



Divergence of Practice: The Handling of Complaints of Gender-Based Violence against Women and Girls by Afghanistan's *de facto* Authorities

December 2023

About this Report

This report is part of a series of thematic studies on current human rights issues of concern to the people of Afghanistan, carried out by the United Nations Assistance Mission in Afghanistan's (UNAMA) Human Rights Service in the framework of [Security Council Resolution 2626 \(2022\)](#) which was extended under [Resolution 2678 \(2023\)](#). Resolution 2626 tasks UNAMA with engaging with “all stakeholders at the national and subnational levels and civil society and international non-governmental organizations in the protection and promotion of the human rights of all Afghans”, and to “monitor, report and advocate with regard to the situation for civilians (and) the prevention and elimination of violence, including a survivor-centred approach to preventing and responding to sexual and gender-based violence.....and advocate for the provision of and equal access to... justice...”

I. Introduction

UNAMA has been monitoring the efforts of successive governments of Afghanistan to address incidents of gender-based violence¹ against women and girls, particularly through the implementation of the Elimination of Violence Against Women (EVAW)² Law enacted in 2009. The prevalence of incidents of gender-based violence against Afghan women and girls, including through harmful traditional practices,³ was known to be high⁴ prior to the Taliban takeover of Afghanistan on 15 August 2021. Since then, it is reported to be even higher given the impact of the economic, financial and humanitarian crises which continue to affect those who live in the country,⁵ leaving millions of Afghans in need of humanitarian assistance.⁶ The Taliban *de facto* authorities⁷ discriminatory policies towards women and girls, including with regards to education (restricted to education below grade seven as well as reportedly in madrassas after primary school), freedom of movement, freedom of opinion and expression (including choice of dress), employment (limited to the health sector, security at the airports, some segments of the manufacturing sector, and some peripheral functions within the *de facto* police), and participation in public life, further heightens Afghan women's and girls' vulnerability to gender-based violence, both in the public and private sphere, the latter including domestic and intimate partner violence, as they are increasingly relegated to their homes.

Prior to the Taliban takeover of the country, the former Ministry of Women's Affairs and its departments across the country, special EVAW Prosecution Units of the Attorney General's Office,⁸ and Family Response Units situated in the Criminal Investigation

¹ "[V]iolence which is directed against a woman because she is a woman or that affects women disproportionately". See Convention on the Elimination of All Forms of Discrimination Against Women, General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19, para 1. See also Section II. A. *International Framework* of this report.

² In 2009, the Government of Afghanistan enacted the EVAW Law. The EVAW Law criminalizes 22 acts of violence against women and girls. For a detailed overview of the legal framework for the elimination of violence against women and girls in Afghanistan, see UNAMA/OHCHR reports on violence against women and girls in Afghanistan: UNAMA/OHCHR, *Still a Long Way to Go: Implementation of the Law on Elimination of Violence against Women in Afghanistan*, 2012; UNAMA/OHCHR, *A Way to Go: An Update on the Implementation of the Law on Elimination of Violence against Women in Afghanistan*, 2013; UNAMA/OHCHR, *Justice Through the Eyes of Afghan Women: Cases of Violence Against Women Addressed through Mediation and Court Adjudication*, 2015; UNAMA/OHCHR, *Injustice and Impunity: Mediation of Criminal Offences of Violence Against Women*, May 2018. Available at: <https://unama.unmissions.org/women%27s-rights-reports>.

³ The UN's Committee on the Elimination of Discrimination against Women (CEDAW Committee) describes "harmful traditional practices" as: "traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles" and perpetuate "widespread practices involving violence or coercion, such as family violence and abuse, forced marriage.... Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them equal enjoyment, exercise and knowledge of human rights and fundamental freedoms." See: General Recommendation No. 19, 199.2

⁴ Around half of Afghan women surveyed reported having experienced at least one form of domestic, physical, sexual, or psychological violence or forced marriage in their lifetime. See: Central Statistics Organization (CSO), Ministry of Public Health (MoPH), and ICF (2017) *Afghanistan Demographic and Health Survey 2015*.

⁵ United Nations Office of the High Commissioner for Human Rights, *Situation of human rights in Afghanistan, Report of the United Nations High Commissioner for Human Rights*, A/HRC/49/24, 4 March 2022.

⁶ United Nations, *The situation in Afghanistan and its implications for international peace and security, Report of the Secretary-General*, A/76/862-S/2022/485, 15 June 2022. See also *Humanitarian Coordinator Appeals for the World Not to Abandon the People of Afghanistan at this Precarious Moment*, 06 April 2023. Available at <https://news.un.org/en/story/2023/04/1135422> Accessed on 10 June 2023.

⁷ In this paper, unless indicated otherwise, all references to the Taliban *de facto* authorities are noted as "*de facto* authorities" or "*de facto* officials".

⁸ The Attorney General's Office and its line Prosecution Units across Afghanistan ceased their prosecutorial function as of 20 August 2022 further to a letter from the *de facto* Attorney General instructing line Prosecution Units country-wide not to accept any files sent for investigation from investigative agencies or other similar offices. Through a *de*

Departments of the Afghanistan National Police – collectively referred to as “EVAW institutions” – were some of the key State actors mandated to ensure justice/access to justice for victims/survivors⁹ of gender-based violence against women and girls. These institutions strengthened over time and were beginning to crystalise their coordination efforts, including the placement of survivors in protective facilities such as women’s shelters.¹⁰ As the Taliban established themselves as the *de facto* authorities in Afghanistan, these institutional structures were either progressively abolished or repurposed¹¹ in line with the Taliban’s general legal and justice system that is predominantly based on Sharia law.

Between 15 August 2021 and 15 July 2022, UNAMA observed that the *de facto* authorities’ handling of complaints/cases¹² of gender-based violence against women and girls was unclear and inconsistent. With a view to understanding how the Taliban *de facto* justice system handled and addressed these complaints, including applicable laws and institutions mandated to receive, process, and adjudicate such matters, UNAMA met and spoke with *de facto* officials and civil society actors on the subject. UNAMA used the EVAW Law of 2009 as a reference point¹³ with regard to types of acts that constituted crimes of gender-based violence against women¹⁴ before the Taliban takeover of the country.

Due to certain limitations on information-gathering, this report does not purport to provide a comprehensive overview, but rather a snapshot, of the legal and judicial response by *de facto* authorities to complaints of gender-based violence against women and girls across the country since 15 August 2021 until March 2023.

facto decree of 21 March 2023, the *de facto* Attorney General’s Office was repurposed by the Taliban Leader, Mullah Haibatullah Akhundzada, and renamed the High Directorate of Supervision and Prosecution of Decrees and Edicts by a decree dated 7 May 2023, with an attendant change in its mandate. The High Directorate of Supervision and Prosecution of Decrees and Edicts now focuses on monitoring “implementation of decrees” and has powers to investigate ‘breaches/crimes’ by all *de facto* authorities and no longer deals with investigations into crimes by individuals, for everyday public order concerns, according to information provided by the Directorate to the UNAMA Human Rights Service in June 2023.

⁹ To identify a person who experienced gender-based violence as “victim” or “survivor” primarily depends on the preference/self-identification of the concerned individual, which is to be respected. The context in which the term is used may vary. For example, the term “victim” is regularly used when indicating that a person has been subjected to a violation of international law or a crime. The term is broad in that victims of sexual violence are those individuals who directly experienced the violence, as well as those who were indirectly affected (for example, children born of rape). The term “survivor” is more commonly used in connection with the healing process of an individual who experienced gender-based violence, as it implies agency and resiliency. There is no United Nations-wide agreement on the use of one term or the other. Both terms can be used simultaneously and interchangeably – “survivor” celebrates the individual, but “victim” recognises the enormity of the system of gender-based discrimination that women and girls face. For purposes of this report, the term “survivor” is used.

¹⁰ UNAMA/OHCHR, *Injustice and Impunity: Mediation of Criminal Offences of Violence Against Women*, May 2018, page 33. Available at <https://unama.unmissions.org/women%27s-rights-reports>.

¹¹ See footnote 8 for example.

¹² In criminal law in general, an individual is accused of a crime via a criminal complaint. Thus, a criminal complaint is what typically marks the commencement of an official criminal case against a suspect. For purposes of this report, the term “complaint” is used in general while the term “case(s)” is used in relation to the *de facto* courts.

¹³ Using the EVAW Law of 2009 as a reference point was necessary given the absence of confirmation or clarity by the *de facto* authorities regarding applicable legal and policy frameworks regarding complaints of gender-based violence against women and girls following the Taliban takeover of Afghanistan since 15 August 2021.

¹⁴ Islamic Republic of Afghanistan, *Elimination of Violence Against Women Law, 2009*, Articles 4 and 5.

II. Legal Framework

A. International Legal Framework

The Declaration on the Elimination of Violence Against Women (1993) defines “violence against women” as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”¹⁵

**“States Parties shall accord to women
equality with men before the law.”**

**Article 15 (1), UN Convention on the Elimination of All
Forms of Discrimination Against Women, 3 September 1981**

The UN Committee on the Elimination of All Forms of Discrimination Against Women, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 (2017), defines gender-based violence as “violence which is directed against a woman because she is a woman or that affects women disproportionately”. It noted that “the concept of “violence against women” as defined in... international instruments and documents, has place[d] an emphasis on the fact that such violence is gender-based”. Thus, the term “gender-based violence against women” is... a more precise term [as it] makes explicit the gendered causes and impacts of the violence.” The Committee also highlighted that “[t]he term further strengthens the understanding of the violence as a social rather than an individual problem, requiring comprehensive responses, beyond those to specific events, individual perpetrators and victims/survivors.”¹⁶ Accordingly, in this paper, the term “gender-based violence against women and girls” is used.

Afghanistan remains a State party to and continues to be bound by the Convention on the Elimination of all forms of Discrimination against Women.¹⁷ The Convention obliges State parties to respect, protect and fulfil women’s rights to non-discrimination and the enjoyment of *de jure* and *de facto* equality. Articles 2(c), 3, 5(a) and 15 of the Convention relate to access to justice. Article 5(a) requires the removal of social norms which impede women from enjoying their rights. Articles 15 to 17 establish obligations to ensure women’s equality before the law¹⁸ and preventing all forms of discrimination against women regarding education, social and economic life, and equality of women’s rights in family life. Furthermore, the Convention establishes that the marriage of a child would render the marriage null and void.

¹⁵ UN Declaration on the Elimination of Violence against Women, A/RES/48/104, 20 December 1993, Article 1.

¹⁶ UN Committee on the Elimination of Violence against Women, *General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19 (2017)*, CEDAW/C/GC/35, 26 July 2017, paragraph 9.

¹⁷ The Islamic Republic of Afghanistan ratified the Convention on the Elimination of all Forms of Discrimination against Women in March 2003.

¹⁸ See also International Covenant on Civil and Political Rights, General Assembly resolution 2200A (XXI), 16 December 1966, Article 14

International treaties to which Afghanistan remains a State party and continues to be bound by,¹⁹ prohibit all forms of discrimination against women and girls and compel the State to take action to ensure the equal right of men and women to the enjoyment of their civil, political, economic, social and cultural rights and eliminate violence and other harmful practices against women.

B. National Legal Frameworks on the Elimination of Violence against Women

The Constitution of Afghanistan of 2004 states that Afghan citizens – women and men – have equal rights and duties before the law, and that any kind of discrimination and distinction between the citizens of Afghanistan is prohibited.²⁰ Furthermore, article 7(1) of the Constitution of Afghanistan acknowledges the obligation to adhere to international treaty obligations: “The State shall abide by the UN Charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights.”²¹

In 2009, the EVAW Law was enacted by presidential decree as the key law governing issues of gender-based violence against women and girls in Afghanistan.

The EVAW Law criminalised 22 acts that constitute gender-based violence against women and girls.²² Pursuant to Article 39 (1) and (2) of the EVAW Law, a woman complainant can withdraw her case at any stage of proceedings, except for five acts of gender-based violence against women and girls which the State must act upon, irrespective of whether a complaint is filed or subsequently withdrawn. These are the crimes of rape, forced prostitution, publicising the identity of a victim, burning of a woman/girl, including through the use of chemical and poisonous substances, and forced self-immolation or suicide – commonly referred to as the ‘five serious offences of gender-based violence against women and girls.’ All other crimes stipulated in the EVAW

¹⁹ The Islamic Republic of Afghanistan is State party to the following international treaties: the International Convention on Civil and Political Rights; the International Convention on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol of the Convention against Torture; the Convention on the Rights of the Child and its two optional protocols (Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography); and the Convention on the Rights of Persons with Disabilities.

²⁰ Islamic Republic of Afghanistan, *Constitution of the Islamic Republic of Afghanistan, 2004*, Article 22.

²¹ For a detailed overview of the legal framework for the elimination of violence against women and girls in Afghanistan, see UNAMA, *Still a Long Way to Go: Implementation of the Law on Elimination of Violence against Women in Afghanistan*, 2012; UNAMA/OHCHR, *A Way to Go: An Update on the Implementation of the Law on Elimination of Violence against Women in Afghanistan*, 2013; UNAMA/OHCHR, *Justice Through the Eyes of Afghan Women: Cases of Violence Against Women Addressed through Mediation and Court Adjudication*, 2015; UNAMA/OHCHR, *Injustice and Impunity: Mediation of Criminal Offences of Violence Against Women*, May 2018. Available at: <https://unama.unmissions.org/women%27s-rights-reports>.

²² Islamic Republic of Afghanistan, *Elimination of Violence against Women Law, 2009*, Article 5: “Commission of the following [22] acts shall be deemed as violence against women: Rape; Forcing into prostitution; Recording the identity of victim and publicizing it in a manner that damage the personality of victim; Setting into flames, using chemicals or other dangerous substances; Forcing into self-immolation or suicide or using poisonous or other dangerous substances; Causing injury or disability; Battery and laceration; Selling and buying women for the purpose or under pretext of marriage; *Baad* [offering a woman in marriage to compensate for a murder or restore peace]; Forced marriage; Prohibiting from right of marriage or choosing husband; Marriage before the legal age; Abusing, humiliating, intimidating; Harassment/ persecution; Forced isolation [denying visit to family]; Forcing a woman into drug addiction; Depriving from inheritance; Preventing from possession of personal property; Denying right to education, work and access to health services; Forced labour; Marrying more than one wife without observing the provision of Article 86 of Civil Code; Denial of relationship.”

Law are investigated and referred to prosecution upon the filing of a complaint by the survivor or a family member.

As a specialised law,²³ the EVAW Law refers to the Penal Code of 1976, which was revised in 2017, for cases involving rape, injury and/or disability. Other sections of the revised Penal Code of 2017 criminalise additional acts of gender-based violence perpetrated against women and girls that the EVAW Law does not capture, such as murder and kidnapping. It does not, however, provide civil remedies that would facilitate the protection of survivors and their children, such as protection or restraining orders.

The EVAW Law also obliges those in authority to take protective and supportive measures in favour of victims, including coordinating their activities to ensure the protection of survivors, providing safe places for victims of gender-based violence and raising the awareness of both men and women regarding their legal and religious rights. Under the former Government, these obligations were shouldered by eight government ministries,²⁴ a national High Commission for the Elimination of Violence against Women (High Commission on EVAW) and all provincial governors in Afghanistan's 34 provinces, the latter instructed by the national High Commission on EVAW to establish provincial-level Commissions on the Elimination of Violence against Women (EVAW Commissions), which they did.

The use of mediation through traditional dispute resolution mechanisms, outside the formal justice system in the resolution of complaints of gender-based violence against women and girls, was already a challenge prior to the *de facto* authorities taking control of Afghanistan.²⁵ Efforts that were underway by the former Government to enact a law to regulate the mediation of disputes, including minor civil matters, were overtaken by the events of 15 August 2021. Article 39 (1) and (2) of the EVAW Law in practice was interpreted as allowing room for the mediation of complaints of gender-based violence against women and girls if a survivor or her family so chose. Under the former Government, traditional dispute resolution mechanisms included community leaders, *jirgas* (gathering of elders informally empowered to take decisions for families or individuals, often for the purpose of resolving disputes or community issues), *shuras* (local councils) and *ulemas* (Muslim scholars).

Following the Taliban's takeover of Afghanistan on 15 August 2021, the *de facto* Minister of Justice, Abdul Hakeem Sharaee, informed in September 2021 of the Taliban's plan to govern the country by temporarily enacting articles from Afghanistan's 1964 Constitution that are "not in conflict with Sharia [law]" and that "international laws and instruments which are not in conflict with the principles of Sharia [law] and Islamic Emirate will be respected as well."²⁶

²³ The term "specialised law" is used to not only indicate the dedication of a law to the issue of elimination of gender-based violence against women and girls but also the expertise [or the need for expertise] in the implementation of the law.

²⁴ These were the former Ministries of Women's Affairs, Religious Affairs, Education, Higher Education, Information and Culture, Justice, Interior Affairs, and Public Health.

²⁵ See, for example, UNAMA/OHCHR, *In Search of Justice for Crimes of Violence Against Women and Girls*, December 2020, Page 11. Available at https://www.ohchr.org/sites/default/files/Documents/Countries/AF/UNAMA_OHCHR_Violence_Women.pdf Accessed on 15 June 2023.

²⁶ Voice of America, *Taliban Say They Will Use Parts of Monarchy Constitution to Run Afghanistan for Now*, 28 September 2021, available at <https://www.voanews.com/a/taliban-say-they-will-use-parts-of-monarchy-constitution-to-run-afghanistan-for-now/6248880.html> Accessed on 25 June 2023.

In December 2021, the Taliban leader, Haibatullah Akhundzada, issued a decree that prohibited forcing a woman into marriage and giving a woman in restitution (*baad*), and granted women the right to consent to marriage. It, however, did not set out the minimum age of marriage. It also granted women heritage rights in the property of their husband, father, brother, child or relative. The decree, however, acknowledges that men practice polygamy and calls on them to “give rights to all women in accordance with Sharia, and maintain justice between them.” The decree also falls short of referring to wider rights of women and girls, inter alia, their rights to education, work and to freedom of movement or to participation in public life. Amongst the *de facto* institutions, the *de facto* Ministries of Hajj and Religious Affairs, and Information and Culture, and *de facto* provincial and district governors are specifically charged with implementing the decree, as well as the *de facto* Supreme Court, the latter to issue “...instructions to all courts to consider applications for women’s rights, especially widows’ rights and their oppression, in a proper and principled manner, [as guaranteed by] Sharia.”²⁷

“We will not discuss what type of political system should we apply in Afghanistan because it is clear. It is sharia law and that is it.”

Waheedullah Hashimi, a senior Taliban Commander speaking to the press on 18 August 2021

The *de facto* authorities have stated on numerous occasions that Sharia law is the applicable legal framework in Afghanistan.²⁸ In mid-2022, the *de facto* authorities initiated a review of all laws passed prior to the Taliban takeover for Sharia compliance, generating legal uncertainty while this work remains underway.²⁹ While parts of the Penal Code of 2017 are reportedly³⁰ considered contrary to Sharia law, to date it is not clear which sections.

²⁷ *Special Decree issued by the Taliban Leader on Women’s Rights*, Decree Number 395, dated 3 December 2021, available at https://twitter.com/Zabehulah_M33/status/1466662484375326720 Accessed on 11 June 2023.

²⁸ Reuters, *Exclusive: Council may rule Afghanistan, Taliban to reach out to soldiers, pilots*, 19 August 2021, available at: <https://www.reuters.com/world/asia-pacific/exclusive-council-may-rule-afghanistan-taliban-reach-out-soldiers-pilots-senior-2021-08-18/>; *EXCLUSIVE Afghan women should not work alongside men, senior Taliban figure says*, 13 September 2021, available at: <https://www.reuters.com/world/asia-pacific/exclusive-afghan-women-should-not-work-alongside-men-senior-taliban-figure-says-2021-09-13/>; Associated Press, *Taliban official: Strict punishment, executions will return*, 23 September 2021, available at <https://apnews.com/article/religion-afghanistan-kabul-taliban-22f5107f1dbd19c8605b5b5435a9de54>; TOLO News, *Officials: Afghanistan Does Not Need a Constitution*, 4 September 2022, available at: <https://tolonews.com/afghanistan-179697>; Associated Press, *Afghan Taliban say group will stick to strict Islamic law*, 17 November 2022, available at: <https://apnews.com/article/afghanistan-business-taliban-921f029801814736709d0445336a53cf>. All weblinks in this footnote were accessed on 15 June 2023.

²⁹ *De facto Ministry of Justice, Minister of Justice Accentuated Upon the Expedition of Law Revision Process*, 10 April 2022, available at: <https://moj.gov.af/en/minister-justice-accentuated-upon-expedition-law-revision-process> Accessed on 15 June 2023.

³⁰ Interviews with eight *de facto* authorities.

III. Methodology

To supplement its ongoing monitoring of how incidents of gender-based violence against women and girls are being addressed since 15 August 2021, UNAMA undertook a series of country-wide interviews from August 2022 to March 2023 with *de facto* officials and civil society actors. Their responses provide a situational snapshot.

The interviews aimed to better understand:

- if the formal EVAW mechanisms and case management procedures established under the former Government were still in use or if an alternative(s) were in place;
- if, and what types of, complaints of gender-based violence against women and girls were received and processed by the *de facto* authorities; and if so, by which *de facto* entity(ies), and how the different categories of crimes of gender-based violence against women and girls were addressed;
- if the said *de facto* entities had dedicated personnel/units specifically mandated to address complaints/cases of gender-based violence against women and girls;
- if complaints of gender-based violence against women and girls were referred to other *de facto* entities/mechanisms and/or per what criteria; and
- if there were any protection mechanisms in place for survivors.

Across Afghanistan, UNAMA conducted a total of 71 interviews with *de facto* officials (67 men and four women), including with the *de facto* Ministry of Interior's police (hereafter referred to as "*de facto* police"), prosecution units, courts, Departments of Justice, and Departments of Propagation of Virtue and Prevention of Vice. With civil society actors, a total of 87 interviews (with 57 men and 30 women) were also conducted. Though UNAMA sought to interview *de facto* officials in all 34 provinces of Afghanistan, this was not possible in four³¹ provinces due to their unavailability for interviews or owing to UNAMA's inability to reach the provinces.

Afghanistan's *de facto* authorities were invited to provide factual comments on the content of the report and their response is annexed.

³¹ Badghis, Daikundi, Ghor and Farah provinces.

IV. Findings

A. Types of Complaints Received by *De facto* Authorities

The most-reported types of complaints of gender-based violence against women and girls lodged with the *de facto* police, prosecution units and courts were murder,³² including murder perpetrated for reasons of so-called “honour,”³³ rape,³⁴ causing injury or disability,³⁵ and depriving a woman of inheritance.³⁶

The *de facto* Departments of Justice mostly received complaints of deprivation of inheritance³⁷ and prevention of possession of personal property³⁸ while the *de facto* Departments of Propagation of Virtue and Prevention of Vice mostly received complaints of deprivation of inheritance, prohibition of marriage or choosing a spouse, forced marriage, and battery and laceration.³⁹

B. Legal Frameworks Used by *De facto* Authorities

The *de facto* authorities shared that they use Sharia law to process and adjudicate complaints of gender-based violence against women and girls,⁴⁰ as well as the laws of

“Punishments for [gender-based] violence against women crimes under Sharia law [compared to the laws of the former Government] are much lower.”

A de facto official of the former Attorney General’s Office, Northern Region.

the former Government,⁴¹ with Sharia law taking precedence in cases of conflict with the laws of the former Government. A *de facto* official of the now repurposed Attorney General’s Office in the Northern Region stated, however, that “punishments for [gender-based] violence against women crimes under Sharia law [compared to the laws of the former Government] are much lower.” It is unknown how Sharia law under the *de facto* authorities interprets gender-based violence against women and girls and the related sanctions and remedies.

Only three *de facto* authority officials interviewed said that all acts criminalised by the EVAW Law continue to be recognized as crimes in their handling of complaints. The criteria for categorising acts of gender-based violence against women and girls as ‘civil’ or ‘criminal’ was not clear from the responses of the *de facto* authorities. Some *de facto* officials considered acts that had been criminalised in the EVAW Law – including forced marriage,⁴² preventing from possession of personal property,⁴³ depriving from

³² Interviews with 16 *de facto* police, 14 *de facto* judges and 10 *de facto* prosecutors.

³³ Interviews with 11 *de facto* police, 10 *de facto* judges and 8 *de facto* prosecutors.

³⁴ Interviews with 11 *de facto* police, 12 *de facto* judges and 9 *de facto* prosecutors.

³⁵ Interviews with 14 *de facto* police, 11 *de facto* judges and 8 *de facto* prosecutors.

³⁶ Interviews with nine *de facto* police, 11 *de facto* judges and 4 *de facto* prosecutors.

³⁷ Interviews with three *de facto* Department of Justice personnel.

³⁸ Interviews with three *de facto* Department of Justice personnel.

³⁹ Interviews with two *de facto* Department of Propagation of Virtue and Prevention of Vice personnel.

⁴⁰ Interviews with 34 *de facto* officials.

⁴¹ Interviews with 25 *de facto* officials.

⁴² Interviews with two *de facto* officials.

⁴³ Interviews with six *de facto* officials.

inheritance,⁴⁴ and beating⁴⁵ – now as civil cases. At least three *de facto* authorities stated that criminal cases of gender-based violence against women and girls included only those crimes that involved physical harm to the victim. The following acts were most often identified as criminal acts by the *de facto* authorities interviewed: murder,⁴⁶ rape,⁴⁷ battery and laceration,⁴⁸ abduction/kidnapping,⁴⁹ causing disability or injury,⁵⁰ so-called *zina*⁵¹ and forced self-immolation or suicide.⁵³

C. Handling of Complaints by *De facto* Authorities

UNAMA monitoring revealed four *de facto* institutions that were “legally”⁵⁴ allowed to handle complaints of violence against women and girls: police, courts, Departments of Justice, and the former Attorney General’s Office/prosecutors.⁵⁵

The former Attorney General’s Office referred complaints of gender-based violence against women and girls that were of a criminal nature to the *de facto* courts for trial, while those of a civil nature were referred to the *de facto* Departments of Justice or the *de facto* courts. Sometimes, as described below, complaints of gender-based violence against women and girls were mediated by *de facto* Departments of Propagation of Virtue and Prevention of Vice even though it is not mandated with such a role.⁵⁶ These five *de facto* institutions received, resolved and/or referred complaints to other actors, including traditional dispute resolution mechanisms, for resolution.⁵⁷

De facto Police

The *de facto* police were the main recipients of complaints of gender-based violence against women and girls.⁵⁸ The Criminal Investigation Department of the *de facto* police handled and investigated most complaints and referred them to *de facto* prosecution units or the *de facto* courts. The referral of complaints directly from the *de facto* police to the *de facto* courts became the norm following the suspension of activities of the *de facto* prosecution units in August 2022.⁵⁹

“...with the consent of both parties (the complainant and accused person), the CID tries to mediate both criminal and civil cases [of gender-based violence against women and girls], but if the case resulted in injury, then they do not mediate.”

A de facto police officer, Eastern Region.

⁴⁴ Interviews with 12 *de facto* officials.

⁴⁵ Interviews with two *de facto* officials.

⁴⁶ Interviews with 18 *de facto* officials.

⁴⁷ Interviews with 13 *de facto* officials.

⁴⁸ Interviews with nine *de facto* officials.

⁴⁹ Interviews with 18 *de facto* officials.

⁵⁰ Interviews with five *de facto* officials.

⁵¹ *Zina* is an Arabic term used to describe the prohibition under Sharia law of the act of engaging in sexual intercourse outside of marriage. *Zina* is a *Hudood* crime under Sharia law, i.e., a crime regarded as being against God’s commands for which punishment is obligatory.

⁵² Interviews with eight *de facto* officials.

⁵³ Interviews with three *de facto* officials.

⁵⁴ Interview with a *de facto* official of the former Attorney General’s Office.

⁵⁵ See Footnote 8.

⁵⁶ Interview with a *de facto* provincial head of the former Attorney General’s Office.

⁵⁷ Interviews with *de facto* officials and civil society actors.

⁵⁸ Interviews with 56 *de facto* officials and 78 civil society actors.

⁵⁹ See Footnote 8.

Family Response Units still exist in 21 provinces,⁶⁰ with 18 of the provinces⁶¹ having at least one female police officer deployed in the unit. In eight provinces,⁶² female police officers of the unit were not allowed to report to the office unless called upon by their supervisors. In two provinces,⁶³ female police officers of the unit were not involved in the investigation of complaints of gender-based violence against women and girls, the task left to their male counterparts only.

When the *de facto* police received complaints of gender-based violence against women and girls, they first endeavoured to resolve them through mediation before referring them to other actors.⁶⁴

“If a couple has several children, the police consider the future of the children and try to reconcile the couple.”

A head of the Criminal Investigation Department of the *de facto* Police, Eastern Region

This appeared to be the case, for instance, where there were children of the marriage, or where both parties consented to mediation, the exception being if the complaint involved physical injury to one of the parties. A *de facto* police officer in the Southern Region said that “Minor cases like public humiliation of a woman or threatening a woman, ...[are] civil case[s] and are addressed by mediation. Those considered minor cases are not escalated to higher authorities.” A *de facto* Chief of Police in the Central Region said that “[cases of gender-based violence against women and girls] are dealt with under the traditional mediation structures,” and interviews with other *de facto* police⁶⁵ and civil society actors⁶⁶ highlighted the same. It was not clear from the interviews what “traditional mediation structures” meant.

Before referring complaints to mediation, some among the *de facto* police⁶⁷ provided the complainant options as to whether they preferred the complaint to be handled formally or referred to a traditional dispute resolution mechanism, before proceeding with a referral.

De facto Courts

The *de facto* courts were the second main recipient of complaints of gender-based violence against women and girls.⁶⁸ They adjudicated both civil and criminal complaints of gender-based violence against women and girls using Sharia law, and referred civil cases to traditional dispute resolution mechanisms unless the survivor requested that the matter be handled by the courts.⁶⁹ For example, a *de facto* Chief Appellate Court Judge in the Eastern Region stated that “the courts ask the complainant how they want

⁶⁰ Badakhshan, Baghlan, Balkh, Bamyan, Faryab, Ghazni, Jawzjan, Kapisa, Khost, Kunar, Kunduz, Laghman, Logar, Nangarhar, Nuristan, Paktika, Pakiya, Parwan, Samangan, Saripul and Takhar provinces. Information was received from 30 provinces.

⁶¹ Badakhshan, Baghlan, Balkh, Bamyan, Faryab, Ghazni, Jawzjan, Kapisa, Khost, Kunduz, Laghman, Nangarhar, Nuristan, Pakiya, Parwan, Samangan, Saripul and Takhar provinces.

⁶² Badakhshan, Ghazni, Khost, Kunduz, Laghman, Nangarhar, Nuristan and Pakiya provinces.

⁶³ Bamyan and Ghazni provinces.

⁶⁴ Interviews with 11 *de facto* police.

⁶⁵ Interviews with 16 *de facto* police.

⁶⁶ Interviews with 60 civil society actors.

⁶⁷ Interviews with eight *de facto* police.

⁶⁸ Interviews with 44 *de facto* officials and 42 civil society actors.

⁶⁹ Interviews with 12 *de facto* judges.

their case to be handled, that is, by elders or through the courts. The courts respect the will of the complainant.... Informal dispute resolution mechanisms do not result in losers and winners, as opposed to the formal justice system that results in the estrangement of family members or relatives,” further adding that cases like deprivation of inheritance (criminalised under the EVAW Law) and verbal abuse were referred to traditional dispute resolution mechanisms for settlement, unless the complainant requested that the matter be handled by the courts.

De facto Departments of Justice

The third-most identified recipient of complaints of gender-based violence against women and girls was the *de facto* Departments of Justice.⁷⁰ While they received all types of complaints of gender-based violence against women and girls, they only mediated civil matters – including denial of property rights, inheritance issues, alimony, and separation/divorce cases – before referring them onward to traditional dispute resolution mechanisms or to the *de facto* courts. Complaints of a criminal nature were referred to the *de facto* police (specifically the Criminal Investigation Department), courts and prosecution units.⁷¹ A *de facto* Department of Justice official in the Central Region, however, stated that his office handles several domestic violence complaints affecting women, including complaints of beating (criminalised under the EVAW Law). He stressed that “mediation is preferred, as it takes a lot of time to settle cases through the courts.”

“Mediation is preferred, as it takes a lot of time to settle cases through the courts.”

A *de facto* Department of Justice official in the Central Region.

If a mediated settlement was not reached by the *de facto* Departments of Justice and/or the traditional dispute resolution mechanism, or if the complainant requested the *de facto* court option, this was when complaints were referred to the *de facto* courts.⁷² For example, a *de facto* Department of Justice official in the Southern Region stated that when his office receives a complaint, it “...may advise the woman to go to her husband’s family and ask them to help resolve the issue.” If the woman insisted on the *de facto* Department of Justice resolving the matter, they called her husband, asked him not to commit the act again and had him make a sworn statement to that effect. Where a complainant opted to take matters to court, the *de facto* Department of Justice provided lawyers to women who could not afford legal representation. On this latter point, it did not appear from responses in the interviews that this service was widely available across Afghanistan.

De facto Prosecution Units

Until the suspension of its mandate in August 2022 and the Attorney General’s Office’s subsequent repurposing by the Taliban Leader in March 2023,⁷³ the former *de facto* prosecution units were the fourth main recipient of complaints of gender-based violence against women and girls. How they were seized of complaints was never explained except that they only received complaints that were of a criminal nature/criminalised by

⁷⁰ Interviews with 27 *de facto* officials and 12 civil society actors.

⁷¹ See Footnote 8.

⁷² Interviews with six *de facto* Department of Justice officials.

⁷³ See Footnote 8.

the EVAW Law. Their duties included conducting investigations, preparing indictments against accused persons, ensuring the enforcement of decisions made by *de facto* courts, and appealing to a higher court where judgement by a lower court was unjustifiable.

In drafting indictments, *de facto* prosecution units used “Sharia law”, particularly “*Hanafi* jurisprudence,” which is used by *de facto* judges in adjudicating cases.⁷⁴ In some *de facto* prosecution units, the laws of the former Government were used to process complaints of gender-based violence against women and girls, such as the Criminal Procedure Code of 2014, but only insofar as provisions were compatible with Sharia law; otherwise, they were not considered.⁷⁵

Prior to the repurposing of the former Attorney General’s Office,⁷⁶ specialised EVAW prosecution units were present in 22 provinces. At the time of the interviews, they no longer existed in five provinces.⁷⁷ Of the 22 provinces where they existed, there were no female prosecutors in five provinces⁷⁸ and in the remaining 17 provinces, 12 provinces did not permit female prosecutors to be involved in investigating crimes of gender-based violence against women and girls.⁷⁹

De facto Departments of Propagation of Virtue and Prevention of Vice

Besides its complaint resolution function involving the investigation and referral of complaints made by the public against *de facto* authorities to relevant entities, some *de facto* Departments of Propagation of Virtue and Prevention of Vice⁸⁰ also received and mediated complaints of gender-based violence against women and girls that were civil in nature, and so-called “moral crimes”, such as *zina*⁸¹ and instances where women/girls ran away from home, termed “running away”; it exclusively used Sharia law in resolving these cases.⁸² A *de facto* Department of Propagation of Virtue and Prevention of Vice official in the Eastern Region stated that his office resolved forced marriage and “prohibiting from right of marriage or choice of husband” cases (both criminalised under the EVAW Law). Another official of the *de facto* Department of Propagation of Virtue and Prevention of Vice in the Eastern Region stated that the *de facto* authorities’ legal age of marriage for both men and women is 18 years. He highlighted, however, that the *de facto* Department of Propagation of Virtue and Prevention of Vice does not stop a marriage if a girl aged below 18 agrees to the marriage.

Most complaints received by the *de facto* Departments of Propagation of Virtue and Prevention of Vice related to forced marriage and inheritance issues.⁸³ It referred these complaints for resolution through *ulemas* and *jirgas*, or referred them for adjudication by

⁷⁴ Interviews with 11 *de facto* prosecutors.

⁷⁵ Interviews with nine *de facto* prosecutors.

⁷⁶ See Footnote 8.

⁷⁷ Provinces where the specialised EVAW prosecution unit existed: Badakhshan, Badghis, Baghlan, Balkh, Farah, Faryab, Ghazni, Ghor, Herat, Jawjan, Khost, Kunar, Kunduz, Laghman, Nangarhar, Nimroz, Nuristan, Paktika, Pakhtiya, Saripul, Samangan and Takhar. Provinces where the specialised EVAW prosecution unit did not exist: Bamyan, Helmand, Kandahar, Urozgan and Zabul provinces. Information was received from 27 provinces.

⁷⁸ Badghis, Farah, Ghor, Herat and Nimroz provinces.

⁷⁹ Badakhshan, Baghlan, Ghazni, Khost, Kunar, Kunduz, Laghman, Nangarhar, Nuristan, Paktika, Pakhtiya and Takhar provinces.

⁸⁰ Interviews with three heads of *de facto* Departments of Propagation of Virtue and Prevention of Vice, 15 other *de facto* officials and seven civil society actors.

⁸¹ See footnote 51.

⁸² Interviews with 18 *de facto* officials and seven civil society actors.

⁸³ Interview with two Heads of *de facto* Departments of Propagation of Virtue and Prevention of Vice.

the *de facto* courts, the latter only when it was a difficult case or when the former failed to resolve the matter.

The *de facto* Departments of Propagation of Virtue and Prevention of Vice also referred complaints of a criminal nature – like wife battery resulting in injuries, and rape – to the *de facto* courts or police. Some officials of the *de facto* Departments of Propagation of Virtue and Prevention of Vice⁸⁴ said their offices are not mandated to address complaints of gender-based violence against women and girls and referred them instead to the *de facto* police, courts, prosecution units and Departments of Justice.

The *de facto* Departments of Propagation of Virtue and Prevention of Vice took over the offices and personnel of the former Departments of Women's Affairs in September 2021. Women personnel of the former Departments of Women's Affairs reported to the office on a 'as needed' basis or only when called by their supervisors, for example, to attend to a specific task or to sign an attendance register.

De facto Provincial/District Governors

De facto provincial and district governors also received women and girls' complaints of gender-based violence⁸⁵ but these were subsequently referred to *de facto* justice actors.⁸⁶ In the majority of cases, traditional elders mediated/endeavoured to mediate such complaints, except for serious offences like murder which were usually referred to the *de facto* police or courts for investigation and trial.⁸⁷

Traditional Dispute Resolution Mechanisms

A *de facto* Chief of Police in the Central Region and a *de facto* primary court judge in the Eastern Region both mentioned that female survivors of gender-based violence sought the resolution of their complaints of violence through traditional dispute resolution mechanisms.

“Should any case [of gender-based violence against women and girls] arise, it is handled through mediation by the local structures, such as ulema, mullah, imam, etc. They very rarely reach the police.”

A *de facto* Chief of Police in the Central Region.

Civil society interview respondents echoed this response highlighting that most survivors seek redress through traditional dispute resolution mechanisms and do not file complaints with the *de facto* entities⁸⁸ due to fear of the *de facto* authorities, including fear of revictimisation.⁸⁹

⁸⁴ Interviews with six Heads of *de facto* Departments of Propagation of Virtue and Prevention of Vice.

⁸⁵ Interviews with 17 *de facto* officials and eight civil society actors.

⁸⁶ Interviews with a *de facto* Provincial Governor, an official from a Provincial Governor's office, and a Deputy Provincial Governor.

⁸⁷ Ibid.

⁸⁸ Interviews with two *de facto* officials and 65 civil society actors.

⁸⁹ Interviews with 39 civil society actors, where these responses were elicited without UNAMA asking specific questions regarding non-reporting by survivors and/or under-reporting of incidents of gender-based violence against women and girls.

Interestingly, most formal *de facto* justice actors – the *de facto* police, prosecution units and Departments of Justice – recorded both the referral and outcomes of referrals to traditional dispute resolution mechanisms.⁹⁰ Whether a central repository for such records exists remained unclear.

D. Women's Protection Mechanisms

Although not present in every province, until 15 August 2021 there were 23 State-sponsored specialised women protection centres operated by national non-governmental organisations in 23 provinces of Afghanistan.⁹¹ The interviewees almost unanimously confirmed that currently, there are no State-sponsored specialised women's protection centres or shelters across the country where survivors can seek refuge.⁹²

A *de facto* police officer in the Northeastern Region said that women's shelters are a western concept, stressing that women should stay with their brothers, fathers, or husbands. A *de facto* former Attorney General's Office official in the Northeastern Region said that "...there is no need for such shelters. No one will harm women while the Islamic Emirate is in power." A *de facto* appellate court judge in the Northeastern Region stated that the *de facto* Cabinet was conducting research to assess if there is a need for women's shelters.

"The Islamic Emirate does not have any shelter for women. They must be with their husbands or other male family members – their *mahram*."⁹³

A *de facto* official of the Department of Justice, Southern Region

Some *de facto* officials reported that, to protect survivors, they requested a commitment – in some instances, sworn statements – from the survivor's male relations that they would not harm the survivor⁹⁴ and also invited local traditional elders to witness family members making this guarantee.⁹⁵ Some *de facto* officials⁹⁶ stated that in instances where they had safety concerns for a survivor, she would be sent to the women's prison, for her protection, akin to how prisons have been used to accommodate drug addicts and homeless people in Kabul.⁹⁷

⁹⁰ Interviews with 30 *de facto* officials.

⁹¹ These were in Badakhshan, Badghis, Baghlan, Balkh, Bamiyan, Daikundi, Farah, Faryab, Ghor, Herat, Jawzjan, Kabul, Kapisa, Kunduz, Kunar, Nangarhar, Nimruz, Paktia, Parwan, Samangan, Saripul, and Takhar provinces. On 17 April 2019, the Prevention of Violence and Public Awareness Working Group, which included the former Government of the Islamic Republic, United Nations and civil society organizations, endorsed the proposal of the former Ministry of Women's Affairs for women's protection centres. This was to enable regular State-funded annual budgeting for the operation of women protection centres across Afghanistan.

⁹² Interviews with 67 *de facto* officials and 87 civil society actors.

⁹³ A "*mahram*" is defined as a woman's husband, or her immediate male relative (i.e., father, brother, paternal and maternal uncles and her nephews) with whom marriage is proscribed for her under Sharia law.

⁹⁴ Interviews with nine *de facto* officials.

⁹⁵ Interviews with an official of the *de facto* Department of Justice official, four *de facto* police, and two officials of the former *de facto* Attorney General's Office.

⁹⁶ Interviews with seven *de facto* officials, including a *de facto* judge.

⁹⁷ See for example, *Edict on the collection of, and assistance to poor persons [beggars] in Kabul city* - 25/7/1443 [or 26 February 2022]

V. Conclusion

As the recipient of most complaints of gender-based violence against women and girls, the *de facto* police were the main entity amongst the *de facto* authorities to which women and girls alleging acts of gender-based violence sought recourse via complaints. This was followed by the *de facto* courts, Departments of Justice, and former prosecution units. The *de facto* Departments of Propagation of Virtue and Prevention of Vice also received and settled complaints, mainly those on inheritance, prohibition of marriage or choosing a spouse, and forced marriage.

It remained unclear which *de facto* formal justice actor is responsible for which action(s) along the justice chain when it came to the handling and processing of gender-based violence complaints from women and girls. The lack of clear delineation of responsibilities among the various *de facto* institutions on the handling of complaints of gender-based violence against women and girls and referrals between entities creates a gap in accountability for justice actors and makes it difficult for women and girls to know which entity to approach when they have a gender-based violence complaint.

The situation is compounded by the handling of gender-based violence complaints predominantly by male personnel of the *de facto* law enforcement and justice institutions. Many survivors reportedly⁹⁸ prefer seeking redress through traditional dispute resolution mechanisms because of fear of the *de facto* authorities. The absence of women personnel and inherent cultural dynamics *potentially* inadvertently, and by default, discourages and inhibits survivors from lodging complaints, contributing to survivors' and/or at-risk women and girls' lack of trust in the *de facto* justice system.

Unlike prescriptions in the EVAW Law, there is no clear distinction by the *de facto* authorities between complaints of gender-based violence against women and girls of a criminal nature and those of a civil nature, with individual *de facto* law enforcement and justice actors arbitrarily making such determinations, including when making referrals to the adjudicating entity. This practice does not ensure effective legal protection for women and girls, runs counter to international human rights standards, and leaves room for discriminatory application of the law.

Complaints considered of a criminal nature – mainly those that resulted in women or girls being injured – were investigated by the Criminal Investigation Department of the *de facto* police and former prosecution units⁹⁹ and adjudicated by the *de facto* courts using Sharia law. In handling such complaints, *de facto* police and former prosecution units used provisions of the laws of the former Government they considered to be compatible with Sharia law, including the Criminal Procedure Code of 2014, especially with regards to the treatment of detainees (the alleged perpetrator/accused), and aspects relating to the length of detention prior to trial. Indictments or charges, were, however, prepared using only Sharia law. Complaints perceived to be of a civil nature were directly referred to the *de facto* Departments of Justice, courts or traditional dispute resolution mechanisms.

⁹⁸ See Footnotes 89.

⁹⁹ See Footnote 8.

The absence of female police officers in some *de facto* Family Response Units (FRUs)¹⁰⁰ and the fact that in some provinces¹⁰¹ female FRU officers were not involved in investigating gender-based violence against women and girls complains does not promote gender-sensitive policing necessary for an accessible formal justice system. In General Recommendation No. 30, the Committee on the Elimination of Discrimination against Women notes that States should ensure women's and girls' access to justice and adopt gender-sensitive investigative procedures to address sexual and gender-based violence.¹⁰²

Similarly, at the time of the interviews, the specialised ERAW prosecution unit continued to exist in 22 provinces, but was also non-uniformly resourced, with five provinces having no female prosecutors as part of the unit.¹⁰³ Where there were female prosecutors, they were not involved in investigating complaints of gender-based violence against women and girls.¹⁰⁴ In an environment where women's and girls' enjoyment of their basic human rights and freedoms are restricted, the limited participation of women in *de facto* law enforcement and justice institutions, coupled with the diminished capacity, underutilisation and/or repurposing of the said specialised mechanisms, risks contributing to the violation of women and girls' right to access justice and having a formal closure of their complaint.

With the *de facto* police, courts and Departments of Justice prioritising mediation of complaints of gender-based violence – including acts criminalised under the ERAW Law such as battery and depriving a woman of inheritance – over prosecution and trial through the *de facto* courts, most complaints appeared to go through mediation first, as a matter of course and practice. The use of traditional dispute resolution mechanisms could amount to human rights violations if they do not function in a manner compatible with international human rights law. The *de facto* authorities have an obligation to protect the rights of any person affected by the operation of these mechanisms. Gender-based violence against women and girls should not be mandatorily referred to alternative dispute resolution procedures, including mediation.¹⁰⁵

Some *de facto* authorities¹⁰⁶ reported referring survivors to prison facilities in instances where survivors had no *mahram* with whom they could stay, or where the survivor's stay with a *mahram* was considered unsafe for her. Whether these referrals were based on court orders was unclear. Under international human rights law, deprivation of liberty must be neither unlawful nor arbitrary. The notion of arbitrariness includes elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.¹⁰⁷

The confinement of women in prison facilities, outside the enforcement of criminal law, and for the purpose of ensuring their protection from gender-based-violence, would amount to an arbitrary deprivation of liberty. Confining women who are already in a situation of vulnerability in a punitive environment would also likely have a negative

¹⁰⁰ See Footnotes 61 and 62.

¹⁰¹ See Footnote 63.

¹⁰² UN Committee on the Elimination of Violence against Women, *General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations*, CEDAW/C/GC/30, 1 November 2013, paragraph 38 (c).

¹⁰³ See Footnote 78.

¹⁰⁴ See Footnote 79.

¹⁰⁵ UN Human Rights Committee, International Civil and Political Rights, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 23 August 2007, para. 34, UN Committee on the Elimination of Violence against Women, *General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations*, CEDAW/C/GC/35, 26 July 2017, para. 32 (b).

¹⁰⁶ See Footnote 96.

¹⁰⁷ UN Human Rights Committee, International Civil and Political Rights, General Comment Number 35, Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014.

impact on their mental and physical health, revictimisation and put them at risk of discrimination and stigmatisation upon released. The *de facto* authorities have an obligation to protect women and girls from gender-based violence, including by preventing potential harm to them by providing necessary safe houses or shelter¹⁰⁸ for the referral of women and girls under threat of harm.

Historically, access to justice for Afghan women and girls who are survivors of gender-based violence has been fraught with challenges that stem from socio-cultural notions and practices of gender norms and mores that inherently discriminate against women and girls. Between 2001 and 2021, Afghans made painstaking efforts to stem the tide and advance women's and girls' human rights. This included law and policy reforms, establishment of specialised mechanisms, recruitment and training of specialised personnel in law enforcement and justice institutions, and the establishment of women protection centres, among others. These have all but disappeared since the Taliban takeover of the country. Survivors are no longer guaranteed formal legal and judicial redress and remedies upon a complaint, including civil remedies and compensation. They are reportedly¹⁰⁹ more afraid of the *de facto* authorities and their arbitrary actions and thus choose not to seek formal judicial resolution of their complaint with *de facto* law enforcement and justice institutions.

As duty-bearers of Afghanistan's State obligation to respect, protect and fulfil the rights of Afghan citizens, including women and girls, the *de facto* authorities are responsible for undertaking 'due diligence' in the protection of women and girls from gender-based violence. This means that the *de facto* authorities must take all appropriate measures to prevent, as well as to investigate, prosecute, punish and provide reparations for, acts or omissions by non-State actors that result in gender-based violence against women.¹¹⁰

This includes legal protection that ensures accountability of perpetrators and putting an end to the perpetual culture of impunity regarding gender-based violence against women and girls. It also means making services available and accessible to survivors, including in relation to justice, remedies, reparations, psychosocial and medical support, and safe havens for the prevention of further physical harm.

¹⁰⁸ For an example, see UN Committee on the Elimination of Discrimination against Women, *General recommendation No. 33 on women's access to justice*, CEDAW/C/GC/33, 3 August 2015, para 16. (b).

¹⁰⁹ See Footnote 89.

¹¹⁰ UN Committee on the Elimination of Violence against Women, *General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19 (2017)*, CEDAW/C/GC/35, 26 July 2017.

VI. Recommendations

UNAMA strongly urges the *de facto* Taliban authorities to take all necessary steps to protect Afghan women and girls from gender-based violence, in line with their obligations under international human rights law to respect, protect and fulfil women's and girls' rights to non-discrimination and to the enjoyment of *de jure* and *de facto* equality. To that end, UNAMA recommends:

To the *de facto* authorities:

The *de facto* authorities should **confirm or clarify the applicable legal framework** that prescribes and regulates the administration of justice regarding complaints of gender-based violence against Afghan women and girls.

- Such applicable legal framework must be in line with Afghanistan's obligations under international human rights law, particularly the Convention on the Elimination of All Forms of Discrimination against Women – to which Afghanistan is a party – which requires the State to adopt laws prohibiting all forms of gender-based violence against women and girls, including psychological violence.
- Such applicable legal framework should ensure that acts of gender-based violence against women and girls are properly defined as crimes.
- Such applicable legal framework should also include appropriate procedures for investigations, prosecutions and access to effective remedies and reparation. To this end, such legal framework should identify the competent *de facto* law enforcement and justice institutions that should address complaints of gender-based violence against women and girls and their responsibilities within the justice chain.

The *de facto* authorities should oblige *de facto* law enforcement and justice institutions to **carry out investigations and prosecute offences**, such as those set out in Articles 17 to 21 of the ERAW Law of 2009, *ex officio*, irrespective of a survivor's failure to file a complaint or her subsequent withdrawal of a complaint. Such investigations and prosecutions must be in line with the *de facto* authorities' international human rights obligations, including to respect, protect and fulfill women's and girls' rights to non-discrimination.

- Reports of incidents of gender-based violence against women and girls brought to the attention of *de facto* law enforcement, justice actors and institutions by members of the public or community should be promptly investigated and prosecuted without having to wait for the concerned survivor and/or her family to file a complaint.
- The *de facto* authorities should **adopt gender-sensitive procedures** in the investigation of complaints of gender-based violence against women and girls and in the prosecution and adjudication of such cases.
- Specialised *de facto* law enforcement and judicial units – such as the *de facto* police Family Response Units and ERAW courts, or their equivalent – should be re-established across the country with a clear mandate, and fully resourced with competent female and male personnel *trained* to handle and address complaints of gender-based violence against women and girls.

- Female personnel in these units should report to the office as regularly as their male colleagues, to promote and ensure the availability and accessibility of the *de facto* authorities' law enforcement and justice services to women and girls.
- Competent and trained female and male personnel should be the only law enforcement and justice personnel allowed to investigate complaints of gender-based violence against women and girls, as well as prosecute and adjudicate such cases, to avoid revictimisation and stigmatisation of victims.

The *de facto* authorities should **provide a clear legal and policy framework governing and regulating traditional dispute resolution mechanisms, including on mediation.**

- Such legal and policy framework should clearly state that mediation cannot be mandatory to resolve complaints of gender-based violence against women and girls and should not constitute an obstacle to women's access to formal justice.
- Such legal and policy framework should also clearly state that *de facto* law enforcement and judicial institutions must never mediate, or refer to mediation, complaints of gender-based violence against women and girls, including the crimes set out in Articles 17 to 22 of the EVAW Law of 2009.
- The *de facto* authorities should **promote and facilitate the establishment of women's protection shelters**, in collaboration with national non-governmental organisations and other competent institutions present in Afghanistan, and survivors should have the option to seek safe shelter that removes them from recurring harm and further violence should they wish to avail of this service.
- Such women's protection shelters should be resourced with female personnel trained in the provision of support services for survivors of gender-based violence.
- In the absence of dedicated State-sponsored institutions, *de facto* authorities should cooperate with relevant entities of the United Nations in this regard.
- Gender-based-violence survivors or women at risk of violence must not be sent to prison.

To the international community:

The international community should **maintain bilateral and/or multilateral advocacy** on women's rights and gender equality in Afghanistan with the *de facto* authorities, including the need for incidents/complaints of gender-based violence against women and girls to be addressed in line with international human rights law, to end discrimination against women and girls in Afghanistan and to promote a system of justice accessible to all Afghans on the basis of the principle of equality.

The international community should **continue support** for national non-governmental organisations in Afghanistan, and other competent institutions, to provide support services to female survivors of gender-based violence.

To the United Nations Country Team:

The United Nations Country Team should **maintain coordinated efforts that monitor and report** on the situation of Afghan women and girls as they relate to gender-based violence and access to related, relevant services, including access to justice.

Annex: Answer of the Ministry of Foreign Affairs of Islamic Emirate of Afghanistan (IEoA) to the draft report of the human rights section of the UNAMA office in Kabul, regarding gender-based violence against women and girls in Afghanistan.

Directorate of Human Rights and Women's International Affairs of Ministry of Foreign Affairs of IEoA shared the draft report of the UNAMA office in Kabul, which is about gender-based violence against women and girls in Afghanistan, with four members of inter-ministerial coordination and technical committee and the Supreme Court of Afghanistan, in order to find out the truth then have their Responses. After obtaining their opinions in view of the facts and after evaluation and consolidation of their responses by this directorate, the following answer is submitted to the above-mentioned draft report of the UNAMA human rights section in Kabul:

Opinions and activities of Ministry of Interior of IEoA:

- In order to prevent violence against women, there are departments such as the central human rights directorate and human rights departments in the provincial police headquarters, police departments, first-level districts, and FRUs within the criminal investigation department, that are handling violence against women.
- Women have special rights and status in the Sharia, and all cases of violence against women are solved according to Sharia laws.
- Sharia law is the first mechanism in Afghanistan that all cases are dealt with according to it.
- If the previous procedures are not in contradiction to Sharia law, they are also applicable.
- Written complaints and complains over the phone by our compatriots, including women, are registered in the Ministry of Interior Affairs in the offices such as Human Rights Directorate, FRU and 119 Police Information Center.
- The cases dealt with by FRUs and police law departments are referred to the courts.
- Written complaints and complains over the phone are received by relevant departments.
- From the beginning of the take over until now, 169 written complaints of violence against women have been registered with human rights directorate, out of which 116 have been dealt with and 53 are under process.
- There are also 90 cases of violence against women that FRU in the General Directorate of Criminal Investigation referred to the relevant authorities and 55 cases are under process in the FRU.
- Police departments, such as the human rights directorate, FRU and their sub-departments in the provinces, and other independent units in the provinces are frontline offices which deal with the complaints of women affected by violence.
- Police in the center and provinces are ready to provide all kinds of services to the people, and women can register their complaints freely and without fear while the relevant departments [of Police] are obliged to deal with the complaints of violence against women.
- The government of the Islamic Emirate is committed to protecting the lives and property of the people, and the life of any Afghan citizen, including women, is not

in danger so that it is felt necessary for a woman to take refuge in a shelter due to the fear from her family members.

- Along with FRU in the criminal investigation department, the women's affairs department, the department of elimination of violence against women, and the department of complaints registration are operational in the human rights directorate. Similarly, [the] general department of law in police, under which human rights departments operate, also deal with complaints in coordination with FRU, when needed.
- The handling of cases is based on Sharia law and there is no injustice committed against women. If the severity of the case is high, there will be no mediation and the case is referred to the court.

Ministry of Justice of EloA:

About how the legislative documents should be processed, the Decree No. 9 of Amir al-Mu'minin, God protect him, published in the official gazette number 1432, dated 1444, obliges the ministries and departments of the emirate to draft initially their legislation with the support of religious scholars, specialists and professional employees. Those issues that have relevant provisions in Sharia, the provisions should be looked for in Hanafi jurisprudential sources and extracted, then the legislation should be forwarded to the Ministry of Justice for further and careful evaluation and scrutiny from all aspects including Sharia. The Ministry of Justice will review the draft of the said document, then after checking and scrutiny of the revision, send all the necessary corrections to the Independent Commission for Revision of Legislative Documents. The commission submits the draft legislative documents to His Highness Amir al-Mu'minin for endorsement so that it be implemented as a legislative document.

In relation to dealing with detainees and respecting human rights, a number of decrees of the Amir al-Mu'minin, God protect him, have been published in the official gazette number 1432 of the year 1444, which are mentioned below:

- Decree No. 83/C1 dated 22/11/2021 of His Highness Amirul Momineen, God protect him, regarding the rights of women.
- Decree Number 28 dated 14/03/2022 of His Highness Amirul Momineen, God protect him, regarding to All Mujahidin.
- About the constitution, answers have already been provided in many communications.
- Those legal issues related to women and girls that have been mentioned in this draft.

It should be mentioned that the IEoA has approved and enforced the procedure for defense lawyers, according to which people, including women and girls or their legal representatives, can have access to defense lawyers to proceed their cases. In addition, the Department of Legal Assistance hires a defense lawyer and assign them free of charge.

The Ministry of Justice acts in accordance with the provisions of the Islamic Sharia and the policy of the IEoA regarding the provision of legal services for persons under detention, especially women and girls, and with the cooperation of other relevant offices, provides legal services through the employment of free defense lawyers.

Views of The High Directorate of Supervision and Follow up of Decrees and Edicts of IEoA:

The UNAMA draft report reflects the opinions of the human rights section of that organization, and most of it is based on the opinions and interviews of individuals and is referenced to the laws of the former administration.

- The rights of women and girls defined Islamic Sharia and we remain committed to those rights. It is necessary for the Islamic Emirate to make a decision at higher level about the commitments that the former administration made towards international conventions in this matter. Also, this directorate agrees on the establishment of a single Islamic authority [apparatus] in all provinces to investigate the complaints of women and girls without the intervention of various other departments. According to this directorate, the Council of Religious Scholars exists in every province and is actually working. In the first stage, these complaints should be resolved through this Council. If the issue is complex and cannot be resolved in this council, it would be better to refer them to the courts for resolving based on Sharia.

Views of MPVPV Listening of Complaints:

Types of complaints that this Ministry received and dealt with includes deprivation from inheritance, prohibition of the right to marry or the right to choose a husband, forced marriage, and beatings. Along with referral to other relevant entities, the Ministry provided required instructions to the victims in order to have their basic rights fulfilled. This fact shows the elimination of violence against women and girls in Afghanistan.

- Also, this Ministry has received the cases of violence against women and girls from the relevant entities for the mediation between parties and has considered this as its duty and dealt with those complaints accordingly. But in mediation, the consent of the parties is a must, and in case they don't consent for mediation, the case is referred to the courts. The directorates of this Ministry refer the complaints to entities that they consider as relevant entities, then follow up the complaints with them till the case is resolved.
- In the UNAMA's report, it is claimed that "there is no [specific] mechanism for handling women and girls' complaints", we reject this. Because the basis of our law is the Holy Book of Allah, Blessed and Most High, and the instructions and sayings of the Prophet Muhammad (PBUH) and the great imams, on which all the issues and problems of Muslims have been resolved for centuries, attributing lack of women's rights in this divine law is a kind of ignorance and lack of knowledge. Our religion is perfect, and our law is equal based on our religion, the rights of men and women are respected. Comprehensive attention is paid to the rights of men and women in this system, particularly women and their rights are defended accordingly.

End