



A CLOSER LOOK

The Policy and Lawmaking Process Behind the Shiite Personal Status Law

A summary of an open discussion at ACBAR

On Wednesday, October 14, the Agency Coordinating Body for Afghan Relief (ACBAR) and the Afghanistan Research and Evaluation Unit (AREU) presented the first in a new lecture/discussion series based on recent and ongoing AREU research findings. The basic format of these series includes a presentation followed by question-and-answer session and open discussion. This first event was focused on the recently released AREU report, “A Closer Look – The Policy and Lawmaking Process Behind the Shiite Personal Status Law” by Lauryn Oates. Presenting were Zaman Sultani of AREU, who was directly involved in the research, and Sarah Parkinson, AREU’s Communications and Advocacy Manager.

In attendance were about 20 ACBAR members. The following notes are based largely on the discussion that followed the presentation, with additions from separate communication with UNAMA and Rights and Democracy.

Access to information in lobbying

Civil society faced many difficulties in accessing accurate information while engaging in debate and lobbying on this law, which they have also been facing with the *Eliminating Violence Against Women Law* and the *Countering Immorality Law*. It is hard for them to find out exactly where a bill is in the lawmaking process. Sometimes the bill may appear on a parliamentary agenda but when they go to observe a session, the agenda has been changed. Sometimes there are multiple versions of the same law in circulation and they do not know which version is actually being debated in Parliament.

On this point, in a separate conversation between AREU and UNAMA representatives, they pointed out that both UNAMA and UNIFEM played an important role in passing information about parliamentary activities to civil society organisations, although they also had a difficult time in accessing information and assessing the accuracy of information in relation to the parliament.

This is clearly an area where civil society can cooperate to share information and also lobby for greater transparency and the following of procedures on the part of parliament and other institutions.

Challenging the law in courts

There was discussion over whether individuals have the right to challenge this law in the courts, or whether a complaint would have to come from parliament, and whether the Supreme Court has the right to overturn the law. For example, it might be possible that a woman could challenge this law as a violation of her constitutional rights, depending on the powers of the courts. People in the discussion were uncertain as to how this law would be interpreted through the courts.



Access to media

The case of the *Shiite Personal Status Law* highlighted the ongoing issue of civil society organisations lacking access to media.

A limited understanding of Members of Parliament as representatives of constituents

The argument used during the debate of this bill in parliament that Sunni MPs should not comment because it is was a Shia matter is not correct, as Sunni MPs may still have Shia constituents.

Status of this law in relation to other laws

Since the *Shiite Personal Status Law* is not consistent with other laws and international agreements that Afghanistan has signed, there was discussion as to which take precedent. A general principle is that national law takes precedence over international laws.

Content of the law

There was some discussion over varied inheritance laws for women in different Shia personal and family laws in different jurisdictions. In summary, the content of such laws may be debatable, since different countries have different versions of the laws.

Commentary on the final paper

One participant observed that while the paper was helpful, it was still quite long: it would be very useful to come up with something like a checklist of “alarm bells”—something very boiled down. This led to a brief discussion on how to generate recommendations from research: Researchers may not be best positioned to recommend how to use research—rather this may need to come from conversation and interaction between researchers and civil society groups.

Some civil society members, largely from Rights and Democracy, wanted the research to be revised on several points to further highlight their involvement in lobbying for changes to the law. They also argued that the research paper gave too much weight to Kateb Institute’s suggested amendments, as they said there had been a different set of amendments that had been suggested by a collection of civil society organisations over the same time period.

The Afghanistan Research and Evaluation Unit (AREU) is an independent research institute based in Kabul. AREU’s mission is to inform and influence policy and practice through conducting high-quality, policy-relevant research and actively disseminating the results, and to promote a culture of research and learning. To achieve its mission AREU engages with policy makers, civil society, researchers and students to promote their use of AREU’s research and its library, to strengthen their research capacity, and to create opportunities for analysis, reflection and debate.