



## Contents:

<b>1. Introduction</b>	<b>3</b>
Research for this report	5
<b>2. Due Diligence</b>	<b>7</b>
<b>3. An ongoing culture of violence</b>	<b>8</b>
<b>4. Political and security environment for women</b>	<b>9</b>
<b>5. The nature and scale of violence</b>	<b>12</b>
<b>6. Forms of violence against women</b>	<b>12</b>
Forced marriages	12
Child marriages	15
Poverty and forced marriage	17
Violence in the family	17
Violence by armed groups	20
Death by self-immolation	23
Perceptions of violence	25
<b>7. Afghan women human rights defenders</b>	<b>27</b>
<b>8. Women and access to justice</b>	<b>29</b>
Failure to investigate by the police	30
Failure to understand the applicable law and the crime of ‘running away’.	31
Failure to provide legal representation	32
Women in prison	32
Testimonies of some female inmates	34
<b>9. Customary and informal justice systems</b>	<b>36</b>
<b>10. Afghanistan’s domestic laws and policies</b>	<b>38</b>
The new Constitution	38
Penal Code	39
<b>11. Violence against women in international law</b>	<b>39</b>
<b>12. Conclusion</b>	<b>42</b>

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<b>13. Recommendations for the protection of women suffering violence</b>	<b>44</b>
National laws and practices	45
Protective measures by the state	46
Informal justice systems	46
<b>14. Access to and protection by the justice system</b>	<b>47</b>
Law enforcement and protection	47
Education and employment	48
Provision of assistance and support	48
Amnesty International calls on the Afghan authorities to:	48
To the international community and donor states	49
To NATO member states contributing to the International Security Assistance Force (ISAF):	49
To the United Nations Assistance Mission in Afghanistan (UNAMA)	49

# Afghanistan

## *Women still under attack - a systematic failure to protect*

STOP  
VIOLENCE  
AGAINST  
WOMEN



### **Afghanistan**

#### **Stop Violence against Women**

#### **Introduction**

*“At the moment, there are more pressing issues... a civil servant has too much on his mind to deal with women’s rights. It’s a matter of priorities.”*

*Governor of Kandahar, Amnesty International interview, 13 September 2004.*

*“Today, women play an important role in Afghanistan...of course women in Afghanistan still face challenges. Girls are married in their childhood or married off to resolve disputes. These practices are cruel, against our religion and no longer acceptable”.<sup>1</sup>*

President Hamid Karzai of Afghanistan, International Women’s Day, Kabul, 8 March 2005

Throughout the world, women are victims of violence on a daily basis whether in the context of peace or in conflict. Perpetrators may be officials of the state, armed opposition

<sup>1</sup> President Karzai Congratulates Women on International Women’s Day – Excerpts from President’s Speech”, press release from the office of the spokesman to the President, 8 March 2005.

groups or individuals – including family members. Violence against women and girls in Afghanistan is pervasive; few women are exempt from the reality or threat of violence. Afghan women and girls live with the risk of: abduction and rape by armed individuals; forced marriage; being traded for settling disputes and debts; and face daily discrimination from all segments of society as well as by state officials. Strict societal codes, invoked in the name of tradition and religion, are used as justification for denying women the ability to enjoy their fundamental rights, and have led to the imprisonment of some women, and even to killings. Should they protest by running away, the authorities may imprison them.

Afghanistan is in the process of reconstruction after many years of conflict, but hundreds of thousands of women and girls continue to suffer abuse at the hands of their husbands, fathers, brothers, armed individuals, parallel legal systems, and institutions of the state itself such as the police and the justice system. There are reported increases in forced marriages; some women in difficult situations have even killed themselves to escape such a heinous

situation whilst others burn themselves to death to draw attention to their plight.<sup>2</sup>

Husbands, brothers and fathers are the main perpetrators of violence in the home but the social control and the power that they exercise is reinforced by the authorities, whether of the state or from informal justice systems such as *shuras* and *jirgas*.<sup>3</sup> Members of factional and militia forces are also responsible for perpetrating violence. In some instances, female members of the family have a role in upholding patriarchal structures, and may also commit violence. However, male members of society perpetrate the overwhelming majority of acts of violence against women.

Violence against women is widely tolerated by the community and widely practiced. It is tolerated at the highest levels of government and judiciary. Abusers are rarely prosecuted; if cases are prosecuted, the accused are often exonerated or punished lightly. Impunity seems to exist for such violence. The authorities seldom carry out investigations into complaints of violent attacks, rape, murders or suicides of women. Women who report rape face being locked up and accused of having committed crimes of *zina*.<sup>4</sup> Laws frequently discriminate against women and are otherwise inadequate to protect the rights of women.

International laws place a duty on the Afghan state to refrain from committing violations of human rights and to protect women from violence committed not only by agents of the state but also by private individuals and groups. Under international human rights standards, states are accountable if they torture, arbitrarily detain, violate the right to life or discriminate in their laws, policies and practices. They must also exercise due diligence to secure women's

<sup>2</sup> Although the exact rate of self-immolations, by which such apparent suicides are known, (*khud-soozi* in Dari) remains unknown across Afghanistan, the sub offices of the Afghan Independent Human Rights Commission (AIHRC), in Herat in particular, has recorded numerous cases over the last two years.

<sup>3</sup> *Jirga* (Pashtun) or *shura* (Dari) are gatherings of almost exclusively male elders.

<sup>4</sup> *Zina* laws are laws which criminalize sexual relations outside marriage.

rights, including the right to equality, life, liberty and security, and freedom from discrimination, torture and cruel and inhuman and degrading treatment. They must have laws, policies and plans to fulfil these rights, to protect women from abuses of these rights, and provide redress and reparation to those whose rights have been violated. States are accountable not only for their own acts but also for the acts of others such as armed groups, informal justice mechanisms, or individuals, such as family members if there has been a widespread failure of effort on their part to end violence against women.

The challenge to repair almost three decades of breakdown of law and order is visible through ongoing insecurity throughout Afghanistan and particularly manifested in widespread violence against women. The unstable environment reinforces inequality and discrimination whilst the rule of law remains elusive. In comparison, traditional and customary practices and codes have shown a remarkable resilience in maintaining their role as conduits of social order, raising disturbing questions as to the male dominated society's understanding of violence perpetrated against women.

Nevertheless, the need to combat violence against women is gaining ground and support in Afghanistan. Emerging networks of women human rights defenders are advancing a women's rights agenda across urban and rural areas. Some women are coming forward in small numbers, mainly in urban areas, and are beginning to report violence, particularly in the family, to their local Afghan Independent Human Rights Offices (AIHRC). Victims of family violence, mainly from urban areas have started to assert their rights, notably to divorce, and contributed to bringing the issue of the protection of women to national attention.

This report highlights the failure of the state to respect, protect and fulfil the rights of women and girls. It is not a comprehensive study of violations and abuses perpetrated against women in Afghanistan. It seeks instead to

provide examples that highlight the inability, and at times the lack of will, of the government and its institutions - in their current state - to respect, protect and fulfil the rights of women. It documents abuses perpetrated against women and girls in Afghanistan, including; forced and underage marriage; sexual violence; violations of the right to mental and physical integrity; deprivation of life and liberty; denial of freedom of movement; and the very present risk of torture and ill-treatment.

Amnesty International calls on the state to ensure that women are free from violence, whether committed by the institutions or agents of the state; members of the community; informal justice systems or by a family member, the state is required also to hold perpetrators to account.

The organization also calls on the international donor community for Afghanistan to encourage and support the Afghan government in ending crimes against women through sustained commitment to rebuilding of the country in ways that enable women to realise their rights.

Afghanistan has ratified, without reservations, the International Convention on the Elimination of all forms of Discrimination against Women (CEDAW), as well as other relevant human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention on the Rights of the Child (CRC). It is obliged to bring its domestic law and practice into conformity with these treaties. In particular, the government has the responsibility to ensure that customary and religious practices which are in conflict with these treaties in general, and which abuse women's human rights in particular, are prohibited.

**According to the Declaration on the Elimination of Violence against Women;**

“States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid

their obligations with respect to its elimination. In order to eliminate gender-based violence, the Declaration urges states to ‘Refrain from engaging in violence against women;’ and to ‘Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.’<sup>5</sup>

### Research for this report

This report is part of the global Amnesty International campaign to Stop Violence Against Women. The campaign highlights the need for states to meet their international and national commitments to stopping violence against women. It calls on states and communities to refrain from committing violence, to prevent violence being committed by others and ensure that discrimination in law, custom and practice is ended. It holds to account states to ensure that a secure environment is created for women to access justice and make their rights a reality.

Amnesty International undertook research for this report in February, August and September 2004. The researchers visited Kabul, Herat, Kandahar and Mazar-e Sharif. Interviews were held with women detainees in Mazar-e Sharif, Kandahar and Kabul and with provincial representatives of; the judiciary and police, administrators and prosecutors; the Ministries of Women's Affairs (MOWA), Justice, Interior, Education, Culture and Information and Islamic Guidance (Ershad –e Islami). Focus group sessions were held with women, in Kabul, Kandahar, Herat and Mazar-e Sharif. Discussion groups were held with men in Kabul and Mazar-e Sharif. In a few instances, Afghan men and women were willing to talk in a joint forum with Amnesty International delegates, in all the aforementioned cities. Amnesty International held in-depth interviews

<sup>5</sup> Declaration on the Elimination of Violence against Women, A/RES/48/104

with staff of the sub offices of the Afghan Independent Human Rights Commission (AIHRC) in all four locations. In addition, representatives of the UN Assistance Mission in Afghanistan (UNAMA), UNIFEM, and UN High Commissioner for Refugees (UNHCR), donor governments, and national non-governmental organisations (NGOs) were interviewed.

Gathering information on this sensitive issue proved to be a difficult task. Whilst it was relatively easy to discuss the topic with the Afghan government, NGOs and international governmental organisations (IGOs), obtaining direct interviews with female victims proved more problematic. Some of those interviewed told Amnesty International delegates that violence against women was excessive, but most were unwilling to name their experiences as violence, indicating that violence was widespread and normalised. Some men were often unaware that women have concerns relating to their human rights.

Amnesty International wishes to thank the Afghan Independent Human Rights Commission (AIHRC) for its invaluable support in allowing access to its staff and information in the aforementioned cities and for coordinating visits to the women's prison in Kabul and Kandahar.

The organization wishes to thank all individuals and agencies in Afghanistan, both Afghan and international, for their valuable insights, time and knowledge. Above all, Amnesty International is grateful to the numerous victims, women and girls, who courageously allowed us to highlight their plight and suffering and who experience liberation in name only.

### **Violence against women**

The UN Declaration on the Elimination of Violence against Women<sup>6</sup> states in Article 1:

*“...the term ‘violence against women’ means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”*

According to the UN Committee on the Elimination of Discrimination against Women,<sup>7</sup> gender-based violence against women is violence “directed against a woman because she is a woman or that affects women disproportionately.”

While CEDAW makes no reference to violence against women, the contemporary understanding of this violence grounds it, to a large extent, in ongoing, pervasive discrimination against women and their subordination in daily life. As the UN body monitoring the implementation of this Convention, the Committee on the Elimination of All Forms of Discrimination against Women, explained,

*“Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include:*

- (a) The right to life;*
- (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;*

<sup>6</sup> UN General Assembly Resolution 48/104 of 20 December 1993.

<sup>7</sup> Committee on the Elimination of Discrimination Against Women, General Recommendation 19, Violence against women, (Eleventh session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/I/Rev.1 at 84 (1994), para. 6.

- (c) *The right to equal protection according to humanitarian norms in time of international or internal armed conflict;*
- (d) *The right to liberty and security of person;*
- (e) *The right to equal protection under the law;*
- (f) *The right to equality in the family;*
- (g) *The right to the highest standard attainable of physical and mental health;*
- (h) *The right to just and favourable conditions of work.”<sup>8</sup>*

This means that gender-based violence against women may constitute a violation by the state of its obligations under CEDAW, where the state fails to exercise due diligence to prevent, stop or punish it.

### Amnesty International in Afghanistan

Earlier (2002-2003), Amnesty International reports focused on the reconstruction of the criminal justice system. In its report, “Afghanistan: No one listens to us and no one treats us as human beings” (ASA Index ASA: 11/023/2003), the organization investigated the needs and treatment of women in the justice system. Almost two years later, Amnesty International found that justice, security and redress remain outstanding issues for women and that women and girls continue to face major obstacles in seeking and obtaining protection and remedy from key law enforcement institutions.

### Due Diligence

A state must act properly and effectively to prevent violence against women and investigate and punish such violence after it occurs, otherwise the state can itself be held responsible for the violation. This is known as

<sup>8</sup> *Ibid*, para. 7.

the standard of “due diligence”, which determines the efforts that a state must undertake to fulfil its responsibilities to protect individuals from abuses of their rights by non-state actors.

The first UN Special Rapporteur on violence against women, Radhika Coomaraswamy wrote, that amongst other obligations:

*“States must promote and protect the human rights of women and exercise due diligence:*

- (a) *To prevent, investigate and punish acts of all forms of VAW whether in the home, the workplace, the community or society, in custody or in situations of armed conflict;*
- (b) *To take all measures to empower women and strengthen their economic independence and to protect and promote the full enjoyment of all rights and fundamental freedoms;*
- (c) *To condemn VAW and not invoke customs, traditions or practice in the name of religion or culture to avoid their obligations to eliminate such violence.*
- (d) *To intensify efforts to develop and/or utilize legislative, educational, social and other measures aimed at the prevention of violence, including the dissemination of information, legal literacy, campaigns and the training of legal, judicial and health personnel.”<sup>9</sup>*

The obligations of states under international law are not limited to ensuring that their agents do not commit violations. In the case of Afghanistan, the state must take effective steps to prevent and punish such acts by non-state actors, for example abuses by a violent husbands; or by an opposition group or by a parallel justice system that exerts informal

<sup>9</sup> Radhika Coomaraswamy, Special Rapporteur on violence against women, Report to the Commission on Human Rights, UN Doc. E/CN.4/2003/75, 6 January 2003, para. 85.



authority within the community. The term non-state actors may also encompass armed political groups.<sup>10</sup>

Amnesty International recognises the challenges facing Afghanistan as it emerges from many long years of conflict and attempts to rebuild its institutions and establish the rule of law. However, as the situation currently stands, state institutions, through their lack of effective and prompt action in response to complaints of violence and threats of violence against women and their failure to bring perpetrators to justice, are allowing widespread discrimination and violence against women to continue. The police frequently fail to investigate or press charges against perpetrators of violence against women. Women are not encouraged to bring complaints against their attackers and fear bringing “dishonour” on the family as well as facing reprisals from the attacker and relatives. Women receive almost no effective protection from the state and it is rare for a court to convict and punish a perpetrator. Traditional attitudes of judges, whereby women are held responsible for having been attacked, raped or killed, show a shocking failure to uphold the law by its custodians and have contributed to influencing the generally permissive attitude toward violence against women. The failure of state institutions to protect women’s rights, to ensure that abusers are brought to justice and provide redress points to official apathy towards, and at times blatant sanctioning of violence against women.

The state of Afghanistan should exercise due diligence not merely by legislating and criminalizing discrimination and violence against women; further, the state should adopt a whole range of measures including the training of state personnel, the adoption of

<sup>10</sup> Amnesty International holds such groups responsible for human rights abuses they commit, whether they are fighting the state or other groups, and regardless of whether they control territory, under principles derived from the laws of armed conflict. (For more on violence against women by armed groups, see: *Making rights a reality: Violence against women in armed conflict*, ACT 77/0502004).

policies and mechanisms to protect women’s rights and ensuring that the law and those charged with enforcing it are accessible to women who have experienced any form of violence and would work to best serve their needs.

## An ongoing culture of violence

Violence against women and girls and other violations of their rights have been widely reported and documented by Amnesty International and other human rights organisations. In 2000, the Special Rapporteur on Violence against Women, in her report to the Commission on Human Rights, wrote “*Most countries of the world appear to tolerate some practices that discriminate against women, but only in some countries is discrimination official policy. In Taleban controlled areas of Afghanistan, discrimination against women is officially sanctioned and pervades every aspect of the lives of women.*”<sup>11</sup>

Although the Taleban is no longer in power, a cultural legacy remains. Nader Nadery, a commissioner with the Afghan Independent Human Rights Commission (AIHRC) said, more than three years later, that the cycle of violence for many women continues and “*comes out of negative practices from Afghanistan’s long history that have created a culture of violence against women.*”<sup>12</sup>

Women have suffered widespread violations throughout the bloody, long and internecine conflict.<sup>13</sup> Many women were raped, abducted

<sup>11</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, “Mission to Pakistan and Afghanistan (1-13 September 1999)”, UN Doc. E/CN.4/2000/68/Add.4, 13 March 2000, para. 13

<sup>12</sup> IRIN press, *Rally to stop violence against women*, Kabul, 24 November 2004.

<sup>13</sup> See Amnesty International reports, including: *Lives blown apart. Crimes against women in times of conflict*, ACT 77/075/2004, *Afghanistan: No -one listens to us and no-one treats us as human beings: Justice denied to women* ASA 11/023/2003, *Afghanistan: Women failed by progress in Afghanistan*, ASA



and killed by persons affiliated to or part of various regimes from 1979 – 2001.<sup>14</sup> Some were attacked for belonging to particular religious and ethnic groups. Others were forced into marriages with members of armed groups. Women were consistently denied rights to physical security, freedom of movement, freedom of association, education, health, employment and the right to choose a spouse with consent.

In April and May 2005, four women were killed, in two separate incidents in northern Afghanistan. In late April, 29-year old Amina, from Badakshan province in north-eastern Afghanistan was unlawfully killed, allegedly by family members, following the decision by the local *ulema* (religious council) to ‘sentence’ her to death by stoning, after they found her guilty of adultery.<sup>15</sup>

In early May 2005, three women from Pul-Khumri town, Baghlan province were found murdered. The victims were reportedly raped and strangled. The exact motive remains unknown despite the discovery of a note close to the bodies, which allegedly linked the killings to their association with non-governmental organisations (NGOs) in Afghanistan. Despite the welcome move by the Afghan authorities to investigate these deaths, Amnesty International is not aware of the perpetrators, in both cases having been brought to justice in either case.

Regardless of periodic peace and change of regime, in the last twenty six years, a

11/015/2004, *Afghanistan: Abduction and rape at the point of a gun* ASA/11/013/2004, *Afghanistan: Re-establishing the rule of law* ASA 11/021/2003

*Afghanistan: making human rights the agenda*, ASA 11/023/2001, *Afghanistan: massacres in Yakaolong*, ASA 11/008/2001, *Afghanistan: executions in Panjshir*, ASA 11/040/2001, “*Afghanistan: women in Afghanistan: pawns in men’s power struggles*”, ASA 11/011/1999

<sup>14</sup> See: Amnesty International press releases: *Afghanistan: Calling for fair and thorough investigations for crimes against women* ASA/006/2005 and *Afghanistan: Stoning to death – human rights scandal* ASA/005/2005

<sup>15</sup> See: Amnesty International press releases: *Afghanistan: Calling for fair and thorough investigations for crimes against women* ASA/006/2005 and *Afghanistan: Stoning to death – human rights scandal* ASA/005/2005

consistent feature of Afghan life has been that women live with a high risk of violence and discrimination.

## Political and security environment for women

Afghanistan is still facing an internal armed conflict and is ruled by a fragile government. The Bonn Agreement in December 2001 paved the way for transition from conflict to peace and signalled the formal end of international hostilities. Although the Bonn Agreement briefly addressed the issue of accountability, there was no explicit reference to a mechanism for ensuring that those who had committed crimes, including against women, were held to account. In June 2002, an Emergency *Loya Jirga* was held, in which elected delegates chose Hamid Karzai to preside over the transitional government.<sup>16</sup> The Constitutional *Loya Jirga*, in December 2003, where the draft Constitution was debated was marred by reports of harassment and intimidation of elected delegates. A female delegate, 25 years old, Malalai Joya, from Farah province was subjected to intimidation and threats after she voiced her criticism of some of the former Mujahedin participants and their role in the destruction of the country. In October 2004, Hamid Karzai was elected President, following landmark and fairly peaceful Presidential elections.

Parliamentary and municipal elections are to be held in September 2005; the inauguration of Parliament would signify, under the Bonn Agreement and Constitution, the end of the transitional government. However, the vast majority of Afghan women continue to shoulder the burden and face the impact of an insecure environment, inadequate institutional protection mechanisms and pressure to conform to strict interpretations of traditional and religious norms. In March 2005, Kofi

<sup>16</sup> A *Loya Jirga* (General Assembly) is a traditional Afghan decision making body dating from the 18<sup>th</sup> century



Annan, the United Nations (UN) Secretary General stated:

*“while the status of women and girls has improved, overall progress has been uneven. The volatile security situation and traditional and social and cultural norms continue to limit women’s hopes and girl’s role in public life and deny them the full enjoyment of their rights.”<sup>17</sup>*

In contrast to the last decades where women were almost absent in all facets of political and public life, progress can be observed in these spheres. In January 2004, a new Constitution was adopted which proclaimed that “the citizens of Afghanistan – whether man or woman – have equal rights before the law” (Article 22). It also provides for a minimum representation of women in both houses of parliament with 27 per cent of seats reserved for them in the lower house; the first female Presidential candidate stood for elections in October 2004; in January 2005, the first woman was appointed as Governor of a province; the head of the national human rights commission is a woman. Although few in number and lacking decision-making power, women are employed in the criminal justice sector; and an active, vigorous civil society is emerging, wherein women are actively participating. Women’s involvement in many spheres is improving; over 40 per cent of women were registered as voters in 2004; there has been an increase in the number of girls enrolled in schools and women are officially allowed to seek employment, albeit with permission from family members. Women’s employment is mainly concentrated in international organisations and sectors of the government.

The Afghan government has taken incremental steps to begin to address the issue of the realisation of women’s rights and gender

<sup>17</sup> Report of the Secretary General, “*The Situation of women and girls in Afghanistan*”, E/CN.6/2005/5, 22 December 2004, summary.

equality. In the Berlin Conference in late March 2004, the Afghan government outlined to international donor states its commitments to promote the participation of women in the reconstruction of Afghanistan and to ensure equal rights in the political, social and economic sphere. As part of concrete measures to promote gender equality, a gender unit has been established in the Ministry of Rural Rehabilitation and Development.<sup>18</sup> An inter-ministerial Task Force has been created, which is committed to combating violence against women. Relevant ministries signed a declaration of intent to end this violence, which has been submitted to President Karzai.<sup>19</sup> The Ministry of Women’s Affairs (MoWA) has begun consultations with various ministries to develop a national action plan for women. MoWA is in the process of attempting to integrate a national policy plan for women into the larger national development strategy for Afghanistan, currently being drafted.<sup>20</sup>

There are indeed considerable and substantive measures at state level that seek to improve the position of women in Afghanistan and are very much welcomed by Amnesty International. A significant constraint to such initiatives remains, however, in the form of the failure to provide physical security for Afghans, particularly women. The climate for enabling women and men to speak out freely is inhospitable. Although the government has slowly established its control over larger parts of the country, it does not have control over the whole territory. Private armed groups under the leadership of powerful regional leaders continue to exert *de facto* control and engage in factional clashes. Despite pledging allegiance to the government, local officials

<sup>18</sup> Efforts to establish gender units have been stalled by a shortage of funds. Amnesty International interview with Meryem Aslan, Director of UNIFEM, Afghanistan, April, 2005.

<sup>19</sup> The Inter-ministerial Task Force consists of representatives, including the Ministry of Women’s Affairs, Justice, Foreign Affairs, Interior, Information and Culture, Public Health, Afghan Independent Human Rights Commission, Islamic Affairs, General Prosecutors and the Supreme Court.

<sup>20</sup> Amnesty International interview with Meryem Aslan, Director of UNIFEM, Kabul, April 2005.

are reported to have close connections with regional armed leaders, who are in control of large parts of Afghanistan.

Many international organisations have drawn attention to the lack of security and the inadequate response by the Afghan government to the instability.<sup>21</sup> The mandate of the International Security Assistance Force (ISAF) has been extended under UN Security Council Resolution 1563, and provides for the;

*“progressive expansion of the International Security Assistance Force to other urban areas and other areas beyond Kabul.”*<sup>22</sup>

However, despite the establishing of small teams of NATO led Provincial Reconstruction Teams (PRTs), (consisting of between 30 –80 military officials); their deployment to all major provincial cities; and an explicit reference in 1563 to ongoing threats to international peace and security in Afghanistan, ISAF continues to lack a mandate to protect civilians.<sup>23</sup>

The national process of disarmament of official militia has begun under the aegis of the Afghan New Beginnings Program and supported by the United Nations Development Program (UNDP). Although initially slow, it is being accelerated. However, the disarmament strategy failed to incorporate irregular militia groups, which continue to wield arms and power. Despite efforts to demobilise and disarm, weapons remain a mainstay of Afghan

life with a large number still circulating amongst ordinary Afghans and factional forces.

In spite of the general improvement of women’s situation following the collapse of the Taleban regime, Amnesty International was informed by women and girls in focus groups and interviews that they felt their situation had remained largely unchanged. Interviews conducted with women in Kabul, Kandahar, Herat and Mazar-e Sharif, highlight the vulnerability of women to abduction, rape, sexual violence and the fear that this brings. As women told Amnesty International delegates;

*“Our current concerns are security of our girls and children. In Karte Se [a district in Kabul], we hear of students and teachers disappearing. Most of them are under the age of 18. If a girl is 18 or more, she is more aware of her environment. The government must provide protection. Some kidnappers do go to jail but then they just bribe their way out”.*<sup>24</sup>

*“Here in Kabul, I want to study but I don’t like Kabul. I am afraid of another war. There’s no security. Sometimes, I don’t feel safe in my area. I just want to feel safe. I felt physically safe in Iran. I want to walk alone, not with a bodyguard. This is what you need here.”*<sup>25</sup>

*“We feel we do not have security here. Schools can be closed. The Taleban can do anything. Schools recently closed and reopened. Parents are not letting their girls go to school here because of the insecurity.”*<sup>26</sup>

Women are disproportionately affected by violence during and after conflicts. In Afghanistan, the conflict may have formally

<sup>21</sup> Agency Coordinating Body For Afghan Relief (ACBAR) letter to NATO, 22 June 2004  
<http://www.acbar.org/downloads/ACBAR%20PRESS%20RELEASE%20Kabul%2022June%202004.pdf>  
 CARE and Afghanistan NGO Security Office (ANSO) *Insecurity continues to impede aid delivery in Afghanistan*, May 9, 2005, [www.care.ca/downloads/publ/afhhan/20050505ansocare.pdf](http://www.care.ca/downloads/publ/afhhan/20050505ansocare.pdf) and Medicins sans Frontieres press release, MSF pulls out of Afghanistan. Kabul, 28<sup>th</sup> July 2005, [www.msf.org](http://www.msf.org).

<sup>22</sup> UN Security Council Resolution 1563, adopted by the Security Council’s 5038<sup>th</sup> meeting, 17 September 2004.

<sup>23</sup> PRTs, some of whom are NATO led and others members of the U.S.led Coalition, are deployed in Bamiyan, Herat, Kandahar, Gardez, Mazar-e Sharif, Kunduz, Jalalabad and have orders to engage in activities that include construction of schools, clinics, bridges and training of police.

<sup>24</sup> Amnesty International focus group interview with women and girls from Karte Se area, Kabul, 1 September 2004.

<sup>25</sup> Amnesty International interview in Kabul with an 18-year-old female returnee from Iran, 6 September 2004.

<sup>26</sup> Reported in Amnesty International focus group, girls school, Kandahar, 14 September 2004

ceased with the collapse of the Taleban regime but factional violence, growing anti government attacks and targeted violence towards national and international aid workers is contributing to an ongoing state of conflict.

Women have not witnessed a significant improvement in their abilities to enjoy their human rights. Discriminatory practices institutionalised prior to and during the war have not disappeared and in some ways have grown stronger. The insecure environment exacerbates this further. In the Afghanistan context, violence suffered during the conflict years was an extreme manifestation of the discrimination and abuses they suffered in before the conflict began as well as the unequal power relations between Afghan men and women.

Such attitudes contribute to the widespread acceptance of domestic violence, rape and other forms of sexual abuse against women. Women's right to choose a marriage partner is still severely curtailed and subject to the authority of male members of the family; they continue to be abducted and forced into marriage; early marriage and childbirth is commonplace; and prohibited interaction between unrelated men and women greatly inhibits women's access to, amongst others, higher education, the workplace and both formal and informal justice mechanisms as these bodies continue to be almost exclusively male and largely segregated.

## The nature and scale of violence

Research by Amnesty International in Afghanistan highlights a disturbing acceptance of violence against women as a norm of life by many women interviewed. Violence by partners and male relatives in the home was defined by respondents according to the level of brutality of the act(s), rather than questioned intrinsically. In discussions on violence perpetrated by armed groups or armed individuals, participants were reluctant to

speaking about possible ordeals suffered by them or female family members.

Crimes of rape and abduction are regarded as more heinous than domestic violence because the perpetrator does not always marry the victim. Such views indicate the acceptability of compelling a woman to remain in an abusive relationship as well as social attitudes toward unwed rape victims. There are no statistics on the number of women and girls suffering from abuse in the family and other forms of violence making it difficult to understand the prevalence of these phenomena.

Anecdotal knowledge is the best indication that currently exists and now needs to be supplemented by more systematic data collection exercises, which the state can support by funding, staff resources, facilitation and public support.

## Forms of violence against women

### Forced marriages

*"Girls can't say no. The men say that women are like animals and dolls, take their hand and do anything".<sup>27</sup>*

Forced marriages are strictly prohibited under international human rights law, including treaties to which Afghanistan is a state party.

Article 23(3) of the ICCPR provides that, "No marriage shall be entered into without the free and full consent of the intending spouses."

Article 16 CEDAW provides, among other things:

*"1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and*

<sup>27</sup> Amnesty International interview with a female teacher in Kandahar, 14 September, 2004.

*family relations and in particular shall ensure, on a basis of equality of men and women:*

*(a) The same right to enter into marriage;*

*(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent.”*

Forced marriage, in contrast to arranged marriage, has been described as “*any marriage conducted without the valid consent of both parties and may involve coercion, mental abuse, emotional blackmail, and intense family or social pressure. In the most extreme cases, it may also involve physical violence, abuse, abduction, detention, and murder of the individual concerned.*”<sup>28</sup>

Arranged marriages have been the subject of discussion not only in South Asia but also in the U.K and European countries with large South Asian communities.

*“It is also vital to understand the difference between an arranged and a ‘forced’ marriage. Whether a couple meet through work/studying together, or whether they meet by way of introduction by family/friends, as long as there is no force applied to either party in accepting a proposal, this is a legally valid marriage. It is important for parents to be involved in their child’s life from an early age, and to provide support and guidance in choice of a marriage partner. However, where any force is exerted to achieve consent of either party to marriage, then this becomes an illegitimate marriage.”*<sup>29</sup>

Under Afghan national law, forced marriage is a crime.<sup>30</sup> The failure of the judiciary, the police and the wider society to treat forced marriage as a criminal offence, due to deep-

<sup>28</sup> Ain O Salish and Shirkat Gah, Information Gathering Exercise on Forced Marriages, submission by Interights to the Home Office Working Group, UK, March 2000.

<sup>29</sup> Muslim Parliament campaign, UK, [http://www.stopforcedmarriages.org/Islam\\_and\\_Marriage.php](http://www.stopforcedmarriages.org/Islam_and_Marriage.php)

<sup>30</sup> See: Chapters 7 and 8, Afghan Criminal Code (1976).

seated attitudes towards women, has ensured that there is a consistent failure by the state to initiate criminal proceedings against perpetrators.

Examining the issue of forced marriages is a particularly complex undertaking in Afghanistan.<sup>31</sup> They should be distinguished from arranged marriages to which the couple may have fully and freely consented, which are an accepted, traditional practice throughout South Asia. Arranged marriages are conceptually distinct from forced marriages, in that the former do not necessarily have had an element of compulsion. It is true that in arranged marriage force or duress may also be present but it is not automatically so. There is thus both a distinction and an overlap between the two; nevertheless they should not be confused.

Arranged marriages are the dominant, almost exclusive form of marriage in Afghanistan. However, research has indicated that there is a degree of coercion in the vast majority of marriages, with the Ministry of Women’s Affairs placing the figure as high as 80 per cent.<sup>32</sup> Some of those interviewed by Amnesty International indicated their belief that almost all marriages were forced.

For instance, women interviewed by AI delegates have said:

*“Only Kabul educated people marry by choice. No others marry through choice.”*<sup>33</sup>

*“Girls marry according to their parents. The reputation of a family goes for generations if a girl confesses to fall in love.”*<sup>34</sup>

<sup>31</sup> See Amnesty International “Afghanistan: No one listens to us and no one treats us as human beings”, AI Index ASA 11/023/2003 and “Afghanistan: Re-establishing the rule of law”, AI Index ASA 11/021/2003.

<sup>32</sup> Institute for War and Peace Reporting, 4 April, 2004.

<sup>33</sup> Female participants in an Amnesty International focus group in Kabul, 14 September 2004

<sup>34</sup> Ibid.

Malalai was 17 years old when her father arranged her marriage, "I had no choice. I did not know my husband, he was already married but had no children. My husband was 53 then. Now he's 70 years old."<sup>35</sup>

Remaining unmarried is generally not a viable option for Afghan women and is seen as unacceptable. Seventeen-year-old Fatima is a recent returnee from Pakistan,

*"I was three when I left Afghanistan. I would like to marry at the age of 20 or so. After 20 the age of marriage is gone. I have many proposals but I don't want that yet. It's necessary to get married."*

Afghans articulate various reasons for the increase in reports of forced marriages. Alleviation of debt, threats from armed groups and individuals, in areas where the families have little recourse to and protection from the law is widely believed to be major factors for the rise in forced marriages. Afghan interviewees informed Amnesty International delegates that poorer families are accepting proposals of marriage for their young daughters in a bid to stave or settle debts. In addition, prevailing lawlessness and impunity of armed individuals has created an environment in which families believe early marriage to be the only route to a safe and secure future for their daughters.

The presence of armed men and groups is a contributory factor in unwanted marriages. In some instances, powerful government and factional leaders are directly supporting perpetrators. The AIHRC in Herat has documented numerous cases of women and girls being forced to marry individuals affiliated with armed factions. Rahima was engaged from infancy.<sup>36</sup> Her fiancé was a foot soldier of the powerful factional leader, Ismail Khan, the former Governor of Herat. When she refused to marry him, Ismail Khan is reported

to have rejected her plea to absolve the engagement. On his orders, without any judicial or other proceedings, she was imprisoned for 6 months. Following her release, she was sent to her fiancé's home by the authorities. Amnesty International was told that the former Governor forced her to marry the man. The victim was desperate to escape her situation and had come to the offices of AIHRC and threatened to kill herself.<sup>37</sup> The AIHRC wrote to the court informing them that Rahima was a victim of forced marriage but the court refused to grant her a divorce.

In Afghanistan, where powerful, armed groups exert control over the police and judiciary, investigation of forced marriages by the state and justice for victims is rare. Cases of forced marriage by armed individuals may only come to light when victims take their accounts outside the home. Following the removal of Ismail Khan as Governor of Herat, Rahima lodged a complaint with MoWA, and having been unsuccessful in her bid to obtain a divorce, MoWA and the AIHRC supported her to travel to Kabul where she appeared on television to highlight her situation. Rahima's desire to publicise her plight was only possible with the removal of the threat of Ismail Khan and the support of MoWA and human rights groups like the AIHRC. Amnesty International is not aware of any action taken by the state against Ismail Khan or Rahima's husband.

Twenty year-old Hana tried to obtain a divorce through the provincial court.<sup>38</sup> A resident of a district in Herat, she claims she was abducted from her home at the age of 18 by four armed men; the perpetrator claims she was his wife and has been since before the fall of the Taliban regime – he is opposed to the divorce. Hana claimed that her abuser forcefully married her, that she was forced to live with him for three months after which she escaped to her father's house. She filed a complaint with the police who forwarded the case to the

<sup>35</sup> Names have been changed to protect the individual.

<sup>36</sup> Names have been changed to protect the individual.

<sup>37</sup> Amnesty International interview with staff of the AIHRC, Herat, September 2004.

<sup>38</sup> *Ibid.*

AIHRC. Her husband is said to have fled Herat for another district. Amnesty International was informed by the AIHRC in September 2004, that the city prosecutor had taken no action to date and the case remained unresolved.

Other cases have reached court and await judgements. Najia's is one such case - Najia is from a district close to Herat city.<sup>39</sup> She was eight years old when she was married to Ghulam (age unknown) who later became the bodyguard of the district governor.<sup>40</sup> In December 2000, Najia lodged a complaint with the district prosecutor, claiming domestic violence following years of abuse. After presenting witnesses to the abuse to the prosecutor, she was threatened by the district governor. Nonetheless, Najia proceeded with her request for a divorce.<sup>41</sup> On 29 March 2002, the district court granted her a divorce but her husband refused to accept the decision of the court and filed an appeal. Following the upholding of the decision by the provincial court, Ghulam lodged an appeal with the High Court in Kabul. He threatened to kill Najia if the decision from the High Court allowed the divorce. District police later arrested Najia's brother-in-law and she was told by local officials to go back to her husband. The AIHRC spoke with the district governor who disagreed with the court's decision to grant Najia a divorce. They also spoke with Ghulam who openly told the AIHRC that he would kill Najia if a divorce were granted.

Amnesty International is aware that the police did not take any action against the threat to Najia. The organization has not been able to obtain any further information on Najia's situation and remains concerned at the risk Najia faces to her life.

Threats and intimidation by armed groups are prevalent throughout Afghanistan. The case of Najia is rare both in that she actually

approached the court and in that the courts have so far upheld her petition for a divorce. Amnesty International welcomes the fact that although the numbers are very small, women are reporting violence perpetrated against them and that the state, in some instances, is taking up these cases. The failure of the police, the collusion of local government officials and lack of protection for victims create "double violence" for the majority of women.<sup>42</sup> Although the exact scale of such practices remains unknown, they indicate failure of the justice system to assist women in such situations. This may be fuelled by a reluctance to deal with armed groups, "*When people are armed, we can't do anything. When weapons are gone, we can work.*"<sup>43</sup>

### Child marriages

The issue of forced marriages is interlinked with child marriages; child marriages by definition constitute forced marriage, as a child cannot be considered to have consented freely;

Article 16(2) of CEDAW provides that "*The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.*"

Child marriage also violates the right of children to freedom from sexual exploitation, as provided in Articles 19 and 24 of the UN Convention on the Rights of the Child. By marrying at an early age, children are further denied their rights to education and health and, crucially, the freedom to determine the course that they wish their lives to take.

There is a seeming divergence as to the age of marriage between urban and rural areas, ethnic background and economic circumstances. Many of those interviewed by Amnesty International delegates in Kabul and provincial

<sup>39</sup> Names have been changed to protect the individual.

<sup>40</sup> Reported to Amnesty International by the sub office of the AIHRC, Herat, September, 2004.

<sup>41</sup> In *Sharia* law, a woman can seek divorce on four grounds, impotence of husband being one of them.

<sup>42</sup> Quote by Palwasha Kakar, Women' Officer, AIHRC, Herat.

<sup>43</sup> Ibid.

capitals stressed that early marriages are occurring mainly in rural parts of Afghanistan and consider that the increase is owed to unrelenting poverty.

Afghan returnees from Iran and Pakistan are also not free from early and other forced marriages. 30-year-old Zainab was married at the age of 10 and lived in Iran for 16 years. Her husband gave her family 700,000 Iranian Rials (equivalent to approximately 78 US dollars) at the time of marriage. Zainab's husband was 20 years old when they married. After six months of marriage her husband began beating her.

*"I was comfortable until six months after the marriage when he began hitting me. I tried to run away three times. The first time I went to my parents and my husband came and pleaded with me to come back. I went but he began beating me again after a month. The second time, I went again to my parents. I stayed there for five months. My husband came armed and threatened my family if I did not return. My husband refused to let me come to my parents' home after that. For one year he was OK and then the beating began again. Once he hit me in (on) the head with a large stone."<sup>44</sup>*

There remains an absence of statistical data for recording births, marriages and deaths throughout almost all of the country. Local clerics conduct marriage ceremonies in communities but it is not clear if they keep records. Clerics are appointed by the state and trained by Ministry of Islamic Guidance Officials.<sup>45</sup> Amnesty International believes that in the situation where a local cleric is conducting a marriage where one or both parties are underage, it is the state's responsibility to ensure that the marriage is carried out in a lawful manner; the bride or groom should fulfil the minimum age requirements in order to be married.

<sup>44</sup> Amnesty International interview, September 2004.

<sup>45</sup> Amnesty International interview with the Minister of Islamic Guidance, August 23, 2004, Kabul.

Through the focus groups and individual interviews, Amnesty International was informed that underage marriages do occur and that the typical age varies from 12 to 16. They believed that girls do marry younger and are generally perceived to be from economically deprived backgrounds with very little, if any education. According to a preliminary survey done by the German NGO Medica Mondiale (MM) the lack of data on child marriages is a huge barrier in understanding the scale of the problem. Their survey also revealed that child marriages are viewed as much more prevalent amongst poorer and illiterate families.<sup>46</sup>

A study conducted by the Ministry of Women's Affairs in 2004 showed that 57 per cent of women surveyed were married before they were 16. Some were reported to be as young as nine. MOWA highlighted the negative impact of early marriage, including on a child's health, the denial of education and the repeated childbirth and pregnancy. The MOWA Minister stated: "Child marriage is a serious issue in Afghanistan, because it has a very negative impact on society."<sup>47</sup> A UNICEF survey placed maternal mortality in four Afghan provinces 130 times higher than the United States.<sup>48</sup> Mohammed Amin Fatimi, the Afghan public health minister stated: "Fifty to seventy mothers die every day from birth complications, which is a silent tsunami for Afghanistan."<sup>49</sup>

Forced and underage marriages not only reduce a woman's choices in life and compromise her health but also serve to strengthen the inequality of power in society. Under Afghan law, the legal age for marriage is 16 for girls and 18 for men.<sup>50</sup> This violates the provisions for equality in marriage in the

<sup>46</sup> Medica Mondiale, *Child Marriage: A Preliminary Briefing*, May 2004.

<sup>47</sup> IRIN press, *Child marriage rate still high – minister*, 13 July 2004, Kabul.

<sup>48</sup> AFP press, *For Afghan women, there are still bigger battles than the right to vote*, Faizabad, 18 October, 2004.

<sup>49</sup> AFP press, *New generation of Afghan midwives fights 'silent tsunami'*, Kabul, 14 April 2005.

<sup>50</sup> Afghanistan Civil Law, 1976, Article 70.



ICCPR and CEDAW quoted above. Amnesty International is concerned, as noted, that children are forced to marry considerably younger than ages stipulated by the law.

### Poverty and forced marriage

The devastation of the war years has left many families in debt or economically unable to support their families. Amnesty International was informed that girls are forced to marry to alleviate family poverty. Although early marriages are reported to be historically common, especially amongst poorer families and outside the main urban areas, forced and child marriages have become even more of a common phenomena. Conditions have been exacerbated by a mixture of extreme poverty, aggravated by the war years, debt, confiscation of land by powerful local patrons; and the need to avoid the possibility of abduction by armed groups of young girls.

Azra was married at the age of nine.<sup>51</sup> Her mother Halima told Amnesty International *“her father married her at a young age because he had no choice. We are very poor and we received 1000 lakh Afghanis for her.”*<sup>52</sup>

The female director of the Afghan NGO, Women’s Organization for the Safeguard and Development of Women’s Rights, in Mazar-e Sharif, told Amnesty International of the case of 15 year old Zohra, from the Tashkurgan area of Mazar-e Sharif, who was married to a 55 year old male. In return her family received a substantial amount of money to settle their debts.

In the Gorzargah Transit Centre (GTC) shelter in Herat, a victim of forced marriage articulated her definition of forced marriage as *“when the father sells or exchanges her for drugs and money, beats the girl into coercion and exchanges her to settle debts.”*<sup>53</sup>

<sup>51</sup> Names have been changed to protect the individual.

<sup>52</sup> Interview with Halima and Aziza, mother and daughter in Kandahar Women’s prison, 12 September 2004.

<sup>53</sup> In Dari, *gorzargah* means transit place. The Gorzargah Transit Centre (GTC) in Herat houses single and married females who

Sixteen-year-old Heena returned from Iran in August 2004 and is a resident of the shelter.<sup>54</sup> Heena told Amnesty International delegates that she was living with her uncle and his family, following the death of her husband and child in 2004. Heena was exchanged to her cousin’s future father in law. She fled her home soon after the wedding.

When Amnesty International delegates interviewed Mahmuda she was 15 years old.<sup>55</sup> Mahmuda and her sister (age 12) were classified as ‘unaccompanied females’ and had been housed in the GTC shelter since July 2004. Mahmuda was 14 years of age when she was forced to marry. Her father received two million Iranian Rials (equivalent to US dollars \$225) from Mahmuda’s husband, *“I was against the marriage and cried. He (Mahmuda’s father) beat me a lot. I had to marry. He was my cousin. I lived with him for two months and he started to beat me. I went to my father’s house who sent me back. I stayed for another month and he carried on hitting me. I ran away to Tehran and the police picked me up.”*

The testimonies above demonstrate the treatment of women and girls as commodities in a male-dominated society instead of being equal in dignity and rights to men.

### Violence in the family

The UN Special Rapporteur on violence against women has stated: “violence against women in general, and domestic violence in particular, serve as essential components in

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have travelled unaccompanied from Iran to Afghanistan. It also houses victims of violence from Herat, women who have been imprisoned by Afghan authorities for committing crimes such as elopement and victims of domestic violence and underage and forced marriages. Generally, the GTC shelter is not used as a refuge for women who have been released after imprisonment. Interview conducted with residents by Amnesty International delegates, 3 September 2004.

<sup>54</sup> Names of the individuals have been changed to protect their identity.

<sup>55</sup> Names of the individuals have been changed to protect their identity.

societies which oppress women, since violence against women not only derives from but also sustains the dominant gender stereotype and is used to control women in the one space traditionally dominated by women, the home.”<sup>56</sup>

In Afghanistan, violence against women by family members is widespread and can range from deprivation of education to economic opportunities, through verbal and psychological violence, beatings, sexual violence and killings. Many acts of violence involve traditional practices including the betrothal of young girls in infancy, early marriage and crimes of “honour”, where a female, is punished for having offended custom, tradition or honour.

From infancy, girls and women are under the authority of the father or husband, have restricted freedom of movement from childhood, restriction on their choice of husband and very limited possibilities to assert their economic and social independence. Most unmarried and married women are faced with the stark reality of enduring abuse. Should they try and extricate themselves from the situation of abuse, they invariably face stigma and isolation as well as possible imprisonment for leaving the home.

The UN Development Fund for Women has found that cultural factors associated with higher levels of family and community violence includes sexual double standards; rigid gender roles; lack of access to education; women’s isolation and lack of support; community attitudes that tolerate physical ‘punishment’ of women and children; and acceptance of violence as an appropriate means of resolving conflict.<sup>57</sup>

Nooria has asked for her story to be published.  
<sup>58</sup> She would like people to know what

<sup>56</sup> Report of the Special Rapporteur on violence against women, UN doc.E/CN.4/1996/53,6 February 1996, para 27.

<sup>57</sup> UN Development Fund for Women, Not a Minute More: Ending Violence against Women, New York, 2003, pg. 207.

<sup>58</sup> Case reported to Amnesty International by a family friend and member of an Afghan NGO in Herat, 5 September 2004,

happened to her in order to highlight abuses endured by her and the injustice she has experienced. Nooria would like the Afghan state and its institutions to be aware of what she and countless others in similar situations have suffered.

Nooria is 20 years old and from western Afghanistan. She was 16 years of age when she was informed that she would be married. It was implied in the neighbourhood and family that for a girl not to be married by the age of 16, she must have a fault or an imperfection. Her family received a marriage proposal from a member of her extended family. Nooria had not been asked whether she consented to the marriage.

On the wedding night, her husband Zia slapped her because he felt the neckline on her dress was revealing. From that moment on, he began hitting her, criticising her; he forbade her leaving the house without his permission, and forced her to do all the household chores. After eight months of marriage, she fell pregnant. Returning from a visit to her doctor, Nooria was met by Zia who beat her for daring to leave the house. Nooria suffered a miscarriage as a result of the beating.

Her father advised her not to even think of leaving her marital home and told her that divorce would bring shame upon the family.

Nooria became pregnant again but her husband carried on beating her regardless. She was able to carry the child to full term giving birth to a girl at home. Her husband was angry at the birth of a girl child and beat Nooria. Over the months, the intensity of the beatings worsened.

When her child was three months old, during one of her husband’s rages, he picked up their child and threw her across the room. On that same day, when her husband was out of the house, Nooria picked up her baby girl and left for her parent’s house. Her parents told her she should return to her husband’s house and

following a request by the individual. Names have been changed to protect the individual.

were not prepared to accept her back home. After a while, her parents agreed to let her and her child stay.

Nooria had been at her parent's home for one year. Her husband had come to see her and asked her to return. She felt that no one in her family had supported her decision to leave her husband.

Although she wanted to obtain a divorce, she knew that it was unlikely. She feared that if she sought a divorce, the shame and stigma of being a divorced woman would destroy the marriage chances of her two younger siblings.

In May 2005, Amnesty International was informed that Nooria had returned to her husband. Her decision was based on traditional attitudes and prejudice from her family and community in which a woman must not leave her marital home, regardless of the suffering she may be enduring.

Nooria's story is by no means unusual. Countless Afghan women suffer violence from a husband or male family member. Like Nooria, they have no means of support and protection from the state or their families. Very few women will go to court. Most are unaware of their rights and the stigma attached endangers not only the victim but also the reputation of her family. Some fear reprisals from angry husbands and even from their own families – some have even been killed.

Despite the Afghan government's declared commitment to stop violence against women, concrete services for victims of violence remain few and far between. Amnesty International is aware of four shelters operating in Kabul. In 2004, the German NGO Medica Mondiale, financed by UNHCR, had begun a project in Mazar-e Sharif, aimed in creating a mechanism to foster coordination between various government ministries, law enforcement agencies and NGOs in providing services to victims who have been subject to domestic and other forms of violence. In Herat,

the GTC shelter houses unaccompanied females and victims of violence. Amnesty International is not aware of the existence of shelters in Kandahar or Jalalabad. The increasing presence of agencies such as the AIHRC and Afghan and international NGOs has begun to offer the local population channels through which to register complaints of violence and abuse.

There is an apparent resistance from municipal and central government officials to the concept of shelters.<sup>59</sup> There is a sense that shelters are not part of Afghan culture and are breeding ground for "immoral" and "un-Islamic" behaviour. The women who seek refuge in such places are perceived to not only transgress traditional norms and codes of behaviour for Afghan females but are also liable to influence other girls and women to leave their families and homes. In Herat, the GTC shelter has generated a negative response from residents and non-residents. The residents complained of their isolation and inability to leave the compound and the non-residents believed it was 'safer' for them to remain in the shelter because as unaccompanied females, they would be viewed in a negative light by the citizens of Herat.<sup>60</sup>

Divorce is traditionally viewed as un-Islamic in Afghan society and contradictory to Afghan culture and customs. As such, tradition and custom leave women no choice but to stay in abusive marriages; support from other family members, including women, is rare. Women and relatives who support victims have been killed for applying for a divorce. The deputy prosecutor in Kandahar informed Amnesty International of a case in early 2002 where a woman was forced into marriage by her parents and suffered years of abuse. She applied to the courts in Kandahar for a divorce and was accused by the judge of lying, as she could not prove the abuse. Her husband

<sup>59</sup> Based on Amnesty International discussions with various government officials in February, August and September 2004.

<sup>60</sup> Based on Amnesty International interviews with residents, international and national organisations.

subsequently divorced her because she had complained. After the divorce, the ex husband killed the woman's father, mother and sister of his ex wife and became a fugitive. Amnesty International is not aware of any state instigated investigation into the deaths of the victim's family members or any effort by the state to arrest the perpetrator. As a female participant in a focus group in Kandahar told Amnesty International delegates,

*"We have no permission to leave the home so no-one (to turn to). We can't even tell our mothers and fathers, community or mullahs. If we do, they will take our children and our husbands will leave us. (We) can't even talk to other women. No one knows about human rights."*<sup>61</sup>

Working females are also not exempt from violence. Forty year-old Raheela had lived in Canada for many years and returned to Afghanistan in early 2002. She married an Afghan man soon after and worked for an international organisation in northern Afghanistan. Raheela was beaten frequently and her earnings taken by her husband, including money sent from her family in Canada. When Raheela demanded a divorce, her husband locked her in the cellar of her home for over a week with a small amount of water. Her neighbours, who were aware of what had occurred, informed her colleagues in her workplace who informed the police. Her family in Kabul was contacted by her workplace colleagues who came and took her away.<sup>62</sup>

Raheela returned to Canada but most women in a similar situation to Raheela are forced to endure family violence as prevailing social and cultural norms obstruct them from seeking protection. Amnesty International is encouraged by the response of the police in this case but remains concerned that for the

<sup>61</sup> Female participant in focus group, Kandahar, 14 September 2004.

<sup>62</sup> Amnesty International interview with an international staff member of an international organisation, September 2004.

majority of women in similar situations, the possibilities of leaving an abusive situation are rare and there are limited means to gain support and outreach services.

## Violence by armed groups

*"I'm suffering from what happened to me."*<sup>63</sup>

Traditional and cultural taboos surrounding rape and other forms of sexual violence have allowed rape to remain unspoken for decades in Afghanistan. As a weapon of war, it was used strategically and tactically to advance specific objectives in the many forms of conflict.

In Afghanistan, during the long years of fighting but especially so during the Mujahedin government of the early 1990s, it was used to conquer, expel and subjugate communities.<sup>64</sup> It is a weapon still being employed in various parts of the country. It terrorizes communities; culturally it is understood to demonstrate the powerlessness of men to defend their family and communities and of course destroys the mental and physical integrity of women.<sup>65</sup> Rape flourishes where perpetrators of such abuse are not brought to justice by the state. Armed groups and militia members, with reported and actual ties to high-ranking government and local officials and powerful, armed, regional leaders have in very few instances been held accountable.

The Afghan NGO, Women's Organization for the Safeguard and Development of Women in Mazar-e Sharif recounted to Amnesty International delegates the case of a 12-year-old girl who was abducted by an armed commander in 2002. She was engaged to another man at the time. The commander came to her parents' house and forcibly took the girl.

<sup>63</sup> Amnesty International interview with rape victim, Kabul, September 2004.

<sup>64</sup> See Amnesty International *Afghanistan: Abduction and rape at the point of a gun* ASA/11/013/2004

<sup>65</sup> See Amnesty International, *Lives blown apart, crimes against women in times of conflict*, ACT 77/075/2004.

She was taken to Peshawar and later sold into prostitution.

Most Afghan women are reluctant to talk about sexual violence. However, in focus groups and interviews with women and girls, some women provided Amnesty International with direct testimonies of rape and abduction. Women linked the absence of security to the widespread circulation of arms, the power exerted by local armed groups in their communities and stories of girls and women they were aware of who had been raped or forced into marriage.

The extent and prevalence of rape and abduction remains unknown. International and national organisations do not have access to large parts of Afghanistan resulting in limited ability to monitor and estimate the prevalence of such crimes. The failure to establish security and government control in large parts of the country leaves women and girls at continued risk of sexual violence and intimidation. Courts and the police are often powerless and in many instances unwilling to arrest perpetrators. If an arrest is made, judges are often reported to be subjected to intimidation and/or offered bribes to respond by releasing the suspected offender. In some cases, offenders have links to local administrators and officials who therefore do not take action. Women do not have confidence in a male dominated police force, knowing that some members have colluded in such abuses. Women also fear being arrested for having committed the crime of unlawful sexual activity and risk being imprisoned.

Amnesty International's research on violence against women in Afghanistan has been limited to largely urban areas owing to the difficulties in safely accessing large parts of the country and the reluctance of victims to speak out. The failure of the Afghan government to establish security and legitimate government in many parts of the country has left women and girls at continuing risk of rape, sexual violence and intimidation.

## Beyond Kabul

During the research, Amnesty International delegates were informed of human rights violations occurring in the remote areas of the central highlands, particularly Daikundi province, central Afghanistan, where the scale of the human rights violations are unknown. During the last 25 years, some of the population have left for Kabul. This section will focus on those who have been displaced to Kabul since the Afghan transitional government came to power and primarily on abuses suffered by the women and girls. Many of the families who have left the province have done so following the rape of family members, beatings, intimidation, confiscation of land and/or murder.<sup>66</sup> Daikundi is a fertile area for opium production and displaced communities report being forced to produce the drug for local factional leaders.

Farishta, a twenty-year-old woman, currently living in Kabul, told Amnesty International delegates of her ordeal, including rape, at the hands of a particular armed leader, who controls areas of Daikundi.<sup>67</sup>

On 9 October 2003, at around 800am, the local armed factional leader raped twenty-year-old Farishta, in the vicinity of her village. In September 2004, she told AI:

*"I'm suffering from what happened to me. I was washing dishes in the spring well close to my home. I felt a touch on my shoulder, turned around and saw it was the local commander of the village. He grabbed me, threw me on the ground and raped me. The whole village could hear my screams, saw what was happening to me but would not help me. My father in law and three brothers in law came running to help me and were beaten and threatened by the commander and his men. They were released*

<sup>66</sup> Amnesty International delegates were unable to travel to Daikundi and its findings are based on interviews with male and female family members in Kabul as well as interviews with members of national human rights organisations and international agencies of the UN, working in Daikundi.

<sup>67</sup> Names have been change to protect the individual.

*but the commander told them he would not touch them now but that he would make sure he would kill them. We left that same night and walked through the mountains to Kabul. This man and his brother have raped many women in this district. He has been commander of this area for four years and many families have left because of his violence, looting and killing.”*

*“I don’t want our story to remain a secret. We want everyone to know. For many years we have complained but no one listens to us. We have complained to the authorities and many others. The authorities cannot do anything in our area as the commander is the one who is the authority”.*

Other sources have also reported that the commander and his brother have raped many other women in the village.<sup>68</sup> The father in law of Farishta told Amnesty International that the factional leader’s armed men have abducted girls and taken them to the brothers. The factional leader holds a position in government administration. Some girls have been abducted on their way home from school. The armed individual is alleged to ‘covet’ women and girls and is committing crimes of sexual violence with impunity. When male members of families attempted to confront the perpetrator, armed members of his militia are alleged to have threatened, beaten and even killed them. Over 100 families have left the district since early 2002 as a consequence of the violence.<sup>69</sup>

Sixty-year-old Jamila and her family are also victims of the factional leader’s brutality.<sup>70</sup> Following a dispute with the armed leader, Jamila’s brother fled to Iran approximately three years ago. The armed leader arrested another brother and kept him in custody around six months. Jamila claims that her

brother was badly tortured and a few months after being released he died.

Amnesty International was informed by the family of Farishta and members of similarly displaced families that they have reported, to government officials in Kabul, the crimes perpetrated against them by the factional leader and his armed associates. The organisation understands that high-ranking officials, including the Ministry of Interior and Justice are aware of the allegations against the armed individual in Dauikundi. The AIHRC in Kabul is reported to be aware of the circumstances of the displaced families. In January 2004, the alleged perpetrator was arrested at Kabul airport but released shortly after.<sup>71</sup>

Efforts by the government to address the human rights violations in Daikundi province have seen a decrease in the reports received of human rights violations committed there. In 2005, new district and provincial officials were appointed, including a new Governor. International intergovernmental organisations (IGOs), including UNHCR and UNAMA as well as the AIHRC have a full time presence, monitoring the human rights situation in the province. Residents of Daikundi have reported to IGOs of relative improvements in their security and a few displaced families have returned.<sup>72</sup> However, the commander looms large and is still present in the area, and perceived to be enjoying support from the highest levels of central government, enjoying impunity for his crimes.

Sultana Bibi was 18 when she was found buried, in early 2004, in the village of Qalacha, near Balkh province, Mazar e Sharif.<sup>73</sup> Sultana’s relatives recount that soldiers loyal to a local armed commander had abducted

<sup>68</sup> Interview by Amnesty International with father in law of the victim (Farishta), head of an Afghan NGO and brother in law of Farishta.

<sup>69</sup> Amnesty International was shown statistics of displaced families by an NGO, assisting the families.

<sup>70</sup> Names have been changed to protect the individual.

<sup>71</sup> Interview with victims, members of the displaced community and head of an Afghan NGO involved in the issue. Interviews have also been conducted through the telephone with members of the international community working in/on Daikundi province.

<sup>72</sup> Amnesty International telephone interview with members of international and national organisations. April 2005.

<sup>73</sup> ARR news, *Forced marriage leads to tragedy*, ARR No.113, 1 April, 2004

Sultana from her village and taken her to Zia Uddin, the brother of her deceased fiancé, who forcibly married her. Sultana's fiancé had died and his family had ordered her to marry one of his brothers. Sultana's family were against the marriage and had refused to allow it to go ahead. In October 2003, her father was kidnapped. Sultana had reported the threat of the forced marriage by Zia Uddin to the police. An officer from the Balkh police force later admitted that Sultana had not been assisted, as there was *'no one to hear her and protect her.'* After Sultana was abducted, her father was freed and stated that he had been held in a military compound belonging to one of the two main armed factions in the north, Jamiat-e Islami. Sultana's mother told the International War and Peace Reporting organisation (IWPR), that Zia Uddin, his first wife and son, had beaten Sultana. Zia Uddin confessed to killing Sultana and was arrested. An investigation by the police was instigated following her death.

Amnesty International welcomes the investigation but believes her death could have been prevented had there been a prompt response when Sultana initially sought help.

Armed militia and factional leaders are a reality in Afghanistan. To date, the Afghan government has not addressed the issue of accountability for past human rights violations committed by such groups. The international community has also been reluctant to take steps to address this issue. In the meanwhile, women bear the brunt of atrocities committed by these groups. A female university lecturer and director of a women's group, in Mazar-e Sharif stated, "Armed men are intervening in every sector of human life and breaking the laws. Forced marriage is part of these interventions."<sup>74</sup> Amnesty International acknowledges that the judiciary and police have arrested individuals in some cases but is aware that in most instances, perpetrators are

<sup>74</sup> ARR news, *Forced marriage leads to tragedy*, ARR No.113, 1 April, 2004

rarely detained and women continue to live in fear.

## Death by self-immolation

Over the last two years, there have been increasing reports of Afghan women and girls attempting suicide by dousing themselves with petrol and setting themselves alight. Some have died whilst others suffer horrific burns for life. Although this phenomenon has been most commonly reported from Herat, it is not limited to the one city but is taking place across the country. Such acts of desperation suggest that women have a sense of being overwhelmed by their situation, perhaps through increased pressures, discrimination and violence. The causes of such deaths were addressed through the course of a two day workshop, chaired by the AIHRC, in October 2003, resulting in the book, "Why self-immolation?"

From 22 September 2003 until 19 April 2004, the AIHRC office in Herat documented 380 cases, some of which were attempted suicides and others that actually resulted in death. Eighty percent are attributed to family violence, but it is not clear if family members are setting the women alight or if the victims have committed the act independently. From 20 March to 21 September 2004, 184 cases were reported with again eighty percent due to violence from a family member. Between 22 September and 21 December 2004 eighty cases were reported, again the overwhelming majority of the victims reported that they had attempted to kill themselves as a result of violence in the family.

According to the AIHRC in Herat, the decrease in number of cases of self immolation in the latter part of 2004 was the result of the AIHRC workshops and seminars, the increase in families approaching the office of the AIHRC to discuss family problems and the appointment of a 'security commander' as a contact point with families of burns victims. This person has powers to investigate the

reason for the act. It is not clear to Amnesty International if the ‘security commander’ is a government official and whether he has powers to charge individuals held responsible for the act

The AIHRC does not have the resources to be able to undertake a comprehensive research of the issue and the cases were compiled following visits to hospitals and reporting by family members to the AIHRC. Medical staff treating the victims have pointed to forced and underage marriages, restrictions on women’s movement by husbands and family members and violence in the home as causal factors in such acts of self-harm.

The acuteness of the problem in Herat has been articulated as a struggle by women to assert their rights, *“In Kabul, women probably don’t have as many problems because they have more rights – they are accepted in society and they are free to work and study. In Kandahar, women have no rights and they have accepted that they should not go outside the house or work. But in Herat women are struggling to get their rights, they are trying to go out and work and study but the men in their family are sometimes opposed to this and that’s what creates this problem.”*<sup>75</sup>

Amnesty International research suggests that self-burning by Afghan women is not exclusively a result of the conflict years and their legacy but in fact has existed as a practice for a long time. However, the increased reports of women and girls attempting and taking their own lives in such a painful manner indicate an immense pressure and inability to cope with the oppression and violence in their lives. A member of the AIHRC, who worked previously in Herat, commented that such acts highlight the desperation of the women and their need to show communities and families the extent of their suffering. Having interviewed some of the victims in hospital, he believed that the women do not want to die but

have no other way of showing their distress. Many had either suffered violence from family members or did not consent to a marriage. The majority were forced to change their stories when in hospital, once surrounded by family members, claiming they fell victim to accidents in the home. Facilities for burns victims are basic and the possibility of surviving horrific burns is decreased by the lack of medical equipment and medicine for victims.

Some male and female government officials and community leaders demonstrate a lack of awareness of the extent to which rising violence is related to women and girls taking such extreme measures. Various reasons were provided by government officials for self-immolation, including increasing material demands upon husbands by wives, the influence of Iranian television and last minute change of wedding venues.

Amnesty International delegates were told by a male community leader in Herat, that he was aware of a young girl who had recently set herself on fire following a last minute change to her wedding venue. A female colleague intervened and explained that the young girl was opposed to the marriage and that the bridegroom was already married. In a meeting with the then governor Ismail Khan, Amnesty International delegates were informed by the governor that self-immolation could be attributed to reasons ranging from ignorance to minor social limitations, reflecting a more widespread ambivalence towards women’s needs and concerns.

In a welcome move, in March 2004, a government fact-finding mission into the causes of self burning in Herat, and composed of representatives of ministries such as MoWA and the Ministry of Interior, concluded that they could not determine the true number of suicides but *“forced marriages, lack of education and unacceptable customs are the*

<sup>75</sup> Dr. Nesar Ahmed Ferehmand, *“Forced marriages to blame for self-immolation by Afghan women”*, AFP, 7 March 2004.



*main reasons for the suicides*”<sup>76</sup> Amnesty International is not aware of any arrests in connection with the suicides.

Although the AIHRC in Herat has documented a number of cases, there remains a large gap in better understanding the causes of this act and the need for more comprehensive work. Often, the underlying causes are ignored and such acts are defined as suicides. Whether the girls have died through self harm or have been killed remains largely un-investigated and the exact number of women who have either been severely burnt or have died through burning, remains unknown.

The state must take measures to ensure that linkages between burns and violence against women are not treated as a private matter but properly investigated and prosecutions brought against perpetrators. Prompt and thorough investigations into cases of burns victims must be initiated by the state; comprehensive studies on the causes of women apparently killing themselves should be undertaken and education and economic opportunities for women should be promoted. Organisations such as the AIHRC and NGOs provide an outlet for documentation of cases, awareness raising and mediation between family members but do not have the power to bring prosecutions against victims’ family members. The responsibility lies with the state to exercise due diligence in holding private individuals, such as family members punishable for abuses committed and resulting in desperate actions by victims.

## Perceptions of violence

*“Women are the property of men from the waist down.”*

Appeal Court judge, Kandahar, September 2004, AI interview

The identity of an Afghan woman is perceived as being closely linked to that of the males in

<sup>76</sup> Dr. Suraya Sobah Rang, Deputy Women’s Affairs Minister, 26 February 2004.

her family. She is always someone’s daughter, sister or wife. This not peculiar to Afghanistan and can be seen, amongst others in countries, such as Pakistan, Iran, India and elsewhere. The concepts of honour and shame are very strong and women are viewed as the bearers of family honour. Women are perceived by men as rooted in the home and injustices committed against them must be dealt with in the home or immediate community. Mehbooba Haqooqmal, the state minister for women in February 2004, articulated the view that crimes against women were viewed against the backdrop of a male dominated culture, strengthened by tribal and community ties, contributing to an ongoing inability for women to enjoy their rights.<sup>77</sup>

*“Culture, law, history, everything is masculine.”*

In rural parts of Afghanistan, women have not had the same level of opportunity to access education and employment as have urban women and existing patterns and customs of behaviour towards women have remained. Early marriage is common; girls stop going to school when they are deemed marriageable, typically around the age of 12 and women have very little opportunity to gain employment. Whilst some women interviewed by Amnesty International delegates, clearly believed that beatings and other physical and mental abuse, sexual violence, abduction and forced marriages were crimes, there was also a perception that violence was to be expected in their lives. Despite the difficulty of their individual circumstances, women in interviews and focus groups expressed a strong desire for change. In particular, their desire for improvement in recognition and protection of their rights was driven by a wish to be able to work and contribute to their communities and country, “Our right is to have work and a salary.”<sup>78</sup> Nearly all the younger women that interviewed by Amnesty International

<sup>77</sup> Amnesty International interview with Mehbooba Haqooqmal. 15 February 2004, Kabul.

<sup>78</sup> Amnesty International focus group held with women in Kandahar. September 2004



expressed their wishes for the future as simply being able to carry on with their education.

Some human rights of women are relatively easy to discuss with Afghan women. The main topics raised by women who spoke to Amnesty International delegates were political participation of women and the need to combat violence against women. On the latter issue, women's groups in Afghanistan are firm in the need to eradicate it. This is not an issue experienced solely by the rural masses but is a part of life for all women, including educated, urban women. Amnesty International believes that civil, political, economic, social and cultural rights are indivisible. The ability of women to enjoy their political rights is inseparable from their ability to live in a secure environment, to have freedom of association and expression and the right to be free from physical and mental violence.

However, there remain differences between how to approach the search for greater assertion and enjoyment of civil and political rights, especially the right to divorce. Numerous female Afghan members of NGOs and government believe that the best and only way to progress women's rights is to work within the framework of Islam and to proceed slowly. In a conservative society, such as Afghanistan, women's rights activists advise caution in order to avoid backlash from the conservative element, such as the Supreme Court who denounced Latif Pedram, a presidential candidate, as an apostate for voicing his opinion that women have an equal right to divorce. Nilobar Mubarez, one of two female vice presidential candidates commented, *"We shouldn't provoke. When society is ready to ask the question that Pedram asks, the women will ask it by themselves."*<sup>79</sup>

Amnesty International found that the above comment exemplifies the cautious and precarious atmosphere under which the issue

<sup>79</sup> Newsday (New York), October 8, 2004, *Eve of Afghanistan Elections*, James Rupert.

of advancing women's rights is currently debated.

Changing male perceptions of women and overcoming traditional practices, which repress the rights of women, are integral to combating violence against women. Unlike the evidence provided by focus group discussions with men, government officials and judicial professionals in Herat, Kabul, Mazar-e-Sharif and Kandahar, interviewed by Amnesty International delegates indicated that violence exists and that it is pervasive.

The deputy Chief Justice of the Supreme Court told Amnesty International delegates that forced marriage is a crime in statutory and Shariah law.<sup>80</sup> However, limited research by Amnesty International indicates that attitudes held by officials towards advancing women's rights differ considerably in the northern, western and central parts of Afghanistan to those held by officials and communities in the south and east.

Amnesty International researchers were repeatedly told that traditional and customary practices, which violate women's rights, such as forced marriage and exchange of girls, occurs more frequently in Kandahar and Jalalabad as well as more rural areas. Information about the nature and scale of violence against women in these parts is more difficult to obtain as neither Afghan nor international organisations have widespread presence in these parts.

Although the security situation is steadily worsening across the whole country, reconstruction efforts by aid and humanitarian agencies have been hampered, particularly in southern and eastern Afghanistan. Women's activists are more visible and vocal and support for victims is more widely available in the rest of the country. Efforts to assist victims and women at risk are more advanced, with shelters created or being planned in Kabul, Herat and Mazar-e-Sharif.

<sup>80</sup> Amnesty International interview with Judge Manavi, Deputy Chief Justice, Supreme Court, 16 September 2004.

Wider pre-dominantly male community attitudes towards violence against women and that of male members of the criminal justice system are interlinked. In an interview with Penal Court judges in Kandahar, one judge remarked to Amnesty International delegates,

*“Women are the property of men from the waist down.”*

In September 2004, the governor of Kandahar, Yusuf Pashtun, whilst acknowledging the need for the state to protect women from violence, voiced the need for women’s rights to be defined more coherently and stated that currently economic and educational development was more important;

*“At the moment, there are more pressing issues... a civil servant has too much on his mind to deal with women’s rights. It’s a matter of priorities.”<sup>81</sup>*

## **Afghan women human rights defenders**

*“You must be a bad woman yourself for wanting to defend those three bad women.”<sup>82</sup>*

Human rights defenders represent the frontline for work on human rights. On 9 December 1998, the UN General Assembly adopted the Declaration on Human Rights Defenders. <sup>83</sup> It declared, in Article 1(2) that “Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.” The adoption of the Declaration reflects the level of importance afforded to the role of human rights defenders

<sup>81</sup> Amnesty International interview with former Governor of Kandahar, Yusuf Pashtun, 13 September 2004.

<sup>82</sup> Medica Mondiale, *Legal Aid Program, Facts and Figures*, July 2004, Dr Anou Borrey, p. 13.

<sup>83</sup> The full title is: UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. General Assembly Resolution 53/144, 9 December 1998.

in advancing the promotion and protection of human rights.

Women have played an instrumental role in the global human rights movement and are active across the world for the protection, promotion and defence of human rights – including those of women.

Afghan women human rights defenders arouse more hostility than their male colleagues because of their gender. Their activities are perceived as defying cultural, religious or social norms about the role of women in Afghan society. In this context, not only do they face human rights violations for their work as human rights defenders but even more so because of their gender and the fact that their work may run counter to societal stereotypes about women’s submissive nature or challenge notions of the society about the status of women. In some instances, they face threats, acid attacks and fear of reprisals against their families.

In December 2003, at the Constitutional Loya Jirga, Ms Malalai Joya openly spoke out against the domination of the Loya Jirga by strong political figures that she called “criminals”. The Chairman prevented the woman from continuing to speak and some of the delegates began screaming abuse at her. Ms Joya was given UN protection at the *Loya Jirga*. She remains under constant threat:

*“I have received many death threats. After I spoke at the Loya Jirga, they even attacked my house. Even now, seven months later, my family aren’t safe.”<sup>84</sup>*

In September 2004, Dina, a human rights activist, was subjected to a drive-by acid attack four days before being interviewed by Amnesty International. Dina had been vocal against forced marriages and the practice of exchanging girls to settle disputes. She was

<sup>84</sup> See: “Afghan right advocate expects death” BBC News, 9 August 2004 and “Loya Jirga member seeks end to HR abuses in Afghanistan”, Dawn newspaper, 5 January 2005.

waiting for a shuttle bus outside her home when three men pulled up in car. One jumped out and threw acid at her, burning her neck and her stomach. Asked whether she would continue her work after the attack, Dina replied, “I will have to, there is no-one else to work on human rights violations against women. Who else is there?”<sup>85</sup>

In October 2004, Zubeida was threatened and told that she would be killed if she continued reporting on powerful armed leaders and the absence of accountability for their past human rights records,

*“I was threatened outside my home on 4th October (2004). A man in traditional Afghan shalwar kameez with a white hat and black waist-coat with a scarf around his neck.<sup>86</sup> He told me (to) stop talking about warlords and commanders and he warned me that I (have) got more courage because I’m talking about the warlords and commanders publicly without any fear. He also mentioned that no one will (would) kill me by a pistol or shot (shoot) me to make me (a) hero. I only need a car accident. I’m sure these things will not push me back from what I want to do. My only concern would be my children not myself.”<sup>87</sup>*

Despite this climate of intimidation and fear, numerous women’s organisations, groups of female journalists and human rights activists have recently been established or re-surfaced. Afghan NGOs and activists have been extremely resourceful in ensuring women have a chance to find out about their organisations and support available.

Amnesty International was informed by numerous Afghan NGOs in Kabul, Mazar-e

Sharif and Herat that they are conducting their activities, including workshops and seminars, with the participation of women in urban and, to a limited extent, rural areas. Security concerns have hampered the ability of NGOs to reach a greater number of rural female inhabitants. Programmes designed to engage local clerics, who exert strong influence in their communities, have been undertaken, to discuss the rights of women.

Amongst other activities, women’s groups are providing education programmes for illiterate women, some degree of support for victims of abuse and generally raising awareness among women and the general public of their rights. However, in a country where the resilience of traditional thinking and strength of customs dictate the role of women, where past human rights abuses have still not been addressed and where past abusers enjoy impunity, the large majority of women face even greater danger in raising awareness of the rights of women and seeking redress for crimes, both past and present.

Amnesty International is aware that Zubeida and Dina have not reported their attacks to the police. They, like many other women in Afghanistan, do not trust the state to prosecute the perpetrators and to ensure freedom of expression and security for women. Amnesty International’s research indicates that the vast majority of women continue not to report crimes committed against them. The organization is not aware of any persons who have threatened human rights defenders being subject of investigation or state instigated prosecution.

The existence of threats and violence towards women constitutes a grave breach of their most fundamental rights, including the right to freedom of expression and association and liberty as well as security of person. The ATA must fulfil their international obligations to protect these rights, as well as to ensure security for those defending human rights. They are obliged under law to take action to

<sup>85</sup> Interview with Amnesty International 17 September 2004. Names have been changed to protect the individual.

<sup>86</sup> A *shalwar kameez* is traditional South Asian dress worn by men and women composed of a long baggy shirt and trousers.

<sup>87</sup> Names have been changed to protect the individual.

encourage and support the contribution of women and men working for women's rights and to ensure that they are able to carry out their legitimate work free from the threat and reality of violence, discrimination and abuse.

*"If we change just a little bit for women, then it's a lot."*<sup>88</sup>

During the course of this research, Amnesty International delegates interviewed several male human rights defenders who overwhelmingly acknowledged the forms and prevalence of violence suffered by women. The head of an Afghan non-governmental organisation, (NGO) the Coordination for Humanitarian Assistance (CHA) informed Amnesty International of incidences of abuse by husbands, of forced marriages and of perceived high levels of violence suffered by women.<sup>89</sup> In some instances, together with female colleagues, male human rights defenders have documented and interviewed victims of abuse. However, in a society as conservative as Afghanistan and where interaction between genders is restricted, it falls mainly on female colleagues and activists to raise their plight. Access to women by unrelated men, including for the purpose of research is very difficult and women are reluctant to talk to them.

The involvement of Afghan men is essential in challenging traditional and customary practices that discriminate against women and encourage violence against them. There is a pressing need to highlight abuses against women and to place them centrally in the human rights agenda. Amnesty International believes that the promotion of equality and non-discrimination between men and women in all aspects of life must be done in cooperation between men and women in all

<sup>88</sup> Amnesty International interview with male employees of the Afghan Independent Human Rights Commission in Herat and Kabul, 24 August, 2004

<sup>89</sup> Amnesty International interview with Dr Waqfi, Director of Coordination for Humanitarian Assistance, Kabul, 26 August 2004. The CHA was established in 1988 and has offices in the provinces of Farah, Herat, Kandahar, Mazar I Sharif, Ghor, Parwan, Kapisa, Kabul and a liaison office in Peshawar.

sections of society, including the highest levels of government, activists in the field and community leaders.

## Women and access to justice

The weaknesses and ineffectiveness of the criminal justice system have been well documented.<sup>90</sup> At most levels of the criminal justice system, the authorities almost overwhelmingly fail to respond to women's complaints of domestic violence, rape, sexual violence or other assaults. Prosecutors for the most part, refuse to open investigations into cases involving domestic violence or to order protective measures for women at risk from their family or community. Indeed, the deputy prosecutor in Kandahar informed Amnesty International that they had never received any cases of violence against women and that such violence no longer occurs following the fall of the Taliban regime.<sup>91</sup> Complaints from victims of domestic violence are widely dismissed by the police as a private matter and victims are often advised, and sometimes pressured into returning to their abusive spouses and family.

For five years, Gulalai, from Kandahar was raped, beaten and taunted by her husband.<sup>92</sup> She was attacked with a machete and her jaw was broken. On occasions, she was attacked in public but was never offered any protection or assistance from the police or community. When Gulalai tried to obtain a divorce, the court refused to permit it without the consent of her husband. Gulalai tried to leave her

<sup>90</sup> Amongst others, Amnesty International, Afghanistan: *Addressing the past to secure the future*, AI Index: 11/03/2005, *Afghanistan: Re-establishing the rule of law*, AI Index: ASA 11/021/2003, *Crumbling prison... Afghanistan: Police reconstruction essential for the protection of human rights*, AI Index: ASA 11/003/2003, "Assistance to justice and the rule of law in Afghanistan – A strategic analysis", Centre for Humanitarian Dialogue, February 2004, International Commission of Jurists "Afghanistan's Legal System and its compatibility with International Human Rights Standards", Dr Martin Lau, November 2002.

<sup>91</sup> Amnesty International interview with the Deputy Prosecutor, Kandahar, 13 September 2004.

<sup>92</sup> Names of individuals have been changed to protect the individual. Information received from a staff member of an INGO, Kandahar, 2005.

abusive spouse a few times but he forced her to return each time.

In 2004, Naseema from Balkh province, Mazar-e Sharif petitioned for a divorce following years of violence from her husband and his family. The courts had arraigned a court hearing but in the meanwhile, Naseema's husband and in laws refused to allow her to leave the house. Her family had been threatened by her husband and could not visit her. Naseema was scared, as she feared that the court hearing and decision could take a long time and would probably not be in her favour. In the meanwhile, the police had arrested her father in law, because her husband had absconded. Naseema remained with the rest of her in laws, subject to continued violence.<sup>93</sup>

The high level of discrimination against women is reflected in the criminal justice system where violence against women is not always seen as relevant grounds for seeking or granting a divorce. Access to a divorce is an essential remedy against violence, and the absence of divorce is contributing to the continuation of violence against women.

### **Failure to investigate by the police**

Confidence in Afghan law enforcement is abysmally low, especially among women. The police are reluctant to prevent and investigate family violence, including, the violent deaths of girls. There is popular recognition of the following as facts, that constrain the willingness of victims to seek help: reluctance and inability to investigate allegations of torture and mistreatment by their own officers, lack of arrests of perpetrators who commit domestic and other forms of violence, arbitrary and unlawful detentions, allegiances to militia forces and imprisonment of women and girls outside the applicable law.

Law enforcement agencies do not ensure that men, in rare instances where they are served

<sup>93</sup> Amnesty Interview with the father of Naseema, Mazar e Sharif, 29 August, 2004.

with court orders, comply with them. In the case of Naseema, who had been suffering violence from her husband and his family, the courts arrested her father in law, after her husband refused to turn up for a court hearing. Her father in law had not been charged with violence against Naseema, rather he was imprisoned to ensure that Naseema's husband would return, a measure, which is in violation of international standards,<sup>94</sup> Naseema's husband did not return but her father in law was released.

When women have sought assistance from the police after suffering violence or escaping forced marriages, the police have in the majority of cases known to Amnesty International sent them home, accused them of tarnishing their family reputations. Alternatively, the police have imprisoned women for their own supposed protection.

Thirteen-year-old Rabia was in Mazar e Sharif prison in August 2004,<sup>95</sup>

*"I am 13 years old. I was engaged to a man who my parents had chosen for me when I was 2. I ran away with someone else. They found me and my boyfriend; my fiancé and his father killed him. I ran away to the home of the sister of my dead boyfriend and she told me to go to the police, as I would be protected. She knew that my fiancé and his father would come looking for me and they would kill her if they found me in her house. So I went to the police who put me in here. My father came to see me once and is now living in Mazar. They are scared of my fiancé and his family. My fiancé is free and living in Sholgara."*<sup>96</sup>

A social worker in Kabul stated, *"some girls do go to the police but the police accuse them of dishonouring their families"*.<sup>97</sup>

<sup>94</sup> Article 9(1) prohibits arbitrary arrest, namely depriving a person of his or her "liberty except on such grounds and in accordance with such procedure as are established by law."

<sup>95</sup> Names have been changed to protect the individual.

<sup>96</sup> Amnesty International interview with Rabia, (name changed), 29 August 2004.

<sup>97</sup> Amnesty Interview with Nadera Kharoj, Cultural Committee of Afghan Women, Kabul, 8 September 2004.

Women view the police as a threat rather than an impartial, professional law enforcement agency.<sup>98</sup> Corruption is widespread amongst the police and male abusers employ bribery to allow them to escape justice. Afghan women in their current state do not have the economic means to extract themselves from such situations, consequently they struggle to progress from being victims.

### Failure to understand the applicable law and the crime of ‘running away’.

The 1976 Penal Code combines ‘secular’ provisions, for crimes such as consuming alcohol and *Zina*, which originate in and reflect Afghani understanding of *Shariah* law. The Penal code in effect authorises judges to apply *Shariah* provisions and even, albeit implicitly only, to mete out cruel and torturous punishments. Article 426 (in Chapter 8: “Adultery, Pederasty, and violations of Honour”) provides that,

*“If in the crime of adultery the conditions of “HAD” are not fulfilled or the charge of “Had” is dropped, because of doubt or other reasons, the offender shall be punished in accordance with the provisions of this chapter.”*<sup>99</sup>

This strongly implies that when “*Had*” conditions are fulfilled the judge may impose “*Had*” punishments, such as stoning to death. Judges who spoke to Amnesty International did not rule out the application of *Had* punishment in cases where the evidentiary requirements were met.<sup>100</sup>

<sup>98</sup> View shared by focus groups in Mazar, e Sharif, Kabul, Herat and Kandahar.

<sup>99</sup> Similar provisions exist for other offences, for instance defamation (Art. 436).

<sup>100</sup> *Hudood* (singular: ‘had’ meaning limit) punishments are those which have a mandatory sentence and not subject to change by a judge, unlike a *ta’zir* judgement.

Amnesty International delegates found it hard to establish, even after speaking to several judges, when they were working strictly within the Penal Code and when they were importing wider *Shariah* provisions. This lack of clarity was more noticeable outside Kabul, where the judiciary was more liable to refer to uncodified *Shariah* law in preference to codified statutory law, especially in regards to perceived breaches of codes of behaviour by women. What is beyond doubt is that whatever are the laws being applied, their application is discriminatory against women.

Women and girls – and only women and girls – continue to be detained for the “offence” of ‘running away’, which has no basis in statutory law. Perceived crimes against morality, such as adultery and consensual sex outside marriage are referred to as *zina* crimes. The Penal Code has not codified law relating to the offence of ‘running away’, it is not a *ta’zir* crime and *qisas* and *diyat* do not apply.<sup>101</sup> The deputy Chief Justice of the Supreme Court clarified to Amnesty International delegates that ‘running away’ is not an offence under Afghan law. He added that the courts could only prosecute for adultery. Under Afghan law, adultery is a criminal offence carrying a maximum prison sentence of up to ten years, or where evidentiary requirements are met, the imposition of the *Had* punishment of stoning.<sup>102</sup>

While men can be prosecuted for adultery, Amnesty International is aware of only women and girls who have been detained and prosecuted for running away. Medica Mondiale, working on women’s legal rights and representation noted that women face continued prosecution and imprisonment for

<sup>101</sup> In Afghani Sharia law *Qisas* and *diyat* covers offences relating to physical injury, manslaughter and murder. The law of *qisas* and *diyat* provides that the punishment must be commensurate with the offence committed. *Tazir* is discretionary punishment, when the evidence is insufficient to impose *qisas* and where punishments have been laid out in the Penal Code.

<sup>102</sup> Articles 426-429, 1976 Afghan Criminal Code.

un-codified offences.<sup>103</sup> When adultery cannot be established and women and girls are punished for transgressing custom and tradition, a predominantly male judiciary will construct 'running away' as a punishable 'crime'. Such improvisation in the construction of crimes constitutes a breach of freedom of expression and association. Amnesty International views the practice of detention for *zina* crimes and the un-codified offence of 'running away' constitutes discrimination against women. It also constitutes a breach of Afghanistan's Constitution.<sup>104</sup>

A great number of cases of 'running away' have roots in forced marriage or violence against the women who flee.<sup>105</sup> Some of the women interviewed in Mazar-e Sharif and Kabul prison, by Amnesty International delegates, had stated that they had left their homes after refusing to accept a forced marriage. A few had fled with their chosen partners, after their families had refused to allow them to marry. Others had fled violence in the family, either from a husband or other male members of the family.

Simultaneously, women face the risk of being criminalized when they seek the help of the police and state and face the prospect of being arrested and charged with *zina* crimes.

The Afghan government is failing in its duty to protect and is instead seemingly punishing victims of violence by imprisoning and charging them with 'running away.'

### Failure to provide legal representation

Access to legal defence is severely compromised for many in Afghanistan. Legal representation for detained and accused women is almost negligible.

<sup>103</sup> Medica Mondiale, *Legal Aid Program, Facts and Figures*, July 2004, Dr Anou Borrey.

<sup>104</sup> Article 130 (2)

<sup>105</sup> Medica Mondiale, *Legal Aid Program, Facts and Figures*, July 2004, Dr Anou Borrey

Women seeking legal aid, especially, are perceived to be acting outside certain codes of behaviour for women. The international NGO Medica Mondiale's (MM) has established a project providing legal aid to some female prisoners in Kabul and is one of the few INGOs to provide this service. In July 2004, MM had a number of cases of female prisoners to whom they were providing representation. Out of these, five women were in jail for the crime of *zina*, one for an illegal marriage, and three for elopement. Some of the women had been in prison for periods ranging from 3 to 14 months. Some had been detained without charge and only a few convicted. None had been provided legal representation by the state.<sup>106</sup>

Moreover, female human right advocates are few and face prejudice from a predominantly male judiciary. A judge remarked to a female advocate during the trial of three women accused of *zina*,

*"You must be a bad woman yourself for wanting to defend those three bad women."*<sup>107</sup>

The right of accused persons to legal assistance of their choosing is crucial for the fairness of any trial, and is provided, for instance, by Article 14 of the ICCPR, which also obliges states parties, including Afghanistan, to provide such assistance free of charge where the accused person cannot afford it.

### Women in prison

*"There appears to exist to a large degree of confusion over the exact rights of women and their legal status. In June 2002, there were about 30 women confined in Kabul jail. Some of them were accused of criminal offences but the majority were, according to the Law Section of the Ministry of Women's Affairs...now detained for a variety of offences related to family law such as refusing to live*

<sup>106</sup> Medica Mondiale, *Legal Aid Program, Facts And Figures*, July 2004, Dr Anou Borrey.

<sup>107</sup> Medica Mondiale, *Legal Aid Program, Facts and Figures*, July 2004, Dr Anou Borrey, p. 13.



*with their husbands, refusing to marry a husband chosen by their parents, or for having run away from either the parental or the matrimonial home. It appears that these women have no access to lawyers, have no information on their rights, if any, and are generally, left in jail until their respective relatives intervene. The most astonishing aspect of my findings was the profound uncertainty surrounding the legality of their detention. Even the female lawyers, attached to the Ministry of Women's Affairs were unsure about the rights of women.*<sup>108</sup>

In August and September 2004, Amnesty International visited state prisons in Kabul, Kandahar and Mazar-e-Sharif. The bulk of women in the prisons had experienced forced marriages and violence in the home. Except for some women in Kabul Welayat jail, they had no legal representation.

Prison conditions are abysmal and do not conform to minimal international standards. Endemic problems of overcrowding, poor sanitation and insufficient food were rife, particularly in the prisons visited in Kandahar and Mazar-e Sharif. Some inmates were accompanied by very young children; there were 30 children ranging from two months to 12 years in Kabul prison. Mazar-e Sharif prison contained six women and two babies: 10 and three days old, and a one year old. The two infants had been born in prison. Women were sleeping six to a room and the female prison officer also slept with the prisoners.

There were 54 women prisoners in Kabul. Fifteen were imprisoned for the offence of 'running away'. Amnesty International interviews in Kandahar revealed that almost all the prisoners had been forced into marriage and been victims of violence from husbands, male relatives and in some cases, female relatives. Some had fled forced marriages and eloped with boyfriends. In many cases,

<sup>108</sup> *An Introduction to Afghanistan's Legal System*, Dr Martin Lau, Yearbook of Islamic and Middle Eastern Law, 2002/03, 8, page 48.

families had requested the police to arrest women. A few were incarcerated to protect them from reprisals from families and husbands.<sup>109</sup>

Pre-trial detainees were mixed with convicted offenders and most had been on remand beyond their pre-trial period. Not a single prisoner had been provided legal representation. The Police Commissioner of Kandahar told Amnesty International delegate that there was not a single woman in prison who had not committed a 'sin' and that there were no cases of women being imprisoned following the need for protection from families or husbands.<sup>110</sup>

Amnesty International also received unconfirmed reports of women being sexually abused in Kabul prison. These included accounts of women being taken out of the prison by police officers, with the alleged collusion of certain prison guards, raped and returned to the prison. In another unconfirmed report, a female inmate was rumoured to have disappeared, her whereabouts unknown.

The UN Independent Expert on Human Rights in Afghanistan Cherif Bassiouni has reported on the situation of female prisoners in Kabul and the imprisonment of women for transgressing traditional and social customs, offences that do not constitute legal violations, highlighting the poor and sub-standard conditions for women and children in Kabul jail. He also raised concerns about the confinement of women in private jails, in the absence of detention facilities in districts and reports of sexual abuse and slave like conditions reportedly endured by the women.<sup>111</sup>

<sup>109</sup> Amnesty International interviews with female prisoners in Kandahar, 13 September 2004.

<sup>110</sup> Amnesty International interview with the Police Commissioner of Kandahar, 1 September 2004.

<sup>111</sup> UN Independent Expert on human rights in Afghanistan 'Interim Report on the Situation of Human Rights in Afghanistan', A/59/370 21/9/2004 and E/CN.4/2005/127

International human rights law and applicable Afghan law requires states to take a series of protective measures to ensure that individuals are not deprived of their liberty unlawfully or arbitrarily.<sup>112</sup> This practice of holding women in private jails extra-judicially violates this provision.

### Testimonies of female inmates<sup>113</sup>

*“They say I attacked my husband but I did not. My husband and I are not really married. He took me when I was seven years old. Because I have lived with him, I am his wife. But we have not had a nikaah [marriage contract]. When I was seven years old, my “husband” was a powerful man. My brother was 12 years old and was kidnapped by this man. I was living with my parents in Chonie, district 6 in Kandahar.*

*I was with my brother when this man took him. My “husband” loved boys and my brother struggled. He was kidnapped for two months and then killed by this man. Nine months later, I was taken. I was seven years old. I was in front of my home when this man saw me. He took me to Pakistan. He’s called Juma Gul. He was a security officer to a local commander in district 6 who was connected to the government. My brother’s dead body was found in front of the house one day. My younger brother and I were playing in front of my home when I was abducted. I was put in a home in district 5 by this man which is near my home, One day, I don’t know how many weeks later, my mother saw me at the window. My husband threatened my mother and told her never to mention she had seen me. My husband was really horrible. He beat me and broke my teeth.*

<sup>112</sup> Article 9(1), ICCPR

<sup>113</sup> Amnesty International interviews with inmates in Mazare-e-Sharif and Kandahar women’s prison – August and September 2004.

*I was taken to Pakistan 2 weeks later. It was in Gulistan, near Quetta in Pakistan. My husband’s parents were not happy with what had happened but he told them that he had got permission from my parents.*

*I was 9 years old before when he first had sex with me. My mother in law and relatives told my husband not to touch me because I was a child and to wait until I was 9 or 10 years old. My husband also had a habit of drinking and liked young boys. I was happy with my husband’s family but not with him. My in laws told him not to beat me because I was a child. I was 12 years old when I had my first child. He used to beat me constantly, put his hands in my mouth all the time and stretched the skin on my face. He wanted me not to tell anyone that I was kidnapped. He used to beat me with his gun. He used to threaten me with grenades. On one occasion he placed a grenade on my stomach. My mother moved to Quetta. I don’t know when. My husband made us move. I moved more than 1,000 times in Quetta, various districts in Quetta. For 2 months I lived in Karachi when my husband got a job selling shoes. My husband was unable to pay the rent. I told my neighbours about my abduction who then told my husband to leave.*

*Five months ago (April 2004) we moved from Pakistan to Kandahar. My brother had died and my husband brought me back to Kandahar for the funeral. I told an old woman what happened to me. I was staying with my sister and her family: all of us were. My husband was smoking hashish at the time. He carried on beating me and injured my face, body and put me in the room where the dogs sleep. He beat me with a dog chain and used to put it around me. At that time my eldest son saw and went and saw the elderly neighbour and told her what was happening. The old woman’s son heard everything. He did not like my husband and said he would beat him up.*

*In July, the old woman and her son came to my*

*house and attacked my husband. I was sleeping at the time and I heard my husband crying. The night before my husband had beaten me up and I was afraid he might think it was my plan. I came out of my room; my husband and the old woman's son were fighting. The other man had a knife and he was stabbing my husband. My husband was injured but took the knife and came towards me. He started shouting at me and blaming me. The other man ran away. I ran to a neighbour's house and stayed there. My children were in the house.*

*My husband told the police. My husband also told the police that the other man was my lover. My husband and his friend took me to the police station in Kandahar. I told the police the whole story. I stayed at the station and then a female officer took me to her house for the night. The next day I was taken to Kandahar Women's Prison. The old woman and her son were arrested by the police, questioned and then let go" Shagufa Abdul Sattar, 20 years old, Kandahar prison, 13 September 2004.*

The deputy provincial Prosecutor in Kandahar told Amnesty International that Shagufa had not yet been charged with a crime since her arrest in August 2004. He was undecided as to whether she would be charged with attempted murder or adultery with the male neighbour and stated that the evidence for either charge would be based on the husband's testimony.

*"I am an orphan and my stepmother was very cruel to me. I just left one day and got into a car. I just wanted to leave. The driver of the car raped me and then dropped me off near Hazrat Ali shrine. The police arrested me and brought me here to jail. I have been here for 10 days. My family do not know where I am. I don't know anyone in Mazar e Sharif. I don't know what to do and I can't send any mail to*

*my family to tell them I am here."*

**Marzia, Char Bolak - Balkh province, Mazar e Sharif prison, 29 August 2004.<sup>114</sup>**

*"I have spent three years in prison. I have seven children and my husband was killed. My youngest two children are with me in jail. My nephew killed my husband. I was arrested by the police for being involved in his murder. The son of my husband's uncle said that I did it. It was my nephew who murdered my husband. I am innocent. My nephew is also saying that I am innocent. He has confessed to the killing and says he killed my husband out of self-defence. He is now in Pul I Charki prison. I spent 1 1/2 years in Samangan jail with my nephew and son in law who was also accused of being involved. I did not have a lawyer and I did not go before a judge. I have been sentenced for 10 years and I have done nothing wrong." Faria, Mazar e Sharif prison, 29 August 2004.<sup>115</sup>*

*"I lived at home with my parents. Three months ago, my cousin came to our house and asked my father for permission to marry me. My father refused and said he wanted me to marry someone else. My cousin came three times to ask. One day my father asked me to go to meet this man with him and I realised he was going to force me to get engaged. When I refused, my father said he would have me locked up for 10 years and that I have to go with him. I ran away with my cousin who wanted to marry me. In Lashkargar I have an aunt and we stayed with her and sometimes, with his family. Then his family told us to leave. The police came and arrested me and put me in prison. I have not been charged yet." Sadiqa Khudairam, Kandahar prison, 13 September 2004.<sup>116</sup>*

<sup>114</sup> All names have been changed to protect the individual.

<sup>115</sup> All names have been changed to protect the individuals.

<sup>116</sup> See "Young lovers left stranded in Afghan legal limbo", The Guardian, 11 November 2004 on an interview with Sadiqa's boyfriend, also imprisoned.

## Customary and informal justice systems

*“States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination.”*<sup>117</sup>

In April 2005, 29-year-old Amina, from Argu district, Badakshan province, north-eastern Afghanistan was ‘sentenced’ to death by stoning, following a directive from the local *ulema* (religious council). Amina, who had been married for seven years, was ‘convicted’ of having committed adultery with Karim, a local man. The sentence was passed by the head of the *ulema*, Yusef Mohammed, a local commander and mullah of the area. Amina’s sentence was passed in less than 48 hours following her ‘trial.’

Following the *ulema*’s order, villagers are claimed to have stoned Amina. The stoning did not result in her death and her family is alleged to have intervened and guaranteed that they would kill her themselves. Members of her family are reported to have beaten Amina to death. The man alleged to have been having illicit relations with her was whipped approximately 80 times and freed.

Amnesty International opposes all forms of corporal punishment. Such punishment is always cruel, inhuman and degrading, and in the case of stoning to death amounts to torture. The UN Special Rapporteur on Torture has similarly concluded, “that, corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment”.<sup>118</sup>

Amnesty International is opposed to the imposition of the death penalty in any form, which it considers a violation of the right to life and the ultimate cruel, inhuman and degrading punishment.

<sup>117</sup> According to Article 4 of the UN Declaration on the Elimination of Violence against Women.

<sup>118</sup> UN Doc. E/CN.4/1997/7, 10 January 1997, para. 6.

Traditional, non-formal justice mechanisms operate under customary law, are rooted in tradition and preside over the lives of the majority of Afghans. Such systems have historically been relied on heavily to dispense justice and the level of reliance varies from province to province. Although having punitive authority, such systems usually dispense restorative rather than retributive justice and are perceived by users to be quick and reliable with an emphasis on restored harmony.

The participants of such systems are exclusively male. Women are unable to approach such systems without the assistance of a male relative; reliance upon male intermediaries mitigates the ability of women both to raise issues that fail to win male support and those that involve those very kin on whom they rely for access. Such systems are not part of the formal justice sector but may include holders of local government positions. Over the years, members of armed groups have become an ingrained part of councils dispensing such justice, and have thus further entrenched their authority in the areas.

Abuses of the human rights of women and girls by the informal justice mechanisms, known as *jirgas* and *shuras* are widely reported.<sup>119</sup> There are considerable difficulties for research on this area, particularly in making direct contact with victims of these systems. However, there is widespread recognition amongst women contacted by Amnesty International, that such community systems perpetrate grave abuses of women’s human rights.

The case of Amina demonstrates the inherent discrimination and disproportionate sentencing meted out to women accused of acting outside

<sup>119</sup> *Shura* is the Dari word for the gathering of council elders. *Jirga* is the equivalent in Pashto and means “trial.” Both are comprised of distinguished and influential members of communities, usually community elders and the local cleric. For further elaboration on the concepts of the *jirga* and *shuras*, please see: International Legal Foundation, *The Customary Laws of Afghanistan*, September, 2004.

the codes of accepted behaviour for women. Amina's case is almost certainly not the first, since the advent of the transitional government where a woman has been 'sentenced' to death for adultery by traditional, informal mechanisms, for acts deemed to be against religious and customary practice. Other practices, such as exchange of girls to settle disputes, particularly when a murder has been committed, are widely reported.<sup>120</sup> Dina, (see section on women human rights defenders) a human rights activist in Kabul had documented and highlighted the abuse of girls through exchange in the border areas of eastern Afghanistan; she has received threats since speaking out about such matters.

Community leaders who pass decisions that abuse the rights of women are not largely held to account by the government. Members of Amina's family who allegedly killed her were arrested but the head of the ulema that passed the decision to sentence Amina to death was twice arrested and released. Amnesty International is aware that 15 suspects are currently being held by the local authorities in Argu district and that no charges have been brought against any of the detained.

Amina's fate was the subject of international media attention which caused the Afghan government to initiate an investigation but the fate of countless other female victims of the local justice mechanisms across the country remains unknown. The case illustrates the failure of the state to bring religious and customary practices in line with international human rights standards. Women, as bearers of, family, honour are fundamental to the esteem and status of a man and his family. Behaviour that is deemed to undermine "honour" initiates specific, prescribed steps, which must be taken to restore that "honour" such as death. The use of such mechanisms has led to violations to the right to a fair trial, and the prohibition on torture and cruel, or inhuman or degrading

<sup>120</sup> Exchange of girls is known as "Bad," which is the Pashto word for exchange. It is worth noting that in Dari, the term 'bad' has the same meaning as in English.

punishment, slavery and slave-like practices and discrimination.

The Afghan government must take clear and unequivocal action to ensure that women are protected from human rights violations committed through such mechanisms. The government must send clear messages to perpetrators that abuses by traditional systems will not be tolerated. The government must systematically monitor practices of the *jirgas* and *shuras* and ensure that the right of persons accused of criminal offences in informal mechanisms are protected.

The government and international community involved in rebuilding Afghanistan have not adequately addressed traditional mechanisms in their justice reform plans and it is only recently that the need to focus on informal systems, has been recognised. According to Ambassador Jolanda Brunetti, the Italian government's special coordinator for the Justice Programme in Afghanistan, informal justice systems dispense 80 per cent of justice in the country.

In early 2005, a six million Euro project to deliver awareness programmes to remote parts of the country was announced in Kabul. Funded by the European Commission (EC), the project is aimed at bringing the formal and informal legal sectors together through a programme of awareness raising which it is hoped will end the dependency of communities on non-formal mechanisms. Women and girls have been highlighted as beneficiaries of this project.

Non formal systems, such as *jirgas* and *shuras* are accepted as part of the existing landscape, and not questioned by this project. Ambassador Jolanda Brunetti has stated: "*If the Justice Programme in Afghanistan were only to focus on developing the formal justice sector, we would be marginalised in our efforts and our achievements.*"<sup>121</sup>

<sup>121</sup> "*Efforts to improve access to justice in rural areas*", IRIN press, 15 February 2005.

Amnesty International calls for this project, which accepts the relevance of *jirgas* and *shuras*, to ensure the development of procedures in accordance with international human rights standards.

Under international human rights law, a state is required to respect and ensure human rights to all individuals within its territory and subject to its jurisdiction without distinction of any kind, including on grounds of “sex”.<sup>122</sup> Customary systems such as *Jirgas* and *shuras* are not in themselves unlawful but if their decisions and practices in regards to women and girls are clearly discriminatory and facilitate violence against women their actions are not acceptable. The Afghan government is required to exercise due diligence to prevent such abuses, to investigate them and to bring perpetrators to justice. The state is responsible for failure to do so.

## Afghanistan’s domestic laws and policies

Judicial failure to prosecute offenders who commit violence against women has strong roots in the existing Afghan legal framework, which is inadequate to protect the rights of women. The Bonn Agreement stated that the existing law is only applicable to the extent that it is consistent with Afghanistan’s international legal obligations.<sup>123</sup> Significant sections of the judiciary condemns atrocities against women but in practice, are applying a mixture of un-codified Shariah law and statutory law and fail to protect women from abuse.

Currently, the laws considered to be applicable in Afghanistan regarding women’s rights are: the Penal Code of 1976, the interim Criminal Procedure Code of 2004 and the Law on Marriage of 1971/1350. Afghanistan’s laws are a long way from being in compliance with its

international obligations but the state has a clear jurisdiction and basic framework to begin to address violations and abuses perpetrated against women.

## The new Constitution

Amnesty International welcomed the new Constitution, adopted in January 2004 which enshrined the equality of men and women. However, Amnesty International remains concerned, among other things, at the lack of explicit protection and promotion of women’s rights, despite Afghanistan’s international obligations under various treaties, including CEDAW. Under the new Constitution, women do not have the right freely to choose a spouse; women and men do not have the same rights and responsibilities in marriage and at the time of termination of marriage; and mothers and fathers do not have clearly shared responsibilities and rights in the raising of their children.

Through ratifying various human rights treaties, successive governments of Afghanistan have undertaken legal obligations to ensure every man, woman and child in Afghanistan will not be subject to discrimination on the grounds of tribe, ethnicity, class, religion, sex or age. Although this is reflected in Article 22 of the Constitution, no clear definition of discrimination exists.

Acts of brutality, regardless of the designation of the perpetrator and practices such as exchange of girls are always unlawful under international standards and may amount to torture or ill-treatment when inflicted by officials, at their instigation, or with their consent or acquiescence. The Penal Code criminalizes torture but the acts involved are not clearly defined; in addition the scope is narrower than the definition envisioned under CAT.<sup>124</sup> Until Afghanistan adopts legislative measures reflecting the provisions of the

<sup>122</sup> See for instance ICCPR, Art. 2(1).

<sup>123</sup> See: Section II (ii), Bonn Agreement.

<sup>124</sup> Article 275 of the 1976 Penal Code criminalizes torture performed by public officials; it does not criminalize torture committed by non-officials, as defined above.

Constitution and international standards, women will not be able to effectively access their rights.

### Penal Code

The applicable Penal Code, amended in 1976, lacks clear provisions to criminalize violence against women and does not provide effective remedies or redress for victims of violence. There is no specific criminalization of the following acts; violence against women in the family; forced marriage and the exchange of girls to resolve disputes.

Sex, including consensual, outside marriage is criminalized through the offence of *zina* in the Code, which includes adultery. Victims of sexual violence risk being detained under *zina* and hence are reluctant to report such crimes. In addition, the fear of being stigmatised by their families and communities brings further inhibitions. There is no clear definition of rape, which requires four adult witnesses to the offence. Women alleging rape who cannot provide said witnesses risk being charged with the crime of consensual sex outside marriage.

Discrimination against women and the proximity between the formal and non formal justice systems is highlighted in the leniency and often lack of penal sanctions in cases of “honour” killings. Evoking honour and offences to custom and tradition is an accepted defence in cases of killing of women and girls. Similarly, the defence of “honour” can be upheld in cases where women and girls are raped and are viewed to have dishonoured their family name, as well as women who refuse to marry against their wishes.

However, most cases of “honour” killings will not come before the formal judicial system, as families will tend to mete out punishments sanctioned by a community justice mechanism such as the *shuras* or *jirgas*.

The Law of Marriage does not provide for equality in: the right to divorce in the dissolution of marriage; equal rights to

property; equal rights to custody of children; full and free consent to marriage. It does not define clear and explicit provisions to penalize those who arrange forced or underage marriages, as provided by CEDAW. Although the law stipulates that marriage must be through choice and that 16 years is the legal age of marriage for women and 18 years for men, guarantees in practice are absent and in contravention of international law. The interpretation of law can be inherently discriminatory towards women. For example, men are accorded the right to divorce under *shari'a* without recourse to the courts. Women are only allowed to seek a divorce from the court on specific grounds provided by the *shari'a*, which are not specified in the Law on Marriage.<sup>125</sup>

### Violence against women in international law

Afghanistan is a state party to a number of major human rights treaties, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC) and the Rome Statute of the International Criminal Court (ICC).<sup>126</sup>

<sup>125</sup> Articles 32 and 35 of the Law on Marriage.

<sup>126</sup> Afghanistan ratified ICCPR (24 April 1983); CRC (27 April 1994), CAT (26 June 1987); Geneva Conventions (1956); and the Rome Statute (2003). As a state party to the Rome Statute of the International Criminal Court (ICC), Afghanistan has a duty to bring perpetrators of international crimes to justice – including, where relevant, to the Court. The standards set out in the Rome Statute, including rights of the accused, should be adhered to in procedures before any court or tribunal established to prosecute perpetrators. Furthermore, Amnesty International calls upon Afghanistan to incorporate the Rome Statute into its domestic law and passes other necessary legislation to ensure effective cooperation with the Court.

International human rights treaties and standards define the obligations of states to ensure human rights for individuals subject to their jurisdiction. They provide guarantees for freedoms and entitlements that individuals may claim at national, regional and/or international levels. States that ratify a treaty agree to promote the right articulated in it: secure those rights for all and enact legislation; translate these into strategies and policies; prevent violations of rights named in the treaty; and provide remedies to victims whose rights are violated.

Provisions and comments on key instruments are given here.

**The Universal Declaration of Human Rights** (UDHR) proclaimed in 1948 by the General Assembly of the UN stated that everyone should enjoy human rights without discrimination (Article 2), that “*Everyone has the right to life, liberty and security of person*” (Article 3) and that, “*No one shall be subjected to torture and inhuman or degrading treatment or punishment*” (Article 5).

**The International Covenant on Civil and Political Rights** (ICCPR), adopted in 1966 – a binding treaty to which Afghanistan is a state party – provides that “*The State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant*” (Article 3). These rights include the right to life (Article 6) and an absolute prohibition on torture and other ill treatment (Article 7). “This prohibition has been interpreted by the Human Rights Commission, which monitors States’ compliance with the ICCPR, as including an obligation on states to exercise due diligence to prevent and punish violence against women in the home and the community.”<sup>127</sup>

<sup>127</sup> Human Rights Committee General Comment 28 on Article 3, and Human Rights Committee Draft General Comment on Article 2.

**The UN Convention against Torture** (CAT), adopted in 1984 and ratified by Afghanistan, does not limit the definition of torture to acts by state officials, but also includes acts performed “*with the consent and acquiescence of a public official or other person acting in an official capacity*” (Article 1(1)). Domestic violence can therefore be defined as torture as it may cause “*severe pain or suffering, whether physical or mental*” and may be “*intentionally inflicted*” for a purpose such as “*punishment*” or “*for any reason based on discrimination of any kind*”. An example of a situation where a state may be in violation of the prohibition on torture that is inflicted by individuals is marital rape where it is not criminalized by law, as is the case in Afghanistan.<sup>128</sup>

**The UN Convention on the Elimination of All Forms of Discrimination against Women** (CEDAW), to which Afghanistan is a state party, sets out in detail the obligations of which state parties to secure equality between men and women and to prohibit torture discrimination against women. It expressly requires state parties to “*take all appropriate measures to eliminate discriminating against women by any person, organization or enterprise*” (Article 2). If the state fails to offer protection against discriminatory practices and abuses, or to bring to justice those who commit such abuses and to ensure reparation for the survivors, it is in breach of its legal obligations. Afghanistan has overwhelmingly failed to investigate abuses, both promptly and effectively, against women and perpetrators are rarely prosecuted, allowing the violence to flourish with impunity. The authorities seldom carry out investigations into complaints of violent attacks, rape, murders or suicides of women.

Afghanistan has ratified CEDAW without reservations.<sup>129</sup> It is obligated to ensure that the

<sup>128</sup> Report of the Special Rapporteur on Violence against Women, February 1996 (E/Cn.4/1996/53, at 45)

<sup>129</sup> Legal statements proclaiming that the state will not abide by a provision, or abide by it only to a limited extent or subject to its own interpretation of it.



Convention is enacted into legislation and that guarantees of equality in civil law, freedom of movement and domicile, and freedom from discrimination in matters relating to marriage and family law. It is also obliged to provide appropriate protective and support services for victims; gender sensitive training of judicial and law enforcement officials; encouraged to undertake research on the causes and effects of violence, including collation of statistics; and to take effective measures to overcome traditional practices and customs that support and eliminate such practices.<sup>130</sup>

**The UN Convention on the Rights of the Child (CRC)**, to which Afghanistan is a state party, defines all those under the age of 18 as children. It requires states to take all effective and appropriate measures with a view to “*protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse*” while in the care of parent (s), legal guardian(s) or any other person who has the care of the child, (Article 19(1) and to abolish traditional practices prejudicial to the health of children (Article 24). It further obliges state parties to protect children from all acts of sexual exploitation and abuse (Article 34) and from torture and other ill treatment (Article 37(1)). The prevalence of child and forced marriage in Afghanistan is both a harmful traditional practice and a form of gender discrimination.<sup>131</sup>

In 1993, participants of the UN sponsored World Conference on Human Rights in Vienna declared violence against women to be a human rights violation requiring urgent and immediate attention. Later that year, The UN Declaration on the Elimination of Violence against Women was adopted by the General Assembly.

<sup>130</sup> General Recommendation No.19 (11<sup>th</sup> Session, 1992).

<sup>131</sup> The Committee on the Rights of the Child. See for instance the Committee’s concluding observations regarding Burkino Faso, UN doc. CRC/C/15/Add.19 (1994), para.8; Central African Republic, U.N. Doc CRC/c/15/Add.138 (2000), para.46; and Bangladesh, UN Doc.CRC/C/15/Add.221 92003), para.61

**The Beijing Declaration and Platform for Action** agreed at the Fourth World Conference on Women in 1995, and its five-year plan review underlined these concerns, which have been further augmented by agreements from other UN world conferences.

**The Rome Statute of the International Criminal Court**, adopted in 1998 and to which Afghanistan is a state party, defines forms of violence against women, including rape and other forms of grave sexual violence as war crimes and crimes against humanity.<sup>132</sup> In addition, gender based persecution was included as a crime against humanity.<sup>133</sup> The Rome Statute contains progressive provisions relating to the participation and protection of victims and witnesses in proceedings before the court, and ultimately for reparations to victims.

The work of the **UN Special Rapporteur on violence against women** has deepened the international community’s understanding of the causes and consequences of violence against women throughout the world. In addition, the mandates of other UN Special Rapporteurs have increasingly included an explicit commitment to addressing the gender dimensions of relevant remit.

Article 7 (1) of the Afghan Constitution requires the Afghan government not to violate human rights treaties;

*“The state shall abide by the UN Charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of human rights.”*

The Afghan Constitution requires the government of Afghanistan to take effective, legislative, administrative, judicial or other steps to make human rights a reality for every Afghan man, woman and child.

<sup>132</sup> See Article 7(1) (g) 8(2)(b) (xxii), 8(2)(c)(vi).

<sup>133</sup> Article 7(1)(h).

## Conclusion

Amnesty International is aware that violence and discrimination against women exists in every society in the world. Many countries have identified and adopted measures that are intended to address and combat inequality, end discrimination and provide women protection against violence, understanding the links between the two. Whilst outright eradication of violence against women may seem unachievable, states are obliged to take concrete and effective steps that advance the protection of women and ensure that perpetrators are brought to justice and that victims are ensured reparations.

Amnesty International recognises that the Afghan authorities face difficulties in the current and volatile period – in which the specific targeting of women continues and the legal obligation to address discrimination is immediate. However, the police and judiciary display an outright discriminatory bias towards women and violations against women by these agencies – the custodians of the law – of women are widely reported. Women's voices remain largely unheard and practices rooted in culture and belief, legitimise violations of their human rights. The unlawful killing of Amina is now the subject of a state investigation.<sup>134</sup> Whilst Amnesty International welcomes this move, the organization is concerned at the poor record of the state in ensuring that serious

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<sup>134</sup>In April 2005, Amina (age 29), from Argu district, Badakshan province was 'sentenced' to death by stoning following orders from the local *ulema* (religious council). The *ulema* found Amina guilty of adultery. The man she is said to have committed adultery with was whipped and freed. Amina is reported to have been initially stoned by villagers but her family led her away, where they are alleged to have killed her. A local police investigation is ongoing and Amnesty International is aware that some members of Amina's family have been arrested along with the head of the *ulema*. However, it is not known whether any charges have been brought against any individual or whether they remain in detention.

efforts are made to hold to account perpetrators of grave human rights violations. Such crimes highlight the collusion of families and the community in perpetrating abuses of the most fundamental human rights, including the right to life and freedom from torture.

The conditions for a stable environment have not as yet been met and the state continues to be in urgent need of a capable and effective criminal justice system, which can adequately address issues of violence against women. It requires a coordinated, sustained and long term effort from the Afghan government and the international community at a time when instability is widespread and violence is increasing. However, at an absolute minimum, the state must ensure that it does not violate human rights, acts with due diligence to prosecute offenders and implements preventive and remedial measures that protect women and girls. The Afghan authorities have failed this. Moreover, through discriminatory laws and practices, such as detaining women for 'running away' and through provisions in the current Criminal Code allowing for the imposition of cruel punishments, the state is also a direct perpetrator and should be held accountable for practicing a form of violence against women.

Amnesty International believes that the Afghan government has not taken sufficient steps to effect real change in order to eliminate discrimination, end the vicious cycle of violence against women in all aspects of their lives and punish perpetrators, whether they are family members or members of armed groups. The role and actions of both formal and informal justice systems that perpetuate or condone violations of women's human rights must be investigated and appropriate responses from the state must be forthcoming.

Abolishing discriminatory laws and ending practices such as arbitrary detention and cruel punishments are a necessary first step towards ensuring that the state itself does not commit human rights violations. However, on their

own, legislative measures to prevent discrimination and violence are insufficient. Effective measures, must simultaneously address the underlying factors that affect and contribute to violence, including cultural, social and customary practices. Afghanistan has a pluralistic legal tradition, under which formal and informal structures have existed side by side for centuries and one in which abuses against women are widespread. As part of the strategy to build the rule of law and promote human rights, both the government of Afghanistan and the international community must work to reform and strengthen the functioning of institutions such as the police and judiciary and address the problems posed by both the formal and traditional judicial bodies to ensure that abuses against women are not committed.

Ensuring respect for women's rights cannot be achieved through the effort of the Afghan government alone but must involve an intense and sustained commitment from the international community. In support of the Afghan government, Amnesty International has consistently emphasized the importance of long-term interest and fulfilment of financial and technical support by donor states. There remains an urgent need for a more coordinated and strategic plan for the reform and strengthening of the criminal justice system, which is one of the essential building blocks for respect for human rights and the rule of law.

Achieving political and economic stability is vital in creating a stable and safe environment throughout Afghanistan. However, it cannot be accomplished by ignoring the equal need for a comprehensive strategy that addresses violence against women as a rights and development

priority for the nation. The full enjoyment women and girls of their human rights of is essential to the future peace and security of Afghanistan

Human rights are inalienable; they should not be traded or bargained away, nor should impunity be granted to human rights abusers.

## Recommendations for the protection of women suffering violence

Some of the recommendations set out below require resources, expertise and support from the international community in order to implement them. Aside from the evident need for renewal of the process and the structure of laws and policies, combating violence against women necessitates an equal need for understanding cultural and social factors, which are at play when women are being targeted for violence. The responsibility to address this lies with the state of Afghanistan.

Rebuilding Afghanistan, after many decades of conflict is a long-term process. A large number of recommendations in earlier Amnesty International reports, on the reform of the criminal justice system, still remain relevant. This report outlines recommendations in relation to protecting women and girls. Please see: *“Afghanistan: Re-establishing the rule of law”* (AI Index ASA/11021/2003) and *“Afghanistan – No one listens to us and no one treats us as human beings”* (AI Index: ASA 11/023/2003) for fuller recommendations on the criminal justice system, noting that the Afghan government has been taking steps to address some of those concerns outlined.

Recommendations outlined below are offered in the spirit of cooperation and in the hope that the Afghan government and international community acts with urgency to remedy the poor situation of women across Afghanistan.

Amnesty International calls on the Afghan government to implement the following recommendations as essential minimum steps towards ending the patterns of discrimination and violence as described in this report.

### Overview of key recommendations

Amnesty International calls on the Afghan authorities to:

- Publicly and unequivocally condemn all violence against women and girls including violence in the family; whether upheld by decisions by informal justice systems or agents of the state;
- Continue to strengthen the reform of the criminal justice system including comprehensive training of the judiciary and police in order to implement international law and standards which promote and protect the rights of women;
- Not invoke any custom, tradition or religious consideration to avoid their obligations to eliminate violence against women;
- Publicly pledge to make the Afghan Constitution of 2004 – which promised equal rights for all – a reality for all women;
- Modify or abolish existing laws (such as the Penal Code), regulations, customs and practices which constitute discrimination against women in family matters or which permit such discrimination to exist. In particular ensure that women are given legal equality with men in law and in practice in respect of: the right to freely choose a spouse, to enter into marriage only with full and free consent, and equal rights and responsibilities during marriage and its dissolution. Further, ensure by means of judicial training and other measures, that the law is implemented by the courts in a way that ensures equality in practice between men and women;

- Ensure that the proposed National Action Plan to tackle violence against women includes legal, social, cultural, political, administrative and budgetary measures to guarantee the protection of women against any form of violence, in cooperation with non-governmental organisations, especially those concerned with the issue of violence against women. This plan must be integrated into the wider draft National Development Strategy for Afghanistan;
- Implement the guidelines and measures articulated in the United Nations Resolution 1325 on women, peace and security and implement them at the domestic level, whereby a gender perspective is employed on all levels in the reconstruction of Afghanistan;
- Promote research, collect data and compile statistics on violence against women, including on violence in the family and ensure that the information is made publicly available. This research should cover such issues as the causes of violence against women, including social attitudes, customs and practice. It should look into the effects of such violence, as well as the effectiveness of measures that could be taken to counteract violence against women and the social attitudes underlying it;
- Take careful note of work conducted by the AIHRC and women's rights NGOs on violence in the family and all other forms of violence and use their insights and findings in planning and implementing public education awareness campaigns with men and women as to how best to combat violence in its various forms.

## Specific recommendations

### Ratifying and implementing international Conventions

Amnesty International calls on the Afghan authorities to:

- Ratify the Optional Protocol to the UN Women's Convention, enabling individuals and groups to complain directly to the UN Committee on the Elimination of Discrimination against Women;
- Issue a standing open invitation to all thematic special procedures on the UN Commission on Human Rights, such as the Special Rapporteur on Violence against Women and the Special Rapporteur on Extra Judicial Executions and facilitate their access to all government facilities, institutions and officials.

### National laws and practices

Amnesty International calls on the Afghan authorities to:

- Abolish laws which criminalize consensual sexual relations and all legislation discriminating against women, including penal and family law;
- Implement fully in domestic law and practice all the requirements regarding complementarity and cooperation with the International Criminal Court (ICC), taking note of Amnesty International's Summary Checklist for Effective Implementation ( AL Index IOR 40/015/2000, 1 August 2000);

- End the detention of women who are imprisoned for the un-codified crime of ‘running away’;
- Take all necessary steps to establish protection in law of the human rights of women on an equal basis with men, as enshrined in the Constitution of Afghanistan;
- Establish a system of consistent registration of marriage and divorce as one measure to ensure forced and underage marriages cannot be conducted in future and to ensure women have fully and freely consented to marriage;
- Define the following forms of violence as criminal acts: violence occurring in the family against women and girls, including sexual violence; the giving of girls and women in marriage as a means of dispute resolution forcing men or women to marry against their will; involvement in the marriage of juveniles; and rape, including marital rape and rape of juveniles;
- Ensure that ‘honour’ crimes and violence in the family are treated as serious criminal offences. Protective measures by the state.

### **Protective measures by the state:**

Amnesty International calls on the Afghan authorities to:

- Include clear and specific provisions to criminalize acts of violence against women, in the Penal Code, currently being drafted. The responsibility of the state to prosecute such violence should be clearly outlined;
- Set in place the necessary framework to ensure protection and full reparation for abuses, as part of the process of legal reform currently underway. Criminal penalties should be introduced for forced and underage marriage.

### **Informal justice systems**

Amnesty International calls on the Afghan authorities to:

- Undertake a comprehensive review of the informal justice systems, as part of the strategy to reform the criminal justice system;
- Thoroughly investigate all cases in which there are indications that a *jirga* or *shura* has perpetrated human rights abuses; ensure that all those participating in them are brought to justice;
- Make the passing of any death sentence, acts which constitute torture, cruel, inhuman and degrading treatment by informal mechanisms a criminal offence in line with prohibitions under international human rights law. These acts should include, but are not limited to: stoning and the exchange of women and girls to settle disputes or as compensation to resolve crimes;
- Train elected representatives and officials in their duties and responsibilities in upholding human rights in order to bring an end to punishments which are cruel, inhuman and degrading, arbitrary detention of women and girls, the exchange of women and girls, forced marriage and other forms of violence against women;

## Access to and protection by the justice system

Amnesty International calls on the Afghan authorities to:

- Take all necessary steps to ensure that complaints by women of violence in any form, whether by private individuals or by officials acting in a private or public capacity, be promptly, impartially and effectively investigated by a body independent of the alleged perpetrators. When there is sufficient admissible evidence, suspects should be prosecuted. Complainants, witnesses and others at risk during such investigations and prosecutions should always be protected from intimidations and reprisals;
- Investigate promptly, impartially and thoroughly all murders, attempted murders and apparent suicides of women, with a view to bringing to justice all those responsible for acts of violence against women, including members of *jirgas* and *shuras* that ordered the crimes where relevant;
- Establish immediate measures to cease police investigation and arrest of women and girls for ‘running away’;
- Prioritise the establishment of juvenile and family courts outside Kabul;
- Incorporate the investigation of crimes against women into all training programs for the police, prosecutors and judges. All programs must include training on appropriate methods of dealing with women victims and accused;
- Support and promote the training of female lawyers to act on behalf of female prisoners, accused and all victims of violence so that there is a fair representation of women and men among lawyers and the judiciary;
- Undertake obligations under CEDAW and ICCPR which obliges the state to take positive steps to enable the participation of women to hold public positions and to be actively recruited into the police and judiciary;
- Develop outreach and education projects that inform community leaders and families that deaths of women under suspicious circumstances will be subject to full investigation.

## Law enforcement and protection

Amnesty International calls on the Afghan authorities to:

- Take steps to recruit and train women police officers, prosecutors and interrogators in sufficient numbers and that women officers are present whenever women are arrested and detained or interviewed by the police or prosecutors;
- Create specialist units or designated officers with the capacity to initiate investigations and prosecution against perpetrators of violence against women. They should be placed across provinces and districts and should consult with MOWA, AIHRC and women’s rights NGOs.
- Conduct training of forensic expertise within the police outside Kabul. The Criminal Investigative Department of the Ministry of Interior and Attorney General’s Office, together

with the lead international donors on policing reform must ensure that the necessary investigative and evidentiary procedures and capacity for prosecuting acts of violence against women, including rape are established. Sufficient numbers of female forensic examiners and medical experts should be trained to ensure women are available to examine victims

- Develop capacity within the police to establish a method of compiling statistics of complaints and reports of violence against women and coordinate assistance and support to victims with women's rights NGOs and the sub offices of the AIHRC;

### **Education and employment**

Amnesty International calls on the Afghan authorities to:

- Take measures to empower women and strengthen their economic independence, including by ensuring their access to employment and income generation loans and projects;
- Encourage the education of girls and make it mandatory to attend school till the age of 16;
- Implement state measures focussed upon the involvement of public and community leaders: extolling the importance of not stigmatising women victims of violence and allowing them to speak out and seek help.

### **Social and cultural issues relating to violence against women**

Amnesty International calls on the Afghan authorities to:

- Improve the educational curriculum and practices to change prevailing prejudicial and cultural precepts that discriminate against women and obstruct their advancement and to introduce human rights education to the curriculum at all levels;
- Raise social and legal awareness through the media and civil society institutions, about women's rights and to combat violence and discrimination against women in order to change discriminatory attitudes towards women;
- Establish a central government unit to collate regular statistics on violence against women and to conduct studies on social, legal and Islamic law issues concerning the topic of violence and discrimination against women.

### **Provision of assistance and support**

Amnesty International calls on the Afghan authorities to:

- Publicly support the work of NGOs working to provide assistance and shelters to women at risk in cooperation with them and ensuring that they are not placed at risk;
- Fund and support measures that will enable all women to live free from violence, such as programmes of civic education, training and systems to support them;



- Continue to build the capacity of MoWA to acquire expertise, legal and otherwise on forms of violence against women and to design and keep a record of cases and follow up. The capacity for legal aid to victims seeking remedy must be expanded and provided beyond Kabul;
- Ensure that all primary health care practitioners and lawyers are given training in responding to violence against women, in all its forms and that appropriate mechanisms exist.

### **To the international community and donor states:**

Please also refer to recommendations in earlier Amnesty International reports, on the reform of the criminal justice system including “*Afghanistan: Re-establishing the rule of law*” (AI Index ASA/11021/2003) and “*Afghanistan – No one listens to us and no one treats us as human beings*” (AI Index: ASA 11/023/2003)

- Ensure that a gender perspective is incorporated in all shared, reconstruction cooperation with the Afghan government and that gender input is properly monitored and evaluated;
- Ensure that the announced campaign on public awareness on accessing the formal justice system in rural areas of Afghanistan clearly denounces crimes against women and states the equality of women in law;
- Provide adequate resources to all members of the formal justice system, including the police and judiciary to enable them to establish a presence in rural areas. Outreach work with rural communities must be established which includes females in order to encourage women to come forward and to support them in seeking redress;

### **To NATO member states contributing to the International Security Assistance Force (ISAF):**

- Increase security throughout Afghanistan. This is essential for the creation of an environment in which the judiciary and rule of law can operate independently;

### **To the United Nations Assistance Mission in Afghanistan (UNAMA)**

- Increase human rights monitoring across the country with a specific gender unit focused on violations and abuses against women and girls.
- All staff of UNAMA, including those not working on cases of violence against women, must be adequately resourced, technically and financially and have specialized training on gender issues, in order to ensure that abuses against women and children are included in human rights monitoring work;
- Establish an effective system of follow up and reporting on results of investigations by the state on cases of violence against women (whether disciplinary or criminal) to ensure that a consistent approach is taken towards ending impunity for those responsible for abuses of the human rights of women and girls;

- Increase capacity building, including substantive knowledge and training on gender issues, of the women's unit of the AIHRC offices across the country;
- Assist the AIHRC, amongst others, in training women staff in interview techniques and collection of statistics.