

HUMAN RIGHTS IN AFGHANISTAN



MARCH 26, 2009

**Briefing of the
Commission on Security and Cooperation in Europe**

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The Helsinki process, formally titled the Conference on Security and Cooperation in Europe, traces its origin to the signing of the Helsinki Final Act in Finland on August 1, 1975, by the leaders of 33 European countries, the United States and Canada. As of January 1, 1995, the Helsinki process was renamed the Organization for Security and Cooperation in Europe (OSCE). The membership of the OSCE has expanded to 56 participating States, reflecting the breakup of the Soviet Union, Czechoslovakia, and Yugoslavia.

The OSCE Secretariat is in Vienna, Austria, where weekly meetings of the participating States' permanent representatives are held. In addition, specialized seminars and meetings are convened in various locations. Periodic consultations are held among Senior Officials, Ministers and Heads of State or Government.

Although the OSCE continues to engage in standard setting in the fields of military security, economic and environmental cooperation, and human rights and humanitarian concerns, the Organization is primarily focused on initiatives designed to prevent, manage and resolve conflict within and among the participating States. The Organization deploys numerous missions and field activities located in Southeastern and Eastern Europe, the Caucasus, and Central Asia. The website of the OSCE is: <www.osce.org>.

ABOUT THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE

The Commission on Security and Cooperation in Europe, also known as the Helsinki Commission, is a U.S. Government agency created in 1976 to monitor and encourage compliance by the participating States with their OSCE commitments, with a particular emphasis on human rights.

The Commission consists of nine members from the United States Senate, nine members from the House of Representatives, and one member each from the Departments of State, Defense and Commerce. The positions of Chair and Co-Chair rotate between the Senate and House every two years, when a new Congress convenes. A professional staff assists the Commissioners in their work.

In fulfilling its mandate, the Commission gathers and disseminates relevant information to the U.S. Congress and the public by convening hearings, issuing reports that reflect the views of Members of the Commission and/or its staff, and providing details about the activities of the Helsinki process and developments in OSCE participating States.

The Commission also contributes to the formulation and execution of U.S. policy regarding the OSCE, including through Member and staff participation on U.S. Delegations to OSCE meetings. Members of the Commission have regular contact with parliamentarians, government officials, representatives of non-governmental organizations, and private individuals from participating States. The website of the Commission is: <www.csce.gov>.

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HUMAN RIGHTS IN AFGHANISTAN

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Commission on Security and Cooperation in Europe Washington, DC

The briefing was held at 2:30 p.m. EST in Capitol Visitor Center Auditorium, Washington D.C. Janice Helwig, Policy Advisor, CSCE presiding.

Ms. HELWIG. I'd like to welcome everyone here today on behalf of the Helsinki Commission and our Co-chairman Congressman Hastings. He's running a bit late. He will be here shortly, and will take over then. But we'll go ahead and get started. I'm going to read a statement on behalf of Mr. Hastings, and then we'll hear from our panelists.

Afghanistan has been taking important steps towards building a stable, lawful, and democratic state. However, it still faces a legacy of egregious human rights violations committed in the context of more than two decades of armed conflict. Rule of law and protection of human rights remains fragile. Human rights defenders and civil society leaders face harassment, intimidation, and violence. Women still face many obstacles.

Under the Taliban, women were forbidden to work, leave the house without a male escort, seek medical help from a male doctor, and were forced to cover themselves from head to toe. While significant progress has been made since then, women and girls continue to be threatened and even attacked as they try to go to work or school. School girls, the schools themselves, and teachers have been one set of targets. High-profile women working outside the home have been another. Nevertheless, many prominent female professionals and policy-makers continue their work on behalf of women and for a new Afghanistan, including our witness today.

Afghan law provides for freedom of speech and of the press. Independent media are active and reflecting differing political views. However, there have been cases of insurgents, government officials, and Taliban intimidating journalists. Journalists have been jailed for speaking out and have been killed by extremists.

Freedom of religion is another cause for concern. Afghanistan is on the U.S. Commission on International Religious Freedom's watch list. Afghanistan's constitution does not explicitly guarantee individuals the right of freedom of religion. There are few protections for Afghans to question interpretations of Islam without fear of retribution.

The government does allow a wide variety of domestic and international human rights groups to operate generally without restriction, investigating and publishing their findings on human rights cases. The Department of State reports that hundreds of local human rights NGOs operated independently and included groups focusing on women's

rights, media freedom, and rights of disabled persons. However, the lack of security in certain parts of the country severely reduces the ability of NGOs to work in these areas. Militant groups and Taliban have directly targeted some NGOs.

We look forward to hearing what our witnesses have to say on these and other human rights issues, as well as the recommendations on how we might work together with the government of Afghanistan to address them.

Let me introduce our panelists today. I would also note that Mr. Hastings's statement and the transcript from today's proceedings will be posted on our website at www.csce.gov.

Dr. Sima Samar chairs the Afghanistan Independent Human Rights Commission, which was established in 2002 to promote and protect human rights in the country and to investigate and verify cases of human rights violations. Dr. Samar served as Vice Premier of Afghanistan and the first interim government in 2002, and later as Minister for women's issues for the first-ever Afghanistan Ministry of Women's Affairs. Dr. Samar has received numerous human rights awards for her work, and has been on the Forbes list of top-100 most powerful women. She also serves as the U.N. special envoy to Darfur Sudan.

I'm also going to introduce our second panelist, Mr. Scott Worden. Mr. Worden is an advisor of the U.S. Institute of Peace's Rule of Law program. He also served as an advisor to the U.N. Assistance Mission in Afghanistan on human rights and election issues, as well as to the Afghanistan Joint Election management body on the conduct of their 2005 parliamentary elections.

With that, I'd like to turn it over to you: Dr. Samar.

Ms. SAMAR. Good afternoon, everybody. As you all heard that—of course the situation after Taliban is getting much better in Afghanistan, but this achievement so far does not satisfy the people in Afghanistan, does not protect the rights of the people or human rights of Afghans, and particularly does not protect women's rights in this country.

I would like to briefly talk about two points. First, I think there's a partnership between Afghanistan, the U.S., and also the other international community. What is that partnership for? A, in order to protect the human rights of all Afghans and B, in order to have general human security, not just a security as we call it—when we do not hear the explosions that we hear today, then we have security. I insist on human security in terms of field security, in terms of access to health care, access to education, access to clean water, access to shelter, and to all of those related issues—access to job opportunities, access to justice.

I think all of the promises which were made at the beginning, after the intervention of the U.S. in Afghanistan, including security in development and providing job opportunities to the people of Afghanistan have not been fulfilled. The majority of the people still do not have access to shelter, access to water, access to education, access to health, and also particularly to development. Like, in Afghanistan, a small percentage of the people still have only partial electricity. You cannot imagine not having electricity. How can the people live in this century without electricity? They can feel the development in the country.

The important part was that it was promised to the people that we would promote—or the U.S. and Afghan government will promote—democracy and equality in the country and of course reduce the discrimination in the country. Unfortunately, this is practically not happening. Yes, it's much better than Taliban time. There's no law to stopping us

from going to school, but do all of the children—specifically, do all of the girls have access to education.

If they do not have access to education, what is the reason? One of the reasons is lack of security, and the second reason is the lack of facilities, and lack of female teachers, lack of books, and lack of school buildings. Schools are located far from the family from the houses or villages they live in. They walk for two hours in order to get to the school, and then when they reach there, there's no teacher, and there's no book to use. All of these things are issues that we could not really fulfill in order to satisfy the people.

The other important part is social justice. Are we really promoting social justice in the country, and fair distribution of development projects? Not really. There are some areas in the country which are completely secure, and there's no terrorist activity, no opium production, but the people don't receive any benefit from that situation. We were proposing that at least that area should get more development fund or money to reward the people for not participating in terrorist activities or opium production. But this is not happening.

The other thing that we are pushing for is more development money for security so that we can develop a model of good development, a good city, a modern city in order to create job opportunity for the people, and to encourage the neighboring provinces that if you keep security in your province, then you can benefit from development also. More importantly, when we have war in the neighboring provinces, and the people are displaced, we will be in a position, or we will be—we will have the capacity to accommodate those IDPs in those secure areas, which is not happening unfortunately. I mean, you could see people in the tent all over the different cities.

These are all, unfortunately, the reality on the ground. I think one of the important parts is that we always cannot bring security and stability in a country solely with military activities. In the recent history of Afghanistan, in 1998—'89, the Russian had 140,000 soldiers on the ground, and they were very close to Afghanistan. They were flying just a half an hour from Tajikistan or Uzbekistan, bombing Afghanistan, and going back. Everything was much cheaper than today.

They couldn't control the people in Afghanistan. The reason was that they did not have the public support. If we do not try to win the hearts and the minds of the people, this situation will not be sustainable. That's why, unfortunately, there was lack of clarity on the strategy to Afghanistan because we were not clear. Even as an Afghan, I didn't know what policy was, although I have access to a lot of people and to understand more compared to other normal Afghans. But even I was not clear on what the overall long-term strategy was for Afghanistan.

I was insisting from the very beginning that we need to have development and creation of job opportunity for the young Afghans who don't know anything in order to not allow them to join the terrorist groups in the country or Taliban in the country. There was no clear strategy, and it was not transparent. Even the money coming to Afghanistan was not transparent. We didn't know how much money came, and which amount spent in each part. I don't know it. I don't know if you know, Scott.

This does cause a lot of suspicion among the Afghans because the majority of the people think that, they don't care about Afghanistan and about our cause. They're just here to do what they are interested in to do. This is very unfortunate. I think it's because there was not long-term strategy, and they were not clear on their strategy; it was more

daily reaction—tactics in the country. That’s why we didn’t really win a lot of battles because we shout today on something. It was not appropriate, or we were too early to say on these issues.

I’ll give you an example. In 1994 after the election, there was an announcement made by the U.S. ambassador over there, and then by our president, that we will have a Reconciliation Commission whoever laid down their gun and then they could come and join the government. There was no condition on that.

We created that commission. That commission has a lot of offices around the country, and they claimed that 8,000 people laid down their gun and they joined the government. But why the violence not reduced in Afghanistan? Why are they still losing areas to the Taliban? Because we don’t know if those people just came and gave their old gun and they went back and got newer gun from the different groups, or where they are. When they come and join the government, what was our facility for them? What was our condition for them? Did we really give them job opportunities? Did we put them in some place to be trained in some kind of skill and then give them job opportunities? No, we didn’t. It is still not clear.

Of course, as I mentioned, they were talking about women’s rights and human rights, but it’s not anymore on the agenda. Nobody talks about it. They keep saying that human rights and women’s rights are Western values. This is a traditional society, this is tribal society. We don’t need to push a lot. We just respect their tradition in religion. This is a very naïve idea. I think women’s rights and human rights are a human value. It’s not a Western value. Do we count the people in Afghanistan as human being or not?

This is an excuse just to not to accept that we are failed in our strategy; we just try to say that this is a traditional society. They don’t want modernity. We don’t really push for women’s rights because we respect their religion and their culture. Using the excuse of respecting culture and religion in Afghanistan, they actually did not pay any attention on women’s rights and education in Afghanistan for the past 30 years.

They are repeating the same mistakes. I mean, during mujahedeen, nobody paid attention to women’s causes, there was even reluctance to provide healthcare to women, let alone the education. Education generally was ignored for boys and girls. That’s why we have madrasahs and Taliban, but specifically for the girls, nobody was interested. By dropping women’s rights and human rights from the agenda, we go back and repeat the same mistakes that I think health and education, all of these basic social services—justice, especially—access to justice is something that we really can build the confidence between the government and the international community in the public we did in the ’80s and ’90s and we’re just repeating it in Afghanistan. How much attention was paid to good governance?

There is question that the people say that how can we promote good governance in Afghanistan? We can promote good governance in Afghanistan by vetting a very well-known perpetrator that everybody knows. We don’t need to go through a database to find out who did what. It’s well-known. We can vet those people from the position of power; we practically give them power. It can be very transparent. It can be very inclusive. It can also promote accountability. We put people in position of power, as a governor, as a chief of police, as a head of national security, but we don’t keep them accountable.

When we, as a Human Rights Commission, collect some information and collect some complaints or get the people’s complaint, and we really do investigate and we find out

that that chief of police really committed torture. We make noises and then hardly that person is removed from that position and put in another position. This is not going to help good governance because that person should be punished for wrongdoing for their act, negative acts. It's torture, its bribery, its corruption; it's helping the drug lord to pass their opium—the track of opium from that city. They should be accountable. They should be punished for that, not simply removed from Jalalabad and put in Mazari Sharif.

Of course that issue that really caused the problem is the civilian casualties. I have to say unfortunately there's not enough coordination between the different PTRs in NATO and U.S. troops in the country. First of all, it's not one chain of command. Nobody knows. We don't know at least. When we go and investigate a civilian casualty, we don't know to whom we should talk. Who did this aerial bombardment, and where? This is not very helpful.

There should be more coordination between the NATO troops of different countries. We have 41 or 40 countries—troops in Afghanistan. It should be more coordination with Afghan security forces, either Afghan police, Afghan army. I think the Afghans should be more involved. Let them go and do the surge, and then keep them accountable, not just let them go and get some kilo of opium and then come back and sell it for itself. These kinds of issues are very important.

What will be my recommendation? One security is important. We have to try to do everything to bring security. But with respect to IHL, international human rights and humanitarian law, it doesn't mean that we should go and bombard everywhere we want. The problem is that some of the warlords or some of the groups, the armed groups are friends of U.S. military forces or the NATO forces, and they bring false information or intelligence to them and they go and bomb, and then that person is not kept accountable. It's usually Afghans. That person should be brought to justice and they should name and shame that person in order to avoid false intelligence in the future.

Then of course the national army and the national police, rather than jumping to auxiliary police or these day community defense groups or police.

Three days—three years ago when it was more war in the southern part of Afghanistan, they started to talk about building tribal militia. When we opposed this, we were very loud against it. We went to the media and said Najib had tribal militia. Najib is the pro-Russian—latest or the final president. He created tribal militia and tried to send the Pashtuns to the Uzbek area and Uzbek to Pashtun area and Hazara to another area in order to divide and rule within the country. The very famous militia is Dosum and he was angry with Najib, then the Najib government was collapsed.

The Taliban had militia. The different mujahedeen group had a militia. We tried and spent a lot of money and time, energy to disarm the people. Now we give them, again, weapons, and we changed the name. Three years ago they said auxiliary police. Now they're turning to community defense something. But it's again the same tribal militia. They started already and they're trying to start in the provinces which are not safe, which isn't war and conflict. It encourages the risk of the other groups in the country that's okay if you just rearm the Pashtuns.

The people in the north try to buy guns, try to rearm them. The people in the center—central Afghanistan—try to do it because they don't trust. We did not really try to build the trust and confidence between the different group and between the government and the public importantly.

Pushing more on transparency and accountability and justice, we believe, in the human rights commission, that we cannot have sustainable peace unless we have justice. Unless we stop the culture of impunity in the country, the people will not trust the government. That's clear.

My other recommendation will be that please do not use the excuse of respecting culture, tradition, and tribes in Afghanistan. If you really look for exit strategy from Afghanistan, this should not be used in order to drop the human rights and women's rights from the agenda, and to walk out and say that, well, we have to lower our expectation in Afghanistan because we had high expectation, and in my view, you never had a high expectation in Afghanistan. Did you really try to build an institution in the country? Did you really try to build the nation in the country? No. It was daily tactical gain and policy without clarity, without transparency, without accountability even.

I think the U.S. should promise less and deliver more rather than promising a lot and deliver very little, because if you promise a lot, you just raise the false expectation for the people. Then when you do not deliver, then the people lose hope. The U.S. should be very clear that we helping the Afghan people and acknowledge that the military action does make some damages, that they acknowledge on civilian casualties, not that it takes a lot of time in order to push them to acknowledge that it was a mistake; it was civilian casualty; it was false intelligence.

This is not there. They have to acknowledge. The Afghan people do have the patience. Once when you acknowledge that you made a mistake, they really forgive you. This is not happening, unfortunately. I hope you would agree with me.

We would say don't negotiate on principles of human rights with anybody. It's three, four years that our president keeps saying my brother Hekmatar, brother Molloamar comes to Afghanistan but they don't come. Now we hear from this country that they are going to negotiate with moderate Taliban. I hope there's a moderate Taliban. I don't know any moderate Taliban because every night when we announce, where our president announce, the next morning we have more violence in the country, more suicide attack, more killing, and I don't know who's the moderate Taliban. I hope U.S. and our government will find moderate Taliban, but please do not negotiate on principles of human rights and women's rights in the country.

Finally I would say that I insist that clear, long-term strategy, please do listen to our friends, and believe that we as an Afghan, we have a mind, and our mind can work. Thank you very much.

Ms. HELWIG. Thank you very much. I will turn the floor over to Dr. Worden.

Mr. WORDEN. Thank you. Thank you to the commission for holding this hearing and for inviting me to participate in it. Before I begin my remarks, I work for the U.S. Institute of Peace, but I want to say that these views are my personal views and do not represent those of the U.S. Institute of Peace, which does not take policy positions.

I think that the overall scope of the human rights situation has already been laid out very well. Certainly there have been significant strides when you compare against what happened to the Taliban period and previously, but as we've heard already there's plenty of urgent needs that still need to be addressed.

I worked, as the introduction said, for the United Nations for a year and a half in Afghanistan, and continue to work on those issues with the U.S. Institute of Peace, both times focusing mostly on rule of law development. I want to concentrate my remarks on

that area. Dr. Samar has already outlined some of the highlights. But I think that in many ways one of the greatest human rights obstacles in Afghanistan is the failure to establish the rule of law. All issues really relate to that. Certainly sustainable protection of human rights over time relies on the implication of rule of law, which I think is significantly lacking.

I think that the overarching problem in the rule of law area is impunity. This is pervasive and destructive at all levels, and I want to talk about that. I think that there are three areas, when you look at impunity on how to try to start reversing the trend in the short term, and actions can be taken to combat impunity by ensuring free and fair elections by taking action to achieve progress on transitional justice, and by focusing more attention on judicial reform.

First, on the subject of impunity—entirely agree, and it was one of my main points that the continued and pervasive impunity in Afghanistan significantly undermines the legitimacy of the Afghan government, therefore people's confidence in it. That also directly relates to the security situation. The more people don't respect or don't believe that Afghanistan's government can deliver on promises of basic needs and services and human rights, the more they will hedge against it and try to look for alternatives.

The statutes for impunity I think really hits at all levels. Dr. Samara mentioned some of the top-level cases. Everybody knows these are gross human rights violators, and yet they are not held accountable, but it also applies at the more local level as well. It also applies across all different sectors.

I think that impunity is pronounced in many of the key areas that are identified as necessary for improving stability in Afghanistan. Corruption—there's been very little action or prosecution on that. Drug trafficking, land seizures is a huge issue that affects the population but gets very little attention in the West, as well as ongoing human rights abuse and violent crime.

In almost all cases, on all of these issues, there has been very little accountability, if any, through the legal system of Afghanistan. I would also note that there are a few instances where some particularly egregious leaders are marginalized or demoted or shifted from province to province, but this too is a problem because not only may it not be enough, but it's outside of the legal system. It's a backroom deal that reinforces that it's personality politics that matter, not the process, and that also undermines the rule of law.

You mentioned General Dostum. There is one example that I think illustrates the case of impunity quite well. For those who don't know, he was a commander during the communist era and during the Taliban—he fought the Taliban, and he has been accused of war crimes in almost every campaign that he has participated in, including war crimes committed in ousting the Taliban in 2001. I think there was an opportunity to marginalize figures like him when Afghanistan created its new government, which were passed up and instead he received fairly prominent positions in government.

The consequence of this was supposed to be stability and greater security. Instead, what you had was continued crime. There was a fairly prominent incident that occurred in his house in Kabul where somebody was kidnapped and beaten. He was not arrested and in fact it was somewhat of a showdown for the Afghan government where I think credibility was on the line and they still failed to arrest him. So here you have, I think, a good example of, you know, actions not being taken in the promise of compromise for

stability, but in fact what you get is continued impunity, not just for significant individuals that have prominent positions but also at small levels. I think you mentioned, you know, drug dealers are arrested and then let loose. People convicted of rape eventually have that conviction overturned.

Painting that picture, I think illustrates that, you know, this is a problem that Afghans are looking at every day, and when you judge the government and they see, you know, where they're going to throw their support, this comes into play. The question is what can be done about that?

The first area to focus on is the upcoming elections. Their conduct and the results of it will have an enormous systemic impact on whether improvements are made on human rights or not. In the presidential election I think that the significant threat to free and fair processes is in abusive government resources by any of the candidates including President Karzai, but any of the candidates who have government positions that are running, there is a threat that there will be government resources used materially to support a campaign, that government authority may be used to favor one candidate over another, and also control of the media may be exercised according to—government resources could be used to exercise control over the media.

The solution to that, I believe, is a great focus on monitoring, both by Afghans in the Free and Fair Elections Associations but also by international observers, and they need to be well-resourced in order to perform that function.

A second solution that can help to even the playing field and promote a fair electoral process at the presidential level is public financing of media for the campaigns. There is a program in the 2005 elections that gave equal time, funded by the election funds, by public funds, to each candidate, and I think that did a significant amount to balancing the playing field and eliminating the influence of illegal money in the campaign, and this is something that can be done to help improve the process.

There are also provincial council elections that will be held in August of this year. There, I think that the greatest danger is the influence of local militia leaders who are identified as illegal armed groups and otherwise will likely take the opportunity to threaten and intimidate their way into office. There is provision of the Afghan electoral law that says that members of illegal armed groups cannot run for election. The same provision existed in 2005 and was very sporadically enforced, and I think greater attention needs to be paid to enforcing that this time around. And in any event, monitoring of the elections—independent monitoring will play a role because there should be an effective elections complaint mechanism that can deal with unfair intimidation at a provincial level.

The second large thing that I think can be done to take a crack at reducing the level of impunity in the country is giving some focused attention to transitional justice. Transitional justice—by that I'm refereeing to the full range of mechanisms to deal with past atrocities, largely committed by people that are still causing problems for the government today. It's both truth processes and accountability and memorialization. There is an action plan on transitional justice that the Afghan government adopted in 2006 and very little has—it was also endorsed by the international community and included in the Afghanistan compact, but very little has been done to implement it.

I think that there is a general sense—you know, if the argument for transitional—for human rights is that, well, first we have to deal with security and then we'll tackle human rights, I agree with Dr. Samar's comments on that, but if that argument is made

toward human rights, it's doubly made for transitional justice: Oh, well, everybody supports one world order or another and therefore nobody really wants to tackle this.

I think that the view from Afghanistan, from my experience there, is quite the opposite. The Human Rights Commission did its own excellent survey in 2004, which indicated overwhelming support for accountability for past crimes and indicated that people really thought that this was a fundamental priority of Afghanistan: that security would be reduced if you don't address this, and that legitimacy of government would be improved. Now, in a conflict situation, especially with the deteriorating security situation and a weak justice system, I'm not expecting prosecutions or trials, and frankly neither is any Afghan, but I think that there are some small things that could be done to have a big effect which are not being done now.

One of them, which is I think the least politically sensitive, is focusing on the memorialization aspect of the action plan, recognizing victims and giving them the resources to participate in the political process and express their views. There has been a number of mass graves that have been uncovered recently that has caused a lot of attention and public focus. This could be a focus of establishing memorials that recognize all victims of the conflict that are not ethnically biased, and I think we go a long way to having people see that the government understands their concerns. More significantly, I think that having an appropriate vetting process, not just with illegal armed groups in the elections but on appointments by the president and by the governors at all levels is critical.

There are plans in place through the advisory panel and presidential appointments as well as the independent director of local governance, to evaluate candidates not just on their credentialed criteria but also on their human rights records. This is something that has been slow to start and doesn't have many resources, but I think if the law that already exists is enforced it will go a long way toward showing people that merit matters more than patronage.

Finally, I think it's important to focus on documentation, understanding that this is a difficult issue and that progress can only be made over the long run. It is at least important to gain evidence of what happened in the past and to preserve and protect that. This is something that recently failed spectacularly I think. Again, in the case of General Dostum, there were massacres that were committed up in the north with mass graves. This was known about by the Afghan government as well as the U.S. government and the international community and nothing was done to secure these graves. Recently it's been discovered that they were uncovered and the evidence was destroyed.

This is an issue that has been a priority, particularly of the U.S. government in a lot of post-conflict situations—in Iraq, in the Balkans, where I worked before in Cambodia, yet it's received very little attention in Afghanistan and I think it's fundamental to establishing a historical record and to future accountability to document and preserve evidence. I think the Human Rights Commission is one of the few organizations that is struggling to do that.

Finally, I think that it's important, looking a little bit longer term, to focus on justice sector reform. A lot reports now are noting that when you look across the different sectors in Afghanistan, the justice sector has been one of the greatest failures and has received some of the least resources, especially in light of its importance. There is an infrastructure problem certainly and it will take time to develop courthouses and administrative mechanisms to bring courts to all the districts in the country. It will also take time to train

judges and prosecutors and lawyers to practice in them. But even in the short term, I think what you're seeing is, you know, a total lack of coordination in terms of the assistance that is given to the justice sector. Afghanistan has developed good plans for building out the justice sector but they're unfunded. It's really some kind of basic nuts and bolts that money invested in Afghan institutions to build them up and have them allocate their resources would go a long way.

I was speaking to somebody in Kandahar recently who was working for the U.N. on their monitoring of the court system there and I was asking, well, obviously that's a difficult environment for sure, and what are the obstacles to the justice system there? There are threats and intimidation, but they aren't the biggest problem. There have been killings, and those challenges exist, but he said the number one thing is that over half of the judicial slots are just not filled. They don't have the salaries; they don't have the recruitment to put people in place. I think there's a lot of boutique investments in the justice sector: Oh, well, we want to fund a special prosecutor's office to look at corruption, which is a good idea, but it hasn't borne out results and it doesn't look at systematic change. Instead there needs to be an overall investment in the justice sector, because ultimately without that, it is analogous to the security situation: you don't have competent Afghan army and Afghan police, you're never going to solve the security situation on a sustainable level. Likewise with the justice sector: cannot promote human rights in a systematic way if you ignore that vital institution for seven years since the Afghanistan reconstruction began.

Let me conclude my remarks there and I'm happy to take questions.

Mr. HASTINGS. Ladies and gentlemen, thank you, and I do sincerely apologize to our briefers for the tardiness. This is one of those days that even though I managed to get here I'm only here for a limited time. But I can't thank you enough, Dr. Samar and Dr. Worden, for being here. We would have had greater attendance, not only of members but of other participants, but this institution is kind of interesting: when the last vote happens, everybody goes to Dulles and to the National Airport, and they're trying to get away from here. But the importance of this matter allows, among other things, that we do have a record of it, and I will see to it that's it's appropriately disseminated to members as well as others, and also placed on the website of the commission.

The staff director of the CSCE is Fred Turner, a young man seated in the front, and Fred and I were just at the Brussels Forum in Brussels this past weekend and we heard—Dr. Samar, you probably know him, and if you do not, Dr. Worden, I'm sure you know of him—but we heard Ahmed Rashid make a presentation, and it was more related to circumstances in Europe as it pertains to what might happen there with regard to terrorism, speaking generally. But he also spoke frankly about Afghanistan and Pakistan, and I was genuinely impressed, both with his knowledge and his passion about those issues.

The United States and hopefully NATO are about the business of increasing their presence in terms of actual boots on the ground. The Europeans that I talked with seemed interested in providing assistance in the way of training of the military, training of the police and border security. I, for one, am concerned that there was very little discussion there about corruption. There was no discussion about sexual abuse of children, trafficking of human beings. And there was a statement that I found interesting that, Dr. Samar, I'm sure you will as well, and that is someone commented that dependent upon your per-

spective, the fact that the international community and the Afghanistan government have provided 5 million children an opportunity to go to school versus 5 million who are not in school. I would be interested in that aspect, if you would all speak to it, and also how the Afghanistan Independent Human Rights Commission is functioning. Perhaps, Dr. Worden, if you would address that.

But, Dr. Samar, just what is your assessment of where they are in terms of particularly young women and girls? The television thing that we see is them being attacked and scarred. I saw one of the television reports that were devastating, and the young lady, she's still courageous enough to walk this gauntlet, as it were.

I know you may have already spoken to either or both of these questions, but if you would, Dr. Samar, address your assessment of where children are in Afghanistan and what the prospects for them are in the future.

Ms. SAMAR. Thank you very much, Congressman, for coming and joining us. Yes, you are right: at least, on paper, we have saying that have 5 million or 6 million children in the school. Of course, if these children go to school or have access to school it's a positive element for Afghanistan and I believe that education plays the primary role or the most important role to change the society and to change the mentality in the country. But the quality of education, which we really did not pay much attention on it, is not very good. Even the school curriculum is somehow—has a really low quality of knowledge.

We, as a Human Rights Commission, are really struggling with the Ministry of Education to put more human rights messages—nonviolent messages, peace messages—within the curriculum of the school, but it's reluctance by the Ministry of Education on that issue. This is one of the problems. The second problem is that we do not have enough qualified teachers. The children go and even walks for two hours, but when they go and reach the so-called school—either it's a tent or under the tree or on the roof of some houses—but they don't find a qualified teacher to attend and really to teach them. Again, in this matter we didn't have a good strategy to reach that and make—facilitate the training, although it's a lot of teacher training in the country, but still the curriculum is not good and it's not a good quality.

In some of areas, we don't have the facilities for schools, unfortunately. There are no buildings. There are no chairs. There are no books. Most importantly, I think, is that in recent years, in 2007 and 2006, about 600 schools were closed down, either burned, destroyed or closed down because of the war. Around 200,000 to 400,000 students stopped going to school because there's no facilities. You heard about the teacher was beheaded in front of the children and there was rocket attack in the school where the students were killed and the teacher was killed and the guard of the school was killed. There are still around 5 million children who don't have access.

Among the students who attend the schools, around 35–30 to 35 percent are girls. The dropout for girls up to secondary school or high school is quite high because of all these things which I said. There is no female teacher in the school. When they reach the age of 12 or 13 the family is reluctant to send these girls to school in most of the rural areas.

Mr. HASTINGS. And the reason for that reluctance would be?

Ms. SAMAR. Lack of female teachers is one of them, and the school is located far from the house so the children walk to the school, and they are an age that can be kidnapped or can be targeted by some people. It's, again, lack of security—a security issue.

The dropouts of the girls are much higher than the boys. I mean, they reach to the level of high school from nine to 12. I think we need to focus a lot and really spend a lot of money and our resources on education because, again, I insist that we really need education in the country if we really want to pull out Afghanistan from the terrorists and opium kind of a production country. I think not only in the school level, but I think we have to spend on the universities because once—like this year we had 70,000 students who attended to the exam so that they could be admitted to a universities, but the universities has only the capacity to absorb 12,000, so the rest of the boys or the rest of the girls are not able to join the university or to go and get higher education. We should have a lot of other possibilities for them—skill training, send them to another technical school or to teacher training more importantly, or some other—all the things, the scale that we need for reconstruction of the country. This is not yet functional in the country, which we have to look at the issue seriously.

We have 60 percent of our population is in the age of between 15 to 27.

Mr. HASTINGS. Right.

Ms. SAMAR. This portion of the population has to be used properly. Otherwise the easiest way would be to go and join the other groups who fight. That's the easiest—they don't require any skill.

Mr. HASTINGS. Well, the functioning of the International Human Rights Commission.

Mr. WORDEN. It certainly has one of the most difficult jobs in Afghanistan, and I think it has done remarkable things in a really difficult climate. It's a great achievement to have a Human Rights Commission empowered by the constitution and constitute with the national presence. This is an accomplishment that puts Afghanistan ahead of most of its neighbors and had been a key source of information, support, advocacy and awareness for Afghans that really doesn't exist in many other countries in the region. I think that the biggest challenge that they face. Broadly speaking, political will, there's not a very receptive climate as an audience for government action. But I think that you know, really what needs to happen on the part of the international community is to really focus on building up institutions that have the capacity to act on the Human Rights Commission's recommendations, to respond to its criticisms.

Right now as I was mentioning in my earlier remarks, there are mechanisms on the books to address issues like impunity through vetting appointments to executive positions. This hasn't been endowed with much political support or much financial support by the international community, which is really needed to press on these issues and correspondingly the Afghan government hasn't assigned it a lot of priority. Very little can happen if there is not a mechanism to respond to. Too often the shortcut of relying on a personal negotiation, a backroom deal, you know, a trade of influence —maybe it achieves the short-term objective of that particular interaction but you don't create, you know a mechanism to do this on its own. The Human Rights Commission is one of the few institutions that's kind of doing its job on the monitoring role, but in terms of implementation there needs to be more structure and more capacity to receive its advice, and you can then work through whether it's the legal system or a vetting system or whatever the issue may be—ministries to enforce women's rights of education.

Mr. HASTINGS. One of the things that bother me a great deal in our efforts, the international community, certainly the United States, is that we concentrate a lot of effort on the military and the police. If I could digress a moment and talk about Iraq. We're

busy training troops and training police, but we're not training judicial authorities. If I turn to Afghanistan, my belief would be, just looking at the State Department report regarding it saying it would be understaffed, under-resourced—the judicial system, to the extent that it exists—but there is yet another question, Dr. Samar, that really needs to be made clear, and that is how, under international human rights provisions, courts that accommodate Sharia law, how does that comport with the general thinking of international—I say general, painting with a broad brush—of international community with reference to human rights?

Ms. SAMAR. I think one of the problems is that the Sharia law or the implementation of Sharia and obligation of Afghanistan to the treaties and convention which was ratified by the country is unfortunately a contradictory in the constitution. When we were drafting the constitution it was not enough attention paid on this issue to be clearer on the constitution. What should be in the constitution we did not really pressurize enough? When I say “we,” I mean we did it from our side, from the Human Rights Commission, but it was not done enough by the international community.

The first part, actually the drafting commission—Constitution Commission—was headed by a conservative person. That's why it's contradicting, including the date of the election that we are now facing a problem. The Constitution Commission was not really open to discussion. What we in the Human Rights Commission did, we drafted another constitution, which was not our job actually, but we did, and we translated into Pashto and Persian and English and handed it over to everybody. The reason we did, we said, maybe we give another alternative to the people who comes to the Constitutional Loya Jirga to give them another idea that there is a possibility for a much better constitution.

I took it to the president, I took it to Ebrahimi, and you know that we give it all the embassies, starting from even the system of the government that we were not in favor of a presidential system. The date of the election, we were proposing the August, which is now the date that everybody is saying that it's the right time. I mean, much better constitution as the constitution that we have. Now what is happening, unfortunately the parliament, which is the legislative pillar of the state, is very, very politicized and it's the majority, I have to say, is the commanders and the conservative elements, and some of them even are not able to read and write because they're not conditioned on that.

They really try to block the laws, the progressive laws. I can give you one example. The criminal age for boys and girls, it took two years to fight because they accepted the age for boys, 18, and they were not willing to accept 18 for the girls. They were putting 17 for the girls. We fought and I went to see the head of the parliament, the speaker of the parliament. I went to see the head of the senate and I saw the president and I said, what's going on? I mean, it is clear in the constitution that men and women are equal before the law. Then we ratified Sidar, and then this is the law.

The speaker of the parliament and the head of the senate promised me that they would put a small group of people—they don't take it to the General Assembly or to the parliament to discuss it because, again, it goes—and they are shouting it's again Islam, which it's not. He said both of them put a small group of people together and then they come up with a more conservative definition of child. A person can't be called a child unless the sign of puberty is not there. I mean, what do you call puberty? Okay, they get—the girls will get their menses when they are 12.

Mr. HASTINGS. Right.

Ms. SAMAR. They are mature.

Mr. HASTINGS. They are mature according to them.

Ms. SAMAR. The boys wait until 18. The whole definition of child was gone. So I went to the president and I said, you don't have to sign this. You have to send them back. It's back in the parliament. We again tried to bring the civil society and everybody. We see the EU representative, we see the U.N. to please put some pressure on these—can you imagine one law between the president's office and the parliament keeps two years? For this—you don't understand the mentality, and nobody is there to tell them that, come on, until 18 is a child? It doesn't matter if they're a girl or a boy.

Mr. HASTINGS. Yes, ma'am.

Ms. SAMAR. Then, it was the Shia personal law, which these days was in the parliament, and some of the Shia mullah was insisting that a nine-year-old girl can be married. Of course, we encouraged the other parliamentarian who doesn't believe in this way, and one of these young parliamentarians told to the mullah, said, I'm willing to marry your daughter which is nine years old. Would you give me, or are you making the law for the others? Then there was fighting and shouting at each other.

We couldn't really achieve—I took to the president our recommendation. He said, don't touch the mullahs. I cannot fight against them. I said, you support me, I'll fight against them. It just contradicts the constitution, it contradicts the—we ratified Sidar; why did we ratify Sidar? We just put in on a shelf somewhere? We don't implement? Then it contradicts the civil law, the family law that we have. This is very unfortunate.

The third problem actually is that, like, we have a Ulema Council, which does not have any legitimate role in the country, let's say. It's a council, but they don't have any role in the judiciary system. They come up with a conviction of someone, like this young journalist. They were everywhere and they were shouting that this boy should be executed.

Mr. HASTINGS. Executed.

Ms. SAMAR. We give them just chance to interfere on those issues. I told the president, I said, you have to tell them that they have to shut up because it's not their job, and we have a judiciary. They should not have the authority to always release a fatwah because they are not the resources of fatwah. We have a specific fatwah section in the supreme court. So we don't go to everybody to release a fatwah.

Mr. HASTINGS. Well, I can tell you this, you describe what obviously a very complex set of problems. Again, I apologize. I must leave. I don't know whether you all have additional time to continue and Ms. Helwig could go forward.

My overall concern as I listen to you especially, Dr. Samar, is—I placed a lot of my focus on—I call myself a human rights activist. I had to lift conditions to rise above serious issues in communities that I've lived in, both as a child and as an adult and professional. But children are a central focus for all of us, and as I listen to you it's clear to me that there are not psychologists and psychiatrists that can help, and it would be no less a concern in war zones around the world or in refugee camps. It's awful that as human beings we would do ourselves this way.

I forget the name of the Indian gentleman that's a finance minister in India that spoke this weekend, and one of the things he said in encouraging that we concentrate on poor countries around the world, and a fact that you pointed out, the age being so

many young people in many of the countries, whether it's the Maghreb, Asia or wherever, you'll find that same situation.

The upshot is we leave these children in these vulnerable positions and we expect them to become Dr. Wordens and Dr. Samars and Congressman Hastings, and the likelihood of that happening versus their being shorn of hope to begin with, winding up in situations whether they're recruited into bad behavior, I don't have to go to Afghanistan to prove that. We could leave here walking and in 20 minutes I could take you into Anacostia here in Washington and show you a replication of a similar situation where there is an infrastructure, where there are roads, where there is electricity, where there are—schools, et cetera, and then you still have this exacting balance because people have been ignored, I might add by government as well as people in the government. The Indian finance minister says he thinks that humanity as a collective lost its will to survive. And somewhere along the lines, courageous folk like yourself that do this work need to be listened to in auditoria in this country as well as around the world that are full so that people can better understand the complexities of what they're dealing with. I would that, in just the short time I'm here, that President Obama was sitting in the audience with President Karzai and with Sarkozy and with others and just listen.

We think and tend to believe that because they're in the political class that's high that they understand these things, but very occasionally they do not, and they have such barriers around them and bureaucracies that support those barriers until they never really get the real deal.

I thank you very much. I do apologize for having to leave, but perhaps we can elevate this status to a hearing level, and I will talk with Chairman Cardin and ask him about it and ask you back when we can have a wider dissemination of the important information that you have provided.

Ms. SAMAR. Thank you very much.

Mr. HASTINGS. Thank you all.

Mr. WORDEN. Thank you.

Ms. SAMAR. Thank you all.

Mr. HASTINGS. Thank you. Let's conclude.



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