



Afghanistan

SUBMISSION TO THE COMMITTEE ON THE
ELIMINATION OF DISCRIMINATION AGAINST WOMEN



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Submission to the Committee on Elimination of Violence against Women
Review of Afghanistan, 75th Session, 10–28 February 2020

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Women, Peace and Security in Afghanistan

Submission to the UN Committee on the Elimination of Discrimination against Women, 75th Session

Review of Afghanistan (10-28 February 2020)

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I. Introduction

This submission is made by WILPF Afghanistan, the national section of the Women’s International League for Peace and Freedom (WILPF) in Afghanistan. WILPF Afghanistan started in 2015. Since then, it has worked to include women in peace processes and to engage men to support women’s participation and gender equality for peace and the prevention of gender-based violence.

This submission is based on an advocacy brief developed in the context of the third cycle of the Universal Periodic Review (UPR) of Afghanistan. The UPR Working Group reviewed Afghanistan at its 32nd session in January 2019. Several issues included in this submission, such as in relation to the implementation of the National Action Plan UNSCR 1325, women’s inclusion in electoral process, violence against women and access to justice, the Law on Elimination of Violence Against Women, and the National Action Plan to Eliminate Early and Child Marriage, were raised by States in the context of the UPR. All UPR recommendations are available in the *Report of the Working Group on the Universal Periodic Review, UN Index: A/HRC/41/5, 3 April 2019*. Afghanistan accepted 235 recommendations, noted 22 and accepted partially one recommendation; 98 in 99 recommendations concerning women have been accepted.¹ The only noted recommendation deals with the signature and ratification of the Optional Protocol to the CEDAW.²

According to the Annual Report 2018 on Protection of Civilians in Armed Conflict by the United Nations Assistance Mission in Afghanistan (UNAMA), the security situation in 2018 worsened, with an increase in overall civilian casualties and in civilian deaths compared to 2017. UNAMA reported “significant increases in civilian casualties from suicide attacks by Anti-Government Elements, mainly Daesh/Islamic State Khorasan Province (ISKP). This, in addition to increases in harm to civilians from

¹ Report of the Working Group on the Universal Periodic Review*, Afghanistan, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, see recommendations 136.40; 136.96; 136.105; 136.107; 136.109; 136.114; 136.192; 136.197; 136.203; 136.207; 136.208; 136.211; 136.35; 136.61; 136.188; 136.189; 136.194; 136.196; 136.198; 136.202; 136.205; 136.217; 136.215; 136.193; 136.206; 136.212; 136.60; 136.161; 136.228; 136.238; 136.241; 136.243; 136.244; 136.246; 136.229; 136.230; 136.15; 136.254; 136.6; 136.57; 136.62; 136.97; 136.144; 136.190; 136.195; 136.199; 136.200; 136.201; 136.204; 136.209; 136.210; 136.213; 136.214; 136.216; 136.218; 136.219; 136.220; 136.221; 136.222; 136.223; 136.224; 136.225; 136.234, A/HRC/41/5/Add.1, available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/AFIndex.aspx>

² Report of the Working Group on the Universal Periodic Review*, Afghanistan, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/41/5/Add.1, available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/AFIndex.aspx>

aerial operations and search operations, more than offset the continued decrease in civilian casualties from ground fighting. Suicide attacks and aerial operations each caused the most civilian casualties ever recorded by UNAMA for those tactic types.”³ In October 2019, in its Quarterly report on the protection of civilians in armed conflict, UNAMA stated that it “is gravely concerned about the unprecedented levels of violence harming civilians during the third quarter of 2019.⁴ From 1 July to 30 September 2019, UNAMA documented the highest number of civilian casualties that it has recorded in a single quarter since it began systematic documentation in 2009. While in the first half year of 2019 UNAMA documented a decrease in civilian casualties in comparison to previous year, in July, August and September extreme levels of violence brought the civilian casualty levels back to the unacceptable high levels of previous years. Furthermore, in the month of July, UNAMA documented the highest number of civilian casualties that the Mission has recorded in a single month”⁵

II. Women’s participation in political and public life

A. Implementation of the National Action Plan on Security Council resolution 1325

The National Action Plan on UN Security Council resolution 1325 (NAP 1325) covers the period 2015-2022. Its strategic priorities are grouped under the four main pillars of Participation, Protection, Prevention, and Relief and Recovery – divided into 39 indicators and 25 strategic objectives.⁶ Difficulties, such as the lack of cooperation between ministries and the absence of budgeting and funding for the implementation of the NAP 1325, compounded with the aggravated insecurity situation, have hampered implementation and programming in provinces as well as in Kabul.⁷ The

³ See, UNAMA. Afghanistan Protection of Civilians in Armed Conflict Annual Report 2018, available at: https://unama.unmissions.org/sites/default/files/unama_annual_protection_of_civilians_report_2018_-_23_feb_2019_-_english.pdf. See also “The situation of human rights in Afghanistan and technical assistance achievements in the field of human rights”, Report of the United Nations High Commissioner for Human Rights, A/HRC/40/45, 28 January 2019.

⁴ https://unama.unmissions.org/sites/default/files/unama_protection_of_civilians_in_armed_conflict_-_3rd_quarter_update_2019.pdf

⁵ See, UNAMA, Quarterly report on the protection of civilians in armed conflict: 1 January to 30 September 2019, available at: https://unama.unmissions.org/sites/default/files/unama_protection_of_civilians_in_armed_conflict_-_3rd_quarter_update_2019.pdf

⁶ Afghanistan’s National Action Plan on UNSCR 1325 - Women, Peace, And Security, 2015-2022, available at: https://unama.unmissions.org/sites/default/files/wps-afghanistan_national_action_plan_1325_0.pdf

⁷ 2017 Status Report on the Afghanistan’s National Action Plan on UNSCR 1325 (Women, Peace and Security), available at: http://cdn.mfa.af/reports/NAP_English_final_29-07-2018.pdf.

implementation of the NAP was delayed for two years after its adoption in 2015 and, although an implementation plan has been subsequently adopted, the financial mechanism for implementation is not finalised yet.⁸ No funding has been allocated by international donors to its implementation yet.⁹

The division of responsibilities in implementing policies regarding women's rights is patchy as they are divided among the Ministry of Women's Affairs, the Presidential office, the Chief Executive's office and the First Lady's office. This fragmentation of responsibilities is another obstacle to the effective implementation of the NAP 1325 as well as of other important instruments and policies on women's rights such as, the Elimination of Violence Against Women (EVAW) law, CEDAW, and policies relating to the NAP.

The second phase of implementation of the NAP 1325 was launched on 6 August 2019. The Minister of Foreign Affairs S. Rabbani stated that the implementation of the second phase of the National Action Plan required cooperation within government entities as well as with the international community. He also emphasized the protection of women's rights during peace talks with the Taliban.¹⁰ However, there can be no effective implementation of the NAP 1325 in the continued absence of a financial mechanism and of adequate funding for implementation.

Recommendations

- Finalise the adoption of the financial mechanism for the implementation of the National Action Plan 1325 by no later than 2022;
- Ensure the implementation of the National Action Plan 1325 with adequate financial, human and monitoring and evaluation resources and with full involvement of civil society;
- Expedite the creation of a specific and fully funded Women, Peace and Security Unit, under the Directorate of Human Rights and Women's International Affairs within the Ministry of

⁸ Afghanistan Public Policy Research Organization, Afghanistan's NAP 1325 (2015– 2018): A Critical Assessment, May 2018, page 19, available at:

<http://appro.org.af/wp-content/uploads/2018/05/2018-05-13-Afghanistans-NAP-1325-A-Critical-Assessment.pdf> ; and Geneva Conference on Afghanistan 27/28 November 2018, Geneva Mutual Accountability Framework (GMAF), page 6, available at:

https://unama.unmissions.org/sites/default/files/gmaf_final_26_nov_2018.pdf.

⁹ Afghanistan Public Policy Research Organization, Afghanistan's NAP 1325 (2015 – 2018): A Critical Assessment, May 2018, page 18, available at: <http://appro.org.af/wp-content/uploads/2018/05/2018-05-13-Afghanistans-NAP-1325-A-Critical-Assessment.pdf>.

¹⁰ <https://www.mfa.gov.af/news/1241-afghanistan-s-second-nap-on-unscr-1325-launched.html#>

Foreign Affairs in charge of the coordination, monitoring and evaluation, reporting, and secretariat functions of the National Action Plan 1325;

- Commission a gender analysis of annual budgeting of all ministries based on the strategic objectives of the National Action Plan 1325 and work with all ministries to minimise and eliminate the adverse impacts of budgeting practices on gender relations and women's rights;
- Strengthen and streamline the mandate of the Ministry of Women's Affairs to ensure clear competences, without duplication with other bodies, and allocate budget and resources to improve its operational efficiency;
- Engage boys, men, and full households as subjects of awareness-changing and transformative interventions on gender equality.

B. Women's involvement in the peace process

The decision on 9 June 2018 by the National Unity Government for an unconditional ceasefire of three days with the Taliban, also observed by the Taliban, was nationally and internationally welcomed.¹¹ Since then, the peace talks in Afghanistan have been moving fast. It is urgent for all actors (national, regional and international), including the CEDAW Committee, to forcefully advocate the promotion of peace talks that meaningfully involve women. It also essential that there be no setback on women's rights as part of the peace process.

There have been concerns about the politicisation of the peace talks by national, regional and international players. Without an inclusive and comprehensive team for peace negotiations, tensions and mistrust in the peace process will continue. The absence of meaningful representation of diverse civil society groups, especially of women, in the peace talks is noticeable. The Afghan government, the High Peace Council, the Shura (Council) of Ulema of Afghanistan, and the international community continue to ignore women's role in peace talks. Women only represented 26% of the Afghan Peace Council and 20% of provincial peace councils.¹² The Afghan government has announced in June 2019 the suspension of the High Peace Council replaced by the Ministry of State for Peace Affairs, which

¹¹<https://www.reuters.com/article/us-afghanistan-president-ceasefire/afghanistan-announces-ceasefire-with-taliban-until-june-20-idUSKCN1J3002> .

¹² <https://www.cfr.org/interactive/womens-participation-in-peace-processes/explore-the-data> .

has been created amid accelerated efforts for peace talks.¹³ On 29 June 2019, President Ashraf Ghani appointed his chief of staff, Abdul Salam Rahimi, as his special representative and State Minister for Peace Affairs.¹⁴ Although this is a newly established institution, only 2 women are members out of more than 30 men.

On the official launch of the second NAP 1325 the Chief Executive called the role of women and protection of women's rights an important element of this process. He stated that the values enshrined in the UNSCR 1325 - women, peace, security; and women's participation in all areas, as well as the implementation of the resolution in Afghanistan was a result of Afghan women's bravery and struggles.¹⁵ The Afghan President has also emphasised the role of women in peace talks on many occasions; this commitment should be followed by action.¹⁶

However, in 23 rounds of peace talks between 2005 and 2014, women were at the table on only two occasions.¹⁷ When officials from over 25 countries gathered for the Kabul Process in February 2018, an Afghan-led peace conference, the room was overwhelmingly filled with men.¹⁸ After the November 2018 conference in Geneva, President Ghani announced a 12-person negotiating team to conduct peace negotiations. Among the 12 members, only three were women but none of them were from civil society.¹⁹

Women have also been excluded from the peace talks which took place between the USA and the Taliban in 2019. The Taliban have held many rounds of peace talks with the United States, but they have refused to deal directly with the Afghan government and always raised issues with the list of delegates participating to the talks. Last February 2019, important peace talks took place in Russia between the US and the Taliban. These talks have almost led to a negotiated peace agreement. However, women and an agenda on women's rights were largely absent from these talks.

¹³ <http://www.1tvnews.af/en/news/afghanistan/38658-abdul-salam-rahimi-appointed-as-afghan-state-minister-for-peace-affairs>

¹⁴ <http://www.bakhtarnews.com.af/eng/politics/item/38841-state-ministry-for-peace-affairs-to-follow-all-peace-related-issues-presidential-office.html>

¹⁵ <https://www.mfa.gov.af/news/1241-afghanistan-s-second-nap-on-unscr-1325-launched.html#>

¹⁶ <https://edition.cnn.com/2018/03/01/asia/afghanistan-ghani-taliban-intl/index.html> .

¹⁷ <https://www.cfr.org/interactive/womens-participation-in-peace-processes/explore-the-data> .

¹⁸ <https://eu.usatoday.com/story/opinion/2018/03/21/afghanistan-taliban-peace-talks-must-include-women-column/437628002/>; <https://af.usembassy.gov/kabul-process-peace-security-cooperation-afghanistan-declaration/> .

¹⁹ <https://www.euractiv.com/section/global-europe/news/afghan-president-names-team-for-taliban-peace-talks-eu-to-act-as-guarantor/> .

The nearly total absence of women (only about 5%) in the negotiations provides a reminder of the harsh treatment of women in Afghanistan under Taliban rule.²⁰ Therefore, Afghan women from diverse groups, networks and civil society coalitions raised their voices at the local, national and international levels and argued that the exclusion of women in peace processes would have serious repercussions on women's rights in the post-conflict phase.²¹ These demands paved the way for the participation of 11 women out of 60 delegates in preliminary intra-Afghan talks that took place in June 2019 in Doha, Qatar.²² In Afghanistan, where women's rights remain precarious, the failure to consistently address women's opportunities and rights will reinforce gender injustice. Including women at the negotiating table and in consultations beyond the formal talks is a necessary step towards a lasting and legitimate peace in Afghanistan.

Donald Trump's surprise visit to US troops in Afghanistan on 28th November 2019 brought a new shift in resuming peace talks with the Taliban.²³ The first direct peace talks between the Afghan government and the Taliban were to take place in China in October 2019 but were postponed.²⁴ On this occasion, the Afghan government presented a list of 27 delegates including four women but that list was rejected by the Taliban and by China.

Recommendations

- Ensure the representation of at least 30% of women in the newly established Ministry of State for Peace Affairs and ensure the meaningful inclusion and participation of women in upcoming intra Afghan talks;

²⁰ Cfr.org/fr.org, Afghanistan 2019 Current Peace Effort, available at: <https://www.cfr.org/interactive/womens-participation-in-peace-processes/afghanistan>

²¹ <https://www.un.org/press/en/2019/sc13900.doc.htm>

²² <https://www.afghanistan-analysts.org/aan-qa-what-came-out-of-the-doha-intra-afghan-conference/>

²³ <https://www.bbc.com/news/world-asia-50594943>; <https://www.reuters.com/article/us-usa-trump-afghanistan/trump-makes-surprise-afghanistan-trip-voices-hope-for-ceasefire-idUSKBN1Y225Y>

²⁴ <https://www.aljazeera.com/news/2019/10/china-invites-taliban-afghan-officials-day-talks-191023065817138.html>; <https://dailytimes.com.pk/499963/china-steps-up-efforts-for-an-intra-afghan-dialogue/>; <https://www.dw.com/en/can-china-make-peace-between-the-afghan-government-and-the-taliban/a-51010157>

- Ensure that Afghan women from diverse groups, including from civil society and from various social, ethnic, political, and religious backgrounds, are included and meaningfully participate in peace talks, including as negotiators.

C. Women's participation in elections

Parliamentary elections

In October 2018, Afghanistan held its long overdue parliamentary elections initially planned in 2015. These were the third parliamentary elections since 2001. While polls reported a high number of voters (about 4.2 million voted out of the 8.8 million registered to vote), the election was marked by technical and organisational issues (e.g. delays in opening polling centres, lack of sufficient electoral materials and staff) and fraud problems at some of the 4,900 polling stations across the country.²⁵ Many Afghans appear to have stayed at home instead of going to the poll stations due to the fear of violence and to the Taliban's organised campaign of threats and intimidations, which is likely to have disproportionately impacted women's participation.²⁶

Women accounted for 39% of the voters in the 2010 Parliamentary elections,²⁷ 36% in the 2014 presidential and provincial council elections, and 38% in the second round of the 2014 presidential elections.²⁸ The paucity of data available shows little change over 5 years, and indeed represents a fall from the 2004 presidential elections statistics, in which 44% of the voters were women. Concerted action is required to reverse this trend and to enable women to make up their rightful proportion of the electorate. However, provisional data estimate that the women turnout in the 2018 elections was higher than in previous recent elections, both in city centres and at provincial levels, despite much insecurity, threats, traditional and customary obstacles, which prevent women from participating both as voters and candidates.²⁹

²⁵https://unama.unmissions.org/sites/default/files/special_report_on_2018_elections_violence_november_2018.pdf, page 2 ; <http://www.fefa.org.af/Home/Details?ps=265> .

²⁶

https://unama.unmissions.org/sites/default/files/special_report_on_2018_elections_violence_november_2018.pdf , page 2 ; <https://www.dw.com/en/why-are-afghan-officials-not-announcing-election-results/a-46511656>.

²⁷ <https://www.ndi.org/sites/default/files/Afghanistan-2010-election-observers-final-report.pdf> , page 38

²⁸ http://cdn.mfa.af/reports/NAP_English_final_29-07-2018.pdf, page 20.

²⁹ <https://www.afghanistan-analysts.org/afghanistan-elections-conundrum-19-women-candidates-going-against-the-grain/>; <https://thediplomat.com/2018/10/peace-blood-and-hope-women-in-afghanistans-election/>.

Under objective 2 of the NAP 1325, the government committed to strengthen women's active participation in national and provincial elections, including by reviewing and amending relevant laws and by taking measures to create an enabling environment for women to safely run for elections, register, vote and campaign.³⁰ In its next report on the implementation of the NAP 1325 the Department of Human Rights under the Ministry of Foreign Affairs should report on activities undertaken to implement these activities in view of the 2018 and 2019 parliamentary and presidential elections.

The loss of morale due to the irregularities and corruption in previous elections, and the delayed announcement of the results have cast serious doubts regarding the legitimacy of democratic processes in the country, and the value of the level of risks taken by Afghan women to participate in elections. The final results were announced only after seven months. This seriously undermines public trust in the electoral process.³¹ The anti-corruption commitments of the Afghan government, including the newly adopted national anti-corruption strategy that comprises specific objectives regarding fair elections, must be effectively implemented as called for in UN Security Council resolution 2405 (2018).³²

Presidential elections

The presidential elections took place on 28 September 2019. 18 men and no woman candidate ran for the elections.³³ Initial results were released only four months after the elections by the IEC due to technical issues with biometric voting machines and allegations of suppression of almost 1 million votes (i.e., names missing from voter lists and biometric devices).³⁴ Voter turnout is estimated to have

30 Afghanistan's National Action Plan on UNSCR 1325 - Women, Peace, And Security, 2015-2022, pages 16 and 17, available at: https://unama.unmissions.org/sites/default/files/wps-afghanistan_national_action_plan_1325_0.pdf.

31 <http://www.iec.org.af/results/en/home>.

32 Afghanistan National Strategy for Combatting Corruption, Islamic Republic of Afghanistan, page 7, para. 36, available at: http://mof.gov.af/Content/files/AFG_AntiCorruptionStrategy_Eng_.pdf; and S/RES/2405 (2018).

33 <https://www.bbc.com/news/world-asia-49794057>

34 <https://www.lowyinstitute.org/the-interpreter/afghan-elections-impressions-polling-day>; <https://www.afghanistan-analysts.org/afghanistans-2019-election-23-disputed-biometric-votes-endanger-election-results/>; <https://www.theguardian.com/world/2019/dec/22/afghanistan-president-ashraf-ghani-on-track-to-win-second-term>

reached its lowest level with around 1.8 million votes from a total of 9.6 million registered voters in a population of around 37 million people.³⁵

Presidential elections were marred by violence attributed to the Taliban with attacks that killed 85 and wounded 373 civilians.³⁶ Casualties were lower than during Afghanistan's 2018 parliamentary elections but over one-third of all civilian casualties on polling day in 2019 were children.³⁷ The low voter turnout suggests that the Taliban's intimidation campaign in the lead-up to the elections including through direct attacks against civilians succeeded in dissuading people from voting and also that Afghans are losing trust in elections due to corruption and mismanagement. The delay in the announcement of the election results has created serious doubts on democratic institutions and divisions that could lay the ground for violence.³⁸

Recommendations

- Ensure the promotion and inclusion of women in electoral processes, including by developing a policy to this effect, and establish networks for women between government, civil society and other stakeholders in order to promote women's participation in elections as voters, candidates, and electoral observers;
- The Afghan electoral institutions, including the Independent Election Commission and the Independent Electoral Complaints Commission, must ensure that the votes of Afghans in the presidential elections are accurately counted and that results are determined in a fair, inclusive and transparent manner;
- The government and political parties must not interfere in the presidential elections results and all Afghan presidential candidates must honour the code of conduct they signed pledging respect and adherence to the electoral process, and to preserve its integrity ;
- Conduct awareness-raising sessions with Ulema and other influencers about women's role in elections and country-wide awareness-raising seminars with women on the importance of women's political participation including in elections;

³⁵ <https://www.voanews.com/south-central-asia/afghanistans-presidential-poll-results-delayed-again>

³⁶ https://unama.unmissions.org/sites/default/files/unama_special_report_-_2019_election-related_violence.pdf; https://www.washingtonpost.com/world/asia_pacific/afghan-presidential-election-remains-in-limbo-as-results-delayed/2019/10/19/559f4b44-f12b-11e9-bb7e-d2026ee0c199_story.html

³⁷ https://unama.unmissions.org/sites/default/files/unama_special_report_-_2019_election-related_violence.pdf

³⁸ <https://www.lowyinstitute.org/the-interpreter/afghan-elections-impressions-polling-day>

- Provide sex-disaggregated data on the participation of women registered on electoral lists and on women voter turnouts as well as on the gender-specific obstacles faced by women voters and candidates participating in the 2018 parliamentary elections and 2019 presidential elections;
- Conduct a transparent and gender-sensitive review of the security, technical and administrative challenges faced by women during the parliamentary and presidential elections, with a view to taking corrective measures to ensure the safety of Afghan women and to facilitate the exercise of their right to participate in the political process;²⁰
- Effectively implement the national anti-corruption strategy and its specific objectives related to fair elections, including the holding of the national consultative conference on ensuring electoral integrity for the 2019 presidential elections with the full involvement of civil society and prosecute any case of corruption;²¹
- Strengthen the Afghanistan's International Election Commission's capacities and resources and ensure its independence, including by conducting impartial investigations into allegations of election fraud and irregularities.

II. Gender-based and sexual violence against women and girls

Afghan women face a host of threats daily, from insurgent violence, attacks on schoolgirls and working women for daring to venture out into the public sphere, high levels of rape and domestic violence, as well as widespread physical and sexual abuse by State security forces, forced and child marriage, and honor killings. 84% of Afghan women are illiterate, while 70-80% face forced marriages, many before the age of 16.³⁹ Government statistics from 2014 show that 80% of suicides are committed by women, making Afghanistan one of the few places in the world where rates are higher among women.⁴⁰ Psychologists attribute this anomaly to an endless cycle of domestic violence and poverty. According to the new announcement of Ministry of Women Affairs in 2019 there has been an 20% increase in cases of domestic violence.⁴¹ Cases of femicides such as that of a woman who was killed inside a court by her husband in front of police officers and of Mena Mangal, a prominent female journalist and

³⁹ <https://tolonews.com/afghanistan/survey-finds-84-percent-women-illiterate>;
<https://www.unfpa.org/news/escaping-child-marriage-afghanistan>

⁴⁰ <https://www.bbc.com/news/world-asia-44370711>

⁴¹ <https://www.trtworld.com/magazine/afghanistan-under-the-shadow-of-family-violence-26724>

womens rights' activist who was allegedly killed by her in-laws and ex-husband continue with impunity.⁴²

Since the fall of the Taliban, several legislative and institutional advances have been made towards the protection of women's rights. For instance, Article 22 of the Afghan Constitution (2004) declares: "Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man and woman, have equal rights and duties before the law."⁴³ Similarly, Articles 83 and 84 of the Constitution state measures for women's participation in the upper and lower houses.⁴⁴

The Afghan government also made various commitments to women's rights and gender equality in the Afghanistan Compact (2006) and in the Afghanistan National Development Strategy (ANDS, 2008-2013).⁴⁵ One of the ANDS' main focus areas was gender mainstreaming and women's empowerment in various governmental bodies and society at large. The National Action Plan for the Women of Afghanistan (NAPWA, 2008-2018) was designed with the sole aim of improving women's lives in Afghanistan with a focus on education, health, economic security and political participation.⁴⁶

A law on the Elimination of Violence Against Women (EVAW) was adopted by Presidential decree in August 2009.⁴⁷ This law was strongly opposed by conservative members of Parliament, which led some women's groups to campaign for the law to be adopted by Presidential decree instead of through

⁴² <https://www.rferl.org/a/after-killing-of-female-afghan-journalist-suspicion-falls-closer-to-home/29938033.html>; <https://www.thenational.ae/world/asia/mina-mangal-family-of-murdered-afghan-journalist-accuse-ex-husband-1.861961>

⁴³ Islamic Republic of Afghanistan, The Constitution of Afghanistan, available at: <http://www.afghanembassy.com.pl/afg/images/pliki/TheConstitution.pdf>.

⁴⁴ Article 83 of the Constitution provides that "The elections law shall adopt measures to attain, through the electorate system, general and fair representation for all the people of the country, and proportionate to the population of every province, on average, at least two females shall be the elected members of the House of People from each province." Article 84 provides that the President shall appoint fifty percent of Members of the House of Elders from amongst women. Islamic Republic of Afghanistan, The Constitution of Afghanistan, available at: <http://www.afghanembassy.com.pl/afg/images/pliki/TheConstitution.pdf>.

⁴⁵ The Afghanistan Compact, available at: https://www.nato.int/isaf/docu/epub/pdf/afghanistan_compact.pdf; Afghanistan National Development Strategy (ANDS, 2008-2013), available at:

https://www.wto.org/english/thewto_e/acc_e/afg_e/WTACCAFG18_CD_1.pdf

⁴⁶ National Action Plan for The Women of Afghanistan (NAPWA), available at: <http://extwprlegs1.fao.org/docs/pdf/afg149120.pdf>.

⁴⁷ <https://www.refworld.org/pdfid/5486d1a34.pdf>

an ordinary legislative procedure.⁴⁸ The law criminalises 22 acts of violence against women such as, forced and child marriage, rape, beating and many other traditions and practices that lead to violence against women.⁴⁹

The EAW law has generated many debates, particularly among more conservative parliamentarians, who have argued that forced marriage and child marriage should not be considered as crimes⁵⁰ and against women's access to shelters, on the account of these being "un-Islamic". As reported by the Special Rapporteur on Violence against Women after her visit to Afghanistan in 2017, "Shelters are viewed by many as institutions that encourage women to leave home; to behave immorally and outside of what is traditionally considered "acceptable" in a conservative and religious society; or as prostitution houses; or establishments that are causing the break-up of families. Thus, both the service providers and those seeking protection are stigmatised and shunned by society."⁵¹

In March 2017, a revised penal code was adopted by presidential decree.⁵² It incorporated all the provisions of the EAW law and strengthened the definition of rape.⁵³ However, because of persistent opposition from conservative members of parliament against the EAW law, some activists advocated to preserve the law in its stand-alone form decreed by the President in 2009.⁵⁴ As a result, in August 2017 President Ghani ordered the Ministry of Justice to remove the EAW chapter from the new penal code.⁵⁵ This reversal has left the status of the law in its initial presidential decree form, which remains fragile as it is in the hands of the President. The EAW law must be safeguarded by the government,

⁴⁸ New Penal Code and EAW Law: To Incorporate or Not to Incorporate? July 2018, Research report, Afghanistan Public Policy Research Organization, available at: <http://appro.org.af/wp-content/uploads/2018/07/2018-08-01-EAW-Law-and-the-new-Penal-Code-1.pdf>

⁴⁹ Islamic Republic of Afghanistan, Ministry Of Justice, Official Gazette, Extraordinary Issue, Law on Elimination of Violence against Women (EAW), 1 August 2009, Issue No: (989), available at: <http://www.refworld.org/pdfid/5486d1a34.pdf> .

⁵⁰ GAPS UK "EAW Law Stalled in Afghan Parliament" available at: <http://gaps-uk.org/evaw-law-stalled-in-afghan-parliament/>.

⁵¹ A/HRC/29/27/Add.3, para. 44.

⁵²

http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=105003&p_count=12&p_classification=01; New Penal Code and EAW Law: To Incorporate or Not to Incorporate? July 2018, Research report, Afghanistan Public Policy Research Organization, available at: <http://appro.org.af/wp-content/uploads/2018/07/2018-08-01-EAW-Law-and-the-new-Penal-Code-1.pdf>

⁵³ New Penal Code and EAW Law: To Incorporate or Not to Incorporate? July 2018, Research report, Afghanistan Public Policy Research Organization, see page 13, available at: <http://appro.org.af/wp-content/uploads/2018/07/2018-08-01-EAW-Law-and-the-new-Penal-Code-1.pdf>

⁵⁴ <http://appro.org.af/wp-content/uploads/2018/07/2018-08-01-EAW-Law-and-the-new-Penal-Code-1.pdf>

⁵⁵ <http://old.moj.gov.af/en/news/312824>

particularly as rapprochement with the Taliban in the context of peace efforts may threaten women's rights.

In 2017 the Afghanistan Independent Human Rights Commission (AIHRC) reported that 4340 cases of violence against women had been registered, increasing by 11.7% in one year.⁵⁶ Very few cases are reported compared to the actual prevalence rate of violence against women, due to family and social pressure.⁵⁷ Women and girls are also prevented from reporting violence due to stigma, discrimination, fear of reprisals, as well as due to the treatment of victims of sexual abuse who seek help as perpetrators of *zina* (i.e. sexual intercourse outside of marriage) or "attempted *zina*."⁵⁸ Women and girls are indeed sometimes charged with the "intention" of committing *zina* when they run away from abuse and seek help.⁵⁹

In addition, the EAW law is not effectively implemented, with very low levels of implementation in rural and remote areas.⁶⁰ The EAW law emphasises the State's role in protection and prosecution, requiring the police to register complaints and protect victims, and courts and prosecutors to prioritise such cases. However, cases of violence against women, including criminal cases, are frequently mediated, notably through traditional dispute resolution mechanisms headed by men and made on the basis of cultural norms, rather than on the legal framework.⁶¹ The United Nations Assistance Mission in Afghanistan (UNAMA) has highlighted that the wide use of mediation in criminal offences of violence against women, including in murder cases, promotes impunity, enables the reoccurrence of violence and erodes women's trust in the legal system.⁶² Sexual harassment and gender inequality at work, including in the public sector, is another great obstacle on the way of women's social and

56 AIHRC. Summary of the Report on Violence Against Women: The causes, context, and situation of violence against women in Afghanistan. 11 March 2018 available at:

<https://www.aihrc.org.af/media/files/Research%20Reports/Summerry%20report-VAW-2017.pdf>.

57 CAT/C/AFG/CO/2, para. 37; A/HRC/29/27/Add.3, para. 64 and 65.

58 A Way to Go: An Update on Implementation of the Law on Elimination of Violence against Women in Afghanistan, UNAMA/OHCHR, see page 22,

https://unama.unmissions.org/sites/default/files/unama_evaw_law_report_2013_revised_on_16_dec_2013.pdf.

59 A/HRC/29/27/Add.3, para. 16.

60 CAT/C/AFG/CO/2, para. 37; A/HRC/29/27/Add.3, para. 63 and 64.

61 CAT/C/AFG/CO/2, para. 37; A/HRC/29/27/Add.3, para. 64 and 65.

62 Injustice and Impunity Mediation of Criminal Offences of Violence against Women, page 6, available at:

https://www.ohchr.org/Documents/Countries/AF/UNAMA_OHCHR_EVAV_Report2018_InjusticeImpunity29May2018.pdf.

economic participation, despite harassment being banned under the EVAW law and the anti-harassment law.⁶³

In 2013, the CEDAW Committee expressed its deep concerns “at the persistence of adverse cultural norms, practices and traditions which are harmful to women, such as child marriage, *baad* (settlement of disputes by giving away girls), *badal* (exchange marriages) and forced marriages, including forced marriages of widows.”⁶⁴ In 2017, the Committee against Torture expressed concerns at the widespread phenomenon of forced and early marriages and recommended that Afghanistan “take all measures to ensure that forced and early marriages are prohibited, those responsible are prosecuted and punished and the victims are rehabilitated.”⁶⁵ The legal age for marriage is 18 for boys and 16 for girls; however, child marriage practices remain prevalent in Afghanistan with around 35% of girls being affected.⁶⁶ In 2017, the government adopted a National Action Plan to Eliminate Early and Child Marriage.⁶⁷ However, the plan is not publicly available, nor is there publicly available information on the status of its implementation.⁶⁸

Child marriage takes roots in social norms, such as tradition, as well as in poverty, insecurity and lack of education. In order to eliminate violence against women and girls, the link between child marriage and poverty needs to be better understood. The extreme levels of harm inflicted on civilians from the armed conflict in 2017 and 2018 have exposed women to becoming the sole-income providers of their households after the death of their husbands, which in turn exposes girls to the risk of marriage to repay debt or to relieve economic hardship.⁶⁹ Rights-based awareness-raising interventions to prevent child marriage should, hence, take into account actions to improve economic conditions and employment opportunities for households.

63 <https://www.afghanistan-analysts.org/harassment-of-women-in-afghanistan-a-hidden-phenomenon-addressed-in-too-many-laws/>

64 CEDAW/C/AFG/CO/1-2, para. 22.

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CEDAW%2fC%2fAFG%2fCO%2f1-2&Lang=en

65 CAT/C/AFG/CO/2, para. 35 and 36.

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CAT/C/AFG/CO/2&Lang=En

66 <https://www.girlsnotbrides.org/child-marriage/afghanistan/>.

67 <https://www.girlsnotbrides.org/afghanistan-launches-national-action-plan-end-child-marriage/>.

68 <https://www.hrw.org/news/2017/04/20/will-afghanistan-follow-through-promise-end-child-marriage>.

69 A/HRC/29/27/Add.3, para. 56; UNAMA documented 8050 civilian casualties from 1 January to 30 September 2018, page 1,

https://unama.unmissions.org/sites/default/files/unama_protection_of_civilians_in_armed_conflict_3rd_quarter_report_2018_10_oct.pdf

Afghanistan is one of the countries most affected by landmines and explosive remnants of war. Landmines, explosive remnants of war and gunshot wounds are among the leading causes of disabilities in the country. People with disabilities face tremendous challenges. Women with disabilities face multiple forms of violence and discrimination; this concern has received hardly any attention, if at all, from the Afghan government, civil society and the international community. The 2016-2020 strategy and national action plan on the elimination of violence against women pays no attention to this concern.⁷⁰ Any policy should identify the multiple forms of discriminations faced by marginalised groups, including women with disabilities, in order to have inclusive policies that leave “no one behind.”

Recommendations

- Safeguard the status of the EAW law under presidential decree and carry out awareness-raising sessions with members of Parliament to change the negative perception of the law, to explain Afghanistan’s obligations under CEDAW and to foster acceptance, understanding and implementation of the EAW law by all key structures of the State;
- Ensure prompt investigation and prosecution of cases of violence against women by referring criminal offences to the criminal justice system and never to traditional dispute resolution mechanisms;
- Ensure that EAW judges and prosecutors are fully trained, resourced, supported and empowered to carry out their mandated functions;
- Ensure that women are informed about their rights during judicial and mediation procedures and are treated with dignity and equality in accordance with international human rights law;
- Work with civil society, community and religious leaders to change the negative perception of shelters or safe houses for women victims of violence who seek support;
- Publicise and effectively implement the 2017 National Action Plan to Eliminate Early and Child Marriage in full consultation with civil society and take measures to address the issue of child marriage as a coping mechanism to poverty;

⁷⁰ Afghanistan’s Strategy and National Action Plan on the Elimination of violence against women, available at: http://www2.unwomen.org/-/media/field%20office%20eseasia/docs/publications/2017/01/aco_evawstrategy_jan17_email-r2.pdf?vs=1821

- Finalise and submit without delay its overdue first report to the Committee on the rights of persons with disabilities, and include specific information on the challenges faced by women with disabilities.