Domestic Violence in Afghanistan
INTRODUCTION

Domestic violence, which can be understood to mean any form of emotional, psychological, economic, verbal, sexual or physical abuse of women within the confines of the household, whether marital or paternal, is a major part of violence against women (“VAW”). Even after the elimination of Taliban from Afghanistan in the year 2001, violence against women continues to rise at an alarming level. As a result, women of all ages are enduring brutal physical and sexual abuse in their own homes.1 Zimbabwe’s representative, made a lucid observation at the discussion in the Third Committee (Social, Humanitarian and Cultural) of the United Nations and rightly stated that ”one of the most pervasive forms of violence against women continues to be perpetrated in their homes by the people they love”. It was further added that domestic violence is an ill that needs to be eliminated if women were to enjoy an improved quality of life on the same footing as men. Enactment of laws by itself is ironically insufficient; it needs to go hand in hand with “aggressive awareness campaigns” in order to combat harmful stereotypes which are the root cause of violence against women and girls. And most importantly, it is necessary to involve men as agents of change in its efforts to fight violence against women, but also in its broader efforts to ensure their full empowerment.2

Before the advent of the Taliban rule, women’s rights in Afghanistan had reached its pinnacle - 50% of teachers, government employees and students were women, and 40% of doctors were women.3 However, the advent of the Taliban rule from 1996 onwards ensured the destabilisation of the Afghan society, which resulted in a massive regression of the Afghan society and diminished all respect women’s rights and equalities - consequently, violence against women increased in both the public and private sphere.

THE SITUATION IN AFGHANISTAN

The primary issue of violence against women is embedded in the traditional structure and conservative values of Afghanistan, which inherently reinforces the notion of “male domination”. Frequent war and instability in Afghanistan’s legal and political structure has weakened its political system, thereby providing an opportunity for conservative elements to strengthen their hold on Afghanistan. The current political structure of Afghanistan comprises of warlords, i.e. a group of corrupt tribesmen who are no different from the Taliban in their attitude towards women. The years of continuous repression and violence against women has lead to its normalization.

While the condition of women still remains deplorable, the fall of Taliban has seen positive improvements in various spheres of Afghan life. Some of these improvements include access to education, health facilities and social activism, including advances in the formal

presence of women in government institutions. Improvements in security and removal of restrictive Taliban-era practices led to advances in respect for women’s rights and gender equality, including the establishment of the Ministry for Women’s Affairs, enactment of a Constitution that grants women equal status to men, improved access to education and representation of women in parliament. Women fill 9 percent of total decision making and policy positions within the Afghan government departments and ministries. There have also been improvements aimed towards women’s rights and ending violence against women. However, such progress is limited to larger cities and has not penetrated to villages and remote areas. In these areas, women still suffer from lack of access to education, health facilities, legal support, and job opportunities.

The biggest concern with regard to women, however, is the sweeping problem of violence against women. Afghan women and girls continue to face endemic domestic violence, trafficking, forced marriages, including child marriages, and being traded in settlement of disputes. The police, the courts and other justice sector officials seldom address women’s complaints of abuses, beatings, rape and other sexual violence. The handful existing women’s shelters have come under sustained political pressure intended to restrict their activity.

Since the onslaught of the Taliban Rule, Afghan has been in a continued state of armed conflict. As a consequence, women and girls have continued to face widespread discrimination, domestic violence, and abduction and rape by armed individuals. They have been trafficked, traded in settlement of disputes and debts, and forced into marriages, including under-age marriages. All human rights defenders, particularly women, continue to suffer from violence, harassment, discrimination and intimidation by government figures as well as the Taliban and other armed groups. In August 2010, the Elimination of Violence against Women law was passed by the Afghan President and Cabinet. The law criminalized violence against women, including domestic violence. Parliamentary approval of the law remained pending.

In 2011, the Afghanistan Independent Human Rights Commission documented 1,891 cases of violence against women, but the true number may have been higher. In March 2011, 18-year-old Bibi Aysha had her nose and ears cut off by her husband in Uruzgan province, southern Afghanistan, apparently on the order of a Taliban commander acting as “judge” for the crime of running away.

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5 Ibid.
6 Ibid.
from her abusive in-laws. On 9 August 2011, the Taliban shot dead a woman, after forcing her to abort her foetus, in Badghis province on accusations of adultery.\textsuperscript{8}

In a positive move in September 2012, the Attorney General’s office agreed to create six provincial offices to fight violence against women. The police and courts often failed to address women’s complaints of abuse, so that allegations of beatings, rape and other sexual violence were rarely investigated.\textsuperscript{9} However, despite the passage of the Elimination of Violence against Women Act in 2009, law enforcement and judicial officials failed to properly investigate violence against women and girls and bring perpetrators to justice.\textsuperscript{10} Women and girls continued to be beaten, raped and killed. They faced discrimination by the authorities and threats within their own communities and families. The Afghanistan Independent Human Rights Commission (“AIHRC”) documented more than 4,000 cases of violence against women from 21 March to 21 October 2013 – a rise of 28% compared with the same period for 2011, reportedly due to increased public awareness. The actual number of incidents was likely to be still higher given the continuing stigma and risk of reprisal associated with reporting such violence.

Despite the dim prospects of women’s rights, progress has flickered in the seemingly unlikeliest of quarters. A new initiative was started by Afghan mullahs to teach men and boys to protect the health and rights of their wives, mothers, daughters and sisters. It aims to reverse the legacy of decades of conflict and poverty. In Friday prayers and community meetings, the religious leaders preach about the harm done by denial of care, domestic violence, child marriage and spacing births too close together. To curb violence in the home, the mullahs suggest ways of managing anger and resolving family conflicts. They seek to clarify that the Islamic religious tenets do not in fact propagate violence against women, and their oppression, but that the religion, in truth, preaches equality between the sexes.\textsuperscript{11} At an October 2012 Clerics’ Conference in Kabul, a statement was made that forced marriage and child marriage are against Sharia. "Violence is found in a place where there is no understanding of religion and religious knowledge is low or absent," Mohammad Yousuf Niazi, minister of Hajj and Islamic affairs told conference participants. "I am asking the Islamic community to inform people and families about what the Quran had said and how it condemns the abuse of women."\textsuperscript{12} However, Afghanistan still continues to be one of the most dangerous places in the world for women. The United Nations says that over 87 per cent of all Afghan women suffer from domestic abuse.\textsuperscript{13}

\textsuperscript{8} http://www.amnesty.org/en/region/afghanistan/report-2011
\textsuperscript{9} http://www.amnesty.org/en/region/afghanistan/report-2012
\textsuperscript{10} http://www.amnesty.org/en/region/afghanistan/report-2013
\textsuperscript{12} http://womensnews.org/story/the-world/121018/afghan-clerics-denounce-violence-against-women#.Uys6FKiSxRF.
\textsuperscript{13} http://www.un.org/webcast/pdfs/unia1204.pdf.
WHY DOES DOMESTIC VIOLENCE THRIVE IN AFGHANISTAN?

a. Subordination of women arising from custom/tradition

In a statement by H.E. Dr. Hussn Banu Ghazanfar, Minister of Women’s Affairs at the Fifty Seventh Session of the UN Commission on the Status of Women in New York, 2013, he compiled the reasons for violence against women as being the existence of unappealing customs, low levels of education and awareness from the endorsed laws of Afghanistan, and poverty of the people.¹⁴ Husbands, brothers and fathers remain the main perpetrators of violence at home. Their position of power over women is reinforced by both state authorities and informal justice systems through discrimination and lack of will to take effective action against abuses. Prevailing cultural attitudes and societal codes, invoked in the name of tradition and religion are used as a justification for denying women the ability to enjoy their fundamental rights. Perceived transgressions of such codes have led to the imprisonment and even killing of some women. Such is the desperation to escape abusive situations, such as, forced marriage that 165 women committed suicide by self-immolation in 2007, according to AIHRC.¹⁵

Harmful practices grounded in tradition and sometimes attributed to religion, lead to pain, suffering, humiliation and the marginalization of millions of Afghan women and girls; violating the most basic human rights of half the population. Afghan men and women interviewed by UNAMA (“United Nations Assistance Mission in Afghanistan”) HR (“Human Rights”) reported that many Afghans believe that practices that subordinate women to the will of men and sharply limit their realms of activity, originate in the Holy Koran. Such practices originate in entrenched discriminatory views and beliefs about the role and position of women and girls in society. Practices that include forced and child marriage, exchange of girls to settle disputes, exchange marriages, and killing in the name of “honour”, constitute harmful traditional practices.¹⁶ In Afghanistan, harmful traditional practices have been further reinforced by widespread poverty and insecurity that Afghans have experienced for more than 30 years.

However, most harmful traditional practices are without basis in religious principles or in some cases actually contradict religious teachings. Biased and incorrect interpretation of the religion, reinforced by the traditional view of women in Afghanistan, has resulted in their disadvantageous status in the society. Religion can be a positive force for the rights of women. The Holy Koran gives women

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many rights. Cultural practices that are injurious to women are sometimes at variance with religious teaching and are attributable more or solely to cultural interpretations of religious precepts.\footnote{Report by Abdelfattah Amor, UN Special Rapporteur on Freedom of Religion or Belief. Study on Freedom of Religion or Belief and the Status of Women in Light of Religion and Traditions, E/CN.4/2002/73/Add, April 2009, p.7.}

UNAMA HR findings as well as studies by other organizations reveal that harmful traditional practices are often reinforced by religious misconception, community and family perceptions of the role of women, judicial and police officials who fail to enforce the law and informal justice mechanisms that compromise women’s individual rights to a collective solution.\footnote{Report by UNAMA 2010.\textit{Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan}. \url{http://unama.unmissions.org/Portals/UNAMA/Publication/Executive%20Summary%20and%20full%20recs%20FINAL.pdf} (hereinafter referred to as “Unama Report 2010”)}

\textbf{b. Economic reasons}

Afghanistan’s unstable political system has left the country impoverished. In another report of the Amnesty International from 2009, it has been rightly said that poverty, for women, is both a consequence and a cause of violence.\footnote{\textit{The Gender Trap: Women, Violence and Poverty}, October 2009, pg. 3 [hereinafter referred to as Amnesty International Report 2009], \url{http://www.amnesty.org.nz/files/The-Gender-Trap-Report.pdf}} The violence women face helps keep them poor, and it is poor women who are most exposed to violence. Poverty is more than lack of income. It is also lack of security, lack of voice, lack of choice. The voices of women who live in poverty are rarely heard.\footnote{Ibid.} Poverty manifests itself in different ways and affects people and countries differently. Women who suffer physical, sexual or psychological violence lose income and their productive capacity is impaired. Violence against women also impoverishes their families, communities and societies. On the other hand, poverty makes it harder for women to find avenues of escape from an abusive relationship. While economic independence does not shield women from violence, access to economic resources can enhance women’s capacity to make meaningful choices.\footnote{Ibid.}

Discrimination and violence against women often go hand in hand, resulting in the denial of women’s rights to health, education, shelter and food. Poverty in turn puts women and girls at risk of further abuse and violence, closing the vicious circle.\footnote{Ibid.} Violence against women entrenches inequality and exacerbates poverty by reducing the capacity of women to contribute productively to the family, the economy and public life. It also drains resources from social services, the justice system, health care agencies and employers.\footnote{Ibid.} There is sufficient proof that improving the status of women and their earning capacity is widely beneficial for alleviating poverty and
improving the economic condition of the country as a whole. The Bangladesh Rural Advancement Committee (BRAC), became the world’s largest grassroots development organization by putting women and girls at the centre of its anti-poverty strategies and engaging with them as active agents of change. Over the years, BRAC has organized women and girls and, with their active participation, has piloted, refined and scaled up practical ways to increase their access to resources and support them as entrepreneurs. BRAC runs microfinance and education programmes in Asia and Africa, reaching more than 110 million people, and is more than 80 per cent self-funded.24

Poverty also forces a society to make tough decisions regarding providing education to their children’s education and more often than not, they decide their boys rather than their girls. Lack of education has lifelong consequences. For girls, lacking an education reduces their opportunities for financial independence. It increases the likelihood that they will enter into early marriage, with its high incidence of emotional and physical ill-health. Lack of education also significantly increases the risks of contracting HIV and of dying in childbirth. It makes it harder for women and girls to navigate society successfully and claim their rights.25

c. Redundant/Inactive law enforcement agencies

The Amnesty Report states that there has been a positive development with respect to strengthening of the rule of law and delivery of justice by drafting and promulgating new laws and legal procedures; the training of several hundred judges and prosecutors; introducing representation of defendants by defence lawyers; and the creation of a national bar association.26 The major drawback of the current structure of the Afghan judiciary is that it still lacks the personnel, infrastructure, training and political will to respect, protect and promote human rights. Most Afghans, and in particular women, have difficulty accessing the formal judiciary courts and legal assistance, and instead, in some 80 percent of disputes, have to rely on informal tribal councils, which abuse fair trial rights and are often discriminatory against women.27 The Afghan police force is primarily reluctant to act on the complaints of women and enforce the protection of human rights, and particularly women’s rights in general. The Afghan National Police, which has some 126,000 personnel today, is poorly paid and trained and notorious for corrupt and abusive practices. Illiteracy, drug abuse and desertion are rampant among its ranks (nearly 20,000 police left the force in 2010).28 Moreover, in certain areas of Afghanistan the police are seen as a greater source of insecurity and misdemeanour as compared to the Taliban since the emphasis on building up the numbers of recruits has undermined the quality of recruitment and training programmes, making for a police force that is weak in law enforcement

24 Amnesty report 2009, pg. 4
25 Amnesty report 2009 pg. 7
26 Amnesty Report 2011, pg. 3
27 Amnesty report 2011, pg. 3
28 Amnesty report 2011, pg. 3
and delivering basic security. Further, the general lack of instability of the Afghanistan civil, political and military system, enhanced by the presence of the US forces on Afghan soil has also seen the arbitrary detention of Afghans and some foreign nationals without clear legal authority and without adequate legal process.

d. Child marriage and other forms of harassment against women and girls

It is pertinent to point out that as believed, domestic violence is not limited to spousal violence, but can encompass violence against women from their very own families and blood relations. The HRW Report [009] provides as instance which suitable displays that domestic violence against women originates from closer blood relations:

“MEZGHAN A. was an orphan who was living with her uncle. He often beat and ill-treated her. When she was 14, he forced her to marry a man who was about age 45. Her husband ultimately abandoned her, leaving her to live with her brother-in-law and his wife, who beat her.”

Further Afghanistan’s minimum age of marriage for girls is 16, or 15 with the permission of the girl’s father or a judge, well below the internationally recommended standard of 18. A number of countries with large Muslim populations, including some in Afghanistan’s region, have taken steps to set a minimum age of marriage of at least 18, with some allowing exceptions in narrow circumstances. These include Bangladesh, India, Egypt, Iraq, Libya, Tunisia, Morocco, Jordan, Oman, Algeria, and the United Arab Emirates. Several Muslim countries had even done so before UN bodies had called for an 18 minimum age for marriage.

Afghanistan is a member of the Organization of Islamic Cooperation (OIC), which in 2008 adopted the Plan of Action for the Advancement of Women. The Plan of Action stresses the importance of special legislation to ensure effective participation by women in all fields of life. It calls for the elimination of all forms of discrimination against women, including preventing early and forced

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29 Amnesty report 2011, pg. 3
30 Amnesty report, pg. 3
31 Human Rights Watch, Afghanistan: Ending Child Marriage and Domestic Violence, 2009 (Reuters), <insert link> pg.11
marriages by all possible means. And it recognizes that early and forced marriages are an impediment to improving the health, education, political participation, social justice, and well-being of women.\textsuperscript{34}

THE LAW GOVERNING DOMESTIC VIOLENCE IN AFGHANISTAN

As previously mentioned in Section II, the Law on Elimination of Violence against Women (EVAW law) enacted in 2009 is based on the Afghan Constitution and Islamic Sharia. It criminalizes all actions imposed by force against women that cause harm or damage to their body, mind, soul, reputation, or property. The EVAW Law lists 22 acts considered to be violence against women, including abuse, harassment, beating, giving baad, forced and underage marriage, and deprivation of property and inheritance.\textsuperscript{35} This law prevails if provisions of other laws contradict it. That means that the EVAW law must apply, even if other laws conflict or disagree with it.\textsuperscript{36} Those who abuse women and commit crimes against them will be punished under this law with imprisonment of different time periods depending on the crime.

In some cases when the girl or woman dies because of the abuse, the judge may order the death penalty (Articles 17 to 38, EVAW law). Further, people who assist others to abuse women and to commit violent crimes against women and girls will also be punished under the law. In addition to the punishment of imprisonment, those who abuse women can also be ordered to pay compensation to the victim. Punishment for perpetrators of violence against women may not be postponed, pardoned, or reduced (Articles 40 to 42, EVAW law). Article 21 of the EVAW law states that, “If a woman is forced to self-immolation or committing suicide or use of poisonous chemicals, the perpetrator shall, in case of injury or infirmity, be sentenced to medium-term imprisonment, or long-term imprisonment not exceeding 10 years, in case of death of the victim.” Article 22 of the EVAW law states that, “If a person beats a woman, the offender shall, depending on the circumstances, be punished according to Article 407 – 410 of the Penal Code, considering the mitigating and aggravating conditions of the crime”.

However, the EVAW law has faced an onslaught of continuous opposition from the majority of the Afghan community and has also been the target of public protests. In July, students at Kabul University held a rally in which they denounced the EVAW law as “un-Islamic” and a “Western” import. Those both inside and outside of Afghanistan who are concerned about the EVAW law and the rights

\textsuperscript{34} Ibid., p. 5.
\textsuperscript{36} Ibid.
of women and girls should consider key facts about the health and economic problems associated with child marriage and domestic violence.\(^{37}\)

During a parliamentary debate in May 2013, a number of members of Afghanistan’s lower house, the Wolesi Jirga, spoke out against the EVAW law. Several called for the law to be examined—and voted on—article by article. In July 2013, the lower house of the Afghan parliament approved a new Afghan criminal procedure code that includes a provision banning all relatives from testifying against a criminal defendant, thus preventing wives from testifying against abusive husbands or daughters from testifying about forced or child marriage. The provision creates a tremendous barrier to prosecuting such cases of abuse. In a positive move, President Karzai decided to not sign the amendment and blocked the law.\(^{38}\)

Despite the enactment of the EVAW law, the system has failed to address the situation effectively. The UNAMA points out several weaknesses in the EVAW law, such as - the failure to criminalize “honour” crimes, lack of a clear definition of rape which distinguishes it from consensual zina (sexual intercourse outside of marriage, a crime under Islamic law) and the absolute requirement that a victim must be the party to initiate or maintain judicial action, further weakens the effective implementation of the EVAW law. The police, the courts and other justice sector officials seldom address women’s complaints of violence, including rape and other sexual violence. Women victims and defendants have little recourse to justice and are discriminated against in both the formal and informal justice systems. The police and judiciary often fail to enforce laws that respect women’s rights and take a selective rather than impartial approach to administering justice. On the contrary, a large number of women have been detained in Afghan prisons for flimsy “moral crimes”, such as where, women who sought to flee abusive marriages have often been detained and prosecuted for alleged offences such as “home escape” or “moral” crimes that are not provided for in the Penal Code and are at variance with international human rights law.\(^{39}\) Several studies report that half of the country’s female prison population (almost 300 women) is detained for “moral crimes.”\(^{40}\)

Serious problems remain in terms of women’s access to justice and equality under the law. The Shi’a Personal Status Law of 2009 formalized discriminatory social norms towards Shi’a women. Afghanistan’s Civil Code sets the legal age of marriage at 16 for girls (18 for boys).

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\(^{37}\) Human Rights Watch, Afghanistan: Ending Child Marriage and Domestic Violence, 2009 (Reuters), <insert link> pg. 3


\(^{39}\) Amnesty International Report 2011, pg. 4

\(^{40}\) UNAMA Report 2010, Id. at pg. 4.
According to UNIFEM and AIHRC 56 percent of all marriages in Afghanistan are child marriages. In 2010 alone the Ministry of Women Affairs documented 6,765 cases of violence against women countrywide. The police frequently fail to investigate or press charges against perpetrators of violence against women and few are ever prosecuted. Also, women are insufficiently represented among the police force and judiciary, with only 119 women judges appointed in 2010 out of 1,577 according to the International Crisis Group.\(^{41}\)

On the international level, Afghanistan has ratified the Convention of Elimination of Forms of Discrimination against Women (“CEDAW”) on 5\(^{th}\) March 2003. While the CEDAW itself does not expressly prohibit domestic violence, General Recommendation the CEDAW Committee states, that the definition of discrimination against women includes gender–based violence, that is “violence that is disproportionately directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence”.\(^{42}\)

In the Fourth World Conference on Women held in Beijing, China in September 1995, the historic Beijing Declaration and Platform for Action was adopted. The Afghanistan representative made a strong statement that:

“Today, Afghan women and children face with difficulties and demand from UN Organizations, friendly countries Non Government Organization Women Associations, please don’t forget Afghan women and children and restart your assistance for them, the homeless, disabled women and children and pay attention to Afghanistan Refugees in other countries and also the refugees inside Afghanistan.

Countries like Afghanistan have suffered from war and conflicts have great difficulties in taking care of their widows and children. UNHCR and WFP and other organizations of UN have aware that Afghan refugees specially women and children inside or outside Afghanistan lead a miserable life. Recently, many countries and international organizations stop or reduce their aids and assistances to refugees”.\(^{43}\)

The Beijing Platform is of great importance as it was developed with the participation of the women’s movement and took on board the concerns of grassroots women’s organizations. It identifies 12 critical areas of concern, among them violence against women and women and poverty.\(^{44}\)


\(^{44}\) Amnesty report, 2009 pg. 18
collaboration with non-governmental organizations and employers’ and workers’ organizations and with the support of international institutions, including, but not limited to, the adverse effects of domestic violence on women.

CHALLENGES AND LIMITATIONS

As a follow-up to the 1995 Fourth World Conference on Women in Beijing, the United Nation’s Beijing plus 5: A Special Session on Women 2000: Gender Equality, Development and Peace for the Twenty-First Century was held. Some of their observations pertaining to the challenges faced by women facing oppression and domestic violence, suitably reflect the challenges which are faced in Afghanistan itself:

“14. Obstacles: Women continue to be victims of various forms of violence. Inadequate understanding of the root causes of all forms of violence against women and girls hinders efforts to eliminate violence against women and girls. There is a lack of comprehensive programmes dealing with the perpetrators, including programmes, where appropriate, which would enable them to solve problems without violence. Inadequate data on violence further impedes informed policy making and analysis. Socio-cultural attitudes which are discriminatory and economic inequalities reinforce women’s subordinate place in society. This makes women and girls vulnerable to many forms of violence, such as physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, other traditional practices harmful to women, and other kinds of domestic non-spousal violence.”

In many countries, a coordinated multidisciplinary approach to responding to violence which includes the health system, the workplace, the education system, as well as the justice system, is still limited. Domestic violence, including sexual violence in marriage, is still treated as a private matter. Insufficient awareness of the consequences of domestic violence, how to prevent it and the rights of victims still exists. Although improving, the legal and legislative measures, especially in the criminal justice area, to eliminate different forms of violence against women and children, including domestic violence, are still weak. Prevention strategies also remain fragmented and reactive and there is a lack of programmes on these issues…”

Afghanistan’s peculiar political, financial, social and economic condition forces it to remain in a state of stagnation. Inadequate financial and human resources and a lack of political will and commitment are also obstacles confronting national machineries. This is further exacerbated by insufficient understanding of gender equality and gender mainstreaming among government structures, as well as prevailing gender stereotypes, discriminatory attitudes, competing government priorities and, unclear mandates, a marginalized location within the national government structures, lack of data disaggregated by sex and age in many areas and
insufficiently applied methods for assessing progress, in addition to paucity of authority and insufficient links to civil society.\footnote{http://www.un.org/womenwatch/daw/followup/as2310rev1.pdf} The activities of the national machineries have been also hindered by structural and communication problems within and among government agencies.

Family, civil, penal, labour and commercial laws or codes, or administrative rules and regulations, still have not been fully integrated with a gender perspective. Legislative and regulatory gaps, as well as lack of implementation and enforcement of legislation and regulations, perpetuate \textit{de jure} as well as \textit{de facto} inequality and discrimination, and in a few cases, new laws discriminating against women have been introduced. Women have insufficient access to the law, resulting from illiteracy, lack of legal literacy, information and resources, insensitivity and gender bias, and lack of awareness of the human rights of women by law enforcement officials and the judiciary, who in many cases fail to respect the human rights of women and the dignity and worth of the human person. There is insufficient recognition of women’s and girls’ reproductive rights, as well as barriers to their full enjoyment of those rights, which embrace certain human rights as defined in paragraph 95 of the Beijing Platform for Action.\footnote{Ibid.} Poverty, the lack of access and opportunities, illiteracy, lack of computer literacy and language barriers, prevent some women from using the information and communication technologies, including the Internet. Development of and access to Internet infrastructure is limited, especially in developing countries and particularly for women.

\textbf{VIEWPOINTS: VOICES FROM AFGHANISTAN}

With an increase in awareness, women have taken up their fight for equality in their own hands. RAWA (Revolutionary Association of the Women of Afghanistan) is a political organization that has been fighting for the rights of women since 1977. They still do not operate openly. UNIFEM (United Nations Development Fund for Women) has been promoting positive change for women in Afghanistan since 2002.

The Group on Equal Rights for Women hosted a panel discussion “Women in Afghanistan: Beyond the media portrayal to action” on 20 November 2001. The message from Revolutionary Association of the Women of Afghanistan (RAWA) was: “What women in Afghanistan need is emancipation; women’s emancipation is not possible without national emancipation; national emancipation is not possible without democracy; and, as long as there is no democracy, human rights and women’s rights are nothing but a hoax”. Vital Voices and UNIFEM sponsored a panel discussion “Women’s voices to rebuild Afghanistan” on 1 November 2001 at Headquarters,
where it recognized the need for awareness in men and women in equal proportions to combat the issue of violence against women, and the peaceful progress of the nation.

Women peace leaders from Afghanistan, Kosovo and East Timor spoke to Security Council members about violations committed during war and women’s role in peace negotiations and peacekeeping efforts. Jamila, Director of the Afghan Women’s Welfare Department said to the Council members: “Do not think that just because women wear a veil we do not have a voice. When the UN is looking for leaders look to us.” This shows the willingness of the women of the country to fight for their rights, and the huge potential of such forces if these energies are well harnessed. Ms. Farida Azizi and Ms. Zieba Shamley (Women’s Alliance for Peace) have both been witnesses to the treatment of Afghan women since 1979. They indicated that traditionally there has been a high degree of respect for women and their education in the Afghan culture. However, recent history had corroded such tendencies.

All women conveyed the message that there was now a high expectation for social justice and a need for a legitimate government. In a meeting between UN representatives and Afghan women activists on 19 December 2001, Ms. Angela E.V. King invited six Afghan women activists, all of whom participated in the Brussels meeting, to share their views with women Ambassadors to the UN and senior women staff of the UN system. First and foremost, the Afghan women demanded that there Afghanistan needs UN peacekeepers on the ground to ensure security, and most importantly, disarmament of armed groups. The latter was considered fundamental for any real peace to be established and the possibility of chaos eliminated. They also stressed that participation of Afghan women in the reconstruction efforts cannot be symbolic; it must be real. It was repeatedly emphasized that there was a need as well as a moral imperative to go beyond the provision of emergency assistance, to find funding for the sustainable reconstruction of Afghan civil society. This funding, it was unequivocally stated, should be made conditional to the human rights situation in the country and to women’s participation.

**RECOMMENDATIONS**

In conclusion, it can be said that while a certain level of advancement has been achieved in Afghanistan’s bigger cities; the rural areas and/or smaller towns have shown little or no improvement whatsoever. What is still required is for the laws of the country to address the issue of domestic violence directly and specify strict punishment for the ones who commit it against women. The government has to come up with the practical mechanisms to overcome this problem. According to a UNAMA study released in December, there was “still a long way to go” in implementing the law due to “dramatic” under-reporting of violence and gaps in

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investigations as a result of cultural restraints, social norms, and taboos, as well as insecurity and weak rule of law. Therefore international pressure on the government, as well as assistance to the young, unstable democracy is a key to the solution.

The Afghan government must take effective and immediate action to ensure that women’s human rights are not relegated to the bottom of the political and development agenda. It must seek to build on its efforts to ensure that laws and policy are translated into action on the ground, so as to guarantee that the human rights of all Afghan women and girls are respected, protected and fulfilled.

The Afghan Government must also ensure that human rights defenders are able to play their vital role in documenting violations of human rights, in upholding international human rights standards and contributing to the development of society. If the rights of defenders are violated, then governments must ensure that those responsible are brought to justice. Women human rights defenders often face a whole series of violations designed to silence them and paralyze their work. There must be an end to this.

Protection from domestic violence and the right to a life free from violence should be a principle not only in legislation on violence against women but also in all relevant areas of family and divorce law. An award of child custody to a perpetrator of violence against women poses a danger to both the adult survivor and the child. The need for ongoing contact after separation to make custody and visitation arrangements are often used by the perpetrator to continue abuse of the survivor. Legislation governing Families should guarantee the following and amend all relevant provisions in family law to reflect this:

- simplified process of divorce from a violent husband and adequate alimony to women and children;
- the survivor’s right to stay in the family dwelling after divorce;
- social insurance and pension rights of survivors who divorce the perpetrator;
- expedited distribution of property, and other relevant procedures;
- careful screening of all custody and visitation cases so as to determine whether there is a history of violence;
- a statutory presumption against awarding child custody to a perpetrator;
- availability, in appropriate cases, of professionally run supervised visitation centres;
- a survivor of violence who has acted in self-defence, or fled in order to avoid further violence, should not be classified as a perpetrator, or have a negative inference drawn against her, in custody and visitation decisions; and
- child abuse and neglect proceedings should target the perpetrators of violence and recognize that the protection of children is often best achieved by protecting their mothers. Increasingly severe punishment should be awarded for repeated incidents of domestic violence, regardless of the level of injury.

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Protection orders are among the most effective legal remedies available to complainants/survivors of violence against women. Such orders vary greatly in their specificity regarding the length of the order, its enforceability, who they may apply for, and whether financial support or other relief may be ordered. Such orders can order the perpetrators to desist from further violence, may order the immediate vacancy of the marital home by the accused or may even order immediate compensation. Legislation should make such protection orders available to survivors of all domestic violence. Violations of protection and restraining orders should be strictly punishable. Legislation should make protection orders available to complainants/survivors without any requirement that the complainant/survivor institute other legal proceedings, such as criminal or divorce proceedings, against the defendant/offender, and on sworn testimony or affidavit of the complainant. These orders are to be issued in addition to and not in lieu of any other legal proceedings.

Law should provide in cases regarding child custody and visitation, stemming after occurrence of domestic violence, that presumption be against award of custody or unsupervised visitation to the perpetrator, and that no visitation rights are to be granted against the will of the child. Further, Legislation should allow complainants/survivors of violence against women to bring lawsuits against governmental or non-governmental individuals and entities that have not exercised due diligence to prevent, investigate or punish the violence. Infrastructure for legally implementing intervention programmes for perpetrators to be prescribed in sentencing and mandate that the operators of such programmes work in close cooperation with complainant/survivor service providers should be put in place.

Increased co-operation between religious institutions, media, governmental policy-making departments and enforcement troops, as well as international groups towards educating the masses in gender sensitization is also required. Inclusive consultation with all stakeholders who are either affected by or will implement legislation is a key element of the preparatory process. It ensures that the realities of women who experience violence are accurately portrayed and that the legislative response is appropriate. It also enhances the potential for legislation to be implemented effectively. Complainants, non-governmental organizations, the national human rights commission, police and law-enforcement agencies, the judiciary, etc are some of the stakeholders who should be consulted in the development of legislation on violence against women. Legislation should be prepared drawing on reliable evidence including data and research on the scope, prevalence and incidence of all forms of violence against women, on the causes and consequences of such violence, and on lessons learned and good practices from other countries in preventing and addressing violence against women.

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50 UN Department of Economic & Social Affairs (Division for Advancement of Women), *Handbook for Legislation of Violence Against Women*, 2010
The Government of Afghanistan at the highest levels including the President should continue to publicly emphasize that promotion and protection of women’s rights are an integral part and main priority of peace, reintegration and reconciliation throughout Afghanistan, and a central pillar of the country’s political, economic, and security strategies. It should expedite implementation of the National Action Plan for the Women of Afghanistan, in particular a national strategy to implement the EVAW law. As an immediate step, the President could by decree release from detention any woman or girl arrested for “running away”, which is not a crime under Afghan law (usually women who run away are charged with intention to commit zina). It also has to concentrate on improving the economic grounds of Afghanistan; if every individual and family is financially secure, there remain little reasons for violence. Increased access to education will ensure that aware women and men will know how to reach a consensus without violence.\textsuperscript{51}

The Supreme Court and Office of the Attorney General should issue directives instructing the courts and prosecution offices to apply the EVAW law. Police and prosecutors should as required under the law register all complaints of harmful traditional practices criminalized by the EVAW law, and the Attorney General’s office should promptly investigate and prosecute such cases. The Ministry of Justice, in cooperation with the national High Commission for Prevention of Violence against Women, should provide training and capacity-building on the EVAW law to all law enforcement officials, including on recognizing, investigating, and prosecuting forced and child marriage and the practice of giving away girls to settle disputes.

Religious leaders, together with the Ministries of Hajj and Religious Affairs, and Women’s Affairs, should develop and deliver training and awareness-raising programmes for mullahs, imams and religious teachers about women’s rights and the EVAW law. Religious leaders should speak out about harmful practices that are inconsistent with Islamic teaching and principles and hold open discussions among Sharia experts on Islam and women’s rights. International donors should increase support to Government and civil society initiatives aimed at enforcement of the EVAW law and efforts to implement the National Action Plan for the Women of Afghanistan.