A research report on

LEGAL OBSTACLES PREVENTING WOMEN FROM ACHIEVING JUSTICE

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Humanitarian Assistance for the Women and Children of Afghanistan (HAWCA)
Legal Obstacles Preventing Afghan Women from Achieving Justice
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Last but not least, we would like to extend our sincere thanks to the research team who worked hard to prepare this research.

We hope this research could help the Afghan People to take actions to protect women rights and eliminate violence against women from their communities.

HAWCA
PREFACE

In countries that have as turbulent a history as Afghanistan, justice is indispensable in rebuilding the broken nation. It is the cornerstone of democracy and one of the pillars on which just and fair societies are built. In Afghanistan, the principles of equality and access to justice are basic human rights listed in the Afghan Constitution and guiding a number of laws in the country. Article 22 of the Constitution states, for example, that “any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, men and women, have equal rights and duties before the law.” It is alarming, however, that these principles are not reflected in practice, which is particularly evident in many cases of women’s rights violation.

On the surface, there have been major improvements with regard to Afghan women’s rights in the past decade and a half. The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) was ratified by the government in 2003, the Elimination of Violence against Women (EVAW) Law was passed in 2009 and, overall, the promotion of women’s rights has been a priority for the Afghan government, the civil society, and many human rights bodies and NGOs, both national and international. Notwithstanding these developments, women continue to face enormous difficulties in attaining justice and securing their rights due to legal and judicial dead ends that plague Afghanistan’s legal system, and in most cases of gross violations of women’s rights, justice has not been granted.

It is for these reasons that Humanitarian Assistance for the Women and Children of Afghanistan (HAWCA) undertook this current inquiry into four legal cases of female victims of violence in which, despite having received national and global coverage, both the women and their families remained victims of a significant miscarriage of justice. Thus, the aim of this study was to analyze legal and social obstacles that prevented the victims from attaining justice, as well as to offer suggestions on how to address and overcome these obstacles in the future.
ABOUT HAWCA

Humanitarian Assistance for the Women and Children of Afghanistan (HAWCA) was established in January 1999 by a group of young Afghan women and men. The establishment of HAWCA was both the result of, and a response to, the despair and devastation suffered by Afghan women and children being the victims of war and injustice in Afghanistan and refugees in Pakistan. Having lived in the same conditions and experienced the same misery as millions of Afghans in Afghanistan and in Pakistan during the civil war, the leading members of HAWCA committed to achieving their aims and objectives as volunteers, and devoted their efforts to improving the lives of Afghans who have faced difficulties both during the era of Taliban domination and in the current times of instability.

HAWCA encourages active participation of Afghan women and youth in the process of reconstruction and development of their country and works in partnership with institutions and organizations that focus on justice development in Afghanistan. One of the key activities that HAWCA has been involved in is working to provide shelter and justice to female victims of violence, which, in recent years, has resulted in establishing shelters and legal aid centers in several parts of the country.
EXECUTIVE SUMMARY

The aim of this current project entitled Legal Obstacles Preventing Afghan Women from Achieving Justice is to advocate for women’s rights and bring justice to female victims of violence by pointing to inconsistencies and gaps in the current Afghan laws and legal procedures, as well as suggesting improvements. Thus, it is hoped that drawing attention to these inconsistencies and gaps will not only spark a wider debate on the topic but, ultimately, will also result in amendments to laws and procedures that will benefit Afghan women.

The project specifically focuses on four cases of violence that fell short of achieving justice despite having received legal attention. The activities undertaken during this inquiry involved collecting and analyzing legal documents and interviewing the victims, culprits, families and representative of the involved authorities.
THE SITUATION OF AFGHAN WOMEN IN THE PAST FOUR DECADES

Afghanistan has consistently experienced war and destruction in the past 40 years. As in, arguably, most conflicts in recent history of the country, women were the prime victims, suffering from both the war and the society’s oppression.

From the beginning of Russian bombardments until today, the war has left widows and homeless with no means to sustain their, mostly large, families. There are estimated to be approximately one million widows in Afghanistan, who support a family of six on average\(^1\). As a result of many men having become disabled\(^2\) in bomb and rocket attacks, women were forced to become the breadwinners of their families. They take menial jobs and are exploited mercilessly, and a number of women have turned to prostitution\(^3\). During the war, women who fled and became refugees in other countries suffered from poverty.

During the factional in-fighting from 1992-1996, women were routinely abducted, raped, gang-raped, mutilated and held as sex prisoners by militias stationed in Kabul, and a number of women committed suicide to escape this terrible fate. Restrictions on dressing, work and education for women were already being implemented by hardline Islamist parties that fought for power.

Life under the Taliban was yet another horrifying period for women. The restrictions imposed by the Taliban on women were not limited to their lives outside (e.g. wearing a burqa, not being allowed to wear makeup or heels, or not being allowed to speak loudly), but also reached right inside their family homes. The windows of their houses had to be painted black to make the inside invisible, and televisions, radios and all other forms of entertainment were banned. The savage treatment of women by the Taliban was perhaps best portrayed in the public execution of Zarmeena, a mother of

\(^{1}\) UNIFEM Gender statistic brochure accessible at http://www.unifem.org/afghanistan/docs/pubs/07/gender_statistics_brochure.pdf

\(^{2}\) Afghanistan Mental and disability health (http://www.emro.who.int/afg/programmes/mental-health.html)

seven children, who was shot dead in front of her children.

After the downfall of the Taliban, the situation of women has not improved much, with the rate of violence against women rising with every passing year and incidents of murder, torture, domestic abuse, mutilation, honor killing, domestic abuse, immolation, suicide and self-immolation, coerced and underage marriages still being common. In a study conducted by Global Rights In 2008, 87 percent of the sample of Afghan women reported having experienced at least one form of abuse in their lifetime, 39 percent said they had been hit by their husband in the last year and 59 percent said they were in forced marriages. Additionally, approximately 57 percent of girls marry before the age of 16 due to customary practices (legal age for marriage is 16). According to Herat Hospital statistics, in Herat province alone 900 suicide attempts by women were reported in 2017.

Women continue to be prosecuted in mock courts and punished publicly in areas under Taliban and government-backed commanders’ control. Women have been lashed, executed, beheaded, and stoned to death in summary trials, or jailed by the Afghan judiciary for so-called moral crimes. In a report published in March 2012, Human Rights Watch documented that 95 percent of girls and 50 percent of women imprisoned in Afghanistan had been accused of “moral crimes” such as ‘running away’ from home or “zina” (i.e. adultery).

Finally, women and children account for 40 percent of the country’s one million drug addicts, which, arguably, further indicates the results of women’s poverty and general misery.

**Obstacles in Attaining Justice**

Considering the above difficulties that Afghan women face, it is alarming that, at the same time, impunity enjoyed by those committing the acts of violence involving women has been a very serious issue in Afghanistan. Although 16 years have passed from the establishment of the new government, and the government failed to address the

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issue and in most cases the culprits manage to escape justice. To overcome this issue, the civil society has been trying to make some of the cases public and to reach the world through media. However, due to the resulting pressure on the government, in most cases the government punished people indirectly involved in the crime but failed to punish the main culprit and his accomplices.

There is a number of factors to which such failure to attain justice may be attributed, including general insecurity, lawlessness, corruption, illiteracy, poverty and culture and traditions.

**General Insecurity:** Insecurity has a direct effect on rule of law and state-building. Afghanistan continues to suffer from a war that has spread armed conflict in majority of its areas. The current situation has brought about such insecurity that people are worried about losing their lives and livelihood. In 2017, an ongoing conflict displaced as many as 360,000 people from their homes and resulted in 8,019 civilian casualties, two thirds of which were women and children.⁹ In situations in which people struggle to survive, justice is simply not being prioritized and women, being the main victims of this situation, tend to the most affected.

**Lawlessness:** Many rural areas of Afghanistan remain outside the control of the central government and the institutions responsible for providing justice. About half of all Afghans live in districts that are outside the control of the government in Kabul, the Long War Journal ¹⁰ reports. As power is in the hands of those who are, themselves, involved in violence against women and have no regard for providing justice for the victims of violence, these areas are deprived of justice for women.

The Taliban have mock courts and mock trials that have passed sentences of public execution and stoning of women to death, usually in cases of illicit relationships with men and running away from home. In many areas under the control of the central government, militias and local commanders have been armed and financed to fight the Taliban, and these militias have been accused of human rights violations.¹¹

**Corruption:** Transparency Index has ranked Afghanistan the fourth most corrupt country in the world.¹² This corruption is evident in institutions and bodies responsible for securing justice, from police authorities to courts and attorney offices. Women face further humiliation and are commonly forced to pay bribes or perform sexual acts, which often results in women preferring to endure violence to seeking help from the

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government.

**Illiteracy:** The United Nations Educational, Scientific and Cultural Organization (UNESCO) states that 90 percent of women in the country’s villages are not able to read or compute, and almost 80 percent of illiterate citizens in Afghanistan are women, according to the Education Ministry of Afghanistan. Therefore, these women are rarely aware of either their rights described in the Afghan laws or the ways to report the incidents of violence.

**Poverty:** Poverty is directly linked with access to justice and is a major cause of limited access to justice and securing rights. In a male-dominated society such as Afghanistan, women and girls tend to suffer in terms of basic needs, healthcare, and education due to low levels of household income for the family and personal income for women. This, in turn, makes access to justice more difficult. Women in Afghanistan are much poorer than men, earning on average 50 to 60 percent of what men earn. In an unpublished study, the Afghan government found an average level of maternal

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deaths between 800 and 1,200 for every 100,000 live births, making Afghanistan the second worst place in the world to be a mother.\textsuperscript{16} Nearly 72 percent of Afghan people affected by depression are women, according to the Afghan Ministry of Public Health.\textsuperscript{17} Afghanistan has been named the fourth-worst place in the world for girls’ education.\textsuperscript{18} These unfortunate conditions force women to endure violence, as they are not financially independent and cannot afford to live their lives without the support of a male figure. This, in turn, discourages them from seeking justice.

**Culture and traditions:** A number of customs and traditions of patriarchal, conservative and deeply religious Afghanistan create countless hardships for women. Inhumane cultural practices and customs, such as the practice of “baad” (i.e. when a female from a criminal’s family is offered to the victim’s family as a servant or bride), child marriage or forced marriage have their roots in the patriarchy and traditions dominant in the country. Unfortunately, the aforementioned financial dependence and low literacy prevent women from overcoming these difficulties.


\textsuperscript{18} One, The 10 toughest places for a girl to get an education (https://www.one.org/us/2017/10/10/girls-education-toughest/, October 10, 2017)
AIMS AND OBJECTIVES

Considering the intolerable level of hardship, as well as the obstacles in achieving justice that Afghan women face, the long-term aim of this current project is to advocate for women’s rights and bring justice to victims of violence by identifying flaws in Afghan laws and legal proceedings and making suggestions for lawmakers and public officials improvements.

In order to identify these gaps and flaws, four cases in which the victims failed to achieve justice despite the cases having received legal attention were analyzed. The results of this analysis are outlined in this report.

THE COLLECTED DATA

**Key informant interview:** Interviews were conducted with the victims’ family members, close friends, neighbors and locals. In several cases, the defendants and witnesses were also interviewed in some cases.

In addition, police officers, attorneys (working in different departments in Kabul and other provinces), lawyers involved in the cases, governors, judges, officials from the Ministry of Women’s Affairs, the Ministry of Interior, and the Ministry of Public Health, the current and former heads of Department of Women Affairs (DOWA), the current and former heads of the Legal Department of DOWA, and Publication Department of DOWA, doctors and other hospital staff members were interviewed.

Finally, members of Afghanistan Independent Human Rights Commission (AIHRC), Civil Society & Human Rights Network (CSHRN), Social Association of Afghan Justice Seekers (SAAJS), Afghanistan Civil Society Forum organisation (ACSFo), Afghan Women’s Network (AWN), Women for Afghan Women (WAW), Women’s Protection Centers (WPC), Afghan Women Skill Development Center (AWSDC), Coalition of Women’s Advocacy, Medica Afghanistan, Defense Committee for Malalai Joya, civil society activists, journalists and reporters were also interviewed.

All interviews were face-to-face and conducted by members of the team, and lasted on average about an hour and were audio-recorded and transcribed.

**Relevant documents:** The documents collected and analyzed in this inquiry were case files, attorney office reports, forensic reports, hospital records, photos showing
the crime scenes and victims, public statements made by victims’ family members regarding the case, media reports and other reports compiled by different bodies. Within the detailed case files, reports prepared by attorneys and detailing legal aspects of the cases were analyzed, as well as forensic reports and reports prepared by investigative bodies.

ETHICS AND LIMITATIONS
Consent was obtained and the informants were given the opportunity to withdraw from the study at any point without giving the reason. Their anonymity was also protected, and pseudonyms are used throughout the report. In addition, any other identifiable information has been altered and/or anonymized. The main limitation that emerged during the inquiry were missing papers and records of certain cases in government and police departments and failure of certain legal and judicial bodies in providing accurate information. Further limitations were the insecurity in certain areas that made it impossible for the researchers to travel there and threats from powerful figures that prevented the researchers from conducting several intended interviews. However, considering the amount and depth of the collected data, it is believed that these minor limitations did not affect the quality of the results.
FINDINGS

1. Sahar Gul

CASE OVERVIEW
This 15-year-old girl’s face was covered in scars, and her eyelids were badly bruised, to the point that she could barely open her eyes. Her nails had been removed with pliers, hair plucked out, and parts of her body burned with hot rods. One of her ears had been cut off. Although her wounds had been treated in the hospital, signs of her torture were still clearly visible. Sahar Gul had been locked up and tortured in the cellar of her husband’s home for seven months by her in-laws, for refusing prostitution and not being able to bear children. She had lived in Badakhshan province and was married off to a family in Baghlan province when she was 14. Her stepbrother married her in exchange for money. She was lying in hay and animal dung at the time of her discovery.

Her case was filed in Baghlan province and the rest of the process continued in Kabul. Although the case is widely perceived as a landmark case in domestic violence against women, it is yet another unfortunate case that failed to deliver justice to the victim.

RESEARCH PROCEDURES
The investigation started with collecting reports and other relevant information concerning this case, including local and international media reports, interviews and video materials. Consent was collected from relevant government authorities, including several departments of the Ministry of Women’s Affairs, the Ministry of Interior Affairs and Attorney General’s Office, who expressed their willingness to collaborate. Subsequently, a team comprised of the primary investigator, two guards, a psychologist and a legal specialist travelled to Baghlan province on February 16, 2018 with the purpose of finding and reviewing case files and medical documentation, studying the location of the incident and conducting interviews.

Considering that this is an old case, a number of challenges, in particular with regard
to gaining access to documents and informants, were encountered by the researchers. Sahar Gul’s brother, mother and uncle, for example, could not be found and the team was unable to contact them. We were also unable to either interview the victim (due to the protection of the safe house where she was based at that time) or locate a local warlord who, according to the interviewed locals, had been involved in the case. The victim’s husband and the Mullah (cleric) of the local mosque, who had been charged with several crimes, were also missing, and the lawyer who followed Sahar Gul’s case did not respond to our emails and phone calls. The hospital approached in order to acquire the victim’s documentation had lost the case files, and no documents were acquired from the Department of Women’s Affairs (DOWA). Although, DOWA is in possession of a number of documents regarding other victims of violence, Sahar Gul’s case was found to be missing from its archives.

According to an official:

“We found out that [Sahar Gul] had referred to judicial authorities, but her case had not been investigated. After the case was publicized in the media, the criminal investigation revealed that the original papers had been destroyed, because if they had found any documents showing [Sahar Gul’s] referral to the authorities and their failure to address her case, the staff of those institutions would have been punished for negligence and failure to perform their duties... They don’t give any importance to the judicial system, but when they encounter a problem, they simply destroy the documents.”

It appears, therefore, that if the case had been taken more seriously, the subsequent tragic events could have been prevented.

Despite these various challenges and obstacles, we were able to obtain a significant amount of relevant documentation, as well as conduct 20 interviews, including with a number of key informants. The interviews were with the main defendants, the local authorities, neighbors and locals. The views of several civil society activists and other bodies were also taken. The documents collected for this case were Sahar Gul’s case details from police headquarters, Attorney General’s report on the shortcomings of the police investigation, case details from the Attorney General’s Office and case details from the Attorney General’s Directorate of EVAW.

Based on the collected and analyzed data, the following report on how the case of Sahar Gul was handled emerged.

**POLICE INVESTIGATION AND LEGAL PROCEEDINGS**

**The initial investigation**

The initial investigation in the case of Sahar Gul was carried out by the police and National Directorate of Security, in accordance with Article 80 of the Criminal Procedure Code.
According to the inquiry of General Appellate Directorate of the Attorney’s Office of Baghlan province, from the Criminal Investigation Department of the province, the victim had first approached the police on July 7, 2011 along with her husband, but the reason for her visit was not clear. The police referred the matter to the Women’s Affairs Department of the province (under document no. 1410, July 9, 2011), and the office mediated and resolved the issue between the two sides, and Sahar Gul returned to her in-laws.

Subsequently, Sahar Gul was transferred to the police station of the Second District when M.K., her step brother, filed a written complaint about her situation on December 25, 2011. Since she was in a poor condition, she was transferred to the main police headquarters, from where she was taken to Baghlan Civil Hospital on December 25, 2011. Based on expert opinion and Sahar Gul’s accounts, four suspects were identified in the case, two of whom, Defendant 3 (mother-in-law) and Defendant 4 (sister-in-law) were arrested on December 25, 2011. However, Defendant 2 (father-in-law) and Defendant 1 (husband) remained at large. Defendant 2 was later arrested in his brother’s home on January 2, 2012 at 5:30 pm, after an operative announcement was made for his arrest. After the initial statements were filed, the case was handed over to the General Appellate Directorate of the Attorney’s office of Baghlan province on December 27, 2011.

**Further investigation**

The investigation related to the crimes was carried out by the designated Attorney, in accordance with Article 145 of the Criminal Procedure Code.

After the preliminary documents were compiled two suspects were arrested by the police of the Second District, Sahar Gul’s case was handed over to the General Appellate Directorate of the Attorney’s Office of Baghlan province. After an Attorney was appointed, the investigation of the case began. The Attorney arrested Defendant 3 and Defendant 4 on December 25, 2011, and later, on January 4, 2012, Defendant 2. The Attorney’s office prepared the indictment letter on January 17, 2012, in which the reasons for the arrest of the suspects were explained, and the crime (beating that caused grievous bodily harm) described. The victim’s stepbrother, was recognized as the main culprit in the case, and the Attorney launched further investigation into his involvement.

According to the indictment letter, the Attorney had called for the prosecution of the defendants, based on Articles 407 and 410 of the Penal Code, and in consideration of Articles 22, 23, 26, 30, 31, and 36 of the Code, as well as Article 41 of the Elimination of Violence Against Women (EVAW) Law, in consideration of Article 104 of the Penal Code. The case file was sent to the Primary Directorate of the Attorney’s Office, where corrections were made before sending the file to the General Criminal Investigation Directorate of the Attorney’s Office. The case was submitted to the Primary Court on January 31, 2012, where the crime classification was changed to attempted murder, but before the case would reach the Primary Court, it was sent to the Primary Court of the Fourth District of Kabul, as per suggestion of the Attorney General.
Primary Court

After the case was transferred to Kabul, it was submitted to the Directorate of the Elimination of Violence against Women of the Attorney’s Office. After reviewing the case, the appointed Attorney renewed the lawsuit and sent the case to General Criminal Directorate of the Primary Court of the Fourth District. Eventually, the following verdict was announced by the court:

“We, the judicial panel of the General Criminal Directorate of the Primary Court of the Fourth District of Kabul province, under the chairmanship of respected Judge A.B.B., head of the Primary Court of the Fourth District, have decided unanimously (under judgment no. 24, May 1, 2012), in the presence of the parties, that Defendant 3, daughter of A.A., Defendant 2, son of I.M., Defendant 4, daughter of Defendant 2, are the defendants in the case of grievous bodily harm, attempted murder and violence against a woman, and each of them are sentenced to one year imprisonment, in accordance with Article 22 (1) of the EVAW Law, and in consideration of Articles 407 and 401 of the Penal Code. In the case of isolating [Sahar Gul] [from her family], each person is sentenced to three months imprisonment, according to Article 31 of the EVAW Law. In the case of forced labor, each person is sentenced to six months imprisonment, according to Article 36 of the EVAW Law. In the case of the attempted murder of [Sahar Gul], in accordance with Article 396 of the Penal Code, and in consideration of Article 29 of the Code, each defendant is sentenced to 10 years’ imprisonment, which is the maximum sentence for such a crime according to Article 156 of the Penal Code. Defendant 1 and D.M., sons of Defendant 2, are to be prosecuted.”

Appellate Court

After the ruling of the Primary Court was issued, the court resent the case to the Directorate of the Elimination of Violence against Women of the Attorney’s Office, where the Attorney was not satisfied with the court order and sought an appeal. The papers were sent back to the designated attorney of the General Appellate Directorate, who was also not satisfied with the ruling, and sought an appeal after stating his objection. The case entered the appeal stage, and the Appellate Court ruled:

“We, the judicial panel, unanimously overrule the decision of the General Criminal Directorate of the Primary Court of the Fourth District of Kabul province (judgment no. 24, May 1, 2012) with our decision (judgment no. 620, July 17, 2012), and sentence the defendants, in the case of the attempted murder of [Sahar Gul], to ten years’ imprisonment, according to Article 22 (2) of the EVAW Law and Articles 395 and 29 of the Penal Code. In the case of forced labor, to six months’ imprisonment, in accordance with the provisions of Article 36 of the EVAW Law; and ac-
According to the provisions of Article 156 of the Penal Code, the maximum sentence has been passed for the above crimes.

The case entered the General Criminal Directorate of the Supreme Court due to the lack of agreement between the parties. After the analysis and evaluation of the case by legal advisers, the Supreme Court overruled the Appellate Court’s decision (judgment no. 620, July 17, 2012) on the basis of flawed reasoning and errors in the implementation of the provisions of the law, and re-submitted the case to the Appellate Court for a fair decision. The case was sent to the General Criminal Directorate of the Appellate Court which, then, made the following announcement (judgment no. 365, June 16, 2013):

“We, the judicial panel, have decided unanimously, in the presence of the parties, by relying on Article 22 (2) of the Law on the Organization and Jurisdiction of Courts and Judiciary, and guided by the decision of the General Criminal Directorate of the Supreme Court (judgment no. 4526, March 20, 2013), to overrule the decision of the General Criminal Directorate of the Primary Court of the Fourth District of Kabul province (judgment no. 24, May 1, 2012), for flawed implementation of the law, and rule that in the case of the attempted murder, there is not enough evidence and reasoning as required by Article 4 of the Penal Code to convict Defendant 2 and Defendant 3, daughter of A.A., and Defendant 4, daughter of Defendant 2, and the court orders their acquittal. Defendant 2, son of I.M., and Defendant 3, daughter of A.A., are sentenced to one-year imprisonment from the day of their detention in the case of committing violence, in accordance with Article 22 (1) of the EVAW Law, and in consideration of the provisions of Articles 408 and 410 of the Penal Code. We order the exoneration of Defendant 4 due to insufficient evidence and reasoning as required by Article 4 of the Penal Code.”

Again, the Attorney was not satisfied with the verdict and stated his objection in a letter, detailing the kinds of violence committed against Sahar Gul. Subsequently, he requested for the implementation of Articles 407 and 410 of the Penal Code, Articles 31 and 36 of the EVAW Law, and Article 396 of the Penal Code, in consideration of Article 29 of the Code, to punish the defendants.

**Supreme Court**

The case was referred to the General Criminal Directorate of the Supreme Court once again. Finally, the General Criminal Directorate of the Court announced the following verdict:

“In a session held on September 30, 2013, we, the judicial panel of the General Criminal Directorate of the Supreme Court, have relied on Article 9 (2) of the Law on the Organization and Jurisdiction of Courts and Judiciary, the analysis and evaluation of legal advisers, and Article 407
(1) of the Penal Code, to strongly overturn the decision of the Appellate Court of Kabul (judgment no. 265, June 16, 2013) regarding Defendant 3, daughter of A.A., Defendant 2, son of I.M., and sentence each person to five years’ imprisonment starting tomorrow. In the case of Defendant 4, it upholds the decision of the Appellate Court, and the following people are to be prosecuted: Defendant 1, D.M, and M.K.”

GAPS AND FLAWS IN THE LAWS, LEGAL PROCEEDINGS AND JUDICIAL PROCESSES

When Sahar Gul had first contacted the police, the police had not asked her for the reason for referring to them, nor had they taken any statement from her, which is at odds with what Article 80 (5) of the Criminal Procedure Code suggests. Her case was taken lightly, and the investigation department referred her to the Women’s Affairs Department of Baghlan province, where the case also failed to receive the required consideration. A written statement from Sahar Gul’s in-laws was simply obtained, after which the victim was returned to them.

Later, on December 25, 2011, M.K., Sahar Gul’s step brother, filed a complaint with the police on this matter. The police personnel of the Second District visited the area, identified one suspect and arrested another. However, no further actions specified in Article 80 (5) of the Criminal Procedure Code were taken.

According to the case file, three suspects had been arrested, including Defendant 4, who was arrested without a written police report, Defendant 3 and Defendant 2. However, neither the reasons for their arrest nor statements made by the arrested were recorded.

Furthermore, Article 121 (1) of the Criminal Procedure Code states that the presence of a female police officer is mandatory while searching a house. However, Defendant 2’s brother, house was searched without a female police officer being present.

During the investigation, the witnesses’ testimony was not obtained, which is a violation of Article 19 of the Criminal Procedure Code that specifies that witness statements must be collected.

Further limitations may be found in the investigation report carried out by the Attorney’s Office, where no evidence have been found that instructions outlined in Article 164 of the Criminal Code had applied to the investigation. Recommendations of The specifications of Article 145 (2) of the Criminal Procedure Code, regarding the motive, also seem to have been neglected during the investigation and preparation of the indictment letter, and the fact that Sahar Gul’s unconsented marriage was a violation of Article 24 of the EVAW Law was omitted in the report.

Sahar Gul’s father-in-law provided the following account of how Sahar Gul’s marriage was organized:
“We went to a friend’s house in Badakhshan to find my son a wife. It was almost evening, when we went to the third house in an isolated village that we were not familiar with. We told a man that we had come to find a bride, to which he replied that he had a daughter. We engaged our son to the girl, paid 430,000 AFN and fed more than 100 people. Three months later, we went back to visit our daughter-in-law and decided to get them married. The bride we knew was a 20-year-old girl, but the girl they presented to us this time was 14-year old Sahar Gul who suffered from mental illness. They had given the other girl for marriage in exchange for 900,000 AFN.”

The Attorney who was in charge of investigating the case neglected the law on several occasions and ignored a number of key facts in this case. Firstly, Sahar Gul’s step-brother, who was in a bad financial situation, had offered her for marriage for 150,000 Afghans. Therefore, as this marriage can be considered a forced marriage, this is a crime under the Articles 24 and 26 of the EVAW Law. This, however, was not considered in the Attorney’s indictment letter. Secondly, the Attorney has acted irresponsibly and without sufficient knowledge of either the described situation or the law. In addition to flaws such as failure to provide a lawyer or not having prepared the report properly, the Attorney invoked Article 36 of the EVAW Law (forced labor) to indict the defendants. The abuse and torture of Sahar Gul was not, after all, the result of her refusing to work in the fields or perform other difficult chores. She had been forced into prostitution by her in-laws, and she was subsequently physically abused for refusing to do so. According to Article 18 of the EVAW Law, forcing a woman into prostitution carries a sentence of a minimum of seven years if she is an adult and no less than ten years if she is underage. This means that the punishment of the defendants could be extended to fifteen years if the circumstances of the crime had been carefully considered. However, neither the police nor the Attorney had considered the above, and the Attorney invoked Article 36 (forced labor) of the EVAW Law, with no consideration of the kind of forced labor which the victim had been forced into. However, the Attorney’s office should have invoked Article 18 (forced prostitution) of the EVAW Law, subject to Paragraph 4 of Article 427 (2) of the Penal Code (i.e. when the offense is committed against a married woman) to determine the punishment.

Specifications of Paragraph 1 of Article 125 (2) of the Criminal Procedure Code, which call for a full and exhaustive evaluation of each case, were also neglected, and the police failed to collect information from the local people who were in possession of relevant information, including a person close to Defendant 2’s family who is believed to be well-informed on Sahar Gul’s case.

When the crime classification was changed from beating to beating and attempted murder, no legal justification was provided. However, had the Attorney’s Office of Baghlan province investigated and discovered the motive for the crime, and invoked Article 395 (3) of the Penal Code (low motivation), because the crime had not been completed and was in its initial form, the perpetrators would have been sentenced to
16 to 20 years’ imprisonment, based on Article 30 (1) of the Penal Code.

It is important to note that all the provisions of the Criminal Procedure Code and the Penal Code are correct. It is the actions of the Attorney’s Office that were not in accordance with the law. The case file was sent to the Attorney’s Office of the Fourth District of Kabul province as per the Attorney General’s decision. The case was submitted to the Primary Court of the Fourth Zone by the Directorate of the Elimination of Violence against Women of the Attorney’s Office of the Fourth Zone, on the basis of a new lawsuit. However, the Directorate of the Elimination of Violence against Women of the Attorney’s Office of the Fourth Zone also failed to address the criminal motive (Article 18 of the EVAW Law, forced prostitution). Subsequently, the case was sent to the Primary Court with these flaws.

**Primary Court of the Fourth Zone**

In Primary Court, Defendants 2, 3 and 4 were each sentenced to one year in prison on charges of grievous bodily harm and attempted murder of Sahar Gul, on the basis of Article 22 of the EVAW Law, with observance of Articles 408 and 410 of the Penal Code. Fortunately, the Attorney was not content with the Court’s decision. This sentence is not proportional to the two crimes committed (grievous bodily harm and attempted murder) and this punishment applies for grievous bodily harm alone. The Penal Code had not been used to consider the charge of attempted murder at all. If, however, it had not been for the circumstances under which Sahar Gul’s ordeal came to an end, it is likely that the victim would have been murdered. The decision by the Primary Court is at odds with the standards of fair trial for criminal offences and principles of justice, namely the proportionality between the offence committed and the punishment given.

The Primary Court should have imposed a sentence of life imprisonment in accordance with Articles 30 (initiation of crime) and 395 (3) (brutal motive) of the Penal Code, because the victim had been tortured and beat up for not having consented to prostitution. Had she consented, Defendants 2 and 3 and other accomplices should still have been sentenced to long term imprisonment (Article 18 of EVAW Law), rather than one year, which is the maximum sentence for a short-term imprisonment. Had the victim been killed as a result of the beating and torture she endured, the crime would have been qualified as a murder and the perpetrators would have received a death sentence, in accordance with Article 395 (3). According to Article 31 (1) of the Penal Code, the physical abuse could be considered the first stage of the deliberate act of murder, because it was done with a motive and committed in a brutal manner. Therefore, Article 395 (3), along with Article 29 of the Penal Code should have been referred to in the ruling (duration of imprisonment could be 16 to 20 years).

Similarly, the Primary Court should have considered Article 395 of the Penal Code (a murder situation) when it based its ruling on Article 156 of the Code (multiplicity of crimes).
Appellate Court
The Court unjustly disregarded the murder attempt and issued a verdict to exonerate the defendants, against the very dignity of the judiciary. This meant that Sahar Gul had not been physically abused by her in-laws, and the individuals were completely innocent.

The Attorney in charge was not satisfied with this ruling and forwarded the case to the highest court.

Supreme Court
The Supreme Court restructured the Appellate Court’s decision regarding Defendants 2 and 3 and did not accept their acquittal. Rejection of the Appellate Court’s sentence by the Supreme Court’s Third Chamber is to be appreciated. Unfortunately, the Supreme Court had also not paid attention to the motive of the crime and Article 18 of the EVAW Law, and only considered the injustice of the Appellate Court while limiting its judgment to physical abuse and, as a consequence, sentencing the convicts to the maximum sentence of medium imprisonment, which is five years.

Violation of the law by the Commission of the Implementation of Decrees of Pardoning and Sentence Reduction of Convicts and Prisoners
Following the final decision of the Supreme Court, the criminals were imprisoned. It is unfortunate, however, that contrary to what Article 24 of the EVAW Law states (i.e. that the punishment of convicted offenders of violence cannot be suspended, pardoned or mitigated), the perpetrators were pardoned by decree after spending approximately 2 years in prison, and later freed. However, the decree specifies that “those convicted of corruption, financing terrorism, committing violence against women, and others, cannot benefit from this decree.” It is clear, therefore, that the Commission of the Implementation of Decrees of Pardoning and Sentence Reduction violated the law, and it is crucial that the Commission is held accountable for these actions.

CONCLUSION AND RECOMMENDATIONS
Firstly, the General Primary and the General Appellate Directorate the Attorney General’s office, the Primary Court, Appellate Court and the Supreme Court, have all failed to disclose accurate facts regarding the case, and to reach a verdict based on these circumstances and the relevant laws.

It is disappointing that all three courts eventually chose to qualify forced prostitution as forced labor, and ruled accordingly. Definitive judgments of the courts are to be implemented, but if these decisions are at odds with the law, they become void.

Therefore, Article 289 of the Criminal Procedure Code, which is concerned with void court sentences, must be implemented because the required processes have not been present in the case. Information on these void trials should be shared with the judicial organs of the country, so that in the future girls like Sahar Gul do not have
to suffer from such flawed processes. Based on the in-depth review of this case, the following recommendations can be made:

• In Article 80 (1) of the Criminal Procedure Code, the exact site of the incident should also be included alongside the location of the incident.

• Article 80 (2) of the Criminal Procedure Code should specify that the kind of offense committed by the criminal should be examined by professionals and experts who should be a part of the discovery team.

• The conditions that allow the arrest and investigation of a suspect, which are merely mentioned in Article 80 (3), should be specified in more detail.

• Although Article 64 (18) of the Constitution provides for the reduction of a sentence and pardoning by the President, Article 42 of the EVAW Law suggests that the suspension, pardoning or mitigation of the sentence for perpetrators of violence against women is not allowed. As these two articles clearly contradict each other, the content of Article 64 of the Constitution needs to include this exception to its provisions.

• Implementation of the EVAW Law in cases of violence against women.

• Capacity building and development of professional skills of the Directorate of the Elimination of Violence against Women of the Attorney’s Office.

• Resolving the issues in the EVAW Law, specifically those that refer to the Penal Code.

• Combating administrative and moral corruption in judicial institutions.

• Imposing the rule of law.
2. FARKHUNDA

CASE OVERVIEW

Farkhunda was a 27-year-old Afghan woman lynched by a mob in Kabul on March 19, 2015. A large crowd formed in the streets around her as her accusers yelled that she had burned the Quran and, therefore, must be killed. The police initially tried to protect her and disperse the crowd but were eventually overwhelmed by the size and fury of the mob. Nationwide protests followed her horrific murder and a memorial was built for her in the area where her dead body had been burned.

RESEARCH PROCEDURES

Prior to the investigation, letters to relevant government authorities (different departments of the Ministry of Women’s Affairs, Ministry of Interior Affairs, and Attorney General’s Office) had been sent and their consent was obtained to assist with the investigation. The team comprised of the primary investigator, a legal specialist and a communication officer travelled to the site with the purpose of obtaining the case files and meeting people involved in Farkhunda’s case. As the case had been filed with the National Security Directorate (NDS), however, no documents were obtained due to the sensitive nature of the case. Further challenges emerged regarding the interviews, as Farkhunda’s family could not be reached. Despite these obstacles, however, the research team was able to conduct 20 interviews with a number of key informants, including the main defendant, her lawyer, several eye witnesses, and officials in ministries. Journalists and numerous social activists from different bodies were also interviewed.

THE INCIDENT

At 3pm on Thursday, 19th March, a mullah from the Shahe Do Shamshira Mosque in central Kabul started shouting that a woman had burned the Quran. Soon after, furious crowd rushed into the shrine and started beating her.

Released footage from the attack shows that Farkhunda had repeatedly told her attackers that she had not burned the Quran, but the angry men disregarded her claims and continued beating her. Many men attacked her with rocks, wooden planks, and other objects at hand.

One of the videos shows that the police fired into the air to disperse the crowd and
were able to scatter them initially, but it remains unclear how the people re-attacked the victim and why the police did not interfere again. With a fractured head and bloodied face, Farkhunda is seen pleading for help, and then collapsing due to the severity of her injuries shortly after.

Subsequently, angered men led by a young boy named A.A.L. drove a car over Farkhunda’s dead body, before burning the body in dry Kabul riverbed. The police, Quick Reaction forces and firefighters transported the victim’s body from the scene. The police arrested several people for their involvement in the incident, but some of the main perpetrators remain at large. The case is still ongoing in the Supreme Court and has not been finalized.

LEGAL PROCEEDINGS

After the initial stages of investigation had been carried out in at the Kabul Police Department, the case was referred to the Attorney’s Office of the National Directorate of Security. Then, the indictment letter and case file were referred to the Directorate for Combating Crimes against Internal and External Security of the Primary Court of the Third District of Kabul.

Primary Court

The Primary Court sentenced four defendants to the most severe punishment (execution) for the murder, and burning the corpse of, Farkhunda, daughter of M.N., in accordance with the provisions of Articles 396, 39 (2) and 28 of the Penal Code, and in consideration of Article 22 of the Elimination of Violence Against Women (EVAW) Law. The court also sentenced each of the remaining eight defendants to sixteen years in prison, commencing from the day of their detention, in accordance with the provisions of Article 22 of EVAW Law, and in consideration of Article 396, Article 28 (2) and 39 (2) of the Penal Code. The court called for the prosecution of Defendants 1, 2, 3 and 4 (Imam of the mosque) and several other individuals who had not been identified but had been involved in the case in some manner. In a public hearing held on May 19, 2015, the Primary Court sentenced each of the remaining five defendants to one year in prison for dereliction of duty, in accordance with Article 43 of the Law of Military Crimes. It, then, suspended this ruling according to Article 8 of the Law. In the case of failure to use their powers without sufficient reasoning, according to Article 25 of the Constitution, and in consideration of Article 4 of the Penal Code and Article 235 of the Criminal Procedure Code, each defendant was exonerated of the charges. Seven other defendants in the case of dereliction of duty were sentenced to one year in prison in accordance with Article 43 of the Law of Military Crimes, commencing from the day of their detention. The court acquitted 26 other defendants and stated that the initial court order was not final and that the right to appeal was allowed.

Appellate Court

Following the announcement of the court’s ruling, which was not accepted by the parties and the designated attorney, the case entered the Appellate Court of Kabul prov-
ince. According to a public hearing held on June 30, 2015, the Court, in the presence of the parties and their lawyers, unanimously overturned the ruling of the Directorate for Combating Crimes against Internal and External Security of the Primary Court of the Third District of Kabul, (judgment no. 15, 06/05/2015 – 19/05/2015), on the basis of wrongful implementation of the law, based on Article 59 of the Law on Organization and Jurisdiction of the Courts of Judiciary. Upon appeal, three of the four defendants who had been sentenced to death for their involvement in the murder and burning of Farkhunda had their sentences overturned and were sentenced to twenty years in prison commencing from the day of their detention, in accordance with the provisions of Articles 396, 39 (2), and 39 (28) of the Criminal Code, in consideration of Article 22 (2) of the EVAW Law, and by observing the principle of proportionality between the offences and penalty. Another defendant who participated in the incident was sentenced to ten years in prison commencing from the day of his detention, in accordance with the provisions of Articles 396, 39 (2), and 39 (28) of the Criminal Code, and in consideration of Article 22 (2) of the EVAW Law, Article 6 (1) and the second paragraph of Article 39 of the Juvenile Code. In addition, eight defendants were sentenced to sixteen years in prison commencing from the day of their detention, by observing the principle of proportionality between the offences and penalty, and according to the provisions of Articles 396, 39 (2) and 39 (28) of the Criminal Code, and in consideration of Article 22 (2) of the EVAW Law. Likewise, according to Article 19 of the Penal Code, the court ordered the confiscation of objects collected in relation to the crime from the twelve defendants mentioned above. Also, Defendants 1, 2, 3 and 4 and other individuals who had been involved in the case but, at that time, not yet identified, were ordered to be identified, arrested and prosecuted. Three police officers were sentenced to one year in prison each, in accordance with Article 43 (2) of the Law of Military Crimes. The Court ordered the exoneration of these police officers and two other people, in accordance with Article 4 of the Penal Code and Article 25 of the Constitution. Also, four other police officers were sentenced to one year in prison each, in accordance with Article 43 (2) of the Law of Military Crimes. According to Article 8 of the aforementioned law, the period following the arrest and detention of the defendants was counted in their sentence and the rest of the sentenced was waived.

However, due to the dissatisfaction of the parties, the case was directed to the final court which, at the initial stage of its judicial review (judgment no. 4041, January 31, 2016), upheld the decision of the Appellate Court about 29 people, and overturned its decision about the other 20 defendants.

A second ruling by the Appellate Court in the case of seventeen other people (under judgment no. 128, July 31, 2016) was announced, and the remaining three people’s sentencing was postponed due to their absence.

The second ruling of the Appellate Court

In a public hearing held on July 31, 2016 by the judicial panel of the Directorate for Combating Crimes against Internal and External Security of the Appellate Court of
Kabul, under the chairmanship of the head of the Appellate Courts of Kabul and in the presence of the parties, it was agreed unanimously under the provisions of Article 49 of the Law on Organization and Jurisdiction of the Courts of Judiciary, the decision (judgment no. 4041, January 31, 2016) taken by the Directorate of the Crimes of the Personnel of the Police Taskforce and the Military and Directorate of Crimes against Internal and External Security of the Supreme Court, that the eight defendants accused of murdering Farkhunda and burning her corpse were to be exonerated on the basis of the lack of sufficient reasoning and evidence as required by Article 4 of the Penal Code and Article 25 of the Constitution. Six police officers were sentenced to two years in prison each for failure to use their powers without sufficient reasoning, according to Article 42 of the Law of Military Crimes and in consideration of Article 8 of the Law. The period following the arrest and detention of the defendants was counted in their sentence and the rest of the sentenced was waived.

Additionally, three police officers were sentenced to two years in prison each for dereliction of duty, according to Article 43 of the Law of Military Crimes, and according to Article 8 of the Law. Also, in accordance with Article 138 of the Criminal Procedure Code, the defendants’ belongings were returned to them. As for the three other defendants who were not present at the judicial session, it was ordered that they be summoned to the court after being detained, and a decision would be reached later. Other people who were involved in the case but had not yet been identified were to be arrested and prosecuted after being identified.

**Supreme Court**

The case was assigned to legal counsellors due to the dissatisfaction of the assigned attorney. It was stated that the Directorate for Combating Crimes against Internal and External Security of the Supreme Court, in a judicial hearing held on February 19, 2017 upheld the decision of Directorate for Combating Crimes against Internal and External Security of the Appellate Court of Kabul (judgment no. 128, July 31, 2016) about the exoneration of the eight defendants; the sentencing of the three defendants accused of dereliction of duty to two years of detention in quarters; and returning the defendants’ belongings. It overruled the Appellate Court’s ruling about the six other people for error in the interpretation of the law. The other areas of the ruling were also upheld.

According to the Supreme Court decision, the case file was sent to the Public Security Office of the Appellate Court for reviewing the sentences of certain individuals.

This office approved the decision of the Primary Court regarding one person on March 22, 2017, and regarding the seven other defendants in the case of failure to use their powers without sufficient reasoning, sentenced each to three years in prison, in accordance with Article 42 of the Law of Military Crimes.

However, the attorney was not satisfied with the ruling regarding the two other defendants, and the case is still in progress.
When announcing its decision (judgment no. 151, May 5, 2016), the Primary Court cited the provisions of Article 396 of the Penal Code in establishing the sentences of Defendants 5, 6, and 8. This article of the Penal Code states that a murderer is to be sentenced to continued imprisonment or execution, depending on specific “circumstances”. It is important to note, however, that it does not clearly state what these circumstances may be, which allows the circumvention and misuse of the text of the law, as it happened in the described case. If the respected Primary Court had used Article 395 (3) of the Penal Code in lieu of the aforementioned provision, which predicted two types of punishments incorrectly, the crime would have been recognized as murder. This murder was committed with criminal intent. The perpetrators had committed this criminal act under the influence of the so-called religious and sectarian feelings (i.e. they believed that anyone who burned the pages of the Quran is an apostate, and the punishment of an apostate is death.) These individuals are also unaware of the religious rules. Islam does not sanction any judgment without the decision of a court. Thus, these people had intended to murder Farkhunda. Additionally, Article 395 (3) states that if the crime is a “murder (...) or has been committed brutally”, the death sentence applies, both of which conditions clearly apply to the case of the described incident. Firstly, it was clear that the intention of the people who subjected the victim to blows, and finally threw a huge stone on her, was, indeed, to murder her, and to do so in a brutal way. Secondly, a person who is not familiar with the techniques and principles of law-making cannot properly analyze Article 395 (3) of the Criminal Code. Some jurists believe that all the words of the provisions of Article 395 (3) should be considered, and all the conditions fulfilled, in order to pass a death sentence. This analysis is not correct, because the use of the word “or” separates the conditions and gives each condition its own power. Although, the article describes the conditions separated by the word “or”, the punishment for each condition is execution. The text of the article states: “if murder is accomplished brutally, with low motivation or for pay.” Therefore, while preparing the indictment letter passing his sentence, the attorney and the judge, respectively, could have invoked any of the conditions mentioned above ("brutally", “low motivation”, “for pay”) independently of one another, which, unfortunately, was not the case. With the flawed interpretation and implementation of this law, the Primary Court also paved the way for the Appellate Court to follow the same flawed ruling. Had the Primary Court invoked Article 395 (3), and considered the “brutal murder” condition, the grounds for the flawed implementation of the law would have been blocked in the Appellate Court. Alternatively, if the court had invoked Article 396, this flaw would have been evident and Farkhunda’s lawyer could have defended her client with a stronger argument. Also, Articles 39 (accomplice in crime) and 28 (beginning the commission of the crime), which the Primary Court cited, conform with the provisions of the Article 395 (3).

In addition, Article 22 (2) of the EVAW Law refers to the provisions of Articles 395 to
399, which was mentioned by the Primary Court (note: Article 22 of the EVAW Law has shortcomings that can be amended.) The Appellate Court used this flawed law and the lack of precision and flawed implementation of the law by the Primary Court to make its decision. Otherwise it should have invoked Article 395 which suggests the death penalty.

The Primary Court made an error in the interpretation of the law. It misinterpreted Article 199 of the Penal Code and treated it irresponsibly and with lack of interest. It ordered the confiscation of objects used during the commitment of the crime, based on this Article. Whereas, Article 199 of the Penal Code states the punishment for the accomplice of a crime. The judgment of the Court is about confiscation of the things and Article 199 has been wrongfully used. It is unfortunate that our judicial bodies are so reckless, especially in the case of such a shameful murder. If the provisions of the Penal Code had been viewed responsibly and sympathetically, confiscation of objects used to commit a crime are specified under Article 119 of the Penal Code.

The Appellate Court reversed the decision of the Primary Court on the basis of flawed implementation of the law, whereas the Appellate Court has itself repeated the same mistake. The court should have considered the Interior Minister’s statement that “there was no trace of a burnt sheet of the Holy Qur’an...”. The Interior Minister was leading the investigative organ, which is the criminal police, and had made this statement on the basis of evidence.

The purpose of the attack was not to subject Farkhunda’s body to blows and injuries that would lead to her death, but specifically to murder her. Thus, this was a deliberate act of murder, executed in a brutal manner, in violation of human dignity. Therefore, the Appellate Court should not have invoked Article 395 of the Penal Code and its provision about continued imprisonment.

Even if one accepts the Appellate Court ruling under Article 396 of the Penal Code, hitting Farkhunda with a rock when she was still alive would still qualify as a brutal murder (Article 396 (3)). Furthermore, even if Defendant 6 had hit Farkhunda with a rock after her death, this would have qualified as mutilation of the corpse (Article 396 (2)). As in both cases the sentence is death penalty, it is unclear why the Appellate Court ruled for life imprisonment.

It is also not clear whether the corpse was sent for postpartum in accordance with the provisions of Article 50 of the Criminal Procedure Code and whether a report was compiled by an expert medical examiner, in accordance with Article 49 of the Criminal Procedure Code. If there was no report, this would be a major flaw in the implementation of the law.

The Appellate Court, similar to the Primary Court, invoked an article that did not comply with the circumstances of the offense. Arguably, the Appellate Court misunderstood the substance of Article 396 of the Penal Code, or otherwise it would have clarified the reason for overturning the Primary Court ruling.

The current specifications of Articles 395 and 396 of the Penal Code are vague in
terms of the degree of punishment for a murder, which results in a number of misinterpretations, and calls for further action to be taken by lawmakers.

**CONCLUSION AND RECOMMENDATIONS**

Farkhunda’s defense lawyer claims that after the Primary Court sentenced him to death, Defendant 6 acquired a fake ID which states that he is under age, so that his sentence would be reduced. This, in itself, is a crime and, therefore, should be investigated.

The Appellate Courts should have demanded the expertise of a medical examiner in accordance with the provisions of the Juvenile Code and the Criminal Procedure Code.

Furthermore, Article 152 of the Criminal Procedure Code states:

> “Before beginning an investigation, the attorney asks the defendant to hire a lawyer. If the defendant refuses to get a lawyer, the matter is recorded in writing along with his signature. If the defendant declares his financial inability to hire a lawyer, he or she is to be given legal aid.”

Thus, failure to introduce a defense attorney, or refusal to do so, should not be a barrier in the process of investigation. The investigation attorney, however, ignored this rule. Both the Primary Court and the Appellate Court also violated the law and continued the case without a lawyer.

Finally, the actions taken were not based on objective facts, and the punishments do not conform to the criminal acts. A member of the civil society and a women’s rights activist believes that,

> “[Farkhunda’s] trial was like a circus. Like a circus, it started by itself, continued and ended, and it was finally announced that the case was closed (...) The judges had been bribed and they all accepted silence in exchange for money.”

Her belief is shared by a lawyer and a member of the Afghanistan Independent Bar Association, who stated:

> “Initially, 25 civilians and 24 military officers were sentenced but only 11 of civilians were detained and the rest were freed, and none of the 24 military personnel were charged because it is said that all of them had escaped (...) [Farkhunda’s] case was not resolved in three years because in Afghanistan in order to resolve cases it is vital to have connections and money, otherwise justice is trampled...”

Based on the above review of the case, the following recommendations are put forward:
• The punishment of an accomplice in crime should be clearly stated in a separate article in the text of punitive laws. The contents of Article 396 (2) (mutilation of corpse) should be integrated into Article 395 which outlines the circumstances of murder and its punishment, which is death.

• The text of Article 396 (2), “mutilation of corpse”, should be incorporated in Article 395 (the crime of murder and its punishment as the death penalty). In reality, the ultimate aim of this article is also granting the death penalty, but its separation brings about ambiguity in the law, and allows its misuse.

• Article 22 of the EVAW Law, and specifically the sub-article 2, should be amended. The article refers the penalty for this crime to an entire chapter of the Penal Code. It would be more reasonable, however, to refer only to Article 395 of the Penal Code.

• The Decree of the Elimination of Violence Against Women is a specific decree that relates to a specific subject and is not as extensive as the crimes mentioned in the Penal Code. Therefore, it would be more effective to define the types of violence in terms of severity, which Article (22) defines only as beating and injury, instead of referring to the Penal Code.

• Regarding the issue of an injury leading to death, Article 22 (2) of the Decree on the Elimination of Violence Against Women refers to Articles 395 to 399 of the Penal Code, although some of these provisions are not relevant to assault. This Article should be made clearer and more precise.
3. SHAKILA

CASE OVERVIEW

Shakila, a 16-year-old girl from Waras in Bamyan province, was shot dead on January 27, 2012 in the house of Abdul Wahidi Beheshti, a representative in the Provincial Council of Bamyan province. Shakila’s sister worked as a maid in Beheshti’s house and her brother-in-law worked for Wahidi as his bodyguard. At the time of the crime, only Wahidi, his nephew W.H., and his wife were present in the house. The victim’s family claims that she had also been raped. While denying the murder of Shakila, Wahidi claimed that she had committed suicide.

Protests took place in Bamyan and Kabul, with the protesters demanding that Shakila’s murderer(s) be brought to justice. The protests resulted in President Hamid Karzai issuing an order demanding that all the authorities cooperate to investigate and find the murderer(s). However, these orders were not carried out by the offices. At the end, Beheshti, whose brother was an MP at the time, was released and the case was closed.

RESEARCH PROCEDURES

Reports and other relevant information about the case, including interviews and video clips, had been collected and relevant government authorities, including different departments of the Ministry of Women’s Affairs, Ministry of Interior Affairs and attorney general’s Office, had assured their assistance and cooperation, before the team comprised of the primary investigator, the Executive director of HAWCA and two guards travelled to Bamyan province on the 5th of August 2018. The aim was to meet the Bamyan province authorities and the local people, to interview Shakila’s mother and relatives, to visit the hospital and obtain relevant documentation, as well as to obtain case files and study the location in which the incident had occurred.

Several challenges emerged, including the team not being able to interview Shakila’s father and brother, not being able to visit Waras due to insecurity, and not being able to obtain Shakila’s case file from the attorney’s Office, despite visiting them several times. Despite these challenges, however, the team managed to obtain a number of relevant documents, including a forensic medicine report, Shakila’s family’s open letter to the President and previously unpublished photos from the murder scene. Additionally, after having sent a request to the Attorney General in Kabul to order Bamyan’s head attorney to release a copy of Shakila’s case file, the team eventually...
managed to obtain the document. Finally, the team managed to conduct 18 inter-
views with key informants, including people directly involved in the case, local au-
thorities, local women’s rights activists, and journalists. Social activists from several
organizations were also interviewed.

It was found in the preliminary investigation that the case appeared to have been
strongly influenced by powerful figures and officials during the police investigation
and the subsequent legal proceedings. Also, many human rights activists had been
threatened and forced to refrain from any kind of involvement with this case. The fact
that the incident had occurred inside the house of a member of the Provincial Council
who exercised considerable influence in the area and the province meant that the
authorities did not have a free hand in conducting their investigation satisfactorily (at
the time of the crime there were reports of members of Parliament intervening in the
case from Kabul and using their power to halt any further investigations and proceed-
ings). According to the study findings, many procedures were bypassed using bribes
or intimidation by these figures. Additionally, the case slanted into tribal disputes due
to the differing tribal backgrounds of the victim and the defendant. As a result, the
case became more political than criminal.

The following is the description of the incident and the events that unfolded after-
wards.

THE INCIDENT

Shakila was a 16-year-old girl from Punjab district of Bamyan province who was visit-
ing her sister and stayed with her for a few days in Zargaran village of central Bamyan.
Her sister was married to Q.B., one of the bodyguards of Sayed Abdul Hadi Wahidi
Beheshti, a representative in the Provincial Council of Bamyan province. Q.B. lived
in Beheshti’s house. After several months, on January 27, 2012, Shakila died from a
Kalashnikov bullet wound.

Shakila was killed in Wahidi Beheshti’s house, a senior official in Bamyan province and
the son of a commander who fought during the civil war. Wahidi was charged with
killing Shakila whose family also claimed that she had been raped.

After the murder of Shakila, Beheshti and some of his family members transferred her
body to the Provincial Hospital of Bamyan without informing the police.

At the time, Beheshti said in an interview that Shakila had not been murdered but had
committed suicide. He attributed the accusations of murdering Shakila to the work of
his political enemies, stating:

“All those who say that I have bribed the court are my enemies. [Shakila]
committed suicide. I did not even hear the shot. I was at home, but I was
praying in another room.”

However, the case file revealed that he had, indeed, admitted to hearing the gunshot.
One of Shakila’s family members recounts:

“[Shakila] died after we took her to the hospital. The medical examinations revealed that she had been shot from distance... Beheshti threatened us not to say anything to anyone. On the day of the investigation, Beheshti’s wife was called again and she changed her statement, saying that she was not aware of the incident and that Beheshti was praying. They always said that we are real and honest Muslims... They were rich and us, poor people, could not fight them...”

A relative of Shakila’s brother-in-law said:

“[Shakila’s] uncle called me to come and meet with Fukur and Wahidi Beheshti to resolve the issue....I had a camera to record the meeting but they didn’t allow me to attend the meeting and the next morning [Shakila’s] uncle called me again. We went to Senator Jaffari’s house and he gave [Shakila’s] uncle 350,000 AFN... I was under surveillance for several years and was threatened through phone calls and Facebook. They deceived [Shakila’s] cousin, E.H., who is now incarcerated at Bagram prison, though he hasn’t committed any crime....”

THE INITIAL INVESTIGATION

At the time, the police said that Shakila had been murdered with Kalashnikov belonging to Sayed Wahid Beheshti’s bodyguard, but it was not clear whether it was a suicide or a murder.

According to document no. 165 of the Investigation of the Site of the Incident Office, a Kalashnikov gun, a Cartridge case of the bullet, the Bullet, a wet pillow contaminated with a liquid and a carpet stained with red liquid had been recovered from the site. All these items were sent to Criminal Techniques for identification, and the body of the victim was sent to a forensic laboratory. The autopsy revealed that the death of the deceased had been in a forced manner and the injuries indicated that they had been caused by a weapon. The injury caused to the pectoral region had the characteristics of an entry wound and the injury in the abdomen had the characteristics of an exit wound, meaning the bullet’s trajectory was from anterior to posterior, and right to left. Also, considering the powder burns around the bullet hole, it was determined that it was a contact shot. The autopsy also revealed that the victim’s hymen had been broken in the past. Finally, no sperm was found in the sample of the vaginal discharge of the victim.

Eventually, the Criminal Investigation Department which had sent Shakila’s body for an autopsy and received the report from forensic experts announced that suicide was improbable. The examination also showed that Shakila was not a virgin at the time of her death, and the forensics team were not able to prove her pregnancy. Shakila’s
family believed that Beheshti raped her, and then killed her out of fear that the word would spread about the incident. However, eventually the family requested for the investigation into Shakila’s virginity to be ended, and the Attorney General complied with this request.

LEGAL PROCEEDINGS

Attorney for General Crime Investigation

Sayed Tahir Rezaie, the attorney of the case, charged Q.B., Shakila’s sister’s husband, with the murder of Shakila and demanded his execution. Q.B. was Sayed Wahidi Beheshti’s bodyguard who had been arrested by the police after the murder. The attorney claimed that according to the witnesses cited by the police, the only piece of evidence recovered was Q.B.’s thumb print on the Kalashnikov that had been established to have been used to kill Shakila. He said that according to the forensic report, Shakila’s case was treated as a murder, not suicide, since the bullet had entered the right shoulder of the victim and exited the body, which is impossible in the case of a suicide. Subsequently, the case reached the Primary Court of Bamyan.

Primary Court

Since the main defendant, according to the indictment letter and case file of the attorney, was Q.B. (Shakila’s brother-in-law), at the preliminary court session the accounts of several individuals were heard. The court announced the decision on May 21, 2012, pointing to the gaps and flaws of the case, and listed five issues which called for further investigation:

-The testimony of several people who witnessed the absence of Q.B. at the location where the crime was committed, as well as Q.B.’s persistent and flawless statements.

-The presence of just three individuals, Wahidi Beheshti, A.W. and S.H., Beheshti’s wife, at the location where the crime was committed, based on the testimony of Shakila’s sister and A.W., who also claimed that Q.B. had been absent.

-The initial remarks made by A.W. contradicted the answers he provided during the court proceedings, and he appeared nervous on the stand.

-The forensic team identified three types of fingerprints, two of which belonged to Q.B. and the third one was not identified.

-According to the claims of Wahidi Beheshti, A.W. and S.H., they were the first people to find out about the incident and they reported it to Q.B. instead of the police. The honorable attorney only sent Q.B.’s fingerprints to the forensic team and failed to deliver the aforementioned three people’s fingerprints.

The court considered the above five points to be controversial issues and called for further investigation of Wahidi Beheshti, A.W. and S.H., as well as argued that the investigation team should be held accountable for negligence. The case was sent to the attorney’s office.
The case documents (specifically the document no. 485, January 29, 2012) were, then, sent by the Criminal Investigation Department of Bamyan to Kabul for further investigation.

**Steps taken in the case in Kabul**

On March 27, 2013, the case was submitted to the attorney of the Northern Zone of Kabul. Eventually, the attorney concluded that Q.B. was innocent, and based his judgment on the following points:

- The bullet trajectory indicated that the victim was sitting, and the murderer was standing.
- Claims made by Shakila’s sister that she had been deceived by Wahidi to make the murder look like a suicide.
- Wahidi’s claim that he had not heard the gunshot, although he was seven meters from the victim.
- Despite the fact that Shakila was alive for twenty minutes after she had been shot, Wahidi did not attempt to save her, and only made a phone call to her brother-in-law.
- Although Shakila’s sister claimed that the weapon was found to the left of the victim, the forensic report states that the bullet went from right to left. Therefore, the weapon should have fallen to the right.
- Contradictory statements made by S.H.
- Although Shakila was single, the forensic report shows that her hymen was broken. This, in turn, indicates that she might have been raped and, thus, provides the main motive for murder.
- Wahidi was believed to have tampered with the crime scene to prove that it was suicide, but he should have called the police first.
- A.W.’s contradictory statements.
- Wahidi stated that he had not called Q.B., but the driver, first, which was denied by the driver.
- The statements provided by M.A., the victim’s brother.
- The forensic opinion states that placing the weapon at 45 degrees upwards and firing the shot is above the strength of a girl.
- Studies have shown that those who commit suicide usually target the critical points of the body, such as the heart and the head, rather than the area between the thorax and abdomen.

The member of the Provincial Council was recognized as the main defendant and according to Article 395 and Article 427 sub articles (1), (3) and (5) of the Penal Code, was deemed liable for the crime and the death penalty was recommended. His wife and nephew were recognized as accomplices to the crime, according to Articles 395 and 39 of the Penal Code.
Regarding Q.B. and A.A., the head of the investigative team that visited the crime scene, the prosecutor stated the following:

“Q.B., son of M.M. and the victim’s sister’s husband is deemed innocent due to the lack of sufficient evidence to prove his guilt. A.A., son of K.H. and the head of the investigative team of the Bamiyan Police had not investigated the crime scene properly due to the lack of experience. He had not collected the evidence in a technical and professional manner and had not taken the fingerprints of those who were present inside the courtyard. For this reason, they were not sent to the Criminal Techniques for comparison. He should receive disciplinary action in accordance with the Law of Military Discipline.”

The case was filed with the court. The court session was held on April 15, 2013 and chaired by Abdul Basit Bakhtiari. Shakila’s lawyers were not allowed to attend the session. The session of the Primary Court of the Fourth District was held on July 17, 2013. Without any consideration given to the claims made by the victim’s family, the Court unanimously decided (under decision no. 89, July 17, 2013) that Mohammad Hadi Wahidi was to be acquitted from the charges of Zina (illicit sexual relations) according to Article 4 of the Penal Code and Article 25 of the Constitution, due to the lack of evidence; Mohammad Hadi Wahidi, A.W., son of M.N., and S.H., daughter of Q.M., were to be acquitted in the case of the murder of Shakila, in accordance with Article 4 of the Penal Code, Article 4 of the Criminal Procedure Code, and Article 25 of the Constitution, due to the lack of evidence. Due to the dissatisfaction of the attorney, the case was sent to the Appellate Court. The Appellate Court decided (under decision no. 296, June 21, 2013) to overturn the decision of the Primary Court and sentenced A.W., son of M.N., to imprisonment for up to six years on the charges of Zina, in accordance with Article 427 of the Penal Code. It also sentenced the defendant to twenty years of imprisonment for the murder of Shakila, in accordance with Article 396 of the Penal Code. Mohammad Hadi Wahidi and S.H. were acquitted and called for the prosecution of Q.B. and A.A.

The case entered the Supreme Court due to the dissatisfaction of the attorney.

The legal advisors of the General Criminal Directorate of the Supreme Court reviewed the decision of the Appellate Court and overruled it (under judgment no. 3629, October 27, 2015).

The case was sent to the General Criminal Directorate of the Appellate Court for reconsideration.

The defendants, Mohammad Hadi Wahidi and S.H., who had both been released on bail, were summoned by their bail bondsperson and instructed on their right to a lawyer and their right to appeal to the Court and attorney’s decisions, as stated in Article 9 of the Criminal Procedure Code. The first session was held in the presence of the parties and under the supervision of the head of the Appellate Court of Kabul prov-
ince. The attorney expressed his acceptance of the decision of the Court (continued imprisonment) on A.W. who was recognized as an accomplice to the crime and not as the main actor. He also requested a fair decision in the case of Mohammad Hadi Wahidi and S.H. After the requests of the attorney were made, Said Danish, the defense attorney, read his written defense. The Appellate Court and the judicial panel heard the objections of the parties and referred to the case documents in order to ensure justice and fairness. Subsequently, the following observations were made.

Firstly, the defendants had not confessed to the murder of Shakila at any point since the beginning of the investigation. Secondly, neither witnesses nor evidence have been presented by the attorney to prove the accusations beyond reasonable doubt. Thirdly, the existence of numerous written statements made by Shakila’s parents to the Attorney General stating that Shakila's death was suicide. Also, a second investigation conducted by the General Appellate Directorate of the Attorney’s office of Bamyan province concluded that the cause of death was suicide and the defendants were not responsible in any way. Moreover, M.A., son of M.B., the victim’s brother, stated in written form that he agreed with his parents on the innocence of Mohammad Hadi Wahidi, S.H. and A.W. Finally, the attorney used the opinion of the investigators which were based on probabilistic and rational, rather than legal reasons, which is a violation of Article 19 of the Criminal Procedure Code.

The forensic report that the hymen had been broken in the past is not considered evidence against the defendants.

In the final analysis, the Court upheld the decision of the Primary Court.

The designated attorney’s decision

The decision of the Court to acquit the defendants was, arguably, irrational and at odds with a number of the presented facts. Firstly, the forensic team rejected the possibility of a suicide and proved that Shakila had been murdered. Secondly, the investigation team had repeatedly covered up the motive behind the murder. Also, the act of sexual intercourse had already been carried out against the victim. Finally, at 2pm on January 27, 2012, there was no one present in the courtyard except Hadi Wahidi, S.H. and A.W. Therefore, the decision was questionable, and the case was sent to the respected General Criminal Directorate of the Supreme Court in accordance with Article 270 of the Criminal Procedure Code.

The Supreme Court’s analysis and evaluation

The verdict of the Appellate Court, based on the ambiguity of the motive, the inability of the attorney to prove the accusations beyond reasonable doubt, the statements and confessions of the victim’s family as to her suicide and the lack of involvement of the defendants in relation to the incident, was fair and legal and upheld. The judgment stated:

“In the judicial hearing of the General Criminal Directorate of the Supreme Court held on November 12, 2016, the Court upheld the Appel-
late Court of Kabul’s decision (under decision no. 412, July 19, 2016) to acquit the defendants of the charges stated, based on the provisions of Article 278 of the Criminal Procedure Code.”

FLAWS IN THE INVESTIGATIVE PROCESS AND LEGAL PROCEEDINGS

Although the forensic team determined the cause of death to have been murder, it only considered the bullet trajectory, the injuries sustained as a result and the peculiarities of the gunshot. It failed, however, to consider the liquid which the pillow was contaminated with and which had never been identified. Had it been identified, it might have been possible to prove the act of rape and invoke Article 17 of the EVAW Law.

If the properties of the liquid had been identified and considered, the Primary Court would not have had any excuse for an unfair ruling, and it would not have been able to exonerate the murderer (Sayed Wahidi Beheshti). Unfortunately, the flawed forensic report only states that “her hymen had been ruptured in the past.” Thus, the purpose of the forensic report, it seems, was to conceal the truth, and facilitate the cover up of the act of rape.

Attorney of the Criminal Investigation Department

The designated attorney did not carry out the investigation in a professional manner and ignored the available evidence. Although the weapon belonging to Q.B. had been obtained from the site of the incident, the attorney relied on the inadequate investigation of the Criminal Techniques Department that had found that the weapon had the fingerprints of Q.B. Certainly Q.B., who was Mr. Beheshti’s bodyguard, had his weapon with him at all times, but the question remains whether there were other people’s fingerprints on the weapon as well. It is not clear whether the Department had written in its report that there were only Q.B.’s fingerprints and, if there were other fingerprints, who they belonged to. The concept of an investigation of a crime is to conduct a comprehensive investigation. In this case, however, it is not clear where the attorney’s comprehensive report is and why the attorney accepted the flawed report of the investigation and the forensic team. It seems likely, in fact, that the above was due to the direct support for the murderer, who was a member of the Bamyan Provincial Council, and his brother, who was a member of the Parliament.

Primary Court of Bamyan province

The decision of the Primary Court which was made based on the gaps and flaws in the investigation, was appropriate, accurate and acceptable.

Steps taken by the attorney in Kabul

The reasons highlighted by the attorney’s office of the Northern Zone of Kabul are correct and correspond to the objective reality. Q.B.’s acquittal was a fair decision. The punishments demanded for Hadi and Wahidi are proportionate to the crime.
Court of the Northern Zone of Kabul

As noted above, on August 23, 2017, the case was referred to the court. However, not allowing Shakila’s lawyers to appear before the court was against the law of the Court of the Northern Zone and all the values of a fair trial and the Covenant on Civil and Political Rights. Unfortunately, the criminal laws of the country and the rules of conduct of judges do not criminalize such unlawful and unethical acts. Additionally, the Court exonerated Wahidi Beheshti despite all the reasons given by the attorney and the resulting request that he be given the death sentence.

An important point to be made is that although the attorney had requested the death sentence for Wahidi Beheshti, he was satisfied with the decision of the court to acquit him. This is something that legislators should pay attention to.

The verdict of the Appellate Court of Kabul

The Appellate Court sentenced A.W. (Wahidi’s nephew) to twenty years in prison. A.W. was present in the courtyard of Wahidi’s house and there was no evidence presented by the discovery and investigative organs to connect him directly to the murder. Thus, punishing him while acquitting Abdul Wahidi Beheshti appears to be an unfair and unjustified decision.

CONCLUSION AND RECOMMENDATIONS

Considering the statements made by the parties to the lawsuit, it is concluded that there was a negligence in the discovery stage by the police capacity of the legal and judicial staff. The gaps and flaws in the investigative process might have helped to conceal facts and cover up the reality. This flawed process also gave the perpetrators time to cover up the truth or escape.

The decisions of the courts show that they are not independent, and their decisions were made under the influence of Wahidi and his brother, who was a Member of Parliament. Therefore, the facts had been concealed by the legal and judicial bodies and the case had been diverted from its original course of action.

Based on the above discussion, the following recommendations can be made:

• Law of forensic medicine: an article should be added to this law, requiring the forensic experts to give clear explanations of the crimes committed. These explanations should be clear and understandable for legal and judicial bodies, lawyers, the claimant and the defendant. For example, the opinion of the forensic expert that the “hymen had been broken in the past” is not supported by any evidence.

• An article should be added to the Penal Code, specifying how to punish an attorney or judge who deliberately conceals facts during investigations and issuance of verdicts.

• It should be incorporated in the Criminal Procedure Code and the Penal Code how to investigate and penalize people or bodies in the cases when there is a significant
difference between the recommendations of the attorney and the court’s verdict. For example, although the attorney demanded the death sentence for the defendant, the court exonerated him.

- The rights established by Article 6 of the EVAW Law and Article 6 of the Criminal Procedure Code were practically violated by the attorneys and courts. The law should establish rules to prevent such breaches for the provisions of the law to be properly implemented by the attorneys and judges.

- A regulatory body should be formed to monitor the actions of the judiciary in order to ensure that the law is rightfully implemented.
4. MARIAM

CASE OVERVIEW

Mariam, an 18-year-old resident of Zarey district in northern Balkh province, was gang-raped outside her home in the village of Bodogh on August 25, 2016.

She was raped by N.Z. and D.I., an Arbaki (an officer of the Afghan Local Police) and the bodyguard of Commander Akram Zarey, the police chief, in the guest house of N.Z. After a few days, people learned about the incident and referred the issue to a local Jirga. This Jirga decided that Mariam should marry D.I., but he escaped with the help of some warlords.

When Mariam and her father went to the office of Commander Akram Zarey, the district commander, to file a complaint against her rapist who had also threatened to kill her, she was raped for the third time, by Akram Zarey.

Zarey is a powerful local commander of Jamiat-e-Islami and is strongly supported by the former governor of Balkh. In addition to having raped Mariam, Zarey is also accused of raping G.N., Z.K.’s wife, and murdering H.T., a 22-year-old boy.

RESEARCH PROCEDURES

Prior to the investigation, reports and other relevant information, including local and international media reports, interviews and video clips, had been gathered. Consent was obtained from several relevant government authorities (different departments of the Ministry of Women’s Affairs, Ministry of Interior Affairs, and Attorney General’s Office) who had expressed their willingness to cooperate. Subsequently, a team comprised of two guards, a psychologist, a legal specialist and a communication officer travelled to Mazar i Sharif province on the 13th of April 2018. The purpose was to interview the local people, Mariam’s mother and relatives, to meet with the Balkh province authorities, to obtain and review documents and case files, including the hospital documentation, and to study and analyze the location of the incident.

Certain challenges, mostly related to the research team’s safety, emerged during the inquiry. Firstly, the team was instructed by Mariam’s defense lawyer that it was dangerous to carry out this investigation or visit the victim’s mother, as she, herself, had received threats from powerful men connected to Akram Zarey. For the same reason, it was not possible to meet Zarey in person. The second arrest warrant had been issued by the court and this could provoke him to take action against those conducting research into this case. Another issue was obtaining relevant documents. Most gov-
ernment officials involved in the case were afraid to cooperate due to the influence of Zarey which could result in threats or loss of their jobs. Finally, D.I. was missing from the village.

The above challenges reflect findings of this current inquiry that revealed a great degree of corruption and injustice that characterized this case. Firstly, it was found that there is no governmental control over high-ranking officials. As a result, these officials are not held responsible for crimes they commit and for not complying with the law in general. It was also found that certain government officials and parties provide support to armed groups or individuals, and that unqualified people are appointed in state and military positions. At the same time, it is alarming that there seems to be a general lack of access to justice at district and village level, and rural people do not seem aware of basic legal and judicial procedures. Mariam’s family, for example, did not know that the first step in taking legal action is to file a complaint. Finally, it was found that there is censorship in the media and there is very limited access to information in the cases where powerful figures are involved. At the same time, there is little, or no protection for journalists who are involved in such cases.

In this investigation, the documents acquired and reviewed by the team were Mariam’s case file, reports about Mariam received from civil society activists and documents gathered from the village where the incident occurred. In addition, 26 interviews were conducted, including with a number of informants, including Mariam’s relatives, local authorities, ministry officials, and local journalists and activists.

THE INCIDENT

Mariam, an 18-year-old girl, was raped by a local soldier named D.I. in the private guesthouse of N.Z. in August 2016. After a while, the local people learned about this incident and the issue was assigned to a Jirga. The Jirga concluded that Mariam and D.I. are to get married, which D.I. accepted. Eventually, however, D.I. fled from the area. The victim’s hopeless family appealed to the district, and the mayor referred the case to the police headquarters. In the police headquarters, Mariam was called to the police chief’s office alone, where she was raped by the police chief. She was then threatened by the police chief to remain silent or she herself, her father and her family would be killed.

After three months of hopeless appeals for help and trying to find support, Mariam and her father came to Kabul and went to the Independent Human Rights Commission. The Commission referred the case to the Ministry of Interior, stating that it is a military case. Based on Mariam’s claim and the Attorney General’s order the case was also filed in the civil division of the attorney’s office in Balkh province.

After a lawyer was appointed to the case, documents such as the creation of a commission from the head of the Ministry of Interior and the commission’s opinion on Commander Akram Zarey, and the application for a medical examination and its outcome, were collected.
At the attorney’s office in Balkh, Mariam’s case was kept in the prosecutor’s office after it was indicated that commander Zarey had provided 500 witnesses who stated that he was not at work at the time of the incident.

Following Mariam’s petition, the case was sent to the western zone’s Attorney General’s military department again. The investigations began, but after a while the case ended up being kept way from the Attorney General again.

Another petition was issued to re-open the case, and the Attorney General’s investigation team presented six points that indicated that the commander Akram had kept the wife of a man named Z.K. for three months, and in the last point the rape of Mariam was also mentioned.

Subsequently, the case was sent to the Attorney General’s Department of Corruption of the military department. After the case had been evaluated and revised there, it was sent back to the Attorney General’s office of Balkh.

At present, the case is still being investigated at the Elimination of Violence Against Women prosecutor’s office in Balkh.

MARIAM’S FATHER’S ACCOUNT OF THE INCIDENT

The following is the victim’s father’s account of the events that led to, and followed the incident:

“This is a case of rape. This person, whose name is D.I. and who is from our village, took away my daughter from home at night. There was also another person with this man, whom my daughter did not recognize due to darkness. They took my daughter to commander N.Z.’s guesthouse, who is also from our village. It was D.I. who took my daughter away.

I was not at home, as I had taken my sick son to Mazar, and it was at the end of Ramadan, and because it was far, I could not go at night, and that night my daughter was taken away and raped.

When I heard the story, I was disgusted and saddened. The elders and relatives of that person [D.I.] gathered and asked me what I was going to do. I told them that I am dead and you, who are alive, should do something. Then, several elders came and advised me on whether to launch a lawsuit or remain silent. I told them I am a man and I will not remain silent and will do anything that needs to be done. One of the elders, who had the telephone number of the police chief, called him and said that there had been a rape at a household. The police chief told him to prepare a petition and bring it to the police station when the holidays are over. Eventually, as all the elders and relatives were ready to go and make a petition, armed men and paramilitary appeared and asked
where we were going. I explained that I was going to the government to make a petition. Then, they suggested that we should solve the issue between us, before pulling the elders from the donkey to the ground, punching and kicking them. They threw me and my daughter into their car, and then dropped us in the backyard of my house. They gathered in commander N.Z.’s house, where D.I. said he was going to marry [Mariam]. The militia commander came to me and ask whether I will give my daughter into this marriage. I replied: “I am a Muslim, and you want to take my daughter with that ease. Go and ask the girl if she wants to marry. What can I do?” They told me that I have authority over my daughter. I replied that I don’t, and that they had already caused enough suffering and they have to compensate. Why did they destroy the innocence of my 18-year-old girl daughter? The matter was brought up to D.I.’s wife, daughter and mother in law who threatened to kill themselves if he married [Mariam], so D.I. escaped.

Then, on a holiday, on July 9th, I made the petition and managed to reach the police in Zarey district in early morning, at 7 o’clock am, fearing that they would catch me again. The soldiers asked us where we came from and what we needed. I replied that we came from Zarey and we need to see the police chief. They contacted the commander and the commander ordered them to let us in. We passed through the first sentry, and there was another soldier at the corridor who went inside and came back. I was walking ahead of my daughter, and then the police tell me to stay outside and let my daughter go alone. I agreed, thinking that the commander might need to ask her something in private, and that, generally, he is a good person who wants to help. 20 minutes passed before the commander came back out with my daughter. He advised me not to take my daughter to Mazar and promised that he would find the perpetrator. He told me not to take my daughter to a safe house which, according to him, was a bad place where the government could take my daughter away. They passed my petition to the crimes department where it was evaluated, but no answer was provided. When, after a few days, I returned to the city, they asked me to bring my daughter on that day, because they wanted to send her to the hospital. I left my donkey and rented a taxi for 1000 AFN to go to my village and bring my daughter. I took my daughter, and this time I also took my wife with me and returned to the police station. However, this time they didn’t let us inside the station. They asked us some questions at the doorstep and told us to go to Zarey Clinic and sent another inquiry to the crimes department. The next morning, we came back to tell them that we expect a formal response, or otherwise we will be going to Mazar. This time commander Akram Zarey was also present, and he was told that we want to go to
Mazar. Akram said that we do not have the power to arrest him and told us not to resist and to end this drama. He also asked us why we insist on going to Mazar, suggesting that they will put my daughter in a safe house where she will give birth to children, and I will be happy to become a grandfather. I told them to stop it and that this was enough. I said that I see there is no humanity left in him and that we will not come again to the police chief.

Then, we went to Mazar and made the petition to Balkh Governor, Provincial Council, Attorney General, Police Chief and Human Rights. Then, I remembered that we had voted for an MP called Abdul Wakil Siah, who is from Mazar. After searching for three days, we found him. I told him that I trust him, and I asked him to follow the case, to which he promised me many things. He asked me to stay at his home, and I stayed there for 20 days while he gathered the elders and asked for their opinions. Then, he told me that they were going away, and asked me to leave too, telling me to solve the issue by myself to avoid another incident or murder. The elders suggested that if we couldn’t solve the issue, we should come there again. Then, I stayed in Mazar for another 15-20 days, but nothing happened. Then, I went back to the MP and he told me that he would follow up on that day or the day after. However, nothing happened, and I stayed for 20 days at his doorstep. On a Friday night my daughter called me and asked me to come. In the morning, I asked the MP for the permission to leave and he told me that I could go if I wanted to. I went home at 1 o’clock. My daughter told me that she felt like a prisoner there and asked me to take her somewhere or else she would kill herself. I told her not to ever think of doing that again. At 3’oclock, with a pair of clothes and some money, we went to Mazar. When we were at the Mausoleum, I asked my daughter where I should take her. I told her that we could go to MP Abdul Wakil Siah’s guesthouse, but she said that if he wanted to do something, he would have done it by now, and asked me to take her to Kabul. I told her that I don’t know anyone in Kabul, but we went there anyway. We stayed at a hotel and we found a petition writer. After a while, she thanked me for having taken her there and said that she would write the petition herself. She also told me that the police chief also raped her that day at the police station when I was waiting in the corridor. He forced her to keep silent and promised he would find the person, but also asked her not to go to Mazar. She was scared initially, but, at this point, she wanted to denounce the police chief too.

On the first day, we went to Parliament’s Complaint Commission to meet with an MP from Mazar, and also went to Afghanistan Independent Human Right Commission. We also went to Attorney General and to the
Ministry of Interior Affairs. It has been 18 months, and we are still uncertain about the future and the outcome of the investigation. I have had no news from home and my family. I cannot go there either, as they have created a mock trial.”

THE INVESTIGATION

On July 8, 2016, K.D. (Mariam’s father) made a petition to the District’s Police Headquarter. The report that Balkh’s attorney of Criminal Investigation presented to Attorney General and Mariam’s father stated that the lawsuit had been launched and the people who the petition was signed against were H.M., S.P., D.I. and N.Z. Based on the case documents, the plaintiffs had been interrogated and Mariam was sent to a non-equipped clinic in the district for diagnosis. The clinic rejected the request due to lack of equipment and trained doctors. Mariam decided not to return to the district and went to the province.

The victim’s father also made a petition to Balkh Province Rank/Position on the 16th of July 2016, and on 18th of July 2016, the organized crime management of Balkh’s Police Headquarter ordered Zarey Police headquarter to arrest and consign the dossier to judicial authorities. Furthermore, on the 20th of November 2016, based on the testimony and the first petition of Mariam’s father, the attorney of criminal investigation ordered the Balkh Police Headquarter to arrest D.I., N.Z., H.M. and S.P. This, however, was not executed. On the 22nd of November 2016, a second order was issued, but it was also ineffective. On the 8th of March 2017, the case was sent to attorney Soldier/Officer Crimes in Balkh, following which an investigation was carried out in Mazar. However, the perpetrators had still not been arrested.

According to Mariam’s lawyer and the case report, the reason for these delays was the lack of evidence and documents against Commander Zarey and the fact that Zarey had presented several local people as witnesses who were his proof of innocence.

Following the Attorney General’s order, the investigation started again at Balkh’s primary attorney office, and the dossier was transferred from this prosecutor’s office to the Violence Against Women prosecutor.

Mariam and her father came to Kabul to make the petition to both the Human Rights Commission and the Parliaments Complaints Commission, and the name of Akram Zarey, the Zarey district commander, was added to this petition. In a meeting held on the 30th of October 2016, the Parliaments Complaints Commission reviewed all complaints against the commander and requested a follow-up investigation by the related authorities. Subsequently, the Human Rights Commission sent the case to Ministry of Interior Affairs (MOI), as the involved person belongs to the military. MOI re-launched the investigation and the MOI Audit Directorate formed a commission to prepare reports. MOI also instructed the defense lawyer to provide the results of medical examinations. Subsequently, the report was sent back to MOI. According to the report, in addition to having raped Mariam, Commander Akram Zarey was also accused of
being involved in two other cases. Following the Minister’s direct order, MOI issued the arrest of Commander Akram Zarey and those complicit in the incident. As the case was already being investigated in Mazar, MOI ceased the investigation.

MOI sent a copy of a report on how the Balkh Provincial Police Officers performed their activities to the Department of Government Affairs of the Islamic Republic of Afghanistan, after which it was sent to the Attorney General for execution by the Department of Government Affairs of Islamic Republic of Afghanistan.

Based on Mariam’s petition, the case was transferred to the prosecutor’s office in the western zone of the military, and this prosecutor requested three times that the victim and her father are investigated, and after a series of inquiries filed through this prosecutor’s office on 25 July 2017, the case was withheld without Attorney General’s notice.

The Attorney General requested a report, and in the report the investigation team required to investigate Mariam’s case. The case was referred to Prosecutor’s Corruption Office of the military department for further investigation, and the final report was to be sent to the Attorney General, where Mariam and her father initially requested the investigation. In the investigation report given to Attorney General, the investigation team suggested that, in absence of evidence and witnesses, the documents related to Akram Zarey should be withheld, and the Attorney General followed the suggestion to reduce/relegate D.I. and his partners’ documents to the competent attorney. On the 15th of November 2017, the prosecutor’s office sent the case against the elimination of Violence against Women in Balkh province.

The case was sent back to Balkh Elimination of Violence Against Women Prosecutor and on the 4th of April 2018, the investigation was postponed in order to detect and arrest the criminal. The arrest of four people, D.I., N.Z., H.M., and S.P., was issued again on the 30th of April 2017 and the 26th of December 2017. At present, the investigation is still underway.

**FLAWS IN THE INVESTIGATIVE PROCESS AND LEGAL PROCEEDINGS**

The following is a list of various issues related to the case and flaws in the investigative process and legal proceedings:

1. The decision of Jirga is against Article 122 of Afghanistan’s constitution. According to this article, all cases must be solved by the court:

If, based on the Jirga’s decision, Mariam and D.I. entered into marriage without Mariam’s consent, this was against Article 66 of the Civil Law, as clear consent in marriages is required. If the marriage did happen, it was also against Article 26 of the Elimination of Violence Against Women Law. Therefore, based on this law, the marriage should have been terminated, and a medium-term imprisonment should be applied. Furthermore, a sexual intercourse between a man and a woman without marriage
is considered a crime of adultery, based of Article 427 of the Penal Code. According to Article 17 of the Law on the Elimination of Violence, in turn, a man who rapes an adult woman should be sentenced to lengthy imprisonment, based on Article 476 of the Penal Code.

Consent after rape is never a true consent, but the consent is under reluctance, which has no legal outcome because any consent under coercion and reluctance is invalid.

Additionally, rather than solving the case, the villagers provided the grounds for D.I. to escape from the implementation of the rule of law. Arguably, the dignity of a man is more important to them than the dignity of women. Therefore, these people should be put to trial.

2. The rape committed by Akram, the police chief of Zarey district, is a criminal act, based on Article 5 of EVAW law, and decrees 17 and 26 of EWAV law, as well as Article 426 of the penal code are applicable for committing the crime of rape.

After raping Mariam, Akram told the victim’s father to take her to Mazar. The purpose of the commander was to destroy evidence of the crime, because after 24 hours the traces that can help establish the criminal’s identity extinguish. Needless to say, eliminating evidence of a crime is also punishable.

Subsequently, Mariam was sent to the district clinic for a medical examination, although the person who recommended this clinic was fully aware that the clinic did not have the facilities to diagnose such crime and establish the criminal. It is evident, therefore, that this person, who was the Commander’s and D.I.’s subordinate, as well as the commander’s personal officer, committed a crime.

According to the experts, the district police chief has no professional training. He is an uneducated jihadist who has committed numerous crimes. Akram, in turn, was previously a member of Junbish-e-Islami party, and after selling the party’s weapons he joined Jamiat-e-Islami party. He is now fully backed by Mazar’s governor. The governor supports him in all his criminal offenses. According to Article 39 (3) of the Penal Code, helping and supporting a criminal is also punishable.

Having no professional background, the commander was assigned to his position on the basis of influence, authority, assistance and support of Mazar’s governor. Based on Article 4 of Strategic Struggle Against Corruption Law, this is also considered a criminal act.

3. Mariam and her father’s arrival in Mazar, presenting petition to the provincial rank/authority, police district and Independent Human Rights Commission of Afghanistan.

In accordance with Article 80 of the Criminal Procedure Code, the heads of the provincial police district should have considered and examined the issue of the second unit of the police district (Zarey district) not having taken necessary steps and having their officer accused. They failed to do so, however, and the actions taken were only meant to deceive Mariam and her father.

According to the petition made by Mariam’s father, the director of detecting orga-
nized crime issued the arrest of suspect to the Zarey District Police District. However, these actions of the police district officials can be considered deceptive because rape is not part of organized crimes. Based on Article 3 (3) of the EVAW Law, this has to be indicated, and the EVAW Police, which is present at the Provincial Police District, should have prosecuted. These prosecutions, however, have not been performed.

The provincial police chief knew that Akram, the district commander, had not taken any action because based on Article 7 (2) of EVAW Law institutions need to register and investigate the complaints according to rule of law. The district had acted according to the law. Therefore, the Provincial Police Headquarters (Legitimacy Measurement), which is the main principle for all the police, should have noted and internally enforced it by arresting the perpetrator and investigating Zarey commander for neglecting his duties. Failing to do so is a violation of the police regulations.

With regard to Balkh Provincial attorney’s execution of arrest order, according to Mariam’s father’s petition, the prosecutor issued the arrest order of D.I. and the people involved to the district police chief twice. However, Article 56 of Criminal Procedural Law states that instigated cases should not be withheld under any circumstances, and only documents can be withheld at the prosecutor’s office. Therefore, if the lawsuit was not prosecutable, it should not have been initiated. It should have been pursued the moment the case was initiated and the arrest of D.I. was issued. The Attorney General did not pursue the case, however, as he feared the governor and considered Akram to be affiliated to the governor.

4. Mariam and her Father’s arrival in Kabul.

Mariam’s father appealed to the Afghanistan Independent Human Rights Commission (AIHRC), Ministry of Interior and Attorney General to seek justice for his daughter. According to Article 27 of the law, establishment, duties and authorities of the AIHRC, the commission should have reviewed the case and overseen it even after it had been assigned to another institution, because based on Article 85 of the Constitution it is the AIHRC’s duty to oversee the implementation of human rights in Afghanistan. Thus, AIHRC’s responsibility does not end after referring the case to MOI, and it is within its duties to oversee governmental and non-governmental institutions for their observance of human rights. AIHRC did not comply, however, with this law.

After reviewing the available documents, including the one stating that Akram Zarey was accused of several other crimes in addition to having raped Mariam, the Interior Minister ordered that Akram and his partners are to be arrested. This order, however, was not executed and Akram was not arrested, which, arguably, indicates the minister’s lack of interest in cases regarding violence against women.

With regard to the actions taken by the Attorney General, after Mariam’s father’s petition had been handed over to the Kabul Western zone Attorney General, it was unlawfully withheld there, for which the Western zone Attorney General should be held responsible. Influenced by Mariam’s father’s pressure, the Attorney General eventually ordered the investigation to be re-launched. This, however, raises several
questions, such as: if the case was to be withheld, why did the Attorney General issue the new investigation? If it was not to be withheld, what actions should Attorney General take towards the Western zone Attorney General?

It must be said that procedural penal code is codified and influenced by standard international penal code and considers the internal conditions of the country. The flaw is not within the law, itself, but rather in the way it was implemented.

Article 80 (2) of the Procedural Penal Code states that the police, after being informed of a crime having been committed, should go to the incident site and take the following steps:

- Inspect the place of the incident and take photos that register the evidence of the incident having taken place:
  
  Thus, after Mariam notified the district police chief about the incident, the commander, in accordance with Article 3 (3), should have sent the official to the place of the incident to confirm that the crime had taken place. He failed, however, to do so, and, as discussed above, he raped Mariam. Again, the problem does not in the law, but rather in how it was implemented.

- Identify the type of crime, the perpetrator and the victim:
  
  From the beginning, the police chief was aware of the type of the crime, as well as of the fact that his officer, D.I., had committed it.

- Arrest and search the perpetrator:
  
  The police chief did not arrest D.I. and, subsequently, the local people assisted D.I. in his escape.

Other components of Article 80 (2) of the Criminal Procedure Code were not implemented by the commander of the district police chief either. Neither D.I., who was the main suspect in the first crime, nor Akram, the main suspect in the second crime, were punished as suggested in Article 38 of the Criminal Code.

According to Article 80 (3) Criminal Procedure Code, the disclosure of a crime requires the expression of necessity for the perpetration of any incident, which is necessary in any event, as the law does not specify and, in fact, precludes a way of removing the police from liability.

CONCLUSION AND RECOMMENDATIONS

Zarey district authorities are uneducated, unqualified and unprofessional. They have been hired by powerful people without merit or qualifications. They have no understanding of women’s Islamic and human rights.

Having the Jirga of the local people resolving this issue was unconstitutional and resulted in D.I.’s escape. Therefore, it can be argued that solving cases of violence against women in the Jirga has a direct negative impact on women’s rights.

Akram, the district police chief who was a frequent criminal offender in Junbish party,
was supported in his crimes against humanity by the governor of Mazar.

Neither of the actions taken by the police and the attorney of Balkh complied with the criminal procedural act. Even though they were fully aware that the Balkh governor supports criminals, they had let the fear overcome their professional duties and responsibilities.

Afghanistan Independent Human Rights Commission, whose duty is to review and oversee the implementation of human rights based on Article 85 of the Constitution, did not, however, oversee Mariam’s case properly.

The Ministry of Interior issued the dismissal of the police chief (the second rapist) and ignored a number of procedures required in the investigation.

The attorney, by referring the case to Kabul’s Western zone attorney, and then reassigning it to Anti-corruption Judicial Center, only wasted time and failed to perform his duties.

As a result, both rapists remain free and continue to commit crimes, and Mariam is residing in a safe house, far from her parent’s love and family.

The problems outlined with regard to this case do not lie in the law, itself, but rather in the way it failed to be implemented by the law enforcement and judicial institutions.

Based on the above, the following recommendations are made:

• Justice should be sought to assess the documents of the mentioned case in order to clarify the correctness and clarity of these illegal acts, negligence and disregard of the authorities. Through the enforcement of criminal justice, justice for the victim must be done.

• The Women’s Support Unit of the United Nations Delegation in Afghanistan (UNAMA) should be allowed to review and reassess the case documents.

• The Ministry of Women’s Affair should professionally and specifically follow-up the case through its representative in Balkh.

• The Afghanistan Independence Human Right Commission should take the responsibility to reinvestigate and oversee the case.

• Women rights defending institutions in Kabul should also be involved.

• The government should take more direct actions to ensure women rights and punish rapists and warlords.

• The government should eliminate the culture of immunity, especially for those who perpetrate women rights.

• The government should introduce and enact more requirements to the EVAW Law, in order to bring justice to women and severely punish the criminals and those who support them.
Complex and lengthy legal procedures, the lack of understanding of the law, corruption, gender discrimination, the lack of representation of women in legal and judicial bodies, countless violations of women’s rights and, as noted in the review of each case, the existence of gaps and flaws in the laws and procedures have resulted in the majority of female victims of violence failing to achieve justice. The complex and overwhelming bureaucracy in the legal, judicial and executive departments result in the victims’ lack of trust towards these institutions, which further results in them not seeking help there. In the rare instances when the victims do find the courage to take this step, the perpetrators and defendants manage to escape punishment by paying bribes and making threats. The institutions reviewed in this report unanimously fail to serve the female victims of crimes.

Numerous deficiencies and inconsistencies in written laws, particularly within Article 39 (2) of the EVAW Law, provide grounds for perpetrators to escape punishment. This allows them to further pressurize the victims and put them at risk of suffering from more harm. Furthermore, decisions made by tribal and local assemblies are often in favor of men in this patriarchal and traditional society, and this makes the situation even more difficult for the victims and easier for the perpetrators.

Although the cases of violence against women do gain some media coverage, most often they are eventually forgotten because of the lengthy litigation process.

This inquiry into four cases of violence towards women revealed that until the following issues are addressed, there is no prospect of addressing the challenges to achieving justice that women in Afghanistan currently face:

1) The amendment of several laws, including the EVAW Law.

2) The facilitation and expedition of legal prosecution processes in cases of violence against women.

3) The equal imposition of laws on all citizens of Afghanistan and elimination of the culture of impunity.

4) Speeding up the process and prioritizing cases of violence against women by setting a time limit for finalizing cases.

5) Establishing women’s rights advocacy committees in all areas of legal and judicial bodies across all provinces to monitor the progress of the cases of violence against
women and requiring these committees to provide regular monthly reports.

6) Establishing a registration system for cases of violence against women in all civilian and non-civilian province, village and district hospitals, in order to prevent the cover up of such cases and to provide emergency access to health, psychological, medical, and forensic services.

7) Putting staff in government bodies based on merit.

8) Preventing the intrusion, threats and bullying from warlords, commanders, armed groups and high-ranking officials.

9) Preventing any form of gender discrimination and giving equal position to women and men in all civilian and private administrations.

10) Placing conscious, active and empowered women in governmental, legal and judicial bodies.

11) Raising public awareness of laws and legal and judicial processes and barring mock trials and traditional assemblies.

12) Strengthening our culture and encouraging people to advance cases through official courts and to obtain accurate information about the different stages of these cases.

13) The establishment of various institutions to ensure neutral, persistent and transparent monitoring.

14) Continuous cooperation between the media and human rights institutions.

15) More research and investigation into violations of laws.

16) Organizing seminars and conferences to showcase the cases in which female victims have successfully overcome the challenges they are known to face.
This report itself highlights the paradoxes of women’s lives in Afghanistan today. HAWCA, a nongovernmental organization founded and run by Afghans and serving some of the country’s most vulnerable women and girls, exemplifies the progress that has occurred since 2001. But the content of this report—a painful and scrupulously detailed retelling and legal analysis of four cases of violence against women—describes a justice system still not ready to protect women and girls.

These four cases are engraved in the memory of anyone who has followed women’s rights in Afghanistan in recent years. The disturbing details of Shakila’s murder, the painful photos of Sahar Gul’s battered face, the shock of Mariam’s courage in denouncing the men who raped her, and most devastating of all, the endless cell phone videos of Farkhunda being beaten and run over and burned by a crowd of men on the streets of Kabul are chilling reminders of how far Afghan women still have to go in seeking safety and justice. By detailing the government’s response to these cases, this report helps to keep alive the stories of four women whose names should be on the lips of every Afghan government official who works to reform the justice system, implements the EVAW law, and acts to improve Afghan women’s right to justice.

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