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Janet Stearns

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Rebuilding Afghanistan

Janet E. Stearns

The calls to service now are global and diverse, but so are we.¹

In a previous article in this *Journal*, I wrote that many of us practicing in the field of housing and community development law had adopted a "myopic" view of the world.² At that time, I urged colleagues to consider the problems of growth management facing urban centers around the globe. I concluded that "[n]ow is the time for us to join the global community in the struggle for more decent affordable housing and more sustainable urban development for all people."³

The tragic events of September 11 forced all Americans to confront the harsh reality of globalization. We can no longer board a plane, enter a school or office building, or go to a baseball game without reflecting on the impact of international affairs. When Mayor Rudy Giuliani is called upon to make a major policy address to the United Nations, we know that local and global interests have truly converged.

In the past few months, many lawyers individually and through the American Bar Association have been involved in addressing the personal needs of the victims and their families as well as the myriad legal issues involved with preventing further terrorist attacks and bringing justice to those who are guilty of prior terrorist acts.⁴ I write to encourage Forum members to direct their energy, knowledge, and creativity towards that area in which we are most expert: the challenges of rebuilding Afghanistan. I will discuss briefly some of the primary concerns that motivate us to this cause and then make recommendations for future involvement.

The Importance of the Rebuilding Effort

This commentary cannot do justice to the long and complex history of Afghanistan.⁵ I would like to focus on several aspects of the current situation that propel us to take immediate action.

Humanitarian Crisis

According to UN Secretary General Kofi Annan, between 6 million and 7.5 million people have fled Afghanistan to the neighboring countries of

Janet E. Stearns (jstearns@law.miami.edu) is the Director of International and Foreign Programs at the University of Miami School of Law. She serves as a Contributing Editor to the Journal of Affordable Housing and Community Development Law.

Pakistan and Iran.⁶ These people are in urgent need of food, shelter, and health care. As housing advocates, let us imagine the scope of finding decent emergency shelter for the entire population of the State of Massachusetts. One UNICEF official has estimated that 100,000 Afghan children might die this winter for lack of food and warm clothing.⁷ Although refugees have a range of legal rights,⁸ they have immediate needs for survival that must be met.

Challenge of Long-Term Reconstruction

According to a recent analysis:

[Afghanistan is] suffering from more than 20 years of conflict, a three-year drought, loss or degradation of most of its infrastructure, depletion of its human resource base, and erosion of social capital, [and] is one of the poorest and certainly the longest-suffering country among the members of the World Bank.⁹

The impact of the War on Terrorism has only exacerbated these circumstances. Therefore, a creative and well-funded plan to rebuild the country is imperative.

Strategic Interests

There can be no justification or excuse for the terrorist acts committed on September 11. However, one of the many factors that led to the terrorist actions relates to the economic and political conditions of Afghanistan. One author has noted that “[c]ountries in which corruption, high unemployment and underemployment, widespread poverty, malnutrition, and civil and human rights abuses are commonplace offer ready-made populations of disaffected people who are vulnerable for recruitment by guerrilla and terrorist groups.”¹⁰

An effective War on Terrorism must be waged on several fronts, one of which is addressing the long-term development needs of Afghanistan and the region. This challenge is now an essential part of our self-preservation in today’s world.

Goals and Priorities for Rebuilding

An international conference on “Preparing for Afghanistan’s Reconstruction” was held November 27–29, 2001, to start working on agendas for both the short and the long term. The conference was sponsored by the World Bank, the UN Development Programme (UNDP), and the Asian Development Bank. More than 300 people attended, many of whom were Afghan people or those affiliated with nongovernmental organizations (NGOs) working directly in Afghanistan. This was symbolic of a central message of the conference—the Afghan people were to be in the “driver’s seat” for the reconstruction effort rather than the international community.¹¹

Balancing the interests of the relief and recovery efforts was another critical issue. As noted by David Lockwood, UNDP deputy regional director for Asia and Pacific, “we have to avoid getting trapped into a relief

operation only. Emergency assistance is vital, but we need to work with the Afghans to build a sustainable future that will provide a range of benefits to all."¹²

The participants identified four critical aspects of the reconstruction process:

(1) Security, including political stability, law and order, and legal and financial security; a related priority is the program to remove land mines, which are a major challenge in Afghanistan;

(2) Agriculture, as a central part of a long-term strategy for sustainable development;

(3) Use of existing community-based programs and strengthening of the role of the government as regulator and adviser in the sectors of education, health, water, sanitation, and infrastructure; and

(4) Creation of conditions for demobilization and refugee return, including opportunity for viable livelihoods and productivity.¹³

Interesting is the delicate balance in each of these items between the role of the local NGO organizations and the international funding and service organizations such as the United Nations and World Bank. The tensions that we regularly encounter between competing federal and state mandates seem simple in comparison. The written statements from the conference would suggest great deference to indigenous groups, but the actual implementation of this agenda in the coming months may yield a very different result.

What Role for the Forum?

Members of the Forum on Affordable Housing and Community Development Law can play a critical role in the process of rebuilding Afghanistan. Key strategies could include:

(1) Technical assistance to governmental officials and NGOs. This technical assistance should cover a range of issues, such as providing temporary housing and relief to refugees; creating a new infrastructure to allow long-term development to begin; and establishing financial mechanisms to allow the market economy to function.

(2) Education on the differences and similarities in community-building, particularly with respect to other countries in postwar situations such as Afghanistan. This presents a tremendous opportunity to learn about transformation and community development. We must distinguish between successful postwar rebuilding strategies, such as those that occurred in Japan and Germany, and less successful ones.¹⁴

(3) Advocacy to American governmental and philanthropic decision makers on the need to support the rebuilding of Afghanistan. Senator Joseph Biden has called for a Marshall Plan for Afghanistan,¹⁵ and Representative Marcy Kaptur has submitted a resolution to Congress expressing "the urgency of providing food and agricultural development assistance to civilian men, women and children in Afghanistan, including Afghan refugees."¹⁶ However, essentially all federal appropriations enacted in the

aftermath of September 11 have been focused on antiterrorism, the war effort, and assistance to victims' families.¹⁷ The extent to which comparable resources are dedicated to assisting the people of Afghanistan and the rebuilding effort will depend on the voices of American advocates.

(4) Increased sensitivity to the ways in which our efforts to provide housing to low-income people in both cities and rural areas relates to the challenges faced in other corners of our world. The right to housing and other basic needs is a universal challenge.¹⁸ We must allocate our human capital and financial resources accordingly.

(5) Coordination with other entities of the American Bar Association, the International Bar Association, and other international organizations such as the United Nations and the World Bank that have expertise in addressing the concerns of rebuilding Afghanistan.

Since September 11, all Americans have gone through stages of shock, sadness, and anger. I find myself wanting to channel these emotions into some creative and specific steps that will help lead us to a better tomorrow. A first step is to take this opportunity to address the problems of housing and community development around the globe.

1. Statement of Tali Farhadian, Yale law student, as reported in a letter from Dean Anthony T. Kronman to alumni (Oct. 12, 2001) (on file with the author).

2. Janet E. Stearns, *Urban Growth: A Global Challenge*, 8 J. AFFORDABLE HOUS. & COMMUNITY DEV. L. 140 (1999).

3. *Id.* at 155.

4. See Terry Carter, *Into the Breach: ABA responds quickly to assist victims of terrorist attacks*, ABA J., Nov. 2001, at 63; see also <http://www.abanet.org>.

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

6. President Discusses Humanitarian Aid to Afghanistan with UN Secretary General, Nov. 28, 2001, available at <http://www.whitehouse.gov/news/releases/2001/11/2011128-7.html>.

7. As reported in Anthony Lewis, *The Inescapable World*, N.Y. TIMES, Oct. 20, 2001, at A21.

8. See generally Ryszard Cholewinski, *Economic and Social Rights of Refugees and Asylum Seekers in Europe*, 14 GEO. IMMIGR. L.J. 709 (2000).

9. World Bank, *Afghanistan Approach Paper* (Nov. 2001), available at <http://lnweb18.worldbank.org/sar/sa.nsf/91e66bec154b73d5852567e6007090ae/72342fd95bbf24f085256b0a007b3f86?OpenDocument> [hereinafter Conference Web Page].

10. Antonio Garrastazu & Jerry Haar, *International Terrorism: The Western Hemisphere Connection*, available at <http://www.miami.edu/nsc/pages/newsupdates/Update48.html>.

11. Co-chairs' Concluding Remarks, available at Conference Web Page, *supra* note 9.

12. Statement of David Lockwood, quoted in Release No. 2001/ SAS, Day 3—Wrap-up conference briefing, available at Conference Web Page, *supra* note 9.

13. Co-chairs' Concluding Remarks, *supra* note 11.
14. Statement of Dr. Paul Oquist, United Nations DP, Release No. 2001/SAS, Day 1 Conference Briefing, *available at* Conference Web Page, *supra* note 9.
15. Joseph Kahn, *The World: Rebuilding What War Has Destroyed*, N.Y. TIMES, Oct. 14, 2001, at A5.
16. H.R. Con. Res. 240, 107th Cong., 1st Sess. (2001).
17. Department of Defense Appropriations Act, H.R. 3338, 107th Cong. (2001), *available at* <http://thomas.loc.gov/cgi-bin/query/D?c107:1:/temp/~c107vxKF5t>; Department of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, Pub. L. No. 107-77, 107th Cong. (2001), *available at* <http://thomas.loc.gov/cgi-bin/query/z?c107:H.R.2500.ENR>. See generally Adam Clymer, *After a Veto Threat, Vote in House Goes Bush's Way*, N.Y. TIMES, Nov. 29, 2001, at A27.
18. See generally Janet E. Stearns, *Voluntary Bonds: The Impact of Habitat II on U.S. Housing Policy*, 16 ST. LOUIS U. PUB. L. REV. 419 (1997).