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ACCORD – Austrian Centre for Country of Origin and Asylum Research and Documentation

Query response on Afghanistan: Rights of single mothers (widows and divorced women): Legislation and practices [a-10170]

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This response was prepared after researching publicly accessible information currently available to ACCORD as well as information provided by experts within time constraints and in accordance with ACCORD's methodological standards and the *Common EU Guidelines for processing Country of Origin Information (COI)*.

This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status, asylum or other form of international protection.

Please read in full all documents referred to.

Non-English language information is summarised in English. Original language quotations are provided for reference.

Widows

The Globe and Mail, a Canadian newspaper, in May 2016 published a series of photographs entitled "Single Mothers of Afghanistan" by documentary photographer Kiana Hayeri, who introduces the topic of the series as follows:

"There is no word for 'single mother' in the Pashto or Dari, the two major languages spoken throughout Afghanistan, yet after four decades of conflict – from the Soviet invasion to the war on terror – millions of women in Afghanistan are raising children on their own.

These women are one of Afghanistan's most vulnerable populations. Some have had to flee abusive spouses, others have lost their husbands in combat or terrorist attacks and some became pregnant before marriage and have been charged with 'moral crimes.' Widows in particular are seen as morally suspect or symbols of bad luck; In a country where few women are or have ever worked outside the home, many widows are forced into remarriage, frequently to a brother of their late husband, and those who choose to remarry outside the family risk losing custody of their children." (Hayeri, 12 May 2016)

A June 2016 article of Tolo News, an Afghan news and current affairs television network, mentions that 500,000 widows reside in Afghanistan:

"Based on statistics of the Labor, Social Affairs Ministry, 500 000 widows live in Afghanistan. Among them are 70 000 who are their family's breadwinner. About 50 percent do handicraft and 37 percent working in offices." (Tolo News, 23 June 2016)

Naheed Esar, a researcher with the Afghanistan Analysts Network (AAN), an independent non-profit research organization headquartered in Kabul that provides analysis on political issues in Afghanistan and the surrounding region, in a May 2015 article with regard to numbers of widows in Afghanistan:

"According to Beyond 9/11, a US-based non-profit group that provides direct financial support to Afghan widows and their children, Afghanistan had around 1.5 million widows in 2008, of which 50,000 to 70,000 live in the capital, Kabul. Official data on the current number of widows in the country does not exist, but both Care (in a phone conversation with AAN) and the UN estimate that today there are more than two million. (1) This amounts to one of the highest numbers of widows (proportionate to the total population) in the world." (Esar, 7 May 2015)

A December 2015 article of the National Geographic, a US magazine, states that there are over 2.5 million widows in Afghanistan, quoting Paula Bronstein, a US photojournalist who has been covering Afghanistan since 2001, as saying that some 50,000 to 70,000 war widows live in Kabul alone (National Geographic, 7 December 2015). Similar figures are provided in a 2013 article by the German international broadcaster Deutsche Welle (DW) (DW, 30 January 2013).

The UN High Commissioner for Refugees (UNHCR) notes in its April 2016 Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan:

“Women without male support and protection, including widows, are at particular risk. They generally lack the means of survival, given existing social norms imposing restrictions on women living alone, including limitations on their freedom of movement and on their ability to earn a living.” (UNHCR, 19 April 2016, p. 63)

Naheed Esar, in her May 2015 article, provides the following overview of the situation of widows in Afghanistan:

“The average age of Afghan widows is just 35 years, says Beyond 9/11. About 94 per cent cannot read and write. About 90 per cent have children, four on average. Widowed women are also at greater risk of developing ‘emotional problems and impaired psychosocial functioning than either married women or men, typically because of social exclusion, forced marriages, gender-based violence and lack of economic and educational opportunities,’ says the organisation. Officials of the Ministry of Women’s Affairs (MoWA) add that shelter, food, earning a living and social protection are among the most pressing issues for widows. To survive, many Afghan widows weave carpets, do tailoring, beg or even engage in prostitution. But nevertheless they still lack strong governmental and community support. [...]

Before marriage, a woman is identified as the daughter of her father, after marriage as the wife of her husband. She always belongs to the male head of the family, as a kind of commodity, and also embodying the ‘honour’ of the family. Widowed women, however, in the eyes of society and their families, become ‘women without identity and protection’; *deg-e besarposh* – a pot without a lid – is the derogatory term. In most cases, they are either returned to their father’s home or married to a brother-in-law [...]. But either way, they are often seen as a burden, an additional economic liability. This is even stronger in wartime when many families come under additional economic strain.” (Esar, 7 May 2015)

The UN Assistance Mission in Afghanistan (UNAMA), in its Annual Report 2014 published in February 2015, reports on the findings from interviews conducted with 60 widows from across Afghanistan who have lost their husbands in conflict-related violence during 2014, highlighting the widows’ social and economic situation:

„To highlight the broader social and economic impact of the conflict on the lives of Afghan women, UNAMA interviewed 60 women from all regions in Afghanistan whose husbands, all civilians, were killed or seriously injured in conflict-related violence in 2014. UNAMA found that women who were left as sole income-providers for their households after the death or injury of their husbands experienced long-lasting social and economic consequences, with poverty forcing many women to give their daughters in marriage in exchange for debts or to take their children out of school often to work. Widowed women were often particularly vulnerable to other forms of violence and abuse from family and community members.” (UNAMA, February 2015, p. 3)

“More than one in four of the 60 women interviewed by UNAMA reported experiencing violence (from relatives and the wider community) after the loss of their husband. The most common types of violence reported were verbal abuse, expulsion from the family home, forced re-marriage, physical abuse and social ostracism. In many cases this violence began within days of the husband’s death, and was most commonly inflicted by the in-law (husband’s) families. The women who spoke to UNAMA stated that violence stemmed from the belief that the woman and her children were an economic burden after the loss of their husbands. Relatives often used the same justification to force the women to have their daughters married.

All of the women whom UNAMA interviewed stated their financial situation had worsened significantly since their husband had been killed or injured. Only one of the 60 women interviewed had been employed before the death of her husband. Several women reported they earned small amounts of money, for example as cleaners or domestic servants after their husband’s death, with most women reporting they had not been able to find work. One-third of the women interviewed reported receiving some form of financial compensation from the Government after their husband’s death or injury, with most receiving a small, one-off,

lump-sum payment and not a regular stipend. Most women interviewed did not know how to access available compensation mechanisms available through the Ministry of Labour and Social Affairs or the President's Office, whether at provincial or central Government level noting they believed compensation payments were available only to the well-connected elite.

From the interviews, UNAMA found that only a quarter of women interviewed were able to provide for their families without receiving outside assistance. The majority were found to be fully or partially dependent on their own families (or more often on their husband's families) to provide for them. Many had been completely excluded from access to their husband's property with several women permitted to use or access their husbands assets but unaware of their rights of inheritance/property/ownership.

While more than half of women interviewed stated they were able to leave their houses unaccompanied after the loss of their husband, many mentioned increased movement restrictions and being required to be accompanied by a male relative when they left the house.

Several women interviewed stated they considered their status in the community had changed since the loss of their husband and they were viewed as a burden, or had lost social status. [...]

However, despite their reduced circumstances, several women reported that their communities showed an understanding of their new situation. Most women reported feeling tolerated or supported with some women reporting an overwhelmingly negative attitude from their communities. One in four reported they had found an institution or charitable organization from which they sought assistance but only one woman reported a positive response.

The consequences of conflict-related violence extend beyond death and injuries with a lasting impact on Afghan families. Asked about their most urgent assistance requirements, the women interviewed stated they required, in order of priority: financial support; food; heating/firewood; housing; and support for their children's education. UNAMA urges relevant Government institutions to prioritize assistance to meet the basic needs of women and children widowed by conflict-related violence." (UNAMA, February 2015, pp. 15-16)

Matt Zeller, Fellow at the Truman National Security Project, a Washington, D.C.-based think tank, writes in a September 2012 article that "[w]hen an Afghan father dies, the responsibility for care of his children passes to his closest living relative – usually one of his brothers" (Zeller, 12 September 2012).

In an April 2016 email response, Lutz Rzehak, associate professor at the Central Asian Seminar of Humboldt University of Berlin, provides details on a custom known in academic literature as "levirate marriage", which involves a widow being remarried (even against her own will) to a male patrilineal relative of her deceased husband. This mainly has the purpose of keeping the deceased man's children within the patrilineal kin group. If a widow were to marry a man outside that kin group, the group would lose any right to claim these children as their own. Moreover, economic interests may also play a role, given that it is very likely that the deceased husband's family has paid a bride price upon marriage. This can also be an incentive for keeping the widow within the kin group. As Rzehak notes, levirate is common among all ethnic groups in Afghanistan, though it is practiced with varying levels of rigidity, with differences between urban and rural areas:

„Es handelt sich um einen Brauch, der in der ethnologischen Literatur als Levirat bezeichnet wird. Danach wird eine Witwe notfalls auch gegen ihren Willen an einen männlichen Verwandten (in patrilinearer Abstammung) ihres verstorbenen Ehemannes weiterverheiratet. Das dient vor allem dem Zweck, die Kinder, die der verstorbene Mann gezeugt hat und die als Mitglieder seiner patrilinearen Verwandtschaftsgruppe gelten, in dieser Verwandtschaftsgruppe zu behalten. Würde die Witwe einen fremden Mann heiraten, würde diese Verwandtschaftsgruppe die Hoheit über diese Kinder verlieren. Hinzu kommen gegebenenfalls wirtschaftliche Aspekte. Bei der Eheschließung wurde durch die Verwandtschaftsgruppe des verstorbenen Mannes sehr wahrscheinlich ein Brautgeld bezahlt. Auch das kann Motivation dafür sein, die Witwe in der Verwandtschaftsgruppe des Mannes zu behalten. Der Brauch des Levirats ist in Afghanistan im Prinzip bei allen Völkern verbreitet, auch wenn er nicht überall gleich streng gehandhabt wird. Unterschiede bestehen am ehesten zwischen ländlichem und urbanem Raum. [...] Die Kinder eines verstorbenen Mannes gehören nach allgemeiner Auffassung auch nach dem Tod ihres Vaters zu dessen patrilinearer Verwandtschaftsgruppe. Das ist Brauch.“ (Rzehak, 7 April 2016)

Afghanistan's Central Statistics Organisation (CSO) and the United Nations Children's Fund (UNICEF) state in a joint report on their "Afghanistan Multiple Indicator Cluster Survey 2010-2011", conducted in June 2012:

"In Afghanistan, orphanhood is not always defined in the same way as elsewhere in the world. Yateem is the term used to refer to a child whose father is dead, and this term is also usually used to describe a child considered to be an orphan, while the term yasir is used to refer to a child whose mother is dead, and such children are often not considered to be orphans. A common definition used more broadly in Muslim societies is any child who is bereft of parental care due to the death or disappearance of a mother or a father, or due to abandonment. In this report, an orphan is defined as any child who has lost one parent." (CSO/UNICEF, June 2012, p. 131)

An April 2011 report of the UN Committee on the Rights of the Child (CRC) states that in Afghanistan, children who have lost their father are often seen as orphans. They may thus be separated from their mother, especially if she refuses to marry a male member of her deceased husband's family (CRC, 8 April 2011, p. 9).

The Lacuna Magazine, a UK-based online magazine focusing on human rights issues, notes in a July 2015 article:

"According to Sharia teachings, widows only get an eighth of the inheritance from their spouse's death if the husband has children (if not, one quarter). The rest is distributed amongst other family members. And widows rarely qualify for support if they have a son aged 18 years or older, but an adult son is no guarantee that a widow will be supported by her family." (Lacuna, July 2015)

The February 2016 UNAMA annual report on protection of civilians in armed conflict states that "[t]he Government for its part continued to struggle to adequately support – or recognize – women-headed households that had lost their primary breadwinners due to the conflict." (UNAMA, February 2016, p. 14).

Further information on war widows is provided in a November 2015 Wall Street Journal (WSJ) article:

· WSJ – Wall Street Journal: After Decades of Conflict, Many Afghan Women Struggle to Survive on Their Own, 3 November 2015 (see attached PDF file)

Divorced women

A September 2015 article of the Institute for War and Peace Reporting (IWPR), a London-based independent not-for profit organisation that works with media and civil society to promote change in conflict zones, informs about the legal framework of divorce in Afghanistan:

"Although it is easy for men to initiate divorce under both Islamic and civil law systems, there are numerous obstacles for women seeking a separation. Conservative social attitudes mean that divorce is seen as profoundly shameful. Nevertheless, advances in rights since the fall of the Taliban government in 2001 mean that women now have greater recourse when it comes to seeking a divorce.

Observers say the situation is slowly changing, particularly in urban areas. Parwin Rahimi, who works on women's rights at the AIHRC, says the number of recorded cases is on the increase. She argues that domestic violence, aggravated by poverty, is a major factor in marital breakdown. [...]

Imamuddin Musaheb, a lawyer, explained the circumstances under which Afghan civil law allows a divorce application.

'If the husband is suffering from a chronic, incurable disease, if he is unable to feed his wife or if he is absent for over three years for reasons unknown, a woman can then get a divorce,' he said. 'Otherwise she can't.'

Islamic law also sets out many constraints. Maulavi Keramatullah Sediqi, head of Islamic studies at the ministry of hajj and religious affairs, listed the circumstances in which a woman could get divorced.

'From the perspective of shariah, a woman can get a divorce if her husband agrees to it; if the husband is unable to feed his wife or has a long-term, incurable disease; if the husband forces the woman to perform immoral acts; if the husband takes a lengthy trip against his wife's will or without her knowledge and does not support her financially in his absence; and if a husband refuses to sleep with his wife for four months. Then she has the right to divorce him,' he said.

Sedighi emphasised that while divorce was permitted by Islam, it was very much frowned on." (IWPR, 15 September 2015)

Provisions on dissolution of marriage, including divorce, and its effects can be found in Articles 131 to 216 of the Afghan Civil Law (Civil Code):

- Civil Law of the Republic of Afghanistan, 5 January 1977 (published by Stanford Law School)
<https://law.stanford.edu/index.php?webauth-document=publication/737834/doc/slspublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>

The United States Institute of Peace (USIP), a US federal institution that provides analysis on conflicts around the world, states in a May 2014 article:

"[D]espite formal guarantees, the courts and society at large still act within the framework of conservative social norms that restrict women's rights in economic and political spheres. These restrictions include limitations on women's free movement as well as on rights to choose a spouse, divorce, and maintain child custody after a divorce. Lack of enforcement of women's economic rights - including women's rights to inheritance, land, and control over earned income - is widespread because women's economic independence is often not tolerated at the community level." (USIP, May 2014)

An April 2017 article of the New York Times (NYT) newspaper reports:

"Since 2009, one nongovernmental organization, Justice for All, has provided legal advice to about 1,250 women seeking divorce across seven provinces, according to its executive director, Mahfuza Folad.

In 2016 alone, another organization, Medica Afghanistan, provided legal help to about 215 women seeking divorce in western Herat Province, according to its provincial director, Jamila Naseri.

Men, Ms. Folad said, 'are used to the old lifestyle, so now they cannot tolerate that women can stand against them.'

If women 'stand and ask their rights,' she added, 'men think it is shamelessness and think that they do not have authority on women, and there the problem starts.'

The most dangerous time for women may be when they seek to leave, but they also face a pervasive and persistent social struggle after divorce: The most mundane activities become daunting obstacles. Often, the easiest way is to hide the fact that they are divorced.

'I did not tell anyone about my status — sometimes, I told them my husband is in Iran,' said Zahra Yaganah, 32, an activist and writer who published her first novel last year. A mother of two teenagers, she has been divorced for about a decade. 'But when people find out that I am divorced — I feel like a divorced woman is up for grabs for the men around her.'" (NYT, 17 April 2017)

A December 2016 BBC News article reports on the alleged killing of a woman who divorced her husband and then remarried, by Taliban militants:

"Taliban militants in Afghanistan have shot dead a woman who divorced her husband and remarried, officials say.

The killing took place in north-western Badghis province. There are some reports that the woman's husband had authorised the separation from abroad.

But when he returned to Afghanistan, he petitioned a self-appointed Taliban court against her remarriage. The Taliban deny carrying out the killing.

Divorce is taboo in the country, especially for women.

Officials said the militants forced the woman, whose name has been given as Aziza, to go to her father's house, where they shot her.

Local politician Naser Nazari said the woman, thought to be 25, was killed on Saturday.

'Her former husband authorised one of his relatives here to divorce Aziza,' he told Pajhwok news.

It reported that she then married another man but when her husband returned from working in Iran he denied divorcing her and went to the militants.

Taliban spokesman Qari Yusuf Ahmadi told the BBC the cause of the killing was a family feud.

He said the Taliban had already detained two men involved in the case and pledged to 'punish them according to Sharia law'." (BBC News, 19 December 2016)

The IWPR states in an August 2016 article:

"Officials in the southeastern province of Kandahar report that large numbers of women are seeking divorces because they can no longer live with their drug addict husbands. [...]

Divorced women had to return to live with their parents until they remarried, she added. Often, custody of any children was handed to the husband's parents.

Malika, 60, recounted how her daughter had moved back to live with her after getting divorced.

However, her in-laws kept her two children and now the young woman stayed up late every night crying for them.

Malika said that she had told her daughter many times to remarry, but she refused to do so until she got her children back." (IWPR, 15 August 2016)

The US Department of State (USDOS) notes in its March 2017 country report on human rights practices, which covers the year 2016:

"Space at the 28 women's protection centers across the country was sometimes insufficient, particularly in major urban centers, and shelters remained concentrated in the western, northern, and central regions of the country. Women who could not be reunited with their families or who were unmarried were generally compelled to remain in protection centers indefinitely, because 'unaccompanied' women were not commonly accepted in society. The difficulty of finding durable solutions for women compelled to stay in protection centers was compounded by societal attitudes toward the shelters as centers of prostitution, the belief that 'running away from home' was a serious violation of social mores, and the continued victimization of women who were raped but perceived by society as adulterers." (USDOS, 3 March 2017, section 6)

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Austrian Red Cross Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD)	Wiedner Hauptstraße 32, 1041 Wien T (Telefon) +43 1 589 00 583 F (Fax) +43 1 589 00 589 info@ecoi.net	Contact Imprint & Disclaimer F.A.Q. Data Protection Notice
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