



Universal Periodic Review of Afghanistan Recommendations on Women, Peace and Security

December 2018

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I. Women's participation in political and public life

A. Implementation of the National Action Plan on Security Council resolution 1325

The National Action Plan on UN Security Council resolution 1325 (NAP 1325) covers the period 2015-2022. Its strategic priorities are grouped under the four main pillars of Participation, Protection, Prevention, and Relief and Recovery – divided into 39 indicators and 25 strategic objectives.¹ According to the Annual Report 2018 on Protection of Civilians in Armed Conflict by the United Nations

¹ Afghanistan's National Action Plan on UNSCR 1325 - Women, Peace, And Security, 2015-2022, available at: https://unama.unmissions.org/sites/default/files/wps-afghanistan_national_action_plan_1325_0.pdf

Assistance Mission in Afghanistan (UNAMA), the security situation in 2018 has worsened with an increase of civilian deaths by 5% compared to 2017.²

Difficulties, such as the lack of cooperation between ministries and the absence of budgeting and funding for the implementation of the NAP 1325, compounded with the aggravated insecurity situation, have hampered implementation and programming in provinces as well as in Kabul.³ The implementation of the NAP was delayed for two years after its adoption in 2015 and, although an implementation plan has been subsequently adopted, the financial mechanism for implementation is not finalised yet.⁴No funding has been allocated by international donors to its implementation yet.⁵

The division of responsibilities in implementing policies regarding women's rights is patchy as they are divided among the Ministry of Women's Affairs, the Presidential office, the Chief Executive's office and the First Lady's office. This fragmentation of responsibilities is another obstacle to the effective implementation of the NAP 1325 as well as of other important instruments and policies on women's rights such as, the Elimination of Violence Against Women (EVAW) law, CEDAW, and policies relating to the NAP.

B. Women's involvement in the peace process

The decision on 9 June 2018 by the National Unity Government for an unconditional ceasefire of three days with the Taliban, also observed by the Taliban, was nationally and internationally welcomed.⁶ Since then, the peace talks in Afghanistan have been moving fast. It is urgent for all actors (national, regional and international) to forcefully advocate the promotion of peace talks that meaningfully

2 UNAMA. Afghanistan Protection of Civilians in Armed Conflict Annual Report 2017, available at https://unama.unmissions.org/sites/default/files/afghanistan_protection_of_civilians_annual_report_2017_final_150218.pdf.

3 2017 Status Report on the Afghanistan's National Action Plan on UNSCR 1325 (Women, Peace and Security), available at: http://cdn.mfa.af/reports/NAP_English_final_29-07-2018.pdf .

4 Afghanistan Public Policy Research Organization, Afghanistan's NAP 1325 (2015- 2018): A Critical Assessment, May 2018, page 19, available at:

<http://appro.org.af/wp-content/uploads/2018/05/2018-05-13-Afghanistans-NAP-1325-A-Critical-Assessment.pdf> ; and Geneva Conference on Afghanistan 27/28 November 2018, Geneva Mutual Accountability Framework (GMAF), page 6, available at:

https://unama.unmissions.org/sites/default/files/gmaf_final_26_nov_2018.pdf.

5 Afghanistan Public Policy Research Organization, Afghanistan's NAP 1325 (2015 - 2018): A Critical Assessment, May 2018, page 18, available at: <http://appro.org.af/wp-content/uploads/2018/05/2018-05-13-Afghanistans-NAP-1325-A-Critical-Assessment.pdf>.

6 <https://www.reuters.com/article/us-afghanistan-president-ceasefire/afghanistan-announces-ceasefire-with-taliban-until-june-20-idUSKCN1J3002> .

involve women. It also essential that there be no setback on women's rights as part of the peace process.

There have been concerns about the politicisation of the peace talks by national, regional and international players. Without an inclusive and comprehensive team for peace negotiations tensions and mistrust in the peace process will continue. The absence of meaningful representation of diverse civil society groups, especially of women, in the peace talks is noticeable. The Afghan government, the High Peace Council, the Shura (Council) of *Ulema* of Afghanistan, and the international community continue to ignore women's role in peace talks. Women only represent 26% of the Afghan Peace Council and 20% of provincial peace councils.⁷

The Afghan President has emphasised the role of women in peace talks on many occasions; this commitment should be followed by action.⁸ However, in 23 rounds of peace talks between 2005 and 2014, women were at the table on only two occasions.⁹ When officials from over 25 countries recently gathered for the Kabul Process in February 2018, an Afghan-led peace conference, the room was overwhelmingly filled with men.¹⁰ After the November 2018 conference in Geneva, President Ghani announced a 12-person negotiating team to conduct peace negotiations. Among the 12 members, only three are women but none of them are from civil society.¹¹

Recommendations

- Ensure that Afghan women from diverse groups, including from civil society and from various social, ethnic, political, and religious backgrounds, are included and meaningfully participate in peace talks, including as negotiators.
- Finalise the adoption of the financial mechanism for the implementation of the National Action Plan 1325 by no later than 2019.

7 <https://www.cfr.org/interactive/womens-participation-in-peace-processes/explore-the-data> .

8 <https://edition.cnn.com/2018/03/01/asia/afghanistan-ghani-taliban-intl/index.html> .

9 <https://www.cfr.org/interactive/womens-participation-in-peace-processes/explore-the-data> .

10 <https://eu.usatoday.com/story/opinion/2018/03/21/afghanistan-taliban-peace-talks-must-include-women-column/437628002/>; <https://af.usembassy.gov/kabul-process-peace-security-cooperation-afghanistan-declaration/> .

11 <https://www.euractiv.com/section/global-europe/news/afghan-president-names-team-for-taliban-peace-talks-eu-to-act-as-guarantor/> .

- Ensure the implementation of the National Action Plan 1325 with adequate financial, human and monitoring and evaluation resources and with full involvement of civil society;
- Expedite the creation of a specific and fully funded Women, Peace and Security Unit, under the Directorate of Human Rights and Women's International Affairs within the Ministry of Foreign Affairs in charge of the coordination, monitoring and evaluation, reporting, and secretariat functions of the National Action Plan 1325;
- Commission a gender analysis of annual budgeting of all ministries based on the strategic objectives of the National Action Plan 1325 and work with all ministries to minimise and eliminate the adverse impacts of budgeting practices on gender relations and women's rights.
- Strengthen and streamline the mandate of the Ministry of Women's Affairs to ensure clear competences, without duplication with other bodies, and allocate budget and resources to improve its operational efficiency.
- Engage boys, men, and full households as subjects of awareness-changing and transformative interventions on gender equality.

C. Women's participation in elections

In October 2018, Afghanistan held its long overdue parliamentary elections initially planned in 2015. These were the third parliamentary elections since 2001. While polls reported a high number of voters (about 4.2 million voted out of the 8.8 million registered to vote), the election was marked by technical and organisational issues (e.g. delays in opening polling centres, lack of sufficient electoral materials and staff) and fraud problems at some of the 4,900 polling stations across the country.¹² Many Afghans appear to have stayed at home instead of going to the poll stations due to the fear of violence and to the Taliban's organised campaign of threats and intimidations, which is likely to have disproportionately impacted women's participation.¹³

Women accounted for 39% of the voters in the 2010 Parliamentary elections,¹⁴ 36% in the 2014 presidential and provincial council elections, and 38% in the second round of the 2014 presidential

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https://unama.unmissions.org/sites/default/files/special_report_on_2018_elections_violence_november_2018.pdf, page 2 ; <http://www.fefa.org.af/Home/Details?ps=265> .

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https://unama.unmissions.org/sites/default/files/special_report_on_2018_elections_violence_november_2018.pdf , page 2 ; <https://www.dw.com/en/why-are-afghan-officials-not-announcing-election-results/a-46511656>.

14 <https://www.ndi.org/sites/default/files/Afghanistan-2010-election-observers-final-report.pdf> , page 38

elections.¹⁵ The paucity of data available shows little change over 5 years, and indeed represents a fall from the 2004 presidential elections statistics, in which 44% of the voters were women. Concerted action is required to reverse this trend and to enable women to make up their rightful proportion of the electorate. However, provisional data estimate that the women turnout in the 2018 elections was higher than in previous elections, both in city centers and at provincial levels, despite much insecurity, threats, traditional and customary obstacles, which prevent women from participating both as voters and candidates.¹⁶

Under objective 2 of the NAP 1325, the government committed to strengthen women's active participation in national and provincial elections, including by reviewing and amending relevant laws and by taking measures to create an enabling environment for women to safely run for elections, register, vote and campaign.¹⁷ In its next report on the implementation of the NAP 1325 the Department of Human Rights under the Ministry of Foreign Affairs should report on activities undertaken to implement these activities in view of the 2018 and 2019 parliamentary and presidential elections.

The loss of morale due to the irregularities and corruption in previous elections, and the still pending results have cast serious doubts regarding the legitimacy of democratic processes in the country, and the value of the level of risks taken by Afghan women to participate in elections. As of November 2018, one month after the elections, the Afghanistan Independent Electoral Commission (AIEC) had announced the voting results of only 14 provinces and it is still not clear how long it will take to obtain the final results. This seriously undermines public trust in the electoral process.¹⁸ The anti-corruption commitments of the Afghan government, including the newly adopted national anti-corruption strategy that comprises specific objectives regarding fair elections, must be effectively implemented as called for in UN Security Council resolution 2405 (2018).¹⁹

15 http://cdn.mfa.af/reports/NAP_English_final_29-07-2018.pdf , page 20.

16 <https://www.afghanistan-analysts.org/afghanistan-elections-conundrum-19-women-candidates-going-against-the-grain/>; <https://thediomat.com/2018/10/peace-blood-and-hope-women-in-afghanistans-election/>.

17 Afghanistan's National Action Plan on UNSCR 1325 - Women, Peace, And Security, 2015-2022, pages 16 and 17, available at: https://unama.unmissions.org/sites/default/files/wps-afghanistan_national_action_plan_1325_0.pdf.

18 <http://www.iec.org.af/results/en/home>.

19 Afghanistan National Strategy for Combatting Corruption, Islamic Republic of Afghanistan, page 7, para. 36, available at: http://mof.gov.af/Content/files/AFG_AntiCorruptionStrategy_Eng_.pdf; and S/RES/2405 (2018).

Recommendations

- Ensure the promotion and inclusion of women in electoral processes, including by developing a policy to this effect, and establish networks for women between government, civil society and other stakeholders in order to promote women's participation in elections as voters, candidates, and electoral observers;
- Conduct awareness-raising sessions with Ulema and other influencers about women's role in elections and country-wide awareness-raising seminars with women on the importance of women's political participation including in elections;
- Provide sex-disaggregated data on the participation of women registered on electoral lists and on women voter turnouts as well as on the gender-specific obstacles faced by women voters and candidates participating in the 2018 parliamentary elections and 2019 presidential elections;
- Conduct a transparent and gender-sensitive review of the security, technical and administrative challenges faced by women during the parliamentary and presidential elections, with a view to taking corrective measures to ensure the safety of Afghan women and to facilitate the exercise of their right to participate in the political process;²⁰
- Effectively implement the national anti-corruption strategy and its specific objectives related to fair elections, including the holding of the national consultative conference on ensuring electoral integrity for the 2019 presidential elections with the full involvement of civil society and prosecute any case of corruption.²¹
- Strengthen the Afghanistan's International Election Commission's capacities and resources and ensure its independence, including by conducting impartial investigations into allegations of election fraud and irregularities.

II. Gender-based and sexual violence against women and girls

Since the fall of the Taliban, several legislative and institutional advances have been made towards the protection of women's rights. For instance, Article 22 of the Afghan Constitution (2004) declares:

²⁰ Based on a recommendation by UNAMA to the Independent Election Commission of Afghanistan, see page 8, https://unama.unmissions.org/sites/default/files/special_report_on_2018_elections_violence_november_2018.pdf.

²¹ Afghanistan National Strategy for Combatting Corruption, Islamic Republic of Afghanistan, page 8, available at: http://mof.gov.af/Content/files/AFG_AntiCorruptionStrategy_Eng_.pd.

“Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man and woman, have equal rights and duties before the law.”²² Similarly, Articles 83 and 84 of the Constitution state measures for women’s participation in the upper and lower houses.²³

The Afghan government also made various commitments to women’s rights and gender equality in the Afghanistan Compact (2006) and in the Afghanistan National Development Strategy (ANDS, 2008-2013).²⁴ One of the ANDS’ main focus areas was gender mainstreaming and women’s empowerment in various governmental bodies and society at large. The National Action Plan for the Women of Afghanistan (NAPWA, 2008-2018) was designed with the sole aim of improving women’s lives in Afghanistan with a focus on education, health, economic security and political participation.²⁵

A law on the Elimination of Violence Against Women (EVAW) was adopted in August 2009. It criminalises 22 acts of violence against women such as, forced and child marriage, rape, beating and many other traditions and practices that lead to violence against women.²⁶ The EVAW law has however generated many debates, particularly among more conservative parliamentarians, who have argued that forced marriage and child marriage should not be considered as crimes²⁷ and against women’s access to shelters, on the account of these being “un-Islamic”. As reported by the Special Rapporteur on Violence against Women after her visit to Afghanistan in 2017, “Shelters are viewed by many as institutions that encourage women to leave home; to behave immorally and outside of what is traditionally considered “acceptable” in a conservative and religious society; or as prostitution houses;

22 Islamic Republic of Afghanistan, The Constitution of Afghanistan, available at: <http://www.afghanembassy.com.pl/afg/images/pliki/TheConstitution.pdf>.

23 Article 83 of the Constitution provides that “The elections law shall adopt measures to attain, through the electorate system, general and fair representation for all the people of the country, and proportionate to the population of every province, on average, at least two females shall be the elected members of the House of People from each province.” Article 84 provides that the President shall appoint fifty percent of Members of the House of Elders from amongst women. Islamic Republic of Afghanistan, The Constitution of Afghanistan, available at: <http://www.afghanembassy.com.pl/afg/images/pliki/TheConstitution.pdf>.

24 The Afghanistan Compact, available at: https://www.nato.int/isaf/docu/epub/pdf/afghanistan_compact.pdf; Afghanistan National Development Strategy (ANDS, 2008-2013), available at:

https://www.wto.org/english/thewto_e/acc_e/afg_e/WTACCAFG18_CD_1.pdf

25 National Action Plan for The Women of Afghanistan (NAPWA), available at: <http://extwprlegs1.fao.org/docs/pdf/afg149120.pdf>.

26 Islamic Republic of Afghanistan, Ministry Of Justice, Official Gazette, Extraordinary Issue, Law on Elimination of Violence against Women (EVAW), 1 August 2009, Issue No: (989), available at: <http://www.refworld.org/pdfid/5486d1a34.pdf> .

27 GAPS UK “EVAW Law Stalled in Afghan Parliament” available at: <http://gaps-uk.org/evaw-law-stalled-in-afghan-parliament/>.

or establishments that are causing the break-up of families. Thus, both the service providers and those seeking protection are stigmatized and shunned by society”.²⁸

In 2017 the Afghanistan Independent Human Rights Commission (AIHRC) reported that 4340 cases of violence against women had been registered, increasing by 11.7% in one year.²⁹ Very few cases are reported compared to the actual prevalence rate of violence against women, due to family and social pressure.³⁰ Women and girls are also prevented from reporting violence due to stigma, discrimination, fear of reprisals, as well as due to the treatment of victims of sexual abuse who seek help as perpetrators of *zina* (i.e. sexual intercourse outside of marriage) or “attempted *zina*”.³¹ Women and girls are indeed sometimes charged with the “intention” of committing *zina* when they run away from abuse and seek help.³²

In addition, the EAW law is not effectively implemented, with very low levels of implementation in rural and remote areas.³³ In the last UPR cycle, many States made recommendations to strengthen the implementation of the law including by providing training to law enforcement officials, by creating specific police and prosecutions units.³⁴ The EAW law emphasises the State’s role in protection and prosecution, requiring the police to register complaints and protect victims, and courts and prosecutors to prioritise such cases. However, cases of violence against women, including criminal cases, are frequently mediated, notably through traditional dispute resolution mechanisms headed by men and made on the basis of cultural norms, rather than on the legal framework.³⁵ The United Nations Assistance Mission in Afghanistan (UNAMA) has highlighted that the wide use of mediation in criminal offences of violence against women, including in murder cases, promotes impunity, enables the reoccurrence of violence and erodes women’s trust in the legal system.³⁶ Sexual harassment and

28 A/HRC/29/27/Add.3, para. 44.

29 AIHRC. Summary of the Report on Violence Against Women: The causes, context, and situation of violence against women in Afghanistan. 11 March 2018 available at:

<https://www.aihrc.org.af/media/files/Research%20Reports/Summerry%20report-VAW-2017.pdf>.

30 CAT/C/AFG/CO/2, para. 37; A/HRC/29/27/Add.3, para. 64 and 65.

31 A Way to Go: An Update on Implementation of the Law on Elimination of Violence against Women in Afghanistan, UNAMA/OHCHR, see page 22,

https://unama.unmissions.org/sites/default/files/unama_evaw_law_report_2013_revised_on_16_dec_2013.pdf.

32 A/HRC/29/27/Add.3, para. 16.

33 CAT/C/AFG/CO/2, para. 37; A/HRC/29/27/Add.3, para. 63 and 64.

34 A/HRC/26/4, see recommendations 136-131 to 136.52.

35 CAT/C/AFG/CO/2, para. 37; A/HRC/29/27/Add.3, para. 64 and 65.

36 Injustice and Impunity Mediation of Criminal Offences of Violence against Women, page 6, available at:

https://www.ohchr.org/Documents/Countries/AF/UNAMA_OHCHR_EVAW_Report2018_InjusticeImpunity29May2018.pdf.

gender inequality at work, including in the public sector, is another great obstacle on the way of women's social and economic participation, despite harassment being banned under the EVAW law and the anti-harassment law.³⁷

In 2017, the Committee against Torture expressed concerns at the widespread phenomenon of forced and early marriages and recommended that Afghanistan "take all measures to ensure that forced and early marriages are prohibited, those responsible are prosecuted and punished and the victims are rehabilitated" .³⁸ Recommendations were also made in the context of the previous UPR cycle on this issue.³⁹ The legal age for marriage is 18 for boys and 16 for girls; however, child marriage practices remain prevalent in Afghanistan with around 35% of girls being affected.⁴⁰ In 2017, the government adopted a National Action Plan to Eliminate Early and Child Marriage.⁴¹ However, the plan is not publicly available, nor is there publicly available information on the status of its implementation.⁴²

Child marriage takes roots in social norms, such as tradition, as well as in poverty, insecurity and lack of education. In order to eliminate violence against women and girls, the link between child marriage and poverty needs to be better understood. The extreme levels of harm inflicted on civilians from the armed conflict in 2017 and 2018 have exposed women to becoming the sole-income providers of their households after the death of their husbands, which in turn exposes girls to the risk of marriage to repay debt or to relieve economic hardship.⁴³ Rights-based awareness-raising interventions to prevent child marriage should, hence, take into account actions to improve economic conditions and employment opportunities for households.

Women with disabilities face multiple forms of violence and discrimination (due to being a woman and being disabled). This concern has received hardly any attention, if at all, from the Afghan government,

37 <https://www.afghanistan-analysts.org/harassment-of-women-in-afghanistan-a-hidden-phenomenon-addressed-in-too-many-laws/>.

38 CAT/C/AFG/CO/2, para. 35 and 36.

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CAT/C/AFG/CO/2&Lang=En .

39 A/HRC/26/4, see recommendations 136.75 (Italy), 136.76 (Sweden); 136.100 (Croatia); 136.160 (Poland).

40 <https://www.girlsnotbrides.org/child-marriage/afghanistan/>.

41 <https://www.girlsnotbrides.org/afghanistan-launches-national-action-plan-end-child-marriage/>.

42 <https://www.hrw.org/news/2017/04/20/will-afghanistan-follow-through-promise-end-child-marriage>.

43 A/HRC/29/27/Add.3, para. 56; UNAMA documented 8050 civilian casualties from 1 January to 30 September 2018, page 1,

https://unama.unmissions.org/sites/default/files/unama_protection_of_civilians_in_armed_conflict_3rd_quarter_report_2018_10_oct.pdf

civil society and the international community. The 2016-2020 strategy and national action plan on the elimination of violence against women pays no attention to this concern.⁴⁴ Any policy should identify the multiple forms of discriminations faced by marginalised groups, including women with disabilities, in order to have inclusive policies that leave “no one behind”.

Recommendations

- Ensure prompt investigation and prosecution of cases of violence against women by referring criminal offences to the criminal justice system and never to traditional dispute resolution mechanisms;
- Ensure that EAW judges and prosecutors are fully trained, resourced, supported and empowered to carry out their mandated functions;
- Ensure that women are informed about their rights during judicial and mediation procedures and are treated with dignity and equality in accordance with international human rights law;
- Work with civil society, community and religious leaders to change the negative perception of shelters or safe houses for women victims of violence who seek support;
- Publicise and effectively implement the 2017 National Action Plan to Eliminate Early and Child Marriage in full consultation with civil society and take measures to address the issue of child marriage as a coping mechanism to poverty;
- Finalise and submit without delay its overdue periodic report to the Committee on the Elimination of Discrimination against Women and its overdue first report to the Committee on the rights of persons with disabilities, and include specific information on the challenges faced by women with disabilities.

⁴⁴ Afghanistan’s Strategy and National Action Plan on the Elimination of violence against women, available at: http://www2.unwomen.org/-/media/field%20office%20eseasia/docs/publications/2017/01/aco_evawstrategy_jan17_email-r2.pdf?vs=1821.