

# Critical Half

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## Gender and Constitution-Building: From Paper to Practice

By the People and For the People:  
Constitution-Building, Gender and Democratization

JOLYNN SHOEMAKER

Implementing Gender Equality Provisions:  
Lessons from the Central American Peace Accords

ILJA A. LUCIAK

Not Just Representation:  
Ensuring Women's Influence in Post-Conflict Bougainville

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The New Afghan Constitution: How Women  
Succeeded in Ensuring Certain Rights and What Challenges Remain

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"Engendering" Rights in Uganda: Women's Struggle for Equality

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The Truth Does Not Discriminate:  
How Post-Apartheid South Africa Constitutionalized Gender Equality

RASHIDA MANJOO

IN THE FIELD: In the Sea of Nation-Building:  
Anchoring Women's Rights in the Iraqi Constitution

MANAL OMAR



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*Critical Half* is a bi-annual journal of *Women for Women International* devoted to the exchange of ideas and insight encountered as practitioners in the field with women, development and post-conflict societies.

Each issue of *Critical Half* focuses on a particular topic within the field of gender and development. Calls for papers for upcoming issues can be found on our website at [www.womenforwomen.org](http://www.womenforwomen.org) along with additional information including submission criteria and deadlines.

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# Critical Half

## GENDER AND CONSTITUTION-BUILDING: FROM PAPER TO PRACTICE

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## Reflections from the Board of Editors

Constitution-building in post-conflict societies can be an important part of the transition to peaceful coexistence. While the peace process often deals with issues of reconstruction and the modalities of new governance, it also provides opportunities for truth and reconciliation and the interjection and recognition of new rights, such as gender equality, disability rights and the special needs and rights of children and the elderly. It can be a stepping stone toward greater equity and fairness in societies that have been divided socially, economically and politically and where internal groups have been at war with one another. The transition creates possibilities to develop a transformational framework for society to move toward justice, equality and democracy and to provide opportunities for the development of those previously excluded from the benefits in society. The transition also provides possibilities for women to push open new doors to political and economic participation and to make constitutional gains that can be stored up for more substantive gains in the future.

But transitions are also times when reconstruction can be a euphemism for reinventing patterns of patriarchal and elite control over society. Both the possibilities and the dangers present strategic challenges for feminist and gender activists. A danger in “rights” talk is that tradition might trump more democratic ways of doing things. This seemed the case in South Africa’s negotiations for a democratic Constitution in 1993-1994. The traditional chiefs tried to get the ANC to agree that customary law should not be tampered with by the new democratic Constitution. Customary law defined women as minors in law – thus the traditional leaders sought to perpetuate the control of men over women. Fortunately, women were well-organized in a diverse range of organizations in South Africa and formed a cross-party coalition that vigilantly monitored the negotiations and prevented the ANC from compromising women’s equal citizenship claims. The Women’s National Coalition demonstrated and lobbied, held media conferences and appeared on television challenging the negotiators to dare to tamper with women’s rights. The first lesson of transition that we learned in South Africa was the imperative for women to be well-organized and to vigilantly monitor peace and constitutional processes.

There is a danger, also, that the peace talks and constitution-building between elites and leadership cadres simply papers over the fault-lines of division in societies exhausted but still replete with the pain and bitterness of the aftermath of civil strife. Even Truth and Reconciliation Commissions can silence the experience of women unless there is a concerted effort to understand the differentiated experience of women and men during war and civil war. In South Africa, the TRC did not confront this reality until a small coalition of gender activists lobbied to ensure that the gendered nature of apartheid be brought to the surface. The process was in fact inadequate, as the final TRC report did not integrate women’s experience, but instead merely provided a chapter on human rights violations against women. Women’s experience is not a discrete chapter, but germane and central to the history of society. Thus, the cautionary lesson from South Africa is that we have to struggle to ensure that women’s stories are not marginalized, but are understood as part of the power relations of society that define women as secondary and keep them subordinate in a multitude of different ways.

In South Africa, the coming to power of a social, democratic regime has not been the panacea that women may have hoped for. While legislation has been progressive, the actual implementation has been strangled by lack of resources. The realization is that even progressive states cannot be left to carve out society’s future without the full integration of an agenda that promotes the transformation of gender relations—this requires more than institutional mechanisms. Transformation requires that women and men take on the feminist agenda of promoting a non-sexist culture. It requires civil society to play a central role in driving change. So the final lesson for all of us is that the feminist struggle for transformation is still at its beginning as we move into the era of peace. Transitions are important moments for women to organize, but after the elections is when the real work, the struggle for transformation, really begins. We can never rest on our laurels.

**Dr. Sheila Meintjes**

*Department of Political Studies,  
University of the Witwatersrand, South Africa*

## In this issue of *Critical Half*

**T**he period of post-conflict reconstruction presents a unique opportunity for an entire population to shape a country's future. Yet women are too frequently left out during this critical moment. Those in power during transitional periods often see women as an afterthought and gender equality as a goal to be tackled only after the important business of building a nation is complete. This viewpoint, however, is severely limiting. Instead, we must consider gender equality and the full participation of women as instrumental to the process of nation-building from the very beginning.

If women are not seated at the negotiating table from the start, their rights are often negotiated for them. Women's tangible rights such as those to marriage, divorce, child custody or property are often seen as private sphere concerns and thus are relegated to religious groups to define the terms. Yet these rights and others, such as those to economic and political participation and education, are all national priorities. In most post-conflict situations, women are the majority of the population. When this majority has a voice in the issues that concern all aspects of their lives, they become the active citizens needed to elevate a nation. When women are forced out of the public sphere and constrained to pre-war traditional roles, they pull the entire society back with them. Yet if women play active roles in decision-making at the family, community and national levels, everyone benefits—stronger women mean stronger nations.

After more than a decade of working with women in post-conflict situations, Women for Women International has come to understand that many of the challenges women face at the grassroots when moving from crisis to stability are the products of larger institutional dilemmas. A woman's social, economic and political status can be traced back to the legal system which governs her country. A country's constitution provides the framework for this legal system. If women are to have a say in the critical document that affects their lives and the future of their countries, they must be involved with the constitution-building process from its inception. Further, we must pay critical attention to the substance of a constitution—what the articles actually say. Some governments believe that simply stating in a constitution's preamble that women and men are equal will suffice. However, a closer look at the individual articles of several constitutions reveals serious discrepancies with this broad

statement. The Rwandan Constitution of 2003, however, offers a good model of leadership commitment to both the form and substance of gender quality in that 22 of its main articles reflect an unambiguous commitment to this goal.

While the language enshrined in the final document is critical, it is only a starting point. Constitutional provisions espousing gender equality have very little real significance until they go from paper to practice. In order for this to happen, the majority of the population—those at the grassroots—must feel a sense of ownership of the document that is to define their nation. Public awareness campaigns must be organized and mechanisms established so members of the public have outlets to express their views. Rwanda offers another good example here as the government simplified the articles of the Constitution and brought them to the grassroots through public education campaigns to make sure that every person understood his or her constitutional rights. A study conducted by Women for Women International in 2004, *Women Taking a Lead: Progress Toward Empowerment and Gender Equity in Rwanda*, illuminates some of the tangible results of these efforts, particularly in terms of women's increased political participation. Rwanda's parliament is now close to gender parity, with 49 percent of female members, and women's involvement in local government and civil society has expanded as well.

The opening article of this journal sets the stage for the exchange of strategies and lessons learned that we hope to spark. In *By the People and For the People: Constitution-Building, Gender and Democratization*, Jolynn Shoemaker discusses how, in a society recovering from conflict, the creation of a new constitution can be an important step toward the realization of democracy. She cites numerous examples of how, over the last several decades, countries around the world have created new constitutions as part of the process of peace building and democratic transformation—with significant repercussions for gender equality, peace and domestic and international stability.

The next article reminds us that women's participation in the earliest stages of a formal peace process is a critical building block for their role in reconstructing a country. In *Implementing Gender Equality Provisions: Lessons from the Central American Peace Accords*, Ilja A. Luciak uses the Salvadoran and Guatemalan experiences

to demonstrate that peace agreements should be viewed as important opportunities to promote gender equality and also provide a useful framework for the process of drafting or revising constitutions. Thus he points out that the best way for women to be involved in the earliest stages of constitution-building is to have active roles in the peace process.

The set of articles that follows provides important insight into the opportunities and challenges for gender equality presented by the creation or revision of a constitution in the aftermath of conflict. In *Not Just Representation: Ensuring Women's Influence in Post-Conflict Bougainville*, Rebecca Linder analyzes the drafting process and provisions in the newly-endorsed Constitution of the South Pacific island province of Bougainville, signed after years of intense conflict. While its provisions signal potential for improved gender equality, Bougainville's lack of governmental capacity, its traditional governance by community norms and customs and lack of public awareness of the Constitution are all obstacles to systemic change.

Afghanistan has drawn the world's attention as it struggles to rebuild after decades of war. In *The New Afghan Constitution: How Women Succeeded in Ensuring Certain Rights and What Challenges Remain*, Horia Mosadiq shares important insight about what Afghan women have achieved in ensuring protection of their rights within the Constitution and potential pitfalls that the process has illuminated. She also offers very useful guiding principles for promoting equality between men and women in the drafting and implementation of a constitution.

Next, Cara Dilts highlights a critical issue that is relevant in numerous countries—the gap between what is written in a constitution and customary laws that may restrict women's rights and freedoms in practice. *"Engendering" Rights in Uganda: Women's Struggle for Equality* discusses the efforts of women's civil society organizations to translate rights enshrined in the Constitution into workable laws and how a decade after a new constitution was created, women still do not enjoy equal status to men, particularly in the crucial area of property rights.

Finally, in *The Truth Does Not Discriminate: How Post-Apartheid South Africa Constitutionalized Gender Equality*, Rashida Manjoo discusses how South African women approached the constitution-building process at the end of the apartheid era in order to ensure gender equality

and prevent marginalization. She also discusses some of the ways in which the constitutionally-created Truth and Reconciliation Commission was established as a mechanism for redressing grievances that occurred during apartheid, especially for women victims.

*Critical Half* traditionally closes with a contribution from one of our field offices. In her article, *In the Sea of Nation-Building: Anchoring Women's Rights in the Iraqi Constitution*, Manal Omar, Women for Women International's Regional Coordinator for the Middle East and North Africa, discusses a battle whose outcome is yet uncertain—protecting women's rights in the legal framework of Iraq. A survey of 1,000 women conducted by Women for Women International in 2004 revealed that 93.7 percent of Iraqi women want to secure legal rights for women, and 83.6 percent want the right to vote on the final Constitution. As the article illustrates, this message from women is loud and clear regardless of whether the legal framework of the final Constitution is religious or secular.

It is our hope that the articles in this issue of *Critical Half* provide insight, inspiration and guidance for countries that are in the midst of or embarking upon the process of drafting or revising a constitution in the aftermath of conflict. Sharing lessons between countries is a critical step in this process.

I would like to express deep gratitude to Catherine Albertyn, Bathsheba Crocker, Anna Karamanou and Sheila Meintjes of our Board of Editors—women who are instrumental players in the struggle for gender equality. I am also grateful to the tireless efforts and talents of Managing Editor, Tobey Goldfarb; to the groundwork laid by Lyla Bashan; to our dedicated copyeditors, Barbara Bares and Rebecca Trinite, and designer, Kristin Hager; and to Corey Oser, whose able leadership brought this journal to fruition. Finally, I thank Women for Women International's supporters whose belief in the capacity of women survivors of war to define their futures, makes this publication possible.



Zainab Salbi  
President and CEO  
*Women for Women International*

**IN A SOCIETY RECOVERING FROM VIOLENT CONFLICT** or transitioning to democracy from an authoritarian regime, the creation of a new constitution is an important step. In the last several decades, countries around the world have created new constitutions as part of the process of peace building and democratic transformation. Constitution-building—the drafting process, the constitutional language that is included and its interpretation and enforcement—have significant repercussions for gender equality, peace and stability. The international community, individual governments, civil society and women themselves each have a responsibility to ensure that new and emerging democracies create inclusive constitution-building processes, draft constitutions that embody international law and women’s human rights and institutionalize mechanisms to interpret and protect these rights and obligations.

# By the People and For the People: Constitution-Building, Gender and Democratization

JOLYNN SHOEMAKER

## Introduction

More than half of all written constitutions in the world have been drafted since 1974.<sup>1</sup> A constitution provides an overarching legal framework for a country. It contains the fundamental principles of government and enshrines the basic rights of individuals. Constitutions vary widely in structure and substance; there is not a single model for achieving the perfect document for a democracy. However, a constitution should embody democratic values—including fundamental freedoms, human rights and a separation of powers within the government. It should also be gender sensitive, reflecting the rule of law, gender equality and the human dignity of every citizen.<sup>2</sup> Women's rights should be central tenets of constitutional law in countries that are transitioning to democracy.

## Constitution-Building: The Importance of Process

In the past, the process of creating a constitution was usually closed to the public. However, public participation in these processes has been growing in recent years with an increasing level of involvement by civil society in governance. This emerging participatory approach to constitution-building is based on international legal instruments and decisions that emphasize the right of democratic participation. For example, the *Universal Declaration of Human Rights (UDHR)* (Article 21) and the *International Covenant on Civil and Political Rights (ICCPR)* (Article 25) provide for the right of democratic participation. In fact, the UN Commission on Human Rights has articulated a specific right to participate in constitution-building.<sup>3</sup> Increasingly, public participation in constitution-building is being accepted as a basic democratic right.

Various mechanisms are used to draft constitutions; some provide more opportunities for broad participation than others. For example, independent commissions

or assemblies, with public input throughout the process, have been used successfully to encourage public participation and to build public support for the new constitution. Such bodies can be appointed and/or elected, and more than one body may be established to handle each phase.

The membership of such groups should be representative of the various social and interest groups within society and include the full participation of women. Women should be represented adequately in bodies formed for constitution-making and approval. For example, in East Timor, at least 40 percent of the Constitutional Commissioners were women.<sup>4</sup>

There are three necessary steps in a participatory constitution-building process: civic education, public consultations and drafting. Each component should involve women. Civic education should increase public understanding of the process and emphasize the importance of a constitution in a democracy. Special initiatives should be implemented to reach out to both rural and urban areas. In Eritrea, this was done through songs, poems, stories, radio and local theatre in various languages.<sup>5</sup> In Rwanda, a Women's Committee conducted training, awareness and sensitivity programs on the Constitution around the country.<sup>6</sup>

During public consultations, the drafters should meet with representatives from various civil society groups, including women, to develop the document. In Nicaragua, this was done by distributing drafts, televising debates and holding town hall open forums.<sup>7</sup> Consultations provide transparency and help ensure that suggestions from the population are taken into account. Drafters should meet separately with women and/or develop other mechanisms to ensure women's full participation.

An open constitution-building process gives women the opportunity to press for their concerns and for specific language to be included in the final document. In

Uganda, women spoke out as members of the Constitutional Commission and the Constituent Assembly and through their involvement with NGOs.<sup>8</sup>

When women play a significant role in the constitution-building process, the resulting constitutions are more likely to reflect gender equality. For example, in South Africa, women's groups and other civil society groups had access to the process, and equal rights and non-discrimination guarantees are included throughout the Constitution.<sup>9</sup> In East Timor, as a result of women's participation in the process, non-discrimination on the grounds of gender is considered in the Constitution as one of the fundamental objectives of the state.<sup>10</sup>

### **Constitutional Language: Incorporating Rights**

A constitution should guarantee fundamental human rights and freedoms, and its language should ensure equal rights of men and women. Inclusion of this principle throughout the constitution is sometimes referred to as "engendering the constitution."<sup>11</sup> Civil, political, social and economic rights are embodied in international human rights instruments, particularly the UDHR, and international conventions, including the ICCPR, the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* and the *Convention on the Elimination of Discrimination Against Women (CEDAW)*. Constitution drafters should include specific language from each of these instruments in the constitution. Some of the international human rights that are vital for women, and the existing international and constitutional language pertaining to them, are described below.

### **Equality and Non-Discrimination**

Equality and non-discrimination are an essential basis for women's rights. Women around the world experience systemic gender discrimination in laws and social practices, which prevent them from enjoying equal rights with men. The rights of equality and non-discrimination are firmly established in international human rights instruments. The right to non-discrimination is articulated clearly in the UDHR, Article 2: "Everyone is entitled to all rights and freedoms set forth in this declaration, without discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Article 7 of the UDHR provides for the right of equal treatment and protection of the law. The ICCPR, Article 26, also guarantees equal protection before the law and prohibits discrimination. Similarly, CEDAW recognizes these rights and obligates states to "condemn discrimination against women in all its forms,

[and] agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women" (Article 2). Furthermore, CEDAW requires that states "embody the principle of the equality of men and women in their national constitutions or other appropriate legislation."

Various constitutions have incorporated these guarantees into their provisions. The Constitution of Cambodia, Article 31, provides that "every Khmer citizen is equal before the law." The Constitution of India, Article 15, prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. Some constitutions have gone even further by including language that provides for equal rights and prohibits discrimination against women specifically. The Constitution of Bangladesh, in Article 28, provides: "Women shall have equal rights with men in all spheres of the State and of public life."

### **Bodily Integrity, Human Dignity and Security**

Bodily integrity, human dignity and security of person are fundamental rights. Women experience violations of these rights in many situations. For example, these rights are clearly abused when women are subjected to rape, human trafficking and other types of gender-based violence. International human rights instruments establish the basis for these rights and include prohibitions against actions that violate them. The UDHR, in Article 3, provides that "Everyone has the right to life, liberty and security of person." The ICCPR, in Articles 7-10, prohibits torture and cruel, inhuman or degrading treatment or punishment and slavery and delineates the rights of liberty, security and dignity. In addition, Article 4 of the ICCPR prohibits slavery, and Article 5 prohibits torture and cruel, inhuman or degrading treatment or punishment.

Many constitutions recognize these rights and prohibitions. For example, Sections 11-13 of the South African Constitution articulate the right to life, freedom and security of person, and prohibit slavery, servitude and forced labor.

### **Political Participation**

For women to achieve equality in society, they must have opportunities to participate in civic life and in the formulation of public policy. Yet women in many countries are excluded or obstructed from full participation in both civic and political life. The right to participate, on an equal basis, in the public sphere is established in international legal instruments. The UDHR, Article 21, articulates the rights of all people to participate in gov-

ernment, to equal access to public service and to periodic and genuine elections. The *ICCPR*, Article 1, delineates the right of self-determination, and Article 25 articulates the right to take part in public affairs, to vote and be elected to office and to have equal access to public services. *CEDAW*, Article 7, not only recognizes these rights but also requires actions by states to ensure that women have equal rights to vote, to form and implement government policy, to hold public office and to participate in non-governmental organizations and other associations involved in public life.

Some constitutions specifically recognize women's rights to participate in public life. For example, the Constitution of Eritrea states: "It is a fundamental principle of the State to guarantee its citizens broad and active participation in all political, economic, social and cultural life of the country. Any act that violates the human rights of women or limits or otherwise thwarts their role and participation is prohibited."

### **Residence, Citizenship and Nationality**

The rights of nationality and citizenship are extremely important because they define which persons may be considered citizens and entitled to all the benefits that accompany citizenship. Women experience discrimination in a variety of ways in this area. In some societies, citizenship is allowed to flow only through paternal lines, women are deprived of their nationality if they marry foreign nationals or governments refuse to naturalize foreign spouses of women. Nationality rights are guaranteed in the *UDHR*, Article 15. *CEDAW* includes broad nationality protections and rights for women. *CEDAW*, Article 9, requires states to grant women equal nationality rights with men and to ensure that neither marriage to an alien nor change of nationality by the husband during marriage changes a woman's nationality, renders her stateless or forces upon her the nationality of her husband. In addition, *CEDAW* requires that states grant women equal rights with men with respect to the nationality of their children.

Some constitutions include either nationality or citizenship rights in their provisions. The Constitution of Cambodia, Article 33, protects against deprivation of nationality. On the other hand, the Constitution of South Africa, Section 3, outlines equal rights to citizenship and its benefits.

### **Economic, Labor, Social and Cultural Rights**

Economic, labor, social and cultural rights are essential for women's livelihood. The fundamental international human rights document that guarantees these

rights is the *ICESCR*. Article 3 of the *ICESCR* obligates states to "ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant." Additionally, *CEDAW* addresses some of these areas, requiring states to ensure equal rights for women in employment, health care and economic and social life.

A few constitutions specifically address women's rights in these areas. The Constitution of Cambodia, Article 45, protects women from losing jobs due to pregnancy and provides for the right of maternity leave without loss of benefits. Article 45 also obligates the government and society to create opportunities for women to get employment, medical care, education for children and decent living conditions.

### **Affirmative Action**

Affirmative action can be an effective mechanism to rectify past discrimination and to create opportunities for disadvantaged groups, including women, to achieve equality. Although affirmative action is not mentioned in the *UDHR*, *ICCPR* or the *ICESCR*, *CEDAW* allows for affirmative action for women. Specifically, Article 4 recognizes that governments may adopt "temporary special measures aimed at accelerating de facto equality between men and women."

Some constitutions include affirmative action provisions. The Constitution of South Africa, Section 9, provides that "legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken." The Constitution of Uganda, Article 33, provides that "women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom." The Constitution of India, Article 15, and the Constitution of Bangladesh, Article 28, both allow the state to institute affirmative action for women.

### **Reconciling Women's Rights With Customary and Religious Laws**

Customary and religious practices often have negative repercussions for women. In countries where there are entrenched customary and religious laws, constitution drafters must determine how to respect these practices while protecting human rights and gender equality. The constitution may reaffirm the importance of cultural and religious traditions, but it should also state clearly that these sources of informal law must conform to international law, especially regarding women's rights, and that the state does not condone practices that dis-

criminate against women and other groups. This concept is supported by *CEDAW*, which obligates governments to take measures to abolish laws, regulations, customs and practices that discriminate against women (Article 2) and to modify social and cultural patterns to eliminate practices that are discriminatory (Article 5).

In the recent cases of Iraq and Afghanistan, constitution drafters attempted to reconcile Islamic and international law. These constitutions allow for the application of Islamic law in certain situations but attempt to make governments accountable to international norms. However, these arrangements have not succeeded in clarifying completely the relationship between religious law and international human rights; there are ambiguities in these arrangements that could leave room for interpretations that are detrimental to women's rights.

Women's rights under international law should be placed above traditions and beliefs that discriminate on the basis of gender. As countries grapple with the problem of reconciling various sources of law, the validity and interpretation of customary and religious laws will continue to be a source of debate. The international community, civil society and women in these countries should advocate strongly for constitutions that recognize only those customs and religious practices that do not violate women's rights of equality and non-discrimination.

### Enforcing Constitutional Rights

It is essential that constitutional rights are enforced and protected by the state. If constitutional rights are consistently violated, distorted or ignored, the constitution loses its legitimacy, and democracy is endangered. It is vital that all levels of government respect constitutional provisions and apply international human rights standards in decisions and policies. The constitution should explicitly include this requirement.

In addition, the constitution should set out a process for determining whether legislative, executive and administrative acts conform to the constitution. In some countries, all courts at all levels have the authority to consider constitutional issues through judicial review. In other countries, constitutional review resides with only one court. Other countries delegate this responsibility to non-judicial entities. All mechanisms of constitutional review should be entirely independent of the executive and legislative branches of government to ensure unbiased decisions.

The constitution may also provide for various commissions to monitor specific constitutional rights. Some constitutions create a human rights commission or an

ombudsman for this purpose. For example, the Constitution of Fiji established a Public Education Commission to inform the public about the nature and content of the Bill of Rights and to make recommendations to the government about compliance with human rights standards. The Constitution of South Africa provides for a Human Rights Commission to promote human rights, monitor the observance of human rights, investigate cases of human rights violations and take steps to secure redress for individuals in cases of violations.

All mechanisms for the protection of constitutional rights should be gender-sensitive. Women should be represented on courts and other bodies that determine constitutional questions, and equality provisions should be considered central aspects of constitutional review. In Uganda, for example, the Constitution provides that "the state shall ensure gender balance and fair representation of marginalized groups on all constitutional and other bodies (Section VI)." Entities that are established to review constitutional questions or monitor the implementation of constitutional rights should receive regular and in-depth training in gender issues.

### Conclusion and Recommendations

Women have an important role to play in the formation of new constitutions and in the protection of constitutional rights. Women and men must be able to exercise these rights equally for democratic culture to take root and flourish. The international community, individual governments, civil society and women themselves all have a responsibility to ensure that new and emerging democracies create inclusive constitution-building processes, draft constitutions that embody international law and women's human rights and institutionalize mechanisms to enforce these rights and obligations. Following are some key recommendations for societies beginning or engaged in constitution-building:

1. Women should fully participate in the development, drafting and ratification of the constitution.
2. The constitution should include international human rights language and norms, including:
  - Guarantees of human rights and fundamental freedoms
  - Equality and non-discrimination clauses
  - A provision allowing for affirmative action
  - Qualifying language stating that women's rights under international law trump inconsistent cultural, social and religious laws and practices

3. The constitution should provide for independent bodies, whose members include women and are subject to gender training, to monitor and protect constitutional rights. Such enforcement mechanisms may include, for example:
  - Human rights commissions or ombudsman offices to evaluate human rights practices, consider individual cases and provide redress for violations
  - An independent judiciary
4. The international community, regional organizations, civil society and local media should raise awareness about the importance of the constitution and women's involvement in constitution-building.
5. Women and their communities, especially in rural areas, should receive education about constitutional rights during the constitution-building process and after the constitution has been ratified.

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**JOLYNN SHOEMAKER** is a Policy Officer at *Women Waging Peace*, an initiative of *Hunt Alternatives Fund*. She held previous positions with the U.S. Department of Defense and the U.S. Department of State. Shoemaker has written a more extensive discussion of constitution-building that appears in the *Women Waging Peace/International Alert* publication called, *Inclusive Security, Sustainable Peace: A Toolkit for Advocacy and Action*, available at [www.womenwagingpeace.net](http://www.womenwagingpeace.net). She is also the author of "Women and Wars within States: Internal Conflict, Women's Rights and International Security" (*Civil Wars*, Autumn 2001) and "In War and Peace: Women and Conflict Prevention" (*Civil Wars*, Spring 2002). She holds an M.A. in national security studies and a J.D. from Georgetown University.

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## ENDNOTES

- 1 Hart, "Owning the Constitution."
- 2 Opar, "The Inclusion of Principles of Gender Equality," 49.
- 3 Hart, "Democratic Constitution Making," 41.
- 4 UNTAET Fact Sheet 11.
- 5 Hart, "Democratic Constitution Making," 7.
- 6 Juliana, "Women's Participation in Electoral Processes," 5.
- 7 Reding, "By the People," 434-441.
- 8 Matembe, "Women and Constitution Making in Uganda."
- 9 Hart, "Democratic Constitution Making," 8.
- 10 UNTAET, see note 4.
- 11 Opar, see note 2.

**PEACE AGREEMENTS SHOULD BE CONCEIVED AS FRAMEWORKS** for subsequent constitutions. Thus, from the very beginning of a peace process, we need to focus on how human rights guarantees will be implemented. The experiences of both El Salvador and Guatemala show that formal inclusion of women in peace negotiations and the institutionalization of gender equality in peace accords and post-war constitutions is not by itself sufficient to achieve greater gender equality. Substantive implementation of these accords and constitutions requires coalition-building between women and men.

# Implementing Gender Equality Provisions: Lessons from the Central American Peace Accords

ILJA A. LUCIAK

## Introduction

Starting a decade ago, women's participation in armed conflict and peace negotiations, as well as their central role in the reconstruction of post-conflict societies, were starting to gain international recognition. This prompted a series of international conferences and meetings that emphasized the importance of looking at these issues from a gender perspective, a lens that permits greater insight into the roles of women and their potential in post-conflict societies.<sup>1</sup>

Today, gender equality is an accepted normative goal, yet we have only made limited progress in transforming societies toward greater gender justice. In the specific context of peace accords and subsequent constitutions containing gender equality provisions, the key issue is their substantive implementation. Peace accords and constitutions share an inherent weakness. They are often normative documents, agreed to under duress by negotiating parties with mutually exclusive views rather than specific agreements or frameworks that can be effectively executed.<sup>2</sup> The Central American experiences, specifically El Salvador and Guatemala, show that women's participation in the design of peace agreements and the explicit recognition of women's rights in the accords themselves do not guarantee that the struggle toward greater gender equality is won.

Typically, as long as the attention of the world community is focused on a particular crisis, the gender content of peace accords and women's participation in the process receive coverage. The rhetoric of officials involved in the process and the formal provisions guaranteeing women's rights that are included in official documents permit the key actors involved to claim success. Yet the crucial implementation phase most often occurs after the attention of the international community has moved on to the next crisis. It is this stage, however, that is the key to substantive change and requires close scrutiny and enforcement of the document's

guarantees. Thus, the formal participation of women in peace negotiations and constitution-building and the inclusion of gender provisions in peace agreements is but a first important step toward gender equality.

## Women's Participation in the Wars

On January 16, 1992, the government of El Salvador and the guerrilla forces integrated in the Farabundo Martí National Liberation Front (FMLN) signed historic peace accords at Chapultepec Castle, Mexico. This agreement ended a 12-year conflict that had traumatized a whole nation.<sup>3</sup>

On December 29, 1996, another Central American peace accord was completed. The guerrilla forces integrated into the Guatemalan National Revolutionary Unity (URNG) and the Guatemalan government, headed by President Alvaro Arzú, signed an agreement that ended the conflict that had engulfed Guatemala for 36 years.<sup>4</sup>

## *El Salvador*

Women played an important role in the guerrilla movements of El Salvador. At the time of the 1992 demobilization of the Salvadoran FMLN, female combatants represented 29 percent of the fighting force. In addition, women were part of the political personnel constituting close to 37 percent of the cadres.<sup>5</sup> Only in exceptional cases did women join the struggle in order to change prevailing gender relations. Instead, they chose to take up arms out of a sense of social justice or to survive the blanket repression unleashed by the army and police forces. The FMLN did not explicitly address women's rights in its early programs and announcements. FMLN commanders, whether male or female, did not focus their energy or thoughts on women's rights, although women did start to organize within the FMLN in the last years of the struggle.

### *Guatemala*

In Guatemala, women were also an important part of the guerrilla forces. Women combatants represented about 15 percent of the 2,940 combatants that officially demobilized. When the massive incorporation of women started in the 1980s, traditional gender views continued to shape the views of the URNG leadership, a reality that contributed to the lower levels of female participation.

### **Women's Role in the Peace Accords**

#### *El Salvador*

Women's issues received scant to no attention in the peace negotiations in El Salvador, although Nidia Díaz, Lorena Peña and Ana Guadalupe Martínez, all high-ranking female Commanders, participated in the process. At the time, none of these three women would have considered themselves advocates for women's rights. All three acknowledge that at the time of the peace accords they lacked gender consciousness or awareness as to how gender issues may be relevant in the post-conflict era.

As a result, the FMLN negotiators focused on political and military issues rather than on socio-economic problems and were unaware of the importance of advocating the inclusion of gender as an organizing principle. Thus, women's rights and needs were barely addressed in the accords.

#### *Guatemala*

In Guatemala, on the other hand, a vocal women's movement supported the efforts of a few high-ranking female URNG officials to put gender equality on the peace negotiation agenda.<sup>6</sup> Luz Méndez, a member of the URNG's commission negotiating the peace accords, had learned from the Salvadoran experience.<sup>7</sup> Méndez, and several other officials, vigorously advocated incorporating a gender perspective into the accords. Their view was not representative of the URNG in general. Awareness of gender issues was, at best, limited in the guerrilla movement. This made it imperative for the advocates for women's rights to be supported from groups within civil society.

The role of civil society in the peace negotiations in Guatemala was institutionalized with an accord that established the *Asamblea de la Sociedad Civil* (Assembly of Civil Society, or ASC). It consisted of 10 diverse organizations representing the main sectors of Guatemalan society and derived its legitimacy from the January 1994 framework agreement, giving it "official recognition as an interlocutor by the parties to the peace talks."<sup>8</sup>

The ASC played an important role in advocating the inclusion of women's rights into the accords. A highly visible group within the Assembly was the Women's Sector which managed to greatly influence the content of some of the accords. As a result, women's rights were specifically addressed in four of the seven substantive agreements that were reached between July 1991 and September 1996.

The Guatemalan accords included a number of important passages on women's rights. In the accord establishing procedures for the resettlement of populations uprooted during the war, the parties agreed "to emphasize in particular the protection of families headed by women, as well as the widows and orphans who have been most affected."<sup>9</sup> Further, the Guatemalan government "committed itself to eliminating all forms of discrimination, factual or legal, against women, and to make it easier [to have] access to land, housing, [and] credit and to participate in development projects. A gender perspective will be incorporated in the policies, programs and activities of the global development strategy."<sup>10</sup>

In an important agreement on the rights of Guatemala's indigenous peoples, considered one of the key achievements of the URNG leadership, indigenous women were given special protection. For example, sexual harassment of an indigenous woman was to be sanctioned particularly severely under Guatemalan law.<sup>11</sup> Women's political rights were also addressed. The accord concerning the strengthening of civil society advocated the introduction of measures of positive discrimination to increase female participation. The agreement required the signatory parties "to take the corresponding measures in order to ensure that organizations of political and social character adopt specific policies tending to encourage and favor women's participation as part of the process of strengthening civilian power."<sup>12</sup>

The Guatemalan accords were very advanced in addressing the role of women in society and advocating change toward greater gender equality. The accords reflected a rethinking of women's roles in society. At least at a formal level, women were acknowledged as key protagonists in Guatemala's future development. Yet the challenge remained to implement the provisions in the accords in a way that would transform Guatemalan society.

### **Women's Role in the Post-Conflict Era**

#### *El Salvador*

In El Salvador, the lack of a gender perspective in the accords and in the design of the reintegration pro-

grams frequently resulted in gender discrimination. For example, female combatants initially did not receive equal treatment in the allocation of crucial resources such as land. The reasons were many, ranging from *machismo* at the grassroots level to lack of support from the male-dominated leadership of the guerrilla movement. Nidia Díaz, the FMLN official originally in charge of the land program, affirmed that although the discrimination of female combatants was not officially sanctioned or designed, the socio-cultural context often made it a reality.<sup>13</sup> Lorena Peña concurred: “I believe that the principal problem that we have experienced is that the reintegration of the female combatant into civilian life has taken place under the classical sexist concepts that have predominated in all political forces of the country, including the FMLN.”<sup>14</sup> Peña claimed that an estimated 70 to 80 percent of female combatants initially did not receive the benefits allocated to them.

Significantly, in-depth studies of the reintegration programs demonstrated that these early instances of discrimination were subsequently rectified.<sup>15</sup> The reason for this reversal could be found in the mobilization of the women’s movement. Together with female FMLN activists, it succeeded in exerting sufficient pressure on the government and the FMLN to reverse discriminatory practices.

### **Guatemala**

In Guatemala, the challenge of reintegrating the URNG combatants into civilian life was enormous. Of particular concern were the poverty and ethnic backgrounds of the ex-combatants. The majority of the URNG’s personnel came from Guatemala’s 21 groups of indigenous peoples and belonged to the most marginalized sectors of society. Not surprisingly, evaluations of the peace accords’ impact sounded a pessimistic note. Leaders of the women’s movement argued that the demands of women in respect to the implementation of the accords lacked tangible results and that commitments had not been converted into actions. The government was criticized for “failing to have an idea of how to attend to women’s historic problems” and for lacking a strategy of action designed to ensure that the provisions of the accords would not remain empty words.<sup>16</sup> With a government unwilling to follow through on commitments made in the accords, and a demobilized guerrilla movement lacking the political clout necessary to hold the government accountable, women were left out in the cold.

### **Analysis**

The current emphasis on the inclusion of gender equality provisions in peace accords and subsequent constitutions is only a necessary first step. While it is important to fight for formal gender equality, it is the implementation of these formal agreements that really matters. Peace accords and constitutions that institutionalize gender equality can easily remain utopian visions unless a concerted effort by societal forces transforms these visions into reality.

### **El Salvador**

In El Salvador, the women’s movement evolved into an effective advocate for gender equality and thus was able to correct the imbalance created by peace accords that failed to address women’s issues. The movement’s efforts were greatly helped by the strong political party that emerged out of the former guerrilla movement. The FMLN’s political strength permitted the new party to pressure the government to adhere to the provisions of the peace accords, which established benefits for the ex-combatants. Female FMLN militants were successful in gaining substantial representation in the FMLN’s leadership structures and in the party’s parliamentary representation. While formal gender equality was achieved in most instances during the implementation of the benefits programs, the prevailing cultural norms impeded progress toward substantive equality. Nevertheless, the Salvadoran experience teaches us that it is essential that ex-combatants form strong political parties to ensure the implementation of any accord.

### **Guatemala**

The Guatemalan peace accords can best be compared to the constitutions of many countries that guarantee extensive rights to the citizens that in the end are rarely enforced. The accords establish normative goals for the future of Guatemalan citizens but not an enforceable code of law. Some commentators have noted that “the Guatemalan agreement contains more wide ranging language on social and economic areas, by far, than the Salvadoran accord, but a great many of the provisions are stated in sufficiently general terms as to make them virtually unenforceable,” a fact described as the Achilles’ heel of the accords.<sup>17</sup> There is strong consensus that the URNG’s weakness at the bargaining table made it impossible for the guerrilla leadership to negotiate more specific, enforceable agreements—a reality that impedes the full realization of the provisions in the accords. The URNG continued to exhibit political weakness during the implementation phase, at a time when a

strong advocate was needed. Thus, when Guatemala held a referendum in May 1999 on the constitutional reforms necessary to fully implement the peace accords, the referendum failed to gain the support required to change the Constitution. This development raised serious questions regarding the viability of the accords. In the end, the URNG did not have the power to deliver on the promises entailed in the accords and the government showed little interest in doing anything without being pressured. Thus, the emphasis given to women's rights in the accords has not yet translated into concrete improvements for the female population.

The importance of establishing measures of positive discrimination was explicitly mentioned in the Guatemalan accords, yet in the years since the accords little has been accomplished in guaranteeing women adequate political representation. Civil society contributed greatly to the successful initiation and conclusion of the peace negotiations, yet it lacked the power to push for a successful implementation of the accords.

### Conclusion

As the examples discussed in this article show, the political will of leaders advocating change and a strong women's movement that can hold them accountable is, in the end, more important than formal constitutional provisions guaranteeing gender equality or the best intentions of the international community. Substantive change requires grassroots support. A politician can advocate change, but for this change to take hold, people need to support new practices by implementing them in their daily lives.

The 2003 report of the United Nations expert group meeting on "Peace agreements as a means of promoting gender equality and ensuring participation of women" provides a useful framework for the process of drafting or revising a constitution.<sup>18</sup> Now we need to ensure that we direct our attention toward implementing formal gender equality provisions to move toward substantive equality. This requires more than formal guarantees. The fight for substantive gender equality requires a transformation of a society's gender consciousness, which in turn can only be achieved if women and men form a strategic alliance. This lesson applies equally to the gender equality provisions of the new Afghan Constitution. Similarly, the process of drafting a new Iraqi Constitution that improves gender equality in that country can be meaningful only if it goes forward in the context of a broad societal discussion concerning the role of women in a democratic Iraqi society.

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**ILJA A. LUCIAK** is Professor and Chair of the Department of Political Science at Virginia Tech University. He has written for *North American, Austrian, Swedish, Italian, British, Mexican, Nicaraguan and Salvadoran publications*. For the past 20 years, he has conducted field research in Latin America, focusing on gender equality and democratization. In November 2003, Dr. Luciak served as a United Nations Expert at the Expert Group Meeting on "Peace agreements as a means for promoting gender equality and ensuring participation of women—a framework of model provisions," held in Ottawa, Canada. He holds an S.J.D. from the University of Vienna, Austria and a Ph.D. in political science from the University of Iowa.

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## ENDNOTES

- 1 A main document that firmly put gender equality on the agenda is the Platform of Action, from the 1995 Fourth World Conference on Women held in Beijing. The Platform's key provisions directed the member states and the international community to take action to address the concerns arising from women and armed conflict. It demanded that women be included in peace negotiations and post-conflict decision-making processes and emphasized the peaceful resolution of prevailing conflicts. United Nations Fourth World Conference on Women, *Action for Equality Development and Peace, Beijing Declaration and Platform of Action*.
- 2 Subsequently, Security Council Resolution 1325 on Women, Peace and Security, adopted in October 2000, highlighted the significance of "bringing gender perspectives to the center of attention in all United Nations conflict prevention and resolution, peace-building, peace-keeping, rehabilitation, and reconstruction efforts. It calls for increased representation of women, particularly at decision-making levels." Resolution 1325 was an important call to action, affirmed by subsequent reports and studies that emphasized the need for gender-based analysis and action. UN Security Council Resolution 1325.
- 3 Report, "Peace Agreements as a Means of Promoting Gender Equality and Ensuring Participation of Women," 24-26.
- 4 The war ravaged the country, creating 1.5 million refugees and claiming the lives of more than 70,000 people, most of them civilians. In the wake of the accords, optimism regarding El Salvador's future was widespread.
- 5 The human suffering during this period defies imagination. According to the report by the Commission for Historical Clarification, charged under the peace accords with establishing the truth about Guatemala's violent past, more than 200,000 Guatemalans were killed or disappeared over the course of the conflict. In addition, hundreds of villages were destroyed and 1.5 million people were internally displaced or sought refuge in Mexico. *Guatemala: Memory of Silence*, 72; Spence et al. "Promise and Reality: Implementation of the Guatemalan Peace Accords," 4.
- 6 ONUSAL, *Proceso de desmovilización del personal del FMLN*.
- 7 Aguilar, "Un movimiento de mujeres embrionario."
- 8 Interview with Luz Méndez, Guatemala City, April 4, 1997.
- 9 Spence et al., "Promise and Reality," 12.
- 10 United Nations, "Acuerdo para el reasentamiento de las poblaciones desarraigadas por el enfrentamiento armado," chapter II, article 2.
- 11 Ibid., chapter III, article 8.
- 12 United Nations, "Acuerdo sobre identidad y derechos de los pueblos indígenas," chapter II, article 1.
- 13 United Nations, "Acuerdo sobre fortalecimiento del poder civil y función del ejército en una sociedad democrática," Article 59. The international climate during the peace negotiations played an important role. For example, discussions on the Socioeconomic and Agrarian Accord coincided with the 1995 Fourth World Conference on Women in Beijing. Having gender issues on the forefront internationally made it easier to incorporate provisions favoring women's rights into this accord. According to Luz Mendez, a key female negotiator, efforts to put gender equality on the agenda were legitimized and strengthened when women pointed out to their male colleagues that the international donor community, which supported the peace process financially, was strongly in favor of women's rights.
- 14 Interview with Nidia Díaz, San Salvador, March 9, 1994.
- 15 Interview with Lorena Peña, San Salvador, July 29, 1993.
- 16 Luciak (2001), chapters 2 and 3.
- 17 Demandas de las mujeres y acuerdos de paz," 11.
- 18 Spence et al., "Promise and Reality," 14.
- 19 Report, "Peace Agreements as a Means of Promoting Gender Equality and Ensuring Participation of Women," 24-26.

**PROVISIONS IN BOUGAINVILLE'S RECENTLY ENDORSED CONSTITUTION** take into account the role of women in society, including provisions for protecting customary matrilineal land ownership. Yet, the drafting process and resulting document do not aggressively advocate for women's political participation. Implementation through interpretation and enforcement will ultimately be as important as the document itself. In order for the new constitutional provisions to be effective, implementation will have to balance diverse interests, sometimes overcome traditional governance by community norms and customs and confront other legal and extra-legal problems facing women.

# Not Just Representation: Ensuring Women's Influence in Post-Conflict Bougainville

REBECCA LINDER

## Opportunity for Change

Post-conflict societies present an exceptional opportunity for change, especially as formerly marginalized groups are able to assert new roles for themselves. While the rupture caused by conflict almost always brings unspeakable devastation, it also opens space for new rules and structures to emerge.<sup>1</sup> Women, often marginalized and victimized during conflict and especially vulnerable in its aftermath, may find themselves empowered by the changes conflict wreaks.

Indeed, the post-conflict reconstruction phase may provide a critical window of opportunity for the elevation of women's standing in virtually every aspect of society—social, economic, political and legal—that the transformation following conflict permeates. As the cornerstone of the nascent legal framework intended to drive that transformation, a constitution can help influence the tone and course of change by ensuring that emerging needs of the people, including gender equality, are incorporated into an updated legal structure.

Some recent literature on post-conflict reconstruction highlights what is sometimes called “constitution-building,” emphasizing a participatory and inclusive process for creating a document that respects the rights of all members of society, the importance of a balance between a progressive reform agenda and societal ownership and buy-in of the result.<sup>2</sup> Accordingly, the constitutional drafting process and the document it produces can significantly influence the position of women in society.<sup>3</sup>

It is also essential to recognize that legal and constitutional tools in isolation are inadequate to bring about change. Women's involvement in drafting a constitution and recognition of women as a constituency in the constitution itself are important. However, they are ultimately insufficient to guarantee women's rights or protect and enhance their position and status.

At the outset, all provisions in the constitution must be carefully drafted to ensure that: the interests and status of women are protected; avenues are created to bring women more fully into the political, social and economic mainstream; and no obstacles are constructed to existing avenues of participation. Moreover, even the most enlightened constitution will do little to influence the situation of women if it is disregarded, made irrelevant by traditional customs or not rigorously implemented because of a weak legal system. Mere token representation will not lead to real political influence, which is the crux of empowerment on the road to gender equality.<sup>4</sup>

Thus, what happens after the final document is ratified may be the most crucial indicator of how a new constitution will affect women's rights. Will women's involvement in the drafting process and recognition as a constituency in the constitution lead to genuine advances in their legal status in society? Or, will these measures turn out to be aspirational lip service? Can constitutional catalysts allow women to transcend limitations placed on them by extra-legal realities? This article examines the possible enhancement of the societal status of women in the Autonomous Region of Bougainville as the island emerges from conflict, discussing the constitution-building framework, gender relevant provisions of the document and other constitutional and related issues.

## The Conflict and Its Impact on Women

The Constitution of the Autonomous Region of Bougainville was created following a conflict between the government of Papua New Guinea (PNG) and various factions on the island province of Bougainville. Open conflict broke out in 1988 after years of growing disaffection among the Bougainville population with the PNG government.<sup>5</sup> The dispute soon transformed into full-fledged hostilities between a rebel movement seek-

ing Bougainville's independence, the PNG government and factions loyal to the PNG government.<sup>6</sup>

Nine years of raging conflict affected the entire Bougainville population profoundly. Prior to the conflict, Bougainville's women, traditionally the landowners in a largely matrilineal although patriarchal culture, were already experiencing the erosion of their influence as a collateral consequence of development.<sup>7</sup> During the conflict, violence increased and women suffered particularly.<sup>8</sup> Many Bougainvillean women fled to the jungle and adapted to life there.<sup>9</sup> Many women were victims of rape, their limited access to healthcare resulted in higher maternal mortality and there was an increase in the number of single mothers.<sup>10</sup>

Despite the impact the conflict had on Bougainville's women, and the varied roles they may have taken on as a result, the island's women came to be instrumental in the peace process. As early as 1996, 700 Bougainvillean women organized a Women's Forum, which was eventually transformed into the Bougainville Working Group that pressured the Australian government to become involved in efforts to end the conflict. In 1997, a ceasefire, referred to as the Burnham Truce, came into effect. During years of negotiations, which produced a series of peace accords, women continued to help drive the process and a final peace agreement was signed on August 30, 2001.

The influence women and women's groups exerted in halting the conflict, and in continually pressing the peace process forward,<sup>11</sup> provides essential context for the analysis of their import in the constitution-building process, their recognition in the Constitution and their status in Bougainville society.<sup>12</sup> When confronted with the effects of violence, Bougainvillean women mobilized and effectively sought non-violent means for change. Historically absent from Bougainville's politics—despite women's traditional cultural prominence, the political process in Bougainville was usually reserved for men<sup>13</sup>—women capitalized on an opportunity to become more involved.

### **The Constitution: Development and Document**

The 2001 Bougainville Peace Agreement granted autonomy to Bougainville, with an option for a referendum on independence that will take place (it may alternatively be cancelled in accordance with the Constitution) 10 to 15 years after the establishment of the autonomous government. The Agreement also laid out guidelines for a constitutional drafting process directing the establishment of a Constitutional Commission, which, while not required to include women, was to

“consult widely with,” and be “broadly representative” of the people of Bougainville. The Agreement also called for the establishment of a “representative” Constituent Assembly.<sup>14</sup>

Consistent with those guidelines, Bougainville's Interim Provincial Government and the Bougainville People's Congress established a Constitutional Commission of 24 members, which included three women and a Constituent Assembly, which included eight women.<sup>15</sup> With the exception of one rebel faction, which continued to occupy a “no-go zone” in the area where the conflict originated, all rebel groups also eventually joined the peace process and the constitution-building process.<sup>16</sup>

The Constitutional Commission drafted constitutional proposals for consideration by the Constituent Assembly. The Constituent Assembly then debated and amended the drafts before submitting a final draft to the PNG government, which endorsed it as consistent with the PNG Constitution. The final Constitution was approved on December 22, 2004, and was published in the PNG National Gazette.<sup>17</sup>

Bougainville's approved Constitution uses male gendered language throughout, stating that “words importing the masculine gender include females,” but it does contain special provisions for women.<sup>18</sup> In addition to those provisions mandating representation and involvement of women in the new government, the Constitution lists several “Objectives and Directive Principles,” which include fair representation of women and other marginalized groups and welfare for widows, children, orphans, the aged and the disabled.<sup>19</sup> It also asserts that “the role and welfare of women in traditional and modern Bougainville society shall be recognized and encouraged and shall be developed to take account of changing circumstances.”<sup>20</sup>

The “Objectives and Directive Principles” are non-justiciable (i.e. they do not confer rights giving rise to judicial remedy), but are meant to guide the government in applying and interpreting the Constitution, in making and implementing policy decisions and in making laws. The president must report to the House of Representatives on the realization of these principles, and based on this report, the House may contemplate appropriate action to make implementation more effective.<sup>21</sup>

In terms of political participation, the Constitution stipulates that the House of Representatives must include three female members, representing the North, Central and South regions of Bougainville, “to represent the interests of the women of the Region.”<sup>22</sup> Other women may also be elected to the House. The Bougainville Executive Council is to include one female

member of the House of Representatives nominated by the other women members of the House and appointed by the president.<sup>23</sup> A Caretaker Bougainville Executive Council, which will function as an Executive until appointments to the permanent Executive Council are made, is also to include a woman member of the House of Representatives. A Senior Appointment Committee will have one female representative, whose selection will be determined by law. There are no special provisions for inclusion of women in the Judicial branch, nor is there language for the creation of a Ministry of Women's Affairs.

### Quotas for Women: Not Enough

The Bougainville Constitution's guarantees of political participation by women represent a positive change; the Constitution of Papua New Guinea, of which Bougainville remains a part, mentions women only once, calling for "equal participation by women citizens in all political, economic, social and religious activities."<sup>24</sup> The approved Constitution for the Autonomous Region guarantees women three out of 39 total seats in the legislature. While a step forward, especially considering early drafts of the Constitution guaranteed only one female representative, this is still a small percentage, and one falling far short of gender equality throughout the government.<sup>25</sup> Bougainville's quota also falls short of the UN goal of 30 percent participation by women.<sup>26</sup>

In some instances, quotas for women like those included in Bougainville's Constitution are able to promote representation in excess of the minimum required; in others they function more as window dressing than true inclusivity. Bougainville's guarantee of less than eight percent of women in the legislature is not a very aggressive quota. To ensure women's influence, both politically and in other realms, and to break down gender barriers, more than token representation is needed. Otherwise, quotas risk confining women's participation to representation of only women's issues and limiting their political opportunity. For instance, the requisite three women on the Bougainville Constitutional Commission were nominated to represent women's interests in their three regions; none were chosen to represent any other interests, groups or organizations.

Furthermore, representation does not guarantee influence. Leaving aside whether women, in fact, will prove to be the best advocates for women's rights, gender awareness for both men and women decision-makers is necessary to advance the position of women. And those with such awareness must wield real power.<sup>27</sup>

It is apparent that Bougainville as a whole can benefit if women can move beyond these quotas politically and gain influence in all aspects of society. Perhaps Bougainville's flourishing NGO community, of which women are a large part, bodes well for the continued involvement of women in society and may translate into their increased involvement in political life.

### Land Issues and Rights

Land ownership, a traditional source of women's power, is also integral to women's broader influence in Bougainville.<sup>28</sup> All of Papua New Guinea, including Bougainville, is undergoing land reforms that impact the country's development and traditions. The majority of PNG's population survives on subsistence farming, curtailing the availability of land for other uses. Pressures for land to be made available for cultivation or mining are forcing an ongoing, often disruptive, transition to a cash economy, further contributing to land shortages.<sup>29</sup>

PNG's people are closely tied to and dependent on their land, both for livelihood and as a means of preserving kinship ties and community structure. For women in Bougainville, land is especially important because of the high concentration of matrilineal tribes in which land is passed down from mother to daughter. In Papua New Guinea as a whole, only three percent of the land is alienated, while 97 percent remains under customary control according to unwritten laws and traditions and the population is generally wary about governmental control of customary land.<sup>30</sup> Matrilineal inheritance could diminish with formalization of land ownership because formal registration tends to result in men holding the official land title.<sup>31</sup>

Bougainville's Constitution specifically addresses these contentious issues. It mandates that the new government develop a land policy that "provide[s] for the protection of the customary powers of heads of matrilineal and patrilineal societies and of customary owners in relation to customary land."<sup>32</sup> The government is also to recognize traditional systems of government, the roles and responsibilities of traditional chiefs and other traditional leaders and of the clan system "wherever practicable and possible."<sup>33</sup> Finally, in managing and preventing damage to natural resources, the government of Bougainville is required to direct the laws and policies toward the recognition of customary rights.<sup>34</sup>

These provisions outline what could be an equitable land policy if interpreted and implemented in a way that is sympathetic to women, but that interpretation will be impacted by tensions between respect for indigenous populations and their customs and traditions and the

economic pressures of development, sustainability and efficient land use. More specific terminology in the Constitution could have ensured protection of customary land ownership; the way the land policy is phrased relies heavily on finding a balance between development and respect for local populations.

### The Constitution's Role in Society

Interpretation and enforcement of the Constitution, as well as mechanisms for implementing the objectives, principles and processes laid out in its provisions, are as important as the document itself, especially to overcome lingering resistance to bringing women further into the societal mainstream. To maximize the Constitution's catalytic impact and adhere to the promises of its ambitious provisions, Bougainville will need public support of the Constitution and increased governmental capacity, particularly in the judicial sector.<sup>35</sup> International support and reconstruction efforts must take this into account.

To guarantee the Constitution's relevance, strong public support and public knowledge are needed. Currently, despite wide consultations by the Bougainville Constitutional Commission and the Constituent Assembly during the drafting process, public knowledge of and about the Constitution is limited. This is changing somewhat: there is now a public awareness program in the lead-up to the elections scheduled for May and June of 2005. The Constitution was published in PNG's official National Gazette following its approval, and copies of the gazetted Constitutions have been printed. But they are in English, while much of the population speak indigenous languages or Pidgin. Additionally, distribution remains a problem due in part to the dearth of reliable communications systems in Bougainville. The length (over 200 pages) and opacity of the Constitution will likely also hinder the degree to which Bougainvilleans are informed about its existence or contents.<sup>36</sup> In an area traditionally governed by community norms and customs, lack of knowledge about the Constitution is likely to limit its acceptance by the population.<sup>37</sup>

Successful implementation of the Constitution and its provisions ensuring equal standing for women will require a functioning independent and impartial justice system and a flexible new legal and judicial framework. A severe lack of capacity in these areas (trained judges, lawyers and prosecutors) may force reliance on traditional mechanisms for justice enforcement.

### Limitations

Because the Bougainville Constitution was approved in December 2004, it is too early to analyze its long-term effects, including its impact on the position of women in Bougainvillean society. Conflict does offer opportunities, but violence never entirely wipes the slate clean. Indeed, patterns, including discrimination, which preceded or perhaps even led to the conflict, may be replicated. Similarly, long-held traditions can be prodded by institutional reforms, but if individual men and women prefer to adhere to their customary ways, real change will not take place. Bougainville's patriarchal society, despite the prominence of matrilineal inheritance, will not be transformed unless a majority of citizens desire and advocate for that transformation. While it is evident that many educated women now have an increased opportunity to participate in public life, this opportunity must not be limited to the elite and privileged. The many women who do not participate in politics still need to have opportunities available to them.

Arguably, some of the most severe problems affecting women's lives are beyond the reach of constitutional and legal measures. For example, improving the economy in Bougainville, re-establishing a vibrant education system, stopping the spread of HIV/AIDS and minimizing the acceptability of domestic violence are all integral to women's well-being. Transition from subsistence living, with separate language groups and tribes, to a more integrated and developed economy is a challenge even for a society not scarred by almost a decade of violent conflict.

Citizens in Bougainville have the opportunity to remake their country in a way that exceeds regional, even global, expectations; the Constitutional framework is in place to capitalize on the entire population's talents and strengths. With sufficient support from its citizens and the international community, the Bougainville Constitution can become an essential tool for improvement of the lives of all Bougainvilleans. Ideally, a solid Constitutional foundation will also promote and ensure women's standing and influence and prove flexible and adaptable enough to allow women, thus empowered, to positively impact even some of those problems that appear beyond the Constitution's reach.

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**REBECCA LINDER** is a researcher for the Post-Conflict Reconstruction Project at the Center for Strategic and International Studies, where she has most recently worked on projects measuring reconstruction efforts across the five sectors of security, governance, social well-being, economic opportunity and justice in Iraq and

*Afghanistan. Her work in these areas has included fieldwork in Afghanistan and co-authorship of two policy briefs assessing the reconstruction effort. Other research areas include Sudan and Sri Lanka. Ms. Linder holds a degree in philosophy from Williams College.*

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- 1 Tonissen, 28.
- 2 U.S. Institute of Peace Special Report 107; Sørensen, "Women and Post-Conflict Reconstruction," 12.
- 3 The report of the Secretary-General on Women, Peace and Security, presented to the Security Council in 2002, recommended stronger measures to integrate women in all steps of peacekeeping, peace-making and peace-building and urged that all peace agreements fully and explicitly integrate gender perspectives: United Nations Security Council Resolution 1325.

- 4 Sørensen, 12-14.
- 5 Hakena, 17; O'Callaghan, "The Origins of the Conflict."
- 6 O'Callaghan, "The Origins of the Conflict."
- 7 The balance and reciprocity associated with this slight paradox may partly explain the lower rate of violence between men and women in pre-conflict Bougainville compared to other in other Pacific societies. Tonissen, 26.
- 8 Ibid.
- 9 Havini and Sirivi, "...As Mothers of the Land."
- 10 Hakena, "Strengthening Communities for Peace in Bougainville."
- 11 Eagles, "Aid As an Instrument for Peace."
- 12 This proposition is reinforced, or perhaps, reinforces what UN Security Council Resolution 1325 refers to as "the important role of women in the prevention and resolution of conflicts and in peace-building." United Nations Security Council Resolution 1325.
- 13 Garasu, "The Role of Women in Promoting Peace and Reconciliation."
- 14 Bougainville Peace Agreement.
- 15 FemTalk ENEWS: A Special Bougainville Edition.
- 16 Nineteen Australian police personnel, integrated with Bougainville forces, are still unable to penetrate the "no-go zone" because of road blocks. McLeod, "Australian Police Encounter Resistance in Bougainville."
- 17 FemTalk ENEWS: A Special Bougainville Edition."
- 18 The Constitution of the Autonomous Region of Bougainville.
- 19 Ibid.
- 20 Ibid.
- 21 Ibid.
- 22 Ibid.
- 23 Ibid.
- 24 Constitution of the Independent State of Papua New Guinea.
- 25 A provision for gender equality was proposed and rejected in the constitutional process. Information provided to author by Anthony J. Regan, Fellow, State, Society and Governance in Melanesia Project (SSGM) and Department of Political and Social Change, Research School of Pacific and Asian Studies, and Fellow at the U.S. Institute of Peace, who has been an adviser to the parties of the peace process in Bougainville since 1994. Mr. Regan was also kind enough to provide a tremendous amount of information and insight into the constitution-making process and the overall situation in Bougainville. I should also note here the similar assistance and contribution of Professor Edward Wolfers, University of Wollongong, and consultant to PNG government.
- 26 Bougainville Constitutional Commission, "Making a Constitution for the Autonomous Region of Bougainville: Brief to the Bougainville Joint Assemblies Meeting"; United Nations, "Beijing Declaration and Platform for Action." Of the 13 highest-ranking countries in terms of women's representation, nine have quotas for representation of women, many of which are high. Rwanda, which is considered to have one of the most progressive constitutions (it guarantees 30 percent representation in government), has the world's highest representation, in fact, 48.8 percent, surpassing even the most representative countries such as Sweden, Norway and Denmark. Institute for Democracy and Electoral Assistance, "The Implementation of Quotas."
- 27 Tonissen, 28. In some post-conflict settings, regimes are designed to be representative of the population, but power is confined to a narrow circle. In Rwanda, for example, which has a progressive constitution and the world's highest level of women's legislative representation, "loyalty to [President Paul Kagame] remains a prerequisite for political survival," and "Parliament does not play an overly confrontational role with the executive branch." Lacey, "Women's Voices."
- 28 Sørensen, 13.
- 29 Parliament of Australia, Joint Standing Committee on Foreign Affairs, Defence, and Trade, "Bougainville: The Peace Process and Beyond."
- 30 Iatau and Williamson, "Case Study of the Land Administration and Cadastral Reform in Papua New Guinea."
- 31 Komjathy and Nichols, et al., "Principles for Equitable Gender Inclusion"; Boydell, "Land Tenure and Land Conflict in the South Pacific."
- 32 The Constitution of the Autonomous Region of Bougainville.
- 33 Ibid.
- 34 Ibid.
- 35 Sørensen, 12-14.
- 36 For the research of this paper, in December 2004 and January 2005, it was remarkably difficult, even through official channels, to acquire a copy of the new Constitution, despite its completion on December 22. This cannot be a good indicator for Bougainvilleans' access to the document, with limited communications resources.
- 37 Sørensen, 14.



**THE TERRORIST ATTACKS OF SEPTEMBER 11, 2001**, brought the plight of Afghan women living under the Taliban regime to the world's attention. After a quarter century of warfare, Afghan women activists, NGO workers and other members of civil society started coordinating their efforts country-wide to ensure that women's fundamental rights were recognized in the new Afghan Constitution. Although they have succeeded in ensuring constitutional protection of certain rights, significant challenges remain for Afghan women in terms of implementing the constitutional provisions and reconciling the more conservative and male dominated aspects of Afghan society with culturally pragmatic conceptions of gender equality.

# The New Afghan Constitution: How Women Succeeded in Ensuring Certain Rights and What Challenges Remain

HORIA MOSADIQ

## Introduction

A constitution is defined as “the basic principles and laws of a nation, state, or social group that determine the powers and duties of the government and guarantee certain rights to the people in it.”<sup>1</sup> The powers and duties of government, and the rights which people are guaranteed, are the tangible results of an internal process translating history and experience into an institutional framework. No two countries have the same history and experiences and each country must consider its own history, characteristics and problems while drafting a constitution. Therefore, each country’s constitution should reflect that country’s unique circumstances.

Additionally, over the last half century, the international community has reached some consensus on a minimum standard of human rights that individual governments must guarantee to their citizens. Therefore, any new constitution should take into account provisions of the United Nations Charter, the Universal Declaration of Human Rights and other international treaties to which the state is a party. Although a constitution in and of itself can never be sufficient to prevent human rights violations and guarantee women’s rights, a constitution that specifically provides for the protection of fundamental human rights and freedoms can be an important starting point for remedying past violations and preventing future ones.

This article examines the recent constitution-building exercises and developments in Afghanistan and attempts to glean some lessons in gender issues that may be relevant in other post-conflict nations facing the challenges of drafting and adopting new constitutions.

## Women in Afghanistan

Afghanistan is an Islamic and culturally traditional country. Throughout Afghanistan’s history, real discussion about women’s rights has been stifled by both religious fundamentalists and the strength of cultural tradi-

tions. Indeed, traditional cultural values are often even more influential than formal religious ones. For example, according to Islamic law, a woman has the right to select her own life partner, but in practice this choice is often made for her. Also, under Islamic law, a woman is entitled to inherit property after a spouse or relative dies, but in practice, if a woman attempts to enforce this right, her community will shun her.

There has been almost constant warfare in Afghanistan for the past quarter century, including the international conflict with Russia’s Red Army, which lasted a total of 14 years and more than nine years of civil war. This constant state of conflict has rendered Afghanistan one of the poorest countries in the world.<sup>2</sup> One consequence of such extreme poverty is that more than half of the women in Afghanistan are illiterate and unaware of their rights. During the rule of the Taliban, the most extremist regime in Afghanistan’s history, women were subjected to behavioral, dress and movement limitations. Because of the social restrictions placed on women, even those women who are able to read have very little awareness of their legal rights.

Since the 1920s, progress on women’s rights in Afghanistan has faced almost overwhelming opposition from religious fundamentalists and those who have promoted their own understandings of the country’s traditions. Afghanistan is a male dominated society. Most of the Islamic verdicts and rules that could benefit women have been misinterpreted by Mullahs<sup>3</sup> and other religious figures in various communities. Because of fundamentalist extremists and prolonged war, the struggle for women’s rights continues today.

After the terrorist attacks on the World Trade Center and Pentagon on September 11, 2001, the plight of Afghan women living under the Taliban regime became a global concern. After the US military invasion of Afghanistan in October 2001, which resulted in the collapse of the Taliban regime, women in Afghanistan seized

the opportunity to reassert the fight for gender equality. To succeed, women needed to secure a legal basis for ensuring recognition and protection of their fundamental rights. The drafting of a new constitution held this potential.

### **Women's Participation in the Constitutional Commission**

On December 5, 2001, the Bonn Agreements, which mandated the Transitional Administration of Afghanistan to set up a Constitutional Commission to draft a new Constitution, were signed.<sup>4</sup> The draft Constitution would then be reviewed, discussed and adopted at a Constitutional Loya Jirga (Grand Assembly). The Bonn Agreements envisaged that the new Constitution would meet international standards and provide for democracy and the rule of law, respect human rights, create independent institutions aimed at ending the tragic conflict in Afghanistan and promote national reconciliation and lasting peace and stability. The Bonn Agreements speak of the right of the people of Afghanistan to freely determine their own political future in accordance with the principles of Islam, democracy, pluralism and social justice. This meant that, as people of that country, Afghan women were now endowed with the right to political participation.

The Constitutional Commission members were recommended by different groups, such as civil society organizations, government officials and the Afghan Independent Human Rights Commission. The President of Afghanistan then appointed the members of the Constitutional Commission from among the recommended persons. Once assembled, the Constitutional Commission was comprised of 35 members, seven of whom were women. These women played an important role in ensuring that women's fundamental rights were specifically addressed in the new Constitution.

### **Constitution-Building and Gender Issues**

A constitution should ensure equal rights for all groups within society, including men, women, children, minorities and the disabled. Also, a constitution will not work if the people do not understand their rights and duties, or find that those rights and duties have little or no relevance in their daily lives. Part of the Constitutional Commission's mandate required consultation with the public in order to avoid these pitfalls. The objective was to draft a Constitution that the people agreed with. The public consultation played an important role in assessing public opinion regarding which rights and government obligations citizens at the grassroots level wanted to establish in the Constitution.

The public consultations revealed that women's issues were a high priority. Specifically, for many years, Afghan women had been unable to obtain the same level of education as men and most had been unable to pursue careers. This was seen as a problem. There was also evidence of a good deal of violence against women, some of it a direct result of the turmoil of recent years and some of it a result of the stresses that circumstances had placed on society as a whole. Customs in particular communities that weighed heavily on women, such as forced marriages and the practice of giving away daughters as a way of settling disputes, were also cause for concern. The customary practices were often enforced by informal justice systems operating in rural areas. These informal decision-making bodies act in both criminal and civil disputes and matters within a community. Their decisions are very much respected by the community members, even though they often violate women's basic and fundamental rights.

### **Coordination by Women's Rights Advocates**

Faced with this situation, Afghan women activists, NGO workers and other members of civil society started coordinating their efforts country wide to ensure that women's fundamental rights were recognized in the new Afghan Constitution. Because the members of the Constitutional Commission were picked by the president based on recommendations from civil society and other groups, it was important that women's groups be engaged at the recommendation, rather than the selection stage of the process. However, the advocates also needed to be careful about how they presented women's rights claims. Again and again throughout the country's history, the Afghan people have shown that they are against any kind of imported culture. It was clear that if women's rights were to be widely accepted and realized, they must not be perceived as imposed by foreign interests.

### **A Gender-Based Approach**

In making recommendations for the Constitution, Afghan women's rights advocates had to grapple with the very real conflicts and tensions between popularly held interpretations of religion and tradition on the one hand, and standards for the promotion and protection of women's human rights on the other. Once women were at the negotiating table and engaged in the drafting process, as was required by the Bonn Agreements, it became clear that in some cases the words used to describe the rights to be protected were just as important as the rights themselves. For instance, it was very important to Afghan women to include the term "men and

women” in the new Constitution instead of “people,” which could be interpreted as applying only to men. Women were keenly aware that they might be denied rights equal to men if the final language was at all vague. Therefore, women delegates pushed for including the word “women” in most of the provisions and articles of the new Constitution.

Ultimately, the Afghan Constitution was drafted so that general rules against discrimination, including gender discrimination, were included in various articles. For example, Article 50, paragraph 5, states, “The citizens of Afghanistan are employed for the state services on the basis of qualification without any kind of discrimination and in accordance with law.” On various occasions, to improve the situation of women, positive discrimination has been utilized. For example, Article 22 of the Afghan Constitution states, “Any kind of discrimination and privilege between the citizens of Afghanistan are prohibited.” And the same Article, in paragraph 2, states, “The citizens of Afghanistan—whether men or women—have equal rights and duties before the law.”

The new Constitution also provides that the state must promote special projects to improve women’s conditions and allow them to struggle against inhumane and un-Islamic traditions that violate their rights. Some of the provisions that are particularly relevant to issues of gender equality are:

- Article 83, paragraph 6, which states, “In the elections, legal measures should be adopted so the elections system shall provide general and just representation for all the people of the country, and at least two female candidates should be elected from each province for the National Assembly.”
- Article 83, paragraph 5, which states, “The president appoints 50 percent of the appointed delegates for the National Assembly from among women.”
- Article 33, paragraph 1, which states, “The citizens of Afghanistan have the right to elect and to be elected.”
- Article 43, paragraph 1, which states, “Education is the right of all citizens of Afghanistan, which shall be provided up to B.A level, free of charge by the state.”

### Remaining Challenges

In light of the social and cultural context in which the constitutional issues were discussed, two basic weak-

nesses in Afghanistan’s new Constitution remain. First, a constitution should be durable, and it will have a better chance of lasting for a long time if it has the flexibility to be changed if something does not work well. Although, at present the amendment process allows women to change or amend the provisions of the Constitution, ensuring gender equality requires a delicate balance, and women are aware of the risk of the return of a fundamentalist government in the future. If one-third of the Parliament members are fundamentalists and do not agree with the gender equality provisions of the new Constitution, they also may amend the Constitution. Therefore, the amendment process could ultimately be used against women.

Second, there is no mechanism to monitor the implementation of constitutional guarantees, and the Constitution fails to establish a complaint procedure accessible to all citizens if their constitutional rights are violated. None of the new language matters if it exists only on paper. Litigation in the ordinary courts would be the most effective mechanism for enforcement as long as this is accessible to ordinary people. If the Constitution is to be respected, the courts must be given the power to enforce its provisions. Conversely, the jurisdiction of the informal justice bodies within the country should be limited so that women’s rights are not bulldozed by customary practice, and when constitutional violations do occur, women have a means of seeking redress.

### Lessons Learned

Achieving constitutional gender equality requires a countrywide effort involving government officials, civil society members and women activists in all stages of the drafting process. Civic education can play an important role in raising awareness among women about their rights and about how important it is to ensure their rights within the constitution. In a country like Afghanistan, where the literacy rate is very low, especially among the rural population, widespread education can have a positive effect and raise awareness. One way to do this is through active civic education such as theater performances.

Once women are aware of their rights, they can choose to actively participate in the social and political affairs of the country. They can change the situation for other women and girls who are suffering from a lack of awareness of their own rights. For example, self-immolation is a major problem among the female population of Afghanistan. Most of these women are committing suicide in an attempt to escape abusive marriages. With awareness of their rights, more women might seek help rather than commit suicide.

## THE NEW AFGHAN CONSTITUTION: HOW WOMEN SUCCEEDED IN ENSURING CERTAIN RIGHTS AND WHAT CHALLENGES REMAIN

Women activists, members of civil society and NGO workers who are interested in ensuring women's rights can also hold discussions and talks with the people involved in the drafting process on the importance of having women's rights guaranteed by the Constitution. At the same time, women around the country can hold peaceful gatherings, associations and rallies and ask the government and the members of the Constitutional Commission to ensure their fundamental rights.

It is also very important to involve women directly in the process of drafting the Constitution itself. These women should work in the interest of women's rights, and they should be appointed from among those women who are familiar with the current laws of the country and with women's problems within their society. These women should also have a very good analytical sense of what issues are most important for women and what rights must be ensured within the Constitution. These women should be able to frame women's rights in a realistic way, such that these rights are implementable not only by the judiciary and by government institutions but also by society as a whole, including nongovernmental bodies such as community councils. For example, in Afghanistan, women cannot make the decision to terminate their marriage. Even if the Constitution or other civil laws provided that women should have the right to decide to terminate their marriages, it would not be acceptable to the majority of the Afghan people. However, if the law set forth the particular circumstances under which women could choose to terminate marriage, the Afghan population might realistically accept this right.

### Conclusion

In short, the Afghan experience has shown that there is a set of guiding principles emerging with regard to gender equality that should be seriously considered when drafting a new constitution:

- A Constitutional Commission should have female members who should be appointed from among women activists, civil society members, lawyers and professionals who are in favor of women's rights. It is important to determine early on who will be making the appointments, and whether there is a quota in place to ensure women's representation or if the selection criteria is discretionary.
- A constitution drafting process should consult with the public and gather people's views, especially women's views, related to their rights.

If illiteracy is a problem, public consultation materials should be available in a variety of formats, and outreach workers should be sensitive to the variant needs of respective communities in this regard.

- Men and women must be entitled to equal rights before the law in all aspects. This should be written into the constitution with explicit and unambiguous language, and every attempt must be made to ensure that customary practices do not trump statutory law with respect to gender equality.
- There should be procedures, preferably judicial, enshrined in the constitution and guaranteed accessible to all citizens to seek redress for violation or non-enforcement of their constitutional rights.
- The constitution should be amended only if an equitably proportionate number of male and female parliamentarians review and approve the amendments that have been recommended in order to avoid the possibility of a situation where women's rights are effectively amended out of the constitution simply because women are outnumbered.

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**HORIA MOSADIQ** is Deputy Director of the Human Rights Research and Advocacy Consortium, which advocates for the rights of all Afghans to peace and physical security, their right to participate politically and their right to share in economic resources and development. She is also a journalist and a human rights activist, having held positions with the Canadian Embassy in Kabul, the Afghan Justice Project, Amnesty International and the United Press International News Agency in Islamabad, Pakistan. Ms. Mosadiq holds a post-graduate degree in journalism from the National Institute of Journalism in Islamabad.

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## ENDNOTES

- 1 Merriam-Webster's Dictionary of Law, s.v. "Constitution."
- 2 The World Bank. "Afghanistan." "Around 70% of Afghans live on less than \$2 a day. The country's infant mortality rate of 257 per 1,000 births puts it way below even the poorest parts of sub-Saharan Africa." North, "Why Afghanistan Wants \$27.6bn."
- 3 A Mullah is an Islamic cleric.
- 4 Agreement on Provisional Arrangements in Afghanistan (2001).

**UGANDA IS OFTEN CONSIDERED ONE OF AFRICA’S MODERN SUCCESSES.** The country has ratified a number of international laws and human rights instruments that proclaim gender equality and the Ugandan Constitution specifies that women are entitled to equal protection under the law. However, the law reform process has not yet fully harmonized domestic legislation with the Constitution. In addition, customary practices deprive women of the enjoyment of many of their constitutional rights, including the right to own, acquire and control property. Thus, a decade after constitutional revisions and commitments to international agreements aspiring to universal gender equality, in reality, the rights of Ugandan women are still not equal to those of men.

# “Engendering” Rights in Uganda: Women’s Struggle for Equality

CARA DILTS

## Introduction

Uganda is often considered one of Africa’s modern successes in terms of national economic development strategies. In 1986, after years of war and political and social turmoil, Uganda began to pick up the pieces of its shattered nation and start down the path toward development.<sup>1</sup> Although the northern areas of the country have had little rest from violent conflict over the last two decades, Uganda has made admirable efforts to fight poverty and increase the standard of living for many of its nearly 25 million inhabitants. Uganda’s star status as a leader in development and poverty reduction in Africa makes the country a valuable case study in an analysis of constitution-building in a post-conflict situation.

This paper focuses on how Uganda has addressed the gender issues that emerged in the post-conflict reconstruction era, specifically through reforming the 1967 Constitution to include equal rights for women. The paper then examines how Ugandan women’s constitutional rights often conflict with statutory law and customary practices, particularly in the area of property rights, emphasizing the discord between the letter of the law and social practice.

## Women’s Rights in the New Constitution

One of the first tasks of Uganda’s post-conflict reconstruction process was for the government to regain international legitimacy. In reinventing itself, Uganda looked to international law, affirmatively recognizing international human rights standards and integrating these standards into the legal framework of the nation. As gender was gaining increasing legitimacy in the international arena as an essential component of development,<sup>2</sup> the Ugandan government followed suit by demonstrating a commitment to the advancement of women in its own domestic law.

Since 1980, Uganda has ratified a number of international laws and human rights instruments that proclaim

gender equality, most significantly the 1985 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>3</sup> In 1988, the government passed the Constitutional Commission Act, which provided guidelines for the drafting of the new Constitution in 1995.<sup>4</sup> The revision of the Ugandan Constitution in 1995 provided the perfect opportunity to bring about “equality of men and women in their national Constitution.”<sup>5</sup>

As the national strategy for reconstruction began to take shape, women’s organizations across the country joined forces to bring women’s rights to the forefront of the nation’s conscience and ensure that women would not be ignored. First, the National Association of Women Organizations in Uganda successfully lobbied for the appointment of two women to the Constitutional Commission.<sup>6</sup> Women’s organizations such as the Forum for Women in Democracy, Action for Development and the Ministry of Gender and Community Development, then backed the proposals of the women delegates and facilitated the involvement of women in the constitution-building process by holding “gender dialogues” and participating in workshops organized by the Commission.

Women working on proposals for the new Constitution referred to CEDAW’s concepts of equality to advocate for the inclusion of gender-equality measures in the Constitution. Today, CEDAW is reflected in a number of important provisions of the Ugandan Constitution.<sup>7</sup>

- Chapter Four of the Constitution addresses the protection and promotion of human rights and freedoms, guaranteeing all Ugandans, regardless of gender, such rights as freedom from deprivation of property, protection from slavery, due process, education and freedom from discrimination.
- Article 32 instructs the state to undertake affirmative action to redress imbalances that exist against marginalized groups, including women.

- Article 33 on the “Rights of Women” stipulates that women shall be accorded full and equal dignity to men, and that the state should facilitate the realization of the full potential of women and prohibit any customs that are against the dignity, welfare or interest of women or which undermine their status.

The Constitution, on its own, is quite progressive in terms of its language of equality. It eliminates discriminatory provisions found in the 1967 Constitution in regards to citizenship and immigration, and provides for reform on issues such as rape, adultery, prostitution and domestic violence by prohibiting customs and traditions that harm women.<sup>8</sup> However, the law reform process has not yet fully harmonized domestic legislation with the Constitution.

For gender discrimination in the law to be totally removed, as Uganda’s Third Country Status Report on CEDAW notes, “The provisions of the Constitution still have to be translated into laws that can be actively utilized to protect women and children against discriminatory practices, which are still prevalent.”<sup>9</sup> Laws regulating the private realm, particularly those governing property ownership, are often drafted in favor of men, and even if the law itself does not openly discriminate against women, the customary application of the law has gender-biased consequences.

## Property Rights

### *Statutory Laws*

The fact that property laws in Uganda discriminate against women is particularly disturbing because Article 26(1) of the Constitution guarantees that “every person has a right to own property either individually or in association with others.” Thus, despite success in putting women’s rights in the national Constitution, there is still widespread resistance to translating those constitutional rights into workable laws. The lack of political will to take further steps to advance women’s rights can be attributed to the widely-accepted idea that such reforms are contrary to Ugandan culture. The age-old concept of gender-differentiated roles (the male as the final decision-maker and power-wielder, and the female as the nurturer, caretaker and producer) forms the primary structure of Ugandan society, touching nearly every dimension of women’s lives.<sup>10</sup> This legacy creates a substantial barrier to women’s property ownership because although women work in agriculture, the household is considered their domain, and they have little access to resources or capital and little say in land-use decisions.<sup>11</sup>

Thus, though women have begun to penetrate the political system, they still must overcome prohibitive cultural barriers to institute political and legal advancements for women’s rights.<sup>12</sup>

One example is the Land Act of 1998 which created a formal system of tenure, ownership and administration of land but failed to provide for women’s property rights because it did not provide for spousal co-ownership. Spousal co-ownership would secure women’s access to land by giving them the right to remain on the family property after divorce or the death of a spouse. Under the current system, the husband holds the land in the event of a divorce, and in the event of his death, the land reverts to his family. Thus, without a clause granting equal rights over marital property to both spouses, the property system cannot be fair and equitable, or uphold Article 16(h) of CEDAW, which ensures “the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property.”<sup>13</sup> The missing co-ownership provision also fails to uphold Ugandan women’s constitutional right to “equal treatment with men...includ[ing] equal opportunities in political, economic and social activities.”<sup>14</sup> This is critical because agriculture is the most important sector of the Ugandan economy, involving over 80 percent of the national work force.<sup>15</sup> Women in Uganda provide more than 70 percent of the labor in agricultural production, but only seven percent of Ugandan women own land.<sup>16</sup>

In 2002, women activists began reviving the fight to include spousal co-ownership (the “lost clause”) in the Land Act, which was then under review. Leading the fight, the Uganda Land Alliance and Uganda Women’s Network quickly realized that co-ownership lacked public support, but that advances might be made by codifying the entire family’s interest in land. Advocates proposed that the Parliament Committee reviewing the Land Act include a new clause requiring registration of “family land” in the names of spouses and dependent children.<sup>17</sup>

After much debate, in June of 2003 the Ugandan Parliament passed the Land Amendment Bill, and despite President Yoweri Museveni’s misgivings that the bill represented a threat to private property and foreign investment because of its potential to complicate and cause disputes over property ownership,<sup>18</sup> he signed the Bill into law in 2004.<sup>19</sup> The Land (Amendment) Act of 2004 does not provide for co-ownership, but it does include a “security of occupancy on family land” provision.<sup>20</sup> Under this provision, spouses have the right to access, live on and use “family land,” as well as give or withhold consent for sale of such land. Though falling short of

co-ownership, the provision did broaden the definition of “family land” to include “either land where a family resides or obtains its sustenance.”<sup>21</sup> The provision also prevented a spouse’s registered objection to sale from lapsing after 60 days, as had been provided under the 1998 Land Act.<sup>22</sup> Thus, women now have security of occupancy on family land given an existing spousal relationship, but those rights terminate on divorce or death of the husband, preserving the traditional patrilineal inheritance system.

Without co-ownership rights, women also do not have the right to fully participate in land management decisions, including how to use the land and its resources. The Act is essentially “a sober attempt to provide ‘veiled co-ownership’ for limited land rights in the manner of consent to the disposal of family land.”<sup>23</sup> All the same, even though the family land provision of the 2004 Act was significantly watered-down in the end, women recognized the additions as at least a small step forward for women’s property rights in Uganda.

### Customary Practices

Customary practices obstruct women’s ownership of property, as women in Uganda generally are not permitted to inherit land from their fathers or husbands because of fears that family land will be taken outside the clan when women marry or that widows will sell land to non-clan members.<sup>24</sup> Thus, “a woman may have jointly acquired land with her husband and may have spent her entire adult life cultivating the land, but she cannot claim ownership of the property.”<sup>25</sup> Further, women who are childless, single, widowed, disabled, separated, divorced or have only female children may have no access to land through a male relative and therefore have no means of subsistence.<sup>26</sup> Under customary practice, women do not inherit land and may be stripped of their possessions, including land, even after years of cultivation and improvement. Widows, in particular, must worry about eviction from their homes by in-laws upon their husbands’ death.

Although statutory law does not “prohibit” women’s ownership of land, the reality is that land rights are a province of customary law.<sup>27</sup> In theory, statutory law trumps customary law, but socio-cultural practices effectively bar women from asserting their rights to property ownership.<sup>28</sup> Further, the absence of legislation on issues such as spousal co-ownership creates a roadblock for women’s ownership of property. Hence, a mere seven percent of the nation’s land is owned by women, even though they make up half the population of the country.

### Conclusion

Uganda is to be commended for undergoing a significant economic and political transformation in the last two decades, including an evolution in its approach to women’s rights and gender equality. Uganda has begun the process of overhauling its laws to reflect international norms and standards, and creating policies that put these laws into action. However, the conflict between the laws enshrined in the Constitution and customary practices must be negotiated to provide for genuine equality.

Although Uganda’s Constitution and some of its statutory laws may espouse gender equality, the customary law that is applied to a given situation often maintains a status quo that benefits men. Property rights in particular continue to be governed largely by customary law. Despite the many obstacles to overcoming customary practices adverse to women, NGOs and women’s organizations can create change through persistent lobbying of decision-makers and long-term commitment to goals. Women should also take advantage of national affirmative action measures that integrate women into local governance structures where they can bring special attention to gender issues.<sup>29</sup>

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**CARA DILTS** received her M.A. in international development and J.D. from the University of Denver. She holds a B.A. in international relations, with a minor in women’s studies, from Duquesne University. In 2003, she conducted field interviews and did extensive research on gender mainstreaming and women’s rights in Uganda. Ms. Dilts is currently a Research Fellow and LL.M. candidate at the National University of Singapore.

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- 1 Since the National Resistance Movement came to power in 1986, the country has experienced rapid economic and political development. After 15 years of civil unrest, the economy rebounded as the new Ugandan government pioneered decentralization and structural adjustment policies. An average annual GDP growth rate of 6.9 percent, as well as an approximate 20 percent decline in household poverty, signifies this success in economic development. Ugandan Embassy, “The Economy.”
  - 2 By the early 1980s, during the UN International Decade for Women, empowering women and ensuring that the development process did not leave women behind became an important component of development. Today, development strategies focus largely on a mechanism called gender mainstreaming which addresses gender perspectives in all areas of societal development in order to enrich the process of human-centered sustainable development. ECOSOC, Agreed Conclusions, 1997/2.
  - 3 In addition to CEDAW, Some of the more important and influential conventions include: the International Covenant on Civil and Political Rights (ICCPR), acceded in 1995; the International Covenant on Economic, Social, and Cultural Rights (ICESCR), acceded in 1987 and the African Charter on Human and People’s Rights (ACHPR), ratified in 1986. In ratifying these important conventions, most significantly CEDAW, and endorsing the Beijing Platform for Action, the Ugandan Government publicly asserted support for women’s rights and gender equality. Further, Uganda ratified CEDAW without any reservations, thereby indicating a complete commitment to support and work for women’s equal rights across a full spectrum of issues. In 1995, Uganda sent a delegation, led by then Vice President Dr. Speciosa Wandira Kazibwe (the first female vice president in Africa), to the Fourth World Conference on Women, where the delegation endorsed the Beijing Platform for Action, committing the Ugandan government to work towards equality, development and peace for women in Uganda.
  - 4 The government’s guidelines for the Commission included “guarantees of fundamental individual rights; separation of the three powers of government, with checks and balances among them; an independent judiciary; a democratic, free, and fair electoral system; and popular accountability.” “Uganda” at 55.
  - 5 CEDAW, Article 2(a).
  - 6 These women were Miria Matembe, the former Minister of Ethics and Integrity, and Mary Maitum, both women lawyers and activists.
  - 7 Uganda Constitution (1995), ch. IV, arts. 31-33; UNIFEM, “Bringing Equality Home.”
  - 8 Semafumu, “Uganda’s Reporting Obligations.”
  - 9 Uganda’s Third Country Status Report on CEDAW.
  - 10 Asiimwe, “The Uganda Women’s Movement.”
  - 11 Only nine percent of decision-makers are women. Less than one percent of women have access to credit. Female control over food crops is 30 percent, while female control over cash crops is a mere nine percent. Ochieng, “Rural Women and Information.”
  - 12 In 2004, women held 24.7 percent of the seats in Parliament. UNDP (2004).
  - 13 Foundation for Human Rights Initiative, “The Rights of Women.”
  - 14 Uganda Constitution (1995), art. 33.
  - 15 CIA World Fact Book.
  - 16 Asiimwe, “The Uganda Women’s Movement.”
  - 17 Leistikow, “Women Gain Inch.”
  - 18 Mpagi, Interview.
  - 19 Museveni’s assent is partially attributed to his need to tread carefully around women’s rights supporters in light of the recent removal and resignation of two key female players in the Ugandan government, the Minister of State for Ethics and Integrity Miria Matembe (the original sponsor of the “lost clause”), and Vice President Dr. Speciosa Wandira Kazibwe. Museveni is hoping to extend his two-term presidency and knows that he cannot ostracize his female constituency. Further, although co-ownership was a losing political battle, it is generally supported by both women and men across Uganda,

and many NGOs and women's organizations have been extremely vocal, fighting to put property co-ownership at the top of the nation's political agenda. Leistikow; Tripp (citing Kibombo, "Patterns and Trends of Women's Participation.": "2000 study of popular opinion in eight districts around the country regarding the co-ownership clause found that 80 percent of women endorsed it, as did 60 percent of men. At least 72 percent support it because it maintained harmony or mutual understanding and 42 percent felt it promoted equal rights. At least 33 percent of those opposing the clause felt that land belonged to men, 28 percent said it would lead to divorce, 16 percent thought that since women made no monetary contribution to land they should not co-own it, and 15 percent were of the opinion that they could co-own it if they contributed to the purchase of the land.")

20 "Women Activists." *New Vision*.

21 Leistikow, note 20.

22 Ibid.

23 Kamusiime, et al., "Gender and the Land Reform Process in Uganda."

24 Tripp, "Women's Movements."

25 Ibid.

26 Ibid.

27 Ibid.

28 Ibid.

29 DENIVA Report, "Towards Effective Political Participation." The 1995 Constitution and subsequent laws mandate women's involvement in the local councils by guaranteeing women one-third of all elected positions in local governance.

**SOUTH AFRICA'S PAST IS OFTEN SYNONYMOUS WITH BRUTAL DISCRIMINATION** based primarily on race, but also on gender, class and geography, all of which took a particularly harsh toll on black women. In the post-apartheid era, a fundamental question was how to recognize, accept and deal with the gross human rights violations of the past. Without a corpus of fundamental rights, those women most severely injured by discriminatory legislation were essentially without a legal basis to seek redress. The answer was to be the Truth and Reconciliation Commission, mandated by the Constitution and based on an innovative model of restorative justice.

# The Truth Does Not Discriminate: How Post-Apartheid South Africa Constitutionalized Gender Equality

RASHIDA MANJOO

## Introduction

Any discussion of South Africa's past will inevitably be characterized by the exploitation of the black majority by the white minority known as apartheid, which took place from 1948 until the early 1990s. Before 1993, the failure of the South African Constitution to afford equal protection to all South Africans resulted in not only racial discrimination, but gender discrimination as well. This inherited legacy of oppression and discrimination based primarily on race, but also on gender, class and geography, took a particularly harsh toll on black women in South Africa.<sup>1</sup>

By the early 1990s, gender issues had been infused into the debate over the framework for South Africa's future. New questions arose concerning the participation of women in the constitutional negotiation process, the inclusion of specific constitutional provisions addressing gender equality, the creation of institutional structures to promote and protect gender equality and the issues of representation of women at different locations of power and decision-making. Groups addressing race and gender issues needed to find common ground and work together.

Another fundamental question during this period that deeply concerned women was how to recognize, accept and deal with the gross violations of human rights of the past. Without a corpus of fundamental rights, those South Africans most severely injured by discriminatory legislation were essentially without a legal basis to seek redress. South Africa's quest for a non-violent transition from oppression to representative democracy required that the question of justice be answered in the context of a future where all its communities could live together in peace.

This article discusses the ways in which the constitutional drafting process approached the daunting task of addressing these issues. The result was a Constitution, which entrenches the commitment to gender equal-

ity by providing for the creation of an independent Commission for Gender Equality and also by including a postamble which committed post-apartheid South Africa to a policy of reconciliation and understanding through the establishment of a Truth and Reconciliation Commission.

## Gender and Constitution-Building

By all accounts, from 1954 to 1989, the struggle against racial oppression and for national liberation took priority over the problem of gender inequality. Even so, while organized women's political activism in South Africa dates back to 1913, the 1954 formation of the Federation of South African Women (FSAW) was still an important development.<sup>2</sup> FSAW's manifesto was the Women's Charter (Charter). With no "Bill of Rights" in place guaranteeing all South Africans protection of human rights, freedoms and liberties, the Charter goals included an end to gender discrimination, the emancipation of women and ending all kinds of oppression. The Charter also sought women's equal rights with men in relation to property, marriage and children; the removal of all laws and customs that deny women those rights; provisions relating to access to education and other basic amenities such as water and electricity. The Charter reflected calls for both formal legal equality, and socio-economic rights which largely impacted on women's roles as primary caregivers of children.

The African National Congress (ANC), founded in 1912 to organize peaceful protest against the discrimination of the British colonial empire, was banned in 1960 following the Sharpeville Massacre. The ANC leaders who were not arrested went into exile, which significantly weakened the ANC power structure and left it vulnerable to internal conflict. By the early 1980s, it was becoming clear that the country was becoming ungovernable, and the government entered into secret and low-key negotiations with the exiled liberation movement in

1985 in order to negotiate the move to democracy. After surviving a series of organizational iterations, the ANC drafted its own constitutional guidelines in 1988. The language of these guidelines reflected a commitment to at least formal, if not substantive, gender equality.

Women within the ANC held a seminar in 1989 in Zambia to respond to the ANC's guidelines and the lack of a women's perspective therein. Another important conference was the Malibongwe Conference, held in Amsterdam in 1990, which brought together women who were in exile and women who had remained in the country during the period of apartheid. An explicit call was made here for gender equality and women's rights to be viewed as autonomous aspects of the national liberation struggle. The Malibongwe Program of Action also called for the building of a national women's movement within the country.

The ANC was unbanned in early 1990. Shortly thereafter, the ANC National Executive Committee issued a policy statement on the "Emancipation of Women in South Africa." This document encouraged women in general, and the ANC's Women's League (ANCWL) in particular, to commence the process of a national debate and to draft a Women's Charter that reflected women's needs and concerns. The ultimate goal was to ensure that gender equality was part of the constitutional negotiation process, and that women's needs and interests were reflected in the laws and policies of a new South Africa.

The ANCWL organized a meeting in 1991 with women's groups and individuals from around the country—across race, class, religion, language and political lines—to start the consultation process. This process culminated in the launch of the National Women's Coalition (WNC) in 1992 with the primary role to coordinate a national campaign for the development and education of women. This effort would take the form of gathering and disseminating information about women's needs and aspirations and also unifying women in formulating and adopting a Charter to entrench equality for women in the new Constitution.

The Women's Charter campaign took place in four provinces and also some of the homelands.<sup>3</sup> This was a difficult process as there was very little funding and volunteerism and NGO funds had to be relied upon, especially for consultative work at the provincial level. Once completed, the Women's Charter reflected the voices of many of the women in South Africa. The final document was written in non-technical language, which made it accessible to the widest possible audience.

In 1993, the South African Parliament adopted an

Interim Constitution.<sup>4</sup> In 1994, the Women's Charter for Effective Equality (Women's Charter) was produced and reflected a rights-based approach to gender equality.<sup>5</sup> Since the 1993 Interim Constitution was a precarious political compromise between rival groups, "it was agreed that the Final Constitution would have to comply with 34 Constitutional Principles contained in the 1993 Constitution and that a Constitutional Court would be empowered to pronounce on the compliance of the final Constitution with these principles."<sup>6</sup>

The Women's Charter served as the basis for the debates around both constitutional provisions and also a framework for gender equality in South Africa. Public education about the Women's Charter and its provisions occurred through the use of print and visual media forms, including comic books and radio broadcasts in the various indigenous languages to ensure that access to information was a reality, regardless of language or literacy.

South African women also lobbied outside of the conference centers where constitutional negotiations were taking place. The women's presence moved the ANC to recommend that each political party participating in the negotiations should have at least one woman on their team. These efforts did result in a 30 percent representation of women on some of the negotiating teams. The women who were part of the negotiation process were then able to also utilize the assistance and resources of the WNC, such as the Women's Charter public consultation and education campaign outcomes, as a starting point for gender provisions.<sup>7</sup>

### **Institutionalizing Gender Equality**

President Nelson Mandela assented to the final Constitution, the Constitution of the Republic of South Africa Act 108 of 1996, on Human Rights Day, December 10, 1996. The 1993 and 1996 Constitutions are substantially similar. In both, a Bill of Rights guarantees internationally recognized human rights, particularly equal protection under the law and prohibitions on discrimination, and a Constitutional Court is empowered to protect the Constitution by means of judicial review.<sup>8</sup> Legislative measures, such as the Employment Equity Act and the Promotion of Equality and Prevention of Unfair Discrimination Act, have subsequently been enacted to implement these guarantees.

During the drafting of the Constitution, South African women were wary of the possibility of marginalization of women post-apartheid and hence chose not to establish a government ministry for women, as occurred in many parts of Africa. South African

women opted instead for a *National Gender Machinery Framework*, which created three different sites of advocacy and negotiation in mainstreaming gender equality in the country. The structures include:

- (1) **The Office on the Status of Women (OSW)**-an administrative body that serves as an internal monitoring and accountability structure to hold the government accountable to their gender equality commitments.<sup>9</sup>
- (2) **The Joint Monitoring Committee on the Quality of Life and Status of Women (JMC)**-a facilitating forum for public input into legislative processes, which also acts as an internal accountability mechanism within Parliament to monitor legislation, debates in Parliament etc., to ensure compliance with both constitutional and international obligations in respect to gender equality and women's human rights.
- (3) **The Commission for Gender Equality (CGE)**-a constitutionally-created, independent body established in 1996 as one of the six state institutions set up to strengthen constitutional democracy. The broad role of the CGE includes the promotion of respect for gender equality and the protection, development and attainment of gender equality.<sup>10</sup> The Constitution provides that the CGE must promote respect for the protection, development and attainment of gender equality. It also has the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality.<sup>11</sup> The Commission is accountable to the National Assembly in Parliament. It must report on its activities and the performance of its functions to the National Assembly at least once a year.

### **The Truth and Reconciliation Commission**

One of the challenges of drafting the new Constitution was incorporating a mechanism that could remedy some of the human rights abuses that occurred under apartheid in a way that would facilitate peaceful co-existence of previously polarized groups. Creation of a judicial process similar to the Nuremberg trials was discussed and rejected, as was the possibility of a system of blanket amnesties. The third proposal was a truth and reconciliation process, which aimed for a model of restorative justice, as opposed to a retributive/punitive model of justice.

The truth and reconciliation concept was accepted and written into the post-amble to the 1993 Interim

Constitution in language that mandated the establishment of a body called the Truth and Reconciliation Commission (TRC). The Promotion of National Unity and Reconciliation Act 34 of 1995 is the enabling legislation for the Truth and Reconciliation Commission. It is a quasi-judicial body that reflects the diversity of the country across racial lines, religious systems and a range of political affiliations. The TRC's principle objectives are to investigate and document human rights violations, make proposals for measures that will give reparation to victims of human rights violations, grant conditional amnesty and rehabilitate and give back the human and civil dignity of people who suffered human rights violations.<sup>12</sup>

"Reparation" and "rehabilitation" are words to describe what can be done to help victims overcome the damage that they suffered, to give them back their dignity and to make sure that these abuses do not happen again. In fact, "[e]ntitlement to reparation...arises from the provision of the Act itself. The only qualification is that the recipient must be a victim of a gross violation of human rights as defined in...the Act."<sup>13</sup>

The TRC Act is gender-blind, with no specific reference to women, gender or to gender-based violence. In March 1996, when the TRC began its work, gender activists were concerned about a potential gender bias in the TRC process. Concerns were raised that statistically, although half of the testifiers were women, the majority of the women testifying spoke of violence pertaining to relatives and dependants (primarily males) who had suffered human rights violations. In other words, women spoke as secondary victims, thus making them ineligible for reparations. Men, on the other hand, spoke of their experiences as direct victims. A large number of women also spoke of severe ill treatment, but not of the torture that a number of them had experienced.<sup>14</sup>

In response to this situation, the TRC agreed to hold special women's hearings and made some procedural changes to encourage women to come forward and speak about their own experiences as victims, as opposed to only testifying about acts relating to family members or friends.

### **Conclusion**

South Africa's Constitution bears testimony to a long struggle for justice and equality by South African women by explicitly recognizing the injustices of the past and honoring those who suffered for freedom and justice. However, with so much focus on the racial implications of apartheid, the gender inequities that were

also allowed to fester during that time have not been completely ameliorated. The apartheid regime resulted in widespread discrimination and underdevelopment, which still affects women in areas such as unemployment, illiteracy, poverty and domestic violence. Mainstreaming gender equality policies, especially with regard to development and poverty eradication, must remain a top priority if South Africa ever hopes to leave the shadow of apartheid's infamous legacy.

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**RASHIDA MANJOO** is an Advocate of the High Court of South Africa and a Member of the Commission on Gender Equality. She is the founder of the Gender Unit at the Law Clinic at the University of Natal and also the Domestic Violence Assistance Programme at the Durban Magistrates Court. Manjoo is a member of the Programme Implementation Committee of the International Solidarity Network of Women Living Under Muslim Laws. She served as a member of the Women's Caucus for Gender Justice in the International Criminal Court and serves on the Advisory Council of the Women's Initiatives for Gender Justice.

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### Endnotes

- 1 Walker, "Women and Resistance in South Africa."
- 2 Black women's political activism in challenging the structures of oppression predates the 1950s and includes the 1913 campaign on land, the 1928-1929 resistance to the introduction of municipal beer-halls, "pass law" opposition campaigns and defiance campaigns.
- 3 The homelands, originally called Bantustans, were areas set aside by the white regime for the black population to cultivate under the Land Acts of 1913 and 1936. Even though they were only 19 percent of the population, whites allocated themselves 87 percent of the land. The land allocated to Africans was generally the least agriculturally productive and was widely dispersed throughout the country.
- 4 This Constitution, which brought an official end to apartheid, "was negotiated by political groups which in most instances were unelected and simply reflected the political realities of the time. For this reason, it was approved only as an Interim Constitution pending the adoption of a final Constitution by a democratically elected Parliament sitting as a Constitutional Assembly." Dugard, "South Africa."
- 5 There were views that the Charter should form part of the documents that would be discussed during the Interim Constitution consultation phase, but this was impossible as the Charter was not ready at that stage. The inclusion of the Charter in the Constitution was also rejected in favor of entrenching the principle of non-sexism and providing for the right to substantive equality in the Constitution.
- 6 Dugard, "South Africa."
- 7 A gender advisory committee with limited powers was also set up as a result of the numerous complaints and protests about the lack of inclusivity in the negotiating process. The WNC also set up a negotiation monitoring team to both monitor the process and to disseminate information to Coalition members.
- 8 Promotion of gender equality and the prohibition of gender-based discrimination are both addressed in Section 9 of the Constitution.
- 9 The OSW was tasked with formulating a national gender policy, and also ensuring that all government policy is consistent with this policy. This includes support to the provinces in ensuring that gender policies and programs are in line with national policy, coordinating and implementing of this policy and co-coordinating and arranging for training in gender planning and policy analysis in all government departments.
- 10 The Commission for Gender Equality Act No.39 of 1996 is the enabling law which fleshes out the powers, functions, composition and other procedural aspects of the Commission. The powers and functions of the Commission are very wide and are set out in Sections 187(1) and (2) of the Constitution and also Section 11 of the CGE Act.

- 11 Section 181(2) of the Constitution provides that the CGE is independent and subject only to the Constitution and the law. It must be impartial and must exercise its powers and perform its functions without fear, favor or prejudice. No person or organ of state may interfere with the functioning of the CGE. In fact, Section 181(3) provides that other organs of state, through legislative and other measures, must assist and protect the CGE to ensure its independence, impartiality, dignity and effectiveness.
- 12 Promotion of National Unity and Reconciliation Act No. 34 of 1995, Section 4 (1995).
- 13 Truth and Reconciliation Commission Final Report, v. 6, at 99.
- 14 Approximately 12 percent of detainees held during the 1986-87 state of emergency were women. There were several reports of miscarriages in detention, torture using electric shock on pregnant women, allegations of rape by soldiers and other forms of abuse. Cock, "Colonels and Cadres;" Russell, "Lives of Courage."

**IN THE FIELD**

*This section highlights a perspective from one of Women for Women International's field offices. In this issue, we feature an article from Manal Omar on the struggle to protect women's rights in the Iraqi Constitution.*

## IN THE SEA OF NATION-BUILDING: ANCHORING WOMEN'S RIGHTS IN THE IRAQI CONSTITUTION

**MANAL OMAR**

*The journey of a thousand miles starts with one step.*  
—Arabian proverb

### Introduction

"We did it. It is no accident that women exceeded the 25 percent quota in the elections. This is because we made it happen," stated an enthusiastic and determined woman from Southern Iraq, echoing the sentiments of many Iraqi women across the nation. Indeed, the success in integrating women into Iraq's newly elected National Assembly in January 2005 was the direct result of organizing and outreach efforts by Iraqi women.

In the period leading up to the election, there was great concern that Iraqi women would be marginalized. Yet Iraqi women were able to quickly organize, lobby and take action, thereby earning themselves a place at the decision-making table. This has allowed Iraq to emerge as the clear leader in the region when it comes to women's rights. Iraqi women have carried on the legacy of their foremothers, speaking up until their voices are heard on legal, social, economic, educational and cultural issues.<sup>1</sup>

Women's groups in Iraq are a profoundly pragmatic element of Iraqi civil society. As early as August 2003 they had set up an NGO Coordinating Council and begun to network across the different religious and ethnic groups. They were the first to call attention to issues like the country's lack of security and basic services, such as electricity. Despite threats and intimidation, Iraqi women insisted on being integrated into the reconstruction process regardless of the personal cost. In many ways, Iraqi women are now being presented with the opportunity to shape the soul and define the spirit of the new Constitution. The work and successes of the past two years have set the stage for what is now a constitutional moment of truth.

### The Constitution Drafting Process

Across Iraq, people see the new Constitution as confirmation that the past two-years' investment in

money, time and blood in the promises of democracy and reconstruction have not been in vain. The Constitution will embody a new social contract between the citizenry and the government. In a country where all faith and trust between these two groups have been lost, the process of writing the Constitution is just as important as the finished product. Public perception of the process will determine the legitimacy of the final document. If Iraqi citizens feel that the new Constitution is legitimate, they will likely also feel both bound and protected by its provisions. Therefore, women's rights and interests need to be considered at all stages of the drafting process so that all of the gender-relevant provisions included in the finished product enjoy the same degree of perceived legitimacy.

Currently, Iraq's government is operating pursuant to the Transitional Administrative Law (TAL).<sup>2</sup> For the TAL to be agreed to, several controversial issues were tabled and will need to be revisited when the new Constitution is drafted. For example, TAL Article 7(a) states that Islam is to be considered as a source of legislation. Considering the wide variety of interpretations and applications of Islamic law, the breadth of this provision will need to be clarified if it is incorporated into the new Constitution. Another example is Article 11, which addresses citizenship but fails to address a woman's right to pass her Iraqi citizenship to her child if the father is foreign.<sup>3</sup> If these and other issues are not considered in earnest, the legitimacy of the new Constitution will be jeopardized.

Women will need to be extremely careful when drafting proposed constitutional language to use concrete and absolute terms wherever possible. This will reduce the room for discretion in constitutional interpretation, which will ultimately bolster the public's perception of the Constitution's legitimacy.

For example, TAL Article 7(a) states that no law can be enacted that "contradicts the universally agreed tenets of Islam."<sup>4</sup> If a law is passed that raises the earliest age at which a young woman can marry, opponents

of the law might argue that the law contradicts the Article 7(a) language because Islamic law does not include an age limit for marriage. The new Constitution must address this type of ambiguity and specify that if there is no universally agreed tenet of Islam regarding a particular issue, then there can be no contradiction with a newly established law.

### Lessons from Other Countries

A United States Institute of Peace Special Report calls today an era of constitution-building and explains that constitutions in this century are “redefining the long tradition of expert constitution making and bringing it into the sphere of democratic participation.”<sup>5</sup> To confront the fast approaching constitutional moment of truth in Iraq head on, Iraqi women should look to other post-conflict countries where women have been able not only to hold open the window of opportunity but also to lift each other through to secure their rights on the other side.

H.E. Narmeen Othman, the former Minister of Women’s State Affairs of Iraq and current Minister of Environment, suggests looking at the example of Rwanda. The new Rwandan Constitution set-aside 27 percent of district council seats for women.<sup>6</sup> Introducing this “critical mass” of women into decision-making positions permanently changed the societal dynamics for Rwandan women. Ten years after the genocide, Rwanda parliamentarians are 49 percent female, surpassing Sweden as the nation with the world’s highest percentage of women in elected office.

In the past in the Middle East, women’s rights have arguably been used as a negotiating chip for governments to appease Islamic political parties such as the Muslim Brotherhood in Egypt, Hamas in Gaza or Party of Justice and Development in Morocco. This has created the false impression that conservative religious law and women’s rights are in opposition. However, the experiences in other countries have shown that this is not always the case. In fact, many examples demonstrate how using an Islamic legal framework may actually enhance women’s rights while gaining popular support. A great example is Morocco’s Personal Status Law.<sup>7</sup>

This law was adopted in January 2004 and has been a beacon of hope for women throughout the Middle East.<sup>8</sup> The law addressed many controversial issues that had been considered legally taboo by countries in most of the region. Among other things, the royal edict: (1) apportioned household responsibility equally between men and women, (2) abolished women’s obedience to their husbands, (3) made marriage easier for women by lifting many of the previous restrictions, (4) removed the requirement for a guardian for women’s marriage

and mobility, (5) restricted polygamy to specific circumstances, (6) improved women’s access to divorce, (7) introduced stricter regulations on men abandoning their wives and (8) raised the minimum age at which women may marry to 18, though exceptions may be made with a judge’s permission.<sup>9</sup>

### The Power of Public Perceptions

Unfortunately, even in the countries just mentioned, there can be a wide chasm between the law as written and as practiced.<sup>10</sup> In Iraq, with its strong cultural and tribal influences, the letter of the new laws will need to reflect a progressive spirit. Learning from the examples cited above, Iraqi women will need to address criticisms proactively before they gain momentum, anticipating objections to their recommendations and preparing a convincing response.<sup>11</sup>

Women also need to be aware of the power of public perception and leverage it to their advantage. During these early stages of nation-building, when women will be arguing for laws that protect their rights, not only men will resist their goals. Remarkably, opposition from women already exists. For example, in the March 2005 Conference on Women, a female member of the new Transitional National Assembly (TNA) cautioned that although she was an advocate for women, she would not sacrifice family values and the rights of the child for women’s rights.<sup>12</sup> Women must clarify the current dialogue so that both men and women see that protecting women’s rights also protects the family and that supporting women’s rights is good for economic growth, reconstruction and nation-building.<sup>13</sup>

Despite strong affiliation with various political parties, women cannot afford to fractionalize as the Constitution is being drafted. To influence the new Constitution, they must frame the debate surrounding women’s issues to allow women to pool the strength of their collective voices so they will be heard. There is too much at stake to allow differences on individual political issues to hamper women’s chance to secure their rights legally and change the entire landscape of women’s rights for decades to come.

The primary division is between the liberal/secular parties on the one hand and the conservative/religious parties on the other. In particular, there is a tendency for women who believe in a separation of religion from state to distance themselves from the more conservative women looking to establish their rights based on Islam. In the past, this type of polarization has significantly weakened the call for women’s full social and political participation.<sup>14</sup> The women’s platform should emphasize that these two positions need not be mutually exclusive and deconstruct the view that a *Shiia* majority

necessarily results in women's oppression.

In fact, most legal advancements in the region pertaining to women were accomplished by linking secular and Islamic laws and principles. An attack on Islam or a call to dismiss working within an Islamic framework will merely marginalize the majority of people and fuel rhetoric that women's rights are synonymous with Western imperialism. Instead, women's rights advocates should be highlighting the connections between Islamic law and the rights they are demanding in the new Constitution.<sup>15</sup>

This is why public consultation, outreach and education are so important. And with current advances in technology, today's media resources are more accessible than ever before.

In developing a media strategy, women's rights advocates should consider the potential of the media as mechanisms of accountability. For example, the March 2005 National Assembly meeting where the media were thrown out was clearly an undesirable situation.<sup>16</sup> With greater transparency through media coverage, the TNA and the Constitutional Committee can be scrutinized by the public and, hopefully, held accountable through public opinion. Therefore, civil society groups should lobby to ensure that such meetings are open to the press. A free and independent press is crucial for applying pressure on the parties involved in the constitutional process. The press has long been used as a tool for political change, from the Watergate scandal in the 1970s in the United States to Sabra and Shatilla in Lebanon.<sup>17</sup> With the help of today's wireless and Internet capabilities, a neutral media can ensure civil rights protection for all Iraqis.

### Seeking Common Ground

To find common ground, each group of women must determine which issues they consider non-negotiable. In other words, what is the issue that will cause a particular group to reject the new Constitution if the stance ultimately taken in the document is contrary to their own? For example, many Iraqi women believe in well-defined roles for women. If the new Constitution allows women's roles to be more loosely-defined, will more conservative or traditional groups refuse to support the document? Once everyone is clear on what is and what is not negotiable, everything else is potentially common ground.

This does not mean that those wanting stricter laws limiting women's rights and roles need to compromise by silencing their voices. One possible strategy is for the women to embrace their differences in opinion and develop some proposals that draw on traditional state's rights arguments. If everyone is equal, including women, then differences in opinion are good for democracy. Let the "states" act as social labs. For example, if there can

be no agreement on what the proper roles of women should be, that issue could be left out of the legal process altogether. Then, if ever there is consensus or need, the "federal government" could take action. This would also prevent direct contradiction with Islamic law.

At the same time, women should explore developing a Shadow Committee that will follow the Constitutional Committee and keep the women informed of issues regarding their rights that arise throughout the drafting process. Rather than wait until the draft Constitution is announced in August 2005, the Shadow Committee Report should be prepared to propose alternate constitutional language and apply external pressure when the Committee acts in a way that challenges women's interests. This "shadowing" of the Constitutional Committee should include a media team so that there is a spokesperson always ready to respond with the women's point of view. By working in parallel with the formal constitutional process, Iraqi women will be in a better position to avoid being surprised by unacceptable constitutional provisions.

### Moving Forward

Women cannot approach Iraq's current constitutional debate as a simple win-lose or all-or-nothing contest. Drawing on lessons gleaned from other nations and from field work in Iraq, some of the guidelines women should consider are set forth below.

- **Define Non-Negotiables**—This is the first step Iraqi women's groups must take. They need to find common ground from which they can lobby, advocate and negotiate provisions of the new Constitution. Finding common ground does not mean women need to speak in one voice on narrow political issues. Rather, a unified voice will demonstrate overwhelming support for gender equality under Iraqi law.
- **Insist on an Independent Judicial System**—An independent judicial system ensures that the permanent Constitution adapts over time to the needs of its citizens through enforcement and interpretation of its provisions and a general public acceptance of the "rule of law." For example, Bahraini women attained many successes in 2003 and 2004 by working through their nation's judicial system, which allowed oppressive yet normalized practices to be challenged as unconstitutional. Although the importance of creating and establishing an independent judiciary is often easy to ignore when the public's focus is on elections and drafting a constitution, an independent judicial system is necessary to keep the Constitution relevant and legitimate in the eyes of the people, particularly in

the case of Iraq where the Constitution is being drafted at a time of reconstruction and instability.

- **Propose Language for the New Constitution**—International agencies and Iraqi lawyers need to be prepared to offer the Constitutional Committee appropriate language for inclusion in the final document. One newly-elected female parliamentarian from the United Alliance explained that she understood the needs of the women but did not know how to translate the recommendations into legal language that could convince the Committee drafting the Constitution. A special working group should be formed to take the input from women's rights activists or concerned citizens and formulate it in appropriate language for the decision-makers.
- **Establish Mechanisms for Accountability**—Without mechanisms for accountability in place and pressure from civil society, the Constitution could be drafted behind closed doors. Civil society must take the initiative to craft the mechanisms of accountability and develop ways to apply pressure to the decision-makers. This includes creating a parallel process of shadow committees that track the developments of the constitutional process and provide input. There should be strong pressure for both the press and members of civil society to have access to the TNA and receive updates and an opportunity for dialogue with the Constitutional Committee. Similarly, women's rights defenders should develop a plan of action if the draft Constitution does not meet their approval, including a plan for how to mobilize the community for the October 2005 referendum when the Constitution will be put forward for a popular vote.
- **Increase Citizen Participation**—In the past, the responsibility for drafting constitutions was confined to the elite and educated classes. However, history has shown that the *process* of creating a constitution is itself the true value added to the legitimacy of the final product. Because a new constitution is a new social contract, avenues for citizen participation must be developed. This responsibility will most likely fall to the leaders of civil society. However, due to the rapid timeline for drafting the Iraqi Constitution, the restrictions caused by lack of security and the immense task before the TNA and Constitutional Committee, many leaders will be tempted to simplify the process by limiting negotiations and citizen input. This can be a fatal mistake, not only reducing transparency in the process and truncating public participation, but endangering ultimate acceptance

of the Constitution, which cannot be passed without a referendum. If the Constitution is not passed, the TNA will be dissolved, a new parliamentary election must be held and Iraqis will find themselves back to the drawing board. Even if the Constitution were to pass, limiting the input of the public during the drafting stage would be missed opportunity for engendering wide support for and commitment to the new laws. Therefore, it is in the interest of all groups to ensure there are avenues for citizen participation in the process at the grassroots level. Including the public in the process will help ensure a stronger sense of ownership between the citizen and the Constitution. This is particularly important for women's rights defenders, as shown by the January 2005 elections where the real influence came from those with access to voters at the grassroots.

- **Ensure that Leaders Are Committed to a Bottom-Up Approach**—The primary success stories involving progress for women's rights in the region have occurred due to the support of people in a position of authority. For example, Egypt's First Lady Suzanne Mubarak publicly endorsed the idea of female judges at a September 2002 convention of the ruling National Democratic Party. The Supreme Council of Women in Bahrain was established by royal decree and is directed by the First Lady, Her Highness Shaikha Sabika bint Ebrahim Al-Khalifa. The injustice of honor crimes could never have been addressed in Jordan if it were not for the support of Their Majesties King Abdallah and Queen Rania. Iraq's new First Lady, Hero Talabani, has already shown her support for women and children in the independent Northern Kurdish area of Iraq. Reform can only take place when it is supported and protected through a commitment from high-level leadership.

## Conclusion

The challenge of bridging the gap between what is preached and what is practiced can only be achieved through time, citizen participation and the commitment and support of leaders. It is a long-term challenge. The development of and referendum on a new Constitution are only the first steps in building public participation and commitment to the rule of law in the new Iraq. Moreover, the legal precedent for women as equal citizens must be set and women's rights in the new Constitution ensured. Women's efforts to guarantee their equal rights under the law will positively affect not only their

gender but society as a whole. In this sense, women can serve as the captains as Iraq navigates through the sea of nation-building, with their rights as an anchor securing freedom and democracy for all.

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**MANAL OMAR** is the Regional Coordinator for the Middle East and North Africa for Women for Women International. She established Women for Women International's program in Iraq in July 2003. She has held previous positions with the World Bank in the Technical Cooperation Program in the Middle East and North Africa division and the Global Development Network. Omar has also worked for the International Center for Research on Women, as well as served as a consultant for the United States Information Agency on building the capacity of local women's NGOs in Yemen and Bahrain. She holds an M.A. in Arab Studies with a concentration in economics and development from Georgetown University.

## ENDNOTES

- 1 As far back as the 1950s, Iraqi women enjoyed one of the most liberal personal status laws in the region. Professional women were commonplace by the 1960s. In the 1970s, a revised Constitution established women as equal citizens with men. In the 1980s, women gained the right to vote in local elections. In the 1990s, the community acknowledged women as the primary reason for families surviving during the economic hardships resulting from the UN sanctions. With the 2005 elections, Iraqi women are once again proving that they are vital components in the success of their nation.
- 2 The "Law of Administration for the State of Iraq for the Transitional Period" was signed and executed on March 8, 2004, by the Coalition Provisional Authority and the 25-member Iraqi Governing Council. It is most commonly known as the Transitional Administrative Law (TAL). <http://www.cpa-iraq.org/government/TAL.html>.
- 3 Ibid.
- 4 Transitional Administrative Law (TAL). <http://www.cpa-iraq.org/government/TAL.html>.
- 5 Hart, Vivien. Democratic Constitution Making. United States Institute of Peace Special Report. [www.usip.org](http://www.usip.org).
- 6 Women Waging Peace. *Inclusive Security, Sustainable Peace: A Toolkit for Advocacy and Action*. November 2004.
- 7 Sabra, Martina. Women's rights by the grace of the king. Magazine for Development and Cooperation. [http://www.inwent.org/E+Z/content/archive-eng/02-2004/foc\\_art4.html](http://www.inwent.org/E+Z/content/archive-eng/02-2004/foc_art4.html).
- 8 The law was a marriage between Islamic Shari'a and international standards of law. The law was put into place after a speech delivered by King Mohammed VI on October 10, 2003. The law is considered by many to be the most wide-reaching social reform since Morocco gained independence in 1956. It is no coincidence that the King delivered his speech on a Friday, the Muslim holy day, and reaffirmed his position as *Amir Al Mumineen*, the leader of the faithful. In essence, the King preempted any potential attacks that his actions were pro-western and anti-Islamic.
- 9 In addition to these reforms, the King addressed the controversial topic of single mothers—the number of which has risen drastically in Morocco over the last few years. Under the new reform, couples will have joint custody of children conceived pre-maritally (during the "engagement"). If the husband refuses to recognize the child as his own, he can be forced to undergo a parentage test. Although the ultimate success of the Moroccan law will be determined only after the reform has been in place for some time, it cannot be denied that the law has symbolic value to demonstrate the compatibility of Islamic identity and human rights.
- 10 This harsh reality was evident during the Afghan Constitutional Convention, when Sibghatullah Mujaddedi, the chairman of the Convention and often considered a moderate, "reportedly told women delegates, 'Don't try to put yourself on a level with men. Even God has not given you equal rights, because under his decision two women are counted as equal to one man'" (referring to a contested provision of Islamic law that says that the testimony of two women is equivalent to that of one man in some cases). Sunder, Madhavi. *The New Afghan Constitution: Will It Respect Women's Rights? Will Its Mixture of Religion and Democracy Work?* January 15, 2004. CNN International. <http://edition.cnn.com/2004/LAW/01/20/findlaw.analysis.sunder.afghan>.
- 11 Based on the experience of Morocco, the primary objection to women's reforms would be that they threaten the family or Islamic beliefs and traditions. With this in mind, Iraqi women can be prepared to argue that neither the family nor Islamic beliefs are threatened when women's rights are promoted; in fact, such values are enhanced.
- 12 March 2005 conference held in Amman, Jordan under the auspicious of the Iraqi Minister of Women's Affairs.
- 13 When the King of Morocco delivered his speech announcing the legal reforms of January 2004, he emphasized that these laws were for the overall benefit of the country. He explained, "These reforms, the most important of which I have mentioned, should not be perceived as an indication of one side's victory over the other, but rather as gains for all Moroccans.... In my capacity as *Amir Al-Muminin* (Commander of the Faithful), I cannot make licit what God has forbidden, nor forbid what He has made lawful.... The aim is to draw up a modern Family Law which is consistent with the spirit of our glorious religion."
- 14 This polarization was best seen in the protest in the streets of Morocco in 2000. A march for women was organized by both sides—one pro-woman and the other pro-family in the cities of Rabat and Casablanca. Both marches claimed to have rallied a greater number of participants, and official estimates ranged up to 1 million participants per march. The fact that both sides were able to galvanize a large grassroots base demonstrates exactly how divisive this issue can become.
- 15 It is important to note that using Islamic arguments is not equivalent to calling for an Islamic government or a constitution based on religion. In Iraq in particular there is a general consensus that religion and state should not be mixed. Ibrahim Al-Jaafari, Iraq's first democratically elected prime minister, has even been referred to by some as a "secular Shia."
- 16 Iraq parliament in uproar over stalemate. March, 29, 2005. Reuters. <http://www.ekurd.net/mismas/articles/misc2005/3/government71.htm>.
- 17 Another recent example was the 2003 appeal for change in the Bahraini judicial system. In September 2003, a group of women's rights activists, attorneys and journalists who were critical of various decisions of Shari'a judges published their views in the daily newspaper *Akhhbar Al-Khaleej*. Eleven Shari'a judges brought slander charges against this group in an attempt to silence and embarrass the women. The newspaper editor-in-chief stood firm and challenged the constitutionality of laws governing the press, judicial authority and criminal procedures. In December 2003, the High Shari'a Court of Appeal suspended the trial and passed the case to the Constitutional Court. On July 13, 2003, seven of the Shari'a judges dropped the criminal case against the newspaper. The Ministry of Justice dismissed the other four judges on charges of corruption. On October 10, 2003, the High Criminal Court rejected the judges' case accusing the women's groups of slander. This example shows how a strong independent media was able to stand firm not only in publicizing women's concerns and critiques but in applying pressure for change.



## ABOUT WOMEN FOR WOMEN INTERNATIONAL

*Women for Women International* provides women survivors of war, civil strife and other conflicts, with tools and resources to move from crisis and poverty into a civil society that promotes and protects peace, stability and self-sufficiency. It provides services to socially excluded program participants aimed at addressing short-term economic needs, while enhancing and building their capacity to create long-term economic solutions. In the process, intensive training in women's economic, political and social roles and value in society is incorporated. This strategy stems from *Women for Women International's* conviction that economic solutions are not sustainable if they are not paired with active participation in social and political discourse. The organization has program offices in Afghanistan, Bosnia and Herzegovina, Colombia, Democratic Republic of the Congo, Iraq, Kosovo, Nigeria and Rwanda.



WOMEN *for* WOMEN  
*International*

1850 M Street, NW, Suite 1090, Washington, DC 20036  
tel. 1-202-737-7705 fax. 1-202-737-7709  
e-mail. [general@womenforwomen.org](mailto:general@womenforwomen.org)