

**WOMEN AND CONFLICT:
DILEMMAS FOR NATIONAL LEGISLATORS AND
THE INTERNATIONAL COMMUNITY¹**

Working Paper

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INTRODUCTION

First of all, let me thank the UNHCR-Spanish Committee and *Globalitaria Peace Building Initiatives* for their kind invitation. It is with great satisfaction that International IDEA is taking part in this activity, which –among others- serves the important purpose of enhancing the communication between legislators, and between them and the public at large. In this sense the cooperation of the Inter-Parliamentary Union² is very much appreciated.

Before starting my presentation, allow me to make a confession. I am not a woman! Still, I am very glad to be here to provide inputs for discussion on this important topic because I think that discussions about women's rights and political participation need to involve more and more men. Today, I am replacing a (female) colleague from International IDEA who unfortunately could not come. As a practitioner and not an expert, I will try today to give inputs for discussion.

I spent the last ten years working in human rights, political affairs and humanitarian affairs. I was working with the United Nations in peace-keeping and peace-building mainly in Afghanistan (where I spent two years from November 2001 to October 2003) and Guatemala. Prior to that, I worked with development NGOs in Central America and Mexico where I had the opportunity to work directly with Mayan and rural women helping them strengthen their local associations. Overall, in my different capacities, I had to liaise with women combatants, refugees, returnees, IDPs, and civil society activists, often victims of human rights abuses but also strong protagonists of political change.

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² For more information, see www.ipu.org.

In November 2003 I joined the International Institute for Democracy and Electoral Assistance (IDEA),³ an inter-governmental organization with the mandate of promoting sustainable democracy worldwide. Open to governments and intergovernmental organizations, International IDEA currently has 21 member-states from all continents and 4 international non-governmental organizations. Created in 1995, it operates at the interface between those who analyze and monitor trends in democracy and those who engage directly in political reform or act in support of democracy at home and abroad. IDEA uses comparative experience, analysis and extensive dialogue with practitioners to identify examples of good practice and produce tools and guidelines on democracy support.

IDEA aims mainly to: (i) assist countries build capacity to develop and strengthen democratic institutions; (ii) provide a forum for dialogue between academics, policy-makers and practitioners; and, (iii) develop practical tools to help improve democratic processes. Its main current areas of activity include: (i) democracy building and conflict management; (ii) strengthening electoral processes; (iii) developing political parties as actors in democracy; (iv) political equality and participation, including women in politics.

My presentation today is based both on my direct experience and the work of International IDEA. It aims essentially to contribute to the broader discussion on women and conflict. The complexity of the topic requires both imagination and synergy of approaches. There are a number of dilemmas that international and national actors have to tackle –together- in order to effectively help women address tremendous social and economic post-war challenges, cultural and religious constraints, and legal and political issues. Before moving on and as an example (among many) of individual commitment of women in situations of conflict, allow me to make a special mention of Bettina Goislard, UNHCR colleague assassinated in November last year in southern Afghanistan while working for the protection of vulnerable people. I am convinced that her sacrifice will renew the efforts of those who work for peace in Afghanistan. However, I do hope this tragedy will also open a space for an intellectually honest review of the global strategy followed by part of the international community in dealing with violence in Afghanistan and the region.

³ For more information, visit the website at www.idea.int.

Today, I will mainly refer to four different types of dilemmas I consider critical in dealing with women and conflict. These are:

- (i) How do we deal with the fact that often women's participation in public life decreases in the post-conflict situation (particularly in early stages)?
- (ii) How can we effectively use traditional mechanisms (of decision-making and dispute-settlements) with the goal of fulfilling international standards of women's rights?
- (iii) How can we introduce a governance perspective to reconciliation?
- (iv) How do we ensure that women's political participation becomes an important factor in constitution and legislation-building processes?

Mostly, I will draw examples from Afghanistan and Guatemala. After identifying some of the main issues, I will pose open questions to national legislators and the international community.

“PEACE AFTER WAR” or “CONFLICT IN TIMES OF PEACE”?

Violent conflicts are dramatic experiences for every human being. Generally, traditional social/family structures as well as economic systems are deeply affected. Women suffer as much as men and the change brought by war implies additional duties for women. Though tragic, this may create also new opportunities for women. When there is a vacuum of power, women have to participate more in the leadership of communities, in the decision-making process, and in the fighting itself. Sometimes, they have more opportunities to educate themselves and develop political and organizational skills. During the displacement, particularly when assisted by the international organizations, they can establish social links and even political dialogues. The case of Guatemala is a clear example where mostly rural and illiterate women found themselves in the refugee camps in Mexico. Assisted by UNHCR and other organizations, women were empowered and managed to establish strong political organizations which played an important role in the political process in Guatemala during *'el refugio'* and after the return.⁴

Of course, it is not possible to generalize. The situation varies significantly according to the context and depends on the degree to which women were sidelined during the pre-conflict period. In the case of Afghanistan, the situation was very different from Guatemala. Still, even Afghan (female) refugees in some of the neighboring countries had (relatively speaking) more opportunities in a less conservative environment than what they had at home (particularly during the Taliban regime, but also after the collapse of their regime).

⁴ UNHCR-Guatemala, *Operación de Repatriación y reintegración de refugiados guatemaltecos*, Guatemala, 2000.

Often, the end of violent conflicts and the return of refugees do not imply an automatic reintegration and stake for women in the process. On the contrary, in many cases, the post-war situation seems more difficult. The real “*war is what happens afterwards*”, a group of Somali women said in the aftermath of the hardest period of the conflict.⁵ When wars end, women have to pick up the pieces. Often, their husbands are dead or maimed and the economic situation is still very hard due to the destruction of public services and the scarcity of goods. They have difficulties in maintaining their ‘new role’ within the community; they face new security challenges. Return often means going back to traditional and conservative settings with very limited opportunities for women.

In many of the returnees’ settlements in Guatemala the very first conflict was often between highly organized women (including widows) and male-dominated leadership. Female activists were victims of death threats, physical violence and overall a loss of opportunities. Although in a very different context, the case of Afghanistan is equally interesting. Women returned to an extremely conservative environment with direct implications in terms of freedom of movement, expression and participation, let alone the rigid dress code. Additionally, they were facing such a difficult economic situation (notwithstanding the important aid from the international community, particularly UNHCR) in which life revolved around daily survival. In the post-return environment women found themselves more “separated” than “integrated”.

Therefore, if the return to “normality” seems -in many situations- to imply a trend to disempowerment for women, the open questions that need to be answered are:

- (i) Can the international community prevent the disempowerment of women in post-conflict settings at the moment of designing/implementing assistance programmes and peace-building interventions (also in light of the UN Security Council 1325 of 2000)?
- (ii) Can national legislators (or the executive in the absence of the legislator) design an emergency package of measures to prevent the disempowerment of women, both through policy measures as well as campaigns of public education?

⁵ Conversations with Ms Judith Large, Senior Adviser on Conflict Management, International IDEA, 2003.

“OUTSIDE” or “INSIDE” THE BURQA?

Amongst other activities, the first team of UNHCR returning to Kabul to reinitiate the operations after the post-September 11th evacuation met with an organization of Afghan women. One of them said: *“the problem with you [international community] is that you do not want to work with us INSIDE the Burqa; if you do not do that, you will not be able to see us.”*⁶ This sentence gives the real dimension of the dilemma the international community needs to face while working in a particular social, cultural and religious context. And the dilemma has no easy resolution. Afghanistan epitomizes this. Shall we abide by the international (human rights) standards at all times or shall we accept to work in violation of some of those standards as a strategy to achieve our goals of social change in a mid/long-term? What is the limit of this temporary abdication to the rights of people that we can accept? The topic of women’s rights is perhaps the one where this contradiction is most obvious.

I recall the case of a young girl forcibly married to a local commander [of militias] in the center of Afghanistan under the post-Taliban and internationally-backed political set up. The news sparked horror among UN and other international organizations. The gender network in Kabul, made of experts and practitioners, decided to seek the best way to stop the violation. In light of the dysfunctional justice system and the lack of effective law enforcement capabilities, the strategy was to promote a solution according to traditional mechanisms of decision-making/dispute-settlement. Local elders and traditional authorities accepted to convene a local *shura* (the traditional assembly) where the abduction of the girl was condemned. The decision was that she had to return to her original family. However, as the abuse had taken place in the framework of a (long-standing) family dispute, the local shura also took the decision to exchange two other girls in order to “settle the issue”. Such a decision, supposedly taken in accordance with traditional mechanisms, resulted in a clear violation of international human rights law/standards and of the (unwritten) principle of “two wrongs do not make a right”.

This example shows very important points. First of all, the international community including gender experts needs to be better prepared to face challenges related to cultural and religious constraints. Second, it is true that traditional structures/mechanisms are in principle the most appropriate and sustainable way to address problems, but only when they are within established

⁶ Conversations with Mr Pedro Felipe Camargo, Head of UNHCR regional office in Kabul, 2002.

parameters of international standards of human rights and democracy.⁷ In this sense, although Afghanistan has shown some success stories (for the ability of the new government and the international community to democratize traditional mechanisms as we saw during the Emergency Loya Jirga and -more recently- the Constitutional Loya Jirga), still this relationship remains very problematic and unresolved.⁸

Overall, the process of women's emancipation in post-conflict situations is a truly political process. As such, any intervention to support it must be based on a broad understanding of the context including the fact that reaching substantive equality takes time. If a "gradual approach" is therefore inevitable, however, there must be a limit to what can be accepted as "temporary imperfection" towards equality. Even more importantly, it is necessary that this gradual approach be evident (particularly for women) that the firm direction of the process is towards the full compliance with international standards. In simple words, can we be sure that Afghan women perceive the current unsatisfactory situation as "a matter of time" and that there are no risks for the process to go backwards?

From this perspective I have my doubts that two years after the end of the Taliban regime, this 'gradual approach' can justify that the Afghan TV cannot show women singing due to the decision of an obscurantist Supreme Court (which manipulates Islam to sustain its ban and which the international community is currently funding) or that women continue to be the object of forcible virginity tests in the city of Herat (whose governor has been an important ally of the US-led Coalition Forces). What can we say to those (numerous) Afghan women who had great expectations (and I had the opportunity to see this directly while in Mazar and Herat at the end of 2001 and the beginning of 2002) after the collapse of the Taliban regime and their systematic repression?

⁷ Although a more 'Western' vision played an important role in shaping these standards, they are really universal instruments incorporating values from different regions of the world. The difference between traditional and international mechanisms is exacerbated by certain leaders who present it as a contradiction for political gains.

⁸ Another symptom of this problematic relationship between local traditions and international standards exists in relation to the role of Diaspora in post-conflict recovery. Often, given the opportunity to develop higher skills, they give crucial contribution to the reconstruction (in the broad sense); at the same time, in a number of cases, their presence tends to exacerbate this perceived dichotomy and provokes negative reactions. This is not only the case of Afghanistan, but also of a different situation like post-Apartheid South Africa. Conversations with a parliamentarian from South Africa, 2004.

It might be true that there is no alternative to working “inside the Burqa” (meaning within the local social, cultural and religious context) in order to provide effective help to local women in gaining their rights. However, this must clearly be a temporary measure with visible limits.

Specifically in relation to this manipulation of the Islamic faith, the extreme use of violence seems to have been left unchallenged to dictate the terms of the debate at the international level. Particularly since September 11th, Huntington’s idea of ‘clash of civilizations’ was repeated and repeated to an extent which is about to make it a self-fulfilling prophecy while the invitation to a ‘dialogue of civilizations’ (as recently done -among others- by the Iranian President Khatami) passed almost unnoticed. Instead of combating this false image of global confrontation (including the baseless idea of a compact/unified Islamic world), a number of power centers in non-Islamic countries contributed to strengthen it by undertaking a series of actions which ended up weakening the relative position of moderate Islamic forces in (the very different) countries where Islam plays an important political role.

Following this, and if I may open a brief parenthesis, the War on Terror has clear shortcomings in this sense particularly visibly in Afghanistan. Beyond the dubious legality (from the point of view of the international law) of the detention of several men in Guantanamo/Cuba, we cannot forget that most of these men left mothers and wives (and children) with no economic support, let alone security, and in a particularly stressful psychological situation (for the impossibility to see their relatives or even having direct information on their detention). In addition to that, the way US-led Coalition Forces are conducting certain arrests and searches in the framework of anti-terrorist activities seems to clash with the efforts that the international community (and the Bonn Agreement) require from Afghans in support of the establishment of an effective system of rule of law. Surely, the rule of law and respect for recognized conventions and rights must be seen as universal, not experienced as questionable double standards.

Therefore, if a strategically gradual approach is inevitable as the only way to succeed, the open questions that need to be answered are:

- (iii) Can the international community find a better way to introduce in all kinds of peace agreements and policy outlines in post-conflict settings those necessary minimum limits for the protection of women’s rights including a precise timeframe for the full application of international standards?

- (iv) How could the international community (particularly within and through the UN) enhance a conclusive dialogue between non-Muslim and Muslim countries with the aim of supporting a moderate interpretation of Islam, fully compatible with the basic international norms? What is the role of democratic Muslim countries in that?

- (v) How could national legislators (or the executive in the absence of the legislator) design adequate mechanisms of dialogue between women's groups and religious organizations?

RECONCILE NOT ONLY “BETWEEN” BUT ALSO “WITHIN”

The third cluster of dilemmas relates to the issue of women in reconciliation processes. Traditionally, reconciliation has been seen primarily as a process of dispute-settlement between opposing groups, separated by nationality, political ideology, economic interests or ethnicity. Important measures/mechanisms of power-sharing, demobilization and reintegration of former combatants, confidence-building, political and institutional reforms are designed/established in order to support negotiated settlement and reconciliation. Although this is clearly a crucial dimension, sustainable reconciliation (intended as a process through which a society moves from a divided past to a shared future minimizing the probabilities to go “backwards”) is a far more complex process. The opposing groups cannot be conceived/treated as monolithic entities as just if they were social groups living in separated/compact territories and in harmony within them.

It is necessary to complement this approach by adding an important community-level and individual component. As International IDEA highlighted in the 2003 Handbook,⁹ reconciliation applies to everyone, not only to those who directly suffered the effect of violence or who inflicted sufferings. “The attitudes and beliefs that underpin violent conflict spread much more generally through a community and must be addressed at a broad level.” This is very true in relation to women. A gender perspective illustrates some of the “small conflicts” that lie beneath the main conflict and which need to be addressed in order to create a sustainable peace and a democratic society. For example, women have experienced sexual abuse in the form of mass rape, forced marriages and prostitution, with social stigmatization and marginalization as a

⁹ International IDEA, Reconciliation after violent conflict: a handbook, 2003.

consequence (and in some contexts HIV). For such women reconciliation involves offences against them being recognized and punished, illegitimate children being recognized as legitimate with full rights, and resources being allocated to deal with the physical and psychological consequences.

Women have to continue to raise their children while co-existing with the very perpetrators of the abuses they were victim of. The Guatemalan highland was a dark example of this, where a number of women (particularly of Mayan origin) had no alternative than living in the same (often very small) villages where the killers of their husbands, fathers and sons continued to live.

An effective reconciliation process cannot be ‘imposed’ from outside and requires a political, legal and institutional framework in which different measures will be formulated to tackle all dimensions of the “problem”, which encompasses both past abuses and present inequalities. In addition to the necessary elements of justice and truth, it is crucial to focus on all these aspects which can enhance peaceful democracies, such as democracy at local level, electoral system design, constitution-building.

This is what we refer to as a “governance” approach, to which the interaction between allocation of international aid and reconciliation in divided societies should be added.

If this is the case, the open questions arising are:

- (vi) Can the international community take into account the impact in terms of reconciliation from a governance perspective of any assistance programme (be it humanitarian, democracy-building or rule of law)?
- (vii) How could the international community give a greater contribution to the justice component of reconciliation by overcoming those elements which feed the perception of a justice of the winner/West?
- (viii) How could national legislators take into account the complexity of reconciliation issues and design appropriate mechanisms to facilitate its development in the long-term?

LAW AS FACTOR or REFLECTION OF (SOCIAL) CHANGE?

Law plays a crucial role in the construction of democracy. First of all, it must be respected by every person everywhere (within the limit of the jurisdiction of legislators), regardless of any difference. Second, it is through laws that legislators, voicing the popular sovereignty (at least in a democratic setting), give shape to the normative system of a country, define the duties and protect the rights of citizens.

Still, particularly in post-conflict settings (but not only), there is the dilemma of how much the norm should be engine of a cultural transformation or just a reflection of it. Applying this to the case of Afghanistan (and if we consider the *burqa* as a limitation to the full exercise of the rights of women as I personally do), the first question would be...shall the *burqa* (just to make an example) be abolished by law notwithstanding the likely reaction from conservative forces or shall 'legislators' wait until "conditions are ready" so that the law will be accepted and therefore be effective?

I think nobody has the right answer and probably a right answer does not exist, let alone a recipe to be applied in different contexts in different times. This is particularly true in a country like Afghanistan where, at least for the past 30 years, very different regimes governed by imposing laws responding to very different *weltanschauung* and which were very easily reverted by the following regime. Beyond the philosophical aspect of the dilemma, the issue is very much linked to the extent of law enforcement capacity of a regime. If a law cannot be enforced, why promulgate it then? Or would it still have a value as a symbol? All these dilemmas are present in a situation like Afghanistan and particularly in relation to the issue of women's rights, due to the intrinsic link with the cultural and religious dimension.

In any case, the main point here is that women should not be left out in the drafting of any laws concerning them. This should be a critical principle in the overall exercise of designing a political system in the aftermath of a violent conflict. In this sense, I consider very interesting the experience of Guatemala where the peace agreements bet on a combination of representative and participatory democracy. The link between civil society and national legislators is perhaps the best indicator to know when there is a demand/need/possibility of success for a law which promotes social change. I remember in the northern part of Quiche (one of the areas most affected by violence), how the participation of women's organizations in the *Consejo Municipal*

de Desarrollo Ampliado (Municipal Development Council including the participation of civil society organizations) played exactly this function of link between civil society and local authorities (in that case at municipal level, but with links with deputies at national level). In my opinion, it is in this combination between the social and institutional level, that the political participation of women has more possibility to make a difference.

One of the main mechanisms advocated by IDEA and many other international organizations to promote the institutional entrenchment of the political participation of women is the legislative quota. If considered in the above described framework, the dilemma between “imposing” a quota by law and allowing a “natural process” of social change does not pose a challenge anymore. The legislator would know when it is the ‘right’ moment to push for a change. On this issue, I would like to mention an interesting paper that my colleague Julie Ballington (together with Richard Matland) wrote on “Enhancing Women’s Participation in Electoral Processes”.¹⁰ According to their research, “most of the recent country experiences with quotas have emerged from transitional and post-conflict states. They have taken varying forms, ranging from voluntary party quotas adopted by the ruling (liberation) parties in Mozambique and South Africa”, to reserved seats and constitutional quotas most recently in Jordan, Rwanda and Afghanistan.

Notwithstanding the existing controversy on the issue, “in many instances quotas have contributed to an increase in the number of women in parliament”. However, International IDEA believes that quotas are unlikely to be successful when introduced as a single measure. “In the short term they may dramatically increase the representation of women, but they allow parties to make concessions to women without necessarily addressing key gender issues. It is not the quota in isolation, but how it interacts with the type of electoral system, the nature of women’s movement, how women were involved in negotiation processes, how the laws have been drafted and enforced.”¹¹

¹⁰ Julie Ballington & Richard E. Matland, “Political Parties and Special Measures: Enhancing Women’s Participation in Electoral Processes”, paper presented at Glen Cove, New York in January 2004.

¹¹ International IDEA and Stockholm University are engaged in a global research project on the implementation and practice of quotas worldwide. A website database on Electoral Quotas for Women (www.quotaproject.org) contains information for 80 countries where quotas exist, previously existed or are currently under discussion.

Recently, Afghanistan went through a very interesting experience during the approval of a new Constitution. The process was fully inclusive, thanks to the will of the Afghan government and the important support provided by the UN, and the participation of women was guaranteed. In addition to that, a quota of 25% of the seats in the future Parliament is reserved to women.

From this particular angle, the open questions are:

- (i) How could national legislators and the international community work together to design/establish mechanisms combining the principles of representative and participatory democracy in post-conflict situations with the particular focus of women's participation?
- (ii) Could the Afghan example of women's participation in inclusive constitution-building processes offer valuable lessons for other settings?
- (iii) How could national legislators introduce quotas as a part of a coherent/articulated package of measures to enhance (and entrench) the participation of women in the decision-making process and in the institutional structure?

CONCLUSIONS

In conclusion, we advocate for coordinated actions from the international community and national legislators in a number of crucial areas from the perspective of women and conflict:

- First of all, the process should always go forward and there should be actions aimed at seeking a degree of irreversibility of the gains women achieve in a given context, even in very difficult times like conflicts.
- Second, it is necessary to establish (minimum) limits for those phases in which the full exercise of the rights of women cannot be achieved at once. Even beyond this, there is the complex but ineludible dialogue between women and religious organizations which must be facilitated and promoted.

- Third, reconciliation can be significantly supported, as a process, only through a governance approach which will tackle at the same time past abuse and current inequalities while safeguarding against future abuses.
- Fourth, a system of representative democracy must be combined with mechanisms of participatory democracy with the full inclusion of women in order to enhance the communication (and synergy) between civil society and legislator.

The advancement of women implies overcoming a number of socio-cultural, religious and political constraints and this synergy will give more chances of success.

Before concluding, I would like to thank the Generalitat Valenciana for its hospitality and all of you for your attention.