

**Justice through the Eyes of Afghan Women:
Cases of Violence against Women Addressed through
Mediation and Court Adjudication**



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**United Nations Assistance
Mission in Afghanistan**



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

**Kabul, Afghanistan
April 2015**

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Glossary

AGO	Attorney General’s Office
AIHRC	Afghanistan Independent Human Rights Commission
ANP	Afghan National Police
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CoEVAW	Commission on Elimination of Violence against Women
DoWA	Department of Women’s Affairs
EVAW law	Law on the Elimination of Violence against Women (2009)
FRU	Family Response Unit of the Afghan National Police
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoWA	Ministry of Women’s Affairs
OHCHR	Office of the United Nations High Commissioner for Human Rights
UNAMA	United Nations Assistance Mission in Afghanistan

Dari, Pashto and Arabic words

<i>Baad</i>	Giving a woman or girl as restitution for murder, rape or another crime to achieve peace and harmony between families.
<i>Badal</i>	Exchange marriages, usually involving the exchange of daughters or sisters as brides.
<i>Hadith</i>	A collection of traditions containing sayings of the prophet Mohammad which, with accounts of his daily practice (the Sunna), constitute the major source of guidance for Muslims apart from the Quran.
<i>Hudood</i>	Crime regarded as being against God’s commands under <i>Sharia</i> law for which punishment is considered obligatory rather than discretionary. Seven crimes involve <i>Hudood</i> punishments: <i>zina</i> , theft, banditry, defamation, transgression, drinking alcohol and apostasy.
<i>Huqooq</i>	The General Department of <i>Huqooq</i> sits in Kabul and settles disputes arising out of debts, properties, and family of real and legal persons pursuant to the <i>Civil Procedure Code</i> and the <i>Law on the Acquisition of Rights</i> . Provincial Departments of <i>Huqooq</i> exist in all of Afghanistan’s 34 provinces.

<i>Iddat</i>	Iddat or waiting period is a specific period of which expiration ceases all effects of marriage following either the death of the husband or divorce
<i>Jirga</i>	Gathering of elders.
<i>Mahr</i>	Amount of money promised directly by the groom to the wife-to-be in consideration of the marriage. It is usually promised prior to the marriage but can be given later and can remain pending for many years.
<i>Sharia</i>	Code of law derived from the Holy Quran and the teachings and examples of the Prophet Mohammed.
<i>Shura</i>	Local council.
<i>Ta'zi</i>	Discretionary sentences or punishments with measures not fixed by <i>Sharia</i> law.
<i>Zina</i>	Sexual intercourse outside of marriage. The practice of arresting and charging women and girls who leave home is based on Articles 427 and 29 of the Afghan Penal Code which, when interpreted together, form the basis for the charge of “attempted <i>zina</i> ” or the “intent to commit <i>zina</i> .”

1. Executive Summary

“I willingly decided to withdraw my complaint as it is better if I join my family. My children are currently studying at school. If my husband is prosecuted and imprisoned then who will be supporting me and my children?”

B, age 25, Takhar province, complainant of battery and laceration against her husband, December 2014

Since 2010, the United Nations Assistance Mission in Afghanistan (UNAMA) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) have observed and documented incidents of violence against women throughout Afghanistan and the Government of Afghanistan’s efforts to address such incidents, particularly through implementation of the 2009 law on Elimination of Violence against Women (EVAW law)¹.

The current report examines in depth factors enabling and hampering Afghan women from seeking accountability and redress for violence committed against them through remedies provided by law from the perspective of women complainants themselves. The report documents the individual experiences of 110 women seeking justice through the judicial system, from registration, investigation and prosecution to adjudication, and through non-judicial mechanisms, particularly mediation² conducted under the EVAW law. UNAMA highlights that an approach centered on women’s direct experiences which amplifies women’s insights and concerns can better inform and influence policy and institutional reforms needed to improve women’s access to justice.

The report reflects the experiences of 110 women and girls who were victims of violence and whose complaints were addressed through adjudication³ (criminal prosecution) or mediation⁴. The acts of violence the women and girls reported were criminalized and sanctioned under the

¹ In its four previous reports, UNAMA/OHCHR found both advances and continuing gaps in enforcement of the EVAW law by judicial and law enforcement institutions across the country. In particular, increases in reporting and registration of incidents of violence against women led to minor increases in the application of the law by the prosecution and courts. Women in Afghanistan continue to face pervasive violence resulting from discrimination, existing social norms and harmful traditional practices that violate the legal obligations and principles of equal rights of women and men and equality under the law. See UNAMA/OHCHR: *A Way to Go – An Update on Implementation of the Law on Elimination of Violence against Women in Afghanistan* (December 2013), *Still a Long Way to Go-Implementation of the Law on Elimination of Violence against Women in Afghanistan* (December 2012), *A Long Way to Go- Implementation of the Law on Elimination of Violence against Women in Afghanistan* (November 2011) and *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan* (December 2010), all available at <http://www.ohchr.org/EN/Countries/AsiaRegion/Pages/HRReports.aspx>.

² For the purpose of this report, the term “mediation” refers to any attempt to resolve a dispute through mutual agreement and reconciliation between parties based on Article 54 of the Afghan Constitution to protect the institution of the family.

³ For the purpose of this report, the term “adjudication” means the formal giving or pronouncement of a judgment in a court proceeding.

⁴ For individual cases resolved through mediation, UNAMA documented mediation processes and outcomes through direct and indirect observation of proceedings and interactions with actors conducting mediations including EVAW law institutions and traditional dispute resolution mechanisms. Information on criminal prosecution proceedings was gathered through interactions with judicial and law enforcement authorities and women complainants.

EVAW law⁵. The report's findings are based on multiple interviews conducted between August 2014 and February 2015 with the women and girls, and on consultations with family members, Government officials, law enforcement and judicial authorities, in 18 of Afghanistan's 34 provinces and at the national level in Kabul.

As a State party to the Convention on Elimination of all Forms of Discrimination against Women (CEDAW), Afghanistan has obligations under international law to take necessary actions to prevent, protect against and respond to violence against women, whether perpetrated by private or public actors. The 2009 EVAW law - which remains the main legislative tool protecting women from violence in Afghanistan - criminalizes 22 acts of violence and harmful traditional practices against women and girls. With the exception of five serious offences, including the crimes of rape and enforced prostitution⁶, the law permits complainants to withdraw their cases at any stage of proceedings, thereby facilitating mediation. The State must pursue proceedings with regard to the five serious offences regardless of submission or withdrawal of a woman's complaint.

UNAMA found that the majority of addressed⁷ cases within the case sample (52 of 80), mainly cases of battery and laceration and cases of abuse, humiliation and intimidation, were brought to mediation (65 per cent). Five per cent of the resolved cases (four of 80) that included battery and laceration and forced prostitution, were adjudicated through criminal prosecution and resulted in sanctions against perpetrators. With the exception of one case, mediation did not occur in cases of crimes the Government is required to prosecute through the judicial system under article 39 of EVAW law.

The report found that women's preference for mediation to address their case was influenced by several factors, such as perceived deficiencies of the criminal justice system in processing their claims, including allegations of corruption, abuse of power, and lack of professionalism. Findings also revealed the high value women attached to the swift processing of their cases due to their multiple obligations from assigned gender roles and financial constraints – which mediation was perceived to be able to provide.

UNAMA findings also indicate that the majority of women interviewed were largely concerned with obtaining redress of a civil nature, such as divorce, receiving fair alimony and custody settlements, or living in a violence-free environment, rather than seeking imposition of criminal sanctions. As such, mediation appeared to offer a suitable and culturally acceptable forum to discuss and address such matters. Women's economic dependency on male family members

⁵ Acts of violence against women criminalized and sanctioned by the EVAW law (within the scope of UNAMA's field research) are the following: Forced prostitution (a. 18); Publicizing the identity of the victim in a damaging way (a. 19); Setting into flames, using chemicals or other dangerous substances (a. 20); Forcing a woman to commit self-immolation (a. 21); Beating (a. 23); Selling and buying women for the purposes of or under pretext of marriage (a. 24); *Baad* (a. 25); Forced marriage (a. 26); Prohibiting the choice of a husband (a. 27); Marriage before the legal age (a. 28); Abuse, humiliation or intimidation (a. 29); Harassment or persecution (a. 30); Forced isolation (a. 31); Forced drug addiction (a. 32); Denial of inheritance rights (a. 33); Preventing from possession of personal property (a. 34); Denying the right to education, work and access to health services (a. 35); Forced labor (a. 36); Marrying more than one wife without observing Article 86 of Civil Code (a. 37); and Denial of relationship (a. 38).

⁶ See Article 39 (1) (2) of the EVAW law. The five crimes are rape, enforced prostitution, publicizing the identity of a victim, burning or the use of chemical substances and forced self-immolation or suicide (articles 17-21 of EVAW law).

⁷ This report uses the term "addressed cases" when a final conclusion was reached in the dispute either through court adjudication or non-judicial mechanisms.

often constituted a deterrent to seeking criminal sanctions as the imprisonment of the perpetrator, when a family member, would automatically cut off women's financial support.

Of the total 110 cases, 30 registered in the criminal justice system remained pending at the time of writing. Ten cases were adjudicated by a court and resulted in 10 convictions under the EVAW law and no acquittals. Six of the ten convictions are awaiting appeal court decisions with four resolved through court adjudication (as noted above). The women survivors expressed satisfaction with convictions entailing long-term imprisonment while in five instances they perceived sentences ordered as too lenient (fines or short-term imprisonment).

Mediation was mostly dealt with by EVAW law institutions⁸ (47 per cent) and NGOs (17 per cent) while traditional dispute resolution mechanisms⁹ (TDR) were used in 22 per cent of mediated cases. The practice of joint mediation sessions conducted by authorities and actors involved in TDR (e.g., police officer and a mullah) in 15 per cent of cases shows the close links and collaboration between public and private actors in the disposition of cases of violence against women.

UNAMA observations revealed that mediation was performed by a variety of actors mediating decisions in the absence of any standardized approach and oversight mechanisms. UNAMA also documented diverse and arbitrary methodologies, documentation practices, and follow-up mechanisms adopted which lead to weaker protection of women survivors' rights. In some cases, mediators performed their role in full respect of the rights and dignity of both parties, especially women. However, this was not always the case.

In at least six cases, the exclusion of the woman complainant from mediation sessions, for example, raised human rights concerns as it constituted a discriminatory practice hindering a woman's right to equality before the law and meaningful participation in proceedings affecting her. UNAMA also encountered at least 11 cases in which the decision to mediate rather than pursue criminal proceedings was imposed on the woman, infringing her choice, right to a fair trial, right to effective remedy and undermining the voluntary nature of mediation. The most prevalent outcome of mediation proceedings observed was reunification of the woman with her alleged perpetrator to preserve the family unit or social cohesion.

UNAMA was able to track the enforcement of 25 decisions. In at least 13 decisions, perpetrators did not honor the agreement made during mediation. With the reoccurrence of violence, women decided to return to shelters, file complaints to the criminal justice system and/or file for divorce. Twelve of the agreements were upheld after the mediation. UNAMA highlights the need to strengthen follow-up and enforcement of decisions which was found to be weak – to provide greater accountability of perpetrators and safety of women survivors.

The report observed that women rarely had a clear vision of whether they wished to resolve their case through criminal prosecution or through mediation when they registered their complaints.

⁸ EVAW law institutions include the Department of Women's Affairs (DoWA), the Departments of *Huqooq*, the Afghanistan Independent Human Rights Commission (AIHRC), the police or the prosecutor's office.

⁹ UNAMA uses the term "traditional dispute resolution (TDR)" mechanisms to indicate mediations conducted by actors which are not authorities identified in the EVAW law. In the Afghanistan context, such actors include family members, village elders, *shuras/jirgas*, religious authorities, and prominent respected individuals. Although NGOs are not listed in the EVAW law, UNAMA has placed them in a separate category from TDR due to the role of NGOs as service-providers in responding to violence against women.

The registration authority often functioned as the woman's initial adviser and paved the way for how the woman accessed justice for her complaint. Although women survivors often acknowledged that the presence of women in court adjudication and mediation proceedings instilled increased confidence, they gave equal weight to the level of expertise and trust in the case officer/mediator handling the case, regardless of their gender. In the majority of instances, the presence of competent men was not reported as a significant impediment to women freely expressing themselves and reporting abuses.

Women surviving violence particularly valued the provision by NGOs of physical protection through shelters, often representing the only safe refuge for women. Women interviewed also acknowledged the limitations of such arrangements in the long term and stressed their need for more independent and safe living arrangements. The key role played by NGOs in responding to violence against women was documented, with NGOs providing legal counseling to a quarter of the 110 women interviewed. Often illiterate, the women were familiarized by NGOs with applicable laws and legal process, and often enabled to make an informed decision about the disposition of their cases.

UNAMA's findings also highlight the need for a review of the legal framework – which mainly focuses on criminal sanctions – so that it is more responsive to women's demands for justice. As such, the strengthening of effective civil remedies available to women experiencing violence (e.g., availability of restraint and protection orders, considerations in matters regulating custody of children, right to maintenance after dissolution of marriage and right to reside in the marital home), accompanied by measures to support women's economic empowerment and integration into society, is imperative. A review of the criminalization of "zina" and "attempted zina" is also necessary as the real risk of prosecution of women for these severely limit women's right to freedom of movement and their right to leave an abusive environment.

Efforts by the Government to increase the local presence of EAW law institutions should be sustained and expanded across the country, and beyond provincial city centres, supported by broad-based information campaigns. Given the significant influence these institutions have on women seeking justice, UNAMA stresses the need to ensure increased recruitment of professional women into all EAW law institutions and regular training of men and women in elimination of violence against women issues to strengthen institutional capacity to treat survivors of violence with professionalism, dignity, sensitivity and respect. Enhanced gender-sensitivity of institutions mandated to respond to violence against women is crucial to build greater public confidence in such institutions, and encourage increased reporting of incidents of violence against women.

1.1 Recommendations

UNAMA offers the following short-term and long-term recommendations to the Government of Afghanistan and international partners to provide accountability and improve protection of women and girls from violence in accordance with domestic laws and international human rights standards.

Government of Afghanistan

Short-Term Recommendations:

- Ensure that serious acts of violence criminalized under the EVAW law and other relevant laws are duly investigated and prosecuted by law enforcement authorities.
- Issue mandatory instructions for all EVAW law institutions clarifying which types of cases must be criminally prosecuted and which may be mediated.
- Develop and implement detailed regulations for EVAW law institutions outlining the methodology, criteria, requirements, minimum duration and follow up mechanisms regulating mediation of registered incidents of violence against women. The regulations should specify responsibilities of specific actors after mediation settlements to ensure enforcement of settlements with mandatory follow-up reports.
- Develop and establish regulatory frameworks, including a Government certification scheme for accredited mediators, and oversight mechanisms for all institutions conducting mediation.
- Expanding on the Office of the Attorney General’s directive 92/202 on “running away” or “attempted *zina*”, provide clear guidance to legal practitioners on standards of evidence required for prosecution of “*zina*” and “attempted *zina*” to ensure these legal provisions are not used to restrict women experiencing violence from raising complaints and reporting violence.
- Strengthen the response of provincial commissions on EVAW¹⁰ to acts of violence against women by inviting relevant civil society organisations, shelter managers and international partners to attend monthly meetings as observers, to report on specific issues and to support the commissions’ work. These efforts should include the design and enforcement of referral mechanisms to facilitate the provision of services by relevant institutions, pursuant to article 16 of the EVAW law.
- Conduct country-wide public campaigns aimed at educating and raising awareness on women’s rights and gender equality. In particular, raise women’s awareness of remedies available when subjected to violence.

Long-Term Recommendations:

- Strengthen the capacity of the criminal justice system to ensure accountability for perpetrators of violence against women and to protect women from violence.
- Ensure that the ongoing reform of the Criminal Code brings relevant provisions related to crimes perpetrated against women in compliance with international human rights treaties ratified by Afghanistan, as required under article 7 of the Constitution of Afghanistan.
- Expand civil remedies available to women affected by violence including a provision to seek restraint and protection orders.
- Review the legal framework to introduce effective legal remedies granting due consideration to women survivors of violence in matters regulating custody of children, right to maintenance after dissolution of marriage and right to reside in the marital home.

¹⁰ Under the EVAW law and order N.514-546 of the Minister of Women’s Affairs (dated 29.4.1388, Afghan year) to provincial governors, the provincial Commissions on Elimination of Violence against Women (CoEVAWs) have the role and mandate under the EVAW law to coordinate all efforts to address violence against women in their regions.

- Review and develop legislation addressing root causes of vulnerabilities faced by Afghan women, including by removing any discriminatory provisions hindering equal rights for women and men in matters related to property.
- Building on the data management systems used for recent reports of the Government of Afghanistan including on implementation of the EVAW law develop and put in place a comprehensive computerized tracking system at the central level for violence against women, which includes unified methods of categorization of violations, and streamline and make mandatory data-gathering by all law enforcement and relevant agencies that respond to incidents of violence against women.
- Increase the recruitment and training of professional women into all EVAW-law institutions, including the Afghan National Police, the Attorney General’s Office and courts to encourage more women to report incidents of violence to female staff.
- Build the capacity of EVAW law institutions which perform mediation to develop an extensive pool of mediators – men and women – who are trained and certified.
- Implement rehabilitation and self-reliance programmes targeting women affected by violence – including those accommodated inside shelters – to support their economic empowerment and reintegration into society.
- Expand availability of and access to free legal advice and court representation to survivors of violence, pursuant to article 6 of the EVAW law.

To International Donors:

- Continue to provide technical expertise and financial resources required to reform the Afghan criminal justice system to ensure enhanced protection of women from violence and adherence to international and national laws and human rights standards.
- Advocate for the adoption of standardized regulations, in line with international human rights norms and standards, outlining the methodology, criteria, minimum requirements and follow up mechanisms to regulate mediation of registered incidents of violence against women and support their implementation through targeted funding.

2. Context 2014-2015

The formation of the National Unity Government in September 2014, led by President Ashraf Ghani and Chief Executive Officer (CEO) Abdullah Abdullah, raised expectations for advancements in women's rights based on their campaign pledges to ensure adequate representation of women in Government and to promote full implementation of the Law on Elimination of Violence against Women (EVAW law). In particular, they both pledged to address harmful traditional practices which lead to violence against women and impede women's exercise of their human rights. On multiple occasions, President Ghani committed to taking serious steps to tackle the problems faced by women. On 21 March 2015, President Ghani and Chief Executive Abdullah announced a further 16 nominees for ministerial positions including four women whose appointments remain pending confirmation by the Wolesi Jirga¹¹. Pre-election promises to improve women's rights through the provision of concrete opportunities for women to influence the political agenda at higher levels have yet to be realized.

The prevalence of violence against women and harmful practices continues to be of serious concern. In particular, two recent cases sparked public outrage and widespread condemnation across Afghanistan and internationally. These were the kidnapping and subsequent gang rape of four women in the Paghman district of Kabul in October 2014, and the killing of a woman by a mob near the Sha i-du Shamshira shrine of Kabul city over allegations of burning a copy of the holy Quran in March 2015. Both cases led to unprecedented demonstrations voicing condemnation of brutal acts of violence targeting women and demands for justice and accountability.

These two cases highlighted widespread concerns about women's safety in the public domain. Upon President Ghani's initiative, a regulation is currently being drafted on the prohibition of harassment of women in the public sphere.

While insecurity, cultural beliefs and women victims' fears of retaliation or stigmatization by communities continued to hamper the reporting of incidents of violence against women and comprehensive analysis of trends, some improvements were observed in the Government's efforts to collect, track and regularly report on violence against women cases across the country.

In March 2014, the Government published its first report on the elimination of violence against women in Afghanistan.¹² Based on information gathered from relevant Government ministries, the report registered¹³ 4,505 incidents of violence against women in 32 of the 34 provinces, between March 2012 to March 2013 (Afghan solar year 1391), of which 3,396 constituted acts that could be prosecuted under the EVAW law, while the remaining fell under the criminal and civil codes.

The report also officially acknowledged the widespread use of mediation (41 per cent) to settle violence against women cases with 11.5 per cent of cases reported as resolved through a criminal justice process that resulted in sanctions against perpetrators or acquittals. The report included a Government commitment to initiate a wide range of legal, institutional and policy reforms to

¹¹ Lower House of the Afghan Parliament

¹² Available at:

http://mowa.gov.af/Content/files/EVAW%20Law%20Report_Final_English_17%20%20March%202014.pdf.

¹³ Any incident of violence against women reported to an institution mandated under the EVAW law to address such cases is treated as a registered case in Government reports.

enhance the prevention of and response to violence against women. These included the establishment of a comprehensive database for tracking cases and their resolution; strengthening of national and provincial EAW commissions; and increasing awareness of the EAW law.

The Government launched main findings of its second report on the issue on 25 November 2014¹⁴, covering the period from March 2013 to March 2014 (Afghan solar year 1392). This report documented a total of 5,406 cases registered (3,715 registered under the EAW law), indicating a 20 per cent increase in overall registration of cases. Findings confirmed the previous trend of prevailing use of mediation. The two Government reports highlighted the positive pattern of more women coming forward to report to EAW law institutions while noting the large number of cases remaining “under process”.

Other efforts to address violence against women in 2014 included the establishment of specialized EAW prosecution units within the Attorney General offices in 18 provinces – a significant increase compared to eight units at the end of 2013. Although the functionality of the specialized units varied widely across the country, UNAMA monitoring indicated the units were a contributing factor towards encouraging women survivors of violence to register cases.¹⁵

The Special Rapporteur on Violence against Women, its causes and consequences, Rashida Manjoo, visited Afghanistan from 5 to 12 November 2014, on the Government’s invitation. She met senior Government officials, the Chairperson of the Afghanistan Independent Human Rights Commission (AIHRC), representatives of civil society and the diplomatic community in Kabul, Herat and Jalalabad, and met with survivors of violence and service providers. While noting legislative and institutional advances such as the creation of the AIHRC, a ministry for women’s affairs at the national level and departments of women’s affairs at provincial level and enactment of EAW law, the Special Rapporteur expressed concern that Afghan women perceive the formal justice system as inaccessible and corrupt, especially on issues related to women’s rights – and thus opt for mediation¹⁶. The Special Rapporteur is expected to present her final report to the Human Rights Council in June 2015.

The EAW law remains enacted and enforced by presidential decree. In conjunction with the Government’s ongoing review of the Criminal Code,¹⁷ there have been proposals to integrate criminal provisions of the EAW law into the revised Criminal Code.

In May 2014, the new Criminal Procedure Code (CPC) and former President Karzai’s legislative decree amending article 26¹⁸ of the Code were published and came into effect on 5 June 2014.

¹⁴ Copies of the findings have not been publically disseminated.

¹⁵ See UNAMA report, *A Way to Go: Update on Implementation of the Law on Elimination of Violence against Women in Afghanistan*, (December 2013).

¹⁶ Available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15284&LangID=E#sthash.xbule8Be.dpuf>.

¹⁷ Pursuant to Presidential Approval Number 847/789 dated 1 June 2010.

¹⁸ Article 26: (1) The following persons may refuse to testify:

A person whose legal responsibility as stipulated in existing laws may be violated by revealing secrets through the provision of testimony, such as a legal advisor, physician, psychiatrist, experts and similar professional functions.

Ancestors and descendants of the accused up to two levels and husband and wife even if the matrimonial relationship has ended. A relative who has been victimized as a result of the crime in question and/or is a complainant or informant regarding the crime is exempted from this provision.

(2) Judicial officers, prosecutors and the courts are required to inform any person stipulated in paragraph 1 of this article of their right to refuse to testify.

(3) When the court determines that the testimony of the persons included under Paragraph 1, Section 1 of this Article is necessary for the proper consideration of a case, to determine the guilt or innocence of the accused, or if

The amendment represents a significant victory for women's access to justice in domestic violence cases as it remedied the previous article 26 which barred the questioning of an accused's relatives.

Over the course of 2014, the Ministry of Interior (MoI) made significant progress in developing policies and directives aimed at enhancing the protection and treatment of police women in the Afghan National Police (ANP). These efforts were undertaken in response to serious concerns raised by several stakeholders – including UNAMA - about high levels of violence and sexual harassment of, and abuse of authority towards female police by male police. In January 2014, the then Minister of Interior, Mohammad Omar Daudzai, endorsed a “Strategy for integration of women in the police force” intended to create a protective environment for women employed in ANP. An action plan was adopted in August 2014 spelling out implementation mechanisms to improve participation, protection, and professionalization of women in ANP. To date, the implementation of the action plan remains slow.

3. Methodology

The report findings are intended to complement UNAMA's earlier efforts to systematically monitor and document cases of violence against women and girls across Afghanistan which began in 2010¹⁹ - with an in-depth, survivor-centered qualitative analysis of factors enabling or hampering women's access to justice for violence they experienced, either through court adjudication or mediation.

The report is based on information gathered from August 2014 to February 2015 in 18 of Afghanistan's 34 provinces, including Badakhshan, Baghlan, Balkh, Bamyan, Farah, Faryab, Herat, Jawzjan, Kabul, Kapisa, Khost, Kunar, Kunduz, Laghman, Nangarhar, Paktya, Samangan and Takhar.

The research was conducted with a focus on women's personal experiences in seeking justice. UNAMA believes that this approach, centered on women's experiences, amplifies women's voices and concerns and, as such, can better inform and influence policy reforms and advocacy efforts aimed at improving women's access to justice.

The current analysis is based on interviews with 96 women and 14 girls that documented their experiences, while proceeding through all phases of judicial and non-judicial mechanisms under the EAW law (registration, investigation, prosecution to adjudication). The selection of cases was based on referral from relevant institutions registering women's complaints or survivors approaching UNAMA directly. All interviews were carried out with the informed consent of women and guardians - in the case of minors.

the public interest is deemed to be of higher importance than the responsibility to maintain confidentiality, then the court may order to hear the testimony of the witness in a private setting, and, if necessary, without the presence of either party.

(4) The testimony of the following persons is not admissible:

A defense lawyer who is defending the accused in the case.

A person who is considered an accomplice to the crime and his testimony includes denial of the accusation against himself.

A person who lacks the legal competency [*Ahliyat*] to testify

¹⁹ See footnote 1.

In line with UNAMA's past and current efforts to monitor and document the implementation of the EVAW law in Afghanistan, the cases analyzed in this report involved different acts of violence criminalized and sanctioned under the EVAW law.²⁰ The offenses of 'rape' and 'causing injury or disability'²¹, although criminalized in the EVAW law, entail a penal sanction pursuant to provisions of the Criminal Code and, as such, were not included in the research for this report.

Data collection was done through multiple face-to-face interviews or telephone interviews with the women. Consultations were also carried out with family members, Government, judicial and law enforcement authorities and mediators across the selected provinces, and at the national level in Kabul.

In addition, its direct observation of 22 mediation sessions and close observation of 104 mediation sessions by EVAW institutions or other traditional dispute mechanisms permitted first-hand insights into proceedings, including women's involvement in the process, and the outcome of mediations.

UNAMA observed principles of confidentiality, non-interference and non-intervention in all its interactions. In particular, mindful of the extreme sensitivity of interviewing women who have suffered from violence, UNAMA teams were guided by the "do no harm" principle to avoid causing re-traumatization. As such, due consideration was given to women's needs in arranging interviews and selecting interviewers. Girl survivors were interviewed in the presence of a guardian, a family member or their legal counselors. To better capture women survivors' experiences, open-ended questions were posed to encourage women to freely express their views about their experiences in accessing justice.

4. Legal Framework to Address Violence against Women

It is important to highlight that the use of mediation to address cases of violence against women remains highly contested. Concerns are centered on existing power imbalances between the abuser and about the fairness, inclusivity and effectiveness of the process.

International Human Rights Law and Principles

Afghanistan has obligations under international law to take necessary actions to prevent, protect against, and respond to violence against women, whether perpetrated by private or public actors. Obligations stem from – among other instruments - the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), ratified without reservations by Afghanistan.

Although mediation is not governed by an international codified set of legally-binding norms, there is an implicit set of general principles, while not specific to violence against women, to guide practitioners based on the experience of mediators working at international, national and local levels²². Principles include preparedness, consent, impartiality, inclusivity, a normative

²⁰ See footnote 5.

²¹ Articles 17 and 22 of the EVAW law.

²² Among the large amount of literature on mediation, see the *United Nations Guidance on Effective Mediation*, (September 2012), available at <http://www.un.org/wcm/webdav/site/undpa/shared/undpa/pdf/UN%20Guidance%20for%20Effective%20Mediation.pdf>.

framework, coherence, coordination and complementarity of mediation efforts and quality of agreements.

The UN General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power²³ acknowledges that informal mechanisms, including mediation, can be used “where appropriate”²⁴ for the resolution of disputes to facilitate conciliation and redress for victims. Based on principles enshrined in the Declaration, non-judicial mechanisms should be voluntary and grounded on principles of participation, equality and non-discrimination in both processes and outcomes. The Declaration also calls for the establishment and strengthening of judicial and administrative mechanisms to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible.

National Laws

The EVAW law was enacted by presidential decree in 2009 and remains the key law governing issues of violence against women in Afghanistan. It criminalizes 22 acts of violence and harmful traditional practices²⁵ against women, outlining specific Government obligations to take protective and supportive measures in favor of women affected by violence. As specialized legislation, the EVAW law refers to the Penal Code for acts of rape and injury and disability. Other sections of the Criminal Code criminalize additional acts of violence perpetrated against women that are not codified in the EVAW law, such as murder and kidnapping.

Pursuant to article 39 (1) (2) of the EVAW law, a woman complainant can withdraw her case at any stage of proceedings, except with regard to five acts of violence against women which the State must act on, irrespective of a woman’s failure to file a complaint or her subsequent withdrawal of a complaint. These are the crimes of rape, enforced prostitution, publicizing the identity of a victim, burning or the use of chemical substances and forced self-immolation or suicide.²⁶

The other crimes, stipulated in articles 22 to 38 of the EVAW law, may be investigated for possible prosecution only if the victim or a family member files a complaint. In practice, any withdrawal of cases is usually the result of mediation by Afghan authorities or by traditional dispute resolution mechanisms. If a decision is reached through mediation after conviction, a sentence imposed will not be executed.²⁷

²³ Adopted by General Assembly resolution 40/34 of 29 November 1985. Available at <http://www.un.org/documents/ga/res/40/a40r034.htm>.

²⁴ See *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* at section 7.

²⁵ See *Law on the Elimination of Violence against Women*, Islamic Republic of Afghanistan, (August 2009): rape; forced prostitution; setting into flames, using chemicals or other dangerous substances; publicizing the identity of a victim in a damaging way; forcing a woman to commit self-immolation; causing injury or disability; beating; selling and buying women for the purpose of or under pretext of marriage; *baad* (giving a woman or girl in settlement of a dispute); forced marriage; prohibiting the choice of a husband; marriage before the legal age; abuse, humiliation or intimidation; harassment or persecution; forced isolation; forced drug addiction; denial of inheritance rights; denying the right to education, work and access to health services; forced labor; and marrying more than one wife without observing Article 86 of the *Civil Code*.

²⁶ See footnote 6.

²⁷ See *EVAW law* at Article 39: Adjudication of law suits and prosecution of perpetrators of crimes stipulated in Articles 22 - 39 of this law shall be done based on the complaint filed by the victim or her attorney. (b) The victim may withdraw her case at any stage of judicial proceedings (detection, investigation, trial or conviction) in

Although there is no explicit provision in Afghan law that defines, permits or prohibits mediation in criminal cases, article 39 of the EVAW law and article 54 of the Constitution,²⁸ which enshrine the overarching State obligation to protect the institution of the family and familial unity, have been interpreted to allow for mediation by officials, traditional dispute resolution mechanisms and other mediators.

Afghan laws²⁹ also enshrine guarantees for survivors of violence during the legal prosecution of their case, including: the right to be treated with fairness and respect; the right to safety; the right to equal and meaningful participation during proceedings; the right to compensation; the right to access information concerning the proceedings; the right to confidentiality; and the right to free legal, medical, psychological and social services.

There are no specific civil remedies (e.g., protection and restraining orders) protecting abused women and their children, which *de facto* exposes victims to further violence. In line with international best practices, effective legal remedies should include specific provisions regulating custody of children, right to maintenance after dissolution of marriage and right to reside in the marital home, which may greatly influence women's decisions to remain or escape from abusive situations.

The legal framework applicable to any Afghan woman - whether she faced violence or not - awards the custody of children to the mother for boys up to the age of seven and for girls up to the age of nine.³⁰ However, cultural norms often make the father the guardian of children and most women do not approach the courts to obtain custody of children.

After the dissolution of marriage, the husband is liable to provide maintenance³¹ for the *iddat* (waiting period)³² only. Maintenance is defined in the law as taking care of the basic needs of the wife³³. Lack of any legal right to reside in the marital home without the consent of her husband and his family makes a woman's position vulnerable in cases of violence as, in many instances, raising a complaint would mean losing her home.

circumstances mentioned in paragraph 1 of this Article. In this case, the adjudication process and punishment shall be stopped.

²⁸ Article 54 of the *Constitution of the Islamic Republic of Afghanistan* states: Family is the fundamental pillar of the society, and shall be protected by the state. The State shall adopt necessary measures to attain the physical and spiritual health of the family, especially of the child and mother, upbringing of children, as well as the elimination of related traditions contrary to the principles of the sacred religion of Islam. Article 3 of the *Constitution of the Islamic Republic of Afghanistan* states: No law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan.

²⁹ Among others, Article 6 of the *EVAW law*, Article 22 of the *Constitution*, articles 6 and 66 of the *Criminal Procedure Code*.

³⁰ *Afghan Civil Code* Article 249.

³¹ *Afghan Civil Code* Article 126: "Divorcee is entitled to maintenance since the date of divorce until the end of the waiting period (Iddat)".

³² *Afghan Civil Code* Article 198: "Iddat or waiting period is a specific period with expiration of which all effects of marriage shall cease to exist."

³³ *Afghan Civil Code* Article 118: "Maintenance of wife includes food, clothing, residence and appropriate medical treatment proportionate to husband's financial ability."

Sharia Law

Islam upholds the dignity of human beings with many references in the Holy Quran³⁴ and Hadith to treating women gently, with kindness, respect and dignity.³⁵ The Holy Quran says that men and women are equal and should be treated equally.

The Holy Quran and Hadith put a high emphasis on resolving disputes through amicable solutions that need to be just.³⁶ Mediation (*miyanjigari*), reconciliation (*sulha*) and arbitration (*tahkim*) are three terms found in Islam that refer to the amicable solution of disputes between parties. Although each differs in detail, they are all means for peaceful dispute resolution, which Sharia emphasizes and can be applied.

Some of the verses and Hadith are directly related to conflict in a society but they can also be applied to conflicts within a family. Given the high value placed on family, the Quran provides separate and specific verses for dealing with disagreements in marital relations.³⁷

Islam therefore encourages the amicable solution of disputes, particularly within the family, but also emphasizes that such solutions should not be unjust to one party, and should be accepted by the free will of both parties. The process is described in a way that should encourage both parties to forgo some of their demands to reach a solution restoring harmony and the dignity of individuals and groups.

Mediation or *Sulha* is widely reflected in Islamic jurisprudence on matters of a civil, commercial or criminal nature except for the crimes of *Hudood*³⁸ and deliberate killing. It is emphasized in Sharia that *Sulha* or mediation should be based on justice and a high level of responsibility is placed on the arbiter or mediator to be fair, neutral and just.

³⁴ For example, “And whoever does good deeds according to his capacity while he believes in Allah and His Messenger, will be welcomed into Paradise. They will never be wronged, not even as little as the speck in a date stone. There is no distinction between male and female.”(Quran, Al Nisa, Verse 124); “People, we created you equal from the union of a pair, male and female (Adam and Eve), and “We made you into nations and tribes, that you may know one.” “Verily, the most honourable of you with Allah are the most pious. Allah is All-Knowing and All-Cognizant.”(Quran, Al Hujurat, Verse 13).

³⁵ Among other Hadith, the following is representative: “Treat them with kindness, for even you dislike them, it may be that you dislike a thing which God has meant for your own abundant good.” (Quran, 4:19).

³⁶ See Al Hujurat 9–“And if two parties among the Believers fall into a quarrel, make ye peace between them: but if one of them transgresses beyond bounds against the other, then fight ye (all) against the one that transgresses until it complies with the Command of Allah; but if it complies, then make peace between them with justice, and be fair: for Allah loves those who are fair (and just).” Also Al Hujurat 10- “The Believers are but a single Brotherhood: So make peace and reconciliation between your two (contending) brothers; and fear Allah, that ye may receive Mercy Conciliation between Muslims is permissible, except for a conciliation that makes lawful unlawful and unlawful lawful.” (Sunan Ibn-Maja, 2nd V, p 788). Also “Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing” (Sura-al Nisa -58). “If you fear a breach between a man and his wife, appoint an arbiter from his people and another from hers. If they wish to be reconciled God will bring them together again. God is all-knowing and wise.” (Sura Al-Nisaa: 35).

³⁷ For example, “If a wife fears cruelty or desertion on her husband's part, there is no blame on them if they arrange an amicable settlement between themselves; and such settlement is best; even though human inner-selves are swayed by greed. But if ye do good and practice self-restraint, Allah is well-acquainted with all that ye do” (Sura-al--Nisaa: 128).

³⁸ Crime regarded as being against God’s command under Sharia law for which punishment is considered obligatory rather than discretionary. Seven crimes involve *Hudood* punishments: *zina*, theft, banditry, defamation, transgression, drinking alcohol and apostasy.

Legal Process for Violence against Women Cases

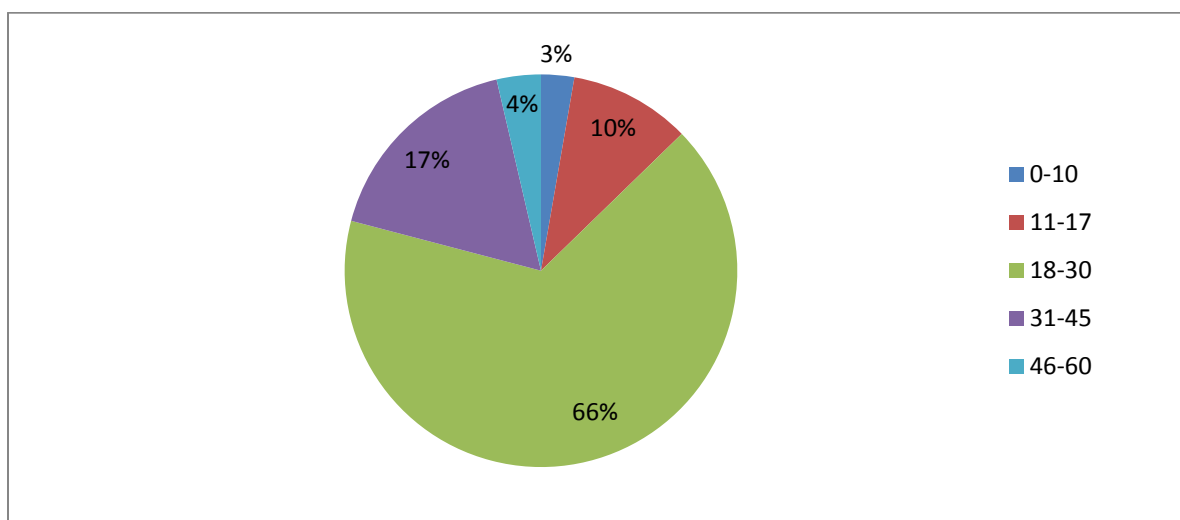
Within the existing legal framework, a female victim of a specified act of violence under the EVAW law has the right to approach the Department of Women's Affairs (DoWA), the Department of *Huqooq*³⁹, the Afghanistan Independent Human Rights Commission (AIHRC), the police or the prosecutor's office to address her case. These institutions often mediate or refer the woman to relevant services, such as women's shelters, based on her wishes. Each of these institutions, in practice, attempts to resolve the case through mediation and dialogue⁴⁰ as a first step, in an attempt to preserve the family unit - provided the act of violence is not among the five crimes that must be prosecuted as stipulated in the EVAW law⁴¹. If the woman decides to pursue her complaint through the criminal justice system, these institutions would refer her case to the police or, in many instances, to the prosecutor's office.

A woman can also approach the police or a prosecutor directly. Once the complaint is registered with the police, the police should refer the case to the relevant prosecutor's office for investigation (unless the case is mediated – which can be conducted by EVAW law institutions, TDR mechanisms and NGOs). Once the prosecutor receives the case, based on a preliminary investigation and prosecutorial discretion, he or she makes a decision to prosecute under the EVAW law or the Criminal Code, or both, and may refer the case to court, followed by a trial.

5. Profile of Cases Documented

UNAMA documented the situation of 110 women (96 adults, 14 minors) who proceeded through either mediation or court adjudication to address violence perpetrated against them between August 2014 and February 2015. While the majority of women were between 18 and 30 years old (66 per cent of all cases), UNAMA recorded experiences of girl victims of violence as young as eight years old (two cases) and women up to 60 years old.

Chart 1: Disaggregation by age



³⁹ The General Department of *Huqooq* sits in Kabul and settles disputes arising out of debts, properties, and family of real and legal persons pursuant to the *Civil Procedure Code* and the *Law on the Acquisition of Rights*. Provincial Departments of *Huqooq* exist in all of Afghanistan's 34 provinces.

⁴⁰ See footnote 28 on the Afghan Constitutional preference to preserve the family unit.

⁴¹ See footnote 6.

With the exception of one Pakistani national, all women interviewed were Afghans. The sample comprised women of different ethnicities, including Tajik (46), Pashtun (26), Hazara (19), Uzbek (7), Pachaie (5), Nuristani (3), Sayed (2), Arab (1) and Pajawri (1).

Through the interviews and case observation, UNAMA documented a total of 148 reported acts of violence, which indicates that some of the 110 women and girls were subjected to multiple acts and forms of violence⁴². As shown in the table below, battery and laceration were the most prevalent reported form of violence against the women interviewed, confirming trends documented by the Government⁴³, UNAMA⁴⁴ and AIHRC.⁴⁵ One woman interviewed for this report died as a result of forced self-immolation following her filing of a formal complaint of violence against her.⁴⁶

Table 1: Number of cases by type of violence criminalized under the EVAW law

Type of Violence	No. of complaints	Percent of all registered complaints
Battery and laceration	66	45%
Abusing, humiliating, intimidating	20	14%
Harassment/ persecution	9	6%
Prohibiting from right of marriage or choosing husband	7	5%
Deterring from right to education, work and access to health services	7	5%
Depriving from inheritance	6	4%
Forced marriage	5	3%
Forcing into prostitution	5	3%
Marriage before the legal age	4	3%
Forced isolation	4	3%
<i>Baad</i> ⁴⁷	4	3%
Forcing into self-immolation or suicide or using poisonous or other dangerous substances	3	2%
Selling and buying women for the purpose or under pretext of marriage	2	1%
Preventing from possession of personal property	2	1%
Denial of relationship	2	1%
Marrying more than one wife without observing the provision of Article 86 of Civil Code	2	1%
Setting into flames, using chemicals or other dangerous substances	-	-
Recording the identity of victim and publicizing it in a manner that damages the personality of victim	-	-

⁴² Multiple acts of violence can be reported in one complaint.

⁴³ See footnotes 12 and 14.

⁴⁴ See footnote 1.

⁴⁵ See AIHRC *Summary Report on Violence against Women*, (8 March 2015), available at http://www.aihrc.org.af/home/daily_report/4172.

⁴⁶ UNAMA field monitoring, January 2015.

⁴⁷ Giving a woman as restitution for murder, rape or another crime to achieve peace and harmony between families.

Forced labor	-	-
Forcing woman to drug addiction	-	-
Grand Total	148	100%

The majority of women interviewed (67 per cent) lodged a complaint with registering authorities only after experiencing multiple incidents of violence.

Out of the 150 alleged abusers, almost all were well-known to survivors, and were relatives in 94 per cent of the cases. Twenty alleged perpetrators of violence against the women interviewed were other women (survivors’ mothers, mothers-in-law, sisters, sisters-in-law), constituting 13 per cent of the alleged perpetrators.

6. Findings

6.1 Registering a Complaint

“It is not considered good for a woman to go to the police”

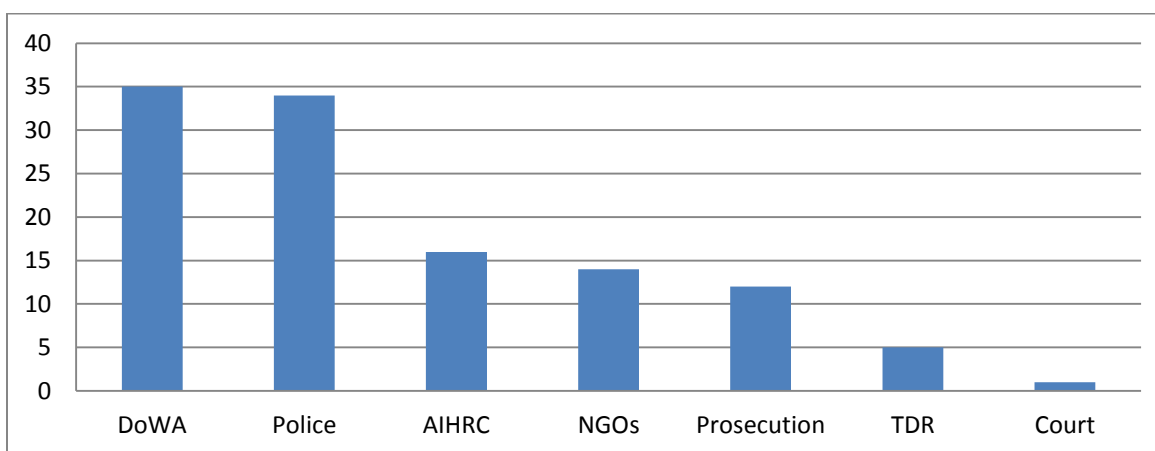
L, age 26, from Kabul province, August 2014

“I have heard through TV about the existence of AIHRC addressing women’s complaint so I asked my older sister to accompany me. We didn’t know the address of AIHRC but we asked the taxi driver to drop us”

H, age 23, from Balkh Province, August 2014

UNAMA observed that most of the 110 women interviewed registered⁴⁸ their complaints with EVAW law institutions. Of the 117 total complaints registered, 35 were made to DoWAs, 34 to the police, 16 to AIHRC, 12 to a prosecutor’s office and one to a court. The remaining 19 complaints were made with NGOs and traditional dispute resolution mechanisms, such as local *shuras/jirgas*⁴⁹ or ulema councils⁵⁰.

Chart N.2: Registration of complaints by institution



⁴⁸ See footnote 13.

⁴⁹ Local councils.

⁵⁰ Councils comprised of religious scholars.

The difference between the number of women interviewed for the report (110) and the number of complaints registered (117) indicates that some women approached several institutions with regard to the same matter. Interviews revealed that such decisions were taken due to mistrust and skepticism regarding the performance of certain institutions, based on women's previous negative experiences. In at least one case, the registering authority refused to register a complaint arguing that a complaint against a relative would not be culturally acceptable.

UNAMA observation indicates that women's decisions to break the silence about their situation by registering a complaint stemmed from numerous factors, including: imminent life-threatening circumstances targeting the woman or her children; failed past attempts to address the abusive situation informally; contacts in the justice system who were instrumental in assisting the woman to learn about legal protections; and geographical proximity to specific services for women surviving violence (e.g., health, legal and physical protection). Women's choices of which institution to report to appeared to be mainly driven by their awareness of the local presence of service providers and/or trust that individual institutions would duly process and follow up their cases.

With a few exceptions⁵¹ at the time of registering their complaint, abused women did not have a clear vision of whether they wished to resolve their case through criminal prosecution or through mediation. As a result, the response of the registration authority was critical, both in providing the woman with all the necessary information about legal options/available services, and in treating her in a respectful and dignified manner. The conduct of the institution the woman first contacted regarding her complaint had significant influence on how she accessed justice.

6.2 Disposition of Complaints/Cases of Violence against Women through Court Adjudication or Mediation

"I am going back to him because I have no alternative. If I had money and someone at home to take care of my children, I would never withdraw my complaint. I wanted to see him punished".

R, age 35, Jawzjan province, November 2014

General Findings

UNAMA found that final settlements were obtained in 80 of the 110 cases, with 30 remaining under process at the time of writing this report. Fifty-two cases (65 per cent) were settled through mediation, leading to withdrawal of the complaints pursuant to article 39 of the EVAW law. Another 13 cases were withdrawn due to external pressure or to a woman's voluntary decision, motivated by multiple factors, including frustration over the length of proceedings.

Only five per cent of the 80 resolved cases (four) were decided through a criminal justice process that resulted in sanctions against perpetrators. This reflected the marked preference of women to opt for mediation to solve their disputes, consistent with the Government's two reports on the implementation of the EVAW law.⁵² With the exception of one case of forced prostitution,

⁵¹ Preference for registering a case with a DoWA was at times explained as less contentious than reporting to police and more in line with traditions as it would not necessarily lead to criminal prosecution.

⁵² See footnotes 12 and 14.

mediation efforts did not relate to crimes required to be prosecuted through the judicial system, in line with the existing legal framework in article 39 of EVAW law.

Outcome	Total
Reached final outcome	
Court Judgment	4
Mediation	52
Violence ceased and authority closed file	10
Withdrawn	13
Not followed up by complainant	1
Partial total final outcomes	80
Still in process	
With registration institution other than MoI, MoJ or AGO	2
With MoI	3
With prosecution	12
With court(s)/MoJ	11
With TDRs	1
Not followed up by complainant	1
Partial total under process	30
Total	110

UNAMA’s study documented that EVAW law institutions often resolved complaints through multiple approaches: attempting mediation, referring cases for prosecution and/or pursuing criminal prosecution in line with their mandates. Referrals between EVAW law institutions, NGOs and TDR were frequently observed, indicating close links between all actors involved in cases of violence against women. Collaboration was particularly evident in the conduct of at least 17 mediation sessions by both TDR and EVAW law institutions (see “outcomes of mediation” below).

Outcomes of Court Adjudication

Of the 110 cases, 30 that were registered in the criminal justice system remained pending at the time of writing this report. Ten of the 110 cases were adjudicated by a court and resulted in 10 convictions under the EVAW law and no acquittals. Six out of the ten convictions were awaiting appeal court decisions at the time of writing.

Different sentences were ordered in three cases of forced prostitution under article 18 of the EVAW law. These varied from seven years, five years and 18 months. The applicable law mandates a sentence of seven years which can be extended to 10 years if the victim is a minor.⁵³

⁵³ Article 18 *EVAW law* states: “If a person forces an adult woman into prostitution, he shall be sentenced to long term imprisonment of not less than 7 years. If the victim under paragraph 1 of this Article is an underage woman, the perpetrator shall, depending on the circumstances, be sentenced to long term imprisonment not less than 10 years.”

In one case of battery and laceration, the initial sentence of one month, based on article 23⁵⁴ of the EAW law was changed on appeal to one year under article 22⁵⁵ of the EAW law. This article requires that the sentence be determined under article 408 of the Criminal Code for bodily injury and harm (i.e., short-term imprisonment of not less than three months and no more than one year).

In five cases of battery and laceration, sentences of one and a half month were ordered under article 23 of the EAW law, which provides for imprisonment not exceeding three months.

In one case of early marriage, the primary court sentenced the perpetrator to one year of imprisonment under article 28 of the EAW law. The appeal court changed the remaining six-month-imprisonment term to a fine of 6000 Afghani (USD 106). Article 28 of the EAW law provides for mid-term imprisonment of not less than two years for the crime of early marriage.

According to the information gathered, UNAMA observes that three out of ten sentences ordered by the courts appear to have been interpreted leniently by judges and not in compliance with the EAW law⁵⁶. This highlights the continued need for strengthened application and understanding of the EAW law by judges.

Outcomes of Mediation

Based on information provided to UNAMA by women complainants and mediators, a total of 126 mediation sessions were undertaken in the processing of 66 of the 110 cases observed. This could indicate a preference among female survivors of violence to opt for mediation to solve their cases under prevailing circumstances. However, UNAMA encountered 11 cases in which the decision to mediate rather than pursue criminal proceedings was imposed on the woman by third parties such as family members and elders, infringing the woman's choice and undermining the voluntary nature of the process.

UNAMA documented that mediation was carried out by numerous actors, including 54 sessions conducted by EAW law institutions,⁵⁷ 25 sessions by traditional dispute resolution mechanisms, 20 sessions by NGOs, and 17 "mixed" sessions mediated jointly by representatives of EAW law institutions and TDRs (e.g., a prosecutor and a family member, Ministry of Interior Family Response Unit and a mullah).⁵⁸

⁵⁴ Article 23 *EAW law* states: "If a person beats a woman, which does not result in damage and injury, the offender shall, depending on the circumstance, be sentenced to short-term imprisonment not exceeding 3 months."

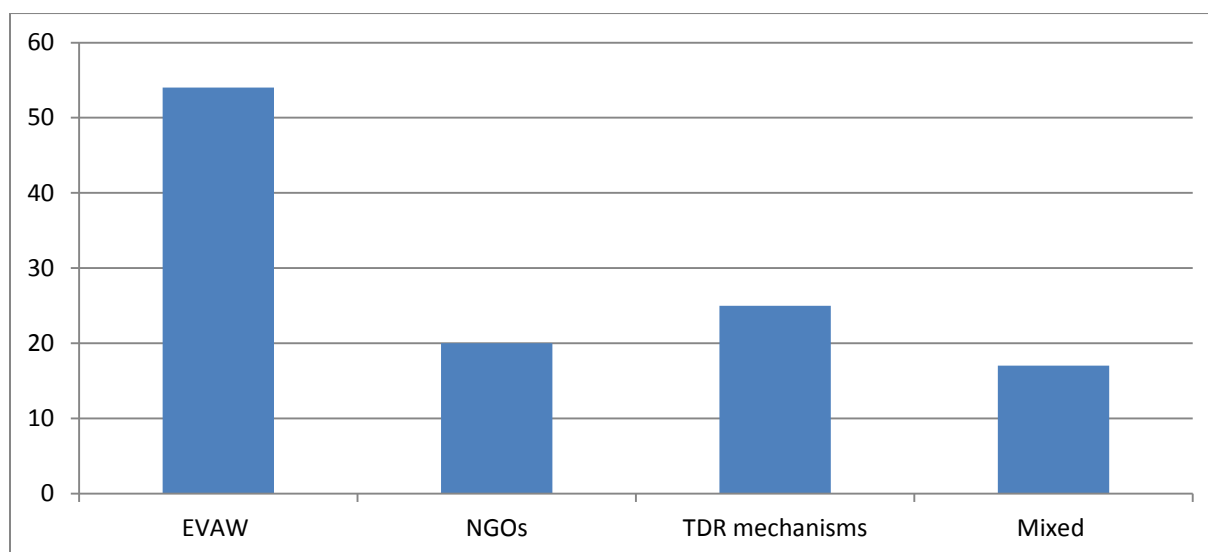
⁵⁵ Article 22 *EAW law* states: "If a person beats a woman, the offender shall, depending on the circumstances, be punished according to Article 407 – 410 of the Penal Code, considering the mitigating and aggravating conditions of the crime. If the acts under paragraph (1) of this Article results in the death of victim, the offender shall, depending on the circumstance, be sentenced according to Article 395 – 399 of the Penal Code".

⁵⁶ However, given UNAMA inability to thoroughly review cases files, UNAMA recognizes its analysis on compliance may be limited in scope.

⁵⁷ Twenty-five sessions were performed by local offices of DoWA, nine by police, eight by court, six by prosecution units, five by the AIHRC, and one by the chair of the provincial EAW commission.

⁵⁸ Data is unavailable on which institution mediated 10 sessions in the Western region.

Chart N.3: Mediation of complaints by institution



As shown in the table below, outcomes of mediations varied significantly, with the most prevalent solution being reunification of the woman with her alleged perpetrator. UNAMA observed this trend with all institutions involved in mediation efforts. UNAMA findings indicate that mediators appeared to aim at obtaining reconciliation between parties, asking abused women to “forget the past” in an effort to preserve the family unit or social cohesion. Outcomes observed are outlined below:

Outcomes reached during mediation	Cases
Survivor and perpetrator reconcile and the victim is reintegrated within the family structure	42
No decision reached	15
Perpetrator’s promise to nullify forced engagement/marriage, refrain from exerting pressure for a forced engagement/marriage, opposition to a marriage	8
Referral to other institutions/actors (e.g., Ulema council, family court, elders)	5
Divorce granted	4
Survivor refused reintegration in the family and allowed to move to an alternative location (e.g., relative, remain in shelter)	4
Survivor’s refusal to reconcile with preference to criminally prosecute perpetrator	2
Access to inheritance granted	1
Total	81⁵⁹

To reach an agreement, decisions were linked to a wide range of conditions agreed upon during mediation sessions and tailored to the specific needs of both parties in the dispute. As shown in annex 1, conditions mostly involved the imposition of obligations on perpetrators aimed at promoting women survivors’ psychological wellbeing and safety (e.g. admission or repentance, pledge of non-repetition), her right to adequate standards of living (e.g., decent accommodation, food, clothes), freedom of movement, work and education (e.g., permission granted to the woman to visit her relatives, including for a death in the family), and financial compensation in

⁵⁹ The difference between the number of cases mediated and decisions reached is due to multiple mediation attempts in several cases.

cash or property (e.g., land for her sons). Conditions related to compensation in cash or in kind were mostly used in mediation sessions by traditional dispute resolution mechanisms such as elders and Ulema councils. UNAMA observation also showed that conditions were placed by mediators on women survivors and/or third parties (e.g., survivors to give up right to claim *Mahr*⁶⁰).

UNAMA observed that decisions were outlined in written agreements called “guarantee letters” in 44 instances, and oral agreements in 11 cases. Findings did not reveal any consistent pattern in the use (or lack of) written documents as ERAW law institutions and TDR mechanisms made use of both approaches. When decisions involved reconciliation and reunification between husband and wife, on the condition that the husband refrained from violence, follow-up was weak or non-existent, irrespective of the institution mediating the case.

UNAMA found that a plurality of actors performed mediation without a clearly outlined standardized approach on sanctions depending on the gravity and nature of the violent act. UNAMA noted that without a uniform framework, the determination of adequate penalties based on circumstance remained entirely at the discretion of mediators.

Within the scope of the project, UNAMA was able to follow up and track the enforcement of 25 decisions. In at least 13 decisions, the agreement made during mediation failed to be honored by perpetrators. With the reoccurrence of violence, women decided to return to shelters, file official complaints to the criminal justice systems or file for divorce. Twelve of the agreements were upheld after the mediation.

6.3 Survivors’ Perspectives on the Disposition of Cases

“I was not interviewed at the police station. Upon my arrival, the policeman called me a prostitute and told me to leave his office. I told him he should ask what our problem is first but he didn’t listen.”

N, age 24, from Samangan province, February 2015

“I was given a chance to explain to my husband face to face during the mediation session, why I did not want to live with his family and why I should be given a separate house.”

G, age 25, from Paktya province, September 2014

UNAMA observed that by the time women facing violence reached institutions or informal mechanisms to report abusive conduct, they were often physically and mentally traumatized, with little or no financial and emotional support. The processing and disposition of their cases is an extremely sensitive process, requiring dedicated resources and expertise (e.g. legal and psychological) to adequately support their attainment of justice and remedies.

UNAMA research highlights that the institutional responses, including the quality of services and treatment, was a critical factor enabling women to make an informed and free decision on the disposition of their cases. Of the 110 women interviewed by UNAMA, 76 (69 per cent)

⁶⁰ Amount of money promised directly by the groom to the wife-to-be in consideration of the marriage. It is usually promised prior to the marriage but can be given later and can remain pending for many years.

expressed the view that the EAW law institutions and TDR mechanisms which handled their case treated them with respect and sensitivity.

The women interviewed highlighted that they particularly valued the opportunity to fully explain the abuse they had experienced, to be listened to and to be consulted on the way forward. They stated that the EAW law institutions and NGOs but not traditional dispute resolution - provided significant support in briefing them about possible judicial and non-judicial options to resolve their situation.

Often illiterate or without prior knowledge of applicable laws and procedures, most survivors were not aware of their legal rights. As such, they expressed appreciation for receiving information about their legal rights and the legal process, particularly through the use of terminology they could fully understand. For 27 women who benefitted from legal counseling (mainly lawyers provided by NGOs or in one case contracted privately), such services proved crucial in enabling them to make an informed decision about the disposition of their case. In only one case, in the southeast region, was the provision of free legal aid by an NGO deemed unsatisfactory as the lawyer insisted on receiving money as a precondition to follow-up court proceedings.⁶¹ Prevalent misinterpretation of religion and applicable law was observed to have misled many women. For example, many women told UNAMA they had accepted remaining in violent marriages for fear of losing custody of their children should they request divorce, showing an erroneous understanding of the law.

Women interviewed said that the provision of a safe refuge while their case was under process was of the highest importance. Physical protection was mainly achieved through referrals by EAW law institutions to NGO-run shelters. UNAMA documented a significant number of cases (34 cases or 31 per cent of all 110 cases) benefitting from these protective arrangements signifying the critical function of shelters that often represent the only safe alternative for women. However, women also acknowledged the limitations of such arrangements in the long term and stressed their need for more independent and safe living arrangements.

Specific Observations on Women's Experiences during Court Adjudication

Based on UNAMA observation, justice through adjudication in the criminal system was consistently perceived by women as being at odds with prevailing cultural norms and traditions, and communal social cohesion was favoured over individual retribution.

One third of the 110 women interviewed (34 women) indicated an overall dissatisfaction with the support they received in the context of court adjudication. Grievances mostly related to the performance of EAW law institutions during criminal prosecutions. In particular, key obstacles described were corruption (three women alleged being asked to pay bribes by public officials or directly witnessed corruption); request for sexual favors (in one case, the police case officer reportedly demanded sexual favors as a precondition to processing the complaint); and lack of direct access to and understanding of proceedings (six women said they were not notified about court hearings, four said they felt lost, not knowing what police had written in their files during interviews). In some instances, women or their family members were asked to come to court offices multiple times to file a complaint.

⁶¹ UNAMA case observation, February 2015.

Lack of professionalism also negatively affected women's attitudes in pursuing their cases formally. Four women stated they were verbally insulted, threatened to be arrested or accused of lying by police and prosecutors during investigations; one woman said a police officer explicitly blamed her for the violence she suffered. Seven women reported they were reprimanded for having made an official complaint or strongly discouraged from pursuing their complaint by different EAW law institutions. Five women reported that staff of EAW law institutions did not pay attention to their cases.

Delays or perceived delays⁶² in the processing of cases through court adjudication generated extreme frustration and impatience on the part of some women interviewed. The length of proceedings resulted in at least two withdrawals of complaints and three mediations. In at least three cases, women said that the time they devoted to seeking justice was unsustainable and they felt obliged to resume their domestic/child bearing tasks. As a result, two women left the shelter they were in and reconciled with respective spouses while one withdrew her complaint after opting for mediation.

Specific Observations on Women's Experiences during Mediation

Based on UNAMA observation, as women interviewed saw the implications of violence as having repercussions that extended beyond individual perpetrators and victims, they sought a resolution that restored the family and community equilibrium. As such, they noted that mediation appeared to better satisfy such aspirations. Also, a number of women reported they had opted for mediation and out-of-court solutions because they were focused on restraining the perpetrator from abusive behavior while they viewed the justice system as offering punishments.

Female complainants interviewed by UNAMA expressed appreciation for swift actions taken by some authorities, indicating their preference for a speedy disposition of their cases, due to multiple obligations stemming from their assigned gender roles and financial constraints. Mediation seemed to have provided a quicker solution and access to remedies.

In the vast majority of the 126 reported mediation sessions held by EAW law institutions, NGOs and TDR to address 66 cases, the women involved stated they were provided with a respectful environment conducive to reporting and free discussions. In 14 sessions, UNAMA recorded verbal abuse against the abused women. However, such incidents - according to women's views - were well managed by mediators who succeeded in bridging divisions among parties and restoring non-abusive environments. The presence of family members during mediation was perceived as a significant encouragement for women.

In six of 25 mediation sessions performed by TDR, in particular *jirgas* and *shuras*, the woman involved was excluded. These women reported that they did not resent their exclusion from mediation proceedings. However, their absence from such proceedings raises human rights concerns as it constitutes a discriminatory practice, hindering women's right to equality before the law and meaningful participation in proceedings affecting them.⁶³ Performed by a variety of

⁶² In several cases UNAMA monitored, although the duration of cases from registration to adjudication was in compliance with the legal terms prescribed by law, women's perception and needs did not match with these legal timeframes. In the eastern region for example, after waiting for a court hearing for one month, one woman survivor decided to withdraw her complaint as her financial resources were depleted.

⁶³ The rights are enshrined in international and domestic standards. Among others: Articles 2, 10 and 19 of the *Universal Declaration of Human Rights*; Articles 16, 19 and 26 of the *International Covenant on Civil and Political*

actors including non-governmental institutions, the absence of institutionalized oversight and accountability mechanisms for institutions conducting mediation led to weaker protection of women survivors' human rights.

On the basis of the interviews, women affected by violence appeared to aspire to justice rendered through an accessible, dignified, gender sensitive and culturally acceptable system that could inform them about their rights and available legal options, and deliver outcomes promptly.

Women's Experiences on Treatment Received by Female/Male Case Officers and Mediators

"I was treated with respect by the male prosecutor and given a chance to fully explain my situation"

B, age 34, from Herat province, October 2014

"I am completely satisfied with the quality of the registration process conducted by a female staff in DoWA. I was treated with full respect and dignity and was given the chance to fully explain my issue. A clear understanding of the process and next steps were explained to me."

G, age 25, from Baghlan province, January 2015

When attended by female staff of institutions, NGOs or TDR mechanisms (e.g., women's *shuras*), the majority of women interviewed said they appreciated the support and sensitive response received. The presence of women was often acknowledged as instilling more confidence in women survivors. In a few instances, women interviewed expressed their appreciation for the support and "remarkable" responses of some female staff of institutions. Examples included a staff member of a DoWA interviewing a girl on her school campus to accommodate her needs and a female prosecutor visiting a survivor in the hospital to check on her health.

UNAMA noted that women's level of satisfaction was not solely linked to the gender of service providers. Women attributed equal importance to the expertise of, and trust in the case officers/mediators handling their cases, irrespective of their gender. For example, in six instances, the unprofessional behavior of female prosecutors and DoWA staff negatively affected the situation of the woman involved and included verbal abuse or poor management/follow-up. Although in 10 instances female complainants expressed having felt discomfort and shame at being interviewed by a man on such sensitive issues (nine instances involved male members of EVAW law institutions and one a *shura*), in the majority of instances, the presence of competent men did not appear to constitute a significant impediment for women to freely express themselves and report abuses.

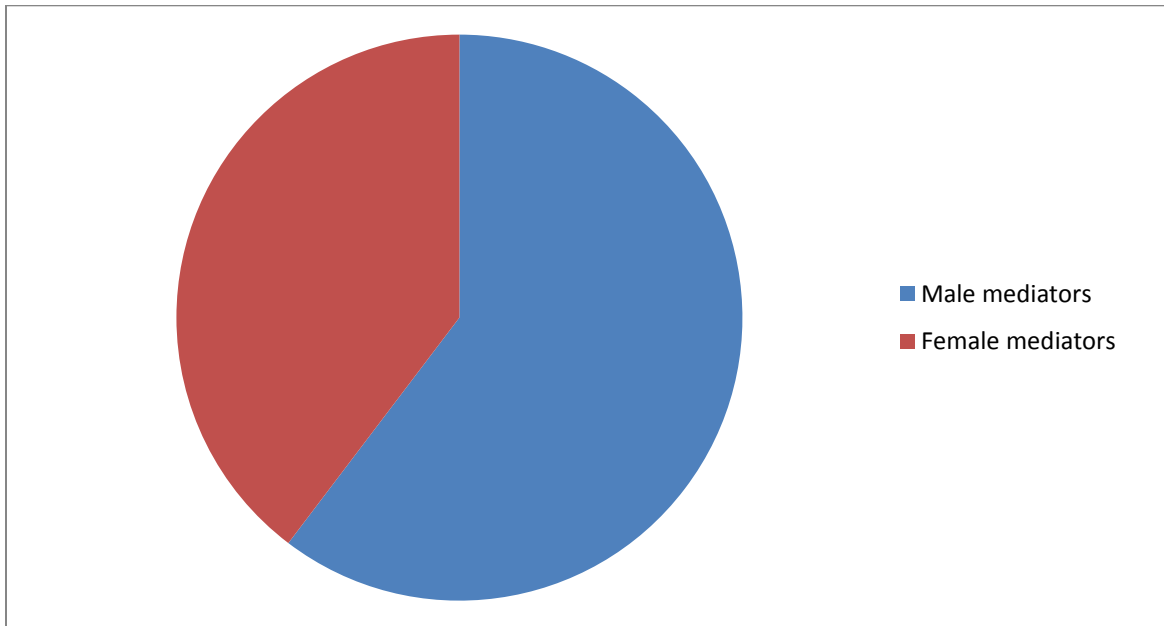
Women repeatedly highlighted their satisfaction with mediators who were well-known, trusted (e.g., a cousin), deemed competent (e.g., Ulema council) and acted with integrity, regardless of whether they were men or women. UNAMA recorded that 40 per cent of known⁶⁴ mediators

Rights; Articles 1 and 15 of the *Convention on the Elimination of All Forms of Discrimination against Women*; Articles 22 of *Afghan Constitution*.

⁶⁴UNAMA identified 73 male mediators and 48 female mediators. Information on the gender of an additional 26 mediators was unavailable.

were women, mostly employed in EVAW law institutions, such as the Ministry of Interior Family Response Units, DoWA and prosecutors. Mediation carried out by TDR appeared to remain a male domain, with a handful of exceptions (e.g., women *shuras*, female provincial council member).

Chart N. 4: Sex disaggregation of mediators



UNAMA findings indicate a need for the Government to combine increased recruitment of professional women into all EVAW law institutions with regular training of all staff of these institutions - men and women - to strengthen their institutional capacity to treat survivors of violence with professionalism, dignity, sensitivity and respect. UNAMA reiterates that ensuring personnel are professional and gender-sensitive is crucial to contribute to greater public confidence in such institutions and encourage reporting of incidents of violence perpetrated against women.

6.4 Women's Perspectives on the Outcome of their Cases

"I do not aim to separate or take divorce. I just wanted to solve my problem in a good manner. The only important reason is my children. If I get divorced, my children will have a bad future as my husband will get a second wife. I cannot put my children in this situation to be with a step mother."

S, age 25, from Badakhshan province, January 2015

"I am really happy the court decided for the imprisonment of my father (case of harassment under article 30.2 of EVAW law), but I am not happy the period of six months. I wanted my father executed by court."

F, age 19, from Faryab province, February 2015

Verdicts Obtained through Adjudication

UNAMA documented a mixed reaction by the 10 women whose cases were adjudicated by a court. Five expressed satisfaction about the outcome, including in three cases in which sentences of long and medium term imprisonment⁶⁵ were ordered. In five other instances, the women interviewed viewed the sentences ordered as too lenient (fines or short-term imprisonment). Two of the women survivors were of the view that capital punishment was the appropriate sentence in their case - although it was not legally applicable for the crimes they had suffered.

Several of the women who had opted for adjudication attached great importance to the arrest of the perpetrators. Women viewed failure by law enforcement and judicial authorities to enforce legal measures (e.g., arrest warrants) in a timely manner with disappointment as well as fear negatively impacting their trust in the criminal justice system. Many women interviewed raised the issue of rampant corruption, and alleged that officials of law enforcement agencies asked for bribes as a precondition to process complaints.

Decisions Resulting from Mediation

The majority of women interviewed whose cases were addressed through mediation indicated that the decisions reflected their wishes.

UNAMA documented instances where power dynamics negatively affected, directly or indirectly, a woman's ability to freely choose the terms of the mediation. Thirteen decisions were perceived by the women involved as directly imposed on them by either a family member or the mediator (six mediated by TDRs, six by EAW law institutions and one by an NGO). Also, factors such as the fear of losing custody of children and the prospect of poverty repeatedly emerged during interviews as indirectly influencing the decision of women to reunite with their spouses even if it meant remaining in abusive relationships.

Several women interviewed expressed skepticism over the enforcement of decisions agreed upon during mediation as these were not legally binding. They welcomed mediators' stipulation of decisions through written guarantee letters instead of oral engagements, and also expressed support for the deposit of copies of guarantees letters with EAW law institutions for record-keeping. However, this was done in a limited number of cases observed. As deterrence to further violence, several guarantee letters included specific provisions that the perpetrator would be referred for criminal prosecution should he or she commit a violent act against the victim in the future. Although follow-up mechanisms were rarely put in place, the presence of respected individuals (e.g., community elders) and the inclusion of witnesses' signatures in some agreements appeared to please female survivors as instruments to guarantee closer monitoring and potential enforcement of commitments.

Several women interviewed regarded justice rendered through court verdicts or mediation only as a partial solution of their cases which, they stated, needed to be accompanied by effective alternatives to staying in abusive relationships and to supporting their (re)integration into society. These included, for example, support to women's economic empowerment through employment opportunities, rehabilitation/self-reliance programmes, housing incentives, and awareness to eliminate stigma associated with women living alone.

⁶⁵ See articles 97-104 of *Afghan Penal Code* for sentences.

6.5 Compliance of Court Adjudication and Observed Mediation Practices with International Principles

With respect to applicable human rights standards and mediation principles UNAMA found strengths and gaps in current practices of mediation and adjudication of cases of violence against women in Afghanistan. In particular:

Legal basis of the process: Afghan laws implicitly allow mediation as an alternative to criminal justice for instances of violence against women, except for specified crimes required to be prosecuted through the judicial system.⁶⁶ UNAMA observed that four out of five recorded incidents of forced prostitution and the three acts of forced self-immolation or suicide were processed through criminal prosecutions, including three adjudicated⁶⁷ by tribunals established by Afghan laws.⁶⁸ As such, with one exception of a forced prostitution case, mediation efforts did not extend to crimes required to be prosecuted through the judicial system - in line with the existing legal framework.

Consent: UNAMA documented 11 instances in which the decision to enter mediation was imposed on female survivors, which is incompatible with the mediation principle of voluntary participation. No instance was reported of women being forced to lodge their complaints through the criminal justice system.

Equal and meaningful participation: UNAMA is concerned about proceedings that excluded the presence of the woman survivor, which occurred during six mediation sessions and six court hearings. Although findings seem to indicate that mediators overall offered equal opportunities to both sides to present and actively participate in the process, UNAMA observed a lack of consistent techniques to manage and continuously reassess significant power imbalances between survivors and perpetrators. For example, the option for mediators to conduct separate sessions was seldom used. UNAMA also noted large variances in the duration of the mediation process, spanning from one up to 10 sessions per case.

Safety and protection: The lack of monitoring and enforcement mechanisms attached to agreements stipulated through mediation is of particular concern. As most cases are resolved with the reunification of the woman survivor with the perpetrator, in an effort to preserve the family unit or social cohesion, risks that mediation may expose women to further violence and abuse (or threats of) cannot be underestimated. Ensuring the safety of the complainant during the mediation process and judicial proceedings, especially following its conclusion, requires due diligence by the mediating institution and possible collaboration with law enforcement authorities and social services. To UNAMA's knowledge, the only protection mechanism used during court adjudication was referral to shelters. In one case, a woman survivor expressed fear

⁶⁶ See footnote 6.

⁶⁷ Three cases remain under process with one withdrawn by the woman and one mediated.

⁶⁸ Regular monitoring of violence against women cases by UNAMA outside the scope of this field assessment indicates a general misunderstanding of which cases are to be mediated and which must undergo criminal prosecutions as mandated under the EAW law. Mediation rather than mandatory prosecution of specific crimes which violates Article 39 of EAW law was observed in Kandahar province from January 2014 to February 2015. UNAMA noted that the AIHRC office in Kandahar mediated 49 cases of crimes under article 21 of EAW law (forcing in to self-immolation or suicide). Similarly, the DoWA in Kandahar mediated eight cases of forced prostitution (Article 17 of EAW law).

for her children's safety and her own following her husband's release from a one-month imprisonment.

Impartiality: Women's accounts documented by UNAMA highlight how mediators rarely played an impartial role in assisting parties to reach a resolution that was mutually satisfactory. Instead, for the most part, mediators performed a more active part in the negotiation advocating at times for solutions proposed by perpetrators or defending survivors' interests as a way to address existing power imbalances among parties. The practice of selecting mediators with material and social interests in the outcome of the mediation could hinder their impartiality. Mirroring concerns over the criminal justice system, in 12 instances women told UNAMA that the public officials mediating did not appear impartial due to personal interests (e.g., alliances with perpetrators) or corruption. As a result, the women reported these officials exerted undue pressure, influencing the course of their case.

Expertise: The complexity and sensitivity of cases of violence against women requires case officers to be adequately trained to address women survivors and guide them through the process of attaining justice. The management of such processes entails specific skills that cannot be improvised. To UNAMA's knowledge, a number of training sessions on case intake and referral mechanisms for women survivors of violence have been carried out across Afghanistan, targeting law enforcement and judicial organs. NGOs managing shelters also train their staff on gender-sensitive mediations. However, efforts to build the capacity of service providers remain limited. According to the women interviewed, the conduct of case officers varied greatly, signaling the need to strengthen the expertise of staff of EAW law institutions in contact with female complainants.

Based on the women's experience, use of TDR to resolve issues of violence against women, with a lack of prior formal training on mediation and the absence of accountability mechanisms, could lead to widespread impunity for acts of violence against women and girls, and result in little or no justice.

Rights-based outcomes: UNAMA observation of verdicts handed down through the 10 court adjudications observed shows an uneven application of sanctions under the EAW law. Regarding agreements stipulated through mediation, concerns arose over the practice of oral agreements and the systematic absence of provisions mentioning individual and institutional responsibilities during the follow-up phase. In some cases, women did not voluntarily accept the decisions which were therefore imposed on women.

7. Key Challenges

7.1 Gaps in Existing Legal Framework

Any complaints of violence against women are primarily addressed through the EAW law which focuses on the imposition of criminal penalties without providing additional civil remedies to survivors of violence. UNAMA research indicated that although criminal prosecution provides remedy to a number of women suffering violence, it does not address and respond to women's need of support in a more holistic fashion.

Strengthening civil remedies at the disposal of women experiencing violence, such as the availability of restraint and protection orders, is imperative as it would enhance their legal

protection vis-à-vis the abuser. Such orders could for example guarantee the right to reside in the marital home providing the woman with a safe shelter within her home. Criminal sanctions should then be provided in the event the perpetrator breaches the terms of the order.

There is no clear provision in the current law which obliges the father to provide for maintenance of children while they are in the mother's custody, especially when she is not working. In the absence of support from the children's father, separated and divorced women are forced to depend on their family for support, which may put an extra burden on already-stretched resources. This also results in custody being given to the father as many mothers are unable to provide economically for their children. A divorced woman becomes a financial liability for her father or brothers who prefer to marry her off for a second time. In such situations, children from the first husband are systematically returned to him as it is difficult to find suitors for a divorced woman with children. It is worth noting that although a woman has a legitimate right to their father's property under Afghan law, as well as to their husband's property⁶⁹ if they are not divorced, very few women in reality get their share.

Fears of prosecution for "zina" severely limit women's right to freedom of movement and their right to exercise their choice to end an abusive marriage. Women trying to live alone after ending an abusive marriage also face the same risk. Continued prosecution of women and girls for "zina" or "attempted zina"⁷⁰ is in breach of international human rights standards and jurisprudence⁷¹ and constitutes another serious legal gap which forces women to tolerate abusive situations.

⁶⁹ Right to property regulated through the *Afghan Civil Code*: Article 2007 (2) "Wife - even though in the reversible divorce, if the husband dies during her time of waiting - or wives, if they do not have children or male children, even in lower degrees, shall be entitled to one fourth of the inheritance and if they have children or male children, even in lower degrees, they shall be entitled to one eighth of the inheritance"; Article 2008 "Daughters, subject to observation of provision of Article (2019) of this Law, shall be entitled to inheritance as follows:

1 – One daughter shall be entitled to half of the inheritance; two or more shall be entitled to two thirds.

2 – Daughters of son, if they do not have daughter or daughter of son, who is higher than her in degree, shall be entitled to the inheritance stated in the above Item. Daughters of son, one or more, in case of existence of daughter or daughter of son who are higher than her in degree, shall be entitled to one sixth of the inheritance.

Article 2009: "Full sisters, with observation of provision of Articles (2019 and 2020) of this Law, shall be entitled to inheritance as follows:

1 – One full sister receives half and two or more of them shall be entitled to two thirds of the inheritance.

2 – In case of non-existence of full sister, half-sisters from the father side shall be entitled to the shares mentioned in the previous Item and with the existence of one full sister; they shall be entitled to one sixth of the inheritance, whether there is one half-sister from the father side or more".

⁷⁰ Article 427(1) of the *Afghan Penal Code* states that "a person who commits adultery or pederasty shall be sentenced to long imprisonment." Article 29(1) states that "the initiation of a crime is starting of an act with the intention of committing felony or misdemeanor but whose effects have been stopped or offset by reasons beyond the control of the doer."

⁷¹ International human rights standards hold that adultery should not be classified as a criminal offence as this would represent a violation of the right to privacy of consenting adults, infringing article 17 of the *International Covenant on Civil and Political Rights* to which Afghanistan is a party. See also among others: CEDAW/C/YEM/CO/6 (CEDAW, 2009), Yemen; A/58/38(SUPP) (CEDAW, 2003), Congo; CCPR/C/SDN/CO/3 (HRC, 2007), Sudan.

7.2 Lack of Standardized Regulations for Mediation

As clearly indicated through UNAMA field monitoring, mediation was conducted by a wide range of actors who interpreted/performed their roles and responsibilities differently and applied legal guarantees protecting women differently. UNAMA documented extremely diverse methodologies, documentation practices⁷², outcomes and follow-up mechanisms in treating similar cases. As a result, the process of mediation was observed to be extremely arbitrary, with potential unfair treatment of a party. The lack of any standard procedure resulted in some violations of women's basic rights. As noted, in some cases, women were not allowed into the mediation sessions, were forced to mediate their case and to accept imposed decisions. This lack of participation and voluntary agreement is inconsistent with the fundamental character of the mediation process and is in violation of the women's rights.

Development of harmonized guidelines on mediation of cases of violence against women would promote compliance with human rights norms and standards. The terms of agreements reached through mediation should condemn violence against women and outline solutions which are fair, safe, voluntary, confidential, free from any form of intimidation and discrimination, and in full respect of the rights and dignity of parties involved. The establishment of a minimum duration for a mediation process (e.g., specifying a minimum number of sessions) could ensure that both parties fully understand the terms of the agreement and are not rushed into an imposed decision.

7.3 Uneven Training of Actors Mediating Cases

The reality observed in Afghanistan is that - despite training efforts undertaken by national and international stakeholders - a limited number of mediators have been trained who are well versed with issues of impartiality and able to manage the complexities of violence against women cases.

UNAMA noted that management of power imbalances during a negotiation process requires specialized expertise which cannot be improvised. A woman survivor's right to freely choose her options without undue pressure, intimidation or coercion should be assessed through repeated discussions with survivors, coupled with a close analysis of direct and indirect factors influencing their decisions. The provision of extensive information on the implications of different legal options and available protection mechanisms would be one safeguard to ensure that women are willingly taking part in adjudication or mediation processes.

UNAMA findings revealed mixed conduct on the part of mediators in individual cases. In some instances, mediators were observed to use patriarchal cultural norms and customs, and misinterpreted religion to subjugate women and further perpetuate violence against them, violating women's legal rights. In other cases mediators performed their role in full respect of the rights and dignity of both parties, especially women.

UNAMA highlights the importance of continuing to build the capacity of EAW law institutions in accordance with international norms and standards so as to develop an extensive pool of officers and mediators - both men and women - who are trained and certified by an appropriate authority.

⁷² There is no standardized form for such agreements across EAW law institutions or TDR.

7.4 Lack of Enforcement of Mediated Agreements and Decisions

Enforcement of provisions pursuant to the EVAW law remains weak whether rendered through mediation processes. Decisions made through mediation often entail guarantees from community or family elders to monitor agreements. However, there is no legal mechanism to hold the guarantor and the perpetrator accountable if the agreement is breached. Most of these agreements remain in the files of the mediating institution and are rarely officially registered, as no formal requirement to do so exists.

UNAMA found that EVAW law institutions which mediated cases often did not have adequate follow-up mechanisms to monitor the enforcement of agreements stipulated between parties. UNAMA documented how limited human and financial resources served as a barrier to proper follow-up.⁷³ The fragile security situation hindered authorities' access to remote or insecure areas of the country, limiting the ability to follow up individual cases. As a result, in most cases it was left to the parties to return to mediators in cases of dissatisfaction. The capacity of abused women to go back to mediators or report further violence was found to be limited due to recurring violence and fear.

7.5 Weaknesses of the Criminal Justice System

UNAMA findings indicated that women who opt for criminal prosecution of perpetrators remain a minority. Limited availability of judicial institutions and difficulties in processing their cases were obstacles discouraging women to pursue their complaints through judicial adjudication. As noted above, widespread concerns about the ineffectiveness of, and corruption in the justice system through adjudication, were a key reason for women to choose mediation.

The limited availability of legal aid across the country remains a key challenge hindering women's access to justice. Even in locations where such services are provided by governmental or non-governmental actors, women are not necessarily informed about these options due to a lack of education and/or access to information. Shelters continue to provide legal aid directly or link women survivors to legal aid organizations.

7.6 Impact of Cultural and Religious Attitudes on Women's Decisions

UNAMA observed that women's decisions in instances of violence were deeply affected by prevailing socio-cultural norms. They considered themselves responsible for keeping the family together and often believed that they should preserve the family at any cost. Taking family issues outside of the family is seen as inappropriate behavior and discourages women from talking about violence within the family. Since prevailing socio-cultural norms make women responsible for the family, any problem within the family is seen as a problem of the woman. Many women interviewed by UNAMA mentioned that their families discouraged them from reporting violence.

⁷³ For example, a DoWA reported to UNAMA that the only mode of contact with woman survivor was often by cellphone and in many cases, the phone numbers of women were switched off after final decisions were reached. Lack of phone credit was also cited as an obstacle. UNAMA meetings with MoWA head of legal department, 20 January 2015, Kabul, meeting with DoWA head of legal department, Pul-I Khumri, 10 December 2014, meeting with DoWA Kandahar, 21 February 2015, meeting with DoWA Herat, 20 January 2015.

Socio-cultural attitudes are also reflected in the way law enforcement agencies treat women reporting violence, often considering them responsible for their situation. UNAMA observed that investigations often focused on finding faults in women as opposed to men. Such attitude of law enforcement agents hindered cases of violence against women from receiving the required attention.

Misinterpretation of the role and rights of women within Afghan laws and Islam was also observed as widely prevalent, leading victims into believing that violence perpetrated against them was legitimate. For example, the common perception is that the father will always be granted custody of children although Afghan law provides for custody of boys up to seven years and of girls up to nine years to the mother⁷⁴. Many women interviewed said that they accepted violence due to their fear of losing custody of their children.

7.7 Economic Vulnerability

Many women interviewed during the study and through UNAMA regular monitoring work stated that they were willing to accept abusive behavior because abusers were often providers. In the absence of social security schemes in Afghanistan, and in light of women's low employment rates, women are generally dependent financially on their father, husband or brother. Raising complaints against such perpetrators of violence often means being cut off from their support, with serious consequences for the entire family.

When perpetrators are imprisoned, their economic dependents are faced with the tough reality of losing financial support provided by the perpetrator. Shelters are usually shorter-term options, and only in extreme cases. There is stigma attached to living in a shelter and reintegration into society for women who have lived in shelters is challenging. Economic vulnerability is combined with the constant threat of being stigmatized by society and of being charged with "zina" which also applies to those survivors who are employed and independent. As result, women are often bound to either take refuge in their parental home or to get married for a second time, if divorced.

8. Conclusion

Considerable progress has been observed in the legal protection of women in Afghanistan through the adoption and progressive implementation of specialized legislation for the protection of women survivors of violence. However, significant gaps remain to be addressed to enable women to access justice and legal remedies in accordance with international human rights standards.

Criminalization of acts of violence is a crucial step in the fight against impunity but needs to be accompanied by measures making the environment conducive for women to report violence against them, access effective remedy and, live a life of dignity and without fear.

UNAMA documented many cases of women voicing dissatisfaction with the legal vacuum which provides insufficient civil remedies and is failing to address pressing concerns over safety, right to custody, right of maintenance and right to property. Unless these concerns are duly and quickly addressed, women survivors of violence remain in extremely vulnerable positions, with few options available to escape from abusive situations. Weaknesses of the criminal justice

⁷⁴ See footnote 30.

system in ensuring accountability and protecting women from violence remained a key obstacle to survivors' access to justice.

Negative social attitudes and widespread misunderstanding of religion regarding the rights of women constitute additional obstacles for those who wish to report abusive situations and access justice. The UNAMA study confirms how responses to violence against women need to address its causes as well as its consequences in a holistic fashion. As such, measures to promote women's economic empowerment and reintegration into society are also key factors to be prioritized in the Government's response to violence against women.

The widespread use of mediation highlighted in this study signals that it is perceived as offering women survivors of violence an accessible, faster, cheaper and culturally acceptable solution to seeking justice and remedies.

However, these mediation processes raise human rights concerns, notably with regard to obtaining the free consent of the victim, fairness, independence and clarity as to who and how the process will be undertaken, and ensuring an appropriate outcome and follow-up of any decision voluntarily agreed to by the parties. UNAMA recommends that all institutions conducting mediation be regulated through a legal framework in line with human rights norms and standards and with appropriate oversight.

Given the high number of cases processed through mediation and the cultural emphasis on mediation, UNAMA reiterates that serious crimes of violence against women should as a matter of law, policy and practice always be prosecuted through courts and not mediated.

UNAMA calls on the Government to act on the recommendations in this report as part of its continuing efforts to support the Government in ending violence against women and girls.

ANNEX 1: Examples of Conditions Specified in Mediation Outcomes

Conditions on perpetrators	Conditions on survivors	Conditions on third parties
<ul style="list-style-type: none"> • Admission or repent • Demand of forgiveness • Pledge of non-repetition • Provision of a phone to the survivor to ask for support - should she face violence again • Pledge to stop using drugs • Non-separation of survivor from her children • Non-interference by family members in matrimonial issues • Relocation to a house which is not collocated with other family members (e.g., in-laws) • Pledge not to leave the home any more • Perpetrator's family to invite survivor's family for different events in order to strengthen ties • Provision for basic needs (food, clothes, living expenses) of survivor and her children • Provision to the survivor of the same quality food as her in-laws • Referral to hospital and payment of medical expenses should the survivor or her children fall sick • Provision of a warm house • Permission granted to the survivor to visit her relatives including in case of a death in the family • Permission granted to children to attend school • Permission granted to survivor to seek employment opportunities and exercise right to work • Provision of two plots of land to each 	<ul style="list-style-type: none"> • Delay of 2 or 3 months before seeking divorce • Survivor's family to invite each other for different events in order to strengthen ties • Request parents' permission before leaving the house • Give up right to claim her <i>Mahr</i> amounting to of 50,000 Afs (about 875 US\$) to obtain the divorce 	<ul style="list-style-type: none"> • Future husband with whom she ran away to pay 50,000 Afs (about 875 US\$) to survivor's brother (who is the perpetrator of violence opposing the marriage) • Future husband with whom she ran away to pay 320,000 Afs (about 6,000 US\$) as "<i>Shir Baha</i>⁷⁶" to the survivor's father

<p>of two sons of the survivor</p> <ul style="list-style-type: none"> • Payment of 14,000 Afs (about 245 US\$) as “<i>malamana</i>⁷⁵” directly to the survivor for forgiveness • Reimbursement by her family to the perpetrator’s family of expenses for the engagement party (50,000 Pakistani rupees, about 500 US\$) 		
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⁷⁶ Literally “mother’s milk”, it is an amount given to the bride’s family by the groom’s family as part of wedding traditions.

⁷⁵ According to local norms a person has to pay some amount as *Malamana* (*redress*) as part of acknowledging his/her fault in the specific case.