



**CONVENTION ON THE ELIMINATION OF ALL FORMS OF  
DISCRIMINATION AGAINST WOMEN**

**MISSION TO AFGHANISTAN, 26-30 AUGUST 2006**

**FINDINGS AND RECOMMENDATIONS**

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## **EXECUTIVE SUMMARY**

At the invitation of the Government of Afghanistan, a panel of experts on the Convention on the Elimination of All Forms of Discrimination against Women (the “Convention”) participated in a mission to Afghanistan in August 2006. The mission was organized by the United Nations Division for the Advancement of Women, Department of Economic and Social Affairs.

The purpose of the mission was to identify gaps and challenges faced by the Government in its efforts to implement the Convention and develop appropriate recommendations for priority action by both governmental and non-governmental bodies for enhanced implementation of the Convention.

The present report contains the experts’ assessment of the situation in Afghanistan with respect to implementation of the Convention, and a set of recommendations for follow-up action. The report was compiled from the individual reports (summaries of discussions, assessments and findings, and recommendations) of the five experts.

The report covers a number of substantive areas, including law reform, awareness-raising, access to justice, violence against women, and women’s education. A major focus is on strengthening the catalytic role of the national machinery for the advancement of women in highlighting the objectives of the Convention and strengthening commitment to and enhancing action for its full implementation across all sectors and levels of Government.

The recommendations contained in this report are also intended to form the basis for a follow-up programme in Afghanistan by the Division for the Advancement of Women to strengthen capacity for implementation of the Convention. It is also hoped that the recommendations will facilitate further support by other institutions, organizations and donors for the promotion of women’s human rights in Afghanistan.

The mission to Afghanistan and the planned follow-up work are part of the Division’s programme to support countries emerging from conflict in the implementation of the Convention on the Elimination of All Forms of Discrimination against Women. Financial support for the programme is provided by the Government of Norway.

## **I. BACKGROUND TO THE MISSION**

### ***1.1 Introduction***

This report outlines the outcome of high-level consultations on the Convention on the Elimination of All Forms of Discrimination against Women (the “Convention”) held in Afghanistan in August 2006.<sup>1</sup> These consultations were the first part of an overall effort to support and strengthen the capacity of the Government of Afghanistan, at its request, to implement the Convention. The purpose of the mission was to identify the gaps and challenges faced by the Government in its efforts to implement the Convention as well as identify training needs and develop appropriate recommendations for priority action for enhanced implementation. The high-level consultations were also guided by the desire to strengthen the catalytic role of the national machinery for the advancement of women in ensuring that the Government as a whole embraces the objectives, implementation and dissemination of the Convention.

The first part of the report outlines the background and purposes of the mission. This is followed by an assessment of the gaps, challenges, progress made and opportunities for implementation of the Convention in Afghanistan. Finally, recommendations for priority action for implementation of the Convention are outlined.

### ***1.2 The obligations in the Convention***

Afghanistan ratified the Convention in March 2003 without reservations. Although the treaty allows for progressive rather than immediate implementation of many provisions, ratification creates legal obligations and demonstrates an unqualified positive commitment to the comprehensive prohibition and elimination of discrimination against women.

According to the Convention’s definition (article 1), discrimination against women encompasses any distinction, exclusion or restriction on the grounds of sex, which prevents the equal exercise or enjoyment by women, irrespective of marital status, on the same basis as men, of their human rights and fundamental freedoms in all spheres of life.

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<sup>1</sup> The Division for the Advancement of Women is grateful to the staff of the United Nations Assistance Mission in Afghanistan (UNAMA) and the United Nations Development Fund for Women (UNIFEM), in particular Ms. Nesrin Hannoun of UNAMA and Ms. Meryem Aslan, Ms. Najia Zewari and Ms. Anou Borrey of UNIFEM, for the excellent logistical and substantive support provided both before and during the mission.

States parties are required by the Convention to eliminate discrimination against women in the exercise and enjoyment of all civil, political, economic, social and cultural rights. The Convention requires States parties to pursue a policy of eliminating discrimination against women, and to take all appropriate measures to eliminate such discrimination, whether committed by public authorities or by any person or organization. Significantly, the obligations of States parties to eliminate discrimination against women extend beyond public life to incorporate discrimination in private life, and, uniquely, within the family.

Upon ratification or accession to the Convention, States parties assume specific obligations for the full implementation of the Convention at the national level. States parties are expected to embody the principle of equality of women and men in their national constitutions or other appropriate legislation, and ensure, through law and other appropriate means, the practical realization of this principle. States parties also commit to adopt legislation prohibiting discrimination, to establish legal protection for women on an equal basis with men, as well as to provide effective remedies against acts of discrimination against women.

The sixteen substantive articles of the Convention identify the specific areas of discrimination that are of particular concern to women and establish the means to eliminate discrimination in these areas. In Part I of the Convention (articles 1-6) States parties agree to take all appropriate measures to bring about the advancement of women. These may take the form of legal, administrative and other measures, which include temporary special measures of affirmative action, modification of social and cultural patterns of conduct and suppression of traffic in women and the exploitation of prostitution of women. In Part II (articles 7-9) States parties undertake to protect women's rights in political and public life. They agree to grant women the right to vote and be elected on a basis of equality with men, to participate in government as officials and policy makers, to participate in non-governmental organizations and to represent their countries internationally. They also agree to grant women equal nationality rights and equal rights with respect to their children's nationality. In Part III (articles 10-14) governments make various commitments to eliminate discrimination in education, employment, health, economic, social and cultural life. In an important and unique provision, States parties also bind themselves to take into account the particular problems faced by rural women, to eliminate discrimination against them and ensure that they

participate in and benefit from rural development on the same basis as men. Lastly, in Part IV (articles 15-16), States parties agree to afford women equality with men before the law, in the exercise of legal rights, and in marriage and family law.

Given the scope of the Convention, its implementation requires a concerted effort and response from the Government as a whole. Such an effort and response should be based on a comprehensive review of national legislation, administrative rules and procedures, and of practices to determine the present degree of compliance with the terms of the Convention. During such a review, attention needs to be paid to each of the substantive provisions of the Convention to assess the extent to which the rights guaranteed are being enjoyed by all women. Based on the results of such a review, clearly stated and targeted policies need to be elaborated and priorities set that are consistent with the provisions of the Convention. Public discussion of Government policies should be encouraged to strengthen the involvement of various sectors of society in the formulation, review and implementation of these policies.

### ***1.3 Multi-phase programme of technical assistance***

The Division for the Advancement of Women proposed a multi-phase programme of technical assistance to support the Government of Afghanistan in identifying obstacles and developing recommendations for enhanced implementation of the Convention.

The first phase, which is covered by this report, involved high-level consultations and meetings of experts with various stakeholders and was intended to sensitize and raise awareness amongst key actors, including staff in various ministries, on the provisions of the Convention and the obligations arising from it for the Government. The involvement of the national machinery for the advancement of women, the Ministry of Women's Affairs, was envisioned as an integral part of this phase so as to enhance its capacity for follow-up and coordination in the development of targeted policies and programmes.

The subsequent phases of the programme will involve the development and delivery, by the Division for the Advancement of Women within its available resources, of training based on the recommendations formulated by the experts at the conclusion of the first phase. These recommendations are laid out in this report and include areas for priority action by the Government, as well as the types of technical assistance and support needed

to enhance the capacity of the Ministry of Women's Affairs and all other ministries, and other actors, to comply with the provisions of the Convention.

It is hoped that the recommendations will facilitate further support by other institutions, organizations and donors for the promotion of women's human rights in Afghanistan.

#### ***1.4 Implementation of phase one: Mission to Afghanistan***

Phase one of the programme of technical support, the high-level consultations with key ministries and other stakeholders, was organized by the Division for the Advancement of Women and took place from 26-30 August 2006. A team of internationally recognized experts in the provisions of the Convention, including current and former members of the Committee on the Elimination of Discrimination against Women (the "Committee"), visited Afghanistan and met with a number of key ministries and other stakeholders in order to:

- assess the current status of awareness about the provisions of the Convention;
- review the provisions of the Convention, and their implications for the work of the respective ministries;
- discuss challenges in implementation of the provisions of the Convention;
- identify opportunities for using the Convention and its provisions as a strategic tool in legislative and policy processes and in programme development, to enhance adherence to its provisions;
- discuss coordination mechanisms to facilitate collaboration between the the Ministry of Women's Affairs and other ministries, as well as with civil society to monitor progress in implementation of the Convention; and
- develop a set of recommendations for priority action for implementation of the Convention in Afghanistan.

The following experts participated in the mission to Afghanistan:<sup>2</sup>

- Prof. Dr. Shaheen Sardar Ali, Professor of Law at the University of Warwick;
- Ms. Shanthi Dairiam, current member of the Committee;
- Prof. Dr. Mohammad Hashim Kamali, professor of international and Islamic law at the International Institute of Islamic Thought and Civilization at the International Islamic University in Malaysia;

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<sup>2</sup> The biographies of the experts is attached as Appendix A.



- Prof. Goran Melander, former member of the Committee; and
- Dr. Heisoo Shin, current member of the Committee.

Ms. Christine Brautigam, Chief of the Women’s Rights Section of the Division for the Advancement of Women, and Ms. Yasmeen Hassan, Social Affairs Officer in the Division, accompanied the experts.

The experts held meetings with a number of key ministries and institutions, including the Ministries of Women’s Affairs, Foreign Affairs, Public Health, Education, Rural Rehabilitation and Development, Hajj, Interior, Information and Culture, and Justice, the Supreme Court and the Office of the Attorney General. Meetings were also held with the leadership of Parliament, the Women and Human Rights Parliamentary Committee, women parliamentarians, the Afghan Independent Human Rights Commission, United Nations entities and non-governmental organizations (NGOs).<sup>3</sup>

The experts welcomed the invitation by the Government and the opportunity to hold this series of discussions with high-level officials and staff in various ministries and other Government entities, and in particular the Ministry of Women’s Affairs, as well as with civil society, and representatives of the United Nations system. They expressed the hope that these consultations would further strengthen commitment and capacity of all stakeholders to fully and effectively implement the Convention.

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<sup>3</sup> The full list of meetings held is attached as Appendix B.

## **2. Assessment of the situation in Afghanistan in respect of implementation of the Convention: Gaps and challenges**

The following is an assessment by the experts of the situation in Afghanistan as it relates to gender equality and the implementation of the Convention, based on information provided and impressions received during the mission. Challenges to the implementation of the Convention have been identified.

### ***2.1 Afghanistan in context***

Afghanistan ratified the Convention in March 2003 without reservations. It has yet to submit a report to the Committee. Afghanistan has also ratified a number of other human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESR), the Convention on the Rights of the Child (CRC), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Convention on the Elimination of All Forms of Racial Discrimination (CERD). It is a party to the Geneva Conventions and has ratified the Rome Statute of the International Criminal Court. Afghanistan's commitment to international human rights standards remains, to a large degree, to be translated into domestic legislation, policy and/or practice to give effect to these international obligations, particularly in relation to women's rights. Legislation that discriminates against women continues to be in effect, and women are also subject to deep-rooted structural discrimination and to customs, prejudices and practices which constitute discrimination against them.

Afghanistan has been devastated by almost three decades of war and civil strife that have weakened its social fabric and eroded its socio-economic and political base and its institutional infrastructure. The Soviet invasion in 1979 followed by the resistance to that invasion, civil war, the Taliban rule and the overthrow of the Taliban in 2001 by the Allied Forces have all wreaked havoc on the country and its population. The emergence of powerful drug lords has effectively turned the country into a drug economy that has wide-ranging ramifications for security, employment and agriculture.

The effects of the foregoing on women and children, the girl child in particular, are far-reaching and grim. Women and girls were subjected to severe discrimination during the Taliban rule, including forced segregation and seclusion, complete and strictly enforced veiling, and lack of access to education, employment and health care. In addition,

women and girls have been, and continue to be, subjected to various forms of violence. In the period of rebuilding, women's rights and gender equality, as in other conflict and post-conflict situations, remain low on the list of priorities.

In late 2001, a conference in Bonn, Germany, established a process for political reconstruction that included election of Hamid Karzai as president in 2004, the adoption of a new Constitution in 2004, and National Assembly elections in 2005. The Afghanistan Compact, adopted in early 2006, established security, governance, rule of law and human rights, economic and social development, and counter-narcotics as critical areas of activity.

The culture of human rights has not been incorporated into Afghanistan. There is generally a lack of knowledge and discussion on human rights. Women's rights in particular are seen as externally imposed and there is not much recognition of women's right to equality. According to members of civil society, there is no strategy for realization of women's rights and no mechanisms to uphold and guarantee such rights. While political support for women's rights is expressed in certain circumstances at the highest level, such support may waver in response to the precarious political situation and religious conservatism. Gender equality is not seen as integral to all Government functions but as a separate issue to be left to the Ministry of Women's Affairs.

## ***2.2 Security***

Security is a pivotal factor in ensuring enjoyment of human rights. Right to life is the prime human right without which all other rights become meaningless. In times of conflict and absence of security, women become more vulnerable, and are subjected to a broad and diverse range of violations of their rights, further aggravated by lack of access to justice and impunity for perpetrators, including the State and its agents.

In the five years since international military operations began, Afghanistan's security situation has deteriorated significantly. After a period of relative calm during the first five years that followed the removal of the Taliban, violence is spreading once again throughout the country. The Taliban have returned and the insurgency frontline now cuts halfway through the country. Attacks occur on a daily basis and several provinces experience suicide bombings, murders, ambushes and explosions. International Security Assistance Force troops, led by the United States and NATO, are regularly engaged in

war operations and are experiencing significant losses, especially in the southern provinces of Helmand and Kandahar, and an increasing number of civilians are being killed.

Lack of security is the gravest problem facing Afghanistan today and a principal obstacle to the education, health, livelihood opportunities and political participation of Afghan women and girls.

### ***2.3 Poverty***

Afghanistan continues to rank at the bottom of most poverty indicators. The situation of women and children is particularly grave. Afghanistan is an agricultural society with eighty percent of its population in rural areas and sixty percent engaged in agriculture. Poverty, the cultivation of poppy in rural areas and, relatedly, drug trafficking, are issues of primary concern in recovery and reconstruction programmes.

Poverty is a major obstacle towards the full realization of human rights, including women's rights, and to the implementation of the Convention, as access to health care, education and employment are dependent on economic resources. Poverty also inhibits an individual's capacity to avail him/herself of civil and political rights. In this regard, it is essential that promotion of enjoyment of the rights enshrined in the Afghan Constitution and in human rights treaties ratified by Afghanistan be supported by mechanisms and strategies aimed at eradicating poverty.

However, there appeared to be limited awareness within the Government of the connection between poverty and discrimination against women. The view was expressed that in situations of extreme poverty and struggle for survival, one cannot promote women's rights but should work on macro economic policies to promote job creation and development which will also benefit women. It is essential that gender sensitivity and women's rights be incorporated into any such macro economic and development programmes and policies. In addition, efforts to tackle discrimination must be intensified and the Convention applied in order to ensure that existing resources are used for the benefit of, and equally enjoyed by, both women and men.

#### ***2.4 Prevalence of customs and practices that constitute discrimination against women, and stereotypes***

Articles 2 (f) and 5 (a) of the Convention require introduction without delay of measures, including legislation, to modify or eliminate customs and practices that discriminate against women and to modify social and cultural patterns of conduct so as to promote women's full enjoyment of their human rights. Article 5(a), in particular, requires States parties to eliminate prejudices and customary and all other practices which are based on the idea of inferiority or superiority of either of the sexes or on stereotyped roles for men and women.

Afghanistan is primarily a tribal society with some urbanized pockets. Customary practices, informed by tribal codes of conduct, are the overarching rules governing the Afghan social structure. While Islamic law as well as codified state law is applied, the effectiveness of both is curtailed, in some settings, by the persistence of centuries old customs and traditions. Islamic law, in particular, is interpreted through the lens of custom and tradition and is used to justify discriminatory tribal customs and practices.

Discriminatory customary practices and gender stereotypes have become firmly entrenched over centuries as a patriarchal and hierarchical framework of rights and obligations, relegating women to second-class citizenship within Afghan society. Such customary practices and stereotypes constitute the most significant impediment to the implementation of the Convention in Afghanistan. Prevailing customs, including those of veiling and gender segregation and the prohibition on women travelling without a related male companion, restrict women to the private sphere of life and vastly curtail their access to education, health and employment opportunities as well as their participation in public life. Custom is also a barrier to women continuing their schooling beyond middle, or even primary, education. Such restrictions are even more stringent after marriage, with dire consequences for women and for the health and wellbeing of the family. Other discriminatory and harmful traditional practices include *badd* (giving of a young girl in marriage to settle debts and as compensation for offences), honour crimes, forced and child marriages, widow re-marriage to a male relative of her deceased husband, and restriction of women's right to inheritance despite clear provisions in Islamic law and the Afghan Constitution.

Cultural diversity is the most common rationalization for discrimination against women - that is, that such different treatment is an integral part of Afghan culture. Such an argument fails to see culture as a dynamic and positive expression of people's aspirations that evolves over time and pre-supposes that human rights and women's rights are not part of Afghan culture and tradition. However, various human rights, in addition to being part of international law, can be traced back in the religions of the world. The principle of non-discrimination is firmly vested in international customary law as well as in treaty law. In treaty law the principle is expressed in the UN Charter (art. 1:3) and in human rights treaties to which Afghanistan is a State party.<sup>4</sup>

Dealing firmly with discriminatory customary attitudes and practices requires political will, i.e., that the Government exercises political leadership to denounce such practices, commits adequate resources, and takes pro-active measures, including the passage of laws, in order to demonstrate that it is genuinely committed to the eradication of these practices. A combination of legislation outlawing the practices and awareness-raising (including through delinking such practices from religion) within the communities that condone and support the practices, is essential.

### ***2.5 Shariah law and its compatibility with the Convention***

Discrimination against women is often legitimized on the basis of Islamic law or Shariah. In the case of Afghanistan, patriarchal and tribal customs and traditions have often been justified on the basis of Islam. Given that the Constitution of Afghanistan specifies that "no law shall contravene the tenets and provisions of the holy religion of Islam" (Article 3) and commits to adoption of measures to eliminate "traditions contrary to the principles of the sacred religion of Islam" (Article 54), it is critical to study the sources of Islamic law on the status of women, highlight the discriminatory customs and practices that have no basis in Islam and harmonize Shariah and the provisions of the Convention.

Some Islamic law experts have postulated that of the 6,239 verses in the *Quran*, a mere 6 may be stated to have a hierarchical formulation and leaning towards inequality for women. Women's human rights in the Islamic legal tradition (based on the *Quran* and

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<sup>4</sup> The Vienna Declaration and Programme of Action, adopted by the World Conference of Human Rights in 1993, stressed, that "all human rights are universal, indivisible and interdependent and interrelated". It also stated that national and regional particularities and various historical, cultural and religious backgrounds could be reflected in States' reservations to human rights treaties. Particularities are, however, irrelevant with respect to the Convention, as Afghanistan has ratified the Convention without any reservations.

*Hadith* and other secondary sources), may be categorized into 4 groups; non-discriminatory, corrective, protective and discriminatory. In the non-discriminatory category, there are many Quranic verses on the equality of men and women.<sup>5</sup> The protective and corrective categories of women's rights in Islam relate to mostly the socio-economic sphere of life where it appears that men have greater rights. However, some Islamic law experts have argued that these rights have been so framed to initiate a process of correction of centuries of discrimination against women.<sup>6</sup> The category of Islamic law that is discriminatory towards women is derived from 6 verses of the Quran<sup>7</sup> which, according to experts, are not straightforward in establishing discrimination against women but are sites of contestation in terms of their content, context and interpretation.

Conformity to the basic principles of Islam is a requirement of the 2004 Constitution. However, since both Islam and the Convention stand for similar values of justice, equality and fair treatment of all citizens, the vast majority of Islamic laws are consistent with the Convention. The mission was informed that there were "three or four" or "a maximum of seven or eight" issues of possible conflict between the provisions of Islamic law and the Convention, some of which could be reconciled.<sup>8</sup> It is important that the exact provisions of Shariah that are in conflict with the Convention be identified and articulated, so as to clarify that Shariah is not a general obstacle to the implementation of the Convention. In addition, it is critical that efforts be made to reconcile the seemingly conflicting provisions of Shariah with obligations under the Convention, including through more progressive interpretations of Shariah.

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<sup>5</sup> Most prominently, verses on the origin of humankind (Verse 39:6), joint and equal responsibility for transgression by Adam and Eve (Verse 7:18-26), equality of men and women on the ethico-religious level (Verse 9: 71-72), equality in moral and spiritual obligations (Verse 33:35; 40:17; 6:164; 74:38), equality in rewards and punishments (Verse: 24:2-4), equality in civil and property rights and complete control over her earnings (Verse 3:285; Verse 4:7; Verse 4:32). A woman's rights to enter marriage of her own choice and to dissolve the marriage are clearly stated in the *Quran* as well. Women's equal right to education, health and employment are non-controversially stated in the *Quran*.

<sup>6</sup> Thus, burying the girl child at birth was corrected by verse 16:58-59; and 17:31. Likewise the son's right to re-marry his father's widow was prohibited by verse 4:19. Women's debarment from inheritance was corrected by verse 4:11. An important correction in the area of family law came where the *mahr* or marriage gift was made the right and property of the wife and not of her father or male relative.

<sup>7</sup> These include verse 4:34 which has been interpreted to make women the charge of their male relatives and to give husbands the right to chastise their wives for inappropriate and disobedient behaviour; verse 2:282 which has been interpreted to require evidence of 2 women in place of one man in financial agreements reduced to writings; verse 4:3 which gives rights of polygamy to men; and verses prescribing stricter clothing requirements for women.

<sup>8</sup> Minister of Justice.

## ***2.6 Violence against women***

Violence against women is a serious problem in Afghanistan. A study by UNIFEM shows that intra-family violence is endemic in Afghan society.<sup>9</sup> In General Recommendation 19, the Committee noted that gender-based violence is a form of discrimination that inhibits women's ability to enjoy human rights and fundamental freedoms equally with men. The General Recommendation stated that the full implementation of the Convention requires States to take positive measures to eliminate all forms of violence against women committed by both public authorities and private actors. As violence against women impairs a number of other rights and freedoms (such as the right to life; the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; the right to equality and equal protection; the right to liberty and security of the person; and the right to the highest standard attainable of physical and mental health), its continued significant prevalence in Afghan society in the post-conflict period negates the full enjoyment by women of the rights guaranteed under the Convention. Violence against women, including rape, domestic violence, honour crimes and forced marriages are human rights violations in terms of the Convention and other international instruments.

Women who are subjected to violence have little recourse – both due to existing cultural norms and practices and an insufficient legal framework and judicial structure. It is regarded shameful for a female victim of violence to go to court and lodge a complaint. It is even more difficult for such victims to substantiate their claims by means of witnesses or other methods of proof. The tribal setting of Afghanistan generally discourages people from getting involved in disputes involving women. Police and prosecutors do not take reports of violence against women seriously and do not consider violence against women to be a criminal offense. It is extremely rare that a case of rape is reported to the police due to the shame and dishonor associated with such a crime, compounded by the fact that a rape victim fears detention and prosecution for unlawful sexual activity instead of being treated as a victim of crime. In the few cases when courts do consider violence against women, it is during divorce proceedings before a civil court.

Trafficking in human beings is a growing problem, and Afghanistan has become a country of origin, i.e. Afghan women are “sold” and sent to other countries where they

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<sup>9</sup> United Nations Development Fund for Women, *Uncounted and Discounted: A Secondary Data Research Project on Violence against Women in Afghanistan*, May 2006.



are sexually exploited. Afghanistan is not a State party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Comprehensive legislation on trafficking has yet to be enacted.

### ***2.7 Law reform***

Article 2 of the Convention, inter alia, provides that States parties must eliminate legal discrimination against women by revising existing and enacting new legislation, and by abolishing customs, traditions and other practices that discriminate against women. Afghanistan's ratification of the Convention without any reservation requires review of existing national laws to bring them into conformity with the provisions of the Convention, and enactment of new laws to enable Afghanistan to meet the obligations set out in the Convention, especially in articles 2 and 3.

In most of Afghanistan, the rule of law has historically been weak. Currently what is applied in Afghanistan is a combination of tribal/customary law, Islamic law and some statutory law. All these systems of law contain provisions that are discriminatory to women.

There are several examples of laws that directly or indirectly discriminate against women in Afghanistan in contravention of explicit provisions of the Convention. For example, women do not have the same right to enter into marriage or get divorced as men, and many find themselves imprisoned for "running away from home" when they try to marry of their own will or to leave bad marriages. Women also do not have equal rights to custody and guardianship of their children or to inheritance. The practice of polygamy continues to exist in Afghanistan. The law on the minimum age of marriage of 16 years for girls and 18 years for boys is not enforced and child marriages are widely practiced. Despite the law which requires registration of marriages, it is estimated that only five percent of marriages are registered, to the detriment of women. Afghan women not only lack the right to pass their Afghan citizenship to foreign husbands and children born outside Afghanistan, they stand to lose their Afghan citizenship and their ability to retain property in Afghanistan upon marriage to a foreign national.

Criminal law and procedure in Afghanistan remains strongly prejudiced against women victims in many respects. Criminal law provides lenient sentences for honour crimes and

does not address intra-family violence. It does not contain specific provisions related to rape which is dealt with under the sections dealing with the *zina* offences of “adultery, pederasty, and violation of honour,” to the disadvantage of rape victims who are often detained on suspicion that the sexual act was consensual and charged on the basis of *zina* crimes, compounding the physical and psychological trauma of rape. The evidentiary rules of *hadd* are applied to the further disadvantage of women victims of rape.

The Judicial Reform Commission was established in November 2002 and has been mandated, as set out in the Bonn Agreement, to rebuild the domestic legal system "in accordance with Islamic principles, international standards, rule of law and Afghan legal traditions". The Judicial Reform Commission is responsible for preparing drafts of new Civil Law and Family Codes, Criminal Law, Criminal Procedure and for surveying the existing judicial system in Afghanistan and has also been involved in the establishment of training programmes for judges.

However, the Judicial Reform Commission still has to formulate a coherent strategy for justice and to prioritize needs. In addition, the vital task of securing the necessary legal framework remains a considerable challenge. The law reform lacks a clear gender equality approach, both with respect to the judiciary and to substantive law reform. While the Judicial Reform Commission has consulted with the Ministry of Women’s Affairs about provisions related to women's rights to be included in these draft laws, priority has not been given to gender equality issues in law reform. There is a lack of leadership to promote law reform related to women’s rights. In this regard, the Ministry of Women’s Affairs is not clear about its role to initiate and influence the law reform agenda. In addition, parliamentarians are involved in the law reform process only to a limited degree and seem to view Afghan culture as an almost insurmountable obstacle to women’s rights and gender equality. Donors, who are crucial to the reform and reconstruction process, are also not constructively promoting law reform related to women’s rights.

While law reform in relation to women’s rights is urgently needed, there is a risk that the process of such law reform will be slow and long-drawn out and its outcome highly dependent on political pressure by outside bodies on the Government. It is crucial that efforts to institutionalize legal reform under the guiding principles of the Convention be stepped up as a matter of urgency. Political will at all levels, including by parliamentarians, is an essential requirement of such an effort.

## ***2.8 Access to justice***

This area, next to security issues, is the most crucial in establishing a society supportive of human rights in Afghanistan. The justice system and law enforcement suffer from a very low level of human resource and physical infrastructure capacity. The years of conflict eroded whatever institutions of justice existed. Despite the attempts at rebuilding, access to the formal justice system is limited for most Afghans, and for women in particular due to discriminatory cultural practices that prevent them from travelling alone. Outside of Kabul, informal systems of justice, such as jirgas, are in operation, applying tribal and customary law with negative outcomes for women. Laws and policies are not in line with international human rights standards. Where laws are in place, poor implementation by an under-trained and gender-insensitive judiciary remains a challenge. In addition, there are numerous reports of wide-ranging corruption in the courts, police and other Government agencies, which serves as a significant impediment to access to justice. The high rate of illiteracy among women and their lack of awareness of their rights further limits their access to justice.

Post conflict, there are very few qualified lawyers and judges. The mission was informed that the majority of judges in Afghanistan have limited legal qualifications and a limited understanding of Islamic jurisprudence and existing statutory law, the Constitution, and international human rights instruments. Consequently, the law that is most frequently applied, particularly in rural Afghanistan, is a combination of traditional tribal/customary law, and Islamic law.

Women are extremely under-represented in the judiciary. Estimates indicate that of some 2000 sitting judges, only 65-70 are women. Moreover, female judges generally have administrative, rather than adjudicative tasks. Despite the Afghan Women Judges Association providing a list of six qualified women judges to the Government for consideration, there are no female Supreme Court judges. There has been no gender-sensitivity training for the judiciary.

A crucial issue for enhancing access to justice is the culture of police and more broadly, of law enforcement and public security services in general. Policing is at present not perceived as community service or support but confined to dealing with ‘criminals’ and ‘criminal activity’. The militarization of the police has dire implications for women with

respect to the appropriateness or suitability of police response to women's problems. The civil security sector remains unfamiliar with human rights obligations and the human rights unit within the Ministry of Interior is unsure of its continued existence in the reform process.

There is a lack of women police officers. Of the 53,400 police officers in Afghanistan in 2005, only 180 (0.3 percent) were women. Moreover, women police officers serve mainly in guard and body-searching duties, rather than in investigative or patrol duties. In the new police training programmes, only 40 of 1500 trainees are women. It is essential that the number of well-trained and empowered policewomen in Afghanistan be increased to ensure that crimes involving women as suspects, complainants or victims are adequately addressed.

The difficulty in accessing information about the situation of women in remote areas prevents the development of meaningful programmes for access to justice in these areas. In this respect, it should be noted that while the Ministry of Women's Affairs' Legal Affairs Department and district level women development centers, and the Afghan Independent Human Rights Commission provide some legal assistance to women, it is not clear whether these institutions have developed linkages between their programmes, especially in remote areas, and to what extent they further the agenda of women's access to justice.

Considerable resources and capacity-building efforts are required to re-build the law enforcement and justice systems to a level where they can function adequately, particularly for the protection of women's human rights. To that end, matters pertaining to women and justice, including women's access to justice, need to become a priority. Lack of knowledge and awareness of the Convention and women's human rights among the judiciary and law enforcement officials need to be addressed through capacity-building and awareness-raising efforts.

### ***2.9 The role and capacity of the Ministry of Women's Affairs***

The Committee's General Recommendation 6 encourages the establishment of national machinery to promote the advancement and development of women in all States parties. The mandate of such machinery should include advice on monitoring progress in compliance with international human rights standards. Under the Beijing Platform for

Action, Governments are required to create and strengthen national machinery for the advancement of women at the highest possible level of authority to perform policy analysis, undertake advocacy, communication, coordination and monitoring of implementation. The national machinery set up in Afghanistan in December 2001 is the Ministry of Women's Affairs which is responsible, inter-alia, for coordinating the implementation of the Convention.

The effectiveness of a women's ministry is dependent on the strength of its mandate and authority, its credibility and its power to influence other ministries. Since the establishment of the Ministry of Women's Affairs, there have been four Ministers of Women's Affairs. On August 8, 2006, a fortnight before the delegation's visit to Afghanistan, Ms Housn Banou Ghazanfar was confirmed as the new Minister of Women's Affairs.

From discussions with the Minister and officials of the Ministry of Women's Affairs as well as other stakeholders during the course of the mission, it is clear that the role, function and scope of the Ministry of Women's Affairs need to be further clarified and defined. This is not an issue specific to Afghanistan as the mandates of women's ministries have been the subject of similar debate and discussion in many other countries.

One issue of concern is the 'location' of the Ministry of Women's Affairs in the hierarchy of Government departments. Neither the Minister of Women's Affairs, nor the ministry as an organization, currently have the power to engage the attention of other ministries when it comes to mainstreaming women's rights into their work. While the Ministry of Women's Affairs maintains its key structural relationships with line ministries via gender focal points, most gender focal points are lower-level officials with little authority to shape planning and policies. In addition, civil society organizations and parliamentarians seem uncertain of the role and authority of the Ministry of Women's Affairs. One way to address these issues is through the political location of the Ministry of Women's Affairs: In some countries, the women's ministry is placed in the Prime Minister/President's office and receives more 'direct' attention as well as greater authority as a result of physical proximity with the head of state.

Secondly, the mandate of the Ministry of Women's Affairs lacks clarity and is confusing for the ministry as well as the beneficiaries of its work. It is not clear whether it is intended to be a parallel 'government' for women as it implements projects of health,

education, skill development and economic empowerment for women. If its mandate is to be focused on policy-making, planning and acting as a catalyst for women's issues and rights, it is not clear how it has conceptualized its role and what strategies it has devised to be effective, particularly with respect to its relation to the line ministries responsible for implementing gender equality policies in various sectors.

A critical challenge affecting the implementation of the Convention is the need for effective co-ordination and collaboration of the Ministry of Women's Affairs with other line ministries, the Judicial Reform Commission, the Afghan Independent Human Rights Commission and civil society. In this respect, the catalytic role of the Ministry of Women's Affairs in facilitating gender mainstreaming in all other Government departments needs to be further developed, including through the appointment of high-level gender focal points in the line ministries who can influence the policies of the respective ministries. In addition, the Ministry of Women's Affairs must take the lead role in coordinating the implementation of the Interim National Action Plan for Women of Afghanistan. Collaboration and co-operation with civil society, including in law reform, education, health and provision of services to women in crisis, also requires further attention and needs to be enhanced and expanded.

The capacity of the staff of the Ministry of Women's Affairs needs to be further developed, especially on the Convention, and their catalytic role in its implementation. Limited knowledge of, and expertise on, the Convention among staff results in limited implementation.

While the Ministry of Women's Affairs works at the provincial and district level through its district level departments, the work of these departments is viewed as inconsistent in scope and quality and dependent on the focus of the person in charge, rather than on their mandates. Since these district level departments are the presence of the Ministry of Women's Affairs in the districts, it is essential that their roles and functions be clarified and the capacity of their staff be developed.

In addition, while the Ministry of Women's Affairs receives assistance from the international community and donors, it appeared that such assistance is not well coordinated and harmonized in order to achieve a more cost effective and focused approach to promoting gender equality and women's rights.

### ***2.10 Role and capacity of civil society***

Non-governmental organisations (NGOs) play an important humanitarian role in Afghanistan. More than 1600 organisations are registered with the Ministry of Planning. The majority of the NGOs are Afghan, but the largest programmes are implemented by international NGOs. A few NGOs are involved in peace building, human rights and advocacy work and even fewer in women's human rights.

From discussions with NGOs and Government agencies, it appeared that a contentious relationship exists between civil society and the Government. Some civil society organizations see Government as ineffective and not delivering on its promises to the people of Afghanistan. The Government on the other hand sees NGOs within civil society as critical of Government and as a competitor for foreign funding and donor support.

There is also competition for funding among the NGOs in Afghanistan. Local NGOs with particular emphasis on women's human rights have been less successful in obtaining funds, sometimes because of poorly drafted projects, sometimes because of un-coordinated activities.

Despite the difficult circumstances under which they operate, NGOs perform a vital role in the promotion of women's rights in Afghanistan. These organizations can play an important role in advocating for, and monitoring, Government action to put in place and implement legislation, policies and programmes aimed at achieving equality between women and men. Improving the capacity of such organizations will not only strengthen their ability to address social and economic inequalities, but also ensure that pressure is continuously maintained to ensure accountability and make certain that the existing political will does not wane.

### ***2.11 Role of donors***

Reconstruction efforts in Afghanistan are dependent on donor assistance and funding. The mission was unable to obtain a clear picture of the extent, and trends over time, of donor support for programmes and projects related to gender equality and advancement of women's human rights. It appeared that donors did not give priority to the integration of women's rights into reconstruction and development efforts, which is difficult to

understand in light of the strong international criticism of the status of women during the Taliban regime.

An additional concern is that donors may support newer civil society groups who can meet certain requirements, such as writing project proposals and partnering with international agencies, at the expense of indigenous civil society organizations with relevant experience and legitimacy. There is also concern that donors may place emphasis on high-visibility, quick impact projects, rather than projects that are sustainable in the long-term.

### **3. Progress made in implementation of the Convention**

The experts identified the following as promising developments that will further gender equality and the implementation of the Convention in Afghanistan.

#### ***3.1 Establishment of the Ministry of Women's Affairs***

The establishment of the Ministry of Women's Affairs as the national machinery for the advancement of women in December 2001, i.e. only a few weeks after the adoption of the Bonn Agreement, is an important step forward in laying the foundation for sustainable work for the promotion of women's human rights.

#### ***3.2 Provisions in the 2004 Constitution***

Chapter two of the 2004 Constitution on the fundamental rights and duties of citizens, provides substantial legal protections for women. Article 22, the anti-discrimination and equality provision, was altered from the draft version to make specific reference to women. However, the Article does not include a comprehensive definition of "discrimination", such as that in Article 1 of the Convention.

Significantly, Articles 83 and 84 of the Constitution establish quotas for women in both houses of Parliament. In accordance with these requirements, women got 68 out of the 249 seats in the Wolesi Jirga and 121 out of 420 seats in the provincial councils. Five provincial council seats reserved for women remained vacant due to lack of women candidates. The women parliamentarians need support in skills building and gender sensitivity training to ensure their effective participation and maximum impact.



Other articles in the Constitution impose positive obligations on the State for the advancement of women: Article 44 requires the State to “create and foster balanced education for women” and Article 54 requires the State to adopt “necessary measures to attain the physical and spiritual health of the family, especially of the child and the mother”.

### ***3.3 Other institutional mechanisms, policies and programmes***

Other mechanisms, policies and programmes that signify progress in the implementation of the Convention include:

- The establishment of the Afghan Independent Human Rights Commission which has worked on the implementation of the Convention.
- The establishment of an Inter-Ministerial Task Force to Eliminate Violence against Women through a presidential decree in 2005.
- The Protocol on Child and Forced Marriages which is a significant step towards implementation of the Convention, despite the fact that it has not been endorsed as yet by some ministries.
- The Interim National Action Plan for Women in Afghanistan which has been drafted but not yet adopted.

## **4. Opportunities for implementation of the Convention**

Based on their discussions with various stakeholders during the mission, the experts identified the following as areas where opportunities exist for the implementation of the Convention. Additional efforts are required to avail of these opportunities.

### ***4.1. Reconstruction process and instruments***

As a country emerging from conflict, Afghanistan faces the daunting task of rebuilding its society and institutions of State. The process of post-conflict reconstruction offers a major opportunity to reassess and rebuild the normative framework, institutions and structures, and the legal system.

The reconstruction phase also provides an excellent opportunity for ensuring that gender equality issues are an integral part of the initial planning and design phase in all policy areas and for putting in place strategies and mechanisms for implementing the

Convention.<sup>10</sup> The wider societal efforts for development are strengthened if gender-based constraints, which curtail women's enjoyment of their rights and contribution to development and entrenched inequalities, are identified and addressed explicitly and at an early stage as part of overall national development efforts.

Article 7 of the 2004 Constitution mandates respect for ratified treaties. The reconstruction of the legal system will provide an opportunity for the country to review its legislative framework and carry out the legal reforms needed to align its laws with the provisions and obligations of the Convention. The Convention is multi-disciplinary and its implementation requires technical expertise in various fields. An inter-ministerial and inter-departmental approach is required to achieve results.

The Afghanistan National Development Strategy, the Interim National Action Plan for Women in Afghanistan and the Afghanistan Compact are parts of the reconstruction process and provide opportunities for an active and visible implementation of the Convention. The Interim National Action Plan for Women is still in draft form. It acknowledges that the elimination of discrimination is a legal obligation and mentions international obligations under the Convention, as well as the Beijing Platform for Action and the Millennium Development Goals, to promote and protect women's rights, and proposes holistic approaches that include interventions in the private and public spheres. However, the Interim National Action Plan for Women is problematic in some aspects: it frequently refers to the goal of equity rather than equality; and, while the obligations under the Convention are acknowledged, all analysis of the situation of women is organised according to the Beijing Platform for Action or Millennium Development Goals and cohesion between the legal obligations under the Convention and the strategies of the Beijing Platform for Action is not demonstrated. An important issue is whether the Interim National Action Plan for Women is integrated into the Afghanistan National Development Strategy. While the Afghanistan National Development Strategy makes the implementation of the Interim National Action Plan for Women a benchmark, it does not explicitly incorporate its provisions.

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<sup>10</sup> Existing consultative, planning and implementing processes – such as the consultative groups and the cross cutting thematic groups used for developing the Afghanistan National Development Strategy and the participatory community based rural development programmes and the National Solidarity Programmes which reach remote rural areas -- can be utilized in this regard.

In addition to ensuring that non-discrimination and gender equality are made an integral part of the reconstruction process, it is also important to ensure Afghan ownership of the respective plans for their effective implementation. The opportunity for involving Afghans, and Afghan women in particular, can be enhanced by ensuring that such plans are simple, accessible and widely discussed.

#### ***4.2 Ministries willing to work on gender equality***

The implementation of the Convention is the obligation of the Government as a whole, and requires a concerted response from key sectors. The mission was encouraged by meetings at several ministries where an awareness of the obligations under the Convention was demonstrated as well as a willingness to make expanded use of the Convention in programmes and policies. Particular mention should be made of the Ministries of Justice, Public Health, Rural Rehabilitation and Development, and Hajj.

A number of articles of the Convention (Articles 2, 3, 6, 9, 11, 15, 16) require States parties to revise existing legislation and/or enact new legislation to eliminate discrimination against women and accord women equality with men before the law. The willingness of the Ministry of Justice to work on law reform, including on harmonization of Shariah and the Convention, will advance the legal rights of Afghan women.

Article 12 of the Convention requires States parties to take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure equal access to health services, including those related to family planning. Article 14(2)(b) of the Convention provides that adequate health services, including information, counselling and services in family planning, be provided to rural women. The initiative of the Ministry of Public Health to focus on decreasing maternal and child mortality and building capacity of health service providers to respond to women's health needs, including in rural areas, as a priority within its limited resources, will have a positive impact on women's health.

The Convention protects the rights of rural women in article 14 and provides that States parties shall take into account the particular problems faced by them and their significant roles in the economic survival of their families. The willingness of the Ministry of Rural Rehabilitation and Development to incorporate the rights of rural women in its programmes will be instrumental in the application of the Convention in rural areas.

Similarly, given the strong role that religion plays in Afghanistan, the initiative of the Ministry of Hajj to tackle issues such as forced and child marriages, self immolation and violence against women, and to show that discriminatory customary practices have no basis in Islam, will be critical. The mission was also encouraged by the Ministry's willingness to engage in harmonizing the provisions of the Convention with Shariah and in highlighting the rights of women incorporated in the Convention in religious sermons.

#### ***4.3 Civil society organizations willing to work with the Government***

The emergence of a lively civil society in Afghanistan, including NGOs working on women's issues, is a development that holds great potential. Although NGOs currently have a far from ideal relationship with the Government, they are willing to cooperate with the Government and to be complementary to the Government in working on women's rights. The Ministry of Women's Affairs should enhance strategic cooperation and networking with such organizations for greater impact and better outcomes for women. However, while collaborating with the Government, NGOs need to maintain their autonomy and independence in order to continue to effectively monitor Government efforts and demand accountability.

#### ***4.4 Presence of the international community***

There are a large number of international organizations, including United Nations entities and international NGOs, that are actively supporting the Government in its reconstruction efforts and are involved in planning of reforms, including in the areas of human rights and justice. The support, direction and sense of purpose provided by such organizations is a strong positive factor towards the implementation of the Convention. Human rights discourse has acquired prominence and momentum in Afghanistan, partly as a result of the efforts of such organizations.

#### ***4.5 Preparation of first report under the Convention***

The preparation of the report under article 18 of the Convention is an opportunity for the Government<sup>11</sup> to highlight, at the international level, the challenges and obstacles to implementation of the Convention. The process of preparing the report enables States parties to review existing laws, policies and programmes and their impact on women;

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<sup>11</sup> While MOWA is the ministry with responsibility for overseeing the implementation of the Convention, the responsibility for preparation of all reports to treaty bodies is with the Ministry of Foreign Affairs.

ensures that States parties regularly monitor the situation with respect to each right in the Convention; provides States parties with the basis for the elaboration of clearly stated and targeted policies; permits public scrutiny of Government policies and encourages the involvement of various sectors of society in their formulation and review; provides a baseline against which States parties can evaluate the progress made in respect to implementation of the Convention; enables States parties to develop a better understanding of the problems and shortcomings involved in the progressive realization of the aims; and enables the Committee and States parties as a whole to identify the most appropriate means by which the international community might assist them.

Implementation of the Convention and preparation of the report requires data on the situation of women. Currently, data is being collected for development purposes, including via a household survey. This provides an opportunity to collect data required for implementation of, and reporting under, the Convention. In addition, shadow reports prepared by civil society organizations will further enhance the availability of information on issues relating to Afghan women.

#### ***4.6 Temporary special measures to enhance political participation by women***

Article 4, paragraph 1, of the Convention provides for the use of temporary special measures aimed at accelerating de facto equality between men and women. General Recommendation 25 encourages States parties to employ more temporary special measures, such as preferential treatment or quotas to accelerate achievement of women's equality in fields such as education, the economy, politics and employment. General Recommendation 25 further advises States parties to establish quotas and targeted recruitment procedures and appointments to particular posts, such as the judiciary, in order to overcome the cultural barriers that remain, after de jure compliance has been achieved.

Temporary special measures have already been successfully used in Afghanistan to increase the number of women in Parliament. Such measures may also be used to increase the participation of women in other areas, including in education, employment and Government service. It is noteworthy that such measures have not been applied at the ministerial level and the present Government has only one woman minister, down from three women ministers in the previous Government.

## **5. Recommendations**

On the basis of the findings of the mission, the following key recommendations are made for prioritising women's enjoyment of their human rights in policy and programme design and enhancing implementation of the Convention in Afghanistan. The recommendations below cannot be implemented by the Afghan Government alone. It is hoped that entities of the United Nations system, donor agencies, as well as international NGOs, will provide funding, capacity-building and other forms of technical assistance to the Government of Afghanistan (especially the Ministry of Women's Affairs), local non-governmental organizations and other stakeholders involved in the efforts to implement the Convention and eliminate discrimination against women. The recommendations made in this report are selective and do not exclude other important measures to enhance the position of women in Afghanistan, such as policies and programmes related to the education, health, employment and economic empowerment of Afghan women or those related to rural women.

### ***5.1 Clarifying the role and responsibilities of the Ministry of Women's Affairs and strengthening its capacities***

The role and responsibilities of the Ministry of Women's Affairs within Government, including its cooperation with other ministries, the Afghan Independent Human Rights Commission and civil society, have to be identified and clearly articulated. In addition, the Ministry of Women's Affairs' structure and responsibilities, including of its various thematic and district level departments, need to be clarified. In this regard, a review of comparative experiences of national machineries in other countries may be a useful tool to identify good effective institutional structures.

The Ministry of Women's Affairs needs to be supported in further developing and strengthening its catalytic roles as policy adviser on gender equality and women's empowerment, including in relation to the implementation of the Convention. Such support should focus on building the capacity of the staff of the Ministry of Women's Affairs and supporting the recruitment, placement and continued training of high-ranking gender focal points in ministries and other Government departments.

The Ministry of Women's Affairs should participate actively in the process of law reform in Afghanistan and, in cooperation with the Ministry of Justice, initiate amendments of existing discriminatory legislation. The Ministry of Women's Affairs should also be

proactive in designing and implementing awareness-raising campaigns and capacity-building projects.

The Ministry of Women's Affairs should clarify and regularize its manner of cooperation with Afghan Independent Human Rights Commission so that both entities can liaise more effectively and support and build on each other's work on gender equality. In particular, the Ministry of Women's Affairs should, through its district level departments, collaborate with Afghan Independent Human Rights Commission's regional and provincial offices to enhance efforts for gender equality in the provinces.

The Ministry of Women's Affairs should also regularize and strengthen its cooperation with civil society organizations, take advantage of civil society experience on women's issues, and support initiatives undertaken by civil society. Strong linkages and cooperation between the Ministry of Women's Affairs and civil society on gender equality issues is desirable since this would further strengthen the role of the Ministry of Women's Affairs in coordinating and monitoring the implementation of gender equality policies across all sectors of Government.

### ***5.2 Training and capacity-building***

Systematic and sustained training and capacity-building of Government officials is a requirement for the normal functioning of all Government agencies. Capacity building on gender equality and Afghanistan's obligations under the Convention should be an integral part of training programmes.<sup>12</sup> The Government, together with other stakeholders, is encouraged to design and implement of comprehensive training programmes on the Convention for the following groups and sectors:

- *Staff of the Ministry of Women's Affairs and gender focal points in line ministries.* The training programme should enable staff of the Ministry of Women's Affairs and gender focal points to carry out their function as catalysts for gender equality. In particular, the training should aim to familiarize them with the full content and meaning of the articles in the Convention; develop their skills to enhance collaboration with line ministries and cooperation and coordination between Government agencies and civil society organizations; and enable them, including through exposure to good practice examples from other countries, to develop

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<sup>12</sup> It is critical to develop national expertise on gender equality since gender equality issues are seen as externally imposed.

policies and programmes for gender equality and women's human rights, as well as to initiate law review and reform. The training should include a training-of-trainers component such that those trained could then design and embark upon a process of training others in the key Government departments, the judiciary and civil society.

- *Staff in line ministries.* The training programme should focus on the relevant provisions of the Convention, their applicability in various sectors, including education, economic and development planning, justice and health, and the important role of each sector in integrating women's interests and concerns into their mainstream work. The integration of gender perspectives in the development of all policy and programming, gender-sensitive resource allocation (gender-sensitive budgeting), the collection of data disaggregated by sex should also be included in this training.
- *Parliamentarians, the judiciary, law enforcement officials and prosecutors.* This training would include the use of international human rights law, in particular the Convention (including violence against women), in the domestic legal process and decision-making. Further details of such training are provided in section 5.4. Special attention must be paid to the training of women parliamentarians so that the gains made in women's political participation through the use of temporary special measures are optimized.
- *Religious scholars and imams.* This training should be conducted in cooperation with the Ministry of Hajj, and should focus on the provisions of the Convention and their compatibility with Shariah. Particular attention should be paid to demonstrating that discriminatory attitudes, customs and practices are not based on requirements of Shariah.

In addition, specialized training is also required for other groups, including journalists, law students, teachers, human rights advocates and civil society. In particular, there is a need to integrate gender perspectives in legal training to ensure that future government lawyers, as well as lawyers in the private sector, are fully cognizant of women's rights and gender equality. In this regard, the Ministry of Justice should work with the Judicial Reform Commission and institutions providing legal education to enhance training programmes on law and gender equality issues, and support the development of gender-sensitive law school curricula.



All training must emphasize women as rights holders rather than victims. Where appropriate, training should focus on correlating substantive rights under the Convention with comparable rights within indigenous religious and cultural systems in order to facilitate the internalization and acceptability of rights under the Convention to the Afghan population. Training should be regularly assessed and monitored to ensure consistency of concepts.

The Ministry of Women's Affairs should be actively involved in training and capacity building projects.

### ***5.3 Review of national laws and policies***

The Government should, as an integral part of the ongoing law reform process, embark on a well-coordinated effort, with clear time lines, to review national laws and policies and ensure their conformity with international principles of human rights and the specific obligations enshrined in the Convention. This reform effort should include the following:

#### *General reform*

- The incorporation of the principle of non-discrimination on the basis of sex in line with article 1 of the Convention in the Constitution (Article 22 of the Constitution does not include discrimination on the basis of sex) or other appropriate national legislation.
- The incorporation of the Convention into domestic legislation.
- The reflection of the principles of non-discrimination on the basis of sex and equality of women and men by abolishing all discriminatory laws in all fields.
- The harmonization of Shariah, statutory law and international obligations in order to address prejudicial customs that are a principal source of discrimination.
- The elaboration of the exact provisions of Shariah ("a maximum of seven or eight") that conflict with the Convention (in order to dismiss claims that Shariah is a general obstacle to the implementation of the Convention) and ways to harmonize them.

#### *Specific law reform*

- The adoption of specific laws criminalizing violence against women, harmful traditional practices, such as honour crimes, and other practices that constitute discrimination against women throughout the life span, such as forced and early marriages and widow remarriage to family member of deceased husband, so as to

ensure complete and effective conformity between the domestic legislative framework and the provisions of the Convention.

- The reform of family law based on more progressive interpretations of Shariah. Examples of how other Islamic countries have overcome discrimination in this area may be a useful point of reference.
- The enactment of comprehensive legislation to combat trafficking in women, covering, among other things, the prosecution and punishment of offenders and the rehabilitation of victims.
- The ratification of the UN Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

*Structural and policy reform*

- The establishment of a reliable system of registration of births and marriages to enforce the minimum age of marriage and protect the rights of women in marriage.
- The adoption of the Interim National Action Plan for Women in Afghanistan and the allocation of the necessary resources to ensure effective implementation.
- Provision of necessary support and resources to the Judicial Reform Commission to accelerate and strengthen the revision of laws to bring them in conformity with the Convention.
- Regular and active cooperation by the Government, especially the Ministry of Justice and the Ministry of Women's Affairs, with the Judicial Reform Commission on gender-related aspects of the Commission's agenda.
- Effective liaison by Parliament with the Ministry of Justice in the preparation of bills to combat gender discrimination in accordance with the Constitution (articles 22, 44, 54) and the Convention.
- The adoption of temporary special measures, in accordance with article 4, paragraph 1, of the Convention, as an integral part of legislative and policy measures to accelerate achievement of substantive equality, accompanied by skills training and other support programmes to allow women to effectively take advantage of such opportunities. Such measures that have been used to successfully increase political participation by women should also be used to increase the representation of women in education, employment and in all spheres of public life, especially Government service.

#### ***5.4 Access to justice***

The Government should take specific steps to enhance women's access to the structures of justice. These should include:

##### *Training of key role players*

- Sensitization of judicial officers, police and prosecutors to the particular challenges women face in accessing justice, and on the types of violations of rights and discrimination women commonly suffer.
- Training programmes for judges and prosecutors on relevant sections of the Constitution and Civil Code and on the Convention.
- Gender sensitivity training for all police and prosecutors to make them more accessible to women and more responsive to crimes committed against them.
- Training to orient police to community service – including responding to domestic violence and other forms of violation of women's rights – as an integral part of policing.
- Establishment of training programmes for police, especially border police, to provide them with the requisite skills to recognise and provide support for victims of trafficking.

##### *Structural reform*

- Establishment of family law courts in all regions of the country that women can access at very little or no cost.
- Simplification of court procedures.
- Issuance of guidelines to judges, police and prosecutors to address, in simple and practical ways, the impact of prejudicial customs that deny women access to justice.
- Strengthening the complaints mechanism of the Afghan Independent Human Rights Commission, especially at the provincial levels, and encouraging the use of this mechanism to report violations of women's rights.

##### *Increase in number of women in the judiciary, prosecution and law enforcement*

- Increase in number of female judges, including through the use of temporary special measures, and appointment of female judges to the Supreme court.
- Recruitment of more female police officers, including through the use of temporary special measures, on a basis of equality with male police offices, with an initial aim of having a minimum of 10 female police officers in each province; accompanied by culturally sensitive ways to recognize women's role in policing.

- Recruitment of female prosecutors and other female staff in the Office of the Attorney General, including through the use of temporary special measures.

*Improve legal literacy*

- Awareness raising campaigns and educational measures to enhance women's knowledge of their rights and their legal literacy, and measures directed at the elimination of social stereotypes that prevent women from seeking justice.

***5.5 Awareness-raising and elimination of stereotypes***

There is an urgent need for awareness-raising in Afghanistan on women's human rights and the Convention across all sectors and levels of Government, as well as to the general public. The media in Afghanistan can be used in this regard. To encourage the media to promote women's rights and contribute to the elimination of stereotypes, it is necessary to create and train a pool of women journalists and media personnel. In addition, the Ministry of Women's Affairs's plan to establish a broadcasting network for women and to have regular radio broadcasts on issues related to women, will enhance awareness among women of their rights. The Ministry of Women's Affairs should also consider upgrading and enhancing its two existing publications on women's rights and holding discussion groups on women's issues, particularly in the provinces. Such programming and broadcasts should include awareness raising on the Convention and Afghanistan's obligations under the Convention. Other ministries are also encouraged to include gender equality issues related to their sector in their publications.

The need to eliminate entrenched and pervasive stereotypes of the roles of men and women in Afghanistan that are based on tribal and customary practices is critical, not only for the advancement of women but also for the health and well being of the family. A process of deep societal change needs to be supported through the development of strategies to eliminate gender stereotypes in all spheres of life and foster the positive portrayal of women and girls at all levels, including through developing and implementing appropriate legislation, policies and programmes and awareness campaigns.

The Government should adopt policies to integrate compulsory gender awareness programmes and human rights training in the school curricula at all levels, designed in particular to eradicate stereotypes and discriminatory practices and to establish a culture of human rights in Afghanistan. The Government should ensure that all stereotypical

attitudes and norms about the roles and responsibilities of women and men in the family and society are removed from the educational curricula.

Other measures to raise awareness on women's rights and eliminate stereotypes should include:

- Campaigns and educational measures (including adult education) to promote awareness about women's human rights, equality between women and men and the persistence of discrimination against women, and to make the Convention and the Government's obligations under the Convention more widely known.
- Targeted programmes and activities designed to raise awareness of and eliminate violence against women and discriminatory cultural practices, such as *baad* and forced and early marriage, and stereotypes.
- Engagement of non-traditional stakeholders such as imams and religious and community leaders to educate the community about women's rights and to reinforce that Shariah recognizes, and is not an obstacle to, women's equality.
- Campaigns related to legal reform and enactment of new legislation so that both men and women are aware of their rights and responsibilities.
- Awareness raising on the significant long term benefits to national development, productivity and family health that will result from women's empowerment.

### ***5.6 Supporting civil society***

It is recommended that civil society organizations working on women's rights be supported and strengthened. NGOs can provide various services such as legal services, counselling services and shelters to women. In addition, NGOs can serve as "watch-dogs" to expose and help address injustices against women. Such organizations should also be supported in making use of the international monitoring mechanisms in order to achieve better respect for women's human rights. In addition, a mechanism should be created for cooperation between the Government and civil society on women's rights.

### ***5.7 Role of the international community, including donors***

In order to support Afghanistan to implement fully and effectively the obligations it assumed by ratifying the Convention, the international community, including the United Nations, international multi-lateral and bilateral donors and international non-governmental organizations, should prioritize projects and programmes related to women's education, health, access to justice and capacity building, as well as awareness-

raising projects and those relating to rule of law and law reform. Efforts should be made to ensure that all such projects and programmes reflect the perspectives and reality of Afghan women. The international community should work with the Ministry of Women's Affairs to identify priority areas for cooperation in every province. Cooperation within the international community should be a guiding principle.

Eighty three percent of the total budget of the Government is from outside funding. The Afghan Independent Human Rights Commission relies one hundred percent of foreign funding. Civil society, including women's NGOs, is heavily reliant on foreign funding. Given the critical role played by donors in the Afghan reconstruction and development effort, it is essential to enhance the capacity of donors so that they can become active in advancing women's human rights and gender equality. Donors can advance the cause of gender equality in Afghanistan by providing targeted funding to ministries and other organizations which incorporate gender equality issues in their programmes, or by providing funding exclusively for programmes related to women's empowerment and gender equality.

The donor community should support projects to build the capacity of the Ministry of Women's Affairs. In addition, the donor community should support NGOs working in the fields of human rights, women's rights and gender equality and, in determining their funding priorities on gender equality issues, consult with such NGOs. In their support of both Government and civil society, donors should give priority to projects that are sustainable over the long term. In this regard, it is recommended that donors regularly monitor and assess the impact of programmes and projects funded by them. Donors should also coordinate their efforts to maximize efficiency in use of resources. Transparency in funding for projects on women's rights and gender mainstreaming should be encouraged.

## Appendix A: Biographies of Experts

### Convention on the Elimination of All Forms of Discrimination against Women: Technical Cooperation Mission to Afghanistan, 27-30 August 2006

#### List of Experts Participating

1. Prof. Dr. Shaheen Sardar Ali
2. Ms. Shanthi Dairiam
3. Professor Dr. Mohammad Hashim Kamali
4. Prof. Goran Melander
5. Dr. Heisoo Shin

#### United Nations Staff Members:

1. Ms. Christine Brautigam, Chief, Women's Rights Section, Division for the Advancement of Women
2. Ms. Yasmeen Hassan, Social Affairs Officer, Division for the Advancement of Women

#### BRIEF BIOGRAPHIES OF THE EXPERTS

**Prof. Dr. Shaheen Sardar Ali** is a Professor of Law at the University of Warwick. A graduate from the University of Peshawar, she was also a Reader in Law at Warwick, prior to serving as Minister of Health, Population, Welfare and Women's Development, in the North West Frontier province of Pakistan (1999-2002). Prof. Sardar Ali has served on the British Council Task Force on Gender and Development, the National Commission of Inquiry on Women and the Prime Minister's Consultative Committee on Women in Pakistan. She is one of the founder members and coordinator of the South Asian Research Network on Gender, Law and Governance (SARN). She is also the author of *Gender and Human Rights in Islam and International Law. Equal before Allah, Unequal before Man* (2000) and is currently working on *Indigenising Development Processes: Some experiences from the North West Frontier of Pakistan*. Prof. Sardar Ali regularly acts as a consultant for a range of international bodies, including DFID, NORAD, UNICEF, and UNIFEM.

**Ms. Shanthi Dairiam** from Malaysia started her career as an educationist as lecturer at the University of Madras, India. For the past 27 years she has been involved in the promotion of women's right through law and policy reform. In 1993, she founded the International Women's Rights Action Watch Asia Pacific, a regional and international independent, non-profit NGO, based in Malaysia, that monitors and facilitates the implementation of the United Nation Convention on the Elimination of All Forms of Discrimination against Women. In 2004, she was elected to the Committee on the

Elimination of Discrimination against Women for a four-year term (2005-2008). She holds a Masters degree in English Literature from the University of Madras India, and a Masters degree in Gender and Development from the University of Sussex, United Kingdom.

**Professor Dr. Mohammad Hashim Kamali** is originally from Afghanistan and is currently the Dean of the International Institute of Islamic Thought and Civilization at the International Islamic University in Malaysia. Prof. Kamali also teaches jurisprudence and legal theory and is the coordinator of the Harmonization of Shariah and Law Unit at the University. Prof. Kamali was part of the Constitutional Reform Commission in Afghanistan in 2003 where he suggested the introduction of various articles to safeguard the rights of women which were not adopted in the final constitution. He has also participated in legal reform workshops organized by IDLO. Prof. Kamali has presented a number of papers regarding women's rights in Afghanistan and their status under the 2004 Constitution. His publications include *Punishment in Islamic Law: An Enquiry into the Hudud Bill of Kelantan* (2004); *Principles of Islamic Jurisprudence* (2003); *The Dignity of Man: An Islamic Perspective* (2002); *Freedom, Equality and Justice in Islam* (2002); and *Law in Afghanistan: A Study of the Constitutions, Matrimonial Law and the Judiciary* (1985).

**Professor Goran Melander** is the former director of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law and professor of law at Lund University, Sweden. He holds a doctor of laws degree from Lund University and was a member of the Committee on the Elimination of Discrimination against Women (2001 - 2004). He has extensive expertise and experience in the area human rights, and has taught and acted as expert consultant on human rights issues in Africa, Asia, Europe and Latin America. An internationally acclaimed scholar of human rights and international law, Professor Melander is the author and editor of numerous books and articles and is active in a number of international human rights events and organizations.

**Dr. Heisoo Shin** from the Republic of Korea was trained as a sociologist and has been working nationally, regionally and internationally for thirty years to protect and promote women's human rights in many areas, especially in the area of violence against women. Currently she is co-representing the Korean Council for the Women Drafted for Military Sexual Slavery by Japan, an organization working for the 'comfort women' victims of war. She is also a commissioner of the Korean National Human Rights Commission, a visiting professor of KyungHee University in Seoul and is a member of the Asia Pacific Forum on Women, Law & Development. At the United Nations, she has been an expert of the Committee on the Elimination of Discrimination against Women of the United Nations for the past six years.



## Appendix Two: Schedule of Meetings

### *CEDAW Mission to Afghanistan – Schedule 26-30 August, 2006*

<i>Date and Time</i>	<i>Organizations</i>	<i>Objectives</i>	<i>Venue</i>	<i>Member of the Team</i>
<b>Saturday Aug 26</b>				
12.30 – 2.30pm	<b>Arrival/lunch</b>			
2.30pm – 3pm	<b>UNAMA</b>	Security briefing	UNAMA Press Briefing Conference Room	All CEDAW experts.
3.30pm – 5pm	<b>UNIFEM</b>	Briefing by UNIFEM team on Ministries’ response to preparatory meetings on CEDAW	UNAMA Press Briefing Conference Room	All CEDAW experts.
5pm – 6pm	<b>UNAMA</b>	Political briefing by DSRSG Political Affairs, Mr Chris Alexander	UNAMA	All CEDAW experts.
6pm – 7pm	<b>UNAMA</b>	Reconstruction/development briefing by DSRSG Relief, Recovery and Reconstruction, Ms Ameerah Haq	UNAMA	All CEDAW experts.
7.30pm	<b>Reception – SRSG Residence</b>	Welcome dinner reception.	SRSG Residence	All CEDAW experts, SRSG office, Ministers, UNCT, UNIFEM and UNAMA representatives
<b>Sunday Aug 27</b>				
9am - 9.45 am	<b>Ministry of Foreign Affairs</b>	Briefing meeting by Mission and MoFA	MoFA	All CEDAW experts; MoFA high level officials, UNIFEM and UNAMA representatives
10am – 1pm	<b>Meeting with the Ministry of Women’s Affairs</b>	To discuss general questions and difficulties related to implementation of the Convention, as well as a discussion of outstanding issues or strategies related to the mission.	Minister’s office, MoWA	All CEDAW experts, UNIFEM and UNAMA representatives.
1pm – 2.30pm	<b>Lunch meeting</b>	Meeting with German, Norwegian and US police representatives responsible for police reform.	Serena Hotel	All CEDAW experts, UNIFEM and UNAMA representatives.
2.45 – 5pm	<b>Meeting with NGOs</b>	Meeting with civil society representatives on the situation of women and implementation of the Convention.	Afghan Women’s Network	All CEDAW experts, hosted by UNIFEM.

6pm – 7pm	<b>Meeting with Gender Donor Coordination Group</b>	Reception with Gender Donor Coordination Group and EU Human Rights and Gender group	Residence of Marianne Olesen, Street 13, Lane 1, Wazir Akbar Khan (opp Danish embassy)	All CEDAW experts, UNIFEM and UNAMA representatives
<b>Monday Aug 28</b>				
09.00 – 10.00	<b>UNCT meeting</b>	To introduce the mission to the Afghanistan UNCT	UNDP Conference Room	All CEDAW experts.
10.30 – 13.00	<ul style="list-style-type: none"> <li>• <b>Ministry of Interior</b></li> <li>• <b>Ministry of Justice</b></li> </ul>	Parallel meetings will be held with individual line ministries, to discuss the main challenges, opportunities and strategies for CEDAW implementation in each of the ministries. Each ministry will also be invited to indicate the priorities and plans in place in relation to issues affecting women.	Relevant ministries.	Individual CEDAW experts (2/3 per meeting); representatives of Ministry of Interior and Justice, UNIFEM, UNAMA, MoWA and MoFA representative.
13.00 – 15.00	<b>Lunch meeting with Women and Human Rights Parliamentary Committee</b>	(Two of the CEDAW experts will deliver lecture for UNAMA human rights training)	Women Parliamentarians Resource Centre (Lecture to be conducted at Room #6, Training Unit, UNOCA, Jalalabad Rd)	All CEDAW experts, UNIFEM and UNAMA representatives.
15.00 – 17.00 pm	<b>Parallel Meetings:</b> <ul style="list-style-type: none"> <li>• <b>Ministry of Education</b></li> <li>• <b>Ministry of Public Health</b></li> </ul>	Parallel meetings will be held with individual line ministries to discuss the main challenges, opportunities and strategies for CEDAW implementation in each of the ministries and challenges and strategies for implementation in the area of law, justice and the courts. Each ministry will also be invited to indicate the priorities and plans in place in relation to issues affecting women.	Relevant ministries.	Individual CEDAW experts (2/3 per meeting); representatives of the relevant Ministries; UNIFEM, UNAMA, MoWA and MoFA representatives.
<b>Tuesday Aug 29</b>				
8.30 – 10.30 am	<b>Parallel meetings:</b> <ul style="list-style-type: none"> <li>• <b>Ministry of Hajj</b></li> <li>• <b>Ministry for Rural Rehabilitation &amp; Development</b></li> </ul>	Parallel meetings will be held with individual line ministries to discuss the main challenges, opportunities and strategies for CEDAW implementation in each of the ministries and challenges and strategies for implementation in the area of law, justice and the courts. Each ministry will also be invited to indicate the priorities and plans in place in relation to issues affecting women.	Relevant ministries.	Individual CEDAW experts (2/3 per meeting); representatives of the relevant Ministries, UNIFEM, UNAMA, MoWA and MoFA representatives.
11.00 – 1.00	<b>Meeting with Afghanistan Independent Human Rights Commission / UNAMA</b>	Discussion of role of AIHRC in regard to monitoring the implementation of CEDAW and progress reporting.	AIHRC	All CEDAW experts, UNIFEM, UNAMA representative.

	<b>Human Rights Unit</b>			
1.00 – 2.30 pm	<b>Lunch meeting with UNIFEM team</b>		TBC	All CEDAW experts.
3.00 – 5.00 pm	<b>Meeting with the leadership of the Parliament (Kanuni and the heads of parliamentary committees)</b>		Parliament conference room.	All CEDAW experts, UNIFEM and UNAMA representatives
<b>Wed Aug 30</b>				
8.30 – 10.30	<b>Parallel meetings:</b> <ul style="list-style-type: none"> <li>• <b>Supreme Court</b></li> <li>• <b>Ministry of Information &amp; Culture</b></li> </ul>	Parallel meetings will be held with the Supreme Court and the Ministry of Information & Culture to discuss the main challenges, opportunities and strategies for CEDAW implementation and challenges and strategies for implementation in the area of law, justice and the courts. The Supreme Court and the ministry will also be invited to indicate the priorities and plans in place in relation to issues affecting women.	Supreme Court MoIC	Individual CEDAW experts (2/3 per meeting); representatives of the Supreme Court and the Ministry, UNIFEM, UNAMA, MoWA and MFA representatives.
10.30 – 12.30	<b>Meeting with the Attorney General's Office</b>	Meeting with representatives of the office of the Attorney General.	AGO	All experts, UNIFEM, UNAMA, MoWA and MFA representatives.
2.30pm – 4pm	<b>Meeting with women parliamentarians</b>	Meet with Gender Forum established by women parliamentarians.	Women Parliamentarians Resource Centre	All CEDAW experts, UNIFEM, UNAMA representatives.
4pm – 5pm	<b>Meeting with Ministry of Women's Affairs, MoWA and CEDAW Taskforce</b>	Wrap-up meeting with MoWA	MoWA	All CEDAW experts, UNIFEM and UNAMA representative
5pm – 6pm	<b>Meeting with UN SRSG</b>	Wrap-up meeting with UN SRSG (TBC)	UNAMA	All CEDAW experts, UN SRSG
7.30pm	<b>Dinner</b>	Hosted by Richard Bennett, Representative of the Office of the High Commissioner for Human Rights	UNAMA GH 25, Flower St	All CEDAW experts and other guests.
<b>Thurs Aug 31</b>				
	<b>Departure</b>	Departure on UNHAS flight to Dubai/ Islamabad.		