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Cures to the Enigmatic Taliban Plague: Legal and Social Remedies Addressing Gender Apartheid in Afghanistan

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CURES TO THE ENIGMATIC TALIBAN PLAGUE: LEGAL AND SOCIAL REMEDIES ADDRESSING GENDER APARTHEID IN AFGHANISTAN

I. INTRODUCTION

Layla, who was five months pregnant, is not alive to tell the chilling events of the day she left her house for a routine pregnancy check-up at the nearby maternity clinic.[1]

> She was dressed head-to-foot in the prescribed [*chadari*] [also called [*burqa*]] which only allowed a grill through which she could look out but even her eyes could not be seen. She wrapped herself carefully in the [*chadari*], as allowing her dress to be seen was against the imposed dress code. Halfway to the clinic she felt suffocated and felt an urgent need for fresh air .... [S]he raised her veil and drew deep breaths, relishing the feeling of relief. Suddenly a scourge-wielding Taliban militiaman screaming abuse materialized out of nowhere. 'Why have you bared your face! Why have you bared your face!' .... [H]is whip hand was raised and before Layla could say anything the blow landed on her distended abdomen. Layla could only scream ... but the frenzied Taliban kept raining down blows on the ... woman .... [B]y now Layla was bleeding[,] but both she and ... two passers-by knew that she could not hope for a helping hand as no women were around and it is against Taliban 'ethics' and edicts for a male to touch any female other than close family members.[2]

Due to the extreme trauma Layla endured, she needed abdominal surgery in order to survive, but before doctors could obtain the mandated clearance needed from the Taliban authorities to perform the surgery, Layla breathed her last breath.[3] Tragically, Layla fell victim to the cruel misogynistic reality facing

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1. Revolutionary Association of the Women of Afghanistan, *Reports from Fundamentalism-Stricken Afghanistan: Forced Abortion, Taliban Style*, *at* http://www.rawa.org/recent.htm (last visited Jan. 21, 2000) [hereinafter RAWA].

2. *Id.* (second alteration in original).

3. *Id.*

all women who live in Afghanistan under the fundamentalist Taliban rule.[4]

This Comment delves into the legal and social complexities currently facing Afghanistan, focusing on the violations of international human rights law committed by the Taliban, a militant Islamic regime that seized control over parts of Afghanistan in September of 1996[5] and continues to maintain a gripping dominion over the region today.[6] Regardless of the present Taliban regime, Afghanistan owes a duty to its female population to elevate women's rights to the status of basic human rights, which are afforded to all individuals under U.N. doctrines and covenants.

Part II of this Comment presents a general overview of the political, social, and historical transgressions that occurred in Afghanistan over the last twenty years. In particular, Part II emphasizes the Taliban's current mandate of gender apartheid against Afghan women. Part III deals with Afghanistan as a member of the United Nations and the international legal ramifications of the Taliban's violation of women's basic rights. Part IV examines the role the United States plays in dealing with the Taliban, and its responsibilities when doing so, and proposes remedies to the Afghan crisis that the United States reasonably could institute. In addition, Part IV argues that under current law, the United States cannot support a country or regime that violates international human rights law, specifically, a regime that promotes gender apartheid. Finally, this Comment suggests how the United States can use federal and state remedies to discourage human rights violations in Afghanistan.

II. BACKGROUND

Throughout the past twenty years, the Afghan people suffered extensive human rights violations at the hands of various regimes that occupied the nation.[7] During the Soviet Union's 1979

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4. *See* RAWA, *supra* note 1.

5. Kathryn J. Webber, Comment, *The Economic Future of Afghan Women: The Interaction Between Islamic Law and Muslim Culture*, 18 U. PA. J. INT'L ECON. L. 1049, 1050 (1997).

6. Robin Wright, *Taliban's Gains in Afghanistan Worry U.S.*, L.A. TIMES, Oct. 2, 2000, at A1.

7. Stephanie Dubitsky, Comment, *The Health Care Crisis Facing Women Under* Taliban *Rule in Afghanistan*, 6 HUM. RTS. BRIEF 10, 10 (1999).

invasion and occupation,[8] "80,000 Afghan guerillas and a million Afghan civilians are believed to have died, and a third of the population fled the country" in horror.[9] When the Soviet Union finally withdrew military forces from Afghanistan in 1988, it left behind great political uncertainty, a decimated population, and a devastated countryside.[10]

In fact, in the tracks of the Soviet withdrawal, restless turmoil persisted,[11] and by 1992, civil war erupted in districts close to the Afghan border.[12] By November 1994, a group known as the Taliban[13] emerged as a volatile, ominous presence in Afghanistan.[14] In 1994, the United States declared a state of emergency in the Afghan capital of Kabul due to Afghanistan's war-ravaged and fragile status.[15] Before stability surfaced, however, the Taliban came to power and seized the capital on September 27, 1996.[16]

"The Taliban, whose name means 'students of Muslim religious studies' in Arabic, is composed primarily of poorly educated youths recruited from the Afghan refugee population . . . ."[17] Raised in refugee camps, these youths receive training in "ultraconservative religious schools ([*madrasahs*]) in Pakistan."[18] Afghanistan's neighbor, Pakistan, primarily supports the Taliban by supplying military aid and personnel, while Saudi Arabia provides the Taliban with financial support.[19]

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8. *Id.*

9. MARY LOUISE CLIFFORD, THE LAND AND PEOPLE OF AFGHANISTAN 192–93 (1989).

10. *See* J. Alexander Thier, Comment, *Afghanistan: Minority Rights and Autonomy in a Multi-Ethnic Failed State*, 35 STAN. J. INT'L L. 351, 352 (1999).

11. RALPH H. MAGNUS & EDEN NABY, AFGHANISTAN: MULLAH, MARX, AND MUJAHID 226–34 (1998).

12. *Id.* at 234.

13. Dubitsky, *supra* note 7, at 10.

14. AMNESTY INT'L, AFGHANISTAN: GRAVE ABUSES IN THE NAME OF RELIGION 1 (1996) ("Since the emergence of the Tal[i]ban as a military force in late 1994, Amnesty International has received continued reports of abuses perpetrated by the Tal[i]ban militia in areas they control.").

15. MAGNUS & NABY, *supra* note 11, at 240.

16. Webber, *supra* note 5, at 1050.

17. Dubitsky, *supra* note 7, at 10.

18. The Feminist Majority Foundation Online, *Stop Gender Apartheid in Afghanistan!*, *at* http://www.feminist.org/afghan/facts.html (last visited Jan. 21, 2000) [hereinafter *Stop Gender Apartheid*].

19. *Id.*

In 1997, to further stamp its presence and control over Afghanistan, the Taliban changed the name of the country to the Islamic Emirate of Afghanistan.[20] Currently, the Taliban controls ninety-five percent of the country[21] including Kabul,[22] the capital and largest city. Led by Mullah Mohammed Omar as Head of State and Leader of the Faithful,[23] Taliban followers promulgate extensive rules that control most aspects of Afghan life and society.[24] These rules are based on Omar's singular view of Islamic law.[25]

Since the sweeping take-over of Afghanistan in 1996,[26] the Taliban continues to commit gross human rights abuses.[27] The most recent report from the U.S. Department of State documents both past and present human rights violations in the region.[28] Specifically, when forces opposing the Taliban attempted a coup in 1997 to recapture the city of Mazar-i-Sharif, the Taliban asserted control by carrying out a large-scale massacre.[29] Taliban soldiers, commanders, and rogue individuals were responsible for political killings, abductions, kidnappings for ransom, torture, rape, arbitrary detention, and looting.[30]

In its report, the U.S. Department of State described the conditions as follows:

> In Taliban areas, strict and oppressive order is imposed and stiff punishments for crimes prevail. The Taliban's Islamic courts and religious police, the Ministry for the Promotion of Virtues and Suppression of Vice (PVSV), enforced their extreme interpretation of Islamic punishments, such as public executions for adultery or murder and amputations of one hand and one foot for theft. For other infractions, Taliban militiamen often

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20. U.S. DEP'T OF STATE, 106TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1998—VOLUME II 1847 (J. Comm. Print 1999) [hereinafter COUNTRY REPORTS].

21. Wright, *supra* note 6, at A1.

22. *Id.*

23. PETER MARSDEN, THE TALIBAN: WAR, RELIGION AND THE NEW ORDER IN AFGHANISTAN 44 (1998).

24. Dubitsky, *supra* note 7, at 10.

25. *Id.*

26. *See Stop Gender Apartheid*, *supra* note 18.

27. COUNTRY REPORTS, *supra* note 20, at 1848.

28. *Id.*

29. *Id.*

30. *Id.*

> decided right and wrong and meted out punishments such as beatings on the spot.[31]

As these serious human rights violations[32] continue unfettered, the Taliban precludes Afghan citizens from changing their government or peacefully choosing their leaders.[33] Instead, the Taliban imposes an "ad hoc and rudimentary judicial system."[34] No constitution, secular rule of law, or independent judiciary exists.[35] Moreover, following "swift summary trials,"[36] the Taliban punishes those alleged to have committed crimes according to extreme interpretations of Islamic law.[37] For example, murderers undergo public executions, at times by throat slitting, which, in some instances, are carried out by the victims' families.[38] Those found guilty of adultery are "stoned to death or publicly whipped with one hundred lashes."[39] Furthermore, citizens found guilty of homosexual acts are crushed by "having walls toppled over them."[40]

Women, in particular, "face a darker side of Taliban rule."[41] Prior to the civil war and Taliban control, especially in Kabul, women in Afghanistan obtained higher education and employment.[42] In fact, fifty percent of students and sixty percent

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31. *Id.*; *see also* Amir Shah, *Taliban Carries Out First Public Execution of a Woman in Kabul*, ASSOCIATED PRESS, Nov. 16, 1999, *available at* http://www.wire.ap.org (last visited Oct. 12, 2000) (reporting on the first public execution of a woman since the Taliban took control) (on file with the Loyola of Los Angeles International and Comparative Law Review). In this incident, thousands of people looked on as the woman was shot and killed. *Id.* The woman was identified as Zareena, a mother of seven children. *Id.* She was found guilty of beating her husband to death. *Id.* Elsewhere, doctors wearing surgical masks chopped off the hand of a convicted thief named Zabiullah. *Taliban Administer Public Amputation and Beating*, ASSOCIATED PRESS, Apr. 24, 1998, *available at* http://www.wire.ap.org (last visited Oct. 12, 2000) (on file with the Loyola of Los Angeles International and Comparative Law Review). This punishment took place in Kabul's sports stadium with over 3,000 people witnessing the event. *Id.* Zabiullah, the young man whose hand was amputated, had been convicted of stealing a carpet and a sewing machine from a home. *Id.*

32. *See* discussion *infra* Part III.A.1.5.

33. COUNTRY REPORTS, *supra* note 20, at 1848.

34. *Id.* at 1850.

35. *Id.* at 1847.

36. *Id.*

37. *Id.* at 1850.

38. *Id.*

39. *Id.*

40. *Id.*

41. Webber, *supra* note 5, at 1051.

42. *Stop Gender Apartheid, supra* note 18.

of teachers at Kabul University were women; seventy percent of school teachers, fifty percent of civilian government workers, and forty percent of doctors in Kabul were women.[43]

Since the Taliban seized control of Afghanistan, however, women have been sentenced to a "living death."[44] For example, the Taliban condones frequent acts of violence against women, including "beatings, rapes, forced marriages, disappearances, kidnappings, and killings."[45] Under Taliban rule, women have been brutally and senselessly "stripped of their visibility, voice, and mobility."[46] The Taliban forbids women from entering mosques or other places of worship, forcing most women to pray at home.[47]

After taking control of the capital in 1996,[48] Taliban decrees banished women from the work force, prohibited girls over the age of eight from attending school, and expelled women from universities.[49] In addition, the Taliban forbade women from leaving their homes unless chaperoned by a close male relative.[50]

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43. *See id.* (presenting facts and statistics on "gender apartheid" in Afghanistan and arguing that women and girls have been stripped of their basic human rights).

> Beginning under the monarchy in the 1960's, and at an increasing pace under President Mohammed Daoud in the 1970's and the Communist regime in the 1980's, a growing number of women, particularly in urban areas, worked outside of the home in nontraditional roles as doctors, nurses, and teachers. This trend was reversed when the Communists were ousted in 1992 and an Islamic government was installed.

COUNTRY REPORTS, *supra* note 20, at 1857.

44. The Feminist Majority Foundation Online, *Stop Gender Apartheid in Afghanistan!*, *at* http://www.feminist.org/afghan/introduction.html [hereinafter *Apartheid in Afghanistan*].

45. COUNTRY REPORTS, *supra* note 20, at 1857. Women are reportedly beaten if their shoe heels click when they walk. *Id.* at 1858.

46. *See Stop Gender Apartheid, supra* note 18.

47. COUNTRY REPORTS, *supra* note 20, at 1858.

48. *See Stop Gender Apartheid, supra* note 18.

49. *Id.*

50. *Id.*; *see* AMNESTY INT'L, *supra* note 14, at 13. On July 14, 1996, Amnesty International reported on the implementation of Taliban edicts imposed upon women seen in public, unaccompanied by a male relative. *Id.* For example:

> Turpeki was taking her toddler to the doctor. The child had acute [diarrhea] and needed to be seen by a doctor soon. Turpeki was dressed in a [*burqa*]. She reached the market area when a teen-aged [Taliban] guard noticed her. The guard called her. Turpeki knew that if she stopped she would be beaten for appearing in public. She was also frightened that her child might die if she did not hurry. She began to run. The [Taliban] guard aimed his [*kalashnikov*] at her and fired several rounds.

Id.

Another mandate required windows of women's houses visible to the public to be painted completely black.[51] Moreover, women are "forced to wear the [*burqa*,] which completely shrouds the body, leaving only a small mesh-covered opening through which to see."[52] In addition, the Taliban denies women and girls admittance to the majority of hospitals in Afghanistan, and male doctors cannot examine them.[53] All the while, the Taliban prohibits most female doctors and nurses from working in the profession.[54] As one Afghan woman stated, "[t]hey won't let us go to school because they want us to be illiterate like them. They make us wear the [*burkas*] because they can control us if we are blind."[55]

The Taliban restricts almost every aspect of women's lives. Taliban decrees mandate that women only ride buses designated as women's buses.[56] These buses are limited in number, hence, women must wait a long time for basic transportation.[57] The Taliban also orders bus drivers who transport female passengers to "encase the bus in curtains, and put up a curtain so that the female passengers cannot see or be seen by the driver."[58] The Taliban further instructs bus drivers to "employ boys under the age of [fifteen] to collect fares from female passengers, and that neither the drivers nor the fare collectors were to mingle with the passengers."[59]

Furthermore, the Taliban ban on female employment seriously impedes the education sector.[60] Because the Taliban forbids women to work as teachers, many schools for both boys and girls have been forced to shut down.[61] For instance, "[m]ore than 100 NGO-funded girls' schools and home-based women's vocational projects were closed in Kabul . . . ."[62] Specifically, the

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51. *Stop Gender Apartheid, supra* note 18.
52. *Id.*
53. *Id.*
54. *Id.*
55. Dexter Filkins, *Bakeries Sustain Afghan Widows Eager for Food—and Work*, L.A. TIMES, July 2, 2000, at A1.
56. COUNTRY REPORTS, *supra* note 20, at 1858.
57. *Id.*
58. *Id.*
59. *Id.*
60. MARSDEN, *supra* note 23, at 89.
61. *Id.*
62. COUNTRY REPORTS, *supra* note 20, at 1859; *see* Human Rights Watch, *Human Rights Watch World Report 1999, Afghanistan: Defending Human Rights*,

Taliban closed down any schools that attempted to violate the rule against teaching females over the age of eight.[63] The Taliban declared that in the future it would license girls' schools on the condition that teaching in such schools be strictly limited to the Koran.[64] These educational mandates stem from the Taliban's fear that "girls will be corrupted by anything other than a pure Islamic teaching, [that] [is] consistent with the Taliban interpretation of Islam . . . ."[65] Taliban decrees, such as these, are formulated to ensure that Afghan women carry out their duty to bring up the next generation of "pure Muslims."[66]

It is equally disconcerting that men associated with the Taliban can commit heinous and violent crimes against their wives without being punished.[67] For example, on October 25, 1999, Seyyed Abdul-Rahman, an aviation engineer with the Intelligence Ministry of the Taliban in Kabul, had an argument with his wife, Salehah.[68] During the argument, he doused her body in gasoline and set her on fire.[69] She died in the hospital two days later.[70] To this day, Seyyed has not been brought to justice.[71] Because Seyyed worked for the Taliban, some suspect that he is being sheltered from prosecution.[72]

Additionally, the Taliban's misogynistic edicts governing health care are so egregious that the physical health of Afghan women is in peril.[73] For example, the Taliban has "prohibited all doctors from treating female patients in the absence of the woman's husband, father, or brother."[74] This decree makes access

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http://www.hrw.org/hrw/worldreport99/asia/afghanistan2.html (last visited Jan. 10, 2001) [hereinafter *Defending Human Rights*] (explaining that no human rights organizations operated inside Afghanistan, but several non-governmental organizations (NGOs) based in Pakistan documented abuses in Taliban-controlled areas).

63. COUNTRY REPORTS, *supra* note 20, at 1859.

64. *Id.*

65. MARSDEN, *supra* note 23, at 99.

66. *Id.*

67. *See* RAWA, *supra* note 1.

68. *Id.* A RAWA journalist in Kabul reported a story about a woman named Salehah entitled, "Another Burning of a Woman by Her Husband." *Id.* Before the Taliban takeover, Salehah had a bachelor's degree in economics and worked at the Export Development Bank. *Id.* She also had a son and an infant daughter from her marriage. *Id.*

69. *Id.*

70. *Id.*

71. *See id.*

72. *Id.*

73. *See* Dubitsky, *supra* note 7, at 10–11.

74. COUNTRY REPORTS, *supra* note 20, at 1857; *see* Barbara Corssette, *Afghan*

to treatment "extremely difficult for Kabul's widows, many of whom have lost all such male family members."[75] Due to the oppressive health care mandates imposed by the Taliban, women have died of "treatable ailments because male doctors were not allowed to treat them."[76] In rare instances when a male doctor treats a woman, "he may not see or touch her, which drastically limits the possibility of any meaningful treatment."[77] Such deplorable conditions lead many women, now forcibly housebound, to attempt suicide rather than to continue living under such conditions.[78] Consequently, a survey by Physicians for Human Rights indicated that an astounding ninety-seven percent of Afghan women exhibit signs of major depression.[79] Overall, health care for both men and women is further hampered by Taliban edicts banning images of humans[80] or representations of human forms.[81] The Taliban ordered all public education posters in the form of pictorial human images to be destroyed.[82] In a

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Women Demanding End to Their Repression by Militants, N.Y. TIMES, Apr. 6, 1998, at A1. This article describes the Taliban custom of *"purdah,"* which secludes women and shields them from any men who are not members of their family. *Id.* at A8. An Afghan midwife stated in an interview that "[w]ith half the people of Afghanistan in [*purdah*] . . . we can't find nurses and other hospital staff. We are headed for disaster." *Id.*

75. COUNTRY REPORTS, *supra* note 20, at 1857.

76. *See Stop Gender Apartheid, supra* note 18.

77. COUNTRY REPORTS, *supra* note 20, at 1857–58.

78. *Stop Gender Apartheid, supra* note 18.

79. COUNTRY REPORTS, *supra* note 20, at 1858. Additionally, the U.S. Department of State's report stated:

> In 1998 Physicians for Human Rights (PHR) conducted a survey of 160 Afghan women in Kabul and in Pakistan, and found that [seventy-seven] percent reported poor access to health care in Kabul, while another [twenty] percent reported no access at all. Of those surveyed, [seventy-one] percent reported a decline in their physical condition over the last [two] years. In addition, there was also a significant decline in the mental health of the women surveyed. Of the participants, [eighty-one] percent reported a decline in their mental condition; [ninety-seven] percent met the diagnostic criteria for depression; [eighty-six] percent showed symptoms of anxiety; [forty-two] percent met the diagnostic criteria for post-traumatic stress disorder; and [twenty-one] percent reported having suicidal thoughts "extremely often" or "quite often."...[U]nconfirmed reports [state] that the suicide rate among women in Kabul has increased significantly since the Taliban takeover of the city.

Id.

80. *Id.*

81. *See* MARSDEN, *supra* note 23, at 46.

82. *See* COUNTRY REPORTS, *supra* note 20, at 1858.

largely illiterate society, these decrees completely halt the circulation and dissemination of health information.[83]

Overall, Taliban decrees have the greatest impact on Afghan family dynamics. First, because the Taliban prohibits women from working outside the home, the large number of civil war widows have little or no means to support themselves.[84] In order to survive, many women sell their possessions and resort to begging[85] to feed their families.[86] Incongruously, even when Afghan women abide by the Taliban mandate not to work outside of the home,[87] male relatives must still obtain permission from the Ministry for the Promotion of Virtues and Suppression of Vice in order for a female relative to engage in home-based employment.[88]

Second, the Taliban restricts which family members may accept deliveries of humanitarian assistance.[89] In 1997, the Taliban promulgated that only close male relatives can relay international assistance to women, and women cannot receive aid on their own.[90] This mandate severely impedes women who lost all of their male relatives in the civil war.[91] Consequently, many women and children are left without any international assistance.[92]

Finally, the requirement that all women wear the *burqa* imposes a great hardship on Afghan women and their families.[93] Prior to the Taliban regime, other Afghan rulers did not insist that women wear the *burqa*.[94] The *burqa* became a necessary asset for the entire family in 1997 when the Taliban issued an edict declaring that "women found outside the home who were not covered properly would be punished severely along with their

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83. *See id.*

84. *See id.* at 1857 (explaining that an estimated 30,000 widows live in Kabul alone).

85. *Id.*; *see* Kathy Gannon, *Kabul's Poorest Hidden Behind the All-Enveloping Burqa*, ASSOCIATED PRESS, Oct. 12, 1998 (on file with the Loyola of Los Angeles International and Comparative Law Review) (reporting that many widows send their children into the streets to beg for food). Huma Saeed, a member of RAWA, explained that widows "have lost the male members of their family and they themselves cannot have a job. Begging is the only way . . . ." *Id.*

86. COUNTRY REPORTS, *supra* note 20, at 1857.

87. *See id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *See id.*

93. *See* MARSDEN, *supra* note 23, at 91.

94. *See id.*

family elders."[95] Complying with this mandate poses its own difficulties because women who do not own *burqas* are forced to purchase them, which adds an additional family expense.[96] Considering that the *burqa* costs approximately nine U.S. dollars, "which is the equivalent of an average monthly salary in Kabul and significantly more than many Afghan women can afford,"[97] the mandate is a true financial hindrance in a society already suffering from a severely deteriorating economy.[98] If the family cannot afford a *burqa*, the women are forced to borrow the garment from others in order to step outside.[99] Consequently, women are further inhibited from traveling.[100] If a *burqa* is not available, the woman may be killed.[101] For instance, the *Associated Press* reported that on August 5, 1998:

> [a] mother watched her daughter writhe with stomach pain for days. But she did not take her to a free clinic because she could not afford the head-to-toe [*burqa*] that Afghanistan's Taliban religious leaders insist women and girls shroud themselves in when they venture out in public .... The [twenty-two]-year-old daughter died.[102]

When women transgress from Taliban edicts, including wearing the mandated *burqa*, they face devastating human rights abuses. Women are brutally beaten, maliciously flogged, and killed for violating Taliban decrees.[103] In one instance, an "elderly woman was brutally beaten with a metal cable until her leg was broken because her ankle was accidentally showing from underneath her [*burqa*]."[104] In another instance, "[a] woman who dared to defy Taliban orders by running a home school for girls was shot and killed in front of her husband, daughter, and

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95. COUNTRY REPORTS, *supra* note 20, at 1858.
96. *See* MARSDEN, *supra* note 23, at 91.
97. Dubitsky, *supra* note 7, at 10.
98. MARSDEN, *supra* note 23, at 91.
99. *Id.*
100. *Id.*
101. *See* Donna Bryson, *Human Rights Group Says Taliban Brutally Mistreat Women in Afghanistan*, ASSOCIATED PRESS, Aug. 5, 1998, *at* http://www.wire.ap.org (last visited Oct. 12, 2000) (on file with the Loyola of Los Angeles International and Comparative Law Review).
102. *Id.*
103. *Stop Gender Apartheid*, *supra* note 18.
104. *Id.*

students."[105] Additionally, "[a] woman caught trying to flee Afghanistan with a man not related to her was stoned to death for [committing] adultery."[106]

The far-reaching decrees affecting Afghan society, and the particularly oppressive edicts directed against women by the Taliban, are clearly gross abuses of human rights.[107] The Taliban, however, claims that these decrees are necessary to purify Afghanistan[108] and to fulfill the obligations of the Koran and Islam.[109] Mullah Amir Khan Motaqi, the Taliban's acting Minister of Information and Culture, expanded on this creed, stating in part:

> The Islamic state of Afghanistan, under the leadership of the Taliban Islamic movement, has put into practice everything that it has preached, according to God's law and the guidance of the magnificent Holy Qur'an. Any step which has been taken by the Islamic state has been in conformity with the [*Shari'a*] [(Islamic law)] and whatever has been said in words has been implemented in action.[110]

Although Taliban adherents claim to follow a pure, fundamentalist Islamic ideology, the "oppression they perpetrate against women has no basis in Islam."[111] For instance, within the culture of Islam, women have the freedom to work, "control their own money, and to participate in public life."[112] Furthermore, the "[fifty-five]-member Organization of Islamic Conference has refused to recognize the Taliban as Afghanistan's official government."[113] In addition, the Muslim Brotherhood in Egypt, regarded by many throughout the world as an "ultraconservative, fundamentalist organization," also has "denounced the Taliban's decrees."[114]

On March 15, 1999, during a White House "Millennium Event" entitled *Women as Citizens: Vital Voices Through the Century*, President Clinton announced that it is simply

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105. *Id.*
106. *Id.*
107. *See* discussion *infra* Part III.A.1.–5.
108. *See* MARSDEN, *supra* note 23, at 61.
109. *See id.* at 62.
110. *Id.*
111. *Stop Gender Apartheid, supra* note 18.
112. *Id.*
113. *Id.*
114. *Id.*

unacceptable to say that the Taliban's actions in Afghanistan are "nothing more than an expression of religious convictions."[115] Elaborating further, President Clinton stated that other conservative Islamic nations, like Iran, do not impose such harsh and constraining decrees upon their female populations.[116] Specifically, the President referred to Iran's recently held local elections in which hundreds of women participated as candidates.[117] He further highlighted that even in Iraq, a country with whom the United States has serious social and political differences, women are not subjected to the types of constraints Afghan women face daily.[118] Because the Taliban violates women's basic and fundamental human rights without any basis in Islam,[119] its actions are unacceptable and deserve international scrutiny.

III. VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW

As a charter member of the United Nations,[120] Afghanistan has a legal responsibility to abide by U.N. doctrines, covenants, and treaties.[121] Regardless of which regime is currently in control of Afghanistan, the nation remains a member of the international community due to its affiliation with the United Nations.[122] "Under principles of international customary law, the Taliban, although not widely recognized as the official government of Afghanistan, is obliged to act in accordance with . . . [agreements] to which Afghanistan is a party in the regions under its control."[123]

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115. The Feminist Majority Foundation Online, *Stop Gender Apartheid in Afghanistan!*, *at* http://www.feminist.org/afghan/millenium.html (last visited Jan. 15, 2000) [hereinafter *Women as Citizens*] (quoting President William Jefferson Clinton, Speech at the Sixth Millennium Event at the White House (Mar. 15, 1999)).

116. *Id.*

117. *Women as Citizens*, *supra* note 115.

118. *Id.*

119. *Id.*

120. JANE'S SENTINEL: SOUTH ASIA § 1.1.7 (1998), *available at* LEXIS, News Library, Afghanistan Country Files.

121. *See* Margaret Plattner, *The Status of Women Under International Human Rights Law and the 1995 UN World Conference on Women, Beijing, China*, 84 KY. L.J. 1249, 1253 (1996).

122. *See Defending Human Rights*, *supra* note 62 (explaining that Afghanistan's U.N. seat remains in control of the Jamaat-I Islami government's leader, Burhanuddin Rabbani, even after he was ousted from Kabul by the Taliban militia in 1996).

123. Dubitsky, *supra* note 7, at 11. For a discussion about the Universal Declaration of Human Rights as customary international law, see Jack Donneily, *The United Nations Adopts the Universal Declaration of Human Rights*, *in* 2 GREAT EVENTS FROM HISTORY

A. Overview and Analysis of Applicable International Human Rights Law

The diverse constituency and differing cultural and religious perspectives of U.N. members invariably results in various interpretations as to the proper implementation of international duties and treaties.[124] Member nations, however, may not arbitrarily violate the specific intent of the doctrines and treaties to which they are parties and must perform their duties in good faith.[125] Taliban policies and decrees, however, severely oppress women and violate both customary international law and U.N. treaties.[126] The Taliban denounces international obligations, asserting that these duties are inconsistent with religious law and cultural practices.[127] According to the Afghan Constitution and the Vienna Convention on the Law of Treaties, this rationale is unfounded.[128]

First, the Afghan Constitution, most recently amended in 1990 (six years prior to Taliban control) preserves an extensive system of fundamental rights, liberties, and duties for all citizens.[129] Specifically, the Preamble declares that the Afghan Constitution is written in conformity with the principles of the U.N. Charter and the Universal Declaration of Human Rights.[130] The Afghan Constitution expressly states that "[c]itizens of the Republic of Afghanistan, both men and women, have equal rights and duties in the eyes of the law, irrespective of their national, racial, linguistic, tribal, educational and social status, religion, creed, political conviction, occupation, kinship, wealth, and residence."[131] Furthermore, it explicitly pronounces that Afghanistan "respects and observes the UN Charter, the Universal Declaration of Human Rights and other accepted principles and norms of international law."[132]

II 789, 792 (Frank N. Magill ed., 1992).

124. *See* Dubitsky, *supra* note 7, at 11.

125. *See id.; see also* Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, art. 26, 1155 U.N.T.S. 332, 339, 8 I.L.M. 679, 690.

126. *See* discussion *infra* Part III.A.1.–5.

127. *See* MARSDEN, *supra* note 23, at 63.

128. *See* AFG. CONST. OF 1990 art. 133; *see also* Vienna Convention on the Law of Treaties, *supra* note 125, art. 38, 1155 U.N.T.S at 341, 8 I.L.M. at 694.

129. *See* AFG. CONST. OF 1990 art. 64.

130. *Id.* pmbl.

131. *Id.* art. 38.

132. *Id.* art. 133.

Second, Afghanistan is a signatory of the Vienna Convention on the Law of Treaties,[133] which declares that "[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."[134] Therefore, the Taliban cannot justify its failure to comport with international human rights law based upon internal religious and cultural precepts.[135] Taken together, the Vienna Convention on the Law of Treaties and the Afghan Constitution specify that Afghanistan is not only responsible for the U.N. covenants it has expressly ratified, but also that Afghanistan has an explicit duty to abide by other accepted principles and norms of international law.[136]

The Taliban violates international human rights law because it blatantly disregards its responsibilities to afford women basic human rights as mandated by several U.N. doctrines.[137] Under Taliban control, Afghanistan fails to fulfill its duties based upon the United Nations' adoption of the Universal Declaration of Human Rights,[138] the Declaration on the Elimination of Violence Against Women,[139] and the Fourth World Conference on Women

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133. *See* Vienna Convention on the Law of Treaties, *supra* note 125, 1155 U.N.T.S at 467, 8 I.L.M. at 679.

134. *Id.* art. 27, 1155 U.N.T.S at 339, 8 I.L.M. at 690.

135. *See id.* Nevertheless, Sher Muhammad Stanakzai, the acting Taliban Foreign Minister, speaking on Voice of Sharia'a Radio, stated:

> By the enforcement of [*Shari'a Hudud*], we have made safe the lives and property of millions of people from Herat to Jalalabad and Kabul. No one can commit theft or crimes. We have not introduced this law. This is the law that was revealed by God to Muhammad. Those who consider the imposition of this law to be against human rights are insulting all Muslims and their beliefs.

MARSDEN, *supra* note 23, at 63. With regards to the restrictions placed on women, the Department for the Promotion of Virtue and Prevention of Vice provided the following reasons why 225 women were punished for violating rules on clothing:

> As the dignity and honour of a Muslim woman is ensured by observing *hejab* [seclusion from society] as requested by Shari'a, all honourable sisters are strongly asked to completely observe *hejab* as recommended by Shar'ia. This can be achieved only if our dear sisters wear *burqas*, because full *hejab* cannot be achieved by wearing only a *chador* [a large piece of material that envelopes the body and covers the head but leaves all or part of the face uncovered, at the discretion of the wearer]. In cases of violation, no one will have the right of complaint.

Id. (alterations in original).

136. *See* Vienna Convention on the Law of Treaties, *supra* note 125, art. 27, 1155 U.N.T.S at 339, 8 I.L.M. at 690; *see also* AFG. CONST. OF 1990 art. 133.

137. *See* discussion *infra* Part III.A.1.–5.

138. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948) [hereinafter Universal Declaration].

139. Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104,

in Beijing.[140] Moreover, the Taliban continues to violate two legally binding and enforceable U.N. international covenants that Afghanistan ratified: the International Covenant on Economic, Social, and Cultural Rights[141] and the International Covenant on Civil and Political Rights.[142]

1. The U.N. Charter

Through an evolution of policy-making and adopting specific doctrines, the United Nations has diligently worked to elevate women's rights to the status of human rights.[143] The United Nations began securing human rights for both men and women with the Charter of the United Nations, signed in 1945.[144] This document established the United Nations and proclaimed the United Nations responsible for the promotion and encouragement of respect for human rights and for fundamental freedoms for all individuals without distinction as to race, sex, language, or religion.[145]

2. The Universal Declaration of Human Rights

On December 10, 1948, the U.N. General Assembly adopted the Universal Declaration of Human Rights (Universal

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U.N. GAOR, 48th Sess., U.N. Doc. A/48/629 (1994), *reprinted in* 33 I.L.M. 1050 [hereinafter DEVAW].

140. *Report of the Fourth World Conference on Women*, U.N. Doc. A/CONF.177/20 (1996) [hereinafter *Fourth World Conference*].

141. International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1999, G.A. Res. 2200A(XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR].

142. International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR]; *see Final Report on the Situation of Human Rights in Afghanistan Submitted by the Special Rapporteur, Mr. Felix Ermacora, in Accordance with Commission on Human Rights Resolution 1994/84*, U.N. ESCOR, 51st Sess. at 9–10, U.N. Doc. E/CN.4/1995/64 (1995) [hereinafter *Final Report*] (mentioning the Special Rapporteur's concerns about "the problem of torture and the situation of women"). "The respect of human rights enshrined in the international instruments to which Afghanistan is a party must . . . be . . . guaranteed by the Government and its agencies." *Final Report* at 6.

143. U.N. CHARTER art. 1, para. 3. The U.N. Charter provides that the purpose of the United Nations is to "achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." *Id.*

144. *Id.* pmbl.

145. *Id.* art. 1, para. 3.

Declaration).[146] "Delegate Eleanor Roosevelt encouraged consideration of the rights of women, and as a result, the preamble of that document states that 'the peoples of the United Nations . . . reaffirm their faith in fundamental human rights . . . and in the equal rights of men and women . . . .'"[147] The Universal Declaration was the "first major document to provide a comprehensive and authoritative statement of international human rights norms."[148] It specifically proclaims that all individuals have the privilege to enjoy human rights equally.[149] The Universal Declaration is only a statement of principles and aspirations, however, and it lacks a mechanism or program for implementation.[150]

Nonetheless, the principle that all human rights are interdependent and indivisible, as established in the Universal Declaration, has largely prevailed.[151] The Universal Declaration is not a document from which member states may pick and choose values as they see fit.[152] Rather, it espouses a comprehensive set of minimum standards of domestic political behavior that must be wholly accepted.[153] It encompasses an equality of all human rights exemplified by the existence of a single document containing both civil and political rights, as well as economic, social, and cultural

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146. Universal Declaration, *supra* note 138.
147. Plattner, *supra* note 121, at 1252.
148. Donneily, *supra* note 123, at 789.
149. *Id.* at 790.

> The Universal Declaration specifically proclaims that everyone has human rights to enjoy all rights equally, without discrimination; life; liberty and security of person; protection against slavery; protection against torture and cruel and inhuman punishment; recognition as a person before the law; equal protection of the law; access to legal remedies for violations of rights; protection against arbitrary arrest, detention or exile; an independent and impartial judiciary; presumption of innocence; protection against ex post facto laws; protection of privacy, family, and home; freedom of movement and residence; seek asylum from persecution; nationality; marry and found a family; own property; freedom of thought, conscience, and religion; freedom of opinion, expression, and the press; freedom of assembly and association; political participation; social security; work under favorable conditions; free trade unions; rest and leisure; food, clothing, and housing; health care and social services; special protections for children; education; participation in cultural life; and a social and international order needed to realize these rights.

Id.

150. *Id.*
151. *Id.* at 791.
152. *Id.*
153. *See id.*

rights without any indication of categorical differences or priorities.[154] Since 1948, the Universal Declaration has evolved as the central international instrument in defining human rights,[155] including women's rights, under the human rights penumbra.[156] Moreover, this document is the model for subsequently enacted U.N. covenants that legally establish women's rights as fundamental human rights.[157]

3. The Declaration on the Elimination of Violence Against Women

The United Nations took its next rousing step on February 23, 1994, when it adopted the Declaration on the Elimination of Violence Against Women (DEVAW).[158] The DEVAW recognizes the "urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity, and dignity of all human beings,"[159] thereby including women under its protective shield.[160] The DEVAW also affirms that violence against women "constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms."[161]

The DEVAW defines "violence against women [as] any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."[162] The Taliban's on-the-spot punishment of women by the religious police, including beatings and imprisonment because of perceived violations of the dress code, illustrates one example of Afghanistan's violation of the DEVAW.[163] In addition, the

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154. *Id.*
155. *See id.*
156. *See id.*
157. *See* Plattner, *supra* note 121, at 1253.
158. DEVAW, *supra* note 139, 33 I.L.M. at 1050.
159. *Id.*
160. *Id.*
161. *Id.*
162. *See id.* at 1051.
163. *See* Dubitsky, *supra* note 7, at 10; *see also* Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984). Afghanistan ratified this U.N.

DEVAW strongly urges that nations "condemn violence against women, and should not invoke customs, traditions or religious consideration to avoid their obligations with respect to its elimination."[164] The Taliban violates this provision of the DEVAW when it perpetuates violence against women.[165] Likewise, the DEVAW urges nations to pursue, "by all appropriate means and without delay, a policy of eliminating violence against women."[166] The Taliban's actions against women clearly violate these basic tenets that govern the way member nations must treat their citizens.

4. The Fourth World Conference on Women in Beijing

Afghanistan's failure to afford women basic human rights also violates international human rights law as provided in the Fourth World Conference on Women in Beijing, which concluded on September 15, 1995 (Fourth World Conference).[167] Afghanistan attended the Fourth World Conference and accepted the provisions.[168] The Fourth World Conference reaffirmed the commitment of all member states to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all individuals.[169] This obligation is consistent with the Charter of the United Nations, other instruments relating to human rights, and international law.[170]

The Fourth World Conference prescribed that an integral part of the United Nations' human rights activities is the recognition of women's human rights.[171] Furthermore, the Fourth World Conference announced that governments must refrain from

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instrument on April 1, 1987. *Id.* The Taliban is therefore obligated to "prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment . . . when such acts are committed by or at the instigation of or with the consent or acquiscence of a public official or other person acting in an official capacity." *Id.* at 198.

164. DEVAW, *supra* note 139, 33 I.L.M. at 1052.

165. *See, e.g.*, Bryson, *supra* note 101 (stating "[t]he 'peace' imposed . . . under Taliban rule is the peace of the [*burqa*], the quiet of women and girls cowering in their homes, and the silence of a citizenry terrorized by the Taliban's violent and arbitrary application of its version of Islamic law").

166. DEVAW, *supra* note 139, 33 I.L.M. at 1052.

167. *Fourth World Conference, supra* note 140.

168. *Id.* at 138.

169. *Id.* at 92.

170. *Id.*

171. *Id.* at 5.

violating the human rights of women and must work actively to promote and protect those rights.[172] Finally, the Fourth World Conference reaffirmed that the human rights of women are inalienable, integral, and indivisible universal human rights.[173] Therefore, the full and equal enjoyment of all human rights and fundamental freedoms by women is a priority for individual governments and the United Nations, and is essential for the advancement of women.[174]

The restrictions on women and the brutalities committed against them under Taliban rule unequivocally contradict the strategic objectives and actions promulgated by the Fourth World Conference. Specifically, the Conference urged governments of the international community to take strategic action in particular critical areas of concern.[175] Unfortunately, the Taliban has done little, if anything, to ensure the rights of women proclaimed by the Fourth World Conference. Namely, under Taliban rule, women are denied equal access to education, health care, natural resources, media, and economic structures.[176] Furthermore, rather

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172. *Id.* at 92.
173. *Id.* at 93.
174. *Id.*
175. *Id.* at 19. The critical areas of concern addressed by the Conference include:
- The persistent and increasing burden of poverty on women
- Inequalities and inadequacies in and unequal access to education and training
- Inequalities and inadequacies in and unequal access to health care and related services
- Violence against women
- The effects of armed or other kinds of conflict on women, including those living under foreign occupation
- Inequality in economic structures and policies, in all forms of productive activities and in access to resources
- Inequality between men and women in the sharing of power and decision-making at all levels
- Insufficient mechanisms at all levels to promote the advancement of women
- Lack of respect for and inadequate promotion and protection of the human rights of women
- Stereotyping of women and inequality in women's access to and participation in all communication systems, especially in the media
- Gender inequalities in the management of natural resources and in the safeguarding of the environment
- Persistent discrimination against and violation of the rights of the girl child

Id. at 19–20.
176. *See Stop Gender Apartheid, supra* note 18.

than working to improve women's living conditions, the Taliban exacerbates the burdens of poverty and violence against women.[177]

5. The International Covenant on Economic, Social, and Cultural Rights & the International Covenant on Civil and Political Rights

Afghanistan ratified both the International Covenant on Economic, Social and Cultural Rights (ICESCR)[178] and the International Covenant on Civil and Political Rights (ICCPR).[179] Both Covenants "bind acceding or ratifying states to undertake and ensure that women and men are accorded equal rights status. Furthermore, each Covenant translates the principles of the Universal Declaration of Human Rights into a legally binding form."[180]

a. International Covenant on Economic, Social, and Cultural Rights (ICESCR)

The ICESCR entered into force on January 3, 1976.[181] The ICESCR focuses on the right of self-determination for all people.[182] Under its terms, *all* individuals have the right of self-determination.[183] This right allows people to freely determine their political status and freely pursue their economic, social, and cultural development.[184] The ICESCR also emphasizes that the rights enunciated therein "will be exercised without discrimination of any kind as to race, colour or sex."[185] The ICESCR further provides that all parties to the instrument must ensure the equal rights of men and women regarding the enjoyment of all economic, social, and cultural rights set forth in the ICESCR.[186]

The rights enunciated in the ICESCR include the following: to work and earn a living as one freely chooses;[187] to enjoy just and

177. *See id.*
178. GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE 281 (Hurst Hannum ed., 2d ed. 1992).
179. *Id.* at 280.
180. Plattner, *supra* note 121, at 1253.
181. ICESCR, *supra* note 141, 993 U.N.T.S. at 4.
182. *Id.* art. 1, para. 1, 993 U.N.T.S. at 5.
183. *Id.*
184. *Id.*
185. *Id.* art. 2, para. 2, 993 U.N.T.S. at 5.
186. *Id.* art. 3, 993 U.N.T.S. at 5.
187. *Id.* art. 6, 993 U.N.T.S. at 6.

favorable conditions of work (including fair wages),[188] and in particular, the guarantee that women's work conditions are not inferior to those enjoyed by men;[189] to protect one's family;[190] to be free from hunger;[191] to have the opportunity to receive an education;[192] and to engage in a cultural life.[193] Afghanistan's obligations under the ICESCR also include the duty to provide its citizens with the highest attainable standard of physical and mental health,[194] which must be provided in a non-discriminatory manner.[195] The Taliban seriously violates the rights addressed above by prohibiting women to work, enforcing dress codes that restrain women's liberty by restricting their movement, beating and imprisoning women, and impeding women's access to health care.[196]

b. International Covenant on Civil and Political Rights (ICCPR)

The ICCPR entered into force on March 23, 1976.[197] It requires Afghanistan to respect the right to life[198] and the right to freedom from torture and other cruel, inhuman, or degrading treatment or punishment.[199] Nations that ratified the ICCPR must ensure these freedoms in a non-discriminatory manner.[200] The ICCPR mandates that participating nations, such as Afghanistan, comply with the following: citizens seeking redress for grievances will be provided with competent judicial, administrative, or legislative authorities;[201] no one shall be subject to compulsory labor;[202] the death sentence shall not be carried out on pregnant women;[203] an accused will be considered innocent until proven

188. *Id.* art. 7, 993 U.N.T.S. at 6.
189. *Id.* art. 7, para. (a)(i), 993 U.N.T.S. at 6.
190. *Id.* art. 10, para. 1, 993 U.N.T.S. at 7.
191. *Id.* art. 11, para. 2, 993 U.N.T.S. at 7.
192. *Id.* art. 13, para. 1, 993 U.N.T.S. at 8.
193. *Id.* art. 15, para. 1(a), 993 U.N.T.S. at 9.
194. *Id.* art. 12, para. 1, 993 U.N.T.S. at 8.
195. *Id.* art. 12, para. 2(d), 993 U.N.T.S. at 8.
196. *See* Dubitsky, *supra* note 7, at 11.
197. ICCPR, *supra* note 142, 999 U.N.T.S. at 172.
198. *Id.* art. 6, para. 1, 999 U.N.T.S. at 174.
199. *Id.* art. 7, 999 U.N.T.S. at 175.
200. *Id.* art. 2, para. 1, 999 U.N.T.S. at 173.
201. *Id.* art. 2, para. 3(b), 999 U.N.T.S. at 174.
202. *Id.* art. 8, para. 3(a), 999 U.N.T.S. at 175.
203. *Id.* art. 6, para. 5, 999 U.N.T.S. at 175.

guilty;[204] there exists the rights of freedom of thought, conscience, and religion;[205] and freedom of association.[206]

The Taliban grossly violates international human rights law because it continues to deny Afghanistan's female population basic civil and political rights as set forth in this international covenant.[207] The restrictions on Afghan women's "freedom of expression, association, and movement deny these women full participation in society and, consequently, prevent them from effectively securing equal opportunities for work, education, and access to public services."[208] As a member of the United Nations, Afghanistan has a duty to its female population to elevate women's rights to the status of basic human rights afforded all individuals under U.N. doctrines and covenants.

B. The Role of the United Nations and Specific Remedies

Despite diplomatic condemnations of the Taliban regime, the United Nations has yet to impose an affirmative remedy or take action to end the atrocities committed by the Taliban.[209] In the past, the United Nations has offered minimal assistance by delivering food[210] and instituting some educational programs for women and children.[211] Negotiations with non-governmental

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204. *Id.* art. 14, para. 2, 999 U.N.T.S. at 176.

205. *Id.* art. 18, para. 1, 999 U.N.T.S. at 178.

206. *Id.* art. 22, para. 1, 999 U.N.T.S. at 178.

207. *See* Filkins, *supra* note 55, at A6 (reporting that the Taliban imposes a draconian form of Islamic law with harsh edicts falling upon women). Women are barred from working and studying and must cover their heads, faces, and bodies when they walk down streets. *Id.*

208. *See* Dubitsky, *supra* note 7, at 10.

209. *See generally* Human Rights Watch, *Human Rights Watch World Report 1999, Afghanistan: The Role of the International Community*, http://www.hrw.org/worldreport99/asia/afghanistan3.html (last visited Jan. 19, 2000) [hereinafter *The Role of the International Community*] (reporting that U.N. diplomatic efforts consist of resolutions that condemn the Taliban regime). The U.N. Commission on Human Rights passed a resolution on April 21, 1999 condemning interference with humanitarian assistance to the civilian population of Afghanistan. *Id.* On August 28, 1999, the U.N. Security Council passed an additional resolution expressing its grave concern with the continued Afghan conflict causing a "serious and growing threat to regional and international peace and security, as well as extensive human suffering." *Id.*

210. COUNTRY REPORTS, *supra* note 20, at 1853.

211. *Id.* (explaining that many of the educational programs for women and children in various parts of the country were curtailed as a result of Taliban restrictions on women and girls).

organizations concerning women's issues, however, were unsuccessful.[212]

As the sole controlling entity of Afghanistan, the Taliban continues to defy the international justice system through blatant disregard of obligations under international human rights law.[213] The international community does not tolerate this type of disregard for the covenants and doctrines of the United Nations by its members,[214] and it should not tolerate it from the Taliban.[215] Therefore, it is essential that the United Nations take an immediate stand against the Taliban. On behalf of the international community, and for the sake of Afghan women, the United Nations should no longer limit its activities with Afghanistan to diplomatic negotiations.[216]

The Revolutionary Association of the Women of Afghanistan (RAWA), a political/social organization for women's rights, has identified several problems with the way the international community has addressed the situation in Afghanistan.[217] In order to cure the Afghan crisis, RAWA suggests that the United Nations should implement the specific remedial measures explained below.[218] By merely trying to negotiate with the Taliban, the United Nations has made no headway and is not addressing the problem properly.[219] "If the UN can send a large number of peace-keeping forces"[220] to eradicate religiously-based gross human rights violations and geonocide in countries such as Cambodia, Bosnia, and, most recently, Kosovo, "why should it not be adopting a similar policy in Afghanistan?"[221] The United

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212. *See id.* at 1856. "In April [1999,] Taliban authorities rejected the participation of U.N. Humanitarian Coordinator Alfredo Witschi-Cestari on the U.N. team selected to negotiate with the Taliban on the travel restrictions for foreign Muslim women and other issues, because he was perceived to be 'anti-Taliban.'" *Id.*

213. *See* discussion *supra* Part III.A.1.–5.

214. *See* RAWA, *supra* note 1.

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.*; *see* Thier, *supra* note 10, at 373 (analyzing the parallel between the human rights crisis in Afghanistan and Bosnia, and illustrating the daunting yet feasible task of international intervention: "only with tremendous will and resources can the norms of the international community be brought to bear upon nonstate actors whose constituency is unclear, whose territory is shifting, and who are not accountable to their own people or the international community.").

Nations must emphasize that "Afghanistan is the homeland of the Afghan people, and not the property" of the Taliban militia.[222]

The most effective way for the United Nations to restore stability is by "fully disarming" the Taliban.[223] This can be accomplished by instituting a large U.N. peace-keeping force stationed in Afghanistan, assigned the task of stabilizing the usurped region.[224] The first step is to "supervise . . . the formation of a government based on democratic values and compromised of neutral personalities."[225] Moreover, this government should conduct "free and fair elections [in which all individuals may participate] within a period not exceeding one year."[226] Ideally, the peace-keeping force would supervise a government that ensures "freedom of thought, religion, and political expression while [simultaneously] safeguarding women's rights."[227]

As the Taliban invokes the name of Islam to justify and legitimize gender apartheid, it is imperative that any new government of Afghanistan separate religion from politics.[228] Under a secular government, the people of Afghanistan have embraced Islam for several centuries without inexorable decrees forced upon women.[229] A secular government is therefore essential to prevent the religion of Islam from being used as a "retrogressive tool in the hands of fanatics."[230] RAWA states, "only a government with secular orientation can thwart the nefarious designs of these reactionaries from the Dark Ages."[231] Accordingly, the United Nations should secure a government that upholds a separation of religious and political processes in Afghanistan. Finally, only upon the establishment of a democratic government, free from the gender apartheid committed by Taliban fundamentalists, would the job of the U.N. peace-keeping force conclude.[232]

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222. RAWA, *supra* note 1.
223. *Id.*
224. *Id.*
225. *Id.*
226. *Id.*
227. *Id.*
228. *Id.*
229. *Id.*; *see* AFG. CONST. OF 1990 art. 38.
230. RAWA, *supra* note 1.
231. *Id.*
232. *Id.*

IV. SPECIFIC U.S. FEDERAL AND STATE LEGAL ACTIONS, REMEDIES, AND LIMITATIONS

Presently, the Taliban refuses to abide by international covenants and doctrines,[233] and the United Nations has yet to send peace-keeping forces into Afghanistan to stabilize the region and bring human rights violations to a halt.[234] Therefore, gender apartheid in Afghanistan continues and diplomacy remains stagnant.[235]

Because the current state of affairs in Afghanistan is fragile, the United States has a unique window of opportunity to intervene and create a positive impact in the lives of Afghan women. With the United States' tremendous social, economic, and political power, it can play an integral role in ameliorating the gross human rights violations occurring in Afghanistan. Although the United States has taken some promising action against the Taliban, much more can be done using the U.S. legal system, at both federal and state levels.

A. Suggestions for the U.S. Federal Government to Remedy Gender Apartheid in Afghanistan Under Current Legal Structures

The U.S. federal government has attempted to assist the oppressed civilian population of Afghanistan with humanitarian aid since the Taliban regime took control of the region.[236] In 1999, the United States contributed $2 million to improve the education and health care of Afghan women and children.[237] In addition, President Clinton pledged to spend $1.5 million for emergency aid to those internally displaced by the recent Taliban offensives.[238] Secretary of State, Madeleine Albright, also verbally condemned the Taliban's treatment of women.[239] Secretary Albright pledged U.S. support for women in Afghanistan by declaring that the rights of Afghan women must be considered in U.S. foreign policy.[240]

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233. *See* discussion *supra* Parts III.A.1.–5.

234. *See The Role of the International Community, supra* note 209.

235. *Id.*

236. *See* The Feminist Majority Foundation Online, *Don't Let U.S. Negotiate Lives of Afghan Women & Girls for Bin Laden, at* http://www.feminist.org/action/action50f.html (last visited Jan. 19, 2000) [hereinafter *Don't Let U.S. Negotiate Lives*].

237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.*

Responding to the assertion that the treatment of women in Afghanistan is part of Afghan culture, Secretary Albright stated, "I say it is criminal and we each have a responsibility to stop it."[241] Secretary Albright's words sent the distinct message to the Taliban that its treatment of women threatens international relations with the United States as well as other countries.[242]

1. Economic Sanctions via Executive Order

Although allocating humanitarian aid and raising awareness of the Afghan crisis on a national level is important, legal action is crucial.[243] The United States can most effectively combat the Taliban by enforcing economic sanctions.[244] Economic sanctions directed at the Taliban could eradicate gender apartheid in Afghanistan if the political and social rhetoric indicates that this is its purpose.[245]

President Clinton placed economic sanctions on the Taliban through Executive Order No. 129 (Executive Order), effective July 6, 1999.[246] The Executive Order prohibits the United States from providing financial, material, or technological support for, or services in support of, the Taliban.[247] Specifically, the Executive Order states:

> [T]he exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located of any goods, software, technology (including technical data), or services to the territory of Afghanistan controlled by the Taliban or to the Taliban or persons designated pursuant to this order is prohibited.[248]

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241. *Id.*

242. *Id.*

243. *Id.*

244. *See* Exec. Order No. 129, 64 Fed. Reg. 36,759 (July 4, 1999) [hereinafter Executive Order]. The prefatory remarks to this Executive Order proclaim that in an effort to deter the Taliban from harboring terrorists in Afghanistan, the United States will implement economic sanctions against the Taliban. *Id.*

245. *See Don't Let U.S. Negotiate Lives, supra* note 236.

246. Executive Order, *supra* note 244, at 36,761.

247. *Id.* at 36,759. The Executive Order is entitled *Blocking Property and Prohibiting Transactions With the Taliban.* *Id.* The Executive Order, however, authorizes "commercial sales of agricultural commodities and products, medicine, and medical equipment for civilian end use in the territory of Afghanistan controlled by the Taliban under appropriate safeguards to prevent diversion to military, paramilitary, or terrorist end users or end use or to political end use." *Id.* at 36,760.

248. *Id.* at 36,759.

Hence, the Executive Order bans the United States from engaging in any business transaction or trade relations dealing with, or for the benefit of, the Taliban.[249] Additionally, the Executive Order directs all persons,[250] entities,[251] and agencies of the U.S. government to act within their authority to execute the provisions of this order.[252]

The Executive Order, however, employs specific political rhetoric.[253] The goal of the Executive Order is to deter the Taliban from harboring and sheltering terrorists, namely, Usama bin Laden (bin Laden).[254] President Clinton stated that he issued the Executive Order pursuant to the authority vested in him as President, under the Constitution and the laws of the United States, including the International Emergency Economic Powers Act, the National Emergencies Act, and 3 U.S.C. § 301.255. President Clinton affirmed:

> [T]he actions and policies of the Taliban in Afghanistan, in allowing territory under its control in Afghanistan to be used as a safe haven and base of operations for Usama bin Laden and the Al-Qaida organization who have committed and threaten to continue to commit acts of violence against the United States and its nationals, constitute an unusual and extraordinary threat to the national security and foreign policy of the United States, and [I] hereby declare a national emergency to deal with that threat.[256]

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249. *See id.*; *see also U.S. Imposes Sanctions on Taliban*, FACTS ON FILE WORLD NEWS DIGEST, Aug. 5, 1999, at 567 [hereinafter *U.S. Imposes Sanctions*].

250. Executive Order, *supra* note 244, at 36,760. The term "United States person" means any U.S. citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States. *Id.*

251. *Id.* The term "entity" means a partnership, association, corporation, or other organization, group, or subgroup. *Id.*

252. *Id.*

253. *See id.* at 36,759.

254. *See id.*; *see also* John F. Burns & Steve LeVine, *How Afghans' Stern Rulers Took Hold,* N.Y. TIMES, Dec. 31, 1996, at A6 (using the alternative spelling "Osama bin Laden"). According to Western intelligence estimates, as many as 400 trained terrorists are living in areas under Taliban control, some of them with links to the bombing of the World Trade Center. Burns & LeVine at A6. One of the most-wanted terrorists, Osama bin Laden, has been identified by the U.S. State Department as a significant financial sponsor of Islamic extremists. *Id.*

255. Executive Order, *supra* note 244, at 36,759.

256. *Id.*; *see U.S. Imposes Sanctions, supra* note 249, at 567 (stating that in November 1998, bin Laden, a Saudi Arabian exile, was charged with orchestrating the 1998 bombings of the U.S. embassies in Kenya and Tanzania).

As a preface to the Executive Order, President Clinton wrote a letter to the Speaker of the House of Representatives and the President of the Senate explaining the impetus behind the Executive Order.[257] In the letter, the President stated:

> The measures taken in this order will immediately demonstrate to the Taliban the seriousness of our concern over its support for terrorists and terrorist networks, and increase the international isolation of the Taliban . . . . [I]t is particularly important for the United States to demonstrate to the Taliban the necessity of conforming to accepted norms of international behavior.[258]

Undoubtedly, U.S. national security is a crucial concern, and sanctioning the Taliban regime based on its repeated practice of harboring terrorists is valid and necessary.[259] Disconcertingly, however, the Executive Order does not mention gender apartheid or violations of international human rights law as motivations for sanctioning the Taliban.[260] Albeit the clear affirmation by President Clinton that "it is particularly important for the United States to demonstrate to the Taliban the necessity of conforming to accepted norms of international behavior,"[261] the Executive Order does not address the struggling plight of Afghan women, the atrocities women face on a daily basis, or the "necessity" that the Taliban conform to accepted norms of international behavior with regard to human rights law.[262]

Furthermore, only two days after the release of the Executive Order, U.S. State Department spokesman James Foley confirmed that the United States would rescind the sanctions if the Taliban handed over bin Laden.[263] In fact, by October 25, 1999, State Department officials met with Taliban representatives and offered the "possibility of more normal relations with the United States if . . . bin Laden [was] expelled from Afghanistan."[264] Ultimately, according to these statements, when bin Laden is expelled from

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257. *Afghan-Politics Online Center for Afghan Studies, at* http://www.afghanpolitics.org/Reference/Taliban/Executive_Order.htm (last visited Sept. 9, 1999) [hereinafter *Afghan-Politics*].

258. *Id.*

259. *See* Executive Order, *supra* note 244, at 36,759.

260. *See id.*

261. *See Afghan-Politics*, *supra* note 257.

262. *Id.*

263. *U.S. Imposes Sanctions*, *supra* note 249, at 567.

264. *Don't Let U.S. Negotiate Lives*, *supra* note 236.

Afghanistan, the United States may normalize relations with the Taliban, although no progress will have been made toward ameliorating the cruel human rights abuses inflicted against Afghan women.[265]

The political rhetoric surrounding the Executive Order illustrates the willingness of the United States to impose sanctions against the Taliban when U.S. national security interests are at stake.[266] The United States, however, is unwilling to integrate statements into the Executive Order that condemn the Taliban's actions of stripping Afghan women of their essential human rights.[267] The President could have, however, incorporated language into the Executive Order that the grave abuses perpetuated by the Taliban were either the impetus for, or an ancillary factor behind, the severe sanctions.[268] Additionally, the President could have decreed that until the Taliban restores the rights of Afghan women, sanctions will remain in place and diplomatic relations will remain stagnant.[269] By taking this step, the United States would have set an example for the world that economic sanctions can be imposed to deter violations of human rights law.[270] By imposing economic sanctions against the Taliban for its human rights abuses, as well as terrorism, the Executive Order could have improved the human rights of Afghan women as well as encouraged the capture of bin Ladin.[271]

By failing to address the violations of international human rights law in the Executive Order, the United States conveyed the message to the Taliban and the entire world that although women comprise half of the world's constituency, women's essential rights are not a national or global priority.[272] Second, the Executive Order impaired the credibility and integrity of the U.S.

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265. *Id.*

266. *See* Executive Order, *supra* note 244, at 36,759.

267. *See id.*

268. *Cf. Don't Let U.S. Negotiate Lives*, *supra* note 236 ("[I]t is of grave concern that 'normalizing' relations with the Taliban would be discussed with no mention of human rights and women's rights.").

269. *See generally id.* (urging the United States to "make sure [it] stands firm with its pledge not to recognize the Taliban unless the rights of women and girls are fully and permanently restored.").

270. *See id.*

271. *See id.*

272. *See generally id.* ("Reports of severe human rights abuses inflicted on the women and girls of Afghanistan continue and there are hundreds of new victims of Taliban offenses each day . . . .").

government because the United States verbally condemned the Taliban's human rights abuses but failed to take action against the Taliban, other than implementing sanctions for harboring terrorists.[273] Finally, in effect, the negotiations sought to exchange the lives of Afghan women for bin Laden.[274]

Therefore, it is essential that the United States focus economic sanctions on addressing the plight of Afghan women.[275] A cure to the Taliban plague of gender apartheid will not occur through a negotiation of bin Laden's release.[276] The present sanctions are inadequate because they may be revoked anytime the Taliban ceases to support, and protect, bin Laden.[277] Instead, the sanctions should punish the Taliban for infringing upon women's human rights.[278] Additionally, the sanctions should remain in place until all women attain the freedom and autonomy they once embraced in the Afghan region.[279]

With the Clinton Administration concluding, the current Executive Order will remain in effect, but may be rescinded by the new administration.[280] Thus, whether or not the Taliban ceases to shelter bin Laden, the United States may deal with, and do business with, the Taliban again in the near future.[281] Considering that the Taliban controls ninety-five percent of the Afghan region, if the United States grants Afghanistan normal economic relations, the United States in essence will be supporting and funding the Taliban.[282] This provides additional support for the proposition

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273. *See id.* In 1999, along with sanctions banning trade and business transactions with Afghanistan, the United States also placed sanctions on Ariana Afghan Airlines because of the company's support of bin Laden. The Feminist Majority Foundation Online, *Feminist News - August 12, 1999: U.S. Imposes More Sanctions on the Taliban, at* http://www.feminist.org/news/newsbyte/august99/0812.html (last visited Jan. 19, 2000). The sanctions are intended to "target overflight fees, a major source of the Taliban's legitimate financial resources . . . . The sanctions also stress the prohibition of any U.S. interaction with the airline." *Id.* The sanctions, however, do not mention Taliban's abusive gender apartheid policies. *Id.*

274. *See Don't Let U.S. Negotiate Lives, supra* note 236.

275. *See id.*

276. *See id.*

277. *See id.*

278. *See id.*

279. *See id.*

280. *See generally* PAUL E. JOHNSON ET AL., AMERICAN GOVERNMENT: PEOPLE, INSTITUTIONS, AND POLICIES 18 (Margaret H. Seawell et al. eds., 3d ed. 1994) (explaining the procedural posture of presidential executive orders).

281. *See U.S. Imposes Sanctions, supra* note 249, at 567.

282. *See id.*; *see also* Wright, *supra* note 6, at A1.

that economic sanctions, with the objective of halting gender apartheid and gross violations of human rights law in Afghanistan, should be implemented now.

2. Limitations and Consequences of the Current Executive Order

Inherent limitations encase the current economic sanctions placed upon the Taliban. First, should bin Laden be expelled from Afghanistan, the sanctions will most likely be lifted.[283] Likewise, should President George W. Bush, who took office on January 20, 2001, opt to rescind the current Executive Order, U.S. corporations would be free to resume business with the Taliban.[284] Corporate investment in Afghanistan would bolster the Taliban regime through monetary support, and therefore facilitate its fundamentalist ideology and gender apartheid practices. If the present Executive Order becomes obsolete, and a new executive order is not instated that bans all trade and business with Afghanistan until Afghan women regain their rights, corporations across the United States will again be free to do business with the Taliban.[285]

In 1998, one year prior to the issuance of the Executive Order, the total trade between the United States and Afghanistan was $24 million.[286] Although $24 million represents a small percentage of U.S. global trade, it is significant to the Taliban and impoverished Afghanistan.[287] Prior to the Executive Order, the profit Afghanistan gained from dealing with U.S. corporations ended up in Taliban hands and was not used for the sustenance of Afghan citizens.[288] Rather, the Taliban used the profits to fund and fight a continuing war to gain further control of Afghanistan.[289]

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283. *U.S. Imposes Sanctions*, *supra* note 249, at 567.

284. JOHNSON ET AL., *supra* note 280, at 18.

285. *U.S. Imposes Sanctions*, *supra* note 249, at 567.

286. John Lancaster, *Clinton Bans Trading With Taliban Militia: Afghanistan Rulers Accused of Giving Terrorist Refuge*, WASH. POST, July 7, 1999, at A15.

287. *See generally* COUNTRY REPORTS, *supra* note 20, at 1847 (explaining that trade and economic activity were minimal in 1998 and were further inhibited by recurrent fighting).

288. *See generally Defending Human Rights*, *supra* note 62. In 1998, the U.N. World Food Programme reported that 145,000 people were at risk of malnutrition. *Id.*

289. *See generally id.* (reporting on the continued struggle for control in the central part of the country resulting in an influx of displaced people into Kabul). Throughout 1998, the Taliban launched mortar and rocket attacks on cities, killing hundreds of

The Executive Order also halted "several incipient deals between the Taliban and U.S. telecommunications and pipeline firms."[290] International oil interests are in "fierce competition to build pipelines through Afghanistan to link Caspian Sea oil and gas reserves to Central and South Asia."[291] For example, before the Executive Order, Union Oil Company of California (Unocal) proposed and attempted to construct a $5 billion, 1,200-mile gas pipeline project that would run through Afghanistan.[292] Through negotiations with Unocal, the Taliban stood to gain $100 million a year from this pipeline.[293] It is still unknown whether Unocal will resume negotiations with the Taliban to build a pipeline if the Executive Order is lifted.[294] Moreover, other U.S. and international corporate interests were vying for business in the Afghan region.[295] For instance, Telephone Systems International (TSI), a New Jersey-based telecommunications firm, reached an agreement with the Taliban to install a satellite-based system through Afghanistan.[296] Now that the Executive Order is in place, however, all pending business transactions have been discontinued.[297] If U.S. corporations resume business relations with Afghanistan, they will effectively resume business with and economically support the Taliban.

B. Suggestions for U.S. State Governments to Remedy Gender Apartheid in Afghanistan Under Current Legal Structures

Neither the United Nations nor the U.S. federal government has implemented effective measures to halt gender apartheid in Afghanistan. U.N. attempts to enforce international human rights

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civilians. *Id.*

290. Lancaster, *supra* note 286, at A15.

291. *Stop Gender Apartheid*, *supra* note 18; *see* U.S. Department of Commerce, *The International Trade Administration, Country Commercial Guide: Turkmenistan, at* http://www.bisnis.doc.gov/bisnis/country/txChapter_V.htm. (last visited Nov. 2, 2000). The construction of the Turkmenistan-Afghanistan-Pakistan gas pipeline, which is 1,500 kilometers in length with an annual capacity of twenty billion cubic meters of gas, is considered a high-priority investment project. *Id.*

292. Burns & LeVine, *supra* note 254, at A6 (reporting that Unocal would build the pipeline in conjunction with Delta Oil Company, a Saudi Arabian entity with close links to the Taliban).

293. *Stop Gender Apartheid*, *supra* note 18.

294. *See id.*; *see also U.S. Imposes Sanctions*, *supra* note 249, at 567.

295. *Stop Gender Apartheid*, *supra* note 18.

296. *See id.*; *see also* Lancaster, *supra* note 286, at A15.

297. Executive Order, *supra* note 244, at 36,759.

treaties and covenants within the region have been inadequate because the Taliban continues to oppress the Afghan people.[298] U.S. economic sanctions against the Taliban are insufficient because the Executive Order may be rescinded.[299] In addition, the Executive Order is inherently flawed because it does not incorporate any language requiring the restoration of human rights in Afghanistan as a precondition for lifting the sanctions.[300]

1. Ability of State Attorneys General to Revoke Corporate Charters

Because both international treaties with Afghanistan and U.S. economic sanctions have failed to deter gender apartheid in the region, state governments should utilize their autonomous legal authority as a means to pressure the Taliban to restore the rights of Afghan women.

Embodied in the authority of the Attorney General of every state is the ability to revoke corporate charters for breach of any "single act of unlawfulness."[301] A "single act of wrongdoing is enough"[302] to revoke the charter of a corporation.[303] In addition, "state and federal courts have consistently recognized the authority of states, in exercise of their sovereign police power[s,] to revoke corporate charters."[304] In broad terms, the relationship between government and corporations manifests in the corporate charter:

> The legal instrument which empowers companies to play a role in our democracy is the corporate charter. The charter, by which states incorporate economic enterprises and grant them special privileges, is one of the most powerful legal devices ever created.[305]

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298. *See* discussion *supra* Parts III.A.1.–5. (providing details of U.N. treaties and covenants designed to prevent human rights abuses).

299. JOHNSON ET AL., *supra* note 280, at 18.

300. Executive Order, *supra* note 244, at 36,579.

301. ROBERT BENSON, CHALLENGING CORPORATE RULE: THE PETITION TO REVOKE UNOCAL'S CHARTER AS A GUIDE TO CITIZEN ACTION 52 (1999). This work includes a petition that was filed with the Attorney General of California aiming to revoke Unocal's corporate charter. *Id.*

302. *Id.* at 60.

303. *Id.*

304. *Id.* at 40.

305. *Id.*

Thus, corporate charters bind economic enterprises as entities and creatures of state law.[306]

State statutes basically confer the right of revocation onto Attorneys General, allowing them to simply go to court and "dissolve a corporation for wrongdoing and sell its assets to others who will operate in the public interest."[307] Some state statutes actually compel the Attorney General to bring a revocation action against a corporation, "where a private grievance or public harm has been shown."[308] For example, section 803 of the California Code of Civil Procedure provides:

> An action may be brought by the attorney-general, in the name of the people of this state, upon his own information, or upon a complaint of a private party . . . against any corporation . . . which usurps, intrudes into, or unlawfully holds or exercises any franchise, within this state. And the attorney-general must bring the action, whenever he has reason to believe that any such office or franchise has been usurped, intruded into, or unlawfully held or exercised by any person, or when he is directed to do so by the governor.[309]

The majority of states have definitive corporate codes that authorize the Attorney General to unilaterally bring an action against a domestic corporation in order to procure a judgment for its dissolution.[310] For instance, section 1801 of the California Corporations Code provides that the Attorney General may "procure a judgment dissolving the corporation and annulling, vacating or forfeiting its corporate existence."[311] The grounds upon which an Attorney General may seek charter revocation under section 1801 include, but are not limited to, serious offenses

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306. *See* Santa Fe Indus., Inc. v. Green, 430 U.S. 462, 479 (1976).

307. *See* The Feminist Majority Foundation Online, *Environmental, Human Rights, Women's and Pro-Democracy Groups Petition Attorney General of California to Revoke Unocal's Charter*, *at* http://www.feminist.org/news/pr/pr091098.html (last visited Jan. 19, 2000) (quoting Robert Benson, Professor of Law at Loyola Law School, Los Angeles, and lead attorney for the National Lawyers Guild's International Law Project for Human, Economic, and Environmental Defense (HEED), which petitioned the Attorney General of California to revoke Unocal's corporate charter for violations of domestic and foreign law).

308. BENSON, *supra* note 301, at 53; *see* People *ex rel.* Raster v. Healy, 82 N.E. 599 (Ill. 1907).

309. CAL. CIV. PROC. CODE § 803 (West 1980).

310. *See id*; *see also* CAL. CORP. CODE § 1801 (West 1990).

311. CAL. CORP. CODE § 1801 (West 1990).

against any provision of the Code,[312] fraudulent abuses or usurpation of corporate privileges or powers,[313] and violations of any provision of law by any act or default which under the law is a ground for forfeiture of corporate existence.[314] Attorneys General, therefore, can revoke the corporate charters of enterprises that seriously offend provisions of the statutes governing their existence,[315] such as ignoring the mandate incorporated into most state statutes to engage only in "lawful" activity.[316]

Corporate charters allow corporations to exist "not of natural right, but only by license of the law, and the law, if we look at the matter in good conscience, is responsible for what it creates."[317] Because U.S. corporations essentially act as extensions of the states themselves,[318] and states are responsible for what they create,[319] Attorneys General should have the authority to revoke the charters of corporations that financially support regimes that violate international human rights law. Although there is currently no specific legislation, statutory interpretation, or judicial ruling that furnishes state Attorneys General the ability to take action to prevent corporations from engaging in this particular type of conduct,[320] revocation of a corporation's charter would

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312. *Id.*

313. *Id.*

314. *Id.*

315. *Id.*

316. CAL. CORP. CODE § 202(b)(1) (West 1990); DEL. CORP. CODE §§ 101(b), 102(a)(3) (West 1991).

317. BENSON, *supra* note 301, at 51 (quoting Liggett Co. v. Lee, 288 U.S. 517, 560 n.37 (1993) (Brandeis, J., dissenting)).

318. BENSON, *supra* note 301, at 51.

319. *Id.*

320. *But see generally* State *ex rel.* Pillsbury v. Honeywell, Inc. 191 N.W.2d 406 (Minn. 1971) (explaining that private individual shareholders are limited in their ability to bring legal action against a corporation). This case held that U.S. corporate law does not recognize the shareholders' right to litigate against a corporation solely because the corporation is involved in a course of business that is incompatible with the shareholders political-social views. *Id.* at 412. This case reaffirmed the proposition that shareholders, at minimum, are expected to have "bona fide investment interest[s] . . . motivated by concern with the long- or short-term economic effects" of a corporation in order to initiate litigation against corporations for inefficient management and control. *Id.* Courts refuse to allow shareholders the right of litigation against corporations pursuing objectives in opposition to shareholders' political-social ideologies because:

> If the courts were to grant these rights on the basis of the foregoing, anyone who has a political-social philosophy which differs with that of a company in which he becomes a shareholder can secure a writ and any company can be faced with a

eliminate its ability to support human rights violations. This Comment seeks to elicit further investigation and commentary as to whether corporate charter revocation can be established as a viable procedure to ameliorate these wrongdoings.

2. State Legislatures Should Enact Statutes Granting Attorneys General the Power to Revoke Corporate Charters for Supporting International Human Rights Abuses

The range of activities considered unlawful or in opposition to the public policy of a state varies.[321] Corporate activity, however, is always limited by the statutes regulating corporations and the corollary statutory interpretation of these regulations as instated by each state legislature.[322] In order that Attorneys General may revoke the charters of corporations doing business with the Taliban, legislatures should classify corporations that financially support regimes to be in violation of international human rights law as engaging in "unlawful acts."[323]

The California[324] and Delaware[325] provisions for corporate charters are among the broadest and most lenient in the nation. Specifically, both California and Delaware require that the purpose of corporate activity is to engage in any "lawful act or activity for which corporations may be organized."[326] Implicit in even the most lenient codes, however, is the idea that corporations shall always be limited to do business "in accord with the public policy of the state."[327] The "courts have consistently held that certain acts of wrongdoing [that go against public policy] clearly warrant charter revocation."[328] For example:

> Judges have upheld revocation as a remedy for "misuse" or "nonuse" of the corporate charter, "unlawful acts," "fraud,"

> rash and multitude of these types of actions which are not bona fide efforts to engage in a proxy fight for the purpose of taking over the company or electing directors, which the courts have recognized as being perfectly legitimate and acceptable.

Id. at 411 n.5.

321. *See* BENSON, *supra* note 301, at 53.
322. *See* Santa Fe Indus., Inc. v. Green, 430 U.S. 462, 479 (1976).
323. BENSON, *supra* note 301, at 60.
324. CAL. CORP. CODE §§ 202, 202(b)(1) (West 1990).
325. DEL. CORP. CODE §§ 101(b), 102(a)(3) (West 1991).
326. *See id.*; *see also* CAL. CORP. CODE §§ 202, 202(b)(1) (West 1990).
327. BENSON, *supra* note 301, at 68.
328. *Id.* at 52–53.

> "willful abuse of chartered privileges," "usurpation of powers," "improper neglect of responsibility," "excess of power," "mistake in the exercise of an acknowledged power" and "failure to fulfill design and purpose."[329]

State legislatures should forbid corporations from monetarily supporting regimes that perpetuate human rights abuses by enacting statutes that recognize that such activity is an "unlawful act,"[330] a "willful abuse of chartered privileges,"[331] or "improper neglect of responsibility."[332] This Comment seeks to recommend that state legislatures codify the notion of corporations monetarily backing regimes that perpetuate human rights abuses as conduct that falls into one of the above listed abuses. Each individual state legislature, however, must tailor the language to reflect the codes particular to the state, thereby assuring that the proper statutory language exists to revoke corporate charters in the state of incorporation.

Should state legislatures take this step, revocation of corporate charters would supply the constituents of all states with the tools to keep corporations "wholly subordinate to the sovereign people by whose permission and toleration they exist."[333] This action would provide a viable remedy and a much needed course of action that states could pursue if U.S. corporations resume business relations or become partners with the Taliban regime in Afghanistan.

V. CONCLUSION

Cures to the enigmatic Taliban plague lie in tenaciously implementing immediate legal and social action on a variety of levels. First, the United Nations, as a representative of the international community, should take action and send peace-keeping forces into the Afghan region to promote a democratic government that ensures freedom of thought, religion, and political expression, while safe-guarding women's rights.

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329. *Id.* at 53.
330. *Id.* at 52–53.
331. *Id.*
332. *Id.*
333. Robert Benson, *How Many Strikes Do Big Corporations Get?*, *at* http://www.heed.net/charter/doc3.html (last visited January 19, 2000).

Second, the United States can also play a substantial role in deterring gender apartheid in Afghanistan. At the federal level, economic sanctions should be instituted with a piercing directive that the sanctions must not be lifted until the gross human rights violations and gender apartheid come to an end. To prevent U.S. corporations from resuming normal business relations with the Taliban, state legislatures should classify this type of corporate behavior as a category of unlawful activity. This action would then allow state Attorneys General to revoke the corporate charters of entities engaging in business with the Taliban, which would prevent them from funding the regime, and further perpetuating human rights abuses.

Women in Afghanistan are entitled to basic human rights. These include independence and living free from the fear of being murdered, raped, beaten, and "virtually subjected to a living death."[334] Until then, the United States, and the international community in general, must pursue all legal options available in order to eradicate the Taliban plague.

Talya Friedman*

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334. *Apartheid in Afghanistan*, *supra* note 44.

* J.D. Candidate, Loyola Law School, Los Angeles, 2001; B.A., Sociology, *cum laude*, University of California at San Diego, 1997. This Comment is dedicated to my parents, Sara and Michael, and to my brother, Ron—for without their continual support, sacrifice, unending love, and guidance I would never be able to realize my potential. Special thanks to my mother, who has taught me, by example, to initiate endeavors with my mind and body, and revel in my soul following; to be compassionate to others; and to embrace all that life has to offer. This Comment is also dedicated in loving memory of Kim Ellis. Thanks to Christopher Doan for academic inspiration and creative contribution to this Comment. Many thanks to Jean Yasuhara Law, Dan Loritz, and all of the editors and staff members of the *Loyola of Los Angeles International and Comparative Law Review* for their invaluable assistance in making this publication possible. To all of my friends, whom I cherish deeply, thank you for your encouragement and motivational reminders throughout the lengthy publication process: Alex Shukhman, Steve Kroll, Tamar Ghazarossian, Dana Graham, Karen Shrira, Caroline Djang, Dan Katz, Darryn Barber, Yael Estline, Mark Posard, Nikki Ostin, Jenny Powazek, Veronica Alderman, and Remy Bender. Finally, may this Comment stand for a commitment to continue working toward eradicating gender apartheid and to promote global awareness in order to shape social policies and legislation in positive and meaningful ways.