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**The Taliban and Human Rights**

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## **TALIBAN LITIGATION REPORT**

“Just about every conceivable human rights violation is occurring in Afghanistan, and on an enormous scale. The crimes of indiscriminate warfare are combined with the worst excesses of unbridled state-sanctioned violence against civilians.”

(*A Nation Is Dying*, p. xiii Introduction)

### **INTRODUCTION:**

Afghanistan is a central Asian country that has been continuously besieged by civil wars and external strife for the past three decades. Since 1979, the various ethnic and political groups have been engaged both in fighting a civil war and ousting the Soviets from Afghanistan. In September 1996, the Taliban, a student-led fundamentalist militia, overthrew the Afghanistan government. While the various ethnic and political groups have been responsible for countless abuses of women's human rights, it is the Taliban who is responsible for the most serious violations of women's human rights.

### **DIFFICULTIES OF GETTING RELIABLE INFORMATION ABOUT AFGHANISTAN:**

Constant fighting between various ethnic and political groups, the Soviet occupation and the Taliban's overthrow has led to confusion about the true conditions of people in Afghanistan. Political parties and alliances are continually changing. The exodus of Afghani refugees has been occurring for over 20 years. Most people are accustomed to thinking of conflict and warfare when they think of Afghanistan.

As a result of this continual violence and instability, it is a very difficult process to obtain reliable information about Afghanistan. Different political parties have their own “official” version of recent events. Although there is no current internationally recognized government in place, there are at least three “official” government web pages that each differ in content. In addition, many Afghani-in-exile have set up their own web pages and newsletters that warn readers to be especially aware of political and ethnic biases in other Afghani publications.

“Afghanistan remains remote...The Afghan government officially closed its doors to most of the major world media and to international humanitarian organizations, and the information that has been released has been dictated by the needs of official propaganda.”

(*A Nation Is Dying*, p. xi, Introduction)

### **BRIEF DEMOGRAPHIC INFO ABOUT AFGHANISTAN:**

#### **Geography and Religion:**

Afghanistan is bordered by Iran, Tajikistan, Turkmenistan, Uzbekistan, China and Pakistan. Its population is estimated to be 25,527,000 (1990 estimate). The majority of Afghani are Muslim, with 84 percent Sunni Muslim and 15 percent Shiite Muslim. Sunnite is considered to be a more flexible interpretation of Islamic thought than Shiite.

Sunnite has four different schools of Islamic law and tends to be most common in Central Asia and Turkey. Shiite, on the other hand, has only one school of law and has a more rigid interpretation of Islam. The Shiite schools of thought are especially common in Iran. There is a very small minority (less than one percent) of Afghans who practice religions other than Islam. These other religions include Hinduism, Christianity and Sikhism.

### **Ethnic Groups:**

There is a vast diversity of ethnic groups within Afghanistan. The majority is made up of Pashtuns (38 percent), Tajiks (25 percent) and Hazaras (19 percent). Other groups, including Uzbeks, Baluchs, Chahars, Aimaks and Turkmens, make up the remaining 18 percent.

The majority of the refugees are Pashtuns since they live along the Pakistan border (eastern and southern Afghanistan), where most of the fighting has taken place. Pashtuns speak Pashto, which is related to Persian. Tajiks predominate in the north and northwest areas of Afghanistan and are ethnically similar to the Tadjiks in Tajikistan and speak Persian. The Hazaras, an ethnic group with Mongol-type features, are a Shiite Muslim group. Traditionally they have had low status in the country and speak a form of Persian called Hazaragi.

### **Mujahideen and Jihad:**

Mujahideen and Jihad are two important concepts that need to be understood in order to comprehend the religious and political struggles in Afghanistan.

Jihad, translated directly as “holy war,” is fighting that is sanctified under Islam. However, the armed struggle of Jihad is considered secondary to that of the struggle within oneself. While Jihad is a central Islamic concept, Mujahideen are simply freedom fighter groups.

Both Jihad and Mujahideen are concepts that have been recently distorted. The political parties within Afghanistan that are fighting the Taliban consider themselves to be jihad. Others have also described these same groups as being mujahideen.

Huma Saeed, a member of RAWA (Revolutionary Association of the Women of Afghanistan), explains how the two terms are almost used interchangeably. “But now being so called ‘jehadi’ only means to fight against the Taliban and seize back the political power.”

In the past ten years, there has been a noticeable rise of jehadi groups both within Pakistan and Afghanistan. Many Pakistani youths became involved in the Afghan conflict because of an appeal to religious fervor. Internationally, the rise of Islamic fundamentalist groups has been linked to the formation of international networks.

### **Government and Political Parties:**

Afghanistan was once a stable country with a solid governmental system in place. The government system was considered a fundamentalist Islamic theocracy. This means that

the government was based upon a strict interpretation of Islamic law and was mostly controlled by Islamic clerics. The Loya Jirgah was “the highest manifestation of the will of the people”.<sup>1</sup> The Loya Jirgah includes: the president, the vice president, the National Assembly, the Council of Ministers, the attorney general, the chairperson of the Constitution Council, provincial councils and representatives from each province. All major governmental decisions (amending the constitution, electing the president and declaring war/peace) are made by a two-thirds majority of the Loya Jirgah.

Yet, both the Soviet occupation (1978-1992) and the Taliban’s 1996 overthrow of Afghanistan significantly destabilized Afghanistan’s government. Since 1996, the country has been ruled by Mullah Muhammad Omar, who proclaims himself to be both the head of state and supreme spiritual leader along with the Council of Ministers.

Afghanistan’s constitution and various laws have been, in effect, rendered useless in the Taliban’s regime. The only document that has been used in the last three years has been the Koran, the holy book of Islam. Since the Taliban took control of the country in 1996, there has been no legal recognition of political parties.

There are four major political parties in Afghanistan that predate the Taliban’s overthrow. These groups, which have had long-standing rivalries and ethnic fighting amongst each other, have formed an alliance and now continue to fight the Taliban.

The first political party is the Unity Party, also known as Hezb-I-Wahdat-I-Islami. It’s a rebel coalition that has been long supported by Iran. The second group, a predominantly Tajik ethnic/political group, is the Islamic Society (Jamiat-i-Islami). This group is led by the former president of Afghanistan, Borhanuddin Rabbani and the former Defense Minister, Ahmed Shah Masoud. The Islamic Party (Hezb-i-Islami) is the third major political group and is often considered to be the most radical of the fundamentalist groups. The Islamic Party is led by former Prime Minister Gulbuddin Hekmatyar and is mostly made up ethnic Pashtuns. The fourth political party is the Communist Homeland Party (Hezb-i-Watan). This party, who was in power from 1978-1992, was formally known as the People’s Democratic Party of Afghanistan (PDPA) but did change its name in 1990.

The Northern Alliance, also known as the United Islamic Front for the Salvation of Afghanistan (UIFSA), is an alliance that seven political parties have entered into in order to fight against the Taliban and regain control of the government. There are some other smaller political factions involved in the Northern Alliance including the Islamic Movement (Harket-i-Islami) and the Islamic and National Movement. General Abdul Rashid Doestam currently leads UIFSA. All the political parties that are members of the Northern Alliance are considered to be “jehadi.”

## **A BRIEF HISTORY OF AFGHANISTAN:**

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<sup>1</sup> Constitutions of the Countries of the World

Starting in the 1800's, Afghanistan has been the site of British and Russian imperial rivalries<sup>2</sup>. Throughout the 1800's and early 1900's, Afghanistan was a buffer between the two empires.

Afghanistan attempted to stay neutral during the early 1900's; it was neutral during WWI though it did sign a friendship treaty with Germany in 1916. This treaty had the effect of ending Afghanistan's isolation and fueled Afghanistan's independence movement. Throughout the 1920's, there was consistent friction between Afghanistan the Soviet Union. King Zahir Khan ruled from 1933- 1973 and promoted economic modernization and interaction with other foreign powers. He desperately tried to improve Afghanistan's relations with both the Soviet Union and Britain. In addition, he built relations with other nations, most notably with Turkey and Iran. During WWII, Afghanistan once again tried to stay neutral though it had both friendly relations and economic agreements with Germany.

After WWII, Afghanistan first began to build relations with the United States. The Cold War divided alliances among communist and anti-communist blocs. Afghanistan, having suspicions regarding the intentions of the Soviets, decided to align itself with the United States.

In the late 50's and early 60's, there was a major shift in Afghanistan's foreign relations. The relations between Afghanistan and Pakistan rapidly deteriorated. This led to a realignment of allies. Since the United States was allied with Pakistan, Afghanistan chose to receive aid from the Soviets. Still, Afghanistan attempted to remain neutral throughout the Cold War. During the late 60's, relations between Afghanistan and its neighbors (including the Soviet Union and Pakistan) stabilized. However, this stability was short lived.

In 1973, King Zahir Khan was overthrown and Prime Minister Muhammad Daud Khan took over the country. While the Marxist Democratic Party (known as the Peoples Democratic Party of Afghanistan, PDPA) initially supported Daud, he was later overthrown and assassinated by them in the 1978 coup. The communist coup led directly to increased instability and was not generally supported by the Afghani people, as many communist tenets were seen to be incompatible with Islam.

“The communists planned nothing less than social, political, and needless to say, economic, transformation. Quickly alienating the majority of the citizens of Afghanistan were reforms involving deeply held conventions on bride-price, legal age of marriage and women's education, land reform and literacy. When these reforms failed to take hold, the communists turned to coercion and then brutal repression. Tens of thousands were jailed and killed, resulting in mass rebellion. Within a year of taking power the government was near collapse.” (Afghan Resistance, p. 3)

During 1978 and 1979, civil unrest led to the increase of guerrilla warfare. In December of 1979, the Soviets responded to Afghanistan's instability by invading the country.

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<sup>2</sup> The Soviet Intervention in Afghanistan, p. 2

Halfizullah Amin of the PDPA, the president since the 1978 coup, was killed and was replaced by Babrak Karmal.

Why did the Soviets invade Afghanistan? While they wanted to protect their borders, the Soviets were most concerned about the implications of growing instability in the region. They may have felt that they needed to prove their superpower status and be considered a credible power in South west Asia. They were also worried about the growing nationalism in Afghanistan.

The Soviet occupation led to torture, disappearances and the largest refugee exodus recorded in history<sup>3</sup>. After the 1979 Soviet invasion, the fighting in Afghanistan moved from being a civil war to being a resistance war against foreign occupation. This war of liberation against the Soviets was considered to be “Jihad,” a holy war that is sanctioned by Islam. In 1985, political exile groups (both traditionalists and fundamentalists) formed the Northern Alliance in order to strengthen their resistance fight against the Soviets.

In April 1992, Soviet President Mohammed Najibullah was forced to resign by a group consisting of mujahideen parties, former government officials and national militia members. Thus, the Communist Homeland Party was no longer in power and it was replaced by the Islamic Society. Borhanuddin Rabbani was the president of Afghanistan from 1992 until the 1996 invasion of the Taliban.

After the Soviets were expelled from Afghanistan, civil war once again broke out amongst the various ethnic and political groups, who were all fighting for control of the government. There were attempts to reinstate the previous institutions of Afghanistan’s government. An executive body was created, a constitution approved and the government was preparing for general elections.

### **The Taliban:**

The Taliban, whose name means “students of religion” in Arabic, first emerged in Afghanistan in 1995. They fought with ethnic and political groups and finally took control of Kabul, Afghanistan’s capital, in September of 1996. The Taliban is a fundamentalist muhajideen militia group though it claims to have different purposes. “It’s stated goals are to install a purist Islamic regime, end what it perceives as gross governmental corruption, and eliminate the armed factions that roam the country. The exclusion of women from all public sectors is also one of their goals”<sup>4</sup>

It is estimated that there are between 10,000 and 25,000 members of the Taliban who are primarily composed of Sunni Muslim ethnic Pashtuns from the Durrani and Ghilzay tribes of the south. In addition, the Taliban is believed to have been formed from student seminaries in northern Pakistan. Many members are poorly educated youths that were recruited from refugee camps in Pakistan.

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<sup>3</sup> Amnesty International 11/99

<sup>4</sup> Financial Times, June 23, 1999

The leader of the Taliban is Mullah Mohammad Omar, who is considered by his followers to be “Prince of All Believers.” He has set forth specific rules of control that are based upon a very strict interpretation of Islamic law. Islamic law, also known as Shari’a law, is the way that Afghanistan and other Muslim countries have integrated religious doctrine with state laws. Fazlur Rahman explains how Islamic law functions:

“Islamic law, called the Sharia, spells out the moral goals of the community. In Islamic society, therefore, the term law has a wider significance than it does in the modern secular West, because Islamic law includes both legal and moral imperatives. For the same reason, not all Islamic law can be stated as formal legal rules or enforced by the courts. Much of it depends on conscience alone.”<sup>5</sup>

Although Islamic law is interpreted differently in a variety of Muslim countries, most Islamic scholars and Islamic governments have denounced the Taliban and stated that their oppressive rule is not Islamic law. Although the international community has not recognized the Taliban, there are three countries, which have: Pakistan, Saudi Arabia and United Arab Emirates.

In February 1995, the United Nations attempted to formulate a peace plan for Afghanistan. While other warring ethnic and political groups participated, the Taliban was the only group that rejected any involvement in the peace plan. Currently, the Taliban controls approximately two-thirds of the country while UIFSA/Northern Alliance continues to fight against them.

Do the Afghani people support the Taliban? Though it has been occasionally stated that the Afghani people do support the Taliban, these statements have come from questionable sources (i.e., the various “official” Afghanistan government web pages and from Taliban supporters). Yet, it is clear that the Taliban’s overthrow of the government was not a nationalist movement and that predominantly, the Afghani people do not support the Taliban and instead claim that conditions have drastically worsened since 1996.

There is limited knowledge about the Taliban and much of it has been based upon rumors. One predominant rumor is that Pakistan has been financially supporting the group and providing weapons. However, it is known that many of the Taliban’s members did come from Pakistan and that Pakistan has recognized the Taliban as the new government of Afghanistan. In fact, according to the Hindustani Times (Aug. 16 1999), on August 12, 1999, more than 5,000 Pakistani students joined the Taliban forces in fighting against the Northern Alliance.

Since the Taliban took over, there is no known information about the government. The legislative branch, executive selection process, constitution, voting rights and legal political parties have all ceased to exist. In 1993, a new Parliament was formed which was in the process of getting approval for a new interim constitution. However, due to

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<sup>5</sup> [Encarta Encyclopedia](#), Fazlur Rahman

ongoing fighting, there is no current knowledge of whether this legislature is even still in existence.

### **Violations of Women's Human Rights**

Since the Taliban overthrew Afghanistan in 1996, the implementation of a repressive version of Shari'a law has led to countless human rights violations. While the conditions of Afghani people have deteriorated immensely since the Taliban's arrival, it is the women's situation which is most grave.

Under Shari'a law, women have been rendered invisible, powerless and immobile. Women are no longer allowed to work and girl children cannot attend school. Women and girls are not allowed to go anywhere unescorted by male relatives. Women cannot be seen. They are obligated to wear burquas which are heavy body-length garments that have a small mesh for which to see and breathe. In addition, women are forbidden from wearing shoes that might make noise when they walk. All windows of houses and buildings must be painted over if women are inside. (See Appendix 1 for a full list of Taliban restrictions).

The punishment for disobeying these edicts is tragic and sometimes fatal. Women are frequently beaten and stoned to death in public for perceived violations. Women are regularly imprisoned. Many women have been taken by members of the Taliban and simply disappear only to have their bodies found later. Rape is pervasive. According to a report from Physicians for Human Rights (PHR), 68% of the women they interviewed in Kabul were detained and physically abused within the last year. These edicts are carried out by the Members of the Department for the Propagation of Virtue and the Suppression of Vice, who are more commonly known as the "religious police."

The repressive acts of the Taliban have far reaching implications for the women of Afghanistan. Both health care and safety are paramount issues for women, which no longer seem to exist.

Currently, the majority of Afghani women have no access to health care. Male doctors are not allowed to see or examine a woman and female doctors are no longer able to work. Fortunately, the International Red Cross was able to negotiate with the Taliban in light of such pressing health concerns. Therefore, a few female obstetricians were allowed to return to work. As a result, ten percent of Afghan women now have access to some sort of health care (UN estimate).

The prevalence of rape, forced prostitution and mandatory marriages demonstrates how personal safety is nonexistent as well. The pervasive violence and fear of being abducted has led to Afghani women obediently following the Taliban's restrictions. It is a life of constant terror.

"Women in Afghanistan generally consider themselves helpless, downtrodden and worst of all, alone and forgotten." (RAWA, in interview with University of Minnesota student Kelli Kirk)

Psychological effects are another damaging consequence of life under the Taliban. Although prostitution, poverty and begging among women have increased, the rates of depression and suicide have skyrocketed.

“...four years ago a girl who was living next door to us was raped by Jihadis and later another girl was stolen from our neighborhood. After these two incidents I found myself in such a bitter state of depression that I tried to kill myself a number of times...Once when I was taking my mother to the hospital and saw a Taliban whipping at the back of my sick mother while shouting abuses on us, I felt so appalled that I ran in front of oncoming cars, however I was stopped by the people passing by and seeing my mother crying and asking me to stop. However, I don't think I would be able to find convincing reasons for continuing this miserable and bitter life.”

(letter from an Afghani women refugee)

Ironically, the justification for the cloistering of women is based upon the notion that women are to be protected. The Taliban consider themselves to be not only the defenders of a purist Islamic state but also the protectors of Afghanistan women from “vices.”

#### Aid and access:

In addition to the deteriorating conditions of Afghani women, various aid attempts have been unsuccessful due to the Taliban's repressive policies. There are approximately forty non-governmental organizations and UN groups that are attempting to provide food, health care and general assistance for women and their families. A July 1997 edict stated that food distribution was limited to those women who could be accompanied by a male relative. Also, convoys of the Red Cross and other ngos have been robbed. As a result of the Taliban's obstruction of access to aid, women's poverty and health are deteriorating.

## **TALIBAN PART II: The Law**

In order for the gross violations of women's human rights to end in Afghanistan, the Taliban must be held accountable legally for these violations. Are there any legal options available that can be used?

Since the Taliban took over in 1996, the previous government has been disbanded. Currently, there is no legal system in place and all cases are put before the Department for the Propagation of Virtue and the Suppression of Vice. The Taliban make judgments based upon their interpretation of the Qu'ran. With the dissolution of the government, there is no possibility of using domestic laws.

Although utilizing domestic law is impossible, there are various possibilities within international law. According to international customary law, the Taliban, though not recognized as the official government of Afghanistan, is still required to abide by the treaties to which Afghanistan is a party.

The effectiveness of UN treaties has much to do with how they were signed. A signature on a treaty is basically just a signature of intent; countries that sign treaties are not held accountable to them. Ratification and accession requires that the country deposit an instrument of ratification with the Secretary General or another UN government body. Ratification is when a country consents to a treaty prior to the convention going into effect. Accession is when a country agrees to be bound by a convention that has already come to force. Although Afghanistan has signed many conventions and treaties, there are only a few pertaining to human rights that Afghanistan has ratified.

“Most international human rights conventions obligate state parties to take certain measures with regard to the provisions contained therein, whether by domestic legislation or otherwise...The number of treaties establishing committees specifically to oversee the implementation of particular conventions, however, is not large, while very few provide for the right of individual petition.”

(International Law, p. 216)

The U.N. Human Rights Committee monitors the treaty-monitoring bodies, investigates reports on human rights abuses and receives complaints from State Parties. State Parties which have acceded or ratified treaties must provide periodic reports to the Human Rights Committee. In examining reports, the committee can consider other reports from NGOs. Once the reviewing process has occurred, the committee can then make recommendations or request further reports.

The optional protocol is the mechanism that allows the Human Rights Committee to review individual complaints. Optional protocols allow individuals the right to challenge human rights violations by their state party. There are two conventions that have optional protocols: ICESCR (International Covenant on Economic, Social and Cultural Rights) and the ICCPR (International Covenant on Civil and Political Rights).

There are two mechanisms to the optional protocol: the individual complaint mechanism and the reporting mechanism. However, these two mechanisms are only available to countries that have ratified or acceded the optional protocol.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), was acceded by Afghanistan on June 30, 1990. Although Afghanistan is a state party to this covenant, it has not signed the optional protocol which would allow individuals to contest the document.

The International Covenant on Civil and Political Rights (ICCPR) was acceded by Afghanistan on April 23, 1984. While Afghanistan did not sign the optional protocol, there are some parts of the ICCPR that can still be used.

Article 2.2 states that all state parties must abide by the laws of the covenant. “Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such

legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.”

Under the Taliban, Afghanistan is in violation of the provisions of the ICCPR. The ICCPR obligates Afghanistan to: the right to life (Article 6), the right to freedom from torture (Article 7), the right to medical care (Article 12), the right to leave/return freely to/from one’s country (Article 7) and that these provisions must be enforced in a non-discriminatory manner (Article 2).

Article 4 allows countries to suspend a majority of the rights guaranteed in the ICCPR document during a state of emergency. This allowance is possible as long as “such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the grounds of race, color, sex, language, religion or social origin.” The specific violations of women’s human rights in Afghanistan is clearly a form of “discrimination based upon sex” and is in violation of Article 4. The Taliban cannot defend their violations of women’s human rights.

Article 41 of the Covenant permits other countries to charge the country with violations against the tenets of the ICCPR. “A State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee.” However, this procedure is only available if both countries have voluntarily signed declarations that recognize the jurisdiction of the Human Rights Committee over individual state complaints. The Human Rights Committee hopes to resolve inter-State issues but can appeal to Article 42, if a resolution does not occur. Under Article 42, the Human Rights Committee can appoint an ad hoc Conciliation Commission.

Which aspects of the ICCPR can actually be used? Even though Afghanistan hasn’t signed the optional protocol (individual complaints procedure), Afghanistan has acceded the ICCPR and is still clearly in violation of it. One possibility is to use Article 2.2 to show that Afghanistan is not abiding by the laws of the Covenant. The other possibility is to hope that another country would use Article 41 (which charges another State Party of not abiding by the Covenant). This action would hold Afghanistan accountable by bringing their violations of human rights before the Human Rights Committee.

The Economic and Social Council, ECOSOC, is a final possibility for use within the UN. According to the UN Charter, ECOSOC can make recommendations regarding human rights (Article 62). The Commission on Human Rights, a subsidiary body of ECOSOC, makes recommendations and drafts international instruments regarding human rights.

There are two procedures within ECOSOC that allows the Commission on Human Rights to intervene in human rights violations: 1235 (public procedure) and 1503 (confidential procedure). The public procedure (1235) is a way of using the Convention on the Prevention of Discrimination and Protection of Minorities to pursue alleged violations of human rights. The process begins when the Secretary General distributes a confidential

document regarding the human rights violations to the Commission of Human Rights. This report is then distributed to member states, which can choose to respond. If member states do respond, the Commission can make further recommendations and send out special rapporteurs to investigate the human rights violations. The 1235 public procedure of ECOSOC has already been used in reference to Afghanistan. In fact, there have been 32 reports completed by the special rapporteurs sent to Afghanistan since the Taliban took over in 1996.

The reports of the Special Rapporteurs are easily accessible through the United Nations webpage ([www.un.org](http://www.un.org)). The recommendations of the Special Rapporteurs are the following: continual close monitoring by the Special Rapporteurs, that armed groups in Afghanistan must respect women's human rights, the repeal of any gender-discriminatory measures, the acknowledgment of women's right to work, education and safety<sup>6</sup>

The confidential procedure (1503) of ECOSOC is meant to show "a consistent pattern of human rights violations." This process begins with an appointed working group which will then consider all the various individual complaints (assuming that individual complaints are on record) and government responses regarding the human rights violations. The confidential procedure (1503) is available to all U.N. members and is not dependent on State Parties signature of Optional Protocol 1. The working group then makes its own recommendations to ECOSOC. These recommendations can include further studies, investigations by an ad hoc committee, written questions to the government and direct contacts with the government.

The International Court of Justice (ICJ) has been valuable for prosecuting issues of security. Yet, disputes that go to the World Court must be between states only (no individuals) and both states have to voluntarily agree to come to court. The states that have serious on-going violence and instability tend not to accept the Court's jurisdiction. However, there is always a possibility that a criminal tribunal could be established for Afghanistan like it was for Rwanda and Yugoslavia. In the case of Rwanda and Yugoslavia, the tribunals were set up by a U.N. Security Council Resolution.

"The Court's relevance to intrastate conflict is severely limited by the fact that only states may be parties to cases brought before it. By their nature, the ICJ's legal proceedings intensify the confrontational and adversarial aspects of disputes, at least in the short run"  
(Preventing Deadly Conflict, p. 49)

Considering the current crisis in Afghanistan, there is no feasibility of using the ICJ for prosecution. The formation of the International Criminal Court (ICC) has definite potential to be used in international human rights violations that are occurring within countries. The ICC would be particularly useful to those countries which have neither ratified nor acceded the treaties that would hold them accountable to human rights violations. However, the ICC is still being formed and will not be able to be utilized for a number of years.

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<sup>6</sup> U.N. document E/CN.4/Sub.2/1999/13.

There is little likelihood that the human rights violations that are currently occurring in Afghanistan can be adequately prosecuted. The most relevant and effective treaties cannot be used since Afghanistan has neither ratified/acceded them nor ratified the Optional Protocols. The other measures (ECOSOC 1235 and 1503) have already been utilized and have resulted in a plethora of reports and recommendations. However, due to the bureaucratic limitations of the United Nations, there is little hope that the United Nations could hold Afghanistan accountable for its gross violations of women's human rights. While the U.N. does monitor human rights violations through Special Rapporteurs, there is no current system for the U.N. to compel Afghanistan to abide by the tenets of these conventions.

### **ISLAMIC LAW**

Although individual governments interpret international laws differently due to their various cultural and religious perspectives, they still must not violate the specific details of the treaties which they've ratified. Clearly, the Taliban are violating many of Afghanistan's treaty obligations. In addition, the Taliban is inconsistent in its interpretation of Shari'a (Islamic law) and has been criticized by many other Muslim scholars.

The Taliban maintains that the international system of human rights and Islamic values conflict. They claim to follow Islamic law (Shari'a) and maintain that they do not have to abide by international law. "It (the Taliban) claims that it is not bound by international law because its religion provides for different standards. It only recognizes the validity of Islamic law and asserts that its policies are justified by the Qur'an"<sup>7</sup>. The Taliban uses religion as its justification for its practices. In addition, the Taliban refuses to consider making any amendments to its interpretation of Islamic law. According to an Amnesty International report, a Taliban official stated, "The Islamic Emirate (of Afghanistan) will bow under no kind of influence in the implementation and enactment of Shari'a punishment and divine orders." The Taliban's interpretation of the Shari'a is contrary to the Qu'ran and other Islamic texts. Since the Shari'a is interpreted differently in each separate country, there is no universal version of Islamic law that can be used.

### **RECOMMENDATIONS**

#### **Legal Possibilities**

Are there any legal avenues available for prosecuting the Taliban? Although the use of international law is limited, there are still some possibilities available. The U.N. procedures for investigating and reporting on human rights violations has already been used. However, there is the possibility of petitioning the United Nations to move the case of Afghanistan from ECOSOC's Commission of Human Rights to the Security Council.

While it is worthy to note that the Taliban's strict interpretation of the Shari'a is not congruent with the Qu'ran, other Islamic texts and Islamic scholars, there is little use of pursuing a form of religious law that is based upon cultural interpretations.

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<sup>7</sup> Marjori Ghasemi, Islam, *International Human Rights and Women's Equality: Afghan Women Under Taliban Rule*.

### **International Pressure**

The U.N. and U.S. have imposed sanctions against Afghanistan. Under these sanctions, the Afghani airline is not permitted to leave Afghanistan except to travel to Mecca, Saudi Arabia. In addition, all Afghani assets held outside of Afghanistan are to be inaccessible. Although no Afghani goods are allowed to leave the country under sanctions, there is no barrier to international humanitarian relief efforts. It is important to realize that the enforcement of sanctions against Yugoslavia was one of the first steps that occurred before the U.N. Security Council set up the tribunal.

Ever since the 1998 terrorist bombings in Africa, Osama bin Ladin has been seeking refuge in Afghanistan. The United States and the U.N. have been pressuring the Taliban to give up bin Ladin for prosecution but the Taliban has stood firm. Both the U.S. and the U.N. have imposed sanctions against Afghanistan and many relief agencies have pulled out of Afghanistan due to both security/safety issues and political pressures. Now (as of week Nov. 18, 1999), Osama bin Ladin has issued a statement agreeing to leave Afghanistan, as long as he is prosecuted in an Islamic court in a Muslim country. While it is debatable whether the use of sanctions are actually effective, it is clear that on-going international pressure against the Taliban has worsened their situation and alienated them from any supporters.

Similarly, this approach of international pressure could be used with regards to the Taliban's desire for international recognition. So far, only three countries have recognized the Taliban as an official government: Pakistan, Saudi Arabia and United Arab Emirates. If the U.N. could target the Taliban's desperation for validity and negotiate with them certain human rights legislation, then perhaps actual intervention in human rights violations could occur.

### **Conclusion:**

The situation in Afghanistan is complicated. Twenty years of civil war and political instability has made the Taliban's overthrow of the Afghanistan government and subsequent rise to power possible. On-going conflict will not quickly end due to some sort of international intervention.

Yet, even though the challenge of ending the gross human rights violations is daunting, there are still possibilities both within and outside of the law. Legally, there are three possibilities within the U.N.: the ICCPR, the ICESCR and ECOSOC. Afghanistan is clearly violating both the ICCPR and the ICESCR. The 1235 and 1503 procedures within ECOSOC are also possibilities. These documents can not only be used but also challenged legally.

Outside the law, the best hope for Afghanistan is international pressure. Consciousness and concern for what's occurring in Afghanistan is crucial. If no one cares about one of the worst and longest-standing human rights atrocities, then why bother to create International laws regarding human rights if they cannot be effective?

Afghanis are the single largest refugee group in the world. During the Soviet occupation (1978-1992), six million people fled the country. Currently, one million civilians are thought to have been killed since the Taliban's take-over and there are approximately two million refugees in Iran and Pakistan. According to the U.N., the socio-economic conditions are among the worst in the world: most do not have any access to health care, there are extremely high rates of malnutrition, maternal mortality is one of the highest in the world and literacy rates are extremely low. Afghanistan is ranked last on the U.N. gender development index.<sup>8</sup> It cannot be forgotten.

“The world should know that Afghanistan is still the world's largest forgotten tragedy; that its people, especially the women, are being tortured and humiliated in a way unparalleled in other fundamentalist ruled countries.” (RAWA)

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<sup>8</sup> Amnesty International, ASA 11/11/99, November 1999, Afghanistan, “Women in Afghanistan: Pawns in Men's Power Struggles.”

## APPENDIX 1

### ***Some of the restrictions imposed by Taliban on women in Afghanistan***

- 1- Complete ban on women's work outside their houses including on female teachers, doctors, engineers and...
- 2- Complete ban on Women's movement outside their houses without a *mahram* (father, brother or husband).
- 3- Ban on dealing with a male shopkeepers.
- 4- Ban on being treated by a male doctors.
- 5- Ban on studying at schools, universities or any other educational institutions.
- 6- Compulsory wearing of long veil (*Burqa*) which covers women head to toe.
- 7- Whipping, beating and verbally abuse of women who's covers are not with accordance to what Taliban wants, or the women is without her mahram.
- 8- Whipping women on public for having non-covered ankles.
- 9- Public stoning of women for having sex outside marriage (a number of lovers are stoned to death under this rule.)
- 10- Ban on all use of make-ups. (a number of women's finger have been cut for having painted nails).
- 11- Banning women from talking or shaking hands with non-*mahram* males.
- 12- Banning women from laughing loudly (No stranger should hear the voice of a women).
- 13- Ban on wearing high heel shoes which would produce sound while walking as hearing the sound of a women's step is forbidden.
- 14- Banning women's use of a taxi without a *mahram*.
- 15- Banning women's presence in radio, television or gatherings of any kind.
- 16- Banning women play of any sport or entering a sport center or club.
- 17- Banning women to ride a bicycle or a motorcycle even with their *mahrms*.
- 18- Banning women's wearing of brightly colored clothes (in their terms "sexually attracting colors").
- 19- Banning women's gatherings on festive occasions such as the Eids or for a recreational purpose.
- 20- Banning women from washing clothes next to rivers or

on public place.

21- All place names with 'women' in it has been change for example "women's garden" has been renamed "spring garden".

22- Banning women from appearing in the balcony of their apartments or houses.

23- Compulsory painting of all windows so women could not be seen from the outside.

24- Banning male tailors from take measurements or sewing women's clothes.

25- Banning from the use of female public baths.

26- Public buses has been divided into separate ones for male and females ban on travel in the same bus by men and women.

27- ban on wearing pants with wide sleeves even under their veil.

28- Ban on being photographed or filmed.

29- Ban on women's picture to be printed on newspapers or books or hang in houses, shops,....

30- Ban on listening to music not only on women but on men as well.

31- Total ban on watching movies, television, video on everyone.

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