



Home Office

Country Policy and Information Note

Afghanistan: Women fearing gender-based violence

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Archived

Preface

Purpose

This note provides country of origin information (COI) and analysis of COI for use by Home Office decision makers handling particular types of protection and human rights claims (as set out in the [Introduction](#) section). It is not intended to be an exhaustive survey of a particular subject or theme.

It is split into two main sections: (1) analysis and assessment of COI and other evidence; and (2) COI. These are explained in more detail below.

Assessment

This section analyses the evidence relevant to this note – i.e. the COI section; refugee/human rights laws and policies; and applicable caselaw – by describing this and its inter-relationships, and provides an assessment of, in general, whether one or more of the following applies:

- A person is reasonably likely to face a real risk of persecution or serious harm
- The general humanitarian situation is so severe as to breach Article 15(b) of European Council Directive 2004/83/EC (the Qualification Directive) / Article 3 of the European Convention on Human Rights as transposed in paragraph 339C and 339CA(iii) of the Immigration Rules
- The security situation presents a real risk to a civilian's life or person such that it would breach Article 15(c) of the Qualification Directive as transposed in paragraph 339C and 339CA(iv) of the Immigration Rules
- A person is able to obtain protection from the state (or quasi state bodies)
- A person is reasonably able to relocate within a country or territory
- A claim is likely to justify granting asylum, humanitarian protection or other form of leave, and
- If a claim is refused, it is likely or unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers **must**, however, still consider all claims on an individual basis, taking into account each case's specific facts.

Country of origin information

The country information in this note has been carefully selected in accordance with the general principles of COI research as set out in the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the Austrian Centre for Country of Origin and Asylum Research and Documentation's (ACCORD), [Researching Country Origin Information – Training Manual, 2013](#). Namely, taking into account the COI's relevance, reliability, accuracy, balance, currency, transparency and traceability.

The structure and content of the country information section follows a [terms of reference](#) which sets out the general and specific topics relevant to this note.

All information included in the note was published or made publicly available on or before the 'cut-off' date(s) in the country information section. Any event taking place or report/article published after these date(s) is not included.

All information is publicly accessible or can be made publicly available, and is from generally reliable sources. Sources and the information they provide are carefully considered before inclusion. Factors relevant to the assessment of the reliability of sources and information include:

- the motivation, purpose, knowledge and experience of the source
- how the information was obtained, including specific methodologies used
- the currency and detail of information, and
- whether the COI is consistent with and/or corroborated by other sources.

Multiple sourcing is used to ensure that the information is accurate, balanced and corroborated, so that a comprehensive and up-to-date picture at the time of publication is provided of the issues relevant to this note.

Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source, however, is not an endorsement of it or any view(s) expressed.

Each piece of information is referenced in a brief footnote; full details of all sources cited and consulted in compiling the note are listed alphabetically in the [bibliography](#).

Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email the [Country Policy and Information Team](#).

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 support him in reviewing the efficiency, effectiveness and consistency of approach of COI produced by the Home Office.

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. The IAGCI may be contacted at:

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Information about the IAGCI's work and a list of the documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector's pages of the [gov.uk website](#).

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Assessment

Updated: 18 March 2020

1. Introduction

1.1 Basis of claim

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

1.2 Points to note

1.2.1 Gender-based violence includes, but is not limited to, domestic abuse, sexual violence including rape, 'honour crimes' or 'moral crimes', and women accused of committing adultery or having pre-marital relations.

1.2.2 Domestic abuse is not just about physical violence. It covers any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members, regardless of gender or sexuality. It can include psychological, physical, sexual, economic or emotional abuse. Children can also be victims of, or witnesses to, domestic abuse. Anyone can experience domestic abuse, regardless of background, age, gender, sexuality, race or culture. However, to establish a claim for protection under the refugee convention or humanitarian protection rules, that abuse needs to reach a minimum level of severity to constitute persecution or serious harm.

1.2.3 For further guidance on assessing gender issues see the [Asylum Guidance on Assessing Credibility and Refugee Status](#) and [Gender issues in the asylum claim](#).

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2. Consideration of issues

2.1 Credibility

2.1.1 For information on assessing credibility, see the 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 Exclusion

2.2.1 Decision makers must consider whether there are serious reasons for considering whether one (or more) of the exclusion clauses is applicable. Each case must be considered on its individual facts and merits. If the person is excluded from the Refugee Convention, they will also likely be excluded from a grant of humanitarian protection.

- 2.2.2 For further guidance on the exclusion clauses and restricted leave, see the Asylum Instructions on [Exclusion under Articles 1F and 33\(2\) of the Refugee Convention](#), [Humanitarian Protection](#) and [Restricted Leave](#).

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2.3 Convention reason(s)

- 2.3.1 In the country guidance case, [NS \(Social Group - Women - Forced marriage\) Afghanistan CG \[2004\] UKIAT 00328](#), heard 21 September 2004 and promulgated 30 December 2004, the Tribunal found that women in Afghanistan form a particular social group (PSG) within the meaning of the Refugee Convention. This still remains the case.

- 2.3.2 Although women in Afghanistan form a PSG, establishing such membership is not sufficient to be recognised as a refugee. The question is whether the particular person has a well-founded fear of persecution on account of their membership of such a group.

- 2.3.3 For further guidance on Convention reasons see the instruction on [Assessing Credibility and Refugee Status](#).

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2.4 Risk

a. State treatment

- 2.4.1 Afghanistan has several legal provisions and policies aimed at protecting the rights of women. However, in practice, laws are not always implemented or enforced. Women face discrimination in family law as well as in accessing employment, education, health services and the justice system (see [Legal context](#), [Approach to and implementation of laws relating to violence against women](#), [Access to justice](#) and [Social, economic and political rights and attitudes](#)).

- 2.4.2 Women, particularly in rural areas, who try to escape from violence, may face arrest and prosecution for 'moral crimes' that include 'running away' from home or for committing adultery (zina). Such women may be subjected to forced virginity tests (see [Approach to and implementation of laws relating to violence against women](#), [Access to justice](#), [Sexual and gender-based violence – Overview](#) and [Virginity testing](#)).

- 2.4.3 For further guidance on assessing risk, see the instruction on [Assessing Credibility and Refugee Status](#) and the [Asylum Instruction on Gender issues in the asylum claim](#).

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b. Societal treatment

- 2.4.4 The social position of women varies according to education, local culture, economics, geography, ethnicity and religion. Women in large, urban areas such as Kabul, are more visible since the ousting of the Taliban and better able to access education and jobs with, for example, tens of thousands of women now working outside their home in Kabul. However, Afghanistan remains a deeply patriarchal and conservative society, with firmly engrained views on gender roles, especially in rural communities, where the majority of

women live. Women are usually considered as the property of their fathers and later their husbands, who they are expected to obey. Unaccompanied women cannot easily walk or travel outside of the home, particularly in rural areas, without facing harassment or abuse (including groping). Educated women may face hostility from conservative family members or hard-line Islamist groups for pursuing financial independence and wanting to live alone (see [Cultural context: discrimination and inequality](#) and [Economic participation](#)).

- 2.4.5 Despite the protections provided for under the Elimination of Violence Against Women (EVAW) law, violence against women, particularly domestic violence, is widespread. Other forms of violence include murder, beating, sexual harassment, rape, mutilation, child and / or forced marriage, giving away girls for dispute resolution (baad), 'honour' and 'moral' crimes and other harmful practices. Incidents of violence against women are thought to be frequent, but difficult to quantify, and are likely to be significantly underreported. Levels of intimate partner violence are estimated to be over 40%, which is higher than the regional average. A UN report, dated 2010, but still considered valid by the Australian Department for Foreign Affairs and Trade (DFAT), found that nearly 90% of Afghan women had experienced physical, sexual or psychological violence in their lifetime. According to the head of the Afghanistan Independent Human Rights Commission, women are more likely to be injured or killed by their own family members than by the ongoing civil conflict. Early and forced marriage is reported to be widespread (see [Sexual and gender-based violence](#), [Domestic violence](#) and [Early and forced marriage](#)).
- 2.4.6 Discrimination and gender-based violence, particularly domestic abuse, is widespread. However, whether the level of abuse, by its nature, degree and repetition, amounts to persecution or serious harm will depend on the facts of the case. The onus is on the person to demonstrate this.
- 2.4.7 For further guidance on assessing risk, see the instruction on [Assessing Credibility and Refugee Status](#) and the [Asylum Instruction on Gender issues in the asylum claim](#).

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2.5 Protection

- 2.5.1 Where the person has a well-founded fear of persecution from the state, they will not be able to avail themselves of the protection of the authorities.
- 2.5.2 Where the person has a well-founded fear of persecution from non-state actors, including 'rogue' state actors, decision makers must assess whether the state can provide effective protection.
- 2.5.3 The government has taken measures to allow women to report crimes of violence and to access formal justice mechanisms, including special courts for the EVAW. There are cases of perpetrators being prosecuted for their crimes of violence against women. However, in practice, socio-cultural barriers often prevent women from seeking justice and laws are not always implemented or enforced (see [Approach to and implementation of laws relating to violence against women](#) and [Access to justice](#)).

- 2.5.4 In remote areas, where formal justice is weak, prosecutors and judges are often unaware of the EAW law – which criminalises 22 acts of violence against women – or they are pressured to release defendants due to familial loyalties, threat of harm, bribery, or because some religious leaders declare the law un-Islamic (see [Approach to and implementation of laws relating to violence against women](#) and [Access to justice](#)).
- 2.5.5 Police routinely refuse to register cases of violence against women, telling women to return to their husbands. Some women are pressured to drop charges, or to undergo mediation as a tool to resolve disputes, via informal justice systems (Jirgas), which often disregard women’s rights. The police’s lack of investigation, prosecution and punishment of perpetrators has contributed to the existence of high rates of impunity and the normalisation of violence against women (see [Approach to and implementation of laws relating to violence against women](#) and [Access to justice](#)).
- 2.5.6 Shelter space is insufficient. 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. Shelters are also sometimes viewed with suspicion by other Afghans as places of ill-repute (see [Women’s shelters and protective custody](#)).
- 2.5.7 The government has introduced legislation and taken some practical steps to improve protection for women. However, the justice system is weak, access may be restricted – particularly for women in rural communities – and implementation and enforcement of laws aimed at protecting women is limited. In general, the state is unable and unwilling to provide effective protection to women fearing gender-based violence. Each case must be considered on its merits.
- 2.5.8 For further guidance on assessing the availability of state protection, see the instruction on [Assessing Credibility and Refugee Status](#) and the [Asylum Instruction on Gender issues in the asylum claim](#).

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2.6 Internal relocation

- 2.6.1 Where the person has a well-founded fear of persecution from the state, they are unlikely to be able to relocate to escape that risk.
- 2.6.2 Where the person has a well-founded fear of persecution from non-state actors, decision makers must give careful consideration to the relevance and reasonableness of internal relocation, taking full account of the individual circumstances of the particular person.
- 2.6.3 In the country guidance case of [AK \(Article 15\(c\)\) Afghanistan CG \[2012\] UKUT 00163\(IAC\)](#), heard on 14-15 March 2012 and promulgated on 18 May 2012, the Upper Tribunal held that it would be unreasonable to expect lone women and female heads of household to relocate internally without the support of a male network (para 249B (v)). This finding was upheld in [AS \(Safety of Kabul\) Afghanistan CG \[2018\] UKUT 118 \(IAC\)](#), heard on 25 and 27 September; 24 October; 20 November and 11 December 2017 and promulgated on 28 March 2018.

- 2.6.4 Similarly, country guidance case of [TG and others \(Afghan Sikhs persecuted\) \(CG\) \[2015\] UKUT 595 \(IAC\) \(3 November 2015\)](#), heard on 31 March 2014 and 17 August 2015, the Upper Tribunal found (at paragraph 119), in regard to risk on return for members of Sikh and Hindu communities, that ‘women are particularly vulnerable in the absence of appropriate protection from a male member of the family’ (para 119 (iii. a)).
- 2.6.5 See the [Country Policy and Information Note on Afghanistan: Sikhs and Hindus](#) for further information.
- 2.6.6 For further guidance on internal relocation and factors to be taken into account, see the instruction on [Assessing Credibility and Refugee Status](#).

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2.7 Certification

- 2.7.1 Where a claim is refused, it is unlikely to be certifiable as ‘clearly unfounded’ under section 94 of the Nationality, Immigration and Asylum Act 2002.
- 2.7.2 For further guidance on certification, see [Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 \(clearly unfounded claims\)](#).

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Country information

Section 3 updated: 18 February 2020

3. Legal context

See also [State treatment and attitudes](#).

3.1 Constitution

3.1.1 The International Foundation for Electoral Systems (IFES) report on violence against women in elections (VAWE), dated April 2019, noted 'The low status of women today contradicts Afghanistan's legal framework which, on paper, includes several provisions that recognize women's equal rights generally and their right to participate in the democratic process specifically.'¹ For example, the Constitution prohibits discrimination between Afghan citizens and states that 'The citizens of Afghanistan, man and woman, have equal rights and duties before the law.'²

3.1.2 Further, Article 54 of the Constitution of Afghanistan states 'Family is the fundamental pillar of the society, and shall be protected by the state. The state shall adopt necessary measures to attain the physical and spiritual health of the family, especially of the child and mother, upbringing of children, as well as the elimination of related traditions contrary to the principles of the sacred religion of Islam.'³

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3.2 Family law

3.2.1 Afghan family law consists of Islamic law, regional customary law, traditional ethnic rules and state law⁴. Family law provisions in the [Afghan Civil Code](#) apply to the whole of Afghanistan. Where statutory law does not exist, religious law applies⁵.

3.2.2 For Shia Muslims, the Shiite Personal Status Law (SPSL) is the main codified law that governs matters relating to marriage and family relations⁶, whilst for the Sunni majority 'The Civil Code is the main codified law that governs matters relating to marriage and family relations. Based on Article 1(2) of the Civil Code, in the absence of codified laws that sufficiently address a particular matter of personal status of Sunnis, generally, the rules of Hanafi jurisprudence (fiqh) apply.'⁷

3.2.3 Musawah ('equality' in Arabic), a global movement for equality and justice in the Muslim family, noted in its report on Muslim family law and Muslim women's rights in Afghanistan, submitted ahead of the February 2020 75th session of the UN Committee on the Elimination of Discrimination Against Women (UN CEDAW), that:

¹ IFES, 'New Assessment on Violence Against Women in Elections...' (page II), April 2019, [url](#).

² Constitution of Afghanistan (Article 22), 26 January 2004, [url](#).

³ Constitution of Afghanistan (Article 54), 26 January 2004, [url](#).

⁴ MPIL, 'Max Planck Manual on Family Law in Afghanistan...' (pages 3-4), July 2012, [url](#).

⁵ MPIL, 'Max Planck Manual on Family Law in Afghanistan...' (page 3), July 2012, [url](#).

⁶ Shiite Personal Status Law, 2009, [url](#).

⁷ Musawah, 'Thematic Report on Article 16...' (page 2), 2020, [url](#).

'Despite the equality guarantee under Article 22 of the Constitution, the Civil Code and the SPSL provide for a marital framework based on "reciprocal" or "complementary" rights (as opposed to "equal" rights) between the two spouses, whereby in return for maintenance and protection from her husband, a wife is expected to obey him. Provisions in the family laws therefore discriminate against women as it is based on male authority and male guardianship.'⁸

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Section 4 updated: 18 February 2020

4. Social, economic and political rights and attitudes

4.1 Overview

4.1.1 In a total population estimated to be 36,643,815 (July 2020), 18,085,944 are female⁹, 75% of whom live in rural areas¹⁰. In 2019, 27.4% of parliamentary seats were held by women; 13.2% of adult women (over 25) had reached some level of secondary education compared to 36.9% of their male counterparts¹¹. An estimated 29.8% of women were literate compared to 55.5% of men in 2018¹². For every 100,000 live births, 396 women die from pregnancy related causes, while the adolescent birth rate is 69 births per 1,000 women aged 15-19¹³. Female participation in the labour market (aged 15 or over and either working or actively looking for work) was 48.7% compared to 82.1% of men in 2018¹⁴. Though not a legal requirement and not required to access government services, 38% of women held a tazkira (identity document)¹⁵ compared to 90% of men¹⁶.

4.1.2 In its 'Concluding observations' the UN Committee on the Elimination of Discrimination against Women (UNCEDAW), published in March 2020, the Committee '... welcome[d] the establishment of a 50 per cent quota for women's participation in Community Development Councils. The Committee is however concerned about the lack of temporary special measures in areas such as credit and loans, health, education, employment, peace and security, including for women and girls who are facing multiple and intersecting forms of discrimination.'¹⁷

4.1.3 The Committee further raised its concern that:

'... many women continue to face barriers in obtaining a Tazkira, due to insecurity, restrictions imposed by male family members, limited mobility or lack of financial means, which in turn has affected their ability to access State services and find employment. It notes with concern the particular barriers faced by women heads of households, widows, divorced women

⁸ Musawah, 'Thematic Report on Article 16...' (page 3), 2020, [url](#).

⁹ CIA World Factbook, 'Afghanistan', (people and society), last updated 31 January 2020, [url](#).

¹⁰ UNOCHA, 'Humanitarian Needs Overview Afghanistan' (page 62), December 2019, [url](#).

¹¹ UNDP, 'Human Development Indicators Afghanistan', 2019, [url](#).

¹² CIA World Factbook, 'Afghanistan', (people and society), last updated 31 January 2020, [url](#).

¹³ UNDP, 'Human Development Indicators Afghanistan', 2019, [url](#).

¹⁴ UNDP, 'Human Development Indicators Afghanistan', 2019, [url](#).

¹⁵ UNOCHA, 'Humanitarian Needs Overview Afghanistan' (pages 11 and 15), December 2019, [url](#).

¹⁶ UNOCHA, 'Humanitarian Needs Overview Afghanistan' (page 70), December 2019, [url](#).

¹⁷ UNCEDAW, 'Concluding observations on the third periodic report...' (para 21), 2 March 2020, [url](#).

and internally displaced and returnee women when seeking to obtain a Tazkira, including administrative barriers and corruption.’¹⁸

4.1.4 With regards to rural women, the Committee stated it was:

‘... concerned that rural women and girls are disproportionately affected by poverty, have limited access to education, health care and water and sanitation. The Committee notes with concern the lack of initiatives to expand the scope and scale of rural women’s entrepreneurship, which mainly focus on traditional micro-level and home based activities. The Committee is further concerned that rural women have limited access to land, productive resources, agricultural equipment, markets, finances and technologies, all of which limits their ability to invest and accumulate assets. It is also concerned that rural women are not able to participate fully and meaningfully in the decision making on all issues affecting their lives, despite the established 50 per cent quota for women’s participation in Community Development Councils. The Committee notes with concern the high prevalence of gender based violence against rural women and girls and their limited access to formal justice mechanisms.’¹⁹

4.1.5 For a regional comparison of data, see the [Country Policy and Information Note on Pakistan: Women fearing gender-based violence](#).

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4.2 Cultural context: discrimination and inequality

4.2.1 Although men and women have equal rights under the Afghan constitution²⁰, the country remains profoundly patriarchal and conservative²¹. The Georgetown Institute for Women, Peace and Security (WPS) Index, which rates women’s inclusion (economic, social, political); justice (formal laws and informal discrimination); and security (at the family, community, and societal levels) in 167 countries²², ranked Afghanistan as the second worst country in the world to be a woman²³.

4.2.2 Following a 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.’²⁴

4.2.3 A 2016 report, by the Afghan Ministry of Women’s Affairs (MoWA), noted:

‘The widely held view in Afghanistan is that the role of women primarily in the home, performing housework and raising children, and that of men is activities outside of the household, such as providing for the family and

¹⁸ UNCEDAW, ‘Concluding observations on the third periodic report...’ (para 38), 2 March 2020, [url](#).

¹⁹ UNCEDAW, ‘Concluding observations on the third periodic report...’ (para 50), 2 March 2020, [url](#).

²⁰ Constitution of Afghanistan (Article 22) 26 January 2004, [url](#).

²¹ VIDC, ‘Refugees return to poverty...’ (pages 32-33) November 2018, [url](#).

²² Georgetown Institute, WPS Index 2019/20 (page vi), 2019, [url](#).

²³ Georgetown Institute, WPS Index 2019/20 (pages 14 and 18), 2019, [url](#).

²⁴ UNHRC, ‘Report of the Special Rapporteur...’ (paragraph 9), 12 May 2015, [url](#).

earning a good living. These gender roles are firmly entrenched in Afghan society, particularly in rural communities. This mindset also affects the legislation and policy-making processes, and their interpretation by individuals, authorities and institutions.’²⁵

4.2.4 The Foreign and Commonwealth Office (FCO) noted in its 2018 Human Rights and Democracy report ‘Although significant progress has been made on women’s rights since the end of the Taliban regime in 2001, women continue to face major challenges, primarily in relation to gender-based violence, access to education, political participation, and economic empowerment.’²⁶

4.2.5 According to 2 confidential sources cited in a report on Afghanistan by the Ministry of Foreign Affairs of the Netherlands, Department for Country of Origin Information Reports (CAB), dated March 2019:

‘Factors such as culture, economics, geography, ethnicity and religion distinguish women’s social position. The vast majority of educated women are in the cities, while uneducated women tend to live in the countryside. The position of women differs per province. For example, in Kandahar, a province with a Sunni conservative population, few women have attended school, but in Daikundi province, many girls go to school. In large cities such as Kabul, Mazar-i Sharif and Herat, women’s social position is better than in the provinces. Women’s social position is better among Shiites because they have more independence, enabling them to participate in education and work.’²⁷

4.2.6 The Australian Government’s Department of Foreign Affairs and Trade (DFAT) June 2019 report on Afghanistan, based on a range of sources, noted:

‘Societal, cultural and religious barriers continue to limit considerably the extent to which women are able to participate fully in Afghan society, as does socio-economic status and geographic location. Women in conservative rural areas are highly unlikely to be able to access education or employment opportunities. AGEs [anti-government elements] have also targeted women active in public life and women employed in non-traditional sectors such as policing and security, limiting their ability to participate in these areas for fear of reprisal.’²⁸

4.2.7 The non-governmental organisation (NGO), Afghan Women's Rights Organization (AWRO), noted in its shadow report to the UN Committee on the Elimination of Discrimination Against Women (AWRO CEDAW Shadow Report), dated January 2020:

‘Despite substantial progress made in political, economic and social condition of women since 2001, [...] major challenges remain in terms of gender mainstreaming efforts in Afghanistan. [...] Afghanistan is still a long way from becoming a stable state, where women can enjoy equal rights and live in safety [and whilst] the Afghan government is publicly committed to

²⁵ MoWA, Strategy and NAP on eliminating VAW (page 8), 2 October 2016, [url](#).

²⁶ FCO, ‘Human Rights and Democracy 2018’ (page 35) June 2019, [url](#).

²⁷ CAB, ‘Country of Origin Report Afghanistan’ (page 88), March 2019, [url](#).

²⁸ DFAT, ‘Country Information Report Afghanistan’ (para 3.61), 27 June 2019, [url](#).

women's rights and empowerment, women continue to face significant barriers.'²⁹

- 4.2.8 The Organisation for Economic Co-operation and Development (OECD) Social Institutions and Gender Index (SIGI), a cross-country measure of discrimination against women in social institutions (formal and informal laws, social norms, and practices), based on range of sources published up to December 2018, noted in its 2019 profile on Afghanistan 'There are no provisions regarding women's right to be recognised as head of household. Traditionally men (father, brother, or son) head the household, bearing larger responsibility towards other family members, including being the predominant decision makers. Women traditionally are responsible for the house and up-bringing of children (CEDAW, 2011).'³⁰
- 4.2.9 The Asia Foundation's annual survey of 17,812 adults (51% male and 49% female) in Afghanistan, published 2019 (Asia Foundation Survey 2019), noted 'Overall approval of a woman's right to vote rose this year from 87.7% in 2018 to 89.3% in 2019. Support for women's equal access to education also grew from 84.0% in 2018 to 86.6% this year.'³¹ According to respondents of the same survey, the biggest problem facing women was lack of educational opportunities (43.2%), followed by lack of rights (34.1%), lack of employment opportunities (24.1%), violence (18.1%), lack of services (13.7%), and economic concerns (9.6%)³².
- 4.2.10 A December 2019 report in The New Yorker noted that life for women in Afghanistan's cities had improved dramatically since the fall of the Taliban in 2001³³. The report stated:
- 'Women are members of parliament, government ministers, and business owners. Across Kabul, young women are particularly visible, smoking hookah pipes in Turkish restaurants and shopping together in small groups at malls. The stereotypical image of an Afghan woman clad in a pale-blue burqa, walking the city's dusty streets, is less and less reflective of life today in Afghanistan's urban centers. A younger generation of women wears pants and long shirts, with brightly colored shawls and head scarves loosely tossed over their hair as a nod to religious tenets. [...]
- 'Middle-class women who advanced themselves through a combination of education and supportive parents are becoming the face of modern Afghanistan. While young Afghan men often talk of moving abroad and making a life for themselves in the West, young women often talk about staying in-country to pursue careers in education, health, and government that contribute to domestic development, despite its enormous challenges.'³⁴

²⁹ AWRO, 'CEDAW Shadow Report' (page 3), January 2020, [url](#).

³⁰ OECD, SIGI Afghanistan (Discrimination in the Family – Household responsibilities), 2019, [url](#).

³¹ Asia Foundation, 'A Survey of the Afghan People: Afghanistan in 2019' (page 199), 2019, [url](#).

³² Asia Foundation, 'A Survey of the Afghan People: Afghanistan in 2019' (page 17), 2019, [url](#).

³³ New Yorker, 'Peace Talks, the Taliban, and Afghan Women's ...', 19 December 2019, [url](#).

³⁴ New Yorker, 'Peace Talks, the Taliban, and Afghan Women's ...', 19 December 2019, [url](#).

- 4.2.11 However, the same source stated, ‘In the country’s conservative rural areas, it would take a colossal shift in culture for the Taliban and for rural men to accept the freedoms that women in cities currently enjoy.’³⁵
- 4.2.12 A ‘photo essay’, published by The Guardian in April 2019, depicted a series of Afghan women living in Kabul, described as breaking down gender stereotypes by working in untraditional roles, including a kickboxer, politician, street artist, yoga teacher, fashion designer and drugs counsellor ‘in one of the most dangerous countries in the world for women.’³⁶ Similarly, in a country where very few women drive, Al Jazeera reported, in August 2019, on the taxi service, Pink Shuttle, run ‘by female drivers for female passengers’³⁷.
- 4.2.13 The March 2019 CAB report, which cited various sources including the EASO country report, which in turn also cited a range of sources, noted ‘Although this is not required by law, it is customary for women in Afghanistan, both Sunnis and Shiites, to wear a headscarf – including in Kabul. The way the headscarf is worn varies according to family or ethnicity. The burqa is also still common, especially among the Pashtun. Women cover themselves with a headscarf or burqa because of religious and social tradition, but also to feel better protected against intimidation.’³⁸
- 4.2.14 For more information on dress codes and behavioural norms, see section 3.2 of the [European Asylum Support Office \(EASO\) Country of Origin Report: Afghanistan – Individuals targeted under societal and legal norms, December 2017](#).

See also [Economic participation](#), [Political participation](#) and [Education](#).

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4.3 Economic participation

- 4.3.1 The Afghan Labour Law prohibits discrimination on the basis of gender³⁹.
- 4.3.2 The Government of Afghanistan’s report, dated 2 January 2020, to the UN Convention on Elimination of Racial Discrimination (UNCERD), noted that according to 2016 statistics, ‘the share of women in different sectors is as follows: 21% in provincial councils, 15% in the Cabinet, 10% in the government’s decision making level, 33% in the health section, 21,7% in the private sector, 26% in government organizations, 12% in the judiciary, 1% in the security sector, 9,8% in the private sector’s decision making level, 6% in the economic sector, 39% as school students, 23% in the public higher education institutions, 14% as professors in government universities, and 34% as school teachers...’⁴⁰
- 4.3.3 A Report to Congress by the US Department of Defense (USDOD), dated December 2019 and covering the period 1 June to 31 October 2019, noted ‘Women’s participation numbers in the ANDSF [Afghanistan National

³⁵ New Yorker, ‘Peace Talks, the Taliban, and Afghan Women’s ...’, 19 December 2019, [url](#).

³⁶ Guardian, ‘Trailblazing women of Kabul, Afghanistan – a photo essay’, 8 April 2019, [url](#).

³⁷ Al Jazeera, ‘Kabul: “I want to break the tradition that women can’t drive”’, 22 August 2019, [url](#).

³⁸ CAB, ‘Country of Origin Report Afghanistan’, (page 90), March 2019, [url](#).

³⁹ Labour Law 2007, [url](#).

⁴⁰ UNCERD, ‘Combined second to sixteenth periodic reports...’ (para 108), 2 January 2020, [url](#).

Defense and Security Forces] have continued to increase in both ministries. The current number of women in the ANA [Afghan National Army] and the ANP [Afghan National Police] is approximately 4,484, with a further 432 civilian women in service.⁴¹ The same source noted that approximately 3,077 women served in the ANP⁴².

- 4.3.4 According to the Afghanistan Living Conditions Survey 2016-17, implemented by Afghanistan's Central Statistics Organization (CSO), the rate of young women 'not in employment, education or training' was especially high and unemployment levels of young women far surpassed that of their male peers⁴³. The same source noted that nationally, the labour participation rate (aged 14 and over) was 26.8% for women compared to 80.6% for men⁴⁴. The majority of employed women work in the agricultural sector, followed by craft and related trades (handicraft, garment and clothes workers)⁴⁵. Only 1.1% of women had a bank account compared to 9.5% of men⁴⁶.
- 4.3.5 According to the USSD HR Report 2018:
'Women continued to face discrimination and hardship in the workplace. Women made up only 7 percent of the workforce. Many women faced pressure from relatives to stay at home and encountered hiring practices that favored men. Older and married women reported it was more difficult for them than for younger, single women to find jobs. Women who worked reported they encountered insults, sexual harassment, lack of transportation, and an absence of day-care facilities. Salary discrimination existed in the private sector. Female journalists, social workers, and police officers reported they were often threatened or abused.'⁴⁷
- 4.3.6 DFAT noted in its June 2019 report 'Labour force participation rates are particularly low for young Afghan women. [...] Despite various laws providing for the participation of women in public and social life, discrimination against women remains systemic and pervasive and flows through to the administration of the entire public sector. For example, only 2,500 out of 150,000 police are women.'⁴⁸
- 4.3.7 Reuters reported, in May 2019, that educated Afghan women continue to face hostility from conservative family members or hard-line Islamist groups for pursuing financial independence⁴⁹. Despite these difficulties the report added '... access to public life has improved for Afghan women since U.S.-backed forces ousted the Taliban, especially in cities such as Kabul, where tens of thousands now work outside the home.'⁵⁰ According to the report, 370 government-run daycare centres for children were attached to government offices, though added that following a bomb attack against the

⁴¹ USDOD, 'Enhancing Security and Stability In Afghanistan' (page 39), December 2019, [url](#).

⁴² USDOD, 'Enhancing Security and Stability In Afghanistan' (page 75), December 2019, [url](#).

⁴³ CSO, 'Afghanistan Living Conditions Survey 2016-17' (page XXX), 2018, [url](#).

⁴⁴ CSO, 'Afghanistan Living Conditions Survey 2016-17' (page 51), 2018, [url](#).

⁴⁵ CSO, 'Afghanistan Living Conditions Survey 2016-17' (page 70), 2018, [url](#).

⁴⁶ CSO, 'Afghanistan Living Conditions Survey 2016-17' (page 77), 2018, [url](#).

⁴⁷ USSD, HR Report 2018 (page 40), 13 March 2019, [url](#).

⁴⁸ DFAT, 'Country Information Report Afghanistan' (para 3.60), 27 June 2019, [url](#).

⁴⁹ Reuters, 'Afghan working women still face perils at home and office', 20 May 2019, [url](#).

⁵⁰ Reuters, 'Afghan working women still face perils at home and office', 20 May 2019, [url](#).

communications ministry in central Kabul in April 2019, some women were now reluctant to leave their children there⁵¹.

4.3.8 According to the UNOCHA report, women outside the main urban areas were largely excluded from the workforce due to socio-cultural norms⁵².

4.3.9 As prescribed in the Labour Law:

‘... women are entitled to some specific privileges in the workplace such as 90 days of paid leave during pregnancy and delivery. Moreover, during their pregnancy, women work only 35 hours a week instead of 40 hours. In addition, women and children shall not be hired for physically harsh, unhealthy and harmful jobs. Furthermore, it is not allowed to hire a pregnant woman, a mother with a child younger than 2 years old, or a juvenile for overtime work or send them on an official trip. It is also not allowed to avoid the recruitment of a woman or to decrease her salary due to pregnancy or breast-feeding.’⁵³

4.3.10 In its ‘Concluding observations’ the UNCEDAW, published in March 2020, the Committee found ‘The Committee notes with concern the lack of legislation to protect women’s labour rights. The Committee is concerned that women’s participation in the labour market remains low and that women are concentrated in the informal economy, in particular in the agriculture sector, domestic work and unpaid care work, without access to social protection.’⁵⁴

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4.4 Political participation

4.4.1 The DFAT report explained the National Assembly consisted of the wolesi jirga (‘House of People’) which had 250 seats, 68 of whom must be women, including at least two from each province, and the meshrano jirga (‘House of Elders’) with 102 seats ‘with two-thirds of members elected from provincial councils for four-year terms, and one-third nominated by the President for five-year terms. Half of the members appointed by the President must be women.’⁵⁵

4.4.2 The Asia Foundation 2019 Survey noted ‘Women make up 27% of the national parliament and are politically active at lower levels as well, with one of Afghanistan’s first female mayors entering office this year in Wardak, a traditionally conservative province.’⁵⁶

4.4.3 The IFES report, based on a field-based assessment across all 34 provinces, noted in April 2019, ‘Afghanistan’s combined factors of insecurity and political instability, widespread impunity for and high rates of violence against women, and negative perceptions about women’s rights have

⁵¹ Reuters, ‘Afghan working women still face perils at home and office’, 20 May 2019, [url](#).

⁵² UNOCHA, ‘Humanitarian Needs Overview Afghanistan’ (page 29), December 2019, [url](#).

⁵³ UNCERD, ‘Combined second to sixteenth periodic reports...’ (para 105), 2 January 2020, [url](#).

⁵⁴ UNCEDAW, ‘Concluding observations on the third periodic report...’ (para 42), 2 March 2020, [url](#).

⁵⁵ DFAT, ‘Country Information Report Afghanistan’ (para 2.42), 27 June 2019, [url](#).

⁵⁶ Asia Foundation, ‘A Survey of the Afghan People: Afghanistan in 2019’ (page 200), 2019, [url](#).

gender-specific effects on Afghan women's full and equal participation in the electoral process.⁵⁷ Its assessment identified 4 key findings:

'1) social media is effectively and increasingly used to amplify and disseminate attacks against women and their families to national audiences;

'2) high rates of sexual harassment against women in politics – including by the Independent Election Commission (IEC) – perpetuates the negative perception that women politicians are immoral;

'3) there are widespread concerns that women's exclusion from the ongoing dialogues with the Taliban will undermine women's rights and democratic progress in Afghanistan; and

'4) harassment of women candidates contributes to families' reticence to support women family members contesting for office.'⁵⁸

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4.5 Education

4.5.1 According to 2016 statistics, cited in the Government of Afghanistan's report to the UNCERD, the share of women in the education sector was '39% as school students, 23% in the public higher education institutions, 14% as professors in government universities, and 34% as school teachers.'⁵⁹

4.5.2 According to the Afghanistan Living Conditions Survey 2016-17, on average, school-life expectancy for girls was 5.6 years compared to 9.7 years for boys. Girls only spent 1.8 years in secondary education⁶⁰. Nationally, only 19.9% of women aged 15 years and over are literate compared to 49.4% of men⁶¹. However, literacy levels have increased for girls under 15⁶².

4.5.3 Whilst the Government of Afghanistan stated it had developed its third Strategic Plan for Education (2017–2021) to improve and increase access to education for girls, and recruit more female teachers, it also noted in its report to the UNCEDAW 'Unfortunately, around 3.5 million children still do not have access to education [...]. The grave insecurity has caused around 1,000 closed schools in different provinces. Around 43 per cent of the schools in the country still do not enjoy safe environment for education...'⁶³

4.5.4 In its 'Concluding observations' the UNCEDAW, published in March 2020, the Committee found:

'The Committee commends the State party for including education on women's rights and gender equality in the curriculum for grades 1 to 6. The Committee also commends the State party for its efforts to increase literacy rates of women and girls, including by implementing the skills-based literacy programme "Enhancement of Literacy Afghanistan III" (2014-2018). It further welcomes the measures underway to recruit 30,000 female teachers, including in remote areas. The Committee remains deeply concerned,

⁵⁷ IFES, 'New Assessment on Violence Against Women in Elections...' (page II), April 2019, [url](#).

⁵⁸ IFES, 'New Assessment on Violence Against Women in Elections...' (page 1) April 2019, [url](#).

⁵⁹ UNCERD, 'Combined second to sixteenth periodic reports...' (para 108), 2 January 2020, [url](#).

⁶⁰ CSO, 'Afghanistan Living Conditions Survey 2016-17' (page 146), 2018, [url](#).

⁶¹ CSO, 'Afghanistan Living Conditions Survey 2016-17' (page 162), 2018, [url](#).

⁶² CSO, 'Afghanistan Living Conditions Survey 2016-17' (page 165), 2018, [url](#).

⁶³ UNCEDAW, 'Third periodic report submitted by Afghanistan...' (paras 133-8), 24 January 2019, [url](#).

however, that school girls and schools for girls remain a target during the armed conflict. It notes with concern the disproportionately high illiteracy rates among girls, especially in rural areas, the socio-economic and cultural barriers faced by girls in accessing and continuing education, the sexual violence and harassment faced by female students and teachers, the long distance to schools in remote areas, the lack of adequate school infrastructures which meet the hygiene needs of girls, such as separate sanitary facilities, in particular in rural and conflict-affected areas, and the lack of female teachers. The Committee is also concerned that girls lack access to secondary and higher education, as well as to non-traditional fields of studies, including Science, Technology, Engineering and Mathematics.¹⁶⁴

For further information on the education of girls, see the [Country Policy and Information Note Afghanistan: Unaccompanied children](#).

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4.6 Access to healthcare

4.6.1 The DFAT report noted ‘... decades of war and conflict have had a severe impact on the health sector. Continuing armed conflict frequently inhibits access to health services in conflict-affected areas, with women and girls particularly affected. Medical supplies are often unable to reach remote communities due to the security situation.’¹⁶⁵

4.6.2 Whilst noting a reduction in maternal and child mortality rates, an increase in life expectancy and better access to vaccinations, a blog, dated February 2018, published by The Borgen Project, a US-based NGO addressing poverty and hunger, also stated:

‘The most pressing issue regarding women’s healthcare in Afghanistan consistently remains healthcare during pregnancy and childbirth. Living in one of the most dangerous countries to give birth, around half a million Afghan women die in childbirth every year. This is a result of poor healthcare, a lack of access to healthcare services and a large number of child mothers. Additionally, around 20 percent of women are malnourished, which often results in a premature delivery. The low quality of women’s healthcare in Afghanistan impacts Afghan children as well, and 396 out of 100,000 babies do not survive [this figure is inaccurate and relates to maternal mortality. Infant mortality rate is recorded as 51.5 per 1,000 live births¹⁶⁶].’¹⁶⁷

4.6.3 The World Health Organization (WHO) noted ‘a significant increase in the utilization of antenatal care (ANC) and skilled birth attendance (SBA) in the last 10 years’ in its 2019 profile on Afghanistan¹⁶⁸. WHO, which used a range of sources to gather its data, also noted the challenges in accessing and providing health services to women and children, which included insecurity, gender inequality, cultural barriers, lack of female staff and low quality of

¹⁶⁴ UNCEDAW, ‘Concluding observations on the third periodic report...’ (para 40), 2 March 2020, [url](#).

¹⁶⁵ DFAT, ‘Country Information Report Afghanistan’ (paras 2.23-2.24), 27 June 2019, [url](#).

¹⁶⁶ UNDP, ‘Human Development Indicators Afghanistan’, 2019, [url](#).

¹⁶⁷ The Borgen Project, ‘Further Improvements to Women’s Healthcare ...’, 19 February 2018, [url](#).

¹⁶⁸ WHO, ‘Afghanistan Country Office 2019’ (page 21), 2019, [url](#).

services⁶⁹. Whilst the WHO noted there had been an increase in the number of women health workers, it added that women faced difficulties in accessing services due to gender norms and poor infrastructure⁷⁰.

- 4.6.4 As noted in its report to the UNCEDAW, the Government of Afghanistan said psycho-social support and counselling was provided in some areas for women affected by gender-based violence and the conflict⁷¹.
- 4.6.5 In regard to survivors of gender-based violence (GBV) accessing healthcare, the WHO cited its 2015 baseline assessment on Afghanistan, which highlighted major weaknesses in health service provision to GBV survivors⁷². WHO noted, in its 2019 report 'Only 10% of facilities are well prepared to address GBV: only a quarter of the 280 health facilities surveyed had private examination rooms and only 2% had a protocol in place for GBV care. The assessment also showed major gaps in health care providers' knowledge and attitudes about the health consequences of GBV and the role of health care providers in helping survivors.'⁷³
- 4.6.6 However, in its 2019 report to the UNCEDAW, the Government of Afghanistan stated 'Family support centres are inside the hospitals so that women can access these services without fear and suspicion by the families and society. Since movement of women to and from public places is limited due to family restriction and control such easy access to services and low risk of visibility is very important for survivors of violence.'⁷⁴
- 4.6.7 According to the December 2019 UNOCHA report, 15% of nurses and 2% of medical doctors were female. Despite having one of the highest fertility rates in the world, there are only 37 dedicated maternity hospitals⁷⁵. The UNOCHA report added 'Women and girls particularly face additional challenges in accessing healthcare. The combination of restrictions on men providing medical treatment to women and a shortage of women health professionals (particularly in rural areas), compromises their access to sustained and quality healthcare.'⁷⁶
- 4.6.8 In its 'Concluding observations' the UNCEDAW, published in March 2020, the Committee found:
- 'The Committee commends the State party on its efforts to reduce maternal mortality and strengthen access to family planning. It also welcomes that the State party trained and deployed female health personnel and midwives to remote areas. The Committee is deeply concerned about the disproportionate impact of conflict on women's healthcare. The Committee also remains deeply concerned about the persistent high maternal mortality rate in the State party and women's limited access to health care, in particular sexual and reproductive health services and information, especially in rural and remote areas. It also notes with concern:

⁶⁹ WHO, 'Afghanistan Country Office 2019' (page 21), 2019, [url](#).

⁷⁰ WHO, 'Afghanistan Country Office 2019' (page 22), 2019, [url](#).

⁷¹ UNCEDAW, 'Third periodic report submitted by Afghanistan...' (para 163), 24 January 2019, [url](#).

⁷² WHO, 'Afghanistan Country Office 2019', 2019, [url](#).

⁷³ WHO, 'Afghanistan Country Office 2019' (page 22), 2019, [url](#).

⁷⁴ UNCEDAW, 'Third periodic report submitted by Afghanistan...' (para 181), 24 January 2019, [url](#).

⁷⁵ UNOCHA, 'Humanitarian Needs Overview Afghanistan' (page 62), December 2019, [url](#).

⁷⁶ UNOCHA, 'Humanitarian Needs Overview Afghanistan' (page 62), December 2019, [url](#).

- a) The limited access to health services for women with disabilities;
- b) The high number of women who suffer from obstetric fistula due to obstructed labour
- c) The lack of comprehensive sexuality education and limited access to family planning and modern forms of contraception;
- d) The lack of gender-sensitive mental health services and facilities to provide quality psychological and psychosocial assistance to women with mental health challenges.⁷⁷

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4.7 Reproductive rights

- 4.7.1 In its report to the UNCEDAW, the Government of Afghanistan noted that family planning and child spacing services, in the form of counselling and providing methods, were offered in all health centres⁷⁸.
- 4.7.2 As noted in the 2019 OECD SIGI report, ‘Abortion is a criminal offense, except if it is to save the life of the mother, under the Criminal Code of 1976 and the Penal Code of 1976 determines fine or imprisonment for those who perform it. This punishment is increased for a medical practitioner, and a woman can be imprisoned or fined should she consent to, or induce, her own abortion (UN, 2017).’⁷⁹ On its map of world abortion laws, current as of 26 April 2019, the Center for Reproductive Rights noted that abortion was illegal in Afghanistan, unless undertaken to save the mother’s life⁸⁰. Although not referring directly to the ‘new’ Penal Code, the Government of Afghanistan confirmed that abortion was criminalised, in its report to the UNCEDAW⁸¹. It also noted ‘All the women who have an abortion have free access to family planning services including awareness raising, counselling and access to methods for family planning.’⁸²
- 4.7.3 According to the USSD HR Report 2018, ‘There were no reports of coerced abortion or involuntary sterilization.’⁸³

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4.8 Marriage, divorce, inheritance and guardianship

- 4.8.1 The DFAT report described Afghan family law (the Civil Code), which governs matters relating to family, including marriage, divorce and inheritance. The report noted:

‘This law provides some important protections to women in child custody, inheritance and divorce rights. However, it also allows women to marry at the age of 16, in contravention of the Convention on the Rights of the Child (to which Afghanistan is a signatory), which specifies 18 as the minimum marriage age for both sexes. Women’s rights organisations have criticised

⁷⁷ UNCEDAW, ‘Concluding observations on the third periodic report...’ (para 46), 2 March 2020, [url](#).

⁷⁸ UNCEDAW, ‘Third periodic report submitted by Afghanistan...’ (para 156), 24 January 2019, [url](#).

⁷⁹ OECD, SIGI Afghanistan (Restricted physical integrity – Abortion), 2019, [url](#).

⁸⁰ Center for Reproductive Rights, ‘World Abortion Map’, 26 April 2019, [url](#).

⁸¹ UNCEDAW, ‘Third periodic report submitted by Afghanistan...’ (para 161), 24 January 2019, [url](#).

⁸² UNCEDAW, ‘Third periodic report submitted by Afghanistan...’ (para 162), 24 January 2019, [url](#).

⁸³ USSD, HR Report 2018 (page 31), 13 March 2019, [url](#).

the law for containing inadequate provisions for the requirement of consent to marriage, and providing unequal rights to divorce and inheritance between men and women. In its November 2018 national report to the UPR [Universal Periodic Review] third cycle, the government advised that the Ministry of Justice had prepared a draft law that would amend the marriage age for both boys and girls to 18 years of age.

‘A separate Shi’a Personal Status Law (2009) governs family law for the Shi’a community [...]. Women’s rights organisations have criticised this law for derogating some constitutional rights for women, instead leaving religious authorities to determine questions around inheritance, marriage and other personal freedoms.’⁸⁴

4.8.2 The Musawah report stated ‘According to women’s advocates, registration of marriages continues to be voluntary and as a result child and forced marriages are more likely to be unregistered. The lack of registration of marriages imposes difficulties on women with regard to their right to seek divorce in addition to their right to a dower (mahr), maintenance and child custody.’⁸⁵

4.8.3 Polygamy is allowed under the Civil Code and Shiite Personal Status Law (SPSL) and Muslim men may have up to 4 wives simultaneously⁸⁶. However, the 2019 OECD SIGI report noted ‘... the conditions set for multiple marriages are not often observed in practice, such as equal treatment of the wives.’⁸⁷ According to the Afghanistan Living Conditions Survey 2016-17, 8.2% of married women live in a polygamous marriage⁸⁸.

See also [Early and forced marriage](#) and [Cultural context: discrimination and inequality](#).

4.8.4 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 4 types of marriage dissolution⁸⁹. 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.’⁹⁰ The Afghanistan Living Conditions Survey 2016-17 stated ‘Because marriage is more of a contract between two families, rather than an emotional relationship between two individuals, the dissolution of marriage through divorce is rare.’⁹¹

4.8.5 The 2019 OECD SIGI report noted:

‘Women can only divorce their husbands if he agrees, or for specific reasons; such as long absences; if he causes suffering to her; if he cannot

⁸⁴ DFAT, ‘Country Information Report Afghanistan’ (paras 3.22-3.23), 27 June 2019, [url](#).

⁸⁵ Musawah, ‘Thematic Report on Article 16...’ (page 4), 2020, [url](#).

⁸⁶ Musawah, ‘Thematic Report on Article 16...’ (page 4), 2020, [url](#).

⁸⁷ OECD, SIGI Afghanistan (Discrimination in the Family – More), 2019, [url](#).

⁸⁸ CSO, ‘Afghanistan Living Conditions Survey 2016-17’ (page 36), 2018, [url](#).

⁸⁹ MPIL, ‘Max Planck Manual on Family Law in Afghanistan...’ (pages 71-86), July 2012, [url](#).

⁹⁰ Safe World for Women, ‘To Be Divorced – and Disgraced – in Afghanistan’, January 2014, [url](#).

⁹¹ CSO, ‘Afghanistan Living Conditions Survey 2016-17’ (page 31), 2018, [url](#).

bear children; has a mental illness or cannot pay her living (CEDAW Shadow Report, 2012). Divorces are granted by family court, but as marriage registration is rare, divorce can be hard to achieve as they must first prove they are married, and prove the divorce is justified (CEDAW Shadow Report, 2012). Khol' divorce is another form, where the marriage is terminated after the women pays the monetary price her husband asks, however, the husband can accept the proposal or not. Women in Afghanistan are largely poor and financially dependent, meaning Khol' divorce is rare (CEDAW, 2011). Shia women face similar restrictions under the Shia Personal Status Law, 2009.⁹²

4.8.6 The Musawah report noted 'Divorce rights between Muslim men and women are not equal [...] According to reports by the Afghan government as well as civil society, several factors restrict a wife's right to divorce: Many women are not aware of their right to seek judicial divorce. This is largely because divorce is culturally unfavourable; The lack of access to legal representation for women in family matters; and The fear of losing custody of her children.'⁹³

4.8.7 The same source noted 'Both Sunni and Shia husbands may delegate their unilateral right to divorce to their wives (isma) through a stipulation in the marriage contract, thus permitting her to pronounce talāq upon herself (talāq-i-tafwid), however activists state that this practice is rare as most women have little opportunity to negotiate the contracts prior to marriage.'⁹⁴

4.8.8 The Musawah report stated that, in general, inheritance rights were unequal⁹⁵.

4.8.9 Regarding inheritance, the 2019 OECD SIGI report said:

'Inheritance in Afghanistan depends on the status of religious, statutory or customary laws, which are often overlapping. The Civil Code articles 1993 to 2051 outlay set rules for inheritance shares, where girls and widows have rights of inheritance, depending on number of daughters and sons in the family, and the number of descendants of the deceased wife or husband (Civil Code, 1977). Sharia Law stipulates that daughters inherit half that of a son [...].

'Although legal provisions grant women the right to inherit, few do in practice, due to lack of awareness of rights, lack of law enforcement, and precedence of customary and tribal law. Fear of disownment from her family, risk of discrimination from male tribal councils, "tradition" of awarding their inheritance to their brothers, and poverty causing the view that land must stay with the men to keep in the family (as daughters are married off, potentially to other tribes which would award that tribe greater influence and control) are all factors preventing women from their legal inheritance rights.'⁹⁶

4.8.10 Despite some factors preventing equality of inheritance, The Asia Foundation 2019 Survey noted 'Acceptance of miras, a daughter's

⁹² OECD, SIGI Afghanistan (Discrimination in the Family – Divorce), 2019, [url](#).

⁹³ Musawah, 'Thematic Report on Article 16...' (page 6), 2020, [url](#).

⁹⁴ Musawah, 'Thematic Report on Article 16...' (page 4), 2020, [url](#).

⁹⁵ Musawah, 'Thematic Report on Article 16...' (page 6), 2020, [url](#).

⁹⁶ OECD, SIGI Afghanistan (Discrimination in the Family – Inheritance), 2019, [url](#).

inheritance from her father, continues to be overwhelming, with 89.9% of respondents strongly or somewhat agreeing with the practice, close to last year's 90.2%.⁹⁷

4.8.11 Describing parental authority and guardianship rights, the Musawah report stated:

'Both Sunni and Shia fathers have priority right over the guardianship of their children. For Sunnis, the Civil Code is silent on the person with the priority right over the guardianship of the children in a marriage. Nevertheless, it is implied in the Civil Code that the priority right over the guardianship of the children belongs to father through various provisions as follows:

'(i) Under Article 71(1) of the Civil Code, the father may conclude the marriage of girls between 15 and 16 years of age;

'(ii) Under Article 252, as long as the mother is married, she cannot take the child on a journey without the permission of the father;

'(iii) Under Article 256, the father shall provide maintenance to his son until the son has the power to work and his daughter until she gets married; and

'(iv) Under Article 268, a father has priority guardianship over the property of his children.

'In addition, according to all Sunni schools of law, the father is obliged to provide for education, upbringing, development, health and security of the minor child.

'For Shias, Article 45 of the SPSL specifies that a father and paternal grandfathers have priority right over the guardianship of his children. The exercise of the guardianship rights of the father and grandfather does not require the authorisation of the court.

'A minor's father or paternal grandfather may appoint an alternative guardian to manage the affairs of minors.'⁹⁸

4.8.12 The 2019 OECD SIGI report noted:

'Parental rights are broken down into two stages: custody and guardianship. Women are awarded custody for their children until they reach the age of nine for girls and seven for boys, when the father become the legal guardian, or grandfather in the second instance, provided the father has not appointed an executor (Civil Code, 1977. Art 249). During the custodial period if the mother should die or become incapacitated than the responsibility passes to her relatives. Guardianship is so defined as legally being responsible for education, upbringing, development, health and security of the child...'⁹⁹

4.8.13 The UNAMA/OHCHR report noted:

'The Afghan legal framework largely awards custody of the children to the mother, with certain limits; boys may stay with the mother up until the age of seven and girls up until the age of nine. Despite allowing a mother to have custody for a few years, Afghan tradition and practice generally favour the

⁹⁷ Asia Foundation, 'A Survey of the Afghan People: Afghanistan in 2019' (page 27), 2019, [url](#).

⁹⁸ Musawah, 'Thematic Report on Article 16...' (page 7), 2020, [url](#).

⁹⁹ OECD, SIGI Afghanistan (Discrimination in the Family – Household responsibilities), 2019, [url](#).

father or another male guardian of children for long-term custody. When a marriage is terminated in Afghanistan, the husband is liable to provide maintenance for the iddat (waiting period) only. Maintenance is defined in the law as taking care of the basic needs of the wife. Women have no legal right to reside in the marital home without the consent of the husband and his family. This weakens a woman's position in cases of violence, as raising a complaint, and subsequent dissolution of marriage, would potentially mean losing her home.¹⁰⁰

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4.9 Unaccompanied women and female-headed households

4.9.1 Based on a number of sources, the December 2017 European Asylum Support Office's (EASO) COI report on Afghanistan reported with regards to women being able to live alone:

'Women who are unaccompanied by a male are not commonly accepted by Afghan society, particularly women such as widows, who are seen as a burden or immoral. Divorced women face similar problems from society and displaced girls and women, particularly those without family support are especially vulnerable to gender-based constraints and violence. The notion of a woman living alone in Afghanistan is described by sources as highly uncommon, "unheard of", practically and socially "inconceivable", and not culturally accepted or secure. Dr. Liza Schuster, a sociologist at the University of London (City), who researches deportation and its impacts on returnees to Afghanistan, and who is partially based in Afghanistan for her research, stated that for women, living alone is unsafe, and they move around outside the home in groups. She noted that living alone with children does not offer any protection; women require a male guardian. Additionally, in Afghan society, living alone is assumed to be negatively associated with inappropriate behaviour; people believe that a person who wants to live alone is engaged in suspicious behaviour such as the consumption of alcohol or illicit relations. Sources noted this perception applies to the idea of living alone for both women and men. However, according to Wimpelmann [Torunn Wimpelmann, a development studies scholar focused on gender and justice in Afghanistan¹⁰¹], it is not considered problematic per se for men to be alone to travel, live, or visit with strangers by themselves; while for women, such acts are potentially "criminal".¹⁰²

4.9.2 According to the Afghanistan Living Conditions Survey 2016-17, 45,000 households (1.2%) were headed by women, meaning 212,000 people (approximately 0.72% of the total population at the time of the survey¹⁰³) lived in female-headed households¹⁰⁴, or 0.57% of the total population using a July 2020 estimate¹⁰⁵.

¹⁰⁰ UNAMA/OHCHR, 'Injustice and Impunity...' (page 16), May 2018, [url](#).

¹⁰¹ EASO, 'Afghanistan: Individuals targeted under societal...' (page 55), December 2017, [url](#).

¹⁰² EASO, 'Afghanistan: Individuals targeted under societal...' (pages 61-62), December 2017, [url](#).

¹⁰³ CSO, 'Afghanistan Living Conditions Survey 2016-17' (page 20), 2018, [url](#).

¹⁰⁴ CSO, 'Afghanistan Living Conditions Survey 2016-17' (page 19), 2018, [url](#).

¹⁰⁵ CIA, 'The World Factbook' (Afghanistan – people and society), updated 31 January 2020, [url](#).

4.9.3 According to media reports, it was difficult for single women or female heads of household to rent property without the support of a male family member¹⁰⁶
¹⁰⁷.

4.9.4 According to sources cited in the March 2019 CAB report:

‘There are no legal barriers prohibiting women from travelling by public transport. In practice, however, it is often risky for women to travel alone – not just in the countryside, but also in large cities such as Kabul. In Afghanistan, as a result of the prevailing culture and associated social pressure, women are often accompanied by a mahram [male guardian] outside the home. The idea behind this is that the mahram can support the woman should she experience problems. This pressure is greatest in rural areas and areas under the control of the Taliban and other AGEs.

‘There are few facilities that allow women to travel alone by public transport without the risk of being harassed by men. However, there are buses on which women can take a seat in a separate section. Some employers arrange their own transport for female employees.’¹⁰⁸

4.9.5 The DFAT report noted ‘Women who walk outside unaccompanied by a man often experience abuse or harassment, including physical groping, and are likely to be blamed for the assault.’¹⁰⁹

4.9.6 Referring to single women, the CAB report noted:

‘In Afghanistan it is very unusual to live as a single woman. Women are seen as the property of their father before they become the property of their husband. It is unsafe for women to live alone, and single women move around outside the home in groups. Without male protection, women are at greater risk of being harassed and discriminated against. A single mother can go into the street without being bothered if she is accompanied by a son. Boys from the age of seven can play this role of chaperone.’¹¹⁰

4.9.7 On divorced women and widows, the same source stated:

‘Divorced women find themselves in an insecure situation. Neither Afghan society nor the government sees young divorced women as adults who can function independently of a man. Divorced women may not be able to return to their father’s house, or may be considered a burden to the family. They are sometimes forced to hand over their property, their housing rights and the custody of their children to the man or the man’s family. In the eyes of Afghan society, a widow is a “woman without identity or protection”.

‘Widows are regarded as a burden in Afghanistan because they are seen as an additional economic responsibility. There are estimated to be around 2.5 million widows in Afghanistan. Women are often illiterate and have little or no experience working outside the home, which means they have few opportunities to earn money when their husbands die. At best, they may receive 150 dollars per year from the government if their husband died in

¹⁰⁶ Guardian, ‘What happens to Afghanistan’s left-behind women...’, 14 November 2019, [url](#).

¹⁰⁷ Thomson Reuters, ‘After four decades of war, Afghan widows...’, 22 January 2020, [url](#).

¹⁰⁸ CAB, ‘Country of Origin Report Afghanistan’ (page 90), March 2019, [url](#).

¹⁰⁹ DFAT, ‘Country Information Report Afghanistan’ (para 3.64), 27 June 2019, [url](#).

¹¹⁰ CAB, ‘Country of Origin Report Afghanistan’ (page 91), March 2019, [url](#).

military action. Many Afghan widows survive by doing domestic work in other houses, by begging or by sending out their children to beg.¹¹¹

4.9.8 The CAB report added further:

‘A widow is often completely dependent on her husband’s family. There is a high chance that she will marry an available brother or cousin. Women usually have little say in the matter, although occasionally one will refuse to remarry. When a woman who has lost her husband is forced to remarry, she usually becomes the man’s second or third wife, so that she has a husband who can take care of her family. Women who choose to remarry outside the family risk losing custody of their children. According to the customary law of the Pashtun population group, the woman is part of the estate. When the husband dies, the widow must marry her brother-in-law or cousin.’¹¹²

See also [Marriage, divorce, inheritance and guardianship](#).

4.9.9 In November 2019, Thomson Reuters Foundation reported on the renovation of some public spaces in Kabul, with the focus on making these areas safe from harassment and more accessible to women¹¹³. According to the report ‘In Kabul, there has been a concerted effort to open up more public spaces to women: Bagh-e-Zanana is the city’s only women’s garden, which doubles up as a marketplace for women. Earlier this year, a local cinema began holding weekly women’s-only shows...’¹¹⁴ The report noted that Chihilsitoun Garden admits only women and families on Wednesdays¹¹⁵.

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4.10 Women in public life

4.10.1 The March 2019 CAB report stated:

‘Women encounter obstacles to participation in public life in Afghanistan. MPs, members of the provincial councils, civil servants, journalists, lawyers, police officers, teachers, human rights activists and women working for international organisations faced frequent intimidation, threats and violence. They are seen as “immoral” by some Afghans because they are contravening social norms. Despite this, more women hold a position of power in Afghanistan than ever before.’¹¹⁶

4.10.2 DFAT noted in its June 2019 report:

‘Since the fall of the Taliban, Afghanistan has seen a slow emergence of women’s rights advocates, including high-profile female civil society representatives. Women’s services and protection shelters have gradually spread across the country. However, these are sometimes viewed with suspicion within the conservative culture of rural Afghanistan. The Taliban in particular have long been averse to this trend and have directly targeted women’s rights advocates and female CSO/NGO [civil society organisation/non-governmental organisation] workers. UNAMA has

¹¹¹ CAB, ‘Country of Origin Report Afghanistan’ (page 91), March 2019, [url](#).

¹¹² CAB, ‘Country of Origin Report Afghanistan’ (page 91), March 2019, [url](#).

¹¹³ Thomson Reuters, ‘In war-ravaged Kabul, women throng parks ...’, 18 November 2019, [url](#).

¹¹⁴ Thomson Reuters, ‘In war-ravaged Kabul, women throng parks ...’, 18 November 2019, [url](#).

¹¹⁵ Thomson Reuters, ‘In war-ravaged Kabul, women throng parks ...’, 18 November 2019, [url](#).

¹¹⁶ CAB, ‘Country of Origin Report Afghanistan’ (page 88), March 2019, [url](#).

previously reported that female CSO/NGO workers and those involved in advocating women's rights face a particular risk. In its annual report for 2016, UNAMA documented 54 incidents of targeted and deliberate killings against women civilian casualties carried out by AGEs in that year, a 25 per cent increase compared to 2015.¹¹⁷

For more information on women in public roles, see section 3.3 of the [European Asylum Support Office \(EASO\) Country of Origin Report: Afghanistan – Individuals targeted under societal and legal norms, December 2017](#).

See also the [Country Policy and Information Note on Afghanistan: Anti-government elements \(AGEs\)](#).

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4.11 Lesbian, bisexual and transgender women

4.11.1 For information see the [Country Policy and Information Note on Afghanistan: Sexual orientation and gender identity or expression](#).

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Section 5 updated: 18 February 2020

5. Sexual and gender-based violence

5.1 Overview

5.1.1 A May 2018 report, by the UN Assistance Mission in Afghanistan and the Office of the UN High Commissioner for Human Rights (UNAMA/OHCHR report), noted 'Violence against women – murder, beating, mutilation, child marriage; giving away girls for dispute resolution (baad) and other harmful practices – remain widespread throughout Afghanistan, notwithstanding the Government's concrete efforts to criminalise these practices and establish measures for accountability.'¹¹⁸

See [Approach to and implementation of laws relating to violence against women](#).

5.1.2 In its report covering 2019 events, Amnesty International noted:
'Afghan women and girls continued to face gender-based violence throughout the country, especially in areas under Taliban control. Incidents of violence against women are believed to be significantly underreported. Where they have been reported, there has often been a failure to investigate these attacks, or pressure has been applied on the victims to withdraw their complaints, or mediation has been used to resolve complaints outside of the legal framework and without human rights protections. The perpetrators of the attacks, which included beatings and killings, torture or other ill-treatment, corporal punishments against women for having sex outside marriage, continued to enjoy impunity.'¹¹⁹

5.1.3 The DFAT report noted:

¹¹⁷ DFAT, 'Country Information Report Afghanistan' (para 3.50), 27 June 2019, [url](#).

¹¹⁸ UNAMA/OHCHR, 'Injustice and Impunity...' (page 5), May 2018, [url](#).

¹¹⁹ Amnesty International, 'Afghanistan 2019', 30 January 2020, [url](#).

'Violence against women, particularly domestic violence, is endemic in Afghanistan. A 2010 survey by UN Women found that nearly 90 per cent of Afghan women had experienced physical, sexual or psychological violence in their lifetime, with 62 per cent experiencing multiple forms. DFAT assesses that the findings of this report remain valid. Violence may take the form of kicking, slapping, and beating with weapons such as wire, sticks, and gun butts. Acid attacks occur frequently, with many attributed to armed groups opposed to girls' education and others committed by rejected suitors. Most violent attacks go unreported. Women who seek help to escape sexual or physical violence often face indifference or criminal sanctions for committing "moral crimes" such as adultery or running away from home.'¹²⁰

- 5.1.4 The UN Office for the Coordination of Humanitarian Affairs UNOCHA stated, in its 2020 Afghanistan Humanitarian Needs Overview, that gender-based violence against women was pervasive¹²¹. The report added 'Women across Afghanistan continue to be subject to high rates of violence related to their gender, although this remains difficult to quantify due to suspected under-reporting and overall lack of data.'¹²²

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5.2 Domestic violence

- 5.2.1 The 2015 UN Special Rapporteur reported that spousal and intra-family 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.'¹²³

- 5.2.2 As noted in the USSD HR Report 2018:

'According to NGO reports, millions of women continued to suffer abuse at the hands of their husbands, fathers, brothers, in-laws, armed individuals, parallel legal systems, and institutions of state, such as the police and justice systems.

'Due to cultural normalization and a view of domestic violence as a family matter, domestic violence often remained unreported. The justice system's response to domestic violence was insufficient, in part due to underreporting, preference toward mediation, sympathy toward perpetrators, corruption, and family or tribal pressure. There were EVAW prosecution units in all 34 provinces, and EVAW court divisions operated at the primary and appellate levels in at least 16 provinces. In August Taliban members shot and killed a woman in Jawzjan Province. According to the governor's spokesman, the woman had fled some months earlier to a safe house in Sheberghan city due to domestic violence. She returned home after local mediation but was later shot by Taliban members.'¹²⁴

¹²⁰ DFAT, 'Country Information Report Afghanistan' (para 3.64), 27 June 2019, [url](#).

¹²¹ UNOCHA, 'Humanitarian Needs Overview Afghanistan' (page 5), December 2019, [url](#).

¹²² UNOCHA, 'Humanitarian Needs Overview Afghanistan' (page 13), December 2019, [url](#).

¹²³ UNHRC, 'Report of the Special Rapporteur...' (paragraph 13), 12 May 2015, [url](#).

¹²⁴ USSD, HR Report 2018 (page 30), 13 March 2019, [url](#).

See [Approach to and implementation of laws relating to violence against women](#) and [Access to justice](#).

- 5.2.3 According to Shaharзад Akbar, head of the Afghanistan Independent Human Rights Commission (AIHRC), cited in The New Yorker in December 2019, ‘Regardless of whether they live in Taliban- or government-controlled areas, [...], Afghan women are much more likely to be injured or killed by their own family members than by the war.’ Akbar said ‘The status of women in their homes, the lack of safety from violence and abuse in their own families, is absolutely unacceptable, but it is the reality. We see more reporting – we don’t see more justice...’¹²⁵
- 5.2.4 According to the WPS Index 2019-20, the prevalence of intimate partner violence in Afghanistan was over 40% and exceeded the regional-average rate¹²⁶.

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5.3 Sexual harassment

- 5.3.1 In its report to the UNCEDAW, the Government of Afghanistan noted that it had:

‘... taken various measures to ensure safety of women in the workplaces, such as enforcement of the Law on Prevention of Sexual Harassment in 2016, the Penal Code with specific provisions preventing harassment of women, ensuring human security, physical safety, and psychological safety of women, as well as the draft on Prevention of Discrimination is also prepared. Additionally, in order to ensure safety of women in the workplaces, committees for prevention of harassment are established in most of the government institutions where female victims can register their harassment complaints to be addressed by these committees.

‘In order to ensure the safety of policewomen, in 1395 (2016) MoI [Ministry of Interior] developed a guide on prevention of sexual harassment, with one of its main objectives to ensure the implementation of the Anti-Harassment Law. MoI has also established a total of 86 women councils in the centre and provinces consisted of 1,666 policewomen.’¹²⁷

- 5.3.2 In response, the Women for Justice Organisation (WJO) said:

‘The Anti-Sexual Harassment Committees of the Ministry of Justice, Ministry of Higher Education, Ministry of Labour and Social Affairs and Ministry of Women’s Affairs have not received any complaints of sexual harassment since the enactment of the Law on Prevention of Sexual Harassment in 2016.

‘We are informed that victims of sexual harassment who had initiated complaints to the Committee have had their complaints minimised, with one victim saying that the Committees are “male-dominated”, “they take the sides of men who harass them” and “blame women for their dressing”.’¹²⁸

¹²⁵ New Yorker, ‘Peace Talks, the Taliban, and Afghan Women’s ...’, 19 December 2019, [url](#).

¹²⁶ Georgetown Institute, WPS Index 2019/20 (page 49), 2019, [url](#).

¹²⁷ UNCEDAW, ‘Third periodic report submitted by Afghanistan’ (para 148-149), 24 January 2019, [url](#).

¹²⁸ WJO, ‘Information for the CEDAW Committee 75th Session...’ (page 2), January 2020, [url](#).

- 5.3.3 The USSD HR Report 2018 stated ‘Implementation and enforcement of the law remained limited and ineffective. The AIHRC reported that more than 85 percent of women and children faced various forms of harassment. Women who walked outside alone or who worked outside the home often experienced harassment, including groping, catcalling, and being followed. Women with public roles occasionally received threats directed at them or their families.’¹²⁹
- 5.3.4 As noted in the 2019 OECD SIGI report:
‘In November 2016, the Anti-Harassment of Women and Children Law was passed by parliament, but has yet to be approved by the president. Article 3 of the law defines harassment as “physical contact, illegitimate request, verbal and non-verbal harassment and any other acts that caused psychological, physical damage and humiliated a woman or a child” (Qaane, 2017). The law further defines harassment as “Hostile action or physical contact with women; publication of posters, pictures, audio and video clips that are against ethics; verbal or non-verbal abuse or illegitimate demands; intimidating or abusing a woman by threatening a demotion, transfer, termination, withholding of promotion, or withholding of a positive evaluation” (Qaane, 2017). However, the law also defines physical harassment as “touching the body of a woman who is not mahram” (women which men cannot marry under Islamic Law, i.e. sister, daughter, or his own wife, etc.), meaning that abuse from close family members or husbands is excluded from the definition of physical abuse, providing a loophole for domestic violence (Qaane, 2017). Sexual harassment is wide spread and, although praising this legislation as a step in the right direction, NGOs question the impact it will have.’¹³⁰
- 5.3.5 In its ‘Concluding observations’ the UNCEDAW, published in March 2020, the Committee found ‘The Committee welcomes the endorsement of an internal Ministry for Interior Harassment Complaint Mechanism for Police Women in 2019, by the Minister of Interior. The Committee welcomes that the State party is in the process of drafting its Anti- Women`s Harassment Law. It is concerned, however, that sexual harassment remains prevalent in the State party, in both the public and private sectors.’¹³¹

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5.4 Rape

5.4.1 Though rape was an offence under the law, spousal rape was not¹³². The 2015 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.’¹³³

5.4.2 The USSD HR Report 2018 noted:

‘The new Penal Code criminalizes rape of both women and men. The law provides for a minimum sentence of five to 16 years’ imprisonment for rape,

¹²⁹ USSD, HR Report 2018 (page 31), 13 March 2019, [url](#).

¹³⁰ OECD, SIGI Afghanistan (Restricted Physical integrity – Sexual harassment), 2019, [url](#).

¹³¹ UNCEDAW, ‘Concluding observations on the third periodic report...’ (para 44), 2 March 2020, [url](#).

¹³² USSD, HR Report 2018 (page 29), 13 March 2019, [url](#).

¹³³ UNHRC, ‘Report of the Special Rapporteur...’ (paragraph 13), 12 May 2015, [url](#).

or up to 20 years if one or more aggravating circumstances is present. If the act results in the death of the victim, the law provides for a death sentence for the perpetrator. The new Penal Code also explicitly criminalizes statutory rape and, for the first time, prohibits the prosecution of rape victims for zina (sex outside of marriage). The law provides for imprisonment of up to seven years for aggression to the chastity or honor of a female “[that] does not lead to penetration to anus or vagina”. Under the law rape does not include spousal rape. Authorities did not always fully enforce these laws.¹³⁴

- 5.4.3 The Government of Afghanistan’s report to the UNCEDAW noted ‘The new Penal Code of Afghanistan has been modernized by [...] refining the definition of rape based on more consent requirements ...’¹³⁵ In response, the Women for Justice Organisation (WJO), a non-profit legal aid organisation based in Kabul, Afghanistan, noted ‘Article 636 of the Penal Code on rape does not define rape as a lack of consent, but a presence of force, threat or intimidation.’¹³⁶

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5.5 Early and forced marriage

5.5.1 The Musawah report noted:

‘For both Sunnis and Shias, the minimum legal age for marriage is 16 for females and 18 for males as per Article 70 of the Civil Code and Article 99(1) of the SPSL, respectively. However, marriages below the minimum legal age for marriage are permissible for both sects:

- For Sunnis: Article 71(1) of the Civil Code provides that either a competent father or competent court may permit girls below 16 to marry. Article 71(2) of the Civil Code absolutely prohibits the marriage of girls below 15.
- For Shias: Articles 99(2) and 99(3) of the SPSL provide that a guardian appearing before the court may permit girls and boys below 16 and 18, respectively, to marry if the marriage is considered necessary and in their best interest. The SPSL does not stipulate an absolute minimum age below which a marriage may not be authorised.¹³⁷

- 5.5.2 The same source further noted that ‘According to women’s advocates, registration of marriages continues to be voluntary and as a result child and forced marriages are more likely to be unregistered. The lack of registration of marriages imposes difficulties on women with regard to their right to seek divorce in addition to their right to a dower (mahr), maintenance and child custody.’¹³⁸

- 5.5.3 The State report to the UNCERD noted ‘The Civil Code and the Constitution, deem full consent of both sides as requirement of the marriage. According to the Civil Law of Afghanistan the minimum marriage age for girls is completion of 16 years. However the Family Law which is currently in the

¹³⁴ USSD, HR Report 2018 (page 29), 13 March 2019, [url](#).

¹³⁵ UNCEDAW, ‘Third periodic report submitted by Afghanistan...’ (para 39), 24 January 2019, [url](#).

¹³⁶ WJO, ‘Information for the CEDAW Committee 75th Session...’ (page 5), January 2020, [url](#).

¹³⁷ Musawah, ‘Thematic Report on Article 16...’ (pages 3-4), 2020, [url](#).

¹³⁸ Musawah, ‘Thematic Report on Article 16...’ (pages 4), 2020, [url](#).

process of approval in the parliament foresees the completion of 18 years as the requirement for marriage, both for girls and boys.¹³⁹

- 5.5.4 The 2015 UN Special Rapporteur cited ‘the importance of preserving family honour and girls’ virginity’ as reasons the early marriage of girls, as well as poverty, tradition, culture and religion¹⁴⁰.
- 5.5.5 The Afghan Living Conditions Survey (ALCS) 2016-17 noted ‘Child marriage often compromises a girl’s development by resulting in early pregnancy and social isolation, interrupting her schooling and limiting her opportunities for career and vocational advancement. It is also considered a direct manifestation of gender inequality [...] According to ALCS 2016-17, 28 percent of women currently aged 20-24 were married before age 18 and 4 percent even before age 15...’¹⁴¹
- 5.5.6 The Asia Foundation 2019 Survey described the cultural practices related to women and forced marriage:
- ‘Baad is the traditional practice of giving away a daughter to another party as a penalty or payment to settle a debt or resolve a dispute, grievance, or conflict between families. Because the exchange is usually one-sided, with the bride going to live with the husband’s family, she can often be the target of abuse. Despite awareness campaigns, baad still happens, though according to the Civil and Liberal Initiative for Peace, less frequently as rural areas become more educated. Baddal is the exchange of daughters in marriage between families. This is often a form of forced marriage, and may have economic implications (e.g., there is generally no bride price or dowry involved). [...] There has been a slow, steady decline in acceptance of baad and baddal [...].’¹⁴²
- 5.5.7 Yet the same report provided the following figures:
- ‘This year, 9.3% of respondents strongly or somewhat agree with the practice of baad, giving away a daughter to resolve a dispute, similar to 2018’s 9.5%. There is a slight increase this year in those who strongly or somewhat agree with the practice of baddal, exchange of daughters in marriage between families, (27.2% this year, up from 25.2% in 2018). Acceptance of miras, a daughter’s inheritance from her father, continues to be overwhelming, with 89.9% of respondents strongly or somewhat agreeing with the practice, close to last year’s 90.2%.’¹⁴³
- 5.5.8 The USSD HR Report 2018 noted ‘... international and local observers continued to report widespread early and forced marriages throughout the country,’¹⁴⁴

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¹³⁹ UNCERD, ‘Combined second to sixteenth periodic reports...’ (para 88), 2 January 2020, [url](#).

¹⁴⁰ UNHRC, ‘Report of the Special Rapporteur...’ (paragraph 14), 12 May 2015, [url](#).

¹⁴¹ CSO, ‘Afghanistan Living Conditions Survey 2016-17’ (page XXX), 2018, [url](#).

¹⁴² Asia Foundation, ‘A Survey of the Afghan People: Afghanistan in 2019’ (page 201), 2019, [url](#).

¹⁴³ Asia Foundation, ‘A Survey of the Afghan People: Afghanistan in 2019’ (page 27), 2019, [url](#).

¹⁴⁴ USSD, HR Report 2018 (page 34), 13 March 2019, [url](#).

5.6 'Honour' and 'moral' crimes

- 5.6.1 According to its report to the UNCEDAW, the Government of Afghanistan stated '... running away is not considered as a crime when the victim is leaving home as a result of family violence and abuses and seeking shelter in the judicial institutions, legal services organizations or their relatives' houses.'¹⁴⁵
- 5.6.2 However, the USSD HR Report 2018 noted:
'Police and legal officials often charged women with intent to commit zina (sex outside marriage) to justify their arrest and incarceration for social offenses, such as running away from their husband or family, rejecting a spouse chosen by their families, and fleeing domestic violence or rape, or eloping to escape an arranged marriage. The constitution provides that in cases not explicitly covered by the provisions of the constitution or other laws, courts may, in accordance with Hanafi jurisprudence (a school of Islamic law) and within the limits set by the constitution, rule in a manner that best attains justice in the case. Although observers stated this provision was widely understood to apply only to civil cases, many judges and prosecutors applied this provision to criminal matters. Observers reported officials used this article to charge women and men with "immorality" or "running away from home", neither of which is a crime. Police often detained women for zina at the request of family members.'¹⁴⁶
- 5.6.3 The report added 'Observers continued to report those detained for moral crimes were primarily women.'¹⁴⁷
- 5.6.4 In 2017, the Institute for War and Peace Reporting (IWPR) noted:
'In Afghanistan, women facing forced marriage or domestic abuse have few options. If they escape and ask for help from the police, they face either being returned or imprisoned, as Afghan women who run away from home or refuse to get married are commonly accused of "moral crimes", a vague concept that does not exist in formal law. Sometimes community elders are asked to intervene or host the runaway, but this is only a very short-term solution.'¹⁴⁸
- 5.6.5 Though zina is a criminal offence¹⁴⁹, in its report to the UNCEDAW, the Afghan Government noted it had reduced the penalty for consensual adult zina¹⁵⁰. The CAB report noted 'Zina is a "moral" offence and is seen by Afghan society as deeply shameful. [...] Although both men and women can be prosecuted for zina, it is almost exclusively women who are prosecuted.'¹⁵¹
- 5.6.6 The CAB report added 'Sexual acts outside marriage are widely seen in Afghanistan as a disgrace for the family, putting those involved – including victims of rape by someone outside the family – at risk of rejection, forced

¹⁴⁵ UNCEDAW, 'Third periodic report submitted by Afghanistan...' (para 105), 24 January 2019, [url](#).

¹⁴⁶ USSD, 'HR Report 2018' (page 8) 13 March 2019, [url](#).

¹⁴⁷ USSD, 'HR Report 2018' (page 9) 13 March 2019, [url](#).

¹⁴⁸ IWPR, 'Afghanistan: Women seek refuge in safe houses', 20 April 2017, [url](#).

¹⁴⁹ CAB, 'Country of Origin Report Afghanistan', (page 98), March 2019, [url](#).

¹⁵⁰ UNCEDAW, 'Third periodic report submitted by Afghanistan...' (para 39), 24 January 2019, [url](#).

¹⁵¹ CAB, 'Country of Origin Report Afghanistan', (pages 98 and 99), March 2019, [url](#).

abortion, imprisonment or even death. Victims often do not dare to report sexual or gender-related violence due to social taboos and out of fear of stigmatisation and retribution, including by their own community or family.’¹⁵²

5.6.7 The UNAMA/OHCHR report noted ‘Afghanistan’s 1976 Penal Code stipulated that a person who kills or injures his wife or a relative in order to defend his honour, will not be subject to the punishment for murder or laceration, and instead shall be imprisoned for a period of no more than two years. The 2018 Penal Code does not mention “honour killings” at all and such justification can therefore no longer be used as a mitigating factor for the defendant in murder cases.’¹⁵³

5.6.8 The same report further noted:

‘UNAMA documented 280 cases of murder and “honour killings” of women from January 2016 to December 2017. Of these, 50 cases ended in a conviction of the perpetrator and subsequent prison sentences, representing 18 per cent of documented cases. UNAMA therefore found that the vast majority of murder and “honour killings” of women resulted in impunity for the perpetrator. UNAMA found that enforcement authorities did not take sufficient action in these cases – including in relation to the apprehension of suspects, in breach of their due-diligence obligations to investigate, prosecute and punish those responsible for the crime of murder. The police only forwarded one third of the documented cases over the two-year period to prosecutors. Notwithstanding the alarming levels of impunity documented for those cases which are registered, UNAMA notes that “honour killings” are under-reported in Afghanistan.’¹⁵⁴

5.6.9 The USSD HR Report 2018 noted that honour killings continued during that year¹⁵⁵.

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6. State treatment and attitudes

See also [Legal context](#).

6.1 Approach to and implementation of laws relating to violence against women

6.1.1 The 2019 OECD SIGI report noted that the [Law on Elimination of Violence Against Women \(EVAW\)](#) was enacted in 2009 and criminalises 22 acts of violence against women, which included:

‘... sexual assault; forced prostitution; recording the identity of the victim and publishing it in a way that damages her personality; burning, using chemicals or other dangerous substances; forcing one to burn herself or to commit suicide or using poison or other dangerous substances; causing injury or disability; beating; selling and buying women for the purpose of or on the pretext of marriage; forced marriage; prohibiting from the right of marriage or

¹⁵² CAB, ‘Country of Origin Report Afghanistan’, (page 98), March 2019, [url](#).

¹⁵³ UNAMA/OHCHR, ‘Injustice and Impunity...’ (page 17), May 2018, [url](#).

¹⁵⁴ UNAMA/OHCHR, ‘Injustice and Impunity...’ (page 8), May 2018, [url](#).

¹⁵⁵ USSD, ‘HR Report 2018’ (page 31) 13 March 2019, [url](#).

right to choose spouse; underage marriage; abusing, humiliation, intimidation; harassment/persecution; forced isolation; forced addiction; deprivation of inheritance; prohibiting access to personal property; prohibition from the right to education, work and access to health services; forced labour; marrying more than one wife without observing Article 86 of Civil Code; and denial of relationship.

'Violence also includes psychological violence, as the law is defined as acts which "cause damage to the personality, body, property, and spirit of a woman" (EVAW, 2009). The EVAW outlines punishments for each of the 22 provisions, with varying penalties from six months' imprisonment to the death penalty. Victims' rights include prosecution of the abuser, shelter in a safe shelter, legal and medical aid.'¹⁵⁶

6.1.2 The UNAMA/OHCHR report noted:

'As a specialised law, the EVAW Law refers to the 1976 Penal Code for cases involving rape, injury and/or disability. Other sections of the 1976 Penal Code and the 2018 Penal Code criminalise additional acts of violence perpetrated against women that the EVAW Law does not capture, such as murder and kidnapping. The EVAW Law includes no specific civil remedies (e.g., protection and restraining orders) protecting survivors and their children, de facto exposing them to risk of further violence, nor does it make any reference to mediation. In line with international best practices, effective legal remedies should include specific provisions regulating the custody of children, the right to maintenance after dissolution of marriage and the right to a home, each of which may greatly influence a woman's decision on whether to remain or to escape from an abusive situation.'¹⁵⁷

6.1.3 In its report to the UNCEDAW, the Afghan Government stated that it had undertaken '... various measures for better implementation of the Elimination of Violence against Women Law (EVAW-Law) such as establishment of the institutions, policies and regulations, training of judges, prosecutors, police, and other relevant employees as well as public legal awareness rising programmes on EVAW Law and providing support to the victims of violence.'¹⁵⁸

6.1.4 The same source noted 'All cases of violence against women are investigated and referred to the judicial institutions based on Afghanistan's enforced laws and EVAW Law. The responsible institutions take the cases of violence against women seriously and deal with the offenders in accordance with the enforced laws of the country.'¹⁵⁹

6.1.5 However, the UNAMA/OHCHR report noted:

'In spite of the Government's concrete efforts, UNAMA found that the enforcement of national legislation aiming to protect women from violence remained a challenge. Women's access to justice remained limited and women continued to face inequality before the law. At the same time, the frequent failure of State officials to exercise due-diligence in investigating,

¹⁵⁶ OECD, SIGI Afghanistan (Restricted physical integrity – Violence against women), 2019, [url](#).

¹⁵⁷ UNAMA/OHCHR, 'Injustice and Impunity...' (page 16), May 2018, [url](#).

¹⁵⁸ UNCEDAW, 'Third periodic report submitted by Afghanistan' (para 27), 24 January 2019, [url](#).

¹⁵⁹ UNCEDAW, 'Third periodic report submitted by Afghanistan' (para 87), 24 January 2019, [url](#).

prosecuting and punishing perpetrators, and providing reparations to survivors, contributed to the existing high rate of impunity and strengthened the normalisation of violence against women in the Afghan society.¹⁶⁰

6.1.6 According to the Deputy Attorney General (DAG) for Elimination of Violence against Women, there were 1,626 prosecutions relating to violence against women (VAW) during the first 8 months of 2017. During the same period, the EVAW unit recorded 1,726 cases of VAW¹⁶¹.

6.1.7 Human Rights Watch (HRW) noted, in its annual report on the human rights situation in 2018, that:

‘Entrenched impunity for perpetrators of violence against women continued. Police routinely refuse to register cases, instead telling women who have been the victims of domestic violence to return to their husbands. In May 2018, UNAMA reported that even cases of murder and rape often never reach the courts. Afghan authorities routinely turn victims away or pressure them to accept mediation, a process in which the abuser merely promises not to repeat the crime. UNAMA also reviewed murders of women in so-called honor killings; the vast majority of these were never prosecuted but instead settled through mediation.’¹⁶²

6.1.8 The same report further noted ‘Despite a 2016 pledge from President Ashraf Ghani to end the imprisonment of women accused of running away from their families, in 2018 Afghan police and prosecutors continued to jail women and girls for “moral crimes” that include “running away” from home, and committing or attempting to commit zina (sex outside of marriage).’¹⁶³

6.1.9 The USSD HR Report 2018 also noted:

‘Running away is not a crime under the law, and both the Supreme Court and the Attorney General’s Office have issued directives to this effect, but some local authorities continued to detain women and girls for running away from home or “attempted zina”. The Ministry of Women’s Affairs, as well as non-governmental entities, sometimes arranged marriages for women who could not return to their families.’¹⁶⁴

See [‘Honour’ and ‘moral’ crimes](#).

6.1.10 The same report further noted ‘The penal code criminalizes assault, and courts convicted domestic abusers under this provision, as well as under the “injury and disability” and beating provisions in the EVAW law.’¹⁶⁵ However, the same source added:

‘Prosecutors and judges in remote provinces were frequently unaware of the EVAW law or received pressure to release defendants due to familial loyalties, threat of harm, or bribes, or because some religious leaders declared the law un-Islamic. Female victims faced stringent societal reprisal, ranging from imprisonment to extrajudicial killing. In September police in

¹⁶⁰ UNAMA/OHCHR, ‘Injustice and Impunity...’ (page 6), May 2018, [url](#).

¹⁶¹ Attorney General’s Office, ‘(AGO) EVAW Deputy Reports ..’, n.d., [url](#).

¹⁶² HRW, ‘World Report 2019 – Afghanistan’, 17 January 2019, [url](#).

¹⁶³ HRW, ‘World Report 2019 – Afghanistan’, 17 January 2019, [url](#).

¹⁶⁴ USSD, HR Report 2018 (page 30), 13 March 2019, [url](#).

¹⁶⁵ USSD, HR Report 2018 (page 30), 13 March 2019, [url](#).

Faryab Province arrested a woman who appeared in an online sex video with a self-proclaimed mullah on charges of zina. The mullah, who remains at large, was suspected of sexual exploitation and rape of several women who came to him for help. Interpretations of sharia also impeded successful prosecution of rape cases.¹⁶⁶

6.1.11 HRW noted in its annual report on the human rights situation in 2019 ‘In July [2019], following numerous allegations of sexual harassment, coercion and assault in ministries, the Afghan government formed a special unit within the Afghanistan Independent Human Rights Commission (AIHRC) to investigate reports of sexual harassment and assault against women in public institutions.’¹⁶⁷

6.1.12 In its ‘Concluding observations’ the UNCEDAW, published in March 2020, the Committee noted its concern that:

‘... the Constitution does not refer to specific grounds of discrimination, including gender and sex. The Committee is deeply concerned that the Law on the Elimination of Violence against Women (promulgated by presidential decree in 2009) and the Penal Code (promulgated by presidential decree in 2017), remain to be debated in the House of Representatives of the People. It also notes with concern that, following the adoption of the Penal Code promulgated by presidential decree in 2017, the section on violence against women was removed. The Committee is particularly concerned about discriminatory provisions in the Civil Code (1977), Shi`a Personnel Status Law (2009) on child marriage, divorce, polygamy, divorce, inheritance and guardianship of children, as well as in the Penal Code (adopted by presidential decree in 2017), which criminalizes so called “moral crimes” such as running away from home or adultery.’¹⁶⁸

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6.2 Access to justice

6.2.1 The UNAMA/OHCHR report, dated May 2018, noted ‘Within the existing legal framework, a survivor of violence against women has the right to approach the Department of Women’s Affairs, the Department of Huqooq, the police or the prosecutor’s office to register a complaint.’¹⁶⁹

6.2.2 The same source added:

‘Under the EVAW Law, once the complaint is registered with the police, the police must refer the case to the relevant prosecutor’s office for investigation. Once the prosecutor receives the case, based on a preliminary investigation and prosecutorial discretion, he or she should make a decision to prosecute under the EVAW Law, or the Penal Code, or both. If decision is taken to prosecute, the case should be referred without delay for swift court adjudication. Unless the case involves one of the five serious offences under the EVAW Law [defined as rape, enforced prostitution, publicising the identity of a victim, burning or the use of chemical substances and forced

¹⁶⁶ USSD, HR Report 2018 (page 29), 13 March 2019, [url](#).

¹⁶⁷ HRW, ‘World Report 2020 – Afghanistan’, 14 January 2020, [url](#).

¹⁶⁸ UNCEDAW, ‘Concluding observations on the third periodic report...’ (para 11), 2 March 2020, [url](#).

¹⁶⁹ UNAMA/OHCHR, ‘Injustice and Impunity...’ (page 18), May 2018, [url](#).

self-immolation or suicide¹⁷⁰], a complainant can stop the prosecution, trial or implementation of punishment at any stage by withdrawing her complaint.¹⁷¹

6.2.3 The USSD HR Report 2018 noted, in regard to women accessing the judiciary:

‘Women who reported cases of abuse or who sought legal redress for other matters reported they experienced discrimination within the judicial system. Some observers, including female judges, asserted that discrimination was a result of faulty implementation of law. Limited access to money and other resources to pay fines (or bribes) and the social requirement for women to have a male guardian affected women’s access to and participation in the justice system. Prosecutors and judges in some provinces continued to be reluctant to use the EVAW law, and judges would sometimes replace those charges with others based on the penal code.’¹⁷²

6.2.4 The report also stated:

‘There was a widespread shortage of judges, primarily in insecure areas, leading to the adjudication of many cases through informal, traditional mediation. A shortage of women judges, particularly outside of Kabul, limited access to justice for women. Many women cannot and do not use the formal justice system because cultural norms preclude their engagement with male officials. Only 234 of 2162, or 12 percent, of judges are women.’¹⁷³

6.2.5 Referring to the judiciary in general, the same source added:

‘The formal justice system was stronger in urban centers, closer to the central government, and weaker in rural areas. Courts and police forces continued to operate at less than full strength nationwide. The judicial system continued to lack the capacity to absorb and implement the large volume of new and amended legislation. A lack of qualified judicial personnel hindered the courts. Some municipal and provincial authorities, including judges, had minimal training and often based their judgments on their personal understanding of sharia without appropriate reference to statutory law, tribal codes of honor, or local custom. The number of judges who graduated from law school continued to increase. Access to legal codes and statutes increased, but their limited availability continued to hinder some judges and prosecutors. UNAMA found during an April to July [2018] survey that judges did not have sufficient copies of the new Penal Code.’¹⁷⁴

6.2.6 In its report to the UNCEDAW, the Government of Afghanistan noted it had:

‘... taken practical measures to enhance women’s accessibility to formal justice system such as: establishment of judicial institutions, semi-judicial institution, recruiting women in judicial institutions, capacity development of the institution’s employees, providing public awareness rising on legal matters as well providing legal assistance. The judicial institutions where women who are victims of violence can seek justice consist of EVAW attorneys in 34 provinces as well as special EVAW courts in Kabul and 15

¹⁷⁰ UNAMA/OHCHR, ‘Injustice and Impunity...’ (page 16), May 2018, [url](#).

¹⁷¹ UNAMA/OHCHR, ‘Injustice and Impunity...’ (page 18), May 2018, [url](#).

¹⁷² USSD, HR Report 2018 (pages 31-32), 13 March 2019, [url](#).

¹⁷³ USSD, HR Report 2018 (page 10), 13 March 2019, [url](#).

¹⁷⁴ USSD, HR Report 2018 (page 10), 13 March 2019, [url](#).

provinces. Women can seek justice in criminal courts if no special EAW court exists in the province. Also, the AGO [Attorney General's Office] has established the Deputy Office for EAW, juvenile delinquency, supporting human rights, primary, appeal, and high investigations attorney directorates in the capital and the provinces, and social interrogators' departments for EAW. Women victims can also register their cases and access to justice in the Legal Directorate of the MoJ in the capital or Legal Departments in the provinces, Directorate of Women's Affairs (DoWA) and the AIHRC offices across the country.¹⁷⁵

- 6.2.7 The UNOCHA report noted 'For many GBV survivors reaching available services such as police, the courts and healthcare requires considerable investment of time, resources and determination to overcome socio-cultural barriers...'¹⁷⁶
- 6.2.8 The USSD HR Report 2018 noted:
'Because the formal legal system often was not present in rural areas, local elders and shuras (consultative gatherings, usually of men selected by the community) were the primary means of settling both criminal matters and civil disputes. They also imposed punishments without regard to the formal legal system. UNAMA and NGOs reported several cases where perpetrators of violence against women crimes that included domestic abuse reoffended after their claims were resolved by mediation. For example, UNAMA cited a case where a Taliban court's mediation sent a victim of spousal abuse back to her home, only for her husband to cut off her nose afterwards.'¹⁷⁷
- 6.2.9 The New Yorker reported in December 2019, 'Women are also subject to a patchy and unfair enforcement of Afghanistan's Sharia-based legal system. What sort of treatment they receive from judges often depends on where in the country they live. Some are simply accused of adultery and thrown into jail, without trial, for "moral crimes".'¹⁷⁸
See ['Honour' and 'moral' crimes](#).
- 6.2.10 The Government of Afghanistan's report to the UNCEDAW acknowledged 'some cases of violence against women are unofficially resolved through Jirga and councils. In order to connect with social structures to avoid violation of law and disregard of victim's rights in cases resolved through ethnic Jirgas, the social interrogators department has been established under the Deputy Attorney General's Office for EAW, juvenile delinquency, and supporting human rights.'¹⁷⁹
- 6.2.11 The same source noted that the Ministry of Justice had drafted and reformed the Jirga Law, barring Jirgas from making decisions that violated human rights, specifically in regard to women and children, and also barring decisions on cases of violence against women. The law had yet to be ratified¹⁸⁰.

¹⁷⁵ UNCEDAW, 'Third periodic report submitted by Afghanistan' (para 56), 24 January 2019, [url](#).

¹⁷⁶ UNOCHA, 'Humanitarian Needs Overview Afghanistan' (page 69), December 2019, [url](#).

¹⁷⁷ USSD, 'HR Report 2018' (pages 10-11) 13 March 2019, [url](#).

¹⁷⁸ New Yorker, 'Peace Talks, the Taliban, and Afghan Women's ...', 19 December 2019, [url](#).

¹⁷⁹ UNCEDAW, 'Third periodic report submitted by Afghanistan' (para 46), 24 January 2019, [url](#).

¹⁸⁰ UNCEDAW, 'Third periodic report submitted by Afghanistan' (para 48), 24 January 2019, [url](#).

6.2.12 In the same report, the Government of Afghanistan indicated the barriers and challenges impeding full implementation of the EAW law included ‘... the lack of security, open borders used by the criminals for escape, lack of adequate budget to raise public awareness on the values of the law, and lack of professional staff for the implementation of the law in the relevant government entities such as courts.’¹⁸¹

6.2.13 The UNAMA/OHCHR report noted:

‘UNAMA found that traditional dispute resolution mechanisms continued to pass decisions on cases involving allegations of criminal acts of violence against women, including murder, “honour killings” and the five serious offences - in all provinces of Afghanistan. UNAMA documented multiple incidents where survivors’ families, EAW Law institutions and non-Governmental Organisations referred cases to mediation by these informal mechanisms. As noted above, in many cases, EAW Law institutions either coordinated or participated in the traditional mediation process.

‘In relation to the crime of “honour killings” and murder of women, UNAMA found that the police often failed to forward these cases, particularly “honour killings” cases to prosecutors. UNAMA notes that the failure of law enforcement authorities to take action in “honour killings” and murder cases of women and girls undermines efforts to promote the rights of women, erodes the rule of law, contributes to an expectation of impunity, discourages the reporting of these cases and increases citizens’ perception of a corrupt and unreliable justice system in Afghanistan.

‘UNAMA highlights that the wide use of mediation in criminal offences of violence against women promotes impunity, enables the reoccurrence of violence and erodes trust in the legal system. Where the five serious offences under the EAW Law and murder and “honour killings” were mediated by authorities or by others with the acquiescence of the authorities, this amounted to a direct breach of the EAW Law, the Penal Code, and constituted a human rights violation on the part of the State.’¹⁸²

6.2.14 The same source further found with respect to mediation that:

‘UNAMA documented consistent patterns countrywide of women routinely subjected to pressure by authorities, family members and perpetrators to withdraw their criminal cases and consent to resolving these issues through mediation. Such patterns highlight the underlying imbalance of power relations in Afghan society, which place women in a subordinate position and which is perpetuated in the mediation of cases of violence against women, irrespective of whether State or non-State actors manage the mediation process. Thus, the use of mediation, which presumes in theory that both parties have equal bargaining power, is unsuitable for the resolution of criminal offences of violence against women, and does not offer women the necessary robust legal protection of their rights.

‘UNAMA further found that the use of mediation in criminal offences of violence against women in Afghanistan is unregulated and involves varying standards of conduct and care. In spite of the large number of cases

¹⁸¹ UNCEDAW, ‘Third periodic report submitted by Afghanistan’ (para 33), 24 January 2019, [url](#).

¹⁸² UNAMA/OHCHR, ‘Injustice and Impunity...’ (page 6/7), May 2018, [url](#).

resolved through mediation, there are no policies on minimum standards of mediation, resulting in a great disparity of standards, procedures, referral of cases by ERAW institutions and capacity of the mediators. Furthermore, there is no code of conduct or certification for mediators.¹⁸³

6.2.15 In its 'Concluding observations' the UN Committee on the Elimination of Discrimination against Women, published in March 2020, the Committee found:

'The Committee takes note of the draft Conciliation of Civil Disputes Law, which seeks to regulate the jurisdiction of jirgas and shuras, and their relationship with the ordinary courts in the State party. However, the Committee notes with concern:

- a) The referral of many cases of gender-based violence and discrimination against women and girls to informal justice mechanisms (Jirgas and Shuras) for advice or resolution, especially in rural and remote areas;
- b) That decisions of informal justice mechanisms such as Jirgas and Shuras frequently discriminate against women and are non-compliant with the Constitution and the Convention;
- c) The persisting impunity of crimes against humanity, including gender-based violence against women and girls.¹⁸⁴

6.2.16 The Committee further raised it was:

'deeply concerned, however, about the extremely high levels of gender-based violence against women and girls, including conflict-related sexual violence, and the lack of protection for victims and impunity enjoyed by perpetrators of such acts. The Committee is particularly concerned about the:

- a) Absence of provisions criminalizing gender-based violence against women in the Penal Code (promulgated by presidential decree in 2017);
- b) Provision of the Criminal Procedure Law (2014), which puts the onus to request for protection on the victim;
- c) Social stigmatization and judicial bias against women victims of gender-based violence, including sexual violence, as reflected by inappropriate questioning and comments during trial about their sexual behaviour and appearance;
- d) Absence of guidance for the judiciary and law enforcement officers on the application of the Law on Elimination of Violence against Women (promulgated by presidential decree in 2009), and the limited enforcement of the said Law, especially in rural and remote areas;
- e) Underreporting of gender-based violence owing to the subordinate role of women in Afghan society, victims' fear of stigmatization and retaliation by their families and communities;
- f) Failure by the police to register complaints;

¹⁸³ UNAMA/OHCHR, 'Injustice and Impunity...' (page 7), May 2018, [url](#).

¹⁸⁴ UNCEDAW, 'Concluding observations on the third periodic report...' (para 15), 2 March 2020, [url](#).

- g) Failure by judicial authorities to issue written warnings and grant protection orders against perpetrators;
- h) Impunity enjoyed by perpetrators, in particular those of high social rank, and the occurrence of concealment or destruction of evidence and bribery by public officials;
- i) High number of cases of gender-based violence against women and girls resolved through mediation, often without the victim`s consent and offering her no meaningful relief, and the wide use of traditional dispute resolution mechanisms for mediation, including in cases of femicide, which exacerbates impunity, enables the reoccurrence of violence and erodes women`s trust in the justice system;
- j) Concentration of women judges and police officers only in Kabul, Herat, Mazar-e-Sharif and Jalalabad due to insecurity in other regions, the lack of trained female police officers assigned to Family Response Units, and their assignment to clerical tasks;
- k) Lack of a consolidated violence against women and girls database;
- l) Lack of coherent coordination and funding to ensure the implementation of the National Action Plan for the Elimination of Violence against Women (2016-2020).¹⁸⁵

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6.3 Virginty testing

6.3.1 The USSD HR Report stated:

‘The new Penal Code criminalizes forced virginty testing under Article 640 except when conducted pursuant to a court order or with the consent of the individual. Awareness and enforcement of this change remained limited. In July the Ministry of Public Health issued a policy prohibiting health clinics and hospitals from performing virginty tests. There were reports police, prosecutors, and judges continued to order virginty tests in cases of “moral crimes” such as zina. Women who sought assistance in cases of rape were often subject to virginty tests.’¹⁸⁶

6.3.2 HRW noted, in its annual report on the human rights situation in 2018, that:

‘Police and prosecutors also continued to subject girls and women to invasive and scientifically invalid vaginal and anal examinations by Afghan government doctors, purportedly to determine whether a woman or girl is a virgin. Afghan officials claim the government banned the examinations, but officials told Human Rights Watch that the practice remains widespread, with many judges, prosecutors, and police officials routinely ordering “virginty tests”.’¹⁸⁷

¹⁸⁵ UNCEDAW, ‘Concluding observations on the third periodic report...’ (para 25), 2 March 2020, [url](#).

¹⁸⁶ USSD, HR Report 2018 (pages 29-30), 13 March 2019, [url](#).

¹⁸⁷ HRW, ‘World Report 2019 – Afghanistan’, 17 January 2019, [url](#).

7. Assistance available to women

7.1 Women's shelters and protective custody

- 7.1.1 The 2015 Special Rapporteur report stated, '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.'¹⁸⁸
- 7.1.2 The USSD HR Report 2018 noted 'Space at the 28 women's protection centers across the country was sometimes insufficient, particularly in major urban centers, and shelters remained concentrated in the western, northern, and central regions of the country. Some women did not seek legal assistance for domestic or sexual abuse because they did not know their rights or because they feared prosecution or being sent back to their family or the perpetrator.'¹⁸⁹
- 7.1.3 Women for Afghan Women (WAW), a civil society organisation aimed at protecting the rights of women and girls, noted that it had 32 centres (12 Family Guidance Centers, 12 Women's Protection Centers, 4 Children's Support Centers, 3 Transitional Houses and 1 Halfway House) operating in 16 provinces: Badakhshan, Baghlan, Balkh, Herat, Faryab, Jawzjan, Kabul, Kapisa, Kunar, Kunduz, Laghman, Nangarhar, Nooristan, Samangan, Saripul, and Takhar¹⁹⁰.
- 7.1.4 In its report to the UNCEDAW, the Government of Afghanistan stated conditions in women's shelters had improved since 2013, adding:
'Women and children in shelters are provided food and clothes according to the specified norms, with the quality and quantity of the food checked by health inspectors. The women in shelters are provided necessary health facilities and access to legal assistance as well as educational opportunity is provided for those who are students and interested in studying. In case of a request by women, the authorities in the shelters enable their meeting with the family members and relatives.'¹⁹¹
- 7.1.5 According to a 2017 IWPR report, '... the concept of women's refuges remains controversial in deeply conservative Afghanistan. Some argue that they encourage women to leave their families and lead to immoral behavior, and persistent rumours circulate that women are often sexually abused inside the refuges.'¹⁹² Advocates of safe houses denied such allegations¹⁹³.
- 7.1.6 The USSD HR Report 2018 said 'Authorities placed some women in protective custody to prevent violence by family members. They also employed protective custody (including placement in a detention center) for

¹⁸⁸ UNHRC, 'Report of the Special Rapporteur...' (paragraph 65), 12 May 2015, [url](#).

¹⁸⁹ USSD, HR Report 2018 (page 30), 13 March 2019, [url](#).

¹⁹⁰ WAW, 'WAW's work in Afghanistan', n.d., [url](#).

¹⁹¹ UNCEDAW, 'Third periodic report submitted by Afghanistan' (para 94), 24 January 2019, [url](#).

¹⁹² IWPR, 'Afghanistan: Women seek refuge in safe houses', 20 April 2017, [url](#).

¹⁹³ IWPR, 'Afghanistan: Women seek refuge in safe houses', 20 April 2017, [url](#).

women who had experienced domestic violence, if no shelters were available to protect them from further abuse.¹⁹⁴ However, as well as appearing to offer protection to women, the USSD HR Report 2018 stated that sometimes women ended up in prison due to lack of a protection centre in their community, or because they were viewed as committing a 'moral' crime for 'running away'.¹⁹⁵

7.1.7 The March 2019 CAB report, which cited various sources, noted:

'Women who cannot be reunited with their families are often forced to remain in the shelter. The women's shelters are mainly concentrated in the western, northern and central regions of Afghanistan. Because most reception centres are in cities, rural women have difficulty accessing them. The shelters are regarded as highly disreputable, and religious scholars have problems with the idea that there are places where women who run away from home can find shelter. Conservative Afghans view the shelters as Western attacks on Afghan culture. Shelters are also blamed for the disintegration of families and the breakdown of the social order. The authorities have also placed women who were victims of domestic violence in detention centres when there were no shelters available to protect them against further abuse.'¹⁹⁶

See ['Honour' and 'moral' crimes](#).

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Terms of Reference

A 'Terms of Reference' (ToR) is a broad outline of what the CPIN seeks to cover. They form the basis for the [country information section](#). The Home Office's Country Policy and Information Team uses some standardised ToRs, depending on the subject, and these are then adapted depending on the country concerned.

For this particular CPIN, the following topics were identified prior to drafting as relevant and on which research was undertaken:

- Legal context
 - Constitution
 - Statutory provisions
- Social, economic and political rights and attitudes
 - Cultural context: discrimination and inequality
 - Economic participation
 - Political participation
 - Education
 - Access to health
 - Marriage, divorce and inheritance

¹⁹⁴ USSD, HR Report 2018 (page 8), 13 March 2019, [url](#).

¹⁹⁵ USSD, HR Report 2018 (page 30), 13 March 2019, [url](#).

¹⁹⁶ CAB, 'Country of Origin Report Afghanistan', (page 101), March 2019, [url](#).

- Reproductive rights
- Single women
- Women in public life
- LGBT women
- Sexual and gender-based violence
 - Domestic violence
 - Rape
 - Early and forced marriage
 - 'Honour' and moral crimes
- State treatment and attitudes
 - Implementation and enforcement of legislation
 - Access to justice
 - Virginity testing
- Assistance available to women
 - Support centres and shelters

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Version control

Clearance

Below is information on when this note was cleared:

- version **3.0**
- valid from **18 March 2020**

Changes from last version of this note

Updated assessment and country information.

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