

Women's Rights and Political Representation: Past Achievements and Future Challenges



Background Brief for the Symposium

Women's Rights and Empowerment in Afghanistan

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- How can *female political participation and representation* best be enhanced, in the next parliamentary elections and beyond?
- What are the most *important strategic issues related to gender equity*, assuming that popular resonance and effective political alliances (including with male constituencies) are requirements for success?
- Are cases of *prosecution of violence against women* best undertaken through specialized entities or through reform of the entire justice system?
- What is the political space for *reform in family legislation*, and which reforms (marriage, divorce, custody or inheritance) would be most important for the status of Afghan women?

These are key questions regarding women's rights and political representation to be discussed at the Oslo Symposium. This paper summarizes the main achievements and challenges for Afghan women's participation in politics and their access to justice. It also presents the most important reflections amongst key stakeholders about possible ways forward, with the aim of facilitating further discussions in these areas. Following a set of concluding reflections, we will round off by detailing questions for further debate.¹

Women in Afghan politics: Participation and Substance

The space for women to participate in politics in Afghanistan has opened up considerably over the last 14 years. The nation-wide perception surveys conducted by the Asia Foundation (2008 to 2013) found that almost 60 percent of Afghans are happy with women representing them in elected institutions, including provincial councils. Younger women in particular appear increasingly willing to take social and even security risks in order to

realize their political aspirations, having seen the first cadre of female leaders gaining prominence after the collapse of the Taliban regime in 2001.

The 2014 Presidential Elections

According to the Independent Election Commission (IEC) more women voted in the 2014 elections than in the elections of 2009, although the number of female voters has given rise to some controversy, related to claims and

accusations that the numbers have been inflated as a result of fraud. Whatever the case female participation in elections seems to have differed greatly alongside rural-urban and provincial lines. For instance, a study by the Afghan Independent Human Rights Commission and the UN assistance mission to Afghanistan reported that in 2009, in Daikundi province, 54.3 percent of the voters were women, whereas in Zabul province, the share of voters who were female was only 11.8 percent. Executive power continues to be a male domain. In the 2014 presidential elections, only one female presidential candidate put her name forward as a candidate and she was disqualified by the Independent Election Complaints Commission for failing to provide the necessary 100,000 ID cards in support of her candidacy upon registration. However, three women ran as vice-presidential candidates and many other female politicians and activists took an active role in the campaigns, more so than in earlier presidential elections. Many of those interviewed for the present paper noted that women are increasingly defying conservative norms by making up part of the public face of the campaigns. In Ashraf Ghani's team prominent women, mostly members of parliament – including Farkhunda Zahra Nader, Heela Irshad and Shahgul Rezai – played an active role in the campaign leadership council, the highest decision-making body. Similarly, well-known female politicians – such as Habiba Sorabi, Nahid Fareed, Mina Khashi, and Nasrin Gros – campaigned for Abdullah Abdullah. These women regularly appeared in campaign gatherings and engaged with the media. However, in both camps men dominated key working committees including the planning and policy, public outreach and finance committees.

It also seems that there is a new appreciation of the importance of the female constituency. For instance, the 2014 presidential candidates engaged more systematically with women's issues in their campaign and focused on women's access to health and education, safeguarding economic security for women and enhancing women's political rights. This was partly because women politicians and activists were more organized and vocal in articulating their demands, asking for specific verbal and written commitments from candidates. The Women Charter and the civil society Pledge Letter are examples of such initiatives. Whilst

Year	All candidates	Female candidates	Total seats	Female council members (none -quota in brackets)
2005	3025	285	420	105 (24)
2009	3196	328	425	117 (20)
2014	2591	308	458	97 (18)

Table 1: Provincial elections and female candidates.³

the latter was initiated and supported by Counterpart Afghanistan, a USAID subcontractor, the former was an initiative by Afghan women civil society actors. The Women Charter specifically demanded guarantees for women in five key areas: law protection and enforcement including the passing and implementation of the Elimination of Violence Against Women Law; improvements in women's access to health; women's access to education; women's economic security; and women's political participation. The two run-off candidates pledged their commitment to these demands.

The Parliament and the Provincial Councils

The 2004 Afghan Constitution introduced a quota system to ensure a minimum level of female representation in the two houses of parliament. A minimum of two of the elected members to the Lower House from each of Afghanistan's 34 provinces must be female. This was clarified in later legislation to mean that 68 of 249, or 27 percent, of the seats in parliament are reserved for women, given that the number of total seats in each province varies significantly according to population levels. In addition 50 percent of the presidential appointees to the Upper House (1/3 of the Upper House seats) must be female. Subsequent electoral legislation has also put in place quotas for women in the provincial councils. This quota was initially at 25 percent, but it was reduced to 20 percent in 2013 although an attempt by some parliamentarians to remove the provincial council quota altogether was unsuccessful.

There are presently 69 female MPs (28 percent) in the Wolesi Jirga (Lower House) and 28 female senators (27 percent in the Meshrano Jirga (Upper House) from a total of 102 members). Studies suggest that over the years, women's share of the total number of

candidates running for parliament has increased. In 2005, 12 percent of the Wolesi Jirga candidates were female, whereas in 2010 the number had increased to 16 percent.² The proportion of women amongst the candidates running for seats in the provincial councils has also increased, from 5 percent in 2005 to 12 percent in 2014.

As the table above shows, between 2010 and 2014 there were 117 women councilors out of a total of 425. This has now dropped significantly to 97 following the 2014 provincial council elections. A major reason for this was the 2013 election law that reduced the proportion of seats reserved for women from 25 to 20 percent.

“The quota system is a form of positive discrimination which is good in the short run but it would lead to laziness and lack of aspiration in the long-run.”

A Male MP from Herat

Overall, there seems to be a consensus, at least in pro-women circles, that the quota system has proven an effective entry point for women in politics and that it is essential to promote women's political participation. Nonetheless, the system has not been without its drawbacks. Numerous reports on the quota system find that the general public perceives the quota as a ceiling rather than a floor for women's elected seats.⁴ Even if female candidates gain enough votes to claim an open seat, they are regarded as having gained one of the seats reserved for women. This is particularly paradoxical in light of the (preliminary) results of the 2014 provincial elections where

many women who won seats did so with much higher margins than earlier, even if the total share of female-won seats decreased.

More generally, there has been a tendency in both local and donor discourse to equate women's presence in politics with the championing of women's interest as a gender group. As is now widely pointed out, this equation is problematic and can lead to misguided policies. For one, women are not insulated from the overall political dynamics in Afghanistan, which are often shaped by relations of patronage and personalized competition. That women are not immune to such dynamics was made clear by personal divisions amongst female MPs in the Wolesi Jirga over attempts to introduce the Elimination of Violence Against Women (EVAW) law to plenary debate in parliament in 2013. Many women's rights advocates believe that these divisions caused the EVAW law, a piece of legislation important to women, to lose some of its legitimacy. Some suggest that these dynamics are exacerbated by international donors who might pick their own champions, particularly amongst English-speaking women MPs, and employ informal tactics to promote gender issues instead of supporting formal channels such as the Women's Commission. At the same time, even if women – like men – are part of patronage politics, they are often more marginalized by such politics than their male counterparts. Women, for example, might be in office as protégées of male leaders (a practice aided by the quota system) or they find it difficult to exercise influence due to the lack of access to informal networks and finances. In the 2005 Parliamentary election, the share of women who were elected to the Wolesi Jirga without requiring the quota was approximately 30 percent of the total.⁵ However, in 2010, in an election generally perceived to have been dominated by strongmen and businessmen-turned-politicians, the number of women gaining seats without the aid of quotas in Wolesi Jirga decreased to 11, from 19 in 2005. An in-depth study on women's electoral participation in three provinces from 2012 by the Afghan Research and Evaluation Unit confirmed that voters, both men and women, tended to see elected representatives as service providers to localized groups. Voters therefore prioritized candidates who were regarded as having the influence and networks to be able



Women in Bagh-e-Babur, Kabul, Afghanistan. Photo: Ninara / Wikimedia

to deliver tangible benefits to their community. Accordingly, it would appear that female representation would gain, in relative terms, by a transition to issue-based or party oriented politics. The country's current voting system, the Single Non-Transferable Vote system, remains an obstacle to the development of more party-based politics.

At the same time, female MPs, like their male colleagues, hold different views and represent a variety of political interests, and cannot be expected to serve solely as defenders of women rights. In fact female MPs in parliament complain of being marginalized and relegated to "women's issues" such as gender violence whereas men are left to debate issues considered more serious and important such as the economy, security and defense, framed as male domains. This is compounded with the barrier posed by men who refuse to listen to women because they are seen as 'quota' candidates. In other words, it is suggested that increasing female participation in politics and building coalitions for women's rights are two

separate objectives and must be approached as such. A promising example of female MPs taking initiatives and driving national policy, working beyond women issues, is the Anti-Corruption Caucus in the Wolesi Jirga, a caucus consisting of the female MPs who successfully championed the Access to Information Act.

If we distinguish between women's participation in politics and the political promotion of gender equality this also means that men must be enlisted as crucial partners to coalitions around women's rights issues. What is promising in this regard is the fact that many of the contributors to intellectual debates about gender roles and feminism in Afghanistan are men, and that many male politicians express support for women's rights. Underlining how rigid gender roles impact men's options as well, for instance by placing heavy responsibilities for family provision and the reputation of female relatives on men, could serve to build an inclusive discourse that is relevant to both sexes.

The peace process

The view that women's participation and priorities must be part of any peace process seems to be well established amongst donors and the Afghan government. There also seems to be a broad acceptance within Afghanistan that peace negotiations with the insurgents, provided that they do not involve concessions that erode women's existing rights, are desirable or at least not objectionable. In the absence of an actual peace process however, and with a seeming inability of the insurgents to articulate a coherent set of demands, the exact modalities through which women's rights and participation can be ensured remains undetermined. Much effort has gone into supporting the nine female members of the High Peace Council, a government body whose 70 members were appointed by President Karzai in 2010. The Council is mandated to facilitate peace talks and lead national reconciliation. The High Peace Council has set up Provincial Peace

Committees to negotiate with armed opposition groups at the local level and persuade them to renounce violence through the Afghan Peace and Reintegration Program.

Women make up less than 10 percent of the members of the Provincial Peace Committees. A report from spring 2014 suggests that the kind and level of influence these female members have been able to exercise varies according to the degree of conservatism in the local area. In some parts of the country, women peace councils ‘met regularly with both formal government representatives and informal community governance structures and were able, if not to influence the reintegration process, then at least to advocate around issues of concern to women in the community’.⁶ In other parts of the country, and particularly in rural conservative places, women’s roles have been more circumscribed.

At the time of writing, in early November 2014, the future of the High Peace Council was uncertain, with suggestions that the new government might establish a new institution altogether. If and when peace negotiations come underway, preliminary measures could be to formulate mechanisms through which women and civil society can systematically participate, modelled perhaps on experiences from other countries such as Guatemala where the structured and substantial inclusion of different civil society actors in the peace process was successfully achieved. It might also be important to ensure that international and local actors are aware of and have access to expertise regarding the multiplicity of possibilities when it comes to formulation of and incorporation of Islamic jurisprudence into government legal systems. This is likely to be a central reference when the Taliban formulate their demands.

Rights and access to justice

Much of the work on women’s access to justice in Afghanistan has focused on the prosecution of violence against women, with comparatively less effort and attention directed towards family law reform or economic rights such as claims over property and inheritance. The Law on Elimination of Violence against Women (EVAW) was enacted by presidential decree in 2009 and has been a cornerstone of both donor and local gender work. The EVAW law differs from earlier legislation by making



Parliamentarian Shukria Barakzai survived a car bomb in Kabul 16 November 2014.
Photo: Embassy of the United States Kabul, Afghanistan

rape a crime distinct from adultery, and by criminalizing under age marriage as well as a series of violations of women’s civil rights such as deprivation of inheritance and polygamous marriage under certain conditions, and various forms of harassment. The EVAW law also stipulates the government’s responsibilities for protecting victims. The law remains unratified by parliament and implementation has been slow, despite significant international and local pressure. At the time of writing, it seemed possible that the EVAW law’s criminal provisions would be incorporated into a revised general Penal Code, which then would be presented to parliament, perhaps in one or two years’ time.

A long awaited government report about violence against women (VAW) cases in the justice system found that cases filed under the EVAW law (as opposed to under the 1976 Penal Code) had increased by 28 percent,⁷ but that of the 4 505 cases registered over a one year period, only 361 cases led to a criminal conviction. (However, almost two-thirds of these convictions came from a single province, Herat.) Around 40 percent of the cases had been ‘solved’ either through mediation or simply by victims withdrawing their cases. The remaining total caseload of around 2 000 was reported to be under processing. Many of the specialized prosecution units for VAW crimes seem to suffer from administrative

challenges, with some case files simply disappearing.

The large number of mediated VAW cases suggests that government officials either regard incidents of violence against women as a less serious or ‘private’ matter, or that justice officials find it to be against women’s interest to imprison their male relatives, upon whom they are often financially dependent. The Ministry of Women’s Affairs is in the process of developing guidelines for mediation, which are intended to ensure universal criteria for when cases can be referred to mediation, and a measure of follow up, since anecdotal evidence suggests considerable repeat violence.⁸ Some actors within the justice sector also call for a more nuanced approach to criminal prosecution; the use of probation, using previous violations as evidence in court if reoffending, should be introduced as alternatives to imprisonment for first time offenders. This would however require a measure of record-keeping and follow up that is currently not standard.

Another focus since 2001 when it comes to women and the justice system has been the women detained for ‘moral crimes’, hereunder adultery, ‘attempted adultery’ and ‘running away from home’. Estimates over the last decade suggest that between 400 and 600 women are incarcerated for such offenses at any given time in the country (currently the



A female employee sews blankets at a textile factory.

figure is around 460).⁹ While these women constitute a small number of the total prison population of near 28,000 (97 percent male) inmates, their detainment is considered to discourage many other women from escaping abusive family situations. No serious attempts have been made to remove adultery (pre and extra marital sexual relations, punishable for both sexes)¹⁰ from the penal code, but aid agencies and activists have challenged judicial authorities on the practice of charging women and girls for the more diffuse crimes of running away or attempted adultery, with some success.¹¹ In the larger cities, legal aid is reported to be available to female detainees, comparing favorably to the services available to the much larger number of male detainees, although differences over the models through which legal aid is organized might lead to cuts in funding. To some extent, legal aid is also available to women in family cases, although unequal divorce and custody rights, and a lack of access to resources means that women are counselled to seek divorce only in cases of extreme abuse or abandonment.

Another important service to female victims of violence mainly established after 2001 are the women's shelters, of which there are currently around 25. The shelters have generally been run by women-led non-governmental organizations and offer refuge to women who are at risk of abuse from family members, or

are for other reasons in a vulnerable situation. The shelters and their staff have frequently been accused of facilitating immorality or 'breaking up the family'. Matters culminated in 2011, when, after a sustained conservative campaign against the shelters, the Ministry of Women's Affairs announced that they would be turned into government-managed institutions under stricter oversight, including admission screenings. However, lobbying from the shelters and national and international allies diffused the situation, and the Ministry and the shelters gradually developed a more cordial relationship. Today, shelters are available to women in at least 20 out of 34 provinces, and in recent years they appear to be gaining acceptance in many areas. However, southern and eastern provinces are poorly covered and for many women the inability to move out of the shelters has been a longstanding issue.¹²

The family and civil code from 1977 is primarily based on a fairly orthodox interpretation of the dominant Islamic school in Afghanistan, the Hanafi school. The code is scheduled for revision, but it is difficult to predict what the outcomes of such revisions will be. Some have suggested that greater custody rights over children, especially in cases of spousal abuse, should be one priority. Currently, women have custody over sons and daughters until the ages of seven and nine respectively, at

which point custody is transferred to the father. Some five years back, there was an attempt to introduce a standardized mandatory marriage contract, which would give women more rights in relation to dowry and divorce. However, women's rights advocates report that the efforts surrounding this initiative faded into the background after the EAW law began to take up much of their focus. Legal aid to women in cases of inheritance (of which they are afforded rights to according to the 1977 family law) is generally not available and national level data on caseloads, or on whether and how courts address such claims, do not exist.

Marriage, divorce and inheritance issues are also part of broader challenges related to identity papers, land, birth and death registrations, which affect the legal rights of all citizens female and male. Likewise, many of the problems with women's access to justice emanate from general challenges facing the justice system; capacity constraints, corruption and political interference. The latter two problems, as well as challenges of aid coordination, have hampered attempts of reform and strengthening the justice system. With the National Unity Government declaring justice sector reform to be a key priority, support to the justice sector might produce better results than what has been the case over the last decade.

In 2003, the Afghan government ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), without the reservations that have been common for Muslim countries with Sharia-derived legislation. The government submitted its first report only in 2012. During the hearing the following year, Committee members pointed out that many Afghan laws explicitly discriminated against women's rights.¹³ They also drew attention to the high number of girls who do not get proper education, the lack of protection of women from violence and the failure to prosecute such acts. Whilst the Afghan government pointed to efforts to implement the EAW law, responses to questions about reform in family law were evaded. It is difficult, however, to see how Afghanistan can meet its obligations under CEDAW without revising some of its existing legislation.

Since 2010, the Afghan government, Finland and UNWOMEN have worked to develop a National Action Plan on Women Peace and

Security. A draft has been completed and is scheduled to be launched shortly. Government priorities set out by the plan include increasing female participation in the security sector, in the High Peace Council and in the civil service, establishment of compulsory marriage registration and of specialized VAW courts, and financial support to vulnerable women and to female economic participation. A more detailed and budgeted implementation plan, intended to ensure that the action plan will form an integral part of government policy, is reportedly yet to be finalized.

Conclusions

Aided by the quota system, women have made significant headway in Afghan politics. Nonetheless, their political participation remains tenuous, with parts of the general public as well as many male parliamentarians viewing women politicians to be mere ‘quota holders’ at best and completely unwelcome at worst. From civil society and international groups, the main criticism against female politicians has been that their increased participation in politics has not translated into sufficient gains for women as a gender group. At the same time, female politicians suffer from notions that because they are women, they should concern themselves with ‘women’s issues’ only. All of this suggests that increasing female participation in politics and building coalitions for women’s rights might usefully be approached as two separate objectives. In other words, even if more women in politics do not automatically translate into the promotion of a pro-women agenda, the former should nonetheless be a goal in itself. Yet the two objectives are not entirely disconnected. Women continue to be structurally disadvantaged as long as the electorate and political landscape favors localized ‘patrons’ over politicians campaigning across communities on specific issues. Female politicians often lack the resources and connections to compete in such a field.

Women’s access to justice has been another cornerstone of both national and international work with women and gender equality in Afghanistan since 2001. In practice, much focus has been directed towards the prosecution of gender-based violence, and the implementation of the EVAW law. Despite considerable efforts, the conviction numbers in cases of vi-

olence against women remain low. There appears to be several reasons for this; chief amongst them are the limited options for women to survive outside of family settings, unequal access to custody and economic assets and challenges related to the general functioning of the justice system. Other important focus areas in the field of justice have been legal assistance and advocacy for women detained for ‘moral crimes’ and the establishment of shelters. Family law reform and women’s access to justice in civil cases have received comparatively little attention. The Afghan civil code of 1977 contains some articles that contradict CEDAW, such as sole custody rights to fathers for children over a certain age, unequal divorce rights and limited economic rights in case of divorce. ■

Notes

1. This background paper draws upon around 30 interviews in Kabul in September and October 2014, as well as the authors’ previous work in the field of gender, political participation and access to justice in Afghanistan.
2. See United States Institute of Peace, 2012. “Learning from Women’s Success in 2010 Afghan Elections”, Special Report. In 2005, there were 2379 male (88%) and 328 female (12 %) candidates running for the Upper House. In 2010, this increased to 406 female candidates (16 %) compared to 2171 (84%).
3. This table is based on Lough, Oliver et al., 2012. ‘Equal Rights, Unequal Opportunities. Women’s Participation in Afghanistan’s Parliamentary and Provincial Council Elections’, Synthesis Report, Afghan Research and Evaluation Unit. The numbers from 2014 are based on the preliminary results.
4. See for instance Independent Election Commission & UNIFEM, 2009. ‘One Step Forward, Two Steps Back? Lessons learnt Lessons Learnt on Women’s Participation in the 2009 Afghan Elections Workshop Report’, UNIFEM and IEC.
5. National Democratic Institute for International Affairs, 2006. ‘The September 2005 Parliamentary and Provincial Council Elections in Afghanistan’, NDI.
6. Peace Training and Research Organization, 2014. ‘The Home Front: The Role of Women in Afghanistan’s Peace and Reintegration Programme’, Research Paper, PTRO.
7. Ministry of Women’s Affairs. ‘First Report on the Implementation of the Elimination of Violence against Women (EVAW) Law in Afghanistan’. Kabul: Islamic Republic of Afghanistan, MoWA.
8. United Nations Development Program, 2013. ‘Report on EVAW units in Kabul, Mazar-e Sharif and Herat’, United Nations Development Program, March 2013.
9. Numbers are based on: Human Rights Watch, 2012. ‘I had to run away. The Imprisonment of Women and Girls for “Moral Crimes” in Afghanistan’, and data obtained from the Corrections System Support Program in October 2014.
10. Some ideas about removing adultery are floating around in connection with the revisions of the penal code. Those in favour of removal argue that adultery is included in Islamic penal law solely as a preventive measure, because it is punishable only when four witnesses exist.
11. A more detailed breakdown of how many of the women incarcerated for moral crimes were imprisoned for adultery as opposed to ‘attempted adultery’ or running away could not be obtained and, it seems, is not generally available.
12. A few transitional houses have been set up for women who are ready to move out of the shelters, but women often face economic challenges in ‘transitioning’ out of these.
13. See Musawah, 2013. ‘Musawah Thematic Report on Article 16: Afghanistan’. Geneva, July 2013.

Issues for discussion

- **Increasing female representation:** What are the best ways to enhance female political participation and representation in the upcoming parliamentary elections and beyond? Should the focus be on the promotion of and assistance to individual women candidates, or on improving the overall landscape in order to reduce the influence of informal networks of patronage and fraud that seems to affect women disproportionately (and if so through what measures)? Should the quota system be rethought or is it better to concentrate efforts on increasing the legitimacy of the quota seats?
- **Promoting gender equality through politics:** If women and gender equality are becoming more significant as electoral issues, how can women and their allies capitalize on this? What can be the core issues for women to mobilize around and put forward as political demands in future elections? Are there issues that might resonate with women across rural/urban and class divides? How can Afghan men be mobilized around gender equality?
- **Prosecution of violence against women:** Can low conviction rates be addressed by targeted initiatives such as special prosecution units and courts or is it more helpful to focus on reforms of the justice system as a whole? Is it meaningful to press for the imprisonment of male relatives if women risk losing the family support and subsistence that they depend on?

- **Family legislation:** What is the political space for changes to the family and civil law, for instance regarding marriage, divorce, custody or inheritance? Are revisions of such provisions the right priority at the moment? Would any such revisions to family legislation make an actual difference to women's lives?

Recommended Readings

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THE AUTHORS

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THE PROJECT

This paper provides background for the Symposium "Women's Rights and Empowerment in Afghanistan", Oslo 23 November 2014. The Symposium is hosted by the Norwegian Ministry of Foreign Affairs, in partnership with the Afghan Ministry of Foreign Affairs, the US State Department, the Afghan Women's Network (AWN), Georgetown Institute of Women, Peace and Security (GIWPS) and PRIO.

PRIO

The Peace Research Institute Oslo (PRIO) is a non-profit peace research institute (established in 1959) whose overarching purpose is to conduct research on the conditions for peaceful relations between states, groups and people. The institute is independent, international and interdisciplinary, and explores issues related to all facets of peace and conflict.