

Violence against Women: The Institutions vs Challenges

A Policy Brief on violence against women and the role of relevant institutions, is among the works of Human Rights & Eradication of Violence Organization (HREVO) towards combating GBV in Afghanistan.

The law on Elimination of Violence against Women and the Regulation on the Prohibition of Women Harassment are the two policy documents enacted to combat GBV. These documents are commonly perceived as addressing all the myriad problems women face in the Afghan society. However, these documents neither adequately deal with the pervasive problem of violence against women in all spheres of their life nor implemented properly to effectively curb the phenomenon.

Background

Incidents of violence against women occur in every country. However, it is very pervasive in some countries including Afghanistan. In Afghanistan it is widespread and has diverse manifestations in different parts of the country. The practice is deeply rooted in harmful traditions. Women have to cope with the agony given their limited freedoms and subservient status in an extremely patriarchal society. The chronic conflict in the country has further exacerbated the situation. Perpetrators of crime of violence

against women escape justice due to deeply entrenched culture of impunity.

According to the Afghanistan Independent Human Rights Commission (AIHRC), 2,762 cases of violence against women were recorded during the first seven months of 1398 (2019), while during the same period in 1397 (2018), this figure was reported at 2,536 cases which represents an increase of 8.2 percent from the previous year.

The violence included physical, verbal, economic, and psychological. Factors contributing to violence against

Key message 1:

Violence against women, is a gross violations of human rights. It is inhumane, unethical and unjust and must therefore stop.

women are often related to harmful traditions and customs, lack of rule of law, corruption and poverty.

This study was designed to assess the justice mechanisms in relation to violence against women in Kabul, Herat, Balkh, Badakhshan and Bamyán provinces. Ten institutions and groups were covered such as courts, prosecution offices, the Independent Bar Association, Ministry of Justice, Ministry of Women's Affairs, Police, the Afghanistan Independent Human Rights Commission, universities, civil society and victims of violence against women. The questionnaires, focus group discussion and case studies were used to collect information.

National and International Mechanism on VAW National

At the national level, there has been considerable achievements in protection and promotion of women's human rights. These achievements have been mainly in the areas of legislations and policies. The documents include:

- The EVAW Law enacted by presidential decree in August 2009.
- Article 22 of the 2004 Constitution which prohibits discrimination among Afghan citizens and provides equal rights and duties for women and men.
- The Regulation on the Prohibition of Harassment of Women in October 2015.
- Formulation of gender-sensitive plans and strategies such as the ANDS and NAPWA.
- Nation Action Plan on implementation of the UN Security Council Resolution 1325. Establishment of institutions such as the MoWA, AIHRC, Special Prosecution Office for Elimination of Violence against Women and High Commission for Prevention of Violence against Women.

International

- Ratification of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).
- Beijing Platform for Action, 1995.
- The Sustainable Development Goals (SDGs) particularly goal number 5.

The EVAW Law is a landmark law with regard to combating violence against women. It is meant to criminalize acts of violence against women such as domestic violence, forced marriage, child marriage, rape, the exchange of women in blood feuds (a practice known as 'Baad'). The law identifies and criminalizes 22 acts of violence against women.

After ten years in place the law is poorly

implemented and women's access to justice remains severely inadequate, according to a UNAMA report. The report adds that cases of violence against women are still widely mediated despite the presence of EVAW Law. Majority of criminal cases of violence against women despite prohibition of the EVAW law are mediated by traditional dispute resolution mechanisms, with government institutions implementing EVAW Law, referring the cases to mediators and participating in the proceedings.

The mediation of incidents of violence against women demeans criminal acts into mere family disputes.

In many cases of violence against women, the perpetrators easily escape justice, promoting the culture of impunity and embedding the cycle of violence.

The long-standing harmful traditional practices on one hand, illiteracy, lack of information on women rights, and the negative consequence of violence against women; on the other, contribute to the continued pattern of the phenomenon.

The other key document addressing violence against women is the Regulation on Prohibition of Harassment of Women approved by the Government of Afghanistan in October 2015. The regulation foresees medium for complaints of harassment to be officially attended and processed, and support victims of harassment. The document fosters harassment-free environment for women to work.

Similarly, the National Action Plan for the Women of Afghanistan (NAPWA) was another policy document which pursued the twin goals of women's empowerment and gender equality.

Afghanistan has implemented and reported under the UN Convention on Elimination of All Forms of Discrimination Against Women (CEDAW). The General Recommendation 35 of the CEDAW Committee elaborates on the gender-based violence, building on the work of the Committee and other international human rights.

In July 2015, the government of Afghanistan launched its first UNSCR1325 National Action Plan (NAP). The document is developed to address the challenges women face in the aftermath of war and conflict.

The government of Afghanistan has been successful in implementing the action plan. Majority of the benchmarks were met according to the recent report of the Ministry of Foreign Affairs.

Institutions vs Challenges

There are four key institutions in Afghanistan which provide justice to its citizens. They are the Supreme Court, Attorney General Office, the Ministry of Interior (police and prison wardens) and the Ministry of Justice.

Enormous resources have been invested in rebuilding the state's justice system. Hundreds of judges, prosecutors, prison wardens, and thousands of police personnel have been professionally trained. Justice institution buildings have been restored, equipped or built from scratches.

Key message 2:

Domestic violence is widespread. It is not restricted to any region, country, culture, race or religion.

However, despite huge investment, accessibility of formal justice institutions for all Afghans, and particularly for women remains a concerning issue. The law enforcement agencies have not yet succeeded in applying the EVAW Law to the vast majority of cases of violence against women. The government has also not been successful in implementing the policies such as NAPWA geared towards women empowerment and ending violence against them.

Another major challenge is the issue of women prisoners. Official statistics show that women are far less likely to commit a crime than men, but there are women who commit crimes. However, women inmates are held in prisons without regard to the nature of the crime. There is no classification of women prisoners on the basis of degree of crimes committed.

Police vs VAW

The police, as the first point of contact for reporting gender-based violence, must act on complaints ethically, proactively, and with kindness. But it normally does not happen. When police receive a report of violence against woman, the police must refer the case to the relevant prosecutor's office. They

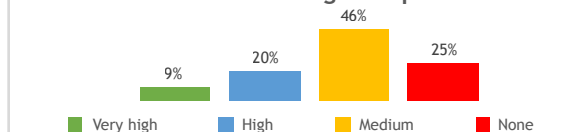
do not have the right to mediate or refer the matter to traditional dispute resolution. In practice police do refer the cases to dispute resolution mechanisms partly because police are still not professional or police ignore the rules due to weak rule of law.

Based on our findings of the VAW relevant institutions, all institutions have the required knowledge related to combating VAW phenomenon. The problem lies with the implementation of pertinent laws and policies.

We conducted interviews and focus group discussions with 264 persons in five provinces (in five regions). The questionnaires were divided as per relevant institutions. The first part was related to the work of police in dealing with cases of violence against women. Questions such as police familiarity with EVAW laws; International human rights documents; mediation by police, discrimination by police in EVAW cases, humiliation of the victims of VAW and sexual demands from the victims of VAW.

Of the 264 interviewees, 75% of respondents were of the view that police's awareness of the above mentioned questions/problems is very high, high and medium. Only 25% of respondents thought that police have no knowledge of the above mentioned questions/problems.

Questions on police's handling of VAW cases at investigation phase



Attorney General Office vs VAW

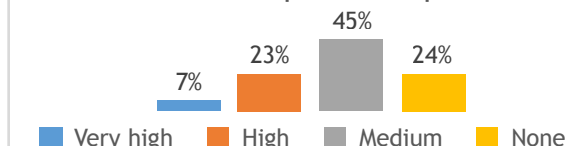
The prosecutor makes the decision when a case of violence is submitted by police, to whether proceed with the case under the EVAW law or the Penal Code or both, on the basis of a preliminary investigation and prosecutorial discretion. She/he may then refer the case to court for a trial. During the entire process, the woman complainant can withdraw her case at any stage.

In practice, withdrawal of cases is usually the result of formal or informal mediation. If a compromise is reached after conviction any sentence imposed will not be executed.

Prosecutors too, in many cases have referred the cases of violence against women to traditional dispute resolution mechanism according to UNAMA report.

We interviewed 264 people on problems such as prosecutors' knowledge of EVAW laws and policies; international human rights documents; gender-based discrimination; humiliation of the victims of VAW; number of prosecutors available in the prosecution offices and corruption. 75% of respondents of interviewees were of the view that prosecutors' knowledge of the above mentioned questions/problems, is very high, high and medium. Only 25% of respondents thought that prosecutors lack knowledge of the above mentioned questions/problems.

Questions on prosecutors handling of VAW cases at prosecution phase



Court vs VAW

Court is the ultimate hope for victims of violence against women. It is the responsibility of judicial authorities to make sure that justice is delivered to every citizen including women. According to an NGO report, 87 per cent of Afghan women have experienced at least one form of physical, sexual or psychological violence or forced marriage in their life. They continue to face pervasive violence resulting from harmful traditional practices, discrimination, and, cultural and social norms which violate the legal obligations and principles of equal rights of women and men and equality under the law.

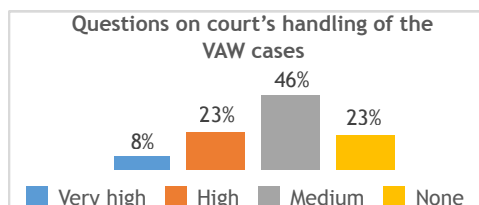
Though, not all VAW cases registered by police and investigated by prosecutors, reach the courts (as many of these cases are referred to traditional dispute resolution

Key message 3:
VAW is fundamentally about exerting power and control through a pattern of abusive behavior. A system needs to be in place to control powers.

mechanisms) the few which reaches are also not appropriately delivered justice.

In our interview with 264 people we asked almost the same questions as we asked about police and prosecution office; except, that we asked, if the courts use relevant international human rights instruments in their adjudication and if the courts respect the legal timeframe set out in the law for process of criminal cases.

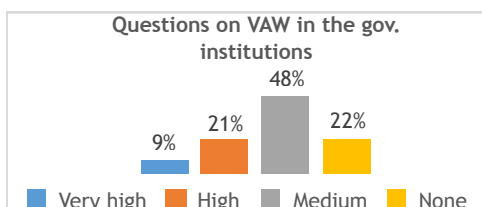
77% of respondents were of the view that judges knowledge of VAW is very high, high and medium. Only 23% of respondents thought that judges lack understanding of VAW.



Other Government Institution vs VAW

In our interview with 264 people, we asked about other institutions on their arrangements for combating VAW. We asked if they think women employees of government institutions are sexually harassed; If government employees are trained on VAW; If any protection mechanism available for victims of VAW in the government institutions; and, if coordination among government institutions, coordination between government institutions and INGOs and civil society organizations has been effective. 78% of respondents agreed that arrangements to combat VAW in the government institutions are in place. However, majority of respondents were also of the view that female government employees are sexually harassed.

Only 22% of respondents were pessimistic about government institutions' groundwork on combating VAW.



Academia vs VAW

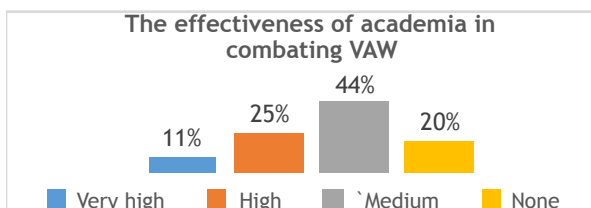
Academic institutions play a key role in combating violence against women and promoting gender

equality. However, some universities including the Kabul University which is the biggest university in the country are accused of not being gender sensitive. The universities have not been able to

facilitate a learning environment that is conducive to gender justice. Gender sensitivity needs to be reflected in all structures, policies, procedures and programs of universities. Interactions among male and female students in class rooms, seminars, group work and at various fora in the universities must be encouraged in order to promote gender sensitivity and remove gender stereotypes and prejudices. The universities must promote a culture and values which foster gender sensitiveness and gender equality. Platforms for open discussions and debate on gender related issues, including GBV must be created.

At the end of our interview during our data collection on VAW, we asked about the role of academia in curbing incidents of VAW. We asked if students are taught about EVAW law, international human rights laws on VAW and practical skills in handling VAW cases at the Law and Shariah departments of universities. We also asked about content of department's curriculum if it contains topics on VAW and exposure visits to judicial institutions.

Majority of respondents, about 80%, were of the view that academia familiarize students with VAW phenomenon and relevant judicial institutions. Only 20% of respondents said that academia do not play their role effectively in curbing VAW.



EVAW Law Implementation

The EVAW law which was adopted in 2009 is a progressive law within the Afghan context. In addition to a broad approach to the issue of violence against women, the law criminalizes 22 acts including forced and early marriage as well as polygamy for the first time in Afghan legal history.

The law which is still enforced by presidential decree faced tough resistance from conservative circles, including in the Afghan parliament. The law was not ratified in the Afghan parliament despite several attempts by women MPs.

An important factor for non-implementation of laws related to violence against women is the harmful traditional practices which is compounded by bias and corruption. The law enforcement agencies usually do not proceed with the cases of violence against women on the basis of EVAW law and refer the cases to traditional dispute resolution mechanisms. The low rate of conviction in VAW related cases is giving rise to violence and entrenches the culture of impunity.

Key message 4:

There is no excuse for VAW. Perpetrators of VAW should never use religion or tradition to justify their heinous acts.

Virginity testing to prove incidence of a crime is immoral and inhumane. The article 640 of the Penal Code indicate there are still flaws in the laws. There are other possible ways to prove the incidence of a crime; therefore there is a great need to amend the article 640 of the Penal Code, so that the dignity of a victim is no more compromised.

Why VAW is so Pervasive in Afghanistan?

Women in Afghanistan are normally excluded from political, economic and social arenas. Laws related to VAW remains poorly implemented with institutions even participating and observing the VAW related cases resolved in traditional dispute resolution mechanisms. Other factors behind this exclusion include traditional and cultural norms, economic independence of women; patriarchal values; limited access to education; under-representation of women in decision-making positions; and women's lack of knowledge of their legal and human rights. The inferiority dogma of female to male exists almost in every Afghan home. It is inculcated from childhood. The continued social exclusion of women is also an outcome of the low investments in the human capital of women at the national level.

Factors Contributing to VAW

Political Exclusion

In a fundamentally patriarchal political setting, women are seen as threat to men's political dominance, so women become targets of violence, defamation and exclusion. Women running for election, or otherwise exercising their political rights, question the established power norms and challenge influence, men believe to be theirs. All these challenges impedes women's full participation in political and civic life. The lack of meaningful participation of women in decision-making levels, from household to community and national, is a major challenge in achieving gender equality and women's empowerment. Women's meaningful political participation influences policies and mainstreams the concerns of women into the national development agenda such as poverty reduction strategies and resource allocation mechanisms. Therefore, allowing room for women to influence policymaking, legislation enactment, institutional setting, planning, and resource allocation is key towards gender equality and women empowerment.

Economic Exclusion

Gender equality in accessing jobs is not often respected in both formal and informal labor market. In accessing decent jobs, women usually experience greater challenges than men. It is

reflected by higher illiteracy rates, lack of expertise and qualification among women. Therefore it is important to monitor the indicators that track the gender dimensions of unemployment and underemployment and inclusion of women in both the formal and informal labour market. While there has been a slight increase in female presence in the formal sector, during the National Unity Government, the informal sector remains exclusively at the hands of male both due to historically high female illiteracy rate and gender segregated roles in society. Harassment is another factor which force out women from the labor market. Several important incidents of sexual harassment of females, including from the Office of President, surfaced on media in the past couple of years. Such incidents greatly discourages families to allow their female members to enter the labor market.

In big cities and some provincial capitals where customarily the societies are open to women's work such as Bamyan city, women do enter the labor market. They mainly depend on small-scale businesses such as embroidery, handcars and agricultural production (dry fruit and dairy products). In order to make women less dependent economically, the government must take initiatives and extend business opportunities and technical capacity.

Social Exclusion

Traditionally throughout history, Afghan women have been marginalized and accorded subordinate status. The inferior status of women is a part of Afghan tradition. The position of women in the family and society has been shaped by many factors and there are strong cultural, traditional and historical roots of discrimination against women and gender inequalities. Afghanistan is a traditional society that has been governed along tribal lines where the role of women has been negligible. They have been under the impression of ultra-conservative, Islamist tradition of treating women as second-class citizens.

The protracted war and violence in the country, which resulted in unstable political and economic situation, disproportionately affected women. Their public life in particular has been affected; specially during the rule of Taliban when women had very little to no freedom in terms of civil liberties.

While the post-Taliban regimes have put in place measures to promote the welfare of Afghan women, the welfare of rural women who lack access to basic services and job opportunities, remains a concerning issue. Women living in rural areas are much more susceptible to a life of abuse and violence. The improved access of women and girls to social services such as health care services, education, food, market accessibility and other sources are key determinants of their ability to be able to engage in productive opportunities and to secure their overall well-being. Most women deaths are due to non-availability of quality health services, inadequate health facilities, poverty, illiteracy and lack of knowledge on the importance of pre-natal care.

Key message 5:
Domestic violence damages the warp and woof of a family life and is a serious public health problem

Key message 6:
To end VAW, all organs of a society should collaborate. It is not the responsibility of an individual or an institution alone.

Key message 7:

Referring the cases of VAW to Local Dispute Resolution Mechanism only contribute to the cycle of violence. It will not bring peace and harmony within families.

Key message 8:

Virginity testing must end immediately. It has no justification and has no scientific base. The act is against honor and dignity of a woman.

Conclusion

A society free from gender-based violence is not possible without having both men and women collaborating in the fight against the phenomenon. It is of particular importance to taking into account the role of women. Unless women are recognized and treated as human beings equal to men, they will continue to suffer the harms of violence. It is of particular concern when women are treated as objects whose existence is defined by their relationship to men. In reality the women are as capable as men in any task but it is the men who in many circumstances create hurdles against the progress of women either under traditional norms or their impression of religion. Gender inequality is a product of society's patriarchal attitude compounded by a narrow interpretation of religion. It has nothing to do with the perceived incapability or physical power of women. Violence against women sustains its momentum because of gender inequality. Poverty, illiteracy and ignorance fuel the phenomenon of violence against women.

Mediation in the cases of VAW and the deeply entrenched culture of impunity has further exacerbated the situation women.

There is a strong need for mobilizing resources towards formulating policy and programs.

Policy Recommendations

- Lobby and advocate for approval of the EVAW law at the parliament, with all MPs in particular MPs who do not support the law;
- Implement the EVAW Law at the provincial and district level through establishing the EVAW Law prosecution offices and courts in all remaining provinces;
- Make sure that VAW cases are registered by police without any excuse and that the cases are referred to prosecution office, and, adjudicated by courts;
- Make sure that VAW cases are not mediated through traditional dispute resolution mechanism;
- Ensure that EVAW judges and prosecutors are well-trained fully resourced and supported to carry out their functions;
- Build the capacity of public officials on EVAW law and coordinated effectively with senior officials of all line ministries and justice authorities to take cases of violence against women seriously and refer such cases to the EVAW Law provisions and special prosecution offices;
- Develop and implement a policy framework on mediation of VAW cases, by clearly stating that mediation may only be used to resolve civil disputes;

- Mainstream NAP 1325 in conjunction with the EVAW Law, to provide more support to both the EVAW Law and NAP 1325.
- Monitor women detention facilities in order to make sure women prisoners are separated on the basis of crimes they committed, according to prison law.
- Virginity testing must end immediately without any condition.

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Address: House No. 277, Street 12, Kart-e 3, District 6, Kabul, Afghanistan

Website: www.hrevo.org

Phone: +93(0)785599847
+93(0)799079671

Email: info@hrevo.org
hrevo.organization@gmail.com