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Afghan women navigate a challenging judicial landscape

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Sadaf Ahmadi*, 18, from the northern Afghan province of Badakshan, has arrived battered and bruised at a women's refuge centre in Faizabad. It is her fifth such visit.

Every time it is the same. Staff at the centre, run by Women for Women, an Afghan NGO, try to offer support, but every previous time local community leaders or the government courts send her back to her husband and the beatings continue.

Now she hopes the government court will end her three-year marriage.

"I have pain in my hand," said Ahmadi, reluctantly lifting her headscarf to reveal scars from past fights, and fresh bruises from the most recent. "I wanted to have a shower and he started kicking me. I fainted, so I don't know how he beat me after that."

While figures on how such disputes are resolved vary, a December 2011 [report](#) by the US Institute of Peace says at least 80 percent of cases are settled through "traditional dispute resolution [TDR] mechanisms".

However, many see TDR as bad for women's rights.

"We are not in favour of tribal decisions because they tend to favour men," said Nafisa Qaderi of the government's Women's Affairs Department in Badakshan. "From our information, about 20 percent of decisions made by elders violate the rights of women."

TDR mechanisms often mean 'shuras' or 'jirgas' - hearings held by tribal elders to resolve disputes - but they include the Taliban's justice system and judgments handed down by religious leaders.

Tribal elder Habibullah from Darayom District in Badakshan works with 'jirgas' in the province. He says it is true that women's rights are sometimes violated and tribal elders may not be very aware of all relevant laws.

However, he says the responsibility of 'jirgas' is to solve disputes among family members while maintaining stable family relationships and harmonious communities.

"This is effective," said Habibullah. "If a woman takes her case to the government she may get justice, but she cannot preserve her family relations. In 'jirgas' the case gets resolved and relations are kept intact."

Violence against women is rising, said Sayeda Muzhgan Mustafawi, deputy minister for women's affairs, at a press conference in January.

Corrupt judiciary

One of the main reasons Afghans resort to TDR, says an Afghan Integrity Watch (AIW) [report](#), is that they do not trust the judiciary.

Bribery, nepotism and cronyism plague the formal justice sector, say critics.

A 2010 AIW corruption [survey of a range of Afghan institutions](#) ranked the justice sector as the most corrupt, threatening the legitimacy of the state and creating a gap between citizens and state.

Public misperceptions, a lack of education and professionalism in the sector, and the absence of district level staff due to insecurity and/or remote locations, were cited in the report as factors contributing to eroding trust in the judiciary.

Observers, analysts, humanitarians and tribal elders who spoke to IRIN also said that while state courts may be more aware of women's rights, their effectiveness is constrained by ineptitude, lack of capacity and corruption.

"The problem," said Adbul Wahab, an elder and lead prosecutor in Kunar Province for the past 18 years, "is that the formal court system does not follow women's cases seriously. They still follow what is good traditionally."

He cited several cases where officials had been bribed to hand back fleeing wives to their husbands' families, something that in several cases has led to the women being killed.

"I haven't seen any courts which exercise competent jurisdiction in cases of violence against women," said a government official working at the Women's Affairs Department in Badakshan, who asked not to be named for security reasons.

Women's rights law

The 2009 Elimination of Violence against Women law (EVAW) was a step in the right direction but its implementation is patchy.

EVAW condemns child marriage; forced marriage; the buying and selling of women for the purpose, or under the pretext, of marriage; 'ba'ad' (giving away girls as payment to settle a dispute); forced self-immolation; and 17 other acts of violence, including rape and beating; and specifies punishments for perpetrators.

"I haven't seen any courts which exercise competent jurisdiction in cases of violence against women" Where judges base their verdicts on EVAW, justice for the victims is more likely, according to a [report](#) by the UN Assistance Mission in Afghanistan (UNAMA).

Official statistics of violence against women are not available, but from March 2010 to March 2011, the Afghan Independent Human Rights Commission registered 2,299 incidents that could be classified as acts of violence against women under EVAW.

Of the 2,299 incidents, prosecutors opened 594 cases (26 percent); indictments were filed in 155 (7 percent), and in 101 cases (4 percent) the courts based their judgements on EVAW.

Most of the registered cases were processed outside the state system through mediation, pressure to withdraw a case, and traditional tribal systems.

Tribal elders change mindsets

In late 2010, tribal elders from Nader Shah Koat District in the southern province of Khost banned the practice of `ba'ad', a tradition illegal under international human rights laws, Afghan law, and - most Islamic scholars agree - Shariah law.

A 2010 UNAMA [report](#), describes the tradition as "one of the most egregious types of violence against women in Afghanistan".

The fact that tribal elders took matters into their own hands and banned the practice is important, said Lyric Thompson, a women's rights advocate with experience in Afghanistan who works for the Washington-based NGO International Center for Research on Women .

"That is important not only because many of the issues faced by women and girls are dealt with in the traditional or community justice sphere, but also because it dispels the myth that any assertion of women's rights - to live free from violence or to get an education, earn an income, etc. -is a "Western imposition".

"These messages coming at the mosque, from a traditional leader who is deeply connected to the people in the community, are often far more powerful than a billboard or radio message saying the same. It's about meeting people where they are," said Thompson.

Following the decision by Nader Shah Koat District elders to ban `ba'ad', seven other districts followed suit.

Observers say the act of banning `ba'ad' by elders in one of the most conservative provinces in Afghanistan shows not only the weakness of the government's justice system, but also how tribal elders can be used as effective allies to help tackle violence against women in the country.

Innovative work with elders

Last month's meeting in Istanbul of the Girls Not Brides initiative, a global partnership to end child marriage, highlighted, says Thompson, how innovative work was now being done with traditional and religious leaders, elders and other culturally important entities.

"Many of the advocates coming from Muslim-majority states like Pakistan were talking about successes - whether it's at the parliamentary level or at the community level - that would just not have been possible without the support and engagement of religious leaders."

The Afghanistan Rule of Law Stabilization Program (RLS-I - launched by the US Agency for International Development in the eastern province of Nangarhar in 2010), is designed to increase elders' knowledge of Afghan laws.

Under RLS-I women have learned more about their rights under Shariah law. This has not only resulted in women demanding their inheritance portions, said Mussarat Arif Momand, senior field monitoring and evaluation officer with RLS-I, but also men demanding the same on their behalf.

"Our surveys indicate that local people trust the elders more than government. In many cases, the state can't control the entire district alone, so they need local elders to help them resolve disputes," said Mussarat.

Mission impossible?

Meanwhile, efforts are also being made to improve local state courts.

AIW has run a [programme](#) to improve access and trust in formal court systems in Kapisa and Bamyán provinces.

They used local monitors to oversee trials in their communities, gave them training, and then disseminated the information gathered by the monitors to address people's concerns related to judicial institutions.

They say they saw "a gradual upturn" in community participation in overseeing trials, which in turn led the community to successfully lobby for judges to be sent to districts that previously had none.

"The more you get in need of more sophisticated demands, the more you'll need the state institutions and the less you can rely on traditional mechanisms," said Yama Torabi, AIW's executive director.

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