

Afghanistan: Women failed by progress in Afghanistan

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Among the principles of Security Council Resolution 1325 is that women must have equal participation in the resolution of conflict and in peace processes. It also calls for an end to gender-based abuses and impunity for such abuses during and after the conflict. Afghanistan's first post-conflict elections earlier this month looked set to be a defining moment for some of these issues. Nazia Hussein, the Amnesty International (AI) researcher on Afghanistan, assesses the situation.

Women represent 41% of Afghanistan's 10.5 million who registered as voters out of a population of approximately 25 million. However, certain provinces in the south (Uruzgan, Zabul) had very low rates of female registrations: Uruzgan - 9%, Zabul- 10%. The security situation in these anti-government strongholds, dominated by the Taleban and Al Qaeda, meant that voter registration staff had restricted access to potential voters in these remote areas. In addition, multiple registrations were reported.

The media reported that women were prevented from voting in these strongholds as family members refused to let them go to the polling stations. As of October 2004, there is still no reliable information as to how many women -- or men -- actually voted. Masooda Jalal was the only female Presidential candidate and there were media reports that she received threats during her presidential campaign.

UN voter registration teams did have female staff members, but, again, security of staff and attacks by anti-government groups meant that registering women in remote areas was difficult. Women were targeted including in an attack on a registration bus in June 2004 in Jalalabad when three female staff members were killed; reports of threats by the Taleban and warlords to deter women from registering; and targeted killings of Afghans holding voter registration cards.

Amnesty International (AI) noted a pervasive lack of security during its mission to Afghanistan in August and September 2004. Women felt unsafe outside their homes in the presence of warlords, guns and the absence of rule of law. The UN was not completely successful in its attempts to recruit a large number of female polling staff across the country, which would have probably encouraged more women to come to the polling stations. The fact that men were staffing the sites may have prevented some women from voting. Combined with a lack of adequate monitoring or security, it is likely that many of the registered women did not vote.

The New Constitution guarantees fundamental equality for men and women. However, implementing legislation is not yet in place and there is a lack of both understanding and implementation of those rights that are protected by law. Women rarely report rape and sexual abuse due to the social stigma attached to the victim and her family, ineffective investigation mechanisms and almost complete failure of the state to provide justice to victims.

Kabul has four shelters operating to provide assistance to survivors *of sexual violence*, but these remain almost non-existent outside the capital. Measures to protect women remain ineffective with a justice system that is weak and ineffectual. The general population has little confidence in the independence of the judiciary. This is particularly the case for women, who have reported being further victimised by the legal system, through the application of "customary law" that violates women's human rights.

With the exception of the heads of the juvenile and family courts in Kabul, women continue to be excluded from key positions in the judiciary. Where women do serve as judges, 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. Female judges outside Kabul are rare.

Efforts are underway to train police recruits to be aware of gender issues, but AI found that such training has been brief and perfunctory so far. AI has also received testimonies about bribery and corruption among police and of failure to follow up on cases involving violence against women.

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There are virtually no effective safeguards to protect women in custody.

A large number of women in Afghanistan continue to be imprisoned for committing so-called "*zina*" crimes. A female can be detained and prosecuted for adultery, running away from home or having consensual sex outside marriage, which are all referred to as *zina* crimes. 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 unlawful sexual activity.

During its recent visit, AI found that a large number of female inmates in prisons across Afghanistan are incarcerated for the crime of "running away" and for adultery, as well as for engaging in unlawful sexual activity. Amongst many judges and judicial officials, there was a prevailing lack of knowledge about the application of *zina* law.

In many instances, there was a lack of basic legal skills among legal professionals interviewed. In addition, in relation to many offences, sentencing is left to judges' unfettered discretion and they often had down arbitrary sentences to women. A majority of imprisoned women have been charged or are imprisoned for transgressing social norms and mores.

There is no effective mechanism for investigation of crimes against women and no confidence-building measures have been implemented to encourage women to come forward and report abuse. As a result, women do not report crimes committed against them because they fear imprisonment (especially in rape cases), harassment and discrimination from the police; violent reaction from the family; lack of support from the community and the lack of services for victims.

Violence against women is widespread, but it is still seen as a private matter. There is a debilitating stigma attached to women seeking justice for sexual crimes, in particular. The state's institutions remain weak and the real power in the community is exerted by males. Prosecutions for violence against women are rare and with limited resources for investigation, prosecutors mostly argue cases on the basis of allegations rather than evidence. In addition, the majority of women remain unaware of their legal rights and do not have the support of the community to pursue their cases.

The United Nations Development Fund for Women (UNIFEM) began to coordinate a working group on violence against women in 2004. This group was created in order to facilitate and coordinate with various inter-governmental organizations (IGOs), non-governmental organizations (NGOs) and government bodies on gender-based violence. UNIFEM is also guiding and funding the Ministry of Women's Affairs, which is looking into the areas of legal research for women, legal education and advocacy. Representatives of Afghan civil society are also part of the UNIFEM Coordination group. Judges and prosecutors from the Ministry of Justice are currently being trained by the International Development Law Organisation (IDLO), whose primary donor is the Italian government.

However, a lack of action from the Afghan Transitional Administration (ATA) in enforcing protection of women and girls remains. Armed groups have not been held to account for their actions, they exert power in key regional and provincial institutions, further eroding the confidence of women in the justice system. Perpetrators of violence against women are rarely prosecuted and AI has evidence of judges making discriminatory remarks and humiliating women during court proceedings. There has been little noted pressure on the judiciary to uphold the rights of women and both opportunities and rights of women continue to be severely restricted throughout the country.