



CHALLENGES IN PROVISIONS OF PENAL CODE & EFFECT ON EVAW LAW

URGENT

21/01/2018

To: His Excellency President Mr. Ashraf Ghani

The Presidential Palace

CC. Her Excellency Ms. Rula Ghani and Ms. Farkhunda Nadiri

We write on behalf of the Afghanistan Women's Network (AWN) and Medica Afghanistan. We refer to AWN's Position Paper on the matter, which was sent to the Presidential Palace on 7 January 2018.

We would first like to thank Your Excellency for giving us the opportunity, in February 2017, to meet with you and convince you to preserve the Elimination of Violence Against Women Law ("**EVAW**") as a standalone law. We appreciate your effort to see our request through to fruition.

We write this petition to voice our concern with the unintended impact of **Article 7(2) and Article 8(2) of the Penal Code 2017** ("**Articles**") on EVAW's punitive mandate.

The aforementioned Articles provide as follows:

Legality of Crime and Punishment and Fair Trial

"No punishment shall be enforced, unless it is stated **in this law**."

[Article 7(2)]

Non-Recognition of Crime and Punishment Outside of Penal Code

"Criminalization and execution of punishment for an action, which is not considered crime and no punishment is prescribed for it **in this law**, is not permissible."

[Article 8(2)]

The use of the words "**in this law**" in the Articles above restricts punishment to only the acts which are criminalized in the Penal Code (and not, EVAW law).

We understand and agree with the rationale behind the Articles. However, we are concerned that the particular use of the words "**in this law**" may confuse prosecutors and judges as to whether the Penal Code has, in effect, repealed EVAW's *punitive* mandate. We are further concerned that opponents of EVAW Law will use this inconsistency to deny EVAW's *punitive* mandate.

We note that **Article 916 of the Penal Code** has not expressly repealed EVAW Law (all other laws have been expressly repealed). However, the inconsistency in Articles 7(2) and 8(2) can lead to a conclusion that whilst the Penal Code has not repealed EVAW Law, it has repealed or restricted EVAW's *punitive* mandate.

We appreciate that Your Excellency took the time in February 2017 to meet with the Afghanistan Women's Network and Medica Afghanistan to hear our petition to preserve EVAW Law as a standalone law.

We appreciate that, to give effect to our request, Your Excellency issued an order to the Ministry of Justice to remove the chapter governing crimes against women from the Penal Code and preserve EVAW Law as a standalone law.

On 23 August 2017, the Ministry of Justice announced that the said chapter had been removed from the Penal Code.

We had expected the Ministry of Justice to give full effect to your order by making necessary amendments to relevant articles of the Penal Code. On 7 September 2017, we wrote to the Ministry of Justice suggesting that there should be an **express reference to EVAW Law in the Penal Code**, to uphold and legitimize EVAW law's punitive mandate. This, however, was not followed through.

Your Excellency is aware that EVAW Law was hard-fought on both sides by its supporters and detractors. Your Excellency may recall that in 2013, detractors fired strong objections against EVAW Law which led to a public protest.

We have been able to keep EVAW Law alive due to Your Excellency's goodwill. However, the events of 2013 are a reminder that we cannot afford to be complacent. EVAW Law still stands on fragile grounds. We have to source ways to legitimize EVAW Law.

One of these ways is to **expressly** legitimize EVAW Law within the Penal Code, as follows:

- a) Nothing in this law is intended to repeal, vary, suspend, or affect any of the provisions of the Elimination of Violence Against Women Decree No. 91 (20/7/2009)
- b) Likewise, nothing in this law shall deny victims of crimes under the Elimination of Violence Against Women Decree No. 91 (20/7/2009), rights which have been prescribed in this law.

Crimes against women are being committed in the hundreds of thousands every year. It is absolutely critical that the government takes an extra step to legitimize EVAW within the penal framework.

As such, we respectfully call upon Your Excellency's **urgent** attention to this petition and our request to amend the Penal Code to expressly legitimize EVAW Law.

We remain guided by Your Excellency's decision.

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