

**Flygtningenævnets baggrundsmateriale**

|                                    |                                                                                                           |
|------------------------------------|-----------------------------------------------------------------------------------------------------------|
| <b>Bilagsnr.:</b>                  | <b>802</b>                                                                                                |
| Land:                              | Afghanistan                                                                                               |
| Kilde:                             | EASO                                                                                                      |
| Titel:                             | Country of Origin Information Report. Afghanistan.<br>Individuals targeted under societal and legal norms |
| Udgivet:                           | December 2017                                                                                             |
| Optaget på<br>baggrundsmaterialet: | 23. januar 2018                                                                                           |



# EASO

## Country of Origin Information Report

Afghanistan  
Individuals targeted under  
societal and legal norms







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ISBN 978-92-9494-818-2

doi: 10.2847/744610

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## Acknowledgements

The following departments reviewed this report:

**Swedish Migration Agency, Lifos** – Centre for Country of Origin Information and Analysis

**United Nations High Commissioner for Refugees (UNHCR)**

Furthermore, the content of this report was reviewed by:

**Neamat Nojumi**, a scholar at George Mason University's School for Conflict Analysis and Resolution with more than 20 years of experience in democratisation, conflict analysis and state-building in Central and Southwest Asia. He has authored numerous books and studies on Afghanistan's conflict and governance issues, including *The Rise of the Taliban in Afghanistan : Mass Mobilization, Civil War, and the Future of the Region* (2002).

**United Nations Assistance Mission in Afghanistan (UNAMA)**

It must be noted that the review carried out by the mentioned departments, experts or organisations contributes to the overall quality of the report, but does not necessarily imply their formal endorsement of the final report, which is the full responsibility of EASO.



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## Disclaimer

This report was written according to the EASO COI Report Methodology (2012) <sup>(1)</sup>. The report is based on carefully selected sources of information. All sources used are referenced. To the extent possible and unless otherwise stated, all information presented, except for undisputed or obvious facts, has been cross-checked.

The information contained in this report has been researched, evaluated and analysed with utmost care. However, this document does not claim to be exhaustive. If a particular event, person or organisation is not mentioned in the report, this does not mean that the event has not taken place or that the person or organisation does not exist.

Furthermore, this report is not conclusive as to the determination or merit of any particular claim to refugee status or asylum. Terminology used should not be regarded as indicative of a particular legal position.

‘Refugee’, ‘risk’ and similar terminology are used as a generic terminology and not as legally defined in the EU Asylum Acquis and the Geneva Convention.

Neither EASO nor any person acting on its behalf may be held responsible for the use which may be made of the information contained in this report.

The target users are asylum caseworkers, COI researchers, policymakers, and decision-making authorities.

The drafting of this report was finalised on **30 November 2017**. Any event taking place after this date is not included in this report. More information on the reference period for this report can be found in the methodology section of the introduction.

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<sup>(1)</sup> The EASO methodology is largely based on the Common EU Guidelines for processing Country of Origin Information (COI), 2008, and can be downloaded from the EASO website: <http://www.easo.europa.eu>.

## Glossary and Abbreviations

|                                        |                                                                                                                                                                                                        |
|----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>AIHRC</b>                           | Afghanistan Independent Human Rights Commission ( <a href="#">url</a> )                                                                                                                                |
| <b>Apostasy</b>                        | The act of leaving Islam; a <i>hudud</i> crime punishable by death                                                                                                                                     |
| <b>Arbaki</b>                          | Tribal police; Afghan Local Police                                                                                                                                                                     |
| <b>AUAF</b>                            | American University of Afghanistan                                                                                                                                                                     |
| <b>AWN</b>                             | Afghan Women's Network, a non-profit network of women's organisations in Afghanistan ( <a href="#">url</a> )                                                                                           |
| <b><i>baad, bad, ba'ad, badaal</i></b> | The practice of exchanging women/girls to resolve a dispute; Exchanging daughters between families for marriage to avoid bride price costs                                                             |
| <b><i>bacha bazi</i></b>               | Dancing boys: Young boys who dance and are often sexually abused; this practice is often associated with men in power.                                                                                 |
| <b><i>bacha bereesh</i></b>            | Refers to 'beardless boys' in the context of bacha bazi                                                                                                                                                |
| <b><i>bacha posh</i></b>               | Practice of dressing a daughter in male clothing to act as a son until puberty                                                                                                                         |
| <b><i>badal</i></b>                    | The concept of revenge or retribution in the <i>Pashtunwali</i>                                                                                                                                        |
| <b>Badam Bagh</b>                      | A women's prison in Kabul city                                                                                                                                                                         |
| <b><i>burqa</i></b>                    | Full body and face covering worn by many Afghan women in public.                                                                                                                                       |
| <b><i>chador</i></b>                   | Originating in Iran, a full body and head covering which leaves the face visible; more often worn in Herat.                                                                                            |
| <b>CPAN</b>                            | Child Protection Action Network; a network of government and non-government organisations and has a mandate to monitor child protection issues and provides services to children in need of protection |
| <b><i>diyat</i></b>                    | Linked to <i>qisas</i> ; retribution of an equal nature or <i>diyat mughallazah</i> (higher than normal amount of <i>diyat</i> compensation);                                                          |
| <b>EVAW</b>                            | Elimination of Violence Against Women Law, criminalises 22 forms of gender based violence and was passed by Presidential Decree in 2009.                                                               |
| <b><i>fatwa</i></b>                    | A ruling or opinion given by the head of religious community in Islam                                                                                                                                  |
| <b>FGC</b>                             | Family Guidance Centres; supported by the NGO Women for Afghan Women (WAW) and offers counselling, mediation, and legal advice                                                                         |
| <b>FPC</b>                             | Family Protection Centres; Supported by the UN and Ministry of Health, and accessed by referral, FPCs support survivors of gender-                                                                     |

|                                       |                                                                                                                                                                                                  |
|---------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                       | based violence by health, medical, and psychosocial support and legal advice                                                                                                                     |
| <b>FRU</b>                            | Family Response Units; offices within the ANP that handle crimes relating to children and women, including domestic violence                                                                     |
| <b>Hanafi</b>                         | Sunni jurisprudence in use in Afghanistan; one of the four schools of Sunni jurisprudence.                                                                                                       |
| <b>Hazara</b>                         | An ethnic group who are mainly Shia                                                                                                                                                              |
| <b><i>hudud, hadd</i></b>             | Crimes against God listed in the <i>Quran</i> , sometimes punishable by death                                                                                                                    |
| <b>Huquq Department</b>               | A department that attempts to resolve family issues or civil cases through mediation under the Civil Procedure Code prior to referral to court; provincial departments exist in all 34 provinces |
| <b><i>Iranigak</i></b>                | Term used in society to label people seen associated with being 'Iranian'                                                                                                                        |
| <b>Islamic Emirate of Afghanistan</b> | The Islamic Emirate of Afghanistan was the state in Afghanistan from 1996 to 2001 under the Taliban regime. The Taliban still uses this name                                                     |
| <b>ISK or ISKP</b>                    | Islamic State in Khorasan Province; affiliates of ISIL based in Pakistan and Afghanistan.                                                                                                        |
| <b>Jat</b>                            | A minority group that is partly nomadic, partly sedentarised; includes the <i>Jogi</i> and <i>Chori Frosh</i>                                                                                    |
| <b><i>jirga</i></b>                   | A council or assembly of tribal elders held for dispute resolution; <i>jirgamar</i> refers to elders whose profession is dispute settlement                                                      |
| <b><i>kafir, kufr</i></b>             | An 'unbeliever' in Islam; label those deemed anti-Islamic                                                                                                                                        |
| <b><i>Kangaroo court</i></b>          | A tribunal outside statutory judicial authorities that does not follow official legal procedures                                                                                                 |
| <b><i>khun</i></b>                    | A unit of 'blood money' compensation; used in the calculation of compensation in Pashtunwali                                                                                                     |
| <b><i>khunbaha</i></b>                | In <i>Pashtunwali</i> , the word referring to 'blood money' or compensation                                                                                                                      |
| <b>Kuchi</b>                          | Nomadic Pashtuns                                                                                                                                                                                 |
| <b><i>levat</i></b>                   | sodomy                                                                                                                                                                                           |
| <b><i>mahram</i></b>                  | A male guardian who is a relative                                                                                                                                                                |

|                             |                                                                                                                                                                                                                                 |
|-----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b><i>mahr</i></b>          | An amount of money promised by the groom to his wife usually as insurance for the woman in case of divorce by her husband or death                                                                                              |
| <b><i>maraka</i></b>        | A specialist in dispute resolution of the <i>jirga</i> ; member of the <i>jirga</i>                                                                                                                                             |
| <b>MoWA</b>                 | Afghanistan's Ministry of Women's Affairs ( <a href="#">url</a> )                                                                                                                                                               |
| <b><i>mullah</i></b>        | Islamic cleric (teachers and preachers) who studied in a madrassa. In Afghanistan they are very prevalent outside the cities and usually the single religious authority in a village. They can often read Arabic and the Koran. |
| <b><i>murtadd</i></b>       | Apostates; People who leave or renounce Islam                                                                                                                                                                                   |
| <b><i>mushrikeen</i></b>    | A term used by Muslim adherents to <i>takfiri</i> ideology to refer to those who worship others than under Islam                                                                                                                |
| <b><i>nagha</i></b>         | Fines paid as compensation                                                                                                                                                                                                      |
| <b><i>namoos, namus</i></b> | Social honour of one's family or household; the concept of the chastity of women in the <i>Pashtunwali</i> ; it is the duty of Pashtun men to protect <i>Namus</i>                                                              |
| <b><i>nanawatai</i></b>     | The concept of seeking forgiveness under the <i>Pashtunwali</i> ; <i>nanatawai</i> means the offender admits guilt and then gives blood money ( <i>khunbaha</i> ) or compensation of some kind.                                 |
| <b><i>narkh</i></b>         | Code of punishments under the <i>Pashtunwali</i>                                                                                                                                                                                |
| <b><i>night letters</i></b> | Also called <i>Shabnameh</i> ; written threat letters delivered at night                                                                                                                                                        |
| <b>NUG</b>                  | National Unity Government; a coalition government formed after the 2014 elections with Ashraf Ghani as President and Abdullah Abdullah as CEO                                                                                   |
| <b><i>Pashtunwali</i></b>   | The idealised customary, social and legal codes of behaviours and conduct among Pashtuns; honour ( <i>nang</i> ) and shame, as well as hospitality ( <i>mel mastiya</i> ) and dignity ( <i>ghairat</i> ) are core concepts.     |
| <b>PDPA</b>                 | People's Democratic Party of Afghanistan, ruling Communist party in Afghanistan from 1978 to 1992.                                                                                                                              |
| <b><i>purdah</i></b>        | The social and religious practice of gender seclusion followed in some Muslim cultures                                                                                                                                          |
| <b><i>qisas</i></b>         | <i>Qisas</i> is a system of retributive justice whereby the victim can inflict an equal injury on the wrong-doer, or demand the payment of <i>diyat</i> (blood money) compensation.                                             |
| <b><i>rafida</i></b>        | A term used by Muslim adherents to <i>takfiri</i> ideology to refer to 'those who worship others'.                                                                                                                              |

|                         |                                                                                                                                                                                                                                                                                                     |
|-------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>returnee</b>         | A person returning after an absence from the country, either due to removal or voluntarily                                                                                                                                                                                                          |
| <b>sharia</b>           | The religious law of Islam; Islamic canonical law                                                                                                                                                                                                                                                   |
| <b>shura</b>            | A decision-making community council; often formed for non-state dispute settlement; made up of a group of people with community authority (elders) to discuss and find solutions to a problem                                                                                                       |
| <b>shura-e-gozara</b>   | Neighbourhood shura in urban areas                                                                                                                                                                                                                                                                  |
| <b>spingiri</b>         | Tribal elders known as ‘white beards’ or <i>Maraka</i>                                                                                                                                                                                                                                              |
| <b>swara</b>            | The practice of giving away girls to settle disputes in Pashtu; linked to <i>Pashtunwali</i>                                                                                                                                                                                                        |
| <b>ta’azir, tazeeri</b> | <b>ta’zeeri,</b> Crimes that do not meet the threshold for <i>hudud</i> punishments; the Civil Penal Code of 1976 deals with <i>ta’azir</i> crimes                                                                                                                                                  |
| <b>takfir</b>           | Pronouncing of others, including other Muslims, as ‘unbelievers’                                                                                                                                                                                                                                    |
| <b>takhm</b>            | The ultimate review undertaken in a <i>jirga</i> after the second and third <i>jirga</i> review (appeals) have been exhausted. <i>Takhm</i> cannot be refused; refusal results in punishment by the tribe.                                                                                          |
| <b>Taliban</b>          | Armed Islamic insurgent movement in Afghanistan. The movement originated in the Afghan refugee communities in Pakistan and in Kandahar in the Mujahideen era (1980s and 90s), took control of Kabul in 1996 and, by 2001, controlled most of the country. See also: Islamic Emirate of Afghanistan. |
| <b>tazkera</b>          | Afghanistan’s national identity card                                                                                                                                                                                                                                                                |
| <b>turboor</b>          | Cousin or peer rivalry; also <i>Turboori</i> , meaning rivalry between cousins or peers, especially among Pashtun cousins                                                                                                                                                                           |
| <b>Ulema</b>            | Islamic or religious scholars; religious council                                                                                                                                                                                                                                                    |
| <b>UNAMA</b>            | United Nations Assistance Mission in Afghanistan ( <a href="#">url</a> )                                                                                                                                                                                                                            |
| <b>walwar</b>           | Bride price; a sum of money given to a bride’s family by the groom                                                                                                                                                                                                                                  |
| <b>WAW</b>              | Women for Afghan Women ( <a href="#">url</a> )                                                                                                                                                                                                                                                      |
| <b>zina</b>             | The crime of adultery; perceived to be deeply shameful and against honour                                                                                                                                                                                                                           |
| <b>zorabad</b>          | Literally translates as ‘land taken by force’. It refers to the areas where people grabbed government and public land and sold it to others or build their houses without seeking official permission.                                                                                              |



## Introduction

This report was drafted by the COI sector of the Information and Analysis Unit in EASO.

### Terms of Reference

The report aims to provide relevant information for the assessment of international protection status determination (PSD, including refugee status and subsidiary protection).

The terms of reference of this report were defined based on information needs identified by policy experts in EU+ countries <sup>(2)</sup> and UNHCR within the context of a Country Guidance pilot exercise on Afghanistan. Terms of Reference for this report can be found in [Annex 2](#)

This report covers topics on individuals targeted by socio-legal norms in Afghanistan. It was drafted in conjunction with a report on targeting by armed actors linked directly to the conflict, titled *EASO Country of Origin Report: Afghanistan - Individuals targeted by armed actors in the conflict* <sup>(3)</sup>.

### Methodology

This report is based on desk research of public, specialised paper-based and electronic sources. The main research was completed up until **30 November 2017**. In addition, EASO researchers conducted extensive interviews with the following sources:

- Abubakar Siddique, senior correspondent specializing in coverage of Afghanistan and Pakistan, and the editor of RFE/RL's 'Gandhara' website. In addition to his reporting, Siddique speaks frequently at prominent Western think tanks and has contributed articles, chapters, and research papers to a range of publications. Siddique's unique expertise is brought to bear in his book, *The Pashtun Question: The Unresolved Key to the Future of Pakistan and Afghanistan* (2014).
- Dr. Liza Schuster, a sociologist at City University of London who has conducted fieldwork in Afghanistan and who studies the impacts of deportation on Afghan returnees and who has published several academic studies on this topic.
- An Afghanistan-based senior representative of the Women for Afghan Women (WAW), a non-governmental organization operating in 13 provinces which provides services, counselling, and support to women in situations of gender-based violence.
- Masood Ahmadi, the national programme manager for Afghanistan on return, reintegration, and resettlement for the International Organization for Migration (IOM), Afghanistan.
- A legal advisor for the Norwegian Refugee Council (NRC), who works on issues of land disputes with displaced populations and returnees to Afghanistan. NRC is an independent humanitarian organisation that delivers aid, and monitors and reports on displaced populations in the field, including in Afghanistan.

---

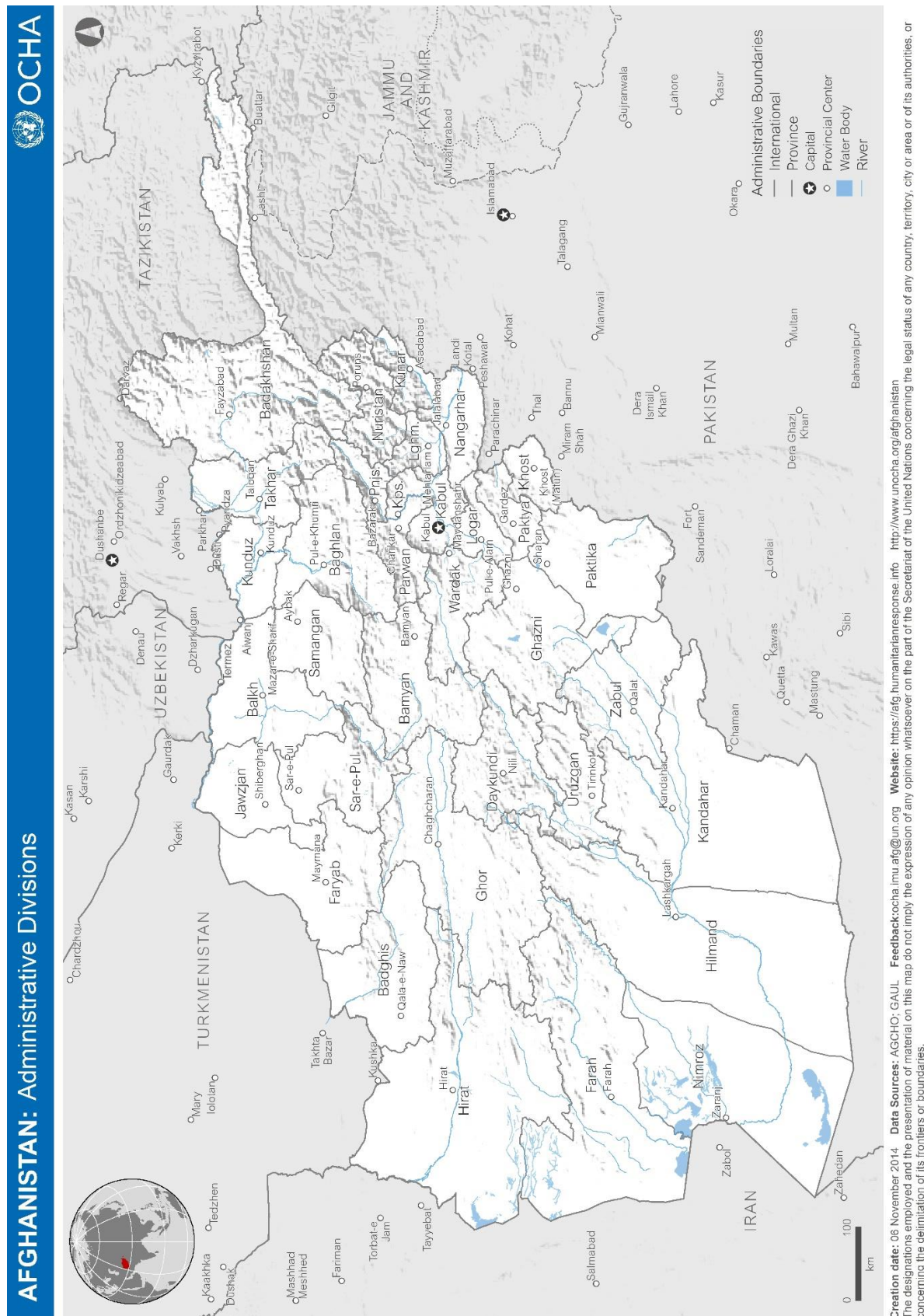
<sup>(2)</sup> All EU Member States plus Norway and Switzerland.

<sup>(3)</sup> EASO, *EASO Country of Origin Report: Afghanistan - Individuals targeted by armed actors in the conflict*, December 2017 ([url](#)).

- Ali M. Latifi, a journalist based in Kabul who has researched the situation of returnees and Afghan refugees since 2013, including in Greece and Turkey.
- A programme officer who was based in Kabul until 2015 and frequently returns to the country, and who has worked with returnees for several international NGOs in Afghanistan. The contact person requested to remain anonymous for security reasons.
- Ahmad Waheed, an independent researcher on Afghanistan and former analyst for the US Naval Postgraduate School program on culture and conflict in Afghanistan, Pakistan, Central and South Asia regions. The program provides information and analyses on culture and conflict to a range of audiences such as military personnel, diplomats, academics, and the public.

To verify whether the writers respected the EASO COI Report Methodology, a peer review was carried out by COI specialists from the departments listed as reviewers in the [Acknowledgements](#) section. In addition, a review of the report was carried out by the Human Rights Unit at the UN Assistance Mission in Afghanistan (UNAMA) and by Dr. Neamat Nojumi, a scholar on Central and Southwest Asia and senior policy analyst on Afghanistan. All comments made by the reviewers were taken into consideration and most of them were implemented in the final draft of this report. EASO performed the final quality review and editing of the text. This quality process led to the inclusion of some additional information, in response to feedback received during the respective reviews.

## Map of Afghanistan



Map 1: Afghanistan - administrative divisions, source: UN OCHA © United Nations

# 1. Overview of socio-legal frameworks for punishment of crime

## 1.1 Legal pluralism

Afghanistan's socio-legal framework is characterised by legal pluralism, whereby multiple sources of law, both codified and unwritten, and formal and informal institutions govern society and its norms <sup>(4)</sup>. Afghanistan's highly diverse society includes urban, rural and tribal segments, each having norms and mechanisms to settle disputes; however, two dominant systems are used by Afghans to obtain justice: through the state, and through non-state systems <sup>(5)</sup>.

Islam is Afghanistan's state religion <sup>(6)</sup>. The Afghan Constitution provides that, under Article 130,

In cases under consideration, the courts shall apply provisions of this Constitution as well as other laws. If there is no provision in the Constitution or other laws about a case, the courts shall, in pursuance of *Hanafi* jurisprudence, and, within the limits set by this Constitution, rule in a way that attains justice in the best manner <sup>(7)</sup>.

In his review of this report, Dr. Neamat Nojumi, a scholar at George Mason University with more than 20 years of experience in conflict analysis and state-building in Central Asia who has authored numerous books and studies on Afghan security and governance, explained that Afghan laws are structured on three inter-related tiers: the Constitution and statutory laws passed by Parliament, *sharia* laws adopted based on legal volumes determined by the Ministry of Justice, and customary law. He explained that there is a hierarchical structure and approach in the application of laws; the Constitution positions statutory law above *sharia* and customary law. In practice, judges are obligated to apply statutory laws, unless they do not suffice, in which case the judge can apply the permitted version of *sharia*, and if that is not sufficient, a judge can apply customary principles, as long as they do not contradict the legal system or violate the basic rights of citizens <sup>(8)</sup>. However, although Article 130 provision was understood by observers only to be used for civil matters, the US Department of State reports that it was also applied to criminal cases by many judicial officials <sup>(9)</sup>.

According to a 2012 book on criminal law in Afghanistan published by the Stanford University Afghanistan Legal Education Project (ALEP), in the *Hanafi* school of Islamic law, there are three types of crimes: *hudud*, *qisas*, and *ta'azir* crimes <sup>(10)</sup>. Article 1 of the Afghanistan 1976 Penal Code states that the Penal Code is restricted to regulating "'Ta'zeeri" crime and penalties' and that crimes of *hudud* and *qisas/diyat* (blood compensation) are to be punished under Islamic law with *Hanafi* jurisprudence <sup>(11)</sup>. For those issues not dealt with under the Constitution or

<sup>(4)</sup> ALEP, Stanford University, An Introduction to the Law of Afghanistan, 2011 ([url](#)), p.3; Nojumi, N., The merits of non-state justice: An effective mechanism for a stable Afghanistan, 5 November 2014 ([url](#)).

<sup>(5)</sup> Nojumi, N., The merits of non-state justice: An effective mechanism for a stable Afghanistan, 5 November 2014 ([url](#)).

<sup>(6)</sup> USDOS, International Religious Freedom Report for 2016 - Afghanistan, 15 August 2017 ([url](#)), p. 1.

<sup>(7)</sup> Afghanistan, Constitution of Afghanistan, 26 January 2004 ([url](#)).

<sup>(8)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report.

<sup>(9)</sup> USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p.9.

<sup>(10)</sup> ALEP, Introduction to the Criminal Law of Afghanistan, 2012 ([url](#)), p. 11.

<sup>(11)</sup> Afghanistan, Penal Code, 22 September 1976 ([url](#)).

Penal Code, the courts rely upon Islamic principles based on the Sunni *Hanafi* interpretation of *sharia* law and *hudud* laws <sup>(12)</sup>.

## 1.2 *Hudud* crimes

*Hudud* crimes are the most serious crimes under Islamic law and are considered transgressions against God; these crimes and punishments are specifically mentioned in the *Quran*. Sources describe *hudud* crimes and punishments as follows:

- Theft of property (amputation of the hand);
- Adultery; also called *zina* or illicit sexual relations (100 lashes, exile, or death);
- Defamation, in particular regarding false accusations of illicit sexual relations (80 lashes);
- Drinking alcohol or ingesting intoxicants (80 lashes);
- Apostasy (repentance within 3 days or face death, banishment, imprisonment);
- Highway robbery (crucifixion, death, amputation of a foot or hand, exile) <sup>(13)</sup>.

According to ALEP, *hudud* crimes are ‘remarkably inflexible’ in terms of enforcement; however, the standard of proof for most *hudud* crimes is very high and ‘witnesses must corroborate any claim before guilt can be established’ <sup>(14)</sup>. Where the standards of proof are not met for *hudud* crimes, they are punished as *ta’azir* crimes <sup>(15)</sup>.

USCIRF states that in Afghanistan, state-supported religious leaders and judicial officials are ‘empowered to interpret and enforce’ judgments under these Islamic principles, which has led to ‘arbitrary and abusive’ judgments and harsh penalties, including death <sup>(16)</sup>. However, Neamat Nojumi stressed that the formal Afghan legal system is bound by the more secular Constitutional provisions and does not adhere to the ‘totality of *hudud*’ in the sense that it is done in Saudi Arabia or Iran. He noted that *hudud* punishments are not applicable in Afghanistan’s formal legal system and practices, but are adhered to and practiced by the Taliban and insurgent groups <sup>(17)</sup>. Islamist groups in Afghanistan apply a literal form of *sharia* with emphasis on the implementation of *hudud* penalties <sup>(18)</sup>. Further information on insurgent interpretations and applications of justice are discussed throughout this report.

However, there are cases reported of criminal charges based on interpretations of Islamic law and the Penal Code prosecuted by state courts, for example, sometimes against women who run away and are charged with adultery <sup>(19)</sup>. For information on state treatment of individuals accused of moral crimes, and other gender-based violence see [Section 3](#).

<sup>(12)</sup> USCIRF, 2017 Annual Report - Afghanistan, 26 April 2017 ([url](#)), p. 2; Afshar, MKR., The Case of an Afghan Apostate – The Right to a Fair Trial, 2006 ([url](#)), pp. 594-598.

<sup>(13)</sup> Oxford Dictionary of Islam, Hadd, n.d. ([url](#)); ALEP, Introduction to the Criminal Law of Afghanistan, 2012 ([url](#)), pp. 87-100.

<sup>(14)</sup> ALEP, Introduction to the Criminal Law of Afghanistan, 2012 ([url](#)), pp. 87-88.

<sup>(15)</sup> DPW, Cornell University Law School, Death Penalty Database – Afghanistan, 11 December 2012 ([url](#)).

<sup>(16)</sup> USCIRF, 2017 Annual Report - Afghanistan, 26 April 2017 ([url](#)), p. 2.

<sup>(17)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report.

<sup>(18)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report.

<sup>(19)</sup> USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p.9.

### 1.3 *Qisas* crimes

*Qisas* crimes in Islamic law in Afghanistan are those that deal with offences to the ‘bodily integrity of another’ such as homicide and physical injury. Homicides are the most serious non-*hudud* crimes. *Qisas* is a system of ‘equality in retaliation’ whereby the victim is permitted to inflict the same injury to the person who committed the *qisas* transgression against them. Punishments are not mandated specifically by the *Quran*, and therefore, according to ALEP, victims can traditionally demand the payment of *diyat*, or blood money as a compensation. According to ALEP, this ‘allows the victims and their families to serve in the unique position as decision maker with regard to punishment’ and they can decide whether to demand compensation or inflict the same injury on the offender as retributive justice; they may also decide to forgive the offender <sup>(20)</sup>. A detailed explanation of the categories of *Qisas* crimes and how they are handled under the *Hanafi* school can be found in the ALEP book on Afghan criminal law <sup>(21)</sup>.

ALEP provides examples of *Qisas* crimes and punishments, which include:

- Intentional murder (retribution of an equal nature or *diyat mughallazah* (higher than normal amount of *diyat* compensation);
- Unintentional murder (monetary compensation);
- Intentional or unintentional physical injury and maiming (retaliation under certain conditions, or compensation) <sup>(22)</sup>.

For Pashtuns, retributive revenge (*badal*) through the death of the offender (*Qisas*) is a synonymous concept in justice under the *Pashtunwali*, sometimes resulting in blood feuds <sup>(23)</sup>. For further detail on revenge and blood feuds, see [Section 7](#).

For information on dispute resolution through customary and non-state mechanisms, see Sections [1.5](#) and [6.4](#).

### 1.4 *Ta’azir* crimes and 1976 Penal Code

ALEP explains that *ta’azir* crimes in Islamic law in Afghanistan are those that are not covered by *hudud* or *qisas* offences and punishments are determined by the state at the discretion of judges. The Penal Code only applies to *ta’azir* offences. ALEP gives the example that in the case of homicide, the provisions of the Penal Code ‘only apply if *qisas* does not govern the offense, either because it is waived or because its elements [under *Hanafi* jurisprudence] are not satisfied’ <sup>(24)</sup>. *Ta’azir* punishments are not a replacement for *hudud* or *qisas* punishments, but may be used as an alternative punishment if the requirements are not met, or to apply an additional punishment; judges may also impose multiple punishments for a crime <sup>(25)</sup>. *Ta’azir* offences are classified by level of seriousness into felonies (punishable by death, or 5 years to life imprisonment), misdemeanours (punishable up to five years in prison or a fine), and obscenities (imprisonment up to three months or a fine) <sup>(26)</sup>.

<sup>(20)</sup> ALEP, Introduction to the Criminal Law of Afghanistan, 2012 ([url](#)), pp. 100-101.

<sup>(21)</sup> ALEP, Introduction to the Criminal Law of Afghanistan, 2012 ([url](#)), pp. 100-104.

<sup>(22)</sup> ALEP, Introduction to the Criminal Law of Afghanistan, 2012 ([url](#)), pp.100-104.

<sup>(23)</sup> FRC, Pashtunwali: an analysis of the Pashtun way of life, 5 April 2017 ([url](#)), p. 48.

<sup>(24)</sup> ALEP, Introduction to the Criminal Law of Afghanistan, 2012 ([url](#)), p. 101.

<sup>(25)</sup> ALEP, Introduction to the Criminal Law of Afghanistan, 2012 ([url](#)), p. 104.

<sup>(26)</sup> ALEP, Introduction to the Criminal Law of Afghanistan, 2012 ([url](#)), p. 33.

Examples of felonies under the 1976 Penal Code include offences such as:

- Robbery (Article 447);
- Murder (Article 395);
- Use of explosives to endanger the lives of others (Article 363) <sup>(27)</sup>.

*Ta'azir* punishments may include:

- Admonitions and reprimands;
- Fines or seizure of property;
- Imprisonment;
- Flogging;
- Death <sup>(28)</sup>.

ALEP remarks that most Afghan criminal law is open to the 'exercise of policy considerations' and 'discretionary enforcement', such as in the case of *ta'azir* crimes <sup>(29)</sup>. With respect to the death penalty, according to the Afghanistan Analysts Network (AAN), execution orders must go through all judicial instances and be signed by the President. AAN states that although legal under both the criminal code and Islamic law, the implementation of the death penalty in practice has been 'ad hoc' <sup>(30)</sup>. Human Rights Watch states that under Afghan law, very few crimes are eligible for capital punishment, but noted a 2014 case where 5 men were hanged for robbery and extramarital sex (*zina*) following a flawed trial for gang rape <sup>(31)</sup>. Amnesty International (AI) reports that for those sentenced to death, many trials held were not in line with standards of fair trial <sup>(32)</sup>.

A detailed explanation of how different types of crimes are handled under the 1976 Afghanistan Penal Code is provided by ALEP <sup>(33)</sup>. Cornell Law School's database on the Death Penalty Worldwide (DPW) provides a summary of crimes and offences punishable by death under the laws in Afghanistan, which include murder, aggravated murder, terrorism offences, treason, espionage and potentially other offenses that could be eligible for the death penalty <sup>(34)</sup>. Individuals who were sentenced to death in 2016 were penalised for crimes such as murder, rape, and terrorism resulting in mass killings <sup>(35)</sup>.

For further information on the functioning of the state judiciary, see EASO *Country of Origin Information Report: Afghanistan - Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City* <sup>(36)</sup>.

<sup>(27)</sup> ALEP, Introduction to the Criminal Law of Afghanistan, 2012 ([url](#)), p. 33.

<sup>(28)</sup> ALEP, Introduction to the Criminal Law of Afghanistan, 2012 ([url](#)), p. 104.

<sup>(29)</sup> ALEP, Introduction to the Criminal Law of Afghanistan, 2012 ([url](#)), pp. 87-88.

<sup>(30)</sup> Bjelica, J. and Qaane, E., Afghanistan's latest executions: Responding to calls for capital punishment, AAN, 11 May 2016 ([url](#)).

<sup>(31)</sup> Human Rights Watch, Afghanistan: Delay executions in rape case, 7 October 2014 ([url](#)).

<sup>(32)</sup> AI, Amnesty International Report 2016/2017 – Afghanistan, 22 February 2017 ([url](#)).

<sup>(33)</sup> ALEP, Introduction to the Criminal Law of Afghanistan, 2012 ([url](#)), pp. 105-151. This source include a detailed explanation of how different types of crimes are handled under the 1976 Penal Code.

<sup>(34)</sup> DPW, Cornell University Law School, Death Penalty Database – Afghanistan, 11 December 2012 ([url](#)).

<sup>(35)</sup> AI, Amnesty International Report 2016/2017 – Afghanistan, 22 February 2017 ([url](#)).

<sup>(36)</sup> EASO, Country of Origin Information Report: Afghanistan - Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City, August 2017 ([url](#)).

### 1.4.1 Practices of corporal and capital punishment by the government

Corporal punishments by the state are permitted by law in Afghanistan <sup>(37)</sup> due to the incorporation of Islamic and civil law, allowing individual judges and courts to determine how to prescribe punishments under either code <sup>(38)</sup>. Radio Free Europe/Radio Liberty (RFE/RL) explains that civil law dominates in urban areas, but *sharia* tends to take precedence in rural areas, and judges handing out corporal punishments is ‘by no means rare’ according to the article <sup>(39)</sup>. In 2015, Human Rights Watch described corporal punishment by district Afghan courts as occurring with ‘regularity’ for crimes of adultery, noting that some district judges kept a lash in their office <sup>(40)</sup>.

Insurgent groups are mainly parties involved in handing down harsh corporal punishments <sup>(41)</sup>. However, more broadly speaking, the UN Committee Against Torture reports that in Afghanistan, there is ‘widespread acceptance and legitimization of torture’ in society, which creates the conditions for an overall ‘climate of impunity’ for such acts <sup>(42)</sup>.

Capital punishment is rarely carried out by the government in Afghanistan <sup>(43)</sup>. AAN indicated in a May 2016 article that 600 individuals were on death row for ‘ordinary crimes’ and waiting for presidential sign-off on their executions <sup>(44)</sup>. According to Amnesty International (AI), approximately 100 individuals were sentenced to death during 2016 <sup>(45)</sup>. AAN notes that Afghanistan carried out 15 executions in 2007, 18 in 2008, two death sentences in 2011, 14 in 2012, two in 2013, six in 2014, and one in 2015 <sup>(46)</sup>. In May 2016, the government hanged 6 men who were members of the Taliban involved in attacks and convicted on terrorism charges; they were hanged at Pol-e Charkhi prison in Kabul <sup>(47)</sup>. In June 2017, President Ghani stated publicly that he would order the execution of 11 insurgents on death row as ‘revenge’ for a truck bombing in June 2017 which killed 80 and wounded nearly 500 people <sup>(48)</sup>. In November of 2017, 5 people were executed in Pol-e Charkhi, including an ex-member of the Herat Provincial Council, for kidnapping and killing a man in 2016. Appeals were exhausted and President Ghani approved the executions <sup>(49)</sup>.

For further information on state justice and actors involved in the conflict refer to *EASO Country of Origin Report: Afghanistan - Individuals targeted by armed actors in the conflict* <sup>(50)</sup>, and the *EASO Country of Origin Information Report: Afghanistan - Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City* <sup>(51)</sup>.

<sup>(37)</sup> BBC News, Afghan judge whips man for drinking alcohol, 1 June 2011 ([url](#)).

<sup>(38)</sup> RFE/RL, Afghan lashing highlights use of Shari’a law, 12 April 2012 ([url](#)).

<sup>(39)</sup> RFE/RL, Afghan lashing highlights use of Shari’a law, 12 April 2012 ([url](#)).

<sup>(40)</sup> Human Rights Watch, Dispatches: A court-sanctioned lashing in Afghanistan, 2 September 2015 ([url](#)).

<sup>(41)</sup> AI, Abhorrent punishment of 100 lashes for ‘adultery’ must be investigated, 2 September 2015 ([url](#)); BBC News, Afghan judge whips man for drinking alcohol, 1 June 2011 ([url](#)); Human Rights Watch, Dispatches: A court-sanctioned lashing in Afghanistan, 2 September 2015 ([url](#)).

<sup>(42)</sup> UNCAT, Concluding observations on the second periodic report of Afghanistan, 12 June 2017 ([url](#)), para. 7.

<sup>(43)</sup> BBC News, Afghan executions: five handed for Paghman gang-rape, 8 October 2014 ([url](#)); RFE/RL, Afghanistan executes five convicted of murder, kidnapping in Herat, 30 November 2017 ([url](#)).

<sup>(44)</sup> Bjelica, J. and Qaane, E., Afghanistan’s latest executions, AAN, 11 May 2016 ([url](#)).

<sup>(45)</sup> AI, Amnesty International Report 2016/2017 – Afghanistan, 22 February 2017 ([url](#)).

<sup>(46)</sup> Bjelica, J. and Qaane, E., Afghanistan’s latest executions, AAN, 11 May 2016 ([url](#)).

<sup>(47)</sup> Bjelica, J. and Qaane, E., Afghanistan’s latest executions, AAN, 11 May 2016 ([url](#)).

<sup>(48)</sup> Reuters, Taliban warns against retaliation over Kabul attack, 1 June 2017 ([url](#)).

<sup>(49)</sup> RFE/RL, Afghanistan executes five convicted of murder, kidnapping in Herat, 30 November 2017 ([url](#)).

<sup>(50)</sup> EASO, Country of Origin Report: Afghanistan - Individuals targeted by armed actors in the conflict, December 2017 ([url](#)).

<sup>(51)</sup> EASO, Country of Origin Information Report: Afghanistan - Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City, August 2017 ([url](#)).

### 1.4.2 New Penal Code

In March 2017, President Ashraf Ghani endorsed a new draft Penal Code to revise and modernise the code for certain offences. The UN notes that it will remove some offences, bringing the law into conformity with international treaties and conventions <sup>(52)</sup>. Without providing specific information, in 2017, the government declared that changes to the Penal Code will reduce the number of crimes subject to the death penalty by 74 % <sup>(53)</sup>. According to the UN, reporting in June 2017, the law was endorsed by the President in March 2017 <sup>(54)</sup>, and adopted on 15 May 2017 <sup>(55)</sup>. However, the application of the law is delayed for 9 months [until February 2017] to allow for training of officials and for public awareness of the law <sup>(56)</sup>.

The revised law reportedly contains provisions against war crimes, crimes against humanity, sexual harassment, and *bacha bazi* <sup>(57)</sup>. Further information on intended provisions are mentioned where relevant in this report; however, the law has yet to be put into force.

## 1.5 Customary law

Customary and local interpretations of Islamic laws are intertwined and combined in processes of traditional dispute resolution <sup>(58)</sup>. Customs and customary law also continue to play a valuable and important role in Afghan society; customs are adhered to by individuals within a family, while customary law encompasses normative principles adhered to by a community, and those traditions differ among groups. For example, Tajik, Hazara, Uzbek, and Turkmen follow different social codes than Pashtuns in relation to marriage, inheritance, and public appearances; though there are some overlapping issues across all groups, such as gender discrimination and blood feud practices <sup>(59)</sup>. Sources note that customary and informal dispute resolution mechanisms are complex systems, are not monolithic, and should be understood as involving numerous justice actors ranging from *jirgas* and *shuras*, to include also individual religious scholars, jurists, community members, to NGOs, and national institutions <sup>(60)</sup>. Neamat Nojumi commented that the diversity of non-state justice comes mainly from the segmentation of the population into urban, rural, and tribal sectors, with the principles of enforcement being based on accepted norms in each context. He explained that in the urban centres within city districts or at the centre of the rural districts people do often have the option to access both forms of state and non-state mechanism while in the

<sup>(52)</sup> UNODC, New Penal Code adopted in Afghanistan, 4 March 2017 ([url](#)).

<sup>(53)</sup> UNSG, The situation in Afghanistan and its implications for international peace and security, 15 June 2017 ([url](#)), p. 8.

<sup>(54)</sup> UNSG, The situation in Afghanistan and its implications for international peace and security, 15 June 2017 ([url](#)), para. 29.

<sup>(55)</sup> ILO, Afghanistan (9) > General provisions, Penal Code 2017, n.d. ([url](#)).

<sup>(56)</sup> UNSG, The situation in Afghanistan and its implications for international peace and security, 15 June 2017 ([url](#)), para. 29.

<sup>(57)</sup> ILO, Afghanistan (9) > General provisions, Penal Code 2017, n.d. ([url](#)).

<sup>(58)</sup> Norway, LandInfo, Afghanistan: Blood feuds, traditional law (Pashtunwali), 1 November 2011 ([url](#)), p.5; FRC, Pashtunwali: an analysis of the Pashtun way of life, 5 April 2017 ([url](#)), pp. 45-46.

<sup>(59)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report.

<sup>(60)</sup> AREU, LGAF – Afghanistan, 22 June 2017 ([url](#)), p.129; Wardak, A., A decade and a half of rebuilding Afghanistan's justice system: an overview, 2016 ([url](#)), pp. 6-7. For detailed information on jirga/shura procedures including for land disputes, refer to Afghanistan, (MEC) Independent Joint Anti-Corruption Monitoring and Evaluation Committee, Final Report of the Public Inquiry into Land Usurpation, November 2014 ([url](#)), pp. 36-38; UNAMA, The Stolen Lands of Afghanistan and its People, August 2014 ([url](#)), pp. 27, 37-38; ALEP, An Introduction to the Property Law of Afghanistan, 2015 ([url](#)), pp. 31-35.

peripheries of the cities and rural districts accessing the state justice system is limited. Within the tribal belt of Afghanistan, mainly across the border with Pakistan and in part with Iran, non-state justice forms the dominant legal system. Within these localities, Afghan tribal communities have the presence of a generation of ‘traditional expertise’ (*Jirgamar*) whose profession and job is dispute settlement <sup>(61)</sup>. Nojumi made the observation, based on his research of Afghans’ experiences of local governance, that non-state justice is widely understood by the population, and such mechanisms as *jirgas* and *shuras* are seen as an affordable and functional way to resolve disputes more effectively than can be done through state institutions due to their basis in social trust with adjudicators. Additionally, Nojumi notes in a 2014 article on the subject, that non-state systems are oriented toward the re-establishment of harmony and the prevention of disruption in the community and in relationships. He makes the point that traditional customs and norms within a family may or may not apply to other families; noting that negative practices such as honour killings and retribution are usually carried out and planned in secret, without involving the broader community; by contrast, customary law is meant to be a consultative process <sup>(62)</sup>.

It is a widely held perception among Afghans that customary laws are in line with Islamic *sharia*; however, in practice the two contradict one another at times <sup>(63)</sup>, as well as also contravening official state laws in some practices <sup>(64)</sup>. Neamat Nojumi made the observation that although popular, there are numerous aspects of customary laws that contradict *sharia* and vice versa, particularly in relation to women’s entitlements, which are neglected or denied <sup>(65)</sup>. Similarly, the US Department of State writes that in rural areas, local elders and non-state justice mechanisms were the primary means used to settle criminal and civil disputes, including prescribing punishments outside the formal justice system <sup>(66)</sup>.

For more information on dispute resolution through non-state mechanisms like *jirga* and *shura*, see [Section 6.4](#).

## 1.6 Extrajudicial punishments by insurgents

Insurgents, in the areas under their control, impose punishments through parallel justice systems, based on a strict interpretation of *sharia* <sup>(67)</sup>. These non-state courts are often described as ‘*kangaroo courts*’ <sup>(68)</sup>. UNAMA considers these punishments involving ‘public executions by stoning and shooting, beating and lashing, and amputation – are illegal under the laws of Afghanistan, constitute criminal acts, and may amount to war crimes’ <sup>(69)</sup>.

Transgressing moral codes however do not exclusively refer to gender related cases. In an example from May 2017, insurgents abducted a 14 year old boy from Samangan, because of dancing in a wedding video posted on social media, in a manner deemed ‘immoral’ <sup>(70)</sup>.

<sup>(61)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during his review of this report.

<sup>(62)</sup> Nojumi, N., The merits of non-state justice: An effective mechanism for a stable Afghanistan, 5 November 2014 ([url](#)).

<sup>(63)</sup> Norway, LandInfo, Afghanistan: Blood feuds, traditional law (Pashtunwali), 1 November 2011 ([url](#)), p.5; FRC, Pashtunwali: an analysis of the Pashtun way of life, 5 April 2017 ([url](#)), pp. 45-46.

<sup>(64)</sup> FRC, Pashtunwali: an analysis of the Pashtun way of life, 5 April 2017 ([url](#)), pp. 45-46.

<sup>(65)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report.

<sup>(66)</sup> USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p. 12.

<sup>(67)</sup> USDOS, Country Report on Human Rights Practices 2016 - Afghanistan, 3 March 2017 ([url](#)), p. 12.

<sup>(68)</sup> Pajhwok Afghan News, 10 kangaroo court incidents happen in north this year, 30 October 2016 ([url](#)).

<sup>(69)</sup> UNAMA, Afghanistan Protection of Civilians in Armed Conflict Midyear Report 2017, July 2017 ([url](#)), p. 44.

<sup>(70)</sup> UNAMA, Afghanistan Protection of Civilians in Armed Conflict Midyear Report 2017, July 2017 ([url](#)), p. 43.

Examples from 2016-2017 of Taliban convicting and punishing civilians for ordinary crimes include:

- The execution of a man and his son, accused of murder in Jawzjan <sup>(71)</sup>;
- The execution of a women accused of killing her husband in Jawzjan <sup>(72)</sup>;
- The Taliban execution of two men in Farah after finding them guilty of kidnapping <sup>(73)</sup>;
- The amputation of a 15-year-old boy's right hand and left foot accused of burglary in Herat <sup>(74)</sup>;
- The lashing of a disabled young man accused of rape in Badakhshan <sup>(75)</sup>.

According to a report on the Taliban produced by Antonio Giustozzi and published by LandInfo (Norway), the Taliban maintain this parallel judicial system at least in part to show the shadow-government character of the Taliban <sup>(76)</sup>. Fatigued by the long waits, corruption and bribes, many Afghans voluntarily turn to the Taliban courts to settle their disputes <sup>(77)</sup>.

## 2. Treatment of people perceived to transgress Islam

### 2.1 Legal position on apostasy, conversion and blasphemy

According to the US Department of State's International Religious Freedom Report for 2016, the Afghan Constitution indicates that Islam is the religion of the state, though members of other religions are free to practice within the 'limits of the law' <sup>(78)</sup>. Neither the 1976 Penal Code nor the Constitution of Afghanistan explicitly deal with matters of apostasy, blasphemy, or conversion <sup>(79)</sup>. Conversion away from Islam to another religion is considered apostasy under Islamic law <sup>(80)</sup>, including leaving Islam for atheism <sup>(81)</sup>.

Under Islamic law individuals who convert will be given three days to recant the conversion, or face the punishment for apostasy <sup>(82)</sup>. However, the process to recant under *sharia* is not clear <sup>(83)</sup>. The Cornell University Law School's Death Penalty Worldwide (DPW) database notes that recanting 'does not truly remove the penalty for existing as an "apostate"' <sup>(84)</sup>.

The *Hanafi* school prescribes that apostasy is punishable by death, imprisonment or confiscation of property <sup>(85)</sup>. According to some interpretations of Islamic law in practice in

<sup>(71)</sup> Pajhwok Afghan News, Taliban execute three persons in Jawzjan, 29 March 2016 ([url](#)).

<sup>(72)</sup> Broadly (Vice News), The Taliban is publicly executing women again, 16 May 2016 ([url](#)); New York Times (The), Taliban publicly execute two women in Northern Afghanistan, 7 May 2016 ([url](#)).

<sup>(73)</sup> UNAMA, Afghanistan Protection of Civilians in Armed Conflict Midyear Report 2017, July 2017 ([url](#)), p. 44

<sup>(74)</sup> DW, The disturbing trend of Taliban justice in Afghanistan, 15 March 2017 ([url](#)).

<sup>(75)</sup> Pajhwok Afghan News, Badakhshan: Taliban lash disabled man on rape charges, 21 August 2017 ([url](#)).

<sup>(76)</sup> Giustozzi, A., Afghanistan: Taliban's Intelligence and intimidation campaign, 23 August 2017 ([url](#)), p. 17.

<sup>(77)</sup> New York Times (The), Taliban Justice Gains Favor as Official Afghan Courts Fail, 31 January 2015 ([url](#)).

<sup>(78)</sup> USDOS, International Religious Freedom Report for 2016 - Afghanistan, 15 August 2017 ([url](#)), p. 1.

<sup>(79)</sup> USCIRF, 2017 Annual Report - Afghanistan, 26 April 2017 ([url](#)), p. 2; DPW, Cornell University Law School, Death Penalty Database – Afghanistan, 11 December 2012 ([url](#)).

<sup>(80)</sup> USDOS, International Religious Freedom Report for 2016 - Afghanistan, 15 August 2017 ([url](#)), p. 1; ALEP, Introduction to the Criminal Law of Afghanistan, 2012 ([url](#)), p. 98.

<sup>(81)</sup> ALEP, Introduction to the Criminal Law of Afghanistan, 2012 ([url](#)), p. 95.

<sup>(82)</sup> USDOS, International Religious Freedom Report for 2015 - Afghanistan, 10 August 2016 ([url](#)), p. 3; ALEP, Introduction to the Criminal Law of Afghanistan, 2012 ([url](#)), p. 98.

<sup>(83)</sup> USDOS, International Religious Freedom Report for 2016 - Afghanistan, 15 August 2017 ([url](#)), p. 4.

<sup>(84)</sup> DPW, Cornell University Law School, Death Penalty Database – Afghanistan, 11 December 2012 ([url](#)).

<sup>(85)</sup> USDOS, International Religious Freedom Report for 2016 - Afghanistan, 15 August 2017 ([url](#)).

Afghanistan, conversion away from Islam is punishable by the death penalty<sup>(86)</sup>, by beheading for men and by life imprisonment for women unless they repent or a judge makes a discretionary decision about a lesser penalty<sup>(87)</sup>. ALEP explains that other punishments have also been adopted, such as marriage annulment, loss of guardianship over his daughter(s), loss of inherited property and inability to pass on property to his children. Children of apostates are still considered Muslims unless they reach adulthood without returning to Islam, in which case they may also be put to death<sup>(88)</sup>. Examples of incidents with corroborating information could not be found.

Blasphemy is punishable by death<sup>(89)</sup> or imprisonment of up to 20 years<sup>(90)</sup>. Like apostates, blasphemers have three days to withdraw their behaviours or face the death penalty<sup>(91)</sup>. A 2004 law prohibits writings and published materials which are considered offensive to Islam or other faiths<sup>(92)</sup>.

For information on threats faced by journalists, and other individuals targeted by armed groups, see *EASO Country of Origin Report: Afghanistan - Individuals targeted by armed actors in the conflict*<sup>(93)</sup>.

## 2.2 Prosecutions by the state for apostasy and blasphemy

Apostasy is a 'serious offence' according to the US Library of Congress, and although it is reportedly rarely prosecuted, this has occurred in past years<sup>(94)</sup>. For instance, according to the US Commission on International Religious Freedom (USCIRF), in 2010-2011, there were two cases of non-Muslims prosecuted for apostasy who faced the possibility of punishment by execution<sup>(95)</sup>. In 2012-2013, USCIRF reported that they were eventually released and left the country after diplomatic pressure over their convictions<sup>(96)</sup>. In 2014-2016, there were reported cases of prosecutions for apostasy or blasphemy by the government<sup>(97)</sup>, or of physical assaults, detentions, arrests, or prosecutions for blasphemy or apostasy<sup>(98)</sup>. The government of Afghanistan stated in a report submitted in May 2016 to the UN Committee Against Torture (UNCAT) that 'no death penalty has been issued or implemented yet' for cases of apostasy or blasphemy<sup>(99)</sup>. According to DPW, despite the lack of clarity under the law,

<sup>(86)</sup> USDOS, International Religious Freedom Report for 2016 - Afghanistan, 15 August 2017 ([url](#)), p. 3; IHEU, Freedom of Thought Report 2015 ([url](#)), p. 285.

<sup>(87)</sup> USDOS, International Religious Freedom Report for 2016 - Afghanistan, 15 August 2017 ([url](#)), p. 3.

<sup>(88)</sup> ALEP, Introduction to the Criminal Law of Afghanistan, 2012 ([url](#)), p. 98.

<sup>(89)</sup> USDOS, International Religious Freedom Report for 2016 - Afghanistan, 15 August 2017 ([url](#)), p. 4.

<sup>(90)</sup> RFE/RL, Afghan 'blasphemy' case an early test for new government, 24 October 2014 ([url](#)).

<sup>(91)</sup> USDOS, International Religious Freedom Report for 2016 - Afghanistan, 15 August 2017 ([url](#)), p. 4.

<sup>(92)</sup> USCIRF, 2017 Annual Report – Afghanistan, 26 April 2017 ([url](#)), p. 2; USDOS, International Religious Freedom Report for 2016 - Afghanistan, 15 August 2017 ([url](#)), p. 4.

<sup>(93)</sup> EASO, Country of Origin Report: Afghanistan - Individuals targeted by armed actors in the conflict, December 2017 ([url](#)).

<sup>(94)</sup> US, Library of Congress, Laws Criminalizing Apostasy in Selected Jurisdictions, May 2014 ([url](#)), p. 3.

<sup>(95)</sup> USCIRF, 2011 Annual Report - Afghanistan, May 2011 ([url](#)), p. 219; Times (The), Afghan to hang for being Christian, 6 February 2011 ([url](#)); Christian Today, Afghan Christian released from prison and safely out of the country, 23 April 2011 ([url](#)).

<sup>(96)</sup> USCIRF, 2013 Annual Report - Afghanistan, 30 April 2013 ([url](#)), p. 4.

<sup>(97)</sup> USDOS, International Religious Freedom Report for 2015, 10 August 2016 ([url](#)), pp. 1, 5; USDOS, International Religious Freedom Report for 2016 - Afghanistan, 15 August 2017 ([url](#)), p. 1.

<sup>(98)</sup> USCIRF, 2017 Annual Report - Afghanistan, 26 April 2017 ([url](#)), p. 2.

<sup>(99)</sup> Afghanistan, Consideration of reports submitted by States parties under Article 19 of the Convention pursuant to the optional reporting procedure, 13 May 2016 ([url](#)).

there are high profile instances where people who are accused of apostasy are threatened with death sentences <sup>(100)</sup>.

In 2014, Afghan authorities arrested the owner and editor of a newspaper on charges of blasphemy, and shut down the newspaper's offices after the paper published an opinion article questioning the existence of God and critiquing the Islamic faith <sup>(101)</sup>. The article sparked protests in which demonstrators called for the death sentence and also drew public condemnation from the government <sup>(102)</sup>. In 2013, one person was convicted and sentenced to 20 years imprisonment for blasphemy; as of 2017, he remains in prison <sup>(103)</sup>. Previous instances of convictions for blasphemy include two people given 20 years in prison for an unaccepted Persian translation of the *Quran* <sup>(104)</sup>, and another sentence for a student journalist accused of downloading information on women's rights and distributing it <sup>(105)</sup>.

In his review of this report, Neamat Nojumi commented that in all these cases, the accused individuals are deprived of a defense attorney or other legal protections on the basis of the Afghan laws. Targeted individuals often have a weak understanding of legal principles and practices, and in the absence of defense attorney, this often leads to hefty punishment <sup>(106)</sup>.

For information on implementation capital punishment by the state, see [Section 1.4](#).

## 2.3 Societal treatment and attitudes towards Christian converts

According to the USDOS, Christians and other minority faiths (Sikhs, Hindus, Baha'i) comprise less than 0.3 percent of the population <sup>(107)</sup>.

The Pew Research Center, a US-based nonpartisan research organisation that conducted a 2013 survey on the attitudes of Muslims, found that in Afghanistan, those surveyed almost universally (99 %) supported the notion of making *sharia* the official law of the country <sup>(108)</sup>. Of the 99 % of respondents who favoured making Islamic law the official law of the state, 79 % approved of executing apostates <sup>(109)</sup>. Afghan converts to Christianity and proselytizers of the faith are perceived with hostility by society <sup>(110)</sup>. They are seen as being immoral, or associated with the West, according to sources <sup>(111)</sup>. In Afghan societal identities, there is a close linkage between religious and national identity meaning Christian converts can be seen to be betraying their Islamic and Afghan heritage <sup>(112)</sup>. Afghans who convert to Christianity

<sup>(100)</sup> DPW, Cornell University Law School, Death Penalty Database – Afghanistan, 11 December 2012 ([url](#)).

<sup>(101)</sup> RFE/RL, Afghan 'blasphemy' case an early test for new government, 24 October 2014 ([url](#)).

<sup>(102)</sup> RFE/RL, Afghan 'blasphemy' case an early test for new government, 24 October 2014 ([url](#)); Kabul Times, Govt ready to take serious steps regarding blasphemous article published in Afghanistan Express Daily: CM, 20 October 2014 ([url](#)); Global Post, An author questioned God in Afghanistan's press – Here's what happened next, 27 October 2014 ([url](#)).

<sup>(103)</sup> USDOS, International Religious Freedom Report for 2016 - Afghanistan, 15 August 2017 ([url](#)), p. 7; USCIRF, 2017 Annual Report - Afghanistan, 26 April 2017 ([url](#)), p. 2.

<sup>(104)</sup> BBC News, Jail upheld in Afghan Koran case, 16 February 2009 ([url](#)); Human Rights Watch, Afghanistan: 20-year sentence for journalist upheld, 10 March 2009 ([url](#)).

<sup>(105)</sup> Guardian (The), Afghan court revokes death sentence for student journalist, 21 October 2008 ([url](#)).

<sup>(106)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report.

<sup>(107)</sup> USDOS, International Religious Freedom Report for 2016 – Afghanistan, 15 August 2017 ([url](#)), p. 3.

<sup>(108)</sup> Pew Research Center, The World's Muslims: Religion, Politics and Society, 30 April 2013 ([url](#)), p. 46.

<sup>(109)</sup> Pew Research Center, The World's Muslims: Religion, Politics and Society, 30 April 2013 ([url](#)), p. 55.

<sup>(110)</sup> USDOS, International Religious Freedom Report for 2016 - Afghanistan, 15 August 2017 ([url](#)), p. 4; Norway, LandInfo, Afghanistan: Ateister, 26 August 2014 ([url](#)), p. 2-4.

<sup>(111)</sup> AFP, Afghan Christians live in fear and hiding, 31 January 2011 ([url](#)).

<sup>(112)</sup> AFP, Afghan Christians live in fear and hiding, 31 January 2011 ([url](#)).

cannot reveal this conversion openly, including to their own families <sup>(113)</sup>. The BBC covered a story of Afghan converts in 2014 noting that the danger is that if it is made public that a Muslim has left Islam, there is ‘no compassion’ for this person, and frequently, the person’s family will repudiate them for being an apostate <sup>(114)</sup>.

According to a 2014 article by the New York Times about a Christian convert living in hiding in Kabul, there have only been a few converts visible in the past decade and the state deals with them by asking them to recant or face expulsion from the country <sup>(115)</sup>. The New York Times also notes the recent growth of Afghan churches in India <sup>(116)</sup>.

A German-language seminar report with Afghanistan experts Thomas Ruttig and Michael Daxner, produced in April 2016 by ACCORD, indicates that there are an increasing number of Afghan converts to Christianity, often through evangelical groups but also by some educated Afghans who deliberately choose to leave Islam <sup>(117)</sup>. Sometimes these Afghans who convert to Christianity are from underprivileged groups, such as street children or very poor families <sup>(118)</sup>. Members of the Christian community who had often been converted while overseas practiced alone or privately in small congregations due to fear of mistreatment; there were hostile attitudes in society to Christian proselytizing <sup>(119)</sup>. The New York Times gave the example of a 2014 story of an Afghan convert to Christianity living in hiding in a Kabul basement, and whose brother-in-law travelled to Kabul from Pakistan to find him and kill him as an ‘apostate’, apparently also threatening to kill his son because he is the son of a non-Muslim <sup>(120)</sup>.

There are no public Christian churches in Afghanistan <sup>(121)</sup>, apart from one Catholic chapel within the Italian Embassy in Kabul <sup>(122)</sup>. According to Reuters, only foreigners attend mass there <sup>(123)</sup>. There was also the Little Sisters of Jesus, a small group of Catholic nuns that had been based in Kabul for 60 years; however the group left Afghanistan in 2017, with the departure of the two last remaining sisters <sup>(124)</sup>. Afghan Christians practice privately in small underground churches or in their homes <sup>(125)</sup>.

According to sources, Afghan people have a tradition of tattooing among some groups <sup>(126)</sup> although permanent tattooing is ‘generally seen as un-Islamic’ and are forbidden in Islamic

<sup>(113)</sup> ACCORD, Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016 ([url](#)), pp. 8-9.

<sup>(114)</sup> BBC News, Controversy of apostasy in Afghanistan, 14 January 2014 ([url](#)).

<sup>(115)</sup> New York Times (The), A Christian convert, on the run in Afghanistan, 21 June 2014 ([url](#)).

<sup>(116)</sup> New York Times (The), A Christian convert, on the run in Afghanistan, 21 June 2014 ([url](#)); New York Times (The), An Afghan church grows in Delhi, 22 July 2013 ([url](#)).

<sup>(117)</sup> ACCORD, Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016 ([url](#)), pp. 8-9.

<sup>(118)</sup> ACCORD, Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016 ([url](#)), pp. 8-9.

<sup>(119)</sup> USDOS, International Religious Freedom Report for 2016 - Afghanistan, 15 August 2017 ([url](#)), pp. 14-15; New York Times (The), A Christian convert, on the run in Afghanistan, 21 June 2014 ([url](#)).

<sup>(120)</sup> New York Times (The), A Christian convert, on the run in Afghanistan, 21 June 2014 ([url](#)).

<sup>(121)</sup> US, CRS, Afghanistan: Post-Taliban Governance, Security, and U.S. Policy, 7 November 2017 ([url](#)), p. 16.

<sup>(122)</sup> USCIRF, Annual Report 2017 – Afghanistan, 26 April 2017 ([url](#)).

<sup>(123)</sup> Reuters, In Afghanistan, Catholic priest hopes for Pope sympathetic to Islam, 13 March 2013 ([url](#)).

<sup>(124)</sup> ItalyEurope24, After 60 years serving the needy, nuns leave Kabul, 28 March 2017 ([url](#)); AsiaNews.it, Fr. Moretti: The Little Sisters of Jesus, for 60 years, Afghan among Afghans, 21 March 2017 ([url](#)).

<sup>(125)</sup> New York Times (The), A Christian convert, on the run in Afghanistan, 21 June 2014 ([url](#)); US, CRS, Afghanistan: post-Taliban governance, security, and U.S. policy, 7 November 2017 ([url](#)), p. 16.

<sup>(126)</sup> Sweden, Lifos, Tatueringar i Afghanistan, 13 September 2017 ([url](#)), p.4; WFP, WFP provides nutritional support for Kuchi women in Southern Afghanistan, 31 January 2013 ([url](#)).

law, according to a report on the topic by Lifos, Sweden's Country of Origin Information service in the Swedish Migration Agency <sup>(127)</sup>. Lifos found that Afghan people with Western style tattoos covered their tattoos in public for fear of societal or insurgent reactions, despite their growing popularity among urban youth <sup>(128)</sup>. Information on prosecutions or public reactions to Afghans with Western style tattoos or tattooed Christian symbols could not be found within time constraints.

The first Lady of Afghanistan, Rula Ghani, was born of Christian Lebanese origin and is a significant public figure <sup>(129)</sup>. According to the Guardian, conservative religious and political figures have made verbal attacks against her for being Christian <sup>(130)</sup>. Such critics have reportedly called her a potential 'threat to Islamic values' <sup>(131)</sup>.

## 2.4 Societal treatment and attitudes towards blasphemy, atheists or secularists

Numerous sources explain that society generally does not tolerate perceived contraventions of Islam. The International Humanist and Ethical Union (IHEU), a UN recognised NGO that produces an annual report on discrimination against non-religious and atheists, states in its 2016 report that in Afghanistan, being accused of blasphemy or defaming religion in Afghanistan can cause people to be targeted for violence <sup>(132)</sup>. The US Department of State's International Religious Freedom Report for 2015 indicates that there were several extrajudicial killings in 2015 for 'alleged religious offences' in Afghanistan during that year <sup>(133)</sup>. According to the BBC, individuals considered 'apostates' are at risk of being beaten to death by ordinary people without being taken before a court <sup>(134)</sup>. Norway's independent COI service, LandInfo, similarly explains that there is a low societal tolerance in Afghanistan for criticism of religious beliefs that are seen as contrary to Islam and expression of such views can cause strong reactions toward that person if done publicly <sup>(135)</sup>. One significant example of mob violence for being perceived to transgress Islam occurred in March 2015 when a young woman named Farkhunda Malikzada was murdered in Kabul city by an angry mob of men after she was falsely accused of burning the *Quran*. The crowd stoned her, ran her over, and set her body on fire without intervention from the police or the public who witnessed her killing but did not prevent it <sup>(136)</sup>. Twelve men were convicted and sentenced to 16-20 years in prison; 7 police officers who were involved in the attack received 2 year suspended sentences with no jail time <sup>(137)</sup>.

IHEU observes that 'assuming or defending any right to criticize, abandon or renounce Islam is considered a taboo even by many Afghans who adhere to broadly democratic values' <sup>(138)</sup>.

<sup>(127)</sup> Sweden, Lifos, Tatueringar i Afghanistan, 13 September 2017 ([url](#)), p.4.

<sup>(128)</sup> Sweden, Lifos, Tatueringar i Afghanistan, 13 September 2017 ([url](#)), p.4.

<sup>(129)</sup> Guardian (The), Rula Ghani, the woman making waves as Afghanistan's new first lady, 6 November 2014 ([url](#)); Diplomat (The), Rula Ghani, Afghanistan's unusually prominent first lady, 7 December 2014 ([url](#))

<sup>(130)</sup> Guardian (The), Rula Ghani, the woman making waves as Afghanistan's new first lady, 6 November 2014 ([url](#))

<sup>(131)</sup> Diplomat (The), Rula Ghani, Afghanistan's unusually prominent first lady, 7 December 2014 ([url](#))

<sup>(132)</sup> IHEU, Freedom of Thought Report 2016 – Afghanistan, 1 November 2016 ([url](#)).

<sup>(133)</sup> USDOS, International Religious Freedom Report for 2015 - Afghanistan, 10 August 2016 ([url](#)), pp. 11-12.

<sup>(134)</sup> BBC News, Controversy of apostasy in Afghanistan, 14 January 2014 ([url](#)).

<sup>(135)</sup> Norway, LandInfo, Afghanistan: Ateister, 26 August 2014 ([url](#)), p. 2-4.

<sup>(136)</sup> FP, A year later, still no justice for Farkhunda, 1 April 2016 ([url](#)); BBC News, Documentary: Farkhunda – the making of a martyr [Online Video], 12 August 2015 ([url](#)).

<sup>(137)</sup> USDOS, International Religious Freedom Report for 2016 - Afghanistan, 15 August 2017 ([url](#)), p. 7; See also, FP, A year later, still no justice for Farkhunda, 1 April 2016 ([url](#)).

<sup>(138)</sup> IHEU, Freedom of Thought Report 2016 – Afghanistan, 1 November 2016 ([url](#)).

Groups such as atheists, secularists, or converts, who hold views that can be perceived as having fallen away from Islam must self-censor and cannot express their personal views or relationship to Islam openly in society <sup>(139)</sup> at the risk of sanctions or violence <sup>(140)</sup>. Likewise, these groups must also appear outwardly Muslim and fulfil behavioural religious and cultural expectations of their local environment, without this being a reflection of their inner conviction <sup>(141)</sup>.

On the issue of whether there is an organised community that Afghans can join, co-director of the Afghanistan Analysts Network (AAN), Thomas Ruttig, explained in a 2016 German-language ACCORD seminar that an ‘atheist movement’ does not exist in Afghanistan <sup>(142)</sup>. Several Facebook pages for groups calling themselves atheist Afghan organisations were found in the course of research for this report; but further information on their activities, including if they are based in Afghanistan or not, could not be found <sup>(143)</sup>.

Other sources noted the point that historically, between 1978 and 1992, the communist government of the People's Democratic Party of Afghanistan (PDPA) pushed significantly for secular values and reforms across Afghanistan <sup>(144)</sup> and aligned itself with the ‘atheistic’ Soviet Union <sup>(145)</sup>. The PDPA government’s programme was imposed with ‘widespread repression’ <sup>(146)</sup> and led to the murder and torture of thousands of people <sup>(147)</sup>. Neamat Nojumi commented during his review of this report that former members and leaders of the PDPA are currently living freely in Afghanistan and are serving in most organs of the government, and have been elected to office <sup>(148)</sup>. For example, some former members of the PDPA, such as Vice-President Abdul Rashid Dostum, still form part of the current government <sup>(149)</sup>.

## 2.5 Situation of the Baha’i

Sources indicate that in 2007, the General Directorate of Fatwa and Accounts, under the Supreme Court, issued a *fatwa* declaring the Baha’i faith to be a form of blasphemy <sup>(150)</sup>. Under the ruling, Baha’i practitioners and converts to the faith are viewed as ‘infidels’ or ‘apostates’ <sup>(151)</sup>; however, there were no reports of Baha’i practitioners being charged for either crime as of 2016 <sup>(152)</sup>.

<sup>(139)</sup> IHEU, Freedom of Thought Report 2015 – Afghanistan, 10 December 2015 ([url](#)), p. 284.

<sup>(140)</sup> IHEU, Freedom of Thought Report 2015 – Afghanistan, 10 December 2015 ([url](#)), p. 284; Norway, LandInfo, Afghanistan: Situasjonen for kristne og konvertitter, 4 September 2013 ([url](#)), p.9; Norway, LandInfo, Afghanistan: Ateister, 26 August 2014 ([url](#)), p. 2-4.

<sup>(141)</sup> Norway, LandInfo, Afghanistan: Situasjonen for kristne og konvertitter, 4 September 2013 ([url](#)), p.9.

<sup>(142)</sup> ACCORD, Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016 ([url](#)), p. 9.

<sup>(143)</sup> Afghan Atheists Organization [Facebook], posted on: 7 September 2017 ([url](#)); Afghan Atheists [Facebook], posted on: 28 September 2017 ([url](#)).

<sup>(144)</sup> Al, Women in Afghanistan: Pawns in men’s power struggles, 1 November 1999 ([url](#)); Barfield, T., Afghanistan: A Cultural and Political History, 2012, pp. 228-229.

<sup>(145)</sup> Barfield, T., Afghanistan: A Cultural and Political History, 2012, pp. 228.

<sup>(146)</sup> Al, Women in Afghanistan: Pawns in men’s power struggles, 1 November 1999 ([url](#)).

<sup>(147)</sup> BBC News, Kabul’s prison of death, 27 February 2006 ([url](#)); BBC News, Afghanistan’s turbulent history, 21 November 2008 ([url](#)); Human Rights Watch, Backgrounder on Afghanistan, 23 October 2001 ([url](#)), p. 1-2.

<sup>(148)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report.

<sup>(149)</sup> Riedel, B., The warlord who defines Afghanistan, 27 July 2014 ([url](#)).

<sup>(150)</sup> USCIRF, 2017 Annual Report - Afghanistan, 26 April 2017 ([url](#)), p. 2; USDOS, International Religious Freedom Report for 2016 - Afghanistan, 15 August 2017 ([url](#)), p. 4.

<sup>(151)</sup> USDOS, International Religious Freedom Report for 2016 - Afghanistan, 15 August 2017 ([url](#)), p. 4; USCIRF, 2017 Annual Report - Afghanistan, 26 April 2017 ([url](#)), p. 2.

<sup>(152)</sup> USDOS, International Religious Freedom Report for 2016 - Afghanistan, 15 August 2017 ([url](#)), p. 7.

## 2.6 Situation of Hindus and Sikhs

There are estimated to be about 900 individual Hindus and Sikhs in Afghanistan <sup>(153)</sup>. According to Reuters, there are less than 220 Hindu and Sikh families in Afghanistan, after many left Afghanistan or have become concentrated in Kabul city, Ghazni and Nangarhar <sup>(154)</sup>. Members of minority communities such as Hindus and Sikhs sometimes serve in government <sup>(155)</sup> and under the Constitution are recognised and protected as equal citizens with Muslims <sup>(156)</sup>. They are allotted one seat in the 249-seat Wolesi Jirga Lower House <sup>(157)</sup>. However, sources also report that Hindus and Sikhs have encountered societal discrimination <sup>(158)</sup>, harassment and some reported instances of societal violence <sup>(159)</sup>, and public harassment of school children and of mourners in cremation ceremonies <sup>(160)</sup>, which require police protection <sup>(161)</sup>. In 2012, a mob of Muslims reportedly attacked a Hindu funeral procession <sup>(162)</sup>. According to a 2017 article by the Emirati newspaper, the National, in which an Afghan Sikh family were interviewed inside the country, the family explained that they must celebrate Diwali discreetly because ‘grand celebrations’ of their faith could be dangerous <sup>(163)</sup>.

For information on treatment of Shia, Hazara, and minority groups by insurgents, see EASO *Country of Origin Report: Afghanistan - Individuals targeted by armed actors in the conflict*, December 2017 <sup>(164)</sup>.

## 2.7 Taliban views and treatment of perceived ‘apostates’

The Taliban monitor and punish the population in the regions of their controls and threatened or killed mullahs, clerics and religious leaders who preached against them or contravened their interpretations of Islam <sup>(165)</sup>. For example, in 2013, the Taliban killed a local cleric in Kunar Province and left a note on his body indicating that he was killed as punishment for having performed funeral prayers for dead ‘apostates’, meaning members of the Afghan government security forces <sup>(166)</sup>. The New York Times reported in 2017 that according to officials, Islamic scholars (*ulema*) who are more liberal or who challenge the Taliban’s ideology, have been increasingly targeted by the Taliban since 2015 <sup>(167)</sup>. BBC News states that the increase in targeting has been due to the shift in attitudes under the new 2016 Taliban

<sup>(153)</sup> USCIRF, 2017 Annual Report - Afghanistan, 26 April 2017 ([url](#)), p. 3.

<sup>(154)</sup> Reuters, Afghanistan’s dwindling Sikh, Hindu communities flee new abuses, 23 June 2016 ([url](#)).

<sup>(155)</sup> US, CRS, Afghanistan: Post-Taliban governance, security, and U.S. policy, 7 November 2017 ([url](#)), p. 16.

<sup>(156)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report.

<sup>(157)</sup> Huffpost, The few remaining Hindus and Sikhs in Afghanistan fight for one seat in its Parliament, 24 September 2016 ([url](#)).

<sup>(158)</sup> US, CRS, Afghanistan: post-Taliban governance, security, and U.S. policy, 7 November 2017 ([url](#)), p. 16.

<sup>(159)</sup> USDOS, International Religious Freedom Report for 2016 - Afghanistan, 15 August 2017 ([url](#)), pp. 14-15. See also: UK, Home Office, Country and Policy Information Note – Afghanistan: Hindus and Sikhs, February 2017 ([url](#)).

<sup>(160)</sup> Al Jazeera, The decline of Afghanistan’s Hindu and Sikh communities, 1 January 2017 ([url](#)); USCIRF, 2017 Annual Report - Afghanistan, 26 April 2017 ([url](#)), p. 3.

<sup>(161)</sup> Reuters, Afghanistan’s dwindling Sikh, Hindu communities flee new abuses, 23 June 2016 ([url](#)).

<sup>(162)</sup> National (The), Afghan Hindus and Sikhs celebrate Diwali without ‘pomp and splendour’ amid fear, 19 October 2017 ([url](#)).

<sup>(163)</sup> National (The), Afghan Hindus and Sikhs celebrate Diwali without ‘pomp and splendour’ amid fear, 19 October 2017 ([url](#)).

<sup>(164)</sup> EASO, Country of Origin Report: Afghanistan - Individuals targeted by armed actors in the conflict, December 2017 ([url](#)).

<sup>(165)</sup> USDOS, International Religious Freedom Report for 2016 - Afghanistan, 15 August 2017 ([url](#)), pp. 1-2, 13-14.

<sup>(166)</sup> USDOS, International Religious Freedom Report for 2013 - Afghanistan, 28 July 2014 ([url](#)), p.9.

<sup>(167)</sup> New York Times (The), Taliban target: scholars of Islam, 28 May 2017 ([url](#)).

leadership of Hibatullah Akhundzada, a hardline senior figure in the Taliban courts <sup>(168)</sup>. The New York Times notes that in Badakhshan province, the department of religious affairs reported that 20 *ulema* were killed in 2017 alone, compared to the 16-year total of 110 <sup>(169)</sup>. Another example was the killing of an Islamic scholar in Kandahar in May 2017 because the Taliban claimed that he stated that the ‘current holy war in Afghanistan was illegitimate’ <sup>(170)</sup>.

In 2010 and 2011, the Taliban killed Christian missionaries and foreigners whom they suspected of being in Afghanistan to convert Afghans to Christianity <sup>(171)</sup>. In a more recent case, in 2014, they attacked a compound and killed a South African pastor and his two children in a suicide attack; the family of the pastor claimed he was not attempting to convert Afghans, while the Taliban claimed he ran a ‘secret Christian missionary group’ <sup>(172)</sup>. Further examples since 2014 could not be found within time constraints.

## 2.8 IS in Khorasan Province (ISKP) views and treatment of ‘apostates’

The Islamic State (IS) promotes the *takfiri* ideology focused on those considered to be ‘undermining Islam’ <sup>(173)</sup>. *Takfir* is the pronouncement that someone is an unbeliever (*kafir*), and sanctions violence targeting Muslim leaders who are ‘insufficiently religious’ <sup>(174)</sup>. According to the IS, those Muslim governments cooperating with the US are considered *murtadd*, defined as apostates who betray Islam, and are legitimate targets of violence; this includes not only Muslim allies of the West, but also those who practice forms of ‘impure’ Islam, which includes non-Sunnis <sup>(175)</sup> and Sunnis who practice Sufism or mystical schools of Islam <sup>(176)</sup>. The founders of IS in Afghanistan, known as IS in Khorasan Province (ISKP), espouse these same *takfiri* views of those they deem to be apostates and consider that those working with *murtadd* (apostate) governments to be legitimate targets for killing <sup>(177)</sup>.

Sources report that ISKP has carried out attacks on those whom it perceives to be ‘apostates,’ for example:

- People working with the government or legislatures, for example, a provincial council member in Kabul in 2016 who was targeted as an ‘apostate’ and wounded in an attack <sup>(178)</sup>;
- People working for or supporting the government, including as teachers or doctors, who the group can label as apostates <sup>(179)</sup>; judges and court staff have been labelled apostates, for instance, those who were attacked at the Supreme Court in 2017 <sup>(180)</sup>;

<sup>(168)</sup> BBC News, Profile: New Taliban chief Mawlawi Hibatullah Akhunzada, 26 May 2016 ([url](#)).

<sup>(169)</sup> New York Times (The), Taliban target: scholars of Islam, 28 May 2017 ([url](#)).

<sup>(170)</sup> New York Times (The), Taliban target: scholars of Islam, 28 May 2017 ([url](#)).

<sup>(171)</sup> VOA, Taliban claims responsibility for killing ‘Christian missionaries’, 6 August 2010 ([url](#)); AFP, Afghan Christians live in fear and hiding, 31 January 2011 ([url](#)).

<sup>(172)</sup> Christian Today, Church mourns pastor and children killed by Taliban suicide bombing in Afghanistan, 1 December 2014 ([url](#)).

<sup>(173)</sup> RFE/RL, IS’s looming death could be hiding bad news, 26 December 2016 ([url](#)).

<sup>(174)</sup> Oxford Dictionary of Islam, Takfir, Oxford Islamic Studies Online, n.d., ([url](#)).

<sup>(175)</sup> RFE/RL, IS’s looming death could be hiding bad news, 26 December 2016 ([url](#)).

<sup>(176)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report.

<sup>(177)</sup> Osman, B., Messages in chalk: ‘Islamic State’ haunting Afghanistan?, 17 November 2014 ([url](#)), p. 3, 7, 8.

<sup>(178)</sup> Osman, B., With an active cell in Kabul, ISKP tries to bring sectarianism to the Afghan war, 19 October 2016 ([url](#)).

<sup>(179)</sup> Osman, B., ISKP’s battle for minds, 12 December 2016 ([url](#)).

<sup>(180)</sup> LWJ, Islamic State claims suicide attack outside Afghanistan’s Supreme Court, 8 February 2017 ([url](#)).

- Hazara Shia, and people who ‘doubt the right to kill them’, who are also deemed apostates <sup>(181)</sup>; in its review of this report, UNAMA commented that ISKP rather calls Shia people *rafida* or *mushrikeen* (those who worship others) or heretics <sup>(182)</sup>;
- The Taliban <sup>(183)</sup>; ISKP considers the Taliban to be ruled by tribal customs and traditions which oppose Islamic *sharia* and the two groups are in conflict over their respective extremist views, with the Taliban being mainly nationalist in scope, and IS being pan-Islamic <sup>(184)</sup>. IS has labelled the Taliban as an ‘apostate’ group <sup>(185)</sup>.
- Those whom they deem to be working for the Taliban <sup>(186)</sup>. In 2015, news sources report that ISKP in Nangarhar province released a video on social media showing the execution of 10 men who were described as ‘apostates’ for aiding the Taliban in the province, or, being aligned with the government. The men were blindfolded, forced to kneel down on explosives and were then blown up <sup>(187)</sup>.

For information on other individuals targeted by anti-government elements, see *EASO Country of Origin Report: Afghanistan - Individuals targeted by armed actors in the conflict* <sup>(188)</sup>.

## 2.9 Avoiding targeting and seeking assistance

The International Humanist and Ethical Union (IHEU), a UN recognised NGO that produces an annual report on discrimination against non-religious and atheists, states in its 2016 report that in Afghanistan, there are few incidents against non-believers and apostates recorded, giving the view that ‘many converts and dissenters from Islam generally are simply too afraid to speak out’ <sup>(189)</sup>. Sources indicate that Christian converts in Afghanistan must conceal their religious beliefs <sup>(190)</sup>. According to Thomas Ruttig, the co-founder of the independent research organization, the Afghanistan Analysts Network (AAN), in order for a converted person to be suspected of being a converted Christian or switching beliefs, concrete triggers must be observed, such as the person saying something wrong in the course of heated discussions; or, being seen publicly expressing a clearly Christian signal or action. He noted that consequently, Christians tend to hold their prayers in small groups in specific spaces. He gave the view that it is possible that these locations are watched by the secret service <sup>(191)</sup>. Corroborating information on such surveillance could not be found.

Regarding the possibility of being found out as a convert, Thomas Ruttig explained in the 2016 ACCORD seminar that someone who converted away from Islam, or no longer wants to be

<sup>(181)</sup> Osman, B., With an active cell in Kabul, AAN, 19 October 2016 ([url](#)).

<sup>(182)</sup> UNAMA, email, 2 October 2017. UNAMA made this comment during their review of this report.

<sup>(183)</sup> Osman, B., ISKP’s battle for minds, 12 December 2016 ([url](#)).

<sup>(184)</sup> Diplomat (The), Revealed: Why ISIS hates the Taliban, 29 January 2016 ([url](#)); LWJ, The Islamic State’s obsession with al Qaeda and the Taliban, 20 January 2016 ([url](#)).

<sup>(185)</sup> LWJ, Taliban and Islamic State clash in eastern Afghanistan, 1 May 2017 ([url](#)).

<sup>(186)</sup> Osman, B., With an active cell in Kabul, AAN, 19 October 2016 ([url](#)).

<sup>(187)</sup> KP, ISIS release horrific execution video, claiming to be filmed in Afghanistan, 10 August 2015 ([url](#)); RFE/RL, Why the Taliban criticized an IS video as ‘horrific’ and ‘un-Islamic’, 13 August 2015 ([url](#)); RFE/RL, Taliban condemns IS video of Afghan prisoners being blown up, 12 August 2015 ([url](#)).

<sup>(188)</sup> EASO, Country of Origin Report: Afghanistan - Individuals targeted by armed actors in the conflict, December 2017 ([url](#)).

<sup>(189)</sup> IHEU, Freedom of Thought Report 2016 – Afghanistan, 2016 ([url](#)).

<sup>(190)</sup> ACCORD, Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016 ([url](#)), p. 9; BBC News, Controversy of apostasy in Afghanistan, 14 January 2014 ([url](#)).

<sup>(191)</sup> ACCORD, Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016 ([url](#)), pp. 10-11.

involved in religious-cultural life still takes part in traditional religious acts as a ‘camouflage’. He stated that leaving one’s faith can be concealed quite well as there are many Muslims who do not regularly attend mosque, so the failure to attend would not automatically result in someone being suspected of converting to Christianity. He explained, however, that if this became known, he knows of no cases where it has been tolerated, with the main problems coming from a person’s family and neighbourhood <sup>(192)</sup>.

A 2012 global survey of the attitudes held by Muslims conducted by Pew Research, which surveyed 1,509 Afghan Muslims inside the country, found about 61 % of respondents said they attend Mosque at least once a week, 88 % said they prayed five times daily, and 93 % fasted for Ramadan <sup>(193)</sup>. Thomas Ruttig explained that there are some atheists in Afghanistan, but that even strong secularists visit the mosque on occasion, and must take part in certain Islamic customs. One’s secularism is ‘tolerated’ as long as one is involved in certain Islamic religious activity, and not agitating against it <sup>(194)</sup>. Similarly, LandInfo’s 2014 report on atheists in Afghanistan found that atheists and non-believers would not be the target of attacks provided they do not express disrespect to Islam in public. The same source explains that the limits of what can be expressed publicly varies both geographically and socially between urban and rural areas in Afghanistan. In liberal milieus among the educated public living in cities, critical discussions such as those on religious issues are more tolerated, though this can also result in sanctions <sup>(195)</sup>.

The US Department of State’s International Religious Freedom Report for 2012 states that converts from Islam who are imprisoned at that time had difficulty accessing legal aid because lawyers object to defending them <sup>(196)</sup>. The International Bar Association’s Human Rights Institute (IBAHRI) explains in a 2014 paper about the legal profession in Afghanistan, that lawyers themselves face problems when defending controversial cases such as apostasy because they are frequently labelled as apostates themselves. They are also pressured by colleagues and family to refrain from taking such cases. Defence lawyers who do take on such cases have received death threats, as well as ‘pressure and condemnation from within the justice sector and the public at large’ <sup>(197)</sup>. Further and more recent information on atheists in Afghanistan could not be found within time constraints.

## 2.10 Moral crimes in Islam

For information on the crime of adultery (*zina*), refer to [Section 3.6](#).

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<sup>(192)</sup> ACCORD, Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016 ([url](#)), p. 9.

<sup>(193)</sup> Pew Research Center, The World’s Muslims: Unity and Diversity, 8 August 2012 ([url](#)), pp. 25, 43, 46, 54.

<sup>(194)</sup> ACCORD, Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016 ([url](#)), p. 9.

<sup>(195)</sup> Norway, LandInfo, Afghanistan: Ateister, 26 August 2014 ([url](#)), p. 2-4.

<sup>(196)</sup> USDOS, International Religious Freedom Report for 2012 - Afghanistan, 20 May 2013 ([url](#)), p. 8.

<sup>(197)</sup> IBARHI, The rule of law, democracy and the legal profession in the Afghan context, January 2014 ([url](#)), p.15.

### 3. Gender-based targeting by society

#### 3.1 Position of women in society

The societal position of women and girls in Afghanistan is embedded across a constellation of mores, norms, and values anchored in familial, religious, tribal and customary traditions <sup>(198)</sup>. Afghan society is characterised by deeply engrained attitudes and societal structures that reinforce gender discrimination against girls and women <sup>(199)</sup>. Culture and tradition strongly influence the place of men as the authority, and responsible for protection, security, and overall needs of the family, which is strongly linked to honour and shame; women are seen to be responsible for domestic life <sup>(200)</sup> and subordinate <sup>(201)</sup> although there is increased awareness of the rights of women in society <sup>(202)</sup>. However, traditional socio-cultural attitudes and patterns of behaviour reinforce the lower societal status of women and become factors leading to gender-based violence <sup>(203)</sup>. Traditionally organised customary tribal codes such as the *Pashtunwali* also prevent women from accessing basic rights and freedoms <sup>(204)</sup>. Displaced women and girls are particularly vulnerable to gender-based constraints on access to livelihoods, education, and services, as well as being more vulnerable to marginalisation and violence due to disrupted family and community support <sup>(205)</sup>.

The UN describes the Government of Afghanistan as a ‘sincere and committed partner’ in its efforts to address violence against women in the face of significant challenges to their full participation in society <sup>(206)</sup>. The Law on Elimination of Violence Against Women (EVAW), enacted by presidential decree in 2009, criminalises 22 types of violence against women, and is the main instrument of legal protection for gender-based harm <sup>(207)</sup> while the 2004 Constitution guarantees equal rights before the law for both men and women <sup>(208)</sup>. Important advancements such as these have been made regarding the development of legal protections for women in Afghanistan since the fall of the Taliban; however, significant gaps in implementation of protections against gender-based violence and access to justice for women remain a problem <sup>(209)</sup>. Despite efforts and achievements made by the government and rights

<sup>(198)</sup> Nojumi, N. et al., *Life and Security in Rural Afghanistan*, 2009, ([url](#)), pp. 35-36.

<sup>(199)</sup> UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, 12 May 2015 ([url](#)), para. 9; IWPR, *The shame of having daughters*, 30 January 2017 ([url](#)); AIHRC, *National Inquiry Report on Factors and Causes of Rape and Honor Killing in Afghanistan*, 2013 ([url](#)), pp. 7-9; CSHRN and OMCT, *Shadow Report to the Committee Against Torture*, March 2017 ([url](#)), pp. 20-21.

<sup>(200)</sup> Siddique, A., Skype interview, 11 August 2017; AREU and SCA, *The Other Side of Gender Inequality: Men and Masculinities in Afghanistan*, January 2016 ([url](#)), p.44-45; USIP, *Rule of Law, Governance and Human Rights in Afghanistan 2002-2016*, 29 August 2017 ([url](#)), pp. 31-33, 34-35.

<sup>(201)</sup> USIP, *Rule of Law, Governance and Human Rights in Afghanistan 2002-2016*, 29 August 2017 ([url](#)), p. 32; AIHRC, *Press Release on Violence against Women Jan-Oct 2017*, October 2017 ([url](#)).

<sup>(202)</sup> Asia Foundation, *The evolving role of women in a politically uncertain Afghanistan*, 7 December 2016 ([url](#)).

<sup>(203)</sup> AIHRC, *National Inquiry Report on Factors and Causes of Rape and Honor Killing in Afghanistan*, 2013 ([url](#)), pp. 96-98.

<sup>(204)</sup> FRC, *Pashtunwali: an analysis of the Pashtun way of life*, 5 April 2017 ([url](#)), p.55; AREU and SCA, *The Other Side of Gender Inequality: Men and Masculinities in Afghanistan*, January 2016 ([url](#)), p.45.

<sup>(205)</sup> UN Human Rights Council, Report of the Special Rapporteur on the human rights of internally displaced persons on his mission to Afghanistan, 12 April 2017, ([url](#)), pp. 11-12; NRC and TLO, *Listening to Women and Girls Displaced to Urban Afghanistan*, January 2015 ([url](#)), p.26.

<sup>(206)</sup> UNSG, *The situation in Afghanistan and its implications for international peace and security*, 15 September 2017 ([url](#)), para. 56.

<sup>(207)</sup> UNAMA, *Justice Through the Eyes of Afghan Women*, April 2015 ([url](#)), p.11; Afghanistan, *Law of 2009 on Elimination of Violence Against Women*, 2009 ([url](#)).

<sup>(208)</sup> Afghanistan, *Constitution of Afghanistan*, 26 January 2004 ([url](#)), Article 22.

<sup>(209)</sup> UNSG, *The situation in Afghanistan and its implications for international peace and security*, 15 September 2017 ([url](#)), para. 30. UNAMA, *Justice Through the Eyes of Afghan Women*, April 2015 ([url](#)), pp. 31-33; UN Special

groups, violence against women in Afghan society is still prevalent and broadly underreported<sup>(210)</sup>. The UN observed that 87 % of Afghan women experience violence during their lives, and 62 % experience it multiple times<sup>(211)</sup>. In an interview with EASO for this report, a senior representative of Women for Afghan Women (WAW), which runs a network of support activities and shelters for women in Afghanistan, explained that the situation of women is strongly linked to the broader security situation in the country, noting that with security deterioration, restrictions on women's freedom of movement intensify as families become more cautious about sending women and children out of the home to work or attend school. Furthermore, she explained that the more insecure a location or district becomes and where there is less government control, the less likely women are to be able to access assistance for gender-based violence<sup>(212)</sup>.

For detailed information on the societal position and socio-economic situation of women in cities as well as additional information on protection and mobility issues, refer to *EASO Country of Origin Information Report: Afghanistan - Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City*<sup>(213)</sup>.

### 3.2 Dress codes and behavioural norms

Women generally require a male chaperone, colleague, or guardian to accompany them outside the house<sup>(214)</sup>, although not within major cities such as Herat, Mazar, and Kabul<sup>(215)</sup>. Women in Afghanistan adhere to stringent societal restrictions on their dress, appearance and behaviour, particularly in public<sup>(216)</sup>. Neamat Nojumi gave the view that adopting coverings with the *burqa* in public is not a woman's choice but an imposition by religious and customary attitudes toward women's public role<sup>(217)</sup>. They cover themselves with a headscarf or *burqa* in public, even in Kabul, to feel more protected, and due to religious and societal tradition; however, the coverings lessen, but do not protect women from sexual harassment outside

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Rapporteur on violence against women, its causes and consequences, 12 May 2015 ([url](#)), paras. 10, 13; Nojumi, N. et al., *Life and Security in Rural Afghanistan*, 2009, p. 37; CSHRN and OMCT, *Shadow Report to the Committee Against Torture*, March 2017 ([url](#)), pp. 20-21; Pajhwok Afghan News, *Progress on human rights promotion in Afghanistan underlined*, 14 August 2017 ([url](#)); UNSG, *The situation in Afghanistan and its implications for international peace and security*, 15 June 2017 ([url](#)), p. 6-8; USIP, *Rule of Law, Governance and Human Rights in Afghanistan 2002-2016*, 29 August 2017 ([url](#)), pp. 31-32.

<sup>(210)</sup> UNSG, *The situation in Afghanistan and its implications for international peace and security*, 15 June 2017 ([url](#)), para. 29; UNAMA, *A Way To Go*, 16 December 2013 ([url](#)), p. 4; AIHRC, *Shadow Report on the Realization and Implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Afghanistan*, 17 May 2017 ([url](#)), p.12; USDOS, *Country Reports on Human Rights Practices for 2016 – Afghanistan*, 3 March 2017 ([url](#)), pp. 33-34.

<sup>(211)</sup> AFP, *A safe place for Afghanistan's abused women*, 27 May 2017 ([url](#)).

<sup>(212)</sup> WAW, Skype interview with a senior representative, 21 August 2017. WAW is a non-governmental organization operating in 13 provinces which provides services, counselling, and support to Afghan women in situations of gender-based violence. For more information, see also: AIHRC, *Press Release on Violence against Women Jan-Oct 2017*, October 2017 ([url](#)).

<sup>(213)</sup> EASO, *Country of Origin Information Report: Afghanistan - Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City*, August 2017 ([url](#)).

<sup>(214)</sup> Siddique, A., Skype interview, 11 August 2017; USDOS, *Country Reports on Human Rights Practices for 2016 – Afghanistan*, 3 March 2017 ([url](#)), p. 26; Wimpelmann, T., *The Pitfalls of Protection*, 2017 ([url](#)), pp. 109-110.

<sup>(215)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report.

<sup>(216)</sup> RFE/RL, *Afghan singer Aryana Sayeed vows the show will go on, despite threats*, 17 August 2017 ([url](#)); WAW, Skype interview with a senior representative, 21 August 2017. WAW is a non-governmental organization operating in 13 provinces which provides support to Afghan women in situations of gender-based violence.

<sup>(217)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report.

the home <sup>(218)</sup> which remains a common problem, including in urban areas <sup>(219)</sup>. In Herat, the majority of women wear a *burqa*, with the exception being some more educated women, or women who have lived in Iran or abroad, who wear imported alternatives from Saudi Arabia, Iran, or the long black *chador* <sup>(220)</sup>.

Public harassment of women is a serious problem <sup>(221)</sup>. Sources interviewed for this report explained that women in Afghanistan, including Kabul, dress traditionally or modestly to avoid problems such as being labelled as ‘a loose woman’, and as a basic precaution to secure oneself from harassment <sup>(222)</sup>. In an interview with EASO for this report, Abubakar Siddique, senior correspondent for RFE/RL specialising in coverage of Afghanistan and Pakistan, explained that women cannot just walk around the streets of Kabul in ‘Westernised’ dress, though within homes or for functions like weddings in Kabul, it is more tolerated <sup>(223)</sup>. The senior representative of WAW also said that women follow dress codes in order to avoid targeting, and even though in cities it is different, women will not dress ‘against the culture’ because doing so will put her life at risk <sup>(224)</sup>. Neamat Nojumi gave the opinion during his review of this report that Hazaras and Tajik women are more active in public spheres while women who are Pashtun, Uzbek and Turkmen are less active outside of their houses <sup>(225)</sup>.

Several examples from recent years illustrate reactions to women who violate social norms about women’s dress codes in public:

In 2015, a female Afghan artist carried out an art project to highlight the problem of sexual harassment in public by walking down the street in Kabul wearing sculpted metal bodysuit. Within 8 minutes, an angry mob shouting and throwing stones at her forced her off the street. She subsequently received death threats and went into hiding <sup>(226)</sup>.

A spate of acid attacks in Kabul city in 2016 caused women to take additional protective measures such as staying indoors more, and covering their faces and bodies with veils <sup>(227)</sup>. In Herat, two acid attacks against women in public occurred in 2017, resulting in hospitalisation of several victims who were sprayed in the face <sup>(228)</sup>.

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<sup>(218)</sup> Netherlands (The), Ministry of Foreign Affairs, Country of Origin Report on Afghanistan, November 2016 ([url](#)), p. 81; BBC News, Afghan artist in hiding after ‘iron underwear’ stunt, 12 March 2015 ([url](#)); Afghanistan Today, ‘Achieving power with the burqa betrays the rights of women’, 25 September 2015 ([url](#)); USDOS, International Religious Freedom Report for 2016 - Afghanistan, 15 August 2017 ([url](#)), p. 15.

<sup>(219)</sup> Qaane, E., Harassment of women in Afghanistan: A hidden phenomenon addressed in too many laws, AAN, 2 April 2017 ([url](#)); USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p. 37; WCLRF, Research on sexual harassment against women in public places, workplace, and educational institutions of Afghanistan, 2015 ([url](#)), p.8.

<sup>(220)</sup> Afghanistan Today, ‘Achieving power with the burqa betrays the rights of women’, 25 September 2015 ([url](#)).

<sup>(221)</sup> FP, When it comes to sexual assault, Afghanistan is all talk and no action, 21 December 2015 ([url](#)).

<sup>(222)</sup> Siddique, A., Skype interview, 11 August 2017; Programme officer, Skype interview, 7 August 2017. The Programme officer programme officer who was based in Kabul and frequently returns to the country, and who has worked with returnees for several international NGOs in Afghanistan in the course of the past several years. The contact person requested to remain anonymous for security reasons.

<sup>(223)</sup> Siddique, A., Skype interview, 11 August 2017.

<sup>(224)</sup> WAW, Skype interview with a senior representative, 21 August 2017. WAW is a non-governmental organization operating in 13 provinces which provides services, counselling, and support to women in situations of gender-based violence.

<sup>(225)</sup> Nojumi, N., email. 22 September 2017. Neamat Nojumi made this comment during the review of this report.

<sup>(226)</sup> BBC News, Afghan artist in hiding after ‘iron underwear’ stunt, 12 March 2015 ([url](#)).

<sup>(227)</sup> New York Times (The), Kabul’s women seek refuge indoors after a series of acid attacks, 8 October 2016 ([url](#)).

<sup>(228)</sup> Pajhwok Afghan News, Unidentified individuals spray acid on sisters in Herat, 21 November 2017 ([url](#)).

In 2017, a popular female Afghan singer faced threats of violence and was heavily criticised by religious leaders who called her un-Islamic and against Afghan culture due to her public performances, making liberal statements and for wearing ‘Western clothes’ <sup>(229)</sup>. Threats of attack were made against a fundraising concert she planned to hold in Kabul on Afghan Independence Day on 19 August 2017 for families of those killed by militants in Mirzawalang, Sar-e Pul <sup>(230)</sup>. The concert was able to go ahead after the venue changed to a secure location <sup>(231)</sup>.

In 2017, on his official social media account, a prominent Afghan politician posted photos of one of his wives who was wearing a Turkish Islamic full body outfit while she was accompanying him on an official trip to Turkey. He was met with criticism for publicly posting the images of a woman, but also because of his wife’s ‘modern’ dress, and for bringing her with him on an official trip <sup>(232)</sup>.

Due to Afghanistan’s cultural gender norms and the basic practical need for male support and protection, there is also a customary practice (*bacha posh*) practiced among some families who do not have a son. A daughter is selected to be dressed as and behave as a boy until she reaches puberty <sup>(233)</sup>. Whilst a *bacha posh*, the girl maintains a male appearance and persona in public so that they can work and go outside the home and assist in supporting their families; the practice is accepted as a way to deal with the functional need in Afghan society to have a male in the family, but it is also unspoken <sup>(234)</sup>. After her family determines she reaches marrying age, a *bacha posh* girl is expected to transform back into being female, get married to a man, and return to her role as a woman <sup>(235)</sup>.

### 3.3 Women in public roles

Afghan women in public roles and who challenge stereotypical attitudes toward women faced intimidation, threats, violence and killings <sup>(236)</sup>. USIP states that ‘[t]he Taliban oppose any public role for women in Afghanistan’ <sup>(237)</sup>. However, according to a 2015 report by the New York Times, ‘repressive views of women were not just a Taliban curse, but also a deeply embedded part of society’ <sup>(238)</sup>. Women who work outside the home, including those who have higher education, encounter frequent sexual harassment and abuse in the workplace

<sup>(229)</sup> RFE/RL, Afghan singer Aryana Sayeed vows the show will go on, despite threats, 17 August 2017 ([url](#)); Reuters, Security fears ahead of concert by ‘Afghanistan’s Kim Kardashian,’ 16 August 2017 ([url](#)).

<sup>(230)</sup> BBC News, Afghan female singer’s video draws threats and praise, 17 August 2017 ([url](#)); RFE/RL, Afghan singer Aryana Sayeed vows the show will go on, despite threats, 17 August 2017 ([url](#)); Reuters, Security fears ahead of concert by ‘Afghanistan’s Kim Kardashian,’ 16 August 2017 ([url](#)).

<sup>(231)</sup> BBC News, Aryana Sayeed: Kabul concert goes ahead despite threats, 20 August 2017 ([url](#)). For more information in English on the treatment of musicians in Afghanistan, see Finland, Finnish Immigration Service, Response to COI Query on musicians, persecution, protection, 3 May 2016 ([url](#)).

<sup>(232)</sup> KP, Afghan politician hits back at critics regarding his wife’s social media photos, 3 July 2017 ([url](#)).

<sup>(233)</sup> Guardian (The), Girls will be boys in Afghanistan, November 30 2011 ([url](#)); Guardian (The), The Afghan girls raised as boys, 22 September 2014 ([url](#)); Time, I’m a woman who lived as a boy: my years as a bacha posh, 15 September 2014 ([url](#)).

<sup>(234)</sup> Guardian (The), Girls will be boys in Afghanistan, November 30 2011 ([url](#)); Guardian (The), The Afghan girls raised as boys, 22 September 2014 ([url](#)); Foreign Affairs, Afghanistan’s female sons, 13 April 2015 ([url](#)).

<sup>(235)</sup> Guardian (The), The Afghan girls raised as boys, 22 September 2014 ([url](#)); Time, I’m a woman who lived as a boy: my years as a bacha posh, 15 September 2014 ([url](#)).

<sup>(236)</sup> USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p. 37; BBC News, Threatened with death for working on TV, 29 April 2016 ([url](#)); USIP, Rule of Law, Governance and Human Rights in Afghanistan 2002-2016, 29 August 2017 ([url](#)), pp. 32, 34-35.

<sup>(237)</sup> Rupert, J., Afghan Women Defend Their Rights Against the Taliban, USIP, 9 May 2017 ([url](#)).

<sup>(238)</sup> New York Times (The), Afghan Policewomen Struggle Against Culture, 1 March 2015 ([url](#)).

and on the street <sup>(239)</sup>. Sexual harassment of women in the workplace is described as a rampant problem and women are expected to give sexual favours <sup>(240)</sup>.

### 3.3.1 Women in politics

Women in public life, such as those elected to office, face negative societal attitudes, discrimination, harassment in carrying out their official responsibilities, lack of official protection and security guards <sup>(241)</sup>, and have received threats of attack <sup>(242)</sup>. In 2015, Sima Joyenda was appointed governor of Ghor province as one of two women governors brought in by the NUG; however, shortly after, she was pressured to leave her post due to threats from religious and local officials and armed groups, and when the Ulema Council complained and refused to 'be obedient' to a female governor <sup>(243)</sup>. She reportedly also faced protests for trying to investigate the public stoning of a girl in Ghor (see [Section 3.6 on moral offences](#)) <sup>(244)</sup> and faced opposition for her stance on land-grabbing <sup>(245)</sup>.

Women in politics have also been subjected to targeted attacks and killings in the past <sup>(246)</sup>. In study of the 2009 Presidential and Provincial Council Elections in Afghanistan, the National Democratic Institute (NDI), an NGO promoting democracy, found that '[n]early all female candidates interviewed by NDI reported receiving night letters or threatening phone calls' and death threats <sup>(247)</sup>. Recent examples of attacks carried out on female politicians include:

- The killing of provincial council member and popular politician Angiza Shinwari in a bomb attack on her vehicle in Nangarhar in 2015 <sup>(248)</sup>;
- A 2014 bomb attack on the vehicle of MP and outspoken woman rights activist Shukria Barakzai; the attack failed to kill the target, but three civilians died and 30 were injured <sup>(249)</sup>.

### 3.3.2 Women in law enforcement and security forces

According to a 2015 report by the New York Times, Afghan female police are thought of as 'little more than prostitutes,' who are seen to be a dishonour their families. That stigma means that mostly desperate women, usually illiterate and poor, have joined the force. The same source reports that 'coercive sex is a frequent tool' in the force and many Afghan female officers abide such sexual harassment out of fear losing their job <sup>(250)</sup>. In 2012, for instance, US-based public news station, National Public Radio (NPR), documented several cases of rape within the police corps of Mazar-e Sharif. Because of the widespread rumours of rape and sexual violence towards women in the police force, many female police officers are ashamed

<sup>(239)</sup> Schuster, L., Skype interview, 7 August 2017; Qaane, E., Harassment of women in Afghanistan: A hidden phenomenon addressed in too many laws, 2 April 2017 ([url](#)).

<sup>(240)</sup> Guardian (The), Outrage at video of Afghan colonel sexually exploiting woman, 2 November 2017 ([url](#)).

<sup>(241)</sup> Al, Afghanistan: Their lives on the line, 7 April 2015 ([url](#)), p. 43.

<sup>(242)</sup> Al Jazeera, A new threat for Afghan women in politics, 17 November 2014 ([url](#)).

<sup>(243)</sup> Ahmadi, S., Reality check: No justice for women in Ghor Province, AAN, 4 December 2016 ([url](#)).

<sup>(244)</sup> Asia Times, Afghan investigator justifies stoning death of woman, 7 November 2015 ([url](#)).

<sup>(245)</sup> Ahmadi, S., Reality check: No justice for women in Ghor Province, AAN, 4 December 2016 ([url](#)).

<sup>(246)</sup> Guardian (The), Opinion: Afghanistan must stop the murder of its female leaders, 17 July 2012 ([url](#)); Reuters, Bomb attack in eastern Afghanistan kills female politician, 16 February 2015 ([url](#)).

<sup>(247)</sup> NDI, The 2009 Presidential and Provincial Council Elections in Afghanistan, 2010 ([url](#)), p. 32.

<sup>(248)</sup> Reuters, Bomb attack in eastern Afghanistan kills female politician, 16 February 2015 ([url](#)).

<sup>(249)</sup> BBC News, Afghan MP Shukria Barakzai survives car attack, 16 November 2014 ([url](#)).

<sup>(250)</sup> New York Times (The), Afghan Policewomen Struggle Against Culture, 1 March 2015 ([url](#)).

to say they are part of the Mazar-e Sharif police corps <sup>(251)</sup>. Rape cases against women police officer have been reported from more rural areas like Badghis, for example <sup>(252)</sup>. Human Rights Watch started a campaign for separate, safe and lockable change rooms and toilets for women police officers <sup>(253)</sup>. Women in other branches of the security forces are subjected to sexual harassment and assault from male colleagues <sup>(254)</sup>. For example, in 2017, an air force colonel was exposed for raping female subordinates and pressuring them into sex in exchange for promotions <sup>(255)</sup>. In 2017, the Ministry of Interior reportedly created a mechanism to curb sexual harassment of female officers <sup>(256)</sup>.

In Kabul, women working in the police force do not dare wear their uniform outside the office or while going home, out of fear of being recognised by neighbours as such. Even if husbands or father agree, if other family members disapprove for example, women working for the police can be at risk of violence from insurgents, or being accused of immoral acts <sup>(257)</sup>. The New York Times reports similarly that women in other branches of the security forces, such as the air force, also hide their employment for fear of violence from family and extremists <sup>(258)</sup>.

### 3.3.3 Women in journalism

The programme officer interviewed for this report explained that in Kabul, women journalists appearing on TV is more tolerated than in the past, but these women are still seen by society as being of poor moral character, and they face threats and require protection. Women journalists on TV without a headscarf are seen as ‘Western’ or ‘non-Afghan’ <sup>(259)</sup>. The Afghan Journalists Safety Committee (AJSC), a Kabul-based non-profit organization that trains and supports journalists, studied harassment of women journalists in 2016 which found that working as a female journalist among men and interviewing men is seen faithless, and as a dishonour to the family and tribe <sup>(260)</sup>.

A 2016 study by AJSC found that 65 % of women journalists surveyed experienced threats and intimidation by relatives, acquaintances, or extremist groups because of their role in media <sup>(261)</sup>. Women journalists interviewed by RFE/RL said that because female journalists become publicly recognizable, and face daily harassment, threats, including death threats, and discrimination <sup>(262)</sup>. Interviewees in Afghanistan have also reacted negatively to female journalists <sup>(263)</sup>. In one widely reported 2016 example, a cleric and member of parliament who opposed the EVAW law was interviewed about the status of women for a documentary and was heard to threaten the female interviewer with rape and violence while on camera <sup>(264)</sup>.

<sup>(251)</sup> NPR, For Afghan Policewomen, Sex Abuse Is A Job Hazard, 8 March 2012 ([url](#)).

<sup>(252)</sup> Tolo News, Badghis Police Chief Accused of Raping 3 Policewomen, 22 September 2012 ([url](#)).

<sup>(253)</sup> Human Rights Watch, Afghanistan: Urgent Need for Safe Facilities for Female Police, 25 April 2013 ([url](#)).

<sup>(254)</sup> New York Times (The), Op-Ed: The dangers of forcing gender equality in Afghanistan, 21 November 2017 ([url](#)).

<sup>(255)</sup> Guardian (The), Outrage at video of Afghan colonel sexually exploiting woman, 2 November 2017 ([url](#)).

<sup>(256)</sup> UNSG, Report of the Secretary-General on Conflict-related sexual violence, 15 April 2017 ([url](#)), p. 10.

<sup>(257)</sup> New York Times (The), Afghan Policewomen Struggle Against Culture, 1 March 2015 ([url](#)).

<sup>(258)</sup> Guardian (The), Outrage at video of Afghan colonel sexually exploiting woman, 2 November 2017 ([url](#)).

<sup>(259)</sup> Programme officer, Skype interview, 7 August 2017. The Programme officer was based in Kabul and frequently returns to the country, and who has worked with returnees for several international NGOs in Afghanistan in the course of the past several years. The contact person requested to remain anonymous for security reasons.

<sup>(260)</sup> AJSC, The Reporting Heroes, 31 March 2016 ([url](#)), p. 10.

<sup>(261)</sup> AJSC, The Reporting Heroes, 31 March 2016 ([url](#)), p. 10.

<sup>(262)</sup> VOA, Some Female Afghan Journalists Slip Back Behind Burqa, 11 October 2014 ([url](#)).

<sup>(263)</sup> AJSC, The Reporting Heroes, 31 March 2016 ([url](#)), p. 10.

<sup>(264)</sup> RFE/RL, Afghan Lawmaker Appears To Threaten Female Journalist With Rape, 11 April 2016 ([url](#)).

Afghan women journalists faced abuses in the industry, but also pressure from their families to leave their job <sup>(265)</sup>, cover their faces at work <sup>(266)</sup> or change their behavior and dress, such as wearing a *burqa* to keep working <sup>(267)</sup>. Women who refused to stop working as a journalists are harassed and sometimes disowned, according to AJSC <sup>(268)</sup>.

For more information on treatment and targeting of female journalists, politicians, and members of the security forces, refer to *EASO Country of Origin Report: Afghanistan - Individuals targeted by armed actors in the conflict* <sup>(269)</sup>.

### 3.4 Harmful traditional practices

Traditional marriage practices in Afghanistan often create or lead to situations of forced marriage and family violence against women <sup>(270)</sup>. For instance, a girl or woman may be given to another family to settle a conflict, which prevents the emergence of a blood feud <sup>(271)</sup>. Such traditional marriage practices include:

- Betrothal as a child or in exchange for money or goods <sup>(272)</sup>, particularly under the *Pashtunwali* <sup>(273)</sup>;
- Polygamy <sup>(274)</sup>;
- Exchanging unmarried daughters between families; it is a common form of Afghan marriage practice allowing families to avoid paying bride prices <sup>(275)</sup>;
- *Baad* is the custom whereby girls are bartered for exchanges to settle family debts or disputes <sup>(276)</sup>, such as blood feuds to settle an ‘injury’ to the dishonoured family <sup>(277)</sup>. The practice is customary among Pashtuns <sup>(278)</sup> and is prevalent in rural areas <sup>(279)</sup>;

<sup>(265)</sup> USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p. 22; AJSC, The Reporting Heroes – A Study on the Condition of Afghan Female Journalists, 14 April 2016 ([url](#)), p. 10.

<sup>(266)</sup> USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p. 22.

<sup>(267)</sup> VOA, Some Female Afghan Journalists Slip Back Behind Burqa, 11 October 2014 ([url](#)).

<sup>(268)</sup> AJSC, The Reporting Heroes, 31 March 2016 ([url](#)), p. 10.

<sup>(269)</sup> EASO, EASO Country of Origin Report: Afghanistan - Individuals targeted by armed actors in the conflict, December 2017 ([url](#)).

<sup>(270)</sup> Human Rights Watch, I had to run away, March 2012 ([url](#)), p. 33; IWPR, Hope for Afghan women traded to end feuds, 17 January 2017 ([url](#)); AIHRC, National Inquiry Report on Factors and Causes of Rape and Honor Killing in Afghanistan, 2013 ([url](#)), p.9; Norway, LandInfo, Afghanistan: Marriage, 19 May 2011 ([url](#)).

<sup>(271)</sup> New York Times (The), For punishment of elder’s misdeeds, Afghan girl pays the price, 16 February 2012 ([url](#)); UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014 ([url](#)), p. 38; IWPR, Hope for Afghan women traded to end feuds, 17 January 2017 ([url](#)).

<sup>(272)</sup> IWPR, Afghanistan: Betrothed in the womb, 22 March 2017 ([url](#)); AIHRC, National Inquiry Report on Factors and Causes of Rape and Honor Killing in Afghanistan, 2013 ([url](#)), p.9; FRC, Pashtunwali: an analysis of the Pashtun way of life, 5 April 2017 ([url](#)), p. 48.

<sup>(273)</sup> FRC, Pashtunwali: an analysis of the Pashtun way of life, 5 April 2017 ([url](#)), p. 48.

<sup>(274)</sup> AIHRC, National Inquiry Report on Factors and Causes of Rape and Honor Killing in Afghanistan, 2013 ([url](#)), p.9.

<sup>(275)</sup> AREU, Decisions, Desires and Diversity: Marriage Practices in Afghanistan, February 2009 ([url](#)), p. 41; Human Rights Watch, I had to run away, March 2012 ([url](#)), pp. 32-33.

<sup>(276)</sup> Human Rights Watch, I had to run away, March 2012 ([url](#)), p. 32.

<sup>(277)</sup> IWPR, Hope for Afghan women traded to end feuds, 17 January 2017 ([url](#)), Pajhwok Afghan News, Forced and early marriages: a form of trafficking in persons, 29 March 2017 ([url](#)).

<sup>(278)</sup> UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014 ([url](#)), p. 38.

<sup>(279)</sup> RFE/RL, Rural Afghan girls continue to fall victim to ‘baad’ marriages, 28 July 2015 ([url](#)); IWPR, Hope for Afghan women traded to end feuds, 17 January 2017 ([url](#)).

- Being female and therefore perceived as a financial burden to the family, or married off or sold to other families for economic reasons, or to repay debts <sup>(280)</sup>.

Under Afghan civil law, girls over age 16 can legally marry whomever they choose without the permission of the family <sup>(281)</sup> and Islamic law also provides that women must consent to marriage <sup>(282)</sup>. However, according to LandInfo, in practice, people have ‘little opportunity’ to make their own choices in regards to marriage in Afghanistan; couples who do go against family wishes and traditional expectations by marrying someone of their choosing without family approval, will likely have to leave the location for transgressing family order and honour <sup>(283)</sup>.

The EVAW Law prohibits *baad* exchange marriages in particular <sup>(284)</sup>. Several reports of tribal elders declaring bans on the marriage to settle blood feuds have also occurred such as in Balkh, Khost, and Paktika <sup>(285)</sup>. According to the WAW representative, there are a number of organisations working on advocacy against forced and underage marriage, and in secure areas where the government has more control, there has been a positive impact on attitudes where there is more access to provide training, and also where prosecutions have happened. However, sources state EVAW is rarely enforced or implemented against the practice <sup>(286)</sup>.

According to the Afghanistan Demographic Health Survey of 2015, 45 % of Afghan women are married by the age of 18 <sup>(287)</sup>. Noting the cultural context, the independent research organisation, Afghanistan Research and Evaluation Unit (AREU), explains that marriage in Afghanistan operates on a spectrum from ‘choice to force’, and that girls, women, as well as boys and men are impacted by the prevailing gender norms that determine the manner in which marriages occur <sup>(288)</sup>. Other sources indicate that women do not decide who they marry and when <sup>(289)</sup> but due to the depth and intensity of traditions and customs in Afghan society, fathers and brothers usually make these decisions <sup>(290)</sup>. Coerced marriages of girls and women are a frequent occurrence in Afghanistan <sup>(291)</sup>. Child marriage of girls also remains widespread <sup>(292)</sup>, mainly occurring in rural areas <sup>(293)</sup> and *baad* in particular is common in Pashtun areas of southern and eastern Afghanistan <sup>(294)</sup>. A 2015 study on *baad* in Kabul, Parwan, and Panjsher

<sup>(280)</sup> UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, 12 May 2015 ([url](#)), para. 9 and 56; AIHRC, National Inquiry Report on Factors and Causes of Rape and Honor Killing in Afghanistan, 2013 ([url](#)), pp. 94-95.

<sup>(281)</sup> CIR, To Kill a Sparrow, 19 October 2014 ([url](#)).

<sup>(282)</sup> Pajhwok Afghan News, Forced marriage: a cultural dimension of human trafficking, 1 March 2017 ([url](#)).

<sup>(283)</sup> Norway, LandInfo, Afghanistan: Marriage, 19 May 2011 ([url](#)), p. 16-17.

<sup>(284)</sup> Human Rights Watch, I had to run away, March 2012 ([url](#)), p. 33.

<sup>(285)</sup> Pajhwok Afghan News, Ulema in Khost ban blood feud marriages, hefty bride price, 15 September 2015 ([url](#)); Pajhwok Afghan News, Balkh clerics declare blood feud marriages illegal, 14 August 2016 ([url](#)); Pajhwok Afghan News, Paktika jirga decides against blood feud marriages, 22 September 2015 ([url](#)).

<sup>(286)</sup> CIR, To Kill a Sparrow, 19 October 2014 ([url](#)); Human Rights Watch, I had to run away, March 2012 ([url](#)), p.2; New York Times (The), Afghan Mullah leading stoning inquiry condones practice, 7 November 2015 ([url](#)).

<sup>(287)</sup> Afghanistan, CSO and MoPH, Demographic and Health Survey 2015, January 2017 ([url](#)), p. 63.

<sup>(288)</sup> AREU, Decisions, Desires and Diversity: Marriage Practices in Afghanistan, February 2009 ([url](#)), pp.vi, 24.

<sup>(289)</sup> AREU and SCA, The Other Side of Gender Inequality, January 2016 ([url](#)), p.46; CIR, To Kill a Sparrow, 19 October 2014 ([url](#)).

<sup>(290)</sup> CIR, To Kill a Sparrow, 19 October 2014 ([url](#)).

<sup>(291)</sup> Human Rights Watch, I had to run away, March 2012 ([url](#)), p. 30; AIHRC, National Inquiry Report on Factors and Causes of Rape and Honor Killing in Afghanistan, 2013 ([url](#)), p. 95; Pajhwok Afghan News, Forced marriage: a cultural dimension of human trafficking, 1 March 2017 ([url](#)); WAW, Skype interview with a senior representative, 21 August 2017.

<sup>(292)</sup> WAW, Skype interview with a senior representative, 21 August 2017.

<sup>(293)</sup> UNFPA Afghanistan, Child Marriage, n.d. ([url](#)); IWPR, Afghanistan: Betrothed in the womb, 22 March 2017 ([url](#)).

<sup>(294)</sup> New York Times (The), For punishment of elder’s misdeeds, Afghan girl pays the price, 16 February 2012 ([url](#)).

by the Afghan NGO Civil & Liberty Initiative for Peace (CLIP), found the main reasons for the continuance of *baad* marriage were to settle disputes over murders, unsanctioned sexual relations, and broadly, the weak presence of the state in resolving disputes, employing the exchange of women and girls as a form of ‘social currency’ <sup>(295)</sup>. In a 2016 case in Ghor that drew media attention, a six year old girl was reportedly given to a 50-year old *mullah* as a gift and the two were married, though he was later arrested for kidnapping <sup>(296)</sup>.

Human Rights Watch conducted a 2012 study of girls and women imprisoned for running away from home, finding that often, the women had not consented to marriage, or were married to men to whom they were engaged from birth or a young age <sup>(297)</sup>. Girls and women in such arrangements may face abuse and violence by the family as a result <sup>(298)</sup>. Refusal of marriage proposals or arrangements can also cause problems of violence for women either from within or outside her family <sup>(299)</sup>. In a 2011 case reported in the media, a woman refused to marry a militia commander and her family supported her marriage to someone else; infuriated, he threw acid on her, disfiguring her. Her family later sought assistance and the men were arrested. The commander’s men later attacked and beat the father and brother, and numerous years later in 2017, the woman’s husband was targeted and killed by the commander’s relatives <sup>(300)</sup>.

In April 2017, the government announced the launch of a national action plan to end child marriage <sup>(301)</sup>, however further information on implementation could not be found.

In 2017, a social media campaign began by several Afghan activists called ‘#Where is My Name’ to bring attention to and challenge the Afghan traditional custom of not using women’s own names to address them, or on official documents like birth certificates, or on headstones. Women are identified in reference to their male relatives or husband. It can be considered inappropriate or an insult to honour to refer to or use a woman’s own name openly <sup>(302)</sup>. According to an Afghan sociologist interviewed by the New York Times about the ‘Where is my Name’ campaign, the denial of women’s names is rooted in tribal custom whereby women are seen to be the property of men, and by extension of that, her body, face, and her name also belong to men <sup>(303)</sup>.

For more information on blood feuds, refer to [Section 7](#).

<sup>(295)</sup> CLIP, Assessment of the practices of *bad* and its adverse social impacts in Afghanistan, August 2014 ([url](#)), pp. 25-26.

<sup>(296)</sup> RFE/RL, Afghan *mullah* arrested after ‘marriage’ to 6-year old girl, 29 July 2016 ([url](#)).

<sup>(297)</sup> Human Rights Watch, I had to run away, March 2012 ([url](#)), pp. 31-32.

<sup>(298)</sup> Pajhwok Afghan News, Forced marriage: a cultural dimension of human trafficking, 1 March 2017 ([url](#)); New York Times (The), For punishment of elder’s misdeeds, Afghan girl pays the price, 16 February 2012 ([url](#)), UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014 ([url](#)), p. 38.

<sup>(299)</sup> Pajhwok Afghan News, Forced marriage: a cultural dimension of human trafficking, 1 March 2017 ([url](#)); Diplomat (The), The women in Afghanistan’s moral prisons, 8 March 2017 ([url](#)); ACCORD, Anfragebeantwortung zu Afghanistan: Konsequenzen, wenn die Familie eines Mädchens Brautwerber ablehnt, 29 September 2017 ([url](#)).

<sup>(300)</sup> New York Times (The), Years after acid attack, an Afghan story of survival takes a dark turn, 13 August 2017 ([url](#)).

<sup>(301)</sup> UNFPA Afghanistan, Together we can end child marriage, 18 April 2017 ([url](#)); Human Rights Watch, Will Afghanistan follow through on promise to end child marriage? 20 April 2017 ([url](#)).

<sup>(302)</sup> Reuters, Where is my name? Afghan women fight for their own identity, 28 July 2017 ([url](#)); New York Times (The), Their identities denied, Afghan women ask, ‘where is my name’, 30 July 2017 ([url](#)).

<sup>(303)</sup> New York Times (The), Their identities denied, Afghan women ask, ‘where is my name’, 30 July 2017 ([url](#)).

### 3.5 Domestic violence, physical and sexual assault, and rape

According to women's organisations interviewed by the New York Times in 2016, violent assaults on women in public in Kabul, including acid attacks, have reportedly become bolder in recent years, and are usually for personal and political reasons, such as refusal to marry, going to school, or seeking divorce <sup>(304)</sup>. The AIHRC recorded 3,778 cases of violence against women in the first 10 months of 2017, most of which were physical assaults (1,351) <sup>(305)</sup>.

The senior representative of WAW interviewed for this report gave the opinion that in Afghan society, discriminatory attitudes towards women and violence against women are essentially the same, regardless of ethnic group <sup>(306)</sup>. Specifically relating to family violence, a 2016 study on male gender norms in Afghanistan by AREU and the Swedish Committee for Afghanistan (SCA) also found that wife battery is widely perceived among men as an acceptable expression of male 'toughness', particularly among Pashtuns. The study found that the majority of respondents of all ethnic groups believe that it is justifiable to inflict gender-based violence when a woman resists a man's decisions. Increased education levels were also associated with decreased support for wife-beating <sup>(307)</sup>.

Domestic and sexual abuse of women is a pervasive problem in Afghanistan <sup>(308)</sup>. Domestic violence against women has led to assaults such as throwing acid on women's faces <sup>(309)</sup>, bodily mutilation such as cutting off ears and noses <sup>(310)</sup> and also, the murder of women <sup>(311)</sup>. AIHRC recorded the murder of 231 women in 2017 <sup>(312)</sup>. According to Institute for War and Peace Reporting (IWPR), due to the strong preference for male children in Afghan society, there are reports of women being abused for failing to have a son, or for giving birth to girls <sup>(313)</sup>.

Rape is punishable under the EVAW law by 16-20 years in prison; however, marital rape is not addressed <sup>(314)</sup>. AIHRC received 186 reports of sexual violence between January and October of 2017 <sup>(315)</sup>. The UN indicates that sexual violence is 'chronically underreported' due to victim stigma and lack of access to insurgent-controlled areas <sup>(316)</sup>. Similarly, the US Department of State writes that due to societal stigma, rape of women, men, and children was difficult to

<sup>(304)</sup> New York Times (The), Kabul's women seek refuge indoors after a series of acid attacks, 8 October 2016 ([url](#)).

<sup>(305)</sup> AIHRC, Press Release on Violence against Women Jan-Oct 2017, October 2017 ([url](#)), p.2.

<sup>(306)</sup> WAW, Skype interview with a senior representative, 26 August 2017.

<sup>(307)</sup> AREU and SCA, The Other Side of Gender Inequality, January 2016 ([url](#)), pp. 2, 46.

<sup>(308)</sup> UNSG, The situation in Afghanistan and its implications for peace and security, 15 September 2017 ([url](#)), para. 29; Reuters, Afghanistan's female lawyers risk danger to help women branded 'cheap and filthy', 4 July 2017 ([url](#)); Human Rights Watch, Afghanistan: Ending Child Marriage and Domestic Violence, 4 September 2013 ([url](#)), p.11.

<sup>(309)</sup> AIHRC, Press release – on recent awful incidents in the country, 4 July 2017 ([url](#)); New York Times (The), Years after acid attack, an Afghan story of survival takes a dark turn, 13 August 2017 ([url](#)).

<sup>(310)</sup> Pajhwok Afghan News, Man chops off wife's ears in Balkh, 31 January 2017 ([url](#)); BBC News, Afghan man mutilated pregnant wife, 28 July 2016 ([url](#)); BBC News, Reza Gul: The Afghan woman whose husband cut off her nose, 28 January 2016 ([url](#)).

<sup>(311)</sup> Pajhwok Afghan News, Killed by husband, woman's body found after 8 days, 17 August 2017 ([url](#)); Afghanistan Times, Faryab man on run after killing newlywed bride, 4 September 2017 ([url](#)); Pajhwok Afghan News, Herat man arrested for stabbing wife to death, 16 September 2017 ([url](#)); AIHRC, Press Release on Violence against Women Jan-Oct 2017, October 2017 ([url](#)), p.2.

<sup>(312)</sup> AIHRC, Press Release on Violence against Women Jan-Oct 2017, October 2017 ([url](#)), p.2.

<sup>(313)</sup> IWPR, Afghanistan: The shame of having daughters, 30 January 2017 ([url](#)); Nordberg, J., The Underground Girls of Kabul, 2015, p.40.

<sup>(314)</sup> USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p. 33.

<sup>(315)</sup> AIHRC, Press Release on Violence against Women Jan-Oct 2017, October 2017 ([url](#)), p.2.

<sup>(316)</sup> UNSG, Report of the Secretary-General on Conflict-related sexual violence, 23 March 2015 ([url](#)), para. 12.

document <sup>(317)</sup>; with damage to a girl's virginity seen by families as particularly dangerous and stigmatising <sup>(318)</sup>. Women who are victims of sexually violence, abuse, or rape are at risk of punishment for adultery or *zina* <sup>(319)</sup> and may be stigmatised, deemed shameful to the family, or killed to restore group honour <sup>(320)</sup>. Arrest, prosecution and conviction rates for rape and sexual violence could not be found.

Sources indicate that prosecutors frequently distrusted the accounts of sexual violence by female victims, assumed victims to be of bad character, discounted their accounts of violence <sup>(321)</sup>, or thought their claims were fabricated <sup>(322)</sup>. Similarly, the AIHRC observes that, based on its study of rape and sexual violence, frequently officials in the justice system consider that victims of sexual assault are themselves the criminals <sup>(323)</sup>.

In 2017, a revised Penal Code was finalised which includes a 'progressive definition of rape' which is gender neutral and includes updated concepts of consent, privacy, and 'bodily integrity' <sup>(324)</sup>. However, UNAMA commented during their review of this report in October 2017 that the entire chapter on violence against women was removed from the new Penal Code that was printed for distribution <sup>(325)</sup>. The Afghanistan Ministry of Justice published a 13 August 2017 Press Release stating that the punitive provisions of the EVAW Law were originally to be included in the new Penal Code, but were removed prior to finalisation, reportedly because at the request of a 'huge number of women' <sup>(326)</sup>. Further information could not be found. For more information on the new Penal Code see [Section 1.4.2](#).

### 3.6 Moral offences and adultery

*Zina* is perceived by Afghan society and families to be a deeply shameful act and can lead to death threats and honour killings <sup>(327)</sup>. *Zina* is also a *hudud* crime that can be prosecuted and variously interpreted in Afghanistan to mean 'moral' crimes such as: sex outside marriage <sup>(328)</sup>,

<sup>(317)</sup> USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p. 34.

<sup>(318)</sup> Wimpelmann, T., The Pitfalls of Protection, 2017 ([url](#)), pp. 102-103.

<sup>(319)</sup> UNSG, Report of the Secretary-General on Conflict-related sexual violence, 23 March 2015 ([url](#)), para. 12.; Human Rights Watch, I had to run away, March 2012 ([url](#)), p. 5; BBC News, Afghan executions: five handed for Paghman gang-rape, 8 October 2014 ([url](#)); Netherlands, Country of Origin Report on Afghanistan, November 2016 ([url](#)), p. 83; US, CRS, Afghanistan: Post-Taliban Governance, Security, and U.S. Policy, 7 November 2017 ([url](#)), p.15; AIHRC, National Inquiry Report on Factors and Causes of Rape and Honor Killing in Afghanistan, 2013 ([url](#)), p.4; Vice News, Portraits of Afghan women imprisoned for 'moral crimes', 18 May 2015 ([url](#)).

<sup>(320)</sup> USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p. 34; AIHRC, National Inquiry Report on Factors and Causes of Rape and Honor killing in Afghanistan, 2013 ([url](#)), p.4.

<sup>(321)</sup> Wimpelmann, T., The Pitfalls of Protection: Gender, Violence, and Power in Afghanistan, 2017 ([url](#)), p.92.

<sup>(322)</sup> Human Rights Watch, I had to run away, March 2012 ([url](#)), p. 5.

<sup>(323)</sup> AIHRC, National Inquiry Report on Factors and Causes of Rape and Honor Killing in Afghanistan, 2013 ([url](#)), p.4.

<sup>(324)</sup> UNSG, The situation in Afghanistan and its implications for international peace and security, 15 June 2017 ([url](#)), para. 29.

<sup>(325)</sup> UNAMA, email, 2 October 2017. UNAMA made this comment during the review of this report.

<sup>(326)</sup> Afghanistan, Ministry of Justice, Urgent Press Release, 13 August 2017 ([url](#)).

<sup>(327)</sup> AIHRC, National Inquiry Report on Factors and Causes of Rape and Honor Killing in Afghanistan, 2013 ([url](#)), pp. 4, 60; Vice News, Portraits of Afghan women imprisoned for 'moral crimes', 18 May 2015 ([url](#)); For further detail in French, see also: France, OFPRA, Les femmes et l'adultère, 7 September 2016 ([url](#)).

<sup>(328)</sup> Human Rights Watch, Dispatches: a court-sanctioned lashing in Afghanistan, 2 September 2015 ([url](#)).

illicit sexual relations <sup>(329)</sup>, adultery <sup>(330)</sup>, pre-marital sex <sup>(331)</sup>. Consensual sexual relations between adults outside of marriage are criminalised by provisions relating to *zina* <sup>(332)</sup>. According to ALEP, if either party is married, the crime is classified as adultery; while if both are unmarried, the crime is fornication, which is punishable by flogging <sup>(333)</sup>.

For further details on *hudud* crimes, refer to [Section 1.2](#).

### 3.6.1 Legal and customary frameworks for the crime of *zina*

Accused persons can be charged with *zina* under both the 1976 Penal Code and under Islamic *sharia*, the latter of which carries the death penalty <sup>(334)</sup>. Under the Afghan Penal Code of 1976, where a *hudud* punishment under *sharia* is dropped or not fulfilled, a person can be charged for *zina* under Article 427 (1) <sup>(335)</sup> which indicates that '[a] person who commits adultery or pederasty shall be sentenced to long imprisonment' <sup>(336)</sup>. The 1976 Penal Code defines such an imprisonment term under Article 100 (1) as 'not less than five years and more than fifteen years' <sup>(337)</sup>. Information on whether *zina* is addressed in proposed changes to the Penal Code could not be found.

According to a 2017 report about the *Pashtunwali* produced by the FATA Research Centre (FRC) <sup>(338)</sup>, for the Austrian COI Department, under *sharia*, for a married man or woman to be found to have committed *zina*, four witnesses are required, and they will be stoned to death as punishment. However, if the woman is unmarried, she will be given 100 lashes <sup>(339)</sup>. The same source notes that frequently, the *Pashtunwali* customary codes clash with Islamic *sharia* over interpretations of how issues such as *zina* should be handled; however, both involve either a death penalty or corporal punishment. Under *Pashtunwali*, customary law, both the male and female who commit *zina* should be killed. The source notes though that tribal variations also sometimes call for the woman to be killed, as she is perceived as only being worth half the value of a man, while the man ought to have a foot cut off <sup>(340)</sup>. Under the *Pashtunwali* code of punishments (*Narkh*), a man who kills his wife for having a secret affair with another man will 'not be interrogated openly' but will be secretly interviewed by elders <sup>(341)</sup>. Further information on how it is treated in other group-specific codes could not be found within time constraints.

According to the Dutch Ministry of Foreign Affairs, although both men and women can be prosecuted for moral crimes such as *zina*, 'it is almost exclusively women who are prosecuted'

<sup>(329)</sup> FRC, *Pashtunwali: an analysis of the Pashtun way of life*, 5 April 2017 ([url](#)), p.46.

<sup>(330)</sup> UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to Afghanistan, 12 May 2015, ([url](#)), para. 23; For further detail, see also: France, OFPRA, *Les femmes et l'adultère*, 7 September 2016 ([url](#)).

<sup>(331)</sup> UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, 12 May 2015 ([url](#)), para. 23.

<sup>(332)</sup> Human Rights Watch, *I had to run away*, March 2012 ([url](#)), p. 37.

<sup>(333)</sup> ALEP, *An introduction to the criminal law of Afghanistan*, 2012 ([url](#)), p.90.

<sup>(334)</sup> UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, 12 May 2015, ([url](#)), para. 16.

<sup>(335)</sup> Afghanistan, Penal Code, 22 September 1976 ([url](#)); UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, 12 May 2015, ([url](#)), para. 16.

<sup>(336)</sup> Afghanistan, Penal Code, 22 September 1976 ([url](#)).

<sup>(337)</sup> Afghanistan, Penal Code, 22 September 1976 ([url](#)).

<sup>(338)</sup> The FRC is a 'private, non-partisan and apolitical research organization' based in Islamabad, according to its website: FRC, *About Us*, n.d. ([url](#)).

<sup>(339)</sup> FRC, *Pashtunwali: an analysis of the Pashtun way of life*, 5 April 2017 ([url](#)), p.47.

<sup>(340)</sup> FRC, *Pashtunwali: an analysis of the Pashtun way of life*, 5 April 2017 ([url](#)), pp.46-47.

<sup>(341)</sup> FRC, *Pashtunwali: an analysis of the Pashtun way of life*, 5 April 2017 ([url](#)), p. 54.

(<sup>342</sup>). The AIHRC similarly notes that women are treated more harshly than men in relation to punishment of adultery or sexual assault. Due to men's superior societal position, such cases seldom result in men being killed as punishment (<sup>343</sup>). The head of women's rights at the AIHRC, interviewed by IWPR, noted that 'gender bias' in the law legitimises the perpetration of domestic violence and killings by men, while women face severe punishments under broad categories of 'moral crimes' (<sup>344</sup>). For example, sources report women and girls accused of *zina* have been prosecuted and given sentences by state judges on the basis of:

- 'moral crimes' (<sup>345</sup>);
- Running away or leaving home without permission (<sup>346</sup>) and in most cases, when fleeing child marriage or domestic violence (<sup>347</sup>);
- Refusal of a forced or arranged marriage (<sup>348</sup>) or defying family's choice of spouse (<sup>349</sup>);
- Being alone with a man who is not a relative (<sup>350</sup>);
- Having a relationship with a man against the will of one's family or father, eloping, or running away with a male to whom she is not married (<sup>351</sup>);
- Malicious statements from irate or abusive male relatives (<sup>352</sup>);
- 'Virginity' tests (<sup>353</sup>) and rectal examinations by government doctors, including examinations of children (<sup>354</sup>);
- Involuntary pregnancy (<sup>355</sup>);
- Women and girls who are victims of sexual assault, violence, abuse, or rape have also been accused and convicted of *zina* or imprisoned for moral crimes (<sup>356</sup>).

### 3.6.2 Medical testing for moral crimes

Testing for the 'virginity' of girls and women is banned by the government, though it remains a frequent practice (<sup>357</sup>). Women and girls arrested for moral crimes such as sexual relations outside marriage are often made to undergo scientifically invalid gynecological and rectal

(<sup>342</sup>) Netherlands, Country of Origin Report on Afghanistan, November 2016 ([url](#)), p. 83.

(<sup>343</sup>) AIHRC, National Inquiry on Factors and Causes of Rape and Honor Killing in Afghanistan, 2013 ([url](#)), pp. 4-5.

(<sup>344</sup>) IWPR, Afghanistan's domestic violence loophole, 16 January 2017 ([url](#)).

(<sup>345</sup>) Human Rights Watch, Afghanistan: End 'moral crimes' changes, 'virginity' tests, 25 May 2016 ([url](#)); New York Times (The), A thin line of defense against 'honor killings', 2 March 2015 ([url](#)).

(<sup>346</sup>) Human Rights Watch, Dispatches: a court-sanctioned lashing in Afghanistan, 2 September 2015 ([url](#)); IWPR, Inside Kabul Women's Jail, 27 January 2014 ([url](#)).

(<sup>347</sup>) Human Rights Watch, Afghanistan: End 'moral crimes' changes, 'virginity' tests, 25 May 2016 ([url](#)); CIR, To Kill a Sparrow, 19 October 2014 ([url](#)); US, CRS, Afghanistan: Post-Taliban Governance, Security, and U.S. Policy, 7 November 2017 ([url](#)), p.15.

(<sup>348</sup>) IWPR, Inside Kabul Women's Jail, 27 January 2014 ([url](#)).

(<sup>349</sup>) US, CRS, Afghanistan: Post-Taliban Governance, Security, and U.S. Policy, 7 November 2017 ([url](#)), p.15.

(<sup>350</sup>) Human Rights Watch, Dispatches: a court-sanctioned lashing in Afghanistan, 2 September 2015 ([url](#)).

(<sup>351</sup>) CIR, To Kill a Sparrow, 19 October 2014 ([url](#)); US, CRS, Afghanistan: Post-Taliban Governance, Security, and U.S. Policy, 7 November 2017 ([url](#)), p.15.

(<sup>352</sup>) Human Rights Watch, Dispatches: a court-sanctioned lashing in Afghanistan, 2 September 2015 ([url](#)).

(<sup>353</sup>) Human Rights Watch, Dispatches: a court-sanctioned lashing in Afghanistan, 2 September 2015 ([url](#)).

(<sup>354</sup>) Human Rights Watch, Afghanistan: End 'moral crimes' changes, 'virginity' tests, 25 May 2016 ([url](#)).

(<sup>355</sup>) Vice News, Portraits of Afghan women imprisoned for 'moral crimes', 18 May 2015 ([url](#)).

(<sup>356</sup>) New York Times (The), Photographer provides striking glimpse inside Badam Bagh, Afghan prison for women, 29 April 2015 ([url](#)); Human Rights Watch, I had to run away, March 2012 ([url](#)), p. 5.

(<sup>357</sup>) New York Times (The), Despite ban, invasive virginity tests prevalent in Afghanistan, 6 January 2017 ([url](#)); UNCAT, Concluding observations on the second periodic report of Afghanistan, 12 June 2017 ([url](#)), para 37; IWPR, Afghanistan: The high price of virginity, 11 January 2017 ([url](#)).

exams for this purpose <sup>(358)</sup>. In 2015, AIHRC interviewed 53 women in 12 provinces accused of moral crimes, such as adultery and escaping from home, and found that 48 of them were forced to undergo ‘virginity’ tests, sometimes repeatedly <sup>(359)</sup>. According to the AIHRC, women and girls are also sent for such tests by women’s shelters, the Ministry of Women’s Affairs, and the police <sup>(360)</sup>, or they may also be ordered by judiciary officials <sup>(361)</sup>. Women and girls accused of moral crimes who are forced to undergo such tests include those in detention, or accused of prostitution <sup>(362)</sup>. Victims of rape or sexual assault are also subjected to such testing <sup>(363)</sup>. The Kabul forensic centre stated in a 2017 article on the topic that they do not perform tests if the woman does not consent; however, women also face familial and cultural pressure to undergo the tests <sup>(364)</sup>. Proof of virginity is also a long-standing Afghan tradition required for girls entering marriage in some areas of the country <sup>(365)</sup>. It is a traditional custom for relatives or in-laws to check for blood stains the morning after the wedding as proof of bridal virginity <sup>(366)</sup>.

### 3.6.3 Arrests

Police and family members are frequently involved in finding and arresting girls and women for moral crimes after they have fled home <sup>(367)</sup>, or if police are approached, they may be returned to the family <sup>(368)</sup>. AIHRC reports that in its 2015 study of 53 detained women whom they interviewed, the majority were arrested for moral crimes by the police (79.2 %), as well as by attorneys, influential elders, fathers, primary courts, or fathers-in-law who approached the police <sup>(369)</sup>.

### 3.6.4 Punishments by government courts

Government courts commonly sentence women to imprisonment for moral crimes <sup>(370)</sup>. Frequently the sole evidence in a case is the woman’s confession; these women being routinely convicted to lengthy prison sentences <sup>(371)</sup>. According to the representative of WAW interviewed for this report, the ‘usual’ punishment is 3 years in prison, but sometimes time is

<sup>(358)</sup> Diplomat (The), The women in Afghanistan’s moral prisons, 8 March 2017 ([url](#)); Human Rights Watch, Afghanistan: End ‘moral crimes’ changes, ‘virginity’ tests, 25 May 2016 ([url](#)); AIHRC, Forced Gynaecological Exams as Sexual Harassment and Human Rights Violation, 5 December 2015 ([url](#)), p.4; New York Times (The), Despite ban, invasive virginity tests prevalent in Afghanistan, 6 January 2017 ([url](#)).

<sup>(359)</sup> AIHRC, Forced Gynecological Exams as Sexual Harassment and Human Rights Violation, 5 December 2015 ([url](#)), p.12.

<sup>(360)</sup> New York Times (The), Jailed Afghan women are often subjected to virginity tests, 1 March 2016 ([url](#)).

<sup>(361)</sup> AIHRC, Forced Gynecological Exams as Sexual Harassment and Human Rights Violation, 5 December 2015 ([url](#)), p. 9; UNCAT, Concluding observations on the second periodic report of Afghanistan, 12 June 2017 ([url](#)), para 37.

<sup>(362)</sup> AIHRC, Forced Gynecological Exams as Sexual Harassment and Human Rights Violation, 5 December 2015 ([url](#)), pp.8-9.

<sup>(363)</sup> AIHRC, Forced Gynecological Exams as Sexual Harassment and Human Rights Violation, 5 December 2015 ([url](#)), pp.8-9; New York Times (The), Despite ban, invasive virginity tests prevalent in Afghanistan, 6 January 2017 ([url](#)).

<sup>(364)</sup> New York Times (The), Despite ban, invasive virginity tests prevalent in Afghanistan, 6 January 2017 ([url](#)).

<sup>(365)</sup> RFE/RL, Virginity or death for Afghan brides, 6 December 2015 ([url](#)).

<sup>(366)</sup> RFE/RL, Virginity or death for Afghan brides, 6 December 2015 ([url](#)); Emadi, H., Culture and Customs of Afghanistan, 2005, p. 176; IWPR, Afghanistan: The high price of virginity, 11 January 2017 ([url](#)).

<sup>(367)</sup> Human Rights Watch, I had to run away, March 2012 ([url](#)), p. 4; AIHRC, Forced Gynecological Exams as Sexual Harassment and Human Rights Violation, 5 December 2015 ([url](#)), pp. 12-13; CIR, To Kill a Sparrow, 19 October 2014 ([url](#)); Vice News, Portraits of Afghan women imprisoned for ‘moral crimes’, 18 May 2015 ([url](#)).

<sup>(368)</sup> Pajhwok Afghan News, Killed by husband, woman’s body found after 8 days, 17 August 2017 ([url](#)).

<sup>(369)</sup> AIHRC, Forced Gynecological Exams as Sexual Harassment and Human Rights Violation, 5 December 2015 ([url](#)), pp. 12-13.

<sup>(370)</sup> IWPR, Inside Kabul Women’s Jail, 27 January 2014 ([url](#)); Human Rights Watch, I had to run away, March 2012 ([url](#)), p. 5.

<sup>(371)</sup> Human Rights Watch, I had to run away, March 2012 ([url](#)), p. 5.

forgiven and women serve a year or a year and a half and are then released <sup>(372)</sup>. Furthermore, corporal punishments for *zina* carried out by formal Afghan courts occur with reported 'regularity', according to Human Rights Watch, despite being illegal under Afghan law <sup>(373)</sup>. Examples of sentences handed down by formal courts for moral crimes include:

- Cases of couples who married or ran away against their families' wishes who were imprisoned for terms of up to six years <sup>(374)</sup>;
- In September 2015, media sources reported on the arrest and lashing of a young woman for *zina* by a judge from the formal court system in Ghor province <sup>(375)</sup>. The young man in the same case was sentenced to 100 lashes <sup>(376)</sup>;
- A 2017 article describes the case of a girl who ran away with a young man; she was imprisoned for three months after a medical examination for moral crimes <sup>(377)</sup>.

Without providing details, the US Congressional Research Service (CRS) states in its November 2017 report on the situation in Afghanistan, that since 2011, the number of women imprisoned for moral crimes has risen by 50 % <sup>(378)</sup>. In 2014, the Ministry of Interior reported to the Afghan Central Statistics Office (CSO) that a total of 695 women were imprisoned in Afghanistan <sup>(379)</sup>. However, according to the Afghan Ministry of Interior, quoted in 2016 by the New York Times, across Afghanistan, approximately 750 women and girls were reportedly in prison for moral crimes <sup>(380)</sup>.

Most female prisoners are serving terms for 'moral crimes' <sup>(381)</sup> or for running away <sup>(382)</sup>. There are reports that in Badam Bagh prison in Kabul, women are imprisoned for moral crimes without conviction or awaiting trial <sup>(383)</sup>, sometimes jailed for several years while waiting <sup>(384)</sup>. Human Rights Watch explains that when a woman is arrested by police for moral crimes, police collect confessional signed statements under 'intimidating circumstances', including from women and girls who are illiterate. Women detained and imprisoned face sexual abuse or harassment by officials, such as police, guards or prosecutors <sup>(385)</sup>. Women in prison for moral crimes often have to bring their children with them to prison, raising them while serving their jail terms <sup>(386)</sup>.

<sup>(372)</sup> WAW, Skype interview with a senior representative, 21 August 2017.

<sup>(373)</sup> Human Rights Watch, Dispatches: a court-sanctioned lashing in Afghanistan, 2 September 2015 ([url](#)).

<sup>(374)</sup> CIR, To Kill a Sparrow, 19 October 2014 ([url](#)); Human Rights Watch, I had to run away, March 2012 ([url](#)), p.55; IWPR, Afghanistan: Rise in female runaways, 22 September 2016 ([url](#)).

<sup>(375)</sup> Human Rights Watch, Dispatches: a court-sanctioned lashing in Afghanistan, 2 September 2015 ([url](#)).

<sup>(376)</sup> Human Rights Watch, Dispatches: a court-sanctioned lashing in Afghanistan, 2 September 2015 ([url](#)).

<sup>(377)</sup> New York Times (The), Despite ban, invasive virginity tests prevalent in Afghanistan, 6 January 2017 ([url](#)).

<sup>(378)</sup> US, CRS, Afghanistan: Post-Taliban Governance, Security, and U.S. Policy, 7 November 2017 ([url](#)), p. 15.

<sup>(379)</sup> Afghanistan, CSO, Women and Men in Afghanistan 2014, 2014 ([url](#)), pp. 9-10.

<sup>(380)</sup> New York Times (The), Jailed Afghan women are often subjected to virginity tests, 1 March 2016 ([url](#)).

<sup>(381)</sup> New York Times (The), Photographer provides striking glimpse inside Badam Bagh, Afghan prison for women, 29 April 2015 ([url](#)); USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p. 36; Human Rights Watch, Afghanistan: End 'moral crimes' prosecutions, 23 June 2014 ([url](#)).

<sup>(382)</sup> BBC News, Afghan notebook: Life inside Badam-Bagh women's prison, 19 May 2014 ([url](#)).

<sup>(383)</sup> OSF, Justice as torture: inside Badam Bagh Women's prison in Kabul, 28 May 2013 ([url](#)); BBC News, Afghan notebook: Life inside Badam-Bagh women's prison, 19 May 2014 ([url](#)).

<sup>(384)</sup> Reuters, Afghanistan's female lawyers risk danger to help women branded 'cheap and filthy', 4 July 2017 ([url](#)); BBC News, Afghan notebook: Life inside Badam-Bagh women's prison, 19 May 2014 ([url](#)).

<sup>(385)</sup> IWPR, Inside Kabul women's jail, 27 January 2014 ([url](#)); BBC, Afghan notebook: Life inside Badam-Bagh women's prison, 19 May 2014 ([url](#)); IWPR, Afghanistan: female detainees face sexual abuse, 28 March 2017 ([url](#)); Reuters, Afghanistan's female lawyers risk danger to help women branded 'cheap and filthy', 4 July 2017 ([url](#)).

<sup>(386)</sup> CIR, To Kill a Sparrow, 19 October 2014 ([url](#)); NPR, Mother and child behind bars: the women of Afghanistan's prisons, 6 September 2015 ([url](#)); BBC News, Afghan notebook: Life inside Badam-Bagh women's prison, 19 May 2014 ([url](#)).

The International Federation of Human Rights Organisation (FIDH) reported on the 2014 case of an Afghan woman who was accused of adultery by her husband; he denied paternity of her children and accused her of adultery. She pursued her case for five years in the courts and was eventually cleared after relying on DNA evidence in court for the first time in Afghan history to prove her husband's paternity and false allegations against her of adultery <sup>(387)</sup>.

### 3.6.5 Punishments for moral crimes in rural areas and outside government control

In 2016, Reuters reported that in remote regions where there are no women's prisons, women convicted of moral crimes by local councils and village elders, as well as provincial courts, have been sentenced to informal detention, outside government control, including serving their sentences in the homes of tribal elders. Reuters reported that there may be thousands of women in informal detention where they are subject to sexual abuse and being treated as property <sup>(388)</sup>.

According to AIHRC, reporting in May 2017, extrajudicial killings of women are committed in areas of the country where the government has less or no control, or where insurgents are the main power <sup>(389)</sup>. UNAMA also documented 'parallel justice' punishments by anti-government elements carried out against women and men for alleged acts of 'immorality' including executions, lashings, beatings and 'degrading' treatment; documenting 8 such incidents against women in 2015 <sup>(390)</sup>, 10 in 2016 <sup>(391)</sup> and two in the first half of 2017 <sup>(392)</sup>. AIHRC has documented 28 cases of women arbitrarily killed by armed groups such as the Taliban since 2014 <sup>(393)</sup>, while Khaama Press (KP) notes that the Taliban executes dozens of people on adultery or similar charges each year <sup>(394)</sup>. Such incidents have been reported in locations where the government lacks control; including areas of Nangarhar, Logar, Ghazni, Helmand, Zabul, Farah and Jawzjan <sup>(395)</sup> and Ghor province <sup>(396)</sup>. Sources report that parallel justice punishments occurring in areas under insurgent control are underreported <sup>(397)</sup>. Sources indicate that the government did not respond to such acts <sup>(398)</sup>.

In November 2015, one case received international media attention when a recording emerged of the Taliban's public execution of a young woman named Rokshana, who was stoned to death for adultery, in the Taliban-controlled area of central Ghor province <sup>(399)</sup>. She

<sup>(387)</sup> FIDH, Batul Moradi: 'A little light is better than absolute darkness,' 3 March 2014 ([url](#)).

<sup>(388)</sup> Reuters, Most Afghan women serve sentences in elders' homes, not prisons, 11 October 2016 ([url](#)).

<sup>(389)</sup> AIHRC, Shadow Report on the Realization and Implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Afghanistan, 17 May 2017 ([url](#)), p.12.

<sup>(390)</sup> UNAMA, Afghanistan Protection of Civilians in Armed Conflict – Annual Report 2015, February 2016 ([url](#)), p. 13.

<sup>(391)</sup> UNAMA, Afghanistan Protection of Civilians in Armed Conflict – Annual Report 2016, February 2017 ([url](#)), p. 76.

<sup>(392)</sup> UNAMA, Afghanistan Protection of Civilians in Armed Conflict – Midyear Report 2017, July 2017 ([url](#)), p. 12.

<sup>(393)</sup> AIHRC, Shadow Report on the Realization and Implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Afghanistan, 17 May 2017 ([url](#)), p.12.

<sup>(394)</sup> KP, Badghis Taliban execute man in public on adultery charges, 14 January 2016 ([url](#)).

<sup>(395)</sup> KP, Mother of two killed on adultery charges in Jawzjan, 27 March 2016 ([url](#)).

<sup>(396)</sup> IWPR, Summary court deals out brutal justice in Afghanistan's Ghor province, 20 November 2015 ([url](#)).

<sup>(397)</sup> UNAMA, Afghanistan Protection of Civilians in Armed Conflict – Midyear Report 2017, July 2017 ([url](#)), p.44; WAW, Skype interview with a senior representative, 21 August 2017.

<sup>(398)</sup> UNAMA, Afghanistan Protection of Civilians in Armed Conflict – Annual Report 2016, February 2017 ([url](#)), pp.76-77; New York Times (The), No justice, 'no value' for women in a lawless Afghan province, 8 July 2017 ([url](#)).

<sup>(399)</sup> New York Times (The), Afghan Mullah leading stoning inquiry condones practice, 7 November 2015 ([url](#)); BBC News, Afghan woman accused of adultery is stoned to death, 3 November 2015 ([url](#)); RFE/RL, Disturbing footage emerges of 'Taliban' Stoning in Afghanistan, 2 November 2015 ([url](#)).

ran away to escape a forced marriage to an older man arranged by her family <sup>(400)</sup>. She was then executed for trying to run away, reportedly with the young man she wanted to marry <sup>(401)</sup>. By contrast to her death sentence, the young man, who was unmarried, was punished with 100 lashes. A presidential commission created to investigate the incident was headed by a prominent member of the country's religious authority, the National Ulema Council, who did not criticise the Taliban for the stoning and has made public statements in support of such punishments <sup>(402)</sup>. Other examples of recent killings and executions for adultery also include punishments carried out by the Taliban, sometimes in conjunction with family:

- In November 2015, a young woman in Jawzjan province was sentenced to death by stoning for adultery, but was saved due to intervention from local clerics and leaders on claims of lack of evidence <sup>(403)</sup>;
- The Taliban stoning of a couple in Sar-i-Pul province in September 2015 over accusations of adultery <sup>(404)</sup>;
- In Samangan in 2016, an 18-year old woman was shot by anti-government insurgents based on accusations of immorality<sup>405</sup>;
- Five women have been stoned to death in Badakhshan since 2015 for a range of offences <sup>(406)</sup>;
- In March 2016, a mother of two was executed for adultery in Jawzjan, after her husband complained to the Taliban; the Taliban denied responsibility <sup>(407)</sup>;
- In July 2016, in the west of Kabul City, two men and a woman were beaten and their vehicle burned after local residents accused the three of adultery <sup>(408)</sup>;
- In August 2016, in Sar-i-Pul, the Taliban shot a young woman for running away from domestic violence by her in-laws and hiding in a shelter <sup>(409)</sup>. She had reportedly sought assistance from police prior to running away <sup>(410)</sup>.
- Execution of two men and two women in Herat for adultery in January 2016 <sup>(411)</sup>;
- A man was publicly executed in Badghis by the Taliban on charges of adultery <sup>(412)</sup>;
- In February 2016, in Ghor, a woman was detained by the Taliban and shot dead after her husband accused her of adultery <sup>(413)</sup>;
- A Taliban court stoning of a woman to death in March 2017 in Badakhshan; her partner was whipped as a punishment <sup>(414)</sup>;
- Taliban stoning of a couple to death for adultery in April 2017 in Logar province <sup>(415)</sup>;

<sup>(400)</sup> New York Times (The), Afghan Mullah leading stoning inquiry condones practice, 7 November 2015 ([url](#)); RFE/RL, Disturbing footage emerges of 'Taliban' Stoning in Afghanistan, 2 November 2015 ([url](#)); IWPR, Summary court deals out brutal justice in Afghanistan's Ghor province, 20 November 2015 ([url](#)).

<sup>(401)</sup> New York Times (The), Afghan Mullah leading stoning inquiry condones practice, 7 November 2015 ([url](#)); RFE/RL, Disturbing footage emerges of 'Taliban' Stoning in Afghanistan, 2 November 2015 ([url](#)).

<sup>(402)</sup> New York Times (The), Afghan Mullah leading stoning inquiry condones practice, 7 November 2015 ([url](#)).

<sup>(403)</sup> Germany, BAMF, Information Centre Asylum and Migration Briefing Notes, 16 November 2015 ([url](#)), p. 1.

<sup>(404)</sup> Germany, BAMF, Information Centre Asylum and Migration Briefing Notes, 14 September 2015 ([url](#)), p. 1.

<sup>(405)</sup> UNAMA, Afghanistan Protection of Civilians in Armed Conflict – Annual Report 2016, February 2017 ([url](#)), p.77.

<sup>(406)</sup> Germany, BAMF, Information Centre Asylum and Migration Briefing Notes, 13 March 2017 ([url](#)), p.1; KP, Taliban stones woman to death, whips man over adultery in Badakhshan, 9 March 2017 ([url](#)).

<sup>(407)</sup> KP, Mother of two killed on adultery charges in Jawzjan, 27 March 2016 ([url](#)).

<sup>(408)</sup> KP, Car torched, 2 men, a woman beaten over adultery in west of Kabul, 10 July 2016 ([url](#)).

<sup>(409)</sup> Pajhwok Afghan News, Taliban execute young woman over fleeing home, 1 August 2016 ([url](#)).

<sup>(410)</sup> UNAMA, Afghanistan Protection of Civilians in Armed Conflict – Annual Report 2016, February 2017 ([url](#)), p.77.

<sup>(411)</sup> Germany, BAMF, Information Centre Asylum and Migration Briefing Notes, 25 January 2016 ([url](#)), p.1.

<sup>(412)</sup> KP, Badghis Taliban execute man in public on adultery charges, 14 January 2016 ([url](#)).

<sup>(413)</sup> RFE/RL, Taliban reportedly executes Afghan woman for adultery, 8 February 2016 ([url](#)); KP, Taliban execute woman on adultery charges in Ghor, 8 February 2016 ([url](#)).

<sup>(414)</sup> Germany, BAMF, Information Centre Asylum and Migration Briefing Notes, 13 March 2017 ([url](#)), p.1; KP, Taliban stones woman to death, whips man over adultery in Badakhshan, 9 March 2017 ([url](#)).

<sup>(415)</sup> Germany, BAMF, Information Centre Asylum and Migration Briefing Notes, 24 April 2017 ([url](#)), p.1.

- In August 2017, BBC Persia reported that local clerics asked the Taliban to investigate a man and woman for having illicit relations when both were already married, according to an eye witness. The Taliban reportedly killed both people, without an investigation or trial according to the witnesses who spoke to BBC. However, the Taliban denied their involvement <sup>(416)</sup>.

### 3.6.6 Targeting of couples and men for *zina*

Torunn Wimpelmann, a development studies scholar focused on gender and justice in Afghanistan, published a book on protection mechanisms based on her 2014 study of the workings of the VAW unit in Kabul. Wimpelman explains in her book that there are dynamics whereby young couples willingly enter a relationship or elope, but their families then force the woman to raise charges of rape or kidnapping against the male because they do not agree with the marital arrangement <sup>(417)</sup>. Couples have also been arrested and sentenced by government courts to imprisonment for *zina* for running away or eloping together <sup>(418)</sup>. There are reports that young couples who marry against their families' wishes have been threatened or killed by them in honour killings over accusations of adultery or dishonor <sup>(419)</sup>. Thomas Ruttig explained in a 2017 email to ACCORD that honour violations such as pre-marital sex, like murder, fall under *badal* (justice through blood revenge), and that such issues are settled between families, including extended families, and the male perpetrator and his male family members can be targeted in the process. These types of honour violations are essentially the same as *qisas* crimes in *sharia* <sup>(420)</sup>. According to a 2014 report by the UNHCR on blood feuds, honour killings sometimes occur as a result of elopement, in which the woman, and sometimes the man, are killed to restore family honour. However, the family of the man who elopes cannot undertake blood revenge, as he was considered to have been killed in a dishonourable act (adultery). However, blood feuds can erupt if the couple successfully elopes and obtains protection from the husband's family but does not come to any agreement with the wife's family group<sup>421</sup>. Thomas Ruttig also explained that there have been repeated cases where families promise forgiveness to the lovers but have then killed them on their return home <sup>(422)</sup>.

Other recent examples of treatment of couples include:

- A young mixed Hazara Shia-Tajik Sunni couple from Bamyan province fled together after being sought after by the wife's family for eloping against their wishes. Their

<sup>(416)</sup> BBC News, Women and man shot dead by Taliban for having illicit relations, 22 August 2017 ([url](#)).

<sup>(417)</sup> Wimpelmann, T., The Pitfalls of Protection, 2017 ([url](#)), pp. 102-103.

<sup>(418)</sup> Wimpelmann, T., The Pitfalls of Protection, 2017 ([url](#)), pp. 132-139; CIR, To Kill a Sparrow, 19 October 2014 ([url](#)); Human Rights Watch, I had to run away, March 2012 ([url](#)), p.55; IWPR, Afghanistan: Rise in female runaways, 22 September 2016 ([url](#)).

<sup>(419)</sup> ACCORD, Anfragebeantwortung zu Afghanistan: 1) Zielen Rachehandlungen wegen vorehelichem Geschlechtsverkehr nur auf den „Täter" ab oder können auch andere Mitglieder seiner Familie zum Ziel werden? 23 February 2017 ([url](#)); New York Times (The), In spite of the law, Afghan 'honor killings' of women continue, 3 May 2014 ([url](#)); New York Times (The), A thin line of defense against 'honor killings', 2 March 2015 ([url](#)).

<sup>(420)</sup> ACCORD, Anfragebeantwortung zu Afghanistan: 1) Zielen Rachehandlungen wegen vorehelichem Geschlechtsverkehr nur auf den „Täter" ab oder können auch andere Mitglieder seiner Familie zum Ziel werden?, 23 February 2017 ([url](#)).

<sup>(421)</sup> UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014 ([url](#)), pp. 19-20.

<sup>(422)</sup> ACCORD, Anfragebeantwortung zu Afghanistan: 1) Zielen Rachehandlungen wegen vorehelichem Geschlechtsverkehr nur auf den „Täter" ab oder können auch andere Mitglieder seiner Familie zum Ziel werden?, 23 February 2017 ([url](#)).

families threatened to kill them; they also had accusations of *zina* and kidnapping made against them and eventually fled to the US in 2016 <sup>(423)</sup>.

- In 2016, a young couple in Faryab were killed, allegedly by their relatives with Taliban support, for suspected 'adultery' and honour crimes, according to police <sup>(424)</sup>.
- In another case, in February 2017 in Nuristan, a young couple who eloped and were arrested by police for adultery and kept in detention were murdered when an angry crowd stormed inside and beat and shot them to death in a honour killing <sup>(425)</sup>.
- In July 2017, in Badghis, a man killed his fourteen-year-old daughter in an honour killing because she fled and eloped with an eighteen year old friend; he was also killed. The father then reportedly joined the Taliban after the killing <sup>(426)</sup>.
- In July 2017, near the Badghis capital, a young woman was killed by her uncle for elopement <sup>(427)</sup>.
- In August 2017, in Jawzjan, a young woman was murdered by her brother, 10 years after her elopement and her relocation to the provincial capital <sup>(428)</sup>.
- In August 2017, a man and woman who were neighbours were accused of adultery and publicly executed by the Taliban in Badakhshan <sup>(429)</sup>.

### 3.7 Honour violence

Honour killing is described as the murder of a family member due to the perception that the person's actions or status is shameful to family honour; usually the killing is by the men in the family against female members <sup>(430)</sup>. The accusation of dishonour alone against a woman can bring perceived shame to the family <sup>(431)</sup>. Afghan women in rural areas are particularly required to adhere to stringent behavioural codes, for example, risking being labelled as immoral if they fail to be escorted by a male guardian <sup>(432)</sup>. In Afghan society, girls or women who are seen to have lost honour, or are suspected not to be virgins prior to marriage may be punished by their family, tribal heads and elders <sup>(433)</sup>, or face public shaming or divorce by their husband <sup>(434)</sup>. The perceived loss of a woman's honour often results in serious family conflicts; she may become the victim of abuse, violence, or be killed by her spouse or relatives

<sup>(423)</sup> New York Times (The), Afghan couple finally together, but a storybook ending is far from ensured, 30 March 2014 ([url](#)); New York Times (The), Afghan lovers begin an asylum odyssey in New York, 25 May 2016 ([url](#)); New York Times (The), Afghan lovers' plight shaking up the lives of those left in their wake, 18 May 2014 ([url](#)).

<sup>(424)</sup> KP, Young couple shot dead in suspected honor killing in Faryab, 13 March 2016 ([url](#)).

<sup>(425)</sup> KP, Couple killed by Nuristan residents for eloping, 12 February 2017 ([url](#)); Pajhwok Afghan News, Mob lynches eloped couple in Nuristan, 11 February 2017 ([url](#)); New York Times (The), Mob kills eloped lovers after storming Afghan police station, 13 February 2017 ([url](#)).

<sup>(426)</sup> KP, Father joins Taliban after killing his teen daughter for eloping in Badghis, 2 July 2017 ([url](#)).

<sup>(427)</sup> Pajhwok Afghan News, 2 Baghis girls killed by relatives over love, 3 July 2017 ([url](#)).

<sup>(428)</sup> Pajhwok Afghan News, Jawzjan woman killed by brother, 10 years after elopement, 15 August 2017 ([url](#)).

<sup>(429)</sup> Pajhwok Afghan News, Taliban execute man, woman on adultery charges, 22 August 2017 ([url](#)).

<sup>(430)</sup> USIP, Women's Access to Justice in Afghanistan, 2014 ([url](#)), p. 7; AIHRC, National Inquiry on Factors and Causes of Rape and Honor Killing in Afghanistan, 2013 ([url](#)), p.28.

<sup>(431)</sup> New York Times (The), Despite ban, invasive virginity tests prevalent in Afghanistan, 6 January 2017 ([url](#)).

<sup>(432)</sup> Human Rights Watch, I had to run away, March 2012 ([url](#)), p.3; Netherlands, Country of Origin Report on Afghanistan, November 2016 ([url](#)), p. 82-83.

<sup>(433)</sup> AIHRC, Forced Gynecological Exams as Sexual Harassment and Human Rights Violation, 5 December 2015 ([url](#)), p.8.

<sup>(434)</sup> IWPR, Afghanistan: The high price of virginity, 11 January 2017 ([url](#)).

(<sup>435</sup>). Honour violence against women is a common occurrence in Afghanistan (<sup>436</sup>) and is a socially accepted practice, according to NGOs and the AIHRC (<sup>437</sup>), although exact statistics are difficult to obtain (<sup>438</sup>). A January 2017 IWPR article reports that the AIHRC documented nearly 600 cases of honour killings in the past 5 years (<sup>439</sup>), while the women's advocacy group, Afghan Women's Network (AWN), estimates that roughly 150 cases of honour killings occur annually (<sup>440</sup>). According to a national inquiry on the issue conducted by the AIHRC, the most common type of honour killing was due to allegations of adultery, or *zina* (<sup>441</sup>). Girls and women have also been killed due to refraining from forced marriage, being a victim or rape, or running away (<sup>442</sup>). WAW indicated that it happens mainly in areas outside of government control, or in insurgent controlled areas (<sup>443</sup>).

Under the 1976 Afghan Penal Code, the crime of murder or 'intentional killing' calls for long imprisonment; however, for killings in defence of honour, the punishment is less severe and the perpetrator would be exempt from capital punishment, if certain conditions for the honour killing, such as in cases of adultery, are met (<sup>444</sup>). Under the Afghanistan Penal Code of 1976, Article 398 states that:

'A person, defending his honour, who sees his spouse, or another of his close relations, in the act of committing adultery or 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' (<sup>445</sup>).

As a result of this, perpetrators of such killings are liable for up to two years in prison (<sup>446</sup>). However, most honour killings go unreported (<sup>447</sup>). Prosecutions and convictions for such honour killings are rare (<sup>448</sup>) and men accused of murdering women try to decrease their penalties by claiming honour defences (<sup>449</sup>). Sources state that victims of honour killings are often killed on the basis of suspicion, assumptions, and accusations (<sup>450</sup>). There are reports of

(<sup>435</sup>) AIHRC, Forced Gynecological Exams as Sexual Harassment and Human Rights Violation, 5 December 2015 ([url](#)), p.8; IWPR, Afghanistan: The high price of virginity, 11 January 2017 ([url](#)), RFE/RL, Virginity or death for Afghan brides, 6 December 2015 ([url](#)); AIHRC, National Inquiry Report on Factors and Causes of Rape and Honor Killing in Afghanistan, 2013 ([url](#)), p. 5.

(<sup>436</sup>) Human Rights Watch, I had to run away, March 2012 ([url](#)), p.30; Al Jazeera, Noorjahan Akbar: What the future holds for Afghan women, 29 May 2016 ([url](#)); WAW, Skype interview, 21 August 2017.

(<sup>437</sup>) USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p.35.

(<sup>438</sup>) USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p.37.

(<sup>439</sup>) IWPR, Afghanistan's domestic violence loophole, 16 January 2017 ([url](#)); Pajhwok Afghan News, 241 Afghan women murdered in 2015: AIHRC report, 7 March 2016 ([url](#)).

(<sup>440</sup>) New York Times (The), In spite of the law, Afghan 'honor killings' of women continue, 3 May 2014 ([url](#)).

(<sup>441</sup>) AIHRC, National Inquiry Report on Factors and Causes of Rape and Honor Killing in Afghanistan, 2013 ([url](#)), pp. 4, 60.

(<sup>442</sup>) AIHRC, National Inquiry Report on Factors and Causes of Rape and Honor Killing in Afghanistan, 2013 ([url](#)), p. 29, 61.

(<sup>443</sup>) WAW, Skype interview with a senior representative, 21 August 2017.

(<sup>444</sup>) AIHRC, National Inquiry Report on Factors and Causes of Rape and Honor Killing, 2013 ([url](#)), pp. 30-31.

(<sup>445</sup>) Afghanistan, Penal Code, 22 September 1976 ([url](#)).

(<sup>446</sup>) IWPR, Afghanistan's domestic violence loophole, 16 January 2017 ([url](#)); USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p. 36.

(<sup>447</sup>) Netherlands, Country of Origin Report on Afghanistan, November 2016 ([url](#)), p. 74; USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p.35; KP, 240 cases of honor killing recorded in Afghanistan, AIHRC, 9 June 2013 ([url](#)).

(<sup>448</sup>) New York Times (The), In spite of the law, Afghan 'honor killings' of women continue, 3 May 2014 ([url](#)); IWPR, Afghanistan's domestic violence loophole, 16 January 2017 ([url](#)).

(<sup>449</sup>) IWPR, Afghanistan's domestic violence loophole, 16 January 2017 ([url](#)).

(<sup>450</sup>) AIHRC, National Inquiry Report on Factors and Causes of Rape and Honor Killing, 2013 ([url](#)), p. 32; IWPR, Afghanistan's domestic violence loophole, 16 January 2017 ([url](#)).

family members or in-laws handing the accused over to the Taliban for punishments <sup>(451)</sup>. According to AIHRC's data on rape and honour killings recorded in its 2013 inquiry into these problems, about 67% of perpetrators were arrested in the rape and killing cases followed by AIHRC; however, 40% were not prosecuted or punished <sup>(452)</sup>.

In July 2016, a 14-year-old pregnant girl in Ghor province, who had been exchanged in a *baad* marriage as a child, was allegedly set on fire by her in-laws and died of her injuries six days later <sup>(453)</sup>. Zahra was reportedly burned to death in a revenge killing because her father married a young cousin of her husband in another disputed *baad* exchange over unpaid construction work <sup>(454)</sup>. The New York Times writes that her in-laws claim Zahra was not 'modest' and had become 'urbanized'. However, her father claims Zahra was being abused by the in-laws but the police did not react to his complaints about this because of the family's political connections in the province. The police first stated she was forcibly set on fire, and then later claimed she had self-immolated due to the abuse <sup>(455)</sup>.

Other examples of reported honour killings, perpetrated by a range of actors, include:

- In another incident in Faryab in 2016, UNAMA reported that a man killed his 20-year old daughter-in-law, following orders from a pro-Government commander to punish her for transgressions against honour and 'immorality' for speaking to a stranger on the phone and running away <sup>(456)</sup>.
- Also in Faryab in 2016, the Taliban publicly whipped a young woman with 30 lashes for the honour crime of running away; when she tried to flee the area beforehand, she was stopped by street children who informed the Taliban that she was trying to escape <sup>(457)</sup>.
- Two couples were killed in Kabul City in April 2016, which police alleged was an honour killing <sup>(458)</sup>;
- In February 2017, the Taliban shot a pregnant girl in her father's house, and killed another girl for rejecting marriage to a local Taliban commander in Badakhshan <sup>(459)</sup>.

### 3.8 Escaping violence, seeking protection and accessing justice

#### 3.8.1 Law on the Elimination of Violence Against Women (EVAW)

The EVAW law, enacted by presidential decree in 2009, is the main legislative protection for women experiencing forms of gender-based harm; it criminalises 22 acts, including harmful

<sup>(451)</sup> KP, Mother of two killed on adultery charges in Jawzjan, 27 March 2016 ([url](#)); RFE/RL, Taliban reportedly executes Afghan woman for adultery, 8 February 2016 ([url](#)), KP, Taliban execute woman on adultery charges in Ghor, 8 February 2016 ([url](#)).

<sup>(452)</sup> AIHRC, National Inquiry Report on Factors and Causes of Rape and Honor Killing, 2013 ([url](#)), p. 67.

<sup>(453)</sup> New York Times (The), Clash of values emerges after Afghan child bride burns to death, 18 July 2016 ([url](#)); AP, Afghan man says in-laws killed his pregnant teen daughter in revenge after he eloped with young cousin, 18 July 2016 ([url](#)); RFE/RL, Family of Afghan teenage girl who burned to death demand justice, 20 July 2016 ([url](#)).

<sup>(454)</sup> New York Times (The), Clash of values emerges after Afghan child bride burns to death, 18 July 2016 ([url](#)); AP, Afghan man says in-laws killed his pregnant teen daughter in revenge, 18 July 2016 ([url](#)).

<sup>(455)</sup> New York Times (The), Clash of values emerges after Afghan child bride burns to death, 18 July 2016 ([url](#)).

<sup>(456)</sup> UNAMA, Afghanistan Protection of Civilians in Armed Conflict – Annual Report 2016, February 2017 ([url](#)), p. 77.

<sup>(457)</sup> Pajhwok Afghan News, AIHRC slams lashing of woman, wants perpetrators punished, 10 February 2016 ([url](#)).

<sup>(458)</sup> KP, 2 women, 2 men mysteriously killed in west of Kabul city, 5 April 2016 ([url](#)).

<sup>(459)</sup> KP, Taliban kill pregnant woman, execute another girl for rejecting marriage proposal, 2 February 2017 ([url](#)).

traditional practices such as *baad*, forced and underage marriage <sup>(460)</sup>, as well as rape, battery, humiliation, intimidation and deprivation of inheritance <sup>(461)</sup>. For five offences (rape, forced prostitution, publicising a victim's identity, burning, self-immolation or forced suicide), the state must pursue proceedings; however, for other offences, a woman may withdraw the complaint and mediate the issue <sup>(462)</sup>. According to the UN Secretary-General's report on the situation in Afghanistan published in June 2017, a draft law on the elimination of harassment of women and children was not endorsed by the President <sup>(463)</sup>. However, according to UNAMA, its provisions were incorporated in the new draft Penal Code under the EVAW chapter, but that section was later removed following a high level directive <sup>(464)</sup>.

Women's access to justice, courts, and legal assistance for gender-based violence cases is described as limited <sup>(465)</sup>. Police response to violence against women is limited, and cases of gender-based violence against women are rarely pursued under the EVAW law; enforcement of the law is weak and uneven <sup>(466)</sup>. The UN explains that this is due to restrictive social and cultural barriers to accessing assistance, acceptance of violence against women, gender discrimination, social stigma, and sometimes, fear of reprisals including threats to life <sup>(467)</sup>. Furthermore, fear of prosecution for *zina* and limited freedom of movement thus 'severely limited' women's ability to leave or end abusive situations <sup>(468)</sup>.

Women are discouraged by their families from seeking assistance for family violence and when they do report such violence to authorities, they are often blamed for their situation <sup>(469)</sup>. Sometimes, women are returned to their families by police after seeking assistance <sup>(470)</sup>, sometimes resulting in subsequent abuse or killings <sup>(471)</sup>. Often, police do not respond to societal violence against women, and women may also be victimised by police themselves when reporting crimes against them <sup>(472)</sup>, or were placed in protective custody <sup>(473)</sup>. Female police constitute less than 2% of the police force <sup>(474)</sup> and there are 400 female prosecutors across the country <sup>(475)</sup>.

<sup>(460)</sup> UNAMA, Justice Through the Eyes of Afghan Women, April 2015 ([url](#)), p.11.

<sup>(461)</sup> USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p. 33.

<sup>(462)</sup> UNAMA, Justice Through the Eyes of Afghan Women, April 2015 ([url](#)), p.2.

<sup>(463)</sup> UNSG, The situation in Afghanistan and its implications for international peace and security, 15 June 2017 ([url](#)), para. 28.

<sup>(464)</sup> UNAMA, email, 2 October 2017, UNAMA made this comment during their review of this report.

<sup>(465)</sup> UNSG, The situation in Afghanistan and its implications for peace and security, 15 September 2017 ([url](#)), para. 29; AIHRC, National Inquiry Report on Factors and Causes of Rape and Honor Killing, 2013 ([url](#)), p. 77; USIP, Rule of Law, Governance and Human Rights in Afghanistan 2002-2016, 29 August 2017 ([url](#)), p.16.

<sup>(466)</sup> UNCAT, Concluding observations on the second periodic report of Afghanistan, 12 June 2017 ([url](#)); UNAMA, Justice Through the Eyes of Afghan Women, April 2015 ([url](#)), p. 33; Wimpelmann, T., The Pitfalls of Protection, 2017 ([url](#)), p. 151; USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), pp. 9, 33.

<sup>(467)</sup> UNAMA, A Way to Go, 16 December 2013 ([url](#)), p. 4.

<sup>(468)</sup> UNAMA, Justice Through the Eyes of Afghan Women, April 2015 ([url](#)), p. 29.

<sup>(469)</sup> Diplomat (The), The women in Afghanistan's moral prisons, 8 March 2017 ([url](#)); New York Times (The), Kabul's women seek refuge indoors after a series of acid attacks, 8 October 2016 ([url](#)); UNAMA, Justice Through the Eyes of Afghan Women, April 2015 ([url](#)), pp. 31-32.

<sup>(470)</sup> IWPR, Afghanistan: Women seek refuge in safe houses, 20 April 2017 ([url](#)); Pajhwok Afghan News, Killed by husband, woman's body found after 8 days, 17 August 2017 ([url](#)).

<sup>(471)</sup> Pajhwok Afghan News, Killed by husband, woman's body found after 8 days, 17 August 2017 ([url](#)).

<sup>(472)</sup> Reuters, Afghan woman 'raped by police chief' when she tried to report her own rape, 8 November 2016 ([url](#));

USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p. 7.

<sup>(473)</sup> USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p. 9.

<sup>(474)</sup> USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p. 39.

<sup>(475)</sup> USIP, Rule of Law, Governance and Human Rights in Afghanistan 2002-2016, 29 August 2017 ([url](#)), p.16.

According to a 2016 investigation by Pajhwok Afghan News, 21,000 cases of violence against women from 2010-2016, including hundreds of murders, have been registered by the Ministry of Women's Affairs (MoWA), averaging about 3,500 per year, mainly registered with MoWA and police <sup>(476)</sup>. AIHRC has documented increases of instances of violence against women since 2014, noting 5,575 cases in 2016 <sup>(477)</sup>, and a total of 3,778 in the first 10 months of 2017 <sup>(478)</sup>.

The UN reports that there are EVAW prosecution units in all 34 provinces of the country, and 27 of those units have at least one female prosecutor on staff <sup>(479)</sup>. In reference to Kabul City specifically, the United States Institute for Peace (USIP), states the main prosecution office for EVAW is based in Kabul and has 16 male and 7 female staff. USIP writes that although the impact on the cases they dealt with was positive, the vast majority of cases are not reported and there was limited access to EVAW units for victims <sup>(480)</sup>. AIHRC reported that of the 231 cases of murdered women received in 2017, 50% of perpetrators were arrested; no information on prosecution was given <sup>(481)</sup>.

Reporting figures to the UN in June 2017, Afghanistan's Special Prosecutor on EVAW stated that 2,442 cases of violence against women were recorded in the country between March 2016-March 2017, with 149 cases adjudicated. Complainants dropped or withdrew their cases in 22% of those registered <sup>(482)</sup>.

Women have difficulty accessing female lawyers and due to the dangers, few of them will appear in court; there are about 500 female lawyers in the country, mostly in Herat, Mazar-e-Sharif, and Kabul City <sup>(483)</sup>. Local loyalties, threats, corruption and bribery reportedly put pressure on prosecutors and judges involved in EVAW cases <sup>(484)</sup>.

### 3.8.2 Mediation

Torunn Wimpelmann, a development studies scholar focused on gender and justice in Afghanistan, published a 2017 book on protection mechanisms based on a 2014 study of the workings of the VAW unit in Kabul <sup>(485)</sup>. She found that low conviction rates in the courts were not only due to negative attitudes of judiciary officials, but that women, within the limits of societal power structures, were opting to pursue resolutions other than punishment under the law, such as bargaining their claims and settlements against the perpetrator, with the assistance of prosecutors <sup>(486)</sup>. Rather than prosecution, the use of mediation to resolve issues of violence and serious crimes against women is frequent, particularly in rural areas <sup>(487)</sup>.

<sup>(476)</sup> Pajhwok Afghan News, Cases of violence against women: is mediation the best option? 11 May 2016 ([url](#)).

<sup>(477)</sup> AIHRC, Shadow Report on the Realization and Implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Afghanistan, 17 May 2017 ([url](#)), p.12.

<sup>(478)</sup> AIHRC, Press Release on Violence against Women Jan-Oct 2017, October 2017 ([url](#)), p.3.

<sup>(479)</sup> UNSG, The situation in Afghanistan and its implications for peace and security, 15 September 2017 ([url](#)), para. 30.

<sup>(480)</sup> USIP, Rule of Law, Governance and Human Rights in Afghanistan 2002-2016, 29 August 2017 ([url](#)), p.16.

<sup>(481)</sup> AIHRC, Press Release on Violence against Women Jan-Oct 2017, October 2017 ([url](#)), p.2.

<sup>(482)</sup> UNSG, The situation in Afghanistan and its implications for international peace and security, 15 June 2017 ([url](#)), para. 28.

<sup>(483)</sup> Reuters, Afghanistan's female lawyers risk danger to help women branded 'cheap and filthy', 4 July 2017 ([url](#)).

<sup>(484)</sup> IWPR, Afghanistan: How abusive men escape justice, 14 November 2016 ([url](#)); USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p. 34.

<sup>(485)</sup> Wimpelmann, T., The Pitfalls of Protection, 2017 ([url](#)), p.89.

<sup>(486)</sup> Wimpelmann, T., The Pitfalls of Protection, 2017 ([url](#)), pp. 106-107.

<sup>(487)</sup> UNCAT, Concluding observations on the second periodic report of Afghanistan, 12 June 2017 ([url](#)); UNAMA, Justice Through the Eyes of Afghan Women, April 2015 ([url](#)), p. 33; Wimpelmann, T., The Pitfalls of Protection, 2017 ([url](#)), p. 151.

Mediation is commonly used to resolve many cases in order to preserve family unity and community cohesion <sup>(488)</sup>, such as in cases of forced marriages <sup>(489)</sup>. Also, mediation and reconciliation in cases of abuse are preferred over criminal prosecution, by women and justice officials, because the ‘prospects for survival’ outside the family are so limited <sup>(490)</sup>. Mediation can involve a range of actors, including civil society, government, elders, family members, and the community <sup>(491)</sup>. With increased awareness, women’s cases are more often referred to shelters by police and Afghan institutions <sup>(492)</sup>, and shelters attempt to mediate with families; however, this can take years <sup>(493)</sup>.

The representative of WAW interviewed for this report indicated that in its work in 13 provinces (8 in the north), it has successfully resolved many cases of forced marriage through mediation with the family <sup>(494)</sup>. She explained the mediation process at WAW as follows: most cases are referred to them through the Ministry of Women’s Affairs, police, human rights commission, Attorney General’s office, though clients do also come by themselves. WAW will then open a file, examine the nature of the violence complaint and determine if it should go to court or be mediated. Rape cases go to court and are assigned a casefile. If it is not rape, such as a case of forced marriage, or running away from home, WAW opens a mediation file. The families are then asked to go and speak to WAW, who then inform them that forced marriage is against the law. WAW then tries to get someone in a position of authority to provide a guarantee letter that the girl will not be harmed again, and she is returned back to the family. The person who makes the guarantee should be an official, or someone with status in the community, such as someone with a licensed business. They provide a guarantee that the father or family will not harm the woman again, and they will be questioned if it does occur <sup>(495)</sup>.

According to sources, there is no systematic monitoring mechanism to follow up on the mediation process <sup>(496)</sup>. UNAMA found that in 13 of 25 decisions that it tracked after mediation, perpetrators did not honour mediated resolutions, and with recurrent violence, women returned to shelters or pursued criminal or divorce cases <sup>(497)</sup>. WAW indicated in an interview with EASO for this report, that for its own cases, it does conduct regular monitoring on its cases at three to twelve month intervals, and makes follow-up field visits and calls with clients. They also provide phone numbers for the women to call if their life is at risk <sup>(498)</sup>. WAW also explained that if women encounter problems with a breach of the mediated agreement, they can return to the organisation to seek further remedy <sup>(499)</sup>. The WAW representative stated that in their organisation, there have been cases and occasions where guarantees are broken, and that there have been ‘rare cases’ where the woman consented to be returned

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<sup>(488)</sup> Pajhwok Afghan News, Cases of violence against women: is mediation the best option? 11 May 2016 ([url](#)); WAW, Skype Interview, 21 August 2017; UNAMA, Justice Through the Eyes of Afghan Women, April 2015 ([url](#)), p.3.

<sup>(489)</sup> WAW, Skype Interview, 21 August 2017.

<sup>(490)</sup> Wimpelmann, T., The Pitfalls of Protection, 2017 ([url](#)), p. 176.

<sup>(491)</sup> Pajhwok Afghan News, Cases of violence against women: is mediation the best option? 11 May 2016 ([url](#)).

<sup>(492)</sup> WAW, Skype Interview, 21 August 2017;

<sup>(493)</sup> AFP, A safe place for Afghanistan’s abused women, 27 May 2017 ([url](#)); WAW, Skype Interview, 21 August 2017.

<sup>(494)</sup> WAW, Skype Interview, 21 August 2017.

<sup>(495)</sup> WAW, Skype Interview, 21 August 2017;

<sup>(496)</sup> Wimpelmann, T., The Pitfalls of Protection, 2017 ([url](#)), p. 96; Pajhwok Afghan News, Cases of violence against women: is mediation the best option? 11 May 2016 ([url](#)); UNAMA, Justice through the Eyes of Afghan Women, April 2015 ([url](#)), p.3.

<sup>(497)</sup> UNAMA, Justice through the Eyes of Afghan Women, April 2015 ([url](#)), p.3.

<sup>(498)</sup> Pajhwok Afghan News, Cases of violence against women: is mediation the best option? 11 May 2016 ([url](#)); WAW, Skype Interview, 21 August 2017.

<sup>(499)</sup> Pajhwok Afghan News, Cases of violence against women: is mediation the best option? 11 May 2016 ([url](#)); WAW, Skype Interview, 21 August 2017.

but is killed, giving an example of a woman in Sarepul who was stoned in a Taliban area several months after leaving a shelter <sup>(500)</sup>.

### 3.8.3 Divorce

According to a 2013 survey by the Pew Research Centre, 44% of Afghans surveyed said that divorce is not a moral issue and that it 'depends on the situation' <sup>(501)</sup>. However, other sources describe divorce as a taboo in Afghanistan <sup>(502)</sup>. Particularly in rural communities, marriage is not an individual enterprise in Afghan society, meaning divorce is not a realistic option for most women as it is seen as an affront to family and social order and honour <sup>(503)</sup>. According to the FRC, divorce is also a taboo under the *Pashtunwali* and Pashtuns 'detest' the concept of divorce, which is seen as being against honour; at times it has led to murder and blood feuds <sup>(504)</sup>. Recent examples that were found include:

- In 2015, a man in Baghlan province reportedly beheaded his wife for seeking a divorce, apparently after a court did not grant her a divorce, she returned to her family and tribal elders ordered them to mediate their problems <sup>(505)</sup>.
- In a 2017 example, a young woman was killed by her brother and the Taliban for seeking a divorce from her second husband, which had angered her father, a local *imam* <sup>(506)</sup>.

Divorce is not frequently pursued and requires the woman to have a *tazkera* document, obtainable only by consent of a woman's husband or father <sup>(507)</sup>. The government registered 1,179 cases of divorce, separation, engagement annulment, alimony, and child custody in the period of March 2014 to March 2015 <sup>(508)</sup>. Further statistics on divorce rates could not be found.

Women who seek divorce must navigate a difficult and discriminatory judicial process <sup>(509)</sup>. Divorce is more easily granted to men than to women <sup>(510)</sup>. Following divorce, women face negative societal attitudes and harassment <sup>(511)</sup>. Sources indicate that divorced women have a precarious situation where they may not be able to return to their father's family home <sup>(512)</sup> or may be seen as a burden on them <sup>(513)</sup>. They may also have to forfeit property, housing rights, and custody to their children <sup>(514)</sup>. In other cases, women serving jail terms for moral crimes may be able to enter mediation agreements within and between families to get

<sup>(500)</sup> WAW, Skype Interview, 21 August 2017.

<sup>(501)</sup> Pew Research Center, *The World's Muslims: Religion, Politics and Society*, 30 April 2013 ([url](#)), p. 82.

<sup>(502)</sup> Reuters, *Afghanistan's female lawyers risk danger to help women branded 'cheap and filthy'*, 4 July 2017 ([url](#)), Siddique, A., Skype interview 11 August 2017.

<sup>(503)</sup> Siddique, A., Skype interview 11 August 2017.

<sup>(504)</sup> FRC, *Pashtunwali: an analysis of the Pashtun way of life*, 5 April 2017 ([url](#)), p. 54.

<sup>(505)</sup> USDOS, *Country Reports on Human Rights Practices for 2016 – Afghanistan*, 3 March 2017 ([url](#)), p. 39; Tolo News, *Police arrest Baghlan man for beheading wife*, 27 August 2015 ([url](#)).

<sup>(506)</sup> Pajhwok Afghan News, *Sar-i-Pul woman shot dead over seeking divorce*, 26 August 2017 ([url](#)).

<sup>(507)</sup> Guardian (The), *Afghanistan, domestic violence, and divorce: one woman's harrowing story*, 5 May 2015 ([url](#)).

<sup>(508)</sup> USDOS, *Country Reports on Human Rights Practices for 2016 – Afghanistan*, 3 March 2017 ([url](#)), p. 33.

<sup>(509)</sup> Reuters, *Afghanistan's female lawyers risk danger to help women branded 'cheap and filthy'*, 4 July 2017 ([url](#)); Wimpelmann, T., *The Pitfalls of Protection*, 2017 ([url](#)), p.86.

<sup>(510)</sup> Guardian (The), *Afghanistan, domestic violence, and divorce: one woman's harrowing story*, 5 May 2015 ([url](#)).

<sup>(511)</sup> New York Times (The), *In Afghanistan, 'I feel like a divorced woman is up for grabs'*, 17 April 2017 ([url](#)).

<sup>(512)</sup> Siddique, A., Skype interview 11 August 2017.

<sup>(513)</sup> NRC, *Displaced Women and Homelessness*, 29 March 2016 ([url](#)), p.10.

<sup>(514)</sup> NRC, *Displaced Women and Homelessness*, 29 March 2016 ([url](#)), p.10.

divorced or (re)married <sup>(515)</sup> or, if both parties are jailed, have their sentence reduced by getting married to one another <sup>(516)</sup>. According to WAW, usually this happens when both people are serving a *zina* sentence, and when they are released, they finalise a divorce and remarry (if already married to other parties), or, if unmarried, the two parties marry each other after their release. She gave the view that in these cases, the divorce is not as difficult; however, because *zina* is against the religion and culture in Afghanistan, it is not easily forgiven <sup>(517)</sup>.

### 3.8.4 Running away and escaping

Sources indicate that Afghan women run away from home to escape forms of abuse such as forced marriage, domestic violence <sup>(518)</sup>, or out of fear of being killed by their family or relatives <sup>(519)</sup>. Also, due to women's lack of freedom of movement and the difficulty of traveling alone unnoticed, young women sometimes escape domestic violence situations by getting help from a man, or by eloping, leading to accusations of *zina* <sup>(520)</sup>. The head of the criminal investigations unit in Kabul, interviewed by IWPR in 2016, gave the opinion that girls increasingly run away due to the influence of mobile phones and 'foreign soap operas'<sup>521</sup>.

The act of 'running away' from home is not a crime in itself under Afghan law, either under the Penal Code or *sharia* <sup>(522)</sup>. However, authorities, including police and prosecutors, will sometimes charge women and girls who run away under 'attempted' *zina* <sup>(523)</sup>, or the 'intention to commit' *zina* <sup>(524)</sup>. Both the Supreme Court and Attorney General have issued directives to cease this practice against those who run away; however, prosecutions and imprisonment for running away continue to occur <sup>(525)</sup>. In 2015 and 2016, President Ghani and the AGO ordered the release of hundreds of women jailed for moral crimes <sup>(526)</sup>.

Women and girls who run away are seen by their families as 'tainted' by being outside of male guardianship; that they have brought shame on the family's honour <sup>(527)</sup> or broken the family order, which is considered by conservative Muslims to be against Islam <sup>(528)</sup>. Running away

<sup>(515)</sup> WAW, Skype Interview, 21 August 2017; Eshaghian, T., Love crimes of Kabul, HBO, 11 July 2011 ([url](#)).

<sup>(516)</sup> Eshaghian, T., Love crimes of Kabul, HBO, 11 July 2011 ([url](#)).

<sup>(517)</sup> WAW, Skype interview, 21 August 2017.

<sup>(518)</sup> BBC News, Afghan notebook: Life inside Badam-Bagh women's prison, 19 May 2014 ([url](#)); UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, 12 May 2015 ([url](#)), para. 16; Human Rights Watch, I had to run away, March 2012 ([url](#)), p. 4.; Pajhwok Afghan News, Forced and early marriages: A form of trafficking in person, 29 March ([url](#)).

<sup>(519)</sup> UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, 12 May 2015 ([url](#)), para. 16; Human Rights Watch, I had to run away, March 2012 ([url](#)), p. 6.

<sup>(520)</sup> Wimpelmann, T., The Pitfalls of Protection, 2017 ([url](#)), p. 151.

<sup>(521)</sup> IWPR, Afghanistan: Rise in female runaways, 22 September 2016 ([url](#)).

<sup>(522)</sup> Human Rights Watch, Afghanistan: End 'moral crimes' changes, 'virginity' tests, 25 May 2016 ([url](#)); UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum, 12 May 2015 ([url](#)), para. 16.

<sup>(523)</sup> Human Rights Watch, Afghanistan: End 'moral crimes' changes, 'virginity' tests, 25 May 2016 ([url](#)); UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, 12 May 2015 ([url](#)), para. 16.

<sup>(524)</sup> UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, 12 May 2015, ([url](#)), para. 16; UNAMA, A Way to Go, 16 December 2013 ([url](#)), p. 4.

<sup>(525)</sup> UNAMA, A Way to Go, 16 December 2013 ([url](#)), p. 4; USIP, Rule of Law, Governance and Human Rights in Afghanistan 2002-2016, 29 August 2017 ([url](#)), pp. 55.

<sup>(526)</sup> USIP, Rule of Law, Governance and Human Rights in Afghanistan 2002-2016, 29 August 2017 ([url](#)), p. 55 (footnote 178).

<sup>(527)</sup> New York Times (The), A thin line of defense against 'honor killings', 2 March 2015 ([url](#)); Human Rights Watch, I had to run away, March 2012 ([url](#)), p. 6.

<sup>(528)</sup> New York Times (The), A thin line of defense against 'honor killings', 2 March 2015 ([url](#)).

from home is often perceived to bring dishonour and shame to a woman's family and women who do so risk violence or killing by their husbands or relatives <sup>(529)</sup>. According to Human Rights Watch, women and girls who decide to leave are 'frequently track[ed]' down and accused of running away or *zina* by their parents, brothers, fiancés or husbands <sup>(530)</sup>. According to research by USIP in 2014, conservative Afghan families 'hold firm' regarding traditional punishments for running away, and women who do so risk being killed for transgressing family honour <sup>(531)</sup>.

In terms of whether a woman's family would be able to pursue her and find her if she runs away, the senior representative of WAW explained that if her family wants to find her, they will. She stated that it may take time, depending on where she left to, but they will find her and will obtain police assistance in locating her too. Additionally, if a woman or girl goes to a shelter, the family will be informed in 24 to 48 hours, if WAW deems it does not pose a risk to the girl. The family will need to be contacted in order to mediate a solution or to go to court. If it is a case that has to be taken to court, the court will ask for the girl's father or brother to be present <sup>(532)</sup>.

The Centre for Investigative Reporting (CIR) produced a documentary film about women and couples accused of moral crimes in Afghanistan in 2014; they interviewed a family who explained that their daughter had fled the family home because as a child she had been promised as a wife to an older man by her family as an exchange to settle a family transgression. As a young woman she refused the marriage and after fleeing with the man she loved, her father and brother explained to the filmmakers that they had been dishonoured by her actions. The family also explained that the only way she could return and be accepted by her family again was if she killed her infant son. If she did not return to marry the man to whom she was promised, they indicated that they would locate her through family and tribal networks and kill her <sup>(533)</sup>. The New York Times reports on the 2013 case of a girl who ran away from a marriage to an older man; she was found by the Intelligence Service and sent to the Ministry of Women's Affairs, who then sent her to Baghlan province's only shelter. Her family came there and promised not to harm her if she returned; after she left, the vehicle was attacked by a group of armed men who pulled her out and shot her, leaving everyone else unharmed <sup>(534)</sup>.

Violence against women is described by the US Department of State as a driving factor leading to Afghan women committing self-immolation and suicide in the country <sup>(535)</sup>.

### 3.8.5 Shelters and support organisations

Sources describe protection for victims and shelter space as insufficient <sup>(536)</sup>. In 2017, the government of Afghanistan created a special fund for emergency services including shelters and medical assistance, aimed at supporting women survivors of 'life-threatening' violence

<sup>(529)</sup> Al Jazeera, Afghanistan: No Country for Women, 3 July 2015 ([url](#)); USIP, Women's Access to Justice in Afghanistan, 2014 ([url](#)), p. 20.

<sup>(530)</sup> Human Rights Watch, I had to run away, March 2012 ([url](#)), p. 4.

<sup>(531)</sup> USIP, Women's Access to Justice in Afghanistan, 2014 ([url](#)), p. 20.

<sup>(532)</sup> WAW, Skype interview, 21 August 2017.

<sup>(533)</sup> CIR, To Kill a Sparrow, 19 October 2014 ([url](#)).

<sup>(534)</sup> New York Times (The), A thin line of defense against 'honor killings', 2 March 2015 ([url](#)).

<sup>(535)</sup> USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p. 35.

<sup>(536)</sup> USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p. 35; USDOS, Trafficking in Persons Report 2017 – Afghanistan, 27 June 2017 ([url](#)).

(<sup>537</sup>). The estimated number of women's shelters varies between 14 (<sup>538</sup>), 20 (<sup>539</sup>), 28 (<sup>540</sup>) and 29 (<sup>541</sup>) across Afghanistan, with 6 reportedly in Kabul (<sup>542</sup>). Family guidance centres provided non-residential legal and counselling support in 17 provinces, and shelters to victims in 14 provinces (<sup>543</sup>); the UN reported there were 37 such centres in March 2017 (<sup>544</sup>). WAW operates 10 FGCs in Afghanistan (<sup>545</sup>), which provide a shelter inside the FGC where clients can stay for a maximum of one week before being transferred to a long term shelter or returning home (<sup>546</sup>). Shelters are located in cities, making it very difficult for rural women to access them (<sup>547</sup>). WAW explained that in the provinces and rural districts, women have difficulty coming to the city to access shelters and services, and this is made more difficult by increasing insecurity, and where there is no government control (<sup>548</sup>).

Safe houses and shelters for women fleeing violence are often perceived by society as places of immorality, or associated with 'Western' ideas (<sup>549</sup>) or are blamed for breaking up families and social order (<sup>550</sup>). The Taliban has also denounced women's shelters in a similar manner (<sup>551</sup>). According to Wimpelmann, for many Afghan officials and conservative circles, women's shelters funded and supported by foreign governments were seen as a challenge to the family, national government control over civil society, and to Afghanistan's sovereignty as an Islamic nation (<sup>552</sup>). The shelters are run by NGOs and are funded in an ad hoc manner by international aid, according to sources (<sup>553</sup>). Safe houses are geared toward giving women and their families a chance to mediate solutions in safety (<sup>554</sup>) or pursue legal cases (<sup>555</sup>). In the shelters, women have access to vocational training, health services, counselling, and legal aid (<sup>556</sup>). While working on mediated solutions or court decisions about their situation, women may end up staying in shelters for months to years (<sup>557</sup>). They are transferred to a shelter until a permanent solution is reached with families (<sup>558</sup>). WAW indicated that they have three such 'transition' houses in Kabul, Herat, and Mazar-e Sharif cities for women coming out of prison with nowhere to go (<sup>559</sup>). Women released from prison for moral crimes are not accepted by society

(<sup>537</sup>) UNSG, Report of the Secretary-General on Conflict-related sexual violence, 15 April 2017 ([url](#)), p. 10

(<sup>538</sup>) Al Jazeera, Afghanistan: No Country for Women, 3 July 2015 ([url](#)).

(<sup>539</sup>) New York Times (The), A thin line of defense against 'honor killings', 2 March 2015 ([url](#)).

(<sup>540</sup>) USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p. 36.

(<sup>541</sup>) USDOS, Trafficking in Persons Report 2017 – Afghanistan, 27 June 2017 ([url](#)).

(<sup>542</sup>) Pajhwok Afghan News, Inside shelters for victims of domestic violence, 7 March 2017 ([url](#)).

(<sup>543</sup>) USDOS, Trafficking in Persons Report 2017 – Afghanistan, 27 June 2017 ([url](#)).

(<sup>544</sup>) UNSG, The situation in Afghanistan and its implications for international peace and security, 3 March 2017, para. 26.

(<sup>545</sup>) Faryab, Saripul, Balkh, Kunduz, Takhar, Badakhshan, Kabul, Kapisa, Nangarhar, Kunar. WAW, Family Guidance Centres (FGC), n.d. ([url](#)).

(<sup>546</sup>) WAW, email, 22 November 2017. Email correspondence with a senior representative.

(<sup>547</sup>) Al Jazeera, Afghanistan: No Country for Women, 3 July 2015 ([url](#)); WAW, Skype interview, 21 August 2017.

(<sup>548</sup>) WAW, Skype interview, 21 August 2017.

(<sup>549</sup>) IWPR, Afghanistan: Women seek refuge in safe houses, 20 April 2017 ([url](#)); Al Jazeera, Afghanistan: No Country for Women, 3 July 2015 ([url](#)); New York Times (The), A thin line of defense against 'honor killings', 2 March 2015 ([url](#)).

(<sup>550</sup>) IWPR, Afghanistan: Women seek refuge in safe houses, 20 April 2017 ([url](#)).

(<sup>551</sup>) AFP, Women targeted in Taliban takeover of Kunduz, 17 October 2015 ([url](#)).

(<sup>552</sup>) Wimpelmann, T., The Pitfalls of Protection, 2017 ([url](#)), p. 109.

(<sup>553</sup>) Wimpelmann, T., The Pitfalls of Protection, 2017 ([url](#)), pp. 127-128.

(<sup>554</sup>) IWPR, Afghanistan: Women seek refuge in safe houses, 20 April 2017 ([url](#)); WAW, Skype interview, 21 August 2017.

(<sup>555</sup>) Pajhwok Afghan News, Inside shelters for victims of domestic violence, 7 March 2017 ([url](#)); WAW, Skype interview, 21 August 2017.

(<sup>556</sup>) Pajhwok Afghan News, Inside shelters for victims of domestic violence, 7 March 2017 ([url](#)); WAW, Skype interview, 21 August 2017.

(<sup>557</sup>) AFP, A safe place for Afghanistan's abused women, 27 May 2017 ([url](#)); WAW, Skype interview, 21 August 2017.

(<sup>558</sup>) Diplomat (The), The women in Afghanistan's moral prisons, 8 March 2017 ([url](#)).

(<sup>559</sup>) WAW, Skype interview, 21 August 2017.

(<sup>560</sup>), and cannot live alone without a family to support her (<sup>561</sup>). In an article in the New York Times, WAW, which runs a network of shelters, stated that roughly 15% of women in WAW shelters are unable to leave (<sup>562</sup>). Women who run away or leave abusive families often must return back home because they lack alternative living arrangements (<sup>563</sup>). Women who are eventually released from prison after convictions for moral crimes are dependent on their male relatives and often must return to the family which may have put them at risk of harm; they may be killed (<sup>564</sup>) or have to live indefinitely in a shelter (<sup>565</sup>) or they may end up living on the street (<sup>566</sup>). Sometimes, trusted family members are able to offer assistance to women and girls who run away (<sup>567</sup>).

Torunn Wimpelmann's study of protection mechanisms observes that, according to her research, ultimately, protection for Afghan women, whether extended by male guardians, government actors, or shelters, is contingent on their conforming to certain ideals that entail a level of renunciation of certain degree of women's autonomy. In the context of the ongoing conflict, all guarantees for women's protection are in some manner, negotiated with the relations in which she is positioned (<sup>568</sup>).

### 3.8.6 Ability to live alone as a single woman

Women who are unaccompanied by a male are not commonly accepted by Afghan society (<sup>569</sup>), particularly women such as widows, who are seen as a burden or immoral (<sup>570</sup>). Divorced women face similar problems from society (<sup>571</sup>) and displaced girls and women, particularly those without family support are especially vulnerable to gender-based constraints and violence (<sup>572</sup>). The notion of a woman living alone in Afghanistan is described by sources as highly uncommon, 'unheard of' (<sup>573</sup>), practically and socially 'inconceivable' (<sup>574</sup>), and not culturally accepted or secure (<sup>575</sup>). Dr. Liza Schuster, a sociologist at the University of London (City), who researches deportation and its impacts on returnees to Afghanistan, and who is partially based in Afghanistan for her research, stated that for women, living alone is unsafe, and they move around outside the home in groups. She noted that living alone with children does not offer any protection; women require a male guardian (<sup>576</sup>). Additionally, in Afghan society, living alone is assumed to be negatively associated with inappropriate behaviour;

(<sup>560</sup>) WAW, Skype interview, 21 August 2017; KP, Zahra: An Afghan woman victim of domestic violence, 23 October 2014 ([url](#)).

(<sup>561</sup>) KP, Zahra: An Afghan woman victim of domestic violence, 23 October 2014 ([url](#)).

(<sup>562</sup>) New York Times (The), A thin line of defense against 'honor killings', 2 March 2015 ([url](#)).

(<sup>563</sup>) Al Jazeera, Afghanistan: No Country for Women, 3 July 2015 ([url](#)); Vice News, Portraits of Afghan women imprisoned for 'moral crimes', 18 May 2015 ([url](#)).

(<sup>564</sup>) Human Rights Watch, I had to run away, March 2012 ([url](#)), p. 12; Diplomat (The), The women in Afghanistan's moral prisons, 8 March 2017 ([url](#)).

(<sup>565</sup>) KP, Zahra: An Afghan woman victim of domestic violence, 23 October 2014 ([url](#)).

(<sup>566</sup>) Vice News, Portraits of Afghan women imprisoned for 'moral crimes', 18 May 2015 ([url](#)).

(<sup>567</sup>) Human Rights Watch, I had to run away, March 2012 ([url](#)), p. 4; New York Times (The), Despite ban, invasive virginity tests prevalent in Afghanistan, 6 January 2017 ([url](#)); USIP, Women's Access to Justice in Afghanistan, 2014 ([url](#)), p. 20.

(<sup>568</sup>) Wimpelmann, T., The Pitfalls of Protection, 2017 ([url](#)), pp. 178-179.

(<sup>569</sup>) USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p.36.

(<sup>570</sup>) AFP, Afghanistan's 'hill of widows' live in a world apart, 23 June 2017 ([url](#)).

(<sup>571</sup>) New York Times (The), In Afghanistan, 'I feel like a divorced woman is up for grabs,' 17 April 2017 ([url](#)).

(<sup>572</sup>) UN Human Rights Council, Report of the Special Rapporteur on the human rights of internally displaced persons on his mission to Afghanistan, 12 April 2017 ([url](#)), pp. 11-12; NRC and TLO, Listening to Women and Girls Displaced to Urban Afghanistan, January 2015 ([url](#)), p.26.

(<sup>573</sup>) Wimpelmann, T., The Pitfalls of Protection, 2017 ([url](#)), p. 151.

(<sup>574</sup>) Schuster, L., Skype interview, 7 August 2017; Programme officer, Skype interview, 7 August 2017.

(<sup>575</sup>) WAW, Skype interview, 21 August 2017.

(<sup>576</sup>) Schuster, L., Skype interview, 7 August 2017.

people believe that a person who wants to live alone is engaged in suspicious behaviour such as the consumption of alcohol or illicit relations <sup>(577)</sup>. Sources noted this perception applies to the idea of living alone for both women and men <sup>(578)</sup>. However, according to Wimpelmann, it is not considered problematic per se for men to be alone to travel, live, or visit with strangers by themselves; while for women, such acts are potentially ‘criminal’ <sup>(579)</sup>.

In Kabul, Zanabad, the ‘hill of widows’, is a small community of 500 women, ‘shunned’ by society, who live together with their children on the outskirts of Kabul and survive on \$150 per year from the government, and from sewing, chores, and begging <sup>(580)</sup>.

For further information on women’s access to justice and actors of protection in large cities, refer to *EASO COI Report: Afghanistan - Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City* <sup>(581)</sup>.

## 4. Sexual orientation or gender identity

Information on the situation and treatment of sexual minorities in Afghanistan is difficult to obtain because sexuality is not openly discussed in Afghan society <sup>(582)</sup>.

### 4.1 Legal position and treatment by authorities and armed groups

The 1976 Penal Code and Constitution do not specifically address consensual same-sex acts <sup>(583)</sup>. However, sexual acts outside heterosexual marriage can be prosecuted as adultery or pederasty and result in *hudud* punishment if the conditions are met, or, if not, lengthy imprisonment <sup>(584)</sup>. According to the Swedish International Development Cooperation Agency (SIDA), pederasty is understood to mean ‘sexual intercourse between men and anal intercourse’ and the punishment increases if the victim is under 18 <sup>(585)</sup>. The Penal Code states, under Chapter 8 on Adultery, Pederasty and Violation of Honour that:

Article 426 - If in the crime of adultery the conditions of “Had” are not fulfilled or the charge of “Had” is dropped, because of doubt or other reasons, the offender shall be punished in accordance with the provisions of this Chapter.

Article 427 –

(1) A person who commits adultery or pederasty shall be sentenced to long imprisonment.

<sup>(577)</sup> Schuster, L., Skype interview, 7 August 2017; Programme officer, Skype interview, 7 August 2017.

<sup>(578)</sup> Schuster, L., Skype interview, 7 August 2017; Programme officer, Skype interview, 7 August 2017.

<sup>(579)</sup> Wimpelmann, T., *The Pitfalls of Protection*, 2017 ([url](#)), p. 114.

<sup>(580)</sup> AFP, Afghanistan’s ‘hill of widows’ live in a world apart, 23 June 2017 ([url](#)); RFE/RL, Afghan widows build unique community on Kabul hill, 20 July 2015 ([url](#)).

<sup>(581)</sup> EASO, Country of Origin Information Report. Afghanistan. Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City, August 2017 ([url](#)).

<sup>(582)</sup> Switzerland, SEM, Note Afghanistan – Bacha bazi, 8 March 2017 ([url](#)), p.4; Afghanistan, Ministry of Public Health, UNAIDS Country Progress Report 2014 – Afghanistan, 31 March 2014 ([url](#)), p.13.

<sup>(583)</sup> UK, Home Office, Country and Policy Information Note – Afghanistan: Sexual orientation and gender identity, January 2017 ([url](#)); Netherlands, Country of Origin Information Report on Afghanistan, November 2016 ([url](#)), pp. 84-85.

<sup>(584)</sup> ILGA, State-Sponsored Homophobia 2016, May 2017 ([url](#)), p. 121.

<sup>(585)</sup> Sweden, SIDA, The Rights of LGBTI persons in Afghanistan, November 2014 ([url](#)), p.1.

(2) In one of the following cases of commitment of the acts, specified above, is considered to be aggravating conditions: a. In the case where the person against whom the crime had been committed is not yet eighteen years old <sup>(586)</sup>.

*Zina* (adultery) offences also include rape, and sodomy (*levat*), according to the umbrella term used in a 2017 report on juvenile justice by Samuel Hall Consulting <sup>(587)</sup>. Several sources also interpret the laws to mean that consensual and same-sex relations are criminalised and can lead to prosecution under these provisions <sup>(588)</sup>.

In Afghan civil and Islamic law, sexual relationships are acceptable in the context of heterosexual marriage <sup>(589)</sup>. Therefore, as with the Penal Code, same-sex activity is understood by sources to be punishable in *sharia* to the maximum penalty of death <sup>(590)</sup>. According to the International Lesbian, Gay, Trans and Intersex Association (ILGA), the laws apply to same-sex acts by both men and women <sup>(591)</sup>. Sweden's development agency (SIDA) produced a report on LGBT issues in 2014, remarking that adultery, sex outside marriage, and homosexuality may be interpreted as transgressions against honour, and therefore, Article 398 of the Penal Code may apply <sup>(592)</sup>. This Article states that those who commit murder in defence of honour receive a reduced penalty:

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 <sup>(593)</sup>.

According to ILGA, reporting in May 2017, there were no reports of implementation of the death penalty by the state for consensual same-sex acts between adults in private <sup>(594)</sup>.

The US Department of State says that NGOs reported that police arrested, detained, robbed and raped gay men <sup>(595)</sup>. The Guardian also reports accounts of police harassment of LGBT individuals <sup>(596)</sup>. Information on arrests of individuals for same-sex activity was scarce.

In a 2017 report on the cases of 112 boys imprisoned in Kabul juvenile detention centre, the research organisation Samuel Hall Consulting documented the imprisonment of 16 boys for moral crimes, mostly for *levat* (sodomy) <sup>(597)</sup>. Under Afghan law the report states that children cannot face death or life imprisonment and sentencing is at the discretion of the judge;

<sup>(586)</sup> Afghanistan, Penal Code 1976, 22 September 1976 ([url](#)).

<sup>(587)</sup> Samuel Hall Consulting, Hope Behind Bars - The Boys of the Kabul JRC ([url](#)), p.23.

<sup>(588)</sup> Sweden, SIDA, The Rights of LGBTI persons in Afghanistan, November 2014 ([url](#)), p. 1; UNDP, Legal environments, human rights and HIV responses among men who have sex with men, 2010 ([url](#)), p.11; ILGA, State-Sponsored Homophobia 2016, May 2017 ([url](#)), p. 164; Rehman, J. and Polymenopoulou, E., Is Green a Part of the Rainbow? Sharia, Homosexuality and LGBT Rights in the Muslim World, 2013 ([url](#)), p. 33.

<sup>(589)</sup> BBC News, Afghanistan LGBT community living under threat of death, 7 October 2016 ([url](#)); Max Planck Institute, Max Planck Manual on Family Law in Afghanistan, July 2012 ([url](#)), p.27.

<sup>(590)</sup> ILGA, State-Sponsored Homophobia 2016, May 2017 ([url](#)), p. 121; UNDP, Legal environments, human rights and HIV responses among men who have sex with, 2010 ([url](#)), p.3.

<sup>(591)</sup> ILGA, State-Sponsored Homophobia 2016, May 2017 ([url](#)), p. 164.

<sup>(592)</sup> Sweden, SIDA, The Rights of LGBTI persons in Afghanistan, November 2014 ([url](#)), p. 1.

<sup>(593)</sup> Afghanistan, Penal Code, 22 September 1976 ([url](#)).

<sup>(594)</sup> ILGA, State-Sponsored Homophobia 2016, May 2017 ([url](#)), p. 8, 40.

<sup>(595)</sup> USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), pp. 47-48.

<sup>(596)</sup> Guardian (The), Will Afghanistan learn that cross-dressers are not criminals?, 13 November 2011 ([url](#)).

<sup>(597)</sup> Samuel Hall, Hope Behind Bars - The Boys of the Kabul JRC, 18 August 2017 ([url](#)), pp. 22-23.

however, the report also highlights that children may also end up in adult prisons <sup>(598)</sup>. In the 16 cases documented, 5 boys were given more than 24 months in prison <sup>(599)</sup>.

Regarding the death penalty for same-sex activity in insurgent areas, in 2015, in Ghor province, the Taliban sentenced two men and a teenager to execution by wall-toppling for homosexuality; the two men were killed while the boy who survived was permitted to live <sup>(600)</sup>.

There are no specific legal protections by the government of Afghanistan against discrimination or harassment on the basis of gender identity or sexual orientation <sup>(601)</sup>.

## 4.2 Attitudes and treatment by society

Although male same-sex behaviours in Afghanistan occur in a range of divergent cultural contexts and circumstances, sexual orientation as an identity issue is not accepted; same-sex practices remain hidden and are highly stigmatised if mentioned publicly <sup>(602)</sup>. Gender identity and sexual orientation that fall out of the main stream are often seen by Afghan society to be synonymous or associated with prostitution and sexual abuse <sup>(603)</sup>, or, through a wider lens of socio-cultural constructions of the ‘masculine male’ versus the dishonourable ‘non-male’ categories <sup>(604)</sup>: superior to women and to the stigmatised ‘beardless youth’ or ‘feminised’ male <sup>(605)</sup>. Although same-sex acts are condemned by Islam, they may be tolerated when they are ‘invisibilised’ by males conforming to ‘honourable’ roles of husbands and fathers <sup>(606)</sup>. Niaz Shah, an expert on Islamic and Afghan law, told the BBC that although homosexual relationships and male-male sexual activity is practiced, this is not perceived as a sexual orientation or a love relationship, and those involved usually go on to marry women <sup>(607)</sup>. The notion of expressing love and wishing to live as an exclusive same-sex couple is an ‘alien concept’ in Afghan society <sup>(608)</sup>. Sources indicate that individuals who do identify as LGBT have very little space to live freely in Afghan society due to religious and conservative societal attitudes and norms about sexuality <sup>(609)</sup>. Identifying as having a sexual orientation or identity outside of expected norms of heterosexuality is a societal taboo and is seen as un-Islamic <sup>(610)</sup>.

<sup>(598)</sup> Samuel Hall, Hope Behind Bars - The Boys of the Kabul JRC, 18 August 2017 ([url](#)), pp. 20-21.

<sup>(599)</sup> Samuel Hall, Hope Behind Bars - The Boys of the Kabul JRC, 18 August 2017 ([url](#)), p. 22.

<sup>(600)</sup> UNAMA, Afghanistan Protection of Civilians in Armed Conflict Annual Report 2015, February 2016 ([url](#)), p. 46.

<sup>(601)</sup> USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), pp. 47-48; Sweden, SIDA, The Rights of LGBTI Persons in Afghanistan, November 2014 ([url](#)), p. 1.

<sup>(602)</sup> Khan, S. Everybody knows, but nobody knows. Naz Foundation International, September 2008 ([url](#)), p. 22; Norway, Landinfo, Afghanistan: Homofili, 16 April 2012 ([url](#)), p. 3-4.

<sup>(603)</sup> Diplomat (The), Defying holy orders: Afghanistan’s LGBT community, 30 January 2017 ([url](#)); IWPR, Boys sold for sex in Afghan province, 2 March 2017 ([url](#)).

<sup>(604)</sup> Norway, Landinfo, Afghanistan: Homofili, 16 April 2012 ([url](#)), p. 3-4.

<sup>(605)</sup> Khan, S. Everybody knows, but nobody knows. Naz Foundation International, September 2008 ([url](#)), p. 23, 28, 33-35, 36; Norway, Landinfo, Afghanistan: Homofili, 16 April 2012 ([url](#)), p. 3-4.

<sup>(606)</sup> Khan, S. Everybody knows, but nobody knows. Naz Foundation International, September 2008 ([url](#)), p. 28.

<sup>(607)</sup> BBC News, Afghanistan LGBT community living under threat of death, 7 October 2016 ([url](#)).

<sup>(608)</sup> BBC News, Afghanistan LGBT community living under threat of death, 7 October 2016 ([url](#)).

<sup>(609)</sup> Washington Post, After Orlando attack, prevailing view is there are ‘not any gays’ in Afghanistan, 14 June 2016 ([url](#)); Sweden, SIDA, The Rights of LGBTI persons in Afghanistan, November 2014 ([url](#)), p. 1.

<sup>(610)</sup> USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), pp. 47-48; UK, Foreign and Commonwealth Office, correspondence with the UK Country Policy and Information Team, 10 January 2017, available in: UK, Home Office, Country and Policy Information Note – Afghanistan: Sexual orientation and gender identity, January 2017 ([url](#)), p. 22; Sweden, SIDA, The Rights of LGBTI persons in Afghanistan, November 2014 ([url](#)), p. 1; BBC News, Afghanistan LGBT community living under threat of death, 7 October 2016 ([url](#)); RFE/RL, ‘Fake Life’: Being gay in Afghanistan, 13 September 2017 ([url](#)).

In correspondence with the UK Home Office, the UK Foreign Office's Afghanistan Unit commented in January 2017 that since the end of the Taliban period, there has been little shift in the cultural views or legal position of homosexuality in Afghanistan, noting that 'conservative values and culture are deeply embedded' in society, particularly in rural areas <sup>(611)</sup>.

The US Department of State reports that LGBTI people experienced discrimination, such as being fired from their jobs and being denied health services <sup>(612)</sup>. Sources also report first-hand accounts of LGBT people experiencing violence such as assault, threats, blackmail, rape, and arrest <sup>(613)</sup>. For example, RFE/RL interviewed several gay Afghan men inside Afghanistan for a 2017 article who described themselves as having to lead secret lives, meeting in secret, and if caught by police, have to give money or sexual favours, otherwise police threaten to tell their families <sup>(614)</sup>.

In 2013, Nemat Sadat, an Afghan-American university lecturer who is openly gay, received threats and was forced from his post at the American University of Afghanistan (AUAF), reportedly due to his online LGBT activism and public comments about his sexual orientation <sup>(615)</sup>. He describes himself as the first openly gay public figure and LGBTI advocate in Afghanistan <sup>(616)</sup>.

In 2016, the Taliban carried out a complex attack on the AUAF in Kabul. According to AAN, the Taliban demonised it as a 'Western' centre of hostility. After the attack, Taliban activists on social media also said the university promoted moral corruption and homosexuality, apparently in reference to Mr. Sadat <sup>(617)</sup>.

The UK Foreign Office notes that there is 'very little space in Afghanistan, in any location' for openly identifying LGBT people; in all but the 'very rarest cases' homosexual individuals hide their orientation to avoid punishment <sup>(618)</sup>. Other sources also state that individuals who identify as such conceal their sexual orientation to avoid sanctions <sup>(619)</sup> and as a consequence, live a 'double life' <sup>(620)</sup>. LGBT individuals fear being rejected as shameful, harassed, or killed by

<sup>(611)</sup> UK, Foreign and Commonwealth Office, correspondence with the UK Country Policy and Information Team, 10 January 2017, cited in: UK, Home Office, Country and Policy Information Note – Afghanistan: Sexual orientation and gender identity, January 2017 ([url](#)), p. 22.

<sup>(612)</sup> USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), pp. 47-48.

<sup>(613)</sup> USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), pp. 47-48; BBC News, Gay Afghan defies tradition to expose identity, 20 February 2013 ([url](#)); Sadat, N., Afghanistan's gay revolution can liberate the Muslim world, 12 October 2015 ([url](#)); AP, Fear, secrecy, and danger a way of life for Afghan gays, 5 November 2016 ([url](#)); Diplomat (The), Defying holy orders: Afghanistan's LGBT community, 30 January 2017 ([url](#)).

<sup>(614)</sup> RFE/RL, 'Fake Life': Being gay in Afghanistan, 13 September 2017 ([url](#)).

<sup>(615)</sup> Sadat, N., Afghanistan's gay revolution can liberate the Muslim world, 12 October 2015 ([url](#)); KP, Afghan man admits his homosexuality, 26 October 2013 ([url](#)).

<sup>(616)</sup> Sadat, N., Afghanistan's gay revolution can liberate the Muslim world, 12 October 2015 ([url](#)).

<sup>(617)</sup> Osman, B., The attack on the American University in Kabul (2): who did it and why?, 5 September 2016 ([url](#)).

<sup>(618)</sup> UK, Foreign and Commonwealth Office, correspondence with the UK Country Policy and Information Team, 10 January 2017, available in: UK, Home Office, Country and Policy Information Note – Afghanistan: Sexual orientation and gender identity, January 2017 ([url](#)), p. 22.

<sup>(619)</sup> UK, Foreign and Commonwealth Office, correspondence with the UK Country Policy and Information Team, 10 January 2017, available in: UK, Home Office, Country and Policy Information Note – Afghanistan: Sexual orientation and gender identity, January 2017 ([url](#)), p. 22; BBC News, Afghanistan LGBT community living under threat of death, 7 October 2016 ([url](#)).

<sup>(620)</sup> Sadat, N., Afghanistan's gay revolution can liberate the Muslim world, 12 October 2015 ([url](#)); Diplomat (The), Defying holy orders: Afghanistan's LGBT community, 30 January 2017 ([url](#)); RFE/RL, 'Fake Life': Being gay in Afghanistan, 13 September 2017 ([url](#)).

their families if found out <sup>(621)</sup>. Afghans of different sexual orientations and gender identities are under familial and social pressure to marry someone of the opposite sex <sup>(622)</sup>, or, are often married <sup>(623)</sup>. According to the Swedish International Development agency, Afghan lesbian women are especially impacted by the discriminatory societal position of women in Afghanistan <sup>(624)</sup>.

#### 4.2.1 Gender identities

The Institute for the Study of War (IWPR) produced an article in 2017 which explains that regionally in South Asian countries, including Afghanistan, there are traditions of ‘third gender’, where individuals identify outside categories of male and female. The same source found that in Afghanistan, people of ‘third gender’ do not have a legally recognised gender status and report shaming and threats from family, discrimination, abuse and sexual exploitation, including by police. Seen as shameful by officials, and living on society’s margins, they are frequently only able to find work as wedding dancers or in sex work. The article states that AIHRC has reportedly not investigated the issue of treatment of people who identify as ‘third gender’ <sup>(625)</sup>.

In 2013, a 16-year-old girl in Kunar received sex re-assignment surgery to become a boy. In a news article, her parents and 10 sisters were reportedly happy about the operation, and the former fiancé of Niaz Bibi also congratulated him on his operation, stating he would find someone else to marry now that she was male <sup>(626)</sup>.

*Bacha bazi* (dancing boys or boy play), is a form of sexual exploitation by adult men in positions of power, such as militias and armed forces, who use boys or young men for entertainment, dancing in female garb, and sexual favours <sup>(627)</sup>. Public condemnations of *Bacha bazi* conflate sexual abuse with homosexuality, the latter of which is seen as ‘haram’ <sup>(628)</sup>. For information on *Bacha Bazi*, see [Section 5.1](#).

#### 4.2.2 Support organisations

There is no publicly visible Afghan LGBT community, according to sources <sup>(629)</sup>. Organisations involved with support to LGBT people cannot operate openly <sup>(630)</sup> and there are none specifically campaigning for LGBT people <sup>(631)</sup>. According to ILGA, there is also ‘no mention’ of sexual orientation or gender identity issues in the work of the Afghanistan Independent

<sup>(621)</sup> BBC News, Gay Afghan defies tradition to expose identity, 20 February 2013 ([url](#)); Sadat, N., Afghanistan’s gay revolution can liberate the Muslim world, 12 October 2015 ([url](#)); AP, Fear, secrecy, and danger a way of life for Afghan gays, 5 November 2016 ([url](#)); Guardian (The), Gay Afghan men face exile or marriage in conformist masculine society, 10 September 2012 ([url](#)); RFE/RL, ‘Fake Life’: Being gay in Afghanistan, 13 September 2017 ([url](#)).

<sup>(622)</sup> BBC News, Afghanistan LGBT community living under threat of death, 7 October 2016 ([url](#)), 2017; BBC News, Gay Afghan defies tradition to expose identity, 20 February 2013 ([url](#)).

<sup>(623)</sup> Guardian (The), Gay Afghan men face exile or marriage in conformist masculine society, 10 September 2012 ([url](#)); Diplomat (The), Defying holy orders: Afghanistan’s LGBT community, 30 January 2017 ([url](#)).

<sup>(624)</sup> Sweden, SIDA, The Rights of LGBTI persons in Afghanistan, November 2014 ([url](#)), p. 1.

<sup>(625)</sup> IWPR, Afghanistan’s third gender people, 24 February 2017 ([url](#)).

<sup>(626)</sup> Lahore Times (The), Niaz Bibi, 16, becomes a boy, now named Enamullah, 18 February 2013 ([url](#)).

<sup>(627)</sup> Sweden, SIDA, The Rights of LGBTI persons in Afghanistan, November 2014 ([url](#)), p. 1; ILGA, State-Sponsored Homophobia 2016, May 2017 ([url](#)), p. 121.

<sup>(628)</sup> Pajhwok Afghan News, Standing up against slavery as a form of trafficking, 25 February 2017 ([url](#)).

<sup>(629)</sup> BBC News, Gay Afghan defies tradition to expose identity, 20 February 2013 ([url](#)).

<sup>(630)</sup> USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), pp. 47-48.

<sup>(631)</sup> Netherlands, Country of Origin Information Report on Afghanistan, November 2016 ([url](#)), pp. 84-85.

Human Rights Commission (AIHRC) <sup>(632)</sup>, although AIHRC does work on the issue of *Bacha bazi* <sup>(633)</sup>.

## 5. Child abuse and sexual exploitation

Child abuse is endemic in Afghan society, and sexual abuse of children remains a pervasive problem, with girls being most frequently abused in their families or communities, and boys being subjected to abuse by men external to their families <sup>(634)</sup>. A study by Save the Children published in 2017 on violence and harmful practices against children in Afghanistan found very high percentages of children experienced physical and sexual abuse <sup>(635)</sup>. Sexual abuse and child rape, including by religious figures and police and officials, reportedly occurred with impunity <sup>(636)</sup>. Corporal punishment carried out on children in schools and at home occurs routinely <sup>(637)</sup>. The UN reported in September 2017 that UNAMA and UNICEF organised a one-day training session on child rights given to 17 district police chiefs in Kabul city <sup>(638)</sup>.

For information on the situation of women and girls see [Section 3](#).

Further information on the situation of children in cities is provided *EASO COI Report: Afghanistan - Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City* <sup>(639)</sup>.

### 5.1 *Bacha bazi*

*Bacha bazi* ('dancing boys' or 'boy play'), is a form of sexual exploitation by adult men in positions of power, such as militias and armed forces, who use boys and young men (*bacha bereesh*, or beardless boy) for entertainment, dancing in female garb, and sexual favours<sup>(640)</sup>. Perpetrators do not perceive it as homosexuality <sup>(641)</sup>. Usually the boys are under 18, with 14 as the average age <sup>(642)</sup>. It is a practice serving as a means for perpetrators (*bacha baz*) to

<sup>(632)</sup> ILGA, State-Sponsored Homophobia 2016, May 2017 ([url](#)), p. 121.

<sup>(633)</sup> AIHRC, Causes and Consequences of Bacha Bazi, 18 August 2014 ([url](#)); Pajhwok Afghan News, AIHRC concerned at bacha bazi, graft in police ranks, 13 February 2017 ([url](#)).

<sup>(634)</sup> USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p.42; AFP, Behind the shame and silence, 8 January 2017 ([url](#)).

<sup>(635)</sup> SCI, Knowledge, Attitudes and Practices on Violence and Harmful Practices Against Children in Afghanistan, 1 September 2017 ([url](#)), pp. 24-28.

<sup>(636)</sup> USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p.42; AIHRC, Causes and Consequences of Bacha Bazi, 18 August 2014 ([url](#)).

<sup>(637)</sup> IWPR, Afghanistan: spare the rod, spoil the child, 27 March 2017, ([url](#)); SCI, Attitudes and Practices on Violence and Harmful Practices Against Children in Afghanistan, 1 September 2017 ([url](#)), p. 7.

<sup>(638)</sup> UNSG, The situation in Afghanistan and its implications for peace and security, 15 September 2017 ([url](#)), para. 29.

<sup>(639)</sup> EASO, Country of Origin Information Report. Afghanistan. Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City, August 2017 ([url](#)).

<sup>(640)</sup> Sweden, SIDA, The Rights of LGBTI persons in Afghanistan, November 2014 ([url](#)), p. 1; ILGA, State-Sponsored Homophobia 2016, May 2017 ([url](#)), p. 121; AIHRC, Causes and Consequences of Bacha Bazi, 18 August 2014 ([url](#)); For further background information in French, see also: France, OFPRA, La pratique du bacha bazi, 14 November 2016 ([url](#)); Switzerland, SEM, Note Afghanistan – Bacha bazi, 8 March 2017 ([url](#)).

<sup>(641)</sup> AFP, Stolen boys: life after sexual slavery in Afghanistan, 26 June 2017 ([url](#)).

<sup>(642)</sup> IWPR, Boys sold for sex in Afghan province, 2 March 2017 ([url](#)).

express their male dominance, status, and power, within a particular cultural context <sup>(643)</sup>. Powerful and wealthy local figures, as well as the police and security forces have reportedly been involved in perpetrating *bacha bazi* <sup>(644)</sup>. Sources report that young boys are abducted and disappeared into the practice <sup>(645)</sup>. Boys involved in the practice may be subjected to violence and threats <sup>(646)</sup> and are raped and kept in sexual slavery <sup>(647)</sup>. The boys taken into *bacha bazi* are reportedly perceived as prostitutes <sup>(648)</sup> and are also ‘pimped’ to other men <sup>(649)</sup> or traded between abusers <sup>(650)</sup>. Boys who are brought into *bacha bazi* are often from poor families <sup>(651)</sup> who sometimes trade their children into the practice in exchange for money <sup>(652)</sup>. Boys are also lured into it with the promise of a job and become trapped <sup>(653)</sup>. Once in the practice, boys are also given opium to make them submissive, according to an article by AFP <sup>(654)</sup>.

A 2016 AFP investigation into *bacha bazi* in Uruzgan found that nearly all local and national police posts in the province have *bacha boys*, and that police demand them as a ‘perk’ on the job <sup>(655)</sup>. Boys taken to outposts sometimes end up being killed in the crossfire in Taliban attacks <sup>(656)</sup>. Occasional instances of violence and public gunfights have occurred between perpetrators over jealousies and rivalries over possession of *bacha boys* <sup>(657)</sup> and this has also reportedly led to deaths <sup>(658)</sup>. In an example reported by the media in July 2015, a gunfight broke out at a wedding in Baghlan province, which allegedly began as an argument over a *bacha boy* <sup>(659)</sup>. The fight left between 20 <sup>(660)</sup> and 22 people dead, including the *bacha boy* <sup>(661)</sup>.

<sup>(643)</sup> Sweden, SIDA, The Rights of LGBTI persons in Afghanistan, November 2014 ([url](#)), p. 1; ILGA, State-Sponsored Homophobia 2016, May 2017 ([url](#)), p. 121; AFP, Kabul to set penalties for subculture of boy sex slaves, 22 February 2017 ([url](#)); AFP, Stolen boys: life after sexual slavery in Afghanistan, 26 June 2017 ([url](#)).

<sup>(644)</sup> USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p.42.

<sup>(645)</sup> AFP, Behind the shame and silence, 8 January 2017 ([url](#)); Salam Watander, Young boys abused for ‘bacha bazi’ by policemen, 22 May 2017 ([url](#)); AIHRC, Causes and consequences of Bacha Bazi in Afghanistan, 18 August 2014 ([url](#)).

<sup>(646)</sup> Sweden, Lifos, Bacha bazi – dansande pojkar i Afghanistan, 30 November 2015 ([url](#)), p.3.

<sup>(647)</sup> USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p.43; AFP, Behind the shame and silence, 8 January 2017 ([url](#)); AIHRC, Causes and consequences of Bacha Bazi in Afghanistan, 18 August 2014 ([url](#)); Hagar International, Forgotten no more: Male child trafficking in Afghanistan, October 2013 ([url](#)), p.8.

<sup>(648)</sup> AFP, Behind the shame and silence, 8 January 2017 ([url](#));

<sup>(649)</sup> Salam Watander, The malicious practice of ‘bacha bazi’ continues to spoil lives, 21 May 2017 ([url](#)).

<sup>(650)</sup> AFP, Stolen boys: life after sexual slavery in Afghanistan, 26 June 2017 ([url](#)).

<sup>(651)</sup> AFP, Their silent screams, 25 July 2016 ([url](#)); AIHRC, Causes and Consequences of Bacha Bazi, 18 August 2014 ([url](#)); Newsweek, Confessions of an Afghan sex slave, 30 May 2015 ([url](#)).

<sup>(652)</sup> USDOS, Trafficking in Persons Report 2017 – Afghanistan, 27 June 2017 ([url](#)).

<sup>(653)</sup> Salam Watander, The malicious practice of ‘bacha bazi’ continues to spoil lives, 21 May 2017 ([url](#)); Sweden, Lifos, Bacha bazi – dansande pojkar i Afghanistan, 30 November 2015 ([url](#)), p.3.

<sup>(654)</sup> AFP, Behind the shame and silence, 8 January 2017 ([url](#));

<sup>(655)</sup> AFP, The Taliban is using child sex slaves to catch and kill Afghan police, 16 June 2016 ([url](#)).

<sup>(656)</sup> AFP, Behind the shame and silence, 8 January 2017 ([url](#)).

<sup>(657)</sup> AFP, The Taliban is using child sex slaves to catch and kill Afghan police, 16 June 2016 ([url](#)); AFP, Behind the shame and silence, 8 January 2017 ([url](#)); AFP, Stolen boys: life after sexual slavery in Afghanistan, 26 June 2017 ([url](#)).

<sup>(658)</sup> AIHRC, Causes and consequences of Bacha Bazi in Afghanistan, 18 August 2014 ([url](#)).

<sup>(659)</sup> AFP, Gunfight over ‘dancing boy’ at Afghan wedding kills at least 22, 27 July 2015 ([url](#)); KP, Deadly wedding clash in Baghlan was likely due to ‘Bacha Baazi’, 27 July 2015 ([url](#)).

<sup>(660)</sup> KP, Deadly wedding clash in Baghlan was likely due to ‘Bacha Baazi’, 27 July 2015 ([url](#)).

<sup>(661)</sup> AFP, Gunfight over ‘dancing boy’ at Afghan wedding kills at least 22, 27 July 2015 ([url](#)).

AIHRC notes that the practice of *bacha bazi* occurs in most parts of the country <sup>(662)</sup>, though it is particularly common in rural areas <sup>(663)</sup> and the north <sup>(664)</sup>. *Bacha bazi* practices are widespread but highly stigmatised publicly in society <sup>(665)</sup>; however, AIHRC noted in 2016 that with the growth of the practice, it is seen no longer as taboo <sup>(666)</sup>.

### 5.1.1 Government efforts and criminalisation

*Bacha bazi*, described by AFP as an ‘institutionalised form of sex slavery’ has seen a resurgence since the end of the Taliban period <sup>(667)</sup>, under which it had been banned <sup>(668)</sup>. Although not specifically addressed in the law, under the 1976 Penal Code, *bacha bazi* is punishable as pederasty, rape and degradation <sup>(669)</sup>. According to UNAMA, a newly revised draft Penal Code was endorsed by Presidential Decree in March 2017, which criminalises *bacha bazi* but is not yet in force <sup>(670)</sup>. Under the new provisions of the Penal Code, prosecution of victims of *bacha bazi* is set to be outlawed <sup>(671)</sup>.

*Bacha bazi* perpetrators generally operate with impunity <sup>(672)</sup> in the context of weak rule of law and corruption <sup>(673)</sup> and official complicity with law enforcement perpetrators <sup>(674)</sup>. In 2016, the government has made some efforts to address the problems of *bacha bazi* <sup>(675)</sup>, such as public statements denouncing *bacha bazi* practices, ordered investigations, and in December 2016, passing an anti-trafficking law which includes punishments for the sexual exploitation of children <sup>(676)</sup>.

UNAMA reported that in 2016, they verified 11 cases of conflict-related sexual violence, including 4 cases of sexual slavery of *bacha bazi* boys by men linked to the security forces; two perpetrators in total were convicted <sup>(677)</sup>. In an example reported by the US Department of State, in October 2016, 5 Afghan soldiers were accused of sexually abusing a boy, one was convicted of unlawful use of lethal force and given a two year sentence, and one was sentenced to a year for battery; the others were released <sup>(678)</sup>. In February 2017, Shah Mirza Panjsheri, a district police chief from Kunduz, was dismissed from his post after a video of his

<sup>(662)</sup> Pajhwok Afghan News, Standing up against slavery a form of trafficking, 25 February 2017 ([url](#)); DW, Afghan laws ambiguous about pedophilic boy play culture, 20 June 2016 ([url](#)).

<sup>(663)</sup> FP, Bacha bazi: An Afghan tragedy, 28 October 2013 ([url](#)).

<sup>(664)</sup> Hagar International, Forgotten no more: Male child trafficking in Afghanistan, October 2013 ([url](#)), p.35.

<sup>(665)</sup> Afghanistan, Ministry of Public Health, UNAIDS Country Progress Report 2014 – Afghanistan, 31 March 2014 ([url](#)), p.13; UNCAT, Concluding observations on the second periodic report of Afghanistan, June 2017 ([url](#)), para. 35; ILGA, State-sponsored homophobia 2016, May 2017 ([url](#)), p. 121; USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p.44.

<sup>(666)</sup> DW, Afghan laws ambiguous about pedophilic boy play culture, 20 June 2016 ([url](#)).

<sup>(667)</sup> AFP, Kabul to set penalties for subculture of boy sex slaves, 22 February 2017 ([url](#)); DW, Afghan laws ambiguous about pedophilic boy play culture, 20 June 2016 ([url](#)).

<sup>(668)</sup> AFP, The Taliban is using child sex slaves to catch and kill Afghan police, 16 June 2016 ([url](#)).

<sup>(669)</sup> AIHRC, Causes and consequences of Bacha Bazi in Afghanistan, 18 August 2014 ([url](#)).

<sup>(670)</sup> Germany, BAMF, Information Centre Asylum and Migration Briefing Notes, 24 July 2017 ([url](#)); UNSG, The situation in Afghanistan and its implications for international peace and security, 3 March 2017 ([url](#)), p. 26.

<sup>(671)</sup> AFP, Kabul to set penalties for subculture of boy sex slaves, 22 February 2017 ([url](#)); Pajhwok Afghan News, Afghan Penal Code revised to deal with felonies, 11 November 2017 ([url](#)).

<sup>(672)</sup> IWPR, Boys sold for sex in Afghan province, 2 March 2017 ([url](#)); Sweden, SIDA, The Rights of LGBTI persons in Afghanistan, November 2014 ([url](#)), p. 1; AIHRC, Causes and consequences of Bacha Bazi in Afghanistan, 18 August 2014 ([url](#)).

<sup>(673)</sup> Sweden, Lifos, Bacha bazi – dansande pojkar i Afghanistan, 30 November 2015 ([url](#)), p.3.

<sup>(674)</sup> USDOS, Trafficking in Persons Report 2017 – Afghanistan, 27 June 2017 ([url](#)).

<sup>(675)</sup> DW, Afghan laws ambiguous about pedophilic boy play culture, 20 June 2016 ([url](#)).

<sup>(676)</sup> USDOS, Trafficking in Persons Report 2017 – Afghanistan, 27 June 2017 ([url](#)).

<sup>(677)</sup> UNSG, Report of the Secretary-General on Conflict-related sexual violence, 15 April 2017 ([url](#)), pp. 10-11.

<sup>(678)</sup> USDOS, Trafficking in Persons Report 2017 – Afghanistan, 27 June 2017 ([url](#)).

involvement in running *bacha bazi* parties was exposed on social media <sup>(679)</sup>. The raid on a *bacha bazi* party in Kabul resulted in the jailing of organisers, but also of several boys who were dancing <sup>(680)</sup>.

### 5.1.2 Treatment by insurgents

In 2016, the Afghan news website Salam Watandar, which was established in 2003 with the support of USAID <sup>(681)</sup>, reported that the Taliban reportedly executed a man and a boy in Baghlan on charges of *bacha bazi* and pederasty and warned the population not to attend the funerals of those killed <sup>(682)</sup>. Corroborating information could not be found.

AFP reported in 2016 and 2017 that the Taliban recruits and uses *bacha boys* to infiltrate and kill police in insider attacks against their abusers; however, the Taliban deny this <sup>(683)</sup>. AFP reported in 2016 that over the past two years, ‘hundreds’ of police have reportedly been killed by *bacha bazi* boys recruited by the Taliban to kill police inside their check posts <sup>(684)</sup>.

### 5.1.3 Escape and support for victims

There is a culture of silence and shame that prevents *bacha bazi* victims and their families from seeking assistance <sup>(685)</sup>. Victims and their families reportedly face social isolation, particularly if the boy becomes well known in *bacha bazi* circles <sup>(686)</sup>. Those who try to complain to authorities also face threats from perpetrators <sup>(687)</sup> or are fearful due to the high status of perpetrators who are sometimes officials or police <sup>(688)</sup>. Running away has reportedly resulted in beatings <sup>(689)</sup>. Victims are frequently themselves punished, detained when seeking assistance, or revictimised <sup>(690)</sup>.

Victims and family members have at times fled their homes to relocate and avoid threats from perpetrators <sup>(691)</sup>. For instance, an article published by Afghan news website Salam Watandar in 2017 tells of a boy who escaped from being a *bacha boy* and ran away to Iran; however, when he returned to his village two years later, he was recaptured by armed men and returned into *bacha bazi* <sup>(692)</sup>. In a similar case, AFP reports of a boy who escaped from a police

<sup>(679)</sup> AFP, Kabul to set penalties for subculture of boy sex slaves, 22 February 2017 ([url](#)).

<sup>(680)</sup> AFP, Stolen boys: life after sexual slavery in Afghanistan, 26 June 2017 ([url](#)); USDOS, Trafficking in Persons Report 2017 – Afghanistan, 27 June 2017 ([url](#)).

<sup>(681)</sup> USAID, Salam Watandar Radio Service, 1 October 2013 ([url](#)).

<sup>(682)</sup> Salam Watandar, Taliban kill 2 people over ‘bacha bazi’ in Baghlan, 23 September 2016 ([url](#)).

<sup>(683)</sup> AFP, Kabul to set penalties for subculture of boy sex slaves, 22 February 2017 ([url](#)); AFP, The Taliban is using child sex slaves to catch and kill Afghan police, 16 June 2016 ([url](#)); AFP, Taliban use ‘honey trap’ boys to kill Afghan police, 16 June 2016 ([url](#)).

<sup>(684)</sup> AFP, Taliban use ‘honey trap’ boys to kill Afghan police, 16 June 2016 ([url](#)).

<sup>(685)</sup> Salam Watandar, Young boys abused for ‘bacha bazi’ by policemen, 22 May 2017 ([url](#)); AFP, Behind the shame and silence, 8 January 2017 ([url](#)); AFP, Stolen boys: life after sexual slavery in Afghanistan, 26 June 2017 ([url](#)).

<sup>(686)</sup> AIHRC, Causes and Consequences of Bacha Bazi, 18 August 2014 ([url](#)).

<sup>(687)</sup> Salam Watandar, Young boys abused for ‘bacha bazi’ by policemen, 22 May 2017 ([url](#)); AFP, Behind the shame and silence, 8 January 2017 ([url](#)); Hagar International, Forgotten no more: Male child trafficking in Afghanistan, October 2013 ([url](#)), p. 49.

<sup>(688)</sup> AIHRC, Causes and Consequences of Bacha Bazi in Afghanistan, 18 August 2014 ([url](#)).

<sup>(689)</sup> AFP, Stolen boys: life after sexual slavery in Afghanistan, 26 June 2017 ([url](#)).

<sup>(690)</sup> UNAMA, Afghanistan Protection of Civilians in Armed Conflict – Annual Report 2016, February 2017 ([url](#)), p.22; AFP, Stolen boys: life after sexual slavery in Afghanistan, 26 June 2017 ([url](#)); Newsweek, Confessions of an Afghan sex slave, 30 May 2015 ([url](#)); USDOS, Trafficking in Persons Report 2017 – Afghanistan, 27 June 2017 ([url](#)).

<sup>(691)</sup> Sweden, Lifos, Bacha bazi – dansande pojkar i Afghanistan, 30 November 2015 ([url](#)), p.3.

<sup>(692)</sup> Salam Watandar, The malicious practice of ‘bacha bazi’ continues to spoil lives, 21 May 2017 ([url](#)).

command post but could not return home due to fear of being re-kidnapped; his family also had to move over fears the commander would come looking for him <sup>(693)</sup>.

A report on the practice by AFP in 2016 talked to one 11-year old boy who was kidnapped for *bacha bazi* but extricated after 18 days due to the help of a high-level intelligence official connected to his family. Rather than pursue justice and risk that their son would be retaken, the official told the family they should leave the area to live in hiding <sup>(694)</sup>.

There is very little support available for victims of *bacha bazi* <sup>(695)</sup>. There is reportedly one short-term shelter in Kabul for trafficking victims <sup>(696)</sup>. The AIHRC publicly raises the issue of *bacha bazi* and advocates for victims <sup>(697)</sup>. According to a 2013 study on male sex trafficking in Afghanistan by the development NGO Hagar International, many organisations did not offer services to trafficked boys due to security risks from powerful agents <sup>(698)</sup>.

One official quoted by AFP stated that one of the only means of escape is for boys to make deals with the Taliban to let them go free in exchange for conducting insider attacks against their abusers in the police <sup>(699)</sup>.

According to Abubakar Siddique, *bacha bazi* boys who become too old or ‘age-out’ of the practice are expected to simply marry a woman and carry on with their lives as any Afghan man is expected to by society, and many do so <sup>(700)</sup>. According to the Guardian, *bacha boys* are usually released from the practice around age 19 at which point they can be married and ‘reclaim their status as “male”’, noting, however that the stigma of having been involved can be difficult to move past <sup>(701)</sup>. AIHRC indicated that in some cases, victims of *bacha bazi* themselves go into the *bacha bazi* business and become predators themselves, due to having few other life options <sup>(702)</sup>, or, end up becoming sex workers <sup>(703)</sup>.

## 6. Land disputes

According to the United States Institute for Peace (USIP), statistics on the frequency of land conflicts in Afghanistan since the fall of the Taliban are not available <sup>(704)</sup>. However, land disputes are reportedly common in Afghanistan, particularly in the context of growing urbanisation, population growth, high numbers of returnees to the country <sup>(705)</sup>, as well as

<sup>(693)</sup> AFP, Stolen boys: life after sexual slavery in Afghanistan, 26 June 2017 ([url](#)).

<sup>(694)</sup> AFP, Behind the shame and silence, 8 January 2017 ([url](#)).

<sup>(695)</sup> AFP, Behind the shame and silence, 8 January 2017 ([url](#)); AIHRC, Causes and Consequences of Bacha Bazi, 18 August 2014 ([url](#)).

<sup>(696)</sup> USDOS, Trafficking in Persons Report 2017 – Afghanistan, 27 June 2017 ([url](#)).

<sup>(697)</sup> Pajhwok Afghan News, AIHRC concerned at bacha bazi, graft in police ranks, 13 February 2017 ([url](#)); AIHRC, Causes and Consequences of Bacha Bazi in Afghanistan, 18 August 2014 ([url](#)).

<sup>(698)</sup> Hagar International, Forgotten no more: Male child trafficking in Afghanistan, October 2013 ([url](#)), p. 79.

<sup>(699)</sup> AFP, Behind the shame and silence, 8 January 2017, ([url](#))

<sup>(700)</sup> Siddique, A., Skype interview, 11 August 2017.

<sup>(701)</sup> Guardian (The), The dancing boys of Afghanistan, 12 September 2009 ([url](#)).

<sup>(702)</sup> Pajhwok Afghan News, Standing up against slavery a form of trafficking, 25 February 2017 ([url](#)); AFP, Stolen boys: life after sexual slavery in Afghanistan, 26 June 2017 ([url](#)).

<sup>(703)</sup> IWPR, Boys sold for sex in Afghan province, 2 March 2017 ([url](#)); AFP, Stolen boys: life after sexual slavery in Afghanistan, 26 June 2017 ([url](#)); Newsweek, Confessions of an Afghan sex slave, 30 May 2015 ([url](#)).

<sup>(704)</sup> USIP, Addressing Land and Conflict in Afghanistan, June 2015, ([url](#)), p.2.

<sup>(705)</sup> IRIN, Land disputes add to Afghanistan’s security woes, 10 September 2013 ([url](#)).

longstanding war, tribal conflict, and ineffective land administration<sup>(706)</sup>. Contestation over land between different communities, ethnic groups, political interests, and economic classes, in addition to the involvement of armed groups and powerful individuals in the face of weak rule of law also drive land disputes<sup>(707)</sup>. Land tenure in Afghanistan is largely based on customary practices, tradition, or local memory<sup>(708)</sup>. Furthermore, institutional and administrative complexity and corruption contribute to low rates of formalised land tenure and registration, which further compounds disputes over ownership<sup>(709)</sup>. The frequent lack of land records makes it difficult to settle such land disputes through the court system<sup>(710)</sup>. Due to factors such as the ambiguities in Afghan land tenure law and ownership systems, availability of forged deeds, and lack of criminal consequences under the current legal framework, opportunities for land grabbing are common<sup>(711)</sup>. According to Afghanistan Land Authority (ARAZI)<sup>(712)</sup>, laws on the usurpation of land are enforced on an ‘ad hoc basis’<sup>(713)</sup>. The Afghan Ministry of Interior stated in a 2014 study that ‘usurpation’ of private and government land has occurred in 30 provinces of the country<sup>(714)</sup>. Sources report on land dispute situations caused by issues such as:

- Arrival of displaced people, refugees, returnees, or IDPs, including those who have left their place of origin and return to reclaim their land /property after an extended period away<sup>(715)</sup>;
- Involvement of insurgents or armed groups in local intratribal or intertribal divisions over land, including arming one side against another<sup>(716)</sup>;
- Illegal land sales and land-grabbing by powerful elites, warlords<sup>(717)</sup>, or powerful individuals<sup>(718)</sup>, or receiving land distributed or obtained through corruption and bribery of officials<sup>(719)</sup>;

<sup>(706)</sup> MEC, Final Report of the Public Inquiry into Land Usurpation, November 2014 ([url](#)), p. 13; USIP, Addressing Land and Conflict in Afghanistan, June 2015, ([url](#)).

<sup>(707)</sup> Wily, L., Land, People, and the State in Afghanistan: 2002-2012, February 2013 ([url](#)), p. 3; MEC, Final Report of the Public Inquiry into Land Usurpation, November 2014 ([url](#)), p. 13.

<sup>(708)</sup> AREU, LGAF – Afghanistan, 22 June 2017 ([url](#)), p.7; Denmark, DIS, Report from Danish Immigration Service’s fact finding mission to Kabul, Afghanistan, 25 February to 4 March 2012, May 2012 ([url](#)), pp. 40-41.

<sup>(709)</sup> AREU, LGAF – Afghanistan, 22 June 2017 ([url](#)), p. 61; Denmark, DIS, Report from Danish Immigration Service’s fact finding mission to Kabul, Afghanistan, 25 February to 4 March 2012, May 2012 ([url](#)), pp. 40-41.

<sup>(710)</sup> Denmark, DIS, Report from Danish Immigration Service’s fact finding mission to Kabul, Afghanistan, 25 February to 4 March 2012, May 2012 ([url](#)), pp. 40-41.

<sup>(711)</sup> AREU, LGAF – Afghanistan, 22 June 2017 ([url](#)), p.7; MEC, Final Report of the Public Inquiry into Land Usurpation, November 2014 ([url](#)), pp. 9-13.

<sup>(712)</sup> UNAMA, The Stolen Lands of Afghanistan and its People, August 2014 ([url](#)), pp. 18-22.

<sup>(713)</sup> MEC, Final Report of the Public Inquiry into Land Usurpation, November 2014 ([url](#)), p. 13.

<sup>(714)</sup> MEC, Final Report of the Public Inquiry into Land Usurpation, November 2014 ([url](#)), p. 44.

<sup>(715)</sup> NRC, Strengthening Displaced Women’s Housing, Land and Property Rights in Afghanistan, November 2014 ([url](#)), p. 27; Denmark, DIS, Report from Danish Immigration Service’s fact finding mission to Kabul, Afghanistan, 25 February to 4 March 2012, May 2012 ([url](#)), pp. 40-41; Muzhary, F., Resettling nearly half a million Afghans in Nangrahar, 12 May 2017 ([url](#)); Pajhwok Afghan News, Corruption hits hard land distribution to returnees, 1 May 2017 ([url](#)).

<sup>(716)</sup> Hakimi, A., Telephone interview in April 2016, in : EASO Country of Origin Information Report: Afghanistan – Recruitment by armed groups, September 2016 ([url](#)), p. 20-21; TLO, Land Based Conflict in Afghanistan: The case of Paktia, December 2008 ([url](#)), p. 62; Pajhwok Afghan News, Why Daesh chose Achin district as its base, 9 March 2016 ([url](#)); Pajhwok Afghan News, Jawzjan farmers taken to Taliban court, 15 February 2017 ([url](#)).

<sup>(717)</sup> Rao, S. and Turkstra, J., Enhancing security of land tenure for IDPs, FMR 46, May 2014 ([url](#)), p. 15; IWPR, Afghanistan: Teacher’s Land Seized, 21 November 2017, ([url](#)).

<sup>(718)</sup> Pajhwok Afghan News, 650,000 acres of government land usurped nationwide, 15 March 2017 ([url](#)).

<sup>(719)</sup> MEC, Final Report of the Public Inquiry into Land Usurpation, November 2014 ([url](#)), p. 27; UNAMA, The Stolen Lands of Afghanistan and its People, August 2014 ([url](#)), p. 17, p. 10; USDOS, Country Reports on Human Rights Practices for 2016 – Afghanistan, 3 March 2017 ([url](#)), p. 30.

- Disputes between nomadic and sedentary local populations <sup>(720)</sup>;
- Claims over contested definitions of private, public, national, or commonly held land ownership <sup>(721)</sup>, such as land being used for informal camps and settlements <sup>(722)</sup>;
- Multiple and competing claims to the same land, involving warlords, powerful commanders, political or armed local actors <sup>(723)</sup>;
- Security and tenure over highly valued urban property, involving politicians and parties <sup>(724)</sup> or, land disputes in urban areas where property is taken by powerful individuals and elites <sup>(725)</sup>;
- Conflicts over government-owned land <sup>(726)</sup>;
- Land disputes between communities, extended families, tribes and sub-tribes over the boundaries of their traditional territories <sup>(727)</sup>;
- Ownership disputes between individuals and family members, such as disputed inheritances <sup>(728)</sup>.

## 6.1 Propensity for violence

The quantifiable extent to which land disputes turn violent was difficult to establish from available sources. However, sources did indicate that disputes over land are a major cause of individual and communal conflicts and can quickly escalate and become violent <sup>(729)</sup>, sometimes degenerating into small armed conflicts, as well as blood feuds <sup>(730)</sup>. According to AREU, in a report tracing trends in land conflicts from 2002-2012, land is ‘frequently and violently contested’ <sup>(731)</sup>. A 2008 study by TLO writes that 25% of land disputes result in hostility and blood shed <sup>(732)</sup>. According to UNAMA, approximately 70% of serious violent crimes such as murder are caused by disputes over land ownership <sup>(733)</sup>.

<sup>(720)</sup> Rao, S. and Turkstra, J., Enhancing security of land tenure for IDPs, FMR 46, May 2014 ([url](#)), p. 15; Waheed, A., Skype Interview, 26 August 2017.

<sup>(721)</sup> Rao, S. and Turkstra, J., Enhancing security of land tenure for IDPs, FMR 46, May 2014 ([url](#)), p. 15; AREU, LGAF -Afghanistan, 22 June 2017 ([url](#)), pp. 43-44.

<sup>(722)</sup> Rao, S. and Turkstra, J., Enhancing security of land tenure for IDPs, FMR 46, May 2014 ([url](#)), p. 15; UN Human Rights Council, Report of the Special Rapporteur on the human rights of internally displaced persons on his mission to Afghanistan, 12 April 2017 ([url](#)), pp.13-15

<sup>(723)</sup> Rao, S. and Turkstra, J., Enhancing security of land tenure for IDPs, FMR 46, May 2014 ([url](#)), p. 15; Tolo News, 20 people injured in Balkh clashes, 19 April 2015 ([url](#)); Pajhwok Afghan News, Balkh land dispute leaves 50 wounded, 19 April 2015 ([url](#)); Pajhwok Afghan News, Year-long Jawand land dispute settled after loss of 6 lives, 25 July 2015 ([url](#)); KP, Five killed, six wounded over land dispute in Parwan 11 July 2015 ([url](#)).

<sup>(724)</sup> Rao, S. and Turkstra, J., Enhancing security of land tenure for IDPs, FMR 46, May 2014, ([url](#)), p. 15.

<sup>(725)</sup> Siddique, A., Skype interview, 11 August 2017; Washington Post, In Afghanistan, the Taliban isn't the only group battling for land, 31 May 2016 ([url](#)).

<sup>(726)</sup> Pajhwok Afghan News, Land dispute puts Hairatan traders in trouble, 13 February 2017 ([url](#)); Pajhwok News, 6,000 acres of usurped land reclaimed in Paktika, 12 July 2017 ([url](#)); Pajhwok News, 650,000 acres of government land usurped nationwide, 15 March 2017 ([url](#)).

<sup>(727)</sup> TLO, Major Land Disputes and Land Titling Systems in Khost Province, October 2014 ([url](#)), p.18.

<sup>(728)</sup> Denmark, DIS, Report from Danish Immigration Service's fact finding mission to Kabul, Afghanistan, 25 February to 4 March 2012, May 2012 ([url](#)), pp. 40-41; MEC, Final Report of the Public Inquiry into Land Usurpation, November 2014 ([url](#)), p. 34; Siddique, A., Skype interview, 11 August 2017.

<sup>(729)</sup> UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014 ([url](#)), pp.12-18; USIP, Addressing Land and Conflict in Afghanistan, June 2015, ([url](#)); Siddique, A., Skype interview, 11 August 2017.

<sup>(730)</sup> Siddique, A., Skype interview, 11 August 2017; Giustozzi, A., Mapping nomad-farmer conflict in Afghanistan, AREU, July 2017 ([url](#)), p. 8; Waheed, A., Skype Interview, 26 August 2017.

<sup>(731)</sup> Wily, L., Land, People, and the State in Afghanistan: 2002-2012, AREU, February 2013 ([url](#)), p. 3.

<sup>(732)</sup> TLO, Land based conflict in Afghanistan: The case of Paktia, December 2008 ([url](#)), p. 13.

<sup>(733)</sup> UNAMA, The Stolen Lands of Afghanistan and its People, August 2014 ([url](#)), p. 10.

The predominant types and nature of conflicts around land and water vary by region and are dependent on the strength of the government, tribal networks, or the presence of powerful locals and warlords in the area <sup>(734)</sup>. The AIHRC, interviewed by the Danish Immigration Service (DIS) in a 2012 fact-finding mission to Kabul, stated that land conflicts happen all over the country, and among all ethnic groups <sup>(735)</sup>. AREU observes that many disputes are ‘clothed in ethnic, tribal, or settler-nomad divisions with ethnic dimensions’ <sup>(736)</sup>. Abubakar Siddique explained that they occur mainly among individuals and families, as well as involving powerful elites; but in rural areas land conflicts can also expand to include whole families, communities, ethnicities, tribes, or clans within one tribe <sup>(737)</sup>.

There were numerous cases of families and individuals involved in conflicts over land and property in different regions of Afghanistan that resulted in killings and casualties between parties found in examples from 2015-2017 <sup>(738)</sup>. Furthermore, land conflicts can become entangled with other conflict actors and agents such as in a 2017 example from Takhar where local residents claimed that the Provincial Intelligence Chief used policemen and vehicles to come to the defense of his nephew’s land-grabbing activity in the area; however, the police denied this claim and said the residents were shooting at them. Two police and eight civilians were hurt in the clash <sup>(739)</sup>.

For information on blood feuds, see [Section 7](#).

For information on land issues affecting IDP communities in cities, see *EASO COI Report: Afghanistan - Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City* <sup>(740)</sup>.

## 6.2 Land disputes among nomadic and sedentary groups

Nomadic groups encountered problems with local strongmen displacing those people who lack citizenship or identity documents, noting that the government has determined that particular groups such as Bangriwala, Vangawala, and Mosulis are not Afghan and can be forcibly removed <sup>(741)</sup>. Minority Rights Group International reports that the Jogi and Chori Frosh groups, which are part of the broader Jat minority, which is also partly nomadic, migrate with the seasons and have become more and more sedentarised. These groups face problems such as constrained access to national identity documents (*tazkera*), and social services,

<sup>(734)</sup> USIP, Addressing land and conflict in Afghanistan, June 2015, ([url](#)), p.8; MEC, Final Report of the Public Inquiry into Land Usurpation, November 2014 ([url](#)), p. 41.

<sup>(735)</sup> Denmark, DIS, Report from Danish Immigration Service’s fact finding mission to Kabul, Afghanistan, 25 February to 4 March 2012, May 2012 ([url](#)), pp. 40-41.

<sup>(736)</sup> Wily, L., Land, People, and the State in Afghanistan: 2002-2012, AREU, February 2013 ([url](#)), p. 4.

<sup>(737)</sup> Siddique, A., Skype interview, 11 August 2017.

<sup>(738)</sup> Pajhwok Afghan News, 2 dead, 4 hurt as land dispute turned violent in Kapisa, 25 February 2017 ([url](#)); Pajhwok Afghan News, 1 dead, 11 wounded over land in Rodat, 24 February 2017 ([url](#)); TKG, 12 killed and injured in clash over land in Nagarhar, 25 February 2017 ([url](#)); Pajhwok Afghan News, 2 killed, 1 injured in clash over land in Parwan, 1 April 2017 ([url](#)); KP, Afghan man brutally kills his 3 cousins over a land dispute in Balkh, 17 July 2016 ([url](#)); Pajhwok Afghan News, Paktia land dispute claims 3 lives, 23 April 2015 ([url](#)); Pajhwok Afghan News, Clash over land dispute leaves 7 injured in Paktika, 1 October 2015 ([url](#)); Pajhwok Afghan News, Logar land dispute claims 1 life, 12 May 2015 ([url](#)).

<sup>(739)</sup> New Afghan Press, 2 killed over land dispute in Takhar, 4 September 2017 ([url](#)); Pajhwok Afghan News, Clash over land dispute leaves 2 policemen, 8 civilians injured, 4 September 2017 ([url](#)).

<sup>(740)</sup> EASO, Country of Origin Information Report. Afghanistan. Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City, August 2017 ([url](#)).

<sup>(741)</sup> USIP, Rule of Law, Governance and Human Rights in Afghanistan 2002-2016, 29 August 2017 ([url](#)), p. 37.

although they are guaranteed citizenship under the law. MRG notes that there has been positive response from the national government regarding the ability of Jogi to access documents, though the lack of coordination between levels of government and discrimination continue to pose access challenges <sup>(742)</sup>.

Kuchis, a nomadic and increasingly sedentarised group, face particularly tenuous and insecure land security <sup>(743)</sup>. Conflict between Kuchi nomadic groups and other settled tribes and groups over access to pasturelands are ongoing with the most long-standing conflict being over nomadic Kuchi access to the pastures of Hazajat inhabited by Hazara farmers <sup>(744)</sup>. The conflict is limited to certain access points along the Kuchi migratory paths which are controlled by Hazara militias <sup>(745)</sup>. Hazara and Kuchi conflicts have become tense and confrontational due to becoming politicised via the involvement of the state and insurgent groups taking sides, at times with the Kuchi <sup>(746)</sup>. However, there are also land disputes over migratory access to pastures between Kuchis and other Pashtuns as well as Tajiks in areas where Kuchis migrate <sup>(747)</sup>. In recent years, Kuchis attempting to settle down permanently and sedentarise have also been involved in altercations over disputed land with the state, for instance, in violent clashes in Kabul in 2017 <sup>(748)</sup>, such as with police in Deh Sabz in 2013 <sup>(749)</sup>, and in Qasaba in 2012 <sup>(750)</sup>.

UNAMA reported that during 2016, ongoing land disputes between members of Hazara and nomadic Kuchi tribes continued in Maidan Wardak; in 2015, the feud lead to abductions, and two killed and several injured <sup>(751)</sup>. In 2016, 34 Hazara civilians in Maidan Wardak were kidnapped across 7 incidents <sup>(752)</sup>.

In January 2017, in Logar, a clash between Kuchi nomads and local residents left 1 person dead and several injured after the conflict escalated from a verbal disagreement to an armed clash following several days of squatting on the land by the nomadic group <sup>(753)</sup>. The Kuchis have been clashing with locals over disputed land for several years with numerous people killed and injured as a result. The Kuchis claim the government awarded the land in 2011, while local people still claim ownership <sup>(754)</sup>.

<sup>(742)</sup> MRG, World Directory of Minorities and Indigenous Peoples – Afghanistan: Jogi and Chori Frosh, 11 November 2017 ([url](#)).

<sup>(743)</sup> Foschini, F., The Social Wandering of the Afghan Kuchis, AAN, November 2013 ([url](#)), pp. 1, 15-17; AREU, LGAF - Afghanistan, 22 June 2017 ([url](#)), pp. 54-56; UN Human Rights Council, Report of the Special Rapporteur on the human rights of internally displaced persons on his mission to Afghanistan, 12 April 2017 ([url](#)), p. 11.

<sup>(744)</sup> AREU, LGAF – Afghanistan, 22 June 2017 ([url](#)), pp. 54-56; Giustozzi, A., Mapping Nomad-farmer Conflict in Afghanistan, AREU, July 2017 ([url](#)), p.3.

<sup>(745)</sup> Giustozzi, A., Mapping Nomad-farmer Conflict in Afghanistan, AREU, July 2017 ([url](#)), p.3.

<sup>(746)</sup> Foschini, F., The Social Wandering of the Afghan Kuchis, AAN, November 2013 ([url](#)), pp. 1, 17-21.

<sup>(747)</sup> Giustozzi, A., Mapping Nomad-farmer Conflict in Afghanistan, AREU, July 2017 ([url](#)), p.2.

<sup>(748)</sup> Guardian (The), Kids on the streets of Kabul get another chance at childhood, 22 May 2017 ([url](#)).

<sup>(749)</sup> Foschini, F., Land Grabs (2): Deh Sabz, the new and the old, AAN, 15 August 2013 ([url](#)).

<sup>(750)</sup> RFE/RL, Afghan nomads fend off authorities in Kabul land dispute, 14 December 2012 ([url](#)).

<sup>(751)</sup> UNAMA, Afghanistan Protection of Civilians in Armed Conflict Annual Report 2016, February 2017 ([url](#)), p. 68; Pajhwok Afghan News, Body to resolve Kuchi-Hazara tribes dispute resumes work, 29 June 2015 ([url](#)); Pajhwok Afghan News, 2 dead as Hazara-Kuchi feud resurfaces in Wardak, 22 June 2015 ([url](#)). For more historical background, see also Norway, LandInfo, Afghanistan: The conflict between the Hazaras and Kuchis in the Beshud Districts of Wardak Province, 6 June 2011 ([url](#)).

<sup>(752)</sup> UNAMA, Afghanistan Protection of Civilians in Armed Conflict Annual Report 2016, February 2017 ([url](#)), p. 68.

<sup>(753)</sup> Pajhwok Afghan News, 4 people suffer casualties over land dispute, 7 January 2017 ([url](#)).

<sup>(754)</sup> Pajhwok Afghan News, As Logar land dispute resurfaces, Kuchis block roads, 15 March 2015 ([url](#)); Pajhwok Afghan News, Logar land dispute leaves 2 dead, 5 injured, 23 December 2014 ([url](#)); Pajhwok Afghan News, Land disputes in Logar leave 6 injured, 25 July 2015 ([url](#)).

In July 2017, Kuchi and Lakan tribesmen in Khost province called for government intervention to resolve a land dispute, claiming it would descend into violence <sup>(755)</sup>.

According to a 2017 study on land governance by AREU, settlement of Kuchis was found to be particularly problematic in terms of local tensions in some districts of Herat and Kandahar, as well as Logar, Laghman and Nangarhar <sup>(756)</sup>.

For information on land issues affecting IDP communities in cities, see *EASO COI Report: Afghanistan - Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City* <sup>(757)</sup>.

### 6.3 Impact of land disputes on women and girls

Women are frequently denied land rights and land inheritances due to cultural norms that disfavour women, or due to lack of access to recourse and absence of documentation <sup>(758)</sup>. Women are also affected by land disputes and have been traded by their families to settle such conflicts through harmful practices such as *baad* marriage <sup>(759)</sup>. In a study on women's displacement and property rights in Afghanistan by the Norwegian Refugee Council (NRC), it is indicated that women who are successful in court cases risk violence from their families for having disrupted 'social and familial' order <sup>(760)</sup>.

Land disputes that affect women may also lead to other types of violence against them, for example, in 2015, Tolo News reported that a man in Baghlan killed his own brother and tried to take the land inherited by the slain man's wife and family. The suspect then later returned and killed his brother's wife and their infant child over the land dispute. He then reportedly fled the area and was not arrested; the remaining children claimed they could not return due to threats over the land from their fugitive uncle <sup>(761)</sup>. In a 2016 example reported by the New York Times, a pregnant woman in Jawzjan was shot in an honour killing after the Taliban executed her on the spot based on an adultery charge made by her husband. The woman's family claimed that the husband fabricated the charge because he was in a land dispute with her family, and wanted to inherit her property <sup>(762)</sup>.

### 6.4 Land dispute resolution

Land is regulated through overlapping formal and informal legal systems including aspects overlapping and blended customary, *sharia* and statutory law making enforcement of

<sup>(755)</sup> Pajhwok Afghan News, Khost Lakan tribe seeks end to land dispute with Kuchis, 31 July 2017 ([url](#)).

<sup>(756)</sup> AREU, LGAF – Afghanistan, 22 June 2017 ([url](#)), p. 55.

<sup>(757)</sup> EASO, Country of Origin Information Report. Afghanistan. Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City, August 2017 ([url](#)).

<sup>(758)</sup> AREU, LGAF – Afghanistan, 22 June 2017 ([url](#)), pp. 63, 179; UNAMA, The Stolen lands of Afghanistan and its people, August 2014 ([url](#)), p.7; NRC, Strengthening Displaced Women's Rights to Housing, Land, and Property, November 2014 ([url](#)), pp. 34-35.

<sup>(759)</sup> NRC, Strengthening Displaced Women's Rights to Housing, Land, and Property, November 2014 ([url](#)), p.34-35; IWPR, Hope for Afghan women traded to end feuds, 17 January 2017 ([url](#)).

<sup>(760)</sup> NRC, Strengthening Displaced Women's Rights to Housing, Land, and Property, November 2014 ([url](#)), p. 53.

<sup>(761)</sup> Tolo News, Baghlan man sought for killing his family, 11 April 2015 ([url](#)).

<sup>(762)</sup> New York Times (The), Taliban publicly execute two women in northern Afghanistan, 7 May 2016 ([url](#)).

ownership rights and dispute resolution complex <sup>(763)</sup>. Dispute resolution for land disputes may occur through formal state court systems, informal customary mechanisms, or the involvement of armed groups <sup>(764)</sup> or hybrid resolutions between the state and customary solutions <sup>(765)</sup>.

#### 6.4.1 Formal mechanisms

Land related disputes are considered civil matters under the statutory law <sup>(766)</sup>. The Ministry of Justice's Huquq Department handles issues of family, trade and property disputes such as land cases <sup>(767)</sup>. In 2012, land disputes made up 40% of all cases received (3,992) by the Huquq Department; however, only 5% of those cases were resolved. The land dispute resolution process through the Huquq Department was blocked by lengthy processing times, false documents, and interference and pressure from influential individuals. If the Huquq Department is unable to settle a dispute, the case is referred to the courts <sup>(768)</sup>. Courts are sometimes approached to settle land disputes; however, sources report that there is little expectation of obtaining fair treatment, and frequently such courts are not present or lack appropriate staff <sup>(769)</sup>. Disputants in land disputes with the means to pay off or bribe judicial officials obtain favourable outcomes <sup>(770)</sup>. Furthermore, in attempts to obtain different outcomes, there have been cases where court orders are ignored and the same case is re-tried simultaneously in various courts. Challenges within the court system dealing with land disputes include lack of documentation or fraudulent land documents, lack of awareness about court proceedings by litigants, delays, and the lack of safety for court officials who have reportedly experienced threats, and beatings. Court employees report that threats to process forged documents or risk being killed are 'not uncommon' in land disputes where the defendant is a powerful individual and the ANP cannot summon the parties involved <sup>(771)</sup>.

For information on land issues affecting IDP communities in cities, see *EASO COI Report: Afghanistan - Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City* <sup>(772)</sup>.

<sup>(763)</sup> NRC, Strengthening Displaced Women's Rights to Housing, Land, and Property, November 2014 ([url](#)), p.30; IRIN, Land disputes add to Afghanistan's security woes, 10 September 2013 ([url](#)); UNEP, Natural Resource Management and Peacebuilding in Afghanistan, May 2013 ([url](#)), p.14.

<sup>(764)</sup> AREU, LGAF – Afghanistan, 22 June 2017 ([url](#)), p. 7; Siddique, A., Skype interview, 11 August 2017.

<sup>(765)</sup> UNAMA, The Stolen Lands of Afghanistan and its People, August 2014 ([url](#)), p. 10.

<sup>(766)</sup> MEC, Final Report of the Public Inquiry into Land Usurpation, November 2014 ([url](#)), p. 44.

<sup>(767)</sup> For detailed information on procedures to resolve land disputes through the courts, refer to: Afghanistan, MEC, Final Report of the Public Inquiry into Land Usurpation, November 2014 ([url](#)), pp. 30-36; UNAMA, The Stolen Lands of Afghanistan and its People, August 2014 ([url](#)), pp. 23, 31-33, 48; ALEP, An Introduction to Property Law of Afghanistan, 2015 ([url](#)), pp. 31-35.

<sup>(768)</sup> MEC, Final Report of the Public Inquiry into Land Usurpation, November 2014 ([url](#)), p. 38.

<sup>(769)</sup> ACCORD, Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016 ([url](#)), pp. 14-15; Siddique, A., Skype interview, 11 August 2017; Wily, L., Land, People, and the State in Afghanistan: 2002-2012, February 2013 ([url](#)), pp. 90-91.

<sup>(770)</sup> ALEP, An Introduction to Property Law of Afghanistan, 2015 ([url](#)), p. 32; AREU, LGAF – Afghanistan, 22 June 2017 ([url](#)), p.179.

<sup>(771)</sup> MEC, Final Report of the Public Inquiry into Land Usurpation, November 2014 ([url](#)), pp. 34-35.

<sup>(772)</sup> EASO, Country of Origin Information Report. Afghanistan. Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City, August 2017 ([url](#)).

### 6.4.2 Customary and traditional mechanisms

The Asia Foundation reports that the most frequent types of cases brought for dispute resolution in 2017 were land disputes <sup>(773)</sup>, while in 2016, land disputes were the most common cases brought to *shuras/jirgas* for resolution <sup>(774)</sup>. Neamat Nojumi notes in his 2014 article on non-state justice that such mechanisms are perceived locally as a form of restorative justice, which have been successful in resolving thousands of communal conflicts and individual disputes rooted in decades of war <sup>(775)</sup>. There are examples of successful land dispute resolution through traditional mechanisms where parties feel satisfied, such as the ending of an 18-year-long dispute between two villages in Gardez, Paktia in 2015, through the intervention of a *jirga* and tribal elders, which reconciled the two groups <sup>(776)</sup>.

Civil and criminal matters, including land disputes are frequently resolved through informal community resolution mechanisms engaging local elders or calling for resolution through *shuras* and *jirgas* <sup>(777)</sup>. People often prefer the customary law system of *jirgas* to resolve disputes because of its benefits: people are more familiar with it, the cost is lower, emphasis on community harmony, and because of problems of trust in the formal system, such as corruption, distance and delays <sup>(778)</sup>. Neamat Nojumi observed that governance and justice based on non-state systems are accepted and popular among the population <sup>(779)</sup>. Decisions made in *jirgas* and *shuras* are outside the justice system of the state and are not legally binding or formally recognised and their decisions sometimes violate Islamic and statute law and human rights <sup>(780)</sup>.

According to Asia Foundation's *Survey of the Afghan People 2016*, Afghans were most likely to use *shuras/jirgas* (43.5%) to resolve a dispute or formal case, followed by courts (23.6%), and the Huquq Department (10.4%)<sup>781</sup>. In rural areas, the preference for *shuras/jirgas* increased to 89.6 % <sup>(782)</sup>. Land disputes were the most common type brought for conflict resolution by *shuras* and *jirgas* (43 %), followed by family disputes (18.3 %), and property disputes (14.4 %) <sup>(783)</sup>.

<sup>(773)</sup> Asia Foundation (The), *Survey of the Afghan People 2017*, November 2017 ([url](#)), p. 103.

<sup>(774)</sup> Asia Foundation (The), *Survey of the Afghan People 2016*, April 2017 ([url](#)), pp. 113-114.

<sup>(775)</sup> Nojumi, N., *The merits of non-state justice*, 5 November 2014 ([url](#)).

<sup>(776)</sup> TKG, *18 year dispute over piece of land resolved*, 14 July 2015 ([url](#)); IWPR, *How fair is traditional justice in Afghanistan?* 4 December 2014 ([url](#)).

<sup>(777)</sup> USIP, *Addressing Land and Conflict in Afghanistan*, June 2015, ([url](#)), p. 3; ACCORD, *Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016*, June 2016 ([url](#)), pp. 14-15; Siddique, A., Skype interview, 11 August 2017; MEC, *Final Report of the Public Inquiry into Land Usurpation*, November 2014 ([url](#)), pp. 36-38; USDOS, *Country Reports on Human Rights Practices for 2016 – Afghanistan*, 3 March 2017 ([url](#)), p.12.

<sup>(778)</sup> ALEP, *An Introduction to Property Law of Afghanistan*, 2015 ([url](#)), p. 32; Siddique, A., Skype interview, 11 August 2017; Wily, L., *Land, People, and the State in Afghanistan: 2002-2012*, February 2013 ([url](#)), pp. 90-91; MEC, *Final Report of the Public Inquiry into Land Usurpation*, November 2014 ([url](#)), pp. 34-35; Wardak, A., *A Decade and a Half of Rebuilding Afghanistan's Justice System*, 2016 ([url](#)), pp. 13-14; NRC, Skype interview, 29 August 2017.

<sup>(779)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during his review of this report.

<sup>(780)</sup> UNCAT, *Concluding observations on second periodic review of Afghanistan*, 12 June 2017 ([url](#)), para. 39; UNAMA, *The Stolen Lands of Afghanistan and its People*, August 2014 ([url](#)), p. 37; Wardak, A., *A Decade and a Half of Rebuilding Afghanistan's Justice System*, 2016 ([url](#)), pp. 11-12; NRC, Skype interview, 29 August 2017.

<sup>(781)</sup> Asia Foundation (The), *Survey of the Afghan People 2016*, April 2017 ([url](#)), pp. 113-114; ALEP, *An Introduction to Property Law of Afghanistan*, 2015 ([url](#)), p. 32.

<sup>(782)</sup> Asia Foundation (The), *Survey of the Afghan People 2016*, April 2017 ([url](#)), pp. 113-114.

<sup>(783)</sup> Asia Foundation (The), *Survey of the Afghan People 2016*, April 2017 ([url](#)), pp. 113-114.

Many Afghans use the terms *jirga* and *shura* interchangeably <sup>(784)</sup>; however, *jirgas* tend to occur more in Pashtun areas under the *Pashtunwali*, and *shuras* tend to be used by other ethnic groups <sup>(785)</sup>. *Shuras* and *jirgas* can be convened at many different levels, from the village, tribe, district, or provincial level for instance, and their modus operandi is largely to settle disputes by consensus <sup>(786)</sup>. The manner in which informal justice is used and recognised varies from district to district to a large extent, according to AREU <sup>(787)</sup>. According to Thomas Ruttig, there are many cases, approximately 90 percent, which are decided by consensus via customary and Islamic practices, particularly for smaller issues. He stated that the decisions issued by such bodies are accepted by the population, ‘even if only for a certain time’ <sup>(788)</sup>. Abubakar Siddique explained that in most cases, *jirgas* and *shuras* are involved in resolving land disputes. He gave the view that the extent to which decisions are binding depends on the local dynamics in the area and the nature of the *jirga* based on the individuals and strength of the tribes involved <sup>(789)</sup>. This can change from tribe to tribe, or case to case <sup>(790)</sup>. AREU observed that such decisions depend on ‘social consensus to be upheld’ and are based on ad hoc combinations of customary norms, perspectives, and *sharia* <sup>(791)</sup>. Customary law and dispute resolution can vary with the region, ethnic group, and among tribes, according to a 2004 overview of customary justice produced by the International Legal Foundation (ILF) <sup>(792)</sup>.

Sources note that the extended Afghan conflict and shifting local dynamics have eroded the effectiveness of the *shura* and *jirga* systems <sup>(793)</sup>. Sources observed that the nature and functioning of customary mechanisms like *jirgas* and *shuras* has changed due to the involvement of local warlords or militant commanders <sup>(794)</sup>, or, are partially run by local commanders and power brokers, who enforce such decisions by force <sup>(795)</sup>. In many places, *jirga* has been replaced with a *shura*, which is more hierarchical and permanent in nature and less based on consensus than *jirgas*, due to the involvement of influential strongmen and warlords <sup>(796)</sup>. Thomas Ruttig explained in a 2016 ACCORD seminar that obtaining resolution in disputes over land and water resources is not a straightforward process. Mr. Ruttig gave the example of a case in Uruzgan in which a very strong local commander was in a violent land conflict with the local population which escalated to the level that a *sharia* mediator was flown in to the province to resolve the matter. Despite a verdict being issued on the basis of Islamic law, the commander did not comply with it <sup>(797)</sup>.

<sup>(784)</sup> Ruttig, T., How Tribal are the Taliban? AAN, April 2010 ([url](#)), p. 2; NRC, Skype interview, 29 August 2017.

<sup>(785)</sup> NRC, Skype interview, 29 August 2017.

<sup>(786)</sup> Wily, L., Land, People, and the State in Afghanistan: 2002-2012, AREU, February 2013 ([url](#)), pp. 90-91. NRC, Skype interview, 29 August 2017.

<sup>(787)</sup> AREU, LGAF – Afghanistan, 22 June 2017 ([url](#)), p.179.

<sup>(788)</sup> ACCORD, Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016 ([url](#)), pp. 14-15.

<sup>(789)</sup> Siddique, A., Skype interview, 11 August 2017.

<sup>(790)</sup> Siddique, A., Skype interview, 11 August 2017.

<sup>(791)</sup> Wily, L., Land, People, and the State in Afghanistan: 2002-2012, AREU, February 2013 ([url](#)), pp. 90-91.

<sup>(792)</sup> ILF, The Customary Laws of Afghanistan, September 2004 ([url](#)).

<sup>(793)</sup> USIP, Addressing Land and Conflict in Afghanistan, June 2015, ([url](#)), pp. 3-4; Siddique, A., Skype interview, 11 August 2017.

<sup>(794)</sup> Siddique, A., Skype interview, 11 August 2017.

<sup>(795)</sup> AREU, Corrupting the State or State-crafted Corruption? June 2010 ([url](#)), p. 14.

<sup>(796)</sup> Ruttig, T., How Tribal are the Taliban? AAN, April 2010 ([url](#)), p. 8; FRC, Pashtunwali: an analysis of the Pashtun way of life, 5 April 2017 ([url](#)), p. 42; TLO, Land based conflict in Afghanistan: The case of Paktia, December 2008 ([url](#)), p. 31.

<sup>(797)</sup> ACCORD, Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016 ([url](#)), pp. 14-15.

Dispute resolution through formal and customary processes are also affected by corruption and tends to favour the party capable of paying the highest amount <sup>(798)</sup> or are influenced by powerful figures, including through threats <sup>(799)</sup>. For instance, AREU found in interviews with Afghans that people without means had to accept decisions of *jirgas*, and even in cases of land disputes resolved by *jirgas* in favour of poor complainants, wealthier land owners then approached district governors to pay them for a favourable outcome <sup>(800)</sup>.

### 6.4.3 Appealing and enforcing decisions made in *jirgas* and *shuras*

ALEP indicates that a party who disagrees with a *jirga* decision can ‘leave the circle’, avoiding being bound by the outcome <sup>(801)</sup>. A dissatisfied party can challenge the decision of a *jirga*, similar to an appeal process in a second *jirga* <sup>(802)</sup>. ALEP explains that the dissatisfied party can ask the *jirga* to review to that and provide a final decision, called *takhm*. However, if the party then does not abide by the *takhm*, ‘he will be punished according to a decision of the applicable tribe’ <sup>(803)</sup>. The parties in the dispute will also lose their deposit put forward required as a guarantee in the process if they do not accept a decision <sup>(804)</sup>. If tribal elders or a *jirga* are unable to come to a resolution under customary and traditional practices, *sharia* is consulted and the issue may be brought to *Qazis*, religious experts on Islamic law <sup>(805)</sup>. Thomas Ruttig also explained that in theory, the party may also approach higher instance authorities, such as *sharia* courts, Council of Elders, or the state <sup>(806)</sup>.

Decisions taken in land disputes in *shuras* and *jirgas* can be difficult to implement when not accepted by one party due to the lack of legal recognition for them <sup>(807)</sup>. Sources observe that social stability plays an important role in enforcing outcomes of a settlement through informal mechanisms <sup>(808)</sup> and that decisions that are approved both by communities and government officials are more likely to offer enduring solutions <sup>(809)</sup>. In an interview with EASO for this report, a legal advisor for the Norwegian Refugee Council (NRC), who is based in Afghanistan and works on issues of land disputes with displaced populations and returnees to Afghanistan said that enforcement of informal decisions varies from one location to another but the idea is to create a consensus; also, *jirgas* require the parties to make a financial guarantee by paying a deposit at the beginning that if they do not accept the decision, they will lose this <sup>(810)</sup>. An NGO interviewed by a Danish fact-finding mission to Kabul in 2012 noted that *shura* decisions are temporary, and last for two to three years, meaning that the decision is ‘not a permanent solution’, and that a change in regional power could create the conditions for the

<sup>(798)</sup> Wily, L., Land, People, and the State in Afghanistan: 2002-2012, AREU, February 2013 ([url](#)), p. 92; UNEP, Natural Resource Management and Peacebuilding in Afghanistan, May 2013 ([url](#)), p.14.

<sup>(799)</sup> MEC, Final Report of the Public Inquiry into Land Usurpation, November 2014 ([url](#)), pp. 36-38; TLO, Land based conflict in Afghanistan: The case of Paktia, December 2008 ([url](#)), pp. 32-33.

<sup>(800)</sup> AREU, Corrupting the State or State-crafted Corruption? June 2010 ([url](#)), p. 14.

<sup>(801)</sup> ALEP, An Introduction to Property Law of Afghanistan, 2015 ([url](#)), p. 34.

<sup>(802)</sup> ACCORD, Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016 ([url](#)), pp. 14-15; ALEP, An Introduction to Property Law of Afghanistan, 2015 ([url](#)), p. 34; FRC, Pashtunwali: an analysis of the Pashtun way of life, 5 April 2017 ([url](#)), pp. 36-40.

<sup>(803)</sup> ALEP, An Introduction to Property Law of Afghanistan, 2015 ([url](#)), p. 34.

<sup>(804)</sup> MEC, Final Report of the Public Inquiry into Land Usurpation, November 2014 ([url](#)), p. 38;

<sup>(805)</sup> FRC, Pashtunwali: an analysis of the Pashtun way of life, 5 April 2017 ([url](#)), p. 37.

<sup>(806)</sup> ACCORD, Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016 ([url](#)), pp. 14-15.

<sup>(807)</sup> MEC, Final Report of the Public Inquiry into Land Usurpation, November 2014 ([url](#)), p. 38.

<sup>(808)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report.

<sup>(809)</sup> USIP, Rule of Law, Governance and Human Rights in Afghanistan 2002-2016, 29 August 2017 ([url](#)), p.11.

<sup>(810)</sup> NRC, Skype interview, 29 August 2017.

situation to turn violent <sup>(811)</sup>. NRC commented similarly in a 2017 interview with EASO for this report that in their work with displaced groups in the provinces where they work, roughly 70% of the time, *shura* decisions are enforced, while there are changing circumstances that cause the solution to be more temporary in other situations <sup>(812)</sup>.

According to AREU, because *jirgas/shuras* are outside formal state structures, their sanction mechanism if a decision is not respected is ‘social exclusion’ of the individual who breaks with the resolution that had been agreed <sup>(813)</sup>. Sources indicate that in tribal areas applying the *Pashtunwali*, if a person violates a ruling of the *jirga*, serious consequences determined by the *jirga* are possible, including expulsion, burning down their home, paying fines <sup>(814)</sup> or giving a girl up for marriage as compensation <sup>(815)</sup>. Sometimes rulings can be upheld by the *Arbaki*, local tribal police, depending on the region <sup>(816)</sup>. NRC noted that there are disincentives to breaking *jirga* decisions in land disputes, for instance that keeping commitments is also a matter of upholding one’s honour, and additionally, if one breaks a *jirga* decision and the matter goes to a court, it becomes very expensive and a person will have to spend ‘everything they have’ to pursue it formally <sup>(817)</sup>.

Since about 2009, efforts have been made by the government and international partners to develop hybrid solutions to facilitate and regulate coordination between the two justice processes <sup>(818)</sup>. Neamat Nojumi made the observation that coordination between the state and non-state justice mechanisms takes place at all primary courts, where the *Huquq* often asks disputants in civil cases to settle the matter through family and local mediation <sup>(819)</sup>. According to USIP, such coordination occurs in major cases, though the processes in the informal sector are less clear <sup>(820)</sup>.

#### 6.4.4 Access to land dispute resolution

Most Afghans lack access to conflict resolution mechanisms for land disputes, according to AREU, though adult males enjoy the highest level of access <sup>(821)</sup>. Customary resolution tends to favour men and exclude women<sup>822</sup>, particularly in land and family disputes <sup>(823)</sup>. However, Neamat Nojumi commented that this also depends on the social status of the men and women involved in the dispute, as non-justice systems are a form of arbitration that both parties can select to negotiate on their behalves <sup>(824)</sup>.

<sup>(811)</sup> Denmark, DIS, Report from Danish Immigration Service’s fact finding mission to Kabul, Afghanistan, 25 February to 4 March 2012, May 2012 ([url](#)), pp. 42.

<sup>(812)</sup> NRC, Skype interview, 29 August 2017.

<sup>(813)</sup> AREU, Corrupting the State or State-crafted Corruption? June 2010 ([url](#)), p. 14.

<sup>(814)</sup> NRC, Skype interview, 29 August 2017; FRC, Pashtunwali: an analysis of the Pashtun way of life, 5 April 2017 ([url](#)), p.37.

<sup>(815)</sup> FRC, Pashtunwali: an analysis of the Pashtun way of life, 5 April 2017 ([url](#)), p.37.

<sup>(816)</sup> NRC, Skype interview, 29 August 2017.

<sup>(817)</sup> NRC, Skype interview, 29 August 2017.

<sup>(818)</sup> USIP, Rule of Law, Governance and Human Rights in Afghanistan 2002-2016, 29 August 2017 ([url](#)), p.11; Wardak, A., A Decade and a Half of Rebuilding Afghanistan’s Justice System, 2016 ([url](#)).

<sup>(819)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report.

<sup>(820)</sup> USIP, Rule of Law, Governance and Human Rights in Afghanistan 2002-2016, 29 August 2017 ([url](#)), p.13.

<sup>(821)</sup> AREU, LGAF – Afghanistan, 22 June 2017 ([url](#)), p.179.

<sup>(822)</sup> NRC, Strengthening Displaced Women’s Rights to Housing, Land, and Property, November 2014 ([url](#)), p.34-35; UNEP, Natural Resource Management and Peacebuilding in Afghanistan, May 2013 ([url](#)), p.14; AREU, LGAF – Afghanistan, ([url](#)), pp. 63-64.

<sup>(823)</sup> MEC, Final Report of the Public Inquiry into Land Usurpation, November 2014 ([url](#)), p. 38; AREU, LGAF – Afghanistan, ([url](#)), pp. 63-64.

<sup>(824)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report.

Women also face significant barriers to accessing formal justice to secure land rights, such as in inheritance cases <sup>(825)</sup>. Formal courts also downplay criminal matters to civil cases and decisions lack enforcement <sup>(826)</sup>, or women complainants receive rulings that provide them less than their entitlement <sup>(827)</sup>. In formal and informal processes, cases tend to award properties to elder sons or male relatives due to prevailing discriminatory attitudes towards women <sup>(828)</sup>. According to the Catholic relief organisation, Cordaid, challenging such decisions puts Afghan women at risk of being labelled shameful, or going against the family, and subsequently losing socio-economic securities linked to family and community <sup>(829)</sup>.

Neamat Nojumi explained that criminal matters within urban populations are handled by the state judiciary system in the ‘absolute majority’ of cases; however this trend fades toward the rural peripheries and vanishes in tribal regions <sup>(830)</sup>. In criminal matters resolved by traditional justice, such as murders, or blood feuds, women or girls may be exchanged as compensation <sup>(831)</sup>. According to AREU, in land dispute resolution, ‘men from marginalised population groups’ encounter barriers to accessing formal and informal conflict resolution mechanisms <sup>(832)</sup>. Dispute resolution in customary processes reportedly tends to favour men, elites, and dominant ethnicities, while sometimes local administrations favour one group over another <sup>(833)</sup>. Furthermore, the US Department of State reports that religious minorities in the Hindu and Sikh community reported that land and property disputes in particular are not pursued through the formal court process due to discrimination and feeling unprotected by the dispute resolution mechanisms of the state. Instead, these communities preferred to rely on community councils and to settle disputes within their own communities <sup>(834)</sup>.

#### 6.4.5 Taliban involvement in land disputes

People also reportedly approach the Taliban to resolve land disputes, as the resolution is perceived in some areas to be faster than courts and informal processes, and do not require the payment of bribes <sup>(835)</sup>, and because they are seen to put a final and fast end to the dispute that could lead to years of conflict <sup>(836)</sup>. This is often the option taken by those in disputes in rural areas where there is little or no governmental judicial presence <sup>(837)</sup> or in areas of Taliban control <sup>(838)</sup>. Abubakar Siddique explained that in some cases the Taliban may not allow *jirgas* and other social bodies to form, wanting people to rely on the Taliban’s systems to resolve

<sup>(825)</sup> UNAMA, The Stolen Lands of Afghanistan and its People – The Legal Framework, August 2014 ([url](#)), p. 7; AREU, LGAF - Afghanistan, ([url](#)), pp. 63-64; NRC, Skype interview, 29 August 2017.

<sup>(826)</sup> Cordaid, Strategy document: supporting primary justice in insecure contexts – Afghanistan and South Sudan, October 2016 ([url](#)), pp. 16-17.

<sup>(827)</sup> NRC, Skype interview, 29 August 2017.

<sup>(828)</sup> MEC, Final Report of the Public Inquiry into Land Usurpation, November 2014 ([url](#)), pp. 34-35.

<sup>(829)</sup> Cordaid, Supporting Primary Justice in Insecure Contexts, October 2016 ([url](#)), pp. 16-17.

<sup>(830)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report; See also: EASO, Country of Origin Information Report. Afghanistan. Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City, August 2017 ([url](#)).

<sup>(831)</sup> IWPR, How fair is traditional justice in Afghanistan? 4 December 2014 ([url](#)).

<sup>(832)</sup> AREU, LGAF – Afghanistan, 22 June 2017 ([url](#)), p.179.

<sup>(833)</sup> UNEP, Natural Resource Management and Peacebuilding in Afghanistan, May 2013 ([url](#)), p.14.

<sup>(834)</sup> USDOS, International Religious Freedom Report for 2016 - Afghanistan, 15 August 2017 ([url](#)), pp. 8, 10-11.

<sup>(835)</sup> New York Times (The), Taliban justice gains favor as official Afghan courts fail, 31 January 2015 ([url](#)); Pajhwok Afghan News, Unable to pay bribes, residents approach Taliban for justice, 6 January 2016 ([url](#)); Siddique, A., Skype interview, 11 August 2017; Waheed, A., Skype Interview, 26 August 2017.

<sup>(836)</sup> ACCORD, Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016 ([url](#)), pp. 14-15; Waheed, A., Skype Interview, 26 August 2017.

<sup>(837)</sup> DW, The disturbing trend of Taliban justice in Afghanistan, 15 March 2017 ([url](#)); Siddique, A., Skype interview, 11 August 2017.

<sup>(838)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report.

their disputes <sup>(839)</sup>. Pajhwok Afghan News reported the use of Taliban courts was a common occurrence in southern Ghazni, for example, where residents could not afford bribes <sup>(840)</sup>. Neamat Nojumi also observed that people may also turn to the Taliban when one side of the dispute does not receive a favourable verdict either from the state or non-state justice process <sup>(841)</sup>.

The official website of the Taliban, the Voice of Jihad, states that in 2017 the Taliban took credit for putting an end to several long-standing land feuds between tribes in Kunar, Khost, and Zabul <sup>(842)</sup>. In some instances reported by the media, those who approached the Taliban courts for land disputes said they were satisfied with the Taliban decisions in their cases <sup>(843)</sup>. However, decisions taken by the Taliban can have serious corporal or capital punishments, or result in people being forcefully taken by the Taliban to have rulings administered <sup>(844)</sup>. Neamat Nojumi commented that the Taliban's judiciary objectives are not based on fairness or justice, but the imposition of their order <sup>(845)</sup>.

In a 2017 example of a land dispute, Pajhwok Afghan News reported that the Taliban became involved in an alleged tribal land dispute in Jawzjan province between Pashtun and Uzbek tribes, and kidnapped 52 residents claiming to have taken them to a Taliban court to have the dispute resolved <sup>(846)</sup>.

## 7. Blood feuds and revenge killings

### 7.1 Characteristics

Blood feuds characteristically occur in areas where the government and rule of law is weak or non-existent <sup>(847)</sup>, where there is easy access to weapons, leading to a quick escalation of violence <sup>(848)</sup>. However, Neamat Nojumi explained that any homicides or killings that are not mitigated can potentially lead to a blood feud regardless the presence or the absence of government <sup>(849)</sup>. Among Pashtuns, blood feuds arise from the central component of the *Pashtunwali* called *badal*, or retributive justice, which requires the restoration of honour through carrying out revenge or; that those who commit an injustice against another's honour

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<sup>(839)</sup> Siddique, A., Skype interview, 11 August 2017.

<sup>(840)</sup> Pajhwok Afghan News, Unable to pay bribes, residents approach Taliban for justice, 6 January 2016 ([url](#)); Pajhwok Afghan News, No judicial officials in 13 Ghazni districts, 10 August 2016 ([url](#)).

<sup>(841)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report.

<sup>(842)</sup> Islamic Emirate of Afghanistan – Voice of Jihad, Sharia court resolves major land disputes in Zabul, 13 March 2017 ([url](#)); Islamic Emirate of Afghanistan – Voice of Jihad, 90-year old land conflict resolved in Khost, 5 April 2017 ([url](#)); Islamic Emirate of Afghanistan – Voice of Jihad, Islamic Emirate resolves 60-year-old feud between two tribes, 8 January 2017 ([url](#)).

<sup>(843)</sup> New York Times (The), Taliban justice gains favor as official Afghan courts fail, 31 January 2015 ([url](#)); Pajhwok Afghan News, Unable to pay bribes, residents approach Taliban for justice, 6 January 2016 ([url](#)); DW, The disturbing trend of Taliban justice in Afghanistan, 15 March 2017 ([url](#)).

<sup>(844)</sup> DW, The disturbing trend of Taliban justice in Afghanistan, 15 March 2017 ([url](#)); IWPR, Summary justice still rampant in Afghan province, 16 November 2016 ([url](#)).

<sup>(845)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report.

<sup>(846)</sup> Pajhwok Afghan News, Jawzjan farmers taken to Taliban court, says Mujahid, 15 February 2017 ([url](#)).

<sup>(847)</sup> UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014 ([url](#)), pp. 34-35; Waheed, A., Skype interview, 26 August 2017.

<sup>(848)</sup> Waheed, A., Skype interview, 26 August 2017.

<sup>(849)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report.

must compensate those who have been wronged <sup>(850)</sup>. The *Pashtunwali* is dominant across the tribal communities and fades away as one moves toward the urban centers <sup>(851)</sup>.

Neamat Nojumi observed that blood feuds are not solely based on *Pashtunwali*; blood feuds are also a practice across other ethnic groups in Afghanistan <sup>(852)</sup>. Other sources note that the phenomenon occurs most frequently among tribal Pashtuns, but also, less commonly, among non-Pashtuns and among other ethnic groups <sup>(853)</sup>. Also, in an interview with EASO for this report, Ahmad Waheed, an independent researcher on Afghanistan who also works with the US Naval Postgraduate School program on culture and conflict, stated that clashes and feuds do occur and are likely to develop between different ethnic groups living in the same area, for instance Hazara and nomadic groups, or in regions where Pashtun and Tajik or Uzbek groups border each other <sup>(854)</sup>. He noted that revenge killing happens mainly among Pashtuns, but in cases involving women's honour, that happens among all ethnicities that see it as a customary transgression <sup>(855)</sup>. Thomas Ruttig explained in email correspondence with EASO for this report that blood feuds are not limited to situations arising from resource conflicts, but indicated that most feuds occur within certain ethnic sub-groups, for instance in the case of Pashtun society: core family, extended family, 'clan' subtribe, tribe <sup>(856)</sup>.

Blood feuds for revenge-taking can be the result of personal violence or wrong-doing that is seen as being against honour, disputes involving land, or family conflicts and relationships <sup>(857)</sup>. Dr. Lutz Rzehak explains in a 2011 paper on the *Pashtunwali*, that under that Pashtun code, 'blood feuds' are so called because they are carried out by kin groups related by blood. Those who are empowered to exact revenge are the patrilineal descendants of someone wronged, against the patrilineal relatives of the perpetrator, with the aim of restoring balance between groups and individuals <sup>(858)</sup>. Ahmed Waheed pointed to cousin rivalry (*turboor*) among Pashtun families as a factor that escalates blood feuds <sup>(859)</sup>. The compensation can be levied by social institutions like *jirga*, or informal gathering of elders (*Maraka* or *spingiri* 'white beards'<sup>860</sup>), by the offended person, or by his relatives<sup>861</sup>.

## 7.2 *Pashtunwali* and blood feuds

As a quasi-legal customary tradition and encompassing a system of social relations, *Pashtunwali* is a highly developed, complex, unwritten tribal code of the idealised Pashtun's

<sup>(850)</sup> FRC, *Pashtunwali: an analysis of the Pashtun way of life*, 5 April 2017 ([url](#)), p.30; UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014 ([url](#)), pp. 4, 10; Rzehak, L. *Doing Pashto*, Afghanistan Analysts Network (AAN) Thematic Report, March 2011 ([url](#)), pp. 14-15; Norway, LandInfo, Afghanistan: Blood feuds, traditional law (*Pashtunwali*), 1 November 2011 ([url](#)), p.8.

<sup>(851)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report.

<sup>(852)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report.

<sup>(853)</sup> Netherlands, Country of Origin Report on Afghanistan, November 2016 ([url](#)), p.75; UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014 ([url](#)), 4; Barfield, T., et al., *The Clash of Two Goods – State and Non-state Dispute Resolution in Afghanistan*, 2011 ([url](#)), p. 11; Siddique, A., Skype interview, 11 August 2017; Waheed, A., Skype interview, 26 August 2017.

<sup>(854)</sup> Waheed, A., Skype interview, 26 August 2017.

<sup>(855)</sup> Waheed, A., Skype interview, 26 August 2017.

<sup>(856)</sup> Ruttig, T., email, 27 September 2017.

<sup>(857)</sup> UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014 ([url](#)), pp. 10-11, 19; Rzehak, L. *Doing Pashto*, March 2011 ([url](#)), pp. 14-15, 18-19; Waheed, A., Skype interview, 26 August 2017.

<sup>(858)</sup> Rzehak, L. *Doing Pashto*, March 2011 ([url](#)), 2017, pp. 14-15.

<sup>(859)</sup> Waheed, A., Skype interview, 26 August 2017; Siddique, A., Skype interview, 11 August 2017.

<sup>(860)</sup> Ruttig, T., email, 27 September 2017.

<sup>(861)</sup> FRC, *Pashtunwali: an analysis of the Pashtun way of life*, 5 April 2017 ([url](#)), p.30

expected behavior <sup>(862)</sup>. The central concepts in *Pashtunwali* revolve around notions of honour (*nang*) and shame, as well as hospitality (*melmastiya*) and dignity (*ghairat*) <sup>(863)</sup>. To be perceived as 'dishonourable' or shameful is among the most serious transgressions for men and Pashtun families <sup>(864)</sup>. Violations of honour as a paramount offense allow for the sanction and acceptance of murder in certain situations, and actually consider it a requirement for restoration of group honour through retribution, rebalancing, or revenge (*badal*) <sup>(865)</sup>.

Shame is connected to the behaviour of women. Women's behaviour is seen in society only as a reflection of the reputations of their families and male family members, specifically <sup>(866)</sup>. Women cannot accumulate honour or better the standing of the family; only men can do this by protecting their property, and their families <sup>(867)</sup>. Therefore, protection of the family women's honour is a primary concern of Pashtun men, and under the concept of *Namus*, it is the duty of men to protect the honour of the women they are responsible for; failure to do so results in a loss of respectability in the eyes of others. *Namus* is thus a frequent cause of conflicts <sup>(868)</sup>.

Among the Pashtuns revenge is part of the *Pashtunwali*, explaining its strength among the group, however, Abubakar Siddique explained that even among Pashtuns, there are many different tribal formations that influence how blood feuds occur <sup>(869)</sup>. ILF notes that there are a diverse complexity of customary systems and a range of local variations in *Pashtunwali*; however, all Pashtuns in rural areas adhere some form of it <sup>(870)</sup>. Thomas Ruttig explained in an email to EASO that aspects of the *Pashtunwali* can differ from region to region, and from tribe to tribe <sup>(871)</sup>.

Neamat Nojumi made the observation that the *Pashtunwali* is applicable among tribal Pashtuns, and is not effective or enforced among urbanite Pashtuns <sup>(872)</sup>.

### 7.3 Duration and propensity for violence

Under the *Pashtunwali*, the taking of revenge does not need to be immediate <sup>(873)</sup>. Such feuds can go on for generations, impacting entire tribes or communities <sup>(874)</sup>. Sources explain that

<sup>(862)</sup> Ruttig, T., How tribal are the Taleban?, June 2010 ([url](#)), pp. 5-6; FRC, *Pashtunwali: an analysis of the Pashtun way of life*, 5 April 2017 ([url](#)), pp. 27-28.

<sup>(863)</sup> Norway, LandInfo, Afghanistan: Blood feuds, traditional law (*Pashtunwali*), 1 November 2011 ([url](#)), p.7; FRC, *Pashtunwali: an analysis of the Pashtun way of life*, 5 April 2017 ([url](#)), pp. 29-36, 42.

<sup>(864)</sup> Norway, LandInfo, Afghanistan: Blood feuds, traditional law (*Pashtunwali*), 1 November 2011 ([url](#)), p.7.

<sup>(865)</sup> Norway, LandInfo, Afghanistan: Blood feuds, traditional law (*Pashtunwali*), 1 November 2011 ([url](#)), p.7.

<sup>(866)</sup> Siddique, A., Skype interview, 11 August 2017; Norway, LandInfo, Afghanistan: Blood feuds, traditional law (*Pashtunwali*), 1 November 2011 ([url](#)), p.7.

<sup>(867)</sup> Norway, LandInfo, Afghanistan: Blood feuds, traditional law (*Pashtunwali*), 1 November 2011 ([url](#)), p.7.

<sup>(868)</sup> Norway, LandInfo, Afghanistan: Blood feuds, traditional law (*Pashtunwali*), 1 November 2011 ([url](#)), p.7; FRC, *Pashtunwali: an analysis of the Pashtun way of life*, 5 April 2017 ([url](#)), pp. 51-52.

<sup>(869)</sup> Siddique, A., Skype interview, 11 August 2017.

<sup>(870)</sup> ILF, *The Customary Laws of Afghanistan*, September 2004; ([url](#)); also cited in Norway, LandInfo, Afghanistan: Blood feuds, traditional law (*Pashtunwali*), 1 November 2011 ([url](#)), pp. 6-7.

<sup>(871)</sup> Ruttig, T., email, 27 September 2017.

<sup>(872)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report.

<sup>(873)</sup> Rzehak, L. *Doing Pashto*, March 2011 ([url](#)), pp. 14-15.

<sup>(874)</sup> FRC, *Pashtunwali: an analysis of the Pashtun way of life*, 5 April 2017 ([url](#)), p. 30; Rzehak, L. *Doing Pashto*, March 2011 ([url](#)), pp. 14-15; Waheed, A., Skype interview, 26 August 2017.

there is no set duration for how long a blood feud can last, and it may be ongoing until it is ‘resolved or burns out’ <sup>(875)</sup> or, until it ‘dies down’ for longer periods and breaks out again <sup>(876)</sup>.

In an email to EASO on this issue, Thomas Ruttig gave the opinion that the number of revenge cases has grown exponentially because the conflict in Afghanistan has exacerbated the causes for conflicts like blood feuds <sup>(877)</sup>. He said that there is a high probability that blood feuds will continue to be violent as such issues are not easily forgotten <sup>(878)</sup>.

According to Dr. Barfield, an anthropologist specialising in Afghanistan, quoted in a 2014 UNHCR seminar report, a cycle of retaliatory violence indicates that traditional dispute resolution has not worked, noting that a blood feud is a transgression against a person or family, and that they ‘have the right, if not the obligation, to seek revenge’ <sup>(879)</sup>.

## 7.4 Connection to broader conflict, land disputes, personal conflicts, and interwoven motives

Several sources indicate that motivations and promulgation of blood feuds also become politicised and intertwined with the Afghan armed conflict. Families or tribes with retributive intent split into opposition to the other party, either because of conflict related violence that becomes personal, or as a strategy employed by weaker parties in a blood feud to secure a means and sense of security <sup>(880)</sup>. Parties will align themselves with one side or another in the armed conflict in order to secure protection from personal targeting <sup>(881)</sup>. This alignment could be on the pro-government side, as well as its factions and sub-factions, with insurgent parties, or outside the government-Taliban constellation <sup>(882)</sup>. According to Neamat Nojumi, this is a recent phenomenon that has undermined the effectiveness of both state and non-state justice systems <sup>(883)</sup>.

Disputes over land that turn violent and lead to a person’s death may result in a blood feud to take revenge for the death or killing <sup>(884)</sup>, or, minor incidents may quickly escalate due to lack of policing to encompass larger communities <sup>(885)</sup>. Sometimes a person is accidentally or intentionally killed in the pursuit of power or in the course of other disputes, such as land, which sparks the feud <sup>(886)</sup>, then the blood feud is not over the land itself, but rather, arises through the retributive revenge taking for killings that result from the dispute <sup>(887)</sup>. Abubakar Siddique similarly explained that it can be difficult to decipher the motivations for violence

<sup>(875)</sup> UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014 ([url](#)), pp. 34-35.

<sup>(876)</sup> Ruttig, T., email, 27 September 2017.

<sup>(877)</sup> Ruttig, T., email, 27 September 2017.

<sup>(878)</sup> Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016 ([url](#)), pp. 16-17; Ruttig, T., email, 27 September 2017.

<sup>(879)</sup> UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014 ([url](#)), pp. 20-21.

<sup>(880)</sup> Waheed, A., Skype interview, 28 August 2017; Siddique, A., Skype interview, 11 August 2017. See also: TLO, Uruzgan: 18 months after the Dutch/Australian Leadership Handover, April 2012 ([url](#)), pp. 115-116, 135; Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016 ([url](#)), pp. 16-17.

<sup>(881)</sup> Waheed, A., Skype interview, 28 August 2017.

<sup>(882)</sup> Ruttig, T., email, 27 September 2017.

<sup>(883)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report.

<sup>(884)</sup> UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014 ([url](#)), pp. 12-13.

<sup>(885)</sup> Giustozzi, A., Mapping Nomad conflict in Afghanistan, July 2017 ([url](#)), p.8.

<sup>(886)</sup> Waheed, A., Skype interview, 26 August 2017.

<sup>(887)</sup> UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014 ([url](#)), p. 12.

that become entangled. Accusations of dishonour and blood feuds are manipulated as a way to target and eliminate competitors or to gain their land or property <sup>(888)</sup>.

Disputes may also become violent over honour issues; a woman's refusal of marriage, eloping, or running away to escape an arranged marriage, for example, can result in revenge killings or spark feuds <sup>(889)</sup>. The New York Times reported on a 'rare victory' for women's rights that occurred in 2017 with the arrest of a pro-government commander (who later joined the Taliban) who had attacked a woman and her family with acid in 2011 after he became infuriated that she married someone else. Four of his men were arrested for the attack; however, the woman's father and brother were later attacked and beaten in retribution for refusing to withdraw the charges. In July 2017, the woman's husband was murdered on his way home from work reportedly by relatives of the commander. Because she is located in an insecure rural area Kunduz, women's NGOs providing assistance are unable to reach her. According to her family, her family was not able to 'take revenge or protect her' as they were too poor <sup>(890)</sup>.

For more detailed information on land disputes, see [Section 6](#).

## 7.5 Blood feuds and women

Dr. Thomas Barfield and Dr. Noah Coburn <sup>(891)</sup>, two scholars on Afghanistan quoted by UNHCR in 2014 for a report on blood feuds, state that a violation of family honour by an outsider, particularly of women's honour, may result in violent disputes or seeking retaliation by the family <sup>(892)</sup>. Violations such as rape, elopement, adultery, or accusations that shame the group may spark a blood feud <sup>(893)</sup>.

Women who transgress family honour in such a way can also be killed by their own male relatives to restore family honour <sup>(894)</sup>. For information on harmful traditional practices, see [Section 3.3](#) and for honour violence, see [Section 3.7](#).

## 7.6 Targets of killings

Adult males are the most frequent target of blood feuds <sup>(895)</sup>. Sources explain that usually revenge is carried out against the brothers or immediate male relatives of the perpetrator <sup>(896)</sup>, however, Dr. Barfield also said an extended household living together means all adult

<sup>(888)</sup> Siddique, A., Skype interview, 11 August 2017.

<sup>(889)</sup> Ruttig, T., email, 27 September 2017.

<sup>(890)</sup> New York Times (The), Years after acid attack, an Afghan story of survival takes a dark turn, 13 August 2017 ([url](#)).

<sup>(891)</sup> Dr. Noah Coburn is a political anthropologist who has been based in Afghanistan and teaches at Bennington College, and Dr. Thomas Barfield is the President of the American Institute for Afghan Studies, a non-profit organisation that studies the culture of Afghanistan.

<sup>(892)</sup> UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014 ([url](#)), p. 19.

<sup>(893)</sup> UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014 ([url](#)), pp. 19-20.

<sup>(894)</sup> FRC, Pashtunwali: an analysis of the Pashtun way of life, 5 April 2017 ([url](#)), pp. 51-52; UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014 ([url](#)), p. 19.

<sup>(895)</sup> ACCORD, Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016 ([url](#)), p. 17; Waheed, A., Skype interview, 26 August 2017.

<sup>(896)</sup> Waheed, A., Skype interview, 26 August 2017; UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014 ([url](#)), pp. 21-22.

males in that family unit could be targeted <sup>(897)</sup>. Thomas Ruttig explained in an email exchange with ACCORD in 2017 that in the case of murder or honour violations, a male perpetrator, as well as his brothers or father are in danger of being the targets of revenge <sup>(898)</sup>.

Women and children are usually excluded as direct targets of revenge killings in blood feuds between parties <sup>(899)</sup>. However, several examples printed in the media were found of children and women reportedly killed in relation to blood feuds or retribution <sup>(900)</sup>. Thomas Ruttig explained that women and children are sometimes affected by blood feuds, but it is difficult to know whether it is from the feud, or for other politically motivated reasons, or both <sup>(901)</sup>.

## 7.7 Resolution and escape

### 7.7.1 Seeking forgiveness and reconciliation in *Pashtunwali*

Blood feuds can be avoided through seeking forgiveness (*nanawatai*) of the injured party and requesting that they forego *badal* <sup>(902)</sup>. *Nanawatai* can be sought by the individual offender approaching the offended party to ask forgiveness, or through a *jirga* with local tribal elders and *ulemas* <sup>(903)</sup>. FRC states that *jirgas* as an institution for conflict resolution are 'participatory' in nature; however, women are excluded from taking part in such fora <sup>(904)</sup>. Carrying out *nanawatai* means the offender admits guilt and then gives blood money (*khunbaha*) to the other party <sup>(905)</sup>. However, FRC states that for offences against *namoos* (the chastity of women or for sexual intercourse with a woman one is not married to), there is 'no forgiveness' through *nanawatai* <sup>(906)</sup>. According to the same source, in the case of revenge for murder, *nanawatai* can be used to resolve the issue peacefully; however, FRC states that it is 'rarely practiced'. Under *Pashtunwali*, if no compromise is reached, the enemy is 'chased and killed' and if he dies or escapes, close relatives and family will become the targets for revenge <sup>(907)</sup>. Furthermore, FRC states that in the case of seeking revenge for murder, obtaining forgiveness is not easy because in Pashtun society those who forgive such an offence are labelled as disgraced and cowardly <sup>(908)</sup>. Additionally, those who do not carry out revenge, report it to authorities, or seek compensation instead, can be perceived as morally weak <sup>(909)</sup>. However, in contrast, Neamat Nojumi gave the opinion that this is no longer the case and that taking revenge is linked to the 'ability to apply violence'. He said that currently, ordinary

<sup>(897)</sup> UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014 ([url](#)), pp. 21-22.

<sup>(898)</sup> ACCORD, Anfragebeantwortung zu Afghanistan: 1) Zielen Rachehandlungen wegen vorehelichem Geschlechtsverkehr nur auf den „Täter" ab oder können auch andere Mitglieder seiner Familie zum Ziel werden?; 23 February 2017 ([url](#)).

<sup>(899)</sup> UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014 ([url](#)), pp. 21-22; ACCORD, Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner 4 Mai 2016, June 2016 ([url](#)), p. 17.

<sup>(900)</sup> Reuters, Heater bomb kills two in Afghan family feud, 15 January 2012 ([url](#)); New York Times (The), Taliban publicly execute two women in northern Afghanistan, 7 May 2016 ([url](#)); Tolo News, Baghlan man sought for killing his family, 11 April 2015 ([url](#)).

<sup>(901)</sup> ACCORD, Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016 ([url](#)), p. 17.

<sup>(902)</sup> FRC, Pashtunwali: an analysis of the Pashtun way of life, 5 April 2017 ([url](#)), p.30; Rzehak, L. Doing Pashto, March 2011 ([url](#)), p. 18.

<sup>(903)</sup> FRC, Pashtunwali: an analysis of the Pashtun way of life, 5 April 2017 ([url](#)), pp.30-31.

<sup>(904)</sup> FRC, Pashtunwali: an analysis of the Pashtun way of life, 5 April 2017 ([url](#)), p. 40.

<sup>(905)</sup> Rzehak, L. Doing Pashto, March 2011 ([url](#)), p. 18.

<sup>(906)</sup> FRC, Pashtunwali: an analysis of the Pashtun way of life, 5 April 2017 ([url](#)), pp.30-31.

<sup>(907)</sup> FRC, Pashtunwali: an analysis of the Pashtun way of life, 5 April 2017 ([url](#)), p. 48.

<sup>(908)</sup> FRC, Pashtunwali: an analysis of the Pashtun way of life, 5 April 2017 ([url](#)), p.54.

<sup>(909)</sup> Norway, LandInfo, Afghanistan: Blood feuds, traditional law (Pashtunwali), 1 November 2011 ([url](#)), p.9.

Afghans cannot easily take revenge against people in the position of power and those protected by armed men and security <sup>(910)</sup>.

Neamat Nojumi observed that the *Pashtunwali* system for resolving blood feuds is not applicable to other ethnic groups or Pashtuns living in big cities. However, blood feud can be in practice across different ethnic and localities and there are diverse methods and traditions of forgiveness at the time of conflict and peace within many non-Pashtun communities who do not adhere to *Pashtunwali* <sup>(911)</sup>.

### 7.7.2 Customary blood feud resolution and compensation

According to Thomas Ruttig, *jirgas* and *shuras* can cover all kinds of conflicts, and are frequently consulted on issues of land conflicts and blood feuds, not only in the context of murder or deaths, but also in order to settle an issue through determining material compensation to be given by the perpetrator <sup>(912)</sup>. Sources noted by UNHCR state that the social context in which the feud takes place impacts how it gets resolved <sup>(913)</sup>. Dr. Barfield noted that the 'social distance' between conflict actors affects how the conflict will be resolved and that blood feuds are usually resolved by using family members as 'intermediaries' <sup>(914)</sup>.

Dr. Rzehak explains that under the *Pashtunwali*, the payment of 'blood money' (*khunbaha*) can be done to avoid further cyclical revenge and 'blood shed' and to resolve disputes peacefully <sup>(915)</sup>. According Dr. Rzehak, under the *Pashtunwali*, once compensation is paid, the blood feud 'must end' <sup>(916)</sup>.

According to LandInfo, the vast majority of decisions resolved through customary dispute resolution result in peace (*solh*), or the payment of compensation <sup>(917)</sup>. Abubakar Siddique explained that it does happen that the payment ends the conflict; however, he noted that there is no 'hard and fast' explanation for how such customs work in practice, explaining that the restoration of family honour is primary and based on trust: one family might gladly accept money as compensation, while another three families might see financial payment as abhorrent and declare that their blood cannot be bought <sup>(918)</sup>. Similarly, Ahmed Waheed explained that the likelihood of permanence for decisions that end feuds depends on the situation and level of trust between parties, noting that in some cases, a lasting solution is achieved, while in others decisions are broken and not upheld <sup>(919)</sup>. He noted that decisions ending feuds or disputes may be undermined by territory changing hands, or, if the government becomes weaker in the local area. If the parties have the will to resolve it, they may pursue a new decision from the government or Taliban; however, if they do not wish to resolve it, parties abandon this and focus instead on assuring their own personal protection <sup>(920)</sup>.

<sup>(910)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report.

<sup>(911)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report.

<sup>(912)</sup> ACCORD, Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016 ([url](#)), pp. 16-17.

<sup>(913)</sup> UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014 ([url](#)), p. 40.

<sup>(914)</sup> UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014 ([url](#)), p. 40.

<sup>(915)</sup> Rzehak, L. Doing Pashto, March 2011 ([url](#)), pp. 14-15, 18-19.

<sup>(916)</sup> Rzehak, L. Doing Pashto, March 2011 ([url](#)), p. 18.

<sup>(917)</sup> Norway, LandInfo, Afghanistan: Blood feuds, traditional law (Pashtunwali), 1 November 2011 ([url](#)), p.14.

<sup>(918)</sup> Siddique, A., Skype interview, 11 August 2017.

<sup>(919)</sup> Waheed, A., Skype interview 28 August 2017.

<sup>(920)</sup> Waheed, A., Skype interview 28 August 2017.

A 2011 research paper on the *Pashtunwali* by Lutz Rzehak, for the Afghanistan Analysts Network (AAN), remarks that in the *Pashtunwali*, blood money units called *khun* are calculated based on the average regional bride price (*walwar*) and the type of damage compensated; this can vary from tribe to tribe. The killing of a male is to be compensated by 2 *khun* (which equals one ‘bride price’), while the compensation of a female killed is ½ *khun*. The underlying rationale is that the payment of *khun* equivalent to the average ‘bride price’ amount allows a victim’s family to pay for a marriage to a girl who will bear them a son <sup>(921)</sup>.

Instead of paying blood money, families can give the offended party one or several girls for marriage <sup>(922)</sup>, which still occurs in rural areas. The practice of exchanging girls between families is a customary solution as a form of compensation to address revenge killings of young men <sup>(923)</sup>; or in Pashto, the term used is *swara* <sup>(924)</sup>. The intention of tribal communities was to join feuding families as one <sup>(925)</sup> or to provide a girl from the perpetrator’s family for marriage and to bear children to replace a killed family member <sup>(926)</sup>. Ahmad Waheed explained that the underlying philosophy of such a solution is that, although it is prohibited in the religion to marry a woman against her will, in rural areas, it is seen as a sacrifice for the group. The traditional reasoning is that individual women and girls who are traded as compensation to end the feud are being sacrificed to ‘save thousands of lives’ <sup>(927)</sup>.

When such a decision is made by families or at a *jirga*, women and girls must comply <sup>(928)</sup>. Women are not permitted to participate in *jirgas* <sup>(929)</sup>. Abubakar Siddique also explained that for the girls or women given up to the other family as compensation, if another conflict between the families arises, the first thing that occurs is that the husbands will divorce these women, or be forced to divorce them by their families <sup>(930)</sup>.

According to the FRC, the practice of *swara* remained in practice in areas such as Pakiya, Nangarhar, Helmand, Kunar and other Pashtun areas of Afghanistan <sup>(931)</sup>. Other sources also observe that the practice remains common in Afghanistan <sup>(932)</sup>.

<sup>(921)</sup> Rzehak, L. Doing Pashto, March 2011 ([url](#)), pp. 18-19.

<sup>(922)</sup> Rzehak, L. Doing Pashto, March 2011 ([url](#)), p. 19; FRC, Pashtunwali: an analysis of the Pashtun way of life, 5 April 2017 ([url](#)), p. 42.

<sup>(923)</sup> Nojumi, N. et al., Life and Security in Rural Afghanistan, 2009, pp. 108-109; ACCORD, Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016 ([url](#)), pp. 16-17; Siddique, A., Skype interview, 11 August 2017.

<sup>(924)</sup> Siddique, A., Skype interview, 11 August 2017; FRC, Pashtunwali: an analysis of the Pashtun way of life, 5 April 2017 ([url](#)), pp. 42, 51-52.

<sup>(925)</sup> Nojumi, N. et al., Life and Security in Rural Afghanistan, 2009, pp. 108-109; RFE/RL, Rural Afghan girls continue to fall victim to ‘baad’ marriages, 28 July 2015 ([url](#)); Norway, LandInfo, Afghanistan: Blood feuds, traditional law (Pashtunwali), 1 November 2011 ([url](#)), p.9.

<sup>(926)</sup> ACCORD, Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016 ([url](#)), pp. 16-17; Rzehak, L. Doing Pashto, March 2011 ([url](#)), p. 19.

<sup>(927)</sup> Waheed, A., Skype interview 28 August 2017.

<sup>(928)</sup> Nojumi, N. et al., Life and Security in Rural Afghanistan, 2009, pp. 108-109; RFE/RL, Rural Afghan girls continue to fall victim to ‘baad’ marriages, 28 July 2015 ([url](#)), Waheed, A., Skype interview, 28 August 2017.

<sup>(929)</sup> Norway, LandInfo, Afghanistan: Blood feuds, traditional law (Pashtunwali), 1 November 2011 ([url](#)), p.12; FRC, Pashtunwali: an analysis of the Pashtun way of life, 5 April 2017 ([url](#)), p. 40.

<sup>(930)</sup> Siddique, A., Skype interview, 11 August 2017.

<sup>(931)</sup> FRC, Pashtunwali: an analysis of the Pashtun way of life, 5 April 2017 ([url](#)), pp. 51-52.

<sup>(932)</sup> Siddique, A., Skype interview, 11 August 2017; WAW, Skype interview 21 August 2017; Waheed, A., Skype interview 28 August 2017.

### 7.7.3 Prosecution by the state

In a 2014 report on blood feuds by UNHCR, Dr. Barfield explained that punishments for murder carried out by the state do not relieve the families of obligations to carry out revenge, unless a settlement is reached <sup>(933)</sup>. Furthermore, a person convicted by the state who serves prison time is not relieved of being a target <sup>(934)</sup>.

According to Ahmad Waheed, the weakness of state judiciary systems to resolve such conflicts also contributes to their continuation, as feuds become intermixed with existing rivalries and the broader conflict and taking sides to protect oneself, contributing to the complexity of resolving the underlying cause. He gave the opinion that because of this, few are resolved in this manner and feuds become increasingly prolonged and complex as time passes <sup>(935)</sup>. Similarly, Neamat Nojumi indicated that Afghans did traditionally enjoy greater access to dispute resolution in the past and could opt for state or non-state mechanisms; however, with the rise of Islamist armed groups and a new generation of strongmen within the government, access to justice is limited and this has contributed to the overall weakening of the justice systems of the country <sup>(936)</sup>.

### 7.7.4 Moving away or to a large urban centre such as Kabul to escape

The societal and family obligations to carry out revenge are strong <sup>(937)</sup>. Thomas Ruttig gave the view that it is difficult for someone to resist or escape a blood feud as a result <sup>(938)</sup>. However, sources indicate that the influence of the tribal context of blood feuds is less strong in large cities <sup>(939)</sup>. Thomas Ruttig explained that even large Afghan cities are still a 'conglomeration of villages', and most people live in ethnic clusters according to their origin <sup>(940)</sup>. He gave the view that by moving away a person will not escape a blood feud entirely and could still face an open issue <sup>(941)</sup>. Similarly, Ahmad Waheed also indicated that, depending on the case, a person who moves to Kabul is not 'entirely' certain of security in a feud <sup>(942)</sup>. Sources explained that a person could move from one part of the country to another to avoid being targeted by the blood feud but this depends on the situation, the target's available resources and connections, the degree of intensity of the feud, and whether the other parties are powerful or influential <sup>(943)</sup>. In email correspondence to EASO for this report, Thomas Ruttig gave the opinion that for most people targeted in a blood feud, moving away is not an option, as this puts them outside their social context and they would become 'strangers' or

<sup>(933)</sup> UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014 ([url](#)), p. 39.

<sup>(934)</sup> Barfield, T., et al., The Clash of Two Goods – State and Non-state Dispute Resolution in Afghanistan, 2011 ([url](#)), p. 16.

<sup>(935)</sup> Waheed, A., Skype interview 28 August 2017.

<sup>(936)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report.

<sup>(937)</sup> UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014 ([url](#)), p. 39; ACCORD, Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016 ([url](#)), pp. 16-17; Siddique, A., Skype interview, 11 August 2017.

<sup>(938)</sup> ACCORD, Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016 ([url](#)), pp. 16-17.

<sup>(939)</sup> Siddique, A., Skype interview, 11 August 2017; ACCORD, Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016 ([url](#)), pp. 16-17.

<sup>(940)</sup> Ruttig, T., email, 27 September 2017.

<sup>(941)</sup> ACCORD, Afghanistan: Dokumentation des expertengesprächs mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016 ([url](#)), pp. 16-17.

<sup>(942)</sup> Waheed, A., Skype interview, 28 August 2017.

<sup>(943)</sup> Waheed, A., Skype interview, 28 August 2017; Siddique, A., Skype interview, 11 August 2017.

outsiders, which reduces protection. He stated that even between distant areas inhabited by the same group, this is the case <sup>(944)</sup>.

Abubakar Siddique, a senior correspondent for Radio Free Europe/Radio Liberty (RFE/RL) and contributor to RFE/RL's Afghanistan-focused website (Gandhara), who was interviewed by EASO for this report, stated that it is possible that a person could move to a larger city to escape a blood feud. However, he noted that this depends on the nature of the dispute and the resources available to one's enemies; even if the target of a blood feud moves to another province, if the person going after him has the resources to do so, he will pursue him <sup>(945)</sup>. He explained that to move from one place to another in the country to avoid targeting, they would need a network of connections and relatives in the city, and employment and money to do so. He gave the view that these kinds of disputes, particularly relating to honour, become the 'primary obsession' for individuals and families who, depending on how severe the transgression is seen to be, are willing to expend their available resources to seek revenge <sup>(946)</sup>.

## 8. Individual targeting of Afghan returnees on the basis of 'Westernisation' following time spent in Europe or Western countries

Documented instances of individual targeting of returning Afghans on the basis of 'Westernisation' due to having travelled in or lived in the Europe, holding Western ID documents, or adopting ideas that are seen to be 'un-Afghan', 'Western' or 'European' following time spent outside Afghanistan were scarce. Varying descriptions by sources indicated that there were 'occasional reports' of alleged kidnapping and targeting <sup>(947)</sup>, or, that not everyone is at risk, but it 'does happen,' though the scale and prevalence is 'difficult to quantify' <sup>(948)</sup>, or, that targeting does not specifically occur because of having sought asylum <sup>(949)</sup> or having travelled to Western countries <sup>(950)</sup>.

### 8.1 Targeting by the state

Information documenting specific instances where state actors targeted Afghans because of being 'Westernised' after returning from such countries could not be found.

Abdul Ghafoor, director of the Afghanistan Migrants Advice and Support Organisation (AMASO), an advocacy group for Afghan migrants and deportees that provides advice and support to deportees returning to Afghanistan <sup>(951)</sup>, was interviewed for a COI report about

<sup>(944)</sup> Ruttig, T., email, 27 September 2017.

<sup>(945)</sup> Siddique, A., Skype interview, 11 August 2017.

<sup>(946)</sup> Siddique, A., Skype interview, 11 August 2017.

<sup>(947)</sup> Australia, DFAT, DFAT Country Information Report – Afghanistan, 18 September 2015, p.23. Available from DFAT upon request. Also cited in: UK, Home Office, Country Policy and Information Note – Afghanistan: Fear of anti-government elements (AGEs), 29 November 2016 ([url](#)), pp. 41-42.

<sup>(948)</sup> Schuster, L., Skype interview, 7 August 2017.

<sup>(949)</sup> Australia, DFAT, DFAT Country Information Report – Afghanistan, 18 September 2015, p.23. Available from DFAT upon request. Also cited in: UK, Home Office, Country Policy and Information Note – Afghanistan: Fear of anti-government elements (AGEs), 29 November 2016 ([url](#)), pp. 41-42.

<sup>(950)</sup> Ahmadi, M., email, 23 August 2017.

<sup>(951)</sup> AMASO was established in 2014. AMASO, Facebook - About, n.d. ([url](#)).

‘Westernised’ young male returnees written by volunteers of the COI group, Asylos<sup>(952)</sup>. In his interview with Asylos, Mr. Ghafoor states that there have been ‘lots of cases’ where the police have stopped returnees based on their appearance and asked for their *tazkira*; however, when they do not produce one, they stay in the station for a day or two for questioning before being released<sup>(953)</sup>. In the same report, Dr. Anicée Van Engeland, a ‘UK-based scholar with extensive Afghanistan experience,’ told Asylos that the government sees returnees as a financial burden and as a possible security threat for potential involvement in drug trafficking or recruitment to armed groups. She stated that authorities are often rude, insulting, or unwilling to address the requests of returnees<sup>(954)</sup>.

However, in contrast with this, Masood Ahmadi, the national programme manager on return, reintegration, and resettlement for the International Organization for Migration (IOM) in Afghanistan, commented that, based on his work with over 20,000 Afghan returnees from Europe and Australia, IOM has not documented state targeting of Afghan returnees due to ‘Westernisation’ from time spent abroad. Specifically, he said that the police will not stop a person for looking ‘Westernised’, but rather those who look more like ‘Talib’ insurgents<sup>(955)</sup>.

Further details and corroborating information for the above could not be found within time constraints.

## 8.2 Targeting by anti-government insurgents

Sources indicate that Afghans who are identifiable as being associated with international forces or Western countries may be targeted by the Taliban and insurgent groups<sup>(956)</sup>. Individuals who could be identified with Western countries through association with international forces or NGOs, usually travel within the country without carrying identification to avoid problems<sup>(957)</sup>. For information on this specific topic, refer to *EASO Country of Origin Report: Afghanistan - Individuals targeted by armed actors in the conflict*<sup>(958)</sup>.

Sources describe the fears claimed by Afghans returning back from the West are related to general insecurity<sup>(959)</sup>, or in some cases, due to their identity<sup>(960)</sup>, fear of the original threat

<sup>(952)</sup> Asylos is a global network of volunteers that provides free Country of Origin reports to lawyers to assist asylum seekers with making their claims. Asylos, Afghanistan: Situation of young male ‘Westernised’ returnees to Kabul, August 2017 ([url](#)), p.4.

<sup>(953)</sup> Asylos, Afghanistan: Situation of young male ‘Westernised’ returnees to Kabul, August 2017 ([url](#)), p.18.

<sup>(954)</sup> Asylos, Afghanistan: Situation of young male ‘Westernised’ returnees to Kabul, August 2017 ([url](#)), p.18.

<sup>(955)</sup> Ahmadi, M., email, 23 August 2017.

<sup>(956)</sup> Canada, IRB, AFG105413.E - Afghanistan: Situation of Afghan citizens who work for NGOs or international aid organizations, and whether they are targeted by the Taliban; attacks against schools and incidents of violence against students, teachers, and the educational sector; state response (2012-January 2016), 22 February 2016 ([url](#)); Australia, DFAT, DFAT Country Information Report – Afghanistan, 18 September 2015, p.23. Available from DFAT upon request. Cited in: UK, Home Office, Country Policy and Information Note – Afghanistan: Fear of anti-government elements (AGEs), 29 November 2016 ([url](#)).

<sup>(957)</sup> Canada, IRB, AFG105414.E - Afghanistan: Documents required to travel within Afghanistan, documents required to pass checkpoints (2013-January 2015), 3 February 2016 ([url](#)); Australia, DFAT, DFAT Country Information Report – Afghanistan, 18 September 2015, p.23. Available from DFAT upon request. Also cited in: UK, Home Office, Country Policy and Information Note – Afghanistan: Fear of anti-government elements (AGEs), 29 November 2016 ([url](#)).

<sup>(958)</sup> EASO, Country of Origin Report: Afghanistan - Individuals targeted by armed actors in the conflict, December 2017 ([url](#)).

<sup>(959)</sup> Van Houte, M., Return Migration to Afghanistan – Moving Back or Moving Forward?, 2016, p. 157; AI, Forced back to danger – asylum-seekers returned from Europe to Afghanistan, 5 October 2017 ([url](#)), p. 17.

<sup>(960)</sup> AI, Forced back to danger – asylum-seekers returned from Europe to Afghanistan, 5 October 2017 ([url](#)), p. 17.

(<sup>961</sup>), or fear of being targeted by the Taliban as ‘un-Islamic’ (<sup>962</sup>). Sources indicate that returnees from the West fear being labelled by insurgents as spies (<sup>963</sup>). Other sources give the view that returned youth are vulnerable to recruitment to armed groups (<sup>964</sup>). In 2015, two research studies on reintegration of returnees to Afghanistan found that returnees’ fear of the security situation stopped them from leaving home to search for employment (<sup>965</sup>), though respectively, one study described it as a ‘larger’ proportion of those studied (<sup>966</sup>), while in the other study, it was 5 of 19 participants (26%) (<sup>967</sup>).

Several instances were found in the media where Hazara Afghans alleged they were targeted because of having spent time in the West:

- In 2014, the Guardian reported on the case of Australian Afghan dual citizen of Hazara ethnicity, Sayid Habib Musawi, who was killed by the Taliban on the road from Ghazni to Kabul. His family told the Guardian that he lived in Australia since 2000 and went back to Afghanistan to visit family. While on the road, he was taken off a bus and killed by the Taliban, which his family said was due to his Australian citizenship (<sup>968</sup>). At the time of the 2014 article, the Australian government was seeking to confirm the report (<sup>969</sup>). Further information could not be found.
- In 2014, Zainullah Naseri, a Hazara man who was a failed asylum seeker deported from Australia, claimed in media reports that he was kidnapped by the Taliban at a checkpoint between Ghazni and Kabul and tortured (<sup>970</sup>). He stated that he had been attacked by the Taliban because he had lived in a foreign country and had become an ‘infidel’; they threatened to kill him unless he gave the money, but he managed to escape (<sup>971</sup>) and returned to Kabul (<sup>972</sup>). He was reportedly carrying his Australian driver’s licence at the time of the attack (<sup>973</sup>). However, in a contrast, an Australian government official said the kidnapping as ‘opportunistic’ (<sup>974</sup>). The Australian

(<sup>961</sup>) Schuster, L., Skype interview, 7 August 2017.

(<sup>962</sup>) Oeppen C., and Majidwhy do children i, N., Can Afghans Reintegrate After Assisted Return from Europe?, July 2015 ([url](#)), p.3; Van Houte, M., Return Migration to Afghanistan – Moving Back or Moving Forward? 2016, p. 157.

(<sup>963</sup>) RSN, After Return: Documenting the Experiences of Young People Forcibly Removed to Afghanistan, 20 April 2016 ([url](#)), p.28; Asylos interview with Shoaib Sharifi, filmmaker, in Asylos, Afghanistan: Situation of young male ‘Westernised’ returnees to Kabul, August 2017 ([url](#)), p.107.

(<sup>964</sup>) USIP, The Afghan refugee crisis in 2016, Peace Brief 220, February 2017 ([url](#)), p.3. For information on recruitment by armed groups, see EASO, Country of Origin Information Report Afghanistan – Recruitment by armed groups, September 2016 ([url](#)).

(<sup>965</sup>) Oeppen C., and Majidi, N., Can Afghans Reintegrate After Assisted Return from Europe? July 2015 ([url](#)), p.3; Koser, K. and Kuschminder, K., Comparative research on the assisted voluntary return and reintegration of migrants, 2015 ([url](#)), p.184.

(<sup>966</sup>) Oeppen C., and Majidi, N., Can Afghans Reintegrate After Assisted Return from Europe? July 2015 ([url](#)), p.3.

(<sup>967</sup>) Koser, K. and Kuschminder, K., Comparative research on the assisted voluntary return and reintegration of migrants, 2015 ([url](#)), pp.182, 184.

(<sup>968</sup>) Guardian (The), Sayed Habib Musawi ‘tortured, killed by Taliban because he was Australian’, 30 September 2014 ([url](#)); Guardian (The), Australian man tortured and killed by Taliban in Afghanistan, family says, 28 September 2014 ([url](#)).

(<sup>969</sup>) Guardian (The), Australian man tortured and killed by Taliban in Afghanistan, family says, 28 September 2014 ([url](#)).

(<sup>970</sup>) Saturday Paper (The), Taliban tortures Abbott government deportee, 4-10 October 2014 ([url](#)); The Guardian, ‘Torture’ of deported Afghan Hazara asylum seeker to be investigated, 9 October 2014 ([url](#)).

(<sup>971</sup>) RFE/RL, Afghan deportees return to shattered lives, 4 November 2014 ([url](#)).

(<sup>972</sup>) Australia, DFAT, DFAT Country Information Report – Afghanistan, 18 September 2015, p.24.

(<sup>973</sup>) Saturday Paper (The), Taliban tortures Abbott government deportee, 4-10 October 2014 ([url](#)).

(<sup>974</sup>) Sydney Morning Herald (The), Government to investigate torture claims of deported asylum seeker Zainullah Naseri, 27 October 2014 ([url](#)).

Ministry of Foreign Affairs indicated that Australian officials subsequently contacted Zainullah Naseri and indicated that he is 'not pursuing the matter' further <sup>(975)</sup>.

- In 2015, the Guardian reported the case of two Hazara teen brothers were deported from Denmark; shortly after arrival and travel to their home province of Wardak, they were robbed and the younger brother went missing. He was later found dead. According to his own declarations, the boy's older brother claimed the Taliban killed him due to his Hazara ethnicity <sup>(976)</sup>. Further information on this case could not be found within time constraints.

However, in contrast, IOM's Masood Ahmadi explained in email correspondence with EASO for this report that based on his information on returnees to Afghanistan, there have been no ethnically-based killings of returnees coming back from Western countries, unless someone becomes caught in a crossfire between government forces and insurgents <sup>(977)</sup>. For information on insurgent targeting of Hazaras, Afghan civilians perceived to be supportive of the government, or those associated with the international community and Western countries, see *EASO Country of Origin Report: Afghanistan - Individuals targeted by armed actors in the conflict* <sup>(978)</sup>.

Information on other reports of alleged targeting that were found are provided below. For a 2016 report on the situation of young Afghans deported from the UK, the advocacy organisation Refugee Support Network (RSN), interviewed 25 young returnees who had spent their teenage years in the UK prior to being returned to Afghanistan <sup>(979)</sup>. RSN said it recorded 7 instances of individual 'targeting' based on having been a returnee from the UK. RSN gave the following examples without providing further details:

- A young man being held up at gunpoint by a person who indicated the assailant said he knew he was back from the UK;
- A young person who told of the Taliban abduction of an older returnee who worked for ISAF, and another who was affiliated with the ANA <sup>(980)</sup>;
- Three returnees living in hosted accommodations were asked to leave their housing due to 'risk association'. Without providing more details, RSN reported that a young man with enemies within armed groups said a man came looking for him at the house where he was staying, and questioned the hosts <sup>(981)</sup>;
- A young person told RSN that a friend of his who returned from Norway was reportedly killed by the Taliban between Ghazni and Kandahar because he had his

<sup>(975)</sup> Australia, DFAT, DFAT Country Information Report – Afghanistan, 18 September 2015, p.24.

<sup>(976)</sup> Guardian (The), Tragic tale of Afghan brothers sent home from Denmark to an uncertain fate, 6 October 2015 ([url](#)).

<sup>(977)</sup> Ahmadi, M., email, 12 September 2017.

<sup>(978)</sup> EASO, EASO Country of Origin Report: Afghanistan - Individuals targeted by armed actors in the conflict, December 2017 ([url](#)).

<sup>(979)</sup> RSN, After Return: Documenting the Experiences of Young People Forcibly Removed to Afghanistan, 20 April 2016 ([url](#)), pp.14-15.

<sup>(980)</sup> RSN, After Return: Documenting the Experiences of Young People Forcibly Removed to Afghanistan, 20 April 2016 ([url](#)), pp. 28-29.

<sup>(981)</sup> RSN, After Return: Documenting the Experiences of Young People Forcibly Removed to Afghanistan, 20 April 2016 ([url](#)), p.20; TBIJ, Unaccompanied asylum seeking children: interview with Catherine Gladwell [Podcast], 17 July 2015 ([url](#)).

‘international papers’ and bank card on his person <sup>(982)</sup>. This information could not be corroborated.

In 2017, Asylos was told by Abdul Ghafoor of AMASO that a deportee from Germany was killed in April-May 2017, but no further details were provided <sup>(983)</sup>. However, in contrast, IOM indicated in correspondence with EASO for this report that the killing of a returnee from Germany ‘has not been confirmed by any reliable sources’ <sup>(984)</sup>.

Amnesty International (AI) produced a report in October 2017 based on field and desk research and interviews with Afghan returnees from Europe conducted between May and September 2017. The report provides the story of an Afghan woman who alleged that her husband was kidnapped by a group opposed to his work causing them to leave for Europe. After their asylum claim was rejected they were deported from Norway; shortly after returning to Afghanistan, he disappeared and was killed. The woman told AI she believed the same group was responsible <sup>(985)</sup>. No further information to corroborate or confirm the incident could be found.

### 8.3 Migration success and failure, pride and shame

According to a 2016 study on masculinity in Afghanistan by AREU, Afghan society links a man’s ability to provide for his family with his self-image and honour, and as such, set high expectations and high pressure on such gendered definitions of integrity <sup>(986)</sup>. Western and northern Europe hold high ‘symbolic value’ and notions of successful migration are linked to personal and family honour and community standing in Afghanistan <sup>(987)</sup>. A 2014 report on unaccompanied Afghan minors by the Afghanistan Research and Evaluation Unit (AREU) and UNHCR also explains that, Afghan children who go abroad and send back remittances are ‘held in high regard’ by their communities at home, which frequently encourages other families to send their unaccompanied children on the journey also <sup>(988)</sup>. According to Abubakar Siddique, a senior correspondent for Radio Free Europe/Radio Liberty (RFE/RL) and RFE/RL’s Afghanistan-focused website, Gandhara, people who come back from the West are often looked up to as a model to emulate <sup>(989)</sup>. Masood Ahmadi, the national programme manager on return, reintegration, and resettlement for IOM Afghanistan explained in correspondence with EASO for this report, that in his experience and based on interviews with Afghan returnees, most are positively received back by their families, relatives and communities after having gone to Europe <sup>(990)</sup>.

However, according to other sources, after a failed migration, some returned Afghans whose families invested in their journey reportedly see them as a failure and they face familial stigma

<sup>(982)</sup> RSN, *After Return: Documenting the Experiences of Young People Forcibly Removed to Afghanistan*, 20 April 2016 ([url](#)), p. 30.

<sup>(983)</sup> Asylos, *Afghanistan: Situation of young male ‘Westernised’ returnees to Kabul*, August 2017 ([url](#)), p.83.

<sup>(984)</sup> Ahmadi, M., email, 12 September 2017.

<sup>(985)</sup> AI, *Forced back to danger – asylum-seekers returned from Europe to Afghanistan*, 5 October 2017 ([url](#)), p. 17.

<sup>(986)</sup> AREU and SCA, *The Other Side of Gender Inequality: Men and Masculinities in Afghanistan*, January 2016 ([url](#)), p. 25.

<sup>(987)</sup> Donini, A. et al., *Afghans on the Move: Seeking Protection and Refuge in Europe*, Global Migration Research Paper, Number 17, Global Migration Centre (GMC), 2016 ([url](#)), pp. 36-37.

<sup>(988)</sup> AREU and UNHCR, *Why do Children Undertake the Unaccompanied Journey?*, December 2014 ([url](#)), p. 14.

<sup>(989)</sup> Siddique, A., Skype interview, 11 August 2017.

<sup>(990)</sup> Ahmadi, M., email, 23 August 2017.

or pressure for this <sup>(991)</sup>. An Afghan programme officer who has worked with returnees for several international NGOs and frequently returns to the country <sup>(992)</sup>, said that Afghans who go to Europe are thought to have ‘everything’ there, and when they return to Afghanistan, others have a difficult time understanding why someone would come back. As a result, Afghans who are returned or sent back are suspected of having done something wrong like being involved with criminality, or, being flawed in some way that lead them to be sent back or returned <sup>(993)</sup>. Some sources report Afghans who are returned feel embarrassed and humiliated by their return and do not seek available IOM assistance as a result <sup>(994)</sup>. Nassim Majidi co-founder of the international development and monitoring firm, Samuel Hall Consulting, has studied the mental health impacts of return and displacement in Afghanistan, noting the particular psychological stressors placed on Afghan youth as a result and the lack of support for mental health <sup>(995)</sup>. Afghans returned from the West reportedly indicate a sense of bleak desperation regarding their future prospects and many plan to re-migrate <sup>(996)</sup>. Afghans face high societal pressure to be successful in their migration journey to Europe, and ‘strong moral codes, self-esteem and considerations for family reputation thus prevent Afghans in Europe from sharing a full account of their situation’ with their relatives back home<sup>997</sup>. According to Afghanistan scholars Schuster and Majidi, in a 2015 study on deportation stigma among Afghans, the stigma of ‘contamination’ could be mitigated for individuals who are seen to return with benefits for the family, or as a ‘successful’ migrant <sup>(998)</sup>. They explain that for Afghans deported from Europe whom they studied, the returnees manage shame by hiding their or embellishing their migration story, or changing the narrative of their deportation to a ‘visit’ while planning to leave Afghanistan again <sup>(999)</sup>. It is reportedly frequent for Afghans to make up reasons to avoid explaining deportation or migration failure <sup>(1000)</sup>.

Afghans returning from Iran frequently become involved as drug users or within drug-using populations <sup>(1001)</sup>. The Australian Department of Foreign Affairs and Trade (DFAT) reports that it is aware of plausible, anecdotal reports of Afghan returnees arriving from the West also ending up in these communities <sup>(1002)</sup>. Further information could not be found within time constraints.

<sup>(991)</sup> Programme officer, Skype interview, 7 August 2017; Schuster L. and Majidi N., Deportation stigma and Re-migration, *Journal of Ethnic and Migration Studies* 41 (4), 2015 ([url](#)), pp. 7-8; Asylos, Afghanistan: Situation of young male ‘Westernised’ returnees to Kabul, August 2017 ([url](#)), p.83; Majidi, N., Young Afghans returning from Europe face isolation and fear back home, 16 November 2016 ([url](#)).

<sup>(992)</sup> The programme officer was based in Kabul until 2015 and frequently returns to the country. The source has worked with returnees for several international NGOs in Afghanistan in the course of the past several years. The contact person requested to remain anonymous for security reasons.

<sup>(993)</sup> Programme officer, Skype interview, 7 August 2017.

<sup>(994)</sup> Dr. Anicee Van Engeland interviewed by Asylos in Asylos, Afghanistan: Situation of young male ‘Westernised’ returnees to Kabul, August 2017 ([url](#)), p.26; Bjelica J. and Ruttig, T., Voluntary and forced returns to Afghanistan in 2016/2017: trends, statistics and experiences, 19 May 2017 ([url](#)).

<sup>(995)</sup> Majidi, N. and Hart, Return and reintegration to Afghanistan: policy implications, *Migration Policy Practice*, Volume 6, Number 3, June-September 2016 ([url](#)), p.37.

<sup>(996)</sup> Schuster, L., Skype interview, 7 August 2017.

<sup>(997)</sup> Donini, A. et al., Afghans on the Move: Seeking Protection and Refuge in Europe, 2016 ([url](#)), p.36. See also, Bjelica J. and Ruttig, T., Voluntary and forced returns to Afghanistan in 2016/2017, 19 May 2017 ([url](#)).

<sup>(998)</sup> Schuster, L. and Majidi, N., Deportation stigma and Re-migration, 2015 ([url](#)), pp. 10-11.

<sup>(999)</sup> Schuster L., and Majidi, N., Deportation stigma and Re-migration, 2015 ([url](#)), pp. 9-10.

<sup>(1000)</sup> Schuster, L., Skype interview, 7 August 2017.

<sup>(1001)</sup> AFP, Afghan returnees from Iran bring drug problems back home, 14 July 2015 ([url](#)), Al Jazeera, Addicted and hopeless in Afghanistan’s Herat, 6 December 2013 ([url](#)); BAAG, Drugs in Afghanistan: a home-grown problem, 14 December 2016 ([url](#)); BBC News, The young people sent back to Afghanistan, 17 July 2015 ([url](#)).

<sup>(1002)</sup> Australia, DFAT, DFAT Country Information Report – Afghanistan, 18 September 2015, p.23. Available from DFAT upon request. Also cited in: UK, Home Office, Country Policy and Information Note – Afghanistan: Fear of anti-government elements (AGEs), 29 November 2016 ([url](#)), pp. 41-42.

## 8.4 Migration debt

In order to pay for the migration journey to Europe, particularly for unaccompanied minors, Afghans and their families frequently sell off assets and accumulate debts <sup>(1003)</sup>. A study of Afghan returnees from Europe published in 2016 by anthropologist Marieke van Houte, found that the 15 involuntary returnees, whose experiences she studied, were ‘not the poorest’ but had sold or borrowed assets to finance their migration to Europe and were worse off upon return than before the journey <sup>(1004)</sup>. Upon return, returnees report being financially dependent on their families <sup>(1005)</sup> or are seen as a burden <sup>(1006)</sup>. According to a 2014 study on Afghan unaccompanied minors by AREU and UNHCR, the inability to pay back debts could lead to security problems from money lenders <sup>(1007)</sup>. A 2016 study by UNHCR on unaccompanied Afghan minors in Sweden notes that only a small minority indicated the loans taken to finance their journey had to be repaid within a year (3%), or the near future (20%)<sup>(1008)</sup>. Debt is also an incentive for returnees to re-migrate in an attempt to provide financial support to their families and repay creditors <sup>(1009)</sup>. Sources indicate that people have little sympathy for returnees to Afghanistan who come back with nothing <sup>(1010)</sup>.

Dr. Liza Schuster, a sociologist who has studied the impacts of deportation on Afghan returnees was interviewed for this report and gave an example of a case where the family of a young man who was returned had sold a piece of family land to finance his migration to Europe. When he returned, the young man’s two brothers were extremely angry with him as they had relied on him to support the family with his migration, having left the family in a worse financial position than before he left. She said the young man felt compelled to leave again and did so by indebting himself to a smuggler <sup>(1011)</sup>.

Without providing details, a 2016 report on the situation of young Afghans deported from the UK by the charity group Refugee Support Network (RSN), reports on one case in which a young returnee was reported to the police by his uncle because he owed him money that was used to send him to the UK originally <sup>(1012)</sup>. Further specific examples of targeting because of migration debt could not be found within time constraints.

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<sup>(1003)</sup> AREU and UNHCR, Why do children undertake the unaccompanied journey?, December 2014 ([url](#)), pp. 22-24; Van Houte, M., Return Migration to Afghanistan – Moving Back or Moving Forward?, 2016, p. 104; Bjelica J. and Muzhary, M., Afghan exodus: can the Afghan government deal with more returnees from Europe? 31 October 2016 ([url](#)); Programme officer, Skype interview, 7 August 2017; UNHCR, This is who we are – a study of the profile, experiences and reasons for flight of unaccompanied and separated children from Afghanistan seeking asylum in Sweden in 2015, October 2016 ([url](#)), p. 40.

<sup>(1004)</sup> Van Houte, M., Return Migration to Afghanistan – Moving Back or Moving Forward? p. 104.

<sup>(1005)</sup> Van Houte, M., Return Migration to Afghanistan – Moving Back or Moving Forward? pp. 102, 104.

<sup>(1006)</sup> Programme officer, Skype interview, 7 August 2017.

<sup>(1007)</sup> AREU and UNHCR, Why do children undertake the unaccompanied journey?, December 2014 ([url](#)), p. 29.

<sup>(1008)</sup> UNHCR, This is who we are – a study of the profile, experiences and reasons for flight of unaccompanied and separated children from Afghanistan seeking asylum in Sweden in 2015, October 2016 ([url](#)), p. 40.

<sup>(1009)</sup> Bjelica J. and Muzhary, M., Afghan exodus: can the Afghan government deal with more returnees from Europe? 31 October 2016 ([url](#)).

<sup>(1010)</sup> Shoaib Sharifi and Dr. Anicee Van Egeland, interviewed by Asylos, in: Asylos, Afghanistan: Situation of young male ‘Westernised’ returnees to Kabul, August 2017 ([url](#)), pp.89 and 107.

<sup>(1011)</sup> Schuster, L., Skype interview, 7 August 2017.

<sup>(1012)</sup> RSN, After Return: Documenting the Experiences of Young People Forcibly Removed to Afghanistan, 20 April 2016 ([url](#)), p. 21.

## 8.5 Jealousy, envy, and perceived wealth

Kidnapping for ransom and extortion have become an increasingly widespread form of criminality in major cities in Afghanistan in recent years <sup>(1013)</sup>. Afghans returning from the West are frequently perceived by others to be a source of funds, or wealthy after having spent time abroad <sup>(1014)</sup> and returnees fear being kidnapped for ransom for this reason <sup>(1015)</sup>, or that their children will be abducted for extortion <sup>(1016)</sup>. The Australian government states in a 2015 report that there are ‘occasional reports’ of alleged kidnapping after return <sup>(1017)</sup>. In a similar characterisation, a research project on return migration from Europe to Afghanistan by scholars Ceri Oeppen and Nassim Majidi, published in 2015, found that a ‘small minority [of Afghan returnees from Europe in the study] faced specific threats’ after coming back to Afghanistan, usually from violent demands for money <sup>(1018)</sup>.

In 2015, an article about returned Afghans from the UK gave the example of a man who was beaten and held for ransom and extorted by criminals, but managed to escape <sup>(1019)</sup>.

Dr. Schuster indicated that she knew of three cases where returned Afghans were threatened or beaten up on the basis of their perceived wealth <sup>(1020)</sup>.

Further examples of migrants targeted in criminality could not be found within time constraints.

## 8.6 Attitudes toward Westerners among receiving communities

Most Afghans who go back to the country return to Kabul, due to relatively better opportunities there <sup>(1021)</sup>. Broadly, Western ‘influence’ on Afghan society, in recent decades due to the international military presence, is seen by Afghans with a mixture of expectation, admiration, suspicion, and animosity <sup>(1022)</sup>. Afghan society encompass a broad range of views about the West, from urban liberal elites and young professionals in Kabul <sup>(1023)</sup>, to strains of urban and rural Afghans, including youth, who align with a range of Islamic and fundamentalist

<sup>(1013)</sup> AFP, Afghan capital plagued by kidnapping and extortion of locals, 10 March 2017 ([url](#)); Schuster, L., Skype interview, 7 August 2017.

<sup>(1014)</sup> TBIJ, From Kent to Kabul – the former asylum seeking children sent back to Afghanistan, 17 July 2015 ([url](#)); Oeppen, C. and Majidi, N., Can Afghans reintegrate after assisted return from Europe? July 2015 ([url](#)), p.3; RSN, After Return: Documenting the Experiences of Young People Forcibly Removed to Afghanistan, 20 April 2016 ([url](#)), p.28; Gladwell, Catherine, No longer a child: from the UK to Afghanistan, Forced Migration Review, Number 44, September 2013 ([url](#)), p. 63; Schuster, L., Skype interview, 7 August 2017.

<sup>(1015)</sup> Schuster, L., Skype interview, 7 August 2017.

<sup>(1016)</sup> Schuster, L., Skype interview, 7 August 2017.

<sup>(1017)</sup> Australia, DFAT, DFAT Country Information Report – Afghanistan, 18 September 2015, p.23. Available from DFAT upon request. Also cited in: UK, Home Office, Country Policy and Information Note – Afghanistan: Fear of anti-government elements (AGEs), 29 November 2016 ([url](#)), pp. 41-42.

<sup>(1018)</sup> Oeppen, C., and Majidi, N., Can Afghans reintegrate after assisted return from Europe?, July 2015 ([url](#)), p.3.

<sup>(1019)</sup> TBIJ, From Kent to Kabul – the former asylum seeking children sent back to Afghanistan, 17 July 2015 ([url](#)).

<sup>(1020)</sup> Schuster, L., Skype interview, 7 August 2017.

<sup>(1021)</sup> Australia, DFAT, DFAT Country Information Report – Afghanistan, 18 September 2015, p.23. Available from DFAT upon request. Also cited in: UK, Home Office, Country Policy and Information Note – Afghanistan: Fear of anti-government elements (AGEs), 29 November 2016 ([url](#)), pp. 41-42.

<sup>(1022)</sup> Washington Post, Years after invasion, the US leaves a cultural imprint on Afghanistan, 28 June 2015 ([url](#)); New York Times (The), Afghans share their views on the West’s influence, 23 August 2013 ([url](#)).

<sup>(1023)</sup> Spiegel Online, Afghanistan’s young liberal elites challenge the Taliban, 24 July 2017 ([url](#)); Guardian (The), The female journalists defying taboos and braving death threats in Afghanistan, 31 May 2017 ([url](#)); New York Times (The), Afghans share their views on the West’s influence, 23 August 2013 ([url](#)).

ideologies<sup>(1024)</sup>, including among educated youth<sup>(1025)</sup>. In the conservative Afghan societal context, sources describe urbanites in Kabul as relatively more progressive in comparison to other more conservative areas of the country<sup>(1026)</sup>. Despite a very traditional cultural context, Western trends and influences such as fashions, entertainment and tattoos are increasingly popular among younger Afghans, according to some sources<sup>(1027)</sup>. Also, Kabul city has a number of restaurants and cafes where urbanite Afghan men and women mix and that are frequented by Westerners<sup>(1028)</sup>, though these have also been attacked by insurgents<sup>(1029)</sup> or raided by police<sup>(1030)</sup>. Dr. Schuster described Kabul city itself as a collection of different communities, including some that are very conservative. She explained that there is no 'single attitude' toward 'Westernisation' in Afghan society. She gave the view that there are significant elements of the population and society who are quite open about 'Western values', or who have worked with international forces, NGOs, or organisations, although there are also sufficient conservative elements in society, and also within individual families, that could pose a threat to someone returning from Europe<sup>(1031)</sup>. Abubakar Siddique gave the view that in Afghanistan, 'Westernisation' entails broader societal and political attitudes as well as more narrowly defined appearances and fashion choices<sup>(1032)</sup>.

Abubakar Siddique also stated that there is a strong difference in how the West is seen in rural areas, versus in the city of Kabul, noting though that saying the 'wrong thing at the wrong time' can cause a negative reaction<sup>(1033)</sup>. The programme officer also said that saying something against Islam or society's ideas can turn a situation bad quickly, giving the 2015 example of the mob killing of Farkhunda Malikzada<sup>(1034)</sup>. Dr. Schuster gave the opinion that the development of a critical stance on Islam while in the West is what puts people most at risk of being targeted, particularly young people who have spent extended periods in Europe. She noted however, that this also very much depends on an individual's capacity to self-censor, their maturity level, mental health, and ability to be astute about their social surroundings in Afghanistan and in picking up on what is inappropriate to say and do<sup>(1035)</sup>. Dr. Schuster explained that factors such as the specific location where a person is returning to, and the nature and attitudes of their immediate community and family are significant in whether a person returning from the West will encounter problems. She gave the opinion that 'it is extremely difficult to predict how a returnee is going to be received' in this respect as Afghan society has different degrees of tolerance for 'Westernisation'<sup>(1036)</sup>. She explained that

<sup>(1024)</sup> Spiegel Online, Afghanistan's young liberal elites challenge the Taliban, 24 July 2017 ([url](#)); Osman, B., Beyond Jihad and traditionalism, January 2015 ([url](#)), pp. 1-2.

<sup>(1025)</sup> Osman, B., Beyond Jihad and traditionalism, January 2015 ([url](#)), pp. 1-2.

<sup>(1026)</sup> Siddique, A., Skype interview, 11 August 2017; Guardian (The), The female journalists defying taboos and braving death threats in Afghanistan, 31 May 2017 ([url](#)); Asyl, Afghanistan: Situation of young male 'Westernised' returnees to Kabul, August 2017 ([url](#)), p.82; BBC News, Going out in Kabul: Little joys in the shadow of fear, 24 December 2016 ([url](#)).

<sup>(1027)</sup> AFP, Skin sin? Tattoos embody 'social revolution' in Afghanistan, 21 December 2014 ([url](#)); BBC News, Afghanistan's increasing temporary tattoo trend, 21 December 2012 ([url](#)); Sweden, Lifos, Temarapport - Tatueringar i Afghanistan, 13 September 2017 ([url](#)), p.4.

<sup>(1028)</sup> Schuster, L., Skype interview, 7 August 2017.

<sup>(1029)</sup> AFP, Kabul restaurant hit by deadly suicide car bombing, 1 January 2016 ([url](#)); BBC News, Kabul French restaurant rocked by 'car bomb attack', 1 January 2016 ([url](#)).

<sup>(1030)</sup> Washington Post, Kabul café is on the front line in Afghan culture war, 24 August 2014 ([url](#)).

<sup>(1031)</sup> Schuster, L., Skype interview, 7 August 2017.

<sup>(1032)</sup> Siddique, A., Skype interview, 11 August 2017.

<sup>(1033)</sup> Siddique, A., Skype interview, 11 August 2017.

<sup>(1034)</sup> Programme officer, Skype interview, 7 August 2017. For information on the Farkhunda Malikzada incident: Foreign Policy (FP), A year later, still no justice for Farkhunda, 1 April 2016 ([url](#)); BBC News, Documentary: Farkhunda – the making of a martyr [Online Video], 12 August 2015 ([url](#)); Washington Post (The), Two years after brutal killing that shocked Afghanistan, outrage has faded, 30 March 2017 ([url](#)).

<sup>(1035)</sup> Schuster, L., Skype interview, 7 August 2017.

<sup>(1036)</sup> Schuster, L., Skype interview, 7 August 2017.

even within areas that are considered relatively safe, such as Dahst-e Barchi, in west Kabul, within individual families, a person may have individuals with strongly conservative views about notions of ‘Westernisation’ <sup>(1037)</sup>.

## 8.7 Appearances, reputation, suspicion and rumours after return from the West

Sources held contrasting views how returnees are perceived by their families and society, which may depend on the context. In correspondence with EASO for this report, Ali M. Latifi, a Kabul-based Afghan journalist who has reported on Afghan refugees in Greece and Istanbul since 2013, stated that Afghans who make themselves stand out in one way or another can be perceived as ‘Westernised,’ whether that is people who have lived their entire lives in Afghanistan and never left, Afghans who leave to study and return, or Afghans who left as children and returned as adults <sup>(1038)</sup>. The issue, he stated, is how a person ‘carries themselves’ while in Afghanistan <sup>(1039)</sup>. Afghans who grew up in Iran may be seen as ‘Iranised’ or ‘not Afghan’ enough by society, according to the programme officer <sup>(1040)</sup>. Afghans of Iranian upbringing are reportedly teased and face difficulties obtaining work because of having a particular accent <sup>(1041)</sup>. For instance, an article by Afghanistan Today about a young Afghan who used to live in Iran and who started a clothing design group in Kabul explains that his ‘Western’ appearance and style, which is nevertheless popular among Afghan youth, has sometimes drawn sarcastic and offensive comments, or being called ‘gay’, or ‘Iranian’ (*Iranigak*) <sup>(1042)</sup>. Dr. Schuster remarked that in Afghanistan, a person must be constantly conscious about one’s actions, body language and how and what one is saying and how one is perceived. Someone who comes back from Europe and does not know the unspoken rules, forgets, errs, or makes mistakes, could be perceived to be ‘cheeky’, rude, or disrespectful <sup>(1043)</sup>.

According to some sources, Afghan deportees and returnees are seen with suspicion <sup>(1044)</sup> and sometimes seen by their family and community as ‘contaminated’ by the West <sup>(1045)</sup>, having become ‘Westernised’, or ‘un-Islamic’ whilst in Europe <sup>(1046)</sup>, such as teenagers and young adults with ‘visible and invisible signs of their cultural change’ through differences in clothing, behaviours, and accents <sup>(1047)</sup>. Several sources explained that local mistrust and community gossip generate fear of problems. Dr. Schuster said that when a young man returns from Europe, family and relatives will welcome the person, and everyone from the neighbourhood (men) will come and sit and drink tea for several days; they are in effect watching to see how this person has changed. She explained that the difficulty is the high level of community gossip which means that people make assumptions or spread rumours easily, and it becomes difficult

<sup>(1037)</sup> Schuster, L., Skype interview, 7 August 2017.

<sup>(1038)</sup> Latifi, A.M., email, 11 September 2017.

<sup>(1039)</sup> Latifi, A.M., email, 11 September 2017.

<sup>(1040)</sup> Programme officer, Skype interview, 7 August 2017.

<sup>(1041)</sup> Van Houte, M., Return Migration to Afghanistan – Moving Back or Moving Forward? 2016, p. 157.

<sup>(1042)</sup> Afghanistan Today, Fashion victims, 23 May 2014 ([url](#)).

<sup>(1043)</sup> Schuster, L., Skype interview, 7 August 2017.

<sup>(1044)</sup> Programme officer, Skype interview, 7 August 2017.

<sup>(1045)</sup> Schuster, L. and Majidi, N. What happens post-deportation? The experience of deported Afghans. Migration studies, 1(2), pp. 221-240, 2013 ([url](#)), Para 2.3; Schuster, L. and Majidi N., Deportation stigma and Re-migration, 2015 ([url](#)), pp. 7-8.

<sup>(1046)</sup> TBIJ, From Kent to Kabul – the former asylum seeking children sent back to Afghanistan, 17 July 2015 ([url](#)); Oeppen, C., and Majidi, N., Can Afghans reintegrate after assisted return from Europe? July 2015 ([url](#)), p.3.

<sup>(1047)</sup> Schuster, L., and Majidi, N., Deportation stigma and Re-migration, 2015 ([url](#)), pp. 10-11.

for someone to control the perceptions around them about their return <sup>(1048)</sup>. She explained that in Afghanistan, it is very difficult to defend oneself against accusations, false or not, of being a spy, having loose morals, or having lapsed as a good Muslim <sup>(1049)</sup>. Abubakar Siddique expressed the view that returnees are not targeted solely because they have returned from the West; he said it may be used against someone for individualistic disputes, explaining that accusations about one's past in the West can be instrumentalised to target a person for other, different reasons <sup>(1050)</sup>. For example, a neighbour knows about a person's past in a Western country and this can be used to start a negative rumour about someone or to accuse them of something later <sup>(1051)</sup>. Marieke van Houte also noted that mistrust in the community generated fear for returnees that neighbours might use their migration history against them, such as informing the Taliban because of jealousy or envy <sup>(1052)</sup>. In a similar way, Masood Ahmadi said that rumours from the local population were problematic for those returning, though IOM had not documented any specific cases of targeting of Afghans returned from the West on the basis of 'Westernisation' <sup>(1053)</sup>.

Other sources state that Afghans who return from the West are looked up to <sup>(1054)</sup> and positively received by their communities and families <sup>(1055)</sup>. According to Neamat Nojumi, returning from a study in the West is a significant gain for the family and as well as for the community; by contrast, being deported is a significant loss, and the impact on the person and his family is seen negatively <sup>(1056)</sup>. Ali Latifi explained that there will always be comments, jokes, or doubts when a person returns to Afghanistan after an absence, giving examples of Afghans who leave to go study and upon return are teased by family for becoming 'Americanised' after going to the US. He added such teasing and joking is 'natural' after an Afghan returns; however, to avoid abuse or ostracisation, a person needs to adapt to the customs and practices of the local culture. He gave the opinion that a person would have to be 'very visible and very vocal' in 'trying to seem different' to be perceived as 'Westernised' and would have to go 'out of your way' to make oneself seem Westernised. He stated that a person who makes themselves stand out by the way they dress or by using a lot of excessive foreign words will be seen as 'Westernised'. He said that in rural areas, if a person does not try to adhere to local customs and standards, a person will stand out even more <sup>(1057)</sup>.

Without providing any details, the RSN reports in 2016 that it had documented several cases of boys who were deported from the UK to Afghanistan who experienced unspecified difficulties because they were seen to have 'lapsed' in their Islamic practices <sup>(1058)</sup>. Further information could not be found.

AI reported on the case of a young Afghan who grew up in Iran, and later lived in Norway for 9 years where he became a converted Christian as a young man. However, he was later deported and explained that he was 'estranged' from his family due to his conversion, stating that he could not live with relatives because they would see he was not praying <sup>(1059)</sup>.

<sup>(1048)</sup> Schuster, L., Skype interview, 7 August 2017.

<sup>(1049)</sup> Schuster, L., Skype interview, 7 August 2017.

<sup>(1050)</sup> Siddique, A., Skype interview, 11 August 2017.

<sup>(1051)</sup> Siddique, A., Skype interview, 11 August 2017.

<sup>(1052)</sup> Van Houte, M., *Return Migration to Afghanistan – Moving Back or Moving Forward?*, 2016, p.157.

<sup>(1053)</sup> Ahmadi, M., email, 23 August 2017.

<sup>(1054)</sup> Siddique, A., Skype interview, 11 August 2017.

<sup>(1055)</sup> Ahmadi, M., email, 23 August 2017.

<sup>(1056)</sup> Nojumi, N., email, 22 September 2017. Neamat Nojumi made this comment during the review of this report.

<sup>(1057)</sup> Latifi, A.M., email, 11 September 2017.

<sup>(1058)</sup> Gladwell, C., *No longer a child: from the UK to Afghanistan*, FMR 44, September 2013 ([url](#)), p. 63.

<sup>(1059)</sup> AI, *Forced back to danger – asylum-seekers returned from Europe to Afghanistan*, 5 October 2017 ([url](#)), p. 14.

For information on treatment of those perceived to transgress Islam, refer to [Section 2](#).

AI also reported on the case of a young Afghan man who fled in the 2000s as a child due to the Taliban, and grew up in Iran; he later left with his mother and brother for Europe, living there for 6 years. The man indicated that he identifies as gay, telling AI he was making efforts to hide his sexual orientation but was fearful when he returned to Kabul, where he did not know anyone <sup>(1060)</sup>. Further incidents and corroborating information could not be found.

For information on the treatment of LGBT people or those perceived to be, refer to [Section 4](#).

## 8.8 Adjustment to local norms

Several sources indicate that Afghans who grew up outside Afghanistan, and are later returned or deported, including from the West, report a sense of alienation from wider Afghan community and culture <sup>(1061)</sup>. Dr. Liza Schuster, who has interviewed about 100 failed asylum seekers, explains that youth who grew up in Europe learn different habits and behaviours abroad and upon return to Afghanistan are not familiar with where is safe and who can be trusted <sup>(1062)</sup>. A 2015 article about Afghan asylum seekers who spent time in the UK prior to being sent back upon becoming adults reports on the story of one Afghan man who lived in the UK for five years prior to his deportation at age 18. The man explained that he did not have any family connections when he arrived, and was seen as different due to his appearance and communication style <sup>(1063)</sup>.

Sources explain that it is important for Afghans who return to the country to adjust, adapt, respect and follow societal and cultural norms and expectations within the communities where they live <sup>(1064)</sup>; and the ability to adjust to this is linked to factors such as time spent outside the country, age, and availability of guidance and support <sup>(1065)</sup>. According to IOM's Masood Ahmadi, not respecting community norms may cause problems for a person. He explained that for young people who grew up in Europe, the problems may not come from society itself, but rather from the person's ability to adjust and reintegrate. He gave the view that the length of time a person spends in Europe and the degree to which that person has changed as a result will also affect the individual likelihood of encountering particular difficulties with reintegration in Afghan society. He stated that smooth reintegration into society is linked to the duration the person has spent outside the country and availability of network support <sup>(1066)</sup>. According to Abubakar Siddique, the time a person spends outside Afghanistan in this way has an impact on reintegration: contrasting someone who internalised the experience, with someone who knows and understands the local culture and customs <sup>(1067)</sup>. Ali Latifi noted that Afghans returning who do not adhere to local customs can 'play it off as being urbanised' as the reason they do not know the local custom. He gave the view

<sup>(1060)</sup> AI, Forced back to danger – asylum-seekers returned from Europe to Afghanistan, 5 October 2017 ([url](#)), p. 15.

<sup>(1061)</sup> USIP, The forced return of Afghan refugees and implications for stability, Peace Brief No. 199, January 2016 ([url](#)), pp. 3-4; BBC News, The young people sent back to Afghanistan, 17 July 2015 ([url](#)); TBIJ, From Kent to Kabul – the former asylum seeking children sent back to Afghanistan, 17 July 2015 ([url](#)).

<sup>(1062)</sup> TBIJ, From Kent to Kabul – the former asylum seeking children sent back to Afghanistan, 17 July 2015 ([url](#)).

<sup>(1063)</sup> TBIJ, From Kent to Kabul – the former asylum seeking children sent back to Afghanistan, 17 July 2015 ([url](#)).

<sup>(1064)</sup> Latifi, A.M., email, 11 September 2017; Schuster, L., Skype interview, 7 August 2017; Ahmadi, M., email, 23 August 2017; Siddique, A., Skype interview, 11 August 2017.

<sup>(1065)</sup> Schuster, L., Skype interview, 7 August 2017; Ahmadi, M., email, 23 August 2017; Siddique, A., Skype interview, 11 August 2017.

<sup>(1066)</sup> Ahmadi, M., email, 23 August 2017.

<sup>(1067)</sup> Siddique, A., Skype interview, 11 August 2017.

that it is more offensive when a person knows that there are local customs or traditions to be adhered to and the person chooses not to follow them or breaks them for the sake of it, which is a sign of disrespect<sup>(1068)</sup>.

Dr. Schuster explained that voicing opinions that could be perceived as challenging norms around Islam or gender, for example, could put young people who have spent extended periods in Europe at risk. For young people who have grown up and lived outside Afghanistan, they become aware that there are alternatives to the expected societal norms; however, very often when people come back, younger people especially, they may not be adept at self-censorship. Dr. Schuster also noted that children who have spent extended time in the West, because they are younger, are particularly less able to exercise discretion about talking about their lives in the West<sup>(1069)</sup>. Abubakar Siddique also gave the view that children who are used to being able to question anything as they do in Europe may have difficulty adjusting to Afghan social norms, he noted<sup>(1070)</sup>.

Several sources were of the opinion that guidance to Afghan cultural norms is needed. Abubakar Siddique gave the view that for people who grew up from a very young age, or were born abroad and have never been to Afghanistan, even if they speak the language, without someone to give guidance, they will have difficulty understanding all the cultural nuances<sup>(1071)</sup>. Dr. Schuster also gave the view that people who are newly returned and do not have a network to offer guidance and advice do not know how to negotiate the limits and boundaries of societal norms and behavioural expectations<sup>(1072)</sup>. However, as a nuance to this, Ali Latifi added the point that, Afghans, even as refugees, tend to gather with other Afghans, and would likely have some sense of Afghan culture in so doing; however, he did also note that for those who have no family, no friends or connections to hang around with, it would be more difficult; however, he also stated that their primary concerns would be more likely about finding shelter, work, and how to avoid suicide bombings and violence from the conflict<sup>(1073)</sup>.

For information on treatment of converts away from Islam and individuals seen to be contravening Islam, see [Section 2](#).

For further information on the socio-economic situation of returnees, see *EASO COI Report: Afghanistan - Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City*<sup>(1074)</sup>.

## 8.9 Marriage, employment, living arrangements

Young male Afghan returnees who have had to deplete and expend resources to fund their migration journey to Europe frequently become economically dependent on family upon return, leading them to enter marriage as a means of negotiating and reclaiming socio-cultural belonging<sup>(1075)</sup>. Afghans who adopted a 'European lifestyle' regarding marriage, sexuality, and

<sup>(1068)</sup> Latifi, A.M., email, 11 September 2017.

<sup>(1069)</sup> Schuster, L., Skype interview, 7 August 2017.

<sup>(1070)</sup> Siddique, A., Skype interview, 11 August 2017.

<sup>(1071)</sup> Siddique, A., Skype interview, 11 August 2017.

<sup>(1072)</sup> Schuster, L., Skype interview, 7 August 2017.

<sup>(1073)</sup> Latifi, A.M., email, 11 September 2017.

<sup>(1074)</sup> EASO, Country of Origin Information Report. Afghanistan. Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City, August 2017 ([url](#)).

<sup>(1075)</sup> Schuster L., and Majidi, N., Deportation stigma and Re-migration, 2015 ([url](#)), pp. 7-8; Oeppen C., and Majidi N., Can Afghans reintegrate after assisted return from Europe? July 2015 ([url](#)), p.3.

gender norms were reportedly not able to continue to do so openly upon return as this was not socially acceptable, according to van Houte's study <sup>(1076)</sup>. Ali Latifi gave an example he knew of a man who left the country and married a white American woman; he encountered problems with his family because this was not something anyone in the family had done before <sup>(1077)</sup>.

Van Houte also found that Afghan returnees who were unmarried had traditional marriages arranged by their families shortly after returning; she explains that although the men in these circumstances had a 'limited choice' in terms of having to adopt Afghan values about marriage, sexuality, and gender norms, the men also expressed strong wishes to 'belong to the Afghan discourse' as a strategy to reclaim social and cultural belonging <sup>(1078)</sup>.

Sources explained that in Afghan society, including for women and young men, living alone is not the norm in Afghanistan, and is assumed and perceived by Afghan society to mean the person must be involved in illicit behaviour such as drugs, drinking, and sexual activities <sup>(1079)</sup>. Property owners will ask many questions about a tenant's background before they agree to rent a person accommodation. Young men tend to live together with their families or in a group in shared accommodation until they marry <sup>(1080)</sup>. AMASO runs a small 'safe house' in Kabul city with the support of activists, which provides temporary accommodation to young males arriving in Kabul who have nowhere to shelter themselves <sup>(1081)</sup>.

Unemployment, underemployment and lack of financial support were reportedly problems for returnees <sup>(1082)</sup>, particularly in the context of significant competition in the labour market due to the rapid and large-scale influx of returning Afghans in recent years <sup>(1083)</sup>, and an environment of nepotism and corruption <sup>(1084)</sup>. Van Houte's 2016 study found that the environment of corruption was also a source of frustration for Afghan returnees <sup>(1085)</sup>.

For further information on the situation of returnees to large cities, including the issue of social networks, see *EASO COI Report: Afghanistan - Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City* <sup>(1086)</sup>.

## 8.10 'Westernised' Afghan women and girls

Abubakar Siddique explained that for Afghan women or girls born in Europe or who have become accustomed to the normal freedoms and independence in the West to go out and conduct basic day-to-day activities alone, Afghanistan's societal restrictions such as requiring a male guardian or escort are very difficult to adjust to <sup>(1087)</sup>. The programme officer explained

<sup>(1076)</sup> Van Houte, M., *Return Migration to Afghanistan – Moving Back or Moving Forward?*, 2016, p. 180.

<sup>(1077)</sup> Latifi, A.M., email, 11 September 2017.

<sup>(1078)</sup> Van Houte, M., *Return Migration to Afghanistan – Moving Back or Moving Forward?*, 2016, pp. 131-132.

<sup>(1079)</sup> Schuster, L., Skype interview, 7 August 2017; Programme officer, Skype interview, 7 August 2017.

<sup>(1080)</sup> Programme officer, Skype interview, 7 August 2017.

<sup>(1081)</sup> *Documenting Afghanistan, Kabul's Deportee Safe House* [Online Video], 4 October 2017 ([url](#)).

<sup>(1082)</sup> Schuster, L., Skype interview, 7 August 2017; Oeppen, C. and Majidi, N., *Can Afghans reintegrate after assisted return from Europe?*, July 2015 ([url](#)), p.3.

<sup>(1083)</sup> USIP, *The Afghan refugee crisis in 2016*, February 2017 ([url](#)); Programme Officer, Skype interview, 7 August 2017; IMF, *Return of Afghan refugees surges as country copes to rebuild*, 26 January 2017 ([url](#)).

<sup>(1084)</sup> Majidi, N. and Hart, *Return and reintegration to Afghanistan*, June-September 2016 ([url](#)), p.37.

<sup>(1085)</sup> Van Houte, M., *Return Migration to Afghanistan – Moving Back or Moving Forward?*, 2016, pp. 160.

<sup>(1086)</sup> EASO, *Country of Origin Information Report. Afghanistan. Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City*, August 2017 ([url](#)).

<sup>(1087)</sup> Siddique, A., Skype interview, 11 August 2017.

that Afghan women, particularly women who were raised in the West and return back to Afghanistan after a long absence, have to navigate between two parallel worlds in society – the outside appearance, where one must conform to all the traditional social and gender norms, and the inside world; care must be taken not to say certain things that could be seen as un-Islamic <sup>(1088)</sup>. Similarly to Afghan women with a public profile, women who have higher education and live in Kabul or provincial cities may be seen as ‘Westernised’ and having contravened the culture, religious and social norms expected of women. Depending on their social environment, they may be subject to violence from society and armed groups. Also, as they stand out more, they are more likely to be talked about in their community <sup>(1089)</sup>. Women who are human rights defenders or active in public life, or those who are employed in non-traditional roles are targeted by anti-government elements <sup>(1090)</sup> and may also be stigmatised and experience violence for transgressing social and religious norms about women’s place in society <sup>(1091)</sup>. UNAMA reported the killing and injury of 96 women through 54 targeted attacks and killings by anti-government elements in 2016 <sup>(1092)</sup>.

For further information on women contravening social norms, see the section on gender-based violence under [Section 3](#).

Also, for details on targeting of ‘Westernised’ women by actors in the conflict, refer to *EASO Country of Origin Report: Afghanistan - Individuals targeted by armed actors in the conflict* <sup>(1093)</sup>.

## 8.11 Protection and vouching

Several sources concur that survival in Afghanistan is strongly linked to access to one’s networks <sup>(1094)</sup>. Dr. Liza Schuster explained that in Afghanistan, accusations against one’s character are difficult to defend against, which can put a person at risk. She gave the view that the ‘only way’ to defend oneself against such accusations is to have someone with significant moral authority who can defend you in the community in such a case <sup>(1095)</sup>. IOM’s Masood Ahmadi explained that, according to his information, most Afghans who return do not encounter difficulties on account of being ‘Westernised’ specifically. However, he said that factors impacting a person’s ability to sustainably reintegrate after return depend on a range of issues, including time spent outside the country, network availability, as well as accounting for individual or family-specific needs; other key factors include the lack of adequate assistance, political and economic instability, and the security situation <sup>(1096)</sup>. Research by scholars Ceri Oeppen and Nassim Majidi in 2015 on Afghan voluntary returnees from Europe states that reintegration is a lengthy and complex process across practical and socio-cultural elements, and dependent on local social networks and social capital <sup>(1097)</sup>. Similarly, van

<sup>(1088)</sup> Programme officer, Skype interview, 7 August 2017.

<sup>(1089)</sup> Netherlands, Country of Origin Report on Afghanistan, November 2016 ([url](#)), p.83.

<sup>(1090)</sup> Netherlands, Country of Origin Report on Afghanistan, November 2016 ([url](#)), p.83; UNAMA, Afghanistan Protection of Civilians in Armed Conflict – Annual Report 2015, February 2016 ([url](#)), p.13.

<sup>(1091)</sup> EU et al., EU+ Local Strategy for Human Rights Defenders in Afghanistan, December 2016 ([url](#)), p.4.

<sup>(1092)</sup> UNAMA, Afghanistan Protection of Civilians in Armed Conflict – Annual Report 2016, February 2017 ([url](#)), p.24.

<sup>(1093)</sup> EASO, Country of Origin Report: Afghanistan - Individuals targeted by armed actors in the conflict, December 2017 ([url](#)).

<sup>(1094)</sup> Schuster, L., Skype interview, 7 August 2017; Ahmadi, M., email, 23 August 2017; Siddique, A., 11 August 2017.

<sup>(1095)</sup> Schuster, L., Skype interview, 7 August 2017.

<sup>(1096)</sup> Ahmadi, M., email, 23 August 2017.

<sup>(1097)</sup> Oeppen C., and Majidi, N., Can Afghans reintegrate after assisted return from Europe? July 2015 ([url](#)), p.4.

Houte's study on Afghan returnees from Europe published in 2016 found that returning Afghans with weaker societal 'embeddedness' were more likely to feel unprotected from generalised violence, and become dependent on family. According to her study, those returnees who had lived in Europe but not really participated in their European host countries had not 'picked up many skills or ideas', which gave them a lower profile relating to their personal risk, and led them to be more inclined to use conservatism and tradition as a means of 'negotiating belonging' upon return to Afghanistan (<sup>1098</sup>).

For further information on the situation of IDPs and returnees in Afghanistan, as well as social networks, refer to *EASO COI report Afghanistan Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City* (<sup>1099</sup>).

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(<sup>1098</sup>) Van Houte, M., *Return Migration to Afghanistan – Moving Back or Moving Forward?*, 2016, p. 169.

(<sup>1099</sup>) EASO, *Country of Origin Information Report. Afghanistan. Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City*, August 2017 ([url](#)). For further information on the issue of networks in Afghanistan, see the Norwegian LandInfo report, *Afghanistan: Nettverk*, 18 September 2017 ([url](#)).

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- WAW (Women for Afghan Women). A senior representative of the Women for Afghan Women (WAW), a non-governmental organization operating in 13 provinces which provides services, counselling, and support to women in situations of gender-based violence. The representative was interviewed by Skype on 21 August 2017 and follow up emails were answered on 22 November 2017.
- A legal advisor for the Norwegian Refugee Council (NRC), who is based in Afghanistan and works on issues of land disputes (housing, land, property rights) with displaced populations and returnees to Afghanistan. NRC is an independent humanitarian organisation that delivers aid, and monitors and reports on displaced populations in Afghanistan. The legal advisor on HLP was interviewed via Skype on 29 August 2017.
- An programme officer who was based in Kabul until 2015, frequently returns to the country, and who has worked with returnees for several international NGOs in Afghanistan in the course of the past several years. The contact person was interviewed on 7 August 2017 via Skype and requested to remain anonymous for security reasons.

## **Annex II : Terms of Reference**

### **Targeting under societal and legal norms**

#### **Criminal law and punishment of crime**

- How does the legal framework treat crime in Afghanistan under civil, Islamic, and customary laws and customs?
- What crimes impose the death penalty under Islamic, customary law and under the Penal Code? Prosecution for alleged crimes under Afghan criminal laws, Islamic laws, and customs; and judicial and extra-judicial punishments in practice (state, non-state).

#### **Transgressions against religious norms**

- What is the legal position and societal treatment of people seen as apostates, blasphemers, converts from Islam, or critics of the religion (by society, the state, and non-state or insurgent actors in the conflict)?
- What is the situation and treatment of members of the Baha'i, Hindus and Sikhs?
- Are there ways to avoid being targeted in practice?

#### **Gender related violence against women**

- How are women treated and perceived in society? How are women who transgress social norms treated? This can include violations of gender norms, behavioural codes, dress codes, or taking on non-traditional professions or public roles.
- What is the situation and treatment of women committing/accused of committing adultery/zina? How are couples or men treated when accused of adultery?
- How are women treated by the state and non-state actors when seeking protection from gender based violence?
- Are there ways women can avoid gender-based targeting?

#### **Sexual orientation/gender identity/intersex (LGBTI)**

- How are same-sex activities and gender orientation issues perceived and handled in Afghan society? How are people who identify as LGBTI or participate in same-sex activities treated under the law? By society, the state, and by non-state groups?
- Are there supports available to individuals who transgress societal views/norms about sexuality and gender identities?

#### **Child abuse and bacha bazi**

- Violence against children, including sexual violence (including "bacha bazi") and domestic violence;
- Gender-specific / child-specific human rights violations such as child marriage;
- Are there ways to escape such situations?

#### **Personal disputes, land conflicts, and blood feuds**

- What characterises of these phenomena and how are they resolved? How do ethnicity, religious, or political dimensions play a role?
- What are the means of resolving such disputes and are they effective?
- Is there a possibility for redress or escaping targeting?
- What are the methods of dispute resolution and the importance of jirga and shura decisions in resolving conflicts and problems?

#### **Afghans who have spent time in Western countries**

- What is the treatment by the state, society, insurgent groups of Afghans 'Westernised' after having spent time abroad in Europe or other Western countries?



Publications Office

ISBN 978-92-9494-818-2  
doi: 10.2847/744610