



IMPLEMENTATION OF THE ELIMINATION OF VIOLENCE AGAINST WOMEN LAW IN AFGHANISTAN HAS A LONG WAY TO GO

KABUL, 23 NOVEMBER 2011 – Judicial and law enforcement officials are so far implementing sporadically the two-year-old law supporting the equality and rights of Afghan women, and the Government has not yet succeeded in applying the law to the vast majority of cases of violence against women, the United Nations Assistance Mission to Afghanistan (UNAMA) and the United Nations High Commissioner for Human Rights said in a report released today.

“Judges, prosecutors and police in many parts of Afghanistan have begun to use the new law which is a positive development; but unfortunately only in a small percentage of violence against women cases,” said United Nations High Commissioner for Human Rights Navi Pillay. “Although the law’s implementation is clearly growing, there is a very long way to go before Afghan women are fully protected from violence and their equality is properly supported through this important law,” she added.

Enacted in August 2009, the landmark Elimination of Violence against Women (EVAW) law criminalises child marriage, forced marriage, selling and buying women for the purpose or under the pretext of marriage, *baad* (giving away a woman or girl to settle a dispute), forced self-immolation and 17 other acts of violence against women including rape and beating. It also specifies punishment for perpetrators.

The 33-page United Nations report entitled *A Long Way to Go: Implementation of the Elimination of Violence against Women law in Afghanistan*, found both positive progress and gaps in the implementation of the law in the period from March 2010 to September 2011.

The report is based on 261 interviews with judicial, police and Government officials and UNAMA/United Nations human rights office monitoring of numerous violence against women cases throughout Afghanistan. The report analyses statistical data on the law’s application by judicial and law enforcement authorities in 31 of Afghanistan’s 34 provinces in its first full year of implementation (21 March 2010 - 20 March 2011) with additional research over the following six months.

The report notes that comprehensive official statistics on the number of cases of violence against women in Afghanistan are not available and most incidents are unreported. The Afghanistan Independent Human Rights Commission registered 2,299 incidents of violence against women that could be defined as crimes under the EVAW law between March 2010 and March 2011. Using the available figure of 2,299 incidents as a baseline estimate, United Nations human rights officials found that prosecutors in 28 provinces opened cases in 26 percent of the total 2,299 incidents (i.e. 594 cases). They filed indictments in seven percent

(155 cases) and primary courts relied on the EVAW law as the basis of their judgments in only four percent of total incidents (101 cases).

“The justice sector in some provinces has applied the EVAW law which is encouraging. But the low number of cases prosecuted and tried shows that a much more active collective effort by justice system actors, Government decision-makers and others is needed to urge judicial and local authorities to apply the law to all cases of violence against women,” said Staffan de Mistura, Special Representative of the Secretary-General for Afghanistan and head of UNAMA. “Progress on the status of Afghan women over the last ten years, including their 38 percent access to schools, their 69 MPs in Parliament and some women who have qualified as airplane pilots, is undermined by uneven implementation of the Elimination of Violence against Women Law.”

Prosecutors in 17 provinces filed indictments under the law. Herat province led the country, with 68 EVAW law indictments filed and 35 cases tried. The Special Violence against Women Unit of the Attorney General’s Office in Kabul opened approximately half of all cases in the country - 285 from Kabul, in addition to 47 received from 19 other provinces. However, its record of filing indictments with the courts was comparatively small: a total of only 21 indictments were filed in Kabul courts from March 2010 to March 2011.

The report determined that many cases of violence against Afghan women were withdrawn or mediated including serious crimes that would require prosecution. United Nations human rights officials found that some murder cases and other serious crimes criminalised under the EVAW law were instead prosecuted under the Penal Code or Sharia law. This sometimes resulted in acquittal of perpetrators, reduction of charges to less serious crimes, convictions with lighter sentences and women victims themselves being accused of “moral crimes”. The report also found that police and prosecutors in many regions continued to refer a majority of cases of violence against women to traditional dispute resolution mechanisms that did not enforce the EVAW law or adequately protect women’s rights.

Mediation was used extensively for domestic violence complaints by institutions including the Police Family Response Unit, Department of Women’s Affairs, Afghanistan Independent Human Rights Commission and the Special Violence against Women Unit of the Attorney General’s Office. While mediation was sometimes preferred by women complainants, the report found that authorities often inappropriately pressured women to withdraw complaints and opt for mediation.

The report said that provincial branches of the Commission for the Prevention of Violence against Women are struggling to fulfill their mandate and require more support from provincial Governors, the national Ministry of Women’s Affairs and other government bodies. Of the 28 provincial branches established since the EVAW law was enacted, only 16 are still functioning currently and meeting regularly.

“As long as women and girls are subject to violence with impunity that violates their human rights, little meaningful and sustainable progress for women’s rights can be achieved in Afghanistan,” said Georgette Gagnon, Director of Human Rights for UNAMA. “Ensuring rights for Afghan women – such as their participation in public life, including in the peace and reconciliation process and equal opportunities in education and employment – requires not only legal safeguards on paper, but speedy and full enforcement of the EVAW law.”

To improve implementation of the EVAW law, UNAMA and the United Nations human rights office made 32 recommendations to the Government and its international partners, including to make a much greater effort to raise awareness of the law among Afghan women and men and within all levels of the Government; to have the Supreme Court, Ministry of Interior and Attorney General’s Office instruct all officials to apply the law consistently, rapidly and efficiently; and, to train police, prosecutors and judges on how to apply the law. The report

called on international donors to support and fully fund the 2008-2018 National Action Plan for the Women of Afghanistan (NAPWA) and the National Priority Programs on *Law and Justice for All* and *Capacity Development to Accelerate NAPWA Implementation*.

Excerpts from the Report

Examples of application of the EAW law:

Herat prosecutors applied Article 22 of the EAW law and Article 395 of the Penal Code to pursue a double murder. Two sisters, age 15 and 17, were killed in Karukh district of Herat in July 2010. Reportedly, the 17-year-old had refused to marry a man her family had chosen for her. Five people, including her would-be in-laws and two other men attacked the two girls in their home and killed them. Police arrested the five in October 2010. The Court of Appeals acquitted three of the men, but sentenced the would-be husband and father-in-law to 16 years imprisonment.

In Jawzjan province, in March 2011, a district court found a former ANA soldier guilty of forcing his wife into prostitution (EAW Article 18). Injured and unable to work, the former soldier told his wife to have sex with their landlord in exchange for rent. The wife refused and reported the case. The husband confessed and was sentenced to three years imprisonment; the Court of Appeals increased the sentence to seven years.

In March 2011, a woman reported her daughter's forced suicide to the (Kandahar) Family Response Unit. Her family had given away their 25-year old daughter in marriage for 300,000 Afghanis (US\$6,600). Her in-laws constantly berated the woman saying "Your parents took so much money from us you must now pay it back by working in people's homes." In February 2011, after ten years of marriage, the in-laws ordered her to have sex with three male guests visiting the family. A month later, the woman set fire to herself in her room. "She was always saying that she would burn herself one day. I would tell her, please tolerate, this is life as it comes and one day you will have a bright future," the woman's mother said. Police recorded the mother's complaint but made no attempt to investigate. Forced self-immolation is one of several crimes the EAW law instructs must be pursued by police and prosecutors even in the absence of a complainant.

In Daikundi province, authorities referred a case of serious violence against a woman to elders for resolution. The case involved a man who stabbed his sister-in-law multiple times in November 2010. She survived, was hospitalized and police arrested the perpetrator. Authorities then reported the case had been resolved through the informal justice system with the assistance of community elders. Their resolution was a pledge from the man that he would leave his sister-in-law in peace instead of prosecution. The prosecutor denied responsibility, blaming the police for referring the case to the elders.