

SILENCE IS VIOLENCE

End the Abuse of Women in Afghanistan



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OHCHR

Kabul, Afghanistan, 8 July 2009

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**Human Rights, United Nations Assistance Mission in Afghanistan
Kabul**

**Office of the United Nations High Commissioner for Human Rights
Geneva**

8 July 2009

This report is dedicated to the memory of **Sitara Achakzai**, a Kandahar Provincial Council member, who was shot dead on 12 April 2009, a few weeks after she shared her views with UNAMA, in the context of this research, on the situation of women in Afghanistan.

Sitara Achakzai knew that her life was in danger because of her activism as a women's rights defender and local political. But like many other Afghan women such as **Malalai Kakar**, the highest-ranking female police officer in Kandahar killed in September 2008, Sitara Achakzai had consciously decided to keep fighting to end the abuse of Afghan women.

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Acronyms and Glossary

Acronyms

AGE	Anti-government element
AIHRC	Afghanistan Independent Human Rights Commission
ANDS	Afghanistan National Development Strategy
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
MP	Member of Parliament
NAPWA	National Action Plan for the Women of Afghanistan
NGO	Non-governmental organization
OHCHR	Office of the United Nations High Commissioner for Human Rights
PC	Provincial Council
UNAMA	United Nations Assistance Mission in Afghanistan
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund

Glossary of Terms

Burqa	Burqa is a piece of clothing that covers a woman from head to foot
Baad	Giving away a girl as “compensation” to settle a dispute between tribes or families
Hizb -I- Islami	Faction led by Gulbuddin Hekmatyar was one of the most prominent of the seven Mujahadeen factions fighting the Soviet Union during the 1980s. Currently this faction is engaged in armed opposition against the Afghan authorities and international forces.
Jirga	A Pashto phrase which means a gathering of tribal elders
Mahram	Male chaperone
Mullah	Religious Leader
Mujahadeen	Muslim guerrilla warriors engaged in Jihad (Holy War)
Pashtunwali	The Pashtun code of conduct
Sharia Law	Divine law of Islam, found in the Quran and Sunna
Shi'a	The second largest denomination of Islam after Sunni. In Afghanistan, Shias constitutes around 10 per cent of the total population.
Shura	A Dari phrase meaning a council of elders
Zina	Act of sexual intercourse outside of a valid marriage (Article 427, Penal Code)

Executive Summary

Afghanistan is widely known and appreciated for its rich history, culture, literature and arts as well as its magnificent landscape. It is also widely known that large numbers of Afghans die, or live wretched lives, because violence is an everyday fact of life. Such violence is not openly condoned but neither is it challenged nor condemned by society at large or by state institutions. It is primarily human rights activists that make an issue of violence including, in particular, its impact on, and ramifications for, women and girls in Afghanistan. It is also left to a handful of stakeholders to challenge the way in which a culture of impunity, and the cycle of violence it generates, undermines democratization, the establishment of the rule of law and other efforts geared to building an environment conducive to respect for human rights.

Violence is pervasive throughout Afghanistan. It has diverse manifestations in different parts of the country. Violence against women is widespread and deeply-rooted as well as acute. The violence which scars the lives of a huge proportion of Afghan women and girls is rooted in Afghan culture, customs, attitudes, and practices. Afghan women have limited freedom to escape the norms and traditions that dictate a subservient status for females. Women in Afghanistan are also subjected to the violence inherent in armed conflict that has intensified in recent years and is exacting an increasingly heavy toll on Afghan civilians. Violence, in its acute form, makes its presence felt in widespread lawlessness and criminality. All these forms of violence are closely linked to a deeply entrenched culture of impunity that is, in part, an outcome of decades of conflict and indifference to a justice agenda that would also allow for a transition from, and draw a line under, a long history of egregious human rights violations.

The report seeks to put back on the agenda some of the issues pertaining to the enjoyment of all human rights by all Afghan women that are being increasingly ignored. The problems identified in this report require further discussion and public debate, with a view to informing appropriate legal, policy and awareness-raising measures. In this report, UNAMA Human Rights has focused on the following critical issues:

- (a) violence that inhibits the participation of women in public life; and
- (b) sexual violence in the context of rape.

These issues are but two manifestations of the violence that confront Afghans. They are reviewed in the context of the prevailing socio-political culture whereby the rights of women are bartered to advance vested interests or issue-specific agendas. This report also examines how conservative political and religious forces play a role in restricting women's rights. The controversy surrounding the Shi'a personal status law exemplifies both problems.

Findings reveal that Afghan women are subjected to an increasingly insecure environment. Women participating in public life face threats, harassment and attacks. In extreme cases, women have been killed for holding jobs that are seen to disrespect traditional practices or are considered "un-Islamic." For every Malalai Kakar and Sitara Achakzai, two prominent Afghan women who have been killed and made headline news, there are numerous women who receive threatening phone calls ordering them to stop working or threatening harm to their children. Women also receive threatening 'night letters', and are physically or verbally abused. As a result, women engage in self-

censorship, restrict their movements, or discontinue their work. Threats and different forms of intimidation and attacks are harmful psychologically as well as physically. In addition to the women who are directly targeted, such violence also inhibits the participation of other women in development or political processes. Attacks against female journalists deny the availability of information pertaining to issues that only they, as women, can access. Attacks against teachers and health professionals deny Afghans access to education and health care.

The pattern of attacks against women operating in the public sphere sends a strong message to all women to stay at home. This has obvious ramifications for the transformation of Afghanistan, the stated priority of Afghan authorities and their international supporters. To take but one example, that of socio-economic development in a country where 42 per cent struggle to survive in absolute poverty, it is unrealistic to anticipate significant advances when one half of the population is denied participation either at the local or national level. The effective imprisonment of women in their homes in an electoral period raises additional concerns, although it is also worth noting that 20 per cent more female candidates than before are standing in the current round of elections. Nonetheless, some female parliamentarians have indicated that, unless the security situation improves, they are unlikely to stand in parliamentary elections, scheduled for 2010. This is of obvious concern in a transitional environment as fragile as that which obtains in Afghanistan.

On the issue of rape, UNAMA's research found that although under-reported and concealed, this ugly crime is an everyday occurrence in all parts of the country. It is a human rights problem of profound proportions. Women and girls are at risk of rape in their homes and in their communities, in detention facilities and as a result of traditional harmful practices to resolve feuds within the family or community. In some areas, alleged or convicted rapists are, or have links to, powerful commanders, members of illegal armed groups, or criminal gangs, as well as powerful individuals whose influence protects them from arrest and prosecution. In the northern region for example, 39 per cent of the cases analyzed by UNAMA Human Rights, found that perpetrators were directly linked to power brokers who are, effectively, above the law and enjoy immunity from arrest as well as immunity from social condemnation.

The issue of "honour" is a socio-cultural norm that is central to the issue of rape and efforts to counter its prevalence. Shame is attached to rape victims rather than to the perpetrator. Victims often find themselves being prosecuted for the offence of *zina* (adultery) and are denied access to justice. The problem is compounded when communities subject female victims to lifelong stigma and shame. Moreover, society may call for, or condone, sexual violence through harmful traditional practices such as *baad* (the practice of handing over girls to settle disputes), or by insisting that a victim marry the rapist. There is a dramatic and urgent need for the Government of Afghanistan and society to question attitudes to rape, the larger problem of violence against women, and their complicity in a crime that destroys the life of numerous victims.

The high incidence and prevalence of violence against women pose questions about the hope and the promise felt by Afghan society upon the demise of the Taliban regime. A central message at the time, at least at the rhetorical level, was that the realisation of women's rights was long overdue. The importance of women participating in, and

shaping, a political dialogue geared towards a lasting and meaningful peace was also a central theme in the period after the signing of the Bonn Agreement (December 2001).

The current reality is that the lives of a large number of Afghan women are seriously compromised by violence. Women are denied their most fundamental human rights and risk further violence in the course of seeking justice for crimes perpetrated against them. Despite the hopes expressed nearly eight years ago, the rights and aspirations of Afghan women, and the men who support them, remain largely unfulfilled. The vast majority of Afghan women suffer a significant human rights deficit; for them, human rights are values, standards, and entitlements that exist only in theory and at times, not even on paper.

The government of Afghanistan, in partnership with civil society and other actors, should provide leadership and commitment in rolling back the phenomenon of violence against women. The government must meet its responsibilities to protect, respect and fulfill women's rights, including its responsibility to end impunity through prosecuting perpetrators of violence against women and girls in Afghanistan.

Summary recommendations that concern, in the first instance, the Afghan government, as well as other stakeholders, include:

- Publicly and explicitly condemn all forms of violence against women and girls;
- Define and criminalise rape in Afghan law;
- Put in place measures that build an enabling environment and cultural ethic that inhibits rape and holds perpetrators to account and allow women to play an active role within their families, communities and Afghan society in general;
- Promote “affirmative action” measures to redress gender imbalance in society and in particular in the work place; and,
- Promote the participation of women in all decision-making processes that affect their lives and Afghan society, including with respect to peace-building and reconciliation efforts.

Methodology

Research for this report was conducted by UNAMA Human Rights through its country-wide field presence. Interviews were undertaken with victims of violence, human rights defenders and women activists, representatives of non-governmental and women's organizations, female parliamentarians and provincial council members, journalists, law enforcement officers, and representatives of public institutions such as the Afghanistan Independent Human Rights Commission and the departments for women's affairs (the provincial representatives of the Ministry of Women's Affairs). Focus group discussions were also held with female teachers, health care professionals, and with religious and community leaders. In addition, UNAMA Human Rights also relied on the numerous researches, studies and reports that have addressed the various issues that limit the realisation of women's rights in Afghanistan.

The report is thus not a comprehensive study on all aspects of the two very complex issues of violence against women in public life and rape; nor does it reflect the lives of all women in Afghanistan. However, the report gives a voice to these women who experienced violence and were willing to share their personal stories and understanding of the situation of women in Afghanistan with UNAMA.

All individual cases are purposely reported without details that could identify the women, and men sharing their stories with UNAMA. Details regarding cases are kept confidential and documented by UNAMA.

I. Introduction

Violence against women in Afghanistan is a well known, but poorly understood, problem. It is also well known that the women and girls of Afghanistan have limited scope to enjoy, or make possible the enjoyment of, their human rights. Indeed, the modern history of Afghanistan is in part a chronicle of “power struggles between contending political factions that use women’s rights as a litmus test of Islamic legitimacy.”¹ This struggle to determine the appropriate role and status of women in Afghan society is one of the fault-lines that shape a rural-urban, or modern-traditional, divide that goes to the heart of contemporary Afghan politics. Other factors, including in particular widespread and deeply entrenched impunity that sustains and exacerbates the ramifications of abusive power structures, greatly complicate efforts to secure respect for the human rights of Afghan females whose rights are “traded in the context of political deals and a transactional approach to justice.”²

Three decades of armed conflict, coupled with associated lawlessness, insecurity, and weak governance, have had a significant impact on the status and situation of women in Afghanistan as well as on efforts geared to their emancipation and empowerment.

Distinct phases of the war, since the outbreak of armed conflict in 1978, have been characterized by events that were particularly dangerous and harmful for women. During the Soviet period, aerial bombardments were instrumental in triggering large-scale population movements that, in turn, had ramifications for the rural poor and agrarian livelihoods and infrastructure including vital irrigation systems. The Mujahedeen period (1992-1996)³ was marked by ferocious, internecine warfare that scarred all aspects of Afghan life. Women’s rights and freedoms were severely restricted. Grave human rights abuses included extra-judicial executions, torture, sexual violence, disappearances, displacement, forced marriage, trafficking and abduction. This period represents one of the darkest chapters in the history of Afghan women.

The brutality and predatory nature of the civil war, or Mujahedeen period, contributed to the emergence of the Taliban and their consolidation of power throughout much of the country after their capture of Kabul, September 1996. The Taliban, with their strict and idiosyncratic interpretation of *Sharia* law put an end to much of the brutality and mayhem that characterised the Mujahedeen period.

Taliban understanding or interpretation of Islam, however, further institutionalized the marginalization of women. Throughout its harsh, five-year rule, the Taliban’s extreme interpretation of *Sharia*, based on a distorted and oppressive version of Islam, attempted to change the essence of Afghan society to that of a fundamentalist and repressive system of governance where Taliban edicts reigned supreme. Taliban rule was particularly harsh in urban centers where women, in particular, were victimized and were

¹ Deniz Kandiyoti, *The Lures and Perils of Gender Activism in Afghanistan*, Anthony Hyman Memorial Lecture, School of Oriental and African Studies, University of London, 2009.

² Sippi Azarbaijani-Moghaddam, *On Living with Negative Peace and a half-built State: Gender and Human Rights*, International Peacekeeping, Vol. 14, January 2007.

³ The Mujahedeen consisted of various groups who aligned to fight the Soviet occupation of Afghanistan. Following the withdrawal of the Soviets in 1989, Afghanistan was ruled by Dr Najibullah until 1992. From 1992-1996 the Mujahedeen factions fought each other in a devastating war that, in part, led to the emergence of the Taliban.

reduced to a shadowy existence. Women and girls were subjected to systematic discrimination that, effectively, confined most females to their homes.⁴ Females were not permitted out in public unless accompanied by a *mahram*⁵.

The contemporary situation of Afghan women is shaped by harmful traditional practices, many of which precede Islam. Such practices and related perspectives contradict the fundamental tenets of Islam but have served to suppress women, restrict their movements outside the home, leave them vulnerable in the face of violence, and violate their basic human rights. Decades of armed conflict, coupled with political turmoil, widespread impunity, and limited access to formal, effective, or credible justice systems, have been devastating for Afghans, women and men. Insecurity, coupled with fears for personal safety, have been hugely detrimental, and hindered efforts geared to undoing deeply engrained discrimination that marginalize women and inhibit their participation in the public life of the country.

Following the demise of the Taliban regime at the end of 2001, there was a great deal of hope and optimism amongst Afghans, human rights activists and others, that the situation of women would improve significantly. The Bonn Agreement (December 2001), was concerned with the transformation, reconstruction and development of Afghanistan.⁶ International stakeholders were no less enthused about righting the wrongs suffered by Afghan women and girls. United Nations Secretary-General, Kofi Annan, noted that “there cannot be true peace and recovery in Afghanistan without a restoration of the rights of women.”⁷ In 2002, just four months after the collapse of the Taliban regime, International Women’s Day focused on the situation of Afghanistan’s women. Kofi Annan underscored that the plight of Afghan women was “an affront to all standards of dignity, equality and humanity”; he went on to add that “women of Afghanistan need more than expressions of solidarity. In order to realise their potential, they need concrete help.”⁸ Similarly, during an event to mark this occasion in Kabul, the head of the Afghan interim authority, Hamid Karzai, stated that, “we are determined to work to improve the lot of women after all their suffering under the narrow-minded and oppressive rule of the Taliban.”⁹

It was in this spirit of transformation – helping Afghanistan climb out of the shadows of the past, helping Afghans enjoy the fruits of peace, the rule of law and governance – that the democratization programme that was the hallmark of the Bonn Agreement was launched. The international community, in partnership with the Afghan interim and transitional authorities, embarked on ambitious programmes intended to enlarge the choices available to all Afghans. Particular focus was given to the situation of women

⁴ With the exception of a few women working in the medical field, and a very limited number working for international organisations, most of whom were not permanently based in Afghanistan.

⁵ A male relative who serves as chaperone.

⁶ The ‘Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions’, commonly referred to as the ‘Bonn Agreement’ was the result of a round of talks where a number of prominent Afghans met under the auspices of the UN to determine a plan for governing the country.

⁷ Speech at Afghan Women’s Summit for Democracy – Brussels 4-5 December 2001.

⁸ Press release, SG/SM/8157, AFG/190, WOM/ 1329, Secretary-General at Observance of International Women’s Day, Stresses that Afghan Women ‘Still need Concrete Help’, 3 March 2002

⁹ John Daniszewski, *Post-Taliban Kabul Marks International Women’s Day*, Los Angeles Times News, 9 March 2002.

and girls; numerous programmes, aimed at enabling them to live freely, safely, and with dignity, were promised or initiated.

A central message, at least at the rhetorical level, was that the realisation of women's rights was long overdue. The importance of women participating and shaping, policy and decision-making processes geared to building a peaceful and democratic society, was a common theme in the immediate post-Bonn period. Since then, there have been many declarations and commitments to enhance the situation of Afghan females. Detailed development programmes, many of which focus on human rights, gender equality, and the empowerment of Afghan women, have been initiated.¹⁰

Eight years after Bonn, a critical question is whether the lives of women and girls in Afghanistan have changed for the better?

Undoubtedly, some progress has been made in advancing the rights of all Afghans including those of women. Noticeable improvements include the adoption of a new constitution with a specific provision on gender equality. Afghanistan is a party to a number of international human rights treaties,¹¹ including accession, without reservation, in 2003, to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); this implies the responsibility of the State to protect and promote the human rights of all Afghan women and girls. The Government has yet to submit its initial state report that is overdue since 2004.¹² With the support of the donor community, UNIFEM signed a memorandum of understanding with the Ministry of Foreign Affairs (July 2009) to support the drafting process of this initial report, as per the request of the Government. Progress includes the creation of a constitutionally-mandated Afghanistan Independent Human Rights Commission which has a women's rights unit and a presence throughout the country. In addition, a ministry of women's affairs was created, and the government has adopted a National Action Plan for the Women of Afghanistan. There is a constitutionally enshrined 25 per cent quota for female members of parliament; one of the highest in the world.¹³ Achievements have also been made in

¹⁰ The Afghanistan Compact which was the outcome of the London Conference on Afghanistan in 2006. The Afghan National Development Strategy (ANDS) is focused on security, governance, economic growth and poverty reduction for the period 2008-2009. The ANDS serves as Afghanistan's Poverty Reduction Strategy Paper; it uses the pillars, principles and benchmarks laid out in the Afghanistan Compact as its foundation. The National Action Plan for the Women of Afghanistan (2008 – 2018) is a strategic plan where government institutions are required to integrate the goals of NAPWA into their programmes, projects and reporting processes.

¹¹ Including: the International Convention on Civil and Political Rights, International Convention on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All forms of Discrimination against Women, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child.

¹² The implementation of the provisions of this Convention is monitored by an expert committee, the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW). Under the Convention, Afghanistan has an obligation to report regularly to the Committee on the implementation of its obligations.

¹³ The 25 per cent quota means that 64 of 249 MPs are women. This figure is, however, not an indication of enhanced participation of women in parliament. MPs report having to censor what they say in a parliament that they feel is dominated by religious conservatives. Some female MPs are also representing the interests of male family members and actively pursue an anti-women's rights agenda. Of 18 ministries in Afghanistan, only one is headed by a woman – the Ministry of Women's Affairs.

female literacy and education.¹⁴ Importantly, there are a number of human rights organizations actively advocating for the promotion and protection of women's rights space. The progress made is significant and, with adequate political support, could constitute a foundation for further progress in realising women's rights.

However, a combination of factors is endangering the progress that has been achieved. While an enormous amount of resources has been poured into Afghanistan in recent years, it remains one of the poorest countries in the world with alarming socio-economic indicators. Afghanistan is ranked 174th out of 178 countries in the Human Development Index.¹⁵ Structural violence, including the persistent marginalization of women, is exacerbated by dire levels of poverty. A range of factors inhibit effective, equitable and sustainable development. The war, organized crime, impunity and rampant lawlessness, particularly in conflict-affected areas, work against community development and, by extension, access to essential services, including health care and justice mechanisms. Forty per cent of the country is not accessible to humanitarian aid workers for extended periods.¹⁶ This is particularly worrying in a setting where 6.6 million people do not meet their minimum food requirements and where almost half of the population is living below the poverty line.¹⁷

The adult literacy rate of Afghans over 15 years of age is 28 per cent including 12.6 per cent for females.¹⁸ In rural areas, where 74 per cent of Afghans reside, it is estimated that 90 per cent of women cannot read or write.¹⁹ Research also reveals that 43 per cent of females are less than 18 years when they marry.²⁰ Afghanistan has one of the worst maternal mortality rates in the world;²¹ one woman dies every 27 minutes due to pregnancy-related complications. This amounts to around 25,000 deaths per annum. Indeed, while the average life expectancy is 44 years, some 20 years short of the global average, "women in Afghanistan die at a younger age than men" notwithstanding the high level of male casualties in armed conflict.²²

Other troubling trends include an apparent backlash against the empowerment of women and their participation in public life. There is inadequate investment in efforts needed to counter deeply engrained discrimination that effectively condemns the majority of

¹⁴ According to the Ministry of Education the number of students in primary and secondary education is 6,139,101 – with girls numbering 2,191,046. Overall boys make up two-thirds of the student population (See:<http://unama.unmissions.org/Default.aspx?tabid=1761&ctl=Details&mid=1892&ItemID=3584>) Disaggregated data on school enrollment reveals that figures vary across the country; in certain areas, particularly conflict-affected provinces, enrollment is much higher for boys. For example in Uruzgan province the net primary school enrollment ratio is 64.93 per cent for boys and 9.85 per cent for girls (total 38.60 per cent). See: Islamic Republic of Afghanistan, Ministry of Education, 1386 (2007) Schools Survey Summary Report, published January 2008. In terms of health according to the Human Development Report 2007/2008 in 1990 three per cent of the population was had access to improved sanitation; in 2004 the figure was 34 per cent.

¹⁵ See, Afghanistan Human Development Report 2007, *Bridging Modernity and Tradition: Rule of Law and the Search for Justice*, Center for Policy and Human Development.

¹⁶ See, UNICEF Humanitarian Action Report 2009.

¹⁷ See World Food Programme, Afghanistan country page at: <http://www.wfp.org/node/3191>

¹⁸ See, Afghanistan Human Development Report 2007.

¹⁹ UNAMA press conference at launch of *Education for All, Global Action Week*, 20 April 2009, see: <http://unama.unmissions.org/Default.aspx?tabid=1761&ctl=Details&mid=1892&ItemID=3584>

²⁰ Ibid.

²¹ Ratio of 1,600 per 100,000 live births, see: Human Development Report 2007/2008.

²² National Action Plan for the Women of Afghanistan (NAWPA), 2008-2018, p.1.

Afghan women to feudal-like conditions. The promise of Bonn is no longer a dream for a significant proportion of Afghan women who must struggle, daily, to survive in a culture and political environment where they are largely invisible.

Violence, in the public and private spheres, is an everyday occurrence in the lives of a huge proportion of Afghan women. Rape and sexual violence, including in detention facilities, so-called “honour” killings, the exchange of women and girls as a form of dispute-resolution (often in connection with land or property issues), trafficking and abduction, early and forced marriages, domestic violence, as well as threats or attacks against women in public life, are but some of the problems that many Afghan women must endure.

Armed conflict, which has steadily increased in recent years, exacts a direct as well as an indirect and accumulated toll on Afghan women and girls. In addition to death and injury, Afghan women and men are adversely affected by warfare as a result of involuntary displacement, destruction of homes and property, reduced or no access to essential services, and a significant erosion of humanitarian space which hinders access to life-saving humanitarian assistance.

Indeed, for a huge swathe of Afghan society, and particularly women, the ability to enjoy rights, that are fundamental to the safety and dignity of human beings everywhere, is extremely limited. The vast majority of Afghan women are not aware that their human rights are universal and are guaranteed by the Afghan Constitution. Afghan women and men suffer a huge human rights deficit including an un-ending litany of egregious human rights violations. Human rights defenders, and others who support the emancipation of Afghan women, face particularly daunting challenges given the history, culture, and the prevailing perspectives surrounding the role of females in Afghan society.

History has many lessons to explain the relatively limited progress made to safeguard and improve the lives and well-being of Afghan females. Rhetoric and empty promises expressing concerns about the plight of Afghan women are common. At the same time the majority of women in Afghanistan remain powerless and at the mercy of a power structure and social order that relates to women as commodities that can be exchanged for commercial or political gain. But history also shows that Afghans, women and men, are intuitively conscious of their inherent human rights given that many fundamental rights are espoused in the teachings of Islam. Each time Afghans have been consulted on the issue of justice, they have voted overwhelmingly for a just, free, fair and inclusive society.²³ This is a powerful if largely ignored message. Peace in Afghanistan cannot be achieved while violence shapes the lives of so many women.

²³ The Afghan Independent Human Rights Commission’s consultation – *A Call for Justice*, involved 6,000 Afghans on the subject of transitional justice. 75 per cent said that war criminals must be brought to justice, 40 per cent demanded the prosecution of notorious perpetrators of human rights abuses, and 90 per cent requested the removal of human rights violators from public office.

II. Threats and attacks against women participating in public life

The growing trend of violence against women participating in public life indicates that the critical role of women's participation in democratic decision-making processes, economic and social development as well as peace and stabilisation efforts is not fully acknowledged or valued in Afghan society and politics. Women and men interviewed for this research indicated that the political space for women who wish to advocate for their rights is increasingly being eroded.

The notion of 'public life' is to be understood broadly, as the following examples show. Women have been targeted in a wide range of circumstances when outside the home; from appearing at a public event without a male relative or advocating in public for the respect of women's rights, to being a provincial or a national elected official or as a civil servant.

Countless media and other reports reveal that women participating in public life have been intimidated, threatened, attacked or even killed. Of five high-profile women interviewed in 2005 by a newspaper interested in covering stories of Afghan women who wanted to take a role in reconstructing their country, three have been murdered and one had to flee the country.²⁴ A large number of women working for government institutions and female elected officials receive threats or are intimidated. Similarly, women working for international or local humanitarian and human rights organisations, or those who actively promote women's rights, are targeted. In this respect, information gathered for this report did not shed light on whether a man engaged in similar activities would also be equally targeted. In other words, it would not be possible in all cases to determine whether the key element behind the threat or harassment is the sex of the victim or her or his activities to promote women's rights.

Attacks against, and insidious condemnation of women active in the public sphere, send strong signals to women and their families that women should stay at home. Women interviewed in the context of this research, report that due to fear for their security, they restrict their movements, engage in self-censorship, and restrict their participation in public life. Women who appear in public on their own put their reputation and their safety at risk. Mullahs consulted during the research for this report referred to Islamic tenets to justify their perspective that a woman can only appear in public when accompanied by a male relative chaperone namely, a *mahram*. This interpretation of Islam is common in Afghanistan, although *Sharia* specialists consulted in the context of this research disagree that religion imposes the need for a male chaperone, provided that certain rules regarding the *hijab* (Islamic veil) are respected.

The *burqa* received an inordinate amount of attention in the West during the Taliban period. The removal of the *burqa* is often viewed as a symbol of the 'liberation' of Afghan women. However, for many women, this is often the only protection they have to move in public locations without being harassed. The *burqa* allows women to maintain a low-profile. Female police officers have reported that they wear a *burqa* for their own personal safety when outside of the police station.

²⁴ Kim Sengupta, *Women who took on the Taliban – and lost*, The Independent, 3 October 2008.

Different women, same risks

Female parliamentarians, provincial council members, civil servants, journalists, women working for international organizations (including the United Nations), as well as those considered to be engaged in “immoral” professions, have been targeted by anti-government elements (AGEs)²⁵, by local traditional and religious power-holders, by their own families and communities, and in some instances by government authorities.

Women who transgress social norms have been threatened via phone calls, ‘night letters’²⁶, handbills posted in public places, in particular mosques; they have been followed in the street and verbally abused; their offices and homes have been attacked; rumors are spread to ruin their reputation, including during Friday prayers; and in some extreme cases women have been physically attacked, faced assassination attempts, or have been murdered.

Targeted women have reported to UNAMA similar countless stories, regardless of their location or their ethnic background. In particular, women speak of receiving daily phone calls from unknown men, usually claiming to be Taliban, telling them to quit their jobs

Malalai Kakar, the highest-ranking female police officer in Kandahar was killed in September 2008, allegedly because she was leading a unit of ten policewomen dealing with domestic violence.

and return home or they would be killed or abducted. ‘Night letters’ are usually signed or stamped by the Taliban. Threats also target the relatives of those women working outside the home. A provincial council member also reported that the threats allegedly made by a Talib were also directed at her husband for allowing, and not disapproving of, her work. Accordingly, not only do women fear for their own safety, but also for the safety of their family.

A woman reported that prior to becoming a provincial council member, she and her husband faced harassment from her brother-in-law, a member of the political party Hizb-i-Islami, who accused them of being “non-Muslims”. A provincial council member stated that when she was elected, her relatives forced a mullah to condemn her in a mosque for allegedly going against Islamic *Sharia*; she was also accused of being a Communist and a non-Muslim because she had participated in a workshop in the USA and had travelled without a *Mahram*. A female MP reported that during the election campaign, she received several threats from male members of her own family and that her child was the object of a kidnap attempt. A senior member of the judiciary reported that she received threatening phone calls and leaflets, and that a hand-grenade was thrown into her compound, killing some of her bodyguards.²⁷

As exemplified by these stories, the specific reasons behind a threat or an attack are at times difficult to determine: is a woman targeted because she is working outside the home? Playing a prominent role in her community, such as an elected official? Being a civil servant? Promoting women’s rights? Questioning or challenging the attitudes of society and men towards women? Empowering other women to claim their rights?

²⁵ Men are similarly targeted as part of a wider campaign against those holding political and government posts by anti-government elements.

²⁶ Threats in writing left at a person’s home or hand-delivered, usually at night.

²⁷ Interview with UNAMA Human Rights.

For instance, in April 2009, a Taliban spokesperson claimed responsibility on behalf of his group for the assassination of Sitara Achakzai, provincial council member, who was encouraging women to take up jobs and fight for their rights in Kandahar. The spokesperson indicated that she had been targeted because of her position in the provincial council and that similar attacks would continue regardless of whether the victim was a man or a woman. In this specific case, it appears that the motive behind the killing was not the sex of the victim, but rather, her position within a state institution. Although the killing was seemingly not aimed at discouraging *women's* participation in public life, it still impacted on women interested in seeking elected offices.

In 2008, a woman involved in public advocacy on women's rights reported that her *burqa* was pulled up before she was repeatedly beaten by an unknown assailant in a bazaar in the southern region of Afghanistan. Several months later, she received a phone call from an unknown person who associated her work with the international military forces and threatened her with death by indicating that there were three bullets in his gun for her. Since this attack and threat, she largely stays at home and maintains a low profile.

Contrary to expectations, there has been an increase in the number of female candidates for the upcoming provincial council elections compared to numbers during the 2005 election.²⁸ Many observers are however concerned that a number of these candidates might withdraw their nomination due to threats,

harassment and possible attacks, particularly during the campaign period. Moreover, at the time of writing, a number of female MPs have already indicated that due to the prevailing security situation and death threats they repeatedly receive, they will not be contesting the next national assembly elections in 2010.

Provincial council member, Zarghuna Kakar, fled her home after she and her family were attacked and her husband killed. She had previously stated that if she had known of the risks, she would not have entered politics.²⁹ In this respect, criticism has been made against the international community for having encouraged women to be more actively involved in the political life of the country. Lack of adequate protection from the Government, as well as support from the international community, is a source of complaint and frustration for women in high-profile positions.

Similarly, women engaged in promoting human rights, especially the rights of women, are often viewed as being involved in an anti-Islamic conspiracy. They are perceived as acting on behalf of organisations mobilising women to claim rights that supposedly contravene Islamic doctrine. Such women confront strong resistance from their own communities, especially when they are labeled as 'non-Muslims' by mullahs who have strong influence in their community. For instance, in Herat province a prominent mullah during Friday prayers condemned a women's rights NGO as a centre for blasphemy and called on people to loot the office and set it on fire; as result, two female staff members reportedly resigned from their positions.³⁰

²⁸ At the time of writing, there were 85 more female candidates than in the 2005 Provincial Council elections. 332 women are currently running for Provincial Council elections.

²⁹ Kim Sengupta, see note 24.

³⁰ Interview with UNAMA Human Rights.

Discussions with mullahs in the western region revealed that during Friday prayers, men are told that women must not work outside the home. As one mullah stated to UNAMA:

*“What religious leaders do is preach and direct people for the good and prevent them from the bad. We have to enlighten people’s minds to their duties and obligations in accordance with Sharia principles... therefore we have advised that women should not work for foreign NGOs and that Provincial Reconstructions Teams must not hire women.”*³¹

It is worth noting that these mullahs did not construe such preaching as intimidation; their viewpoint is that they are only advising people on a truthful interpretation of Islam.

In this respect, most heads of the district offices of the Ministry of Women’s Affairs reported being under pressure from elders, local commanders, and even local authority representatives not to address cases where Afghan customs and religious beliefs clash with Afghan laws guaranteeing women’s rights. Similarly, female members of justice institutions reported that they face higher risks of receiving threats than their male colleagues. This is particularly the case when they have ruled in favour of a female victim against a male defendant.

Although various factors are at play in any given instance – including at times some personal grievances, a woman active in public life is at risk because she is perceived as going against Islam or transgressing social norms; in the mind of some, this justifies targeting such women. High-profile women in urban centers or women exercising ordinary professions in remote locations are similarly at risk and have been targeted. The nature of the activities performed seems not to be a determining factor, as the motivating factor appears to be the mere fact that a woman is active in society.

When tradition suppresses women’s voices

Women cannot express themselves freely, particularly when their actions are deemed to conflict with traditional practices. Women in politics, for example, not only face threats and attacks from anti-government elements, but also from within the ranks of government. Chauvinist attitudes, conservative religious viewpoints and the domination of Parliament by MPs with a history of warlordism, means that women are silenced; they actually face attacks – both verbal and physical – if they speak their minds. In 2006, MP Malalai Joya had water bottles and abuse hurled at her by fellow MPs when she

Zakia Zaki, a 35-year-old radio journalist and teacher was murdered by unknown gunmen in her home in Jabalussaraj, in Parwan province on 6 June 2007. In 2001, Zakia Zaki had established a private radio station called *Sada-e-Solh* (Peace Radio). During five years of working with the radio station, she and her staff reportedly produced some 20 programmes, mainly on women’s rights, and received numerous death threats. To date no progress has been made in bringing the perpetrators of this crime to justice. Zakia Zaki reportedly liked saying that her radio station was “a home for the community’s residents, the only place where they dare to speak freely.”

See press statement: Reporters without Borders, *Radio station director’s murder still unpunished two years late*, 5 June 2009. Available at: <http://www.rsf.org/Radio-station-director-s-murder.html>

³¹ UNAMA Human Rights, discussion with a mullah.

questioned the criminal records of some Mujahedeen; she had to be escorted out of parliament for her own safety³².

Female journalists have also reported similar harassment and abuse, as well as dismissal from, or obstruction to, their work. Journalism is perceived by some as an “immoral” profession for women. A journalist was told while live on radio that she should stop working, as women are not supposed to work outside the home. For fear of reprisals by AGEs or religious conservative groups, female journalists have advised that they engage in self-censorship. They refrain from criticising warlords and other power brokers, or covering topics that are deemed contentious such as women’s rights. Journalists also report not using their real names during the course of their work in order to safeguard their security. A journalist reported that ‘night letters’ were distributed in her village, condemning to death any woman who cooperated with her radio-station. This prompted an informal *jirga* convened by the village elders who requested the journalist to discontinue her work. She suspended her programme for 45 days out of fear, but resumed after adopting a different name, tone and timing of her radio programme.

Shaima Rezayee, the 24-year-old presenter of a popular TV music show stated, before her death in May 2005 in Kabul, that “things are not getting better... we have made some gains but there are a lot of people who want to take it all back. They are not even Taliban, they are here in Kabul.” Her TV station was publicly criticised for allowing her to talk freely to men on the programme, and following pressure from conservative clerics she was dismissed from her job.³³

A prominent case involving a male journalism student also highlights the difficulties involved in advocating for women’s rights. Sayed Parweiz Kambakhsh was arrested at the end of 2007 and subsequently sentenced to death for downloading from the internet and distributing to fellow students, material on women’s rights that was deemed offensive to Islam. In February 2009, the Supreme Court upheld the conviction and sentenced him to 20-years imprisonment.

Similarly, female artists are being targeted. Actress Parwin Mushtakhel, the first Afghan woman to appear on television after the fall of the Taliban regime, had to flee the country due to constant death threats and fear for the safety of herself and her children after her husband was shot dead outside their home. In addition to the death threats she was receiving, her own family reportedly disapproved of her acting, stating that being an

actress in Afghanistan is “like being a whore”. She said that when the Taliban went I thought things were getting better for women, now I think they will not change for a long

³² See, Tim Albone, *Woman MP is attacked in a blow for democracy*, The Times, 9 March 2006. Joya was attacked when she interrupted a former warlord who was praising the Mujahedeen during a debate to mark the Anniversary of the defeat of Communism. She declared that there are two types of Mujahedeen – real ones, and criminals responsible for the deaths of tens of thousands of innocent people. MP Joya survived a number of assassination attempts in what is seen as attempts by fundamentalists to silence her. Her parliamentary mandate was suspended in May 2007 for what was considered to be insulting remarks she had made on television about several fellow parliamentarians. The Inter-Parliamentary Union has expressed concern about this suspension and has called upon the Afghan Parliament to allow her to resume her mandate as quickly as possible.

See, Press release: *IPU Concerned about the plight of legislators in 32 countries*. Available at <http://www.ipu.org/press-e/addis7.htm>

³³ Kim Sengupta, *Women who took on the Taliban – and lost*, The Independent, 3 October 2008.

time.”³⁴ She added that, “the atmosphere has changed; day by day women can work less and less.”³⁵ Similarly, a young woman from Kandahar entered the televised singing competition “Afghan Star”, the Afghan version of “American Idol”, in 2008. In Kandahar, her behaviour was considered “un-Islamic” and of having dishonoured her family. As a result of the numerous death threats she received, she fled the county.

Impact on women’s professional lives

Women are constantly forced to adapt their behaviour, and in numerous cases, to cease working. As professionals or active members in their own communities, they censor themselves and struggle to comply with behaviour that is considered appropriate to females in line with traditional and religious practices and norms. Their contribution to society is therefore extremely limited and they are unable to meaningfully participate in decisions that affect their and their families’ lives.

Even women representing State institutions encounter resistance, including from local traditional and religious power-holders. A woman working for the Afghanistan Independent Human Rights Commission for several years indicated having problems when on official travel to the provinces. Mullahs questioned her travelling with men and refused her entry to a mosque.

Despite the risks and fear, a number of women continue with their work. As one female MP stated to UNAMA: “Threats do not affect my personal or professional life. I strongly believe that life is like a battle and that we must do our best to win this battle.” Others continue this battle, but not without consequence for their personal life. A high-profile woman told UNAMA:

“Threats have affected my personal life but not my professional life. I did not allow threats to push me back and force me to resign, but in my personal life... All three of my children stopped going to school for fear of abduction or assassination. Wherever I or my children go, we have to be guarded by armed bodyguards. This has caused widespread limitations and made life bitter for me and my children.”

Often the impact of violence, and the course of action women take to deal with it, will depend on the support they have from their families. As one interviewee stated, “my husband has to take me to work in the morning and bring me back in the evening; actually he is both my bodyguard and personal driver!” A family’s influence and power are also important factors that protect women; a provincial council member told UNAMA, “The role and influence of the tribe are very important for protection. I have an extended family with influence. My relatives would support me if I encounter any problem.”

Similarly, a number of women interviewed, particularly elected officials, noted that because they are working for the people and are helping them, the people are protecting them. A female MP stated that: “I have enjoyed the protection of the people more than

³⁴ Christina Lamb, *Women Choose exile as Taliban laws return*, The Sunday Times, 5 April 2009.

³⁵ Tom Coghlan, *Parween Mushtakhel is forced into hiding as the Taliban return to Kabul*, The Times, 2 March 2009.

relying on my family background. I represent all ethnicities and it caused all people, Pashtun, Hazara, Tajik and Turkmen to respect me and to extend support.”

Gender perceptions also affect women’s capacity to play the role they are assigned while performing their professional or official duties. Female provincial councillors and MPs have complained that they are not taken seriously by their male counterparts, although their presence in the Provincial Council and Parliament is required by the law. They often feel marginalized or even ignored. This is particularly manifested when issues at stake relate to matters that are governed in Afghan society by religion. Religious conservatives are said to dominate the Afghan Parliament and certain Provincial Councils. As indicated by a female MP: “most of the time women don’t dare even say a word about sensitive Islamic issues, because they are afraid of being labeled as blasphemous.”³⁶

Women who run for elected office have complained that the fact that they are women was used by male candidates to tarnish their reputation when they were campaigning. Accusations of “immoral” behavior, relayed by conservative religious leaders, are powerful allegations in a highly conservative society.

District representatives of the Ministry of Women’s Affairs have expressed concerns about their inability to perform their functions due to lack of respect by male local government counterparts. Similarly, journalists interviewed in the course of UNAMA’s research, reported that they are kept aside from standard journalistic procedures such as informing all journalists about important events that would need to be reported upon. “Actually, our male colleagues cannot think of us as members of journalism family”, said one journalist.³⁷ Likewise, a senior member of the judiciary reported to UNAMA that a male colleague told her that he would not accept a woman “sitting in the same chair as him” and that “women are worth half of a man”.³⁸

Some professions are considered as more appropriate than others for women. Working with women or children, in the health or education sectors, is permissible because it will not expose those women to have contact with men. A religious leader explained to UNAMA: “*Sharia* allows women to work in the health and education sectors. We can approve of that as these are sectors where they will be in touch only with women and children.”³⁹ As a result, some women have indicated having changed their profession.

However, in areas that are severely affected by the conflict, schools do not operate, and when they do, parents often

From April to May 2009, three gas attacks on schools have been reported. In April, in Parwan province, dozens of girls were admitted to hospital after smelling an unusual odour and feeling nauseous and dizzy. A few days later, again in Parwan, 61 schoolgirls and one teacher were similarly admitted to hospital. In May, in Kapisa province, 90 schoolgirls aged eight to 12 were admitted to a hospital for headaches and vomiting, following a poison gas attack. Although responsibility for these attacks has not been attributed to anyone, fears have been expressed that these were new methods used by AGEs to take girls out of education.

See: Starkey, *90 Afghan Schoolgirls Poisoned in Taliban Gas Attack*, Independent Newspaper, 13 May 2009.

³⁶ Anand Gopal, *Women Lawmakers Battle Warlords*, Inter Press Service, 9 March 2009.

³⁷ UNAMA Human Rights, focus group discussion with female journalists.

³⁸ Interview with UNAMA Human Rights.

³⁹ UNAMA Human Rights, focus group discussion with mullahs.

do not send their children for fear that they may not return. Schools are reportedly targeted by anti-government elements wishing to curtail government presence and services. Sometimes, only boys have been authorised by AGEs to attend school, which reinforces some patterns that give precedence to boys in educational matters. Breaching these instructions put girls at extreme risk as exemplified by the acid attack on a group of schoolgirls in November 2008 in Kandahar. Teachers reported to UNAMA that when the security situation deteriorates, their families do not allow them to go to work.⁴⁰ Increasing attacks against schools, particularly girls' schools, deprives thousands of girls of their right to education. UNICEF has recorded 292 attacks on schools and educational facilities in 2008. In 2009, the number of documented schools attacked to date is 29,⁴¹ resulting in 13 deaths and 14 injuries. According to UNICEF, 700 schools have been closed due to the conflict and around 200,000 children cannot attend school.⁴² While not all attacks on schools have been attributed, an increasing number of security incidents involve what is described as a deliberate insurgent strategy to limit girls' education and to polarise local communities and foment support for their cause. The situation is extremely worrisome given the very low literacy rates, particularly for women and girls, and the long-term impact it has on the involvement of women in society.

Similarly, non-governmental and humanitarian organisations have reported that female medical professionals are increasingly receiving threats from AGEs, and some have been forced to resign. This has adversely impacted on women's access to health services, especially in rural remote areas where there are few qualified medical professionals and where maternal mortality is a critical concern.

On 13 June 2009, a midwife named Narges was gunned down in Farah province along with her husband and her seven-year-old boy. She had been working for a health clinic in Khormaleq village, Golestan district, run by a well-established non-governmental organisation that has been providing basic health services for a long time in this Province. She was the only healthcare professional working in this area. Previously, local Taliban had reportedly been critical of women having undertaking work outside the home, including in the health sector.

Inadequate response from public authorities

Victims repeatedly complain that inadequate attention is given by authorities when they report a case of harassment, threat or attack. Women feel that the lack of action by Afghan authorities serves to reinforce the view that perpetrators of violence are immune from punishment.

Afghan women have repeatedly reported that they have lost faith in the law enforcement and judicial institutions that they consider ineffective, incompetent, dysfunctional and corrupt. Referring an incident to the police, the national directorate of security (i.e., the intelligence service) or a prosecutor is said to be of no avail; cases are usually not taken seriously, properly recorded or acted upon. Ultimately, authorities are not willing or are not in a position to provide women at risk with any form of protection to ensure their safety. For instance, the outspoken head of a district office of a department of women's

⁴⁰ Interview with female teachers, Gardez.

⁴¹ Figure as at end of April 2009.

⁴² Press conference – Shigeru Ayoagi, UNESCO Country Director and Gopal Sharma, UNICEF Deputy Representative, 20 April 2009. Transcript available at: www.unama.unmissions.org

affairs told UNAMA that following threats from the Taliban over a period of several months in 2008, her request for security guards for her office was turned down, including by the provincial governor, who she reported had told her: “if you are under threat, just go home.” And when a case is acted upon, it is often done in an unprofessional manner with little regard to the safety and security of women, which further undermines women’s confidence in public authorities’ willingness and capacity to protect them. The police often refer to the lack of appropriate resources, including qualified female officers, to explain their limitations in pursuing such cases.

Najeeba, who had been receiving threatening phone calls, finally decided to inform the police as she feared for her own as well as her family’s security. Investigators managed to identify the caller, Rafiq, but stated that they could not do anything. Rafiq was eventually arrested for other offences. The police, however, told him that Najeeba had reported the threats she was received from him. As a result, Najeeba is receiving phone calls from other men, who say that she will be killed as soon as Rafiq is released from prison.

According to many women, reporting a case to the police may actually further endanger them as it raises their profile. The policing of offices or houses and the provision of personal security might not be available to all women at risk in Afghanistan, and may, counterproductively, raise their profile. As a result, women adopt their own preventive protection measures in order to mitigate the

level of risks. In practice, this entails that they attempt to maintain their anonymity when leaving the home, or often restrict their movements or cease work or other activities outside the home altogether.

Public security institutions face great challenges in providing security to women of various professions or carrying out activities in various contexts. While it may be somehow easier to protect a high-profile woman in Kabul by introducing specific protection arrangements, it is far more complicated to identify appropriate responses to ensure the safety of other women, such as nurses or school teachers in conflict-affected areas of the country. To this end, the authorities, and the police in particular, must make further efforts to identify the appropriate ways of guaranteeing the security and safety of all women, irrespective of the nature of their profession and other activities performed outside the home, in particular, all precautionary measures must be taken to secure confidentiality and the complainants’ safety. Relevant public institutions should also engage with local communities to ensure the support of the individual’s close network.

Socio-cultural barriers

One of the major barriers to realising women’s rights in Afghanistan is the way in which traditional practices and conservative interpretations of social norms restrict women’s participation in public life. Traditions are often reinforced by arbitrary invocation of religion to further restrict women’s movement. As stated by the Minister for Women’s Affairs: “Afghan women are facing unacceptable customs from decades ago that are just obeyed. These traditions do not have any religious or legal basis, but the people accept them”.⁴³

⁴³ Heidi Vogt, *Afghan minister: Old customs impede women’s rights*, Associated Press, 14 January 2009.

Harmful traditional practices, in some cases preceding Islam, have been reinforced by tribal, community and religious leaders in the name of religion. The concept of “tradition” has, however, to be treated with a degree of caution as, “what to Western eyes looks like tradition is in many instances, the manifestation of new and more brutal forms of subjugation of the weak, made possible by a commodified criminal economy, total lack of security, and the erosion of bonds of trust and solidarity that were tested to the limit by war, social upheaval, and poverty.”⁴⁴

As a result, many communities and families sincerely believe that women should stay at home. A popular Afghan saying encapsulates this: “women are made for homes or graves”. The tradition of segregation of the sexes reinforces this belief.

In many cases, women have indicated suffering from immense strain; rather than facing constant pressure mainly from male relatives, colleagues and community members many women have opted for a low profile approach, even if this meant resigning from their position.

This attitude is not restricted to rural areas or families that lack formal education, but is extended to women and girls in urban centres who are also restricted in similar ways. Based on the research undertaken for this report, there is no clear distinction between rural and urban women in terms of risks associated with an active life outside the home, or the support they receive from their families and communities.

On one hand, out of necessity, rural women often work in agricultural fields alongside male family members. Some have argued that women in urban centres are even more restricted to their homes as nothing would justify their going out. On the other hand, some have claimed that the extent of restrictions and level of conservatism is greater in rural areas especially in households with a low level of formal education. As one person interviewed by UNAMA noted: “In remote provinces, it is almost impossible to convince families to let their female members appear in public”.⁴⁵

Similarly, while women in rural areas might be required to assist in the fields, highly educated women are not always perceived as having more legitimate grounds to carry out a professional activity. For instance, a Supreme Court judge confided to UNAMA that she had to abandon her position to become a teacher as a result of family pressure⁴⁶. Female medical doctors and journalists have shared similar experiences.

In general, women still believe that educated families would more willingly allow their female members to study and work. As one provincial council member stated:

“I have always been supported by my family. My father himself was well educated and employed by the Government. He would always say that the education of his daughters was more important than the one of his sons. Why? Because he wanted his daughters’ dowry to be education as such dowries will never be lost or

⁴⁴ Deniz Kandiyoti, *Old Dilemmas or New Challenges? The Politics of Gender and Reconstruction in Afghanistan*, Development and Change, Vol. 38, no. 2, 2007, pp. 169-199.

⁴⁵ UNAMA Human Rights, focus group discussions with female NGO/ political party staff members.

⁴⁶ Interview with UNAMA Human Rights.

destroyed. In addition, he firmly believed that women's education was the duty of any Government."⁴⁷

Many families, however, remain concerned about disapproval within their extended families and communities, when females go out to work. Some families do not allow their women to undertake an activity outside the home, risking their safety and the safety of other family members. As one woman stated, "if the husband of an educated woman is under the influence of his uneducated family members, he will not allow his wife to work".⁴⁸ Support from husbands and families is thus often a pre-condition for a woman to play an active role in society.

Conservative interpretations and misinterpretations of Islam similarly shape Afghans' perceptions regarding what is permissible or not for a woman. Religious and community leaders retain an immense power in influencing, if not dictating, peoples' attitudes. Working outside the home is said, by some mullahs, to be disrespectful of Islam. A female MP indicated: "I was warned not to work, because a female working outside the home is taboo; and that it is forbidden by *Sharia*. The salary I receive is *haram* (illegitimate) and I must stay at home." A provincial council member added that some Mullahs label husbands of such women as *kafir*, namely an infidel.⁴⁹

During focus group discussions in the western part of the country, mullahs took the view that "the role models for a Muslim woman are the Prophet's wives and daughter. The best women are those who stay at home. A woman's main duty is to manage the household and bring up children in accordance with accepted Islamic morals." *Sharia* specialists consulted in the course of this research indicated to UNAMA that a number of mullahs in Afghanistan have a very basic knowledge of Islam, and then, only of the core tenets. In this respect, mullahs may present certain religious arguments in a way that reinforces or justifies what they consider as the appropriate social norms and traditions in Afghanistan. Experts, in contrast, note that Islam supports the active role of women in society, acknowledging that they should not be confined to the home.

Such denigration by religious leaders in mosques or other public locations runs the risks of further endangering women's safety. There is a high probability that some individuals might feel authorised and empowered to intimidate or harm women, including members of their own families if they do not stay home.

Conservative religious thinking is also used to reinforce gender perceptions that limit the ability of women to perform a role within society. Women in high-profile positions in public institutions, including at the provincial level, are particularly subjected to criticisms. A mullah indicated to UNAMA that:

"Women should not work and be in charge of key government department positions, as women are more delicate in terms of feelings and are more sentimental than men. Therefore, they cannot perform as competently as men. There is a religious teaching that says: 'no nation whose leader is a woman will be salvaged'."

⁴⁷ Interview with UNAMA Human Rights.

⁴⁸ UNAMA Human Rights interview with head of a women's NGO.

⁴⁹ Interview with provincial council member, Herat.

III. Sexual violence against women: Rape

The reality for most female victims is that state institutions fail them. No issue demonstrates this more clearly than the issue of sexual violence and rape in particular.

Afghan society perceives women to be the guardians of culture and the custodians of a family's "honour". As a result, women are seen as "dishonouring" their families and communities when they are subjected to sexual violence. As such, it is the girl or woman – the rape victim – and not the perpetrator who carries the shame of the crime. As Afghan families customarily wish to uphold their "honour" by hiding incidents of rape of family members, the extent of the problem of rape within Afghan society remains unknown. In the interest of preserving "honour", and of preventing ostracism and humiliation, Afghan women are under a lot of pressure to remain silent.

The Government has failed to establish effective and appropriate referral pathways for victims to get assistance and to promote awareness-raising that rape is a serious crime. As a result, rape is shrouded in social taboos that help maintain a conspiracy of silence, and by extension, inaction, that perpetuates and exacerbates the problem.

Consequently, sexual violence is under-reported in Afghanistan. However, available information points to a widespread phenomenon. It affects all communities and all segments of the population.

Only in a few isolated cases have public institutions taken appropriate action. In many instances, victims seeking help and justice are further victimized. Evidence has proved that victims of rape are discouraged from taking their cases to the police, and if they do so, are not treated with respect. Frequently, rape victims are humiliated or denied justice, and are sexually abused while held in custody or detention. The Government has not invested adequately in measures geared to investigating rape cases effectively, nor in prosecuting the perpetrators. More should be done by the Government to promote change in societal attitudes and practices that at times condone sexual violence through harmful customs, such as *baad* – the handing over of a girl as "compensation" to settle a dispute or a crime – or insisting that a victim marry her rapist.

Media reporting on rape is progressively exposing the problem in the public realm. However, on occasion, this further endangers rape victims by revealing their identity. While some politicians have been outspoken in their condemnation of rape, Government action to address rape is woefully inadequate.

When rape is reported⁵⁰

In general, Afghan women and men consider discussing issues related to sex and sexual violence as taboo, as women's sexuality is effectively controlled by men. In the course of this research, UNAMA found it extremely difficult to use terms like "rape", "sexual consent" and *zina*. The issue of marital rape is never considered or reported, since women have no choice in terms of consenting to sexual intercourse with their spouse.

⁵⁰ Although forced sexual intercourse also affects Afghan men and boys, this report is focused on the situation of women and girls.

The power imbalance of the relationship between men and women within the family means that husbands decide over issues related to their partners' sexuality, including the frequency and nature of sexual intercourse. Early and forced marriages are in this respect particularly conducive to marital rape, including of very young girls.

Most information on sexual violence and rape in particular, is anecdotal, incomplete and at times unreliable. There is a lack of official primary and comprehensive data on rape. Statistics on rape cases (including cases reported to the police, Prosecutors and the courts) as well as on the profile of both victims and perpetrators, are currently unavailable. To address this gap, the Ministry of Women's Affairs has established a database, though cases remain under-reported.

UNAMA's preliminary data gathering suggests that rape is a widespread occurrence in all parts of Afghanistan and in all communities, and all social groups.

The majority of rape cases that have been reported involve young girls (as young as three years old) or females, aged between 7 and 30, with a fair number of cases ranging between 10 and 20 years of age. Women are at risk in their homes and communities, and on the streets whilst travelling to and from work or school. A significant number of reported cases coincided with armed robberies and kidnapping, and several recorded cases involved gang-rape. Women in both rural and urban settings are at risk of rape, but the risk appears to be greater for women in rural areas. Unaccompanied women and those

Reports of sexual abuse of female inmates occurring in prison cells in, or during transfer to and from, Pol-i-Charkhi, Kabul, in 2007 and 2008, prompted the authorities to transfer all female inmates to Badam Bagh female prison in Kabul, to prevent sexual violence and abuse.

who have previously been subjected to sexual violence are at greater risk, as are widows, divorced women, and women whose husbands are out of the country. In the latter case, abuse, mainly involves beatings but sometimes sexual violence by the husband's male relatives. Similarly,

girls who run away from home, including from forced marriage, are also at risk as they are perceived as an easy target. Moreover, when it comes to sexual violence in the family, observers note that illiterate or poor women are less likely to report cases of violence, including rape.

In many cases, not only the victim of a rape incident, but her entire family will fear for their own safety and well-being, because of the stigma attached to rape and the risk of reprisals. This often results in forced abortions carried out by family members in order to hide the fact that their female relative was a victim of rape.

Analyses of cases revealed that many perpetrators are close family members of the victim, or otherwise known to the victim. A large number of cases were of incest. In addition, a number of rape cases involving young women married to older men were committed by the husband's brothers or sons.

In October 2008 in Bamyan, a nine-year-old girl was allegedly raped by one of her relatives, a 23-year-old man, who wanted to take revenge for the rape of his own 10-year-old brother.

Rapists include individuals who are entrusted as guardians or as care-takers of children and women, such as staff of prisons, juvenile rehabilitation centres, police stations or orphanages. Some detention facilities' officials are said to have forced female detainees

into prostitution or to conduct sexual acts in exchange for food and other items. Others reported that perpetrators are linked to local power-holders, such as Government or elected officials, powerful commanders, members of illegal armed groups and criminal gangs. It is understood that the power and influence of these local power-holders shield perpetrators from prosecution. Statistical data is not available but this type of impunity is deemed to be widespread throughout Afghanistan. Indeed, impunity is a significant contributing factor to the high incidence of rape as well as the reluctance of many victims to report or seek redress for such crimes. The prevalence of armed groups and criminal gangs are factors that have often been cited as contributing to sexual violence in rural areas.

Private feuds, such as those between families or within communities are also a motive for sexual violence. In such contexts, rape is used to “dishonour” another family, tribe or clan, to obtain revenge for a previous crime. Men thus enter into a cycle of revenge, based on the sexual abuse of

In Farah province, a father referred the case of his young daughter who was having a ‘liaison’ with a neighbour to a local *jirga*. Elders decreed that the man having an affair should give money, his younger sister, and his six-month old baby daughter to the girl’s father as compensation. Members of the girl’s family, however, allegedly abducted and raped one of the nieces of this man to avenge their “honour”.

women. Sexual violence and rape are seen as ‘compensating’ for an earlier crime. However, it was noted by some interlocutors that revenge is usually meted out on families that are considered less powerful.

Is rape a crime in Afghanistan?

In January 2006 in Samangan province, “Fatima” was gang-raped, allegedly upon the instruction of a local commander, to avenge the alleged rape of the wife of one of his bodyguards by “Fatima’s” son. Both the gang-rape victim and her husband waged a nonstop campaign to bring the perpetrators to justice. Three men were eventually sentenced to 13-years imprisonment by the Supreme Court, while the commander was acquitted by the primary court; the presiding judge was allegedly related to this commander. In April 2008, the convicted rapists were released from prison under a presidential pardon. Concerns were raised about these pardons by human rights organizations and the UN. In early May 2009, the husband of the rape victim was killed by an unidentified gunman. The provincial prosecutor of Samangan opened an investigation against a number of persons for this murder, and two individuals have been arrested.

There is no explicit provision in the 1976 Afghan Penal Code that criminalises rape. In instances of forced sexual intercourse, law enforcement and judicial authorities overwhelmingly resort to the concept of *zina*, which does not adequately address the issue of consent, one of the core elements of the crime of rape. *Zina* (under chapter eight of the Penal Code which focuses on crimes of adultery, pederasty, and violation of “honour”), only refers to individuals engaged in sex outside of marriage. In principle, partners engaged in

zina are both liable for criminal punishment. However, if coercion is established, the victim is relieved of any criminal liability. It is unclear how this distinction between *consensual* and *coercive zina* is being applied in Afghan courts. In addition, there is no clear definition of what amounts to ‘coercion’. This distinction is not well applied and

understood, including by justice officials. In this respect, it must be noted that the Parliament is currently drafting a Bill on the Elimination of Violence against Women that in principle, should incorporate and define the crime of rape. At the time of writing, concerns were expressed that the current draft provision did not spell out clearly the element of coercion.

The issue of the criminalization of rape is further complicated by the fact that judges rely extensively on their own interpretation of Islamic law and its jurisprudence when adjudicating *zina* cases. In this respect, a party alleging *zina* has to provide four adult male witnesses of sound standing – this is impossible in nearly all cases. While this standard protects women from false accusation of adultery, the same standard of proof arguably limits the ability of victims to prove rape. In any event, according to information received, judgments passed on *zina* cases usually do not meet these requirements. Even when women make claims of coercion during the investigation or court proceedings, they remain at a high risk of being accused of having consented to *zina*.

It is worth noting that a survey conducted by an Afghan stakeholder in Herat prison with convicted rapists indicated that they did not know that rape was a criminal offence. Most indicated that if they had been aware that they would be punished by imprisonment, they would not have coerced their victims into sexual intercourse. This demonstrates that efforts should be made in terms of raising awareness of the public at large on the issue. It also appears that more convictions for rape would eventually have a deterrent effect and serve to reduce the occurrence of rape in the country.

A 34-year-old nurse reported to UNAMA that she and her sister were repeatedly raped by a local commander and his men who abducted them on three occasions at the end of 2006 in Parwan Province. In one instance, the nurse was raped in front of her husband, who did not dare file a complaint with the police due to fear of reprisals. The victims allegedly fled to Iran with their families.

When injustice becomes the norm

The son of a member of parliament in Saripul province was accused of raping a 13-year-old girl in February 2008. The trial of the rape case was transferred from Saripul to Kabul amidst allegations of interference with the judicial process, including attempts to portray his son as a minor, by the MP concerned. At the time, the victim's uncle reported to UNAMA that, following his campaign for justice for his niece, he was sacked from his position within the Saripul provincial government and received threatening telephone calls ordering him to drop the case. The accused person is still awaiting trial at a juvenile detention facility. The rape victim's family was also reportedly involved in a "reconciliation" process which involved the giving away of a girl as *baad* by the accused person's family.

Access to formal justice institutions in Afghanistan is limited, especially in rural areas. Some studies have indicated that 80 per cent of the population relies on traditional dispute-resolution mechanisms, especially as the formal justice system is viewed as ineffective and corrupt. Numerous reports demonstrate that authorities systematically fail to investigate and prosecute perpetrators of sexual

violence.

Lack of will, ability and interest in pursuing cases that affect women is the primary reason behind the lack of results in the investigation of rape cases. UNAMA interlocutors

are of the view that police and judicial officials are not aware or convinced that rape is a serious criminal offence. Investigating a rape case is rarely a priority. Moreover, authorities, in particular the police, raised concerns about the lack of capacity, including trained female staff and forensic expertise to investigate rape cases.

When a case is being pursued through the formal justice system, women are rarely in a position to challenge claims that they consented to sexual intercourse. This is explained in particular by women's low standing in criminal proceedings, which most of the time are conducted solely by men. Judgments are widely considered as biased in favour of men, even when there is strong evidence or presumption that sexual intercourse was forced on the woman. The so-called victim's 'moral character' is one of the elements taken into consideration. In view of the position of women in society, this necessarily disadvantages women, especially as previously indicated, when these women are not married. Bribes and pressure exercised by local power-holders, especially when they have ties to armed groups, are also said to play a significant role in the release and non-prosecution or acquittal of alleged rapists, thus, undermining the rule of law. Such interference with the independence of the judiciary is widely reported.

Any woman who dares to report a rape subjects herself to potential further victimization, including criminal prosecution and imprisonment for *zina*. Women are aware of their low chances of obtaining justice through the formal justice system. Coupled with the conservative nature of Afghan society and the social stigma of rape, families often attempt to resolve the case privately or at the community level, through a *jirga* or *shura*⁵¹. As an NGO representative from Paktya stated to UNAMA: "it is very rare for women to reveal an incident of rape, because they are afraid of what their community will think. I am also not sure what kind of assistance women might be able to receive if they actually report rape. I think it is better if the issue is resolved with tribal elders and within the family."

Informal ways of addressing rape and sexual violence give little space for the victims' voice and choice. In numerous cases, in order to avoid 'shame' and to reconcile families, tribes or clans, the proposed resolution of the case is an arranged marriage between the rapist and his victim. Needless to say, such arrangements have far-reaching consequences for the woman and, it is feared, will put the concerned woman at risk of domestic violence. Monetary compensation or *baad* is often also part of what is seen as an

In Paktya province in 2008, a seven-year-old girl was sexually abused by a 25-year-old married man, who was a relative of the girl's father and was eventually arrested. The girl's family wanted to kill the man, but a *shura* decided that the perpetrator's family had to pay the victim's family money as compensation. It was also decreed that the child victim should marry the rapist when she grew up.

acceptable solution to all parties. It is reported that when victims, who have gone by through this resolution process want to lodge a formal complaint with state authorities, the latter reject them. This rejection occurs on the ground that they consider such cases to be "resolved", as if no crime had ever been committed.

Traditions and customs dictate how families address rape: according to the interpretation of a provincial-level prosecutor of the *Pashtunwali code* (the Pashtun code of conduct),

⁵¹ Such mechanisms are in particular available in Pashtun communities.

there are a number of ways with which victims' families may wish to 'resolve' a case, including:

- a) Both parties are killed, whether they consented to sexual intercourse or not, as the act brings shame (*gno*, i.e., sin) on both families;
- b) Both sides agree to resolve the issue by the perpetrator's family giving one or more girls to the victim's family to "compensate" for the harm done (*baad* exchange).⁵²

A number of male interviewees concur with the idea that if a girl is raped, then the rapist has to wait until she reaches the age of marriage and then marry her. This is viewed as preventing additional shame to the families concerned, especially as a rape victim has few prospects of marriage to another person. At times, formal justice institutions and traditional resolution mechanisms work in parallel. In 2006 in Paktya province, a *jirga* ordered the marriage of an eight-year-old girl who had been raped by a 26-year-old married man who had been sentenced by a court to 12-years imprisonment.

In some cases, rape victims have been killed by their own families in an attempt to preserve the family's "honour". In many cases, victims are ostracised and are no longer allowed to participate as a member of their family.

Allegations have been made of cases in which men raped women who they actually wish to marry in order to avoid paying an expensive dowry or being refused. Thus, the rape occurs with the knowledge that marriage will follow as the victim and her family will have no other choice.

Socio-cultural barriers

"In Afghanistan, a woman's place is firmly in the family which appropriates their sexuality in defense of family "honour"; this overrides all other concerns."⁵³ As a result, men have assigned themselves the role of dispensing justice in such a way that the family's "honour" will be preserved; commonly, this occurs at the expense of women. In Afghan society, actually it seems only men control "honour". Thus, women have very little influence on how a 'just' solution will be found to preserve it.

Because of this socio-cultural paradigm that is reinforced by the Government's lack of willingness to act on these issues, women are accused of *zina* rather than being considered rape victims. Afghan society largely turns a blind eye to victims of sexual violence. Coupled with the absence of appropriate and safe response mechanisms, including psycho-social or medical assistance, rape victims are forced into silence.

As a result, offenders go unpunished, as cases are rarely reported in the first place. Even when rape cases reach justice institutions, be they traditional or formal, impunity prevails in the overwhelming majority of cases reported to UNAMA. The lack of political will and an appropriate legislative framework to address sexual violence and rape has often

⁵² UNAMA Human Rights, interview with a prosecutor.

It seems that other non-Pashtun communities in the south of the country might have the same approach regarding how to 'solve' rape cases.

⁵³ Personal communication from Sippi Azarbaijani-Moghaddam.

been condemned by human rights activists. The absence of punishment reinforces patterns of violence, as society does not acknowledge that sexual violence and rape are serious crimes.

The lack of clarity of the provisions in the Afghan Criminal Code pertaining to rape, and accordingly of the justice institutions on how to apply them, further exacerbates the problem of impunity.

Most Afghan women interviewed in the context of this research have underlined that they felt powerless when it came to expressing their choice in matters regarding their sexuality. They believed that most women were not necessarily aware of the law and redress mechanisms, including ways to complain about rape. Not only do women seem to lack understanding about rape as a crime, but also State authorities and community elders, as well as society at large, do not consider rape an issue that requires prompt and resolute action.

A radical shift in thinking is needed so that the shame associated with sexual violence does not remain with the victim, but with the perpetrator. Women and men alike need to understand the gravity of the offence endured by women who have been sexually abused. Currently, victims are further coerced, including by their own families or communities, into accepting social norms which are at odds with their safety and violate their human rights.

State institutions, from law enforcement and judicial authorities to psycho-social and medical institutions, need to deliver prompt and appropriate support to rape victims. This includes priority attention to the need for justice and some means of redress for victims and their families. As exemplified by the on-going legislative process on the Shi'a Personal Status Law (see box, below), the legal framework should not be used to reinforce harmful traditional practices or beliefs. On the contrary, and in accordance with the Constitution of Afghanistan,⁵⁴ it should provide guarantees that women will be able to enjoy all their rights. In this respect, the Government has the duty to eradicate these harmful practices, by making them illegal, educating its population and demonstrating leadership and commitment to safeguard the rights of all Afghan females, minors as well adults.

⁵⁴ Article 54, Constitution: "The state adopts necessary measures to ensure physical and psychological well being of family, especially of child and mother, upbringing of children and the elimination of traditions contrary to the principles of the sacred religion of Islam."

The Shi'a Personal Status Law

How a legislative process risks undermining the rights of women

The Shi'a Personal Status Law that regulates the personal affairs (civil matters) of Shi'a community members was drafted by the Shi'a Council of Religious Scholars and presented to Parliament by the Ministry of Justice. It was approved by the national assembly in February 2009, and signed by President Karzai in March. In April and May 2009, following national and international outcry, President Karzai publicly requested a review of the Law to ensure its conformity with the Afghan Constitution and international law. In June, President Karzai reiterated to a group of female MPs and women activists that the law had been amended to incorporate their suggestions, and would be presented to Parliament for adoption following the August elections.

Observers noted that the legislative process was not transparent; there were few debates in Parliament and little media coverage. Sunni MPs reportedly did not get involved in the drafting as they considered the matter to be of concern to, and thus decided solely by, the Shi'a community. The Law was viewed as giving the Shi'a community some recognition within Afghan society.

Although not yet gazetted and thus not yet formally in force, the Law contains a number of provisions that violate Afghan constitutional guarantees regarding gender equality as well as international obligations of Afghanistan that protect women's rights, in particular in the following areas:

- Obligation for a woman to obey her husband in sexual matters, including with respect to the frequency of intercourse;
- The bride's virginity as a condition for the validity of a marriage;
- Unequal rights regarding divorce, guardianship of children, inheritance and enjoyment of property;
- Conditions to exercise the right to work and education, and limitations on movement, women being allowed to leave their homes for 'legitimate purposes only'; and,
- Implicit acknowledgement of sexual intercourse and marriage with minors.

These provisions contravene protections afforded to both women and men under the Afghan Constitution and international law in relation to:

- Equality before the law of women and men, including equal and same rights to enter freely into marriages, after having attained full maturity and capacity to act;
- Equal and same rights and responsibilities between spouses within the family and with respect to the parenting of children; and,
- Equal and same rights in respect of ownership, management, enjoyment and disposition of property.

Afghan women, including MPs and human rights activists, openly protested certain provisions of the Law. They noted that this Law echoed Taliban-like practices that restricted women's decision-making powers and their choices, including with respect to freedom of movement. They claimed that religion was once more arbitrarily invoked and misinterpreted to marginalise women. When some women demonstrated peacefully in mid-April, they were met by male counter-protesters calling for 'death to the enemies of Islam'. Ayatollah Mohseni, who is a chief architect of this Law, publicly stated that any change would be unacceptable and that the Government should not succumb to what he considered international pressure.

Some allegations have been made about the Law being used as a bargaining chip to gain the support of the Shi'a community – some ten per cent of the Afghan population – in the upcoming elections.

Conclusions and Recommendations

The women and girls of Afghanistan have benefited in different ways from the many changes that have occurred since the signing of the Bonn Agreement (December 2001). Positive changes included the launch of numerous Government-led initiatives to improve governance, reduce poverty, and address the wrongs that kept Afghan women in servitude and the second lowest ranking in the recently released global Gender Development Index.

However, it is also apparent that armed conflict and insecurity, criminality and lawlessness, are on the rise and with it the level of violence that jeopardizes the lives of Afghans, men, women and children. In this respect, Afghanistan mirrors experience elsewhere which indicates “a near universal co-relation between heightened conflict, insecurity, and violence against women.”⁵⁵

Violence, whether structural in the sense of cultural, social and other norms that reproduce gender biases and dictate the subservient role accorded to women, or violence that is acute in the sense of posing an immediate threat to the safety and physical integrity of those at risk, is a dominant factor in the lives of numerous women and girls throughout Afghanistan.

The nature of violence that Afghan women endure, and the harm it does to individual lives and that of their families, communities, and society as a whole, is documented in this report. There are similarities and differences in patterns of violence throughout the country but a common thread is that women and girls are not valued as individuals with inherent human rights.

Experience also shows that there is a very high level of tolerance for the violence that women are subject to. Depending on the nature of the crime, brutality, or injustice inflicted, as well as the ‘personality’ of the perpetrator or the source of violence, there is a tendency on the part of families, communities, and traditional dispute-resolution mechanisms, as well as State institutions, to penalize the victim or to discount the need for redress and justice. Indeed, a significant part of the dynamics underpinning violence against women is the extent to which those with power, or decision-making authority, are unwilling to acknowledge that the rights of Afghan women are no less important than those of men.

Research undertaken by UNAMA, as well as a large reservoir of studies that expose the nature of discrimination and its violent ramifications for Afghan women, and society as a whole, clearly identify a range of factors. These include, in particular, cultural norms and traditional practices, that are harmful, and in some instances deadly, for women. Although some practices such as *baad* precede Islam, religion is often used to reinforce these traditions that are not sanctioned by Islamic precepts. Similarly, an unholy coalition of conservative political, community and religious leaders, espouse and pursue agendas in the name of Islam or tradition to maintain their own power and influence, by attacking and obstructing initiatives designed to tackle deeply engrained discrimination against women.

⁵⁵ Ward, Jeanne and Mendy Marsh *Sexual Violence Against Women and Girls in War and its Aftermath, Realities, Responses, and Required Resources*, UNFPA, 2006.

The modern history of Afghanistan shows that the status and role of women is a perennial, convenient, and expedient issue to reinforce or challenge the power and influence of contending factions and vested interests. In the process, the rights of women are ‘traded’ in exchange for political support or leverage in an ever-changing mosaic of alliances. As a result, the tug and pull of history means that improvements in the realization of women’s rights can easily be reversed.

Recent history also shows that rights activists and others, either in or outside Government, who are antagonistic to discrimination are constantly operating in a fluid and tense environment given the changing nature of alliances. As a result, those in favour of advancing women’s rights have difficulty mounting or maintaining a public discourse that would allow and oblige the Afghan Government, public institutions, civil society actors, human rights entities, and international community stakeholders, to deliver on declared commitments to respect and promote women’s rights.

The stop-go nature of the discourse surrounding women’s rights has immediate implications for initiatives designed to help women and girls realize their full potential. When discrimination against women is endorsed by figures, entities, or institutions that wield power, violence against women is effectively condoned.

An inescapable conclusion of the findings set out in this report, is that unless and until the Government of Afghanistan, with the support of its international partners, demonstrates in a meaningful and concrete way that violence against women is unacceptable, the abuse and attacks on women will continue.

No less irrefutable is the conclusion that the silence surrounding the widely-known problem of violence against the girls and women of Afghanistan must be broken. To be silent is to be complicit in the rape of little girls who are then ‘sold’ in marriage to the rapist to assuage the “honour” of men of the victim’s family. To be silent is to support those who are intent on maintaining their own power and authority by confining women to household chores. To be silent is to uphold discriminatory policies and systems that condone violence against women. To be silent is to abandon women who are conscientiously taking risks to play an active role in their communities and in Afghan society to advance the rights of women.

Recommendations

The findings and conclusion set out in this report give rise to a number of general recommendations that are designed to assist various stakeholders, and primarily the Government of Afghanistan that has the obligation to respect, protect, and fulfill the rights of Afghan women. In this endeavour, women as well as Afghan and international civil society organizations should be consulted in order to find the most appropriate ways to address the problems identified in this report. The international community should assist the Government in these efforts, and make their commitment to assist the Government in upholding human rights a priority.

As a matter of priority, the Government of Afghanistan should:

- Design and implement programmes and campaigns, including through the media and educational curricula, aimed at raising awareness in society, particularly amongst religious and community leaders, about women's rights, gender discrimination, and violence against women.
- Reform laws and policies to ensure that all rights are protected equally for women and men, and that rape is made a serious crime under criminal law; and take the necessary measures to discourage *jirgas* and *shuras* from addressing the crime of rape through traditional dispute-resolution methods that do not respect women's rights.
- Ensure that the draft legislation on the Elimination of Violence against Women (EVAW) explicitly criminalizes rape, contains a clear definition of rape that is in accordance with international standards, takes a strong stance against so-called "honour" killings, and incorporates mechanisms that hold State officials accountable for redressing crimes of sexual violence.
- Strengthen the capacity of law enforcement and judicial institutions to address violence against women, and in particular rape, in an effective and professional manner that in no way, compromises the safety and security of the victims; this should include providing comprehensive training to law enforcement and judicial personnel on women's rights, and recruiting and training female officers.
- Hold to account public officials who fail to adequately investigate and prosecute perpetrators of sexual violence.
- Strengthen the capacity of psycho-social and medical public institutions, as well as legal aid programmes, to fulfill victims' right to have appropriate and prompt remedies.
- Ensure that security forces are adequately resourced and committed to providing protection to women in public life, particularly those at high risk such as elected officials and high-profile civil servants; this should include ensuring adequate investigation and prosecution of individuals threatening, harassing, intimidating, attacking or murdering women.
- Enhance the monitoring capacity of Afghan institutions to ensure better data collection, tracking of complaints and analysis of crimes of violence against women.
- Adopt and implement affirmative action laws and policies aimed at redressing the current gender-imbalance.
- Ensure that women, and in particular elected female officials, are part of decision-making processes that affect Afghan women and society as a whole, including in relation to peace and reconciliation initiatives.

- Submit without delay its initial state report under CEDAW, and work with its partners at the implementation of the relevant recommendations of the outcome of the Universal Periodic Review of Afghanistan conducted in May 2009.