

## Calendar No. 61

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. CON. RES. 19

Expressing the sense of Congress that the Shi'ite Personal Status Law in Afghanistan violates the fundamental human rights of women and should be repealed.

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### IN THE SENATE OF THE UNITED STATES

APRIL 23, 2009

Mrs. BOXER (for herself, Ms. SNOWE, Ms. MIKULSKI, Mrs. MURRAY, Mrs. GILLIBRAND, Ms. CANTWELL, Mrs. SHAHEEN, Mrs. FEINSTEIN, Ms. COLLINS, and Ms. LANDRIEU) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations

MAY 13, 2009

Reported by Mr. KERRY, with an amendment and an amendment to the preamble

[Strike out all after the resolving clause and insert the part printed in italic]

[Strike the preamble and insert the part printed in italic]

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## CONCURRENT RESOLUTION

Expressing the sense of Congress that the Shi'ite Personal Status Law in Afghanistan violates the fundamental human rights of women and should be repealed.

Whereas in ~~March 2009~~, the Shi'ite Personal Status Law was approved by the parliament of Afghanistan and signed by President Hamid Karzai;

Whereas according to the United Nations, the law legalizes marital rape by mandating that a wife cannot refuse sex to her husband unless she is ill;

Whereas the law also weakens mothers' rights in the event of a divorce and prohibits a woman from leaving her home unless her husband determines it is for a "legitimate purpose";

Whereas President Barack Obama has called the law "abhorrent" and stated that "there are certain basic principles that all nations should uphold, and respect for women and respect for their freedom and integrity is an important principle";

Whereas the United Nations High Commissioner for Human Rights has said that the law represents a "huge step in the wrong direction" and is "extraordinary, reprehensible and reminiscent of the decrees made by the Taliban regime in Afghanistan in the 1990s";

Whereas the Secretary-General of the North Atlantic Treaty Organization (NATO) has asserted that passage of the law could discourage countries in Europe from contributing additional troops to help combat terrorism in the region;

Whereas President Karzai has instructed the Government of Afghanistan and members of the clergy to review the law and change any articles that are not in keeping with Afghanistan's Constitution and Islamic Sharia, yet has not made a concrete declaration that the provision legalizing marital rape and other provisions curtailing women's rights will be removed completely;

Whereas the law includes provisions that are fundamentally incompatible with the obligations of the Government of

Afghanistan under the various international instruments that it has ratified, as well as under its own Constitution;

Whereas Afghanistan is a signatory of the Universal Declaration of Human Rights (UDHR), which establishes the principle of nondiscrimination, including on the basis of sex, and states that men and women are entitled to equal rights to marriage, during marriage, and at its dissolution;

Whereas Afghanistan became a party to the International Covenant on Economic, Social and Cultural Rights, done at New York December 16, 1966, and entered into force January 3, 1976 (ICESCR), which emphasizes the principle of self-determination, in that men and women may freely determine their political status as well as their economic, social, and cultural development;

Whereas Afghanistan acceded to the Convention on the Elimination of All Forms of Discrimination Against Women, done at New York December 18, 1979, and entered into force September 3, 1981 (CEDAW), which condemns discrimination against women in all its forms and reaffirms the equal rights and responsibilities of men and women during marriage and at its dissolution;

Whereas, notwithstanding any declarations or reservations made upon ratification of these various international conventions, the Government of Afghanistan is under an obligation not to act in any way which might defeat the object and purpose of these conventions, pursuant to the Vienna Convention on the Law of Treaties, done at New York May 23, 1969, and entered into force January 27, 1980, which is widely recognized as embodying customary international law;

Whereas article 22 of the Constitution of Afghanistan (2003) prohibits any kind of discrimination between and privilege among the citizens of Afghanistan and establishes the equal rights of all citizens before the law;

Whereas article 54 of the Constitution of Afghanistan obligates the Government of Afghanistan to ensure the physical and psychological well-being of the family, especially of mothers and children;

Whereas the international community and the United States have a long-standing commitment to and interest in working with the people and Government of Afghanistan to re-establish respect for fundamental human rights and protect women's rights in Afghanistan; and

Whereas the provisions in the Shi'ite Personal Status Law that restrict women's rights are diametrically opposed to those goals: Now, therefore, be it

*Whereas in March 2009, the Shi'ite Personal Status Law was approved by the parliament of Afghanistan and signed by President Hamid Karzai;*

*Whereas according to the United Nations, the law legalizes marital rape by mandating that a wife cannot refuse sex to her husband unless she is ill;*

*Whereas the law also weakens mothers' rights in the event of a divorce and prohibits a woman from leaving her home unless her husband determines it is for a "legitimate purpose";*

*Whereas President Barack Obama has called the law "abhorrent" and stated that "there are certain basic principles that all nations should uphold, and respect for women and respect for their freedom and integrity is an important principle";*

*Whereas the United Nations High Commissioner for Human Rights has said that the law represents a “huge step in the wrong direction” and is “extraordinary, reprehensible and reminiscent of the decrees made by the Taliban regime in Afghanistan in the 1990s”;*

*Whereas the Secretary-General of the North Atlantic Treaty Organization (NATO) has asserted that passage of the law could discourage countries in Europe from contributing additional troops to help combat terrorism in the region;*

*Whereas President Karzai has instructed the Government of Afghanistan and members of the clergy to review the law and change any articles that are not in keeping with Afghanistan’s Constitution and Islamic Sharia;*

*Whereas the law includes provisions that are fundamentally incompatible with the obligations of the Government of Afghanistan under various international instruments to which it is a party;*

*Whereas Afghanistan is a signatory of the Universal Declaration of Human Rights (UDHR), which establishes the principle of nondiscrimination, including on the basis of sex, and states that men and women are entitled to equal rights to marriage, during marriage, and at its dissolution;*

*Whereas Afghanistan became a party to the International Covenant on Economic, Social and Cultural Rights, done at New York December 16, 1966, and entered into force January 3, 1976 (ICESCR), which emphasizes the principle of self-determination, in that men and women may freely determine their political status as well as their economic, social, and cultural development;*

*Whereas Afghanistan acceded to the Convention on the Elimination of All Forms of Discrimination Against Women, done at New York December 18, 1979, and entered into force September 3, 1981 (CEDAW), which condemns discrimination against women in all its forms and reaffirms the equal rights and responsibilities of men and women during marriage and at its dissolution;*

*Whereas article 22 of the Constitution of Afghanistan (2003) prohibits any kind of discrimination between and privilege among the citizens of Afghanistan and establishes the equal rights of all citizens before the law;*

*Whereas the international community and the United States have a long-standing commitment to and interest in working with the people and Government of Afghanistan to re-establish respect for fundamental human rights and protect women's rights in Afghanistan; and*

*Whereas the provisions in the Shi'ite Personal Status Law that restrict women's rights are inconsistent with those goals:  
Now, therefore, be it*

1       *Resolved by the Senate (the House of Representatives*  
2 *concurring), That Congress—*

3           (1) *urges the Government of Afghanistan and*  
4       *President Hamid Karzai to declare the provisions of*  
5       *the Shi'ite Personal Status Law on marital rape and*  
6       *restrictions on women's freedom of movement uncon-*  
7       *stitutional and an erosion of growth and develop-*  
8       *ment in Afghanistan;*

9           (2) *supports the decision by President Karzai*  
10       *to analyze the draft law and strongly urges him not*

1 to publish it on the grounds that it violates the Con-  
2 stitution of Afghanistan and the basic human rights  
3 of women;

4 (3) encourages the Secretary of State, the Spe-  
5 cial Representative to Afghanistan and Pakistan, the  
6 Ambassador-at-Large for International Women's  
7 Issues, and the United States Ambassador to Af-  
8 ghanistan to consider and address the status of  
9 women's rights and security in Afghanistan to en-  
10 sure that these rights are not being eroded through  
11 unjust laws, policies, or institutions; and

12 (4) encourages the Government of Afghanistan  
13 to solicit information and advice from the Ministry  
14 of Justice, the Ministry for Women's Affairs, the Af-  
15 ghanistan Independent Human Rights Commission,  
16 and women-led nongovernmental organizations to  
17 ensure that current and future legislation and offi-  
18 cial policies protect and uphold the equal rights of  
19 women, including through national campaigns to  
20 lead public discourse on the importance of women's  
21 status and rights to the overall stability of Afghani-  
22 stan.

23 That Congress—

1           (1) *urges the Government of Afghanistan to re-*  
2 *vis the Shi'ite Personal Status Law, including its*  
3 *provisions on marital rape and women's freedom of*  
4 *movement, to ensure its consistency with internation-*  
5 *ally recognized rights of women, including those con-*  
6 *tained in treaties to which Afghanistan is a party;*

7           (2) *supports the decision by President Karzai to*  
8 *analyze the draft law and strongly urges him not to*  
9 *publish it until it has been revised to be consistent*  
10 *with internationally recognized rights of women;*

11           (3) *encourages the Secretary of State, the Special*  
12 *Representative to Afghanistan and Pakistan, the Am-*  
13 *bassador-at-Large for Global Women's Issues, and the*  
14 *United States Ambassador to Afghanistan to consider*  
15 *and address the status of women's rights and security*  
16 *in Afghanistan to ensure that these rights are not*  
17 *being eroded through unjust laws, policies, or institu-*  
18 *tions; and*

19           (4) *encourages the Government of Afghanistan to*  
20 *solicit information and advice from the Ministry of*  
21 *Justice, the Ministry of Women's Affairs, the Afghani-*  
22 *stan Independent Human Rights Commission, and*  
23 *women-led nongovernmental organizations to ensure*  
24 *that current and future legislation and official poli-*  
25 *cies protect and uphold the equal rights of women, in-*

- 1 *cluding through national campaigns to lead public*
- 2 *discourse on the importance of women's status and*
- 3 *rights to the overall stability of Afghanistan.*

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preamble