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It's in our hands

STOP
VIOLENCE
AGAINST
WOMEN



Afghanistan

Women still under attack - a systematic failure to protect

Date 30/05/2005

SUMMARY

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"At the moment there are more pressing issues... a civil servant has too much on his mind to deal with women's rights. It's a matter of priorities."

Violence against women and girls in Afghanistan is pervasive; few women are exempt from the reality or threat of violence. Afghan women and girls live with the risk of: abduction and rape by armed individuals, forced marriage or being traded to settle disputes and debts. They face daily discrimination from all segments of society as well as from state officials. Strict societal codes, invoked in the name of tradition and religion, are used as justification to deny women the ability to enjoy their fundamental rights and have led to the imprisonment and even to killings.

In April 2005, Amina, aged 29, of Argu district, Badakshan province, was "sentenced" to death by stoning on the reported orders of the local *ulema* (religious council) for committing adultery. Amina was reported to have initially been stoned by villagers and was later taken away by members of her family, who are alleged to have killed her. Following her death, the

district authorities instigated an investigation. To date, 15 persons have been arrested but formal charges have not been brought against any of the detained. Whilst Amnesty International welcomes the investigation, the organization remains concerned at the poor record of the state in ensuring that serious efforts are made to hold to account perpetrators of grave human rights abuses. Such crimes highlight how families, community leaders and the state authorities can collude to perpetrate abuses of the most fundamental human rights of women, including the right to life and freedom from torture.

Husbands, brothers and fathers are the main perpetrators of violence in the home but the social control and the power that they exercise is reinforced by the authorities, whether of the state or traditional 'justice' systems such as *shuras* and *jirgas*.² Members of factional and militia forces also carry out violence. In some instances, female members of the family have a role in upholding patriarchal structures and may commit violence. However, men perpetrate the overwhelming majority of acts of violence against women.

¹ Amnesty International interview with the former Governor of Kandahar, 13 September, 2004.

² *Jirga* (Pashtun) or *shura* (Dari) are gatherings of almost exclusively male elders, community members and leaders.

For three decades, Afghanistan has suffered a breakdown in law and order. Conflict may have formally ceased with the collapse of the Taleban regime, but factional violence, growing anti-government attacks and targeted violence against national and international aid workers have contributed to an ongoing state of conflict. Instability is reinforcing inequality and discrimination while the rule of law remains elusive. Women have had little improvement in their ability to enjoy their human rights. Discriminatory practices institutionalised prior to and during the war have not disappeared and in some ways have grown stronger.

In comparison, traditional and customary practices and codes have shown a remarkable resilience in maintaining their role as conduits of social order, raising disturbing questions about perceptions and understanding of violence against women by communities and the state.

Violence against women is widely tolerated by the community and widely practiced. Women's right to choose a marriage partner is still severely curtailed and subject to the authority of male members of the family. They continue to be abducted and forced into marriage. Early marriage and childbirth is commonplace. Prohibited interaction between unrelated men and women impedes women's access to, amongst others, higher education, the workplace and both formal and informal justice mechanisms as these bodies continue to be almost exclusively male and largely segregated.

Even at the highest levels of government and the judiciary, violence against women is tolerated. Abusers are rarely prosecuted; if cases are prosecuted, the accused are often exonerated or punished lightly. Impunity appears to exist for such violence. 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*.³ Laws frequently discriminate against women and are otherwise inadequate to protect the rights of women.

Nevertheless, the need to combat violence against women is gaining ground and support in Afghanistan. Emerging networks of women human rights defenders are advancing a

women's rights agenda across urban and rural areas. Some women are coming forward, though in small numbers and mainly in urban areas, and beginning to report violence, particularly in the family, to their local Afghan Independent Human Rights Offices.

In contrast to the last decades, women are increasingly becoming involved in the political sphere. The 2004 Constitution provides for a minimum representation of women in both houses of parliament; the first female candidate stood for the presidential elections in October 2004; in January 2005, the first woman was appointed governor of a province. Victims of family violence from urban areas have started to assert their rights, notably to divorce, and have contributed to bringing the issue of the protection of women to national attention.

Amnesty International welcomes these developments, but is concerned that a full realization of women's rights is undermined by the Afghan government's inability to provide physical security for Afghans, particularly women.

This report highlights the failure of the Afghan state to respect, protect and fulfil the rights of women and girls. It is not a comprehensive study of violations and abuses perpetrated against women in Afghanistan. It seeks instead to provide examples that highlight the inability and at times the lack of will of the government and its institutions – in their current state – to respect, protect and fulfil the rights of women. It documents abuses perpetrated against women and girls in Afghanistan, including:

- forced and underage marriage
- sexual violence
- violations of the right to mental and physical integrity
- deprivation of life and liberty
- denial of freedom of movement
- and the very present risk of torture and ill-treatment.

³*Zina* laws are laws which criminalize sexual relations outside marriage.

State failure to respect, protect and fulfil

Amnesty International believes that the Afghan authorities have not taken sufficient steps to effect real change in the lives of Afghan women. The conditions for a stable environment have not as yet been met and the state continues to be in urgent need of a capable and effective criminal justice system which can adequately address issues of violence against women. It requires a coordinated, sustained and long-term effort from the Afghan government and the international community at a time when instability is widespread and violence is increasing.

As an absolute minimum, the state must ensure that it does not violate human rights, acts with due diligence to prosecute offenders and implements preventive and remedial measures that protect women and girls. The Afghan authorities have failed to do this. Moreover, through discriminatory laws and practices, such as detaining women for ‘running away’ and through provisions in the current Criminal Code allowing for the imposition of cruel punishments, the state is also a direct perpetrator and should be held accountable for practicing a form of violence against women.

Abolishing discriminatory laws and ending practices such as arbitrary detention and cruel punishments are a necessary first step to ensure that the state itself does not commit human rights violations. However, on their own, legislative measures to prevent discrimination and violence are insufficient. Effective measures must simultaneously address the underlying factors that affect and contribute to violence, including cultural, social and customary practices. Afghanistan has a pluralistic legal tradition, under which formal and informal structures have existed side by side for centuries and one in which abuses against women are widespread. The role and actions of both formal and informal justice systems that perpetuate or condone violations for women’s human rights must be investigated and appropriate responses from the state must be forthcoming.

Aside from the evident need for rehabilitation of the process and the structure of laws and policies, combating violence against women necessitates an equal need for understanding cultural and social factors, which are at play when women are being targeted for violence. The

responsibility to address this lies with the state of Afghanistan.

Amnesty International calls on the state to ensure that women are free from violence – whether that violence is committed by institutions or agents of the state, members of the community, informal justice systems, or by a family member; the state is required also to hold perpetrators to account.

Call for sustained international commitment

Ensuring respect for women’s rights cannot be achieved through the effort of the Afghan government alone but must involve an intense and sustained commitment from the international community. In support of the Afghan government, Amnesty International has consistently emphasized the importance of long-term interest and fulfilment of financial and technical support by donor states. There remains an urgent need for a more coordinated and strategic plan for the reform and strengthening of the criminal justice system, which is essential to promoting respect for human rights and the rule of law.

Achieving political and economic stability is vital to creating a stable and safe environment throughout Afghanistan. However, it cannot be accomplished by ignoring the equal need for a comprehensive strategy that addresses violence against women as a rights and development priority for the nation. Human rights are inalienable; they should not be traded or bargained away, nor should impunity be granted to human rights abusers. Women must have full enjoyment of their rights and freedoms if peace and security in Afghanistan are to be realized.

The organization also calls on the international donor community for Afghanistan to encourage and support the Afghan government in ending crimes against women through sustained commitment to the rebuilding of the country in ways that enable women to realize their rights.

Summary of key recommendations

Amnesty International is calling on the Afghan authorities (with the support of the international community) to:

- Publicly and unequivocally condemn all violence against women and girls, including violence in the family; whether upheld by decisions by informal justice systems or agents of the state;
- Continue to strengthen the reform of the criminal justice system, including comprehensive training of the judiciary and police in order to implement international law and standards which promote and protect the rights of women;
- Not invoke any custom, tradition or religious consideration to avoid their obligations to eliminate violence against women;
- Modify or abolish existing laws (such as the Penal Code), regulations, customs and practices which constitute discrimination against women in family matters or which permit such discrimination to exist. In particular ensure that women are given legal equality with men in law and in practice in respect of: the right to freely choose a spouse, to enter into marriage only with full and free consent, and equal rights and responsibilities during marriage and its dissolution. Further, ensure by means of judicial training and other measures, that the law is implemented by the courts in a way that ensures equality in practice between men and women.
- Ensure that the proposed National Action Plan to tackle violence against women includes legal, social, cultural, political, administrative and budgetary measures to guarantee the protection of women against any form of violence, in cooperation with non-governmental organisations, especially those concerned with the issue of violence against women. This plan must be integrated into the wider draft National Development Strategy for Afghanistan;
- Implement the guidelines and measures articulated in the United Nations Resolution 1325 on women, peace and security and implement them at the domestic level, whereby a gender perspective is employed on all levels in the reconstruction of Afghanistan;
- Publicly pledge to make the Afghan Constitution of 2004 – which promised equal rights for all – a reality for all women;
- Promote research, collect data and compile statistics on violence against women, including on violence in the family and ensure that the information is made publicly available. This research should cover such issues as the causes of violence against women, including social attitudes, customs and practice. It should look into the effects of such violence, as well as the effectiveness of measures that could be taken to counteract violence against women and the social attitudes underlying it;
- Take careful note of work conducted by the Afghan Independent Human Rights Commission and women's rights NGOs on violence in the family and all other forms of violence and use their insights and findings in planning and implementing public education awareness campaigns with men and women as to how best to combat violence in its various forms.