

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report –
Universal Periodic Review:
AFGHANISTAN

I. BACKGROUND INFORMATION

A. Asylum-seekers and Refugees

In August 2005, Afghanistan became a State party to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter referred to jointly as the *1951 Convention*). The Government of Afghanistan is currently in the process of adopting national refugee legislation in line with the pledge made by the Ministry of Refugees and Repatriation (MoRR) during UNHCR's Ministerial Intergovernmental Event on Refugees and Stateless Persons (hereinafter the *2011 Ministerial Meeting*) in December 2011.¹

In the absence of a national legal framework for refugees in Afghanistan, UNHCR conducts refugee status determination (RSD) under its mandate. Afghanistan has thus far accepted UNHCR decisions on RSD and allowed asylum-seekers, as well as recognized refugees, to remain in the country pending identification of a durable solution. The Government of Afghanistan has generally respected international principles relating to refugee protection, in particular, the principle of *non-refoulement*.

UNHCR provides protection and limited assistance to asylum-seekers and refugees. Almost all individually recognized refugees and asylum-seekers live in the urban areas of Kabul and Herat, where RSD interviews are conducted. UNHCR assists asylum-seekers and refugees with accommodation and provides them with a monthly allowance based on a needs assessment. UNHCR also carries out advocacy efforts with the different Ministries in order to have asylum-seekers and refugees included in the national framework of assistance and services, such as in the provisions of health services and access to education. Nonetheless, refugees and asylum-seekers continue to face difficulties related to integration due to the absence of social and legal frameworks to guarantee their protection and integration into Afghan society. This is further compounded by the volatile security situation in Afghanistan. UNHCR continues to explore durable solutions for these individuals.

¹ UN High Commissioner for Refugees, *Ministerial Intergovernmental Event on Refugees and Stateless Persons - Pledges 2011*, October 2012, available at: <http://www.refworld.org/docid/50aca6112.html>.

B. Refugee Returnees

Afghanistan has experienced more than three decades of war, political upheaval, and insecurity, resulting in millions of Afghans fleeing to neighbouring countries, primarily the Islamic Republic of Iran and Pakistan. 5.7 million Afghan refugees have returned to Afghanistan since 2002, and UNHCR has assisted 4.6 million of them. While the high number of returnees is a positive sign that Afghans see a future back in their home country, a survey conducted in August 2011² indicates that a substantial proportion of these persons have not been able to fully integrate. Almost 60 percent of the returnee community representative groups surveyed indicated that many of the returnees have not achieved parity with their local counterparts in terms of livelihood, shelter, access to land tenure, access to basic services, and protection. Some 15 percent of returnees have departed from their original area of return through secondary movements to urban areas of the country or, returned to their former countries of asylum, primarily in search of sustainable livelihoods and food security.

Around 2.7 million Afghan refugees still live in Pakistan and Iran. Most of them were born outside of Afghanistan and have no or little key linkages or community networks within Afghanistan. Furthermore, a substantial number of refugees have become urbanized during their exile and/or have no property in Afghanistan. Therefore, these factors, along with the difficulties faced by returnees, make it unlikely that many of these refugees will repatriate voluntarily. The MoRR and UNHCR continue to seek durable solutions to improve conditions for the millions of Afghan refugee returnees.

C. Internally Displaced Persons (IDPs)

A significant increase in internal displacement has been witnessed in the last few years. Conflict, insecurity, human rights violations and natural disasters continue to trigger internal displacement in Afghanistan. The country's southern, eastern and western regions continue to produce the majority of conflict-induced internal displacement in Afghanistan. However, areas that previously did not have significant displacement, such as the central region of Afghanistan, are now recording displacement, which would tend to indicate a continued escalation and broadening of the conflict. At the end of April 2013, some 536,000 individuals or approximately / 83,000 families were displaced in Afghanistan. It should be noted that UNHCR Afghanistan tracks conflict-induced IDPs in groups, and as such, the IDP statistics do not accurately reflect the number of individuals/families. Furthermore, the tracking system currently in use cannot systematically capture those who move as families/individuals through secondary displacement (e.g. moving or reuniting with family members in a third location), nor IDPs living in peri-urban or urban areas.

With a large number of IDPs in situations of protracted displacement with limited prospects for return or other durable solutions, there is a need for longer term interventions to address livelihood and other needs in displacement. A vast majority of IDPs still continue to rely on their host communities for assistance. Until recently, the Government of Afghanistan had not taken any specific steps towards tackling the situation of IDPs in a comprehensive manner,

² Rapid Assessment of Refugee Returnee Population and Reintegration Dynamics, August 2011, *available at:* [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/20808817B79A803CC12579DF002CA3B8/\\$file/UNHCR-Snapshot-Survey_Jan2012.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/20808817B79A803CC12579DF002CA3B8/$file/UNHCR-Snapshot-Survey_Jan2012.pdf).

nor had it adopted a clear position regarding the three durable solutions for displacement: voluntary return to the place of origin, local integration in the place of displacement or settlement to another part of the country. In particular at the provincial level the authorities appeared to consider the most suitable durable solution to be voluntary return, to the exclusion of the other two solutions, thus contributing to IDPs remaining in protracted displacement, in precarious circumstances. The engagement of the Government started to take a more dynamic direction when in December 2011 the Afghan Government instructed the MoRR to develop a comprehensive plan to address the issue of internal displacement. In March 2012, the National IDP Task Force, co-chaired by MoRR and UNHCR, strongly endorsed the development of a National IDP Policy to undertake measures to prevent and respond to internal displacement as well as to clearly delineate roles and responsibilities of the different stakeholders in relation to internally displaced persons. The policy was developed through a process of broad consultation led by the MoRR. In July 2012 a National Consultation, attended by the Special Rapporteur for Internally Displaced Persons, Dr. Chaloka Beyani, launched the process that also included consultations with authorities, IDP communities and other stakeholders in different provinces.

In October 2012, UNHCR seconded a Senior IDP Advisor to the MoRR to begin supporting the drafting process. Meetings and consultations continued with the participation of IDPs and communities affected by displacement, main line ministries, provincial and district governors, mayors and local authorities, the Afghan Independent Human Rights Commission, the Afghan civil society and NGOs, international humanitarian and development organizations, donors and influential individuals and academics. A range of coordination mechanisms, including IDP Task Forces and Protection Cluster working groups at both national and provincial levels were also consulted.

A draft of the policy in Dari, Pashtun and English was widely circulated for comments in March and April 2013, when a second round of provincial consultations were conducted in Logar, Herat, Balkh, Kandahar and Nangahar. The draft was amended on the basis of these discussions and comments received from different institutions and organizations. On 22 May 2013 a second National Consultation was organized and attended by major stakeholders and representatives of IDPs from different provinces including women. The draft IDP Policy was discussed and several additional comments were received. A final document is going to be presented in June to the Cabinet.

Finally, while Afghanistan has been proposed as a pilot country for the Secretary-General's Framework for Durable Solutions for refugees and IDPs in the aftermath of the conflict, the UN in Kabul agreed that although Afghanistan is not yet in a post-conflict situation, the SG's Framework can be positively utilized in this context.

D. Statelessness

The Government of Afghanistan has not acceded to the *1954 Convention relating to the Status of Stateless Persons (1954 Convention)*, nor to the *1961 Convention on the Reduction of Statelessness (1961 Convention)*. Although no in-depth assessment has been undertaken in Afghanistan on the scope and magnitude of statelessness in the country, there are clear indications that there are persons with unclear citizenship status who may be of concern to UNHCR, in particular members of the Jat ethnicity, which encompasses the Jogi, Chori Frosh and Gorbat communities. During 2013, UNHCR intends to gather more information on the

situation, the numbers and the protection needs of potentially stateless persons also in view of developing advocacy messages and seeking possible solutions.

II. ACHIEVEMENTS AND BEST PRACTICES

1. Drafting of National Refugee Legislation

Following the *2011 Intergovernmental Event on Refugees and Stateless Persons*, the Minister for Refugees and Repatriation established a working group with technical assistance from UNHCR to develop national refugee legislation that conforms to international best practices and fully complies with the *1951 Convention* and other international norms. The working group will present the final draft of the law to the different line Ministries later in 2013. With the necessary political support from different Ministries, the law should be adopted in the course of 2013.

2. Development of Solution Strategies for Afghan Refugees

The *Solutions Strategy for Afghan Refugees to Support Voluntary Repatriation, Sustainable Reintegration and Assistance in Host Communities* (SSAR) was prepared by the Islamic Governments of Afghanistan, Iran, and Pakistan, with UNHCR's assistance³ and endorsed by some 50 countries in May 2012. This regional strategy aims both to preserve asylum space for Afghan refugees in neighbouring countries over the coming three years and beyond, and to support sustainable reintegration for those Afghans who return home. Furthermore, it pursues an increased effort to bridge the gap between humanitarian assistance and development to increase the absorption capacity for potential returnees. UNHCR is supporting the Governments with the full implementation of this strategy.

3. Development of a National IDP Policy

UNHCR welcomes the development of the National IDP Policy spearheaded by the MoRR and the positive dimension that the process for its adoption has taken. As mentioned above, the process for the adoption of the National IDP Policy has reached the last step with the presentation to the Cabinet for approval. The National IDP Policy seeks to address: a) issues of protection and assistance to IDPs displaced due to man-made or natural disasters; b) all phases of the displacement cycle from pre-displacement to displacement and durable solutions; c) issues related to prevention of displacement; and d) the identification of the main governmental body responsible for coordinating IDP issues.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Absence of National Refugee Legislation

Although Afghanistan is a State party to the *1951 Convention*, no legal and institutional framework exists for the determination of refugee status and the protection of refugees. Currently, UNHCR conducts RSD under its mandate. Furthermore, there is no systematic approach to ensuring that refugees can fully avail themselves of their rights. Due to the

³ Solutions Strategy for Afghan Refugees to Support Voluntary Repatriation, Sustainable Reintegration and Assistance in Host Communities, available at: <http://www.unhcr.org/afghanistan/solutions-strategy.pdf>.

absence of social and legal frameworks to guarantee their protection, refugees and asylum-seekers continue to face difficulties related to integration.

Recommendation:

- Adopt and implement the draft national Law on Asylum and Refugees without delay, in order to effectively protect persons in need of international protection in accordance with international human rights and refugee protection standards.

Issue 2: Access to healthcare, education and other services

There is a need to initiate steps to formally include asylum-seekers and refugees in national plans for access to services. The Committee on Economic, Social and Cultural Rights noted “*with concern that the State party has not yet put into place a basic social security system and that therefore a large number of disadvantaged and marginalized individuals and groups, including older persons, self-employed persons, women, in particular single mothers, IDPs, returnees and refugees are not entitled to any protection,*” and recommended that Afghanistan “*design a national plan for social security and progressively supplement a social security scheme to ensure protection of disadvantaged and marginalized groups.*”⁴ The Committee on the Rights of the Child furthermore called upon the State party “*to take the necessary measures to ensure that returnee, refugee and internally displaced children are not denied access to education and identity documents (....)*”.⁵ UNHCR continues to carry out advocacy efforts with the different Ministries for the inclusion of refugees and asylum-seekers in national frameworks for services and assistance.

Recommendation:

- Consider the inclusion of registered asylum-seekers and refugees in national social security plans, particularly in the health and education sectors, to allow access to services on a par with nationals.

Issue 3: The current situation of IDPs and refugee returnees in Afghanistan

The security situation in Afghanistan continues to be volatile, and obtaining humanitarian access to many areas remains impossible. The lack of security continues to be the main cause of displacement. UNHCR estimates that as of April 2013, some 536,000 Afghans were internally displaced. The principles and standards of international human rights law must be fully respected in the implementation of a comprehensive IDP policy. Considering the volatile security situation and the uncertainty of the potential impact of the withdrawal of the international military forces, the number of IDPs is expected to increase. With the support of the humanitarian community, the Government should ensure that IDPs are properly identified and receive basic assistance, with proper measures to ensure the inclusion of persons with specific needs, particularly women, children, elderly, minorities and persons with disabilities. Furthermore, UNHCR supports the recommendation made by the Committee on the Rights of the Child in its concluding observations on Afghanistan at its 56th session, that “*the State party to develop a clear policy to monitor the situation of internally displaced children*

⁴ Committee on Economic, Social and Cultural Rights, E/C.12/AFG/CO/2-4, 44th Session, 21 May 2010, para. 26, available at:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/428/76/PDF/G1042876.pdf?OpenElement>

⁵ Committee on the Rights of the Child, CRC/C/AFG/1, 56th Session, 4 February 2011, para.63, available at: http://www2.ohchr.org/english/bodies/crc/docs/CRC_C_AFG_CO_1.doc

prioritizing timely protection support to internally displaced and paying due attention to their needs in terms of health and education.”⁶

In regards to refugee returnees, the pace of return will largely depend on the security situation and progress in reintegration and development programmes in Afghanistan, as well as the socio-economic and protection situation in the two neighboring asylum countries. Following the International Conference on the SSAR in May 2012, the MoRR and UNHCR continue to seek durable solutions to improve conditions of return for the millions of refugee returnees. The situation of IDPs is particularly acute in urban areas where a large number of vulnerable individuals live in destitute conditions and under threat of forced eviction. In addition, cases of land grabbing are recurring in Afghanistan as well as numerous cases of land disputes, which undermine the rule of law and the enjoyment of human rights. Due to the procedural and bureaucratic nature of the formal justice system, many land and property disputes are settled using the informal dispute resolution mechanisms, often to the detriment of women and certain ethnic groups, like the Kuchis.

Furthermore, challenges remain vis-à-vis gathering data in relation to secondary movement, the situation in areas of return and varying protection risks faced by IDP groups in longer term displacement and in urban areas. One challenge for the IDPs remains obtaining an ID card (Taskera) in the place of displacement. IDPs are expected to return to their place of origin in order to prove their identity.

Recommendations:

- Adopt the National IDP Policy and ensure its implementation at both the national and regional level in order to address the humanitarian and protection needs of the displaced population, irrespective of the situation or nature of their displacement.
- Provide assistance to IDPs and refugee returnees beyond the initial displacement phase, including after secondary movements and take the necessary measures to create conditions conducive to the achievement of sustainable durable solutions aimed to end their condition of displacement.
- Increase the absorption capacity for returnees, and improve the reintegration process of refugee returnees, include the refugee returnee population in the planning and development of national projects, *inter alia*, the National Priority Programs (NPPs).
- Adopt a comprehensive legal framework, as well as policies and administrative measures to resolve land related disputes; revise the Land Allocations Scheme (LAS) (Decree 104, 2005) and strengthen its programmes related to landlessness, with particular focus on returnees and IDPs.
- Establish and adopt mitigating measures to address the risk of corruption in the LAS, in particular in relation to beneficiary selection and to take effective measures to prevent discrimination against women in cases of land disputes.⁷
- Ensure that IDPs have access to individual documentation and that they are permitted to prove their identity in their place of displacement.

⁶ Committee on the Rights of the Child, CRC/C/AFG/1, 56th Session, para.63, available at: http://www2.ohchr.org/english/bodies/crc/docs/CRC_C_AFG_CO_1.doc

⁷ See also the recommendation made by the Committee on Economic, Social and Cultural Rights, E/C.12/AFG/CO/2-4, 44th Session, 21 May 2010, para. 36, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/428/76/PDF/G1042876.pdf?OpenElement>

Issue 4: Access to birth registration and issuance of birth certificates

Persons are often at risk of statelessness, because they have difficulties proving they possess links to a State. Birth registration helps to prevent statelessness by establishing a legal record of where a child was born and who his or her parents are. As such it serves as a key form of proof of whether a person has acquired nationality by birth or by descent.

UNHCR supports the recommendation made by the CRC in its concluding observations on Afghanistan at its 56th session in 2011: “[w]hile noting some progress made in 2009 to increase birth registration, the Committee is however concerned that the majority of children remain unregistered. The Committee also expresses concern about the situation of children born out of wedlock who may be deprived of their right to birth registration.(...) The Committee draws the attention of the State party to the fact that birth registration is an essential means of protecting children's rights, in particular protecting children against early marriage, child labour, premature enlistment in the armed forces or, if accused of a crime, prosecution as an adult and that the lack of a birth certificate may prevent a child from receiving health care, social assistance, and from being enrolled in school. **It urges the State party to take all the necessary measures to ensure that all children, including children born out wedlock are properly registered at birth.**⁸”

Recommendation:

- Ensure the registration of all births in the country to prevent statelessness, in line with Article 7 of the Convention on the Rights of the Child.

Issue 5: Access to identity documentation (Tazkera) for ethnic minority groups

Lack of identity documentation can increase risks of statelessness due to difficulties in proving nationality. Information on the scope and nature of statelessness in Afghanistan is limited. However, there are indications that some members of the Jat ethnicity, including the nomadic Jogi, Chori Frosh and Gorbat communities has been denied issuance of Afghan ID cards (Tazkera). It remains unclear whether this denial of ID cards is linked to the individuals concerned not being considered as Afghan nationals by the relevant authorities.

Recommendation:

- Ensure the promotion of access to nationality documentation for ethnic minorities.

Issue 6: Accession to the Statelessness Conventions

Accession by Afghanistan to the the 1954 *Convention relating to the Status of Stateless Persons* and to the 1961 *Convention on the Reduction of Statelessness* would establish a stronger framework to prevent and reduce statelessness and avoid the detrimental effects of statelessness on individuals and society by ensuring minimum standards of treatment for stateless persons.

⁸ Committee on the Rights of the Child, CRC/C/AFG/1, 56th Session, paragraphs 33 and 34, available at: http://www2.ohchr.org/english/bodies/crc/docs/CRC_C_AFG_CO_1.doc

The *1954 Convention relating to the Status of Stateless Persons* ensures minimum standards of treatment for stateless persons in respect to a number of fundamental rights. These include, but are not limited to, the right to education, employment, housing and public relief. Importantly, the 1954 Convention also guarantees stateless persons a right to identity and travel documents and to administrative assistance.

The *1961 Convention on the Reduction of Statelessness* establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. This treaty is therefore complementary to standards contained in other human rights treaties that address the right to a nationality. An increase in the number of State parties to the two Statelessness Conventions is essential to strengthening international efforts to prevent and reduce statelessness and ensuring full enjoyment of a number of these rights.

Furthermore, although specific surveys have not been conducted on the scope of statelessness in the country, there are clear indications that there may be situations of statelessness or populations at risk of statelessness which need to be carefully assessed.

Recommendations:

- Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.
- Assess the scope of statelessness in the country and provide the necessary protection to these persons of concern.

**Human Rights Liaison Unit
Division of International Protection
UNHCR
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ANNEX

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies and Special Procedures' Reports

- Universal Periodic Review:

AFGHANISTAN

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations and Special Procedures' reports relating to issues of interest and persons of concern to UNHCR with regards to Afghanistan.

I. Treaty Bodies

Committee on the Rights of the Child

CRC/C/AFG/1, 56th Session

4 February 2011

4. The Committee also welcomes the ratification by the State Party of the following international human rights treaties:

[. . .]

e) Convention relating to the Status of Refugees (1951) and its 1967 protocol on 30 August 2005.

Birth registration

33. While noting some progress made in 2009 to increase birth registration, the Committee is however concerned that the majority of children remain unregistered. The Committee also expresses concern about the situation of children born out of wedlock who may be deprived of their right to birth registration.

34. The Committee draws the attention of the State party to the fact that birth registration is an essential means of protecting children's rights, in particular protecting children against early marriage, child labour, premature enlistment in the armed forces or, if accused of a crime, prosecution as an adult and that the lack of a birth certificate may prevent a child from receiving health care, social assistance, and from being enrolled in school. It urges the State party to take all the necessary measures to ensure that all children, including children born out wedlock are properly registered at birth.

Internally Displaced/refugee Children

62. The Committee commends the State party for its efforts to provide assistance to returnee and internally displaced children, especially those who were internally displaced between June 2009 and July 2010 in the Helmand and Badghis provinces. However, the Committee expresses concern that there is currently no clear policy to monitor the situation of internally displaced children and their families and respond to their needs and that refugee, returnee and internally displaced children, especially Pashtun and "Jogies" children continue to face harsh

living conditions and problems accessing birth registration and identity documents, education.

63. The Committee urges the State party to develop a clear policy to monitor the situation of internally displaced children prioritizing timely protection support to internally displaced and paying due attention to their needs in terms of health and education. The Committee also calls upon the State party to take the necessary measures to ensure that returnee, refugee and internally displaced children are not denied access to education and identity documents and are not discriminated in any other way on the basis of their ethnicity. The Committee encourages the State party to accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Sale, trafficking and abduction

72. The Committee expresses concern that children are trafficked by criminal groups mainly within the country and into neighbor countries for forced prostitution, forced begging and forced labor in brick kilns, carpet-making factories, in the drug smuggling industry and domestic service. The Committee is also deeply concerned that some families knowingly sell their children for forced prostitution, including for bacha baazi. The Committee notes with concern that little has been made to implement the provisions of the 2008 Law on Counter Abduction and Human Trafficking and the 2004 National Plan of Action on Combating Child Trafficking and that human trafficking convictions remain rare while victims of trafficking are punished for acts they may have committed as a direct result of being trafficked and jailed pending resolution of their legal cases, despite their recognized victim status.

73. The Committee urges the State party to adopt concrete measures for the full implementation of the anti-trafficking law and plan of action and in particular ensure that perpetrators are effectively prosecuted and punished if found guilty. The Committee calls upon the State party to ensure the children victims of trafficking are no longer punished and jailed for unlawful acts committed as a direct result of being trafficked but receive protection and rehabilitation services; and that public awareness campaigns to warn at-risk populations of the dangers of trafficking are conducted. The Committee further encourages the State party to consider ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

Committee on Economic, Social and Cultural Rights

E/C.12/AFG/CO/2-4, 44th Session

21 May 2010

26. The Committee notes with concern that the State party has not yet put into place a basic social security system and that therefore a large number of disadvantaged and marginalized individuals and groups, including older persons, self-employed persons, women, in particular single mothers, IDPs, returnees and refugees are not entitled to any protection. (Article 9)

The Committee recommends that the State party design a national plan for social security and progressively supplement a social security scheme to ensure protection of disadvantaged and marginalized groups. In this regard, the Committee encourages the State party to explore the possibilities of international cooperation in line with article 2.1 of the Covenant and General Comment 19 of the Committee on the right to social security.

36. The Committee notes with concern the persistence of illegal land seizures in Afghanistan as well as the numerous cases of land disputes, which undermine the rule of law and the enjoyment of the Covenant Rights. It regrets that, due to the lack of trust in the formal judicial system, many land disputes issues have been left to informal dispute resolution mechanisms, and that, discriminatory practices have provided preferential access to land to certain ethnic groups, to the detriment, in particular, of the Kuchis. The Committee notes that the deteriorating security situation and landlessness are factors that prevent the reintegration of IDPs and returnees, as well as the return of refugees. (Article 11)

The Committee recommends that the State party: (a) adopt a coherent and comprehensive legal framework, as well as policies and administrative measures to resolve the land related disputes; (b) revise the Land Allocations Scheme (LAS) (2005) and harmonize it with the Covenant rights and the international human rights standards; (c) strengthen the programmes related to landlessness, with particular focus on returnees and IDPs; (d) set out a monitoring mechanism to mitigate the risk of corruption in the LAS; and (e) take effective measures to prevent discrimination against women in cases of land disputes.

II. Special Procedures

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns

Addendum: Follow-up to country recommendations: Afghanistan
Human Rights Council, 17th Session
A/HRC/17/28/Add.6, 27 May 2011

Women and the criminal justice system

69. The armed conflict continues to have a detrimental impact on women; the criminal justice system is yet to develop a gender-sensitive approach. Information received suggested that both informal and formal justice systems handle cases relating to gender based violence, such as multiple revenge killings and intra-family murder. Nevertheless, women often lack access to justice in Afghanistan.

70. Traditional jirgas and shura (informal communal councils), which operate outside the formal justice system, reportedly disregard fair trial rights and often discriminate against women, and continue to handle an estimated 80 per cent (some stakeholders estimate up to 95 per cent) of all disputes in Afghanistan, particularly in rural areas. A study released in 2009 documented deficiencies of the criminal justice system in connection with women. This has had an adverse impact on the right to life, as official figures indicate that, every year, approximately 2,400 women self-immolate owing to the hardships caused by gender-based violence. It is reported that self-immolation is often a cry for help to escape an abusive, violent family life and that, although not all women and girls who take such action intend to kill themselves, most die from their injuries. Common causes of self-immolation include child and forced marriages, the handing over of girls to settle baad (disputes) and sexual and domestic violence.

71. Cases of self-immolation are usually not investigated. Information received suggested that the authorities investigate very few cases where family members of women who self-immolate are alleged to have caused the act. This is reportedly due to the lack of evidence,

but also to reluctance on the part of State authorities to investigate or prosecute such cases. This practice is contrary to the Law on the Elimination of Violence against Women, which outlaws the act of forcing another person to commit self-immolation. Similarly, under sharia law, a person who forces another person to commit suicide or harm themselves may be criminally responsible for the act.

Honour killings

72. Honour killings are crimes committed frequently in the name of “honour”, on suspicion of engagement in actions deemed dishonourable for the family as a whole. The motives of these crimes range from mere association with the opposite sex to sexual relations or running away from home, as highlighted by the previous mandate holder in his mission report.

73. Honour killings imply the killing of a family member, usually women, and need to be adequately addressed in the criminal justice system in Afghanistan. The Special Rapporteur recalls that, under international law and human rights standards, States are obliged to protect women from violence, such violence being a violation of human rights. They also should ensure that mechanisms for prosecuting and punishing its perpetrators are available, effective and gender-sensitive. Such practices originate in entrenched discriminatory views and beliefs about the role and position of women and girls in society. In Afghanistan, harmful traditional practices have been further reinforced by the widespread poverty and insecurity that Afghans have experienced over the past 30 years.

74. Afghan men and women interviewed by the UNAMA Human Rights Unit reported that many believed that practices subordinating women to the will of men and sharply limiting their realms of activity originated in the Holy Koran. Most harmful traditional practices are, however, without basis in religious principles or, in some cases, actually contradict religious teachings. Culture and tradition, sometimes viewed and used as a refuge during violent conflict, can be persuasive arguments for perpetuating practices that harm women, but should be distinguished from religious precepts.

75. In response to the above and related concerns, the Government enacted the Law on the Elimination of Violence against Women in August 2009. The Law refers to “fighting against customs, traditions and practices that cause violence against women contrary to the religion of Islam” and preventing and prosecuting violence against women. Article 5 of the Law lists 22 acts, the commission of which constitutes violence against women. The Law itself, however, has been criticized because it requires a victim or her relative to file a complaint before State institutions for it to take action. This implies that, when a victim withdraws a complaint or fails to file one owing to family pressure or fear of reprisal, the State is not required to investigate or prosecute a crime of violence against women. Furthermore, women’s rights activists have criticized the law for failing to criminalize honour crimes and for not defining crimes clearly. In this regard, the Special Rapporteur recalls the recommendations made by UNAMA in 2010 and urges the Government of Afghanistan to take all necessary steps to repeal article 398 of the Penal Code reducing punishment for killings perpetrated in the name of “honour” and to ensure that no law within Afghanistan is contrary to international law and human rights standards, by virtue of which the State is obliged to protect women from violence, which is a violation of human rights.

76. The Law on the Elimination of Violence against Women obliges the Government to take protective and supportive measures in favour of victims and to educate and raise awareness

about harmful traditional practices and other forms of violence against women. Prosecution offices must treat cases of violence against women as a priority and act expeditiously. In this regard, the Special Rapporteur shares the opinion expressed by stakeholders to UNAMA about the importance of raising awareness about the law's existence and the acts it criminalizes, and of ensuring its immediate implementation, in particular of provisions aimed at eradicating harmful traditional practices and bringing perpetrators to justice.