



Home Office

Country Information and Guidance

Afghanistan: Women fearing gender-based harm / violence

Version 1.0

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Preface

This document provides country of origin information (COI) and guidance to Home Office decision makers on handling particular types of protection and human rights claims. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether – in the event of a claim being refused – it is likely to be certifiable as ‘clearly unfounded’ under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the guidance contained with this document; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

Country Information

The COI within this document has been compiled from a wide range of external information sources (usually) published in English. Consideration has been given to the relevance, reliability, accuracy, objectivity, currency, transparency and traceability of the information and wherever possible attempts have been made to corroborate the information used across independent sources, to ensure accuracy. All sources cited have been referenced in footnotes. It has been researched and presented with reference to the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the [European Asylum Support Office’s research guidelines, Country of Origin Information report methodology](#), dated July 2012.

Feedback

Our goal is to continuously improve the guidance and information we provide. Therefore, if you would like to comment on this document, please [e-mail us](#).

Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations to him about the content of the Home Office’s COI material. The IAGCI welcomes feedback on the Home Office’s COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy.

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Information about the IAGCI’s work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector’s website at <http://icinspector.independent.gov.uk/country-information-reviews/>

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Guidance

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1. Introduction

1.1 Basis of Claim

1.1.1 Fear of gender-based persecution or serious harm by the state and/or non-state actors because the person is a woman.

1.1.2 For the purposes of this instruction, gender-based persecution or serious harm includes domestic violence, sexual violence including rape, “honour” and “moral” crimes.

1.2 Other points to note

1.2.1 For further information and guidance on assessing gender issues, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

2. Consideration of Issues

2.1 Credibility

2.1.1 For further information and guidance on assessing credibility, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview. (See the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)).

2.1.3 Decision makers should also consider the need to conduct language analysis testing. (See the [Asylum Instruction on Language Analysis](#)).

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2.2 Particular social group (PSG)

2.2.1 In [NS \(Social Group - Women - Forced marriage\) Afghanistan CG \[2004\] UKIAT 00328](#) the Tribunal found that that women in Afghanistan form a particular social group (PSG) within the meaning of the Refugee Convention (also see [Background](#) and [Legal context](#)).

2.2.2 Although women in Afghanistan form a PSG, this does not mean that establishing such membership will be sufficient to make out a case to be recognised as a refugee. The question to be addressed in each case will be whether the particular person will face a real risk of persecution on account of their membership of such a group.

2.2.3 For further information and guidance on particular social groups, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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2.3 Assessment of risk

Treatment by the state

2.3.1 Although the government has undertaken positive steps towards the empowerment of women through various policies and laws, violence against women is still a serious human rights problem in Afghanistan. Domestic violence is not explicitly classified as a crime in the Penal Code and the Elimination of Violence Against Women law criminalises rape but not spousal rape. Justice mechanisms are available to women within the existing legal framework although implementation of the law varies across the country. The number of women jailed for “moral crimes” increased by 50 per cent between 2011 and 2014. Rape victims are often treated as criminals by the criminal justice system. Unaccompanied women may face arrest and prosecution under the offence of zina (adultery) and may be subjected to forced virginity tests. Government officials have been implicated in human rights abuses against women human rights defenders . (See [Position of women in society](#), [Legal context](#), [“Honour” and “moral” crimes](#), and [State attitudes and response to violence against women](#)).

Societal treatment

- 2.3.2 Afghanistan remains a strictly patriarchal society, which restricts freedom of movement, and limits access to healthcare services, justice and the workplace. There is no law banning sexual harassment and it is estimated that around a third of men living in some rural provinces refuse to let their wives go to hospital to give birth due to conservative views on honour.
- 2.3.3 Violence against women is widespread despite the protections proscribed under the Elimination of Violence Against Women (EVAW) law. Local customs and traditional practices discriminate against women across the country. Although the EVAW law criminalises forced or under-age marriage, 15 per cent of girls are married before age 15 and underage marriage is common. Some 60-80 per cent of women are estimated to be subjected to forced marriage, often at a young age. Mere suspicion of pre-marital or extra-marital sex can result in an honour killing and victims of sexual assault may be killed by spouses or other family members due to the shame brought upon the victim’s family (see [“Honour” and “moral” crimes](#)).
- 2.3.4 It is estimated that up to 87.2 per cent of women have experienced at least one form of physical, sexual or psychological violence, or forced marriage. More than 60 per cent of women experience multiple forms of violence. There are widespread allegations of women police officers facing sexual abuse from their male colleagues. Women working in the public sector, or as human rights defenders, face targeted attacks from anti-government elements (see [Position of women in society](#), [Social and economic rights](#), [Legal context](#), [Harmful traditional practices](#), [Sexual and gender based violence](#) and [Assistance available to women](#) For information on women affected by the conflict see the [Country Information and Guidance Afghanistan: Security and humanitarian situation](#)).
- 2.3.5 Being female does not on its own establish a need for international protection. The general level of violence and discrimination against women in Afghanistan will not in most cases amount to persecution. The onus is on the person to demonstrate that she would be personally at risk of gender based violence.

- 2.3.6 For further information and guidance on assessing risk, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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2.4 Protection

- 2.4.1 There are legal mechanisms in place for women to report acts of violence against them, and cases of perpetrators being prosecuted for their crimes of violence against women (VAW). However, lack of security, corruption in the judiciary and low level awareness of the laws protecting women, allowed perpetrators to escape punishment. Police and the prosecutors continuously refer cases relating to violence against women, including domestic violence, to informal justice mechanisms (jirgas and shuras) for advice or resolution when such cases should be formally prosecuted. Only a small percentage of reports of violence against women are registered with the judicial system, and about one-third of those proceed to trial. Some women are reluctant to report cases of violence to state agencies because under the applicable legal framework, women victims may be charged with adultery, and because of the victims' fear of retaliation and stigmatization. (See ["Honour" and "moral" crimes](#), and [State attitudes and response to violence against women](#)).
- 2.4.2 Where the person's fear is of ill treatment/persecution at the hands of the state, they will not be able to avail themselves of the protection of the authorities.
- 2.4.3 Decision makers must assess whether effective protection is available in relation to the particular circumstances and profile of the person. Any past persecution or past lack of effective protection may indicate that effective protection would not be available in the future. The onus is on the person to demonstrate why they would be unable to access effective protection.
- 2.4.4 The police are sometimes unwilling or unable to provide protection for women fearing sexual or gender based violence. Police are sometimes reluctant to take action in domestic violence cases, viewing them as family matters. Large numbers of women and girls face arrest, prosecution and imprisonment for so-called "moral crimes", including the offence of adultery and premarital sex, which can include rape; and running away (leaving home without permission). State agencies often fail to protect the lives of women in high profile positions or those working in the public domain. Attacks against such women often occur with impunity and often serve as a warning to other women who aspire to hold such positions. Less than 2 per cent of the Afghan National Police are female officers and few are deployed in rural areas (see [Assistance available to women](#)).
- 2.4.5 There are between 13 and 28 women's shelters across Afghanistan, mostly based in urban areas but with insufficient space for the number of users. Women in need of shelter but who could not find it often ended up in prison, either for their own protection or based on local interpretation of "running away" as a crime. Some members of society see women's shelters as places of ill-repute as women seeking refuge are viewed as having committed a "moral" crime by running away from home or being raped and thus committing adultery. The stigma attached to living in a shelter means

reintegration into society for women who have lived in shelters is challenging (see [Single/unaccompanied women](#), [Sexual and gender based violence](#) and [Assistance available to women](#)).

- 2.4.6 For further information and guidance on assessing the availability or not of state protection, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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2.5 Internal relocation

- 2.5.1 Where the person's fear is of ill treatment/persecution at the hands of the state, they will not be able to relocate to escape that risk.
- 2.5.2 Where the person's fear of persecution is at the hands of non-state actors decision makers must give careful consideration to the relevance and reasonableness of internal relocation on a case-by-case basis taking full account of the individual circumstances of the particular person (see also the [Country Information and Guidance Afghanistan: Security and humanitarian situation](#)).
- 2.5.3 Decision makers must also take into account the general position of women in Afghan society where they:
- face patriarchal attitudes and deep-rooted stereotypes, which do not generally accept unaccompanied/single women into society;
 - may not be educated or even literate (over 80 per cent of the female population are illiterate, about 55 per cent of men);
 - may have to depend on relatives for economic support;
 - face safety issues and social constraints in living alone, including social stigma, arrest and prosecution for "moral" crimes.

In such cases, internal relocation is likely to be unduly harsh for many women. (see [Single/unaccompanied women](#) and [Social and economic rights](#)).

- 2.5.4 For further information and guidance on considering internal relocation and factors to be taken into account, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

2.6 Certification

- 2.6.1 Where a claim falls to be refused, it is unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.
- 2.6.2 For further information and guidance on certification, see the [Asylum Instruction on Non-Suspensive Appeals: Certification Under Section 94 of the NIA Act 2002](#).

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3. Policy summary

- 3.1.1 The general level of violence and discrimination against women in Afghanistan will not in most cases amount to persecution. The onus is on the person to demonstrate that she would be personally at risk of gender based violence amounting to persecution or serious harm.
- 3.1.2 Although there have been a number of legislative and other measures undertaken to improve the situation of women in Afghanistan in recent years, gender based violence and discrimination against women remains a serious problem.
- 3.1.3 Effective state protection is unlikely to be available for most women fearing gender based violence, particularly where they may be accused of committing a “moral” crime.
- 3.1.4 Women working in the public domain may face targeted attacks and evidence suggests that the authorities do not offer them effective protection. However, each case needs to be carefully considered on its individual facts.
- 3.1.5 Internal relocation to avoid risk from gender based violence is unlikely to be viable except in some limited cases, i.e. women with economic means or family support.
- 3.1.6 A grant of asylum will be usually be appropriate for a woman who fears gender based violence where they have demonstrated:
 - (i) a real risk of continuing hostility such as to raise a real risk of serious harm in her former home area; and
 - (ii) that they would have no effective protection in their home area against such a risk; and
 - (iii) is unable to relocate elsewhere in Afghanistan with regard to the available support or economic means, shelters, and family members in other parts of the country.

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4. Position of women in society

- 4.1.1 Although men and women have equal rights under the Afghan constitution, the country remains profoundly conservative. The Foreign and Commonwealth Office (FCO) noted that 'Life for many Afghan women is controlled under a strictly patriarchal society resulting in restricted freedom of movement, and limited access to healthcare services, justice and the workplace.'¹ Local customs and practices discriminating against women existed across Afghanistan.² The Social Institutions and Gender Index (SOGI) stated with regards to Afghanistan that 'According to the Code of Personal Status of Shiite Afghans (applicable to Shiite Afghans only), entered into force in 2009, the husband is the head of the family and the wife can be appointed as head of the household only if it is established that the husband is intellectually unable to assume this position.'³
- 4.1.2 Following her visit to Afghanistan from 4-12 November 2014, the Report of the UN Special Rapporteur on violence against women, its causes and consequences, stated 'The Government has taken positive steps towards the empowerment of women, including through the implementation of the Afghanistan National Development Strategy (2009-2012) and the National Action Plan for Women Advancement. However, there remain deeply engrained structural and societal challenges that hamper the realization of this goal, including gender discrimination and male preference.'⁴
- 4.1.3 The FCO commented on the progress of women over the last 12 years (up to 2013), citing 'over two million girls now attend school (40% of those who regularly attend school are girls), compared to almost zero under the Taliban, 15% of university lecturers are female, and there are proportionally more women in parliament in Afghanistan (27% of seats) than in either the UK or the US.'⁵ The United States Institute of Peace (USIP) reported in May 2014 that 'Women own and run businesses. Although only a small percentage, women are represented in the police, the army, the judiciary, and the attorney general's office.'⁶ In a report published by the Austrian

¹ Foreign and Commonwealth Office, Human Rights and Democracy Report - Afghanistan, 12 March 2015, available at: <http://www.refworld.org/docid/551a53045e.html>, date accessed 6 November 2015.

² US Department of State, Country Report on Human Rights Practices for 2014, Afghanistan, 25 June 2015, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236632>, section 6, date accessed 6 November 2015.

³ Social Institutions and Gender Index, Country Profiles Afghanistan, 2014, <http://genderindex.org/country/afghanistan>, Discriminatory Family Code, date accessed 28 January 2016.

⁴ UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to Afghanistan, 12 May 2015, A/HRC/29/27/Add.3, available at: <http://www.refworld.org/docid/5583f8224.html>, paragraph 9, date accessed 26 November 2015.

⁵ FCO, The role of women in Afghanistan: A case study on the role of women in Afghanistan from the 2013 Human Rights and Democracy Report, 10 April 2014, <https://www.gov.uk/government/case-studies/the-role-of-women-in-afghanistan>, date accessed 6 November 2015.

⁶ United States Institute of Peace, Special Report, Sharia and Women's Rights in Afghanistan, May 2014, <http://www.usip.org/sites/default/files/SR347->

Federal Ministry of Interior in March 2014, Afghanistan analyst Dina Latek noted that conservative attitudes make it difficult for women to run businesses and make independent decisions. She also noted that ‘In large metropolitan cities, women are... employed as doctors, attorneys, teachers, nurses, and engineers.’⁷ In a 2015 survey of 9,586 people – men (50.6 per cent) and women (49.4 per cent) – most Afghans favoured women having an expanded scope of rights and social and economic opportunities although this support has declined overall since 2006. The survey also found: ‘the number of Afghans who say women should make their own voting decisions has dropped to a record low of 50.1% in 2015.’⁸

4.1.4 The Congressional Research Service reported in December 2015 that:

‘There are over 150 female judges, up from 50 in 2003, and several hundred 500 female journalists nationwide... Women are legally permitted to drive, and press reports say that an increasing number of Afghan women, mainly in larger cities, are exercising that privilege. The wearing of the full body covering called the burqa is no longer obligatory, and fewer women are wearing it than was the case a few years ago.’⁹

4.1.5 Despite some improvements, the International Crisis Group (ICG), reporting in 2013, stated:

‘... persistent insecurity and violence threaten women’s political, economic and social rights. Those in positions of authority are regularly threatened; many have been killed by insurgents. Militants have attacked girls’ schools, students and staff. Qualified female teachers and health workers are reluctant to work outside relatively secure urban centres, undermining rural women’s and girls’ access to education and basic health services.’¹⁰

4.1.6 Amnesty International reported in April 2015 that ‘Women human rights defenders are increasingly expressing concern over the erosion of women’s rights amid a revitalized conservative movement; they worry this trend will only continue. At the same time, there has been a national and international shift in focus away from “development” towards “security”.’¹¹

[Sharia and Women%E2%80%99s Rights in Afghanistan.pdf](#), page 2, date accessed 12 November 2015.

⁷ Latek, D., Austria: Federal Ministry of the Interior, Afghanistan: 2014 and beyond, March 2014, available at: <http://www.refworld.org/docid/53564a484.html>, page 52, date accessed 27 November 2015

⁸ The Asia Foundation, Afghanistan in 2015: A Survey of the Afghan People, 17 November 2015, <http://asiafoundation.org/publications/force-download.php?f=%2Fresources%2Fpdfs%2FAfghanistanin2015.pdf>, page 129, date accessed 19 November 2015.

⁹ Congressional Research Service, Afghanistan: Post-Taliban Governance, Security and U.S. Policy, 22 December 2015, <https://www.fas.org/sgp/crs/row/RL30588.pdf>, page 14, date accessed 5 January 2015.

¹⁰ International Crisis Group, Women and Conflict in Afghanistan, 14 October 2013, <http://www.crisisgroup.org/~media/Files/asia/south-asia/afghanistan/252-women-and-conflict-in-afghanistan.pdf>, page i, date accessed 6 November 2015.

¹¹ Amnesty International, Afghanistan: Their Lives on the Line: Women Human Rights Defenders Under Attack in Afghanistan, 7 April 2015, <https://www.amnesty.org/download/Documents/Submitted%20after%202015-05-11T11%2024%2035/ASA1112792015ENGLISH.PDF>, page 12, date accessed 21 December 2015.

5. Legal context

5.1 Legislation

- 5.1.1 In May 2014, the United States Institute of Peace (USIP) reported that ‘On paper, women in Afghanistan enjoy significant rights’ citing the 2004 [constitution](#) and the 1977 [Afghan Civil Code](#), of which some chapters provide for the protection of women, or are gender-neutral.¹² The AREU stated that the constitution ‘stands out for its advocacy of women’s equality and takes significant measures to ensure greater participation of women in public life. It contains clauses that address the status of women directly, and also those that are gender-neutral but also supportive of women’s rights.’¹³
- 5.1.2 The UN Special Rapporteur reported on some of Afghanistan’s legislative and institutional advances on general human rights and particularly women’s rights over the last 15 years. The report cited:
- ‘...the creation of a national human rights institution, a ministry for women’s affairs at the national level and departments of women’s affairs at the provincial level, human rights units in various ministries, gender units in some ministries and the enactment in 2009 of the landmark Law on the Elimination of Violence against Women. During the visit, the Special Rapporteur was also informed of several law reform initiatives to be carried out over the following year or so, including a comprehensive review of the Penal Code and the drafting of a law to regulate the jurisdiction and functioning of jirgas and shuras (informal communal councils).’¹⁴
- 5.1.3 USIP noted ‘Election legislation protects women’s right to vote and sets quotas for women to participate in elected bodies. A right to legal aid is guaranteed for women and the indigent.’¹⁵ For example, the human rights organisation Justice for All (JFAO), run by women for women, provided free legal aid, advice and representation from 11 provinces.¹⁶
- 5.1.4 USIP also stated that ‘A range of national programs and policies, including the Afghanistan National Development Strategy (2008), the National Action

¹² United States Institute of Peace, Special Report, Sharia and Women’s Rights in Afghanistan, May 2014, [http://www.usip.org/sites/default/files/SR347-Sharia and Women%E2%80%99s Rights in Afghanistan.pdf](http://www.usip.org/sites/default/files/SR347-Sharia%20and%20Women%E2%80%99s%20Rights%20in%20Afghanistan.pdf), page 2, date accessed 12 November 2015.

¹³ Afghanistan Research and Evaluation Unit (AREU), Afghanistan’s Constitution Ten Years On: What Are the Issues?, August 2014, 1416E, available at: <http://www.refworld.org/docid/53fc4dd34.html>, page 28, date accessed 12 November 2015

¹⁴ UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to Afghanistan, 12 May 2015, A/HRC/29/27/Add.3, available at: <http://www.refworld.org/docid/5583f8224.html>, paragraph 10, date accessed 26 November 2015.

¹⁵ United States Institute of Peace, Special Report, Sharia and Women’s Rights in Afghanistan, May 2014, [http://www.usip.org/sites/default/files/SR347-Sharia and Women%E2%80%99s Rights in Afghanistan.pdf](http://www.usip.org/sites/default/files/SR347-Sharia%20and%20Women%E2%80%99s%20Rights%20in%20Afghanistan.pdf), page 2, date accessed 12 November 2015.

¹⁶ Justice For All Organization, About JFAO, undated, <http://www.jfao.org/about.html>, date accessed 14 January 2016.

Plan for Women of Afghanistan (2008), and many ministerial strategies emphasize the importance of gender equality as a cross-cutting theme.¹⁷

- 5.1.5 The UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) was ratified by Afghanistan in 2003. In 2009, the Elimination of Violence Against Women (EVAW) law was enacted by presidential decree, and criminalises 22 acts of violence against women and harmful practices including:

‘rape; forced prostitution; publicizing the identity of a victim in a damaging way; forcing a woman to commit self-immolation; causing injury or disability; beating; selling and buying women for the purpose of or under pretext of marriage; baad (retribution of a woman to settle a dispute); forced marriage; prohibiting the choice of a husband; marriage before the legal age; abuse, humiliation or intimidation; harassment or persecution; forced isolation; forced drug addiction; denial of inheritance rights; denying the right to education, work and access to health services; forced labor and marrying more than one wife without observing Article 86 of the Civil Code.’¹⁸

- 5.1.6 Regarding the EVAW law, UNAMA reported that ‘With the exception of five serious offences [rape, enforced prostitution, publicizing the identity of a victim, burning or the use of chemical substances and forced self-immolation or suicide], the law permits complainants to withdraw their cases at any stage of proceedings, thereby facilitating mediation. The State must pursue proceedings with regard to the five serious offences regardless of submission or withdrawal of a woman’s complaint.’ The same report noted that ‘the EVAW law refers to the Penal Code for acts of rape and injury and disability. Other sections of the Criminal Code criminalize additional acts of violence perpetrated against women that are not codified in the EVAW law, such as murder and kidnapping.’¹⁹

See also [State attitudes and responses to violence against women](#)

- 5.1.7 Reporting in December 2015, the Congressional Research Service stated that:

‘There is no law specifically banning sexual harassment, and women are routinely jailed for zina – a term meaning adultery, and a crime under the penal code, and that includes running away from home, defying family choice of a spouse, eloping, or fleeing domestic violence. These incarcerations are despite the fact that running away from home is not a crime under the penal code. Under that code, a male who is convicted of

¹⁷ United States Institute of Peace, Special Report, Sharia and Women’s Rights in Afghanistan, May 2014, http://www.usip.org/sites/default/files/SR347-Sharia_and_Women%E2%80%99s_Rights_in_Afghanistan.pdf, page 2, date accessed 12 November 2015.

¹⁸ Islamic Republic of Afghanistan, Ministry of Women’s Affairs, First Report on the Implementation of the Elimination of Violence Against Women (EVAW) Law in Afghanistan, January 2014, http://mowa.gov.af/Content/files/EVAW%20Law%20Report_Final_English_17%20%20March%202014.pdf, pages 13 and 72, date accessed 12 November 2015.

¹⁹ UNAMA/UNHCR, Justice through the Eyes of Afghan Women: Cases of Violence against Women Addressed through Mediation and Court Adjudication, April 2015, https://unama.unmissions.org/sites/default/files/unama_ohchr_justice_through_eyes_of_afghan_women_-15_april_2015.pdf, pages 2 and 11, date accessed 27 November 2015.

“honor killing” (killing a wife who commits adultery) can be sentenced to no more than two years in prison. In December 2011, a woman was jailed for having a child outside wedlock – even though the child was a product of rape.²⁰

- 5.1.8 USIP reported that many legal provisions for women failed to be applied in practise, stating that:

‘Women still face barriers in accessing education, which hinders their access to public life. Despite the declared goal that women fill at least 30 percent of civil servant positions, women are routinely excluded from civil service hiring, or when hired are denied promotion. Female victims of sexual violence and trafficking are frequently persecuted and incarcerated for moral crimes, and their predators are only infrequently indicted or incarcerated.’²¹

(See [Sexual and gender-based violence](#))

- 5.1.9 In its 2013 report, the CEDAW Committee expressed its concern at the:

‘existence of multiple legal systems with regard to marriage and family relations in the State party and their discriminatory impact on women. It is concerned that, despite the amendments to the Shia Personal Status Law, discriminatory provisions remain, such as the requirement of the husband’s authorization for his wife to leave home. It is also concerned about discriminatory provisions under civil law and customary practices, such as the husband’s legal right to authority over his wife and children. It is also concerned at unequal and limited rights for women to divorce and obtain guardianship of children under the Civil Law. It is concerned that women are deprived of their inheritance rights owing to their subordinate role in society and domination by their male relatives. It is concerned at the low registration of marriages and divorces, which prevents women from claiming their legal rights. The Committee is concerned at the persistence of child and forced marriages and that the minimum age of marriage for girls is set at 16. It is also concerned that polygamy is permitted under certain circumstances.’²² (see [Social and economic rights](#) and [Harmful traditional practices](#)).

- 5.1.10 Tribal and village councils (jirgas and shuras) continued to be popular for administering justice, particularly in rural areas, in the absence of formal mechanisms. However, the outcomes of such meetings sometimes violated or discriminated against the rights women.²³ (see [Avenues of redress](#))

²⁰ Congressional Research Service, Afghanistan: Post-Taliban Governance, Security and U.S. Policy, 22 December 2015, <https://www.fas.org/sqp/crs/row/RL30588.pdf>, page 15, date accessed 5 January 2015.

²¹ United States Institute of Peace, Special Report, Sharia and Women’s Rights in Afghanistan, May 2014, [http://www.usip.org/sites/default/files/SR347-Sharia and Women%E2%80%99s Rights in Afghanistan.pdf](http://www.usip.org/sites/default/files/SR347-Sharia%20and%20Women%E2%80%99s%20Rights%20in%20Afghanistan.pdf), page 2, date accessed 12 November 2015.

²² United Nations, Committee on the Elimination of Discrimination against Women Concluding observations on the combined initial and second periodic reports of Afghanistan, 30 July 2013, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgcjdM0xgERNalXh22nhTUKKQTKDrE0nx47As8n4%2bLnyzSULXtFONH6qKk2YmLIVPSSO9BCs%2ffUDuf4NQGf3zN7pEzblo2vGSerxbcp6ixK2>, paragraph 42, date accessed 12 November 2015.

²³ Latek, D., Austria: Federal Ministry of the Interior, Afghanistan: 2014 and beyond, March 2014, available at: <http://www.refworld.org/docid/53564a484.html>, page 46, date accessed 27 November 2015.

5.1.11 The USSD Human Rights report 2014 noted that implementation of the EVAW law was limited, was widely misunderstood and some people viewed it as unIslamic. According to the report, the authorities continued to fail to enforce the EVAW law wholly and successfully. Under the law rape did not include spousal rape.²⁴ (see [Sexual and gender-based violence](#)).

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6. Social and economic rights

6.1 Overview

6.1.1 In a total population of 32,564,342 (July 2015 estimate), 16,052,165 were women.²⁵ In 2014, 27.6 per cent of parliamentary seats were held by women; 5.8 per cent of adult women have reached a secondary level of education compared to 33.9 per cent of their male counterparts.²⁶ An estimated 17 per cent of women aged 15 and over were literate compared to 45.4 per cent of men.²⁷ According to the United Nations Development Fund, female participation in the labour market is 15.8 per cent compared to 79.5 per cent for men. For every 100,000 live births, 1,200 women die from pregnancy related causes; adolescent birth rate is 86.8 births per 1000 live births (2014 figures).²⁸ The United Nations Population Fund (2015) cited the maternal mortality rate as 396 per 100,000 live births.²⁹ IPWR reported in October 2015 that:

‘Afghanistan still has one of the highest rates of maternal death in the world... Health workers say conservative views on “shame” and “honour” contribute materially to the high mortality rate. Mohammad Qasim Saidi, head of Parwan’s department of health, says attitudes are changing, but estimates that around a third of men living in more remote parts of the province refuse to let their wives go to hospital to give birth.’³⁰

6.1.2 The UN Special Rapporteur reported that:

‘Despite the Government’s efforts to ensure education for girls and boys, social and cultural obstacles keep many girls out of school. Even for those

2015

²⁴ US Department of State, Country Report on Human Rights Practices for 2014, Afghanistan, 26 June 2015, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236632>, Section 6, date accessed 17 November 2015.

²⁵ CIA World Factbook, Afghanistan, last updated 28 October 2015, <https://www.cia.gov/library/publications/the-world-factbook/geos/af.html>, People and society, date accessed 17 November 2015.

²⁶ United Nations Development Programme (UNDP), ‘Human Development Indicators Afghanistan’, 2014, <http://hdr.undp.org/en/countries/profiles/AFG>, Gender, date accessed 17 November 2015.

²⁷ UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to Afghanistan, 12 May 2015, A/HRC/29/27/Add.3, available at: <http://www.refworld.org/docid/5583f8224.html>, paragraph 11, date accessed 26 November 2015.

²⁸ United Nations Development Programme (UNDP), ‘Human Development Indicators Afghanistan’, 2014, <http://hdr.undp.org/en/countries/profiles/AFG>, Gender, date accessed 28 January 2016.

²⁹ United Nations Population Fund, The State of World Population 2015, <http://www.unfpa.org/world-population-dashboard>, Maternal and new born health, date accessed 28 January 2016.

³⁰ Institute for War and Peace Reporting IWPR "Honour" Rules Deny Care to Mothers and Babies 22 October 2015 <https://iwpr.net/global-voices/afghanistan-honour-rules-deny-care-mothers-and>, date accessed 21 January 2016.

girls who go to school, separate toilets and the necessary facilities for them during menstruation are lacking in most schools, resulting in girls missing at least a quarter of their educational life. In more remote areas, there is a shortage of female teachers, resulting in girls in those areas foregoing their education. Teachers are sometimes brought in from other provinces to address the shortage; however, insecurity and fear of violence for teachers and female students while travelling to neighbouring schools serves as a deterrent to mobility.³¹

6.1.3 In a report published by the Austrian Federal Ministry of Interior in March 2014, Dina Latek, an Afghanistan analyst at the Country of Origin Information Unit at the Federal Office for Immigration and Asylum, looked at the situation for women in the country and noted:

‘In regards to higher education, 112,367 students were enrolled at 60 government and private universities, of which 19,934 were female students. Out of 4,873 university teachers, the total number of female teachers numbered at 603. In regards to vocational training, data revealed that there were only a few women; out of 27,019 students 3,245 were female. The highest enrolment in vocational training for women was in management and accounting, with around 50 percent of the students.’³²

6.1.4 USIP reported:

‘... despite formal guarantees, the courts and society at large still act within the framework of conservative social norms that restrict women’s rights in economic and political spheres. These restrictions include limitations on women’s free movement as well as on rights to choose a spouse, divorce, and maintain child custody after a divorce. Lack of enforcement of women’s economic rights – including women’s rights to inheritance, land, and control over earned income – is widespread because women’s economic independence is often not tolerated at the community level.’³³

6.2 Marriage, divorce, child custody, and inheritance laws

6.2.1 The Afghan legal system applicable to family law consists of Islamic law, regional customary law, traditional ethnic rules and state law. Family law provisions in the Afghan Civil Code apply to the whole of Afghanistan. Where statutory law does not exist, religious law applies.³⁴ The US Department of State’s 2014 International Religious Freedom Report for Afghanistan stated

³¹ UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to Afghanistan, 12 May 2015, A/HRC/29/27/Add.3, available at: <http://www.refworld.org/docid/5583f8224.html>, paragraph 11, date accessed 26 November 2015.

³² Latek, D., Austria: Federal Ministry of the Interior, Afghanistan: 2014 and beyond, March 2014, available at: <http://www.refworld.org/docid/53564a484.html>, page 58, date accessed 27 November 2015

³³ United States Institute of Peace, Special Report, Sharia and Women’s Rights in Afghanistan, May 2014, http://www.usip.org/sites/default/files/SR347-Sharia_and_Women%E2%80%99s_Rights_in_Afghanistan.pdf, page 2, date accessed 12 November 2015.

³⁴ Rastin-Tehrani, K., and Yassari, N., Max Planck Manual on Family Law in Afghanistan, Amended 2nd Edition, July 2012, http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf, page 3, date accessed 17 November 2015.

'The state will recognize non-Muslim marriages as long as the couple does not publicly declare their non-Muslim beliefs. A Muslim man may marry a non-Muslim woman, but the woman must first convert if she is not an adherent of one of the other two Abrahamic faiths – Christianity or Judaism. It is illegal for a Muslim woman to marry a non-Muslim man.'³⁵

- 6.2.2 The Afghan Civil Code proscribes the minimum age of marriage for girls as 16 years old and 18 years for boys; girls may be married at 15, with consent of the father or a competent court.³⁶ The EAW law criminalises forced or under-age marriage, and baad (exchange marriages as compensation).³⁷ However, a 2010-2011 survey indicated that 15.2 per cent of girls were married before age 15.³⁸ (see [Forced and arranged marriages](#) and [Child marriage](#))
- 6.2.3 The Max Planck Manual on Family Law in Afghanistan stated that 'In accordance with the provisions of Article 131 CC [Civil Code], a marriage can be dissolved during the lifetime of the couple by annulment (faskh), repudiation (talāq), divorce by mutual consent (kholc) or judicial divorce (tafrīq).' The report detailed the four types of marriage dissolution.³⁹ Safe World for Women published a blog, dated January 2014, which stated 'Divorce is seen as a disgrace, and a divorcée is often seen as a bad influence because she failed to protect her marriage – even if she ended it because of extreme abuse.'⁴⁰ The Social Institutions and Gender Index described 'In matters related to divorce, a man can easily divorce his wife without due process of law. But women face very difficult circumstances to get a divorce.'⁴¹
- 6.2.4 Describing parental authority and child custody, the SOGI stated that:
- 'according to the Afghan Civil Code, custody, defined as care for an infant in his/her early years of life, is in the hands of the mother or, if the woman dies or becomes incapable of looking after the child, of her own relatives. Instead guardianship, defined as the obligation of the legal guardian to provide for education, upbringing, development, health and security of the child, is with

³⁵ US Department of State, 2014 International Religious Freedom Report Afghanistan, 14 October 2015, <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2014&dliid=238488>, Section II, date accessed 24 November 2015.

³⁶ Civil Law of the Republic of Afghanistan (Civil Code), 5 January 1977, <http://www.asianlii.org/af/legis/laws/clotroacogn353p1977010513551015a650/>, Articles 70 and 71, date accessed 17 November 2015.

³⁷ US Department of State, Country Report on Human Rights Practices for 2014, Afghanistan, 26 June 2015, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236632>, Section 6, date accessed 17 November 2015.

³⁸ UNFPA Afghanistan, National Action Plan to Eliminate Early And Child Marriage in Afghanistan, 31 December 2015, http://countryoffice.unfpa.org/afghanistan/2015/01/08/11238/national_action_plan_to_eliminate_early_and_child_marriage_in_afghanistan/, date accessed 19 November 2015.

³⁹ Rastin-Tehrani, K., and Yassari, N., Max Planck Manual on Family Law in Afghanistan, Amended 2nd Edition, July 2012, http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf, pages 71-86, date accessed 17 November 2015.

⁴⁰ Safe World for Women, To Be Divorced — and Disgraced — in Afghanistan, January 2014,

⁴¹ Social Institutions and Gender Index, Country Profiles Afghanistan, 2014, <http://genderindex.org/country/afghanistan>, Discriminatory Family Code, date accessed 28 January 2016.

the father, or in case of death of the father or divorce, with the family of the father. Guardianship replaces custody once children have reached a certain age, usually nine for girls and seven for boys.⁴² However, UNAMA reported that ‘cultural norms often make the father the guardian of children and most women do not approach the courts to obtain custody of children.’⁴³

- 6.2.5 Describing women’s inheritance rights, the Women and Children Legal Research Foundation (WCLRF) reported that, despite inheritance laws and entitlements, women’s access and control of inherited land was restricted, often due to poverty, cultural and traditional practices. The report noted:

‘Based on Islamic jurisprudence and Sharia law, women have the right to inherit both as daughters, and widows. This is also reflected in the Civil Code of 1978. However, divorced women have no right to their husband’s property. According to these laws, women receive one-eighth of the property if they have children and one-fourth of the property if they do not have any children. In cases of polygamy [sic] the property of the deceased [sic] is shared among the wives. Daughters inherit half of what the sons inherit.’⁴⁴ However the SOGI stated:

‘Women’s right to inheritance in Afghanistan may vary, depending on whether they are determined by religious, statutory or customary law... Under customary law, a wife generally does not inherit. The United Nations Mission in Afghanistan reports that widows are particularly poorly treated with respect to inheritance rights, and commonly forced to marry another male in the family to keep their inheritance in the family. Often, if a widow does not remarry into the same family she risks losing her children.’⁴⁵

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6.3 Single/unaccompanied women

- 6.3.1 The US Department of State cited ‘Cultural prohibitions on free travel and leaving the home unaccompanied prevented many women from working outside the home and reduced their access to education, health care, police protection, and other social services.’⁴⁶ According to an article in The New York Times ‘When the police in Afghanistan find unmarried women, even though legally adults, unaccompanied by a close relative, the women are arrested and routinely subjected to a virginity test by a forensic pathologist,

⁴² Social Institutions and Gender Index, Country Profiles Afghanistan, 2014, <http://genderindex.org/country/afghanistan>, Discriminatory Family Code, date accessed

⁴³ UNAMA/OHCHR, Justice through the Eyes of Afghan Women: Cases of Violence against Women Addressed through Mediation and Court Adjudication, April 2015, https://unama.unmissions.org/Portals/UNAMA/UNAMA-OHCHR/UNAMA_OHCHR_Justice_through_eyes_of_Afghan_women_-_15_April_2015.pdf, page 12, date accessed 15 December 2015.

⁴⁴ Women and Children Legal Research Foundation, Women Right to inheritance and property, Research report, 2011, <http://www.wclrf.org/wp-content/uploads/2013/09/Womens-access-to-inheritance-English-book.pdf>, page 7, date accessed 24 November 2015

⁴⁵ Social Institutions and Gender Index, Country Profiles Afghanistan, 2014, <http://genderindex.org/country/afghanistan>, Discriminatory Family Code, date accessed 20 January 2016.

⁴⁶ US Department of State, Country Report on Human Rights Practices for 2014, Afghanistan, 26 June 2015, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236632>, Section 6, date accessed 17 November 2015.

another customary practice that exists outside the law.⁴⁷ UNAMA reported that 'Fears of prosecution for "zina" [adultery] severely limit women's right to freedom of movement and their right to exercise their choice to end an abusive marriage. Women trying to live alone after ending an abusive marriage also face the same risk.'⁴⁸ (see [Sexual and gender-based violence](#))

- 6.3.2 The Afghanistan Research and Evaluation Unit (AREU) reported that, in January 2012, the Ulema Council of Afghanistan (council of religious scholars) issued a resolution advising women to "avoid travel without the company of a close relative (mahram) under Shariah," and stressed that women should "keep away from mixing with strangers of the opposite sex in social circles, places of education, the market place, offices and other walks of life," and that women should also recognise polygamy as part of Islam.⁴⁹
- 6.3.3 According to the US Department of State's Human Rights report for 2014, unaccompanied women were generally not accepted in society. In January 2014 The Guardian reported that 'Living alone is socially and culturally impossible for all but a handful of elite Afghan women.'⁵⁰ Afghanistan analyst Dina Latek noted in a 2014 report that 'Generally, in rural Afghanistan, the principle of purdah dictates that women should be hidden from public view and therefore activities outside the household are often barred to them, so as to preserve their honor (gheirat).'⁵¹
- 6.3.4 In contrast, Latek stated that '...in certain mountainous, rural regions, where entire settlements are made up of one kin, females often exercise greater freedom of movement outside their home than women from lower-middle and poorer classes in urban households.'⁵²
- 6.3.5 The same report continued:
- 'Women in Afghanistan's Northern region enjoy certain liberties and more rights in their childhood and youth. A Swiss newspaper observed that the separation of the sexes was much less stringent in the city of Mazar-e Sharif, the capital of the Northern Province of Balkh, than in other regions of Afghanistan. The interaction between (unrelated) young men and women is

⁴⁷ The New York Times, In Spite of the Law, Afghan 'Honor Killings' of Women Continue, 3 May 2014, http://www.nytimes.com/2014/05/04/world/asia/in-spite-of-the-law-afghan-honor-killings-of-women-continue.html?_r=0, date accessed 26 November 2015.

⁴⁸ UNAMA/OHCHR, Justice through the Eyes of Afghan Women: Cases of Violence against Women Addressed through Mediation and Court Adjudication, April 2015, https://unama.unmissions.org/Portals/UNAMA/UNAMA-OHCHR/UNAMA_OHCHR_Justice_through_eyes_of_Afghan_women_-_15_April_2015.pdf, page 29, date accessed 15 December 2015.

⁴⁹ Afghanistan Research and Evaluation Unit (AREU), Afghanistan's Constitution Ten Years On: What Are the Issues?, August 2014, 1416E, available at: <http://www.refworld.org/docid/53fc4dd34.html>, page 28, date accessed 12 November 2015

⁵⁰ The Guardian, The Afghan female politician in hiding: 'No one respects women in our country', 14 January 2014, <http://www.theguardian.com/world/2014/jan/14/afghanistan-politician-hiding-women-rights>, date accessed 22 December 2015.

⁵¹ Latek, D., Austria: Federal Ministry of the Interior, Afghanistan: 2014 and beyond, March 2014, available at: <http://www.refworld.org/docid/53564a484.html>, page 50, date accessed 27 November 2015

⁵² Latek, D., Austria: Federal Ministry of the Interior, Afghanistan: 2014 and beyond, March 2014, available at: <http://www.refworld.org/docid/53564a484.html>, page 50, date accessed 27 November 2015

relatively unconstrained. They even attend school and work together. If they come from a liberal family, young people may even meet in mixed groups during leisure times; a gathering that would not be possible in many other regions.

'In southern and eastern Afghanistan, boys and girls attend separate schools, and rarely have any interaction, unless they are related to each other. On the other side, one explanation for the reportedly higher prevalence of female suicides in the North is attributed to these freedoms as women often might find it harder to fit back into traditional structures, when they try to stretch the limits of these freedoms, after their adolescence.'⁵³

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7. Harmful traditional practices

7.1 Forced and arranged marriages

7.1.1 The Max Planck Manual on Family Law in Afghanistan stated:

'According to observations reported by national and international organisations, forced marriages do take place in Afghanistan. These are marriages of under-age children, married by their parents or other persons, as well as marriages of adults, mostly women, against their free will and consent. According to the Afghan Independent Human Rights Commission, 60-80% of the marriages in Afghanistan are concluded without the consent or against the will of one of the spouses.'⁵⁴

7.1.2 Reporting on marriage in Afghanistan, Landinfo stated 'Marriage without the consent of the parties (forced marriage) is not valid under Sharia law and the Afghan Penal Code.' The EVAW law and the Afghan Penal Code define the penalties for forced marriages, which include marriage annulment and a prison sentence. However, there are cultural marriage traditions that contradict these laws including: baadal (the exchange of daughters or other female family members between two families); baad (giving a girl(s) to the victim's family, clan or tribe as compensation for a crime); and widow marriage, whereby a widow is forced to marry her late husband's brother, or other male relative, thus keeping any inheritance within the family.⁵⁵ Such traditions led to the practice of child marriage.⁵⁶ The Social Institutions and Gender Index reported findings from the Women and Children Legal Research Foundation (WCLRF) which found that 'a total of 30% of the early marriages studied in Balkh, Nangarhar, Kabul and Parwan were baadal

⁵³ Latek, D., Austria: Federal Ministry of the Interior, Afghanistan: 2014 and beyond, March 2014, available at: <http://www.refworld.org/docid/53564a484.html>, page 50, date accessed 27 November 2015

⁵⁴ Rastin-Tehrani, K., and Yassari, N., Max Planck Manual on Family Law in Afghanistan, Amended 2nd Edition, July 2012, http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf, pages 32, date accessed 17 November 2015.

⁵⁵ Landinfo, Country of Origin Information Centre, Report Afghanistan: Marriage, 19 May 2011, http://www.landinfo.no/asset/1852/1/1852_1.pdf, page 6, 12,13 and 15, date accessed 23 November 2015.

⁵⁶ UN Children's Fund (UNICEF), Child Notice Afghanistan, November 2015, available at: <http://www.refworld.org/docid/56430b2d4.html>, page 75, date accessed 24 November 2015.

marriages.⁵⁷ The Congressional Research Service reported in December 2015 that the practice of baad remains prevalent.⁵⁸

- 7.1.3 For more detailed information on the different cultural marriage traditions see the [Landinfo report](#).

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7.2 Child marriage

7.2.1 Under-age marriage was reported to be common across all regions and ethnic groups of Afghanistan.⁵⁹ UNICEF reported in its 2014 report on children and women in Afghanistan that ‘Child marriage is widely prevalent in Afghanistan, but there are no known cases where parents have been prosecuted for marrying off their under-age daughters.’⁶⁰ According to the Afghanistan Multiple Indicator Cluster Survey (AMICS) 2010-2011, 15.2 percent of surveyed women were married before the age of 15 and 46.4 per cent before 18.⁶¹ As reported by UNICEF ‘The Shiite Personal Status law recognizes marriages for boys and girls “at puberty” but it also refers to marriage as permissible “prior to the mentioned ages” by a guardian before the court. This provision removes the power of the court to rule against early marriage, rendering the law ineffective.’⁶²

7.2.2 The US Department of State Human Rights report for 2014 stated:

‘Despite laws banning the practice, many brides continued to be younger than the legal marriage age of 16 (or 15 with a guardian’s and a court’s approval). A survey of married women between the ages of 20 and 24 found 39 percent married before the age of 18. Very few marriages were registered, leaving forced marriages outside legal control.’⁶³

7.2.3 The UN Special Rapporteur cited “the importance of preserving family honour and girls’ virginity” as reasons the early marriage of girls, as well as

⁵⁷ Social Institutions and Gender Index, Country Profiles Afghanistan, 2014, <http://genderindex.org/country/afghanistan>, Discriminatory Family Code, date accessed 28 January 2016.

⁵⁸ Congressional Research Service, Afghanistan: Post-Taliban Governance, Security and U.S. Policy, 22 December 2015, <https://www.fas.org/sgp/crs/row/RL30588.pdf>, page 15, date accessed 5 January 2015.

⁵⁹ UNAMA/OHCHR, Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan, 9 December 2010, http://unama.unmissions.org/Portals/UNAMA/Publication/Harmful%20Traditional%20Practices_English.pdf, page 18, date accessed 24 November 2015.

⁶⁰ UNICEF, Children and Women in Afghanistan: A Situation Analysis, November 2014, http://www.unicef.org/afghanistan/SitAn_-_Long_Report_-_small_size_.pdf, page 39, date accessed 24 November 2015.

⁶¹ UNFPA Afghanistan, National Action Plan to Eliminate Early And Child Marriage in Afghanistan, 31 December 2015, http://countryoffice.unfpa.org/afghanistan/2015/01/08/11238/national_action_plan_to_eliminate_early_and_child_marriage_in_afghanistan/, date accessed 19 November 2015.

⁶² UNICEF, Children and Women in Afghanistan: A Situation Analysis, November 2014, http://www.unicef.org/afghanistan/SitAn_-_Long_Report_-_small_size_.pdf, pages 38-39, date accessed 24 November 2015.

⁶³ US Department of State, Country Report on Human Rights Practices for 2014, Afghanistan, 26 June 2015, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236632>, Section 6, date accessed 17 November 2015.

poverty, tradition, culture and religion.⁶⁴ The UNFPA noted in its Afghanistan State of Youth 2014 report that poverty was widely considered one of the main causes of child marriage, adding:

‘In households that experience acute poverty, young girls may be regarded as an economic burden and her marriage to another family could become a survival strategy as it may be seen to reduce the economic pressure on the household.

‘In addition, the overwhelming majority of Afghan marriages are arranged based on Islamic law according to which the groom’s family must pay the bride’s family (mahr). This practice, coupled with chronic poverty in many parts of the Afghan society, has led to instances where girls and young women are effectively sold by their families to deal with financial pressure. For instance, poor households may marry off heir daughters to settle debts, including those originating from the opium trade, which has led to the coining of the terms “loan bride” and “opium child bride”.’⁶⁵

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8. Sexual and gender-based violence

See [State attitudes and responses to violence against women](#) for the difficulties some women face in reporting abuse, and for information on avenues of redress.

8.1.1 The March 2015 report of the UN Secretary General on Conflict-related sexual violence explained that ‘Sexual violence is chronically underreported in Afghanistan owing to the stigmatization of complainants and lack of access to Taliban-controlled areas. Under the applicable legal framework, women victims may be charged with adultery and exposed to further harm, which discourages them from seeking redress.’⁶⁶

8.1.2 Reporting on cases of violence against women and their access to justice, UNAMA reported:

‘The prevalence of violence against women and harmful practices continues to be of serious concern. In particular, two recent cases sparked public outrage and widespread condemnation across Afghanistan and internationally. These were the kidnapping and subsequent gang rape of four women in the Paghman district of Kabul in October 2014, and the killing of a woman by a mob near the Sha i-du Shamshira shrine of Kabul city over allegations of burning a copy of the holy Quran in March 2015.’ The same source stated that a Government report on violence against women, covering the period from March 2013 to March 2014, documented a total of

⁶⁴ UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to Afghanistan, 12 May 2015, A/HRC/29/27/Add.3, available at: <http://www.refworld.org/docid/5583f8224.html>, paragraph 14, date accessed 26 November 2015.

⁶⁵ UNFPA, Afghanistan State of Youth Report 2014, undated, <http://countryoffice.unfpa.org/filemanager/files/afghanistan/2014/reports/unfpasoayreportv333e.pdf>, page 110, date accessed 24 November 2015.

⁶⁶ UN Security Council, Report of the Secretary General on Conflict-related Sexual Violence, 23 March 2015, <https://unama.unmissions.org/Portals/UNAMA/Documents/WPS-SG%20Report%20CRSV%20-March%202015.pdf>, paragraph 12, date accessed 27 November 2015.

5,406 registered cases, indicating a 20 per cent increase in the registration of cases. The findings confirmed the previous trend of prevailing use of mediation.⁶⁷

8.1.3 The UNFPA reported in 2014 that ‘studies confirm an overall high level of VAW [violence against women] in Afghanistan. It is estimated that up to 87.2 percent of women have experienced at least one form of physical, sexual or psychological violence, or forced marriage. More than 60 percent of women experience multiple forms of violence.’⁶⁸ The Afghanistan Independent Human Right Commission (AIHRC) reported that violence against women in Afghanistan was often related to harmful traditions and customs.⁶⁹

8.1.4 The AIHRC stated in its National Inquiry report on rape and honour killing in Afghanistan, published 2013, that:

‘Although, over the past few years, numerous attempts are made in the area of women's rights, and violence against women has been fought, violence against women is still one of the most serious human rights problems in Afghanistan. Many women and girls become the victims of different types of domestic violence. Despite all the problems and restrictions, each year, thousands of cases of violence against women in Afghanistan are registered through the Afghanistan Independent Human Rights Commission’s offices.’⁷⁰

8.1.5 The report of the UN Secretary General on Conflict-related sexual violence noted that between January and December 2014, 44 incidents of sexual violence against women and girls were documented by UNAMA. Of those, 3 were committed by a party to the conflict – members of the Afghan National Police in Faryab and Herat provinces, and a member of an illegal armed group in Baghlan province. During the same time period, 8 incidences of sexual violence against children were carried out by members of the Afghan National Security Forces and a pro-Government militia. The report further noted that in a survey by the New Afghanistan Women’s Association, based on 2,000 questionnaires, 35 per cent of the respondents identified the perpetrators of sexual violence as “influential people, armed commanders and illegal armed individuals”.⁷¹

8.1.6 In its 2013 Concluding Observations, the CEDAW Committee expressed its concern at the:

⁶⁷ UNAMA/OHCHR, Justice through the Eyes of Afghan Women: Cases of Violence against Women Addressed through Mediation and Court Adjudication, April 2015, https://unama.unmissions.org/Portals/UNAMA/UNAMA-OHCHR/UNAMA_OHCHR_Justice_through_eyes_of_Afghan_women_-_15_April_2015.pdf, pages 7-8, date accessed 15 December 2015.

⁶⁸ UNFPA, Afghanistan State of Youth Report 2014, undated, <http://countryoffice.unfpa.org/filemanager/files/afghanistan/2014/reports/unfpasoayreportv333e.pdf>, page 5, date accessed 24 November 2015.

⁶⁹ Afghanistan Independent Human Rights Commission (AIHRC), Elimination of violence against women 1394, 30 November 2015, http://www.aihrc.org.af/home/research_report/5170, date accessed 15 December 2015.

⁷⁰ AIHRC, National Inquiry report on Factors and causes of Rape and Honor Killing in Afghanistan, Spring 1392 (year 2013), <http://www.aihrc.org.af/media/files/PDF/Natioan%20Inquiry%20final%20-%20for%20P-R.pdf>, page 3, date accessed 26 November 2015.

⁷¹ UN Security Council, Report of the Secretary General on Conflict-related Sexual Violence, 23 March 2015, <https://unama.unmissions.org/Portals/UNAMA/Documents/WPS-SG%20Report%20CRSV%20-March%202015.pdf>, paragraph 12, date accessed 27 November 2015.

'high prevalence of violence against women in [Afghanistan], in particular domestic violence, rape, battery and laceration. It is also concerned at cases of stoning of women. ..It is concerned that, despite the specific efforts to implement the Law on the Elimination of Violence against Women, incidents of violence and harmful practices remain underreported owing to the subordinate role of women in Afghan society, cultural beliefs and the victims' fear of retaliation by their family and of being stigmatized by their communities.'⁷²

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8.2 Women in the public sphere

8.2.1 In April 2015 Amnesty International reported on women human rights defenders in Afghanistan and stated that they were:

'perceived as defying cultural, religious and social norms concerning the role of women in society, regardless of whether they are doctors, journalists, educators, female police officers or elected representatives. This puts them at risk of sexual and other forms of gender-based violence. It can further restrict their movements. Also, they can be convicted of "moral crimes", face gender-based attacks on their reputation and experience social isolation.'⁷³

8.2.2 The Special Rapporteur expressed concern at the:

'escalating level of targeted attacks against high-profile women, particularly those working in the public sector. For instance, in February 2015, a former journalist and member of the provincial council of Nangarhar Province was wounded in an explosion in Jalalabad city and died a week later. In November 2014, a parliamentarian was targeted in a suicide attack, which resulted in the death of three individuals.

'Earlier in 2014, another parliamentarian was wounded in an attack when leaving her office. Her sister, who is also a member of parliament and a prominent women's rights activist, was attacked in 2010. In 2013, a senator lost her daughter in an attack on her car and a parliamentarian was kidnapped and held for several weeks before being released. In July 2013, the highest-ranking female police officer in Helmand was shot and killed on her way to work. In July 2012, the head of the Department of Women's Affairs in eastern Laghman province was killed by a car bomb as she left for work. Gunmen killed her replacement in December 2012. These examples are illustrative of the systematic pattern of attacks against women working in the public domain. These attacks occur with impunity and often serve as a warning to other women who aspire to hold such positions.'⁷⁴

⁷² United Nations, Committee on the Elimination of Discrimination against Women Concluding observations on the combined initial and second periodic reports of Afghanistan, 30 July 2013, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgcjdM0xgERNalXh22nhTUKQTKDrE0nx47As8n4%2bLnyzSULXtFONH6qKk2YmLIVPSSO9BCs%2ffUDuf4NQGf3zN7pEzblo2vGSerxbcp6ixK2>, paragraph 22, date accessed 21 January 2016.

⁷³ Amnesty International, Afghanistan: Their Lives on the Line: Women Human Rights Defenders Under Attack in Afghanistan, 7 April 2015, <https://www.amnesty.org/download/Documents/Submitted%20after%202015-05-11T11%2024%2035/ASA1112792015ENGLISH.PDF>, page 10, date accessed 21 December 2015.

⁷⁴ UN Human Rights Council, Report of the Special Rapporteur on violence against women, its

- 8.2.3 The Amnesty International report noted ‘While the Taliban and other armed opposition groups are responsible for the majority of abuses against women human rights defenders, they are not the only perpetrators. Government officials and powerful commanders and warlords who are supported by local authorities have also been implicated in committing human rights abuses against women human rights defenders.’⁷⁵
- 8.2.4 Women rights workers and journalists, as well as midwives and women’s shelters, were targeted by the Taliban during its assault on the city of Kunduz in September 2015.⁷⁶ In the December 2015 report to the UN Security Council the Secretary General stated ‘The overall security situation in the north and north-east led to the forced temporary suspension of services aimed at protecting vulnerable women, including shelters, in several adjacent provinces.’⁷⁷
- 8.2.5 The Special Rapporteur noted in her May 2015 report that ‘Certain areas of the country are outside of the Government’s control, and targeted attacks against communities and high-profile women and men by anti-Government elements, both in Government-controlled areas and other areas, are a frequent occurrence. ...In different provinces, numerous women have been forced to quit their jobs or have been killed.’⁷⁸

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8.3 Domestic violence

- 8.3.1 The UN Special Rapporteur reported that spousal and intrafamily violence affected Afghani women disproportionately, adding ‘Most manifestations of violence are underreported in the context of a patriarchal and conservative society where domestic violence is not always perceived as a crime and is condoned by authorities that attribute the abuse to a woman’s alleged disobedience of her husband.’⁷⁹

causes and consequences, Addendum : Mission to Afghanistan, 12 May 2015, A/HRC/29/27/Add.3, available at: <http://www.refworld.org/docid/5583f8224.html>, paragraphs 21-22, date accessed 26 November 2015; Congressional Research Service, Afghanistan: Post-Taliban Governance, Security and U.S. Policy, 22 December 2015, <https://www.fas.org/sgp/crs/row/RL30588.pdf>, page 15, date accessed 5 January 2015.

⁷⁵ Amnesty International, Afghanistan: Their Lives on the Line: Women Human Rights Defenders Under Attack in Afghanistan, 7 April 2015, <https://www.amnesty.org/download/Documents/Submitted%20after%202015-05-11T11%2024%2035/ASA1112792015ENGLISH.PDF>, page 11, date accessed 21 December 2015.

⁷⁶ Agence France Presse, Women targeted in Taliban takeover of Afghan city, 17 October 2015, available at: <http://reliefweb.int/report/afghanistan/women-targeted-taliban-takeover-afghan-city>, date accessed 5 January 2015.

⁷⁷ UN Security Council, Report of the Secretary General on the Situation in Afghanistan and its Implications for International Peace and Security, 10 December 2015, https://unama.unmissions.org/sites/default/files/report_of_the_secretary-general_the_situation_in_afghanistan_and_its_implications_for_international_peace_and_security.pdf paragraph 32, date accessed 29 January 2016.

⁷⁸ UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to Afghanistan, 12 May 2015, A/HRC/29/27/Add.3, available at: <http://www.refworld.org/docid/5583f8224.html>, paragraph 57, date accessed 21 January 2016

⁷⁹ UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to Afghanistan, 12 May 2015, A/HRC/29/27/Add.3,

8.3.2 The same report added:

'In spite of its prevalence, domestic violence is not explicitly classified as a crime in the Penal Code, though it may constitute beating and laceration under articles 407 and 408. It has been reported that, during criminal investigations of domestic violence cases, including in the criminal and family courts, a factor often taken into account is whether the violence was a response to a woman's disobedience. This then results in decisions not to prosecute cases, or in the reduction of sentences.'⁸⁰

8.3.3 The Institute of War and Peace Reporting (IWPR) reported:

'Married women are often vulnerable to abuse from their husbands and in-laws in Afghanistan, where domestic violence is a feature of life for many. The custom of preserving "family honour" make[s] it difficult for victims to seek outside help. There are laws to protect women, but activists says [sic] these are often ignored.

'The Afghanistan Independent Human Rights Commission (AIHRC) says it is concerned about the rates of abuse being reported. Last year, more than 2,000 women visited AIHRC offices around the country to register incidents of violence.

'Adila Amarkhil, deputy head of the AIHRC's department for women's rights, said that official figures represented just a fraction of the total, as many victims were unable to report cases.'⁸¹

8.3.4 The US Department of State noted 'Police response to domestic violence was limited, in part due to low reporting, sympathetic attitudes toward perpetrators, and limited protection for victims. There were reports of government officials' complicity in violations of the EVAW law.'⁸²

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8.4 Rape

8.4.1 The EVAW law criminalised rape but not spousal rape.⁸³ The Special Rapporteur was informed that, 'in the context of marriage, rape is seldom acknowledged or reported, since women do not have the freedom to decide whether or not to have sexual intercourse with their husband.'⁸⁴

available at: <http://www.refworld.org/docid/5583f8224.html>, paragraph 13, date accessed 26 November 2015.

⁸⁰ UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to Afghanistan, 12 May 2015, A/HRC/29/27/Add.3, available at: <http://www.refworld.org/docid/5583f8224.html>, paragraph 13, date accessed 26 November 2015.

⁸¹ Institute of War and Peace Reporting, Afghanistan: Calls for Action on Domestic Abuse, 28 October 2015, <https://iwpr.net/global-voices/afghanistan-calls-action-domestic-abuse>, date accessed 5 January 2015.

⁸² US Department of State, Country Report on Human Rights Practices for 2014, Afghanistan, 26 June 2015, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dclid=236632>, Section 6, date accessed 17 November 2015.

⁸³ US Department of State, Country Report on Human Rights Practices for 2014, Afghanistan, 26 June 2015, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dclid=236632>, Section 6, date accessed 17 November 2015.

⁸⁴ UN Human Rights Council, Report of the Special Rapporteur on violence against women, its

8.4.2 The USSD Human Rights report for 2014 stated:

'Rapes were difficult to document due to social stigma... Female victims faced stringent societal reprisal, from being deemed unfit for marriage to being imprisoned or a victim of extrajudicial killing... Women who sought assistance in case of rape often became subjects of virginity tests and in some instances had their cases converted into adultery cases. Interpretations of sharia also impeded successful prosecution of rape cases.'⁸⁵

8.4.3 Amnesty International (AI) reported on the Taliban's assault on the city of Kunduz in September 2015, where women human rights defenders spoke of the rape and murder of numerous civilians including female human rights defenders, midwives and government employees. AI noted that 'According to local activists, Taliban fighters also raped female relatives and killed family members, including children, of police commanders and soldiers, especially those working for Afghan Local Police (ALP). The Taliban also burnt down the families' houses and looted their belongings.'⁸⁶

8.4.4 The UN Special Rapporteur stated 'Women are perceived as the custodians of a family's "honour" and are seen as "dishonouring" their families and communities when they are subjected to sexual violence. As such, it is the rape victim who carries the shame of the crime in many cases. Women and girls who live in rural areas, unaccompanied women, widows, divorced women and women whose husbands are away are at a greater risk of becoming victims of rape.'⁸⁷

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8.5 "Honour" and "moral" crimes

8.5.1 The AIHRC stated in its National Inquiry report on rape and honour killing in Afghanistan, published 2013, that honour killings were most commonly committed against women accused of extra-marital relations (zina). Mere suspicion of pre-marital or extra-marital sex can result in an honour killing. The report stated 'For example, escaping of women from home, though... not considered as a crime, according to laws in Afghanistan, can sometimes cause honor killing. Almost 15.4 percent of honor killings documented by the National Inquiry Program are committed for this reason.' Victims of sexual assault may also be killed due to the shame brought upon the victim's family

causes and consequences, Addendum : Mission to Afghanistan, 12 May 2015, A/HRC/29/27/Add.3, available at: <http://www.refworld.org/docid/5583f8224.html>, paragraph 13, date accessed 21 January 2016.

⁸⁵ US Department of State, Country Report on Human Rights Practices for 2014, Afghanistan, 26 June 2015, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236632>, Section 6, date accessed 17 November 2015.

⁸⁶ Amnesty International, Afghanistan: Harrowing accounts emerge of the Taliban's reign of terror in Kunduz, 1 October 2015, <https://www.amnesty.org/en/latest/news/2015/10/afghanistan-harrowing-accounts-emerge-of-the-talibans-reign-of-terror-in-kunduz/>, date accessed 14 December 2015.

⁸⁷ UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to Afghanistan, 12 May 2015, A/HRC/29/27/Add.3, available at: <http://www.refworld.org/docid/5583f8224.html>, paragraph 19, date accessed 21 January 2016.

or tribe. Spouses and other family members were often cited as the perpetrators of honour crimes.⁸⁸

- 8.5.2 As reported by the Special Rapporteur, women and girls faced arrest, prosecution and imprisonment for so-called “moral crimes”, including the offence of adultery; premarital sex⁸⁹; and running away (leaving home without permission).⁹⁰ The Special Rapporteur reported that, as of 5 November 2014, of the 744 female prisoners across the country, 428 were charged with “moral crimes”.⁹¹ The Congressional Research Service stated that ‘The number of women jailed for “moral crimes” has increased by 50% since 2011.’⁹²
- 8.5.3 The Special Rapporteur noted ‘that the women’s versions of the incidents prior to their detention was seldom taken into account, and that women victims were often treated as criminals by the criminal justice system, thus violating due process rights. One interviewee alleged that, following her rape by a relative, she was sentenced to six years of imprisonment, along with her rapist, for the crime of zina.’⁹³
- 8.5.4 The UN High Commissioner for Human Rights reported in 2014 that:
‘Although “running away” is not a crime under Afghan law or sharia law, police and prosecutors often arrest and prosecute women and girls for this “moral crime” and based on their discretion, charge them with “intention” to commit zina (premarital or extramarital sexual intercourse). Under sharia law, zina is a crime irrespective of a woman’s marital status or age, but “attempt to commit zina” is not a distinct codified crime in the Afghan Penal Code, nor is it proscribed under sharia law. UNAMA observed through field monitoring that authorities’ determination of “intent” in such cases is highly subjective, usually based on circumstantial evidence and often centred on the views of a specific prosecutor or police officer.’⁹⁴

⁸⁸ AIHRC, National Inquiry report on Factors and causes of Rape and Honor Killing in Afghanistan, Spring 1392 (year 2013), <http://www.aihrc.org.af/media/files/PDF/Natioan%20Inquiry%20final%20-%20for%20-P-R.pdf>, page 4, date accessed 26 November 2015.

⁸⁹ UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to Afghanistan, 12 May 2015, A/HRC/29/27/Add.3, available at: <http://www.refworld.org/docid/5583f8224.html>, paragraph 23, date accessed 26 November 2015.

⁹⁰ Human Rights Watch, “I Had To Run Away” The Imprisonment of Women and Girls for “Moral Crimes” in Afghanistan, March 2012, https://www.hrw.org/sites/default/files/reports/afghanistan0312webwcover_0.pdf, page 34, date accessed 16 December 2015.

⁹¹ UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to Afghanistan, 12 May 2015, A/HRC/29/27/Add.3, available at: <http://www.refworld.org/docid/5583f8224.html>, paragraph 45, date accessed 26 November 2015.

⁹² Congressional Research Service, Afghanistan: Post-Taliban Governance, Security and U.S. Policy, 22 December 2015, <https://www.fas.org/sgp/crs/row/RL30588.pdf>, page 15, date accessed 5 January 2015.

⁹³ UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to Afghanistan, 12 May 2015, A/HRC/29/27/Add.3, available at: <http://www.refworld.org/docid/5583f8224.html>, paragraph 24, date accessed 26 November 2015.

⁹⁴ UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Afghanistan and on the achievements of technical assistance in the

- 8.5.5 The AIHRC reported that women accused of moral crimes were subjected to forensic medical testing, without consent, to establish whether sexual intercourse had taken place. The AIHRC added that the test results were “usually accepted” as reliable proof by judicial organs.⁹⁵
- 8.5.6 The Institute of War and Peace Reporting stated that ‘Afghan courts are liable to see women as offenders rather than victims. Although there is no written law to that effect, judges routinely jail women for the “immoral” act of running away from parents or husbands – including when it is to escape abuse.’⁹⁶

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9. State attitudes and responses to violence against women

- 9.1.1 In its 2013 Concluding Observations the UN CEDAW committee stated its concern that:
- ‘police and the prosecutors continuously refer cases relating to violence against women, including domestic violence, to informal justice mechanisms (jirgas and shuras) for advice or resolution, despite the fact that many of these cases should be formally prosecuted and that decisions of informal justice mechanisms are discriminatory against women and undermine the implementation of existing legislation. It is further concerned that women are often prevented by their family members from filing complaints.’⁹⁷
- 9.1.2 Reporting in 2015 on research conducted in 13 provinces across Afghanistan between August and November 2014, Amnesty International (AI) stated that security and law enforcement agencies systematically failed to respond to threats and investigate incidents of violence reported by women human rights defenders and women in public life. AI added that ‘A common thread emerging from the interviews as well as from reports by NGOs and research organizations is that the pattern of abuse against women human rights defenders is matched by the government’s systematic failure to provide an environment that protects them or to bring the perpetrators of abuses to justice.’ The report noted the:

field of human rights in 2013 [A/HRCR/25/41], 10 January 2014, available at http://www.ecoi.net/file_upload/1930_1390309443_a-hrc-25-41-en.doc, paragraph 45, date accessed 16 December 2015.

⁹⁵ AIHRC, Forced Gynecological Exams as Sexual Harassment and Human Rights Violation, 5 December 2015, http://www.aihrc.org.af/home/research_report/5184, date accessed 12 January 2015.

⁹⁶ Institute of War and Peace Reporting, Tackling Gender-Based Violence in Afghanistan, 9 June 2014, <https://iwpr.net/global-voices/tackling-gender-based-violence-afghanistan>, date accessed 17 December 2015.

⁹⁷ United Nations, Committee on the Elimination of Discrimination against Women Concluding observations on the combined initial and second periodic reports of Afghanistan, 30 July 2013, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgcjdM0xgERNalXh22nhTUKKQTKDrE0nx47As8n4%2bLnyzSULXtFONH6gKk2YmLIVSSO9BCs%2ffUDuf4NQGF3zN7pEzblo2vGSerxbcp6ixK2>, paragraph 14, date accessed 21 January 2016.

‘institutionalized indifference on the part of the authorities to the threats, harassment and attacks that women human rights defenders face... particularly within the judiciary and law enforcement and security agencies. ...While the Taliban and other armed opposition groups are responsible for the majority of abuses against women human rights defenders, they are not the only perpetrators. Government officials and powerful commanders who are supported by local authorities have also been implicated...’⁹⁸

- 9.1.3 The Institute of War and Peace Reporting (IWPR) cited Kabul university law lecturer Shahla Farid who stated that lack of security, corruption in the judiciary and low level awareness of the laws protecting women, allowed perpetrators to escape punishment.⁹⁹
- 9.1.4 The Special Rapporteur reported in May 2015 that she ‘was informed that, even when women wish to file complaints, they are often discouraged, and when they file complaints, they are encouraged to withdraw the case. Prosecutors often use one of the objectives of the Law on the Elimination of Violence against Women, defined under its article 2 as the preservation of the family unit, to mediate cases out of the formal court system.’¹⁰⁰
- 9.1.5 The USSD Human Rights report 2014 stated ‘Prosecutors and judges in some remote provinces were unaware of the EAW law, and others were subject to community pressure to release defendants due to familial loyalties, threat of harm, or bribes. Reports indicated men accused of rape often claimed the victim agreed to consensual sex, leading to adultery charges against the victim, or made false claims of marriage to the victim.’ The same report stated: ‘Some police and judicial officials were not aware or convinced rape was a serious criminal offense, and investigating rape cases was generally not a priority.’¹⁰¹
- 9.1.6 Reporting on gender based violence against women, the IWPR cited the problems some women faced when attempting to report cases of abuse. Parwin Rahimi, head of the women’s support section at the AIHRC told the IWPR that the organisation came across many cases of women who did not approach state agencies because they mistrusted them or feared they would be subject to further abuse. Rahimi was quoted as saying “When a woman goes to the police to complain about a case of violence against her, the police [by their treatment] unfortunately commit a second act of violence against her. Sometimes women are even sexually abused by the police.”

⁹⁸ Amnesty International, Afghanistan: Their Lives on the Line: Women Human Rights Defenders Under Attack in Afghanistan, 7 April 2015, <https://www.amnesty.org/download/Documents/Submitted%20after%202015-05-11T11%2024%2035/ASA1112792015ENGLISH.PDF>, pages 11 and 12, date accessed 21 December 2015.

⁹⁹ Institute of War and Peace Reporting, Afghanistan: Calls for Action on Domestic Abuse, 28 October 2015, <https://iwpr.net/global-voices/afghanistan-calls-action-domestic-abuse>, date accessed 5 January 2015.

¹⁰⁰ UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to Afghanistan, 12 May 2015, A/HRC/29/27/Add.3, available at: <http://www.refworld.org/docid/5583f8224.html>, paragraph 65, date accessed 21 January 2016.

¹⁰¹ US Department of State, Country Report on Human Rights Practices for 2014, Afghanistan, 26 June 2015, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236632>, date accessed 20 January 2016

The report added that many perpetrators of violence against women were released or avoided prosecution upon payment of bribes or due to their connections with the authorities.¹⁰²

- 9.1.7 In response, Bazir Azizi, a spokesman for the Attorney-General's Office, stated it had recorded 8,000 cases of violence against women in recent years, adding that the Office had set up a special department to handle violence against women, and most of its staff were female. Azizi stated:

“In cases involving violence against women, some individuals have been sentenced to execution, others have been sentenced to prison terms of up to 20 years,”... As for claims that suspects escaped prosecution, he said, “There are some cases where the evidence is insufficient, or where the claims are baseless. When there is no evidence, the Attorney General's Office has the authority to release individuals”.¹⁰³

9.2 Avenues of redress

- 9.2.1 Reporting on justice mechanisms for women in Afghanistan, UNAMA reported that:

‘Within the existing legal framework, a female victim of a specified act of violence under the EAW law has the right to approach the Department of Women's Affairs (DoWA), the Department of Huqooq [which settles disputes arising out of debts, properties, and family], the Afghanistan Independent Human Rights Commission (AIHRC), the police or the prosecutor's office to address her case. These institutions often mediate or refer the woman to relevant services, such as women's shelters, based on her wishes. Each of these institutions, in practice, attempts to resolve the case through mediation and dialogue as a first step, in an attempt to preserve the family unit - provided the act of violence is not among the five crimes that must be prosecuted as stipulated in the EAW law [see [Legal context - Protections](#)]. If the woman decides to pursue her complaint through the criminal justice system, these institutions would refer her case to the police or, in many instances, to the prosecutor's office.’ However, the same report also noted that: ‘mediation was performed by a variety of actors mediating decisions in the absence of any standardized approach and oversight mechanisms. ...UNAMA also encountered at least 11 cases in which the decision to mediate rather than pursue criminal proceedings was imposed on the woman, infringing her choice, right to a fair trial, right to effective remedy and undermining the voluntary nature of mediation.’¹⁰⁴

- 9.2.2 The UNAMA report further noted ‘widespread concerns about the ineffectiveness of, and corruption in the justice system through adjudication,

¹⁰² Institute of War and Peace Reporting, Tackling Gender-Based Violence in Afghanistan, 9 June 2014, <https://iwpr.net/global-voices/tackling-gender-based-violence-afghanistan>, date accessed 17 December 2015.

¹⁰³ Institute of War and Peace Reporting, Tackling Gender-Based Violence in Afghanistan, 9 June 2014, <https://iwpr.net/global-voices/tackling-gender-based-violence-afghanistan>, date accessed 17 December 2015.

¹⁰⁴ UNAMA/OHCHR, Justice through the Eyes of Afghan Women: Cases of Violence against Women Addressed through Mediation and Court Adjudication, April 2015, https://unama.unmissions.org/sites/default/files/unama_ohchr_justice_through_eyes_of_afghan_women_-15_april_2015.pdf, pages 3 and 14, date accessed 15 December 2015.

were a key reason for women to choose mediation ... The limited availability of legal aid across the country remains a key challenge hindering women's access to justice.' The UNAMA also observed that:

'women's decisions in instances of violence were deeply affected by prevailing socio-cultural norms... Taking family issues outside of the family is seen as inappropriate behavior and discourages women from talking about violence within the family ... Socio-cultural attitudes are also reflected in the way law enforcement agencies treat women reporting violence, often considering them responsible for their situation. UNAMA observed that investigations often focused on finding faults in women as opposed to men.' The report also stated 'In the absence of social security schemes in Afghanistan, and in light of women's low employment rates, women are generally dependent financially on their father, husband or brother. Raising complaints against such perpetrators of violence often means being cut off from their support, with serious consequences for the entire family.'¹⁰⁵

9.2.3 The UNAMA continued to say that:

'A woman can also approach the police or a prosecutor directly. Once the complaint is registered with the police, the police should refer the case to the relevant prosecutor's office for investigation (unless the case is mediated – which can be conducted by EAW law institutions, TDR [traditional dispute resolution] mechanisms and NGOs). Once the prosecutor receives the case, based on a preliminary investigation and prosecutorial discretion, he or she makes a decision to prosecute under the EAW law or the Criminal Code, or both, and may refer the case to court, followed by a trial.'¹⁰⁶ However, the Congressional Research Service noted in its report dated December 2015 that '... despite the EAW decree, only a small percentage of reports of violence against women are registered with the judicial system, and about one-third of those proceed to trial.'¹⁰⁷

9.2.4 The AIHRC reported that 91 percent of honour killings and rape cases registered with the AIHRC during the one-year period of research were referred to the judicial authorities and of those, 64.5 per cent were considered to be successful and in accordance with the law.¹⁰⁸ The AIHRC also noted that, based on written information from the Attorney General's Office on cases of violence against women in 2014 up to January 2015, the Office received:

¹⁰⁵ UNAMA/OHCHR, Justice through the Eyes of Afghan Women: Cases of Violence against Women Addressed through Mediation and Court Adjudication, April 2015, https://unama.unmissions.org/sites/default/files/unama_ohchr_justice_through_eyes_of_afghan_women_-_15_april_2015.pdf, pages 31 to 32, date accessed 15 December 2015.

¹⁰⁶ UNAMA/OHCHR, Justice through the Eyes of Afghan Women: Cases of Violence against Women Addressed through Mediation and Court Adjudication, April 2015, https://unama.unmissions.org/sites/default/files/unama_ohchr_justice_through_eyes_of_afghan_women_-_15_april_2015.pdf, page 14, date accessed 15 December 2015.

¹⁰⁷ Congressional Research Service, Afghanistan: Post-Taliban Governance, Security and U.S. Policy, 22 December 2015, <https://www.fas.org/sgp/crs/row/RL30588.pdf>, page 15, date accessed 5 January 2015.

¹⁰⁸ AIHRC, National Inquiry report on Factors and causes of Rape and Honor Killing in Afghanistan, Spring 1392 (year 2013), <http://www.aihrc.org.af/media/files/PDF/Natioan%20Inquiry%20final%20-%20for%20P-R.pdf>, page 6, date accessed 26 November 2015.

'about 965 cases of which 57 cases have been finalized after the trial process is completely finished. 186 cases were referred to the Primary Court of Kabul province, 25 cases to the Court of Appeal, and 155 cases were kept in the Administration Directorate of this Office because of the lack of referring of plaintiffs. 134 cases were kept because of the withdrawal of the victim (woman) in accordance with paragraph 2 of Article 39 of the Law on Elimination of Violence against Women. 170 cases are under the investigation of Research Committees, and other cases were sent to the relevant authorities because of lack of jurisdiction.'¹⁰⁹

- 9.2.5 In a report published by the Austrian Federal Ministry of Interior in March 2014, Dina Latek, an Afghanistan analyst at the Country of Origin Information Unit at the Federal Office for Immigration and Asylum, looked at the situation for women in the country and noted:

'...the implementation of justice, as well as the administration varied in different regions of the country. In major cities, courts resumed to decide criminal cases as mandated by the law, while the formal legal system frequently was not present in rural areas. In [the] absence of effective state structures, customary informal mechanisms for the administration of justice, such as tribal or village councils [jirgas and shuras], continued to be popular and significant for resolving disputes, particularly in rural areas.

'However... Many women stated limited access to justice in male-dominated tribal shuras, in which inquiries concentrated on the settlement with the community and families rather than the rights of the individual. In some villages women were not allowed any access to dispute resolution mechanisms. In many cases, the shuras did not respect the constitutional rights and sometimes violated the rights of women. Often they resulted in outcomes that discriminated against women.'¹¹⁰

- 9.2.6 In May 2015, the Special Rapporteur reported that 'In most instances, women do not use the formal justice system, for reasons including a lack of easy access to the justice system, the ineffective implementation of existing legislation and the overreliance on the informal justice system.' The report continued 'In numerous cases, mediation is conducted by jirgas and shuras, whose membership is limited to men, and solutions are made on the basis of cultural norms rather than using the legal framework, to ensure accountability and effective redress for the victim...'¹¹¹

- 9.2.7 The report also stated:

'Women and girls are prevented from reporting acts of violence for various reasons, including deeply engrained attitudes that regard domestic violence

¹⁰⁹ Afghanistan Independent Human Rights Commission (AIHRC), Elimination of violence against women 1394, 30 November 2015, http://www.aihrc.org.af/home/research_report/5170, date accessed 15 December 2015.

¹¹⁰ Latek, D., Austria: Federal Ministry of the Interior, Afghanistan: 2014 and beyond, March 2014, available at: <http://www.refworld.org/docid/53564a484.html>, page 45, date accessed 27 November 2015

¹¹¹ UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to Afghanistan, 12 May 2015, A/HRC/29/27/Add.3, available at: <http://www.refworld.org/docid/5583f8224.html>, paragraphs 63- 64, date accessed 21 January 2016.

as a private matter and the treatment of victims of sexual abuse as perpetrators of zina. Other reasons include stigma, shame, discrimination, fear of reprisals from the perpetrators, feelings of guilt and lack of support from friends and family. The lack of proper investigation, evidence collection and forensic capacities further hinder women's access to justice... Furthermore, corruption in the criminal justice system is prevalent and represents an obstacle to the rights of due process and fair trial, thus affecting women's access to justice...The Special Rapporteur was informed that bribes were often required for cases to move through the different stages of the criminal justice system. Also, perpetrators can go unpunished if bribes are paid to relevant officials. This creates a culture of impunity and fosters further distrust of the formal justice system.¹¹²

- 9.2.8 In May 2014, an article in the New York Times stated: "In Afghanistan judges stick to customary law, forget Shariah law, let alone civil law," said Shala Fareed, a professor of law at Kabul University... Of 4,505 cases of violence against women last year ... less than 10 percent are resolved through legal process, according to the latest report from the Women's Ministry. Nearly half of the cases were either dropped or settled out of court, often to the women's detriment.¹¹³

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10. Assistance available to women

10.1 Women police officers

- 10.1.1 Oxfam reported that in July 2013, there were 1,551 policewomen serving out of a force of 157,000, adding that very few were deployed in rural areas.¹¹⁴ In a March 2015 article, The New York Times reported that, according to the Afghan Ministry of Interior, there were 2,700 women police officers, less than 2 per cent of the 169,000 members of the Afghan National Police [ANP] force.¹¹⁵
- 10.1.2 The US Department of State noted in its 2014 report that 'There were 283 female response unit investigators working in 33 of 34 provinces. These units were staffed by police officers, some of whom were female, who addressed violence and crimes against women, children, and families. Women serving in civilian and ANP positions in the Ministry of Interior offered mediation and resources to prevent future domestic violence.'

¹¹² UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to Afghanistan, 12 May 2015, A/HRC/29/27/Add.3, available at: <http://www.refworld.org/docid/5583f8224.html>, paragraphs 65-67, date accessed 21 January 2016.

¹¹³ The New York Times, In Spite of the Law, Afghan 'Honor Killings' of Women Continue, 3 May 2014, http://www.nytimes.com/2014/05/04/world/asia/in-spite-of-the-law-afghan-honor-killings-of-women-continue.html?_r=0, date accessed 26 November 2015.

¹¹⁴ Oxfam, Women and the Afghan Police, 10 September 2013, <https://www.oxfam.org/sites/www.oxfam.org/files/bp-173-afghanistan-women-police-100913-en.pdf>, page 2, date accessed 27 November 2015.

¹¹⁵ The New York Times, Afghan Policewomen Struggle Against Culture, 1 March 2015, http://www.nytimes.com/2015/03/02/world/asia/afghan-policewomen-struggle-against-culture.html?_r=0, date accessed 27 November 2015.

- 10.1.3 Following a 2012 investigation, the US-based National Public Radio (NPR) found widespread allegations of sexual coercion and rape of female police officers by their male colleagues in Mazar-e-Sharif, Balkh Province, where around 300 women were serving in the police force. However, according to the UN, abuse of women police was not limited to that area.¹¹⁶
- 10.1.4 In its October 2013 report, International Crisis Group noted: ‘Mistreatment and discrimination against women within the [police] force are common. Policewomen are sexually assaulted and harassed by male colleagues and rarely placed in positions of authority...The insurgency often targets policewomen.’ The report continued ‘Many policewomen lack the capacity and influence to tackle cases of gender-based violence. Adequate legal training and psychological counselling is unavailable in most [family response units]. A human rights advocate said, “women police register a lot of self-immolation cases at hospitals, when these are clearly attempted murders”. Moreover, the preferred method for domestic violence cases is usually mediation. “We try to talk women out of divorce for the sake of the children”, said a policewoman in an FRU. As a result even if a woman victim of domestic abuse summons the courage to contact police, she may be at even greater risk if told to return to an abusive husband.’¹¹⁷
- 10.1.5 In a report published by the Austrian Federal Ministry of Interior in March 2014, Afghanistan analyst Dina Latek noted that ‘Sexual assaults against female police officers show how deeply embedded (sexual) violence against women is in the Afghan society. An unpublished United Nations report found that 70 percent of policewomen personally experienced sexual harassment or sexual violence themselves; however a rather smaller segment stated that they were raped or otherwise sexually assaulted.’¹¹⁸
- 10.1.6 UNAMA stated in its April 2015 report that:
- ‘Over the course of 2014, the Ministry of Interior (Moi) made significant progress in developing policies and directives aimed at enhancing the protection and treatment of police women in the Afghan National Police (ANP). These efforts were undertaken in response to serious concerns raised by several stakeholders – including UNAMA - about high levels of violence and sexual harassment of, and abuse of authority towards female police by male police. In January 2014, the then Minister of Interior, Mohammad Omar Daudzai, endorsed a “Strategy for integration of women in the police force” intended to create a protective environment for women employed in ANP. An action plan was adopted in August 2014 spelling out implementation mechanisms to improve participation, protection, and

¹¹⁶ National Public Radio, For Afghan Policewomen, Sex Abuse Is A Job Hazard, 8 March 2012, <http://www.npr.org/2012/03/08/148041305/for-afghan-policewomen-sex-abuse-is-a-job-hazard>, date accessed 27 November 2015.

¹¹⁷ International Crisis Group “Women and Conflict in Afghanistan” 3 October 2013 <http://www.crisisgroup.org/en/publication-type/media-releases/2013/asia/afghanistan-women-and-conflict.aspx>, pages 18-19, date accessed 20 January 2016

¹¹⁸ Latek, D., Austria: Federal Ministry of the Interior, Afghanistan: 2014 and beyond, March 2014, available at: <http://www.refworld.org/docid/53564a484.html>, page 57, date accessed 20 January 2016.

professionalization of women in ANP. To date, the implementation of the action plan remains slow.¹¹⁹

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10.2 Women's shelters

10.2.1 The Ministry of Women's Affairs (MoWA) regulated all shelters operated by non-governmental organisations.¹²⁰ "Women's Protection Centers Guidelines", developed by civil society shelter providers and the MoWA, launched in mid-2014 and aimed to assist the women's shelters to operate efficiently and improve the quality of services provided to shelter clients.¹²¹ There were between 13¹²² and 28¹²³ shelters (protection centres) for women. According to Al Jazeera, most were based in urban areas and therefore inaccessible to many women.¹²⁴ The US Department of State stated in its 2014 Human Rights report that there was insufficient room in the 28 formal shelters across Afghanistan. Where there were no shelter facilities available, women who were victims of domestic violence were sometimes placed in protective custody, including in a detention centre.¹²⁵

10.2.2 The US Department of State noted that:

'According to NGOs that ran women's shelters countrywide, police continued to make up a significant portion of referrals, likely reflecting improved ANP training and awareness... Women who could not be reunited with their families or remarry were compelled to remain in shelters indefinitely because "unaccompanied" women were not commonly accepted in society. The difficulty of finding durable solutions for women compelled to stay in shelters was compounded by societal attitudes toward shelters, the belief that "running away from home" was a serious violation of social mores, and the

¹¹⁹ UNAMA/OHCHR, Justice through the Eyes of Afghan Women: Cases of Violence against Women Addressed through Mediation and Court Adjudication, April 2015, https://unama.unmissions.org/Portals/UNAMA/UNAMA-OHCHR/UNAMA_OHCHR_Justice_through_eyes_of_Afghan_women_-_15_April_2015.pdf, page 9, date accessed 15 December 2015.

¹²⁰ US Department of State, Country Report on Human Rights Practices for 2014, Afghanistan, 26 June 2015, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236632>, Section 6, date accessed 17 November 2015.

¹²¹ International Development Law Organization, Launch of Women's Protection Centers Guidelines, 25 June 2014, <http://www.idlo.int/news/events/launch-women%E2%80%99s-protection-centers-guidelines>, date accessed 11 December 2015.

¹²² UN Women in Afghanistan, <http://www.unwomen.org/~media/headquarters/attachments/sections/executive%20board/2015/as%2015/un-women%20afghanistan%20background%20one%20pager-pdf.pdf?v=1&d=20150624T220306>, date accessed 11 December 2015.

¹²³ US Department of State, Country Report on Human Rights Practices for 2014, Afghanistan, 26 June 2015, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236632>, Section 6 and 1d, date accessed 17 November 2015.

¹²⁴ Al Jazeera, Afghanistan: No Country for Women, 3 July 2015, <http://www.aljazeera.com/programmes/101east/2015/06/afghanistan-country-women-150630115111987.html>, date accessed 11 December 2015.

¹²⁵ US Department of State, Country Report on Human Rights Practices for 2014, Afghanistan, 26 June 2015, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236632>, Section 6 and 1d, date accessed 17 November 2015.

continued victimization of women who were raped but perceived by society as adulterers. Women in need of shelter but who could not find it often ended up in prison, either due to a lack of shelter alternatives, for their own protection, or based on local interpretation of “running away” as a moral crime.’

The same report noted: ‘In May 2013 parliamentary debate over the EVAW law reignited a public debate over women’s shelters, which some public figures compared to brothels.’¹²⁶

10.2.3 In March 2015 the New York Times reported:

‘As the shelters have grown, so has the opposition of powerful conservative men who see them as Western assaults on Afghan culture...The opposition comes not only from conservative imams, but also from within the Afghan government itself. ...“A lot has changed since 2001, but most people still have conservative, traditional views of women,” said Manizha Naderi, who runs Women for Afghan Women, which operates shelters or other programs in 13 provinces. ... Ms. Naderi estimates that about 15 percent of the women in her shelters cannot leave — ever. For these abused women, the longer they live suspended between two worlds, the less the shelter comes to feel like a haven and the more like a jail.’¹²⁷

10.2.4 In April 2015, UNAMA reported ‘There are no specific civil remedies (e.g., protection and restraining orders) protecting abused women and their children, which de facto exposes victims to further violence.’ The same report noted ‘To UNAMA’s knowledge, the only protection mechanism used during court adjudication was referral to shelters.’ The report continued ‘There is stigma attached to living in a shelter and reintegration into society for women who have lived in shelters is challenging.’¹²⁸

10.2.5 The Special Rapporteur stated in May 2015 ‘As regards protection mechanisms, the main challenges include the insufficient number of shelters and safe houses for women who are victims of violence and the lack of opportunities for women to be reintegrated back into their families and society.’¹²⁹

See [“Honour” and “moral” crimes](#)

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¹²⁶ US Department of State, Country Report on Human Rights Practices for 2014, Afghanistan, 26 June 2015, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236632>, Section 6, date accessed 17 November 2015.

¹²⁷ New York Times, A thin line of defense against honor killings, 2 March 2015 http://www.nytimes.com/2015/03/03/world/asia/afghanistan-a-thin-line-of-defense-against-honor-killings.html?_r=0, date accessed 20 January 2016

¹²⁸ UNAMA/UNHCR, Justice through the Eyes of Afghan Women: Cases of Violence against Women Addressed through Mediation and Court Adjudication, April 2015, https://unama.unmissions.org/sites/default/files/unama_ohchr_justice_through_eyes_of_afghan_women_-_15_april_2015.pdf, pages 12, 27 and 32, date accessed 21 January 2016.

¹²⁹ UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to Afghanistan, 12 May 2015, A/HRC/29/27/Add.3, available at: <http://www.refworld.org/docid/5583f8224.html>, paragraph 65, date accessed 21 January 2016.

Version Control and Contacts

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email [the Country Policy and Information Team](#).

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email [the Guidance, Rules and Forms Team](#).

Clearance

Below is information on when this version of the guidance was cleared:

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- valid from **16 February 2016**
- this version approved by **Sally Weston, Head of Legal Strategy Team, International and Immigration Policy Directorate**
- approved on: **15 February 2016**

Changes from last version of this guidance

First version of country information and guidance.

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