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纳入妇女人权和性别公平观：暴力侵害妇女

暴力侵害妇女、其原因及后果问题  
特别报告员亚肯·埃蒂尔克的报告

增 编 \*

对阿富汗的访问

(2005年7月9日至19日)

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\* 访问报告的内容提要以所有正式语文分发。报告本身载于内容提要附件，仅以原文分发。

## 内容提要

本报告载述的是暴力侵害妇女、其原因及后果问题特别报告员于 2005 年 7 月 9 日至 19 日对阿富汗伊斯兰共和国进行正式访问后的调查结果。报告阐述了冲突中和冲突后在该国存在的多种形式暴力侵害妇女的现象，并指出需要采取哪些关键措施及举措，确保保护和促进妇女的权利并逐步消除暴力侵害妇女的现象。

塔利班垮台四年来，法律和机构框架发生了相当程度的变化。自 2003 年 4 月开始，妇女在立宪支尔格大会上有了席之地。男女权利平等的原则被写进宪法。宪法规定阿富汗有尊重国际人权的义务，并规定立法机构中必须保留一定席位给妇女。阿富汗无保留地批准了《消除对妇女一切形式歧视公约》。成立妇女事务部。尽管数量还不够，但在该国已出现一些庇护场所，为敢于逃出暴力侵害环境的妇女和女童提供庇护。

虽然取得了这些重要进展，但妇女的状况仍然悲惨，严重暴力侵害妇女的现象比比皆是。造成如今妇女脆弱及暴力现象顽固存在的原因有四：传统的家长式性别等级观念；社会保护机制的丧失；法治的缺乏；该国的贫穷和不安全状况。暴力侵害妇女的行为被容忍，而犯罪者不会受到惩罚，因为执法和司法系统一般不起作用，何况还对妇女抱有偏见。从法律和体制角度看，出现这种对妇女失于保护的现象，究其原因是在存在多重规范制度，以及所谓“非正式”司法优先于正式司法。

阿富汗妇女地位的改善与今天阿富汗社会面临多重转型的挑战密切相关。在全国各地实现法治和安全是所有公民得以从发展和重建中受益的前提条件。同时，要把保护女童和妇女免受侵害作为一项紧迫任务对待。

鉴于这些挑战，特别报告员向阿富汗政府、国际社会和非政府组织提出建议，包括七大方面：国家建设和公民责任感；家庭和刑法；开展活动，增强公众及目标群体对妇女权利的意识；被拘留妇女的状况；扩大和巩固安全住宅；数据收集和研究；在公共政策中把妇女人权和消除对妇女的歧视放在优先位置。

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON VIOLENCE  
AGAINST WOMEN, ITS CAUSES AND CONSEQUENCES,  
YAKIN ERTÜRK, ON HER MISSION TO AFGHANISTAN  
(9-19 JULY 2005)**

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## I. INTRODUCTION

1. The Special Rapporteur on violence against women, its causes and consequences, visited the Islamic Republic of Afghanistan at the invitation of the Government from 9 to 19 July 2005. She would like to thank the Government for the cooperation extended during her visit.

2. The Special Rapporteur is very grateful for the support provided by the United Nations Country Team (UNCT). In particular, she would like to express her gratitude to Mr. Richard Bennet, the Director of the Human Rights Unit within the United Nations Assistance Mission to Afghanistan (UNAMA) for the logistical and substantive support he and his staff provided.

3. In the course of the mission, the Special Rapporteur visited Kabul, Kandahar and Herat. She held meetings with several ministers, the Chief Justice of the Supreme Court, the Deputy Prosecutor General, other judges and prosecutors, the head and members of the Afghan Independent Human Rights Commission (AIHRC), members of the police force, prison administration, and medical staff in hospitals. She listened to testimonies of women detained in the women's prisons in Kabul, Kandahar and Herat, as well as victims of violence in two shelters for women. She also had meetings with representatives of civil society, including non-governmental organizations (NGOs). Finally, she met with the heads and staff of many of the United Nations agencies present in Afghanistan.<sup>1</sup>

4. The Special Rapporteur would like to express her heartfelt thanks to all the victims of violence who agreed to relate their personal experiences; their testimony was crucial to gain a deeper understanding of the situation of women in Afghanistan.

## II. THE CONFLICT AND POST-CONFLICT CONTEXT

### A. Discontinuities in recent history

5. The plight of Afghan women has been subject to a constant flux within the often complicated dispute over power that marks the country's recent history, in particular since the establishment of its present borders at the end of the nineteenth century. Against the backdrop of a complex history and ethnic diversity,<sup>2</sup> Afghanistan in the twentieth century witnessed several attempted drives towards enforced modernization, aborted by ultra-conservative backlash. While women's mobilization within this political contestation was insignificant,<sup>3</sup> there have been moments of advances in formal rights for women,<sup>4</sup> which were albeit interrupted.

6. The major interruption came with the socialist coup in 1978, followed by the Soviet military invasion in 1979 that lasted until 1989. War continued after the withdrawal of Soviet armed forces, first between the mujahideen and the pro-Soviet regime, and after its collapse in 1992, between the various mujahideen factions. The third phase of the Afghan conflict began with the ascension of the Taliban in 1994. The Taliban rose out of the refugee camps in Pakistan, from where it is said they brought the conservative values taught in the *madrassas* (Koranic schools). In 1996, full-scale war erupted between the Taliban and the coalition of mujahideen forces (Northern Alliance). The Taliban took control of Kabul in September 1996. By mid-2001, they controlled more than 90 per cent of the country.

7. Despite gross violations of women's rights during the pre-Taliban eras, the situation of women in Afghanistan attracted international attention only in the historical vacuum when the Taliban regime introduced a rigid gender policy that entailed "cleansing" public space of women. There were four elements to the Taliban gender policy: to ban women from employment, except in the health sector; to ban women from school attendance; to impose a dress code for women and men that wrapped the women up in the burka; and to impose strict control on women's freedom of movement.<sup>5</sup>

8. The 23 years of warfare were characterized by extreme levels of violence: 69 per cent of the thousands of persons interviewed by the AIHRC consider themselves to be victims of war crimes.<sup>6</sup> Despite the strong, culturally rooted reticence to speak about rape and other gender-specific violence, there can be no doubt that crimes against humanity, were widespread in particular against women, including cases of rape, abduction, forced marriages, etc.<sup>7</sup>

9. The most recent phase of the conflict started in October 2001, when as a response to the 11 September 2001 terrorist attacks in the United States of America, an international coalition led by the United States invaded Afghanistan and ousted the Taliban regime with the help of the Northern Alliance. Four years after this operation, security is still frail in Afghanistan. Reports of kidnappings and rape of women by militia and warlords continue to be widespread to the present day, including cases of executions by local councils. Thus, the rule of power rather than the rule of law continues to be the norm in Afghanistan, which has the most deleterious impact on the more vulnerable, including women and children.

### **B. The Bonn process and reconstruction**

10. On 5 December 2001, Afghan delegations representing the Northern Alliance and different Afghan exile communities met in the presence of the United Nations Special Representative of the Secretary-General in Bonn, Germany, and adopted an agreement to end the armed conflict, establish an interim authority to serve as repository of Afghan sovereignty, and start a constitution-making process. The Bonn Agreement was endorsed by Security Council resolution 1383 (2001), which stresses that the people of Afghanistan had the right "freely to determine their own political future". To this end a Constitution was adopted by the Constitutional Loya Jirga, which convened for the first time on 14 December 2003.

11. Two out of the nine legal scholars composing the initial drafting commission and 7 of the 35 members of the Constitutional Review Commission that prepared the draft that went before the Constitutional Loya Jirga were women. Women took part in the public consultations that were an essential part of the constitutional process, representing 19 per cent of the participants.<sup>8</sup> Of the 502 delegates elected or appointed to the Constitutional Loya Jirga, 100 were women. Reports indicate that women delegates were overtly threatened and intimidated, and after the uproar caused by the speech of an outspoken woman delegate, Malalai Joya, women were "conspicuously silent and unwilling to participate vocally in the debates".<sup>9</sup>

12. The Constitution defines Afghanistan as an "Islamic Republic, [and] independent, unitary and indivisible State" (art. 1). It contains a bill of rights that enshrines the principle that "the citizens of Afghanistan - whether man or woman - have equal rights and duties before the law", expressly prohibiting any discrimination or privilege between citizens (art. 22). Although

aiming for inclusion and gender sensitivity, the constitution is said to fall short in regard to women.<sup>10</sup> The legislature consists of two houses, the House of Representatives (*Wolesi Jirga*) elected by the people, and the Senate (*Meshrano Jirga*), the members of which are partly elected by provincial and district councils and partly appointed by the President. For both houses, the Constitution provides quotas for women.<sup>11</sup> With regard to the executive branch, the Constitution provides for a strong central Government headed by a strong President. At the apex of the judiciary, the Constitution places the Supreme Court of Afghanistan.

13. The State partially controls the country, with local commanders holding power particularly in the periphery. The local power blocks remain heavily armed, notwithstanding an ambitious demobilization and reintegration programme for militia members run by the United Nations. Forces of the North Atlantic Treaty Organization (NATO) operating under ISAF (International Security Assistance Force) are mandated to assist the fledgling Afghan police and military forces in ensuring security in Kabul and other districts of the country. Armed forces of the Coalition led by the United States continue to fight remnants of the Taliban, who are said to have regained some strength and expanded their area of influence in the course of 2005.

### **C. Gender discrepancies in underdevelopment**

14. The 23 years of war generated in the massive displacement of populations, resulting in large-scale fluxes of refugees and swelling urban centres. An estimated 6 million Afghans were displaced, many seeking refuge in neighbouring countries or far away abroad. Since the fall of the Taliban, over 2.4 million Afghans are said to have returned alone from Pakistan and the Islamic Republic of Iran, but 3.4 million Afghans still remain outside the country.<sup>12</sup>

15. The uprootedness caused by the conflict goes far beyond physical displacement, since it entailed a transformation of the country's economy away from subsistence agriculture and pastoralism to a war economy based on trade in arms and drugs.<sup>13</sup> The structures of authority moved away from traditional forms of social control to ruthlessly repressive forms of control, creating an environment conducive to committing crimes in a climate of total impunity. The lack of rule of law has not only oppressed women but has also disempowered and subdued the more progressive men in society.

16. As a result of the overall destruction, Afghanistan today suffers from poverty and a lack of human and institutional capacity. The human development indicators for Afghanistan are among the worst in the world, ranking 173 out of 178. Life expectancy is estimated at 44 for women and 45 for men. Despite male war casualties men outnumber women with an average sex ratio of 104 for all ages.<sup>14</sup> Fifty-three per cent of the rural population lives in poverty, with extreme regional disparities. For example, in Ghor province in Western Afghanistan, 92 per cent of the rural population is poor.<sup>15</sup> Although precise figures are not available, the level of malnutrition is estimated to be somewhere between 45 and 55 per cent,<sup>16</sup> with women and infants particularly at risk.

17. The maternal mortality rate is among the highest in the world, with 1,900 deaths per 100,000 live births, with as many as 6,500 in Badakshan. In other words, one woman dies giving birth approximately every 30 minutes.

18. According to official figures, only 28.7 per cent of the population over the age of 15 can read and write. Reportedly, the actual figure may be much lower, as low as 10 per cent for the general population and 5 per cent for women. Four million children have enrolled in school since the fall of the Taliban. Despite great progress since 2002, the primary school enrolment rate is among the lowest in the world, and only half as many girls are enrolled in primary education as boys. This wide gender disparity prevails in the entire country, but is particularly acute in the southern provinces, where girls represent only 15 per cent of the primary school population.<sup>17</sup> Afghanistan's Gender Development Index rank is the third lowest in the world.

## II. VIOLENCE AGAINST WOMEN

19. In the three and a half years between the fall of the Taliban and the Special Rapporteur's visit, policy, legal and institutional framework has been considerably changed to improve women's status. This has also included access to education and employment. However, the principle of equality is far from being an everyday reality for women at large. As a consequence, gender-based discrimination is pervasive and violence against women remains dramatic in its intensity, in both public and private spheres of life.

20. The current trends in violence against women in Afghanistan cannot be solely reduced to culture and tradition without consideration of the conflict and post-conflict situation. Four factors underlie women's vulnerability and the perpetuation of violence today: the traditional patriarchal gender order; the erosion of protective social mechanisms; the lack of the rule of law; and poverty and insecurity in the country. Reports of domestic violence, rape, trafficking, among others, are said to have escalated with the war and post-war conflicts. Prevailing power blocks tend to legitimize much of the transgression of women's rights, by referring to the sharia. The diverse and contradictory interpretations in this regard undermine the establishment of any universal code of conduct.

21. There is a lack of data on violence against women, however, anecdotal evidence as well as documentation of cases in hospitals suggest that it is widespread and that girls and women are at risk in the home and on the street, in intimate relations, in an encounter with strangers, within the context of hegemonic interpretations of tradition and the sharia, and of discriminatory laws and administration of justice. Furthermore, cases of rape, abduction and forced marriage by powerful commanders are not rare.

22. Marital rape, sexual assault and other forms of violence against women within the household are on the one hand a taboo, but on the other accepted as a norm. Therefore, such incidents come to light only when the victim seeks help. The Special Rapporteur's interviews with such victims, with organizations assisting them and with government and international officials, as well as a review of reports reveal that the phenomenon is pervasive.

23. The practice of child marriages and forced marriages<sup>18</sup> are at the root of most violence that takes place in the household, but ramifies also to other spheres. The AIHRC estimates that between 60 and 80 per cent of all marriages in Afghanistan are forced marriages and approximately 57 per cent of girls are married before the age of 16.<sup>19</sup> In addition to being the cause of much subsequent physical and psychological violence, the practice in itself constitutes a

serious form of violence against women. Relevant laws are neither enforced nor perpetrators punished. Since only 5 per cent of marriages are registered, these unlawful acts remain outside the formal and legal domains.

24. Economic reasons are said to play a significant role in such marriages. Due to the common practice of bride money, the girl child becomes an asset exchangeable for money or goods. Families see committing a young daughter (or sister) to a family that is able to pay a high price for the bride as a viable solution to their poverty and indebtedness. In another typical scenario, a brother and a sister are married to another pair of siblings to avoid, by mutual compensation, any payment having to be made.

25. The custom of bride money may motivate families that face indebtedness and economic crisis to “cash in” the “asset” as young as 6 or 7, with the understanding that the actual marriage is delayed until the child reaches puberty. However, reports indicate that this is rarely observed, and that little girls may be sexually violated not only by the groom but also by older men in the family, particularly if the groom is a child too.

26. The response of the Chief Justice to the Special Rapporteur’s query regarding the case of Halide - an 8-year-old girl married at the age of 6 and now under protection in a shelter - is worth mentioning. After condemning child marriage as being against Islam and Afghan laws and tradition, the Chief Justice explained to the Special Rapporteur that Halide would be placed with a “reliable Muslim family” and asked to decide about her marriage when she reaches the age of 15. Why an illegal act would be sustained until then was not made clear!

27. Another particularly heinous type of forced marriage is the Pashtu practice of *bad*, where a woman or girl is ceded by one family to another to settle a dispute upon the orders of a local council (*jirga*), thus preventing a potential blood feud between them. While *bad* may serve to settle a dispute between two families, it does so at the expense of women, who are reduced to property to be exchanged and disposed of as desired. In this sense it constitutes a high risk situation for women who are married under such an arrangement.

28. Another situation of vulnerability occurs to women if their husbands die. Since a widow is perceived as the property of her in-laws, she can be forced to marry a brother-in-law, who may already have a wife, and any property left by her late husband is seized by his family. In the absence of a male in the family, the widow may be given to an outsider in a degrading manner.<sup>20</sup> Given the early marriage age and the low life expectancy, women can encounter widowhood in their 20s and 30s.

29. Family violence is reportedly associated to the phenomenon of self-immolation reported in Herat, whereby women and girls attempt suicide by setting themselves on fire.<sup>21</sup> The hospital in Herat has registered approximately 100 cases a year in the last three years. The AIHRC documented 380 cases between September 2003 and April 2004, the majority of which resulted in death. The victims are mostly girls and young women from middle- and lower-class families. Self-immolations, according to some, result from a sense of deprivation as women compare the harsh reality of their lives with what they see on television. On the other hand, many of the victims are refugees who have returned from Iran,<sup>22</sup> and some observers suggest that it is the difficulty to cope with the hardships of displacement that might contribute to driving these young women to self-immolation. A fact-finding mission conducted by the Government in

March 2004, however, concluded that while they could not assess the exact extent of the suicides, “forced marriages, lack of education and unacceptable customs are the main reasons for the suicides”.<sup>23</sup>

30. It is also suggested that self-immolations are linked to honour crimes, normally committed by male family members to “cleanse” the honour of the family presumably “soiled” by a girl or a woman who refuses a coerced marriage, is the victim of a sexual assault, seeks a divorce, runs away from an abusive husband, allegedly commits adultery, etc.

31. Aside from direct assaults, girls and women are exposed throughout their life to malnutrition and inadequate medical care. Lack of food and medical services of course afflict men, women, and children in many parts of Afghanistan, due to poverty and the disruption of livelihoods and the destruction of the health-care system by a quarter century of war. But the preference given by the predominant value system to male infants over female infants, to boys over girls and to men over women, results in the female half of the population being disproportionately affected. Other factors also contribute to the dire health situation of Afghan women - girls tend to become pregnant at an age at which their body is not fully developed; child spacing is unknown or ignored because of the societal pressure to generate sons; and women are simply denied health care because there is no one to accompany them to health-care centres or no money to cover the costs. This is particularly widespread in rural areas where health care may be far away, and where the absence of female doctors prevents women from seeking medical help even in emergency situations. As a result, Afghanistan is the only country in the world in which female life expectancy does not exceed that of men, and maternal mortality is among the highest in the world.

32. The case of Aziza (not real name) is representative of women’s multiple vulnerabilities in Afghanistan and the inability of the system to protect them. She is 19 years old, and was a university student. Three years ago, a local commander whose uncle is a governor, asked to marry her. When the family refused, the commander and his men threatened to kill the girl’s brother. The increased pressure led to the death of her father of heart attack. Unable to resist any further, Aziza was compelled to marry the commander. After she married she had to quit her studies and started to work as a teacher. Soon after the marriage, the commander and his family started abusing her under the pretext that she must have had a lover since she had refused to marry him. She had heard about the Ministry for Women’s Affairs, so she ran away to Kabul and went to the Ministry for help. Since then she has been staying in a shelter. Her mother and brothers were arrested for kidnapping her then released. Her husband refuses to grant her a divorce and has publicly pledged to kill her. She is worried for her brothers who are students in the university. They do not have the means to move somewhere else. Aziza is a bright young woman, and is now taking English and computer courses at the shelter. Her future is uncertain.

### **III. RESPONSE TO VIOLENCE AGAINST WOMEN**

33. Women who experience multiple forms of violence in the private and in the public sphere are victimized a second time by the failure of the authorities to protect them. Violence against women is tolerated and perpetrators enjoy impunity because the law enforcement and justice systems are generally dysfunctional and are heavily biased against women. From the legal and

institutional point of view, this failure to protect is grounded in or at least greatly abetted by the multiplicity of normative systems in Afghanistan, and the predominance of the so-called “informal” justice over the formal justice machinery.

#### **A. Parallel and discriminatory normative systems**

34. While there is a general agreement among women the Special Rapporteur spoke to that there have been improvements in women’s lives since the fall of the Taliban, their vulnerability to violence persists because of the lack of a standardized and just normative system. Five normative frameworks are particularly pertinent: international human rights obligations; the Constitution; the formal secular legal system; the sharia; and customary law. There is no codified hierarchy between the formal secular legal system, the sharia and customary law, which coexist *de facto* and interact in multiple ways. In practice, the impact of the parallel systems is further compounded by the presence of armed groups who ruthlessly continue to assert their power over women.

35. Afghanistan is party to all major international human rights treaties, including the Convention on the Elimination of All Forms of Discrimination against Women and article 7 of the Constitution provides that the “State shall abide by the United Nations Charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights”.

36. The new Constitution, which used the 1964 Constitution as a model, clearly establishes the duty of the State to protect women against violence, to respect their rights and to take positive steps to promote their equality in practice. Article 22 expressly provides that men and women have equal rights and duties before the law, and prohibits “any kind of discrimination and privilege”. Article 24 dictates that “liberty and dignity of human beings are inviolable” and specifies that “liberty is the natural right of human beings”. Finally, paragraph 3 of article 24 adds that “the state has the duty to respect and protect the liberty and dignity of human beings”. In article 44, the Constitution provides that “the State shall devise and implement effective programmes for balancing and promoting education for women”.

37. However, despite these constitutional guarantees, the failure of the State to protect women from violence is embedded in the fact that existing normative frameworks are gender-biased and that parallel normative standards - although all claim authenticity *vis-à-vis* the sharia - compete in shaping women’s lives, thus undermining the application of any standard set of norms.

38. The Constitution defines Afghanistan as an “Islamic Republic” and grants Islam the rank of “religion of the state”. Article 3 of the Constitution expressly provides that “[i]n Afghanistan, no law can be contrary to the beliefs and provisions of the sacred religion of Islam”. However, the Constitution does not describe the sharia as applicable law, but only as a constraint upon the legislator. In practice, the legal practitioners refer to the sharia (in its variable interpretations) when faced with a legal question, particularly concerning matters of family law. Actual knowledge of the rules of sharia law and their scholarly interpretation though appear to be ambiguous. Reportedly most judges, prosecutors, members of local councils and other persons called upon to apply law do not have sufficient legal training to distinguish between tribal

customs and the sharia. Practices that blatantly violate Islamic teachings, such as child marriage, *bad* and denial of the rights of widows and women's inheritance rights are thus assumed to be in accordance with the sharia. In some rural areas mullahs interpret the sharia to justify a father's absolute right over his daughters.

39. The status of women and family law are governed by the provisions of the 1977 Civil Code, which establishes the legal age of marriage at 15 for girls and 18 for boys, and the right of women to choose a husband without the prior consent of their guardian. Registration of marriages is required. The Code contains provisions aimed at ensuring that the bride money is actually received by the wife and not seized by the husband's family. Polygamy is not outlawed, but subjected to stringent conditions. Yet none of these provisions are applied in practice. Men can divorce their wives extrajudicially by pronouncing a divorce either orally or in writing. Women however can only obtain a divorce by court on a limited number of grounds, proof of which is by witnesses. This places women at considerable disadvantage, as their word counts less and they wield less influence over potential witnesses.

40. Article 517 of the 1976 Afghan Penal Code provides that "a person who gives in marriage a widow or girl who is 18 years or older against her will or without her consent" shall be punished by a short term of imprisonment. Paragraph 2 of that article provides that where this is done as compensation for a wrongdoing (i.e. as *bad*), the defendant shall be sentenced to up to two years' imprisonment. Article 427 makes sexual intercourse outside the marriage (*zina*) punishable by imprisonment. Article 426, however, provides that *zina* shall be punished under article 427 only if it is not punished as *hudud*.<sup>24</sup> *Hudud*, on the other hand, are not defined in the Penal Code, which thereby refers to an external source of law (the sharia) for the harshest punishment of *zina* (including whipping and stoning). Article 429 arguably criminalizes rape by providing for punishment not exceeding seven years of imprisonment for anyone who "through violence, threat, or deceit violates the chastity of another". The crime of statutory rape, which protects girls under the age of consent, is unknown in Afghan law. Neither does the Penal Code contain provisions regarding domestic violence.

41. Only a minority of the women detained in the prisons visited by the Special Rapporteur are incarcerated for "ordinary" offences such as theft, drug trafficking, assault or murder. The majority of these women are detained on charges related to sexual offences, such as adultery, illicit sexual intercourse or prostitution. Both the legal basis for considering these sexual conducts criminal (i.e. are they rendered punishable by the criminal code, or was sharia law applied, or customary law?) and the delimitation between these offences remain hazy after conversations with detainees and legal practitioners. Many of these women typically explained that they remarried after being divorced by their husband, who then filed a complaint that his wife was having an illegitimate relationship. With no means of proof, these women, some of whom have children from their second partner, are charged with adultery. On the other hand, "running away from home" is clearly not an offence, neither under the Penal Code nor under the sharia; nonetheless Afghanistan's prisons are full of women detained for this "crime", as it is assumed that they have engaged in illegitimate sexual relations during their absence from home.

42. In addition to the legal and more generally conceptual difficulties that police officers, prosecutors and judges have in identifying criminally punishable sexual conduct, women are often unjustifiably criminalized due to the law of evidence. When a woman is forced to have sexual intercourse against her will, and raped, she will need four adult witnesses to prove that

sex took place against her will. If she cannot muster the four witnesses required, she risks being accused herself of illicit sexual intercourse. Similarly, many of the women in detention have been charged with adultery, but claim that they were divorced by their husband, which again they have difficulty proving.

43. While offences against the social mores committed by women are zealously punished (whether contained in the Penal Code or not), the Penal Code provisions criminalizing forced marriages (of adult women) and the Civil Code provisions regarding the validity of marriages and divorce, which would constitute a legal protection for women against male arbitrariness, exist only on paper.

44. The normative framework governing the lives of most Afghan women, particularly in rural areas, is in fact dictated by tribal customs. These customs include practices such as child and forced marriages, *bad*, the total subordination of women to men, the denial of women's inheritance rights, their exclusion from public life, and harsh punishment for women who violate social mores. Of course, tribal customs vary geographically and according to prevailing power dynamics, and not all these forms of violence are sanctioned by all customary law regimes in Afghanistan.

### **B. Multiple mechanisms of justice**

45. The failure of the State to protect women against violence is in particular a consequence of the multiplicity of power holders, in particular the existence of an informal system of law enforcement and justice that operates parallel to the official system.

#### **The police**

46. Twenty-three years of civil war have left Afghanistan's police force weak, fragmented, unskilled, ill-equipped and prone to corruption. In several provinces and districts, the chief of police is a local militia commander. The recruitment and training of an effective and modern police force is one of the priorities of the Government, and these efforts are being generously supported by foreign Governments.

47. There are very few women in the police. At the time of the Special Rapporteur's visit, there was not one woman in the police force in Herat, a city of two million inhabitants. On the other hand, the Special Rapporteur met a female police general in the human rights unit in the Ministry of Interior, and a female police officer who is the focal point for domestic violence in the Kandahar police force. In a society where segregation by sex is strictly observed and sexual and domestic violence are taboos, the absence or scarcity of female police officers constitutes a considerable obstacle to access to police protection for women who experience violence.

#### *The formal justice system*

48. Afghanistan's judicial system is composed of primary courts at the district level, a high court in each provincial capital, and the Supreme Court at the top of the judicial hierarchy. In some rural areas, the formal justice system has completely disappeared as a consequence of the

civil war. In others, while a primary court may be functioning in the district or provincial capital, the distances and the infrastructure are such that litigants will not turn to the formal justice system.

49. The majority of judges lack legal training in the secular law and in the sharia. Judges in the formal justice system are often at the same time religious mullahs. As men of influence, they might also be members of the traditional dispute resolution mechanisms described below. They have no knowledge of the official legal system and no access to collections of laws or official gazettes, which are unavailable in most of Afghanistan's courthouses. Generally, judges prefer to apply what they perceive as sharia over the secular law. The population perceives the judiciary as weak and tending to evade responsibility, if not outright corrupt.

50. From all interviews of the Special Rapporteur, including with members of the law enforcement and the judiciary, it was clear that in cases of child marriages and domestic violence the police, the prosecutors and the courts seek to mediate instead of enforcing the law against the perpetrators. Only in cases of serious injury or death of the woman will an abusive husband be prosecuted. Similarly, it was said that women coming to a courthouse seeking a divorce are discouraged from doing so and verbally abused by judges.

51. The weakness of the judiciary is exemplified in a letter written by the Supreme Court to the Women and Children Legal Research Foundation, an Afghan NGO in reply to a letter it wrote enquiring about Supreme Court action with regard to *bad*. In justifying its reluctance to intervene in *bad* cases, the Supreme Court writes: "It would be premature to take action against local traditional practices in provinces where women do not enjoy civil and political rights. The reason is that tradition has replaced the official law of the country in those areas. It will take a long time."<sup>25</sup>

#### *Traditional dispute resolution mechanisms*

52. Local councils (*shura* or *jirga*), composed of influential persons in the community such as landlords, persons of wealth, religious clerics or other elders recognized for their wisdom or charisma exercise authority to settle disputes and enforce norms. With rare exceptions members of a *jirga* are all men who interact on an egalitarian basis, although some members might enjoy greater influence. *Jirgas* are convened ad hoc to decide on specific disputes and meet in an open space or in a mosque. They hear the parties to the dispute and then discuss the matter and reach a decision. Decisions of a *jirga* are binding and sanctions for non-compliance are harsh, including arson of the trespasser's house, isolation or expulsion from the community and forced removal from the settlement.

53. Data on the percentage of disputes solved within the formal legal system versus the informal are not systematically collected, but it is estimated that 80 per cent of litigation takes place within the latter system. The formal and the informal justice are however communicating systems. Not only might a judge be at the same time a member of a traditional council; individual cases may also be "referred" back and forth. In Kandahar province, for example, the public prosecutor's office usually forwards criminal cases to *jirgas*. When the *jirga* cannot solve a case, it might alert the prosecutor's office and pass the case back to it.

54. Some argue that the informal justice sector should be reformed to make it more responsive to women's rights. Others argue that the informal sector is inherently discriminatory against women and that women's rights can only be protected by ensuring that women have access to a functioning formal judiciary and law enforcement system. While in the short term the former may be inevitable, the State-building itself would necessarily require the strengthening of the latter.

#### *Rule of militia commanders*

55. The prolonged civil war and the resulting disintegration of the social fabric have taken their toll on traditional dispute settlement mechanisms as well. In some regions of the country, local military commanders either dominate the *jirgas* or entirely substitute them as decision makers. In these areas, women enjoy no protection at all from violence. On the contrary, numerous reports attest to the helplessness of families and traditional power holders vis-à-vis the unbridled despotic violence against women practiced by militia commanders and their men, in the form of forced marriages, kidnappings and rape

### **C. The policy framework**

56. The Government's strategy to reduce the level of violence against women is focused on economic development, education and empowerment of women. Ministers point out that the roots of many practices, such as forced and child marriages, lie in the abject poverty in which a majority of the population lives. Women's weak societal position resulting from their lack of education and access to the labour market and to sources of income contributes to their victimization. The strategy is reflected in Afghanistan's report on the Millennium Development Goals, which gives great prominence to targets relating to enrolment of girls in primary and secondary education, gender equality and maternal health and envisages directed microcredit schemes to economically empower women. The report recognizes that "[g]ender equality is not only a goal in its own right, but an essential ingredient for achieving broad based economic growth and fulfilling the required MDG goals. The current status in terms of promoting gender equality and empowering women indicates that Afghanistan has a long way to go".<sup>26</sup>

57. The Ministry of Women's Affairs was created in 2002 and has four priority areas responding to gender concerns and advancing the status of women: health, education, legal protection and economic empowerment. The Ministry of Health and the Ministry of Rural Reconstruction and Development also play an important role in the realization of the Government's gender equality agenda. The Ministry of Health has identified maternal mortality as a core area of intervention, is promoting child spacing and is training midwives and female community health workers to ensure that women in rural areas enjoy access to health care also where a female physician might not be available.<sup>27</sup> The Ministry of Rural Reconstruction and Development is responsible for the National Solidarity Programme, designed to support small-scale reconstruction and development projects identified by communities and empowers them to make decisions and control resources during every stage of the project cycle. While pursuing reconstruction and poverty reduction the National Solidarity Programme, should also favour the growth of a sense of citizenship among the people. It provides for mechanisms aimed at ensuring the participation of women in decision-making on the projects to be carried out; as it aims to cover every village in Afghanistan within four years, it offers an invaluable opportunity to build society from the grass roots up.

58. On 6 June 2005 the Government created the Inter-Ministerial Task Force on the Elimination of Violence against Women, chaired by the Ministry of Women's Affairs, which includes high-ranking representatives from the Supreme Court, the Attorney-General's Office, the Ministry of Hajj and Islamic Affairs, the Ministry of Justice, the Ministry for Foreign Affairs, the Ministry for Internal Affairs, the Ministry of Information and Culture, the Ministry of Health, the Independent Human Rights Commission, and the Ministry of Women's Affairs.

59. On 10 July 2005, the Task Force finalized and endorsed a three-month workplan. Among the 10 objectives identified there are the elimination of discrimination against women by courts, prosecutors' offices and the police; the registration of marriages and divorces; ensuring the implementation of existing legislation protecting women; reducing the impact of traditional practices unfavourable to women; ensuring respect for women's inheritance rights; the protection of mothers and children against the negative health impact of insufficient intervals between consecutive pregnancies; an increase in the schooling of girls; and the condemnation of violence against women as contrary to Islamic values. For each objective, the plan identifies current concerns and activities to be deployed, as well as the entities responsible for its implementation. The workplan proposes an integrated approach, which includes different strategies to be implemented by the relevant ministries. The proposed activities range from legal awareness to reorganization of justice entities.

60. Following the workshop "Elimination of Violence against Women: Preventing Child and Forced Marriage" organized by the Ministry of Women's Affairs on 23 and 24 November 2005<sup>28</sup> a protocol was signed and recommendations were adopted to eradicate child and forced marriages by representatives from various ministries,<sup>29</sup> including the Attorney-General's Office.

#### **D. Other initiatives**

##### **Afghan Independent Human Rights Commission (AIHRC)**

61. AIHRC is mandated to promote and monitor human rights and investigate human rights violations, develop a national curriculum on human rights and provide suggestions for corrective measures to improve the human rights situation in the country. It is composed of 11 members, 4 of them women, including the chair.

62. AIHRC has conducted research into the causes of female criminality in Afghanistan and on women's self-immolation. Current research projects concern domestic violence and forced marriages. The Commission also engages in protection work and is an outspoken advocate for women's rights and speaks up against violence against women.

63. In 2002, AIHRC was specifically mandated to consider the issue of transitional justice. In January 2005, the Commission released its report entitled *A call for justice*, which sets forth a comprehensive strategy for transitional justice to deal with the atrocities committed during the 23 years of civil war in Afghanistan. The report recommends institutional reform, vetting of candidates for elective public office and of senior appointed public officials, and the establishment of a special office of the Prosecutor mandated to investigate and prosecute mass atrocities and systematic violations of human rights, both past and current, as well as of a specialized court to hear such cases. The report is based on a widespread consultation involving thousands of individuals, men and women, and covering 32 of Afghanistan's 34 provinces, as

well as refugee populations in Iran and Pakistan. The report constitutes a powerful reminder to the Government and to the international community that the people of Afghanistan demand accountability for past abuses, and not only a smooth and economically prosperous future.

### **Civil society organizations**

64. Afghan civil society also was a victim of the quarter of a century of civil war, but at least in Kabul and Herat, citizens have formed associations to provide their input in the conduct of public affairs.

65. Afghan NGOs active in the defence of women's rights<sup>30</sup> are numerically few but certainly play a dynamic part in this fledgling civil society. Their projects include the organization of round tables and workshops for women to discuss and exchange experiences, literacy courses and vocational training, counselling and awareness-raising on women's rights among men. The challenges these NGOs face are considerable, beginning with the need to develop capacities, financing and human resources. Moreover, when they work directly with victims of gender-specific violence, NGOs have to operate in near secrecy as women who are victims of such violence are commonly regarded as immoral and disruptive of the customs that hold society together. With the assistance of UNHCR and Medica Mondiale, an international NGO, a network of women human rights defenders has been organized with the aim of bringing together women activists from across the country, thereby enabling the exchange of experiences and the development of a common strategy.

66. A very important and highly sensitive activity undertaken by a number of Afghan NGOs with support from international organizations is the establishment and running of safe houses for women. There are currently six safe houses, four in Kabul, one in Herat and one in Mazar-I-Sharif.

67. The transit shelter in Herat, which is supported by UNHCR, receives "unaccompanied" female refugees returning from the Islamic Republic of Iran. The great majority of women in this safe house have escaped a forced marriage or domestic violence; approximately one third of them had been imprisoned in Iran after they were found in the streets "unaccompanied", some were released from prison or caught in prostitution and deported, and a few had been involved in drug smuggling.

68. In general, women who are forced to find shelter in a safe house risk finding themselves in a dead end. Since "unaccompanied" women are not accepted in Afghan society, women who cannot be reunified with their family have nowhere to go. The difficulty of finding durable solutions for women who end up in a shelter is compounded by the societal attitude towards shelters, which to a large extent are regarded as places of doubtful reputation, bringing dishonour upon the women and their families. This attitude is in turn linked to the already mentioned perception of "running away from home" as a serious violation of social mores and a criminal act. The misapprehension that safe houses are a "safe haven" for immoral women has been reinforced by the occasional practice of sending released female prisoners to shelters. This public perception of safe houses further forces them to operate nearly clandestinely and in a precarious security situation.

69. In the safe houses, women receive a certain degree of education and vocational training. Many women in these shelters are seriously traumatized by their past experiences of violence, including incest, and need psychological support. Due to their limited capacities and the difficult circumstances under which the shelters operate, the NGOs running them have only been able to provide limited access to psychosocial counselling.

### **The international community**

70. The United Nations agencies in Afghanistan operate under the overall responsibility of UNAMA. Security Council resolution 1401 (2002) establishing the mission, as well as the Bonn Agreement, give UNAMA a mandate to monitor and investigate human rights violations and engage in human rights education.

71. Some of the United Nations activities relevant to addressing violence against women are:

- UNIFEM deals with economic empowerment of women, gender and justice, political participation, violence against women, capacity-building at the MOWA, and a gender and media programme;
- UNDP's programme includes access to justice, rural reconstruction, awareness-raising for women and education through local media, particularly the radio, as well as the construction of *hamams* as a place where women can meet freely to bond;
- UNAMA and UNODC are assisting the Government with the reform and restructuring of the prison system;
- The UNAMA human rights unit monitors and investigates human rights violations, supports activities of the AIHRC and is generally engaged in human rights promotion and education;
- UNHCR is engaged in securing safety of refugee women returning voluntarily or by deportation, and assists the local NGO running the Herat shelter for unaccompanied returnee women. Together with Medica Mondiale, UNHCR is producing a manual about sharia law to help women with family law cases.

72. In addition to United Nations agencies, numerous government aid agencies bilaterally provide assistance and support to the Government and Afghan NGOs for projects on economic and social empowerment of women.

73. International NGOs defending women's rights play a crucial role in Afghanistan, both in running projects and increasingly in providing expertise, financial support, training and other forms of capacity-building to local NGOs and individual women human rights defenders. The Special Rapporteur wishes to highlight the particular importance of projects that combine protection and relief with an opportunity to gather data on violence against women, such as medical projects, psychosocial assistance to women with traumas, legal aid and support to local NGOs running safe houses for women.

## V. CONCLUSIONS AND RECOMMENDATIONS

74. The four years since the fall of the Taliban have seen considerable change in the legal and institutional framework. Women have played a role in the Constitutional Loya Jirga of April 2003. The Constitution enshrines the principle of equal rights for men and women, obliges Afghanistan to respect international human rights, and reserves a certain amount of seats in the legislature to women. Afghanistan has ratified the Convention on the Elimination of All Forms of Discrimination against Women without reservations. A Ministry of Women's Affairs was created. Although insufficient, there are several shelters in the country offering refuge to women and girls who dare to escape an abusive environment.

75. Despite these significant developments, the situation of women in Afghanistan remains dramatic, and severe violence against them is all-pervasive. Efforts to improve the status of women are closely linked to the challenge of multiple transitions confronting Afghan society today. Broadly speaking, these transitions include the transition from conflict to peace from a fragmented war economy to a sustainable growth economy, from factional struggles to national reconciliation, and from rule of power to rule of law. The realization of these tasks will take time. Asserting government control over and ensuring security in all parts of the country are certainly necessary preconditions to the establishment of the rule of law in the entire territory and to allowing all citizens to benefit from reconstruction and development. In the meantime, women and girls must be protected from violence as a matter of urgency.

76. The cause of the extraordinary level of violence is embedded in a traditional system of male domination in which girls and women have no status as independent persons. They are workforce, assets to be used to the greatest financial or strategic benefit on the marriage market, and a potential source of dishonour for the patriarchal family. Moreover, the limits the traditional normative framework placed on the exercise of male power over women, reigning in mere arbitrariness, have to a large extent been washed away by 23 years of boundless war, which has disintegrated the social fabric of the society. When the rule of power, be it in the hands of State or non-State actors, replaces the rule of law, the highest price is paid by those with the least power, particularly women and children. In this context, many actors deform Islam and culture from a source of justice and fairness into a justification for their tyrannical acts against women.

77. The condemnation of child and forced marriages is clear in international law and to an extent also in domestic law. The cabinet members and other officials in the executive branch of the Government of Afghanistan the Special Rapporteur met, appear to be strongly committed to eradicating the existence of such marriages, which are a major source of violence against women throughout their life cycle. The protocol signed following a workshop held by the Ministry for Women's Affairs testifies to this commitment. There is also a marked interest to establish the rule of law and ensure law enforcement and a functioning judicial system and to protect the weaker and more vulnerable segments of society, in particular women. In these efforts the Government is supported and encouraged by the United Nations and other international actors in Afghanistan, by the forceful Independent Human Rights Commission, as well as by local and international NGOs.

78. In view of the need for a double strategy addressing both short-term protection needs and long-term underlying causes of violence against women, the Special Rapporteur makes the following recommendations. In making these recommendations, she is fully aware of and has benefited from the mass of thinking, discussion and hands-on activity that has already been invested by others into this matter. In this regard, these recommendations are intended to supplement the plan of action of the Inter-Ministerial Task Force on the Elimination of Violence against Women, as well as other initiatives already in progress. Therefore, I will not restate, for example the importance of making quick progress towards girls' educational attainment.

(i) State-building and sense of citizenry

79. The building of a strong, democratic, inclusive State able to ensure throughout the country an environment of economic and social development from which girls and women fully benefit, has correctly been identified by the Government, by the United Nations, and by bilateral supporters as a priority for the country - this also is important for the improvement of the situation of women. In this context, the Special Rapporteur would like to highlight the importance not only of building State institutions, but also of encouraging the grass-roots development of a sense of citizenry in both men and women. Two programmes are particularly promising in this respect, the National Solidarity Programme and the consultation process on transitional justice carried out by AIHRC. Therefore the Special Rapporteur recommends that:

- The Government, with the support of the international actors, ensure continued financial and political support to the National Solidarity Programme, allowing it to achieve its goals where it has already been launched and to reach those districts which have not yet benefited from it. The Government, the international actors and civil society have to be vigilant that the specific provisions aimed at women's full participation in the Programme are vigorously applied;
- The Government and the international actors ensure that the sense of being taken seriously, as citizens and as victims of war crimes and crimes against humanity, which the AIHRC consultation process has given many citizens of Afghanistan, is not dissipated and turned into disillusionment by indefinite postponement of the transitional justice processes;
- NGOs identify and implement projects that allow women to rebuild communities from the grass roots, to strengthen solidarity among themselves and to organize for self-help. The Government and the international actors should support those projects as a matter of priority.

(ii) Review of family and criminal law

80. The multiplicity of normative systems in Afghanistan favours the power structures intent on oppressing women in the private sphere and in public life, facilitates their impunity, and presents a significant obstacle for women and defenders of women's rights. The Special Rapporteur therefore recommends:

- **To give priority to a clear codification of family law and of the criminal law concerning gender-specific offences in compliance with article 22 of the Constitution, which expressly provides that men and women have equal rights and duties before the law, as well as with the Convention on the Elimination of All Forms of Discrimination against Women;**
- **That the legislation reiterate the mandatory character of the registration of marriages and divorces;**
- **That the criminal law clearly establish that those involved in the organization of child and forced marriages commit a crime and must be prosecuted and punished.**

81. **In drafting this new legislation, the Ministry of Justice and the Ministry of Women's Affairs might consider seeking advice from the AIHRC. It might also prove useful to seek the input of these United Nations agencies present in the country, which have the necessary expertise, as well as of experts from other predominantly Muslim countries which have enacted a secular family law and criminal law.**

**(iii) Public awareness and targeted information campaigns on women's rights**

82. **In order to prepare, accompany and give full effect to the above clarification and codification of women's rights in the private sphere and of the criminalization of violence against women, in particular of forced and child marriages, the Special Rapporteur recommends that the Government:**

- **Clearly instruct the police and the judiciary that child marriages are null and void, and that under-age girls who have been "married" must be returned to their families of origin (as long as this does not endanger their safety) and cannot continue to live in the household of their "husband" until they reach marriageable age;**
- **Clearly instruct the police and prosecutor's offices that girls and women who escape situations of domestic violence must not be returned to their families unless their safety can really be ensured;**
- **Establish specialized women's rights units within the police at the provincial and district levels and equip them with adequate human and technical resources (e.g. vehicles), and ensure a strong component of female staff. Also, the Government should increase the resources of the central human rights unit in the Ministry of Interior;**
- **Identify and implement a realistic and effective way to enforce the duty to register marriages and divorces, and launch a media campaign in favour of marriage and divorce registration;**
- **Sensitize and train police officers, prosecutors and judges;**

- **Launch media campaigns to inform the public that forced and child marriages violate fundamental precepts of Islam;**
- **Consider the possibility of organizing workshops to sensitize clerics and preachers to the need to clearly state to their communities that forced and child marriages violate fundamental precepts of Islam.**

**(iv) Women in detention**

**83. With regard to women in detention, the Special Rapporteur recommends:**

- **That the Ministry of Justice, in cooperation with the Ministry of Women’s Affairs, review the file of every single woman currently in detention to verify whether**
  - **There is a valid judgement sentencing the detainee to imprisonment, or in the case of pretrial detention an order by the authority competent under the new Criminal Procedure Law;**
  - **The woman was found guilty of or is accused of a crime expressly punishable under the 1977 Criminal Code or another codified (written) law currently in force, emanating from a government authority competent to legislate in criminal matters;**
  - **The woman has enjoyed a fair trial with a right to defence and respect of other internationally recognized guarantees to a fair trial.**

**84. Considering the limited number of prisons for women in Afghanistan, it should be possible to complete this review within six months of the publication of the present report. The data thus collected and the legal expertise gathered during this exercise will prove very useful in the review of Afghanistan’s family law and the criminal law regarding offences against morality recommended above.**

**85. The Special Rapporteur would also like to draw the attention of the Government to the need to consider, in parallel to the above review on grounds for the detention of women, the question of transit houses for women who are released from detention, as well as for their children.**

**(v) Increasing and strengthening safe houses**

**86. Despite the drawbacks and risks for women connected with safe houses highlighted above, the immediate need to protect women from extreme violence requires an increase and strengthening of these shelters. In this regard, the Special Rapporteur recommends:**

- **The opening of additional shelters, in the few cities that already have ones but even more urgently, in areas where there are none. While it is advisable that safe houses are run by NGOs, the Government must give them its strong and unambiguous support, at the political level, financially and in the form of legal**

**protection for shelter activities. These resources should be adequate to provide psychosocial counselling for the women in shelters, legal aid and vocational training;**

- In order to avoid victims of violence mixing with women who have a criminal past (who, of course, are also often victims of violence), and to avoid confusion in the public perception of the nature of safe houses, it is advisable to create separate transit houses for women who are released from prison.**

**(vi) Data collection and research**

**87. The scarcity of data on violence against women is a major obstacle to assessing the scale of the problem and designing effective strategies and programmes to combat it. NGOs and international organizations are engaged in efforts to collect relevant information, both statistical data and case studies. The Special Rapporteur recommends that the Ministry of Women's Affairs increase its efforts to collect data from all relevant sources, including other ministries, hospitals, the police, courts, shelters and prisons, and to start building a substantive database on violence against women, and to provide support to comprehensive research on gender issues.**

**(vii) Prioritizing in public policy women's human rights and the elimination of violence against women**

**88. In addition to the above, the Special Rapporteur encourages the Government, international actors and civil society to prioritize the elimination of violence against women in public policy. To this end, the Special Rapporteur recommends that:**

- The Government strengthen the Ministry of Women's Affairs, the Human Rights Office of the Ministry of Interior, the Afghan Independent Human Rights Commission and other entities mandated to protect women's rights;**
- International donors consider focusing support on projects that have a potential to further equality between men and women and to counteract violence against women in the short and medium term.**

**89. To sum up her recommendations, the Special Rapporteur urges the Government of Afghanistan and the international community to acknowledge and address the unbearable and hardly paralleled level of violence against women as a priority ranking equally with security and economic development.**

### Notes

<sup>1</sup> Regrettably, a meeting with President Karzai and the head of UNAMA did not take place.

<sup>2</sup> See L. Dupree, 1980. *Afghanistan*, Princeton, Princeton University Press.

<sup>3</sup> Women's public participation increased particularly with the universal suffrage introduced by the constitutional monarchy in 1964. Women's activism in protest of reactionary transgressions was also not uncommon during this period.

<sup>4</sup> By the 1920s Afghanistan had some of the most progressive legislation in the Muslim world. The family law passed in 1921 banned child marriages among other provisions traditions. See D. Kandiyoti, 2005. *Politics of Gender and Reconstruction in Afghanistan*. UNRISD Occasional Paper 4; P. Marsden, *The Taleban*, London, Zed Books, 1998.

<sup>5</sup> Marsden; op cit, pp. 88-89.

<sup>6</sup> See AIHRC. *A Call for Justice. A National Consultation on Past Human Rights Violations in Afghanistan*, (January 2005) p. 4.

<sup>7</sup> See Human Rights Watch, *Blood Stained Hands. Past atrocities in Kabul and Afghanistan's Legacy of Impunity* pp. 62-63,  
<[http://hrw.org/reports/2005/afghanistan0605/4.htm#\\_Toc105552351](http://hrw.org/reports/2005/afghanistan0605/4.htm#_Toc105552351)>.

<sup>8</sup> A/58/616.

<sup>9</sup> Rights and Democracy, "At the Cross-Roads of Conflict and Democracy: Women and Afghanistan's Constitutional Loya Jirga", (2004) p. 29.

<sup>10</sup> Friedrich Ebert Stiftung, *Lessons from gender-focused International Aid in Post-Conflict Afghanistan*, 2005.

<sup>11</sup> Sixty-eight seats in the *Wolesi Jirga* were won by women in the September 2005 election; 19 (7.6 per cent) would have been elected without the quota. See Draft working papers by MOWA and UNIFEM. "Women of Afghanistan: Towards a Policy Framework" (November 2005).

<sup>12</sup> *Afghanistan Human Development Report 2004*.

<sup>13</sup> When the international flow of aid and arms for the mujahideen declined in the 1990s, they procured alternative sources of funding from drugs and contraband. During the Taliban, the war economy was further consolidated and Afghanistan became the world's major source of opium.

<sup>14</sup> MOWA/UNIFEM, op cit.

<sup>15</sup> *Opening Doors to Opportunity: Afghanistan's Millennium Development Goals*: 11.

<sup>16</sup> Ibid, p. 15.

<sup>17</sup> Ibid, p. 25.

<sup>18</sup> Forced marriages are distinct from the cultural practice of arranged marriage. See Amnesty International. *Afghanistan: Women still under Attack - A systematic failure to Protect* (Index: ASA 11/007/2004).

<sup>19</sup> MOWA-UNIFEM: 14.

<sup>20</sup> J.K. Hekmaty. "Widow Marriages in Afghanistan", unpublished article.

<sup>21</sup> Amnesty International 2005 report suggests that the incident may be taking place across the country: 23.

<sup>22</sup> Similar incidents are observed in Ilam, Islamic Republic of Iran. See E/CN.4/2006/61/Add.3.

<sup>23</sup> Quoted in Amnesty International 2005: 25.

<sup>24</sup> *Hudud* is a body of criminal law based on the sharia.

<sup>25</sup> WCLRF, *Bad, a Painful Tranquilliser*, 2004: 52. The report does not indicate whether the letter originates from the Supreme Court as a collegial organ, from the Chief Justice, or from the Court's secretariat.

<sup>26</sup> *Opening Doors to Opportunity: Afghanistan's Millennium Development Goals*: p. 25. Afghanistan was not represented at the United Nations when the Millennium Declaration was adopted in September 2000. In 2004, Afghanistan became its 191st signatory.

<sup>27</sup> Ten per cent of graduates from medical school are women, and one out of six doctors is a woman.

<sup>28</sup> The workshop, which the Special Rapporteur attended at the invitation of the Minister of MOWA, was technically supported by UNIFEM and UNDP.

<sup>29</sup> The Ministries of Health; Women's Affairs; Hajj and Islamic Affairs; Information and Culture; Public Works and Social Affairs; Defense; Justice.

<sup>30</sup> Particularly well known is the Association of the Women of Afghanistan (RAWA), founded in 1977, to promote women's rights.

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