

# Afghanistan

**"No-one listens to us and no-one treats us as human beings".**

**Justice denied to women.**

## 1. Introduction

The rights and status of women in Afghanistan became an issue of global concern prior to the military intervention by a US-led coalition that led to the end of the Taleban regime in November 2001. The international community, including members of the coalition, made repeated undertakings that their intervention would support women in realising their rights. Colin Powell, US Secretary of State, declared that, "The recovery of Afghanistan must entail the restoration of the rights of Afghan women. Indeed, it will not be possible without them. The rights of the women of Afghanistan will not be negotiable".(1)

During the rule of the Taleban, the women's movement, Amnesty International and other human rights organizations repeatedly highlighted serious concerns regarding the situation of women in Afghanistan. The rigid social, moral and behavioural codes imposed by the Taleban included severe restrictions on women's freedom of movement, expression and association.(2) Widespread human rights abuses committed during the same period by regional commanders of the Northern Alliance were little publicized outside Afghanistan. Many of those commanders today hold powerful positions in the regions and in central government.

Two years after the ending of the Taleban regime, the international community and the Afghan Transitional Administration (ATA), led by President Hamid Karzai, have proved unable to protect women. Amnesty International is gravely concerned by the extent of violence faced by women and girls in Afghanistan. The risk of rape and sexual violence by members of armed factions and former

combatants is still high. Forced marriage, particularly of girl children, and violence against women in the family are widespread in many areas of the country. These crimes of violence continue with the active support or passive complicity of state agents, armed groups, families and communities. This continuing violence against women in Afghanistan causes untold suffering and denies women their fundamental human rights.

The criminal justice system is too weak to offer effective protection of women's right to life and physical security, and itself subjects them to discrimination and abuse. Prosecution for violence against women, and protection for women at acute risk of violence is virtually absent. Those women who overcome powerful barriers and seek redress are unlikely to have their complaints considered, or their rights defended.

In certain regions of Afghanistan, women accused of adultery are routinely detained, as are those who attempt to assert their right under Afghan law and international standards to marry a spouse of their choice.

The criminal justice system will have to play a central role if women are to realize their rights in Afghanistan. The role of an effective, functioning criminal justice system is to provide remedy to victims of human rights abuses and to bring accused people to justice in accordance with international standards for fair trial. In Afghanistan, these two roles are not clear and may lead to the criminalization of victims themselves. Impunity and the failure to provide justice and protection from abuse perpetuate violence against women as the perpetrators do not consider themselves as criminals.

Legal reform and the rebuilding of the police force and judicial system with international support are currently being taken forward in Afghanistan. Such measures offer a significant opportunity to build capacity to protect the rights of women and girls. Amnesty International is, however, concerned that despite certain positive steps this vital opportunity will be missed. No clear strategy appears to be in place to ensure that discrimination against women within the existing structures will be ended or the capacity to protect the rights of women built. Key donors supporting reform of the police and judiciary have failed to ensure that their intervention will support protection of women's rights. In certain

instances, international intervention may even be perpetuating and condoning gender discrimination. Protection and shelters for women at risk have not been created, and legal aid provision remains entirely inadequate.

In both planning and implementation, donors funding the reconstruction of the justice system have displayed an alarming lack of attention to the specific needs of women who come into contact with the justice system as well as to violence against women. These issues are key to human rights protection and development in Afghanistan.

The UN Security Council has expressed its commitment to giving gender equality a central place in post-conflict reconstruction and peace operations through the adoption of UN Security Council Resolution 1325 on "Women Peace and Security". Resolution 1325 and the Namibia Plan of Action on "Mainstreaming a Gender Perspective in Multidimensional Peace Operations" (Namibia Plan of Action) outline measures to protect the rights of women that should be integrated in such operations.<sup>(3)</sup> The particular need for law enforcement activities and judicial and legal reform to ensure protection of women's rights is detailed in the UN study on implementation of Resolution 1325.<sup>(4)</sup> The international community's involvement in Afghanistan is an important test case for seeing whether the will and resources to ensure such commitments are in fact implemented.

In early 2003, the ATA made a legally binding commitment to respect and ensure respect for women's rights through ratifying the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>(5)</sup> Afghanistan is a party to other important human rights treaties and has thus undertaken to guarantee that the rights contained in these instruments are afforded to all Afghans without discrimination.<sup>(6)</sup>

The ratification of CEDAW was a major development. Afghanistan has made a specific commitment to address women's rights in law and practice; in public, political, social and cultural life; as well as in personal status laws, education, health and work. The ATA has also ratified the Rome Statute for the International Criminal Court (ICC), which contains gender sensitive definitions of crimes and

procedures to protect vulnerable victims and witnesses. This constitutes a model for domestic legal reform.

Amnesty International recognizes the difficulties facing Afghanistan as it seeks to recover from over 23 years of conflict. However, it is vital that measures to protect the rights of women are built into legal and constitutional reform, and integrated into policing and criminal justice processes.

A system of justice that meets the need of women and merits their trust will be essential if this critical challenge is to be met. Amnesty International believes that the rebuilding of the criminal justice system in Afghanistan must be designed with the intention to protect women from violence and to create the capacity to offer justice to victims.

Amnesty International calls on the ATA and the international community to act with urgency to protect women from violence, and to build a criminal justice system that is able to defend women's right to live free from violence. The organization believes that international standards offer Afghanistan a strong and coherent framework to undertake this essential task.

## **2. Background**

The framework for the transitional process under way in Afghanistan was established by the Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions (the Bonn Agreement), signed on 5 December 2001. The process initiated by the Bonn Agreement is intended to lead to the establishment of a "broad-based, gender sensitive, multi-ethnic and fully representative government". The ATA, established by an Emergency *Loya Jirga* convened in June 2002, is mandated to govern until general elections planned for 2004 conclude the process of transition.(7)

A process of judicial and legal reform has been initiated as part of the transitional process in an attempt to rebuild Afghanistan's shattered legal system.(8) A Constitutional Commission has prepared a draft constitution and is carrying out public consultations in preparation for a Constitutional *Loya Jirga*, which is

expected to be held in late 2003. Delegates to this gathering will discuss the work of the Constitutional Commission and adopt a new constitution for the country. While the draft constitution has not been formally made public, Amnesty International understands that extensive and sustained efforts by women in civil society and government have secured provision for the equal rights of women.

The Judicial Reform Commission (JRC) was established in November 2002 and has been mandated, as set out in the Bonn Agreement, to rebuild the domestic legal system "in accordance with Islamic principles, international standards, the rule of law and Afghan legal traditions". The JRC is responsible for preparing drafts of new Criminal, Criminal Procedure and Family Codes, and for surveying the existing judicial system in Afghanistan. It has also been involved in the establishment of training for judges. The JRC has consulted with the Ministry of Women's Affairs (MoWA) over provisions for women's rights to be included in these draft laws. However, the vital task of securing the necessary legal framework will be a considerable challenge.

The Afghan Independent Human Rights Commission (AIHRC) established in June 2002 has a large mandate that includes investigating and monitoring human rights abuses and implementing a program of human rights education. The AIHRC has integrated the issue of women's rights as one of its priority areas for action, and its headquarters in the capital Kabul and its seven provincial offices will monitor abuses.

The ATA remains reliant on international support. Planning and coordination of the work of the ATA and of international intervention is carried out through a mechanism of consultative groups on thematic issues. The process is led by the ATA, with relevant ministries chairing these groups. Each area of intervention and consultative group also has a contributing country as a lead donor. Of particular relevance to the work of Amnesty International on reconstruction of the criminal justice system are the consultative groups on police, judicial reform and human rights.

Specific capacity to address issues of gender equality and women's rights within the ATA is provided by the MoWA, which is also responsible for gender mainstreaming the work of the ATA and leads the Gender Advisory Group.(9)

The lead donor on gender issues is UNIFEM (the UN Development Fund for Women). Departments of the MoWA have been opened in many provinces of Afghanistan. However, the work of the MoWA and international intervention on gender issues has been subject to criticism. Intervention has been described as symbolic rather than substantial and strategic. An assessment by a non-governmental organization (NGO) of the situation of women in Afghanistan after the fall of the Taliban considered that UN Security Council Resolution 1325 "lies dormant at the time when Afghanistan provides an opportunity for positive use of the principles of the resolution."<sup>(10)</sup> Despite the work of the Gender Advisory Group and the mechanism of consultative groups, it was reported that the ATA has so far failed to incorporate gender effectively into the national budget or the policy calculations of line ministries. Gender focal points appointed by the ATA in ministries have little authority to shape planning and policies.<sup>(11)</sup>

In March 2002 the UN Assistance Mission to Afghanistan (UNAMA) was established. It was mandated to assist the ATA with the implementation of the Bonn Agreement and is headed by the UN Secretary-General's Special Representative, Lakhdar Brahimi. UNAMA is active on issues of human rights and women's rights.<sup>(12)</sup> The structure put in place by UNAMA to provide for human rights and coordination of human rights and rule of law issues has been subject to criticism. The UNAMA staff structure includes a post of Senior Gender Advisor that has been vacant since late 2002. The focus of UNAMA gender activities is on intervention in individual cases of abuse, with the mission also attempting to support the MoWA in the political and legal aspects of its work.

Women seeking to realize their rights do so in a context of continuing insecurity and threat of violence. The ATA has been unable to establish control outside Kabul, where insecurity results from the existence of private armed groups under the leadership of powerful regional commanders and factional fighting between some of these armed groups. A number of reports have highlighted the specific effects on women of the lack of security and effective law enforcement in many parts of Afghanistan, and the failure to curtail abuses by powerful regional commanders.<sup>(13)</sup>

Women and girls are vulnerable to rape, sexual violence and abduction. The burning of a number of girls' schools has demonstrated the threat to provision for

the realization of the rights of women. Many organizations have drawn attention to the insufficient international security provision, and the problems surrounding the response by ATA law enforcement. The UN-mandated International Security Assistance Force (ISAF), which has been credited with improving security in Kabul, does not have a mandate to work in other parts of the country although this is being discussed.(14) Provincial Reconstruction Teams (PRTs), consisting of between 50 and 100 civilian and military officials, have been deployed to some provinces to engage in civil-military and humanitarian activities.(15) A national process of disarmament of armed groups has not begun.

The prevailing insecurity has directly impacted on attempts by women to engage in political activities and ensure integration of women's rights in the process of reconstruction. Women delegates at the Emergency *Loya Jirga* were subject to intimidation, and activists have articulated a deep concern that their participation at the Constitutional *Loya Jirga* will be similarly threatened.

The question of the rights of women is central to the nature of Afghanistan's future government and society. Progress and emancipation have been characterized by some political forces as unIslamic and contrary to *Shari'a* (Islamic law). The history of Afghanistan demonstrates resistance to central government attempts to change traditions relating to women's status in the family and community. Women in civil society and government in Afghanistan however strongly assert that progressive formulations of law must be created and implemented to protect the rights of women.

The progress made on women's rights in Afghanistan following the Bonn Agreement in December 2001 has been significant in the face of unparalleled challenges. The issue has gained visibility, which has begun to encourage women to come forward to seek assistance in cases of violence. The development of draft constitutional provisions for equal rights for women and the development of a vigorous NGO sector provide real potential for change.

### **3. Amnesty International in Afghanistan**

This report is the last of four reports by Amnesty International produced as part of a year-long project focusing on the reconstruction of the criminal justice system

in Afghanistan. Amnesty International established a field presence in Afghanistan in June 2002 in order to facilitate reporting and campaigning on human rights. Earlier Amnesty International reports on policing, prisons and the judiciary included a focus on treatment of women within the criminal justice system.<sup>(16)</sup> This report is based in part on research conducted for those reports, which included interviews with women detainees and with law enforcement professionals on issues of women's rights.

Additional research for this report was conducted in April and May 2003. Research was conducted in Kabul, Mazar-e Sharif, Bamiyan, Herat and Jalalabad. Amnesty International delegates met representatives of the MoWA, AIHRC, UNAMA, UNIFEM, UN High Commissioner for Refugees (UNHCR), donor governments and international and national NGOs.

Amnesty International researchers investigated the needs of women for justice, security and redress which are unmet by the existing criminal justice system. The organization researched patterns of violence against women and obstacles faced by women in seeking access to justice. Direct testimony on issues of violence against women is difficult to obtain. Statistical data on levels of violence against women is also lacking. Amnesty International therefore used a methodology involving discussion groups, referred to in this report as focus groups, to provide initial information on the scale of violence against women and its most prevalent forms. Research on violence against women was designed to provide a basis for structural recommendations for the reconstruction of the criminal justice system.

Focus groups of women were assembled in each location visited by Amnesty International. These groups provided a forum for discussion where women of different ages were able to talk in confidence. Participants were drawn from village communities or urban neighbourhoods with the cooperation of international agencies, in particular UN Habitat (UN Human Settlements Programme).

Amnesty International is grateful to all those who assisted the organization through sharing their views, ideas and experiences. Due to the potential risk to individuals, names and in many cases locations are not identified in the illustrative cases.

#### **4. International obligations to protect women's rights**

Afghanistan is a party to a number of important human rights treaties, including the ICCPR, the ICESCR, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the CRC, CEDAW and the Rome Statute of the ICC. By ratifying these international human rights treaties Afghanistan has undertaken to guarantee that the rights they provide are afforded to women on a basis of equality with men and without discrimination. The principle of non-discrimination is established in all such human rights treaties, and is defined in Article 1 of CEDAW.(17) International standards provide the ATA with an indispensable resource of measures proven to be effective in improving the status of women.

State parties to CEDAW must respect and ensure respect for the rights of women. To give effect to their obligations they must undertake comprehensive measures to end discrimination against women through laws, policies and commitments by state institutions.(18) State parties are required to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women".(19)

State parties to CEDAW are bound to ensure the equal protection of women by the law. Article 2(c) requires states "to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination".

The ratification of CEDAW creates an obligation on the government of Afghanistan to take comprehensive measures to combat violence against women, whether the perpetrators are family members, state officials or members of armed groups. In its General Recommendation No. 19, the Committee on the Elimination of Discrimination against Women stated that, "The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women

disproportionately".(20) The obligation of state parties to address violence against women includes violence perpetrated by "any person, organization or enterprise".(21) Measures which the state must take to meet the requirements of international law are comprehensive, and are established by the standard of due diligence: "State parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention".(22) Comprehensive and coordinated measures should include criminal sanctions for acts of violence against women. The particular efficacy of penal sanctions has been articulated by the UN Special Rapporteur on violence against women, its causes and consequences (Special Rapporteur on violence against women) who noted that such measures can secure reduction in violence within a generation.(23) The Rome Statute of the ICC includes provisions for the gender sensitive treatment of women victims and witnesses.

Afghanistan has ratified CEDAW without reservation. It is obliged by the terms of CEDAW and the ICCPR to ensure the equality of men and women with regard to marriage and to divorce. State parties must ensure "the same right to enter into marriage...the same rights and responsibilities during marriage and at its dissolution".(24) CEDAW also provides that marriage must be entered into only with free and full consent of both parties.(25)

Specific protections for girls are also established by CEDAW, including prohibition of underage marriage. Girls should be protected from the risk of sexual abuse. Article 16(2) of CEDAW prohibits state parties from giving legality to marriage of children and calls on state parties to "specify a minimum age for marriage and to make registration of marriages in an official registry compulsory". The Convention states necessary action shall be taken to specify a minimum age for marriage and to make registration of marriages in an official registry compulsory.

CEDAW and the ICCPR establish that appropriate legislation and other measures should be taken by state parties to prohibit discrimination against

women. Such measures are vital to addressing structural discrimination, and may include special provision to ensure increased numbers of women are brought into public life and decision making, including law enforcement and judicial bodies.

Violence against women in the family has been recognized as a leading cause of death and suffering around the world. The UN Declaration on the Elimination of Violence against Women(26) and the Beijing Declaration and Platform for Action(27) substantiate measures that states must take to eliminate all forms of violence against women, including violence perpetrated within the family. Efforts to eliminate violence against women must be sustained and subject to review to ensure their continuing effectiveness.(28) International standards and declarations provide to the ATA an indispensable resource of measures to improve the status of women.

Specific responsibilities to put gender equality and the rights of women at the heart of post-conflict reconstruction apply to the international community. These are established by UN Security Council Resolution 1325 on "Women, Peace and Security" and the Windhoek Declaration.(29) The adoption of these measures reflects concerns raised over the failure of previous international interventions to take the needs of women into account or address the specific impacts of conflict on women. Recent conflicts, including in Afghanistan, have included grave violations of the rights of women. UN Security Council Resolution 1325 applies to all parties engaged in peace-keeping, peace support operations and post-conflict reconstruction. It requires the integration of a gender perspective into peace-keeping operations, and training on the protection, rights and the particular needs of women of those engaged to ensure respect for women's rights.(30) It calls on all actors to take "measures that ensure the protection of and respect for the human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary".(31)

Responsibility and accountability for measures to increase gender equality should be vested at the highest level. The Windhoek Declaration states that "accountability for all issues relating to gender mainstreaming at the field level should be vested at the highest level, in the Secretary-General's Special Representative, who should be assigned the responsibility of ensuring that

gender mainstreaming is implemented in all areas and components of the mission."(32)

In the study on Women, Peace and Security submitted by the Secretary-General pursuant to Resolution 1325, specific measures required of the international community are laid out. The international community must "ensure that the principles of gender equality and non discrimination are considered during the formulation of constitutions in the post-conflict era; that legal reforms are based on gender analysis of civil and criminal law...and address criminalization of violence against women and girls, including sexual violence."(33)

Amnesty International believes that the international standards set out above provide the essential framework for developing national legislation and measures to uphold women's human rights. The government of Afghanistan has the responsibility under international human rights law, and must take every possible step to ensure that women's human rights are protected throughout all stages of the reconstruction process.

## **5. Combating violence against women and girls: a key challenge for the criminal justice system**

Women and girls in Afghanistan are threatened with violence in every aspect of their lives, both in public and private, in the community and the family. Violence against women in the family including physical abuse and underage marriage is widely reported. Forced and underage marriage also occurs when women and girls are given in marriage as a means of dispute resolution by informal justice mechanisms. Rape of women and girls by armed groups continues to occur. The prevalence of violence against women and girls constitutes a grave threat to their right to physical and mental integrity. Amnesty International's research indicates there is a threat to the right to life of women and girls from violence in the family; women and girls have been killed and driven to suicide while the state has failed to take action.

Significant numbers of underage marriages, incidents of physical abuse in the family and other forms of violence were reported to Amnesty International. The vast majority had not been reported to the criminal justice system, and almost

none had been subject to investigation or prosecution. Women were largely unsupported when suffering violence, and had very few means to leave violent situations.

Amnesty International's research indicates impunity for such violence on a vast scale. Such impunity perpetuates violence since perpetrators are free to consider their actions as normal and acceptable.

Further research on violence against women in Afghanistan is urgently needed. The findings of Amnesty International can only indicate the general scale of the problem and highlight some of the most common forms of violence that require the implementation of urgent measures by the ATA and the international community. Much more must be learned about the extent, patterns and types of violence against women and girls in Afghanistan.

## ***5.1 Violence against women and girls in the family***

### **5.1.1 Physical violence against women in the home**

*"If they didn't beat us, we wouldn't be afraid of them and do what they want."*(34)

Violence against women in the home by husbands, male family members and, on rarer occasions, female family members was widely reported in the focus groups as well as by NGOs active on gender issues. Some women perceived violence as a means of control, while others saw it as caused largely by economic difficulties.

The issue emerged starkly in certain focus groups where some women spoke openly of routine abuse. In one focus group, women reported violence that was socially sanctioned. The participants described how a *mullah*(35) in a local mosque reportedly preached that it was acceptable for a man to beat his wife if she was behaving badly, but that he should restrain himself if she was behaving well.

Provincial departments of the MoWA and women's NGOs have also been approached for assistance by women experiencing severe domestic violence. An

NGO outlined to Amnesty International the circumstances of a woman experiencing sustained violence from her husband. When the woman sought help, her husband attempted to injure her, tearing out her hair in order to prevent her leaving the house. The woman persisted in seeking help from the NGO who assisted her in taking her case to court, where a conviction of the husband and divorce were secured.

Few cases of abuse, however, are reported either to the authorities or NGOs. The extent of the problem emerges more clearly in hospitals than in any other state institution, when severely injured women seek treatment. According to one woman doctor interviewed by Amnesty International, "domestic and physical violence are normal practice - we have a lot of cases of broken arms, broken legs and other injuries. It is common practice in Afghanistan - it is not something we should say is not in our region because most Afghan men are using violence." A foreign doctor working in a hospital spoke of women victims of severe domestic violence undergoing hospital treatment at a rate of about one each week. No monitoring of domestic violence issues is undertaken in the hospital and the doctor stated that she believed domestic violence often went unrecognized as the cause of less serious injuries.

When asked about solutions to the problem of domestic violence, women in certain focus groups clearly perceived the impact of making such acts illegal and subject to punishment. As one focus group participant said, "Men would learn it is wrong and would stop beating us."

Amnesty International received reports of women and girls killed by family members. These included the shooting of a woman by her father for refusing his choice of husband. The district governor of the woman's village attempted to bring the alleged killer to justice, but was frustrated in his efforts when the alleged killer was given sanctuary by members of an armed group to whom he is reportedly affiliated. Amnesty International also received unconfirmed reports in focus groups of two 12-year-old girls killed by their husbands.(36)

Amnesty International's research indicated that in some parts of the country custom or tradition is used to legitimize the violent deaths of women. Amnesty International was repeatedly informed in Jalalabad, eastern Afghanistan, that

where women and girls are alleged to have committed adultery or eloped, the family would deal with the situation by killing the girl or woman involved. In some parts of Afghanistan, adultery, "running away from home" and unlawful sexual activity are referred to as *zina* crimes and are subject to criminal prosecution. Some women in such circumstances are also at risk of being killed if released. The following quotes from women participants in focus groups indicate the diverse circumstances where women may be at risk:

*"A man killed his wife when he found her with a cousin. No one did anything about the case because he had strong reasons."*

*"When a woman is killed [in a case of alleged adultery] it is the family of the woman who carries out the killing... These things are secret, they are happening inside homes."*

*"They [family members] will kill man and woman [in certain cases of rape]. If married she should go back to her father, because her husband will not keep her... If unmarried she will be killed."*

*"Where a father kills his daughter, he will never go to court, no one will be aware because it is a big shame and no one can bear it."*

*"If a woman or girl doesn't want to respect what her family is saying, of course she will commit suicide or her family will do this to her [kill her and make it appear as suicide]."*

Physical violence against women in the family is an abuse of their human rights. The Committee on the Elimination of Violence against Women has stated, "Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women's health at risk and

impair their ability to participate in family life and public life on a basis of equality."(37)

### **5.1.2 Underage and forced marriage**

*"A girl should have her first period in her husband's house and not her father's house."*(38)

The legal age for marriage in Afghanistan for men is 18 and for women is 16 years of age.(39) Clear data on actual marriage age is lacking as provisions to register marriage and birth are absent in many areas, and many people do not know their exact age. Age of marriage varies between urban and rural areas and according to ethnic background and economic circumstances.

However, a clear pattern of widespread underage marriage of girls emerges, particularly in rural areas. It appears relatively rare for girls to remain unmarried by the age of 16. Amnesty International asked focus groups of women about the typical age of marriage in their communities. All groups gave the age at which girls married as typically between 12 to 16 years. A women's *shura* (traditional Afghan decision making body) in Nangarhar Province in eastern Afghanistan reported marriage age for girls to be between 10 and 12 years in the region.(40)

On occasion, girls are forced into marriage below the age of puberty, sometimes at extremely young ages. Such cases include that of "Fariba", aged eight, who was given in marriage to a 48-year-old man.(41) The father of the girl reportedly received 600,000 Afghani for his daughter.(42) Fariba was reported to have suffered sexual abuse by the husband. A relative approached government officials and Fariba was removed from her husband's home and placed in an orphanage. However, at the time that this case was brought to the attention of Amnesty International, no criminal charges had been brought against either the girl's father or her husband, and a divorce had not been granted by the judge who heard the case to determine the status of the marriage.(43)

Few girls have the opportunity to express their distress. "Fatima", aged 17, is a rare example of a girl who fled a situation of underage marriage. Fatima related

to Amnesty International how she was sold by her father into marriage to a much older man at the age of 14. Her father used the proceeds to buy a car. Her new husband lived far away and, since he was from a different ethnic group, spoke a language with his family that she could not understand. Fatima described how she had been given presents and clothes by her family but did not understand at first that she was to be married. When she realized she tore off the wedding clothes and protested, but could not prevent the marriage. She also related how she was raped by her husband.

Fatima left her husband and returned to her father's house. She is now in a desperate situation where her husband's family and father's family are negotiating over financial arrangements related to her marriage situation. Fatima told Amnesty International that she would definitely go to a shelter if there was one in her area, and wants to seek training to be able to support herself. She is being supported by a woman NGO leader who lives near her and whom she visits frequently.

Women in focus groups described marriage practices that denied them the right to choose a spouse. A husband would be chosen by the father or another close male relative, and the marriage imposed upon girls and women, if necessary in the face of protest and against their will. By the time of the formal ceremony of marriage, usually attended by three male witnesses, any resistance would have been progressively overcome, and a girl or woman would have great difficulty refusing. This oppressive process reflects in part the fact that girls and women are treated as an economic asset, with families receiving a price from the family of the groom on marriage in all communities where Amnesty International conducted research. They are also reflective of the pervasive control exerted by husbands and male relatives on women's lives.

Amnesty International considers that underage marriage amounts to denial of the right to physical and mental integrity, and may also amount to cruel, inhuman and degrading treatment. Underage marriage is a breach of Afghan law and Afghanistan's international obligations. Amnesty International considers that forced marriage of women is a denial of the right to mental and physical integrity. Forced marriage is also a breach of Afghan law and Afghanistan's international obligations. The ICCPR provides that no marriage should be entered into without

the free and full consent of the intending spouses. "State parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of man and woman: (a) the same right to enter into marriage; (b) the same right to freely choose a spouse and to enter into marriage only with their free and full consent".(44)

### **5.1.3 Consequences of violence in the family**

*"Every life matters, whether it be an American life or the life of an Afghan girl."*(45)

Doctors, NGOs and focus group participants in certain regions reported to Amnesty International a pattern of suicide by women made desperate by sustained violence in the family. A common form of suicide is self-immolation (death by fire). No data is kept by the authorities, but one NGO Amnesty International met has written up the circumstances of a number of suicides by women.

A doctor in Jalalabad hospital reported seeing about one case of suicide by self-immolation each month in the main hospital. She said that "after they die we understand from the family that this is because of cruelty or violations they suffered from the husband or his family." The incidence of such cases was reported at around two each week by a doctor working in Herat hospital.

Amnesty International documented several individual cases of suicide arising from violence against women. An international organization working with community groups in Afghanistan reported the case of a young girl whose father beat her so much that she killed herself by self-immolation. In another case a woman fell in love with someone that her family did not approve of. Her brother became aware of this, and was reported to have beaten her so severely that she committed suicide by taking an overdose of tablets.

Although the exact rate of such suicides remains unknown, their apparent frequency reflects the very few options and forms of assistance available to women experiencing physical violence in the home. A group of school teachers

Amnesty International spoke to expressed the opinion that suicide was more common than divorce in their area of the country.

The abuses of the human rights of girls resulting from underage marriage illustrate how this practice sustains discrimination and the subordination of women. In a situation where girls are married without full consent or at an age where they are too young to give meaningful consent to sex, the risk of sexual assault and rape is clear. Amnesty International research also indicates a particular vulnerability among underage brides to physical abuse.

The extent to which the autonomy and freedom to make major life choices is denied to women and girls by the practice of forced marriage is striking. It denies them the right to physical integrity and often infringes their right to health and education.

Discrimination in access to education results from early marriage. Few communities where Amnesty International conducted research in rural areas reported girls receiving schooling after they reach the age of around 12. Focus groups reported that girls generally end their schooling on marriage. This is confirmed by a study of school drop out ages undertaken in Bamiyan province, central Afghanistan. School drop out ages for girls were found to be between 11 and 14 years.(46)

The right to health of girls is also compromised by the early onset of pregnancy and childbirth. Information from a group of women teachers provided in the course of Amnesty International's research indicates the possible impacts. The group stated that at least half of young women in their area die in childbirth, owing to lack of facilities and young age. The impact on adolescent girls of childbirth before full physical maturity has been noted by the CRC.(47) Detrimental effects on the health of mother and child in the case of early marriage have also been shown by research, and highlighted in particular in the case of Afghanistan.(48)

#### **5.1.4 Recommendations**

- The ATA must publicly and unequivocally condemn all violence against women and girls including that occurring in the family. The ATA must publicly commit itself to fulfil its responsibility to act with due diligence to combat violence against women in the family.

- With the support of the international community, Afghanistan should develop a comprehensive strategy that addresses violence against women as a rights and development priority for the nation. The strategy should be informed by the recommendations of the Special Rapporteur on violence against women and adapted to the specific context of Afghanistan through a process of public consultation.(49)

- The process of constitutional and legal reform currently under way should set in place the necessary legal framework to ensure protection and full redress for abuses. This framework should include remedies to enable women to leave situations of abuse and forced marriage, and girls to be assisted in leaving situations of abuse and forced marriage. Criminal penalties should be introduced for forced and underage marriage, subject to the principle of non-retroactivity.

- The ATA must introduce measures to ensure forced and underage marriages cannot be conducted in future, and to ensure women have fully and freely consented to marriage. A system of consistent registration of marriage and divorce must be established.

- Immediate measures must be taken to ensure deaths of women and girls that may have been caused by violence in the family are investigated and perpetrators brought to justice. Law enforcement agencies must be informed of their responsibilities to investigate violence against women and killings of women and girls that may have been caused by violence in the family. The ATA must ensure through education and outreach that community leaders know that deaths of women under suspicious circumstances will be subject to full investigation.

- Linkages should be established between hospitals and the criminal justice system to facilitate investigation of serious injuries caused by violence against women in the family.(50)

- The international community should support detailed research and data collection on the incidence and nature of violence against women, in particular violence in the family, to facilitate targeted policies and intervention. A program to increase Afghan women's activists' research, interviewing and other skills would be valuable.

## **5.2 Violence against women in the community: exchange of women and girls in dispute resolution**

As documented in Amnesty International's report "*Afghanistan: Re-establishing the Rule of Law*" forced marriage of girls and women also occurs as a result of decisions of informal justice mechanisms, such as *jirgas* and *shuras*.<sup>(51)</sup> This practice was reported as occurring in all provinces where Amnesty International conducted research. All except one focus group reported the giving of girls, usually below the legal age of marriage, as the preferred means of resolving cases of unintentional killing. In some areas, it was reported that elopement might also be resolved through the exchange of girls.<sup>(52)</sup> Typically, the family of the perpetrator will be ordered to provide a girl, or girls, to the family of the deceased or of the girl who has eloped, in order to compensate for the alleged crime. Girls "exchanged" are then forcibly married to male members of the victim's family.

A community leader in the Mazar-e Sharif region recounted to Amnesty International how he had participated in the decision to promise a 10-year-old girl in marriage in order to make reparation to a family whose daughter had eloped. The community leader informed Amnesty International that the marriage would be consummated when the girl was around 12.

In another case, a woman relative of a murder suspect related how she had been coerced into providing the family of the alleged victim with two young girls as compensation. The woman informed Amnesty International that the two girls were aged eight and 15.

A participant in a focus group told of the distress of an eight-year-old girl who she witnessed being given in exchange in a dispute resolution. This woman saw the young girl being carried off crying by the man to whom she was given, as if she was "a prize in *bozkashi*".<sup>(53)</sup> Women in focus groups and NGOs spoke of the particularly harsh treatment of girls given in dispute resolution and subsequently married. Their own families might sever contact with them, and the family of the groom regards them as tainted by the circumstances of the marriage.

Amnesty International is concerned that the practice of exchange of women and girls constitutes torture or cruel, inhuman or degrading treatment.

### **5.2.1 Recommendations**

- The exchange of girls as a means of resolving disputes in the community and dealing with criminal offences is a clear violation of international human rights law. The practice must be stopped immediately and it should be criminalized under Afghan law.
- The ATA must ensure that informal justice mechanisms do not abuse the right of women to freely choose marriage partners and do not abuse the rights of girls. Informal justice mechanisms must fully conform to Afghanistan's international obligations to respect the rights of women and girls.
- The ATA must engage provincial and district governors in urgent efforts to bring an end to the exchange of women and girls as a means of dispute resolution. Governors are in frequent contact with community leaders and elders active in informal justice mechanisms. The ATA should support governors in developing alternative forms of resolution to disputes in the community. The capacity of the formal justice system must be developed, particularly in rural areas, to provide due process in addressing serious crimes currently dealt with by informal justice mechanisms.

### **5.3 Violence against women by armed groups**

*"During the Taleban era if a woman went to market and showed an inch of flesh she would have been flogged, now she's raped."(54)*

The failure to establish security and legitimate government in many parts of Afghanistan has left women and girls at continuing risk of rape, sexual violence and intimidation. The Afghan state has a duty under international treaties to which it is a party to exercise due diligence to ensure that all cases of rape or other serious sexual assault are effectively investigated and the perpetrators brought to justice.

Abuses perpetrated by armed groups against women and girls since the fall of the Taleban government in November 2001 include rape, abduction, and forced

and underage marriage. The exact extent and prevalence of such abuses remains unclear owing to the reluctance of most victims to speak out and the limited capacity for monitoring. However, the opening of regional offices of the AIHRC is beginning to increase the amount of available information about such violence. The initial work by the AIHRC in this area indicates that the abuse of women by armed groups is so common that the body's research department has decided to maintain a separate category in its files for such incidents.

Amnesty International's research indicates a systematic pattern of abuse against women and girls in Mazar-e Sharif, and incidence of abuse in both Nangarhar and Bamiyan provinces. Human Rights Watch has reported on the occurrence of rape of women, girls and boys in southeast Afghanistan, including in Laghman, Ghazni, Gardez and Nangarhar provinces, and in Paghman district of Kabul province.(55)

Incidents reported to Amnesty International included the rape of four girls by members of an armed group. The youngest, aged 12, was unconscious as a result of her injuries when brought to hospital by her parents.(56) UNAMA has investigated a number of incidents of abuse of women and girls by members of armed groups, including incidence of forced marriage of girls as young as 12.

Amnesty International is deeply concerned by reports that in certain cases, members of the police or the Afghan National Army (ANA) may be involved or colluding in such abuses. In one incident, said to be indicative of a pattern of abuse, a woman was reported to have been detained at an ANA checkpoint and handed over to the commander of an armed group.(57) Her fate remained unknown, but it was understood that she would be transferred as a "gift" to different commanders. Amnesty International was informed of incidents of police colluding in such abuses. There are also reports of women's reluctance to report such abuse because they fear government involvement. One individual told Amnesty International, "These cases remain secret because if a government official becomes aware they will start abusing the woman".

Testimony on such abuses is extremely difficult to collect owing to the shame and secrecy surrounding rape and the fear inspired by perpetrators. In Afghanistan, where the criminal justice system is perceived as ineffective and

prosecution for rape is extremely rare, few incidents of rape and sexual violence are reported to the authorities. The possibility of any investigation by the criminal justice system may be entirely ruled out when powerful members of armed factions exert control over the police and the judiciary. The only form of restraint on perpetrators appears to be the rare occasions where punitive action is taken by the leaders of armed groups against their own followers.

In parts of Afghanistan, women have stated that the insecurity and the risk of sexual violence they face make their lives worse than during the Taleban era. Women expressed a greater sense of fear and intimidation arising from the behaviour of illegally and heavily armed groups in parts of Mazar-e Sharif and Jalalabad.

The occurrence of sexual violence by armed groups is used as a justification for the imposition of restrictions on women's rights and freedoms. Women spoke of the risk of such attacks being used to justify restrictions on their movement decided upon by male family members.(58)

The impact on the life and prospects of rape victims may be devastating. Loss of virginity is perceived as ruinous to the prospects of women and girls. As one witness to the aftermath of rape on a young victim commented, "What's the point of investigation? Her life is over." Such stigma compounds the trauma and suffering of victims.(59) No support or professional services are available to women victims of rape in Afghanistan.

Amnesty International also has concerns about the effectiveness of intervention on individual cases of abuse of women's rights undertaken by UNAMA. Amnesty International understands that UNAMA makes use of informal mediation, including with members of armed groups involved in abuses and generally does not make outcomes publicly known. Reliance on mediation does not support ending the prevailing impunity of perpetrators of violence against women or facilitate legal redress. As detailed later in this report, there are no available forms of shelter that can guarantee safety for victims of violence. Intervention in cases of violence against women requires experts with a specific background on violence against women and the trauma it causes, and on gender sensitive

approaches to interviewing. Amnesty International understands such expertise is not available in UNAMA.

### **5.3.1 Failure to protect women participating in the post-conflict political process**

The failure to protect women's physical security as outlined above has affected women participating in the political process. Women speaking out on issues of women's rights have not been protected by ISAF or the ATA. Women's delegates to the Emergency *Loya Jirga* in June 2002 faced intimidation and threats allegedly by members of armed groups loyal to powerful regional commanders. The ATA and the international community have a responsibility to secure an environment in which people can speak out freely. Debate is crucial to achieving inclusive solutions to complex issues of abuses of women's rights. Women's rights activists are deeply concerned that provision for security at the Constitutional *Loya Jirga* will be as ineffective as that provided at the Emergency *Loya Jirga* in June 2002.

### **5.3.2 Recommendations**

- Increase security throughout Afghanistan to protect women and girls from rape and sexual assault by armed groups. The international community must take immediate steps to ensure women and girls are protected from human rights violations by members of armed groups. Active consideration should be given to the extension of patrols by ISAF beyond Kabul, with a focus on areas where high levels of human rights violations by armed groups are reported. A specific mandate should be given to ISAF to protect women and girls from abuses by armed groups. Such a mandate should be implemented through training and codes of conduct for ISAF members on issues of women's rights.
- The international community must increase the focus on and resources for the protection of women and girls from gender-based and sexual violence. UNAMA must fully commit to women's rights protection. UNAMA staff working on cases of violence against women must have specialized training on gender issues, including appropriate behaviour toward victims. All UNAMA staff should have substantial gender training.

- The ATA with the support of the international community must provide shelter and support services for women and girls experiencing trauma or stigmatization by their communities because of rape or sexual assault and put in place appropriate security provisions to guarantee the safety of victims.
- Measures must be taken to end the impunity of members of armed groups for abuses of women's rights. The ATA with the support of the international community must act with urgency to investigate alleged abuses and to detain and prosecute alleged perpetrators according to international human rights standards. Effective security to enable arrest and trial of alleged perpetrators must be provided. Active consideration should be given by the international community to support provision of security by ISAF. Active consideration should be given to the deployment of international policing experts with experience of working on issues of violence against women in post-conflict environments who are able to support the work of the ATA and police in investigating alleged incidents of rape and sexual assault.
- Ensure members of the ANA are not complicit in acts of violence against women: the Ministry of Defence and foreign troops engaged in supporting the ANA must take measures to ensure ANA commanders and soldiers are informed of their responsibilities under international law with regard to women's rights, and any allegation of abuse must be subject to full and independent investigation and appropriate sanction.

#### ***5.4 Vulnerability of women to sexual abuse in custody***

No safeguards are in place to protect women from sexual abuse while in police custody and in detention. No procedures exist for women to safely report abuse in custody. Amnesty International has received unconfirmed reports of sexual abuse of women prisoners in official detention centres in Herat, Mazar-e Sharif and Kabul. In Herat in early 2003, a riot by women prisoners was alleged to have been a response to sexual abuse by staff. Assaults by staff and incidents of members of armed factions being allowed to abuse women prisoners were reported in Mazar-e Sharif. Amnesty International is also concerned that safeguards are not in place to protect women in police custody.

Amnesty International was informed that when women are arrested for adultery in Jalalabad, they face the risk of sexual abuse and transfer to different police

stations where they are repeatedly abused. One woman told Amnesty International: "If the commanders arrest a girl in a case of adultery when her case is going to the first district police station, they are sexually abusing her saying you had relations with a man so you should with us also. Then they transfer the woman from station to station." This case also highlights increased vulnerability to abuse owing to the involvement in some cases of commanders or members of armed factions with no formal status in the criminal justice system. The system in certain areas such as Jalalabad appears to be permeated by abuse. The general absence of oversight, accountability and police training contributes to the vulnerability of women in custody.(60)

The UN Special Rapporteur on torture has stated that rape and other forms of sexual assault on women in detention violate the inherent dignity and right to physical integrity of the human being, and constitute torture.(61)

#### **5.4.1 Recommendations**

- The ATA must review provision for the security and treatment of women in custody and detention, and ensure their rights are safeguarded according to international standards.
- The ATA must establish clear rules of procedure and safeguards for the treatment of women prisoners and women in police custody based on international standards, and clearly display these in prisons and detention centres.
- Ensure that any reports of violations of the rights of women including rape and sexual assault, while in custody or police detention, are promptly, thoroughly, independently and impartially investigated. Perpetrators should be brought to justice and victims receive redress. Violations of the rights of women must be treated as criminal offences and criminal procedures followed. Penalties sufficient to act as a clear deterrent to the commission of violations of the rights of women, including removal from office or criminal prosecution, should be established.
- Women prisoners and women in detention must be informed of their right to make complaints against prison staff and staff of detention centres. Establish mechanisms to receive complaints in confidence and in a secure environment.

- Internal and external oversight mechanisms to ensure full accountability of prison and detention centre staff must be established. Rigorous efforts to ensure members of armed groups and those outside the police and prison services do not have access to women detainees and prisoners must be initiated urgently.
- Women prisoners and women in detention should be guarded by appropriately trained female staff. Efforts to recruit and train increased numbers of female prison and detention facility staff must be initiated. Access to doctors trained in appropriate forensic techniques should be ensured according to the manual on effective investigation and documentation of torture and cruel, inhuman or degrading treatment or punishment - "the Istanbul Protocol".

## **6. Barriers to justice in the family and community**

*"A woman should enter the house in a white dress and leave the house in a white dress."*(62)

Amnesty International research, and in particular discussions in focus groups, exposed several powerful barriers that prevent women victims of violence from seeking the help of either informal or formal systems of justice. Such barriers help keep women in situations of violence.

### **6.1 Risk of shame and further violence**

Many women perceived the potential costs and risks of seeking assistance as simply too great. The practices and customs that regulate the lives of women vary greatly in different regions of Afghanistan. In certain areas, risk of violent reprisal including death was highlighted. For example, in Nangarhar Province, a woman interviewed by Amnesty International expressed the belief that seeking help could result in death. She stated that, "a woman would be killed (if she sought help) because it is the Pashtun Wali tradition and because it is a big shame if a woman brings her problems outside the home."(63) Some women also expressed fear that seeking help would result in increased violence in the family.

Women interviewed by Amnesty International often focused heavily on other risks arising from seeking help, in particular shame, stigma and loss of

reputation. As one woman informed Amnesty International, "in our community and tradition, if a girl complains to a government body, they say this girl is a bad girl who doesn't obey her father or brother." Many women in focus groups expressed the view that seeking help would result in negative judgments being passed on them. Many women themselves were unsympathetic to victims of domestic violence, describing them as culpable because it was presumed they had not obeyed their husbands.

Restrictions on women's freedom of movement help create further obstacles to their seeking assistance in cases of abuse. In some communities, women cannot leave the home without an accompanying male relative or *mahram*.<sup>(64)</sup> To be seen to travel alone might result in loss of reputation. Male family members were reported to determine to which areas it was considered safe for women to travel. One woman met by Amnesty International in northern Afghanistan described the great efforts she had made to travel in secret to the office of an NGO to seek help without her family finding out about her visit.

Many communities in Afghanistan limit or prohibit interactions between women and unrelated men, which greatly inhibits women's access to both formal and informal justice mechanisms as these bodies are almost exclusively male. In focus groups, women reported that they could not directly approach elders or those with authority in their communities. Generally, it is only acceptable for women to bring problems to elders of the community, or *shuras* and *jirgas* through a male, or in some communities through an older female relative.

## **6.2 Lack of access to divorce**

Barriers may be embedded in the life of communities as tradition and custom, making them very difficult for women to confront. This is of relevance to women who might wish to divorce their husbands in order to leave behind violent or forced marriages. In a number of interviews and group discussions, women reported that divorce never or almost never happened, because "it is not an Afghan tradition". Others spoke of women who sought divorce being perceived by the community as acquiring a negative reputation. Women also indicated that the risk of losing their children following divorce and the absence of provision to seek custody of children prevented them leaving abusive relationships.

Non-discriminatory access to divorce is an essential remedy against violence against women. Its absence contributes to violence against women continuing. In Afghan law, interpretations of which partly constitute custom and tradition, women and men have an unequal right to divorce. Men have the right to divorce their wives, whereas women have only the right to seek divorce on prescribed grounds. Such inequality is a barrier both in the formal justice system and in the community. Women must first negotiate support within their families if they are to seek divorce.

However, it should be noted that practices and traditions can change in Afghanistan. For example, it was reported to be more acceptable in communities for women to seek divorce in some areas before the civil war in Afghanistan that started in 1978.

### ***6.3 Lack of access to human rights information***

Lack of communications and transportation infrastructure is a problem for most people outside of urban settlements, further limiting access to justice. Telephone facilities are non-existent in rural areas and even in urban areas remain inaccessible to most Afghans. Roads across the country are poor and in many areas are seasonally impassable. Illiteracy, which is widespread and reportedly much higher among women than men, is another barrier.

The economic circumstances of women are a further practical barrier. Women generally lack skills that would make them economically self-sufficient outside the family. This dependence upon the family for economic support increases the risks of negative consequences for those seeking assistance in situations of abuse.

Women perceived the difficulty in getting help as rooted in their subordinate status and lesser worth. In at least two focus groups, women said, "We just want to be treated as human beings," articulating their profound frustration at the status of women. One focus group participant stated that, "No one listens to us and no one treats us like human beings."

Women are largely unaware of their rights under international law and also, to an extent, their rights under Afghan and *Shari'a* law. They are also remote from community information and decisions. From this distance, they may perceive authority as punitive and patriarchal. In one focus group, women stated that in their area justice was dispensed largely by the Governor who enforced and gave legitimacy to discriminatory practices, including the exchange of women and girls as a form of dispute resolution. They viewed the government as likely to directly abuse their rights and deny them justice.

A further key barrier is the absence of support and legal information. When support services are available, women approach them, often at considerable risk and with persistence. The fact that women do come forward to seek the assistance of NGOs and provincial departments of the MoWA indicates the need for expanded assistance programs and significant improvements to access to justice. A member of the MoWA staff in Mazar-e Sharif recounted how one woman continued to seek assistance from the MoWA office, despite severe violence at home. NGOs have been extremely resourceful in ensuring women had a chance to find out about their organizations, for example by visiting Mazar-e Sharif mosque on women's day to talk about their work.

Focus group discussions reveal that the vast majority of women suffering abuse face insurmountable barriers to accessing assistance. Some groups of women and girls, for example those given in dispute resolution, may also encounter particular difficulties because of the extreme isolation they often experience and estrangement from other family members sometimes imposed on them.

#### ***6.4 Recognizing the need for change***

Despite the difficulty of their circumstances, women in all focus groups articulated a strong desire for change. Most did not agree with practices such as forced marriage, although they are established custom. Many women supported the idea that acts of violence such as forced marriage and abuse in the family should be punished. One focus group member said "then men would learn and they would not do this to us". Several women in situations of abuse or violence stated the need for support, in particular from other women. Overwhelmingly, their

desire for improvement in their rights was driven by the wish to be able to work and contribute to their communities and country.

Some men also recognize the need for change. As one male community leader told Amnesty International, "humans are social beings - we can learn from the people of other societies. Over the years we can improve...if something is harmful (in society or traditions) we can remove it." The placement of men who are supportive of women's rights in positions of leadership is essential to achieving change. For example, Amnesty International delegates documented the actions of a provincial governor struggling to improve access to education for women and to conduct an investigation into the death of a woman in his community.

### **6.5 Recommendations**

- Provisions by states for combating violence against women must include legal aid and support services to women to assist them in coming forward to seek help and address cases to the justice system.(65) Legal aid to assist women victims of violence in approaching courts and law enforcement agencies must be provided as a priority. Training of, and support to, women working as service providers is required.
- Education programs targeting the public and community leaders should be undertaken on the importance of not stigmatizing women victims of violence and allowing them to speak out and seek help. Public information and legal literacy training approaches require extensive use of radio and community-based approaches in the context of widespread illiteracy. Assistance at the grassroots level will need to be created, based on the advice of NGOs already active at this level in view of the defects of the communications infrastructure.
- Communication and cooperation between civil society organizations and law enforcement agencies should be established at local level in the interests of protecting victims of violence and increasing women's trust in the criminal justice system.
- Community outreach is particularly important for cases of forced underage marriage. A number of creative solutions must be sought to encourage women in situations of risk to come forward and to support them in seeking redress. These

should aim at providing easily identifiable and confidential forms of support. The skills already developed by NGOs and community workers should be built on.

- NGOs and schemes such as Community Forums, organized by UN Habitat, have developed the capacity to do such work in some areas, which provides useful experience for work on violence against women. Women from outside the communities in question may be effective in gaining the trust of victims.

- Women with knowledge of women's rights and with skills in community outreach should be recruited and trained as police officers.

- Family law should be amended so that there is non-discriminatory access to divorce for women, in line with Article 16 of CEDAW.

## **7. Justice denied: women and the criminal justice system**

In its report "*Afghanistan: Re-establishing the Rule of Law*" Amnesty International reported on the failure of the current Afghan criminal justice system to protect the rights of women.(66) The report highlighted the denial of access to justice for women, combined with the widespread practice in certain locations of detaining and prosecuting women for *zina*.

The functioning of the formal justice system is generally limited to certain urban areas of Afghanistan. In rural areas, many disputes and crimes are dealt with by informal justice mechanisms, such as *jirgas* or *shuras*.(67) In some areas, powerful commanders or provincial governors, rather than traditional structures of community elders, will settle disputes on matters of importance.

Amnesty International documented two main features of the treatment of women within the criminal justice system in Afghanistan. One feature is that women are simply absent from the criminal justice system. Their invisibility in certain parts of the country appears complete. They do not appear as victims, perpetrators or as employees within the system of criminal justice. In such locations women are not known to approach the criminal justice system for assistance and are also absent from the civil court system. The second feature observed by Amnesty International is that where women do appear within the criminal justice system, they do so largely as defendants on charges of *zina*.

Response to women's concerns and in particular to the grave threat to their rights from systematic violence in the family and community is almost entirely missing. Justice, protection and redress are out of reach; instead women are prosecuted for consensual relationships outside marriage.

### ***7.1 Inadequate legal provisions to protect the rights of women***

Currently, the law considered to be applicable in Afghanistan regarding women's rights are: the Penal Code of 1976/1355 (Penal Code), the Criminal Procedure Law of 1965/1344 amended in 1974 (Criminal Procedure Law) and the Law on Marriage of 1971/1350 (Law on Marriage).

Amnesty International understands that new draft laws to be prepared by the JRC will be based on these laws. Shortcomings in these laws with regard to protection of women's rights will have to be addressed. The Penal Code, Criminal Procedure Law and Law on Marriage lack clear provisions to criminalize violence against women and do not provide appropriate remedies for women who experience violence. The possibility of redress for women is currently limited by the inadequacy of applicable law.

Consensual sex outside marriage is criminalized through the offence of *zina* in the Penal Code.<sup>(68)</sup> Amnesty International opposes the criminalization of consensual sex outside marriage and therefore believes that *zina* offences should not be included in the new Afghan Penal Code. Amnesty International further believes that the inclusion of consensual sex as an offence in the Criminal Code is an impediment to prosecution for rape, since women coming forward to report rape risk being detained for *zina*. The problem created by this particular aspect of the applicable law is illustrated by the comment of a woman prosecutor to Amnesty International when asked about the question of prosecution for rape. "You see we have a problem in our civil code. If a woman comes forward to report rape she is likely to be arrested for *zina*."

The Penal Code does not contain a clear definition of the offence of rape. Rape is considered to be included in, or conflated with, that of *zina* as set out in the Penal Code. However, such provision is entirely inadequate and does not

conform to international standards.(69) Provision to make violence against women in the family a criminal offence is also lacking.

The Penal Code also permits mitigation of sentences for murders claimed to have been committed in defence of honour. For example, a husband who murders his wife when she is found committing adultery is exempted from punishment for murder on that basis. This constitutes discrimination against women.(70)

The Law on Marriage stipulates that marriage must be through choice and that 16 years is the legal age of marriage for women, and 18 years for men. However, no clear and explicit provision is included in the Criminal Procedure Law to penalize those who arrange forced or underage marriages. Article 99 of the Law on Marriage, however, states that marriage of a minor may be conducted by a guardian, known under *Shari'a* law as a *Sharia-wali*. Amnesty International believes such provisions should be removed since such marriages constitute an abuse of the rights of girls.

Amnesty International is concerned by the provisions for divorce in the Law on Marriage, which it believes discriminate against women. Men are accorded the right to *Shari'a* divorce without recourse to the courts.(71) This right may be surrendered in the marriage contract. Women are accorded only the right to seek divorce from the court on specific grounds provided by *Shari'a*, which are not specified in the Law on Marriage.(72)

### **7.1.1 Recommendations**

- The ATA supported by the international community should ensure that the Constitution and Criminal Procedure Law, Criminal Law and Family Codes to be adopted during the transitional process fully comply with international standards, in particular CEDAW, and contain clear provisions to protect the rights of women. Amnesty International believes international expertise should be considered to support the work of the JRC and to ensure Afghanistan has the best possible legal basis for women to realize their rights.

- **The Constitution** should enshrine the principle of the equality of women and men and prohibit all forms of discrimination against women. The definition of

discrimination in CEDAW should be incorporated in the Constitution. The Constitution should provide for equal protection before the law for women and men. This requires the law to protect women according to their needs and to protect them from violence and harm specific to their gender. The Constitution should include specific provisions which enshrine the right to bodily and psychological integrity and the right of women and men to live free from violence.(73) The right of the state to take affirmative action and protective measures to promote the rights of women, which enable discrimination to be tackled effectively, should also be included in the Constitution.(74) All rights and freedoms created by the Constitution should be explicitly stated as applying to both women and men. The means of enforcement of constitutional rights through a Constitutional Court with clearly defined powers is essential. The right to bring proceedings, by relevant people and groups under the Constitution, should also be included.

- **The new Penal Code** of Afghanistan should include clear and specific provisions for the protection of women from violence. The responsibility of the state to prosecute such violence should be clearly outlined. The following forms of violence against women should be clearly defined as criminal acts: violence occurring in the family against women and girls, including sexual violence; the giving of women and girls in marriage as a means of dispute resolution; forcing women or men to marry against their consent; involvement in the marriage of juveniles; and rape, including marital rape and rape of juveniles. The definition of rape should conform to international standards. The definition provided by the draft Elements of Crime for the ICC is an appropriate formulation.(75) Any measures which constitute discrimination *de jure* or are known to result in discrimination against women in practice must be excluded. This includes the defence of honour for killing a woman, and the criminal offence of adultery and consensual sex.

- **The Criminal Procedure Law** should establish appropriate standards and procedures for gathering evidence in cases of violence against women, in accordance with international standards, in particular the Rome Statute of the ICC and the Istanbul protocol. Procedures for investigation, evidence gathering and prosecution of rape must be gender sensitive and respectful of the rights of women.

- The provisions of the **Family Code** should comply with the requirements for equality of rights between men and women included in the ICCPR and

CEDAW. Women and men should have equal rights in marriage and on dissolution of marriage. The right to divorce should be equal for men and women, and rights to property on divorce should be equal. The right of women to custody of children in case of divorce should be established. The right of women and men to marry a spouse of their choice must be guaranteed. The law should outline measures to ensure both parties have fully and freely consented to the marriage, and have made an informed and positive choice to marry. The role and responsibility of parents with regard to choice of spouse should be considered secondary to the choice of the individual, and considered to be advisory only. The responsibility of the state to ensure proper registration of birth, marriage and divorce and the availability of understandable documentation should be clear. Any marriage made without the full and free consent of both parties should be considered invalid. Courts should have powers to declare invalid marriages made without full consent of both parties. Any marriage of an underage person should be considered invalid. Remedies should be created to enable juveniles to be released from situations of forced marriage. Clear remedies and the means for their enforcement for women victims of violence must be provided. These are necessary in addition to the prosecution of offenders to ensure women can leave situations of violence and find safety. The route from situations of risk and violence to safety must be clear in law, and guaranteed in practice. Clear remedies for female juveniles in situations of risk and violence must also be guaranteed. The rights of other parties to bring proceedings on behalf of, and in order to protect the rights of, juveniles must be ensured. Provision of civil protection orders for victims of domestic violence should be included.

## ***7.2 Failure to investigate crimes of violence against women***

Amnesty International research indicates a failure on the part of the state to investigate fully serious crimes against women and to protect women at risk. Prosecution for crimes of violence against women including rape and domestic violence is extremely rare. Amnesty International was not informed of any instances of prosecution for either forced marriage or the exchange of women or girls.

### **7.2.1 Failure to investigate violence against women in the family**

There is a failure to address and tackle adequately violence against women in the family. The Criminal Procedure Law contains no provision that clearly criminalizes violence in the family. In addition, even in serious cases, the police and courts do not treat violence against women as a criminal offence. As a result of these factors, the only reported cases where the courts consider violence against women in the family is during divorce proceedings before a civil court.

In two divorce proceedings observed by Amnesty International delegates, women claimed that they had been physically abused by their husbands. However, in both of the cases, the judges failed to view the physical abuse allegations as giving rise to any form of criminal liability on the part of the husband. In one of the cases, the judge ordered the wife to return home to her husband and "come to an agreement with him". The judge stated that if they had not come to an agreement within three days that they should return to the court to decide whether a divorce should be granted. Amnesty International observed that reconciliation of partners is the preferred method used by the court in cases of violence against women in the family and that women are routinely sent back to an abusive spouse.

Moreover, it appears that in divorce proceedings, violence against women in the family is not always seen as appropriate grounds for granting a divorce. Amnesty International delegates were informed that injuries sustained must be perceived to be serious by the judges in order for them to consider granting a divorce. In one divorce case, it was reported that a woman was beaten in the street by her husband, and that witnesses supporting her claim appeared in court. However, the judges reportedly stated that as her arm was only lightly injured and not broken, there were no proper grounds for a divorce.

Some judges interviewed by Amnesty International delegates stated that the practice of using any form of physical violence against a woman, violated the *Shari'a*. However, the failure to criminalize the practice or offer any form of support to women victims of violence makes it almost impossible for women to bring cases before the courts.

### **7.2.2 The failure to investigate rape**

Prosecutions for cases of alleged rape are extremely rare within the criminal justice system. This is in part a result of the lack of capacity within the criminal investigation department of the police to investigate rape cases properly. Currently, there are no facilities for forensic investigations that are essential for the collection of evidence in rape cases. Instead virginity testing is carried out on rape victims. The police and prosecutors stated that the results of virginity tests and witness statements, if they exist, are currently the only supporting evidence that can be produced before the court in rape cases. However, the major factor preventing victims of rape complaining to the authorities is the fear that instead of being treated as a victim, they themselves will be prosecuted for *zina*.

### **7.2.3 The failure to investigate forcible marriage of girls and women**

In certain areas of Afghanistan where Amnesty International found that cases of forced marriage had come to the attention of the courts, there was an evident failure to initiate any criminal proceedings against the accused. In one particularly serious case, the grandmother of an eight-year-old girl approached the court to facilitate proceedings against a 48-year-old man to whom her granddaughter had been forcibly married. However, the court refused to initiate any proceedings for forced marriage of a juvenile and stated that the only manner in which the case could be dealt with was through proceedings for divorce.

### **7.2.4 Pressure on the judiciary**

There is a widespread pattern of family members putting pressure upon the courts in order to ensure that a female relative, who has not acted in accordance with their wishes, is detained. The problem is particularly acute in cases involving girls and young women who resist forced marriages or who wish to marry men against the wishes of their family. Amnesty International interviewed a number of girls and young women in prison whose families had put pressure on the police and courts to ensure their arrest and continued detention after they had refused to marry in defiance of their families. The legal basis for these detentions was, in most cases, unclear.

In one case, the father of an 18-year-old woman initiated the arrest and prosecution of his daughter after she refused to marry a cousin. The young woman had informed her family that she wished to marry a different man.

However, her parents insisted that she marry her cousin and when she refused her father put pressure on the police to facilitate her arrest. At her first court appearance, the judge informed the young woman that she was being detained for "wishing to marry without her parents' consent". However, the young woman was subsequently subjected to two forcible virginity tests and informed that she was being charged with *zina*. Both the police and the court informed the woman that she would not be released from prison until such time as her family changed their minds and agreed to the marriage that she wanted.

While there is no evidence of corruption in this case, in other similar cases there are indications that family members provided financial incentives to judges in order to ensure that female relatives remain in prison. One case documented by Amnesty International involves a 14-year-old girl who was sentenced to three years' imprisonment for leaving her husband. The girl had been forcibly married by her family at the age of 13 and was reportedly subjected to physical and sexual abuse by her husband. A year after the marriage, the girl left her husband with the assistance of another man. It was reported that the family paid the judges to ensure her conviction.

Women's perception of the formal and informal justice system deters them from seeking assistance and reporting crime. Neither of these structures merit the trust of women, who clearly perceive that both would favour the interests of men. Women informed Amnesty International delegates that they expected the courts to protect the interests of a man if they sought justice, a reason given by one woman for not seeking divorce. Women stated that they would only ever seek the assistance of such mechanisms in cases of very severe abuse, or when they were desperate, if at all.

#### **7.2.5 Difficulties for women in approaching the courts**

As described above, women are denied access to informal justice mechanisms by the fact that they cannot approach such bodies directly. In the rare instances when they seek action by such bodies, a male relative, or in certain cases an older woman, has to plead on the woman's behalf. If women are able to overcome the barriers outlined above, informal justice mechanisms provide only very limited redress for women experiencing severe abuse. The Deputy Head of a provincial office of the MoWA told Amnesty International that reports suggest

such bodies normally decide the case in the interests of the man. They may gather to consider the case, but the only action they are reported to take is to warn the husband to stop beating his wife.

In practice it is difficult for women to approach the formal justice system without the support of a man. Though Amnesty International was informed of rare instances when women had approached the criminal justice system in circumstances of grave violence, seeking justice, for example succeeding in getting divorce, is much easier for women who have the support of families and male relatives.

#### **7.2.6 Confusion about applicable law**

Statutory law is not the exclusive source for judges currently working in Afghanistan, and is not uniformly or consistently applied.<sup>(76)</sup> In adjudicating criminal cases, judges are currently applying a mixture of *Shari'a* law, Afghan customary law and statutory law. Amnesty International research found an evident lack of clarity regarding the relationship between the different sources of law and how to resolve any conflicts between the different sources.

The decades of destructive civil war have left limited material resources, including legal texts, and a central and uniform administration of justice is lacking. Amnesty International is concerned that the lack of certainty and consistency over legal sources has particular and negative implications for women. A women's rights activist who has assisted women in legal proceedings stated to Amnesty International that, "Judges will choose between written law, custom and *Shari'a* according to which suits the interests of the man."

Court proceedings observed by Amnesty International indicate that the criminal justice system in Afghanistan may apply charges that have no basis in written or *Shari'a* law. Women and girls are routinely detained for the offence of "running away", which has no basis in statutory law. A young woman who was detained for *zina* crimes, when brought before court was charged by a judge with seeking to marry without her parents' permission - again a charge without legal foundation.

#### **7.2.7 Lack of adequate training and capacity**

There is very little professional training for police in Afghanistan.(77) Police have so far not received training on positive measures to protect the rights of women. As Amnesty International's report "*Afghanistan: Re-establishing the rule of law*" showed, judges display a lack of gender sensitivity and legal knowledge in relation to women's rights.

Amnesty International is concerned in particular that the training of police and judges established with international support following the fall of the Taliban regime does not equip law enforcement and justice professionals with the requisite understanding, knowledge or skills to respond properly to women victims of violence.

Training of new recruits in the Police Academy in Kabul does not include appropriate instruction and sensitization on issues of violence against women. In August 2002 the Police Academy was re-established, with support from the German government. It uses curricula developed by the German Project for the Support of the Police in Afghanistan (German Policing Project). Amnesty International understands that recruits are taught about the steps they should take to enforce the *zina* provisions of the applicable law.(78) They are not, however, taught about their responsibility to act in cases of rape, domestic violence or underage marriage. A new police academy is due to be opened in Gardez in November 2003, with others planned to open next year in Bamiyan, Jalalabad, Kunduz, and Mazar-e Sharif. According to the UNAMA spokesperson, "The courses are aimed at existing policemen who have had little or no previous police training and cover the democratic principles of policing, human rights and basic law as well as policing techniques such as arrests" but there is no mention of issues specific to violence against women.(79)

Amnesty International is also extremely concerned that a training program for sitting judges and prosecutors planned by the International Development Law Organization (IDLO) will not include training on gender sensitivity and the rights of women. IDLO informed Amnesty International delegates that it considered such training "too sensitive for Afghans".(80)

The absence of training on the protection of women's rights is of great concern in view of the manifest lack of concern, sensitivity and understanding of women's

rights and violence against women displayed by those working in the criminal justice system. For example, in response to a question from an Amnesty International delegate about what might constitute evidence of rape, a woman prosecutor responded that she was not sure what to look for, and suggested blood on the clothes of an alleged perpetrator might constitute evidence.

As stated above, capacity is lacking within the criminal investigation department of the police to investigate rape properly. Currently there are no facilities for forensic investigations that are essential for collection of evidence in rape cases, for example DNA testing of semen. However this is not reflective only of lack of resources. Capacity does exist to routinely conduct virginity testing on alleged perpetrators of *zina* crimes and rape victims.

### **7.2.8 Recommendations**

- A planned response for women seeking assistance must be developed as a priority. It should be clear who women can go to, and who has designated responsibility for assisting. There must also be accountability to ensure that women are not ignored.

- **Training** on policing to protect the rights of women should be incorporated into the curricula of all Police Academies.<sup>(81)</sup> A curriculum component should be designed for use in the Kabul Academy and other planned training academies. Interactive and participatory training methods are likely to increase understanding of gender and discrimination issues and the need for change. Training should make clear what constitutes appropriate treatment of women, and what is discriminatory and abusive behaviour which must be avoided. Training should instil awareness about violence against women and the need to protect women from violence wherever it occurs. International standards outlined in this report should be used as a basis for training curricula on women's rights. Inclusion of training on women's rights should begin with as soon as the appropriate curriculum is developed. Classes should be provided to past students to redress the absence of such training for the first intake of recruits. The skills of Afghan police trainers should be developed to work on policing to protect women's rights, and women trainers should be recruited. Training by international experts should be considered as a short-term measure. Effective training requires provision for follow-up and supervision and support to those who have been trained. Models of training used should be based on those proven to be effective in other countries.

Training of in-service police should also include issues of gender and violence against women.

- **Guidelines for police** incorporating clear and binding procedures should be established for action and response when women report violence to police. Police officers and commanders should be made aware of their responsibilities. Police should be provided with accessible materials on the rights of women and appropriate and non-discriminatory conduct towards women.

- **Specialist policing capacity** should be established to increase police and investigative capacity to protect the rights of women, and to investigate and prosecute violence against women, according to international standards. This should be developed through specialist units or designated experts in provincial police and prosecution structures. Such experts should consult and work with the MOWA and women's rights NGOs. In the interim, seconded international expertise should be considered to support this work, and to support those learning skills.(82)

- **Forensic expertise** should be developed. The Criminal Investigation Department of the Ministry of Interior and Attorney General's Office must ensure that the necessary investigative and evidentiary procedures and capacity for prosecuting acts of violence against women, including rape, are established. Those responsible for gathering physical evidence in cases of rape should be trained in appropriate and gender sensitive methodologies and according to appropriate international standards. Sufficient numbers of women forensic examiners and medical experts should be trained to ensure women are available to examine victims in cases of violence against women. There must be sufficient international donor support to create this capacity.

- **Training of judges** must include training on the rights of women. Judges should have a comprehensive training on the theory and practice of protecting women's rights, including on the provisions of CEDAW and the ICCPR. Specific practical training should be given on issues such as gender sensitive interviewing of women, respectful treatment of women, the independence of the judiciary from family influence over questions of women's status, and the principle of non-discrimination in judicial proceedings. Clear and accessible materials on women's rights and relevant professional responsibility for those working in law enforcement should be developed and circulated.

· **The establishment of juvenile and family courts** should be prioritized. The establishment of properly functioning family and juvenile courts is essential for ensuring that the rights of vulnerable groups are protected. The Supreme Court and the JRC, with the assistance of the international community, must immediately establish family and juvenile courts outside Kabul.(83)

### ***7.3 Under-representation of women in the criminal justice system***

Gender inequality in Afghanistan permeates into the judiciary where women are greatly under-represented. Although at the time of writing no exact statistical data pertaining to the number of women judges was available, a Supreme Court representative informed Amnesty International delegates that out of a total of 2,006 sitting judges, only approximately 27 are female. There are also few women police officers and those met by Amnesty International delegates appeared to have a limited role, such as carrying out body searches of women suspects or searching buildings containing women, but were not involved in regular operational policing duties. Forty women have been recruited to the police academy in Kabul, with concerted plans to recruit more women under way. (84)

With the exception of the heads of the juvenile and family courts in Kabul, women are excluded from key positions within the judiciary. In addition, where women do serve as judges, reports indicate they do not perform the same functions as their male counterparts. Female judges tend to act in the capacity of judicial clerks and are rarely involved in the adjudication of cases.

In interviews with Amnesty International, a number of senior judges expressed a lack of concern for, and even resistance to, the greater inclusion of women in the judiciary. The lack of concern with the under-representation of women is evident in the fact that neither the Supreme Court, Ministry of Justice nor the Attorney General's Office hold any statistical data on the number of women judges and prosecutors. Furthermore, in interviews with Amnesty International delegates, many senior judges expressed outright opposition to increasing the number of women judges. Other judges informed the organization that if there were to be more women in the judiciary, then it would only be appropriate for them to serve in the family and juvenile courts. When Amnesty International delegates asked

the Chief Justice whether he had a strategy for increasing the number of women judges, he informed the organization that "there are many unemployed men and our priority is to provide jobs for them. Once the problem of male unemployment has been resolved then we will turn our attention to women."

CEDAW places an obligation on the government of Afghanistan to ensure the right of women to hold public office and perform all public functions at all levels of government.<sup>(85)</sup> In addition, both CEDAW and the ICCPR set out that, where necessary, governments should undertake affirmative action to ensure that men and women enjoy equal rights.<sup>(86)</sup> Amnesty International believes that affirmative action must be taken to ensure greater participation of women in the Afghan judiciary.

### **7.3.1**

- In order to remedy gender imbalance within the judiciary, a fast track program for women lawyers to become judges must be initiated. Female graduates from the law school and qualified female lawyers should be identified for recruitment to all training courses. The current requirement that these women lawyers are employees of the Ministry of Justice, Supreme Court or Attorney General's office should be lifted. The international community must assist in the establishment of this program and provide financial support to women lawyers to ensure that they are able to engage in the training program.

- Targets for the recruitment of women into the police force should be set and maintained. Proactive recruitment programs should be established and specially designed trainings undertaken to encourage more women to join. The decision to recruit and train more women police officers should be taken at the highest policy levels of the police and implemented across the whole country.

### **7.4 Prosecution for zina crimes: a double harm to women**

Of the provincial capitals in which Amnesty International conducted research, the practice of detention and prosecution of women for adultery, "running away from home" and consensual sex outside marriage, referred to in Afghanistan as *zina* crimes, was common in Mazar-e Sharif, Kabul, and Herat. In regions such as Jalalabad where Amnesty International found no women or girls detained for *zina* crimes, the organization was repeatedly informed that if there was a case

involving *zina* crimes it would not be reported to the police. Instead, the family would deal with the case by killing the girl or woman involved.

Amnesty International delegates interviewed over 40 women and girls in prisons in Kabul, Herat and Mazar-e Sharif. In Herat, of 67 detainees in the women's detention centre all but six were imprisoned or detained for *zina* crimes. The majority of married girls and young women interviewed by Amnesty International stated that they had either been forced into marriage or sold by their families at an early age. Many detainees stated that they had subsequently become victims of sexual and physical abuse. Other detainees were seeking to marry a spouse of their choice in preference to a forced marriage - a right enshrined in Afghan and international law. Other women and girls were fleeing violence in the home by family members. In such cases, the Afghan state is apparently punishing victims of violence whom it has failed to protect.

The detention of women and girls whose circumstances involve abuse and forced marriage also indicates the complete absence of remedies and access to protection for women victims of violence in both the formal and informal legal systems. It should be noted that escaping violence or the risk of a forced marriage is usually only feasible in the company of a man, since travelling alone is risky and presumably extremely difficult for many women to finance. Detention for *zina* crimes may constitute the only possible way in which women at risk of violence from their families, in particular for seeking to escape from forced marriages can be made safe. Several women in detention for *zina* crimes in Kabul informed Amnesty International delegates of their fear of violence from family members if released. In November 2002 following an amnesty for women in which 21 women were released from Kabul detention centre, one woman detained for *zina* crimes was reported to have been killed when released.(87)

The women and girls detained lack access to legal advice and some have little understanding of their situation. Their behaviour shows no criminal intent and they have harmed no one. Their incarceration can be of no benefit to the security of Afghanistan. In certain cases, detention and prosecution is triggered by the family approaching the police. In Herat, it is reported that police carry out investigations against women and girls, following women "like spies" and, in some cases, randomly carrying out virginity tests.

Women and girls are detained for "running away" even though no such offence is present in Afghan law. Detention and imprisonment for uncodified offences is a breach of international standards ratified by Afghanistan.(88) Criminalization of the act of running away from home constitutes a breach of freedom of expression and association. The practice of detention for *zina* crimes constitutes discrimination against women. Men are also prosecuted for adultery, but in lesser numbers and may receive shorter sentences. Women alone are detained and prosecuted for "running away".

The risk that women seeking assistance will be criminalized is born out by many cases of women seeking the help of the police and being arrested for *zina* crimes. Among them was "Massoumeh" who wanted to marry against the wishes of her family. She had not succumbed to pressure from her family. But, when she made a second approach to the police for help to prevent a forced marriage, she was arrested and charged with *zina*.(89) Police informed her that she would remain in prison until her family agreed she could get married. Massoumeh was examined twice to see if she was a virgin. The court held two hearings on the case. The charges read out by the judge included wishing to marry without her family's permission. Massoumeh's understanding was that if she agreed to do what her family wished she would be released, otherwise she and the man she wished to marry would be sentenced to 10 years' imprisonment. Massoumeh, who is illiterate, had tried to tell her story to judges and a prosecutor, but found that they did not care what she said.

"Jamila", aged 16, interviewed by Amnesty International, and serving a three-year sentence for running away from home, had been to court nine times. She had been forced to marry an 85-year-old man at the age of nine, and had run away with a lover when her situation became intolerable.

"Ziba", aged only 14, was sentenced to three years in prison for running away from home. She had been abused by the cousin she had been forced to marry when she was 13.

Physical examination of women for virginity is carried out on many women detainees in Herat, Kabul and Mazar-e Sharif.(90) The examination is carried out

by medical forensic specialists, who are generally men. One young woman reported being tested against her will. Other women have little understanding of the process. Women may also be subjected to more than one test, if the outcome is doubtful. The process appears to be based on examining the hymen to establish whether it is intact.. Amnesty International considers such procedures as having no place as evidence in criminal proceedings. Medical specialists consider the state of the hymen as an unreliable indicator of virginity.(91)

Amnesty International views the practice of virginity testing that is used in cases of *zina* as a form of cruel, inhuman and degrading treatment, a denial of the right of women to physical and sexual integrity and a form of violence against women by state officials.

#### **7.4.1 Recommendations**

- The ATA, with the support of the international community should undertake to bring the detention and prosecution of women and men for *zina* crimes to an end. This process should be conducted in a carefully planned way. The ATA should take measures, including public information and media initiatives to ensure that decriminalization of adultery does not expose women to the risk of violence or result in cases of elopement and alleged adultery being resolved through murder or the exchange of girls as an alternative.
- The process of legal reform currently underway should remove the criminal offence of adultery from the Afghan Penal Code.
- Protection and shelter capacity must be developed as an alternative to detention for women and girls accused of *zina* crimes and at risk of violence from their families.
- Immediate measures should be taken to cease police investigation and arrest of women and girls for "running away".

#### ***7.5 Inadequate provision for shelter and legal aid***

Access to shelter is one of the most important needs for any woman attempting to seek redress. Amnesty International understands that two shelters, run by NGOs, have been in operation in Kabul but they have encountered several problems. Outside the capital, to Amnesty International's knowledge, no shelters

exist. The international community must provide support for the creation of safe and functioning shelters, and those running these shelters must be adequately trained.

Legal aid is another essential tool for women to seek justice in the formal court system. Plans to provide legal aid for women in provincial centres have been made by the US development agency, USAID. However, Amnesty International was told that provision of legal aid is the hardest of their tasks and, therefore, would be the last objective addressed. It is essential that access to legal aid for women is provided as a priority. A far-reaching human rights awareness campaign should be launched to ensure that women know their rights, and where they can go to seek legal aid.

UNIFEM and the MoWA are responsible for the specific projects relevant to the protection of the rights of women such as provision of shelter and legal aid. However, specific and urgently needed interventions to provide legal aid, shelter and access to justice for women have been subject to much delay. For instance, the MoWA proposed the establishment of a shelter but had not been able to secure funds for its creation at the time of writing.

The MoWA has dedicated capacity to provide legal aid and has a specific legal department in its headquarters in Kabul. However, this is not available yet in provincial offices. There, staff of the MoWA undertake support as far as they are able without specific capacity. Legal aid provided by the MoWA in Kabul and in the provincial departments has often focused on mediation and informal intervention rather than supporting legal redress. Amnesty International was informed that the head of a provincial department of the MoWA, when approached by a woman experiencing violence, had intervened with the family. This was considered to have been an effective intervention. However, the address of the woman was not on file in the office and no follow up visits had been undertaken, leaving the woman at risk of further violence. Women may approach a number of different actors for assistance including NGOs, the MoWA, AIHRC, UNAMA or, on rare occasions, law enforcement agencies and courts. There is not one consistent and effective mechanism to which women know they can turn and which has been able to develop expertise in responding to requests.

A clear system to track women and coordinate assistance to ensure they are not at risk needs to be established.

UNIFEM itself admits that a proper legal aid strategy needs to be put in place. It has undertaken a survey on gender and justice and provided capacity building for the legal department of the MoWA in Kabul. It has recently finalized its gender justice program based on their capacity building of women legal professional NGOs.

The work of UNIFEM in the field of gender and justice consists to date of supporting a group of NGOs and government representatives to submit recommendations on legal reform, and support to the MoWA legal department.

### **7.5.1 Recommendations**

- The provision of shelters and places of safety for women victims of violence and women at risk of violence must be expedited. Such provision requires specialized technical skills and is particularly challenging in Afghanistan owing to the extent of violence against women and the involvement of armed groups in such violence. Amnesty International recommends that external expertise is made available to assist with the planning and implementation of shelter provision.
- UNIFEM should urgently build the capacity of the MoWA to provide effective legal aid through training by external expertise where necessary, and design a system of case recording and tracking. Capacity for legal aid should be provided at a provincial level as an urgent priority.
- Co-ordination between shelters and legal aid providers and law enforcement agencies should be developed. UNIFEM should develop a system that will coordinate response to women victims of violence. Women should not be returned to situations of risk.
- Capacity building for NGOs providing legal aid and shelter to women should be provided. This should include provision to develop specific knowledge and skills on women's rights, provision of legal aid, and violence against women. They should be provided with specialized skills to conduct such work provided by experts with proven experience. Technical skills needed to work on legal aid, counselling for victims and provision of shelters should be provided to encourage

the development of specialized NGOs. Technical capacity building on issues of membership and administration should also be provided.

- Opportunities for learning about women's human rights and gender should be provided to a range of civil society representatives, such as the media and students, to increase future capacity.

## **8. Integrating gender equality in all areas**

In late 2002 the ATA and the international community established a single government-led aid coordination mechanism. Among the 12 Consultative Groups established were one for the justice sector and one on policing. In addition, advisory groups were established for each cross-cutting issue, including gender, human rights, humanitarian affairs, and the environment.

The government stated that its "principal strategy on both practical and strategic gender concerns is mainstreaming within each of the national development priority programme areas and the national budget."

The MoWA chairs the Gender Advisory Group, while UNIFEM and the USA are the focal points. The Advisory Group consists of members of international and national NGOs, UN agencies, professional women's associations and networks, and donors with gender expertise. This Advisory Group supports the MoWA and was intended to feed recommendations into each Consultative Group, the Consultative Group Standing Committee, and the Afghanistan Development Forum (ADF), due to meet annually in Kabul to assess progress and discuss national priorities for the new budget. This Advisory Group was seen as an opportunity for coordination on women's issues by the ATA with the international community that should be maximized by all those involved.

Despite the intentions, these mechanisms have so far not been able to ensure the coordination and planning of donor contributions and activities to promote gender equality and women's rights during the reconstruction process. Importantly, in terms of women and the criminal justice system, Amnesty International is not aware of any cooperation between the MoWA and the ministries responsible for justice and law enforcement. The existing arrangement

has not been effective to date in ensuring work to reconstruct the criminal justice system has fully integrated provision for women's rights.

The system of gender mainstreaming has not provided relevant technical advice on policing and justice issues. Police and judicial reconstruction advisory groups have not consistently considered and planned to incorporate issues of gender and women's rights into their work. One donor expressed the view that the Gender Advisory Group was exclusive and had not encouraged other donors to contribute to gender equality issues.

The budgets for the Justice and Interior Ministries do not include specific provision for activities to protect the rights of women. Although UNIFEM is working with the MoWA to provide training to other ministries of the ATA, no such training has so far been conducted for staff of the Justice and Interior Ministries. The Justice and Interior Ministries do not have sufficient capacity or specific strategies to undertake activities to combat violence against women. Operational cooperation between the MoWA's legal department and the Ministries of Justice and Interior has not been effectively established. Although focal points for gender were appointed in each ministry, few of these have any power and cannot influence the programs of their ministries.

The two key donors involved in the reconstruction of criminal justice system are Italy, the lead donor for judicial reconstruction, and Germany, lead donor for policing. This role gives them responsibility for coordinating international donor assistance in the respective spheres. When planning reform and reconstruction of the criminal justice system, neither donor has developed a clear strategy to ensure non-discrimination and protection of the rights of women. In addition, specific analysis has not been carried out on gender discrimination or the needs for protection of women's rights within the existing system. Specific projects, such as training for judges including women judges, are under way, but there is no consistent nationwide strategy to ensure the protection of women's rights in the criminal justice system. The gender component of the Italian funding of judicial reconstruction mainly consists of financial support to the work of UNIFEM. UNIFEM has recently finalized a new gender justice strategy which is based on their capacity-building of women legal professional NGOs. While the new strategy is a potentially valuable contribution, the extent of structural

discrimination and the failure to protect the rights of women in the criminal justice system mean that analysis and planning must be carefully gender mainstreamed throughout.

In addition, the survey undertaken by the JRC between March and May 2003 on capacity within the existing justice system did not include an analysis of gender discrimination. So far, no new projects focusing on women's rights have been planned as a result of this survey.

Germany was instrumental in the reopening of the Police Academy in Kabul and the design of the curriculum. Amnesty International welcomes the attempts to recruit more women to the Academy, but has found that no components on policing to protect women from violence have been included in the curricula for the Academy. Specialist expertise on this issue has not so far been provided by the German policing project, and special training has not been given to ensure that Afghan police trainers in the Academy are appropriately skilled.

There are also concerns about the lack of attention to protect the rights of women by ISAF. For instance, Amnesty International was told that during its joint patrols with the police in Kabul, women are routinely arrested and detained for *zina* crimes. As set out in this document this practice leads to abuse of the rights of women.

Amnesty International believes that measures to protect the rights of women should be central to all plans for the reconstruction of the criminal justice system. Reconstruction should aim to end discrimination and abuse with the existing system and ensure capacity is created to protect the rights of women and girls according to international standards. The international community has a responsibility to ensure this, and to provide the ATA with the necessary support, including financial, material and technical.

## **8.1 Recommendations**

- Responsibility for gender mainstreaming of the reconstruction process in Afghanistan must be taken at the highest level in the ATA and international community. The MoWA must be given more political support by the ATA.

- A holistic strategy should be designed and implemented to ensure protection of women's rights during reconstruction of the criminal justice system.
- The MoWA should be supported in developing a policy unit that can effectively oversee the work of government ministries on gender issues and provide guidance.
- The Ministry of Justice and Ministry of the Interior should have designated resources for developing and implementing measures to protect the rights of women. Responsibility should be undertaken for gender issues at a senior political level. Specialist capacity on gender issues sufficient to cooperate fully with MoWA and to effect change should be provided within ministries.
- UNIFEM should ensure that specialized technical training on practical measures to protect the rights of women is conducted for staff at the Ministries of Justice and the Interior. Carefully targeted external expertise should be considered to support work in these ministries.
- A taskforce to address violence against women should be established at senior level by the ATA and the international community. Such a body should be cross-ministerial and include participation at senior level.
- The international community should undertake to support analysis of discrimination and abuses within the existing system to ensure all problems identified are addressed.
- The establishment of a database of relevant best practice on policing and judicial measures to protect the rights of women should be considered by UNIFEM as an information resource for donors on lessons learned during other post-conflict intervention and relevant technical expertise.(92)
- ISAF should immediately review its joint patrols with police to ensure that all possible efforts are made to ensure respect for the rights of women.

## **9. Conclusion: Keeping the promise?**

Amnesty International recognizes that building the capacity of the criminal justice system to address issues of violence against women is a long-term process. Careful planning and sequencing of the different elements required is essential, hence the importance of strategic planning. Certain aspects of provision and action by the international community and ATA must be carefully combined and coordinated, such as measures to make violence against women a crime and provide public education.

Amnesty International welcomes the attention of the ATA and the international donor community to the reconstruction of the criminal justice system, but urges that more is done. The forthcoming *Loya Jirga*, which will debate a new Constitution for Afghanistan, is an opportunity to enshrine women's rights in the laws of Afghanistan. The poor situation for women, highlighted in this report, must be remedied. Women's rights must be prioritized throughout the reconstruction process. The international community must support the ATA in this complex and difficult task.

Donors must ensure that the international community coordinates its financial and technical support programs and that commitments are made to provide long-term assistance based on international standards. Donors must consult women across Afghanistan to determine the needs of Afghan women.

Ensuring respect for women's rights and the rule of law in Afghanistan can only be successful if there is sustained commitment and support from the international community and key Afghan actors. Amnesty International is calling on all national and international actors to fully implement the recommendations in this report as a matter of urgency.

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(1) Remarks at the Eisenhower Executive office building, 19 November 2001, reported on US State Department website, <http://www.state.gov/secretary/rm/2001/6229.htm>.

(2) See, for example, Amnesty International Women in Afghanistan: Pawns in men's power struggles, AI Index: ASA 11/11/99, and Report of the UN Special Rapporteur on violence against women, its causes and consequences on her mission to Afghanistan, Ref: E/CN.4/2000/68/Add.4 (March 2000).

(3) UN Security Council Resolution 1325 adopted 31/10/2000. Namibia Plan of Action adopted in Windhoek, Namibia, 2000.

(4) Women, Peace and Security: Study submitted by the Secretary-General pursuant to UN Security Council Resolution 1325 (2000). Ref: E.03.IV.1 ISBN: 9211302226.

(5) CEDAW was ratified by Afghanistan on 5 March 2003.

(6) Afghanistan ratified the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1983, which both require that states respect and ensure respect for human rights without discrimination, inter alia on the grounds of sex. It ratified the Convention on the Rights of the Child (CRC) in 1990, which requires that states protect the rights of boys and girls equally.

(7) A Loya Jirga (General Assembly) is a traditional Afghan decision making body dating from the 18th century. Prior to the establishment of the ATA, the government of Afghanistan consisted of the Interim Administration established by the Bonn Agreement.

(8) See Amnesty International "Afghanistan: Re-establishing the Rule of Law", August 2003, AI Index: ASA 11/021/2003, pages 2-4 for further information.

(9) In late 2002 the ATA and the international community transitioned to a single government-led aid coordination mechanism to ensure that the ATA set priorities for future aid spending. Twelve Consultative Groups (CGs) were established, within which the National Budget was to be planned, financed and implemented. Advisory groups were established for each cross-cutting issue, including gender, human rights, humanitarian affairs, and environment. The government has stated

that its "principle strategy on both practical and strategic gender concerns is mainstreaming within each of the national development priority programme areas and the national budget." The Advisory Group on Gender supports the MoWA and will feed recommendations into each CG, the CG Standing Committee, and the Afghanistan Development Forum (ADF), due to meet annually in Kabul to assess progress and discuss national priorities for the new budget. The group consists of members from international and national NGOs, UN agencies, professional women's associations and networks, and donors with gender expertise.

(10) Womankind Worldwide, "Taking Stock Update: Afghan Women and Girls Sixteen Months on", May 2003.

(11) International Crisis Group, "Afghanistan: Women and Reconstruction", ICG Asia Report No. 48, 14 March 2003.

(12) 2 See Amnesty International "Afghanistan: Re-establishing the rule of law", AI Index: ASA 11/021/2003 for a more detailed outline of UNAMA's work on human rights.

(13) See, for example, Human Rights Watch reports, "Killing You is a Very Easy Thing For Us":

Human Rights Abuses in Southeast Afghanistan (July 2003), and "We Want to Live as Humans: Repression of Women and Girls in Western Afghanistan" (December 2002).

(14) Deployment of ISAF was authorized in December 2001 by UN Security Council Resolution 1386.

(15) PRTs do not have orders to intervene in conflicts between factions or to protect civilians. PRTs are engaged in activities that include construction of schools, clinics and bridges, and training of police. There are ongoing discussions as to whether PRTs are a real option for security across the country.

(16) Amnesty International "Afghanistan: Re-establishing the rule of law" AI Index: ASA 11/021/2003, "Afghanistan: Crumbling prison system desperately in need of repair" AI Index: ASA 11/017/2003, "Afghanistan: Police reconstruction essential for the protection of human rights" AI Index: ASA 11/003/2003.

(17) The Convention defines discrimination against women as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

(18) Article 2 of CEDAW, paras (a) - (g).

(19) CEDAW, Article 5, paragraph (a).

(20) General Recommendation 19, made at the 11th session of the Committee in 1992 is included as an annex to this report. The Committee is a body of 23 independent experts mandated to receive reports by state parties on the implementation of the convention.

(21) General Recommendation 19, paragraph 9.

(22) General Recommendation 19, paragraph 24(b).

(23) Report of the Special Rapporteur on VAW, "Cultural Practices in the family that are violent towards women" E/CN.4/2002/83.

(24) CEDAW, Article 16 (a) and (c).

(25) 4 CEDAW, Article 16.

(26) UN General Assembly Resolution 48/104 of 20 December 1993.

(27) Adopted at the Fourth World Conference on Women, 1995, Beijing.

(28) Beijing Platform for Action, paragraph 124d) "[States should] adopt and/or implement and periodically review and analyse legislation to ensure its effectiveness in eliminating violence against women, emphasising the prevention of violence and the prosecution of offenders; take measures to ensure the protection of women subjected to violence, access to just and effective remedies, including compensation and indemnification and healing of victims, and rehabilitation of perpetrators."

(29) Both instruments are included as an annex to this report.

(30) UN Security Council Resolution 1325; clauses 5, 6 and 7.

(31) UN Security Council Resolution 1325; clause 8(c).

(32) Article 8 of the Namibia Plan of Action adopted by the Windhoek Declaration 2000.

(33) Action 2, Recommendations on Reconstruction and Rehabilitation, Study on Women Peace and Security submitted by the Secretary-General pursuant to UN Security Council Resolution 1325. UN document ref: S/2002/1154, 16 October 2002.

(34) Participant of an Amnesty International focus group discussing violence against women in the family by male family members, April 2003.

(35) A mullah is a Muslim cleric.

(36) Cases reported by a district governor and the head of a provincial AIHRC office.

(37) General Recommendation 19 (CEDAW), paragraph 23.

(38) Proverb from one region of Afghanistan relating to marriage age.

(39) Afghanistan Civil Law, 1976 Article 70.

(40) Women's shuras have been established in certain parts of Afghanistan by authorities or international agencies.

(41) Throughout this report names have been changed to protect the individual.

(42) In August 2003 US \$1 was equal to between 40 and 50 Afghani.

(43) Case reported to Amnesty International in Herat, western Afghanistan in May 2003.

(44) Article 16(a) and (b), CEDAW. See also ICCPR Article 23(2) and (3)

(45) US President George W. Bush, Little Rock, Arkansas, 29 August, 2002, US State Department website: <http://www.state.gov/p/sa/rls/fs/16590.htm>

(46) Survey undertaken by the NGO Solidarite. Information given verbally to Amnesty International delegates.

(47) See examples of CRC reports cited in "Bringing Rights to Bear: An Analysis of the work of UN Treaty Monitoring Bodies on Reproductive and Sexual Rights", Centre for Reproductive Rights, 2003.

(48) See for example Fraser AM, Brockert JE, Ward RH "Association of young maternal age with adverse reproductive outcomes" *New England Journal of Medicine* 1995; page 332: 1113-1118, Physicians for Human Rights "Maternal Mortality in Herat Province: The Need to Protect Women's Rights", September 2002.

(49) See "Integration of the human rights of women and the gender perspective" E/CN.4/2003/75, 6 January 2003, report of the Special Rapporteur on violence against women.

(50) See report of the UN Special Rapporteur on violence against women, "Integration of the human rights of women and the gender perspective". Ref: E/CN.4/2003/75, January 2003.

(51) Amnesty International "Afghanistan: Re-establishing the rule of law" AI Index: ASA 11/021/2003, pages 46-47. Jirga (Pashtun) or shura (Dari) are gathering almost exclusively of male elders.

(52) Elopement, or "running away from home" does not have a basis in statutory law but judges informed Amnesty International that the offence is based in Islamic law.

(53) Traditional central Asian sport played on horseback.

(54) Observations of an international NGO worker.

(55) "Killing you is a very easy thing for us": Human Rights Abuses in Southeast Afghanistan", Human Rights Watch Vol.15, No. 05 C, July 2003.

(56) Reported by hospital employee who witnessed three of the girls being brought into the hospital.

(57) Incident report to Amnesty International by a contact in the eastern region.

(58) Reported in Amnesty International focus groups.

(59) The trauma caused by rape is well established by medical evidence. Kozaric-Kovacic D, Folnegovic-Smalc V, Skrinjaric J, Szajnberg NM, Marusic A., "Rape, torture, and traumatization of Bosnian and Croatian women: psychological sequelae", *American Journal of Orthopsychiatry*, 1995; 65(3):428-33; Kelly N., "Political rape as persecution: a legal perspective", *Journal of the American Medical Women's Association*, 1997; 52(4):188-190; Lunde I, Ortmann J., "Prevalence and sequelae of sexual torture", *Lancet*, 1990; 336:289-91.

(60) As highlighted in Amnesty International report "Afghanistan: Police Reconstruction essential to protect human rights", AI Index: ASA 11/003/2003.

(61) Oral introduction to the report of the Special Rapporteur to the 1992 session of the Commission on Human Rights, quoted in UN document E/CN.4/1995/34, paragraph 16.

(62) Afghan saying meaning that a woman should enter the house of her husband in a bridal gown and leave the house for her funeral, and should not seek divorce.

(63) Pashtun Wali is the customary law of Pashtun ethnic groups.

(64) A mahram is a close male relative who may see a woman without her being covered, such as her father, husband, brother or son.

(65) General Recommendation 19, CEDAW paragraph 24 (b).

(66) Amnesty International "Afghanistan: Re-establishing the rule of law", August 2003, AI Index: ASA 11/021/2003. See pp. 38-44.

(67) Jirga (Pashtun) or shura (Dari) are gatherings of almost exclusively male elders.

(68) Articles 426-429 of the Penal Code.

(69) An approved definition of the act of rape according to international standards can be found in the elements of crimes for the Rome Statute of the International Criminal Court.

(70) Article 398 of the Penal Code.

(71) Article 32 of Law on Marriage.

(72) Article 35 of the Law on Marriage.

(73) The Constitution of the Republic of South Africa provides one possible formulation: "Everyone has the right to freedom and security of the person which includes the right...to be free from all forms of violence, from either public or private source." Constitution of the Republic of South Africa 1996, s.16, cited in Post Apartheid Constitutions: Perspectives on South Africa's Basic Law, Ed Andrews and Ellman, p.336, The Stepchild of National Liberation: Women and Rights in the New South Africa.

(74) One possible formulation is provided by the South African Constitution: "To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons disadvantaged by unfair discrimination may be taken." Constitution of the Republic of South Africa, s.12.

(75) UN Doc PCNICC.2000/1/Add.2, Elements of crimes, from the elements of the crime against humanity of rape and the war crime of rape: 1. The perpetrator invaded [footnote: The concept of "invasion" is intended to be broad enough to be gender neutral.] the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or other part of the body.

2. The invasion was committed by force, fear of force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent. [Footnote: It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity.]

(76) See Amnesty International "Afghanistan: Re-establishing the rule of law" AI Index: ASA 11/021/2003.

(77) Amnesty International "Afghanistan: Police reconstruction essential for the protection of human rights" AI Index: ASA 11/003/2003.

(78) International Commission of Jurists "Afghanistan's Legal System and its Compatibility with International Human Rights Standards", Dr Martin Lau, November 2002.

(79) "New measures in Afghanistan aim to promote law and order, UN reports", UN News Service, 14 September 2003.

(80) Amnesty International "Afghanistan: Re-establishing the rule of law" AI Index: ASA 11/021/2003, p. 14.

(81) The academy has one and three-year curricula for non-commissioned officers and officers respectively.

(82) "Vision, innovation and professionalism in policing violence against women and children", Professor Liz Kelly, produced for the Council of Europe police and human rights 1997-2000 programme.

(83) See Amnesty International "Afghanistan: Re-establishing the rule of law" AI index ASA 11/021/2003.

(84) Amnesty International "Afghanistan: Police reconstruction essential for the protection of human rights" AI Index: ASA 11/003/2003.

(85) Article 7, CEDAW.

(86) Articles 4,3,2 and 5 CEDAW; Article 3, ICCPR and Human Rights Committee General Comment 28.

(87) See "Trapped by Tradition": Women and Girls in Detention in Kabul Welayat', medica mondiale, 5 March 2003.

(88) Article 15, ICCPR.

(89) Woman prisoner charged with adultery, interviewed by Amnesty International.

(90) Based on Amnesty International interviews and also case testimony in "Trapped by Tradition": Women and Girls in Detention in Kabul Welayat', medica mondiale, 5 March 2003. See also "We want to live as human beings: Repression of Women and Girls In Western Afghanistan, Human Rights Watch, on violations of women's rights in Herat.

(91) British Medical Journal 1998; 316:461.

(92) Relevant materials and reports include "Vision, innovation and professionalism in policing violence against women and children", Professor Liz Kelly, produced for the Council of Europe police and human rights 1997-2000 programme. Also see the report of the Special Rapporteur on violence against women, "Integration of the human rights of women and the gender perspective" (UN Document E/CN.4/2003/75).

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