

# Breaking Barriers

Challenges to Implementing Laws on Violence  
Against Women in Afghanistan and Tajikistan  
with special consideration of displaced women



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STUDIES





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**Gender & Refugee**  
STUDIES



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*Cover photo by William Castillo Guardado*



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*Full report and recommendations available at <http://cgrs.uchastings.edu/Breaking-Barriers>.*

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# Executive Summary

In the Islamic Republic of Afghanistan and the Republic of Tajikistan, sexual and gender-based violence (SGBV) against women persists and is widespread.<sup>1</sup> Deeply entrenched patriarchal attitudes viewing women as subservient and the property of men permeate both societies. Females have less access to education than their male counterparts and limited opportunities for employment; face forced and often early marriages; and are vulnerable to violence, particularly from family members. These limitations and vulnerabilities are compounded for refugees and displaced women in each country who, according to the President of the United Nations (UN) Security Council, “are at heightened risk of being subject to various forms of human rights violations and abuses, including sexual and gender-based violence, and discrimination, which can occur during the various stages of the displacement cycle.”<sup>2</sup>

The heightened risks and limits on access to justice for displaced women are of particular concern in the region. As of June 2015, there were nearly one million internally displaced persons (IDPs) living in Afghanistan as a result of conflict and violence. Tajikistan hosts approximately 4,000 asylum seekers and refugees, the largest number in Central Asia, approximately 97 percent of whom are Afghan nationals predominantly of Tajik ethnicity.<sup>3</sup> Afghan women flee to Tajikistan due to political and ethnic conflict as well as to escape forced marriage, honor killings, and other forms of gender-based violence.

Both Afghanistan and Tajikistan are party to the major international human rights instruments, including the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Moreover, the constitutions of both Afghanistan and Tajikistan guarantee the equality of women and men. In 2009, former Afghan president Hamid Karzai issued an executive order decreeing into law the End Violence Against Women (EVAW) Law that criminalizes twenty-two crimes of violence against women. In 2013, the Tajik parliament passed the Law on the Prevention of Family Violence (Family Violence Law), an effectively declaratory document that focuses on preventing violence as reflected in the law’s title. The EVAW Law and the Family Violence Law were enacted in response to the efforts of women’s rights advocates in both countries who recognized the disproportionate levels of violence against women in their societies and the need for formal legal protection for women. Subsequently, both Afghanistan and Tajikistan have created state programs to prevent violence against women aimed at implementation of their respective laws. While enactment of the laws and establishment of state programs are positive first steps by both countries, there continue to be significant gaps between the implementation of the laws and the effective protection of women.

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<sup>1</sup> The use of the term “women” in this report refers to all females regardless of age including females under the age of majority.

<sup>2</sup> UN President of the S.C., Statement by the President of the Security Council (Oct. 28, 2014), [http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_prst\\_2014\\_21.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_prst_2014_21.pdf).

<sup>3</sup> HCR, Tajikistan: 2015 UNHCR subregional operations profile – Central Asia, <http://www.unhcr.org/pages/49e4872e6.html> (last visited Feb. 11, 2016).

With support from the UN Trust Fund to End Violence Against Women, the Center for Gender and Refugee Studies (CGRS) and the Danish Refugee Council (DRC) launched in 2013 a two-year project, *Women’s Empowerment in Afghanistan and Tajikistan for Displaced Persons through Legal Aid and Training to Combat Violence against Women*. The project—carried out with local partners Women for Afghan Women (WAW) in Afghanistan and Right & Prosperity (R&P) in Tajikistan—included two principal components: trainings of lawyers and law students in Afghanistan and Tajikistan and other efforts to increase legal aid capacity and access to justice for displaced and refugee women at risk of SGBV; and original research analyzing the laws enacted to protect women from violence, the implementation of such laws, and the challenges in protecting women and girls from violence, particularly those in displacement.

While there has been considerable international attention and publication of studies examining violence against women in Afghanistan, there has been less attention paid to implementation of the EAW Law as applied to displaced women and the specific challenges displaced women face in exercising their right to be free from violence. Moreover, there are no in-depth studies examining implementation of Tajikistan’s Family Violence Law and much less attention paid to the particular circumstances of refugee women, who are predominately Afghan, in the country. This report seeks to address these holes. The findings and recommendations of this report were prepared by CGRS, based on original and secondary research (see methodology), with substantial input from DRC and contributions from local project partners R&P and WAW.

## Methodology

The Center for Gender & Refugee Studies conducted original research for this report in Afghanistan and Tajikistan as well as desk-based research and consultations with the project coordinator, the Danish Refugee Council in both countries, and project partners Women for Afghan Women (Afghanistan) and Right & Prosperity (Tajikistan).

Primary sources include Afghan and Tajik legislation relevant to women’s rights and violence against women issues including, in particular, Afghanistan’s 2009 EAW Law and Tajikistan’s 2013 Family Violence Law. In addition, CGRS conducted in-person or video-conference interviews with representatives from government agencies, non-profit organizations, international organizations and the United Nations, and independent experts in Afghanistan and Tajikistan between April 2014 and July 2015.<sup>4</sup>

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<sup>4</sup> CGRS did not conduct individual interviews with women or girl survivors of gender-based violence for this report to avoid unnecessary re-traumatization. To include the voice of Afghan and Tajik women and to adhere to do-no-harm principles of protecting survivors of violence, CGRS interviewed services providers working with survivors in Afghanistan and Tajikistan, and relied on baseline surveys conducted by DRC-Tajikistan and DRC-Afghanistan of gender-based violence survivors, which included interviews with women and girls in both countries. See DANISH REFUGEE COUNCIL, *BASLINE SURVEY 2014, SEXUAL AND GENDER-BASED VIOLENCE AMONG AFGHAN REFUGEES IN TAJIKISTAN AND AMONG DISPLACEMENT AND RETURNEES IN AFGHANISTAN* (Oct. 26, 2014) (on file with DRC).

The report also draws on commentaries made by government and civil society actors during the May 29, 2015 national consultative meeting in Dushanbe, Tajikistan, *Towards Effective Implementation and Reporting on the CEDAW Concluding Observations* as well as discussions with law student and attorney training participants, which operated similar to group interviews or focus groups.<sup>5</sup>

CGRS reviewed existing literature on gender-based violence and relevant legal frameworks in Afghanistan and Tajikistan. Further, CGRS considered relevant submissions to UN treaty bodies by the governments of Afghanistan and Tajikistan and public and civil society organizations; studies and reports by human rights organizations, scholars, the governments of Afghanistan and Tajikistan; and other media sources. Where possible, CGRS obtained and reviewed statistical data for this report.<sup>6</sup>

## Report Overview

While women in both Afghanistan and Tajikistan experience SGBV in its various manifestations, this report focuses specifically (though not exclusively) on whether the laws in both countries have effectively protected women in domestic violence situations. The report examines the challenges for women experiencing domestic and other forms of gender-based violence. Special attention is paid to women in situations of displacement, a subject that has received little attention in the literature on violence against women in the region to date.

**Chapter 1** of the report discusses CGRS's key findings regarding the context for violence against women in Afghanistan and the implementation of the EVAW Law. Six years after the enactment of the EVAW Law, levels of violence against women continue to increase. An alarming 87.2% of Afghan women, according to UN Women, have experienced some form of physical, psychological, sexual, or economic violence perpetrated predominately by family members. Forced and early marriage, domestic violence, and sexual harassment are endemic in Afghanistan. Women leaving the family home to escape violent situations are presumed to have engaged in unlawful sexual intercourse, and face prosecution for running away from home or allegedly committing "moral" crimes such as *zina* (sex outside of marriage). By bringing perceived shame and dishonor to their families, rape victims and women fleeing violence often face double victimization through honor killings. Returnee and internally displaced women are

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<sup>5</sup> The multi-day training workshops conducted by CGRS, *Empowering Displaced Women in Afghanistan and Tajikistan through Legal Aid and Training to Combat Gender-Based Violence*, took place in Dushanbe, Tajikistan and Kabul, Afghanistan in 2014 and 2015.

<sup>6</sup> The report considers statistics publicly available through the Statistical Agency under the President of the Republic of Tajikistan, statistics provided by the Tajik Committee on Women and Family Affairs at the May 29, 2015 national consultative meeting, "Towards Effective Implementation and Reporting on the CEDAW Concluding Observations," as well as statistical data maintained by organizations interviewed for this report. Statistics for Afghanistan include information provided from DRC and WAW and secondary sources reviewed for this project.

particularly vulnerable to violence as they lose traditional support mechanisms and face discrimination and social isolation in their new communities. The degradation of socio-economic conditions in displacement places IDP women at greater risk of early and forced marriage and domestic violence.

Based upon provisions supporting human rights and women’s rights in the Afghan Constitution and Islamic *Sharia* Law, the EAW Law criminalizes twenty-two acts of violence against women and its enactment signifies the need to protect women against high levels of violence. However, even though Afghanistan is party to CEDAW and other key international human rights treaties, antiquated civil and criminal codes that disproportionately discriminate against women remain in force, countering the EAW Law’s advancement. Criminal prosecution for violent crimes committed against women remain low with few cases proceeding through the formal judicial system. Resolving cases through the informal justice system or some other form of dispute mediation, particularly in cases of intra-familial violence, are preferred. Awareness of women’s rights and SGBV as well as available services to women experiencing violence is low among displaced men and women in Afghanistan, and cases of violence against displaced women remain underreported.

Negative perceptions of the EAW Law—from conservative lawmakers to prosecutors, police, and judges with responsibilities under the law—based upon pervasive bias and discrimination against women impede its implementation. Fear of increased violence and stigmatization as well as police bias steeped in entrenched patriarchal norms deter women from reporting violence, thereby preventing enforcement of the EAW Law. Furthermore, lack of access to shelters forces women to remain in precarious situations and contributes to the EAW Law’s inability to protect women from violence. Displaced women are at increased vulnerability to violence due to loss of traditional support mechanisms, limitations on mobility, and degradation of socio-economic conditions that prevent them from accessing food, shelter, health, education, and employment opportunities.

**Chapter 2** of the report discusses CGRS’s key findings regarding the context for domestic and other sexual and gender-based violence in Tajikistan and the implementation of the Family Violence Law. Lack of available data and underreporting make it difficult to determine the exact figures for violence against women in Tajikistan. According to the U.S. Department of State, spousal abuse is “so commonplace” that often it is not recognized as a problem.<sup>7</sup> Tajik women face multiple types of violence from their partners—physical, psychological, economic, sexual, and social. In-laws also commonly inflict violence against women in Tajikistan, which is exacerbated by male labor migration overseas due to scarce domestic employment opportunities. While their husbands are abroad, women typically live with their in-laws, who treat them as household slaves and inflict psychological and physical abuse. Labor migration

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<sup>7</sup> U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, H.R. AND LAB., TAJIKISTAN 2014 HUMAN RIGHTS REPORT (2014); AZITA RANJBAR, EURASIA FOUND., INFORMAL JUSTICE IN TAJIKISTAN: THE ROLE OF INFORMAL LEADERS IN PROVIDING AND PREVENTING ACCESS TO JUSTICE 35 (2012); *see also* INFORMATION FROM TAJIK NGOs FOR THE ADOPTION OF A LIST OF ISSUES FOR THE REVIEW OF TAJIKISTAN’S SECOND AND THIRD PERIODIC REPORTS ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS ¶ 37 (Nigina Bakhrieva ed., 2014).

has also reduced the male population, and contributed to increasing numbers of women in polygamous and forced marriages. Poverty compels some parents to marry their daughters off at any early age, and an estimated 10-20% of all marriages involve underage girls. As both early and polygamous marriages are illegal under the Tajik Criminal Code, these marriages are typically not registered with the civil registry, leaving many of these women without legal protection when faced with violence.

Although few Afghan asylum-seeker and refugee women report violence in Tajikistan, legal service providers and the UN High Commissioner for Refugees (UNHCR) believe domestic violence is widespread among the population. The social-economic vulnerabilities of living in displacement coupled with gender dynamics within the Afghan family structure fuel violence against asylum seeker and refugee women.

Focusing primarily on prevention, the Family Violence Law recognizes the rights of victims to legal, medical, and psycho-social assistance and individual remedies, including registering a case of violence and obtaining protection orders. The Family Violence Law provides only for administrative liability; the law does not criminalize domestic violence and victims seeking prosecution and punishment of the abuser must bring claims under the Tajik Criminal Code. The Family Violence Law does not define the term “family” and, by the interpretation of many, leaves unprotected women who are in polygamous, early and unregistered marriages as well as women who were previously married.

In spite of Tajik legislation providing men and women with equal rights, women continue to face violence and lack effective mechanisms to live a life free from violence, particularly in their own homes. An absence of clear instructions to processes provided for under the Family Violence Law, such as filing a complaint and obtaining a protection order, has impeded its implementation. Moreover, due to patriarchal norms, economic dependence, and social stigma, Tajik women are reluctant to report domestic violence. Police mandated to protect women under the Family Violence Law often lack gender-sensitivity, are biased and sometimes manipulate women victims of violence into reconciling with their abusers, further discouraging women from reporting. A scarcity of shelters also prevents effective implementation of the Family Violence Law as women have no safe place to go to be free from violence. High levels of judicial corruption and lack of sensitivity towards women prevent women from pursuing cases of domestic violence in the criminal justice system, and result in very low prosecution and conviction rates and a preference for mediation.

Afghan asylum-seeker and refugee women face additional challenges obtaining protection under the Family Violence Law depending on their legal status in Tajikistan. Typically accompanied and financially supported by males, Afghan women in Tajikistan lack their own identity documents. Tajikistan’s restrictions on where asylum seekers and refugees may reside and transportation costs to access legal advice and crisis centers present further barriers to Afghan women seeking protection from domestic violence.

## General Recommendations

The report concludes with extensive recommendations for stakeholders in each country for how to strengthen protection mechanisms for women and girls at risk of SGBV, and reduce impunity for crimes committed against them, with a special focus on displaced and refugee women. The recommendations—directed at the governments of Afghanistan and Tajikistan as well as civil society and international organizations and donors—center on several themes, including: improving clarity of roles and obligations in the law; reforming laws to ensure adequate protection; training relevant government actors charged with implementing the laws; providing adequate temporary and long-term shelter options for women; allocating adequate budget for implementation; putting in place mechanisms for collecting and analyzing data on violence against women; and addressing the unique protection needs of displaced and refugee women. Some of the most critical recommendations are included here; the full, detailed, and comprehensive recommendations are available at the conclusion of this report.

<p><b>Definitions</b></p>	<p>Successful implementation of the laws aimed at preventing and punishing SGBV require clarity around definitions regarding scope of the laws as well clarity around agency functions. The governments of Afghanistan and Tajikistan must improve clarity of definitions and agency functions provided for by the relevant laws in several ways. For example, the Afghan government should develop a protocol for implementing the EAW Law and identifying cases for criminal prosecution, including clearly defining the elements for the crime of <i>zina</i>. The Tajik government should expand coverage of the Family Violence Law by providing a broad definition of “family” and it should clarify confusion around issuance and scope of protective orders.</p>
<p><b>Legal Reforms</b></p>	<p>The laws in both Afghanistan and Tajikistan, while welcomed advancements, leave many critical issues uncovered. The governments should amend the laws to ensure prosecution of SGBV by, for example, amending the EAW Law in Afghanistan to increase protection for women faced with violence by honor killings and amending Tajik law to explicitly criminalize domestic violence.</p>
<p><b>Training</b></p>	<p>A key barrier to implementation of the laws on violence against women is lack of awareness of the laws and women’s rights among government actors with mandates to prevent, investigate, and punish acts of violence. The governments of Afghanistan and Tajikistan, with the support of civil society, must make efforts to raise awareness, train, and sensitize government actors, including creating specialized bodies to</p>

	<p>attend to cases of violence against women in an effective manner that does not re-victimize survivors. Civil society organizations must also work with international organizations, donors, and the governments of each country to adopt a survivor-centered approach to providing comprehensive services for women.</p>
<b>Shelter</b>	<p>A root cause of the cycle of domestic violence includes women’s economic dependence on men, a result of deeply entrenched patriarchy and norms subordinating women in Afghan and Tajik society. To stop the cycle of violence and provide long-term solutions for women to live a life free of violence, the governments of Afghanistan and Tajikistan—in coordination with civil society and international donors—must provide shelter options, in the short- and long-term, and opportunities for women to achieve independence such as education, vocational training, and small business and employment opportunities.</p>
<b>Budget</b>	<p>Allocation of an adequate budget to all government agencies tasked with implementing the relevant laws is essential for ensuring public actors comply with their mandates under the laws. Both countries must allocate adequate budget for programs aimed at violence against women under the EAW Law in Afghanistan, the Family Violence Law in Tajikistan, and related initiatives.</p>
<b>Data and Monitoring</b>	<p>Collection of data and otherwise monitoring and evaluating the implementation of the law is essential for reducing violence and impunity. The governments of Afghanistan and Tajikistan must implement effective data collecting mechanisms to gather information on the number of cases involving violence against women, including displaced women, and mechanisms to analyze the statistics and set benchmarks and priorities.</p>
<b>Displaced Populations</b>	<p>Recognition of the need for enhanced protections for IDPs, asylum seekers, refugees, and returnees is essential for ensuring safety of women in these populations. This includes the need for Tajikistan to repeal or amend laws that violate international refugee law by restricting freedom of movement of asylum seekers and refugees and ensure that displaced women in both Afghanistan and Tajikistan are aware of their rights and have access to legal, medical, psycho-social, and vocational services to prevent further violence.</p>

# Chapter 1

## Afghanistan

### I. Introduction

Since the fall of the Taliban in 2001, women’s rights and equality in education, employment, politics, public life, and protection from violence in Afghanistan have improved.<sup>1</sup> Women have regained many of the rights they lost during the Taliban regime and have gained new rights, including protection and remedies for crimes of violence committed against them, at least in the law as written.<sup>2</sup> The current Afghan Constitution guarantees equal rights between men and women, the right to free education for all citizens, and the right to work for “every Afghan.”<sup>3</sup> The Afghan government ratified the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) in 2003, and enacted its framework law to eliminate sexual and gender-based violence (SGBV), the Elimination of Violence Against Women Law (EVAW Law), in 2009.<sup>4</sup>

This chapter examines the current context of violence against women in Afghanistan, including the forms, causes, and levels of violence, and analyzes the legal framework for violence against women in Afghanistan, focusing primarily on the EVAW Law. It identifies the principal barriers to effective implementation of the EVAW Law and legal protections for women facing violence. The additional, unique vulnerabilities and protection concerns for internally displaced and returnee Afghan women receive highlighted attention.

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<sup>1</sup> The term “women” in this report refers to all females regardless of age and does not exclude females under the age of majority. *Afghanistan: Fight Rampant Sexual Harassment*, HUMAN RIGHTS WATCH (Oct. 14, 2014), <http://www.hrw.org/news/2014/10/14/afghanistan-fight-rampant-sexual-harassment>; Chandrika Narayan, *Women’s rights groups hail conviction of Afghan cleric for girl’s rape*, CNN (Oct. 27, 2014), <http://www.cnn.com/2014/10/26/world/asia/afghan-girl-rape/>; Zulaikha Rafiq, *Afghan women keep the business of life going*, NEW INTERNATIONALIST BLOG (Dec. 3, 2014), <http://newint.org/blog/2014/12/03/afghan-women-rights/>.

<sup>2</sup> Gabriel Dominguez, *UN Women chief ‘seriously concerned’ Afghan women’s gains may be reversed*, DEUTSCHE WELLE (Nov. 28, 2014), <http://www.dw.de/un-women-chief-seriously-concerned-afghan-womens-gains-may-be-reversed/a-18100806>. The English version of the EVAW Law relied upon in this report is contained in Annex I of the Islamic Republic of Afghanistan, *First Report on the Implementation of the Elimination of Violence against Women (EVAW) Law in Afghanistan*, MINISTRY OF WOMEN’S AFFAIRS (Jan. 2014), [http://mowa.gov.af/Content/files/EVAW%20Law%20Report\\_Final\\_English\\_17%20%20March%202014.pdf](http://mowa.gov.af/Content/files/EVAW%20Law%20Report_Final_English_17%20%20March%202014.pdf). Article 6 of the EVAW Law provides the following rights for a victim of violence: (1) prosecution of the offender; (2) access to a protective center, safe home, or other secure place; (3) free access to emergency health services; (4) having an advocate or legal aid provider; (5) compensation from the resulting act of violence; and (6) confidentiality.

<sup>3</sup> Afg. Const., Jan. 26, 2004, Arts. 22, 43, 44, 48. The English translation of the Constitution of Afghanistan referenced in this report is available on the Afghan Embassy in Poland’s website, <http://www.afghanembassy.com.pl/afg/images/pliki/TheConstitution.pdf>.

<sup>4</sup> Afghanistan signed CEDAW on August 14, 1980, but did not ratify it until March 5, 2003.



## II. Women's Rights in Afghanistan: Inequality and Violence

### A. Current political context

The recent political context in Afghanistan signals change. After the formation of the National Unity Government in 2014, President Ashraf Ghani and Chief Executive Officer Abdullah Abdullah signed a petition from the Afghan Women's Network—a network of non-governmental organizations working on women's issues in Afghanistan—indicating their commitment to advance implementation of the ERAW Law, the National Action Plan for Women of Afghanistan (NAPWA), and other relevant national and international commitments. The petition, a non-binding statement, details policy areas, including thirty specific recommendations for the empowerment of Afghan women and the involvement of women in political leadership and peace and security matters.<sup>5</sup> President Ghani further stated his intention to establish a presidential women's advisory board comprised of thirty women's rights advocates and experts from across the country.<sup>6</sup> First Lady Rula Ghani also plays an active role in advancing the rights of women and internally displaced persons (IDPs),<sup>7</sup> including launching a United States Agency for International Development (USAID) women's empowerment program known as "Promote."<sup>8</sup>

Women's rights advocates fear roll backs in the achieved progress, particularly as conservative forces appear to be gaining strength since the withdrawal of the International Security Assistance Force (ISAF) at the end of 2014, evidenced by increasing numbers of Taliban attacks against women's rights activists.<sup>9</sup> In some instances, the Afghan Parliament and judiciary have

<sup>5</sup> Oxfam Briefing Paper 200, *Behind Closed Doors: The risk in denying women a voice in determining Afghanistan's future*, OXFAM 4 (Nov. 24, 2014), [http://www.oxfam.org/sites/www.oxfam.org/files/file\\_attachments/bp200-behind-doors-afghan-women-rights-241114-sum-en.pdf](http://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp200-behind-doors-afghan-women-rights-241114-sum-en.pdf).

<sup>6</sup> *Id.*

<sup>7</sup> See generally Zulaikha Rafiq, *Afghanistan has become a better place for women, but there is a long way to go*, THE TELEGRAPH (Dec. 4, 2014), <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/11271438/Afghanistan-has-become-a-better-place-for-women-but-there-is-a-long-way-to-go.html>; Jan Egeland, *Our Unkept Promise to Afghan Women*, AL JAZEERA (Dec. 6, 2014), <http://www.aljazeera.com/indepth/opinion/2014/12/job-only-half-done-afghanistan-201412661314812621.html>.

<sup>8</sup> OXFAM, *supra* note 5.

<sup>9</sup> Ben Smith, *Prospects for Afghanistan as ISAF Withdrawal Approaches*, H. OF COMMONS LIBRARY, Research Paper 14/18, 29 (Mar. 19, 2014); Ben Smith, *Afghan Women 2014*, STANDARD NOTE (SNIA/6841), INT'L AFFAIRS AND DEF. SECTION, 4 (Mar. 5, 2014); Spozhmai Maiwandi, *Are Legal Protections for Afghan Women improving or reversing?*, WOMEN NEWS NETWORK (June 18, 2014), <http://womennewsnetwork.net/2014/06/18/protections-afghan-women/>. See generally OXFAM, *supra* note 5; see Rafiq, *supra* note 7; Sune Engel Rasmussen, *Afghanistan's women risk their lives to demand equal rights and protection*, THE GUARDIAN (Nov. 25, 2015), <http://www.theguardian.com/global-development/2015/nov/25/afghanistan-women-risk-lives-demand-equal-rights-protection>. In October 2015, Taliban fighters seized the northeastern city of Kunduz and attacked Radio Roshani, a radio station with focused programming on women's rights issues. Although the attacks directly affected women's rights journalists, they affected women on a broader scale as Radio Roshani's literacy and other programming for women have ceased. See, e.g., Sudarsan Raghavan, *Afghan radio station focused on women's rights is a casualty of the Taliban*, WASH. POST (Nov. 15, 2015), [https://www.washingtonpost.com/world/asia\\_pacific/an-afghan-womens-radio-station-becomes-a-taliban-casualty/2015/11/15/64f8eeac-7db6-11e5-bfb6-65300a5ff562\\_story.html](https://www.washingtonpost.com/world/asia_pacific/an-afghan-womens-radio-station-becomes-a-taliban-casualty/2015/11/15/64f8eeac-7db6-11e5-bfb6-65300a5ff562_story.html).

already tried to erode legal protections for Afghan women.<sup>10</sup> As Afghanistan has assumed primary responsibility for its own security and overall international assistance has been reduced, ISAF's withdrawal and Taliban resurgence are predicted to have a significant impact on the country's economic and political landscape.<sup>11</sup> Advocates have expressed concern that both domestic and international stakeholders will compromise by scaling back on women's rights in the interest of ongoing peace and reconciliation negotiations with the Taliban.<sup>12</sup>

### B. *The state of Afghan women in education, employment, and politics*

In the fifteen years since the Taliban regime ended, Afghanistan has witnessed the increased presence and participation of women in education, employment outside the home, and political elections. Female education in Afghanistan has risen, with almost four million girls in school as of the beginning of 2014, the highest number in Afghanistan's history.<sup>13</sup> Of the 8.3 million students in schools across Afghanistan, approximately 39% are girls, a record high and a dramatic improvement since 2001 when fewer than a million students attended school, of which a negligible number were girls.<sup>14</sup> Despite the increased numbers of girls attending school, a recent investigation shows that Afghanistan continues to have the "highest level of gender disparity in primary education in the world, with only 71 girls in primary school for every 100 boys."<sup>15</sup> The literacy rate is 24.2% for females and 52% for males.<sup>16</sup>

There has also been some advancement in women's employment since 2001. Afghan women are now employed in a range of professions, including as doctors, police officers, pilots, judges, governors, and prosecutors.<sup>17</sup> However, most women continue to work primarily in the informal sector. Women are significantly unrepresented in the private sector, working in predominately low-income jobs such as domestic services, cooking, and tailoring.<sup>18</sup> Comprising less than one-fifth of lawyers, women remain under-represented in the legal sector.<sup>19</sup> Overall,

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<sup>10</sup> Maiwandi, *supra* note 9. For example, laws have been proposed to reinstate stoning as punishment for adultery and to abolish the seats designated for women on provincial councils. There have also been ongoing attempts to repeal the EVAW Law.

<sup>11</sup> Dominguez, *supra* note 2; Michelle Barsa, *Determining if Progress Will Prevail or Peril: The Role for Women in Defining Afghanistan's Future*, 38 WTR FLETCHER F. WORLD AFF. 87, 91 (Winter 2014).

<sup>12</sup> Dominguez, *supra* note 2. See also OXFAM, *supra* note 5.

<sup>13</sup> Dominguez, *supra* note 2. See also OXFAM, *supra* note 5.

<sup>14</sup> Dominguez, *supra* note 2. See also OXFAM, *supra* note 5; Smith, *Afghan Women 2014*, *supra* note 9; Arne Strand, *Expanding and improving the quality of girls' education in Afghanistan*, BROOKINGS (Aug. 19, 2015), <http://www.brookings.edu/blogs/education-plus-development/posts/2015/08/19-girls-education-afghanistan-strand>.

<sup>15</sup> Strand, *supra* note 14.

<sup>16</sup> *The World Factbook, Afghanistan*, CIA (Sept. 24, 2015), <https://www.cia.gov/library/publications/the-world-factbook/geos/af.html>.

<sup>17</sup> OXFAM, *supra* note 5.

<sup>18</sup> Gayle Tzemach, *Women's achievements and continued challenges in Afghanistan*, COUNCIL ON FOREIGN REL. (Sept. 9, 2014), <https://www.devex.com/news/women-s-achievements-and-continued-challenges-in-afghanistan-84305>.

<sup>19</sup> Maria Caspani, *Afghan women need more female judges and prosecutors to get justice – report*, THOMSON REUTERS FOUND. (Mar. 19, 2014), <http://www.trust.org/item/20140319112526-w75mh>.

only 21% of the female urban workforce is employed, and even fewer in the rural areas, which contributes to women's economic dependence on men.<sup>20</sup>

Women's participation in elections and assumption of government positions have increased, and women now hold 28% of the seats in the National Assembly.<sup>21</sup> The Afghan Constitution provides quotas for women's seats in both the upper house, House of Elders (*Meshrano Jirga*), and the lower house, House of the People (*Wolesi Jirga*), of the National Assembly, guaranteeing that women must be included in parliamentary positions.<sup>22</sup> The same is true of provincial council seats.<sup>23</sup> The Independent Election Commission reported nearly 300 women (accounting for 12% of the candidates) ran for provincial posts in 2014, reflecting a record number of women candidates on the ballot.<sup>24</sup> Moreover, women showed up in record numbers to vote in the first round of the Afghan presidential elections on April 5, 2014, which boasted the largest voter turnout of the last three elections.<sup>25</sup>

In an effort to elevate women to high-level government positions, President Ghani appointed two women as governors of Ghor and Daikundi provinces in 2015, four women to cabinet level positions in April 2015, and has publicly vowed to appoint four female ambassadors.<sup>26</sup> Women's rights advocates regard these appointments "as little more than window dressing" to placate international donors, and criticize that they do little to address systematic discrimination against women.<sup>27</sup> Even though some women are now in higher level government positions, the lack of consultations and direct engagement with women and women's organizations prevents their voices from coming to the political forefront.

Indeed, while women have achieved some representation in parliamentary and provincial posts, they continue to lack significant political influence.<sup>28</sup> Many women in elected office are

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<sup>20</sup> Tzemach, *supra* note 18.

<sup>21</sup> *Proportion of seats held by women in national parliaments (%)*, WORLD BANK (2014), <http://data.worldbank.org/indicator/SG.GEN.PARL.ZS>.

<sup>22</sup> Afg. Const., Arts. 83-84; *see also* Smith, *Afghan Women 2014*, *supra* note 9.

<sup>23</sup> In May 2013, the House of People passed a law abolishing a requirement that women should make up a quarter of elected provincial council officials. The House of Elders then reinstated the quota, and after an intervention from the presidency, the two houses reached a compromise, reducing the quota to 20%. *See* Smith, *Afghan Women 2014*, *supra* note 9.

<sup>24</sup> Maiwandi, *supra* note 9.

<sup>25</sup> *Id.*

<sup>26</sup> *Afghanistan Nominates First Female Judge to the Supreme Court*, RADIOFREEEUROPE/RADIOLIBERTY (June 30, 2015) <http://www.rferl.org/content/afghanistan-female-judge-supreme-court/27102086.html>; Sune Engel Rasmussen, *Afghan activists urge donors to make aid conditional on women's rights*, THE GUARDIAN (Sept. 15, 2015), <http://www.theguardian.com/global-development/2015/sep/05/afghanistan-womens-rights-aid-gender-equality>; Rachel Vogelstein, *Afghan Women A Year into Ghani Presidency*, COUNCIL ON FOREIGN REL. (Oct. 5, 2015), <http://blogs.cfr.org/women-around-the-world/2015/10/05/afghan-women-a-year-into-ghani-presidency/>.

<sup>27</sup> Rasmussen, *supra* note 29.

<sup>28</sup> Dominguez, *supra* note 2.

perceived to lack constituency-based legitimacy and political authority.<sup>29</sup> Women involved in politics are also vulnerable to harassment, intimidation, and security threats.<sup>30</sup>

On June 30, 2015, President Ghani nominated Anisa Rasouli, the Head of the Afghan Women's Association and former juvenile judge, to the Supreme Court.<sup>31</sup> With nine votes short of approval, the National Assembly, influenced by Islamic clerics and some male lawmakers, rejected Rasouli's nomination, declaring that "a woman was not fit to try serious crimes."<sup>32</sup> The rejection of Rasouli's nomination to become Afghanistan's first female Supreme Court justice was a major disappointment to women's rights advocates. Although the National Assembly includes sixty-nine females, at least twenty of the female members were absent during the vote.<sup>33</sup> One advocate for women's rights observed that some of Afghanistan's female parliamentary members "are worse to women than men" and opined that the reason that parliamentarians did not approve Rasouli's nomination is simply because she is a woman.<sup>34</sup>

### *C. Violence against Women in Afghanistan: forms and current levels*

Despite positive steps in the advancement of women's rights and protections in Afghanistan, in particular since President Ghani assumed office, violence remains a reality for many Afghan women and girls.<sup>35</sup> United Nations (UN) officials confirm and studies report that violence against Afghan women reached "pandemic" levels in 2013 and into early 2014, with "up to 87.2% of women having experienced some form of violence, such as physical, psychological, sexual, economic violence, social abuse [and/or] forced and early marriage."<sup>36</sup> The Afghan Independent Human Rights Commission (AIHRC) reported a 25% increase in cases involving violence against women in 2013 from 2012, a rise which continued in 2014.<sup>37</sup> Extremist groups are specifically targeting women and girls who participate in public life by running for office, attending school, or speaking out about their rights.<sup>38</sup> Forms and levels of violence against women vary depending on location with heightened levels of violence found in rural areas in

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<sup>29</sup> *Id.*

<sup>30</sup> Tzemach, *supra* note 18.

<sup>31</sup> RADIO LIBERTY, *supra* note 29.

<sup>32</sup> *Historic bid to become Afghanistan's first female justice falls 9 votes short*, THE WASH. POST (July 27, 2015), [https://www.washingtonpost.com/world/asia\\_pacific/an-afghan-judge-was-nominated-to-the-supreme-court-trouble-is-shes-a-woman/2015/07/27/bbb80a82-2ef3-11e5-818f-a242f28e7022\\_story.html](https://www.washingtonpost.com/world/asia_pacific/an-afghan-judge-was-nominated-to-the-supreme-court-trouble-is-shes-a-woman/2015/07/27/bbb80a82-2ef3-11e5-818f-a242f28e7022_story.html).

<sup>33</sup> *Id.*

<sup>34</sup> Shadi Khan Saif, *Afghan MPs reject first female Supreme Court judge*, ANDALOU AGENCY (July 8, 2015), <http://www.aa.com.tr/en/politics/552143--afghan-mps-reject-first-female-supreme-court-judge>.

<sup>35</sup> Dominguez, *supra* note 2.

<sup>36</sup> Smith, *Afghan Women 2014*, *supra* note 9; Dominguez, *supra* note 2.

<sup>37</sup> Ghanizada, *Woman killed by her husband in Logar province*, KHAAMA PRESS (KP) (Dec. 25, 2014), <http://www.khaama.com/woman-killed-by-her-husband-in-logar-province-8881>; Mina Habib, *Tackling Gender-Based Violence in Afghanistan*, INST. FOR WAR AND PEACE REPORTING (June 9, 2014), <https://iwpr.net/global-voices/tackling-gender-based-violence-afghanistan> (the AIHRC "recorded 228 cases of abuse against women in April and May of 2014, a significantly higher rate than over the past solar year ending April 2014, when there were a total of 997 cases").

<sup>38</sup> *Country Profile: Afghanistan*, WOMEN FOR WOMEN INT'L, 1 (Aug. 2014), [http://www.womenforwomen.org/sites/default/files/WfWI-Afghanistan-Country-Profile%2008202014\\_0.pdf](http://www.womenforwomen.org/sites/default/files/WfWI-Afghanistan-Country-Profile%2008202014_0.pdf).

southern and eastern provinces bordering Pakistan where there are high levels of gender insecurity and widespread discriminatory traditional practices, and in communities where former insurgents are reintegrating.<sup>39</sup>

In the majority of cases of violence against women, the perpetrators are male family members.<sup>40</sup> Many Afghan men believe they are the “owners” of women and children, and treat them as property.<sup>41</sup> As the chairperson of the AICHR put it, violence occurs because family members use “religion,” “culture,” and “tradition,” to keep power and control over women.<sup>42</sup> Restrictions on women’s dress, including wearing the veil, and seclusion of women in the home persist. Although protection is provided as a reason to limit a woman’s mobility outside the home, it is practiced to keep her “from the eyes of other men” and to preserve the male family member’s honor.<sup>43</sup> If a woman goes outside the home, a male guardian or chaperone (*mahram*) generally must accompany her.<sup>44</sup> These restrictions limit the rights of Afghan women in general, and displaced women and girls are at increased vulnerability due to dismantled family networks with fewer or no male chaperones.<sup>45</sup> Limitations on mobility further prevent displaced women and girls from accessing health, education, and employment opportunities as well as reduce their ability to maintain relationships with their home communities or establish new social networks in displacement.<sup>46</sup>

### 1. Honor killings

In Afghanistan, women and girls are considered to embody family honor, and they often pay the price if they are perceived to have offended custom, tradition, or honor.<sup>47</sup> Female rape victims in Afghanistan are deemed to have brought shame on their family and community and

<sup>39</sup> *UN Women Afghanistan Development Results Narrative 2014-2017*, UN WOMEN, 10 (2015), <http://www.unwomen.org/~media/headquarters/attachments/sections/executive%20board/2015/as%2015/un%20women%20afghanistan%20programme-pdf.pdf?v=1&d=20150624T220301>.

<sup>40</sup> *Afghanistan: No Country for Women*, AL JAZEERA (July 3, 2015), <http://www.aljazeera.com/programmes/101east/2015/06/afghanistan-country-women-150630115111987.html>.

<sup>41</sup> *10 of the most dangerous places to be a woman*, THE NEW ECONOMY (June 17, 2014), <http://www.theneweconomy.com/insight/10-of-the-most-dangerous-countries-to-be-a-woman>; *Listening to Women and Girls Displaced to Urban Afghanistan*, NORWEGIAN REFUGEE COUNCIL (NRC) 13 (Jan. 2015), <http://reliefweb.int/report/afghanistan/listening-women-and-girls-displaced-urban-afghanistan>.

<sup>42</sup> AL JAZEERA, *supra* note 40.

<sup>43</sup> *Listening to Women and Girls*, NRC, *supra* note 41, at 13, 16.

<sup>44</sup> *Id.*

<sup>45</sup> Afghanistan’s National Policy on Internally Displaced Person recognizes that “culture and custom often confine women to their ‘homes’, restricting their movement and making it difficult for them to adequately attend to the nutritional, health, educational and social needs of their children.” *National Policy on Internally Displaced Persons*, THE GOV’T OF THE ISLAMIC REPUBLIC OF TAJIKISTAN, MINISTRY OF REFUGEES AND REPATRIATION 19 (Nov. 25, 2013), <http://morr.gov.af/Content/files/National%20IDP%20Policy%20-%20FINAL%20-%20English%281%29.pdf> [hereinafter *IDP Policy*].

<sup>46</sup> *Listening to Women and Girls*, NRC, *supra* note 41, at 16. In a study conducted by the NRC, 71% of girls interviewed did not attend school; no girls interviewed in the Kabul Informal Settlement attended school. Obstacles to attending school included having to help their families and prohibition by their families.

<sup>47</sup> See *Urgent Action: Rapist Sentenced, Girl Survivor Still at Risk*, AMNESTY INT’L (Oct. 30, 2014), [https://www.amnestyusa.org/sites/default/files/uaa25314\\_1.pdf](https://www.amnestyusa.org/sites/default/files/uaa25314_1.pdf).

risk double victimization through honor killings.<sup>48</sup> Similarly, women suspected of having sexual relations outside of marriage (*zina*) are widely perceived to bring shame on their families and also risk being the subject of an honor killing, either on the initiative of male family members or at the direction of local councils comprised of male elders.<sup>49</sup>

**Box 1-1. Rape Brings Shame on Families in Afghanistan: Case Example**

In 2014, an Afghan cleric (*mullah*) was convicted of brutally raping a ten-year-old girl in a mosque and sentenced to 20 years in prison for raping a minor and a fine of 1,500,000 Afghani (which equates to roughly USD\$30,000).<sup>50</sup> The judge recognized that as a child, the girl could not commit adultery, and the *mullah's* acts constituted rape.<sup>51</sup> Due to the shame the rape had brought on the family, the family removed the girl from school.<sup>52</sup> According to police and women's rights activists, the girl's family members plotted to kill her to defend the family's honor because they were ashamed by her rape.<sup>53</sup>

There are no concrete statistics on how many women and girls in Afghanistan fall victim to honor killings, but according to the AIHRC, at least 243 cases of confirmed honor killings were recorded between January 2011 and May 2013.<sup>54</sup>

## 2. Forced marriage and *baad*

Exact figures of forced marriage in Afghanistan are unknown. However, an Asia Foundation survey of over 65,000 Afghans reports that forced marriage, including *baad*—marrying a woman to someone as a blood price or to achieve peace linked to murder, sexual violence, or in line with other customs and traditions—is one of the greatest problems Afghan women face.<sup>55</sup> The practice is reported with the highest frequency in the southeast and the lowest in Hazarajat in the center of the country.<sup>56</sup>

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Wazhma Samandary, *Shame and Impunity: Is Violence against Women becoming more brutal?*, AFGHAN ANALYSIS NETWORK (Nov. 30, 2014), <https://www.afghanistan-analysts.org/shame-and-impunity-is-domestic-violence-becoming-more-brutal/>; Narayan, *supra* note 1.

<sup>51</sup> Rod Nordland, *Afghan Mullah Who Raped Girl in his Mosque Receives 20-Year Prison Sentence*, N.Y. TIMES (Oct. 25, 2014), <http://www.nytimes.com/2014/10/26/world/asia/afghan-mullah-who-raped-girl-in-his-mosque-receives-20-year-prison-sentence.html>.

<sup>52</sup> *Urgent Action: Rapist Sentenced*, AMNESTY INT'L, *supra* note 47.

<sup>53</sup> Nordland, *supra* note 51.

<sup>54</sup> *Id.*

<sup>55</sup> *Afghanistan in 2014: A Survey of the Afghan People*, ASIA FOUND. 1 (2014), <https://asiafoundation.org/resources/pdfs/Afghanistanin2014final.pdf> (EVAW Law, Art. 3(4) defines *baad*).

<sup>56</sup> *Id.*

### 3. Domestic violence

The Asia Foundation’s survey further reveals domestic violence as one of the major problems for Afghan women particularly in the west, southwest, and southeast of the country.<sup>57</sup> Husbands abuse wives, but women also experience violence—physical, psychological, and economic—from in-laws and other family members.<sup>58</sup> It is reportedly common for parents to encourage their sons to beat their wives.<sup>59</sup> No official data exists, but murder, including honor killings (discussed above), of women by their husbands or other family members is widespread.<sup>60</sup> IDP communities report that domestic violence is a common outcome of the pressures of displacement.<sup>61</sup>

#### Box 1-2. Divorce in Afghanistan

In Afghanistan, the majority of women who experience domestic violence do not divorce due to economic dependence on their husbands and cultural pressure to keep families united.<sup>62</sup> Women who seek divorce face challenges. An identification document (*tazkera*) and a marriage certificate proving the marriage are required to pursue divorce in court. Many rural, and as many as 80% of internally displaced women, do not have a *tazkera* or a marriage certificate.<sup>63</sup> Women must obtain the consent of their husband or father to obtain a *tazkera*, which can be particularly difficult in cases of domestic violence. For example, as reported in *The Guardian*, an Afghan domestic violence survivor was forcibly married at age seven to an abusive husband who disfigured her face by cutting off her nose, slashing her lips, and beating her until she lost consciousness.<sup>64</sup> She did not have a *tazkera*, but sought the help of legal counsel at the Norwegian Refugee Council (NRC), which had to pay her drug-addict father to obtain a *tazkera* on her behalf.<sup>65</sup> A NRC legal advocate observed: “Customarily, men don’t want to take *tazkera* for their women. They say it’s not right to take women to a government office who will take their picture and put it on a piece of paper. . . . They say it’s a shameful act.”<sup>66</sup>

<sup>57</sup> *Id.* Domestic violence is less frequently cited as a problem in the northeast and Hazarajat.

<sup>58</sup> UN WOMEN, *supra* note 39.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Displacement Dynamics: IDP Movement Tracking, Needs and Vulnerability Analysis, Herat and Helmand*, SAMUEL HALL, commissioned by the International Organization for Migration (IOM), Kabul 52 (2014), <https://www.iom.int/files/live/sites/iom/files/Country/docs/IOM-Afghanistan-IDP-Survey-Herat-Helmand-Full-Version.pdf>.

<sup>62</sup> Sune Engel Rasmussen, *Afghanistan, domestic violence and divorce: one woman’s harrowing story*, THE GUARDIAN (May 5, 2015), <http://www.theguardian.com/global-development/2015/may/05/afghanistan-domestic-violence-divorce-one-woman-harrowing-story-setara>.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

#### 4. Sexual harassment

Sexual harassment remains a major problem in Afghanistan. No domestic laws specifically prohibit sexual harassment and legal protection for victims is very limited.<sup>67</sup> Although significant progress has been made to improve girls' access to education and integrate women into the Afghan Parliament and civil service, according to Human Rights Watch, "unchecked sexual harassment has been a significant obstacle to women's employment and participation in public life."<sup>68</sup> Women and girls have struggled "to regain their rights after being completely shut out of education and employment during Taliban rule."<sup>69</sup> They face sexual harassment daily, and those who have reported harassment to the police have typically received no assistance.<sup>70</sup>

As evidenced by the March 2015 assault of a young woman who was protesting sexual harassment in the streets of Afghanistan, women who speak out against sexual harassment end up targets of violence.<sup>71</sup> Part of a staged protest, Kubra Khademi, a young Afghan woman, walked through Kabul's most populated neighborhood, Kote Sangi, where she said women are frequently harassed, wearing metal armor to demonstrate her denunciation of sexual harassment.<sup>72</sup> A group of men followed Ms. Khademi shouting insults and throwing rocks at her. She went into hiding after several angry men showed up at her home.<sup>73</sup>

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<sup>67</sup> *Afghanistan: Fight Rampant Sexual Harassment*, HUMAN RIGHTS WATCH, *supra* note 1.

<sup>68</sup> *Id.*

<sup>69</sup> Human Rights Watch reports that President Ghani has described levels of sexual harassment in schools as "shocking," and has ordered the Ministry of Education to report every incident of sexual harassment in schools to enable action against harassers. He has directed relevant ministries to develop a plan to counter sexual harassment in educational institutions. So far, "[o]nly one government agency, the Independent Directorate of Local Governance, has developed anything resembling an anti-sexual harassment policy. The directorate's 'anti-harassment policy guideline' cites a commitment in the government's 2007-2017 National Action Plan for the Women of Afghanistan (NAPWA) to adopt and implement 'a policy against sexual harassment' as the basis for the guideline." *Id.* It sets out a detailed description of harassment and measures a victim can take, including anonymously seeking the assistance of a Conflict Resolution Committee. There is little information on the actual implementation of this policy and there is currently no legislation to protect women from sexual harassment.

<sup>70</sup> *Id.*

<sup>71</sup> Elsa Buchanan, *Kabul: Men stone woman protesting sexual harassment with metal armour*, INT'L BUS. TIMES (Mar. 5, 2015), <http://www.ibtimes.co.uk/kabul-men-throw-rocks-punches-woman-protesting-sexual-harassment-metal-armour-1490681>.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*



### 5. Prosecution for running away from home and attempted zina (sex outside marriage)

Women in Afghanistan face prosecution for running away from home, often in the context of domestic violence or forced marriage, and other alleged “moral crimes.”<sup>74</sup> However, there is no legal basis for prosecuting a woman for running away or elopement.<sup>75</sup> The Afghan Penal Code regulates specific *Sharia* law crimes and penalties, providing that the crimes of *hudood* (meaning crimes with predetermined or fixed punishments in the Qur’an), *qisas* (a category of crimes for which an “eye for an eye” or retaliatory punishment is allowed under *Sharia* law), and *diyat* (financial compensation paid to victims of particularly serious crimes such as murder or bodily harm) “shall be punished in accordance to the provisions of Islamic religious law applicable in Afghanistan.”<sup>76</sup> Running away from home is not codified as and does not constitute any of the above-mentioned types of crimes.<sup>77</sup> The government has even issued guidelines that women should no longer be prosecuted for running away from home.<sup>78</sup> Notwithstanding the lack of legal basis, women are still being prosecuted for this reason.<sup>79</sup>

Prosecutors have successfully brought cases against women by transforming the act of running away into a charge of attempted *zina*.<sup>80</sup> Although there is a basis for prosecuting *zina* in the law,<sup>81</sup> there is no definition or explanation of the elements of the crime, and the law has been misinterpreted to bring false charges against women who have had no actual or intended sexual contact with a man, but have merely been found in the presence of a man who is not a family member.<sup>82</sup> Authorities allege that a woman who runs away from home is doing so in order to have unlawful sexual intercourse.<sup>83</sup> In reality, many women in Afghanistan leave their homes to escape domestic violence or forced marriages.<sup>84</sup>

<sup>74</sup> “*I Had to Run Away*”: *The Imprisonment of Women and Girls for “Moral Crimes” in Afghanistan*, HUMAN RIGHTS WATCH (Mar. 28, 2012), <https://www.hrw.org/report/2012/03/28/i-had-run-away/imprisonment-women-and-girls-moral-crimes-afghanistan>.

<sup>75</sup> Fatma Boggio-Cosadia, *Elimination of Violence Against Women in Medica Afghanistan Legal Aid Practice: Second Report - An analysis on the use of the Elimination of Violence Against Women Law (EVAW Law) in Medica Afghanistan legal aid cases*, MEDICA AFG. 8 (Nov. 2014), [http://www.medicamondiale.org/fileadmin/redaktion/5\\_Service/Mediathek/Dokumente/English/Documentations\\_studies/Analysis-Report\\_Use-of-EVAW-Law\\_November-2014\\_CR-Medica-Afghanistan.pdf](http://www.medicamondiale.org/fileadmin/redaktion/5_Service/Mediathek/Dokumente/English/Documentations_studies/Analysis-Report_Use-of-EVAW-Law_November-2014_CR-Medica-Afghanistan.pdf).

<sup>76</sup> *Id.* See also Afg. Penal Code, Art. 1.

<sup>77</sup> Boggio-Cosadia, *supra* note 75.

<sup>78</sup> Smith, *Prospects of Afghanistan*, *supra* note 9, at 25.

<sup>79</sup> *See id.*

<sup>80</sup> *See id.* While Afghan Law does explicitly criminalize the act of “attempted *zina*,” prosecutors have interpreted Article 29 (initiation or intent to commit a crime) and Article 427 of the Afghan Penal Code together to charge women for “attempted *zina*” or the “intent to commit *zina*.”

<sup>81</sup> *See* Afg. Penal Code, Art. 427.

<sup>82</sup> As Human Rights Watch has pointed out, “[t]his vagueness makes it easy for a husband or father angered by a woman or girl fleeing from home to allege, if she has spent any time in the company of a man after having fled, that *zina* has occurred.” “*I Had to Run Away*,” HUMAN RIGHTS WATCH, *supra* note 74.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

### Box 1-3. The Paghman Case

In the high profile 2014 case of the “Paghman rapists,” ten men dressed in police uniforms and armed with rifles robbed and gang-raped four women who were returning to Kabul from a wedding with their families, and traveling through the Paghman district.<sup>85</sup> The accused in the Paghman case were not charged with rape, but with sex outside marriage (*zina*). Although *zina* typically implicates both parties, and is often used against female rape victims, many believe the women were not charged in this case because the victims’ husbands were present during the attacks and the rapists were strangers.<sup>86</sup> According to Human Rights Watch, “[t]he fact that the husbands were overpowered and humiliated . . . in a sense made them the victims in the eyes of the government.”<sup>87</sup>

Former President Hamid Karzai immediately publicly demanded justice, and within a week, police arrested seven suspects, whom the victims identified. After a two-hour trial, a court sentenced the defendants to death by hanging.<sup>88</sup> An appeals court upheld the sentences for five of the seven defendants, and reduced the sentences of two of the men to 20 years in prison due to insufficient evidence to justify the death penalty.<sup>89</sup>

Although the Paghman case demonstrates the Afghan government’s ability to prosecute cases of violence against women if there is political will and heightened media attention, this case also portrays the deep failings of the country’s justice system and lack of commitment to rule of law, particularly with respect to issues of due process.<sup>90</sup> The case involved alleged coerced confessions, inadequate time to prepare a defense, and lack of eyewitness testimony presented at trial.<sup>91</sup>

The Paghman case further highlights the dangers for female victims of sexual violence who face severe social stigma in Afghanistan.<sup>92</sup> Police investigators allowed journalists to observe the four women when they identified the alleged attackers in a lineup, potentially placing the victims at risk and deterring victims of future sexual attacks

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<sup>85</sup> Gary Owen, *A Gang Rape in Afghanistan is Exploited for Political Theater*, VICE NEWS (Sept. 15, 2014), <https://news.vice.com/article/a-gang-rape-in-afghanistan-is-exploited-for-political-theater>.

<sup>86</sup> *Afghanistan: Gang Rape Trial Badly Flawed: Due Process Violations, Political Interference Undermine Justice*, HUMAN RIGHTS WATCH (Sept. 8, 2014), <https://www.hrw.org/news/2014/09/08/afghanistan-gang-rape-trial-badly-flawed>. See also Owen, *supra* note 85.

<sup>87</sup> Owen, *supra* note 85.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*; see also Rod Nordland, *Afghan Court Confirms 5 Death Sentences in Rape Case That Led to Outrage*, N.Y. TIMES (Sept. 15, 2014), [http://www.nytimes.com/2014/09/16/world/asia/court-confirms-5-death-sentences-in-afghan-rape-case.html?\\_r=0](http://www.nytimes.com/2014/09/16/world/asia/court-confirms-5-death-sentences-in-afghan-rape-case.html?_r=0).

<sup>90</sup> *Afghanistan: Gang Rape Trial Badly Flawed*, HUMAN RIGHTS WATCH, *supra* note 86 (which observed that “the case was marked by serious flaws, in the police investigation and in a trial that violated international due process standards as well as protections under Afghan law and the constitution”). See also Samandary, *supra* note 50.

<sup>91</sup> *Afghanistan: Gang Rape Trial Badly Flawed*, HUMAN RIGHTS WATCH, *supra* note 86. See also Owen, *supra* note 85.

<sup>92</sup> *Afghanistan: Gang Rape Trial Badly Flawed*, HUMAN RIGHTS WATCH, *supra* note 86.

from coming forward.<sup>93</sup> The media published reports disclosing personal details of the victims, including their names, their villages, and their faces.<sup>94</sup>

Moreover, by charging the men with *zina*, as Amnesty International observed, “the authorities continued a pattern of addressing rape in a completely flawed manner—not as a crime against the dignity, autonomy and bodily integrity of the woman, but as a crime of ‘morality’ and a crime against marriage, thereby objectifying women instead of treating them as rights-holders.”<sup>95</sup>

#### 6. Internally displaced and returnee Afghan women are more vulnerable to sexual and gender-based violence

Due to the political, security, and economic transitions faced by Afghanistan since the withdrawal of ISAF, internal displacement continues to rise against a backdrop of on-going armed conflict, high rates of civilian casualties, increased abuses by non-state armed groups, and pervasive conflict-related violence.<sup>96</sup> In 2015, there was a significant number of new displacements in the Kunduz and Badakshan provinces, which border Tajikistan.<sup>97</sup> As of June 2015, there were at least 948,000 IDPs living in Afghanistan, including 103,000 new IDPs in the first six months of 2015, as a result of conflict and violence.<sup>98</sup> Many Afghans are migrating to urban areas where poverty and unemployment are increasing.<sup>99</sup> Between January and August 2015, approximately 417,825 Afghans returned or were deported to Afghanistan after living abroad in exile.<sup>100</sup> Reintegration into society is challenging and displaced Afghans, particularly women, are more vulnerable due to precarious housing situations with poor sanitation and hygiene conditions, limited access to basic services such as food, water, and electricity,<sup>101</sup> as well as economic insecurity and a volatile security situation.<sup>102</sup>

<sup>93</sup> *Id.*

<sup>94</sup> Samandary, *supra* note 50.

<sup>95</sup> *Afghanistan: President must reverse death penalty decision*, AMNESTY INT’L 1 (Oct. 3, 2014).

<sup>96</sup> *Afghanistan: As humanitarian space shrinks, IDP policy must be implemented*, INTERNAL DISPLACEMENT MONITORING CTR. (IDMC) & NRC (June 19, 2014), <http://www.internal-displacement.org/south-and-south-east-asia/afghanistan/2014/as-humanitarian-space-shrinks-idp-policy-must-be-implemented> [hereinafter IDMC/NRC].

<sup>97</sup> Anne-Kathrin Glatz, *Afghanistan: New and long-term IDPs risk becoming neglected as conflict intensifies*, IDMC (July 16, 2015), <http://www.internal-displacement.org/south-and-south-east-asia/afghanistan/2015/afghanistan-new-and-long-term-idps-risk-becoming-neglected-as-conflict-intensifies>.

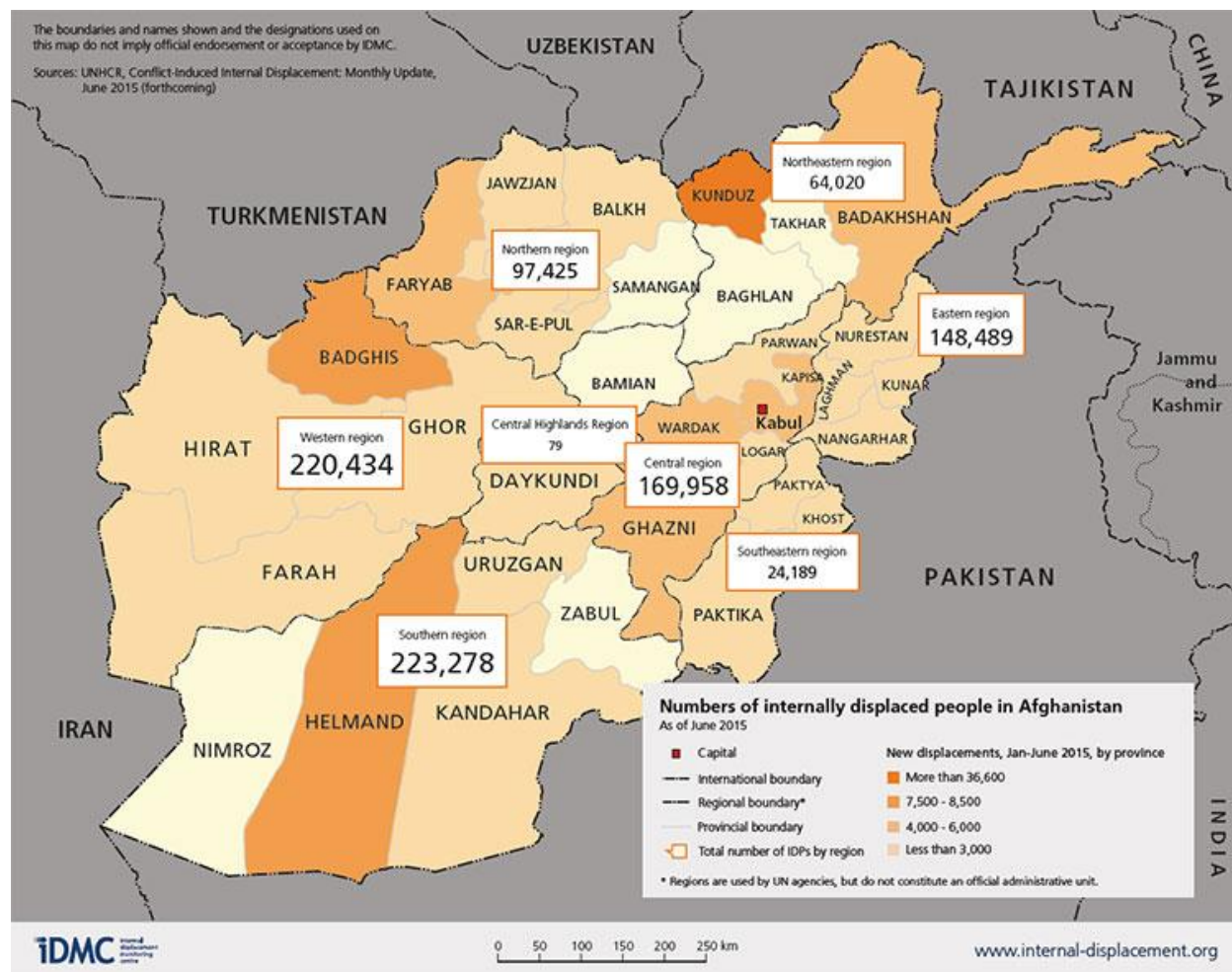
<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> Autumn Newsletter, IOM AFG. 3 (2015), [https://www.iom.int/sites/default/files/mission\\_newsletter/file/IOM-Afghanistan-Newsletter-Autumn-2015.pdf](https://www.iom.int/sites/default/files/mission_newsletter/file/IOM-Afghanistan-Newsletter-Autumn-2015.pdf); see also Shareena Qazi, *Afghan returnees from Pakistan endure dire conditions*, AL JAZEERA (Dec. 3, 2015), <http://www.aljazeera.com/news/2015/12/afghan-returnees-pakistan-live-dire-conditions-151203151127275.html>.

<sup>101</sup> *Policy Brief: National Policy on IDPs in Afghanistan*, SAMUEL HALL, on behalf of NATIONAL IDP POLICY WORKING GROUP (Mar. 2015), [http://samuelhall.org/wp-content/uploads/2015/04/IDP-Policy-Briefing-note\\_SH\\_-English\\_FINAL.pdf](http://samuelhall.org/wp-content/uploads/2015/04/IDP-Policy-Briefing-note_SH_-English_FINAL.pdf).

<sup>102</sup> *2015 UNHCR country operations profile – Afghanistan*, UNHCR (2015), <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e486eb6&submit=GO>. For more information on the context for returnees, see *The 2015 Afghanistan Refugee and Returnee Overview*, UNHCR (2015), <https://docs.unocha.org/sites/dms/Afghanistan/2015%20Afghanistan%20Refugee%20and%20Returnee%20Overview.pdf>.



Internally displaced and returnee women and girls are particularly vulnerable and at high risk of gender-based violence and abuses including but not limited to gender discrimination, sexual harassment, sexual assault and rape, and early and forced marriage. Displaced women are also more often forced into prostitution or trafficked.<sup>103</sup> The heightened risk is due to IDP women's low economic status, social isolation, and lack of traditional support networks and social protection mechanisms.<sup>104</sup>

Many returnee refugees and IDPs live in informal settlements in major urban areas such as Kabul, Jalalabad, and Kandahar.<sup>105</sup> Comprised of basic tarpaulin tents and one-room mud huts, the informal settlements are overcrowded with up to 20 people living in one or two simple

<sup>103</sup> Lida Ahmad, *Sexual violence: unacceptable on all counts*, FORCED MIGRATION REV., REFUGEE STUD. CTR, UNIV. OF OXFORD, ISSUE 46 (May 2014), <http://www.fmreview.org/afghanistan/ahmad>.

<sup>104</sup> *Global Overview 2014: people internally displaced by conflict and violence-Afghanistan*, IDMC/NRC (May 14, 2014), <http://www.internal-displacement.org/assets/publications/2014/201405-global-overview-2014-en.pdf>.

<sup>105</sup> *Listening to Women and Girls*, NRC, *supra* note 41, at 8.

rooms under the threat of eviction by the government.<sup>106</sup> Conditions in Jalalabad and Kandahar are slightly better than Kabul for those who can afford more than one room, but it is not uncommon for up to 20 family members to live together in cramped conditions.<sup>107</sup> Poor quality water, insufficient sanitation, and scarce electricity plague the settlements.<sup>108</sup> High rates of unemployment, lack of food security reaching dangerous hunger levels, and poverty prevail in displaced communities.<sup>109</sup> Urban communities shun displaced populations perceiving them as threats to the already limited local resources and competition for employment.<sup>110</sup>

Displacement amplifies the loss of traditional support mechanisms when women relocate to a new and unfamiliar area. A study conducted by the Internal Displacement Monitoring Centre (IDMC) and the Norwegian Refugee Council (NRC) found that “the legal status of women and the decision-making power remain linked to that of a male relative.”<sup>111</sup> Therefore, women are “unlikely to own land, inherit or have security of tenure should their husband or another male relative from which they depend die, divorce, or disappear.”<sup>112</sup> When displaced women are victims of abuses such as forced marriage or domestic violence, they cannot easily access external protection mechanisms. Going to the police or seeking out the justice system puts them at great risk of being ostracized by their families and communities.<sup>113</sup> In precarious situations, such as negotiating a marriage or attempting to break an engagement, internally displaced women are often more vulnerable to violent outcomes because they lack the support of a male relative.<sup>114</sup>

Despite assistance from national and international organizations to address increased vulnerabilities while living in urban displacement, displaced women and girls, particularly in Kabul, Jalalabad, and Kandahar, face significantly greater challenges than males and increased violence.<sup>115</sup> In general, women and girls have less access to services and opportunities than in their pre-displacement places of origin.<sup>116</sup> Specifically, displaced young women and girls are frequently kept in seclusion and are often prohibited from leaving the house, which drastically reduces their access to education, healthcare, and livelihood opportunities.<sup>117</sup>

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<sup>106</sup> *Id.* at 20; see also Danielle Moylan, *Displaced Afghan Women Face Prison Conditions*, AL JAZEERA (Mar. 31, 2015), <http://www.aljazeera.com/indepth/opinion/2015/03/displaced-afghan-women-face-prison-conditions-150330104049003.html>.

<sup>107</sup> *Listening to Women and Girls*, NRC, *supra* note 41, at 20.

<sup>108</sup> *Id.* at 21.

<sup>109</sup> *Id.* at 17.

<sup>110</sup> *As humanitarian space shrinks*, IDMC/NRC, *supra* note 96.

<sup>111</sup> *Id.* at 9.

<sup>112</sup> *Id.* at 9-10.

<sup>113</sup> Camille Hennion, *Displacement and violence against women in Afghanistan*, FORCED MIGRATION REV., REFUGEE STUD. CTR, UNIV. OF OXFORD, ISSUE 46 (May 2014), <http://www.fmreview.org/afghanistan/hennion>.

<sup>114</sup> *Id.*

<sup>115</sup> *Listening to Women and Girls*, NRC, *supra* note 41, at 8.

<sup>116</sup> *Id.* at 26.

<sup>117</sup> Dan Tyler & Susanne Schmeidl, *Urban realities for displaced young women and girls*, FORCED MIGRATION REV., REFUGEE STUD. CTR, UNIV. OF OXFORD, ISSUE 46 (May 2014).

The degradation of socio-economic conditions for displaced households increases the risks of forced marriage and domestic violence.<sup>118</sup> Exploitation of girls and women increases during displacement as struggling families sell their daughters to pay debts or to generate much-needed income. Internally displaced girls are susceptible to being targeted by outsiders to the IDP community who seek out desperate families willing to give away their young daughters for marriage because they cannot feed them.<sup>119</sup>

The marriage age of displaced Afghan females is younger than the general Afghan population—male family members promise girls as young as eight for engagement to much older men.<sup>120</sup> Early marriage often results in early widowhood, which means some displaced mothers in their twenties attempt to survive as single heads of household.<sup>121</sup> Approximately 19.3% of displaced women are widows, compared with 3.6% nationally, and are at higher risk of violent outcomes in situations such as claiming inheritance and negotiating marriages because they lack support from male relatives.<sup>122</sup>

Domestic violence is widespread in displaced communities because men, idle and frustrated from lack of employment, find it difficult to adjust to new challenges and take out aggression on women.<sup>123</sup> Women report that violence occurs more often during displacement because their husbands are “more stressed.”<sup>124</sup> High levels of drug use are common among men, who have little access to addiction treatment, aggravating circumstances for women living in such households.<sup>125</sup>

**Box 1-4. Mental Health Impacts of SGBV and Displaced Women**

Psychosocial problems among displaced women in Afghanistan are prevalent. Some women express a preference for death to their current life.<sup>126</sup> As a result of their situation, displaced women reported feelings of shame, depression, and helplessness.<sup>127</sup> The lack of mental health services in Afghanistan for women, with access to services even more limited for displaced women, leaves displaced women to cope with trauma on their own; some resort to self-harm.<sup>128</sup>

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<sup>118</sup> *As humanitarian space shrinks*, IDMC/NRC, *supra* note 96.

<sup>119</sup> Katie Nguyen, *Displaced Afghan women risk ‘cheap’ marriages, isolation and depression*, THOMAS REUTERS FOUND. (May 8, 2014), <http://www.trust.org/item/20140508052252-ibru1/>.

<sup>120</sup> *Listening to Women and Girls*, NRC, *supra* note 41, at 13, 14.

<sup>121</sup> *Id.* at 14.

<sup>122</sup> Hennion, *supra* note 113.

<sup>123</sup> *Listening to Women and Girls*, NRC, *supra* note 41, at 15.

<sup>124</sup> *As humanitarian space shrinks*, IDMC/NRC, *supra* note 96.

<sup>125</sup> *Listening to Women and Girls*, NRC, *supra* note 41, at 15.

<sup>126</sup> *Id.* at 23.

<sup>127</sup> Tyler & Schmeidl, *supra* note 117.

<sup>128</sup> *Id.*

### III. Afghan Legal Framework for Preventing and Punishing Violence Against Women

#### A. *The Elimination of Violence Against Women (EVAW) Law*

Afghanistan is an Islamic country with a 99% Muslim population.<sup>129</sup> Afghanistan's laws and social affairs must adhere to Islamic *Sharia* law, which is considered the supreme law of the land.<sup>130</sup> According to the Holy Qur'an, the central Islamic religious text, "[t]here is no distinction between male and female."<sup>131</sup> Thus, the principle of equality can be interpreted as enshrined in the Qur'an.

Although the Afghan Constitution, on paper, supports human rights and women's rights, antiquated civil and criminal codes are still in force throughout the country that discriminate against women.<sup>132</sup> Critics point out that the Afghan Penal Code and the Civil Code adopted in 1976 and 1977, respectively, "are vague, outdated and lacking sufficient clarity regarding women's rights."<sup>133</sup> For example, under the Afghan Civil Code, marriage is defined as "a contract that legalizes intercourse between a man and a woman."<sup>134</sup> Disparate treatment of males and females includes a lower minimum marital age—sixteen for girls, eighteen for men—and an exception to the minimum marital age for girls to be married at age fifteen with the consent of her father or the court.<sup>135</sup> Husbands may divorce their wives at any time for any or no reason, but women seeking divorce must obtain the approval of their husbands and produce witnesses in court to testify that the divorce is justified.<sup>136</sup> Even though the Afghan government has signed CEDAW, other international human rights treaties, and the UN Security Council Resolution 1325 on women, peace, and security, national law still predominates,<sup>137</sup> preventing international instruments from effectively protecting Afghan women from violence, particularly sexual violence.<sup>138</sup>

Recognizing the violence faced by Afghan women and the legislative void offering protection, Afghan women's rights advocates, civil society organizations, and some lawmakers, supported by the Ministry of Women's Affairs (MoWA) and the Ministry of Justice (MOJ), drafted a bill in

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<sup>129</sup> CIA, *supra* note 16. The population of Afghanistan is 80% Sunni Muslim and 19% Shia Muslims.

<sup>130</sup> Article 3 of the Afghan Constitution provides: "No law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan."

<sup>131</sup> QUR'AN 4:124.

<sup>132</sup> Afg. Const., Arts. 6, 7, 22, 58.

<sup>133</sup> Ahmad, *supra* note 103.

<sup>134</sup> Afg. Civ. Code, Art. 60.

<sup>135</sup> Afg. Civ. Code, Arts. 70 and 71.

<sup>136</sup> Afg. Civ. Code, Art. 135. *See also Violence Against Women in Afghanistan*, THE ADVOCATES FOR HUMAN RIGHTS (May 18, 2011), <http://www.stopvaw.org/afghanistan>.

<sup>137</sup> Article 3 of the Afghan Constitution provides that no laws should contravene the tenets and provisions of Islam, and therefore *Sharia* law is the supreme law of the land.

<sup>138</sup> Ahmad, *supra* note 103.

2008 to criminalize certain acts of violence against women.<sup>139</sup> In 2009, then-president Hamid Karzai issued a presidential decree enacting the EVAW Law, which was lauded as a major step forward for women's rights.<sup>140</sup>

The EVAW Law is based on provisions set forth in the Afghan Constitution establishing the rights to liberty and human dignity and recognizing that family is a fundamental pillar of society that the state should protect<sup>141</sup> as well as principles of Islamic *Sharia* law.<sup>142</sup> The EVAW Law defines terms such as "violence," "sexual assault," "humiliation," "intimidation," and "persecution" in the context of acts perpetrated specifically against women.<sup>143</sup> Under the EVAW Law, there are 22 enumerated acts deemed as violence against women, including crimes of physical and sexual violence, early and forced marriage, forced self-immolation, suicide or isolation, deprivation of rights to education, work, health, and property rights.<sup>144</sup> These crimes are punishable by law, and the EVAW Law provides sentencing guidelines.<sup>145</sup>

The EVAW Law specifies that the rights of the victim include prosecution of the offender, access to shelter or a safe place, access to emergency health services, access to an advocate or legal aid provider, compensation for damages resulting from an act of violence, and

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<sup>139</sup> Fawzia Koofi, *It's Time to Act for Afghan Women: Pass EVAW*, FOREIGN POL'Y (Jan. 13, 2015), <http://foreignpolicy.com/2015/01/13/its-time-to-act-for-afghan-women-pass-the-evaw/>; see also *Afghanistan's EVAW Law*, CANADIAN WOMEN FOR WOMEN IN AFG. 1, [http://www.cw4wafghan.ca/sites/default/files/attachments/pages/cw4wafghan-afghansevawlaw\\_0.pdf](http://www.cw4wafghan.ca/sites/default/files/attachments/pages/cw4wafghan-afghansevawlaw_0.pdf).

<sup>140</sup> *In the Spotlight: Implementing the EVAW Law at a Critical Juncture*, SAMUEL HALL, external evaluation of the EVAW Comm'n Project commissioned by UN WOMEN 6 (2013).

<sup>141</sup> See EVAW Law, Art. 1; Afg. Const., Art. 25 and 54.

<sup>142</sup> EVAW Law, Art. 2 provides for the following objectives of the EVAW Law: (1) "[s]afeguarding the religions and legal rights and protecting the human dignity of women;" and (2) "[p]rotecting well being of family and fighting against customs, traditions and practices [that] cause violence against women contrary to the provisions of the religion of Islam."

<sup>143</sup> EVAW Law, Art. 3.

<sup>144</sup> EVAW Law, Art. 5 expressly recognizes that commission of the following acts constitute violence against women: (1) rape; (2) forcing into prostitution; (3) recording the identity of a victim and publishing it in a manner that damages her reputation; (4) burning, using chemicals or other dangerous substances; (5) forcing self-immolation or suicide or using poisonous or other dangerous substances; (6) causing injury or disability; (7) battery and laceration; (8) selling or buying women for the purpose of or under the pretext of marriage; (9) *baad* (defined in EVAW Law, Art. (3)(4) as "[m]arrying a woman to someone as blood price or to achieve peace linked to murder, sexual assault or other circumstances to observe indecent customs and traditions"); (10) forced marriage; (11) prohibiting the right to marriage or the right to choose a spouse; (12) underage marriage; (13) abuse, humiliation, intimidation; (14) harassment or persecution; (15) forced isolation; (16) forcing a woman to drug addiction; (17) deprivation of inheritance; (18) preventing possession of personal property; (19) deterring the right to education, work, access to health services; (20) forced labor; and (21) denying a relationship with woman to prevent her from access to property, inheritance or other rights. It also recognizes (22) marrying more than one wife without observing Article 86 of the Civil Code, which requires that the following conditions must take place for a man to marry more than one woman: (1) the marriage will not cause injustice between the wives; (2) the man can provide each woman with food, clothes, a suitable house and medical treatment; and (3) the first wife must suffer from an incurable disease or be unable to bear children. The punishment for failing to meet all three requirements is imprisonment of no less than three months.

<sup>145</sup> EVAW Law, Arts. 17-41. Sentencing guidelines for certain acts are included in the EVAW Law while the Penal Code is referred to for others.



confidentiality.<sup>146</sup> Under the EAW Law, a victim of violence or her relatives may file a written complaint to the police, human rights offices (*huquq*) of the MOJ, courts, and offices of the MoWA located in each of Afghanistan's 34 provinces.<sup>147</sup> State institutions that receive the complaints must inform MoWA, and the prosecutors' offices and courts are to prioritize violence against women cases and process them as expeditiously as possible.<sup>148</sup> With the exception of the crimes of rape, forced prostitution, publicizing the identity of a victim, burning or the use of chemical substances and forced self-immolation or suicide—which the state *must* prosecute through the formal judicial system, consistent with other areas of Afghan criminal law—a victim may withdraw her case at any stage of prosecution, which terminates the proceeding.<sup>149</sup> This is highly problematic as women face many pressures to withdraw their claims.

In addition to delegating responsibilities to MoWA and the MOJ, the EAW Law obligates the Ministry of Religious Affairs, Ministries of Education and Higher Education, Ministry of Information and Culture, Ministry of Interior Affairs, and Ministry of Public Health to adopt specific preventive and protective measures to end violence against women.<sup>150</sup> To establish coordination among governmental, non-governmental, and other relevant organizations, the EAW Law requires the establishment of an EAW High Commission comprised of deputies from the above ministries as well as the Attorney General's Office and Ministry of Labor, Social Affairs, Martyrs, and Disabled, and members of the AIHRC, Kabul Specialized Family Court, and Afghanistan Independent Bar Association.<sup>151</sup> Chaired by MoWA, the EAW High Commission is charged with monitoring the implementation of the EAW Law, including studying and evaluating factors of violence, collecting statistics of violence related to crimes, and suggesting amendments to the Law or adopting regulations and procedures to more effectively implement the Law.<sup>152</sup> Notably, the Law does not contain a provision requiring that adequate budget be allocated to implement the Law or provide for sanctions of government officials who fail to perform their obligations.

Although the EAW Law recognizes 22 acts of violence against women, the list is not comprehensive. Despite calls by the UN and others to recognize "honor killing" as a specific crime, honor killing is not enumerated under the EAW Law as a form of violence against women and the Afghan Penal Code has not been amended to recognize honor killing as a crime.<sup>153</sup> Rather, the offense of murder under the Penal Code is mitigated when it involves an

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<sup>146</sup> EAW Law, Art. 6

<sup>147</sup> EAW Law, Art. 7.

<sup>148</sup> EAW Law, Art. 7.

<sup>149</sup> EAW Law, Art. 39; *Justice through the eyes of Afghan women: Cases of Violence Against Women Addressed through Mediation and Court Adjudication*, UNITED NATIONS MISSION IN AFG. (UNAMA) (Apr. 15, 2015), [http://unama.unmissions.org/Portals/UNAMA/UNAMA-OHCHR/UNAMA\\_OHCHR\\_Justice\\_through\\_eyes\\_of\\_Afghan\\_women\\_-\\_15\\_April\\_2015.pdf](http://unama.unmissions.org/Portals/UNAMA/UNAMA-OHCHR/UNAMA_OHCHR_Justice_through_eyes_of_Afghan_women_-_15_April_2015.pdf).

<sup>150</sup> EAW Law, Arts. 8-14.

<sup>151</sup> EAW Law, Art. 15

<sup>152</sup> EAW Law, Art. 16

<sup>153</sup> Honor killings are not clearly defined in Afghan law. Article 398 of the Afghan Penal Code states: "A person defending his honour, who sees his spouse or another of his close relations, in the act of committing adultery or

honor killing, and a perpetrator receives a more lenient sentence to a term “not exceeding two years.”<sup>154</sup>

Moreover, tension exists between some provisions of the EAW Law and the Afghan Penal Code leaving some women unprotected. For example, the EAW Law explicitly recognizes *baad* as a crime against women, including girls under 18; increases the term of imprisonment for up to ten years for someone who gives or takes a woman in *baad*; and also imposes medium term imprisonment upon a witness, counsel, marriage solemnizer, or other involved party.<sup>155</sup> However, the Afghan Penal Code criminalizes *baad* only in the case of a widow or a woman over 18, which carries a medium-term imprisonment not to exceed two years.<sup>156</sup> Even though both the Afghan Penal Code and the EAW Law ban *baad*, women continue to be forced into marriage as retribution or to make amends for crimes committed by male family members due to reliance on the informal justice system, which relies on tribal law that allows for the exchange of women.<sup>157</sup> *Baad* is more frequently cited as a problem in the east and southeast, but rarely in the northeast, west, northwest, and central areas of Kabul and Hazarajat.<sup>158</sup>

If women exercise their right to choose their own spouse, they may be charged and imprisoned for adultery. For example, the press reported a case where the father of Zahra, a young Afghan woman, promised her in marriage to a 70-year-old man because her brother had “stolen” the second younger wife of the man. Zahra was exchanged for her brother’s crime. Resisting the marriage, Zahra ran away with a young man, but they were caught after two years and jailed for adultery.<sup>159</sup>

The EAW Law currently exists as a freestanding law. However, the MOJ is leading governmental discussions to integrate criminal provisions of the EAW Law into the Penal Code.<sup>160</sup> Advocates believe that existence of the EAW Law as separate from the Penal Code is crucial to the protection of women’s rights in Afghanistan and the recognition that violence disproportionately affects women and girls. Incorporating the EAW Law into the Penal Code would thus weaken the EAW Law.<sup>161</sup> Moreover, it is possible that not all of the EAW Law’s provisions will be included in a revised Penal Code, which would reverse progress made on the prevention and protection of Afghan women from violence.<sup>162</sup>

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being in the same bed with another and immediately injures or kills one or both of them shall be exempted from punishment for laceration and murder but shall be imprisoned for a term not exceeding two years.”

<sup>154</sup> *Id.*

<sup>155</sup> EAW Law, Art. 3, 5, 25.

<sup>156</sup> Afg. Pen. Code, Art. 517.

<sup>157</sup> Alissa J. Rubin, *For Punishment of Elder’s Misdeeds, Afghan Girl Pays the Price*, N.Y. TIMES (Feb. 16, 2012), [http://www.nytimes.com/2012/02/17/world/asia/in-baad-afghan-girls-are-penalized-for-elders-crimes.html?\\_r=0](http://www.nytimes.com/2012/02/17/world/asia/in-baad-afghan-girls-are-penalized-for-elders-crimes.html?_r=0).

<sup>158</sup> *Afghanistan in 2014*, ASIA FOUND., *supra* note 55, at 27.

<sup>159</sup> Mirwais Jalalzai, RAWA News, *Zahra: An Afghan woman victim of domestic violence*, KHAAMA PRESS (Oct. 23, 2014), <http://www.rawa.org/temp/runews/2014/10/23/zahra-an-afghan-woman-victim-of-domestic-violence.html>.

<sup>160</sup> *Justice through the eyes*, UNAMA, *supra* note 149, at 5.

<sup>161</sup> Correspondence with Taj Sultana, Protection and Advocacy Mngr., Danish Refugee Council-Afghanistan (Dec. 22, 2015) (on file with CGRS) [hereinafter DRC-Afg.].

<sup>162</sup> *Id.*

**Box 1-5. IDP Policy and SGBV Prevention**

In November 2013, Afghanistan adopted a National Policy on Internally Displaced Persons to implement strategies to prevent future displacement as well as respond to the immediate short-term needs of the country's current displaced persons. For the first time, the Afghan government clearly defines who qualifies as an IDP: "all persons who are forced to flee or leave their homes, including as a result of national or international military operations, Taliban abuses, natural disasters and development projects and those who remain in affected areas."<sup>163</sup> Recognizing that women "are often at greater risk of physical and sexual violence, as well as poverty, and frequently have no access to critical medical or psycho-social services or law enforcement and legal remedies despite the traumas they experience,"<sup>164</sup> the IDP Policy explicitly affirms Afghanistan's commitment to implement appropriate strategies and programs to protect the rights of displaced women.<sup>165</sup> On paper, the IDP Policy identifies the vulnerabilities of women and aims to protect displaced women in a manner consistent with the EAW Law and other related laws and policies. In reality, the implementation of the IDP policy has been slow in large part due to lack of political will on the part of the Ministry of Refugees and Repatriation, the government agency responsible for carrying out the policy.<sup>166</sup>

**B. Cases prosecuted under the EAW Law**

The EAW Law enables women victims of violence the right to register crimes committed against them with the AIHRC, the police, or a MoWA, *huquq*, or prosecutor's office.<sup>167</sup> If a case is registered—and it is not referred for resolution by mediation or the informal justice system (see sections III.C and IV.D)—it should be referred to the prosecutor's office.<sup>168</sup> The prosecutor's office conducts a preliminary investigation and has the discretion to indict abusers under the EAW Law, Penal Code, or both, and may refer the case to the court for trial.<sup>169</sup>

Despite the many entry points for victims, according to statistics from the Afghan government, AIHRC, and reports from legal aid providers, few cases involving violence against women have been resolved through the formal judicial process.<sup>170</sup> In 2013, the AIHRC found that of the 2,400

<sup>163</sup> Turner, *supra* note 96; *Global Overview*, *supra* note 104.

<sup>164</sup> *IDP Policy*, *supra* note 45. The IDP Policy notes that female heads of households, expectant mothers, mothers with young children, and women with disabilities are particularly vulnerable. *Id.* at 20.

<sup>165</sup> Section 7 of the IDP Policy reaffirms the human rights that IDPs are entitled to and highlights the specific vulnerabilities of women: protection of life, integrity liberty, and security; right to adequate housing and access to land; right to livelihood; right to water, food, clothes—adequate standard of living; right to health care; right to education; right to property protection and compensation; participatory rights, including the right to vote.

<sup>166</sup> Turner, *supra* note 96; *Global Overview*, *supra* note 104.

<sup>167</sup> EAW Law, Art. 7.

<sup>168</sup> *A Way to Go: An Update on Implementation of the Law on Elimination of Violence against Women in Afghanistan*, UNAMA, 1 (Dec. 2013), <http://www.refworld.org/docid/52a6dff4.html>.

<sup>169</sup> *Id.*

<sup>170</sup> Boggio-Cosadia, *supra* note 75. For example, Medica Afghanistan, a non-profit non-governmental organization working to eliminate violence against women, reports that out of a total number of 1,277 cases from August 1, 2012 to December 31, 2013, the EAW Law was invoked in 98 (7.6%) cases. The Afghan government reports that

cases of violence against women referred to the justice system, only 400 (16.67%) of the cases were processed and adjudicated; the remaining were unsettled, withdrawn, or closed.<sup>171</sup> In its December 2013 update report on the implementation of the EVAW Law in Afghanistan, the UN Assistance Mission in Afghanistan (UNAMA) observed that registration of reported incidents of violence against women increased by 28% from October 2012 to September 2013, amounting to 650 cases (compared to 470 cases in 2011-2012).<sup>172</sup> However, the use of the EVAW Law as a legal basis for indictment increased only by 2%.<sup>173</sup> The discrepancy between the number of reported incidents and the indictments may reflect the insufficiency of evidence to indict, but could also reflect that many cases did not proceed through the judicial system because women preferred not to press charges (see section IV.B below) or chose to resolve matters through mediation or informal mechanisms (see sections III.C and IV.D below). Between October 2012 and September 2013, courts applied the EVAW Law to convict in only 55% of the 109 indictments filed under the EVAW Law, which constitutes a 17% decrease in courts' use of the EVAW Law to decide cases.<sup>174</sup> The primary reasons for these low numbers are discussed in section IV.

As of July 2015, Women for Afghan Women (WAW) was representing displaced Afghan women in seven cases before the family court including issues of domestic violence, inheritance, engagement abolition, separation and child custody.<sup>175</sup> The engagement abolition case was based upon an indictment of *baad* under the EVAW Law and has been resolved. The other six cases are still in progress, and with the exception of the inheritance issue, are being pursued under the EVAW Law as the victims in those cases suffered from violence.

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out of 4,505 VAW cases reported from March 2012 to March 2013, 518 (11.5%) of registered cases went through the formal legal process and resulted in either punishment or acquittal. Punishments included 10 death sentences, 292 jail sentences, 59 cash fines, 67 divorces, and 40 acquittals. See *First Report on the Implementation of Violence against Women (EVAW) Law in Afghanistan*, ISLAMIC REPUBLIC OF AFG. MINISTRY OF WOMEN'S AFFAIRS (Jan. 2014) [hereinafter *Afg. First Report on EVAW*].

<sup>171</sup> Simar Samar, *Corruption is a brutal enemy of Afghan women*, THOMAS REUTERS FOUND. (May 3, 2013), <http://www.trust.org/item/20130502130716-v16ht/>.

<sup>172</sup> *A Way to Go*, UNAMA, *supra* note 168, at 3.

<sup>173</sup> In a May 2014 interview, the director of the Office of the Special Attorney for Afghanistan reported that “[j]ust in the capital city of Kabul, more than 3,500 cases of violence against women have been solved in the past four years, and the perpetrators have been convicted, sentenced with imprisonment and even execution.” Maiwandi, *supra* note 9. This number of reported prosecutions conflicts with the December 2013 United Nations investigation of the implementation of the EVAW Law (see section III.B) which found that while the number of complaints about violence against women invoking the EVAW Law had increased by 28% in 2012-13 compared with 2011-12, the number of prosecutions had only risen by 2% over the same period. See Smith, *Afghan Women 2014*, *supra* note 9; see also Jalalzai, *supra* note 159.

<sup>174</sup> *A Way to Go*, UNAMA, *supra* note 168, at 3.

<sup>175</sup> Videoconference Interview by CGRS with Women for Afghan Women (July 12, 2015).

**Box 1-6. Legal Aid Success Stories**

Rates of prosecution of violence against women under the EAW Law remain minimal. However, there have been some successes, often owing to the involvement of legal aid providers and women's rights advocates in Afghanistan who push the system to work for their clients. Legal aid organizations provide women facing violence and their families with legal advice and collaborate with prosecutors to indict perpetrators.<sup>176</sup> Lawyers collect evidence, such as taking pictures of women's injuries and obtaining medical certificates, and are present during trial.<sup>177</sup>

Out of eight criminal cases prosecuted in 2012 and 2013, Medica Afghanistan—a non-profit, non-governmental Afghan women's organization working to eliminate violence against women—succeeded in convincing prosecutors to indict six cases under the EAW Law provisions, sometimes together with other provisions of the Penal Code.<sup>178</sup> Prosecutors' indictments based upon the EAW Law familiarize judges with its provisions, bringing further legitimacy to the EAW Law. Some of the cases, including three cases where the indictment was based solely on provisions of the EAW Law, resulted in convictions, indicating some willingness of the courts to follow prosecutors' indictments.<sup>179</sup>

Attorneys have also successfully used the EAW Law to help prevent honor killings. For example, in March 2014, after an Afghan couple eloped, the woman's father pressed bigamy charges against them, claiming that his daughter was already married to her nephew.<sup>180</sup> The woman claimed she had been engaged to her nephew against her will and without her knowledge and was not married.<sup>181</sup> Several of the woman's male family members publicly vowed to carry out an honor killing against her, angry not only that she had defied her family, but also that she had married someone from a different ethnic group.<sup>182</sup> A lawyer from Women for

<sup>176</sup> Boggio-Cosadia, *supra* note 75. Legal aid organizations may also defend women accused, indicted, prosecuted, and judged during all stages of proceedings; and represent women in civil proceedings before family courts such as divorce, child custody and alimony, and mediation.

<sup>177</sup> *Id.*

<sup>178</sup> Three cases were indicted on the sole basis of battery and laceration under the EAW Law; one case on causing injury or disability and *baad* under the EAW Law; one case on injury or disability under the EAW Law and attempted murder under the Penal Code; and one case on injury or disability under the EAW Law and murder under the Penal Code.

<sup>179</sup> Boggio-Cosadia, *supra* note 75. While the EAW Law is not applicable in civil proceedings, according to Medica Afghanistan, lawyers have referred to the Law's provisions in divorce requests in family court based on harm. In addition to providing evidentiary documentation such as medical certificates and testimonies, lawyers quote from the EAW Law as a deliberate strategy to underline the type of violence the woman has gone through, and to underscore the fact that such acts of violence are forbidden and punishable under the Law. This strategy can have positive effects as it promotes the concept that violence against women is a crime. It has been helpful for lawyers to highlight this, particularly in family courts where judges do not deal with criminal offenses and are not familiar with the EAW Law.

<sup>180</sup> Jawad Sukhanyar & Rod Nordland, *Forbidden Afghan Couple are Reunited After Arrests*, N.Y. TIMES (June 17, 2014), [http://www.nytimes.com/2014/06/18/world/asia/forbidden-afghan-couple-reunited-after-arrests.html?\\_r=0](http://www.nytimes.com/2014/06/18/world/asia/forbidden-afghan-couple-reunited-after-arrests.html?_r=0).

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

Afghan Women, who won dismissal of the bigamy charges for the couple, indicated the authorities had offered to draw up a warrant for the arrest of the woman's father for attempting to force her to marry against her will, a crime under the EAW Law.<sup>183</sup> These actions are believed to have prevented the family from carrying out the honor killing.

C. Use of the EAW Law by legal aid attorneys in mediation and violence prevention

Islamic law emphasizes resolving disputes through peaceful solutions particularly within the family, and emphasizes that such solutions must be just and accepted by the free will of both parties.<sup>184</sup> This, coupled with the many barriers to pursuing criminal prosecution under the EAW Law discussed in the following section, influence many women to turn to mediation.<sup>185</sup> Attorneys for women have sought to use the EAW Law to prevent violence through awareness raising and to resolve cases through informal mediation primarily in cases of domestic violence. The majority of cases of violence against women reported to the police and prosecutor's offices are being processed outside of the formal justice system—mostly through mediation.<sup>186</sup> Women are often reluctant to file complaints against their husbands or immediate family members with authorities and prefer mediation, hoping for a resolution that preserves family unity.<sup>187</sup> Fear of public scrutiny, high costs, and corruption in the judicial system also deter women from seeking prosecution (discussed in more detail below). Civil redress, such as divorce, fair alimony and custody settlements, and living violence-free may be more important to women than seeking imposition of criminal sanctions against their abusers.<sup>188</sup>

To incorporate the EAW Law into mediation processes, legal aid organizations working with survivors have referred to EAW Law provisions in the signed agreements, clearly laying out which actions constitute a crime against a woman and the consequences for violating the EAW Law.<sup>189</sup> Legal aid organizations report that quoting the EAW Law in mediation agreements has had a positive effect on men and women. Referencing the EAW Law has reportedly deterred perpetrators of violence who are alerted that certain acts of violence against women have criminal consequences.<sup>190</sup>

While mediation can result in a positive solution for some women, this is not always the case. Alarming, in some mediation cases, women were not present during the mediation

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<sup>183</sup> *Id.*

<sup>184</sup> *Justice through the eyes*, UNAMA, *supra* note 149. Mediation (*miyanjigari*), reconciliation (*sulha*) and arbitration (*tahkim*) are terms found in Islam that refer to peaceful dispute resolution.

<sup>185</sup> *A Way to Go*, UNAMA, *supra* note 168, at 12. Afghan law does not prohibit mediation in EAW cases.

<sup>186</sup> UNAMA examined the individual experiences of 100 women seeking justice under the EAW Law and found 65% of cases were resolved by mediation, and found only 5% of cases adjudicated through criminal prosecution resulted in sanctions against the perpetrators. See UNAMA, *supra* note 149, at 1, 2.

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> Boggio-Cosadia, *supra* note 75, at 17.

<sup>190</sup> *Id.*

agreement and have had mediations imposed on them by other parties.<sup>191</sup> Resolving cases through mediation also reflects a minimization of the grave crimes of violence against women and can even lead to increased vulnerability to further violence. The mediation process utilized by legal aid attorneys, while creative and beneficial to their clients in many respects in the current context, lacks a standardized approach or monitoring mechanism to ensure adherence to the principles of consent, safety, impartiality and inclusivity of the victim; however, it is often the only desirable option.<sup>192</sup> While mediation may be an acceptable resolution for certain types of disputes, it is not a substitute for prosecution in cases involving serious crimes of violence, such as rape, forced prostitution, forced self-immolation or suicide, and to use it as a substitute in these cases is inconsistent with international law and policy.

In addition to mediation, the Danish Refugee Council (DRC) has reported success in raising awareness about the EVAW Law to prevent violence. For example, an 11-year-old girl had been betrothed at birth to her father's best friend's son who was 13 years older.<sup>193</sup> After being educated on the EVAW Law and understanding the criminal liability faced for underage marriage, the girl's father canceled the engagement.<sup>194</sup>

#### **Box 1-7. Violence Prevention: Case Study**

The case of 22-year-old Humaira provides an example of how legal aid organizations have used the EVAW Law to prevent violence, resolve domestic conflict, and engage in alternate forms of dispute resolution. Humaira had been married to Murtaza for two years and they had a five-month-old daughter, Sofia. After Humaira gave birth to her daughter, her in-laws' behavior towards her changed as they expected she would give birth to a boy. Influenced by his family's behavior, Murtaza's treatment of Humaira worsened. Humaira's mother-in-law constantly demanded that Humaira do a lot of housework, and when she was unable to do something, her mother-in-law complained to Murtaza, who beat her. Humaira discussed the situation with her parents, but they advised her to be patient and try to keep her in-laws and husband happy as her impoverished parents could not support her financially.

Marzia, Humaira's neighbor, learned about Humaira's situation. Marzia, who had undergone a two-month community outreach worker training on the EVAW Law and Civil Code procedures provided Humaira with basic information about violence against women, and referred her to Women for Afghan Women (WAW) for legal advice. A WAW lawyer educated Humaira that under the EVAW Law, beating or physical abuse by anyone, including one's husband or in-laws, is a crime punishable for up to three months imprisonment and for imprisonment of three months to ten years if there is injury or disability.

<sup>191</sup> *Justice through the eyes*, UNAMA, *supra* note 152, at 3.

<sup>192</sup> *Id.*; see also Jalalzai, *supra* note 159; Ali M. Latifi, *UN says Afghanistan's court system fails women*, L.A. TIMES (Apr. 19, 2015), <http://www.latimes.com/world/afghanistan-pakistan/la-fg-un-afghanistan-women-courts-20150419-story.html>.

<sup>193</sup> Correspondence with DRC-Afg. (Jan. 2, 2016) (on file with CGRS).

<sup>194</sup> *Id.*

Humaira was not willing to file a case against her husband and in-laws as she feared her husband would divorce her and leave her and Sofia without support. Therefore, she requested DRC and WAW use an alternate way to address her problem. DRC and WAW invited her husband and in-laws to participate in a one month awareness raising training with other people from their community that focused on the legal consequences of physical abuse, including beatings in particular, and more generally on violence against women. Three months after the training, Humaira reported that her situation improved and her husband and in-laws discussed the information they gained during the training session.<sup>195</sup>

#### IV. Barriers to Effective Implementation of the EVAW Law

The EVAW Law has theoretically advanced equality and women's rights in Afghanistan and has successfully provided protection and punishment in some cases (as detailed in the previous section). Despite being controversial, the EVAW Law has positively raised the profile of the gender agenda in Afghanistan. According to UN Women Chief Phumzile Mlambo-Ngcuka, the Law has provided "a platform for debate and awareness raising issues related to gender equality and the rights of women and girls particularly, to live a life free of violence."<sup>196</sup> However, six years after its enactment, SGBV against women and women's lack of legal rights persist in Afghanistan and, as the UN Women Chief further noted, weak implementation of the EVAW Law means that "perpetrators of violence go free."<sup>197</sup>

Women's rights advocates fear that violence will only worsen since ISAF forces have withdrawn from the region. A main reason for the potential regression of women's legal protection is the lack of mechanisms for implementation and enforcement of the EVAW Law. Reports and studies of violence against women and political attitudes towards the EVAW Law in Afghanistan over the last year indicate that women continue to experience high rates of violence.<sup>198</sup> Amnesty International reports women's rights activists are facing increased levels of violence and harassment, to which the authorities "turn a blind eye."<sup>199</sup>

Barriers to effective implementation of the EVAW Law, explored in the sections to follow, include deeply entrenched patriarchal views and bias against women, women's persistent fear of reporting due to lack of confidence in the authorities and judiciary, and continued reliance on informal justice mechanisms.<sup>200</sup> While the discussion of barriers to implementation of the

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<sup>195</sup> *Id.* (Names have been changed to maintain confidentiality.)

<sup>196</sup> Dominguez, *supra* note 2.

<sup>197</sup> *Id.*

<sup>198</sup> *Afghanistan turns a blind eye to rising violence against women activists – Amnesty*, RT (Apr. 7, 2015), <http://www.rt.com/news/247637-afghan-women-activists-amnesty/>; *See Their Lives on the Line: Women Human Rights Defenders Under Attack in Afghanistan*, AMNESTY INT'L (Apr. 7, 2015), <https://www.amnesty.org/en/documents/asa11/1279/2015/en/>.

<sup>199</sup> *Id.*

<sup>200</sup> Article 64 of the Afghan Constitution allows the President to appoint the Chief Justice and justices of the Supreme Court with approval of the *Wolesi Jirga*. The decision on how justices are appointed may have significant implications for enforcing women's rights if the president lacks commitment to the rule of law and protecting



EVAW Law covered in this chapter is not exhaustive, it discusses the primary barriers identified by women’s rights advocates and legal aid providers and confirmed by Center for Gender & Refugee Studies’ (CGRS) research (see the Executive Summary for more on methodology).

*A. Perceptions of sexual and gender-based violence and the EVAW Law: pervasive bias and discrimination against women*

Implementation of the EVAW Law has been slow due to opposition to the Law by conservative lawmakers and members of society. Opponents of the EVAW Law question its legal status, arguing the Afghan Constitution requires Parliament to pass presidential decrees even though other Afghan laws enacted by presidential decree have been implemented without parliamentary approval.<sup>201</sup> In the face of the 2014 presidential elections and to mitigate the risk that a new president would reverse President Karzai’s decree enacting the EVAW Law, Afghan Parliament member and women’s rights activist, Fawzia Kofi, introduced the EVAW Law for ratification by Parliament in 2013.<sup>202</sup> Critics argue that Ms. Kofi’s introduction of the EVAW Law into Parliament was premature and politically motivated, that it re-opened controversy over the EVAW Law, bringing the Law to the attention of conservatives who were unaware of the presidential decree and, thus, has weakened the effectiveness of the Law.<sup>203</sup> Conservatives take the position that Parliament must vote on the EVAW Law to give legal effect to the presidential decree. Some parliamentary members claim the EVAW Law contradicts Islamic *Sharia* law—including in particular that it prohibits forced and early marriages and establishes women’s shelters—and oppose its passage.<sup>204</sup> Despite efforts from advocates over the last two years, the EVAW Law still has not received parliamentary approval.<sup>205</sup>

Despite the reported and confirmed statistics of rising violence against women in Afghanistan (see section II.C), some officials deny the levels of violence, claiming the numbers are actually low, and blaming women for the violence. Officials also reject accusations of bias or corruption (discussed below), asserting that the challenge in investigating cases of violence against women is the remote location of the incidents and that women are at fault for defying traditional roles

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women’s rights. See Carolyn A. Dubay, *Beyond Critical Mass: A Comparative Perspective on Judicial Design and Gender Equality in Iraq and Afghanistan*, 24 FLA. J. INT’L. L. 163, 200-203 (April 2012).

<sup>201</sup> Christine Roehers & Sari Kouvo, *On a Knife’s Edge: The looming parliamentary debate about the Elimination of Violence against Women Law*, AFG. ANALYSTS NETWORK (May 16, 2013), <https://www.afghanistan-analysts.org/on-a-knifes-edge-the-looming-parliamentary-debate-about-the-elimination-of-violence-against-women-law/>; see also Smith, *Afghan Women 2014*, *supra* note 9. The Ulama Council, Afghanistan’s highest religious authority, has been silent on the need to protect women from violence and criticized President Ghani’s nomination of a woman to the Supreme Court as against *Sharia* law. See Fazul Rahim & F. Brinley Bruton, *Afghanistan’s Women: Future Clouded by Rampant Violence, Conservatism*, NBC NEWS (June 28, 2015), <http://www.nbcnews.com/news/world/afghanistans-women-future-threatened-violence-conservatism-n377631>.

<sup>202</sup> *In the Spotlight*, SAMUEL HALL, *supra* note 140, at 8.

<sup>203</sup> *Id.*; see also Ali M. Latifi, *Afghan women in fight over rights law*, AL JAZEERA (May 30, 2013), <http://www.aljazeera.com/indepth/features/2013/05/201352711108360922.html>.

<sup>204</sup> Ahmad, *supra* note 103.

<sup>205</sup> *In the Spotlight*, SAMUEL HALL, *supra* note 140, at 64.

and leaving the home.<sup>206</sup> In a September 2014 meeting in Lashkar Gah, the Institute for War and Peace Reporting (IWPR), a non-profit organization supporting journalists in conflict and crisis zones, reported that the “head of the women’s affairs ministry in the province, Jamila Niazi, claimed that levels of violence against women were very low.”<sup>207</sup> Similarly, a few days later, about 100 people met in Bamyan, Afghanistan, to discuss what actions officials and organizations were taking to stem the rising tide of violence against women in the region.<sup>208</sup> At this gathering, Mortaza Nejati, a local prosecutor who sits on the regional committee for preventing violence against women, rejected the allegations of delaying proceedings and letting suspects go for bribes, indicating that the “real challenge . . . was investigating cases that occurred in remote parts of Bamyan, a highland area where travel is difficult.”<sup>209</sup> Torpekai Elkhani, the provincial head of the women’s affairs ministry, observed that contributory factors in the rise of SGBV include ignorance about women’s rights and social problems like unemployment and illiteracy, but also claimed that women leave themselves “open to assault” by being “too ready to stray from home.”<sup>210</sup> These kinds of sentiments impede the implementation of the EAW Law and other legal protections for women in Afghanistan.

Negative perceptions of the EAW Law persist beyond the Parliament and the Executive to other actors in the justice system. In recent years, trainings conducted in police stations, particularly the Afghan National Police’s (ANP) Family Response Units (FRUs), which handle family violence, troubled children, and female victims of crime, have contributed to an improvement of the attitude of some police towards women victims of violence.<sup>211</sup> However, many police officers are still unaware of the EAW Law and of the appropriate procedure to file a complaint if a woman reports violence. Formal training on specific issues in violence against women cases is not provided universally, and is particularly lacking in smaller provinces and districts without FRUs.<sup>212</sup> As UNAMA observes, some police fail to follow required legal procedures, and instead, refer cases to informal dispute resolution mechanisms which undermine the implementation of the EAW Law.<sup>213</sup>

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<sup>206</sup> *Rising Violence Against Women in Central Afghanistan: Gender violence said to be rising in secure Bamyan province and falling to war-torn Helmand*, INST. FOR WAR AND PEACE REPORTING (IWPR) (Oct. 31, 2014), <https://iwpr.net/global-voices/rising-violence-against-women-central-afghanistan>.

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> FRUs are units of the Afghan National Police. The first FRU was created in 2006 prior to the enactment of the EAW Law. Boggio-Cosadia, *supra* note 75, at 14. A female police officer in Kabul who attended a GBV training for police recruits organized by the Ministry of Interior in collaboration with the United Nations Population Fund (UNFPA) in December 2014 observed that the training raised awareness about GBV among all participants, not just the female ones. She stated: “After completing this course my male colleagues were saying that they understood the importance of not using any kind of violence against women. Their mindset was changed as well.” See *Mariam: I’m More Capable of Recognizing Gender-Based Violence: Gender-based violence training not only improve skills, but also changes mindset*, UNFPA AFG. NEWS (Dec. 23, 2014), [http://countryoffice.unfpa.org/afghanistan/2014/12/23/11185/mariam\\_i\\_m\\_more\\_capable\\_of\\_recognizing\\_gender\\_based\\_violence/](http://countryoffice.unfpa.org/afghanistan/2014/12/23/11185/mariam_i_m_more_capable_of_recognizing_gender_based_violence/).

<sup>212</sup> Boggio-Cosadia, *supra* note 75, at 14.

<sup>213</sup> *A Way to Go*, UNAMA, *supra* note 168, at 25.

Despite some efforts to sensitize and train police, which have improved reception of women in some instances, there are still cases where women have reported domestic violence crimes and the police blame them for the abuse.<sup>214</sup> A representative of the AIHRC observed, “When a woman goes to the police to complain about a case of violence against her, the police [by their treatment] unfortunately commit a second act of violence against her. Sometimes women are even sexually abused by the police.”<sup>215</sup> Moreover, if a woman does not have marks of violence on her body, the relevant institutions refuse to register her complaint.<sup>216</sup> The EVAW Law does not contain sanctions if police or other authorities do not follow proper procedures.

According to Afghan lawyers representing women in SGBV claims and available government statistics, even if a case moves beyond the police, the prosecution of cases based on the EVAW Law remains low in the formal judicial system.<sup>217</sup> Legal aid lawyers working with women victims of violence advocate that prosecutors indict abusers under relevant provisions of the EVAW Law to explicitly recognize the crimes as those committed against women. Positively, some prosecutors have followed suggestions to indict under certain EVAW Law provisions, which forms the basis of the sentence.<sup>218</sup> However, in other cases, domestic violence in particular, prosecutors disregard the EVAW Law and indict under Penal Code provisions that fail to recognize the severity of the crime and the familial relationship between the perpetrator and the victim.<sup>219</sup> For example, in a case where a husband beat and raped his wife, a Medica Afghanistan lawyer advocated that the prosecutor indict the husband under the rape provision in the EVAW Law, which increased the maximum penalty from seven years to ten years because of the familial relationship.<sup>220</sup> The prosecutor did not follow the attorney’s request and the husband received a much lighter sentence under the Penal Code.<sup>221</sup> This highlights the importance of explicitly recognizing marital rape, an unfamiliar concept under Afghan and

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<sup>214</sup> Michelle Barsa, *Determining If Progress Will Prevail or Peril: The Role for Women in Defining Afghanistan’s Future*, 38-WTR FLETCHER F. WORLD AFF. 87, 92 (Winter 2014).

<sup>215</sup> Habib, *supra* note 37; UNAMA reported that women were asked to pay bribes to public officials. One woman reported that a police officer reportedly demanded sexual favors as a precondition to processing her complaint. *See Justice through the eyes*, UNAMA, *supra* note 149, at 22.

<sup>216</sup> Boggio-Cosadia, *supra* note 75, at 14.

<sup>217</sup> Videoconference Interview by CGRS with Women for Afghan Women (July 12, 2015). *See also* Boggio-Cosadia, *supra* note 75. According to Afghanistan’s First Report on EVAW, there were 4,505 violence-against-women cases reported between March 2012 and March 2013, but only 629 (13.9%) cases were referred for prosecution and 153 cases referred to court.

<sup>218</sup> Videoconference Interview by CGRS with Women for Afghan Women (July 12, 2015). *See also* Boggio-Cosadia, *supra* note 75, at 9.

<sup>219</sup> Boggio-Cosadia, *supra* note 75, at 11.

<sup>220</sup> *Id.* at 21. Rape is criminalized under Article 17 of the EVAW Law. Where a woman’s chastity is violated, the perpetrator may be sentenced up to seven years in prison; if the perpetrator is a “close relative up to the third degree, a teacher, employee, or physician of the victim, or the perpetrator has authority or influence over the victim, the perpetrator should be sentenced to long term imprisonment of not more than ten years.” EVAW Law, Article 17(4)-(5).

<sup>221</sup> *Id.*

Islamic law, as a crime under the EAW Law. Prosecutor's indictments based upon the EAW Law to prosecute perpetrators of violence against women remain low.<sup>222</sup>

Some observe recent improvements in the attitudes of prosecutors, but there has been "no improvement in the attitude[s] of judges towards the EAW Law and enforcement of the law by courts."<sup>223</sup> Worse, lawyers have noticed "an increase in negative perceptions" of the EAW Law, "including sarcastic remarks during court sessions."<sup>224</sup> Judges rarely take initiative to apply the EAW Law on their own, which they are empowered to do, but follow the prosecutors' indictments.<sup>225</sup> In sum, women face bias and discrimination during the prosecution, hampering progress in their cases.

### *B. Women fear reporting violence*

According to MoWA statistics, 5,406 cases of violence against women, including 3,715 cases under the EAW Law, were registered from March 2013 to March 2014, indicating a 20% increase in overall registration of cases from previous years.<sup>226</sup> A female member of the Afghan Parliament observed that "the rising numbers may reflect an increased willing[ness] to report crimes as women become more aware of their rights" under the EAW Law.<sup>227</sup> While that may be the case, in large part due to significant efforts of the women's movement in Afghanistan, it is commonly understood that these figures grossly underrepresent instances of violence against women in the country, in particular crimes of sexual violence. According to the AIHRC, less than 10% of reported violence concerns sexual violence, which is a "reflection of the powerful taboos against discussing it."<sup>228</sup> A major barrier to the enforcement of the EAW Law is women's fear of reporting crimes.

Women do not report violence perpetrated against them due to danger of increased violence, isolation, and stigmatization. A study by Medica Afghanistan found that the vast majority of women who sought help in Medica's offices refused to file a complaint because they were afraid of the consequences of initiating judicial proceedings such as "increased violence, including killing from their husbands after they have served their sentence and are released from prison," rejection by their families and communities, pressure from the family or husband to withdraw the complaint, if filed, and fear of lack of evidence to prove the violence due to refusal of witnesses to testify.<sup>229</sup>

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<sup>222</sup> Sultanda, *supra* note 161.

<sup>223</sup> Boggio-Cosadia, *supra* note 75, at 14.

<sup>224</sup> Telephone Interview by CGRS with Afghan Lawyer, Name Withheld (Jan. 8, 2015). Boggio-Cosadia, *supra* note 75. Supreme Court justices have also expressed reluctance to accept the EAW Law, commenting that it contains certain provisions that are "western and not according to Afghan culture and not Islamic."

<sup>225</sup> Boggio-Cosadia, *supra* note 75, at 24.

<sup>226</sup> *Justice through the eyes*, UNAMA, *supra* note 149.

<sup>227</sup> Habib, *supra* note 37.

<sup>228</sup> *For Afghan women, violence remains entrenched*, RAWA NEWS (Apr. 7, 2015), <http://www.rawa.org/temp/runews/2015/04/07/for-afghan-women-violence-remains-entrenched.html>.

<sup>229</sup> Boggio-Cosadia, *supra* note 75, at 18.

A lack of women in the police force, police bias against women due to entrenched patriarchal norms, police insensitivity, and corruption within the criminal justice system also contribute to women's fear of reporting violence.<sup>230</sup> As Human Rights Watch reports: "In Afghanistan's deeply gender-segregated society, many women [do] not feel able to speak with a man who is not their relative to report a crime, let alone discuss sensitive issues covered by the EVAW Law such as domestic violence, rape and forced marriage."<sup>231</sup> Many women do not approach state agencies because they mistrust the agencies or fear being subjected to further abuse, and feel there is nowhere they can turn for safety.<sup>232</sup>

According to AIHRC's chair, the main reason for the low numbers of violence against women cases proceeding through the justice system is "corruption and the improper use of influence in the judicial system."<sup>233</sup> For example, one woman was asked to pay a bribe or marry the judge to get her case adjudicated; other women have been pressured by authorities to withdraw their complaints and return to their abusers.<sup>234</sup>

Women often understand that corruption and lack of training for police and prosecutors prevent their cases from being properly investigated and prosecuted.<sup>235</sup> Perpetrators of violence against women often avoid punishment due to personal or political connections with police or prosecutors and the payment of bribes, which in turn encourages others to commit violence against women because they know they are not likely to be punished.<sup>236</sup> The AIHRC has reported many instances where the police have released perpetrators of violence against women who "enjoy impunity, because of collusion, and in exchange for money."<sup>237</sup> MoWA is therefore unable to effectively pursue cases of violence against women, and perpetrators are released because of corruption within legal and judicial institutions.<sup>238</sup> If their cases will not progress, women have little incentive to report.

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<sup>230</sup> *Afghanistan: Fight Rampant Sexual Harassment*, HUMAN RIGHTS WATCH, *supra* note 1.

<sup>231</sup> *Id.*

<sup>232</sup> Habib, *supra* note 37.

<sup>233</sup> Samar, *supra* note 171.

<sup>234</sup> *Id.*

<sup>235</sup> Article 7 of the EVAW Law provides for a code of conduct in investigations made by the police, *huquq* offices, courts and other relevant offices.

<sup>236</sup> Habib, *supra* note 37.

<sup>237</sup> *Id.* It is unclear from the source whether the perpetrators were released after conviction or after arrest but before investigation and a hearing.

<sup>238</sup> *Id.* (citing Fatana Gailani, chairwoman of the Afghanistan Women's Network). There are also criticisms that MoWA appointed regional heads on the basis of "connections rather than merit."

**Box 1-8. Baseline Survey: IDPs Lack Awareness of Women’s Rights and SGBV**

According to DRC’s June 2014 survey of 187 Afghan returnees and IDPs in Kabul’s Alisghan area, and Bagh-e-Dawood and Kodakistan, two of the Kabul Informal Settlements, awareness of women’s rights and SGBV is low among displaced Afghans, and males tend to have more awareness than females of women’s rights because males have greater mobility and access to the community.<sup>239</sup> The survey also revealed that men’s awareness of women’s rights is based primarily on Islamic principles with limited knowledge of the national and international laws that protect women.<sup>240</sup> Although most displaced Afghan men and women surveyed have never attended trainings on women’s rights and SGBV issues, they indicated they are generally receptive to attending such trainings.<sup>241</sup>

Even among both men and women who indicated awareness of women’s rights, knowledge on the topic is poor.<sup>242</sup> The majority of displaced Afghan men and women surveyed have not heard of SGBV,<sup>243</sup> and among both men and women who have awareness of SGBV, understanding is very low.<sup>244</sup> Displaced people also reported a lack awareness of services available to women experiencing violence; for example, a high percentage of displaced women did not know how to access legal assistance because they did not believe such service providers exist.<sup>245</sup> Of the small number of women who are aware of services, according to survey, many had incomplete information about available services.<sup>246</sup> Domestic violence among displaced Afghan women remains underreported as women are reluctant to report violence due to “fears of stigmatization, social exclusion, reprisals, and threats to life.”<sup>247</sup>

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<sup>239</sup> *Sexual and Gender-Based Violence among Afghan Refugees in Tajikistan and among displacement and returnees in Afghanistan: Baseline Study 2014*, DRC & UNITED NATIONS TRUST FUND TO END VIOLENCE AGAINST WOMEN (OCT. 26, 2014) [hereinafter DRC Baseline Survey 2014]. DRC Baseline Survey 2014 reports that only a quarter of men and 18.7% of women surveyed reported awareness of women’s rights; 40% of women reported no awareness of women’s rights.

<sup>240</sup> *Id.*

<sup>241</sup> *Id.* Nearly 90% of men and women surveyed by DRC had never attended trainings on women’s rights or SGBV issue. Eighty percent of Afghan men surveyed expressed interest in attending such a training.

<sup>242</sup> *Id.* More than half of the respondents who reported awareness of women’s rights indicated their knowledge was poor.

<sup>243</sup> *Id.* Only 20% of men and women surveyed indicated they were aware of SGBV.

<sup>244</sup> *Id.* Due to cultural barriers, a large number of women declined to respond to DRC’s question about their understanding of SGBV.

<sup>245</sup> *Id.* DRC Baseline Survey 2014 reveals that nearly 90% of displaced Afghan women surveyed lacked any knowledge as to how to access legal services. Seventy-one point four percent of those who did not know how to access legal services responded that there were no such services available, 16.96% responded that no such services were available in their area, and 9.82% indicated that their families would not allow them to seek such services. The DRC Baseline Survey 2014 reports that only 12% of displaced Afghan women interviewed responded that, yes, there were effective services available to women experiencing violence, 86% responded no, and 2% did not respond.

<sup>246</sup> For example, the majority of survey respondents indicated that MoWA provided assistance, and some also believed community elders and humanitarian NGOs provided assistance, but very few indicated that they understood the family courts and police could provide assistance. Interestingly, more respondents felt no one had responsibility to assist (9.8%) than family courts (8%) or the police (6.3%). *Id.*

<sup>247</sup> *Listening to Women and Girls*, NRC, *supra* note 41. The DRC Baseline Survey 2014 reported that if violence occurred, 50% of displaced women respondents would do “nothing, keep it to myself,” 15% would talk to female

### C. Shelter availability and controversy

The availability of emergency shelters, in the short- and long-term, is essential for ensuring the safety of women fleeing violence. Shelters are particularly important in cases involving domestic violence where women have no other option but to remain in the home with their aggressors or wind up homeless. Long-term shelters that provide more comprehensive services for survivors can end the cycle of violence and provide women with more permanent solutions free of violence. The EAW Law recognizes the importance of shelters and centers where women survivors can seek protection and remain safe, but this provision has been met with strong opposition.<sup>248</sup>

Opponents of the EAW Law view the right of women fleeing domestic violence or forced marriage to seek shelter as “the most controversial” provision in the Law, and describe shelters “as places where women get raped and prostituted.”<sup>249</sup> Predominately funded by western donors, shelters provoke this reaction, it is understood, because they enable women to make their own choices, undermining traditional and deep rooted patriarchal control over women. Conservatives view shelters as an assault on Afghan culture and Islam.<sup>250</sup> There are reported cases of women who sought protection in shelters, but when they returned to their families, the families killed them and—despite involvement of MoWA—no charges were pressed against alleged perpetrators.<sup>251</sup> There is the perception that after a woman leaves her family, others can do whatever they want to her, including sexual acts, and an honor killing is the only way to eradicate the shame she has brought to the family.<sup>252</sup>

The controversy over shelters resulted in the introduction of a bill in 2011 for the Afghan government to manage all women’s shelters. If passed, this bill would have required women to appear before a panel comprised of members of the Afghan MOJ to determine if they should remain in the government-controlled shelter, be sent to jail, or returned home where they might face further abuse or death by honor killing.<sup>253</sup> If the panel found a woman qualified to stay in the shelter, she was required to remain for life or face imprisonment if she defied

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relatives, 12% felt it was a personal matter that should not be discussed outside the family, and 11% would talk to female friends. Only 1% would report to the police. Eleven percent of women surveyed did not respond to the question.

<sup>248</sup> EAW Law, Art. 8(3). MoWA in cooperation with other ministries is to adopt protective and supportive measures for “[p]aving the ground for protection and safe keeping of the victims of violence or exposed to violence at the protective centers or in case no shelter is available, in other save [sic] places for control and supervision.” The EAW Law does not explicitly provide for the creation of shelters.

<sup>249</sup> Borhan Osman, *The EAW Law – an Evil Law? The backlash at Kabul University*, AFG. ADVOCATES NETWORK (May 26, 2013), <https://www.afghanistan-analysts.org/the-evaw-law-an-evil-law-the-backlash-at-kabul-university/>.

<sup>250</sup> An influential senior imam is reported as stating: if a woman “tries to leave the family, she is breaking the order of the family and it’s against the Islamic laws and it’s considered a disgrace.” Alissa J. Rubin, *A Thin Line of Defense Against Honor Killings*, N.Y. TIMES (Mar. 2, 2015), [http://www.nytimes.com/2015/03/03/world/asia/afghanistan-a-thin-line-of-defense-against-honor-killings.html?\\_r=0](http://www.nytimes.com/2015/03/03/world/asia/afghanistan-a-thin-line-of-defense-against-honor-killings.html?_r=0).

<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

<sup>253</sup> Eric Wilson, *Homes of Refuge: Women’s Shelters in Afghanistan*, AQUILA STYLE (Mar. 18, 2015), <http://www.aquila-style.com/focus-points/homes-of-refuge-womens-shelters-in-afghanistan/96202/>.

confinement.<sup>254</sup> Under the bill, women would also have to undergo “forensics examinations” to assess sexual activity, and those determined to be sexually active would be charged with adultery.<sup>255</sup> The bill was defeated, but prominent politicians continue to seek the closure of women’s shelters. Judge Nazir Ahmad Hanafi, a member of Parliament representing Herat, the second largest city of Afghanistan, and head of Parliament’s Legislative Commission, is one of the most prominent voices against the EAW Law and shelters.<sup>256</sup> According to Judge Hanafi, “these so-called ‘safe houses’ are very bad,” and in his view, “[t]hey protect people who are doing wrong things and give them immunity . . . [and] open the gates to social problems like AIDS.”<sup>257</sup> Judge Hanafi further believes that shelters are “actually ‘brothels’ and could prompt a ‘revolution’ that could kill millions.”<sup>258</sup>

Women’s lack of access to shelters impedes implementation of the EAW Law; if a woman has no safe space to turn to pursue a complaint, she is likely to remain in precarious circumstances.

#### D. Reliance on the informal justice system

Another problem facing the implementation of the EAW Law is reliance on the informal justice system and rejection of the formal criminal justice system called for in the EAW Law.<sup>259</sup> Even when a woman reports violence to the institutions specified as authorities in the EAW Law, and charged with prosecution, such institutions refer the woman to informal local councils, such as tribal councils (*jirgas*) or consultation councils (*shuras*) that exist throughout the country. In many instances, a woman may express that she prefers to resolve the matter through traditional dispute resolution (for reasons detailed above). In other instances, authorities pressure or coerce women into resolving their claims in this way.<sup>260</sup>

Powerful, conservative males typically dominate these councils and are not receptive to changing women’s roles within Afghan society and take little account of the EAW Law and the formal justice system even though the EAW Law prevails if there is a contradiction between its provisions and other enforced laws.<sup>261</sup> Instead, they make decisions “based on a mix of tradition, varying interpretation of Islamic law and local power relations sometimes contrary to law or religious principles.”<sup>262</sup> Informal local councils often possess little or flawed knowledge of

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<sup>254</sup> *Id.*

<sup>255</sup> *Afghanistan: Government Takeover of Shelters Threatens Women’s Safety*, HUMAN RIGHTS WATCH (Feb. 13, 2011), <https://www.hrw.org/news/2011/02/13/afghanistan-government-takeover-shelters-threatens-womens-safety>.

<sup>256</sup> Rahim & Bruton, *supra* note 201.

<sup>257</sup> *Afghanistan: No Country for Women*, AL JAZEERA, *supra* note 40.

<sup>258</sup> Rahim & Bruton, *supra* note 201.

<sup>259</sup> A full discussion of the tension between customary and Islamic law and the EAW Law and other domestic Afghan laws is beyond the scope of this report. For further discussion, see Hamid M. Khan, *Islamic Law, Customary Law, and Afghan Informal Justice*, United States Institute of Peace Special Report 363 (Mar. 2015), <http://www.usip.org/sites/default/files/SR363-Islamic-Law-CustomaryLaw-and-Afghan-Informal-Justice.pdf>.

<sup>260</sup> Samar, *supra* note 171.

<sup>261</sup> Smith, *Afghan Women 2014*, *supra* note 9; Dubay, *supra* note 200. Article 43 of the EAW Law states: “The provisions of this law shall prevail if they contradict the provisions of other enforced laws.”

<sup>262</sup> *A Way to Go*, UNAMA, *supra* note 168, at 21.



*Sharia* or Islamic legal principles, and base their resolutions under customary laws and traditional practices that may vary among ethnic groups and communities.<sup>263</sup> This has resulted in vulnerable populations, including internally displaced and returnee women and children, facing further victimization.<sup>264</sup>

Discrimination against women and the continued reliance on the informal justice system, rather than the formal system, is demonstrated in the leniency and lack of penal sanctions in cases of honor killings, which are not specified as a crime under the EVAW Law.<sup>265</sup> Evoking honor as an offense to custom and tradition is often an accepted defense for the perpetrator in cases of murder of women and girls.<sup>266</sup> However, most cases of honor killings do not come before the formal judicial system, as families often carry out punishments sanctioned by a community justice mechanism such as the *shuras* or *jirgas*.<sup>267</sup>

Government authorities who receive complaints from women also refer women to legal aid organizations to mediate disputes.<sup>268</sup> As discussed in section III.C, there are instances where informal mediation may be in the best interests of the woman. However, frequently, referral for mediation conflicts with the Afghan authorities' general duty to fully investigate and prosecute crimes as outlined in the Criminal Procedure Code (CPP). Neither the EVAW Law nor the CPP include mediation as an alternative to criminal prosecution where a crime has been allegedly committed and there are no guidelines for how mediation should be used to ensure protection for women in cases of violence within the family.<sup>269</sup> Rather, most mediation proceedings result in reunification of a woman with her perpetrator to preserve family unity and do not necessarily provide enforcement mechanisms to protect women from further violence and accountability of the perpetrator.<sup>270</sup> The EVAW Law outlines specific criminal penalties for cases of violence against women, but mediation may be used to circumvent any of these legal consequences, and therefore prevent effective legal enforcement of actions criminalized under the EVAW Law, even in cases involving the most serious crimes.<sup>271</sup>

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<sup>263</sup> Khan, *supra* note 259, at 7.

<sup>264</sup> *A Way to Go*, UNAMA, *supra* note 168, at 21.

<sup>265</sup> *Id.*

<sup>266</sup> *Id.*

<sup>267</sup> *Id.* The use of *baad*, as reported on by the New York Times, is also another problematic example of use of the informal justice system in lieu of the formal. See Alissa J. Rubin, *For Punishment of Elder's Misdeeds, Afghan Girl Pays the Price*, N.Y. TIMES (Feb. 16, 2012), [http://www.nytimes.com/2012/02/17/world/asia/in-baad-afghan-girls-are-penalized-for-elders-crimes.html?\\_r=0](http://www.nytimes.com/2012/02/17/world/asia/in-baad-afghan-girls-are-penalized-for-elders-crimes.html?_r=0).

<sup>268</sup> *A Way to Go*, UNAMA, *supra* note 168, at 21.

<sup>269</sup> *Id.*

<sup>270</sup> *Justice through the eyes*, UNAMA, *supra* note 152, at 3.

<sup>271</sup> Boggio-Cosadia, *supra* note 75, at 6.

### E. Additional obstacles for IDP women

Conflict, natural disaster, and human-made disasters forcibly displace women from their homes and expose them to additional vulnerabilities and protection challenges when faced with violence. Security risks for displaced women vary throughout Afghanistan and vary by province and district. For example, deterioration of the security situation in various districts in Ghazni, Maidan Wardak, Kapisa, Kunduz, Faryab, Badakshan, Helmand, Khost, Farah, and Uruzgan due to on-going armed conflict has caused increasing instability for IDP families in those areas causing further displacement.<sup>272</sup> IDP households tend to be larger than the general population with an average of nine members per family, increasing the vulnerability of households faced with economic challenges, which particularly impacts the women and children.<sup>273</sup>

In general, IDP populations are disadvantaged in securing livelihoods, facing obstacles such as lack of stable work opportunities, relevant skills, information about the local labor market, and support from the local government.<sup>274</sup> IDPs may also face discrimination because they are from outside of a particular community or belong to an ethnic minority.<sup>275</sup> Higher levels of illiteracy and less access to education among displaced women limit their skills and ability to obtain employment and generate income to support themselves and their families.<sup>276</sup> In certain areas, such as Herat, men migrate to Iran to seek work, increasing the vulnerabilities and protection concerns for the women they leave behind.<sup>277</sup> Female-headed households, including widows, who do not have male economic support sometimes resort to begging in the street or selling their underage daughters.<sup>278</sup> Lack of identity documentation, such as *tazkeras* and election cards, negatively impacts IDP women as such documents are essential for accessing health and education facilities and many employment opportunities.<sup>279</sup>

Although Afghanistan has adopted a National IDP Policy (see Box 1-5, page 27), which would mitigate some of the vulnerabilities to violence, the dissemination and roll-out of the policy with local stakeholders has been slow, and only Nangarhar province has taken initial steps to draft a local action plan.<sup>280</sup> Therefore, in addition to variable security concerns depending on area, local implementing structures to assist IDPs may also vary by location and affect the implementation of the EVAW Law and the protection of displaced women from violence.<sup>281</sup>

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<sup>272</sup> *Afghanistan Conflict-Induced Internal Displacement Monthly Update*, UNHCR 3 (May 2015), <http://www.refworld.org/pdfid/5594f2544.pdf>.

<sup>273</sup> *Displacement Dynamics*, SAMUEL HALL, *supra* note 61, at 34.

<sup>274</sup> *Id.*

<sup>275</sup> *Id.* at 41.

<sup>276</sup> *Id.* at 84.

<sup>277</sup> *Id.* at 15.

<sup>278</sup> *See generally id.*

<sup>279</sup> *Id.* at 52.

<sup>280</sup> Glatz, *supra* note 97.

<sup>281</sup> For additional barriers for IDP women, see Tyler & Schmeidl, *supra* note 117; Hennion, *supra* note 113; Khalid Koser, *Afghanistan 2014: A Crisis of Internal Displacement*, BROOKINGS (Aug. 30, 2013), <http://www.brookings.edu/blogs/up-front/posts/2013/08/30-afghanistan-internal-displacement-koser>.

*F. Article 26 of the Criminal Procedure Code rolls back implementation of the EAW Law*

In June 2013, the lower house of Afghanistan's Parliament passed a new draft CPP that includes a controversial Article 26 prohibiting relatives of the accused from testifying in criminal cases.<sup>282</sup> This provision of the draft law covers cases of women who are victims of domestic violence, which—if put into effect—would have made the prosecution of those cases even more difficult given that most witnesses to abuse in the home are relatives.<sup>283</sup> In 2014, former President Karzai signed into law the new CPP. However, due to widespread pressure and criticism from women's rights activists, he issued a separate presidential decree modifying Article 26, making the testimony of an accused's relatives voluntary rather than prohibited. As such, although an improvement as modified by the decree, the amendment still increases the difficulty in successfully prosecuting domestic violence cases because courts are unable to compel witnesses to testify.

Article 26 of the CPP is not aligned with Afghanistan's obligation under the EAW Law to its citizens to discover, investigate and prosecute crimes, and bring perpetrators to justice.<sup>284</sup> Afghanistan is obligated to take all measures to investigate and gather all relevant evidence, which is essential in the determination of a perpetrator's criminal act, the establishment of guilt or innocence, and the determination of punishment. Witness testimony and collection of evidence in general have been highlighted as "important pillars" in Afghanistan's new CPP.<sup>285</sup> Yet, in the violence against women context, Medica Afghanistan observed in its 2014 report that the decision to accept witnesses' refusal to testify "can bend the truth and leave crimes unresolved and unpunished," which "can only reinforce insecurity and people's lack of confidence in the State and its justice system."<sup>286</sup>

## **V. Conclusion**

Passage of the 2009 EAW Law was a positive step towards recognizing the rights of all Afghan women to live a life free of violence. Efforts by organizations working with women have increased the awareness of both men and women regarding the EAW Law and the criminal consequences for committing acts of violence against women. Legal service organizations are using creative methods to incorporate the EAW Law into informal mediation agreements and alternate forms of dispute resolution in an attempt to protect women and prevent further violence. While this produces positive outcomes for some women, others become more vulnerable to violence as their perpetrators escape criminal liability, signaling to society that there are little or no consequences for committing crimes against women. Displaced women, who face difficulties accessing even the most basic services such as water, health, and shelter,

<sup>282</sup> Afg. Crim. Pro. Code, Art. 26; Boggio-Cosadia, *supra* note 75.

<sup>283</sup> Smith, *Afghan Women 2014*, *supra* note 9; Maiwandi, *supra* note 9.

<sup>284</sup> *Id.*

<sup>285</sup> Boggio-Cosadia, *supra* note 75, at 7.

<sup>286</sup> *Id.*

and are at heightened risk of violence, are particularly limited in their ability to seek legal recourse for criminal actions perpetrated against them. Regional insecurity leading to increasing numbers of women living in displacement in Afghanistan, deeply entrenched views that tolerate and continue to encourage the subordination of women to men, preference for informal justice mechanisms, and women's own reluctance to report violence or pursue criminal charges against their abusers prevent the EVAW Law from being fully implemented.

# Chapter 2

## Tajikistan

### I. Introduction

Violence against women in Tajikistan is widespread, although exact figures are unknown due to underreporting and limited data collection. Tajik women face physical, psychological, economic, sexual, and social violence. Aggressors are primarily spouses, in-laws, and family members.<sup>1</sup> Male labor migration overseas due to limited domestic employment opportunities in Tajikistan contributes to the prevalence of violence against women. While their husbands are abroad, women typically live with their in-laws, who often treat the women as household slaves. Labor migration has also increased the number of women in polygamous and forced marriages as there are fewer males in the country. Poverty compels some parents to marry off their underage daughters, and an estimated 10-20% of all marriages involve underage girls. As both early and polygamous marriages are illegal under the Tajik Criminal Code, these marriages are typically not registered with the civil registry, leaving many of these women without adequate legal protection when faced with violence.

Afghan women asylum seekers and refugees in Tajikistan who experience violence, in particular domestic violence, face even greater vulnerabilities than Tajik women. The socio-economic vulnerabilities of living in displacement coupled with restrictions on the residency and movement of asylum seekers and refugees under Tajik law prevent women from seeking assistance. Most Afghan women in Tajikistan do not have their own identity documents, which further limits their ability to seek protection from abusive husbands or male family members. Moreover, the differentiation and disparate treatment between different classes of Afghan women fleeing persecution—refugees recognized by the Tajik government (known as “Convention refugees”), refugees recognized by the United Nations High Commissioner for Refugees (UNHCR) (known as “mandate refugees”), and asylum seekers (who have yet to receive a designation as a refugee)—prevent Afghan women from receiving effective protection from violence in Tajikistan.

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<sup>1</sup> This report defines spouse to include those in both registered and non-registered marriages.

## II. Women's Rights in Tajikistan: Inequality and Violence

### A. Background and current political context for violence against women

The Tajik people, who are primarily of Persian descent and Muslim, first came under Russian rule in the 1860s and 1870s.<sup>2</sup> Following the Russian Revolution of 1917, which placed the Bolsheviks in power, Russia's hold on Central Asia weakened.<sup>3</sup> Tajikistan was created as an autonomous republic within Uzbekistan in 1924, and was designated as a separate republic of the Union of Soviet Socialist Republics (USSR or Soviet Union) in 1929.<sup>4</sup>

Before Soviet rule, Tajik society viewed women as subordinate to and the property of men, and women wore the veil according to Islamic custom.<sup>5</sup> Tajikistan's legal system was based upon Islamic *Sharia* law. In the 1920s and 1930s, the Bolsheviks, which became the Communist Party of the Soviet Union, linked Tajik women's unequal position to traditional and religious practices and began to introduce women's liberation programs to equalize women's legal status in Tajikistan and enacted laws to ban traditional practices.<sup>6</sup> The new Soviet Constitution provided women with social, economic, and political rights equal to men.<sup>7</sup> In 1927, the Soviets launched a mass unveiling campaign, outlawing the practice.<sup>8</sup> The Soviets encouraged the education of women and their participation in the economy and the Communist Party.

The Soviet government created the Criminal Code of the Soviet Republic of Tajikistan, and criminalized several forms of sexual and gender-based violence (SGBV) including forced and early marriage, polygamy, paying a bride price, sexual assault, rape, and obstructing a woman from enjoying equality.<sup>9</sup> Despite the criminalization of these acts, local officials prevented women from filing complaints; perpetrators often went unpunished and practices such as early marriage remained commonplace.<sup>10</sup> Beginning in the 1960s, the situation changed as the Soviet regime strengthened, increasing the number of women in education, employment, and public life and enhancing legal protections. However, while there were gains under Soviet rule, the regime failed to effectively address the root causes of women's subordination to men, including eradicating patriarchal norms.<sup>11</sup>

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<sup>2</sup> *The World Factbook, Central Asia: Tajikistan*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/ti.html> (last updated Sept. 24, 2015).

<sup>3</sup> *Russian Revolution of 1917*, Encyclopedia Britannica, <http://www.britannica.com/event/Russian-Revolution-of-1917>; CIA, *supra* note 2.

<sup>4</sup> CIA, *supra* note 2.

<sup>5</sup> Zouhal Avzalchoeva, 'Nobody Beats an Obedient Woman': state and non-state responses to violence against women in Tajikistan (Jan. 2012) (unpublished Ph.D. dissertation, University of Sussex), at 62.

<sup>6</sup> *Id.* at 59-60.

<sup>7</sup> *Id.* at 63.

<sup>8</sup> *Domestic Violence in Tajikistan*, THE ADVOCATES FOR HUMAN RIGHTS (Oct. 2008), [http://www.stopvaw.org/uploads/tajikistan\\_3\\_6\\_07\\_layout\\_-\\_final\\_mc.pdf](http://www.stopvaw.org/uploads/tajikistan_3_6_07_layout_-_final_mc.pdf).

<sup>9</sup> *Id.*

<sup>10</sup> Avzalchoeva, *supra* note 5, at 66.

<sup>11</sup> *Id.* at 67.

Shortly after Tajikistan became independent, civil war erupted and lasted from 1992 to 1997. The war led to a significant unraveling of Tajik women's social and economic gains made during the Soviet period, including a resurgence of the subordinate role of women in Tajik society.<sup>12</sup> Without enforced secularism, conservative religious approaches to marriage and divorce openly resurfaced resulting in more "traditional" gender roles in which women were expected to bear and raise children, perform housework, and care for family members. A marked gender division of labor also arose as society transitioned into a market economy, positioning women in the lowest or worst paid sectors of the economy.<sup>13</sup>

An increase in violence against women occurred during the Tajik civil war, particularly by extremist Islamic groups perpetrating discrimination and violence on "moral grounds."<sup>14</sup> For example, in some areas, Islamic dress code was brutally enforced against women. Early and forced marriages became more prevalent, and human trafficking, mainly of young girls, became more acceptable during the war.<sup>15</sup>

The period following the civil war saw a resurgence of Islamic beliefs; religious practice, in particular, Islam, had been prohibited during the Soviet era. Recent figures show that more than 90% of Tajikistan's estimated 8.35 million people are Muslim.<sup>16</sup> Women's rights advocates feel that the civil war took Tajikistan "backwards" and the situation for women has deteriorated substantially after the fall of the Soviet Union.<sup>17</sup> For example, violence against women, including beatings, rapes, and murders of women have increased, and women seldom report such crimes and perpetrators are rarely prosecuted (see section IV.).<sup>18</sup> According to a representative of the Committee on Religious Affairs of the Republic of Tajikistan, many people

<sup>12</sup> *Tajikistan Gender Profile*, WORLD BANK (2000).

<sup>13</sup> *Violence is not just a family affair: Women face abuse in Tajikistan*, AMNESTY INT'L 11 (2009), <http://www.amnesty.org/en/library/asset/EUR60/001/2009/en/59bb6e9b-727d-496b-b88d-1245a750d504/eur600012009en.pdf> [hereinafter 2009 Amnesty Report].

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> The majority of Muslims adhere to the Hanafi school of Sunni Islam as traditionally practiced in Central Asia, while approximately four percent are Ismaili Shia, who are predominately of Pamiri ethnicity and reside in the remote eastern Gorno-Badakhshan Autonomous Region. The Hanafi school uses reason, logic, opinion (*ray*), analogy (*qiyas*), and preference (*istihsan*) in the formulation of laws, and its legal doctrines are relatively liberal, particularly with respect to personal freedom and women's rights in contracting marriages. John L. Esposito, ed., *Hanafi School of Law*, THE OXFORD DICTIONARY OF ISLAM, OXFORD ISLAMIC STUDIES ONLINE, <http://www.oxfordislamicstudies.com/article/opr/t125/e798>; see also, *International Religious Freedom Report for 2014 – Tajikistan*, U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm#wrapper>; AGENCY ON STATISTICS UNDER PRESIDENT OF THE REP. OF TAJ., GENDER STATISTICS DATABASE (2015), <http://stat.tj/en/Gender6/Genderbaz/>.

<sup>17</sup> Interview with Name and Affiliation Withheld, Tajik Women's Rights Advocate, in Dushanbe, Taj. (May 28, 2015) (see Appendix, Interviews with Government and NGO Representatives and Other Experts); Interview with Representatives, Office of the High Comm'r for Human Rights (OHCHR), in Dushanbe, Taj. (Aug. 11, 2014).

<sup>18</sup> Avzalchoeva, *supra* note 5, at 73.

in Tajik society during this time, including religious leaders and organizations, misinterpreted Islamic beliefs as stating that women are subordinate to men.<sup>19</sup>

Practices banned but not eradicated during the Soviet era, such as polygamy, unregistered marriages, and early marriages have resurfaced in Tajik society. Though such practices are currently unlawful, they are largely tolerated, a result of discrimination on the part of the state. For example, the state fails to fully enforce marriage registration and anti-polygamy laws to the detriment of women.<sup>20</sup> Women in polygamous or early marriages may face challenges in proving their relationship to their husbands and, as a result, may have fewer legal protections in cases of divorce or abuse.

### *B. State of women in education, employment, and politics*

Prior to Soviet rule, formal educational institutions did not exist in Tajikistan. According to the first Soviet census of 1926, the literacy rate was four percent for Tajik men and less than one percent for Tajik women.<sup>21</sup> The Soviets passed compulsory education laws, and by 1939, the literacy rate had increased to 71-82%.<sup>22</sup> The current literacy rate in Tajikistan is over 99% for both men and women.<sup>23</sup>

However, traditional attitudes and patriarchal norms persist in Tajikistan resulting in the subordinate status of women, particularly in rural areas where there is less access to education and opportunity for economic independence. Although the Constitution provides for nine years of free, compulsory education to boys and girls in Tajikistan, there are secondary costs such as books as well as “voluntary fees” that parents are required to contribute to a school’s “development fund.”<sup>24</sup> Such fees are cost-prohibitive for many families. Due to the depressed Tajik economy and lack of job opportunities available, the number of people, especially women, who pursue higher education has decreased.<sup>25</sup> Indeed, Tajikistan is one of the few countries in the world where men and women between 20 and 30 years old have a much lower education

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<sup>19</sup> Interview with Sulyamon Davlatov, Head, Comm. on Religious Affairs, Rep. of Taj., Dushanbe, Taj. (May 26, 2015).

<sup>20</sup> A 2007 study found that over 90% of marriages in the country include more than one wife. Lauryn Oates, *Tajikistan: A Fundamental Concern*, HERIZONS 32 (2007). A significant number of women surveyed by NGO Kuhsor were married before the age of consent. *Say no to Domestic Abuse in Zerafshan Valley: Report Based on the Observation Results in Zerafshan Valley of the Sogdian Region*, PUBLIC ORG. “KUHSOR” (2007). [НЕТ ДОМАШНЕМУ НАСИЛИЮ В ЗЕРАФШАНСКОЙ ДОЛИНЕ (отчет по результатам мониторинга в Зеравшанской долине Согдийской области)] [RUSSIAN Document; translation done by CGRS] [hereinafter *Say No to Domestic Abuse in Zerafshan Valley*].

<sup>21</sup> *Global Initiative on Out-of-School Children: Tajikistan Country Study*, UNICEF (Dec. 2013), <http://allinschool.org/wp-content/uploads/2014/08/Tajikistan-OOSCI-Country-Report-En.pdf>.

<sup>22</sup> *Id.*

<sup>23</sup> CIA, *supra* note 2. Literacy is defined as those 15 and older who can read and write.

<sup>24</sup> Const. Repub. Taj. Art. 41; *Global Initiative on Out-of-School Children*, *supra* note 21.

<sup>25</sup> According to recent data, school enrollment of Tajik girls significantly decreases when they reach age 15, and a lower percentage of women, particularly rural women, are receiving higher education than men. *Promote gender equality and empower women*, UNDP Tajikistan, <http://www.tj.undp.org/content/tajikistan/en/home/mdgoverview/overview/mdg3.html>.



level than those over 40, as some Tajik families do not see the point in investing in their children's education because there are few jobs in the local market.<sup>26</sup>

Many Tajik families prioritize the education of sons over daughters and feel there is no need to invest in a daughter's education because she will get married, leave the family unit, and live with her husband who will provide for her. According to traditional views, investing in a girl's education is an unwise economic decision if a girl will leave the family after she is married and not contribute to the family economy. Although some girls wish to continue their education, many parents prohibit girls from educational advancement and prioritize efforts to get their daughters married, allowing the daughter's future husband to decide whether or not she can continue with her education.

While education provides women with more opportunities in certain respects, in rural areas, educated women have diminished marriage prospects as many men do not want to marry educated women. In particular, in-laws view an older, educated woman as more of a liability than an asset because they assume she risks destabilizing the family by challenging traditional gender roles.<sup>27</sup>

Participation of women in the labor market is low with an employment rate of approximately 31%.<sup>28</sup> Women are less likely to enter the labor market because traditional views dictate that women should stay at home to cook, clean, and take care of the children while the men work to provide for the family.<sup>29</sup> A married woman's ability to enter the labor market is often dependent on whether her husband and in-laws will permit her to do so.<sup>30</sup>

Tajikistan is taking some steps towards women's economic empowerment and has established a micro-loan program and presidential grants to assist women entrepreneurs. Since 2010, the number of women entrepreneurs has increased significantly; recent figures show that women are in more leadership positions now, and are receiving more micro-loans.<sup>31</sup> However, men still dominate such positions and receive approximately 70% of the micro-loans.<sup>32</sup>

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<sup>26</sup> *Global Initiative on Out-of-School Children*, *supra* note 21.

<sup>27</sup> *Informal Justice in Tajikistan: The Role of Informal Leaders in Providing and Preventing Access to Justice*, EURASIA FOUNDATION, 28 (Jan. 2012), <http://equalbeforethelaw.org/sites/default/files/library/Informal%20Justice%20in%20Tajikistan.pdf>.

<sup>28</sup> *Promote gender equality*, *supra* note 25.

<sup>29</sup> TAJ. COUNTRY PROGRAMME 2010-2015 EVALUATION REPORT, UNFPA 37 (Nov. 2014).

<sup>30</sup> *Id.*

<sup>31</sup> GENDER STATISTICS DATABASE, *supra* note 16.

<sup>32</sup> *Id.*

Women hold only 19% of the seats in the Tajik Parliament and 33.7% of public administration positions.<sup>33</sup> No legally-mandated or voluntary quotas in the election law currently promote greater participation of women in politics.<sup>34</sup>

### C. *The Tajik economy and male labor migration overseas*

By the end of the civil war, over one-tenth of Tajikistan's population had fled the country and at least 50,000 people had been killed.<sup>35</sup> This devastated the Tajik economy. Tajikistan has yet to recover economically from the war. Poverty is widespread and Tajik migrants working abroad, primarily in Russia, earn nearly half of the Gross Domestic Product (GDP), making Tajikistan the most remittance-dependent country in the world.<sup>36</sup> Recent economic sanctions by the United States on Russia, in response to the situation in the Crimea region of Ukraine, have further weakened the Tajik economy, which is dependent on the Russian economy.<sup>37</sup> The sanctions have increased prices in Russia, which in turn have decreased remittances from Tajik migrants working in Russia back to Tajikistan and negatively impacted the Tajik economy and state budget.<sup>38</sup>

Lack of employment opportunities in Tajikistan have caused many Tajik men to migrate overseas, mostly to Russia, to seek employment, leaving their wives and children behind in Tajikistan. UN Women has identified four categories of rural women who are particularly vulnerable to violence due to male labor migration: (1) abandoned wives of labor migrants; (2) women with young children; (3) women who have disabled family members; and (4) women with low education.<sup>39</sup> Labor migration of Tajik men has led to a disproportionate number of

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<sup>33</sup> *Id.* Tajikistan's Parliament Supreme Assembly (*Majlisi Oli*) consists of a lower chamber, the Assembly of Representatives (*Majlisi namoyandagon*), and an upper chamber, the National Assembly (*Majlisi milli*).

<sup>34</sup> Report on Country Visit to Taj., June Zeitlin, Special Rep. of the Org. for Sec. and Co-operation in Europe (OSCE) Chair-person-in-Office on Office of Gender Affairs, (Nov. 1-5, 2014), <http://www.osce.org/cio/145601?download=true>.

<sup>35</sup> *Tajikistan profile – Overview*, BBC NEWS (May 19, 2015), <http://www.bbc.com/news/world-asia-16201032>.

<sup>36</sup> *See Personal remittances, received (% of GDP)*, THE WORLD BANK, <http://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS>. In 2013, 49.6% of Tajikistan's GDP came from remittances; Joe Schottenfeld, *Tajikistan's Russian Dream: Letter from Dushanbe*, FOREIGN AFFAIRS (May 11, 2015), <https://www.foreignaffairs.com/articles/tajikistan/2015-05-11/tajikistans-russian-dream>. *See also Personal remittances, supra* note 36. In 2013, 49.6% of Tajikistan's GDP came from remittances.

<sup>37</sup> Exec. Order No. 13660 (blocking Property of Certain Persons Contributing to the Situation in Ukraine); Exec. Order No. 13661 (blocking Property of Additional Persons Contributing to the Situation in Ukraine); Exec. Order, (blocking Property of Additional Persons Contributing to the Situation in Ukraine); Exec. Order 13685 (blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to the Crimea Region of Ukraine); Interview with Representatives, Swiss Agency for Dev. and Cooperation (SDC), in Dushanbe, Taj. (May 26, 2015).

<sup>38</sup> *Personal remittances, supra* note 36. The remittance percentage dropped from 49.6% in 2013 to 41.7% in 2014.

<sup>39</sup> *Situational Analysis Report: The Impact of Migration on the Socio-Economic Vulnerability of Rural Women in Tajikistan*, UN WOMEN 8 (2014).

women in Tajikistan, resulting in an increase in men marrying more than one woman in polygamous and unregistered marriages, and an increase in women forced into marriage.<sup>40</sup>

#### *D. Tajik government's funding priorities*

Despite Tajikistan's depressed economic situation, the government has managed to raise external funds in the past few years for extravagant building projects, including the tallest flagpole, largest library, biggest museum, and largest teahouse in Central Asia, and construction is ongoing for Central Asia's largest mosque and largest theater.<sup>41</sup> The government has come under criticism for these projects, as the government has not made similar efforts to raise funds that directly benefit the social welfare of Tajik citizens.<sup>42</sup>

#### *E. Afghan women in Tajikistan*

Afghan women flee to Tajikistan for numerous reasons, including political instability and violence in their home country. Most women flee Afghanistan with their families and are dependents on the refugee claims of their husbands or fathers. While the majority of Afghan women arrive in Tajikistan with male family members, some women come as heads of households if they are fleeing domestic violence, forced marriage, or honor killings.<sup>43</sup> Women also come without a male adult, for example, if their husbands were killed in Afghanistan, were not permitted to cross the border, or had to stay behind in Afghanistan for some other reason.<sup>44</sup> Many of these women, traveling without an adult male family member, have children they need to support on their own.<sup>45</sup> Women heads of households face higher levels of insecurity than men or women accompanied by men.<sup>46</sup>

As of November 2015, there were 2,344 refugees and 468 asylum seekers in Tajikistan, of which 97% are from Afghanistan and predominately of Tajik ethnicity.<sup>47</sup> Approximately 50% of the

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<sup>40</sup> Interview with Alla Kuvatova, Indep. Expert, Exec. Dir., Women with Univ. Education, Member, Coal. of Pub. Orgs. in Taj. from De Jure Towards Equality De Facto, in Dushanbe, Taj. (Aug. 7, 2014); Interview with Representatives, Human Rights Ctr., in Dushanbe, Taj. (Aug. 8, 2014).

<sup>41</sup> *Tajikistan to spend \$100m on 'central Asia's largest theatre' – but for who?*, THE GUARDIAN (Apr. 20, 2015), <http://www.theguardian.com/world/2015/apr/20/tajikistan-100m-new-theatre-for-who-central-asia>. Tajikistan raised 30% of the money to build Central Asia's biggest mosque in Dushanbe, which cost USD\$100 million. See *Central Asia's biggest mosque reportedly some 40% completed*, ASIA-PLUS (May 12, 2013), <http://news.tj/en/news/central-asia-s-biggest-mosques-reportedly-some-40-percent-completed>.

<sup>42</sup> For example, government officials admit the country lacks an adequate budget to implement the Family Violence Law (discussed in section IV.G.). CEDAW Nat'l Consultative Meeting, in Dushanbe, Taj. (May 29, 2015); Interview with Marxabo Alimova, First Deputy, Office of the Comm. on Women & Family Affairs (CWFA), Taj., in Dushanbe, Taj. (May 27, 2015).

<sup>43</sup> Interview with Representatives, UNHCR, in Dushanbe, Taj. (Aug. 10, 2014 & May 19, 2015).

<sup>44</sup> Mahasti Dustromod, Rustam Majidov, and Galim Faskhutdinov, *Afghan Refugee Rebuild Lives in Tajikistan*, IWPR (Dec. 12, 2013), <http://iwpr.net/print/report-news/afghan-refugees-rebuild-lives-tajikistan>.

<sup>45</sup> *Id.*

<sup>46</sup> Interview with Representatives, DRC, in Dushanbe, Taj. (Aug. 11, 2014).

<sup>47</sup> Correspondence with UNHCR (Jan. 29, 2016) (on file with CGRS). Tajikistan is a signatory to the 1951 Convention on the Status of Refugees ("UN Refugee Convention") and its 1967 Protocol, and has enacted its own domestic

asylum seekers and refugees are female.<sup>48</sup> There are no refugee camps in Tajikistan; the majority of Afghan asylum seekers and refugees reside in the western part of the country outside of the capital, Dushanbe.<sup>49</sup> Domestic laws prohibit asylum seekers and refugees from temporary residence in Dushanbe, limiting access to employment opportunities and legal and social services.<sup>50</sup>

#### F. Violence against women in Tajikistan: forms and current levels

Clearly delineated gender roles and entrenched gender stereotypes in Tajikistan contribute to the persisting patriarchal norms in Tajik society that undergird violence against women in its many manifestations. Men study, have a career, and are financially responsible for supporting the family; women bear children, take on the care-giving role, perform housework, cook, and are supposed to stay at home.<sup>51</sup> Low levels of education, particularly in rural areas, and the increase in the number of early, polygamous, and unregistered marriages aggravate a woman's vulnerability to gender-based violence, though well educated women also face such violence.<sup>52</sup>

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refugee law. Law of the Repub. of Taj. on Refugees, No. 1124 (2014) (Tajikistan), <http://www.refworld.org/docid/3eda26b84.html>. Article 2 of the Law of the Republic of Tajikistan on Refugees ("Tajik Refugee Law") defines a refugee as "a person who is not a citizen of the Republic of Tajikistan and resides in its territory owing to well-founded fear of being persecuted in the country of his citizenship for reasons of race, religion, nationality, membership of a particular social group or political opinion, and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a certain citizenship and being in the Republic of Tajikistan as a result of such events, is unable or, owing to such fear, is unwilling to return to the country of his permanent residence." The same article of the Tajik Refugee Law defines an asylum seeker as "a foreign citizen or stateless person who has left the country of his citizenship or the country of his former habitual residence with the intention to apply for refugee status in the Republic of Tajikistan."

<sup>48</sup> Dustromod, *supra* note 44.

<sup>49</sup> See Angela Li Rosi, Marco Formisano, and Ljubo Jandrijasavic, *Lives in limbo: A review of the UNHCR's implementation of urban refugee policy in Tajikistan*, UNHCR 9 (2011), <http://www.unhcr.org/4dc261419.pdf>; *Sexual and Gender-Based Violence among Afghan Refugees in Tajikistan and among displacement and returnees in Afghanistan: Baseline Study 2014*, DRC & UNITED NATIONS TRUST FUND TO END VIOLENCE AGAINST WOMEN (OCT. 26, 2014) [hereinafter DRC Baseline Survey 2014] (finding that the highest numbers of Afghan refugees reside in Vahdat with some also residing in Rudaki, Hisor, and Khujand).

<sup>50</sup> Resolutions 325 and 328 enumerate a list of districts where asylum seekers and refugees are prohibited from temporary residence. See *Tajikistan: Resolution No. 325 of 2000, On the list of Tajik settlements prohibited for temporary residence of asylum-seekers and refugees*, NAT'L LEGISLATIVE BODIES/NAT'L AUTHORITIES (July 26, 2000), <http://www.refworld.org/docid/415a68a54.html>; *Tajikistan: Resolution No. 328 of 2004, On making amendments to the list of settlement areas in the Republic of Tajikistan which is prohibited for temporary residence of asylum-seekers and refugees*, NAT'L LEGISLATIVE BODIES / NAT'L AUTHORITIES (Aug. 2, 2004), <http://www.refworld.org/docid/415a69314.html>. Despite being prohibited from living in Dushanbe, approximately 30% of Afghan asylum seekers and refugees live in the capital where Tajik police subject them to frequent questioning, residence verification, and extortion for bribes. DRC Baseline Survey 2014, *supra* note 49.

<sup>51</sup> Interview with Alla Kuvatova, Indep. Expert, Exec. Dir., Women with Univ. Education, Member, Coal. of Pub. Orgs. in Taj. from De Jure Towards Equality De Facto, in Dushanbe, Taj. (Aug. 7, 2014).

<sup>52</sup> See *Information from Tajik NGOs for the Adoption of a list of Issues for the Review of Tajikistan's Second and Third Periodic Reports on the Implementation of the ICESCR*, PRE-SESSIONAL WORKING GROUP OF THE COMM. ON ECON., SOCIAL AND CULTURAL RIGHTS, 15 (Nigina Bakhrieva ed., May 2014), [http://www.iphronline.org/uploads/9/0/2/7/9027585/final\\_tajik\\_ngos\\_icescr\\_list\\_of\\_issues.pdf](http://www.iphronline.org/uploads/9/0/2/7/9027585/final_tajik_ngos_icescr_list_of_issues.pdf); Interview with Zaitoona Naimova, Nat'l Gender Officer, OSCE, in Dushanbe, Taj. (Aug. 7, 2014).

A representative from the Tajik Ministry of Justice (MOJ) acknowledges: “we face many challenges as it may be related to our mentality” and the inequality between men and women still “exists from old times.”<sup>53</sup>

Various organizations working with women in Tajikistan track their own statistics, but there is no official, centralized database that provides comprehensive statistics on levels and types of violence against women.<sup>54</sup> The Statistical Agency under the Office of the President of Tajikistan maintains gender statistics, including a section on “Direction of prevention of violence against women,” but the data does not provide information on the number of crimes of violence against women, the types of crimes, and the outcomes for each type of crime.<sup>55</sup> According to official data from the Ministry of Interior (MOI), 2,103 crimes against women were registered in 2013 nationwide, most of which represent crimes of violent character.<sup>56</sup> How many of these violent crimes involve domestic violence or other forms of SGBV is unclear because the statistics do not track the reasons for the harms or other revealing data, for example, the relationship of the aggressor to the victim. Despite the lack of official data, domestic violence and other gender-motivated harms are believed to be prevalent throughout Tajikistan against both Tajik women as well as displaced and refugee women primarily from Afghanistan.

### 1. Domestic violence (intimate partner)

Spousal abuse is so widespread in Tajikistan and “so commonplace”—as the U.S. Department of State reports—that often it is not recognized as a problem.<sup>57</sup> Tajik women face multiple types of violence from their partners—physical, psychological, economic, sexual, and social. Abusers often beat women on parts of their bodies that are hidden by clothing rather than on the face or more obvious places so as not to draw attention from outsiders to a private matter between a husband and wife.<sup>58</sup> Psychological violence is also prevalent with husbands exerting control over their wives and limiting their movement outside of the house. Men further exert economic

<sup>53</sup> Interview with Representative, Ministry of Justice (MOJ) of the Rep. of Taj., in Dushanbe, Taj. (May 28, 2015).

<sup>54</sup> Interview with Mukaram Mumindzhanova, Lawyer, State Women’s Ctr., in Dushanbe, Taj. (May 28, 2015). Organizations that work with women include national Consultation Centers, Women’s Resource Centers, victim support units housed in hospitals, Crisis Centers, and a limited number of shelters.

<sup>55</sup> These statistics include a section on the total number of registered crimes, but these appear to be statistics for all registered crimes not just registered crimes of violence against women. Moreover, they focus on the gender of the perpetrator of a crime. Interestingly, statistics are included for the number of women convicted of crimes, but there are no statistics for men. The Ministry of Interior (MOI) reportedly tracks data on the number of crimes committed against women and girls each year as well as suicide cases by women and girls, but this information is not reflected in the gender data the Statistical Agency provides. GENDER STATISTICS DATABASE, *supra* note 16.

<sup>56</sup> GOV’T OF THE REPUB. OF TAJ., STATE PROGRAM TO PREVENT DOMESTIC VIOLENCE IN THE REP. OF TAJ. FOR 2014-2023 (Apr. 2014).

<sup>57</sup> *Country Reports on Human Rights Practices for 2014 – Tajikistan*, U.S. DEP’T OF STATE, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236652#wrapper>; *Informal Justice*, *supra* note 27, at 35; *Tajik NGOs*, *supra* note 52, at 15.

<sup>58</sup> Advocates observed this trend—beatings on non-obvious parts of a woman’s body—even before the passage of the Family Violence Law. Interview with Representatives, Ghamkori Crisis Ctr., in Kurgan-Tube, Taj. (May 27, 2015).

violence against their wives and partners, depriving women of money to buy necessities, such as food and medication for themselves and their children, causing their health to deteriorate.<sup>59</sup>

Beyond the lack of reliable data (discussed in sections II.F. and IV.H.), underreporting of abuse makes it difficult to obtain concrete data on the prevalence of domestic violence. UN Women estimates that at least one-third of Tajik women face physical violence in the home.<sup>60</sup> According to Tajikistan's National Statistic Committee, 19% of women between the ages of 15-49 have reported experiencing physical violence by a spouse since the age of 15.<sup>61</sup> The highest reports of domestic violence are in the Sughd district with 22% of women reporting such violence.<sup>62</sup> According to a 2012 Tajikistan Demographic and Health Survey (DHS), only 20% of women who have suffered physical or sexual violence sought help to end the violence, 10% never sought help but told someone about the violence, and the overwhelming majority, 61%, neither sought help nor told anyone about the violence.<sup>63</sup>

Statistics on spousal rape are particularly illusive as very few married women report sexual violence and rape. The majority of Tajik women do not embrace the concept of spousal rape and do not view non-consensual marital sexual contact as abuse because women are conditioned to believe that it is "natural" for husbands to demand sex from their wives.<sup>64</sup> Spousal rape is not explicitly mentioned in the Law on the Prevention Against Family Violence (Family Violence Law) or criminalized under the Tajik Criminal Code.

Reliable public statistics on domestic violence do not exist, but a review of the statistics maintained by the State Women's Center sheds some light on the types of cases for which women seek assistance.<sup>65</sup> In May 2015, for example, the State Women's Center assisted in 103 cases on the phone or in the office, raising a total of 160 types of claims as some women sought assistance for multiple issues. The largest number of cases, 41 in total (25.2%), involved

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<sup>59</sup> The Family Violence Law defines economic violence as an "illegal intentional action by one family member directed at another family member aimed at his or her deprivation of house, food, clothing, use of property . . . which may cause damages in the person's physical and mental health or causes other harmful circumstances." Family Violence Law, Art. 1. In many cases, women, who are accustomed to being fully dependent on their husbands for economic support, are unaware that this deprivation and resulting harm constitute economic abuse under Tajik law. Interview with Malika Iskandari, Nat'l Prot. Coordinator, UN Women, in Dushanbe, Taj. (May 20, 2015).

<sup>60</sup> Interview with Barno Mukhamadieva, Nat'l Program Officer, UN Women, in Dushanbe, Taj. (Aug. 6, 2014).

<sup>61</sup> *Country Reports on Human Rights, supra* note 57.

<sup>62</sup> *Id.*

<sup>63</sup> *Tajikistan Demographic and Health Survey 2012*, STATISTICAL AGENCY UNDER THE PRESIDENT OF THE REPUB. OF TAJ., MINISTRY OF HEALTH, MEASURE DHS (Nov. 2013), <http://dhsprogram.com/pubs/pdf/FR279/FR279.pdf>.

<sup>64</sup> Interview with Barno Mukhamadieva, Nat'l Program Officer, UN Women, in Dushanbe, Taj. (Aug. 6, 2014); Interview with Malika Iskandari, Nat'l Prot. Coordinator, UN Women, in Dushanbe, Taj. (May 20, 2015) (Tajik wives understand that "saying no" to sex with their husbands is "not welcome.").

<sup>65</sup> Most legal aid workers reported that, since the enactment of the Family Violence Law, there has been an increase in complaints from women on various types of family matters such as divorce, alimony, and property rights. But this is anecdotal. Further, it sheds little light on levels of violence because women may seek assistance for those matters and other civil remedies for reasons other than violence.

domestic violence.<sup>66</sup> The next most common claims included alimony (29 women or 15.3%), divorce (25 or 15.6%), and housing (22 or 13%).<sup>67</sup> The State Women's Center addressed a total of 955 cases in 2014, 774 cases in 2013, and 683 cases in 2012.<sup>68</sup>

#### Box 2-1. Domestic Violence and HIV/AIDS

In 2014, there were 6,152 officially registered cases of HIV in Tajikistan with 4,340 cases involving men.<sup>69</sup> Actual numbers are much higher, and the number of women living with HIV has increased.<sup>70</sup> Knowledge of HIV and prevention methods among women is low, and women have unique vulnerabilities to contracting HIV because of social taboos surrounding discussion of sex and condom use.<sup>71</sup> Tajik men perceive condom use as a symbol of deceit or cheating and some Islamic adherents believe condom usage violates traditional Islamic rules.<sup>72</sup> Few women believe they can actually request their husbands to use condoms without being accused of being unfaithful.<sup>73</sup>

During labor migration, men may contract HIV, typically through intravenous drug use, and then return to Tajikistan and infect their wives.<sup>74</sup> Even if men know they have HIV/AIDS, they do not always reveal the status to their wives and do not assume responsibility for infecting their wives. Instead, they blame their wives for "misbehaving" while they were away.<sup>75</sup> In some instances, women with HIV/AIDS have revealed their HIV status to government officials to access appropriate government services, but they report being mocked by officials and accused of being sexually promiscuous and engaging in immoral acts that enabled contraction.<sup>76</sup>

Under Tajik law, knowingly infecting another person with HIV is a crime,<sup>77</sup> but social stigma and the lack of closed proceedings prevent HIV-infected women from taking

<sup>66</sup> Interview with Mukaram Mumindzhanova, Lawyer, State Women's Ctr., in Dushanbe, Taj. (May 28, 2015).

<sup>67</sup> Other claims included: placement of a wife on the husband's property after a court procedure (6.7%); accommodation of children in orphanages (5.6%); paternity (2.4%); division of property (1.2%); and other (12.3%).

<sup>68</sup> Interview with Mukaram Mumindzhanova, Lawyer, State Women's Ctr., in Dushanbe, Taj. (May 28, 2015).

<sup>69</sup> *Id.* Annual numbers for domestic violence were not available from the State Women's Ctr.

<sup>70</sup> *Country Reports on Human Rights, supra* note 57.

<sup>71</sup> Interview with Mansur Sattorov, Lawyer, Spin Plus, in Dushanbe, Taj. (May 25, 2015).

<sup>72</sup> *Tajikistan Demographic and Health Survey 2012, supra* note 63. The 2012 DHS Survey reveals that only 62% of women in Tajikistan have heard of HIV/AIDS and only 11% have comprehensive knowledge of about HIV/AIDS. Women's knowledge of HIV prevention methods is low: 43% of women are aware that transmission can be reduced by limiting sex to one uninfected partner with no other partners, 36% are aware that using condoms at every intercourse prevents HIV, and only 33% are aware of both of these methods of reducing HIV. *See also Country Reports on Human Rights, supra* note 57.

<sup>73</sup> Interview with Malika Iskandari, Nat'l Prot. Coordinator, UN Women, in Dushanbe, Taj. (May 20, 2015); Interview with Shuhrat Latifov, Program Coordinator, Women Living with HIV, in Dushanbe, Taj. (May 26, 2015).

<sup>74</sup> *Id.*

<sup>75</sup> Interview with Representatives, Women Living with HIV, in Dushanbe, Taj. (May 26, 2015); Interview with Malika Iskandari, Nat'l Prot. Coordinator, UN Women, in Dushanbe, Taj. (May 20, 2015).

<sup>76</sup> Interview with Malika Iskandari, Nat'l Prot. Coordinator, UN Women, in Dushanbe, Taj. (May 20, 2015).

<sup>77</sup> Interview with Shuhrat Latifov, Program Coordinator, Women Living with HIV, in Dushanbe, Taj. (May 26, 2015).

<sup>78</sup> Tajik Criminal Code, Art. 125.

their husbands to court.<sup>78</sup> While some women have divorced husbands who infect them with HIV, in most cases, women do not divorce.<sup>79</sup> Couples receive counseling from doctors when HIV/AIDS status is revealed, and in many cases, the doctors counsel the couple not to divorce.<sup>80</sup> Women tolerate their husbands' abuse out of fear that their HIV/AIDS status will be publicized.<sup>81</sup> According to those working with women infected with HIV/AIDS in Tajikistan, when a woman divorces her husband because of his HIV/AIDS status "her problems double because there is no guarantee her parents will take her back and receive her."<sup>82</sup>

In a 2014 survey of HIV positive women conducted by the Institute on War and Reporting (IWPR), 72% of the respondents confirmed that they had thoughts of suicide, and 24% had attempted suicide.<sup>83</sup> Little psychological counseling for women victims of violence living with HIV/AIDS exists in Tajikistan and no shelters are specifically dedicated for women with HIV/AIDS who require specialized medical services and treatment.<sup>84</sup> In some cases, compassionate staff at non-governmental organizations (NGOs) personally open their homes to these women, illustrating the insufficiency of available services and the absence of sustainable long-term solutions.<sup>85</sup>

## 2. Violence from other family members and in-laws

Violence from in-laws is common in Tajikistan. Traditionally, women move in with the husband's family, and, in the home, the man's mother is placed in a higher position than his wife. When the wife enters her husband's house, she commonly faces physical and psychological abuse at the hands of her husband (discussed above) as well as her in-laws.<sup>86</sup> In particular, male labor migration has placed immense stress and pressure on families, and has aggravated conditions for women who live with their in-laws.<sup>87</sup> Some men deliberately marry women prior to embarking on labor migration so that their parents have a "servant" to attend

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<sup>78</sup> Interview with Shuhrat Latifov, Program Coordinator, Women Living with HIV, in Dushanbe, Taj. (May 26, 2015); Interview with Malika Iskandari, Nat'l Prot. Coordinator, UN Women, in Dushanbe, Taj. (May 20, 2015) (women with HIV/AIDS are stigmatized more than men with HIV/AIDS).

<sup>79</sup> Interview with Takhmina Khaydarova, Exec. Dir., Women Living with HIV, in Dushanbe, Taj. (May 26, 2015).

<sup>80</sup> *Id.*

<sup>81</sup> CEDAW Nat'l Consultative Meeting, in Dushanbe, Taj. (May 29, 2015); STATE PROGRAM TO PREVENT DOMESTIC VIOLENCE, *supra* note 56; *Alternative report on implementation of the UN Convention on the Elimination of All forms of Discrimination against Women*, CENTRE FOR MENTAL HEALTH AND HIV/AIDS, TAJIK NETWORK OF WOMEN LIVING WITH HIV, GULI SURKH (Dec. 2013).

<sup>82</sup> Interview with Takhmina Khaydarova, Exec. Dir., Women Living with HIV, in Dushanbe, Taj. (May 26, 2015).

<sup>83</sup> *IWPR Tajikistan: Women with HIV Face Twice the Harassment*, CENTRAL ASIA BUREAU FOR ANALYTIC REPORTING (Mar. 17 2015), <http://www.cabar.asia/en/tajikistan-en/74-en-gb/investigative-reporting/investigative-reporting-tajikistan/219-iwpr-tajikistan-women-with-hiv-facing-twice-the-harassment>.

<sup>84</sup> Interview with Takhmina Khaydarova, Exec. Dir., Women Living with HIV, in Dushanbe, Taj. (May 26, 2015).

<sup>85</sup> In Tajikistan, non-governmental organizations are typically referred to as "public organizations," which does not indicate that they are funded with government or public money. *Id.*

<sup>86</sup> Interview with Mukaram Mumindzhanova, Lawyer, State Women's Ctr., in Dushanbe, Taj. (May 28, 2015);

Interview with Barno Mukhamadieva, Nat'l Program Officer, UN Women, in Dushanbe, Taj. (Aug. 6, 2014).

<sup>87</sup> UNFPA, *supra* note 29; Interview with Zebo Sharipova, Exec. Dir., League of Women Lawyers, in Dushanbe, Taj. (Aug. 4, 2014).



to them while the men are away in migration.<sup>88</sup> Migrant husbands are not always aware of the abuse—mainly from mother-in-laws—towards their wives, but when they are, they often side with their mothers as their wives are considered not only their property but that of his entire family.<sup>89</sup> Some refugee women (discussed in section II.F.4. below) report to UNHCR that physical and psychological violence by in-laws is “part of daily life.”<sup>90</sup>

Women who leave abusive husbands and in-laws and return to live with their parents often face continued violence—predominately psychological and emotional and sometimes physical—in their parents’ home. In some cases, the woman’s brothers and sisters-in-laws who live in the same house do not accept her and cause conflict in the new family dynamic.<sup>91</sup> A woman’s brothers and their wives accuse her of being an “additional bread eater” and placing shame on the family for leaving her husband.<sup>92</sup>

### 3. Early, forced, and unregistered marriages

Under Tajik law, 18 is the legal age of consent to marriage.<sup>93</sup> Early marriages are criminalized; by definition early marriages are “forced” as a child cannot legally consent.<sup>94</sup> However, the law provides exceptions, including in cases where a petition is made to the local city or town government (*hukumat*) to determine if there is a compelling reason for early marriage, for example, in cases of 17-year-olds who are pregnant, orphaned, or have only one living parent.<sup>95</sup> According to advocates, this exception is “overused and misused” enabling some parents to marry off underage girls for merely economic reasons.<sup>96</sup>

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<sup>88</sup> Men frequently do not register their marriages to protect family property. Many stay abroad, find a new partner, and leave their wives in Tajikistan. Labor migration is one of the main reasons for divorces in Tajikistan, and migrating husbands do not feel it is in their interest to register marriages that will ultimately fail. *Informal Justice*, supra note 57, at 23.

<sup>89</sup> Interview with Shakarbet Niyatbekov, Nat’l Program Officer, Rule of Law, SDC, in Dushanbe, Taj. (Aug. 4, 2014); see also Interview with Mukaram Mumindzhanova, Lawyer, State Women’s Ctr., in Dushanbe, Taj. (May 28, 2015) (the mentality of many men is, “I cannot find another mother, but I can find another wife”).

<sup>90</sup> Interview with Representatives, UNHCR, in Dushanbe, Taj. (Aug. 4, 2014).

<sup>91</sup> Interview with Representatives, OHCHR, in Dushanbe, Taj. (Aug. 11, 2014).

<sup>92</sup> Interview with Representatives, Ghamkori Crisis Ctr., in Kurgan-Tube, Taj. (May 27, 2015); see also Interview with Mukaram Mumindzhanova, Lawyer, State Women’s Ctr., in Dushanbe, Taj. (May 28, 2015)

<sup>93</sup> See Tajik Family Code, Art. 13(1) (setting 18 as the legal age for marriage).

<sup>94</sup> See Tajik Crim. Code, Art. 168 (“Giving in marriage a girl who has not reached marriage age by parents or guardians, is punishable by correctional labor for up to 2 years or restriction of freedom for the same period, or confinement for up to 6 months.”). Tajik Crim. Code, Art. 169 (“Contracting a marriage in relation to a person who has not reached marriage age, is punishable by a fine in the amount of 1000 to 2000 times the minimum monthly wage or correctional labor for up to 2 years, or up to 6 months of confinement.”).

<sup>95</sup> Tajik Family Code, Art. 13(2) (provides the court to reduce the marriage age to 17 in exceptional circumstances). It is unclear whether the procedure initiated at the *hukumat* is a prerequisite to the court procedure provided for in the Tajik family Code. See *Protecting the Girl Child Legal Annex: Using the Law to End Child, Early and Forced Marriage and Related Human Rights Violations*, EQUALITY NOW, LATHAM & WATKINS, AND THOMAS REUTERS 168-69 (Jan. 2014), <http://www.trust.org/contentAsset/raw-data/ffe4a0de-2934-47f9-9150-24321388c29c/file>; Interview with Representatives, SDC, in Dushanbe, Taj. (May 26, 2015); *Informal Justice*, supra note 57.

<sup>96</sup> Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (see Appendix, Interviews with Government and NGO Representatives and Other Experts).

Exact numbers for early marriages are unknown, but the United Nations Population Fund (UNFPA) reports that an estimated 10-20% of all marriages in Tajikistan involve girls under the age of 18.<sup>97</sup> Poverty and a family's economic situation compel some parents to force their daughters to marry at an early age, and the practice is particularly prevalent in rural areas.<sup>98</sup> Society views unmarried women above the age of 20 or 21 as "too old" for marriage and stigmatizes the women and their families.<sup>99</sup>

Forced marriage continues to be prevalent in Tajikistan among adult women as well and labor migration has contributed to an increase in the practice of forced marriage.<sup>100</sup> In many areas, particularly in the south, it is not socially acceptable for either males or females to choose their spouse, and parents arrange the majority of marriages in Tajikistan with little or no input from the intended bride or groom.<sup>101</sup> Intra-familial marriages, such as marriages between first cousins, are common as they enable property to be kept within the family.<sup>102</sup> Culture and respect for elders often overshadows a woman's right to choose her spouse; females are more stigmatized than males for refusing to marry the person of their parents choosing, and marry at younger ages than males.<sup>103</sup> According to a representative of UN Women, there is a perceived "fine line" between "forced" and "arranged" marriages in Tajikistan.<sup>104</sup> There is hesitancy among Tajiks, including some women's rights advocates, to recognize situations where families pressure females to marry against their will as a "forced" marriage. Instead, the perception is that the girls are "convinced" at their own will to marry a spouse of their parents' choosing.<sup>105</sup> Concrete statistics on forced marriage are therefore very difficult to ascertain.<sup>106</sup>

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<sup>97</sup> *Child Marriage in Tajikistan (Summary)*, UNFPA, <http://eeca.unfpa.org/sites/default/files/pub-pdf/unfpa%20tajikistan%20summary.pdf>.

<sup>98</sup> See *Informal Justice*, *supra* note 57, at 27-28; see also Interview with Representatives, GOPA Consultants, Prevention of Domestic Violence (PDV) Project, in Dushanbe, Taj. (May 26, 2015); Interview with Shahribonu Shonasimova, Project Manager, Int'l Alert, in Dushanbe, Taj. (May. 21, 2015). The age when a female is deemed "too old" tends to be higher in Dushanbe and other urban areas.

<sup>99</sup> As one NGO worker describe, the mentality exists that a "woman above 21 who is not married is for nothing and she cannot find a man." Interview with Representative, GOPA Consultants, PDV Project, in Dushanbe, Taj. (July 21, 2014).

<sup>100</sup> TRAFFICKING IN PERSONS REPORT, U.S. DEP'T OF STATE (July 2015), <http://www.state.gov/documents/organization/245365.pdf>.

<sup>101</sup> According to PDV, the estimated number of arranged marriages in Tajikistan is 90%. Interview with Representative, GOPA Consultants, PDV Project, in Dushanbe, Taj. (July 21, 2014); see also Interview with Malika Iskandari, Nat'l Prot. Coordinator, UN Women, in Dushanbe, Taj. (May 20, 2015); Interview with Diana Ismailova, Indep. Expert, in Dushanbe, Taj. (May 26, 2015).

<sup>102</sup> Interview with Representatives, GOPA Consultants, PDV Project, in Dushanbe, Taj. (May 26, 2015).

<sup>103</sup> Interview with Malika Iskandari, Nat'l Prot. Coordinator, UN Women, in Dushanbe, Taj. (May 20, 2015); Interview with Diana Ismailova, Indep. Expert, in Dushanbe, Taj. (May 26, 2015); Interview with Shahribonu Shonasimova, Project Manager, Int'l Alert, in Dushanbe, Taj. (May. 21, 2015).

<sup>104</sup> Interview with Malika Iskandari, Nat'l Prot. Coordinator, UN Women, in Dushanbe, Taj. (May 20, 2015).

<sup>105</sup> *Id.*

<sup>106</sup> Interview with Diana Ismailova, Indep. Expert, in Dushanbe, Taj. (May 26, 2015).

Women have the burden of proving the existence of a valid marriage and have limited rights if unable to do so.<sup>107</sup> Forced and early marriages are often not officially registered, placing women at risk, which therefore complicates their legal protections.<sup>108</sup> For example, the 2008 Tajik Law on Registration of Rights to Immovable Property provides for joint registration of property, but only in cases where the marriage is registered with the civil registry.<sup>109</sup> If a marriage is registered and a couple divorces, women are entitled to 50% of shared property and assets jointly acquired during the marriage.<sup>110</sup> For spouses who have had only religious marriages that are unregistered, one spouse may add the other to property acquired before the marriage, but joint land ownership has a higher social tax and deters many people from sharing land ownership with a spouse.<sup>111</sup> However, in the absence of a registered marriage, if a man abandons the woman, the burden is on the woman to prove common ownership of property, which is extremely difficult to do without official documentation.<sup>112</sup> Women in unregistered marriages are therefore particularly disadvantaged because they lack property, inheritance, and other rights afforded to wives in officially registered marriages.<sup>113</sup>

#### 4. Afghan women in Tajikistan face particularized risk for SGBV

The overall situation for Afghan asylum seekers and refugees in Tajikistan is difficult because of the vulnerabilities facing all displaced people. However, Afghan females face even greater vulnerabilities than Afghan males in Tajikistan because of the social-economic hurdles of living in displacement coupled with gender dynamics within the Afghan family structure and the challenges facing women in general in Tajikistan (as discussed in this section). Moreover, the majority of Afghan women travel to Tajikistan with their husbands, fathers, or other male family members, and are not the heads of the household. Afghan women typically do not have

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<sup>107</sup> Complicating matters, women are not always aware if a marriage has been officially registered as their husbands or fathers typically register the marriage. *Informal Justice*, *supra* note 57, at 21.

<sup>108</sup> Interview with Representatives, GOPA Consultants, PDV Project, in Dushanbe, Taj. (May 26, 2015); *Informal Justice*, *supra* note 57, at 27; *see also* Interview with Representative, UNHCR (May 26, 2014); Interview with Gulnora Gaibova, Interim Country Dir., Helvetas Swiss Intercooperation (May 15, 2014). According to advocates, in the event of divorce and resulting custody and alimony disputes, the fact that a marriage is unregistered does not necessarily mean that a court will find that a couple's marriage is invalid. Tajik law contains provisions that recognize the validity of these marriages, although advocates must then establish that a religious ceremony (*nikoh*) occurred and women are faced with increased challenges in proving that a marriage existed. Unregistered marriages include polygamous marriages—where a man may be officially married to one wife, but unofficially married to one or more other wives, possibly through *nikoh* ceremonies—which are also illegal. Article 33 of the Tajik Constitution forbids polygamy and provides for equal rights in a marriage. And Article 170 of the Tajik Criminal Code criminalizes polygamy, which is punishable by a fine of 200-500 times the minimum monthly wage or up to two years of correctional labor.

<sup>109</sup> *Informal Justice*, *supra* note 57, at 30.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> Interview with Malika Iskandari, Nat'l Prot. Coordinator, UN Women, in Dushanbe, Taj. (May 20, 2015); Interview with Shahlo Juraeva, Dir., State Women's Ctr., in Dushanbe, Taj. (May 28, 2015).

their own separate passports and are included on their male family members' passports, making it more difficult for women to escape domestic violence.<sup>114</sup>

Limited employment opportunities for asylum seekers and refugees in Tajikistan places women at further risk for domestic violence. Afghan women in Tajikistan report that their husbands, who are traditionally the head of the household, become frustrated because they cannot find work, and take out their aggression on the women in the family.<sup>115</sup> Given that many Afghan refugee women are illiterate, they thus experience more difficulty than refugee men in finding employment and gaining financial independence that would allow them to escape violent circumstances.<sup>116</sup>

**Box 2-2. Afghan Women: SGBV Asylum Claims and Access to the Territory**

The majority of asylum claims of Afghan women involving gender-related harms raise domestic violence as a basis. The profile of an Afghan female asylum seeker or refugee is typically a woman married to a man with multiple wives or a woman who married at a young age. As discussed in Chapter 1 of this report, Afghan women facing domestic violence from their husbands face challenges, and often do not receive support from their other relatives or relief through the judicial system. No longer able to tolerate the abuse, Afghan women flee Afghanistan and arrive in Tajikistan. The Afghan women who flee to Tajikistan to escape their husbands' abuse are comparatively more educated than the Afghan women who flee with their husbands or family.<sup>117</sup>

Forced marriage also causes Afghan women to flee to Tajikistan. Women who face being forced into marriage often leave with their children; this group includes widows who refuse to remarry their husband's brother or relative in accordance with tradition.<sup>118</sup> In some cases, women flee Afghanistan with other family members where the family's refusal to force them into marriage puts the family in danger.<sup>119</sup>

UNHCR has expressed concern that Tajikistan denies bona fide refugees from Afghanistan access to the territory.<sup>120</sup> Tajik officials reportedly detain Afghan

<sup>114</sup> Meeting with Najiba Shirinbekova, Dir., Right & Prosperity, in Dushanbe, Taj. (Apr. 29, 2014).

<sup>115</sup> Meeting with Najiba Shirinbekova, Dir., Right & Prosperity, in Dushanbe, Taj. (Mar. 3, 2014).

<sup>116</sup> Approximately 25% of adult Afghan refugees have little to no education with the rate of schooling being four times higher in males than females. *Afghan Refugee Household Assessment in the Republic of Tajikistan*, DANISH REFUGEE COUNCIL, 11 (Apr. 29, 2013), <http://www.refworld.org/docid/51c188074.html>.

<sup>117</sup> Interview with Representatives, DRC, in Dushanbe, Taj. (Aug. 11, 2014).

<sup>118</sup> Interview with Representatives, UNHCR, in Dushanbe, Taj. (Aug. 10, 2014).

<sup>119</sup> *Id.*

<sup>120</sup> The majority of Afghan asylum seekers obtain valid tourist visas for entry into Tajikistan and apply for refugee status once they are in the country. Due to alleged security concerns, the Tajik government has not provided UNHCR and NGOs access to border areas so that they can effectively monitor the number of asylum seekers who are denied access to territory. See DRC, GAP ANALYSIS REPORT: A REVIEW OF TAJIKISTAN'S ASYLUM LAW AND PRACTICE 8 (2012). As a general rule, in order to give effect to their obligations under the 1951 Convention and/or 1967 Protocol, States are required to grant individuals seeking international protection access to territory (e.g., entry into the state) and to fair and efficient asylum procedures. See *Advisory Opinion on the Extraterritorial Application*

asylum seekers who are not in possession of a Tajik visa at the Afghanistan/Tajikistan border and deport them without properly assessing their fear of return to Afghanistan and without providing them the opportunity to access the asylum process in Tajikistan.<sup>121</sup> This is of particular concern regarding women fleeing SGBV who may be forced to return to life-threatening conditions in Afghanistan.

The vulnerabilities of asylum seeking/refugee women in Tajikistan are compounded by difficulties in obtaining official refugee status from Tajikistan's Refugee and Citizenship Unit (RCU) under the Law of the Republic of Tajikistan on Refugees, which is based on the UN Refugee Convention and entitles refugees to certain benefits.<sup>122</sup> The refugee status determination system in Tajikistan has been heavily criticized for failure to comply with international standards.<sup>123</sup> For example, pre-screening procedures prevent some asylum seekers from ever accessing the system. Another impediment to fair refugee status determinations includes corruption of state officials.<sup>124</sup> Illustrative of the system's failings, the acceptance rate has dropped drastically from approximately 60% of refugee claims accepted in 2012 to a one to two percent acceptance rate in 2013, leaving many women without refugee status. Asylum seekers whose claims are rejected by the RCU face difficulties challenging the denials of refugee status in Tajik courts.<sup>125</sup>

Female asylum seekers and refugees often do not have documentary evidence of their status in Tajikistan. Refugees recognized by the RCU, referred to as "Convention refugees," are issued refugee identification cards (red cards) valid for three years, whereas asylum seekers who have yet to be recognized as refugees by the RCU are provided asylum seeker certificates (white cards) for the time it takes to adjudicate their claim, which may take up to six months.<sup>126</sup> Identity documents are only issued to the head of the household with other family members

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*of the Non-Refoulement Obligations Under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, UNHCR (Jan. 26, 2007), <http://www.refworld.org/pdfid/45f17a1a4.pdf>. However, UNHCR acknowledges access to territory is a concern for Afghan asylum seekers as Tajikistan is "located at the crossroads of subregional population movements, including human smuggling and trafficking, which often originate in Afghanistan," causing heightened security in border areas. *See 2015 UNHCR subregional operations profile – Central Asia*, UNHCR, <http://www.unhcr.org/pages/49e4872e6.html>.

<sup>121</sup> *Country Reports on Human Rights*, *supra* note 57; Interview with Representatives, UNHCR, in Dushanbe, Taj. (May 19, 2015).

<sup>122</sup> Law of the Repub. of Taj., *supra* note 47.

<sup>123</sup> *County Reports on Human Rights*, *supra* note 57.

<sup>124</sup> State officials receive low salaries and frequently demand "informal payments" from asylum seekers in the refugee status determination process. This raises concerns that corruption influences decisions on refugee status determination and translates to greater access to only asylum seekers who are able to pay. GAP ANALYSIS REPORT, *supra* note 120, at 11; *see also* Interview with Representative, DRC, in Dushanbe, Taj. (July 29, 2014).

<sup>125</sup> Those who have access to Tajik courts are confronted with judges who are not adequately trained in asylum law. The lack of judicial independence (discussed in section V.C.) also contributes to what refugee advocates described as the "abysmal reversal of refugee status denial decisions by the courts." GAP ANALYSIS REPORT, *supra* note 120, at 10.

<sup>126</sup> *See* Law of the Repub. of Taj., *supra* note 47, at art. 11(9); Interview with DRC, in Dushanbe, Taj. (Aug. 11, 2014); *Lives in limbo*, *supra* note 49, at para. 29.

listed, which disadvantages women who are typically not the head of the household.<sup>127</sup> This documentation must be renewed at a fee, and refugees have reported paying official fees as well as “informal fees” of up to USD\$400 for renewal.<sup>128</sup> The renewal expenses are cost-prohibitive for many asylum seekers and refugees and put them at heightened risk of living in Tajikistan without proper documentation, which can result in difficulties accessing health, education, and social services, extortion by Tajik authorities, and deportation.<sup>129</sup>

Asylum seekers denied refugee status by the Tajik government are referred to UNHCR to determine if they can be considered “mandate” refugees under the UN Refugee Convention and issued UNHCR refugee certificates. Mandate refugees recognized by UNHCR are not accorded the same rights as Convention refugees determined under the Tajik state system. First and foremost, mandate refugees do not have any legal status in Tajikistan; rather, Tajik authorities simply tolerate their presence.<sup>130</sup> Without recognition by the Tajik government as a Convention refugee, mandate refugees have limited access to health, education, and social services.<sup>131</sup> Moreover, mandate refugee women encounter problems obtaining legal protection under Tajik laws as they generally do not have identification documentation.<sup>132</sup> Despite UNHCR advocacy efforts, local integration and obtaining Tajik citizenship for mandate refugees has been very difficult.<sup>133</sup>

Resettlement of mandate refugees can be a lengthy process, taking up to three years, and exposes mandate refugees to additional protection concerns including domestic violence.<sup>134</sup> In some cases, for example, mandate refugee women have attempted to seek divorce from abusive husbands, but were unable to do so under the Tajik domestic law, and had no choice but to return to their abusive husbands.<sup>135</sup> In one case, a female Afghan asylum seeker sought

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<sup>127</sup> *Lives in limbo*, *supra* note 49, at paras. 31-32; see Law of the Repub. of Taj., *supra* note 47, at Art. 11 (which requires refugee claims to be considered within three months of registration, but permits an addition three months for difficult cases).

<sup>128</sup> *Lives in limbo*, *supra* note 49, at para. 30.

<sup>129</sup> Although Tajikistan’s refugee law provides for Convention refugees to apply for and receive Tajik citizenship, there are no known cases of refugees actually receiving Tajik citizenship. GAP ANALYSIS REPORT, *supra* note 120, at 18.

<sup>130</sup> Interview with Representatives, UNHCR, in Dushanbe, Taj. (May 19, 2015).

<sup>131</sup> UNHCR has advocated that mandate refugees be afforded the same rights as Convention refugees, and has gained access to services for some individuals. Interview with Representatives, UNHCR, in Dushanbe, Taj. (May 19, 2015).

<sup>132</sup> Women refugees lack documentation for several reasons. For example, they may be in the country on expired visas, may not have their own passports, and/or may not have received an identification card from the Tajik Ministry of Foreign Affairs. Although UNHCR issues identity documents to mandate refugees, these documents are not recognized under Tajik law. Interview with Najiba Shirinbekova, Dir., Right & Prosperity, in Dushanbe, Taj. (June 10, 2014).

<sup>133</sup> Interview with Representatives, UNHCR, in Dushanbe, Taj. (May 19, 2015); Interview with Representatives, DRC, in Dushanbe, Taj. (July 29, 2014).

<sup>134</sup> *Id.*

<sup>135</sup> Interview with Representatives, UNHCR, in Dushanbe, Taj. (Aug. 4, 2014). While Tajik divorce law applies to Convention refugees even if the refugee married in Afghanistan, according to Right & Prosperity, a public organization in Tajikistan that provides legal aid to refugees, there have been no known cases involving Convention refugees married abroad in Afghanistan or married in Tajikistan who have successfully received a divorce in Tajik

legal assistance to divorce her husband, but she could not obtain a divorce through the Tajik court system.<sup>136</sup> The woman went to the Afghan embassy to seek her own divorce and attempted to obtain a passport separate from her husband. However, without her husband's permission, she was not able to obtain an independent passport or a divorce and was unable to leave the abusive relationship.<sup>137</sup>

Afghan women asylum seekers who have yet to have their status adjudicated, and those rejected by the RCU, have even less legal protection than Convention or mandate refugees and face even greater hurdles to accessing the Tajik legal system. Since Afghan women typically do not have their own passports, they are unable to travel independently and face challenges accessing legal protection when faced with violence.

### III. Tajik Legal Framework for Addressing Domestic Violence

#### A. *The Law on the Prevention of Family Violence: ten years in the making*

The current Constitution of the Republic of Tajikistan, adopted in November 1994, provides for equal rights between men and women and equal rights to spouses in the case of divorce.<sup>138</sup> In 1999, President Emomali Rahmon issued a decree on Enhancing Role of Women in Society to increase women's participation in public life and state institutions, including a goal of women holding 30% of positions in the judicial, legislative, and executive branches.<sup>139</sup> In 2005, Tajikistan adopted the Law on State Guarantees of Equal Rights and Opportunities for Men and Women and Equal Opportunities in the Exercise of Such Rights, which provides for the equality of men and women in social, political, cultural, and other spheres, and the prevention of discrimination between men and women.<sup>140</sup> In December 2006, Tajikistan designated the Committee on Women and Family Affairs (CWFA) as a central executive body with the mandate to carry out "the functions of the state policy to protect and ensure the rights and interests of women and families, create equal conditions for the exercise of their rights and interests and achieve gender equality."<sup>141</sup> Despite the recognition of women's rights in Tajikistan, women

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courts. Interview with Najiba Shirinbekova, Dir., Right & Prosperity, in Dushanbe, Taj. (June 10, 2014). Article 16(2) of the Refugee Convention explicitly provides that all refugees enjoy "the same treatment as a national in matters pertaining to access to the Courts, including legal assistance." Tajikistan's disparate treatment of Convention and mandate refugees therefore violates its international law obligations as it prevents Afghan refugee women from receiving adequate protection from domestic violence in Tajikistan.

<sup>136</sup> If an Afghan woman seeks to obtain a divorce in Tajikistan from her abusive husband, Afghan divorce law governs, which requires the husband's consent. Interview with Representatives, UNHCR, in Dushanbe, Taj. (May 26, 2014).

<sup>137</sup> Interview with Representatives, UNHCR, in Dushanbe, Taj. (May 26, 2014).

<sup>138</sup> Const. Repub. Taj. Arts. 17, 33.

<sup>139</sup> Pres. Dec. on Enhancing the Role of Women in Society, No. 5 (Dec. 3, 1999); Avzalchoeva, *supra* note 5, at 179.

<sup>140</sup> Law on State Guarantees of Equal Rights and Opportunities for Men and Women and Equal Opportunities in the Exercise of Such Rights (Mar. 1, 2005); Gov't of the Repub. of Taj., State Program to Prevent Domestic Violence in the Rep. of Tajikistan 2014-2023 (2014).

<sup>141</sup> Gov't of the Repub. of Taj. Dec. No. 609, Situation: the Committee on Women and Family Affairs under the Government of the Republic of Tajikistan, at para. 1 (Dec. 28, 2006).

continued to lack effective mechanisms to live a life free from violence, in particular in their own homes.

As far back as 2003, in response to the high levels of domestic violence in Tajikistan, a working group formed to lobby for a domestic violence law. The law underwent many drafts, at least four title changes, and took over ten years to pass.<sup>142</sup> Initial drafts of the domestic violence law included provisions discussing the protection of victims, prevention of violence, and the punishment of perpetrators. The MOJ initially objected to the domestic violence law and deemed it unnecessary, claiming that the Tajik Criminal Code provided adequate protection for violent acts occurring within families and that Family Code provisions adequately regulated the dynamics between families.<sup>143</sup>

Since 2000, Tajikistan has been a state party to the Convention on the Elimination of Discrimination Against Women (CEDAW). This is significant as international legal instruments are considered part of Tajik law, and Tajikistan's obligations under CEDAW prevail over any aspects of Tajik domestic law that violate CEDAW or other international obligations. In 2007, the CEDAW Committee noted its concern with Tajikistan's "resurgence of patriarchal attitudes subordinating women and of strong stereotypes regarding their roles and responsibilities in the family and society," which significantly impede the implementation of CEDAW and are a "root cause of women's disadvantaged position in the labour market, their difficulties in accessing their land rights, the continuing existence of polygamy, domestic violence and the high dropout rates of girls from school."<sup>144</sup> The CEDAW Committee urged Tajikistan to prioritize eliminating all forms of violence against women, particularly domestic violence, and to enact the draft domestic violence law.<sup>145</sup>

In advance of Tajikistan's reporting to the CEDAW Committee in October 2013, the Tajik Parliament finally passed the Law on the Prevention Against Family Violence (Family Violence Law) in March 2013.<sup>146</sup> As highlighted in its title, the law focuses on prevention of domestic violence. The Family Violence Law does not criminalize domestic violence, and if women wish to

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<sup>142</sup> Interview with Zebo Sharipova, Exec. Dir., League of Women Lawyers, in Dushanbe, Taj. (Aug. 4, 2014); Interview with Barno Mukhamadieva, National Program Officer, UN Women, in Dushanbe, Taj. (Aug. 6, 2014).

<sup>143</sup> Interview with Representatives, SDC, in Dushanbe, Taj. (May 26, 2015); Interview with Alla Kuvatova, Indep. Expert, Exec. Dir., Women with Univ. Educ., Member, Coal. of Pub. Orgs. in Taj. from De Jure Towards Equality De Facto, in Dushanbe, Taj. (Aug. 7, 2014).

<sup>144</sup> CEDAW, *Concluding comments of the Committee on the Elimination of Discrimination Against Women: Tajikistan*, at para. 19 (Feb. 2, 2007); see also Const. Repub. Taj. Art. 10.

<sup>145</sup> CEDAW, *Concluding comments of the Committee on the Elimination of Discrimination Against Women: Tajikistan*, at paras. 21-22 (Feb. 2, 2007).

<sup>146</sup> The Family Violence Law amends the Code of Administrative Offences and the Law on Militia. The Code of Administrative Offences is amended by Article 931 ("Violation of the requirements of the Law of the Republic of Tajikistan on Prevention of Domestic Violence") and Article 932 ("Violation of a protective order"). These articles establish liability for breach of the Family Violence Law in the absence of criminal evidence for: an intentional act of physical, mental, or economic violence, or threat of their fulfillment in family relations; acts violating the rights and freedoms of a family member; or for violation of a protective order. Responsibility is embodied in the form of fines and administrative arrest. The Law on Militia discusses police responsibility to take individual measures to prevent domestic violence.



press charges against perpetrators, those cases must be prosecuted under general provisions for violence, such as battery, in the Tajik Criminal Code and proceed through the ordinary criminal courts.

The Family Violence Law, which applies to citizens and foreign citizens (such as Afghan women in the country), has several sections, first, defining different types of domestic violence.<sup>147</sup> Further, the Law recognizes the rights of victims of violence including the rights to: receive medical, psychological and social assistance; have access to crisis centers, medical institutions, and centers for rehabilitation; receive legal advice; seek protection from local self-governing administrative bodies for public reprimand of the perpetrator; and seek protection from law enforcement agencies, the prosecutor's office, or the court to hold the perpetrator accountable for committing violence.<sup>148</sup> Under the Law, the bodies responsible for preventing family violence include national as well as local administrative and government bodies on women and family affairs, law enforcement agencies, educational institutions, health institutions, social protection agencies, support centers, medical and social rehabilitation centers for victims, and the Commission on Children's Rights.<sup>149</sup> The Law includes individual remedies for victims of violence, including registering a case of violence, and obtaining a protection order.<sup>150</sup> The bodies responsible for preventing family violence may conduct disciplinary conversations with the offenders and victims of violence to identify the causes and circumstances of the violence, explain social and legal consequences of future violence, and strengthen family ties.<sup>151</sup>

The CEDAW Committee's October 2013 concluding observations recognized the adoption of the Family Violence Law as a positive development, but noted numerous areas of ongoing concern, including women's lack of awareness of rights under CEDAW, which particularly affected women living in rural and remote areas.<sup>152</sup> The Committee expressed concern that patriarchal attitudes contributed to the persistence of violence against women and underreporting of domestic violence.<sup>153</sup> Moreover, the Committee observed concerns with the law as written, for

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<sup>147</sup> Law on the Prevention Against Family Violence [hereinafter Family Violence Law], Arts. 1, 4, Mar. 2013.

<sup>148</sup> Family Violence Law, Art. 6.

<sup>149</sup> Family Violence Law, Arts. 7-17.

<sup>150</sup> Family Violence Law, Arts. 18-19, 21. Other individual remedies for preventing violence include: referring an individual who has committed family violence to law enforcement; taking administrative custody of an offender; depriving an offender of parental or guardianship rights; and placing a victim in a support center or medical and social rehabilitation center.

<sup>151</sup> Family Violence Law, Art. 20. Chapter IV of the Family Violence Law concludes with provisions on confidentiality, liability for non-fulfillment of the law, and implementation of the law. Family Violence Law, Arts. 24-26.

<sup>152</sup> CEDAW, *Concluding observations on the combined 4th and 5th periodic reports of Tajikistan*, at para. 7 (Oct. 18, 2013) [hereinafter CEDAW 2013 Concluding Observations].

<sup>153</sup> The Committee remained concerned with "the persistence of adverse cultural norms, practices and traditions, as well as patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and in society" noting "that such stereotypes contribute to the persistence of violence against women, the practice of child marriage and de facto polygamy and result in the disadvantaged and unequal status of women in many areas." *Id.* at para. 15. The Committee attributed underreporting of violence to "the prevalence of discriminatory social and cultural norms and limited access to justice and legal support for victims." *Id.* at para. 17(a).

example, the lack of a specific definition of family (see section III.B.1.) as well as the lack of information and data on the types of violence against women (see section IV.H.), lack of adequate shelters for women facing violence (see section IV.E.), and lack of access to basic social services for refugee and other disadvantaged women (IV.F.).<sup>154</sup>

In 2014, Tajikistan ratified the optional protocol to CEDAW.<sup>155</sup> To prepare for its periodic report to the CEDAW Committee in October 2015, the Tajik government, international organizations, and NGOs attended National Consultations in Dushanbe in May 2015. The National Consultations focused on the CEDAW Committee's recommendations regarding violence against women, which included amending existing Tajik legislation to criminalize all forms of violence against women and addressing vulnerabilities facing disadvantaged groups of women, including refugee, elderly, migrant, stateless, and disabled women.<sup>156</sup> The Consultations provided a forum for the government to present the steps it had taken to address the recommendations and for stakeholders to voice concerns about existing challenges. International and civil society organizations hoped to work collaboratively with the government to provide an accurate report, but advocates report that government representatives drafted its contents behind closed doors and submitted the periodic report to the CEDAW Committee without additional input from non-governmental stakeholders.

### *B. Limitations of the Family Violence Law*

Gender experts and women's rights advocates involved in drafting the Family Violence Law have expressed that prior versions of the law were much stronger and protective of women's rights to be free from domestic violence than the version the Tajik Parliament passed in 2013.<sup>157</sup> Parliamentary discussions regarding the Family Violence Law were closed to civil society, and NGOs and women's rights advocates thus were unable to comment on the final version. The result is a weaker, less protective law that differs in key respects from what advocates had put forth during the decade-long drafting process.<sup>158</sup>

#### *1. Lack of clear definitions*

Article 1 of the Family Violence Law provides definitions for physical, mental, sexual, and economic violence in the "family." However, the Law does not define the term family, making it unclear which types of relationships are covered under the Law. A definition for family (though imperfect) was included in previous drafts of the Law, but was omitted from the text of the

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<sup>154</sup> *Id.* at paras. 31-32.

<sup>155</sup> U.N. TREATY COLLECTION, OPTIONAL PROTOCOL TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (Oct. 6, 1999), [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8-b&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en). Tajikistan made reservations to Article 8, the individual complaints procedures, and Article 9, the inquiry procedure of the Optional Protocol.

<sup>156</sup> CEDAW 2013 Concluding Observations, *supra* note 152.

<sup>157</sup> Interviews with Barno Mukhamadieva, Nat'l Program Officer, and Viloyat Mirzoeva, Taj. Portfolio Manager, UN Women, in Dushanbe, Taj. (May 27, 2014).

<sup>158</sup> Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (see Appendix, Interviews with Government and NGO Representatives and Other Experts).

enacted law.<sup>159</sup> No other Tajik legislation offers a definition of family, including even the Family Code and, therefore, the Law provides no clarity as to who is and is not considered part of the family.<sup>160</sup>

In Tajikistan, there are different types of common intimate partner relationships: a) marriages officially registered with the civil registry; b) religious marriages performed by *nikoh* ceremony that are not officially registered with the civil registry; c) romantic or sexual relationship where the parties live together without officially registering their marriages; and d) polygamous marriages.<sup>161</sup> However, according to legal advocates, it is not clear if all of these relationships are covered. A previous draft of the Law was broader in scope, encapsulating a wider range of familial relationships including, for example, former family members who commit or threaten violence after divorce.<sup>162</sup> The Family Violence Law thus fails to protect women who face violence from former intimate partners, women involved in a romantic or sexual relationship who do not cohabit with their partners, and women in some unregistered marriages, including polygamous, early and forced marriages.<sup>163</sup> Moreover, uncertainty remains as to whether the Law provides protection to Afghan women asylum seekers and refugees living in Tajikistan. For example, if the marriage of an Afghan woman when she was younger than the age of consent in Tajikistan or marriages conducted pursuant to *Sharia* law are not recognized in Tajikistan, the women in these marriages may be unprotected.<sup>164</sup> The Law also fails to protect women from abuse at the hands of their in-laws.<sup>165</sup> The lack of a comprehensive definition of family in the Family Violence Law is a significant gap and diminishes protection for women who are in relationships not specifically enumerated in the law as they are pushed further into the margins.

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<sup>159</sup> A representative of the MOJ indicated that the MOJ is working on draft legislation to amend the Family Code, but there is currently no definition of family in the Tajik Family Code. Interview with Representative, MOJ of the Repub. of Taj., in Dushanbe, Taj. (May 28, 2015).

<sup>160</sup> Interview with Representatives, SDC, in Dushanbe, Taj. (May 26, 2015); Interview with Larisa Aleksandrova, Indep. Expert, in Dushanbe, Taj. (Aug. 4, 2014).

<sup>161</sup> In Tajikistan, many couples hold a religious marriage ceremony called *nikoh*. *Nikoh* marriages have no legal meaning under Tajik law. See Tajik Family Code Art. 1(3). Only marriages registered with the state civil registry office have legal validity. Tajik Family Code Art. 10(3). Couples who hold a *nikoh* ceremony must also register with the state civil registry for their marriage to be legally recognized. However, many times couples fail to register the marriage resulting in the existence of only a *nikoh* marriage.

<sup>162</sup> Draft of Family Violence Law, Art. 4.

<sup>163</sup> As the CEDAW Committee recognized in its October 2013 concluding observations, “the lack of a specific definition of family in the existing legislation . . . may leave out of its scope women in de facto polygamous relations, which are quite widespread, in particular in rural and remote areas.” CEDAW 2013 Concluding Observations, *supra* note 152.

<sup>164</sup> While Article 169 of the Tajik Family Code recognizes that the marriage of foreigners conducted in other countries shall be respected in Tajikistan, in reality, according to advocates, it is almost impossible for refugees to seek relief in courts. Judges lack the knowledge, procedure, and mechanisms for implementing Article 169. Interview with Najiba Shirinbekova, Dir., Right & Prosperity, in Dushanbe, Taj. (June 10, 2014).

<sup>165</sup> When women report violence from their mother-in-laws, the police often do not understand that it should be considered domestic violence. Interview with Viorelia Rusu, Gender & Anti-Trafficking Officer, OSCE (May 20, 2015).

Another flaw with the Family Violence Law is that the enacted law includes the term “intentional” in the definitions of the four types of violence—physical, mental, sexual, and economic—but does not specify whether intent is general or specific.<sup>166</sup> It is therefore unclear whether an abuser must intend to cause an act of violence without the intent to harm or whether the abuser must specifically intend to cause physical, mental, sexual, or economic injury to the victim to constitute violence under the Law.

## 2. *Failure to criminalize domestic violence*

The Family Violence Law does not criminalize domestic violence, nor does the Tajik Criminal Code or any other Tajik law.<sup>167</sup> Focusing primarily on prevention, the Family Violence Law provides only administrative punishments, such as fines and administrative custody of the perpetrator.<sup>168</sup> Instead of criminal penalties, the Law proscribes “disciplinary conversations” with the offenders and victims of violence to identify the causes and circumstances of the violence and explain social and legal consequences of future violence.<sup>169</sup> Because the Family Violence Law does not explicitly recognize it as a crime punishable under the law, impunity for domestic violence remains the norm. Advocates agree that a major hurdle to combatting domestic violence in Tajikistan “is obtaining widespread acknowledgement that domestic violence is a violation of human rights and a crime.”<sup>170</sup>

Opponents to criminalizing domestic violence contend that it is unnecessary because the Tajik Criminal Code offers sufficient protection to victims. Relevant provisions of the Criminal Code, for example, include intentional infliction of major bodily harm, minor bodily harm, or bodily harm to a lesser degree.<sup>171</sup> While these crimes would cover some instances of violence perpetrated in the domestic context, a conviction requires evidence that a victim sustained physical injuries. Therefore, the Criminal Code provides no accountability in cases in which the physical injury is no longer detectable or for instances of psychological or economic violence.

Crimes of sexual violence—including sexual assault, sexual abuse, sexual coercion, and rape—are criminalized under the Tajik Criminal Code, but there is no provision explicitly criminalizing spousal rape.<sup>172</sup> Spousal rape is rarely reported (see section IV.A.) due to social stigma, yet

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<sup>166</sup> Family Violence Law, Art. 1.

<sup>167</sup> Chapter 20 of the Tajik Criminal Code is entitled “Crimes Against Family and Minors,” but the provisions criminalize specific actions solely against minors.

<sup>168</sup> Family Violence Law, Art. 22. Note that a 2012 draft of the Family Violence Law included “Protection” in the title and was called the “Law of the Republic of Tajikistan on Prevention and Protection of Domestic Violence,” but this was removed as the Law came to focus on prevention.

<sup>169</sup> *Id.*, Art. 20(1). Individuals interviewed for this report were not certain what these “disciplinary conversations” entail and expressed confusion as to the meaning of this section of the Law. Women’s rights advocates have expressed skepticism as to effectiveness of such conversations.

<sup>170</sup> *Informal Justice*, *supra* note 27, at 36.

<sup>171</sup> Tajik Crim. Code, Arts. 110-112.

<sup>172</sup> *Id.*, Arts. 138-42; *Country Reports on Human Rights*, *supra* note 57.

research shows that perpetrators of sexual violence are overwhelmingly a woman's current or former partner.<sup>173</sup>

Criminalization of domestic violence is crucial to overcoming patriarchal norms and recognizing the seriousness of intra-familial violence, including beatings, rapes, humiliation, deprivation of food and property, and other acts of physical, mental, sexual and economic violence, which disproportionately affect women. The CEDAW Committee has reiterated that all violence against women, including domestic violence, needs to be criminalized, and urges Tajikistan to amend its legislation.<sup>174</sup> According to a representative from the Executive Office of the President, the Tajik government is presently reviewing relevant codes and plans to amend the law to reflect CEDAW's recommendation to criminally prosecute violators of the Family Violence Law.<sup>175</sup> Until then, prosecution of violence against women in the family must fall within the categories provided for under the Tajik Criminal Code. For a discussion on additional barriers to prosecution, including women's reluctance to pursue cases through the criminal justice system, see section V.

#### **Box. 2-3. Mediation by Legal Service Providers**

In cases of domestic violence, many women in Tajikistan prefer using mediation rather than pursuing their cases through the criminal justice system due to fear, stigma, and other social pressures. As a result, legal service providers often engage in mediation to resolve conflicts between husbands and wives. Tajikistan does not currently have a formal mediation law or system, and mediation techniques employed by legal service providers vary widely. Only some legal service providers have received formal mediation training.

To pursue mediation, legal service providers may invite the women and her partner and other family members to their office for a discussion about the violence. To educate both the victim and the abuser regarding their rights and responsibilities, lawyers might explain the Family Violence Law and the consequences of violating the law. They may also discuss the possibility of prosecution under the Criminal Code. Lawyers report some success in reconciling couples and preventing further violence using mediation and warning the abuser about the legal consequences.

## **IV. Barriers to Effective Implementation of the Family Violence Law**

Numerous barriers exist to the effective implementation of the Family Violence Law. Women lack awareness of their rights and therefore do not take advantage of the legal protections available to them in Tajikistan. Moreover, patriarchal norms, social stigma, and confidentiality concerns, as well as mistrust of law enforcement and judicial systems, further prevent women

<sup>173</sup> *Tajikistan Demographic and Health Survey 2012*, *supra* note 63, at 199. According to the 2012 USAID DHS, 76% of ever-married women who reported experiencing sexual violence indicated that the perpetrator was a current husband or partner, and 23% indicated that the perpetrator was a former husband or partner.

<sup>174</sup> Interview with Malika Iskandari, Nat'l Prot. Coordinator, UN Women, in Dushanbe, Taj. (May 20, 2015); CEDAW 2013 Concluding Observations, *supra* note 152.

<sup>175</sup> CEDAW Nat'l Consultative Meeting, in Dushanbe, Taj. (May 29, 2015).

from reporting domestic violence. Economic dependence and lack of familial support also prevent women from leaving violent relationships. Other barriers to implementing the Family Violence Law include biased and discriminatory attitudes of law enforcement, prosecutors, and judges towards women who report domestic violence; a preference to resolve disputes through informal justice and reconciliation; and a lack of clear mechanisms and processes for the Law's implementation. Added barriers exist for Afghan asylum seeker and refugee women living in Tajikistan, including heightened socio-economic vulnerabilities, language, lack of identification documents, and fear of deportation.

"I know my rights, but I was dependent on [my husband and his relatives]. My husband and his family regulated my life. I was not allowed to wear certain clothing, go outside and work, and I stayed at home. I was surprised how this could happen in my family that was educated and well-known. They were still very traditional."

- Anonymous Tajik Woman

#### *A. Women underreport violence*

##### *1. Lack of awareness of women's rights and available protections*

Lack of awareness of women's rights and persisting patriarchal norms are chief among the impediments to women reporting violence in Tajikistan, and negatively impact the effective implementation of the Family Violence Law. The Law is not welcomed or well understood by all, including those in high-level governmental positions.<sup>176</sup> The restrictive male-dominated culture, where women are expected to stay home with the children and ask permission from their husbands or in-laws to leave the home, prevents women, particularly those in remote and rural areas, from accessing information about the Law much less reporting violence.<sup>177</sup>

Women who do not understand their right to be free from violence do not report violence. This is particularly acute among the Afghan women asylum seekers and refugees.<sup>178</sup> Two recent studies demonstrate the lack of awareness among Afghan women in Tajikistan of what constitutes SGBV. In a 2012 UNHCR survey of 400 refugee men and women, none reported domestic violence in their families.<sup>179</sup> Some refugee women admitted experiencing violence from their husbands in Afghanistan, but did not characterize this as domestic violence.<sup>180</sup> In 2014, DRC surveyed 300 Afghan asylum seekers and refugees living in Tajikistan, and found that most women did not feel comfortable discussing personal experiences of SGBV and denied

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<sup>176</sup> Interview with Zarofu Khujaeva, Dir., Nishod, in Dushanbe, Taj. (May 22, 2015).

<sup>177</sup> Interview with Alla Kuvatova, Indep. Expert, Exec. Dir., Women with Univ. Educ., Member, Coal. of Pub. Orgs. in Taj. from De Jure Towards Equality De Facto, in Dushanbe, Taj. (Aug. 7, 2014).

<sup>178</sup> Interview with Representatives, Refugees, Children, & Vulnerable Citizens (RCVC), in Dushanbe, Taj. (Aug. 6, 2014).

<sup>179</sup> UNHCR conducted an assessment of 400 refugees of all ages regarding domestic violence. Interview with Representatives, UNHCR, in Dushanbe, Taj. (Aug. 4, 2014).

<sup>180</sup> Interview with Representatives, UNHCR, in Dushanbe, Taj. (Aug. 4, 2014).

violence even if they had experienced domestic violence.<sup>181</sup> The majority of women indicated that if they experienced violence they would do nothing and keep the information to themselves.<sup>182</sup>

Afghan women in Tajikistan lack knowledge not only of their rights but also of the available resources to help them seek assistance for domestic violence. Nearly two-thirds of Afghan women surveyed by DRC indicated that they believed no effective services exist for women experiencing violence or that they were unaware of the existence of such services in Tajikistan.<sup>183</sup> More than half of the Afghan women surveyed responded that they did not know how to access legal assistance if they experienced violence because they were unaware of such services providers.<sup>184</sup> Although support centers provided for under the Family Violence Law such as Consultation Centers, Crisis Centers, Women’s Resource Centers, and victim support units (discussed in sections IV.E. and F.) are open to refugee women, in large part, Afghan women do not avail themselves of these services in Tajikistan.<sup>185</sup>

**Box. 2-4. UNHCR Survey: Refugee Women in Tajikistan and Fear of Reporting**

Domestic violence is believed to be widespread in refugee communities, but official statistics do not exist and any available statistics far underreport the problem due to the reluctance of women to report.<sup>186</sup> The same cultural norms that lead Tajik families to refrain from discussing domestic violence openly also exist within the Afghan asylum seeker and refugee community.<sup>187</sup> Afghan women are reluctant to discuss domestic violence for fear of bringing shame on the family, and rarely report such violence to UNHCR and service providers, much less to the authorities in Tajikistan.<sup>188</sup>

<sup>181</sup> DRC Baseline Survey 2014, *supra* note 49.

<sup>182</sup> When asked what they would do if they experienced violence, 37% of women responded that they would do “nothing, keep it to myself” and 19% indicated that it was a “personal matter and should not be discussed with outsiders.” *Id.*

<sup>183</sup> When asked to name entities responsible for providing assistance to those experiencing SGBV, Afghan women indicated the following: 22.5% community leaders, 21.6% no one had responsibility, 17.1% UNHCR, 11.5% humanitarian NGOs, 11.8% the Department of Women’s Affairs (DoWA)/Ministry of Women’s Affairs (MoWA), 6.7% police, and 3.7% family court. The 2014 Baseline Survey indicated the DoWA/MoWA, which are the relevant agencies in Afghanistan. It is unclear whether Afghan refugees understood this to mean the relevant counterpart in Tajikistan, the CWFA. *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> To increase refugee women’s knowledge of their rights and raise awareness of SGBV issues, UNHCR, DRC, and RCVC, a non-profit, humanitarian organization in Tajikistan provide trainings for refugee women to teach them how to protect themselves. UNHCR’s group trainings for refugees on women’s rights and issues of violence against women have helped refugee women open up about domestic violence. Interview with Representatives, UNHCR, in Dushanbe, Taj. (Aug. 4, 2014). According to DRC’s Baseline Survey, the majority of displaced Afghan women and men reported that they had not attended trainings on women’s rights and SGBV issues in Tajikistan, but would be interested in the topics.

<sup>186</sup> Approximately five to ten percent of Afghan refugee women reported domestic violence to UNHCR in 2014-2015, but UNHCR believes the problem is more widespread and refugee women are reluctant to report the violence. Interviews with Representatives, UNHCR, in Dushanbe, Taj. (May 26, 2014 & May 19, 2015).

<sup>187</sup> Those who work closely with refugees report that domestic violence “is not something [Afghan] refugee women talk about.” Interview with Representatives, RCVC, in Dushanbe, Taj. (Aug. 6, 2014).

<sup>188</sup> Interview with Representatives, DRC, in Dushanbe, Taj. (Aug. 10, 2014); Interview with Representatives, UNHCR, in Dushanbe, Taj. (Aug. 4, 2014).

In a recent training conducted by UNHCR on violence against women, 19 out of 20 women indicated they had experienced violence in their lives, but feared reporting because they did not trust that the information would be held confidentially.<sup>189</sup> Those reporting violence to UNHCR said they typically experienced psychological and economic abuse from their husbands.<sup>190</sup> While Afghan women rarely report physical violence to UNHCR, this is indicative more of women's reluctance to discuss physical violence inflicted by their husbands rather than fewer incidents of physical violence. Sexual violence also occurs, but is seldom raised by Afghan refugee women as many women are unaware that marital rape constitutes abuse and believe that women are obligated to have sex with their husbands whenever the husband wants. As sex outside the marriage is highly stigmatized and criminalized under Afghan and *Sharia* law, Afghan refugee women who experience sexual violence from men who are not their husbands are even more reluctant to report the violence fearing ostracization and bringing shame to their families.

## 2. Social stigma

Due to pervasive stigma against victims, women feel shame or guilt for reporting their husbands or other family members and discussing private, family matters outside the home.<sup>191</sup> Advocates describe a mentality in which community rights and perception trump that of the individual, and many people live for others and not themselves, often caring more about what their neighbors say than what is best for themselves or their children.<sup>192</sup> Women are afraid that if their neighbors see police coming to the family home, the family will be stigmatized which will cause further conflict in the family.<sup>193</sup> Many communities stigmatize women who report their husbands to the police by shaming them and subjecting them to further violence.<sup>194</sup> In one case in Khujand, a man stabbed his wife with a knife. When members of the community learned she reported her husband to the police, they turned against her and blamed her for his violence.<sup>195</sup>

## 3. Economic dependence and lack of familial support

Lack of education among women, coupled with the mindset in a majority of families in Tajikistan that women should not work, has caused women to become economically dependent on their husbands or male family members. This mentality occurs across the social spectrum from uneducated families to more educated. A man may forbid his wife from working because neighbors, whose wives stay at home, might question his authority.<sup>196</sup> Men feel emasculated if

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<sup>189</sup> Interview with Representatives, UNHCR, in Dushanbe, Taj. (Aug. 4, 2014).

<sup>190</sup> Meeting with Najiba Shirinbekova, Dir., Right & Prosperity, in Dushanbe, Taj. (Mar. 3, 2014).

<sup>191</sup> Interview with Shahribonu Shonasimova, Project Manager, Int'l Alert, in Dushanbe, Taj. (May 21, 2015).

<sup>192</sup> *Id.*

<sup>193</sup> Interview with Shakarbet Niyatbekov, Nat'l Program Officer, Rule of Law, SDC, in Dushanbe, Taj. (Aug. 4, 2014).

<sup>194</sup> Interview with Najiba Shirinbekova, Dir., Right & Prosperity, in Dushanbe, Taj. (Mar. 3, 2014).

<sup>195</sup> *Id.*

<sup>196</sup> Interview with Alla Kuvatova, Indep. Expert, Exec. Dir., Women with Univ. Educ., Member, Coal. of Pub. Orgs. in Taj. from De Jure Towards Equality De Facto, in Dushanbe, Taj. (Aug. 7, 2014).



other people believe their wives are working outside the home because they do not make enough money to support the family.

Women who leave their husbands have nowhere to turn because, in many cases, parents do not accept their daughters back into the family home after separation or divorce. Traditional beliefs direct that the woman belongs to her husband's family after marriage. A separated or divorced woman no longer belongs to her husband's family and brings shame to her own family if she returns home.<sup>197</sup> A woman's family may also reject her as a financial burden.<sup>198</sup> Moreover, it is not safe for women to return to live with their parents where they may face violence at the hands of siblings and in-laws. A woman's return may cause conflict in the new family dynamic.<sup>199</sup>

Even if a woman initiates a complaint against her abuser, she frequently withdraws the complaint due to family pressure or desire to reconcile for economic reasons. If a woman learns that criminal prosecution against her husband might result in jail time, she might withdraw the complaint because she needs her husband to support the family.<sup>200</sup> The State Women's Center in Dushanbe—which assists women in gathering forensic evidence so that they can pursue domestic violence cases in criminal court (see section V.)—estimates that in approximately half of these cases women retract their complaints and do not pursue the case further. Women often say they do not want to submit their complaints to the police or to court for fear their husband will retaliate against them.<sup>201</sup>

Economic pressure especially afflicts Afghan asylum seekers and refugees. While they have the right to work in Tajikistan, asylum seekers and refugees face difficulties obtaining employment as preference is given to local Tajiks.<sup>202</sup> DRC conducted an assessment of Afghan refugee households in 2013 and determined that unemployment and underemployment are high, and Afghan asylum seekers and refugees live in “extremely vulnerable” conditions and a standard of living “very much below that of the host population's standards.”<sup>203</sup> Residential restrictions preventing asylum seekers and refugees from living in certain cities, including the capital where there are more job opportunities, have created employment barriers for Afghans and prevented many from earning enough income to subsist.<sup>204</sup> Limited mobility and lack of

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<sup>197</sup> Interview with Representatives, OHCHR, in Dushanbe, Taj. (Aug. 11, 2014).

<sup>198</sup> According to an OHCHR representative, “It's the mathematics of money. The woman does not work and becomes a burden to her family, which is especially difficult because there is such poverty in rural areas.” Interview with Representatives, OHCHR, in Dushanbe, Taj. (Aug. 11, 2014).

<sup>199</sup> *Id.*; see also Interview with Representatives, Ghamkori Crisis Ctr., in Kurgan-Tube, Taj. (May 27, 2015).

<sup>200</sup> Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (see *infra* Appendix, Interviews with Government and NGO Representatives and Other Experts).

<sup>201</sup> Interview with Mukaram Mumindzhanova, Lawyer, State Women's Ctr., in Dushanbe, Taj. (May 28, 2015).

<sup>202</sup> Interview with Representatives, UNHCR, in Dushanbe, Taj. (May 19, 2015).

<sup>203</sup> AFGHAN REFUGEE HOUSEHOLD ASSESSMENT IN THE REPUBLIC OF TAJIKISTAN, DRC 18 (2013), <http://www.refworld.org/docid/51c188074.html>.

<sup>204</sup> The residential restrictions limits the mobility of Afghan asylum seekers and refugees to seek job opportunities as security officials regularly monitor their movements causing them to live in fear of being caught by the police and forced to pay bribes. *Country Reports on Human Rights, supra* note 57.

employment opportunities exacerbate the already difficult situation for displaced Afghans in Tajikistan, and have contributed to increased violence against Afghan women and underreporting of the violence.

Afghan women are dependent on their husbands and male family members for economic support and fear reporting violence to the authorities will result in the deportation of their abuser, their primary means of economic support. The increased economic challenges facing asylum seekers and refugees present an even greater obstacle for Afghan women, who lack the economic means to travel to places where they can seek assistance for the violence. As with displaced Afghan women in Afghanistan (discussed in Chapter 1, section II.C.6.), Afghan women in Tajikistan have very limited familial and social support networks.

#### *4. Lack of confidentiality*

Confidentiality concerns also prevent some women from reporting violence. Although the Family Violence Law recognizes confidentiality to “[p]rivate information related to the family and personal life of the victim,” many women, particularly in remote and rural areas with smaller populations, fear their relatives or others in the community will find out if they report violence.<sup>205</sup> A previous draft of the Law had a more expansive definition of confidentiality to protect the victim, including “all obtained information related to health, living conditions and other private information,” but no such provision was included in the enacted Law.<sup>206</sup> Regardless of the scope of the Law, some legal aid offices do not strictly enforce principles of confidentiality, and women may be interviewed in open spaces where others seeking legal assistance can hear.<sup>207</sup>

When offered the option of criminal prosecution, many women fear pursuing the case through the criminal justice system after learning what the procedure entails.<sup>208</sup> Advocates explain: “The area is small and there are neighbors of the victims who might work in the courts so they do not want everyone to know what is going on. Even when services are granted by the state, such as by doctors, confidentiality is a problem and people don’t want to go.”<sup>209</sup>

#### *5. Bias and discrimination on the part of government authorities*

The biased and discriminatory attitudes of law enforcement, prosecutors, and judges towards women who report domestic violence (discussed in more detail in the sections to follow) further deters women from pursuing legal action against their husbands. Authorities chastise

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<sup>205</sup> Draft of Family Violence Law, Art. 29.

<sup>206</sup> *Id.*

<sup>207</sup> Interview with Year 1 Training Participants, Empowering Displaced Women in Afg. & Taj. through Legal Aid & Training to Combat Gender Based Violence, Dushanbe, Taj. (May 22, 2015).

<sup>208</sup> Interview with Diana Ismailova, Nat’l Program Assoc., U.N. Population Fund (UNFPA), in Dushanbe, Taj. (July 31, 2014).

<sup>209</sup> *Id.*

and subject women to humiliation if they report. Even if a woman successfully files a complaint, the treatment she faces in the system leads many women to withdraw at a later stage.<sup>210</sup>

### 6. Tradition values informal justice with emphasis on reconciliation

Customary approaches to conflict resolution are commonly used to resolve disputes between parties in Tajikistan. Deference to elders is greatly revered in Tajik culture, leading to a hierarchical approach to resolving matters. Immediate or extended family, local elders, religious leaders of *mahallahs*, and *bibiotum* often serve as mediators and draw upon Islamic law and customary norms to provide guidance to those seeking to resolve differences.<sup>211</sup> With family disputes, preservation of the nuclear family is the primary objective and divorce is strongly discouraged.<sup>212</sup>

As an illustration of the emphasis on preserving the family unit, during International Family Day on May 15, 2015, a representative from the Department of Culture under the Dushanbe City mayor's office gave a brief speech with the message, "Keep Tajik family. Preserve Tajik family." A common misperception, civil society representatives report, is that "a woman who reports her husband is not a good wife or woman."<sup>213</sup> Women who report violence risk breaking apart the family, and are seen as taking actions contrary to the values put forth by the Tajik government and society.

In Tajik society, lawyers, prosecutors, and judges commonly urge women to reconcile with their husbands and family members when there is conflict, including violence, and cases resulting in permanent separation or divorce are rare.<sup>214</sup> Preservation of family unity is highly valued, and Tajik society highly stigmatizes divorced women, perceiving them as having lower societal status.<sup>215</sup> Divorce is uncommon in Tajikistan, but when it occurs, a divorced woman is often forced to live in the same house as her ex-husband, their kids, the ex-husband's new wife and her children, as well as the husband's mother and father, creating further tension and potentially increasing a woman's susceptibility to violence.<sup>216</sup> As a result, women facing violence often prefer using informal justice mechanisms by local leaders or mediation efforts by legal service providers to resolve issues of domestic violence and seldom pursue recourse through the formal justice system. As with Tajik women, Afghan asylum seekers and refugees

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<sup>210</sup> According to advocates, women "are forced to tolerate" violence. Interview with Shurat Latifov, Program Coordinator, Women Living with HIV, in Dushanbe, Taj. (May 26, 2015).

<sup>211</sup> A *mahallah* is an organizational unit of a community; thus, a *mahallah* leader is similar to a neighborhood leader. A *bibiotum* is a woman of influence. *Informal Justice*, *supra* note 27, at 4.

<sup>212</sup> *Id.* at 15.

<sup>213</sup> Interview with Representatives, SDC, in Dushanbe, Taj. (May 26, 2015). This is not the SDC's opinion, but that of Tajik society.

<sup>214</sup> Interview with Zaitoona Naimova, Nat'l Gender Officer, OSCE, in Dushanbe, Taj. (Aug. 7, 2014).

<sup>215</sup> Interview with Takhimina Khaydarova, Exec. Dir., Women Living with HIV, in Dushanbe, Taj. (May 26, 2015); Dilbar Turakhanova, *Legal response to domestic violence in Tajikistan*, in GENDER-BASED VIOLENCE AND PUBLIC HEALTH: INTERNATIONAL PERSPECTIVES ON BUDGETS AND POLICIES (Keerty Nakray, ed., 2013).

<sup>216</sup> Interview with Malika Iskandari, Nat'l Prot. Coordinator, UN Women, in Dushanbe, Taj. (May 20, 2015).

prefer mediation to judicial proceedings in resolving domestic violence.<sup>217</sup> (See also Chapter 1, sections III.C. and IV.D.). Since the passage of the Family Violence Law, there are no known cases of Afghan refugee women pursuing domestic violence cases through the Tajik criminal justice system under relevant Criminal Code provisions.

### 7. Additional barriers to reporting for Afghan women in Tajikistan

Language barriers prevent Afghan women in Tajikistan from reporting domestic violence to the authorities. While spoken Dari (the native language of most Afghans in Tajikistan) and spoken Tajik have similarities, the written languages are distinct—Dari follows the Persian script and Tajik the Cyrillic script. Most Afghans do not read or write Cyrillic and need translators to assist them in filling out forms and making complaints.<sup>218</sup> Investigations into cases may be suspended until a suitable translator is available to assist. In addition, Afghan asylum seekers and refugees face discrimination from the police and local authorities who admit that they cannot solve the problems of local Tajiks and view asylum seekers and refugees as, in the words of advocates, “an additional headache.”<sup>219</sup>

Fear of deportation—both of their husbands and themselves—prevents Afghan women from reporting domestic violence. Women fear that reporting could jeopardize their husband’s status in the country and result in their deportation to Afghanistan. As many refugee women are uneducated and are the primary caregivers for their children, they are reliant on their husbands for survival. Reporting could also result in the deportation of the entire family back to Afghanistan, as women and children are typically included on the husband’s passport and refugee certificate.<sup>220</sup> Moreover, due to residency restrictions, many asylum seekers and refugees register their residences in places that they do not actually live, which further deters women facing violence from reporting because they fear authorities will learn about the false registration of residence and deport the entire family to Afghanistan.<sup>221</sup> Women in relationships with Tajik men, whose marriages are most often not officially registered, may also be more reluctant to report domestic violence for fear of deportation if the state learns of their illegal marriage.<sup>222</sup>

Another factor preventing reporting is that many Afghan asylum seekers and refugees in Tajikistan have expired documents because they cannot afford to renew them. Women are afraid if they seek help from the authorities they will be forced to pay bribes to rectify the expired status.<sup>223</sup>

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<sup>217</sup> Interview with Najiba Shirinbekova, Dir., Right & Prosperity, in Dushanbe, Taj. (Apr. 29, 2014).

<sup>218</sup> Interview with Representatives, Right & Prosperity, in Dushanbe, Taj. (Aug. 12, 2014).

<sup>219</sup> Interview with Representatives, Right & Prosperity, in Dushanbe, Taj. (Aug. 12, 2014).

<sup>220</sup> DRC Baseline Survey 2014, *supra* note 49.

<sup>221</sup> *Id.*

<sup>222</sup> Interview with Najiba Shirinbekova, Dir., Right & Prosperity, in Dushanbe, Taj. (Mar 3, 2014); *Joint Statement of Right & Prosperity and Bureau on Human Rights and Rule of Law, CEDAW*, 5 (2013), [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/TJK/INT\\_CEDAW\\_NGO\\_TJK\\_14940\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/TJK/INT_CEDAW_NGO_TJK_14940_E.pdf).

<sup>223</sup> DRC Baseline Survey 2014, *supra* note 49.

As discussed in section IV.A.7., Afghan women asylum seekers and refugees lack awareness of their rights and resources available to them when faced with violence. Even when they have awareness, these women have difficulty accessing resources due to Tajik domestic law restricting refugee residency in Dushanbe and other cities where more infrastructure is in place to assist women living in violent situations.<sup>224</sup> Similar to Tajik women, Afghan women in Tajikistan lack accommodation and support if they leave the family home.<sup>225</sup>

*B. Members of the Tajik police force are unable and unwilling to implement the Family Violence Law*

Police in Tajikistan contribute to the inability to effectively implement the Family Violence Law. First, due to bias and entrenched patriarchal norms, police often do not take women's complaints of violence seriously and pressure them not to file complaints. Second, although police training and the establishment of gender-sensitive police units has improved the situation for women reporting violence, even when police are willing to attend to victims, they face obstacles in implementing the Family Violence Law, including lack of clear guidance in the law for how to process complaints of violence and lack of training on how to work with victims. Illustrating the deeply entrenched patriarchal norms in Tajik society, police have expressed concerns that the Family Violence Law impedes the rights of men, and many police officers are reluctant to refer cases of violence to the general prosecutor's office.<sup>226</sup> Advocates report that when a woman lodges a complaint with the police, the police usually ask her, "Why do you want to lodge a complaint against your husband? He will go to jail. Will this really be in your best interest?"<sup>227</sup> Others recount police officers telling women who seek police protection from domestic violence that it is a "private issue and to go home" and blaming them for the abuse.<sup>228</sup>

Though police have been traditionally reluctant to investigate complaints of domestic violence, police cooperation has increased since the Family Violence Law passed, particularly in the five stations where there are gender-sensitive police units—two in Dushanbe, two in Khatlon province and one in Sughd province.<sup>229</sup> For example, police have been referring women who have experienced violence to Crisis Centers in Dushanbe and Kurgan-tube, the capital of

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<sup>224</sup> Interview with Representatives, DRC, in Dushanbe, Taj. (Aug. 2014).

<sup>225</sup> Interview with Representatives, UNHCR, in Dushanbe, Taj. (Aug. 4, 2014).

<sup>226</sup> Police officers in Tajikistan are predominately male. According to the Department of State, International Narcotics and Law Enforcement Affairs Bureau (INL), the Tajik government reports 12% of officers are female, but female officers are mostly in administrative positions. Women police officers also report discrimination within the police units because they are female and are treated differently than men. Interviews with Zaitoona Naimova, Nat'l Gender Officer, OSCE, in Dushanbe, Taj. (June 16, 2014 & Aug. 7, 2014).

<sup>227</sup> Interview with Zebo Sharipova, Exec. Dir., League of Women Lawyers, in Dushanbe, Taj. (May 20, 2015).

<sup>228</sup> Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (*See infra* Appendix, Interviews with Government and NGO Representatives and Other Experts); *see also* Interview with Representatives, Right & Prosperity, in Dushanbe, Taj. (Aug. 12, 2014).

<sup>229</sup> Interview with Zebo Sharipova, Exec. Dir., League of Women Lawyers, in Dushanbe, Taj. (May 20, 2015); CEDAW Nat'l Consultative Meeting, in Dushanbe, Taj. (May 29, 2015).

Khatlon.<sup>230</sup> Some positive efforts have improved police sensitivity to working with survivors of violence and increased awareness of the Family Violence Law.<sup>231</sup> A series of seminars for police in Sughd province has proven useful, increasing their understanding of what domestic violence is and how to apply the Family Violence law.<sup>232</sup>

Progress is not universal. In some instances police with knowledge of the Family Violence Law manipulate women into thinking they are explaining the law to her and her rights under the law, but, in reality, are siding with her husband. In one example, a woman reported her husband's violence to a police officer who advised, "It is my responsibility as a police officer to tell you that you have the right to file a complaint against your husband and take this issue to court, but you should think about your kids. If the abuser receives a sentence then your kids cannot enter the civil service because they have a bad record that their father was sentenced and you will ruin the future prospects of your children."<sup>233</sup> Fearful she would ruin her children's future, the woman chose not to file a complaint against her husband.

Police often put pressure on women who report, saying things like, "Who will take care of you? If you do this, your husband may beat you more. Where will you live?"<sup>234</sup> The woman feels pressured to withdraw her statement and her husband is not punished; he may even beat her more if he finds out she went to the police.<sup>235</sup> Observing that police are reluctant to accept domestic violence cases even when women are accompanied by a lawyer, a lawyer at a legal services organization remarked, "Imagine how it is when she goes alone."<sup>236</sup>

Police in Tajikistan lack awareness for how to handle domestic violence complaints as the Family Violence Law provides little guidance on procedures for processing a complaint and attending to victims, and no further guidance has been issued. As a general matter, police officers often do not know where to refer victims of domestic violence so they can seek temporary safety or know how to interact and communicate with victims to avoid

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<sup>230</sup> Interview with Representatives, GOPA Consultants, PDV Project, in Dushanbe, Taj. (May 26, 2015).

<sup>231</sup> To encourage women to report to the police, the OSCE began a gender-sensitive policing project in 2010 and renovated five police stations in different districts in Tajikistan, including two police stations in Dushanbe, to establish five gender-sensitive police units. The gender-sensitive police units include separate, private entrances and are staffed with female police officers to make the setting more comfortable for women to report violence. However, as of May 2015, advocates report only three of the five gender-sensitive police units were operating because one police officer was on maternity leave and the other unit lacked adequate staffing. In addition to staffing the gender-sensitive police units, female officers in these positions continued to hold additional responsibilities and were overworked, making it difficult to adequately dedicate the resources necessary to maintaining the gender-sensitive police units. The Tajik government reported in its interim report to the CEDAW Committee in October 2015 that three additional gender-sensitive police units have been established since 2013. Rep. of Taj., Interim Report to CEDAW Comm. (Oct. 2015).

<sup>232</sup> Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (*See infra* Appendix, Interviews with Government and NGO Representatives and Other Experts).

<sup>233</sup> Interviews with Zaitoona Naimova, Nat'l Gender Officer, OSCE, in Dushanbe, Taj. (Aug. 7, 2014).

<sup>234</sup> Interview with Zebo Sharipova, Exec. Dir., League of Women Lawyers, in Dushanbe, Taj. (Aug. 5, 2014).

<sup>235</sup> *Id.*

<sup>236</sup> Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (*See infra* Appendix, Interviews with Government and NGO Representatives and Other Experts).

revictimization, particularly in the more remote and rural areas.<sup>237</sup> Lack of proper training means police risk causing further damage rather than protection. In some cases, for example, after a woman reports violence, the police—without properly assessing any risk to the woman and considering her safety—may go directly to the family home with the woman and ask what happened, placing the woman in further danger of violence.<sup>238</sup>

The Family Violence Law gives the police the authority to identify causes and circumstances leading to domestic violence, register the perpetrator of domestic violence, and institute criminal proceedings or administrative liability against the perpetrator.<sup>239</sup> The Law does not explicitly proscribe the appropriate steps and procedures law enforcement should take to determine whether incidents of violence occurred and assess whether a case should be referred to the prosecutor’s office for criminal prosecution. The Family Violence Law does not reference the Tajik Penal Code and procedures to be followed in cases where criminal liability is raised.

### *C. Uncertainty and confusion surrounding protection orders*

While the Family Violence Law provides law enforcement with the authority to issue protection orders, in practice, few women have successfully obtained them. The Law provides little guidance to women and their legal representatives as to how to obtain protection orders and to law enforcement authorities on the precise steps that must be taken to issue protection orders. Even if a woman is able to obtain a protection order, the order provides minimal protection from further abuse because, for example, the Law does not provide for “no contact” or “move out” provisions for the abuser nor does it provide adequate enforcement mechanisms for violations.

“When I approached the police, the police said they never use protection orders in practice and said, ‘You develop us a form and we will send it to the abuser.’ The police don’t know the procedure to use a protection order. They alleged the form was under development, but we have no information.”

- Lawyer at Ghamkori Crisis Center in Kurgan-tube

<sup>237</sup> Interview with Malika Iskandari, Nat’l Prot. Coordinator, UN Women, in Dushanbe, Taj. (May 20, 2015); Interview with Representatives, GOPA Consultants, PDV Project, in Dushanbe, Taj. (May 26, 2015); Interview by CGRS with Name and Affiliation Withheld, Dushanbe, Taj. (May 2015) (*See infra* Appendix, Interviews with Government and NGO Representatives and Other Experts).

<sup>238</sup> Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (*See infra* Appendix, Interviews with Government and NGO Representatives and Other Experts).

<sup>239</sup> Family Violence Law, Art. 11.

1. *No clear guidance for women and their legal representatives on how to obtain protection orders*

Two years after the passage of the Family Violence Law, the authorities have issued very few protection orders due in large part to ambiguities in the language of the Law and its failure to provide clear guidance to women seeking to obtain an order and law enforcement tasked with issuing them. As an initial matter, the language of the Law itself is confusing and it is unclear who the protection order actually protects—the aggressor or the victim.<sup>240</sup> This deters women and their legal representatives from seeking protection orders.

The Family Violence Law fails to clearly state who can apply for a protection order or an extension of a protection order, whether the person may be assisted by an advocate or lawyer, and what steps must be taken to secure a protection order or its extension. As a result, confusion abounds and legal service providers working with women have not taken advantage of the Law’s protection order scheme as a mechanism for assisting their clients as they mistakenly believe it is the role of the police.<sup>241</sup> While some legal advocates in Dushanbe and Kurgan-tube report having heard of protection orders being issued in other parts of Tajikistan, they have not seen a protection order and are not aware of any mechanisms for securing protection orders for women they represent in Dushanbe and Kurgan-tube.<sup>242</sup>

2. *Law enforcement bias*

As discussed above in section IV.A.5., law enforcement bias impedes the effective implementation of the Family Violence Law, including the issuance of protection orders. Law enforcement officials have reportedly expressed “doubts” about protection orders because they feel they limit the freedom of movement of the perpetrator.<sup>243</sup>

MOI statistics show that law enforcement agencies did not issue any protection orders in 2013 and issued only 72 protection orders in 2014.<sup>244</sup> Use of protection orders is reportedly more common in Kulyab in the southwest Khatlon region, and Khujand, the second largest city in

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<sup>240</sup> For example, the law envisages issuing protection orders as an instrument for the aggressor, and one of the “protection” measures included in the protection order is to keep the aggressor at home. “If you look at the words in the law there is actually protection for the aggressor and it keeps the abuser in the house. It’s very strange.” Interview with Viorelia Rusu, Gender & Anti-Trafficking Officer, OSCE, in Dushanbe, Taj. (May 20, 2015).

<sup>241</sup> Interview with Zebo Sharipova, Exec. Dir., League of Women Lawyers, in Dushanbe, Taj. (Aug. 5, 2014).

<sup>242</sup> Interview with Representatives, Ghamkori Crisis Ctr., in Kurgan-Tube, Taj. (May 27, 2015); Interview with Representatives, State Women’s Ctr., in Dushanbe, Taj. (May 28, 2015); Interview with Representatives, PDV, in Dushanbe, Taj. (May 26, 2015); Interview with Representatives, DRC, in Dushanbe, Taj. (May 2015); Interview with Diana Ismailova, Indep. Expert, in Dushanbe, Taj. (May 26, 2015).

<sup>243</sup> Interview with Zaitoona Naimova, National Gender Officer, OSCE, in Dushanbe, Taj. (June 16, 2014 & Aug. 7, 2014).

<sup>244</sup> Statistics were not available regarding the number of requests for orders made. Zeitlin, *supra* note 34, at 3 citing Solieva Zumrad, *Presentation on NGO-Government Dialogue Towards Effective Implementation of CEDAW in Tajikistan*, Head of Int’l Relations of the Ministry of Internal Affairs of Taj. (Dec. 5, 2014).



Tajikistan and the capital of Sughd province located in the north.<sup>245</sup> Even in the few regions where protection orders are more frequently issued, according to the Prevention of Domestic Violence (PDV) Project, some local village police stations arbitrarily do not issue protection orders on weekends, leaving women particularly vulnerable to violence at that time.<sup>246</sup>

### *3. No clear guidance for law enforcement authorities on how to properly issue protection orders*

The Family Violence Law defines a protection order as “a legal document issued by the law enforcement agencies to a person who committed violence in the family or threatened to do so.”<sup>247</sup> The head or deputy head of the local law enforcement unit is to issue a protection order within 24 hours from the occurrence or threat of familial violence or the report of actual or threatened violence.<sup>248</sup> Protection orders are issued for 15 days and may be extended up to 30 days at request of the victim or her legal representative to the head of the law enforcement department and with the approval of the prosecutor.<sup>249</sup> The order should contain: the name of the offender; the place, time, and circumstance of the violence or threats of violence; time and place of issuance of the protection order; the order’s duration period; requirements for the offender; legal consequences for continuation of violence and refusal to comply with the order; and the name and title of the official authorized to issue the order.<sup>250</sup> Requirements for the offender might include prohibitions on any type of violence against the victim and the use of alcohol or drugs.<sup>251</sup> Oddly, the Law establishes that an order may recommend an abuser’s timely return home—which could place the victim at risk, because presumably the woman is still living in the shared home. An offender faces administrative liability (see section III.A.) for violating the requirements of the protection order.<sup>252</sup>

Although the Law discusses some mechanics for the contents of a protection order, it does not provide any useful guidance for law enforcement on the criteria for deciding whether a protection order should be issued and the steps that law enforcement must take to issue the protection order.<sup>253</sup> According to a representative from the Organization for Security and Co-operation in Europe (OSCE), this represents one of the Law’s greatest weaknesses because “the

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<sup>245</sup> Interview with Viorelia Rusu, Gender & Anti-Trafficking Officer, OSCE, in Dushanbe, Taj. (May 20, 2015).

<sup>246</sup> The PDV Project is funded by the Swiss Development Cooperation and implemented by GOPA Consultants, a German development consulting firm in cooperation with civil society organizations and crisis centers in Tajikistan. Interview with Representatives, GOPA Consultants, PDV Project, in Dushanbe, Taj. (May 26, 2015).

<sup>247</sup> Family Violence Law, Art. 1.

<sup>248</sup> Family Violence Law, Art. 21(4).

<sup>249</sup> Family Violence Law, Art. 21(5).

<sup>250</sup> Family Violence Law, Art. 21(6).

<sup>251</sup> Family Violence Law, Art. 21(7).

<sup>252</sup> Family Violence Law, Art. 21(2), (8).

<sup>253</sup> The Family Violence Law provides that “a head or deputy head of the local law enforcement unit” issues the protection order and gives law enforcement the sole authority to issue protection orders rather than the court, yet allows perpetrators of violence to appeal protection orders to the court. 2013 Family Violence Law, Article 21(9) provides that “The protection order can be appealed to the court. The appeal shall be reviewed within three days. Appeal to the court on the protection order does not terminate the order’s validity.”

police are not confident on how to implement the protective order and what to do” when a woman seeks such an order.<sup>254</sup>

#### *4. No uniform form*

According to the State Women’s Center in Dushanbe, the MOI has developed a protection order form. However, the government has yet to distribute the form nationwide or provide training on how to use the form.<sup>255</sup> In regions where protection orders have been issued, the contents of the form appear to vary from location to location.<sup>256</sup>

#### *5. Minimal protection*

Even if a woman is able to obtain a protection order, the types of orders authorized under the Law provide only minimal protection and, in some instances, may actually put women in further danger. Most importantly, the Law does not provide for no contact or move out provisions—common in domestic violence laws around the world to prevent further violence—that order the abuser to stay a certain distance from the victim, her house, job, or place she frequents, or move out of their shared home.<sup>257</sup> To the contrary, the Family Violence Law states a protection order may include “recommendations on [the aggressor’s] timely return to home.”<sup>258</sup> This provision is both puzzling and troubling; while a curfew on the abuser presumably limits his opportunity to consume alcohol or engage in other vices, this ignores the dynamics of domestic violence—that is that substance abuse is not a cause of violence, but rather, patriarchy and discrimination against women are at the root. It is unclear how a protection order mandating the abuser’s return to the shared home in any way protects the victim, but rather, risks exposing her to further abuse.<sup>259</sup>

Although protection orders may require the abuser to stop drinking alcohol or using drugs during the period the order is effective, counseling for abusers to ensure long-term rehabilitation such as anger management classes and substance abuse programs are not mandated.<sup>260</sup>

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<sup>254</sup> Interview with Zaitoona Naimova, National Gender Officer, OSCE, in Dushanbe, Taj. (Aug. 7, 2014).

<sup>255</sup> Interview with Representatives, State Women’s Ctr., in Dushanbe, Taj. (May 28, 2015).

<sup>256</sup> Interview with Representatives, GOPA Consultants, PDV Project, in Dushanbe, Taj. (May 26, 2015).

<sup>257</sup> A prior draft of the Law provided for “limiting access of the offender or person, who threatened to commit domestic violence, to minor family members” but the enacted Law omits this provision and lacks clarity as to the purpose of the protection order and how it protects the victim. Draft of Family Violence Law, Art. 25.

<sup>258</sup> Family Violence Law, Art. 21.

<sup>259</sup> Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (*see Appendix, Interviews with Government and NGO Representatives and Other Experts*); Interview with Viorelia Rusu, Gender & Anti-Trafficking Officer, OSCE, in Dushanbe, Taj. (May 20, 2015) (“The Law needs amendments in order to assure better protection to the victims.”). *See also* Interview with Zaitoona Naimova, National Gender Officer, OSCE, in Dushanbe, Taj. (June 16, 2014). Interview with Larisa Aleksandrova, Indep. Expert, in Dushanbe, Taj. (Aug. 14, 2014).

<sup>260</sup> Family Violence Law, Art. 21(7).

Furthermore, the Law lacks enforcement mechanisms for violations of the order aside from administrative fines.<sup>261</sup> Therefore, any protection offered by the Family Violence Law is limited.<sup>262</sup>

#### *D. Lack of clear procedures for implementation of the Family Violence Law*

While the enactment of the Family Violence Law in 2013 was a positive step towards protecting women from domestic violence, the Law primarily serves as a general, declaratory document with recommendations.<sup>263</sup> The Law calls upon certain government authorities to participate in the development and implementation of programs to prevent domestic violence, but its provisions do not set forth explicit implementation mechanisms and procedures for the authorities to fully carry out their responsibilities under the Law.<sup>264</sup> The final article of the Law is entitled “Implementation of the current law,” but merely establishes the date the Law takes effect and offers no further guidance how the Law should be implemented.<sup>265</sup>

The Law’s language also lacks clarity as to how the remedies specified will protect the victim and prevent further violence. Although the Law provides for individual remedies including registration of complaints, disciplinary conversations, and protection orders, the process for requesting such remedies is unclear under the Law. The Law provides administrative liability resulting in a fine if a perpetrator commits violence against a family member (that does not amount to a crime) or violates a protection order, but it lacks clear guidance as to how a victim may access administrative remedies and what role legal representatives may play in assisting victims under the Law. Furthermore, the Law does not specify what steps responsible government actors are obligated to take to ensure women are protected from violence, claims of violence are properly investigated, and aggressors are held liable.<sup>266</sup> No public data exists on the number of administrative penalties issued under the Family Violence Law, but advocates believe it to be very few.

The MOI, the agency charged with developing regulations to implement the law, claims commentaries exist that instruct how to implement the Family Violence Law. However, experts

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<sup>261</sup> Interview with Viorelia Rusu, Gender and Anti-Trafficking Officer, OSCE, in Dushanbe, Taj. (May 20, 2015).

<sup>262</sup> Family Violence Law, Art. 21(7). *See Women with HIV, supra* note 83 (observing that a protection order “is essentially a piece of paper that does not protect” women from anything).

<sup>263</sup> Interview with Firuz Sattorov, Senior Staff Attorney, American Bar Ass’n Rule of Law Initiative (ABA ROLI), in Dushanbe, Taj. (May 19, 2015). The view of one gender expert, who wished to remain anonymous is that the 2013 Family Violence Law was passed because international bodies put pressure on Tajikistan to pass the law, but “it was adopted for the sake of adoption like the gender equality law.” Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (*see* Appendix, Interviews with Government and NGO Representatives and Other Experts).

<sup>264</sup> Interview with Firuz Sattorov, Senior Staff Attorney, ABA ROLI, in Dushanbe, Taj. (May 19, 2015).

<sup>265</sup> Family Violence Law, Art. 26.

<sup>266</sup> Admin. Code of the Republic of Taj., Arts. 93<sup>1</sup> & 93<sup>2</sup>; Family Violence Law, Art. 21(8). Victims may also be reluctant to pursue administrative fines under the Family Violence Law as the aggressor is responsible for paying the fine, as opposed to a government supported fund, which would otherwise be used to support the victim and her children.

who have reviewed the commentaries say they are copied and pasted from the law itself or a similar law from the Russian Federation and include very few provisions that correlate with or provide guidance on the Tajik law.<sup>267</sup> The commentaries emphasize the theory of the law rather than provide any practical guidance as to what government authorities should do to respond to complaints of domestic violence.<sup>268</sup> Without clear instructions and procedural mechanisms, advocates also do not fully understand how to use the Family Violence Law to assist victims of violence.<sup>269</sup>

#### *E. Inadequate long-term solutions for women*

Lack of shelters and long-term solutions for women facing violence is another major impediment to the implementation of the Family Violence Law. The Law explicitly calls for temporary shelters, but is silent on long-term shelters and rehabilitation centers. Although both temporary and longer-term shelters exist in Tajikistan, the number and capacity of shelters to accommodate women are far fewer than necessary, leaving many women unprotected and with no choice but to return to live with their abusers.

The Family Violence Law contains provisions to strengthen existing support centers and medical and social rehabilitation centers as well as establish new institutions for victims of violence.<sup>270</sup> Article 16 of the Law provides for the establishment of “Support Centers” to receive victims of violence; provide necessary free medical, psychological, legal and social support to victims; and provide temporary shelter.<sup>271</sup> Support Centers in Tajikistan that offer assistance to women victims of violence include 110 state-run Consultation Centers, 18 OSCE-supported Women’s Resource Centers, nine Victim Support Rooms, and 33 Crisis Centers.<sup>272</sup> Although the Law states that Support Centers should provide temporary shelter, only the nine Victim Support Rooms have the ability to provide temporary shelter, each with a limited bed capacity for two adults and one child. No specific budget has been allocated to strengthen existing or create new institutions called for in the Law.

Article 17 of the Law also provides for the establishment of medical and social rehabilitation centers for victims, with expenses paid by the offender.<sup>273</sup> While the Law provides that victims

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<sup>267</sup> As Tajikistan is a former member of the Soviet Union, many of its laws have been adapted from Russian laws. Tajik lawyers noted that some laws are cut and pasted from the Russian laws with little revision to the Tajik context. Interview with Malika Iskandari, Nat’l Prot. Coordinator, UN Women, in Dushanbe, Taj. (May 20, 2015); Interview with Firuz Sattorov, Senior Staff Attorney, ABA ROLI, in Dushanbe, Taj. (May 19, 2015); Interview with Malika Iskandari, Nat’l Prot. Coordinator, UN Women, in Dushanbe, Taj. (May 20, 2015) (noting that no “step by step instructions” exist on how to use the 2013 Family Violence Law).

<sup>268</sup> Interview with Representatives, SDC, in Dushanbe, Taj. (May 26, 2015); Interview with Malika Iskandari, Nat’l Prot. Coordinator, UN Women, in Dushanbe, Taj. (May 20, 2015).

<sup>269</sup> Interview with Barno Mukhamadieva, Nat’l Program Officer, UN Women, in Dushanbe, Taj. (Aug. 6, 2014).

<sup>270</sup> Family Violence Law, Arts. 16-17.

<sup>271</sup> *Id.*, Art. 16(2).

<sup>272</sup> Presentation of Marxabo Alimova, First Deputy, CWFA, CEDAW Nat’l Consultative Meeting, Dushanbe, Taj. (May 29, 2015).

<sup>273</sup> Family Violence Law, Art. 17.

may stay in the centers for the “necessary period of time required for the treatment,”<sup>274</sup> the Law also confusingly states that the “[w]orking time of centers and medical and social rehabilitation sections that provide support to victims should be in line with the working time of health centers and hospitals.”<sup>275</sup> Despite stating that victims may stay in a rehabilitation center for the “necessary period of time required for treatment,” Article 17, read in its entirety, does not appear to consider the possibility that rehabilitation may be long-term as it limits the centers’ hours to the work hours of the health centers and hospitals, and depends on the offender to pay for rehabilitation expenses.

### 1. Shelters

While the Family Violence Law recognizes that Support Centers providing temporary shelter are necessary, the law does not provide explicitly for the establishment of long-term shelters or long-term solutions to protect victims of violence.<sup>276</sup> The Tajik government does not operate any long-term shelters. According to CWFA, there are three privately-run shelters for victims of domestic violence.<sup>277</sup> There are no clear criteria for admission and no priority necessarily given to women exhibiting specific vulnerabilities. The shelters house no more than 20 women at one time, and the amount of time a woman can stay depends on each specific shelter, but generally does not exceed six months.<sup>278</sup> Not all of the shelters have capacity to accommodate women with children. CWFA recognizes that the lack of shelters for women is a “serious problem” and three shelters in the entire country is “way too few” as many women experiencing domestic violence have nowhere to live if they wish to leave an abusive home environment.<sup>279</sup> CWFA acknowledges the government is not currently capable of providing long-term protection to victims of violence country-wide.<sup>280</sup>

Most advocates agree that shelters are needed, but they must offer proper management, security, and holistic care for women, including programs aimed at decreasing economic dependence on men and trauma counseling. Because existing shelters cannot or do not provide

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<sup>274</sup> *Id.*, Art. 17(4).

<sup>275</sup> *Id.*, Art. 17(1).

<sup>276</sup> Interview with Zebo Sharipova, Exec. Dir., League of Women Lawyers, in Dushanbe, Taj. (May 20, 2015).

<sup>277</sup> Interview with Marxabo Alimova, First Deputy, CWFA, in Dushanbe, Taj. (May 27, 2015). There were inconsistent reports as to how many shelters there are in Tajikistan for women fleeing violence. The 2014 U.S. State Department Human Rights Report on Tajikistan reports that there are four shelters. Some interviewees in Tajikistan reported two shelters: one in Dushanbe and one in Khujand. The IOM has a shelter for trafficking victims and UNICEF and the Child’s Right Center have shelters for children.

<sup>278</sup> Interview with Marxabo Alimova, First Deputy, CWFA, in Dushanbe, Taj. (May 27, 2015). CWFA indicates that there are three shelters for victims of violence in Tajikistan, two in Dushanbe and one in Khujand in Sughd province. However, representatives from international organizations and legal service providers indicated that there are no shelters in Dushanbe. UNICEF and the Child’s Right Center have shelters for children and the International Office of Migration (IOM) has a shelter for trafficking victims. In rare emergencies, advocates have been able to place domestic violence victims in these shelters, but indicate that the needs of domestic violence differ and that these shelters often do not have the capacity to take on domestic violence victims.

<sup>279</sup> Presentation of Marxabo Alimova, First Deputy, CWFA, CEDAW Nat’l Consultative Meeting, Dushanbe, Taj. (May 29, 2015).

<sup>280</sup> Interview with Marxabo Alimova, First Deputy, CWFA, in Dushanbe, Taj. (May 27, 2015).

these services or long-term housing, no long-term effective solution currently exists to protect women.<sup>281</sup>

Society stigmatizes women who stay overnight outside the home, including in shelters, because traditionally women who leave their families and stay out overnight are seen “as bad.”<sup>282</sup> Patriarchal attitudes dictate that if a wife wants to go somewhere, she needs permission, and she needs to be accompanied and protected. Some advocates working to protect women from domestic violence question whether money should be spent on shelters if they are not going to be accepted within society, while others feel that it is crucial to work with society to accept shelters, and to facilitate women’s reintegration.<sup>283</sup> There is fear that shelters will be misconstrued as brothels merely because they house women.<sup>284</sup> The stigmatization of shelters is a serious obstacle to effectively protecting women fleeing domestic violence in Tajikistan.<sup>285</sup>

Despite the Law’s provision that temporary shelter must be provided to victims of violence, there are at most 18 beds for adults and nine beds for children in only six cities in Tajikistan, which is far from adequate given the prevalence of domestic violence. The three longer-term shelters in Tajikistan are wholly inadequate to meet the needs of women.<sup>286</sup> To fill this gap in assistance, some employees at non-profit organizations have invited women into their own homes as a temporary solution from the violence. This situation is far from ideal and illustrates the acute need for additional shelters in Tajikistan.

## 2. *Victim Support Rooms*

In 2012, prior to the enactment of the Family Violence Law, the Ministry of Health and Social Protection, with support from UNFPA, established Victim Support Rooms for domestic violence victims.<sup>287</sup> Units with Victim Support Rooms are located in eight hospitals in the Dushanbe, Rasht, and Vahdat districts in central Tajikistan, Kurgan-Tube and Kulyab in the southwestern province of Khatlon, and Khujand and Kayrakkum in the northwestern province of Sughd.<sup>288</sup>

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<sup>281</sup> Interview with Viorelia Rusu, Gender & Anti-Trafficking Officer, OSCE, in Dushanbe, Taj. (May 20, 2015).

<sup>282</sup> Interview with Alla Kuvatova, Indep. Expert, Exec. Dir., Women with Univ. Education, Member, Coal. of Pub. Orgs. in Taj. from *De Jure Towards Equality De Facto*, in Dushanbe, Taj. (Aug. 7, 2014).

<sup>283</sup> Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (*see* Appendix, Interviews with Government and NGO Representatives and Other Experts); Interview with Viorelia Rusu, Gender & Anti-Trafficking Officer, OSCE, in Dushanbe, Taj. (May 20, 2015).

<sup>284</sup> Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (*see* Appendix, Interviews with Government and NGO Representatives and Other Experts).

<sup>285</sup> Interview with Viorelia Rusu, Gender & Anti-Trafficking Officer, OSCE, in Dushanbe, Taj. (May 20, 2015).

<sup>286</sup> The Tajik government submitted an interim report to the CEDAW Committee in October 2015, and refers to these longer-term shelters as “temporary shelters” as there are no long-term shelters available for women in Tajikistan. This report refers to the three shelters as “longer-term” to distinguish from the temporary shelter service available through the Victim Support Rooms, but notes that the Victim Support Rooms are not actual shelters. Rep. of Taj., Interim Report to CEDAW Comm. (Oct. 2015).

<sup>287</sup> Interview with Diana Ismailova, Nat’l Program Assoc., UNFPA, in Dushanbe, Taj. (July 31, 2014).

<sup>288</sup> *Id.*

There is also one Victim Support Room located at the CWFA office in Dushanbe.<sup>289</sup> Each Victim Support Room has two beds for adults and one bed for a child, and women are provided clothes, hygiene packages, temporary accommodation, and meals for two to five days.<sup>290</sup> Most of these victim support units are housed in the maternity wards of hospitals, and beds have been reportedly misused to accommodate maternity patients who have not suffered violence.<sup>291</sup> Furthermore, victims of violence may stay only up to five days; after they leave, most have no option but to return to the home shared with their abusers.

Taking into account the local cultural context that stigmatizes women who spend the night outside the family home, there is the perception that the location of the Victim Support Rooms in the hospitals lessens the stigma for women who can say they stayed overnight in a hospital for medical treatment. However, advocates have mixed reactions to the Victim Support Rooms. Even those who feel that the victim support rooms are a positive addition and resource for women, observe that some facilities work better than others, noting that some facilities face ongoing challenges.<sup>292</sup> Hospital personnel who staff the Victim Support Rooms do not receive adequate training to work with domestic violence victims and there is high turnover among staff.<sup>293</sup> Although some medical and psychological counseling may be available to women staying in the Victim Support Rooms, the rooms operate as “shock” rooms for women in the immediate aftermath of trauma and do not provide comprehensive services, including adequate referrals for additional assistance after they leave the support rooms.<sup>294</sup>

As discussed in Chapter 1, Afghan culture also stigmatizes shelters and Afghan asylum seeker and refugee women remain hesitant to seek even temporary shelter in Tajikistan. Although the victim support units are open to refugee women, there are no known registrations of such women at any of the victim support units or domestic violence shelters.

**Box. 2-5. Lack of Shelters Prevents Effective Protection of Women**

An anonymous domestic violence service provider reported as follows: “The major difficulty is the lack of shelters. Over the last few weeks, several women have approached us because it is dangerous for them to continue life with their partners. The law stipulates temporary accommodation of victims. There is room available for temporary accommodation of a victim in the hospital, but it is only for three days. The conditions are not good and no one provides food. Yesterday, we made several telephone calls to find temporary accommodations because a woman was under great risk from her husband. She had a one-year-old child and was pregnant.

“The process of tackling the victim’s case takes a long time. Many victims are without passports or identification and the lawyers needs to gather documents. . . . Within this time, if she needs shelter, food, to live in safety, there are lots of

<sup>289</sup> *Id.*

<sup>290</sup> *Id.*

<sup>291</sup> Interview with Diana Ismailova, Indep. Expert, in Dushanbe, Taj. (May 26, 2015).

<sup>292</sup> Interview with Representatives, Ghamkori Crisis Ctr., in Kurgan-Tube, Taj. (May 27, 2015).

<sup>293</sup> Interview with Diana Ismailova, Nat’l Program Assoc., UNFPA, in Dushanbe, Tajikistan (July 31, 2014).

<sup>294</sup> *Id.*

difficulties. We don't have solutions to this problem—to provide accommodation for victims. What's worse is that if a woman victim approaches us, we don't allow her to go to her husband, but if she goes to her parents' home, the situation may become aggravated. When she approaches us, we try to provide help, but we can't provide accommodation and have no choice but to send her back home. When she is sent back home, the violence continues and she regularly phones us. It seems that all of our efforts are in vain.”

#### *F. Limited access to legal assistance and the justice system*

Since the enactment of the Family Violence Law, there have been increased efforts to improve women's access to justice, including creation of more Women's Resource Centers, Consultation Centers, and Crisis Centers (described below) and the establishment of a telephone hotline to reach women with limited mobility or those living in more remote areas. These efforts are welcomed, but inadequate. Women continue to face challenges reporting violence as they have difficulties obtaining means to transport themselves (as well as any of their children) to obtain help.<sup>295</sup> Although these centers are located throughout the country, they are only open during daytime hours and provide limited services including information, legal consultations, or referrals. The centers do not have the capacity to provide temporary shelter to victims of violence as provided for under the Family Violence Law or representation in legal proceedings. Asylum seekers and refugees may access these services, but there are no reports of Afghan women in Tajikistan obtaining assistance through in-person visits to support centers or telephone calls to the hotline.

##### *1. Women's Resource Centers*

Support centers mandated under the Family Violence Law to provide victims with free medical, psychological, legal, and social support services include 18 OSCE-supported Women's Resource Centers throughout Tajikistan. In a three-month period in 2015, the Women's Resource Centers provided 1,094 people with psychological support, 1,079 people with legal advice, and 565 with vocational training, such as sewing, computer, and literacy courses.<sup>296</sup> The Centers do not collect data regarding the number of cases involving domestic violence, making it difficult to assess whether the Women's Resource Centers have contributed to the protection of women victims of domestic violence.

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<sup>295</sup> Interview with Alla Kuvatova, Indep. Expert, Exec. Dir., Women with Univer. Educ., Member, Coal. of Pub. Org. in Tajikistan from *De Jure Towards Equal. De Facto*, in Dushanbe, Taj. (Aug. 7, 2014).

<sup>296</sup> OSCE, *Gender equality and anti-trafficking are part of comprehensive security*, (July 21, 2015), <http://www.osce.org/tajikistan/166561>.



## 2. State-Run Consultation Centers

With the support of UN Women, CWFA has established 110 state-run Consultation Centers that provide information and counseling regarding domestic violence, including short-term legal and psychological assistance.<sup>297</sup> In the first three months of 2015, Consultation Centers received 2,684 complaints, 2,511 lodged by women and 173 by men.<sup>298</sup> Most complaints centered on property claims, alimony, division of property, or employment matters.<sup>299</sup> CWFA does not have data on the number of complaints involving violence or have information on whether abusers faced punishment, so it is not possible to determine whether Consultation Centers are operating as called for in the Family Violence Law and whether women receive protection. According to CWFA, the increase in complaints from women regarding family violence to the Consultation Centers is “noticeable” and “means that women are beginning to actively defend their rights.”<sup>300</sup> However, advocates express less optimism that women subject to or threatened with violence actively seek assistance and observe that the situation remains largely unchanged since enactment of the Family Violence Law with persistent high rates of domestic violence.<sup>301</sup>

## 3. Crisis Centers

According to CWFA, the state and NGOs run 33 Crisis Centers in Tajikistan that provide day-time legal, psycho-social, and medical assistance to domestic violence victims.<sup>302</sup> In general, Crisis Centers report receiving approximately 20-50 requests for assistance per month.<sup>303</sup> In 2012-2013, to illustrate, the Bovyary Crisis Center run by CWFA assisted 3,054 women and registered 1,714 complaints of domestic violence.<sup>304</sup>

Some Crisis Center lawyers provide more than just legal advice to women: they also represent them in legal proceedings, such as family law or property issues. However, they encounter difficulties. For example, employees at the Ghamkori Crisis Center acknowledge limitations on their ability to assist victims of severe violence where reconciliation is not possible and could further endanger a woman due to the lack of shelter options.<sup>305</sup> Although the law mandates temporary protection to victims of violence, in Kurgan-Tube, the conditions of the victim support unit are “not good,” “no one provides food,” and women can only stay for three

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<sup>297</sup> These centers are financed from the budget of the local executive bodies of state power.

<sup>298</sup> Interview with Marxabo Alimova, First Deputy, CWFA, in Dushanbe, Taj. (May 27, 2015).

<sup>299</sup> *Id.*

<sup>300</sup> *Id.*

<sup>301</sup> Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (see Appendix, Interviews with Government and NGO Representatives and Other Experts).

<sup>302</sup> Presentation of Marxabo Alimova, First Deputy, CWFA, CEDAW Nat’l Consultative Meeting, Dushanbe, Taj. (May 29, 2015).

<sup>303</sup> Rep. of Taj., Interim Report to CEDAW Comm. (Oct. 2015).

<sup>304</sup> Fifty-six percent of the cases during this time were therefore related to domestic violence. Rep. of Taj., Interim Report to CEDAW Comm. (Oct. 2015).

<sup>305</sup> Interview with Representatives, Ghamkori Crisis Ctr., in Kurgan-Tube, Taj. (May 27, 2015).

days.<sup>306</sup> Because the process of preparing a woman's case may take a long time, especially if a woman does not have a passport or identity documents, and there are limited shelter options, in some instances the Crisis Center lawyer has no choice but to send the woman home where she may face further violence.<sup>307</sup>

Recently, Crisis Centers in certain regions report a decrease in the number of women seeking assistance. Some have interpreted this decrease to indicate that the Family Violence Law is having a positive impact, particularly through awareness raising campaigns focused on prevention. These campaigns educate the public about the consequences for perpetrators of violence, such as criminal liability and economic consequences in the event of divorce and alimony.<sup>308</sup> However, experts surmise that the decrease has less to do with fewer incidents of violence, and more to do with underreporting due to, among other things, fear and lack of awareness or access to services (see section IV.A.). If anything, a representative from an international organization cautions that the decrease could be more appropriately interpreted as a "temporary effect"—as male migrants who have not been educated on the Law return to Tajikistan and their economic situation worsens, there could be a "burst" in the levels of violence.<sup>309</sup> The lack of a uniform database for tracking cases at Crisis Centers makes it difficult to evaluate violence prevention programs.<sup>310</sup>

#### 4. *Legal aid hotline*

To increase legal aid for vulnerable persons, including women, disabled people, and rural residents, the MOJ—in partnership with the development organization Helvetas Swiss Intercooperation—launched a legal aid hotline in December 2014. Anyone in Tajikistan may obtain free legal advice and legal aid referrals from trained operators regarding criminal, civil, and family law issues by dialing 3040 on their mobile phones.<sup>311</sup> According to statistics collected by Helvetas between December 2014 and February 2015, the hotline provided 858 phone consultations with 454 female and 404 male callers. More than half of the calls related to family law issues, and fewer than 100 people received referrals to consultation centers.<sup>312</sup> While it is possible that survivors have used the services, the hotline does not identify which cases involved domestic violence. Although the most number of calls were from Dushanbe, this number did not necessarily reflect that there was more need for legal advice in Dushanbe. Rather, power cuts and limited internet connection could have resulted in lower

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<sup>306</sup> *Id.*

<sup>307</sup> *Id.*

<sup>308</sup> Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (see Appendix, Interviews with Government and NGO Representatives and Other Experts).

<sup>309</sup> Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (see Appendix, Interviews with Government and NGO Representatives and Other Experts).

<sup>310</sup> Participant Comment, CEDAW Nat'l Consultative Meeting, in Dushanbe, Taj. (May 29, 2015).

<sup>311</sup> Interview with Representative, MOJ of the Rep. of Taj., in Dushanbe, Taj. (May 28, 2015).

<sup>312</sup> Other calls related to "human rights" (101), administrative law (93), and criminal law (16) issues; however, these terms are not defined. Helvetas, Access to Justice Protect Tajikistan PowerPoint Presentation (Apr. 2015); Interview with Representatives, Helvetas Swiss Intercooperation, in Dushanbe, Taj. (May 19, 2015).

numbers of calls from other regions, and significant challenges still remain in providing access to justice for rural residents.<sup>313</sup>

### *G. Insufficient inter-agency coordination and funding*

The Tajik government developed a State Program to Prevent Domestic Violence for 2014-2023 (State Program) and created an Action Plan to implement the State Program, intended as steps towards implementing the Family Violence Law.<sup>314</sup> The State Program attempts to: (1) strengthen the mechanisms for preventing domestic violence by (a) improving the practical application of the Family Violence Law, (b) changing public opinion on domestic violence, (c) raising literacy and awareness regarding domestic violence, and (d) coordinating state and NGOs on domestic violence; (2) combatting criminal acts related to domestic violence by (a) strengthening law enforcement authorities in prevention, detection, and elimination of domestic violence, and (b) establishing central information on crimes characterized as domestic violence; and (3) ensuring social and legal protection by (a) establishing aid centers and medical and social rehabilitation centers for victims of domestic violence, and (b) improving social support to victims and their families.<sup>315</sup> The State Program assigns relevant agencies goals and activities outlined in the Action Plan, which attempt to clarify each agency's responsibility for carrying out the Family Violence Law.<sup>316</sup>

Coordination between relevant ministries and agencies remains weak and implementation of the State Program and Action Plan is hampered by the lack of budget allocation for agencies to comply with their enumerated responsibilities.<sup>317</sup> Financing of the State Program is to "be carried out through funds provided by the state budget and other extra-budgetary resources."<sup>318</sup> However, the Ministry of Finance was not involved in the drafting of the Family Violence Law and the development of the State Program and Action Plan, and, in reality, the CWFA acknowledges that there is "no specific budget allocation" to implement the enumerated

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<sup>313</sup> Interview with Representatives, Helvetas Swiss Intercooperation, in Dushanbe, Taj. (May 19, 2015).

<sup>314</sup> STATE PROGRAM TO PREVENT DOMESTIC VIOLENCE, *supra* note 56, at 1. Laws relevant to preventing domestic violence include: the Constitution, the Family Violence Law, Law "About State Forecasts, Concepts, Strategies, and Programs for Socio-Economic Development," Law "On Parental Responsibility for Upbringing and Education of Children," Law "On Police," the Criminal Code, Code "On Administrative Offences," and the Family Code.

<sup>315</sup> STATE PROGRAM TO PREVENT DOMESTIC VIOLENCE, *supra* note 56, at 3:21.

<sup>316</sup> Interview with Representatives, GOPA Consultants, PDV Project, in Dushanbe, Taj. (July 31, 2014); Family Violence Law, Arts. 7-17. The following are agencies identified in the State Program as implementing agencies: the Supreme Court; the Council of Justice; the General Prosecutor's Office; the Statistics Agency under the President; Agency for Drug Control under the President; the Ministry of Justice; the Ministry of Internal Affairs; the Ministry of Education and Science; the Ministry of Economic Development and Trade; the Ministry of Labour, Migration and Employment; the Ministry of Health and Social Protection; the Ministry of Culture; the Women and Family Affairs Committee; the Youth, Sports and Tourism Committee; the Television and Radio Broadcasting Committee; the Committee on Religious Affairs, Regulation of National Traditions, Ceremonies, and Rituals; local state executive government authorities; and public organizations.

<sup>317</sup> Interview with Representative, MOJ of the Rep. of Taj., in Dushanbe, Taj. (May 28, 2015).

<sup>318</sup> STATE PROGRAM TO PREVENT DOMESTIC VIOLENCE, *supra* note 56, at ¶ 6:30; Action Plan of the State Program to Prevent Domestic Violence in the Republic of Tajikistan for 2014-2023.

activities.<sup>319</sup> After the Law's enactment and the creation of an inter-government working group to implement the Law and State Program, there still is no representative from the Ministry of Finance in the inter-governmental working group, which contributes to the deficiencies in ensuring adequate budget allocation for implementation.<sup>320</sup> Ministries and agencies charged with implementing the State Program work within the budgets allocated to them by the government, but do not receive specific budget allocations earmarked to implement the State Program activities.<sup>321</sup> To fill the state's funding gaps, the government and civil society organizations rely on the financial support of international organizations.<sup>322</sup>

Inter-governmental coordination and communication regarding the implementation of the Family Violence Law remains weak. For example, the MOI has not provided the MOJ and other ministries information on the number of registered family violence cases and courts have not provided information on the number of registered civil and criminal cases involving family violence.<sup>323</sup> A representative from the MOJ acknowledged that without an improved system for information-sharing and communication between the MOJ and other relevant agencies, such as the Office of the Prosecutor, the courts, and local authorities, progress will not occur.<sup>324</sup>

CWFA is the lead agency charged with coordinating agencies implementing the Family Violence Law and the State Program, and chairs the inter-ministerial working group on implementation.<sup>325</sup> Hierarchical government structure weakens CWFA's ability to coordinate institutions; as a "committee," CWFA has a lower status than a "ministry."<sup>326</sup> Thus, although CWFA is the lead coordinator, its power to direct ministries, including the MOI—which has a

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<sup>319</sup> Interview with Representatives, SDC, in Dushanbe, Taj. (May 26, 2015); Presentation of Marxabo Alimova, First Deputy, CWFA, CEDAW Nat'l Consultative Meeting, Dushanbe, Taj. (May 29, 2015); Interview with Representatives, State Women's Ctr., in Dushanbe, Taj. (May 28, 2015); Interview with Marxabo Alimova, First Deputy, CWFA, in Dushanbe, Taj. (May 27, 2015). Furthermore, a representative from UN Women observed that the Action Plan "looks beautiful on paper, but under the current budget there aren't funds and there isn't money to implement the program. In Tajikistan, there are some nice laws, but there is no budget." Interview with Malika Iskandari, Nat'l Prot. Coordinator, UN Women, in Dushanbe, Taj. (May 20, 2015).

<sup>320</sup> Presentation of Marxabo Alimova, First Deputy, CWFA, CEDAW Nat'l Consultative Meeting, Dushanbe, Taj. (May 29, 2015).

<sup>321</sup> *Id.*; Interview with Shakarbet Niyatbekov, Nat'l Program Officer, Rule of Law, SDC, in Dushanbe, Taj. (Aug. 4, 2014) (Without funding "it does not matter what the validity is of the language of the law because each ministry has its own funds and there is no implementation of the law. There is no coordination council and unit in the implementation of the law. This is the issue with many of the laws in Tajikistan.").

<sup>322</sup> Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 28, 2015) (*see* Appendix, Interviews with Government and NGO Representatives and Other Experts); Interview with Marxabo Alimova, First Deputy, CWFA, CEDAW Nat'l Consultative Meeting, Dushanbe, Taj. (May 29, 2015) (noting that international organizations and civil society organizations are interested in domestic violence issues and the government has been "able to find donors").

<sup>323</sup> Interview with Representative, MOJ of the Rep. of Taj., in Dushanbe, Taj. (May 28, 2015).

<sup>324</sup> *Id.*

<sup>325</sup> Interview with Marxabo Alimova, First Deputy, CWFA, in Dushanbe, Taj. (May 27, 2015).

<sup>326</sup> Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (*see* Appendix, Interviews with Government and NGO Representatives and Other Experts); Interview with Representatives, GOPA Consultants, PDV Project, in Dushanbe, Taj. (July 31, 2014); Interview with Zaitoona Naimova, Nat'l Gender Officer, OSCE, in Dushanbe, Taj. (June 16, 2014).

significant role in implementing the Law—is questioned.<sup>327</sup> Moreover, as a committee, CWFA has less staffing and resources than a ministry.<sup>328</sup> According to some advocates, placing a ministerial level agency as the lead coordinator—whether that means elevating CWFA or assigning the MOI or other ministry—would be more effective in fostering inter-agency cooperation and implementation of the Family Violence Law and State Program.

Beyond budget and coordination shortfalls, the vagueness of the State Program and accompanying Action Plan hampers progress. For example, the deadlines indicated for activities speak in general terms—“2014-2023” or “regularly”—setting few rollout dates or fixed deadlines for implementation of the goals.<sup>329</sup> As such, government actors lack any urgency or accountability for implementing their responsibilities. Furthermore, the Action Plan lists multiple agencies as responsible for certain activities, but provides no clarity as to each agency’s specific role. Progress stalls as one agency might believe another agency is taking the initiative and await further communication from the other agency before taking action.<sup>330</sup> A high-level representative at the Ministry of Health was unaware of her responsibility to monitor Victim Support Rooms until someone outside of the ministry showed her a directive indicating that she was the assigned monitor.<sup>331</sup>

#### *H. No clear and publicly available monitoring mechanisms*

The Family Violence Law does not contain any provisions regarding the monitoring of the Law’s implementation. However, the State Program and Action Plan, mandate that CWFA “and other actors in preventing violence in the family” monitor implementation of the State Program by evaluating certain indicators.<sup>332</sup> CWFA and the other unnamed agencies must collect statistics on: complaints related to domestic violence; centers created and specialized staff available to assist victims of violence; awareness raising activities, including programs, media, and printed materials designed to prevent domestic violence; terminated marriages; girls in secondary and higher education; women and children affected by domestic violence; and court decisions connected to domestic violence related offenses.<sup>333</sup> Every six months, ministries, agencies, and

<sup>327</sup> Interview with Representative, MOJ of the Rep. of Taj., in Dushanbe, Taj. (May 28, 2015); Interview with Alla Kuvatova, Indep. Expert, Exec. Dir., Women with Univ. Educ., Member, Coalition of Pub. Org. in Taj. from De Jure Towards Equal. De Facto, in Dushanbe, Taj. (Aug. 7, 2014).

<sup>328</sup> Interview with Alla Kuvatova, Indep. Expert, Exec. Dir., Women with Univ. Educ., Member, Coalition of Pub. Org. in Taj. from De Jure Towards Equal. De Facto, in Dushanbe, Taj. (Aug. 7, 2014).

<sup>329</sup> STATE PROGRAM TO PREVENT DOMESTIC VIOLENCE, *supra* note 56. Family Violence Law, Article 23 provides that “[f]unds for implementation of activities of the bodies preventing violence in the family are allocated from the state budget, individuals and legal entities and other sources that are not prohibited by the legislation of the Republic of Tajikistan,” but does not provide any guidelines or requirements for the budget.

<sup>330</sup> As one advocate observes, “When it becomes everyone’s business, it becomes no one’s business.” Interview with Shahribonu Shonasimova, Project Manager, Int’l Alert, in Dushanbe, Taj. (May. 21, 2015).

<sup>331</sup> Interview with Diana Ismailova, Indep. Expert, in Dushanbe, Taj. (May 26, 2015).

<sup>332</sup> STATE PROGRAM TO PREVENT DOMESTIC VIOLENCE, *supra* note 56. The Action Plan does not specify who the “other actors in preventing violence in the family” are, but the State Program’s monitoring provision discusses “concerned ministries and agencies, as well as local state executive government authorities.” STATE PROGRAM TO PREVENT DOMESTIC VIOLENCE, *supra* note 56, at ¶ 7:31.

<sup>333</sup> STATE PROGRAM TO PREVENT DOMESTIC VIOLENCE, *supra* note 56, at ¶ 8:33.

local state executive government authorities must submit reports on their implementation of the State Program to CWFA.<sup>334</sup> These reports have not been made publicly available, and CWFA has not released publically available data or any analysis of its findings.

The State Program also calls for the establishment of a “single information center on crimes characterized as domestic violence.”<sup>335</sup> However, a database of such information has yet to be made publicly available. The Agency on Statistics under the Office of the President maintains a website for reporting gender statistics, including rates of violence against women, but it does not contain the data called for under the State Program on domestic violence.

No government agencies or other organizations collect comprehensive and consistent statistics and information to monitor the implementation of the Family Violence Law. As such, it is not possible to monitor the extent to which various aspects of the Law are being applied to assess gaps in the law or bottlenecks for different types of women’s cases in any systematic way. Inconsistent recordkeeping on the part of agencies that interact with victims makes it impossible to know if the number of complaints have increased (or decreased) or the outcomes in the cases.<sup>336</sup>

## **V. Barriers to Prosecution of Domestic Violence Under the Criminal Code**

Under the current legislative framework, women victims of domestic violence can seek prosecution of abusers through the ordinary criminal justice system (see section III.B.2.). Legal aid organizations report that very few women are willing to pursue their cases through the formal judicial process due to skepticism regarding the judicial system’s ability to protect them, competing time demands, and case-related costs.<sup>337</sup> There are few female judges, making the judicial process even more intimidating for women living in a patriarchal society. Judicial hostility, ignorance of the law, and corruption further contribute to low prosecution rates of domestic violence cases.

### *A. Time and case costs*

Legal expenses, including transportation, legal fees, and other court costs prohibit many women in domestic violence situations who lack economic independence from filing criminal charges against their abuser. Legal aid providers also report that women have expressed concern about the court process being lengthy and time-consuming because they have household obligations and caretaking responsibilities that require their attention. For women with children, lack of childcare impedes their ability to meet with lawyers to prepare their case,

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<sup>334</sup> *Id.* at ¶ 7:31.

<sup>335</sup> *Id.* at ¶ 3:27.

<sup>336</sup> For example, Victim Support Rooms staff have not always recorded a woman’s visit if she does not stay in the room overnight. Even when women complain about domestic violence, inconsistent record-keeping practices reported by organizations assisting women reveal that not all complaints are recorded and the numbers could be much higher than indicated. Interview with Diana Ismailova, Indep. Expert, in Dushanbe, Taj. (May 26, 2015).

<sup>337</sup> A draft law on free legal aid is currently being discussed, but has not yet been enacted.

gather the requisite evidence, and complete the court process. According to the State Women's Center, women in Dushanbe who pursue domestic violence cases through the criminal justice system typically fit the following profile: they are educated with a university degree, have wealthy parents, and enjoy familial support.<sup>338</sup>

### *B. Hostile judiciary and ignorance of the law*

Patriarchal attitudes and discrimination against women (discussed in section II.) permeate the judicial sector and present barriers to prosecuting domestic violence cases under the Criminal Code. Judges blame women for the violence and fail to engage in objective, unbiased fact-finding before deciding a case.

Judges' lack of sensitivity towards women victims of violence presents a serious obstacle to prosecuting domestic violence cases within the criminal justice system. Since the Criminal Code does not codify domestic violence as a distinct crime, perpetrators of physical abuse can only be charged with crimes such as simple battery. This means no special mechanisms or procedures take into consideration the sensitivities that domestic violence cases involve. For example, Tajik law does not stipulate closed court proceedings for domestic violence cases taken to criminal court, further impeding women from pursuing criminal prosecution out of fear that community members will learn about their internal family problems.<sup>339</sup>

The Law does not call for creation of specialized courts for domestic violence cases, nor does it require that judges receive specialized training that sensitizes them to working with women victims of violence or traumatized persons. Some judges victim-blame and urge women to reconcile with their husbands, admonishing them by asking, for example: "Why is there a need to put your husband in jail? This will have a negative effect on your children and your family."<sup>340</sup> Judges have reportedly issued decisions finding that a woman was hurt because of the way she acted, in other words she invited the violence, without providing explanation of the legal rationale.<sup>341</sup> These outcomes reflect judges' preconceived notions about women and their role in society and the home, rather than application of objective legal principles to the facts.<sup>342</sup> Judges further revictimize women. In one case, a judge found two men guilty of raping a teenage girl. Despite the conviction, which was positive, the girl suffered extreme humiliation during the trial as a result of the judge's degrading, and baseless, comments about her being a sex worker.<sup>343</sup>

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<sup>338</sup> Interview with Representatives, State Women's Ctr., in Dushanbe, Taj. (May 28, 2015).

<sup>339</sup> Interview with Shuhrat Latifov, Program Coordinator, Tajikistan Network Women Living with HIV, in Dushanbe, Taj. (May 26, 2015).

<sup>340</sup> Interview with Larisa Aleksandrova, Indep. Expert, in Dushanbe, Taj. (Aug. 14, 2014).

<sup>341</sup> *Id.*

<sup>342</sup> Advocates have observed that in some SGBV cases, "the judges were not using legal norms, but their own thoughts in making decisions." Interview with Diana Ismailova, Nat'l Program Assoc., UNFPA, in Dushanbe, Taj. (July 31, 2014).

<sup>343</sup> *Id.*

### C. Corruption and lack of independence

The lack of an independent judiciary is one of the greatest challenges lawyers face in representing women who pursue cases in the criminal justice system.<sup>344</sup> Judges are appointed by the Office of the President and often money plays a role in the appointment.<sup>345</sup> The poorly performing economy fuels corruption, including bribery, which is rampant in Tajikistan.<sup>346</sup> Because high levels of corruption plague the judicial system, a judge's decision will not always be based on the testimony and evidence presented in the case.<sup>347</sup>

Accepting bribes is common among police, prosecutors, and judges whose salaries are reportedly low.<sup>348</sup> Lawyers and representatives from civil society and international organizations widely acknowledge judicial corruption as pervasive in Tajikistan and observe that, unless one is politically well-connected or wealthy, corruption remains a challenge to obtaining a favorable decision. Women lack access to justice because they do not have the money, or desire, to pay bribes and therefore the police or judge may refuse to pursue their case.<sup>349</sup>

"Judges take bribes. This is endemic in society because everyone takes bribes. In the courts, at the high level, a couple thousand dollars may solve a case and the person is found not-guilty."

- Anonymous representative of an international organization<sup>350</sup>

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<sup>344</sup> Interview with Representatives, Right & Prosperity, in Dushanbe, Taj. (Aug. 12, 2014).

<sup>345</sup> Interview with Representatives, Right & Prosperity, in Dushanbe, Taj. (Aug. 4, 2014).

<sup>346</sup> Freedom House, *Freedom in the World 2015 Report – Tajikistan*, <https://freedomhouse.org/report/freedom-world/2015/tajikistan>; see also Transparency International, *Overview of Corruption and Anti-Corruption in Tajikistan* (Jan. 7 2013), [http://www.transparency.org/whatwedo/answer/overview\\_of\\_corruption\\_in\\_tajikistan](http://www.transparency.org/whatwedo/answer/overview_of_corruption_in_tajikistan). Transparency International's 2014 Corruption Perception Index ranks Tajikistan 152 out of 175 countries and territories surveyed with a rank of one being the least corrupt and 175 the most corrupt; Sofia Wickberg, *Overview of corruption and anti-corruption in Tajikistan*, U4 ANTI-CORRUPTION RESOURCE CENTRE, CMI, Bergen, Norway (Jan. 4, 2013), <http://r4d.dfid.gov.uk/Output/196824/> (observing that the World Bank's Worldwide Governance Indicators places Tajikistan in the lowest tenth of the percentile ranks, with a score of nine, on a scale of zero to 100, in terms of control of corruption, which can be explained by instability in the country combined with damaging effects of the economic crisis that adversely affected the country).

<sup>347</sup> Interview with Representatives, ABA ROLI, in Dushanbe, Taj. (May 19, 2015).

<sup>348</sup> *Country Reports on Human Rights*, *supra* note 57.

<sup>349</sup> Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (Aug. 2014) (see Appendix, Interviews with Government and NGO Representatives and Other Experts); Meeting with Interview with Oinihol Bobanarzarova, Chairman of the Board, Perspective Plus, in Dushanbe, Taj. (May 15, 2015) (see Appendix, Interviews with Government and NGO Representatives and Other Experts).

<sup>350</sup> Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (Aug. 2014).



Beyond bribery, government officials frequently apply political pressure to influence judicial decisions, and judges who go against the grain risk losing their jobs.<sup>351</sup> For example, one female judge decided a criminal case without consulting her colleagues and superiors. Despite providing a reasoned justification for her decision, she was falsely accused of receiving a bribe to influence her decision and a criminal case was filed against her.<sup>352</sup> Although the criminal case against her was eventually closed, the judge was forced into retirement.<sup>353</sup>

#### *D. Cumbersome evidentiary requirements*

Even when a woman has sustained physical injuries, evidentiary requirements for documenting injuries are reportedly cumbersome, making proof difficult to obtain and preventing women from pressing charges against their abusers (see section IV for additional barriers to criminal prosecution).<sup>354</sup> For example, government forensics offices often will not examine a woman to document her injuries unless she first obtains a court order, but the physical evidence of a woman's injuries may have healed by the time she obtains the order and receives an examination.<sup>355</sup> Additionally, medical exams and medical certificates are only available during limited hours. If a woman is accompanied by a lawyer from an organization with a good relationship with the forensics office, she may be able obtain a timely exam, even if the forensics office is closed over the weekend.<sup>356</sup> However, women without lawyers may not have such access to justice for crimes committed against her.

#### *E. Additional obstacles facing Afghan women in Tajikistan*

Afghan women asylum seekers and refugees in Tajikistan face additional restrictions on their access to justice. A major obstacle to pursuing cases through the criminal justice system as well as civil remedies such as divorce, child support, and alimony is the lack of documentation among Afghan women (discussed in section II.F.4. *supra* and Chapter 1, section II.C.6.).<sup>357</sup> Without independent identity documents, women remain reliant on male family members to access basic services and risk being fined or deported if Tajik authorities discover they are without status in Tajikistan. If an Afghan woman living in Tajikistan lacks identity documents, she must go to the Afghan embassy with her husband or male family member so that he may give permission for her to obtain her own passport.<sup>358</sup> For women in domestic violence situations, requesting permission from her husband or other male family members to obtain a

<sup>351</sup> *Country Reports on Human Rights, supra* note 57; Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015).

<sup>352</sup> Interview with Larisa Aleksandrova, Indep. Expert, in Dushanbe, Taj. (Aug. 14, 2014).

<sup>353</sup> *Id.*

<sup>354</sup> Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (see Appendix, Interviews with Government and NGO Representatives and Other Experts).

<sup>355</sup> Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (see Appendix, Interviews with Government and NGO Representatives and Other Experts).

<sup>356</sup> Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (see Appendix, Interviews with Government and NGO Representatives and Other Experts).

<sup>357</sup> *Lives in limbo, supra* note 49, at 31-32.

<sup>358</sup> Meeting with Najiba Shirinbekova, Director, Right & Prosperity, in Dushanbe, Taj. (Apr. 29, 2014).

separate passport is nearly impossible and may exacerbate the violence. Moreover, requesting assistance from the embassy presents another challenge for asylum seekers who, by definition, cannot avail themselves of the protection of the Afghan government, including the embassy.<sup>359</sup> There are no reported cases of abused Afghan refugee women in Tajikistan who have successfully obtained their own passport and no reported cases of Afghan women seeking judicial remedies for domestic violence.<sup>360</sup>

#### **IV. Conclusion**

Since the enactment of the Family Violence Law in Tajikistan in 2013, some modest efforts have been made to create programs to prevent domestic violence, including awareness raising campaigns on the Law, establishment of gender-sensitive police units, and expansion of the number of support centers. Although the Tajik government recognizes that violence against women is rooted in deeply entrenched patriarchal views and traditional norms, greater efforts must be taken to overcome these norms and ensure the protection of women's rights. Lacking a clear definition of the term "family," the Law omits from protection women who face violence in non-registered marriages or from in-laws or former spouses, and presents additional challenges for displaced Afghan women who lack documentation and whose marriages may not be recognized under Tajik law. The wording in certain provisions of the Law is unclear, leaving legal advocates confused as to their meaning and questioning whether certain aspects of the Law, such as protection orders, serve to protect the aggressor rather than the victim of violence. An absence of clear instructions and procedures on mechanisms contained in the Law, such as the victim's registration of complaints, the use of protection orders, and how to seek administrative liability against an aggressor, has impeded implementation of the Law and diminished its effectiveness to prevent and protect women from violence. Furthermore, without adequate budget allocation to create more temporary and long-term shelters to meet the high numbers of women needing safe accommodation, women often have no choice but to return to the violent situations they seek to flee. Afghan asylum seeker and refugee women in Tajikistan face even greater vulnerabilities than Tajik women in accessing medical, legal, and social services to protect them from violence.

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<sup>359</sup> *Id.*

<sup>360</sup> *Id.*

# Recommendations

The Center for Gender and Refugee Studies (CGRS) at the University of California Hastings College of the Law developed these recommendations in coordination and collaboration with the Danish Refugee Council (DRC), and local partners Women for Afghan Women in Afghanistan and Right and Prosperity in Tajikistan. They flow from research conducted by CGRS on violence against women, with a focus on displaced and refugee women, in Afghanistan and Tajikistan in 2014 and 2015, including: interviews with representatives of government and civil society organizations as well as other independent experts; documents and statistics produced and compiled by governmental and inter-governmental organizations as well as civil society organizations and research centers; recommendations made by international human rights institutions and other stakeholders; and existing national and international norms and laws.<sup>1</sup>

In particular, the recommendations focus on strategies for improving implementation of Afghanistan's 2009 End Violence Against Women Law (EVAW Law) and Tajikistan's 2013 Law on the Prevention of Family Violence (Family Violence Law) and for addressing the shortcomings of these laws as written for preventing and punishing domestic violence and other sexual and gender-based violence (SGBV) against women.

The United Nations Trust Fund to End Violence Against Women supported this initiative as part of a two-year project, *Women's Empowerment in Afghanistan and Tajikistan for Displaced Persons through Legal Aid and Training to Combat Violence against Women*.<sup>2</sup>

## I. Recommendations for Afghanistan

- A. To the Afghan Government
- B. To Civil Society Organizations in Afghanistan
- C. To International Organizations and Donors

## II. Recommendations for Tajikistan

- A. To the Tajik Government
- B. To Civil Society Organizations in Tajikistan
- C. To International Organizations and Donors
- D. To the United Nations High Commissioner for Refugees (UNHCR)

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<sup>1</sup> The term "civil society" is used here to refer to non-governmental organizations and may be used interchangeably with the term "public organization," which is commonly used for such organizations in Tajikistan.

<sup>2</sup> For more information regarding the project and the full report and findings associated with these recommendations, please visit <http://cgrs.uchastings.edu/Breaking-Barriers>.

## I. Recommendations for Afghanistan

### A. To the Afghan Government

#### *Inter-Institutional Coordination*

1. Ensure delineation of clear responsibilities, cooperation, and accountability between agencies responsible for implementation of the EVAW Law including, among others, the Ministry of Women Affairs (MoWA), Ministry of Social Affairs (MoSA), Ministry of Justice (MoJ), Ministry of Interior (Mol), Ministry of Public Health (MoPH), and Ministry of Refugees and Repatriation (MoRR).

#### *Expansion of Coverage of Legal Protections and Clarification of State Obligations*

2. Develop and provide instructions to state institutions responsible for implementing the EVAW Law, clarifying appropriate identification of cases requiring criminal prosecution.
3. Develop and implement guidelines or regulations for determining the limited circumstances in which mediation of cases of violence against women may be appropriate and include provisions to ensure enforcement of settlements and follow-up mechanisms to monitor enforcement.
4. Amend the EVAW Law to include civil remedies such as protection orders for women facing violence and provisions that address the custody of children, right to maintenance, and property rights.
5. Amend the EVAW Law to include honor killings and otherwise ensure that perpetrators of honor killings are not granted legal concessions.
6. Amend the EVAW Law to allow prosecution to go forward for a crime recognized under the EVAW Law even if the victim does not or is unable to file a complaint, for example, in cases of honor killing, self-immolation, or induced suicide.
7. Eliminate the requirement derived from Article 44 of the Criminal Procedure Code that the Attorney General's Office, court, or other relevant office must issue a letter to refer women to medical forensics and ensure that women victims of violence have immediate access to obtain medical forensics examinations to document injuries related to violence and access to appropriate treatment.
8. Amend family and criminal laws that discriminate against women, in line with recommendations of the UN Special Rapporteur on violence against women, its causes and consequences, to: (1) ensure the obligation to register all marriages and divorces; (2) establish criminal liability for all parties involved in the organization of child and forced marriage; (3) incorporate clearly defined gender-specific offenses into the Penal Code, including rape, and specify that they should be treated with the same degree of gravity as gender-neutral crimes; (4) prohibit degrading practices, including virginity testing; and (5) eliminate the use of "moral" crimes as a pretext for prosecuting women, in particular those related to *zina*.
9. Secure parliamentary approval of the EVAW Law.

10. Include enhanced protection mechanisms against violence for internally displaced and other vulnerable women and girls in the National Policy on Internally Displaced Persons (IDP Policy).

*Training and Creation of Specialized Units and Personnel*

11. Recruit women to institutions responsible for enforcement and implementation of the EAW Law, including the Afghan National Police (ANP), Attorney General's Office, and Family Response Unit (FRU), to increase female staff in offices where women report violence, and ensure women police officers have appropriate changing and bathroom facilities and are treated equally as male officers with effective complaint mechanisms to report incidents of harassment.
12. Train personnel in the police and Attorney General's Office to fully investigate and assess moral crimes brought against women.
13. Train judges, prosecutors, police, and legal and medical services providers on the EAW Law and its application and on gender-sensitivity and working with survivors of trauma.
14. Train personnel in all relevant government offices—including the police, *huquq*, MoWA, MoSA, Mol, MoJ, MoPH, and Attorney General's Office—to identify IDP, returnee, and other vulnerable women and girls who are at heightened risk of abuse and exploitation for violence and to develop referral networks for medical, psycho-social, and legal services.
15. Create specialized EAW prosecution units within the Attorney General's Office in all provinces by amending relevant legislation, including the EAW Law, and ensuring sufficient budget allocation.
16. Create specialized EAW courts for adjudication of cases related to violence against women by amending relevant legislation, including the EAW Law.

*Awareness and Prevention of SGBV, Promotion of Gender Equality, and Comprehensive Services for Survivors*

17. Promote nationwide awareness raising campaigns on the EAW Law with a focus on men and the general community, in particular in rural areas, mosques, schools, and hospitals on: (1) women's rights and gender equality; (2) women's right to be free from violence under domestic, Islamic, and international law and how the laws do not conflict; (3) criminal nature of acts of violence against women; and (4) protections available to women under the EAW Law and complaint procedures.
18. Expand access to free legal aid for women victims of violence, in particular in rural areas.
19. Establish at least one women's shelter in each province that has: (1) adequate bed space to accommodate the numbers of women and children facing violence; (2) appropriate legal, medical, psychosocial, and vocational services; and (3) long-term solutions for women who cannot return to their homes. Create public awareness campaigns to disseminate information so women and girls understand how to access available services.
20. Ensure that women, especially displaced, returnee, and other vulnerable populations, have opportunities for education and vocational training and involve displaced, returnee, and other vulnerable women in the development of violence prevention programs.

21. Ensure women human rights defenders receive adequate protection from security threats.
22. Increase the number of women at all levels of Afghanistan's legislative, judicial, and law enforcement institutions, including nominating women to the Supreme Court.

*Data Collection and Monitoring Compliance*

23. Ensure that police, prosecutors, judges, and other relevant authorities investigate and prosecute acts of violence against women criminalized under the EAW Law and related Afghan laws and provide a mechanism to sanction public officials who do not comply with their obligations.
24. Implement effective monitoring mechanisms to assess the number of cases of violence against women reported, investigated, and prosecuted through the judicial process, as well as gather data on cases resolved outside the judicial process by collecting information from legal aid organizations and other community leaders as well as MoWA, *huquq*, police, and other offices.
25. Adopt implementation mechanisms for the IDP Policy that details concrete steps, specifies indicators to measure progress, and requires annual reports with data on displaced women and girls.
26. Include gender mainstreaming into assessments and response strategies for displaced and vulnerable women and girls living in both formal and informal settlements.
27. Improve existing methods for data collection of cases involving the EAW Law, including: (1) adding the ability to record cases electronically; (2) providing support to provinces where data collection has been particularly difficult; and (3) expanding the database fields to capture the full process of an EAW case from initial registration to final result.

*Provision of Adequate Budget*

28. Prioritize state budget allocation to all government agencies charged with implementing the EAW Law to effectively realize their mandates under the Law and implement recommendations set forth here.

**B. To Civil Society Organizations in Afghanistan**

*Collaboration with Government*

29. Engage in a multi-sectoral approach with the Afghan government and international organizations to end violence against women, including promoting the understanding of women's right to be free from violence under domestic, Islamic, and international law and how the laws do not conflict.
30. Collaborate with prosecutors to ensure relevant provisions of the EAW Law and the Penal Code are used as the basis for prosecution, indictment, and adjudication of cases involving violence against women.

### *Advocacy Priorities*

31. Collaborate with international non-governmental organizations on advocacy efforts and awareness raising in mosques, communities, schools, and hospitals regarding women's rights under the EVAW Law, what conduct is criminalized under the EVAW Law, protections available to women under the EVAW Law, and the complaint filing process, including: (1) engaging women and girls in developing programs to eliminate violence against women; and (2) involving religious and community leaders in awareness raising around the EVAW Law, including training community elders, *shuras* (local women committees), and religious leaders on national and international legal protections for Afghan women so they can serve as a resource to women experiencing violence.
32. Continue advocating for the EVAW Law to exist as a separate law not to be integrated into the Penal Code and for the National Assembly to pass the EVAW Law.

### *Training and Comprehensive Services for Survivors*

33. Work with international organizations, donors, and the Afghan government to adopt a survivor-centered approach to increasing access to legal, medical, psychological, educational, and vocational services for women facing violence.
34. Increase the number of mobile clinics, particularly to rural areas, to provide greater access to services for women.
35. Work to develop mediation processes and procedures that take a survivor-centered approach, including referencing the EVAW Law in family law cases and mediation agreements to highlight any relevant violations, protections for women, and consequences for perpetrators under the EVAW Law.
36. Establish and strengthen existing *shuras* in urban and rural areas by training them on the EVAW Law and access to justice mechanisms for women, including advocating for the *shuras* to be registered with MoWA and MoJ, which will be responsible for monitoring their progress and issuing regulations on the registration of *shuras*.
37. Train personnel in civil society organizations, including the Afghan Women's Network to identify IDP, returnee, and other vulnerable women and girls who are at heightened risk of abuse and exploitation for violence and to develop referral networks for medical, psycho-social, and legal services.

## **C. To International Organizations and Donors**

### *Funding Priorities*

38. Continue providing technical expertise and funding to projects to protect women in Afghanistan from violence that are rooted in community-based solutions and perspectives.
39. Work with the Afghan government and civil society organizations to increase access—including by providing funding—to shelters, family guidance centers, and legal, medical, psychological, education, and vocational services for women facing violence.

40. Urge the Afghan government to increase the number of women in legislative, judicial, and law enforcement positions.

*Advocacy Priorities*

41. Engage in a multi-sectoral approach with the Afghan government and civil society organizations, including religious institutions and other community leaders, to end violence against women by raising awareness of the EVAW Law and women's right to be free from violence under domestic, Islamic, and international law.
42. Work with civil society organizations on advocacy efforts with the Afghan government and parliamentarians to urge the National Assembly to pass the EVAW Law.

*Trainings, SGBV Prevention, and Comprehensive Services for Survivors*

43. Establish a network of organizations working with survivors of trauma to identify best practices and challenges facing women survivors of violence.
44. Work with civil society organizations to increase the number of mobile clinics, particularly in rural areas, to provide greater access to services for women.
45. Conduct trainings to build the capacity of legal and social services providers on the following: (1) working with survivors of trauma; (2) the EVAW Law and process; (3) mediation; (4) identification of IDP, returnee, and other vulnerable women and girls who are at heightened risk for abuse and exploitation for violence; and (5) development of referral networks for medical, psycho-social, and legal services.

*Monitoring Compliance*

46. Monitor the Afghan government's compliance with international human rights treaties relevant to women's rights to be free from violence, including recommendations from the Committee on the Elimination of Discrimination Against Women (CEDAW).
47. Condition aid to the Afghan government on measured progress on women's rights by creating benchmarks for projects and tie on-going funding to achievement of indicated benchmarks during the life of the project.



## II. Recommendations for Tajikistan

### A. To the Tajik Government

#### *Inter-Governmental Coordination*

1. Increase information sharing and communication between the relevant government agencies by ensuring the Inter-Agency Steering Committee schedules regular meetings to provide updates on the progress of carrying out the State Program on Prevention of Domestic Violence and the recommendations made by the CEDAW Committee.
2. Include a representative from the Ministry of Finance in the inter-ministerial working group on the implementation of the Family Violence Law to discuss budget allocation for implementation of the Family Violence Law and the State Program and National Action Plan on Prevention of Domestic Violence.

#### *Expansion of Coverage of Legal Protections and Clarification of State Obligations*

3. Issue regulations and clear instructions for responsibilities of each government agency involved in implementing the Family Violence Law and the State Program on Prevention of Domestic Violence.
4. Amend existing legislation to include a definition of “family” that protects women in unregistered and polygamous marriages and also includes other relationships such as other members of a household (e.g., in-laws and immediate and extended family members), one’s nuclear family, blood relatives, and former family members (e.g., former husband).
5. Introduce comprehensive legislation to protect women survivors of violence, including those in unregistered and polygamous marriages, and in matters regulating the custody of children, right to maintenance, and property rights.
6. Develop a unified anti-discrimination plan for vulnerable populations, including asylum seekers, refugees, stateless persons, disabled individuals, and persons with HIV/AIDS to protect economic, social, and cultural rights in compliance with international human rights norms and standards to prevent stigmatization of these populations.

#### *Improvement of Availability and Effectiveness of Protection Orders*

7. Amend and clarify provisions of the Family Violence Law related to protection orders, including: (1) issue clear instructions on the definition and purpose of protection orders; (2) adopt a standard form for protection orders; (3) clarify the process for obtaining protection orders, including whether someone other than the victim may assist the victim in obtaining a protection order and where to obtain a protection order; (4) designate the entities with authority to issue protection orders by providing law enforcement the authority to issue emergency protection orders and placing authority for issuing longer term protection orders with judicial rather than law enforcement authorities; (5) clarify the elements and factors considered for determining whether the issuance of a protection order is warranted;

- (6) provide authority to judicial authorities to extend protection orders; and (7) allow designated authorities to include no-contact provisions in protection orders—which restrict an abuser’s access to the victim, shared home, family members, and property—as well as order counseling for abusers, such as anger management or substance abuse programs.
8. Establish clear procedures for receiving complaints in the event aggressors violate the terms of protection orders, steps for enforcing the orders, and applicable fines and/or penalties for violating a protection order.
9. Train police and relevant authorities on the use of protection orders.
10. Train legal advocates how to assist clients with obtaining protection orders.
11. Require police to inform victims of available protective measures.

*Training, SGBV Awareness and Prevention, and Comprehensive Services for Survivors*

12. Develop long-term, holistic solutions for women survivors of violence to rehabilitate and become self-reliant, including activities—within the shelter system and outside of shelters—focused on psychological rehabilitation, economic independence, and empowerment such as education, vocational training, and small business and employment opportunities.
13. Broaden the availability and access of free legal aid to survivors of violence in rural and under-served areas, including conducting outreach through mobile legal clinics or other means.
14. Coordinate with relevant governmental and civil society organizations to provide a 24-hour emergency domestic violence hotline operated by the Ministry of Justice and train hotline workers to assist callers facing emergency situations.
15. Provide immediate access to healthcare and develop the capacity for psychological and mental health support services to women victims of violence, including recruitment of professionals, training, and provision of services.
16. Collaborate with civil society and international organizations to train legal and social services providers working with trauma survivors on: confidentiality and legal ethics; identifying victims of SGBV and understanding their vulnerabilities; and domestic and international legislation related to violence against women.
17. Develop a comprehensive training program for advocates on mediation of domestic violence cases that incorporates best practices for ensuring the safety, security, and best interests of the victim.
18. Develop a comprehensive referral network for legal, medical, psycho-social, and vocational services.
19. Provide support for the Committee on Women and Family Affairs (CWFA) to work with civil society and international organizations on awareness-raising campaigns, including: (1) know your rights presentations for women on the Family Violence Law and women’s rights; (2) education of youth in primary and secondary school on women’s rights; (3) education of men and other family members including in-laws on the Family Violence Law and women’s rights; (4) public programs on prevention of violence through radio, television, newspapers, and other media; and (5) awareness on HIV/AIDS and prevention.
20. Continue trainings of religious leaders and develop materials on violence against women with theologians and experts on Islamic law.

21. Work with the media on responsible reporting and the breaking down of gender stereotypes.
22. Work with *hukumats* to fund additional shelters and other service centers for women.
23. Establish rehabilitation centers for abusers.
24. Increase the capacity to achieve long-term sustainability of legal aid and social services for women survivors of violence without international donor support.

#### *Training and Creation of Specialized Units and Personnel*

25. Increase staffing of CWFA, especially at the *hukumat* level, and build capacity of staff to effectively implement the Family Violence Law.
26. Train healthcare workers staffing Crisis Centers and Victim Support Units on: (1) the Family Violence Law; (2) gender-sensitivity and special needs of female victims of violence; and (3) referrals to legal aid organizations and law enforcement as necessary.
27. Increase recruitment and training of female police officers, prosecutors, and judges and conduct gender-sensitivity trainings on the Family Violence Law and special needs of women victims of violence as well as ensure female officers are treated equally and with dignity and respect by their male colleagues.
28. Require introductory and ongoing professional training of all police officers to include sessions on violence against women, such as training on responding to and processing complaints of violence against women and issuance of protection orders.
29. Create additional gender-sensitive police units nationwide with designated female specialists dedicated to providing support to women victims of violence.
30. Establish a forensics unit independent from law enforcement.
31. Establish specialized courts to hear cases involving domestic violence.

#### *Data Collection and Monitoring Compliance*

32. Ensure the Inter-Agency Steering Committee on Implementation of the Family Violence Law sets benchmarks to assess progress, including a centralized database to track statistics and outcomes.
33. Monitor the progress of the State Program on the Prevention of Domestic Violence and Action Plan and the implementation of the Family Violence Law through: (1) creating a centralized database that collects comprehensive statistics including the indicators enumerated in the State Program ¶ 7; the number of cases registered at relevant government offices and Crisis Centers, national Consultation Centers, Victim Support Units, Women's Resource Centers, gender-sensitive police units, shelters, and the hotline; information on the number, type, and outcome of crimes of violence committed against women, including profiles of and relationship between perpetrators and victims; number of protection orders requested and issued for domestic violence cases; and suicide rates; (2) requiring all agencies implementing the Family Violence Law to cooperate with the Tajik National Statistical Agency to provide updated information on gender data to the public; and (3) consulting with relevant international and civil society organizations.

34. Coordinate with Helvetas Swiss Intercooperation and other governmental and non-governmental implementing partners to track statistics on domestic violence cases reported to the 3040 hotline and the legal aid centers.
35. Conduct assessments of the medical, psychological, and social needs of women in domestic violence situations and identify gaps in services through the monitoring of national Consultations Centers, Crisis Centers, Women's Resource Centers, and Victim Support Units.
36. Monitor the effectiveness of protection orders by collecting comprehensive data and statistics from across the country on requests for protection orders, the circumstances under which protection orders are issued, the length of time specified by the orders, the measures stipulated by the orders, violations of the protection orders and any follow up measures or recorded violence.
37. Collaborate with civil society organizations and international organizations working on violence against women issues to increase transparency.

*Provision of Adequate Budget*

38. Prioritize state budget allocation to all government agencies charged with implementing the Family Violence Law and activities in the State Program on the Prevention of Domestic Violence and Action Plan to effectively realize their mandates under the laws and programs and implement recommendations set forth here.
39. Earmark administrative fines collected from violations of the Family Violence Law for a victim support fund to assist victims of violence.

*Criminalization of Domestic Violence*

40. Amend the Tajik criminal code to criminalize domestic violence in Tajik legislation, including the ability to prosecute violators of the Family Violence Law.
41. Ensure perpetrators of violence against women are held accountable and punished appropriately by: (1) collecting best practices from other countries on the implementation of laws that prevent, protect, and criminalize violence against women; (2) strengthening the capacity of the criminal justice system to protect women from violence by increasing training of police, prosecutors, and judges on gender-sensitivity and the Family Violence Law; and (3) taking measures to achieve judicial independence.
42. Eliminate requirements for medical and police report documentation for the prosecution in domestic violence cases and ensure cases of physical and sexual violence are prosecuted even when medical certificates are absent or do not have indicators of physical violence.

## **B. To Civil Society Organizations in Tajikistan**

### *Government and Inter-Agency Collaboration*

43. Continue working with the Tajik government and international organizations to train police, judges, prosecutors, and religious leaders.
44. Collaborate and engage in information-sharing with other civil society organizations to pool resources available to support women survivors of violence.
45. Partner with other civil society organizations to apply together for grants from international donors, explaining how each public organization partner adds value to the goal of providing protection to and advocating on behalf of women survivors of violence.

### *Advocacy Priorities*

46. Urge parliamentarians and the Tajik government to amend the Family Violence Law and/or Tajik Family Code to provide an expansive definition for the term “family” that includes women in de facto polygamous relationships, unregistered marriages, members of a household, one’s nuclear family, blood relatives, in-laws, and other parties that may be deemed family.
47. Advocate for clear instructions and use of protection orders to protect victims of violence in accordance with the Family Violence Law.
48. Urge the Office of the President, Parliament, Ministry of Justice, Ministry of Interior, and General Prosecutor’s Office to amend the Criminal Code to make domestic violence a crime and require enhanced penalties for crimes involving domestic violence.
49. Advocate that the Ministry of Labour, Migration and Employment of Population, including the State Agency on Social Protection, Employment and Migration, ensure that women victims be examined by forensics immediately so that injuries can be timely and properly documented.

### *Training, SGBV Awareness, and Comprehensive Services for Survivors*

50. Increase the capacity of mobile legal clinics to bring services to rural, displaced, and disadvantaged women, including women asylum seekers and refugees, as a target group in projects involving national Consultation Centers, Crisis Centers, Victim Support Units, Women’s Resource Centers, shelters, and legal aid centers.
51. Raise awareness relating to women’s rights and violence against women issues by involving men as well as asylum seekers, refugees, stateless, disabled, and other vulnerable populations in trainings and awareness raising activities.

## **C. To International Organizations and Donors**

### *Funding Priorities*

52. Continue providing financial resources and technical expertise required to implement the Family Violence Law.
53. Prioritize funding for shelters to house women victims of violence.
54. Include women asylum seekers and refugees as a beneficiary group in projects involving crisis centers, shelters, and legal aid centers.
55. Encourage civil society organizations to partner for grant applications to assist women survivors of violence.

### *Advocacy Priorities*

56. Work with civil society organizations in advocacy efforts urging the government to: (1) expansively define the term “family;” (2) criminalize domestic violence; and (3) clarify the purpose, process, and use of protection orders.
57. Advocate for clear instructions for the use of protection orders to protect victims of violence in accordance with the Family Violence Law, collect best practices for the use of protection orders, and train legal advocates on how to help clients with obtaining protection orders.
58. Advocate with UNHCR to urge the Tajik government to comply with international law and provide equal access to courts for all refugees.

### *Trainings, SGBV Prevention, and Comprehensive Services for Survivors*

59. Work with civil society organizations on awareness campaigns to increase knowledge of the Family Violence Law and involve the male population in combatting domestic violence.
60. Work with legal aid organizations to understand how to use the Family Violence Law in court and to effectively incorporate it into mediation agreements between parties.
61. Work with civil society organizations to develop the capacity for mobile legal clinics to bring services to rural, refugees, and disadvantaged women.
62. Continue working with the Tajik government and international organizations to train police, judges, prosecutors, and religious leaders.
63. Expand One Stop Shop Programs, as piloted by UN Women, to include domestic violence as well as increase the capacity of such programs, particularly in rural areas and communities where asylum seekers and refugees reside.

**D. To the United Nations High Commissioner for Refugees**

64. Urge the Tajik government to comply with international law and provide equal access to courts for both “mandate refugees” determined by UNHCR and “Convention refugees” determined by the Refugee Coordination Unit.
65. Urge the government to repeal or amend Resolutions 325 and 328 which violate international refugee law by placing residential restrictions on asylum seekers and refugees, and to ensure freedom of movement.
66. Continue to raise awareness among asylum seekers and refugees regarding women's rights and violence against women issues.





# Appendix

**Center for Gender & Refugee Studies  
University of California Hastings College of the Law**

**Interviews with Government and NGO Representatives and Other Experts**

**By Agency or Organization**

American Bar Association Rule of Law Initiative  
Coalition of Public Organizations in Tajikistan from De Jure Towards Equality De Facto  
Committee on Religious Affairs of the Republic of Tajikistan  
Committee on Women and Family Affairs of the Republic of Tajikistan  
Danish Refugee Council, Afghanistan and Tajikistan  
Ghamkhori Crisis Center  
GOPA Consultants, Prevention of Domestic Violence Project  
Helvetas Swiss Intercooperation  
Human Rights Center  
International Alert  
League of Women Lawyers  
Ministry of Justice of the Republic of Tajikistan  
Nishod  
Organization for Security and Co-operation in Europe  
Perspective Plus  
Refugees, Children, and Vulnerable Citizens  
Right and Prosperity  
Spin Plus  
State Women's Center, Dushanbe  
Swiss Agency for Development and Cooperation  
Tajik National University  
Tajikistan Network of Women Living with HIV  
UN Women  
United Nations High Commissioner for Refugees  
United Nations Office of the High Commissioner for Human Rights  
United Nations Population Fund  
U.S. Department of State International Narcotics and Law Enforcement Affairs Bureau  
Women for Afghan Women  
Women with University Education  
Other Anonymous/Independent Experts

## By Individual\*

*Abdulloeva, Nodina*. Labor Migration Program Coordinator, Human Rights Center, Dushanbe, Tajikistan (August 8, 2014).

*Ahmad, Naqib*. Independent Expert, Kabul, Afghanistan (January 8, 2015).\*

*Aleksandrova, Larisa*. Independent Expert, Dushanbe, Tajikistan (August 4, 2014).

*Alimova, Marxabo*. First Deputy, Committee on Women and Family Affairs of the Republic of Tajikistan, Dushanbe, Tajikistan (May 27, 2015).

*Amiri, Benafsha*. Kabul Province Manager, Women for Afghan Women, Kabul, Afghanistan (July 12, 2015).\*

*Asadova, Umeda*. Access to Justice Project, Helvetas Swiss Intercooperation, Dushanbe, Tajikistan (May 19, 2015).

*Bobanazarova, Oinihol*. Chairman of the Board, Perspective Plus, Dushanbe, Tajikistan (May 15, 2015).

*Bobosadikova, Guljahon*. Independent Expert, Dushanbe, Tajikistan (May 28, 2015).

*Bulbulshoeva, Nilufar*. SGBV Focal Point and Community Service Assistant, Refugees, Children, and Vulnerable Citizens, Dushanbe, Tajikistan (August 6, 2014).

*Davlatov, Sulaymon*. Head, Committee on Religious Affairs of the Republic of Tajikistan, Dushanbe, Tajikistan (May 26, 2015).

*Dvoracek, Patricia*. Human Rights Advisor, Swiss Agency for Development and Cooperation, Dushanbe, Tajikistan (May 25, 2015).

*Gaibova, Gulnora*. Interim Country Director, Helvetas Swiss Intercooperation, Dushanbe, Tajikistan (May 15, 2014); Deputy Director, Helvetas Swiss Intercooperation, Dushanbe, Tajikistan (August 5, 2014).

*Iskandari, Malika*. National Protection Coordinator, UN Women, Dushanbe, Tajikistan (May 20, 2015).

*Ismailova, Diana*. National Program Associate, United Nations Population Fund, Dushanbe, Tajikistan (July 31, 2014); Independent Expert, Dushanbe, Tajikistan (May 26, 2015).

*Ivanovikj-Castarade, Vesna*. Legal and Electoral Reform Officer, Organization for Security and Co-operation in Europe, Dushanbe, Tajikistan (May 20, 2015).

*Jung, Barbara*. Country Director, Helvetas Swiss Intercooperation, Dushanbe, Tajikistan (May 19, 2015).

*Juraeva, Shahlo*. Director, State Women's Center, Dushanbe, Tajikistan (May 28, 2015).

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\* Interviews were conducted in-person except where indicated.

*Kenjaeva, Sitora*. Lawyer- Consultant, Right and Prosperity, Dushanbe, Tajikistan (July 31, 2014; August 12, 2014).

*Khalilov, Nurmahad*. Executive Director, Human Rights Center, Dushanbe, Tajikistan (August 8, 2014; May 21, 2015).

*Khaydarova, Takhmina*. Executive Director, Tajikistan Network of Women Living with HIV, Dushanbe, Tajikistan (May 26, 2015).

*Khayrulloev, Farrukh*. Lawyer-Consultant, Right and Prosperity, Dushanbe, Tajikistan (July 31, 2014).

*Khujaeva, Zarafo*. Director, Nishod, Dushanbe, Tajikistan (May 22, 2015).

*Kuvatova, Alla*. Independent Expert; Executive Director, Women with University Education; Member, Coalition of Public Organizations in Tajikistan from De Jure Towards Equality De Facto, Dushanbe, Tajikistan (August 7, 2014).

*Latifov, Shurat*. Program Coordinator, Tajikistan Network of Women Living with HIV, Dushanbe, Tajikistan (May 26, 2015).

*Law Faculty*. Tajik National University, Dushanbe, Tajikistan (May 28, 2015).

*Mavjuda Rakhmanova*, Director, Refugees, Children, and Vulnerable Citizens, Dushanbe, Tajikistan (August 6, 2014).

*Mirzoeva, Viloyat*. Tajikistan Portfolio Manager, UN Women, Dushanbe, Tajikistan (May 27, 2014).

*Mukhamadiyeva, Barno*. National Program Officer, UN Women, Dushanbe, Tajikistan (May 27, 2014; August 6, 2014).

*Mumindzhanova, Mukaram*. Lawyer, State Women's Center, Dushanbe, Tajikistan (May 28, 2015).

*Naimova, Zaitoona*. National Gender Officer, Organization for Security and Co-operation in Europe, Dushanbe, Tajikistan (June 16, 2014; August 7, 2014).

*Niyatbekov, Shakarbek*. National Program Officer Rule of Law, Swiss Agency for Development and Cooperation, Dushanbe, Tajikistan (August 4, 2014; May 25, 2015).

*Petrosyan, Larisa*. Deputy Country Director, American Bar Association Rule of Law Initiative, Dushanbe, Tajikistan (May 19, 2015).

*Representative*. Ministry of Justice of the Republic of Tajikistan, Dushanbe, Tajikistan (May 28, 2015).

*Representatives.* Ghamkhori Crisis Center, Dushanbe, Tajikistan (May 27, 2015).

*Representatives.* Prevention of Domestic Violence Project, GOPA Consultants, Dushanbe, Tajikistan (May 15, 2014; July 31, 2014; May 26, 2015).

*Representatives.* UN High Commissioner for Refugees, Dushanbe, Tajikistan (May 26, 2014; June 4, 2014; August 4, 2014; August 10, 2014; May 19, 2015).

*Representatives.* UN Office of the High Commissioner for Human Rights, Dushanbe, Tajikistan (August 11, 2014; May 21, 2015).

*Representatives.* U.S. Department of State International Narcotics and Law Enforcement Affairs Bureau, Dushanbe, Tajikistan (July 15, 2014).

*Rubino, David.* Regional Director for Tajikistan and Georgia, American Bar Association Rule of Law Initiative, Dushanbe, Tajikistan (May 19, 2015).

*Rusu, Viorelia.* Gender and Anti-Trafficking Officer, Organization for Security and Co-operation in Europe, Dushanbe, Tajikistan (May 20, 2015).

*Saidov, Suhrob.* Project Assistant, Skills, Employment, Market, Helvetas Swiss Intercooperation, Dushanbe, Tajikistan (May 19, 2015).

*Sattorov, Firuz.* Senior Staff Attorney, American Bar Association Rule of Law Initiative, Dushanbe, Tajikistan (May 19, 2015).

*Sattorov, Mansur.* Lawyer, Spin Plus, Dushanbe, Tajikistan (May 25, 2015).

*Sharipova, Zebo.* Executive Director, League of Women Lawyers, Dushanbe, Tajikistan (August 5, 2014; May 20, 2015).

*Shirinbekova, Najiba.* Director, Right and Prosperity, Dushanbe, Tajikistan (March 3, 2014, April 29, 2014; May 6, 2014; June 10, 2014; July 15, 2014\*; July 24, 2014, August 12, 2014).

*Shodibekova, Shamsiya.* Lawyer, Grata Law Firm, Dushanbe, Tajikistan (April 6, 2014).

*Shonasimova, Shahribonu.* Project Manager, International Alert, Dushanbe, Tajikistan (May 21, 2015).

*Training Participants.* Empowering Displaced Women in Afghanistan and Tajikistan through Legal Aid and Training to Combat Gender Based Violence, Dushanbe, Tajikistan (September 22-23, 2014; May 22, 2015).

*Turakhanova, Dilbar.* Independent Consultant, Dushanbe, Tajikistan (May 25, 2015).

*Valiev, Tohir.* Project Director, Helvetas Swiss Intercooperation, Dushanbe, Tajikistan (August 5, 2014).

*Yurmatova, Nigina.* Officer Manager, Refugees, Children, and Vulnerable Citizens, Dushanbe, Tajikistan (August 6, 2014).





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