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LEGAL EMPOWERMENT AND ACCESS OF WOMEN TO JUSTICE ASSESSMENT FEBRUARY-MARCH 2008

RIMA DAS PRADHAN & PAULINE TWEEDIE

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List of Acronyms

AGO	Attorney General's Office
AIHRC	Afghanistan Independent Human Rights Commission
ANA	Afghan National Army
ANDS	Afghanistan National Development Strategy
ANP	Afghan National Police
AREU	Afghanistan Research and Evaluation Unit
ARoLP	Afghanistan Rule of Law Project
CAT	Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
CCPR	International Covenant on Civil and Political Rights
CDC	Community Development Councils
CDP	Community Development Plans
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	International Convention on the Elimination of all Forms of Racial Discrimination
CESCR	International Covenant on Economics, Social and Cultural Rights
CRC	Convention on the Rights of the Child
CRC-OP-AC	Optional Protocol to the Convention on the Rights of the Child and the Involvement of Children in Armed Conflict
CRC-OP-SC	Optional Protocol of the Convention of the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
CSO	Central Statistics Office
DoWA	Provincial Department of Women's Affairs
FPs	Facilitating Partners
FRU	Family Response Unit
GDI	Gender Development Index
HAWCA	Assistance to the Women and Children of Afghanistan
HDI	Human Development Index
IBA	International Bar Association
INGO	International Nongovernmental Organization
INLTC	Independent National Legal Training Center
IRoA	Islamic Republic of Afghanistan
LEAWJ	Legal Empowerment and Access of Women to Justice
MDG	Millennium Development Goals
MoFA	Ministry of Foreign Affairs
MoHRA	Ministry of Hajj and Religious Affairs
MoI	Ministry of Interior
MoICYA	Ministry of Information Culture and Youth Affairs
MoJ	Ministry of Justice
MoLSA	Ministry of Labor and Social Affairs
MoWA	Ministry of Women's Affairs
MRRD	Ministry of Rural Rehabilitation and Development

NAPWA	National Action Plan for Women of Afghanistan
NGO	Nongovernmental Organization
NJS	National Justice Strategy
NJSS	National Justice Sector Strategy
TAF	The Asia Foundation
TDR	Traditional Dispute Resolution
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
UNODC	United Nations Office on Drugs and Crime
USAID	United States Agency for International Development

A. Executive Summary

Afghanistan is emerging from nearly thirty years of war as one of the world's youngest democracies. The country's first successful presidential election was held in the fall of 2004 and followed by parliamentary elections in September 2005. These fledgling democratic processes and institutions must be supported by courageous leadership, good government and public administration if they are to be effective and far-reaching. If long term stability and success is to be achieved across Afghanistan, a key pillar within the democratic process that must be recognized and reinforced immediately is the strengthening of the rule of law and availability of—and access to—all forms of justice by the women of Afghanistan.

The assessment contains several recommendations and implementation strategies that should be considered for action in the near future by the senior leadership of the justice sector. The list of recommendations provided is not an exhaustive list nor is it a criticism of the current myriad of Herculean efforts made by the government, nongovernmental organizations (NGOs) and justice personnel, but rather, identifies areas where changes could have positive effects both in the near and long term. With the approval and strong support of the justice sector leadership to transform and improve upon current practices, it is anticipated that increased professionalism within the judiciary and greater access to justice across Afghanistan for women could be realized within this very important and much-publicized sector of Afghan society.

Perceptions and Attitudes of Women Justice Sector Users

The overall perception regarding women's rights and their access to justice is that, although it has improved since the fall of the Taliban, things have slipped backward in the last two years primarily due to increasing insecurity. Progress has been made particularly in the area of legal protection and legal awareness. However, cultural and societal constraints have prevented implementation of the legislative framework and transformation of this increased awareness into improved access to justice. Likewise, this improvement has not been universal in the country, as women in urban areas have relatively better access to justice, while in rural areas, women still lack legal awareness or access to justice.

With regards to interaction between the formal and informal system, women are discriminated against by both the formal and informal justice systems, and in particular, women are voiceless in the informal justice system. Although interviewees felt that the formal court system was improving, many felt that the courts were corrupt and there is a general lack of rule of law. Additionally, most laws are inconsistently implemented, enforcement officials can be bribed to ensure non-compliance, and judicial processes are frequently subverted for political expediency. This inadequate and selective use of the law has fostered a public perception that the law is an instrument of control rather than relief, redress and security. The perception expressed by interviewees is that courts are controlled by the rich and powerful, which has a disproportionately negative affect on women as women are generally poorer and powerless.

Overall, the public expressed greater confidence in the informal system than the courts, though the overall trust in the formal court system appears to be increasing as evidenced by the growing number of cases taken to the courts. Irrespective of this, shuras and jirgas are still seen as legitimate and generally the preferred dispute-resolution mechanisms.

Women and the Formal Justice System

The core national-level institutions of the formal justice system are the Supreme Court, the Ministry of Justice (MoJ), the Attorney General's Office (AGO) and the Ministry of Interior (MoI). In addition to these core institutions, the Ministry of Women's Affairs (MoWA) and the Afghanistan Independent Human Rights Commission (AIHRC) also play important roles in the formal justice sector. The legal department of MoWA mediates certain types of disputes and refers matters to the formal institutions. The AIHRC monitors and investigates human rights abuses and also refers matters to the formal institutions. Given the important role that Sharia (Islamic law) plays in the formal justice system, the roles of the Ministry of Hajj and Religious Affairs (MoHRA) and the Council of Ulama, Afghanistan's community of religious scholars, should also be considered when discussing issues related to women's access to justice.

There are many efforts to raise awareness of gender issues in the formal justice sector, many of which are supported by the international community. However, gender sensitivity and human rights trainings are not conducted in a systematic and sustained manner and conservative, culturally driven attitudes still determine the way women are treated in the formal justice system. Violence against women is pervasive and, generally, the formal justice system does not regard violence as a serious crime.

Additionally, there is a significant gender gap in how men, versus women, interact with formal justice institutions. Dealing with men outside of the immediate family is generally considered a cultural taboo, a matter of shame and a loss of family honor. This has a number of implications—a key one being that female victims must deal with men if they are to bring their complaints forward. Conversely, where complaints are raised against women, they are likely to face additional discrimination and challenges, as compared to those challenges faced by female victims. There are efforts underway to try and recruit more women into formal justice institutions, but there remain limitations on women's participation in public life, freedom of movement and other cultural and structural barriers.

The general perception of the respondents during the study was that the formal justice system is corrupt. This means that, in many cases, where women are victims, men and/or their families can bribe officials to stall or stop the case. And in reverse, where women are accused, they have little chances of receiving a fair hearing.

There is much capacity-building required at every level, both on substantive and procedural issues. The formal justice system is also under-resourced in terms of facilities, infrastructure and equipment and therefore is often unable to perform its functions effectively.

Still, despite its problems, many of the respondents felt that the existing legal framework provides the basics of legal protection for women in Afghanistan. The problem lies in the interpretation, implementation and enforcement of the laws. There are a range of issues which contribute to this.¹

- Lack of rule of law and deteriorating security situation;
- The importance given to morality, family honor and integrity, with the burden being primarily borne by women;
- The stigma of raising “private” issues outside of the house;
- The dominance of customs and traditions, which are often conflated with Sharia;

¹ The list is not in any order of priority.

- Male and female illiteracy;
- Lack of knowledge about the legal system outside the urban and peri-urban areas of the country;
- Lack of courts and other legal support services around the country;
- Lack of legal training for judges or access to laws;
- Afghanistan's male-dominated culture; and
- Corruption within the formal justice sector.

The laws are based on Sharia, which provides many legal protections for women. However, Sharia and the IROA laws are misinterpreted, often because many in the formal justice sector are not adequately trained in the law. There is a significant problem with forced marriages, including underage marriages. When girls/women try to escape from their situation and are caught by the authorities, women are arrested for simply "running away," an act that is usually categorized by the authorities as *zina*, or extra- or pre-marital sex, a crime in Afghanistan. Rape is also not a distinct crime.

It is important to note however, that there are champions promoting women's rights in the formal institutions. Unfortunately, these are individuals and their efforts do not necessarily reflect an institutional shift in the formal justice sector becoming more gender-sensitive or increased access to justice for women. Some key findings about the different institutions are set out below:

- While the Constitution of the Islamic Republic of Afghanistan says no law can be in contradiction to Sharia, the laws of Afghanistan must be applied before referring to Sharia. However, the reverse is often applied by the formal justice sector, referring to Sharia almost solely because they have insufficient legal education. This requires long-term and systematic continuing legal education for in-service judges, prosecutors and police. The academic curriculum for all new judicial officials also needs to emphasize this order, particularly those who have graduated from Faculties of Sharia.
- There are a number of significant legal reform initiatives underway. Care must be taken to ensure that there are no contradictions between existing laws and between the new and old laws. New laws and provisions that override old laws and provisions should clearly state this.
- The Supreme Court should have a strategy and the resources to ensure that all courts, including district-level courts, have easy access to the laws, including new laws. Explanatory notes on how laws should be implemented, their relevance and limits must also be stated. The application of laws needs to be monitored by the Supreme Court.
- Similarly, other formal institutions such as the Attorney General's Office and the Afghan National Police need to ensure that their officials are up-to-date with the law. Strategies to ensure that under-educated and insufficiently trained officials and officers receive training and are also kept up-to-date.
- As a matter of priority, public awareness campaigns on laws must continue and be expanded. Strategic partnerships with progressive mullahs should be considered. The awareness campaigns must not be limited to just women, but should take a gendered approach, raising the awareness of male leaders of a community.
- Couching new legal reform initiatives in terms of the *Quran*, Islam's holy book, is an effective way to gain support. This practice should continue in order to get wider support. Couching rights issues in international standards can result in a backlash.

Women and the Informal Justice System

The historic Bonn Agreement of 2001 recognizes the importance of the informal justice system in Afghanistan. However, the informal justice system, like the formal justice system, discriminates against women. Women are voiceless in the informal justice system and are not represented. Decisions are made on a woman's behalf by representatives from her family by and members of the local decision-making body, the jirga or shura. If the honor of a woman is violated in anyway, the honor of her family is violated and a remedy is necessary. In cases involving murder, the perpetrator's family is required to give the victim's family a girl or woman in exchange for the loss of life. This pre-Islamic tradition of *bad* is particularly prevalent amongst the Pashtun ethnic group.

One of the critical problems when considering women's rights within the context of the informal justice sector is the conflation between customary law and Sharia. Often, customs associated with the informal justice system are contrary to Sharia but are practiced in the name of Sharia. Customary law is highly localized and diverse and is passed on orally, in most cases. But generally, the core principle throughout Afghanistan is restorative justice, or *nanawati*, which means seeking forgiveness or pardon.

While most respondents recognized that the informal justice system is often the only dispute resolution venue for many people in the country, they all stated that the types of cases that should be heard before the jirgas/shuras should be limited. All respondents felt that criminal issues should not be considered by the informal justice system and should first be tried before the courts. However, if it is necessary to fulfill the traditional aspects of restorative justice in murder cases, for example, the informal justice system can have a role in determining compensation such as money, or exchange of animals rather than the exchange of girls and women.

There are possibilities of linking the informal justice system with the formal justice system, but careful thought is necessary to ensure that there is buy-in and that this linking does not have unintended consequences.

Women and the Legal Profession

Women are poorly represented in the justice sector with very few women currently employed as judges, prosecutors, lawyers, or police officers. While female participation in law studies has increased significantly during the past several years, their numerical and academic gains have not yielded equivalent increases in participation in the legal profession or judiciary. Due largely to social and cultural constraints and the traditional belief that justice is a realm reserved for men rather than women, their participation in the legal profession and judiciary is low at both the local and national level. The long-held belief that the delicacy and timidity of women's nature makes them unfit for the practice of law is prevalent across the sector.

Limited access to educational opportunities in the past and social and cultural constraints could be considered root causes for the delay in progress toward increased female participation within the justice profession. Low numbers of women working in the justice sector and in law enforcement suggests that women's perspectives are often overlooked in the formulation of laws. As a result, the government could face difficulty responding to sensitive judicial challenges involving women due to the lack of qualified female law enforcement, legal and judicial professionals.

Islamic Republic of Afghanistan and NGO Activities for Legal Empowerment and Increasing Women's Access to Justice

Legal empowerment activities build capacity around existing laws, policies, rules and regulations, but additionally, also seek to foster a broader perspective concerning respective rights. In general, the term “legal empowerment” is unknown in Afghanistan, but a limited number of initiatives have been championed by civil society groups to support women’s access to justice. While many civil society organizations are conducting excellent work in providing access to justice systems, unless they increase an individual’s ability to independently access services and resources, they are not considered to be legal empowerment initiatives. Most activities focus on promoting awareness of women’s rights with limited activities targeting women’s access to justice.

The women’s movement in Afghanistan is not harmonized nor coordinated. Rather, it can be characterized as a movement fraught with friction and rivalry as various groups compete for recognition and donor funding. Legal empowerment programs require a holistic programmatic approach that needs to be coordinated, and this will not happen without concerted effort across the complete spectrum of women’s rights and legal empowerment stakeholders.

The Ministry of Women’s affairs is seen as the lead government agency responsible for the promotion of women’s legal awareness and access to justice. A number of other government agencies and ministries conduct legal awareness programs, but there is no overall strategy and little coordination between agencies. All government institutions need to accept responsibility to improve women’s access to justice and harmonize their activities to ensure women’s legal empowerment.

NGOs and other civil society organizations provide a range of services and activities related to improving awareness of women’s rights and their access to legal services. As women face a multitude of issues and challenges, there is need for all types of services to be offered. However, organizations need to better coordinate activities to fill the gaps and most importantly avoid duplication. Unfortunately, there has been a clear lack of coordination to date and that needs to be addressed if substantial gains are to be realized in women’s legal empowerment and their access to justice.

Legal aid assists individuals in accessing specific rights, redress or relief, but without building capacity for future autonomous decisions and actions this current trend of legal aid will not lead to empowerment. Additionally, it is difficult to properly monitor the impact of legal aid services as few legal aid initiatives have established baseline surveys and systematic documentation.

For many women, accessing legal rights is often dependent on physically moving out of their homes and finding safe shelters. Further, similar to legal aid, shelter services are only one step in the legal empowerment process.

B. Introduction

1. Assessment Rationale and Methodology

The Legal Empowerment and Access of Women to Justice Assessment (LEAWJ) was conducted between 17 February and 20 March, 2008 for the USAID-funded Afghanistan Rule of Law Project (ARoLP). The assessment team developed a questionnaire that could be adapted for different groups that addressed five areas: 1) *Perceptions and attitudes of justice system users regarding legal*

empowerment and access to justice by women. For this section of the questionnaire, the team tried to draw out some comparisons between access to justice for women before the Taliban, and then after the Taliban. 2) *Access of women to, and challenges faced by, women in the formal justice sector (qualitative and quantitative aspects), both as victims of crimes or defendants accused of crimes, as well as petitioners in civil and family law cases.* For this part of the questionnaire, the team tried to collect gender-disaggregated data wherever possible. With regards to the Family Courts, those in Herat, Balkh and Nangarhar had been operational only for the last three to five months, and had processed relatively few cases. The team was able to obtain some statistics for the Family Court in Kabul. 3) *Problems faced by women before informal justice and customary justice mechanisms (shuras and jirgas) in different regions of the country.* While the team did not have the opportunity to meet with *shura* or *jirga* members, we interviewed a wide range of those who had some experience with the informal system. However, the majority of interviewees were more associated with the formal justice system. 4) *Prospects for women in the legal profession.* For this part of the questionnaire, the interviews were conducted with recent graduates from Faculties of Sharia and Law, academics, judges, prosecutors, police, legal aid providers and girls and women residing in shelters. This was perhaps the most inspiring aspect of the study, where many respondents, knowing the cultural and structural hurdles, and the increased exposure to security threats, stated that they had chosen their professions because they wanted to work for the women of Afghanistan given the history of oppression. 5) *Activities of NGOs and the Islamic Republic of Afghanistan on strengthening access to justice.* There are a tremendous number of organizations, most providing some form of capacity-building training on legal awareness and human rights for a variety of groups, including mullahs, judges, prosecutors, and police. Generally, respondents felt that the trainings offered were ad hoc and thus not as effective as they should be.

The team consulted with over 100 NGOs, international NGOs (IGOs), UN agencies, parliamentarians, government agencies, and academics. (For a list of all meetings, please see Annex 18.) Interviews were conducted in Kabul, Nangarhar, Herat, and Balkh provinces. The team also extensively reviewed documents from agencies such as The Asia Foundation, the Afghanistan Research and Evaluation Unit (AREU), the Ministry of Women’s Affairs, and the UN Office of Drugs and Crime Prevention (UNODC).

2. Definitions of Access to Justice

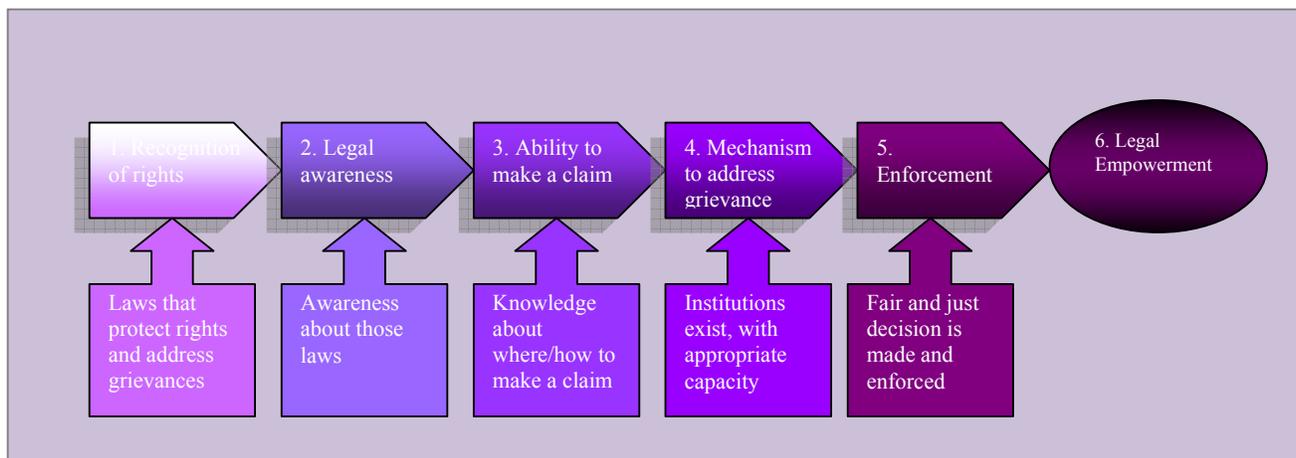
Access to justice can be defined as: access to fair, effective and accountable mechanisms for the protection of rights, control of abuse of power and resolution of conflicts. In this case, access to justice is focused on women and thus includes:

- the existence of legal protections for women;
- women’s awareness and knowledge of their rights;
- women’s ability to make a claim for their rights;
- women’s ability to participate as professionals in the formal and informal justice systems, and in the enforcement of remedies and/or decisions.

Legal empowerment includes all of the above and the ability to seek and exercise influence on law-making and law-implementing processes and institutions. (See Figure 1.² Annex 1 provides more information.)

Figure 1. Components of Access to Justice

² Partly based on A Framework for Strengthening Access to Justice, World Bank, 2006.



C. Background

Women constitute 48.8 percent of the settled population³ in Afghanistan. However, their development is not equal to that of men. While UNDP’s Human Development Index (HDI) measures average achievements, the Gender Development Index (GDI) adjusts this average to reflect the inequalities between men and women in the same three dimensions—a long and healthy life, knowledge, and a decent standard of living. At .310—the lowest index rating in the world—the GDI for Afghanistan is not encouraging, though it accurately reflects the inequality in opportunity faced by women in Afghanistan.⁴ Afghan women’s access to education, health and economic opportunities is much less than that of men and, likewise, their access to justice is also lower.

1. Legal history—Access to Justice for Women in Afghanistan

Afghanistan’s legal tradition is influenced by its rich and complex culture but it is also a deeply segmented society split along ethnic, tribal and clan lines. The main basis of the legal system is the Islamic legal system of the Hanafi School of law practiced by Sunni Muslims, though there is also a Shiite minority in the country and, under Article 131 of the Afghan Constitution, courts may apply the Shiite school of law in cases dealing with cases involving Shiites.

Sharia has always played an important role in the development of the Afghan justice system. The reformist leader Amanullah, who came into power following independence from the British in 1919, introduced statutory law with the purpose of creating a modern Afghan state. Along with customary law, the Hanafi school of jurisprudence was the basis of the budding Afghan judicial system. One of Amanullah’s achievements was to bring the religious leaders, or Ulemas, under state control and divided the courts according to jurisdiction. This move threatened the power of the Ulemas, who together with other conservative elements in the country, removed Amanullah from power in 1929.

Some of Amanullah's key legacies in the Afghan legal system were the 1923 Constitution, the codification of *Ta'zeeri* crimes, or crimes with flexible punishments, in the Penal Code of 1924-25,

³ Central Statistics Office, Afghanistan Statistical Yearbook 2006.

⁴ Afghanistan Human Development Report, 2007

and the provision of training to judicial officials outside of religious schools. Each successive constitution has based itself in part on the 1923 constitution, and the codification of *Ta'zeeri* crimes, allowing secular professionals to access the law.⁵ Nevertheless, due to ongoing pressure from the Ulamas to maintain control over the legal system, a dual judicial system evolved after 1964—one that covered issues such as civil and criminal laws, which came under the ambit of the Ulamas, and the other that covered statutory issues such as international law, administrative law, and tax law. Unless a specific statute was created that took jurisdiction away from the Ulamas, their law was applied.⁶ The Court of Cassation, the highest court of the land at this time, was divided into two chambers along the same lines. Thus, a case going through one chamber would never come into the chamber of the other chamber.

Despite these developments in the courts, customary laws continued to play an important role with the primary courts. Judges of the primary courts were always careful not to encroach upon local religious leaders and tribal leader's power, and always referred matters to them and the village elders to resolve a matter through customary law. If the matter could not be resolved in this forum, then the primary courts would consider the case and pass judgment. If a decision was reached at the *jirga/shura* level, then the decision would be recorded in the primary courts.⁷ The duality in the legal system was mirrored in the legal education system. One chose either schooling in Hanafi jurisprudence, or *fiqh*, or in the law and statutes. Each group did not study the other area in any great depth. There is a similar situation today, where students wishing to enter a legal profession choose either to study in Faculties of Sharia or in Faculties of Law. Some graduates of religious schools, or *madrassas*, also enter justice-sector positions.

Following the military coup of 1978, the new Marxist government tried to introduce a Soviet-style judiciary and introduced legal reforms that aimed at secularizing the law. These efforts did not gain much traction. For example, despite announcing a set amount for *Mahr*, or dowry⁸ prices (300 Afghani) through Decree 7/1978, early child marriages and the payment of excessive marriage expenditures went largely ignored.⁹ This meant that particularly amongst the poor, the promise of a substantial dowry often meant that girl children were offered for marriage.

The legal tradition in Afghanistan today can thus be defined as:

*“...a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society and the polity, about the proper organization and operation of a proper legal system, and about the way law is or should be made, applied, studied, perfected, and taught. The legal tradition relates to the legal system to the culture of which it is a partial expression. It puts the legal system into cultural perspective.”*¹⁰

⁵ Bruce Etling, *Legal Authorities in the Afghan Legal System (1964-1979)*, (2004)

⁶ *Ibid.*

⁷ *Ibid.*

⁸ The *mahr* is an amount of money or property that is given to the wife by the husband as a non-returnable dowry in the marriage contract. She is meant to be able to use it as she wishes.

⁹ Irene Schneider, *Recent Developments in Afghan Family Law: Research Aspects*, ASIEN 104 (Juli 2007), S 106-118.

¹⁰ John Henry Merryman, David S. Clark, and John O. Haley, *The Civil Law Tradition: Europe, Latin America and East Asia*. (Charlottesville: Michie Co, 1994), 3-4

2. Islam and Women – Sources of Law

In Afghanistan, a history of patriarchal customs and traditions has influenced how Islam is interpreted and practiced. These misinterpretations of Islam's precepts impact on women in a drastic manner. In order to understand the situation of women in Afghanistan today, it is necessary to go back in history and understand the root causes of today's situation.

When Islam emerged, it was within an environment of polytheism, deeply rooted historical beliefs and an entrenched patriarchal culture.¹¹ Some of these historical beliefs included:

- Women were weak and cowardly, and inferior to men; and
- Women were there to satisfy the needs of men.

Islam, on the other hand, generally protects the wellbeing of women and provides equal status in many aspects. Unfortunately, despite Islam being adopted as a religion, pre-Islamic beliefs and culture continue to be practiced in Afghanistan. The patriarchal social structures associated with these beliefs and customs continue to be the predominant influence shaping daily life. This perpetuated the dominance of males, and the devaluation of women. For example, Afghan men believe:

- A woman should obey her husband;
- A man has the right to punish his wife to the extreme;
- Women should only work at home;
- Women have less faith, as they cannot pray on the days that they are menstruating;
- Women are deficient in intelligence; and
- Women are soft and of imperfect mind.

However, there are many *Quranic* verses and sayings of the Prophet (*Sunnah*) that are contrary to these practices and emphasize the equality between men and women.

When Sharia became codified in the first and second centuries, the context and the general perspective on women's rights were different. Furthermore, it must be understood that Sharia is a human attempt to understand the "divine will" of Allah and it is not the divine will itself. This is evidenced by the fact that there are different schools of jurisprudence. In Sunni Islam, there are four different schools of jurisprudence: Hanafi, Shafi'i, Hanbali and Maliki. In Shia Islam, there is Ja'fari or the Ithna Ashari school, as well as the Isma'ili and Zaidi schools of jurisprudence.¹²

Sunni Islam bases Sharia on a number of sources other than the *Quran*, chosen by humans, not Allah. The various sources and the interpretation process are summarized in Annexes 2 and 3 of this report. There is a similar problem in Shia jurisprudence. While Shia law is based on the Quran and the pronouncements of the Prophet, the laws are also interpreted by humans—Imams who are the male descendants of the Prophet's daughter Hazrat Fatima and her husband Ali. It is the Imams alone who can interpret the Quran; anything else is considered to be mere speculation. The argument in Shia Islam is over which Imam, from amongst four Imams, is the true Imam. This disagreement about the true Imam has resulted in Shia Islam's four sects Ithna Asharis, the Isma'ilis, the Zaidis and the Alavids. Each sect has its own Imam, and each does not consider the other Imams as legitimate.

¹¹ Belquis Ahmadi, Trip Report, August 19-September 16, 2006, "Women in Islam" Assessment Report, 2006, p 3.

¹² Belquis Ahmadi, Trip Report, August 19-September 16, 2006, "Women in Islam" Assessment Report, 2006, p 3.

Needless to say, given this situation, the juridical pronouncements of the Imams differ from each other at times.

All these complexities have impacted on women in Islam. While the Quran is divine and immutable, its interpretation is a human construct and this mere fact admits change. At the time of the Quran, the situation of women was different from now. And, given that the various schools in their human interpretation can admit change, Islam in relation to women can also be interpreted to be more relevant to the modern day context.

The belief that Islam is discriminating against women is particularly emphasized in countries like Afghanistan, where women face tremendous obstacles both in private and public spheres of life. There are number of reasons why this is the case:

- Afghanistan is a highly diverse country ethnically and geographically. The people are organized along tribal and ethnic lines and are deeply conservative.
- The Quran is interpreted by many people who are illiterate and have not read the, leaving scope for incorrect interpretations and interpretations that are contrary to the *Quran*. Thus in many parts of the country, the *Quran* is interpreted narrowly, conservatively or even erroneously.
- Many of the madrassas have self-proclaimed religious scholars teaching the holy texts.
- A very important factor is that pre-Islamic customs and traditions are deeply entrenched in Afghan society as part of ethnic or tribal identity, but many of these practices are carried out in the name of Islam when, in fact, they are against Islam.
- In the formal legal system, the majority of judges have come through Faculties of Sharia, rather than law. They have little training in statutory law.

Annex 3 attempts to explain this complexity in Afghanistan.

3. 2008: Six Years Later

Following the fall of the Taliban in 2001, the “freeing” of women in Afghanistan was the catchphrase of the donor community.

But, six years on, Afghanistan remains a very patriarchal society organized around ethnic, clan and tribal affiliations, especially in rural areas. Gender relations continue to be shaped by two principle beliefs:

- Women are considered inferior to men and are here to satisfy the needs of men; and
- A man’s honor resides in the actions of the women in his family. Thus, the burden of maintaining family honor lies with the woman.

Despite these challenges, Afghan women have been active at various levels in Afghanistan’s communities, both socially and politically. As stated earlier, the starting point for the improvement of the Afghan women’s situation was with the reformist leader Amanullah. The losses and gains for women from then until the fall of the Taliban are depicted in Annex 5.

The fledgling democratic processes and institutions in Afghanistan must be supported by courageous leadership, good government and public administration if they are to be effective and far-reaching. A key pillar within the democratic process that must be recognized and reinforced immediately, if long-term stability and success is to be achieved across Afghanistan, will be the unbridled availability and

access to all forms of justice by the women of Afghanistan. On numerous occasions, the IROA has reaffirmed its commitment to women's equality and protection of women's rights; however, these commitments are yet to become reality.

4. International Treaty Obligations and Agreements

While this study focuses on the laws of Afghanistan, it is important to bear in mind that Afghanistan has signed, ratified or acceded to ten treaties relevant to this study (See Annex 4.) Of note is the fact that Afghanistan ratified the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) in 2003 without any reservations. Article 7 of the constitution also states that the state shall observe the Charter of the United Nations, international treaties and conventions that Afghanistan is party to, and makes particular reference to the Universal Declaration of Human Rights.

Bonn Agreement

The Bonn Agreement includes a specific commitment to establish a broad-based, gender-sensitive, multi-ethnic and fully representative government and makes mention of the importance of the participation of women in the Interim Administration and Emergency Loya Jirga, or house of representatives. The Interim Authority and the Special Independent Commission for the Convening of the Emergency Loya Jirga will ensure the participation of women as well as the equitable representation of all ethnic and religious communities in the Interim Administration and the Emergency Loya jirga. The Bonn Agreement also appointed Dr. Sima Samar as the first minister of women's affairs.

The Afghanistan Compact

On February 1, 2006, the London Conference concluded with the signing of the Afghanistan Compact. The Compact reaffirmed the IROA's commitments in relation to women's equality and established a number of benchmarks for gender and justice. With respect to governance, rule of law and human rights, the compact commits to upholding justice and the rule of law and promoting respect for the human rights of all Afghans. For a complete list of women and justice specific commitments and benchmarks please see Annex 4.

Afghanistan National Development Strategy

The Afghanistan National Development Strategy (ANDS) contains 40 statements of gender commitment and eight gender-specific benchmarks. For a full list of ANDS women and justice specific priorities and benchmarks please see Annex 7.

National Action Plan for Women of Afghanistan

The National Action Plan for the Women of Afghanistan (NAPWA) is the main resource for gender mainstreaming in Afghanistan's government institutions. The NAPWA is a 10-year plan of action by the Islamic Republic of Afghanistan to implement its commitments to women constituents. These commitments are provided under the Afghan Constitution as well as international treaties such as the CEDAW. The NAPWA itself is a high-level benchmark for achieving women's equal integration into the Government of Afghanistan under the Afghanistan Compact and the Afghanistan National Development Strategy (ANDS).

National Justice Sector Strategy

Following the July 2007 Rome Conference on the Rule of Law in Afghanistan, a National Justice Sector Strategy (NJSS) was developed, as well as the National Justice Program (NJP), which will be implemented over the next three years. The focus is going to be on strengthening Afghan capacity to deliver legal services with integrity and accountability, ensure public access to courts and legal aid and improve public awareness of legal rights and processes, while promoting the coordination of donor activities. The strategy is divided into three goals. These goals represent the sector-wide changes or results that the strategy seeks to achieve. Within each goal there are a number of strategies laid out and expected results within the next five years. The full NJSS should be available at <http://www.moj.gov.af>. The strategy has taken a comprehensive approach and identified a number of gender specific goals (See Annex 8.) Expected results within the next five years are also identified. All of these goals and recommendations are in line with the findings of this study. Gender has not only been mainstreamed into the strategy, but there are specific strategies that will improve access to justice for women.

D. Perceptions and Attitudes of Women Justice Sector Users

1. Introduction

Overall people feel that women's access to justice is improving. However, much work still remains to be done. Interviewees felt that the formal court system was more equitable and fair towards women and that the informal justice system was systematically discriminatory towards women. In analyzing the results of The Asia Foundation's public opinion survey, these perceptions are not held by the general public. Rather, both men and women expressed greater trust and confidence in the informal system than the formal courts. However the survey also shows increase in people are taking their disputes to court, which is an indicator of increased trust in the formal system.

The overall perception regarding women's rights and their access to justice is that it has improved since the fall of the Taliban. However, in the last two years things have slipped backwards due to a decline in security. In general, interviewees felt that women's issues, including women's legal empowerment and access of women to justice, have fallen off the international agenda. As one interviewee noted, "In 2001 everyone talked about freeing the women of Afghanistan but now no one mentions it. The perception is that the problem is solved."

2. General Perceptions

Progress has been made particularly in the area of legal protection. However, proper implementation of the laws and attitudinal changes are yet to become a reality. Women's rights to equality are enshrined in the constitution and most laws are considered to be gender equal or gender neutral. however, this does not translate into equality in implementation. Many judges do not have access to the current laws and most have not taken training specifically related to women's rights under the laws. An even larger challenge is the informal sector where shura and jirga members are generally not trained in the law at all. These dispute-resolution mechanisms rely on Sharia and a variety of local customs and traditions such as *bad* or *badal*, the exchange of brides/wives that are considered to be discriminatory towards women. Although illegal practices such as are decreasing, a number of legal aid providers reported they represented victims where *bad* had been practiced.

The biggest challenges to women's access to justice are local customs and traditions that discriminate against women, insecurity and women's lack of legal awareness. In addition to the discriminatory practices, there is significant social pressure against women accessing either the formal or informal justice system. Going to court is seen to bring shame on a woman and her family. Therefore, if a woman's family is not supportive of her decision to file a complaint either in the formal or informal justice system, it is highly unlikely that she will be able to pursue the matter.

AIHRC and MoWA have reported higher numbers of incidents of violence over the past few years, but this does not necessarily imply an increase in violence. Rather, this is a result of women becoming more aware of their rights and reporting incidents where facilities are available and accessible. However, there is a need for more legal awareness for both men and women.

Legal awareness for women is reaching people and now many women know they have rights and when their rights are being violated. However, in most cases of violations, there are few alternatives other than to return the woman back to her family. Afghan culture and tradition is such that women are dependant on the men in their families. If a woman is experiencing violence in her home at the hands of her husband or husband's relatives, her only long-term option is to return to her father's or brother's home. Likewise, if the violence is being perpetrated by a member of her own family, her only hope of escape is marriage. Shelters provide interim solutions, however none are set up to take women long term.

Women in urban areas have relatively better access to justice, while in rural areas, women still lack legal awareness. Government and NGO programs are relatively focused on urban areas and there is a significant difference in access and awareness between rural and urban areas. Reduced security and stability is compounding this problem as NGOs are unable to conduct awareness activities and women are unable to access legal services in rural areas.

Interviewees were asked to compare the communist, mujahedeen, and post-Taliban periods in terms of women's legal empowerment and access to justice. The majority of respondents felt that women's rights were best protected during the Communist time, since during this period women had the best access to education and equal economic opportunities. Anecdotally, the majority of female judges and professors interviewed graduated during the Communist regime and they all noted the higher representation of female students in law and Sharia faculties during that time.

3. Confidence in the Formal and Informal Justice Systems

Women are not treated equally by both the formal and informal justice systems, and in particular, women are voiceless in the informal justice system. Most interviewees felt that women faced greater discrimination in the informal justice system as they are unable to be present in hearings and must be represented by male relatives. Legal aid providers mentioned that they sometimes represent women in shuras and jirgas and NGOs or government institutions often convene family jirgas to mediate disputes. Many respondents felt that the formal court system was also male-dominated and judges were conservative and not open minded. This perception applied to both male and female judges.

Illiteracy and lack of legal education is a systematic problem in the informal sector. In general, respondents felt that shura and jirga members are uneducated and lack any legal training, which leads to discrimination and improper decision-making. Their ignorance of the law further reinforces the conflation of Sharia and customary law.

A loss of faith in the system leads people to not register and pursue legal rights in court. Although interviewees felt that the formal court system was improving, many felt that the courts were corrupt and there is a general lack of rule of law. Additionally, most laws are inconsistently implemented, enforcement officials can be bribed to ensure non-compliance, and judicial processes are frequently subverted for political expediency. This inadequate and selective use of the law has fostered a public perception that the law is an instrument of control rather than relief, redress and security. The perception expressed by interviewees is that courts are controlled by the rich and powerful, which has a disproportionate affect on women as women are generally poorer and powerless.

4. Attitudes and Perceptions of the Existing Dispute-Resolution Mechanisms

Data from *Afghanistan in 2007: A Survey of the Afghan People*, published by The Asia Foundation,¹³ was used to analyze women and men's perceptions regarding access to justice and attitudes toward the judicial system. Selected questions are analyzed below. For a full list of gender-disaggregated data see Annex 12.

Overall, both men and women expressed significantly greater confidence in local shuras and jirgas than the courts. The 2007 Asia Foundation survey found that 58 percent of survey respondents said they considered state courts to be fair and trusted, while 78 percent said they believed local jirgas and shuras are fair and trusted. Women, in general, were also more confident in shuras and jirgas than in the courts, according to survey, which showed 69 percent of women trusted the shiras and jirgas versus 46 percent of women who trusted the courts. This does not correspond with the general opinion expressed by interviewees that the informal system was more discriminatory towards women.

As a comparison to other government institutions, women and men expressed the highest levels of confidence in the Afghan National Army, police, radio and TV. Less than 50 percent of women expressed confidence in the municipality, government judicial systems, and political parties. Local militias had the lowest level of confidence for both men and women. In general, women expressed lower levels of confidence in all institutions. However, women's confidence was significantly lower for IGOs, CDCs and local NGOs. This may be due to lower levels of interaction or higher expectations of these organizations.

Women and men agree that shuras and jirgas are more trustworthy than the courts, according to The Asia Foundation survey. However, a significantly lower percentage of women strongly agreed that jirgas and shuras are fair and trusted. Women were more likely to agree somewhat or disagree. This may be due to inequalities of representation or practices such as *bad* that are discriminatory towards women.

5. Women's Access to and Knowledge of the Justice Systems

Where institutions exist, the survey showed that women know where and how to access legal services. Generally, women seek to file complaints with government institutions including the AIHRC, MoWA and district governors. If NGOs are active in the area, the government institutions refer the women to the service providers. If there are no NGOs, the government institution may transport the woman to another area or in limited cases attempt to provide the assistance directly.

¹³ The full survey can be found at <http://www.asiafoundation.org/publications/pdf/20>. The authors would like to thank the Asia Foundation for providing the gender disaggregated data for analysis.

With regards to accessibility, women and men were markedly different in their responses with women feeling that both the formal and informal justice systems were less accessible to them. Although this is consistent with what many people expressed during this study's interviews, that women's access was much more restricted than men's, less than 25 percent of women felt that the courts were inaccessible to them. Women appear to know that there are courts and the majority feel that if they need to they can access them.

Women were less likely than men to file disputes; however, when they do, they are more likely to approach the courts than local shuras or jirgas. This may be because of perceived greater equality in the courts and, although these findings are somewhat inconsistent with some perceptions outlined above, it appears that when it comes time to file a complaint, women are more likely to utilize the formal system. Likewise, women also expressed a higher rate of satisfaction with the outcome than men.

When filing a complaint, women were less likely to rely solely on professional legal advice. However, when combining both legal and family advice, women appear to receive equal legal advice and/or representation. This is consistent with what many interviewees explained. A woman may seek out legal advice, but since going to court is considered shameful, she may also seek advice from her family and/or other non-legal support structures. However, over 50 percent of women did not receive any legal advice or support, highlighting the need for expanded legal aid services.

According to survey data, land disputes are by far the most common type of disputes involving women, however most interviewees said that women are primarily involved in family or civil disputes. Cases involving physical assault of women were quite low, though this is probably not because women are less likely to be victims of assault but rather, because of the perception that they are helpless to prevent or complain about it. There was also a significant divergence between men and women in divorce cases, which is not surprising given the requirement for women to obtain a divorce through the formal judicial system whereas a man can easily divorce his wife without court authorization.

Recommendations

- The international community should continue to engage the Islamic Republic of Afghanistan on the issue of women's rights and legal access and provide funding for legal awareness targeted at men and women as well as broad-based legal empowerment for women.
- More efforts should be made to improve legal awareness in rural areas, however this must be complemented with improved access to legal services in areas outside of the provincial capitals.
- Programs should be developed to engage with and provide basic legal education to community shuras and jirgas members, as they are viewed as a legitimate dispute-resolution mechanism by the general public, even if key stakeholders perceive them as biased and discriminatory towards women.
- Gender awareness and sensitivity training should be conducted for all court officials.

E. Access to the Formal Justice Sector

The core national-level institutions of the formal justice system are the Supreme Court, the Ministry of Justice, the Attorney General's Office and the Ministry of Interior. The Supreme Court is the highest court of the land and is charged with managing the affairs of the judiciary at the provincial and district levels.

The Ministry of Justice has four functions: to act as the government’s legal representative, to provide legal assistance to the people, to draft laws, and, since 2003, to manage the prison system. The Attorney General’s Office is an independent institution that investigates and prosecutes crimes. The Ministry of Interior is responsible for the Afghanistan National Police (ANP). In addition to these core institutions, the Ministry of Women’s Affairs and the Afghanistan Independent Human Rights Commission also play important roles in the formal justice sector. The legal department of MoWA mediates certain types of disputes and refers matters to the formal institutions. The AIHRC monitors and investigates human rights abuses, and also refers matters to the formal institutions. The role of these institutions particularly as they relate to access to justice for women are discussed in greater detail below. The sequence of institutions discussed is broadly patterned after a case flow through the formal system.

1. Ministry of Women’s Affairs

MoWA is a policy-making body established by the Bonn Agreement (2001) to address gender issues in all spheres of life. It does this through advocacy, the provision of technical assistance, monitoring, coordination, capacity building of ministries and government agencies, raising public awareness on gender issues and providing support for women. MoWA aims to do this by promoting: (1) gender rights equality; (2) inter-ministerial and inter-agency cooperation; and (3) capacity-building for centralization of mainstreaming gender equality in rehabilitation and development activities.¹⁴

An important function that MoWA plays is the provision of legal and mediation services for women. At the provincial level, there are Directorates of Women’s Affairs (DoWAs) in all 34 provinces, though some are not fully functional due to poor security, such as in Paktika and Helmand provinces. According to MoWA’s *Violence Against Women Database (2008)*,¹⁵ its branches in the provinces or DoWAs and UN agencies received 63 percent of complaints on human rights issues thus making them key venues for women to bring their complaints to.

However, there is a lack of clarity about the extent of MoWA’s mandate. Other ministries consider anything related to women’s issues as “MoWA issues”. This has the potential risk of letting critical issues related to women fall through the gaps. For example, during the assessment, when the issue of welfare for homeless, or women recently released from prison was raised, it was considered to be an issue that MoWA dealt with and not the Ministry of Labor and Social Affairs, Martyrs and Disabled. However, MoWA does not have services for homeless or recently released prisoners—they are usually referred to the NGO-run shelters.

MoWA has its own mediation process but, depending on the type of case, some cases are referred to the Hoqooq Department, the AGO or directly to Family Courts. From the assessment, it is clear that many women see MoWA as a venue to bring their complaints. DoWAs in particular were identified as playing an invaluable role in the provinces. When MoWA or each DoWA’s legal department receives a case application—written or oral—MoWA tries to bring the disputing parties for mediation. If an agreement is successfully reached, the parties sign an agreement with the help of MoWA’s mediators. Each DoWA legal section has two people for mediating women’s cases. If the case cannot be mediated, it goes to court and the woman in question is appointed an attorney and the case is monitored. All criminal cases go directly to the Attorney General or court and cases are monitored by MoWA. See Figure 2 for the type of issues that MoWA/DoWA has dealt with in the

¹⁴ http://www.mowa.gov.af/content/about_mowa/reports/yearly_reports/mowa_performance_report_05_to_06_eng.pdf

¹⁵ Supported by UNIFEM.

first three quarters of 1386/2007. Filing a complaint would largely be about issues such as alimony, inheritance, maintenance, etc.

Figure 2. Cases processed at MoWA/DoWA in the first three quarters of 1386/2007



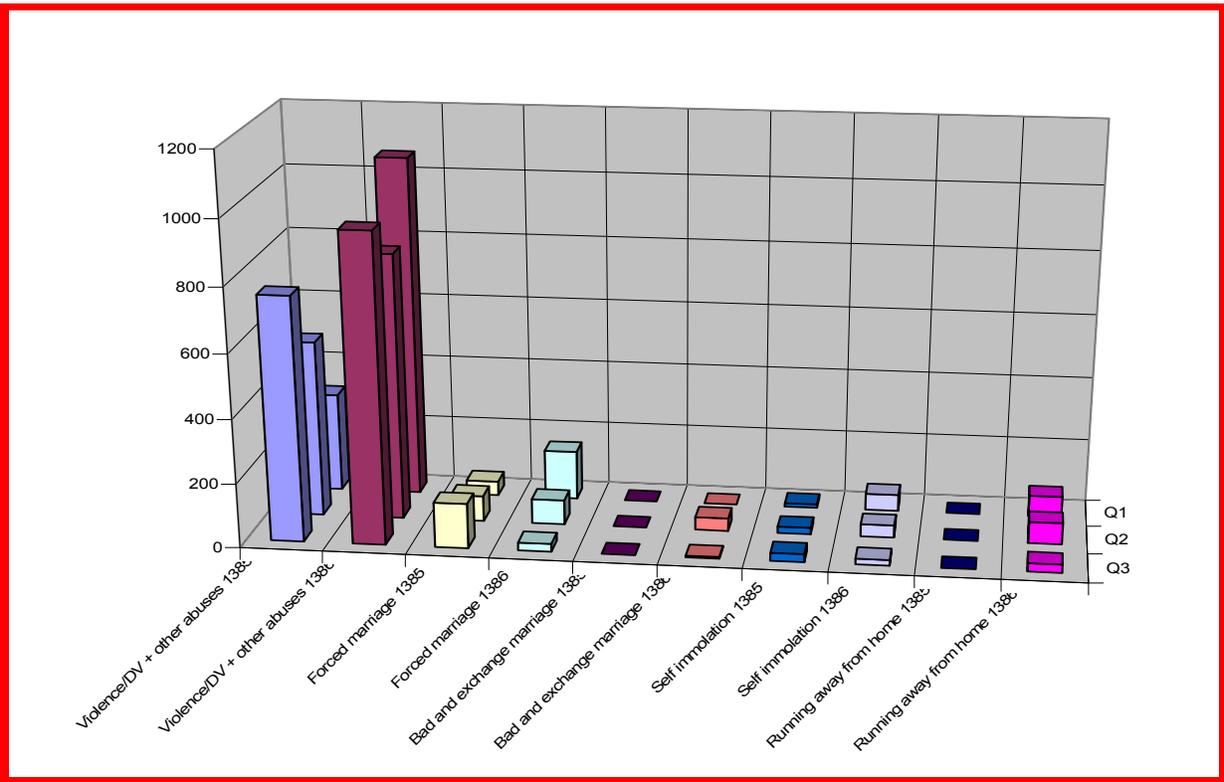
While this process provides an opportunity for women to raise their complaints, there are some issues of concern. According to interviewees, there are no trained mediators facilitating the process and there are not enough social workers. Given the cultural importance placed on keeping the family unit together, the focus of the process is to try and resolve the issues and to keep the family together, which amounts to sending the woman back into the situation she raised a complaint about or was running away from. While the agreement reached through the mediation process is meant to be legally binding, there is limited follow-up from MoWA/DoWA. If the woman received legal advice from one of the legal aid NGOs, and was temporarily housed in a shelter, the shelter may have a better follow-up program depending on where the woman lives, the shelter’s case load, and available resources and transportation. There are often repercussions for the woman for raising a private family matter in public and she may face a situation of elevated violence and abuse.

1.

Figure 3 shows a pattern of increased reporting of incidents in the second year of data collection by MoWAs /DoWAs, which is a positive sign. Interestingly, complaints about forced marriages were the only category that went down significantly, but we know from all our sources that this is still a significant problem. What may be a true positive sign is that there is a significant spike in reporting of runaway cases. This indicates that more women are being “caught” through the MoWA/DoWA system than the prison system. Arrests of runaways has been a significant problem, since many runaway girls and/or women are accused of *zina*. Note however that 1386/2007 numbers have data only from a limited number of provinces. For, example, the category “violence and other abuse”¹⁶ 960 cases were reported from 25 provinces, for *bad* there were 25 cases from 13 provinces, and for self-immolation there were 5 cases reported from 13 provinces.

¹⁶ From data received from MoWA the category “violence and other abuse” includes: Physical abuse, seize, divorce, kidnapping, property, dissolution of engagement, murder, forced marriage, trafficking, self immolation, running away from home, rape and other types of violence. According to the definition by AIHRC, violence is any violent act or threat of violence that causes harm or injury to a woman based on gender discrimination.

Figure 3. Number of cases processed by MoWA in Kabul and Provinces (1385/2005-2006 to 1386/2006 - 2007)



MoWA currently regulates the affairs of shelters in Afghanistan, but the processes are overly bureaucratic. During the assessment, one of the key NGO legal aid providers in Afghanistan recommended that MoWA revisit the current procedures for regulating and monitoring shelters. For example, every time a lawyer has to meet with a client, s/he needs written authorization from MoWA. This can create critical delays for the client so that windows of opportunity are missed. By the same token, the NGO legal aid provider also stated that it was important that there was some regulation of shelters.

While MoWA is one of the ministries that received a great deal of donor attention, there is still much capacity-building needed in every aspect as a policy, advocacy and advisory body. Six years on, many people stated that there is every indication that “donor fatigue” has set in on women’s rights issues. It is thus important that targeted, results-based support is provided to MoWA.

Recommendations

- MoWA’s mandate needs to be clarified through an inter-ministerial process. MoWA’s primary and secondary areas of responsibility should be clearly identified. Similarly, where other agencies should play the primary role, their roles and MoWA’s role needs to be clearly set out and agreed to.
- Through an inter-agency coordination process involving consultations with NGOs and CSOs, issues that are currently falling through the gaps need to be identified and lead and support agencies need to be assigned.

- MoWA and legal aid providers need to collectively work on a regulatory framework for shelters that will facilitate speedier access to justice for women in shelters.
- MoWA and the Hoqooq should have a cadre of trained mediators who have been trained to work with women who have been traumatized.
- MoWA should work together with legal aid providers and trained social workers on a follow-up strategy for women who have either returned to their husband’s family or to their own family after fleeing a situation of violence and trauma.
- The international community must keep Afghan women on the agenda. If the donor community is to demonstrate their commitment to empowering the women of Afghanistan, donors need to continue the level resources and support to women’s empowerment efforts in the long-term. It is important that donors develop funding strategies that are multi-year and responsive to the needs on the ground. Priority programs need to be clearly identified and decision-making and disbursement mechanisms should be streamlined.

2. Commission on the Elimination of Violence against Women

The Commission on the Elimination of Violence against Women (CEVAW) is seen as an effective mechanism to ensure women’s cases are given the attention due within the formal justice system. The Commission has regular sessions, but also convenes on urgent matters. Membership in the Commission includes the Supreme court, the AGO, MoFA, MoJ, Ministry of Hajj and Religious Affairs, AIHRC, Ministry of Information and Culture & Youth Affairs (MoICYA), MoH and MoWA. Legal aid NGOs also participate. While the commission has a work plan, urgent cases relating to women are also brought before the commission, either by legal aid providers, MoWA, AIHRC or shelters to hold a form of “out-of-court” conference. The parties to the dispute may also be asked to participate in part of the session to present their issues to the commission. If the commission is able to facilitate an agreement between the parties, it is signed by the parties concerned and it becomes legally binding.

Some of the respondents stated that this approach has been very effective in ensuring that priority cases relating to women are moved quickly through the formal justice system. This “out-of-court” process also ensures that the woman gets a fairer hearing than if the case were to move through the normal process as the formal justice actors cannot work individually to stall or dismiss the case. Given the allegations of corruption within the formal justice system, the commission decision-making process is more transparent, and the scope for corruption is reduced as the case is fast-tracked through to this “out-of-court” process where commission members jointly agree on a finding. The “out-of-court” process is also important as it also ensures that there is a common understanding of the legal issues and reduces the opportunity for misinterpretation of the law. This is particularly important given the variety of educational backgrounds of the different players.

Box 1. 2006 Work plan for the Commission on Elimination of Violence against Women

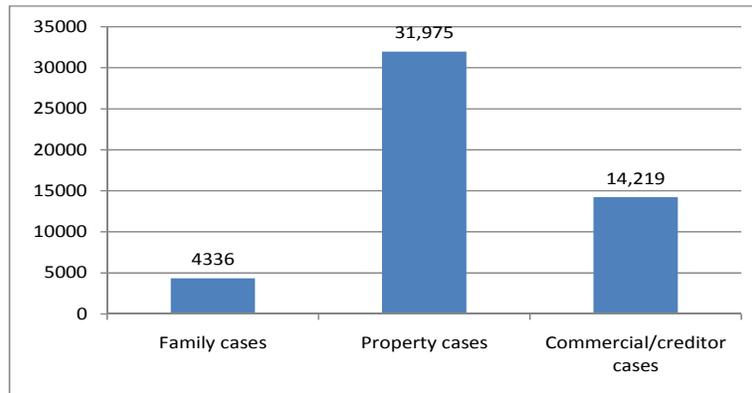
- Devise strategies to remove sexual discrimination from the courts, AGO and the police.
- Develop a system for registration of marriages and divorces
- Apply the Supreme Court’s Circulars 2362/1352 and 2362/1352 dated 13/06/1384.
- Address violence against women and women’s rights from an Islamic context.
- Ensure inheritance rights for women

3. Ministry of Justice – Hoqooq Department¹⁷

The Hoqooq, while not established to facilitate the adjudication of civil disputes—such as family, commercial and property matters—via mediation, has for historical and other reasons taken on this role. The agreement reached between parties is then signed and registered with the courts. The MoJ has offices in all 34 provinces and have a presence in 364 districts. In Kabul, the Hoqooq Department is present in all 18 divisions of Kabul city in addition to all districts of Kabul province. If the parties do not come to a resolution, then the matter is referred to the appropriate court.

The Hoqooq system was developed to ensure a speedy settlement of a case. In the provinces, the size of the directorate is determined by the workload of the relevant province. (See Figure 4.) The cases brought before the provincial Hoqooq offices are typically resolved at the district or central provincial levels. Where the matter is not resolved, the matter is referred to the primary courts (See Figure 5.). In the first 3 quarters of 1386/2007, there had been 50,530 petitions filed in provincial Hoqooq offices. The breakdown of the types of cases is set out in Figure 4. At the time of this writing, the figures for Q4 were being compiled.

Figure 4. Cases by type filed with the Hoqooq (Q1-Q3 1386/2007)



According to interviewees, the Hoqooq does not have the resources or the space in many of its offices to conduct this dispute resolution in a manner that protects the privacy of the parties involved. Often the cases are heard at the police stations. The execution of the court orders relating to these matters is the jurisdiction of the Hoqooq, though the police also insist in being present, which can be problematic.

Recommendations

- As the Hoqooq offices deal with family cases, and family violence is pervasive, in many cases, when women come to resolve civil disputes, it is likely that there has been some form/degree of violence or abuse. It is important that women have some level of safety and privacy as it is usually difficult enough for a woman to raise a family issue in a forum outside that of the family.
- In addition, if there is some level of family violence involved, the Hoqooq mediators should also be required to report this to an institution like MoWA so that the issues relating to violence and abuse are also addressed.

¹⁷ <http://www.moj.gov.af/rights.html>

- As there are a number of venues for family matters to be heard—such as MoWA, the Hoqooq, and family courts—problems could arise from “forum shopping”, where men and/or women could go to the different venues in order to get an outcome in their favor. This issue needs to be kept in consideration, particularly when the Civil Procedure Code and the Law for the Acquisition of Rights are up for review.

4. Ministry of Interior – Police and Family Response Units

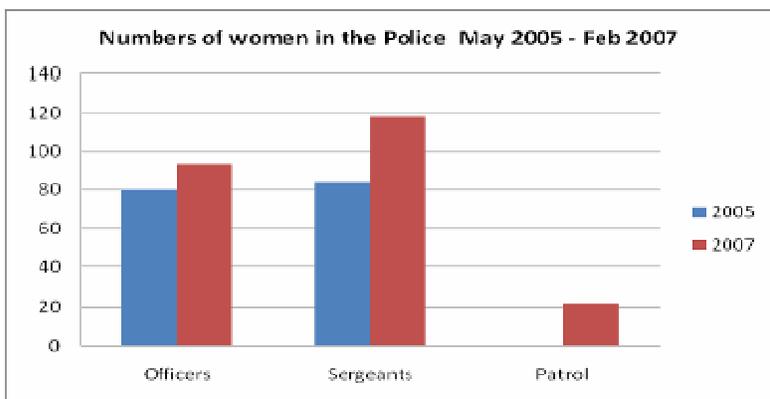
<p>Afghanistan Constitution, 2004 Article 134</p>	<p>Discovery of crimes shall be the duty of police, and investigation and filing the case against the accused in the court shall be the responsibility of the Attorney's Office, in accordance with the provisions of the law. The Attorney's Office shall be part of the Executive organ and shall be independent in its performance. The organization, authority as well as method of work of the Attorney's Office shall be regulated by law. Special law shall regulate discovery and investigation of crimes of duty by the armed forces, police and officials of national security.</p>
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The Afghan National Police (ANP) was established in 2003 as a civilian police force by presidential decree with three levels of police: officers, sergeants and patrol police. However, the institutional culture is still very militaristic. During the time of the Soviets, the civilian police was militarized and was further weakened during the civil war. During the years of the Taliban, the only police force in place was the “Vice and Virtue” police. Thus in 2002, there were no civilian police. Since 2002, most of the international trainers have also been from the military. The institutional culture, therefore, is very masculine and generally policewomen play a supporting role and not a policing role. Police women do not perform the full range of police functions such as investigations, but are generally limited to tasks such as chaperones during interrogations, prison matrons, cleaning etc.

Of the 62,000 police, there are between 230 -250¹⁸ police women, with 14 more currently being trained in the Police Academy. While the Ministry of Interior is making efforts to recruit more women into the police force, very few women are coming forward. Working as a police woman has a social stigma attached to it, as well: Police women are seen to be working with “immoral women”. The security situation, with police as particular targets for insurgents, is also a significant factor in women’s reluctance to join the police force. There are particularly low numbers of women in the patrol ranks given the social limitations of women participating in public. (See Figure 6.)

“My mother and I hid the fact that I was going to the Police Academy for the 9 month training program to become a patrol police.”
A recent female graduate

Figure 6. Numbers of women in the police May 2005—Feb 2007



(Source UNDP Afghanistan Human Development Report, 2007)

¹⁸ It was not possible to get a precise figure as the numbers keep changing.

As well, many of the patrol police in general have low levels of literacy. At the officer level, the recruits have to have completed at least twelfth grade, but only according to legislature passed by the National Assembly in mid-2008. For the mid-level, recruits have to have completed ninth grade, and for the patrol police, some basic literacy is required. The intake of cases usually starts with the patrol police. Illiteracy amongst patrol police means that they cannot make a report in writing. Low literacy levels and a lack of knowledge of women’s rights often go hand-in-hand, so when women come to make a report, police do not necessarily report their case. Interviewees stated that there have been instances where women have been raped by the police when they have gone to report an incident.

The institutional culture, lack of training, corruption and illiteracy amongst the patrol ranks of police has been problematic for women. In some of the less stable parts of the country, the police are seen to be either under the influence of or under pressure from the local commanders. Since police are often the first points of contact for women dealing with a situation of violence, it is the police who decide whether to proceed or not with a case.

<p>Afghanistan Constitution, 2004 Article 27</p>	<p>No deed shall be considered a crime unless ruled by a law promulgated prior to commitment of the offense. No one shall be pursued, arrested, or detained without due process of law. No one shall be punished without the decision of an authoritative court taken in accordance with the provisions of the law, promulgated prior to commitment of the offense.</p>
<p>Afghanistan Constitution, 2004 Article 30</p>	<p>A statement, confession or testimony obtained from an accused or of another individual by means of compulsion shall be invalid. Confession to a crime is a voluntary admission before an authorized court by an accused in a sound state of mind.</p>

Contrary to Article 27 of the constitution, in runaway cases, there is a tendency for the police to presume that the crime of *zina*¹⁹ has been committed, and the women are detained and sent for “virginity tests”. Shelter workers stated that runaway cases are problematic, particularly if the woman has run away with the assistance of a man. Unmarried women who are running away from situations like violence in the home or forced marriages tend to have the most difficult time. Family Response Unit international mentors stated that they are still working with the police to make them understand that running away in itself is not a crime. The presumptive link between running away and *zina* is a deeply engrained concept, and the FRU international mentors stated that much more awareness-raising and training was necessary for the police and the community at large. Due process in runaway cases is highly unlikely. Sources also reported that due to intimidation, or lack of knowledge of the process, women were making statements without fully understanding the implications of how they might be used. Many of the cases in the juvenile courts for example are runaway cases.

Interviewees stated that they can see some positive changes in the police, and women are being referred by police to shelters and DoWA. This is particularly the case where NGOs, legal aid organizations and DoWAs have built up a relationship with the police. This tends to be limited to urban areas or provincial centers. For example, one of the factors behind the spike in the number of runaway cases recorded by MoWA in 1386/2007 is likely to be because the police are starting to refer runaways to MoWA. Nevertheless, the positive changes are thought to be the result of individuals rather than an indication of attitudinal change within the institution. This observation is also indicated in the MoWA database study of 2008 that states that there is limited information about

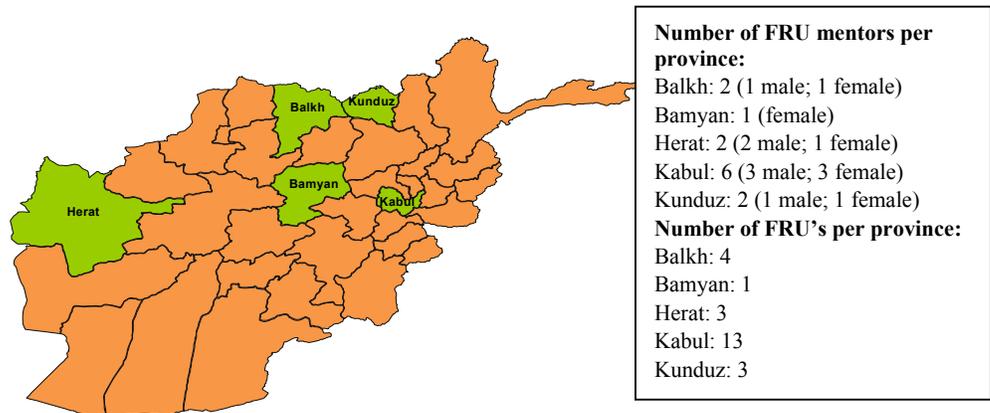
¹⁹ Extra-marital or pre-marital sex which is a crime according to the Penal Code, 1355/1976, (Chapter Eight: Adultery, Pederasty and Violation of Honor, Articles 42 – 429)

how cases are referred. The figures from the MoWA database indicate that the DoWA, the police and UN agencies are the main referring organizations.²⁰

Family Response Units

The FRU concept was initiated in 2005 by U.S. police mentors working in Kabul City’s District 10 police station. The police women in this station were generally employed in low-level, non-policing duties. U.S. police mentors had the idea of using these women in a special unit that provided work for the women that would build their policing competencies, provide an opportunity to demonstrate that women could work autonomously as police, and provide policing services for women in the communities in District 10 who were the victims of family violence. Since then the number of FRUs have grown to 24 across the country, though there may be others, since according to reports from mentors, they continue to “discover” FRUs during routine monitoring visits of police stations. The fact that police commanders are establishing FRUs on their own could be interpreted as positive in that there is some recognition of the value of an FRU and its role in the community. However, unchecked establishment of FRUs could undermine the legitimacy of FRUs as these new FRUs have untrained staff, no resources, and are thus unable to meet community expectations. There are currently 5 FRUs which are getting support from international mentors. (See Figure 7.)

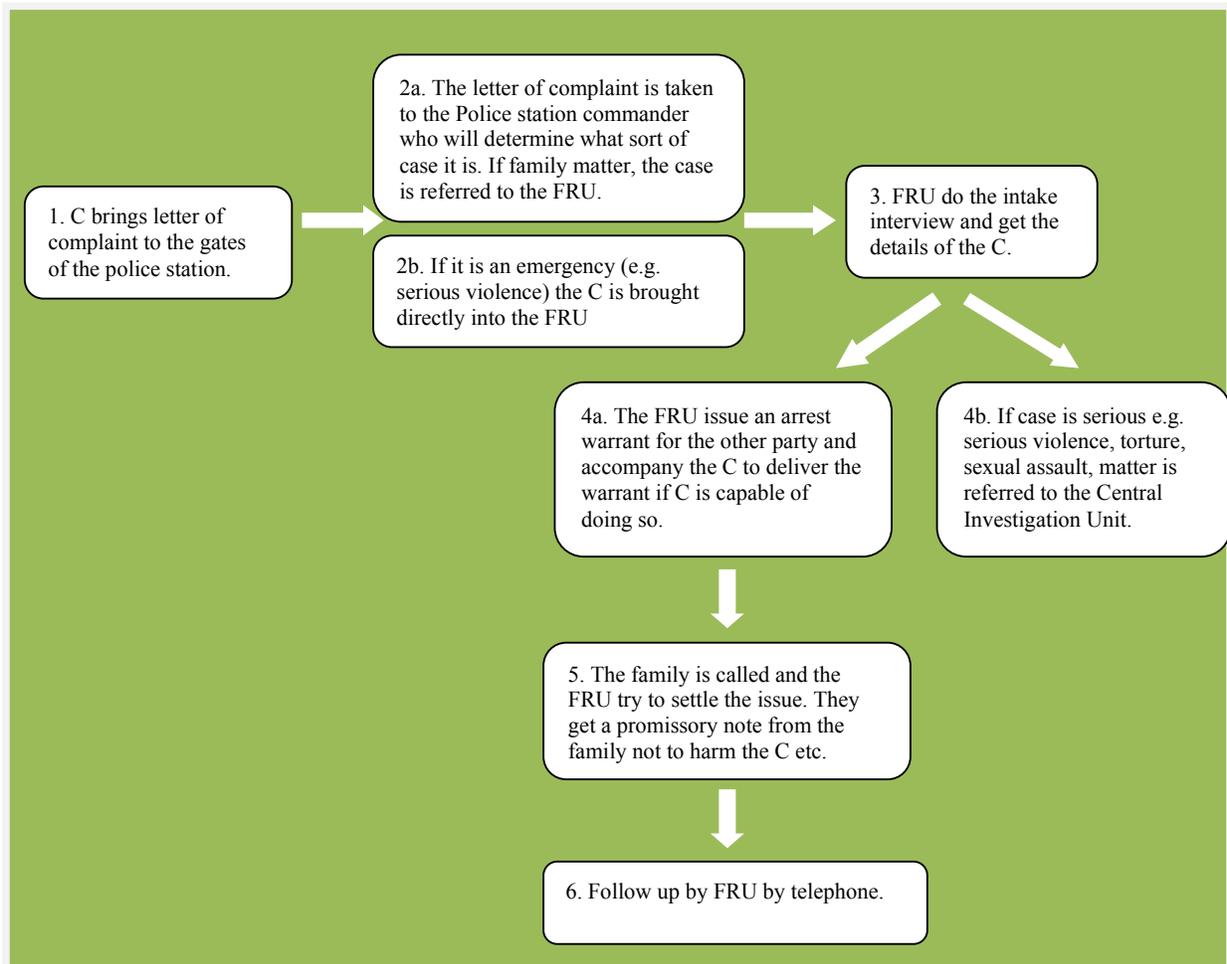
Figure 7. FRUs currently with international mentors



FRUs are open between 8:30am and 3:10pm six days a week and are staffed by one woman and one man, where possible. The FRU facilities that are part of the donor-funded, mentoring program are separate from the main intake area of the police stations where possible. While there are no women on duty at the station during the night, women in some stations, such as in District 10, take weekly turns to be on-call in case of emergencies. The FRU was initially established as a women’s response unit. However, in order to gain wider support, and prevent backlash, the unit’s mandate was altered so that it became a venue for all family cases. Figure 8 sets out the intake process at the FRU in one of the districts in Kabul. Figure 8 outlines the standard operating procedures that have been instituted to try and ease access for women, however, some obstacles still exist and are discussed below.

²⁰ MoWA, Violence against Women Primary Database, 2008: pg 19.

Figure 8. Intake process at the FRU in a Kabul District Police Station



According to the FRU staff, most women come in the early or late morning as incidents usually occur during the night. Many of the women are illiterate, hence the police often have to help them register their case by drafting a letter of complaint. The FRU staff at the District 10 Kabul police station stated that the women in such instances make their complaint verbally, the police write the letter of complaint, read it back to her, and then have the woman sign the letter with a thumb print. Where there are FRUs, particularly the ones with international mentors, it is more likely that a woman's complaint will be recorded, considered and steps taken to investigate the complaint, according to FRU administrators. However, as stated earlier, many police, particularly at the patrol-level, are not literate, and this can sometimes create problems. Other important steps that an FRU is likely to take are:

- If the girl or woman at the police station/FRU is a runaway, the FRU staff at the District 10 Kabul police station do not assume *zina* has been committed. Instead, the girl or woman is questioned in order to try and understand why she has run away. She is then referred to a legal aid provider or shelter, rather than placed in a detention center or prison.
- If a woman is injured or traumatized, the FRU staff in units with international trainers have received more training in how to deal with traumatized women. In cases of serious injury, the FRU staff will accompany the woman to the hospital to get medical attention and a doctor's certificate.

- If the matter is not a serious criminal offence, the FRU tries to resolve the matter between the parties. However, it seems that rather than issuing a summons to the other party to appear at the police station, that they actually arrest the person or persons in question.

Some issues of concern with the current standard operating procedures for the FRU include:

- Rather than issuing a summons to the other party in question, an arrest warrant is issued.
- According to the FRU staff interviewed, if the woman is able, she accompanies the police to deliver the arrest warrant.
- Following the discussion with the other party and family members, if the woman is to return to the husband, the fact that she has raised a family matter in public is considered to be bringing dishonor to the family, and this has repercussions. This matter is compounded when an arrest warrant is issued for the other party in question.
- While it is positive that the FRU attempts to provide follow-up services to women, it is usually via telephone, and not a physical visit to assess the situation of the woman and ensure that she has not since been subjected to more violence and abuse.
- According to the staff at the FRU, as many as 50 percent of their incoming cases are repeat cases, with the same women coming back for help.

Box 2. Observations at a Kabul District Police Station

The FRU staff interviewed at a Kabul district station stated that while FRU staff and police officers may be more sensitive to gender issues and women’s rights, that this attitude was limited to the Kabul or such urban areas. Police outside of the urban centers have low capacity and poor understanding of issues like women’s rights.

The particular district police station visited by the team also had a very supportive police station commander who had done much to change the culture and environment of the police station.

The female FRU staff stated that her male colleague at the FRU who was an officer knew more about women’s rights issues and helped women assert those rights more than she did.

The staff of the FRUs face opposition in the community and in their homes, as they are considered to be working with “immoral women.” While the FRUs supported by the international mentors program have committed national staff working in them, they have a difficult balancing act to play between the work they are doing at the FRU and the prevailing social attitudes within their family and the wider community.

The general consensus amongst interviewees was that the FRU concept was a good concept—however, more capacity-building is needed. Furthermore, while the MoI funds the budget for staff salaries, all other resources are donor-funded. The FRUs are not part of the *tashkiel* or organizational structure of the MoI. Currently the FRU’s activities are limited to the initial intake-process for new cases. Once the case file is sent to the Central Investigation Unit (CIU), they are no longer involved in the process and are not able to track the cases through the system (See Figure 8). The ultimate objective would be to have the FRU also conduct the investigations. There are no women in the CIU, so while the FRU may be a supportive and culturally appropriate point of entry, very quickly, once the case is in the system, the woman has to deal with men. While the FRU staff members are trained in dealing with victims of violence, the CIU staff do not have this training.

The FRUs also face institutional obstacles from within the police department because of turf wars. For example, in Herat, a female FRU officer was placed in the hospital to monitor women being

brought into the hospital for treatment. However, a CIU male officer was also placed there and obstructed the FRU officer from taking action.

There have been some attempts from international advisers to provide training to police on how to deal with women, particularly traumatized women who have fled from physical, psychological or sexual violence. The proposal was to train both male and female police. However, decision-makers at the MoI have been largely silent about this proposal.

From the weekly reports received from the five FRUs with international mentors, it shows an increase in reporting of incidents. It seems that more and more women are starting to become aware of the FRUs.

Recommendations

- As part of the training for the three levels of police, an intensive practicum on dealing with traumatized women is essential, along with periodic refresher courses.
- It is important to try and address the level of illiteracy for the patrol-level of police. The patrol police are often the first point of contact for a woman trying to make a complaint and, if the police person (most likely a man) is illiterate, he will be unable to write a report. Neither is he able to read the law or the ANP's standard operating procedures.
- The limited number of women in the police force means that it is important that they are enabled to perform the full range of policing functions, including working as first responders, investigators, officers, and decision-makers, rather than being limited to support roles.
- While it was not possible to get statistics on complaints against the police of abuse and violence against female victims, many respondents stated that women fear going to the police because there is a perception in some districts that it will result in further abuse, violence or sexual violence. It is important that a complaints process is in place to report such acts, and that, if acts of abuse and violence take place, they are taken seriously by police management and the perpetrators are prosecuted.
- In order to deter police abuse and to encourage a culture of proper conduct in dealing with women complainants amongst the police, a mechanism to reward police and or police/stations that have most effectively dealt with women's cases should also be explored. This incentive scheme could either be from within the police force, or organized by institutions such as the AIHRC and/or MoWA.
- The FRU initiative needs continued targeted and systematic support from the international community to develop their skills further, to take on more complex tasks, and to streamline the process for women.
- FRUs need to be brought within the *tashkiel* of the MoI and the ministry needs to seek budget allocation for the FRU when preparing their annual budgets.
- If the standard operating procedures set out for the FRU in Figure 7 is representative of other FRUs, they need to be revisited to ensure that women are not put into situations of further violence.
- FRU statistics should be forwarded to the MoWA database of incidents of violence against women in order to try and have a central repository for statistics. There should also be a unified classification system for different types of cases.
- The FRU staff could and should be trained alongside the Special Victims Unit proposed at the AGO.

Figure 9. Case statistics from weekly FRU reports (Jan—Mar) 1386-1387/2007-2008

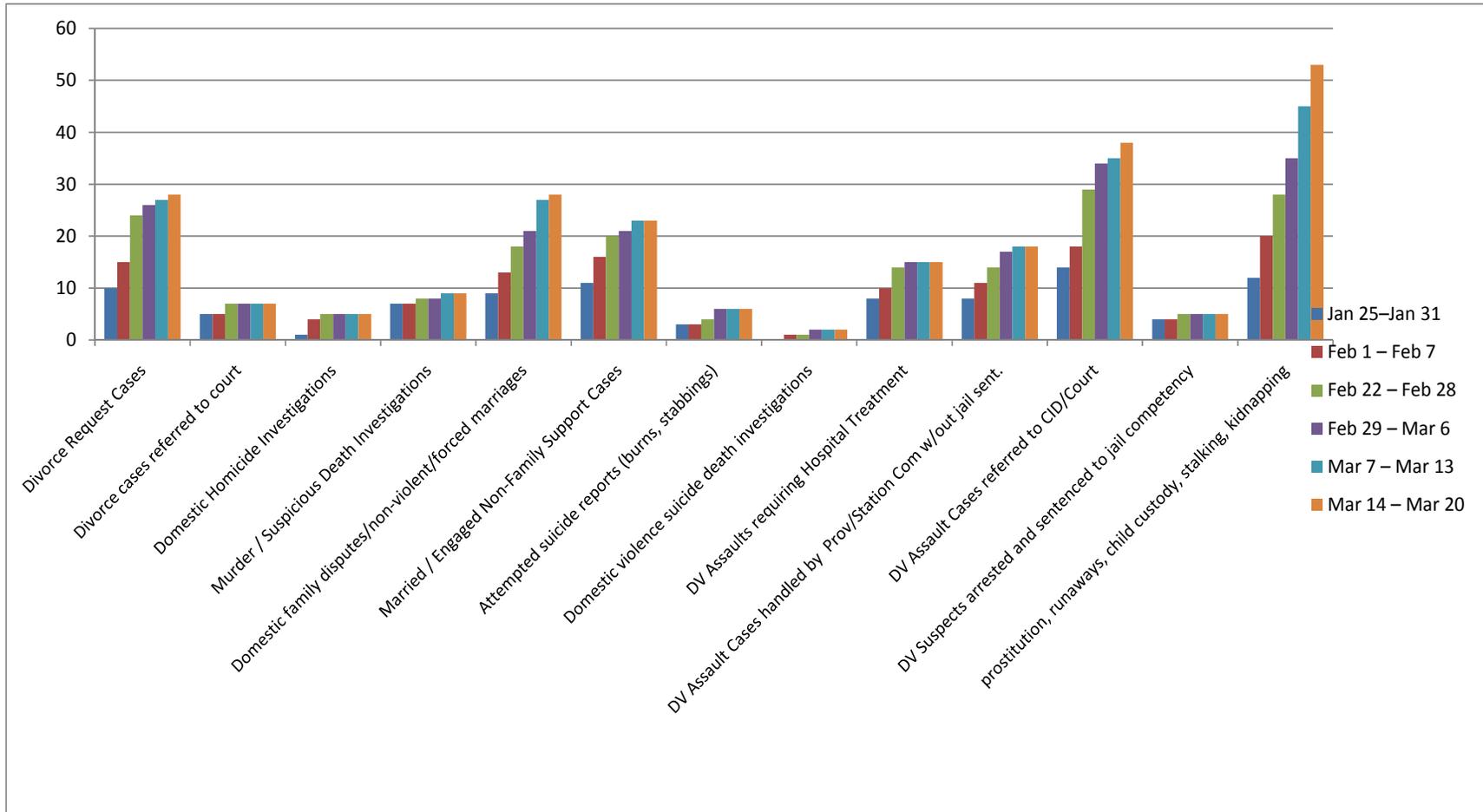
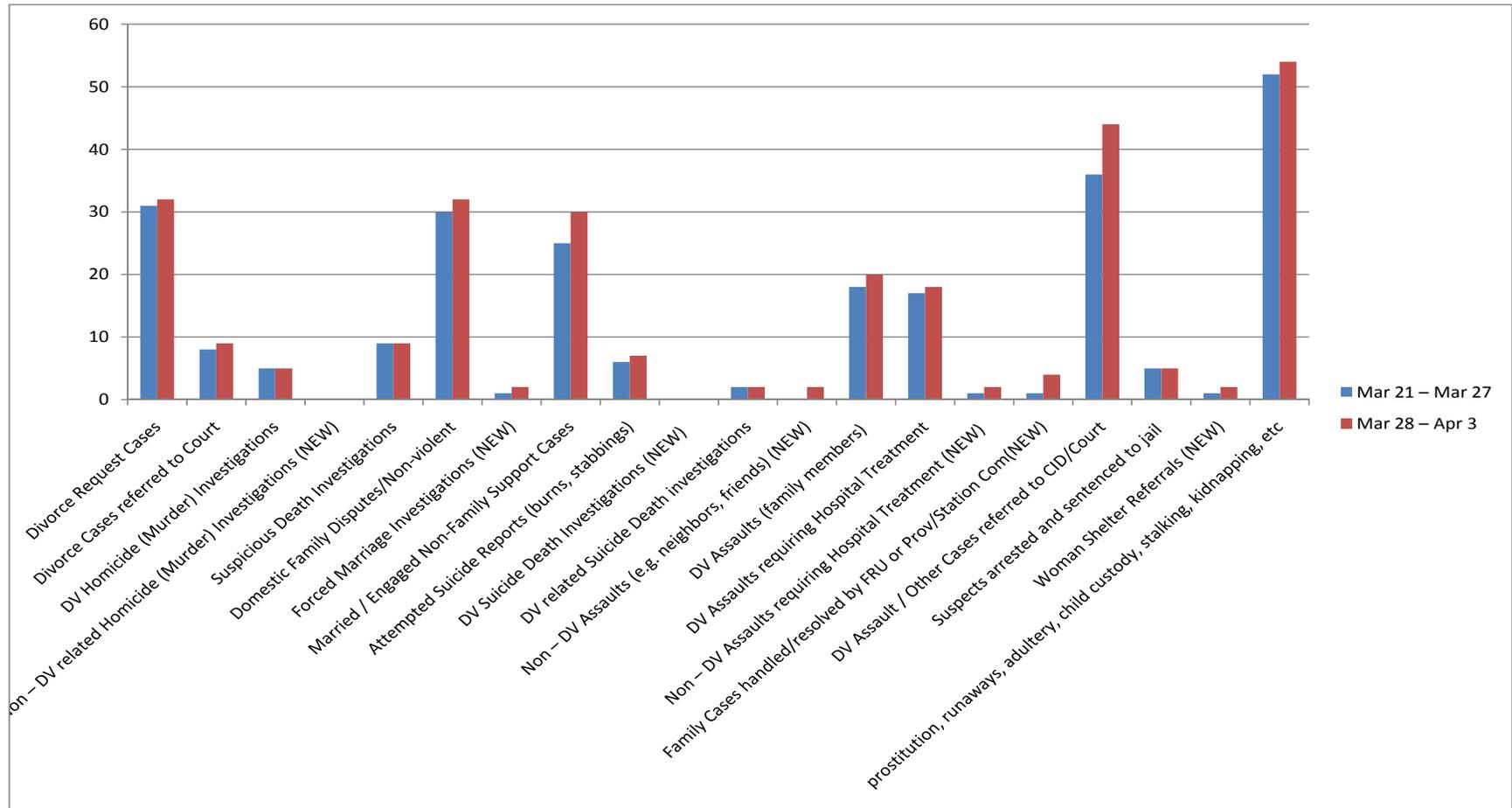


Figure 10. Case statistics from weekly FRU reports (Mar- Apr) 1387/2008



5. Prosecutors

The AGO's mandate under Article 134 of the constitution is for "investigation and filing the case[s] against the accused in the court." It is an independent entity of the executive branch. While the function of the police is to detect crimes, the function of the prosecutor is the investigation and prosecution of crimes. The AGO, like the police force, was virtually dismantled during the Taliban, thus its current capacity is to essentially investigate simple crimes. There are now AGOs in all provinces, including offices at the district-level. However, in some districts, poor security requires district prosecutors to work out of the provincial center.

Afghanistan Constitution, 2004 Article 134	Discovery of crimes shall be the duty of police, and investigation and filing the case against the accused in the court shall be the responsibility of the Attorney's Office, in accordance with the provisions of the law. The Attorney's Office shall be part of the Executive organ and shall be independent in its performance. The organization, authority as well as method of work of the Attorney's Office shall be regulated by law. Special law shall regulate discovery and investigation of crimes of duty by the armed forces, police and officials of national security.
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The AGO is meant to be a key link between the police and the courts, but interviewees state that there is little coordination between the police and the AGO. The investigators claim that the case files prepared by the police CIU is inadequate, and the police claim that the investigators are not trained to do their job. Donors such as the European Union Police Mission in Afghanistan (EUPOL) are making efforts to build bridges between the police and the investigators.

There is an extremely low number of women in the AGO. There are approximately 4,900 employees working in the AGO with a technical staff (i.e. prosecutors and investigators) of 1521. Amongst the technical staff, women make up about 5 percent (See Figure 11). In addition, there are 247 female officers in the AGO who work in an administrative and support capacity. Three of the Attorney General's advisers are women. It is virtually impossible to hire women in the insecure areas of the country, especially in the South.

The AGOs strategy for ANDS states that many prosecutors do not have university degrees in law or Sharia (See Figure 12). This is particularly the case in the provinces. Additionally, until recently, prosecutors did not take a Stage training program to provide new prosecutors with basic training. The strategy paper also goes on to state that before 2004, the Stage had been in hiatus for over a decade. Now, prosecutors and investigators, like judges, have to go through a year-long training program. The Independent National Legal Training Center is proposing courses for legal professionals, including prosecutors, in the near future.

There is no in-house or external systematic continuing legal education program to provide ongoing training for in-service prosecutors. According to an interviewed senior AGO official, the staff participate in many training programs supported by donors, including programs on women's and human rights. When laws are passed, letters explaining the implications of the new law are sent to provincial and district offices without any real training on implementation. This has implications for a number of new laws that are in the pipeline aimed at providing better protecting the rights of women and children.

Of particular note is that according to the AGO strategy to implement the ANDS, Special Victims Units are to be established in provincial prosecutorial offices to investigate and prosecute gender-based violence and family-related crimes. At the AGO's office in Kabul, a special victims and suspects unit is planned that will investigate and prosecute cases that are beyond provincial capacity.

Many of the shelters stated that their collaboration with the AGO is much more positive and that, in the last few years, there has been a process of “learning-on-the-job” for all concerned. If this unit is established, with a proper legal mandate and resources, it could complement the work of the FRU. However, as mentioned above, the sustainability of the FRU as it currently stands is in question given that it is outside the MoI’s budget, and donor-funded.

Figure 11. Number of prosecutors and investigators 1386/2006-2007

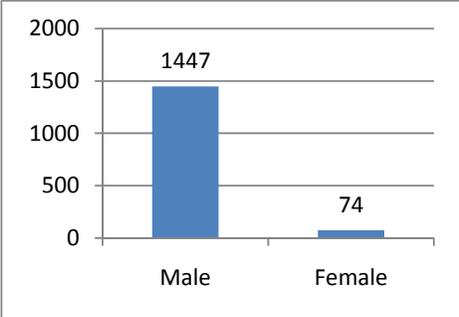
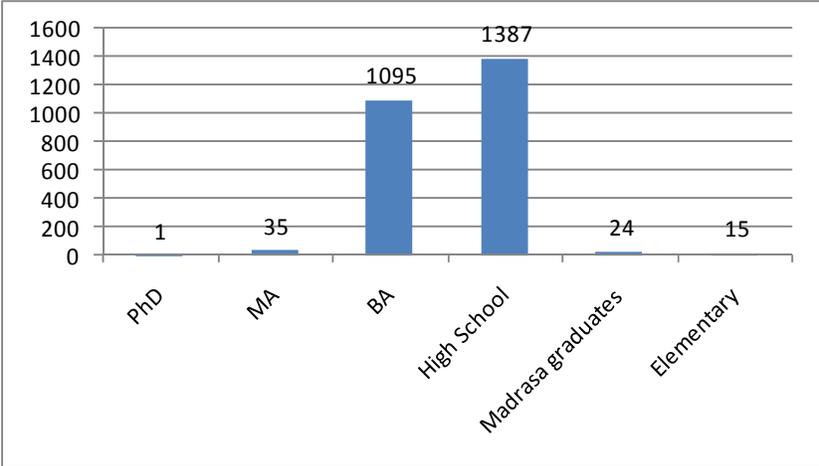


Figure 12. Education levels of prosecutors and investigators (1386/2006-2007)



Recommendations

- Fulfill the goals identified in the AGO Strategy as outlined in Box 4.

Box 3. Priorities identified in the Attorney General's Strategy for ANDS, April 2007

Some priority expected results relevant to this assessment include:

- By end 2010, 100% of prosecutor candidates admitted to the AGO Stage Course will hold degrees in law or Sharia from a credible university.
- By end 2010, 100 % of entry-level prosecutors will have completed AGO Stage vocational training.
- By end 2009, 20% of prosecutors in Afghanistan will have completed post-Stage practical skill investigative and prosecution training, including police-prosecutor collaborative training.
- By end 2010, 10% of prosecutors in the provinces shall have acquired specialized and advanced skills, including the ability to plan and lead proactive police-prosecutor investigations.
- By end 2012, the AGO will increase representation of women to at least 30% of all senior appointments and 30% of all prosecutor positions, while implementing the National Action Plan for Women of Afghanistan (NAPWA) and Eliminating Violence Against Women (EVAW).
- By end 2010 there is an effective witness and victim management mechanisms will be operational and used by all prosecutors at AGO HQ, and by 30% of the prosecutors in the major provinces.
- By end 2010, prosecutor offices at the AGO HQ and in 10% of provinces will include facilities specially rehabilitated or constructed for women, children, victims, protected witnesss, and the disabled.
- By end 2008, agreements will be in reached and protocols designed with international and national agencies and NGOs to accept information and investigate complaints regarding treatment of cases involving women and juvenile suspects of victims.
- By end 2008, review of all cases will be initiated in the major provinces regarding the detention and charging practices involving those charged with moral crimes (home escape, elopement, adultery, and kidnapping by romantic partners.).

6. Afghanistan Independent Human Rights Commission

Article 58 of the Afghanistan constitution establishes the Afghanistan Independent Human Rights Commission (AIHRC). Article 58 also states that anyone can report their complaints to the AIHRC. The AIHRC has the authority to refer the cases of violation to the relevant legal institutions and assist them in defending their rights. Article 5 of the Law on the Structure, Duties and Mandate of the AIHRC states that the AIHRC has a role in promoting and protecting human rights through monitoring the situation of human rights in the country and people's access to fundamental rights and freedoms. The AIHRC has investigative powers to verify cases of human rights violations and to take measures to strengthen and promote human rights in the country. The AIHRC has a policy of gradual evolution and currently has 12 satellite offices in the provinces (See Figure 13).

Almost all the interviewees stated that the AIHRC is one of the most effective organizations in protecting human rights in Afghanistan. From our conversations with interviewees, the AIHRC is seen as an institution of integrity with relatively higher capacity than other agencies in the justice sector. The AIHRC is perceived to be more independent than other institutions in the justice system. In 2007, a total of 2,060 cases of violence against women were registered, which is significantly higher than the 1,199 registered in 2006.²¹ The case flow process once the AIHRC receives a complaint is set out in Figure 14.

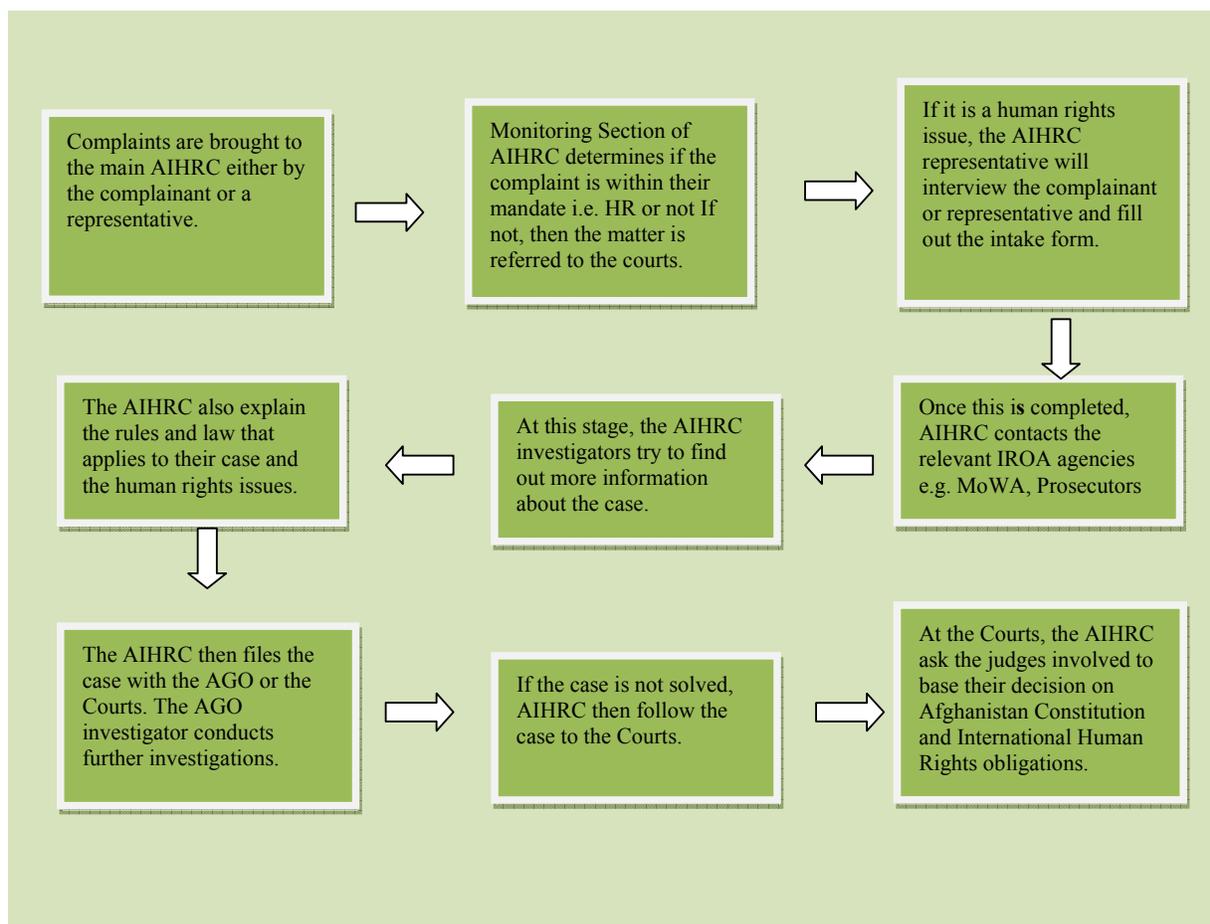
²¹ AIHRC Annual Reports 2006 and 2007.

Figure 13. AIHRC Offices around the country



The Women's Rights Unit in the AIHRC is amongst one of six committees established in AIHRC offices and was created to monitor women's rights at the district level, including in prisons and hospitals. Each Committee is charged with monitoring human rights in a specific area and to raise awareness. The objective of the Women's Rights Unit is to establish a safe environment for women in each village. Committee members travel to villages and work with teachers, families, government officials and raise public awareness about women's rights in Sharia, law and international law. The Women's Rights Units also meet with mullahs as well as other organizations working with women on a monthly basis.

Figure 14. Case flow of complaints received at AIHRC



The AIHRC also monitors the prisons, and aims to find out why a person is in jail, or what the status of his/her case is in the court system. In runaway cases where a woman or girl has fled from a forced marriage situation, torture or domestic violence, the AIHRC follows up quickly with the relevant judicial authorities to try and resolve cases. In 2007, the AIHRC Monitoring and Investigation Unit, in close cooperation with the MoJ, prepared a list of 2,392 people who were in prisons after the completion of their sentences or were illegally detained.²² Figure 15 depicts the gender breakdown of those released. This list was presented to the president, who established a commission to investigate this issue. The commission released a report on the situation and released 819²³ people who were illegally detained or imprisoned in Kabul.²⁴ The commission is determining the sentences of the remaining 1,574 cases.

Afghanistan Constitution, 2004
Article 24

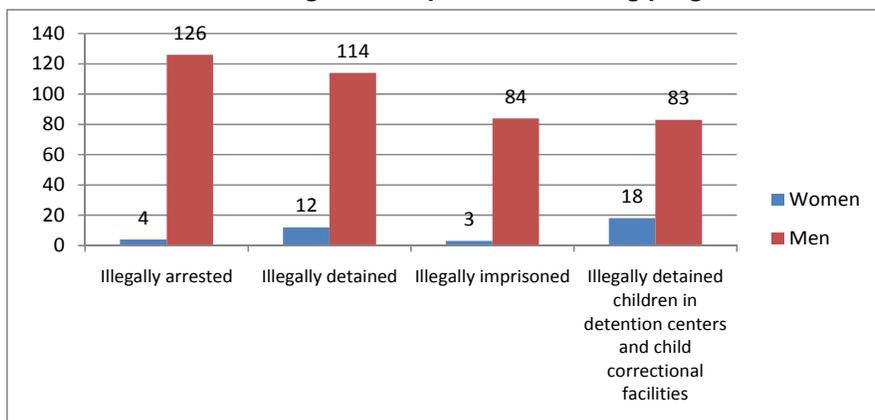
Liberty is the natural right of human beings. This right has no limits unless affecting others freedoms as well as the public interest, which shall be regulated by law. Liberty and human dignity are inviolable. The state shall respect and protect liberty as well as human dignity.

²² AIHRC Annual Report for 1386/2007, p 9.

²³ However, the reason for the discrepancy between the 819 and the break down set out in the graph is not explained.

²⁴ AIHRC Annual Report for 1386/2007, 26.

Figure 15. Persons released through AIHRC prison monitoring program in 1386/2006-2007 ²⁵



The AIHRC Commissioner in Herat stated that a key priority was to expand the activities of their Women’s Rights Unit beyond the urban areas. The AIHRC sees working at the district level as critical. In Herat, the key areas of concern for women and girls were early marriage, deprivation of education and domestic violence. The commissioner also expressed concern about the case backlog at the Supreme Court in Kabul, which is typically two years. This is problematic for those awaiting trial at the final appeals level in provinces such as Herat. Commissioner of the AIHRC in Mazar-i-Sharif, capital of Balkh province, stated that in 2007, there were more than 100 cases on appeal from the court of Appeals in Mazar-i-Sharif and many of the appellants are simply waiting for their hearing in prisons.

The AIHRC highlighted a positive development in the justice sector in its 2007 Annual Report. The report states that there is close cooperation between high level officials in the judicial and police sectors, which is indicative of growing awareness of women’s rights and human rights in these sectors. AIHRC stated that when they send in a letter informing the judicial and police institutions about human rights violations, the replies show positive action and responses. These letters are signed off by the Attorney General or the Minister of Interior depending on what the issue is about.

7. Legal Aid and Defense Attorneys

One of the most positive developments in the justice sector has been the establishment of the legal aid system. There has been no legal aid system in recent years and the accused were generally tried without any representation. The constitution places an obligation on the state to appoint a defense attorney for the indigent in criminal cases (Article 31), thus making it a constitutional right. Since 2001, there have been a growing number of legal aid providers, many of whom started in refugee camps in Pakistan. As of March 2008, there are about 10 NGOs that provide legal aid services for the needy in several regions. The Supreme Court has a Legal Aid Department, but this is not considered to be very effective. The courts tended to contact legal NGOs for defense attorneys.

“We had developed enough of a relationship with the prison wardens so that when a case was going to trial, the prison warden would call and inform us about this. This gave us an opportunity to ensure that defense lawyers were present at the trial”. A defense attorney

With the newly passed Advocates Law in November 2007, the Legal Aid Department is moving from the Supreme Court to the MoJ. There are already over 400 registered attorneys who will report

²⁵ AIHRC Annual Report for 1386/2007, 26.

to the Ministry of Justice’s new legal aid unit, which is receiving attention from international and national stakeholders.²⁶

Most of the legal aid providers said that at first the judges did not know why they were present, but now they are being accepted and expected to be present. All judges interviewed stated that they would not proceed with a case without the presence of a defense attorney, unless the defendant elected not to have one. Legal aid NGOs confirmed that their defense attorneys are gaining greater acceptance in the courts. While legal aid organizations may still have to choose strategically whether they send a male or a female defense attorney to represent the defendant, defense attorneys are gaining greater access to the courts themselves, for example being given access to the relevant court documents.

There are only approximately 190 legal aid attorneys in the country—still too few legal aid providers. In Herat, one of the Family Court judges stated that she is a member of the local Commission on the Elimination of Violence Against Women (CEVAW), but she also provides legal advice to women at the local shelter. Legal NGOs are almost completely dependent on donor funds and face funding uncertainties. Some judges also complained that sometimes too many defense lawyers would come forward to represent the same case.

<p>Afghanistan Constitution, 2004 Article 31, par. 1</p>	<p>Upon arrest, or to prove truth, every individual can appoint a defense attorney (par. 1). Immediately upon arrest, the accused shall have the right to be informed of the nature of the accusation, and appear before the court within the time limit specified by law. In criminal cases, the state shall appoint a defense attorney for the indigent</p>
<p>par. 3</p>	<p>Confidentiality of conversations, correspondence, and communications between the accused and their attorney shall be secure from any kind of violation. The duties and powers of defense attorneys shall be regulated by law.</p>
<p>Interim Procedure Code for courts, Chap. 2, Articles 18</p>	<p>1. Legal assistance to the suspect and the accused requires the service of a qualified professional. 2. To this end, an official register is established in the Ministry of Justice where only persons with a university degree in law or <i>Sharia</i> can be included. 3. The suspect and the accused can be, in any case, assisted by a defense counsel of their choice.</p>
<p>Article 19 Legal Aid</p>	<p>1. The suspect or the accused be financial unable to appoint a defense attorney are entitled to have a free defense attorney appointed for him or her in the following manner: a. The investigating <i>Saranwal</i> or the court adjudicating the case, on the petition of the person, appoints a defense attorney for the destitute person from amongst the lawyers officially permitted to work as defense attorney. b. The person for whom an attorney has been appointed reserves the right not to accept the appointed defense attorney and to defend himself in person. c. The fees for the aforesaid attorney shall be paid from the State budget and its extent shall be fixed by regulation.</p>

²⁶ <http://daccessdds.un.org/doc/UNDOC/GEN/N08/255/80/PDF/N0825580.pdf?OpenElement> para 26.

8. The Courts

The Supreme Court is the highest court and has nine justices, including the Chief Justice. The authority, roles and responsibilities of the courts are set out in Article 120 – 121 of the Afghan constitution. There is a separate law on the structure and composition of the courts, the Law on the Jurisdiction and Organization of the Courts of the Islamic Republic of Afghanistan, 2005.

According to interviewees, one of the positions on the bench was to be initially allocated for one of the qualified senior women judges in Afghanistan. However, this did not happen when a vacancy occurred. Despite support from President Hamid Karzai, opposition from conservative quarters in the judiciary blocked this move.

There are 36 judicial advisers at the Supreme Court, of whom four are women. There are four dewans, or divisions, within the Supreme Court – civil, criminal, commercial and public rights. The 34 Provincial Appeal Courts in the capital of every province are the second-highest level of court in the judiciary. Their jurisdiction also covers civil, criminal, commercial and public rights both at the appellate level and primary level. However, the Provincial Appeal Courts usually have two additional dewans—public security and juvenile. The Urban Primary Court is in every provincial center and are the courts of first instance, handling general criminal, civil, public rights, public security and traffic. There is meant to be a sub-system of primary courts in each of the 364 districts, and each should contain at least three judges, though this is not the case in reality. There are specialized courts such as the Family Court, and the Narcotics Court—the latter, unlike the Family Court has received significant specialized international support. The Supreme Court can also recommend the establishment of mobile courts with the approval of the president.

Afghanistan Constitution, 2004 Article 120	The authority of the judicial organ shall include consideration of all cases filed by real or incorporeal persons, including the state, as plaintiffs or defendants, before the court in accordance with the provisions of the law.
Afghanistan Constitution, 2004 Article 121	At the request of the Government, or courts, the Supreme Court shall review the laws, legislative decrees, international treaties as well as international covenants for their compliance with the Constitution and their interpretation in accordance with the law.
Law on the Structure and Composition of courts Art 14.	Courts shall be independent but subject to law only when issuing orders. Resolving a case and issuing an order by the courts shall be based on the principle of the parties' mutual equality before the law and the court and obeying justice and impartiality.

Most interviewees, other than those who work for the courts, did not consider the courts to be independent and felt that their decisions were influenced by those in power. Furthermore, most of them also stated they felt that the courts were highly corrupt and their decisions were usually in favor of the party with the “deeper pockets.” As women in Afghanistan are generally economically dependent on their families and/or husbands, few women have independent sources of income. This is particularly the case in non-urban areas.²⁷ This means that, in addition to all the other obstacles faced by women in accessing justice, corruption is another obstacle.

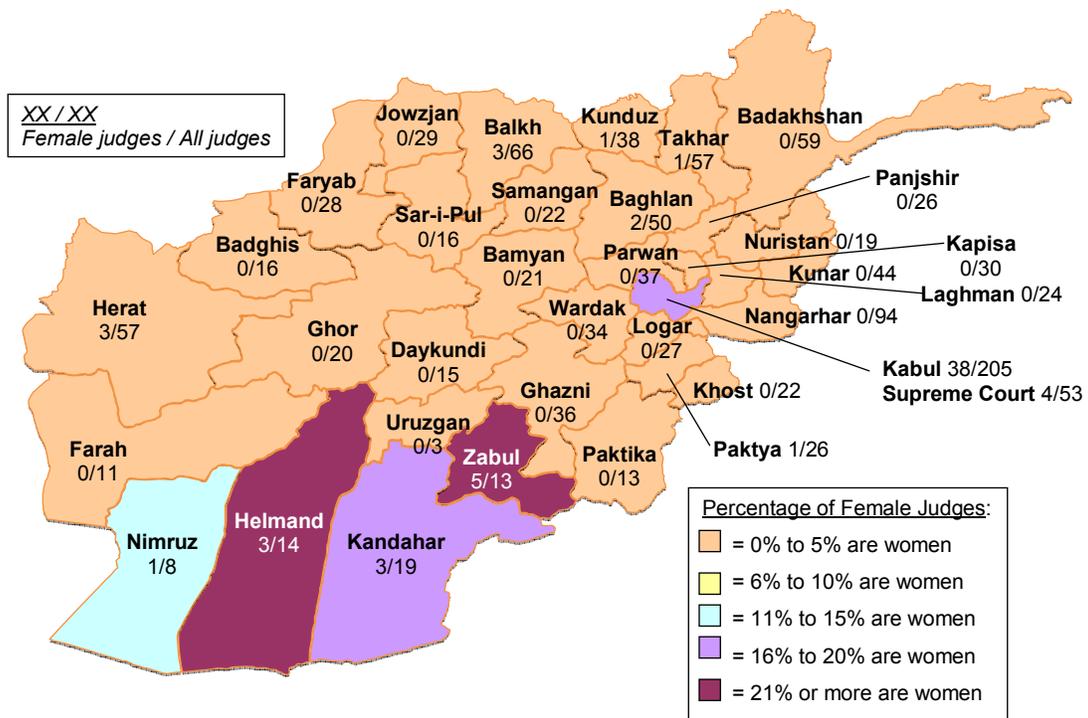
²⁷ Even in urban areas such as Kabul, women tend to hand over their pay checks to the husband so that they are not in control of their financial resources.

While there are meant to be courts at the district-level, there are no courts in many parts of the country, especially where security is an issue. There are 392 courts in total in Afghanistan. Where there are courts, they do not necessarily have the three judges required by law. According to the Supreme Court’s judicial personnel database, administered by the USAID Afghanistan Rule of Law Project, there were 1,242 sitting judges in Afghanistan—one per 21,317 persons.

The courts around the country are meant to send monthly reports with case statistics to the Supreme Court, though reporting is inconsistent and not every court reports. A paper-based case management system has in the process of being rolled out by USAID and the Supreme Court.

The judiciary is an institution that is still very male-dominated (See Annex 10). The only female heads of court are the Family and Juvenile Courts. Women judges are not allowed to sit on *Hudud*²⁸ (Arabic plural of *hadd*, meaning “limit” or “restriction”) and *Qisas* (Arabic word meaning “retaliation”)²⁹ crimes, as they are considered to be too “soft” for pronouncing sentences on these crimes. However, a female judge named Judge Nafisa Kabuli was chosen to head the newly established Counter-Narcotics Court to demonstrate that women judges could work anywhere in the judiciary. Male judges do not necessarily give much worth to the opinions of female judges.

Figure 16. Location of female judges



²⁸ *Hadd* is the word often used in Islamic social and legal literature for the bounds of acceptable behavior and the punishments for serious crimes

²⁹ *Qisas* (Arabic word meaning retaliation) is the right of the heirs of a murder victim to demand execution of the murderer

“I was newly appointed and was the only female judge in the session. The head of the Court walked out when I took my place, as did two others. Thus there were only two of us who made the decision. When the decision was submitted to the head of the court, with the note that only two judges had been present at the time, he stated that only 1.5 judges made the decision – that as a woman, however hard I worked, my opinions would always be half that of a man.”

Personal anecdote from a Family Court Judge about her experience as a judge in the Court of Appeals

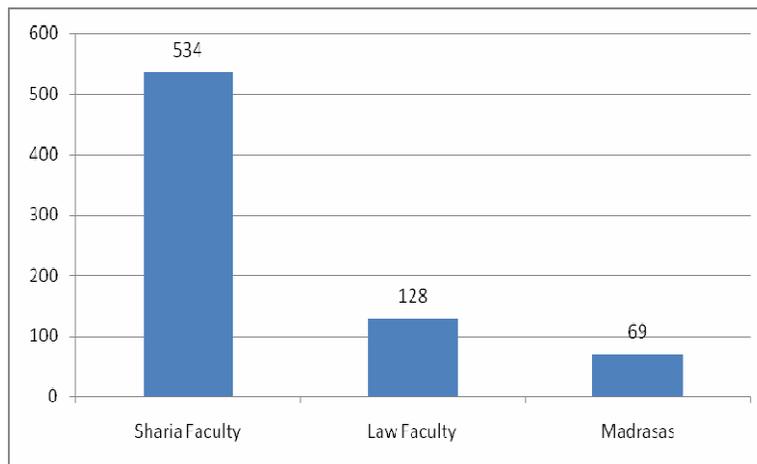
Many judges have not been adequately trained in the law. As Figure 17 indicates, of the 731 judges whose Supreme Court personnel files include educational background information, 73 percent graduated from Faculties of Sharia, where there is very little secular law actually included in the curriculum. Students in the Faculty of Sharia can choose from either the “Islamic Law and Jurisprudence” branch of the faculty, alternatively called the “Fiqh and Law Branch”, or from the “Islamic Studies Branch.” Seventeen percent of the 731 judges with educational histories graduated from Faculties of Law and Political science, while 9 percent graduated from madrasahs, religious schools that offer little to no legal education for future judges.

In Herat, the Family Court is seeing an increasing number of women seeking separation because their husbands are addicted to narcotics. There has been an increase in such cases over the last few years as more and more Afghan refugees are being deported from Iran.

Family Court Judge

In addition, judges do not have access to the laws, and are sometimes still using laws that have since been amended. The fact that a majority of the judges have not received formal legal training means that many turn to Sharia as the primary source of law. While Sharia does provide protections for women, it is widely misinterpreted, particularly by those who have come through the madrasahs, where there is no real quality control on what is being taught or how Sharia is to be interpreted.

Figure 17. Educational backgrounds of sitting Afghan judges



Note: As of April 5, 2008, only 731 of Afghanistan’s 1,242 sitting judges have educational information listed in their Supreme Court personnel records. The graph shown here is based on those 731 Supreme Court records. Educational information about the remaining judges is unknown.

9. Family Court

Specialized Family Courts have only been reestablished since 2005. Where there are no Family Courts established, the primary courts still hear family matters. There are currently Family Courts in Balkh, Herat, Kabul, Kandahar, Kunduz and Nangarhar provinces (See Figure 18). The Supreme

Court intends to establish a Family Court in every province in the next few years. The head of the Family Court in Kabul is Judge Fawzia Faizi, one of the first female heads of courts since 2002. There is a general tendency for women judges to be appointed to the Family Courts. In many of the newer Family courts, as in Herat, the appointment process is still incomplete so that there are only two judges instead of three.

Figure 18. Family Courts in Afghanistan



The jurisdiction of the Family Court is family-related matters, according to the Law on the Organization and Structure of Courts, 2005. However, there is no clear definition of “family matters”. From interviews with the Family Courts in Kabul, Herat, Nangarhar and Balkh, the Family Court mainly deals with divorce that is requested for various reasons such as forced marriages, family violence, sexual and psychological violence, the man’s inability to provide for the woman, etc. The perception of the public about the Family Courts is slowly changing – at first there was some resistance to it on the grounds that it seemed to be focusing on the needs of the woman. However, according to interviewees, this perception is changing in urban centers.

Case statistics from the Family Courts are generally considered non-representative, as at least two of the courts have been operational less than a year. The figures to date received or estimated is set out in the tables below.³⁰

³⁰ Afghan calendar year 1385 is 2006, and 1386 is 2007.

Table 1. Family courts performance -Kabul City- 1385-1386

SN	Case type	19/1/1385-28/12/1385	5/1/1386-7/12/1386
1	Decision	80	91
2	Judicial Ruling	214	216
3	Law Suit	97	90
4	Marriage Contract	27	30
5	Divorce	34	32
6	Confession	3	7
7	Withdrawal	4	14
8	Copy of Divorce letter		6
9	Copy of Decision letter		1
		459	487

Table 2. Case statistics and court information from some Provincial Family Courts

PROVINCE	COMMENTS
Mazar-i-Sharif in Balkh Province	The Family Court had only been in operation for 9 months at the time of the interview (April 2008). The court had five cases. 2 cases had been decided, 1 rejected, and two in process.
Herat	The Family Court is also newly established. There are only two judges, both women. One more judge is to be appointed. The Family Court currently has about 50 cases before it. 1 case has been transferred from the Primary courts, and has been going on for four years. There are 15 cases in process and 30 -35 new cases. Most of the cases are related to domestic violence. The court is also seeing more women seeking separation or divorce as their husbands become addicted to drugs. The rise has been noticeable since the deportation of Afghan refugees from Iran.

As the Family Court usually has female judges, women feel more comfortable coming directly to the courts in areas like Herat. However, it is clear that, like other courts in Afghanistan, they do not have proper resources. Most of the judges from the Family Courts interviewed stated that they had not necessarily been trained in issues such as the changes in the law that are meant to protect women’s rights, application of international treaties such as CEDAW in the domestic context. The Family Court is usually the last court to receive any targeted capacity-building support. Cases are referred to the Family Court from NGOs, legal aid providers, the AIHRC, or Hoqooq offices. Individual women and men also bring their cases directly to the courts.

“Since I have become a Family Court Judge, I have received more threats to my life than ever before. My aim is to learn and give back to women of Afghanistan who have suffered and continue to suffer. If I get killed because of my work, I have told my family to be proud of me. I don’t fear being killed by a car or a gun – the only people I don’t want to be killed by are the Taliban.”
Family Court Judge

Despite the fact that women can bring their cases to the family courts, the only solution for the woman is to either be reunited with her husband, or be reintegrated into her own family. Currently there are no other options for women in Afghanistan. The Family courts also depend on family mediation as a starting point, and try to facilitate a resolution. This agreement is recorded in the courts. The courts do not have the resources to follow up whether the situation for the woman has improved or not. Again, if the woman has been in shelter, the shelters may follow up – but this is limited by resources and security. There are anecdotes that the women go back to a worse situation of violence or become “honor killing” victims. However, honor killing is permitted under the Penal Code (1976), Article 399, and there is no systematic means to monitor this.

The process for civil matters is illustrated in Figure 19. For criminal matters, see Figure 20.

Figure 19. Case Flow Diagram of Civil Matters

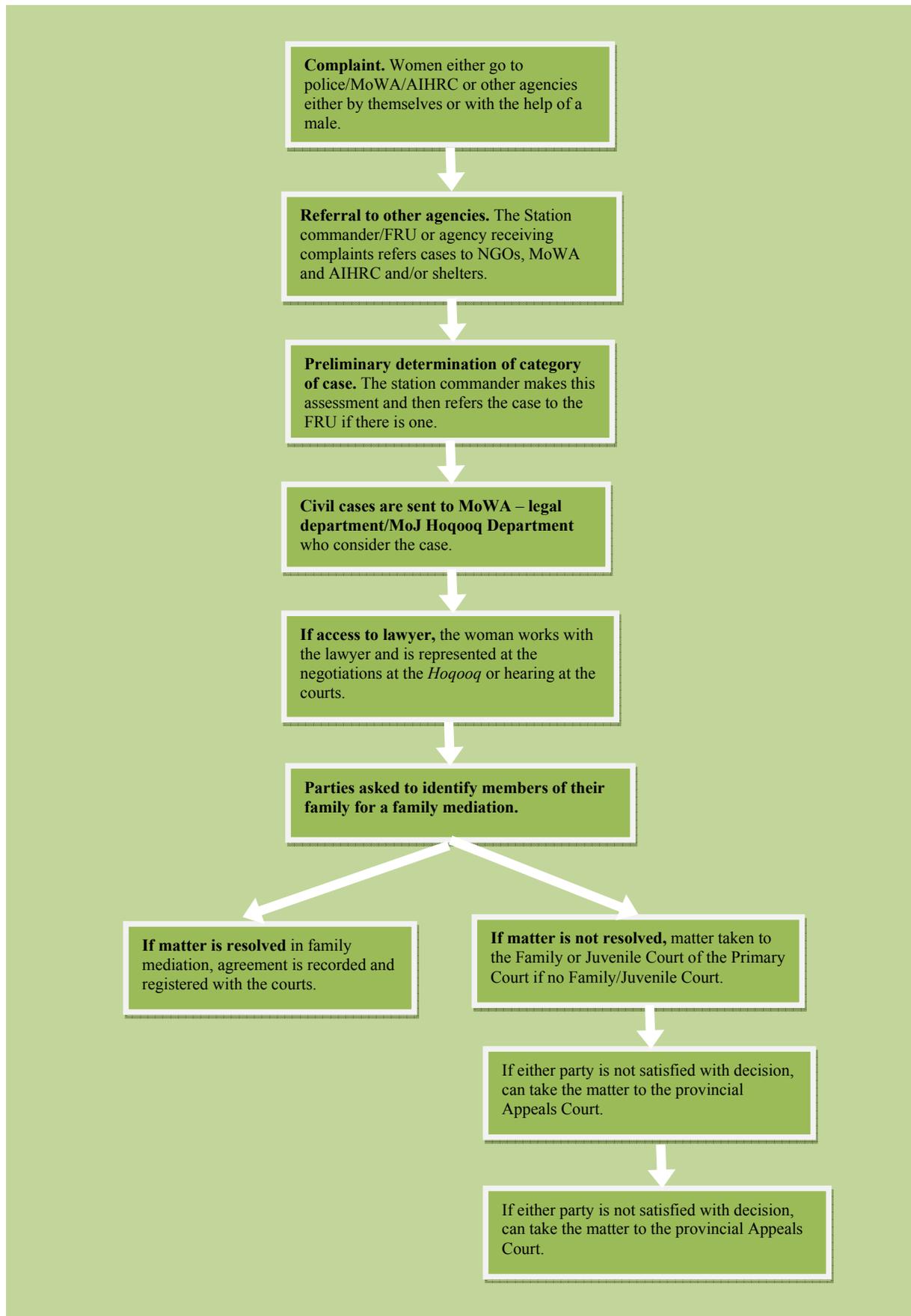
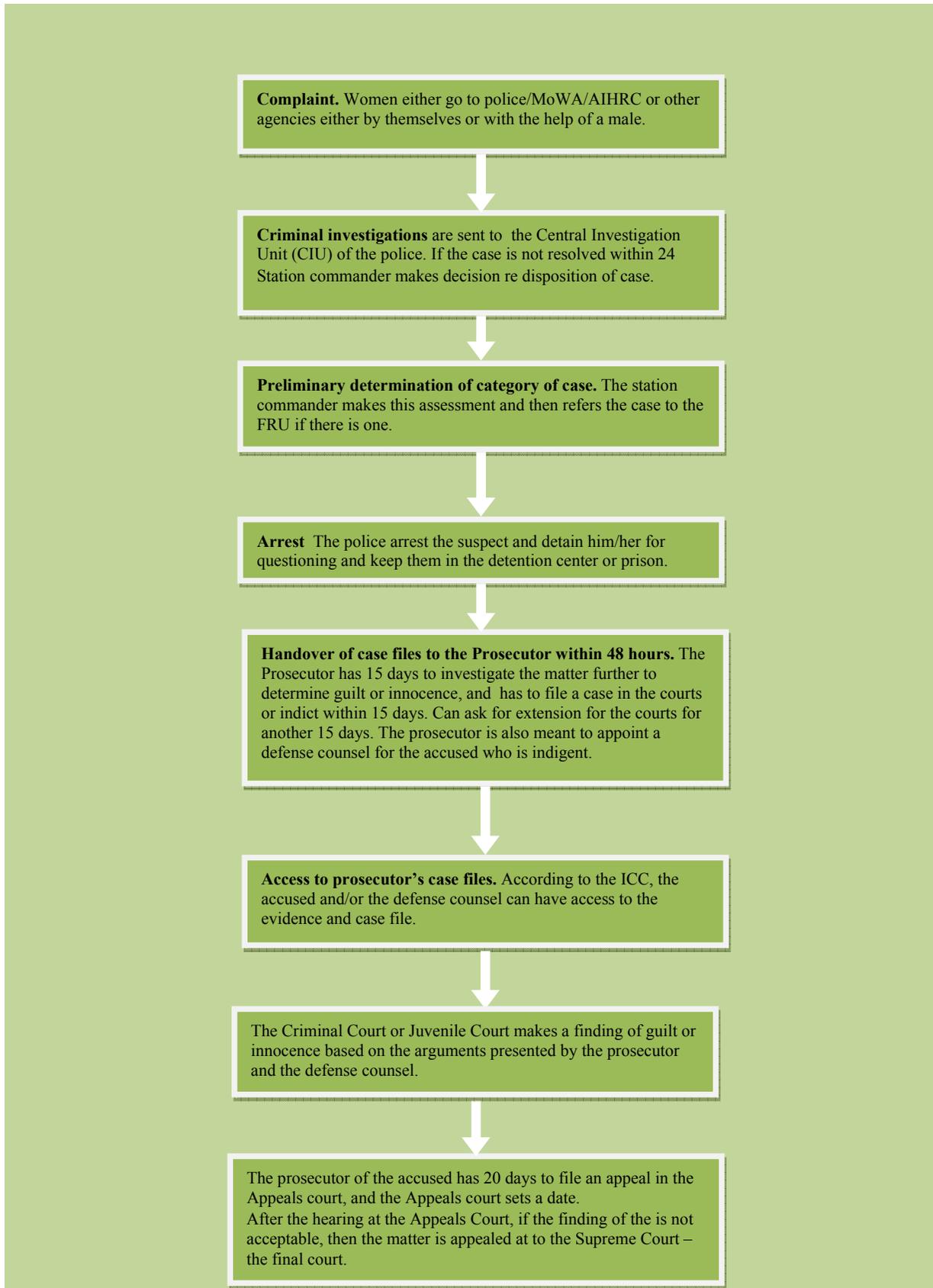


Figure 20. Case Flow Diagram of Criminal Matters



10. Juvenile Court

The Juvenile Code of 2005 defines a child as a person who is under the age of 18 (Article 4). A non-discerning child is one who is under the age of seven, and a discerning child is a person who is older than seven and younger than 12 years old. A child who is under the age of 12 is not criminally responsible (Article 5).

Figure 21. Juvenile Courts in Afghanistan



There are meant to be Juvenile Courts in every province, however only six provinces currently have Juvenile Courts (see Figure 20).

Like the Family Courts, the Juvenile Courts are fairly new, and case statistics are approximations. The Juvenile Court in Herat, like the Family Court, had been in operation only since January 2008. At the time of this assessment's interview, there were 25 pending cases (carried over from the Primary court), 35 cases had been decided, and about one third of the cases were to do with girls. And almost all of them were about runaways. In Mazar-i-Sharif, the acting head of the juvenile court was a woman. She had been in her position since the court was opened, two months prior to this assessment's interview with her. Of the 18 cases she had on her docket, 10 cases were remaining. Only one case was to do with a girl, and it was a runaway case. In Kabul, the Juvenile Court had about 450 cases, of which 20 to 30 were to do with girls.

Cases within the juvenile justice system are meant to be given priority and fast-tracked through the justice system. The process flow as set out in law is illustrated in Figure 21. However, given that there are only four special Juvenile Courts in the country, this does not occur. This is particularly the case when it comes to runaway girls who are accused of committing *zina*.

According to the Juvenile Courts, most of the cases to do with girls are forced marriages and runaway cases. The court sees some murder and kidnapping cases involving girls. According to Article 39 of the Juvenile Code, children between 12 and 16 cannot be sentenced for more than one-third the sentence stipulated in the Penal Code for those above 18 years for the same crime. For those

between 16 and 18 years old, the sentence is half that stipulated in the Penal Code for those above 18 years. While the law calls for social services to rehabilitate the child, this is a distant reality in most of Afghanistan.

According to the law, a juvenile must be detained in separate facilities—in a “special temporary location”—and the detention authority is obliged to provide access to social, educational, psychological and health services (Article 12). However, in reality, in most of the country, children who are awaiting trial and who have been convicted are placed with adults and do not have access to most of the services required by law. A new open center for juveniles has just been completed in Kabul. However, there remains a dearth of social workers in the country.

Data from the Ministry of Justice shows that 20 percent of children in custodial institutions are accused of offences that are not crimes under Afghan law. A recent study of 22 provincial juvenile facilities by the United Nations Children’s Fund (UNICEF) and AIHRC pointed to a general lack of due process in the juvenile justice system. The study revealed that only 24 percent of juveniles had contact with a lawyer during detention, 56 percent reported that their statement was not given voluntarily and only 9 percent were advised of their rights upon arrest.³¹ The juvenile court has few facilities and the judges have not received any specialized training on juvenile justice issues.

Recommendations for All Courts

- There is an urgent need to have systematic capacity-building across the board in the judiciary. Training should be in the context of both law and the Sharia about issues such as equality between men and women and on procedural matters.
- There is an urgent need to provide the necessary resources and training to judges in the Family Courts and Juvenile Courts in particular.
- Positive initiatives such as the Family Courts should be expanded across all provinces with trained judicial staff, and adequate resources.
- A system to develop a systematic continuing legal education (CLE) strategy for in-service judges is of crucial importance. While there are many donor-supported training programs, these are ad hoc.
- Initiatives to “bring” CLE programs including the stage program to the provinces are necessary as women professionals do not have the freedom to travel out to attend the training programs.
- Efforts to improve the case management system needs to be strengthened and supported for the long term until an effective and sustainable system is in place. A systematic method of collecting gender disaggregated data needs to also be established. This method needs to be coherent and systematic across the formal justice system so that the categories are the same, and can thus be properly measured and tracked.

³¹ <http://daccessdds.un.org/doc/UNDOC/GEN/N08/255/80/PDF/N0825580.pdf?OpenElement>

11. Prisons

In the last few years there have been a few key changes in the prison system in Afghanistan. The responsibility for prisons moved from the Central Prison Department (CPD) of the MoI to the MoJ in 2003. In addition, a new Law on Prisons and Detention Centers was adopted in May 2005. A regulation has been submitted to the Taqnin of the MoJ on Juvenile Justice. There are 34 provincial prisons, with most in need of urgent attention.³²

The management of prisons comes under the Supreme Council of Prisons, an inter-agency council chaired by the Minister of Justice. According to the Law on Prisons and Detention Centers, the Supreme Council is meant to meet every three months. Article 19 of the law places responsibility on MoE, MoLSA, MoPH and MoWA to collaborate on prisoner programs and assign staff such as social workers to the penal system accordingly. Resource constraints have limited this sort of support to the penal system. There are also very few qualified social workers in Afghanistan.

Box 4. Membership of the Supreme Council on Prisons

Chair: Minister of Justice

The Deputy Attorney General
A representative from the Supreme Court,
Deputy Interior Minister
Deputy Public Health Minister
Deputy Education Minister
Deputy Minister of Labor and Social Affairs
Deputy Minister of Women's Affairs
Deputy Head of National Security Department,
Representative from the AIHRC
Representative from CSOs
Director General of Prisons

Box 5. Priorities for the Women Prison in Balkh

The team visited the Balkh women's prison on February 28. There were 26 women and 13 children in two rooms. The rooms themselves were relatively clean. There was one bed, with the others sleeping in mattresses. There were no doors, but blankets to stop the cold from coming in. The women had a separate courtyard, and toilet facilities outside. The women seemed to be generally able to move around the court yard. Women awaiting trial and those who had been sentenced are housed together. The women's prison had women prison wardens. The Chief Prison Warden discussed his thoughts about priorities.

- He wanted separate prison facilities for women
- Vocational training for the women
- Better health care
- Better nutrition – they get potatoes for lunch and rice for dinner
- Child care facilities and opportunities for the children to go to school. Currently ?

In the restructuring of the prison administration system, there is to be a Central Prison Department for Women Offender Facilities, with a deputy commissioner for women offenders supporting the commissioner general of prisons.³³ The deputy commissioner for women offenders would be responsible for policy and program development and implementation nationally. This is an important step to address some of the current issues faced by women in prison, as well an opportunity to plan for post-release support and reintegration.³⁴

The number of women in prisons has almost tripled in the last three years (See Figure 21.). The team was unable to get data to analyze the reason behind this trend. From interviews with the courts, all courts stated that very few women were in prison for murder or theft. Most of the cases were runaway cases. However, judges noted that they are starting to see more women who are “mules” for drug traffickers. Most of these women have either been

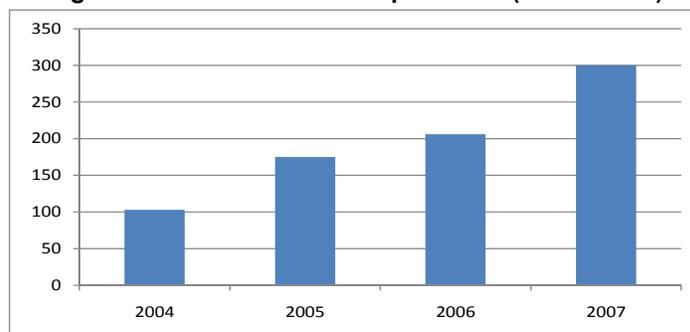
forced, or chosen to work as mules because of extreme poverty.

³² Rome Conference Afghan Prison Update, May 2007-

³³ UNODC, Afghanistan Female Prisoners and their Social Integration, March 2007, p 32.

³⁴ UNODC, Afghanistan Female Prisoners and their Social Integration, March 2007, p 32

Figure 22. Number of female prisoners (2004—2007)



Women are held in a compound within the main prison complex. Most of the prisons do not have separate facilities for women. In some districts and provinces where there are no prison facilities for women, they are often kept in private homes of district officials and mullahs with no water or electricity or transferred to the nearest provincial prison. This leaves them vulnerable to abuse.

The 2007 Annual Report of the AIHRC states that the standards of prisons as a result of the agency's interventions have improved conditions in 11 detention centers and prisons. Improvements included access to defense lawyers, better behavior of prison wardens, faster processing of cases, provision of clean drinking water, improvements in health and sanitation, and the establishment of vocational training centers for prisoners. AIHRC's monitoring and investigation unit secured the release of 1,079 people in 2008 held illegally in prisons and detentions.

A "closed" juvenile rehabilitation center was opened in November 2007, and a women's prison was launched in January 2008. Both facilities are being piloted in Kabul. These centers, supported by the Italian government, with UNODC as the implementing partner, aim to provide offenders with the training, reeducation, vocational education, and counseling they need to make better lives for themselves once they complete their sentences. The Juvenile Center is a pilot project that the agency has begun in Kabul and hopes to expand throughout Afghanistan. It will house boys and girls under the age of 18 in conflict with the law. At the center, they will be provided with vocational training, education and counseling. Before this center, juvenile offenders served their sentences in "open centers" which allowed them to go home each day.

A significant problem is post-release support for women. Even if women were employed before their imprisonment, it would either have been within the home, or with the support of a male member of the family. Post-release women have an additional barrier with the stigma attached to their imprisonment. Some women are not able to return home as they are rejected due to the shame they have brought the family according to local custom and tradition. Some of these women are likely to go back to a situation of honor killing.

MoWA is currently responsible for post-release women. However, MoWA does not have the resources to meet this need and relies on shelters run by NGOs. There are currently three shelters in Kabul, one in Herat and one in Balkh. The average capacity for each of these shelters is about 20 women. However, these shelters are not a long-term option for women with problems. MoWA, with the support of UNIFEM, are in the process of putting together a proposal for a transitional house.³⁵

³⁵ UNODC, *Afghanistan Female Prisoners and their Social Integration*, March 2007, p 36

Recommendations

- Efforts such as those supported by other donors such as the Italian government and UNODC, such as building separate women’s prisons with better basic facilities, should be expanded outside of Kabul, but in a coordinated manner.
- Programs on psycho-social support, literacy skills, and basic-skills building should continue to be expanded beyond Kabul.
- As new prisons are built or repaired, separate holding facilities for pre-trial cases should be factored in. Similarly facilities for lawyers to meet with their clients should also be addressed.
- There is an urgent need to expand the number of social workers across the country who are able to work with girls and women across the board, but especially those who are in prison.
- The Supreme Council of Prisons needs to develop a strategy to address the large number of runaway cases so that they are fast-tracked through the system. This should also be coordinated with the inter-agency Commission on the Elimination of Violence Against Women.
- Sustained efforts to train prison wardens need to continue and be expanded across the country.
- Both the Kabul authorities such as the Supreme Council of Prisons and the international community need to jointly develop a strategy to address the significant gap in the lack of post-release facilities. Having a center that houses and trained post-release women is a culturally sensitive issue, and this needs to be carefully thought-through.
- A program to monitor the reintegration of post-release women is also important.

F. Afghan Laws Pertaining to the Legal Protection of Women

This section of the assessment is not meant to be a comprehensive assessment of laws and regulations that apply in Afghanistan that protect the rights of women. It considers some key provisions relevant to the various aspects of access to justice have been discussed to illustrate some of the obstacles faced by women in accessing justice.

Afghanistan is signatory to 10 treaties relevant to the legal empowerment and access to justice for women, ratifying or acceding to them all. All are important measures. Afghanistan’s commitment to these treaties is reflected in Article 7 of the constitution, including Afghanistan’s obligation to the Convention of Elimination of All Forms of Discrimination against Women (CEDAW), which the government ratified in 2003 without any reservations.

Article 7	The state shall observe the United Nations Charter, inter-state agreements, as well as international treaties to which Afghanistan has joined, and the Universal Declaration of Human Rights.
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For the sake of this analysis, the gap between the law and practice will be illustrated by examining the laws of Afghanistan that are currently in force, so as to highlight the existing protections and to demonstrate how these provisions are actually applied or not applied in reality.

Most of the interviewees felt that the existing legal framework provides the basics of legal protection for women in Afghanistan. The problem lies in the interpretation, implementation and enforcement of the laws. There is a range of issues that contribute to this:³⁶

³⁶ The list is not in any order of priority.

- Lack of rule of law and a deteriorating security situation;
- The importance given to morality, family honor and integrity, with the burden being primarily borne by women;
- The stigma of raising “private” issues outside of the house;
- The dominance of customs and traditions, which are often conflated with Sharia;
- Male and female illiteracy;
- Lack of knowledge about the legal system outside the urban and peri-urban areas of the country;
- Lack of courts and other legal support services around the country;
- Lack of legal training for judges or access to laws;
- Afghanistan’s male-dominated culture; and
- Corruption within the formal justice sector.

Table 3. Snapshot of the key relevant laws for the protection of women

Law	Purpose of law and relevance to legal protection of women and girls
Advocate Law	2007 This law was enacted pursuant of Article 31 of the Afghan Constitution to regulate the rights and duties as well as other responsibilities of advocates.
Afghan Constitution	2004 The Constitution states that Afghanistan shall be an Islamic Republic, independent, unitary and indivisible state (Article 1) and that no law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan (Article). The gender equality provision, Article 22 states that he citizens of Afghanistan, man and woman, have equal rights and duties before the law. The article also forbids any kind of discrimination and distinction between citizens of Afghanistan.
Civil Law	1977 The Civil Law is in four volumes and covers a range of civil issues such as Residency, Citizenship, Marriage and Divorce, Children’s Rights, Endowments, Contract, Property, Inheritance.
Civil Procedure Code	1990 The key objectives of this Code are as follows: i) Observing the equality of the rights of citizens and implementation of the provisions of the laws of the Republic of Afghanistan in civil cases; ii) Management of the due process in judicial proceedings; iii) Determining the limits of rights and duties of the parties to the claim, witnesses and experts; iv) Management of the manner of giving testimony and evaluation of the legal documents, absolute evidence, circumstantial evidence and grounds for judgment; v) Management of affairs related to appeal, final appeal and review of the decisions and final rulings of the courts; and vi) Expediting the proceedings in civil actions.
Afghan Penal Code	1976 This Law regulates the <i>Ta’zeeri</i> crime and penalties. Those committing crimes of <i>Hudud, Qisas and Diyat</i> shall be punished in accordance with the provisions of Islamic religious law (the Hanafi jurisprudence).
Interim Criminal Procedure Code	2004 The Interim Criminal Code for courts sets out the rules and procedures that relate to a criminal case. It sets out the duties and responsibilities of the courts, the Prosecutors and the Judicial Police. It sets out jurisdiction of the court. The rights of suspects and accused, and their right to a defense counsel and legal aid is also recognized. The trial procedure is set out, as is the appeals procedure.
Regulations for the Interpretation and Implementation of the Interim Criminal Procedure Code	2005 This regulation is to be applied for the proper interpretation and implementation of the provisions of the Interim Criminal Procedure Code for courts. Those using the Code are duty bound to abide by the regulations-
Juvenile Code	2005 This Code, in compliance with article 54 national constitution and International Conventions protecting human rights and in particular the interests of children, dictates provisions indicating measures and procedures applicable to children in conflict with the law, children at risk, and children in need of care and protection and safeguarding their rights during investigation and trial.
Juvenile Justice Regulation (Draft)	This Regulations purpose is to organize and manage the activities of the juvenile rehabilitation and training centers (open centers and closed centers) on keeping and reeducating juveniles-in-detention and its other affairs operated by the Juvenile Justice Administration Department of the Ministry of Justice.
Marriage Law	1971 This law sets out what is and is not a valid marriage. It provides for marriage registration at the courts, the rights of the woman to her mah’r, the marriage contract, and that marriage of minors is invalid. The law also sets out the process, rights and

		responsibilities of parties who are seeking a divorce.
Law of Prisons and Detention Centers	2005	The Law sets out the types of deprivation of freedom, structure and organization of prisons, general condition of prisons, attitude toward detainees and prisoners, procedures and conditions for serving the sentence, supervision, and provision of temporary shelter.
Law on Jurisdiction and Organization of the courts of the Islamic Republic of Afghanistan	2005	Article 1 states that the objective of this law is pursuant to Articles 116 and 123 of the Afghan Constitution, and is for the purpose of managing the affairs related to the organization of the judiciary, duties and powers of the Supreme court, primary and appeal courts and judges of the Islamic Republic of Afghanistan.
Law on Organizing the Affairs of Defense Attorneys	1972	The law sets out the rights and obligations of the Defense Attorney, conditions for engaging in the profession, rights and privileges and disciplinary provisions.
Law on the Attorney General's Office	2006	This law sets out the roles and responsibilities of the <i>Saranwali</i> (prosecutor).
Police Law	2005	This law has been enacted on the basis of Articles 56 and 75 (3) and Article 134 of the Constitution of Afghanistan and sets out the duties powers of the police in order to ensure public order and security.

Table 4. Draft legislative plan for the years 1387 (2008/09)

Name of the Legislative Document	Sponsoring Institution	Estimated Timeline of Review at MoJ	Estimated Submission Deadline to the Council of Ministers
Law on Kidnapping and Trafficking of Humans	MoJ	First Quarter	First Quarter
Legal Aid Regulation	MoJ	First Quarter	First Quarter
Regulation on Juveniles Rehabilitation and Training Centers	MoJ	Second Quarter	Second Quarter
Criminal Procedure Code	AGO	Second Quarter	Second Quarter
Law on Elimination of Violence Against Women	MoWA	Third Quarter	Third Quarter

The Law on Personal Status of Shiites has already been through the review process at the Taqnin at the MoJ.

1. The Hierarchy of Legal Sources

The hierarchy of laws is set out in the constitution and also in the Civil Code (1977). The primary source of law is the constitution and the laws of Afghanistan, though in reality, particularly in rural areas, courts do not necessarily know or have easy access to the laws. Article 130 of the Constitution goes on to say that if there are no laws that apply to a case, then the courts will defer to Hanafi jurisprudence. The application of Hanafi jurisprudence is limited under the constitution, which says the practice of religious law cannot contravene international standards to protect human rights. Finally, where there is no provision in either law or in the fundamental principles of Sharia law, then the judges can “rule in a way that attains justice in the best manner.” Article 2 of the Civil Code refers to this as “public convention” and, like religious law, should be limited by the provisions of the law or principles of justice.

Afghanistan Constitution, 2004 Article 130	In cases under consideration, the courts shall apply provisions of this Constitution as well as other laws. If there is no provision in the Constitution or other laws about a case, the courts shall, in pursuance of Hanafi jurisprudence, and, within the limits set by this Constitution, rule in a way that attains justice in the best manner.
Afghanistan Constitution, 2004 Article 131	The courts shall apply the Shia jurisprudence in cases involving personal matters of followers of the Shia sect in accordance with the provisions of the law. In other cases, if no clarification in this Constitution and other laws exist, the courts shall rule according to laws of this sect.
Afghanistan Constitution, 2004 Article 149	The principles of adherence to the tenets of the Holy religion of Islam as well as Islamic Republicanism shall not be amended. Amending fundamental rights of the people shall be permitted only to improve them.

Civil Code Article 1	(1) In cases where the law has a provision, the practice of religious jurisprudence is not permitted. Provisions of this Act are applicable in letter and spirit.
Civil Code Article 2	(2) In cases the law has no provision; the court shall issue a verdict in accordance with the fundamental principles of <i>Hanafi</i> jurisprudence of Islamic <i>shariat</i> to secure justice in the best possible way. Where there is no provision in the law or in the fundamental principles of the <i>Hanafi</i> jurisprudence of Islamic <i>shariat</i> , the court issues a verdict in accordance with the public convention provided the convention does not contradict the provisions of the law or principles of justice.

In reality, the courts, particularly in rural areas, do not apply the law as a primary source of law, relying instead on Article 130 that allows for the application of Sharia. This application is influenced by local traditions and customs, often because judges have little to no proper academic or legal training. According to the Supreme Court judicial personnel database, 61 percent of Afghanistan’s 1,242 judges have completed both a university degree in law or Sharia and received formal Stage training. The remaining 40 percent of Afghanistan’s judges lack basic legal training.

2. Equality before the law

Obstruction of women’s access to justice is unconstitutional, according to Article 22 of the constitution. Under the law, men and women should be given the same opportunities to effectively claim and defend their rights. This also means that, during all stages of proceedings in a case, all parties must be treated equally by the police, the prosecutor, and the judge—before the trial, during the trial and after the trial. The reality is that in much of the country, if women choose to attempt to take matters before the formal justice system, there are hurdles every step of the way.

Afghan Constitution Art. 6	The state shall be obligated to create a prosperous and progressive society based on social justice, preservation of human dignity, protection of human rights, realization of democracy, attainment of national unity as well as equality between all peoples and tribes and balance development of all areas of the country.
Afghan Constitution Art. 7 (1)	The state shall observe Charter of the United Nations, international treaties, international conventions that Afghanistan is a part to, and the Universal Declaration of Human Rights.
Afghan Constitution Art. 22	Any kind of discrimination and privilege between the citizens of Afghanistan are prohibited. The citizens of Afghanistan – whether woman or man – have equal rights and duties before the law
Interim Criminal Code for courts Art 22.	1. The Primary <i>Saranwal</i> has the obligation to introduce the penal action for prosecution of all crimes, known directly by him or reported to him, committed in the territory of the District, unless otherwise expressly provided by law. 2. The <i>Saranwal</i> shall not dismiss or stay a case except as otherwise provided by the law.
Law on the Structure and Composition of courts Art 14.	courts shall be independent but subject to law only when issuing orders. Resolving a case and issuing an order by the courts shall be based on the principle of the parties’ mutual equality before the law and the court and obeying justice and impartiality.

According to the AIHRC, in many provinces, women can rarely access the justice sector to solve their disputes for a host of reasons, including rampant corruption, intimidation and the value given to religious and traditional norms. Women women’s case files get to the courts, they are sometimes ignored, or the court officials do not pay attention to women’s complaints. Decisions are usually made in the absence of women. If the women are present, they are not informed of their right to a defense lawyer, as required by law. Corruption, ignorance, and violence are possibilities at every step

of the legal process. Often, the burden of proof rests on women. Women's prisons do not exist in most provinces, and there are no prison standards for women and children.

In criminal case proceedings, according to the principles of fair trials, the defense and prosecutors must have equal opportunities to prepare and present their cases during the course of proceedings. Based on interviews with defense lawyers, defense attorneys are beginning to have access to court documents in order to prepare and present their cases. While a positive step, this is a trend that is limited to urban centers. In most of the country, there are no defense lawyers available.

3. The Right for Women to Work

Afghanistan Constitution, 2004 Article 48	Work is the right of every Afghan. Working hours, paid holidays, employment and employee rights and related matters shall be regulated by the law. Choice of occupation and craft shall be free within the bounds of law.
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Women are often prevented from going to work by their families or husbands as it is considered improper for women to be working and interacting with other men in public. Other obstacles to working outside the home include security and transportation problems and the lack of childcare, given Afghanistan's high fertility rate of 7.2 births per woman³⁷. For women who do work outside their homes, they are generally paid much less than men. In general, women earn 41 percent of what men make in similar non-agricultural jobs.³⁸ Interviewees added that many working women are forced to hand over their salaries to their husbands. An illiteracy rate of 84.2 percent³⁹ further compounds the problem of women's dependence on men. In the context of this assessment, the lack of economic independence means that women often do not have the means to get help.

4. Forced Marriage of Girls and Women is a Significant Legal Problem

MoWA's 2008 database of incidents of violence against women showed that 6 percent of the 1,011 cases registered between May 2006 and October 2007 were cases of forced marriage.⁴⁰ According to UNICEF, 57 percent of Afghan marriages involve girls under 16, while women's activists say up to 80 percent of marriages in the country are either forced or arranged. The problems of forced and child marriages are particularly acute in poverty-stricken, rural areas. The situation for women seems to be worse where there is a lack of rule of law. For example, in Helmand province, there were 114 cases of forced marriage registered by the AIHRC during 2007. Recently in the international media, the story of "Opium Brides" has made the headlines. This is when the farmer who is dependent on opium as a cash crop takes out a loan. Should the crop fail, or as in some cases, be destroyed by the authorities, the farmer is unable to repay the loan, hence offers up his daughter, no matter what her age, as a bride to the creditor.

³⁷ UNICEF Afghanistan Statistics: http://www.unicef.org/infobycountry/afghanistan_statistics.html

³⁸ Belquis Ahmadi, Women in Islam, Afghanistan Report, 2006, P 12.

³⁹ UNIFEM Afghanistan Statistics: <http://afghanistan.unifem.org/media/pubs/08/factsheet.html#education>

⁴⁰ UNIFEM in cooperation with MoWA launched a primary database on violence against women in March 2006- This was piloted in three provinces. This has expanded to 21 provinces. The contributions from the provinces vary due to the staged roll-out.

5. The Lack of Post-Shelter/Post-Prison Care

An area of particular concern is the lack of any long-term options for women who have been released from prison. It is highly unlikely that a woman who has been in prison will be allowed to return to her husband's family. Her family may take her back, but without some sort of intervention, she may be killed by her father or her brothers because she has harmed the honor of the family. Shelters are sometimes reluctant to take post-release women for fear that she may be a bad influence, particularly if she was in prison for crimes such as prostitution or murder. Shelters, in any case, are only short-term options for women and have limited space. Interviewees who managed Afghanistan's shelters stated that they try and negotiate a woman's safety with her family before releasing her back to her husband's family or her own family. In many cases, where the woman is able to return to her family, the family usually leaves the area.

Some key points to consider:

- A girl or woman's integrity is paramount to family honor;
- A girl or woman who approaches the formal sector without her family's knowledge may face reprisals for bringing shame to the family;
- Remarriage is the only option for survival for most divorced women or widows;
- Girls or women who run away from their situations are assumed to have pre- or extra-marital sex, which is a crime; and
- Girls or women who have been to prison have few options post-release other than to return home

6. De Jure/De Facto Analysis of Key Provisions

As stated previously, many sources interviewed said they felt that the basics of legal protection for women are provided by existing laws, but that the laws are misinterpreted and members of the justice discriminate against women both in substance and in procedure. Issues such as marriage, divorce, alimony, maintenance, and inheritance are dealt with primarily by the Civil Law and the Marriage Law. There is a new Family Law being drafted that would update and consolidate all the provisions related to women into one law, which would then be applied by the Family Courts.

Criminal issues are dealt with by the Penal Code of 1976 and the Interim Criminal Procedure Code, which is in the process of being reviewed and updated. According to the penal code, there are two broad classifications of crimes—*Ta'zeeri* crimes and *Hudud*, *Qisas* and *Diyat* crimes. *Ta'zeeri* crimes are crimes against the community and judges have discretion in determining the penalties. *Hudud*, *Qisas* and *Diyat* crimes are crimes against God and therefore have to be punished in accordance with Sharia. Women judges are not allowed to pass sentences on *Hudud* and *Qisas* crimes, as they are considered to be too "soft". These crimes usually involve harsh punishments such as execution or chopping off the offender's limb(s)

Some key provisions relating to civil and criminal law are set out below in Annex 11.

Recommendations

- While the Constitution of the Islamic Republic of Afghanistan says no law can be in contradiction to Sharia, the laws of Afghanistan must be applied before referring to Sharia. However, the reverse is often applied by the formal justice sector, where refer to Sharia directly

because they have insufficient legal education. This requires long-term and systematic continuing legal education for in-service judges, prosecutors and police. The academic curriculum for all new judicial officials also needs to emphasize this order, particularly those who have graduated from Faculties of Sharia.

- The Supreme Court should have a strategy and the resources to ensure that all courts, including district-level courts, have easy access to the laws, including new laws. Explanatory notes on how laws should be implemented, their relevance and limits must also be stated. The application of laws needs to be monitored by the Supreme Court.
- As a matter of priority, public awareness campaigns on laws must continue and be expanded. Strategic partnerships with progressive mullahs should be considered. The awareness campaigns must not be limited to just women, but should take a gendered approach, raising the awareness of men the leaders of a community.
- Couching new legal reform initiatives in terms of the *Quran*, Islam's holy book, is an effective way to gain support. This practice should continue in order to get wider support. Couching rights issues in international standards can have a backlash.
- Rape must be considered a separate offence and evidentiary requirements should place the burden on the victim. There should also be procedural protections to ensure that victims of rape are not prosecuted for other crimes, such as *zina*.
- Domestic violence in all forms should be criminalized. Article 53 of the Penal Code, 1976, states: "Commitment of a criminal act with good will for the purpose of exercising a right, which is granted to a person by the way of religious or other laws, shall not be considered crime." The article must be limited in its use and clarified because the Quran does not condone violence against women.
- The criminal procedure law currently states only the victim of a crime—not a witness—can make a formal complaint. This should be amended so that it is not necessary for a complaint to be made by only victims of crimes, such as domestic violence (usually a woman), abuse and torture.
- Underage marriage should be criminalized. Currently, the civil code of 1977 prohibits the marriage of girls under the age of 16. However, the law allows the *Wali* or guardian to marry off a minor not younger than age 15. These two legal provisions are inconsistent with each other. However, it should be noted that there is a new bill awaiting President Karzai's signature that states the legal minimum age for marriage for boys and girls is 18. Whether or not this new bill is implemented or enforced remains to be seen.
- Article 517 of the Penal Code criminalizes forced marriage of women over the age of 18, including widows (Article 517)⁴¹, but the sentence is only a "short sentence" and these provisions are not implemented. There should be no provisos for *bad*, the practice of selling or giving away women to settle a dispute or debt and forced marriages should be criminalized.

⁴¹ Article 517 states: (1) A person who gives in marriage a widow, or a girl who is eighteen years or older, contrary to her will or consent, shall be sentenced in view of the circumstances to short imprisonment. (2) If commitment of the crime specified under the above paragraph is for the purpose of 'Bad dadan' (as a compensation for wrongdoing), the offender shall be sentenced to medium imprisonment not exceeding two years."

G. Access to and Challenges Faced by Women in the Informal Justice Sector

1. Afghanistan’s Rich Ethnic, Cultural and Geographical Diversity

Afghanistan is home to about 14 ethnic groups: Pashtun, Tajik, Hazara, Uzbek, Turkmen, Baloch, Pashayee, Nuristani, Aymaq, Arab, Qezelbash, Qirghiz, Gojar, Berahawi and other distinct ethnic groups and as many customary legal systems (See Tables 5-10). However, there is no dominant group or language. This also means that the ways of organizing as a community, a tribe or a group are highly localized and dependent on various factors. With the current political and security situation, these systems of organizing continue to change. Without a recent, formal population census, it is accepted as fact that the largest group is the Pashtuns, who comprise 40 percent to 45 percent of the population. However, even amongst this group, there is a high degree of diversity socially and geographically. Some Pashtun groups live integrated in large settlements, while those in the rural areas often organize themselves in highly tribalized isolated groups. There are also nomadic and semi-nomadic Pashtun groups.⁴² The Tajiks, which comprise approximately 30 percent of Afghanistan’s population, are spread throughout the country. The Hazara, Uzbek and Turkmen ethnic groups are smaller and more homogenous.

Historically, there has been a dual system of governance since the 1800s, where the urban and agricultural lands were under the control of formal governments. However, the regions in the mountains, steppes, and deserts remained beyond the reach of the government. With the advent of communications, transportation and availability of arms, the reach of the government did extend into these areas, however, local autonomy always remained high. With the collapse of the formal system and destruction of the social fabric of Afghanistan in the last 30 years, the informal systems came to fill an important vacuum. Even today, in areas where the presence of formal institutions is spare, the informal system continues to be the primary method of dispute resolution.

The historic Bonn Agreement of December 2001 recognized the importance of the informal justice system in Afghanistan. It specified that existing laws and regulations of Afghanistan would remain in effect to the extent that they were not inconsistent with the provisions of the 1964 Constitution or with international legal obligations to which Afghanistan is a party. The Afghanistan Constitution of 2004 is largely silent about the role of the informal justice sector, giving primacy to the constitution, laws of the country, and when an issue is not covered by these sources, then Hanafi jurisprudence, is to be consulted as a source, “within the limits set by this Constitution, rule in a manner that attains justice in the best manner.” (AC: Article 130). For Shias, Article 131 of the Afghanistan Constitution provides that for personal status matters, Shia jurisprudence is to be used. If there are no provisions in either the Constitution or the law on certain issues, Shia jurisprudence is to be applied. A Personal Status Code has been drafted and is being considered by the Taqnin. According to the MoJ legislative workplan, the Taqnin should have completed scrutinizing it by 15/3/1386.

Afghanistan Constitution, 2004 Article 130	In cases under consideration, the courts shall apply provisions of this Constitution as well as other laws. If there is no provision in the Constitution or other laws about a case, the courts shall, in pursuance of Hanafi jurisprudence, and, within the limits set by this Constitution, rule in a way that attains justice in the best manner.
Afghanistan Constitution, 2004 Article 131	The courts shall apply the Shia jurisprudence in cases involving personal matters of followers of the Shia sect in accordance with the provisions of the law. In other cases, if no clarification in this

⁴² Barfield, Nojumi and Their, 2006, p 5.

2. Core principles behind customary law

*Customary law is a means by which local communities resolve disputes in the absence (or in opposition) to state or religious authority. It is based on a common cultural and ethical code that generates binding its members. Communities use this code to resolve disputes, evaluate actions for praise or blame, and to impose sanctions against violators of locally accepted norms.*⁴³

The customary systems in Afghanistan are highly diverse⁴⁴ and are constantly evolving due to changing situations and internal struggles. The ones highlighted in red are of particular concern to women either because women are excluded from the process, or because women are used for the “restorative process”:

Table 5. for Ahmed Zai Tribe, Southern & Eastern Region

Term	Meaning
Restorative action <i>Pighlas (a.k.a. Speen Paitsa, Got Laka, Ronee)</i>	In the case of an intentional murder without abuse or torture, if the victim's relatives promise not to seek revenge and the perpetrator accepts the decisions of the <i>jirga</i> , he will be charged with a full <i>Poar</i> or one <i>Khoon</i> . Punishment. A full <i>Poar</i> in such cases requires the perpetrator's family to give two <i>Pighlas</i> , or two fair and virgin girls (also known as <i>Speen Paitsa, Got Laka and Ronee</i>) to be wedded to a member of the victim's family following special ceremonies. In some cases, an additional cash payment is made. Girls are preferred to money, because when the girls are wedding to the victim's family, kinship and blood-sharing will transform the severe enmity into friendship.

Table 6. Customary law terms and practices for Central region of Hazarajat.

Term	Meaning
Structure <i>Maraka/Majiles Qawmi</i>	The <i>jirgas</i> of this region are known as <i>Maraka</i> or <i>Majiles Qawmi</i> . <i>Marakas</i> have three to 15 to 30 members, depending on the seriousness of the case.
Composition <i>Malek</i>	Leader of the <i>Maraka</i> .
<i>Maarkachi</i>	Members of a <i>Maraka</i> . They include elders, or <i>Ulema</i> , and the descendents of the prophet, known as <i>Sadat</i> or <i>Saiid</i> . Women cannot be members of a <i>Maraka</i> . Decisions of <i>Marakas</i> are binding. Punishment: A party who rejects the decision of the <i>Maraka</i> is dismissed from the tribe. His relatives will no longer be invited to weddings and funerals.
<i>Sadat or Saiid</i>	Descendents of the prophet who serve on a <i>Maraka</i> .
<i>Ulema</i>	Elders who serve on a <i>Maraka</i> .
Location <i>Takia Khana</i>	Location where a <i>Maraka</i> is held, usually a mosque or a private home.
Restorative action <i>Ozrana</i>	The formal apology process. Also known as <i>Nanawati</i> . Punishment: <i>Ozrana</i> usually involves taking the culprit to the family of the aggrieved party with a Quran, one or more sheep, money, rice, wheat, oil or other food stuffs, and a request for forgiveness.
<i>Bad</i>	Gift of a girl to the family of a victim. This practice is not common among Hazaras.
<i>Jarima</i>	Paying of a fine as part of <i>Ozrana</i> .

⁴³ Barfield, Nojumi, Their, 2006, p 6.

⁴⁴ International Legal Foundation, 2004, *Customary Laws of Afghanistan*.

Table 7. Customary law terms and practices for Southern & Eastern Region

Term	Meaning
Structure <i>Jirga</i>	Customary decision-making bodies. Pashtun <i>jirgas</i> are made up of local, respected leaders. Afghans regard <i>jirga</i> decisions as the law and condemn those who refuse to accept these decisions. Pashtu's regard <i>jirgas</i> as the main foundation for <i>Pashtunwali</i> , or the Pashtun cultural customs.
Composition <i>Marakchi</i>	Members of a <i>jirga</i> who are well known in their communities and who have distinguished themselves by their ability to make decisions. They are neither elected nor appointed.
<i>Arbakai</i>	Men responsible for the enforcement and implementation of <i>jirga</i> decisions. They take orders from a commander and given immunity in their communities. They cannot be harmed or disobeyed. Punishment: Those who flout these rules are subject to the punishments set by the Arbakai organization.
<i>Badraga</i>	A person or group from a neutral tribe chosen to escort an endangered person.
<i>Telay</i>	Decisions that set forth general rules and have precedential value. The <i>Telays</i> of the <i>Ahmed Zai</i> tribe are well known and deemed reliable because the tribe is the largest Pashtun tribe with the wisest <i>jirga</i> men.
Location <i>Local Mosque</i>	Private chamber where a <i>jirga</i> is convened. Women and children are not invited into the local mosque.
Crimes <i>Bad</i>	<i>Bad</i> refers to crimes ranging from saying an improper word to murder or violating someone's Namos. Different fines (<i>Nagha and Sharm</i>) are assessed for different <i>Bads</i> , depending on their severity.
<i>Badann</i>	<i>Badann</i> is a special agreement for preserving the forests. No one can cut down a tree for personal use in a forest. Punishment: If he cuts down a tree in a forest for personal use, he will have to pay a specified fine to the tribe.
<i>Namos</i>	When a woman marries and goes to her husband's house, she becomes his Namos (pride, property, and responsibility). Punishment: If a husband beats his wife, breaks a bone, injures a body part or kills her, the bride's father may claim <i>Poar</i> . If the father does not consent to the <i>Poar</i> , he can perform <i>Qisas</i> and kill her murderer.
<i>Panah</i>	Providing shelter or protection. Even criminals are given protection by Pashtu's. Punishment: If a woman enters a stranger's house seeking asylum and the owner of the house gives her shelter without contacting her family, he is considered a kidnapper and punished accordingly.
Restorative process <i>Nanawati</i>	A special custom for seeking apology and eliminating enmity. The custom is used in all Pashtun tribes, taking virtually the same form in every community. Punishment: Refusing the <i>Nanawati</i> subjects the victim's family to accusations of opposing the <i>Nerkhs</i> and <i>Tselays</i> of Pashtu's--an allegation that no one can afford.
<i>Nerkhs</i>	Translated as "price" in English, which are specific to every tribe and are essentially recognized amounts of damages for different wrongs. The <i>Nerkhs</i> of the <i>Ahmed Zai</i> tribe are well known and deemed reliable because the tribe is the largest Pashtun tribe with the wisest <i>jirga</i> men.
<i>Machilgha</i>	Cash or property with a value equivalent to the case being deliberated by the <i>jirga</i> is collected from the disputing parties at the beginning of the session and given to a third party for safekeeping. A legal guarantee accepted by all tribes. Punishment: If a party refuses to accept the decision of the <i>jirga</i> , he forfeits the <i>Machilgha</i> or <i>Baramta</i> , which will be given to the other party or be kept by <i>jirga</i> members.
<i>Baramta</i>	The same as <i>machilgha</i> , but <i>Baramta</i> usually refers to instances when a person, rather than a property, is pledged to guarantee the enforceability of the <i>jirgas</i> pronouncements. Punishment: If a party refuses to accept the decision of the <i>jirga</i> , he forfeits the <i>Machilgha</i> or <i>Baramta</i> , which will be given to the other party or be kept by <i>jirga</i> members.
<i>Poar</i>	Wrongdoers are asked to pay <i>Poar</i> , or blood money, to victims and to ask for forgiveness. Also known as <i>Khoon Bad Poar</i> or <i>Khoon Baha</i> .
<i>Takhm</i>	A person dissatisfied with a <i>jirga</i> decision may ask that another <i>jirga</i> review the case. If a party is dissatisfied with the ruling of the second <i>jirga</i> , a member of the <i>jirga</i> may ask for a third and ultimate review known as a <i>Takhm</i> . Parties must accept the final decision of the <i>Takhm</i> . Punishment: If one refuses the decision of the <i>Takhm</i> , the tribe chooses a suitable punishment, which ranges from cash fines to burning down the house of the guilty party.

Table 5. Customary law terms and practices for Momand Tribe, Southern & Eastern Region

Term	Meaning
Restorative action <i>Kashinda/Nika/ Soara</i>	The <i>Nerkhs</i> of the Momand Tribe require that a murder case be settled either by killing the perpetrator (<i>Qisas</i>), payment of blood money (<i>Nika</i>), giving of a girl (<i>Soara</i>) or exile of the perpetrator from the country (<i>Kashinda</i>).

Table 9. Customary law terms and practices for Northern Region

Term	Meaning
Structure <i>shura</i>	Reconciliation council, headed by the Imam of the local mosque, accompanied by the <i>Walkill</i> and one or more elder.
<i>shura-Eslahy</i>	In the north of Afghanistan, the terms <i>jirga</i> and <i>shura-Eslahy</i> are used interchangeably.
<i>Awri/Awra/Awrjast/Uloo</i>	<i>jirga</i> , resolving disputes according to custom and Islamic law.
<i>Mookee-Jamaat-Khana/shura-e-Jamaat-Khana</i>	The traditional tribunal of the Ishmaelite community, followers of Karim Agha Khan. Also known as <i>Mookees</i> . <i>Mookee</i> is also the name of the religious leader of the Ishmaelite community and of the representative who presides over these councils. <i>Mookees</i> are educated and have distinguished themselves by their religious knowledge. They are paid by the Agha Khan and are known for their obedience to him.
Composition <i>Arbab</i>	Chief of a valley; mostly in the Samangan region. <i>Arbabs</i> sit on <i>shuras</i> in this region. Unfortunately, <i>Arbabs</i> and other elders have allied themselves in recent years with the local commanders and armed men, and the community no longer trusts them to judge matters objectively.
<i>Majlis</i>	Members of the <i>Awra</i> . They must be known as morally upright, virtuous and God-fearing to be members of the <i>jirga</i> . They should have at least a formal primary education whether religious or scientific. There are usually three to five members who are elected for one to two years. Members are not paid and use the money from fines for public welfare. The <i>Majlis</i> have been described as scholars, or mullahs, who studied in Pakistan. Punishment: If one party withdraws from the <i>jirga</i> process, his <i>Garaw</i> is not returned to him but is divided between the members of the <i>jirga</i> or given to the public.
<i>Jasht/Ojasht</i>	The <i>Majlis</i> chairperson.
<i>Wakeel</i>	Guardian. If one party to a dispute cannot represent his rights because of lack of courage, simplicity of mind, or lack of information, that person may have a guardian represent him or her before the <i>jirga</i> .
<i>Walkill/Kalanter</i>	Person assigned by the village to be the link between the village and the government. He is not necessarily an elder. He is given the position of <i>Walkill</i> generally because he is educated--often the only educated man in the village. Because there is a presumption that the son of an educated man is also educated, the position of <i>Walkill</i> is often hereditary.
Location <i>Ree/Natima</i>	Location where <i>Awra</i> are held. Usually a mosque or cultural center.
<i>Jamaat Khan</i>	The name of the mosques <i>Mookees</i> meet in. <i>Mookees</i> never meet in an individual's house.
Restorative process <i>Rogha-jura</i>	Decision of the <i>jirga</i> . Also known as "peace".
<i>Garaw/Zamanat</i>	Same as a <i>Machilgha</i> in Pashto--a guarantee that the party will accept the decision of the <i>jirga</i> .
<i>Nagha</i>	A fine paid by the perpetrator. Punishment: It may be in the form of money--twice the value of the property--or may take other forms.
<i>Uzr</i>	The apology (<i>Nanawati</i> in <i>Pashto</i>). An intricate part of the resolution. A perpetrator must apologize, though the apology can take different forms.

Table 10. Customary law terms and practices for Wazir Tribe, Southern & Eastern Region

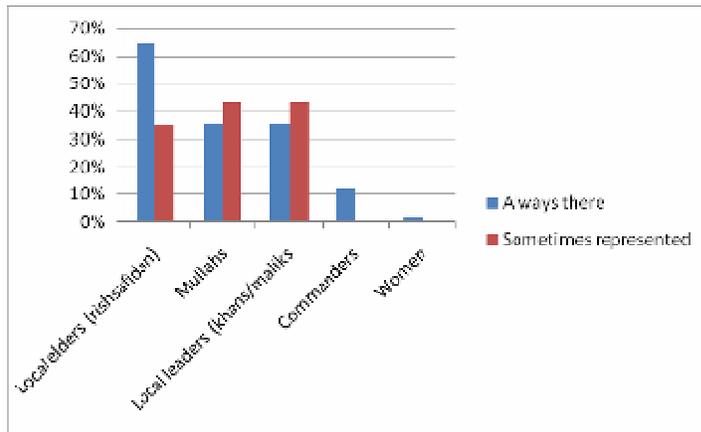
Term	Meaning
Restorative action <i>Deiyat/Soara/ Qisas</i>	<i>Nerkhs</i> of the Wazir Tribe mandate that a murder be punished by either death (<i>Qisas</i>), giving blood money to the victim's family (<i>Deiyat in Sharia, or Soara</i>), or giving a girl to the victim's family. The term has the same definition in the <i>Momand</i> Tribe.

The core principle underlying Afghanistan's informal justice system is the concept of *nanawati*, which means seeking forgiveness or pardon. This offer of truce has to be accepted by the aggrieved party with the purpose of reaching reconciliation (*rogha*). As part of the justice process, the offender is publicly held responsible. Forgiving the wrongdoer and reintegrating him or her back into the community is also part of the process.

Legitimacy of the prevailing customary law is derived from community consensus. Thus, the maintenance of order falls to individuals and their kinship with the community. In parts of Afghanistan where there is no government, rather than the communities living in anarchy, these complex sets of rules hold communities together and are enforced by the community at large. *Jirgas* and *shuras* are responsible for implementing the informal justice sector's rules. Interviewees stated

that it was highly unlikely that women were ever present in Pashtun jirgas, however, older women, considered to be elders of the community, may be present in certain types of shuras.

Figure 23. Composition of jirga/shuras
Source: UNDP HD Report, 2007, pp 97-8



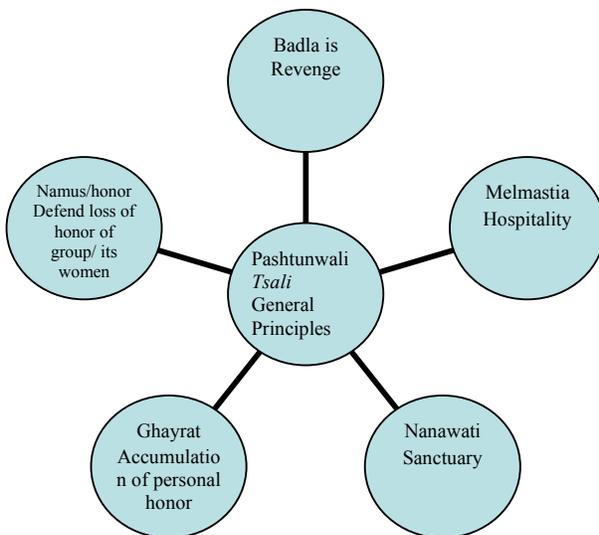
To prevent blood feuds between individuals, and to prevent feuds from spreading beyond families and into the community at large, jirgas and shuras made up of village elders and notables—almost always exclusively men—come together to resolve disputes. These bodies mediate on the basis of their perceived long experience, their knowledge of customs of that particular area, and Sharia. The decision that the shura/jirga arrives at is aimed at restoring an individual’s or family’s honor and /or property.

Most importantly, in relation to the question of the honor of women, if a woman’s honor is violated because of something she did herself or because of something done to her and her family’s honor is tarnished, the shura and jirga are responsible for remedying the situation.

3. Pashtunwali

The ethnic custom known as Pashtunwali is the best known and most complex of the customary law systems. It is not based on religion and applies to Pashtuns, who reside predominantly in Afghanistan’s southern and eastern regions. Customary laws are generally passed down orally and consist of general principles and practices (*tsali*) (See Figure 24). The emphasis is on personal autonomy, hence the significance of consensus as the core of leadership. Decisions should be voluntary – not coerced. Thus, in a jirga, men meet as equals to resolve disputes through mediation or arbitration.

Figure 24 Core principles of Pashtunwali



Disputes among Pashtuns were said to arise from *zar*, *zan* and *zamin* (gold, women and land). And the most difficult cases usually were those that instigated blood feuds. By bringing the matter to a jirga, an aggrieved party must give up its right to retaliation. Cases that degrade a woman’s honor are especially sensitive. Often, in recompense for crimes involving the dishonor of women, Pashtunwali calls for the exchange of women from the families involved (*Badal*) or exchange of one or two girls from the wrongdoer’s family to the victim’s family (*Bad*).

4. Customary Law Examples from Other Groups

In resolving disputes, other ethnic groups—including the Tajiks, Uzbeks, Hazaras, Turkmen—convene a *shura-i-islahi* (resolution council). One key difference between the shuras and the Pashtun jirgas is that the local clergy play an active role in the local shuras. Thus, Sharia does play more of an obvious role, and the final remedy must be in accordance with Sharia. Customary law is often believed to be based on Sharia law, though many of these practices are in fact against Islam. Some customs that are anti-Islamic include: *bad*. In some cases of *bad*, up to 3 girls are given in recompense for some wrongdoing or to pay a debt. The practice of putting a price on a bride, or decisions such as banning girls to go to school, or refusing to build girls' schools in a community, deciding whom a widow should marry, or ordering the burning of houses as punishment are anti-Islamic.

5. A Snapshot of What is Happening on the Ground

During the assessments, most people interviewed, particularly those from the formal justice sector, were vehemently against recognizing the informal justice sector because it was considered to be un-Islamic. They said the informal justice sector was not rule-based, that justice was being meted out by people untrained in the law or Sharia and that women were not able to participate in informal justice proceedings either as members of shuras or jirgas, or as witnesses.

Interviewees associated with NGOs and INGOs took a more pragmatic approach to the informal justice system. First, many of them restated all the reasons mentioned above, but also accepted that the formal justice system was not present in many parts of the country. In addition, almost all of those interviewed mentioned that some parts of the formal justice system remained corrupt and “justice depended on the one with the heaviest pocket.” They recognized the value of the informal justice sector, but were searching for ways to work with it, to link the two systems together, and address some of the negative aspects of the informal justice sector. In some cases, legal NGOs and shelters worked with members of the informal justice sector in a community to facilitate the reintegration of women into the family or husband's family or community following an incident.

This is confirmed by the 2007 Asia Foundation survey that showed many people in the country found traditional authority figures more trustworthy, in general, than the formal justice system. What is of interest is that the courts are generally considered more trustworthy for resolving disputes than mullahs. The Asia Foundation's 2007 survey demonstrates that, even in the rural areas, about 42 percent of survey respondents said they are beginning to go to the formal system, with 10% approaching both the formal and informal sectors.

Figure 25. Level of trust of formal and informal players for dispute resolution

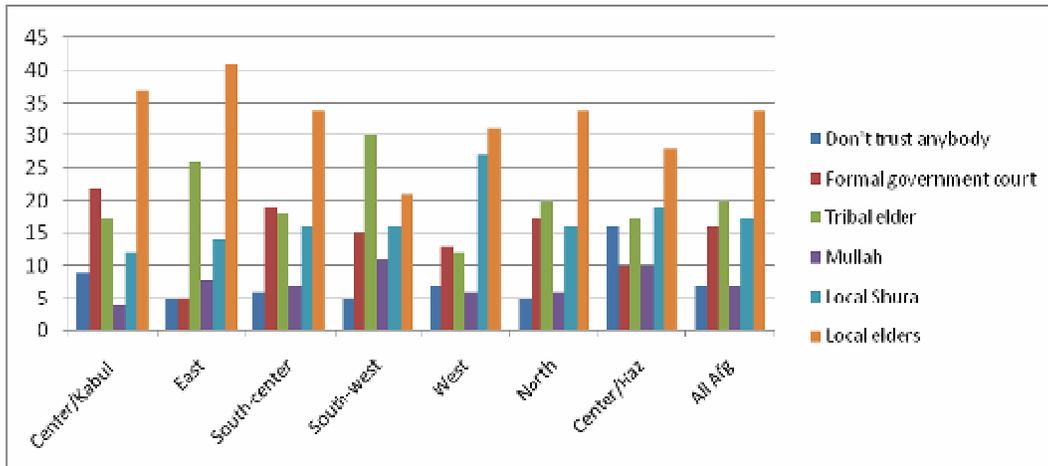
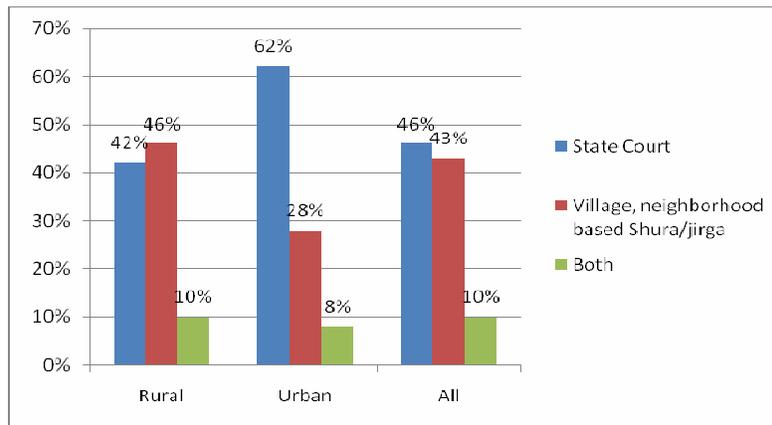


Figure 26. Where people have taken disputes to (2006)



6. The Conflation of Sharia with Customary Law

Sharia and customary law are not one and the same, but the two continue to be conflated, even though they often contradict one another on key aspects such as matters relating to family law, attitudes towards blood feuds and revenge, and punishments that are available under customary law.

Whereas Sharia law is divine word and immutable, customary law is highly localized and changes with events. It is an oral tradition rooted in local cultures and has changed over time. Respected members of the community take on the oral tradition of customary law in resolving disputes. The solutions they craft to address each particular dispute between parties and decision-makers do not have to be linked to a written legal code.

7. The Pros and Cons for the Informal System and Its Impact on Women

In a country like Afghanistan, where various reports state that the government only controls 30 percent to 31 percent of the country⁴⁵, the informal sector has been a major dispute-resolution mechanism and will continue to play a major role. Some of these key considerations are set out in Table . Of those interviewed, most people from the formal justice sector were completely against the informal justice sector particularly when it came to dealing with criminal matters. Some felt that perhaps the scope of these informal justice mechanisms be limited to simply land and family matters. However, most also acknowledged that in parts of the country where there is no security, and there are no courts, this was the only viable option.

Table 6. Pros and cons of customary law in Afghanistan and its impact on women

Pros	Cons	Impact on Access to Justice for Women
The shura/jirgas are members of the community, respected (or feared by most) by most	Women are very rarely present on a <i>shura/jirga</i> . In some communities, if the woman is old and respected, she may be presented.	If a woman is a party to the case, she cannot attend the deliberations, but is represented by a male member of her family.
Decisions are made by respected people within the community (sometimes not respected), and most feel comfortable going to familiar faces in the community rather than strangers in the formal system.	There is anecdotal evidence that in some places, <i>shura/jirgas</i> are not independent, and have been “captured” by warlords, commanders, and armed political groups, so as to control the population. Therefore decisions they make are influenced by the interests.	There are different reports, in some cases, such as in the cases of <i>mahr</i> or dowry, the <i>shuras/jirgas</i> have set limit on the amount of <i>mahr</i> . In some instances of violence against women, the family is made to agree that this will not occur. However, generally, the tendency is for women to be completely invisible through the process, and findings are usually made against the woman/girl particularly when it comes to matters related to morality.
Given that there are no working courts in many parts of the country, people trust this system of dispute-resolution and see it as effective and more accessible	The informal system can play an important role in maintaining social harmony, particularly where there are no institutions, however, there are many customs in the dispute-resolution that are both against the law, and un-Islamic.	Women do not generally gain from either the formal or the informal justice system. Women are starting to have access to the formal system easier than the informal system. However, this varies across the different parts of the country, and whether the women are from urban or rural areas.
The proceedings are relatively quick and inexpensive compared to the formal system.	It is an oral tradition, and other than <i>Pashtunwali</i> , which has the most formalized system of a customary law system, the procedures are quite arbitrary and ad hoc. The decisions are not recorded.	This provides an opportunity for the <i>shura/jirga</i> to not necessarily follow decisions made in similar cases in the past where the decision was in favor of the woman.
The focus of the <i>shura/jirga</i> process is restorative with the aim of apology, forgiveness, and restoration of social harmony.	The current practice of <i>bad</i> amongst the Pashtun’s for murder, “two fair and virgin girls” to be given to the victim’s family so that when the girls are wedded to the victim’s family, kinship and blood sharing will transform the enmity to friendship.	This sometimes results in underage girls being forced into marriage with much older members of the victim’s family. The girl(s) is usually treated as a slave by the family. The girl is not allowed to go her family for at least the first 4 or 5 years.
It is alleged that there is a high degree	However, in places where the warlords	

⁴⁵ Associated Press, 28 February, 2008: “Director of National Intelligence Michael McConnell told the Senate Armed Services Committee that the resurgent Taliban controls 10 to 11% of the country and Karzai’s government controls 30 to 31%. But more than six years after the US invasion to oust the Taliban and establish a stable central government, the majority of Afghanistan’s population remains under local tribal control, he said.”

Pros	Cons	Impact on Access to Justice for Women
of compliance with the decisions of the <i>shuras/jirgas</i> because of the social and community pressure.	and commanders prevail, so does impunity- and it is ruled by gun.	
A woman, who wants to raise an issue for a <i>shura/jirga</i> , though not being present at the meetings, can stay in her own community, with some form of support if possible.		The woman/girl needs some form of family support for her to make this a viable option.
By trusting the system, people are able to accept its legitimacy and moral weight and therefore likely to see the decisions of the <i>shuras/jirgas</i> binding on their behavior.	While decisions of <i>shura/jirgas</i> are enforced through local and tribal social pressures, in some cases, particularly in very tribal Pashtun areas, the decisions are enforced by young, unmarried members of the village, sub-tribe or tribe – or <i>arbakian</i> . ⁴⁶ These groups are sometimes instructed to burn the offender’s house down for non-compliance with the <i>shura/jirga</i> decision.	
	It gives the individual undue power to seek their own justice as long as the community respects the right of the victims’ families to seek redress by force	This can be in the form of honor killings of women
	This community-based mechanism is not good for dealing with matters that are larger than the community	

8. Current Linkages Between the Formal and Informal Justice Systems and Issues of Concern

The basic premise of the formal justice system is also very much about mediating an outcome that will preserve social harmony and the family unit. As illustrated in the case flow processes at the MoWA, the Hoqooq, FRUs, and the Family Courts, often the basic starting point for resolving any dispute is to invite the parties to bring members of their family who they trust. If this does not work, parties are asked if they want to bring a wider group of representatives from their community, such as elders and *jirga* and *shura* members.

Provincial authorities also tend to play a key role in dispute resolution. Provincial and district governors and police chiefs often take an active role in resolving a range of disputes outside the court system on both civil and criminal matters. Again, they see this as part of their role to maintain social order. The newly elected provincial councils composed of representatives from the area are also starting to play a role in dispute resolution in some areas. Most of these provincial councils do have at least one woman as a member. She may not be able or allowed to take an active role in the provincial council. However, it is the start of a two-way process of empowering the woman with support from both male and female change agents, and exposing the wider community to the fact that women can take part in decision-making which benefits the community.

⁴⁶ UNDP Afghanistan Human Development Report, 2007, p97.

The National Solidarity Program (NSP) is another area in which the local decision-making processes are used to identify, plan, manage and monitor the communities own development projects.⁴⁷ The NSP was established in 2003 and created by the Islamic Republic of Afghanistan to empower communities to identify projects, make decisions and manage resources during all stages of the project cycle. The NSP aims to empower Afghans to reduce poverty through establishing and strengthening a national network of self-governing community institutions composed of men and women. The flexible and responsive design of the NSP has allowed it to be a main conduit of central government poverty reduction and reconstruction policies, permitting local people to actively participate in local administration through the formation of Community Development Councils (CDCs). In some areas there are mixed shuras of men and women. In other areas women shuras take decisions separately. There are some areas where there are no women on the shuras.

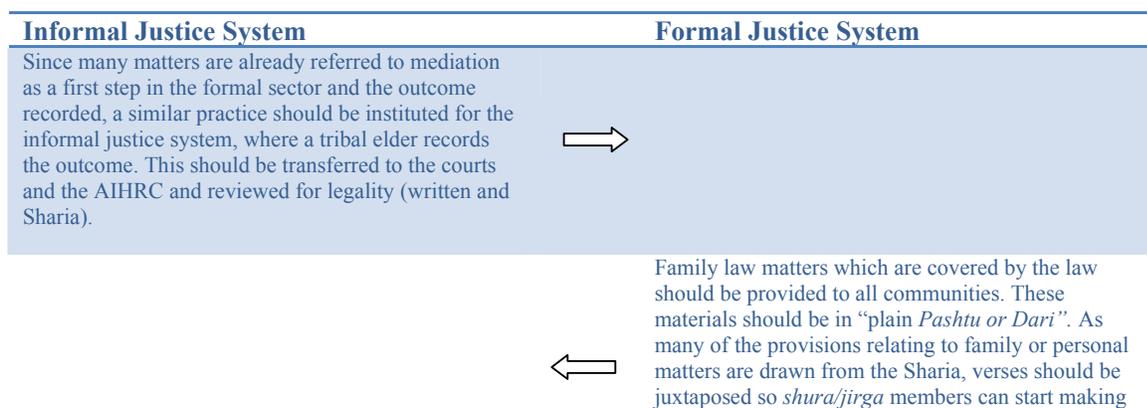
Table demonstrates the number of communities that have been mobilized by the Facilitating Partners (FPS) which are usually international NGOs or national NGOs.

Table 12. Community Development Progress (As of 19th March 2008 or 29th Hoot 1386):⁴⁸

No of Communities which have been mobilized by the FPs (Facilitating Partners)	21,420
No of Community Development Councils (CDCs) elected	20,502
No of Community Development Plans (CDPs) completed	20,182
No of Community sub-project proposals submitted to the NSP	37,559
No of Community sub-project proposals approved by the NSP	36,310
No of Community sub-projects completed	18,434

Recommendations

- Women need to be gradually brought into the jirga/shura system. One way to do this would be using community development centers, or CDs, to host mixed shuras, or encourage female provincial council members to include mullahs in their meetings.
- Most importantly, a vigorous human-rights and gender-rights monitoring mechanism needs to be in place. This particularly relates to women’s access to justice. The AIHRC is already an effective monitoring body, as are DoWA, women’s shelters, and legal aid organizations.
- A linked formal/informal system must ensure that the benefits or strengths of both the systems are maximized. The negative elements need careful thought and remedies may need to be site-specific. Suggested linkages between the formal and informal justice systems include:



⁴⁷ <http://www.nspafghanistan.org/faqs.shtm#Q1>

⁴⁸ http://www.nspafghanistan.org/reports_and_publications.shtm

Informal Justice System	Formal Justice System
	the connection. If there are no literate members in the <i>shura/jirga</i> such material could be provided to a literate but respected member of the community so that they can inform <i>shura/jirga</i> members.
Matters that are not resolved at the informal level are moved into the formal justice sector.	
Decisions from the <i>shura/jirgas</i> should be able to be appealed in the formal justice system.	
The types of cases that the informal justice system can hear should be delimited	As a matter of policy, no serious criminal matters should be heard by a <i>shura/jirga</i> . However, once the matter has been heard by the court, the <i>jirga/shura</i> could decide on restorative aspects so as to ensure that the victim or the victims family feels that their restorative rights under custom and tradition have been fulfilled. –e-g compensation by way of money or animals.
A streamlined standard operating procedure that links the two systems should also be established.	
	Introduce a study on informal justice system in faculties of law and Sharia so as to expose the next generation of legal professionals.
	Develop materials which clarify key issues relating to women and the laws of Afghanistan and women in Islam and distribute to communities.
Strengthen mediation techniques used in the informal justice system.	 Strengthen mediation techniques used in the formal justice system.

- Networks such as the central statistics office (CSO) network supported via the U.S. Agency for International Development (USAID), or the CDC network of 21,420 centers are possible entry points to test various pilot programs. The solution will have to be somewhat community-specific to take into account local differences. For example, with the CDCs, which often host mixed shuras, the centers with women and men in separate shuras and the centers without women’s shuras should be mapped out. Again slightly different engagement and buy-in strategies will be necessary. Chart 1 below has outlined some possible ways the formal and informal justice systems could work together on certain case categories.

Key to Chart 1

Primary forum for the case to be resolved
Secondary forum or “support function” where the informal system with the reconciliatory aspects between the victim or victim’s family and perpetrator especially in criminal cases. I E.g. <ul style="list-style-type: none"> In murder cases, develop new ways to address the issue of <i>Nanawati</i> which complements the decision of the formal justice system to fulfill the social/traditional need for a ritual involving forgiveness. Where a runaway woman is held wrongfully or rightfully for <i>zina</i>, the <i>jirga/shura</i> to find out the reason behind the woman/girl running away from her situation and helping her reintegrate into the family and community, marry the man she wants to marry, or see if she has a legitimate claim to divorce.
Not to be considered by the marked system

Chart 1. Examples of possible ways the formal and informal systems can work together

	Formal	Informal	Possible roles for each sector for specific cases
Child marriage			Work with members of shuras/ <i>jirgas</i> , particularly mullahs to pronounce such activities as un-Islamic. If there is a progressive shura/ <i>jirga</i> , get them to raise awareness amongst the community, and negotiate with families on behalf of the girl/woman.
Forced marriage			
Human Trafficking			
Prostitution			The formal justice system needs to develop mechanisms to find out the story behind a woman submitting herself to prostitution. E.g. was she sold/trafficked? Is she doing it because of poverty? Is it because she has been rejected by her community and her family (post-release from prison)? Is she doing it to support her or her husband’s (or both) drug habit.
Murders			There are very few cases involving women as the perpetrators. If they are the perpetrators, this should be dealt with in the formal justice system, with a full query into issues such as motive/self-defense/”battered wife syndrome. The informal system or members of it to work with family for post-release reintegration.
Rape			Need some changes to the Criminal Code, especially with regards to burden of proof being placed on the victim, and the victim also being accused of <i>zina</i> . Informal system to “name and shame” the perpetrators. Denouncing rape as un-Islamic. Informal system and Formal system to help victim be reintegrated into the community.
Unsolved deaths of women/Suicides			The police and the prosecutor as a matter of standard operating procedure investigate each case of suicide, self-immolation.
Women used as drug mules			The formal justice system needs to develop mechanisms to find out the story behind a woman submitting work as drug mules. Many allegedly do it because of poverty, or they are forced to. Focus should not be on her crime, but should involve the anti-narcotics apparatus.
Adultery			Adultery is a <i>zina</i> crime. With the review of the Interim Criminal Procedure for the courts, evidentiary requirements will be changed, so that the burden of proof lies on the accused. The informal system can be used, where possible, facilitate the reintegration of the woman into the community, and negotiate a divorce with the husband. There have been such cases.
Domestic Violence			Both formal and informal systems can play a part in bringing justice. Depending on the progressiveness of the informal system, the informal justice system can actually monitor
Registration or marriages, births			This is an important initiative to monitor forced and underage marriages. To make this process accessible, it needs to be available at the district-level. The district courts should liaise with the mullahs on a weekly basis to see how many marriages he has conducted. There is no need to go to mullah according to Sharia. But the problem is most times men deny that they have divorced their wives and when women remarry the husbands accuse them of <i>zina</i> . There is no need to have witness when husbands divorce their wives.
Alimony			
Inheritance			
Land			

	Formal	Informal	Possible roles for each sector for specific cases
Maher			
Maintenance			
Petty Theft			Theft up to a certain monetary value should be able to be dealt with at the informal-level. However, punishment should be by way of compensation and some community work.

H. Women and the Legal Profession

Although the number of female students in law studies has increased during the past several years and their performance as reportedly surpassed that of their male counterparts, unfortunately, their numerical and academic gains have not yielded equivalent increases in participation in the legal profession or judiciary. Due largely to social and cultural constraints and the traditional belief that justice is a realm reserved for men rather than women, their participation in the legal profession and judiciary is low at both the local and national level compared to their male counterparts. The long-held belief that the delicacy and timidity of women's nature makes them unfit for the practice of law and justice seems to be prevalent across the sector. Separately, interviewees said that their families encouraged them to go into teaching or to work for NGOs because salaries there are generally higher. They added that entering formal legal professions was difficult because training programs often required travel far from home. Limited access to educational opportunities and social, cultural and practical constraints could be considered root causes for the delay in progress towards increased female participation within the justice profession.

As highlighted in the NAPWA, women are poorly represented in the justice sector and law enforcement agencies with very few women currently employed as judges, prosecutors, lawyers, or police officers. Reasons for the gender imbalance in the justice sector includes women's restricted movement, limited opportunities for education, lack of recognition of women's professional capacity, and the general perception that women's understanding of Islamic laws is limited. Low numbers of women working in the justice sector and in law enforcement suggests that women's perspectives are often overlooked in formulation of laws. As a result, the Government could face difficulty responding in to sensitive judicial challenges involving women due to lack of qualified female law enforcement, legal and judiciary professionals.

1. Legal Education

The National Justice Sector Strategy has set a target of 30 percent female professors and students at faculties of Law and Sharia. Currently, female students represent only 14 percent and 17 percent of the student populations, respectively, and female professors account for a mere 6 percent of the professors in Law or Sharia Faculties. The Sharia Faculty in Kabul is the only faculty in the country where women represent more than half of the student body. Although the number of females in the Kabul Sharia faculty is considerably higher compared to other provinces, female students are only admitted to the Islamic Studies department and not permitted to study in the Sharia law departments including *Fiqh* (Islamic jurisprudence) and *Qanoon* (Sharia law). Additionally, women are taught separately from men in the Islamic studies department and the justification for segregated teaching is that the majority of males admitted come from madrassas and already have some knowledge of Sharia and Arabic language skills. Respondents explained a number of rationales for this high

percentage of female students including active recruitment from Kabul's many female high schools, lower *Konkor* (university entrance exam) scores as an entry requirement and some family's preference to send their daughters to all-female schools. Please refer to Annex 13 for female legal education statistics.

Women constitute 15 percent of professors in all universities across Afghanistan however they represent only 6 percent of professors in Law and Sharia Faculties. Likewise women accounted for only 8 percent of last year's judicial preparation stage class. Although efforts are being made to increase the number of women professors, the majority of new professors are recent graduates with limited experience. As well, with higher salaries NGOs are attracting the best performing students. The Government's affirmative action program for women in the legal profession is a vital initiative however the government needs to expand this program to all institutions and levels of the judicial system including legal education if they are to make any substantial gains in women's participation in the legal system.

Women face discrimination and social stigma even within academic institutions. One example that was given was a female professor who was tortured by her husband. When she went to court to ask for a divorce, the University fired her.

There are no remedial or accelerated programs for women who have some prior legal education. All women were forced to stop their education when the Taliban seized power and closed universities for women. Recognizing that some students may have only been one or two year away from graduating some universities allow women to continue their education where they dropped out however this grace period only lasts six years. If a woman does not return to university within six years she must start her university education over again.

Once accepted, women tend to outperform men in University. Opinions were mixed in relation to female student performance on the *Konkor* (university entrance exam) as some interviewees felt that although there are many fewer women taking the *Konkor*, on average, they score better than men, whereas other said that because women do not have access to good schools they do not score as well on the *Konkor*. However, according to the Dean of one Law Faculty, "women get better grades than men and women are more intelligent".

Challenges for women's participation in university are related to general security, lack of transportation and an insufficient number of female dormitories. For example, the Nangarhar University is located outside of the capital city, Jalalabad. Currently, a university vehicle picks up female students and brings them to the university each day. Security is a concern for female students too, particularly those attending provincial universities where women are subject to threats and intimidation. In one province prior to this year's *Konkor* exam, night letters were distributed around the city following which none of the 35 women registered to take the exam came to take the exam.

In the past there was no common legal curriculum for Law and Sharia Faculties. As set out in the National Justice Sector Strategy, a goal of the legal education and training section is the completion and launch of a harmonized core curriculum for both Faculties of Sharia and Law and Political Science. As both the Law and Sharia Faculties train future legal professionals, it is important to ensure that all candidates have the same basic legal foundation. In January 2008, ARoLP convened a meeting of seven universities' faculties of law and Sharia that agreed on a common core curriculum to be taught nationwide. This is an important step in standardizing the curriculum not only between universities but also faculties. The curriculum will include eleven common courses including Constitutional law, Human Rights, Criminal and Civil law.

The Independent National Legal Training Center (INLTC) located at Kabul University was established to develop standards for advanced and specialized professional legal education and offer a focal point for donors participating in justice sector reform. The INLTC was built with the intention to provide a common training facility for all justice institutions including the Supreme court, the Ministry of Justice, the Office of the Attorney General and the Ministry of Higher Education. Since its inauguration in May 2007 the INLTC has mainly been used to conduct the Supreme court's stage program as well as other Kabul based judicial training. As part of a revised stage program, all new judges, prosecutors and defense attorneys will be required to undergo a one year theoretical and practical training program. The INLTC plans a standardized test for candidates the results of which will determine which stream they go through (i.e. judges, prosecutors, or defense attorneys). Four months will be focused on theoretical aspects such as civil law and procedure, criminal law, constitutional law, commercial law to ensure that all candidates have the same basic foundation. This will be followed by an eight-month practicum. If available, the INLTC candidates will use the dorms at Kabul University where the women's dormitories have recently been refurbished. Numerous donors including USAID and the Italian Government have pledged technical assistance and financial support. As a common resource for judicial institutions the INLTC provides an opportunity for the Government and donors to develop gender components in all judicial training and ensure the implementation of the Government's affirmative action commitments.

2. Ministry of Justice

The Government of Afghanistan has reaffirmed its commitment to promoting the participation of women in the legal system on numerous occasions, including specific goals and objectives within the NAPWA, National Justice Sector Strategy (NJSS), and Ministry of Higher Education Strategy. As outlined in the NJSS, the government has committed to "designing and implementation of affirmative action programs by the Supreme Court, MOJ, AGO and Ministry of Higher Education to encourage women's entry into and retention in the legal profession, including a special Stage for women judges, prosecutors, lawyers, and special remedial training programs". Likewise, the NAPWA establishes an indicator of a minimum 30 percent increase in the participation of women in the justice sector and law enforcement agencies. This is a welcome initiative as currently women represent only 5 percent of the total number of sitting judges and there are no female judges in 23 provinces. In addition, there are significant regional differences with women representing 38 percent of the judges assigned to Zabul, however this does not mean that 38 percent of the Judiciary in Zabul Province is female.

Female judges are often unable relocate to the provinces due to family resistance or in limited instances due to insecurity in the province. If female judges are unable to relocate to the provinces they generally remain in Kabul and take up private work. In the Supreme Court itself there are no female Justices sitting on the Supreme Court and the four female justices at the Supreme Court are advisory judges and three sit within the Public Security Division with the remaining one in the Criminal division. Women are particularly under represented at the decision-making levels of the Ministry of Justice with no female representatives in the three most senior levels. Even within the lower management levels, women make up only 5 percent of the workforce as compared to the government average of 9 percent.⁴⁹

Ministry of Women's Affairs, *Government Employee Structure Report*, Dalwa 1386 (January-February, 2008)

Given the low level of legal knowledge while the passage of new legislation continues, comprehensive training of all judges (both men and women) should be instituted and a continuous learning process should be institutionalized within the Supreme Court's Human Resource system. A number of organizations and institutions are conducting judicial training including ARoLP, IDLO, GTZ, Max Planck Institute and ISISC. While these training providers have reached a number of judges, there are still considerable challenges that lie ahead to ensure a broad population of the judiciary undertakes legal training in a coordinated and timely manner. It is clear through discussions with interview respondents that the legal training is thought to be beneficial and very much necessary, but at times has been organized in an ad hoc fashion, perceived as donor driven and influenced and has been created in a vacuum without due consideration given to the development of a long term training strategy that befits the legal framework and level of education of the majority of the judiciary in Afghanistan. The Supreme Court should be encouraged to develop a standardized judicial training program, inclusive of women's rights issues, that focuses on long term continuous professional development with clearly defined benchmarks for qualification, progression and promotions.

Efforts should be accelerated to ensure that female members of the judiciary have equal access to training opportunities. Approximately 48 percent of female judges have participated in some judicial training and the majority of this training occurred in Kabul. As a comparison 41 percent of male judges have participated in some judicial training.⁵⁰ While these figures may seem impressive and reflect a determined effort by the ARoLP and other judicial training projects to include female judges, overall, women represent only 6 percent of all judicial training participants. Interviewees noted that women's participation in judicial training is hampered as a result of the majority of training taking place in Kabul and often women are unable to travel from their home provinces. Likewise, female university graduates commented that their families would not allow them to attend the stage program because it would require them to move to Kabul for almost one year (currently the judicial stage is a 9 month program). Efforts should be made to ensure that legal education opportunities are made available and accessible for women across Afghanistan. This is of particular importance if the above mentioned recommendation of linking promotions to qualifications and continuous professional development is put into action, otherwise, it may act as yet another barrier to women's advancement.

Recommendations

- The Supreme Court should be encouraged to develop a standardized judicial training program inclusive of affirmative action programs for women that focus on long-term continuous professional development with clearly defined benchmarks for qualification, progression and promotions.
- Continuous training and legal upgrading including gender awareness and sensitivity training should be institutionalized in the Supreme Court and promotion should be linked to certain prerequisites.
- As much as possible ongoing legal education for sitting judges or practicing lawyers should be conducted in the provinces and particular attention should be paid to the provinces with the highest number of female representation.
- Explore the feasibility of establishing temporary regional stage programs for prosecutors and judges, since women are generally unable to travel.

⁵⁰ These figures are from the Supreme Court personnel database which is still under development and while all efforts are being made to ensure accuracy, due to difficulties with Provincial Court reporting the information may not be entirely accurate.

- The Government’s affirmative action program for women in the legal profession should be expanded to include all levels of the judicial system including legal education to encourage the recruitment of female students and professors in law and Sharia faculties.
- The Ministry of Higher Education and Ministry of Justice should establish a quota system for female students in the Law and Sharia faculties and stage program.
- Preparation courses for the *Konkor* exam should be provided to help ensure that girls are adequately prepared for the exam.
- Establish accelerated law school programs for women who are already engaged in the legal sector or have received some legal education. (i.e. paralegals)
- Develop policies to integrate gender perspectives and minimum female participation requirements for all training conducted at the INLTC.

I. IROA and NGO Activities for Legal Empowerment and Increasing Women’s Access to Justice

Legal empowerment activities build capacity around existing laws, policies, rules and regulations, but additionally seek to foster a broader perspective concerning respective rights. In general, the term ‘legal empowerment’ is unknown in Afghanistan, but a limited number of initiatives have been championed by civil society groups to support women accessing justice. Most activities focus on promoting awareness of women’s rights and with limited activities targeting women’s access to justice.

This assessment contains several recommendations and implementation strategies that should be considered for action in the near future by the senior leadership of the justice sector. The list of recommendations provided is not an exhaustive list that would present a challenge to implement nor is it a criticism of the current myriad of Herculean efforts by dedicated Government and Non-Government Organizations, but identifies areas that if change is made could have positive effects both in the near and long term.

1. Government Initiatives and Activities

Unclear mandates and lack of coordination between government departments have resulted in a misinformed perception that the Ministry of Women’s Affairs (MoWA) is responsible for all women’s legal awareness, empowerment and services. Many of the respondents view the Ministry of Women’s Affairs as the lead government agency related to women’s rights and promoting women’s access to justice however they do not understand the need to coordinate and cooperate on women’s legal empowerment programs. When speaking with other government institution such as the Ministry of Hajj and Religious Affairs or Ministry of Labor and Social Affairs they were quick to say that any programs related to women was the responsibility of the MoWA. This has lead to a lack of initiative on the part of other government institutions to launch programs related to women’s legal

Box 6. Some MoWA activities in 2007

- Monitor women in hospitals, prisons and shelters
- Support women released from prison
- Address the culture of impunity amongst men
- Provide legal support for family cases
- Research on legal and constitutional amendment
- Convene the Commission on the Elimination of Violence Against Women
- Coordinate the activities of the provincial offices (legal awareness raising, legal advice, referrals etc).

empowerment or access to justice. Although MoWA should be the pre-eminent government institution for the promotion of women's legal empowerment it should be viewed as a coordinating body and not the only institution for women's legal empowerment and awareness programs.

MoWA has launched a number of innovative programs targeting women's legal awareness and services; however, the Ministry is severely under-resourced and does not have sufficient human or financial capacity to sustain these programs once donor funding comes to an end. For example, the MoWA/MOI women's referral centers established in Parwan and Nangarhar are fulfilling an important function providing legal assistance, psycho-social counseling and temporary shelter services, but UNIFEM funding is only confirmed for one year. MoWA has not included the operating expenses for these centers into its core budget for 1387 (2008), nor has it initiated the *tashkil* process to integrate the center staff formally into the Ministry's structure. Therefore the centers may be forced to close if UNIFEM or another donor does not continue to fund the centers operating and staffing costs.

MoWA has cooperated with a number of government and non-government organizations to promote women's legal awareness, however initiatives tend to be sporadic and donor driven. For example, MoWA worked with the Supreme Court and Medica Mondiale to introduce mandatory marriage registration including a minimum age for marriage but there was no complementary plan to ensure the protection of women's rights in the *Nika Nama* (marriage contract). The NAPWA outlines some program and benchmarks for women's legal protection and participation but it does not mention legal empowerment. MoWA needs to develop a comprehensive holistic strategy for women's legal empowerment and identify government and non-government partners to assist in the implementation of the strategy.

At the provincial level, the Departments of Women's Affairs (DoWAs) are generally considered venues for woman to seek legal assistance and forward their complaints. All DoWAs conduct legal awareness training for government, non-government, educational and academic institutions as well as the general public. DoWAs are generally dependant on NGOs to be service providers as MoWA and DoWAs' official mandate is advocacy and policy related however some DoWAs offer legal services such as legal aid and/or temporary shelter service but this varies greatly depending on local capacity and availability. Added to this confusion is the perception at the local level that DoWAs are service providers. In order to resolve this confusion DoWA mandates and activities should be harmonized and clarified to key stakeholders.

As described in section A. 5, the Ministry of Interior operates Family Response Units (FRU) in five provinces. The Ministry of Interior has also announced plans to expand FRUs to all provincial headquarters and large district police stations (83 in total). However there is neither a formalized training program nor an operating budget to support the majority of these FRU and it is unclear how MoI will implement this expansion. As well, some provinces do not have police women so the FRUs will be staffed exclusively by men until women become available and are able to take over operations at FRUs. While its intentions are good, in the rush to populate the FRUs with female police, MoI is assigning inexperienced and sometimes illiterate police women to work in the FRUs. If MoI is serious and committed to expanding the FRUs they need to develop a structured implementation plan that takes into consideration training, human resource and financial requirements.

Other government institutions including Ministry of Hajj and Religious Affairs (MoHRA) and the Ministry of Labor and Social Affairs have limited activities related to women's legal empowerment

and access to justice. MoHRA is responsible for sending messages to mosques for *Jumu'ah* (Friday prayers) as well as training and certifying mullahs. The training program for mullahs includes limited discussion about women's rights and customs versus Sharia, however there is no legal education component and it is unclear exactly what messages are being transmitted by the religious scholars. The majority of interviewees identified mullahs as a respected community member and the key player in channeling information to a community. With the exception of support from ISAF to publish materials related to Islam and security issues, no international donors are working directly with this Ministry. While this is particularly sensitive and it is acknowledged that USAID cannot take a hands-on approach with this Ministry, efforts should be made to engage trainers and senior religious scholars from the Ministry in open dialogue with other domestic and regional religious scholars who provide alternative and progressive interpretations of the Quran in relation to women's rights. As mullahs are often called upon to mediate disputes, the training program should include mediation techniques as well as a formal legal education component covering domestic, international and Sharia law.

As previously discussed, the AIHRC is very engaged in promoting women's rights awareness and protecting human rights in Afghanistan. The AIHRC has programs targeting students, government officials, mullahs and the general public to educate both men and women regarding women's rights. The AIHRC should be applauded for its efforts to protect human rights and track violations however they alone cannot tackle the issue of women's legal empowerment and improve women's access to justice. All government institutions need to accept responsibility to improve women's access to justice and harmonize activities to ensure women's legal empowerment. For a full breakdown of IRoA activities please see Annex 14.

2. Nongovernmental Initiatives and Activities

NGOs and other civil society organizations provide a range of services and activities related to improving awareness of women's rights and their access to legal services. Some organizations are quite broad in their scope, conducting general awareness raising activities aimed at both men and women while other organizations are focused in their services and target beneficiaries. As women face a multitude of issues and challenges there is need for all types of services to be offered. However; organizations need to better coordinate and harmonize activities to fill the gaps and most importantly avoid duplication. Unfortunately, there has been a clear lack of coordination to date that needs to be addressed if substantial gains are to be realized in women's legal empowerment and their access to justice.

Legal aid

Legal aid is a valuable and important service that is much needed in Afghanistan. Currently NGOs are the main providers of all legal aid services including acting as defense attorneys for accused which under the new Advocates Law is the responsibility of the Government. The Ministry of Justice recent announcement to develop a new department of public defenders is a welcome initiative, but it could take years to develop the capacity of public defenders as current NGO employed legal aid attorneys are unlikely to move to the Ministry of Justice due to limited training opportunities, low salaries and inferior benefits compared to their current NGO salaries and benefits package.

Legal aid organizations vary in size and structure with some focused on a single issue or beneficiary group while others provide a broad array of services to all groups. For a full breakdown of NGO Legal Aid Providers please see Annex 15.

Legal aid assists individuals to access specific rights, redress or relief however without building capacity for future autonomous decisions and actions this current trend of legal aid will not lead to empowerment. Unfortunately, Legal Aid organizations do not have a holistic approach to community problems, with groups working on behalf of individuals rather than with people and the community. While it is acknowledged that Legal Aid organizations are fulfilling an immediate need there is little recognition that empowered organized citizens are the only sustainable means of making state institutions accountable and society more democratic.

It is difficult to properly monitor the impact of legal aid services as few legal aid initiatives establish baseline surveys and systematic documentation. The majority of legal aid organizations have very basic case management systems that do not disaggregate cases in a way that allows for useful data analysis. There is also a tendency to carry out results-based assessments rather than process oriented monitoring and evaluation.

Shelters

For many women, accessing legal rights is often dependent on physically moving out of their homes and finding safe shelters may be a pre-requisite for accessing justice. Women usually approach shelters as a result of domestic violence, to dissolve marriages, to avoid being forcibly married, and as a consequence of having married someone without their parents' approval. For a full breakdown of NGO shelter providers please see Annex 16.

MoWA is responsible for regulating and monitoring all shelters in the country. Effectively this means that MoWA or the provincial DoWA must approve requests from NGOs who provide shelter services before they are allowed to accept women into their shelter. This can lead to bureaucratic delays but as there is a limited number of shelters this is generally not a problem. However if NGOs continue to expand shelter services, the current mechanism of seeking approval may prove difficult to scale up. Likewise this arrangement leaves the woman and the NGO at the mercy of MoWA to decide if they qualify to enter the shelter. There are four shelters in Afghanistan; two in Kabul, one in Herat and one in Balkh. In addition there are 3 temporary "transit" shelters in Kabul, Nangarhar and Parwan. All shelters offer psycho-social counseling, access to health and legal aid services. Literacy and vocational training are mandatory for residents of some shelters.

In Mazar-i-Sharif, CCA has worked with key stakeholders to form a commission including 8 members: CCA, Afghan National Police, DOWA, Department of Health, court, AIHRC, Attorney General and Legal Department. The Commission is responsible for reviewing a woman's case to determine if she qualifies to stay in the shelter and then mediating and/or following up on the case. The Commission has the authority to resolve all types of private matters including family disputes except for criminal cases. When a woman files a complaint with the DOWA or AHIRC, the legal department of DOWA investigates the complaint and calls a meeting of the Commission. The Commission reviews the case and if she is in immediate danger or cannot return to her house, she is allowed to stay in the shelter. The Commission then decides where to refer the case e.g. in criminal cases it will be referred to the police for a full investigation. If the complaint is referred to another institution, the Commission continues to follow up on the case to ensure it is resolved and the woman is treated fairly. If the parties agree the Commission can review, mediate and make a decision. In some cases for example divorce cases, their decision must be registered with the court. The Commission has been in existence for two years and the majority of complaints involve family disputes such as child custody, maintenance and domestic violence. As all key stakeholders are

involved in the commission, it effectively works as a check and balance to counter any corruption within one institution. The Commission's quasi-formal structure has been able to effectively bridge both the formal and informal systems while concurrently ensuring women's access to justice. This model should be further investigated to explore possibilities for replication in other provinces. For a full description of the case flow for the Shelter Commission please see Annex 16.

Legal Empowerment

As mentioned previously, while many civil society organizations are conducting excellent work in providing access to justice systems, unless they increase an individual's ability to independently access services and resources, they are not considered to be legal empowerment initiatives. An international NGO, Rights and Democracy has developed a comprehensive legal empowerment program consisting of legal awareness, legal aid and legal advocacy to address the issue from both a top down and bottom up approach. Rights and Democracy will conduct legal advocacy activities with local NGOs and other groups to lobby for the inclusion of clauses protecting women's rights in the *Nika Nama* that will be included in the marriage certificate issued by the Supreme Court. They will also concurrently support the development of mass media messages related to registration of marriage and provide training and assistance to legal aid providers to understand the new conditions.

The women's movement in Afghanistan is not harmonized nor coordinated; rather it can be characterized as one of friction and rivalry as various groups compete for recognition and donor funding. The Elimination of Violence Against Women Law is one example of a lost opportunity for all groups, government, non-government and Parliament to come and work together for a single issue. Instead, MoWA, civil society and Parliament all drafted their own version of the law leading to significant delays which ultimately hurts the women the law is supposed to protect. Legal empowerment programs require a holistic program approach which needs to be coordinate as this will not happen without concerted effort across the complete spectrum of women's rights and legal empowerment stakeholders.

Recommendations

- Focus on relationship-building between key actors, such as legal aid attorneys, prosecutors, judges, NGO workers, and local leaders and mullahs.
- MoWA and the Ministry of Justice should be encouraged and assisted to develop and implement a comprehensive and holistic strategy for women's legal empowerment including the identification of government and non-government partners to assist in the implementation of the strategy.
- Funding for such program needs to be long-term to ensure sufficient time for the full relationship-trust-attitudinal change cycle to be solidified. This is especially important for legal empowerment, legal aid and shelter services.
- A common documentation and reporting mechanism should be developed for all legal aid and shelter services. This information should be reported back to the relevant Ministries and Government institutions and shared with other legal empowerment stakeholders.

J. Recommendations

Women's legal empowerment and access to justice is a key component of Afghanistan's efforts to establish the rule of law and to achieve long-term stability.

This report, in an effort to gauge the status of women's legal empowerment and access to justice in today's Afghanistan, focused on five issues: attitudes and perceptions of women's access to justice; challenges women must overcome to access the formal justice sector; problems women face in the informal justice sector; prospects for women in the legal profession; and activities carried out by the Afghan government and nongovernmental organizations to strengthen access to justice.

The report's recommendations for each of these issues are summarized below.

Perceptions and Attitudes of Women Justice Sector Users

The overall perception regarding women's rights and their access to justice is that, although it has improved since the fall of the Taliban, things have slipped backward in the last two years primarily due to increasing insecurity. In general, women are discriminated against by both the formal and informal justice systems, and in particular, women are voiceless in the informal justice system. Recent national survey data has also shown that the public is more confident in the informal system than in the courts, but that their overall trust in the formal court system is increasing.

Recommendations

- The international community should continue to engage the Islamic Republic of Afghanistan on the issue of women's rights and legal access and provide funding for legal awareness targeted at men and women as well as broad-based legal empowerment for women.
- More efforts should be made to improve legal awareness in rural areas, however this must be complemented with improved access to legal services in areas outside of the provincial capitals.
- Programs should be developed to engage with and provide basic legal education to community shura and jirga members, as they are viewed as a legitimate dispute-resolution mechanism by the general public, even if key stakeholders perceive them as biased and discriminatory towards women.
- Gender awareness and sensitivity training should be conducted for all court officials.

Women and the Formal Justice System

The core national-level institutions of the formal justice system are the Supreme Court, the Ministry of Justice (MoJ), the Attorney General's Office (AGO) and the Ministry of Interior (MoI). In addition to these core institutions, the Ministry of Women's Affairs (MoWA) and the Afghanistan Independent Human Rights Commission (AIHRC) also play important roles in the formal justice sector.

There are many efforts to raise awareness of gender issues in the formal justice sector, many of which are supported by the international community. However, gender sensitivity and human rights trainings are not conducted in a systematic and sustained manner and conservative, culturally driven attitudes still determine the way women are treated in the formal justice system. Additionally, there is a significant gender gap in how men, versus women, interact with formal justice institutions.

The general perception of the respondents during the study was that the formal justice system is corrupt. Still, despite its problems, many of the respondents felt that the existing legal framework provides the basics of legal protection for women in Afghanistan. The problem lies in the interpretation, implementation and enforcement of the laws. Sharia and the IROA laws are misinterpreted, often because many in the formal justice sector are not adequately trained in the law.

There is therefore a need for capacity-building at every level, both on substantive and procedural issues to combat this perception and to improve the effectiveness and professionalism of the formal justice system.

Ministry of Women's Affairs

While MoWA was established as a policy-making body by the Bonn Agreement (2001) to address gender issues in Afghanistan, it also plays an important role in providing legal referral and mediation services for women around Afghanistan. However, there is some confusion about the mandate of MoWA, with all women's issues seen as being within MoWA's ambit. This has the potential risk of letting critical issues related to women fall through the gaps.

While MoWA is one of the ministries that received a great deal of donor attention, there is still much capacity-building needed in every aspect as a policy, advocacy and advisory body. Six years on, many people stated that there is every indication that "donor fatigue" has set in on women's rights issues. It is thus important that targeted, results-based support is provided to MoWA.

Recommendations

- MoWA's mandate needs to be clarified through an inter-ministerial process. MoWA's primary and secondary areas of responsibility should be clearly identified. Similarly, where other agencies should play the primary role, their roles and MoWA's role needs to be clearly set out and agreed to.
- Through an inter-agency coordination process involving consultations with NGOs and CSOs, issues that are currently falling through the gaps need to be identified and lead and support agencies need to be assigned.
- MoWA and legal aid providers need to collectively work on a regulatory framework for shelters that will facilitate speedier access to justice for women in shelters.
- MoWA and the Hoqooq should have a cadre of trained mediators who have been trained to work with women who have been traumatized.
- MoWA should work together with legal aid providers and trained social workers on a follow-up strategy for women who have either returned to their husband's family or to their own family after fleeing a situation of violence and trauma.
- The international community must keep Afghan women on the agenda. If the donor community is to demonstrate their commitment to empowering the women of Afghanistan, donors need to continue their level resources and support to women's empowerment efforts in the long-term. It is important that donors develop funding strategies that are multi-year and responsive to the needs on the ground. Priority programs need to be clearly identified and decision-making and disbursement mechanisms should be streamlined.

The Hoqooq Department, Ministry of Justice

The Hoqooq, while not established to facilitate the adjudication of civil disputes—such as family, commercial and property matters—via mediation, has for historical and other reasons taken on this role. The Hoqooq department thus provides another venue for women to resolve their problems before resorting to the courts. But, according to interviewees, the Hoqooq does not have the resources or the space in many of its offices to conduct this dispute resolution in a manner that protects the privacy of the parties involved.

Recommendations

- As the Hoqooq offices deal with family cases, and family violence is pervasive, in many cases, when women come to resolve civil disputes, it is likely that there has been some form/degree of violence or abuse. It is important that women have some level of safety and privacy as it is usually difficult enough for a woman to raise a family issue in a forum outside that of the family.
- In addition, if there is some level of family violence involved, the Hoqooq mediators should also be required to report this to an institution like MoWA so that the issues relating to violence and abuse are also addressed.
- As there are a number of venues for family matters to be heard—such as MoWA, the Hoqooq, and family courts—problems could arise from “forum shopping”, where men and/or women could go to the different venues in order to get an outcome in their favor. This issue needs to be kept in consideration, particularly when the Civil Procedure Code and the Law for the Acquisition of Rights are up for review.

The Afghan National Police and Family Response Units

Almost five years after the establishment of the Afghan National Police, the ANP’s culture remains militaristic and masculine. This has meant that the women in the ANP do not perform the full range of police functions, but rather, play a supporting role, e.g. escorting female witnesses.

The patrol-rank police are usually the first point of contact for the public. However, because they are barely literate and undereducated, they are unable to write reports and often use cultural and traditional practices to determine their actions as police. This has had an impact on women seeking assistance from the police.

Still, many of the respondents, particularly those running shelters and legal aid providers, stated that while the ANP were initially feared by women, this is starting to change. And, women are increasingly coming to Family Response Units, which were established to provide police services to men and women on family matters. The general consensus amongst interviewees was that the FRU concept was a good concept—however, more capacity-building is needed.

Recommendations

- As part of the training for the three levels of police, an intensive practicum on dealing with traumatized women is essential, along with periodic refresher courses.
- It is important to try and address the level of illiteracy for the patrol-level of police. The patrol police are often the first point of contact for a woman trying to make a complaint and, if the police person (most likely a man) is illiterate, he will be unable to write a report. Neither is he able to read the law or the ANP’s standard operating procedures.

- The limited number of women in the police force means that it is important that they are enabled to perform the full range of policing functions, including working as first responders, investigators, officers, and decision-makers, rather than being limited to support roles.
- While it was not possible to get statistics on complaints against the police of abuse and violence against female victims, many respondents stated that women fear going to the police because there is a perception in some districts that it will result in further abuse, violence or sexual violence. It is important that a complaints process is in place to report such acts, and that, if acts of abuse and violence take place, they are taken seriously by police management and the perpetrators are prosecuted.
- In order to deter police abuse and to encourage a culture of proper conduct in dealing with women complainants amongst the police, a mechanism to reward police and or police/stations that have most effectively dealt with women's cases should also be explored. This incentive scheme could either be from within the police force, or organized by institutions such as the AIHRC and/or MoWA.
- The FRU initiative needs continued targeted and systematic support from the international community to develop their skills further, to take on more complex tasks, and to streamline the process for women.
- FRUs need to be brought within the *tashkiel* of the MoI and the ministry needs to seek budget allocation for the FRU when preparing their annual budgets.
- If the standard operating procedures set out for the FRU in Figure 7 is representative of other FRUs, they need to be revisited to ensure that women are not put into situations of further violence.
- FRU statistics should be forwarded to the MoWA database of incidents of violence against women in order to try and have a central repository for statistics. There should also be a unified classification system for different types of cases.
- The FRU staff could and should be trained alongside the Special Victims Unit proposed at the AGO.

Investigators/Prosecutors – Attorney General's Office

The AGO is meant to be a key link between the police and the courts. Respondents, however, stated that a critical problem in Afghanistan is the lack of coordination and institutional tensions between the police and the AGO.

Contributing to this problem is a general lack of education among the country's prosecutors. The AGOs strategy for ANDS states that many prosecutors do not have university degrees in law or Sharia. Additionally, until recently, prosecutors did not take a Stage training program to provide new prosecutors with basic training. In addition, when there are new laws, a circular is sent out to all the offices about the changes in the law, but there is no training on implementation of the changes.

Like the other formal justice institutions, there are very few women who are either investigators or prosecutors: Out of 1521 investigators or prosecutors, only 74 are women.

Recommendations

- Fulfill the priorities identified in the AGO Strategy

Priorities identified in the Attorney General's Strategy for ANDS, April 2007

Some priority expected results relevant to this assessment include:

- By end 2010, 100% of prosecutor candidates admitted to the AGO Stage Course will hold degrees in law or Sharia from a credible university.
- By end 2010, 100 % of entry-level prosecutors will have completed AGO Stage vocational training.
- By end 2009, 20% of prosecutors in Afghanistan will have completed post-Stage practical skill investigative and prosecution training, including police-prosecutor collaborative training.
- By end 2010, 10% of prosecutors in the provinces shall have acquired specialized and advanced skills, including the ability to plan and lead proactive police-prosecutor investigations.
- By end 2012, the AGO will increase representation of women to at least 30% of all senior appointments and 30% of all prosecutor positions, while implementing the National Action Plan for Women of Afghanistan (NAPWA) and Eliminating Violence Against Women (EVAW).
- By end 2010 there is an effective witness and victim management mechanisms will be operational and used by all prosecutors at AGO HQ, and by 30% of the prosecutors in the major provinces.
- By end 2010, prosecutor offices at the AGO HQ and in 10% of provinces will include facilities specially rehabilitated or constructed for women, children, victims, protected witnesss, and the disabled.
- By end 2008, agreements will be in reached and protocols designed with international and national agencies and NGOs to accept information and investigate complaints regarding treatment of cases involving women and juvenile suspects of victims.
- By end 2008, review of all cases will be initiated in the major provinces regarding the detention and charging practices involving those charged with moral crimes (home escape, elopement, adultery, and kidnapping by romantic partners).

Courts

Most interviewees, other than those who work for the courts, did not consider the courts to be independent and felt that their decisions were influenced by those in power.

While there are meant to be courts at the district-level, there are no courts in many parts of the country, especially where security is an issue. There are 392 courts in total in Afghanistan. Where there are courts, they do not necessarily have the three judges required by law. Many of the judges do not have sufficient legal education or access to the laws. And, of the 1,242 judges in Afghanistan, female judges only make up a small percentage. Women judges are generally assigned to the newly established family and juvenile courts in Balkh, Herat, Kabul, Kandahar, Kunduz and Nangarhar provinces.

For women accessing the formal court system, respondents stated that there were relatively few women charged with crimes such as murder. Most of the women coming through the criminal justice system were accused of committing the crime of *zina*. For those who are involved in the formal court system, the only solution for the woman is to either be reunited with her husband, or be reintegrated into her own family. Currently there are no other options for women in Afghanistan.

Recommendations for All Courts

- There is an urgent need to have systematic capacity-building across the board in the judiciary. Training should be in the context of both law and the Sharia about issues such as equality between men and women and on procedural matters.
- There is an urgent need to provide the necessary resources and training to judges in the Family Courts and Juvenile Courts in particular.

- Positive initiatives such as the Family Courts should be expanded across all provinces with trained judicial staff, and adequate resources.
- A system to develop a systematic continuing legal education (CLE) strategy for in-service judges is of crucial importance. While there are many donor-supported training programs, these are ad hoc.
- Initiatives to “bring” CLE programs including the stage program to the provinces are necessary as women professionals do not have the freedom to travel out to attend the training programs.
- Efforts to improve the case management system needs to be strengthened and supported for the long term until an effective and sustainable system is in place. A systematic method of collecting gender disaggregated data needs to also be established. This method needs to be coherent and systematic across the formal justice system so that the categories are the same, and can thus be properly measured and tracked.

Prisons

The number of women in prisons has almost tripled in the last three years. From interviews with the courts, all courts stated that very few women were in prison for murder or theft. Most of the cases were runaway cases. However, judges noted that they are starting to see more women who are “mules” for drug traffickers. Most of these women have either been forced, or chosen to work as mules because of extreme poverty.

In the recent restructuring of the prison administration system, there is to be a Central Prison Department for Women Offender Facilities, with a deputy commissioner for women offenders supporting the commissioner general of prisons. The deputy commissioner for women offenders would be responsible for policy and program development and implementation nationally.

For now, however, in most of the country, girls and women who are in the pre-trial stage are held with other women prisoners who have been sentenced. And, post-release women face significant challenges as they have few options besides returning to their husband’s family or their own.

Recommendations

- Efforts such as those supported by other donors such as the Italian government and UNODC, such as building separate women’s prisons with better basic facilities, should be expanded outside of Kabul, but in a coordinated manner.
- Programs on psycho-social support, literacy skills, and basic-skills building should continue to be expanded beyond Kabul.
- As new prisons are built or repaired, separate holding facilities for pre-trial cases should be factored in. Similarly facilities for lawyers to meet with their clients should also be addressed.
- There is an urgent need to expand the number of social workers across the country who are able to work with girls and women across the board, but especially those who are in prison.
- The Supreme Council of Prisons needs to develop a strategy to address the large number of runaway cases so that they are fast-tracked through the system. This should also be coordinated with the inter-agency Commission on the Elimination of Violence Against Women.
- Sustained efforts to train prison wardens need to continue and be expanded across the country.

- Both the Kabul authorities such as the Supreme Council of Prisons and the international community need to jointly develop a strategy to address the significant gap in the lack of post-release facilities. Having a center that houses and trained post-release women is a culturally sensitive issue, and this needs to be carefully thought-through.
- A program to monitor the reintegration of post-release women is also important.

Women and the Informal Justice System

In a country like Afghanistan, where various reports state that the government only controls 30 percent to 31 percent of the country, the informal sector has been a major dispute-resolution mechanism and will continue to play a major role.

However, the informal justice system, like the formal justice system, discriminates against women. One of the critical problems when considering women's rights within the context of the informal justice sector is the conflation between customary law and Sharia. Sharia and customary law are not one and the same, but the two continue to be confused, even though they often contradict one another on key aspects such as matters relating to family law, attitudes towards blood feuds and revenge, and punishments that are available under customary law.

While most respondents recognized that the informal justice system is often the only dispute resolution venue for many people in the country, they all stated that the types of cases that should be heard before the jirgas/shuras should be limited. There are possibilities of linking the informal justice system with the formal justice system, but careful thought is necessary to ensure that there is buy-in and that this linking does not have unintended consequences.

Recommendations

- Women need to be gradually brought into the jirga/shura system. One way to do this would be using community development centers, or CDs, to host mixed shuras, or encourage female provincial council members to include mullahs in their meetings.
- Most importantly, a vigorous human-rights and gender-rights monitoring mechanism needs to be in place. This particularly relates to women's access to justice. The AIHRC is already an effective monitoring body, as are DoWA, women's shelters, and legal aid organizations.
- A linked formal/informal system must ensure that the benefits or strengths of both the systems are maximized. The negative elements need careful thought and remedies may need to be site-specific.
- Networks such as the central statistics office (CSO) network supported via the U.S. Agency for International Development (USAID), or the CDC network of 21,420 centers are possible entry points to test various pilot programs. The solution will have to be somewhat community-specific to take into account local differences. For example, with the CDCs, which often host mixed shuras, the centers with women and men in separate shuras and the centers without women's shuras should be mapped out. Again slightly different engagement and buy-in strategies will be necessary. Chart 1 below has outlined some possible ways the formal and informal justice systems could work together on certain case categories.

Women and the Legal Profession

Women are poorly represented in the justice sector with very few women currently employed as judges, prosecutors, lawyers, or police officers. Limited access to educational opportunities in the past and social and cultural constraints could be considered root causes for the delay in progress toward increased female participation within the justice profession.

Currently, female students represent only 14 percent and 17 percent of the student populations, respectively, and female professors account for a mere 6 percent of the professors in Law or Sharia Faculties. The Sharia Faculty in Kabul is the only faculty in the country where women represent more than half of the student body.

Women constitute 15 percent of professors in all universities across Afghanistan however they represent only 6 percent of professors in Law and Sharia Faculties. Likewise women accounted for only 8 percent of last year's judicial preparation stage class.

The Government of Afghanistan has reaffirmed its commitment to promoting the participation of women in the legal system on numerous occasions, including specific goals and objectives within the NAPWA, National Justice Sector Strategy (NJSS), and Ministry of Higher Education Strategy.

Recommendations

- The Supreme Court should be encouraged to develop a standardized judicial training program inclusive of affirmative action programs for women that focus on long-term continuous professional development with clearly defined benchmarks for qualification, progression and promotions.
- Continuous training and legal upgrading including gender awareness and sensitivity training should be institutionalized in the Supreme Court and promotion should be linked to certain prerequisites.
- As much as possible ongoing legal education for sitting judges or practicing lawyers should be conducted in the provinces and particular attention should be paid to the provinces with the highest number of female representation.
- Explore the feasibility of establishing temporary regional stage programs for prosecutors and judges, since women are generally unable to travel.
- The Government's affirmative action program for women in the legal profession should be expanded to include all levels of the judicial system including legal education to encourage the recruitment of female students and professors in law and Sharia faculties.
- The Ministry of Higher Education and Ministry of Justice should establish a quota system for female students in the Law and Sharia faculties and stage program.
- Preparation courses for the *Konkor* exam should be provided to help ensure that girls are adequately prepared for the exam.
- Establish accelerated law school programs for women who are already engaged in the legal sector or have received some legal education. (i.e. paralegals)
- Develop policies to integrate gender perspectives and minimum female participation requirements for all training conducted at the INLTC.

IRoA and NGO Activities for Legal Empowerment and Increasing Women's Access to Justice

In general, the term “legal empowerment” is unknown in Afghanistan, but a limited number of initiatives have been championed by civil society groups to support women’s access to justice. Still, the women’s movement in Afghanistan is not harmonized nor coordinated.

The Ministry of Women’s affairs is seen as the lead government agency responsible for the promotion of women’s legal awareness and access to justice. A number of other government agencies and ministries conduct legal awareness programs, but there is no overall strategy and little coordination between agencies.

NGOs and other civil society organizations provide a range of services and activities related to improving awareness of women’s rights and their access to legal services.

Legal aid organizations assist individuals in accessing specific rights, redress or relief, but without building capacity for future autonomous decisions and actions this current trend of legal aid will not lead to empowerment.

For many women, accessing legal rights is often dependent on physically moving out of their homes and finding safe shelters. Further, similar to legal aid, shelter services are only one step in the legal empowerment process.

Recommendations

- Focus on relationship-building between key actors, such as legal aid attorneys, prosecutors, judges, NGO workers, and local leaders and mullahs.
- MoWA and the Ministry of Justice should be encouraged and assisted to develop and implement a comprehensive and holistic strategy for women’s legal empowerment including the identification of government and non-government partners to assist in the implementation of the strategy.
- Funding for such program needs to be long-term to ensure sufficient time for the full relationship-trust-attitudinal change cycle to be solidified. This is especially important for legal empowerment, legal aid and shelter services.
- A common documentation and reporting mechanism should be developed for all legal aid and shelter services. This information should be reported back to the relevant Ministries and Government institutions and shared with other legal empowerment stakeholders.

Annex 1: Framework for Looking at Access to Justice for Women in Afghanistan⁵¹

Component	Description	Key actors
Legal protection	<ul style="list-style-type: none"> Legal protection establishes the legal basis for the other components of access to justice. Legal protections are the set of rules that provide legal standing in both formal and informal justice systems. Both systems need to recognize those rights and have the ability to protect the rights of the aggrieved, particularly the disadvantaged. This can be achieved through: Strengthening of rights in the constitution and their effective implementation Strengthening legal protection by addressing gaps in national legislation Ratification of treaties and their implementation in the domestic laws Addressing policy/legal gaps through implementation of rules and regulations and administrative orders Traditional and customary law. 	Supreme court/Judges Wolesi/Meshrano jirga Ministry of Justice (MoJ) Ministry of Women’s Affairs (MoWA) Attorney General’s Office (AGO) Afghan National Police (ANP) Prisons and Detention Centers (MoI) Afghanistan Independent Human Rights Commission (AIHRC) Legislative Commissions at the MoJ jirgas/shuras Community leaders and CSOs, especially those involved in legal research, legal advocacy and monitoring Ministry of Foreign Affairs (MoFA) UN
Legal awareness	<p>In order to promote legal awareness, it is necessary to develop effective, culturally appropriate means of disseminating information that would help women understand:</p> <ul style="list-style-type: none"> their right to seek remedies through the justice system the mechanisms/institutions established and entrusted to protect their access to justice the steps involved in starting legal procedures. <p>Information dissemination about women’s rights should not only target women but disseminated to the whole community so that there is a gradual attitudinal change and legal awareness about women’s rights in the community as a whole.</p> <p><i>For instance in Afghanistan, our assessment found that one of the most effective ways to reach the community at large, the informal sector and the formal sector is to work with mullahs.</i></p>	MoJ Ministry of Education/Higher Education, schools and universities MoWA Ministry of Hajj and Religious Affairs (MoHRA) Ministry of Information, Culture & Youth Affairs (MoICYA) Mosques AIHRC Legal aid providers Local government bodies NGOs, Bar association (when it is fully established) , universities, communities Labor unions Media
Legal aid and counsel	<p>In order for women to be able exercise their rights, they need the support of representation so that they can assert and pursue justice. Legal aid and counsel can be in the form of professional lawyers, paralegals or both.</p> <p><i>There is a small community of legal aid providers, how they are limited to certain parts of the country, and are too few to meet the demand there.</i></p>	MoJ /state-funded legal aid Public Attorneys court system (e.g. to deal with court fees) ANP / prison system NGOs/Bar association Law clinics (often linked to university faculties of law)
Dispute resolution forum/mechanism	<p>Development of capacities to determine the most adequate type of remedy or compensation. Adjudication can be through the formal system, quasi-judicial system, administrative bodies or traditional legal systems.</p> <p><i>To a large extent, much of the dispute resolution in Afghanistan is within the informal justice sector. However, even within the formal justice sector, the process usually starts with mediation in civil cases.</i></p>	courts AIHRC Alternative dispute-resolution mechanisms: court system or administrative bodies (e.g. land and labor boards) Traditional and indigenous ADR

⁵¹ Adapted from UNDP (2003), Access to Justice; World Bank (2006) Access to Justice Framework.

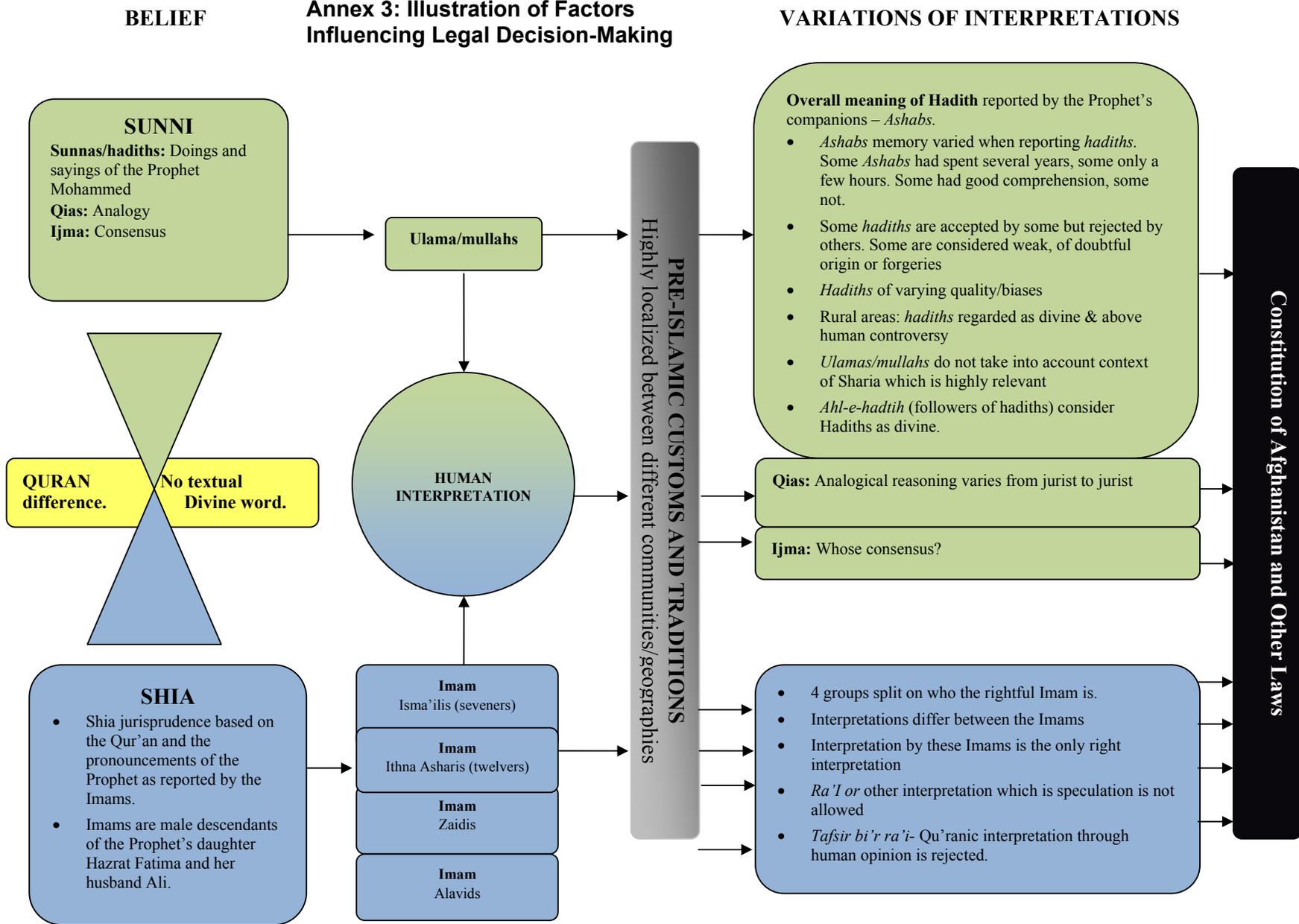
Component	Description	Key actors
Enforcement	Development of capacities for enforcing orders, decisions and settlements emerging from formal or traditional adjudication in a transparent and accountable manner. Development of reasonable appeals procedure against arbitrary actions or rulings.	AGO ANP MoI Administrative enforcement shuras/jirgas
Civil society and parliamentary oversight	Development of civil society’s monitoring and advocacy capacities to contribute to the development of overall accountability within the justice system. <i>There is a burgeoning CSO network within Afghanistan, including those specifically focused on women. One of the accomplishments to date has been the coming together of some CSOs/NGOs to develop a draft Violence Against Women law.</i>	NGOs/CSOs Media Parliamentary special and permanent committees

Annex 2: Sources of Sharia for Sunnis

Quran	<p>This is the divine will. It is fixed and immutable. However, the three other sources: <i>hadith</i> (saying of the Prophet Muhammad), <i>Qias</i> and <i>Ijma</i> are controversial because they are open to human interpretation</p>
Hadith	<ul style="list-style-type: none"> • Overall meaning of the <i>hadiths</i> is reported by the Prophet’s companions – <i>Ashabs</i>. • <i>Ashabs</i> memories varied when reporting <i>hadiths</i>. Some <i>Ashabs</i> had spent several years with the Prophet, some only a few hours. Some had good comprehension, some not. Some <i>hadiths</i> are accepted by some but rejected by others. Some are considered weak, of doubtful origin or outright forgeries. • Therefore, the <i>hadiths</i> are of varying quality/ and influenced by different biases. • <i>Ulamas</i>/mullahs do not take into account context of Sharia which is highly relevant. • Extensive forgery with the <i>hadiths</i> was commonly known to have occurred in the early decades of the advent of Islam.⁵² • In rural areas and followers of <i>Hadith-s Ahl-e-hadith</i>, <i>hadiths</i> are regarded as divine & above human controversy.
Qias	<p><i>Qias</i> are based on analogy, and this has the immediate implication of reasoning varying between jurists.</p>
<i>Ijma</i>	<p><i>Ijma</i> is the consensus or agreement of the community of scholars/jurists related to interpretation of the Sharia or particular points of Islamic law. The problem is <i>whose consensus?</i> There has been little consensus amongst religious scholars, <i>Ulamas</i>.</p>

⁵² A Textbook of Hadith Studies by Mohammad Hashim Kamali

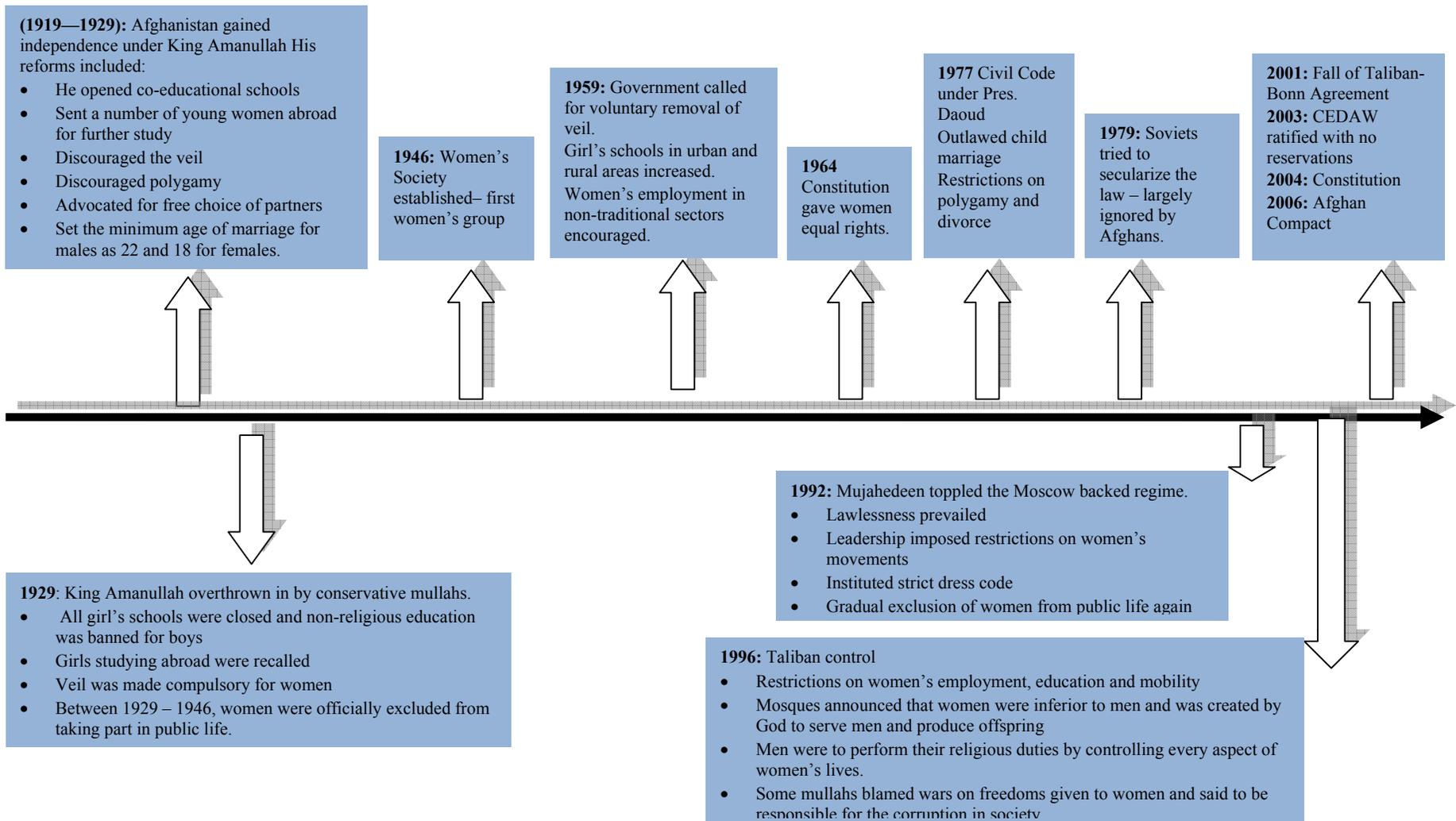
Annex 3: Illustration of Factors Influencing Legal Decision-Making



Annex 4: International Treaties Signed and Ratified/Acceded by Afghanistan

INTERNATIONAL TREATY	RATIFIED ON
1- The International Covenant on Civil and Political Rights (CCPR)	By accession 24th April 1983.
2- The International Covenant on Economics, Social and Cultural Rights (CESCR)	By accession 24th April 1983.
3- The International Convention on the Elimination of all Forms of Racial Discrimination (CERD)	By accession 5th August 1983.
4- The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)	5th March 2003.
5- The Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT)	26th June 1987.
6- The Convention on the Rights of the Child (CRC)	27th April 1994.
7- The Optional Protocol of the Convention of the Rights of the Child (CRC-OP-SC) on the sale of children, child prostitution and child pornography	19th October 2002.
8- The Optional Protocol to the Convention on the Rights of the Child (CRC-OP-AC) on the involvement of children in armed conflict	24th Sept. 2003
9- United Nations Convention on Corruption	20 Feb 2004
10- Vienna Convention	17 June 2004

Annex 5: Timeline of Women's Status in Afghanistan



Annex 6: Afghanistan Compact Women and Justice Specific Commitments and Benchmarks

As the Afghan Government and the international community embark on the implementation of this Compact, they will

5. Build lasting Afghan capacity and effective state and civil society institutions, with particular emphasis on building up human capacities of men and women alike;

7. Recognise in all policies and programmes that men and women have equal rights and responsibilities;

Commitments

The Afghan Government and the international community reaffirm their commitment to the protection and promotion of rights provided for in the Afghan constitution and under applicable international law, including the international human rights covenants and other instruments to which Afghanistan is party.

Gender

By end-2010: the National Action Plan for Women in Afghanistan will be fully implemented; and, in line with Afghanistan's MDGs, female participation in all Afghan governance institutions, including elected and appointed bodies and the civil service, will be strengthened.

Rule of Law

By end-2010, the legal framework required under the constitution, including civil, criminal and commercial law, will be put in place, distributed to all judicial and legislative institutions and made available to the public.

By end-2010, functioning institutions of justice will be fully operational in each province of Afghanistan, and the average time to resolve contract disputes will be reduced as much as possible.

A review and reform of oversight procedures relating to corruption, lack of due process and miscarriage of justice will be initiated by end-2006 and fully implemented by end-2010; by end-2010, reforms will strengthen the professionalism, credibility and integrity of key institutions of the justice system (the Ministry of Justice, the Judiciary, the Attorney-General's office, the Ministry of Interior and the National Directorate of Security).

By end-2010, justice infrastructure will be rehabilitated; and prisons will have separate facilities for women and juveniles.

Benchmarks and Timelines

The Afghan Government, with the support of the international community, is committed to achieving the following benchmarks in accordance with the timelines specified.

EDUCATION

Primary and Secondary Education

By end-2010: in line with Afghanistan's MDGs, net enrolment in primary school for girls and boys will be at least 60% and 75% respectively; a new curriculum will be operational in all secondary schools; female teachers will be increased by 50%; 70% of Afghanistan's teachers will have passed a competency test; and a system for assessing learning achievement such as a national testing system for students will be in place.

Higher Education

By end 2010: enrolment of students to universities will be 100,000 with at least 35% female students; and the curriculum in Afghanistan's public universities will be revised to meet the development needs of the country and private sector growth.

Skills Development

A human resource study will be completed by end-2006, and 150,000 men and women will be trained in marketable skills through public and private means by end-2010.

HEALTH

By end-2010, in line with Afghanistan's MDGs, the Basic Package of Health Services will be extended to cover at least 90% of the population; maternal mortality will be reduced by 15%; and full immunization coverage for infants under-5 for vaccine-preventable diseases will be achieved and their mortality rates reduced by 20%.

SOCIAL PROTECTION

Vulnerable Women

By end-2010, the number of female-headed households that are chronically poor will be reduced by 20%, and their employment rates will be increased by 20%.

Annex 7: I-ANDS Women and Justice Specific Priorities and Benchmarks

INTERIM-AFGHAN NATIONAL DEVELOPMENT STRATEGY

VISION

This Government's vision for Afghanistan is fully consistent with our Islamic and cultural values as stated in our Constitution. In the next fifteen years, we aim to ensure that Afghanistan meets. If we achieve this vision, we will all but eliminate extreme poverty and hunger in Afghanistan. All our children, boys and girls alike, will complete their primary educations. *Afghanistan's women will enjoy greater equity in education, political participation and justice.* We will cut by more than half the number of children dying before they reach five, and the number of mothers that die in childbirth. *(Emphasis added)*

GOVERNANCE, RULE OF LAW, AND HUMAN RIGHTS PRIORITIES

The Government will strengthen protection of human rights for all, especially women and children, and assure redress for violations.

9. By Jaddi 1389 (end-2010): the National Action Plan for Women in Afghanistan will be fully implemented; and in line with Afghanistan's MDGs, female participation in all Afghan governance institutions, including elected and appointed bodies and the civil service, will be strengthened.

13. By Jaddi 1389 (end-2010), justice infrastructure will be rehabilitated; and prisons will have separate facilities for women and juveniles.

GOVERNMENT'S FIVE-YEAR STRATEGIC BENCHMARKS

Gender Equity

The Government's goal is to eliminate discrimination against women, develop their human capital and promote their leadership in order to guarantee their full and equal participation in all aspects of life in Afghanistan.

By Jaddi 1389 (end-2010): the National Action Plan for Women in Afghanistan will be fully implemented; and in line with Afghanistan's MDGs, female participation in all Afghan governance institutions, including elected and appointed bodies and civil service, will be strengthened.

Justice & the Rule of Law

4. By Jaddi 1389 (end-2010), Justice infrastructure will be rehabilitated; and prisons will have separate facilities for women and juveniles.

Religious Affairs

1. By Jaddi 1389 (end-2010), religious institutions and scholars, both men and women, will participate in structured ways on issues of national development policy.

2. By Jaddi 1389 (end-2010), concrete measures will be put in place to ensure that the status and participation of women in Islamic activities increase, both locally and internationally.

Skills Development

A human resource study will be completed by Jaddi 1385 (end-2006), and 150,000 men and women will be trained in marketable skills through public and private means by Jaddi 1389 (end-2010).

Culture, Media, and Sport

2. By Jaddi 1389 (end-2010), the media will be protected as independent, pluralistic and accessible to Afghan women and men throughout the country, thereby promoting an open and democratic society.

3. By Jaddi 1389 (end-2010), sports will be promoted, with special emphasis on creating access for children, women and the disabled.

Support To Vulnerable Women

By Jaddi 1389 (end-2010), the number of female-headed households that are chronically poor will be reduced by 20%, and their employment rates will be increased by 20%.

Annex 8: Excerpt from National Justice Sector Strategy

Goal 1—Improved institutional capacity to deliver sustainable justice services focuses on improved functionality, competence and professionalism of the justice institutions that will enhance credibility and improve institutional arrangements for service delivery. It focuses on four main areas;

- administrative structure and information/operating systems
- human resources development (including remuneration and professional education)
- institutional and professional integrity
- infrastructure, transportation and equipment needs.

This goal also integrates cross-cutting issues of gender, counter-narcotics, international cooperation and anti-corruption as well as special topics including national security, counter terrorism and transitional justice.

Goal 2 Improved coordination and integration within the justice system and with other state institutions. focuses on linkages between critical areas of support necessary for the proper functioning of justice institutions that includes the:

- legislative process
- support for governmental legal education and training mechanisms
- academic legal education
- training mechanisms and partner institutions in government and civil society.

Goal 3—Improved Quality of Justice focuses on processes and practices in the justice institutions that will facilitate citizens' access to quality justice services. Specifically, it will address issues related to the availability of:

- basic legal information by victims
- witnesses, accused persons
- civil litigants
- other constituents of the justice system to access quality justice.

Goal 3 is divided into three sections: criminal justice, civil justice and access to justice. Some of the key topics covered under this goal include:

- reform of and coordination among criminal justice actors
- streamlining of civil justice procedures
- improved case management
- improved standards of judicial education and training
- establishment of the Bar Association and a legal aid system throughout the country
- legal awareness
- traditional dispute-resolution mechanisms.

Some key Expected Results (within 5 years) as set out in the NJSS which aim to improve access to justice for women

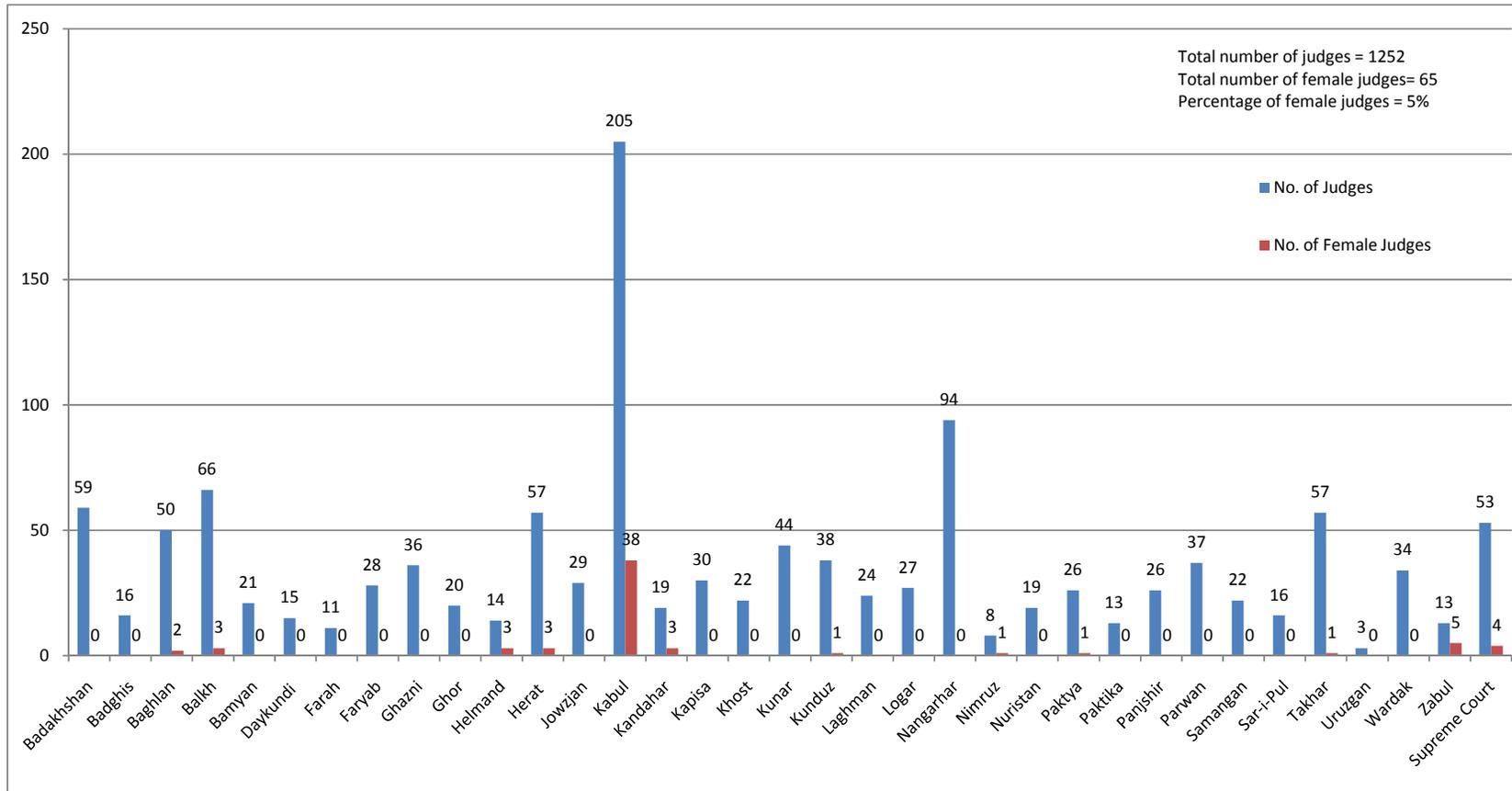
- Have established and/or enhanced specialized capacity to prosecute and adjudicate cases involving cross-cutting issues in counter narcotics, violence against women, regional cooperation, corruption, as well as juvenile justice.
- Have recruited and promoted justice professionals on merit, based on established policies and procedures, including meeting the target of 30% of the professional staff being female
- Have mapped in detail the processes linking all justice institutions, and have streamlined them to improve information systems and business processes, with the aim of reducing delays in processing of cases, administrative costs and vulnerability to corruption
- Constructed or rehabilitated justice infrastructure, including offices, courts, prisons, and juvenile rehabilitation centers in all provinces
- Have sufficient transportation assets to provide justice services throughout the country.
- Relevant institutions will conduct a comprehensive and gender oriented review and prioritization of civil, criminal, and commercial laws that are required to be enacted or amended to complete the legal framework required by the Constitution
- All laws will be fully harmonized with the implementation requirements of the United Nations Convention Against Corruption, and other applicable international treaties and conventions, including the:
 - International Covenant on Civil and Political Rights, and the Optional Protocol
 - Convention on the Elimination of All Forms of Discrimination against Women
 - United Nations Convention against Transnational Organized Crime
 - International Convention on the Elimination of All Forms of Racial Discrimination
 - International Covenant on Economic, Social and Cultural Rights.
- No suspects or accused persons will be in detention or incarceration without lawful charge and being informed of the charges against them, and never without authorization of a competent authority
- Efficient and effective systems will be in place for protecting and assisting victims and witnesses, and managing evidence, in at least eight major provinces
- Updating of Laws, Practice and Procedures Laws, judicial practices and practices for enforcing judgments will be updated and standardized to conform fully with Constitutional requirements and international commitments
- Simplified processes for production, certification, storage and dissemination of documents for legal identity and entitlement, including deeds, birth and death certificates, marriage contracts and certificates will be promulgated by the courts and Government
- Establish a fully operational Independent Bar Association (IBA)
- Establish a comprehensive administrative system for legal aid, with special attention to ensuring women's access to legal aid
- Fully establish a unit in the MOJ responsible for monitoring human rights across the Government
- Continue and expand current legal awareness and legal literacy programs alongside expansion of resources and deployment of personnel. This will include development of legal awareness programs on: rights and responsibilities of the women, men and the justice institutions and how the formal justice system works for Afghan citizens
- Develop policies towards Traditional Dispute Resolution (TDR) mechanisms to promote compliance of TDR with Afghan Constitutional principles and values, and Islamic law.

Annex 9: Courts by Province and Type in Afghanistan

Province	Court Type	No. of Courts	Province	Court Type	No. of Courts
Badakhshan	Urban Court	1	Kunar	Urban Court	1
	Appeal Court	1		Appeal Court	1
	District Courts	27		District Courts	13
	Total: 29			Total: 15	
Badghis	Urban Court	1	Kunduz	Appeal Court	1
	Appeal Court	1		District Courts	8
	District Courts	5		Central Primary Family Court	1
	Total: 7			Total: 10	
Baghlan	Urban Court	1	Laghman	Urban Court	1
	Appeal Court	1		Appeal Court	1
	District Courts	14		District Courts	4
	Total: 16			Total: 6	
Balkh	Appeal Court	1	Logar	Urban Court	1
	District Courts	16		Appeal Court	1
	Central Primary Juvenile Court	1		District Courts	6
	Central Primary Family Court	1		Total: 8	
	Total: 19		Nangarhar	Appeal Court	1
Bamyan	Urban Court	yyy		District Courts	23
	Appeal Court	1		Central Primary Juvenile Court	1
	District Courts	6		Central Primary Family Court	1
	Total: 8		Total: 26		
Daykundi	Urban Court	1	Nimruz	Urban Court	1
	Appeal Court	1		Appeal Court	1
	District Courts	4		District Courts	1
	Total: 6		Total: 3		
Farah	Urban Court	1	Nuristan	Urban Court	1
	Appeal Court	1		Appeal Court	1
	District Courts	3		District Courts	7
	Total: 5		Total: 9		
Faryab	Urban Court	1	Paktya	Urban Court	1
	Appeal Court	1		Appeal Court	1
	District Courts	12		District Courts	8
	Total: 14		Total: 10		
Ghazni	Urban Court	1	Paktika	Urban Court	1
	Appeal Court	1		Appeal Court	1
	District Courts	14		District Courts	1
	Total: 16		Total: 3		
Ghor	Urban Court	1	Panjshir	Urban Court	1
	Appeal Court	1		Appeal Court	1
	District Courts	8		District Courts	6
	Total: 10		Total: 8		

Province	Court Type	No. of Courts	Province	Court Type	No. of Courts
<i>Helmand</i>	Urban Court	1	<i>Samangan</i>	Urban Court	1
	Appeal Court	1		Appeal Court	1
	District Courts	8		District Courts	6
	Total: 10			Total: 8	
<i>Herat</i>	Appeal Court	1	<i>Sar-i-Pul</i>	Urban Court	1
	District Courts	17		Appeal Court	1
	Central Primary Juvenile Court	1		District Courts	4
	Central Primary Family Court	1			
	Central Primary Commercial Court	1			
	Total: 21		Total: 6		
<i>Jowzjan</i>	Urban Court	1	<i>Takhar</i>	Urban Court	1
	Appeal Court	1		Appeal Court	1
	District Courts	10		District Courts	16
	Total: 12			Total: 18	
<i>Kabul</i>	Appeal Court	1	<i>Uruzgan</i>	Appeal Court	1
	District Courts	19		District Courts	1
	Central Primary Juvenile Court	1			
	Central Primary Family Court	1			
	Central Primary Commercial Court	1			
	Central Primary Narcotics Court	1			
	Total: 24		Total: 2		
<i>Kandahar</i>	Urban Court	1	<i>Wardak</i>	Urban Court	1
	Appeal Court	1		Appeal Court	1
	District Courts	8		District Courts	8
	Total: 10			Total: 10	
<i>Kapisa</i>	Urban Court	1	<i>Zabul</i>	Urban Court	1
	Appeal Court	1		Appeal Court	1
	District Courts	6		District Courts	8
	Total: 8			Total: 10	
<i>Khost</i>	Urban Court	1	<i>Kunar</i>	Urban Court	1
	Appeal Court	1		Appeal Court	1
	District Courts	9		District Courts	13
	Total: 11			Total: 15	
<i>Parwan</i>	Urban Court	1	<i>Kunduz</i>	Appeal Court	1
	Appeal Court	1		District Courts	8
	District Courts	9			
	Total: 11			Total: 9	
TOTAL NUMBER OF COURTS IN AFGHANISTAN: 390					

Annex 10: Number of male and female judges in Afghanistan (Data current as of April 2, 2008)



Annex 11: De Jure/De Facto Analysis of the Civil Code of 1977 and Penal Code of 1976

Civil Code of 1977, Afghanistan and Women: De Jure/De Facto Analysis

	DE JURE	DE FACTO
	The Civil Code states: “Freedom is the natural right of man. No one may undermine this right.” (Article 44).	
Purpose of marriage	<p>Marriage is seen to be a contract that legalizes intercourse between man and a woman with the object to establish a family, and it places rights and obligations on both parties (Article 60) such as right to inheritance, and to avoid prohibited acts (Article 90).</p> <p>The proper contract of marriage requires offer and acceptance by the parties or by their guardians and presence of two witnesses (Article 77).</p>	There is a very high incidence of forced marriages. 60-80 %, with 57% being under-age marriages. While there are rights and obligations on both parties stipulated in the law, women and girls, particularly in forced marriage situations often have no rights. They are often used as slaves, tortured and beaten.
Marriage registration	The Civil Code requires that the marriage contract is to be registered in the courts in an official marriage deed, and is to be prepared in three copies (Article 61) Marriage Law	<p>The Supreme Court of Afghanistan approved a new marriage contract, or <i>Nika Nama</i> which is expected to help stop child and forced marriages in the country. According to the AIHRC 60 – 80 percent of marriages are forced.</p> <p>According to officials however, only one to three marriages are registered per day in a country of about 25 million people.</p>
Marriage age	<p>A girl under the age of 18 is considered to be a child, the marriage age for boys is 18 and girls 16 (Article 70).</p> <p>However, if a girl has not reached the age of 16, the marriage can be concluded through her father or the competent court (Article 71 (i)). The law goes on to state that the marriage of a minor girl whose age is less than 15 shall never be permissible (Article 71 (ii)). Furthermore, the law states that when a “wise” girl reaches her maturity age and marries, the marriage shall be binding (Article 80).</p> <p>Article 19 of the Marriage Law states that a marriage contract for a minor, in the absence of the permission of a <u>Sharia wali</u> (custodian) or a legal marriage certificate, is not valid.</p>	<p>There is a new bill awaiting signature by the President which has changed the legal age to be 18 for both boys and girls. This regulation addresses in law the issue of the father being able to marry off an under-age daughter. The provision regarding marriage of minors never being permissible is largely ignored particularly outside of the main urban centers. This happens for many reasons. For example:</p> <ul style="list-style-type: none"> • As soon as girls’ reach puberty, or are pre-pubescent, fathers marry their girls off for fear that they will become sexually active and thus dishonor the family. • Families sell their daughters because of poverty at a very early age. These girls may then be resold a number of times, and used as slaves, or even prostitution. • Poor people often give up their daughters to creditors when they cannot repay their debts. E.g. the case of “Opium brides” where poor farmers cannot repay their loans to creditors either because there has been a bad crop or the authorities have destroyed his field. Or the case in Kunduz where a father sold his 4 year old daughter for \$20. <p>Article 80 is often misused by the authorities on the grounds that an underage girl looked physically mature. According to UNICEF, 57 percent of marriages in Afghanistan involve girls below the legal age of 16. The new marriage registration document endorsed by the Supreme Court in 2007, stipulates that if a man wants to marry, he should make sure that his would-be wife is at least 16. Marriage certificates will</p>

	DE JURE	DE FACTO
Polygamy	<p>According to Article 86, polygamy can only take place if there is no fear of injustice between the wives, when the person can provide for the wives, or the first wife is childless or suffering from disease.</p> <p>Article 88 states that during the conclusion of marriage the woman can make the marriage subject to a condition that if her spouse would marry another woman contrary to the provisions of Article (86) of this law, she would be authorized to get her divorce. This condition shall be valid when it is written down in the marriage deed.</p>	<p>not be issued for underage brides.</p> <p>In reality, the practice of polygamy is widely practiced, particularly in the rural areas. Many of these marriages are to underage girls.</p>
Marriage portion	<p>During the marriage contract, all or part of the marriage portion shall be determined including payment arrangements (Article 101). The wife is entitled to the portion of the marriage contract (Article 99) and is considered to be the property of the wife who can exercise any power of ownership over her marriage portion (Article 110)...</p> <p>This is also reflected in the Marriage Law: Article 14.</p>	<p>However, in reality, particularly in the rural areas, the marriage portion is often denied to the woman/girl, and is retained and controlled by others such as her father or brothers.</p>
Residence	<p>The husband is to provide a suitable residence for the wife (Article 116 and 117), and she can refuse to go to her husband's residence if a suitable residence is not provided (Article 117 (2)).</p>	<p>In many cases, should the wife refuse to go to her husband's residence, it is likely that she would be beaten up by her father and brother – as it would bring shame to the family.</p>
Mobility for women	<p>This permission is to be granted by her husband.</p>	<p>This is still the case for many women, including professional women in urban areas such as Kabul. However, impacts on women in many different ways:</p> <ul style="list-style-type: none"> • Ability to go and seek help • Ability to work • Ability to go for education e.g. many women do not become judges because the year-long stage course is in Kabul.
Divorce by the man	<p>The husband can divorce his wife directly or through a legal deputy (Article 142). The husband can divorce the wife three times (Article 144).</p>	<p>However, according to the law, women can only get divorced through the courts. The reasons are set out below.</p> <p>The husband can get divorced only by stating “talaq” three times. Sources from shelters say that men often take advantage of this. They divorce their wives in this manner, but come back later to reclaim the wife stating that he had not really divorced her. The woman has to be able to prove that she had a divorce, and this usually requires registration of the divorce in the courts. The woman's family will try to persuade the wife to go back to the man for the sake of family honor. In which case, she is likely to go back into a situation of physical and mental abuse.</p> <p>In other instances, if the woman has gotten married to another man in the meantime, the first husband can claim that she has committed <i>zina</i> because she was not really divorced.</p>
Divorce due to polygamy	<p>A woman can include a condition at the time of marriage that she is entitled to divorce if the man should marry another woman contrary to Article 86 (Article 88). If a man marries contrary to Article 86, she is entitled to seek a divorce (Article 87).</p>	

	DE JURE	DE FACTO
Divorce due to defect	Women can seek a divorce due to “defect” of the husband through illness or disability for example if she did not have knowledge at the time of marriage (Articles 176 – 181, Civil Code).	Divorce is possible, but is the prerogative of the husband. However, women can only obtain a dissolution of marriage through the court, and if certain conditions are met. Some of this has been codified in the Civil Code (Articles 171 – 193).
Divorce due to absence	If the husband is absent without reasonable excuse for a period of three years (Articles 194 – 195)	A number of cases were reported where husbands have returned to claim that there he had not granted a divorce during his time away. The woman then has to prove the divorce from the first husband. Failure to do so will result in imprisonment of the woman for running away and adultery, even if the second marriage is legal.
Divorce due to imprisonment	Where the husband is imprisoned for ten years or more, the wife can seek a divorce after five years.	There was a case from one of the shelters where the woman had remarried after her first husband was in prison for ten years. Once he was released from the prison, the husband started harassing the wife and her second husband that he had not divorced her and started creating many problems for her.
Divorce due to refusal or inability to pay alimony	Where the husband refuses or is unable to pay alimony and this can be proven. However, divorce in this case if ordered by the court, is considered a return-divorce, and the husband can return to the wife “within the definite divorce period, provided the husband would prove his financial power and his willingness to pay the alimony.” (Articles 191-193).	
Divorce due to mutual consent or <i>Khul</i>		As defined by classical jurists, <i>khul</i> is separation claimed by the wife as a result of her extreme ‘reluctance’ towards her husband, and the essential element is the payment of compensation to the husband in return of her release. This can be the return of the dowry, or any other form of compensation. Unlike <i>talaq</i> , <i>khul</i> is not a unilateral but a bilateral act, as it cannot take legal effect without the consent of the husband. If the wife fails to secure his consent, then her only recourse is the intervention of the court and the judge’s power either to compel the husband to pronounce <i>talaq</i> or to pronounce it on his behalf.
Inheritance	There are some legal protections for women codified in the Civil Code (Articles 209 – 211), There are a complicated set of rules relating to inheritance rights for women in different scenarios. <ul style="list-style-type: none"> • For example • Daughters and widows have rights to inherit property. • With regards to paternal offspring, male and female offspring are meant to receive equal portions (Article 2006). • For maternal offspring, the male is to receive twice as much as the female. 	The reality is that inheritance rights are very often denied to women.
	Divorced women have no rights to inheritance unless the husband dies during the “divorce period” of three months (Article 2007). Divorce women in this situation can receive maintenance for one year, but not property.	In most situations of divorce, the woman has left because of violence, torture etc. It is thus highly unlikely that the woman is going to claim her right to inheritance.
	Widows with children are entitled to one-eighth of	Widows are at the bottom of the social order in a

DE JURE	DE FACTO
the property, and one-fourth of the property if she has no children	community, and as a matter of practice, she is wedded off to her expired husband's brother. In some tribes, the widow is married off to an infant brother or nephew of the former husband. This is anti-Islamic, but likely.

Penal Code of 1976, Afghanistan and Women: De Jure/De Facto Analysis

	DE JURE	DE FACTO
Commitment of crime and exercising a right	<p>Penal Code, 1976 Chapter 4, Book I: Exercise of Right, Article 53 Commitment of a criminal act with good will for the purpose of exercising a right, which is granted to a person by the way of religious or other laws, shall not be considered a crime.</p>	<p><i>Article 53 is often used when a woman charges her husband or his family with excessive violence, and even torture. The “disobedience” defense is an example of how Sharia has come to be misinterpreted</i> so that it is now generally applied as the norm by the courts and prosecutors. However, the <i>Qur’an</i> requires a man and a wife to live in harmony with each other, and if she is disobedient, the man is instructed to first speak with her, then, if that is unproductive, can refuse to sleep with her. If these measures fail, he can symbolically hit her.</p> <p>Given the tendency of judges and prosecutors to rely on Sharia more than on the law because of their lack of training in the law, they accept this defense, and either dismisses any complaints raised by the woman, or reduce the sentence.</p> <p>The women are thus put in a situation where they either have to face their husbands and his family and return to perhaps greater violence as punishment for bringing shame to the husband and his family, or return to her family, and face the consequences of bringing dishonor to her family, which could also result in violence and even death.</p> <p>This is also catch-all provision that enables judicial officials to try and justify the criminal acts of men usually in cases such as honor killing etc.</p>
Forced marriages	<p>Penal Code, 1976 Chapter 7, Book II: Miscellaneous Provisions— Article 517</p> <p>The Civil Code of 1977 prohibits the marriage of girls below the age of 16. However, the Penal Code only looks at marriage of women over the age of 18 years including widows (Article 517). Currently the sentence is a “short sentence”. It goes to say that if the marriage is for <i>bad</i>, the offender shall get two years.</p>	<p><i>Despite the fact that both bodies of law prohibit forced marriages, it is widely practiced, using customary law and tradition as the basis for this.</i> In the MoWA/UNIFEM study, from the 1011 cases reported, 16 percent reported forced marriage, and another 7 percent forced engagement.</p> <p>Though forced marriages and its consequences are widely known, the formal justice sector accepts this as tradition and fails to see it as a criminal offence. These provisions are largely ignored.</p>
Domestic /Family Violence	<p>Penal Code, 1976 Chapter 5, Book II: Section 2 Beating and laceration</p> <p>Articles 407 – 413 sets out a range of sentences for beating and laceration. For example Article 407 (1) states that if a person intentionally beats and lacerates another who then gets cut, injured or defected, becomes permanently handicapped, loses his/her senses, the person is to provide compensation</p>	<p><i>Family violence is closely linked to forced marriage.</i> There is no offence on domestic violence per se; however, there are efforts currently underway to draft a law on domestic violence. There are currently three drafts of the law at the Taqin/MoJ. The first was drafted by MoWA without consultation with civil society groups and was submitted to the MoJ. The second was drafted by the Parliament’s Commission on Human Rights and has not been submitted.</p>

	DE JURE	DE FACTO
	<p>and be sentenced for up to three years.</p> <p>Article 407 (2) provides that if the victim loses his/her intellect, or if the offender has had prior intent and pursued the victim, the offender is to be sentenced for up to 10 years.</p> <p>Article 409 provides that if the beating or laceration does not cause defect or idleness, or causes inability to work for less than twenty days, the offender will be sentenced to six months or fined six thousand Afghanis.</p> <p>There are other provisions for “a person who intentionally administers on someone harmful but not fatal materials; for persons fighting etc.</p>	<p>Domestic violence is a criminal offence under Afghan law under Section 2 on “Beating and Laceration”, however most consider domestic violence to be a family matter – a norm, unless the domestic violence was considered to be “excessive”.</p> <p>In the MoWA/UNIFEM study from the 1011 cases reported, 22 percent of the cases were physical attack, 7 percent of cases were verbal abuse, 7 percent of cases – threat of violent action.</p> <p>This report also found that most of the perpetrators of violence were family members close to the girl/woman either from her own family or her husband’s/fiancé’s family. 84 percent of the violence is perpetrated by men and 9 percent by women (mothers/sisters-in-law) and mothers arranging forced engagements/marriages.</p> <p>However, domestic violence is so pervasive, it is rarely recognized as a criminal act, yet according to anecdotal evidence, most of the divorce cases that come through the Family courts, or most of the women in the shelters are seeking divorce or leaving because of some form and degree of family violence. In addition, those investigating criminal cases of domestic violence, and criminal and Family Courts considering such cases, regularly consider whether the violence was in response to the woman’s misbehavior or disobedience. In criminal cases, this often leads to a decision not to prosecute a case of beating, or the reduction in the sentence of the accused on the basis of Article 53 of the Penal Code, 1976.</p>
Intentional Murder	<p>Penal Code, 1976 Chapter 1 and 2 Book II: Murder, Articles 394 – 398</p> <p>Murder is a crime that should be considered under <i>Qisas</i>. However, if the charge under <i>Qisa</i> is dropped, or there is insufficient evidence, then murder will be sentenced under <i>Ta’zeeri</i> principles. Generally, those accused of murder gets the death sentence.</p>	<p>Chapter 4, Book 1, Articles 57– 64 set out a list of Legitimate Right of Defense.</p> <p>Article 57 states that the commitment of a criminal act for the purpose of exercising the legitimate right of defense shall not be considered a crime.</p> <p>Theoretically, this should provide a defense for a woman who is accused of murdering her husband; however, there was no opportunity to validate this. The judges interviewed stated that very few women are in the criminal justice system because of murder.</p>
Honor killing	<p>Penal Code, 1976 Chapter 1 and 2 Book II: Accidental murder through beating, Articles 399</p> <p>There is a defense for people committing an act of murder to defend “his honor, who sees his spouse, or another of his close relations, in the act of committing adultery or being in the same bed with another and immediately kills or injures one or both of them, shall be exempted from punishment for laceration and murder but shall be imprisoned for a period not exceeding two years as a <i>Ta’zeeri</i> crime.</p>	<p>Committing adultery is used expansively, and could be as little as a woman being in the company of another man who is not her husband or known relative. However Article 399 leaves it open for a woman’s family to kill her on the basis of bringing dishonor to the family.</p>
Zina	<p>Penal Code, 1976 Chapter 8, Book II: Adultery, Pederasty, and Violation of Honor, Article 426—430</p> <p>The only provisions that rape can be dealt with are those under Chapter 8. <i>Zina</i> is typically considered a <i>Had</i> crime. However, if the conditions of <i>Had</i> are</p>	<p><i>Zina</i> is usually a <i>Had</i> crime, however, only when the evidentiary requirements of <i>Hudud</i> (plural of <i>Had</i>) cannot be met, then it is considered under the Penal Code as a <i>Ta’zeeri</i> offence. The evidentiary requirement under <i>Hudud</i> for <i>zina</i> is that there must have been at least four pious Muslim men of undoubtable character who had</p>

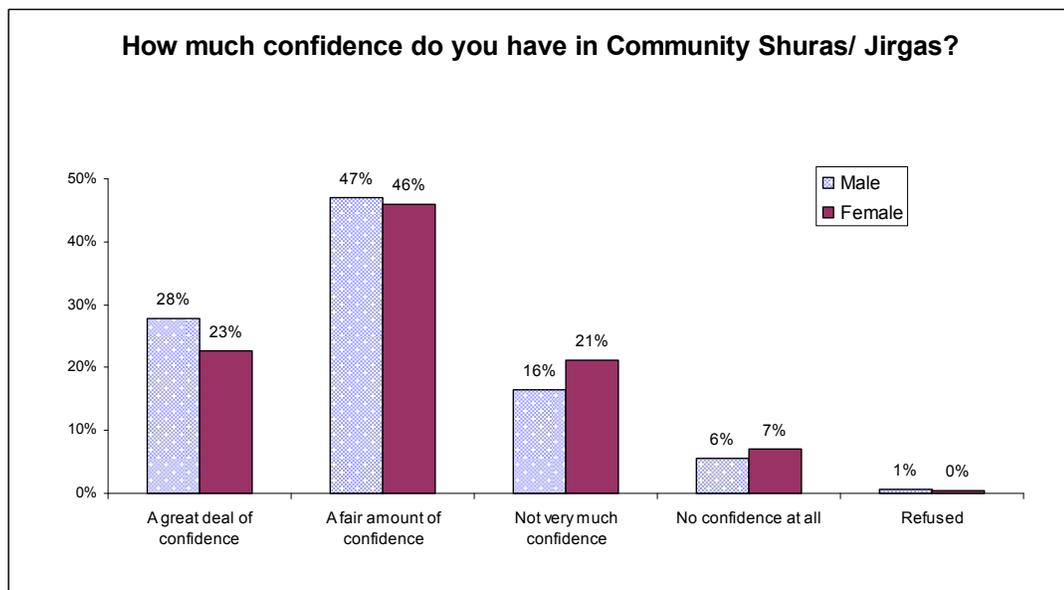
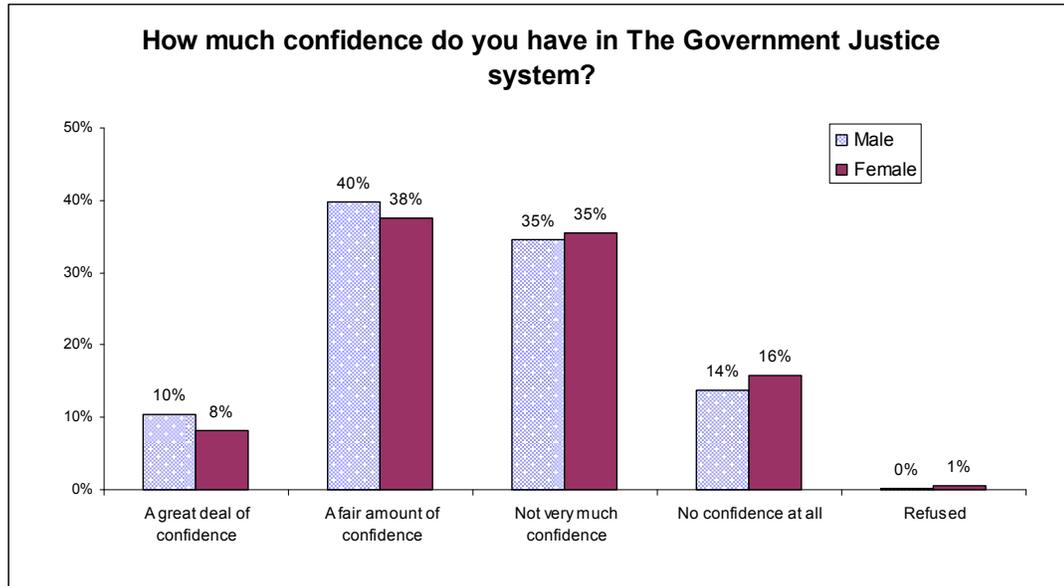
	DE JURE	DE FACTO
Rape	<p>not fulfilled, or the charge of <i>Had</i> it dropped, then provisions under 426 are to apply.</p> <p>Article 426 (2) sets out the aggravating conditions which include:</p> <ul style="list-style-type: none"> • If the victim is not yet 18 years old • If the victim is a third degree relative of the offender • If the offender is in a power of authority over the victim • If the victim is a married woman • If the victim becomes infected by genital disease or becomes pregnant <p>The offender is to be sentenced to up to seven years if the commitment of the act results in the death of the victim.</p>	<p>witnessed the act of sexual intercourse taking place.</p>
	<p>Article 429 sets out the mental elements – i.e. If the offender, through violence, threat or decept violates the chastity of another, he will be sentenced to up to seven years.</p> <p>Article 430 sets a sentence for up to ten years for the offender if the victim is under 18 years old, or is one of the persons set out in Article 426 (2).</p>	<p><i>There is no distinct offence of rape in Afghan law.</i> Rape relating to <i>zina</i>, or extra marital sexual intercourse including adultery, is an offence under the provisions of the Penal Code, 1976 (Articles 427 and 428). There is also an offence of forceful violation of chastity (Article 429) where there is sexual violence; however, it does not result in rape.</p> <p><i>A victim of rape is often regarded as a criminal; however this is in contradiction of the law.</i> Should a rape victim report the matter to the police, they are often detained and accused of consensual sex, and sometimes prosecuted for <i>zina</i>. While there is a mental element requisite for a conviction of <i>zina</i> (Articles 34-35 of the Penal Code, 1976), the woman is in fact presumed to be the guilty party.</p> <p>Article 65 of the Penal Code, 1976 sets out that conviction also requires the act was committed with free will. The duress defenses are set out in Articles 94 and 95. Under the penal law, given that there is a tendency for the woman to be seen as the guilty party even in the case of rape, she may be found guilty of <i>zina</i>, sentenced to prison and further stigmatized by the family and community.</p> <p><i>There have been cases of women being further sexually abused while in custody by the police.</i> However, the shelters and legal organizations interviewed stated that they are starting to build good relations with the police in places they operate in, and the police refer cases to them. This is however, not an indication of institutional policy, but rather individually-based.</p> <p><i>The girl/woman is required to undergo a medical examination, and there have to be clear and visible indications of a struggle on the rest of her body, before some medical examiners will declare that the girl/woman had in fact been raped.</i></p> <p>The reality is that most rape victims will not come forward. The social stigma and shame has a significant impact on the woman and her family. Moreover, if a woman should go and report the matter to the authorities, she comes under suspicion.</p> <ul style="list-style-type: none"> • The woman is considered to immoral and had lured the man/men to have intercourse with her

	DE JURE	DE FACTO
Suicide	<p>Penal Code, 1976 Chapter 8, Book II: Murder, Article 397</p> <p>1. A person who instigates another to suicide or, one way or another, assists someone in an act of suicide, shall be imprisoned for a period not exceeding seven years.</p> <p>2. If, as a result of the instigation, the act of suicide has only been initiated, the offender shall be sentenced to short imprisonment</p> <p>3. A person who initiates an act of suicide shall not be punished.</p>	<ul style="list-style-type: none"> Often, she is accused as having committed <i>zina</i>, pre or extra-marital intercourse, until proven innocent. <p>There is little reliable data were available on suicides for the whole of Afghanistan, as is still the case today. One particularly horrific means of suicide that is common in Afghanistan is self immolation.</p> <p>According to Medica Mondiale, neither the police nor the government have data, as hospitals record only the total number of burns victims and do not distinguish in terms of the causes.</p> <ul style="list-style-type: none"> “Self-immolation is very frequently employed by young women and girls as a way of escaping violence in their families – even if this means death. Medica Mondiale has been studying this since 2002, and came to the following conclusions: <ul style="list-style-type: none"> Suicide occurs in all provinces, amongst both men and women (hanging, shooting, drowning in wells or rivers, taking rat poison or tablets, poisoning etc.). Self-immolation is the most common method in the province, with especially frequent occurrences in the west in the Herat area. Self-immolation is particularly frequent among women and girls in the 10-40 age group, although men also self-immolate. Decisive factors amongst women and girls include profound psychological and physical violence (beatings, psychological torture, etc.) over extended periods of time, the still widespread custom of families exchanging girls as brides, for example in order to obtain money or goods, or to “pay off” debts or crimes, marriages of couples without their consent etc.”⁵³ <p>According to the same report, as much as 85 percent of women die because of their burns. Given the immense social taboo, either they are not taken to hospital, or take them to hospital too late, or the hospitals have no capacity to deal with such cases. The shame that surrounds this issue means that the girls/women are further isolated and excluded from society.</p>
Running away from home or elopement	<p>Afghanistan Constitution, 2004 Article 130</p> <p>In cases under consideration, the courts shall apply provisions of this Constitution as well as other laws. If there is no provision in the Constitution or other laws about a case, the courts shall, in pursuance of Hanafi jurisprudence, and, within the limits set by this Constitution, rule in a way that attains justice in the best manner.</p>	<p>There is no crime in the Penal Code for running away. This is an example of how Article 130 of the Afghan Constitution is misused.</p> <p>If a woman runs away with a man, she is accused of <i>zina</i>, in which case, it has to be proven that she had no intercourse with the man with whom she ran away. This is proved through a virginity test.</p> <p>Or the judicial officials will try addressing runaway cases through Article 130. If it is deemed that there had been no sexual intercourse between the man and woman, then she may be accused of <i>Khelwat-e-sahiha</i>, or where a male and female are in a situation together, a crime under the <i>Hanafi</i> jurisprudence.⁵⁴</p>

	DE JURE	DE FACTO
		<p>As reported in a UNODC study, detention and imprisonment of runaway women seems to depend on whether the family has reported the matter to the police or not. Where women go directly to somewhere like MoWA or AIHRC, arrest and imprisonment does not take place, and she is usually referred to shelters. Increasingly, there are reports that police are also referring cases to the shelters.</p>

Annex 12: The Asia Foundation 2007 Survey Results Disaggregated by Gender ⁵⁵

1.1 Levels of Confidence



Overall both men and women expressed greater confidence in local shuras and jirgas than the courts, however women expressed 6% less confidence in shura and jirgas than men.

⁵⁵ The full Asia Foundation survey can be found at <http://www.asiafoundation.org/publications/pdf/20>. The authors would like to thank the Asia Foundation for providing the gender disaggregated data for analysis.

1.2 Summary Table of Levels of Confidence in various Government and Non-Government institutions

Statement	Great Deal		Fair Amount		Not very much		No Confidence at all		Refused		Don't know	
	M	F	M	F	M	F	M	F	M	F	M	F
How much confidence do you have in Community shuras/ jirgas?	28%	23%	47%	46%	16%	21%	6%	7%	1%	0%	3%	3%
How much confidence do you have in the Government Justice system?	10%	8%	40%	38%	35%	35%	14%	16%	0%	1%	1%	2%
How much confidence do you have in the Afghan National Army?	48%	41%	41%	45%	8%	10%	2%	3%	0%	0%	0%	1%
How much confidence do you have in the Afghan National Police?	38%	39%	44%	44%	14%	14%	3%	3%	0%	0%	1%	1%
How much confidence do you have in Local militias?	9%	9%	24%	25%	28%	29%	36%	34%	1%	1%	1%	3%
How much confidence do you have in Government Ministers?	15%	11%	46%	43%	28%	31%	9%	11%	0%	1%	2%	3%
How much confidence do you have in Provincial Councils?	23%	22%	49%	45%	20%	22%	6%	8%	0%	1%	2%	3%
How much confidence do you have in the Municipality?	11%	9%	38%	39%	34%	29%	14%	18%	0%	1%	3%	4%
How much confidence do you have in Community Development Councils?	20%	18%	50%	41%	19%	25%	7%	10%	1%	1%	4%	6%
How much confidence do you have in Public administration?	15%	12%	47%	46%	28%	28%	7%	10%	0%	1%	2%	3%
How much confidence do you have in Political parties?	10%	6%	29%	33%	38%	36%	21%	22%	0%	1%	2%	3%
How much confidence do you have in Electronic media such as radio, TV?	31%	34%	44%	39%	17%	15%	6%	7%	0%	1%	2%	4%
How much confidence do you have in Newspapers, print media?	23%	22%	41%	38%	21%	19%	7%	9%	1%	1%	7%	10%
How much confidence do you have in International NGOs?	24%	21%	45%	39%	19%	26%	9%	11%	0%	1%	1%	3%
How much confidence do you have in National NGOs?	18%	15%	46%	41%	25%	29%	9%	11%	1%	1%	2%	3%

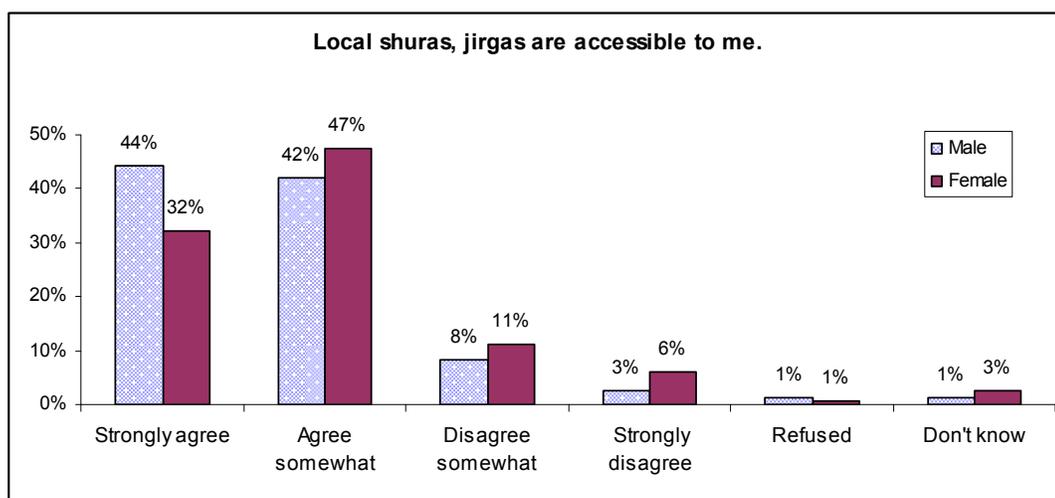
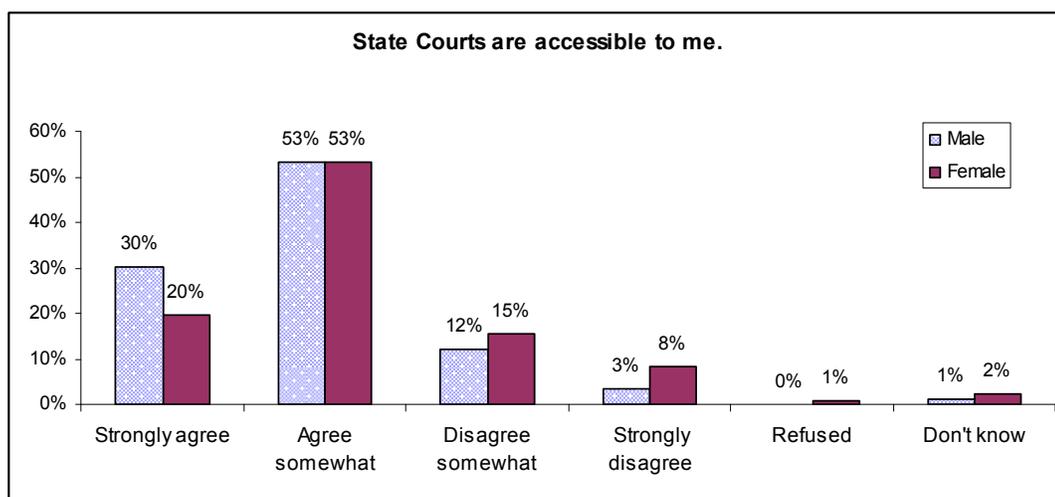
Statement	Overall Confidence		Female Male variance *
	female	male	
How much confidence do you have in the Afghan National Army?	86%	89%	-3%
How much confidence do you have in the Afghan National Police?	83%	82%	1%
How much confidence do you have in Electronic media such as radio, TV?	73%	75%	-2%
How much confidence do you have in Community shuras/ jirgas?	69%	75%	-6%
How much confidence do you have in Provincial Councils?	67%	72%	-5%
How much confidence do you have in Newspapers, print media?	60%	64%	-4%
How much confidence do you have in International NGOs?	59%	69%	-10%
How much confidence do you have in Community Development Councils?	59%	69%	-10%
How much confidence do you have in Public administration?	59%	62%	-4%
How much confidence do you have in National NGOs?	56%	64%	-7%
How much confidence do you have in Government Ministers?	54%	61%	-7%
How much confidence do you have in the Municipality?	48%	49%	0%
How much confidence do you have in The Government Justice system?	46%	50%	-4%
How much confidence do you have in Political parties?	39%	38%	0%
How much confidence do you have in Local militias?	34%	33%	1%

Women and men expressed the highest levels of confidence in the Afghan National Army, Police and electronic media. With very small expectations, women expressed lower level of confidence than men for all institutions. Women's levels of confidence in relation to International NGOs, CDC and local NGOs were much lower than men.

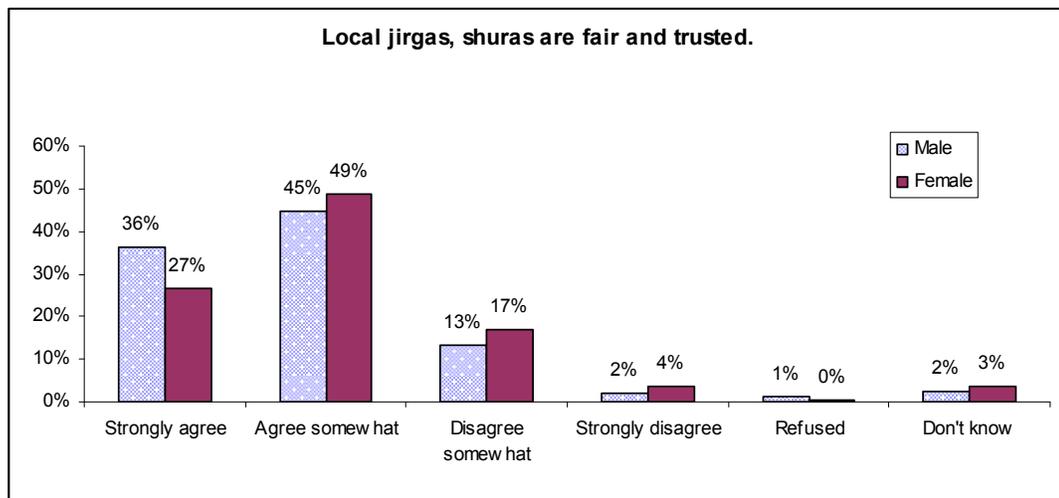
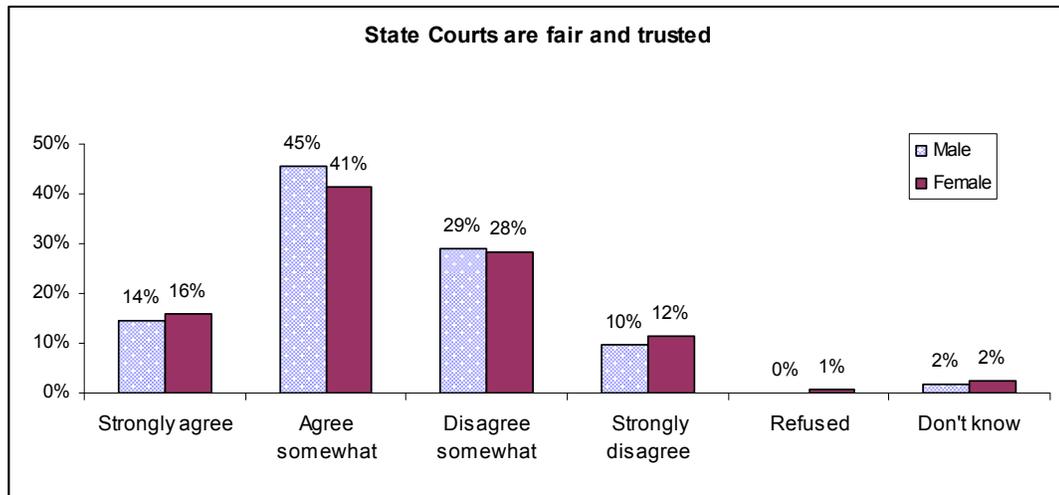
* Totals may not add exactly due to rounding.

1.3 Formal and Informal Perceptions

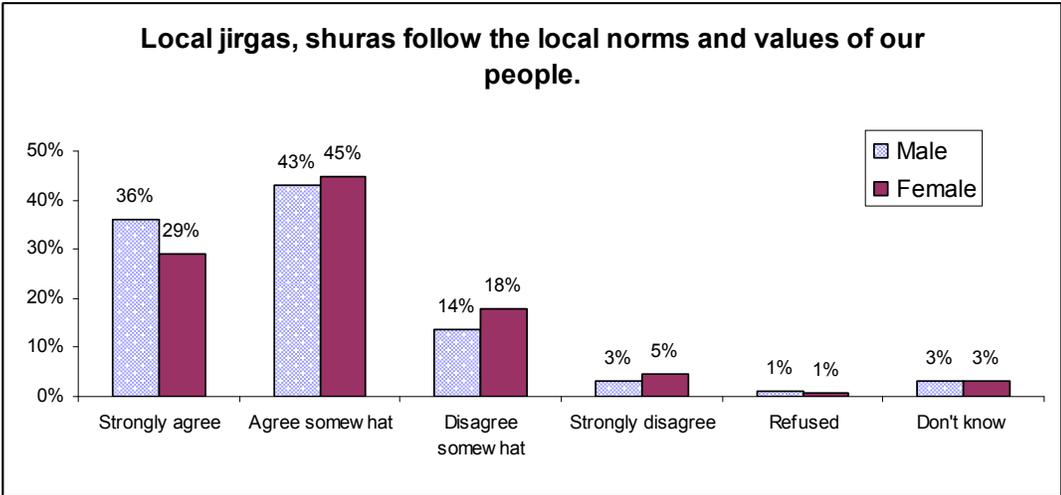
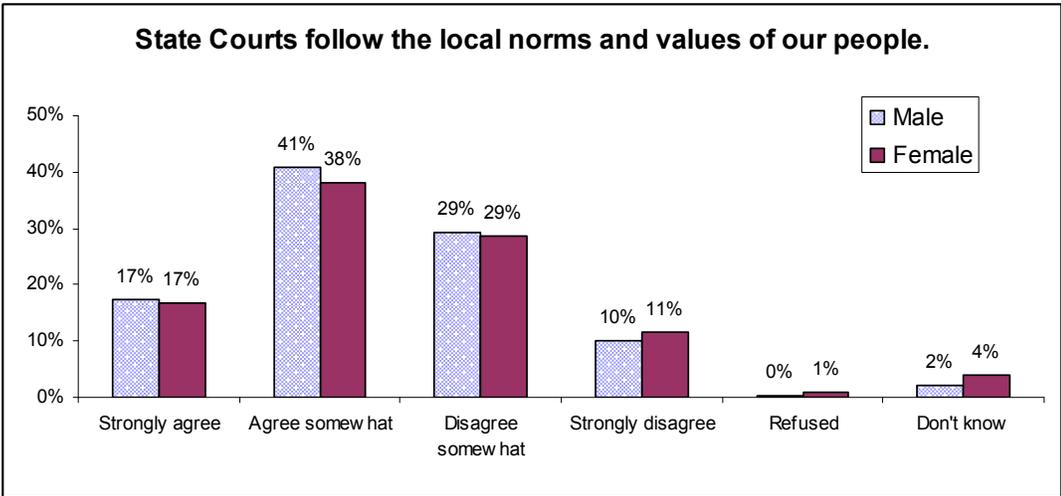
Gender / Statement	Strongly agree		Agree somewhat		Disagree somewhat		Strongly disagree		Refused		Don't know	
	M	F	M	F	M	F	M	F	M	F	M	F
State courts are accessible to me.	30%	20%	53%	53%	12%	15%	3%	8%	0%	1%	1%	2%
Local jirgas, shuras are accessible to me.	44%	32%	42%	47%	8%	11%	3%	6%	1%	1%	1%	3%



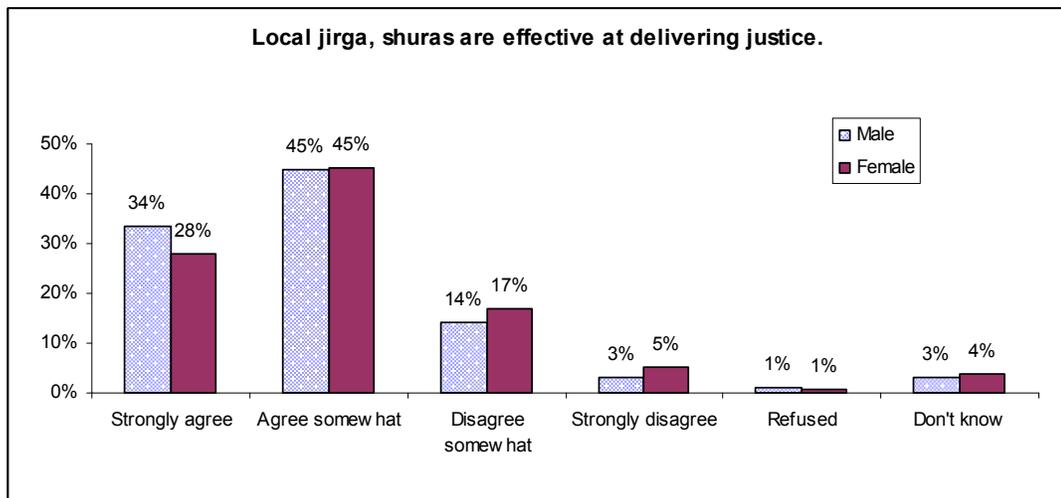
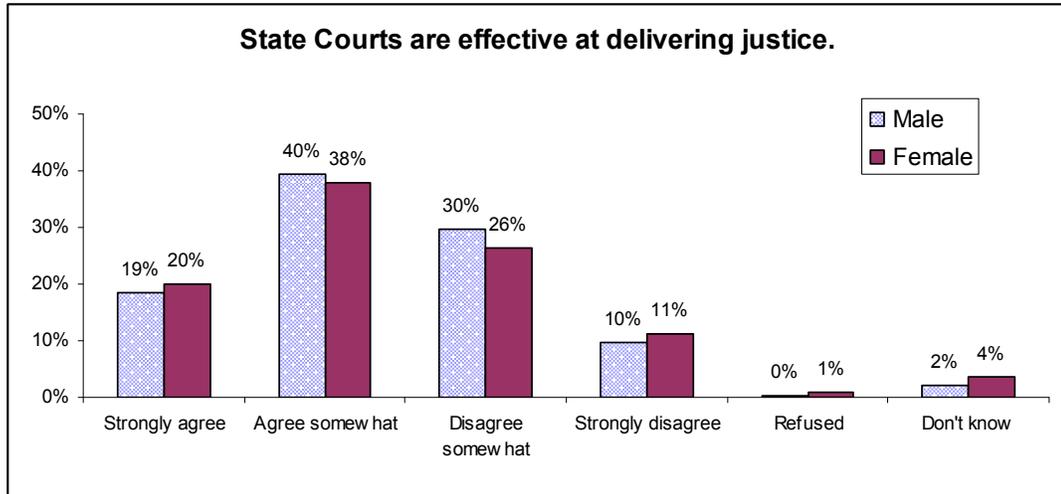
Women were significantly less likely to strongly agree that both the formal and informal justice sectors were accessible to them. Overall 73% of women agreed that the courts were accessible and 79% agreed that shuras or jirgas were accessible to them. In comparison 83% of men agreed that the courts were accessible and 86% agreed that shuras and jirgas were accessible. Likewise women were more likely to strongly disagree particularly with regards to the court system.



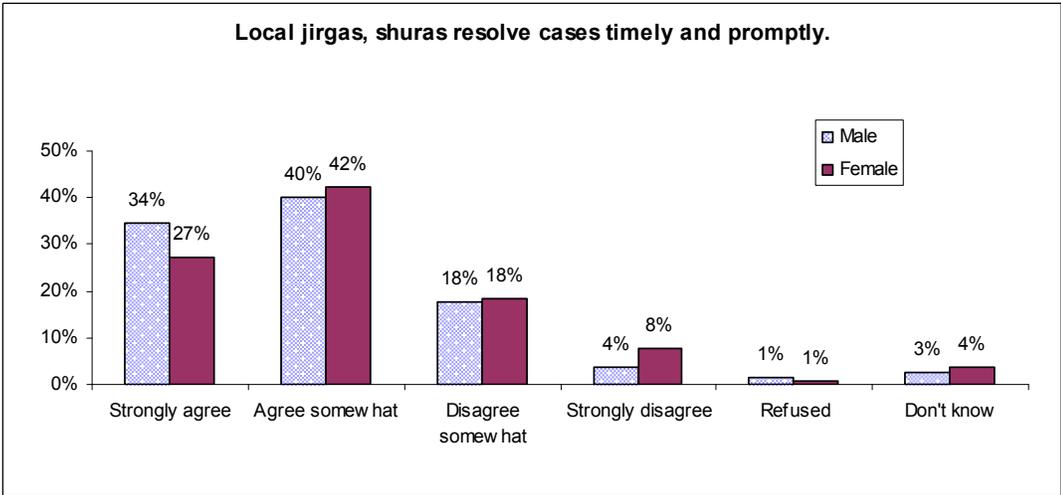
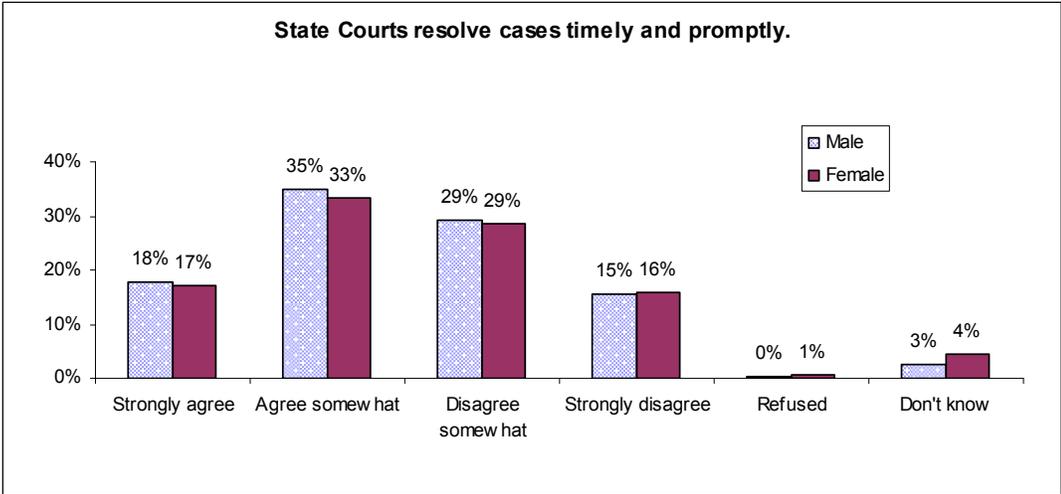
Women and men agree that shuras and jirgas are more trustworthy than the courts, however a significantly lower percentage of women strongly agreed that jirgas and shuras are fair and trusted. Women expressed slightly stronger opinions than men in relation to perceptions about the court. Taken together 58% of female respondents agreed with the statement in comparison with 59% of male respondents. In comparison 76% of women and 81% of men felt that local jirgas and shuras were fair and trusted.



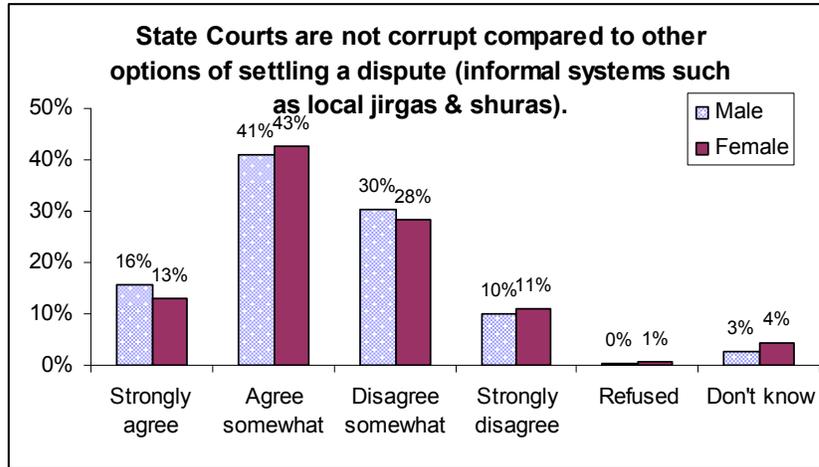
Men and women felt that local shuras and jirgas were more likely to follow local norms and values than State courts, however women were 6% more likely than men to disagree that local shuras reflected local norms and values.



Although both men and women felt that local shuras and jirgas were more effective at delivering justice than State courts, 5% more women disagreed that local shuras and jirgas were effective at delivering justice. Conversely 3% less women disagreed with this statement in relation to State courts.



Both men and women agreed that local shuras and jirgas resolved cases quicker than the courts, however women were less likely to agree with regards to local shuras and jirgas.

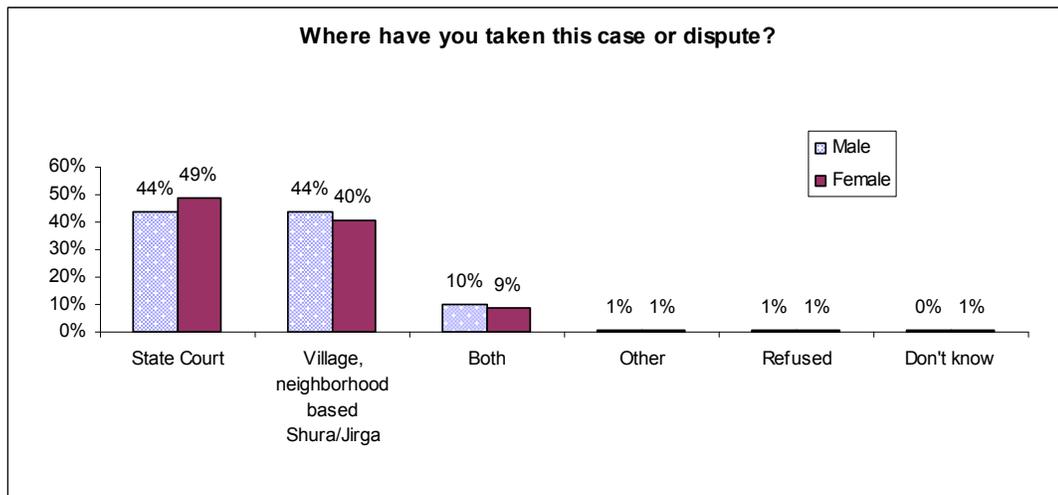
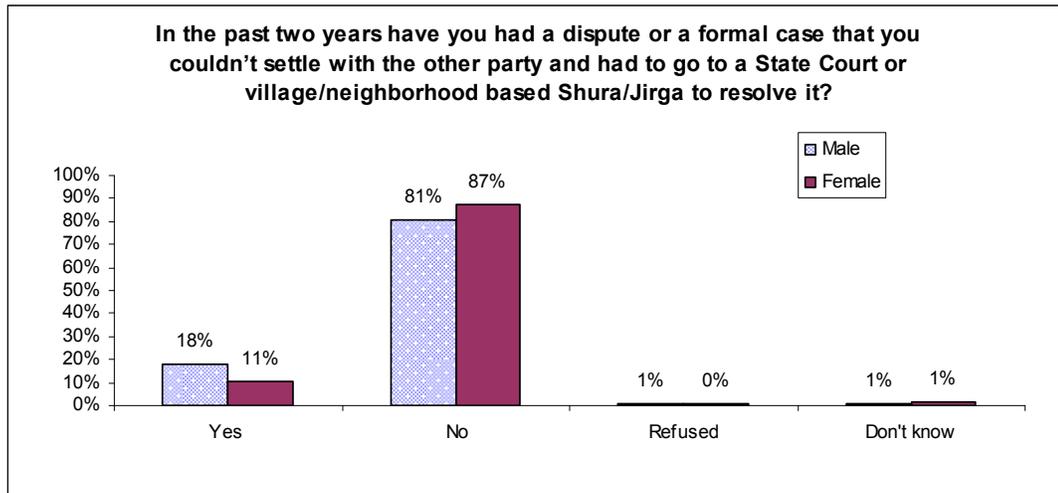


Women were slightly less likely to strongly agree with the statement however 56% agreed with the statement while only 39% disagreed. Comparatively 57% of men agreed and 40% disagreed.

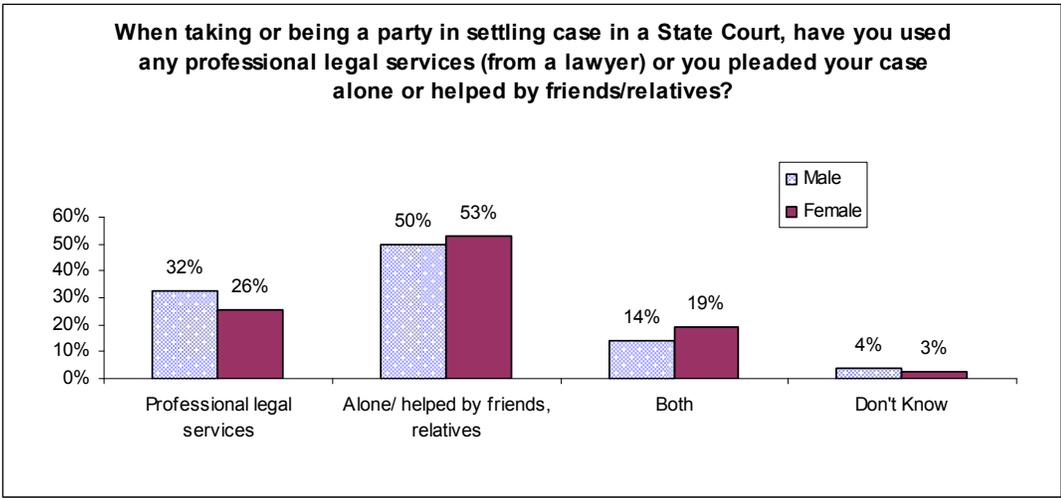
1.4 Formal vs. Informal Perceptions Summary Chart

Statement	Strongly agree		Agree somewhat		Disagree somewhat		Strongly disagree		Refused		Don't know	
	M	F	M	F	M	F	M	F	M	F	M	F
State courts are accessible to me.	30%	20%	53%	53%	12%	15%	3%	8%	0%	1%	1%	2%
Local jirgas, shuras are accessible to me.	44%	32%	42%	47%	8%	11%	3%	6%	1%	1%	1%	3%
State courts are fair and trusted.	14%	16%	45%	41%	29%	28%	10%	12%	0%	1%	2%	2%
Local jirgas, shuras are fair and trusted.	36%	27%	45%	49%	13%	17%	2%	4%	1%	0%	2%	3%
State courts are not corrupt compared to other options of settling a dispute (informal systems such as local jirgas & shuras)?	16%	13%	41%	43%	30%	28%	10%	11%	0%	1%	3%	4%
State courts follow the local norms and values of our people.	17%	17%	41%	38%	29%	29%	10%	11%	0%	1%	2%	4%
Local jirgas, shuras follow the local norms and values of our people.	34%	28%	45%	45%	14%	17%	3%	5%	1%	1%	3%	4%
State courts are effective at delivering justice.	19%	20%	40%	38%	30%	26%	10%	11%	0%	1%	2%	4%
Local jirgas, shuras are effective at delivering justice.	34%	28%	45%	45%	14%	17%	3%	5%	1%	1%	3%	4%
State courts resolve cases timely and promptly	18%	17%	35%	33%	29%	29%	15%	16%	0%	1%	3%	4%
Local jirgas, shuras resolve cases timely and promptly	34%	27%	40%	42%	18%	18%	4%	8%	1%	1%	3%	4%

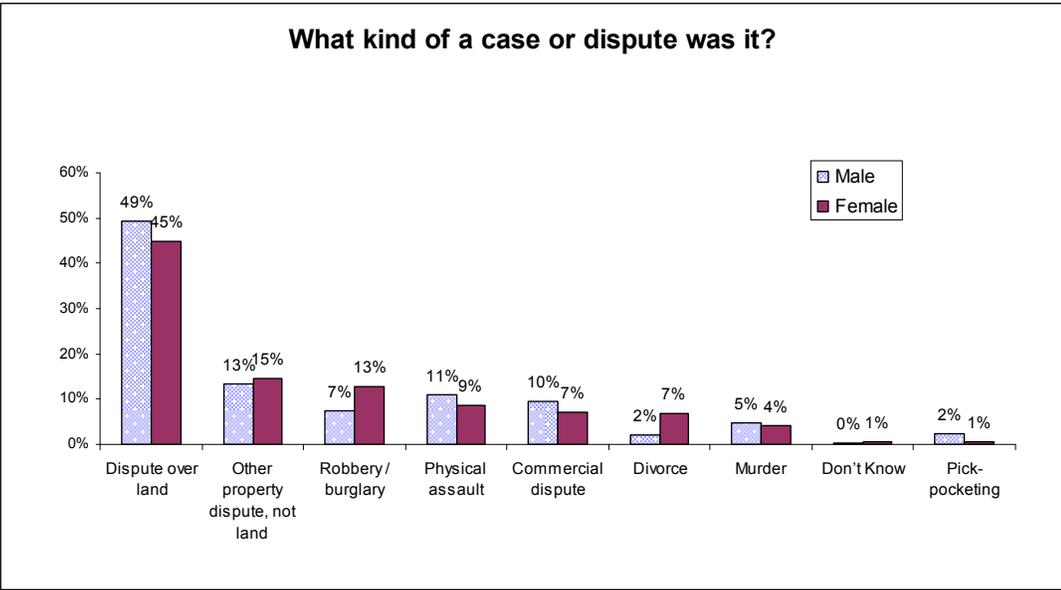
1.5 Dispute resolution



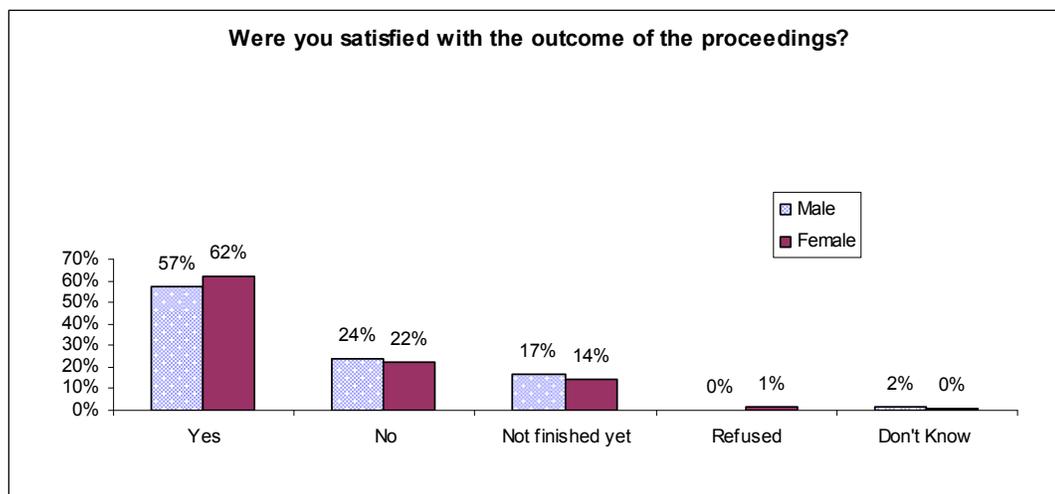
Women were 7% less likely than men to file disputes with any type of dispute resolution body, however when women do file disputes they are 9% more likely to file these disputes with the formal court system than with community based dispute-resolution mechanisms.



Women were less likely to rely solely on professional legal advice however when combining both women appear to receive equal legal advice and/or representation. This is consistent with what many interviewees explained. Women may seek out legal advice however since going to court is considered shameful she may also seek advice from her family and/or other non-legal support structures.



Land disputes and other property disputes were the most common for both men and women, however women were more likely to complain about robbery or theft over physical assault. This is probably not because women are less likely to be victims of assault but rather a perception that they are helpless to prevent or complain about it and limited opportunities for them to report it. There was also a significant divergence between men and women in divorce cases, which is not surprising given the difficulty for women to obtain a divorce outside of the formal judicial system.



Although women represented a lower percentage of complainants they expressed a higher rate of satisfaction than men.

<i>In the past 5 years, has your community had such a problem in your area that you had to ask for help or cooperation to resolve it?</i>	<i>Female</i>	<i>Male</i>
Yes	14%	19%
No	82%	78%
<i>What type of problem was it?</i>		
Lack of water and electricity	22%	19%
Dispute over land	21%	32%
Reconstruction of roads and bridges	9%	9%
Security problems	9%	7%
Robbery and burglary	6%	7%
Tribal problems	6%	4%
Building clinics	4%	3%
Presence of Taliban	4%	2%
Building mosque	3%	3%
Building schools and kindergartens	3%	2%
Economic problems	2%	4%
Agricultural problems	2%	2%
Unemployment	2%	1%
Murder	0%	2%
Poor transportation system	0%	1%
Disarmament	0%	1%
Refused	1%	1%
Don't know	5%	0%

For women water and electricity disputes were on par with land disputes whereas men overwhelming identified land disputes as the most common type of community dispute.

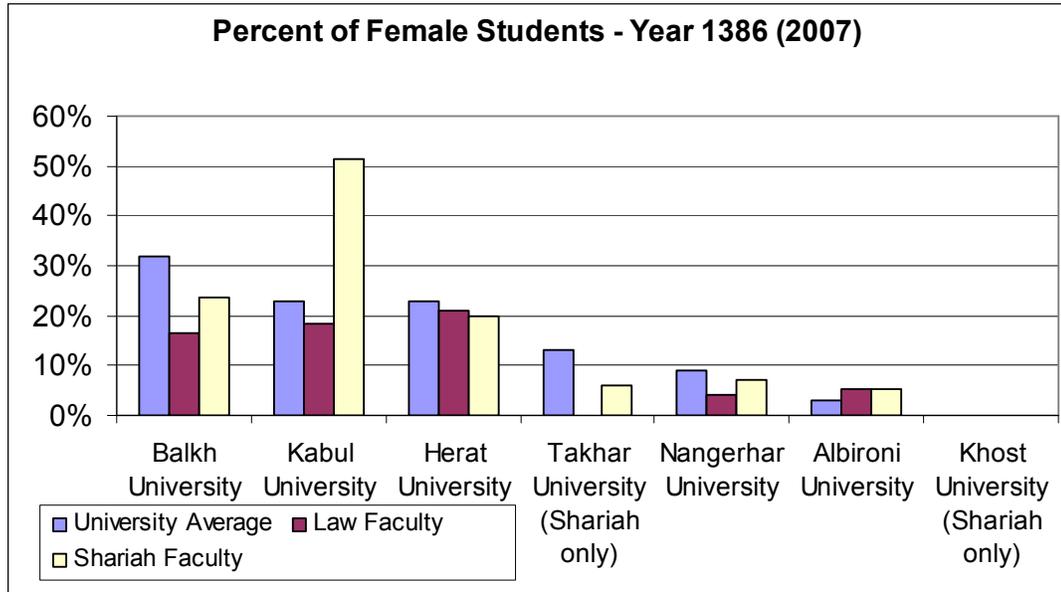
1.6 Women's challenges

<i>Biggest Problem facing women in this area</i>	<i>Female</i>	<i>Male</i>
Education / illiteracy	48%	48%
Lack of rights / women's rights	25%	22%
Lack of job opportunities for women	22%	16%
Domestic violence	16%	13%
Forced marriages/ dowry	14%	13%
Poverty	12%	8%
Can't leave homes	10%	9%
General health care	9%	10%
Under control of men / men have power	9%	6%
Pregnancy related health care	6%	7%
Security	3%	5%
Lack of professional courses	3%	2%
Lack of electricity and water	1%	1%
Transportation Problems	1%	0%
Representation in shura/ jirga	0%	0%
Women have no problems	5%	15%
Don't know	15%	23%

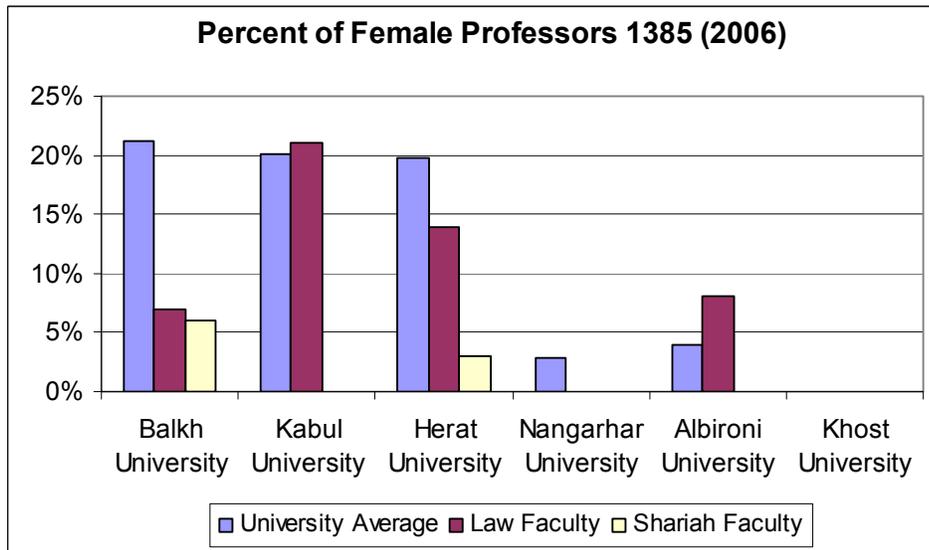
Both men and women agree that lack of education and illiteracy is the largest challenge for women followed by lack of rights and unemployment concerns. Although both men and women mostly agree on the order of priorities women express a much higher emphasis on unemployment and they ranked overall poverty much higher than men.

Annex 13: Female Legal Education Statistics

Female Students in Law and Sharia Faculties



Female Professors in Law and Sharia Faculties



Annex 14: Government Legal Empowerment and Awareness Programs

Name of Government Institution	Legal Aid	Mediation	Shelter	Legal Awareness within CSO	Legal Awareness within Government	Legal Awareness Schools	Legal Awareness in Higher Education Institutions	Legal Awareness with jirgas/shuras/Religious Scholars	Legal Education	Capacity Building of Legal Professionals	Legal Advocacy
Ministry of Women's Affairs	√ (mostly refer to NGOs)	√	√ (responsible for oversight and monitoring)	√	√ (gender mainstreaming)	√	√	√ (in conjunction with MOHRA)			√ (e.g. Domestic Violence Law, Marriage Registration)
National Solidarity Program, MRRD		√ (some CDCs conduct community mediation)			√ (for CDC members)						
Supreme Court				√						√ (Judges)	√
Ministry of Justice	√	√ (Hoqooq Department)		√					√ (Stage)	√	√ (<i>Taqunin</i>)
Attorney-General Office									√ (Stage)	√ (Prosecutors)	
Women Political Participation Committee				√						√	√
Ministry of Labor and Social Affairs		√	√ (orphans, disabled and martyrs families)								
Ministry of Interior (FRU)		√								√ (Police)	
Ministry of Hajj & Religious Affairs								√ (in conjunction with MoWA)			
Afghan Independent Human Rights Commission		√	√ (participate in shelter committee)	√	√	√	√	√			√

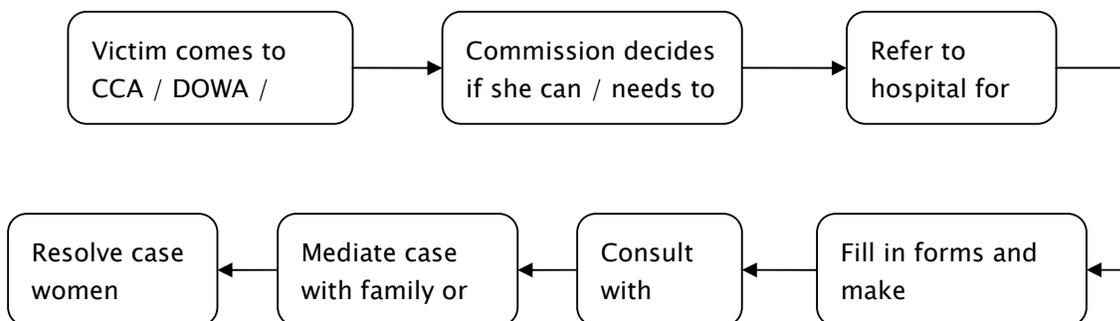
Annex 15: NGO Legal Aid Providers

Organization	Target beneficiary	Type of cases	Number of Lawyers	Geographic coverage
Afghan Human Rights Organization	All, but priority for women and children	All cases	42 lawyers	Kabul, Nangarhar, Kandahar, Balkh, Jawzjan, Kunduz, Baghlan
Norwegian Refugee Council	IDP, refugees and returnees	Civil case only mainly property disputes	29 lawyers	Kabul, Baghlan, Faryab, Balkh, Herat, Nangarhar, Bamiyan
International Legal Foundation	All	Criminal	40 lawyers	Kabul, Kunduz, Herat, Kandahar, Nangarhar and Ghor (expanded services areas will include Paktia, Baghlan, Farah, Balkh , Badghis and Sar-e-pol)
De Qanoon Ghokhtonky	Women and men clients but focus on women – will not defend men in cases of women violations	All	32 lawyers	Kabul, Kapisa, Herat, Ghor, Farah, Badghis, Kandahar, Nangarhar, Kunar, Wardak, Ghazni, Logar
Women for Afghan Women	Shelter clients	Mainly domestic violence and civil (divorce)	2 lawyers	Kabul
Medica Mondiale	Women only	Criminal and Civil no property	14 lawyers	Kabul, Balkh, Kandahar, Herat
Afghan Women Judges Association	Mainly women (as they are located in DoWAs)	All	5 lawyers	Kabul, Parwan, Kapisa, Ghazni, Balkh
Legal Aid Organization of Afghanistan	All	All	19 lawyers	Kabul, Faryab, Takhar
Women & Youths Support Center (Mazar)	Women only	All but mainly domestic violence cases	3 lawyers	Balkh
Women's Rights Defense Association (Mazar)	Women only	All but mainly domestic violence cases	3 lawyers	Balkh, Samangan

Annex 16: Shelter Service Providers

Name of Organization	Type of service	Location	Capacity
Women for Afghan Women	Shelter	Kabul	50 women
Assistance to the Women and Children of Afghanistan (HAWCA)	Shelter and transit home	Kabul	25 women
CCA	Shelter	Balkh	30 women
De Qanoon Ghokhtonky	Provide legal aid to women in shelters	Balkh, Nangarhar, Herat	
Medica Mondiale	Funding and technical assistance only		
MoWA / MOI Women's Support and Referral Center	Temporary transit shelter (maximum 1 week)	Nangarhar and Parwan	10 women each location
Voice of Women	Shelter	Herat	25 women

Figure 2. Case flow for Shelter Commission



Annex 17: Summary of Donor Engagement in the Justice Sector in Afghanistan

NATIONAL JUSTICE PROGRAMME ANNEX 1 ⁵⁶ NATIONAL LEVEL ACTIVITIES Final 1st quarter 15/03/2007					
NJP Sub-Programme Number	Int. Agency/Donor	Title of project/ category*	Description and purpose (specify: activities/beneficiaries)	Institutional Counterpart/partners	Date of project
1	CIDA	Counter Narcotics Trust Fund	Contributed to CNTF to assist GoA in fighting illicit drug production and implementing National Drug Control Strategy. Contribution was earmarked for Alternative Livelihoods	UNDP	2006
1	CIDA	Counter-Narcotics Capacity Building Project	Working with UK and Belgium to support UNODC to increase capacity of justice professionals to prosecute high-profile drug traffickers. Project objectives include: building capacity of judges, prosecutors and investigation unit officers; improving physical infrastructure necessary to arrest, investigate, try and detain/imprison alleged serious drug offenders; and mentoring Afghan Counter Narcotics Criminal Justice Task Force	United Nations Office on Drugs and Crime	2005-2007
1	CIDA	Gender Advisor to the Ministry of the Interior	Supporting gender advisor within MOI to foster more gender-balanced police organisation that operates under rule of law and human rights principles and actively protects women and girls. Activities include training and mentoring Afghan policewomen	CANADEM	2005-2008 (2007-2008 funding awaiting final approval)
1	IJPO / Italy / UNICEF	JUVENILE DETENTION CASES	Review of the juvenile detention cases	Advocates Society of Afghanistan	Jan 2007
1	UNODC/Italy	Prison System Reform (project AFG/R41)	<ul style="list-style-type: none"> • Support to training centre for penitentiary staff and delivery of training sessions on prison management, ethic rules, and intern. conventions—nine series/approx. 1800 penitentiary staff, (from 2004—2005); • Basic training in English and Computer for admin. staff of Central Prison Department (CPD), (2003); • Study tours (Italy, Germany) aimed to build capacity of the CDP staff members, (2003); • Workshop in partnership with UNIFEM on Legal Aid for women in detention (2004); • Support to the Legislative Department of Ministry of Justice (MoJ) in drafting the Penitentiary Law. The law was signed by the President of Afghanistan in May 2005; • Workshop to launch the Penitentiary Law for all actors including the heads of prisons from 34 provinces, (2005); • Refurbished the Kabul male detention center, Block I of Pol-e-Charki Prison, and the female detention center in Kabul, (2004—2005); • Renovation of the male and female detention centre in Kabul; 	MoJ/CPD	06/03- 06/07

⁵⁶ Afghanistan Reconstruction Trust Fund Project Proposal, Afghanistan Justice Sector Reform Project, Annex 7.

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NATIONAL LEVEL ACTIVITIES Final 1st quarter 15/03/2007

NJP Sub-Programme Number	Int. Agency/Donor	Title of project/ category*	Description and purpose (specify: activities/beneficiaries)	Institutional Counterpart/partners	Date of project
			<ul style="list-style-type: none"> • Construction of a female detention centre – on going • Renovation of Pol-e-Charki main prison, Block 1 and construction of a kitchen, medical and 		
1	UNODC/Italy	Juvenile Justice Reform (project AFG/R40)	<ul style="list-style-type: none"> • Support to the establishment of the Juvenile Justice Department (JJD) at the MOJ; • Inclusion of JJD in stage 2 of Priority Reform and Restructuring (PRR) via Ministry of Finance; • Support to establishment of MoJ Working Group on Women and Children in Justice in Oct. 2005; • Study tour (Lebanon) aimed to learn from ODC model in managing children in conflict with law; • Refurbishment and equipment provision of Juvenile Court of Kabul; • Trainings of trainers for 250 professionals dealing with children in contact/in conflict with law (staff of JJAD and juvenile rehabilitation centers, judges, prosecutors, defense lawyers, police, forensic doctors, social workers) in Kabul, and 4 provinces (Herat, Jalalabad, Mazar, Kandahar) in partnership with UNICEF on the new Afghan Juvenile Code and Juvenile Justice; • A high level Afghan Legal Experts' Seminar on "Children's rights" organized with UNICEF; • Construction of a Juvenile Rehabilitation Center in Kabul – on going; • Assistance provided to Kabul University in identifying interdisciplinary curricula for a specialization course in social work; • Rapid assessment on the implementation of the Juvenile Code and the treatment of juveniles in the justice system in ten provinces (ongoing); • Project extension of juvenile justice activities to provincial level drafted but not funded. 	MoJ/JJAD, SC, AG	03/04—06/07
1	UNODC/UK, Canada, Belgium	Fast-track capacity building for a Counter Narcotics Criminal Justice System (project AFG/U10)	<ul style="list-style-type: none"> • Assistance to the establishment of the Criminal Justice Task Force (operational since July 2005); • Training to all CJTF investigators, prosecutors and judges on the criminal legislation; • Training of 53 key provincial judges, prosecutors, and police investigators on the criminal legislation; • Rehabilitation and construction of high security prison for mid and high level drug traffickers (expected handover early 2007); • Training for 150 penitentiary staff deployed at the high security facility. 	MCN, SC, AGO, Mol, MoJ	03/05—04/07
1	UNODC/ Austria	Post-release opportunities for women and girls prisoners (project AFG/S47)	<ul style="list-style-type: none"> • Assessment of criminal and social profile of women housed at Pul-e Charkhi • Development of programmes addressing the needs of detained women and girls, especially those with children (as well as drug users) with UNIFEM and UNICEF • Development of post-release options for women 	MoJ/ CPD	08/06- 07/07
1	UNODC/Italy	Prison System Reform—Extension to the provinces (project AFG/R87)	<ul style="list-style-type: none"> • UNODC has with UNAMA the leadership in MoJ ANDS working group on Strategy for Prison Reform and Rehabilitation and the Donor Coordination (ongoing); • Model prison facilities for provinces developed to facilitate construction and coordination with other stakeholders; • Construction of two new prisons facilities in Gardez and Mazar-e- Sharif – ongoing; • Training of penitentiary staff on implementation of Penitentiary Law, human rights in conjunction with rights of detainees/ prisoners, for penitentiary staff at central/provincial level (2006). 	MoJ/ CPD	07/05—04/07
1	UNODC	Reform of the	<ul style="list-style-type: none"> • Training for professionals dealing with juveniles in contact and in conflict with the 	MoJ	Planned

NATIONAL JUSTICE PROGRAMME ANNEX 1⁵⁶
NATIONAL LEVEL ACTIVITIES Final 1st quarter 15/03/2007

NJP Sub-Programme Number	Int. Agency/Donor	Title of project/ category*	Description and purpose (specify: activities/beneficiaries)	Institutional Counterpart/partners	Date of project
		juvenile justice system—Extension to the provinces (AFG/S51)	law trained on the new Afghan Juvenile Code and on Juvenile Justice and implementation of non-judicial measures and non-custodial sanctions; <ul style="list-style-type: none"> • Training on management, data management for directors of Juvenile Rehabilitation Centers, and provincial Juvenile Justice Departments; • Enhancement of the capacity of social workers to perform their task, in line with the Juvenile Code; elaboration of multi-disciplinary curricula within Kabul University for a Social Work specialization course based on an inter-ministerial memorandum, Ministry of Justice; • Pilot on-the-job training program for social workers and educators at the new Kabul Juvenile Closed Rehabilitation Centre; training for social workers and educators at the new Kabul Juvenile Rehabilitation centre; • Juveniles in Rehabilitation Centres are provided with educational and vocational trainings. NGOs will be sub-contracted to elaborate and conduct pilot educational and vocational training for 		
1	UNODC	Counter Terrorism (CT)	<ul style="list-style-type: none"> • National workshop, June 2004, on necessary legislative measures for fighting terrorism and transnational organized crime. 53 officials of the Government representing various Ministries were trained. • Legislative drafting workshop for Afghan experts in Vienna, November 2004; achievements of the workshop: <ul style="list-style-type: none"> - National Plan of Action submitted, with specific timelines and identified continued support from UNODC; - Draft Counter Terrorism Law; - Draft proposed amendments for Penal Code. • Facilitation of regional cooperation in counter terrorism by facilitating exchange of information and participation in regional workshops. 	MoJ	Planned
1	UNODC	Measures to prevent and combat trafficking in human beings in Afghanistan (AFAFG/S54)	<ul style="list-style-type: none"> • Assessment report including trends and recommendations on anti-trafficking strategies; • Assessment report prepared on existing legislation and legislative drafting assistance; • Training programme designed for law enforcement and the judiciary; • An awareness raising campaign implemented and national plan of action to combat trafficking in human beings adopted at a National Forum. 	MoJ	Planned
1	UNODC	Crime Assessment in Afghanistan	<ul style="list-style-type: none"> • To engage national institutional counterparts into the research and the collection of information available in concerned authorities and institutions; • To establish an inventory of data and information (secondary data) available at institutional level and in selected concerned authorities; • To conduct a survey at national, provincial, district and village level aimed to identify crime characteristics and criminal justice system response (primary data); • To elaborate an overall assessment report outlining crime typology and trends, and containing an analysis of responses to the crime problem both through formal and informal channels. 	MoJ	Planned
1	US/US/INL-DOD	Senior Federal Prosecutors Program	Reform key criminal justice laws; Train and mentor the CNTF and CNT; Develop security for facilities and personnel.	MOJ, SC, AGO, MOI, CNTF	
1	US/INL	JSSP Legal	Legal education, training, mentoring in criminal law. Develop professional standards.	MOJ, AGO, Kabul	

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NJP Sub-Programme Number	Int. Agency/Donor	Title of project/ category*	Description and purpose (specify: activities/beneficiaries)	Institutional Counterpart/partners	Date of project
		Education and Training		University, NLTC	
1	US/INL	JSSP AGO	Support Build capacity of the Attorney General's Office and prosecutors	AGO	
1	US/INL	JSSP Police/Prosecutor Coordination	Police-prosecutor coordination and criminal justice integration	AGO, MOI	
1	US/Treasury	Anti-Money Laundering Assessment	Assess Interfaces Between FIU and Law Enforcement	AGO, MOI, Central Bank	
1	US/CSTC-A	ANA Criminal Investigative Division	Provide training, mentoring and equipment to military criminal investigators.	MOD	
1	US/CSTC-A	Operational Law	Provide mentoring and training on Law of Armed Conflict and ROE (Nationwide)	MOD	
1	US/CSTC-A	ANA Mentoring of Basic court-Level Judiciary	Provide mentoring, training, equipment to prosecutors, defense counsel and judges.	MOD	
1	US/CSTC-A	ANA International Military Legal Training	Provide training in military justice, utilizing international experts.	MOD	
1	US/Treasury	Anti-Money Laundering Advisor to DAB	Improve anti-money laundering capacity and financial intel	Central Bank	
1	US/INL	JSSP Provincial	Justice Assessment Comprehensive provincial criminal justice system assessment including customary law	MOJ, SC, AGO, MOI	
1	Egyptian Embassy/ EFTC	Law enforcement	Advanced field training seminar for Anti-Narcotics Officers	Egyptian Police Academy, MOCN	current year
1	NL	Promoting Transitional Justice	Promote Transitional Justice support the Action Plan in all its facets provide support staff for GoA focal point on Transitional Justice	ICTJ (in partnership with AIHRC and UNAMA)	2006-2007
1	NL	Transitional Justice— support staff	Provide support staff for GoA focal point on Transitional Justice	Presidential Palace, MoFA, AIHRC	2006-2007
1	NL	Open up archives on war crimes	Open up archives on Dutch investigations and sources on Afghan war crimes	Afghanistan Center Kabul University	2006-2007
Justice Practices and Processes: Civil Justice					
2	Max-Planck-Institute for Comparative and Private International Law, Hamburg/ Germany	The matrimonial laws of Afghanistan	survey of current legal situation as regards matrimonial law, experts workshop on matrimonial law, publication of a family law textbook	legal community in Afghanistan	2006—2007
2	US/USAID	court Administration	Improve overall admin and case management MOJ, SC	MOJ, SC	
2	US/USAID	Commercial court Reform	Develop capacity, training programs, advisory support	MOJ, SC	
Justice Practices and Processes: Access to Justice					
3	CIDA	Strengthening the Rule of Law	Supporting IDLO to improve access to justice through legal aid, training of prosecutors, judges, and public defenders, and enhancing court administration.	International Development and Law Organization	2004-2007
3	CIDA	Women's Rights Fund	Supporting Rights and Democracy to promote human rights for women among	International Centre for	2003-2006

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NJP Sub-Programme Number	Int. Agency/Donor	Title of project/ category*	Description and purpose (specify: activities/beneficiaries)	Institutional Counterpart/partners	Date of project
			Afghan women, to help build space for women=s voices in political, judicial and civil processes, and to promote capacity-building among local Afghan women=s groups. Activities include training, project support for selected local groups, networking and liaison with Ministry of Women=s Affairs.	Human Rights and Democratic Development	(follow-up project under review)
3	CIDA	Support to Legal Aid Afghanistan (LAA) Project	Supporting International Legal Foundation (ILF) to build infrastructure for public defence system (legal aid) throughout Afghanistan through International Legal Foundation-Afghanistan. Activities include setting up offices, training and mentoring lawyers delivering defence services to the poor and conducting workshops for all stakeholders. ILF-A plans to be independent Afghan-run organization by 2009	International Criminal Defence Attorneys Association & International Legal Foundation	2005-2006 (new funding under review)
3	Medica Mondiale/EC	Family Violence	Improve legal situation of women and girls affected by family violence through direct legal service for survivors, awareness raising and education on their rights and by building capacity of different key actors providing effective prevention and response mechanism.	Penitentiary Institutions	12/05 --12/07
3	US/INL	Afghan women judges judicial education program	Study tour for 4 judges (2006), distribution of legal texts, legal awareness training, capacity-building of Afghan Women Judges Association (2007)	SC, AWJA	
3	US/INL	JSSP Legal Aid and Defense	Improve legal aid and criminal defense capacities	SC, MOJ	
3	US/USAID	Women's Rights Under Islam	National dialogs, provincial dialogs	MoWA, Cultural Centers	
3	US/CFC-A	CERP-Public Defense Development	Provide access to criminal defense services for indigents	Defense Lawyers	
3	Medica Mondiale/EC	Family Violence	Improve legal situation of women and girls affected by family violence through direct legal service for survivors, awareness raising and education on their rights and by building capacity of different key actors providing effective prevention and response mechanism.	Penitentiary Institutions	12/05 --12/07
Accountable Justice Operations and Accessible Justice Institutions: Accountability and Accessibility					
4	Government of Canada	Corrections Advisor to UNAMA	Deploying Corrections Advisor to UNAMA to help establish professional correctional service that respects rule of law and international human rights standards and practices. Duties include advising UNAMA and Ministry of Justice and liaising with donors and GoA on justice and correctional issues. Advisors have helped to develop Prisons and Detention Centers Act and assisted Central Prison Department in developing priorities for correctional sector National Programs	UNAMA	2003-2007
4	GTZ—Germany	Promotion of the Rule of Law in Afghanistan	to strengthen the judiciary, police and civil society	MoJ, MoJ, SC, AGO	second phase, 01.01.2006 to 31.12.08
4	IDLO / Italy	JUSTICE INSTITUTION SUPPORT	Technical support to AGO, SC and MoJ through experts embedded in the institutions	AGO, MoJ, SC	Jan 07—June 08
4	UNODC/Italy, Ireland	Justice Capacity Building (project AFG/R42)	<ul style="list-style-type: none"> • Training on office management, English language, and computer literacy for 70 civil servants from the MoJ, Attorney General's Office (AGO) and Supreme Court (SC); • Study tours (Italy, UAE) for senior staff of MoJ, SC, AGO, and of the Civil Service Commission; • Strengthening of the rule of law at provincial level, with training courses for administrative personnel for 55 civil servants; 	MoJ/ SC/ ADO	01/04—06/07

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NJP Sub-Programme Number	Int. Agency/Donor	Title of project/ category*	Description and purpose (specify: activities/beneficiaries)	Institutional Counterpart/partners	Date of project
			<ul style="list-style-type: none"> • Support to law reform in all matters related to criminal justice; • Co-leading leading organization for the Criminal Law Reform Committee; Organization of conference (Egypt) on comparative Islamic studies incl. penal system; • Justice Support Centre (JSCs) are currently under completion in 6 provinces: 1. Paktya (Gardez), 2. Nangarhar (Jalalabad), 3. Balkh (Mazar-i-Sharif), 3. Kunduz, 4. Mihtarlam (Laghman), 5. Baglan – on going; • Training of Justice Sector Librarians from Kabul, Paktya, Balkh, Kunduz, Nangarhar, and Laghman provinces (May—June 2007). 		
4	US/INL	CSSP MOJ/Correc ions Police Department Advisor	Improve Capacity and Reforms to Corrections System	MOJ	
4	US/INL	JSSP MOJ Support	Strengthen MOJ planning, coordination, policy capacity	MOJ	
4	US/CFC-A	Jus ice Sector Assessment	Evaluation & Assessment of Justice sector(na ionwide) through civilian mentors, PRTs civil affairs personnel	MOJ, AGO, MOI, SC	
4	US/CSTC-A	Afghan Na ional Army--General Staff Legal Mentors	Provide mentoring, training, equipment to ANA justice officials (Na ionwide)	MOD	
4	US/CFC-A	Support to ANDS Consultative Groups	Provide support/coordination, as appropriate, to CG process	ANDS, MOJ, AGO, MOI, SC	
4	US/CSTC-A	KMTC Legal Advisors	Provide mentoring and training at the ANA's recruit and training commands.	MOD	
4	US/CSTC-A	Corps-Level ANA Legal Advisors	Provide embedded mentoring and training to Corps-level Staff Judge Advocates	MOD	
4	US/CSTC-A	ANA court of Military Appeals	Provide mentoring and training to ANA's appellate court.	MOD	
4	US/CFC-A	Coordination of US military ROL initiatives	Provide coordination of US military ROL initiatives as directed by US Embassy ROL Coordinator	MOJ, MOI, SC, AGO	
4	NL	Strengthening the Jus ice System of Afghanistan	capacity building and reform of justice institutions, provide technical assistance and training	UNDP	2006-2007
Accountable Justice Operations and Accessible Justice Institutions: Integrity and Transparency					
5	CIDA	Alternative Livelihoods Program in North-eastern Afghanistan	Supporting Aga Khan Foundation Canada to provide effective alternative livelihood options through community-based, integrated rural development in Bamyan, Baghlan, Parwan, and Samangan. Project supports increased range of licit income genera ing opportunities for women and men, and increases capacity of village development committees to sustain range of community development initiatives. Two main project components are Rural Livelihood Options and Local Capacity Building	Aga Khan Foundation Canada	2005-2009
5	CIDA	Disbandment of Illegal Armed Groups	Assisting GoA to disband and disarm illegal armed groups to set condi ions for good governance and rule-of-law	UNDP/Afghanistan New Beginnings Program (ANBP)	2005-2009
5	UNODC	Strengthening the capacity of the judiciary to prevent	• To build the awareness and capacity of the Na ional Assembly to ratify the UNCAC and to work on the implementation of its principles and provisions at central and provincial level;	MoJ	Planned

NATIONAL JUSTICE PROGRAMME ANNEX 1⁵⁶
NATIONAL LEVEL ACTIVITIES Final 1st quarter 15/03/2007

NJP Sub-Programme Number	Int. Agency/Donor	Title of project/ category*	Description and purpose (specify: activities/beneficiaries)	Institutional Counterpart/partners	Date of project
		and combat corruption in Afghanistan	<ul style="list-style-type: none"> • Provision of legislative assistance in order to amend national legislative framework in accordance with the provisions of the UNCAC; • To strengthen the operational capacity of the members of the justice sector in Kabul and selected provinces as well as to establish a monitoring mechanism on implementation of the UNCAC. 		
5	US/CSTC-A	Ethics	Provide mentoring and training on ethics laws and regulations.	MOD, MOI	
5	US/CSTC-A	Ministry of Interior & Afghan National Police Mentoring	Mentor ANP Legal Affairs Chief and his staff; assist other MOI and ANP directorate heads with anti-corruption initiatives, written policies and draft legislation; advise on major cases.	MOI	
5	US/CSTC-A	ANP Legal Monitoring and Evaluation	Evaluate quality of Afghan legal support rendered within MOI and ANP. Monitor and evaluate observance by MOI and ANP leadership to Rule of Law.	MOI	
5	US/CSTC-A	ANP Internal Monitoring Mentoring	Provide advice to ANP Internal Affairs, Human Rights and Inspections staff on probes of matters under their cognizance.	MOI	
Accountable Justice Operations and Accessible Justice Institutions: Infrastructure, Transportation & Equipment					
6	IJPO / Italy	NEW BUILDING MOJ	Construction of a two floors building for MoJ	MoJ	2007—2008
6	IJPO / Italy	SHARIA FACULTY	Refurbishment of the Sharia Faculty	Kabul University	2007
6	UNODC / Italy	FEMALE AND JUVENILE DETENTION CENTRE	Construction of the two detention centers	MOI	
6	IMG / Italy	COURTS REHABILITATION IN THE PROVINCES	Construction and rehabilitation of courts in Provinces to be defined		February 2007
6	US/USAID	Infrastructure	court, Administration, Prison, and Other Construction	MOJ, SC, AGO, MOI	
6	US/CFC-A CFC-A	Prison Survey	Survey of all CPD prison facilities (Nationwide)	MOJ	
6	US/INL	JSSP AGO Logistic	Support Provide equipment, supplies, security support for AG	AGO	
6	US/CSTC-A	Afghan National Police (ANP) Legal Mentoring	Assist ANP Legal Affairs Chief with resource needs such as equipment and manning ("tashkil" process for additional billets)	MOI	
6	US/CSTC-A	ANP Procurement Law Mentoring	Advise on contact and procurement law and policy.	MOI	
6	US/CFC-A	CERP-Other Infrastructure (New Construction & Rehabilitation)	courthouses, justice administration buildings, other related construction	MOJ, SC, AGO	
6	US/CSTC-A	ANA Military court Houses (New Construction)	Build court houses at each Corps/Basic court location.	MOD	
Name?					
7	CIDA	Human Rights Treaty Reporting	Supported GoA to report on six human rights treaties to which they are party, beginning with International Covenant on Economic, Social and Cultural Rights.	UNDP, Ministry of Foreign Affairs	2004-2007

NATIONAL JUSTICE PROGRAMME ANNEX 1⁵⁶
NATIONAL LEVEL ACTIVITIES Final 1st quarter 15/03/2007

NJP Sub-Programme Number	Int. Agency/Donor	Title of project/ category*	Description and purpose (specify: activities/beneficiaries)	Institutional Counterpart/partners	Date of project
			Provided technical assistance, capacity building for government staff, and help establishing database for monitoring compliance.		
7	CIDA Parliamentary Development— Support to the Establishment of the Afghan Legislature		Working with France, Italy, European Commission, Sweden, Denmark and Germany to support Establishment of the Afghan Legislature (SEAL) project. Project objectives include ensuring timely establishment of Afghan Parliament and supporting its first year of operations e.g. assisting Afghan authorities in setting up effective coordination and programming mechanism for all activities related Parliament support; building capacity of admin and technical staff and members of Parliament; establishing legal environment to enable first session of Parliament; ensuring compatibility between physical infrastructure, information services and communication technologies; supporting parliamentary outreach, public information and awareness; and meeting first-year set-up and basic running costs.	UNDP	2005-2010
7	US/CSTC-A	ANA Legislative Drafting Assistance	Assist in Drafting Laws and Regulations Affecting Military Justice	MOD	
Legislative Processes, Legal Education, & Traditional Dispute Resolution: Legal Education and Training					
8	Max-Planck-Institute for Comparative Public Law and International Law, Heidelberg/ Germany	Assistance to the Training Commission of the Supreme Court in the education of judicial candidates	Assistance to the SC-Trainings Commission in the education of judicial candidates ("stage"), teaching Constitutional Law, Human Rights, court Organization Law, General Criminal Law, Judicial Ethics and Fair Trial Principles	SC, IIPLD (France), (coordination of the training modules with USAID and IDLO)	2006-2007
8	IDLO / Italy	ENHANCING THE CAPACITY OF LEGAL PROFESSIONALS IN AFGHANISTAN	building the capacity of NLTC + training for judges + anticorruption action plan +enhancing the legal capacity of government +strengthening the capacity of faculty of sharia	IDLO	jan 2007— june 2008
8	IJPO / Italy / IDLO	MASTER PROGRAMME	Master Programme in Public Law and International Relations for high level civil servants	Kabul University	2007- 2008
8	US/USAID	Legal Education	Overseas Travel, Law Journal, Computer Training, Curriculum	MOJ, SC, Kabul University, NLTC	
8	US/USAID	Law Reform and Legal Drafting	Compiled Laws, Translation, Legislative Drafting Training	MOJ, SC	
8	US/INL	CSSP Corrections Officer Training	Curriculum Development, Training, Nation Training Center	MOJ, NCTC	
8	US/INL	CSSP Prison Engineering Development	Supports and develops capacity from design to renovation	MOJ	
8	US/USAID	Judicial Training	Curriculum Development, Training, Training Infrastructure	SC	
8	US/CSTC-A	ANP Legal Training	Arrange legal training for ANP members by use of ANP staff and international mentors	MOI	
8	US/INL	LLM (Master's in Law) Program	ESL training for 17 law professors in Kabul and Seattle, LLM and certificate degrees in 2007	Kabul University	
8	Egyptian Embassy/ EFTC	Building Capacity	500 fellowships for Afghan students to study Sharia and Law at Al-Azhar University for years, with an average of 80 scholarship per year	Al-Azhar university,	current year

NATIONAL JUSTICE PROGRAMME ANNEX 1⁵⁶
NATIONAL LEVEL ACTIVITIES Final 1st quarter 15/03/2007

NJP Sub-Programme Number	Int. Agency/Donor	Title of project/ category*	Description and purpose (specify: activities/beneficiaries)	Institutional Counterpart/partners	Date of project
8	Egyptian Embassy/ EFTC	Building Capacity	Visiting Scholars Program:30 Egyptian Professors specialized in Sharia, Islamic Jurisprudence, Gender issues, Criminal Law and Human Rights	Al-Azhar university	current year
8	NL	Training members of parliament	Exchange and training programme of members of parliament	Netherlands Institute for Multiparty Democray	2006-2007
Legislative Processes, Legal Education, & Traditional Dispute Resolution: Traditional Dispute Mechanisms					
9	UNDP/EC	A2J at the District Level	This project aims to support access to justice at the district level. The action is taken around four main activities: reassessment of districts within the national strategy framework on strengthening the justice system; refurbishment of judicial centres at district level including facilities for judicial execution, training main judicial actors (including religious authorities and members of traditional mechanisms involved in administrating justice process); public awareness campaigns specifically targeted to disadvantaged categories.	District courts	01/05-07/07
9	US/USAID	Informal Justice Sector and Access to Justice	Educational Materials, Cultural Centers, Women's Rights	MoWA, Cultural Centers	
9	UNDP/EC	A2J at the District Level	This project aims to support access to justice at the district level. The action is taken around four main activities: reassessment of districts within the national strategy framework on strengthening the justice system; refurbishment of judicial centres at district level including facilities for judicial execution, training main judicial actors (including religious authorities and members of traditional mechanisms involved in administrating justice process); public awareness campaigns specifically targeted to disadvantaged categories.	District courts	01/05-07/07

Annex 18: List of meetings

Government Agencies			
Name	Title	Organization	Meeting Date
Kabul			
Judge Asefa Kakar	Judge Adviser of Public Security Division of Supreme court	The Supreme court	February 19, 2008
Haji Zahera Ahmadyar Mawlayee	MP Representative from Ghazni	Wolesi jirga	February 19, 2008
A. Munir Mehrwar	Head of Legal Affairs	Ministry of Higher Education	February 19, 2008
Suraya Paikan	Deputy Minister	Ministry of Higher Education	February 19, 2008
Senator Humaira (Namati)	MP Representative	Meshrano jirga	February 20, 2008
Senator Najiba Husseini	MP Representative from Daykundi	Meshrano jirga	February 20, 2008
Fawzia Amini	Head of the Legal Department	Ministry of Women's Affairs	February 20, 2008
Associate Professor M. Nasim Barna	Head of the Hoqooq Department	Ministry of Justice	February 21, 2008
Zohra Rasekh	Director, Office of Human Rights & Women's Intl. Affairs	Ministry of Foreign Affairs	February 21, 2008
Fawzia Faizi	Head Judge	Family court	February 23, 2008
Associated Professor Hamida Barmaki	Head of Law & Political Science's Department	National Center for Policy Research	February 24, 2008
Judge Nafisa Kabuli	Judge	Special Narcotic court of Appeals	February 24, 2008
Homa Alizoy	Judge	Special Juvenile court	March 1, 2008
Dean Mohammad Gran	Acting Dean of the Faculty of Sharia	Kabul University	March 1, 2008
Wais Ahmad Barmak	Executive Director	National Solidarity Program, Ministry of Rural Rehabilitation and Development	March 1, 2008
Saranyar Muhammad Yunos "Roman"	A.G. assistant in inspection	Attorney General Office	March 2, 2008
Ass.Prof. Abdul Iqrar Wasel	Dean Faculty of Law and Political Sciences	Kabul University	March 4, 2008
Mohammad Ghous Bashiri	Deputy Minister Labour Affairs	Ministry of Labor, Social Affairs, Martyrs & Disabled	March 6, 2008
Qazi Sulaiman Hamed	Deputy Minister and Head of Violence Against Women Commission	Ministry of Haj & Religious Affairs	March 12, 2008
Veronique Marissiaux	Legal Adviser	Embassy of Italy	March 13, 2008
Mohammad Farid Hamidi	Commissioner	Afghanistan Independent Human Rights Commission	March 16, 2008
Balkh			

Qazi Salaam	Head	Primary Family court	February 27, 2008
Qazi Mohammed Afzad	Head	Family court of Appeals	February 27, 2008
Friba "Majeed"	Director	Ministry of Women's Affairs	February 28, 2008
S. Hafizullah (Khaliqyar)	Director of Attorney Istinaf of Balkh Province	Attorney General's Office	February 28, 2008
Nangarhar			
Associate Professor Shir Ali (Ann)	Dean of Law & Political Science Faculty	Nangarhar University	March 4, 2008
Abdul Majeed Hedayat	Dean of the Faculty of Sharia	Nangarhar University	March 4, 2008
Sheila Babery	Director	Directorate of Women's Affairs	March 5, 2008
Qazi Hussain	Head	Primary Family court	March 5, 2008
Qazi Abdul Qadeer	Judge	Primary Family court	March 5, 2008
Herat			
Ustad Jamshid Nykjo	Acting Dean of the Faculty of Law and Political Science	Herat University	March 8, 2008
Judge Safia	Judge	Family court	March 8, 2008
Karima Jamsheedi	Member	Provincial Council	March 8, 2008
Arefa Rahmani	Head Judge	Juvenile court	March 9, 2008
Ms. Mahwash	Prosecutor	Attorney General's Office	March 9, 2008
Non-governmental Legal Aid Organizations			
Name	Title	Organization	Meeting Date
Kabul			
Arezo Merza	Kabul Team Leader	Norwegian Refugee Council (NRC)	February 24, 2008
Ibrahim Hassan	Country Director	International Legal Foundation-Afghanistan	February 25, 2008
Lal Gul	Chairman	Afghan Human Rights Organization (AHRO)	February 23, 2008
Freshta Karimi	Director	Da Qanoon Ghoushtonky	March 2, 2008
Najibullah Azizi	Deputy Director	Da Qanoon Ghoushtonky	March 2, 2008
Mohammad Afzal Nuristani	Co-founder	Legal Aid Organization of Afghanistan	March 2, 2008
Susan Paklar	Head of Mission	Medica Mondiale Afghanistan	March 12, 2008
Geralyn Busnardo	Chief of Party	IDLO	March 18, 2008
Judge Hossam Helal	Judge	IDLO	March 18, 2008
Nangarhar			
Eng. Mohammad Muneer "Khogyany"	Eastern Zone Head Officer	Afghanistan Human Rights Organization (AHRO)	March 5, 2008
Women's Rights Advocacy and Other Organizations			
Name	Title	Organization	Meeting Date
Kabul			
Manizha Naderi	Director	Women for Afghan Women	February 20, 2008
Judge Marzia Basel	Head	Afghan Women Judges' Association	February 20, 2008
Horia Mosadiq	Project Director	Human Rights Research and Advocacy Consortium (HRRAC)	February 21, 2008

Ghizaal Haress	Senior Program Manager, Legislative Program	National Democratic Institute (NDI)	February 23, 2008
Jamila Afghani	Managing Director	Noor Educational Center (NEC)	February 24, 2008
Fazal Ghani Kakar	Project Manager	Noor Educational Center (NEC)	February 24, 2008
Selay Ghaffar	Director, Human Rights	Humanitarian Assistance for the Women and Children of Afghanistan (HAWCA)	February 24, 2008
Michael Hartmann	Senior Advisor for the Criminal Justice Programme	United Nations Office on Drugs and Crime (UNODC)	February 25, 2008
Mary Cummins	Chief of Party	International Foundation for Election Systems (IFES)	February 25, 2008
English language trainees	Participants in the winter Academic Legal English Program (students and professors of law and Sharia from Al Biruni, Balkh, Herat, and Kabul Universities)	Afghanistan Rule of Law Project (ARoLP)	March 1, 2008
Daria Davitti	Human Rights Officer, Central Region	United Nations Assistance Mission in Afghanistan (UNAMA)	March 2, 2008
Akiko Shiozaki	Human Rights Advisor to the Ministry of Interior	United Nations Assistance Mission in Afghanistan (UNAMA)	March 2, 2008
Mr. Shezad Mehmood	Deputy Chief of Party	Counterpart International	March 3, 2008
John Dempsey	Head of the Informal Justice Sector Program	U.S. Institute of Peace (USIP)	March 3, 2008
Dr. Anou Borrey	Gender and Justice Consultant	United Nations Development Fund for Women (UNIFEM)	March 3, 2008
Ms. Shafiqah Habibi	Director	The New Afghanistan Women Association (NAWA)	March 4, 2008
Mary Akrami	Executive Director	Afghan Women Skills Development Center	March 5, 2008
Najiba Ayubi	Managing Director	Radio Killid	March 6, 2008
Lisa Rousso	Justice Advisor	Afghanistan Justice Sector Support Program (JSSP)	March 8, 2008
Damian Klauss	Section Leader	Afghanistan Justice Sector Support Program (JSSP)	March 8, 2008
Dr. Deborah J. Smith	Senior Research Manager, Gender and Health	Afghanistan Research and Evaluation Unit (AREU)	March 9, 2008
Afifa Azmi	Director	Afghan Women's Network	March 10, 2008
Katherina Rodriguez Osorio	Gender Adviser	GTZ	March 10, 2008
Ele Pawelski	Chief of Party	IDLO/CIDA	March 11, 2008
Palwasha Hassan	Head of Office	Rights & Democracy	March 11, 2008
Balkh			
Sayed Abdul Hamid Safwat	Regional Manager	Cooperation Center for Afghanistan (CCA)	February 26, 2008
Ruqia Alavi	Safe House Manager	Cooperation Center for Afghanistan (CCA)	February 26, 2008

Judith Niederberger, M.A.	Peace Building and Human Rights Adviser to the Cooperation Center for Afghanistan	Deutscher Entwicklungsdienst (ded)	February 26, 2008
Robina Khair Andish	Director	Radio Rabia Balkhi	February 27, 2008
Malalai Roshandil Osmani	Managing Director	Association of Defence for Women Rights, Civil Society Support Center	February 27, 2008
Nilofar Sayar	Executive Director	Women and Youths Support Center	February 27, 2008
Oly Vick	Political Affairs Officer	United Assistance Mission in Afghanistan (UNAMA)	February 27, 2008
Seh Lih Long	Associate Human Rights Officer	United Assistance Mission in Afghanistan (UNAMA)	February 27, 2008
Qazi Said Mohd Saame	Regional Programme Manager, Northern Region	Afghan Independent Human Rights Commission (AIHRC)	February 28, 2008
Nangarhar			
Mirwais Ahmadzai	Eastern Region Program Manager	Afghan Independent Human Rights Commission (AIHRC)	March 3, 2008
Lailuma Fahim	Coordinator	Women Support & Referral Center, UNIFEM	March 3, 2008
Alhaj Ab.Ghani Hashimi	Coordinator	Mediothek Afghanistan	March 4, 2008
Khan Aqa Gharmal	Lead Trainer—AWN Jalalabad	Afghan Women's Network	March 5, 2008
Mawlawi Noorullah	Khogyanee District Representative	Afghan Women's Network	March 5, 2008
Jan Mohammad Tofan	Khogyanee District Representative	Afghan Women's Network	March 5, 2008
Ms. Nahid Abubakr	Head of Office	United Nations Assistance Mission to Afghanistan (UNAMA)	March 5, 2008
Anthony Nwapa	Human Rights Officer	United Nations Assistance Mission to Afghanistan (UNAMA)	March 5, 2008
Herat			
GH.N. Hakkak	Regional Program Manager	Afghan Independent Human Rights Commission	March 8, 2008
Soraya Haqiq	Head of the Women's Program	Afghan Independent Human Rights Commission	March 8, 2008
Frishta Khatibi	Director	Women Activities & Social Service Organization (WASSA)	March 9, 2008
Caroline Howard	Human Rights Officer	United Nations Assistance Mission to Afghanistan (UNAMA)	March 9, 2008
Faezeh Mohammadpoor		United Nations Assistance Mission to Afghanistan (UNAMA)	March 9, 2008

Annex 19: Contact Information of Interviewees



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