



Medica Afghanistan

A Petition on to develop a guideline measuring non – material compensation

To: His Excellency Mr.Sarwar Danish, the 2nd vise president

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Medica Afghanistan – Women Support Organisation (MA-WSO) is a non-profit, non-governmental Afghan women's organisation working towards the elimination of violence against women. Medica Afghanistan provides direct psycho-social and legal counselling to female survivors of sexualised violence. It seeks to raise awareness on women's rights and sensitise all those who deal with women at risk, regardless of gender.

MA has been working to ensure justice and quality assistance to victims of violence against women. Through a more survivor-centered approach to justice, we focused on obtaining compensation and protective measures for the victims, two things which are hugely undervalued in justice systems around the world today, but which are practical and critical for clients. We are pleased to say that we have been able successful and have obtained compensation for numerous clients. Which the amount is more than \$10,334 USD and ordered based on law by court.

We ask the government, in particular the justice and judicial bodies, including the Cabinet Law Committee, to set a benchmark and develop a specific mechanism for non-material compensation for victims of violence against women.

Based on the UN Basic Principles and Guidelines on the Right of Remedy and Reparations, compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each cases, such as:

1. Physical or mental harm;
2. Lost opportunities, including employment, education and social benefits;
3. Material damages and loss of earnings, including loss of earning potential;
4. Moral damage;
5. Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

We note that material compensation is easy to access.

However, non-material compensation which includes the suffering of physical pain and personal and human dignity, cannot be quantified without guidance on how to quantify it. We have laws

which guarantee the right of compensation (see below). Civil law provisions also describe the right of victim for non-material compensation and Islamic law recognizes the right of non-material compensation.

1. The Constitution (Article 51)
2. Civil law (from Articles 776 to 780)
3. The Torture law, explicitly referring to the suffering and how it is handled by the Task Force on Torture Proceedings, proves that the Afghan government has recognized the importance of compensation and emphasizes that compensation it has an important role to play in the rule of law and in reducing crime against people's lives() .
4. Elimination of violence against women Act (Article 41)
5. Criminal procedure Act (Articles 189-101)
6. Penal code (Article 14)
7. Article 19 of Majala al ahkam "la dara wa la dirara" can be relied upon to prove civil liability for non-material damage.
8. In addition, the Diyat's provision of bodily harm recognizes non-material damages.

However, none of the above laws instruct lawyers, prosecutors and courts on how compensation is to be assessed.

Wisdom dictates that the inflicted non-material damage must be compensated. Most jurists have considered reparable any damage to the reputation, life, and any dimension of the human personality. Indeed, compensation is one of the most important parts of social security.

Today, suffering is not only a matter of losing one's material benefit, but also of mental and psychological harm and non-material harm, so that one is also vulnerable to non-material harm that is sometimes not obvious and from within.

We have studied the experiences of other countries such as Iran and Singapore. These countries have created guidelines to measure "pain and suffering" including physical pain and psychological suffering to determine a proportional amount of compensation.

Our goal is to achieve the same. We recommend the government to create guidelines for how injuries are to be assessed based on anatomical structure of the human body, severity of the injury, as well as, the severity of psychological injury. We can list them methodically in law or a directive.

By doing this, lawyers, respected prosecutors and judges will have clear guidance and instructions on how to measure and determine the amount of spiritual compensation. Now, we are struggling with ambiguity. Courts are hesitant to award compensation in the absence of guidance. This is a matter of rule of law creates a legal vacuum. It is also a matter of ensuring that compensation is effectively available to those entitled to it.

We respectfully urge the honorable Mr Sarwar Danish to advise and direct the relevant institutions to develop guidelines to measure non - material damages so that victims in general and in particular women victims of violence can avail this legal right.

Medica Afghanistan will extend its hand and expertise to assist institutions to develop this.