

Identifying the causes and solutions for Sexual harassment against Women in Afghanistan

Case Study



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Women and Children's Legal Research Foundation, 2015



Book description: Identifying the causes and solutions for Sexual harassment against women in Afghanistan
Publisher: Women and Children Legal Research Foundation (WCLRF)
Donor: Open Society of Afghanistan (OSA)
Year: 2015
Circulation: 1000 copies
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About WCLRF

The Women and Children Legal Research Foundation (WCLRF) was established in March 2002 in Kabul. It was created primarily to respond to the injustices caused by traditional and customary practices against women and children in Afghanistan. WCLRF's work is focused on several long-term objectives, addressing topics that are often considered sensitive in Afghan society, but which bear heavily on the health and welfare of women and girls.

The overall purpose of WCLRF's programming is to empower women and children to claim their legal human rights, particularly the rights to dignity, equality and justice. WCLRF strives to make the voices of women and children heard in all regions of the country, encouraging men to accept the challenge of making communities and homes safe for women and children. Our strategy is to mobilize communities to prevent violence and respect rights. WCLRF analyzes the causes of problems faced by women and

children by conducting evidence-based research and building advocacy programs that respond to our research findings.

In the communities where WCLRF works, awareness has been raised of the negative impacts of certain customary practices. Our advocacy work is bearing fruit. For instance, after our work on the extravagant costs of weddings and the resulting impact on family economies, in some villages, local authorities have imposed a maximum amount that can be spent on marriages. Our research found that the higher the price for a wedding, the higher the likelihood that there will be violence in the marriage. WCLRF works with communities and with local authorities – not against them. The outcome of our work is directed at improving communities as a whole, and not just individuals. WCLRF's activities currently cover a number of provinces, in addition to advocacy work carried out from Kabul.

Other Reports Published by WCLRF:

- Women's Access to Justice;
- Violence against Women;
- Wife Battering;
- Polygamy;
- Situation of Girl children in Afghanistan;
- Child Marriage;
- Women's Rights to Inheritance;
- Bad: A Painful Sedative in Afghanistan; Access to the Right of Identity Cards and Registration of Births in Afghanistan;
- Extravagant Expenditures on Weddings
- Study on the Impact of Proverbs Against Women in Afghanistan;
- Violence Against Women (report; and documentary film);
- A Look Into the Practice of Child Naming in Afghanistan;
- Waqeyat ("Reality") - Legal and research magazine published periodically;
- "Jurmana" – An advocacy film about reform of "Bad" in Afghan Society;
- A local song clip reflecting children's rights;
- "Bad" – A radio drama on this customary practice;
- Preventing Sexual Harassment Against Women and Girl in Afghanistan;
- Research report (physical violence Against Women in Afghanistan)
- Research report of seizing the vote (women political participation in Afghanistan);
- Advancing Women's and Girl's Right to Protection Under the ERAW Law;
- Women's access to inheritance strategy(Maher, inheritance and property);
- Women's Access to Inheritance Methodology In Islamic Countries ;
- Women's Access to Inheritance and Maher (Two two-minutes spots);
- Research methods in social science Manual;
- Gender Misgendering in national policy Manual;
- Women's Economic Empowerment Manual;
- Importance of Maher and inheritance for women's long term empowerment;
- Mullah Importance Nekah Registration in protecting women's in economical Law;

For more information please visit www.wclrf.org.af

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Common Abbreviations

AGO	Attorney General’s Office
AIHRC	Afghanistan Independent Human Rights Commission
ANDS	Afghanistan National Development Strategy
ANP	Afghan National Police
CEDAW	Convention on the Elimination of Discrimination against Women
CPVAW	Commission for the Prevention of Violence Against Women
DoWA	Department of Women’s Affairs
EVAW	Elimination of Violence Aga
inst Women	
FRU	Family Response Unit
MoJ	Ministry of Justice
MoI	Ministry of the Interior
MoLSAMD	Ministry of Labour, Social Affairs, Martyrs, and the Disabled
MoWAM	Ministry of Women’s Affairs
MP	Member of Parliament
NAPWA	National Action Plan for the Women of Afghanistan
OHCHR	Office of the High Commissioner for Human Rights
PCVAW	Provincial Commission for the Prevention of Violence against Women
UNAMA	United Nations Assistance Mission in Afghanistan
VAW	Violence against Women

1. Introduction

Sexual assault covers multiple forms of violence such as public sexual harassment, sexual violence, molestation, eve-teasing, marital rape, sexual exploitation, and rape. Harmful gender stereotypes are intrinsic to the commission of sexual assaults in Afghanistan. Sexual assaults occur when a society stereotypes men as individuals with uncontrollable urges and women as causing fitnah, temptations or public disorder. These stereotypes are harmful because they justify and naturalize sexual assaults as a common and inescapable aspect of life. Far from being ‘natural’, sexual assaults act as a form of control over women. In 2012, the Afghanistan Independent Human Rights Commission (AIHRC) published research identifying harmful gender stereotypes as a cause for victim blaming and highlighting the lack of investigation and prosecution of sexual assaults in Afghanistan. The AIHRC mapped out specific cultural and social attitudes about women that contributed to “institutionalized” and “regularized” violence. AIHRC referred to stereotypes that women painted as “imperfect and unfaithful creatures” and also attributed these stereotypes to the “linguistic aspects rampant in the forms of saying and proverbs in the Afghan society.”

The consequences of these stereotypes are far-reaching and serious. Also referred to as victim blaming, such stereotypes blame women for causing sexual harassment and sexual assault, for reasons ranging from how she is dressed to being ‘at the wrong place at the wrong time’. In Afghanistan, victim blaming is frequent because there are a large range of activities

deemed immoral, some of which, like running away from home, have incurred criminal liability on women. The occurrence of sexual assaults in a society is strongly correlated with the occurrence of sexual harassment. Unchallenged sexual harassment helps create an environment permissive of sexual assaults. WCLRF designed a project that is premised on the idea that in order to tackle sexual assault, we must tackle these gender stereotypes simultaneously as a legal method and as a religious undertaking by Muslims. This theory of change underpins this research, the action of which is to collect data on sexual harassment in Afghanistan, in order to have findings that inform the design of advocacy activities planned by WCRLF.

This report briefly describes the research objectives and methodology, before providing a situational analysis of sexual harassment and violence in Afghanistan that addresses the scope of the problem, the legal context (including domestic, international and customary or religious law), and responses and services available to victims. The findings are then presented in the form of short vignettes for each case study, two each from five provinces: Kandahar, Kabul, Kapisa, Nangarhar and Balkh. The case studies are followed by an analysis of key themes arising from the cases presented, and the report concludes with recommendations for policy-makers, service providers, duty bearers and others involved in the fight against gender-based harassment and violence.

2. Research Objectives

Evidence-based advocacy initiatives have a better chance of leading to change, as they can provide information, examples and facts used to argue against the status quo. WCLRC plans to use the research findings to inform the design of a training program and build capacity for responding to cases of sexual harassment, as a way of addressing one symptom of widespread sexual violence in Afghanistan. The findings of the research will also inform development of national policy on addressing sexual harassment currently underway, as well as help to develop and propose relevant provisions to the review process of Afghanistan's criminal law. To that end, this study had the following objectives:

- Identify common justifications used that legitimize sexual harassment;
- Identify social and cultural beliefs and opinions about women's roles and responsibilities that lead to such justifications;
- Document common trends in how sexual harassment occurs in Afghanistan;
- Document case studies of women's experiences with sexual harassment, their responses to it, and the impact it has on their lives (i.e. mobility, work, association, etc.);
- Document positive examples from Islamic texts and jurisprudential sources that can be used to condemn sexual harassment and violence in Afghan society.

3. Methodology

As a study concerned with documenting and interpreting human experience and behavior, a qualitative methodology was applied to this study. The case study approach is a useful qualitative method that solicits the rich data needed to build comprehensive studies of illustrative cases. Further, given the highly sensitive nature of the topic, the case study method can rely on a smaller number of research participants, recognizing

the difficulties in getting victims of sexual violence to share personal, and in many cases, traumatic experiences. This challenge is particularly acute in Afghanistan, where the conservative culture makes the topic especially taboo. Interviews and observation served as the main data collection methods, in addition to a review of secondary sources. Three methods and five categories of sources were used to triangulate the data and validate findings. Ten case studies from five provinces

constitute the research findings. For each case study, interviews were conducted, recorded and transcribed with the victim, service providing organizations working with her, and duty bearers such as police or DoWA officials. These three perspectives

were then used to describe the case. Cases were then analyzed using open coding to elicit recurring themes and patterns. For full details on the research methodology, please refer to Appendix A.

4. Scope of the Problem

Violence against women is pervasive across Afghanistan. Anecdotal evidence has long suggested that Afghan women experience violence routinely and systematically, and that many women die at the hands of their abusers, who tend most often to be members of their own families. Yet it is only in recent years that there is empirical data to support the anecdotal evidence. Over the past decade, the first ever studies of violence against women have been carried out in Afghanistan, alongside establishment of the first ever reporting systems. These changes have meant that we can finally begin to get a sense of the extent of this problem, more details of how gender-based abuses are manifested and their impact on women's lives. At the same time, longstanding taboos over the discussion of violence against women are being broken, with the Afghan media in particular taking up the issue by covering news stories of specific cases of violence against women, analyzing progress on the Elimination of Violence Against Women (EVAW) Law, or even interviewing survivors of violence anonymously, such as through the unique television program, "The Mask", which broadcasts on one of the commercial private TV channels.

Sexual violence, too, is increasingly in the spotlight. In August 2014, in the district of Paghman in Kabul province, a group of men and women returning from a wedding at the popular picnic stop were forcefully pulled over by a gang of eight men who tied up the men before raping the four women, one of whom was pregnant. The case was widely reported in the media and led to public outrage, including street protests demanding justice for the victims. Perhaps as a result of the public pressure, the then-president of Afghanistan, Hamid Karzai, stated the perpetrators would be executed for their crimes. While some international human rights group criticized Karzai's statement, made even before a trial had occurred, and condemned the five executions that followed in October 2014, most Afghans appeared to support the harsh response. Nevertheless, while the case illustrated a growing intolerance for sexual violence towards women, it also revealed an ambiguous legal stance towards rape, which will be discussed further on.

Several other cases received media attention domestically and internationally, and were even sensationalized. For example, a child

bride named Sahar Gul was rescued in 2011 from the cellar of her husband's family home, where she was held captive and tortured, reportedly for refusing the family's demands that she prostitute herself. Gul was found emaciated, with clumps of her hair pulled out, her fingers nails missing, pieces of skin torn off with pliers, with bite marks and signs of regular, severe beatings all over her body. Gul had also been subjected to sexual violence, wherein her father-in-law had inserted a hot iron in her vagina and ears. While her case was badly mishandled, with the perpetrators managing to have the charges thrown out and ending up released, Sahar Gul's case received widespread public sympathy, and brought increased attention to violence against women. An internet café in Kabul was named after her. After recovering in hospital, she now resides in a women's shelter in Kabul where she has been able to go to school and start to rebuild her life. While she endured unspeakable abuses, the outcome of Sahar Gul's case signals a shift in how violence against women is responded to in Afghan society, a shift that will be explored further on.

The stories of women and girls such as Sahar Gul represent what a great deal more women and girls endure, whose stories are not told. However, quantitative data collected through research undertaken in Afghanistan over the past decade provides some sense of the scope of violence. In 2005 the UN Special Rapporteur on Violence Against Women, Its Causes and Consequences, Dr. Yakin Ertürk, carried out a mission to Afghanistan and reported her findings in a report published in 2006 and submitted to the 62nd session of the Economic and Social Council's Commission on Human Rights. The report noted the pervasiveness and normalization

of violence against women, the systemic and institutionalized practices that sustain VAW, and the critical shortage of services for victims at that time. It further called for reliable statistics to begin to formulate responsive policies to the problem. More recently, the new UN Special Rapporteur on VAW, Rashida Manjoo, visited Afghanistan in November 2014, and noted the continued prevalence of VAW including sexual violence such as incest. She also singled out sexual harassment in the work place, and noted that, for women, "the formal justice system was deficient in many respects, including being inaccessible, unresponsive, corrupt, and untrustworthy, especially as regards matters related to women's rights" (UN, 2014).

The first significant examination of domestic violence in Afghanistan based on data collected from a cross-section of sources was undertaken by UNIFEM in 2006. The study was based on data collected by 17 organizations working throughout the country between January 1, 2003 and June 30, 2005, looking at 1,327 reported cases of violence against women from 818 respondents. This was perhaps the first statistical analysis of violence against women in Afghanistan using a significant sample size, though it represents only recorded cases, whereas the vast majority of violence goes unreported. The UNIFEM report helped initiate a move towards standardized and systematic recording of domestic violence cases, to facilitate the analysis and comparison of data collected over several years, and was followed later by two additional reports based on case reporting data.

In 2006, Global Rights carried out a survey of 4,700 households in 16 provinces, asking

women about their experiences of domestic violence. They found that an overwhelming majority of women in Afghanistan experience violence regularly, with 87.2% of respondents having experienced at least one form of violence (psychological, physical, psychological or forced marriage) and many having experienced multiple forms of violence. They found that 17.2% of women surveyed had experienced sexual violence in their homes, with broad variations by province, ranging from 43% in Kandahar to 2% in Nuristan, though it was also suspected that sexual violence was likely to be under-reported. Interestingly, many had also been abused by female members of the household, in most cases by their mother-in-law, alongside abuse from their husbands, challenging traditional notions of domestic violence as being perpetrated by males only.

In 2009, the UN Assistance Mission to Afghanistan (UNAMA) published the first of several reports on women's rights issues, titled "Silence is Violence: End Violence Against Women in Afghanistan", which focused on two forms of VAW: violence inhibiting the participation of women in public life; and, sexual violence in the context of rape, which they reported was an "everyday occurrence in all parts of the country" (2009, p.2). They highlighted the issue of "honour" and the role it plays in perpetuating sexual violence by putting shame on victims rather than perpetrators, and the conflating of zina, or sex outside of marriage, with rape, when zina calls for the punishment of female victims of rape. The report recommended clearly criminalizing rape. They also noted the prevalence of marital rape, which is common in marriage practices like forced marriage and early marriage that give women little agency

over the sexual and reproductive rights. Data analyzed found that most reported rapes were cases of under-age girls, many involved cases of incest or abuse by in-laws, forced prostitution was common, and rape seemed to be more prevalent in rural areas, but UNAMA pointed out that, "Most information on sexual violence and rape in particular, is anecdotal, incomplete and at times unreliable. There is a lack of official primary and comprehensive data on rape." (2009, p.22). The report was followed by another in 2010 that looked at harmful traditional practices against women, then in 2011, UNAMA published the first report assessing the implementation of the Elimination of Violence against Women (EVAW) law. Comparative progress reports on the EVAW Law's implementation were published by UNAMA again in 2012 and 2013.

This research occurred as Afghan government institutions were establishing reporting mechanisms for VAW. The Ministry of Women's Affairs (MoWA) and its provincial units, the Departments of Women's Affairs (DoWAs), receive referred and reported cases of violence against women. In 2004 and 2005, for example, 2,600 cases of violence against women were referred to MoWA. The Afghan Independent Human Rights Commission (AIHRC) has collected data on cases it has received since 2002 through its Women's Rights Department, as well as collecting data from the provincial Departments of Women's Affairs and from hospitals. The Commission then collates this data into its own system. What this data, as well as the findings of the research reports described above, indicate is that sexual violence is commonplace, under-reported, and impunity reigns, routinely denying justice to victims. What has been less

well understood is the link between sexual harassment and sexual violence.

There is remarkably little research on sexual harassment specifically; however, harassment of women is widely reported as prevalent in work places, schools and universities, and on the street. Some recent research efforts have attempted to begin documenting the nature and scope of sexual harassment in Afghanistan. The NGO, Women for Afghan Women, interviewed 241 women and 61 men who work in government ministries of Afghanistan, and found that many female respondents had experienced sexual harassment first-hand, that victims had no recourse to justice, and there were no policies or procedures in place for addressing harassment in the work place. Human Rights Watch documented systemic harassment of police women by male coworkers, as well as sexual violence including rape, molestation and coercion into prostitution (2013). Sexual violence is facilitated by the lack of safe facilities for women, such as separate toilets and change rooms. They found that women police officers are essential to helping protect women facing abuse and to responding to sexual violence cases, and when women police officers themselves are facing abuse at the work place, their capacity to assist other women is inhibited: “Female police officers are an absolutely crucial ingredient in the effort to enforce the EVAW law. In Afghanistan’s deeply gender-segregated society, many women, especially those from the most disadvantaged parts of society, refrain from reporting violence because they are hesitant to speak to male police officers” (2013). In 2014, Human Rights Watch called for the Afghan Government to take action against sexual harassment in Afghanistan, noting the lack

effective policies to prevent and punish sexual harassment: “Government institutions have made almost no effort to prohibit harassment and assist victims. Only one government agency, the Independent Directorate of Local Governance, has developed anything resembling an anti-sexual harassment policy” (2014). They specifically mention harassment in work places, the education system, and street harassment as endemic.

The feminist youth organization, Young Women for Change, has campaigned against street harassment, organizing protests in Kabul: “The organizers hoped the deluge of media coverage would ignite a public discussion of the problem of sexual harassment and encourage more young Afghans, including men, to join the nascent movement to make their country’s streets safe for women” (Moore, 2011). Young Women for Change and others have described a culture of harassment, where women walking on the street are commonly subjected to cat-calling, verbal abuse, groping and other forms of harassment, with the consequences that women’s freedom of mobility is reduced as women and their families seek to avoid such harassment.

In 2010, the Gender Studies Institute of Afghanistan, in partnership with the UNDP and UNESCO, published a study examining gender-based violence at three universities in Afghanistan, in Kabul, Balkh and Herat. Respondents reported experiencing harassment from both male students and faculty members, besides facing discrimination, nepotism and a lack of regulations to address harassment on campuses. There’s a reluctance to report sexual harassment, and a prevalent view that women invite it upon themselves

through their dress or behaviour, resulting in impunity for perpetrators. These studies have begun to paint a picture of how, where and why harassment of a sexual nature occurs

in Afghanistan, and provide some context to help better understand the relationship between harassment and violence.

5. Findings

“In my opinion every person and every organization play a role in ending this phenomenon in their families and environment.”¹

The case studies below provide illustrative examples of how sexual harassment is manifested, and how it is linked to more consequential forms of sexual violence. These are the cases of women and girls who reported incidences of harassment or sexual assault. Their cases are being processed within the justice system and they have received support, such as access to a shelter or legal assistance, therefore, their stories may not be reflective of experiences of sexual violence at large, which are more often unreported. However, they tell something of

the experiences of victims attempting to seek justice and what they face in the ‘system’. The case studies are from women and girls of diverse ages, both from rural and urban areas, educated and uneducated. In some cases their families were supportive, in other cases, their families blamed them. Perpetrators were family members, neighbors, cousins, fiancés, or strangers. All victims’ names are pseudonyms. There are two case studies below presented for each province of Balkh, Kabul, Kandahar, Nangarhar and Kapisa.

¹ Interview with Sayeed Abdul Wakeel, Advocate, Women for Afghan Women, 1393/4/18

Balkh Case Study 1

This case registered in Mazar-i-sharif involves a survivor named Friba who was engaged to a man in exchange for a bride price. During the engagement, the fiancée demanded that Friba engage in sexual intercourse, arguing that he had spent lots of money to buy her. He made unwanted sexual advances on her in his home, and when she refused the advances, he beat her. In response, Friba fled his home and came to

a police station. She now lives in a shelter, while her case is being pursued in court. A court originally sentenced her fiancé to jail time; however, he is appealing the verdict. This case is emblematic of what the service providing organization described as “men’s attitudes regarding women,” where they “think that they have bought women and are allowed to do whatever they want to them”.

Balkh Case Study 2

Nahid is a widow who fell into poverty after her husband died three years ago. She worked as a cleaner in people’s homes, but to make ends meet, also engaged her 13-year-old daughter to a 27-year-old man from Faryab province but would not allow the man to consummate the marriage. Instead, the fiancé pressured his mother-in-law Nahid for sex, in addition to attempting to rape her 13-year-old daughter, who had also been pulled out of school after the engagement. Both mother and daughter lay awake at night ready to defend themselves against rape. The fiancé told Nahid that if he continued to be refused sex by his fiancé, he would rape her. He then physically attacked and beat her. Neighbours heard the commotion and advised Nahid to go to the AIHRC office in her district for help. Nahid also approached local elders, who asked the fiancé on several occasions to

promise not to attack Nahid or her daughter, but this had no effect: “They told me I have to be patient and make no noise. They said you are poor and it is shameful that every day you make disputes.” The AIHRC and DoWA did intervene, and Nahid and her daughter were moved into a shelter run by an NGO. The AIHRC were able to get the engagement terminated. Nahid’s family members blame her for the situation, and have said there is now suspicion over the daughter because she lived in a house with a man she was unmarried to. Nahid and her daughter have left the community, and Nahid is now looking for a new job where she has relocated. Nahid continues to live in fear, saying, “I feel that he may find our address and rape me and my daughter, or kill us.”

Kabul: Case Study 1

Seema is 18. She is from Parwan but now lives in Kabul. She is married and has one child. From the time of her engagement to the man she is now married to, her husband's brother has sought to begin an affair with her. During her engagement, he bought her a cell phone, clothing and other gifts. Seema informed her husband, who defended his brother, denying that he had any ill intentions, saying he was just being friendly. Soon after she was married, her husband's brother, who lives in the same house, began making aggressive advances towards her. In the first incident, he came into her room, and demanded sexual favors: "Although he assured me that no one is going to be informed, I couldn't betray my husband and couldn't accept his demands. Then he beat me. At night when everybody came, I shared the incident with them, but no one accepted what I had told them." The harassment continued. The brother-in-law again entered Seema's room, demanding that she strip off her clothes. Other family

members were aware of the harassment Seema was experiencing, but did not intervene, or accused her of making up stories. Seema then used her cell phone to record the brother-in-law's advances, which she then played for her brother. Her brother played the recording for local elders; however, nothing was done as a result. As a last, desperate resort, Seema ran away from her husband's home, arriving at a police station, where she registered a formal complaint against her brother-in-law. The police introduced her to a shelter run by Women for Afghan Women, where she is now staying. She suffers from depression, headaches, and has attempted suicide. To date, no charges have been laid against her brother-in-law. She feels safe in the shelter, but is worried what will happen when she leaves. Her brother-in-law has stated his intention to kill her. She wants to divorce her husband, but fears losing custody of her child.

Kabul: Case Study 2

Hamida is 14-years-old. She attended school and is literate. She is from Kunduz but now lives in Kabul. She has a male cousin who was used as a bacha bazi, or sex slave, to a local commander named Faizullah, and four of his sons. One day this cousin asked her to come over to read the information on a medicine bottle for his mother, as they are both illiterate. Hamida was given permission by her mother and went to her cousin's home. There, she was drugged. She woke up in a

house she didn't recognize. That night, the commander and his four sons came into the room where she was being held. They tied her up, drugged her again, and when she woke up, she realized she had been gang raped. She was continuously raped over a period of six days. When she cried or shouted, her cousin told her she would be killed if she resisted. The commander told her that because of her beauty, they could not help their actions. She was also violently assaulted during and after the rapes. Meanwhile, her family had gone to

the police station to file a complaint. When the commander learned that her case had been reported to the police, he forcefully married Hamida to her cousin. The commander said that she had willingly run away from home. Hamida was hospitalized, but in the hospital she was accused of zina. She was then sent to prison. Her case went to court, where she was also accused of running away and zina. She appealed, and after six months, her lawyer managed to have her case transferred from Kunduz to a court in Kabul. She was also assisted by the police in Kunduz, who

introduced her to a women's NGO that runs a shelter. She has praised the police's handling of her case, but said it was the judiciary that turned her from a victim to a perpetrator. She was assigned a new lawyer, and given space in a women's shelter. Her case is presently being prosecuted. Hamida says she feels hopeless. She breaks into tears any time she tries to speak of the rapes. She cannot socialize with others, and has had suicidal thoughts. She wants her forced marriage to her cousin to be annulled, and she wants the commander and his sons to be punished.

Kandahar: Case Study 1

Malalay, who is 22-years-old, was sexually assaulted by her husband's brother. When she told her husband about the assault, he responded by beating and verbally attacking her, first accusing her of lying and then blaming her for the assault, saying her own behaviour caused it. It was not the first time Malalay was physically attacked by her husband, and both her husband and brother-in-law have repeatedly threatened her with death. Malalay informed her parents and her brothers about the assault, and she also brought her case forward to the local AIHRC office in Kandahar. She was able to access medical care after the sexual assault and

beating, as well as to file a formal complaint. Her brother-in-law had meanwhile fled, and is wanted by police. Malalay suffers from the psychological consequences of the attack, and fears for her reputation in a society where women's 'purity' is prized: "I'm now nothing and lost all of my value as an Afghan woman." She is physically and socially isolated, and feels her life has been ruined. While the AIHRC work on her case, she is not optimistic things will turn out for her. Her case is one of more than 100 cases registered with Kandahar's AIHRC office so far this year.

Kandahar: Case Study 2

Shaista is 22 and was engaged to her cousin. Her fiancé anally raped her during the engagement, causing severe muscle damage requiring medical attention. She reports that the rapes occurred more than ten times. Her fiancé told her not to tell anyone about the rape; however, Shaista reported the

attacks to her mother and to her aunt, her fiancé's mother. Her fiancé then annulled the engagement saying he had found another woman to marry. He said if Shaista reported his actions, he would post compromising photos he had taken of Shaista onto social media sites. Her cousin has denied his crimes,

and subsequently ran away. Meanwhile, Shaista, who is well educated, was forced by her family to withdraw from her university

studies as a result of the incident. Shaista says she remains mentally distressed, feeling she has lost everything.

Nangarhar: Case Study 1

Zarlasht is from a village in Nangarhar. Her aunt sought to marry her to her cousin, the aunt's son, Ferdows, in exchange for Ferdows' sister to be married to Zarlasht's brother. Zarlasht felt uncomfortable around her cousin, who often leered at her. Eventually a dispute arose and Zarlasht's brother's engagement to his cousin fell apart, to the rage of Ferdows' family. Zarlasht reports that to avenge her family over the dispute, her aunt and uncle waited until Zarlasht was at home alone one day and came over with food and beverages. An anesthetic drug in a Pepsi given to Zarlasht caused her to lose consciousness, during which time her cousin Ferdows raped her. "When I came round, I shouted and cried, no one was at home, but the rapist called my family after a few minutes," Zarlasht says, and her cousin declared that their family had taken their revenge against

Zarlasht's family. After learning of what had occurred, Zarlasht's brother took a gun and shot Ferdows five times, who survived, and was arrested along with his parents for their role in the rape. Zarlasht's family registered a complaint against the rapist with the local police, but still blames her for trusting her aunt and uncle, and allowing their entry into the family home while Zarlasht was alone. While Zarlasht does not feel she is any danger and has some confidence that the justice system will serve her in this case, she says her life will never be the same. She is withdrawn, and left Nangarhar to stay in Pakistan for some time, wanting to avoid people she knew. She avoids visiting friends and family, feeling ashamed over what happened to her. She says her family has lost position in its tribe, and her reputation is forever damaged.

Nangarhar: Case Study 2

Palwasha is a young girl from a poor family in Laghman province whose property was confiscated years ago by a neighbour who remains on their land. They live adjacent to their former land. Islam Bibi's home has no source of clean water, so she is sent to collect water from the neighboring property. In April 2014, Palwasha's mother Laila noticed that her daughter behaved strangely after returning from fetching water, where she had been for some time. Palwasha continuously

went to the toilet and her mother asked her what the matter was. The girl said she had some abdominal pain. After falling asleep, Palwasha woke up several times in pain, and her mother gave her some herbal medicine. In the morning, Laila noticed how disheveled her daughter appeared and saw blood spots and tears in her clothing. She implored her daughter to tell her what happened. Palwasha said, "I have a secret but never tell anyone because he has a pistol

and he will kill us,” before explaining that the neighbour, Farhad “forced me into his guest room and told me I will play with you.” He held his hand over her mouth and raped her, threatening to kill her if she told anyone. Laila explained, “When I saw the condition of my daughter, I ran to Farhad’s house and knocked at the gate. His father opened the door and I told him the story. He replied, Farhad has not come home since yesterday and don’t accuse my son.” Laila took her daughter to the hospital. Farhad’s father offered Laila money, urging her not to report the crime, and suggesting they solve it through the local elders. But Palwasha’s father, a worker in the local flour market,

nevertheless filed a complaint with the police in Jalalabad, in neighbouring Nangahar province. The police are investigating the complaint, and Laila feels the police were sympathetic to her daughter. They also referred her to Women for Afghan Women, who provided Palwasha money for her medical treatment and assigned her a lawyer. Palwasha continues to experience pain in her abdomen to the extent that she has trouble walking. She is withdrawn and avoids people, saying “I feel indecency even when I see my family members.” Laila believes that her daughter’s rapist took advantage of their family’s poverty, confident in his power over her daughter.

Kapisa: Case Study 1

Frishta is 20 years old and in the 11th grade. On her way to school she was regularly harassed by a local man, the son of her neighbour, who would follow her part of the way and verbally harass her. He managed to get her phone number and would call her too, harassing her. Her family warned her that there was some animosity between this man’s family and her uncle, and she should take care to avoid him. Frishta didn’t tell her family of the harassment because she was afraid they would stop her from going to school, though she did share the problem with a friend in confidence. After two months of this harassment, he caught Frishta alone during the lunch hour outside the village and raped her. She screamed for help as he violently assaulted her, but the area was too isolated for anyone to hear. Frishta went to the police station and reported the rape. The rapist was arrested. Frishta felt that the police treated her humanely and with empathy,

promising to capture her attacker. Her family discouraged her for seeking further assistance, but the police referred her to the Women for Afghan Women shelter. Frishta said she got some relief from the arrest of her rapist, but she harbours fears of being raped again, and contends with the reaction of her family: “I feel ashamed, because everybody blames me... women and girls are always blamed because they think women are the cause of fithnah [miseries]. In my case, they think I am guilty due to not informing them about the harassment. But they didn’t understand how important it is for me to go to school and study and to work for my people, especially for women.” WAW and other advocates are trying to help her reintegrate with her family, though her caseworker said other individuals have interfered, trying to force her home to her parents before she’s ready and where she may be at risk.

Kapisa: Case Study 2

Kamila is 29-years-old. In the spring of 2014 on a Friday afternoon she was returning home by foot when a car pulled over. The man behind the wheel offered her a lift home. Kamila got in the vehicle and the man headed towards her village, however just before arriving, he turned in the opposite direction down another road. He took Kamila into an abandoned house in an isolated area. Kamila yelled, but there was no one close by to hear her. The man raped her in the house. When Kamila returned home, she told her family of the rape. Her family insisted that they find the man and compel him to marry Kamila to restore honor. The man was located, but refused the marriage proposal, denying he

had committed the rape, and saying he had a wife and children. After the refusal, Kamila's family reported the incident to the police, filing a formal complaint. The case remains under investigation and the man has not been arrested. The local AIHRC office appointed an advocate to Kamila. Kamila's family blamed her for the rape, and Kamila also felt judged by police officers she dealt with, who made suggestions that her behavior and clothing caused her to be attacked. She feels everyone around her lacks sympathy and sees her as responsible for the rape. She has attempted suicide several times, and believes she will never be able to trust any man again.

6. Analysis of Cases

In our society the people, especially women, always blame women instead of men. When I am harassed, they usually say: “You are a widow”, or “It might be your fault” or “You caused it happen” or “A wife has one husband and a widow has several husbands”.²

6.1 Unsafe Anywhere

The cases described above show that sexual violence is pervasive, occurring in homes, schools, work places, and on the street. Women are not safe anywhere, despite a popular belief among many that women are vulnerable to sexual violence only if they leave their homes, work outside, or otherwise engage in public life. While many of the cases involved economically vulnerable women who had to work outside the home out of necessity and faced sexual harassment and assault from unrelated men, most of the women were victimized in their own homes by people they know. Because perpetrators are so often known to victims, often being a fiance or relative for example, there is enormous pressure on victims to not disclose the abuse or to withdraw complaints. In most of the cases, a complaint occurred after repeated incidents. Victims rarely register complaints for first time offences. They file a complaint, usually at the urging of those supporting them such as the AIHRC, only after their situation has become desperate. While it was commonplace for victims to be accused as having brought sexual attacks on themselves by being engaged in activity outside the household, such as Frishta who

was attacked on her way to school, it is in fact women’s very isolation that often makes them vulnerable to sexual violence, when they are economically and socially dependent on people who prey against them. Women’s isolation also denies them access to support networks, information, or protection, making it less likely they will report sexual violence. When women’s worlds consist entirely of the family home and it is in the family home where they are experiencing abuse, there is nowhere to turn for help.

At the same time, women who are economically vulnerable are often at greater risk. They may be more likely to engage in risky behavior, such as being in situations where they are exposed to dangerous people, as in Kamila who accepted a ride to her village from a stranger or Palwasha who had to go to a neighbor’s compound to collect clean water. In particular, widows are extremely vulnerable, often pressured into marriages out of economic desperation, where they may be subject to sexual violence. Uneducated women have less access to information that could protect them or help them access justice after being the victim of sexual violence.

² Nahid, VAW survivor, July 7, 2014

6.2 Shame and Honour

A major obstacle to access to justice for the victims described above is the preeminence placed on female purity as the barometer of family honor. In most cases, concerns over the dishonor brought to a family as a result of a rape take precedence over concern for the best interests of the victim. In some cases this is so extreme that a victim is compelled to marry her rapist rather than live with the shame of sexual impropriety, and in many cases victims' lives are at risk from their own family members in the aftermath of a rape. Shelters perform a life-saving role to this end, in protecting victims from threats from their own family members, as well as perpetrators.

The notion of honor through the bodies of women and girls also makes them vulnerable to rape as a weapon of revenge. With so much weight placed on the importance of brides being virgins and of women not engaging in extramarital sex, the rape of a woman from a family one seeks to avenge represents an opportunity to inflict maximum consequence, with women becoming pawns in rivalries and conflicts between families. Raped women become UN marriageable and sources of shame for their families; thus the stakes are high: victims contend with the physical and emotional trauma of surviving sexual violence, but face irrevocably shattered futures. This was demonstrated in the case of Zarlisht in Nangarhar, whose cousin's family actively orchestrated her rape as revenge against her brother, knowing it would be a devastating punishment to the victim's entire family.

Some of the cases also demonstrate how new technologies in Afghanistan intersect with the shame and honor culture. Harassment increasingly involves unwanted phone calls via cell phones; or women are shamed for texting or talking to men by phone. In the case of Shaista in Kandahar, her attacker threatened to post compromising photos of her on social media sites if she reported the attack. Thus while growing access to mobile and internet technology have the potential to reduce women's isolation and to give Afghans greater exposure to the world outside, these tools have also been used to control and objectify victims of sexual harassment and assault.

The deep sense of shame that comes from experiencing sexual violence is apparent in the after-effects in all of the cases described. Victims withdraw from their social worlds and live under a cloud of shame, as in the case of Palwasha who described her constant sense of indecency around her family members. Many describe struggling with anxiety, fear, depression, loneliness, hopelessness and suicidal thoughts. In addition to this, many victims also lose their freedom of mobility and association in the aftermath of an assault, when families no longer permit them to go out. The shame and honor codes ingrained in Afghan culture and carried upon the shoulders of women and girls amplify the already devastating impacts on individuals of sexual violence.

6.3 Navigating Taboos

A particular challenge in undertaking this research is the taboo nature of discussions of anything of a sexual matter, and most especially, of abusive sexual behavior. These taboos are closely tied to the shame and honor culture discussed above, and the opaqueness that surrounds talk of sexuality plays into the hands of sexual predators, who can count on a high likelihood of impunity for their actions. Efforts to seek justice for victims of sexual violence are hampered by the habit of conflating consensual sex with rape. Sex outside of marriage, zina, is an accusation as dangerous to a rape victim as it is to a woman who engaged in consensual intercourse with someone she is not married to. The gravity of zina as a religious crime and its inherent assumption that women are responsible for protecting their own ‘purity’ detracts from the deeply violating action of rape in favor of focusing on the immorality of extramarital sex writ large. It means that blame is shared between the rapist and his victim, or in many cases, blame falls entirely on the victim. The conflating of rape with zina is also the source of the abominable tradition of forcing or pressuring rape victims to marry their rapists, as a means of cleansing the rape victim by placing her within a ‘legitimate’ sexual partnership. This was the case for Kamila of Kapisa province, whose family sought to

marry her to her rapist, who was unknown to his victim prior to the rape. Similarly, perpetrators use promises of marriage to pressure women into sex, to legitimize the actions.

The cloaked nature of topics of sexuality also leads to confusion in terminology. Afghans, even those working in service providing organizations or in advocacy roles for victims of sexual violence, use terms such as ‘sexual assault’ and ‘harassment’ interchangeably. Many terms other than ‘rape’ are used for the action of rape, making it difficult to discern whether an incident was in fact forced or consensual. This is compounded by the fact that very often, the perpetrator is someone known to the victim. Further, it’s possible that some victims may downplay a violation, calling a sexual assault, sexual harassment, because of fears of being accused of committing zina or not wanting it to be known that an unmarried girl’s virginity was compromised. The language available for labeling different acts of sexual violence is murky and limited in the context of Afghanistan, as is eliciting information from a victim about what she experienced when conversations about such taboo issues are often extremely difficult for people to openly discuss.

6.4 Getting Help

The cases discussed here are set apart in that they include victims who are seeking justice through formal channels, and the cases tell something of their experience to this end. The cases illuminate a changing paradigm of justice. In the very recent past victims had little recourse to justice of any kind, formal or informal, and perpetrators of sexual violence could expect impunity. This is still visible in many of the cases described above where attackers clearly had little expectation of being arrested or otherwise brought to justice. Yet in several of the cases, investigations were in fact being pursued against perpetrators. Many of the women reported reasonably positive experiences dealing with police, though this may be because the cases are taken from provinces where there are shelters that have established cooperative relationships with local police departments and undertaken some sensitization efforts. Nevertheless, there are encouraging signs that there are at least rudimentary functioning referral systems in place at the point of contact between police and victims coming forward. Further, in most of the cases below, independent service providers such as women's NGOs that run shelters report improved services from police, and at least some collaboration between police stations, DoWAs, AIHRC, prosecutors and shelters. In many of the cases, police have treated sexual violence as a crime, even if not all investigations result in arrests, and few in prosecutions. NGOs report good collaborative practices from the DoWA in particular, which often refers

women to their shelter and other services. At the same time, they say that there is need for greater capacity among local police and attorneys, and a need to attract younger, progressively minded individuals to work in government departments that deal with VAW cases.

What many of the cases also illustrate is the failure of traditional justice mechanisms to satisfactorily resolve cases in favor of protecting women. Several victims reported first going through local elders or councils for resolution, always to no effect. This finding reflects what others have found in the relative ineffectiveness of mediation from a women's rights perspective. The Afghan Ministry of Women's Affairs raised their concerns at a conference in September 2014 to develop guidelines for mediation practices that existing mediation mechanisms have not been effective in criminal cases that involve physical violence, murder or sexual assault. In their press release for the conference UNAMA noted, "Traditional mediation approaches stem from existing practices and are considered to be acceptable within religious and cultural frameworks. However, mediation is typically conducted by various entities without any standards, guidelines or training, factors that raise concerns regarding women being unfairly treated in the process" (UNAMA, 2014). While the landscape of access to justice and support services has changed drastically over the past decade, parallel justice systems exist, and they do not serve women and girls equally.

7. Legal Context

In Afghanistan, violence against women is prohibited by both domestic and international law, though the domestic legal framework has some problematic provisions particularly with regard to rape. No laws specifically prohibit

sexual violence. The section that follows describes the legal framework with regards to sexual violence from the perspectives of international, domestic, and religious and customary laws.

7.1 International Law

Afghanistan is a signatory to numerous pieces of international law which oblige it to protect women from discrimination and violence, including the Universal Declaration of Human Rights, the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights (which prohibits forced marriage for instance), and the Convention on the Elimination of All Forms of Discrimination Against Women, the latter of which was ratified by the Government of Afghanistan without reservation in 2003. As signatories to these treaties, the Government of Afghanistan is responsible and indeed obliged to prohibit any customary, religious and cultural practices that violate the provisions set out to protect women's human rights.

Violence against women is a violation of the fundamental rights of victims and a human rights concern for which the state is accountable. The United Nation's definition of torture applies to violence against women

including domestic violence³. Nevertheless, there is a dangerous tendency to relegate domestic abuse to the private realm, as a matter to be dealt with within the family unit; and one for which the state is not responsible for preventing, investigating, or seeking justice on behalf of victims. International human rights law calls for due diligence on the part of states, obliging states to prevent, investigate and punish acts of violence against women. Specifically, Article 4(c) of the Declaration on the Elimination of Violence Against Women⁴ requires states to "exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons." This clearly established legal obligation makes states responsible for protecting women against abuse. Due diligence requires that the Government take proactive measures to prevent violence, protect victims and to prosecute perpetrators. This means taking

3 The UN Convention Against Torture defines torture as, "an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person," for a purpose such as obtaining information or a confession, punishment, intimidation, coercion, "or for any reason based on discrimination of any kind."

4 See for instance, United Nations Declaration on the Elimination of Violence Against Women (1993), and other conventions such as the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, and the Convention of the Elimination of All Forms of Discrimination Against Women.

concrete actions such as constructing and supporting safe houses, equipping the public health system to effectively respond to

domestic violence patients, training police officers to investigate cases of domestic abuse and to treat victims with sensitivity.

7.2 Domestic Law

Afghanistan's de jure legal system is presently using the criminal code of 1976, positive law based on Afghanistan's legal system in place prior to the 1978 communist coup. In 2004, Afghanistan welcomed a new Constitution drafted by a Constitutional Commission of representatives from both shari'a and secular legal traditions, based on extensive nation-wide consultations with male and female citizens, and voted in through a Constitutional Loya Jirga. From a women's rights perspective, of particular significance is Article 22 of the Afghan Constitution, which guarantees equality between women and men. Legal decisions for which no provision in the Constitution or other standing laws can be found turn to the school of Hanafi jurisprudence in Sunni Islamic law (shari'a). Indeed, shari'a's influence can be found throughout Afghan law. A new criminal procedure code was recently passed, to comply with the Constitution, Islamic law, international legal standards, and to remedy conflicts with other national legislation.

However, there remain procedural challenges in how the criminal code is used to address VAW. While domestic violence is considered a crime under Afghan law⁵, in practice, police and courts routinely defer to Article 53 of the penal code⁶ to determine whether a wife's disobedience was the cause of an instance of

abuse, in which case it is not considered to constitute a crime. Rape and other forms of sexual violence are also considered a crime under the criminal code⁷; however, the concept of rape within marriage is generally not recognized by the courts, and rarely reported by victims. This is due to many factors, including those that characterize the experience of rape in general: the social stigma, the threat of bringing "shame" to the family for reporting rape, and of being alienated from one's family and relatives.

Looking at civil law, a major weakness of Afghan law is a difference in minimum marriage age between males (18) and females (16), as well as weak protection against forced marriages, given the evidence suggesting that abuse is more likely to take place in forced and child marriages. There is little enforcement of the laws that are in place limiting forced and under-age marriages due to the lack of marriage and birth registrations. Other problems in criminal law included no specific mention of gender-based violence, the requirement that victims must register a complaint, and no penalties for authorities who fail in their legal obligations to protect women and girls from abuse. However,

many of these problems were addressed, at least on paper, when the Law on the

5 See for instance Afghan Penal Code, Chapter 5, Book II, Section 2 on beating and laceration and murder in Chapters 1-2.

6 Article 53 states that "Commitment of a criminal act with good will for the purpose of exercising a right, which is granted to a person by the way of religious or other laws, shall not be considered a crime."

7 Articles 427 and 428, Afghan Penal Code.

Elimination of Violence against Women (EVAW Law) was enacted by presidential decree in 2009.

The EVAW Law is considered landmark legislation and was named by UNAMA (2011) as “the most important legal step taken so far by the Government to criminalize acts of violence against women and bring perpetrators to justice”. It addresses weaknesses in the criminal code by explicitly criminalizing acts of violence against women including rape, domestic violence, child marriage, forced marriage, the exchange of women in blood feuds and other disputes (‘baad’), among numerous other specifically cited acts of violence against women (VAW). The EVAW Law was first drafted in . The law was approved by President Karzai based on a legislative decree in 2009, after which the law was enacted (though it technically remains pending parliamentary approval). The EVAW Law is one development intended to meet priority areas of action identified in Afghan Government policy, such as the National Action Plan for the Women of Afghanistan, -2018 (NAPWA), the gender equality commitments outlined in the Afghanistan National Development Strategy (ANDS), and the provision for non-discrimination on the basis of gender found in the Constitution of Afghanistan (2004). It also serves to meet obligations under international law to which Afghanistan is a signatory, including the Convention on the Elimination of Discrimination against Women (CEDAW), discussed above.

While the EVAW Law is widely known of, and some individuals have begun to enact various duties in upholding this law, this enactment has been uneven and varies significantly across different state

institutions. Institutions with clearly defined mandates to protect women from violence and to bring perpetrators to justice are failing because they have poorly prepared their employees to meet their obligations in enforcing the Law, and there have been minimal consequences for these institutional failures. Though the Law has been in effect since 2009, awareness of the specific provisions of the EVAW Law, including among those responsible for enforcing it, remains low. Administrative, policy and accountability procedures necessary to properly integrate the implementation of the EVAW Law’s provisions have not been systematically introduced, and the result is that women and girls who have faced violence are not getting justice. A report conducted by UNAMA and OHCHR based on data collected in 2010 and 2011, found that “the Government’s implementation of the law, in particular by police and prosecutors, was limited and that much greater efforts were needed to improve enforcement” and “comprehensive official statistics on the number of complaints of violence against women in Afghanistan are not available and most incidents are unreported”. They found that cases were opened for only 26% of reported VAW incidents, indictments were filed in only 7% of cases, and the EVAW law was used as the basis of judgment in only 4% of cases. Prosecution of cases under the Penal Code instead of the EVAW Law often led to the acquittal of accused perpetrators. Customary law and tribal “justice” remained often relied-upon means of ‘resolving’ VAW cases, and rarely serve the interest of female victims. A research paper published by WCLRF (2013) also found critical challenges in implementation. In surveying enforcement authorities, members of

provincial EVAW commissions, and victims of VAW, WCLRF found a mixed track record in the implementation of the Law in the five provinces covered by the study. For instance, nearly half of respondents were unaware of what specific instances of VAW the EVAW Law is applicable in, such as rape cases. Overall, there is a pointed lack of consistency in efforts to familiarize officials with the law's provisions. For example, only 38% of those tasked with enforcement duties were aware of any official protocol, policy or procedures document for responding to VAW cases at their place of work. There is also little consistency in what information is collected across different institutions. Even basic information, such as the name of the victim, was found to be recorded by only 65% of respondents. Only 7% of respondents could produce an intake form used to document VAW cases, and it appeared that no intake form was in use at police stations, courts, prosecutors' offices or AGOs, the main organizations charged with the legal enforcement of the EVAW Law. Only 27% of judges and 30% of court employees indicated that data on VAW was ever compiled or tabulated. One of the most alarming findings in

WCLRF's research (2013) was in the attitudes towards rape found among a high percentage of respondents: one third of those tasked with enforcement of the EVAW Law view a female victim of rape or sexual assault as being at least partially at fault. Further, the overall experience for female victims of coming to court presents little to encourage victims to proceed with lodging a complaint leading to criminal charges. There is no protection for victims, no explanation of court procedures offered, no private waiting areas for witnesses and no privacy or confidentiality for victims or other witnesses. To date, training programs for Afghan healthcare personnel to professionally respond to patients suffering the physical health consequences of gender-based violence are almost non-existent, and have not been seen as a priority within the health sector, nor in the justice sector. Despite these challenges, both the UNAMA reports on EVAW Law's implementation and WCLRF's study found that there is incremental progress with enforcement, albeit unevenly. Yet there is still a need for extensive legal reform through multiple channels to better protect women and girls from sexual violence.

7.3 Religious and Customary Law

Despite progress in legal reform, such as the passing of the EVAW Law, for many women and girls customary law remains the de facto legal system of more immediate bearing. Throughout Afghanistan's long series of conflicts over the past thirty years, the legal system and the reach of any central government in general gradually eroded to the point of being non-existent in many areas. This environment has been slow to change as the legacy of war and instability has left in place strengthened local mechanisms of conflict resolution. It is this informal legal system, in most cases, that largely regulates how domestic abuse is addressed and to which options women have recourse.

Afghan customary law is diverse in its form and procedure, varying from province to province. However, it commonly fails to treat domestic abuse as a crime; and in many cases compounds the injustice by turning victims into criminals. For example, if a woman has been raped, she may be judged for the "crime" of zina, or sexual intercourse outside of marriage. The primary institutions of Afghanistan's informal justice systems are generally the jirga or maraca for Pashtuns and its approximate equivalent for non-Pashtun ethnic groups, the shura, local tribal institutions tasked with resolving disputes. Decisions made by a jirga or shura are usually based on a combination of local tradition, tribal codes (for example, as derived from the Pashtunwali), diverse interpretations of shari'a law (typically not based on any written code), and personal authority and

opinion. Shura members are usually powerful, influential elders from the community, and are usually exclusively male. Some communities have female counterpart shuras, but decisions made by female shuras are often treated as token contributions and do not carry the same weight as the "real" shura.

Domestic violence and other family-related disputes are usually first addressed through the extended family network before being referred to tribal or informal justice institutions, and as a last resort, to the state. Customary law has filled the void of a functioning justice system for a prolonged period and has in some cases been found to be effective in securing reconciliation among disputing parties, imparting forgiveness and identifying compromise arrangements in disputes (Wardak, 2004). It is; however, extremely problematic in its relationship to condoning and perpetuating VAW. A punishment sometimes applied in murder cases is the marriage of a girl or woman from the offending family to the victim's male relative, a practice known as bad. In addition to meting out punishments that make women vulnerable to hostile marriages often leading to sexual violence (Erturk, 2006), customary law generally does not contain protective provisions for victims of VAW.

In Afghanistan, with severe consequence, Islamic perspectives on domestic violence which emphasize equality between the sexes and the protections afforded to women⁸ by Islamic tenets have been silenced

⁸ See for instance, Qur'anic verses 4:19-21 condemning forced marriage and requiring the return of dowry for abandoned wives; 24:2 on the punishment for those making false charges against women; and 65:6 calling for joint decision-making between husbands and wives.

to a great extent, or ignored. Yet, the Qu’ran contains numerous verses implying that domestic abuse is unacceptable. Further, as many scholars of Islamic law point out, Islamic tradition and shari’a are derived from a multitude of sources. Reliance on this diversity of sources is what will give laws and traditions based in Islam their legitimacy, and gives law-makers exposure to a variety of different interpretations to draw upon.

These sources include the Qu’ran, the Sunnah, the Hadith, Fiqh (jurisprudence) and madahib (schools of law), and various interpretations of shari’a (Islamic law). Many activists for women’s rights in Afghanistan rely on the strategy of making reference to protections to women’s rights and to their bodily integrity offered by the Qur’ran, the Hadiths and progressive interpretations of Islamic tradition to argue against VAW.

8. Response and Services

Available to Victims

For the first time in Afghan history, data on VAW cases is being collected through government (police, MoWA and AIHRC), NGO, and multilateral (UN Women) agencies. Services for abused women have been introduced, such as women’s shelters, legal aid, trauma counselling and Family Response Units (FRUs) in some police stations. There has been a modest but incremental increase in uptake by duty-bearers (such as police and court officials). These changes can be summed up as responsive – they provide support for survivors after the violence has occurred. In terms of preventative efforts, approaches utilized in Afghanistan to date have focused on ‘awareness raising’ through methods such as workshops, engaging national media, public service announcements (such as on radio or posters), and publishing Islam-based arguments against VAW. These efforts have no doubt had some impact on some audiences. However, while the most recent Survey of

the Afghan People (TAF, 2013) found that 90% of Afghans agree that “everyone should have equal rights under the law, regardless of gender,” it also found that 36% say women should not be allowed to work outside the home; only 62% disagree with the practices of baad (giving a daughter to another party as penalty or payment) and badal (the exchange of daughters between families for marriage); and only 21% of women say they know of a place where women can take their problems to be resolved. There is thus still some way to go in challenging attitudes and opinions that condone VAW.

However, when it comes to sexual violence in particular, there remains a dearth of services available to victims. There is little specialized knowledge in treating either the physical or emotional needs of survivors of sexual violence, poor sensitization among duty bearers such as healthcare providers or the judiciary, and even hostility and accusations of immorality towards victims.

Below follows a brief description of existing responsive services, including police and justice, shelters, legal assistance, counseling

and psycho-social services, medical services, and referral systems.

8.1 Law Enforcement

While police stations were often hostile and hindering to victims of VAW rather than helpful, even sometimes reportedly unleashing further abuse on victims in their custody including rape, some NGOs are reporting a growing sensitivity and professionalism among Afghan police in some parts of the country when encountering cases of VAW. This is more likely to be the case when service providing organizations, such as those managing shelters, develop and nurture relationships with police stations, to facilitate referrals and supportive services for victims, such as connecting victims to legal assistance or access to a safe house. Family Response Units (FRUs) have been established over the past decade, currently numbering 33 units. The FRUs are staffed by female officers, located in a private, separate area from the main police station, and deal primarily with VAW cases. The capacity and professionalism of the FRUs varies significantly by location and level of assistance received. In general, there is no capacity for forensic investigation of sexual violence cases, such as the collection of evidence through rape kits, or analysis of evidence in forensic labs.

Despite the progress represented in the establishment of the FRUs, the role of police is limited without more female police officers in all departments and at all levels, and appropriate facilities for women police, as found by Human Rights Watch (2013). Currently, less than 2% of the police force is made up of women (as of 2012 there were 1,690 female police officers, an increase from 1,215 in 2007). The UNDP and the European Union's Police Mission in Afghanistan are working with the Ministry of the Interior to recruit more female police, and provide training in crime scene analysis for female officers who handle domestic violence cases (Moetsabi, 2014). There is also great need for improved consistency in the handling of VAW cases. UNAMA's reports assessing the implementation of the EVAW Law (2011; 2012; and 2013) and WCLRF's research (2013) found wide ranging practices in terms of which laws are used to prosecute VAW cases, inconsistent information and knowledge among duty bearers of the EVAW Law, and few prosecutions using the EVAW Law or other relevant law. In particular, there have been almost no prosecutions of rape victims.

8.2 Shelters and Safe Houses

Since the end of the Taliban regime, the first women's shelters, in Afghanistan typically called Women's Protection Centres, began to open in Afghanistan, first in the capital, and then gradually, in the provinces as well. There were 24 known women's shelters active in the country at the time of writing. The establishment of shelters is a major turning point in addressing violence against women, and can often make the difference between life and death for women fleeing violence. This is a welcome development; however, more shelters are needed since over half the country's provinces have no shelters yet and it is usually difficult for victims to travel far to seek protection. Further, more capacity development is needed to professionalize the management of some women protection centers, including specialized knowledge and practices for dealing with survivors of sexual violence. According to one observer, "they must be able to treat the women cliental in a trauma sensitive manner."⁹ In particular, it has also been recommended that women protections centers staff receive special training in maintaining the confidentiality of WOC's residents, to reduce social stigma and victims' re-traumatization, at a time when there is increased interest from the

national and international media in VAW in Afghanistan.

Further, a great deal of sensitization is needed among the general public, the media, police, and among politicians and government officials in light of the backlash that has occasionally arisen in response to the arrival of women's shelters . WPCs are still a new phenomenon in Afghanistan and face misunderstanding, even from influential decision-makers who see them as threatening to the institution of the family, rather than as life-saving institutions for women. Afghan women's organizations have more recently managed to forge a more collaborative relationship with MoWA, including enacting regulations for the management of WPCs, shelters in Afghanistan are generally poorly equipped to handle sexual violence cases. Staff lack protocols and the specialized training necessary to treat the physical and emotional consequences endured by survivors of rape and other forms of sexual violence. There is no capacity for forensic investigation, no standards for carrying out interviews with victims, and wide variation in practices of cooperation and referral between agencies, whether governmental or non-governmental.

9 Pers. Correspondence, leader of a service providing organization working with VAW survivors, Feb. 17, 2013.

8.3 Legal Aid and Assistance

Supporting survivors of sexual violence often requires legal intervention. There may be criminal prosecution for any of the forms of violence cited in the EVAW Law, which requires the gathering of evidence, witness statements, and may require testimony from the victim. Women who have experienced violence at the hands of their husbands may need to seek a divorce, child custody, maintenance, and other rights they are entitled to under family law. These are daunting steps, particularly for women who may have little awareness of what rights they are entitled to, who are uneducated, and who are typically suffering from post-traumatic stress disorder, have no access to funds to pay for legal representation, and who may be isolated and unable to easily access information and resources.

Afghanistan also has competing and sometimes conflicting forms of law, and the law is generally not systematically applied. Judges may refer to codified criminal or civil law in making rulings, but they sometimes also refer to sharia law, or to customary norms rooted in tribal traditions that are not codified (and should therefore not be applicable). There are wide-ranging interpretations of sharia law, and judges as well as others in decision-making positions often fail to properly justify their sharia-based decisions with reference to written texts, or to consult the full range of relevant fiqh texts. Further, judges relying on uncodified customary norms rather than law

often go unchallenged. This makes it critically important for advocates working to defend women from violence to protect women from arbitrary, biased and faulty legal rulings, and to insist that codified law is used to protect women, and to seek justice for victims of violence.

Not only do many perpetrators of VAW enjoy impunity, but victims have also been punished. For example, girls or women who have run away from violence are sometimes arrested for having fled their families or husbands, rather than offered protection. Women who have been raped have been imprisoned for ‘zina’, sexual relations outside of marriage. Some women have been urged or even forced to marry their rapists.¹⁰

In the last decade, several civil society organizations began to provide legal assistance services to Afghan women. The INGO, Global Rights, has provided technical support to the establishment of Legal Advice Bureaus at the courts, “where lawyers will assist clients with finding and completing the appropriate forms to register their cases, provide basic advice on simple family law matters, and, if necessary, refer them to attorneys willing to provide pro bono legal assistance,” per the organization’s website. They also support women to assert their rights in basic family court cases involving issues such as forced marriage, domestic violence, and child custody by providing

¹⁰ For example, in 2011, the story of a woman named Gulnaz was widely reported in the media. She was raped by her cousin’s husband, impregnated, and then sentenced to 12 years in prison by the courts. Gulnaz was given the option to marry her rapist, in lieu of her sentence. The prosecutor’s office has reported “hundreds” of such cases. <http://www.cnn.com/2011/11/22/world/asia/afghanistan-rape>

legal services through their Family Law Clinical Training Program. Medica Afghanistan is a women's organization based in Kabul that provides legal consultation for women, having supported over 8,000 women to date. In Medica's drop-in centres, "lawyers advise women and girls on issues of civil law such as divorce and custody cases, and they also prepare the representation in court. Together with social workers, they also mediate in order to try and settle the matters out of court." Their lawyers have provided counseling and legal

defense from the moment a woman is taken into custody, until the final court decision. Women for Afghan Women is another example of an organization providing legal services, including "counseling, mediation, and legal services for women and girls who are victims of gross violations of their rights, including domestic violence, sexual and mental violence, forced and underage marriage, being exchanged as compensation for a crime (the custom 'baad'), honor killings, and being denied education," per their website.

8.4 Counseling and Psycho-social Services

Psychosocial care is defined as follows:

Psychosocial care ... entails a range of psychological and social services that support individuals and communities in need of mental health services. This includes any intervention from supporting a person in need of counseling to teaching specific skills to finding employment. In the general field of psychology this may entail stabilizing a person in crisis, offering counseling, connecting someone with family members, educating and giving information on specific psychological or neurologically based personal reactions, explaining behaviours of specific groups of people and sharing information on different forms of psychological help. Social interventions are supports that help people deal with the social part of their lives. These include any service that helps connect people as families, communities, neighbourhoods and other groups
(Manneschmidt & Griese, 2009, p. 43).

The last decade has seen the growth of counseling and other psychosocial services offered by non-governmental organizations to women who have experienced violence. Mental health services for VAW survivors are often integrated with other services for women facing abuse, such as access to shelters and to legal assistance, when offered by NGOs experienced in handling VAW. Medica Afghanistan also provides psychosocial and trauma counseling for Afghan women (including group counseling), and trains Afghan professionals in providing these services. Counseling is available at most of the women's shelters operating in Afghanistan, but the quality has not been professionally evaluated vis-a-vis the National Strategy. There are counseling services in the women's centers operated by the NGO, Afghan Women's Resource Centre, in Kabul, Jalalabad and Laghman. UN Women supports Women's Protection Centers and Family Guidance Centers that are run by NGOs offering counseling programs for women. In addition, UN

Women supports the EVAW commissions and women's resource centers in several provinces, facilitating access to information and follow-up in VAW cases.

Other organizations offer more general mental health services for women. Health net TPO delivers a mental health program integrated within the existing health framework to help reduce stigmatism of mental health issues, a program that has started in five provinces and is focused on serving women and children. The International Medical Corps has opened several clinics in the Shomali plains region offering counseling and other services. In Herat, the International Assistance Mission manages a mental health hospital, which was founded in response to the particularly high rate of suicide among women by self-immolation in the western region. In Kabul, there is a long established center known as Marastoon, operated by the Afghan Red Crescent Society, established to house residents suffering from mental illness, though the quality and professionalism of care there has been questioned by some observers.

Counseling services provided by women's organizations as well as some mainstream organizations (such as CARE and Health net TPO) include those that attempt to mediate within families in response to conflicts that are leading to abuse, and to give families tools to resolve conflicts non-violently, as well as counseling that seeks to treat the mental health impacts on individuals who have survived gender-based violence. Mental health impacts typically include symptoms of anxiety, post-traumatic stress disorder (PTSD), and depression; and to a lesser extent, self-mutilation. Suicide and

suicide attempts are also common among women, as a response to abuse situations. The Government of Afghanistan has moved towards the integration of mental health care into the Basic Package of Health Services (BPHS) and the Essential Package of Health Services (EPHS), which is considered progressive for Afghanistan's sociocultural climate (Ventevogel et al, 2012). An initial National Mental Health Strategy through 2014 was established by the MoPH in 2009, with the expectation that this should be used as a benchmark for monitoring and evaluation of the different programs implemented by NGOs. However, the Mental Health Department of the MoPH suffers from low technical capacity and minimal financial resources, and coverage of mental health services remains low (Sayed, 2011), particularly in terms of capacity to address the consequences of surviving sexual violence. There are limited services available from governmental institutions for addressing the mental health needs of women in general, and no known specialized programs for supporting women survivors of VAW. Overall, there are reportedly only 42 psychologists and psychiatrists in the entire country. The government runs 11 mental health counseling facilities, none of which have any formal linkage to the MoPH's Mental Health department, community contact, after-care services, or services for children or adolescents (Sayed, 2011). The MoPH manages the Kabul Psychiatric Hospital, which includes inpatient services for men and women, and a drug treatment centre called the Jangalak Substance Misuse Centre. The hospital, long notorious for its dilapidated and unhygienic state, has only 60 beds; while experts say at least a 300-bed facility is needed in the capital

alone, according to an assessment by the International Medical Corps (2011), which is working to build the capacity of the facility. The MoPH currently operates a mental health training program with funding from the European Union and Caritas, with plans underway to expand it to four hospitals in the north, and the mental health program integrated within BPHS and EPHS includes mental health training to all CHWs working in BHUs with funding from the World Bank

and the European Commission. However, there is currently no dedicated university department or program to train mental health personnel. International Medical Corps announced in February 2011 its plans to work with the Ministries of Higher Education and Public Health “to improve advanced psychiatric education at medical universities in Afghanistan,” though progress in this program is not known (IMC website).

8.5 Medical and Health Services

Besides the mental health consequences of sexual violence and other forms of VAW, there are often serious physical health impacts on women, ranging from bruising and scratches, to fatal injuries. The World Health Organization (1997) lists the following physical health impacts of VAW on women:

- Homicide
- Serious injury ranging from bruises, fractures to chronic disabilities
- Injuries during pregnancy
- Injuries to children
- Unwanted and early pregnancy
- Sexually transmitted diseases (STDs)
- Vulnerability to disease

Sexual violence also often leads to specific forms of serious injuries that can sometimes be fatal such as gynecological problems, abdominal pain, fibromyalgia, gastrointestinal disorders, limited mobility and poor overall health. The WHO notes that “health workers who provide care to survivors of sexual assault often lack training in sexual violence and forensic evidence

collection.” This is currently the case in Afghanistan, where healthcare workers in hospitals and clinics are often insensitive to the needs of VAW victims, and lack forensic evidence collection capacity, to support the prosecution of VAW perpetrators. Concerns over insensitivity to victims’ needs have been voiced by those working in addressing VAW, and there are calls for gender and trauma sensitivity training for doctors in particular.¹¹ To date, training programs for Afghan healthcare personnel to professionally respond to patients suffering the physical health consequences of gender-based violence are almost non-existent, and have not been seen as a priority within the health sector, nor in the justice sector. One exception is the Herat Burn Hospital, the only facility in Afghanistan that specializes in treating burn victims, who are most often women. Women self-immolate, as a desperate escape from violent families or forced marriages, and they are also sometimes set on fire by abusive husbands or relatives, to make their deaths look like accidents. For other serious injuries resulting from violence, women typically must seek treatment outside of

¹¹ Pers. Correspondence, leader of a service providing organization working with VAW survivors, Feb. 17, 2013.

Afghanistan, though few women have the means for this unless assisted by a women's organization specializing in assisting VAW victims, such as Women for Afghan Women. Fortunately, in late 2014 the World Health Organization (WHO), with support from UN Women, supported the Afghan MoPH

to develop a GBV treatment protocol (UN Women, 2014). Yet the larger challenge is the lack of reporting by victims, an issue tied to the justice sector and the risks that women face when reporting sexual or domestic violence.¹²

8.6 Referral System

Women or girls who wish to report rape or other forms of violence or seek assistance have various points of first contact, from where they are referred to relevant agencies to meet their needs. Women often come to provincial AIHRC offices, as well as to DOWA offices in the districts, to the police, hospitals, or to an independent NGO. Some agencies have well organized, systematically applied referral systems in place, and work to maintain their relationships with other agencies, cooperating to the extent possible. The Herat Burn Hospital for instance usually offers to refer patients to lawyers, such as to secure a divorce from an abusive husband. Medica Afghanistan has a medical care referral service for their clients. However, in most governmental organizations, and across all major organizations addressing VAW, there is no centralized referral system, and women rarely have access to all of the available forms of assistance they may need due to a lack of cooperation, of information sharing practices, and minimal collaboration among the respective agencies. UNAMA (2011) has called for the "creation of a subcommittee of the High Commission

dedicated to assuring victims are supported with services, protection and legal assistance, as per the EVAW law's article 16." There is also a lack of referral systems and networks focused on transitioning women survivors of violence, such as providing access to livelihoods support, food assistance, or educational opportunities for women in shelters who wish to eventually live independently.

WCLRF's 2013 study on the implementation of the EVAW Law found lackadaisical commitment to enforcement within official agencies is the lack of consistent data collection and record keeping processes in place. Only half of respondents involved in enforcement kept any written records of VAW cases they processed. This prevents systematic data collection of reported VAW cases that would greatly aid in analyzing patterns of violence, victims' needs, response efforts, and changes year to year. Better data management will ultimately allow for the measurement of progress, or regress, and is thus an important tool for reducing VAW. At the provincial EVAW commissions in four

¹² For example, under prevalent interpretations of Sharia law, the burden of proof for rape falls upon a rape victim, who must produce four male witnesses of the incident or a confession from the rapist. Very often, women who report rape have been arrested as criminals, accused of adultery, and sentenced to long jail terms or pressured to marry their rapists. Rape victims are also at risk of honour killings at the hands of their own family members.

provinces, it was found that there is little standardization among the practices and procedures in the provincial commissions, in all respects: in whether they had any formal terms of reference or other guidelines for their work, referral systems, the management of cases and case data, and monitoring. Members of the same commission often had vastly differing understandings of the work of their commission. Almost all members have received training; however, trainings were delivered by a range of different organizations, on different topics, many unrelated to EVAW. Thus, while training is occurring, it is not standardized, nor always relevant. There was little consistency in what victims had been told by officials about their rights and options (such as access to legal assistance, to a shelter, and their right

to file a criminal complaint). WCLRF found among the VAW victims they surveyed that cases were first registered with a variety of different organizations, indicating a strong need for monitoring for consistency and quality performance in processing cases that are being handled by vastly different institutions, from local courts to AIHRC offices. Most cases were brought into the formal justice system only after victims had first sought assistance from relatives or local elders and in approximately half of cases, local elders or tribal council members had been involved in some capacity in the women's cases, to little or no effect (and in two cases, local elders urged women to withdraw their formal complaints).

9. Conclusions and Recommendations

Afghanistan remains one of the most dangerous places in the world to be born a female. Every day, women throughout the country are beaten, raped, molested, sold, starved, and denied their most basic rights. It is a human rights crisis of epic proportions that demands urgent attention and action both from within Afghanistan and outside it. At the same time, amidst innumerable stories of suffering and injustice, there is a light shining on these tragedies that is changing women's prospects for justice, even if on a modest scale to begin with. A legal framework undergoing gradual reform, media coverage of violence against women,

the establishment of reporting and data collection systems on violence cases, and an active civil society mobilizing to advocate for women are dramatic changes of the post-Taliban era that are transforming women's access to justice.

The case studies analyzed in this report are diverse but exhibit several important patterns. One is that women are vulnerable to violence anywhere. Whether women are segregated and sequestered away at home, or whether they work outside the home or study, they risk being victims of violence. Women experience harassment and abuse from strangers and

known persons alike, often from the very people expected to protect and care for women. However, the isolation women often live with disserves them by erecting further barriers to support and access to justice, amplifying the scope and scale of violence against women. Secondly, a major obstacle to access to justice for the victims whose stories are included here is the preeminence placed on notions of shame and honour that are embodied in the sexuality of women. Concerns over the dishonour brought to a family as a result of a rape take precedence over concern for the best interests of the victim, make women vulnerable to rape as a tool of revenge, oblige women to marry their rapists, and leave victims with an enduring sense of shame and indecency in the aftermath of sexual violence. Thirdly, sexuality remains extremely taboo in Afghanistan and this works against the need for open and frank discussions and robust actions that address the crisis of sexual violence facing Afghan women and girls. Finally, a positive finding is that some victims have been able to access

at least some avenues of justice by going to the police, staying in a shelter, securing legal representation, and having the DoWA or AIHRC advocate on their behalf. However, these formal avenues coexist with informal avenues that largely fail to uphold the best interests of female victims of sexual violence. Continued legal reforms, eroding taboos, expanding services and support, and holding perpetrators to account will help to reverse the crisis of sexual violence and enable women and girls to realize their long awaited and well deserved rights.

The following recommendations are derived from the findings of this case study research, and are aimed at policy-makers, service providers, duty bearers and others involved in the fight against gender-based harassment and violence. They are intended to be actionable and of immediate relevance to the VAW situation in Afghanistan as it now stands, and also echo recommendations that came out of WCLRF's research on the implementation of the EVAW Law (2013).

9.1 Recommendations to the Attorney General's Office, Ministry of Justice and Ministry of the Interior:

- Issue a formal memo to all prosecutors' offices and to all criminal investigation units of all police departments, introducing the EVAW Law, and highlighting relevant provisions for those institutions, making clear the requirements for criminal investigation of VAW, and instances where mediation is prohibited. Copies of the law should be available in all police departments, courts, and prosecutors' offices, and re-distributed annually.
- Integrate EVAW enforcement duties into job descriptions, official policies, and performance measurement mechanisms in all institutions that have enforcement responsibilities, including the courts, prosecutor's offices, and police departments.
- Require that all judges, prosecutors, and all heads of police departments attend an orientation session over the EVAW Law, and in turn, are required to brief their

officers on the relevant provisions of the EVAW Law. Training should include familiarization with specific terms related to sexual crimes, to help duty bearers better distinguish between crimes such as sexual harassment and sexual assault and rape, and between forced and consensual sex.

- Undertake a systematized monitoring system (and training in such) whether through the provincial EVAW commissions or the DoWAs to evaluate the professionalism and accountability of law enforcement and judicial institutions to address violence against women, and in particular rape, and apply disciplinary measures against those who ignore provisions of the EVAW Law.
- Increase the recruitment of female police officers, and continue to expand the Family Response Units (FRUs) at police stations in the provinces, providing appropriate training to officers staffing these units.
- Prohibit the resolution of any serious VAW cases in tribal courts or other by other traditional, customary legal mechanisms, such as shuras, per the requirements of the EVAW Law.
- The current review of the criminal code underway should define specific types of sexual assault and fully integrate the EVAW Law provisions into the new criminal code.

9.2 Recommendations to the Ministry of Women’s Affairs and to the High Commission for the Prevention of Violence against Women

- MoWA should consult all training programs for Commission members or others involved in EVAW enforcement focused on VAW or on the EVAW Law developed to date, and develop a standard introductory training on EVAW, for delivery to those tasked with enforcement. This training should focus on communicating criteria for when mediation is appropriate, and when it is not, and should make clear that the EVAW Law provides for the criminal prosecution of a victim’s family member.
- Per UNAMA’s recommendation, “develop terms of reference for the provincial Commissions on Prevention of Violence against Women, including for their members, and guidelines for their registration and follow up of cases of violence against women.” These terms of reference should include a glossary of terms related to sexual crimes, to help duty bearers better distinguish between crimes such as sexual harassment and sexual assault and rape.

- Monitor enforcement agencies to check for the presence of written records of VAW cases, even those sent for mediation rather than investigation or prosecution, and should verify the completeness, accuracy, and quality of data collection in such records.

9.3 Recommendations to the Ministry of Public Health

- Provide training in sexual violence and forensic evidence collection to nurses and doctors in public hospitals and clinics.
- Undertake awareness raising of different forms of sexual violence and ensure representations of the public health sector know that sexual violence is criminalized under Afghan law. Ensure copies of the EVAW law, and a memo outlining the provisions relevant to healthcare workers, are distributed to all public hospitals and clinics, and include a glossary of terminology related to sexual violence and its health impacts.
- Better integrate the health sector into referral networks. Invest in significant capacity development of the health sector to properly and sensitively treat victims of VAW, preserving evidence, demonstrating compassion and empathy, and referring victims to all forms of assistance available (legal representation, shelters, and otherwise).

9.4 Recommendations to the Ministry of Higher Education

- Expand mental health and psychiatric services available to all Afghans, which will have a positive impact on efforts to end VAW, as well as specialized training in psychosocial assistance to female survivors of sexual violence. Establish dedicated psychiatry departments at Afghanistan's medical schools, and include robust community outreach programs and applied learning opportunities, to train mental health professionals.
- Combating sexual harassment must be a part of National Unity government's, especially education organizations' strategy, and the content of sexual harassment must be added to ministry of higher education and ministry of education's curriculum.

9.5 Recommendations to Women's Organizations and Civil Society

- Continue to reach out to mullahs and imams to espouse and spread messages condemning sexual violence, and to educate clerics and local elders on the difference between consensual and forced sex, making reference to relevant

religious passages. Engagement with religious leaders should focus on ending the ‘blame-the-victim’ culture that is pervasive among many mullahs and imams, many of whom view women as being at fault when they are sexually assaulted.

- Robust public education efforts should be carried out on the subject of sexual violence, and should work to counter the myth that women bring rape upon themselves. Such efforts should refer to the EVAW Law’s provisions criminalizing all forms of sexual violence, should highlight the negative impacts of sexual violence on individuals, families, and communities, and should clearly distinguish between consensual sex and rape, introducing terminology where possible.
- Work with members of parliament to propose amendments to the EVAW Law that will designate as a separate offence crimes committed in the name of “honor”, with more severe sentencing, clearly define rape as distinctive from zina, and specify the rights of girls and women who run away from home, to the protection of the law and the option to not return home. Most importantly, allow for police or prosecutors to file complaints against perpetrators of VAW, rather than having complaints only filed by victims or their relatives.
- Conducting a comprehensive research in all over Afghanistan about sexual harassment and identifying the basic factors and justifications.
- All shelters must have psychotherapy centers in order to help victims regain their mental health. In the meanwhile, a part of anti-harassment regulation must be dedicated for mental health and the service provider organizations must be responsible for fulfilling that.

9.6 Recommendations to Donor Countries to Afghanistan and Assistance Agencies

- Fund more women’s shelters, and commit to long-term funding strategies for all existing and new shelters.
- Support legal aid and other legal assistance services that help VAW victim’s access justice, including the strengthening of the public legal aid system.
- Provide long-term technical assistance for the High Commission for Prevention of Violence against Women, to the provincial EVAW commissions, to provincial prosecution offices and to criminal courts.

- Fund an expansion of police sensitization programs, drawing on lessons learned from existing efforts to proactively engage police departments and secure their cooperation in referral systems.
- The implementation area of projects must be expanded from the current number one provinces to all over Afghanistan; because they constitute a mass number of population and sexual harassment mostly take place in those provinces.

9.7 Recommendations to the ministries of Haj and Awqaf & Information and Culture

- The ministry of Haj and Awqaf has to ask all preachers of Mosques through a written formal letter to preach about sexual harassment.
- The ministry of Information and Culture must design and produce long-term cultural programs through mass media.

References

Gender Studies Institute, Kabul University (2010). *Gender-Based Violence: A Study of Three Universities in Afghanistan*. Kabul: Gender Studies Institute with the UNDP and UNESCO.

Human Rights Watch (2013). *Afghanistan: Urgent Need for Safe Facilities for Female Police*. Retrieved from: <http://www.hrw.org/news/2013/04/25/afghanistan-urgent-need-safe-facilities-female-police>

Moetsi, T. (2014). *Afghan police force recruits women to fight crime and stigma*. Kabul: UNDP. Retrieved from <http://www.undp.org/content/undp/en/home/ourwork/womenempowerment/successstories/afghan-women-join-police-force/>

Moore, U. (2011). *Demanding Dignity on Kabul's Streets, Afghan Women March Against Sexual Harassment*. UN Dispatch. Retrieved from <http://www.undispatch.com/demanding-dignity-on-kabuls-streets-afghan-women-march-against-sexual-harassment/#sthash.I6wCy7cw.dpuf>

Oates, L. (). *Living With Violence: A national report on Domestic Abuse in Afghanistan*. Washington, DC: Global Rights.

UNAMA (2014). *At UN-backed gathering, experts aim to improve response to cases of violence against women*. Retrieved from <http://unama.unmissions.org/default.aspx?tabid=12254&ctl=details&mid=15756&itemid=38331&language=en-us>

UNIFEM (2006). *Uncounted and Discounted: A secondary Data Research Project on Violence Against Women in Afghanistan*. New York: UNIFEM.

UN News Centre (2014). *Afghanistan: UN expert calls for sustainable measures to address violence against women*. Retrieved 12/01/14 from: <http://www.un.org/apps/news/story.asp?NewsID=49328#.VH0rooej4vA>

UN Women (2014). *Gender-based Violence Treatment Protocol for Healthcare Providers in Afghanistan*. Kabul: UN Women, with the World Health Organization (WHO), and Ministry of Public Health of the Government of Afghanistan.

APPENDIX A: Full Methodology

Methodological Approach

As a study concerned with documenting and interpreting human experience and behavior, a qualitative methodology was applied to this study. The case study approach is a useful qualitative method that solicits the rich data needed to build comprehensive studies of illustrative cases. Further, given the highly sensitive nature of the topic, the case study method can rely on a smaller number of research participants, recognizing the difficulties in getting victims of sexual violence to share personal, and in many cases, traumatic experiences. This challenge is particularly acute in Afghanistan, where the conservative culture makes the topic especially taboo. Interviews and observation will serve as the main data collection methods, in addition to a review of secondary sources. Altogether, three methods and five categories of sources will be used to triangulate the data and validate findings, and are described in the table below.

	Collection Method	per #	Source	Data	Responsible
1	site	Source	Data	Responsible	interviewers
2	Interview	2	(Victim (female	Transcript	interviewers
3	Interview	Min. 3	Duty bearers (prosecutor; police; DoWA	Transcript	interviewers
4	Interview	Min. 2	Service providers (shelter; AIHRC; counseling / psychosocial organization; legal aid /legal counseling provider; (health; advocacy	Transcript	interviewers
5	Literature review		Scholarly journals, research reports, published papers, books	Published research	Research report consultant
	Media review		Digital and print newspapers	News articles reporting on sexual violence cases	Research report consultant

Research Participants

WCLRF consulted with the provincial commissions on the Elimination of Violence Against Women (EVAW) in each of the five research sites to identify two cases in each site for in-depth study, and to enlist the support of the commission members in facilitating access to the victims, and to other stakeholders in each case. The research participants are described as follows:

	Participants/ Respondents	Criteria for Selection
1	Victim	<ul style="list-style-type: none"> • Female aged 13 or older • Has recently been the victim of sexual harassment • The incident(s) of harassment occurred in the province in question (one of the five research sites) • There may or may not have also been incident(s) of violence that occurred after or alongside the harassment • Willing to share her story in detail with a female interviewer
2	Duty bearers	<ul style="list-style-type: none"> • A male or female adult who has been involved in formal complaints of sexual harassment as a duty bearer • May be a police officer who investigated a complaint for or against a victim, a prosecutor for or against a victim, or a representative of the Department of Women's Affairs / provincial EVAW commission, or another governmental official with an official responsibility towards assisting victims and investigating complaints of sexual harassment • The respondent should be well informed of recent cases/ complaints, and should be able to provide details on recent cases • The respondent must be willing to do an in-depth interview
3	Service providers	<ul style="list-style-type: none"> • A male or female adult who has been involved in sexual harassment victims' cases as service providers or advocates • May be an individual employed in a women's shelter; a representative of the AIHRC; an employee in an NGO/CSO providing counseling, psychosocial support, legal aid, health treatment, advocacy, or other forms of support • The respondent should be well informed of the extent of the problem of sexual harassment in the province in question • The respondent must be willing to do an in-depth interview

Research Site

The research collected two case studies from each of the following five provinces: Kabul, Kandahar, Balkh, Nangarhar and Kapisa. These provinces represent the capital region, the South, West, East and North East, thus providing representation from the country's most populous regions and reflecting the country's diverse cultural, political and security contexts. The cases were drawn from the provincial capitals in each case in order to be proximate to courts, services and government institutions involved in the cases, and to better ensure the security of the researchers, and their access to amenities such as safe accommodation and local transport.

Research Activities

The main steps undertaken for gathering research for the case studies included recruiting and training the interviewers, planning the data collection, data collection, and then the data analysis. Each is described as follows.

a) Training of Researchers

WCLRF recruited two female interviewers with previous experience carrying out interviews, and with excellent typing skills in Dari, to facilitate quality transcription of data. The interviewers received a general training in data collection, but with a strong emphasis on imparting skills for interviewing victims of sexual harassment and/or violence, to ensure they acquire the skills needed to carry out interviews in a sensitive manner, and to avoid re-traumatizing victims. The training also focused on methods of gathering data for the case study method, to ensure data is sufficiently detailed and rich, and allowed for a comprehensive picture of each case to be prepared following the data analysis. The training included two days of theory / lecture in data collection, and one day of practice interviews under the mentorship of the trainer.

b) Planning

WCLRF translated the questionnaires to Dari and Pashto, and prepared other paperwork, including the confidentiality and consent form for respondents. Logistical preparations were made for the interviewers including a data collection itinerary for each location, booking of flights and accommodation to each site, and local transport arrangements. The researchers traveled to the five research sites to meet with the provincial EAW commissions in each location to identify two case studies in each site. The researchers then identified names and contact information for each of the respondents, scheduled interviews, and scheduled times for courtroom observation.

c) Data Collection

The interviewers carried out the interviews and observation periods at each site consecutively. Each researcher recorded verbatim the responses of each participant by one of the following two methods, depending on the typing skill of the interviewer: recorded the interview with a recording device and then transcribing the interviews into a word processing program; or, typing the responses directly into a word processing program on a laptop during the interview. Interviews typically lasted between 60 and 120 minutes each, and were carried out in a private location with only the interviewee and interviewer present. No family members, advocates, government authorities or other individuals were present during the interview, to protect the respondent's right to confidentiality and to encourage respondents to feel comfortable during the interview. Prior to each interview, the interviewer introduced the purpose of the interview, explained how the information will be used in the research, and explained the principles of informed consent, anonymity and confidentiality.

Meanwhile, the research consultant undertook a comprehensive literature review of recent (2003 and later) published research related to the subject matter in Afghanistan, focusing on all forms of sexual violence, and describe the results of the review in the final report. Further, a review of recent media coverage from within Afghanistan on sexual violence cases was undertaken, in order to determine the extent to which the issue is discussed in national media, which media are willing to report on the topic of sexual violence, and the tone, style and approach used in reporting on sexual violence (i.e. the level of the detail, evidence of criticism of the victim, perpetrator or enablers, level of analysis of causes and consequences of sexual violence, among others). Media reports from a representative range of sources were consulted, included Dari, Pashto and English publications from different newspapers (aligned with different ideologies, personalities, ethnic groups, etc).

d) Data Analysis

After the data was collected, grounded theory was applied to the data sets in the analysis stage, using the open coding process (Strauss & Corbin, 1990). The analysis of the qualitative data included identifying repeating patterns, identifying interrelationships across the data, creating meaningful categories for the data (Hoepfl, 1997), grouping the repeating ideas into broad themes, and creating conceptual categories with labels, thus creating a framework for analysis. Once key patterns, relationships, and theoretical constructs emerged from the analysis, axial coding was applied, and the findings were cross-analyzed with other recent, relevant research findings on the subject.

