

Breaking Barriers

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

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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.¹ 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.

¹ 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.² Following the Russian Revolution of 1917, which placed the Bolsheviks in power, Russia's hold on Central Asia weakened.³ 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 1929.⁴

Before Soviet rule, Tajik society viewed women as subordinate to and the property of men, and women wore the veil according to Islamic custom.⁵ 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.⁶ The new Soviet Constitution provided women with social, economic, and political rights equal to men.⁷ In 1927, the Soviets launched a mass unveiling campaign, outlawing the practice.⁸ 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.⁹ 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.¹⁰ 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.¹¹

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

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

⁴ CIA, *supra* note 2.

⁵ 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.

⁶ *Id.* at 59-60.

⁷ *Id.* at 63.

⁸ *Domestic Violence in Tajikistan*, THE ADVOCATES FOR HUMAN RIGHTS (Oct. 2008), http://www.stopvaw.org/uploads/tajikistan_3_6_07_layout_-_final_mc.pdf.

⁹ *Id.*

¹⁰ Avzalchoeva, *supra* note 5, at 66.

¹¹ *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.¹² 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.¹³

An increase in violence against women occurred during the Tajik civil war, particularly by extremist Islamic groups perpetrating discrimination and violence on "moral grounds."¹⁴ 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.¹⁵

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.¹⁶ 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.¹⁷ 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.).¹⁸ According to a representative of the Committee on Religious Affairs of the Republic of Tajikistan, many people

¹² *Tajikistan Gender Profile*, WORLD BANK (2000).

¹³ *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].

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 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/>.

¹⁷ 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).

¹⁸ 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.¹⁹

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.²⁰ 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.²¹ The Soviets passed compulsory education laws, and by 1939, the literacy rate had increased to 71-82%.²² The current literacy rate in Tajikistan is over 99% for both men and women.²³

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.”²⁴ 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.²⁵ 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

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

²⁰ 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*].

²¹ *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>.

²² *Id.*

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

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

²⁵ 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.²⁶

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.²⁷

Participation of women in the labor market is low with an employment rate of approximately 31%.²⁸ 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.²⁹ 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.³⁰

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.³¹ However, men still dominate such positions and receive approximately 70% of the micro-loans.³²

²⁶ *Global Initiative on Out-of-School Children*, *supra* note 21.

²⁷ *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>.

²⁸ *Promote gender equality*, *supra* note 25.

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

³⁰ *Id.*

³¹ GENDER STATISTICS DATABASE, *supra* note 16.

³² *Id.*

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

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.³⁵ 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.³⁶ 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.³⁷ 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.³⁸

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.³⁹ Labor migration of Tajik men has led to a disproportionate number of

³³ *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*).

³⁴ 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>.

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

³⁶ *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.

³⁷ 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).

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

³⁹ *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.⁴⁰

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.⁴¹ 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.⁴²

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.⁴³ 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.⁴⁴ Many of these women, traveling without an adult male family member, have children they need to support on their own.⁴⁵ Women heads of households face higher levels of insecurity than men or women accompanied by men.⁴⁶

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.⁴⁷ Approximately 50% of the

⁴⁰ 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).

⁴¹ *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>.

⁴² 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).

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

⁴⁴ 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>.

⁴⁵ *Id.*

⁴⁶ Interview with Representatives, DRC, in Dushanbe, Taj. (Aug. 11, 2014).

⁴⁷ 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.⁴⁸ 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.⁴⁹ Domestic laws prohibit asylum seekers and refugees from temporary residence in Dushanbe, limiting access to employment opportunities and legal and social services.⁵⁰

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.⁵¹ 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.⁵²

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."

⁴⁸ Dustromod, *supra* note 44.

⁴⁹ 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).

⁵⁰ 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.

⁵¹ 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).

⁵² 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; 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.”⁵³

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.⁵⁴ 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.⁵⁵ 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.⁵⁶ 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.⁵⁷ 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.⁵⁸ Psychological violence is also prevalent with husbands exerting control over their wives and limiting their movement outside of the house. Men further exert economic

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

⁵⁴ 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.

⁵⁵ 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.

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

⁵⁷ *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&dclid=236652#wrapper>; *Informal Justice*, *supra* note 27, at 35; *Tajik NGOs*, *supra* note 52, at 15.

⁵⁸ 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.⁵⁹

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.⁶⁰ 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 15.⁶¹ The highest reports of domestic violence are in the Sughd district with 22% of women reporting such violence.⁶² 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.⁶³

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.⁶⁴ 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.⁶⁵ 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

⁵⁹ 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).

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

⁶¹ *Country Reports on Human Rights, supra* note 57.

⁶² *Id.*

⁶³ *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>.

⁶⁴ 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.").

⁶⁵ 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.⁶⁶ The next most common claims included alimony (29 women or 15.3%), divorce (25 or 15.6%), and housing (22 or 13%).⁶⁷ The State Women's Center addressed a total of 955 cases in 2014, 774 cases in 2013, and 683 cases in 2012.⁶⁸

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.⁶⁹ Actual numbers are much higher, and the number of women living with HIV has increased.⁷⁰ 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.⁷¹ Tajik men perceive condom use as a symbol of deceit or cheating and some Islamic adherents believe condom usage violates traditional Islamic rules.⁷² Few women believe they can actually request their husbands to use condoms without being accused of being unfaithful.⁷³

During labor migration, men may contract HIV, typically through intravenous drug use, and then return to Tajikistan and infect their wives.⁷⁴ 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.⁷⁵ 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.⁷⁶

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

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

⁶⁷ 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%).

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

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

⁷⁰ *Country Reports on Human Rights, supra* note 57.

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

⁷² *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.

⁷³ 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).

⁷⁴ *Id.*

⁷⁵ 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).

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

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

⁷⁸ Tajik Criminal Code, Art. 125.

their husbands to court.⁷⁸ While some women have divorced husbands who infect them with HIV, in most cases, women do not divorce.⁷⁹ Couples receive counseling from doctors when HIV/AIDS status is revealed, and in many cases, the doctors counsel the couple not to divorce.⁸⁰ Women tolerate their husbands' abuse out of fear that their HIV/AIDS status will be publicized.⁸¹ 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."⁸²

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.⁸³ 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.⁸⁴ 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.⁸⁵

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.⁸⁶ 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.⁸⁷ Some men deliberately marry women prior to embarking on labor migration so that their parents have a "servant" to attend

⁷⁸ 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).

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

⁸⁰ *Id.*

⁸¹ 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).

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

⁸³ *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>.

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

⁸⁵ 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.*

⁸⁶ 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).

⁸⁷ 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.⁸⁸ 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.⁸⁹ 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.”⁹⁰

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.⁹¹ 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.⁹²

3. Early, forced, and unregistered marriages

Under Tajik law, 18 is the legal age of consent to marriage.⁹³ Early marriages are criminalized; by definition early marriages are “forced” as a child cannot legally consent.⁹⁴ 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.⁹⁵ According to advocates, this exception is “overused and misused” enabling some parents to marry off underage girls for merely economic reasons.⁹⁶

⁸⁸ 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.

⁸⁹ 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”).

⁹⁰ Interview with Representatives, UNHCR, in Dushanbe, Taj. (Aug. 4, 2014).

⁹¹ Interview with Representatives, OHCHR, in Dushanbe, Taj. (Aug. 11, 2014).

⁹² 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)

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

⁹⁴ 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.”).

⁹⁵ 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.

⁹⁶ 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 18.⁹⁷ 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.⁹⁸ Society views unmarried women above the age of 20 or 21 as "too old" for marriage and stigmatizes the women and their families.⁹⁹

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.¹⁰⁰ 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.¹⁰¹ Intra-familial marriages, such as marriages between first cousins, are common as they enable property to be kept within the family.¹⁰² 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.¹⁰³ According to a representative of UN Women, there is a perceived "fine line" between "forced" and "arranged" marriages in Tajikistan.¹⁰⁴ 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.¹⁰⁵ Concrete statistics on forced marriage are therefore very difficult to ascertain.¹⁰⁶

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

⁹⁸ 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.

⁹⁹ 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).

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

¹⁰¹ 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).

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

¹⁰³ 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).

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

¹⁰⁵ *Id.*

¹⁰⁶ 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.¹⁰⁷ Forced and early marriages are often not officially registered, placing women at risk, which therefore complicates their legal protections.¹⁰⁸ 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.¹⁰⁹ If a marriage is registered and a couple divorces, women are entitled to 50% of shared property and assets jointly acquired during the marriage.¹¹⁰ 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.¹¹¹ 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.¹¹² Women in unregistered marriages are therefore particularly disadvantaged because they lack property, inheritance, and other rights afforded to wives in officially registered marriages.¹¹³

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

¹⁰⁷ 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.

¹⁰⁸ 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.

¹⁰⁹ *Informal Justice*, *supra* note 57, at 30.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ 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.¹¹⁴

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.¹¹⁵ 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.¹¹⁶

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.¹¹⁷

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.¹¹⁸ 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.¹¹⁹

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

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

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

¹¹⁶ 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>.

¹¹⁷ Interview with Representatives, DRC, in Dushanbe, Taj. (Aug. 11, 2014).

¹¹⁸ Interview with Representatives, UNHCR, in Dushanbe, Taj. (Aug. 10, 2014).

¹¹⁹ *Id.*

¹²⁰ 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.¹²¹ 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.¹²² The refugee status determination system in Tajikistan has been heavily criticized for failure to comply with international standards.¹²³ 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.¹²⁴ 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.¹²⁵

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.¹²⁶ Identity documents are only issued to the head of the household with other family members

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>.

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

¹²² Law of the Repub. of Taj., *supra* note 47.

¹²³ *County Reports on Human Rights*, *supra* note 57.

¹²⁴ 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).

¹²⁵ 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.

¹²⁶ *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.¹²⁷ 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.¹²⁸ 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.¹²⁹

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.¹³⁰ Without recognition by the Tajik government as a Convention refugee, mandate refugees have limited access to health, education, and social services.¹³¹ Moreover, mandate refugee women encounter problems obtaining legal protection under Tajik laws as they generally do not have identification documentation.¹³² Despite UNHCR advocacy efforts, local integration and obtaining Tajik citizenship for mandate refugees has been very difficult.¹³³

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.¹³⁴ 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.¹³⁵ In one case, a female Afghan asylum seeker sought

¹²⁷ *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).

¹²⁸ *Lives in limbo*, *supra* note 49, at para. 30.

¹²⁹ 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.

¹³⁰ Interview with Representatives, UNHCR, in Dushanbe, Taj. (May 19, 2015).

¹³¹ 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).

¹³² 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).

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

¹³⁴ *Id.*

¹³⁵ 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.¹³⁶ 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.¹³⁷

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.¹³⁸ 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.¹³⁹ 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.¹⁴⁰ 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."¹⁴¹ Despite the recognition of women's rights in Tajikistan, women

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.

¹³⁶ 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).

¹³⁷ Interview with Representatives, UNHCR, in Dushanbe, Taj. (May 26, 2014).

¹³⁸ Const. Repub. Taj. Arts. 17, 33.

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

¹⁴⁰ 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).

¹⁴¹ 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.¹⁴² 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.¹⁴³

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."¹⁴⁴ 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.¹⁴⁵

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 2013.¹⁴⁶ 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

¹⁴² 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).

¹⁴³ 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).

¹⁴⁴ 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.

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

¹⁴⁶ 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.¹⁴⁷ 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.¹⁴⁸ 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.¹⁴⁹ The Law includes individual remedies for victims of violence, including registering a case of violence, and obtaining a protection order.¹⁵⁰ 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.¹⁵¹

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.¹⁵² The Committee expressed concern that patriarchal attitudes contributed to the persistence of violence against women and underreporting of domestic violence.¹⁵³ Moreover, the Committee observed concerns with the law as written, for

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

¹⁴⁸ Family Violence Law, Art. 6.

¹⁴⁹ Family Violence Law, Arts. 7-17.

¹⁵⁰ 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.

¹⁵¹ 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.

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

¹⁵³ 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.).¹⁵⁴

In 2014, Tajikistan ratified the optional protocol to CEDAW.¹⁵⁵ 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.¹⁵⁶ 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 2013.¹⁵⁷ 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.¹⁵⁸

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

¹⁵⁴ *Id.* at paras. 31-32.

¹⁵⁵ 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. Tajikistan made reservations to Article 8, the individual complaints procedures, and Article 9, the inquiry procedure of the Optional Protocol.

¹⁵⁶ CEDAW 2013 Concluding Observations, *supra* note 152.

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

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

enacted law.¹⁵⁹ 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.¹⁶⁰

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.¹⁶¹ 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.¹⁶² 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.¹⁶³ 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.¹⁶⁴ The Law also fails to protect women from abuse at the hands of their in-laws.¹⁶⁵ 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.

¹⁵⁹ 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).

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

¹⁶¹ 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.

¹⁶² Draft of Family Violence Law, Art. 4.

¹⁶³ 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.

¹⁶⁴ 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).

¹⁶⁵ 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.¹⁶⁶ 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.¹⁶⁷ Focusing primarily on prevention, the Family Violence Law provides only administrative punishments, such as fines and administrative custody of the perpetrator.¹⁶⁸ 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.¹⁶⁹ 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.”¹⁷⁰

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.¹⁷¹ 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.¹⁷² Spousal rape is rarely reported (see section IV.A.) due to social stigma, yet

¹⁶⁶ Family Violence Law, Art. 1.

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

¹⁶⁸ 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.

¹⁶⁹ *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.

¹⁷⁰ *Informal Justice*, *supra* note 27, at 36.

¹⁷¹ Tajik Crim. Code, Arts. 110-112.

¹⁷² *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.¹⁷³

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.¹⁷⁴ 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.¹⁷⁵ 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

¹⁷³ *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.

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

¹⁷⁵ 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.¹⁷⁶ 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.¹⁷⁷

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.¹⁷⁸ 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.¹⁷⁹ Some refugee women admitted experiencing violence from their husbands in Afghanistan, but did not characterize this as domestic violence.¹⁸⁰ 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

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

¹⁷⁷ 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).

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

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

¹⁸⁰ Interview with Representatives, UNHCR, in Dushanbe, Taj. (Aug. 4, 2014).

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

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.¹⁸³ 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.¹⁸⁴ 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.¹⁸⁵

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.¹⁸⁶ 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.¹⁸⁷ 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.¹⁸⁸

¹⁸¹ DRC Baseline Survey 2014, *supra* note 49.

¹⁸² 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.*

¹⁸³ 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.*

¹⁸⁴ *Id.*

¹⁸⁵ 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.

¹⁸⁶ 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).

¹⁸⁷ 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).

¹⁸⁸ 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.¹⁸⁹ Those reporting violence to UNHCR said they typically experienced psychological and economic abuse from their husbands.¹⁹⁰ 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.¹⁹¹ 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.¹⁹² 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.¹⁹³ Many communities stigmatize women who report their husbands to the police by shaming them and subjecting them to further violence.¹⁹⁴ 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.¹⁹⁵

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.¹⁹⁶ Men feel emasculated if

¹⁸⁹ Interview with Representatives, UNHCR, in Dushanbe, Taj. (Aug. 4, 2014).

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

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

¹⁹² *Id.*

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

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

¹⁹⁵ *Id.*

¹⁹⁶ 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.¹⁹⁷ A woman's family may also reject her as a financial burden.¹⁹⁸ 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.¹⁹⁹

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.²⁰⁰ 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.²⁰¹

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.²⁰² 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.”²⁰³ 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.²⁰⁴ Limited mobility and lack of

¹⁹⁷ Interview with Representatives, OHCHR, in Dushanbe, Taj. (Aug. 11, 2014).

¹⁹⁸ 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).

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

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

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

²⁰² Interview with Representatives, UNHCR, in Dushanbe, Taj. (May 19, 2015).

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

²⁰⁴ 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.²⁰⁵ 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.²⁰⁶ 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.²⁰⁷

When offered the option of criminal prosecution, many women fear pursuing the case through the criminal justice system after learning what the procedure entails.²⁰⁸ 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.”²⁰⁹

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

²⁰⁵ Draft of Family Violence Law, Art. 29.

²⁰⁶ *Id.*

²⁰⁷ 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).

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

²⁰⁹ *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.²¹⁰

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.²¹¹ With family disputes, preservation of the nuclear family is the primary objective and divorce is strongly discouraged.²¹²

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."²¹³ 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.²¹⁴ Preservation of family unity is highly valued, and Tajik society highly stigmatizes divorced women, perceiving them as having lower societal status.²¹⁵ 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.²¹⁶ 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

²¹⁰ 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).

²¹¹ 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.

²¹² *Id.* at 15.

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

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

²¹⁵ 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).

²¹⁶ 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.²¹⁷ (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.²¹⁸ 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.”²¹⁹

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.²²⁰ 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.²²¹ 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.²²²

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.²²³

²¹⁷ Interview with Najiba Shirinbekova, Dir., Right & Prosperity, in Dushanbe, Taj. (Apr. 29, 2014).

²¹⁸ Interview with Representatives, Right & Prosperity, in Dushanbe, Taj. (Aug. 12, 2014).

²¹⁹ Interview with Representatives, Right & Prosperity, in Dushanbe, Taj. (Aug. 12, 2014).

²²⁰ DRC Baseline Survey 2014, *supra* note 49.

²²¹ *Id.*

²²² 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.

²²³ 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.²²⁴ Similar to Tajik women, Afghan women in Tajikistan lack accommodation and support if they leave the family home.²²⁵

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.²²⁶ 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?"²²⁷ 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.²²⁸

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.²²⁹ For example, police have been referring women who have experienced violence to Crisis Centers in Dushanbe and Kurgan-tube, the capital of

²²⁴ Interview with Representatives, DRC, in Dushanbe, Taj. (Aug. 2014).

²²⁵ Interview with Representatives, UNHCR, in Dushanbe, Taj. (Aug. 4, 2014).

²²⁶ 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).

²²⁷ Interview with Zebo Sharipova, Exec. Dir., League of Women Lawyers, in Dushanbe, Taj. (May 20, 2015).

²²⁸ 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).

²²⁹ 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.²³⁰ Some positive efforts have improved police sensitivity to working with survivors of violence and increased awareness of the Family Violence Law.²³¹ 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.²³²

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."²³³ 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?"²³⁴ 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.²³⁵ 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."²³⁶

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

²³⁰ Interview with Representatives, GOPA Consultants, PDV Project, in Dushanbe, Taj. (May 26, 2015).

²³¹ 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).

²³² Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (*See infra* Appendix, Interviews with Government and NGO Representatives and Other Experts).

²³³ Interviews with Zaitoona Naimova, Nat'l Gender Officer, OSCE, in Dushanbe, Taj. (Aug. 7, 2014).

²³⁴ Interview with Zebo Sharipova, Exec. Dir., League of Women Lawyers, in Dushanbe, Taj. (Aug. 5, 2014).

²³⁵ *Id.*

²³⁶ 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.²³⁷ 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.²³⁸

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.²³⁹ 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

²³⁷ 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).

²³⁸ Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (*See infra* Appendix, Interviews with Government and NGO Representatives and Other Experts).

²³⁹ 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.²⁴⁰ 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.²⁴¹ 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.²⁴²

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.²⁴³

MOI statistics show that law enforcement agencies did not issue any protection orders in 2013 and issued only 72 protection orders in 2014.²⁴⁴ Use of protection orders is reportedly more common in Kulyab in the southwest Khatlon region, and Khujand, the second largest city in

²⁴⁰ 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).

²⁴¹ Interview with Zebo Sharipova, Exec. Dir., League of Women Lawyers, in Dushanbe, Taj. (Aug. 5, 2014).

²⁴² 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).

²⁴³ Interview with Zaitoona Naimova, National Gender Officer, OSCE, in Dushanbe, Taj. (June 16, 2014 & Aug. 7, 2014).

²⁴⁴ 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.²⁴⁵ 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.²⁴⁶

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.”²⁴⁷ 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.²⁴⁸ 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.²⁴⁹ 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.²⁵⁰ Requirements for the offender might include prohibitions on any type of violence against the victim and the use of alcohol or drugs.²⁵¹ 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.²⁵²

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.²⁵³ 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

²⁴⁵ Interview with Viorelia Rusu, Gender & Anti-Trafficking Officer, OSCE, in Dushanbe, Taj. (May 20, 2015).

²⁴⁶ 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).

²⁴⁷ Family Violence Law, Art. 1.

²⁴⁸ Family Violence Law, Art. 21(4).

²⁴⁹ Family Violence Law, Art. 21(5).

²⁵⁰ Family Violence Law, Art. 21(6).

²⁵¹ Family Violence Law, Art. 21(7).

²⁵² Family Violence Law, Art. 21(2), (8).

²⁵³ 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.²⁵⁴

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.²⁵⁵ In regions where protection orders have been issued, the contents of the form appear to vary from location to location.²⁵⁶

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.²⁵⁷ To the contrary, the Family Violence Law states a protection order may include “recommendations on [the aggressor’s] timely return to home.”²⁵⁸ 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.²⁵⁹

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.²⁶⁰

²⁵⁴ Interview with Zaitoona Naimova, National Gender Officer, OSCE, in Dushanbe, Taj. (Aug. 7, 2014).

²⁵⁵ Interview with Representatives, State Women’s Ctr., in Dushanbe, Taj. (May 28, 2015).

²⁵⁶ Interview with Representatives, GOPA Consultants, PDV Project, in Dushanbe, Taj. (May 26, 2015).

²⁵⁷ 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.

²⁵⁸ Family Violence Law, Art. 21.

²⁵⁹ 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).

²⁶⁰ Family Violence Law, Art. 21(7).

Furthermore, the Law lacks enforcement mechanisms for violations of the order aside from administrative fines.²⁶¹ Therefore, any protection offered by the Family Violence Law is limited.²⁶²

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.²⁶³ 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.²⁶⁴ 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.²⁶⁵

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.²⁶⁶ 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

²⁶¹ Interview with Viorelia Rusu, Gender and Anti-Trafficking Officer, OSCE, in Dushanbe, Taj. (May 20, 2015).

²⁶² 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).

²⁶³ 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).

²⁶⁴ Interview with Firuz Sattorov, Senior Staff Attorney, ABA ROLI, in Dushanbe, Taj. (May 19, 2015).

²⁶⁵ Family Violence Law, Art. 26.

²⁶⁶ Admin. Code of the Republic of Taj., Arts. 93¹ & 93²; 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.²⁶⁷ 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.²⁶⁸ Without clear instructions and procedural mechanisms, advocates also do not fully understand how to use the Family Violence Law to assist victims of violence.²⁶⁹

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.²⁷⁰ 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.²⁷¹ 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.²⁷² 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.²⁷³ While the Law provides that victims

²⁶⁷ 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).

²⁶⁸ 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).

²⁶⁹ Interview with Barno Mukhamadieva, Nat’l Program Officer, UN Women, in Dushanbe, Taj. (Aug. 6, 2014).

²⁷⁰ Family Violence Law, Arts. 16-17.

²⁷¹ *Id.*, Art. 16(2).

²⁷² Presentation of Marxabo Alimova, First Deputy, CWFA, CEDAW Nat’l Consultative Meeting, Dushanbe, Taj. (May 29, 2015).

²⁷³ Family Violence Law, Art. 17.

may stay in the centers for the “necessary period of time required for the treatment,”²⁷⁴ 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.”²⁷⁵ 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.²⁷⁶ The Tajik government does not operate any long-term shelters. According to CWFA, there are three privately-run shelters for victims of domestic violence.²⁷⁷ 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.²⁷⁸ 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.²⁷⁹ CWFA acknowledges the government is not currently capable of providing long-term protection to victims of violence country-wide.²⁸⁰

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

²⁷⁴ *Id.*, Art. 17(4).

²⁷⁵ *Id.*, Art. 17(1).

²⁷⁶ Interview with Zebo Sharipova, Exec. Dir., League of Women Lawyers, in Dushanbe, Taj. (May 20, 2015).

²⁷⁷ 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.

²⁷⁸ 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.

²⁷⁹ Presentation of Marxabo Alimova, First Deputy, CWFA, CEDAW Nat’l Consultative Meeting, Dushanbe, Taj. (May 29, 2015).

²⁸⁰ 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.²⁸¹

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.”²⁸² 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.²⁸³ There is fear that shelters will be misconstrued as brothels merely because they house women.²⁸⁴ The stigmatization of shelters is a serious obstacle to effectively protecting women fleeing domestic violence in Tajikistan.²⁸⁵

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.²⁸⁶ 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.²⁸⁷ 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.²⁸⁸

²⁸¹ Interview with Viorelia Rusu, Gender & Anti-Trafficking Officer, OSCE, in Dushanbe, Taj. (May 20, 2015).

²⁸² 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).

²⁸³ 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).

²⁸⁴ Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (see Appendix, Interviews with Government and NGO Representatives and Other Experts).

²⁸⁵ Interview with Viorelia Rusu, Gender & Anti-Trafficking Officer, OSCE, in Dushanbe, Taj. (May 20, 2015).

²⁸⁶ 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).

²⁸⁷ Interview with Diana Ismailova, Nat’l Program Assoc., UNFPA, in Dushanbe, Taj. (July 31, 2014).

²⁸⁸ *Id.*

There is also one Victim Support Room located at the CWFA office in Dushanbe.²⁸⁹ 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.²⁹⁰ 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.²⁹¹ 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.²⁹² 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.²⁹³ 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.²⁹⁴

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

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ Interview with Diana Ismailova, Indep. Expert, in Dushanbe, Taj. (May 26, 2015).

²⁹² Interview with Representatives, Ghamkori Crisis Ctr., in Kurgan-Tube, Taj. (May 27, 2015).

²⁹³ Interview with Diana Ismailova, Nat’l Program Assoc., UNFPA, in Dushanbe, Tajikistan (July 31, 2014).

²⁹⁴ *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.²⁹⁵ 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.²⁹⁶ 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.

²⁹⁵ 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).

²⁹⁶ 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.²⁹⁷ In the first three months of 2015, Consultation Centers received 2,684 complaints, 2,511 lodged by women and 173 by men.²⁹⁸ Most complaints centered on property claims, alimony, division of property, or employment matters.²⁹⁹ 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.”³⁰⁰ 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.³⁰¹

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.³⁰² In general, Crisis Centers report receiving approximately 20-50 requests for assistance per month.³⁰³ In 2012-2013, to illustrate, the Bovyary Crisis Center run by CWFA assisted 3,054 women and registered 1,714 complaints of domestic violence.³⁰⁴

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.³⁰⁵ 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

²⁹⁷ These centers are financed from the budget of the local executive bodies of state power.

²⁹⁸ Interview with Marxabo Alimova, First Deputy, CWFA, in Dushanbe, Taj. (May 27, 2015).

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (see Appendix, Interviews with Government and NGO Representatives and Other Experts).

³⁰² Presentation of Marxabo Alimova, First Deputy, CWFA, CEDAW Nat’l Consultative Meeting, Dushanbe, Taj. (May 29, 2015).

³⁰³ Rep. of Taj., Interim Report to CEDAW Comm. (Oct. 2015).

³⁰⁴ 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).

³⁰⁵ Interview with Representatives, Ghamkori Crisis Ctr., in Kurgan-Tube, Taj. (May 27, 2015).

days.³⁰⁶ 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.³⁰⁷

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.³⁰⁸ 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.³⁰⁹ The lack of a uniform database for tracking cases at Crisis Centers makes it difficult to evaluate violence prevention programs.³¹⁰

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.³¹¹ 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.³¹² 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

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (see Appendix, Interviews with Government and NGO Representatives and Other Experts).

³⁰⁹ Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (see Appendix, Interviews with Government and NGO Representatives and Other Experts).

³¹⁰ Participant Comment, CEDAW Nat'l Consultative Meeting, in Dushanbe, Taj. (May 29, 2015).

³¹¹ Interview with Representative, MOJ of the Rep. of Taj., in Dushanbe, Taj. (May 28, 2015).

³¹² 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.³¹³

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.³¹⁴ 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.³¹⁵ 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.³¹⁶

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.³¹⁷ Financing of the State Program is to "be carried out through funds provided by the state budget and other extra-budgetary resources."³¹⁸ 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

³¹³ Interview with Representatives, Helvetas Swiss Intercooperation, in Dushanbe, Taj. (May 19, 2015).

³¹⁴ 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.

³¹⁵ STATE PROGRAM TO PREVENT DOMESTIC VIOLENCE, *supra* note 56, at 3:21.

³¹⁶ 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.

³¹⁷ Interview with Representative, MOJ of the Rep. of Taj., in Dushanbe, Taj. (May 28, 2015).

³¹⁸ 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.³¹⁹ 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.³²⁰ 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.³²¹ To fill the state's funding gaps, the government and civil society organizations rely on the financial support of international organizations.³²²

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.³²³ 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.³²⁴

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.³²⁵ Hierarchical government structure weakens CWFA's ability to coordinate institutions; as a "committee," CWFA has a lower status than a "ministry."³²⁶ Thus, although CWFA is the lead coordinator, its power to direct ministries, including the MOI—which has a

³¹⁹ 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).

³²⁰ Presentation of Marxabo Alimova, First Deputy, CWFA, CEDAW Nat'l Consultative Meeting, Dushanbe, Taj. (May 29, 2015).

³²¹ *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.").

³²² 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").

³²³ Interview with Representative, MOJ of the Rep. of Taj., in Dushanbe, Taj. (May 28, 2015).

³²⁴ *Id.*

³²⁵ Interview with Marxabo Alimova, First Deputy, CWFA, in Dushanbe, Taj. (May 27, 2015).

³²⁶ 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.³²⁷ Moreover, as a committee, CWFA has less staffing and resources than a ministry.³²⁸ 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.³²⁹ 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.³³⁰ 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.³³¹

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.³³² 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.³³³ Every six months, ministries, agencies, and

³²⁷ 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).

³²⁸ 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).

³²⁹ 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.

³³⁰ 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).

³³¹ Interview with Diana Ismailova, Indep. Expert, in Dushanbe, Taj. (May 26, 2015).

³³² 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.

³³³ 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.³³⁴ 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.”³³⁵ 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.³³⁶

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.³³⁷ 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,

³³⁴ *Id.* at ¶ 7:31.

³³⁵ *Id.* at ¶ 3:27.

³³⁶ 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).

³³⁷ 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.³³⁸

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.³³⁹

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."³⁴⁰ 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.³⁴¹ 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.³⁴² 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.³⁴³

³³⁸ Interview with Representatives, State Women's Ctr., in Dushanbe, Taj. (May 28, 2015).

³³⁹ Interview with Shuhrat Latifov, Program Coordinator, Tajikistan Network Women Living with HIV, in Dushanbe, Taj. (May 26, 2015).

³⁴⁰ Interview with Larisa Aleksandrova, Indep. Expert, in Dushanbe, Taj. (Aug. 14, 2014).

³⁴¹ *Id.*

³⁴² 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).

³⁴³ *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.³⁴⁴ Judges are appointed by the Office of the President and often money plays a role in the appointment.³⁴⁵ The poorly performing economy fuels corruption, including bribery, which is rampant in Tajikistan.³⁴⁶ 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.³⁴⁷

Accepting bribes is common among police, prosecutors, and judges whose salaries are reportedly low.³⁴⁸ 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.³⁴⁹

“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 organization³⁵⁰

³⁴⁴ Interview with Representatives, Right & Prosperity, in Dushanbe, Taj. (Aug. 12, 2014).

³⁴⁵ Interview with Representatives, Right & Prosperity, in Dushanbe, Taj. (Aug. 4, 2014).

³⁴⁶ 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. 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).

³⁴⁷ Interview with Representatives, ABA ROLI, in Dushanbe, Taj. (May 19, 2015).

³⁴⁸ *Country Reports on Human Rights*, *supra* note 57.

³⁴⁹ 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).

³⁵⁰ 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.³⁵¹ 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.³⁵² Although the criminal case against her was eventually closed, the judge was forced into retirement.³⁵³

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).³⁵⁴ 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.³⁵⁵ 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.³⁵⁶ 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.).³⁵⁷ 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.³⁵⁸ For women in domestic violence situations, requesting permission from her husband or other male family members to obtain a

³⁵¹ *Country Reports on Human Rights, supra* note 57; Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015).

³⁵² Interview with Larisa Aleksandrova, Indep. Expert, in Dushanbe, Taj. (Aug. 14, 2014).

³⁵³ *Id.*

³⁵⁴ Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (see Appendix, Interviews with Government and NGO Representatives and Other Experts).

³⁵⁵ Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (see Appendix, Interviews with Government and NGO Representatives and Other Experts).

³⁵⁶ Interview with Name and Affiliation Withheld, in Dushanbe, Taj. (May 2015) (see Appendix, Interviews with Government and NGO Representatives and Other Experts).

³⁵⁷ *Lives in limbo, supra* note 49, at 31-32.

³⁵⁸ 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.³⁵⁹ 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.³⁶⁰

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.

³⁵⁹ *Id.*

³⁶⁰ *Id.*