



# WOMEN'S ACCESS TO JUSTICE IN AFGHANISTAN

INDIVIDUAL VERSUS COMMUNITY  
BARRIERS TO JUSTICE

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## ABOUT THE REPORT

This report maps how Afghan women seek justice when their rights are violated and the barriers women face in pursuing justice or receiving a fair outcome, whether in the formal system, in community-based mechanisms, or at home. Part of ongoing research and programming by the United States Institute of Peace (USIP) on how community-based approaches can improve women's access to justice, this report is based on a time-limited ethnographic study of women's disputes in five provinces of Afghanistan between March 2011 and January 2012. This study was conducted in cooperation with the Women Activities and Social Services Association, the Organization for Human Welfare, and the Afghanistan Human Rights and Democracy Organization. It was funded by the U.S. Agency for International Development's Office for Democracy and Governance and the U.S. Department of State's Bureau for International Narcotics and Law Enforcement.

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Cover photo: Afghan female judges at the end of a four-day conference in the capital, Kabul, Afghanistan, 04 September 2013 (Photo by Fardin Waezi/UNAMA)

The views expressed in this report are those of the authors alone. They do not necessarily reflect the views of the United States Institute of Peace.

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[Ongoing conflict, high maternal mortality and domestic violence rates, limited access to health care, and “near total lack of economic rights” combine to make Afghanistan the world’s most dangerous country in which to be born a woman.]

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## Summary

- Protecting women's rights and expanding women's access to justice has been a major priority for the international community, the Afghan government, and Afghan women's advocates since the fall of the Taliban in 2002.
- Awareness of women's rights, women's participation in public life, and women's access to education and healthcare have increased significantly. Meanwhile, government, legal aid, and psychosocial and shelter services for women have expanded dramatically.
- This level of progress in roughly a decade's time is remarkable in a country where conservative cultural norms, ongoing violence and conflict, and a poor economic situation might have augured for much slower progress.
- Despite these gains, protection of women's rights and women's access to justice remain extremely limited. Few Afghan women resort to state mechanisms or nongovernmental organization (NGO) services. Deeply ingrained social norms dissuade women from asserting their rights. Reporting abuses would trigger social stigmatization and the loss of social or economic safety nets.
- In some communities, social taboos against external intervention limit both men and women from seeking state or NGO help. These collective barriers continue to frustrate rights- or individual-based approaches to access to justice.
- Women predominantly address their justice needs within their families or communities, but even there, a number of normative, consequential, and practical barriers prevent women from seeking or receiving justice.
- Understanding how these barriers affect women's decision making is critical to expanding access to justice. Decisions that appear ill-advised because they forfeit rights are often based on a rational appraisal of the limited opportunities for justice and the likely consequences of seeking it.
- Greater consideration for the community context and the barriers women face will be critical in the coming period given the expected reduction in support and reach for state and NGO services following international troop withdrawal in 2014.



## Introduction

Although the path to full exercise of women's rights remains long and uncertain, the current status of those rights is measurably better than it was a decade ago.<sup>1</sup> Before its fall in 2002, the Taliban enforced some of the most egregious limitations on women's rights in modern statehood, preventing women from taking part in the most basic activities—from going to school to working outside the home to even walking in the street unaccompanied by a male relative. Women were forced to veil themselves head to toe when in public. They could not deal with male shopkeepers or doctors or speak to men outside their family. These restrictions severely limited women's access to medical or other services. Exercise of political rights was near zero, with women denied the right to take part in public activities, much less serve in decision-making roles. Restrictions on women's rights were enforced severely and often brutally, including consequences ranging from public stoning for accusations of adultery to chopping off women's fingers if they were found wearing nail polish.

In the first few years after the ouster of the Taliban regime, the new Afghan government took significant steps to unwind the legal restrictions the Taliban had placed on women.<sup>2</sup> In 2004, after a constitutional Loya Jirga was held, Kabul ratified a new constitution that guaranteed the equality of all Afghan citizens, including women, before the law. Earlier, in 2003, Afghanistan acceded to the Convention on the Elimination of Discrimination Against Women (CEDAW). In 2007, the Ministry of Women's Affairs (MoWA) ratified the National Action Plan for Women, which called for a progressive mix of development, education, and legislation to ensure women's full realization of equality in Afghanistan.<sup>3</sup> In a 2009 executive decree, President Hamid Karzai enacted the Law on the Elimination of Violence Against Women (EVAW), which codified a new class of crime for acts of physical, economic, and emotional violence committed against women.<sup>4</sup>

Women have also taken an increased role in public life, particularly where government quotas have mandated it. In 2010, the United Nations' Fund for Women (UNIFEM, since renamed UN WOMEN) estimated that 19 to 21 percent of government posts were filled by women, a far higher percentage than a decade earlier.<sup>5</sup> The Wolesi Jirga, the lower council of Parliament, has sixty-nine female representatives, who occupy 28 percent of all seats, which is among the highest rates of female parliamentary representation in the world. In the upper council, or Meshrano Jirga, women hold twenty-eight senatorial posts. The posts are guaranteed by law through the constitution. Female representation in provincial councils was also initially guaranteed at 25 percent, but a recent amendment to the national electoral law lowered the quota to 20 percent.<sup>6</sup> The National Solidarity Program (NSP) is an initiative by the government of Afghanistan to create democratically selected local institutions to manage development funds at a local level nationwide. It requires a level of female participation in community development councils (CDCs) and estimates that in CDCs "for which gender-segregated data is available" female members constitute 35 percent. However, within these CDCs, women hold only 3 percent of leadership roles, which are not subject to limitations and quotas.<sup>7</sup>

Significant efforts have also been made to improve women's educational opportunities and health care. In 2001, according to some estimates, fewer than ten thousand girls were enrolled in schools nationwide. In 2011–12, according to the Afghan Ministry of Education, just under three million girls were enrolled in school.<sup>8</sup> Numbers of female teachers have also dramatically increased. Meanwhile, maternal mortality rates have more than halved since 2000.<sup>9</sup> See table 1 for a numeric overview of the current status of Afghan women with respect to literacy, abuse, violence, and political presence.

**Table 1. Snapshot of Status of Women in Afghanistan**

UNDP Gender Inequality Index	147 of 148 nations <sup>a</sup>
Literacy rate of females fifteen and older	22 percent <sup>b</sup>
Provinces with female literacy rate under 10 percent	11 of 36 <sup>c</sup>
Representation in legislature	Parliament: 69 of 249 members (27.7 percent) Senate: 28 of 102 (27.5 percent) <sup>d</sup>
Female members in Community Development Councils (supported by Afghan government and foreign donors)	146,010 of 408,594 (36 percent) <sup>e</sup>
Have experienced at least one form of domestic abuse	87 percent <sup>f</sup>
Have experienced multiple forms of violence	62 percent <sup>f</sup>

a. UNDP, *The Rise of the South: Human Progress in a Diverse World*, Human Development Report, 2013

b. Lauryn Oates, "The Mother of All Problems," *The Guardian*, June 21, 2013

c. Hayat Alvi, "Women in Afghanistan," *RAWA News*, November 12, 2012

d. Inter-Parliamentary Union, "Women in National Parliaments," 2014, [www.ipu.org/wmn-e/classif.htm](http://www.ipu.org/wmn-e/classif.htm)

e. Latifa Hamdi, Afghanistan Ministry of Rural Rehabilitation and Development, e-mail, November 13, 2013

f. Diya Nijhowne and Lauryn Oates, "Living with Violence: A National Report on Domestic Abuse in Afghanistan" (Kabul: Global Rights, March 2008).

Qualitative interviews conducted for this report suggest that improvements for women have occurred not just in terms of political representation and macro-level health and education indicators but also in the status of women at the grassroots level. The overall perception among most men and women interviewed was that women's rights had improved slightly since 2001, even if such improvements are against the extremely low benchmark under the Taliban. As comments from a woman from northern Jowzjan Province illustrate, these gains have been incremental: "The situation is better now. Men care more about women and listen to their words. But still the men do not consult with women about important issues."<sup>10</sup> According to another woman from Jowzjan, "Our condition is largely the same now as under the Taliban regime, although now we have a little more freedom [of movement]."<sup>11</sup>

Many of those interviewed remarked on lower levels of extreme domestic abuse, decreased honor killings, and, in some areas, greater respect for women's education and employment opportunities and for a woman's right to choose a marital partner. Throughout the areas surveyed, male and female respondents mentioned improvements in legal education and awareness. According to one woman from Daykundi Province: "The women have a better condition since Karzai came to Afghanistan. He gave justice, equality, and rights to women. The women themselves can decide about their life, and no one may interfere in their personal affairs."<sup>12</sup>

This progress is due at least in part to the unprecedented level of investment in and engagement on women's rights in Afghanistan since 2002. Supporting the advancement of women's rights was a prominent promise of the international community following the U.S.-led invasion that toppled the Taliban regime in 2001 and has been a top priority for international donors. Supporting and promoting women's rights in Afghanistan was eagerly taken up not only by donors but also by many domestic activists and members of the Afghan government.

Women's rights advocates have focused not only on prevention of rights violations but also on improving women's access to justice so that women may seek justice where and when their rights are violated. Access to justice strategies have focused on improving formal justice mechanisms, advancing progressive laws and policies, supporting legal awareness campaigns based on these legal provisions, and expanding legal aid services for women.

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In addition to supporting state mechanisms, funds aimed at improving women's rights have supported a growing number of NGOs that have not only engaged in legal awareness and services but also provided critical health, psychosocial, and shelter support to women. This emerging cadre of external actors has begun playing an increasingly valuable role in helping women access justice. Women interviewed for this research offered powerful examples of how NGOs and other women's rights supporters (within and outside the government) had helped them when no other options were available.

## Challenges Ahead

Although significant gains have been made since the overthrow of the Taliban in 2002, Afghan women still face one of the most challenging environments in the world. A 2011 Thompson Reuters Foundation survey found that ongoing conflict, high maternal mortality and domestic violence rates, limited access to health care, and "near total lack of economic rights" combine to make Afghanistan the world's most dangerous country in which to be born a woman.<sup>13</sup> The female literacy rate in Afghanistan is still among the lowest in the region, despite percentile gains in the tens over the past decade.<sup>14</sup> Women have little economic independence and few opportunities to work. Only 16 percent participate in the workforce, versus 80 percent of men—one of the world's lowest rates.<sup>15</sup> According to the 2013 Human Development Report issued by the United Nations Development Program (UNDP), only one country—Yemen—has greater gender inequality (see table 2).<sup>16</sup>

Conservative social norms continue to restrict basic freedoms, from whom to marry and divorce, to child custody, to freedom of movement. It is telling that the highest religious body in the country publicly decreed in 2012 that women were secondary to men.<sup>17</sup> Despite marriage being illegal for women younger than sixteen, or fifteen with parental permission, it is still common in many communities for girls to marry below that age and to be betrothed while still young children or even at birth.<sup>18</sup> Most parts of the country still practice systems of bride-price, in which a prospective husband's family pays a male relative of the prospective bride for her marriage commitment. Honor killings—the murder of a family member, in this case often women, on the basis of perceived shame or dishonor brought by that individual's actions or status—are still practiced despite being illegal, as are stoning and other capital punishments for women accused of adultery or other moral crimes.

Although women have equal rights under Afghan law, in practice these legal protections are under-enforced. According to a UN report on the EAW law, of 2,299 cases reported to the Afghanistan Independent Human Rights Commission (AIHRC) that could be classified as a crime under the EAW law, only 7 percent were followed through with indictments by prosecutors.<sup>19</sup> The use of the law by state officials to protect women remains limited: Only seventeen of thirty-four provinces use it, and only two main urban areas regularly.<sup>20</sup> Human rights advocates frequently note that the law is still fairly new—only enacted 2009—and that while there is still a long way to go, substantial progress is made each year.

The pervasive inequality and suffering of women was strongly reflected in the interviews conducted for this report. None described a situation in which a woman was treated equally to a man or could fully exercise her rights. Many of the cases stemmed from violations of women's most fundamental rights, including domestic abuse, rape or sexual assault, and punishment or imprisonment for running away from home. Many also signal continuing inequality of women with regard to economic rights and social rights. Women were repeatedly dispossessed of property or monetary assets and denied the right to work.

**Table 2. Afghanistan's Performance and Current Status Relative to Strong Neighbors**

Country	Female Literacy Rate (%)	Maternal Mortality Ratio (per 100,000 live births)	Female Life Expectancy (years)	Females and Males in Workforce (%)	Female Land Ownership (%)	Gender Inequality (of 148 nations)
Afghanistan	22 (est.) <sup>a</sup>	400 <sup>b</sup>	61 <sup>b</sup>	F: 16 – M: 80 <sup>b</sup>	2 <sup>c</sup>	147
India	66	220	68	F: 29 – M: 81	11	132
Iran	81	23	75	F: 16 – M: 73	—	107
Pakistan	45	190	67	F: 23 – M: 83	—	123
Tajikistan	100	44	71	F: 57 – M: 75	—	57
Uzbekistan	100	36	71	F: 48 – M: 75	—	—

a. Central Statistics Organization of Afghanistan and UNICEF, "Afghanistan Multiple Indicator Cluster Survey, 2010/11," (Central Statistics Organization of Afghanistan, UNICEF, January 2013), <http://cso.gov.af/Content/files/AMICS.pdf>.

b. World Bank, "Maternal Mortality Ratio," (World Health Organization, 2014), <http://data.worldbank.org/indicator/SH.STA.MMRT>

c. USAID, "Afghanistan: Property Rights and Resource Governance," USAID Country Profile, (United States Agency for International Development, July 2010), 8, <http://usaidlandtenure.net/afghanistan>.

Many women's groups fear that even greater challenges are ahead after the 2014 international troop withdrawal. The international community has proved an important ally to domestic women's rights groups, supporting their resistance to conservative legislation that might restrict women's rights,<sup>21</sup> as well as encouraging and supporting Afghan institutions in improving enforcement of these rights. If the trends toward more conservative politics continue as the international community's influence recedes, some of the gains made so far may be at risk. If international troop withdrawals are followed by greater insecurity, women's mobility is likely to decrease, which affects access to education, health, employment, and justice. Women and men interviewed for this report both noted that restrictions on women's mobility were already increasing in areas that had become more unstable.<sup>22</sup>

In addition, the Afghan institutions and Afghan NGOs that have strongly contributed to advances in women's rights and access to justice since 2002 depend heavily on external funding. Whatever levels of political and physical security are preserved following international troop withdrawals, donor funds are expected to decline from the high benchmark of the previous twelve years. To the extent that state and external mechanisms are already not capable of meeting all justice needs and not fully accessible to women, the lack of funding and any decline in security will likely result in their being less accessible in the near future.

This is particularly troubling because this research suggests that an important remaining challenge is that the resources for women developed since 2002 are still beyond their reach. The vast majority of women do not or cannot access state mechanisms or NGOs (state or external actors). Most disputes involving violations of women's rights do not go outside of her immediate family, and if they do they are far more likely to be resolved by community elders or forums than to be brought to state and external actors. This report unpacks at length some of the social norms, potential consequences, and practical barriers that have contributed to the limited use of external mechanisms. These normative, consequential, and practical barriers inform a woman's decision about whether and how to pursue a violation of her rights and whether she is likely to receive a fair outcome whichever route she pursues. In addition, a woman's ability

to seek assistance or intervention by a state or external actor depends not only on overcoming personal obstacles, fears, and challenges but also on the overall community's relationship with forums for redress. Where communities are completely closed to outside intervention or help (as many are in Afghanistan), these collective barriers against going outside the community can restrict not only women but also men's ability to reach state or external barriers.

These collective barriers have important bearings for designing programming that can push further against women's access issues and may explain at least some of the limitations that still exist despite great efforts and strides in women's rights. The findings suggest that a purely rights-based approach to improving women's access to justice, without consideration for the collective barriers, may have little impact—and in some instances may further ossify the gaps between communities and state resources and principles of justice.

This is not to suggest that women's access to justice efforts should abandon the strategies that—by all evidence—have had a significant impact since 2002. That those interviewed noted some gains is a signal that some of these rights-based strategies may be succeeding, albeit gradually. Although this report is based on a recognition that community forums are an important part of the justice landscape in Afghanistan—and may become increasingly so—it does not suggest that the women's rights community should switch tracks entirely to a purely community-based justice approach (a strain of programming that has already provoked a significant schism in women's rights groups because of the adamant opposition of some to this approach). Instead, a strategy combining both approaches will be necessary to maintain existing gains and to breach the obstacles that most women still face.

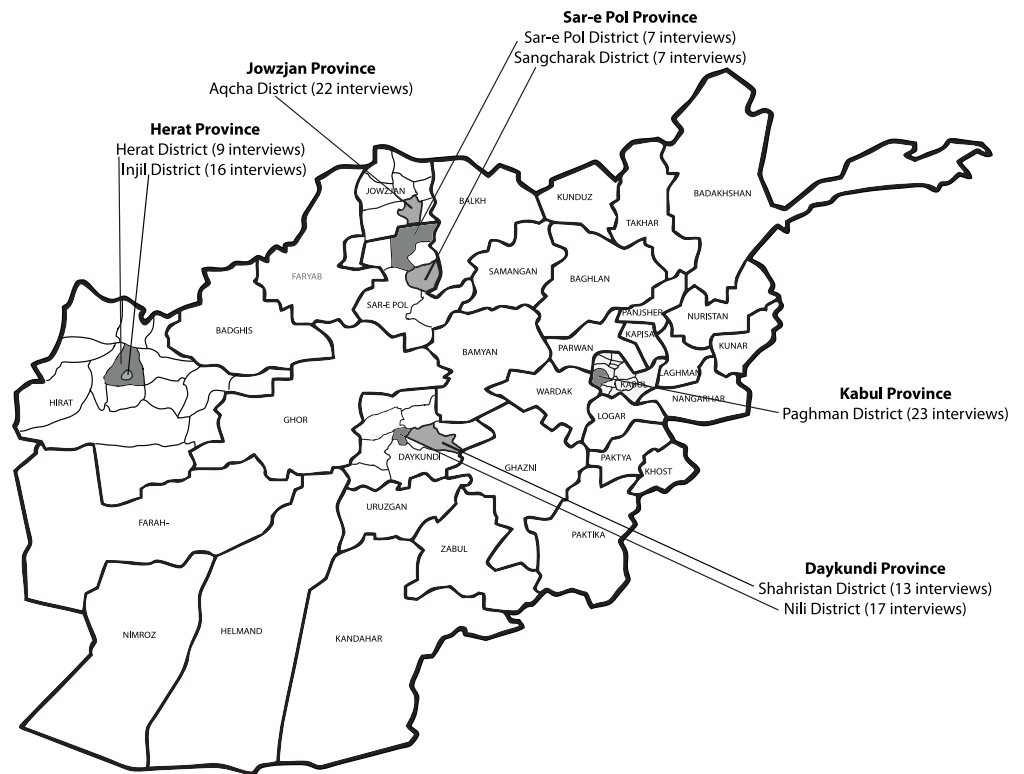
The primary focus of this report is to document women's calculations and responses to their options via either family, community, or external mechanisms with a view to informing programming that might attempt to work with any or all of these mechanisms. Looking at how women negotiate their rights within the family and in community mechanisms, and at the limitations within them, is important to better understanding women's choices, including those to navigate the formal justice system. Access to justice thus refers to the ability to obtain effective, responsive, and fair resolution of a conflict, dispute, or grievance. The phrase is often used to refer to access to formal justice mechanisms, but in this report it also refers to a broader definition that includes access to community mechanisms and respect for notional senses of justice.

## Methodology

The research on which this report is based was funded by the U.S. Agency for International Development's Office for Democracy and Governance and the U.S. Department of State's Bureau for International Narcotics and Law Enforcement. The fieldwork was conducted from March 2012 to January 2013 in five provinces.

The target provinces were Daykundi, Herat, Jowzjan, Kabul, and Sar-e Pol (see figure 1). Within these provinces, researchers focused on seven districts: Nili District and Shahrstan District in Daykundi Province, Herat District and Injil District in Herat Province, Aqcha District in Jowzjan Province, Paghman District in Kabul Province, and Sar-e Pol District and Sangcharak District in Sar-e Pol Province (see table 3).

Districts were chosen in consultation with local partner organizations, which also helped facilitate research. Participating provinces and districts were selected based on a number of factors, including security level, ethnic composition, and geographic location. The districts were also selected to include views from communities that are urban, rural, and peri-urban (that is, near urban areas but not themselves urban). Ease and security of access for field researchers

**Figure 1. Provinces Covered by the Research**

were primary considerations; without them, meaningful qualitative research would not have been possible. Depth of access was favored over breadth of coverage.

Researchers identified five broad categories of target interviewees:

- government service providers or representatives, including provincial/district governors, police, court officials, and representatives from the Ministry of Justice’s Law Department charged with civil law matters, the Provincial Department of Women’s Affairs (DoWA), the AIHRC, and others
- community leaders and local service providers
- NGOs and civil society organizations (CSOs) operating in the target communities, particularly those engaged in women’s service delivery, training, and protection
- individual community members not direct parties to a dispute
- disputants to conflicts, particularly female disputants and litigants

Teams of two researchers spoke with or conducted formal interviews with 213 individuals. The teams consisted of one or two full-time USIP staff members and one local partner. Each province was assigned two teams, one all-female and one all-male. Generally, the female team conducted in-depth interviews with female respondents, and the male team talked with male representatives, community leaders, and government representatives. Researchers conducted 107 in-depth, structured, individual interviews; twenty-three focus group discussions (either all-male or all-female groups);<sup>23</sup> thirty-one case study interviews with individual disputants; and an additional fifty-three informal, semi-structured discussions and interviews.

Researchers used a mix of targeted and snowball sampling (in which interviewees recommended specific individuals for subsequent interview, usually those who were known to have

**Table 3. Profiles of Research Districts: Number Interviews, Characteristics, Ethnicity**

<p><b>Sar-e Pol Province, Sar-e Pol City (includes surrounding peri-urban villages of Khaja Belan, Rulghani Kalan, and Pesh Kepa)</b></p> <ul style="list-style-type: none"> <li>• Seven individual interviews</li> <li>• Provincial capital, estimated population 115,000<sup>a</sup></li> <li>• Majority Uzbek, minorities of Pashtun, Tajik, and Hazara, a few smaller minority populations</li> </ul>
<p><b>Sar-e Pol Province, Sangcharak District</b></p> <ul style="list-style-type: none"> <li>• One focus group discussion, six individual interviews</li> <li>• Rural, estimated population 86,000,<sup>a</sup> increasingly unstable security situation, thirty minutes from provincial center, predominantly agricultural production, some weaving</li> <li>• Majority Tajik, large Uzbek minority, smaller Hazara and Pashtun minorities</li> </ul>
<p><b>Jowzjan Province, Aqcha District</b></p> <ul style="list-style-type: none"> <li>• Three focus group discussions, nineteen individual interviews</li> <li>• Rural, estimated population 50,000, thirty-one miles from provincial capital Sheberghan</li> <li>• Predominantly Turkmen, large Uzbek population, small Pashtun minority, Tabai village entirely Pashtun</li> </ul>
<p><b>Kabul Province, Paghman District</b></p> <ul style="list-style-type: none"> <li>• Four focus group discussions, nineteen individual interviews</li> <li>• Rural to peri-urban, estimated population 120,000,<sup>b</sup> district center within thirty minutes of Kabul; economy based mostly on agriculture, some outward labor migration to Kabul City for work</li> <li>• Majority Pashtun, large Tajik minority, small Arab population</li> </ul>
<p><b>Daykundi Province, Shahrستان District</b></p> <ul style="list-style-type: none"> <li>• Five focus group discussions, eight individual interviews</li> <li>• Rural, estimated population 66,000, livelihood predominantly subsistence agriculture;<sup>c</sup> highly isolated and impoverished population, limited access to state services</li> <li>• Majority Hazara, small Sayyid population</li> </ul>
<p><b>Daykundi Province, Nili District</b></p> <ul style="list-style-type: none"> <li>• Two focus group discussions, fifteen individual interviews</li> <li>• Small urban provincial capital, estimated population 30,000,<sup>d</sup> primary source of income almond production, relatively easy access to government offices, limited antigovernment threats</li> <li>• Hazara</li> </ul>
<p><b>Herat Province, Injil District</b></p> <ul style="list-style-type: none"> <li>• Three focus group discussions, thirteen individual interviews</li> <li>• Peri-urban, estimated population 236,000,<sup>e</sup> one main market town, relative access to government facilities in district center, more rural or remote villages more limited access to government facilities</li> <li>• Majority Tajik, large Pashtun minority, smaller Hazara and Turkmen populations,<sup>e</sup> mix of Shiite and Sunni</li> </ul>
<p><b>Herat Province, Herat City</b></p> <ul style="list-style-type: none"> <li>• Two focus group discussions, seven individual interviews</li> <li>• Urban, estimated population 436,000,<sup>f</sup> Jebrail area within city predominantly Hazara</li> <li>• Majority Tajik, large Pashtun, Hazara, and Turkmen populations, smaller Qazelbash, Baluch, and Uzbek communities</li> </ul>

a. Ministry of Rural Rehabilitation and Development, "Summary of District Development Plan: Sar-e-pul Center, Sar-e-pul Province" (report, in collaboration with UNDP and MRRD, November 2007), 2, [www.mrrd-nabdp.org/attachments/article/139/Saripul\\_Saripul%20Center\\_Summary\\_Finalized.pdf](http://www.mrrd-nabdp.org/attachments/article/139/Saripul_Saripul%20Center_Summary_Finalized.pdf).

b. UNHCR, "Sub-Office Central Region District Profile" (Paghman, Kabul, July 31, 2002), 1, [www.aims.org.af/afg/dist\\_profiles/unhcr\\_district\\_profiles/central/paghmani.pdf](http://www.aims.org.af/afg/dist_profiles/unhcr_district_profiles/central/paghmani.pdf).

c. Ministry of Rural Rehabilitation and Development, "Summary of District Development Plan: Shahrستان District, Daikundi Province" (report, in collaboration with UNDP and MRRD, November 2007), 2, [http://nabdp.org/attachments/article/134/Daikundi\\_Shahrستان\\_DDP%20Summary-Finalized.pdf](http://nabdp.org/attachments/article/134/Daikundi_Shahrستان_DDP%20Summary-Finalized.pdf)

d. Ministry of Rural Rehabilitation and Development, "Summary of District Development Plan: Nili District, Daikundi Province" (report, in collaboration with UNDP and MRRD, November 2007), 2, [http://www.nabdp.org/attachments/article/134/Daikundi\\_Nili%20DDP%20Summary-Finalized.pdf](http://www.nabdp.org/attachments/article/134/Daikundi_Nili%20DDP%20Summary-Finalized.pdf)

e. UNHCR, "Sub-Office District Profile" (Injil, Herat, August 26, 2002), 1, [www.aims.org.af/afg/dist\\_profiles/unhcr\\_district\\_profiles/western/herit/injil/injil.pdf](http://www.aims.org.af/afg/dist_profiles/unhcr_district_profiles/western/herit/injil/injil.pdf).

f. Central Statistics Office, Government of the Islamic Republic of Afghanistan, "Settled Population of Herat Province by Civil Division, Urban, Rural and Sex—2012-13" (Central Statistics Office, Kabul, 2012), <http://cso.gov.af/Content/files/Herat%281%29.pdf>.

been party to a dispute) to identify interview subjects in each of the target areas. Research in each field site typically began with targeted sampling of the first three categories of interviewees noted, using structured interview guidelines.

The overall objective was to document individual decision-making processes and rationales in the course of resolving conflicts and to understand those decisions within a broader community or social framework. Given social restrictions and cultural prohibitions against discussing internal community or family disputes, identifying actual cases proved a massive challenge. The custom of hiding or diminishing the severity of disputes from external observation or scrutiny characterized many of the communities in which the researchers worked. In some instances, where communities or individuals were unwilling or unable to discuss actual cases, hypothetical scenarios were invoked to determine how people would resolve such a case. Whenever possible, however, researchers tried to track case processes and structure interviews using actual disputes.

It is important to emphasize that this research was qualitative; the sample was not developed in a way that would permit reliable quantitative interpretation. Where possible, the report references statistics derived from a tabulation of some of the interviews. These statistics, however, are offered purely to provide the reader a sense of the frequency with which an issue or opinion was expressed by interviewees. Only thirty-one of the 213 interviews were sufficiently detailed and specific to permit any form of statistical analysis. The report draws on the statistics of other organizations, researchers, and public reports to augment its findings where appropriate.

## Common Rights Violations and Causes of Dispute

Although the districts and provinces studied have different ethnic, economic, geographic, and political compositions, many of the same issues emerged. Discussions began with questions about what issues most commonly arise with regard to women or for examples of disputes involving women. The vast majority of responses were not merely disputes involving women, but serious violations of women's rights. Among the thirty-one cases documented, the most common issues were divorce (frequently involuntary), domestic abuse, child custody, disputes over women's inheritance rights, rape, forced marriage, and running away. The greater number of divorce cases may have been because of the focus on seeking examples of cases that had gone to court. Other women's groups working on a community mediation basis or on social work have found a greater proportion of other issues, such as inheritance disputes.

Significantly, respondents generally perceived these not as isolated problems but as interconnected concerns that could produce a chain of legal and social troubles. For example, a forced marriage might lead to women running away or committing adultery or being subjected to domestic abuse or other violence, any of which in turn might lead to divorce. In addition, other factors related to the unequal social or economic status of women (such as economic disparities), as well as larger community problems (such as opium addiction, see box 1), often exacerbated these issues or were a secondary cause of the rights violation or of the dispute in question.

### *Divorce and Child Custody*

*"It is the worst thing that can happen for a woman."* —Diba, forty-three-year-old Tajik female

Under Afghan civil law, men may freely initiate a divorce without cause and may do so orally,<sup>24</sup> but women may only request a divorce based on a set of prescribed reasons: when intercourse would be harmful, when the husband is infirm for a prolonged period or the infirmity makes intercourse harmful, prolonged absence of three years or more, and failure of the husband to

### Box 1. Opium Addiction and Divorce

One emerging trend in the past decade is an increase in the rate of divorce due to opium addiction. According to the United Nations Office on Drugs and Crime, Afghanistan produces nearly 90 percent of the world's opiates. From 2005 to 2009, the rate of opiate use nearly doubled; the addiction rate in Afghanistan—at around 5.3 percent of the population, or 1.6 million users—is among the highest in the world.<sup>a</sup>

This problem was mentioned repeatedly in USIP interviews and was cited frequently by respondents in Daykundi, Jowzjan, and Herat Provinces. Husbands addicted to heroin or other opiates were often incapable of providing for their wives because they diverted limited financial resources to supporting their addiction, forcing some women to seek divorce or external support for maintenance. As one justice official in Herat noted, “The most important problem for women is their husband’s addiction, and it causes other problems in their lives. I dare say it is [involved in] about 95 percent of our cases.”<sup>b</sup>

a. Azam Ahmed, “That Other Big Afghan Crisis, the Growing Army of Addicts,” *New York Times*, November 2, 2013.

b. Thirty-seven-year-old Tajik male head of Huqoq office, interview, Injil District, Herat Province, December 26, 2012.

provide support.<sup>25</sup> In practice, prevailing conservative social norms limit a woman’s right to initiate a divorce to even more limited circumstances; for example, instances of extreme violence that are seen to violate local norms or local conceptions of Islamic law. As the Afghan government noted in its report to the CEDAW committee, “Although women have the right to ask for separation based on lawful reasons, most women are not aware of their right. The tendency for separation is not much either, because separation is deemed unfavorable in the Afghan culture.”<sup>26</sup> In many communities, it was virtually unheard of for women to initiate divorce until about ten years ago. Even today, the small but increasing number of women initiating divorces—at least formally—are predominantly found in urban areas, where there is greater awareness of women’s rights and greater means of economic independence and social support.<sup>27</sup>

Respondents reported that the negative stigma for women who sought divorce was so great that it was a last resort and acceptable only in extreme circumstances. In Daykundi, one young woman said that “the people speak behind my back if I go out because I am a divorced woman.”<sup>28</sup> A woman in Herat warned that women “destroy their lives” by divorcing.<sup>29</sup>

Although seeking a divorce was still a significant taboo, respondents cited it as one of the most common reasons why women seek out formal processes or other means of dispute resolution. Of the thirty-one individual cases documented, women sought divorce in one-third.<sup>30</sup> Almost half of those women did so because of deteriorating economic conditions or persistent lack of financial support. For example, some husbands left the neighborhood seeking jobs and never returned; others were addicted to opium, which plunged their families into extreme poverty. In approximately one-quarter of the cases of divorce initiated by women that USIP encountered, the women said that they sought a divorce because of domestic abuse at the hands of their husbands and in-laws.

Despite suffering abuse, women may choose not to seek divorce out of concern for their children. One woman in Herat reported being thrown out of her home by her husband many times, but she kept asking him to allow her back because “I always thought about my children’s life and what happens to them if I leave my life, and who would support and protect me if I do it.”<sup>31</sup>

Women who divorce risk losing custody of their children (who under Afghan law would remain in the custody of the husband’s family) or having their children viewed or treated with-

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***Even today, the small but increasing number of women initiating divorces—at least formally—are predominantly found in urban areas, where there is greater awareness of women’s rights and greater means of economic independence and social support.***

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**Even if women do keep their children after divorce, they may have no way of supporting them unless they remarry.**

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in the community as illegitimate. Even if women do keep their children after divorce, they may have no way of supporting them unless they remarry. In one focus group discussion, women discussed the story of a married woman who was forced to tolerate an abusive relationship and ultimately withdrew her divorce request:

They threatened to take her children if she followed her divorce case. The woman's family was poor, but the husband's family was rich and influential. She returned to her home because she had small children. She went to the court for one year, but the court and the judge did not follow up on her case or provide her an opportunity to speak. The husband went just one time to the court, and he promised that he would stop beating his wife. But he continued to beat her when they went back home.<sup>32</sup>

In one case in Sar-e Pol, after an opium-addicted husband abused his wife and sold items from the home to fund his addiction, the wife's father took him to a clinic to try to help him. When he continued using opium, the father asked the man to divorce his daughter and represented his daughter in the divorce. The man agreed to the divorce in return for all the items he had purchased for the woman, and the couple was able to obtain a decree.<sup>33</sup>

These examples illustrate that with family support a woman is able to obtain her right to divorce, but in many instances, women seeking divorce are discouraged from doing so by their family, their community, and government officials.

### **Forced Marriage**

*"I was innocent, but I had to get married to my husband because of my brother's problem. I said that I did not want to get married to him, but no one listened to my voice."*—Nabila, nineteen-year-old Pashtun female

Forced marriages are prevalent in Afghanistan, particularly in conservative communities. Husbands are chosen for young women or girls in exchange for a sum of money—what is known as a bride-price. To avoid a bride-price, two families may agree to provide a daughter to a son of the respective family (a practice known as exchange, *badal*). Alternately, in the common custom known as *baad*, members of the family (typically girls, but they can also be boys) are given over to another family as compensation for murder or violence or even to settle small debts. This is considered a way to prevent blood feuds or to restore harmony between the two communities but is a gross violation of girls' rights.

Forced marriage has been formally outlawed at least since the adoption of the current version of the Civil Code in 1977, though similar interpretations were also applicable in the Taliban period.<sup>34</sup> Both Afghan law and Islamic legal traditions guarantee men and women equal authority in determining their marital partner.<sup>35</sup> In addition, forced marriage was explicitly prohibited through the EAW law in 2009. Despite this legal clarity that women must consent, in practice the old traditions remain. A Global Rights survey conducted in 2008 found that in Khost Province in the east of the country, 91.6 percent of women were forced into marriage.<sup>36</sup> The lowest rates were found in Daykundi and Jowzjan Provinces, just over 20 percent.<sup>37</sup>

NGOs engaged in women's rights protection or in dispute resolution services have suggested a decrease in *baad* in the past decade and a greater awareness of a woman's right to choose her husband. Citing anecdotal evidence, those working with communities have suggested this may have been due to increased awareness about the harm caused by *baad*, ways that it contravenes Islamic law, or simply better overall economic prospect and so more alternatives for impoverished families. However, given the sensitivity of the issue, it is difficult to get an accurate picture of whether—and, if so, why—*baad* or other forced marriage practices have decreased.



Forced marriages often—but not always—take place when a girl is very young. *Nishani* refers to the practice of a father promising or engaging his daughter at a young age, sometimes as early as birth, to another family to strengthen social or economic ties between families. The legal marriage age for women under Afghan civil law is sixteen, or fifteen with parental permission. In 2010, the Ministry of Public Health in Afghanistan estimated that 21 percent of all women were married by age fifteen and another 53 percent by age eighteen;<sup>38</sup> some NGOs have estimated that the percentage before sixteen is much higher. According to the United Nations Children's Fund (UNICEF), 57 percent of marriages in Afghanistan involve girls under sixteen, many if not most of them arranged for the girl.<sup>39</sup>

Studies on the impact of forced marriage suggest severe and enduring consequences:

- 63.8 percent of women who were forced to marry reported experiencing physical violence versus 36.5 percent of those who married freely
- 80.2 percent of women forced to marry reported psychological violence versus 65.7 percent of those in free marriages
- 21.6 percent of women in forced marriages reported sexual violence versus 10.6 percent of those in marriages freely entered into.<sup>40</sup>

Respondents in all five provinces cited forced marriage and its ongoing consequences as a major source of disputes within their communities. Respondents who discussed forced marriages were well aware of the negative impact over time of such marriages, in terms not only of the risks of physical and psychological abuse but also of the limits placed on women's freedom and educational opportunities. Many girls are interested in continuing their education after marriage, but their husbands or their husbands' families often prevent them from going to school.

Forced marriage was not only deeply entrenched in social norms but also often connected to issues of poverty, debt, and bride-price. In impoverished areas or families, forced marriage seemed especially resilient. In one community in Sar-e Pol, a father's gambling left his family destitute. His thirteen-year-old daughter was then given in marriage to a sixty-year-old man because her family could not afford treatment for her eye condition. Her sister was also sold to a cousin's son so that her father could secure more money for gambling.<sup>41</sup> In general, respondents suggested that a high bride-price was an incentive for forced marriage in many communities. In Daykundi, a police officer noted that a high bride-price made fathers "just think about cash. They do not care [what] happens to their daughters in the future. They just want a lot of money."<sup>42</sup> A justice official in Jowzjan similarly stated that "families do not send their girls to a husband's home; they sell their girls here, which later causes many problems for the girl."<sup>43</sup>

Women and girls perceive themselves as powerless to avoid a forced marriage. "The family does everything and at the end they ask if the girl is happy or not, [when] all the people are enjoying the wedding party. The girl has to accept the marriage even if she is not satisfied," a thirty-seven-year-old woman from Daykundi said.<sup>44</sup> Women in each province also emphasized the role of fathers (or other male guardians) as the final arbiters of decisions about marriages. In one community in Daykundi, a woman reported that "everybody here got married through her father's decision. No woman could decide about her marriage."<sup>45</sup> In Sar-e Pol, one young girl said she had been asked her opinion about marriage but giving it was irrelevant because "it was my father's decision."<sup>46</sup>

A twenty-five-year-old woman from Herat (see box 2) said that although she told her family that she did not want to get married to her cousin, she was told she "must follow the tradition of the community," after which she felt so hopeless she attempted suicide before arriving in a protection shelter for abused women.<sup>47</sup>

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**According to UNICEF, 57 percent of marriages in Afghanistan involve girls under sixteen, many if not most of them arranged for the girl.**

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## Box 2. “I Ate Eighteen Sewing Needles on My Wedding Day”

“My father died before I was born. I was seven months in my mother’s womb when he died. Before his death my father had promised that he would give his child to his brother’s son if I was a girl. My father liked his brother so much and wanted to strengthen their relationship by giving me to his brother’s son as a bride. After my father died, my uncle and his family always repeated my father’s words. My relatives would tell me that I was the fiancé of my cousin Mirwais. At first I was indifferent . . . but I grew to hate him. I did not have a particular reason but I did not like him. I would go to see my mother [who remarried] in her new home. My mother’s husband had a son [Samie] from his previous wife. We were the same age and we fell in love. I imagined that he would be my husband in the future.

“When I was thirteen years old, my uncle’s family came, and they brought me a golden ring to perform our niqah ceremony. I was not willing to take the ring or be wed. My mother came to me, and she insisted that I marry Mirwais. . . I tried to commit suicide several times. . . but unfortunately I did not die. I started eating sewing needles when the elders of the family were performing my marriage ceremony. I ate eighteen sewing needles on my wedding day, but I did not die. I was broken hearted.

“At the end of the [wedding] party, I called my fiancé’s mother and I told her that I did not want to be her daughter-in-law. I asked her to take back the presents to their home, but she refused. She advised me to accept that marriage and told me that I would fall in love with her son in time. Then she told my uncle and my uncle sent a message that he would kill me if I did not accept the marriage. I was afraid, but I loved Samie. At that time, my maternal uncle supported me a little. He knew that I did not like my cousin, but even he advised me to get married. I would have run away from home with Samie if somebody had helped me.

“It is a very bad tradition in Afghanistan that the people say the girl is gande [bad] if she does not want to get married, and they always blame her. No one cares about the future of the women’s lives here. . . . I told everybody that I did not want to get married to my cousin, but they all said I must follow the tradition of the [community].

“Then I got married to my husband. We lived together, but I was depressed. Two years after our marriage I got pregnant, but I always thought everybody had done an injustice to me. Then I gave birth to my son. He is nine years old, and I gave birth to my daughter six years ago, but I don’t even like my children.

“Forced marriage is the main problem. The families force girls to get married to old men when the girls are not happy. Also fathers give their daughters to married men. These girls have to be the second or even third wife.”

—Twenty-five-year-old Tajik female, interview, Injil health care clinic, Injil District, Herat Province, December 2012

## Domestic Abuse—Physical and Psychological

*“My father often beat my mother. It was normal. Then my father engaged me to a married man who had some mental [problems]. He got angry [so quickly that] I felt he [must be] a mad man. He usually breaks things or he screams and then he beats me. . . . It was not a life. I was living in hell.”—Karima, thirty-two-year-old Tajik female*

Physical and psychological domestic abuse is a widespread problem across Afghanistan. A 2008 survey conducted by Global Rights found that 87 percent of Afghan women suffer some form of physical, sexual, or psychological abuse.<sup>48</sup> This is one of the most common reasons women seek help outside the home. For example, a local partner legal aid organization found that of 1,508 family cases it handled from October 2009 to June 2013, 31 percent dealt with domestic abuse, according to records shared with the authors. Another women’s services NGO that shared data with the authors found that between 22 and 49 percent of the women who had sought its help each year from 2009 to 2012 did so because of domestic violence.

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**A 2008 survey conducted by Global Rights found that 87 percent of Afghan women suffer some form of physical, sexual, or psychological abuse.**

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Many of those who work in women's rights and women's services argue that domestic abuse is severely underreported due to conservative social norms, societal acceptance of violence against women, and women's limited access to reporting mechanisms, among other factors. Rights monitors estimate that only a fraction of incidents come to the attention of a legal aid organization or the formal justice sector. As one press statement from the United Nations Assistance Mission in Afghanistan (UNAMA) evaluating violence against women noted, "Those incidents that reach law enforcement and judicial authorities or receive public attention due to their egregious nature represent the tip of the iceberg of incidents of violence against women throughout the country."<sup>49</sup> Underreporting of violence against women is so widespread that rights organizations interpret increases in reported violations each year as a sign of progress because the trend signals greater awareness and acceptance that these incidents are violations.<sup>50</sup>

Because of the stigma surrounding domestic abuse, even where domestic abuse is initially reported, women face continuous and significant pressure to drop their cases. For example, one legal aid provider noted that in one of the provinces where it works, Badakhshan, 75 percent of domestic abuse cases were abandoned, unresolved, or withdrawn by the victim.

This research unearthed similar patterns. Domestic violence was described as prevalent by male and female members of every community visited, although community definitions of what constituted abuse in the home varied considerably. Both male and female respondents said that a husband was entitled to use some level of violence to maintain order within the home but that the extremity of legitimate force was limited. However, no interviewee clearly articulated what levels of violence or acts would cross that line and be seen as illegitimate.<sup>51</sup> A 2008 study by the Women and Children Legal Research Foundation, an Afghan organization, found that 36.6 percent in a survey of 450 males and 900 females in five provinces responded that women should only file a complaint when "physical violence leads to broken bones."<sup>52</sup> Only 40 percent believed a complaint should be filed in cases of rape.<sup>53</sup>

Respondents perceived domestic abuse as stemming from multiple causes, including poverty and unemployment. As one police officer put it, "Poverty brings violence."<sup>54</sup> Respondents in all five provinces mentioned general unemployment and a lack of job opportunities in their communities. "When a person cannot support his family," remarked an official in the district governor's office in Jowzjan, "he feels shame and cannot control his emotions."<sup>55</sup> Such violence is not limited to the husband or other male family members; one woman in Herat reported that her mother-in-law and other relatives abused her and that "their reason for beating me was my husband's lack of a job."<sup>56</sup>

For many women, particularly those in forced marriages, abuse and violence came on top of an existing general unhappiness about their marriage. Such conditions had serious negative psychological consequences for many female respondents. As one woman in Herat said, "Those years living with my husband made me mentally sick" (see box 3).<sup>57</sup> Many women expressed hopelessness about their situation and their inability to make the violence stop. This feeling of powerlessness led some women to take extreme actions, such as running away, self-mutilation, or attempted suicide. A woman in Herat said that she had decided to commit suicide more than ten times, but concern for what would happen to her children prevented her from following through.<sup>58</sup> Police officers in Daykundi also noted that several women in the district had killed themselves because their husbands had abused them and that women had few alternatives to escape domestic violence.<sup>59</sup>

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***Both male and female respondents said that a husband was entitled to use some level of violence to maintain order within the home but that the extremity of legitimate force was limited. However, no interviewee clearly articulated what levels of violence or acts would cross that line and be seen as illegitimate.***

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### Box 3. “I Tolerated Everything Because of My Children”

*From an interview with Belkis, a Hazara woman age forty, at AIHRC office, Herat, December 2012.*

A sixteen-year-old woman was forced to marry a seventy-year-old widower to pay off the debt of her father. In exchange for waving the bride-price, the father's debt was forgiven. After moving from her native province to Helmand, the woman was forced to live in her husband's adult son's house.

After a short time, she became the victim of abuse from multiple members of her new family, “We had a normal life just for one month, but then my husband changed his behavior and he started mistreating me. My stepsons were very cruel, and they did not accept me as their father's new wife. [Crying] Sometimes they beat me severely and I could not move my body. ... Last year my stepsons threw me out of the warm room with my two sons, and we had to pass the winter in a cold room...I would lose my patience and argue with them, but they beat and threw me out of the house again.” Her hands had been broken and the scars and mis-set bones were still visible.

“I did not dare complain to somebody about my abuse. I just complained to my husband. My stepsons beat me if they figured out about me telling him.” She said that her husband told his sons to stop, but he was old and powerless within the home.

Her children also suffered frequent beatings and severe abuse from her stepsons and other extended family members, including potentially rape and sexual assault. “I remember once their cousin came to our home. He was an impolite sixteen-year-old boy. One day early in the morning, I saw my little eight-year-old son crying and changing his underwear. He refused to tell me what had happened, but I insisted. Then he told me that the boy was trying to rape him when my son was sleeping, but he figure[d] it out and threatened the boy that he would tell everybody if he did not leave him alone. I don't know if that boy raped my son or not, but I went directly to my husband and told him what had happened. The boy and my stepsons denied the incident, but then they beat me and my son when my husband was out. I never talked with anyone outside of the home about it.”

Despite the abuse, she refused to leave, “I tolerated everything because of my children. They did not allow my sons to go to school, but I did not want my sons to be illiterate like me and my daughter so I sent them to school in secret.” Then her first child, a daughter, was forced to marry when she was twelve years old for a \$10,000 bride-price. “My stepsons decided to [arrange] her marriage. They did not ask me and my daughter whether we were happy with the marriage.”

Eventually, the woman was able to get word to her brother about her abuse. “He went to my stepsons. He objected to how they were abusing me, and they told him that they cannot support me financially anymore and it would be better if my brother took me to his home. He took me to his home, and he promised me he would talk with them and that I would be able to go back to my home again. But three days later my stepsons came with a mullah, and they demanded a divorce on behalf of my husband. Then they took my sons to their home. They went to the mosque with my brother and a mullah, and then they came and told me they had finished the divorce. I went to my husband's home when I heard about them taking my sons, but my stepsons did not let me enter.” After pleading with her husband, he said there was nothing he could do and said that it was best if she just leave.

The woman refused to give up her sons, though. After taking them back, she moved to a different province and sought work to support her sons. After a few months, the police came to her home and arrested her, explaining that her stepsons had filed a complaint against her and accused her of stealing a large sum of money from their home in Helmand. “The police investigated the case, and then the police figured out that my stepsons were lying and had filed a false complaint. They confessed that they had filed the charges in order to get my sons back. I told them I did not accept the initial divorce because my husband had not divorced me. They showed me a paper and said that they would not disturb me anymore and I could keep my sons if I signed the paper. I accepted and signed it. But later they said it was a divorce document and by signing I had accepted my divorce. They deceived me. A few days later they came and took my sons by force and left the area. I sought help from my brother, but he said it is not his business. I told my sister, but she ignored me too. They were afraid of my stepsons.”

The woman later learned that her children were being forced to work in her stepson's store and being prevented from going to school. “I am concerned about my children's future.

**Box 3. "I Tolerated Everything Because of My Children" cont.**

They are too young. Every morning I went to the store in secret, when my stepsons were not there, so I could see my children. My stepsons found out, and they warned me that they would beat my children if I continued seeing them. Now just my youngest son is working there on Fridays, but still I am seeing him in secret. I had to spend my life in that home, so how is it my right to suffer? They destroyed my life, stole my children, and I now cannot support my life."

This case had been investigated by the AIHRC, which corroborated her story.

**Running Away and Moral Crimes**

*"There were some women and girls in our community who ran away with strange men and their fathers or husbands killed them when they found out about it. I did not want my father to kill and bury me like those women."*—Hanifa, thirty-year-old female Jugi

Running away is not a crime under Afghan law, but it functions as one in practice. Women who flee their husbands or family are often arrested and prosecuted by law enforcement officials, typically charged either with *zina* (moral crimes), such as adultery or attempted adultery, or sometimes with running away or with moral crimes more generally.<sup>60</sup> In 2012, the Afghan Supreme Court issued an opinion that declared that running away was not a crime in Afghanistan; in response, prosecutors and judges in many jurisdictions began using attempted adultery as a new class of moral crime to detain women who ran away, although this is also not supported by Afghan law.<sup>61</sup>

In 2012, UNAMA and Human Rights Watch (HRW) noted that the arrest of girls or women for moral crimes is common and widespread, despite advances in legal protections and statements by high officials attempting to curtail the practice.<sup>62</sup> Although noting that accurate national statistics are not available, an HRW study of these issues in Afghanistan found that in three of the main prisons where women are held, half of all adult female inmates and virtually all teenage girls were imprisoned for moral crimes.<sup>63</sup> In 2013, HRW reported a 50 percent increase over the previous eighteen months in incarcerated women and girls for moral crimes.<sup>64</sup>

The instances of running away that had the most severe consequences tended to involve girls or women who sought support from or became engaged to men who were not part of their families. This type of running away was often mentioned in the context of secret or illicit relationships, which frequently involved deceit on the part of male suitors. One woman in Sar-e Pol in a relationship with a man who promised to marry her but later refused to do so was forced to run away because she feared violence from family members after they discovered her relationship.<sup>65</sup> Another woman in Daykundi ran away after a young man told her he could make her happy and give her a better life. Later, he left her when she was pregnant, and she had no choice but to continue living with his family, who abused her.

In some communities, running away was linked not to false promises but instead to high bride-price and poverty.<sup>66</sup> When a boy's father was unable to pay a high bride-price, the couple had "no choice except to escape from home" if they wanted to be together.<sup>67</sup> This phenomenon was cited as particularly prevalent in some Hazara communities in Daykundi, where, one man noted, "There are so many girls escaping from their houses—as far as I know it is at least five to six girls per year...and it is all happening because of poverty."<sup>68</sup>

Stigma and shame may prevent women who run away from returning to their communities or contacting their families. If a woman cannot return home and cannot stay with the man she

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***Stigma and shame may prevent women who run away from returning to their communities or contacting their families....Women from more conservative communities that hold firm to traditional methods of punishment run the risk of death through honor killing for running away.***

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ran away with, she may be left without any social or economic safety net. Women from more conservative communities that hold firm to traditional methods of punishment run the risk of death through honor killing for running away. As an elder woman in Paghman said,

I have not seen honor killings happen in our community. But I think members of families must murder women or girls who run away from home because of doing a bad thing—for instance, running away with a strange boy. But if she runs away because of cruelty and injustice within family, it is not bad because they forced her to do it.<sup>69</sup>

Within this research, women who had decided to run away described it as their only option. In many instances, women who fled their marital home would return to their natal home or that of a trusted male relative, such as a brother, cousin, or uncle. In some instances, they sought the support of shelters or state representatives.

### *Inheritance*

*“My cousin today came to me and told me that the elders . . . are in my father’s home to divide the land, but no one informed me about it.”—Mahgul, twenty-five-year-old Hazara female*

Afghan and Islamic law entitles a woman to both property ownership and inheritance rights following the death of a husband or father. Under Islamic law, a woman is generally entitled to half the portion allotted to her male relatives within the same agnatic generation.<sup>70</sup> However, across the researched provinces, whether women received their portion of an inheritance depended more on the family or community than on any legal or statutory framework. According to the Afghan government’s reporting to the CEDAW committee:

In most areas, men do not give women the inheritance right, and in some areas women do not even dare to ask for their inheritance rights. Request of inheritance by women can be deemed dishonor[able] and not acceptable among parts of society. Even if women dare to ask [for] their inheritance, the access to judicial organs barely exists and women’s issues are [weighted] less . . . in local councils and Jirgas.<sup>71</sup>

A study of popular attitudes toward women’s inheritance rights in ten provinces by the Women and Children’s Legal Research Foundation found that, among those surveyed, 89 percent of men versus 37 percent of women had received an inheritance owed to them.<sup>72</sup>

Interviews for this report suggested a number of reasons for the stark difference. In some communities, women may not ask for their portion at all and instead simply cede it to their brothers as a rite of custom. In such instances, it is generally accepted that the brother then maintains a social obligation to look after his sister’s interests for the duration of her life. More commonly, women are left entirely out of the decision making. Often, women found out about the division of property after it had already been decided by male elders and relatives. A lack of understanding and education impedes women’s ability to assert their rights. One male head of a primary court in Jowzjan noted that “unfortunately, most people, even women themselves, think that women have no right to ask for their inheritance.”<sup>73</sup> Thus, in some cases, whether women receive their portion may depend not only on their awareness of their rights but also on community and familial leaders’ acknowledgment of those rights. In some of the communities, respondents said that women who sought their legal inheritance were denied it.

The failure to respect a woman’s inheritance rights can have as critical an impact on a woman’s life as other physical violations of her rights. A woman’s inheritance may be the only economic asset she has to ensure the safety of her children after the death of her spouse. As will be discussed, lack of economic independence reinforces a woman’s dependence on her

husband, family, or community and can make it even harder to overcome barriers to justice. In the absence of economic independence, a woman may be forced to forfeit her individual rights to protect her family's or her children's interests. One woman explained the rationale to marry her deceased husband's brother:

My husband passed away a few years ago, but I had to get married with my brother-in-law because of my husband's inheritance. I wanted to keep my husband's portion for my children. My husband and his brother had land, but I would lose the portion of my husband if I did not marry my brother-in-law. My brother-in-law does not take care of me and my children at all. I have two daughters and one son, but he does not buy any clothes or food items for me.<sup>74</sup>

## Rape and Sexual Assault

*"As much as I shouted, they beat me again and again and they were raping me again and again. They told me that this was a place that no one would hear my voice."*—Shakila, fifteen-year-old Herat female rape victim

International officials and rights activists insist that though reporting is low, the rates of rape and sexual assault in Afghanistan are high both in the home and in the few areas where women are active in the workplace. One survey found that 42.6 percent of women in Kandahar experience rape or sexual assault versus 17.2 percent nationally.<sup>75</sup> Although these statistics offer some sense of how widespread the problem is, accurate statistics on the prevalence of sexual assault are difficult to come by. Instances of rape in Afghanistan are underreported because of social stigmatization, limited understanding of legal definitions and protections, and fear of being doubly victimized within the state justice system.

Under the EVAW law, rape and forced prostitution are explicitly criminalized.<sup>76</sup> These protections, however, are often not enforced. UNAMA observed that the "majority" of rape, sexual violence, and forced prostitution cases were either never investigated or the prosecution and investigation were dropped without explanation. At the same time, it noted that increases in reporting each year are a strong victory for increasing awareness of women's rights.<sup>77</sup> Parts of the EVAW law are explicitly contradicted by other domestic law. For example, a strong interpretation by many in the women's rights community was that the 2009 Shiite Personal Status Law effectively legalized partner rape for Shia women.<sup>78</sup>

Reports of government or law enforcement officials being tacit or complicit in perpetuating sexual abuse and assault are common. Women who have reported being raped have often found themselves being charged as accomplices to the rape and so guilty of a zina crime.<sup>79</sup> One case shared during the course of this research was the rape of a sixteen-year-old girl by four police officers in Badghis Province. When rights advocates and supporters of the girl tried to have the case prosecuted, they were pressured by a local parliamentary representative, local influential elders, and members of the provincial council not to do so.

During the course of interviews for this report, women in various communities, particularly Daykundi, Sar-e Pol, and Herat, described rape and sexual assault as occurring but were often reluctant to share the details. Where it was reported, sexual assault appeared to take place at the hands of both family members and external parties. When rape was committed by someone other than a spouse, women feared that they might be killed by their family to restore its honor if the case were to become public. Women who had been raped by someone outside their family often resign themselves to the rapist marrying them (see box 4), in many cases because they see no other way to restore their and their family's honor.

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**Women who have reported being raped have often found themselves being charged as accomplices to the rape.**

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#### Box 4. “The Boy Who Raped Me Must Take Me as His Wife”

This case was introduced to the research team by the director of DoWA in Daykundi Province, who was acting as an advocate on behalf of a juvenile rape victim. The fourteen-year-old girl, referred to here as M, had been brought from a remote district to the provincial capital after being attacked as she walked home from school. Her family had not provided support, and in the absence of a qualified shelter in the province, the director was housing her in the directorate until a more permanent solution could be found. The interview was conducted in September 2012.

**Q: Can you tell me what happened to you?**

M: My classmates and I were going home [from school], but I stayed back because I was sick. I had a bad stomach ache. Then a young boy riding a bike came close to me. He asked me to sit behind him, but I refused. He stayed there and I walked faster because I was very scared. There were no people around. He again came closer and ordered me to sit behind him. He grabbed my scarf, but I ran away and he could not catch me. I changed my path to my house, but suddenly another boy appeared before me and he grabbed me. He gave me to the first boy and then he ran to his home. The first boy raped me by force. He covered my mouth so I could not scream. Then suddenly I heard a voice. The voice was getting closer. Two boys were coming toward us. I screamed and they saw us. They got the boy and beat him, but the boy fled to his house. One of them raised me from the ground and put my scarf on my head and told me to inform my mother as soon as possible. They were my classmates. I had very bad pain in my body, but I could walk. [I started walking home] but my mother came to find me on the way. At home, my mother heard about the details and she was unconscious for three hours and she started crying when she woke up.

**Q: What happened to the boy who did this? Did anyone press charges?**

M: My mother and I went to the boy's home that night. The boy's father told us that you should forget this incident, and then I will come to your home after Eid [the holiday to celebrate the end of Ramadan] and take you for my son as his wife. But Eid passed and they did not come to our home. We sent a person to their home to perform the marriage, but they refused. My mother started crying and screaming and arguing with the boy's father, but she is not confident at all. She could not defend me there. My mother then went to her brother and informed him about their refusal, because my father is dead. My uncle called the police and they came to our home.

**Q: Why did you not call the police at first?**

M: I told my mother to inform the police at the beginning, and they will go and arrest that boy. But my mother did not listen. She was afraid about people's words. She was scared that people would talk behind our back. The police arrested the boy who gave me to the rapist, but the rapist ran away. Finally, his brother brought him to the police and they took him and sent them both to the jail.

**Q: What happened to you while they were looking for the rapist? Was the issue resolved?**

M: I lived with several female police officers in their home for three weeks in the Silbitu area in Sang Takht District, while the police were investigating the incident. Then they transferred me to Nili. The police sent me to the prosecutor's office in Nili to investigate the incident more. ... The police of Silbitu brought me to the prosecutor's office in Nili. There, the prosecutor asked me about the incident and I described everything. Then the director of DoWA was told about my story by the prosecutor and allowed me to come stay with her rather than go to the jail. Now I am living with her and I am waiting to end my case. No one tells me what is happening to my case, but I am waiting.

**Q: Who did you go to for help with resolving the dispute before calling the police?**

M: I have no father, nor any uncle [brother of her father]. My father died six years ago. I have a poor mother. She tried to help me but she could not... My mother said to the boy's father that we will file a complaint against them if they do not take me. His father said, "The police will arrest both my son and your daughter if you complain. Your daughter cannot tolerate being in jail, but my son can." I heard that the boy got sick in the jail. The white beards [elders] of the qawm went to the boy's father once to end the dispute, but the father refused to accept their decision. The white beards wanted to perform the marriage, but he would not accept their recommendation. He told them that his son is innocent and he did not do what I accused him of doing. But the doctor in the clinic checked me and she confirmed the rape. I went to the doctor with one of the female police officers.



**Box 4. “The Boy Who Raped Me Must Take Me as His Wife” cont.****Q: Do you have any contact with your mother?**

M: No, I do not. My mother has no information that I am here. Our house is too far away from the police station. It is one hour to the police by car. I cannot even call my mother. There is no signal there. No one has come here to see me.

**Q: What do you think about your future?**

M: That boy must take me as his wife. He should take me. It is not good if I sit at home with shame. The people will say very bad things behind my back. During those three days, I heard many bad things said about me when I was waiting for them to come and take me to their home. The people said to each other that I had an illegal relationship with that boy. I was so sad. I want to get married to him and end these words.

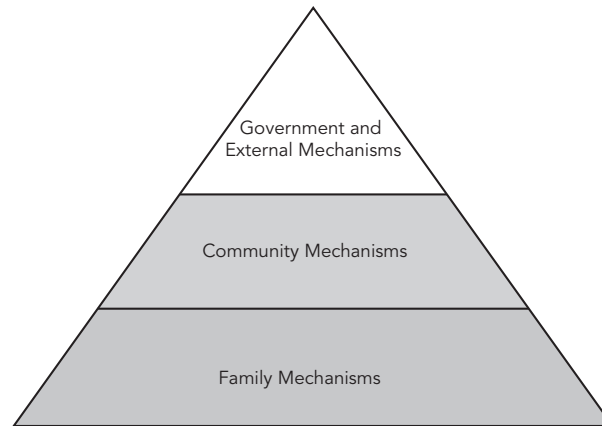
**Mechanisms and Barriers in Dispute Resolution for Women**

As illustrated, women frequently lack protection of even their most basic rights. This section attempts to map how women go about addressing severe rights violations, as well as other disputes or grievances they may have. Understanding how women seek access to justice requires understanding not only the different mechanisms available but also the barriers confronting women who try to use them.

Those mechanisms exist on three levels: family, community, and external (that is, state mechanisms and other actors external to the community). Typically, women (like men) turn first to a family mechanism; if that fails, they turn to community mechanisms; if that fails, they may turn to an external mechanism. The largest number of disputes is resolved at the lowest level, the fewest at the highest (see figure 2). The same case may, in theory, be brought to any or all of the three levels.

Which mechanism a woman turns to often depends on the barriers to entry and the barriers to actually receiving justice within that mechanism by the woman's estimate. Barriers are categorized in this report as normative, consequential, or practical. A normative or cultural barrier might be that women do not raise a dispute because they want, or feel obliged, to conform with social and cultural standards of appropriate behavior or because the deeply entrenched normative views of women legitimize some violations of their rights. These normative barriers often go hand in hand with lack of awareness about women's rights. Consequential barriers refer to situations in which a woman is deterred from bringing a dispute by the risk of consequences for her action. Such risks include physical abuse, potentially fatal in extreme cases, to herself or her children; loss of any means to support herself or her family; and loss of face and honor for herself or her family (which may also lead to abuse, even death, or economic consequences). Finally, practical barriers refer to obstacles such as not having the money to pay fees associated with a court dispute, the difficulty of traveling long distances to where a court or other help might be found, or lack of appropriate documentation to establish a case in court.

Normative, consequential, and practical factors may act not only as barriers to entry to mechanisms but also to finding justice within dispute resolution mechanisms. Many of these barriers have a dual function: First, they impede a woman's ability to access a forum; second, if she nonetheless accesses it, they prevent a resolution of her case or grievances in a way that respects her rights. During interviews, women expressed extreme dissatisfaction with all levels of the dispute pyramid in terms of giving them a fair hearing and enforcing their rights. They complained that men did not listen to them or respond fairly to their complaints in the family or community mechanisms. In the formal system, women said that their cases had been put on

**Figure 2. Pyramid of Dispute Resolution Mechanisms**


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**Women's overall skepticism that they would have their rights enforced, or even have a fair chance to explain their view, was itself a major deterrent and obstacle to justice.**

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the back burner and never resolved. Four out of five women interviewed were not pleased with the outcomes of their cases. Those women who were satisfied tended to present uncomplicated cases that could be resolved with minimal negotiation at the community level. Women's overall skepticism that they would have their rights enforced, or even have a fair chance to explain their view, was itself a major deterrent and obstacle to justice. Thus, each section also includes a description of the reasons that these mechanisms offer poor prospects of justice for women.

It is important to understand that, from the individual's perspective, the barriers may appear less as obstacles and more as preferences or choices, often based on a rational appraisal of the available options and the likely consequences. No single barrier explains why individuals choose or are forced to choose particular paths to resolve a conflict. Each woman's experience with confronting these challenges is unique.

These barriers tend to be cumulative. The normative barriers that are present in the family level also exist at the community and state/external level, even if they present themselves slightly differently. Similarly, the consequential barriers in community mechanisms are also present—often to a more aggravated degree—in the state/external mechanisms.

### **Family Mechanisms**

The majority of disputes are first addressed, resolved, or forfeited at the family level. This is true for both men and women but seems to be especially true with regard to violations of women's rights because of notions of privacy and family honor. In small villages, a woman's extended family may realistically extend through the entire village. This makes the distinction between family and community levels in small villages highly variable and mutable. As used in this report, *family* generally denotes a woman's inner circle, usually her immediate family or close extended family.

Resolution of disputes at this level often falls to elder individuals, male or female. As a result, the family forum is the only place where women would frequently act as adjudicators or mediators, particularly in disputes involving women within the same household. Women interviewees repeatedly said that they like to solve their disputes or raise issues or concerns among other women in the family, often noting that men do not listen to them or give them a fair hearing. Many women expressed a preference for family-level mechanisms and explained that they did not want to air what they considered to be private matters outside the family.

However, this was not purely a matter of privacy or preference. Many women said they had no option but to resolve disputes within the family because mechanisms outside their family structure were not open to them or because they would face extreme social, economic, or physical consequences for sharing family problems with outsiders. As one male community worker commented, “Suppose a woman tried to share her problem with those in her community [such as elders]; later she and her family would have to leave the community because it would be a big shame for the men of that family.”<sup>80</sup>

This research and other reports on dispute resolution trends among the broader population strongly suggest that the vast majority of cases involving women in Afghanistan never leave the family structure during the course of their resolution or abrogation.<sup>81</sup> This situation makes documentation and tracking of disputes involving women particularly difficult. The majority of conflicts involving women are never reported at all or are obstructed from public view, sometimes even from the view of those within the same community.

### *Barriers to Family Mechanisms*

Although family mechanisms are the most accessible level, women nonetheless face barriers at this level to raising a case and to being fairly heard. Many of these barriers relate to deeply entrenched social norms, such as expectations and definitions of a good woman and the legitimization and internalization of domestic violence. Not understanding the rights guaranteed under law may also prevent women from fully demanding or realizing those rights and protections even within the family level.

### **Normative Aspirations**

*“A good woman should tolerate difficulties and troubles within the family.”—Karima, thirty-two-year-old Tajik female*

Principles of tolerance, patience, and modesty are seen as important elements in distinguishing a woman’s character. Suffering, including that inflicted by one’s family, is often cited as a requisite or natural part of a woman’s life. A woman’s ability to tolerate and quietly persevere in the face of such suffering helps define being a good woman. Aspirations to meet these social standards deter women from making a complaint. At the same time, other family members—male and female alike—are likely to reject a woman’s right to make a claim because, as a good woman, she is meant to bear suffering silently. These social norms are a barrier throughout all three levels of the pyramid but are encountered first within the home.

Women are counseled by other women from a young age to abide their suffering and not raise issues even within the home.<sup>82</sup> Women are encouraged to *burdabar*, literally “to bear the burden.” As one woman in Paghman District, Kabul Province, said,

[Women] should tolerate [suffering or abuses] because it is not appropriate if they complain. For instance, when I came to my husband’s family’s home, all [my husband’s] sisters and my brothers-in-law were illiterate and jealous of me because I was educated. They forced me to do difficult things and made me stop teaching because I was a bride and should be tolerant and patient. I had never done such things in my family’s home before marriage, but I had to tolerate and did not say anything because it would have been bad if I said something.<sup>83</sup>

Women also evoked the idea of *sabor*, or patience, and *sangin*, or modesty, when describing expectations of women’s behavior.<sup>84</sup> These expectations lead a large number of disputes to be abandoned within the home before they are ever brought to another person or forum for assistance. It is not uncommon for women to speak nonchalantly about serious issues such as do-

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***It is not uncommon for women to speak nonchalantly about serious issues such as domestic violence, to say they had simply accepted that such abuse was part of their fate and that they would only suffer more if they were to raise their issues with others.***

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mestic violence, to say they had simply accepted that such abuse was part of their fate and that they would only suffer more if they were to raise their issues with others. “Women have many problems, but there is no one who listens to them,” remarked one widow. “There are many difficulties and problems at home, but women have to be patient and cannot inform other people. . . . I tolerated everything in my life and never complained about violence or injustice.”<sup>85</sup> An elder woman in Daykundi used the term *tasha kadan* to describe a woman’s ability to hide or obscure violence, abuse, or injustice.<sup>86</sup>

Showing contrition as a sign of respect or deference to others in the family—even when it is recognized that someone else is at fault—is a valued trait.<sup>87</sup> This is reinforced by the subordinate status many women have in the family to their husbands, their fathers, their mothers-in-law, or even other women who have married into the family earlier. As one woman explained, “It is better if the wife tries to settle the dispute and apologize even if she wasn’t guilty because the mother-in-law is old and respectable and the young should respect them.”<sup>88</sup> Like the other principles, contrition is reinforced and taught from a young age. One woman recollected the advice she gave to a young bride: “Maybe it is your mother-in-law’s fault, but you have to tolerate and behave and respect her. Otherwise your life will be worse.”<sup>89</sup>

### Norms Legitimizing Violence

*“Sometimes the women cause the husband [to] beat them. [In the past I fought] with my husband. I insulted my husband [so] he beat me.”*—Masouma, thirty-two-year-old Tajik female

Violations of rights are also less likely to be raised because prevalent social norms tend to accept these as appropriate consequences for what is deemed bad behavior. Examples include a husband punishing a wife by not allowing her food, beating or verbally abusing her, or divorcing her without her consent. Acceptance of violence against women is widespread.

Many women and men interviewed for this report said that examples of such behavior are legitimate responses when the wife angers, disobeys, or otherwise displeases her husband. One woman from Paghman reflected this attitude: “I think men sometimes have to beat women [when women] are guilty. For instance, if a man comes back home and he is tired, but the woman starts disturbing and insulting him, so the man has to beat her in order to stop her.”<sup>90</sup>

This acceptance of violence or punishment makes women less likely to seek justice even within the home because they see these punishments as legitimate rather than as violations of their rights. In addition, even if a woman does recognize the violation of her rights and wants to object to or resist punishment, it is difficult for women to rebut the common wisdom that she must have done something to provoke violence. A female police officer from Paghman District concurred: “Women are always guilty. A woman should not fight or make disputes; otherwise she is guilty and a bad woman.”<sup>91</sup> This barrier appears first within the family mechanisms but is a consideration at all levels of the pyramid.

Acceptance of punishment does not relate only to physical violence. Men and women interviewed said that for a man to divorce his wife over her behavior is an extreme form of punishment because the economic and social repercussions for the divorced woman and her children are so severe. Although considered extreme, this type of punishment is also frequently legitimated and viewed as the fault of the woman. “I think if a woman has good behavior, her husband will never divorce her,” argued one woman from Parachi Village. “[But] sometimes a woman makes a man so angry that he has to divorce her!”<sup>92</sup>

This barrier appeared to deter or suppress many potential claims or complaints about treatment, but there were limits. Although no one was able to articulate what constituted an

illegitimate use of violence against a woman within the home, both men and women declared that certain levels of abuse or other punishment were not legitimate and could not be tolerated. Community leaders said that the community would intercede when the violence toward a woman transcended unarticulated local norms of acceptable behavior.

### *Community Mechanisms*

Although a woman's first preference is generally for resolution through the family, when a case becomes too problematic or involves grave issues, she may resort to a community mechanism (also referred to in policy and academic texts as informal, traditional, or customary justice forums). Community, as used in this report, does not refer exclusively to a bound or contiguous geographic space. In some areas where research was conducted, the word was also used interchangeably with *qawm*, an extended kin group that is not necessarily geographically bound. Likewise, communities may not refer to family or kin relations but be based on physical location, though this is more common in urban areas. In more urban or heterogeneous areas, multiple communities may coexist or overlap within a particular geographic locale.

The majority of women interviewed privately and in all-female focus groups discussions said they preferred these community mechanisms for justice provision if they could not get an issue addressed or resolved among immediate family. Rights advocates frequently counter that this is because they lack other options, not because women would prefer these community forums if they had a choice. Nonetheless, an estimated 80 percent of disputes in Afghanistan are resolved by dispute resolution mechanisms outside the formal justice system.<sup>93</sup> The percentage would likely be even higher if all the disputes resolved at the family level were factored into the calculation.

Both women and men said they preferred community mechanisms because they are quick, cost-effective, and knowledgeable about the situation in the community as a whole and about community values. Another attraction is that because community mechanisms are more connected to community norms and power structures, the decisions reached may be more likely to be respected and enforced than those of formal justice mechanisms and to mitigate any potential loss of face or reputation for the parties to a dispute.

Community mechanisms may offer women a better alternative than the home, especially when members of the family are the cause of a woman's rights violations or concerns. If a woman's husband, father, mother-in-law, or other family member is ignoring a woman's wishes or abusing her rights, individuals within *shura* or *jirga* structures, as well as other influential community leaders, may help her seek justice in a way that respects her interests. However, where community mechanisms are closed to women (as is not uncommon in conservative areas) or where the elders or community leaders in decision-making roles are hostile to women who assert their rights, women may have no good options for redressing rights violations. Although community mechanisms seemed to exist in all the areas covered by this research, they were not always accessible to women. For example, in Aqcha District of Jowzjan Province, women were largely restricted from any forum outside the home, be it a formal state mechanism or an informal community forum.<sup>94</sup> As one woman in the community scoffed, "Women cannot go out of their homes, so how can they go to the shura?"<sup>95</sup>

Within the category of community mechanisms, the most common mediators of disputes are respected elders drawn from the local communities, including tribal elders, community leaders, mullahs or other religious leaders, local government officials acting outside their formal mandate, and other individuals who are respected within the community (sometimes but not often including respected women). In many Pashtun communities, the social structure is

dominated by tribal networks, and the dispute resolution mechanisms tend to be tribal jirgas, or ad hoc mediation councils run by particular tribal leaders or arbitrators.<sup>96</sup> In non-Pashtun communities, tribal structure may be less central to dispute resolution patterns, although in some places family- or clan-based structures may play an equivalent role. However, there are similar structures of decision making by local respected elders and community leaders and collective decision making through shuras and jirgas.

Within the community level, women often try to seek the help of any individuals, male or female, reputed to defend women's views and positions. For example, according to interviewees in the provincial capital of Sar-e Pol, strong female community leaders were able to intercede on behalf of women in the community and act as their advocates in both government and community forums. Sunni women in the Injil District, just outside Herat City, described one mullah as open-minded and supportive of women's rights, and he was their preferred mediator when they had a dispute.

Aside from these local champions, women's preferences over where to raise a dispute generally mirrored those of men in the same community. However, each research area differed somewhat, as table 4 illustrates.

Although community-level mechanisms are by no means new, specific actors and practices are constantly evolving. The situation has been particularly fluid since the fall of the Taliban and the surge in foreign investment at the local level. In the past dozen or so years, the Afghan government and foreign donors have transformed existing shura councils or formed new ones to create and expand subnational governance structures, the most prominent of which are the NSP shuras, as communities often refer to the shuras created under the auspices of the National Solidarity Program (described earlier).<sup>97</sup> These semi-formal governmental bodies have become increasingly dominant in local dispute resolution.<sup>98</sup>

The presence of these externally driven shuras and their increasing prominence in community decision making and dispute resolution has had a mixed effect on women's access to justice. On the one hand, many of these semigovernmental bodies are required to have a certain quota of female members or a certain level of female participation in decision making. In some of the participating research districts, all-female NSP shuras have been established. In districts where all female NSP shuras exist, or where women participate in NSP shuras, female interviewees tended to identify them as one of their first choices for dispute resolution outside the family. This is a positive development because it increases options for women to seek justice in their local communities and creates opportunities for women to be part of the process. On the other hand, government efforts to force communities to promote women to positions of authority by putting them on local NSP shuras has provoked a backlash in more conservative communities.

### ***Barriers to Community Mechanisms***

Although the existence of community forums may provide women another option for resolving disputes, they are far from perfect vehicles of justice for women. First, some of the same normative barriers discussed earlier in the family section strongly deter or limit access to community mechanisms. A woman may also be deterred from raising a case before community mechanisms because she fears the consequences of going outside the home or does not believe that she will receive a fair hearing.

**Table 4. Preferred Dispute Resolution Actors**

Province	Men	Women
Herat (Herat City, Injil District)	<ul style="list-style-type: none"> <li>• Arbab or other elders</li> <li>• Mullah</li> <li>• Formal actors acting in an informal capacity</li> </ul>	<ul style="list-style-type: none"> <li>• Family members</li> <li>• NSP and women's shura</li> <li>• Arbab, mullah, or other male community actors</li> <li>• Formal actors or NGOs (DoWA, AIHRC, WASSA)</li> </ul>
Jowzjan (Aqcha and Sheberghan Districts)	<ul style="list-style-type: none"> <li>• NSP shuras</li> <li>• Qaryadars or other elders</li> <li>• Formal actors acting in an informal capacity</li> </ul>	<ul style="list-style-type: none"> <li>• Family members</li> <li>• Female shura leaders</li> <li>• Sar-e Pol women's shelter</li> </ul>
Sar-e Pol (Sar-e Pol City, Sangcharak District)	<ul style="list-style-type: none"> <li>• NSP shuras</li> <li>• Qaryadars or other elders</li> <li>• Formal actors acting in an informal capacity</li> </ul>	<ul style="list-style-type: none"> <li>• Family members</li> <li>• Female shura leaders</li> <li>• Sar-e Pol women's shelter</li> </ul>
Daykundi (Shahristan and Nili Districts)	<ul style="list-style-type: none"> <li>• Elders (individually or in shuras)</li> <li>• <i>Woleswali</i> (district governor)</li> <li>• Formal actors acting in an informal capacity, not formal mechanisms</li> </ul>	<ul style="list-style-type: none"> <li>• Family members</li> <li>• Elders or shuras (sometimes women's shuras)</li> <li>• Formal actors, often in informal capacity (DoWA, police)</li> </ul>
Kabul (Paghman District)	<ul style="list-style-type: none"> <li>• Elders (individually or in shuras)</li> <li>• Local government actors acting in an informal capacity</li> <li>• Formal mechanism as last resort</li> </ul>	<ul style="list-style-type: none"> <li>• Family members</li> <li>• Elders or shuras (sometimes women's shuras)</li> <li>• Formal mechanisms, or external actors in Kabul as last resort</li> </ul>

Terminology: A variety of terms describe local elders or community leaders. In addition to those noted in the text, Pashtun communities often refer to their elders as white beards (*reesh-e-safed* in Dari; *spingheri* in Pashtun), *wakil-e-gozar* (which tends to signify some level of official deputization), or *malik(s)*. In non-Pashtun communities in the west of the country, the term *arbab* is commonly used to refer to influential community members. *Khan* is also used, particularly in Hazara areas. In the Turkmen areas where research was conducted (Sar-e Pol and Jawzjan Provinces) influential leaders are frequently called *khojahen*. Many western and northern provinces also frequently refer to community leaders as *qaryadars* or *malik*, although this term often implies some formal, governmental deputation to a community actor. In the north, particularly in recent years, the dominant community leaders have been those with some wealth in the community.

## Normative Barriers

*"Sometimes women go to the qaryadar but not often. Most of the women solve their problems at home because it is not considered appropriate to let other people know about your problems."*—  
Maryam, sixty-year-old Pashtun female

To the extent that notions of what it means to be a good woman or the internalization of violence deters women from making a complaint within the home, these norms can be even more formidable barriers against women raising a complaint or issue with those outside the home, at the community level. "[A woman] will go to hell if she takes the problem out of the home. A woman is shameless if she goes out of the home," an older woman in Daykundi said. Another

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***In communities where rigid gender segregation has been in place and women's exposure to men has been restricted almost entirely to immediate relatives, the prospect of discussing personal matters with men unrelated to them is harrowing.***

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woman from the same village noted, "I always thought it was a very bad action if I shared my domestic problem with the *arbab*, the mullah, or the white beards outside of the home."<sup>99</sup>

Women interviewees said that they are uncomfortable at the prospect of sharing the intimate details of their lives with men who are not part of their family. Indeed, in communities where rigid gender segregation has been in place and women's exposure to men has been restricted almost entirely to immediate relatives, the prospect of discussing personal matters with men unrelated to them is harrowing. As one elder explained "Women prefer not to say their problems to the men because they are not comfortable sharing those things with men in the shura."<sup>100</sup>

Just as in the family mechanisms, some norms may also predispose others within the community, such as elders, to reject a woman's right to complain about abuse or to regard the complaint as spurious because the use of punishment or violence against women is deemed legitimate. In this way, these social norms are not only barriers to access but also may be barriers to receiving a fair outcome within community mechanisms.

Many disputants interviewed argued that women would have greater access to justice through these forums (and indeed family and external mechanisms as well) if they had greater access to education or if men in these community forums had more education. Although true, it is important to recognize that what is limiting recognition of women's rights in these cases is not merely a lack of knowledge but the combination of that ignorance and these deeply entrenched normative barriers, which may take decades, if not generations, to change.

### Consequential Barriers

*"The women do not dare go to the woleswali for their problems. The family will cut their heads off if the women go there. Men do not like that."* —Fatima, thirty-seven-year-old Hazara female

Taking a claim outside the family to community mechanisms, which in practice often means raising it with a male who is not a member of the woman's family, can trigger very real consequences for women. These include social stigma or disapproval, physical violence, and loss of economic support or sustenance. Fear of these consequences can be a serious barrier against raising a claim with community mechanisms.

Women are so cognizant of these potential consequences that it was difficult to discern from women's statements whether they were internalizing the stigma against sharing problems outside the home (a normative barrier) or simply afraid of being punished for transgressing these norms (a consequential barrier). In most cases, both are probably present. A thirty-two-year-old Tajik woman in Yahya Village in Herat explained her decision not to raise an issue outside the home this way: "I had two reasons that I did not seek help. One is that I was afraid of my husband's family and that they would abuse me. And two, I did not go anywhere in order to save my family's honor."

Women in all five provinces said that taking a case outside of the home, even to another community member, would dishonor them personally and harm their family's reputation or honor. As one woman in Daykundi Province explained, "Women are embarrassed if the other neighbors know about their problems, so they do not destroy their honor and they do not go to the shura."<sup>101</sup> The issue of social stigma or censure of both the individual and her family was raised by nearly every woman interviewed. A woman from Paghman said women did not raise issues with community elders because they feared what the rest of the community would think: "They [community] think she is not a good woman because she could not solve the problems within the family and complained against her family members, and they will call her a bad woman."<sup>102</sup>



Because going outside the home damages not only a woman's honor but also her family's, women risk serious retaliation, physical or psychological, from others in the family when they take an issue to a community mechanism. A woman from Sar-e Pol Province who suffered domestic abuse from her husband said that both she and her family were threatened if they raised the issue further among the community: "[My husband] and his brother threatened me to murder my parents if I described the events [abuse] to the people. My [brother-in-law] beat my sister when she came to our home. He even threatened to beat my sister severely if she talks about it [to others]."103 A woman in Jowzjan Province noted, "The men do not let women talk. They even may kill the women if they go to the people."104

Women also face severe consequences for their basic livelihood if raising a dispute outside the home leads their family to cut them off from existing economic support. This is one of the strongest potential consequences coloring the decision not to seek help with community members or mechanisms. As one forty-five-year-old woman from Herat Province said, "Sometimes I thought about getting my divorce, but always I thought about who would support and protect me if I do it. Many times my husband threw me out of home, but I cried and asked him to allow me back home."

Women have few opportunities to earn a livelihood independently or to provide for their children outside their extended family. Women are frequently denied inheritance rights. Only an estimated 2 percent of women own land, most of them widows.<sup>105</sup> Social stigmas against women working are high, and only 16 percent of the female population participates in the workforce.<sup>106</sup> Aside from jobs serving women—women's health providers or educators—most sectors of employment are de facto (but not legally) closed to women. Even women working in these more accepted fields are frequently harassed or threatened for working outside the home, particularly in more conservative areas. Because women's independent economic means are so limited, when a woman defies social norms and takes a case outside the home, she puts her basic ability to provide for herself or her children in jeopardy.

Economic barriers are felt most acutely in many rural communities, in which women have less freedom of movement than women in cities and even more limited access to economic opportunities outside the home. As a woman in Paghman District explained,

We are peasant women and jobless, so we have to tolerate things. Women in Kabul work and are independent, so they don't have to tolerate everything. I am pretty certain that if rural women could get education and work, they would not be patient and even they could divorce their husbands [laughing], but now they do not have good economic conditions.<sup>107</sup>

Fear of economic consequences can be most pronounced when a woman turns to an external justice mechanism because the associated stigma is even larger and the likelihood of family members cutting her off is higher. Nonetheless, while a community mechanism may be more likely to broker a compromise that allows the woman to continue to be supported (because she too is part of the community), that compromise may be imposed on the woman and may deny her fundamental rights. Under Afghan law, a husband has an obligation to support his wife and children on divorce, but in practice these rights are under enforced at the community level as well as in the formal justice system. One woman interviewed in a focus group discussion in Herat Province said she wanted to get a divorce when her husband took a second wife, but because she was an orphan and had no other family, she did not have any place to go and she could not abandon her children.<sup>108</sup>

Because of the lack of economic independence and normative and cultural stigmas, women face few options if seeking help outside the home leads their family to cut them off. It is incredibly rare for a woman to set up a home on her own. Human rights and shelter advocates queried

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***Women also face severe consequences for their basic livelihood if raising a dispute outside the home leads their family to cut them off from existing economic support.***

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said they could only think of a “handful” of cases of women doing so and living independently. As one international women’s right advocate explained,

For most women, living alone is inconceivable. So the only option if you want to leave home is a shelter, if you have one in your area. But there are often no options on the other side of a shelter: you can’t live alone and you’ve become a bad option for marriage. Do you want to spend the rest of your life there or endure the abuse?<sup>109</sup>

## Dim Prospects for Justice

*“I do not think that the men allow the women to be very active. They try to silence the women’s voices.”*—Masouma, thirty-five-year-old Hazara female

Many women are deterred from taking an issue to community mechanisms because they do not anticipate getting justice. Although most of the women interviewed said that they would raise a claim at a community forum before they would do so in Afghan courts, few seemed optimistic that they would get a fair hearing in community forums. Community mechanisms still mete out discriminatory and sometimes abusive punishments toward women; decisions are based on community compromise rather than rights enforcement, which is what some women want; and women are unable to represent themselves in many community forums, exacerbating existing inequalities.

## Community Welfare over Individual Rights

Community mechanisms may not satisfy a woman’s demand for her rights to be enforced because their focus is not enforcement of rights but maintenance of community harmony and cohesion. Community forums seek a sustainable compromise that will strike a balance between the interests of the parties; their primary concern is not necessarily enforcing an individual’s legal rights, especially not the rights of women. This predisposition tends to reinforce rather than to rebut existing community norms, which do not embrace the notion of equal rights for women. Given women’s subordinate stature within a community due to deeply entrenched social norms, their views or interests often lose out in such deliberations.

The lack of respect for women’s rights or wishes can range from counseling a woman who wants a divorce to continue trying to live with her husband despite abuse, to not respecting a woman’s inheritance rights, to sanctioning punishments against her for behavior that does not comply with community social norms but is not illegal under Afghan law. Women’s rights groups have frequently criticized community mechanisms for perpetuating gender inequality and enforcing discriminatory practices. Community mechanisms sometimes sanction gross human rights abuses, including the practice of *baad* or, less commonly, stoning of women accused of adultery.<sup>110</sup> It is worth noting that though discriminatory practices often manifest themselves at the community level, the unequal status of women is an equally challenging problem at both the family level and in government mechanisms.

## Lack of Female Participation and Representation

Women may also be deterred from raising a case before community mechanisms because of the lack of female decision makers in those mechanisms and because most women lack the ability to represent and speak for themselves in community forums. Women are often skeptical that they will receive a fair hearing. “I myself do not believe in the *shura*,” explained a female lawyer, “because they are composed of mullahs, white beards, and other men in the community who have religious, [family]...or cultural biases. I think they never settle disputes in favor of women.”<sup>111</sup>

The level of women's participation in community decision-making processes differs from community to community. In most communities, women reported being unable to approach shuras directly.<sup>112</sup> Typically, a woman's case is represented in a community forum by a male family member, such as a father, brother, husband, or uncle. This immediately puts a woman at a disadvantage if the perpetrator of rights violations is representing her or if she is lobbying for individual interests or rights not supported by her family.

Although representation by a male family member is the norm, there are exceptions. In some areas, it may be tolerated for elders or well-respected women in the community to act on behalf of women, raising their issues with community leaders and serving as ad hoc advocates in community forums. In others, it is relatively acceptable for widows with no father, brother, or other male relative to bring a case directly to a community mechanism.

Interviewees suggested that efforts since the ouster of the Taliban to expand women's rights and access to justice have resulted in an increasing number of women both demanding and being permitted greater participation and direct representation in community mechanisms.

This trend is most marked in urban or peri-urban areas, especially those with greater access to progressive influences. In some communities in Herat Province, and to a lesser extent in Jowzjan Province, women suggested that prohibitions against women's participation in public forums were being relaxed, albeit slowly and incrementally. However, geographical proximity to progressive forces did not always result in greater openness to women's self-representation. In Paghman District, for example, located less than thirty kilometers from Kabul, the most progressive city in the country with the most resources available for helping women, women cited continued community resistance to women directly addressing or participating in community mechanisms.

A related issue is the lack of women as decision makers in shuras or other community dispute resolution spaces. Despite instances of mixed shuras in some communities, and even entirely female shuras in others (primarily government or donor sponsored such as NSP shuras, which may have quotas for female participation), the majority of community forums to which disputes are referred consist entirely of local men.<sup>113</sup> As a sixty-year-old woman in Jowzjan Province scoffed, "Women cannot participate or make decisions within the shuras at all. ... The men do not accept that."

Women often do not take decision-making roles at a community level because of both social norms and threats against them. Those women interviewed who had taken on a dispute resolution role in the community reported encountering resistance and threats. One female head of a NSP shura was threatened by the Taliban for participating in a Loya Jirga meeting, while another female shura head was warned to stop working for women. Despite such threats, these women leaders resolved to continue their work. As a female leader in Herat stated, "I received some letters with death threats, but I did not stop my job."<sup>114</sup>

The lack of women in decision-making roles continues to deter women from seeking justice through community mechanisms available to them. Women interviewed suggested that men would not be as sympathetic or as likely to hear their side of the story as women would.

Although this is likely true in many cases, it is worth noting that where women were promoted to leadership positions—whether through the NSP shuras or, less commonly, in formal representation positions—they did not necessarily advance views any different from those voiced by men in the communities. For example, a prominent female prosecutor in Herat was known to take a more conservative or harsh stance toward women with regard to moral crimes than her male counterparts. In response to questions about what women should do when

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***The majority of community forums to which disputes are referred consist entirely of local men.... Women often do not take decision-making roles at a community level because of both social norms and threats against them.***

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faced with domestic abuse, the head of a local women's shura in Herat said that the solution lies in women not doing things to anger their husband. She said she had been teaching women how to behave with their husbands so as not to make them angry. One woman who received this counsel said that the advice was working, that although she had previously insulted her husband over conflicts with her mother-in-law, "Now I do not say bad things to him to cause conflict at home."<sup>115</sup>

### *State and External Mechanisms*

At the top of the dispute resolution pyramid, with the fewest cases, lie state and external mechanisms. This level includes not only formal state actors, such as judges, prosecutors, and law enforcement agents, but also women's rights advocates, lawyers, and other private individuals working in NGOs, in shelters, for legal aid providers, and for other nonprofit organizations.

Although a women's shelter is very different from a local prosecutor, they are both discussed as external mechanisms in this report because many of the barriers a woman faces when she decides to go to a women's shelter are also present when she seeks the help of a prosecutor, the police, or another state actor. Furthermore, both the shelter and the prosecutor's office clearly lie beyond the locally defined spheres of the home and the community. This report also seeks to make a clear distinction between family and community mechanisms and the state and external ones because most programming that has attempted to improve women's access to justice since 2002 has focused on providing resources for or addressing problems at this state or external level.

State justice mechanisms have expanded in number and reach since 2002, as have the number of lawyers, paralegals, and legal counselors who support the formal justice system and women's access to it. Formal reporting and complaints about rights abuses have steadily increased since 2002, signaling a greater understanding among women of what their rights are and perhaps some degree of greater acceptance that they may assert those rights through state mechanisms.

Women in all five provinces noted that if they were going to go to a state representative, they would go to the local Department of Women's Affairs or the local representative of the AIHRC. The AIHRC is considered an independent body, though it is mandated in the constitution and commissioners are appointed by the executive branch. Although currently underutilized, these institutions are now established and accepted as a part of the social landscape, which is in itself a significant achievement. Barriers do exist, but if a woman faces dire circumstances and feels empowered to complain, there is at least a place she can seek help.

Outside of DoWA and AIHRC, positive experiences with formal justice actors or mechanisms was lacking among women interviewed in the study. Despite large investments, state and external mechanisms still have a limited reach, and state actors still have limited awareness of their roles and of citizens' rights. But there were exceptions. One woman from Daykundi said that she had failed to receive a divorce from her abusive husband for more than ten years using family and community mechanisms but was finally successful when she turned to formal mechanisms. The judge who heard her case not only agreed that she should be granted a divorce but also ordered that she be paid alimony. "Neither my relatives nor the white beards supported me. They just vindicated my husband, but the judge supported me. The government and court is better. I should have just solved my problem before the government [to begin with]," she said.<sup>116</sup>

The growth in support from external, nonprofit actors has also been marked. Interviews attested to the increasing and important role that women's rights groups and advocates can play within communities. For example, in the city of Herat, many women mentioned the efforts of women's rights groups and other NGOs providing services for women such as the Women Activities and Social Services Association and Voice of Women Afghanistan, which have active legal aid and protection services in the provincial capital. In both Sar-e pol and Jowzjan, many women were aware of the women's shelter in Sar-e Pol City run by Women for Afghan Women, and some had turned to it in extreme cases, such as when they had run away from home, faced domestic abuse, or were seeking a divorce. Although in many communities, shelters are controversial because the women taken in are perceived to violate social taboos, some shelters have been successful in winning local community support. Some shelters have also made headway developing positive partnerships with local authorities and police, which can improve the chances that women in extreme circumstances will be able to seek help without being doubly victimized, an issue discussed at greater length later in this report.

Yet though this NGO sector has expanded since 2002, the presence of such NGOs is still limited, particularly outside urban areas. In many of the non-urban communities researched for this report, there was little to no NGO presence. Reaching a shelter or a women's group would itself have been a logistical and financial feat and an incredibly dangerous step for a woman to take. As a Human Rights Watch report on women jailed for moral crimes noted,

The number of women's shelters in Afghanistan has increased from 14 in 2011 to 18 in 2013. However, the capacity of the shelters is far too limited for the number of women who require assistance, and fewer than half of the country's 34 provinces have even a single shelter. There are no shelters in the more conservative southern half of the country.<sup>117</sup>

Overall, the growing availability of state and external actors is a huge accomplishment and an important safety net for women facing often egregious violations of their rights. Yet though these mechanisms have expanded, they are still the least accessible and thus the least relied on options for women seeking justice or help.

Table 5 presents the presence and reputations of state and external mechanisms in each of the districts visited, illustrating the varying roles these mechanisms play in supporting women's rights and access to justice in each community.

### ***Barriers to State and External Mechanisms***

Women faced the most significant barriers when they chose to seek the assistance of state or external actors, particularly state mechanisms. All the normative barriers present at the family and community level are also present when women try to access state and external mechanisms, but to a much greater degree. The fear of the consequences of going outside the home (community stigma or disapproval, physical retaliation from family members, loss of economic sustenance, and so on) is even more intense at this level than at the community level. In addition, much as women are skeptical of community mechanisms, women often doubt that they will find justice in state mechanisms due to the poor conduct of state actors or the overall perception of dysfunctional government service delivery. That social norms tend to bar opportunities for women to represent themselves also makes justice harder to secure.

Despite a deliberate search for women who were open to or had already sought state or external mechanisms, only one-third of women interviewed said that they were willing to go to the formal system. Most of those said they would go to state and external mechanisms only

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***Only one-third of women interviewed said that they were willing to go to the formal system.***

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**Table 5. Roles and Reputations of External Actors**

<p><b>Province, District Name</b></p> <ul style="list-style-type: none"> <li>• Relationship with or attitude toward government</li> <li>• Presence of NGOs</li> <li>• Availability of advocates or resources for women</li> </ul>
<p><b>Sar-e Pol Province, Provincial Center</b></p> <ul style="list-style-type: none"> <li>• Limited trust in state officials, fears of corruption, high costs of engagement with government, and long processes; limited resort to the police or courts in the district, except in extreme cases</li> <li>• Limited presence or role for most NGOs in the community; most serve as support agencies</li> <li>• To some degree; women reported positive role of DoWA and the NGO Women for Afghan Women (WAW) as points of reference for disputes; DoWA has become de facto outlet for women in community for dispute resolution support</li> </ul>
<p><b>Sar-e Pol Province, Sangcharak District</b></p> <ul style="list-style-type: none"> <li>• Low rates of referral to the government, limited service provision in the district</li> <li>• No regular presence of NGOs; NGOs or other external actors provided support only if women came to offices in provincial center</li> <li>• Neither state nor NGOs engaged in the community overall (much less women's issues) due to insecure travel from provincial center</li> </ul>
<p><b>Jowzjan Province, Aqcha District</b></p> <ul style="list-style-type: none"> <li>• Positive relationship between provincial governor's office and community elders in some villages; tension between majority populations of Turkmen and Uzbeks, who dominate local governance institutions, and minority Pashtun population (in Tabai village)</li> <li>• Some NGOs in Aqcha District center but focus on livelihoods and education and confined mostly to district center because of insecurity or antigovernment elements in some surrounding villages; past instances of kidnapping of aid workers in communities</li> <li>• In Tabai, women had little knowledge of NGOs working in the district or of the role and responsibilities of government bodies dealing with women's issues, including DoWA and AIHRC; severe distrust of government representatives among broader community</li> </ul>
<p><b>Kabul Province, Paghman District</b></p> <ul style="list-style-type: none"> <li>• Lack of trust in district governor's office (long process, high expenses, and corruption); little reference to the police or the primary court</li> <li>• No permanent NGO presence in Paghman District but located in Kabul Province, and highest saturation of NGOs and government services in Afghanistan in nearby Kabul City</li> <li>• Despite proximity to Kabul, community does not allow outsiders, including law enforcement, to interfere in disputes, much less other women's-related resources; some women mentioned MoWA as a potential resource but few had used it</li> </ul>
<p><b>Daykundi Province, Shahrستان District</b></p> <ul style="list-style-type: none"> <li>• Geographic isolation, poor infrastructure, and limited government presence; many people have no access to government services</li> <li>• NGOs carry out intermittent projects in community, such as livelihood and peacebuilding programming</li> <li>• Virtually no dedicated district activities focused on women's support exist; nearest resources in provincial capital</li> </ul>
<p><b>Daykundi Province, Nili District</b></p> <ul style="list-style-type: none"> <li>• Good physical access to government entities, but many not keen to refer their cases to government because of perceived corruption and complicated processes</li> <li>• Some NGOs provide training for livelihoods and improving economic issues, but few legal or women's services; limited professional legal community and awareness of formal justice system</li> <li>• DoWA provides some assistance to abused women, but no formal shelter</li> </ul>
<p><b>Herat Province, Injil District</b></p> <ul style="list-style-type: none"> <li>• Lack of trust in district governor's office; fear of community censure for taking a case to government; fear of corruption and misconduct all deter engagement with state actors</li> <li>• Some NGOs have provided services in the past, particularly WASSA, which regularly provides legal awareness and counseling for women</li> <li>• WASSA helps many women in community; local women's shura may refer cases to DoWA or AIHRC if shura cannot resolve issue on its own</li> </ul>

after they had tried and failed to have the issue resolved in the home or in the community. Women resorted to the formal state actors only when faced with a serious issue, such as grave physical violence within the home.

Normative barriers can be much stronger vis-à-vis state or external actors, in particular collective barriers that deter the entire community (men and women) from going outside it for help. Women doubt that they will get a good outcome in state or external mechanisms. In discussing why this is so, the following section also spotlights a number of other practical or pragmatic barriers to accessing such mechanisms, such as lack of education and limited mobility. Although many of these barriers are present whether women seek the support of state mechanisms or of other external actors, some are relevant only with regard to state mechanisms.

## Normative Barriers

*“The women should say goodbye to their family if they go to the court because they have ignored the family’s reputation.”*—Sakina, thirty-year-old Hazara female

The normative barriers that are present in the family and community levels— notions of what a good woman’s role would be, internalization of violence, the assumption that women have fewer rights than men, and association of shame and dishonor with exposing private matters to “strangers or outsiders”—also prevent or deter women from seeking justice through state or external actors, but to a much greater degree. By illustration, when prompted with the question, “Can women go to the police or the courts in the community? Why or why not?” four female respondents from Paghman District, Kabul Province, answered as follows:

M: No, her family will not let her go.

Z: Everyone will tease her. If she goes to court, people will think she is a bad woman. Her husband will certainly tell her not come back home again.

P: Maybe her husband will beat her if she goes and he will not let her come back home.

D: Yes, women could go, but in practice no one does. It is not good for women to go to the police. People say everything behind her. Everyone tries to hide the disputes from outsiders and keep them within the family.

Such attitudes were common across all the communities visited. In Jowzjan, a girl tried to have her mother serve as a witness for her marriage after the girl had run away, but her uncle prevented her mother from going to support the girl. Her mother said, “We did not see my daughter because of the stigma she brought for us, and people’s words. We were scared to go out of the community and to the court [because it would also bring shame on us].”<sup>118</sup>

These normative barriers may be even stronger when it comes to state or external mechanisms because doing so risks violating not only personal or family honor but also the entire community’s honor. As such, the normative barriers act as collective barriers for anyone in the community who contemplates going outside it and are often collectively reinforced.

## Collective Barriers

A woman’s ability to access justice is defined not only by her relationship with her family or community (and expectations and attitudes of women within those spheres) but also by the relationship between the family or community and external services or authorities. Collective barriers stem from the same normative and cultural barriers discussed with regard to family and community mechanisms. One of the most significant collective barriers to raising cases with state and external actors is the taboo against taking problems outside the community. According

to one young man whose sentiments echoed others in a focus group discussion, “In the village we are living like family and we are coming and going in each other’s houses. If we go to the police, it means that we don’t trust our elders. That seems very bad for all of us.”<sup>119</sup> As a member of the police force in Paghman District noted, “Here is a rural district, and people still think that going to the police or the court is a big sin, and they do not come here.”<sup>120</sup> Even when individuals do turn to an external mechanism for support, they often request that their use of the mechanism be kept quiet.

Distrust seemed to be greater with state mechanisms than with nongovernmental actors, though this depended highly on local community values and preferences. That it does may stem from the perception that the government’s methods do not reflect local norms and values. Some communities may have specific grievances against the government. For example, in the village of Tabai in Aqcha District, the minority Pashtun population deeply resented the predominantly Turkmen and Uzbek local government officials, who they claimed had discriminated against them for years.

The collective taboo limits access to state and external mechanisms generally but is undoubtedly a greater barrier for women. Going to the state or external actors demonstrates that a community and its leaders are incapable of resolving issues and protecting the population. It is frowned upon when men do it but women doing so provokes a yet fiercer condemnation. In the words of one young man,

It is very shameful for women to go to the police. And it seems very shameful for all of her family for a woman to go to the police. But if they go to the police, then it shows our shura’s weakness, and it is shameful for all of us. And then the shura will lose its trust among the people.<sup>121</sup>

Because violating this taboo brings collective shame, it is strongly enforced by other members of the community. A young woman commented,

The other members of a family would not let a woman in the family go to [the government]. But if she were to file a complaint against her family, all the people would say the members are cowards who let her do that and the woman is not respectable anymore.<sup>122</sup>

Women interviewees expressed the very real fear that violating a family’s or a community’s honor by raising an issue with external actors could have severe consequences, including being shunned or cut off from their family or community. A dissolution of all family and community relationships would strip a woman of economic and social protection.

Because of these collective barriers, a community’s willingness to engage with state and external mechanisms varied greatly from one district to another and strongly affected how much the women in that community were able to access them. No single model of openness to state and external actors fits all communities. Instead, communities fall along a spectrum—from those that are relatively open to external intervention or assistance to those that are closed and discourage all members from seeking outside help. Most communities in Afghanistan are situated toward the closed end of the spectrum, in part for historical reasons and in part as a response to generations of conflict. Greater openness is to be found in urban areas; however, even urban areas contain some relatively closed communities, as in the case of the Hazara community in the Jebrail area of Herat City.

Relatively open communities tend to make greater use of services offered by NGOs, formal government services and institutions, and actors (even informal actors) in other communities. For example, in Herat City and the immediately surrounding areas, both men and women were relatively free to approach external actors, though women still faced greater stigma for doing so. In such communities, strategies of ensuring that legal resources are avail-



able to women are likely to have an impact. Focusing on service provision, with the expectation that people will use the services provided, makes practical sense in such instances. This research suggests that expanded access to these resources in the past decade in areas such as Herat City has significantly improved popular perceptions of external justice services and enhanced women's access to external forums for rights protection.

### Consequential Barriers

These normative and collective barriers are often enforced by the consequences a woman faces for transgressing them, which, as discussed earlier in the community section, include shame, dishonor for herself or her family, loss of economic support for herself and her children, and physical abuse. In addition, a woman is often deterred by the potential consequence of poor or abusive conduct by the state or other external actors from whom she seeks help, as well as by the prospect of what her life would be like if she were to seek external help. Whereas these consequences may follow a woman's decision to raise a violation at the community level, they are much more likely for a woman who goes one step further and seeks help from state or external actors. Also, just as the transgression of going to state or external actors is much greater, so are the consequences. The likelihood is far higher that a woman will face serious abuse or death, such as through an honor killing, or be completely cut off from her family when she goes outside the community.

### Poor or Abusive Conduct

Women are afraid that going to formal justice actors will not only be of little help but will expose them to physical abuse or prosecution.

Women expressed fears about being physically assaulted or abused by state representatives—particularly members of the Afghan National Security Forces (ANSF). Female officers in Daykundi reported instances of abuse and rape within the ANSF, and a respondent in Herat described the rape of a sixteen-year-old girl by ANSF forces. The violence perpetrated against Afghan women who are members of the police force illustrates why many women say they are afraid to report sexual assault to authorities. An unpublished UN report leaked to the press found that 70 percent of Afghan policewomen interviewed in a nationwide survey had been sexually harassed or had experienced sexual assault in the workplace, typically by colleagues.<sup>123</sup> Powerful local leaders or members of government have sometimes enabled such abuse, as illustrated in an example provided by an AIHRC representative in Herat:

There was a female police officer who has been [forced to] dance for other male police officers in the chief of police's office in one of the districts. She was then misused and raped by the police officers. Then we tried to bring her to the shelter, but . . . a MP [Member of Parliament] . . . supported [the male police officers] and told us to send the woman back to the province. I told them no and that so long as I am alive, no one will take her back [there].<sup>124</sup>

In addition to the risk of physical violence, women who report crimes such as assault or domestic violence are frequently then prosecuted themselves, and often no action is brought against the perpetrator. For example, women who flee situations of domestic violence or other violations of their rights (for example, the right to choose a marital partner) are frequently charged with running away and sometimes with attempted adultery despite the fact that neither are crimes under the Afghan criminal code. Women who report sexual assaults or rape are also frequently charged with adultery or charged generally with moral crimes.<sup>125</sup> As the head of a shelter in Herat commented, "Women are violated by men, then the women are brought to the court and found guilty."<sup>126</sup>

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***Women who report sexual assaults or rape are also frequently charged with adultery or charged generally with moral crimes.***

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The interviewees included several women who had been arrested and prosecuted when they had attempted to flee violence or had sought government assistance with a dispute.

In some cases, women may be arrested and jailed on very little evidence, and solely due to a family member's complaint. One woman reported that her husband beat her severely, threatened to take another wife, and threw her out of the home. She was later arrested after her brother-in-law filed a complaint against her for allegedly having an illegal relationship with her cousin and running away from home.

### No Return to a Normal Life

Another important consequential barrier is that women who turn for help to state actors or to NGOs, such as women's groups or shelters, are likely to find it extremely difficult to return to their former lives. Women weigh the inability to reintegrate against the low likelihood of an outcome that protects their rights and interests.

This dilemma may be the most extreme for women who seek the support of a women's shelter. The only option for many women who have run away from home, face extreme abuse and persecution, and have no other family support is to seek the assistance of a women's shelter. But though shelters may provide immediate economic and physical protection, a frequent consequence may be that a woman is cut off from her long-term support. Women may not be able to see or live with their families again because of notions of shame or dishonor associated with time spent in a shelter. As one NGO worker in Herat noted, though the situation was better than in the past, it is "very difficult to convince parents to accept girls back from the shelter."<sup>127</sup>

### Dim Prospects for Justice

*"I am innocent. Those men raped me, but I am in the jail now."*—Fatima, thirty-five-year-old Hazara female

Just as women are deterred from going to community mechanisms because they do not think they will receive justice, they often do not seek justice through state or external mechanisms for the same reason. Reports of state misconduct, incompetence, and malfeasance are rife, ranging from pervasive corruption to officials' lack of knowledge sufficient to perform their jobs competently, to predatory behavior against the population over whom state representatives have authority. Conservative views of women and discriminatory decisions and punishments are a major issue in state mechanisms, as they are at all levels. Legal aid workers and women's rights activists have noted that even defense counsels may further deprive their female clients of their legal protections because they do not agree personally with a female client's decisions or actions or have a poor understanding of her individual rights.<sup>128</sup>

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***Interviewees frequently cited state officials' inefficiency and incompetence, reflected in long delays and lengthy case resolution times, as a reason they would not go to the formal justice system.***

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### Incompetency and Lack of Enforcement

The overall poor reputation of state actors, and of judicial actors in particular, also led women to believe they would not achieve justice through formal mechanisms. Interviewees frequently cited state officials' inefficiency and incompetence, reflected in long delays and lengthy case resolution times, as a reason they would not go to the formal justice system. Both men and women interviewees expressed concerns about the transparency of judicial proceedings and the honesty of judicial actors. One man summarized the feelings of many when he said, "If you refer your case to the government, it means that you have made a big mistake because there will be

**Box 5. "A Painful Story"**

Women who seek to assert their rights typically need exceptional perseverance, as illustrated by this story shared by a defense lawyer in Nili.

"The woman [aged twenty-six] had a painful story. She had lived with her husband for twelve years, and then the man decided to divorce her when they had three children and she was pregnant again because he was in love with another girl. Her husband had thrown her out of their home with their children three times in order to get married to that girl. But every time the wife went back to the home and told him that she is not interested in a divorce. But the husband beat her, and finally the woman went to the shura to seek help [to obtain] a divorce. The shura decided to support her husband to divorce her without any alimony. She was a smart woman, though, and she wanted to get her alimony. She came to me. We did not want the case to go to the court because it certainly would have been a long process, so I sent her to the hoquq department [the local representative office of the Ministry of Justice, which is tasked with conciliation or mediation services]. The head of the hoquq department tried to get her alimony from her ex-husband. He sent several letters to the man to come to his office. The last I knew of the case, it seemed to be working. I hope she can solve her problem."<sup>1</sup>

<sup>1</sup> Twenty-six-year-old Hazara female divorcee, interview, Nili District, Daykundi Province, September 2012

no justice. The winner would be the person who paid more bribes."<sup>129</sup> This view, too, is consistent with other studies, which cite high levels of corruption or perceived corruption in the courts.<sup>130</sup>

Women worried that courts would not actually have the power or even the inclination to enforce women's rights, a justifiable concern in light of available statistics. A December 2013 report on the enforcement of the EAW law found that although the preceding year had witnessed a 28 percent increase in official reports of violence against women to police and prosecutors, actual prosecutions increased by only 2 percent.<sup>131</sup> Women said that they did not think courts would help them. A woman, Fatima, went to the court to get a divorce from her husband and to obtain her *mahr* (a woman's financial rights guaranteed through her marriage contract), which would support her financially. Her husband threatened her that he would sign divorce papers only if she did not request the alimony at court, as was her right. Fatima said she did not think the court would or could force her husband to pay, so she ended up not only not asking for the alimony but not even going through with the divorce because she would have no way to support herself afterward.<sup>132</sup>

In many instances, the very normative values within the home and community that prevent women from accessing state or external forums for dispute resolution are reinforced by government actors, who either force women to refer cases back to the previous forums for resolution or punish them for transcending accepted social norms despite their legal right to seek protection (see box 5).

**Lack of Female Participation and Representation**

Some of the representation issues at the community level are also present at the government level and inform women's belief that they will not get a full and impartial hearing of their grievances. First, opportunities for self-representation are limited. State authorities frequently demand that women be represented by men at all stages of a formal justice proceeding (and even in first making a complaint), despite the fact that Afghan law endows women with autonomy and the right to enter contracts, own land, and participate in legal processes.<sup>133</sup>

**Table 6. Women's Representation in the Formal Justice Sector and Law Enforcement Services**

Female judges	186 (of 1,800) <sup>a</sup>
Female defense lawyers	300 (of 1,700) <sup>b</sup>
Provinces with no practicing female attorneys	19 (of 34) <sup>c</sup>
Government employees who are female	21% <sup>d</sup>
Women-friendly police stations (equipped with women's toilets, changing rooms, etc.)	0

a. UNAMA, "Afghanistan's Female Judges Discuss Challenges in Justice Delivery," September 4, 2013, <http://unama.unmissions.org/Default.aspx?tabid=12254&ctl=Details&mid=15756&ItemID=37235&language=en-US>

b. "More Defense Lawyers Needed for Afghanistan," European Union Police Mission for Afghanistan (EUPOL). [www.eupol-afg.eu/?q=node/314](http://www.eupol-afg.eu/?q=node/314)

c. AIHRC report, "Citizens Access to Justice," (2012), 28, [www.aihrc.org.af/media/files/AIHRC%20Report%20on%20Decree%2045%20\(English\)-final.pdf](http://www.aihrc.org.af/media/files/AIHRC%20Report%20on%20Decree%2045%20(English)-final.pdf). The report also notes that there are fewer than five active defense attorneys in fifteen provinces, and none at all in three of those provinces.

d. Central Statistics Office of Afghanistan, "2012 report on government employees by ministry and department: Number of Female Government Employees," 20, <http://cso.gov.af/Content/files/03%20Government%20Employees.pdf>

Family support may also be necessary because of either the cost of legal fees or the difficulty of traveling to and from court sessions (a woman traveling unescorted outside her community runs contrary to prevalent social taboos). For example, women in a focus group discussion in Herat suggested that even in the city of Herat, where women had greater autonomy and access to formal justice than women in any of the other research districts, women often could not obtain a divorce without a male family member advocating on her behalf.

One woman went to the woleswali with her father to seek a divorce, [but] her husband refused to divorce her, so the woman's father had to pay 2 lakh [200,000 Afghani, or approximately \$3,500] to his son-in-law to get his daughter's divorce. Her family supported her, otherwise she would not have been able to do that. She is living with her parents now.<sup>134</sup>

In addition, it is rare for women accessing the justice system or seeking other state support to be helped by a woman on the other side. Despite significant efforts to recruit women, female judges, prosecutors, lawyers, and police are few (see table 6). The interviews with women working in government or taking on other public roles suggest a long way to go in filling this gap. Nearly all of those interviewed reported confronting significant challenges to working, from negative perceptions or criticism to threats to outright attacks. Women police officers, for example, reported experiencing harassment. One woman noted that

there is still a negative attitude toward women working as police officers. The people always say . . . that we are bad women. But it is not their fault. They do not know that a woman should check women and that a woman can share and talk with a woman police officer more easily.<sup>135</sup>

One woman working with a legal aid organization in Daykundi said that men would tell her that she was forcing their wives to get divorced and if she did not stop the process they would make trouble for her.<sup>136</sup>

As a result of the lack of women in these positions, the social taboos that prevent women from speaking to men outside the family can be a formidable barrier to accessing state mechanisms. This is less of an issue with most nongovernmental actors, which frequently have female

staff. In most formal mechanisms, there is effectively no one to whom a woman would feel comfortable bringing her case. Many women also said they would not bother trying because they did not believe that men, including those in government, would listen to women's needs or treat them fairly.

## Practical Barriers

*"I could not find my way if I went out of the community. I do not know where the court is."*  
—Gul Bibi, twenty-one-year-old Hazara female

Although most of the barriers discussed so far have been normative or consequential, when it comes to accessing state or external mechanisms, a number of practical or pragmatic barriers also come into play. Resolving a dispute within the home or the community is quick and relatively easy for women because no fees, distances, or formal legal arguments are involved. But taking a case to state or external mechanisms can mean surmounting a number of obstacles, including a lack of information about where to go, low levels of literacy, the need to travel great distances, and the cost of legal representation fees.

## Limited Education and Awareness

Women's ability to demand rights is impeded by a lack of understanding of basic rights and legal protections afforded under Afghan and Islamic law. This is a problem at every level of the dispute resolution pyramid, but it is most acute at the topmost level. Women are relatively more familiar with the "rules of the game" within the home and even in their community, but the rules of the state system are entirely foreign to many potential disputants.<sup>137</sup> And, in the absence of a basic understanding of the legal principles and rationales being applied by state actors, many women find themselves forced to argue using terminology and a normative framework with which they are largely or entirely unfamiliar.

For many women, the first and most obvious barrier is lack of basic literacy. "The most important barrier," observed one young woman, "is illiteracy within women. If all women were literate, they could easily access justice and find solutions for their problems and establish justice."<sup>138</sup> When an illiterate woman does obtain counsel or support, she is immediately put in a continuing state of dependence on another party (such as a counselor or shelter worker) who can read official documents and inform her of her rights and issues of due process.

Most government services rely on some degree of written documentation and an ability to work through a complex and challenging bureaucracy. This can be a barrier for both men and women, given the high illiteracy rates across Afghanistan and the almost universal lack of legal understanding—even of the basic notion of rights—within some communities. However, as a rule, women have even higher rates of illiteracy than men and are often cut off from pathways of information, given social norms prohibiting them from speaking to men outside their family.

A general lack of understanding of the government's functions and purpose also means that most of the women interviewed had a very limited understanding of the roles and responsibilities of the various state actors. In the absence of that information, most women must navigate the justice landscape blindly. "I am a victim of ignorance," one woman in the Sar-e Pol shelter said.<sup>139</sup> When asked where they would go if they had to get assistance from the government regarding a dispute, the majority of female respondents said they would seek out the DoWA. Women in many communities were unaware that DoWA does not have a mandate to provide services to people by law and would in most instances be unable to do more than provide ad hoc counseling or advisory services.

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***The rules of the state system are entirely foreign to many potential disputants...In the absence of a basic understanding of the legal principles and rationales being applied by state actors, many women find themselves forced to argue using terminology and a normative framework with which they are largely or entirely unfamiliar.***

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State mechanisms also present the added challenge of being conducted in an unfamiliar language. The majority of formal court proceedings, including all official documentation, are conducted in one of the two major national languages—Dari or Pashto—though at least seven other primary languages are spoken throughout the country. Poor Dari or Pashto skills are a practical challenge for both male and female non-native speakers, but women are often in a worse position due to limited opportunities for formal education and economic participation.

### Bureaucratic and Administrative Barriers

Often neglected in rights awareness and legal aid campaigns is that women typically lack the legal documentation necessary to establish legal protections. Nearly all the married women interviewed said that they did not have an official marriage certificate from the state. All of them had *urfi* (customary) documents for their *niqab* (official marriage in Islam) from the religious leader who performed the wedding ceremony, but few had ever registered the document with the state.<sup>140</sup> Some of the younger respondents and those with easier access to government offices had obtained a marriage certificate, but they were in the minority. Problems can arise for a woman without a certificate should she seek a divorce or try to secure mahr because state officials may claim that her lack of documentation prevents them from enforcing the payment of her mahr. Similarly, a lack of documentation can be troublesome during custody or maintenance claims for children or during inheritance disputes in the event of a spouse's death.

Women also faced bureaucratic or administrative barriers to seeking assistance within state forums when they did not have a *tazkera* (an official government identification card). Many women did have voter registration cards, but few had a *tazkera*, which is often needed to formally register cases or obtain government assistance.

### Limited Mobility

A woman's ability to seek dispute resolution beyond her home depends heavily on her freedom of movement. State services are still primarily available only in urban or semi-urban areas in a country where 76 percent of the population still live in rural areas.<sup>141</sup> Because of security concerns, poor roads and transportation, and limited resources, formal justice actors—such as court officials, state conciliators (*hoquq*), and attorneys—rarely stray outside provincial capitals, though some do travel to or operate in district centers. Among formal justice actors, the Afghan National Police had the greatest penetration into rural communities and beyond district centers. Even so, the nearest police station might be a two hour walk away, according to a number of respondents. Others reported that their district center—and the state representatives who work there—was five hours away.

Mobility and geographic access are thus a serious issue for many rural citizens, but particularly for women, given social norms limiting their movement outside the community, or sometimes even outside their home or compound, unchaperoned. To venture out unchaperoned might put a woman into the category of having run away, which in turn would likely lead her to be treated as a criminal. Research identified no instances in which women were permitted to visit a court, police station, or other external forum completely unhindered or unburdened by social prohibitions. In response to the question of why women do not bring cases to the formal system, one male community member in Aqcha District explained that they would have to be accompanied by a *mabram* or family member who would implicitly have to agree with her decision.<sup>142</sup>

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***Mobility and geographic access are thus a serious issue for many rural citizens, but particularly for women...To venture out unchaperoned might put a woman into the category of having run away, which in turn would likely lead her to be treated as a criminal.***

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In almost all the areas covered by the research (excepting highly conservative areas of Aqcha and Paghman Districts), women noted positive changes in women's ability to move outside their homes and within their communities since the fall of the Taliban regime. However, a number of female and male respondents noted that the space for public movement had begun to contract again in the past few years as perceptions of insecurity in the country as a whole and in local communities had increased. If, as many observers expect, security deteriorates in the near future, it will likely further inhibit women's freedom of movement in many areas.

### Costs

The brunt of all costs associated with entering the government system must be borne by the parties to the conflict. Legal aid is still limited across Afghanistan. Real, and often prohibitive, costs include court fees, attorney costs, transportation to and from service providers, associated penalties and compensation costs after a decision is made, and bribes. As one young man in a focus group discussion remarked, "We don't have extra money to spend in government offices for solving our problems. We can solve our entire problem within the community, so, therefore, there has been no need to go to the government to solve our problems."<sup>143</sup> The costs incurred can be an even bigger barrier to women, given their lack of economic independence in most cases. Without her family's financial support, a woman often cannot proceed with a legal case.

### Conclusion: Strategizing for Long-Term, Sustainable Impact

Over the past decade, Afghan women have made gains in terms of increased public participation and the realization of some basic protection of their rights and interests. This progress is remarkable given the extent to which women's rights were denied and ignored under the Taliban. Yet, despite the progress, interviews with both men and women indicate that women still face enormous obstacles in asserting and defending their rights and interests. Women said repeatedly that they had no choice, no option, or no means to access justice. At all levels of the dispute resolution pyramid, women are prevented from fully voicing concerns, raising a grievance, exercising their rights, ensuring their economic and physical protection, or otherwise seeking justice.

Many women's rights advocates expect these challenges to increase in the near future, given the expected drawdown in international support and the potential for greater insecurity and violence in the coming years. Although interviewees seldom mentioned it, the possibility of the Taliban or other conservative elements gaining a stronger foothold in terms of geographic or government control is real and would put women's rights under even greater strain. A full rollback of all rights, as under the previous Taliban regime, seems remote. But the pace of change may slow in the coming decade. Absent strong international pressure, many of the more progressive legislative victories for women may fall prey to conservative political pressures. The relative increase in women's mobility may shrink in areas where security decreases or conservative actors assume more control.

Given these increased challenges, the need to support women's access to justice is greater than ever. There are no easy solutions and likely no way to completely mitigate or reverse the coming restrictions on women's rights and freedoms. However, it will be possible to preserve at least some of the hard-fought gains made since 2002. A long-term strategy of encouraging a shift in deeply entrenched normative beliefs and social practices may pay dividends, sowing the seeds for greater women's equality in the future. Some of the assumptions that have underlain women's access to justice strategies should be revisited based on the insights gained in this research.

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***At all levels of the dispute resolution pyramid, women are prevented from fully voicing concerns, raising a grievance, exercising their rights, ensuring their economic and physical protection, or otherwise seeking justice.***

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### *Unpacking Assumptions*

Although the research indicates that the women's rights strategies of the last decade have had some positive effect, it also suggests that slightly different approaches or understandings of women's barriers might have increased the impact of these strategies. Women's rights programming in Afghanistan was based on assumptions that increasing women's (and men's) knowledge about their rights and improving women's proximity to resources would enable women to access justice. These assumptions and subsequent programming need to be revisited in light of the findings about barriers to justice for women. Lack of awareness and lack of resources are certainly significant hurdles to women's access to justice, but they are only part of the problem. Even when women are aware of and physically close to the resources, they often are prevented from using these resources or choose not to use them because of the individual and collective barriers described.

### **Cost-Benefit Calculations and Awareness-Raising**

Many efforts to improve women's access to justice since 2002 have been based on an assumption that a lack of knowledge (both among men and women) about women's rights was the main obstacle to women asserting their rights. As a result, most programming activities have focused on increasing the awareness of women's rights, both among men and women.

These findings suggest that while awareness and knowledge—as well as the community norms informed by lack of knowledge—do play a role in limiting women's access to justice, they are far from the only factors. The prevailing family and community norms and the consequences for contravening those norms may have more of a limiting role than a woman's level of knowledge. Certain decisions a woman may make may seem to forfeit her individual rights or protections and thus may appear ill-advised and the product of coercion or ignorance. Yet often these decisions are based on a rational and realistic appraisal by a woman of the limited opportunities to pursue justice and of the very likely consequences of choosing to do so. Even women who are well aware of their rights may rationally decide not to pursue them.

An Afghan woman is more likely to weigh the potential consequences of her actions for her family and surrounding community members than a Western woman is. This results in actions different to those that an individual rights-based perspective might anticipate. Community-based concerns—including the protection of her personal or family honor, the guarantee of custodial rights, and the security of the social and economic safety net woven by family connections—may be judged more valuable to a woman than her individual rights. Or the certain consequences of contravening social norms may loom larger than the benefit preferred by a woman's rights in theory given the dim prospects for actually having those rights enforced in the available forums, whether through family, community, or state mechanisms.

What this suggests is that though awareness-raising, education, and the gradual norm change that such activities ideally encourage are core components of improving women's access to justice, they are not sufficient in themselves. They can contribute to change over the long term but they may not change a woman's ability to access justice in the short or medium term because of the many other barriers that may take much longer to break down.

### **Resources and Proximity**

The second assumption underpinning women's rights strategies has been that the availability and proximity of resources are the primary determinants of access. Since 2002, legal aid clinics,



formal justice mechanisms, women's shelters, and other resources have been provided on a geographic basis wherever funds and infrastructure (human or physical) were available. Although no sector or type of gender programming was able to cover all geographic areas, many programs have assumed that the impact would gradually spread like an inkblot. According to this theory, making legal services or counseling more available in one area and raising awareness of individual rights could increase access and spread awareness to neighboring areas, even if the programs did not directly engage those areas.

This research suggests that the inkblot theory of programming impact is misguided: The nature of the community matters more than its geographic proximity to services, information, or resources. For example, despite Paghman District's immediate proximity to the city of Kabul, which has the country's largest concentration of women's rights resources, very few women in Paghman District accessed resources outside the immediate family or community. Local community norms were extremely resistant to members of the community going to outsiders for help and largely blocked any positive spread of rights protection to women in the community.

In the future, the nature of the local community should affect the type of engagement strategy adopted. Evaluating the nature of the target communities should be the first step taken before any program is developed. One of the most important factors to assess is how strong the stigmas are within a given community against seeking outside help; in other words, one must determine where a community falls on the open or closed spectrum discussed earlier. In open communities, providing and expanding support via external mechanisms may help women because they will have some degree of freedom to access those resources.

However, if strong collective barriers are present, as they are in closed communities, strategies that target women as individuals but that ignore the wider community will have only limited impact, and in some cases minimal impact. For example, the minority Pashtun community within Aqcha District mistrusted all state actors (and also many nongovernmental actors who worked with the government) because the community perceived the government to be dominated by the local majority, non-Pashtun ethnic group and therefore to be biased against Pashtuns. Because of these community barriers, no individual—woman or man—in the Pashtun Aqcha community would consider resorting to outside actors (governmental or nongovernmental) to resolve a dispute or help address a problem. Women's services might be available close by, and a woman might even know about them, but as a member of the Aqcha community, she would be unlikely to take advantage of them.

Even in relatively open communities, such as major urban areas, it is important to explore subcultures or smaller communities within the city where community barriers or social mores may limit access regardless of the openness of the surrounding urban community. If these barriers are not identified, then a large subsection of the population will struggle to obtain access to justice, even if resources are close at hand.

Many gender-based intervention strategies in such communities have failed because they have misdiagnosed a large part (if not the largest part) of the problem by ignoring or underestimating the scale of collective barriers. In most cases, the collective barriers are stronger than the individual ones. Although collective barriers may not be based on gender, women may find them even more of a hurdle because, given prevailing conservative norms, women are most vulnerable to physical retribution or social ostracism or least likely to test normative limits in conservative communities.

Where women's rights programming seeks to work in closed communities, a narrow focus on women's rights will be ineffective. Programming and awareness campaigns must broaden

their focus and target the entire community, particularly men, to ensure improved access to or acceptance of external mechanisms by the community as a whole.

### *Breaking Down Barriers*

These revisited assumptions suggest a need for a slightly different strategy in the future, one whose underlying theory of change is based on a more community-specific and end user-focused strategy of access to justice. First, to the extent possible, greater efforts should be made to engage with community-level forums. Second, many of the existing strategies of awareness-raising should continue but with an understanding that they are long-term strategies, which must be committed to on a sustainable basis for years to come. Third, to the extent that engagement with formal and external mechanisms continues and is possible (which may depend on the reach and openness of successive Afghan governments), efforts should be made to break down some of the practical barriers to reaching this top level of the dispute resolution pyramid.

### *Working with Community Mechanisms*

Many of the findings support greater investment in community level engagement for two reasons. First, the research suggests that a strategy of focusing purely on government or external mechanisms will have little or no impact on the vast majority of women's conflicts because most women cannot overcome the barriers to engaging these mechanisms. Going one level down and developing strategies targeted at the community level may improve the reach of existing programs and offer new opportunities to improve access to justice.

Second, working to improve women's justice outcomes via these nonstate mechanisms may also be an increasingly necessary pragmatic response to potentially greater limitations on state and external mechanisms in the near future. In the coming years, political instability and increased physical insecurity may make external mechanisms even harder to access. Many expect the Afghan state to have a weaker presence and less control. If so, it will be less able to support formal justice mechanisms across the country effectively. In addition, in the past few years, conservative forces within the Afghan government have increasingly tried to roll back gains in women's rights. Should these trends continue, threats to women's protection may come from within the Afghan state. In addition, as foreign funds and influence contract, so may the geographic reach of NGOs and the services they provide.

Community forums are already the only realistic option for many women seeking justice resolution outside their homes. Ignoring community forums—particularly given the potential for contracting state and external resources in the near future—risks leaving the vast majority of women with little recourse to address rights violations or find help. It is better to work within the reality of what exists than to pretend that the existing system is effective and enforced.

Many women's groups have been reluctant to engage with community forums because many of those forums continue to resist the full application of women's rights as outlined in Afghan and international law. These are valid concerns, but some engagement with these actors may be necessary to shift changes in norms in the long term. Trying to shift norms without engaging community actors and forums as part of a rights-based strategy may slow the pace of long-term change by creating short-term resistance and blowback against what are perceived as outside or Western norms—resistance that is likely to strengthen—as the international presence in Afghanistan diminishes. Understanding community perceptions and norms before trying to shift them will help practitioners target diminishing resources more strategically.

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Past approaches should not be abandoned, but an even greater emphasis should be placed on local coordination and partnerships and greater attention given to specific community needs and blockages than in the past. At the community level, programs may benefit from identifying and leveraging opportunities to support individual women who are leading the struggle for greater access to justice. Elder women, female members of NSP shuras, female teachers, and other respected women are finding opportunities and space to protect women's rights within community forums. This research identified a number of examples of women who were active in counseling other women, advocating on their behalf in community forums, or providing direct mediation services. Similarly, in many of the communities where research was conducted, progressive mullahs and elders were vocal and effective supporters of women's right to access justice.

Efforts to work with these individuals have been made in the past. Examples include empowering women leaders by appointing them or requiring their engagement in local decision-making bodies, supporting women leaders economically through microfinance grants or other gender-focused employment, and organizing training and education forums for women in a community (which have often also acted as de facto support groups and informal counseling forums). In addition, some women's rights groups and legal aid organizations have recently invested more time and effort in engaging religious leaders and progressive mullahs, helping them to be advocates or to help in community rights outreach.<sup>144</sup> All of these are examples of ways of leveraging existing opportunities within communities to promote rights. Other models or examples of programming might be developed if greater attention is given to starting women's rights programming from a community-centric approach.

Beyond supporting individual leaders, there may be other ways to work within community traditions and norms to advance women's protection and resources. For example, certain Pashtun communities have a tradition of community protection schemes for women, such as community-based safe houses where women can find temporary sanctuary when they are victims of a clear breach of community-accepted norms of abuse or domestic violence. Because women's rights groups have tended to reject partnering with community elders, particularly within the tribal system, little attention has been given to the possibility of using these traditions to launch community-based and socially acceptable shelters that could reach a substantial proportion of the female population in need.

The Afghan state should also try harder to engage with these community mechanisms. Some state institutions have tended to oppose engagement with informal mechanisms for dispute resolution. Rearticulating internal ministry procedures to emphasize the need to protect vulnerable populations may help state actors at the district level have more positive engagement with informal actors.

### Encouraging Long-Term Normative Change

Many of the barriers women face can be reduced or removed only through long-term normative change. For example, the normative barriers related to definitions of a good woman and the acceptance of domestic violence that are widespread among both men and women will take decades to change as will the consequences women face when they transgress these norms—including physical, economic, and emotional retaliation. Education may be the only way to change discriminatory norms in the long term.

That some progress has already been achieved in the past decade is encouraging. Male and female interviewees agreed that there is greater respect for women's rights today than a dozen

years ago and that the most extreme abuses of women within the home have decreased over the same period. Greater knowledge of rights and greater awareness of the importance of protecting those rights seems to have been one important contributing factor. So, too, however, was media programming that portrays strong female characters and explores options and pathways for seeking justice. This research suggests that in areas such as the city of Herat, where media access was strong and this type of programming was prevalent, it had already begun to change women's (particularly young women's) attitudes, broadening their conceptions of the rights they have or should have. As one woman in a focus group in Herat said, "The violence against women has reduced since the media broadcast their programs and propaganda, which are beneficial for women's rights. It has caused a very positive impact on the people's understanding about women's rights."<sup>145</sup>

If the woman in Herat is right, then investment in women's rights awareness should continue, with donors continuing to fund both short-term, rights-focused programming and long-term policies to change educational priorities. If the next Afghan government agrees with this approach, then investing in early childhood education and incorporating civic and equal rights into the curricula of all state-funded and state-certified schools may be a more effective way to anchor awareness-raising about women's rights than the ad hoc and often uncoordinated programming that has taken place in the past. Continued support in the media sector may be particularly important given the role it has already played in shaping community views on women's roles and rights. This will require continuing donor funding, as the current level and genre of media programming is not sustainable absent external support.

### Improving Prospects for Justice

Several of the barriers identified in this report stem from deficits within the mechanisms available to women. At each of the three levels, women were worried that even if they took the risks associated with raising an issue, they would still not get justice. Improving the fairness of these mechanisms depends in part on fostering long-term normative change and legal awareness. Some immediate barriers within community and state mechanisms might also be addressed, however.

In both community and state mechanisms, the lack of female representation is a problem. Efforts since 2002 to ensure that women take part in public life and play decision-making roles—at a community level within bodies such as the NSP shuras and at a government level by recruiting more female police and government officials—have had a positive effect. However, this has been one of the most controversial steps taken since 2002 and may be a major target for conservatives in the coming difficult period. It is important to try to continue to promote women's autonomy within communities and to boost their participation in the government, but greater attention must be given to the risks women face when they assume a public role. The government of Afghanistan, international donors, and nongovernmental actors should work together to create stronger safeguards for the women who have made the choice to take part in public life, particularly female security service personnel. Protecting these women—especially from physical danger—will not only allow them to perform their roles effectively but also encourage others to follow their lead and may over the long term result in mechanisms more attuned to women's needs.

Finally, much more can and should be done to improve the likelihood that women will receive a just hearing within state mechanisms. Women will turn to the formal system only if they perceive state institutions as effective protectors of their rights. It is critical, therefore,

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***It is important to try to continue to promote women's autonomy within communities and to boost their participation in the government, but greater attention must be given to the risks women face when they assume a public role.***

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that efforts to improve respect for women's rights are sustained. Laws, such as the EVAW law, and Afghanistan's accession to international treaties protective of women's rights are good first steps in state recognition of full rights for women. But there must be greater oversight of the implementation of those laws and direct punishments for individuals who break them or fail to uphold them. Some important progress has been made in this regard in the last several years, but more is needed. Monitoring and enforcement mechanisms for formal justice providers should be improved to ensure that Afghan laws protecting women's rights are applied in practice. Broad judicial discretion tends to reinforce existing patriarchal social norms that deny women adequate rights protection within state forums.

### Tackling Practical Barriers

Many women face pragmatic barriers to accessing justice. These barriers are most relevant when women try to access state and external mechanisms and range from basic mobility and transportation issues to fees involved with legal representation to the lack of bureaucratic and administrative options.

Continuing investment in legal aid, which is something to which many donors have committed in the coming period, is an important step to responding to these pragmatic needs. However, legal aid organizations and service providers must do more to develop models of legal assistance and counseling that are more accessible for women. Some innovative approaches are currently being piloted on a small scale: for example, basic legal counseling services being provided through health clinics or women's groups, advice being offered by mobile legal clinics, and paralegals from within communities handling a wider range of issues. Given the mobility issues women face, the more that services can be brought to women, rather than women going to the services, the better women's access will be.

Women must also be provided the basic tools necessary to access their rights. This research suggests that a lack of basic documentation and paperwork is a significant hurdle for many women. Women must be able to easily acquire tazkeras, marriage certificates, and other documentary proof of their citizenship, personal status, and economic entitlements. Such documentation is particularly valuable in cases involving inheritance, marriage rights, custody, and lack of child support by fathers in cases of divorce or separation.<sup>146</sup>

Finally, women already know of and make use of some services that offer advice on women's options for accessing justice and on surmounting some of the pragmatic, consequential, and normative barriers that stand in women's way. In many of the communities where research was conducted, DoWA and the AIHRC were the first entities that women approached when they wanted to engage with—or at least seek more information about engaging with—the formal justice sector. The government of Afghanistan should develop a strategy to empower these entities and expand their ability to serve as de facto entry points into the formal justice system. Such a strategy might include offering training programs for provincial and district representatives on practical skills, such as intake counseling, managing case referral systems, providing mediation services, and case tracking. Donors and NGOs should reinforce a positive relationship between state entities and nonstate providers of women's services by developing programming that includes outreach or cooperation (including referral where relevant) with local branches of DoWA or the AIHRC.

However, while empowering AIHRC and DoWA to deliver some services would be a positive step, those entities should not be treated as the sole providers of women's services, nor should all nongovernmental as well as other governmental services for women (such as

shelters) be placed under their control, as has been suggested in some recent policy debates.<sup>147</sup> Women must have the flexibility to go to nongovernmental actors, as well as to government bodies, when in need of shelter, counseling, and legal guidance.

The Afghan state also has a responsibility to work with communities in ensuring that resources and protection are available for women. Social safety nets for vulnerable groups—a category to which most women in Afghanistan belong—must be wide and strong enough to catch all who need them. The state, with the support of the international community, should make every effort to ensure that all women have access to the financial and support services they need if they are to take their disputes to the formal justice sector without fear of being ostracized and cast into poverty as a consequence.

## Recommendations

Action from both the Afghan government and external donors and programmers is needed. These efforts combined will be critical in ensuring women’s long-term and effective access to justice.

### *Afghan Government*

- Expand procedural guidelines for line ministries (some exist with some ministries already) regarding engagement with nonstate and community-based forums, with an emphasis on gender sensitivity and protection of vulnerable populations.
- Improve monitoring and enforcement mechanisms for formal justice providers to ensure that Afghan laws protecting women’s rights are applied in practice and that those who infringe upon those rights are punished. This will entail greater judicial review and oversight of decisions made through lower courts or of charges brought by prosecutors that punish women for being victims of particular crimes, such as rape, running away, or attempted adultery.
- Make greater efforts to ensure that women are easily able to gain access to tazkeras, marriage certificates, and other documentation of their citizenship, personal status, and economic rights. Such an identification and registration program may be modeled on voter registration strategies, which have had at least some success in registering large sections of the population in remote areas of the country and providing them with documentation. Current efforts to provide electronic tazkeras should have a gender-sensitive approach and make a concerted effort to reach the female population who may not have the freedom to come to central registration locations.
- Support the expanded ability of MoWA and DoWA to deliver services for vulnerable or at-risk women or victims of violence, such as in-take counseling, victims’ support or case tracking, or simply expanded referral services. The targeted training and financial support for MoWA and DoWA should support de facto practices of service provision that already exist in many provinces and provide technical capacity development, such as case documentation and tracking, counseling, and outreach services, as well as basic legal awareness.
- Any such support services should not replace or subsume existing responsibilities of state security services or judicial personnel, nor should it be seen as a viable replacement for NGO services. In no way should such support curb the invaluable work NGOs do to provide emergency safety nets and shelters.

- Develop stronger protection mechanisms for women in public service positions and encourage greater female representation in the security sector, courts, and criminal defense professions.

### *Donors and Program Implementers*

- Commit to long-term support for services for women, including multiyear funding for shelters, psychosocial services, the AIHRC, the Commission for the Prevention of Violence Against Women, and legal defense funds that support women. Given the slow pace of change in this area, continued support to these areas for a number of years is essential to preserve and expand on existing gains, especially if the post-transition results in increased pressure on women's rights.
- Develop programming that includes outreach and cooperation (including referral where relevant) with local branches of DoWA and the AIHRC.
- Develop programs to encourage greater women's participation and representation in community forums and through community mechanisms. This may include training respected female or male community members to act as paralegals and help women represent their interests within community forums.
- Before designing a programming intervention, conduct a context-based needs assessment of the target communities, paying attention not only to the supply side of justice services for women but also to gender-based and community barriers to accessing justice.
- Clearly define whether program modalities and objectives will primarily target gender-based, individual barriers or nongender-specific community barriers, which also affect women's ability to access justice in the target communities.
- Establish an iterative process of discussion with community leaders and individuals about women's rights protections and disputes to help identify points of intervention in particular communities.
- Continue long-term support for education campaigns for both men and women about women's rights. The results will emerge slowly and will be hard or impossible to measure in a single project cycle; donors should therefore be patient and base project metrics on longer time frames for normative and attitudinal changes associated with knowledge change.
- In relatively closed communities, emphasize gradually changing norms in the community and increasing overall community access to and trust in external mechanisms.
- Identify and leverage opportunities for supporting individual women within communities, particularly those women who have relative freedom of movement and the capacity to enter negotiations with community actors or to act as local advocates within community forums on behalf of women. Look to build on examples of local solutions to existing problems regarding women's participation, representation, and access to justice.
- Support the provision of continued, and even expanded, social safety nets and economic opportunities for women. Such programs can help eliminate a key consequential barrier affecting many women's decision of whether to pursue or abdicate their rights.

- Support public programming, such as media programming and women-to-women networking programs that model effective ways to make informed choices about accessing justice mechanisms, or provide Afghan role models who have successfully pursued and obtained their rights or legal protection.
- Do not assume that the inkblot theory works in practice. The only way of being sure that a district or community is exposed to a program is to implement that program in that community or district. This may mean making tough choices in terms of where limited funds are allocated, but it will be a more accurate way of estimating a program's impact and preparing adequate outreach than assuming that geographic proximity is equal to coverage.

## Notes

1. Women's rights, as used in this report, refers to the standards set out under international human rights law and Afghan law.
2. For a full review of the efforts to codify women's rights protections in Afghan law, see the report submitted by the Afghan government to the Convention on the Elimination of All Forms of Discrimination Against Women, December 21, 2011, [www.bayefsky.com/reports/afghanistan\\_cedaw\\_c\\_afg\\_1\\_2\\_2011.pdf](http://www.bayefsky.com/reports/afghanistan_cedaw_c_afg_1_2_2011.pdf)
3. Ministry of Women's Affairs Government of the Islamic Republic of Afghanistan, "National Action Plan for Women: 2008–2018" (MOWA, 2008), <http://mowa.gov.af/en/page/6686>.
4. But see UNAMA, "Still a Long Way to Go" (Kabul, Afghanistan: UNAMA, December 2012).
5. United Nations Development Fund for Women (UNIFEM), "Fact Sheet 2010," <http://gender.care2share.wikispaces.net/file/view/AFGHANISTAN%20CASE%20STUDY.pdf>. See also Central Statistics Office of Afghanistan, "Government Employees by Ministry and Department," <http://cso.gov.af/Content/files/03%20Government%20Employees.pdf>.
6. Atia Abawi, "Afghan Women Suffer Setback as Parliament Lowers Quota for Female Lawmakers" (NBC News, July 18, 2013), [http://worldnews.nbcnews.com/\\_news/2013/07/18/19534549-afghan-women-suffer-setback-as-parliament-lowers-quota-for-female-lawmakers](http://worldnews.nbcnews.com/_news/2013/07/18/19534549-afghan-women-suffer-setback-as-parliament-lowers-quota-for-female-lawmakers).
7. Latifa Hamdi, Head of the Gender Mainstreaming Office at the National Solidarity Program, Afghanistan Ministry of Rural Rehabilitation and Development, e-mail to the authors, November 13, 2013.
8. The Ministry of Education website includes a report summarizing the total number of students for the year 1390 (2011–12) as 2,930,471 girls out of 7,681,927 total students. See "Total Students and Schools," at the Afghan Ministry of Education website, Reports: Total Students and schools, available at <http://moe.gov.af/Content/files/EMIS-Total%20Student%20and%20schools%201390.xls>; see also Ashley Jackson, "High Stakes: Girls' Education in Afghanistan" (OXFAM, February 2011); Sean Carberry and Sultan Faizy, "Are Afghanistan's Schools Doing As Well As Touted?" (NPR, October, 24, 2013), [www.npr.org/blogs/parallels/2013/10/24/240482395/are-afghanistans-schools-doing-as-well-as-touted](http://www.npr.org/blogs/parallels/2013/10/24/240482395/are-afghanistans-schools-doing-as-well-as-touted).
9. Ministry of Public Health, Islamic Republic of Afghanistan, "Afghanistan Maternal Mortality Survey 2010." Despite these declines, Afghanistan still has one of the highest maternal mortality rates in the world.
10. Twenty-five-year-old Pashtun female, focus group discussion, Tabai Village, Aqcha District, Jowzjan Province, June 24, 2012.
11. Sixty-year-old Pashtun mother of community leader, focus group discussion, Tabai Village, Aqcha District, Jowzjan Province, June 24, 2012.
12. Seventeen-year-old Hazara girl, interview, Faizabad Village, Shahrstan District, Daykundi Province, September 18, 2012.
13. Owen Bowcott, "Afghanistan Worst Place in the World for Women, but India in Top Five," *The Guardian*, June 14, 2011, [www.theguardian.com/world/2011/jun/15/worst-place-women-afghanistan-india](http://www.theguardian.com/world/2011/jun/15/worst-place-women-afghanistan-india).
14. UNICEF, Afghanistan Multiple Indicator Cluster Survey 2010/11 Central Statistics Organization of Afghanistan, "Afghanistan Multiple Indicator Cluster Survey 2010/11" (UNICEF, January 2013), <http://cso.gov.af/Content/files/AMICS.pdf>. By contrast, the estimated literacy rate for women several years ago was 12 percent. See <http://www.parl.gc.ca/content/lop/researchpublications/prb0734-e.pdf>.
15. It is one of the six lowest, along with Syria, Algeria, Jordan, Palestine, and Iraq. Neighboring Iran has a slightly higher level of female participation in the workforce, at 16.4 percent. See United Nations Development Programme (UNDP), *Human Development Report 2013: The Rise of the South: Human Progress in a Diverse World*, <http://hdr.undp.org/en/2013-report>.
16. See UNDP, *Rise of the South*, 156.



17. In the same declaration, the Ulema council also decreed women's support for the right to property, inheritance, marriage rights and alimony, choice of spouse, and prohibitions against badal (the sale or barter of women), and other acts of abuse against women. On some levels, the declaration was a positive endorsement from the religious community of many progressive values that the legal community had been pushing for since 2001. But the failure to recognize the inherent equality of both sexes potentially undermines the more progressive components. See the English translation of the Ulema Council's declaration about women, March 2, 2012, at D. <http://afghanistananalysis.wordpress.com/2012/03/04/english-translation-of-ulema-councils-declaration-about-women/>. Original Dari version available <http://president.gov.af/fa/news/7489>, March 2, 2012. See also, <http://unama.unmissions.org/Default.aspx?ctl=Details&ctabid=12254&mid=15756&ItemID=33591>.
18. Afghan Civil Code, articles 70–71, [www.asianlii.org/af/legis/laws/clotroacogn353p1977010513551015a650/](http://www.asianlii.org/af/legis/laws/clotroacogn353p1977010513551015a650/).
19. UN Assistance Mission in Afghanistan (UNAMA) and UN Office of the High Commissioner for Human Rights (OHCHR), "A Long Way to Go: Implementation of the Elimination of Violence against Women Law in Afghanistan" (Kabul, Afghanistan: UNAMA, November 2011), 1, [www.ohchr.org/Documents/Countries/AF/UNAMA\\_Nov2011.pdf](http://www.ohchr.org/Documents/Countries/AF/UNAMA_Nov2011.pdf).
20. A disproportionate amount of all indictments and successful prosecutions took place in only in two urban areas: Kabul Province, through the Attorney General's Violence against Women Special Prosecution Unit, and in Herat Province. Together, they accounted for nearly 65 percent of all the violence-against-women cases in the country during 2012. See UNAMA, "Still a Long Way to Go."
21. See, for example, Anastasiya Hozyainova, "Sharia and Women's Rights in Afghanistan," Special Report no. 347 (Washington, DC: U.S. Institute of Peace, May 2014).
22. Empirical evidence of such trends has not yet been researched or become available publicly, however.
23. Mixed focus group discussions were conducted only in Daykundi at the request of the local community leadership.
24. Article 139 of the Afghan Civil Code, the Government of the Islamic Republic of Afghanistan, 1976. The civil code does not stipulate that the husband has to have cause for a divorce, so long as he is sane (not "mentally confused") and an adult. Article 137 of the Civil Code, [www.law.yale.edu/rcw/rcw/jurisdictions/assc/afghanistan/Afghan\\_Civil\\_Code\\_1976.pdf](http://www.law.yale.edu/rcw/rcw/jurisdictions/assc/afghanistan/Afghan_Civil_Code_1976.pdf).
25. Under Article 131 of the Civil Code, *tafreet*, or separation, can be initiated by a wife based on specifically enumerated causes, such as Article 176 (infirmity, when the husband is a victim of a disease that cannot be cured or requires a long time to recover from, and when intercourse with him is completely harmful), Article 183 (when intercourse is harmful), Article 191 (when the husband refuses alimony or support), and Article 194 (when the husband has been absent for three years or more). A different means of divorce is available, but only for men, under Article 131 of the Civil Code, which does not enumerate these specific cause limitations. See Afghan report to CEDAW, para. 359.
26. *Ibid.*, para. 372.
27. Fawzia Fakhri, "Till Death Do Us Part," *Afghanistan Today*, Herat, October 1, 2010, [www.afghanistan-today.org/article/?id=83](http://www.afghanistan-today.org/article/?id=83).
28. Twenty-four-year-old Hazara female divorcee, interview, Nili District, Daykundi Province, September 2012.
29. Thirty-two-year-old Tajik female, focus group discussion, Haji Yahya Village, Injil District, Herat Province, December 19, 2012.
30. There are no reliable statistics on the number of divorces in Afghanistan, much less the total number initiated by women as opposed to men. As stated by the Afghanistan government's report to the CEDAW committee: "There is not any exact figure of marriages in the country, however, based on the figures given by Supreme Court of Afghanistan, from 2006 to 2009 (1385–1388) 1049 divorce cases have been registered." See Afghan report to CEDAW, para. 356.
31. Forty-five-year-old Tajik female, interview, Injil health care clinic, Injil District, Herat Province, December 2012.
32. Thirty-five-year-old Hazara female, focus group discussion, Haji Baba Abbas Village, Herat Province, December 17, 2012.
33. Sixteen-year-old Uzbek female, interview, Sar-e Pol City, Sar-e Pol Province, August 2012.
34. During the Taliban period, the Civil Code was pending. Interpretations of Hanafi jurisprudence and executive decrees by then-head of state Mullah Omar were relied upon in place of the civil code. Mullah Omar issued a decree in September 1998 that included four articles related to the issue of running away, which read (translation by USIP): "Article 1: In a murder case, Afghan Muslim citizens cannot give a woman as Deyah (blood money), compromise or under any other title to the family of the murdered; Article 2: (1) Afghan Muslim citizens cannot force a widow to get married with a member of the husband's family; (2) A widowed woman can get married at her full discretion under provisions of Islamic Sharia; Article 3: All staff members of the Emarah and judges are obliged to seriously punish those who violate provisions of this decree." See *Official Gazette* number 788, decree number 104, September 9, 1998, copy on file with authors.

35. A March 2012 declaration by the Ulema Council expounded at some length on the rights of women under Islam, including the right to freely choose her spouse. See the English translation of the Ulema Council's declaration about women, March 2, 2012, at D. <http://afghanistananalysis.wordpress.com/2012/03/04/english-translation-of-ulema-councils-declaration-about-women/>. In Dari, <http://president.gov.af/fa/news/7489>.
36. Diya Nijhowne and Lauryn Oates, "Living with Violence: A National Report on Domestic Abuse in Afghanistan" (Kabul: Global Rights, March 2008).
37. Ibid.
38. Afghan Ministry of Public Health et al., *Afghanistan Mortality Survey*, table 3.11, "Age at first marriage" (2010), 52.
39. "Afghanistan: Child Forced Marriages Still a Common Tradition," *IRIN*, Kabul, February 23, 2007, [www.irinnews.org/indepthmain.aspx?InDepthID=28&ReportID=69984](http://www.irinnews.org/indepthmain.aspx?InDepthID=28&ReportID=69984).
40. Ibid., 15.
41. Sixteen-year-old Uzbek female, interview, Sar-e Pol City, Sar-e Pol Province, August 2012.
42. Twenty-two-year-old Hazara female police officer, focus group discussion, Nili City, Daykundi Province, September 13, 2012.
43. Thirty-year-old Pashtun male head of court, interview, Aqcha District, Jowzjan Province, December 6, 2012.
44. Thirty-seven-year-old Tajik female, focus group discussion, Haji Yahya Village, Injil District, Herat Province, December 19, 2012.
45. Sixty-year-old Hazara female head of NSP shura in focus group discussion, Qaf Village, Shahristan District, Daykundi Province, September 19, 2012.
46. Sixteen-year-old Uzbek female, interview, Sar-e Pol City, Sar-e Pol Province, August 2012.
47. Twenty-five-year-old Tajik female, interview, Injil health care clinic, Injil District, Herat Province, December 2012.
48. Nijhowne and Oates, "Living with Violence."
49. Ibid., 1.
50. A 2012 UNAMA report assessing violence against women noted that a nearly 50 percent increase in cases of violence reported by the AIHRC from 2011 to 2012 was a sign of greater sensitization to violence against women as a crime. See UNAMA, "Still a Long Way to Go," 2. The AIHRC registered six thousand cases of domestic violence in the first six months of 2013. See UNAMA Press Statement, <http://unama.unmissions.org/LinkClick.aspx?fileticket=bTiCHtLkbU%3d&tabid=12316&language=en-US>.
51. Article 5 of EVAW articulates twenty-two acts defined as "violence against women," which include acts of physical, emotional, and economic abuse. Law on the Elimination of Violence Against Women (Government of Islamic Republic of Afghanistan, 2009). Article 5 states: The commission of the following acts shall be deemed as violence against women: 1. Sexual assault, Rape; 2. Forcing into prostitution; 3. Recording the identity of the victim and publishing it in a manner that damage the personality of victim; 4. Setting into flames, using chemicals or other dangerous substances; 5. Forcing into self-immolation or suicide or using poisonous or other dangerous substances; 6. Causing injury or disability; 7. Battery and laceration; 8. Selling and buying women for the purpose or under pretext of marriage; 9. Baad (retribution of a woman for a murder, to restore peace etc...); 10. Force marriage; 11. Prohibiting from right of marriage or choosing husband; 12. Marriage before the legal age; 13. Abusing, humiliating, intimidating; 14. Harassment/persecution; 15. Forced isolation; 16. Forcing woman to drug addiction; 17. Depriving from inheritance; 18. Preventing from possession of personal property; 19. Deterring from right to education, work and access to health services; 20. Forced labor; 21. Marrying more than one wife without observing Article 86 of Civil Code; and 22. Denial of relationship.  
See Islamic Republic of Afghanistan, Ministry of Justice, *Official Gazette*, "Law on Elimination of Violence against Women (EVAW)," Kabul, August 1, 2009, 6-7, [www.laoa.af/laws/law\\_on\\_elimination\\_of\\_violence\\_against\\_women.pdf](http://www.laoa.af/laws/law_on_elimination_of_violence_against_women.pdf).
52. Women and Children Legal Research Foundation, "Women's Access to Justice: Problems and Challenges," (2008), 35, [www.wclrf.org.af/wp-content/uploads/2013/09/Women-Access-To-Justice-Final.pdf](http://www.wclrf.org.af/wp-content/uploads/2013/09/Women-Access-To-Justice-Final.pdf).
53. Ibid.
54. Twenty-year-old Hazara female police officer, focus group discussion, Nili City, Daykundi Province, September 13, 2012.
55. Thirty-four-year-old Uzbek male, interview, Aqcha District, Jowzjan Province, June 13, 2012.
56. Thirty-two-year-old Tajik female, interview, Haji Yahya Village, Injil District, Herat Province, December 2012.
57. Forty-five-year-old Tajik female; see note 40.
58. Thirty-four-year-old Uzbek male; see note 66.

59. Twenty-year-old Hazara female police officer, focus group discussion, Nili City, Daykundi Province, September 13, 2012.
60. UNAMA, "Still a Long Way to Go," 22.
61. The UNAMA report on the enforcement of the ERAW law noted that a statement by the High Council of the Supreme Court clarifying how courts should deal with running-away cases was intended to curtail the practice but their clarification has instead been interpreted and used to legitimize a continuation of it. *Ibid.*, 22–23.
62. A Human Rights Watch report on moral crimes noted that they continue to be "rampant" despite increasing pardons of women and girls charged with moral crimes by President Hamid Karzai. "I Had to Run Away" (Human Rights Watch, Kabul, March 2012).
63. *Ibid.*, 2–3. Women prison in Afghanistan number 769 (202 in Kabul and 150 in Herat absorbing the most female prisoners) out of a total of 25,690. There are thirty-four female prisons of a total of seventy nationwide. See Central Statistics Office, Government of Islamic Republic of Afghanistan, <http://cso.gov.af/Content/files/04%20Social%20Statistics.pdf>.
64. Human Rights Watch (HRW), "Afghanistan: Surge in Women Jailed for 'Moral Crimes,'" (Human Rights Watch Report, May 21, 2013), [www.hrw.org/news/2013/05/21/afghanistan-surge-women-jailed-moral-crimes](http://www.hrw.org/news/2013/05/21/afghanistan-surge-women-jailed-moral-crimes).
65. Thirty-year-old Jugi female, interview, Sar-e Pol City, Sar-e Pol Province, July 2012.
66. Women who had not received their mahr—the nuptial gift to which a bride is entitled through her marriage and allowed an unfettered right to use under Islamic law—or whose families had not received a bride-price tended to have even less economic security or independence, which would enable them to leave the marriage if needed later. See also Hamid Khan, *Practitioner's Guide: Islamic Law*, International Network to Promote the Rule of Law, (July 2013), 63, [http://inprol.org/sites/default/files/publications/2013/islamic\\_law\\_guide-july\\_2013\\_final\\_0.pdf](http://inprol.org/sites/default/files/publications/2013/islamic_law_guide-july_2013_final_0.pdf).
67. Thirty-seven-year-old Tajik female,, focus group discussion, Haji Yahya Village, Injil District, Herat Province, December 19, 2012.
68. Sixty-five-year-old Hazara male, focus group discussion, Kajgeer Village, Shahrستان, Daykundi Province, September 18, 2012.
69. Thirty-four-year-old Tajik female, interview, Parachi Village, Paghman District, Kabul Province, April 2012.
70. John Esposito, ed., *The Oxford Encyclopedia of the Islamic World*, vol. 2, 565.
71. Afghan report to CEDAW, 75.
72. Women and Children's Legal Research Foundation, "Women's Access to Inheritance" (September 2013), 13, [www.wclrf.org.af/wp-content/uploads/2013/09/Womens-access-to-inheritance-English-book.pdf](http://www.wclrf.org.af/wp-content/uploads/2013/09/Womens-access-to-inheritance-English-book.pdf).
73. Thirty-year-old Pashtun male head of court, interview, Aqcha District, Jowzjan Province, December 6, 2012.
74. Forty-five-year-old Hazara female in focus group discussion, Qaf Village, Shahrستان District, Daykundi Province, September 19, 2012.
75. Nijhowne and Oates, "Living with Violence."
76. See Islamic Republic of Afghanistan, Ministry of Justice Official Gazette, "Law on Elimination of Violence against Women (ERAW)," Kabul, August 1, 2009, 6, [www.laoa.af/laws/law\\_on\\_elimination\\_of\\_violence\\_against\\_women.pdf](http://www.laoa.af/laws/law_on_elimination_of_violence_against_women.pdf).
77. UNAMA, "Still a Long Way to Go," 21.
78. Article 132 (4) specifies that it is "the duty of the wife to defer to her husband's inclination for sexual enjoyment." The law applies only to Shiite citizens and is commonly referred to as the "Shiite Family Law." The unofficial English translation of the Shiite Personal Status Law (April 2009) is available at <http://www.ref-world.org/docid/4a24ed5b2.html>. Although many women's rights advocates argued that this law effectively legalized marital rape, others argued that interpretation was not necessarily clear from the text.
79. UNAMA, "Silence is Violence" (research report prepared for UNAMA and OHCHR, Kabul, 2009), 2, available at <http://unama.unmissions.org/Portals/UNAMA/vaw-english.pdf>.
80. Thirty-three-year-old male vaccinator, interview, Aqcha District, Jowzjan Province, June 6, 2012.
81. Ali Wardak, Daud Saba, and Halima Kazem, *Afghanistan Human Development Report 2007: Bridging Modernity and Tradition* (Kabul: Center for Policy and Human Development and UNDP, 2007), [http://planipolis.iiep.unesco.org/upload/Afghanistan/Afghanistan\\_hdr2007.pdf](http://planipolis.iiep.unesco.org/upload/Afghanistan/Afghanistan_hdr2007.pdf).
82. Thirty-six-year-old Tajik female, interview, Parachi Village, Paghman District, Kabul Province, April 2012. A mother in the Paghman District described advice she had given her daughter, "Women usually do not seek help from the shura, and try to solve their problems within family and do not discuss their problems within shura. For instance, as I said before, my daughter has five children, but sometimes she has conflict with her husband and comes to me. I advise her to stop the dispute even though her husband may be guilty. I do not want her to make her life worse."
83. Thirty-eight-year-old Pashtun widow, focus group discussion, Paghman District, Kabul Province, April 2012.

84. A domestic violence abuse victim who ultimately filed for divorce said, “Everybody said that I should be patient. My parents encouraged me to be patient and then I would see good results in my life. But I have not seen that” (twenty-one-year-old Hazara female, interview, Hoquq Department, Herat Province, December 2012). A female police officer describes the principle of modesty as follows: “Women have to hide all things, such as domestic violence and disputes and problems within the family” (thirty-eight-year-old Pashtun female police officer, interview, Ghalay Amir Village, Paghman District, Kabul Province, April 2012).
85. Forty-two-year-old Pashtun female teacher, interview, Mohammed Khel Village, Paghman District, Kabul Province, April 2012.
86. The term is common in Hazara language and derives from the terms to make and to hide—roughly translated as one who is able to hide problems (thirty-seven-year-old Hazara female, focus group discussion, Qaf Village, Shahrستان District, Daykundi Province, September 19, 2012).
87. *Ba hawsilab* (patient person) is the Dari term used to refer to the act of contrition, apology, or demonstration of respect paid by a woman to others. This often includes admitting guilt or wrong, even if it is not the case, for the sake of internal family harmony.
88. Thirty-eight-year-old Pashtun widow, focus group discussion, Paghman District, Kabul Province, April 2012.
89. Ibid.
90. Thirty-four-year-old Tajik female, see note 82.
91. Thirty-four-year-old Pashtun woman, focus group discussion, Paghman Town, Paghman District, Kabul Province, April 2012.
92. Thirty-four-year-old Tajik female, see note 82.
93. Wardak, Saba, and Kazem, *Afghanistan Human Development Report 2007*.
94. Even in communities that granted women a relatively greater level of access to community mechanisms, it was typically with the permission of or through the representation of a male family member.
95. Twenty-five-year-old Pashtun female, see note 27.
96. Decisions are often based on an oral code of customary law, which tends to be collectively described as Pashtunwali and embraces a wide range of practices that vary by region, tribe, and the local customs. See the International Legal Foundation (ILF) report, “The Customary Laws of Afghanistan” (Kabul, 2004), <http://theilf.org/wp-content/uploads/2011/08/reports-ilfa-customary-laws.pdf>.
97. What distinguishes these semigovernmental shuras from traditional shura formations is that individuals have been directly paid to take part in these bodies. In addition, the semi-governmental shuras have the right to designate how government or foreign funds are spent within a community. Such power, derived from external sources, has helped boost the authority of members of the semi-governmental shuras over other areas of community life, including dispute resolution. See also sixty-year-old Pashtun mother of community leader, focus group discussion, Tabai Village, Aqcha District, Jowzjan Province, June 24, 2012.
98. Erica Gaston, Akbar Sarwari, and Arne Strand, “Lessons Learned on Traditional Dispute Resolution in Afghanistan” (Washington, DC: U.S. Institute of Peace, April 2013), [http://www.usip.org/sites/default/files/Traditional\\_Dispute\\_Resolution\\_April2013.pdf](http://www.usip.org/sites/default/files/Traditional_Dispute_Resolution_April2013.pdf). See also Seth Peavy, “Opportunities and Challenges for Justice Linkages: Case Studies from Kunduz & Takhar” (Kabul: CPAU, 2012), [http://cpau.org.af/manimages/publications/CPAU\\_Justice\\_Linkages\\_Report2012.pdf](http://cpau.org.af/manimages/publications/CPAU_Justice_Linkages_Report2012.pdf).
99. Fifty-year-old Hazara woman, focus group discussion, Qaf Village, Shahrستان District, Daykundi Province, September 19, 2012; thirty-two-year-old Tajik female.
100. Twenty-five-year-old Hazara female, focus group discussion, Faiz Abad Village, Shahrستان District, Daykundi Province, September 18, 2012.
101. Twenty-three-year-old Hazara female, focus group discussion, Faizabad Village, Shahrستان District, Daykundi Province, September 18, 2012.
102. Thirty-six-year-old Tajik female head of women’s NSP shura, interview, Parachi Village, Paghman District, Kabul Province, April 2012.
103. Fifteen-year-old Pashtun girl, interview, Sar-e Pol City, Sar-e Pol Province, July 2012.
104. Forty-year-old Pashtun woman, focus group discussion, Tabai Village, Aqcha District, Jowzjan Province, June 24, 2012.
105. USAID, “USAID Country Profile, Property Rights and Resource Governance, Afghanistan” (2013), 8. [http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID\\_Land\\_Tenure\\_Afghanistan\\_Profile.pdf](http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Afghanistan_Profile.pdf). An Afghan property law expert noted in an interview with the author that this property ownership by women has declined by as much as half since 2002 (January 28, 2013, Kabul).
106. Labor participation rate, “Percent of Female Population Age 15 and Above,” World Bank Data Bank, <http://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS->.
107. Thirty-four-year-old Tajik female, see note 82.
108. Forty-year-old Tajik female, focus group discussion, Sar Asiab Mukhtar Village, Injil District, Herat Province, December 23, 2012.

109. E-mail correspondence with Rachel Reid, women's rights advocate, May 3, 2014.
110. Sylvana Sinha, "Traditional Dispute Resolution and Afghanistan's Women," PeaceBrief no. 117 (Washington, DC: U.S. Institute of Peace, December 2011), [www.usip.org/sites/default/files/resources/PB117.pdf](http://www.usip.org/sites/default/files/resources/PB117.pdf).
111. Twenty-four-year-old Hazara female, focus group discussion, Haji Baba Abbas Village, Herat City, Herat Province, December 17, 2012.
112. Sixty-five-year-old Tajik male shura member, interview, Sar Asiab Mukhtar Village, Injil District, Herat Province, December 23, 2012.
113. See, for example, the Pesh Kepa village community, with a female NSP, headed by a fifty- to fifty-five-year-old Hazara woman in Sar-e Pol Province. Also, Homa Rahimi, a thirty-eight-year-old Hazara female, director of women's affairs in Daykundi, claims to have registered 155 women shuras in Daykundi Province.
114. Thirty-seven-year-old Tajik female teacher and head of Mohammad shura, interview, Haji Yahya Village, Injil District, Herat Province, December 18, 2012.
115. Thirty-two-year-old Tajik female, focus group discussion, Haji Yahya Village, Injil District, Herat Province, December 19, 2012.
116. Thirty-three-year-old Hazara female divorcee, interview, Shahrstan District, Herat Province, December 2012.
117. HRW, "Afghanistan: Surge in Women Jailed for Moral Crimes."
118. Fifty-five-year-old Uzbek woman, interview, Aqcha District, Jowzjan Province, June 2012.
119. Eighteen-year-old male student, in focus group discussion, Qala Ameer Village, Paghman District, Kabul Province, March 13, 2012.
120. Thirty-eight-year-old Pashtun female, see note 104.
121. Thirty-five-year-old male, interview, Mohammad Khil Village, Paghman District, Kabul Province, March 14, 2012.
122. Thirty-four-year-old Tajik female, see note 82.
123. Alissa Rubin, "Afghan Policewomen Say Sexual Harassment is Rife," *New York Times*, September 16, 2013, [www.nytimes.com/2013/09/17/world/asia/afghan-policewomen-report-high-levels-of-sexual-harassment.html?\\_r=0](http://www.nytimes.com/2013/09/17/world/asia/afghan-policewomen-report-high-levels-of-sexual-harassment.html?_r=0).
124. Forty-five-year-old Uzbek female, interview, Herat City, Herat Province, December 18, 2012.
125. HRW, "Afghanistan: Surge in Women Jailed for Moral Crimes"; HRW, "I Had to Run Away."
126. Forty-two-year-old Tajik female executive director of Voice of Women Afghanistan, interview, Herat City, Herat Province, January 27, 2013.
127. Forty-two-year-old Tajik female, see note 126.
128. Anastasiya Hozyainova, "Sharia and Women's Rights."
129. Thirty-eight-year-old Hazara male, focus group discussion, Kajgeer Village, Shahrstan District, Daykundi Province, September 17, 2012.
130. According to the Asia Foundation Survey of 2013, corruption is perceived as the second biggest problem facing Afghanistan after insecurity. See <http://asiafoundation.org/resources/pdfs/2013AfghanSurvey.pdf>, 5-6. See also the UNODC report, "Corruption in Afghanistan: Recent Patterns and Integrity Challenges in the Public Sector" (in collaboration with Islamic Republic of Afghanistan High Office of Oversight and Anti-Corruption, October 2013), 26, [www.unodc.org/documents/data-and-analysis/statistics/corruption/Corruption\\_Afghanistan\\_2013.pdf](http://www.unodc.org/documents/data-and-analysis/statistics/corruption/Corruption_Afghanistan_2013.pdf)
131. Alissa Rubin, "Justice for Abused Afghan Women Still Elusive UN Report Says," *New York Times*, December 9, 2013, [www.nytimes.com/2013/12/09/world/asia/justice-for-abused-afghan-women-still-elusive-un-report-says.html?ref=alissajohannsenrubin](http://www.nytimes.com/2013/12/09/world/asia/justice-for-abused-afghan-women-still-elusive-un-report-says.html?ref=alissajohannsenrubin).
132. Twenty-four-year-old Hazara girl, interview, Nili District, Daykundi Province, September 15, 2012.
133. See Constitution of Afghanistan, [www.embassyofafghanistan.org/page/constitution](http://www.embassyofafghanistan.org/page/constitution)
134. Nineteen-year-old Tajik girl, focus group discussion, Haji Yahya Village, Injil District, Herat Province, December 19, 2012.
135. Twenty-year-old police officer, see note 70.
136. Twenty-five-year-old Hazara female, interview, Nili District, Daykundi Province, September 14, 2012.
137. See Caroline Sage, Nicholas Menzies, and Michael Woolcock, "Taking the Rules of the Game Seriously: Mainstreaming Justice in Development, The World Bank's Justice for the Poor Program" (Justice and Development Working Paper Series, World Bank, 2009), <http://a4id.org/sites/default/files/Taking%20the%20Rules%20of%20the%20Game%20Seriously%20-%20Mainstreaming%20Justice%20in%20Development.pdf>.
138. Thirty-four-year-old Tajik female, see note 82.
139. Thirty-year-old Uzbek female, interview, Sar-e Pol City, Sar-e Pol Province, July 2012.
140. Urfi documentation is typically used to refer to customary or religious documents that are similar to contracts but are not universally recognized in all jurisdictions of Afghan courts.

141. See website of Trading Economics, "Urban Population in Afghanistan," citing 2012 data from the World Bank, [www.tradingeconomics.com/afghanistan/urban-population-wb-data.html](http://www.tradingeconomics.com/afghanistan/urban-population-wb-data.html).
142. Forty-three-year-old male head of huqoq, interview, Aqcha District, Jowzjan Province, June 12, 2012.
143. Eighteen-year-old male student, focus group discussion, Qala Ameer Village, Paghman District, Kabul Province, March 13, 2012.
144. Hozyainova, "Sharia and Women's Rights," note 16.
145. Thirty-year-old Hazara female, focus group discussion, Haji Baba Abbas Village, Center of Herat, Herat Province, December 17, 2012.
146. "It would be good if all the women had *nikah khat* [marriage certificate], but still many of the women do not have a tazkera even. It would be better if first of all women had tazkeras. How can they prove that they are from Afghanistan when they don't have any tazkera or nikah khat. The women and their families need to provide these documents to women" (Twenty-five-year-old Tajik female, focus group discussion, Haji Yahya Village, Injil District, Herat Province, December 19, 2012).
147. Frud Bezhan, "Afghan Women's Shelters Face Uncertain Future," Radio Free Europe/Radio Liberty, July 23, 2012, [www.rferl.org/content/afghanistan-womens-shelters-uncertain-future/24653459.html](http://www.rferl.org/content/afghanistan-womens-shelters-uncertain-future/24653459.html); see also Human Rights Watch, "Afghanistan: Government Takeover of Shelters Threatens Women's Safety" (February 13, 2011), [www.hrw.org/news/2011/02/13/afghanistan-government-takeover-shelters-threatens-women-s-safety](http://www.hrw.org/news/2011/02/13/afghanistan-government-takeover-shelters-threatens-women-s-safety).



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Despite tremendous gains in women's rights since the fall of the Taliban in 2002, Afghan women still face enormous challenges to accessing justice. Drawn from more than six months of in-depth field research in five Afghan provinces in 2011 and 2012, this report documents the pervasive inequality and suffering of women across Afghanistan. No interviewees were able to describe a situation in which a woman was treated equally to a man or could fully exercise her rights to seek justice, and many of the cases documented stemmed from violations of women's most fundamental rights, including domestic abuse, rape or sexual assault, and punishment or imprisonment for running away from home. This report probes how and where women pursue justice, what barriers they face, and what the Afghan government and international donors and programmers might do to help ensure long-term, sustainable access for women to justice in Afghanistan.

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