

**کمیسیون مستقل حقوق بشر افغانستان**

Afghanistan Independent Human Rights Commission (AIHRC)

AIHRC Specific information on the issues relevent to the the implementation of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), to be conveaned in February 2020, Geneva Switxerland.

Afghansitan Independent Human Rights Commision (AIHRC)

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**Preamble:**

Afghanistan, which has been engaged in conflict for over forty-one-year, is one of the countries where discrimination and violence against women are still prevalent. The women in the country are still living a difficult life and face different problems and challenges.

After the fall of the Taliban and the ratification of the Convention on the Elimination of All Forms of Discrimination against Women on March 5, 2003, the Afghan Government created new possibilities to improve women's human rights, and endorsed the promotion of equality between men and women as part of the new Afghan Government's strategic goals.

The AIHRC, by establishing the Women's Rights Unit played a positive and effective role in improving the human rights situation of women.

Over the past 18 years, AIHRC has investigated the human rights situation of women throughout the country and provided numerous reports in Dari, Pashto and English, in addition to human rights education, monitoring and investigation of human rights violations, protection and promotion of the rights of children and persons with disabilities, advocacy for victims of war.

The following report has been independantly produced covering the implementation on the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in Afghanistan. It looks to serve the CEDAW Committee’s dialogue and contextual understnading alongisde the report to be submitted by the GoIRA.

**Equality Between Men and Women and Non-Discrimination Against Women Within the Law**

**(Implementation of CEDAW Articles 2, 3, 4, 6, 7, and 15)**

**Statement of Situation:**

The adoption of the Constitution is one of the main achievements of the GoIRA in the area of gender equality. Article 22 of the Afghan Constitution explicitly prohibits discrimination against women. Furthermore, this legally binding document promotes the improvement of literacy, protection of families and promotes the evolving involvement of women within parliamentary and presidential elections.

Afghanistan’s national laws have taken meaningful steps towards incorporating elements of human rights and working towards the elimination of discrimination against women. The Afghan Election Law stipulates a minimum of 25 per cent female participation within parliament. The President of Afghanistan selects one third of Senate nominees and of this one third, half of the candidates are women. The Afghan Labor Law protects equality in various sectors of work and focusses on elements such as equal and transparent employee recruitment, adequate living wages and setting standards for retirement and salary ranges.

Furthermore, the law on the Elimination of Violence Against Women (EVAW), the Law on Harassment of Women and Children and the new Criminal Code are amongst the key laws adopted at the national level to promote and mainstream gender parity and combat against discrimination.

**Challenges and Concerns about Inequality in the Laws:**

Despite advances being made at the institutional level, as seen in the above-mentioned laws, the adoption and acceptance of gender equality within Afghanistan continues to encounter serious barriers.

One of the challenges in the field of gender equality is Article 70 of the Civil Code and Article 94 of the *Shi'a* Personal Status Law. On the basis of these two articles, as stipulated under Afghan law, men are granted the right to marry at age 18 and women 16. Girls are legally able to be married at age 15, if their father’s give permission to a legitimate court. In most cases, Afghan women are not given the right to choose their spouses nor when they would like to get married. These two articles clearly contradict the provisions of Article 12 of the EVAW law, which states that under-age marriage is regarded as violence against females and is not permitted.

Articles 135 to 155 of the Civil Code of Afghanistan have enshrined the right to divorce in favor of men. According to Article 135, divorce can only be initiated by a man or a legitimate and recognized court. Women are only able to initiate a divorce if she has obtained the agreement of her husband prior to formally initiating the process. In addition to this, Afghan women are permitted to initiate separation under four contexts which are: if her husband abandons her, if she experiences extreme abuse and/or violence, he cannot provide for her basic necessities, and if he has series health complicates. Although the four instances are clearly stipulated, the process remains highly complex and lengthy for Afghan women.

**Equal Access to Education**

**(Implementation of CEDAW Articles 5 and 10)**

**Statement of Situation:**

Women in Afghanistan are still struggling to obtain equal access to quality education in comparison to that of their male counterparts. Within the familial structure, educating male members of the family is prioritized and often when a family must choose whether to send their son(s) or daughter(s) to school the males will be given preference. This is part and parcel due to the vulnerability of women on their way to and from school facing verbal and physical harassment. In more insecure regions of the country, instances of kidnapping and more violent forms of sexual violence are a prevalent threat, causing families to restrict their daughters from accessing education.

In addition to this there are higher rates of dropouts amongst females rather than males in Afghanistan due to domestic labor demands such as household chores, taking care of younger siblings and/or elder relatives. In addition to this, the continues lack of female representation as teachers, faculty members and/or as peers within the classrooms discourages female participation within the education sectors due to societal perception of education being a male dominated sphere.

Given the real and dire barriers to quality access to education, the GoIRA has taken steps to develop the setting of education for women and girls. In 2015, the Afghanistan Central Statistics Office reported girl’s access to education as 40 per cent, and in 2018 this figure amounted to 38 per cent. Furthermore, the statistics from the Afghanistan Central Statistics Office has shown the number of female college students in 2015 amounted to 22.7 per cent and in 2018 this figure reached 26 per cent, highlighting an increase in three per cent female enrollees.

**Challenges and Concerns Against the Right to Education:**

The AIHRC’s research and Ministry of Education’s reports highlight the following problems as active and direct barriers in accessing education: distance from home to schools, insecurity, lack of educational facilities, lack of female teachers, cultural limitations, and familial poverty have all been direct factors in the lower number of female students enrolled in primary, secondary and post-secondary schooling in comparison to their male counterparts.

These barriers to education also contribute to high dropout rates, particularly for female students who suffer more from instances such as insecurity, restricting women’s mobility within the public space and participation within formal sectors; sparse representation of females within the education system which discourages families from sending their daughters to school; patriarchal cultural values that have been influenced over years of conflict; widespread extreme poverty diverting families from sending their children to school but rather to work and generate additional household incomes; and finally the ongoing war within Afghanistan has particularly discriminated and marginalized against women, their access to resources, basic necessities and observing their human rights.

**Equal Access to Quality Health Services**

**(Implementation of CEDAW Article 12 and 14)**

**Statement of Situation:**

Providing equal and quality health services to women is one of the most important responsibilities of governments globally and has been outlined in Sustainable Development Goal (SDG) 3: Good Health and Well-Being. This issue has a direct impact on maternal and child mortality rates due to the vulnerability of women, especially in the war-stricken situation of Afghanistan. The maternal mortality rate in Afghanistan remains at a global high. The Ministry of Public Health (MOPH) research in 2010 showed that the maternal mortality rate was 327 per 100,000 births and by the year 2015 there were 1291 maternal mortality cases recorded in Afghanistan. Bleeding, preeclampsia, delayed and obstructed delivery are one of the most prevalent causes of maternal mortality.

Due to harmful patriarchic cultural norms and practices, that have been influenced by over 41 years of conflict, women are not given equal rights particularly within their households. Many women suffer from poor obstetric health, sustain prolonged illnesses and are not treated on time risking fatal circumstances. This is because men within the household are prioritized to be sent to receive medical care, part and parcel due to them being the traditional breadwinners. This puts many children at risk of being orphaned and being socialized with the notion that women’s access and right to proper health care is not of importance.

The phenomena of child marriages are another serious risk to women and girls’ reproductive health. This is alarming due to the lack of access to reproductive health care, specifically access to contraceptives. In addition to this, although forced virginity testing has been criminalized in Afghanistan, due to the weak rule of law it is still practiced in regions within Afghanistan. This is a phenomena and abuse of women’s rights must be actively combatted against.

Implementation of vaccination for children under five years of age and pregnant mothers is a priority for both mother and the child’s health care. However, in Afghanistan, hundreds of children are still unable to receive vaccinations due to the unstable security situation, hindering their ability to access clinics and receive the medical care needed.

**Challenges and Concerns about Right to Equal and Quality Access to Health Care:**

Despite the improvements made in the provision of health services, the lack of qualified health professionals, especially female health personnel, lack of facilities for providing health services, insecurity, poor prenatal care, lack of specialized nursing and the lack of specialized care at the time of delivery, early delivery, and doing hard labor within the household, high fertility rates, low rates of contraceptive access and use, severe malnutrition, successive pregnancies and maternal anemia are all prevalent and serious challenges facing Afghan women and their health.

**Equal Access to the Right to Work and Political Activities**

**(Implementation of CEDAW Article 7, 8 and 11)**

**Statement of Situation:**

The right to work is amongst the fundamental human rights of women, as provided for in Article 11 of CEDAW. The information obtained from the Afghanistan Central Statistics Office shows that in 2018, the number of female employees in government departments was 21 per cent, while this figure was 22 per cent in 2015, highlighting a government setback in the promotion of women within the formal sector.

Women’s political participation in elections showed a slight decrease. According to the Afghan Independent Election Commission's (IEC) official statement, female voters in the 2016 *Wolesi Jirga* (Parliament) elections reached 32% and female candidates reached 16%, which was in fact 3% lower than the previous election held. And female voter in 2018 presidential election reached 38%.

Furthermore, although there is presence of women in the Supreme Peace Council, both within the central and provincial leadership roles, Afghan women remain isolated within the peace negotiations with no direct involvement in discussions with the armed opposition.

**Challenges and Concerns about Equal Access to Work:**

In analyzing the data related to the number of female employees within administrative ranks, the findings show that the number of Afghan women in leadership and/or managerial positions is not proportional to that of their male counterparts.

Rural women have fewer opportunities to upward mobility and access to opportunity than urban women. They have less access to education, health service, work and employment opportunities. Furthermore, cultural constraints, insecurity, low level of literacy, inadequate work environment for women, inadequate public services in the field of employment are the main problems faced by women.

**Equal Access to Justice**

**(Implementation of Article 16 of CEDAW)**

**Statement of Situation:**

Based on Articles 2, 3, 6, 7 and 15 of CEDAW, access to justice is one of the basic human rights of women. A recent AIHRC study shows that out of 3,742 interviewees, 1892 people confirmed that women's problems within the justice and judicial organs are being dealt with in a better way, and 714 people believe that they still have problems in accessing justice, especially with the justice organs where people are faced with gender discrimination. In addition to this of the nine-member Afghan Supreme Court, there is only one female judge who had not been formally sworn in as her appointment has not been approved by parliament thus, reinforcing a male dominated judiciary system with no female representation and/or input within the leadership and decision-making mechanisms.

**Challenges and Concerns to Access Justice**

Within the Afghan context there are many barriers for Afghan citizens, particularly Afghan women, in accessing justice. The continued practice of informal justice strongly marginalizes and discriminates against women due to the male dominance throughout its mechanisms. Informal justice also undermines the established formal justice mechanisms, particularly in the provincial regions which often see severe cases of human rights abuses towards women and girls.

The cultures of corruption, impunity and the common practice of nepotism are widespread occurrences that have crippled the Afghan justice system and weakened citizen trust towards the government and judiciary bodies. Sexual harassment, favoritism, limitation on the access to defense lawyers and to other justice and judicial facilities due to poverty and/or physical insecurity obstructing mobility and reach, are identified as the main challenges for Afghan women’s access to justice.

**Fight Against** **Human Trafficking of Women**

**(Implementation of Articles 5, 9 and 13 of CEDAW)**

**Statement of Situation:**

The trafficking of women is an emerging and serious trend being witnessed within Afghanistan. The AIHRC’s database shows that in recent years, dozens of cases relating to the human trafficking of women have occurred within Afghanistan. The lack of mechanisms, strategies and national capacities to combat the trafficking of women and children at the national level is a major challenge that must be addressed and taken seriously.

**Combating Violence Against Women and Harmful Traditions:**

**(Implementation of CEDAW Articles 5, 9 and 13)**

**Statement of Situation:**

Violence against women, especially domestic violence, is amongst the most serious problems faced by women within Afghanistan throughout all provinces. The AIHRC has registered 12724 cases of violence, which includes 29983 incidences of violence registered from 2014 to 2019.

Honor killings and extrajudicial trials are amongst serious cases of violence against women. In the past four years, the AIHRC has documented 720 cases of honor killings and 46 extrajudicial trials in Afghanistan. In addition to domestic violence, women are also the victims of armed conflict. Over the past 10 years, 5712 women have been killed and injured during armed conflicts.

Harassment of women is another serious and wide spread form of violence against women in Afghanistan. The AIHRC conducted a survey in 2017, which interviewed 1,530 people and found that 85.4 per cent of the victims were exposed to of one or more of types of street harassment, workplace harassment and/or harassment within academic institutions.

**Challenges to Fighting Violence Against Women**

Insecurity and continuation of armed conflicts in Afghanistan, weak rule of law, a lack of good governance, and the control of insurgent groups in some districts of the country, low level of public education, harmful traditions and patriarchal systems are the most pertinent challenges in fighting violence against women in Afghanistan.

**Recommendations**

Given the reality of the situation on the ground and the facts highlighted within this document, the AIHRC presents the following recommendations to the GoIRA and the United Nations.

**AIHRC recommendations to the GoIRA:**

1. Provide security and strengthen the rule of law, in particular the implementation of penalties on perpetrators of violence against women such as honor killings, sexual assaults, extrajudicial trial, and trafficking in women, and in addition to developing strategies to combat the informal justice system in the country, provide support for victims in terms of rehabilitation, compensation and restoration of dignity.
2. Make plans to enhance and improve public education across the country in order to provide access to education and literacy programs for all Afghan people, particularly women and children.
3. Establish practical and precise mechanisms and practical solutions to ensure gender equality in the legislative process and to adjust all the country's laws based on the international instruments of human rights ratified or signed by Afghanistan.
4. Take action to standardize detention centers, in particular by setting up detention facilities, kindergartens and extra schools, to facilitate the education and training of kids with their mothers in prison.
5. Make policy in line with the SDG’s fifth goal, particularly focusing on equal access to employment for male and female, so that women's financial dependence on men (especially women in the country's villages, where women do all the household affairs, including cooking, child care, and washing) decreases and women’s work at home would be introduced as a job.
6. Guarantee women's involvement at all stages of the peace process, including the planning, negotiation and execution of the peace agreement, with a strong emphasis on upholding human rights values.

**AIHRC Recommendations to the United Nations:**

The country's ongoing war and armed conflict are a major threat to human rights and women's rights in particular. In this situation, therefore, international organizations have important responsibilities and obligations to prevent conflicts, violence and safeguard human rights values, and to assist the Afghan government in the following areas:

1. Strengthen the rule of law and punish perpetrators of violence against women, including sexual harassment, in particular extrajudicial trials and honor killings.
2. Cooperate with Afghanistan in terms of exchanging information on human trafficking organizations, cooperation with victims to travel home, punishment of domestic and foreign traffickers without discrimination, as well as providing shelters, accommodation, education and judicial proceedings, and rehabilitation of victims of trafficking, regardless of nationality, race and religion.
3. Continue to provide financial and technical support to the GoIRA and people, protect and safeguard the government's achievements over the past 18 years, in particular the constitutional and democratic structures and institutions established during this period with the victimization of many Afghans.
4. Continue to fully cooperate with the GoIRA in the protection of human rights, human rights defenders, women's rights activists and activists of freedom of expression in Afghanistan.

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