

Mandates of the Working Group on the issue of discrimination against women in law and in practice; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on freedom of religion or belief; and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE: AL
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23 April 2015

Excellency,

We have the honour to address you in our capacities as Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; Special Rapporteur in the field of cultural rights; Special Rapporteur on freedom of religion or belief; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 23/7, 19/6, 22/20 and 23/25.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations relating to the **public lynching and setting on fire of Farkhunda [REDACTED] who had been accused of burning a copy of the Quran.**

According to the information received:

On 19 March 2015, at around 17:30 hours, a crowd killed a 27 year-old madrassa student named Farkhunda [REDACTED] and burnt her. The attack took place near the Shah-I – Du Shamshera shrine in Kabul city.

On the day of the incident, the victim was allegedly accused of having burnt a copy of the Quran while she was at the shrine. Once the rumor about her alleged behavior spread, a mob comprised of approximately 30 men physically assaulted her with stones and sticks. The victim was reportedly run over with a vehicle three times. As a result, Farkhunda died and her corpse was subsequently set on fire. Afghan National Police recovered her remains in the dried banks of the Kabul River. The police arrived on the scene of the violence while the lynching was ongoing but reportedly failed to adequately respond to the mob violence and prevent the victim's killing.

The victim had been to the Shrine few days before the incident and was preaching people not to engage in practices such as using amulets given by Mullah – which in her views were practices incompatible to her understanding of Islam. When she returned to the Shrine on 19 March, she reportedly had an argument with a Mullah (name unknown) over this issue. Angered by her behavior, the Mullah reportedly

showed a burnt book to those present alleging she was responsible for the act of blasphemy by burning the Quran. His accusations, which were later not corroborated by any evidence, according to what the Ministry of Hajj and Religious Affairs indicated, instigated the crowd and yielded to the deadly outburst of violence.

In fear of further violence, Farkhunda's family left Kabul - upon police's advice - on the day of the incident. Her father who initially had stated his daughter suffered from mental illness told media that she was not ill but that he was advised by the police to say so for the safety of the family. The victim studied Sharia and was going to be a teacher. The Afghan Independent Human Rights Commission found in their investigation the failure of the police to protect Farkhunda first and her family thereafter.

On 20 March, President Ashraf Ghani appointed a commission to investigate the case from a religious and legal point of view. Headed by Maulavi Mahiuddin Baloch, former High peace council member and religious scholar, the commission is comprised of civil society activists and religious scholars and is expected to share findings and recommendations to the President.

The Criminal Investigation Department of Kabul province initially started the criminal investigation on the incident. On 24 March, the investigation was reportedly transferred to Criminal Investigation Department at the Headquarter of the Ministry of Interior given the high profile of the case. According to the investigating authority, as of 25 March, 30 civilian men had been arrested in connection to the incident and were waiting for charges being pressed under the Penal Code. 13 policemen have been allegedly suspended for their role in the incident and an additional 20 are under investigation. The Chief of Police PD 2, where the incident took place, was allegedly dismissed on 24 March.

The victim's killing has sparked public outrage and widespread condemnation across Afghanistan, including in social media. During her funeral procession which took place on 22 March, several women honored Farkhunda's memory by carrying her coffin and going to the graveyard defying cultural/religious practices that exclude women from graveyards. Since her death, demonstrators have been protesting on a daily basis across the country demanding justice for perpetrators of such heinous crime.

While we do not wish to prejudge the accuracy of these allegations, we wish to express serious concern regarding the unresponsiveness of police to take action to prevent Farkhunda's death. While noting the steps already taken to investigate the case and the arrests that took place so far we would like to stress your Excellency's obligation to act with due diligence under international human rights law to hold accountable not only the direct perpetrators of violence, but also state authorities which, by their inaction, have failed to protect the victim and have condoned such violence.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide the details and if already available, the results of any investigation and judicial or other inquiries which have been carried out in relation to this case. Please also indicate which authority is in charge of the investigations.
3. In the event that the alleged perpetrators are identified, please indicate under which provisions of the penal code charges have been pressed and provide the full details of any prosecutions which have been undertaken.
4. Please indicate any measures taken to ensure the physical and psychological integrity of the victim's family as well as any measures taken to ensure compensation and satisfaction to the victim's family
5. Please indicate what measures of punishment, both criminal and disciplinary are being taken as regards to the 13 policemen who have been allegedly suspended for their role in the incident and the additional 20 who are under investigation.
6. Please confirm whether the Chief of Police PD 2 was dismissed and, if so, give details regarding the conditions under which he was dismissed and how it affects his future career in the police force.
7. Please indicate whether the Mullah is being criminally charged as an accessory or instigator of the murder of the victim?
8. Please indicate any strategy implemented to prevent violence committed in the name of religion.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to prevent the re-occurrence of such grave violations and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

It is our intention to, depending steps taken at national level, publicly express our concerns as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting public attention. The press release would indicate that we have been in contact with your Excellency's Government to clarify the issue/s in question. In this regard we shall continue to follow closely the progress related to the actions taken at the national level to hold the perpetrators to account and put in place a framework to prevent the re-occurrence of such grave violations.

Please accept, Excellency, the assurances of our highest consideration.

Emna Aouij
Chairperson-Rapporteur of the Working Group on the issue of discrimination against
women in law and in practice

Farida Shaheed
Special Rapporteur in the field of cultural rights

Heiner Bielefeldt
Special Rapporteur on freedom of religion or belief

Rashida Manjoo
Special Rapporteur on violence against women, its causes and consequences

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we wish to recall that article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), which Afghanistan acceded on 24 Jan 1983, and which recognizes that every human being has the right not to be arbitrarily deprived of his or her life. Furthermore, article 18 (1) ICCPR provides that "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom [...] either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."

We also wish to recall that the Committee on the Elimination of Discrimination against Women (CEDAW) in its general recommendation No. 19 (1992), defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women (acceded by your Excellency's Government on 5 March 2003), whether perpetrated by a State official or a private citizen, in public or private life. Thus, the Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes, including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay. In general recommendation No. 19, the Committee sets out specific punitive, rehabilitative, preventive and protective measures States should introduce to fulfil this obligation; in paragraph 9, it makes clear that "under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation".

In addition, we refer your Excellency's Government to the relevant provisions of the Convention on All Forms of Discrimination against Women, including article 2, which condemns all forms of discrimination against women, and article 5, which requests the modification of social and cultural patterns of conduct in order to eliminate the prejudices based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women. Furthermore, we would like to stress the relevance of article 13 (c) of the CEDAW relating to the rights of women to equal participation in all aspects of cultural life, as well as article 27 of the Universal Declaration of Human Rights and article 15 of the International Covenant for Economic, Social and Cultural Rights, relating to the right of everyone to take part in cultural life. In her thematic report on the enjoyment of cultural rights by women on an equal basis with men (A/67/287), the Special Rapporteur in the field of cultural rights recalled that accessing and enjoying cultural heritage implies the ability to contribute to the identification, interpretation and development of cultural heritage (para. 30). She also stressed that women must enjoy the freedom to create new cultural meanings and practices without fear of punitive actions, including any form of violence. This means that women must be able to embrace or reject particular cultural practices and identities as well as to revise and (re)negotiate existing traditions, values or practices, regardless of their provenance (para. 28).

We would also like to refer to Your Excellency's attention Article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.

In its 2013 Concluding Observations (CEDAW/C/AFG/CO/1-2) to Afghanistan, the CEDAW Committee had expressed deep concern at the high prevalence of violence against women in the State party and at cases of stoning of women and had urged the Afghanistan to establish measures, as a priority, to effectively combat impunity and comply with its due diligence obligation to prevent, investigate, prosecute and punish violence perpetrated against women by State and non-State actors (para 22 and 23).

The Special Rapporteur on violence against women, its causes and consequence, at the end of her visit to Afghanistan in November 2014, emphasized the importance of accountability as the norm for acts of violence against women, more especially within a context of generalised impunity for violence in public and private spheres and noted that the 2009 Elimination of Violence against Women Law (EVAW) lists, among the 22 acts of violence, the burning of women.