

# **A Way to Go: An Update on Implementation of the Law on Elimination of Violence against Women in Afghanistan**



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**United Nations Assistance  
Mission in Afghanistan**



**United Nations Office of the  
High Commissioner for Human Rights**

**Kabul, Afghanistan  
December 2013**



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## Glossary

AGO	Attorney General's Office
AIHRC	Afghanistan Independent Human Rights Commission
ANP	Afghan National Police
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CoEVAW	Commission on Elimination of Violence against Women
DoWA	Department of Women's Affairs
EVAW law	Law on the Elimination of Violence against Women (2009)
FRU	Family Response Unit of the Afghan National Police
Mol	Ministry of Interior
MoJ	Ministry of Justice
MoWA	Ministry of Women's Affairs
NAPWA	National Action Plan for the Women of Afghanistan
OHCHR	Office of the United Nations High Commissioner for Human Rights
UNAMA	United Nations Assistance Mission in Afghanistan

### **Dari, Pashto and Arabic words**

<i>Baad</i>	Giving a woman as restitution for murder, rape or another crime to achieve peace and harmony between families
<i>Badal</i>	Exchange marriages, usually involving the exchange of daughters or sisters as brides
<i>Hudood</i>	Crime regarded as being against God's commands under <i>Shari'a</i> law for which punishment is considered obligatory rather than discretionary. Seven crimes involve <i>Hudood</i> punishments: <i>zina</i> , theft, banditry, defamation, transgression, drinking alcohol and apostasy
<i>Jirga</i>	Gathering of elders
<i>Mahram</i>	A women's husband, or her immediate male relative ( <i>i.e.</i> , father, brother, paternal and maternal uncles and her nephews) with whom marriage is proscribed for her under <i>Shari'a</i> law
<i>Pashtunwali</i>	Traditional, unwritten ethical code followed by Pashtun people
<i>Shari'a</i>	Code of law derived from the Holy Qur'an and the teachings and examples of the Prophet Mohammed

<i>Shura</i>	Local council
<i>Tashkil</i>	Official Government staffing table
<i>Ta'zir</i>	Discretionary sentences or punishments with measures not fixed by <i>Shari'a</i> law
<i>Zina</i>	Sexual intercourse outside of marriage (premarital or extramarital)

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## 1. Executive Summary

*I was 15 when I was forcibly married to someone in an exchange marriage when my brother married my husband's sister [badal]. From the very first day my husband made it clear that he was married to me against his will and he regularly subjected me to violence including beating and abuse. In 2010 he married a second time and forced me to leave the house but my family forced me to return. In 2011 my husband and brother-in-law took me back to my father after severe beatings and told him they will not keep me. I took my complaint to the Afghanistan Independent Human Rights Commission which referred me to a women's protection center. They appointed a lawyer for me. My case was mediated. My husband gave a written statement to the police that he would refrain from violence and I went back with him. Within a month he started beating me again. He tried to kill me when neighbors intervened to save me. I had to leave again. My case has been mediated three times by local elders, shuras, jirgas and the Department of Women's Affairs. My family does not want me to do anything legal as it is considered a shame under Pashtunwali [traditional, unwritten ethical code followed by Pashtun people] and my brother will have to divorce his wife too. I have suffered a lot and I want justice. I don't care about anything else.<sup>1</sup>*

**NAK, age 24, from Nangarhar province, November 2013**

This report<sup>2</sup> examines implementation of the *Law on Elimination of Violence against Women* (EVAW law) from October 2012 to September 2013 by Afghan judicial and law enforcement authorities. The report updates findings presented in UNAMA's December 2012 report *Still a Long Way to Go: Implementation of the Law on Elimination of Violence against Women in Afghanistan* and its previous reports on violence against women and girls in Afghanistan.<sup>3</sup> The report is based on information obtained in 18 of Afghanistan's 34 provinces and highlights the registration and judicial processes followed under the EVAW law by the Afghan National Police (ANP), prosecutor's offices and primary courts in a representative sample of violence against women incidents.

The Government of Afghanistan gave legislative effect to its constitutional commitment to ensure gender equality through enactment of the EVAW law in August 2009.<sup>4</sup> This landmark

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<sup>1</sup> UNAMA interview with NAK, 19 November 2013, Nangarhar province.

<sup>2</sup> All references to this report are intended to be understood as referencing a joint UNAMA/UNOHCHR report.

<sup>3</sup> See, e.g., *Still a Long Way to Go: Implementation of the Law on Elimination of Violence against Women in Afghanistan*, United Nations Assistance Mission in Afghanistan (UNAMA), December 2012, available at <http://unama.unmissions.org/LinkClick.aspx?fileticket=Qy9mDiEa5Rw%3D&ta>; see also *A Long Way to Go: Implementation of the Elimination of Violence against Women Law in Afghanistan*, United Nations Assistance Mission in Afghanistan (UNAMA)/United Nations Office of the High Commissioner for Human Rights (OHCHR), November 2011, available at [http://unama.unmissions.org/Portals/UNAMA/human%20rights/November%2023\\_UNAMA-OHCHR-Joint-Report-on-Implementation-of-EVAW-law-ENG.pdf](http://unama.unmissions.org/Portals/UNAMA/human%20rights/November%2023_UNAMA-OHCHR-Joint-Report-on-Implementation-of-EVAW-law-ENG.pdf); *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*, United Nations Assistance Mission in Afghanistan (UNAMA)/United Nations Office of the High Commissioner for Human Rights (OHCHR), December 2010, available at [http://unama.unmissions.org/Portals/UNAMA/Publication/Harmful%20Traditional%20Practices\\_English.pdf](http://unama.unmissions.org/Portals/UNAMA/Publication/Harmful%20Traditional%20Practices_English.pdf); *Silence is Violence - End Violence against Women in Afghanistan*, United Nations Assistance Mission in Afghanistan (UNAMA)/United Nations Office of the High Commissioner for Human Rights (OHCHR), July 2009, available at <http://unama.unmissions.org/Portals/UNAMA/human%20rights/vaw-english.pdf>.

<sup>4</sup> See *Law on the Elimination of Violence against Women*, Islamic Republic of Afghanistan, 1 August 2009 [hereinafter "EVAW law"]. Article 5 of the EVAW law lists 22 acts the commission of which constitute violence against women: rape; forced prostitution; setting into flames, using chemicals or other dangerous substances; publicizing the identity of a victim in a damaging way; forcing a woman to commit self-immolation; causing injury or disability; beating; selling and buying women for the purpose of or under pretext of marriage; *baad* (giving a woman or girl in settlement of a dispute); forced marriage; prohibiting the choice of a husband; marriage before the legal age; abuse, humiliation or intimidation; harassment or persecution; forced isolation; forced drug addiction; denial of inheritance rights; denying the right to education, work and access to health services; forced labor; and marrying more than one wife without observing Article 86 of the Civil Code. Article 2 lists as the law's objectives "fighting against customs, traditions and practices that cause violence against women contrary to the religion of Islam" and "preventing and prosecuting violence against women." Notably, the EVAW law reinforces the duties of the Afghan National Police to assist victims, protect individuals' rights and freedoms, and detect, combat and investigate crime, by explicitly obliging the police to receive and register complaints of violence against women, deal with them according to the law, and inform the Ministry of Women's Affairs (MoWA) of its actions. The EVAW law also obliges the Government to take protective and supportive measures in favor of victims. It outlines specific obligations for seven Government

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legislation criminalized for the first time in Afghanistan 22 acts of violence against women and harmful practices including child marriage, forcing or prohibiting marriage, forced self-immolation, rape and beating.<sup>5</sup> The law also specified punishments for perpetrators.<sup>6</sup> Under its international human rights treaty obligations,<sup>7</sup> the Government of Afghanistan must act with due diligence to prevent and respond to violence against women, whether committed by State representatives or private individuals and organizations, and ensure that women have the right to equality before the law and equal protection of the law.<sup>8</sup>

UNAMA asserts that periodic evaluation of progress made in the implementation of the EVAW law, reinforced by the Government and international partners in the 2012-13 Tokyo Mutual Accountability Framework agreement<sup>9</sup> is imperative in view of pervasive violence against women in Afghanistan. Widespread harmful practices and violence against women and girls have long prevented women from participating in public life and blocked their voices from being heard in political and decision-making forums including initiatives aimed at promoting peace and reconciliation. Progress in implementing the EVAW law can contribute to improving the realization of women's human rights to enable them to fulfill their crucial and imperative role in the country's political, economic and social development.

The current update found both progress and continuing gaps in the implementation of the EVAW law by judicial and law enforcement institutions in 16 provinces and in Herat and Kabul from October 2012 to September 2013.<sup>10</sup> In UNAMA's sample of 16 provinces, police and

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ministries and establishes a national High Commission for the Elimination of Violence against Women which instructed governments in Afghanistan's 34 provinces to create provincial level EVAW commissions. See Arts. 5 and 26 of the ANP Law, Art. 29(2) of the Interim Criminal Procedure Code and Arts. 7 and 13 of the EVAW law.

<sup>5</sup> See EVAW law, *ibid.* at Art. 5.

<sup>6</sup> See generally *ibid.* at Ch. 3. For certain enumerated crimes such as rape under Art. 17, the EVAW law refers to provisions of the Afghan Penal Code to determine punishment. Other Government measures to address violence against women include the establishment and regularization of the High Commission on Elimination of Violence against Women in June 2010 and creation of its provincial arms; establishment of the Special Prosecution Unit in the Attorney General's Office in March 2010; regulation on shelters in September 2011; regulation on the provision of legal aid; Presidential Decree 45 of July 2012 on the elimination of corruption; the creation of Family Response Units (FRUs) in the Afghan National Police; and establishment of Gender and Human Rights Units in various Government ministries. In April 2013, the Afghan Ministry of Interior (Moi) published its "Ten-Year Vision for the Afghan National Police: 1392-1402." The Vision includes among its aims increasing female personnel in the Afghan National Police force (ANP) and the Moi, with the goal of having women comprise 10 per cent of both institutions by 2023. The Vision also aims to prevent gender-based harassment and violence of female staff. See Islamic Republic of Afghanistan, Ministry of Interior Affairs, *Ten-Year Vision for the Afghan National Police: 1392-1402*, available at <http://www.moi.gov.af/en/page/5718/5729>.

<sup>7</sup> Afghanistan is a State party to the following human rights treaties: the International Convention on Civil and Political Rights (ICCPR); the International Convention on Economic, Social and Cultural Rights (ICESCR); the Convention on the Elimination of All Forms of Racial Discrimination (CERD); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and the Convention on the Rights of the Child (CRC).

<sup>8</sup> See CEDAW Committee General Recommendation No. 19, 11<sup>th</sup> Session, 1992, available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>; see also CEDAW Committee General Recommendation No. 30, UN Doc. CEDAW/C/GC/30, 18 October 2013, available at <http://www.ohchr.org/Documents/HRBodies/CEDAW/GComments/CEDAW.C.CG.30.pdf>; UN General Assembly Declaration on Violence against Women, 1993, UN Doc. A/RES/48/104. Article 4(c) notes that States shall: "Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons."

<sup>9</sup> See *Letter dated 9 July 2012 from the representatives of Afghanistan and Japan to the United Nations addressed to the Secretary-General, Tokyo Mutual Accountability Framework*, UN Doc. A/66/867-S/2012/532, Annex II, available at [http://www.peacewomen.org/assets/file/SecurityCouncilMonitor/Reports/Afghanistan/unama\\_s2012\\_532.pdf](http://www.peacewomen.org/assets/file/SecurityCouncilMonitor/Reports/Afghanistan/unama_s2012_532.pdf).

<sup>10</sup> The 16 provinces where disaggregated data from courts, police and prosecutors was obtained for the current and 2012 reports were: Bamyan, DaiKundi, Parwan, Kapisa, Nangarhar, Kunar, Laghman, Jawzjan, Samangan, Badakhshan, Khost, Paktiya, Paktika, Farah, Badghis and Ghor. Due to the prevailing security situation preventing access to certain regions and lack of systematic data collection by the relevant Government institutions, this report is based on detailed information from these 16 of Afghanistan's 34 provinces. UNAMA's sample of 16 provinces for the current report and its previous report both omit data from Kabul and Herat provinces given that EVAW law implementation has been more intensive in these locations and indicative of different trends. Herat and Kabul are separately assessed, at p. 18, *infra*. The remaining 16 Afghan provinces where UNAMA was unable to obtain data

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prosecutors registered 650 incidents of violence against women with prosecutors using the EVAW law in 109 or 17 per cent of cases and courts applying the law in 60 decisions. In the previous UNAMA report covering the same 16 provinces (October 2011 to September 2012), 470 reported incidents of violence against women were registered to which the EVAW law was applied in 72 or 15 per cent of cases with courts using the law in 52 decisions. Similar to UNAMA's previous findings, the crime of battery and laceration<sup>11</sup> was the most prevalent form of violence against women among the registered cases documented in the current period.

The current report observes that while registration of reported incidents increased by 28 per cent, use of the EVAW law as a basis for indictment increased by only two per cent. Courts this year applied the EVAW law in 60 decisions (55 per cent of 109 indictments filed under the EVAW law) compared to 52 decisions (72 per cent of indictments filed under the EVAW law) last year, a 17 per cent decrease in courts' use of the EVAW law to decide cases in the current period. Of concern, the overall number of criminal indictments filed by prosecutors in violence against women cases under all applicable laws decreased this year despite the rise in reported and registered incidents.

Based on these year-over-year findings, UNAMA observed that encouraging increases in reporting and registration of incidents of violence against women by police and prosecutors did not lead to a similar increase in the use of the EVAW law to resolve cases by prosecutors and courts particularly through criminal prosecution. This suggests that prosecutors and courts lacked sufficient resources to keep up with the increase in registered complaints and as a result mediated or dealt with more cases outside of the judicial process, and/or that prosecutors and courts made a deliberate decision to resolve cases through mediation with fewer cases going to courts for prosecution.

UNAMA highlights that while it is clear developments in EVAW law implementation are occurring the results for Afghan women cannot be more accurately assessed without improved system-wide data collection, tracking and analysis of violence against women incidents from reporting to resolution by police, prosecutors and the courts.

UNAMA's finding of an increase of 28 per cent in the total number of EVAW law incidents registered by Government authorities – 650 – in the 16 provinces over the current period is positive. The increase however should be viewed in the context of 1,019 incidents of violence against women registered by the Departments of Women's Affairs (DoWAs)<sup>12</sup> in 15 of these 16 provinces in the same period; DoWAs registered 1,019 incidents while police and prosecutors together registered 650 incidents.<sup>13</sup> This gap suggests that many Afghan women (and their families) still remained reluctant to approach police and prosecutors with their complaints.<sup>14</sup>

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due to prevailing insecurity or lack of systematic data collection, or both, were: Baghlan, Balkh, Faryab, Ghazni, Helmand, Kandahar, Kunduz, Logar, Maidan Wardak, Nimroz, Nuristan, Panjshir, Saripul, Takhar, Urozgan and Zabul.

<sup>11</sup> See EVAW law, *supra* note 4 at Art. 23.

<sup>12</sup> All 34 provinces in Afghanistan each have one Department of Women's Affairs (DoWA). Provincial DoWAs report to the Ministry of Women's Affairs (MoWa). Under the EVAW law, DoWAs serve as the first contact point for women reporting domestic violence and disputes.

<sup>13</sup> Information covered in this report was received from 15 of 16 provincial offices of the DoWAs, and the figure reflects the current reporting period. Similar information from DoWAs for the previous period (October 2011 to September 2012) was not available. Information was not available to UNAMA to assess whether the incidents of violence against women registered by DOWAs and the incidents registered by police and prosecutors in these 15 provinces were the same incidents, reflected some level of duplication or were different incidents.

<sup>14</sup> Under Afghan law, reporting to law enforcement agencies in cases related to the family is the right of the complainant. Departments of Women's Affairs and the AIHRC can only refer cases to the police and prosecution with the complainant's consent. See EVAW law, *supra* note 4 at Art. 39, stating "Adjudication of law suits and prosecution of perpetrators of crimes stipulated in Articles 22 - 39 of this law shall be done based on the complaint filed by the victim or her attorney." Exceptions to a woman's right to withdraw a complaint at any point are enumerated in the EVAW law at Ch. 3, Arts. 17-21, for serious crimes to which criminal sanction applies as follows: rape; enforced

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A further observation is that in the general context of an estimated total 1,669 (650 + 1,019) incidents of violence against women registered with Departments of Women's Affairs and police and prosecutors in the concerned provinces, UNAMA notes that only 109 cases (seven per cent) went through a judicial process using the EAW law. This indicates that the overall use of the EAW law to indict and prosecute perpetrators of violence against women still remained low in the 16 provinces over the current period.

In Herat province, UNAMA observed comparatively higher rates of reported incidents of violence against women along with proactive implementation of the EAW law compared to other provinces. UNAMA documented however a small overall decrease in registration, prosecution and conviction of incidents of violence against women in Herat in the current period although Herat's Department of Women's Affairs continued to register a higher number of violence against women incidents than other provinces. Prosecutors and police together registered 405 incidents of violence against women compared to 435 in the previous period (October 2011 to September 2012) in Herat, reflecting a small (seven per cent) decrease. Forty-two per cent (172 of 405) of incidents were referred to courts, also a decrease. Most other cases were mediated formally or informally.

In Kabul province, although an overall increase was observed in the number of reported incidents registered by prosecution offices compared to the last period, the number of cases referred to court that used the EAW law as a basis for prosecution remained the same. Police in Kabul registered 255 reported incidents of violence against women during the reporting period, of which 84 (33 per cent) were referred for prosecution. Kabul prosecutors registered 968 incidents of violence against women and referred 205 (21 per cent) of cases to courts. This pattern indicates that while more women were coming forward to register incidents of violence in Kabul, the number of cases that went through the judicial process remained the same as in the previous period.

The report found that the presence of specialized EAW law units within eight prosecution offices<sup>15</sup> appears to have had a positive impact on the registration of violence against women cases in those eight provinces – with more cases registered. In the few provinces where registration was relatively high, however, it was generally limited to provincial city centers.

UNAMA highlights that most incidents of violence against women still remain largely underreported, especially in rural areas, due to social norms and cultural restraints, discrimination against women (leading to wider acceptance of violence against them), fear of social stigma or exclusion and, at times, fear of reprisals and threat to life. Those incidents that reach law enforcement and judicial authorities or receive public attention represent only a small percentage of thousands of incidents of violence against women throughout the country.<sup>16</sup>

The practice of wrongful prosecution and imprisonment of women and girls for “running away” from home also referred to as “attempted *zina*”, often to escape violence, continued in spite of directives from the Supreme Court and the Attorney General to end such practices.<sup>17</sup> For

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prostitution; publicizing the identity of a victim; burning or the use of chemical substances; and forced self-immolation or suicide.

<sup>15</sup> Balkh, Herat, Badakhshan, Nangarhar, Parwan, Kapisa, Bamyán and Kabul are the eight provinces with specialized EAW law prosecution units.

<sup>16</sup> The Afghanistan Independent Human Rights Commission (AIHRC) recorded 2,669 incidents of violence against women between 22 September 2012 and 21 March 2013, and 4,154 incidents between 22 March 2013 and 21 September 2013, for a total of 6,823 incidents between October 2012 and September 2013 (reporting period for this report) in Afghanistan's 34 provinces. AIHRC's data collection is based on six-month periods in the Islamic solar year. The AIHRC's methodology used to arrive at the 6,823 figure includes all recorded violations and does not reflect individual complainants; if one woman reported experiencing four EAW law violations, the AIHRC records her experience as four incidents of violence.

<sup>17</sup> UNAMA observed through field monitoring that women and girls who leave their homes for any reason are often charged with “attempted *zina*” using an interpretation of Article 427 of Afghan Penal Code which sets out aggravating conditions for the crime of *zina*. See Sec. 5.3, *infra* p. 22 for more on “attempted *zina*”; see also note 79, *infra*.

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example, in three provinces the Supreme Court recorded the convictions of 283 individuals (mostly women) for “attempted *zina*” with 71 convictions for both “running away and attempted *zina*” between March 2012 and March 2013. In Takhar province, the court convicted 48 women and young girls for “running away and attempted *zina*.”<sup>18</sup>

UNAMA observed that police were mediating more cases registered under the EVAW law and that large numbers of cases were still resolved through informal dispute resolution mechanisms (*jirgas* and *shuras*). Mediation, whether through informal or formal processes, often did not enforce penal sanctions for perpetrators under the EVAW law and/or the Afghan Penal Code.<sup>19</sup> Through field monitoring, UNAMA observed that mediation of violence against women cases by police in practical terms meant persuading a woman to resolve her case outside the judicial system by highlighting problems she may face in choosing to file a formal case. In many instances of mediation, the perpetrator, his family members and influential persons are called for a “dialogue” which puts immense pressure on a woman complainant to withdraw her case.

The EVAW law does not refer to mediation but permits a woman to withdraw her complaint at any point which in practice facilitates mediation.<sup>20</sup> There is no procedure in Afghan law governing the process of mediation for violations of EVAW law (or any other crimes) by State authorities, but since mediation is culturally emphasized, mediation is often carried out on an *ad hoc* basis by police, prosecutors, courts, Departments of Women’s Affairs, or any other party including *jirgas* and *shuras*.<sup>21</sup> UNAMA observed numerous examples where mediation and informal dispute resolution failed to discourage or penalize violence against women and girls, including serious crimes, through failure to use the EVAW law and/or the criminal process. UNAMA noted that settlements and agreements reached through mediation were often not enforced through adequate and systematic follow-up measures by relevant authorities often leading to further violence against women.

UNAMA also observed that a majority of provincial Commissions on Elimination of Violence against Women (CoEVAWs) were still not fully functioning. With a crucial role and mandate under the EVAW law to coordinate all efforts to address violence against women in their regions, these Commissions would benefit significantly from greater support and oversight from the High Commission on Elimination of Violence against Women in Kabul and from international partners.<sup>22</sup>

UNAMA notes concerns regarding recent efforts to weaken the EVAW law. In May 2013, a Parliamentary debate on the EVAW law was reopened with sections of the law criminalizing forced and child marriage and other provisions deemed “un-Islamic” by some Members of Parliament who proposed removing these provisions from the law.<sup>23</sup>

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<sup>18</sup> UNAMA field monitoring interview, October 2013, Kunduz regional office.

<sup>19</sup> See, e.g., statement of NAK, age 24, a victim of domestic violence from Nangarhar province, *supra* Sec. 1. UNAMA observed many similar incidents throughout its field monitoring covering the current period. See also EVAW law, *supra* note 4 at Ch. 3, which lists serious crimes (Arts. 17-21) including rape to which criminal sanction applies. The crime of rape under Art. 17 of the EVAW law refers to Art. 426 of the Afghan Penal Code for punishment, while punishment for violations of Arts. 18-21 are enumerated under the EVAW law itself.

<sup>20</sup> See EVAW law, *supra* note 4 at Art. 39(2), which states, in relevant part: “The victim may withdraw her case at any stage of judicial proceedings (detection, investigation, trial or conviction) . . . . In this case, the adjudication process and punishment shall be stopped.”

<sup>21</sup> According to Art. 7(2) of the EVAW law, authorities (police, prosecutors and others) are required to register each complaint of violence against women and take appropriate action pursuant to the law. See EVAW law, *supra* note 4. However, mediation and informal dispute resolution mechanisms are culturally preferred to uphold the familial unit, the preservation of which is emphasized in Art. 54 of the Constitution of the Islamic Republic of Afghanistan, *infra* note 48.

<sup>22</sup> The High Commission on EVAW is the body that oversees provincial CoEVAWs.

<sup>23</sup> Issues deemed “un-Islamic” included prohibition of child marriage, forced marriage, and unrestricted access to health care, education and women’s shelters.

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In July 2013, Afghanistan appeared before the United Nations Committee on the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) to present its first State report on CEDAW implementation. The Committee highlighted the many achievements made in women's rights protection in Afghanistan since 2001 including enactment of the EVAW law, other laws promoting women's rights including special temporary measures to advance women's rights and the positive role of Afghan civil society in working towards ending violence against women and promoting women's rights.<sup>24</sup> The Committee expressed concerns about recent developments in Afghanistan's legislative framework, including recent parliamentary proposals that could undermine the EVAW law and continuing reports of violence committed against Afghan women and girls with impunity.<sup>25</sup>

UNAMA's overall findings highlight that Afghan authorities need to do more to build on the gains made so far in implementing the EVAW law. There is a way to go before women and girls will be protected fully from violence through the EVAW law - which continues to require much greater proactive and concerted enforcement by judicial and law enforcement institutions.

UNAMA asserts that police, prosecutors and courts need increased resources and technical and political support and direction from the highest levels of Government to deal adequately with the increase in reporting and registration of violence against women cases documented in this report. Such support could enable these authorities to better meet their obligations under the EVAW law and to do their jobs better.

Increasing demands for justice by Afghan women who are coming forward to report incidents of violence has led to increased registration of such incidents by the police, prosecutors and courts. It is clear however that judicial authorities need to apply the EVAW law – the main legislative tool that currently exists to protect women fully from violence – with much greater frequency to prosecute perpetrators of violence against women and bring them to justice. Only then can Afghan women's demands for justice be met and can Afghanistan move forward on the long road toward ending violence against women.

## 1.1 Recommendations

In its previous two reports UNAMA offered 71 recommendations to enhance and strengthen implementation of the EVAW law. Only four of these recommendations have been implemented by the Government of Afghanistan while another 20 have been partially implemented (see Annex 1). Reasons for slow implementation of previous recommendations may be due to a lack of resources and capacity in the Government, and/or a lack of willingness and support for women's rights on the part of some Afghan authorities at all levels.

Renewing previous recommendations and offering several new recommendations, UNAMA calls on the Government of Afghanistan to take the following short- and long-term measures to improve EVAW law implementation in compliance with its legal obligations and efforts to protect women and girls from violence and harmful practices.

### Short-term Recommendations

- Strengthen the national and provincial Commissions on EVAW to enable them to coordinate all efforts to address violence against women and fulfill their legally prescribed role mandated under the EVAW law, including through oversight and political support by the highest level of the Government. Issue clear instructions to all Government bodies to collaborate and share information with the Commissions.

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<sup>24</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations on the combined initial and second periodic reports of Afghanistan, CEDAW/C/AFG/CO/1-2, 23 July 2013, paras. 10 and 11, available at <http://www.refworld.org/pdfid/51ff5ac94.pdf> [hereinafter "CEDAW Concluding Observations"].

<sup>25</sup> CEDAW Concluding Observations.

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- Fully implement the Attorney General's 2012 directive No. 92/202 which requires prosecutors to ensure that women are not prosecuted for leaving their houses, and review any new cases of women who are imprisoned for "running away" and/or "attempted *zina*" by a joint delegation comprising the AGO, Supreme Court and Ministry of Interior with a timeline for completion and follow up action including release of those women and girls wrongly imprisoned.
  - Issue mandatory instructions for all prosecutors clarifying which types of cases must be criminally prosecuted and which may be mediated and ensure all serious crimes are prosecuted.
  - Develop and implement detailed instructions for police and prosecutors outlining the methodology, criteria, minimum requirements and follow up mechanisms regulating mediation of registered incidents of violence against women. The instructions should specify responsibilities after mediation settlements to be carried out periodically for a minimum period of six months with mandatory follow-up reports.

### Long-term Recommendations

- Put in place a concrete plan within six months which covers the next two-year period to improve implementation of the EVAW law to include the following measures as recommended to Afghanistan by the United Nations Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee) in August 2013 (See Annex II):
  - Establish adequate mechanisms for reporting, registration, investigation and prosecution of violence against women incidents by the police and prosecution and issue periodic instructions and guidelines covering the same;
  - Induct, train and empower policewomen to improve outreach and services to women in the communities, and staff Family Response Units with a sufficient number of policewomen;
  - Issue detailed instructions and monitoring guidelines by the Supreme Court to improve mandatory application of the EVAW law in all relevant cases;
  - Increase financial resources and training with clear terms of reference and guidelines for sub-national EVAW commissions to follow-up on cases and associated services.
- Develop and put in place a comprehensive computerized tracking system at the central level for violence against women cases which includes unified methods of categorization of EVAW law violations, and streamline data-gathering to involve all law enforcement and relevant agencies to monitor EVAW law implementation. This system should be capable of tracking the number of registered cases, along with the actions taken and outcomes or prosecutions. Acknowledging the lack of infrastructure in some provinces, establish a centralized system immediately, with a clear plan to roll out the same system to all provinces. Ensure that information on trends and statistics tracked through this mechanism is made public.
- Facilitate the recruitment of women into all levels of law enforcement agencies (Afghan National Police, Attorney General's Office, courts) including through improved working conditions and protection for police women which can accelerate implementation of EVAW law and encourage more women to report EVAW law violations to female staff.
- Put in place protection mechanisms for all female Government staff through formulating and implementing a zero-tolerance policy against sexual harassment at the work place and related measures.
- Build the capacity of Government institutions working on implementation of the EVAW law to ensure a common understanding of violence against women and the provisions of EVAW law. Training on the EVAW law should be a mandatory element of the training curriculum of police and prosecutor's offices with progress on EVAW law implementation measured semi-annually against defined indicators and publicly reported.

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- Ensure all prosecutors' offices have a specialized EAW unit that is adequately trained, supported and resourced.

#### Recommendations to International Donors

- All major donors should consider increasing support to the Government in implementing the EAW law through channelling development assistance towards commitments made under the Tokyo Declaration on gender equality, women's empowerment and EAW law implementation, and toward recommendations made by the CEDAW Committee to Afghanistan in August 2013.
- Implement a joint monitoring framework with specific indicators to measure progress in these areas that includes incentives for sustained and increased financial support based on demonstrated measurable results by the Government in EAW law enforcement and related measures to end violence against Afghan women and girls.

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## 2. Context 2012-13

With the withdrawal of international troops from Afghanistan and presidential elections underway in 2014, many Afghan communities have expressed concern and anxiety about what lies ahead. Women's groups, civil society organizations and the UN High Commissioner for Human Rights have raised serious concerns about the high risk of rollback and waning attention to women's rights in the context of the current political, economic and security transition in Afghanistan.<sup>26</sup>

UNAMA observed several negative trends in 2013 concerning protection and promotion of women's rights. These have included both legislative developments and new restrictions imposed on women based on certain interpretations of Islam in some regions. For example in Deh-I Salah, Baghlan province, religious scholars along with community elders issued a religious edict prohibiting women from leaving their homes without a *mahram*. In the last week of June 2013, they further prohibited women from going to cosmetic shops.<sup>27</sup> After negotiations, women can now go to cosmetic shops in Deh-I Salah but are only allowed to do so with a *mahram*.<sup>28</sup>

Over the course of 2013, several legislative developments represented setbacks for advancement of women's rights in Afghanistan. The most serious of these was the Parliamentary debate on the EAW law on 18 May 2013. The law was enacted by Presidential Decree in August 2009 and has since been in force. The Parliamentary Commission on Women's Affairs, Civil Society and Human Rights brought the EAW law to the Parliament with the stated purpose of confirming the decree as a law.

This process, however, resulted in a heated debate with sections of the law labeled "un-Islamic" by some members of Parliament. The speaker of the Parliament sent the law back to the Joint Commission of the Parliament for further discussion with the 18 parliamentary committees. Key contentious issues raised as un-Islamic included: prohibition of child marriage, forced marriage, and unrestricted access to health care, education and women's shelters.<sup>29</sup> Some members of Parliament argued that these sections of the EAW law were not compliant with *Shari'a* law.

The parliamentary debate around the EAW law negatively impacted what was already weak implementation of the law in certain parts of the country and highlighted the fragile nature of legislative gains made for women's rights to date in Afghanistan. Uncertainty remains around the future of the EAW law, currently being discussed in the parliamentary committees, and around several of its key provisions that protect women's rights.

In another development, in June 2013 the lower house of the Afghan Parliament, the *Wolesi Jirga*, passed a draft criminal procedure code which includes an article prohibiting relatives from testifying in all criminal cases.<sup>30</sup> This draft provision would make effective prosecution of EAW law cases extremely difficult as in most instances where violence takes place in the domestic sphere, family members are generally the only witnesses to the underlying criminal acts.

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<sup>26</sup> "Violence against women remains endemic, and I have urged the relevant authorities to do their utmost to speed up and improve the implementation of this important law, which President Karzai passed by decree in 2009. I am encouraged by the ready acknowledgement by top Government officials that much more needs to be done, especially in rural areas, and their commitment to pursuing further improvement, I also note the widespread concern among civil society groups that the momentum on advancing women's rights has halted, and indeed may even be regressing." Opening remarks by UN High Commissioner for Human Rights Navi Pillay at a press conference during her visit to Afghanistan, Kabul, 17 September 2013, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13734&LangID=E>.

<sup>27</sup> UNAMA field monitoring, 21 July 2013. North eastern region, Baghlan.

<sup>28</sup> UNAMA field monitoring, November 2013, North eastern region, Baghlan.

<sup>29</sup> As at July 2013 18 shelters for women are operating in Afghanistan, 16 of which are run by NGOs with two managed by Departments of Women's Affairs. UNAMA interview with Deputy Director, UN Women Afghanistan, Kabul, 28 July 2013.

<sup>30</sup> See Article 26 of the draft Criminal Procedure Code of the Islamic Republic of Afghanistan.

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Support for the new provision focused on the need to keep family matters such as violence against female relatives and child abuse private matters to be addressed within the family or community. As of 1 December 2013, the draft law was pending before the upper house of Parliament, the *Meshrano Jirga*.

The Afghan electoral law, passed in July 2013, reduced the quota of seats reserved for women from 25 to 20 per cent. Moreover, the quota no longer applies to electoral positions at the district-level while seats were previously reserved for women to occupy at all levels.<sup>31</sup>

In July 2013, Afghanistan appeared for the first time before the United Nations Committee on the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) and presented its State report. While the Committee welcomed the country's progress on advancing women's rights since 2001, it expressed grave concern regarding recent developments in the legislative framework such as the provision to reduce the quota for women in the electoral law and the proposed recommendations in parliament to weaken the EVAW law.<sup>32</sup>

The Committee urged the Government of Afghanistan to consolidate gains made for women's rights in legislative framework and to make implementation of EVAW law a priority.<sup>33</sup> It asked the Government to provide a two-year interim report on these two issues. The Committee called on Afghanistan to sensitize and ensure law enforcement officers refer for prosecution cases of violence against women and to clearly define which cases must be prosecuted. The Committee recommended that the Government take all necessary steps to ensure that women have access to the formal justice system. It also expressed serious concerns regarding ongoing harmful practices, domestic violence and honor crimes.<sup>34</sup>

Finally, 2013 saw continuing attacks on women in public life. In August 2013, three high-profile women (two senators and a Member of Parliament) and their families were targeted.<sup>35</sup> While Identification of the perpetrators has not been made, the public perception is that the women were targeted because they were public figures. In July and September 2013, in Helmand province, two senior policewomen were killed, Third Lt. Islam Bibi<sup>36</sup> and Second Lt. Nigara.<sup>37</sup> According to local police and prosecutors, investigations into these killings are still underway.<sup>38</sup> On 5 December 2013, another policewoman was shot and killed by unknown armed men in Zaranj, Nimroz province while on her way to work.

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<sup>31</sup> New Election law Gazette No. 1112, 6 August 2013.

<sup>32</sup> See CEDAW Concluding Observations *supra* note 25, at paras. 10 and 11.

<sup>33</sup> States are required to report to the CEDAW Committee on a regular basis every four years, however the CEDAW Committee requested Afghanistan to provide an interim report in two years. See *ibid.* at paras. 11 and 23.

<sup>34</sup> *Ibid.* at paras. 22, 23 and 24.

<sup>35</sup> UNAMA documented increasing numbers of targeted killings and attacks against high profile civilians – both women and men – employed in Government institutions in 2013. See *2013 Mid-Year Report on Protection of Civilians in Armed Conflict*, United Nations Assistance Mission in Afghanistan (UNAMA), available at <http://unama.unmissions.org/LinkClick.aspx?fileticket=EZoxNuqDtps%3d&tabid=12254&language=en-US>.

<sup>36</sup> UNAMA field monitoring, 4 July 2013, Helmand province.

<sup>37</sup> UNAMA field monitoring, 16 September 2013, Helmand province.

<sup>38</sup> UNAMA field monitoring, 2 November 2013, Helmand province.

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### 3. Methodology

Given limited access to some areas of Afghanistan due to the prevailing security situation and lack of systematic country-wide data collection by relevant Government institutions, this report is based on detailed information from 18 of Afghanistan's 34 provinces for the one-year period October 2012 to September 2013 with technical review by the UN Office of the High Commissioner for Human Rights.<sup>39</sup>

The current analysis is intended to update and generally compare developments in UNAMA's December 2012 report *Still a Long Way to Go: Implementation of the Law on Elimination of Violence against Women in Afghanistan*, which documented EAW law implementation for a one-year period from October 2011 to September 2012 in the same 16 provinces. The previous and current reports included additional assessments of EAW law enforcement in Kabul and Herat provinces.<sup>40</sup>

UNAMA consulted with more than 200 Government, judicial and law enforcement authorities involved in the application of the EAW law and obtained information related to registration, investigation, prosecution and application of the EAW law by police, prosecutors and courts. The report is also based on UNAMA Human Rights' monitoring of almost 500 cases of violence against women throughout Afghanistan over the one-year period.

Although the Ministry of Women's Affairs (MoWA) maintains a database to gather information on registration, referral and follow-up of violence against women cases, there is no centralized, harmonized and systematic Government system of official tracking between the Ministries of Interior, Justice and Women's Affairs and the AGO. This situation makes rigorous and accurate data collection and analysis very difficult and impedes formulation of appropriate responsive action.

Heightened insecurity in certain areas and limited resources on the ground also made the process of information gathering challenging. Information from some provinces (e.g., Ghazni, Helmand and Nimroz) was not available due to insecurity while in other provinces Afghan authorities were not cooperative in sharing information with UNAMA. In general, gathering information from the courts in all provinces was particularly difficult. Although assurance was given from the Supreme Court that all required information at the central level would be shared with UNAMA, The Court ultimately made information from only three provinces due to the lack of a comprehensive and functional centralized system.<sup>41</sup>

Weak systems of record-keeping at all levels in Government institutions contributed to challenges in acquiring accurate information on violence against women cases and the Government's response to such cases.

UNAMA gathered information from the ANP, prosecutor's offices and primary courts in the same 16 provinces for the current report and its previous report in addition to Herat and Kabul provinces.<sup>42</sup> Information was also gathered from provincial DoWA offices in 15 of the same 16 provinces (except Jawzjan). Due to prevailing insecurity or the lack of systematic data-collection by Government institutions, or both, UNAMA was unable to obtain information from the ANP, prosecutor's offices and primary courts in the other 16 provinces.

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<sup>39</sup> See list of 16 provinces, *supra* note 10.

<sup>40</sup> See p. 18, *infra*.

<sup>41</sup> The three provinces for which the Supreme Court was able to share its data with UNAMA were Balkh, Herat and Kabul. Most of the data the Supreme Court provided was from March 2012 to March 2013, however, and the Court did not include information on application of the EAW law.

<sup>42</sup> Herat and Kabul are separately assessed, at p. 18, *infra*. See also *supra* note 10.

Police, Prosecution offices, and City Courts	Badakhshan	Badghis	Bamyan	Daikundi	Farah	Ghor	Jawzjan	Kapisa	Khost	Kunar	Laghman	Nangarhar	Paktika	Paktiya	Parwan	Samangan
DoWA offices	Badakhshan	Badghis	Bamyan	Daikundi	Farah	Ghor	Jawzjan, not covered	Kapisa	Khost	Kunar	Laghman	Nangarhar	Paktika	Paktiya	Parwan	Samangan
Provinces not covered in this report	Baghlan	Balkh	Faryab	Ghazni	Helmand	Kandahar	Kunduz	Logar	Maidan Wardak	Nimroz	Nuristan	Pangshir	Sripul	Takhar	Urozgan	Zabul

### 3.1 Legal process for cases of violence against women

Under the EVAW law, a female victim of an enumerated act of violence under the law has the right to approach a Department of Women’s Affairs (DoWA),<sup>43</sup> the AIHRC, the police or the prosecutor’s office. The Departments of Women’s Affairs (DoWAs), AIHRC and the Departments of *Huqooq*<sup>44</sup> often mediate or refer the woman to relevant services, such as a women’s shelter,<sup>45</sup> based on her wish. Each of these institutions in practice attempts to find a solution (resolve the case) through mediation and dialogue.<sup>46</sup> While there is no explicit provision under Afghan law that permits or prohibits mediation in such cases, mediation is often used as a first-step by police and prosecutor’s offices in an attempt to preserve the family unit. Mediation and informal dispute resolution mechanisms are culturally preferred to uphold the familial unit, the preservation of which is emphasized in Art. 54 of the Constitution. However, if the woman decides to pursue the legal path then these institutions will refer her case to police or in many instances to the prosecutor’s office.

A woman can also approach police or the prosecutor on her own. If a woman’s report of violence is registered with the police, and the police do not choose to mediate or refer the matter to traditional dispute resolution, police refer the case to the relevant prosecutor’s office.<sup>47</sup> Once the prosecutor receives the case, based on a preliminary investigation and prosecutorial discretion, the prosecutor makes a decision to proceed with the case under the EVAW law or the Penal Code or both, and may refer the case to court, followed by a trial. During the entire process, the woman complainant can withdraw her case at any point. In practice, any form of withdrawal of cases is usually the result of formal or informal mediation. If a compromise is reached after conviction any sentence imposed will not be executed.<sup>48</sup>

<sup>43</sup> For more on DoWAs, see *supra* note 12.

<sup>44</sup> The General Department of *Huqooq* sits in Kabul and settles disputes arising out of debts, properties, and family of real and legal persons pursuant to the Civil Procedure Code and the Law on the Acquisition of Rights. Provincial Departments of *Huqooq* exist in all of Afghanistan’s 34 provinces.

<sup>45</sup> See *supra* note 29 discussing the lack of available women’s shelters throughout Afghanistan.

<sup>46</sup> See *supra* note 21 on the Afghan Constitutional preference to preserve the family unit.

<sup>47</sup> See *ibid.*

<sup>48</sup> See EVAW law, *supra* note 4 at Art. 39: Adjudication of law suits and prosecution of perpetrators of crimes stipulated in Articles 22 - 39 of this law shall be done based on the complaint filed by the victim or her attorney. (b) The victim may withdraw her case at any stage of judicial proceedings (detection, investigation, trial or conviction) in circumstances mentioned in paragraph 1 of this Article. In this case, the adjudication process and punishment shall be stopped.

Article 476 of the Penal Code of the Islamic Republic of Afghanistan states: (1) In the crimes specified in the chapters (5, 7, 12, 13, 16, 17) of this section, which harms the spouse or one of the roots or branches, filing of the claim or other actions against them are not permitted, except on the basis of the complaints of the person against whom the felony is committed [victim]. Prosecution before issuance of final verdict shall be dropped upon desistence of the person against whom the felony has been committed. (2) If desistence is made after the final decision of the court, execution of the verdict shall be stopped.

Article 54 of the Constitution of the Islamic Republic 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.

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The EVAW law lists five acts of violence against women as “criminal provisions” which include the crimes of rape, enforced prostitution, publicizing the identity of a victim, burning or the use of chemical substances and forced self-immolation or suicide.<sup>49</sup> These five crimes entail penal sanction under the EVAW law and/or the Penal Code, and must be acted on by the State irrespective of a woman’s failure to file a complaint or her subsequent withdrawal of one.<sup>50</sup> Similarly, the crime of murder is dealt with solely under the Penal Code, and not included in the EVAW law while the EVAW law refers to the Penal Code for punishment of rape.

For other crimes such as causing injury or disability, battery or laceration, starvation or selling of women into marriage,<sup>51</sup> the EVAW law states that a woman can withdraw her complaint, which in practice could mean that a woman who was beaten and sustained injuries can be referred to mediation or an informal dispute resolution mechanism. Given the high number of cases resolved through mediation and the cultural emphasis in Afghanistan to mediate, UNAMA asserts that serious crimes of violence against women should as a matter of law, policy and practice always be prosecuted through the formal justice process and not mediated.

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<sup>49</sup> See EVAW law, *supra* note 4 at Ch. 3, Arts. 17-21.

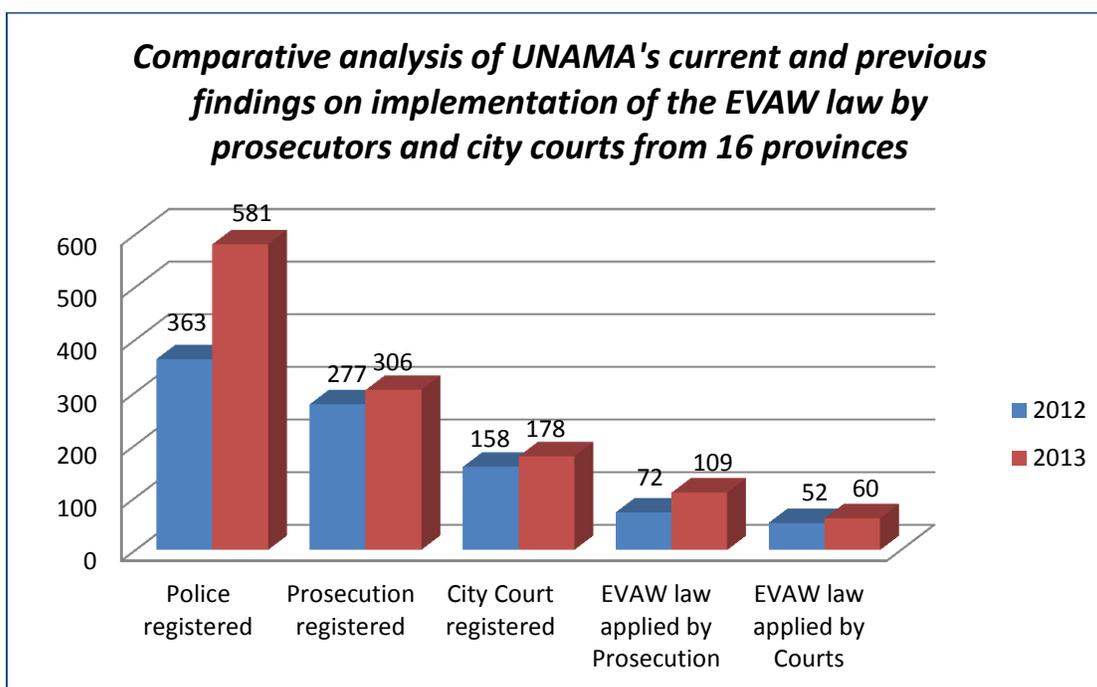
<sup>50</sup> See UNAMA, *Still a Long Way to Go*, *supra* note 3 at p. 10.

<sup>51</sup> See EVAW law, *supra* note 4 at Ch. 3, Arts. 22-24 and 32.

## 4. Findings

*I was married and divorced. My family forced me to re-marry my current husband as his second wife. I work at a Government institution which is not liked by my family. I have a daughter from my current marriage. I was encouraged to put myself forward for public office by my colleagues. I did that. My husband complained to my father and brother that I was talking to foreign men and was promiscuous. They threatened to kill me and my daughter. One evening an unidentified man came to my house. Once I spotted him, he fled but one of the kitchen knives was missing. Later my husband told the neighbors that it was him [who took the knife] with the intention to kill me. Based on my husband's accusation of my immoral conduct, my brother and father called me and beat me severely with a belt and threatened to kill me. I made a complaint to the police but I fear for my life and the life of my daughter. I have nowhere to go. Even if police take action now, I am afraid that as soon as they get a chance my family will kill me.<sup>52</sup>*

**S, age 35, Herat province, October 2013**

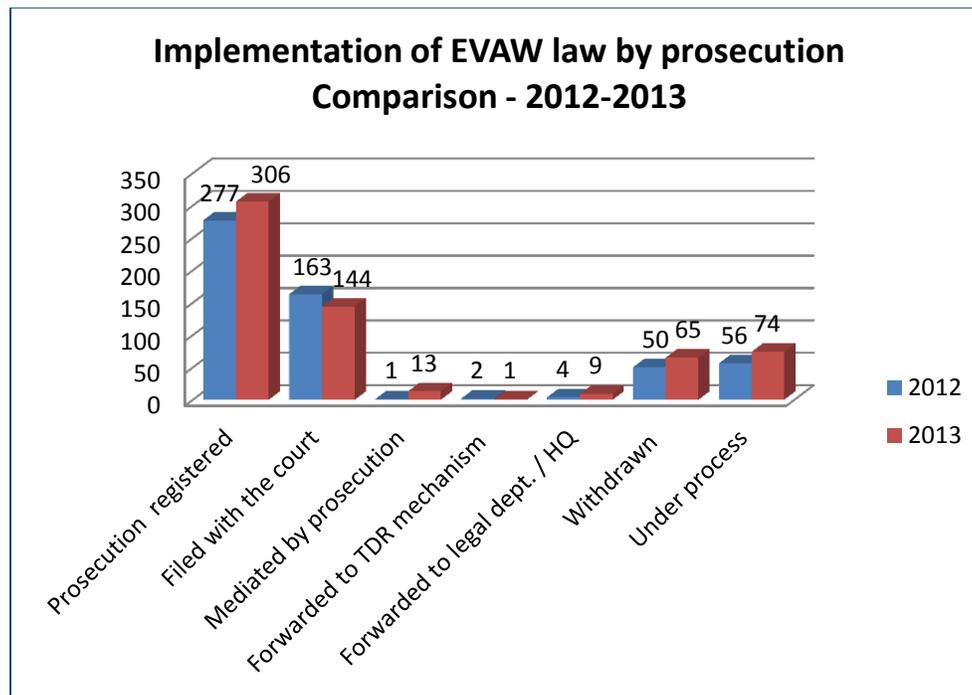


UNAMA observed a significant (62 per cent) increase in the number of incidents of violence against women registered with police compared to the previous period (581 in 2013 compared to 363 in 2012).

The registration of incidents by prosecution and courts increased as well, although less significantly. The application of EAW law by the prosecution showed only a minor increase (two per cent) compared to the last period. This highlights that while more women have come forward to report violence and that authorities registered more incidents, the number of cases applying the EAW law resolved through the judicial process changed little compared to the previous one-year period.

<sup>52</sup> UNAMA interview with S, October 2013, Herat province.

## 4.1 Registration of cases and implementation of the EAW law by prosecuting authorities



- Prosecutors registered 306 cases<sup>53</sup> of violence against women in the 16 provinces during the one-year period for an average of 25 cases registered per month. The prosecution registered 10 per cent more cases this period than last, reflecting a small increase.
- Prosecutors referred 144 cases of violence against women to the courts for trial or close to half of the 306 cases they registered.<sup>54</sup> Thirteen (13) of the remaining 162 cases were mediated by the prosecution, nine were forwarded to the legal department of the Ministry of Justice (MoJ),<sup>55</sup> 65 complainants withdrew their cases and one case was referred to an informal dispute resolution mechanism. At the time of writing, 68 cases were still being processed, four cases could not be located and two were sent to districts. (In the previous period, prosecutors referred 163 cases to the courts for trial, or 59 per cent of the 277 cases they registered).
- In the 16 provinces, prosecutors used the EAW law in 76 per cent of 144 indictments filed. However, this needs to be assessed within the 650 total registered incidents reflecting a two per cent increase in the use of the EAW law by prosecutors compared to the previous period.<sup>56</sup> In the previous period prosecutors applied the EAW in 72 or 15 per cent of reported incidents compared to 109 indictments (17 per cent) under the EAW in 650 registered incidents in the current period.
- 47 per cent of cases registered by the prosecution were referred to court (144 of 306) compared to 59 per cent (163 of 277 registered cases) in the previous period. These

<sup>53</sup> For this report, registration of a reported incident by police or prosecutors means that a complaint was received and a file was opened but does not necessarily mean the prosecutor opened an investigation or that police referred the registered incident to the criminal justice system for prosecution.

<sup>54</sup> Referral by prosecutors to the courts means the prosecutor completed the investigation and sent the case to court for trial.

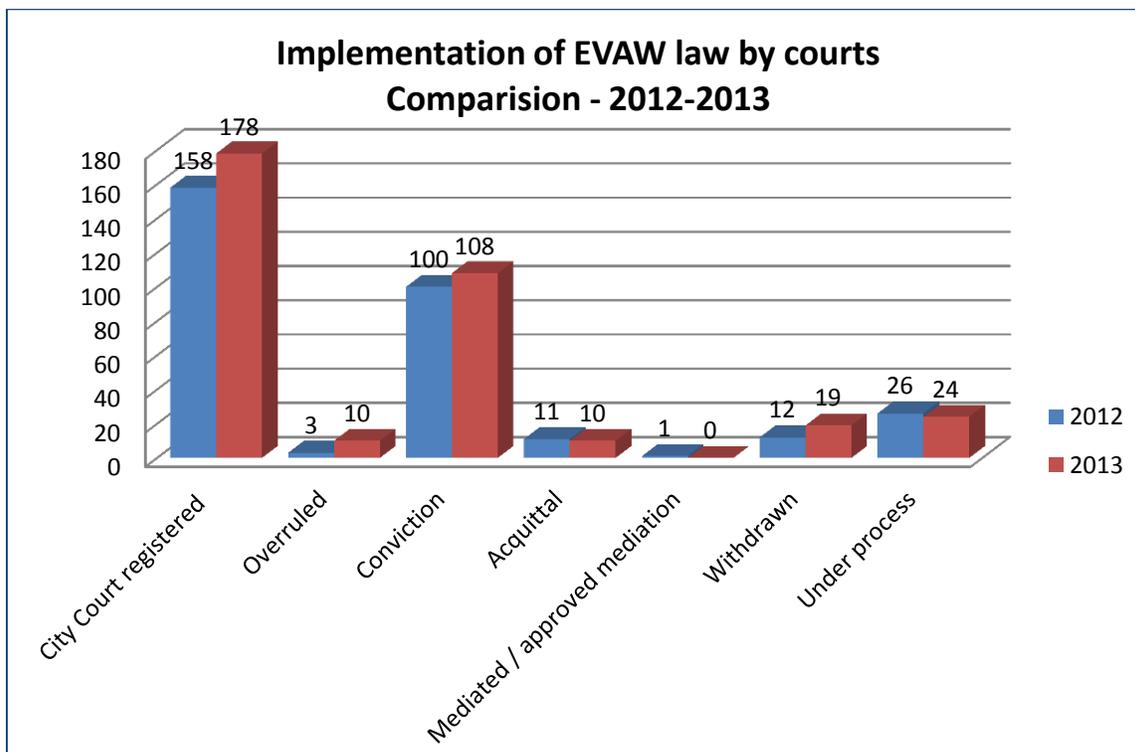
<sup>55</sup> EAW law cases which tend to be forwarded to the MoJ are, e.g., inheritance related disputes. See EAW law, *supra* note 4 at Art. 5 (17) or 33.

<sup>56</sup> From October 2011 to September 2012 the prosecution applied the EAW law in 44 per cent of cases (72 of 163) in the 16 provinces. See UNAMA, *Still a Long Way to Go*, *supra* note 3 at p. 21.

statistics show a decrease of 12 per cent of incidents of violence against women referred to court by prosecutors, which is due in part to an increased reliance on mediation.

UNAMA's findings also indicate that prosecutors, particularly in the eight provinces where specialized EAW law units exist,<sup>57</sup> relied on the EAW law as a basis for prosecution in violence against women cases they referred to courts during the reporting period. For example, Kabul, Balkh, Herat, Badakhshan and Nangarhar provinces all have fully functional EAW prosecution units and UNAMA observed that these offices registered a higher numbers of violence against women cases.

#### 4.2 Registration of cases and implementation of EAW law by courts



- From data obtained in 16 provinces<sup>58</sup> over the one-year period, UNAMA observed that 61 per cent of violence against women cases tried in courts – or 108 of 178 cases – resulted in conviction. In UNAMA's previous report, the same percentage of cases (100 of 158, or 60 per cent) taken to trial over a one-year period resulted in conviction. The courts therefore continued to apply EAW law at the same rate as the previous period.
- UNAMA observed a small increase in the number of cases in which courts relied on the EAW law as a basis for convictions compared to the previous period. Over the recent period, courts used the EAW law in 56 per cent of adjudicated cases – or 60 of 108 cases.<sup>59</sup> In the previous period courts used the EAW law to render decisions in 52 per cent of cases (52 of 100 cases).<sup>60</sup>
- Although the findings are similar to the previous year, it is important to note that the overall number of cases processed by the courts under the EAW law in UNAMA's sample remained relatively small (169 of 650, or 26 per cent of registered cases).

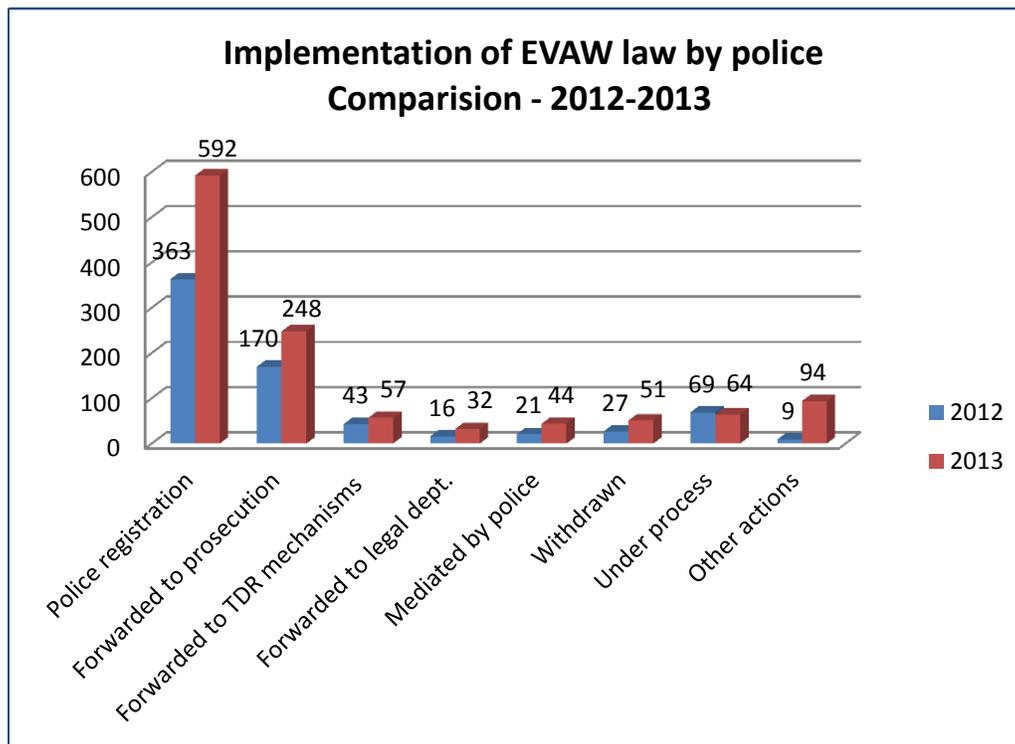
<sup>57</sup> For the list of provinces with specialized EAW law prosecution units, see *supra* note 15.

<sup>58</sup> See list of 16 provinces, *supra* note 10.

<sup>59</sup> See UNAMA, *Still a Long Way to Go*, *supra* note 3 at p. 21.

<sup>60</sup> *Ibid.*

### 4.3 Registration and Handling of incidents of violence against women by Afghan National Police



- For the 16 provinces in the current sample, UNAMA found that the ANP registered a total of 592 reported incidents of violence against women during the reporting period. In the previous period, UNAMA noted 363 registered incidents from the same 16 provinces. This reflects an average increase of 63 per cent in registration of incidents by the ANP over the one-year.
- Police referred 248 of the 592 reported incidents to prosecutor's offices – a small decrease from the previous period (47 per cent previously to 42 per cent currently).
- An increase was observed in the number of incidents of violence against women police mediated. Forty-four (44) cases were mediated by police compared to 21 cases in the previous period.<sup>61</sup>
- Police also referred for mediation similar numbers of incidents registered during the current and previous periods.<sup>62</sup>
- Police referred 57 incidents of violence against women to informal dispute resolution mechanisms. This represents an increase from the previous period where 43 referrals were made (10 per cent of total registered incidents were referred to traditional mechanisms this period, and 12 per cent last year).<sup>63</sup> Fifty-one (51) cases were withdrawn by complainants after registration with the police compared to 27 withdrawals in the previous period.
- These findings show that overall reliance on mediation by the ANP has increased with a slight decrease in referrals by the ANP to informal dispute resolution mechanisms.

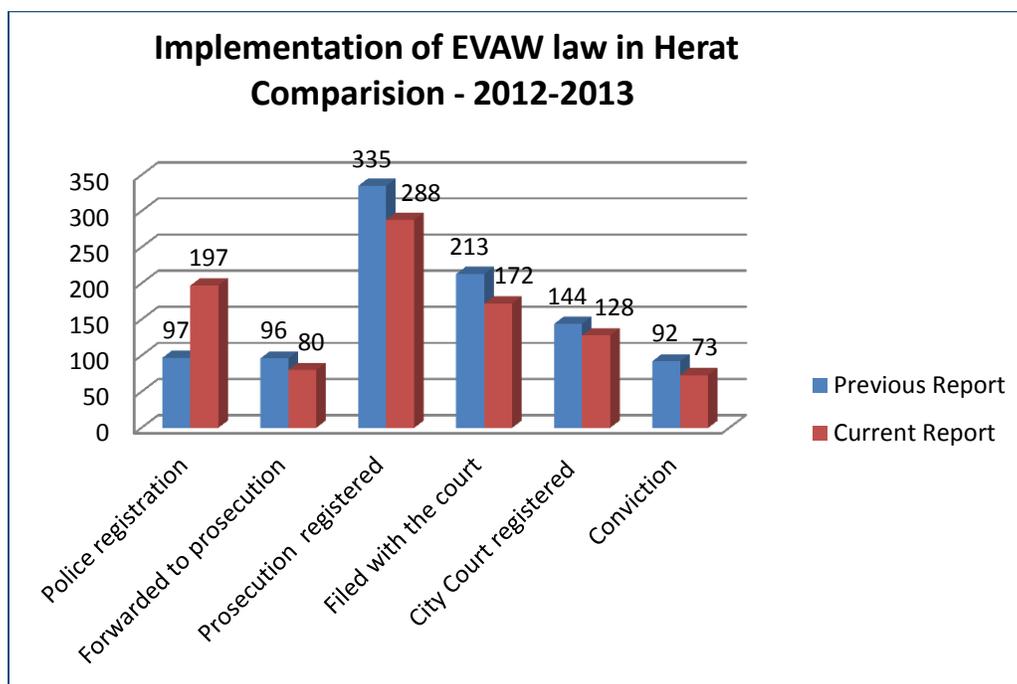
<sup>61</sup> UNAMA noted that in Kabul, police mediated 65 of 170 reported incidents of violence against women. In Nangahar, 27 of 127 incidents of violence against women were mediated by the police. While both Kabul and Nangahar provinces have a specialized EAW prosecution unit, mediation was still relied on in both provinces.

<sup>62</sup> Police referred for mediation seven per cent of the 592 cases they registered under the EAW law this period, and six per cent in the previous period (of a total of 363 cases registered).

<sup>63</sup> UNAMA, *Still a Long Way to Go*, *supra* note 3.

## 4.4 Herat and Kabul

UNAMA observed that Herat and Kabul provinces revealed a significantly different pattern than the rest of the country in implementation of the EVAW law with relatively higher use of the EVAW law.



### Herat Province

UNAMA observed comparatively high rates of reported incidents of violence against women in the last two years in Herat province along with proactive implementation of the EVAW law. However compared to the last reporting period, Herat showed a small overall decrease in registration, prosecution and conviction of incidents of violence against women over the current period. The DoWA in Herat continued to register a higher number of violence against women incidents than other provinces.

In Herat province over the 12-month period, police and prosecution together registered 452 incidents of violence against women compared to 432 cases registered in the previous period. Police alone registered 197 cases of which 80 or 41 per cent were referred to the prosecution with 117 or 59 per cent of cases processed through other systems, such as mediation, or still under process at the time of writing. Last year police in Herat registered 97 cases and referred 96 cases (or 99 per cent) to prosecution. These figures show a large increase in registration of incidents by police with far fewer incidents referred to prosecution indicating increased mediation by police.

Prosecutors registered 288 cases of which 172 or 60 per cent were referred to the court, and 54 or 19 per cent were withdrawn. Prosecutors used the EVAW law as a basis for prosecution in all 172 cases they referred to the court. In the previous period, 335 cases were registered with prosecutor's offices of which 213 or 64 per cent were filed with the court. The current findings show a decrease in both the number of registered cases by the prosecution and in cases filed with the court.

Similar to the prosecution, Herat court records also showed a decrease in the number of cases registered with the court and in the number of cases receiving convictions by the court. During the current reporting period Herat courts registered 128 cases, a 13 per cent decrease

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compared to the previous year, in which they issued convictions in 73 cases or 57 per cent. During the last reporting period, Herat courts registered 144 cases of which 92 cases or 64 per cent resulted in conviction.

Of the overall registered incidents of violence against women, 73 resulted in conviction. This figure should be assessed in the context of the total 693 incidents of violence against women registered by the Department of Women's Affairs in Herat for the 12-month reporting period. The findings indicate that many women in Herat region did not report incidents of violence against them to the formal legal system and instead approached the DoWA for assistance.

An overall decrease was observed in the registration of reported incidents of violence in Herat courts. Only 42 per cent (172 out of 405 incidents) were referred to court. Most other cases were mediated formally or informally. Cases which are listed as withdrawn were also often done so as a result of mediation.

### **Kabul province<sup>64</sup>**

For the reporting period police in Kabul registered 255 cases out of which 84 were forwarded to the court. Three cases were referred to informal dispute resolution mechanisms while 73 were mediated by the police. Twenty-five cases were withdrawn by the complainants,<sup>65</sup> and 20 were referred for other action. Since data for the previous period from Kabul was not provided to UNAMA, it was not possible to make a comparison.

The prosecution registered 968 cases and referred 133 or 14 per cent to court. Two-hundred and five (205) or 21 per cent of cases were withdrawn.<sup>66</sup> One-hundred and eighty-four (184) cases were still under investigation. For the last reporting period, the prosecution referred 101 of 670 or 15 per cent of cases to court and 175 or 26 per cent of cases were withdrawn.

As stated elsewhere, most cases which were not followed-up by complainants or were withdrawn were settled through informal or formal mediation or through informal dispute resolution mechanisms.

Although an overall increase was observed in the number of reported incidents registered by the prosecution in Kabul compared to the last period, the number of cases referred to court remained the same. Any information related to Kabul should be assessed in the context of Kabul as the most highly populated province and, in the absence of census figures, it is difficult to determine whether these numbers represent a higher-level of comparative reporting or not.

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<sup>64</sup> Due to the difficulty in gathering data from Kabul province, a comparative chart was not prepared for this report.

<sup>65</sup> See *supra* note 20.

<sup>66</sup> See *ibid*.

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## 5. Trends

### 5.1 Uneven Progress in Registration and Application of the EVAW law

During the reporting period, UNAMA observed some progress in the registration of incidents of violence against women by law enforcement authorities and the application of the EVAW law by prosecutors and courts compared to previous findings. Prosecutors and police registered more reported incidents of violence against women than in previous years. However UNAMA observed only a small increase in the use of the EVAW law by courts.

In other words, although registration of incidents of violence against women increased significantly, the increase in the number of cases that used the EVAW law resolved through the judicial process was found to be comparatively lower. This could be a result of lack of capacity within the police force and prosecution offices to process increasing numbers of violence against women cases or due to the use of mediation as the key measure for resolving complaints of violence against women. In either scenario, the findings show that a large number of cases were mediated through formal and informal mechanisms.

UNAMA also observed that the EVAW law was not implemented to the same degree in all provinces and where it is implemented, it remained limited to city centers. Law enforcement agencies told UNAMA that most registered cases were from cities, noting very few complaints registered or cases referred from rural and remote areas where the presence of both Government and police Family Response Units is minimal.

UNAMA found that most incidents of violence in rural areas generally, and violence against women in particular, continued to be resolved through informal dispute resolution mechanisms, which in numerous cases imposed sentences detrimental to women. For example in April 2013 in the Abkamary district of Badghis province, a 15-year-old girl was publicly sentenced to death and killed for leaving her house with a man with whom she was involved. The man went into hiding while she was caught and killed. Later when police registered the case, one of the perpetrators was arrested and convicted. This form of justice, where a female minor is publically executed for a sexual relationship outside of marriage, remains widely used and often relied on by the local culture.<sup>67</sup>

Of the 16 provinces in UNAMA's sample, those with specialized EVAW units in prosecutor's offices registered a higher number of cases than those provinces without an EVAW unit. Kabul, Balkh, Herat, Badakhshan and Nangarhar have fully functional EVAW prosecution units and UNAMA observed these offices registered a higher numbers of violence against women cases. Notably however Kabul and Nangarhar also mediated a large number of cases.<sup>68</sup>

Findings also suggest that application of the EVAW law did not mean courts always took decisions in favor of female victims. In some cases the Penal Code appears to have been invoked for the benefit of victims, in particular in instances of rape, which is more explicitly defined in the Penal Code than in the EVAW law. Also, for the crime of "beating," (stipulated under the EVAW law either under Article 22 - causing injury or disability, or Article 23 - battery and laceration<sup>69</sup>), the EVAW law refers to the Penal Code for punishment. As stated earlier, the EVAW law details several acts of violence against women as "Criminal Provisions," including

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<sup>67</sup> UNAMA field monitoring, April 2013 (updated November 2013).

<sup>68</sup> See *supra* note 61.

<sup>69</sup> See EVAW law, *supra* note 4 at Art. 22, causing injury or disability: If a person beats a woman considering the mitigating and aggravating circumstances, the offender in view of the circumstances shall be sentenced in accordance with Article 407 – 410 of the Penal Code. 2. If the acts included in paragraph (1) of this Article results in the death of the victim, the offender in view of circumstances shall be sentenced in accordance with Article 395 - 399 of the Penal Code. Article 23, Battery: If a person beats a woman which does not result in injury or disability, the offender in view of the circumstances shall be sentenced to short term imprisonment not more than three months.

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rape, enforced prostitution, publicizing the identity of a victim, burning or the use of chemical substances and forced self-immolation or suicide.<sup>70</sup> These crimes entail a penal sanction pursuant to the EAW law and/or the Penal Code, depending on the crime, and should be acted on by the State under either the EAW law, Penal Code or both.

UNAMA observed the crime of battery and laceration as the most widespread crime recorded under the EAW law. An increase was also observed in registered cases of self-immolation with the police. The practice of wrongful prosecution and imprisonment of women and girls for “running away” from home often to escape violence continued in spite of Government directives to end the practice (see below section).

## 5.2 Increased Use of Mediation

For the purposes of this report mediation is understood to mean “an attempt to resolve family disputes through mutual agreement and reconciliations between parties” based on the obligation under Article 54 of the Afghan Constitution<sup>71</sup> to protect the institution of the family.<sup>72</sup> In theory, mediation means that both parties should outline their conditions based on their rights guaranteed under Afghan law and sign a written agreement called a “*Tahudnama*” if law enforcement agencies are involved. Given the power imbalance between men and women in Afghan society, it is often not possible for both parties to negotiate equally. Given the cultural norms, extended family and community also often get involved which leads to negotiations conducted based on cultural norms rather than through a legal framework. Law enforcement agencies such as ANP Family Response Units (FRUs) are mandated to mediate as a first step although no criteria or guidelines exist to regulate such mediation.

UNAMA observed police and prosecutors taking an increasing role in resolving EAW cases through mediation. This situation raises concerns regarding capacity as many ANP and prosecution staff engaged in such mediations are not trained or informed about the processes or often the EAW law. Other concerns include potential intimidation due to the positions of such men, and a lack of oversight or follow-up protocol for mediation in general, either in the law or in institutional guidelines.

UNAMA further found that rather than following required legal procedures, the ANP and prosecutor’s offices continued referring cases including serious crimes to informal dispute resolution mechanisms such as *jirgas* and *shuras* for advice or resolution—a practice which often undermined implementation of the EAW law and does not deter harmful practices.<sup>73</sup> For example in Samangan province, 22 of 55 registered cases by police were referred to informal dispute resolution mechanisms during the reporting period. As UNAMA previously reported, decisions resulting from these mechanisms are often influenced by powerful men in local areas applying different procedures and making decisions based on a mix of tradition, varying interpretations of Islamic law and local power relations sometimes contrary to law or religious principles. As a result, vulnerable segments of society, especially women and children sometimes faced further victimization.<sup>74</sup>

In addition, referring authorities have no oversight of mediation or informal dispute resolution mechanisms and women often remained at risk of recurrent violence when they were forced to return to their families following “resolution.” UNAMA’s observation of mediations and informal dispute resolution shows that the practices take place between families and if a woman does not have a supportive family, she is not in a position to negotiate a settlement on her terms and conditions. Law enforcement agencies engaged in mediation also do not receive clear

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<sup>70</sup> See EAW law, *supra* note 4 at Ch. 3.

<sup>71</sup> See Art. 54 of the Constitution of the Islamic Republic of Afghanistan, *supra* note 48.

<sup>72</sup> Meeting with AGO, August 2013; see also Meeting with FRU, September 2013.

<sup>73</sup> See *supra* Sec. 1.

<sup>74</sup> UNAMA, *Still a Long Way to Go*, *supra* note 3 at p. 29.

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guidelines which leaves every individual in the process to interpret procedural standards and apply his or her own interpretation of how to conduct mediations on a case-by-case basis. If mediators belong to law enforcement agencies, they are also perceived as particularly powerful which may unduly influence negotiations.

The Family Response Units (FRUs) of the ANP operational in provincial headquarters and larger districts are mandated to place a priority on mediating incidents reported under the EVAW law. For this reason, FRUs should be staffed with a sufficient number of police women and should receive appropriate training in both women's rights issues and mediation. However as FRUs are not present in all provinces and districts the result is often that regular police officers mediate cases who have neither received formal training nor been sensitized to specific issues in violence against women cases. Moreover, based on Afghan cultural norms and social values, it is generally neither appropriate nor possible for a woman to speak and negotiate in her best interests when all other parties involved in the process are men including police who have authority and power (with weapons) over all the actors.

### 5.3 Running away and attempted *zina*

*I had phone contact with G R for 15 days but I never saw him or knew him. He requested to meet and suggested that if we both like each other then he would propose to marry me through his family. I accepted and went to his house. We met in the guestroom of his house. As soon as I entered, the police came and arrested both of us. My medical examination shows that I am virgin and I did not commit adultery, still my dossier is in court. Judges said that if we marry each other, we will be released soon. He agreed to marry me and both families agreed to the marriage. Based on the judges' request, we have to marry at the court. I am scared to go ahead with this marriage because I don't know the boy very well and he might want to marry me only to be released from jail. If I hadn't been arrested, I would not marry him and I would continue my education.*<sup>75</sup>

**AA, age 17, female detainee charged with attempted *zina*, Kunduz province**

Often when Afghan women and girls leave their homes without permission from their *mahram*,<sup>76</sup> or without providing information to their families about their whereabouts, they are arrested and charged with "running away from home." Afghan authorities investigate and register such cases as "attempted *zina*."

*Zina* is an Arabic term used to describe the prohibition under *Shari'a* law of the act of fornication (engaging in sexual intercourse) outside of marriage. *Zina* is a *Hudood* crime under *Shari'a* law, or a crime regarded as being against God's commands for which punishment is obligatory.<sup>77</sup> However, when *zina* cannot be proven as a *Hudood* crime, meaning there is no evidence of premarital or extramarital sexual intercourse, it is dealt with as a *Ta'zir* crime under the Afghan Penal Code. *Ta'zir* crimes in Islam are those which do not appear in primary sources of Islamic law (*i.e.*, neither in the *Qur'an* nor in the canonical authority of the *Sunnah*). Rather, *Ta'zir* crimes proceed "from the discretionary authority of the sovereign as delegated to the judge."<sup>78</sup>

As noted, "attempt to commit *zina*" is not a distinct or codified crime in the Afghan Penal Code nor is it proscribed under *Shari'a* law. In Afghanistan, the arrest, prosecution and conviction for

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<sup>75</sup> UNAMA field monitoring, September 2013.

<sup>76</sup> A women's husband, or an immediate male relative (*i.e.*, father, brother, paternal and maternal uncles and her nephews) with whom marriage is proscribed for her under *Shari'a* law.

<sup>77</sup> Under *Shari'a* law, *zina* as a *Hudood* offence requires a high level of proof and the act has to have taken place (*i.e.*, intent to commit the act would not suffice). Failing to qualify as a *Hudood* offence, *zina* is covered under Art. 426 of the Afghan Penal Code as a *Ta'zir* crime. However, *zina* is not clearly defined under the Penal Code. Supreme Court Approval No. 527, Sec. 5.3.1, *infra*, is based on an assumption that the act of *zina* might occur, as the woman in question who leaves her home has exposed herself to the possibility. This assumption has no legal basis, as intention alone is not sufficient for the crime of *zina*, as the burden of proof is nearly impossible.

<sup>78</sup> G. Benmelha, "Ta'azir Crimes," in M. CHERIF BASSIOUNI (ED.), THE ISLAMIC CRIMINAL JUSTICE SYSTEM 211-225 (New York: Oceana Publications Inc., 1982).

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“attempted *zina*” occurs based on the discretionary authority of police, prosecutors and judges pursuant to their interpretation of Articles 427 and 29 of the Afghan Penal Code together with, most often, circumstantial evidence of “intent” to commit the crime.

In Afghanistan, the practice of arresting and charging women and girls who leave home with a *Ta’zir* crime is based on Articles 427 and 29<sup>79</sup> of the Afghan Penal Code which, when interpreted together, form the basis for the charge of “attempted *zina*” or the “intent to commit *zina*.” These two articles are interpreted and used together by Afghan authorities to charge women and girls with the intent to initiate the actual crime of *zina*. Under *Shari’a* law, *zina* is a crime irrespective of a woman’s marital status or age.

UNAMA observed through field monitoring that Afghan authorities’ determination of “intent” in *zina* cases is often subjective usually based on circumstantial evidence and often centered on the views of a specific prosecutor or police officer. For example, the circumstance of a woman seated in a public place with a man who is not her *mahram* may be considered a sufficient basis to prosecute and convict her of “attempted *zina*” as determined by a prosecutor using discretionary authority further to interpretation of the two provisions in the Penal Code.

In September 2012, the Afghan Minister of Justice Habibullah Ghalib, Minister of Women’s Affairs Husn Banu Ghazanfar, and former Deputy Interior Minister Mirza Mohammad Yarmand condemned the practice of charging women and girls with “attempted *zina*” and the wrongful imprisonment of women and girls on charges of “attempted *zina*” or “running away.”<sup>80</sup>

### 5.3.1 Supreme Court Approval No. 527

In August 2010, Supreme Court Approval No. 527 was issued to provide guidance to the Office of the Attorney General (prosecutors) in the handling of run-away cases. As such, it was meant to be a positive step; however, in practice little has changed. According to the Approval, courts should assess whether a woman or girl who left her home was single or married, the cause and motive for her having ran away, and the place to which she ran (a relative’s or stranger’s house). However, Approval No. 527 also states that if a woman or girl goes to a stranger’s house, she exposes herself to adultery and other associated offences that are illegitimate under *Shari’a* and thus prohibited and punishable as “attempted *zina*.” This permits authorities, relying on *Hanafi* jurisprudence and applying the Penal Code to continue to charge women with “running away” or “attempted *zina*.”

How this occurs is that Approval No. 527 treats the woman as a suspected criminal by asking prosecutors to determine her purpose for running away rather than accepting the right of any female to leave her house without a *mahram*. This permits investigators to determine a female’s marital status and the place from where she ran. Though her motive for leaving is considered, there is no instruction to investigate the potential perpetrator of violence against her should it be concluded the woman fled her home due to violence. In most cases, unless a woman or girl is able to prove that she left her house to escape violence and went to an institution deemed appropriate (i.e, a DoWA), she is suspected of “attempted *zina*.”

Since Approval No. 527 places a high emphasis on determining intent based on where a woman or girl went after leaving her house, it puts women and girls in highly disadvantaged positions. Many women and girls in Afghanistan also have not had access to education and may

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<sup>79</sup> Article 427(1) of the Afghan Penal Code states, in pertinent part, that “a person who commits adultery or pedasty shall be sentenced to long imprisonment.” Article 29(1) also states, in relevant part, that “the initiation of a crime is starting of an act with the intention of committing felony or misdemeanor but whose effects have been stopped or offset by reasons beyond the control of the doer.”

<sup>80</sup> Special meeting held by the Parliamentary Commission on Women, Human Rights and Civil Society, Kabul, 16 September 2012.

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not be aware of available governmental institutions (e.g., DoWAs) to which they can go when leaving their homes. Moreover, these institutions are not present in all provinces and in many instances are not easy for women and girls to access. UNAMA asserts that women and girls should not be punished for their lack of knowledge of or access to “permitted” Government institutions when fleeing their homes.

### 5.3.2 AGO Communication No. 92/202 on “Running Away”

To reinforce the Supreme Court’s approach, other instructions were issued including the Attorney General Office’s urgent Communication No. 92/202 of 11 April 2012, which requests ERAW units to issue instructions to all prosecution offices not to press charges against women for “running away” or “attempted *zina*” as these are not an actual codified crime under Afghan law.<sup>81</sup>

In December 2012, the Supreme Court sent a letter (No. 820/347) to the AGO stating that running away from home to escape domestic violence and seeking assistance from justice institutions, legal aid organizations or relatives is not a crime and should not be prosecuted, and that courts and prosecutors should not use the term “running away from home” for such cases in judicial files.<sup>82</sup> The letter added however that leaving home for any reason other than to escape violence should be treated differently and should be prosecuted. The key problem with this approach is that treatment of a woman or girl who has left her home as a “suspected criminal” remains, and the prosecutor is left to determine the reasons underlying her having left – a highly subjective determination that can be made absent any concrete evidence as noted above.

Information provided to UNAMA by the Supreme Court for three provinces, namely Balkh, Kabul and Herat showed that authorities continued to imprison women and girls for “running away/attempted *zina*” in violation of the AGO Directive and Supreme Court instructions. The Supreme Court recorded in three provinces the convictions of 283 individuals (mostly women) for *zina* with 71 convictions or “running away/attempted *zina*” between March 2012 and March 2013. In Takhar province, the court convicted 48 women and young girls for “running away/attempted *zina*.”<sup>83</sup>

UNAMA highlights that the continuing high number of women and girls being charged with “attempted *zina*” is inconsistent with Afghanistan’s legal obligations under international human rights law.<sup>84</sup> A wide interpretation of *zina* that permits inclusion of “intent to commit *zina*” still being applied by judicial authorities discriminates against women, infringes on women and girls’ basic right to freedom of movement and highly disadvantages women. This criminalization of freedom of movement automatically limits many other opportunities for women and forces them to remain in a subordinate position in the society. The practice is based on gender-bias stereotypes promoted and accepted in Afghan culture.

UNAMA urges the Government and judicial authorities to clarify and fully enforce AGO and Supreme Court directives to ensure that women and girls are not convicted and imprisoned for

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<sup>81</sup> AGO urgent communication No 92/202-11 April 2012, Provided to UNAMA by AGO office.

<sup>82</sup> Supreme Court letter No 820/327, 31 December 2012 - UNAMA file - provided by the Supreme Court.

<sup>83</sup> UNAMA field monitoring interview, October 2013, Kunduz province.

<sup>84</sup> CEDAW Article 2(f) (f): “To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;” Art 5. “States Parties shall take all appropriate measures: To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women; general recommendation 19 of CEDAW committee <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>.

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“running away/attempted *zina*.” As a matter of urgency, the authorities should review without delay all such cases and promptly release those women and girls wrongly imprisoned.

## 5.4 Women in the Police

UNAMA observed that Afghan women in public life continued to face threats, discrimination, intimidation and often violence. They were not only targeted by insurgent groups but also sometimes faced threats, intimidation and sexual harassment within Government institutions. The police force is one such institution where women comprise barely one per cent of the total force and therefore are particularly vulnerable. There have been many attempts by the Ministry of Interior to increase the number of police women however mechanisms to protect women from abuse of power and sexual harassment within the police force are few and not enforced. UNAMA has observed that the current situation of women in the ANP is not conducive to their protection, advancement and gender equality. Having so few women in the police force also discourages female victims of violence from coming forward to register their complaints.

UNAMA has urged the Minister of Interior to take a number of measures to improve the working conditions and situation of police women in an effort to both better protect female police from sexual harassment and abuse which can in turn contribute to improved efforts to address violence against women across the country.

## 5.5 Key Challenges

UNAMA highlights that many of the same challenges facing Afghan women and girls remain as found in its previous reports. This shows how the lack of a comprehensive and well-resourced strategy to address violence against women and EAW law implementation has slowed down efforts to protect women and girls from violence and harmful practices.

Lack of awareness among law enforcement agencies, cultural biases as well as negative perceptions within communities remain key barriers to the implementation of the law. UNAMA observed a selective application of the administration of justice which focused on reinforcing social norms and values that discriminated against women (e.g., the emphasis placed on arresting and prosecuting women for “running away” or “attempted *zina*”) and lack of emphasis on arresting and prosecuting male perpetrators of violence.

### 5.5.1 Lack of empowered female police staff

The issue of police capacity was observed as often hindering proper investigation of incidents of violence against women and use of the judicial process. UNAMA observed a higher number of women came forward to report violence to the police, and an equally high number of women withdrew their cases or the cases were mediated. Based on UNAMA’s interaction with some of these women, it was noted there is often a lack of understanding and sensitivity towards women coming forward to report. As most police are men who may not be sensitized to the situation of women, it discourages women from reporting. This is evident from the difference in the number of incidents reported to DoWAs in comparison to the incidents reported to law enforcement agencies. The lack of empowered female police staff appointed as investigative officers also hampered many women’s access to justice.

### 5.5.2 Emphasis on mediating EAW law violations

High emphasis on mediation in many instances was observed to place protection of the woman as a lower priority and often led to further violence against women. Mediation carried out by individuals and police officers who were not trained and skilled to conduct mediations with no clear provision for oversight or follow-up also put women at risk of continued violence.

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Within the police force, FRUs are mandated to conduct mediation but they are not present in all provinces and are not staffed with sufficient numbers of women. The same applies to specialized EVAW prosecution units, which exist only in eight of 34 provinces and are similarly neither properly staffed nor equipped. Acknowledging the emphasis placed on family values and preservation of the familial unit under the Afghan Constitution, these values should not take precedence over the rights and constitutional guarantees of women.

#### 5.5.3 Lack of systematic data collection

As previously found by UNAMA, comprehensive official statistics on the number of reported and registered incidents and cases of violence against women in Afghanistan were not available. No standard criteria exists regarding the list of violations covered under the EVAW law to be commonly understood and shared by the various law enforcement institutions, provincial Departments of Women's Affairs and the Afghanistan Independent Human Rights Commission (AIHRC). This situation continues to create enormous challenges in identifying and evaluating the scope, nature and scale of the causes, obstacles and prevalence of violence against women which, if fully known, could better inform appropriate remedies and solutions.

It is important to note that Afghan authorities have identified deficiencies in data collection as a problem and under the leadership of the MoWA, the process of developing a database is ongoing. However, any attempt to mainstream data collection should harmonize existing individually fragmented systems within the various departments on implementation of EVAW law. Lack of technical infrastructure in some of the provinces compounds this problem. The Government of Afghanistan committed to providing a comprehensive report on its implementation of EVAW law by the end of 2013 as part of the 2012-13 Tokyo Mutual Accountability Framework agreement which if realized can assist all concerned to better respond to persistent violence against women and girls in Afghanistan.

#### 5.5.4 Negative attitudes towards (or no awareness of) the EVAW law

During UNAMA's field monitoring, numerous judicial personnel and police officers demonstrated negative attitudes towards the EVAW law as well as a reluctance to apply it. These attitudes were often shown to be based on cultural values, biases and exposure to conservative interpretations of *Shari'a* law. These attitudes discouraged women from reporting violence perpetrated against them.

Lack of awareness among the Afghan population as a whole continued to be a huge challenge to EVAW law implementation. This is clearly reflected in the relatively low number of cases registered by the authorities. The impact of improved and growing awareness however is highlighted by the fact that the number of reported cases of violence against women was significantly higher in provinces such as Herat and Kabul where the level of awareness and exposure to the EVAW law is higher than in other parts of the country, due in part to specialized EVAW units.

#### 5.5.5 Women's freedom of movement and charges of "attempted *zina*"

The continued insistence by Afghan prosecutors and courts to consider "running away" cases under *Hanafi* law and against guidance provided by the Supreme Court and AGO poses a threat to women's freedom of movement. A wide interpretation of *zina* that permits inclusion of "intent to commit *zina*" as applied by judicial authorities disadvantages women by preventing their realization of human rights and from fulfilling their role in Afghanistan's political, economic and social development.

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## **6. Conclusion**

The Government has a way to go to fully protect women and girls from violence through implementation of the EVAW law. The way forward however is clear, apparent and achievable. UNAMA calls on the Government of Afghanistan to act on the recommendations in this report and on the recommendations of the CEDAW Committee as a matter of priority in its continuing efforts to end violence against women and girls in Afghanistan.

## Annex I: UNAMA Recommendations from 2011 and 2012 Reports with implementation status

Responsible organizations	Recommendations	Implementation status	Report
MOWA and CoEVAW	Develop guidelines and terms of reference for the provincial Commissions on Prevention of Violence against Women, including for their constituent members, and codify the procedures by which they register and follow up on cases of violence against women.	Partially implemented (TOR developed, but procedure has not been codified)	2011
MOWA and CoEVAW	Ensure the High Commission has a well-functioning secretariat to enable it to more effectively follow up on decisions and action points.	Information not available	2011
MOWA and CoEVAW	Consider creation of a subcommittee of the High Commission dedicated to assuring victims are supported with services, protection and legal assistance, as per the EAW law's article 16.	Not implemented	2011
MOWA and CoEVAW	Establish an oversight mechanism to monitor performance of the provincial Commissions and assist them to develop work plans and acquire the skills needed to fulfill their responsibilities.	Partially implemented (reporting of CoEVAW is the only mechanism)	2011 and 2012
MOWA and CoEVAW	Invite civil society, including representatives of women's rights NGOs, shelter managers and international partners, to attend High Commission meetings as observers, to report on specific issues, and to actively support the Commission's work.	Not implemented	2011 and 2012
MOWA and CoEVAW	Design and implement referral mechanisms at the district level, coordinated by the representative office of one of its members, to facilitate and follow up referral of victims of violence against women to appropriate law enforcement institutions or service providers on shelter, psycho-social support, legal aid, health care, pursuant to article 16 of the EAW law.	Not implemented	2012
MOWA and CoEVAW	Ministry of Women's Affairs coordinate with the MoI, MoJ, and AGO to develop a standard classification and categorization criteria to be commonly used by all law enforcement institutions and departments of women's affairs for registration of all forms of violence against women cases, including those not criminalized under the EAW law such as honour killings and	Not implemented	2012

	so-called “moral crimes”, separate from civil cases relating to women.		
CoEVAW,	Develop a guideline on the application of mediation that could be used by the department of women’s affairs, police and prosecutor’s offices including special violence against women units to fully protect victims of violence.	Not implemented	2011 and 2012
Government	Issue instructions to Provincial Governors reminding them of their responsibility to take leadership of provincial Commissions for the Prevention of Violence against Women further to directions from the High Council for Prevention of Violence against Women.	Not implemented	2011 and 2012
Government	At the highest levels, including the President, continue to publicly emphasize that promotion and protection of women’s rights is an integral part and main priority of peace and reconciliation throughout Afghanistan, and a central pillar of the country’s political, economic, and security strategies	Partially implemented	2012
Government and International Community	In conjunction with the international community develop a monitoring framework of the commitments in the Tokyo Declaration and the Presidential Decree 45 specific to gender equality, women empowerment, and effective implementation of the EAW law.	Implemented	2012
Government	Ensure all acts criminalized under the EAW law in particular serious cases of violence against women are duly investigated and prosecuted by law enforcement authorities.	Partially implemented	2011 and 2012
Supreme Court	Ensure all judges are trained on the EAW law as part of mandatory training for judges.	Partially implemented ( in the two-year training to become functional judges training provided on Afghan laws including the EAW law)	2011 and 2012
Supreme Court	Issue clarifications and instructions to the courts on the provisions of the EAW law, including their mandatory application in conjunction with other Afghan laws	Information not available	2011-20112
Supreme Court	Establishing divisions within Family and City Courts throughout the country devoted to crimes of violence against women. Judges in these courts would develop expertise and help relieve	Not implemented	2011 and 2012

	the overcrowded dockets of the General Penal division. <sup>85</sup>		
Supreme Court	Instruct the General Criminal Division and the Inspection Department to monitor the courts' proper application of the EVAW law to cases of violence against women	Information not available	2011 and 2012
Supreme Court	Issue a clear interpretation of Article 398 of the Penal Code that mitigates punishment for killings perpetrated in the name of "honor" to avoid its misuse, and work toward its repeal.	Not implemented	2012
MOJ	With the High Commission on the Prevention of Violence against Women and the National Legal Training Centre, provide training for judicial officials on the EVAW law. Consider involving judges and prosecutors who are successfully applying the law to train other judicial officials.	Information not available	2011 and 2012
MoJ	Ensure that any law defining the relationship between the formal justice system and informal mechanisms for dispute resolution ( <i>jirgas</i> and <i>shuras</i> ) improves their compliance with all national laws, including the EVAW law, and prohibits them from resolving serious crimes.	No law enacted – not implemented	2011 and 2012
AGO	Issue instructions for all prosecutors clarifying which type of cases must be criminally prosecuted and which may be referred for mediation. Ensure prosecution of all serious crimes of violence against women.	Partially implemented	2011
AGO	Ensure that the General Penal Department ( <i>Saranwali Jazai Omom</i> ) and other appropriate divisions of the AGO monitor how prosecution offices are applying the EVAW law.	Information not available	2011 and 2012
AGO	Consider tasking the Special Violence against Women Unit in Kabul with responsibility to monitor and follow up on all cases of violence against women that reach the Supreme Court. This could be specified in the Tashkil for 1391.	Not implemented	2011 and 2012
AGO	Continue to create and support commissions or units in provincial prosecution offices dedicated to prosecuting cases of violence against women with qualified staff and adequate resources	Partially implemented	2011 and 2012
AGO	Develop a central database of all violence against women cases for all prosecution offices and special units on violence against women attached to prosecution offices Encourage proper investigation and prosecution of violence against women cases through performance appraisals of the frontline prosecution officers by adding a performance indicator on handling such	Not implemented	2012

<sup>85</sup> See Article 61(2) of the Law on the Structure and Jurisdiction of Judiciary of the Islamic Republic of Afghanistan: "If required, the Supreme Court may, after the approval by the President, establish other tribunals within the provincial center primary court. If needed, the head of provincial center primary court may temporarily assign a member of one tribunal to another."

	cases.		
AGO	Conduct an assessment of the Special Violence against Women Unit in Kabul to determine why few of its total registered cases have been prosecuted and how its work can be strengthened.	Not implemented	2011
MOI	Include sensitization on violence against women as part of basic police training and the police's role in responding to the victims needs in accordance with the EVAW law.	Implemented	2011 and 2012
MOI	Provide special training on the EVAW law for all police working with the FRU.	Not implemented	2011 and 2012
MOI	Provide guidelines for the police Criminal Investigation Division (CID), including the Family Response Unit (FRU), clarifying the type of offences that must be investigated and forwarded to the prosecution and those that may be mediated by police, and ensuring that all cases mediated or referred for mediation by Police are properly registered and officially documented	Not implemented	2011 and 2012
MOI	Ensure that women approaching police stations can consult immediately with the FRU	Partially implemented	2011 and 2012
MOI	Ensure that the FRU remains part of CID, that its officers benefit from training on investigative techniques, and are able to fully participate in investigations of crimes involving domestic violence, rape or other types of violence against women.	Partially implemented	2011 and 2012
MOI	Develop a central database of all violence against women cases with inputs from the CID, Family Response Units and other police departments concerned.	Implemented	2012
MOI	Create an effective mechanism for proper registration and follow-up of violence against women cases that are mediated to ensure protection of victims once they return to their families/communities.	Partially implemented (for two weeks keep contact with victim)	2011 and 2012
MOI	Encourage proper registration, investigation and prosecution of violence against women cases through performance appraisals of the frontline police officers by adding a performance indicator on handling of violence against women cases.	Information not available	2012

Ministry of Finance	Provide adequate resources and support to the ministries of Women's Affairs, Hajj and Religious Affairs, Justice, Public Health, Information and Culture, Education and Higher Education to enable them to fulfil their responsibilities as required under the EVAW law.	Information not available	2011
Ministry of Finance	Ensure that activities of the High Commission for Prevention of Violence against Women and its provincial Commissions mandated by the EVAW law are adequately funded.	Not implemented	2011
International Donors	Increase support to Government initiatives aimed at enforcement of the EVAW law, including nation-wide awareness campaigns, assistance and training for provincial Commissions for Prevention of Violence against Women.	Information not available	2011
International Donors	Support the Government in implementing the 2008-18 National Action Plan for the Women of Afghanistan (NAPWA); in particular in developing and putting in place a national strategy to implement the EVAW law	Partially implemented	2011 and 2012
International Donors	Increase support for women's protection centres/shelters that offer refuge to female victims of violence. Increase support to special units or commissions of the Attorney General's Office prosecuting violence against women.	Partially implemented	2011 and 2012
International Donors	Support the Government in the implementation of the Tokyo Declaration through channelling development assistance towards commitments made under the Tokyo Declaration on gender equality, women's empowerment and the EVAW law implementation and develops a joint monitoring framework with specific indicators to measure progress in these areas.	Implemented	2012
International Donors	Develop a program of technical assistance for the High Commission for Prevention of Violence against Women.	N/A	2011

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## Annex II: CEDAW Recommendations to Afghanistan, August 2013

### Concluding observations on the combined initial and second periodic reports of Afghanistan\*

1. The Committee considered the combined initial and second periodic report of Afghanistan (CEDAW/C/AFG/1-2) at its 1132<sup>nd</sup> and 1133<sup>rd</sup> meetings, on 10 July 2013 (see CEDAW/C/SR.1132 and 1133). The Committee's list of issues and questions are contained in CEDAW/C/AFG/Q/1-2 and the responses of Afghanistan are contained in CEDAW/C/AFG/Q/1-2/Add.1.

#### A. Introduction

2. The Committee highly appreciates that the State party submitted its combined initial and second periodic report. It also appreciates the State party's written replies to the list of issues and questions raised by its pre-session working group. It welcomes the quality of the oral presentation of the delegation and the further clarifications provided in response to the questions posed orally by the Committee during the dialogue.

3. The Committee commends the State party delegation which was headed by Mr. Qasim Hashimzai, Senior Advisor to the Ministry of Justice. The delegation also included the Deputy Minister for Women Affairs, the Deputy Minister of Social Affairs, Martyrs and Disabled as well as representatives from the Ministry of Education and from the Permanent Mission of Afghanistan to the United Nations in Geneva.

#### B. Positive aspects

4. The Committee commends the State party for having ratified the Convention without reservations. It welcomes the ratification of the following international treaties since the ratification of the Convention by the State party:

- (a) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2003;
- (b) The Rome Statute of the International Criminal Court, in 2003;
- (c) The 1951 Convention relating to the Status of Refugees and its 1967 Protocol, in 2005;
- (d) The UNESCO Convention against Discrimination in Education, in 2005; and
- (e) The United Nations Convention against Corruption, in 2008.

5. The Committee notes with appreciation that the State party has adopted legislation aimed at eliminating discrimination against women, in particular:

- (a) The provisions in the Constitution and in the Electoral law which establish specific quotas for women in the Wolsi Jirga and the Meshrano Jirga; and

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\* Adopted by the Committee at its fifty-fifth session (8-26 July 2013).

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(b) The Elimination of Violence against Women Law (2009).

6. The Committee welcomes the adoption of the National Action Work Plan for Women (2008-2018).

### **C. Principle areas of concern and recommendations**

#### **Implementation**

**7. The Committee is fully aware of the State party's important efforts to enact and implement, during the last decade, a legal framework protecting and promoting women's rights. However, it considers that the climate of persisting and extreme violence, in particular against women, the on-going political process and the security forces transition, places the State party in a challenging position. The Committee considers that the implementation of the Convention is the most effective safeguard to ensure the full respect and enjoyment of women's rights. It urges the State party to consider the recommendations contained in the present concluding observations as requiring a high priority for national mobilization and international support. The committee calls upon the State party to promptly implement the present concluding observations between now and the next reporting process under the Convention by setting up a special coordination mechanism with all relevant state institutions at all levels, the Parliament (Wolsi Jirga and Meshrano Jirga), the judiciary and with the stakeholders, including international stakeholders currently supporting the State party's transitioning into its Transformation Decade. The Committee will support and closely monitor the implementation of the present concluding observations.**

#### **Participation of women in the peace process and its impact on women's rights**

8. The Committee notes with satisfaction the formal commitment, confirmed by the delegation, that women's rights will not be compromised by the peace negotiations. Notwithstanding, it considers that concrete measures need to be taken and implemented to fulfil this commitment. It notes with satisfaction the establishment of the Elite Women's Advisory Board whose aim is to ensure women's engagement in the peace process at all levels of the government. However, it is deeply concerned that women's meaningful and effective participation in the peace and reconciliation process is being jeopardized by several factors, in particular, the limited number of women members of the High Peace Council (9 out of 70 members); women's exclusion from the major decision-making processes; the possibility for the peace negotiations to be moved outside the State party, in the context of the Doha talks; and the lack of adequate means to ensure their effective participation. It is also concerned that women's interests and needs may be compromised in the peace negotiations due to the deep rooted patriarchal attitudes in the State party. It regrets that the State party has not yet adopted its National Action Plan (NAP) to implement the Security Council Resolution 1325 (2000).

**9. The Committee urges the State party to:**

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- (a) Increase women's representation in the High Peace Council and fully involve them effectively at all stages of the peace and reconciliation process, including by ensuring equal opportunities and active participation of women in the decision-making processes;
  - (b) Ensure that women members of the Elite Women's Advisory Board and civil society organizations working on women's issues are included in the peace negotiations and reconciliation process, including at the planned Doha talks;
  - (c) Reaffirm the non-negotiable character of all human rights and adopt a strategy to prevent any setback for women's rights in the peace negotiations; and
  - (d) Adopt the draft National Action Plan to implement Security Council Resolution 1325 (2000) and ensure that it incorporates a model of substantive equality which will have an impact not only on violence against women but also on all spheres of women's life, in line with the Convention.

#### **Upholding women's rights achievements**

10. The Committee notes with appreciation the information provided by the delegation with respect to the State party's commitment to consolidate the constitutional and legal framework related to women's rights, including quotas for women. However it is concerned that in the context of the transition the State party is facing, such consolidation may not be considered as a priority. It is particularly concerned that several members of the Parliament, particularly from the Wolesi Jirga, are attempting to repeal existing provisions in the Electoral Law which provide that at least 25% of seats in the provincial councils be reserved for women and to weaken provisions for the protection of women in the Law on the Elimination of Violence against Women. The Committee notes the collaboration between the State party and some women's organizations in numerous fields.

#### **11. The Committee urges the State party to:**

- (a) Set as a priority, for the next eighteen months, the consolidation of the legislative achievements by reinforcing the implementation of the Law on the Elimination of Violence against Women and the Electoral Law, in line with the Convention;
- (b) Ensure that the Wolesi Jirga and Meshrano Jirga joint Commission working on amendments to the Electoral Law maintains the 25% quota for women in the National Assembly and in the Provincial Councils as currently established in the Electoral Law;
- (c) Consolidate the legislative framework related to women's rights by adopting without delay the draft Family Code and by ensuring that any revisions of the Penal Code and the Code of Criminal Procedures repeal, and does not include, discriminatory provisions against women;

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- (d) Reinforce its efforts to sensitize parliamentarians and members of the Provincial Councils on women's rights with a view to upholding the gains already achieved; and
  - (e) Intensify its collaboration with women's organizations to eliminate violence against women as well as to improve women's access to education, health, justice and political participation.

#### **Definition of discrimination**

12. The Committee notes with appreciation that article 22 of the Constitution of the State party and other legislation guarantee the right to non-discrimination and equality to all citizens. However, it is concerned about the absence of an explicit prohibition of discrimination based on sex.

**13. The Committee recommends that the State party include in its Constitution and in the draft regulation on the elimination of discrimination and in other relevant legislation provisions on equality between women and men and prohibiting direct and indirect discrimination against women in the public and private spheres, as well as sanctions, in line with articles 1 and 2 of the Convention.**

#### **Legal complaint mechanisms**

14. The Committee notes the efforts of the State party to make the formal justice system accessible for its population, in particular for women, through the establishment of Courts in remote areas, Family Courts, a Prosecution Office on violence against women and through training of women judges. It is concerned that despite these efforts, the police and the prosecutors continuously refer cases related to violence against women, including domestic violence, to informal justice mechanisms (*jirgas* and *shuras*) for advice or resolution; despite the fact that many of these cases should be formally prosecuted and that decisions of informal justice mechanisms are discriminatory against women and undermine the implementation of existing legislation. It is further concerned that women are often prevented by their family members from filing complaints.

**15. The Committee recommends that the State party:**

- (a) Develop guidelines for the police and prosecutors clarifying the type of cases which must be formally prosecuted;
- (b) Ensure the implementation of the policy on traditional justice and inform women about the possibility to challenge decisions of informal justice mechanisms in the formal justice system;
- (c) Ensure that any law defining the relationship between the formal justice system and informal justice mechanisms improves compliance with all national laws, including the EAW law and prohibits *jirgas* and *shuras* from addressing serious violations of human rights, as previously recommended by the international community;

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- (d) **Sensitize the police, prosecutors, judges and the general public on the importance of addressing violations of women's rights, including domestic violence, through the formal justice system rather than *jirgas* and *shuras*; and increase the awareness of women and girls about their rights and available legal remedies;**
  - (e) **Raise awareness amongst religious and community leaders about the principle of equality between women and men, contained in the Constitution and in the Convention; and**
  - (f) **Enhance women's accessibility to the formal justice system; increase the number of female police officers and judges; and, provide systematic training to the police, judges, prosecutors and lawyers on the application of domestic legislation on women's rights, in line with the Convention.**

### **Transitional Justice**

16. The Committee notes the establishment of the Afghan Peace and Reintegration Programme (APRP) and it is concerned about its inadequate implementation and about its limited effectiveness in addressing issues of gender-based violence by non-State actors, as well as its procedures and vetting processes and systems to ensure accountability. It also notes the information provided by the delegation on the adoption of a transitional justice policy.

#### **17. The Committee recommends that the State party:**

- (a) **Ensure the adequate implementation of the APRP by making sure that its rules of procedures and vetting process are applied and by effectively involving the civil society, in particular women and women's organizations; and**
- (b) **Ensure the prompt implementation and monitoring of the transitional justice policy, in line with the State party's legislation and its international obligations, including the Convention.**

### **National machinery for the advancement of women**

18. The Committee notes the establishment of the Ministry of Women Affairs (MoWA) in 2004, the establishment of Provincial Directorates of MoWA in 22 provinces and the creation of Gender Units in several Ministries. However, it is concerned at the scarce financial resources allocated through the national budget and the lack of qualified staff assigned to MoWA to fulfil its mandate. It is further concerned about MoWA's high dependency on external funding which may affect the sustainability of the achievements in the field of gender equality and women's rights in the context of the State party's transition. It is also concerned about the challenges which impede the full implementation of the National Action Plan for Women (NAPWA) such as the lack of resources and the lack of accountability at the ministerial level responsible for its implementation.

#### **19. The Committee urges the State party to:**

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- (a) **Ensure the sustainability of the Ministry of Women Affairs (MoWA) by providing it with adequate human, technical and financial resources to fulfil its gender equality and women's rights mandate, in line with the principles of the Tokyo Mutual Accountability Framework such as the one stating that international assistance, through national budgets, can improve national institutional capacities, development performance and accountability of the State party, to all its citizens;**
  - (b) **Ensure the implementation of the National Action Plan for Women (NAPWA) through, *inter alia*, gender-responsive budgets, regular monitoring of its implementation with indicators set out in the NAPWA and accountability mechanisms; and**
  - (c) **Establish a clear timeframe to consolidate and reinforce the national and local capacities of the national machinery for the advancement of women.**

#### **National Human Rights Institution**

20. The Committee welcomes the establishment in 2002 of the Afghan Independent Human Rights Commission (AIHRC). However, it is deeply concerned at information indicating that the latest process of appointment of Commissioners lacked transparency and was not participatory, all of which jeopardizes the independence and effectiveness of the AIHRC and undermines its high reputation at the national and international level.

**21. The Committee reiterates the call by the United Nations High Commissioner for Human Rights that, the State party reconsider the recent appointments of Commissioners and re-open the selection process, in line with the Paris Principles and the requirements as established in the regulatory framework of the AIHRC.**

#### **Violence against women and harmful practices**

22. The Committee expresses its deep concern at the high prevalence of violence against women in the State party, in particular domestic violence, rape, battery and laceration. It is also concerned at cases of stoning of women. It is deeply concerned at the persistence of adverse cultural norms, practices and traditions which are harmful to women such as child marriage, *baad* (settlement of disputes by giving away girls), *badal* (exchange marriages), and forced marriages, including forced marriages of widows. It is further concerned at cases of self-immolation and running away from home, as a response to harmful practices and violence against women. It is concerned that despite the concrete efforts to implement the Law on the Elimination of Violence against Women, incidents of violence and harmful practices remain under-reported due to the subordinate role of women in Afghan society, cultural beliefs and the victims' fear of retaliation by their family and of being stigmatized by their communities. It is concerned at the sustainability of the shelters for women victims of violence as well as about the need to increase their number.

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**23. In line with its general recommendation No. 19 (1992) on violence against women, the Committee urges the State party to:**

- (a) Establish measures, as a priority, to effectively combat impunity and comply with its due diligence obligation to prevent, investigate, prosecute and punish violence perpetrated against women by State and non-State actors;**
- (b) Ensure the proper implementation of the Law on the Elimination of Violence against Women by, for example, providing systematic training on the EVAW law for all police officers working in Family Response Units, issuing guidelines to the courts on the application of the EVAW law, including its mandatory application in conjunction with other relevant national legislation; and developing a strategy to ensure the recruitment and retention of female police officers;**
- (c) Ensure that shelters for women victims of violence are properly resourced and that the quality of services offered is regularly monitored; increase the number of shelters so as to strengthen support services for victims, such as counseling and rehabilitation services, both medical and psychological; and develop a strategy to ensure their financial support in the framework of the Tokyo Mutual Accountability Framework.**
- (d) Adopt a comprehensive policy and strategy to eliminate all harmful practices against women and girls, which includes the sensitization of religious and community leaders with the aim to prevent misinterpretations of Sharia Law and Islamic principles; as well as awareness-raising efforts targeting the general public and the media, in collaboration with civil society and women's organizations; and**
- (e) Ensure the proper registration of cases of violence and the standardized collection of disaggregated data on all forms of violence against women.**

**“Moral crimes” and so-called honour killings**

24. The Committee deplores the practice of arresting and prosecuting run away women and girls for “moral crimes” and charging them with the aggravating intention to commit *zina* (sexual intercourse outside of wedlock) or pre-emptive *zina*, despite the fact that running away is not a crime under Afghan law. It also regrets that due to the lack of a definition of rape in the Penal Code, rape victims are charged with *zina* and are further re-victimized as some of them are forced to get married to their rapists. It is deeply concerned that rape and run away victims are forced to undergo virginity tests. It is equally concerned at the increase of so-called honour killings and at the discriminatory provision in the Penal Code which allows presenting the defence of honour as a mitigating circumstance for perpetrators of such crimes (art. 398).

**25. The Committee urges the State party to:**

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- (a) Re-issue and implement without delay the directive of the Attorney General of April 2012 stating that running away is not a crime under Afghan law and emphasize that no charges of attempted or pre-emptive *zina* should be brought; and
  - (b) Repeal article 398 of the Penal Code to ensure that perpetrators of so-called honour killings are not given legal concessions; and include a definition of rape in the Penal Code, in line with international standards.

#### **Trafficking and exploitation of prostitution**

26. The Committee notes the adoption of the Anti-Human Trafficking and Abduction Law (2008) and is concerned about its lack of implementation. It is concerned at information indicating that victims of trafficking are sometimes prosecuted for having committed *zina*. It is further concerned at the lack of information about the extent of trafficking and exploitation of prostitution in the State party as well as about the lack of protection measures for those victims of trafficking who decide to testify as witnesses.

#### **27. The Committee urges the State party to:**

- (a) Conduct research on the prevalence of internal and international trafficking, including on its scope, extent, causes, consequences and purposes, as well as its potential link with child marriage and *baad*;
- (b) Ensure the adequate implementation of the Anti-Human Trafficking and Abduction Law (2008) in order to ensure that victims of trafficking are not prosecuted for having committed *zina*;
- (c) Strengthen mechanisms for the investigation, prosecution and punishment of traffickers and support services for victims of trafficking and forced prostitution as well as measures for witness protection; and
- (d) Ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol) and the SAARC Convention on the Prevention and Combatting the Trafficking in Women and Children for Prostitution.

#### **Participation in political and public life**

28. The Committee notes the efforts of the State party to increase the participation of women in political and public life since 2001. It considers it essential to recognize women's diverse experiences in conflict, including as victims but also as the main agents of peace building processes. However, it is concerned at the low participation of women in decision-making in all areas of life. It is further concerned that deeply rooted patriarchal attitudes such as imposing movement restrictions to women, as well as, the fragile security in the State party may adversely affect the participation of women, as candidates and voters, in the forthcoming 2014 elections. It is further concerned at threats and

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targeted killings of women occupying prominent positions in the administration and of women human rights defenders. It expresses its concern at the low participation of women in the judiciary in the superior courts and the total absence of women judges in the Supreme Court.

**29. The Committee calls upon the State party to:**

- (a) Pursue sustained policies aimed at the promotion of women's full and equal participation in decision-making as a democratic requirement in all areas of public, political and professional life, at the national, provincial and district levels, by for example, adopting temporary special measures, in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation No. 25 (2004);**
- (b) Implement awareness-raising activities on the importance of women's participation in decision-making for society as a whole, in particular as candidates and voters, with a view to eliminating patriarchal attitudes which deter women from participating;**
- (c) Ensure effective security protection for women in prominent positions in the administration and women human rights defenders; and hold accountable perpetrators of violent attacks against them; and**
- (d) Take appropriate measures to increase the number of women judges in superior courts and ensure the appointment of women to the Supreme Court.**

**Nationality**

30. The Committee notes that the draft National Law recognizes double nationality for Afghan citizens. It is concerned about the high number of women who lack personal identity documentation in the State party, which increases the risks of statelessness and restricts women's enjoyment of their rights such as to secure land and property and to access education, health care and employment opportunities.

**31. The Committee recommends that the State party**

- (a) Adopt the draft National Law; and**
- (b) Raise awareness on the importance of personal identity documentation and ensure that women have access to such documentation.**

**Education**

32. The Committee highly appreciates the efforts to increase the enrolment of girls at all levels of education and it commends the demonstrated political will to continue pursuing this goal through global mobilization. It considers that sustainable development calls for an educated population with equal opportunities for women and men and fully supports the high priority given to this issue. However, it is concerned at the high illiteracy rate among women, the low enrolment of girls, particularly at the secondary level, and their high dropout rate, especially in rural areas, mainly due to a lack of security to and from school. It is further concerned about the negative attitudes in society with

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respect to girls' education, as well as at the lack of qualified female teachers and the poor school infrastructure and long distances to school. It expresses its deep concern at the increased number of attacks on girls' schools and written threats warning girls to stop going to school by non-State armed groups, as well as at incidents where girls became ill at school under the suspicion of being poisoned. It is also concerned about the marked underrepresentation of women in higher education which is a major impediment to their appointment in public offices and their engagement in public affairs.

**33. In light of the commitments of the State party under the Tokyo Mutual Accountability Framework, the Committee recommends that the State party:**

- (a) Set specific targets and adopt a plan of action to improve the literacy rates of women and girls, increasing school enrolment and attendance of girls with specific time-bound targets, and monitor achievement of these targets;**
- (b) Continue its efforts to increase the recruitment of female teachers with the pre-requisite qualifications and provide incentives to ensure their presence throughout the country, in particular in remote areas; improve and standardize the quality of education, including by continuously training teachers and by conducting periodic revisions of the curriculum and textbooks to remove gender stereotypes;**
- (c) Develop a strategy to ensure that essential education services for women and girls are sufficiently funded, in light of the decline of external assistance;**
- (d) Ensure that the Safety and Protection Directorate effectively fulfills its mandate to provide recommendations on how to prevent attacks on girls' schools; and ensure that perpetrators of such acts of violence are promptly prosecuted and punished; take measures to address the fear that such security incidents creates among girls and their families and thereby preventing girls access to education; and**
- (e) Review procedures related to the university entrance examination and remove biases that effectively limit women's access to this level of education.**

### **Employment**

34. The Committee notes with satisfaction that the Priority Reform and Restructuring Programme (PRR) emphasizes the recruitment of women into the civil service. It also notes that, only 21 per cent of total employees in the civil service are women. It is concerned that the majority of them are hired at the lower levels of the administration. It is also concerned at the negative perception in society of working women. It is further concerned at the prevalence of sexual harassment in the workplace, which particularly affects women police officers and undermines the recruitment and retention of women in the security sector. It is concerned that the large majority of women work in the informal sector (agriculture) and in the care economy (domestic and

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home-based work), and that as such they are not recognized as workers in the existing labour legislation, and are thus unprotected and do not have access to social security and other benefits.

**35. The Committee recommends that the State party:**

- (a) **Adopt effective measures in the formal labour market, including temporary special measures, to increase female participation and eliminate both horizontal and vertical occupational segregation, to narrow and close the wage gap between women and men, and to ensure the application of the principle of equal remuneration for work of equal value, as well as equal opportunities at work;**
- (b) **Conduct awareness raising campaigns targeting the public at large with a view to eliminating negative stereotypes towards working women;**
- (c) **Take immediate action to put in place policies and programmes to prevent and respond to sexual harassment in the workplace, in particular, for women police officers in order to retain them at work; enact specific legislation prohibiting sexual harassment in the workplace; and**
- (d) **Prepare a plan of action for the protection of women working in the informal sector, such as agriculture and remunerated domestic work.**

**Health**

36. The Committee notes with appreciation the health policy framework in place in the State party. However, it is concerned about the high maternal mortality ratios, the high number of women who suffer from fistula and the extreme trauma that a large number of women, particularly in the conflict affected remote areas, suffer which threatens their mental health and well-being. It is also concerned about deep patriarchal attitudes and cultural beliefs which limit women's freedom of movement and prevent them from being treated by male doctors and that women's access to contraceptives is subject to their husbands' authorization. It is further concerned at the low number of trained women healthcare workers and the high number of women giving birth without access to obstetric care.. It is concerned that abortion is only permitted when the life of the mother is endangered and that such restrictions lead to unsafe abortion often threatening the mother's life. The Committee is further concerned at the insufficient allocation of human and financial resources to health facilities, in particular in rural areas

**37. In the framework of the Tokyo Mutual Agreement Framework and in line with its general recommendation No. 24 (1999), the Committee urges the State party to:**

- (a) **Set specific targets and adopt an action plan to ensure the sustainability and reinforcement of the health sector to prevent, at a minimum, a further reduction of the already limited health services available for women;**

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- (b) **Take effective measures to reduce the maternal mortality rate and provide women with access to health-care facilities, obstetric care and medical assistance by trained personnel, including midwives, especially in rural and remote areas;**
  - (c) **Conduct awareness raising campaigns to eliminate patriarchal attitudes and cultural beliefs which impede women's free access to health services and contraceptive methods;**
  - (d) **Take effective measures to increase the recruitment of female healthcare workers and to continuously enhance their capacity;**
  - (e) **Expand the grounds on which abortion is permitted, in particular, cases of rape and incest, and prepare guidelines on post-abortion care to ensure that women have free access to this type of service;**
  - (f) **Adopt effective measures to address the mental health condition of women suffering trauma and other psychological disorders; and**
  - (g) **Increase budgetary allocations to the healthcare sector, making specific allocations for the treatment and reintegration of victims of fistula.**

#### **Poverty and rural women**

38. The Committee notes that almost 80 per cent of the total population of the State party live in rural areas. It is concerned that almost 36 per cent of the population live under the poverty line and that the large majority of them are women. It is concerned at the reliance of the rural population, in certain areas of the country, on the cultivation of opium as a livelihood. It also notes that the Ministry of Rehabilitation and Rural Development (MRRD) is conducting a programme by which rural women and men are granted small loans aiming at supporting self-employment. However, it is concerned that women who have access to these loans, often hand over the funds to their husbands or male relatives. The Committee is also concerned at the difficulties faced by rural women in gaining access to health and social services and in participating in decision-making processes at the community level.

#### **39. The Committee recommends that the State party:**

- (a) **Elaborate a comprehensive development plan for rural areas with the full involvement of rural women in its elaboration and implementation and backed by sufficient budgetary resources with the aim to fight against poverty and to promote new economic opportunities which will replace the cultivation of opium;**
- (b) **Integrate a gender perspective into the programmes and activities of the Ministry of Rehabilitation and Rural Development;**
- (c) **Take measures to ensure that rural women are the effective decision-makers and beneficiaries of programmes and credit facilities; and**

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- (d) **Strengthen its efforts to address the needs of rural women and provide them with better access to health, education, clean water and sanitation services, fertile land and income-generating projects.**

#### **Refugee returnees and internally displaced women and girls**

40. The Committee is concerned at the increasing number of internally displaced persons in the State party, particularly women and girls and at the need of a long term intervention to ensure, *inter alia*, their access to basic services and protection. It is further concerned at the situation of Afghan refugee returnees many of whom become displaced or are forced into economic migration due to the lack of income generating opportunities and access to basic services.

#### **41. The Committee urges the State party to:**

- (a) **Endorse the National Internally Displaced Persons Policy and ensure its full implementation and provide long term interventions to address the needs of internally displaced persons, in particular women and girls;**
- (b) **Ensure that Afghan refugee returnees, in particular women and girls, have adequate access to health services, education, food, shelter, free movement and opportunities to secure justice and durable solutions; and**
- (c) **Accede to the 1954 Convention relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness.**

#### **Marriage and family relations**

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

#### **43. In line with its general recommendations No. 21 (1994) and No. 29 (2013) on article 16 of the Convention, the Committee recommends that the State party:**

- (a) **Repeal discriminatory provisions against women in the Shia Personal Status Law and the Civil law; and amend**

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relevant legislation to raise the minimum age of marriage for girls to 18;

- (b) Ensure that the draft Family Law provides equal rights for women and men in all matters related to marriage and family relations, in particular with respect to their responsibilities within the family, property and inheritance, divorce and custody of children;
- (c) Conduct awareness raising campaigns targeting women to make them aware of their rights with respect to family relations and marriage;
- (d) Take measures to facilitate the procedure to register marriages and divorces; ensure that marriage and family law cases are adequately handled and heard by civil or family courts; and
- (e) Take the necessary legislative and policy measures to abolish polygamous marriages.

#### **Optional Protocol and amendment to article 20, paragraph 1, of the Convention**

44. The Committee encourages the State party to ratify the Optional Protocol to the Convention and to accept, without delay, the amendment to article 20, paragraph 1, of the Convention concerning the meeting time of the Committee.

#### **Beijing Declaration and Platform for Action**

45. The Committee calls upon the State party to utilize the Beijing Declaration and Platform for Action, in its efforts to implement the provisions of the Convention.

#### **Millennium Development Goals and the future framework**

46. The Committee calls for the integration of a gender perspective in accordance with the provisions of the Convention in all efforts aimed at the achievement of the Millennium Development Goals as well as in the new development framework as of 2015.

#### **Technical assistance**

47. The Committee recommends that the State party avail itself of international assistance, including technical assistance to develop a comprehensive programme aimed at the implementation of the above recommendations as well as the Convention as a whole. The Committee also calls upon the State party to further strengthen its cooperation with specialized agencies and programmes of the United Nations system in line with the UNDAF and the Tokyo Mutual Accountability Framework.

#### **Dissemination**

48. The Committee requests the timely dissemination of the concluding observations, in the official language(s) of the State party, to the relevant state institutions at all levels (national, regional, local), in particular to the Government, the ministries, the

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**Wolesi Jirga and Meshrano Jirga and to the judiciary, to enable their full implementation. It encourages the State party to collaborate with all stakeholders concerned, such as human rights and women's organisations, universities and research institutions, media, etc. It further recommends that its concluding observations be disseminated in an appropriate form at the local community level, to enable their implementation. In addition, the Committee requests the State party to continue to disseminate the CEDAW Convention, its Optional Protocol and jurisprudence, and the Committee's General Recommendations to all stakeholders.**

**Follow-up to concluding observations**

**49. The Committee requests the State party to provide, within two years, written information on the steps undertaken to implement the recommendations contained in paragraphs 11 and 23 above.**

**Preparation of next report**

**50. The Committee invites the State party to submit its third periodic report in July 2017.**

**51. The Committee requests the State party to follow the "Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents" (HRI/MC/2006/3 and Corr.1)**