

Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan



UNAMA



OHCHR

Kabul, Afghanistan, 9 December 2010

Executive Summary

Widespread harmful traditional practices – child marriage, giving away girls for dispute resolution, forced isolation in the home, exchange marriage and “honour” killings – cause suffering, humiliation and marginalization for millions of Afghan women and girls. Such practices are grounded in discriminatory views and beliefs about the role and position of women in Afghan society. Many Afghans, including some religious leaders reinforce these harmful customs by invoking their interpretation of Islam. In most cases, however, these practices are inconsistent with Sharia law as well as Afghan and international law, and violate the human rights of women.

UNAMA Human Rights’ 56-page report *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan* documents particular customary practices that violate the rights of women and girls throughout Afghanistan, describes the Government of the Islamic Republic of Afghanistan’s response to these practices and makes recommendations to end such practices. Based on extensive research and interviews carried out in 29 of 34 provinces of Afghanistan with women, men, Government authorities, religious leaders, women’s rights and civil society activists and community groups, UNAMA Human Rights (HR) found that such practices are pervasive, occurring in varying degrees in all communities, urban and rural, and among all ethnic groups. The report found that such practices are further entrenched by the Government’s inability to fully protect the rights of women and girls, highlighting the need to expedite implementation of the Law on Elimination of Violence against Women (EVAW law) which criminalizes many harmful traditional practices. The report notes that most harmful traditional practices are both crimes under Afghan law and inconsistent with Sharia law and cites the relevant article of the EVAW law that criminalizes the harmful practice together with complementary principles of Sharia law. Extensive discussions with a diverse range of Islamic legal experts informed UNAMA HR’s analysis of the principles of Sharia law.

The role of religious leaders, community elders and traditional dispute resolution mechanisms in both perpetuating and eliminating harmful practices is also highlighted. The report presents findings on community perceptions of harmful practices to better inform the design and delivery of measures by the Government, religious leaders, communities and international donors to end such practices

In August 2009, the Government enacted the EVAW law which if fully implemented could end most harmful traditional practices. The EVAW law seeks to eliminate “customs, traditions and practices that cause violence against women contrary to the religion of Islam.” It makes illegal the selling and buying of women for marriage, forced marriage, marriage before the legal age, forced isolation, forcing a woman to commit self-immolation, denying the right to education, work and access to health services among other harmful practices. The law prescribes preventive measures for seven Government ministries to implement and establishes a national High Commission for the Prevention of Violence against Women.

The EVAW law is a major step forward in the legal protection of women’s human rights. At the same time, UNAMA HR notes several weaknesses in the EVAW law, such as the failure to criminalize “honour” crimes, clearly define rape to distinguish it from consensual *zina* (sexual intercourse outside of marriage, a crime under Islamic law) and the requirement that a victim initiate or maintain judicial action. Despite these concerns,

UNAMA HR together with most Afghan women's rights defenders believes that raising awareness about the current law and working for its full implementation now is urgently needed to protect women and girls while recognizing that revisions may be necessary to fully guarantee women's rights.

UNAMA HR found that law enforcement authorities often are unwilling or unable to apply laws that protect women's rights and that such inaction is one of the main factors that permit harmful traditional practices. UNAMA HR observed that although the police and the judiciary are becoming aware of the EVAW law, they require much more guidance and support from national-level authorities on how to apply the law. In many rural and remote provinces, communities and Government officials do not know about the EVAW law and it remains unimplemented.

UNAMA HR notes that harmful traditional practices are not consistent with the religious teachings of Islam, although certain interpretations of religious precepts are often used to justify some harmful practices. Islam has a central place in Afghanistan's Constitution, and as the report documents, under Sharia law forced marriage, giving girls away to settle disputes and many other harmful practices are prohibited. UNAMA HR suggests that the Government take the lead in promoting a comprehensive interpretation of Sharia law that demonstrates how rights guaranteed in national and international law are consistent with, and complement, the fundamental teachings of Islam.

Giving away girls to settle disputes, under *baad*, is one of the most severe forms of violence against women in Afghanistan. UNAMA HR found that *baad* is practiced among communities throughout the country although it is illegal under Afghan law. Despite the occurrence of *baad*, many Afghan men and women interviewed expressed strong opposition to the practice. Women in Faryab province told UNAMA HR that a girl married through *baad*, *"is never respected by her new family as they associate her with her male relative who committed the crime and accuse her equally of being a criminal. The girl is treated like a servant as a means of revenge. Sometimes she is forced to sleep with the animals in the barn."*

Through country-wide discussions and analysis of reported cases, UNAMA HR found that many marriages in Afghanistan are "forced" because a woman's free and informed consent was missing. Forced marriage in Afghanistan encompasses *baad*, *baadal* (exchange marriages), child marriage (by its very nature forced) and coercion of widows to marry a relative of a deceased husband.

The marriage of girls' before the age of 16, or under limited circumstances at 15 years is prohibited under Afghan law. Yet the marriage of very young girls is common across all regions and among all ethnic groups. No official figures are available but studies cited by UNAMA HR show that half of all Afghan girls are married before the age of 15. Although child marriage is widespread in Afghanistan, all Afghan men and women interviewed for this report identified child marriage as one of the most serious harmful traditional practices in the country.

The consequences of child marriage have been widely demonstrated to be lasting and damaging to the health, education and well-being of girls. Afghanistan has the worst rate of maternal mortality in the world and many deaths are of women who were married under the age of 16.

The high bride price families must pay to marry their sons was categorized by many Afghans interviewed as a harmful traditional practice. In the context of extreme poverty in Afghanistan, high bride price can lead to forced and underage marriages, the selling of girls and a high level of domestic violence. Men sometimes take out frustrations at being in debt or having to work for years to repay loans on their wives.

UNAMA HR found no justification in law or religion for customary restrictions on women's freedom of movement that violate women's rights. *"I was warned not to work,"* a female member of parliament told UNAMA HR, *"because a female working outside the home is taboo; and is forbidden by Sharia. The salary I receive is haram (illegitimate) and I must stay at home."*

UNAMA HR documented incidents of "honour" killings, usually of women by one or several relatives who believe the victim has brought shame on the family. The perceived dishonour is often the woman's flight from a forced marriage or engaging in questionable conduct with a man. The report recommends amending the Afghan Penal Code to eliminate reduced sentences for perpetrators of "honour" killings.

Among the most tragic consequences of harmful traditional practices is self-immolation – an apparently growing trend in some parts of Afghanistan. The doctor in charge of Afghanistan's only special burn unit has described the main cause of self-immolation as forced marriage. *"Young women married to old men, sold, swapped for sheep or even opium....Under pressure from abusive husbands and mothers-in-law they sometimes go to mullahs and community councils to ask for help, but even there they face humiliation and abuse."*

The police and judiciary often fail to enforce laws that respect women's rights and take a selective rather than impartial approach to administering justice. They often pursue cases where women are perceived to have transgressed social norms and fail to act when women report violence or in cases of child marriage claiming these are "private matters". This situation is demonstrated by the large number of women detained in Afghan prisons for "moral crimes." When social and cultural circumstances do not allow women and girls to oppose harmful traditional practices, or to escape violence, they sometimes run away from home. "Running away" is not a crime under Afghan law. Yet law enforcement authorities often arrest, jail and prosecute girls for running away, the charge is usually "intention" to commit *zina* (sexual intercourse outside of marriage). Several studies report that half of the country's female prison population (almost 300 women) is detained for "moral crimes."

Police in Jalalabad, for example, arrested and detained a 17-year-old girl when they discovered her alone in a hotel room accusing her of intending to commit adultery (*zina*). UNAMA HR's investigation found that the girl had been forced to marry at the age of 13, denied an education, was ill treated by her in-laws and forbidden to leave the house even to visit her own family.

UNAMA HR documented some improvements in the Government's response to harmful traditional practices. State authorities sometimes supported girls who objected to their forced marriage. For example, in December 2009 in Nimroz province, a 12-year-old girl and her family opposed a marriage contracted to a 60-year old man when the girl was two-years old. Ten years later, when the man asked to formalize the marriage, the girl

refused saying she had not agreed to the marriage and that she would not be a 70-year old man's wife. The family returned the money that had been exchanged and the police warned the man that he could not marry the girl by force.

UNAMA HR observed that some religious and community leaders perpetuate harmful traditional practices although such practices are inconsistent with the fundamental tenets of Islam. Many Afghan men and women interviewed for this report stated that the way to end harmful traditional practices is to provide religious leaders with training and education. They said that the moral voice of religious leaders could advise local communities that harmful practices discriminate against women and that such practices are not consistent with Islamic law.

Some religious leaders have spoken out in favour of women's rights. At a conference on International Women's Day 2010 in Jalalabad, 15 *ulema* members from Nangarhar province unanimously vowed to raise awareness against harmful practices in their teaching at mosques. UNAMA HR also found examples of religious figures condemning exchange marriages and high bride price.

Adequate implementation of the EVAW law requires a huge investment in building the capacities of law enforcement personnel and in providing services to victims. Convictions under the EVAW law can result in deterring perpetrators of violence against women. At the same time, the Afghan public should be informed about the law's existence and the practices it criminalizes. Awareness-raising about the negative social consequences of harmful traditional practices across Afghan society is also necessary. Civil society should be supported in monitoring, awareness-raising and advocacy activities.

UNAMA HR believes that little meaningful and sustainable progress for women's rights can be achieved in Afghanistan as long as women and girls are subject to practices that harm, degrade, humiliate and deny them their basic human rights. Ensuring rights for Afghan women – such as their participation in public life including in the current peace, reconciliation and reintegration process; their access to adequate health care; and equal opportunities in education and employment – require not only legal and constitutional safeguards on paper, but also, more importantly, adequate implementation. UNAMA HR calls on the Afghan Government, religious leaders, communities, civil society and international donors to take all possible measures to eliminate harmful traditional practices and fully implement the EVAW law without delay.

Key Recommendations

- **The Government of Afghanistan** at the highest levels including the President should continue to publicly emphasize that promotion and protection of women's rights are an integral part and main priority of peace, reintegration and reconciliation throughout Afghanistan, and a central pillar of the country's political, economic, and security strategies.
- The Government should expedite implementation of the National Action Plan for the Women of Afghanistan, in particular a national strategy to implement the EVAW law. As an immediate step, the President could by decree release from detention any woman or girl arrested for "running away", which is not a crime

under Afghan law (usually women who run away are charged with intention to commit *zina*).

- **The Supreme Court and Office of the Attorney General** should issue directives instructing the courts and prosecution offices to apply the ERAW law. Police and prosecutors should as required under the law register all complaints of harmful traditional practices criminalized by the ERAW law, and the Attorney General's office should promptly investigate and prosecute such cases.
- **The Ministry of Justice**, in cooperation with the national High Commission for Prevention of Violence against Women, should provide training and capacity-building on the ERAW law to all law enforcement officials, including on recognizing, investigating, and prosecuting forced and child marriage and the practice of giving away girls to settle disputes.
- **Religious leaders**, together with the ministries of Hajj and Religious Affairs and Women's Affairs, should develop and deliver training and awareness-raising programmes for mullahs, imams and religious teachers about women's rights and the ERAW law. Religious leaders should speak out about harmful practices that are inconsistent with Islamic teaching and principles and hold open discussions among Sharia experts on Islam and women's rights.
- **International donors** should increase support to Government and civil society initiatives aimed at enforcement of the ERAW law and efforts to implement the National Action Plan for the Women of Afghanistan.

Full Recommendations

To the Government of the Islamic Republic of Afghanistan

- At the highest levels, including the President, continue to publicly emphasize that promotion and protection of women's rights is an integral part and main priority of peace, reintegration and reconciliation throughout Afghanistan, and a central pillar of the country's political, economic, and security strategies.
- Ensure adequate implementation of the ERAW law including prosecutions of harmful traditional practices criminalized under the law; support for victims' services and support to the national High Commission on the Prevention of Violence against Women.
- Expedite implementation of the National Action Plan for the Women of Afghanistan, in particular develop and put in place a national strategy to implement the ERAW law.
- The President could issue a decree immediately releasing from detention any women or girls charged with "running away," which is not a crime under Afghan law (usually women who run away are charged with intention to commit *zina*).
- The President could initiate a national dialogue that promotes a comprehensive interpretation of Sharia law that is consistent with national laws and Afghanistan's international human rights obligations.

Ministry of Justice

- With the Ministry of Interior, ensure that police and prosecutors apply the EVAW law, by registering all complaints of harmful traditional practices criminalized under the law and through effective investigations and prosecutions.
- With the national High Commission on the Prevention of Violence against Women, provide training and capacity-building to all law enforcement officials on the EVAW law, including recognizing, investigating, and prosecuting forced and child marriage and the practice of giving away girls to settle disputes.
- Provide legal assistance to victims of violence who file complaints under the EVAW law.
- Recommend that Parliament repeal Article 398 of the Penal Code that reduces punishment for killings perpetrated in the name of “honour.”
- With the Supreme Court and Parliament consider legislation to make registration of marriage obligatory requiring both prospective spouses to appear before a registrar.
- Recommend to Parliament the amendment of the Civil Code to make 18 years the minimum age of marriage for both men and women in line with constitutional guarantees of equality and international human rights standards.
- With the Supreme Court and the Office of the Attorney General consider conducting a national review of laws that impact women’s rights to ensure their compliance with national and international human rights standards. Ensure the active participation of Afghan civil society in any review. Following such review repeal or amend any laws that do not comply with human rights guarantees.
- Initiate assessment and review of the EVAW law and its application to identify areas for possible reform. For example, consider amending Article 39 which specifies that prosecution is initiated by the victim’s complaint to also permit a prosecutor to initiate a case.
- Ensure that the proposed law defining the relationship between the formal justice system and traditional mechanisms for dispute resolution (*jirgas* and *shuras*) improves compliance with all national laws including the EVAW law and prohibits traditional mechanisms from addressing serious violations of human rights.

Supreme Court and Office of the Attorney General

- Issue directives to the courts and prosecution offices instructing them to apply the EVAW law together with specific instructions on the law’s application including its relation to other criminal laws.
- Conduct a review of the legal basis for arresting, investigating and punishing women for “moral crimes” in view of Article 130 of the Constitution. The High Council of the Supreme Court should consider revising its judicial circular on the “crime” of “running away” so that the circular complies with constitutional guarantees, national and Sharia law, and the State’s international human rights obligations.

Ministry of Women's Affairs

- Provide targeted assistance to women to register complaints of harmful traditional practices with the police and prosecution.
- Ensure adequate support to the national and provincial Commissions on Elimination of Violence against Women; establish provincial commissions in all provinces and take measures, including training, to ensure their effective functioning.
- Conduct nation-wide campaigns to raise awareness on the EVAW law with both men and women to sensitize the public on violence against women and women's rights. Give particular focus to rural areas.
- Together with the ministries of Public Health and Education, provide support to women and girls who are victims of harmful traditional practices, through provision of shelter, psycho-social support, medical treatment and access to education.

Ministry of Interior

- Strengthen the Family Response Units in the police including by recruiting more female police officers.

Ministry of Hajj and Pilgrimage

- Develop and implement training and awareness-raising programmes for mullahs, imams and religious teachers about women's rights and the EVAW law.
- Promote and develop materials based on Sharia law that support and complement the EVAW law.

Ministry of Information and Culture

- Produce and disseminate radio and television programmes to raise awareness about the EVAW law, violence against women and its consequences, with particular focus on rural communities.

Ministry of Public Health

- Provide specific programmes for free and immediate treatment for women and girls who are victims of violence.
- Gather and analyze data on the impact of child marriage on maternal and child mortality.

Ministry of Education and Higher Education

- Develop curriculum materials for boys' and girls' schools that highlight issues of violence against women, including the legal prohibition of harmful traditional practices such as child marriage.
- Strengthen programmes to retain girls in schools—including through financial incentives to their families.

Ministry of Finance

- Provide adequate resources and support to the ministries of Women's Affairs, Hajj and Pilgrimage, Justice, Public Health, Information and Culture, Education and Higher Education to enable them to fulfil their responsibilities as required under the EVAW law.

To Religious Leaders

- Together with relevant Government ministries (Women's Affairs and Hajj and Religious Affairs) develop training programmes for mullahs, imams and religious teachers about women's rights and the EVAW law.
- Promote and develop materials based on Sharia law that support and complement the EVAW law.
- Together with the Ministry of Women's Affairs assist in the development of a nation-wide campaign that raises awareness about the EVAW law, violence against women and its consequences, with particular focus on rural communities.
- Speak out about harmful practices that are inconsistent with Islamic teaching and principles and hold open discussions among Sharia legal experts on Islam and women's rights.
- Support the President in initiating a national dialogue on Islam and human rights.
- Call on the Supreme Court to conduct a review of the legal basis for arresting, investigating and punishing women for "moral crimes" and revise its judicial circular on the "crime" of "running away."

To Civil Society (human rights and women's organizations, and the Afghan Independent Human Rights Commission)

- Encourage active implementation of the EVAW law, create programmes to oversee, monitor and publicly report on how Government institutions are implementing the law, including on prosecutions.
- Provide targeted assistance to women to register complaints of harmful traditional practices with police and prosecution.
- Conduct training sessions for religious and community leaders addressing women's rights, violence against women and harmful traditional practices, through Mosques, Ministry of Hajj and Religious Affairs, Ministry of Women's Affairs, and in association with media, elders and *shuras*.
- Ensure civil society's active involvement in any Government process aimed at reviewing laws that impact women's rights.
- Urge the Government to repeal Article 398 of the Penal Code that mitigates the crime of murder if it is committed in the name of "honour."
- Urge the Government to release all females detained for so-called "moral crimes," and revise its judicial circular on the "crime" of "running away."

To International Donors

- Increase support to Government and civil society initiatives aimed at enforcement of the EVAW law, including through training of officials, nation-wide awareness campaigns, and assistance to provincial commissions on elimination of violence against women.
- Continue and increase support the Government in implementing the National Action Plan for the Women of Afghanistan; in particular in developing and putting in place a national strategy to implement the EVAW law.
- Expand programmes that provide technical assistance and support for provincial prosecution offices, particularly aimed at implementation of the EVAW law.
- Provide targeted support for Government and civil society initiatives aimed at eradicating child marriage and other harmful traditional practices.
- Support extensive public awareness campaigns about the illegality of harmful traditional practices under the EVAW law.
- Provide support for programmes targeting men's awareness on women's rights and the EVAW law.
- Support Government and civil society educational programmes for mullahs and religious teachers on Sharia, human rights and the elimination of harmful traditional practices.
- Expand support for programmes that provide material incentives to the families of girls who remain in school.
- Increase support to shelters that offer a refuge for female victims of violence. Ensure that all shelters are well managed and well secured to guarantee the dignity of women assisted.
- Call on the President to release all female detainees (pre-trial and convicted) who are charged for committing so-called "moral crimes."
- Call on the Government (all relevant government agencies) to conduct a national review of laws that impact women's rights to ensure their compliance with national and international human rights guarantees.