

Afghan Women's Network

REPORT OF THE NON-GOVERMENTAL ORGANIZATIONS

REGARDING

**IMPLEMENTATION OF THE CONVENTION ON
THE ELEMINATION OF ALL FORMS OF DISCRIMINATION AGAISNT WOMEN
(CEDAW) IN AFGHANISTAN**

Kabul 2007

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PREFACE

Afghanistan signed and ratified the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) on March 5, 2003. The government of Afghanistan was supposed to submit its report to the CEDAW committee in July 2004 but the government of Afghanistan was not able to report back on the fixed date and the report has been postponed. This delay gave women groups and civil society some time to perceive the government of Afghanistan's efforts for the implementation of the CEDAW convention in Afghanistan.

Afghan Women's Network with 3000 individual members and 65 women NGO members, as a formal network, created a core group to work on CEDAW Shadow report and submit it to the CEDAW committee on behalf of Afghan Women's groups and civil society.

The phase before drafting the shadow report contained several steps, as the women groups and civil society had to draft the CEDAW Shadow report for the first time after the ratification of CEDAW convention by the government of Afghanistan, which included; creation of NGOs core group, conducting workshops and awareness trainings on CEDAW and role of civil society, identification of key issues related to gender, and data collection, etc.

As Ministry of Women Affairs is drafting a law on eradication of violence against women, therefore, AWN shared some of their comments and proposals with the women MPs related to this issue. AWN proposed the women MPs to consider participation of civil society and women groups in the drafting of law for eradication of violence against women, as civil society members are the real representatives of people; employment of more women as police and provision of trainings to police personnel on confrontations related to violence; increase the number of women personnel in the courts on the provincial level and provide support to the professional capacity building of women defense lawyers; support and develop the capacities of Shelters for women; consider the international conventions specially CEDAW convention while making or modifying the laws in the country.

There are many issues related to discrimination against women in Afghanistan, but this report does not attempt to cover all the problems of discrimination against women in Afghanistan. This shadow report includes only those issues which are considered the most prominent problem which are identified by the women groups through some workshops and trainings on CEDAW. For improving the situation of women, government of Afghanistan has to take serious actions to perfect the legislative mechanism and strengthen the legal system in the country and carefully monitor the implementation of laws and sanctions at all levels and in all areas.

Afghan Women's Network would like to thank ADASH and Afghan Women's Leader Connect for financially supporting the training on CEDAW for Afghan women NGOs and the collection of information and data, the making and publishing of this report. Without their support this report could have not been possible. We would also like to thank our women NGO colleagues who really worked hard to collect the information and data and contributed to this report.

Glossary

AWN	Afghan Women's Network
CEDAW	Convention for Elimination of all forms of Discrimination against Women
NGO	Non-governmental Organization
MP	Member of parliament
ADASH	
Loya Jirga	General Assembly- a traditional Afghan decision making body
Zina	In some parts of Afghanistan, adultery, "running away from home" and unlawful sexual activity are referred to as <i>zina</i> crime.
Sharia	Islamic law
Shura	traditional Afghan decision making body
Baad	Crime ranging from saying an improper word to murder or violating someone's namus.
AIHRC	Afghanistan Independent Human Rights Commission
Fetwa	ordinance
Fiqah	Islamic Jurisprudence
Mullah	Religious scholar

1. Introduction

Throughout the 20th century, the debate on women's rights and their role in Afghan society has been closely interlinked with the national destiny. Women not only carry the burden of symbolizing the honor of the family, but often are seen as embodying the national honor as well. Gender has thus been one of the most politicized issues in Afghanistan over the past 100 years, and attempts at reform have been denounced opponents as un-Islamic and a challenge to sanctity of the faith and family. During the years of turmoil, concern about women's security led to the imposition of ever-stricter interpretation of socially acceptable female behavior, supported by the most conservative reading of the holy scriptures. Despite the rhetoric, women suffered from very serious human rights violations throughout the conflict. While it justified itself on the bases of protecting women, the Taliban retrogressive views on gender resulted in the opposite, as women were not allowed to work or receive even basic education, and restrictions on their mobility obstructed their access to medical care.

The four years since the fall of Taliban have been considerable change in the legal and institutional framework. Women have played a role in the constitutional Loya Jirga. The Constitution enshrines the principle of equal rights for men and women, obliges Afghanistan to respect international human rights and reserves a quota in the legislature to women. Afghanistan has ratified the Convention of the Elimination of All forms of Discrimination against Women without reservations. A Ministry of Women Affairs was created. Although insufficient, there are a few shelters in the country that offer refuge for women and girls who dare to escape on abusive environment.

Despite the significant developments, the situation of women remains dramatic and severe violence against them all pervasive. Four factors underlie women's vulnerability and the perpetuation of violence today; the traditional patriarchal gender order; the erosion of protective social mechanisms; the lack of the rule of law; and poverty and insecurity in the country. Violence against women is tolerated and perpetrations enjoy impunity because the law enforcement and justice system are generally dysfunctional and moreover biased against women. From the legal and institutional points of view, this failure to protect is grounded in the multiplicity of normative system and the predominance of the so called informal justice over the formal justice machinery.

During the workshops and meetings the women identified four main issues which are obstacles for women: education, violence against women, health and security .Again they specified Violence against women especial domestic violence such as forced and child marriages, honor-killing (Baad) and self-emollition for the report to how elements these violence.

Some of the facts given below about the situation of women in Afghanistan largely causes domestic violence against women as well as violates the right of women in general.

1.2 Context

Political Context

In 2001, a window of opportunity had opened for the international community to turn Afghanistan around and enable foundations to be laid for a lasting peace in this country which had endured nearly a quarter century of violent conflict. In particular, women's rights were at the fore of discussion around a new Afghanistan, as the Bonn Agreement was coming together in December 2001. Since then 102 women delegates participated in the Constitutional Loya Jirga of December 2003 where a new constitution was debated over and approved, granting Afghan women equality with men (Article 22)¹. The first ever direct presidential election was held in 2004. In 2005, Afghanistan's new parliament was formed with a 25% quota exceeded by women member of parliaments. Using the provisions of the Bonn Agreement as benchmarks, it would appear that progress has steadily been made and women are occupying central role in the country's political life. In reality; however, 'paper rights' have not equaled rights in practice.

Economic Context

Women play an extremely important role in all dimensions of agricultural production. In certain regions, women's time input equals men's, but in other regions traditions restrict their work to the household where they are involved in crop processing and also are in charge of most of the household-based activities. Women play an increasingly important role in opium production, livestock production and processing of dairy products. Even when women's domestic production, the main income of the household, they rarely control the marketing of these products, which is most often managed by male relatives or middlemen.

Women's involvement in the formal sector has mainly been urban-based, as civil servants in the health and education sectors, where they had a sizeable presence before the conflict. This was severely disrupted by the strong restrictions on female employment during the Taliban period. Currently, close to one-third of all teachers are female, while an estimated 40% of all basic health facilities lack female staff, a clear constraint to delivering basic services (health, in particular) to women.

Women often lack ownership, control, and access to productive assets such as land, equipment and materials, and their legal right to inheritance is usually bypassed. The lack of working capital reduces opportunities to start activities that require an initial investment.

Women in Education

The adult literacy rate in Afghanistan is estimated as 36%, while for adult women it is estimated as being 21%² (2001).

The social unrest and conflict in Afghanistan has had a long term effect on the education system. Physical infrastructure has been damaged, household displaced and teachers

¹ Article 22, Chapter II, Constitution of Afghanistan 2004

² World Bank, 2004. Adult literacy rate relates to the age group 15 and above

abandoned their profession. The present literacy rate in Afghanistan stands at 36% and is unevenly distributed among men and women. Only 40 % of eligible girls attend primary school where the corresponding ratio for boys is 67%. The situation demands a strategy that creates access not only to the eligible population for primary education but also takes the backlog into consideration and place girls in the centre of strategy.

In Afghanistan, the number of girls going to school is less than half the number of school boys, and even in some regions like Zabul, this ratio is 3% / 97%; though the number of male and female populations aging between 6-18 year old don't have a considerable difference.

Another problem in terms of education in Afghanistan is the number of female schools including elementary and high schools that has decreased considerably. In Kandahar, for example, there are 255 elementary schools, whilst 20 high schools exist in the city. In central region of the country there are 256 elementary schools and only 27 high schools, which show inability or unwillingness of girls to study.

One other considerable challenge in education area is the inappropriate distribution of schools across the country and thus violation of children access to education, especially female children right, especially female children right.

According to press releases of United Nation in year 2006, 300 schools particularly in southern region were set in fire and a number of teachers were killed. This clearly indicates insecurity level in the country which has had intense impact on children admission to school, especially girls.

Many girls fail to go to schools because of household work, while most of these girls are not regarded as working children. As such, the number of girl workers who don't go to school is more than boy workers.

The norm of early marriage creates both social and legal impediments to girls' education. Most of the girls drop out due to increased domestic responsibilities after marriage.

Women and Health

Afghanistan health indicators are among the worst in the world particularly in the areas of child health and women's reproductive health with 1,600 per 100,000 live births. Life expectancy at birth in Afghanistan is 44.5 years which is about the lowest in the world.

The range of factors that contributed to poor health condition of women are the lack of access to basic health facilities - only 40% of the population is in the coverage areas of basic health facilities, and only 9% of rural households surveyed in 2003 reported a health facility in their village³; lack of female staff at the existing facilities particularly in rural areas; marked rural-urban disparities in availability of health facilities; and lack of infrastructure (roads and transport) and security that reduce mobility and access.

³ World Bank, 2004, p 105

The alarming health conditions of Afghan women do not reflect deliberate gender discrimination in households, but rather the result of poverty and the general lack of health facilities, which together with a number of social factors such as improper tradition, non-existence or lack of health centers, poor economy, lack of self-sufficiency, lack of women participation in their own affairs, lack of attention to their health issues by the families, domestic violation against women which emanates from culture of patriarchy as well as illiteracy among women are the factors that affect women particularly hard. These factors also include low marriage age and very high fertility among Afghan women – in other words, too many and too frequent child-births, without access to proper health care. To this should be added the widespread reluctance to let women seek medical assistance from male health workers, lack of awareness of maternal health care among men and women, and insufficient awareness of health, hygiene and nutrition.

Violence against Women

In addition to women's problems in various spheres of health and education, other serious and complex problems such as forced marriages, family violence, sexual harassments and prevention of women from social and political activities affect their life.

Domestic violations against women are another issue. 50 % of women, in addition to suffering from other types of violence have been beaten. Violence against women by husband, male family members and in some occasions, by female family members is common. Domestic violation against women not only has serious physical and mental effects on women but it also causes other grave problems such as self emulation, sue aside , escape from the family, forced prostitution and addiction to narcotic.

Marital rape, sexual assault and other forms of violence against women within the household are on the one hand a taboo, but on the other accepted as a norm. Therefore, such incidents come to light only when the victim seeks help. Rape of women and girls by armed groups continues to occur.

Escape from home is another issue emanated from domestic violence and family restrictions against women.

1.3 Main recommendations

The government of Afghanistan should work more seriously in the area of education than in the past, explore root causes of the problems, try to raise public awareness regarding significance of girls education and assistance to poor families in order to send their children to schools, deal with security challenges and remove obstacles of girls education, whether in terms of their enrolment to school of their ability to go to schools and to continue their education in higher levels.

The state has to abide by its commitments against the national and international laws to increase allocation of the budget for health services quantitatively and qualitatively and take

positive steps for correction of wrong beliefs in the society; otherwise its bad consequences will affect not only the women, but the society at large.

Reporting Issue

Violence against Women

Relevant CEDAW articles: Article No. 6, article No. 16 (a) (b)

2.1 Context

Violence against women is a deeply rooted and wide spread social problem in Afghanistan for centuries. Women and girls in Afghanistan are threatened with violence in every aspect of their lives, both in public and private, in the community and the family. Violence against women in the family including physical abuse and underage marriage is widely reported. Forced and underage marriage also occurs when women and girls are given in marriage as mean of dispute resolution by informal justice mechanisms. Rape pf women and girls by armed groups continue to occur. The prevalence of violence against women and girls constitutes a grave threat to their right to physical and mental integrity. A research indicates there is a threat to the right to life of women and girls from violence in the family; women and girls have been killed and driven to suicide while the stat has failed to take action. Significant numbers of underage marriages, incidents of physical abuse in the family and other forms of violence were reported. The vast majority had not been reported to the criminal justice system and almost none had been subject to investigation or prosecution. Women largely unsupported when suffering violence and had very few means to leave violent situations. The authorities seldom carry out investigations into complaints of violent attacks, rape, murders or suicides of women. Women who report rape face being locked up and accused of having committed crimes of *zina*. Such impunity perpetuates violence since perpetrators are free to consider their actions as normal and acceptable.

Domestic violence

In Afghanistan, violence against women by family members is widespread and can range from deprivation of education to economic opportunities, through verbal and psychological violence, beatings, sexual violence and killings. Many acts of violence involve traditional practices including the betrothal of young girls in infancy, early marriage and crimes of "honor". The issue of domestic violence is sensitive. Addressing domestic violence is difficult because it is considered the family's private affair.

There is luck of data on violence against women, however, anecdotal evidence as well as documentation of cases in hospitals suggest that is widespread and that girls and women are at risk in the home, in intimated relations, in an encounter with strangers, within the context

of hegemonic interpretations of tradition and *sharia* and discriminatory laws and administration of justice. This cultural bias keeps strong voice from protesting domestic violence. Women have little knowledge about their right in the family and have been brought up to accept domestic violence as their fate.

There are different contributing factors that encourage domestic violence in Afghan society.

Polygamy is a historical and customary phenomenon that contributes to a higher level of violence within the family. There are different reasons that men go for more than one wife in Afghan society. Having no children or having no son is one of the reasons that men decide for second or third marriage. Article 86 of Afghan civil law has also declared that man having not child, can marry another woman. According to a research done by Women and children legal research foundation (WCLRF) 11.01% men (among the ones interviewed) married the second or third wife because they had no children while only 1% men referred to physician before getting another wife. There are other customs and traditions such as child marriage, marrying a widow, baad, exchange of girls and force marriages most of the time persuade polygamy and women are always the victim of violence in such cases.

Exchange of girls is a common tradition in Afghanistan where a brother and a sister from one family marries the brother and sister from the other family, most of the time to avoid paying Bride price. The relationship between one couple depends on the relationship between the other couple. A very common example is; if the husband beats his wife (the sister of the other guy) then the brother of the woman also beats his wife (the sister of the first man)

Illiteracy and cultural difference is a cause of violence in the families. In such families where man is literate and woman is not, the woman is most of the time victim of verbal and psychological violence by her husband because she is not capable enough to have mental understanding with her husband, therefore, she is insulted by her husband. In cases where woman is literate and man is not, woman is usually victim of physical violence. Woman is beaten because she has to adopt the culture and customs of her husband which she may not be willing to. It must be mentioned that violence in such families is less than the families where both husband and wife are illiterate⁴.

Divorce is traditionally viewed as un-Islamic in Afghan society and contradictory to Afghan culture and customs. As such, tradition and custom leave women no choice but to stay in abusive marriage, support from other family members including women is rare. Women and relatives who support victims have been killed for applying for a divorce.

Forced marriage

Article 16 CEDAW provides, among other things:

“1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

⁴ AIHRC and DED ”Causes of violence against women in the families”.

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent.”

It is estimated that between 60-80% of all marriages in Afghanistan are forced marriages⁵. The term forced marriages covers a wide array of practices from giving a female in marriage as repayment for a debt or to clear up a feud to a family determining who a daughter should marry without her consent.

Alleviation of debt, threats from armed groups and individuals, in areas where the families have little recourse to and protection from the law are the major factors for the rise in forced marriages. Poorer families are accepting proposals of marriage for their young daughters in a bid to stave or settle debts. Although early marriages are to be historically common, especially amongst poorer families and outside the main urban areas, forced and child marriages have become even more of common phenomena. Conditions have been exacerbated by a mixture of extreme poverty, aggravated by the war years, confiscation of land by powerful local patrons and the need to avoid the possible abduction by armed groups of young girls. In addition, prevailing lawlessness and impunity of armed individuals has created an environment in which families believe early marriage to be the only route to a safe and secure future for their daughters.

Economic reasons play a significant role in forced marriages. Due to the common practice of bride money, the girls become an asset exchangeable for money or goods. Families see committing a young daughter or sister to a family that is able to pay a high price for the bride as a viable solution to their poverty and indebtedness.

Another situation of vulnerability occurs to women if their husbands die. Since a widow is perceived as the property of her in-laws, she can be forced to marry a brother in law, who may already have a wife, and any property not to an outsider in degrading manner left by her husband is seized by his family. In the absence of a male in the family the widow may be given to an outsider in degrading manner. Given the early marriage and the low life expectancy, women can encounter widowhood in their 20s and 30s.

Baad

Baad is practiced to resolve debt or disputes between households, communities or even tribes. *Baad* is the common practice among the Pashtun tribes where a woman is ceded by one family to another to settle a dispute upon the orders of a local council (*Shura*), thus preventing a potential blood feud between them. The issue of *Baad* is interrelated with murdering, adultery, trafficking, escaping from home and etc. While *Baad* may serve to settle a dispute between two families, it does so at expense of women, who are reduced to property to be exchanged and disposed of as desired. *Baad* has much similarity with the story of the “Bride of Nile” where ancient Egyptians annually threw a young girl into the river Nile in order to stop it from overflowing. It has taken another form in Afghanistan. For instance, when a father or a brother commits a murder, the tribal *jirga* is summoned to peacefully settle

⁵ Human Rights Watch “Lessons in Terror: Attack on Education in Afghanistan”, July 2006

the inter-family disputes by deciding that a girl from perpetrator family must marry somebody from the victim family. This way tribal jirga tries to stop conflict from overflowing and put an end to the crisis⁶. This practice has taken a grim form and is compulsorily applied on defenceless girls with no attention to their age groups and their desires. For this reason, such a customary action may end in deplorable ramifications and the misery and wretchedness of the victims. This has mainly led to the death of girls and women. However this practice has been criminalised in the Afghan Penal Code⁷, it is strongly implemented in our society where traditional law is fiercely dominant over the country's official legislation.

Baad has converted into a different form of forced marriage. Various factors have provided the ground for victimising women and girls under Baad practice. One of the heinous actions with harmful social consequences, which has been considered as a crime is killing. In a society where security and judicial organs are not sufficiently able to arrest and prosecute the perpetrators of such crime, it will not only affect the killer and the deceased, but the relatives of both sides too as a result of taking revenge. A research conducted by women and children legal research foundation on cases of Baad indicates that 38% of such cases are resulted from killings committed by a family member of the Bad victim⁸.

Escape from home is one of the actions or incidents that may not be considered as a crime in other countries. Likewise this action is not considered as a crime in the Penal Code of our country, but according to Fetwa (ordinance) of the Fiqah (Islamic Jurisprudence) if a girl runs away from home she will be convicted to Tazzyree punishment (the extent of Tazzyree punishment can be from advice to execution). In addition, escaping of a girl from home is considered as degradation to her family. Since in most cases of escape, a man or a boy is involved it causes animosity among families and family disputes. To settle this dispute, the local elders in a meeting decide to give a sister of the man or the boy to the family of the eluded girl as a Bad⁹.

Dealing or agreements are the commitments made by the two sides. If one of the sides can not fulfil his commitment it should be settled by law. Even the legal disputes and proceedings are settled by giving Bad and the jirga decides that a girl from the family of the indebted should be given to the creditor¹⁰.

If someone beats or injures another person to the extent that the person dies, it is called beating and injury leading to death. Researches show that in such cases also, instead of punishing the perpetrator according to the items 399 and 400 of the Penal Code, local jirgas decide on giving a girl from the family of the perpetrator to the family of the deceased or injured as a Bad¹¹. Jirga decisions not only do not ease the tension between the two parties to the conflict but also expand its dimensions. It is clear that the direct victims are Women who are used as means to settle disputes. In such cases women have no role their choice but receive the most severe damage in their life. Women disclose the painful and shocking

⁵ WCLRF, "Baad painful sedative" report.

⁷ Penal Code, Official Gazette, Ministry of Justice, 1355, Article 17, Paragraph 2.

⁸ WCLRF report "Baad Painful Sedative" page 24

⁹ WCLRF report "Baad Painful Sedative" page 26

¹⁰ WCLRF report "Baad Painful Sedative" page 28

¹¹ WCLRF report "Baad Painful Sedative" page 27

realities and indicate the scope pain and miseries tolerated by these women through out their life.

2.2 Recommendations

In order to make the Afghan government more responsive to the responsibilities as set in the CEDAW convention, women groups, Afghan women's network and other civil society organizations suggest the following:

- Consider participation of civil society and women groups in the drafting of law for eradication of violence against women.
- Modification an amendment of criminal and civil laws and judicial system.
- Employment of more women as police and provision of trainings to police personnel on confrontations related to violence.
- Increase the number of women personnel in the courts on the provincial level and provide support to the professional capacity building of women defense lawyers.
- Inclusion of line ministries especially ministry of Pilgrimage and religious affairs for solving the issues and cases related to women rights violations and sermonizing by Mullas in mosques.
- Support and develop the capacities of Shelters for women
- Consider the international conventions specially CEDAW convention while making or modifying the laws in the country
- establish a law on the legal marriage age (will check this) ensure all marriages are registered and there are marriage certificates
- pass a family law
- Proper enforcement of the rule of law
- Raises awareness and develops skills in relation to CEDAW amongst government, NGOs, others
- Strengthens ability of CEDAW Committee to set and interpret universal standards for women's rights & turns CEDAW into a living instrument!