

Gender –based Violence in Afghanistan

2009

An Annual Report by Afghan Women's Network , Kabul

FOREWORD:

“A culture of impunity exists for sexual violence in the country. It is always seen as private matter of the family. State institutions refuse to intervene in some cases. In other cases, they promote the ownership of females in the family by men”.

Dr.Sima Samar , the Chairperson of the Afghanistan Independent Human Rights Commission at the Senate Foreign Relations Committee, February 23, 2010. USA

Afghanistan Women’s Network, a coordinating network of over 70 women organizations and groups, and more than 3000 individual members was established following the 1995 Beijing +5 conference, in Pakistan. Since then, the network has been actively involved in women empowerment, activism for women’s rights , addressing child protection at the local, national and international arenas. The member activists of the network, have been struggling hard for the realization of women’s rights as defined in national and international commitments of the Afghanistan government as well as within the Afghan society. Considering the ongoing the ongoing political and security dilemmas in Afghanistan, the network has been active in strengthening the role and voices of the Afghan women organizations and CSOs in regards to national issues from a women perspective. The network and its members believe that women empowerment can only be achieved if women of Afghanistan are integrated and visible in national and local agenda’s as well as international interventions both as recipients of development assistance but more importantly, as the agents of change.

The year 2009 was a challenging year for the women of Afghanistan, as it was for the whole nation and government. The struggles for women rights continued within challenging discriminatory articles of the Shia Personal Status Law, towards realization of those rights in the Elimination of Violence Against Women Laws, the efforts around women’s mobilization for elections under the 5 million Women Campaign, The Regional 1325 Conference with 6 other neighbors, initial work on the CEDAW Shadow report trainings in Afghanistan and India, the inter-governmental High Commission on Prevention of Sexual Abuse against Children and Women and many other advocacy initiatives by the network’s members.

This report aims to provide a general overview on the current conditions of women of Afghanistan from a gender perspective. The network believes that the conditions of women can only be empowered if her status and condition is improved within her relations with the other half, both at the domestic and public spheres. Therefore for the purpose of this report, Violence against Women and Gender-based Violence have been used interchangeably in this report, however they do not have the exact same meanings.

The report is created by Afghan Women’s Network using the work experiences of the women activists and leaders in Afghan society and also from the literature produced on the issue nationally and globally.

THE CONCEPTS:

Lets get the concepts right. Post 2001 Afghanistan has seen floods of concepts from the outside world, with very little clarity and comprehension. Gender Equality still remains un-translated in Afghanistan's local languages. Although the report uses the terms of Violence against Women (VAW) and Gender-Based Violence (GBV) to explain almost the same thing which is mainly the ongoing oppression on women and girls because of their sex and also because of their gender. It might be a complicated conceptual discussion so we establish a general definition for both concepts that are going to be discussed in various forms in this report:

United Nations Conventions on Elimination of Discrimination against Women claims that any harm inflicted to a woman because she is a woman is considered the basis for GBV. The General Recommendation 19 of the Committee goes further that such a harm could be categorized as inflicting physical, sexual, psychological harm to a woman, even the threats of committing such suffering, and dispossession of freedoms¹.

VAW and GBV isnt only a suffering a women and girls but deprives them of their basic human rights which are fundamental for the existence of every individual. Universal Declaration of Human Rights (1948), article 3 says: 'Everyone has the right to life, liberty and security of person', article 5, 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.' Afghanistan's current Consitutions obligates the Afghan government to adhere to its international responsibilities and respects the United Nations international conventions, as claimed by article 7 of the Constitution. The same constitution has another guarantee of women's equal rights before the law, article 22 serves the basis of gender equality in Afghanistan.

BACKGROUND:

Conflict exacerbates violence. Every report and research on the conditions of the Afghan women yields so much attention to combat the ongoing and growing violence against women within domestic and public places. However, such analysis ignores the impact of an ongoing war, the legacy of the historical conflict and the outcomes of fragile governance.

More importantly, our experiences on the ground, especially in Afghanistan, have proved that psychological violence creates a foundation of terror and fear in women and prevent them from resisting other kinds of violence including sexual and physical suffering.

' My husband doesn't always beat me – but his attitude and the bad names he calls me is worse than if he stabs me with a sword. With this sense of fear, my whole body shakes, especially my hands and whatever is in my hand, fells down and breaks down. Then he gets so angry and beats me that why did I break glasses and household utensils. When I want to tell him that I didn't

¹ GBV book by Oxfam: Edited by Geraldine Terry with Joanna Hoare, 2007.

break things intentionally, my tongue gets paralyzed and I cant speak a word- its all the fear, I think its better to die once than dying everyday'. Torpekai, 43, Kabul²

In Afghanistan- the GBV and VAW debates evolve around domestic and physical violence on women and UNIFEM Afghanistan³ together with AIHRC name these acts as per the ratio of their occurrence:

- Most VAW cases are physical violence
 - Severe beating
 - Forced marriage
 - Self immolation
 - Murder
 -
- Psychological violence
 - Forced marriage
- Sexual violence
 - Rape (community/domestic)
- Combination of three (physical, psychological and sexual violence) at once
- Exchange of girls
- Kidnapping
- Taking away women's property
- Preventing from social activities (education included)
- Trafficking

The CURRENT SCENARIO:

Facts matter. On 01 December 2009, opening the 25-day Elimination of Violence against Women Campaign in Afghanistan, Norah Niland, The UNAMA's Human Rights Chief cautioned about the deteriorating situation for the women of Afghanistan. She said 'The space for women in public life is shrinking' during the inauguration of the campaign. ⁴According to a nationwide research in 2008, Global Rights Afghanistan concluded that 87.2 Percent of Afghan women and girls are faced with at least one form of sexual, physical, economical, psychological abuse in Afghanistan. Today in Afghanistan, every 29 minute one woman dies from pregnancy related complications, 80 % of which can be treated with basic health services. Reported cases of violence against women have increased 100 % between 2008 and 2009 ranging from domestic abuse to honour killing to rape to self immolation and exchange of women to solve communal disputes. Up to 80 % of marriages are forced marriages on girls and 57 Percent of girls are forced into marriages without their consent. Afghanistan's Supreme Court does not have a women member in its Executive Council, with only 4 Percent of women as judges in different courts around the country. Women's access to education is dire; one girl per two boys in primary,

² Torpekai, called AWN on the VAW hotline number in August 2009. She has been directed towards psychological counseling but she didn't come anymore.

³ UNIFEM Afghanistan Fact Sheet 2010

⁴ UNIFEM 01 December 2009, Media Centre , Global Rights 2008

one girl up to four boys in secondary and eventually only 1 percent of girls make it to the higher education.⁵

However, another perspective will indicate that the past 8 years have been the 'golden years' for Afghan women, as described by a prominent Member of the Parliament, Shukria Barakzai. As she says, Afghanistan has the region's progressive women's quota (reserved seats) in both houses of the parliament, approximately 27 Percent, for the first time in the history⁶; the country has a Ministry of Women's Affairs as part of the Bonn agreement⁷ that marked the new era for the women of the country. 6 million children going to school, out of which 35 Percent are girls⁸. There is a flourishing women's movement advocating for women's political and social inclusion, the recent approval of the Elimination of Violence against Women Law⁹ as a recent example of struggles against violence on women and girls.

Sexual abuse is another form of violence experienced by women and girls in Afghanistan. In 2008, Global Rights nationwide research indicated that 17 Percent of the women are sexually abused by their husbands, in other words marital rape¹⁰. However, no such term can be found in the national criminal or civil legislation in Afghanistan. Adding insult to injury, even rape in its general terms is not defined in the legislative context of Afghanistan. The national Penal Code equates rape with adultery¹¹ and even children who have been victims of rape were subjected to prosecution and were sent to jail or the Children's Reform Centers, as prisoners. Such a crisis is also telling of the lack of access to justice means for women and girls in Afghanistan. Civil and family disputes are considered private and are not reported to the formal courts, however the traditional dispute resolution mechanisms or the Jirga's decide for such cases. In most instances, women are punished, killed and given in exchange of crime (called as Bad) as a restorative justice mechanism¹².

DEVELOPMENTS IN 2009

The year 2009 was a challenging year for Afghanistan generally with the two major laws being challenged and lobbied for women rights protection, the presidential elections and women's participation and ongoing activism of Afghan and international activism for the women's rights.

⁵ UNIFEM Fact Sheet 2008 and Ministry of Higher Education Tv report 2008

⁶ <http://www.youtube.com/watch?v=t12B4dHk98o> : Shukria Barakzai's interview with FROST

⁷ Bonn Agreement 2001 is the start of the interim government in Afghanistan after the formal fall of the Taliban by US and UK bombings in late 2001.

<http://www.afhangovernment.com/AfghanAgreementBonn.htm>

⁸ UNICEF Afghanistan : http://www.unicef.org/infobycountry/afghanistan_background.html

⁹ My notes from the Advocacy meetings for draft of the legislation by Ministry of Justice and advocacy meetings with women organizations, international community.

<http://www.reliefweb.int/rw/RWB.NSF/db900SID/EGUA-7YATYC?OpenDocument>

¹⁰ Global Rights 2008

¹¹ Adultery is sexual intercourse between a married woman and another married man. Its called Zinna in Islamic Law and upon testimony of 4 authentic witnesses (men) the adulterer and adulteress are subject to lashes and stoning based on the Sharia law and the judgement of the Qaazi (religious judge).

¹² www.institute-for-afghan-studies.org/.../Ali-Wardak/Law%20and%20Social%20Change%204.doc

Building a Post-War Justice System in Afghanistan Ali Wardak University of Glamorgan, UK

The Shia Personal Status Law sparked national and international attention particularly after the law was called a “Rape Law” in a Guardian article in March 2009. However, the women organizations and activists had been lobbying for the amendments of the discriminatory articles for the past two years, since it was first discussed in the parliament’s commission. The law regulates the public and private affairs of Shia women and restricts basic human freedoms from marriage to child custody to work outside and even the law tried to regulate the sexual relationships of married couples.

AWN, Afghan women activists, and other human rights supporters in the country launched a coordinated and historical campaign to address the discriminatory articles of the Shia Personal Status Law. Historical in a sense, that never before in Islamic Republic of Afghanistan, such an Islamic law was challenged. Although the activists were claiming that their campaign is against the articles not the law itself, and also that such discrimination was not allowed by religion, politicians who were the drafters of the law used the resistance as against religion and a lot of women activists were under severe criticism of challenging religion. While in reality, they were challenging violence against women- and violence against women is not accepted in religion as well.

In general terms the law’s first version was very discriminatory on women especially in issues of marriage, divorce, inheritance, and other marital rights and duties. Women and girls are only the legal minors as their relationships with a man define their existence, being a daughter, a wife or a mother. The law didn’t only restricted women’s life in details but once again reminded us that women are not considered the equal individuals, when it comes to their relationships and rights with men in the family or the society.

Some of the articles in the first version of the law that was approved by parliament and President were:

- Vagueness on clarifying duties; many claimed that this article allows marital rape as well: a woman has to fulfill “her sharia and legal conjugal obligations, otherwise, she shall not be entitled to maintenance” (Article. 165). “Maintenance shall cover all of the common necessities for life, such as food, clothes, shelter, medical treatment, and so on.” (Article. 161)
- If a mother got the custody of the child- she wouldn’t be allowed to marry again. If she wanted to marry, she should inform the court and the court will appoint someone else as the guardian of the child.
- The law promoted polygamy, one of the articles reads as “man who can financially support up to four wives”.
- A woman couldn’t nullify her marriage contract due to disability, blindness or epidemic diseases of the man, while he can do so. (Article.129)
- Another article restricted women’s property right as “She is entitles to inheritance from moveable property of her dead husband, but he is entitled to moveable and immovable property of his dead wives.” (Article.211)
- The law gave the right of divorce so easily for the man saying ‘She can terminate a marriage contract only due to harm or suffering cases, but the husband can divorce her, anytime he want’. (Articles. 140, 141)

- Another article of the law said that a woman could only go out of home and work if this was agreed in her marriage contract. This is a direct prevention of women outgoing work because almost all marriages in Afghanistan are done in customary ways and a very small percentage is registered. Most of the women don't have a marriage contract and if some have, they can't even read it.

Afghanistan Civil Society and Human Rights Network had a press statement on the law and it reads as :

- Adopting and signing this legislation is against the values of the Holy Islam as well as against the international principles of human rights. The values anchored there deeply respect the important role of women and mothers in society.
- Adopting and signing this document is to impair the weak body of the rule of law in Afghanistan, because the rule of law is based on social and public reality, the priority of human values, the common will, sustainable reforms and respect for the constitution.
- Adopting and signing this document is against the international commitments the Afghan state has assumed with regard to international human rights including the International Covenant on Civil and Political Rights and the Convention on the Elimination of all Forms of Discrimination Against Women. The adoption of this new law took place after the Afghan government had committed itself to the principles of human rights in the Universal Periodic Review report submitted to the UN Human Rights Council.
- Adopting this legislation is a blow against the role of the parliament in Afghanistan because the adoption of a law according to an ideological and religious community will put into question the capacity and the efficiency of the Afghan Parliament.
- The adoption and signature of this document will badly damage the role of women in the field of economic, social, political and cultural spheres in society. The restriction of the role of women will negatively influence the national economy of Afghanistan.
- The adoption and implementation of this legalisation will affect negatively the support to Afghanistan by the international community. A decrease of this support will harm the process of reconstruction and rehabilitation of Afghanistan and the Afghan people will lose the momentum created through the strong support of the international community to Afghanistan.

The national and international efforts made the Afghan president and government to seek amendments to the law and after a long process of consultation, the law was amended for the better. This was an achievement for the realization of women's movement in the country, even though the amendments weren't completely satisfactory for a lot of women activists. A group of activists and even women from homes organized and participated in demonstrations¹³, raising their concerns around

¹³ <http://www.timesonline.co.uk/tol/news/world/asia/article6098614.ece>

the discrimination that was being promulgated through this law. From a political perspective, the situation might look very complicated, since many political factions had a lot of stake of power in sustaining the law as it was but from a women's rights angle, the act of amendment was itself a step towards national struggle on violence against women.



(Musadeq Sadeq/AP) 16 April 2009

The amended version deleted more than 20 discriminatory articles, and changed around 60 articles that had direct language degrading women's position and condition. However, activists still opposed the amendments but the struggle continues- the activists and women's groups can file complaint and concern to the upcoming parliament that will be elected in mid 2010.

On 9th July 2009, the AWN activists sent the following letter to President's Office:

We appreciate your earlier considerations of the review of the Shiite Personal Status Law and your inclusion of the civil society in the reform process. We also appreciate your promises that you will fight on our behalf to bring substantial improvements to the law.

After yesterday's (8th July) press conference by the Ministry of Justice we, the representatives of Afghan civil society, express our deep concerns over the ambiguity of information released related to the content of the draft amendments of the Shiite Personal Status Law.

Our members of the civil society have been continuously working in close contact with Ministry of Justice through repeatedly presenting our recommended amendments to you in order to improve women's human rights within the proposed law. However, most of our key recommendations, including the discrimination in the polygamy provision, women's right to work, sexual obedience, and many others have not been considered in the

way it was proposed by us, except with slight changes in wordings of the law, rather than changes in content.

Therefore, we urge your Excellencies to ensure the following recommendations:

1. The civil society members should have access to clear information based on the Constitution of Afghanistan, before the law is officially passed.
2. The civil society recommendations should be seriously considered before the law is being endorsed by the President.

Civil Society Representatives, the organizers of 5 million women voters's campaign.

Elimination of Violence against Women Law (EVAW) that had been developed, discussed and debated in the past 4 years was finally approved by the Council of Cabinet and sent to the parliament for approval. However, it seems that the law might be discussed in the next round of the parliament considering the shortage of time and other important issues to parliament, especially the Electoral Law for the parliamentarians.

The Law addresses one of the most important issues central to women's human rights, which is addressing women as individual human beings. In Afghanistan, women's identities are crafted in terms of her relationship with men in the family and she carries that identity even outside home, which leads to increased oppression and violence on women in social spaces as well.

Another attempt of the law is to criminalize rape and sexual violence on women, which is at the heart of the GBV struggles. Under the Afghanistan Criminal/Penal Code, rape is characterized as 'zina' adultery and punishes the victim and the perpetrators as partners in crime. We have young girls in jails and correction centers that were prosecuted after they were raped, at times the rapists were never found but the victim serves in jail for adultery. EVAW is a major achievement for women's rights activists and groups by defining rape in its comprehensive manner and makes it a Crime.

Article 4:

Violence is crime and nobody has the right to commit it at the place of residence, government or non-government offices, institutions, public places, means of transport or other areas. If committed, the person shall be punished according to the provisions of this law.

The law creates a foundation of respect and dignity for women's human rights and its second article (Article 2), it says: This law has the following objectives:

1. Safeguarding the religious and legal rights and protecting the human dignity of women.
2. Protecting well being of family and fighting against customs, traditions and practices that cause violence against women contrary to the provisions of religion of Islam.
3. Protecting the victim of violence (affected woman) or exposed to violence.
4. Preventing violence against women.

5. Ensuring public awareness and education on violence against women.
6. Prosecuting perpetrators of violence against women.

Currently, the AWN and women's groups are lobbying with various individual MPs and also with the Commission of Women Affairs in the Lower House to pursue their approval of the law. However, the law is already promulgated by Ministry of Justice and came into effect with the signature of President Karzai, right before the presidential elections. We are being told that Attorney General's office established a commission to develop the implementation procedures of EAW law for Attorney general and courts.

Commission on Prevention of Sexual Abuse on Children and Women was established in 2009 under the direct supervision of the First Vice President. The Commission consisted members ministers and deputy ministers, from Supreme Court, Attorney general Office, the Family and Jauvenile Court, AIHRC and members of the Afghan Women's Network. The Commission discussed the shortcomings in the Penal code in terms of not defining rape and sexual abuse as well as reviewed the current situation of victims of rapes and sexual abuse in courts and jails around Afghanistan. AWN was tasked of compiling a lawyer's supplementary note on the penal code and that was presented to the MPs as well. The changes into the Penal Code should be lobbied as the new parliament comes into effect in 2010 and onwards.

Although commission mainly created a political stance on the issue but also looked into practical situations of environments and policies that enabled sexual abuse of children and women; the Commission members were able to investigate one of the complains by the girls of a governmental public health institute and MPs took the issue to ministry of Public health for the prosecution of the perpetrator that was a lecturer of the institute. AWN contributed to the investigations of the incident but for the security purposes of the girls in the institute, didn't publish the outcomes of the investigation.

The Commission stopped working since the First VP was changed after the Presidential Elections but the AWN and MPs are trying to re-instate the Commission as it adds more political will on the part of the Afghan government on the issue and also is a practical mean for connecting women activists to high level government officials and is a platform for informing policy decisions that impact women's lives.

Moving Ahead:

Every report and analysis on the women of Afghanistan starts and ends of tragic facts and figures about the increased violence against women and how they are being exploited, harassed, and discriminated socially and nationally. However, this report didn't address all those issues that are easily available in a click of mouse about Afghanistan but detailed some of the practical solutions and mechanisms that was pursued by the women activists, Afghan Women's Network.

Afghanistan is going through a severe insurgency at times called at War and this conflict has direct impact on the increased violence against women so any efforts to bring stability and governance to Afghanistan would eventually and directly impact

women's conditions as well. Access to justice and rule of law the two desperate needs for women nationally; efforts to ensure implementation of the EVAW Law should be prioritized, however when we travel more towards rural areas the picture of demands changes. Women's lives are not different from the rest of the family or community, if the community has lesser bread to eat, the women don't get anything to eat- if there are no female doctors, it's the women who deliver in unsafe environments and every 30 minutes, a woman dies due to delivery and pregnancy complications.

While national level policies and laws are important for legal protection of women and increasing their political participation; focus should be also on providing income opportunities for women and men in rural and urban settings. Our experiences reveal that at homes and societies with more poverty, there is more violence and more gender based deprivation and discrimination; as girls are discriminated against since resources are scarce and preferred for boys and men.

'With an empty stomach, any claim of rights feels like a thorn in my throat. If our husbands are jobless, children illiterate, no bread at home, no doctor to go for, what would I do with this voting card?' Shahperai, school teacher, Charekar.