



**Special Rapporteur on violence against women finalizes country mission to Afghanistan and calls for sustainable measures to address the causes and consequences of violence against women, including at the individual, institutional and structural level**

KABUL (12 November 2014) – At the end of a nine-day mission to the Islamic Republic of Afghanistan, which took her to Kabul, Jalalabad and Herat, Ms. Rashida Manjoo, United Nations Special Rapporteur on violence against women, its causes and consequences, delivered the following statement:

“I have been mandated by the Human Rights Council to seek and receive information on violence against women, its causes and consequences, and to recommend measures to eliminate all forms of violence against women. Violence against women and girls is a widespread and systemic problem that has an impact throughout the lifecycle of women and girls, whether it occurs in the public or private spheres. It precludes the realisation of civil, political, economic, social, cultural, and development rights, and is a barrier to the effective exercise of citizenship by women and girls.

I would like to express my appreciation to the Government of Afghanistan for extending an invitation to me to conduct this official country visit. I am grateful to all interlocutors, including State officials, representatives of civil society organisations, United Nations agencies, and in particular, individual survivors of violence.

**Context and realities of women and girls in Afghanistan**

The four decades of prolonged armed conflict across the country has contributed to significant levels of instability, insecurity, violence, rule of law challenges, and poverty and underdevelopment, which have obstructed the effective realization and enjoyment of human rights for people of Afghanistan. It must be stressed that the insecurity, pervasive levels of gender-based violence and an ever-present climate of fear has had a disproportionate impact on the promotion, protection and fulfillment of human rights of women and girls.

I would like to point out that this is not the first visit to Afghanistan by my mandate, in the quest to assess the situation of violence against women, its causes and consequences. The two previous mandate holders visited the country in 1999 and 2005, respectively. The first visit took place during the Taliban era, at a time when discrimination against women was officially sanctioned, thus impacting every aspect of the lives of women. In addition to the various manifestations of violence, as commonly understood, the issuance of strict edicts banning women from education, work, restrictions on their freedom of movement, and the imposition of particular dress codes, among others, has had a lasting and devastating impact on the lives of women and girls in Afghanistan.

I would like to cite a few recommendations from the report of the first mandate holder, which was presented in 2000 to the then UN Commission on Human Rights. The mandate holder stated the following: “Peace and security must be returned to Afghanistan. If the situation does not improve, the Afghan people will not be able to break away from the patterns of human rights violations which has plagued the territory for decades.” The mandate holder called for the end of the armed conflict, and also the establishment, through peaceful political negotiations, of a broad-based multi-ethnic fully representative government which would respect internationally recognised human rights and abandon all policies that are inconsistent with the international human rights instruments to which Afghanistan is a party. Another crucial recommendation in the report is the need for women’s involvement in the political and peace process. The mandate holder also recommended that all parties to the conflict must end the violations of the human rights of women and girls; must ensure respect for women’s right to security of the person; must ensure justice and accountability for crimes against women; and take urgent measures to ensure the elimination of all discriminatory legislation, policies and practices. To differing degrees, many of these recommendations continue to resonate in the context of Afghanistan today.

The second visit to Afghanistan by this mandate took place four years after the fall of the Taliban regime. The mandate holder’s report to the then UN Commission on Human Rights in 2006 acknowledged that efforts to improve the status of women are closely linked to the challenge of multiple political and economic transitions confronting Afghan society, and importantly attempts to move from the rule of power to the rule of law. The report highlights the fact that the extraordinary level of violence against women and girls is embedded in a traditional system of male domination in which girls and women have no status as independent persons. The persistence of patriarchal cultural norms and customs and misinterpretation of religion have been used to subjugate women and further perpetuate the cycles of violence against them. The mandate holder also stated that: “The multiplicity of normative systems in Afghanistan favours the power structures intent on oppressing women in the private sphere and in public life, facilitates impunity, and presents a significant obstacle for women and defenders of women’s rights.” The report reiterates the need to acknowledge and address the ‘unbearable and hardly paralleled’ level of violence against women as a priority - ranking equally with security and economic development. She called for urgent measures to protect women and girls from violence; and reiterated the need to build a strong democratic inclusive State which is able to ensure an environment of economic and social development from which women and girls fully benefit. Again, many of the findings and recommendations resonate in the context of Afghanistan today.

My visit to Afghanistan provides an opportunity to reflect on the developments and challenges over the last nine years as regards the elimination of violence against women, its causes and consequences, within the broader context of women’s human rights. Currently, the broader security concerns and the general climate of fear, further impact the levels of violence experienced by women and girls. Numerous reports and interviews confirm the continuing prevalence of different manifestations of violence against women and girls in both the public and private spheres, including violence perpetrated by husbands and other relatives; violence linked to early and forced marriages - including *baad* (the exchange of girls for dispute resolution) and *baadal* (exchange marriages); incest; so-called honour crimes; and self-immolation and self-harm due to domestic violence and forced marriage practices. As regards the last manifestation, during my visit to the Burn Clinic of the Regional Hospital in Herat, I was informed that women and girls who take this action do not necessarily intend to kill themselves, but are often seeking attention and a resolution to the

problem. Nevertheless, they do inflict severe injuries upon themselves, which in some cases causes their death. This was also confirmed in the 2011 follow-up report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. Other manifestations of violence include targeted killings of women; sexual harassment in the workplace and in public spaces; and the rape of women and girls.

### **Developments and challenges**

The adoption and acceptance of the Bonn agreement in 2001 served as a framework for the establishment of democratic governance in Afghanistan. Among others, the implementation of the Bonn Agreement led to the adoption of a national Constitution, which enshrines the principle of equal rights for men and women; it led to an increase of women's participation in civil and political life; and it led to a commitment to respect international human rights, including through the ratification of the Convention on the Elimination of All Forms of Discrimination against Women. Over the past 15 years, several legislative and institutional advances have been made towards the promotion of human rights broadly and women's rights in particular, including through the creation of a national human rights institution, a ministry for women's affairs at the national level and departments of women's affairs at provincial level, human rights units in various ministries, gender units in some ministries, the enactment of landmark legislation on the elimination of violence against women, and very recently the adoption of a national action plan on the implementation of Security Council Resolution 1325 on Women, Peace and Security.

The Elimination of Violence against Women Law (EVAW) was created through a Presidential Decree in 2009 and it includes a reference to "fighting against customs, traditions and practices that cause violence against women contrary to the religion of Islam". The law lists 22 acts of violence including among others, rape; forced prostitution; burning or poisoning women; engaging in violent behaviour which causes women to commit suicide or self-harm; causing injury or disability; battery; selling women for the purpose of marriage; *baad*; forced marriage; and underage marriage. The EVAW law represents a key step towards the elimination of violence against women and girls and includes both criminal and civil remedies. For the implementation of the EVAW law, the Government has established an EVAW Commission, specialized EVAW prosecution units in some provinces, and Family Response Units within some police stations. Furthermore, in order to provide a responsive reporting environment, the recruitment of more women police officers has been undertaken. Training and awareness-raising activities for relevant state authorities continue to take place, especially with the support of the international community.

I was also informed of several law reform initiatives to be carried out over the next year or so, including a comprehensive review of the Penal Code, which would include gender-based violence crimes including sexual harassment. The drafting of a law to regulate the jurisdiction and functioning of *jirgas* and *shuras* (informal communal councils) is underpinned by the objective of providing guidance to such forums on compliance with the Constitution, relevant laws, and also the Sharia in the resolution of disputes. Consultations have also been held with relevant stakeholders, including the Ulema authorities, on the drafting of a comprehensive family code.

As regards information shared on continuing and new challenges, the issue of access to justice and to justice itself for women and girls, whether in the formal justice system or in the

informal dispute resolution forums, was a source of deep concern in numerous interviews. It was stated by many interlocutors that the formal justice system was deficient in many respects, including being inaccessible, unresponsive, corrupt, and, untrustworthy, especially as regards matters related to women's rights. These factors and also societal pressure to deal with problems within the family, often leads to women opting to use mediation and the resolution of disputes outside of the formal justice system. The informal dispute resolution forums such as *jirgas* and *shuras* were also criticised by many interlocutors, especially for violating fair trial and equality and non-discrimination rights, particularly in matters concerning women and children.

Another challenge identified is the issue of the lack of effective interpretation and implementation of relevant laws by State authorities, particularly the EAW law. Many interviewees stated that the unresponsiveness and pervasive gender-bias in the policing sector is a barrier to reporting. Moreover, the failure to investigate or prosecute crimes committed against women and girls, continues to reinforce a climate of impunity, and normalises violence and renders it as acceptable. Allegations of discriminatory judgements and arbitrary sentencing patterns, as experienced by women defendants, can also reinforce the lack of trust in the formal justice system. The challenges as regards effective implementation of the EAW law have been documented by among others, UN entities, including UNAMA and UNDP; the Afghanistan Independent Human Rights Commission; and numerous civil society organisations.

Furthermore, many women and girls who are subjected to violence do not come forward to register complaints due to their lack of knowledge of the law and its protective remedial provisions; fear of reprisal from the perpetrators and family members; financial and other constraints, including the lack of freedom of movement; and fear of being treated as criminals instead of victims, when reporting crimes committed against them. Many interviewees alleged that they had been charged for 'moral crimes' including when fleeing domestic violence and early or forced marriages. Women and girls who try to escape from situations of violence or abuse are often condemned and shunned by their families, communities and the authorities, and are threatened with death, should they return home.

A large number of women and girls live in a context of deep inequality, underdevelopment, high levels of illiteracy, and the lack of educational and employment opportunities, more especially those living outside of the cities. In these circumstances, the challenge of addressing issues of violence, difficulties of obtaining a divorce, inheritance deprivation, fears about removal of children from their custody, and the inability to return to their homes and communities, all contribute to women choosing not to leave abusive situations. The existence of shelters in some provinces could be seen as a protective remedy for women seeking to flee their violent and discriminatory situations. Unfortunately, the views and perceptions that exist as regards shelters and shelter staff are of deep concern to me. Shelters are viewed by many individuals as institutions which encourage women to leave home; to behave immorally and outside of what is traditionally considered 'acceptable' in a conservative and religious society; as prostitution houses; and as establishments that are causing the break-up of families. Interviewees in shelters that I visited expressed their gratitude that these mechanisms exist, as it is the only alternative of escape from a life of violence. It is clear that many women and girls spend long periods of time in shelters, sometimes up to five years. This is unusual but necessary in Afghanistan, considering the reality of women's situation as described above. For the medium and longer term, there is a

need to think about solutions for the long term housing needs of women and girls, so as to enable them to transition from shelters to more independent and safe living arrangements.

Globally, shelters are accepted mechanisms which provide protection, therapy, legal services, and sometimes economic empowerment activities – with the objective of empowering women and girls to become independent and self-confident individuals who are then active agents in their own development. As with many mechanisms, shelters also face challenges in their stated objectives and implementation thereof, and gradually evolve and change over time, to reach goals that are in the best interests of women and children. This is a process that shelters in Afghanistan will also undergo, as they develop further.

Another challenge raised is the issue of over-incarceration of women and girls for ‘moral crimes’. I visited the Badam Bagh prison in Kabul and the Juvenile Rehabilitation Center in Herat where I interviewed several convicted and pre-trial detainees. Some interlocutors revealed that they had been subject to physical and/or sexual violence prior to incarceration, which had led to them ‘running away/leaving home’. Many interviewees stated that crimes linked to them leaving home, including convictions for the crime of zina, assault and murder has led to convictions and custodial sentences. Running away from home is not a crime under Afghan law, and this has been reinforced by the Supreme Court in a decree. The two facilities I visited had numerous women and girls charged with ‘attempted adultery’- irrespective of their marital status. The presumption on which charges were based was that the woman would have probably engaged in ‘immoral’ behaviour during her absence from home. It was stated that these convictions are usually based on minimal evidence of wrongful behaviour; that investigations are not carried out with due diligence; and that virginity testing is done and the results of such tests is often used as the basis of evidence to convict. A minority of interviewees stated that they are incarcerated for ‘ordinary’ offenses such as theft, drug trafficking, assault or murder.

Last week, during a visit to a prison in Kabul, President Ghani stated that he would not tolerate seeing his people imprisoned as a result of mistakes by the police, prosecutors or judges. He further stated it was the responsibility of the State to protect the dignity of society and demanded that rape accusations be strongly founded and proved.<sup>1</sup> In light of this statement, it is my hope that the government of Afghanistan will protect the dignity and human rights of women and girls who are incarcerated, through a review of all their cases, to ensure that no miscarriages of justice exist in these cases.

## **Conclusion**

Despite the situation of insecurity throughout the country, it is clear that there have been legislative and institutional developments. This is a reflection of political will in addressing the promotion and protection of women’s rights which is further reflected in the appointments of women in high level positions. However, such developments should not detract from the fact that violence against women continues to be a source of deep concern in Afghanistan. Currently, there is no comprehensive and coherent data collection mechanism to enable either government or the public at large to fully grasp the magnitude of the phenomenon in the country. Despite government agencies and civil society organisations

---

<sup>1</sup> <http://president.gov.af/en/news/president-ghani-i-cant-tolerate-to-see-our-people-imprisoned-for-mistakes-by-police-prosecutors-or-judges>

collecting statistics, these estimates are disputed, depending on whom one speaks to or receives information from. The lack of effective interpretation and implementation of laws and policies requires attention by the government of Afghanistan, as does the issue of the allocation of appropriate resources to enable sustainable solutions.

It is important to recall that Afghanistan has international legal obligations to meet, as set out in, among other treaties, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. The State has a responsibility to act with due diligence to eliminate all forms of violence against women and girls. This responsibility includes the protection, prevention, investigation, punishment, and provision of effective remedies, including compensation measures. Furthermore, the State has a responsibility to hold accountable not only the perpetrators of violence, but also state authorities who fail to protect and prevent the violations of women and girls human rights, due to a lack of response or because of ineffective responses.

It is crucial to recognize that violence against women and girls is a human rights violation that is rooted in multiple and intersecting forms of discrimination and inequalities, and that it is strongly linked to the social, cultural and economic situation of women. The importance of accountability as the norm for acts of violence against women cannot be over-emphasised, more especially within a context of generalised impunity for violence in public and private spheres. Accountability for all crimes committed against women and girls; the empowerment of women; and, the transformation of society, need to remain a focus for the government of Afghanistan, independent State institutions, civil society organisations and also the international community. It is imperative that the best interests of all women and girls in Afghanistan should guide the response of relevant stakeholders to ensure coherent and sustainable solutions, in the quest to address the individual, institutional and structural causes and consequences of violence against women and girls.

My findings will be discussed in the comprehensive report that I will present to the United Nations Human Rights Council in June 2015.”

*Ms. Rashida Manjoo (South Africa) was appointed Special Rapporteur on Violence against women, its causes and consequences in June 2009 by the UN Human Rights Council. As Special Rapporteur, she is independent from any government or organization and serves in her individual capacity. Ms. Manjoo is a Professor in the Department of Public Law of the University of Cape Town.*

*Learn more, visit:*

<http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRWomenIndex.aspx>

*For additional information on the mandate of the Special Rapporteur, please visit:*

<http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRWomenIndex.aspx>