

## **Afghanistan: Sexual Violence Needs Justice, Not Mediation**

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Critics argue that traditional processes undermine entire legal system.

Afghan officials have hit back at a UN report that criticised their government for allowing mediation to replace formal justice proceedings in cases of violence against women. Rights activists, however, argue that the study highlights key problems with the legal approach to gender abuse.

The UNAMA document, published in May 2018, said that women's limited access to justice was exacerbated by a reliance on mediation rather than prosecution.

Neither the Afghan penal code nor the flagship Law on the Elimination of Violence Against Women - enacted by presidential decree in 2009 - allow mediation in criminal cases.

However, the UN report, *Injustice and Impunity: Mediation of Criminal Offences of Violence against Women*, documented numerous cases of mediation between August 2015 and December 2017.

Danielle Bell, head of human rights at UNAMA, said. "Many of the women interviewed for this report said that they were pressured into withdrawing their official complaints and agreeing to mediation, as if no actual crime had occurred."

Traditional justice procedures are common in Afghanistan, with local elders or community gatherings convened to arbitrate on a wide range of disputes. UN officials said that this was counterproductive.

"The use of mediation in criminal cases serves not only to normalise violence against women but also to undermine confidence in the criminal justice system as a whole," Tadamichi Yamamoto, the UN secretary general's special representative for Afghanistan, told reports at a press conference in May 2018.

However, Afghan officials at the ministry of women's affairs argued that - although the report made some good points - it had failed to appreciate the advances made in the fight against gender violence.

"The report stated that VAW cases are being settled through traditional jirgas and gatherings involving mediation by elders," Nasrat Elahi, the ministry's acting director of legal affairs, said. "This might be the case in remote places, but in urban areas all cases related to violence against women are resolved through legal and judicial bodies. Unfortunately, the report did not mention this."

Jamshid Rasouli, spokesman for the Attorney's General office, also stressed that his department "regards the protection and freedom of citizens as its responsibility and has prioritised cases of violence against women".

He said that 2,300 VAW cases had been processed over the last year, including instances of beatings, harassment, and sexual violence. Some of the perpetrators had been convicted and sentenced, Rasouli continued.

He added that the attorney general had established prosecutors' office in all 34 provinces of the country with the mandate to process cases of gender violence and to increase public awareness. In addition, female prosecutors had been hired for courts in 31 provinces, and a dedicated psychotherapy centre established to help women with associated mental health issues.

But women's rights activists say that multiple factors still prevent women suffering gender violence from even seeking help.

"It's considered to be a shameful act if a woman registers her complaint at a judicial institution," said Shahla Fareed, a women's rights activist and law lecturer at Kabul University.

"According to the dominant traditions, women should not complain. Unfortunately, all these factors provide opportunities for perpetrators to commit more crimes."

She continued, "Women who want to speak out are threatened by their husbands. For example, they are told if they approach the police to make a complaint, then they will never be able to go home again. Elders also say that if a woman goes to the police she should never be allowed back into society so as not to encourage other women [to follow suit]."

Roshan Sirran, director of the Training Human Rights Association for Afghan Women (THRA), said, "There is a law for elimination of violence against women in existence in Afghanistan, but it's not being implemented, and the main reason is a lack of security."

One issue, Sirran continued, was that the law was not applied equally. Those with money and power escaped prosecution or received very light sentences, while others remain in prison for years waiting for their cases to be processed.

Fareed agreed that a culture of impunity meant that abusers were confident that their crimes would go unpunished.

“When women are mistreated, their husbands tell them that even if they report the case to the police, [the husband] can bribe the police with 2,000 Afghanis to be released,” she said. “Similarly, they can sort out the case at prosecutors’ office by paying 5,000 Afghanis, or even - because they are men - they can get the whole case by paying 10,000 Afghani. So women do not approach legal and judicial bodies, and try to tolerate the pain they face at home.”

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**Topic:** Rule of Law

Women's rights

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