve a dispute internally.

1. *Shuras* are rather stable structures. As mentioned before, in recent years, *Shuras* have adapted to government structures. Thus, in addition to tribal *Shuras*, there are also village, district and provincial *Shuras*, with the latter two often being joint ventures between the government and the tribes. In most Pasthun inhabited districts, an inter-tribal *Shura*, composed of representatives from each tribe, who live in that district, also exists. The size of the *Shura* depends on the size of the

population of the district, and the number of tribes and sub-tribes that have to be accommodated. Each tribe selects its own representatives. Each *Shura* has a director (*Rais*) or head of the *Shura*. The district and the provincial *Shuras*, usually have an official status with the provincial government, with members often receiving some financial compensation for their participation.

Arbakee[3]

Currently, security in Loya Paktia heavily depends on traditional tribal police – the *Arbakee*. The notion of an *Arbakee* is an old concept in rural Pashtun Afghanistan, which can be best compared to what we consider as community policing. The *Arbakee* or tribal policing is a community tool, used for enforcing a decision of the *Jirga* or *Shura*. As such, the *Arbakee* is a form of law enforcement or executive branch of the Pashtun governance system. In the Southeast of Afghanistan, the *Arbakee* remains a crucial characteristic of the tribal Pashtun society of Paktia, where it has been extremely successful in ensuring security.

It is important to draw a clear line between the *Arbakee* and militias, of any sort, that are associated with warlords for the following reasons:

- The *Arbakee* is a very temporary body that is only established for solving specific problems, and only for the length of time required to do so.

- The size of the *Arbakee* depends on the kind of operation. In many cases, it is simply for the purpose of dispute resolution or executing the decision of a *Jirga* or *Shura*.

- Despite the fact that each *Arbakee* has several sub-commanders called (*Mir*), who work under the command of the *Shura* / council, the accountability goes back to the tribal council (*Jirga* or *Shura*) that called upon the *Arbakee*, which in turn, is accountable

back to its communities. Furthermore, *Arbakee* only functions in the very limited realm of the tribe it represents. Its fighters are volunteered from within the community and are paid for by the community.

- In addition, the *Arbakee* is also supported by the government, with salaries being paid to each person. In such a case, the government decides the number of persons to be included in the *Arbakee*. This emphasizes, again, that its loyalty is with the communities and elected government, and not an individual leader.

In Loya Paktia, the *Arbakee* was used for election security during the 2004 and 2005 elections. Its size outnumbered the Afghan National Police, by three or four times, at a minimum. Currently, in Paktia, *Arbakee* exists in every single district, except for the provincial centre. Its engagement ranges from contributing to district security, protecting national forest against illegal logging, to road, and in rare cases, border security. Occasionally, *Arbakee* is still involved in solving disputes between communities – a very traditional function.

Due to the close association with traditional structures, *Jirgas* or *Shuras*, *Arbakee* can only function in areas with strong and cohesive tribal structures. This, at present, is only true for the Southeast (Paktia, Khost and Paktika) of Afghanistan, and *Arbakee* is essentially unique to this area. Trying to copy the *Arbakee* to other parts of Afghanistan, such as, the south, where the tribal structures have been weakened by war, may lead to an empowering of warlords and their militia, since the traditional leadership has been replaced by a military elite, like the commanders or elites who control the means to violence.

The Tribal Liaison Office – Idea, Origins and Approach[4]

In 2003, swisspeace-Afghanistan (then working mainly through its first project, the Afghan Civil Society

Forum) was approached by the elders of the Ahmadzai and Mangal tribes from Loya Paktia, asking for assistance in helping them to find ways to participate in the peace and reconstruction process, and engage with the Afghan government and international actors. With funding from the Heinrich Böll Foundation, a pilot project on good governance, for Southeastern Afghanistan was conducted, which explored along with the tribes in the area, on how best to engage them. As the local will for participation proved overwhelming, the pilot project quickly gained acceptance and momentum, and resulted in the creation of the Tribal Liaison Office (TLO), in December 2003. Aside from the main office in Kabul, offices in Khost, Paktia, and Paktika were established by February 2004. Start-up funding was generously provided by the German and Finnish Ministries of Foreign Affairs and the Heinrich Böll Foundation.

Since 2005, the Tribal Liaison Office has also worked on tribal issues in Logar, Kabul, Kandahar and Helmand, as the concept is gaining increasing acceptance, among the international community and within the Afghan government. In the provinces where TLO has a field office, elders from the district, provincial and tribal *Shuras,* serve on consultative groups that provide advice to the TLO offices, represent their respective tribes, and liaise with their *Shuras.* The Kabul headquarters, engages in strategic and programme planning, facilitates with the donor community and central government, and provides logistical, technical and programme support to field projects.

The mission of the TLO is to facilitate the formal integration of communities and their traditional structures, with Afghanistan's governance framework. The project strategy relies on the cooperation with, and the involvement of the tribal structures, in the form of *Shuras* or *Jirgas (see earlier discussion).*

The approach to actively engage the Pashtun tribes in the peace, security and reconstruction process in the country was considered the best way to positively influence security in the region, and to ensure an enabling environment for the delivery of rapid reconstruction measures in the region.

The basic idea, then, is to work with elders who base their power less on military means than traditional ones; assist them in identifying the needs of their communities, and increase their power-base, by delivering back to their communities, not only in the areas of health and education, but also water (wells, irrigation) and transportation (roads). The communities are made to understand that they hold the ultimate responsibility for the security of the projects, and that they need to contribute to the construction effort. This means that communities need to pave the way for TLO assessment teams, allow access to all parts of their areas during the assessment, and assure that those involved with project implementation remain unharmed[5].

However, the moment one chooses to engage with traditional structures, it is important to understand how these function, how to gain access to their *Shuras,* in order to identify key individuals, change agents so to speak, who can assist in conducting initial negotiations. This is exactly the reason why TLO has conducted research, prior to engagement, as one of its major activities. The pilot study that led to the creation of TLO, for example, found that tribal elders, who were focusing on peaceful (or non-military) means of governance, and were willing to engage with the central government, were particularly important. At present, most of these elders are in a very difficult position, as they are at odds with gun-holders, who derive their power not only from traditional systems of inheritance, but also through money, drugs and access to weapons. It is the latter leaders who have made the Southern, Southeastern and Eastern parts of Afghanistan volatile and unpredictable.

In the light of the above, equipped with a thorough understanding of tribal and traditional dynamics in the Southeast, TLO decided to contribute to governance in these areas, by identifying and engaging with the traditional elders, as well as, providing them with the necessary assistance to better serve their communities. More specifically, it formulated the following core-objectives:

- Promote dialogue and cooperation between tribes, provincial and central government, as

well as, with international actors, and thereby, contribute to the strengthening of the rule of law and local judicial authority.

- Build the capacity of local *Shuras*, leaders and community groups, to provide good governance within the national framework and increase tribal accountability and contribution to the peace and security process.

- Facilitate the reconstruction and development of public infrastructure, through the participatory assessment of community needs.

- Promote an understanding about local tribal structures and decision-making patterns, through research and analysis.

These objectives are realized through a set of activities in the following key areas:

Research and Advocacy

- Increase knowledge and understanding of communities, conflicts, tribes, tribal structures, decision-making processes.

- Advocate community reconstruction needs and priorities to international donors and implementing agencies.

- Help to identify and support local markets and promote integration with the larger Afghan economy.

Capacity Building

- Train traditional *Shuras* in development work and community monitoring.

- Build governance capacity in conflict resolution, economic development and human and civil rights.

- Public (civic) education and information dissemination among communities and tribal *Shuras.*

Coordination

- Promote coordination and increase information sharing among international, national and local stakeholders.

- Promote and facilitate dialogue between various stake-holders.

Facilitation

- Report reconstruction needs and community projects to donors and implementing agencies.

- Organize projects on land and security arrangements with communities.

- Assistance to international and local actors, in the resolution of local conflicts, through stabilization initiatives.

- Connect implementing agencies and their projects to local communities.

- Facilitate the implementation of projects.

From Idea to Practice – Favouring Factors for the Establishment of TLO

The fact that TLO managed to establish itself successfully in the Southeast, was linked to several factors. Important was the marrying of the knowledge, acquired in several areas, within the research team, and by looking at the problem from various perspectives. Engaging with local actors helped to identify the needs and desires of the population.

The deep knowledge of local structures and politics, gained by the Afghan staff of TLO, helped to put this into perspective and identify possible problem areas and pitfalls. The experience of swisspeace, in the areas of peace building, conflict analysis, prevention and civil society, allowed the translation of the local knowledge into concrete objectives and activities, which could be communicated to policy-makers and donor countries. In sum, a successful collaboration with various actors helped TLO to develop its unique structure and projects, with research in the initial stages, being the key determining factor. The following paragraphs will explain, in greater detail, the factors that helped TLO to position itself in the Southeast:

First, TLO was not imposed onto tribal communities in the Southeast, but was initiated upon the request of several tribal elders from the area. The intensive dialogue, in particular with traditional elders, but also international actors (especially the regional UNAMA office, was very supportive of the process) during the pilot phase study, allowed to design the basic objectives and activities, and also the work structure of the future TLO offices. Thus, the participatory approach of establishing TLO, helped to enhance the Afghan ownership in the process, which is a very powerful supporting factor.

Linked to this point is clearly the fact that TLO did not shy away from utilizing traditional structures, but integrated them into the foundation of its approach. TLO tried to solve the dilemma (which mainly tends to come from the donor community) of working with undemocratic structures by trying to: focus on and utilize their beneficial elements, such as, the patron-client system that is found among the Pashtun tribes of the Southeast; the knowledge and information given to the elite that may trickle down to rest of the population; and that the elite hold power through service-delivery. Thus, the patrons were considered as change-agents through whom, acceptance for programmes and activities could be negotiated. As a second step, direct access to lower levels (the clients) was facilitated and supported, through the patrons, and through the delivery of services. Thus, TLO and the traditional elders engaged in a mutual strengthening and legitimization process.

Third, TLO was able to address the existing grievance among the population – non-inclusion. The tribes expressed their overall frustration regarding the slow pace of development work in their region, and hallow promises made by the Afghan government and the international community. They felt that they suffered because of the projected poor image of insecurity, which in their opinion was unjustified.

Simultaneously, the tribes felt that they had no proper representation in the central government that could lobby for their interests, and improve the negative image of the Southeast as an *Al-Qaeda* or *Taliban* friendly territory. Essentially, the communities of the Southeast felt isolated and left-out from the peace and reconstruction process that was taking place within Afghanistan. In other words, they felt that they did not receive any piece of the large pie, the international community had promised to deliver to the Afghan people.

This overall frustration of the local population created a situation of pressure for traditional leaders. As mentioned before, in the Pashtun tradition, elders are, among others, measured according to their ability to provide services to their community and negotiate access to the politics in Kabul. Thus, there was a great interest among the elders in the Southeast, to create access for development organizations, which could eventually lead not only to the development of the Southeast, but also increase the voices of the Southeast within the central government, and thereby strengthen their own political base. Thus, clearly, in addition to ownership / participation, utilizing existing structures and existing grievances, political opportunism among tribal elders was an important fourth factor that helped TLO to establish itself in the Southeast.

Such opportunism, however, did not entirely come from the elders. Considering again, the history of Afghanistan, and the discussion so far, state-building in Afghanistan cannot be seen independent from traditional structures. Historically, just as in the present, the Afghan State, in many ways, is highly dependent upon the collaboration with traditional structures, in order to rule. As such, tribal systems should not

be seen as a parallel, but more as a complimentary system to a modern state. A strong and a successful Afghan state, would even find ways on how to bring traditional structures on board, and integrate them into the state-building process. Most rulers of Afghanistan have understood this important symbiosis between the traditional and the modern. Even though, not all parts of the central government in Afghanistan, may understand the importance of traditional structures, the rather weak representatives of the central government in the Southeast did. They knew, that their own success was linked to their acceptance by, and support from, the local elite. Given that TLO could provide a linkage to the traditional structures, it helped legitimize the office, also in the eyes of the local government.

Following this point, one can argue that TLO has essentially performed an important service in the state-building exercise, by trying to foster linkages and cooperation between the two important structures. On the one hand, it helped the government to gain support from the local elite and, on the other hand, it helped the traditional elite to gain access to the government and understand how to integrate into a modern system, for example, through being elected into the parliament. In the process, TLO, however, also had to convince elders that they would benefit by supporting the modern state-building exercise, which was mainly done through hopes for the big carrot – the benefit of international assistance and reconstruction efforts, and also the prospects of peace and security for the Southeast. This facilitating role helped TLO, to receive support and recognition from the governmental and tribal stakeholders alike.

Of course, one could argue that TLO also acted as an opportunist; due to the problematic security situation, there were hardly any or few NGOs that were engaged in the Southeast. Thus, TLO, in addition to bringing a thorough understanding of local structures, and how to engage them, and bring them to the negotiating table, did benefit from the general vacuum, that existed, in terms of engagement.

More important than this, however, is the fact that TLO offered different kinds of services than other NGOs –

mainly facilitation, information-sharing and capacity building, *inter alia*. Also, TLO was the only organization, that made the working with tribal structures, an integral part of their mission and basic foundation. This helped TLO to create a certain niche for itself. There was really nobody in the area that had the same knowledge about the traditional structures, and, more importantly, the trust of the elders, to be able to bring them to the negotiation table. This led to a situation where, for international actors (military and civilian alike), TLO by default became a facilitator that could help them to enhance their own work. The following concrete projects are examples of how TLO could gain acceptance through linkage and knowledge:

- Through participatory rural assessment, in most of the districts of Paktia, Khost and Paktika, TLO was able to meet two needs at the same time: that of the local communities, which had wanted to communicate their needs to the outside; and, to the government and international actors, by providing them with a list of projects that were prioritized and supported by the local communities.

- TLO was the official partner of the Afghan Civil Society Forum (also developed by swisspeace), in the large-scale civic education outreach, for the presidential and parliamentary elections. Thus, it not only performed a useful service to both the communities in providing information, but also the government and the UN, by being able to reach the inaccessible areas.

- TLO was the only NGO in Loya Paktia that could help the government and the international actors, to engage in conflict-resolution exercises, and initiate projects for the purpose of stabilizing the region. The following are two examples:

- One priority for the provincial governments (Paktia, Khost and Paktika), UNAMA and UNHCR, was a long-standing (60 years) tribal land conflict between the Sabari and Bal Khail on the Paktia-Khost. TLO was asked to facilitate the designing and implementing of a road project, to create access for the two conflicting tribes, and TLO Regional Office Manager in Gardez, Mr. Daud Shah Niazi, was part of the *Jirga* comprising elders from the three provinces. The final project – a 12.6 km road funded by UNHCR – helped settle the conflict.

- Another initiative that was taken by the three governors (Paktia, Khost and Paktika), relates to the Zadran Arc Stabilization Initiative (ZASI), supported by UNAMA. TLO was again the facilitating organization, that helped with assessments in the Zadran tribal districts of Loya Paktia (some of the most unstable districts in the area). It identified projects (carrots), in all the three districts, and USAID, so far, has funded them in two districts. The ZASI project is still on-going.

Last but not the least, TLO's ability to not shy away from bringing a military actor – the local Provincial Reconstruction Teams[6] – PRTs on board, also helped in gaining acceptance at various levels. Even though, it is usually considered more than odd (often even a no-no) for NGOs to work closely with the military, the situation in the Southeast, where the military presence is a part of the local political picture, brought the PRTs into the necessary discussions, especially as the traditional structures wanted to understand the nature of PRT's engagement. Thus, TLO's

ability to bring them on board, and into a dialogue with local structures, also helped cement its position as a facilitator in the area.

In addition to these programmatic aspects, is the fact that one of the main TLO staff, who belongs to a very influential traditional family that is held in high esteem among the Southeastern elders, helped to gain entrée into the otherwise inaccessible structure of traditional elders. TLO and swisspeace, have been quite open about this important contributing factor, from the very onset of this project. Building on the trust, which came with the family name, TLO was able to counter existing scepticism, among traditional elders against outsiders in general, and NGOs in particular. Of course, this put TLO staff somewhat under pressure, as a non-delivery to the elders would have repercussions on the reputation of the family in the region.

In the light of the above, TLO's ability to address the varying needs of local and international stakeholders in the Southeast (governmental and non-governmental alike), and to use local knowledge and structures to its advantage, helped the positioning of the organization in a difficult environment. Furthermore, its innovative approach, that set TLO apart from other more traditional NGOs, helped to create a niche for engagement. As emphasized earlier, especially the linkage between research and participatory action, meaning that the activities that were centred on a deep understanding of local structures, and the needs and desires of the local communities, were important contributory factors for TLO's successful establishment in the Southeast.

Notes and References

1.   The author would like to thank Dr. Susanne Schmeidl for comments on and assistance with this paper. In addition,

the author benefited from previous discussions and input from Dr. Conrad Schetter.

2.   Although tribal codes vary among the tribes, the overall values are similar. Because of this, the tribes live in coexistence under tribal laws, and are further able to enforce treaties made among them. These treaties, as well as, the punishments associated with them, are still accepted to a large degree by the government. The tool for enforcing the tribal codes and laws is the jirga, or council, which can be convened by a tribe or between tribes.

3.   This portion of the paper relies heavily on the following report to which the author contributed to: Improving Governance and Security Through Local Structures - Feasibility Study on Integrating the Arbakee (Tribal Police) into Central Police Structures. Research Report to DFID. Kabul, Afghanistan, 2006.

4.   This portion of the paper draws heavily on the following publication: Masood Karokhail and Susanne Schmeidl. 2006. "Integration of Traditional Structures into the State-building Process: Lessons from the Tribal Liaison Office in Loya Paktia" Pp. 59-79 in *Publication Series on Promoting Democracy under Conditions of State Fragility. ISSUE 1: AFGHANISTAN*. Berlin: Heinrich Böll Foundation.

5.   It has to be acknowledged, that by strengthening certain parts of a community and alienating others (in our case, those holding guns), conflict might be created in the short-term. However, social change is never fully free of tension and conflict, and often local communities have to make choices on how to respond to it. The fact that the areas of engagement – South, South-East and East – are considered highly insecure, demand innovative and potentially unconventional means of working with communities, to promote governance and security. In highly volatile environments, this may essentially be the only way to foster change and security in the long-run, at least until the central government is able to extend its influence across the entire country.

6.   The PRTs in the Southeast are staffed by the US Military, which is now under NATO command.

Establishing Village Institution through National Solidarity Programme

Bijay Karmacharya

Afghanistan has unfortunately been the scene of political and civil conflicts for generations. The continuous deconstruction of political, social, economic and governance structures, that started in the mid-seventies, came to an end in October 2001; leaving behind a transitional state with 70 percent of its physical infrastructure destroyed or severely damaged, a population exhausted by war, an economy barely able to support the people, and the governance structures almost defunct.

The transitional Islamic State of Afghanistan had the enormous task of physical reconstruction and social reconciliation ahead of it, both in the urban centres and rural hinterlands.

In order to support reconstruction and rehabilitation in the rural communities, where there is complete absence of state mechanism, the government emphasized the need to develop a national strategy for decentralized and self-reliant rehabilitation approach, that supports re-engagement of the masses in the nation rebuilding process.

Building on some twelve years of experience in Afghanistan, including the seminal work in community forums in urban areas, UN-HABITAT contributed to the conceptualizing, designing and planning of the National Solidarity Programme (NSP), to be delivered to rural communities throughout Afghanistan.

In 2002, the Government of transitional Islamic State of Afghanistan identified NSP, as one of the six national priority sub-programmes, within their National Reconstruction Programme. Today, NSP covers nearly half the rural communities across all 34 provinces of the country. The NSP

coverage will reach some 17,000 communities by the end of 2006. Without doubt, it is the largest people's project in the history of this country.

The NSP is based on Afghan traditions, especially that of "*Ashar*" (community members working together to build infrastructures and resolve conflict) and Islamic values of unity, equity and justice. NSP is founded on the belief that organized communities could actively contribute to their own development, with responsibility and prudence, if they are provided with the appropriate tools, such as, representative and inclusive community development councils, participatory planning process, transparent and accountable procedures and provision of block grants.

In accordance with the government policy, NSP lays the foundations for the establishment and strengthening of community level governance, while building and supporting community capacity through self-managed sub-projects. The programme promotes a development paradigm that empowers communities to take decisions and control allocated resources.

The NSP is executed by the Ministry of Rural Rehabilitation and Development (MRRD) which reaches the communities to implement NSP through 24 Facilitating Partners (FPs), operating throughout Afghanistan.

The Constitutional Provision for Village Governance Structure

The passage of the 2004 Constitution has provided the government of the Islamic Republic of Afghanistan, with an opportunity, as well as, a challenge to establish a representative and democratic local governance structures at the village level. The most urgent priority, at that stage of reconstruction of the country, was to foster solidarity at the community level and to give a sense of the presence of a state, and build the trust between the government and the people.

Article 140 of the Constitution states "In order to organize activities involving people and provide them with the opportunity to actively participate in the local development / administration, councils shall be set-up in districts and villages, in accordance with the provisions of the law". The Constitution has a proactive vision for establishing elected councils that promotes popular participation. The immediate aim of the government is to create legitimate and functioning representative structures, at the local level, to enhance national solidarity, stability and prosperity. The Afghan government is committed to ensuring effective, democratically controlled and accountable local institutions that take charge of local development priorities.

The NSP is designed as a mechanism, to lay the foundations for establishment of local governance – through inclusive representation, consultative decision-making and community-based planning and implementation of sub-projects.

Characteristics of Traditional Power Structures

Traditional power structures governed rural villages of Afghanistan, with relatively little interference from the state. The local level power holders include; *Malik* (or *Arbab*), *Mirab*, *Khan*, *Ulema* (*Mullah*); *Jirga* (*Shura*).

The role of the individual power holders, such as, *Mirab*, *Ulema* etc. are limited within the communities - mostly in the resolution of community conflict, while the *Malik* also provides the linkage between the communities and central power.

Despite the ethnic and cultural diversity, many communities have some form of council called *Jirga* (*Shura*). Councils are usually made up of leaders from more than one village. The individual power holders, stated earlier, are usually the members of the council along with the white bearded elders. What is often misunderstood about the traditional councils is that they are traditional structures belonging to a number of neighbouring villages, not necessarily of a single village, and that they mostly meet

when there is a problem to resolve. Problems range from inter-personal conflict, land disputes, inter-communal disputes to the maintenance of communal infrastructures.

While the institutions and terminology may differ across the country, the local governance landscape mostly comprises a mix of appointed local councils and / or power holding individuals.

Many changes in the governments, over the last three decades, have led to the existence of various forms of power structures at the local level. During the past 30 years, different institutions have emerged, appeared, formed and dissolved overtime. As each new regime took over an area, a new power structure emerged. They have gained and lost legitimacy, as well as, community acceptance. Now, as the new government is trying to stabilize the country, it has to encounter with different forms of power structures at the local level.

While there are varying traditional mechanisms at the village level, the absence of state mechanism is one constant across the country. There is no legitimate, representative, recognizable and uniform structure in the villages, across the country, with which the government can work, in the course of state-building process. None of the traditional power structures represent the broad spectrum of the community, and possess the legitimacy needed for working with a programme, aiming at national solidarity, and establishing a democratic governance structure at the grassroots level.

Need of Representative Councils at Village Level

Effective and sustainable reconstruction and socio-economic development of rural communities requires institutions that have the capacity to organize, manage and nurture community-owned development initiatives. These institutions should enjoy support, trust and confidence of their community members.

Although, traditional power structure of some form existed in many villages, they lacked the characteristics necessary for making them a legitimate or effective partner in NSP programme implementation. As far as legitimacy is concerned, the composition of traditional Afghan *Shuras* is mostly non-representative of its village constituency. Members of traditional *Shuras* are often inherited appointees of commanders, members of wealthy family. They are more inclined to represent the interests of the powerful, than the marginalized majority. By virtue of its origin, representation of women in these traditional *Shuras* is completely absent. *Shuras* traditionally, do not play a proactive development role in the community.

When plans for launching the National Solidarity Programme took shape, it was, therefore, mandated by the Government that villages interested in participating in NSP should first elect a representative Community Development Council (CDC) or *Shura*.

The election of a CDC was seen as a mechanism to facilitate the emergence of village representatives, who have a mandate of the majority. Unlike working with the traditional structure, the election of CDC offers a framework for village level consultative decision-making, in accordance with the Islamic principle of the "Consultation".

National Solidarity Programme Community Facilitation Process: A "5-Phase-Cycle

The design of NSP consists of five phases: The focus of activities during Phase 1 is to make contact and build trust with the community, engage in household and small group meetings on local problems, capacities and opportunities; Phase 2 focuses on discussing and then deciding on the establishment of a representative Community Development Council (CDC), with

vested authority from the community and the responsibility to manage the community's socioeconomic development programme. During Phase 3, the Development Council prepares community development plans, in consultation with the communities, and prioritizes one or several development activities to be implemented in the community. Priority project proposal(s) are submitted to the MRRD for block grant funding; Phase 4 focuses on project approval, disbursement of the block grant, procurement of materials and services; The focus of Phase 5 is on project implementation, monitoring and evaluation, and project completion.

Forming the Community Development Councils

As the NSP tries to establish a representative local council in the rural communities, it has to encounter with different forms of power structures existing in the rural communities. There is almost always some level of resistance from the existing councils, elders and *Malik / Arbab*. They fear that their power of decision-making is being challenged by CDC, and they are afraid of eventual power loss.

Introducing the concept of elections to Afghan rural communities turned out to be a challenge for multifarious reasons: a) there was almost no precedence of holding elections in rural areas; b) there is a high rate of illiteracy within Afghan communities; c) women's participation within the election touched a sensitive nerve of Afghan men, in many remote villages of Afghanistan; and d) "elections" and "representation" are perceived as "Western" concepts that may undermine Afghan values and culture.

Rather than rushing to the CDC election process, the NSP follows a process-oriented approach in establishing the CDCs. After establishing contact and initial trust with the opinion leaders of the communities, discussions are facilitated in cluster groups about the feasibility of establishing a board-based representative community development council, to take charge of NSP and the development needs of the village.

During the course of the facilitation process, the qualities required for true representatives for CDCs are

developed in a consultative way, which help prevent the elite from affecting the election process. At the time of election, the social organizers remind the voters, to vote the individual that best matched the characteristics identified earlier. Electioneering and campaigning is not allowed for the election of the CDC members.

Communities participating in NSP are divided into clusters of 10-30 families (with an average population of 6-8 persons per family), and then requested to elect one community member, as their cluster representative on the CDC (see Figure 1).

Figure 1: Development Council Elections
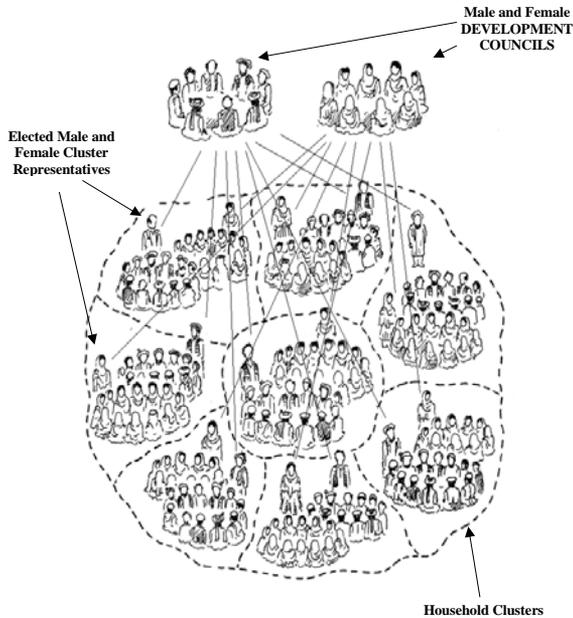
The Election Process

CDCs are elected through a democratic process of: 1) creating voting clusters of 25-30 families; 2) identifying eligible voters, and; 3) having a quorum (at least 40 percent) of each cluster vote, by secret ballot, for their representative to the CDC (if the community has separate male and female CDCs, then the clusters elect separate representatives).

The community first works out the terms of reference of the development council, characteristic of the members and the method of election. They widely consult and discuss in small groups, and finally receive endorsement in large meetings.

In each cluster, a list of eligible voters (both men and women) is prepared. Anyone, over the age of 18 years and married, is eligible for voting and included in the list. The date of election is decided through the large community meeting.

On the day of the election, the Social Mobilizer explains to the community gathering, about the process of voting. The eligible voters are then divided into their cluster groups and their attendance is taken prior to the election. A ballot is handed out to each eligible voter. Each voter is asked to write the name of the person they would like to elect, to their development council, from their cluster. Voting is done by casting on stamped ballots, which are later counted by an appointed election committee. Illiterate members select a "secretary" of their trust, who assists them to cast the vote to the preferred candidate.

Once the cluster representatives of CDCs are elected, they then vote among themselves for a CDC president, deputy, secretary and treasurer.

Community Development Councils of NSP

Started two and half years ago, the National Solidarity Programme now covers 175 districts in all 34 provinces of the country. By the end of 2005, Community Development

Councils (CDCs) have been established in over 11,000 villages across the country.

The CDCs represent, the first step, along the path of implementing the government's vision of a democratic, participatory and accountable governance, at the community level. Compared to the existing traditional village structures, the CDCs bring a number of new elements to the community:

Democracy

CDC is the first village institution, in the history of rural Afghanistan, to be directly elected by the people.

Inclusion of Women

Within one of the most gender repressive environments in the world, and a culture where full importance of women and the marginalized in society has been slow to emerge, NSP has made enormous efforts to include women. The election of CDCs has opened up a space for women's participation, as representatives of their communities. No other village institution in rural Afghanistan offers women a role to play.

The positive efforts of the programme have delivered a surprising two-thirds of HABITAT supported communities, with either separately elected women CDCs or women's committees of the CDC. Establishing a forum where women can meet, discuss problems and issues, and contribute to decision-making within their community, has profound consequences on women's empowerment and gender equity.

Legitimacy

Through the ballot boxes used in the election of family cluster representatives, the CDCs have come to represent the basic unit of a self-governing nation.

The elections also confer legitimacy on the CDCs, empowering them to take executive decisions about the

development issues of the communities, and, at the same time, making them answerable to the people who voted them.

Good Governance

NSP's training to CDCs, using culturally sensitive and appropriate quotations from the Holy *Quran* and other Islamic teachings, reinforces principles of participation, consultation, accountability, transparency etc. which strengthen good governance in the communities.

Social Audits

Social audit meetings provide regular platform for the communities, to get reported on the progress and achievements of the sub-projects. Such a platform helps promote transparency in decision-making and the resources used within the communities.

Election Results of Community Development Council

UN-HABITAT has facilitated the implementation of the NSP programme, in nearly 20 percent of the CDCs established throughout the country, as part of the NSP programme during 2003 / 2004 and 2004 / 2005. The following section presents statistical data about the elections facilitated by UN-HABITAT, in various communities of 37 districts of the provinces of Bamyan, Farah, Herat, Kandahar, Bulkh, Kapisa, Panjshir and Parwan.

General Election Statistics

By the end of December 2005, a total of 2,385 CDCs were elected, of which, 1,672 were men CDCs, and 713 were female CDCs. Some communities elected joint CDCs, with representation of both male and female community members, while many communities elected separate CDCs.

During the election of the CDCs, 73 percent of the eligible female voters, voted for their representatives, compared to 71 percent voters' turnover among the men. This

was significantly higher than the anticipated 40 percent turnover in the NSP Operational Manual.

A total of 22,339 persons have been elected to the male and female CDCs, among whom, 15,132 are men and 7,107 are women. Each elected member represents about 23 eligible voters of its respective community cluster.

The percentage of registered voters, who turned out for voting, confirmed that communities were open to support the CDC election process, after having gone through the discussion on the rationale behind the CDC elections. In other words, it would have been impossible for such a large percentage of community members to vote for elections, if the community, as a whole was opposed to the process of election.

Literacy

The results of the elections show that there is a tendency within rural communities to elect elders as chairs (notwithstanding their illiteracy) because they are revered. Treasurers are found to be selected for their trustworthiness, which is appraised higher than illiteracy.

Figures show that 45.9 percent of all executive members of the male CDCs and 21.1 percent of female CDCs, are literate. Literacy rate of CDC members, who did not hold a CDC officer's position, was around 24.7 percent, which is substantially lower than the literacy rate of office bearers. Further, 66 percent of all secretaries and 48 percent of all treasurers were found to be literate, as people realized the responsibilities of these executive positions.

Age

While the majority of the elected members were below 50 years of age, female members elected to the CDCs, were younger compared to the male members. About 64 percent of the male members elected were below the age of 50, while 78 percent of the female members were less than 50 years old. This is significant for a culture, where authority

and competence is associated with age and maturity, rather than education or skills.

Amongst the elected females, 50 percent of the secretaries and 46 percent of the treasurers were below 40 years of age. The youngest members elected were a 16 year old female and an 18 year old male. The oldest elected were 93 years male and 83 years female. While, 231 male (3 percent) and 205 female (4 percent) CDC members were 70 years and older.

The average age of chairpersons for men was 48.2 years, and for women 39.2 years. Secretaries tend to be younger than the rest of the office bearers (male secretaries' average age was 43.1 years, and women secretaries' age was 32.5 years).

Profession

Of the total, 62 percent of the males, elected as CDC members, were farmers. The rest of the CDC members represented a very wide range of professions including teachers, shopkeepers and traders.

Among the women members, 72 percent were housewives and 13 percent weavers. The remaining identified themselves as teachers, quilt or embroidery producers, farmers, health workers (such as nurse or midwife), or students. Contrary to the representation in traditional *Shuras*, the election results confirm, that CDCs are represented by the broader range of people, within the community.

Social Status

Out of 22,339 elected members by the end of December 2005, 558 persons (2.5 percent) identified themselves as *Mullahs* and 112 persons (0.5 percent) as Commanders. Another 134 persons (0.6 percent) identified themselves as other traditional leaders, such as, *Arbabs, Wakils, Mujahids, Maliks* etc.

Comparatively, a greater number of *Mullahs* were being elected as CDC members than any other traditional power holder. This may be due to the religious respect *Mullahs* enjoy or demand in rural communities. In addition, *Mullahs* are usually literate and effective communicators, and, therefore, are wanted in a Community Development Council.

It is interesting to note, that people holding positions of power, do not find themselves elected to the Community Development Councils. It may be because of the fact, that secret ballot elections have provided voters with the welcome opportunity to express dissent, with traditional power holders, without being seen to dissent in public. Both, the Islamic admonition to not delegate authority to people of questionable character, as well as, the "non-electioneering / non-campaigning" policy, stated in the NSP Operational Manual, may have added to the surprising fact that few politicians or traditional power holders found themselves elected to a Community Development Council.

The election process observed in NSP has provided with an opportunity to liberate the communities from "elite capture".

Unless, community mobilization and election processes are being allowed, to take the time necessary for adequately reflecting and implementing processes, such as, the CDC elections, the NSP Conceptual Framework will fall short of producing the desired transformational impact in the communities.

Conclusion

Conflicts can result in the demise of existing states and the emergence of new ones. In the process, development infrastructure is destroyed, the social safety system falls apart, and families get uprooted. However, in the entire upheaval, the only survivors are the people themselves. This inherent strength of ordinary people to survive ordeals, and their common desire to lead a productive life, is the only asset

on which post-conflict countries can build their future. This very asset remains latent during the conflict period, while suffering and patiently bearing the violence and atrocities. The challenge, a country faces in its post-conflict phase, is to turn this latent energy into a vibrant force that transcends religious, ideological and ethnic divides.

NSP programme is the only real expression, of the presence of the State, at the community level. Overtime, NSP Community Development Councils have gained legitimacy, both in the eyes of the people, as well as, the government institutions other than the Ministry of Rural Rehabilitation and Development. CDCs formed under the NSP, possess the potential to fulfill the roles as envisaged by the government and the Constitution.

CDCs have been established as popularly elected village institutions, which have wider acceptance by the community. Unlike in the traditional *Shura*, it has a broader representation, of the wider spectrum of community members. CDCs have started to emerge as a functional village institution, with a regular system of participation and consultative decision-making.

The formation of Community Development Councils has been one concrete step forward, in establishing a legitimate structure at the grassroots level, for planning and coordination of village development activities. Having the authority and mandate to take decisions on behalf of the community CDCs, it has tremendous potential to develop itself into a representative governance institution in the villages.

The communities' reaction to the CDCs existence has been overwhelmingly positive. Voter turnout had been as high as 80 percent. Women are represented on the CDCs, and are providing their voices in the decision-making of the communities, barring some exceptions. A clear indication of increasing legitimacy is the fact, that CDCs are being asked to take on additional roles by the communities, outside the roles mandated by NSP.

The National Solidarity Programme has proven, that secret-ballot election, is a concept that can be embraced by Afghan rural communities. Rural Afghans certainly appreciate the privilege of having a say about who should represent their interests. The idea to prohibit "campaigning or electioneering" has added value too, as it facilitated the emergence of a new cadre of community representatives, who had traditionally been excluded from decision-making processes.

Women's participation lags behind men's participation, due to cultural constraints. Women have, nonetheless, participated in elections even in conservative communities. Men have consented to women participating in elections, after they themselves have had the opportunity to appreciate the NSP elections experience.

Women are being organized, perhaps for the first time, in rural Afghanistan, through the election process to CDCs. In the majority of the villages, where NSP operates, there are separate CDCs for men and women. Although, consultations between men and women members of CDCs have been reported, women's influence on ultimate decision-making has been very limited. Women's empowerment can only be realized if they are provided with an opportunity to shoulder the responsibility on a regular basis, such as, in project implementation. Whereas, their involvement in activities like savings and credit, and literacy provide the purpose to remain functioning and sustaining as a functional group.

The empowerment of the community members is realized through participation in decision-making, and the accountability and transparency practiced by the CDC. If these practices are not observed, the CDCs will lose legitimacy before the people who voted for them. When the government validates the authority of the communities' elected representatives, the CDCs are able to assume their political function, and be a truly representative body. In this manner, the NSP approach differs from the more traditional "project committee" model, where the committee is empowered and not the community members.

It is a myth that marginalized and traumatized communities cannot plan. The results of NSP show, resoundingly, that when communities are given the appropriate tools and techniques, they respond with intelligence and vigour.

As the CDCs, established through NSP, become more robust, there will be a need to find ways and means to link the local development action / initiatives of CDCs, with the government budgetary process, so that community empowerment becomes an integral part of the development paradigm.

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Gender Aspects of Traditional Structures and Local Governance in Afghanistan

Shinkai Karokhail and Marianne Elliott

This paper has two sections. The first section contains an overview of Shinkai Karokhail's presentation at the HBF symposium. Shinkai's presentation offered a comment on the gender aspects of the approaches to traditional structures and democracy, outlined by Masood Karokhail (TLO) and Bijay Karmacharya (NSP), respectively.

The second section, by Marianne Elliott, presents a range of issues that arose in the discussions and questions, following the presentations. It attempts to place these issues in the context of other research and writings about gender and local governance, both in Afghanistan and in general.

Section One: Presentation by Shinkai Karokhail

Shinkai Karokhail is a Member of the Parliament and is the founder of the Afghan Women Education Centre (AWEC).

Thank you to the two speakers. We have heard from Bijay about the Community Development Councils and the National Solidarity Programme, and from Masood, about how the Tribal Liaison Office is trying to make traditional *Shuras* more accountable, and to increase their knowledge about human rights and governance issues.

In order to put my comments on these two presentations in context, it is important to understand how these processes impact women. Firstly, I would like to make some brief comments on the traditional *Shuras* or local structure and decision-making.

The traditional system of *Shuras* has played, and continues to play, a valuable role, where people had no

access to legal systems, and, therefore, needed structures to resolve disputes and problems. Their function was essentially one of conflict resolution. Rules and regulations guided these processes and, in the absence of a trusted legal and police system, the local communities were able to trust their local processes, headed by key people and power holders.

Victims would appoint more powerful people as their advocates / representatives. Punishments would be different, according to the circumstances of the "crimes". These punishments typically involved exchanging money and / or women, in order to permanently resolve conflicts. The system served to protect the family of the victim and the perpetrators, and keep the image and reputation of both sides intact. Although, the system intends to protect the honour of both sides, women are the sacrifice for this honour. Supplying women as compensation for crime, is seen as being more trustworthy and sincere, than giving over money.

These conflicts are almost always resolved by men in the community, with no female involvement in decision-making. The influence of these local structures is so strong that women themselves respect and follow these rules, agreeing to offer their own daughters to settle scores. While a very small number of women might have power in these systems, it is not power with agency, but rather, power that can be used by others for immediate benefits to those involved in the dispute.

With no real voice or opportunity to reflect on what might be best for women, they choose to follow a system that protects male honour and subjugates women. Whilst the perpetrator's crimes are effectively forgiven and forgotten, and he gets on with his life, the women who have been exchanged often continue to pay the price for the rest of their life, being treated like a criminal because she came from the perpetrators family.

In this way, men do not pay the price for their crimes and women are held accountable for the misdeeds of men. Using this system, real justice is not necessarily the outcome. On the contrary, whichever family had access to an

"advocate", with higher prestige, is normally able to secure a more favourable outcome with less punishment. This further reduces the value of women. Even young female children, and women who are already engaged, are offered or demanded in exchange. These local structures also do not favour or protect women who are outside of the system, such as, widows, who are completely disempowered from their rights. Often the system purports to protect widows, for example, by arranging marriages for them. But, they are often married off to men who are far too young for them, or have psychiatric problems, or who are for some other reason unsuitable marriage partners. Alternatively, they might be sold without reference to the woman's own feelings or needs. These women are often disallowed their inheritance rights or lose their right to have input into their own children's future.

When the only authority you have to turn to is the *Shura*, and the *Shura* upholds values that severely limit the wishes of women, then women have nowhere to turn. This is well illustrated by a recent event in Chamkani, Paktia. A 15-year old girl was denied the opportunity to continue her education, in the formal system, by her step-brothers. So committed to her education was she, that her step brothers attempted to control her behaviour with physical abuse. Knowing that she would not receive support elsewhere, and that the *Shura* which upholds these traditional views would not support her, she took her own life.

Essentially, these traditional structures do not consider women's needs or voices, and do not help women to progress and develop. Women are not given freedom of movement or given the chance to make decisions in matters that are important to their lives. Women are used and given value only when it gives a benefit to the greater community or tribe. Men can exchange their own daughters for a new wife and the original wife does not have a say in the matter. Essentially these structures protect the interests of men. Women are not part of decision-making. In fact, the local structures set the price of women.

Furthermore, these traditional structures are not really accountable to the people, and especially not to women, nor

are they open to appeal. Their role is not really about community development and governance, but it is rather about conflict resolution and the maintenance of the present system and current power holders.

What is the hope for new structures such as Community Development Council's CDCs?

Because the CDC's are elected democratically, people are involved even if they are illiterate, as opposed to the traditional systems, where only money and power are valued. They are more representative, and give the message to the traditional power holders that they need to be more accountable, and to realize that their position in the society is not above the influence of the greater community.

Significantly, they involve women, and this has a good impact. This reminds the community of the benefit of women's participation and value of women. This will help build acceptance of women's role in the society. Women are currently considered second class citizens and their problems are not taken as seriously as those affecting mainly men. By showing leadership in this issue, the government does its bit to empower both women and also men, who have less access to power. This increases the participation of the general community in decisions affecting everybody.

The impact on women's lives from approaches like the NSP, CDCs, will come in the longer term, rather than in the short term. Because women's participation is occurring in structures that are understood and accepted by the community, it helps show women's participation as a local initiative rather than an imported western concept. Women's CDCs also put women in touch with other women, giving them the opportunity to support each other, and empower themselves as a community. This, in turn, assists them to become advocates for themselves. It creates opportunities for learning and sharing and further development. When women don't support each other, they are easier to control and their issues easier to ignore.

These new structures provide greater chances to the people, to have their voices heard in development issues, and hopefully, this will create a chance for change. As these structures get more power, people will rely less on traditional *Shuras* and power holders. As a result, governance structures are improved and their base broadened. As the community builds its trust in the CDCs, then the community will rely on them rather than turn to their old structures, and this will build the stability and relevance of the formal justice and governance systems.

The story of Mahera –an example of how giving women, both the space to participate and the confidence to do it well, can change the whole community. By Shinkai Karokhail.

Mahera Ahmadzai is a 50 year old woman, married to her cousin. She has six children. Her youngest child is disabled. She has lived for a long time, in a village, in the Ahmad Aba district of the Paktia province. She is an educated woman but she has had to live a totally traditional life. I met her when she visited Kabul and discussed the poor situation of women in her province, and particularly in her district.

I thought it would be good for AWEC to go into this province, where women are excluded from social and political life. I knew that many political processes were underway, and wondered how it was possible for these processes to progress, without the participation of women.

First, I met with the local authority and local shura (counsel), and obtained permission for AWEC to work there. We also obtained funds from a donor, and then I started to think about who could we appoint as the project manager, to implement the project successfully.

Mahera came to my mind. So, I went to visit her and encouraged her to work on this project. It was a difficult decision for her to go to work, and with an NGO, and to work in her community in this role. She had no confidence in herself because she never had a chance to prove herself.

Finally, she accepted the position. We then wanted to find literate women, in the area, to work as social workers and teachers. I remember us, walking together, through the village. It was snowing and we were both afraid of dogs! It was again difficult to find these women. Men of the village were ashamed to admit that they had married literate women. We did eventually find women, and with difficulty, they obtained permission to work.

Mahera started her work and she has proven to be a really strong person, with strong commitment to this work. She faced difficulties with her husband and other family members. Her husband even told her that, since everyone was now talking about her, he was afraid that one day they would call him "Mahera's husband", and he would completely lose his own identity.

Working in Paktia province is not an easy job. AWEC has started work for another big project, which needed a lot of staff, and we, therefore, needed to find more women. I was worried about how to find more women. But Mahera achieved this through her good work, and her understanding of and respect for local traditions and appropriate language. In this way, she has not only overcome male opposition, but has also managed to get them to support the ongoing work.

She has become a role model in the area and many men are impressed. This has made it much easier for AWEC to find women, to work on its projects. Now, there are a large number of women working, not only for AWEC, but also for other organizations. For example, UNAMA asked AWEC to find women to work with them.

Mahera has built good respect, and she is now working in that province without any fears. She has established 7 women's *Shuras* and youth counsels. She encouraged women to vote and participate in all the political processes. Because of her hard work, women stood for the provincial counsel. Now, the Governor of the province consults her, on issues facing the area. She was able to organize a joint meeting of men and women of the province. It was the first time that this had happened in the history of the province. Through her achievements, men have started to trust more in women's ability and commitment.

To summarize, I would like to say that Mahera changed the image of the province, and particularly of women in the province. At the very least, she has opened the door for others.

The key to achieving more of the kind of positive social changes, that we see in Mahera's story, is sustainability. Women's CDCs are now in their infancy, and women are just beginning to build up the confidence they need for real participation. However, these are the first steps that can be built upon. The challenge will lie in not letting these CDCs end, when NSP ends, as this would invariably mean that the community reverts back to the less representative traditional structures which would exclude women, yet again.

The biggest immediate challenge is how to make women's participation meaningful, rather than symbolic, so that they feel that their contribution is valued, and men also feel that their input has added value to the process. This would inspire more confidence in, and opportunities for women to participate in decision-making processes, affecting both the country and their own lives. This is particularly important in a country, where traditionally, girls are not brought up to express their own opinions and engage in important decision-making events.

So, I would like to end with a series of questions that are our challenges, for enabling real women's participation in decision-making processes: How do we make women's voices really heard? How do we make their participation real? How do we increase their learning and improve their decision-making? How do we get men to take them seriously? And, how do we make sure that we promote the existence of these opportunities, even after the projects that spawned them end?

I appreciate the work of both NSP and TLO. Firstly, NSP should be applauded for challenging the heavy influence of traditional power holders, and also empowering normal people to participate in decision-making; and, TLO for modernizing or at least trying to get the shuras more involved in the current political context. However, women's participation continues to represent a challenge to both.

The challenges for these organizations are as follows:

- for NSP, it is in ensuring active women's participation, and creating a sustainable model to ensure women's involvement, that extends beyond the life of the programme;

- for TLO, the challenge is not only to assist traditional *Shuras* in becoming more accountable but also to get them to open up to women's voices, needs and participation.

Section Two: Discussion Themes and Context
Marianne Elliott

Marianne Elliott is a human rights practitioner from New Zealand, who has worked in post-conflict settings, including, the Occupied Palestinian Territories, Timor-Leste and Afghanistan. She is currently working in Afghanistan.

The lively discussions that took place on this topic revealed a wide spectrum of perspectives. These ranged from those who place significant value on the role of tribal decision-making bodies, and see a greater need for engagement with and respect for these bodies, through to those who are so concerned at the discriminatory impact of the codes, that govern both the make-up and the decisions of these bodies, that they advocated for their complete abandonment.

In her presentation, Shinkai Karokhail, avoided simplistic dichotomies, sometimes found in debates and discussions, about traditional structures and democracy in Afghanistan. While reporting with enthusiasm on the positive impact that the Community Development Council's (CDCs) established, as part of the National Solidarity Programme (NSP), are having on women's participation in local governance, she did not overlook the challenges that remain for these structures. Nor did she ignore the continued importance of more traditional decision-making structures, or the possibilities that exist to improve women's participation in these structures, and the outcomes for women of the decisions made by them.

Shinkai's presentation provided a thoughtful and critical reflection on the need for concerted efforts, to improve participation of women in all forms of local governance, both through working with traditional structures and through the establishment and support of newer structures. Above all, she offered a model for increasing women's participation in local governance, that has worked for AWEC, and that could be integrated into both the NSP and the TLO approach. Thus, the objective of this section is to complement Shinkai's presentation, with an overview of the issues, that arose in discussions at the HBF symposium.

Kandiyoti has described what she called "the facile dualities of Western impositions versus indigenous culture that are often invoked in discussions of women's rights in Afghanistan" (Kandiyoti, 2005: 3). In her work, she tried to avoid these dualities, by looking at gender in Afghanistan, in the context of relevant historical experience, including the impact of civil war, of changing socio-demographic circumstances, evolving political and institutional frameworks, and of the "various global and local actors implicated in setting the policy agenda in post-Taliban Afghanistan" (Kandiyoti, 2005: 3). She argues that this contextual analysis is essential for the development of strategies, to bring about a change because "these transformations do not occur in a social vacuum but build upon existing societal arrangements that condition and limit the range of available opportunities" (Kandiyoti, 2005: vi)

In his keynote address to this symposium, Hamish Nixon warned against positing "traditional" and "modern", as two distinct systems, with a range of imputed characteristics for each model. The reality, he suggested, is much messier where both "have diverse foundations, varying degrees of "democraticness" … and often co-exist and interact already in given geographic or functional spaces" (Nixon, 2006).

Feminist commentators have also warned against falling into false dichotomies when addressing traditional societies and "modernization". Nalini Visvanathan, a feminist scholar who focuses on public health and communication, writes, "Modernization theory depicts traditional societies as authoritarian and male-dominated and modern ones as democratic and egalitarian", and asserts that this approach "distorts the lives of Third World women" (Visvanathan cited in Joshi, 2005: 4).

For the same reasons, this paper tries to avoid polarization of the debate, and instead, identifies some themes of the discussions that took place at this symposium on gender, traditional societies, local governance and democracy. It then, sets those themes into the wider context of research and discussion taking place, both in Afghanistan and globally.

This symposium, took place, in the context of a wide body of research and analysis on traditional societies and local governance. At a global and national level, there has been a growing awareness by governments and development actors, of both the importance and the complexity of local governance. Hamish Nixon reported the increasing importance of the relationship between democracy and traditional society in the development context. Hamish also suggested that the reasons why this relationship is seen to be important are varied and that, as a result, the answers to the questions raised about the relationship will, therefore, also be different. These differences were apparent in the contributions by different participants at these discussions (Nixon, 2006).

Some of the key themes, to emerge from the discussions, included questions about the most effective way to achieve a positive change for women, the difference between formal and substantive change (and the challenge of measuring change), the importance of engaging people affected at the local level, in the process of bringing about any change, and in particular, the need for Afghan men and women themselves to see the value of women's participation in governance, the right to participate, and the importance of building governance capacity, especially in women.

One of the key strands of the group discussions, in response to the presentations on Afghanistan, was about how change can be achieved. Presenters and participants appeared to agree on the need for change in the community level governance in Afghanistan, particularly, in relation to gender relations and women's rights. The differences to emerge from the discussions included different views on the pace at which change can take place, and on the benefits and risks of working with existing traditional structures, in order to bring about changes.

Shinkai's compelling commentary on the devastating impact on women, of existing governance and justice systems in Afghanistan, was reinforced by contributions from other participants. Their descriptions are also supported by the reports of various organizations mandated to monitor women's rights in Afghanistan. In 2006, Human Rights Watch

reported that women and girls in Afghanistan remain subject to both formal and informal (customary) justice mechanisms, that fail to protect their rights. They also reported ongoing "rampant" violence against women, including domestic and sexual violence, and a failure, by both formal and informal mechanisms, to investigate these cases (Human Rights Watch, 2006).

Another international human rights organization, Amnesty International, reported specifically on the role of traditional or informal structures, in violating the rights of women*:*

> "Abuses of the human rights of women and girls by the informal justice mechanisms, known as *Jirgas* and *Shuras* are widely reported. … [T]here is widespread recognition amongst women contacted by Amnesty International, that such community systems perpetrate grave abuses of women's human rights" (Amnesty, 2005: 38).

Perhaps most importantly, Amnesty has also found that Afghan women themselves, consistently expressed a desire for change. In the research conducted in 2003, Amnesty found that women in all the focus groups expressed a strong desire for change, and most did not agree with practices, such as, forced marriage, "although they are established customs" (Amnesty, 2003: 23).

Other researchers have also found that the traditional *Shura* structure does not allow for participation by women.

> "Women are never allowed to participate in this customary "governance" and conflict regulatory system, except in very unusual circumstances, for example, when they may act on behalf of a deceased husband" (Boesen, 2004: 6).

On the other hand, despite acknowledgment of the significant advantages, in terms of women's participation,

offered by newer models such as the NSP's CDCs, participants also emphasized the need for further improvements in women's effective participation in these structures, and in the actual influence that women (either as members of joint CDCs or of separate women's CDCs) have on the overall decision-making processes at the local level. Even strong supporters of the NSP approach acknowledge that participation by women has been one of the major challenges in the implementation of the programme, and agree that there continues to be room for further improvements.

Boesen concludes that women's participation in the NSP is a "very sensitive and difficult issue", in most communities and districts. All the facilitating partners involved in her study reported that women's participation had generally been the most difficult aspect of implementation. Boesen suggested that women's participation in planning and decision-making "seemed to be new and disturbing in relation to the most central and fundamental values and norms of Afghan culture and society" (Boesen, 2004: 48).

The extent to which the norms that appear to be challenged by women's participation, in local governance, go to the core of Afghan culture may be contested. In particular, Kandiyoti (2005) challenges the assumption that, resistance to changes in the gender aspects of political processes in Afghanistan, is a result of unchanging expression of local "culture".

> "Combinations of new pressures (such as poverty, indebtedness and predation by local strong-men), with existing practices (such as, early marriage of girls against the payment of bride price), create outcomes that may easily be misread as unmediated expressions of local "culture". Such misidentification detracts critical attention from the full nexus of influences that deepen the vulnerability of girls and women" (Kandiyoti, 2005: 32).

There was, however, a general agreement amongst participants, that changes in this area must be approached with an understanding of the context in which any new structures or practices are being introduced. Different participants, however, had different views about what would be the most effective approach to bring about the change.

The approach of the Tribal Liaison Office, as described by Masood Karokhail, is to work with the traditional structures, acknowledging their ongoing power in the community, and the important role they play in maintaining stability at the community level. Masood explained that TLO recognized the need for changes to promote women's rights and gender equity. However, TLO believes that a relationship of trust must first be established, with the traditional leaders, before any attempt can be made to encourage or influence change of this kind.

Some participants felt that working with the traditional structures was altogether inappropriate, because of the devastating impact of their decisions on women. These participants asked why it was necessary to engage with them at all, and suggested that the best approach would be to marginalize the traditional power structures, by working with newer and more equitable structures, such as, the CDCs.

In considering these different perspectives, it is useful to review the past experience in Afghanistan, of attempts to bring about a social change, and particularly reforms, to promote greater rights and freedoms for women.

The reign of King Amanullah from 1919 to 1928, and the rule of the PDPA between 1978 and 1979, have been identified by historians, as the two most pronounced examples of attempts to impose radical "modernizing" reforms in Afghanistan, including reforms to promote women's rights (e.g. Kandiyoti, 2005: 6; Ahmed-Ghosh, 2003: 7). Both these attempts were met with resistance, sometimes violent, from "traditional" and conservative forces (including powerful tribal leaders), and both were followed by periods during which women not only experienced a reversal of the reformist

changes but an even greater "backlash", targeting women's rights and freedoms.

Both, Ahmed-Ghosh and Kandiyoti argue, that the central factor in determining the eventual outcomes of both periods of change was not a genuine women's rights movement, but rather, different groups of men contesting power over the political sphere. "In both periods, tribal leaders, who objected to the redefining of women by the State and the diminution of their general authority, initiated the disruption of the modernization process" (Ahmed-Ghosh, 2003: 7). Kandiyoti asserts that both the reformist programmes and the conservative "backlashes" have been "instigated, primarily by men, contending for state power, with limited mobilization for social change among women" (Kandiyoti, 2005: 6).

These past experiences offer some possible lessons, for the current discussions on traditional structures and democracy, in particular, the participation of women and the protection of women's rights. They suggest that, current and future efforts to institute changes in these areas, will only succeed where they have been developed with full recognition of the resistance likely to be faced. They also suggest that contesting the rights of women will not be viewed or approached by those who resist, as an isolated matter of civil or individual rights, but rather, as an essential element of the overall contestation of control of political space, at the regional and local level.

> "The domestic domain and the control of women are among the most jealously guarded areas in the reproduction of sub-national identities [in Afghanistan]" (Kandiyoti, 2005: 12).

Another theme, that emerged from the discussions was about, who needed to be involved in efforts to increase women's participation in governance and development in Afghanistan. Some participants felt that energy should be concentrated on empowering women to engage effectively, and with confidence. Others emphasized the importance of

engaging men, who currently hold the power, to either prevent or facilitate women's participation. Most participants agreed with Shinkai, when she asserted, that an immediate and urgent challenge was to ensure that both men and women saw the value of women's participation.

In March 2005, AREU hosted a workshop in Kabul, to discuss the outcomes of their research on different approaches, to increase women's participation in development. One of the working groups at this workshop discussed the role of development actors, in increasing women's participation in development, and "[t]he group felt it is also important for programmers to engage with men so that they understand the value of women's participation (through *Shuras*, or other community mechanisms where men are traditionally leaders)" (AREU, 2005: 7).

A very similar conclusion was reached in a report by Amnesty International, which found that "[t]he involvement of Afghan men is essential in challenging traditional and customary practices that discriminate against women and encourage violence against them" (Amnesty, 2005). This conclusion was, perhaps, influenced by earlier research by Amnesty International in 2003 which found that some men already identified the potential benefit of greater participation by women. One male community leader told Amnesty International, 'humans are social beings – we can learn from the people of other societies. Over the years we can improve… if something is harmful (in society or traditions) we can remove it (Amnesty, 2003: 23).

The importance of involving a wide range of men and women (including powerful tribal elders and otherwise marginalized groups), in efforts to bring about a change, has been highlighted by those who have reviewed Afghanistan's historical experiences, in attempts at social reform.

> "As desirable as many of these changes may have been for Afghanistan, in neither situations were rural communities of Afghanistan involved. These issues remain important today when, once again, a limited

national government and international pressure demand radical changes in women's status" (Ahmed-Ghosh, 2003: 8).

Outside of Afghanistan, commentators on traditional societies, development and social change, have also highlighted the importance of 'endogenous' pressures for change. Nicolas Garrigue (2005), discusses the forces that come together to create change, and identifies both "endogenous" (from within) and "exogenous" (exerted by outside forces) pressure, as factors that power change.

> "At the level of any given *traditional* society, there are elements within it, which are more inclined to follow rules and values that tend towards the modern side of the continuum, but who still see themselves as part of the traditional paradigm because they were born, raised and still exist as social beings within that society. … Their influence can yield important changes in the traditional structures, while not directly challenging their very existence. They are avenues for the introduction of modern governance ideas into the society" (Garrigue, 2005: 5).

The approach adopted by TLO would seem to fit Garrigue's definition of endogenous pressure and, as such, would be seen by him to be an essential part of any overall "change dynamic". Interestingly, Garrigue, who has been involved in research and analysis related to traditional societies, democracy and development in numerous settings, notes an opportunity for more learning about how these kinds of changes actually progress.

> "It would be interesting to research a typology of evolutional stages, based on actual cases, and determine which are the functions / mechanisms of traditional authorities that are usually reformed / abandoned first to the profit of modern-type ones" (Garrigue, 2005: 5).

This information gap would seem to be one to which lessons from Afghanistan could very usefully be addressed.

TLO's emphasis on proceeding slowly and cautiously has also been echoed by others. Amnesty International, for example, has reported that women's rights activists in Afghanistan advise caution "in order to avoid backlash from the conservative element" (Amnesty, 2005: 27).

In order, for both men and women, to recognize the value to the family and community, of women's participation in local governance, participation must be effective. Shinkai illustrated this point vividly through the story of Mahera, whose effective participation in local decision-making has provided an opportunity both, for women, to see how they themselves could make a valuable contribution; and, for men, to also recognize the value that can be added by women to family, tribal and community development.

Women themselves have identified the opportunity to make a contribution to the development of their family and community, as the key motivator for them, to participate in local governance.

> "Overwhelmingly, their desire for improvement in their rights was driven by the wish to be able to work and contribute to their communities and country" (Amnesty, 2003: 23).

The greatest current barrier to this achievement, identified by presenters and participants, was the extent to which women's participation remains formal rather than substantive. In other words, although the forms of participation may have been established (either through women's participation in CDCs or other newer village organizations or through the establishment of separate women's CDCs and *Shuras*), the effective influence of women participating in these forms remains minimal.

A recent AREU briefing paper, addressed this specific challenge, based on the findings of field research conducted

to assess the implementation of the NSP and other studies. The paper's title "A Place at the Table" refers to the important difference between providing a physical space at the decision-making or governance 'table' for women, on the one hand, and the achievement of a substantive change in gender power balance, on the other.

> "Too often, the symbolic participation of women, in public institutions, is seen as a measure of success. Tangible indicators, such as, the creation of physical space for women or the numbers of women present at public activities are used to demonstrate the achievement of gender equality. In the Afghan context, it is fair to say that these developments signal some forms of change, but identifying which forms of change are occurring is important. Women may be present at the table, but is this where decisions are made? Do those in the room have any authority to challenge decisions made, if they do not agree with them" (Wakefield, 2005: 4)?

One of the studies, upon which this briefing paper was based, was AREU's research on the implementation of the NSP, through the election of CDCs, in several provinces of Afghanistan. Having discussed the participation of women in the election processes, the research-based report explains that while the statistical data, concerning the composition of the CDCs, showed that women were represented in most of the CDCs, "behind the figures, there were different realities which reflected local arrangements for broaching the tricky question of women's equal participation with men in decision-making" (Boesen, 2004: 34).

The flexible approach adopted by NSP Community Facilitators, including different solutions adopted to resolve community discomfort, with women participating alongside men in the CDCs, are likely to have been much more suitable in the context of Afghanistan than the more rigid approaches adopted in other similar projects.

In Timor-Leste, for example, the Community Empowerment and Local Governance Project (CEP) was set up in late February 2000. The objective of the project, much like that of the NSP in Afghanistan, was to provide a democratic and participative forum to increase community participation in the planning and decision-making processes, concerning development issues at the village level. Similar to the NSP, the CEP in Timor supported the creation of Village Development Councils (VDCs). In Timor, however, a quota for 50 per cent of the council seats, to be filled by women was imposed, and traditional leaders were disqualified from the election to the VDC. The intention of the latter restriction was to promote a wider involvement of the people who traditionally have power.

In relation to the gender quotas, a review of the CEP carried out for the World Bank in 2001, noted that women's participation in CEP decision-making bodies was still challenged by a series of constraints, most of them related to women's perceived role in a traditional society (Hohe and Ospina, 2001).

> "In the experience of the research team during the fieldwork, the female council members seemed to be side-lined. No head of a village or sub-district council in the study areas was female. When the female representatives were present in the interviews with male council members, they would not make any comments, unless directly asked. In CEP village meetings, female council members could mostly be observed taking care of food and drinks for the people in traditional power positions who attended the meeting. Sometimes they would take notes of the suggestions made, but they were never seen actively encouraging people to speak or discuss matters themselves" (Hohe and Ospina, 2001).

The inadequacy of quantitative indicators of women's participation, as a measure of success, in improving women's

actual influence on political processes and local governance, has also been illustrated through attempts to evaluate gender aspects of the 2005 parliamentary elections in Afghanistan. Massoud, in his presentation, reports, with justified satisfaction, on the high female voter turnout in Paktia province. Without detracting from the significance of this achievement, it is, nonetheless, important to note that women's participation in these elections was often only possible with the permission of their husbands and fathers. One Afghan commentator, who was working at the time with FEFA, noted that "[i]n some provinces, men had the right to vote for women. Surprisingly, [at a polling station], in one of the very conservative provinces, the [recorded] number of male voters was 230 and female voters was 830, but the monitors couldn't see women coming to vote in this specific centre. Also, there were some polling centres where there was no female worker" (HRRAC, unpublished).

There was a broad agreement, amongst the participants, over the fact, that both men and women saw the importance of the current and potential value to the community, as a result of increasing women's participation in local governance. However, there were some participants, who asserted, that even where that value was not (yet) seen by the community, women retained their right to participate, based on human rights standards, including those provided for in the international instruments ratified by the Government of Afghanistan.

There were different views expressed on whether the values represented by these standards were, or were not, consistent with the fundamental values, that define and govern customary law in Afghanistan. It was also argued by some participants, that universal respect for and implementation of those standards, across Afghanistan, would require the exertion of some kind of a force from outside the community.

This kind of "exogenous" pressure for change is advocated by some human rights organizations, not only to promote women's participation in governance, but also to protect women from violation of their fundamental rights by

traditional structures. Based upon an analysis of State duties, to protect women from violations of their rights by informal decision-making structures, Amnesty International has called upon the Afghan authorities to undertake: a comprehensive review of informal justice systems; thoroughly investigate all cases in which there are indications that a *Jirga* or *Shura* has perpetrated human rights abuses; ensure that all those participating in them are brought to justice; and make the passing of any death sentence, and acts which constitute torture, cruel, inhuman and degrading treatment (such as, the exchange of women and girls to settle disputes or as compensation to resolve crimes) by informal mechanisms, a criminal offence, in line with prohibitions under international human rights law (Amnesty, 2005: 49).

However, there are also arguments in support of women's right to participate, that derive from more "endogenous" forces, such as, the acknowledgment of a correlation between women's essential contribution to the task of reconstruction, and their respective right to participate in decisions about that task.

> "The participation and human resources of women are necessary in view of the huge task of reconstruction and development of the country, and women's contribution as a resource in reconstruction and development activities should be accompanied by rights of participation in planning and decision-making, especially concerning aspects that affect their own lives (Boesen, 2004: 9).

Whatever the approach taken to increase women's participation in local governance, or to reduce violation of women's rights by local governance structures (whether traditional or modern), participants agreed that success would always be dependent on sufficient efforts to build the governance capacity of both women and men.

Discussions on "capacity building" revealed that this term is used to refer to a wide variety of different objectives and activities, by different people (and sometimes even by the

same person). In these discussions, it was used to refer to: providing community members with the information they needed to participate; provision of the practical resources (including physical spaces, transport) in forms which are appropriate to the community needs; programmes to develop practical skills, such as, basic accounting, project design, and proposal writing; programmes to develop strategic and governance skills and leadership qualities; education to promote changes in attitudes, about traditional roles, and restrictions on women's activities; and the provision of appropriate facilitators and supporters, whose role should include, encouraging the development of confidence in community members, to participate.

Each different sense of "capacity building" presented its own gender issues. One theme to emerge from the discussions was the need to apply a careful gender analysis, to each aspect of any programme, designed to build capacity for participation in local governance. One example of the need for this was highlighted in an AREU study of implementation of the NSP. The research found that "a very important element influencing men's and women's different perspectives and participation in the NSP, was access to information. Due to the restrictions on women's mobility, socially and spatially, in the context of *Purdah*, women were less able to participate in information meetings and community mobilization in general" (Boesen, 2004: 23).

It is important to also note, however, that Boesen's study also revealed significant differences in knowledge, awareness and participation, depending on age and education. Older women and illiterate women tended to know very little about the project (Boesen, 2004: 24).

Conclusion

Reflecting on the themes of the participants' discussions, the significance of the story of Mahera, shared by Shinkai in her presentation, becomes all the more apparent. This story contains all the key elements addressed

in these discussions. The approach adopted to increase the participation of women, in local decision-making, through Mahera's work, integrates the key factors identified for success: building capacity for success, including gender specific support, and development to build women's confidence; working with both informal / traditional and newer, formal structures; showing both men and women the real value of women's participation through genuine (rather than merely formal or symbolic) participation; and establishing sustainable approaches that develop slowly, but grow steadily.

Shinkai's presentation reminded the participants, at the symposium, of the importance of remaining alert and vigilant about the different impacts, various structures and processes of local governance have on women. However, she also reminded us that genuine, effective, positive change can be achieved and that simplistic dichotomies are not necessary or conducive to this aim.

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Locating Women's Engagement in Democratization, Representation and Local Government Structure of Pakistan

Farrah Parvaiz Saleh

Democratization is the transition from an authoritarian or semi-authoritarian system to a democratic political system, where the democratic system is taken to be one approximating to universal suffrage, regular elections, a civil society, the rule of law and an independent judiciary. Institutionalization of democracy, at the grassroots level, in Pakistan, was one of the first and major steps of the current President, Pervaiz Musharraf. The essence of Musharraf's assumption of power was based on removing the already prevalent structured democracy, and replacing it with the "real one". The provincial governments of Pakistan were asked: to promulgate the Local Government Ordinance (LGO), 2001 in their respective provinces; to install a new integrated Local Government System, with effect from 14th August 2001; to function within the provincial framework; and to adhere to the Federal and Provincial Laws. Since 2001, two local government elections have been held under this system.

The new Local Government System of Pakistan is based on the system of subsidiary, involving devolution of power from the provinces to districts and other lower levels. The new system has three tiers of governance: the district government; the *Tehsil* / town administration; and, the union council administration. Women representation has been secured at 33 percent in all the three tiers. Subsequently, the Legal Framework Order (LFO) also directs 17.5 percent representation of women, in legislative bodies, at the National, Provincial and Senate levels.

There are a number of issues related to the elected women folk in their respective roles, in addition to participation in the mainstream politics and decision-making. Most of the issues are hostage to socio-cultural practices,

lack of skills, exposure, and experience, besides lack of unity among political women.

The paper highlights women's' participation as voters, councillors, parliamentarians, candidates and political workers to locate their engagement in the democratization process.

Status of Women in Pakistan

The total population of the country, according to the provincial results of the 1998 Population Census, is 158 million. According to the Human Development Index (HDI) ranking, indicating the proportion of people affected by three key deprivations, is 46 percent, ranking Pakistan at 63 out of a list of 77 developing countries. Its GDP is 0.527, ranking it at 153 out of a list of 177 developing countries[1].

Despite numerous commitments to gender equality in the past decades, Pakistan has made unsatisfactory progress in important gender measurements. For example, it has under-invested in education for years, especially girls' education, and the literacy gap between the male and the female population has widened over the years. In 1975, the literacy gap between women and men in Pakistan was 25 points (11 percent literacy for women as against 36 percent for men). By 2001, this gap had inched upwards to 29 points (29 percent literacy for women compared to 58 percent for men). The number of illiterate Pakistanis has doubled since 1951, and the number of illiterate women has tripled since then. In fact, Pakistan's high fertility rates are now considered to be strongly correlated with its low level of female literacy. Given that the sex ratio in a country is the first indication of gender discrimination, Pakistan's skewed sex ratio of 108 men to 100 women, is another strong reflection of higher female infant mortality, and the overall privileged treatment of boys over girls.

Women's legal status is unequal to that of men because of the socio-cultural norms and religious interpretations, frequently used as the basis for challenging and re-deciding women's rights issues, creating insecurity and uncertainty for women about their rights.

Even the legal system does not do justice to the women of Pakistan. Laws and regulations, revised time and time again, deem women as subordinate to men, in both religious and non-religious fashions. There are several discriminatory laws in existence that have a direct impact on women. Laws, such as, the Law of Evidence and the *Hudood* Ordinance, in particular, depict the patriarchal nature of the Pakistani society. The Law of Evidence is discriminatory, both in terms of gender, as well as, religion. It limits a Muslim woman's legal capacities, by reducing the value of her attestation of evidence to half, that of, and unacceptable, without that of a Muslim man, in matters of written financial transactions. The law also states that the testimonies of four non-Muslim women are equivalent to 1 male Muslim. Similarly, the *Hudood* Ordinance, the most damaging of the laws in the context of women, contains provisions which totally oust women's testimony for the imposition of *Hadd* or maximum penalty. The ordinance criminalizes all forms of extra-marital sex. Even if a woman is raped and not involved in adultery, she must have four pious male Muslims to prove the rape, otherwise the rape is classified as adultery. The law is often used for false and malicious prosecution of women, to curtail their freedom of movement, freedom of choice in marriage, and as revenge or reprisal for their attempt to exercise their legal rights.

Women in Pakistan face constraints throughout their lives due to the prevalent socio-cultural norms, which result in denying them equal access to several facilities and opportunities at par with men. Consequentially, lack of information, skills and self-confidence further curtail their growth.

Women's Participation in Politics

The New Local Government

A new system of local government was introduced in 2001, and the local government elections have been held twice since then. Separate laws relating to local councils exist, in each of the four provinces of Pakistan, as working of the local governments is a provincial matter, within the

framework of the Local Government Ordinance 2001. There are three types of councils for urban and rural areas, for municipal and administrative functions. There is provision for reserved seats in all the three tiers for women in local bodies, as well as, for workers / peasants, and minorities. The reserved and general seats are directly elected at the Union Council level, and indirectly elected at district and sub-district levels, for *Zila* and *Tehsil* councils. The tenure for local councils is four years.

Women have an equal right to that of men, of contesting the local government elections on general seats, besides contesting on reserved seats.

Women's Representation in Local Government

In Pakistan, the general situation of women is such that they still lag behind men, in terms of population ratio, literacy rates, school enrolment rates, life expectancy, and access to basic health services, labour force participation and legal status. This lag is also reflected in the situation of women's representation in legislative bodies, although the Government of Pakistan is trying to bring about a significant change in this respect.

The Local Government Ordinance (LGO) 2001, provided 33 percent reservation of seats for women, through a combination of direct elections at the union council level, and indirect elections at the district and *Tehsil* / town levels. This provision was a shock for the political parties and religious groups, who tried hard to block this affirmative action. Whereas, the civil society organizations, particularly women organizations, held several meetings with the government and media, and announced their full support in its favour.

Thereof, the Pakistani society witnessed a social change in 2001, when some 67,000 women filed their nominations, dispelling the misconception of non-existence of women in the political arena, due to their own lack of interest. Despite the significant number of vacant seats, it has enabled over 36,000 women to enter into the formal politics, at the

local government level. A province-wise detail of women representation after 2001 elections is given in the table below. It should be noted, that in all provinces, the percentage of women councillors, of the total seats, is not more than 30 percent. Although, as mentioned earlier, 33 percent of the seats had been reserved for them.

Gender Profile of Union Councilors by Province				
Province	*Women Nazmeen*	*Women Union Councilors*	*Total Union Council Seats*	*Women Union Councilors as a %age of Total Seats*
Punjab	**9**	**20,007**	**72,513**	**27.6**
Sindh	**2**	**5,878**	**22,974**	**25.5**
NWFP	**0**	**3,963**	**20,097**	**19.7**
Balochistan	**0**	**2,374**	**10,878**	**21.8**
TOTAL	**11**	**32,222**	**126,462**	**25.4**
Source: (Mirza:2002)				

More important is the fact that, the poor and illiterate women also contested the direct elections for the union council reserved seats for women, despite their low exposure to politics.

It can be claimed that, an overwhelming presence of women in the local councils, contributed enormously, in mainstreaming women into politics. Women's enthusiastic participation in the local government elections in 2001, in fact, provided the impetus for women's effective participation in the General Elections of 2002.

At present, there are 28,000 women councillors. Decrease in the number of women councillors is not due to their lack of participation in the 2005 elections, but because of the reduction, by the government, in the number of the overall seats for councils. Women's reserved seats quota is still 33 percent. The number of women, as head of the councils, has, in fact, increased in the present tenure.

New Local Government System Women in Decision-Making Role – 2005	
Position in Local Government	*No. of Women in each position*
Union Nazims	*16*
Naib *Union* Nazims	*07*
Tehsil / *Town* Nazim	*02*
Naib Tehsil / *Town* Nazims	*02*
District Nazims	*04*
Naib *District* Nazims	*01*
Source: CCHD's report on women in local governments	

Women in Mainstream Politics

The Legal Framework Order (LFO), promulgated before the General Elections 2002, carried some positive provisions for women and minorities. These included: revival of the system of joint electorates, reservation of seats for non-Muslims in the National Assembly (NA) and Provincial Assemblies (PAs); lowering the voting age to 18; increasing the size of legislatures; and the reservation of about 17.5 percent seats for women in the legislative bodies (reservation of seats in the Senate, National and Provincial Assemblies is given in the appendix). This percentage is the highest proportion of reservation ever made for women in legislative bodies, and for the first time ever in the Senate.

The general elections also witnessed a quantitative change in the representation of women in the legislative bodies. Despite the substantial increase in reserved seats, it was the highest-ever number of women, who contested and won in the elections of 2002 on general seats, taking the women's overall legislative representation to almost 20 percent. This increase in general seats could be due to the condition, put by the government, on the education level of the candidate, as some mainstream politicians did not posses the required graduate degree. Thereof, they felt safe to bring their women in the parliament.

However, this aspect of women's political participation has shattered the myth that women are not ready

or willing to come into mainstream politics, or are not yet able to engage in electoral politics at the constituency-level. This has been one of the most positive steps, for women's political empowerment, and has had some immediate effects.

However, the system of indirect election of women to reserved seats, in the legislative bodies, has been unfortunate, which has resulted in curtailing their role in mainstreaming politics (since they have no geographical constituencies). This also leaves them primarily dependent on the male membership / leadership of political parties (who nominate them to the lists). It has also led to allegations of nepotism in the selection process. Moreover, despite the substantial increase of women legislators, this has not been matched by an increase of women in cabinets, where their representation remains nominal.

Number of Women in Ministerial Positions

Political parties still view women as a passive vote bank, and as election supporters or canvassers, following the orders of their male counterparts or family members. This is also reflected in their representation in the federal and provincial legislatures**.** There were 19.2 percent women in the National Assembly (5 out of 26) and about 3 percent in the Senate (1 out of 33). The Ministerial Positions of women are given below:

Gender and Year-wise representation in the Federal Cabinet								
Year	Federal Ministers			Ministers of State			Advisors		
	Women	Men	Total	Women	Men	Total	Women	Men	Total
2003	1	24	25	-	-	-	1	3	4
2004	1	32	33	5	21	26	1	2	3
Source: Political and legislative participation of women in Pakistan –UNDP									

Gender and Year-wise representation in the Provincial Cabinets								
Year	Federal Ministers			Ministers of State			Advisors		
	Women	Men	Total	Women	Men	Total	Women	Men	Total
Punjab									
2003	5	36	41	-	2	2	-	-	-
2004	4	36	40	-	2	2	-	1	1
Sindh									
2003	1	19	20	1	14	15	1	3	4
2004	2	16	18	1	19	20	-	-	-
NWFP									
2003	-	18	18	-	2	2	-	1	1
Balochistan									
2003	-	14	14	-	-	-	-	-	-
2004	2	28	30	-	-	-	-	1	1
Source: Political and legislative participation of women in Pakistan -UNDP									

Constraints Effecting Women's Political Participation in the Capacity of Councillors

The role of women as public representatives is not a new phenomenon in the sub-continent. Nevertheless, resistance can be found in nearly every district, owing to cultural, as well as, religious constraints prevalent in the Pakistani society.

The constraints that women councillors face may be divided into two parts: pre-election and post-election.

Pre-Election

The Local Government Elections of 2001 were held on a non-party basis. But, it is a known fact, that almost all parties openly fielded their male candidates and denied support to women candidates; in some of the cases, the political parties withdrew women candidates. This was also the case in 2005. If the women wished to contest elections on general seats; they had to bear the pressure from the political parties and male candidates, because most political parties discouraged them, and fully supported the male candidates. The majority of the groups only encouraged those women, who if elected, were less likely to be a hindrance to them. Consequently, appropriately well-suited and active women had to make a deal with the majority groups, during the elections, if they wished to contest on general seats.

On the other hand, independent women candidates, who won in the elections of 2001, could hardly create a space for themselves in the 2005 elections. This was primarily because of a lack of interest of the political parties in these female candidates. As a result, a greater number of women, who had the backing of power or political groups, made their way to councils rather than community or social activists.

Post-Election

The post-election scenario has proven worse for women, as they are more dependent on the influential and the majority groups that helped them acquire their seats. In most of the cases, they have to please the chairperson and the other elected male councillors. Otherwise, they are likely not to be given the development funds and, are excluded from the working of the councils. The women councillors, due to their social status, cannot pressurize or oppose male councillors or demand their rights. This severely restricts their participation and effectiveness.

As the majority of the women councillors of the upper two tiers i.e. district and *Tehsil*, are elected on reserved seats, through indirect elections, they have no constituency of their own. Therefore, they are considered to have an inferior status

compared to their male counterparts. Although, there is no legal difference between the councillors elected on reserved seats, and those elected on general seats.

Because of the conservative nature of the society in Pakistan, people do not accept women as leaders, and do not give them due respect. They believe that women belong in homes, to look after the domestic affairs and the children. It is not only men who take this viewpoint, but many women themselves also believe that women leaders are an unnatural phenomenon. In some incidents, women councillors from Sialkot, Sargodha, Nowshehra and Talagang were publicly disgraced, while women councillors have also been murdered in Abottabad, Kohat and Peshawar.

It is a general trend in politics that political or elected women are mostly included in committees, related to women's issues. They are not assigned to finance, policy or administrative issues, as they are mostly considered as care-takers and not decision-makers.

Owing to this attitude, they are also not invited to most of the meetings, and are kept excluded from the decisions of the councils or groups. There were several instances, where women were disgraced, like being asked by the district *Nazim* to remain silent during the council sessions; in another instance, the District *Nazim* in Dir (NWFP) segregated the male and female councillors, by putting a curtain in the Assembly hall. The same *Nazim* stopped women from attending the capacity-building training sessions[2].

The women councillors virtually get no support at the administrative level, due to gender biases, social-cultural practices, etc. Not to mention, that there are hardly any women in the offices, in the city or district governments, or in *Tehsil* / town and union councils. Women councillors have to wait for hours to meet with any district official at any level. They have no rest rooms, offices or toilets, in almost any of the local assemblies. The situation gets worse in the rural areas, where women observe *Purdah*. Most of the women

councillors are seen standing with their relatives in the corridors of the local government offices or councils.

According to one of the newspaper reports, of the daily *Jang*, June 24, 2004, "Women councillors in the Chakwal city of Punjab (in Pakistan), are a disgruntled lot, as they alleged that they are treated like nothing more than a showpiece in the Council, are totally ignored, and not given even a single penny for development schemes".

Political Representation of Women in the Capacity of Voters

Women's Share as Registered Voters

The overall proportion of the registered female voters has increased, since the first general elections that were held in 1970. This proportion, however, declined in the 1990's. For the 1970 elections, women comprised 43.7 percent of the voters' list and 46.3 percent for the 1988 elections. But the percentage decreased, marginally, to 46.1 percent for the 1990 elections; and down to 45.5 percent for the 1993 elections; and even lower, to 44.5 percent for the 1997 elections. This decline appears to be due to the fact that fewer women than men have been registered as new voters, in recent years. During the period 1993 to 1997, there was a 7 percent increase in the list of new male voters, and only 3 percent for new female voters. If this pattern continues, the difference between registered male and female voters will become even more marked[3].

During the last General Elections held in 2002, fewer women than men were registered as voters (53.86 percent men and 46.14 percent women), and a smaller percentage actually voted.

Barriers to Women Registration as Voters

The barriers for women, to register as voters, are the same as those which limit them to take an active part in politics, such as male domination, lack of knowledge about the electoral system, its procedures, and lack of literacy in many areas, etc. In one such incident, in Ghungh village (in Punjab, near Lahore), during a bye-election held in 1990, there was not a single woman registered as a voter as against 700 registered male voters. This was because of a directive given by the "spiritual mentor" of the village, debarring them from registering. The males claimed that no regime could force them to register their women, and that they would beat their women with shoes, if they insisted on their right to vote[4].

Women's Share in Voting Population

There has been a general downward trend in the overall voter turnout in Pakistan. In 1977, the reported turnout of voters was 61.9 percent, declining to 43.07 percent in 1988. In 1990, the national voting average went up slightly to 45.46 percent, then declined again to 40.28 percent in 1993, and further to 35.42 percent in 1997. Similar trends are repeated in provincial voting patterns for the Provincial Assemblies elections, except for Sindh, where the turnout was higher in 1997. The declining trend in the turnout of voters appears to indicate people's loss of confidence in the political system, as a result of the growing corruption and criminalization of politics in Pakistan, and a lack of faith in the electoral process itself[5].

General Elections

Women and men vote separately in the general and local government elections. However, the Election Commission had never released gender-disaggregated data on the votes polled, despite the consistent demands by women's rights groups, up until 2005. This makes it difficult to gauge the previous level of women's participation, as actual constituents and voters.

Voter Turnout in General Elections 2002			
Province / Area	**Total No. of Registered Voters**	**Total Number of Votes Polled**	**%age**
Islamabad	384070	196719	51.28 %
Punjab		18996880	46.03 %
Sindh	41253850	6179416	38.17 %
NWFP	8925808	3107153	35.09 %
FATA	1281705	327211	25.48 %
Balochistan	3926843	1164970	29.67 %
Total (in million)	**71913850**	**29972353**	**41.68**
Source: General Elections 2002 Report, Election Commission of Pakistan			

Local Bodies Elections

The following table provides gender-based data on the number of registered voters, and the total turnout percentage in the last local bodies elections held in 2005.

Province Wise Turnout: Local Government Elections 2005 (Phase I & II)									
PROVINCE	**Registered Voters**			**Polled Votes**			**Turnout (%)**		
	Male	**Female**	**TOTAL**	**Male**	**Female**	**TOTAL**	**Male**	**Female**	**Total**
PUNJAB	19402605	6410648	35813253	11929333	7213699	19143032	61.48	43.96	**53.45**
SINDH	7395600	5580699	12976299	3520466	1356425	4876891	47.60	24.31	**37.58**
NWFP	4310412	3465009	7775421	2475106	730195	3205301	57.42	21.07	**41.22**
BALOCHISTAN	1399267	1197183	2596450	549558	256814	806372	39.27	21.45	**31.06**
Total	**32507884**	**26653539**	**59161423**	**18474463**	**9557133**	**28031596**	**56.83**	**35.86**	**47.38**
Source: Local Bodies Elections 2005 , Election Commission of Pakistan									

The first ever disaggregated data on voters turnout shows, and makes obvious, that women voters did not fully

take part in the voting process throughout the country, particularly in Sindh, Balochistan and NWFP, where their participation was almost half.

Comparison of the above two tables also shows that the voters' participation in the local bodies elections was more than the general elections: 41.68 percent in general elections of 2002; and 47.38 percent in the local bodies elections of 2005. The higher turnout in the local government elections could be attributed to people's interest in their local candidates, who actually belong to their own communities.

Future Directions

While the affirmative action taken to increase the number of women seats, in local governments and legislative bodies, will undoubtedly help to facilitate the process of women's political empowerment, the primary responsibility still lies will women in politics, as they have to set the model for other women, who aspire to join politics. Although, there are many issues related to policy, legislation and budgets, for improving the status of women in general, which should be addressed, simultaneously, by all sectors of the society, particularly by women in politics, there are some areas which can be given due consideration at the personal and collective levels, without much sweat. The following are a few:

Networking and Alliance-Building

Women representatives, at all levels, must take the responsibility to join hands and take a common position on women's issues and their status, despite their political settings. Women in legislatures should increase their influence by addressing the day-to-day issues of a common person, with a solid understanding of the problems and their solutions. They will certainly gain from the work of women's rights groups and other civil society organizations, by engaging actively with them and their networks. Only through this collective effort will women councillors, parliamentarians, and political workers, be able to create sufficient pressure, to impact decisions regarding laws and policies. Besides, their linkages and a close interaction with the State institutions

could influence national policies and plans, by mainstreaming gender. It is important for political women to build alliances and networks for women councillors, as they are more marginalized and powerless compared to their parliamentarian sisters.

Learning and Capacity-Building

Although, a lot of learning opportunities are being provided to women in politics, by the government and the civil society organizations, the process is scanty on learnings specific to: the Constitution; legislative / policy-making procedures, rules of business, and the functioning of committees, government organs and the State institutions; key issues, like the laws and policies relating to women, as well as, the related international commitments; and, mainly the existing policies and programmes, besides municipal legislation, budget and taxation, service delivery systems, poverty alleviation schemes, community and environmental management, shelter schemes, women's development, etc. Continuous education of women as councillors, parliamentarians, political office holders is the key towards their empowerment.

Key Essence

A major argument for democratization emphasizes the involvement of people and public representatives, in the affairs of governance. Democratization is often attributed to as the most accountable factor, that distinguishes the power holders from the non-power holders. Democratization is thus seen, as peoples' engagement, where participation affects the resolution of local problems, improved service delivery, accountability and use of equitable resources.

If women are ingrained with the notion that the involvement of a large section of the society, through the democratization process, can indirectly address the non-visibility of the poor in decision making, pave the way for their empowerment, through the use of fair and equitable resources, and result in breaking poverty of opportunity and

helplessness, then there is no barrier to stopping women's rule in Pakistan.

Conclusion

The last five years have seen active participation of women, wherever they found a political niche. This itself speaks volumes of women's yearning to get engaged in the affairs of democracy and governance. It is hoped that more affirmative actions are being planned to further strengthen the position of women in the political parties, governmental committees, electoral process and media. The key to making an impact on governance will remain with the women folk themselves. Therefore, they are strongly advised to keep themselves engaged in the learning process, and build their caucuses at all levels, to voice their concerns. Although, democratization has still to take roots in Pakistan, including regular, free and fair elections, a vibrant civil society, rule of law and an independent judiciary, besides universal suffrage.

APPENDIX

Table: 1 SENATE

NUMBER OF SEATS							
EXISTING				PREVIOUS			
Province/Area	General Seats	Seats reserved for		Total	General Seats	Ulema, Technocrats and other professionals	Total
		Women	Technocrats and Ulema				
Federal Capital	2	1	1	4	3	-	3
Punjab	14	4	4	22	14	5	19
Sindh	14	4	4	22	14	5	19
NWFP	14	4	4	22	14	5	19
FATAs	8	-	-	8	8	-	8
Balochistan	14	4	4	22	14	5	19
Total	**66**	**17**	**17**	**100**	**67**	**20**	**87**
Source: Election Commission of Pakistan							

Table 2:

NATIONAL ASSEMBLY

NUMBER OF SEATS						
EXISTING					PREVIOUS	
Province / Area	General Seats	Seats reserved for		Total	General Seats	Seats reserved for Non Muslims
		Non Muslims	**Women**			
Federal Capital	2		**-**	2	1	
Punjab	148		**35**	183	115	
Sindh	61	10	**14**	75	46	10
NWFP	35		**8**	43	26	
FATA	12		**-**	12	8	
Balochistan	14		**3**	17	11	
Total	**272**	**10**	**60**	**332+10=342**	**207**	**207+10=217**

Source: Election Commission of Pakistan

Table 3:

PROVINCIAL SEATS

NUMBER OF SEATS						
EXISTING					PREVIOUS	
Province	General Seats	Seats reserved for		Total	General Seats	Seats reserved for Non Muslims
		Non Muslims	**Women**			
Punjab	297	8	**66**	371	240	8
Sindh	130	9	**29**	168	100	9
NWFP	99	3	**22**	124	80	3
Balochistan	51	3	**11**	65	40	3
Total	**577**	**23**	**128**	**728**	**460**	**460+23=483**

Source: Election Commission of Pakistan

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Indigenous Institutions for Decision-Making in Pakistan

Ali Gohar

Pakistan

The Islamic Republic of Pakistan emerged as a sovereign state on the world map in August 1947. Located in South Asia, Pakistan shares an eastern border with India and a north-eastern with China. Iran makes up the country's southwest border, and Afghanistan runs along its western and northern edge. The Arabian Sea is Pakistan's southern boundary with 1,064 km of coastline. The country has a total area of 796,095 sq km. Official literacy rate is 32 percent and the male to female ratio is 48:52.

With an approximate population of 158 million people, Pakistan is home to several diversified ethnicities across four provinces, the sub-state political, administrative and development units. Its landscape is equally diverse, nurturing one of the world's highest mountain peaks, warmest deserts and strategic ports. Additionally, the country generously opened up itself, to provide refuge to people from war-torn homelands, such as Afghanistan, Somalia and Bosnia.

Under the present government, a decentralization and devolution of governance power project was introduced five years ago, which created a new tier of popular power of people's representatives at the local district level. Under this devolution of power project, thousands of common, ordinary Pakistani women, for the first time, took up the political public roles as district and Union Councillors (Union Council is an administrative unit lower than district). The governance power is devolved from the central government, directly to the local district level, with the aim to bring the administrative and resources decision-making closer to the point of influence, that is, the communities. This project still needs nurturing and

support to develop and entrench itself in the political system and culture.

Historically, Pakistan is one of the most ancient lands known to human kind, with Alexander the Great and Ashoka passing through and leaving imprints still visible today, Harappa and Moenjodaro — the ancient civilizations. Although, Pakistan showcases a turbulent political history and a sleeping civic movement, there are two indigenous conflict resolution institutions, operating from times immemorial in Pakistan.

Introduction

As Leo Tolstoy very rightly said, "the seeds of every crime are in each of us". Crime is not an out-side phenomenon. It lives with each individual's inner self, and depending on the opportunities available, it can come out. "Power corrupts" and "the needy are not respectable". These are some of the notions used by, both the weaker and the stronger to legitimize their actions. It changes its form from place to place and individual to individual. Shame, honour, customary practices, ego, what others will think or say, are the basic elements that lead to crime in a society. Such elements generate crime, in each individual, with different excuses. In some cases, the victimization of the offender is dominated by his commitment of crime to others, while weak law provides ample opportunities, to the strong, to take the matter in his own hands and quench thirst. Strong law prevents the criminal from committing a crime on the one hand, while social bondage prevents the individual from committing the crime, even in countries where law is weak. Divine law is the most important and above all, if it is taken in its real sense, to prevent community members from committing the crimes. If divine law is not practiced, then the two laws come to challenge each other's existence. The criminal justice system and the traditional system of different communities are practiced in different part of the world. Such traditional systems are organized in the WEST, under the umbrella of restorative justice systems. Called *circle* in the WEST, *Sulah* in the Middle East, *Gachacha* in Africa, and Morie tribe traditional practice in New Zealand. *Jirga* and

Punchayat of Pakistan is the same system, with marginal differences. *Jirga* and *Punchayat* systems are common to all the four provinces of the country. *Jirga* is commonly practiced in NWFP and Balochistan, while *Punchayat* relates to the Punjab and Sindh provinces. *Jirga* replaces the name of *Punchayat* now and sweeps across the entire country, even though there are quite some differences between the two. *Punchayat* is headed by a "*Sarpunch*", that is, a notable of an area who imposes his decision on others, while *Jirga's* decision is unanimous. There is a difference of opinion within the *Jirga* process, but the final verdict is acceptable to all, inspite of the reservation of some members. There are many, who are of the opinion, that the system of *Jirga* is better than the modern time democracy: in a *Jirga*, a decision taken is acceptable to all, while in the democratic setup, opposition can play its role within and outside of the house, and can take a position on the opinion held, right to the end.

What is *Jirga*

Jirga is best summarized as a strategic exchange, between two or more people, to address an issue through verbal communication. The exchange may or may not result in an agreement on the issue, but the process itself leads the parties, including the interveners, to maintain a certain level of formal communication, thus ensuring peace[1].

To a common person, *Jirga* is a body comprised of local, elderly, and influential men in Pukhtoon communities, who undertake dispute resolution, primarily through the process of arbitration. Compared to the judicial system of the present day governments**,** *Jirga* ensures a fast and cheap justice to the people. Indigenous to Pukhtoon tribal communities, *Jirga* is alive even in the areas now influenced by an Anglo-Saxon legal system, and is used for inter-personal dispute resolution. In the tribal areas, *Jirga* is the only vehicle through which the political administration dispenses justice.

What Is *Punchayat*

Punchayat comprises a five-member jury, headed by a *Sarpunch*, who can use his vote, for either of the parties, based on his discretionary powers. The age, the social position and, more importantly, wisdom and sagacity are some of the characteristics considered for a *Punchayat* member. The following are other characteristics, which are static and essential for being a member:

Characteristics of the *Punchayat* members

a.   A candidate should be a resident of the village in the true sense.

b.   His character must be blameless and a model for others.

c.   He must be known to be fair and honest in his dealings.

d.   He must be of mature age, certainly above 40 years[2].

The Difference Between the Two

In Pakistan, the role of *Punchayat* has diminished with the passage of time, as the governments in the provinces of Sindh and Punjab withdrew their support for this traditional structure. Despite this, however, the influential of the area still continue to use this method for resolving community disputes, whereby they impose their decision on the disputant. The term punchayat is less known to the public now. Instead, it has, of recent, being replaced by *Jirga*. However, *Jirga* is a term that has lost its credibility in the provinces of Punjab and Sindh, primarily because this term is seen to be associated with the authoritarian and individual decision-making powers vested in a few influential – the members of the *Jirga*. But this institution is still in place and operative in the provinces of NWFP and Balouchistan. Although, the government does not lend its full legal support to the verdicts of *Jirgas* in these provinces, it does, in certain circumstances, resort to its decision-making, to resolve issues and bring about peace in

the tribal areas, when other options fail. For example, very recently, the present governor of NWFP took the initiative to select members for a *Jirga*, from the tribal belt, to organize a uniform grand *Jirga*, in order to find a sustainable solution for the present unrest in the areas.

Another major criticism, associated with *Jirgas* and *Punchayats*, is that criminals end up replacing the notables in both these institutions. This is, however, not true for all the areas. For instance, in the provinces of Sindh, Balochistan and Punjab, *Punchayat* is still held and steered by the notables, mostly the tribal chiefs. *Jirga* in the tribal belt remains the same as before, while in the settled districts of NWFP, it is rather mixed. For example, in some areas, the criminals do get hold of it. However, if the nature of the dispute is serious, the community reverts back to the notables of that area and approach them for intervention. It needs to be emphasized here, that the previous role of *Jirgas*, that was unique, as a distinct institution, is not practiced nor does it exist any more. But there is a Pustho proverb that "if the meat burns, it is still better than lintels", suggesting that the *Jirga* decision is still cheap, easy, accessible and at the doorsteps of the disputant. It also needs to be re-emphasized here, that the *Punchayat* decision is mostly a one-man show. Since, the term *Jirga* has now come to replace *Punchayat*, it has ended up defaming the entire institution of *Jirga*. The reports of such *Jirgas* (actually *Punchayat*) are then highlighted in the national press, further damaging the credibility of the *Jirga* system.

Exploring *Jirga*

The practice and notion of *Jirga* is actually operative, at all levels of the society, for different purposes and different objectives. For an outsider, the dynamics of *Jirga* may appear overwhelmingly complex. But a deeper examination of it makes it clear, that there exists a common understanding amongst the *Jirga* members, on issues that may seem as being complex.

The composition of a *Jirga* may be split into the following two categories: one is the representative level of a

Jirga, where the *Jirga* may represent a party, a village, or an area or region; at the second level, the *Jirga* may serve a particular role, which can vary, depending on the circumstance. Some examples of these roles are diplomatic missions, peace building interventions, or smaller juries.

The term *Jirga* has different meaning for the locals. Some of these are:

Terms used for Jirga	Meanings
Jirga Kawal	Doing a *Jirga* or lets sit to talk
Pa Jirga Talal	Going as a *Jirga*, or doing an intervention
Jirgay ta Khabara Workawal	Referring a case to *Jirga* by parties or one of the parties
The Jirgay Khabara	The word of *Jirga*, opinion of *Jirga*
Jirga Manz ta Ratlal	Intervention by a *Jirga*, i.e. ceasefire

Each of these terms is used for a variety of meanings related to the organization of the local community life, indicating the relevance and importance of *Jirga*, as an integral institution.

The nature and scope of a specific *Jirga* can vary, and there is generally no clear distinction between the types of *Jirga*. Even the locals will talk about *Jirga*, as the type, they best understand. And when questioned, they smile and agree that their definition or understanding of a *Jirga* is a narrow one. Most writers have delineated *Jirga* into four general types:

1. *Sarkari* or Government *Jirga*
2. *Qaumi / Ulasi* or Local Representative *Jirga*
3. *Shakhsi* or third party *Jirga*
4. *Loya* or Grand *Jirga*

In the tribal belt (where *Jirga* is still an active conflict transformation institution), the *Jirga* specifically executes three different kinds of roles, much like the present day modern approaches for bringing peace in the conflicting world.

Peacekeeping: the elders place *Tega* (stone) between the parties in conflict and ask for money, weapons etc. that are kept with the *Jirga*. They declare ceasefire for an interim period, before the final decision. If any one of the parties violate the ceasefire, its money or other items are confiscated by the *Jirga*. A special voluntary force, called "*Lashkar*", in such cases, imposes the decision of the *Jirga* to punish the perpetrator.

Peace making: The *Jirga* members intervene on the request of the parties in conflict, through the use of shuttle diplomacy or their own power, and come into the middle through parachute diplomacy. Peace is brought about by first listening to the parties and convincing them to accept the solution to the problem. The role of the *Jirga* members changes from a diplomat, to a mediator and an arbitrator.

Peace-building: Apart from conflict resolution, *Jirga* plays an active role in the development of the areas. They change the *Jirga* role and regulations and bring in new laws, according to the needs of the community. They also work closely with the government agencies for the betterment of the people. As well as, provide an equitable share to each tribe, according to its population in the government jobs, land, and other resources.

The Way Ahead

During the colonial period, in an "us versus them" scenario, people recognized governance as a system of the other side, designed and implemented for the benefit of the colonizers only. The newly independent countries of the present day Third World, inherited these systems of governance, which were alien to their people. Despite the fact that the new governments were mostly democratic in nature, and people were duly represented in governments, there

remained a gap between the traditional understanding of society and the one presented by the modern systems. People were faced with the following choices in the post-colonial era:

> Forget about the past practices and embrace the new system, despite the fact that alien people designed it. It is now the most viable way of developing into a responsible nation-state. This was a difficult choice because of deep-seated resentment and hatred for the colonizers. In addition, the loss of past practices and traditions rub up against issues of identity, language, religion, and culture — aspects of a society that cannot be replaced or buried without pain and, often, resistance. The *Punchayat* system was alive after independence for a certain period of time but vanished soon due to lack of support by the community and government alike.

> Forget about the new system given by the colonizers, and let us get back to our old traditional system. This choice again was a difficult one. During the colonial times, societies often preserved their traditional practices. These traditions, however, were not given much of a natural space to grow and change and, because of this, began to look remote and backward. The modern times also brought science and technology, a development that became difficult for the old systems to adopt and integrate. The tribal belt preserved its *Jirga* system, while the settled areas of NWFP and Balochistan, struggled to keep this system alive for some time but later began to use both.

> Merge the good traditional practices with the modern times, and develop systems best suited for our needs, as a responsible nation-state. Some societies could do this easier,

than the others, because of the cultural resonance they had with their colonial masters. However, in other cases, the gap between the masters and the people was so wide that it was difficult to merge the two systems. In addition, the people had little capacity to adopt the modern system or improve the traditional systems, to match the modern times. Thus, the deficiency of human capacity prevented the merger of the two systems.

Of course, the system of *Jirga*, both at the community, as well as, the government level, did not improve as much as needed, in order to compete with the requirements of the modern government systems. Rather than allowing itself to decay, the *Jirga* system preserved itself as a useful tool for sustaining a bare minimum standard of social contract. The formation of *Loya Jirga* at Bonn in 2002 proves the point, that indigenous local systems can be more sustainable than the fragile modern systems of the present day, particularly in the developing countries.

However, it is a fact that things change! Change can be seen in the society, particularly in the urban areas. There is a remarkable difference between the urban elite and the rural poor of the region. One area of change is the exclusion of women. The veil for women can be seen as a yardstick, to gauge if there has been any departure, from the old approach of gender exclusion. Some critics might argue that the pace of this change is too slow. The fact remains, however, that in societies today, there is enough space to highlight this human plight and argue for a social change in a non-violent manner.

What then is *Jirga's* role in the process of social change? *Jirga*, the dominant social institution that guides and comprehensively defines all dimensions of life, such that individuals can live only within the framework defined by the traditional Pukhtoon culture, i.e. Pukhtoonwali through the *Jirga*. Even a religion like Islam is subjected to confirmation by the culture and traditions. *Jirga* then, will challenge any

move towards a social change, unless necessitated by circumstances.

Fortunately, the process of *Jirga* relies completely on the establishment of communications, a medium that binds to continuous talking, even to their worst foes. It is the mastery of this art that *Jirga* upholds, offering a culture of peace and tolerance. Negotiation is the "*Jirgamars"* hobby and pleasure, and they will always appreciate good negotiators. *Jirga*, therefore, can be engaged for any topic, attractive to the outside world. Beyond negotiation, *Jirga* would recognize only a war, as a natural compulsion, forced upon them, and obliging them to fight it out. Forcible occupation to them would remain a temporary phenomenon, an opportunity to get back to their traditional system.

As a traditional institution, *Jirga* has been tested over centuries, with its culture being exposed to alternative systems and pressures to change. What is the path for *Jirga* amidst these unavoidable dynamics?

Critical Issues

Those who are disenchanted with *Jirga*, often regard it as an old tribal institution that has outlived its utility in modern times. Critics cite *Jirga* members as turning against the innocent and vulnerable, particularly where the *Jirga* system, applied in combination with the governmental legal system, becomes a tool for manipulation. Or, *Jirga* is entirely discredited with stories of *Jirga* members receiving bribes. However, concrete arguments against *Jirga* and the *Jirga* system, do emerge, from broadly stated negative stories. The word *Jirga* is misused in different part of Pakistan, in relation with the *Punchayat*, in which a single individual or a few people give a verdict against innocent people of the community. This has badly marred the reputation of the term *Jirga* and its internal dynamics, which actually hinges high on taking each decision by consensus, and vulnerable groups, especially women, children and the aged are given due respect in all its decisions. These arguments can be broken down into many general themes listed below. Some of these are more visible in the media like:

1.   *Jirga's* unwritten Nature

2.   An outdated institution in the Modern Nation-State System

3.   Fundamental Human Rights and *Jirga*

4.   Abuses of contemporary institutions and *Jirga*

5.   Linkages Building

6.   Institutionalizing *Jirga*

7.   Future role of women

8.   The misuse of *Jirga* name

Reinvigorating the *Jirga*

Jirga cannot survive just on good intentions. *Jirga* will have to recreate its due space, if it wants to survive the challenges of the modern world. This will be a process of consolidation, of what it already has, and a rationalization of the aspects criticized by others, providing space for bridging the gap between traditional and more modern systems. Growth of this will automatically follow.

The proponents of *Jirga* will be required to bring a better-reasoned case before the outside world, in order to be taken seriously. At the same time, keeping aside the question of a viable substitute of *Jirga*, the opponents of *Jirga* will need to undertake a cost-benefit analysis, before simply discarding a centuries old social practice.

In our discussion, we have tried to see what a *Jirga* is and why it is so. We have also examined how it is practiced in contemporary times. We expanded on the many roles a *Jirga* plays in simple and still unique ways. We also saw how vulnerable a local system can be, when in confrontation with the present day complex issues of social justice. So where do we go from here? Do we want to scrap this centuries old practice, credited for guarding the social fabric, enabling us to survive and allowing us to move on? Or do we want to try to modify and improve it to suit the present day structures?

In between a "yes" and a "no" for *Jirga*, one can see many options, more viable than a surgical insertion of a new legal system. The British overlaid a foreign system on us, many decades ago, and we are still uncomfortable with that.

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Local Democracy in India: An overview

Buddhadeb Ghosh [*]

After independence, India chose to retain the structure of local governance inherited from the colonial rulers of the country. The hallmark of this structure was that the entire domain of local administration remained at the hands of the bureaucracy of the provincial government. Popular control over the local bureaucracy was out of question. It is within this framework that the *Raj* had introduced the Local Self-Government Institutions (LSGI) in the sub-continent. These institutions lacked autonomy and were starved of financial and administrative resources, besides being compelled to work under the constant surveillance of the district bureaucracy. They were not expected to substitute any organ of the provincial government for discharging functions exclusively earmarked for them. The local administration remained bureaucratic as before, the LSGIs being given the responsibility of looking after minor civic functions.

Since the structure of local administration was retained in its entirety even after independence, the role of the LSGIs was not expanded. As a result, even though the governments at the central or State levels were democratized, there was no democratic government at the local level to control and guide the bureaucrats functioning at the district and lower levels. The decision to maintain the *status quo* in respect of local governance would not have created problems, had the character of the newly formed Indian State remained the same. But radical transformation did take place in the character of the State after independence. First, India opted for democracy with a set of social and political rights guaranteed to her citizens. Second, the political leaders of the country declared at the dawn of independence that the most important tasks of the new State would be to eliminate "poverty and ignorance and disease and inequality of opportunity"[1]. These two factors changed the character of the State, necessitating consequent changes in the manner as to

how the country should be governed. The changeover to democracy meant that the people of the country were no more the "subjects" of a central political authority, but had become right-bearing "citizens", to whom the governors of the country had responsibility and accountability. The commitment made by the leaders of the newly independent State to end poverty, illiteracy, ill health and inequality of opportunity meant that the State's energy and resources should be increasingly diverted toward development and welfare functions, along with affirmative actions for the underprivileged.

Towards *Panchayati Raj*

That the structure of the local governance system, inherited from the past, would be incompatible with the above changes in form and content of governance was not quite apparent at the beginning. The incompatibility came to be noticed shortly after the State embarked upon an ambitious rural development programme in 1952. Known as the "community development and national extension service programme", this development initiative, which very soon was extended to the entire country, envisaged various activities, including creation of physical infrastructure like village roads or spot sources for drinking water supply, provisioning of various services for creating social infrastructure like social education or women's development, and transferring updated technology for improving economic activities in the farm and non-farm sectors through an array of technically qualified officials in several disciplines. The hallmark of the community development programme was to encourage the village communities to identify their "felt needs" and to formulate such development programmes that would satisfy those needs. In order to bring the services closer to people, a new administrative unit called community development Block was created, roughly for 100 odd villages or one hundred thousand people[2].

A programme of this kind needed, for its success, generation of sufficient local interest and local initiative through people's participation. The officials of the community development Block were unequal to the task. A study team

appointed by the Government of India in 1957 candidly admitted this and observed that the development programmes aimed at satisfying the local needs, identifying the local priorities and generating local initiatives, could not be successful, unless they remained at the hands of the local representative institutions. This realization prompted the study team to recommend setting up of three-tier local government institutions in rural areas – *Panchayats* at the village (either one village or a group of small villages), Block and district levels[3]. By early 1960's, representative local government institutions were set up in most of the States of the country, giving a taste of local democracy, for the first time, to the people of the country's nearly six hundred thousand odd villages. Jawaharlal Nehru showed great enthusiasm for these grassroots democratic bodies, and christened the new system as *Panchayati Raj* – rule by the village councils[4].

The enthusiasm over *Panchayati Raj* did not last long. Before the new institutions of *Panchayats* could blossom into viable local governments, they began to stagnate after Nehru's death in 1964, and started declining in almost all the States from the early 1970's. A second attempt at reviving these institutions was made by three States, namely West Bengal, Andhra Pradesh and Karnataka, in late 1970's and mid-1980's, following the report of another committee appointed by the Government of India and headed by Asoka Mehta, a veteran Socialist leader and former vice chairman of the Planning Commission[5]. Among the three States, the *Panchayats* of only West Bengal survived and were firmly institutionalized. The institutions of the other two States declined after their first term was over.

Constitutionalizing *Panchayats*

The repeated attempts to institutionalize *Panchayati Raj* prove that the case for democratic decentralization is very strong in India. Firstly, it is a vast country and densely populated. It also exhibits tremendous cultural varieties[6]. This fact makes India difficult to govern centrally. Secondly, 72 percent of its population (744.66 million people) lives in 594 thousand dispersed villages. For them, democracy can have meaning only if the representative government is brought

closer to them. Thirdly, experience has shown that any programme of the State that aims at social and economic development of rural society cannot make any dent, unless people participate in it. Bureaucracy is unequal to the task of social mobilization. Hence, such programmes cannot be successful, if people's representatives do not find any space within the lower levels of the administrative structure.

It is against this background, that several attempts were made after independence to establish the institutions of *Panchayats* on a sound footing. Failure of these attempts brought into relief, among other things, the inherent difficulty in pushing institutional reform of the governance system within a federal framework. Local government is a State subject and the Constitution did not make provisions for *Panchayats*, except in the chapter entitled "directive principles of State policy", which was non-enforceable. Hence, the question of the institutionalization of a viable local government system for the rural areas depended on the political will of the regimes in charge of the State governments. Experience showed that the policies taken by the State governments from time to time in such matters as holding of *Panchayat* elections on time, providing support to these institutions or devolving functions and resources to these bodies, depended on the political compulsions of the ruling parties of the respective States[7]. Accordingly, needs began to be felt to give Constitutional recognition to the *Panchayats* as the government at the third tier of the Indian polity, that is, at the sub-State level.

The first serious attempt to Constitutionalize *Panchayats* was made by Rajiv Gandhi, the Prime Minister of India, during mid-1980's. It is interesting to note that his advocacy for the *Panchayats* was not prompted initially by the concern for deepening democracy or to enrich the practice of democracy. It was the quest for "efficient" and "responsive" administration at the district and sub-district levels that ultimately drove him to *Panchayati Raj*. After assuming office, he toured extensively rural India, where he came in direct contact with rural people. Soon he came to realize that the experience of people at the grassroots was that the administration was "unresponsive" and "often callous" to

"those whom they [were] meant to serve". Rajiv Gandhi was trying to find a solution, and after holding several workshops with the District Magistrates in different parts of the country, he came to the conclusion that the underlying problem was "fundamentally of a systemic nature". "Our district administration is not sufficiently responsive", he observed, "because it is not sufficiently representative"[8]. Soon after this, he brought the 64th Constitution Amendment bill on *Panchayati Raj* in May 1989, to set up the third tier of governance at the district and sub-district levels. Unfortunately, he could not get the bill passed by the parliament. But the efforts initiated by him did not go in vain. Three years after his tragic assassination, *Panchayats* and municipalities did find place in the Constitution, through the 73rd and the 74th Constitution Amendment Acts, respectively. With the passing of these amendments, by both the houses of parliament in December 1992, and subsequent ratification of the same by the legislatures of the States, *Panchayats* and the municipalities emerged as institutions of government at the third tier of Indian federation.

Salient features of the 73rd Constitution Amendments

The 73rd (and the 74th) Constitution amendments[9] are a landmark event in the history of Indian democracy. They carry the seeds of a profound change in the pattern that has traditionally characterized the relationship between an ordinary citizen of a remote village and a State agency in India. For, they hold the promise of moving the State closer to people in order to demystify it, as it were, by making it responsive, efficient, transparent and participative. Since this involves systemic change, its implementation is posing problems. Before we go into that, it would be necessary to be acquainted with the salient features of the amendments, which are as follows.

The 73rd Constitution amendments provide that there shall be a three tier system of *Panchayats* for the rural areas in a district - a *Panchayat* for one or a group of villages at the lowest tier, a *Panchayat* for the district, and a *Panchayat* at the intermediate level. For States having population below

two million, the constitution of intermediate *Panchayat* is not necessary. *Panchayats* have been defined as institutions of self-government, which implies that these institutions are not mere agencies of the State governments, but should have autonomous jurisdictions. Constitution of *Panchayats* is mandatory for the States and, hence, these institutions are now an integral part of the country's governance system[10].

The Constitution also introduces the concept of direct democracy in the form of *Gram Sabha. Gram Sabha* is an assembly of all the adult citizens of a village *Panchayat*, registered as voters. At least, one meeting of the *Gram Sabha* is compulsory. In some States, four meetings of the *Gram Sabha*, on fixed dates, have been made mandatory. In the States where *Gram Panchayats* are large, in terms of population, provision has been made to have village assemblies at the ward level. The Constitution authorizes the State legislatures to confer power and responsibilities to the *Gram Sabha*, in the respective State Acts, to ensure accountability and responsiveness of the Gram *Panchayat*.

The other noteworthy feature of the amendment was the attempt to make the local government institutions inclusive. With this end in view, seats of members and the positions of chairpersons of *Panchayats* of all the three tiers have been reserved for the underprivileged persons. Not less than one-third seats of members and positions of chairpersons of all the *Panchayat* bodies are reserved for women. Additionally, the seats of members and the positions of chairpersons are reserved for people belonging to the scheduled caste (SC) and scheduled tribes (ST), in proportion to their population[11].

The term of *Panchayats* is 5 years. Elections must be held before the term of a board expires, so that it does not become necessary for the elected body to continue in office beyond the period of five years. In the event of dissolution, elections must be held within six months. In other words, ensuring regular elections to the local councils is one of the principal aims of the Constitution amendment. Besides, in order to ensure conduct of elections in fair manner, the Constitution introduces a new institution, namely Election

Commission for each State. The State Election Commissions are independent of the State governments. Their tasks are superintendence, direction and control of the electoral process, and preparation of the electoral rolls for *Panchayats* and the municipalities.

Panchayats at all levels have been given the mandate of preparing plans for "economic development and social justice". They will also implement projects, in respect of functions or activities assigned to them. The functions / activities that can be transferred to the *Panchayats* are indicated in a schedule (11th schedule). This schedule shows that the responsibility that the *Panchayats* are expected to shoulder, covers practically the entire range of subjects relevant for economic and social sector development. Thus in the Constitutional scheme, the role of local councils does not get confined within the narrow limits of "civic functions" that are ordinarily earmarked for the local government institutions. They are intended to be made partners of higher level governments for achieving the development goals of the State. *Panchayats* of India, thus, differ from the framework of typical local government institutions. They are local governments, no doubt, but with a role that is bigger than the one associated with similar institutions elsewhere. However, the Constitution did not make mandatory provisions on the devolution of functions and responsibilities to the *Panchayats*. It provided the conceptual framework and the guidelines on the subject, while the individual State legislatures were given the discretion to specify what functions and activities should be devolved to the local bodies in the respective States.

In order to consolidate the development plans to be prepared by the three-tier *Panchayat* system and the municipalities of a district, and to integrate such plans with the State and the national plans, provision has been made for the Constitution of District Planning Committees (DPC) in each district. Even though the majority of the members of the DPC would come from the elected members of *Panchayats* and municipalities, provision has been made to nominate some experts, social activists and officials also to this committee. The number of such nominated members will not, however, exceed 20 percent of the total members of the committee.

The task of the DPC is to prepare a draft development plan for the district, after consolidating the plans prepared by the *Panchayats* and the municipalities. Since there are two types of local government institutions in a district, namely *Panchayats* or the rural local bodies and the municipalities or the urban local bodies, one of the major tasks of DPC is to integrate the plans prepared for the rural and urban areas.

The respective State Acts on *Panchayats* are required to indicate the sources, from which the *Panchayats* would generate their resources. Normally, such resources may come from the following sources:

- Taxes, duties, tolls, fees, rent, user charges levied and collected by the local bodies, subject to the State laws.

- Tax, fees, cess etc. collected by the State government but assigned to the local bodies.

- Specific purpose or untied grants from the State government.

- Borrowing, subject to state laws, from the financial institutions.

- Donations / Gifts.

In order to ensure that the *Panchayats* do not suffer from chronic shortage of resources, the Constitution provides that a Finance Commission shall be constituted every 5 years by the State government, to determine the principles / policies, on the basis of which, adequate financial resources could be ensured for the local bodies. Thus, an expert committee will review the fiscal position of the local bodies every five years, and recommend to the State government the measures necessary to provide resources to the local bodies in order to enable them to discharge the functions assigned to them.

The Principles Guiding the Constitution Amendments

It is possible to discern certain principles that have informed the Constitution amendments on *Panchayats*. It will be worthwhile to look at them.

Autonomy of *Panchayats*

Being defined as a self-governing institution, the *Panchayats* should not be treated merely as an agency of the higher-level government. Following the federal principles, they will have full authority to take decisions in respect of functions / activities transferred to them. This is a sharp departure from the way how the local government institutions used to be treated in the country. Granting autonomous jurisdiction of *Panchayats* implies that the Constitution intends devolution type of decentralization, as opposed to mere administrative deconcentration. This would necessitate transfer of functions, finance and functionaries to the local bodies.

Elections

A democratic body loses its vitality, unless the electors renew it at regular intervals. The Constitution has taken special care to ensure regularity of elections to the local bodies, and holding of such elections in free and fair manner.

Inclusion of Weaker Sections of People in Decision Making

By making reservation provisions for the scheduled castes, scheduled tribes and women, the Constitution sends a strong message to include the weaker sections of people in the decision-making process of *Panchayats*. This is a positive attempt to avoid the danger of the village councils being "captured" by the rural elite, and to make the practice of local democracy inclusive.

Planning

The amendments seek to institutionalize the concept of decentralized planning. This is evident in the mandate given to the local councils. In the first place, the *Panchayats* at all the three levels are required to prepare development plans for their respective areas. Secondly, the goal of such plans is also defined. This is expressed in the phrase "economic development and social justice". The Constitutional provisions on decentralized planning, and on the goal of such planning are quite significant, because, as mentioned previously, they transform the character of the local bodies from being merely civic service providers to an important agency of the State, for promoting multi-sectoral development activities with emphasis on human development. A look at the 11th schedule, which gives a list of activities intended to be transferred to the local bodies, shows that the term "economic development" has to be understood in the broad sense of development. Hence, this should include development of social sector (education, health, women and child development, social security), economic sector (farm and non-farm economic activities, including service sector activities), as well as, development of infrastructure and institutions necessary for social and economic development. Besides, the expression "economic development and social justice" also implies that the consideration of social justice should remain embedded in the plans to be prepared by the *Panchayats*. In other words, such plans should have a focus on the development and empowerment of those who suffer from economic and social deprivations.

Participation

It is also necessary to understand the significance of the Constitutional provision on the "*Gram Sabha*" (village assembly). It firstly gives recognition to this body of all the voters at the village *Panchayat* level, and then gives directions to the State legislatures to give powers and functions to the body. This means that the *Panchayats* are to be encouraged to involve the local community in taking decisions. If one reads together the provision on the *Gram Sabha* and the provisions on the reservation for the weaker

sections of people, it becomes clear that the Constitution intends to ensure participation in planning and implementation of development activities at the grassroots level. The provisions on inclusion of the weaker sections of the village communities in the local councils imply that their role in development is not one of recipients only, but also one of partners. They are not to be considered merely as the "objects" of development. They are to be considered as "subjects" who have the right to be consulted in the process of decision making on matters that affect their lives. The provision on *Gram Sabha* further expands this idea, by enabling the entire community to participate in the decision-making process. The Constitution, thus, sends a signal of introducing participatory governance at the local level.

Implications of the Amendments

The most important effect of the 73rd Constitutional amendment is that it has made Indian democracy more inclusive and participative. If one goes by the sheer number of people's representatives in the governance system, then one would notice a sea-change. Before the Constitutional amendment, the total number of people's representatives was a little less than 6,000 only - 790 in the two houses of central legislature, and about 5,000 in the legislatures of all the States. Now there are nearly 2.2 million representatives. The spread of people's representatives, in different tiers of *Panchayati Raj* institutions, is roughly as follows:

- 11,708 representatives in 537 District *Panchayats*, of whom 42 percent are women.

- 1,09,324 representatives in 6,097 Intermediate *Panchayats*, of whom 43 percent are women.

- 20,65,882 representatives in 2,34,676 village *Panchayats*, of whom 40 percent are women.

- Besides, there are representatives from the communities of scheduled castes and scheduled tribes in proportion to their numbers.

Thus, both in terms of number and in terms of representation from the weaker sections of citizens, the base of India's democratic structure has been widened, almost beyond recognition. Besides, the amendment carries the seeds of a profound change in the governance system. Firstly, a representative government has emerged at the *third stratum* of the governance system[12]. Secondly, with a representative government available at the local level, it is expected that the traditional role of the bureaucracy working at the grassroots will change. Previously, they were not accountable to the local citizens. As the local councils get increasingly empowered, the downward accountability of bureaucracy will increase. Thirdly, the local governance system will be more transparent and accountable. Last, but not the least, for the first time, the common citizens will get an opportunity to participate in the State's decision-making process. Such participation may not necessarily be restricted to matters that are to be dealt by the local councils. The institutional structures of the local councils also provide fora for reflecting views of the people at the grassroots, on policies and programmes of the higher level governments[13].

Impact of the Amendments

More than a decade has passed, after the coming into force of the 73rd Constitutional amendment on democratic decentralization. It would be quite legitimate to assess its impact. On the positive side, three important changes have taken place, the long term effects of which, in strengthening Indian democracy, cannot be underestimated. First, certainty of *Panchayat* institutions has been ensured. Every State has to establish *Panchayats*. Their space in the structures of governance is now guaranteed, and not dependent upon the political will of the individual State governments. Second, continuity of the institutions, through elections every five years, is also now guaranteed. Even the defaulting States, which did not take their Constitutional duty seriously, had to explain to the public, to the media and also to the judiciary, the reasons as to why they could not hold the elections on time. Third, weaker sections of the people, including women, have entered the public sphere in a critical mass, making

Indian polity more inclusive. Positioning of innumerable elected bodies below the State level, and representation within them of people belonging to the weaker sections, constitute an event that cannot be dismissed easily.

Despite these achievements, the grand possibilities of the Constitution amendments in replacing substantially the bureaucratic district administration by the empowered, accountable and participative local government institutions, as envisioned by some observers, did not materialize in most of the States. There are exceptions, where the *Panchayats* are strengthening the practice of democratic governance. In many States, however, they seem to have failed to emerge, till now, as responsible governments at the local level. Those who noticed radical elements in the Constitution amendment believed that, as an institution of self-government nearest to people, *Panchayats* would assert their autonomy, and prepare the ground for dispersal of political power at an unprecedented scale. But, the old order is refusing to yield to the new. The project of democratic decentralization still remains an unfinished task. This will be evident from the discussion that follows.

Present Status of Devolution

The Constitution intended instiutionalization of adequately empowered rural local governments at the village, district and intermediate levels. This implied that the *Panchayati Raj* bodies should be endowed with sufficient powers over significant activities, along with adequate financial and administrative resources, to discharge the responsibilities transferred to them. In other words, functions, finances and the functionaries (the so-called three Fs) were required to be devolved to the *Panchayati Raj* bodies, in a significant manner. As mentioned, the responsibility of doing this was left to the individual State governments. But in most States, the progress made in this respect is not yet satisfactory. All the State Acts on *Panchayats* have, no doubt, incorporated the mandatory provisions of the Constitution, but when it comes to the question of devolution of functions and resources to these bodies, in order to enable them to act as self-governing institutions, most Acts draw a blank and offer

hardly anything new. The pattern that emerges in respect of functional devolution to the *Panchayats*, in most of the States, is roughly as follows.

Large numbers of functions are generally assigned to the lowest tier, namely the *Gram Panchayats*. The assignment of functions, however, is not matched by the concern for providing adequate finances and staff support, in order to enable these institutions to discharge their responsibilities. In the circumstance, the list of functions given to them in the statutes loses much of its value.

The functions are described in broad general terms, for example, "primary education", "women and child development" or "promotion of fishery". For all such functions, there are specific departments of the State government, with their offices located at the districts, Blocks or even villages. These offices of the line departments are already performing several activities relating to such broad functions. The specific activities among them that would be transferred to the local councils are not identified. The management of the field-level institutions, like the health centres or child care centres or the primary schools, remains the responsibility of the respective line departments. As a result, many activities under any of the broad functions, which are assigned to the *Panchayats* by the State Acts, do not get transferred to them in real terms, and the line departments continue to discharge the functions as before.

Under the above arrangement, there is no exclusive jurisdiction of *Panchayats*, in respect of various development and welfare functions listed in the 11th schedule of the Constitution. What the State Acts have done is merely to "permit" the *Panchayats* to work in these fields. Since, the funds and staff support, necessary for discharging the activities indicated in the statutes are not provided, acquiring only the "right" to function in certain fields does not carry much sense. The Constitution intended devolution type of transfer of power and authority to the local bodies. This means that the *Panchayats* should have exclusive jurisdiction over the functions or activities that are devolved to them. This is possible, if the functions or activities assigned to the

Panchayats, are correspondingly withdrawn from the respective line departments of the State government. Such a concept is absent, as the idea that the local bodies might substitute the existing delivery system of the State government in certain areas, is taking time to take roots. In most cases, they are being conceived as yet another implementing agency within the existing delivery system under the control of the State government.

It is generally true that the *Panchayats* have exclusive jurisdiction over the civic functions, as there is no agency of the State government to look after the village roads, street lights, conservancy, sanitation, maintenance of public tanks, crematorium / graveyard etc. But, here also, because of the paucity of funds and lack of control over technical personnel, the *Panchayats* remain dependent upon the State institutions for providing services. Thus, even with respect to providing civic services, *Panchayats* functional autonomy is restricted.

Even though the Constitution has empowered every panchayat to prepare area plans for development, many State Acts do not give this role to the *Gram Panchayats* and the intermediate panchayats. Even where such responsibility is given, *Panchayats*' capacity to prepare holistic development plans gets undermined, because of their lack of autonomous jurisdiction in several vital developmental subjects, apart from their lack of access to untied funds.

If creation of an exclusive functional jurisdiction for the local councils still remains a somewhat elusive goal, the fiscal capacity of these institutions has not yet been sufficiently strengthened. Although, the fiscal profiles of *Panchayats* of different States are not uniform, the general pattern obtained in most States is as follows[14].

- The extent of fiscal decentralization through the empowerment of local bodies is not yet significant.

- *Panchayats* are mostly grant-dependant. Most of such grants are in the form of specific-purpose grants. Development

activities of these bodies are mostly financed by the schemes sponsored by the central or State governments. They have very little untied funds at their disposal.

• *Panchayats*' capacity to raise revenue locally is extremely limited. Most *Panchayats* cannot balance even their revenue budgets, by using their own fiscal powers.

The silver-lining, in this rather unhappy picture of the financial capacity of the rural local councils, is that a consensus is growing slowly that the *Panchayats* have a legitimate claim over a part of the State revenue, thanks to the recommendations of several State Finance Commissions (SFC). Some SFCs have recommended for the creation of a divisible pool, and specified entitlement of the local bodies to such resources, on the basis of certain transparent principles. Some SFCs have also recommended transfer of State revenue for operation and maintenance of assets. The federal finance commissions have also been providing funds to the local bodies from the central divisible pool[15].

The record, in respect of placing adequate staff at the disposal of the rural local councils, is also not satisfactory as yet. With the exception of a few, most States have not made any attempt to transfer their field-level staff to the *Panchayats*. Nor any viable arrangement has been made to build separate cadres for the *Panchayati Raj* institutions. Accordingly, their administrative capacity also remains poor.

From the above account, it will be seen that while political decentralization has made considerable headway, the functional, fiscal and administrative decentralization has not kept pace with it. Within this general picture, however, exceptions have to be noted. For these exceptions reveal the potentialities of the Constitution amendments in deepening democracy, and transforming the bureaucratic character of local administration. There are several States like West Bengal, Maharashtra and Gujarat, where *Panchayats* were quite strong, even before the enactment of the Constitution Amendment Act. Some other States, like Kerala, Karnataka

and Madhya Pradesh, have taken significant steps in strengthening the *Panchayat* system, and to introduce participatory governance at the local level. However, of all the States of India, Kerala has taken the longest stride, in making democratic decentralization a reality. In many ways, this State has shown how the agenda of decentralization, embodied in the 73rd Constitution amendment, should be pursued. As such, we shall discuss, in brief, the major features of Kerala's decentralization initiatives.

Panchayat Reform in Kerala

Kerala's gram *Panchayats* have a very long tradition, dating back to the pre-independence days. But its three-tier *Panchayat* system, with the mandate of achieving development goals, is of recent origin, being the product, basically of the 73rd Constitution amendment. In 1996, soon after a leftist government came to power in the State, Kerala embarked upon a massive programme of decentralization, through the *Panchayati Raj* institutions and the municipalities. The starting point of this programme was the bold decision of the State government to take a "big bang" approach to decentralization, by devolving as much as 35-40 percent of its plan funds to the local bodies in untied form, and institutionalizing the process of participatory planning at the level of each *Panchayat* or municipality[16]. A detailed methodology of participatory local level planning was developed, in which the common people could find space to express views on their urgent needs, and the local councils had the autonomy in taking decisions on local development projects, within the framework of broad guidelines given by the State planning board. The most remarkable aspect of the decentralization initiatives of Kerala Government, during the mid-1990s, was the radical transformation of the *Panchayat* system. It elaborated and concretized the concept of participatory government at the local level and, thus, tried to put into practice, the principles embodied in the 73rd Constitution amendments. For this purpose, the State amended its Panchayat Act and the rules thoroughly, and took many vital executive actions, to put in place, viable and autonomous local government institutions. The salient features of these reform measures are as follows[17]:

Functional, financial and administrative autonomy of the local bodies: A large number of subjects, relevant to local development, have been transferred to the local bodies. The subjects, thus transferred, have been divided into individual activities and sub-activities, and then assigned to the three tiers of *Panchayats*, following the principle of subsidiarity as far as possible. The institutions created for service delivery in various sectors, such as health centres, primary schools, veterinary hospitals, child care centres etc. have been brought under the management of *Panchayats*. The staff and funds, necessary for running these institutions, have also been devolved to the appropriate *Panchayat* bodies. Steps have been taken to strengthen the financial capacity of the panchayats, in three ways. Firstly, a portion of the plan funds of the State Government continues to be provided to the local bodies in untied form, to enable them to prepare plans based on local needs and priorities. Secondly, the fiscal powers of the local bodies are being strengthened, so that they can raise more resources from their own sources. Thirdly, fund that is required for managing the transferred institutions is met from the State budget.

People's participation: *Panchayats* have been encouraged to involve people in decision-making. For this purpose, *Gram Sabhas* have been given substantial powers. For preparing annual development plans, *Panchayats* are required to go through an extensive consultative process, in which, the common people can participate. Involving the beneficiaries in implementing the public works projects is another means of enlisting people's participation.

Transparency and accountability: Kerala has taken several steps to introduce transparency in the functioning of *Panchayats*. This includes elaborate arrangements to ensure the right to information. The citizens have the right to access any information from the *Panchayat*. They may even procure copies of official documents relating to financial transactions on payment of nominal fees. The *Panchayats* have to give wide publicity, before they take up any public works activity in an area. At the *Gram Sabha* meetings, they have to place their accounts and audit reports. Any citizen, who has been denied a certain benefit under any individual beneficiary-

oriented scheme, has the right to know why his or her claim has been rejected. Besides, the *Panchayats* have been asked to adopt citizen's charter. Various transparency guarantees have been accompanied by revamping both upward and downward accountability procedures. The tools adopted for this include performance audit, social audit by local citizens, introduction of beneficiary committees for execution of public works projects and creation of the institution of Ombudsman.

Kerala has silenced the critics of *Panchayati Raj*. In evaluating the experience of decentralization only a few years after the reform was launched, it was found that in respect of provisioning of "shelter, drinking water, sanitation facilities and connectivity, the local governments … performed beyond expectations. In other sectors, particularly in agriculture, animal husbandry, health and education, there have been good models, which can be studied and replicated"[18]. Kerala has also shown that it is possible to transfer functions and responsibilities to the local bodies in one stroke, without taking an incremental approach, provided the decentralization process is "guided with care, and the unexpected issues and challenges thrown up by the process … [are addressed] very promptly [and] with commitment"[19].

Conclusion

Kerala has rightly become a role model for the rest of the country, in respect of creating genuine institutions of local democracy. In some other States like West Bengal, Maharashtra, Gujarat, Karnataka or Madhya Pradesh, steps have been taken from time to time to empower *Panchayats*, but the task of democratic decentralization, as envisaged in the Constitution, still remains far from being complete. In many States, the fates of the *Panchayats* are going through vicissitudes, laudable attempts to empower these institutions by some regimes, being stalled by some other regimes.

The uneven progress in the institutionalization of *Panchayats*, reminds one of the fact that the difficulties in the implementation of the 73rd Constitution amendment, not only

in letter, but also in spirit, are quite formidable. But they are certainly not insurmountable. In an important book on India, a perceptive scholar observes that "as an idea, as a seductive and puzzling promise to bring history under the command of the will of the community of equals … [democracy] has irreversibly entered the Indian political imagination. A return to the old order of caste, or rule by empire is inconceivable: *the principle of authority in society has been transformed*"[20]. This, indeed, is the reality. Democracy has not only survived in India, it has churned every section of the society. Political participation is not restricted to the elites only. Today, numerous people belonging to the lowest strata of Indian society are found to be interacting with the agencies of State in both positive and negative ways, signifying that the "state and the politics around it are becoming increasingly important" in their lives[21]. They are registering their voice in various ways to let others know as to how they would like to be governed. Their modes of expressions sometimes fail to maintain the norms of democratic practice, because quite often the institutions, through which they could ventilate their hopes and aspirations and even anger, are found to be inadequate or inaccessible. This calls for expansion and reform of the democratic institutions, so that the State becomes relatively more accessible and responsive to the common people. In this context, "achieving greater democracy at the local level" becomes "a crucial component of the … task of transforming the practice and quality of democracy in India"[22]. The forces that have a vested interest in maintaining the *status quo,* are mounting resistance against attempts to empower the institutions of local government. This need not make one despondent, for there are positive signs that the constituency of those who seek greater democracy at the grassroots level is getting stronger gradually. There are reasons to believe that the idea of local democracy can no longer be stopped, because its "time has come" in India.

Notes and References

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3. Jawaharlal Nehru's speech at the Constituent Assembly, New Delhi on 14 August, 1947 cited in *Jean* Drèze and Amartya Sen (2002), *India: Development and Participation,* New Delhi: Oxford University Press, P 1.

1. For an account of the community development programme and its impact on local administration, see P.R. Dubhasi (1970), *Rural Development Administration in India*, Bombay: Popular Prakashan.

4. The study team was headed by Balvantray G. Mehta, a Gandhian leader of Congress party and former chief minister of Gujarat. See Government of India (1957), *Report of the Study Team for the Study of Community Projects and National Extension Service*, New Delhi: National Development Council, Committee on plan projects.

5. While inaugurating the first panchayati raj system in India at Nagaur in the State of Rajasthan on 2 October, 1959, Jawaharlal Nehru hailed it as 'the most revolutionary and historical step in the context of new India'. Quoted in George Mathew (2000), 'Panchayati Raj in India: An Overview' in George Mathew ed. *The Status of Panchayati Raj in the States and Union Territories of India, 2000,* New Delhi: Institute of Social Sciences and Concept Publishing Company, P 6.

6. *See* Government of India (1978), *Report of the Committee on Panchayati Raj Institutions*, Ministry of Agriculture and Irrigation, Department of Rural Development.

6. India is seventh-largest country in the world having an area of 3.29 million sq km. With more than a billion people, it is second largest country in terms of population. India is a land of great linguistic diversity. According to the 1991 Census, there were at least 114 languages in India, besides many dialects. There are 23 official languages in India. Among them Hindi and English are official languages of the central Government. In terms of religion, even though more than 80 percent of population are Hindus, there are sizeable numbers of Muslims, Christians, Sikhs,

Buddhists and Jains. Administratively, India is divided into 28 States and 7 Union Territories of which at least 18 States have a population of over 10 million each and 5 among them are inhabited by more than 75 million people.

7. On this see Buddhadeb Ghosh and Girish Kumar (2003), *State Politics and Panchayats in India*, New Delhi: Manohar and Centre De Sciences Humains.

8. Cited in D. Bandyopadhyay (2005), 'Rajiv Gandhi and the third tier of governance' in L.C. Jain ed. *Decentralisation and Local Governance*, New Delhi: Orient Longman. pp 84-6.

9. 74th Constitution amendment relates to the urban local government institutions. This paper deals with the rural local government institutions and, therefore, focuses only on the 73rd amendment.

10. Some authors think that the introduction of the institutions of self-government at the sub-State level has the potentiality of transforming the two-level Indian federation into a multi-level federation. For, with the pachayats at the district, village and intermediate levels, 'each State … would become a federation; so would each zilla parishad [district panchayat]. Decentralisation below the State level would … require a new system of governance which would go beyond mere development-linked administrative decentralization and enable district and lower institutions to become really self-governing. India would then have a cascading federalism: federation of federations'. See Nirmal Mukarji and Balveer Arora eds. (1992), *Federalism in India: Origins and Development*, New Delhi: Vikas Publishing House, P 270.

11. People belonging to the Scheduled castes (SC) constitute communities that had traditionally remained at the bottom of the social hierarchy of the Hindu society. They along with

the communities of Scheduled tribes (ST) have been subjected to extensive social and economic disadvantage with practically no possibility of upward mobility. Together they constitute more than 24 percent of India's population. The Constitution of India has accorded a special status to the SC / ST communities in order to enable the state to take various affirmative actions for their development.

12. See Nirmal Mukarji (1993), 'The Third Stratum' in *Economic and Political Weekly,* May 1.

13. Citizen's participation in public debates and discussions is vital for making democracy work for common people. They can 'play a major part in the formation of values. Indeed, even the identification of needs cannot but be influenced by the nature of public participation and dialogue. Not only is the force of public discussion one of the correlates of democracy, with an extensive reach, but its cultivation can also make democracy itself function better'. See Amartya Sen (1999), *Development as Freedom,* New Delhi: Oxford University Press, P 158.

14. On fiscal decentralization, see Shikha Jha (2000) 'Fiscal Decentralisation in India' in World Bank, *Overview of Rural Decentralisation in India*, Vol III, New Delhi and M.A. Oommen (1998), *Devolution of Resources to Local Bodies*, Institute of Social Sciences, Occasional paper 21, New Delhi.

15. For a brief discussion on the reports of the State finance commissions of several States, see M.A. Oommen (2005), 'Rural Fiscal Decentralisation in India: A Brief Review of Literature' in L.C. Jain ed. *Decentralisation and Local Governance*, New Delhi: Orient Longman, pp 244-250.

16. On this, see T.M. Isaac and Richard W Franke (2000), *Local Democracy and Development: People's campaign for decentralised planning in Kerala*: New Delhi: Left Word.

17. For details, See T.M. Isaac and S.M. Vijayanand (2000), 'kerala' in George Mathew ed. *The Status Of Panchayati Raj in the States and Union Territories in India, 2000,* and Government of Kerala (1999), *Report of the Committee on decentrlisation of powers*, Thiruvanatapuram.

18. See T.M. Isaac and S.M. Vijayanand (2000), in George Mathew ed., *The Status Of Panchayati Raj in the States and Union Territories of India, 2000.* P163.

19. Ibid.

20. Sunil Khilnani (1999), *The idea of India*, New Delhi: Penguin Books, P 60, emphasis added.

7. Sudipta Kaviraj (2003), 'In search of civil society' in Sudipta Kaviraj and Sunil Khilnani eds, *Civil Society: History and Possibilities,* New Delhi: Cambridge University Press, pp 316-8. Also see in this connection Partha Chatterjee (2004), *The Politics of the Governed: Reflections on popular politics in most of the world*, New Delhi: Permanent Black.

8. Jean Drèze and Amartya Sen (2002), India: Development and Participation. pp 358-9.

Citizens Campaign for Women's Representation in Local Government

Shabeena Ayaz

This paper focuses on the campaigns run by the Aurat Foundation (AF) for women participation in Local Government elections. It cites several incidents and examples from the North West Frontier Province (NWFP), which form most of my work experience.

Pakistan is a federation comprising four provinces, with a multiparty, democratic system and a parliamentary form of government. The federal government consists of a prime minister and a bicameral legislature -- the National Assembly and Senate. Pakistan has gone through a turbulent period of nationhood in the 59 years of its existence. During this period, three separate constitutions were framed in 1956, 1962 and 1973. It took Pakistan 23 years, after independence, to hold its first general election to Parliament in 1970, on the basis of the adult franchise.

The population of Pakistan is approximately 158 million, out of which 50 million are currently living below the poverty line. Poor governance is a key factor in the current social and economic depression in Pakistan. The civilian governments and military regimes pay no attention to the strengthening of the democratic institutions or developing a democratic culture. The Pakistani society continues to move towards democratization in fits and starts. The elected government, currently in power in Pakistan, has compromised with the military, and the key security and political decisions continue to be made outside of the Parliament.

It is amply evident that women and girls in poor households bear a disproportionately high share of the burden of poverty. Their greater deprivation is due to restricted mobility, lack of education and training, lower access to or ownership of resources and assets,

discrimination in labour markets, and limited access to credit and social services. As a result of this, the Pakistani women have limited participation in decision-making in all spheres of life, from family to the state. This is a vicious cycle, where women have no say in the decisions affecting their economic and social status in the society.

Women's Participation in Political Decisions at the Local Level

In order to encourage women's participation in political decision-making, special legal provisions for women's seats in the legislative bodies, have existed since 1935 in the Sub-continent. The elections to the Local Government institutions were held six times (1956, 1979, 1983, 1987, 1991-92 and 1998-99) until the year 2000. The first four were held under the military regimes. The 1991-92 and the 1998-99 elections, were held only in the Punjab and Balochistan, during the first and second tenures of the then prime minister, Nawaz Sharif.

After the military takeover on 12th October 1999, General Musharraf's regime announced its 7-point agenda. The Devolution of Power Plan was part of this agenda. The plan was unveiled on 14th August 2000. The polls were held in five phases, from December 2000 to August 2001, for the Union Councils, based on adult franchise, separate electorate and non-party basis. The elections for *Tehsil* / Town and District councils were held in two phases, in August-September 2001, through an indirect election modality. The elections were held under separate provincial ordinances promulgated for the purpose.

The Local Government Elections 2005 were held behind the schedule. The government was in secret talks with the opposition that led people to think that there would be some sort of mutual understanding between the government and the opposition, that would lead to snap polls; hence there would not be any need for holding the Local Government elections. However, at last, the government announced the poll schedule. Before the elections, the government introduced drastic changes to the Local Government system.

For example, the Local Government Ordinance 2001 and that of NWFP, underwent 89 amendments.

The Local Government elections were held in four phases, from 18th August to 28th December 2005. The Union Councils elections were held in the first and second phases, from August 18th to 25th August 2005, while the Nazim and Naib Nazim elections took place in the third and fourth phases, from October 6th to 28th December 2005**.**

The Role of Aurat Foundation

Aurat Foundation has been working for the empowerment of women since 1986, with the belief that, while many crucial inputs are required for better governance, one of the key elements missing from our political canvass is the role of citizens organizations. The Foundation considers it critical to bring citizens organizations to play an active role, to articulate the collective interests of the citizens, for greater representative and accountable governance.

As one of the main dimensions of social capital, effective citizens organizations are needed, to act as pressure groups, for elected governments to push for more transparency, reflection of merit, rule of law and accountability in decision-making, by the public representatives, and the executive and judicial arms of the State.

The other key missing element is that of women's participation in political and economic decisions at all levels. This means that women's priorities and their concerns are not reflected in the allocation and utilization of resources in the country. However, this active role, in decision-making, will be possible only if women are able to have access to and a hold on knowledge, resources and decision-making institutions. Only then will they have the confidence and the means to bring about a quantitative and qualitative change in their lives. Women's participation, particularly in Local Governance, has had significant implications for development planning and poverty reduction.

However, it is well understood and clear that women's participation in the political decisions is not a "stand alone" process. It is directly related to the larger citizens' participation in governance, as the latter creates the required space for women to play their active role in societal development.

Therefore, Aurat Foundation defined its niche in the generation and dissemination of knowledge for women, as well as, in carrying out advocacy based activities, for them to strengthen their capacities for decision-making in the society. The Foundation further interacts and networks with various citizens organizations, on political issues, to strengthen them to work for women's empowerment, citizens rights and good governance in Pakistan.

Aurat Foundation, hence, works with the activists comprising citizens groups, to strengthen social capital in Pakistan. As its key strategic partners, the activists groups and organizations have helped Aurat Foundation strengthen its outreach across the country. Thus far, the Foundation operates, through a regular and systematic mode of collaboration, with citizens groups, in 70 districts of the country. It now has the largest network, covering all the districts of the country. Our network of over 1,400 information focal points, at the community level, is being integrated with the citizens groups at the district level, to ensure community women's access to resources, public representatives and local power elite.

At the same time, linkages have been built at the macro level, with the political groups in all the legislatures, and with policy-makers and planners in the provincial and federal governments, to work for creating an enabling environment for women at the grassroots level.

In the early 1990's, however, women and human rights organizations developed a consensus, with woman members of various political parties, on the specific demand for 33 percent reserved seats for women, at all levels of legislatures and the Local Government, to be filled up through direct elections.

In 1993, Aurat Foundation launched a nationwide campaign, to take the issue to its larger network of partner organizations, and to lobby with the government. However, when it came to lobbying at the federal level with different civilian governments, representing both the major political parties, the main response to 33 percent reservation of seats for women was negative because, "There are no women out there". The condition of direct elections was dismissed out of hand as being "unrealistic in the social conditions of Pakistan".

When the military regime of General Musharraf accepted the demand, it presented a challenge to the civil society organizations that had campaigned for it. Since this was achieved as a direct result of their lobbying, it became all the more important to look for "the women out there". The "Citizens Campaign for Women's Representation in the Local Government'" was the response to this challenge.

In September 2000, Aurat Foundation launched a national campaign to mobilize woman candidates to contest against all the Local Government reserved seats, along with the general seats. The Aurat Foundation staff, together with their partners, visited 106 districts, covering almost all the 6,022 Union Councils, the lowest tier of the Local Government. Through advocacy, facilitation and support at the local level, a large number of women came forward as contestant candidates. They were provided orientation and facilitation for nomination. Aurat Foundation also gained a great deal of experience, of local level politics, and strengthened its contacts with the government machinery involved in the electoral process, as well as, with the organizations and activists working at the district level.

The elections were held in almost all the 6,022 Union Councils, and 32,222 women were elected as local councillors at the Union Council level alone. All the Union Council members, men and women, at tehsil and district elected another 4,167 to the tehsil and district levels, through indirect elections. While the creation of reserved seats for women would have brought forward a number of women anyways, this nationally-recognized campaign made it

possible to fill up 96 percent of the women's seats, resulting in the election of over 37,000 women councillors. The by-elections, in the beginning of the year 2004, brought another 2,578 women against the vacant seats, taking the overall coverage to over 97 percent. This is, no doubt, a milestone in the history of Pakistan's political development, and has created the potential to significantly broaden the democratic base and bring women into the mainstream of the local political life.

One key focal group, the Aurat Foundation has begun to work with, particularly since the year 2000, is that of woman councillors. They are now being integrated into the larger network of Aurat Foundation, for enhancing their capacities and strengthening their capabilities as public representatives. For this purpose, Aurat Foundation Resource Centres have been set up in 70 districts of the country, and networks of woman councillors are being formed in various districts. The "Citizen groups" are assisting them to run advocacy campaigns and in building important political and economic linkages. Such endeavours are initiated to ensure that any future government does not revoke the reservation of 33 percent seats, through direct elections, for women in Local Government.

In 2005, when the next Local Government elections were due, the government was hesitant to hold the polls, owing to their own self-interests. This led many to think that there would be some sort of a mutual understanding between the government and the opposition. However, soon, the government announced the schedule for the polls, but with a radical change in the Local Government system, followed by changes made in the Local Government ordinances in all the four provinces of the country. The important change made in the Local Government ordinance, that negatively impacted women's participation, was reducing the number of women seats from 6 to 4. The right to elect a greater number of representatives was, thus, being snatched away from the masses. This also obviously affected the larger representative nature of the Union Councils, and overall representation of women.

Citizens Campaign for Women's Representation in Local Government Elections

The second Local Government election was held in phases from 18th August to 28th December 2005. The Union Councils elections were held in the first and second phases, from 18th to 25th August 2005, while the Nazim and Naib Nazim elections were held in the third and fourth phases, from 6th October to 28th December 2005. Aurat Foundation again launched a countrywide campaign in 110 districts, covering 6,127 Union Councils, to ensure women's participation in the Local Government election of 2005.

The general objectives of the campaign were:

- To mobilize woman candidates in 6,127 Union Councils all over the country;

- To create public acceptability about the role of women as public representatives;

- To create an enabling environment, at the local level, for prospective candidates; and

- To provide an orientation to women candidates about the Local Government system and the electoral process.

The overall strategy included the setting up of a National Steering Committee (NSC), with major national support organizations and representatives of labour federations, as well as, the media. The Provincial Steering Committees (PSCs) were formed on the same pattern, involving the major provincial or regional support organizations. The National and Provincial Steering Committees were supported by secretariats, setup within the Aurat Foundation, at its offices in Lahore, Karachi, Peshawar, Quetta and Islamabad.

The District Coordination Committees (DCCs) were setup at the district level, on the same pattern, comprising community-based organizations and activists. The DCCs were also formed at the tehsil level by the Provincial Steering Committees. The DCCs handled the actual coordination and

implementation of the campaign activities at the grassroots level.

The major activities undertaken were:

- Dissemination of material on the Local Government system and election procedures;

- Dissemination of material on women's reserved seats;

- Facilitation in provision of ID cards;

- Facilitation in the process of voter registration;

- Organizing support building meetings at the Union Council level;

- Identification of women willing to contest elections;

- Providing trainings (TOTs) to local activists for the orientation of women candidates;

- Organizing orientation meetings for women candidates;

- Liaising with election authorities and the district administration;

- Offering legal help to women candidates;

- Selective monitoring on polling days;

- Liaising with the media to project the activities at the district, provincial and national levels.

To achieve the objectives of the campaign, thousands of support-building meetings were held in the Union Councils. These mobilization and support building meetings were organized with only one agenda: the representation of women in the Local Government elections, as candidates and as voters.

To assist and provide information and legal help to women candidates, 273 facilitation camps were setup across

the country. The idea of setting up facilitation camps proved its worth in the Local Government election of 2000-1. However, for the Local Government election of 2005, such facilitation camps were established only in the province of NWFP, totalling to 51 during the two phases of the Local Government polls, at which 31, 542 people were facilitated. As a result of an intense interaction with people, across all sections of the society, camps were visited by not only a large number of women candidates but also men.

The Aurat Foundation camps maintained voter lists, posters, replica ballots, Aurat Foundation staff and DCC members, as well as, lawyers. On priority basis, the Foundation instantly took up any problems faced by the potential candidates, with the relevant authorities, and were redressed.

The courts and the lawyers' community extended help to the camps. Other Civil Society Organizations (CSOs) and Community Based Organizations (CBOs) activists also provided help. There was also cooperation from the government, as all the camps were allowed to be setup by the sessions judges, who obviously represented the government. The government provided security by deputing police, whenever and wherever needed and requested.

These camps helped the DCCs to establish contacts with the potential candidates and their supporters. It created goodwill for the DCCs, that could be relied on and contacted later, including for attaining any information required.

The DCCs also organized a large number of training workshops (TOTs) for women and men activists. This was followed by identifying female activists, who were provided with the required orientation, as potential women candidates, at the tehsil and Union Council levels. The entire process followed a cluster-based strategy, combining three or four Union Councils. A total of 33,527 potential women candidates and their election agents attended these sessions.

Such an exercise proved useful and beneficial as the WPLGE campaign staff had the opportunity to interact with

the volunteers, and to get to know their views about various women's issues. The campaign teams made an effort to select mostly women as trainers, keeping in view the cultural norms. Women candidates were also involved in the process, as they had already undergone capacity-building trainings, conducted by Aurat Foundation, in different districts, under its various projects. These women certainly had an edge over others, in terms of a clearer understanding of women representation issues. They also had the advantage of relating their own personal experiences, as representatives, during the training sessions.

Overall, the participants were briefed on the political participation of women and how to run a campaign and vote-casting through the replica ballot. The trainings also helped the trainers to prepare a database of candidates, through the forms which were filled out by the trainers.

As the campaign gained pace, and its message spread across the districts, requests were received from the major political parties to provide an understanding of the new electoral system to their candidates, including men. Political parties also used the campaign material during their own electoral drives. Most of the DCCs also assisted the government registration and election authorities' in facilitating the provision of identity cards and voter registration, in electoral polls.

The campaign had a quick redress mechanism. Any problems in the field, that could not be handled locally, were communicated by the DCCs, to the national and provincial secretariats. The campaign management, at all levels, was constantly in touch with the Election Commission and the Ministry of Local Government, and was readily able to get an immediate response, as well as, relief in most cases.

The campaign staff was prompt in raising and responding to the issues, and taking the same with the relevant authorities. The issue of an increase in minority seats, in the Kalash valley, raised by Aurat Foundation, is perhaps, the best example. The Kalash valley is a far-flung area in Chitral, with a considerable number of non-Muslim

inhabitants. Here the proportionate increase in the minority seats did not take place, although it was clearly mentioned in the Local Government Ordinance 2001, that if in an area, the minority is more than 10 percent of total population of the Union Council, the seats for the minorities will be increased accordingly. This rule, as stated, was not implemented in the Kalash valley. The Aurat Foundation, henceforth, took up the issue with the concerned authority and the Kalashi minority was, as a consequence, able to get another seat, with the approval of the government. The nomination papers filing fee, for women candidates, was Rs. 1500. The Aurat Foundation viewed this amount to be on the higher side, considering the economic status of people in general and that of women in specific. It, therefore, took up the issue with the Government, and made a case for reduction in fee. The provincial government conveyed the issue to the central government. A notification was issued and the fee was cut down to Rs. 500, ultimately benefiting a large number of the prospective candidates.

Whereas, Kohistan, Lower Dir and Battagram remained difficult districts, as far as women's participation in the electoral process was concerned. Before the Local Government elections 2005, an agreement was inked in Lower Dir, by local chapters of the religio-political parties, on 13th July 2005, calling for abstaining women to participate in the electoral exercise. Another such anti-women accord was struck in Battagram on 23rd July 2005. The Aurat Foundation moved against these steps for disenfranchisement of women through its District Coordination Committees (DCCs), formed in the districts to mobilize women for elections. A proper strategy was devised. It was decided to intervene in these areas through Ms. Nilofar Bakhtiar, Adviser to the Prime Minister on Women's Affairs. While the Adviser was in Peshawar, Resident Director, Aurat Foundation, Ms. Rukhshanda Naz, visited her and discussed the issue of women's representation and the role of the Civil Society Organizations. The Aurat Foundation planned two activities in Lower Dir and Battagram, on the basis of legalities or the standing legal status. The first entailed symbolic ceremonies, for women candidates, to encourage women to participate and to discourage the conservative elements. The Adviser's

visits to Lower Dir and Battagram, positively forwarded a strong message to the retrogressive forces.

Secondly, the Adviser, in different meetings, with the civil society and the government representatives, directed them to create a conducive environment for women's participation in the upcoming Local Government elections. Later, she went to Lower Dir and Battagram, where she met with different segments of the society and asked them to allow women to participate, as it was the right given by the Constitution of the country and Islam. She also took three women candidates to the respective Returning Officer for filling their nomination papers in Lower Dir.

The strategy to keep a close contact with the district networks paid off well: the DCCs / TCCs performed the task assigned to them efficiently, and in the shortest possible time. As well as, the camps setup by them proved to be very effective: they covered the entire district through mobilization meetings and conducted the trainings of the candidates etc.; the staff was dedicated and performed well, both at the regional and district levels; they did all the work on their own and no outside resource persons were involved; the huge task was carried out despite the time constraint; most of the staff had the capacity to deliver and were more than ready to act, although the work of some was hampered because of the limited time at hand.

Further, the media management of the campaign was done on scientific basis, and as a result, the role of the media remained positive and supportive in the latest Local Government elections: there was less negative propaganda against women participation in the electoral process and in the civil society.

Aurat Foundation and the DCCs kept a close contact with the media persons, at the regional and district levels. The regional office released the information under the caption of "Election Update" to the Press, to update them on the WPLGE activities, and the issues raised about women's representation. As effective strategy was to involve the well-known media persons, including main office-bearers of

provincial journalist organizations and clubs, media experts, television and radio producers, as members of the NSC, all the PSCs and most of the DCCs. The main purpose of forming the Media Committees was to provide information to the journalists at the district level, from the focal office, which was basically the DCC office. Thus, the DCC activities and women's political issues were regularly highlighted through the media.

The media, on the other hand, maintained its level of support as they had in the elections of 2000-2001. In the Local Government elections 2005, quite a good number of news items, about women's participation in the electoral process and the campaign activities, appeared in both the national and regional Press. However, this time on, there was, relatively speaking, a positive difference with added value. For example, columns, reporters' diaries, articles and editorials appeared to bring to the fore, the problems faced by women in the electoral process. Compared with the national Press, the local newspapers, at the district level, gave more coverage to women candidates, by publishing their statements and even interviews.

When there were agreements on barring women from the electoral process in Battagram and Lower Dir, the print and electronic media gave due coverage to these happenings. It must be acknowledged that it was because of the proper coverage and highlighting of such anti-women agreements, by both the print and electronic media, that the government moved and decided to take action against such developments.

The media also highlighted the government's undue interference in the Local Government polls. It featured the favouritism exercised in deputing the election staff, providing insufficient supplies of election material / stationery and provision of other facilities to the election staff during the polling day, as well as, spotlighted the polling day irregularities.

Indeed, the growing number of FM radio stations and the television channels of the private sector, helped

strengthen the efforts of women's participation in the Local Government elections of 2005, as well as, their participation in the Local Government polls, by giving it significant coverage and importance.

The Aurat Foundation had bought air time at the FM radio stations. The programmes were aired from the districts, by the local activists, in regional languages, to highlight the importance of women's participation in the Local Government polls. The programmes, under the FM radio stations, were well received by the public and its impact positively felt. One of the main reasons for this was that the auditory range of the FM radio stations was greater, covering more areas, and hence, reaching a larger number of people. The interesting aspect of the programmes was that calls were received from the listeners, which were instantly responded to. Such calls well exhibited the interest, as well as, participation of people in the issues at hand. The strategy to involve the local resource persons in these programmes allowed for citation of examples from their own areas, attracting attention of the people of those local communities. Such programmes also strengthened the position of these local resource persons in their respective districts.

The Compact Disk (CD) recordings, prepared by Aurat Foundation were also shown at the district level, through the cable television networks. Video Cassette Recorders (VCRs) were used in the districts, where there was no television cable network facility. Messages from prominent figures of national repute and women councillors were aired through these CDs.

Concurrently, the Aurat Foundation prepared a set of booklets, pamphlets, posters, stickers and audio-cassettes in four languages. These were distributed in large quantities throughout the campaign, and served as a major source in motivating women to come forward as candidates. The demand for these materials increased manifold, owing to the interest of the candidates, both males and females, political parties, district administration and election authorities.

The replica ballot proved to be the most important information material. It was used not only by the campaign staff but also other organizations working for women's participation in Local Government polls. Even a *Jamaat-e-Islami* (JI) affiliated NGO requested Aurat Foundation, for the replica ballot material, for the purpose of disseminating the information in their training programmes. The request was accommodated twice. Overall, the material was widely distributed through various civil society organizations, trade unions, community development workers, political activists, provincial line departments, newspaper distributors and truck, bus and van drivers, as well as, through the facilitation camps.

Difference Between the Past and Present

In comparison with the first election, held under the Devolution Plan, in 2000 / 2001, the situation for the second election of 2005 was, socially and politically, much more favourable for campaigning in NWFP. The following are some of the advantageous and supportive happenings:

> The strong intervention of the religious parties, through senior party heads, specifically the *Muttahida Majlis-e-Amal's* (MMA) women parliamentarians, made their constituencies more active, unlike in the past. For example, in the first Local Government elections, most of the religious political parties, especially the *Jamiat Ulema-e-Islam* (JUI), had boycotted the polls, and were deadly against women's representation in the Local Government polls. But in the second election of 2005, there was no opposition from the religious political parties. Instead the political parties were rather enthusiastic and active, where political parties like JUI and Awami National Party (ANP) had already formed the women's wing, and Pakistan People's Party (PPP) and Pakistan Muslim League (PML) further strengthened their women's wings. The JI changed its stand

against women's representation in Dir, through mobilizing women's supporters for the polls in NA-35 by-poll in Malakand, and their candidate Mr Bakhtiar Mani was elected to the National Assembly, against Pakistan Muslim League-Quaid-e-Azam (PMLQ) candidate, and strongly supported by the Federal Government.

In the first election, religion was used as a strong political tool to dissuade women from entering the political arena. Written agreements were struck within and between political parties, and *Jirgas* were convened to bar women from the electoral process. Contrarily, in the second election, as a result of the advocacy pressure, by the civil society and the interests of the political parties, no such written accords took place. Instead, rather weak cultural and social reasons were cited to obstruct women's participation in the Local Government poll process. This time on, the conservative elements faced tough resistance in furthering their narrow agenda.

In the second Local Government election, there were differences within the MMA over participation in the election. The two main components of the six-party alliance – *Jamaat-e-Islami* and *Jamiat Ulema-e-Islam* -- contested the elections separately, and in certain cases against each other. This trend led to more fielding of women as candidates, as they contested from two different platforms.

The *political* parties fielded their woman candidates and that increased the number of the contestants. Former women councillors, who already had the experience and the vision, came forward to contest on party basis, or even as independent candidates, if

the party support was denied. However, with the increase in the number of contestants, the contest between these women (in the second election) became tougher, as the number of reserved seats for women was cut down from 6 to 4.

The tally of woman vacant seats in the Local Government polls 2000-2001 stood at 1,779, while in the Local Government polls 2005, it was reduced to 494. Of the total 79,651 seats in the Union Councils, 24,508 were reserved for women. As many as 23,766 women were elected in 6,127 Union Councils against the reserved seats. The percentage of vacant seats in Punjab was 1; Balochistan 3; Sindh 1; and NWFP 12. In the first Local Government polls, no woman was elected in Kohistan; one made it in Battagram, and in Lower Dir 8 women were elected to the local councils. In the second election, the situation was the same in Kohistan; in Battagram 72; and in Lower Dir 216 made it to the local councils, signifying a breakthrough in, at least, two districts.

Although, for Kohistan, Aurat Foundation had devised a special intervention strategy, besides some of the above-mentioned tools: Kohistan is the most socio-culturally conservative area of Pakistan, shrouded by a strong anti-NGOs environment, where female mobility is extremely low. Thus, while campaigning in this area, Aurat Foundation abstained from directly mentioning the term women's rights, particularly women's participation in the Local Government elections. Instead, it accomplished its campaign objectives through voter's education and other indirect means. For instance, focused efforts were made to involve the local religious leaders, along with the influential elders of the area. As opposed to such efforts, in 2000-2001, more than 70 percent Union Council nazims were elected in Kohistan through "Draw System". According to this system, the local elders wrote the name of each potential nazim on a separate

piece of paper; properly folded the paper; and then picked one and announced the name of the selected nazim, without going to direct polls. In the campaign, the DCC strongly criticized this undemocratic practice and earned a good name, especially for voter's education.

Braving the odds

Area-wise, the North West Frontier Province (NWFP) is the smallest of the four provinces of the country. It is spread over 74,521 km and has a population of 1,75,54,674 (Census 1998). Distribution of the population by sex is 89,62,543 males and 85,92,131 females. Pashto and Hindko are the two major languages.

There are a total of 24 districts with 986 Union Councils in the province. According to the statistics available, the voters number stood at 79,63,256. Of these, 44,16,156 were men voters while woman voters stood at 35,44,296. The Aurat Foundation in Peshawar covered a total of 21 districts with 928 Union Councils. There were verbal agreements in most of the Union Councils where women were barred to vote. Even the provincial capital was not spared.

The traditions, loyalties, and identities of the tribe, clan or class abstained women from freely exercising their right to vote or contest. As women are economically dependent, socially excluded and politically marginalized, their voting right is subject to the permission of the male members of the family.

Additionally, owing the prevalent low literacy rate, women do not have the confidence and the independence to make their own decisions. Most of the women do not have any knowledge about political parties or their respective agendas. As they do not have any interest in politics, they are unaware of the importance of the vote. It has been observed that those who begin to become more politically aware, confront multi-faced pressures, forming one of the reasons to disallow women to vote. This was witnessed in almost all the 21 districts of the NWFP, during the Local Government polls.

Understandings were reached to keep women away from the electoral process.

Another reason for not allowing women to vote is the impression of the people, even the educated ones, that there are no proper arrangements for women polling; combined men and women polling stations; and insufficient security.

Given these realities, Aurat Foundation, through its DCCs, that monitored the election process and facilitated the candidates, took up the Election Day issues with the Election Commission of Pakistan. Following were the main issues:

- There were both written and verbal agreements to bar women from the polling process.

- The voter-lists were flawed. Those handed to the polling agents did not tally with the ones handed to the candidates. At certain polling stations, even these lists were not provided in time, due to which, polling was delayed.

- There were insufficient security measures, leading to scuffles among men. Such events ultimately scared the women voters and disrupted women's polling. Such incidents were more common at the combined polling stations, with polling booths for both men and women. There was either a complete absence of or a very scanty number of women police that was deputed at the polling stations. There were common (single) entrances for both men and women, at the combined polling stations.

- The election symbols were missing from the ballot papers which delayed the start of polling. There was an under-supply of the ballot papers for women general seats. The Election Commission office and the Election Cells were blaming each other, and not ready

to accept responsibility for the given mistakes.

- The polling stations were under-staffed, especially the women polling staff. In certain areas, male staff members were performing the duties in the place of women counterparts. This kept the women voters away from the polling stations: owing to the cultural norms, women do not feel easy being dealt by the male staff members.

- The polling booths, setup at the women polling stations, were less than the required. This led to a rush at the voting time, creating problems for women voters.

- The staff, at most of the polling stations, was inexperienced. Even in the provincial capital, Peshawar, there were areas where the staff was not issuing minority candidates ballots to the voters, despite the fact that the polls were being held under the joint electorate, and ballots for all categories should have been issued.

- The polling staff complained about the insufficient supply of stationery and low quality of stamp pad and ink.

- Supporters of male candidates were seen roaming freely on the premises of the women polling stations.

- Some candidates had setup their election camps very close to the polling stations, creating problems for the voters.

- Women polling stations were closed, using the excuse of rigging, as in the majority of the districts, women do not carry a photograph on their National Identity Card (NIC), owing to cultural norms.

- The hot weather was a reason for less turn-out. This was more visible in the plain areas.

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How to Accommodate the Agenda of the Afghan Government, Local Communities and Development Actors?

Raphaëlle Guillon and Bobby Anderson

Decades of conflict between the oft-fragmented Afghan centre, peripheral elites, and outside actors has continually broken the fledgling connection between local and central Afghan governance structures. Part of the current Afghan political challenge is to re-establish that connection, through legitimate and accountable local representative bodies. Here the National Solidarity Programme (NSP) fits into the government agenda.

NSP — a World Bank-funded, government (Ministry for Rural Rehabilitation and Development-led programme) — has a double objective: to rebuild (or reframe) both rural infrastructure and civil society. The local governance aspect of NSP educates communities in democratic processes, through community mobilization and the election of Community Development Councils (CDCs). The Facilitating Partner (FP - usually a Non-Governmental Organization or a UN agency) then builds the capacity of the CDC, to prioritize and implement both rural infrastructure and human capital development projects.

NSP is well-understood as a development body: its role as a local governance structure remains ill-defined. This approach reflects the demands of the international community and the ideological atmosphere that surrounds the programme. The need to present donors and the Afghan government with quick and visible results has turned NSP into a hardware-oriented programme, where the construction of small-scale development projects has overshadowed governance aspects. This paper argues that, absent of the institutionalization of CDCs into the larger governmental-administrative framework, the transition of CDCs from development to governance structures is highly dependent on

the presence of "strong men" whose interests coincide with, or simply dominate, their community constituency. Strong pre-existing local governance structures can either restrain or encourage the transition of CDCs from rural development tools to governance structures.

The Agency for Technical Cooperation and Development (ACTED) staff initialized research in early spring 2006, to assess how NSP effects change (and to what degree) in the pre-existing local governance structures. Complementary to this was a questioning of community perceptions of NSP, both before and during the community mobilization process. This paper considers the example offered by several CDCs in Badakhshan, where ACTED implements NSP across 5 provinces[1]. Badakhshan lies at the extreme Northeast of the country and has always existed on Kabul's periphery, with the state having little or no authority outside of large towns and official border crossings. Due to the province's conflicted past and geographic remoteness, social, religious and military elites hold places of prominence, and often successfully compete for representation at the expense of the central government. CDCs there operate alongside diverse pre-existing governance structures, for both the *Mujihadeen* era and before. The future applicability of such CDCs, as governance bodies, absent the codification of the role of CDCs into law, is thus extremely dependent on local conditions, and in most of the cases, hardly assured.

This paper first examines the local context in which NSP attempts to take root. Then, NSP, *per se*, is analyzed. More precisely, the paper focuses on how the programme is constrained and redefined by its various primary actors, namely the state, the international community and the beneficiaries themselves. Based on the interviews conducted during the research phase, different types of relations between CDCs and traditional governance structures, will be identified. Finally, recommendations will be made so as to enable the continuation of CDCs, both as development tools and as local governance structures.

Governance, Government and the Fragmentation of Afghanistan

Afghanistan is historically a case of governance in lieu of government. The country is traditionally characterized by tensions between the central state and the peripheral elites over sources of political legitimacy, despite attempts of centralization by concurrent Kabul regimes[2]. From the government's perspective, NSP is just but one of these attempts. Since 1978 and the fall of the Daud regime, the country has rarely fit, even the minimal, Weberian definition of a state.

The basic rural governance unit has traditionally been located at the family (*Qawn*) and village levels (Thier and Chopra, 2002:4). The village assembly (*Shura*), an ad-hoc institution, whose functions range from conflict-resolution to the organization of communal work (*Ashar*), remains the primary decision-making structure. Olivier Roy (in Johnson & Leslie, 2005:35) suggests that "real" political life is played out at the local level, and primary loyalty lies within the "solidarity group". Thus, power in rural Afghanistan resides neither in a specific location, nor in a person; it rests upon a kinship network which strikes the uninitiated as elusive.

New sources of power have risen from decades of regional conflict. Local commanders emerged, empowered with money and weapons provided by regional and international actors. Commanders gradually replaced pre-existing power system (Abdullaev, 2004:175). At the end of the Cold War, the Afghan conflict shifted towards a "post nation-state" model of war (Duffield, 2000:47), marked by the development of yet a third layer of power, as regions emerged as semi-autonomous zones, governed by warlords. The merging of the politics of profit and violence facilitated the emergence of regional war economies, based on pre-existing smuggling (and other) networks, thus reproducing decentralized network structures (Duffield, 2003:299).

Years of conflict has, therefore, increased the polarization of local identities and strengthened divisions between both the centre and the periphery, urban and rural;

little authority has been exercised from the centre in decades (Goodson, 2003:84; Rubin, 1996). Individual loyalties have always been more local than national; Afghans believe in *their* Afghanistan, not in every Afghan's Afghanistan (Moshref, 2002:33). But the slow progress of the government in asserting itself, and coupled with its lack of legitimacy, has made the peripheries more prone to identity manipulation, with local political entrepreneurs reluctant to release their power to a central authority. In such an uncertain environment, situational identity is more likely to be realized and emphasized. There is not only immediate frustration to build on, but also a long-term problem of lack of both leadership and vision, which could meet local aspirations. This lack of political vision is more than just an Afghan issue; the absence of alternative models to challenge liberal capitalism is a global issue and is reflected in the weakness of the reconstruction process (Johnson & Leslie, 2005:107).

The Case of Badakhshan

Badakhshan is an excellent example of the troubled relationship and traditional distrust between Kabul and its borderlands.

As in most rural areas, village authority traditionally reposed with an Arbab, who governed in consultation with a council of elders, chosen according to their wealth, piety, charisma and age; such a social order is marked by a quasi-automatic granting of authority according to title and status. Problems were solved in the mosque, and more contentious issues were (and are) answered by the forming of an issue-specific *Shura*. Boesen (2004) describes such structures as "in principle, an egalitarian body in which every member has one voice, representing its lineage of its constituent household".

Badakhshan's remoteness, contrary to other regions of Afghanistan, ensured that the Soviet occupation had little influence on traditional local governance structures. But years of instability and civil war, following the fall of the Soviet-backed regime in 1992, marked a general militarization of the local society. The Soviet withdrawal allowed for an expansion

of predatory behaviour, by both party-affiliated and non-ideological actors, with some larger commanders becoming warlords and transcending locality (Kakar, 2001:11).

Badakhshan was almost entirely run by commanders affiliated with *Jamaat-e-Islami* (JI)[3]. Their authority overshadowed traditional *Shuras* and Arbabs, as commanders co-opted tribal and *Qawm* networks to centralize their power at the local level. Such co-option extended control over trade routes and rural industries. Their authority was further strengthened by the redistribution of external aid and weapons, as well as, cross-border smuggling[4].

Processes underlying the current centralization of power, and disenfranchisement of local commanders and regional warlords, are gradually arriving in Badakhshan. There, as well as, in Faryab and other areas, the rehabilitation (or even new development) of communications and transportation infrastructure coincides with the arrival of coercive elements, including governmental military forces, and the implementation of demobilization and alternative livelihoods programmes. Occurring in conjunction with such measures, are development programmes, including NSP (World Bank, 2005:3) and the activities of various local and international NGOs.

Development is *never* a neutral activity; it has always gone hand in hand with the assertion of state authority over the provinces. Although local commanders[5] may resent such threats to their power, the notion of a strong government meets wide approbation among Afghans. Kabul's government has, so far, faced difficulties to overcome the power of local political actors in Badakhshan, and has tended to rely either on co-opted local commanders — in-laws, to Tilly — or on rentier systems with appointed provincial governors etc.

Kabul's presence is minimal outside of Faizabad. The provincial governor is appointed by Kabul, but the lack of transparency in the appointment process undermines his legitimacy[6]. Furthermore, to disrupt traditional patron-client relationships, provincial governors tend to originate from

outside the province; which add to the distrust, especially in an area as remote as Badakhshan[7].

In consequence, sources of power arise from local actors such as district leaders, usually local commanders[8], established within and well-known by the local population, and akin to Tilly's stationary bandits. Power in Faizabad does not lie so much with the provincial governor or the chief of police (a less powerful position in Afghanistan, relative to other countries), but with a Faizabad-born *Jamiat* commander, who allegedly controls much of the opium traffic in the province[9]. He and other non-government elements exercise control over other government employees, including select elements of the police and military.

NSP is super-imposed upon this social topography from afar. Commanders and elites *can* and *do* interfere. Areas of factional conflict have, for instance, resulted in the attempted co-option of some CDCs[10].The ground upon which the NSP is being implemented is a complex one, and the work of Facilitating Partners is easily constrained by both the governmental agenda and the opinions of the recipient communities of what, exactly, NSP is, and what Community Development Councils could grow to be.

The National Solidarity Programme: Conflicting Roles

As mentioned previously, NSP objectives are twofold: it serves both as a rural development project and a local governance tool, through the creation of solid links, between the province and the village. By its nature, NSP finds itself at the nexus of different, and often contradictory, agendas and sets of interests. Its purpose as a development tool is evident to beneficiaries; until the roles and duties of CDCs in relation to district-level government are codified by Kabul, its function in relation to local governance is less known at the village level.

State-building and Decentralization

The civil society aspect of NSP educates communities in democratic processes, through community mobilization, leading to gender-inclusive election of CDCs via secret ballot. Facilitating Partners then build the capacity of CDCs to identify, prioritize and implement rural infrastructure and human capital development projects. The expected outcome is the creation of a representative village-level governance body, able to execute small scale development projects, as well as, represent the community to the outside, especially to NGOs and the Afghan government at the district level (World Bank, 2005:2).

A key element of Afghanistan's future stability concerns whether, Kabul relates directly to the districts or interacts through a provincial-level authority (Johnson et al, 2003:20). NSP attempts to balance between the need for centralization, in order to immediately consolidate power and enforce peace and stability *from above*, and the need for decentralization to secure equal long-term distribution, and guarantee participation *from below*. Such duality can and does generate conflict between the core and the periphery, the interests of which often differ; a short-term example can be found in poppy eradication campaigns in Badakhshan, as here, the governmental agenda, tailored towards obligations to the international community, is likely to clash with the needs of the local community[11]. The model chosen by Kabul faces a stark paradox: state power must properly exist before it may be decentralized (USIP, 2003:4), and Kabul has none. Collaborative and stable power arrangements, with a degree of legitimacy – and thus, durability – are the end products of internal processes, rather than a path solely constructed by foreign finance (Fowler, 2000:4). Again, strengthening civil society requires high levels of central state-capacity and cooperation (Platteau & Abraham, 2002). The notion of governance, in the spirit of the CDCs, is not something comprehended by many in local governments.

Donor-agenda and Community Participation

Like development itself, the process of working at the community level is not neutral. It possesses a normative and inherently political character, that implies formulating ideas and knowledge about *what people should do and how they should do it* (Gordon *et al*, 1993).

The concepts underlying NSP — village-level participation and "partnership" with local communities (assumed to bring greater productivity at lower cost) — have recently gained currency among bilateral and multilateral agencies (Brand, 2001:962; Fowler, 2000:3). NSP is implemented through select NGOs. Yet NGOs — which by their nature accrue no profit — are dependent on governmental and multilateral aid agencies. Their accountability is, therefore, primarily to such donors, and secondarily to beneficiaries. NGOs maintain neutrality; they divert their efforts away from social mobilization, and towards the simpler (and fundable) provision of services (Malena, 2000:20; Hamilton, 2000:49-50). Such agencies work with the desire to both: a) control uncertainty; and, b) order the development process into systematic and rational stages. This control orientation reflects agency concerns with short-term outputs, and often involves the translation of problems and solutions into chains of causality, which, in turn, generates uniform strategies and "blueprints" with standardized ingredients, in order to address varied and multi-faceted realities (Crewe and Young, 2002:9; Green 2003:128-129). Such processes reduce political and social issues to technicalities, to be remedied by routine and neutral policy tools (Robertson, 1984:3, 7-9)[12]. But it must be acknowledged that local communities (CDCs), as well as, the personalities and difficulties inherent in them, are unique. Control orientation is inapplicable in such circumstances, and furthers the divide between reality "in the field" and reality, converted and transmitted via Microsoft excel spreadsheet or Word document, for the consumption of Bruxelles, DC or London. In regard to the historical behaviour, of both donors and development, as a whole, even when sets of rules, standards and criteria create a mould, which implies that beneficiaries participate in the project planning process, they actually have

little effect on how projects are conceptualized (Mosse, 2001:19) by both donors and implementers. NSP is rare, in that the community, within broad parameters, defines its own projects and executes them accordingly.

Community and Individuality; Democratic Discourse and Traditional Structures

As analyzed previously, situational identity, as part of the *Qwam*, is prevalent in Afghanistan. Imposing democratic discourses and practices, within rural communities, is therefore, extremely constrained. Democracy is not guaranteed; nor is the disenfranchisement of elites and patrons.

CDCs meet other pre-existing governance structures which emerge from below — either the traditional Arbab-led structure, resplendent with elders, elites and mullahs, or less benign, newer structures of commander and military *Shura*; they often meet some combination of both. The electioneering of candidates is forbidden during CDC elections; this measure intends to reduce the likelihood of elite capture, electioneering of another kind is still taking place at an informal level. Powerful people, within the community, do not need electioneering; they are already known, and their power depends on wealth and pre-existing support; such influence cannot simply be undone by the concept of secret ballot. Such elite control trade and land; they pay for day labour; they may control trade and smuggling routes. In rural communities, often markedly illiterate, it is expected that this elite will be elected to CDCs, because they are either respected or feared, but most often, simply by force of habit and deference. *Mullahs* are usually elected because they are the traditional problem solvers, and because they are, generally speaking, the only literate persons in the community. The democratic discourse, built upon the precept of one person, one vote, is constrained in the local context, by both lack of education and entrenched social pressure.

Therefore, CDCs remain likely to be drawn from the pool of local elite[13], many of whom are adept at manipulating participatory methods, by representing their own interests as

community concerns (Crewe and Harrison, 1998:70-75), thereby hindering possible redresses to structural inequalities (Fisher, 1997:455) which exist at the village level, and which the CDC, it is hoped, shall rectify. Not all "development" discourses are entirely hegemonic, and constrain beneficiaries in a deterministic fashion (Grillo 1997:20-21). Perceptions of the NSP, by local communities, allow them to explore the utility of CDCs; development is, therefore, re-appropriated and re-negotiated, through popular understanding and practices (Scott, 1998:353). What is super-imposed upon the community, from above, can be shaped according to circumstance and personality, and is thus owned, from below.

Local Actors and NSP CDCs – Methods of Accommodation

The primary theme in interviews concerned were: who held power in the village, both nominally and actually; what was expected from a CDC; what, if any, additional role outside the scope of the block-grant, the CDC has taken on itself; the composition of the CDC, in regard to traditional power holders and vested interests; and what role was envisioned for the post-block grant CDC.

Expectations and Perceptions of NSP in non-NSP Villages

In new villages, some interviews were marked by a degree of defiance — not against NSP or other government intrusions so much, as the community's general perception of NGOs, whose efficiency is not positively rated. Some distrusted the idea of NSP, because they regarded it as just another survey conducted by foreigners, from which little good would come. Other interviewees displayed a marked bitterness, from past experiences, with international organizations, and also, *Kabul*, and even, in remote villages, *Faizabad* — a word that was sometimes used to signify the government.

> "At the beginning of NSP, the people distrusted it and did not believe it would work

> or that the money would come. Soon people became interested when they started to believe in it".
>
> -CDC member, Torgani Village, Faizabad
> district

NSP, unlike other programmes, is a known quantity. The difficulties inherent in year 1 implementation — which, due to delays in block-grant allocations, fostered a sense of betrayal in some communities, bordering on violence directed at FPs — have softened, as communities look to the example of earlier NSP communities. There is some trust at the community level that money will actually be spent, although in some occasions, confusion remains[14].

Non-regard of NSP as a Governance Tool

> "NSP unites and makes the solidarity between the people. But the mosque is where the decisions are taken".
>
> -Elder, Khoja Abdul Maroof Village, Faizabad

Far from the local governance structure, envisioned by FPs and Kabul / MRRD, NSP is initially understood at the village level, purely as a development programme. Decision-making and problem-solving often remains the sole domain of the elders, and in the mosque. In Khoja Abdul Maroof village, then undergoing community mobilization, the elders told us that, once the CDC is elected, it will have their support. For these elders, and others, there stands a clear division of role and function between the traditional structures and the CDC; when pressed for possibilities of what else a CDC may be useful for, outside of the life of the block grant, most elders volunteered only, that the CDC might be useful for the organizing of *Ashar*, or communal voluntary labour[15]. They regarded themselves as the future CDC. "We will be the NSP", stated one member of the Ulema, in Batosh village.

Traditional elite and new CDCs

Contrary to the data collected by UN-Habitat, in the areas where they are the NSP FP in Badakhshan, field research demonstrates mixed CDC electoral results, with regard to substantive inclusion of new, "non traditional" local leaders. Reasons for this lie in the relative remoteness of the area (which allows for the control of information, through infrequent and limited sources, and the filtering of new ideas), the extremely low level of literacy (which further limits the flow of information, and opens, those effected, up to increased influence from above), the commander- and elite- oriented village structure (which again, due to remoteness, sees little, in the form of competing ideas), and most importantly, the strong economic networks supporting local stakeholders.

In Badakhshan, interviewees indicated that criteria for potential election to CDCs are the same as for membership in the traditional *Shura* (although one is freely elected by all, whereas the other is elected by elder men only): age, piety, land ownership (almost all CDC members own land), and other economic and military preconditions. Women, in principle, are accepted in CDCs by interviewees – as long as they are pious, middle-aged and educated. Such rural women face a Catch-22, where they may be accepted in a leadership position if they are educated, but they are traditionally denied an education. Also, the very term *education* may need to be refined in this rural context. As a result, elders and / or commanders were part of the CDCs, and such persons often served as the head, deputy head, or cashier at least. In the limited instance, where a CDC is elected, which does not contain at least a few elders, it is evident that, although the CDC maintains and controls the block grant, the earlier structures of local governance maintain suzerainty; here the transition of the CDC from development to governance tool, is likely, not to occur. In such villages, the CDC works on sub-project proposals; the elders' council remains as the primary problem-solving and local governance tool of the village. Again, the voting-specific issues, resulting from traditional patron-client relationships, in rural Afghanistan, will not be avoided; small settlement size and illiteracy heighten the problem. As a result, co-option by traditional elite or

commanders, is the situation most CDCs find themselves in. A strong man remains a strong man, whether the vote is secret or not. In NSP villages, where local commanders developed their own military *Shura* power-structure before NSP's arrival, CDCs consequently replicated the military *Shura*. In Torgani and Shura-Baq villages, for example, the heads of both CDCs are local commanders; the entire cast of each CDC is DDR'd *Mujahideen*. Thus, a military *Shura* becomes a development tool; a power transition has occurred, but only in name. In a continuation of the premise of hereditary power, and focusing on the evolution of local power structures through the years, it is interesting to note that in Shura-Baq, all the members of the CDC — the commander (an ex-army officer) and several ex-*Mujahideen* — are the children of the previous Arbab and his *Shura* of elders. This is not exclusively negative. Depending on context and personality, pre-existing local governance structures are replicated, positively influencing the transition of the CDC from a development to a governance tool, but not in a way that the donor or the FP contemplated. In particular cases, the presence of commanders – whose agenda coincides with those of the government, as in Torgani - may indicate the withering of traditional elite authority to the benefit of the entire community.

Therefore, the inclusiveness of a given CDC is highly reliant on the local context and level of education. Salman-e-Fars, Faizabad district, is a semi-urban area, located a few kilometres from Faizabad centre. The population is markedly more transitory and mobile; consequently, traditional governance structures are weak and the *Manteqa* population is more open to external influence. CDC members are government employees — mostly teachers in the Ministry of Education. Women are active participants in the CDC, and even challenge the authority of local commanders[16]. The authority of this CDC has expanded, beyond the management of the block grant, to conflict-resolution and communal land management, in collaboration with three neighbouring CDCs. A new "elite" step in when there is room for it.

CDCs' Relations to the Central Government

> "No outside source will ban our decisions. We took part in the struggle to remove bad regimes. We had our *Jihad*. We will have another *Jihad* if bad decisions are made".
> -Mullah, Batosh Village

The autonomy of the community *vis-à-vis* the central government is highly valued. As mentioned previously, national cohesion presupposes the construction of a national identity, which will help legitimate state infrastructure and institutions. As Esman (2004:160) claims, service provision and effectiveness are not sufficient for the state; it must also be seen as legitimate, and deserving obedience and respect. So far, Kabul has never met these requirements, and Badakhshan has had no other choice but to rely on a more narrow situational identity.

> "The governor is forced to leave when another can pay more for his position. It does not have to do with us; we will not receive anything from them".
> -Elder, Khoja Abdul Maroof Village.

In addition, the patron-client relationship can be so strong that the very concept of relations, between village and government, are meaningless. But depending on the political affiliation of the village leader — for instance, a commander affiliated to *Jamiat* — the local opinion towards Kabul can change.

> "We want this kind of government. We allowed this kind of government to come into being. We have volunteered for DDR. I tell my people: the foreigners are needed, and Kabul is now good. We need strength in Kabul".
> –Mohammed Amin, ex-*Jamiat* Commander & CDC leader, Torgani Village

Depending on the circumstances, the concept of community representation is progressing, especially *vis-à-vis* previously non-elected leaders, and a province-level government, perceived as corrupt and unaccountable to its supposed citizenry.

> "The elders were unofficial, but we are elected officials… in disputes (between people), we will tell the government what the truth is, who is right and who is wrong. We are the representatives".
> –Commander Sher, CDC leader, Shura Baq Village

Lastly, NSP is a governance programme, but paradoxically, government visibility is limited. The sentiment of one villager in Shura-Baq - "Why doesn't the government come and do this stuff directly"? is a common one.

Which future for the CDCs?

The success of NSP, as a development tool, is unchallenged and is understood by involved communities as such: a means to receive funds, a vehicle in which to liaise with NGOs and implement small-scale development projects. As far as the governance aspect of NSP is concerned, the results are more mixed, which endanger the sustainability of the CDCs after the expiration of the block-grants.

Almost all interviewees – CDC members and villagers alike – envision the future of their CDCs through a purely developmental paradigm. The council will remain in charge of representing the community to solicit NGOs, liaise with the Rural Development Department, handle development funds and manage the participation of the community in new development projects. As such, the CDC is conceptualized, by most NSP communities, as the traditional *Shura* in charge of managing the communal work (*Ashar*), but adapted to the modern world, the ballot concept and the intrusion of external actors, such as NGOs, and Kabul – a government which may actually provide benefit. But again, the divide remains between development and governance. Social issues are

discussed and agreed upon outside of the CDC. In cases where the CDC expands its authority, it is often the pre-existing responsibility and authority of members executing their traditional duties through, and consolidating said responsibilities within, the CDC. Also, decades of conflict and years spent on a day-to-day struggle for subsistence, have hampered capacities, for long-term planning. Without external support – from NGOs or government – it is likely that the 2-year re-election cycle of CDCs will collapse.

Due to a lack of official institutionalization of CDCs, the definition and role of NSP in local governance remains unclear and, for now, can only be defined in relation to specific CDC / local circumstances, along with the unique personalities existing both inside and outside a particular community. NSP's current shortcomings are mostly the result of the changing expectations of the international donors, as well as, the lack of capacity of a central government unable – or unwilling? - to step in, and fully assert its authority in the borderlands. Although NSP was originally conceived to stabilize rural societies by reinforcing local governance, the perspective soon changed: with increasing numbers of sub-projects and parliamentary elections approaching, implementing rural infrastructure projects became the main NSP output. As the London Conference neared, NSP was more regarded, by donor governments, as a poverty reduction programme, rather than a local governance programme. NSP was also presented to donors as a pro-poor growth programme. Such differing perspectives influenced the types of reports to be generated, including criteria originally not envisaged in the organization of programme information (GTZ 2006:7). For instance, FP monitoring and assessment responsibilities to the Oversight Consultants are mostly based on the percentage of projects completed, and the amount of money spent (OC 2006:21). As such, three types of Monitoring and Evaluation (M&E) are conducted: implementation monitoring (measuring progress against workplan); post-implementation monitoring (quality of the completed sub-project); and, programme evaluation (development outcomes, effectiveness and efficiency of the implementation). The M&E component has nothing to do with the governance aspect of NSP.

The need to present the donors, and the Afghan government, with quick and visible results, has turned NSP into a hardware-oriented programme, where the construction of small development projects has overshadowed the governance aspect (Sihlongonyane, M. F. 2001:40). It shows that NSP's different elements have been conceived, by actors not in agreement, as to what the final outcome and goals of NSP should be. Everyone is aware of the development aspect, which is well-defined. The governance aspect remains an empty canvas and jars of paint. It falls to the CDCs themselves, and the community beyond them, to decide the complexity of the image, and the colours. Lacking codification of the roles and responsibilities of the CDC into law, along with the general rules and precepts discussed in the NSP Operational Manual (January 2006), including set election and re-election schedules, gender equity, secret ballot, etc., and a further definition of the relationship between the community and the government at the district level, also codified into law, this is all that one can expect: the governance role of any given CDC will be shaped uniquely, and will be determined by strength.

Conclusion

Lacking the definition and codification of CDC roles, responsibilities, and obligations, into law, the successful CDC will bear the mantle of, and often, come to resemble, a traditional non-government *Shura*. It may take on duties according to the strength of personalities within the CDC. It is an exciting process, and while some CDCs will crumble, and others will succumb to corruption and traditional interests, still others will become what the donor and FP intend for them to be.

Once the programme is over, issues outside the scope envisioned by MRRD and the World Bank will arise, and, given the continuing status of Badakhshan (and other NSP provinces) as a periphery, where Kabul often holds little sway, it can be expected that such decisions may not fit to government norms. When will a particular CDC condemn

alternative livelihoods? When will a rural infrastructure project, such as, an irrigation network, be used to irrigate a poppy field? When will a CDC, composed of traditional *Shura* members, weigh the fate of a woman accused of adultery?

Such considerations are not unrealistic; MRRD, the World Bank, and the Afghan government aim to replace traditional governance structures such as *Shuras* with the CDC. And *Shuras* can, and do, issue precisely these kinds of *Fatwas* and decrees. It is unrealistic to think that a CDC will not involve itself in such matters, absent clear definitions and support from the central government of what a CDC can, and cannot, do. The possibility of such future outcomes must be acknowledged.

Notes and References

1.   ACTED is an NSP facilitating partner in 5 Afghan provinces, and has established CDCs in 1,495 villages (including year 3 activities now beginning in new districts of Badakhshan). Primary research was conducted in Badakhshan; ACTED conducted interviews in several villages where NSP has not yet been implemented, as well as NSP year-three villages where community mobilization was only beginning and no CDC election had yet occurred; other interviews were conducted with active CDCs in year 2 villages. Illustrative examples were also utilized from, and peripheral research was conducted among, ACTED CDCs in Kunduz, Faryab and Takhar provinces.

2.   Amir Abdur Rahman laid the foundation, not only of the centralized and the modern Afghan state, but also of the alienation from the state of the religious, tribal and ethnic groups that dominate Afghan society (Ottaway & Lieven, 2002:2) The Communist party attempted to re-launch the state's modernizing programme, with some radical and authoritative methods. The growing distance between the urbanized and westernized elite, and the rest of the country,

contributed to the failure of the Afghan constitutional monarchy in the 1960s and 1970s, and ultimately ended the state.

3.   This group, primarily composed of Tâjiks, was nominally led by Burhannudin Rabbani, former president of the Islamic State of Afghanistan. The most powerful leader was Ahmad Shah Massoud, the commander of the Panjshir Valley. Both were Sunni Persian speakers but from different sub-regions and different bases of support (Rubin et al., 2001:20). Yet, unity in political affiliation did not preserve Badakhshan from violence. Fights between commanders, notably Bassir Khan and Najdmouddin, divided the province.

4.   Commanders usually mobilize a clientele based on economic or religious basis. They also draw their legitimacy from their fighting abilities. Often, depending on men and weaponry, a commander can implement basic police and administration services. Their political power is localized; commanders who espouse loyalty to political parties unusually were not under the direct control of such a party, as groups such as Jamiat did not possess the infrastructure or capacity to centralize power fully. The power of one commander is thus personal, non-institutionalized and based on patron-clients relationships. No wonder then, that power in such areas becomes hereditary (Johnson et al, 2003:7)

5.   Although the term *commander* is rife with negative implications – and not without reason – it must be noted that many commanders began their careers by simply defending their own communities. While some looked forward to the end of the fighting, others did not wish to relinquish the power they had gained during years of combat, and turned to illicit activities to maintain their positions.

6.   Every interviewee asked about the process of governmental appointments in Badakhshan answered thusly. The perception of Kabul, whether it is true or not, is that it, and its representatives, is undermined by corruption allegation.

7.   As from today, Badakhshan's current provincial governor is Monshi Abdul Mashid from Baghlan. It is alleged that he is receiving percentages from the raw opium trade. While these allegations are unverifiable, and likely result from the common belief that those in power must profit from such trades, such opinions reflect the defiance of the local population vis-à-vis sources of power not perceived as legitimate. The concept of *foreign-ness* applies to people not only outside of one's province, but in the case of Badakhshan, can imply those from outside of one's district, or even one's valley.

8.   Most commanders in Badakhshan were Jamiat; a few were Hizb or Sayaf. Many affiliations were ones of convenience, and actual allegiance was fluid.

9.   While militias have been officially demobilized, locals alleged that he could rapidly mobilize 300-400, men and has access to larger weapons.

10.   Badakhshan is an almost entirely Tadjik and Jamiat-dominated area. Yet, in an area where political or factional alignments represent more of a name-brand than a coherent political ideology, competition between commanders has resulted in attempts by one faction or another to co-opt CDCs. This has also occurred in militia-contested areas of Faryab province.

11.   Poppy eradication in Badakhshan is currently underway. In the first week of April 2006, national and provincial officials announced the start of the campaign immediately followed by violence in Jurm district. The UK government has set a target of 70 per cent reduction in poppy crops by 2008 and 100 per cent by 2013 (Pugh & Cooper, 2004:78).

12.   Some scholars, building upon Foucault, analyze such reductions as control orientation in terms of a "discourse", attempting to expose development as an instrument of power and knowledge.

13.   Another impediment, that assists in elite capture of CDCs, is the lack of payment for CDC members. A landowner has the leisure time to dedicate work to the CDC, and will not be confined by the lack of payment for such a duty; others do not have such leisurely schedules or options.

14.   ACTED had to contend with a district leader in Faryab province, who assured his constituents that we would give away US$200 per family. Removing this preconception presented considerable problems in regard to implementation.

15.   Subsequent research in Imam Sahib district, Kunduz province, confirmed the clear demarcation, between the CDC as a development tool, and the subsistence of the elders council, as a conflict-resolution assembly.

16.   Relatives of the most powerful commander in Badakhshan had decided to appropriate some communal lands from to the school. They had obliged villagers to sign a paper, agreeing on them taking possession of the land, threatening them more or less directly. The husband of Meena, the deputy head of the CDC, had also signed the paper. When Meena heard about this issue, she cancelled the procedure and helped stop the transfer. "I represent the people, I have the authority to cancel the transfer".

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NOTE: Author's personal experiences of participating in various workshops, discussions, and debates are also reflected in the paper. For any further information or clarification author could be approached. Heinrich Böll Foundation, therefore, will not be in the position to respond.

The Contributors

Ali Gohar, obtained a Masters degree in International Relations from the Quaid-e-Azam University, Islamabad. For thirteen years, he served as an Additional Commissioner in the Social Welfare Cell for Afghan refugees--a project of (UNHCR). During his tenure, he sought to make the public aware of the plight of the street children among Afghan refugees. He wrote two Pushto plays for the Pakistan Television Corporation on *HIV/AIDS, Drug awareness and Domestic Violence*. Recently, he completed a Master's degree in Conflict Transformation as a Fulbright Scholar from Eastern Mennonite University in Harrisonburg, Virginia, USA. Ali Gohar has co-written *"The Little Book of Restorative Justice"* in the Pak- Afghan context, originally authored by Prof. Howard Zehr. He has also been instrumental in the development of a peace story and song, *"In your song, I hear my voice,"* sung in twenty languages. This was an initiative of the distinguished scholar, John Paul Lederach. Ali Gohar wrote a book with Hassan Yousafzai entitled *'Towards Understanding Pukhtoon Jirga, an indigenous way of peace building and more'*. He is also the founder member and Advisor of the first peace building NGO, Just Peace, working in Pakistan and Afghanistan.

Bijay Karmacharya has been working for UN-HABITAT in Afghanistan since February 2006, as NSP Management Officer (Advisor). He is responsible for the National Solidarity Programme within UN-HABITAT. He has been actively involved in getting institutional recognition of Community Development Councils (CDCs). He is also engaged in shaping local governance structures and developing participatory planning process, at cluster and district levels. He holds a Master's Degree in "Resources Engineering", which is a multi-disciplinary engineering course designed to suit the context of developing nations from the University of Karlsruhe, Germany. His professional career, of over 15 years, has been in community-based rural development. Before his work with the UN-HABITAT, he worked for GTZ in

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Buddhadeb Ghosh served in the State Civil Service of West Bengal, India, and held various positions in development administration, including a stint as Director, State Institute of Panchayats. Currently, he is Senior Fellow at the Institute of Social Sciences, New Delhi, where he participates in research projects and consultancy assignments on governance, decentralization and institutional issues of rural development. He is the author of several published papers on decentralization, local government and related matters, in journals and edited volumes. The books co-authored by him include *West Bengal Panchayat Election, 1993: A study in participation* and *State politics and Panchayats in India.*

Farida Shaheed, a sociologist, is a Coordinator of Shirkat Gah - Women's Resource Centre in Pakistan. In addition to overall organizational responsibility, she is personally responsible for Shirkat Gah's legal consciousness, Women, Law and Status Programme (WLS) that she has developed with the team. WLS advocates appropriate changes in laws, procedures and policies while simultaneously building grassroots capacity through legal awareness, paralegal trainings, legal counselling/assistance and providing linkages. She is a founder member of the national women's lobby, Women's Action Forum, that led women's resistance under a decade of martial law (1977-88), and is one of the coordinators of the international network for information solidarity and support: Women Living Under Muslim Laws. Her numerous publications include many on the intersecting issues of women's rights, customs and religion, and development. In 1989 her co-authored book *Two Steps Forward One Step Back- Women of Pakistan,* won the Prime Minister's award. In 1997 she received the Second Annual Women's Human Rights Award of the Women Law and Development International. She is one of the twenty-nine women of Pakistan nominated in the '1000 Women for Peace', forwarded to the International Body for Consideration of Nobel Peace Prize Committee". Since 1980, she has served as Consultant to various U.N. and bi-lateral development agencies and the Government of Pakistan, as

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Farrah Parvaiz Saleh, MSc in **Environmental** and Development Education from South Bank University, London. She started her career, as a journalist with one of the leading newspapers of Pakistan. She has written several papers on women and politics. The main area of her work focuses on strengthening democracy, good governance, human rights, and community development in Pakistan, with the mission to improve the status of women and other disadvantaged groups in the society. Given the work pursued, the main activities include, mobilization of grassroots organizations, working with key government departments, media, policy-makers and legislatures, through awareness raising, advocacy, lobbying and capacity-building.

Hamish Nixon is the governance researcher at the Afghanistan Research and Evaluation Unit in Kabul, where he has worked since March 2005. He completed his doctoral work on comparative peace processes at St. Anthony's College, Oxford. He has worked on post-conflict institutional issues in Southeast Asia, Central America, the Balkans, the Middle East, and Afghanistan.

Hangama Anwari is a law graduate, with extensive work on women's issues in Afghanistan. She is currently one of the nine members of the Afghanistan Independent Human Rights Commission. She is also the founder of a Research Centre (Women and Children Legal Research Foundation). This centre has been able to introduce the concept of research to the Afghan women, and has also conducted a number of research projects on the most sensitive issues related to women and children's rights in the traditional society of Afghanistan. She is also a member of a number of other networks and civil society groups working for women and children.

Katharina Lumpp worked as a protection officer for the United Nations High Commissioner for Refugees (UNHCR) in Afghanistan between 1998 and 2002 and again, since May

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Marianne Elliott is a human rights lawyer and advocate from New Zealand, who has worked in post-conflict settings, including the Occupied Palestinian Territories, Timor-Leste and Afghanistan. Most recently, she worked with the Human Rights Research and Advocacy Consortium in Afghanistan.

Masood Karokhail has been working and living in Afghanistan since 1999. He holds a Masters in Business Administration from the Preston University in Pakistan. He started his career with Unilever, as assistant to country manager for Afghanistan, based in Kabul. In 2001 he joined the Afghan Civil Society forum as a consultant, and later as Programme Manager. In the meantime, he also worked as Country Coordinator for FAST (Early Conflict Warning-swisspeace). Since 2003, he is working as Deputy Director with Tribal Liaison Office.

Nafisa Shah did an MSc in Social and Cultural Anthropology from the University of Oxford. Presently, she is working on her Dphil thesis 'Honour, violence and Moral Power: A case study of Karo Kari Killings in Upper Sindh'. She has also had hands on experience in administering a rural district in Upper Sindh where she was elected to the position of a Nazim. Besides, Nafisa is a well-known political activist associated with the Pakistan People's Party, and is extensively engaged with problems of the people, in particular women, at the grassroots level.

Nasira Iqbal obtained LLB and LLM degrees from the Punjab University, Lahore, and LLM from the Harvard University, USA. She was a practicing advocate and later a Judge of the Lahore High Court. Currently, she remains engaged as a social worker, women's rights activist and heads various charities, such as, being a Trustee of Ferozsons Trust, Fatima Memorial System, Lahore. She is also an Adjunct Professor and Member Board of Graduate Studies, Punjab University,

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Nira Yuval-Davis is a Professor and Graduate Course Director in **Gender, Sexualities and Ethnic Studies** at the University of East London. She is the former President (2002-2006) of the Research Committee **05** (on **Racism, Nationalism and Ethnic Relations**) of the International Sociological Association (ISA), and has been on the organizing committee of the ISA congress in Durban, since July 2006. Professor Yuval-Davis is an elected member of the **Academy of the Learned Societies for the Social Sciences** and is a founder member of the international research network on **women in militarized conflict zones.** She has been an expert consultant to, among others, UNDP, Amnesty International and the UN Special Rapporteur on Violence Against Women.

Nira Yuval-Davis has published widely (19 written and edited books and more than a hundred refereed articles and chapters in books). She has written extensively on theoretical and empirical aspects of nationalism, racism, fundamentalism, citizenship and gender relations in Britain and Europe, Israel and other settler societies. She has travelled widely and has given lectures, seminars and keynote presentations in conferences and universities in more than twenty five countries in five continents. Her book Gender and Nation (Sage, 1997) has been translated, by now, to seven different languages. She is currently working on a monograph on Nationalism and Belonging (Sage, forthcoming) and is the Director of an ESRC funded research project on *Identity, Performance and Social Action: The Use of Community Theatre among Refugees.* Her research interests include Intersectionality, Politics of Belonging, Identities and Social Action, Racism, Nationalism and Gender Relations.

Palwasha Hassan completed her post-war recovery studies from the University of York, UK. She has been actively involved in women's rights issues through her work in different local women groups and national and international forums. She is a founding member of organizations and networks, such as, Afghan Women Network (AWN), Women and Street Children project for refugee women in Peshawar, Roazana and Irfan Cultural Centre. She has been one of the female delegates in the Constitution Loya Jirga, contributing to the efforts of promoting women's rights in the Afghan Constitution.

Raphaëlle Guillon lived and worked in Afghanistan from October 2005 to July 2006. She worked with ACTED, as Capital Reporting Officer, where she undertook research on local governance in Badakhshan and Kunduz provinces. She holds a Masters degree in "Violence, Conflict and Development" from the School of Oriental and African Studies, London. She wrote her dissertation on "State-building, local identities and national cohesion in Afghanistan". Before that, she worked in Nepal, with UNDP, on Human Development and Conflict prevention.

Robert Anderson has managed various NGO programmes in South-eastern Europe and Central Asia. He holds an MA in International Politics and Security Studies from the Department of Peace Studies, University of Bradford (UK). Currently he works in northern Afghanistan.

Roya Rahmani was born in Afghanistan and lived there until the age of thirteen. She returned to Afghanistan in 2004 from Canada, where she received a degree in software engineering from McGill University, to work for promoting women's rights. She has been heading the office of Rights and Democracy since Oct, 2004, and is the sitting member of the Board of Directors for five development and human rights organizations. She started to advocate for, and identifies herself as an activist, for gender equality, since she was nine years old.

Shabeena Ayaz acquired a postgraduate degree in 1992 from the Department of Journalism and Mass

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Shaheen Sardar Ali, BA, LLB, MA, LLM, PhD (Hull) Professor of Law, University of Warwick, UK, and Professor II University of Oslo, Norway. She was formerly Professor of Law, University of Peshawar, Pakistan. Her teaching and research experience is mostly in International Law of Human Rights, Women's Human Rights, Children's Rights, Islamic Law and Jurisprudence, Alternate Dispute Resolution and Gender and the Law. She has been consultant to a range of national and international organizations and UN agencies. Professor Ali has served as Minister for Health, Population Welfare and Women Development, Government of the North West Frontier Province of Pakistan and Chair of Pakistan's first National Commission on the Status of Women. She served on the Prime Minister's Consultative Committee for Women (Pakistan), and the Senate National Commission of Enquiry on the Status of Women (Pakistan).

Professor Ali has published extensively in a number of areas including Human Rights, Islamic Law, International Law, and Gender Studies. Some of her more recent publications are: Gender and Human Rights in Islam and International Law. Equal Before Allah, Unequal Before Man. (2000), The Hague: Kluwer Law International; co-authored with Javaid Rehman, Indigenous Peoples and Ethnic Minorities of Pakistan Constitutional and Legal Perspectives (2001); The United Nations Convention on the Elimination of All Forms of Discrimination Against Women, Islamic Law and Laws of Pakistan: A Comparative Study, 1995. Some Articles and Chapters in Books include Legacies of Common Law: "Crimes of Honour" in India and Pakistan (2006) Vol. 27 Third World Quarterly. Co-authored with Pratiksha Baxi and Shirin M Rai; "The Concept of Jihad in Islamic International Law" (2005) Vol. 10(3) Journal of Peace and Security Law. Co-authored with Javaid. Rehman; "Sigh of the Oppressed?"

Islamisation of laws in Pakistan: A case Study of the NWFP"
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children.

ABBREVIATIONS

ACTED	Agency for Technical Cooperation and Development
AF	Aurat Foundation
ANP	Awami National Party
AREU	Afghanistan Research and Evaluation Unit
AWEC	Afghan Women Education Centre
CBO	Community Based Organization
CD	Compact Disk
CDC	Community Development Council
CEDAW	Convention of Elimination of all forms of Discrimination Against Women
CEP	Community Empowerment Project
CLJ	Constitutional Loya Jirga
CO	Community Organization
CRC	Convention on the Rights of the Child
CSO	Civil Society Organization
DCC	District Coordination Committee
DPC	District Planning Committee
DDR	Disarmament Demobilization and Reintegration, Mujahideen
FATA	Federally Administered Tribal Areas
FCR	Frontier Crime Regulations
FEFA	Free and Fair Election Foundation for Afghanistan
FIR	First Investigation Report
FP	Facilitating Partner
GDP	Gross Domestic Product
GOI	Government Of India
HBF	Heinrich Böll Foundation
HDI	Human Development Index
HRRAC	Human Rights Research and Advocacy Consortium
I-ANDS	Interim Afghanistan National Development Strategy
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDP	Internally Displaced Person
ILAC	Information and Legal Aid Centre

JEMB	Joint Electoral Management Body
JI	Jamaat-e-Islami
JUI	Jamiat Ulema-e-Islam
LFO	Legal Framework Order
LGO	Local Government Ordinance
LSGI	Local Self-Government Institution
MA	Masalihat Anjuman
MFA	Ministry of Foreign Affairs
MMA	Muttahida Majlis-e-Amal
MRRD	Ministry of Rural Rehabilitation and Development
NA	National Assembly
NGO	Non-Government Organization
NRC	Norwegian Refugee Council
NSC	National Steering Committee
NSP	National Solidarity Programme
NWFP	North West Frontier Province
OWAAD	Organization of Women of African and Asian Descent
PA	Provincial Assembly
PDPA	People's Democratic Party of Afghanistan
PLD	Pakistan Legal Documents
PML	Pakistan Muslim League
PMLQ	Pakistan Muslim League-Quaid-e-Azam
PPC	Pakistan People's Party
PRT	Provincial Reconstruction Team
PSC	Provincial Steering Committee
SC	Schedule Caste
SFC	State Finance Commission
SIDA	Swedish International Development Cooperation Agency
ST	Schedule Tribe
TLO	Tribal Liaison Office
TOT	Training Of Trainers
UNAMA	United Nations Assistance Mission in Afghanistan
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees

UDHR	Universal Declaration of Human Rights
USAID	United States Agency for International Development
VCR	Video Cassette Recorder
VDC	Village Development Council
VRF	Voluntary Repatriation Form
WCAR	World Conference Against Racism
WILPF	Women's International League for Peace and Freedom
WPLGE	Women's Participation in Local Government Election
ZASI	Zadran Arc Stabilization Initiative