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Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan



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Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan

**Human Rights, United Nations Assistance Mission in Afghanistan
Kabul**

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

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Contents

Executive Summary	i
Glossary	vi
Methodology	viii
1. Context	1
2. Legal Framework	3
2.1 Constitutional Framework Relevant to Harmful Traditional Practices ...	3
2.2 Law on Elimination of Violence against Women (EVAW law)	4
2.3 International Legal Standards	5
3. Harmful Traditional Practices in Afghanistan	5
3.1 Forced marriage	6
3.2 <i>Baad</i> or giving away girls to settle disputes	11
3.3 <i>Baad</i> al – exchange marriages	15
3.4 Child marriage	18
<i>Child engagements</i>	23
<i>Poverty and child marriage</i>	24
3.5 High bride price	25
3.6 Forced marriage of widows and inheritance rights	27
3.7 Restrictions on women’s freedom of movement	30
3.8 “Honour” killings	32
3.9 Self-immolation as a response to harmful traditional practices and violence against women	35
3.10 Running away as a response to harmful traditional practices and violence	37
3.11 Effects of harmful traditional practices on women’s access to education and adequate health care	39
<i>Denial of education and link to child marriage</i>	44
4. State Responses to Harmful Traditional Practices	45
4.1 Implementation of the EVAW law to date	45
4.2 Law enforcement and access to justice	46
5. Role of Religious Leaders	49
6. Role of the Government: Promoting a National Dialogue on Islam and Human Rights	50
7. International Response	51
7.1 UNAMA’s role in protecting and promoting the rights of women	51
8. Recommendations	52

Executive Summary

Widespread harmful traditional practices – child marriage, giving away girls for dispute resolution, forced isolation in the home, exchange marriage and “honour” killings – cause suffering, humiliation and marginalization for millions of Afghan women and girls. Such practices are grounded in discriminatory views and beliefs about the role and position of women in Afghan society. Many Afghans, including some religious leaders reinforce these harmful customs by invoking their interpretation of Islam. In most cases, however, these practices are inconsistent with Sharia law as well as Afghan and international law, and violate the human rights of women.

UNAMA Human Rights’ 57-page report *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan* documents particular customary practices that violate the rights of women and girls throughout Afghanistan, describes the Government of the Islamic Republic of Afghanistan’s response to these practices and makes recommendations to end such practices. Based on extensive research and interviews carried out in 2010 in 29 of 34 provinces of Afghanistan with women, men, Government authorities, religious leaders, women’s rights and civil society activists and community groups, UNAMA Human Rights (HR) found that such practices are pervasive, occurring in varying degrees in all communities, urban and rural, and among all ethnic groups. The report found that such practices are further entrenched by the Government’s inability to fully protect the rights of women and girls, highlighting the need to expedite implementation of the Law on Elimination of Violence against Women (EVAW law) which criminalizes many harmful traditional practices. The report notes that most harmful traditional practices are both crimes under Afghan law and inconsistent with Sharia law and cites the relevant article of the EVAW law that criminalizes the harmful practice together with complementary principles of Sharia law. Extensive discussions with a diverse range of Islamic legal experts informed UNAMA HR’s analysis of the principles of Sharia law.

The role of religious leaders, community elders and traditional dispute resolution mechanisms in both perpetuating and eliminating harmful practices is also highlighted. The report presents findings on community perceptions of harmful practices to better inform the design and delivery of measures by the Government, religious leaders, communities and international donors to end such practices.

In August 2009, the Government enacted the EVAW law which if fully implemented could end most harmful traditional practices. The EVAW law seeks to eliminate “customs, traditions and practices that cause violence against women contrary to the religion of Islam.” It makes illegal the selling and buying of women for marriage, forced marriage, marriage before the legal age, forced isolation, forcing a woman to commit self-immolation, denying the right to education, work and access to health services among other harmful practices. The law prescribes preventive measures for seven Government ministries to implement and establishes a national High Commission for the Prevention of Violence against Women.

The EVAW law is a major step forward in the legal protection of women’s human rights. At the same time, UNAMA HR notes several weaknesses in the EVAW law, such as the failure to criminalize “honour” crimes, clearly define rape to distinguish it from consensual *zina* (sexual intercourse outside of marriage, a crime under Islamic law) and the requirement that a victim initiate or maintain judicial action. Despite these concerns,

UNAMA HR together with most Afghan women's rights defenders believes that raising awareness about the current law and working for its full implementation now is urgently needed to protect women and girls while recognizing that revisions may be necessary to fully guarantee women's rights.

UNAMA HR found that law enforcement authorities often are unwilling or unable to apply laws that protect women's rights and that such inaction is one of the main factors that permit harmful traditional practices. UNAMA HR observed that although the police and the judiciary are becoming aware of the ERAW law, they require much more guidance and support from national-level authorities on how to apply the law. In many rural and remote provinces, communities and Government officials do not know about the ERAW law and it remains unimplemented.

UNAMA HR notes that harmful traditional practices are not consistent with the religious teachings of Islam, although certain interpretations of religious precepts are often used to justify some harmful practices. Islam has a central place in Afghanistan's Constitution, and as the report documents, under Sharia law forced marriage, giving girls away to settle disputes and many other harmful practices are prohibited. UNAMA HR suggests that the Government take the lead in promoting a comprehensive interpretation of Sharia law that demonstrates how rights guaranteed in national and international law are consistent with, and complement, the fundamental teachings of Islam.

Giving away girls to settle disputes, under *baad*, is one of the most severe forms of violence against women in Afghanistan. UNAMA HR found that *baad* is practiced among communities throughout the country although it is illegal under Afghan law. Despite the occurrence of *baad*, many Afghan men and women interviewed expressed strong opposition to the practice. Women in Faryab province told UNAMA HR that a girl married through *baad*, *"is never respected by her new family as they associate her with her male relative who committed the crime and accuse her equally of being a criminal. The girl is treated like a servant as a means of revenge. Sometimes she is forced to sleep with the animals in the barn."*

Through country-wide discussions and analysis of reported cases, UNAMA HR found that many marriages in Afghanistan are "forced" because a woman's free and informed consent was missing. Forced marriage in Afghanistan encompasses *baad*, *baadal* (exchange marriages), child marriage (by its very nature forced) and coercion of widows to marry a relative of a deceased husband.

The marriage of girls' before the age of 16, or under limited circumstances at 15 years is prohibited under Afghan law. Yet the marriage of very young girls is common across all regions and among all ethnic groups. No official figures are available but studies cited by UNAMA HR show that half of all Afghan girls are married before the age of 15. Although child marriage is widespread in Afghanistan, all Afghan men and women interviewed for this report identified child marriage as one of the most serious harmful traditional practices in the country.

The consequences of child marriage have been widely demonstrated to be lasting and damaging to the health, education and well-being of girls. Afghanistan has the worst rate of maternal mortality in the world and many deaths are of women who were married under the age of 16.

The high bride price families must pay to marry their sons was categorized by many Afghans interviewed as a harmful traditional practice. In the context of extreme poverty in Afghanistan, high bride price can lead to forced and underage marriages, the selling of girls and a high level of domestic violence. Men sometimes take out frustrations at being in debt or having to work for years to repay loans on their wives.

UNAMA HR found no justification in law or religion for customary restrictions on women's freedom of movement that violate women's rights. *"I was warned not to work," a female member of parliament told UNAMA HR, "because a female working outside the home is taboo; and is forbidden by Sharia. The salary I receive is haram (illegitimate) and I must stay at home."*

UNAMA HR documented incidents of "honour" killings, usually of women by one or several relatives who believe the victim has brought shame on the family. The perceived dishonour is often the woman's flight from a forced marriage or engaging in questionable conduct with a man. The report recommends amending the Afghan Penal Code to eliminate reduced sentences for perpetrators of "honour" killings.

Among the most tragic consequences of harmful traditional practices is self-immolation – an apparently growing trend in some parts of Afghanistan. The doctor in charge of Afghanistan's only special burn unit has described the main cause of self-immolation as forced marriage. *"Young women married to old men, sold, swapped for sheep or even opium....Under pressure from abusive husbands and mothers-in-law they sometimes go to mullahs and community councils to ask for help, but even there they face humiliation and abuse."*

The police and judiciary often fail to enforce laws that respect women's rights and take a selective rather than impartial approach to administering justice. They often pursue cases where women are perceived to have transgressed social norms and fail to act when women report violence or in cases of child marriage claiming these are "private matters". This situation is demonstrated by the large number of women detained in Afghan prisons for "moral crimes." When social and cultural circumstances do not allow women and girls to oppose harmful traditional practices, or to escape violence, they sometimes run away from home. "Running away" is not a crime under Afghan law. Yet law enforcement authorities often arrest, jail and prosecute girls for running away, the charge is usually "intention" to commit *zina* (sexual intercourse outside of marriage). Several studies report that half of the country's female prison population (almost 300 women) is detained for "moral crimes."

Police in Jalalabad, for example, arrested and detained a 17-year-old girl when they discovered her alone in a hotel room accusing her of intending to commit adultery (*zina*). UNAMA HR's investigation found that the girl had been forced to marry at the age of 13, denied an education, was ill treated by her in-laws and forbidden to leave the house even to visit her own family.

UNAMA HR documented some improvements in the Government's response to harmful traditional practices. State authorities sometimes supported girls who objected to their forced marriage. For example, in December 2009 in Nimroz province, a 12-year-old girl and her family opposed a marriage contracted to a 60-year old man when the girl was two-years old. Ten years later, when the man asked to formalize the marriage, the girl refused saying she had not agreed to the marriage and that she would not be a 70-year

old man's wife. The family returned the money that had been exchanged and the police warned the man that he could not marry the girl by force.

UNAMA HR observed that some religious and community leaders perpetuate harmful traditional practices although such practices are inconsistent with the fundamental tenets of Islam. Many Afghan men and women interviewed for this report stated that the way to end harmful traditional practices is to provide religious leaders with training and education. They said that the moral voice of religious leaders could advise local communities that harmful practices discriminate against women and that such practices are not consistent with Islamic law.

Some religious leaders have spoken out in favour of women's rights. At a conference on International Women's Day 2010 in Jalalabad, 15 *ulema* members from Nangarhar province unanimously vowed to raise awareness against harmful practices in their teaching at mosques. UNAMA HR also found examples of religious figures condemning exchange marriages and high bride price.

Adequate implementation of the EVAW law requires a huge investment in building the capacities of law enforcement personnel and in providing services to victims. Convictions under the EVAW law can result in deterring perpetrators of violence against women. At the same time, the Afghan public should be informed about the law's existence and the practices it criminalizes. Awareness-raising about the negative social consequences of harmful traditional practices across Afghan society is also necessary. Civil society should be supported in monitoring, awareness-raising and advocacy activities.

UNAMA HR believes that little meaningful and sustainable progress for women's rights can be achieved in Afghanistan as long as women and girls are subject to practices that harm, degrade, humiliate and deny them their basic human rights. Ensuring rights for Afghan women – such as their participation in public life including in the current peace, reconciliation and reintegration process; their access to adequate health care; and equal opportunities in education and employment – require not only legal and constitutional safeguards on paper, but also, more importantly, adequate implementation. UNAMA HR calls on the Afghan Government, religious leaders, communities, civil society and international donors to take all possible measures to eliminate harmful traditional practices and fully implement the EVAW law without delay.

Key Recommendations

Detailed recommendations are presented at the end of the report.

- **The Government of Afghanistan** at the highest levels including the President should continue to publicly emphasize that promotion and protection of women's rights are an integral part and main priority of peace, reintegration and reconciliation throughout Afghanistan, and a central pillar of the country's political, economic, and security strategies.
- The Government should expedite implementation of the National Action Plan for the Women of Afghanistan, in particular a national strategy to implement the EVAW law. As an immediate step, the President could by decree release from detention any woman or girl arrested for "running away", which is not a crime

under Afghan law (usually women who run away are charged with intention to commit *zina*).

- **The Supreme Court and Office of the Attorney General** should issue directives instructing the courts and prosecution offices to apply the EVAW law. Police and prosecutors should as required under the law register all complaints of harmful traditional practices criminalized by the EVAW law, and the Attorney General's office should promptly investigate and prosecute such cases.
- **The Ministry of Justice**, in cooperation with the national High Commission for Prevention of Violence against Women, should provide training and capacity-building on the EVAW law to all law enforcement officials, including on recognizing, investigating, and prosecuting forced and child marriage and the practice of giving away girls to settle disputes.
- **Religious leaders**, together with the ministries of Hajj and Religious Affairs and Women's Affairs, should develop and deliver training and awareness-raising programmes for mullahs, imams and religious teachers about women's rights and the EVAW law. Religious leaders should speak out about harmful practices that are inconsistent with Islamic teaching and principles and hold open discussions among Sharia experts on Islam and women's rights.
- **International donors** should increase support to Government and civil society initiatives aimed at enforcement of the EVAW law and efforts to implement the National Action Plan for the Women of Afghanistan.

Glossary

Acronyms

CEDAW:	Convention on the Elimination of all Forms of Discrimination against Women
DoWA	Department of Women's Affairs (the provincial representative of the Ministry of Women's Affairs)
EVAW law	Law on Elimination of Violence against Women
MoWA	Ministry of Women's Affairs
NGO	Non-Governmental Organization
UNAMA HR	United Nations Assistance Mission in Afghanistan, Human Rights
UNIFEM	United Nations Development Fund for Women

Dari, Pashtu and Arabic words

<i>Baad (baad dadan)</i>	Giving away a girl or woman in marriage as blood price to settle a conflict over murder or a perceived affront to honour
<i>Baadal</i>	Exchange of daughters between families for marriage
<i>Deen</i>	Religion or the path along which righteous Muslims travel to comply with divine law
<i>Hadith</i>	Record of the sayings or actions of the Prophet Muhammad
<i>Haram</i>	Illegitimate or forbidden under Sharia
<i>Hudood</i>	(Plural of <i>Hadd</i>). Crimes regarded as being against God's commands, for which punishment is considered obligatory rather than discretionary. There are seven crimes to which <i>Hudood</i> punishments are attached: adultery, theft, banditry, defamation, transgression, drinking alcohol, and apostasy.
<i>Ijab-o-Qabul</i>	Expression of marriage intention, or marriage offer (by a woman) and acceptance (by a man)
<i>Imam</i>	Religious scholar who leads prayers

<i>Jirga</i>	Gathering of elders
<i>Shura</i>	Local council
<i>Mahram</i>	Close blood relative (including a husband and men that a woman is not allowed to marry such as her father, son, brother, etc)
<i>Maraka</i>	Delegation of elders sent to mediate between families
<i>Malek</i>	Leading elder in a village or community
<i>Mahr or Mahriya</i>	Dowry, money or property promised by a husband to a wife as part of the marriage contract
<i>Nikah</i>	Marriage contract verbally formalized by a mullah
<i>Nikah Shighar</i>	Exchange of women without their consent and without the required dowry (<i>mahr</i>)
<i>Nafaqa</i>	Support provided by a husband to his wife, consisting of food, clothing, housing, medical care and other needs
<i>Sharia</i>	The code of law derived from the Holy Koran and from the teachings and example of the Prophet Mohammed
<i>Shingari</i>	Act of running away (<i>shingara</i> in Pashto)
<i>Tazeer</i>	Penalties and punishments defined by legislation rather than Sharia law
<i>Valvar, Qaleen, Toyana</i>	Sum of money or property requested by the bride's family from the groom's, in addition to dowry (<i>mahr</i>) given to the bride
<i>Wali</i>	Guardian of the interests of a legally incompetent person (such as a child or a mentally disabled person)
<i>Wakil</i>	Lawyer or representative in a contractual or official matter
<i>Ulema</i>	Religious scholars
<i>Zina</i>	Sexual intercourse outside of marriage

Methodology

The human rights section of the United Nations Assistance Mission in Afghanistan (UNAMA), which also represents the United Nations Office of the High Commissioner for Human Rights, conducted research for this report through its country-wide field presence during 2010. In total 150 individual and group interviews were carried out. UNAMA Human Rights (HR) officers conducted individual interviews with female victims of violence, human rights defenders and activists, representatives of women's organizations, defence lawyers, social workers, health care professionals, provincial council members, journalists, law enforcement officials (including investigating and prosecuting authorities), local government officials from the ministries of public health, religious affairs, women's affairs, and culture and information, as well as the Afghanistan Independent Human Rights Commission. UNAMA HR officers in regions throughout Afghanistan facilitated male and female focus group discussions (both separate and mixed) that included teachers, health care professionals, university and high school students, housewives and religious and community leaders, including some *ulemas*.

Discussions and interviews included as diverse and representative a sample of the Afghan population as possible and were carried out in rural and urban districts in the provinces of Kabul, Kapisa, Logar, Panjsher, Parwan, Wardak, Kunduz, Taloqan, Faizabad, Herat, Ghor, Badghis, Farah, Bamyán, Dai Kundi, Paktya, Paktika, Khost, Ghazni, Nimoz, Uruzgan, Sari Pul, Jawzjan, Balkh, Faryab, Samangan, Nangahar, Laghman and Kunar. Where UNAMA HR was unable to visit an area due to security constraints (for example Nuristan province) staff held discussions in secure locations with persons from those areas. All interviews and discussions centred on the practice, prevalence, attitudes and consequences of harmful practices affecting women and girls, as well as community and State responses. The report also includes a representative sample of cases of harmful traditional practices investigated and monitored by UNAMA HR officers over the past two years. UNAMA HR carried out a literature review of numerous public studies to inform this report.

The report is not a comprehensive study of all forms of harmful traditional practices in Afghanistan. It is aimed at raising concerns on the nature, causes and long-term consequences of certain practices that seriously impede the realization of women's rights and to advocate for reform and the eradication of such practices. The report refers to cases that UNAMA HR has monitored, investigated and followed up with State authorities, to highlight patterns of abuse, as well as share experiences reported by female victims and human rights defenders. All information that would disclose the identity or other sensitive information about victims and persons interviewed is not included for security reasons.

1. Context

Harmful practices grounded in tradition and sometimes attributed to religion, lead to pain, suffering, humiliation and the marginalization of millions of Afghan women and girls; violating the most basic human rights of half the population. Practices that include forced and child marriage, exchange of girls to settle disputes, exchange marriages, and killing in the name of “honour,” constitute harmful traditional practices¹. Such practices originate in entrenched discriminatory views and beliefs about the role and position of women and girls in society. In Afghanistan, harmful traditional practices have been further reinforced by widespread poverty and insecurity that Afghans have experienced for more than 30 years.

Afghan men and women interviewed by UNAMA HR reported that many Afghans believe that practices that subordinate women to the will of men and sharply limit their realms of activity, originate in the Holy Koran. As outlined in this report, however, most harmful traditional practices are without basis in religious principles or in some cases actually contradict religious teachings. Culture and tradition, sometimes viewed and used as a refuge during violent conflict can be persuasive arguments for perpetuating practices that harm women, but these should be distinguished from religious precepts.

Culture, however, is never fixed and traditions continually evolve. Religion can be a positive force for the rights of women. According to the UN Special Rapporteur on Freedom of Religion or Belief, “In countries declaring scrupulous adherence to Koranic precepts...one forgets that such precepts were laid down as measures aimed at women’s emancipation and liberation, by comparison with the practices of pre-Islamic Bedouin society, where women had no legal status and were an item of assignable and transferable property.”² The Holy Koran gives women many rights.³ Cultural practices that are injurious to women are sometimes at variance with religious teaching and are attributable more or solely to cultural interpretations of religious precepts.⁴

UNAMA HR’s findings as well as studies by other organizations⁵ reveal that harmful traditional practices are often reinforced by religious misconception, community and family perceptions of the role of women, judicial and police officials who fail to enforce the law and informal justice mechanisms that compromise women’s individual rights to a collective solution.

¹ Report of Special Rapporteur on violence against women, its causes and consequences, *Cultural practices in the Family that are Violent Towards Women*, Radhika Coomaraswamy, January 2002, E/CN.4/2002/83.

² Report by Abdelfattah Amor, UN Special Rapporteur on Freedom of Religion or Belief. *Study on Freedom of Religion or Belief and the Status of Women in Light of Religion and Traditions*, E/CN.4/2002/73/Add, April 2009, p.7.

³ Ibid.

⁴ Ibid.

⁵ For further research on harmful traditional practices in Afghanistan, see: *Afghanistan: Female Prisoners and their Social Reintegration* UNODC, March 2007, *The Impact of Gender-based Violence on Females Reproductive Health*, Medica Mondiale/UNFPA, *Early marriage in Afghanistan*, Women and Children Legal Research Foundation, 2008, *Decisions, Desires and Diversity: Marriage Practices in Afghanistan*, Deborah J. Smith, AREU, 2009, *Trapped by Tradition: Women and Girls in Detention in Kabul Welayat*, Medica Mondiale 2003.

2. Legal Framework

This report cites the relevant article of the Law on Elimination of Violence against Women (EVAW law), enacted in August 2009,⁶ that criminalizes a particular harmful practice together with complementary principles of Sharia law. UNAMA HR's analysis of Sharia law, as outlined in this report, was informed by extensive discussions with a diverse range of Sharia law specialists and experts.

2.1 Constitutional framework relevant to harmful traditional practices

The Constitution of the Islamic Republic of Afghanistan (2004) sets out the legal framework for protection and advancement of human rights, including women's rights, and recognizes the need to eliminate traditions that are contrary to Islam. The Constitution gives a central position to Islam; many harmful traditional practices described in this report are inconsistent with Sharia law.

The Constitution

Article 7

The state shall abide by the UN charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights.

Article 3

In Afghanistan, no law can be contrary to the beliefs and provisions of the sacred religion of Islam.

Article 22

Any kind of discrimination and privilege between the citizens of Afghanistan are prohibited.

The citizens of Afghanistan – whether man or woman – have equal rights and duties before the law.

Article 54

The state adopts necessary measures to ensure physical and psychological well being of family, especially of child and mother, upbringing of children and the elimination of traditions contrary to the principles of sacred religion of Islam.

Article 130

When there is no provision in the Constitution or other laws regarding ruling on an issue, the courts' decisions shall be within the limits of this Constitution in accord with the Hanafi jurisprudence and in a way to serve justice in the best possible manner.

⁶ Following endorsement by presidential decree, the Official Gazette (No. 989) published the law on 1 August 2009.

Sharia Law

“And whoever does good deeds according to his capacity while he believes in Allah and His Messenger, will be welcomed into Paradise. They will never be wronged, not even as little as the speck in a date stone. There is no distinction between male and female.”

(Holy Koran, Al Nisa, Verse 124)

“People, we created you equal from the union of a pair, male and female (Adam and Eve), and We made you into nations and tribes, that you may know one another. Verily, the most honourable of you with Allah are the most pious. Allah is All-Knowing and All-Cognizant.”

(Holy Koran, Al Hujurat, Verse 13)

2.2 Law on Elimination of Violence against Women

In response to widespread concerns about harmful traditional practices and endemic violence against women throughout Afghanistan, the Government enacted the EVAW law in August 2009, which represents a significant legislative step towards ending harmful traditional practices. Civil society groups and the Ministry of Women’s Affairs steered the law’s development. Among its objectives, the law lists “fighting against customs, traditions and practices that cause violence against women contrary to the religion of Islam,” and preventing and prosecuting violence against women.⁷

Article 5 of the law lists 22 acts, the commission of which constitutes violence against women: rape; forced prostitution; publicising the identity of a victim in a damaging way; forcing a woman to commit self-immolation; causing injury or disability; beating; selling and buying women for the purpose of or under pretext of marriage; *baad* (retribution of a woman to settle a dispute); forced marriage; prohibiting the choice of a husband; marriage before the legal age; abuse, humiliation or intimidation; harassment or persecution; forced isolation; forced drug addiction; denial of inheritance rights; denying the right to education, work and access to health services; forced labour and marrying more than one wife without observing Article 86 of the Civil Code.

The EVAW law obliges the Government to take protective and supportive measures in favour of victims, and to educate and raise awareness about harmful traditional practices and other forms of violence against women. Prosecution offices must treat cases of violence against women as a priority and act expeditiously.⁸ The law outlines specific obligations for seven Government ministries and establishes a national High Commission for the Prevention of Violence against Women; members include key Government ministries and departments.⁹ Based on a decision of the national Commission, provincial level commissions have also been established (or are in the process of being established).

Women’s rights activists have criticized the law for failing to criminalize “honour” crimes, and for not defining crimes clearly. For example, the EVAW law does not define rape or

⁷ EVAW law, Article 2.

⁸ EVAW law, Article 7(4).

⁹ EVAW law, Chapter Two, “Protective and Supportive Measures”.

the element of coercion that is required to distinguish rape from consensual *zina* (sexual intercourse outside of marriage, which is a crime under Islamic law). The law also requires a victim or her relative to file a complaint before State institutions will take action. This means that when a victim withdraws a complaint or fails to file due to family pressure or fear of reprisal, the State is not required to investigate or prosecute a crime of violence against women. These criticisms are valid.

While recognizing that revisions of the EVAW law may be necessary to fully guarantee women's rights, UNAMA HR and women's groups take the view that the current law, if effectively implemented, can serve as a strong and immediate tool to protect and promote women's rights leading to the reduction of practices that harm millions of Afghan women and girls. Afghan defenders of women's rights have told UNAMA HR that it is important to raise awareness about the law's existence, the acts it criminalizes and ensure immediate implementation, in particular of provisions aimed at eradicating harmful traditional practices and bringing perpetrators to justice.

2.3 International legal standards

The Afghan Government is obliged under its international human rights treaty obligations¹⁰ to ensure that women have the right to equality before the law and equal protection of the law. Under international law the Government must act with due diligence to prevent and respond to violence against women, whether committed by State representatives or private individuals and organizations.¹¹ All applicable international human rights laws are detailed in appendix I to this report.

UNAMA HR notes that a significant discrepancy exists between rights enshrined in international treaties to which Afghanistan is a State party, its constitutional guarantees, and current Afghan laws that include provisions that discriminate against women. For example, the Shia Personal Status Law, enacted in 2009, contains several articles that conflict with Afghanistan's international human rights obligations, constitutional guarantees and national laws – including the EVAW law.¹²

To provide better legal protection, the Afghan Government should take steps to align and make consistent all laws to ensure safeguards on non-discrimination. A national

¹⁰ Afghanistan is State party to: International Convention on Civil and Political Rights, International Convention on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child.

¹¹ See: CEDAW Committee General Recommendation No. 19, 1992. Also see UN General Assembly Declaration on Violence against Women, 1993, A/RES/48/104, Article 4(C) that State shall “*exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.*”

¹² The Shia personal Status Law was endorsed by presidential decree and published in the official Gazette, on 27 July 2009. Several of its articles violate fundamental human rights. Following concerns expressed by national actors and the international community, President Karzai requested a review to ensure the law's conformity with the Afghan Constitution and the State's international obligations, however the published law still contains articles that discriminate against women and perpetuate harmful practices. These include granting sole guardianship of children to male family members; restricting woman's freedom of movement, “a wife can leave the house for legitimate purposes to the extent that local custom allows; allowing the marriage of children under the age of 16 – the legal age of marriage is defined as 16 years of age for girls, and 18 for boys, however, the law allows for marriage of a child if the guardian can demonstrate that the child has the “ability and interest to marry” and has reached puberty; allowing a husband to deny maintenance to a wife who denies him “conjugal rights.”

review of legislation, initiated by the Ministry of Justice and including the national High Commission for Prevention of Violence against Women, women's organizations and civil society, could significantly promote consistency in legal standards and in application of laws and practices. Following such an expert review, the Government could recommend to parliament the amendment or repeal of all laws that fail to meet national and international human rights obligations.

3. Harmful Traditional Practices in Afghanistan

"Da zar kharidim da sang mekoshim"
*We bought you with money and will kill you with a stone*¹³

Traditions, history, culture and religious attitudes affect the enjoyment of rights by women throughout the world.¹⁴ The UN's Committee on the Elimination of Discrimination against Women (CEDAW Committee) describes harmful traditional practices as: "traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles" and perpetuate "widespread practices involving violence or coercion, such as family violence and abuse, forced marriage.... Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms."¹⁵ The EVAW law represents the Government's most significant effort to date to define acts that constitute violence against women and eradicate practices that harm and degrade women.

UNAMA HR's research and case monitoring as well as discussions held at the community level show that such practices remain pervasive, existing to varying degrees in all communities and among all social classes.

At the root of such practices lies the belief among a majority within Afghan society that girls are not as valuable as boys.¹⁶ Many Afghans interviewed by UNAMA HR cited "preference for sons" as a cultural tradition with negative consequences for women.¹⁷ The preference is based partly on the custom that a girl marries and becomes the "property" of someone else, where a son brings a bride to serve and work for the family.¹⁸

UNAMA HR also found that some of the practices described in this report, such as selling girls to settle debts or denying widows' inheritance rights, are acts that most Afghans do not view as an extension of their culture, but reflect a breakdown of customary trust and mutual support, and are a manifestation of hardship and lack of rule of law following decades of conflict.¹⁹

¹³ A saying in Dai Kundi province, quoted by civil society representatives during a meeting in Nili, Dai Kundi province, March 2010.

¹⁴ "Amor report, *Study on freedom of religion or belief and the status of women in light of religion and traditions*, op.cit., p.19.

¹⁵ See, General Recommendation No. 19, 1992.

¹⁶ For an interesting insight into the extent of the social pressure to give birth to baby boys, and how boys are prized in Afghan society, see: Jenny Nordberg, *In Afghanistan, Boys are Prized and Girls Live the Part*, New York Times, 20 September 2010. Of particular importance is the amount of freedom and opportunities girls masquerading as boys are able to enjoy.

¹⁷ This argument was challenged by a religious scholar interviewed by UNAMA HR in Sarbagh district, Samangan province who argued that the Prophet had no sons, but his name and family line nonetheless continued through his daughter Fatima, April 2010.

¹⁸ Interview with female teachers, Fayzabad district, Jawzjan province, April 2010.

¹⁹ Deniz Kandiyoti, *The Lures and Perils of Gender Activism in Afghanistan*, Anthony Hyman Memorial Lecture, SOAS, University of London, 2009.

3.1 Forced marriage

“Forced marriage is not a harmful tradition in our culture. I know my daughter’s best interests and since she does not leave the house, she does not understand the world and it will not be possible or acceptable for her to choose her own husband. She has no right to select her own husband and I am in the best position to choose for her.”

(Interview with male member of Faryab Provincial Council, April 2010)

“If a woman is forced to spend her entire life with someone that she didn’t dream about, it will depress her spirit and affect her attitude and behaviour toward all those in her house and her community. She begins to hate everyone and everything in her life and thinks only of revenge. In some cases, she will commit suicide as the only way out of her constant pain, or she may attempt to run away from home. If she becomes a mother, she will not have the energy to raise her child as her heart is broken. In general, she will be unable to be a good wife and mother.”

(Interview with male prosecutor, Samangan province, April 2010)

A forced marriage is one in which the free and full consent of one or both of the intending spouses is missing. Forced marriage in Afghanistan encompasses *baad* (the exchange of girls for dispute resolution), *baadal* (exchange marriages), child marriage (by its very nature forced) and coercion of widows to marry a relative of a deceased husband. According to a 2008 report by UNIFEM, 70 to 80 per cent of Afghan marriages are forced.²⁰ Through country-wide discussions and analysis of cases reported, UNAMA HR found that often a woman’s free and informed consent was not given in many marriages.

Forced marriage conflicts with the right to freely and fully consent to a marriage – as enshrined in international law, as well as the requirement of consent of both parties for any marriage contract under Sharia law. The EVAW law criminalizes marriage without consent.

UNAMA HR recognizes that drawing a sharp line between “forced,” “arranged” and “free” marriage oversimplifies the range of factors that determine how a marriage is decided in Afghanistan.²¹ Arranged marriages often are not coerced. Even when an element of compulsion is involved in a marriage, if the marriage turns out to be a relatively happy one, most people will not view it as a “forced” marriage *per se*.

Forced marriage also harms men and boys by denying them their right to freely enter into a marriage but to a lesser degree as parents do not exchange or “sell” boys into marriage and a boy is more likely to be able to object to his father’s choice of a partner. If a man is unhappy in marriage, he may be able to take a second wife; men are also less likely to suffer violence in marital relationships.

²⁰ UNIFEM Afghanistan, “The Situation of Women in Afghanistan,” UNIFEM Afghanistan Fact Sheet, 2008. [<http://afghanistan.unifem.org/media/pubs/08/factsheet.html>]

²¹ For in-depth analysis see: Deborah J. Smith, *Decisions, Desires and Diversity: Marriage Practices in Afghanistan*, AREU, Issue paper, February 2009.

The law

Afghan National Law

EVAW Law

Article 24

A person who sells a woman for the purpose or under the pretext of marriage, or purchases a woman or act as an intermediary in the process, the perpetrators shall, depending on the circumstance, be sentenced to long-term imprisonment not exceeding 10 years.

Article 26

If a person gets a woman engaged or married who has reached the legal marriage age without her consent, the perpetrator shall, depending on the circumstances, be sentenced to medium-term imprisonment not less than two-years, and the engagement and marriage is invalid, according to the provision of the law.

Article 27

If a person prohibits marriage of a woman, the offender shall, depending on the circumstances, be convicted to short-term imprisonment.

Penal Code

Article 517

A person who gives in marriage a widow, or a girl who is eighteen years or older, contrary to her will or consent, he or she shall be sentenced in view of the circumstances to short-term imprisonment.

Sharia Law

In Islam, marriage by definition is a voluntary union of two people. Mutual consent (*Ijab-o-Qabul*) is a prerequisite to any marriage. Marriage is based on a mutual contractual agreement between the bride and the groom, whether the bride is a virgin, divorced or widowed. Moreover, both bride and groom have the liberty to define various terms and conditions and make them a part of this contract. Noble Verses of the Holy Koran (for example, Holy Koran, Al-Nisa, Verse 18) clearly explain that whether or not the woman is a virgin, her permission is obligatory.

According to Sharia law, the father of a woman has the right to approve her choice; this is to safeguard her welfare and interest; it does not replace the right of the woman herself to consent. No such right for the father exists when it comes to the marriage of a widow or a divorced woman.

A well-known *Hadith* (sayings and actions of the Prophet) demonstrates the need for consent in all cases. According to the hadith, a woman called Khansa Bint Khidam, stated that “My father married me to his nephew, and I did not like this match, so I complained to the Messenger of Allah.” He said to me, “accept what your father has arranged.” I said, “I do not wish to accept what my father has arranged.” He said, “then this marriage is invalid, go and marry whomever you

wish.” I said “I have accepted what my father has arranged, but I wanted women to know that fathers have no right in their daughter’s matters.”

(Fathul Bari Sharh Al Bukhari 9/194, Ibn Majah Kitabun Nikah 1/602)

With a forced marriage, according to the above sources, Islam grants the woman a divorce, as the marriage contract is not valid.

According to Islamic jurisprudence (which interprets the Holy Koran and the *hadiths*), there are three pillars or conditions for a marriage contract in Islam:

1. The party who offers the proposal of marriage is the woman, or her representative (*wakil*). Until she offers a proposal, there can be no acceptance (*qabul*). This indicates that the female has the privilege of proposing a marriage contract, rather than being under pressure to accept a proposal of marriage. There should be an offer or proposal (*ijab*) from the *wali* or the person acting in his place, who should say to the groom, “I marry so-and-so to you” or similar words. There should be an expression of acceptance (*qabul*) on the part of the groom who should say, “I accept,” or similar words, this means the groom has to be an adult with sound mind to accept the marriage contract.
2. The marriage has to be formally announced and there is a minimum requirement of two witnesses to the marriage contract.
3. There is a requirement for *mahr* (dowry), agreed on and to be paid by the groom to the bride.

(Sunan Abu-Dawud, Marriage, Kitab Al-Nikah, Book 11, Number 2091)

Illustrative cases

In April 2010, the father and brother of a 15-year-old girl from Ghoryan district, Herat province, beat her when she refused to accept a forced marriage. She ran away from home. On the same day, unknown men in a car picked her up, raped her and released her on the street after several hours. An elder reported the incident to the district police who transferred the girl to a safe house for her own protection.²²

In January 2009, a 20-year-old woman, from Darqad district, Takhar province, who was engaged under *baad* at the age of four, sought protection from the Department of Women’s Affairs in Taloqan to avoid the forced marriage. After two months, DoWA, facing threats from local community elders and politicians, sent the girl to the district court in Darqad for a decision on the legality of the marriage. As the court session was about to start, a group of some 300 people who supported the forced marriage, attacked the district complex compound, abducted the girl and forcibly took her to her in-laws’ house. All efforts by UNAMA HR to contact the woman failed and her whereabouts remain unknown.²³

In October 2009, a 16-year-old girl from Logar province was forcibly engaged to a 65-year-old man. According to the girl, the man insisted on visiting her at her family home

²² Case reported to UNAMA HR, April 2010.

²³ Case investigated by UNAMA HR, January 2009.

prior to the marriage, claiming that he had given the girl's father a vast amount of money and was entitled to see her. During this time, the girl called a local radio station and discussed her problem with the male host. She and the male host became friends and continued to call each other. Later they both fled Logar and on their way to Laghman province where they intended to get married, police arrested them in Nangarhar province on charges of *zina*. The man was convicted to 13 years imprisonment and the girl to five years. The girl was reportedly raped while in detention. UNAMA HR learned that the 65-year-old man demanded another girl in "compensation" and the girl's father gave his younger daughter, aged 14 or 15, in marriage to the man.²⁴

Community Perceptions

Given that consent is the key determinant of whether a marriage is entered into freely, UNAMA HR undertook research among communities on how marriages are entered into and what constitutes "consent". Such research can assist in informing advocacy and policy responses to address all forms of forced marriage.

While Afghans in focus group discussions did not highlight the need for individual consent as a requirement for marriage, they objected strongly to specific kinds of forced marriage in which families do not respect the best interests of sons and daughters. These include child marriage, the giving of girls to settle disputes (under *baad*), the marrying of a girl to a man who already has one or more wife (*ban*), and when fathers marry off girls to solve financial problems.

Engagement and marriage are traditionally a family and group concern in Afghanistan and not a matter of individual right. No Afghan men and women in any of the focus group discussions held in 29 provinces suggested that sons and daughters should select their own spouses. Many said however that parents should not force their children to marry when they object to it.²⁵

"The community views it as bad or disrespectful if a girl contradicts her parents or elders' decisions."

(Female high school student, Bamyan province, April 2010)

"Forced marriage is the rule in X area. No one can marry without the permission of parents."

(Female school teacher in Sorobi district, Kabul province, March 2010)

"In our tradition, for parents to consult a girl on her choice of husband is perceived as a defect and a disgrace."

(Female Social Worker, Balkh province, April 2010)

"If the girl opposes the choice made by her father, her luck depends on her family...if the father is kind he will listen to her...if not she will have to get married."

(Female *shura* member, Kabul province, April 2010)

²⁴ Case investigated by UNAMA HR in October 2009.

²⁵ UNAMA HR's research demonstrates that in practice, parents tend to be much less receptive to the objections of girls than to boys' objections. A boy will typically feel able to (delicately) object to his parents' choice, and his views may be taken into account. The silent acquiescence of a girl is, however, taken as a "mark of honour," and a girl who dares to protest against her parents' choice will be considered disrespectful and her views ignored.

During UNAMA HR focus group discussions and interviews, defining “consent” proved difficult. Men generally supported the view that as long as a girl does not strongly oppose her father’s choice, the marriage could not qualify as “forced.” A group of men educated in Islamic law agreed that consent is required but said it should not be as extensive as expressed under international human rights standards (see annex I for international standards). Another male participant argued that under Islamic law, fathers²⁶ can act as fully competent representatives of their sons and daughters and that this encompasses “consent.”

Interviews in the central highlands²⁷ region of Afghanistan revealed that parents often asked daughters for their consent to be engaged or to marry – but only after they agreed with the prospective fiancé’s family. Consent in these cases is a formality, because a female is unlikely to contradict her parents’ decision; if she did, her parents would persuade or coerce her to “consent” to the marriage. However, some Afghans consulted said they consider it a positive practice to formally ask girls to give their “consent,” even if the decision has already been taken.²⁸

In Nimroz province, discussions revealed that many men think it is their right to marry their daughter to whomever they choose; they do not consult their daughters at all. Participants acknowledged, however, that a forced marriage can make a girl unhappy for the rest of her life. In the central region²⁹, Afghan women interviewed said conflict-affected areas, such as Logar and Wardak provinces, had higher rates of forced marriage than provinces under Government control, such as Panjsher.

In Uruzgan, a focus group of male judges, prosecutors, police and community elders identified forced marriage as the most significant harmful traditional practice in the province. The group noted that with the exception of a few communities in the provincial capital, Tirin Kot, nearly all marriages take place without the woman’s consent. One elder stated that while he now considers forced marriage as prohibited by the Holy Koran, he had married his first daughter without her consent.³⁰

“One of the principles of Islamic marriage is ijab and qabul (compliance, affirmation and consent). If ijab and qabul are absent, the marriage is invalid. Most marriages in rural areas are invalid under Islam because usually the brides do not give consent to their marriages; they are never asked for their consent.”

(Deputy head of a provincial court, northern region, April 2010)

²⁶ Fathers and grandfathers are usually the decision-makers although when they have made bad decisions on the marriage of their children in the past, women may be given authority. For detailed analysis see Smith, op. cit., AREU report, p. 18. In Kabul, a researcher found middle-class widows making marriage decisions for their daughters.

²⁷ Including the provinces of Bamyan and Dai Kundi.

²⁸ Female focus group discussions held in Bamyan centre and Nili district, Dai Kundi, and discussions with male elders in Kahamard district, Bamyan province, and Shahrستان district, Dai Kundi province, March/ April 2010.

²⁹ Including the provinces of Kabul, Kapisa, Logar, Panjsher, Parwan and Wardak.

³⁰ Stated by an elder during a focus group discussion with men in Uruzgan province, March 2010.

3.2 *Baad* or giving away girls to settle disputes

“Baad may be used when there is a claim that adultery occurred but the claimant is unable to prove his claim. He will have to give two girls to restore the honour of the other family.”

(Shura member in Tagab, Kapisa province, April 2010)

“Instead of the murderer being punished, an innocent girl is punished and she has to spend all her life in slavery and subject to cruel violence.”

(Interview with group of women, including teachers, Khulm district, Balkh province, April 2010).

“Baad is common, especially in Eshpay valley (under the control of the Taliban), to solve conflicts emanating from murders, run away cases, rape.”

(Interview with a local *malek*, Kapisa province March 2010)

The practice of *baad* or giving away of girls to settle disputes, forms one of the most egregious types of violence against women in Afghanistan. *Baad* allows communities or families to settle crimes such as murder, in theory to restore peace and order between the conflicting parties, by transferring punishment for the crime to a woman or girl. The “honour” of the aggrieved family is “restored” through punishing the woman for a crime she did not commit.

Baad is used to end conflicts over serious crimes such as killings, but also for “moral” crimes and acts such as adultery, rape and where women have run away (for example, from a forced marriage). The merit of this practice in resolving disputes is highly dubious; often conflict and enmity between families or groups continue.³¹

UNAMA HR found that giving away girls to settle disputes, through *baad*, takes place in communities throughout the country. In spite of the prevalence of this practice, many Afghans expressed strong opposition to it. As an informal method of dispute resolution, UNAMA HR found that in the central region more *baad* is practiced in conflict zones where the Government exercises less authority and lacks legitimacy (for example, conflict-affected areas such as Tagab and Alasay district in Kapisa province, Uzbin in Sarobi district of Kabul province) and in remote areas where the formal rule of law institutions are weakest.³²

Under Sharia law the practice of giving away girls to settle disputes violates the principle of consent, a prerequisite for a valid marriage in Islam, and serves to treat women as property which is prohibited. The practice is also illegal under Afghan law – under both the ERAW law and the Penal Code – as well as Afghanistan’s international human rights

³¹ This was reported to UNAMA HR in a number of discussions/ interviews held throughout the country.

³² Interviews and group discussions were held in March and April 2010, with males and females, representing different ethnic groups, districts and communities in Kabul, Kapisa, Logar, Panjsher, Parwan and Wardak provinces.

obligations. *Baad* violates the fundamental human rights of women, and can amount to exploitation and slavery under international law.

The law

Afghan National Law

EVAW Law

Article 3(4)

Baad: Marrying a woman to someone as blood price or to achieve peace linked to murder, sexual violence or other circumstances to observe indecent customs and traditions.

Article 25

- 1) If a person gives or takes a woman for marriage in retribution for a *baad*, the perpetrator shall, depending on the circumstances, be sentenced to long-term imprisonment not exceeding 10 years.
- 2) In such case under paragraph (1) of this Article, the involved persons (witnesses, counsel, mediator and solemnizer of marriage) shall, depending on the circumstances, be sentenced to medium-term imprisonment, and the marriage contract shall be considered invalid at the request of the woman, according to the provisions of law.

Penal Code

Article 517

- 1) A person who gives in marriage a widow, or a girl who is 18 years or elder, contrary to *her* will or consent, shall be sentenced in view of the circumstance to short imprisonment.
- 2) If *commitment* of the crime specified under the above paragraph is for the purpose of “*Baad dadan*” (as a compensation for a wrongdoing) the offender shall be sentenced to medium imprisonment not exceeding two years.

Sharia Law

Marrying girls to settle a family or tribal dispute and exchange of girls is strictly prohibited in Islam, on the basis of the following principles:

- A human being has dignity and therefore cannot be considered “property” in any sense. This principle should be observed in all human behaviour and human interaction. To marry a woman to settle a dispute defies the dignity Islamic principles bestow on a woman.
- Giving away a woman in marriage to settle disputes violates the principle of *consent* as the woman is forced into the marriage. The principle of consent is enough to determine that the non-consensual marriage is invalid; if the girl concerned consents to marry someone to settle a dispute, then technically the Islamic requirement of consent would be met, but her consent would have to be free and not coerced in any way.

- The Sharia principle that it is unlawful to “forcibly inherit a women” also means that the practice of *baad* is contrary to Islam. Prior to the advent of Islam, women were treated as property and could effectively be “inherited.” The Holy Koran eliminated this harmful tradition through the requirement for “consent” and *mahr* - dowry given by a husband to a wife as part of the marriage contract.

(See: Sahih Muslim, The Book of Marriage [Kitab Al-Nikah], chapter 9)

Under Sharia law, it is incumbent upon parents to act in the best interests of their children. Engagement or marriage for financial or other benefit is thus considered contrary to Sharia law. Furthermore, consent, which is a non-derogable principle under Sharia law, is a prerequisite for any marriage contract.

The following verse of the Holy Koran emphasizes that parents should act in the best interests of their family - which includes every individual. This requirement is not optional but compulsory.

“O ye who believe! save yourselves and your families from a Fire whose fuel is men and stones...” (Holy Koran 66:5)

Some Islamic scholars consulted by UNAMA HR interpret this verse to mean that if a girl is married based on any sort of personal benefit, and against her will, it contradicts the tenets of Sharia and may lead to an environment that can damage her spiritual life.

Illustrative cases

In April 2010, in Paryan district of Panjsher province, a family received a girl in compensation for another girl's *shingari* (running away) from a forced engagement. The girl eloped. A local *shura* reportedly mediated in the case and decided that the boy's family with whom the girl ran away should pay 500, 000 Afg (approximately 11,600 US dollars) to the family of the man she was initially engaged to. Later, the *shura* decided that in addition to the money the boy's father should give one of his daughters in marriage as “compensation” – this was accepted and the man's 19-year-old daughter was married to a 13-year-old boy. The boy's father complained that he had to sell all his livestock, and sell and lease some of his land in to pay the required money. He also informed UNAMA HR that he had been involved in armed clashes with villagers and that he intended to move his family to Kabul for their safety.³³

An incident in Uruzgan province was widely discussed in the international press after the victim was pictured on the front of Time Magazine.³⁴ When Aisha was 12 years-old, her father reportedly gave her and her younger sister away in marriage to settle a blood debt; her uncle had allegedly killed a relative of the man Aisha was sent to marry. At the husband's house, the in-laws housed the girls with the livestock, used them like slaves and beat them frequently for their uncle's crime. Aisha fled but her husband caught her and sliced off both her ears and her nose as punishment, leaving her bleeding and unconscious. (A man shamed by his wife is said to have lost his nose, so it seems that Aisha was punished in kind.)

³³ Case reported to UNAMA HR, interviews with father and girl who ran away, April 2010.

³⁴ See, Aryn Baker, *Afghan women and the return of the Taliban*, TIME Magazine, 9 August 2010, and Rod Nordland, *Magazine cover of Disfigured Afghan Stokes Debate*, New York Times, 4 August 2010.

Aisha managed to survive the attack; Afghan women's organizations assisted her and eventually she travelled to the USA for reconstructive surgery. Her 10-year-old sister remains in Uruzgan with the abusive in-laws.

Community perceptions

In the central region, *baad* was reported among Pashtun, Tajik (Panjsher province), Pashayee (Alasai in Kapisa province) and Sayeed (Parwan province) communities. UNAMA HR found however, from interviews and focus group discussions that strong opposition exists to the practice of

"The girl is never respected by her new family as they associate her with her male relative who committed the crime and accuse her equally of being a criminal. The girl is treated like a servant as a means of revenge. Sometimes she is forced to sleep with the animals in the barn."

(Interview with group of Pashtun women, Qaysar district, Faryab province, April 2010)

giving away girls to settle a dispute. Many men and women interviewed stated that the husband's family considers the girl or woman given away as their "property." They also said girls given in *baad* are often treated like slaves – they endure mistreatment, physical violence and humiliation as retaliation for the crime committed by a male family member. For example, in the south³⁵, both male and female focus group participants said *baad* poses special risks to the girl concerned, because her own brother or other relative is responsible for murdering a member of the family into which she has married. The marriage takes place without any large ceremony and the stigma of having been given in *baad* will stay with the girl forever. In addition, while in theory the giving away of a girl under *baad* should settle the murder, in practice, the girl's husband and in-laws may take out their anger on the girl. Insults and beatings are common, and, in some cases, the husband's family denies the girl all contact with her parents and siblings.³⁶

A member of a UNAMA HR focus group in Uruzgan province described *baad* in his community as occurring in the following way:

"Girls are sometimes exchanged as compensation for a murder so as to prevent or settle a feud between families. Typically, a delegation from the murderer's family will come to the house of the victim's family. Such a delegation is known as a maraka. It is likely to bring cash, guns and sheep. If the victim's family accepts the delegation's request for reconciliation, the sheep will be slaughtered to provide a feast. The guns are likely to be accepted, but in general, money will be rejected on the grounds that no price can be put on a human life. If that happens, the delegation will propose that one or more girls from the murderer's family be given in marriage to men from the victim's family. This is baad."

(Male focus group discussion conducted by UNAMA HR, April 2010)

³⁵ Research and discussions in the provinces of Uruzgan and Nimroz, April/May 2010.

³⁶ Based on focus group discussions in Uruzgan province, March 2010.

Some persons UNAMA HR interviewed from various parts of the country cited the benefits of such traditional dispute resolution in preventing escalation of blood feuds between families.³⁷ They told UNAMA HR that *baad* is also supposed to restore links between families and tribes in conflict by creating a common interest and “mixing blood.” Most of those interviewed, however, recognized that a girl given in marriage is effectively punished on behalf of the male member of her family who committed the original crime. The recipient family may target the girl for abuse as revenge. They may not consider her as a proper wife and make her live as a slave; the man or boy who receives her will very often take another ‘proper’ wife.

In the northern region³⁸, Pashtun women during discussions with UNAMA HR described *baad* as practiced where a newly-wed husband discovers that his wife is not a virgin. He returns the bride to her father’s house and receives her virgin sister by way of “compensation.”³⁹ Local community elders, imams, village governors, local commanders, and men from both families take part in any mediation aimed at restoring relations between aggrieved families.⁴⁰

While all persons interviewed by UNAMA HR in the northern region said that *baad* occurs in all five provinces of the region, they also stated that wide knowledge exists about the illegality of *baad*; some also mentioned its illegality under the EAW law. Members of a local *shura* said that their communities no longer view *baad* as an accepted traditional practice.⁴¹ A female director of a radio station, however, said that in remote rural areas, the practice continues.⁴²

As one provincial council member reported:

*“The truth is that these practices can change or decrease over time. For example, baad is not very practical in the communities now. People tend to oppose baad even in the rural areas because they have understood its negative consequences and have begun to value their female family members.”*⁴³

3.3 *Baad* – exchange marriages

Three ethnic Turkmen women told UNAMA HR they were exchanged in marriage by their families at very young ages. They described accepting the arrangement, having been told it was in their families’ best interest. They reported that they suffered physical and mental abuse at the hands of their in-laws – for not bringing sufficient gifts by way of dowry, for not producing children and for not carrying out household tasks satisfactorily. As one woman stated, “Other than running away, I had no option but to endure this violence.”⁴⁴

³⁷ “In some circumstances, marriage through *baad* is good because this will prevent further killings.” interview with a group of Pashtun women from Chemtal district, Balkh, April 2010.

³⁸ The northern region covers five provinces, Balkh, Samangan, Sari Pul, Jawzjan, Faryab, and a total of 54 districts where people from different ethnic backgrounds live including, Uzbek, Tajik, Turkmen, Hazara, Arab, Pashtun, and Tatars.

³⁹ Interview with a group of Pashtun women, Chemtal district, Balkh, April 2010.

⁴⁰ Interview with AHRO defence lawyer, Balkh province, April 2010.

⁴¹ Interview with members of a local *shura* from an ethnic Tajik village, Khuran wa Sarbagh district, Samangan province, April 2010.

⁴² Interview with female director of local radio station Balkh province, April 2010.

⁴³ Interview with five Sari Pul provincial council members (male and female), April 2010.

⁴⁴ Group interview, Arab Qalgh village, Khwaja Du Koh District, Jawzjan province, April 2010.

Exchange marriages are mutual arrangements between families to exchange daughters. The families avoid monetary negotiations and the cost and risks of incurring debt. Persons interviewed by UNAMA HR described exchange marriages, *baadal*, as occurring throughout Afghanistan, but reported that they are most common among poorer rural families. Not all communities practice *baadal*; the majority ethnic Uzbek population of Jawzjan province, for example, has no such tradition.

The practice denies women the right to freely enter into a marriage based on consent – as required under international, national and Sharia law. The practice also contradicts Sharia law requirements that forbid one man to give his daughter in marriage to another to avoid *mahr* (dowry payments).

One widely reported consequence of these marriages is that in-laws punish brides reciprocally in exchange for any reported mistreatment or punishment of their own daughter. For example, if one woman, who was exchanged in marriage, is beaten, the in-laws of the other exchanged woman may also beat her in retaliation. If one couple divorces, the other may as well. The practice, as well as denying a woman's right to freely enter into a marriage based on consent, can also be viewed as promoting violence against women.

The law

Afghan National Law

EVAW

Article 26

If a person gets a woman engaged or married who has reached the legal marriage age without her consent, the perpetrator shall, depending on the circumstances, be sentenced to medium-term imprisonment not less than two years, and the engagement and marriage are invalid, according to the provision of the law.

Penal Code

Article 517

1) A person who gives in marriage a widow, or a girl who is 18 years or older, contrary to her will or consent, shall be sentenced in view of the circumstances to short-term imprisonment.

Sharia Law

In Islam, only one kind of marriage – involving consent of both parties – is accepted (see above under “forced marriage”).

Nikah Shighar, exchange of women without their consent and without the required *mahr* (dowry given to the woman), is prohibited. Abdullah Ibn Umar (companion of the Prophet) said that Allah's Messenger prohibited *Shighar*, which means it is forbidden for a man to give his daughter in marriage on the condition that another man gives his own daughter to him in marriage, without dowry.

(See: Sahih Muslim, book 008, Kitab al-Nikah, chapter 7, number 3295).

Exchange marriages thus undermines the principles of consent and *mahr* (dowry).

The Sharia principle that it is unlawful to “forcibly inherit a women” means that both the practice of *baad*, and exchange marriages are contrary to Islam.

(See, Holy Koran, Surah Al Nisa, verse 18).

Illustrative cases

In one high-profile case, reported in May 2010, involving two girls aged 13 and 14 from Ghor province who were reportedly forced into a marriage exchange, each girl was given to an elderly man in the others family. The girls’ husbands reportedly beat them when they tried to resist consummating the unions. Police picked up the girls and reportedly returned them to their remote village, where local mullahs and a former warlord publicly flogged them for daring to run away. The case was exposed when a video of the flogging was smuggled out of the district. The two girls were very fortunate, as eventually they were declared divorced and sent home.⁴⁵

Civil society representatives in Bamyán province, informed UNAMA HR of a case where two 50-year-old men in Panjab district exchanged their daughters, aged 13 and 14. Each then married the other’s daughter.⁴⁶

Community perceptions

Afghans in several areas identified economic necessity as the chief cause of exchange marriage.⁴⁷ *Baadal* allows families to avoid paying high bride prices.⁴⁸ Some Afghans interviewed reported that many families consider *baadal* a last resort, but that the increasing cost of marriage⁴⁹ makes exchanging daughters appealing. During discussion

⁴⁵ See, Rod Norland, *Child brides escape marriage but not lashes*, New York Times, 30 May 2010.

⁴⁶ As reported to UNAMA HR during discussion with civil society activists, May 2010.

⁴⁷ Interview with female provincial council member, Faryab province, April 2010. Poverty and economic necessity as a causal factor for exchange marriages was reported during discussions in the central region, March/April 2010, and in interviews with civil society representatives in Bamyán province. In discussions with males in Uruzgan province (March 2010), they indicated that exchange marriage enables families to avoid the risk of incurring debt and that sometimes some money may also change hands if the match is considered “unequal.”

⁴⁸ One group of interviewees stated that wealthy Pashtun families in Khulm district, Balkh province, also practice *baadal* as a means of reinforcing mutual prestige and social status. April 2010.

⁴⁹ It can easily amount to 1,200,000 Afghanis (approximately 28,000 US dollars).

with a group of men in Uruzgan province, it was reported that marriage ceremonies may not take place immediately; what is exchanged are commitments.⁵⁰

In interviews and discussions with UNAMA HR, several people, including for example, Pashtun women, defended exchange marriage as “in people’s best interest to reduce wedding expenses.”⁵¹ Others viewed the practice as demeaning the value of marriage by reducing it to an economic transaction.⁵²

3.4 Child marriage

“If you hit a girl with your hat and she doesn’t fall over, it’s time to marry her.”⁵³

Child marriage constitutes one of the most severe forms of child abuse with a disproportionately negative impact on the girl child. It is both a cause and consequence of the most severe form of gender discrimination. The practice harms girls by denying them their childhood and forcing them into marriage (as children they are unable to make a free and informed choice about a future spouse). The practice also denies girls the right to education and health, as early marriage leads to early childbirth for which girls are mentally and physically unprepared. Due to widespread poverty, child marriage also leads to “selling” of girls, particularly to much older men, who can pay impoverished families for a young girl’s marriage. As older men often take young girls as additional wives, the practice of polygamy can, according to a number of Afghans interviewed by UNAMA HR, in turn promote child marriage.⁵⁴

Underage marriage is common across Afghanistan, in all regions and among all ethnic groups. According to UNIFEM and the Afghan Independent Human Rights Commission, 57 per cent of Afghan marriages are child marriages – where one partner is under the age of 16.⁵⁵ In a study of 200 underage girls who had been married, 40 per cent had

⁵⁰ Male focus group discussion, Uruzgan province, March 2010.

⁵¹ A group of women in the majority Pashtun district of Chemtal, Balkh province, also stated that exchange marriage was a “good practice, because it allows us to marry off our daughters and sons without spending huge amounts of money.” April 2010.

⁵² Interview with a group of ethnic Uzbek Ulema and teachers, Khan Chahar Bagh district, Faryab province. “The quantity of the qaleen depends on the quality of the girl. If the girl is beautiful, or can be an income provider (as carpet weaver, tailor, embroiderer) then her qaleen will be exorbitant.” Emphasising the financial basis of the marriage transaction, one interviewee said “among Turkmens, the price for a widow woman is much higher than that of an unmarried woman. This is because the widow woman is believed to have greater experience of weaving carpets than unmarried girls. On this basis, the bride price for a widow woman in the north is approximately 470,000 Afs (approx. 10,000 US dollars).”

⁵³ Saying quoted during discussion with group of Afghan women, Chimtal district, Balkh province, April 2010.

⁵⁴ Discussions with male and female participants in a number of provinces throughout the country identified the way polygamy is practiced in Afghanistan as a causal factor of child marriage. According to a religious teacher interviewed by UNAMA HR, men often take second wives if the first does not give birth to a son or bears no children, as well as due to the view that they are allowed to have up to four wives. Men interviewed by UNAMA HR acknowledged that Islam permits a man to have up to four wives, but on the condition that he provides for all his wives equally and treats them with justice. Interview with religious leaders and male focus group discussions, Balkh, Faryab provinces, April 2010. The Holy Koran states: “Marry of the women who seem good to you two, three or four, and if you fear that you cannot do justice, then only one.” (Surah 4, verse 3 of the Holy Koran) “You will never be able to deal equally between your wives, however much you wish to do so.” (Surah 4, verse 129 of the Holy Koran).

⁵⁵ UNIFEM Afghanistan, “The Situation of Women in Afghanistan,” UNIFEM Afghanistan Fact Sheet, 2008 [<http://afghanistan.unifem.org/media/pubs/08/factsheet.html>], and quoted in Yakin Erturk, Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to Afghanistan, February 2006, E/CN.4/2006/61/Add.5, p. 7.

been married between ages 10 and 13 years, 32.5 per cent at 14, and 27.5 per cent at the age of 15.⁵⁶

In spite of widespread child marriage in Afghanistan, UNAMA HR found in all focus group discussions that men and women identified child marriage as one of the most serious harmful traditional practices in the country.

Paradoxes and legal contradictions are many when it comes to child marriage in Afghan law.⁵⁷ Under the Penal Code, for example, “adultery” (defined as sexual intercourse outside of marriage) or the “violation of honour” of a person who has not yet reached the age of 18 is considered an aggravated offence. Similarly, for rape, which is now explicitly criminalized under the EVAW law,⁵⁸ where the victim is under the age of 18, the offence is aggravated. The same conduct, sexual intercourse with a child, is however, accepted within the protective mantle of “marriage.”⁵⁹ Moreover, marriage of Afghan girls under the age of 15, in practice, remains largely unpunished. UNAMA HR suggests that to avoid such inconsistencies, and to safeguard the rights of the child, all Afghan laws should define a “child” as boys and girls aged below 18 years – in line with Afghanistan’s international human rights obligations.

A General Comment on the requirements of the International Covenant on Civil and Political Rights (to which Afghanistan is State party) states:

*“Men and women have the right to enter into marriage only with their free and full consent, and States have an obligation to protect the enjoyment of this right on an equal basis. Many factors may prevent women from being able to make the decision to marry freely. One factor relates to the minimum age for marriage. That age should be set by the State on the basis of equal criteria for men and women. These criteria should ensure women’s capacity to make an informed and uncoerced decision. A second factor in some States may be that either by statutory or customary law a guardian, who is generally male, consents to the marriage instead of the woman herself, thereby preventing women from exercising a free choice.”*⁶⁰

The CEDAW Committee applies the term “child marriage” to anyone who marries under the age of 18, but in Afghanistan the Civil Code has stipulated the minimum age as 16 for girls and 18 for boys. The Afghan Civil Code also allows the father of a girl or a

⁵⁶ See: *Early Marriage in Afghanistan*, Women and Children Legal Research Foundation, 2008.

⁵⁷ *Child Marriage and the Law*, Legislative Reform Initiative Paper Series, UNICEF, January 2008.

⁵⁸ Article 17(1) of the EVAW law stipulates that: “If a person commits rape on an adult woman he shall be sentenced to life imprisonment in accordance with the provision of Article (426) of Penal Code, and if the act results in death of the victim, the perpetrator shall be sentenced to the death penalty.” 17 (2) “If a person commits rape on an underage woman, he shall be sentenced to life imprisonment according to the provision of Article (426) of Penal Code, and if the act results in death of the victim, the perpetrator shall be sentenced to death penalty.” The EVAW law fails to clearly define the elements that constitute the crime of ‘rape’. And 17 (5) “If the victim under paragraph 4 of this Article has not reached age 18 or the perpetrator of the crime is a close relative up to third degree, teacher, employee, or physician of the victim or the perpetrator has influence and authority over the victim, the perpetrator shall be sentenced to long term imprisonment of not more than 10 years considering the circumstances.”

⁵⁹ Op. cit., *Child Marriage and the Law*, UNICEF.

⁶⁰ See: *Human Rights Committee, General Comment 28, Equality of rights between men and women (article 3)*, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000). Comment on Article 3 of the International Covenant on Civil and Political Rights, to which Afghanistan is State party.

competent court to “consent” to the marriage of a girl who is 15 years, but this is meant to be applied in extenuating circumstances.⁶¹

Illustrative cases

In February 2010, a *shura* in Baghlan decided that a 13-year-old girl should be given in marriage to a 65-year-old man who offered 3,000 US dollars for the child. The girl had been orphaned at the age of three and was looked after by a neighbour. When the girl’s brother attempted to remove her from the neighbour’s house, the neighbour insisted that he should receive a substantial amount of cash for taking care of the girl for 10 years. The case was then “resolved” by a *shura*, and the neighbour and the girl’s brother divided the marriage money.⁶²

In January 2010, in Parwan province, the mother and stepfather of a 13-year-old girl forcibly married the girl to a 32-year-old man whose first wife died, leaving four children. The girl’s mother received money for her daughter’s marriage. The girl’s husband was a drug-addict and beat her; the girl complained to the Department of Women’s Affairs (DoWA). Concerned that the husband, with the support of a local commander, would take the girl back to his house by force, UNAMA HR jointly with the police and head of DoWA, convinced the mother to allow her daughter to go to the women’s referral centre, where she stayed for several weeks. Upon verification of the conditions and facts surrounding the case, local authorities agreed that the girl was better off with her husband than her mother, as the step-father was also abusive and the girl’s mother wanted her to divorce her husband; she had promised her in marriage to another man – also for financial gain. Based on a guarantee provided by village elders that the girl’s husband would not abuse her in any way, the local authorities handed the girl back to her husband. The provincial Child Protection Action Network continues to follow the case and ensure the girl’s safety and well-being.⁶³

The law

Afghan National Law

EVAW Law

Article 28

If a person marries a woman who has not reached the legal marriage age, without considering the provision of Article 71 of Civil Code, the offender shall, depending on the circumstances, be sentenced to mid-term imprisonment of not less than two years and the marriage contract shall be cancelled at the request of the woman.

⁶¹ Article 70 of the Civil Codes states that, “marriage shall not be considered adequate until the male reaches the age of 18 and a female the age of 16. Article 71(1) further states that, “where the girl does not complete the age provided under Article 70 of this law, the marriage may be concluded only through her father or the competent court. (2) “The marriage of a minor girl whose age is less than 15 shall never be permissible.”

⁶² Case investigated by UNAMA HR, February 2010.

⁶³ Case investigated by UNAMA HR, January 2010.

Civil Code

Article 70

Marriage shall not be considered adequate until the male reaches the age of 18 and a female the age of 16.

Article 71

- 1) Where the girl does not complete the age provided under Article 70 of this law, the marriage may be concluded only through her father or the competent court.
- 2) The marriage of a minor girl whose age is less than 15 shall never be permissible.

Sharia Law

As highlighted above in the section on forced marriage, in Islam, mutual consent is a prerequisite to any marriage. Marriage is a contractual agreement between the bride and the groom, whether the bride is a virgin, divorced or widowed.

Although the Holy Koran does not expressly mention a minimum age for marriage, some Islamic scholars claim that Islam permits the marriage of a child who has reached puberty. Several religious scholars consulted by UNAMA HR believe that since a child lacks the maturity and understanding to freely enter into a contractual agreement required for marriage in Islam, the marriage of a child should not be permitted.

Community perceptions

In all focus group discussions conducted for this report, Afghan men and women identified child marriage as a harmful traditional practice. In the northern region, they said child marriages were more common in poor rural areas than among wealthier urban families⁶⁴ but that early marriages – the marriage of children who have reached puberty (viewed by many Afghans as being the determinant of adulthood under Sharia law and thus the legal age of marriage) but who are still defined as children under Afghan national law, is the accepted norm. A provincial council member in Samangan province said most families aim to marry their female children by the age of 14.⁶⁵

During a workshop organized by UNAMA HR, a district governor indicated that the *Gojar* tribe in Nuristan usually marry baby girls to baby boys even though they are sent to live with each other as husband and wife when they reach puberty. He told UNAMA HR that he wanted to work towards eradicating these “negative and non-Islamic practices” within his community.⁶⁶

A provincial council chair who had engaged his daughter at the age of four defended the practice: *“My father did the same thing and this is the tradition and there’s nothing wrong*

⁶⁴ Focus group discussion, Balkh province, April 2010.

⁶⁵ Interview with provincial council member, April 2010.

⁶⁶ During a conference organised by UNAMA HR, in coordination with the Afghan Independent Human Rights Commission in Nuristan province, in March 2010, a district governor gave this example. He also urged other conference participants, which included tribal elders and religious clerics, to support the Government to eliminate such practices.

*with it.*⁶⁷ Others, including some defenders of women's rights, justified the practice pragmatically. One local female official said that she, and many families she knew, had married their daughters at an early age to protect them from possible kidnapping, rape and forced marriage to local commanders and members of illegal armed groups.⁶⁸

Afghans interviewed by UNAMA HR also mentioned fears that the longer a girl remains unmarried, the more likely she is to lose her virginity⁶⁹, and therefore any "value" on the marriage market.⁷⁰ Others stated that they would rather have their daughters married early than risk becoming spinsters.⁷¹ Some said men prefer to marry young girls because it is easier for a husband and in-laws to establish and maintain control over them.⁷²

In Uruzgan province, men and women who participated in focus group discussions said child marriage⁷³ is common throughout the province⁷⁴ and estimated it accounts for more than half of rural marriages. They cited the positive influence of the media in cities as a factor in reducing the practice in urban areas, and the poverty in rural areas as encouraging "selling" of girls. Men and women involved in the focus group also said it is customary for both boys and girls to be married as soon as possible, albeit for different reasons: girls, to preclude a premarital relationship, and boys as a matter of pride; indeed, families in a village may view this as something of a competition. They also mentioned boys bringing another female into the household to help with chores as positive.⁷⁵

In Nimroz province men and women interviewed in a focus group discussion said that parents marry most girls when they are between the ages of 10 and 15, but that some, even in the capital, Zaranj, are married even younger.⁷⁶ While marriages between older men and girls are more common in rural areas, UNAMA HR is aware of cases in Zaranj city, including one where a 45-year-old man married a 10-year-old girl.

In the northern region, ethnic Turkmen parents said they prefer not to give their daughters in marriage before they are 18 to 20 years of age. Turkmen girls learn from an early age to weave carpets and provide cash income to their families.⁷⁷ Because of this

⁶⁷ Interview with male provincial counselor, Faryab province, April 2010.

⁶⁸ Interview with member of human rights NGO, Jawzjan province, April 2010 who stated that she and many other families had married their daughters at an early age for this reason. The head of an NGO in Maymana, Faryab province also observed that families tend to use early marriage as a means of protecting their daughters from being forcibly taken in marriage by local commanders – who see polygamy and the taking of young wives as a demonstration of their power and strength.

⁶⁹ Some health workers said that one degrading (and forensically dubious) consequence of the desire for virgin brides is the practice of forcing unmarried girls to undergo "virginity tests" at the hands of "specialist" doctors. Interview with health care professionals, Jawzjan province, April 2010.

⁷⁰ Interview with female director of a radio station, Balkh province; interview with UNHCR Gender Focal Point, Balkh province, April 2010.

⁷¹ Interview with a focus group of Uzbek women in Khoja Sapz Posh district, Faryab province, April 2010.

⁷² Interview with a religious teacher, Sozma Qala IDP Camp, Sari Pul, April 2010.

⁷³ In Uruzgan, "child" will typically refer to someone who has yet to reach puberty, and even 8-12 year olds may be viewed as adults. During the discussions participants were specifically referring to boys younger than 18 and girls younger than 16, April 2010.

⁷⁴ The focus group participants did say that in the ethnically Hazara areas of Khas Uruzgan, and Gizab (administered by Uruzgan though part of Dai Kundi), custom makes child marriage virtually non-existent. In the provincial capital of Tirin Kot, child marriage is significantly less common than in the districts, March 2010.

⁷⁵ Focus group discussions with both males and females (separate), Uruzgan province, March 2010.

⁷⁶ UNAMA held a meeting with a group of educated women and female teachers, clerics (*ulema*), civil society members, and male and female government officials, including the DoWA, April 2010.

⁷⁷ UNAMA HR individual interviews with male construction workers, Aqcha district, Jawzjan, April 2010.

income-generating capacity, Afghans interviewed said the families of Turkmen girls can demand a higher bride price from prospective grooms. While their skills can protect these girls from early marriage, they are more likely to be kept out of school to weave carpets at home.”⁷⁸ Women interviewed informed UNAMA HR that parents generally keep Turkmen girls from attending school after the age of 13 because of fear they “will become immoral, lose their chastity and have sexual relationships with men.”⁷⁹

Education of girls seems to be a crucial factor affecting age of marriage. UNAMA HR visited several girls’ schools in Kohband district of Kapisa province, where apart from one 14-year-old girl, no students under the age of 16 were engaged.

Child engagements

The eradication of child marriage is also affected by the age at which a child is engaged or promised in marriage. In some cases, engagements are agreed upon at an early age but the girl concerned may be married much later – her “consent” to the marriage is therefore inconsequential, in direct contradiction of Islamic law. The girl’s human right to freely enter into marriage as an adult with a person of her choice is denied. International law requires the Afghan State to ensure that men and women enter marriage on an equal basis and only with their free and full consent. In spite of this clear lack of consent, child engagement is not explicitly illegal under Afghan law.

In Dai Kundi province, civil society representatives informed UNAMA HR that baby girls as young as one-year old are promised to male suitors in marriage.⁸⁰ In the northern region, Afghans who were interviewed said parents promised girl children in marriage to strengthen relationships or to settle disputes between families. In some instances, the parents arrange the girl’s engagement immediately after her birth⁸¹. Such arrangements take place only between close families and they are rarely rescinded at the girl’s request.⁸²

Community perceptions

Afghans reported that sometimes a child engagement is formalized by the ceremony of *nikah* at which a mullah reads the appropriate verses from the Holy Koran, creating a binding obligation on the parties to proceed with the marriage. Where the engagement is not formalized, sometimes family members announce it at public gatherings. From the moment of the announcement, the honour of both families becomes linked to the eventual consecration of the marriage, and any attempt by the girl to resist or choose her husband will invoke the accusation that she has violated the family honour – with all the attendant consequences.⁸³ The head of a provincial council informed UNAMA HR that he had arranged for his 14-year-old daughter to be engaged when she was four “so that she could have a good future.”⁸⁴

⁷⁸ “*Turkmen people do not rear the female child to become a daughter, mother or wife. They rear female children for slavery – as carpet weaving machines.*” Interview with director of an NGO, Balkh province, April 2010.

⁷⁹ UNAMA HR group interview with women, and individual interviews with male construction workers, Aqcha district, Jawzjan province, April 2010.

⁸⁰ Discussion participants specifically referred to parts of Khedir, Kitti and Bandar Sangtakht districts of Dai Kundi province, March 2010.

⁸¹ Interview with Agency for Technical Cooperation and Development (ACTED) social worker, Balkh province, April 2010.

⁸² Interview with Head of Domestic Violence Unit, Family Response Unit, ANP, Balkh province, April 2010.

⁸³ Interviews with social workers, female police officers, Balkh province, April 2010.

⁸⁴ Interview with provincial councillor, Faryab province, April 2010.

In the central region, UNAMA HR was informed that early engagements may be more common than very early marriages. (Parents will usually wait until the girl reaches puberty to celebrate the marriage.) In Sorobi district of Kabul province, for example, people interviewed by UNAMA HR said early engagements are common and are often used to strengthen links between families. Families may promise their daughters at birth and then marry them before the age of 16.⁸⁵

In Nimroz province, people interviewed by UNAMA HR said that in the capital of Zaranj, more than one third of children have been engaged, and, in many rural areas, more than two thirds. They said several beliefs underpin this practice: fathers see such engagements as reinforcing friendships they have with other men; people think that if a child's father and mother are good people, the child will be too – thus, committing a young child to such a marriage does not appear risky; fathers also believe they know what is in the best interests of their child.⁸⁶

Poverty and child marriage

In January 2010, UNAMA HR investigated a case where a family sold their four daughters aged four to 14 in marriage to anti-government elements in Guzara district, Herat province. When questioned, the parents pleaded their extreme poverty. Police learned of the case when the father complained he had not been paid. The parents of the girls were charged and sentenced to imprisonment – one year for the father and three months for the mother. In May 2010, UNAMA HR learned that the girls had been entrusted to the mother's care when she was released, on condition that she not allow them to marry before the age of 16. The mullah who had married the girls received a suspended sentence.⁸⁷

In the southern region, Afghans in a focus group discussion informed UNAMA HR that families often marry their young daughters to settle debts. Uruzgan farmers have suffered from drought for much of the past decade, leading to poverty and huge debts.⁸⁸ Local traditions find it disgraceful to be unable to arrange for sons' marriages. As a matter of Islamic law, a boy's family must provide the girl's with a sum of money known as *mahr*. The amount varies but by custom it is usually in the hundreds of thousands of Afghanis (or thousands of US dollars). The boy's family must also pay for the wedding celebration.⁸⁹

In interviews with both males and females in Uruzgan province,⁹⁰ UNAMA HR was told that in practice a daughter's marriage is often arranged to pay for a son's. Sometimes a family marries a daughter first and saves the income to later pay for a son's marriage. If

⁸⁵ Focus group discussion held in Sorobi district, Kabul province, March 2010.

⁸⁶ Focus group discussion with educated women, female teachers, clerics (*ulema*) representatives of civil society, and male and female Government officials, April 2010.

⁸⁷ UNAMA HR investigation, following a January 2010 complaint. The district judge who pursued the prosecution ruled that the EAW law could not be applied in this case as it cannot be applied retroactively, it is unclear how he reached this conclusion as the law came into effect as of August 2009. Instead the prosecution was pursued in line with Article 130 of the Constitution, which states that if there is no provision in the Constitution or other laws about a case, the courts shall, in pursuance of Hanafi jurisprudence, rule in a way that attains justice in the best manner.

⁸⁸ As reported to UNAMA HR in a focus group discussion with males in Uruzgan province, April 2010.

⁸⁹ Ibid. This issue was also raised in focus group discussions around the country.

⁹⁰ UNAMA HR held two focus group discussions in Uruzgan in March 2010, one for men, including representatives of the AIHRC, judges, prosecutors, senior police officer, and community elders. The other group consisted of women, including teachers, doctors, and students.

the son is married first and his family is poor, the father will take out a loan, perhaps based on the projected value of his next harvest – in the south this is generally for poppy. Fluctuating prices and a bad harvest can leave farmers with limited options: they can hand over goods or personnel property, go deeper into debt, or use the marriage of a daughter to settle the debt. The last option is often the most attractive. The father will speak with his creditor and suggest that their families settle the debt by becoming relatives through marriage.⁹¹ Government poppy eradication programmes have also reportedly left farmers unable to pay off loans. Afghans refer to girls who are effectively sold to pay off these debts as “loan brides.”⁹²

In the southeast⁹³, Afghans interviewed by UNAMA HR described marrying and selling girls as a coping mechanism against poverty. With “bride price” at an average of 2-6,000 US dollars, marrying a daughter can be lucrative. The future husband sometimes may also promise to support the family-in-law in the long term. In one case brought to the attention of UNAMA HR, a man took a 12-year-old girl as a second wife, paying the bride price and promising to sustain the girl’s family with flour and oil.⁹⁴

Those interviewed by UNAMA HR emphasized that under financial pressure a father may disregard his daughter’s best interests and agree to an inappropriate marriage. They reported that in some poor rural areas, such as in Badghis, girls have been exchanged for livestock and in one case in the northeast, a girl was exchanged for a vehicle.⁹⁵

UNAMA HR has investigated cases where drug-addicted parents sold their young daughters. In Dai Kundi province, in August 2010, UNAMA HR investigated a case where the parents of a six-year-old reportedly sold her in the local bazaar for around 400 US dollars, and then fled to Kabul. The police are reportedly investigating the case.

3.5 High bride price

Although high bride price is not specifically illegal under national, international or Sharia law, a number of human rights consequences emanate from this practice. Persons interviewed by UNAMA HR in many provinces of Afghanistan view the high bride price

⁹¹ Male focus group participants said that typically, if the creditor agrees, his wife and daughters will visit the debtor’s household, meet the girl, decide whether she is suitable, and discuss some of the terms, including when the marriage will take place. The two fathers will then meet before a mullah and, in the presence of friends and family, make the arrangement formal and final. If the girl is already a teenager, the marriage will typically take place within a year. If she is younger, the marriage may be postponed for several years. In some cases, girls as young as eight or 10 will be immediately married to the creditor and move into his household. March 2010.

⁹² See: Sami Yousafzai and Ron Moreau, *The Opium Brides of Afghanistan: farmers forced to sell their daughters to pay loans*, Newsweek, 7 April 2008. The article refers to a case in Laghman province where a poppy farmer borrowed 2,000 US dollars, promising to repay the loan with 24 kilos of opium at harvest time. Just before the harvest, a government crop-eradication team appeared and destroyed his entire crop. The trafficker, from whom he borrowed the money, demanded payment. The case was taken before a tribal council who decided that the farmer would have to give his daughter in marriage to the 45-year-old drug-runner. No one knows how many debt brides there are but numbers reportedly rose as poppy eradication efforts push more farmers to default on loans.

⁹³ The southeast region includes the provinces of Paktika, Paktya, Ghazni and Khost. Between February and March 2010, focus group discussions were held in all four provinces, with both males and females. In addition, workshops on women’s rights and gender awareness were also organized in Khost, Paktika and Ghazni provinces, where special sessions were dedicated to harmful traditional practices.

⁹⁴ Reported to UNAMA HR in a meeting with DoWA, Ghor province, April 2010.

⁹⁵ In 2009, UNAMA HR recorded a case of a girl married in Kabul and a few weeks later exchanged for a vehicle by her husband in Baglan province.

families pay to marry their sons as a harmful traditional practice. They said that in the context of poverty, it leads to forced and underage marriages, selling of girls, and a high level of domestic violence – as men take out frustration at being in debt or having to work for years to pay off loans, on their wives.

Bride price appears to be central to the commodification of women and girls within Afghan society and a major factor contributing to forced marriage. High bride price has sometimes left families financially crippled and according to Afghans interviewed by UNAMA HR, turned marriage into a transaction where girls are effectively sold to the highest bidder.⁹⁶ It was reported in discussions that brides' families use the funds obtained through *qaleen*⁹⁷ to offset the costs of securing wives for their sons. Many families have also used business loans or development assistance to fund marriage costs; one group of women informed UNAMA HR they had used money provided as small business loans by the Asian Development Bank to help pay bride prices for their sons.⁹⁸ Families are often trapped into an escalating spiral of expenditure and debt.

Community perceptions

Elders and a Government official in Faryab province told UNAMA HR that high bride price is leading to trafficking of girls from areas where the bride price is low to places where it is high. They described a trafficking ring that buys ethnic Tajik and Turkmen girls and women between the ages of 13 and 22 from families in Kunduz, Takhar and Badakhshan provinces, and then sells them as brides to Turkmen families in Faryab province.⁹⁹ A Faryab elder explained that the practice had developed because families were unable to pay the locally high bride price.¹⁰⁰

In some areas, families are organizing to confront the problem of high bride price and the consequences on girls with varying results. In a district in Jawzjan province, Afghan elders informed UNAMA HR, *"We as elders and mullahs of our district have discussed the idea of lowering the amount of dowry, and have concluded that the current price of 400,000 Afs (approximately 9,300 US dollars) is a very high price. We have therefore started to advise families to ask a maximum of 200,000 Afs (approximately 4,650 US dollars) for their dowry – but we have yet to see any positive outcome of this advice."*¹⁰¹

In a majority ethnic Tajik district in Samangan, the local *ulema* issued instructions to reduce bride price from 10,000 to 4,000 US dollars and cut back on wedding parties. This instruction was reportedly successfully implemented in Khurm village¹⁰² and in Sar

⁹⁶ "In most communities, *mahr* has been replaced with *qaleen* ...and the bride's parents seize the bride price. Therefore it is more like selling ones daughter." Interview with a deputy head of a provincial court, northern region, April 2010.

⁹⁷ Under Islamic law, the bride is entitled to receive a marriage portion (*mahr*) from the groom or his family at the time of marriage. These gifts, whether in the form of money, land, or other fixed or moveable assets, in theory become her personal property. The family (in strict terms the mother) of the bride is also entitled, under Islamic law, to be paid "milk money" by the groom's family, an amount paid in recognition of the costs incurred by a family in raising their daughter. This "milk money" is known as *qaleen*. Among Pashtuns it is known as *valvar* and among ethnic Tajiks it is called *toyana*. In the northern region, for example, the amount of *qaleen* demanded ranges from 150,000 (\$3,200) to 400,000 Afs (8,500 US dollars). Information provided to UNAMA HR during interviews/ discussions in the northern region, April 2010.

⁹⁸ Interview with group of ethnic Uzbek women, Faryab province, April 2010.

⁹⁹ Interview with group of elders, Faryab province, April 2010.

¹⁰⁰ Interview with elder from Faryab province, April 2010.

¹⁰¹ Interview with a group of mullahs and village elders, Fayzabad district, Jawzjan province, April 2010.

¹⁰² Interview with members of *shura*, Khurm village, Khurm wa Sabagh district, Samangan province, April 2010.

Bagh village,¹⁰³ but in nearby De Asel village, parents of young girls “angrily rejected” it.¹⁰⁴ In Khost province, a Sabari tribe *jirga* specified the amount of gold to be given to the bride and instructed that dowry payments should not exceed 250,000 Afs (approximately 5,000 US dollars).¹⁰⁵

In Tagab district, Kapisa province, the Taliban reportedly issued an edict in July 2010 stating that bride price should not exceed 3,800 US dollars, with offenders facing a 2,000 US dollar fine. A Taliban representative reportedly said the decision was made after consultations with religious leaders.¹⁰⁶

3.6 Forced marriage of widows and inheritance rights

A 40-year-old widow from Ghazni province was physically assaulted by her deceased husband’s brother in December 2009, when she refused to marry him. Her injuries were grave, necessitating specialist treatment in Kabul. The Department of Women’s Affairs assisted her to report the case to the police, no action was taken.¹⁰⁷

Harmful traditional practices not only curtail Afghan women’s rights before and during marriage but also after their husband dies.

Forced marriage of widows stems in part from widows being considered the property of their in-laws, but is also often due to the desire to deny a widow her right to inheritance by marrying her to a relative and keeping any inheritance within the family. The woman concerned is thus forced into a marriage against her will, contrary to all national and international law, as well as Sharia law – where consent is a prerequisite for any marriage.

Often, if a widow does not remarry into the same family she risks losing her children. According to the Afghan Civil Code, once children have reached a certain age (nine for girls, seven for boys) guardianship is with the father, or in case of death or divorce, with the family of the father. The lack of authority over her own future limits a woman’s choices. Widows in turn may marry off their daughters at an early age to prevent them from being mistreated by relatives of the deceased husband’s family.¹⁰⁸

In several provinces where UNAMA HR carried out interviews, Afghans reported seizure of widows’ inheritance, usually through her forced marriage to another male relative, as a harmful traditional practice.

¹⁰³ Interview with head of Madrassa, Sar Bagh village, Khurm wa Sabagh district, Samangan, province, April 2010.

¹⁰⁴ Interview with village *shura* members, De Asel village, Khurm wa Sabagh district, Samangan province, April 2010.

¹⁰⁵ The deputy head of the Department for Labour and Social Affairs in Khost informed UNAMA HR during a meeting in May 2010, that a year earlier elders of Sabari district of Khost province capped the amount of dowry payments allowed at 250,000 Afs. Following this decision, the people of Sabari district are bound to implement the new rules. He informed UNAMA HR that the local Taliban played an active role in taking this decision and participated in the *jirga*.

¹⁰⁶ Habiburrahman Ibrahimi, *Taliban winning hearts - and more*, Asia Times, 10 September 2010.

¹⁰⁷ Incident reported to and investigated by UNAMA HR, January 2010.

¹⁰⁸ Reported to UNAMA in interviews and discussions in several provinces of Afghanistan, March-April 2010. In a number of cases investigated by UNAMA HR, child marriages have taken place to protect the daughters of widows from violence in the home.

The law

Afghan National Law

EVAW Law

Article 33

If a person prevents a woman to take possession of inheritance from the legator, he shall in addition to transfer of her inherited legal share be sentenced to short-term imprisonment of not more than one month.

Article 34

If a person takes the inherited goods of a woman, or prevents her from acquiring it, he shall, depending on the circumstances, be sentenced to short-term imprisonment of not more than three months, and the goods shall be vested to her.

Sharia Law

In addition to the prerequisite of “consent” for a marriage to be valid in Islam, the Holy Koran also clearly states the inheritance rights of a woman from her deceased husband:

1. A wife will get a fourth (1/4) of the total wealth left by husband in case he has no children.
2. She will get an eighth (1/8) of total wealth left by the husband if he has children.

“And for them a fourth of what you leave, if you have no children; but if you have children, then for them of what you leave an eighth after any bequest they may bequeath, or any debt.”

(Holy Koran, Al-Nisa, Verse 12)

A husband’s inheritance from his deceased wife is also clear in the Holy Koran as per following situations:

1. He will get half (1/2) of the total wealth left by the deceased wife if the wife has no children.
2. In case she has any children, the husband will get a fourth (1/4) of the total wealth left by the wife.

The Holy Koran also states:

“And for you a half of what your wives leave, if they have no children; but if they have children, then for you of what they leave a fourth, after any bequest they may bequeath, or any debt.”

(Verse 12, Al-Nisa, Holy Koran).

“O you who believe! You are forbidden to inherit women against their will, and you should not treat them with harshness, that you may take away part of the Mahr you have given them, unless they commit open illegal sexual intercourse. And live with

them honourably. If you dislike them, it may be that you dislike a thing and Allah brings through it a great deal of good.”

(Verse 19, Al-Nisa, Holy Koran)

As stated above (under section on *baad*) prior to the advent of Islam, women were treated as property and could effectively be “inherited.” The Holy Koran eliminated this harmful tradition by prohibiting forcible marriage through the requirement for consent, and stated that it is unlawful to “forcibly inherit a woman.”

(Al-Nisa, Holy Koran)

The following verse also defines the relationship between men and women:

O people! be careful of (your duty to) your Lord, Who created you from a single being and created its mate of the same (kind) and spread from these two, many men and women; and be careful of (your duty to) Allah, by Whom you demand one of another (your rights), and (to) the ties of relationship; surely Allah ever watches over you.

(First verse, Al-Nisa, Holy Koran)

Illustrative cases

The case of Karima is representative of the problem of forced marriage of a widow, denial of inheritance rights and possible loss of children. Karima, a resident of Ghazni province, was a widow who was forced to marry her late husband’s brother or risk losing her five children. She told UNAMA HR that her husband had been “a very good and kind man” and they had a happy marriage. She gave birth to four daughters and she was pregnant with a boy when her husband was killed during a military operation. Three months after his death, the in-laws visited and took away all her valuable household items, saying she had no right to them. Five years later, they forced her to marry one of her husband’s brothers, under threat of being separated from her five children; a delegation that included a mullah gave her an ultimatum.¹⁰⁹

In February 2010, UNAMA HR investigated a case in Parwan province, where a 22-year-old widow was reportedly forcibly married to an 11 or 12-year-old mentally disabled brother of her late husband. Her in-laws wanted to keep her inheritance in the family. The widow met another man and expressed her will to marry him. She ran away from her in-law’s house to a local shelter. The in-laws approached the courts and local authorities to force the widow’s return. With intervention from the Afghan Independent Human Rights Commission, the case was finally resolved in favour of the widow, who married the man of her choice after the court declared her marriage to the brother in-law void.¹¹⁰

Community perceptions

In the southern region (Uruzgan and Nimroz), men and women in focus group discussions explained that the practice of marrying a widow to a relative has two rationales: it prevents the portion of the man’s property that the widow is entitled to from

¹⁰⁹ Interview conducted with victim by UNAMA HR, March 2010.

¹¹⁰ Case investigated by UNAMA HR, February 2009.

leaving the family; and it avoids the “shame” of a widow marrying outside of her former husband’s family.¹¹¹

One man interviewed by UNAMA HR in Uruzgan province gave the example of a woman from Tirin Kot who repeatedly refused to marry another member of her husband’s family and instead, married someone from Kandahar. This was quite rare and viewed very negatively.¹¹² A man from another tribe who marries a widow will be viewed as a “kidnapper” and a *maraka*¹¹³ will likely be held to reconcile the tribes.

In the southeast region, persons interviewed by UNAMA HR said widows are often forced to marry a male relative from their deceased husband’s family. They said although threats to deny a widow access to her children may be rare, widows usually remarry in the family to ensure they remain with their children.¹¹⁴

When there is no adult member of the family able or willing to marry her, a widow may be wedded to a teenage boy in an essentially sham marriage serving to keep the woman and her property within the family. The underage husband will marry a second wife when he is older – and the first wife, the former widow, will generally be abused by both the underage husband and the second wife.¹¹⁵

In separate focus group discussions with both men and women in Uruzgan province, the participants recommended that the practice of forcibly marrying widows for inheritance should be prevented through changes in the law. They said that legal provisions should expressly state that a woman can marry whomever she wants and also prohibit her marriage to a member of her deceased husband’s family.¹¹⁶

3.7 Restrictions on women’s freedom of movement

“It is better to confine women and girls at home and safeguard their chastity and modesty.”¹¹⁷

UNAMA HR found from discussions with Afghan men and women that women’s participation in public life is constrained due to restrictions on freedom of movement. This restriction is the result of both arbitrary and misinterpreted references to religion¹¹⁸,

¹¹¹ Focus group discussions conducted with men and women in Nimroz and Uruzgan provinces, March/April 2010.

¹¹² Reported in focus group discussion held with men in Uruzgan province, March 2010.

¹¹³ A *maraka* is similar to a *jirga* where the parties themselves agree to refer an issue to interveners for an amicable settlement of a dispute.

¹¹⁴ Focus group discussions were held in the provinces of Gardez and Paktya (February and April 2010), Khost (February and March 2010), Paktika (March 2010) and Ghazni (March 2010).

¹¹⁵ This was raised during focus group discussions in Uruzgan province with groups of both males and females, March 2010.

¹¹⁶ Stated during focus group discussions conducted in Uruzgan province, March 2010.

¹¹⁷ Statement made by an elder during a focus group discussion with mullahs and local community leaders, Sangcharak district, Sari Pul province, April 2010.

¹¹⁸ Special Rapporteur on freedom of religion or belief: “Manipulation of religion can create social mechanisms that control women’s status, sometimes denying the most basic rights, such as freedom of movement and the right to travel without the husbands authorisation,...such mechanisms are intensified by

as well as to widespread insecurity in areas throughout Afghanistan. It represents a major barrier to realizing the full range of women's rights; denial of women's freedom of movement prevents women from engaging in work, and accessing many other rights, such as education and adequate health care.¹¹⁹

In some Afghan communities, women who transgress accepted norms bring dishonour on the entire family or even the community.¹²⁰ The link between women's behaviour and the honour of the community (especially its male members) leads to treating women as possessions.¹²¹ They are prevented from engaging in most social interaction outside the home to protect the men's honour. Some such traditional customs have been legalized, although they contradict the Constitution and the ERAW law. For example, under the Shia Personal Status Law, women must be accompanied by a *mahram* (a close male relative) when they move outside the home.

Under the ERAW law those who forcibly isolate a woman or prohibit her from accessing education, work and health care are committing a criminal act. Further, in Islam it is well known that the Prophet's wives were actively engaged in public life as business women, scholars and educated literate women. The Holy Koran also requires men and women to strive to learn.

The law

Afghan National Law

ERAW Law

Article 31

If a person forces a woman to isolation, he shall, depending on the circumstances, be convicted to short-term imprisonment of not more than three months.

Article 35

If a person prohibits a woman from the right to education, work and access to medical services or use of other rights stipulated in the law, he shall, depending on the circumstances, be convicted to short-term imprisonment not exceeding six months.

Sharia Law

Under Sharia, no one has the right to isolate others illegally. A husband is not the "owner" of his family members and must act in their best interests. The Holy Koran says: "consort with women in kindness."
(Verse 19, Al-Nisa, Holy Koran).

the fact that women's representation in spheres of public life, including religion, is limited and sometimes non-existent." Special Rapporteur Amor report, op.cit., p. 26.

¹¹⁹ For more in-depth research and analysis on traditional attitudes towards women's participation in public life in Afghanistan as well as illustrative cases, see, UNAMA/ OHCHR report, *Silence is Violence: End the Abuse of Women in Afghanistan*, July 2009.

[<http://unama.unmissions.org/Portals/UNAMA/human%20rights/Violence-against-women-report.pdf>]

¹²⁰ Interview with an Afghan woman working with an international organization, Balkh province, April 2009.

¹²¹ A religious teacher in an IDP camp in Sozma Qala district, Sari Pul, said that married women generally lose their individual identity after marriage, with the community referring to them as "wife of X" rather than by their given names. Interview with UNAMA HR, April 2010.

It is well known that Hazrat Khadija, the first wife of the Prophet was a business woman; active in public life. A Muslim woman's entitlement to wealth and to ownership of property alongside her husband (Surah 4, Holy Koran) is interpreted by Islamic legal experts consulted by UNAMA HR as an indication that she may actively, and publicly, acquire and dispose of income and property.

Also see below – right to education under Sharia law.

Community perceptions

A female member of parliament informed UNAMA HR:

*"I was warned not to work, because a female working outside the home is taboo; and that it is forbidden by Sharia. The salary I receive is haram (illegitimate) and I must stay at home."*¹²²

Several women from Bagdis province informed UNAMA HR that they planned to travel to a forum in Spain, but changed their minds after a local mullah, during Friday prayers, threatened them with stoning if they travelled to a foreign country without a *mahram*.¹²³

A female Government employee interviewed by UNAMA HR stated:

*"According to our mullahs we shouldn't go to school, shouldn't go to university or even walk outside our house. According to our mullahs we can't be governors, can't be judges, and certainly can't be mullahs ourselves.... However, now we are in a different society where our legal rights have been preserved by our government. If we are restricted at home how can we live up to our responsibility to future generations to protect and promote their rights?"*¹²⁴

Some male participants of discussions cited the Islamic concept of *nafaqa*, which obliges men to provide financial and physical support and protection to women. *Nafaqa*, they argued, means that there is no need for women and girls to go outside the house if they are being properly cared for.¹²⁵ Many Islamic legal experts, however, highlight Islam's general support for the active role of women in society.¹²⁶

3.8 "Honour" killings

Frashta, a woman in her early 20s from Parawan province, was forcibly married to her cousin in 2009, but ran away to Kabul with another man after beatings and drugging by her grandmother and stepfather. Police arrested Frashta for intent to commit *zina* and she was sentenced to five months imprisonment. Following her release she moved in with a maternal uncle. Her great uncle then shot and killed her during a "reconciliation," dinner in January 2010. The great uncle, grandmother, and two other women were arrested and await trial.¹²⁷

¹²² See: UNAMA/ OHCHR report, *Silence is Violence: End the abuse of women in Afghanistan*.

¹²³ Interview with UNAMA HR, April 2010.

¹²⁴ Interview with female Government official, Samangan province, April 2010.

¹²⁵ Interview with elders, mullahs and community leaders in Sangcharak district, Sari Pul, April 2010. Group members acknowledged that financial necessity often requires women and girls to work outside the home.

¹²⁶ Based on interviews and discussions with Islamic legal experts March to October 2010.

¹²⁷ Case reported to and followed up by UNAMA HR, January 2010.

Where women are perceived as receptacles of family honour, their opposition to family dictates about marriage often puts them at risk of brutal physical punishment.¹²⁸ So-called “honour” killings recognize a man’s right to kill a woman with impunity because of the damage that her immoral actions have caused to family honour. It is a killing of a family member by one or several relatives who believe the victim has brought shame upon the family.¹²⁹ The perceived dishonour is often the woman’s flight from a forced marriage, choosing her own marriage partner, or engaging in questionable conduct with the opposite sex. An “honour” killing is, given the nature of the crime and its link to cultural notions of honour, a harmful traditional practice.

The UN Special Rapporteur on Violence against Women has called honour “a magic word that cloaks the most heinous of crimes.” Such murders are not based on religion but on deeply rooted cultural beliefs.

In a number of discussions and interviews held throughout the country, Afghans acknowledged the occurrence of “honour” killings. In most cases, these killings are perpetrated against women and girls who the community views as transgressing their socially accepted norms.

The law

Afghan National Law

Penal Code

Chapter one, Articles 394-397 of the Penal Code deals with the crime of murder.

The offence is mitigated, however, when it involves an “honour” killing.

Article 398

A person, defending his honour, 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 “Tazeeri” punishment.”

EVAW Law

The EVAW law does not criminalize “honour” killings, but refers to the Penal Code.

Article 22 of the EVAW law states that:

- 1) If a person beats a woman, the offender shall, depending on the circumstances, be punished according to Article 407 – 410 of the Penal Code, considering the mitigating and aggravating conditions of the crime.
- 2) If the acts under paragraph (1) of this Article results in the death of victim, the offender shall, depending on the circumstance, be sentenced according to Article 395 – 399 of the Penal Code.

¹²⁸ Special Rapporteur Amor report, op.cit., p. 31.

¹²⁹ Ibid, paras 155-158.

Sharia law

Islam upholds the sanctity of human life. The Holy Koran declares that killing one innocent human being is akin to killing the entire human race. (Holy Koran 5:32, 6:151, 17:33).

Islam is clear on its prohibition of any sexual relationships outside of marriage (*zina*) which carries a *hadd*¹³⁰ punishment under Sharia law. This prohibition does not distinguish between men and women. A case to be brought before a Muslim court must meet several strict criteria. Accusation of *zina* requires four witnesses; and they must have witnessed the act of sexual intercourse itself. Although sexual relationships outside of marriage are a *hadd* crime Sharia law, which places strict emphasis on administration of justice, does not authorise individuals to carry out punishment for this offence.

Legal analysis

The EVAW law does not create a separate offence for “honour” crimes. Article 398 of the Penal Code, cited above, mitigates penalties for murder if the victim is a close relative caught in the act of committing adultery. The killing cannot be premeditated. These provisions open the door to possible abuse, particularly as there may be no other witness to the crime. As the sentence for a murder of this nature is reduced to a term “not exceeding two years,” the Penal Code can be viewed as excusing such killings in the name of “honour.”

UNAMA HR takes the view that article 398 of the Penal Code should be repealed in any ongoing efforts to reform the criminal law. This article is not required as other provisions of the law distinguish between premeditated and unintentional killing. Article 398 not only demeans women and devalues their lives, but also is the legal articulation of a harmful cultural practice.

Illustrative cases

Although most incidences involve females, UNAMA HR has investigated several cases of men and boys killed for “honour.” In May 2010, the family of a young man reportedly murdered a man and woman in Nimroz province. The two were promised to others in marriage. Someone saw them talking, and, according to law enforcement officials, the boy’s relatives took them to a remote area, shot them, and dumped the bodies in a well. Suspects have been arrested.¹³¹

Some honour killings seem to have the approval of entire communities. In August 2010, in Bamyan province, a girl died under suspicious circumstances the day after her wedding. The new husband reportedly took the girl back to her father’s house on the wedding night, saying that she was not a virgin. She died in her father’s house the next day. The police informed UNAMA HR that they started an inquiry but threats from local community members prevented them from investigating further. A team that included the

¹³⁰ Hudood (plural of *Hadd*) crimes are regarded as being against God’s commands, they are considered absolute, rather than discretionary. There are seven crimes to which Hudood punishments are attached: *zina*, theft, banditry, defamation, transgression, drinking alcohol, and apostasy.

¹³¹ Case reported to and investigated by UNAMA HR, May 2010.

head of the provincial criminal investigation department then visited the crime scene, but local people also prevented them from investigating the death. Following this, the authorities have taken no further action. UNAMA HR continues to follow this case.¹³²

Community perceptions

In discussions in the provinces of Sari Pul, Jawzjan, Samangan and Balkh in the northern region, Afghans acknowledged the existence of “honour” killings. In Sari Pul, for example, the deputy head of the provincial court reported a case where a brother had killed his sister after she ran away from a forced marriage to be with her boyfriend.¹³³

In other areas, community members denied the existence of certain crimes in their area and said that “honour” killings are unknown. Male *shura* members interviewed in De Asel village, Samangan, for instance, said “honour” killings (as well as *baad* and denial of education to women) were not practiced in their district and that the community regarded them as crimes.¹³⁴ Male interviewees made similar statements denying “honour” killing in other locations. However, UNAMA HR has investigated several incidents of “honour” killings in the northern region, including one in March 2007 where a father strangled his daughter in Sari Pul province after her fiancé broke his engagement following the circulation of “indecent” pictures of the girl.¹³⁵

Some Afghans interviewed by UNAMA HR (including Pashtun women) reported that “honour” killing is most widely practiced in rural Pashtun communities.¹³⁶ The low level of “honour” killings reported in the ethnic Turkmen community was explained as: “Turkmen girls can weave carpets and fathers do not want to lose their earnings.”¹³⁷

3.9 Self-immolation as a response to harmful traditional practice and violence against women

A 20-year-old pregnant woman set herself on fire in Panjsher province in July 2009. Before she died, she explained to UNAMA HR that she had endured daily beatings from her husband and abuse from her sisters-in-law since her marriage in 2007. On the day of the incident, her husband had accused her of not being virgin on their wedding day. She poured kerosene over herself and set herself alight. She died of her injuries a few days later. The husband is currently serving a two-year prison sentence for having caused the suicide.¹³⁸

Self-immolation is one of the most tragic consequences of harmful traditional practices and violence against women in Afghanistan. The authorities investigate very few cases where family members of women who set themselves alight are alleged to have caused the act. This is due to lack of evidence, but also due to reluctance on the part of State authorities to investigate or prosecute such cases.

¹³² Investigation and interviews conducted by UNAMA HR, August 2010.

¹³³ According to the judge, the alleged perpetrator of violence was never arrested. Interview, April 2010.

¹³⁴ Interview with male *shura* members, Samangan province, April 2010.

¹³⁵ Case reported to UNAMA HR, March 2007.

¹³⁶ Interviews with head of women’s NGO, and defence lawyer, Balkh province, April 2010.

¹³⁷ Interview with construction workers, Kole Bqaal village, Aqcha district, Jawzjan province, April 2010.

¹³⁸ Investigation by UNAMA HR; information provided by provincial chief judge and the husband of the victim, UNAMA HR also spoke to the victim before she passed away, July 2009.

The ERAW law makes illegal the act of forcing another person to commit self-immolation. Similarly, under Sharia law a person who causes another person to commit suicide or harm themselves may be criminally responsible for the act.

The Government has reported that depression is the main cause for women to set themselves on fire and estimates that some 2,400 women commit self-immolation each year.¹³⁹ For most, such action is a cry for help to escape an abusive, violent family life.¹⁴⁰ Although not all women and girls who take this action intend to kill themselves, most die of their burns. Child and forced marriages, the handing over of girls to settle disputes, and sexual and domestic violence are the main causes of self-immolation.¹⁴¹

Illustrative cases

In one case reported to UNAMA HR in Herat province, a 14-year-old girl who was engaged at the age of two and married at 10 to her cousin tried to kill herself four times due to the domestic violence she faced; her cousin refused to grant her a divorce.¹⁴²

In Nimroz province, in May 2010, a 13-year-old girl died after dousing herself with petrol and setting herself on fire. She had been married when she was 10-years old and reportedly found life with her husband and his family intolerable. The case was brought to the attention of UNAMA HR during a hospital visit; the girl died three days after she set herself on fire.

The law

Afghan National Law

ERAW Law

Article 21

If a woman is forced to self-immolation or committing suicide or use of poisonous chemicals, the perpetrator shall, in case of injury or infirmity, be sentenced to medium-term imprisonment, or long-term imprisonment not exceeding 10 years, in case of death of the victim.

Sharia Law

Sharia prohibits self-immolation, self-harm, and committing suicide:

The Holy Koran states:

“And cast not yourselves to perdition with your own hands, and do good (to others)”

(Surah, 2 Al-Baqara, verse 195).

¹³⁹ *Suicide rate soars amongst Afghan women*, Xinhua, 31 July 2010.

¹⁴⁰ As reported in discussions/interviews throughout the country, March/April 2010.

¹⁴¹ *Ibid.*, and based on analysis of cases investigated by UNAMA HR.

¹⁴² Case reported to UNAMA HR by the provincial prosecution office, Herat province, November 2010. The case is pending with the court; the girl's husband has reportedly fled to Iran.

Sharia law experts consulted by UNAMA HR stated that suicide is prohibited in Islam and is considered a sin (*haram*) but it is not a punishable offence. In some situations where a person commits or attempts to commit suicide under duress, the person responsible for the pressure could be regarded criminally responsible for the act.

In 2007, provincial health authorities in the western city of Herat established a special burns unit. It handles eight to 10 self immolation cases a month, 40 per cent more than in 2009. The doctors estimate there are likely an equal number of cases in the province they do not see, as such incidents occur far from the city, or the victims are left to die. One woman was found by accident 15 days after she had set herself alight; she had been raped by her father-in-law and brother-in-law and wanted to die.¹⁴³ The vast majority of victims are women aged 15 to 25; most are poor and illiterate. The doctor in charge of the unit explained, *“Forced marriages lead to problems. Young women married to old men, sold, swapped for sheep or even opium. Sometimes girls are engaged to babies.” These women are under pressure from “abusive husbands and equally from women, mainly mothers-in-law. They sometimes go to mullahs and community councils to ask for help, but even there they face humiliation and abuse.”* The doctor is firm that the key to eradicating cases of self-immolation is to end the practice of forced marriage.¹⁴⁴

3.10 Running away as a response to harmful traditional practices and violence

The father of 16-year old girl from Logar province sold her in marriage to an elderly man. She ran away with a boy to Jalalabad. Police arrested her and charged her with “running away” and *zina*. She was detained in Logar juvenile correction centre where she was allegedly raped. The primary court sentenced her to seven years imprisonment and transferred her to a juvenile correction centre in Kabul. Later, her father gave her younger sister in *baad* to the old man.¹⁴⁵

UNAMA HR found that when social and cultural circumstances do not allow women and girls to oppose harmful traditional practices, or to escape violence, they sometimes resort to running away. In Panjsher province, for example, running away (*shingari*)¹⁴⁶ is quite common. Girls run away to escape forced engagements but also to elope with the man of their choice.

While “running away” is not a crime under Afghan law, law enforcement authorities often arrest, jail and even prosecute girls for running away, usually qualifying the charge as

¹⁴³ As reported in *Desperation drives abused women to suicide by fire*, AFP, 28 September 2010.

¹⁴⁴ Ibid.

¹⁴⁵ Case reported to and investigated by UNAMA HR, January 2010.

¹⁴⁶ There are different types of *shingari*: a) when the boy and girl are both willing to get married but the families/ communities oppose it, there is a risk of “running away”; b) if the girl was already “engaged” when *shingari* happens, then usually the tradition is to give another girl in compensation to the family of the man she was initially engaged to; c) for ordinary *shingari* (when both the boy and girl are willing to get married and the families do not really oppose it) usually gifts decided by elders are considered as sufficient compensation.

“intention” to commit *zina* (sexual intercourse outside of marriage).¹⁴⁷ Under Article 425 of the Penal Code a man who elopes with a woman who is 18 years or older is not deemed to have committed an act of kidnapping.¹⁴⁸ This implies that a woman, aged 18 or above, who “runs away” to marry is not guilty of a crime.

Running away can lead to conflicts among families or communities. Sometimes, as in the case mentioned above, families are compelled to give away another girl through *baad*. Runaways also sometimes face the risk of being murdered in “honour” killings by their relatives.

Illustrative case

Women and girls often run away to escape violence in the home. Often the root cause of many problems is a harmful traditional practice such as child marriage. UNAMA HR investigated an incident in Farah province involving a 14-year-old girl who was abducted and forcibly married when she was 9-years old. The girl said that her father-in-law beat her because she refused to have sex with him. Her husband and mother-in-law also abused her because they believed she engaged in sexual relations with her father-in-law.

UNAMA HR officers interviewed the girl and saw that she had two broken fingers and that oil had been poured on her body (allegedly by her father-in-law), her feet had also been burnt (allegedly by her mother-in-law). She also claimed that her husband had tied and hung her by her hands for one night. The girl’s father referred her case to the police (who removed the girl from her in-laws) and to the Department of Women’s Affairs. DoWA sent the girl to hospital and asked the police to arrest the perpetrators. To date, the local police have taken no action due to their familial/tribal relationship with the family. UNAMA HR has continued to raise the case with appropriate authorities.¹⁴⁹

Treatment of women who “run away” by Afghan courts

In August 2010 the High Council of the Supreme Court, in “approval number 572”¹⁵⁰ instructed prosecutors on how to handle “run away” cases. According to the instruction, courts should assess whether the runaway is single or married, the cause and motive for running away, and the place to which the woman has run (a relative’s or stranger’s house). If a woman runs to escape harassment and disturbance by family members, and goes to a relative’s house, to the house of a legitimate *mahram*, or to a justice institution, then the incident shall not be regarded as a crime from the Sharia perspective. Conversely, if the woman goes to a stranger’s house, although the reason for running away may be to escape ill treatment, the instruction states that she exposes herself to

¹⁴⁷ Based on numerous discussions UNAMA HR officers have had with law enforcement officials. The police arrest women who have “run away” on the premise that she intends to commit *zina* (sexual intercourse outside of marriage) which is crime under the Afghan penal code as well as under Sharia law.

¹⁴⁸ Article 425 of the Penal Code states, “A person who carries off a girl, who is 18 years or over, at her own will from her parents’ residence for the purpose of lawfully marrying her, shall not be deemed as having committed an act of kidnapping.” This is in line with Article 80 of the Civil Code which states, “when a wise girl attaining her majority age marries, her marriage shall be binding.”

¹⁴⁹ Case investigated by UNAMA HR, August 2010.

¹⁵⁰ Approval no. 527, a directive or instruction, was articulated in a letter, dated 1 August 2010, from the High Council of the Supreme Court, which was sent in response to a communication from the International Development Law Organization requesting clarification on the legal basis of arrest and prosecution for the crime of “running away.” The response received was shared with UNAMA HR. The circular was also published in *Islah Daily newspaper* 25 August 2010.

crimes such as “adultery and other associated offences” that, according to the High Council, are illegitimate under Sharia and thus prohibited and punishable.

The instruction could appear to represent a positive step against the common practice of arresting girls who run away. Closer analysis, however, suggests that the Court is using article 130 of the Constitution (which allows for courts to apply *Hanafi* jurisprudence in circumstances where there is no clear provision under criminal laws) to legitimize a traditional practice that restricts women’s movement and has no basis under Sharia law.

Islamic law experts consulted by UNAMA HR are of the view that the instruction is both unrealistic and contrary to Sharia law.¹⁵¹ Women facing violence may not have immediate access to their family or law enforcement institutions, or they may not trust family members or State authorities and prefer to rely on a “stranger,” such as a neighbour, to seek protection. Moreover, the crime of *zina* under Sharia law applies equally to males and females. Intention to commit *zina* has no legal basis in Sharia. The instruction is thus based on an assumption that the act might occur, as the women has exposed herself to the possibility. UNAMA HR takes the view that this instruction conflicts with constitutional guarantees of gender equality as well as articles 31 (forced isolation) and 35 (denial of access to education, work, and access to medical services) of the EVAW law.

Perceived contradictions between international law, Sharia law, and national laws may be resolved by the Government promoting a comprehensive interpretation of Sharia law that harmonizes, rather than undermines national laws that give effect to Afghanistan’s international human rights obligations. UNAMA HR suggests that the High Council of the Supreme Court revise this instruction in line with constitutional guarantees, national and Sharia law, and Afghanistan’s international human rights obligations.

3.11 Effects of harmful traditional practices on women’s access to education and adequate health care

Harmful traditional customs exacerbate several other challenges facing Afghanistan in promoting women’s enjoyment of human rights, including access to education and the right to health. Child marriage is the most lasting and destructive of these practices in the scale of its consequences. A girl married at 12 years will be unable to continue her education, and may become pregnant when she is a young teenager, physically and mentally unprepared for motherhood.

Under the EVAW law prohibiting a woman/girl from accessing her right to education is a criminal offence. Islam also teaches that men and women have the same rights and that it is the duty of all Muslims to strive to learn. The Constitution of Afghanistan also guarantees the right to education for all citizens as well as the provision of adequate health care.

Right to health

Medical practitioners¹⁵² described to UNAMA HR the gynaecological problems that arise from early sex and childbirth. They include vaginal laceration, ruptured uterus, and

¹⁵¹ UNAMA HR consulted Islamic legal experts on the circular and asked them to provide a legal opinion based on Sharia law, October 2010.

¹⁵² Interview with obstetric and gynaecological doctors, Jawzjan province, April 2010.

urethra-vaginal fistula¹⁵³. Doctors in Balkh province informed UNAMA HR that they observed this latter condition in a 14-year-old child, whose 50-year-old husband reportedly refused to pay for her medical treatment, stating that he would rather save the money and marry another wife.¹⁵⁴

In developing countries generally, adolescent pregnancy is one of the leading causes of high maternal mortality. Girls who give birth before the age of 15, at an age when their bodies are not ready for childbirth, are five times more likely to die during pregnancy and childbirth than women in their 20s.¹⁵⁵

Afghanistan has the worst maternal mortality rate in the world.¹⁵⁶ It is linked to early marriage, frequent pregnancies, and lack of awareness linked to low levels of literacy, among other factors.¹⁵⁷ This amounts to around 24,000 deaths per year, many of them girls under the age of 18. A child born to a girl under the age of 18 has a 60 per cent greater chance of dying in the first year of life.¹⁵⁸ In Afghanistan, maternal mortality represents ten times more deaths (24,000 per annum) than conflict-related civilian deaths (UNAMA HR recorded 2,412 conflict-related civilian deaths in 2009¹⁵⁹).

Early marriage harms not only the girl child but also the infant she bears. Premature birth, low birth weight and poor mental and physical growth are frequent characteristics of babies born to young mothers.

Many women and medical personnel interviewed by UNAMA HR said that child brides often have little or no experience or understanding of how to care for newborn babies. They mentioned incidents where young inexperienced mothers accidentally burned or suffocated babies.¹⁶⁰

Social pressure on young brides to bear children immediately after marriage is huge.¹⁶¹ Most child brides are poor and have had little or no schooling; they rarely have information or services on family planning or standing with their husband to delay childbirth. The right to decide freely and responsibly on the number and spacing of

¹⁵³ Fistula is a condition where the vagina, bladder and/or rectum tear during childbirth, usually because a girl's body is not sufficiently developed to cope with childbirth. Untreated, fistula causes lifelong leakage of urine and faeces.

¹⁵⁴ Interviews with medical practitioners, Balkh province, April 2010.

¹⁵⁵ Saranga Jain and Kathleen Kurtz, *New Insights on Preventing Child Marriage: A Global Analysis of Factors and Programmes*, International Center for Research on Women, April 2007 (quoting UNFPA and University of Aberdeen research); also see, *Afghanistan warns more investment needed to meet MDGs 4 and 5*, joint press release, (Government of the Islamic Republic of Afghanistan, WHO, UNICEF, UNFPA), 22 September 2010.

¹⁵⁶ Maternal deaths have fallen from 1,600 per 100,000 live births in 2001 to 1,400 in 2010, but this figure still represents the worst level in the world. See, *Afghanistan warns more investment needed to meet MDGs 4 and 5*, joint press release, (Government of the Islamic Republic of Afghanistan, WHO, UNICEF, UNFPA) 22 September 2010; and, *Trends in Maternal Mortality: 1990 to 2008 Estimates developed by WHO, UNICEF, UNFPA and The World Bank*, 2010.

¹⁵⁷ Ibid, press statement, stated by the Acting Minister of Public Health, Government of the Islamic Republic of Afghanistan.

¹⁵⁸ Ibid.

¹⁵⁹ See, UNAMA HR report, Annual Report on Protection of Civilians, 2009.

¹⁶⁰ Interview with a group of Afghan women, Chemtal district, Balkh province, April 2010.

¹⁶¹ Based on focus group discussions UNAMA HR held with Afghan women, March-April 2010.

children is recognized under international human rights law,¹⁶² and a violation of a woman's reproductive rights constitutes violence against women.¹⁶³

Better collection of information and data on child marriage in Afghanistan is crucial to inform strategies on how to eradicate this harmful practice. Such information gathering can be carried out by humanitarian actors. The World Food Programme, for example, supports breast-feeding mothers through nutrition programmes, and tracks the age of the children receiving assistance but not the age of the mothers.¹⁶⁴ Collection of data on the age of mothers would provide valuable information and enable more targeted programmatic responses.

As highlighted above, the practice of denial of freedom of movement or tightly restricting women's ability to travel is widespread in Afghanistan. This, in turn, also leads to denial of access to health services.

Right to education

Ten-year-old Shanaz, in Nimroz province, objected to marriage with a 45-year-old man that her father had arranged. She was in school and wanted to continue her studies. Her father was contrite, but said he was poor and needed money to treat an illness. The case came to the attention of the provincial Commission for Eliminating Violence against Women, (which includes representatives of the police, the prosecutor, court, and the Department of Women's Affairs) and they warned those involved that marrying Shanaz was illegal. In response, the father returned the money to the man and gave a guarantee to the provincial Commission for Eliminating Violence against Women that he would not marry his daughter so young. Shanaz is continuing her education.¹⁶⁵

Denial of education for girls is a harmful traditional practice and a violation of fundamental human rights guarantees. It is also one of the most severe consequences of child marriage due to the ramifications of this practice on the development of a girl child. Denial of the right to education is a cause of child marriage and a symptom of this harmful practice. Child marriage therefore not only destroys a child's life but also the child's life potential.

Traditional practices coupled with security concerns represent the biggest obstacle to girl's education in Afghanistan.¹⁶⁶ UNAMA HR's takes the view that excluding half of the potential workforce of a country – its women – from public life, including accessing education, also adversely impacts the country's full economic and development potential.

The adult literacy rate for all Afghans over 15 years old is 28 per cent; for women alone it is 12.6 per cent.¹⁶⁷ Girls who marry as children almost never continue with their education. Young brides take on heavy domestic chores, new restrictions on their

¹⁶² Article 16(1) of CEDAW ensures "the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights."

¹⁶³ Coomaraswamy report, *Cultural practices in the family that are violent towards women*, op. cit., para 90.

¹⁶⁴ Information provided to UNAMA HR by WFP, October 2010.

¹⁶⁵ Incident investigated by UNAMA HR and DoWA, April 2010.

¹⁶⁶ Based on interviews and discussions with Afghan men and women throughout the country, March-April 2010.

¹⁶⁷ See, Afghanistan Human Development Report 2007.

mobility, the birth of children, and social norms that view marriage and schooling as incompatible.¹⁶⁸ Pressure comes from many directions, including the families of other students, who do not want their daughters attending school with married girls.

The low regard in which Afghan society holds females and the early age at which they are married and sent away from their parents contributes to many families keeping girls at home rather than allowing them to attend school.¹⁶⁹ Families of girls who attend school may force them to drop out when they reach puberty, to protect them from possible harassment and insecurity on the way to school. Insufficient schools and resources for education, lack of female teachers, and threats from anti-government elements all contribute to keeping girls out of school.¹⁷⁰

The law

Afghan National Law

The Constitution of the Islamic Republic of Afghanistan

Article 43

Education is the right of all citizens of Afghanistan, which shall be provided up to the level of the B.A. (*lisâns*), free of charge by the state.

The state is obliged to devise and implement effective programmes for a balanced expansion of education all over Afghanistan, and to provide compulsory intermediate level education.

Article 52

The state is obliged to provide free means of preventive health care and medical treatment, and proper health facilities to all citizens of Afghanistan in accordance with the law.

EVAW Law

Article 36

If a person who prohibits a woman from the right of education, work and exercising her other rights as provided by law, considering the circumstance the offender shall be convicted to short-term imprisonment not more than 6 months.

Article 6

A victim of violence has the right to:

- 3) Free access to emergency health services.

¹⁶⁸ *Afghan perspectives on child marriage causes consequences and solutions* – Annex II of report *The Impact of Gender-based Violence on Females Reproductive Health*, Medica Mondiale.

¹⁶⁹ Based on interviews and discussions with Afghan men and women throughout the country, March-April 2010. Some men and women UNAMA HR interviewed said that many families do not invest in educating their daughters as once married they will become someone else's "property."

¹⁷⁰ This was reported in a number of discussions/ interviews. Also in some areas there are communities where there are no girls' schools, for instance Paryan district in Panjsher, Khalzai village in Parwan province, and a number of districts in Kapisa Province.

Sharia Law

Right to education

Islam entitles women to the same rights to education as men. The following verses of the Holy Koran emphasize that males and females should strive to learn and both have same rewards.

Say (unto them, O Muhammad): Are those who know equal with those who know not? But only men of understanding will pay heed. (39:9)
He grants wisdom to whom He will, and whoever is granted wisdom, he truly has received abundant good. But none remember except men of understanding. (2:269)

And of men and beasts and cattle, in like manner, divers hues? Only those of His servants who possess knowledge fear Allah. Verily, Allah is Mighty, Most Forgiving. (35:28)

The Prophet of Allah said:

"Seeking knowledge is compulsory for each and every Muslim" (i.e. both male and female)

(Ibn Majah, 224 al-Baihaqi)

Sharia law experts consulted agreed that the words "Muslim" or "all people" when used in revealed scriptures, includes both males and females. Thus, Islam entitles women to the same right to education in order to understand religious and social obligations. It obliges both to raise children in the best manner, in accordance with the right Islamic guidance. Moreover, Hazrat Aisha, the wife of the Prophet, was a great scholar; she narrated many *Hadith* and taught followers of the Prophet. She contributed much to enhance the Prophet's followers' knowledge of the personal life of the Prophet. Without her contribution Muslims would be deprived of many sources of Islamic knowledge. Hazrat Aisha was an educated and literate person in an age when most men were illiterate. The same is true of some of the other women in the Prophet's family, such as Hazrat Zahra and Hazrat Zainab.

The Prophet also said:

"Whoever follows a way to seek knowledge, Allah will make easy for him a way to paradise."

In other *Hadith*, Abud Darda narrated:

I heard the Apostle of Allah say: If anyone travels on a road in search of knowledge, Allah will cause him to travel on one of the roads of Paradise. The angels will lower their wings in their great pleasure with one who seeks knowledge, the inhabitants of the heavens and the Earth and the fish in the deep waters will ask forgiveness for the learned man. The superiority of the learned man over the devout is like that of the moon, on the night when it is full, over the rest of the stars. The learned are the heirs of the Prophets, and the Prophets leave neither dinar nor dirham (Arab currencies); leaving only knowledge, and he who takes it takes an abundant portion.

(Translation of Sunan Abu-Dawud).

Right to Health

Even if there is no particular verse or *Hadith* to be quoted, the Holy Koran and *Hadiths* emphasis on cleanliness is relevant.

The Prophet said, cleanliness is part of belief. He also said cleanliness is half *Deen*. Injunctions of Islam address both men and women equally; no one can claim that they deny women access to health care.

The following verse of the Holy Koran ordered men to provide women with the equal accommodations and ease their lives.

“Lodge them where ye dwell, according to your wealth, and harass them not so as to straiten life for them. And if they are with child, then spend for them till they bring forth their burden. Then, if they breast feed for you, give them their due payment and consult together in kindness.” (65: 6)

Denial of education and the link to child marriage

In one study of 200 child marriages in Afghanistan by the Women and Children Legal Research Foundation, most of the girls interviewed had been denied their right to education.¹⁷¹ Illiteracy and lack of access to schools in rural areas, low levels of awareness in the laws of the country and Sharia, and low levels of awareness of the harms and negative consequences of childhood marriage, are the key causes of child marriage. In this particular study, the majority of parents – 71 per cent – who forced their child daughters to marry were illiterate. Illiteracy levels of parents are thus also a highly significant causal factor of child marriage. Of the girls who took part in the study, 70 per cent who married in early childhood were illiterate.¹⁷²

Empowerment through education lies at the heart of reducing the harmful practice of child marriage in Afghanistan. Today’s child brides often become the impoverished and illiterate mothers of tomorrow, who may in turn, marry off or engage their own daughters at an early age. Mothers who have attended school are often more likely to recognize the value of learning for their children, as well as being more aware of health and nutrition, leading to lower maternal and infant mortality rates.¹⁷³

The world’s poorest countries have highest child marriage rates. Studies reveal that higher levels of schooling for girls decrease their risk of child marriage. Girls with eight or more years of education are less likely to marry young than girls with zero to three years of school.¹⁷⁴ Compulsory education up until the age of 16 significantly decreases the chances of early marriage.

Given that post-primary education is a significant determinant of whether a girl will marry before the age of 18, incentives aimed at keeping girls in school need to be accelerated

¹⁷¹ *Early Marriage in Afghanistan*, Women and Children Legal Research Foundation, 2008.

¹⁷² *Ibid.*

¹⁷³ See: Saranga Jain and Kathleen Kurtz, *New Insights on Preventing Child Marriage: A Global Analysis of Factors and Programmes*, International Center for Research on Women, April 2007; and *Child Marriage and the Law*, Legislative Reform Initiative Paper Series, UNICEF, January 2008.

¹⁷⁴ *Ibid.*, Survey findings in Bangladesh reveal that post-primary education is the most significant factor associated with whether a girl will marry before the age of 18, see p.20.

as measures to eradicate harmful traditional practices. The World Food Programme, for example, provides oil, as take home rations, for girls in grades one to nine, to offer incentives to attend school in areas where the gender disparity for school enrolment is equal to more than 25 per cent.¹⁷⁵

4. State Responses to Harmful Traditional Practices

4.1 Implementation of the EVAW law to date

The EVAW law represents a major step forward by the Government in meeting its obligations to promote and protect the rights of women and girls. Passed in August 2009, the EVAW law requires commitment and engagement from the highest levels of Government to ensure its adequate implementation.

UNAMA HR, through discussions with law enforcement personnel and investigation of individual cases, found that the police and the judiciary are becoming increasingly aware of the EVAW law's existence. They have, however, received little or no guidance from national-level authorities on how to apply the law, particularly in relation to other criminal laws. In many rural and remote provinces, the law remains both unknown and unimplemented.

Herat province is ahead of most other provinces in prosecutions under the EVAW law. Led by a female chief provincial prosecutor, prosecutions were initiated under the EVAW law starting from August 2009. As of November 2010, prosecutors had filed charges under the EVAW law in 88 cases.¹⁷⁶ According to the chief prosecutor, initial reluctance to use the law went away after training and capacity building assistance provided by the international NGO International and Development Law Organization.¹⁷⁷

At the national level the Special Violence against Women Unit¹⁷⁸ of the Attorney-General's Office officially opened in March 2010. It has received a total of 132 complaints through August 2010 mostly from Kabul, but also from 12 other provinces. Complaints concerned domestic violence, forced and underage marriage, sexual assault, the giving away of girls in *baad* to settle disputes, as well burning/ use of chemical substances to harm a women. Eleven prosecutions are currently under way.¹⁷⁹

¹⁷⁵ Based on information obtained from the World Food Programme, October 2010. During 2010, WFP aim to provide oil incentives to around 6,500 secondary school students (grades 10-12) and 469,00 primary school students (grades 1-6) and as well as to approximately 20,000 teacher training programme participants.

¹⁷⁶ Based on information received from the prosecutor's office by UNAMA HR in November 2010, 66 prosecutions have been initiated under Article 22 of the EVAW law (causing injury of disability) as well as article 409 of the Penal Code. Given the requirement under Article 37 of the EVAW law, that requires a complaint to be filed by a victim or her attorney for a prosecution to be initiated, some prosecutions are dropped if a victim withdraws her complaint. A murder, which involved an attempted forced marriage, has led to a conviction and sentence of 16 years imprisonment for the perpetrator.

¹⁷⁷ Interview with chief provincial prosecutor, Herat, November 2010.

¹⁷⁸ The Unit has 22 staff and its objectives are to investigate and prosecute cases of violence against women, encourage mediation of domestic disputes and referral of cases to the Unit, coordinate stakeholders working on violence against women, ensure sufficient resources to support the Unit. Information provided by European Union Police Mission in Afghanistan, August 2010.

¹⁷⁹ As per information provided by European Union Police Mission in Afghanistan, August 2010.

Prosecutors used the EVAW law in a case in Dai Kundi province where a mullah was accused of raping two teenage girls, but ultimately the conviction in the case was made based on relevant provisions of the penal code. In this case, the court sentenced one of the victims to four years of “home confinement” – something that would appear to be illegal under EVAW law.¹⁸⁰

The Government has set up a national Commission on Elimination of Violence against Women¹⁸¹ and has taken steps to establish provincial Commissions that mirror the national commission in function and membership. At the end of October 2010, provincial commissions existed in 22 provinces.¹⁸² In some areas, security concerns have so far blocked their establishment.

Early analysis of the commissions reveal problems of absenteeism by Government representatives at monthly meetings, lack of knowledge of the EVAW law by local officials, and weak leadership by provincial Departments of Women’s Affairs, who chair the commissions. Lack of mechanisms for referral of cases and weak coordination among members are also some of the challenges facing the new institutions.

UNAMA HR believes that adequate implementation of the EVAW law requires investment in building the capacities of law enforcement personnel, training and awareness-raising to enable civil society organizations to monitor implementation, and education for the general public about the law and what it criminalizes.

4.2 Law enforcement and access to justice

UNAMA HR has found that the police and judiciary often do not act as impartial enforcers of the law. In focus group discussions throughout Afghanistan, UNAMA HR heard that laws protecting women go largely unimplemented. Law enforcement authorities often reinforce harmful traditional practices rather than actively challenge them, as they are required to do by law.

When officials’ judge cases according to their own standards and values and not according to the law, the rule of law is undermined as is public confidence and trust in

¹⁸⁰ The alleged rapes took place in Dai Kundi province, the incident was initially reported to UNAMA HR in March 2010. UNAMA HR followed all legal proceedings and continues to follow the case and raise concerns with appropriate authorities.

¹⁸¹ In June 2005, the Government established a National Commission on the Prevention of Violence against Women; this was transformed into the national Commission on Elimination of Violence against Women following enactment of the EVAW law. In June 2010, the Council of Ministers approved the Commission’s proposal for commissions to be established at the provincial level. The commissions’ functions include: research on the causes of violence in the country; determining appropriate preventive measures; designing publicity and public awareness programmes to prevent violence against women; coordinating activities of relevant Government and non-governmental agencies for combating violence; collecting statistics and figures related to violent crimes; proposal of regulations and adoption of relevant procedures for better implementation of the EVAW law; request and follow-up on information on cases of violence before the police, prosecutor’s office and courts, and the preparation of an annual activity report on violence to the Council of Ministers. Members of the national and provincial commissions include the ministries of: Women’s Affairs (chair – in the provinces the ministry is represented by DoWA), Interior, Justice, Public Health, Information and Culture, Education, Higher Education, Labour, Social Affairs, Martyrs and the Disabled, Hajj and Religious Affairs, (at the national level the representation is at deputy minister level), and the Attorney General’s Office, and Afghan Independent Human Rights Commission.

¹⁸² According to the Ministry of Women’s Affairs and UNAMA HR field offices, provincial commissions on EVAW have been established to date in Kapisa, Wardak, Bamyan, Dai Kundi, Badakhshan, Takhar, Baghlan, Kunduz, Balkh, Samangan, Jawzjan, Faryab, Herat, Farah, Nimroz, Kandahar, Helmand, Uruzgan, Ghazni, Nangahar, Laghman, Kunar.

the judicial system. Laws that prohibit and criminalize practices that violate the integrity and dignity of women, including the EVAW law, will have little effective impact on the lives of Afghan women if they remain unimplemented.

The Government has the obligation to take the necessary steps to implement existing legislation and ensure that women have the right to equality *before* the law and equal protection *of* the law. The State has a positive obligation to prevent and respond to violence against women in all spheres of life – whether the violence is committed by State representatives or private individuals and organizations. Under international law, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of human rights or to investigate and punish acts of violence.¹⁸³

Illustrative cases

UNAMA HR investigated a case where police arrested and detained a 17-year-old female in Jalalabad city of Nangarhar province when they found her alone in a hotel room. They accused her of intent to commit adultery (*zina*) based on where they found her. UNAMA HR investigated the case and concluded that the women had been forced to marry a man at the age of 13 and had been subjected to domestic violence by her in-laws. The girl was a victim of child marriage, had been denied an education, forbidden to visit her own family or leave her in-laws' house, and physically abused. When the girl attempted to escape this violence, the police arrested for adultery.¹⁸⁴

In 2009, the Khost health department reported a case to UNAMA HR where it admitted to hospital a 17-year-old girl whose father had attempted to cut her throat after she refused to marry a man he had selected. Authorities took no criminal action against the girl's father, treating the case as a private family dispute.¹⁸⁵

A selective approach to justice

The two cases referred to above illustrate how authorities may take a selective approach to administering justice, often becoming actively involved where a woman is perceived to transgress social norms and ignoring violence against women perceived to be a “private” issue. The double standards at play are stark.

Afghans participating in UNAMA HR focus group discussions throughout the country cited inaction by law enforcement officials as one of the main factors that perpetuate harmful traditional practices. Many abuses against women, they stated, are never reported to police and prosecutors for a range of reasons. These include lack of public confidence in the judicial system, lack of availability of sufficiently trained personnel, including female police officers, as well as taboos against reporting crimes of sexual violence and fears by victims of violence that the justice system may re-victimize them.

Due to entrenched cultural beliefs about the status of women, UNAMA HR has found that in many instances judicial officials have tended to punish female victims of violence rather than perpetrators. This situation is demonstrated by the large number of women detained in Afghan prisons for “moral crimes.” In August 2010, according to UNAMA HR figures, prisons held 565 females (both pre-trial and convicted male prisoners) for “moral

¹⁸³ See footnote 11, CEDAW Committee General Recommendation No. 19, 1992. Also see UN General Assembly Declaration on Violence against Women, 1993, A/RES/48/104.

¹⁸⁴ Case investigated by UNAMA HR, January 2010.

¹⁸⁵ Reported to UNAMA HR in an interview with the Director of the Public Health Department, 25 May 2010.

crimes.” Approximately half of the country’s female prison population is detained for “moral crimes.”¹⁸⁶

Recent improvements in the State’s response to cases of violence against women

UNAMA HR has observed some improvement in the way that Afghan authorities respond to cases of violence against women. As illustrated by some of the cases highlighted earlier in this report, police have at times acted in the interests of women. For example, in one 2009 case in Khost province, a paternal uncle had arranged for a young girl to be married to an older man. Her mother reported the case in Kabul, stating that the girl was 13, and not 18, as the uncle had asserted, and that the uncle had no right to arrange her marriage. Authorities in Kabul ordered the uncle’s arrest and transfer to Kabul for questioning.¹⁸⁷ The chief prosecutor of Khost informed UNAMA HR that the girl’s father and grandfather resolved the case and the girl was not married.¹⁸⁸

State authorities have also, in some instances, supported engaged girls who objected to their forced marriage. In December 2009, in an incident investigated by UNAMA HR, a 12-year-old girl and her family in Nimroz province opposed following through on marriage contracted when the girl was two years old to a 60-year-old man. The girl’s father had received 1,000 US dollars in exchange and it was agreed that the girl would be sent to live with her “husband” when she was older; her father was to receive another 1,000 US dollars at this time. When, 10 years later, the man asked to formalize the marriage, the girl objected saying she had not agreed to the marriage and that she would not be the wife of a 70-year-old-man. The family returned the money and the police, prosecutor, and judge warned the man that he could not marry the girl by force.¹⁸⁹

Such instances can demonstrate to communities the State’s willingness to enforce laws that protect women’s rights.

Traditional mechanisms of dispute resolution

Investigating and prosecuting authorities, in the eastern region¹⁹⁰ for example, sometimes refer cases involving harmful traditional practices to traditional dispute resolution mechanisms instead of taking action themselves. In most Afghan communities, people rely heavily on *jirgas* and *shuras*,¹⁹¹ which often perpetuate harmful traditional practices that victimize women.¹⁹² Even cases investigated and prosecuted by the formal judicial system may also go to community mechanisms. For example, a court may sentence a rapist to imprisonment, but in tandem, a community-based mechanism may decide he should marry the victim or call for a *baad* exchange.

¹⁸⁶ A sample of 70 female defendants in a prison surveyed by the Women and Children Legal Research Foundation (WCLRF) in 2008 found that most women had been imprisoned for “moral crimes,” primarily *zina* or running away. A UNODC report, *Afghanistan: Female prisoners and their social reintegration*, March 2007, based on interviews with 56 women in Pul-e-Charki prison contained similar results; half of those questioned had been charged with “moral crimes,” including “running away.”

¹⁸⁷ Interview with head of the prosecution office, Khost province, 5 April 2010.

¹⁸⁸ Case investigated by UNAMA HR.

¹⁸⁹ Case investigated by UNAMA HR, December 2009.

¹⁹⁰ The region includes the provinces of Nangahar, Lagman, Kunar and Nuristan.

¹⁹¹ *Jirga* is a Pashto word that means a gathering of tribal elders; a *shura* is a Dari phrase meaning council of elders.

¹⁹² As noted in UNAMA HR/OHCHR report *Silence is Violence*, op. cit.

Although rare, elders and religious leaders, acting as part of traditional mechanisms sometimes take measures to protect women and children. In September 2010, UNAMA HR learned that two girls, aged five and seven, had been given away under *baad* in Mehtarlam city, Laghman province. Reportedly, the girls' father had obtained a second wife on the premise that he would give an older daughter in exchange. That girl, a teenager, fled when she learned of the arrangement. The ensuing dispute led the father to agree to give his two small daughters as "compensation" to the father of his new wife. Despite repeated calls from concerned organizations and individuals, including UNAMA HR, the police failed to take any action. Village elders finally formed a *jirga* and decreed that the children should go back to their family and that their father pay 40,000 Afs (approximately 930 US dollars) to the aggrieved party.¹⁹³

Afghanistan is currently considering¹⁹⁴ a draft law proposed by the Ministry of Justice to define the relationship between the formal and traditional systems of dispute resolution seeking to have the two systems operate together to improve access to justice and compliance with Afghan laws – including the EVAW law. If equipped with sufficient implementing and monitoring and oversight mechanisms, the new law could serve to decrease some harmful traditional practices, and protect and promote the rights of women and girls.

5. Role of Religious Leaders

UNAMA HR has observed that often community elders and religious leaders do not act in the interests of women, and their actions can perpetuate harmful practices against women.

Many Afghans interviewed for this report, both male and female, stated that the way forward is to provide religious leaders with training and education¹⁹⁵ so that their "moral voice" can inform local communities that harmful practices that discriminate against women are not compatible with Islamic law.¹⁹⁶

In Herat province, in May 2010, the *ulema* council issued an edict banning women from travelling abroad without a *mahram*, (a husband, father, brother or other approved escort) even during the Hajj.¹⁹⁷ It also condemned women working for foreign organizations and said their fathers and husbands have a religious duty to prevent such acts. Conservative, traditional members of *ulema* councils who issue proclamations of this nature often do not explain their reasoning or clarify the religious sources they rely on. Greater explanation and clear statement of religious sources used would enhance open discussion on Islamic principles and jurisprudence.

¹⁹³ Case investigated by UNAMA HR, September 2010.

¹⁹⁴ International partners including UNAMA HR are involved in discussions.

¹⁹⁵ "Religious scholars should be selected and trained on a broader study of the Koran and its modern interpretations, as in, for example, Egypt and Malaysia." Interview with group of five members of the Council of Shia Religious Scholars, Balkh province, April 2010.

¹⁹⁶ For example, "Mullahs should be trained and equipped with Islamic values against [such practices] because they can play a major role in increasing awareness amongst the communities." Interview with defence lawyer, Balkh province, April 2010. Other men and women interviewed throughout the country made similar statements on the role of religious leaders.

¹⁹⁷ *Afghan Clerics impose Taliban-style restrictions on women's travel*, PAN, 26 May 2010.

[<http://www.rawa.org/temp/runews/2010/05/26/afghan-clerics-impose-taliban-style-restrictions-on-womens-travel.html>]

There are many examples of religious leaders speaking out in favour of women's rights. At a conference organized by UNAMA HR to mark International Women's Day, in March 2010, in Jalalabad, 15 *ulema* members from Nangarhar province unanimously vowed to immediately start raising-awareness against harmful practices in their teaching at mosques.¹⁹⁸ As illustrated earlier in this report, UNAMA HR also found examples of religious figures taking leadership to condemn exchange marriages and high bride price and to help to reduce or eradicate certain practices. Elders from Fayzabad district, Jawzjan province, explained:

*"We as village elders and local mullahs are struggling to make the people of our district aware of women's rights in accordance with Islamic laws and Afghan and international human rights laws at Friday prayers and other ceremonies. It is stated in the Holy Koran that the most perfect woman amongst you is the one whose marriage portion (mahr) is small. This should be the advice for all families who are asking for a bride price. It is the word of God"*¹⁹⁹

Religious leaders have great influence in Afghanistan and should be encouraged by Government and civil society to deepen their study of Sharia and human rights. By applying comprehensive interpretations of Islam aligned with international human rights standards, religious leaders can help to change perceptions and societal attitudes that lead to harmful traditional practices.

6. Role of the Government: Promoting a National Dialogue on Islam and Human Rights

The Government could take the lead in promoting a comprehensive national dialogue on Islam and human rights. Such a dialogue could serve to minimize the influence of voices that challenge legal and social reforms aimed at realizing women's rights. The Government could highlight that many rights enshrined in international law and the Constitution of Afghanistan are in harmony with, and complement, the fundamental teachings of Islam. It is possible to preserve the diversity of cultural practices and conform to religious teaching while ensuring the fundamental human rights of women.²⁰⁰

Articles 3 and 130 of the Constitution²⁰¹ that discuss the relation of Islam to national law could be employed to strengthen and uphold rights enshrined in the Constitution. An interpretation based on seeking harmony between Islamic and international human rights law could lead to greater adherence to international standards. As highlighted in this report, the two spheres of law are usually complementary and can be mutually reinforcing. UNAMA HR suggests that such a measure could represent a critical way to eliminate harmful traditional practices and send the message the Government should be promoting.

¹⁹⁸ See: *Ulemas vow to raise public awareness on women's rights*, Afghanistan Times, 6 March 2010.

¹⁹⁹ Interview with elders and religious leaders, Jawzjan province, April 2010.

²⁰⁰ For example, Turkey has amended its civil code to abolish the supremacy of men in marriage and allows women to have a say in matters relating to the marriage. This establishes the equality of men and women in the family.

²⁰¹ Article 3 states: "In Afghanistan, no law can be contrary to the beliefs and provisions of the sacred religion of Islam." and 130 states: "When there is no provision in the Constitution or other laws regarding ruling on an issue, the courts' decisions shall be within the limits of this Constitution in accord with the Hanafi jurisprudence and in a way to serve justice in the best possible manner."

7. International Response

In addition to a wide range of bi-lateral programmes with international donors, the National Action Plan for the Women of Afghanistan (NAPWA, 2008-2018) represents the Government's national vision and policy framework to empower and eliminate discrimination against women. It is the Government's main tool to implement its commitment to protect the rights of women and girls, as guaranteed in the Constitution, the Afghan National Development Strategy, and national and international policy instruments on women.²⁰² International donors are assisting the Government to implement this policy framework.

The NAPWA includes objectives such as criminalizing and prosecuting traditional practices harmful to women – including forced and child marriage; improving knowledge and awareness of human rights and rights guaranteed under Islam, particularly the rights of women and girls; implementing long-term public campaigns on women's rights, targeting both men and women, to reduce the social acceptance of violence against women; reducing female illiteracy and improving school enrolment and retention rates for girls.²⁰³

At the July 2010 Kabul Conference, the Government and its international partners together committed to prioritizing NAPWA benchmarks and to developing a strategy to implement the EVAW law, including helping to fund services for victims.²⁰⁴

UNAMA HR believes that this “contract” between the Government and international donor countries to protect and promote the human rights of Afghan women and girls, represented by the Kabul Communiqué²⁰⁵, forms a unique opportunity to channel global resources toward the eradication of harmful traditional practices. These practices are the root cause of many of the challenges articulated in the NAPWA.

UNAMA HR urges the international community to prioritize and fully fund these commitments.

7.1 UNAMA HR's role in protecting and promoting the rights of women

In line with UNAMA's mandate²⁰⁶ UNAMA HR supports efforts aimed at the protection and promotion of the rights of Afghan women and girls. Reporting and advocacy on violence against women, in particular, is a priority area of work. Human rights officers throughout the country, in all UNAMA regional and provincial offices, monitor and regularly report on human rights abuses against women. All concerns are raised with appropriate Government authorities and individual cases are continually monitored to promote the safety and dignity of victims.

²⁰² See, National Action Plan for the Women of Afghanistan.

[http://afghanistan.unifem.org/media/pubs/08/NAPWA_EN.php]

²⁰³ Ibid.

²⁰⁴ The Final Communiqué of the 20 July 2010 Kabul Conference renews commitments by the Afghan Government to the Afghan people and by the international community to Afghanistan.

[<http://unama.unmissions.org/Portals/UNAMA/Documents/Kabul%20Conference%20Communique.pdf>]

²⁰⁵ Ibid.

²⁰⁶ As articulated in UN Security council Resolution 1917 (2010). The mandate of the Mission is renewed on an annual basis.

Together with other UN partners, local women's groups and human rights organizations, UNAMA HR is advocating for the rights of Afghan women, including in legislative reform processes that impact the rights of women, responding to issues of violence against women, and promoting women's involvement in all political and decision-making processes.

To encourage implementation of the EVAW law, UNAMA HR has undertaken a number of activities, including: wide dissemination of the EVAW law among relevant authorities; workshops and discussions with law enforcement and local authorities, as well as community and religious leaders, on Islam and human rights; and broadcast of radio programmes aimed at informing the Afghan public on women's rights and acts that the EVAW law criminalizes. UNAMA HR has also provided support to and facilitated the establishment of provincial Commissions on Elimination of Violence against Women throughout the country.

UNAMA HR underscores the importance of continual monitoring and reporting on all developments – including those linked to the current peace, reconciliation and reintegration process – to ensure that women's rights receive a central place on the agenda of all policy makers. To eradicate the many harmful traditional practices documented in this report, UNAMA HR calls for increased action and commitment to implement the EVAW law by the Government with support from international partners, religious leaders and civil society.

8. Recommendations

To the Government of the Islamic Republic of Afghanistan

- At the highest levels, including the President, continue to publicly emphasize that promotion and protection of women's rights is an integral part and main priority of peace, reintegration and reconciliation throughout Afghanistan, and a central pillar of the country's political, economic, and security strategies.
- Ensure adequate implementation of the EVAW law including prosecutions of harmful traditional practices criminalized under the law; support for victims' services and support to the national High Commission on the Prevention of Violence against Women.
- Expedite implementation of the National Action Plan for the Women of Afghanistan, in particular develop and put in place a national strategy to implement the EVAW law.
- The President could issue a decree immediately releasing from detention any women or girls charged with "running away," which is not a crime under Afghan law (usually women who run away are charged with intention to commit *zina*).
- The President could initiate a national dialogue that promotes a comprehensive interpretation of Sharia law that is consistent with national laws and Afghanistan's international human rights obligations.

Ministry of Justice

- With the Ministry of Interior, ensure that police and prosecutors apply the EVAW law, by registering all complaints of harmful traditional practices criminalized under the law and through effective investigations and prosecutions.
- With the national High Commission on the Prevention of Violence against Women, provide training and capacity-building to all law enforcement officials on the EVAW law, including recognizing, investigating, and prosecuting forced and child marriage and the practice of giving away girls to settle disputes.
- Provide legal assistance to victims of violence who file complaints under the EVAW law.
- Recommend that Parliament repeal Article 398 of the Penal Code that reduces punishment for killings perpetrated in the name of “honour.”
- With the Supreme Court and Parliament consider legislation to make registration of marriage obligatory requiring both prospective spouses to appear before a registrar.
- Recommend to Parliament the amendment of the Civil Code to make 18 years the minimum age of marriage for both men and women in line with constitutional guarantees of equality and international human rights standards.
- With the Supreme Court and the Office of the Attorney General consider conducting a national review of laws that impact women’s rights to ensure their compliance with national and international human rights standards. Ensure the active participation of Afghan civil society in any review. Following such review repeal or amend any laws that do not comply with human rights guarantees.
- Initiate assessment and review of the EVAW law and its application to identify areas for possible reform. For example, consider amending Article 39 which specifies that prosecution is initiated by the victim’s complaint to also permit a prosecutor to initiate a case.
- Ensure that the proposed law defining the relationship between the formal justice system and traditional mechanisms for dispute resolution (*jirgas* and *shuras*) improves compliance with all national laws including the EVAW law and prohibits traditional mechanisms from addressing serious violations of human rights.

Supreme Court and Office of the Attorney General

- Issue directives to the courts and prosecution offices instructing them to apply the EVAW law together with specific instructions on the law’s application including its relation to other criminal laws.
- Conduct a review of the legal basis for arresting, investigating and punishing women for “moral crimes” in view of Article 130 of the Constitution. The High Council of the Supreme Court should consider revising its judicial circular on the “crime” of “running away” so that the circular complies with constitutional guarantees, national and Sharia law, and the State’s international human rights obligations.

Ministry of Women's Affairs

- Provide targeted assistance to women to register complaints of harmful traditional practices with the police and prosecution.
- Ensure adequate support to the national and provincial Commissions on Elimination of Violence against Women; establish provincial commissions in all provinces and take measures, including training, to ensure their effective functioning.
- Conduct nation-wide campaigns to raise awareness on the ERAW law with both men and women to sensitize the public on violence against women and women's rights. Give particular focus to rural areas.
- Together with the ministries of Public Health and Education, provide support to women and girls who are victims of harmful traditional practices, through provision of shelter, psycho-social support, medical treatment and access to education.

Ministry of Interior

- Strengthen the Family Response Units in the police including by recruiting more female police officers.

Ministry of Hajj and Pilgrimage

- Develop and implement training and awareness-raising programmes for mullahs, imams and religious teachers about women's rights and the ERAW law.
- Promote and develop materials based on Sharia law that support and complement the ERAW law.

Ministry of Information and Culture

- Produce and disseminate radio and television programmes to raise awareness about the ERAW law, violence against women and its consequences, with particular focus on rural communities.

Ministry of Public Health

- Provide specific programmes for free and immediate treatment for women and girls who are victims of violence.
- Gather and analyze data on the impact of child marriage on maternal and child mortality.

Ministry of Education and Higher Education

- Develop curriculum materials for boys' and girls' schools that highlight issues of violence against women, including the legal prohibition of harmful traditional practices such as child marriage.
- Strengthen programmes to retain girls in schools—including through financial incentives to their families.

Ministry of Finance

- Provide adequate resources and support to the ministries of Women's Affairs, Hajj and Pilgrimage, Justice, Public Health, Information and Culture, Education and Higher Education to enable them to fulfil their responsibilities as required under the EVAW law.

To Religious Leaders

- Together with relevant Government ministries (Women's Affairs and Hajj and Religious Affairs) develop training programmes for mullahs, imams and religious teachers about women's rights and the EVAW law.
- Promote and develop materials based on Sharia law that support and complement the EVAW law.
- Together with the Ministry of Women's Affairs assist in the development of a nation-wide campaign that raises awareness about the EVAW law, violence against women and its consequences, with particular focus on rural communities.
- Speak out about harmful practices that are inconsistent with Islamic teaching and principles and hold open discussions among Sharia legal experts on Islam and women's rights.
- Support the President in initiating a national dialogue on Islam and human rights.
- Call on the Supreme Court to conduct a review of the legal basis for arresting, investigating and punishing women for "moral crimes" and revise its judicial circular on the "crime" of "running away."

To Civil Society (human rights and women's organizations, and the Afghan Independent Human Rights Commission)

- Encourage active implementation of the EVAW law, create programmes to oversee, monitor and publicly report on how Government institutions are implementing the law, including on prosecutions.
- Provide targeted assistance to women to register complaints of harmful traditional practices with police and prosecution.
- Conduct training sessions for religious and community leaders addressing women's rights, violence against women and harmful traditional practices, through Mosques, Ministry of Hajj and Religious Affairs, Ministry of Women's Affairs, and in association with media, elders and *shuras*.
- Ensure civil society's active involvement in any Government process aimed at reviewing laws that impact women's rights.
- Urge the Government to repeal Article 398 of the Penal Code that mitigates the crime of murder if it is committed in the name of "honour."
- Urge the Government to release all females detained for so-called "moral crimes," and revise its judicial circular on the "crime" of "running away."

To International Donors

- Increase support to Government and civil society initiatives aimed at enforcement of the EVAW law, including through training of officials, nation-wide awareness

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- campaigns, and assistance to provincial commissions on elimination of violence against women.
- Continue and increase support the Government in implementing the National Action Plan for the Women of Afghanistan; in particular in developing and putting in place a national strategy to implement the EVAW law.
 - Expand programmes that provide technical assistance and support for provincial prosecution offices, particularly aimed at implementation of the EVAW law.
 - Provide targeted support for Government and civil society initiatives aimed at eradicating child marriage and other harmful traditional practices.
 - Support extensive public awareness campaigns about the illegality of harmful traditional practices under the EVAW law.
 - Provide support for programmes targeting men's awareness on women's rights and the EVAW law.
 - Support Government and civil society educational programmes for mullahs and religious teachers on Sharia, human rights and the elimination of harmful traditional practices.
 - Expand support for programmes that provide material incentives to the families of girls who remain in school.
 - Increase support to shelters that offer a refuge for female victims of violence. Ensure that all shelters are well managed and well secured to guarantee the dignity of women assisted.
 - Call on the President to release all female detainees (pre-trial and convicted) who are charged for committing so-called "moral crimes."
 - Call on the Government (all relevant government agencies) to conduct a national review of laws that impact women's rights to ensure their compliance with national and international human rights guarantees.

Appendix I

International Legal Standards

Forced marriage

Universal Declaration on Human Rights

Article 16

- 1) Men and women of full age... have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- 2) Marriage shall be entered into only with the free and full consent of the intending spouses.

International Covenant on Civil and Political Rights

Article 23

- 2) The right of men and women of marriageable age to marry and to found a family shall be recognised.
- 3) No marriage shall be entered into without the free and full consent of the intending spouses.

International Covenant on Economic, social and Cultural Rights

Article 10

- 1) Marriage must be entered into with the free consent of the intending spouses.

Convention on the Elimination of All Forms of Discrimination against Women

Article 16

- 1) States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
 - (a) The same right to enter into marriage.
 - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent.

Child Marriage

Convention on the Rights of the Child

Article 1

A child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 3

- 1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 19

- 1) States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Convention on the Elimination of All Forms of Discrimination against Women**Article 16**

- 2) The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

Giving away of girls to settle disputes**Convention on the Elimination of All Forms of Discrimination against Women****Article 6**

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

Convention on the Rights of the Child**Article 19**

- 1) States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity.
- (b) The exploitative use of children in prostitution or other unlawful sexual practices.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Article 1

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Article 2

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration.

Inheritance rights

Convention on the Elimination of All Forms of Discrimination against Women

Article 15

- 1) States Parties shall accord to women equality with men before the law.
- 2) States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
- 3) States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

Article 16

- 1) States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
 - (c) The same rights and responsibilities during marriage and at its dissolution.

Right to education and adequate health care

Universal Declaration on Human Rights

Article 25

- 1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Article 26

- 1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

International Covenant on Economic Social and Cultural Rights

Article 12

- 1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
- 2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene;
 - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

- 1) The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
- 2) The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
 - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

Convention on the Elimination of All Forms of Discrimination against Women

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

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- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
 - (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
 - (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 12

- 1) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
- 2) States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 14

- 1) States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.
- 2) States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
 - (a) To participate in the elaboration and implementation of development planning at all levels;
 - (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
 - (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency.

Convention on the Rights of the Child

Article 24

- 1) States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
- 2) States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care.
- 3) States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

Article 28

- 1) States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.