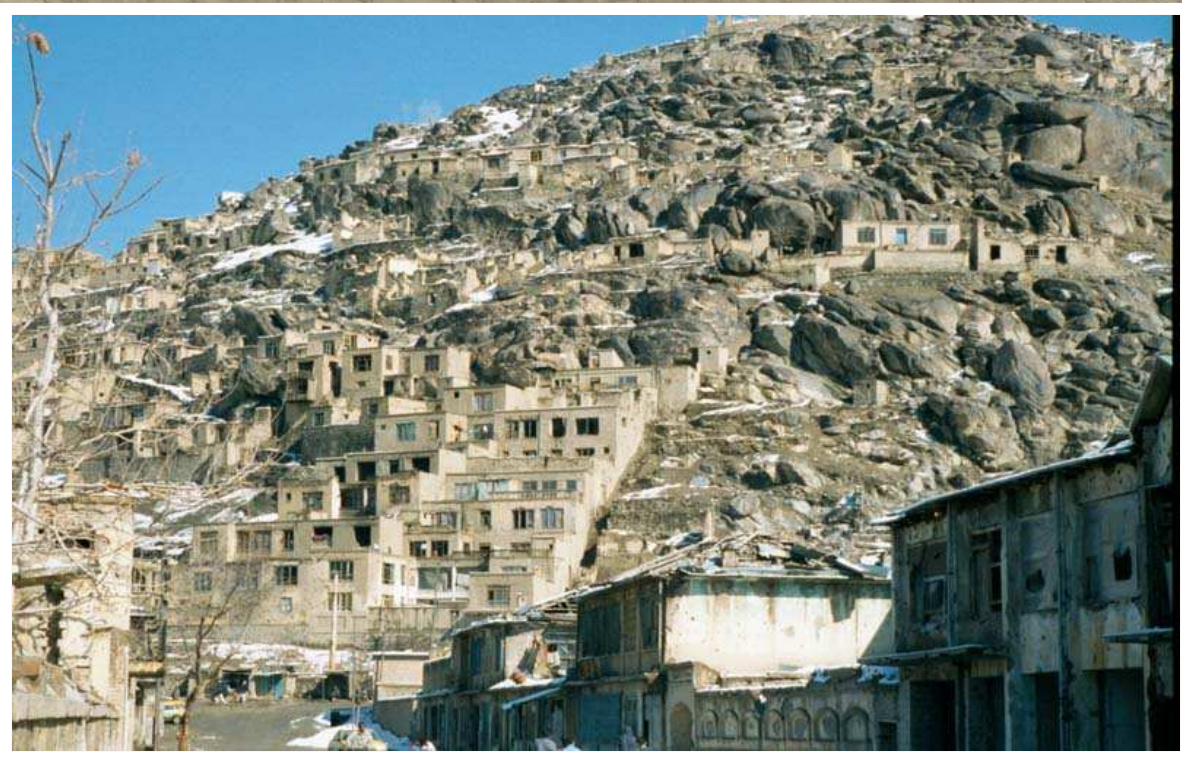




Living with Violence: A National Report on Domestic Abuse in Afghanistan

GLOBAL RIGHTS

March 2008



Partners for Justice

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A National Report on Domestic Abuse in
Afghanistan**

Global Rights: Partners for Justice

March 2008



**British Embassy
Kabul**

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Global Rights: Partners for Justice

Global Rights is a human rights capacity building and advocacy organization that partners with local activists to challenge injustice. We work to create just societies founded on the principles of human rights. With offices in countries around the world, we help local human rights defenders affect change using proven strategies. Since 1998, Global Rights has been engaged with local partners to support the protection of human rights, particularly women's rights, and the development of the rule of law in Afghanistan, first by working with Afghan refugee women in Peshawar, Pakistan, and since 2001, from our office in Kabul.

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Global Rights in Afghanistan

Global Rights has actively participated in local networks and initiatives engaged in the task of improving the lives of women in Afghanistan through rights-based approaches such as targeted legal and human rights education and advocacy.

In Afghanistan, Global Rights' work on domestic violence to date has included:

- Launching one of the first campaigns against domestic violence in Afghanistan, which featured trainings focused on addressing domestic violence as a human rights violation, an analysis of the causes and consequences of domestic violence in Afghan society, and a multi-media campaign to raise public awareness against domestic violence;
- Creating and distributing 500 copies of a brochure in Dari entitled *Stop Domestic Violence Against Women*, which discussed the reasons for and impact of domestic violence and encouraged Afghan men and women to work to prevent domestic violence;
- Organizing a roundtable discussion on national television to raise awareness of domestic violence and to promote a rights-based legal framework to combat domestic violence;
- Creating posters depicting domestic violence and its impact on daily life and distributing these posters to schools, the Association of Lawyers and Judges, and the women's prison;
- Conducting outreach with mullahs to discuss domestic violence as a violation of Islamic principles and teachings; five mullahs from different mosques spoke on the subject during their Friday afternoon prayers; and
- Hosting a National Conference on Women's Rights, Law, and Justice to explore interpretations of Islamic law on issues such as domestic violence.

In 2006, Global Rights embarked on a project to build the capacity of local organizations to engage in one of Global Rights' core strategies for promoting and protecting human rights – documentation of human rights violations. To collect the data which informs this report, Global Rights partnered with the Social Research Institution (SRI), an Afghan organization specializing in conducting social science research, as well as four local women's groups: Cooperation Center for Afghanistan (CCA); the Training and Human Rights Association for Women (THRA); the Afghan Women's Peacemaking Center (AWPC); and Shahrestan Reconstruction and Cultural Services Organization. In 2008, Global Rights will enter into a new phase of work on domestic violence: building the capacity of Afghan non-governmental organizations to work in coalition with each other and with women's rights advocates to develop and implement an advocacy campaign to end domestic violence based on the findings presented in this report.

Acknowledgements

Global Rights gratefully acknowledges the many people and organizations who contributed to our research on domestic violence and the writing of this report, including more than 25 women's organizations who participated in consultations and workshops during 2006 and 2007. We are particularly appreciative of our five partner organizations, the Social Research Institution (SRI), Cooperation Center for Afghanistan (CCA), the Training and Human Rights Association for Women (THRA), the Afghan Women's Peacemaking Center (AWPC), and Shahrestan Reconstruction and Cultural Services Organization, as well as the researchers who actually conducted the surveys with women in their homes. We would also like to extend our gratitude to Humanitarian Assistance for Women and Children of Afghanistan (HAWCA), Shuhada and the Noor Education Centre (NEC), Afghan women's organizations supporting survivors of violence and working for grassroots change, which provided us with the case studies included in this report. The Afghan Independent Human Rights Commission was also instrumental in sharing information and data with us. Former and current staff at our Global Rights office in Kabul, Shaheen Rassoul, Jamila Omar, Mohammad Eshaq Faizi, and Lisa Sarush, were responsible for actually implementing the research project and deserve our special thanks. Sonnia Chavez in our Washington D.C. office kindly performed the laborious chore of formatting the Report. We are also highly indebted to our consultants in the United States. Brett Stoudt applied his indispensable expertise in statistics to the task of analyzing and presenting the data from our research. Naomi Cahn lent her depth of knowledge on domestic violence to the process of writing the report and her contributions to organizing and editing this report were immensely helpful. Last, but not least, we would like to express our sincere appreciation to the 4700 women who welcomed our researchers into their homes and took the time to speak to them about a very sensitive topic. Without them, this research and report would never have been possible.

Global Rights also wishes to acknowledge the generous support of the British Foreign and Commonwealth Office and of the British Embassy in Kabul, which funded this entire project, including the research process, the writing of this report, and its translation into Dari and Pashto.

The opinions, findings, and conclusions or recommendations expressed in this publication are those of Global Rights and do not necessarily reflect the views of the British Foreign and Commonwealth Office or the British Embassy in Kabul.

This report is dedicated to the thousands of women and girls who experience violence every day in Afghanistan.

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I. EXECUTIVE SUMMARY

A. INTRODUCTION

In Afghanistan, an epidemic of daunting proportions is taking place. Violence against women in the home is so prevalent and so pervasive that practically every Afghan woman will experience it in her lifetime. Domestic violence has become a regular feature of almost all households, and shapes every aspect of women's and girls' lives: their health, their livelihoods, their access to social and cultural resources, and their educational opportunities.

Global Rights' *Living with Violence: A National Report on Domestic Abuse in Afghanistan* (the Report) presents the findings of surveys on domestic violence conducted with women in 4,700 households in 16 provinces¹ located across Afghanistan in 2006.² The research is unique in many respects. It is the first to report on domestic violence throughout the country based on samples of women that are representative of the ethnic and geographic diversity of Afghanistan. It is also the first that gathers statistical data from surveys with women at the household level rather than relying on secondary sources such as records of reported violence at police stations or hospitals. Perhaps the most significant feature of the research, however, is that it reflects a collaborative effort between Global Rights and Afghan civil society. Global Rights partnered with four Afghan women's organizations in conducting the research, and trained women leaders to conduct surveys with women in the communities in which they lived. An Afghan research institute was involved in analyzing the data, and workshops and consultations were held with women's rights advocates and service providers to draw on their experiences to provide a context for interpreting the research findings.

B. THE KEY RESEARCH FINDINGS

The findings of this research are alarming: an overwhelming majority of women, 87.2%, experienced at least one form of physical, sexual or psychological violence or forced marriage, and most, 62.0%, experienced multiple forms of violence. Overall, 17.2% of women reported sexual violence, with 11.2% experiencing rape. Furthermore, 52.4 % of women reported physical violence, with 39.3% saying they had been hit by their husband in the last year. Women who experienced psychological abuse totaled 73.9%, while 58.8% of women were in forced marriages, as distinct from arranged marriages. There were broad variations between provinces with 100% of Kochi women living in Kabul reporting at least one form of physical, sexual or psychological violence; 42.6% of women in Kandahar experiencing sexual violence; and 91.6% of women in Khost experiencing forced marriages.

The research identified a number of risk factors for domestic violence, as well as factors that tended to protect against violence, under the circumstances. These factors, as well as other factors that influenced levels of violence are summarized in the following tables.

¹ The following geographical regions were covered: 1) Central provinces: Kabul, Ghazni, Kapisa and Daikundi; 2) Northern provinces: Balkh, Badakhshan, Jawzjan and Faryab; 3) Western provinces: Herat, Ghowr and Nimruz; 4) Southern provinces: Kandahar, Helmand and Khost; 5) Eastern provinces: Nangarhar, and Nuristan. Members of the traditionally nomadic Kochi community were also interviewed in Kabul.

² Global Rights uses the definition of domestic violence found in the United Nations Declaration on the Elimination of Violence Against Women which states in Article 1: "[T]he term 'violence against women' means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life." Article 2 states: "Violence against women shall be understood to encompass, but not be limited to, the following: a) Physical, sexual and psychological violence occurring in the family..."

RISK FACTORS

- The experience of one form of violence as it increases the likelihood of women experiencing other forms of violence
- Being in a forced marriage
- Being single through divorce or widowhood violence
- Being in a polygamous marriage
- Being under 15 years of age and married
- Having rigid perceptions of gender roles
- Living in rural communities
- Living in the southern and eastern border provinces

PROTECTIVE FACTORS

- Employment of both women and men (at least in impacting upon forced marriage and physical violence)
- Consenting to marriage
- Literacy of both women and men
- Knowing a husband prior to marriage
- Enjoying a higher household income (at least when measured by proxy indicators of income)
- Perceiving satisfactory gender relations in the home in Afghan society and being satisfied with one's husband
- Living in urban communities
- Living in the northern and western provinces

OTHER FACTORS TO CONSIDER

- Husbands are not the sole abusers in families: mother-in-laws were identified as the main abuser by almost a quarter of the women surveyed.
- Domestic violence is highly normalized in Afghan society: many women noted satisfactory marital relationships while simultaneously reporting experiences of violence in the home
- Almost a quarter of women were dissatisfied with relationships between men and women in the home in Afghan society. These women represent a force for change that can lead efforts to end domestic violence in the country if mobilized.
- Only 18% of women knew other women who had been beaten by their husbands, suggesting that most women are isolated in their experiences of violence.
- The lower likelihood of women experiencing violence in urban settings and in certain provinces may be associated with a stronger government presence and rule of law compared to rural communities and other provinces.
- The higher likelihood of women experiencing violence in provinces where there is greater Taliban control suggests that oppressive ideology towards women may contribute to increased domestic violence.
- The regions where women have a greater likelihood of experiencing violence are those with greater levels of armed conflict, suggesting linkages between community violence and violence in the family. Further research is needed to substantiate this observation.
- Domestic violence is a rights violation in itself but also prevents women from exercising their civil, political, social, economic and cultural rights.

C. IMPLICATIONS OF THE RESEARCH FINDINGS FOR DESIGNING INTERVENTIONS TO END DOMESTIC VIOLENCE

Based on the risk, protective, and other factors listed above, Global Rights urges civil society organizations particularly, but also government and international organizations, to develop the following types of interventions to contribute towards preventing domestic violence:

- Advocating for the State's realization of the Constitutional protections to the Right to Education, particularly Article 44, which commits the State to providing programs to eliminate illiteracy;
- Providing basic literacy training to both men and women as components of activities to reduce domestic violence in communities;
- Increasing employment opportunities for men and women through a diversity of vocational training programs or micro-credit schemes to enable men and women to better generate income;
- Providing opportunities for women to challenge rigid gender roles by learning how Islam, Afghan law and international human rights law safeguard gender equality and other women's rights;
- Targeting training and support services to divorced, widowed and other single women, with a focus on services to protect them from sexual violence;
- Raising awareness about the frequency with which women are perpetrators of domestic violence and highlighting to women as well as men that such behavior constitutes a crime under Afghan law and under Islam;
- Facilitating opportunities for women to talk about domestic violence so as to break the sense of many women that they are isolated in their experience of it;
- Sending strong messages through public service announcements that violence is a crime under Afghan law and under Islam so as to challenge the normalization of violence;
- Raising awareness about relationships between violence and a woman's lack of knowledge of her husband before marriage to encourage families to allow their daughters to become better acquainted with their husbands prior to marriage, even if such marriages are arranged;
- Advocating for an end to forced marriage, child marriage, and polygamy and the traditional practices that encourage them;
- Ensuring that efforts to address domestic violence are not limited to urban centers but extend to rural regions and to provinces in the south-eastern border zones where the likelihood of violence tends to be higher than in other provinces;
- Ensuring that any efforts to prevent, protect against, and punish violence against women involve women themselves in the design and implementation of activities so as to draw on their lived experiences and ensure effectiveness, but also to serve as a means of empowering women to take action to make positive changes in their lives; and
- Advocating for the expansion and enforcement of the rule of law throughout the country to increase provision of formal justice mechanisms, the monitoring of informal justice mechanisms, and the availability of health, education and other government services.

D. THE AFGHAN STATE’S DUE DILIGENCE OBLIGATION TO PREVENT, INVESTIGATE AND PUNISH DOMESTIC VIOLENCE

In presenting the findings of the research in this Report, Global Rights emphasizes that domestic violence is a human rights violation. International human rights law requires States to exercise due diligence to prevent, investigate, and punish violations of rights whether they are committed by the government itself, or by businesses or individuals.³ Due diligence, thus, legally requires the Afghan State to take proactive measures to prevent domestic violence, to investigate incidents of abuse, and to prosecute perpetrators of this violence. This means taking concrete actions such as constructing and supporting safe houses where women leaving abusive relationships can live; equipping the public health system to effectively respond to patients who have experienced domestic violence; training police officers to investigate cases of domestic abuse as crimes and to treat victims with sensitivity; and enacting and enforcing laws that will enable the prosecution of domestic violence. The Report concludes that the Afghan State has failed to comply with its due diligence obligations.

E. RECOMMENDATIONS

In the Report, Global Rights recommends a range of actions the Afghan State must take to begin to meet its due diligence obligations, but urges prioritization of the recommendations pertaining to legislative reform. This is not to discount the other recommendations but to emphasize that legislative reform is critical to clearly identify domestic violence as a human rights violation that the State has a legal obligation to respond to, as well as an offence under Islam and a crime under national law. Such identification is essential to remove domestic violence from the private realm of the home, where it is considered beyond the purview of the state apparatus, and to place it firmly at the centre of the public realm, the legal system, where it can be treated as the crime that it is.

Although it is true that only a small proportion of women have access to the formal justice system where their legal rights can be protected, the legal system and laws also have both a persuasive and moral effect in changing people’s attitudes and perceptions. While domestic violence will only be eliminated when there is widespread, societal change in women’s status, the existence of robust laws that condemn domestic violence can be used as a tool for advocating for these societal changes. Moreover, the State’s due diligence obligations to prevent, investigate and punish domestic violence cannot be fulfilled without an effective set of laws in place to address domestic violence as a crime. It is for this reason that Global Rights prioritizes legislative reform as the first step in holding the government to its legal obligations to address the pervasiveness of domestic violence in Afghanistan that this research has documented.

Priority Recommendations to the Afghan State to Meet its Due Diligence Obligations to Prevent, Investigate and Punish Domestic Violence

Criminal Law Reform

- Create a specific criminal offence of rape and specify that marital rape is included in the definition of rape;
- Amend Article 53 of the Penal Code to state that disobedience on the part of a wife in no way absolves the husband of criminal responsibility for acts of violence towards his wife;

³ Article 2(e) of the Convention on the Elimination of All Forms of Discrimination Against Women.

- Introduce protective measures for women from “honor” crimes and treat “honor” crimes as serious criminal offences;
- Create a criminal provision prohibiting child marriage and apply meaningful sentences to those who facilitate child marriage;
- Amend Article 517 of the Penal Code to apply to all girls and women, not only those over 18 years of age; significantly increase the sentences for forced marriage; and implement enforcement mechanisms for prosecution of forced marriages;
- Specify in legislation that all members of *shuras* or *jirgas* will be prosecuted for ordering the death of women, rape, *bad* or any other illegal act; and
- Provide protections for victims of rape being prosecuted for crimes such as *zina*.

Criminal Procedure Reform

- Amend the Interim Criminal Procedure Code to allow for the criminal prosecution of domestic violence offences without the requirement of a complaint being issued by the victim;
- Enact legislation stating specifically that the testimony of a woman on specific cases may alone be sufficient to criminally convict a perpetrator; and
- Clarify that running away from home is not a crime and cannot be prosecuted as such, and introduce sanctions for police or prosecutors who do not abide by this law as well as compensation for those who have been unjustly detained or prosecuted for running away from home.

Family Law Reform

- Ensure that polygamous marriages do not occur without the permission of the courts, and that permission is contingent upon all requirements being met as stipulated in Article 86 of the Civil Law. Criminalize polygamy that occurs in contravention of the conditions set out in Article 86 of the Civil Law⁴;
- Add a provision to the Civil Code to make it clear that divorce and separation are available to women in situations of domestic violence and develop expedited procedures for obtaining the divorce or separation;
- Specify in the Civil Code that in situations of domestic violence, husbands are required to pay their wives *mahr* (the marriage portion) and develop expedited procedures and enforcement mechanisms for women to obtain these funds; and
- Amend the Civil Code to state that *nafaqa* (economic support) must be paid to women who have separated or divorced their husbands due to domestic violence and extend the period when the woman is eligible to continue receiving the *nafaqa*, to beyond a few months and to a period in the future when the woman has attained some level of self sufficiency⁵

⁴ Global Rights advocates prohibiting polygamy in all cases but offers the recommendation to enforce compliance with Article 86 as the next best option.

⁵ Global Rights recommends that the family law system be reformed more broadly to ensure that women are able to share in the property of their husband at the time of divorce.

II. INTRODUCTION

In Afghanistan, an epidemic of daunting proportions is taking place. Violence against women in the home is so prevalent and so pervasive that practically every woman will experience it in her lifetime. Domestic violence has become a regular feature of almost all households, and shapes every aspect of women's and girls' lives: their health, their livelihoods, their access to social and cultural resources, and their educational opportunities.

While frontline organizations, such as women's advocacy groups, legal aid clinics, shelters and organizations offering counseling services are all too familiar with the enormity of the problem of domestic violence, a persistent challenge in addressing it has been the lack of statistical data and research on domestic violence in Afghanistan. By publishing *Living with Violence: A National Report on Domestic Abuse in Afghanistan* (the Report), which presents the findings of surveys on domestic violence conducted with women in 4,700 households in 16 provinces located across the country, Global Rights hopes to contribute significantly to filling this dearth of knowledge.

Global Rights' research is unique in a number of respects. It is the first to report on domestic violence throughout the country based on samples of women that are representative of the ethnic and geographic diversity of Afghanistan. It is also the first that gathers statistical data from surveys with women rather than relying on secondary sources such as records of reported violence at police stations or hospitals. In a context where the vast majority of domestic violence remains unreported, obtaining data from a representative sample of women adds valuable information to the existing body of knowledge on domestic violence. Perhaps the most significant feature of the research, however, is that it reflects a collaborative effort between Global Rights and Afghan civil society. Afghan women's organizations were involved in designing the survey, including formulating the questions, and determining where to conduct the research. They also played a central role in recommending women to serve as researchers. All researchers were leaders in the communities they were researching, ensuring that they were sensitive to local cultural norms and that the research was not perceived as being imposed by outsiders. An Afghan organization was involved in analyzing the data, and workshops and consultations were held with women's rights advocates and service providers to draw on their experiences of working with women, including victims of domestic violence, to provide a context for interpreting the research findings.

In presenting the findings of the research in this Report, Global Rights emphasizes that domestic violence is a human rights violation. Situating domestic violence within an international human rights framework is important: it shifts responsibility for responding to domestic violence away from a moral or charitable act of individuals and converts it into also being a binding legal obligation of the government. Under international law, the Afghan State has a duty to take all steps to respect, promote and fulfill human rights, and to prevent, eradicate and punish violations of human rights, including domestic violence. Recognizing domestic violence as a human rights violation also empowers women by classifying them as rights bearers rather than victims or subjects of the government's goodwill or largesse.

The extraordinarily high levels of violence taking place within Afghan households, which is documented in this Report, indicates an environment in which women are valued less than men and where hurting or even killing women can be acceptable and enjoys impunity. In Afghanistan, as in every other country in the world, the presence of domestic violence is symptomatic of deep-running inequality between men and women and of social institutions and political structures that condone and perpetuate this inequality. Ending domestic violence therefore demands the mobilization of all sectors of government, of the international community in Afghanistan, and of civil society; it demands not only a response to acts of violence that have taken place or are still occurring, but also the initiation of transformations at a social, cultural, political, and economic level that will prevent abuse from occurring at all.

Drawing on the findings of the research, this Report identifies factors that accentuate the risk of domestic violence as well as protect against it. Global Rights urges civil society organizations, the Afghan government and the international community to design interventions to reduce domestic violence in the country based on these factors. This Report also provides a set of recommendations for action that the State, specifically, can take to begin to meet its due diligence obligations to prevent, investigate and punish violence. Global Rights advocates the prioritization of those recommendations pertaining to legislative reform. Legislative reform is critical in clearly identifying domestic violence as a human rights violation that the State has a legal obligation to respond to, as well as an offence under Islam and a crime under national law.

The next section of this Report will set out the Afghan State's due diligence obligations to end domestic violence under international law. The Report will then describe Global Rights' research on domestic violence before presenting the key research findings. Following a discussion of the research findings, the Report will examine the Afghan State's responses to domestic violence, including the services it provides to victims of violence, the official response of the government, and the response of the legal system. The Report will conclude by underscoring the implications of the research findings for designing interventions to end domestic violence, and evaluating the State's compliance with its due diligence obligations to address domestic violence. Finally, Global Rights will present its recommendations to the Afghan State for beginning to meet its due diligence obligations, prioritizing those related to legislative reform.

III. THE AFGHAN STATE'S DUE DILIGENCE OBLIGATION TO PREVENT, INVESTIGATE AND PUNISH ACTS OF DOMESTIC VIOLENCE

There is now an established consensus within international human rights law that violence against women, including domestic violence, is a violation of fundamental human rights. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was ratified by the Government of Afghanistan in 2003 without any reservations, does not mention violence against women explicitly. However, the Committee that monitors the Convention stated in its General Recommendation No. 19,

*"The Convention in Article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence."*⁶

As a result, references in CEDAW to eliminating discrimination also apply to eliminating gender based violence, which includes domestic violence. All signatories to CEDAW, including the Afghan government, have a legal obligation to undertake the actions stipulated in the Convention that are required to end gender-based violence.

Significantly, Article 2(e) of CEDAW requires States Parties to "take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise." CEDAW thus not only requires that the State itself refrain from discriminating against women, but that it act to eliminate discrimination against women conducted by non-state actors, such as individuals or businesses. The CEDAW Committee in General Recommendation 19 explains that: "Under general international law and

⁶ CEDAW Committee General Recommendation No. 19, para. 6.

specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”⁷

Under international law, due diligence indicates the level of action that a State must provide to protect an individual from violation of her human rights. The CEDAW Committee provides examples of what acting with due diligence may require, stating:

- r) Measures that are necessary to overcome family violence should include:*
 - i. Criminal penalties where necessary and civil remedies in cases of domestic violence;*
 - ii. Legislation to remove the defense of honor in regard to the assault or murder of a female family member;*
 - iii. Services to ensure the safety and security of victims of family violence, including refuges, counseling and rehabilitation programs;*
 - iv. Rehabilitation programs for perpetrators of domestic violence;*
 - v. Support services for families where incest or sexual abuse has occurred*⁸.

The Former Special Rapporteur on violence against women, Radhika Coomaraswamy, also developed a list of considerations for evaluating State compliance with the due diligence obligations, which included: ratification of international human rights instruments; constitutional guarantees of equality for women; the existence of national legislation and/or administrative sanctions providing adequate redress for women victims of violence; policies or plans of action that deal with the issue of violence against women; the gender sensitivity of the criminal justice system and police; accessibility and availability of support services; the existence of measures to raise awareness and modify discriminatory policies in the field of education and the media; and the collection of data and statistics concerning women.⁹

In her 2006 report, the Special Rapporteur on violence against women, Yakin Ertürk, explained that because non-discrimination is another fundamental principle associated with a State’s due diligence obligation, States must “use the same level of commitment in relation to prevention, investigation, punishment and provision of remedies for violence against women as they do with regards to the other forms of violence.”¹⁰ Consequently, women who have experienced domestic violence must receive the same level of legal protection as do other citizens who have been assaulted or subjected to other violent crimes. The police force must respond to their complaints as rapidly and attach the same level of importance to their reports as they do to other victims; health care providers should provide the same level of medical service as they would to other victims of violence; and the courts should impose the same severity of sentences on perpetrators of domestic abuse as they would on perpetrators whose victims are strangers to them.

An additional general principle associated with the due diligence obligation identified by the Special Rapporteur is to ensure that “interventions designed to prevent and respond to violence against women are based on empirical data.” Global Rights’ research and this Report are intended to assist the Afghan government in complying with this principle. This Report also highlights action that the Afghan government must take to help it fulfill its due diligence obligations to prevent, investigate, and punish acts of domestic violence.

⁷ CEDAW Committee General Recommendation No. 19, para. 9.

⁸ CEDAW Committee General Recommendation No. 19, para. 24.

⁹ Radhika Coomaraswamy, E/CN.4/1999/68, para. 25.

¹⁰ Ertürk, Yakin, *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, Report of the Special Rapporteur on violence against women, its causes and consequences, E/CN.4/2006/61, para. 35.

IV. GLOBAL RIGHTS' RESEARCH ON DOMESTIC VIOLENCE

A. PURPOSE OF THE RESEARCH

Global Rights undertook this research to provide data that highlights the prevalence of domestic violence, and imparts a better understanding of the particular ways in which domestic violence is manifested in the varying and multiple contexts of Afghanistan. The intent is for this data to serve as an impetus for the government and civil society to take action to ensure that domestic violence is treated as a human rights violation, and to inform effective legislative and policy responses. By collaborating with women's organizations in different parts of the country in conducting the research, this project also served to build the capacity of these organizations to document the human rights violation of domestic violence, enabling them to develop skills that they can use in the future to document additional human rights violations against women. Further development of these skills is a critical step towards addressing domestic violence and other human rights violations that women face.

B. THE DEFINITION OF DOMESTIC VIOLENCE

In this Report, Global Rights uses the definition of domestic violence found in the United Nations Declaration on the Elimination of Violence Against Women, which states in Article 1:

"[T]he term 'violence against women' means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."

Article 2 states:

"Violence against women shall be understood to encompass, but not be limited to, the following:

a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence related to exploitation;"

Global Rights examined physical, sexual and psychological violence against women occurring in the family, and did not study violence perpetrated by members outside the family. Family is defined broadly to reflect what the interviewee herself defines as family and includes extended family members. While the term domestic violence may be used broadly to refer to violence directed towards any family member by any other family members, in this Report, use of the term is restricted to violence directed towards women who are married, divorced or widowed. This violence may occur either inside or outside of the home.

Global Rights also defined forced marriage as a form of domestic violence. The United Nations Secretary General's Study on Violence Against Women defines forced marriage as "one lacking the free and valid consent of at least one of the parties. In its most extreme form, forced marriage can involve threatening behavior, abduction, imprisonment, physical violence, rape and, in some cases, murder."¹¹ Forced marriage was treated as a form of violence because being coerced to marry a man without her consent invariably causes a woman psychological harm and almost always requires her to have sex with the man against her will.

¹¹Secretary General's Study on Violence Against Women, A/61/122/Add.1 para. 122.

C. CATEGORIES OF VIOLENCE

In analyzing data from the surveys, Global Rights identified five main categories of violence: 1) physical; 2) psychological; 3) sexual; 4) total violence, which included reports of any of the three aforementioned forms of violence; and 5) forced marriage. The five categories of violence were cross-tabulated against numerous other variables in the surveys, such as socio-economic indicators, geographic location, and marital status. Forced marriage is also treated as a variable that may contribute to increased incidences of all other forms of violence. The types of acts that are included in each of the five categories of violence are described in the table below.¹²

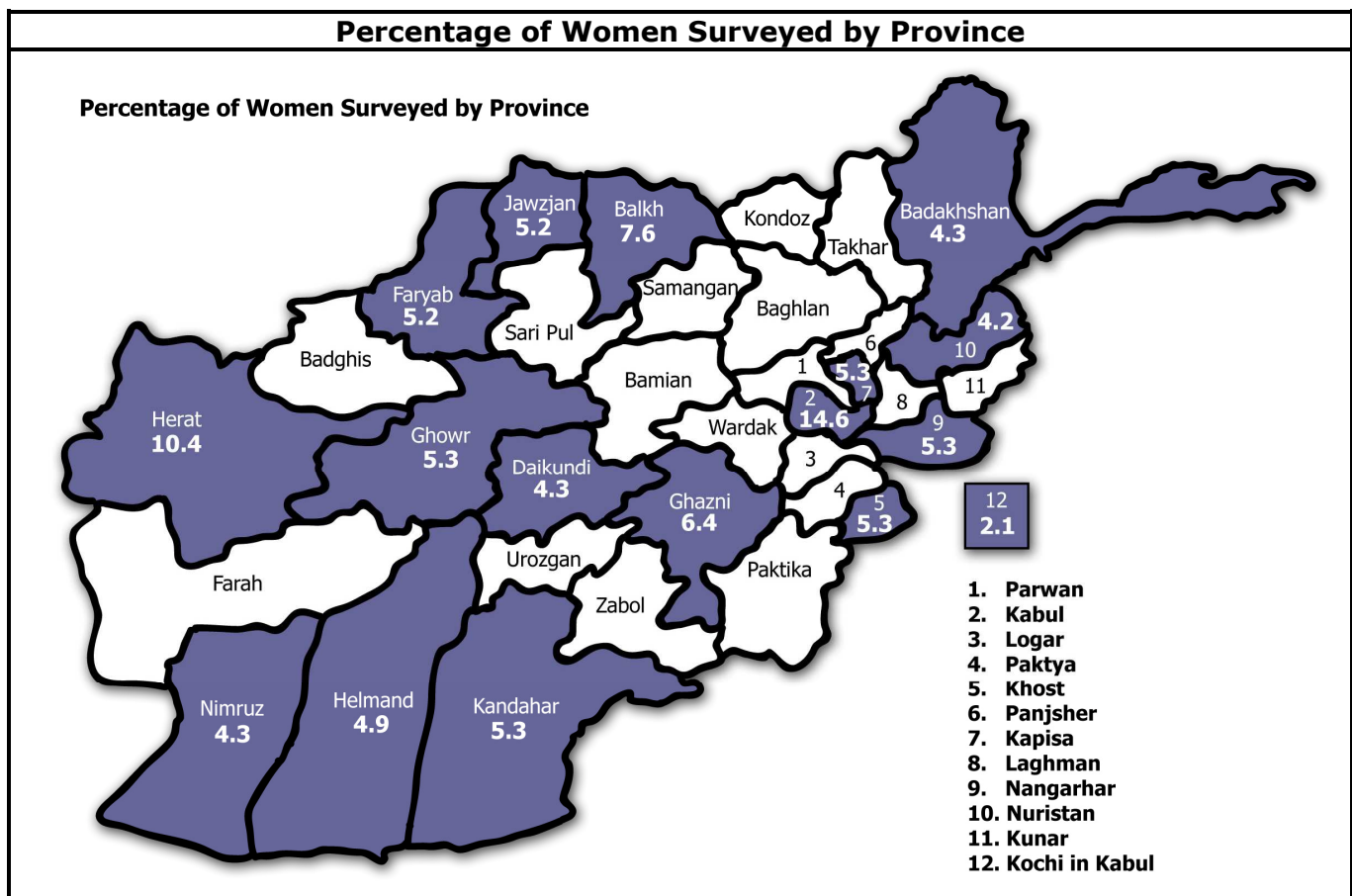
All Forms of Violence (Total Violence)	Includes: - Physical Violence - Sexual Violence - Psychological Violence
Physical Violence	Includes: - Slapping, punching or kicking, beating with a stone or stick, hurting with a knife or other sharp object, tearing of clothing or personal effects, pulling hair, burning, breaking teeth, or breaking a body part or bone; - Being detained at home by force or physically restrained
Sexual Violence	Includes: Hurting the sexual organs, compulsory sexual relations (rape), denial of sexual relations to the wife.
Psychological Violence	Includes: - Social violence: being prevented from visiting friends or relatives; prevented from appearing in public ceremonies or gatherings; prevented from making phone calls; - Cultural violence: insulting the customs of the woman's family; prevented from participating in religious activities; forced to change one's views or beliefs; forced to wear special clothing; prevented from going to shrines; - Economic violence: being prevented from working outside the home; from learning a language; from making clothing; from spending money and from owning property; prevented from eating; - Verbal violence: taunting, insulting and other forms of verbal abuse; - Threats of death, beating, divorce and taking another wife by the husband.
Forced Marriage	Marriage that a woman entered into without her consent and against her will.

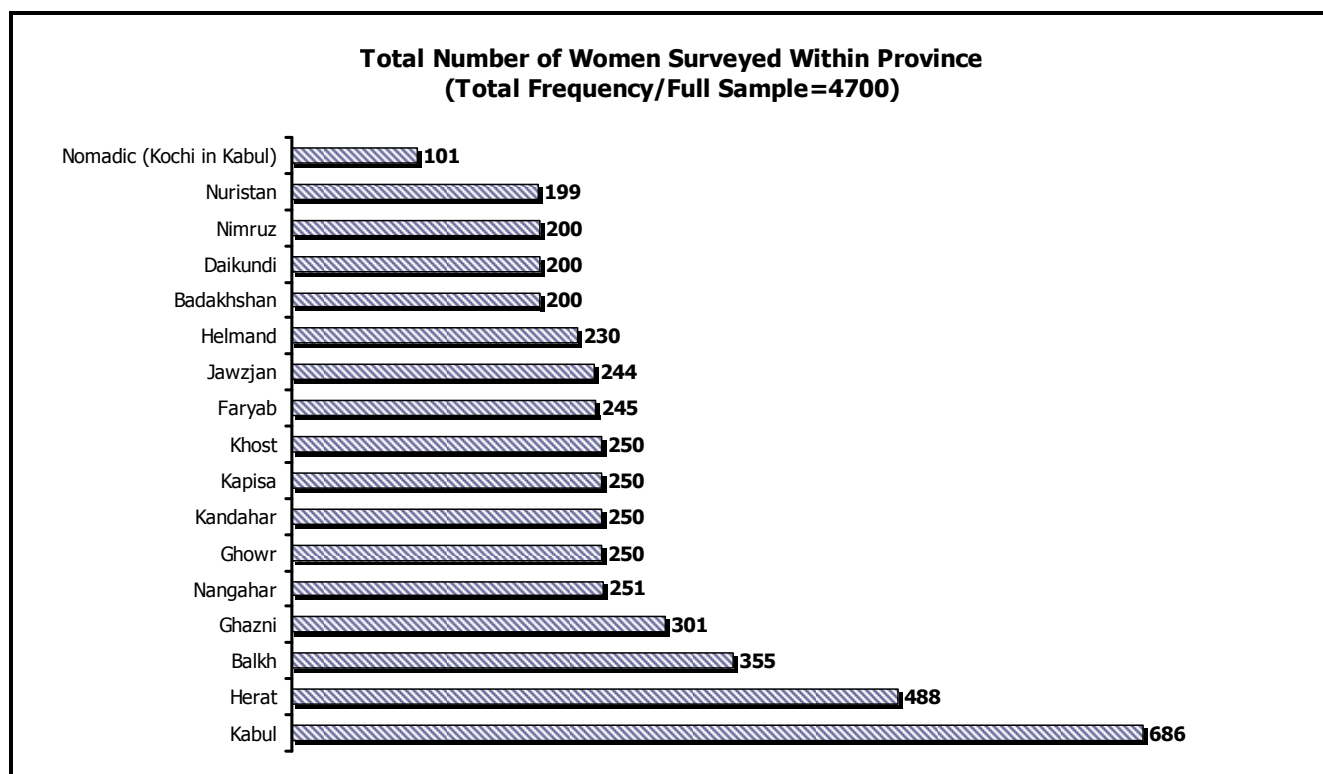
The following section describes the demographic characteristics of the women who participated in the survey to set the context for the key research findings. For more information on the existing body of research on domestic violence in Afghanistan, and Global Rights' research methodology and data collection process, please refer to the Annex.

¹² It should be remembered that any form of categorization is inexact and that there is overlap between categories and within categories. Moreover, the list of acts in each category of violence are not exhaustive and were selected by the local women's organizations involved in designing the research based on their experience of what are the most common and significant forms of violence occurring within their communities.

V. THE SURVEY POPULATION

The survey on domestic violence was conducted on women in 4,700 households located in 16 provinces throughout Afghanistan. Considerable effort was made to ensure that the sample of women reflected the geographic, ethnic, linguistic and cultural diversity of Afghan women. The map below depicts the provinces in which the survey was conducted. Within the provinces, women were interviewed from rural and urban communities. Women from different ethnic communities were also surveyed in proportion to the ethnicities living in the province. Members of the Kochi community, a traditionally nomadic group, were also interviewed in settlements in and around Kabul.





A. ETHNIC COMPOSITION

The women interviewed belonged to the following ethnicities: 31.1% were Pashtun, 29.0% were Tajik, 12.5% were Hazara, 7.6% were Uzbek, 5.3% were Turkmeni, 4.3% were Nuristani, and 3.4% were Baluch. 6.7% of the women were from other ethnicities.

B. MARRIAGE CONTEXT

Almost all (96.0%) of the women were married. 2.9% were widowed, and 1.2% were divorced. In 91.1% of marriages, the husband and wife were from the same ethnic background. 12.6% of women were in polygamous marriages: 10.3% of all women were in marriages that involved one other wife; 1.5% involved two other wives; 0.5% had three other wives; 0.1% had four other wives; and 0.1% had five other wives or more. In 87.1% of cases, the first wife was interviewed for this survey. Only 26.3% of respondents knew their husbands well before they were married, while 27.2% knew him a little, and 46.5% did not know their husbands at all prior to their marriage.

C. FAMILY CONTEXT

Many of the respondents had spent time outside of Afghanistan as refugees, with 18.6% having lived in Pakistan at one time, 13.5% in Iran and a small percentage in Arab countries, the U.S.A. or other parts of Asia. Many respondents (51.8%) were living in large families of 6-10 members and 23.6% lived in families of 10 people or more: 9.6% of respondents had no children; 21.8% had 1-2 children; 30.3% had 3-4 children; 29.4% had 5-7 children; 8.1% had 8-10 children, and 0.8% had more than 10 children. A variety of age groups were included in the survey with women ranging in age from between 10 to 14 years (1%) to over 50 years. Nearly all respondents were married to men older than themselves with variations in the age differences.

D. SOCIO-ECONOMIC CONTEXT

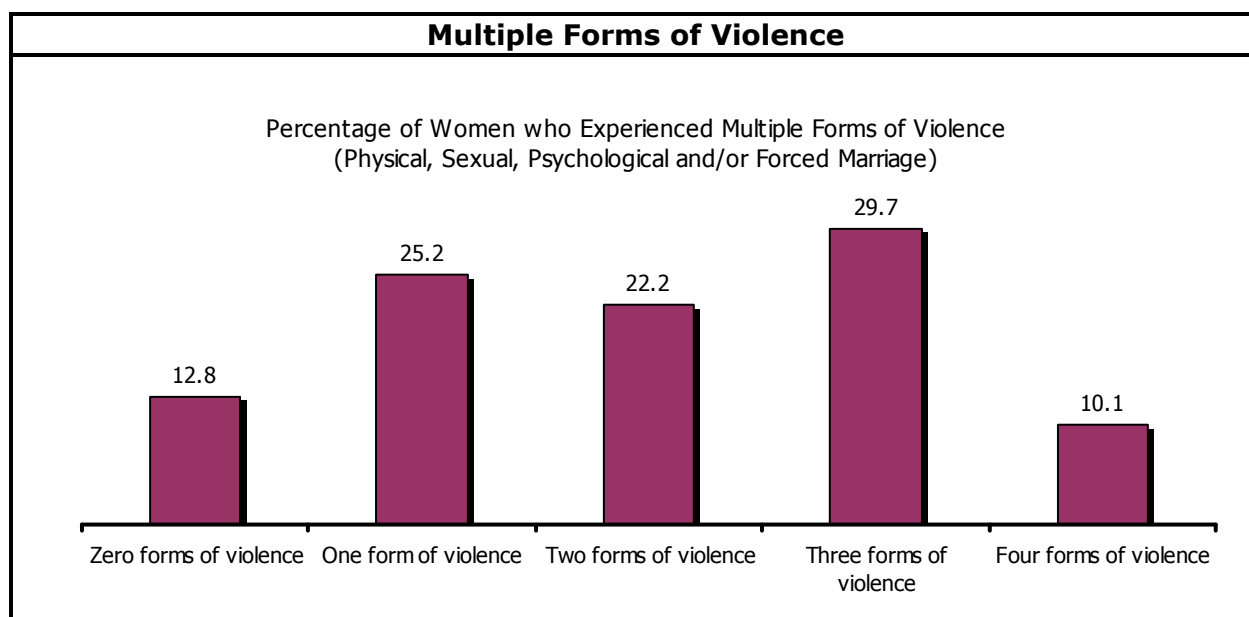
48.0% of the women lived in urban areas and 52.0% lived in rural villages. 80.8% were illiterate. 9.2% had some primary education and 4.9% reported having some secondary education while 1.5% had a bachelor degree or higher. 86.0% did not work outside the home and 85.7% did not earn a monthly salary while 4.0% were teachers or lecturers, 1.8% worked in the handicrafts sector, 1.4% had government jobs, 1.6% worked in non-governmental organizations (NGOs) and 5.1% had other jobs. 75.6% of households owned their own home.

VI. THE KEY RESEARCH FINDINGS¹³

For a guide on how to read the graphs in this section please refer to footnote 14 below.¹³

A. THE PERVASIVENESS OF VIOLENCE AND THE EXPERIENCE OF MULTIPLE FORMS OF VIOLENCE

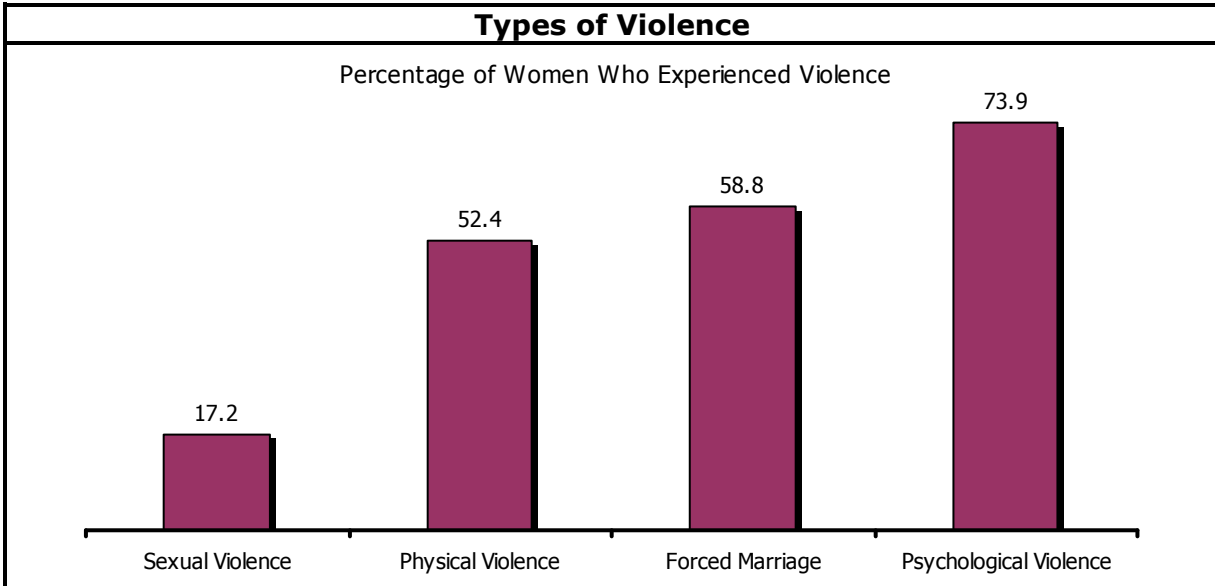
An overwhelming majority of women, 87.2%, reported experiencing at least one form of domestic violence (physical, sexual, psychological or forced marriage) and most (62.0%) experienced multiple forms of violence.



¹³ Due to rounding, percentages may not total exactly 100%.

¹³ When reading the graphs in this section that report on the incidences of each form of violence in relation to another variable, it is necessary to note that the statistics refer to the percentage of the total frequency (full sample of women interviewed) reported for the variable being measured. For example, in the graph on forced marriage, the total frequency is 58.8% of women in forced marriages and 41.2% of women in consensual marriages. Of the 58.8% of women who are in forced marriages, 63.8% experienced physical violence; of the 41.2% who are in consensual marriages, 36.5% experienced physical violence.

B. THE INCIDENCE OF DIFFERENT FORMS OF VIOLENCE

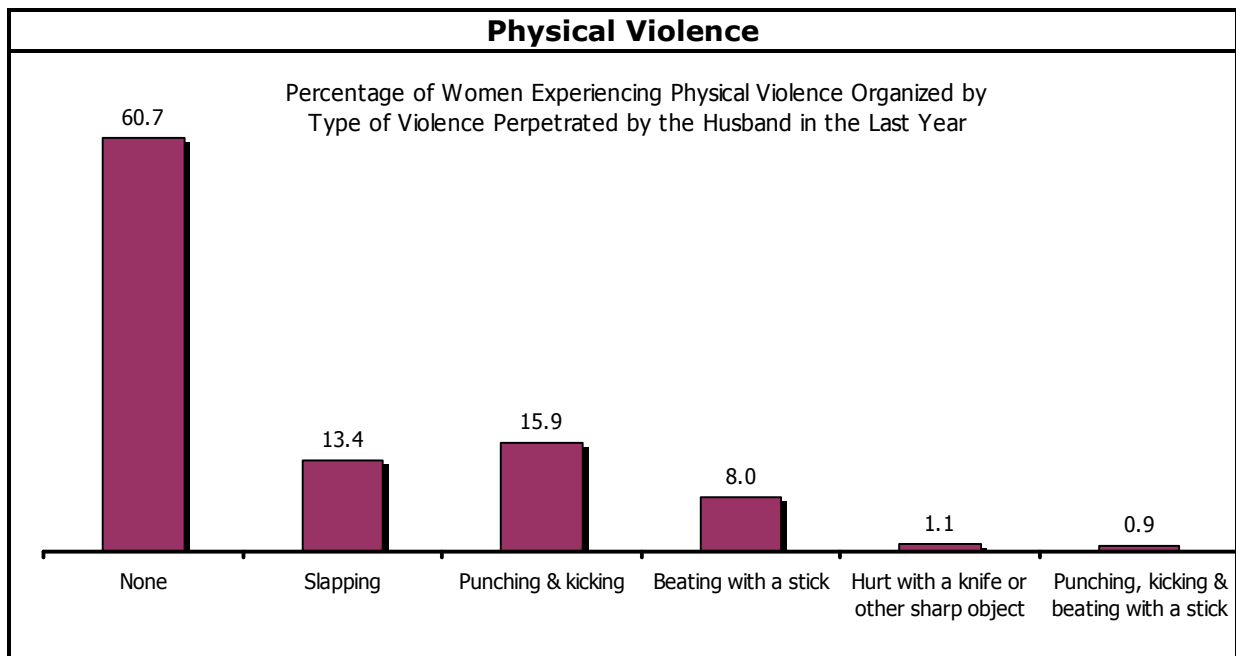


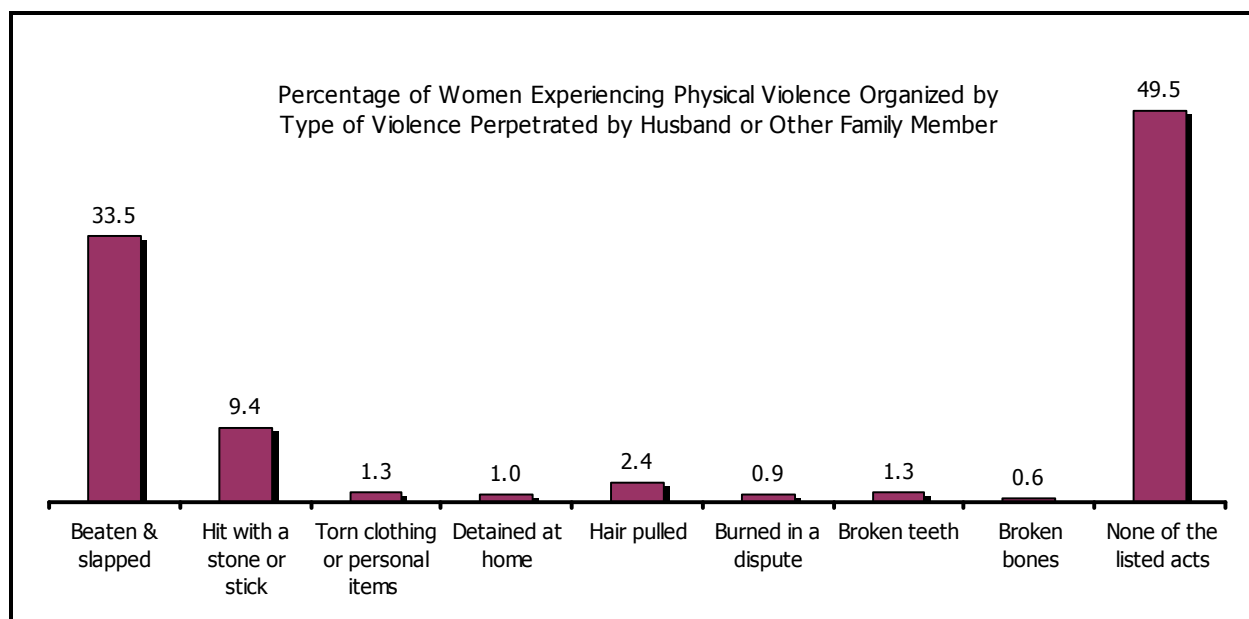
1. Sexual Violence

17.2% of the women had experienced sexual violence with 11.2% of women experiencing rape, 1.3% experiencing injury to their sexual organs and 4.7% being denied sexual intercourse by their husband.

2. Physical Violence

Over half of the women, 52.4%, had experienced physical violence. 39.3% said they had been hit by their husband in the last year.





3. *Psychological Violence*

73.9% of the women experienced psychological violence, including threats, social, economic and cultural violence, and verbal violence.

a) **Threats**

Over a quarter of the women (25.5%) received threats of a beating from their husbands, 4.2% were threatened with divorce and 3.3% were threatened by their husband that he would take another wife. 5.1% of women received threats of death from their husband.

b) **Social, Cultural and Economic Violence**

41.3% of the women were prevented from participating in public or social life with 32% being prevented from visiting friends or relatives or participating in public ceremonies or gatherings. 18.1% of women were prevented from spending money. 49.2% of the women were prevented from engaging in cultural and religious activities and of those, 30.2% were prevented from participating in religious affairs or visiting shrines.

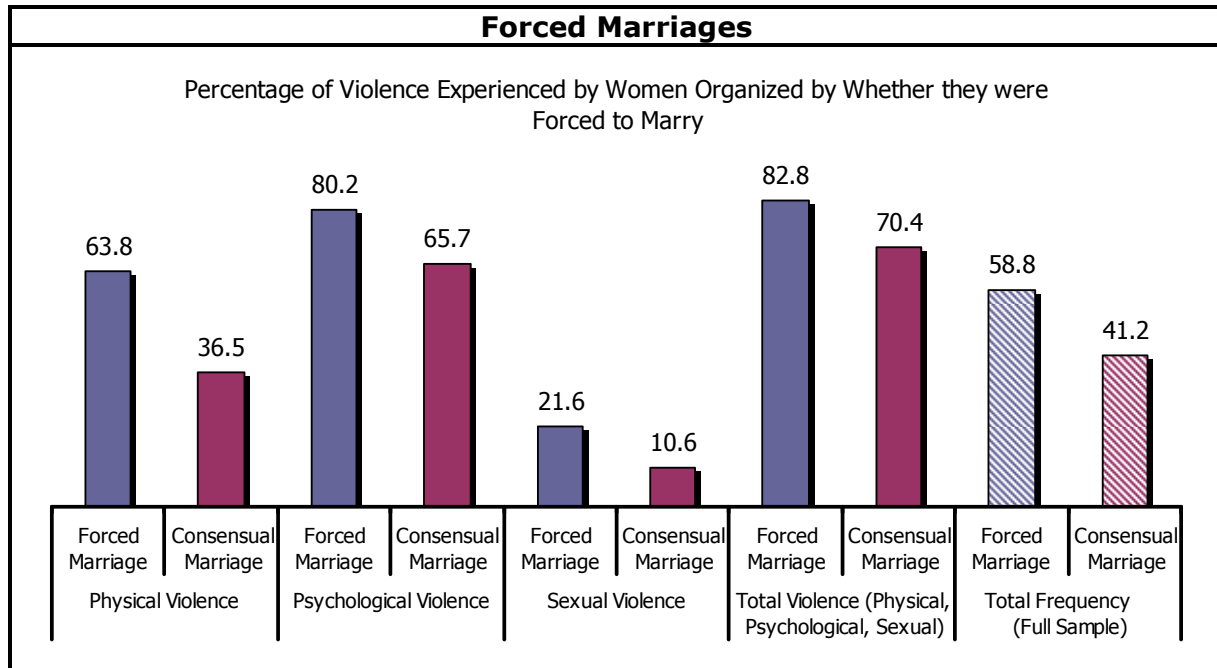
c) **Verbal Violence**

55.8% of women reported experiencing verbal abuse, including insulting and taunting.

4. *Forced Marriage*

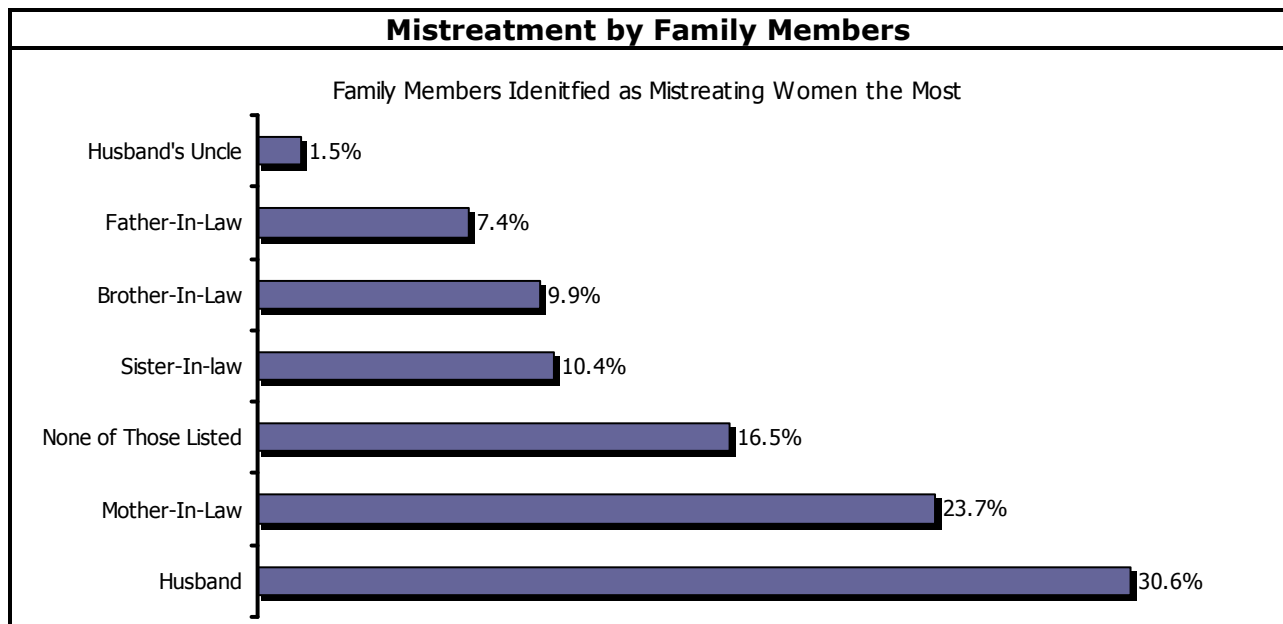
58.8% of the women were in forced marriages. There were wide variations by province ranging from a low of 20.5% in Daikundi to a high of 91.6% in Khost, where almost every marriage was forced.

Forced marriage was strongly related with other forms of violence: 63.8% of women who were forced to marry reported experiencing physical violence, compared to 36.5% of the women who married freely; 80.2% forced to marry reported psychological violence compared to 65.7% in free marriages; and 21.6% in forced marriages reported sexual violence, compared to 10.6% in marriages freely entered into.



C. THE PERPETRATORS OF VIOLENCE

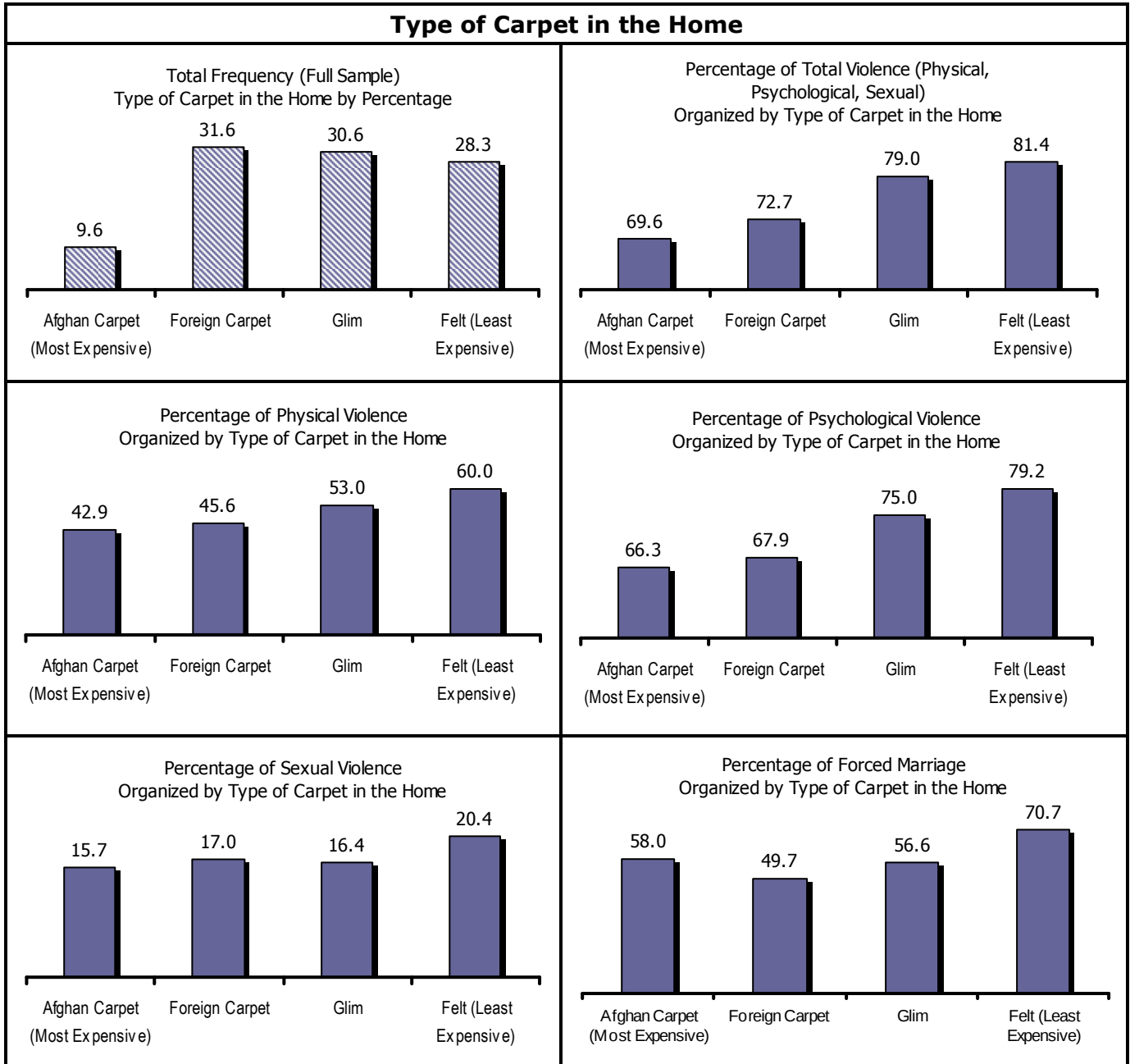
The husband was the main abuser for 30.6% of women, while the mother-in-law was the perpetrator for 23.7% of women. Other family members responsible for abuse included the sister-in-law (10.4%), brother-in-law (9.9%), father-in-law (7.4%), and the husband's uncle (1.5%).



D. SOCIO-ECONOMIC STATUS AND VIOLENCE

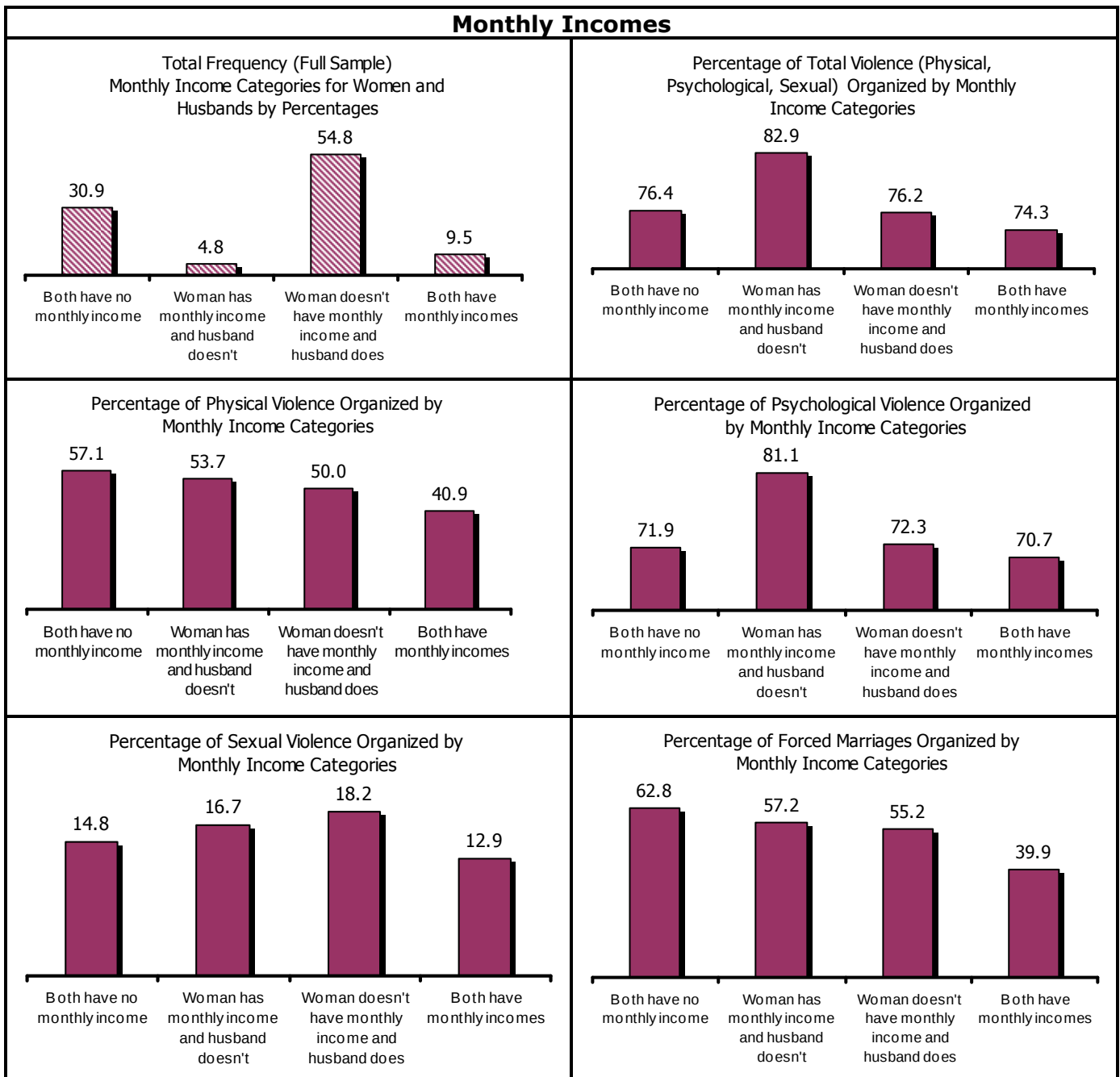
1. Carpet Type as a Proxy of Income

Using carpet type as a proxy for income or wealth, homes with the cheapest form of carpets were more likely to experience all types of violence than homes with the most expensive form of carpet. 81.4% of women who had the cheapest type of carpet experienced at least one form of physical, psychological or sexual violence as compared to 69.6% of women who had the most expensive type of carpet.



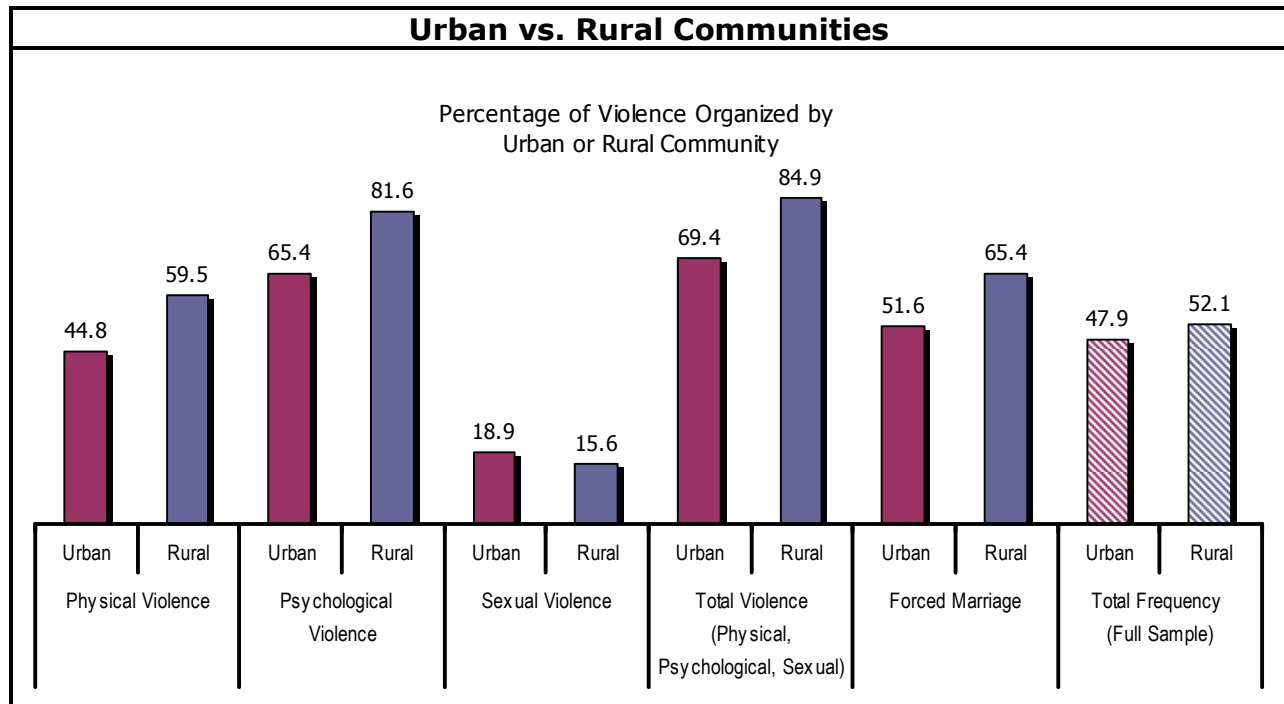
2. Earning a Monthly Income

Women in couples where both partners earned a monthly income were the least likely to experience violence of every form, including forced marriage. Women in marriages where neither of the partners earned an income were most likely to experience physical violence and were the most likely to be in forced marriages. For example, when both partners earned a monthly income, 40.9% of the women experienced physical violence compared to 57.1% of women when both partners earned no monthly income. Women were most likely to experience sexual violence when the husband earned an income and the wife did not, though differences between incidences of sexual violence and employment patterns of each partner were very small. Women were most likely to experience psychological violence when the wife earned an income but the husband did not (this only occurred in 4.8% of the households surveyed).



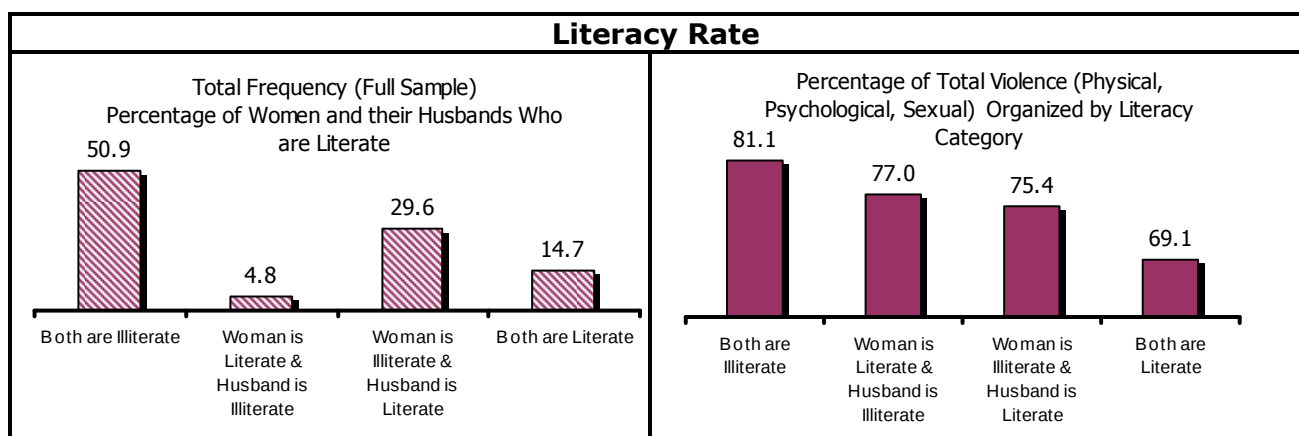
3. Urban vs. Rural Communities

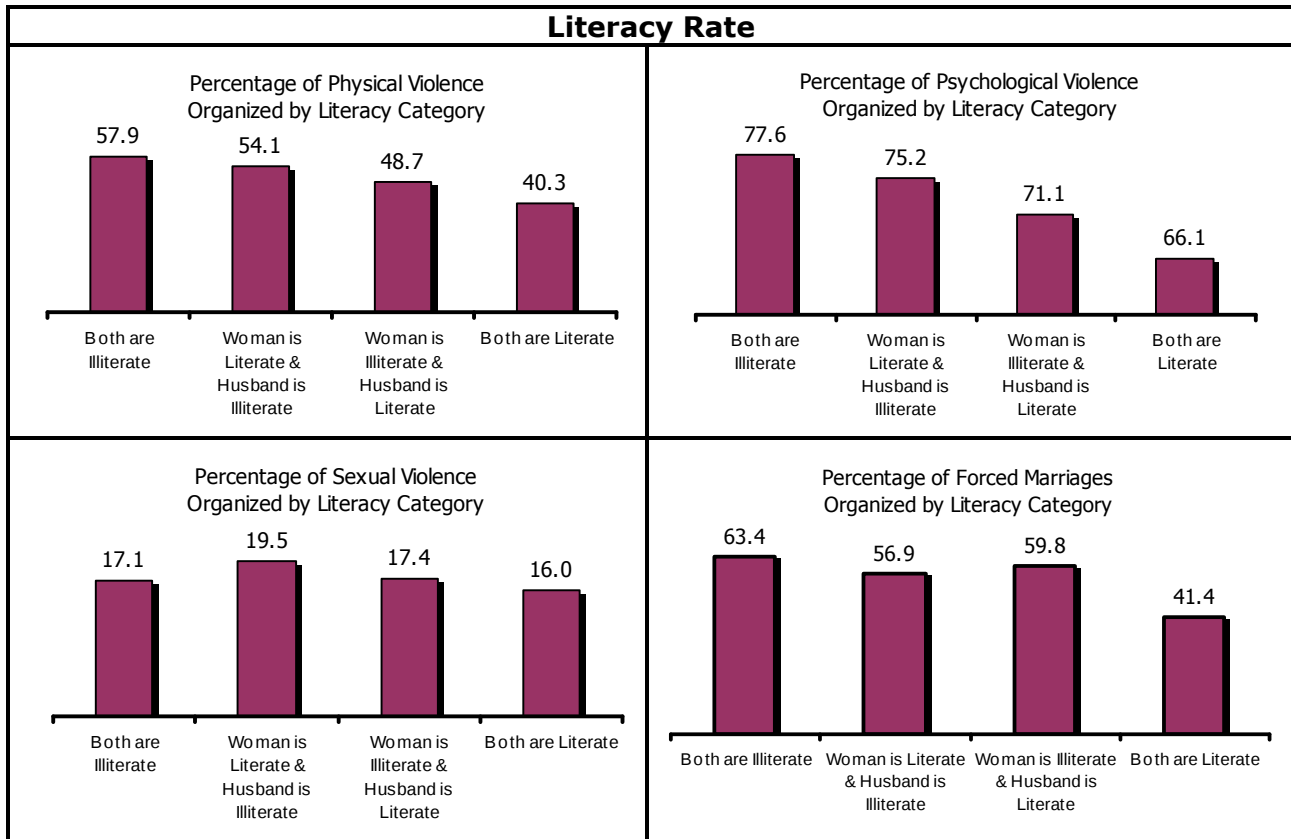
The likelihood of all forms of violence, other than sexual violence, was higher for women living in rural areas than for women living in urban areas. 84.9% of women in rural areas experienced at least one form of physical, psychological or sexual violence compared to 69.4% of women in urban areas.



4. Literacy

The proportion of women who experienced at least one form of physical, sexual or psychological violence was highest (81.1%) when both the husband and wife were illiterate and was lowest when both the husband and wife were literate (69.1%). This pattern held for each of the forms of physical, sexual and psychological violence when viewed separately, although the differences were negligible in the case of sexual violence. Levels of forced marriage were also lower when both partners were literate.





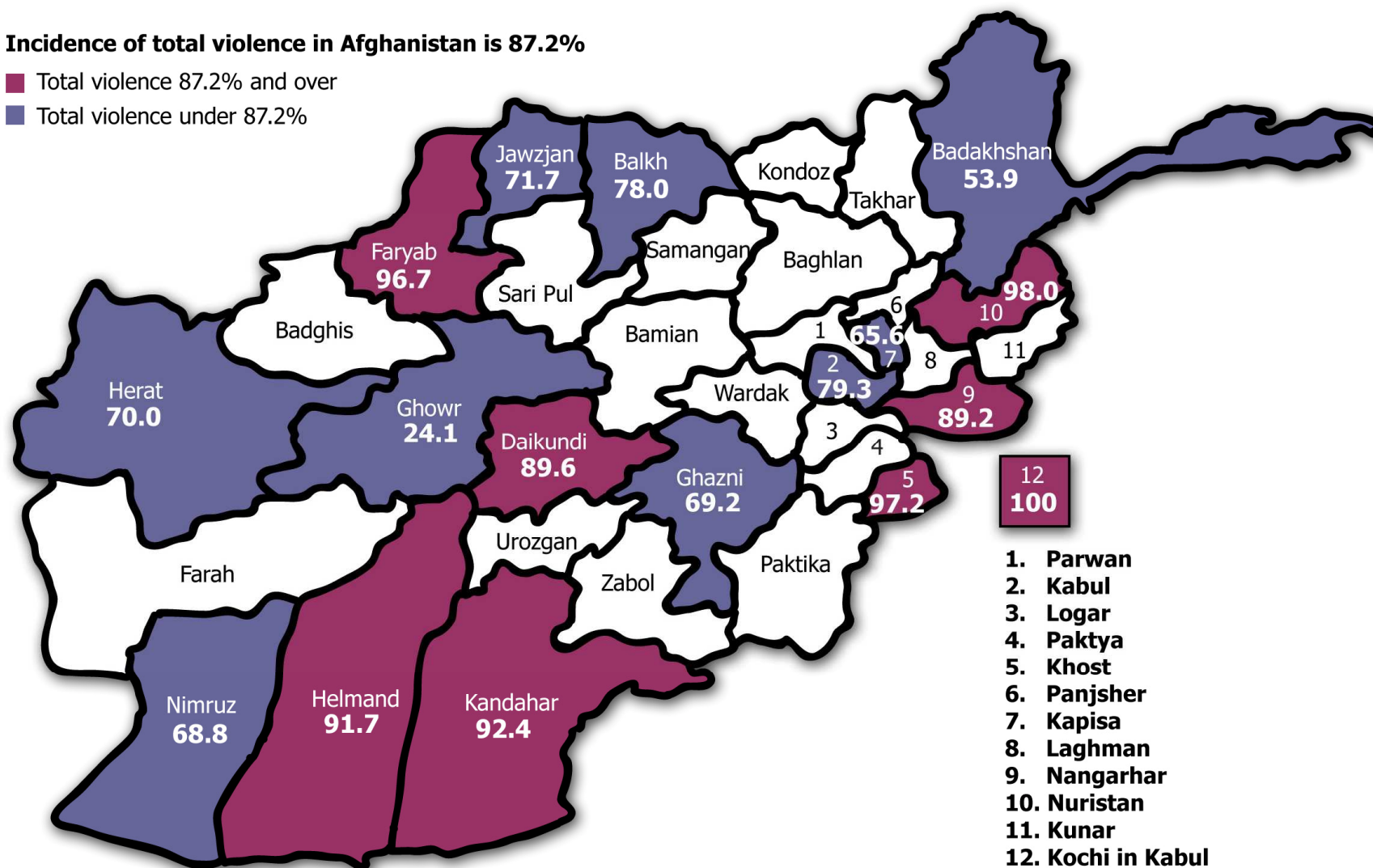
E. VARIATIONS IN VIOLENCE BY PROVINCE

In general, women in provinces in the South and East of the country, in the border regions with Pakistan, were more likely to experience violence, including forced marriage, than women in provinces in the rest of the country, although there was variation within regions and between different forms of violence.

Total Violence by Province

Incidence of total violence in Afghanistan is 87.2%

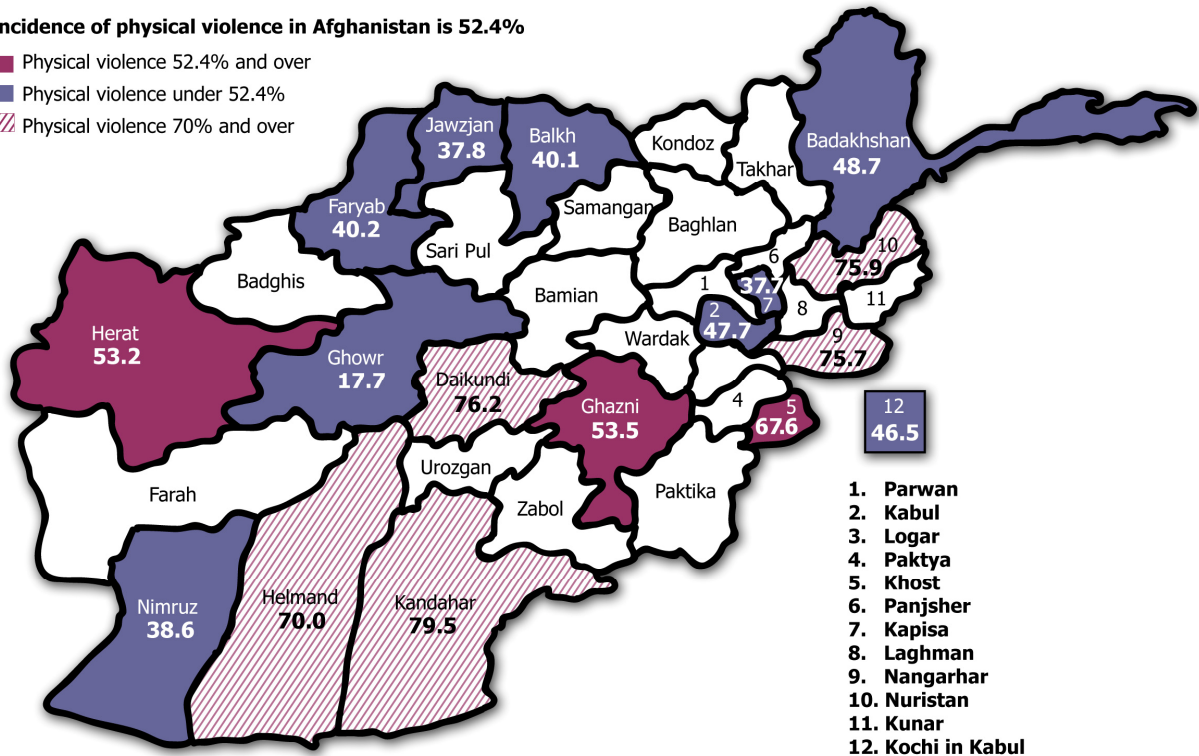
- Total violence 87.2% and over
- Total violence under 87.2%



Physical Violence by Province

Incidence of physical violence in Afghanistan is 52.4%

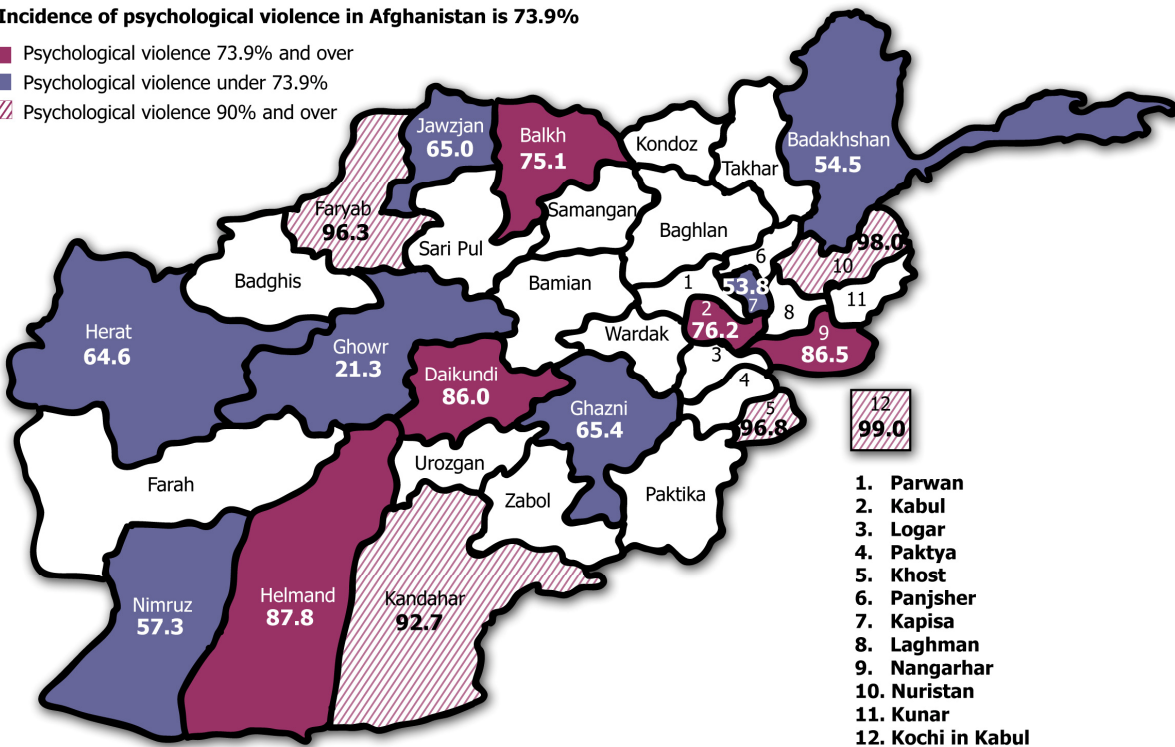
- Physical violence 52.4% and over
- Physical violence under 52.4%
- ▨ Physical violence 70% and over



Psychological Violence by Province

Incidence of psychological violence in Afghanistan is 73.9%

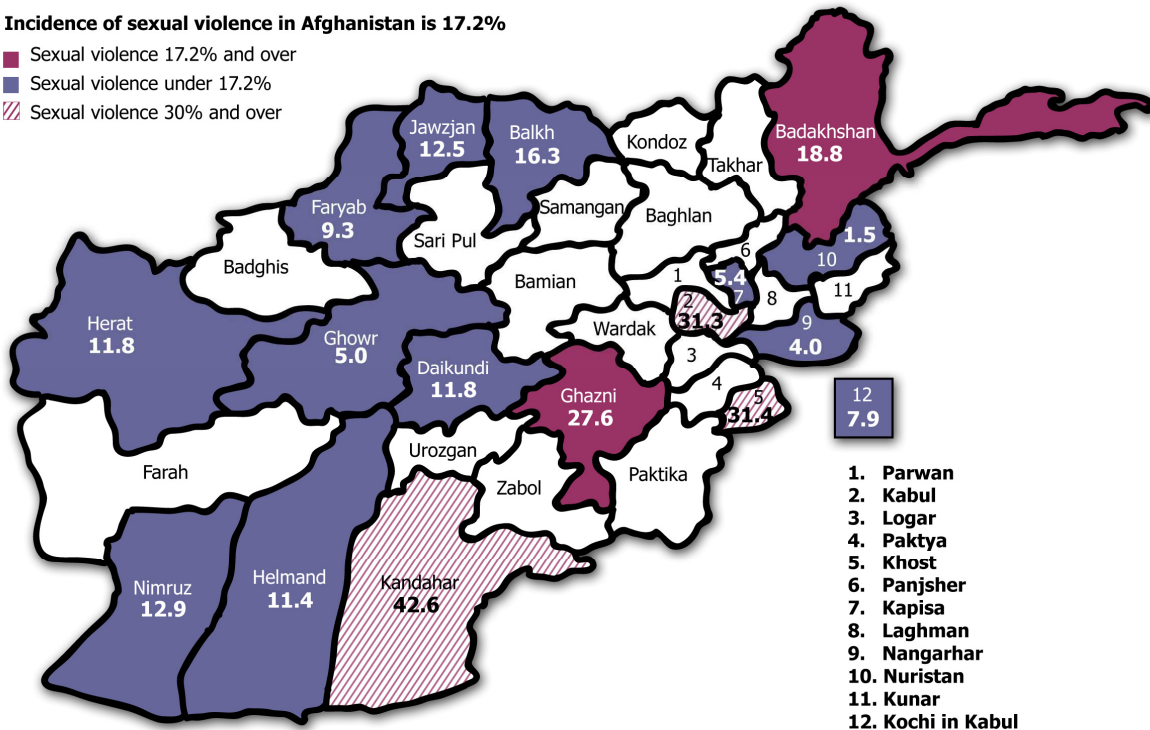
- Psychological violence 73.9% and over
- Psychological violence under 73.9%
- ▨ Psychological violence 90% and over



Sexual Violence by Province

Incidence of sexual violence in Afghanistan is 17.2%

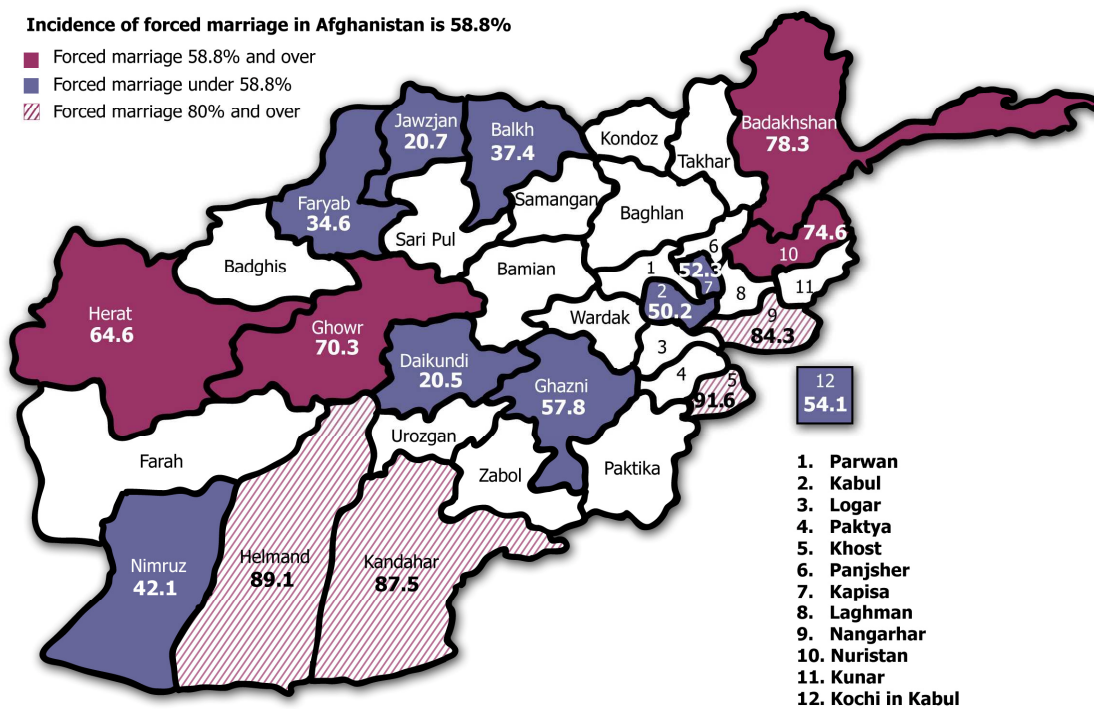
- Sexual violence 17.2% and over
- Sexual violence under 17.2%
- ▨ Sexual violence 30% and over



Forced Marriage by Province

Incidence of forced marriage in Afghanistan is 58.8%

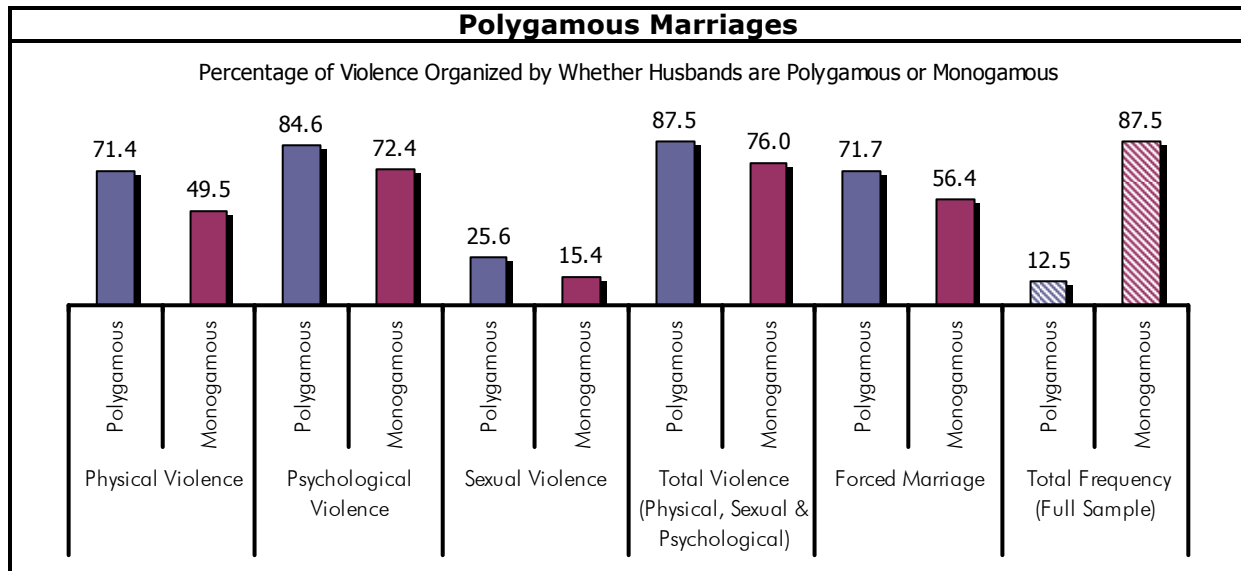
- Forced marriage 58.8% and over
- Forced marriage under 58.8%
- ▨ Forced marriage 80% and over



F. MARRIAGE CONTEXT

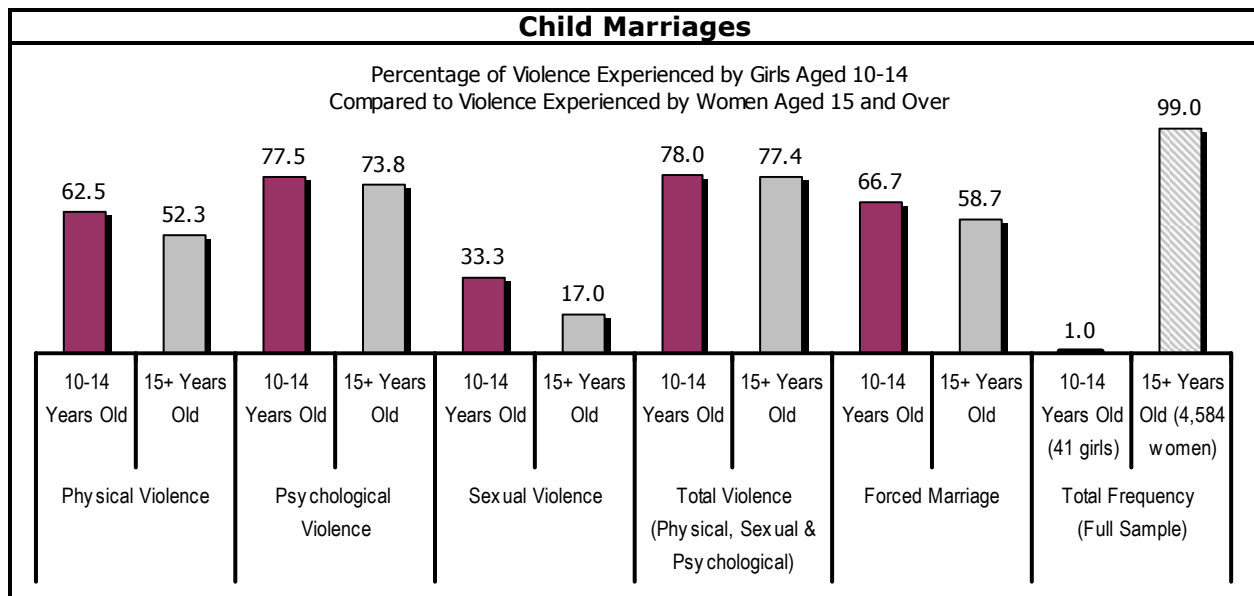
1. Polygamous Marriages

12.5% of women were in polygamous marriages. While all forms of violence were more likely for women in polygamous marriages, the likelihood of physical violence was particularly high, at 71.4% compared with 49.5% for women in monogamous marriages.



2. Child Marriages

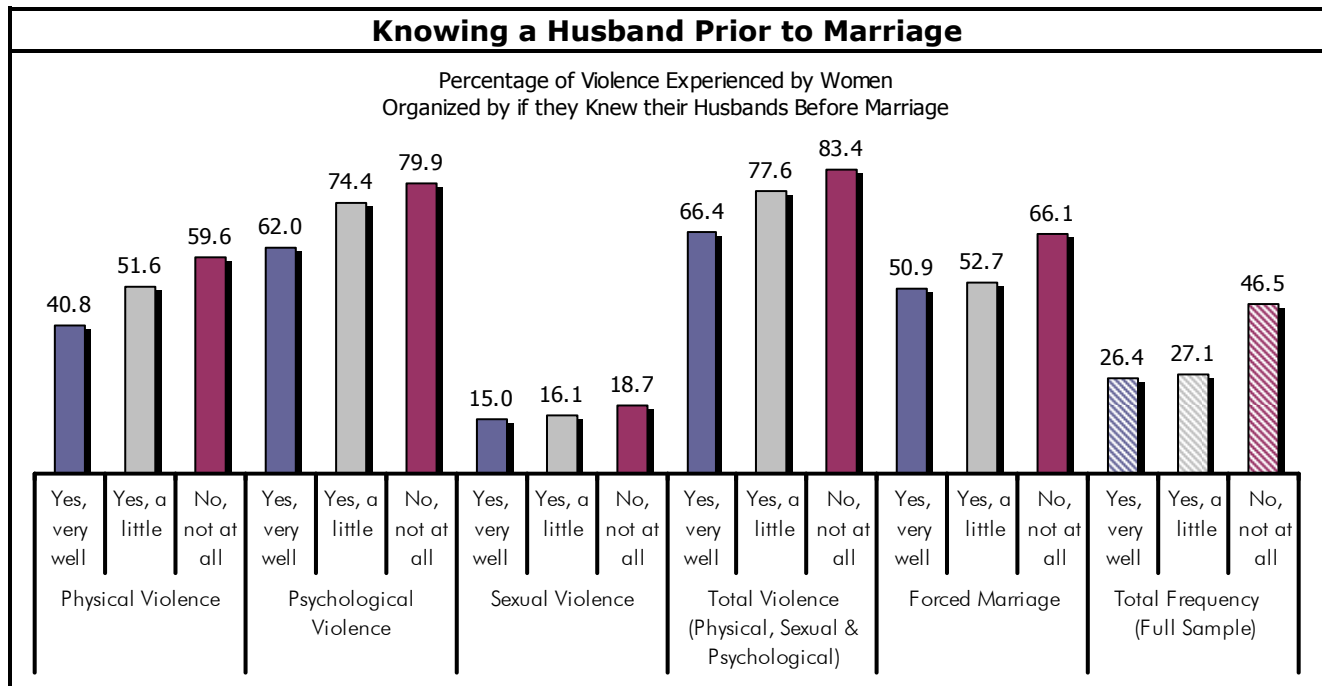
Girls aged 10-14 were more likely to experience all forms of violence than girls and women 15 years of age and older. In particular, 33.3%¹⁴ of girls in this age group reported sexual violence, which was almost double the incidence for females aged 15 years and older. 62.5% reported physical violence compared to 52.3% for older girls and women.



¹⁴ The 33.3% of girls between the ages of 10-14 who reported sexual violence is comprised of only 13 girls.

3. *Knowing a Husband Prior to Marriage*

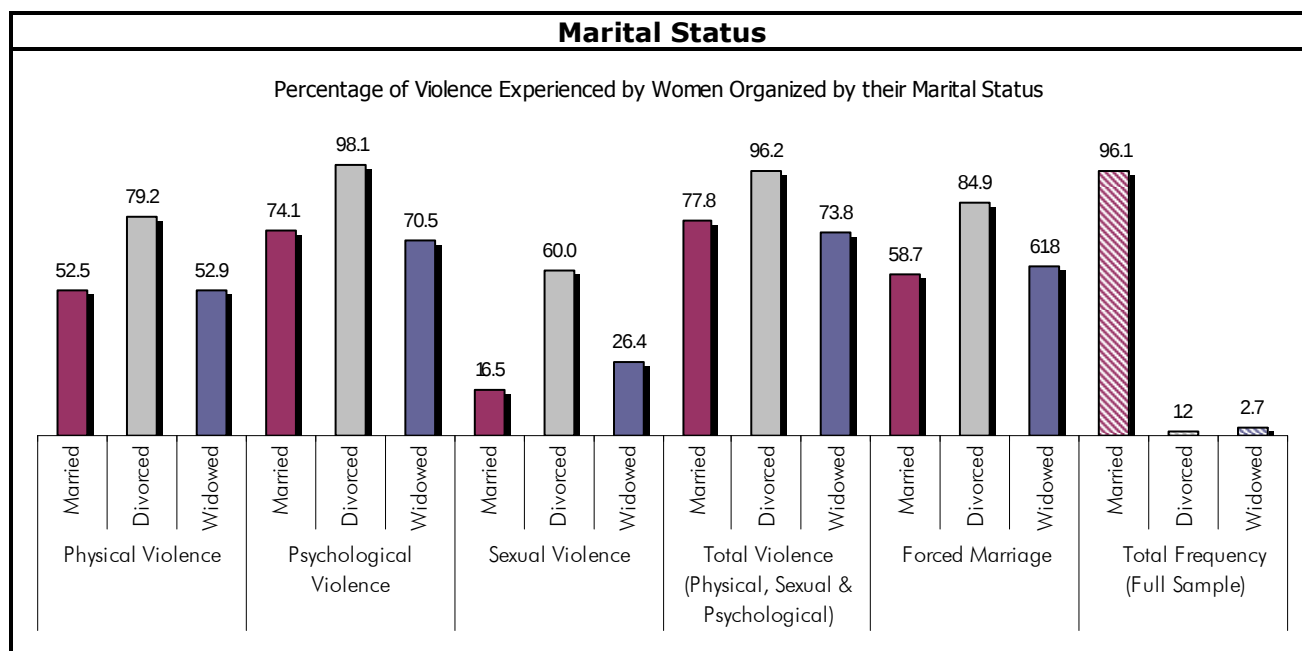
46.5% of women did not know their husband when they married him. For each category of violence, the better a woman knew her husband before marriage, the less likely she was to experience violence. 83.4% of women who did not know their husband before marrying him experienced at least one form of physical, psychological or sexual violence, compared with 77.6% of women who knew him a little before marriage and 66.4% of women who knew him very well.



G. MARITAL STATUS

Divorced women were more likely to report experiencing all forms of violence, including forced marriage, than women who were married at the time of the survey or who had been widowed and had not remarried. 96.2% of divorced women experienced at least one form of violence compared to 77.8% of married women.

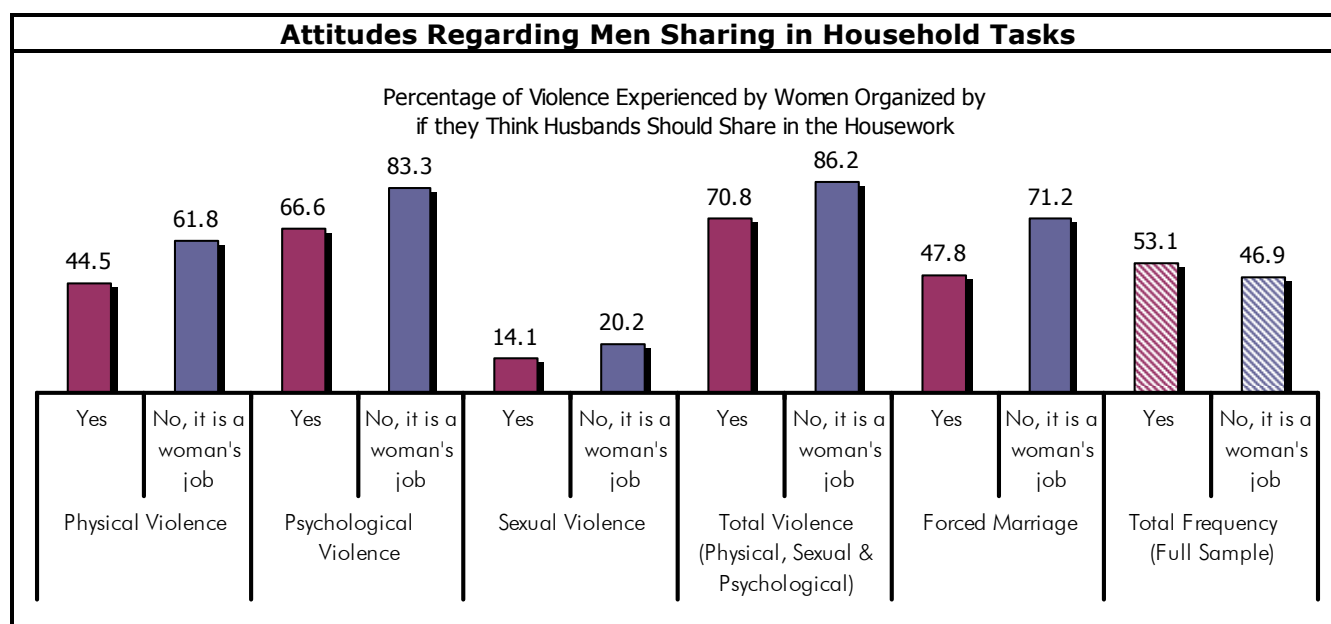
60% of divorced women reported sexual violence compared to 16.5% of married women. While widows were as likely to experience physical and psychological violence as married women, they were more likely to experience sexual violence: 26.4% compared to 16.5% for married women.



H. PERCEPTIONS OF GENDER ROLES AND SATISFACTION WITH FAMILY RELATIONSHIPS

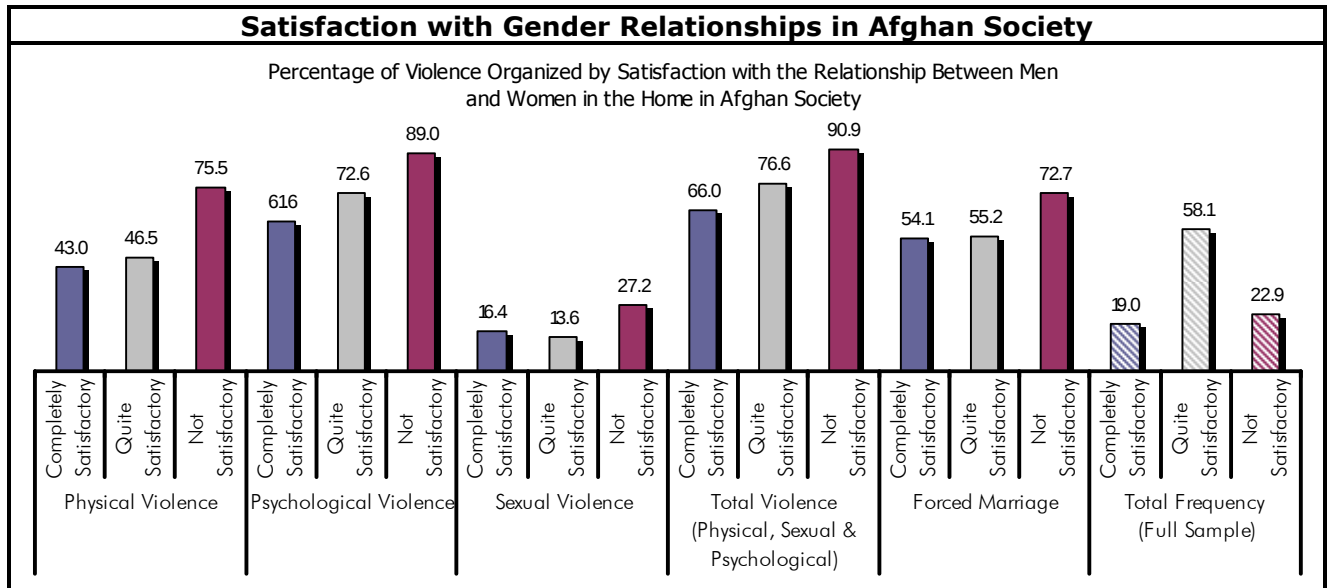
1. Perceptions of Whether Men Should Share in Household Tasks

Of the women who said that men should share in household tasks, 70.8% had experienced at least one form of physical, psychological or sexual violence; of the women who said that men should not share in household work because it is a woman's job, 86.2% had experienced at least one of these forms of violence.



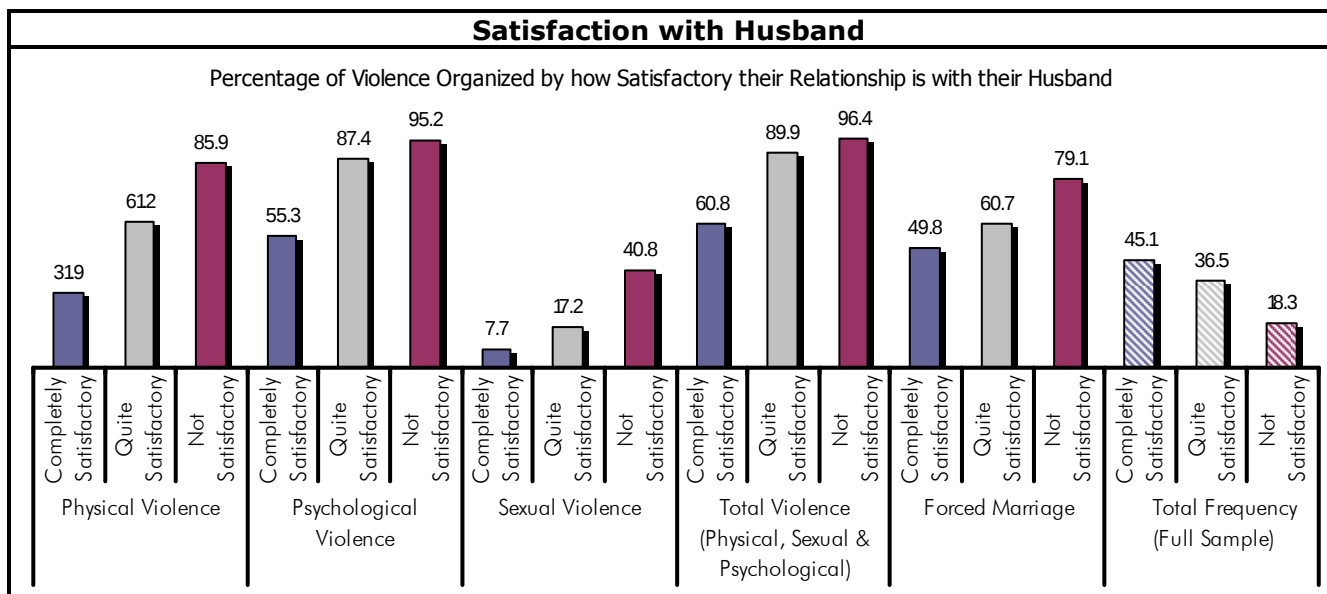
2. Satisfaction with Relationships between Men and Women in the Home in Afghan Society

Women who were satisfied with relationships between men and women in the home in Afghan society tended to experience less violence. However, many of the women who were satisfied also experienced violence. Of the 19% of women who said they were completely satisfied with gender relationships in the home, 43% experienced physical violence, 61.6% suffered psychological violence, 16.4% had endured sexual violence, and 54.1% had been forced to marry.



3. Women's Satisfaction with their Husband

Women who were more satisfied with their husbands were less likely to experience violence than women who were less satisfied with their husbands. Nonetheless, many women who claimed they were completely satisfied with their husband experienced violence. Of the 45.1% of women who claimed they were completely satisfied with their husbands, 31.9% had experienced physical violence, 53.3% psychological violence, 7.7% sexual violence, while 49.8% had been forced to marry.



I. REPORTING INCIDENTS OF VIOLENCE TO OTHER WOMEN

Although 52.4% of women experienced physical violence, only 18.4% of women knew another woman whose husband had beaten her.

VII. DISCUSSION OF THE RESEARCH FINDINGS

A. THE EXPERIENCE OF VIOLENCE

This study highlights the endemic nature of domestic violence in Afghanistan, showing that it is experienced by the vast majority of women we sampled in our survey. The finding that most women suffer multiple forms of violence indicates that a woman who suffers one form of violence is at heightened risk of suffering other forms. Moreover, the finding emphasizes that violence does not consist of a single act or even of a series of acts, but typically pervades every aspect of a woman's life. It affects her freedom to express her views or beliefs, her ability to participate in social or religious life, as well as her physical security. This, in turn, prevents a woman from realizing her civil, political, economic and cultural rights. Hence, while domestic violence is a human rights violation in itself, it has a multiplier effect on other rights violations.

In discussions with Global Rights, women's organizations serving victims of domestic violence all stressed the extremity of the violence suffered by women in their homes. Indeed, while all violence is unacceptable, this qualitative data suggests that domestic violence in Afghanistan can reach proportions of unspeakable brutality. Staff in a women's legal aid clinic in Jawzjan province describe a girl sexually assaulted and mutilated, and chained in a basement and regularly raped by her father for over one year before being discovered and freed by neighbors. Frontline organizations have seen countless cases of husbands who have forced their wives to prostitute themselves. Other women and girls have been set on fire by in-laws or had pieces of their scalps ripped out from hair pulling.

Farah was accused by her husband of over-salting the meal at supper. Her husband beat her, and then tied her up in the basement of their home, where he beat her some more for several hours. He then forced their young son to violently penetrate his mother's vagina with a stick as a punishment for shaming the husband in front of the dinner guests. In another case, Jamila had her sexual organs violently injured by her father-in-law, who told his wife and daughter to hold Jamila's legs open. He then forcefully penetrated her with sharp objects, accusing her of trying to attract other men. She bled severely from the assault and nearly died.

Case Study provided by: Noor Education Centre (NEC)

**Names have been changed*

While no official statistics exist, women's organizations, the Afghan Independent Human Rights Commission and international organizations assert that the murder of women by their husbands and other family members, including 'honor killings,' is widespread in Afghanistan. A limited number of cases have become public recently, including the 2005 stoning death of a woman in Badakhshan province, murdered by family members following a sentence by local *ulema* after an accusation of adultery.

B. PERPETRATORS OF VIOLENCE

While the most common perpetrator of violence was the husband, the frequency with which the mother-in-law or sister-in-law perpetrated the violence challenges common notions of domestic violence as abuse perpetrated by men against women. Findings from the workshops and interviews with women's organizations provided further evidence that women from the in-law family are frequently responsible for perpetrating abuse, encouraging the husband to beat his wife, or condoning the violence taking place. It is of critical importance that advocacy and service organizations: 1) recognize the role that women are playing in perpetuating abuse; 2) identify entry points to dissuade women from abusing other women; and 3) challenge behavior, attitudes and values which facilitate women's mistreatment of other women.

C. SOCIO-ECONOMIC FACTORS

Recognizing the reluctance of women to discuss incomes, the survey asked about the family's possession of indicative material objects to ascertain household wealth. Material possessions included the type of carpet owned, for example, whether it was an Afghan carpet, foreign carpet, *glim*, or felt (*satranji* or *muket*). Relationships were found between expensive carpets and lower incidences of violence, suggesting that income has an impact upon violence in a home.

It should be noted, however, that the survey found no relationship between actual, reported household income and levels of violence. This may be partly due to the fact that most women surveyed, 78.6%, had a total family income of less than 11,000 Afghans per month so there was not a sufficient range of incomes to provide meaningful findings regarding incidences of violence by income level. It may also be because of the unique circumstances in Afghanistan, where a near total lack of support services for victims of violence, the scarcity of divorce and the normalization of domestic violence affects all women almost regardless of their socio-economic circumstances. Further, women rarely have their own independent sources of income to rely upon, regardless of the income level of the household. As the survey data shows, only 14.3% of women earn a monthly income themselves. While women from wealthier birth families may be more likely to have the option of returning to their parents' homes to escape abuse, shame and stigma prevent this from occurring in most cases. Moreover, the survey finds that poverty in Afghan is widespread with 30.9% of households reporting that neither the husband or wife have a regular monthly income. The lack of relationship in our data between reported family income levels and levels of violence is also interesting: when asked why they thought they were mistreated by their husbands or family members, the largest group of women, 46.6%, responded that the reason was poverty.

When women were not asked directly about the amount of their household income but, rather, whether they and their husbands earned a monthly income, relationships were found between the incidence of violence and employment. While the incidences of all forms of violence were lowest when both husbands and wives earned an income, this was particularly marked for physical violence and forced marriages; for sexual violence and psychological violence, however, there was minimal difference between incidences of violence when both partners earned an income and when both partners did not earn an income. Nonetheless, assuming that those families with higher levels of employment had a greater income, the findings suggest that higher incomes are associated with lower incidences of violence, at least physical violence and forced marriage. Alternatively, it could mean that employment in itself mitigates these forms of domestic violence. Either way, the research indicates that the development of employment opportunities for both men and women can have a positive impact on reducing at least some forms of violence.

Women who earned a monthly income who were married to husbands who did not earn a monthly income experienced greater psychological violence than women in marriages where both partners did not earn a

monthly income or where only the husband earned an income. This may point to men having a greater tendency to resort to psychological violence in situations where their pride or self-esteem is injured, or where their traditional gender roles are challenged. Public awareness campaigns that promote women's rights and challenge traditional gender norms may thus have an impact on this form of violence, at least in the long term. Variations in sexual violence were small regardless of employment patterns, making it difficult to comment on the impact of employment on this form of violence.

If it is assumed that rural communities have higher poverty levels than urban communities, increased incidences of all forms of violence, including forced marriage, in rural communities compared to urban communities may also support the theory that poverty is associated with heightened violence. As rural areas tend to have much fewer public services such as schools, hospitals, police, lawyers, formal justice institutions, and support services for victims of violence, the higher incidences of violence may reflect the fact that the comparatively greater presence of these services in urban areas tends to slightly mitigate violence there presently. Sexual violence was very slightly lower in rural areas and may suggest that socio-economic factors and access to services have less of an impact on sexual abuse than other forms of violence. Alternatively, the anomalous data for sexual violence may simply be a result of rural women being particularly reluctant to report this form of violence and thus skewing the results for this category of violence.

Global Rights' research identified strong relationships between literacy of both men and women and reduced levels of violence, suggesting that basic literacy training for both men and women can have a significant impact on domestic violence rates. The Constitution of Afghanistan has specific provisions guaranteeing the right to education, including literacy.¹⁵ Civil society should demand that the government fulfills its commitments to protect this right, especially given that the research found that 80.8% of the women surveyed were illiterate.

D. VARIATIONS IN VIOLENCE BY PROVINCE

In general, the research found that women in provinces in the south and east were more likely to experience violence than women in provinces in the rest of the country; however, there were exceptions to this rule and variations between provinces and types of violence. Possible reasons for higher incidences of domestic violence along the border zone include greater levels of armed conflict in this region as well as the influence of the Taliban with its oppressive ideology towards women. Insecurity limits the reach of the central government into these zones, restricting the availability of public services such as schools, hospitals, courts, and police forces, compared to the rest of the country. The availability of support services for victims of domestic violence is even scarcer than in other provinces as both local and international non-governmental organizations find it more difficult and dangerous to work in these areas. Increased mental and physical health disorders associated with conflict, such as trauma, are also likely to lead to people turning to violence to resolve disputes with family members. There is also some research to suggest that an environment of violent conflict exacerbates domestic violence and, in particular, conflict creates a "climate for rampant sexual violence."¹⁶ Other factors influencing disparities in levels of violence between provinces that may not necessarily be associated with conflict and insecurity include differences in formal and informal justice system mechanisms available; the prevailing forms of customary law; local perceptions of domestic violence; the role of religious and community leaders in responding to violence; livelihood opportunities; and differences in socio-economic factors. It was also suspected by some researchers that there may be cultural variations among women's openness in speaking about issues of domestic violence¹⁷.

¹⁵ The Constitution of Afghanistan (2003) Articles 43, 44, 45 and 46.

¹⁶ UN Action Against Sexual Violence in Conflict. Stop Rape Now booklet, p.4.

¹⁷ Interview conducted by the author with Dr. Deborah J. Smith, Afghan Research and Evaluation Unit (AREU), October 1, 2007.

E. MARRIAGE CONTEXT

The research emphasizes that the circumstances in which a woman marries will play an important role in determining the likelihood of her experiencing domestic violence. Not only do women in forced marriages have a heightened risk of experiencing all forms of violence, but the less a woman knows her husband before marriage, the higher the incidence of violence. This is significant as just under half (46.5%) of women did not know their husbands at all when they married. This finding suggests that efforts must be made not only to end forced marriages but to develop a culture where women can at least become acquainted with their husbands before either arranged or free marriage..

Women in polygamous marriages also experienced higher incidences of all forms of violence, including forced marriage, than women in monogamous marriages. This is likely because husbands do not treat their wives equally and this leads to conflict amongst the wives and with the husband. The husband typically favors the most recent wife and our research found higher levels of violence reported by second, third and fourth wives than the first wife. Research from the Max Planck Institute found that polygamy was hardly practiced in urban areas and is a rural phenomenon amongst illiterate but rich Afghans who view having several wives as a status symbol.¹⁸ Illiteracy and living in a rural community were associated with heightened risks of violence in Global Rights' study so these factors may be compounding the influence of polygamy on the incidences of violence.

The research also found that married girls aged 10-14 are particularly vulnerable to all forms of domestic violence, including forced marriage.¹⁹ The Max Planck Institute notes that child marriages are due to traditional practices that contradict Islamic principles. It lists the following practices as encouraging child marriage: *badal*, or the exchange of girls between two families to marry the sons in each others families; betrothing unborn children to each other or conducting engagements between children; forced marriages, typically between young girls and much older men; *bad*, the practice of settling a dispute by marrying a girl from the perpetrator's family to a man in the victim's family to prevent conflict between the families in the future; and marrying daughters so that the family can obtain the bride price or *walwar*.²⁰ Interventions to challenge these practices are required to end the practice of child marriage. The relationships between child marriage and increased violence are particularly significant as qualitative evidence collected from women's organizations and the Afghan Independent Human Rights Commission suggests that most marriages in Afghanistan are in fact child marriages.

Following the death of her mother, Asra went to live with her sister and her sister's fiancé. Not wanting to care for her, her sister's fiancé decided to sell Asra for 200,000 Afghanis to a man aged over 60. Asra's sister and her fiancé then left the area. The man who bought Asra married her to his son, who was already married to another young girl. The old man's wife soon began forcing Asra to have sex with different men, collecting the money the men paid. After two years, she eventually ran away from home. She found a police station, which referred her to the Ministry of Women's Affairs, which sent her to a safe house. Today, at age 15, Asra is studying, learning to sew and taking part in the regular activities at the safe house. She hopes to become a social worker in the future.

Case Study provided by: Humanitarian Assistance for the Women and Children of Afghanistan (HAWCA)

**Names have been changed*

¹⁸ Max Planck Institute for Foreign Private Law and Private International Law, Family Structures and Family Law in Afghanistan: A Report of the Fact Finding Mission to Afghanistan, January –March 2005 p20-22.

¹⁹ Due to difficulties experienced during the data input stage, this research did not capture the incidence of violence on girls aged 15-18. Also, the research only refers to girls who were 14 years of age or younger at the time of the interview and cannot comment on incidence of violence for women who married below the age of 18 but are now adults.

²⁰ Max Planck Institute (2005) p 17-18.

F. MARITAL STATUS

While only 1.2% of the women surveyed were divorced, they were more likely to experience all forms of violence, including forced marriage, than married women. The survey did not distinguish whether the women experienced violence before or after their divorce. The findings could thus suggest that divorced women experience greater violence as a result of their divorced status. Alternatively, it could mean that those women who experienced the worst forms of violence either resorted to a divorce or were divorced by their husbands.

The exceedingly low divorce rate suggests that it is highly uncommon and that almost all women remain in their marriages and continue to suffer violence directed towards them, rather than leave their relationship. This is likely due to the extremely low status accorded divorced women in Afghanistan who fall into the category of “dishonored women”. It can also be attributed to difficulties in obtaining divorces, the absence of a system to divide marital property upon divorce, and the failure to enforce legal provisions that may require husbands to provide financial support to their former wives, in a context where women have few opportunities to earn their own income. In addition, the lack of a functioning marriage registry means that most women do not have marriage certificates, severely hindering attempts to seek a divorce in courts. It should be remembered, however, that while divorce and separation can be critical remedies for women who experience domestic violence, in most cases, women simply want the abuse to stop, and do not want to obtain a divorce. Interventions must recognize that the family is the primary social unit in Afghanistan and provide services such as marriage counseling and mediation in addition to options for women to leave their marriage.

The research findings also show that divorced and single women are more likely to experience sexual violence than married women. While only 2.7% of the women surveyed were widowed and had not re-married, the findings show that these women were more likely to experience sexual violence compared to married women: 26.4% experienced sexual violence compared to 16.5% of married women. Even more startling, 60% of divorced women reported sexual violence, over three times the rate for married women, in an environment where few women report this form of violence. It suggests that divorced and widowed women are targeted for sexual violence because they do not have the protection of a husband and in the case of divorced women, may be viewed as being immoral or promiscuous. Indeed, the needs of all single women must be examined more closely when designing responses to domestic violence as the absence of a husband makes them particularly vulnerable to abuse from relatives and others.

When Farida was living in Iran as a refugee, her family forced her to marry a man who beat her every day. When she could bear it no longer she asked her husband for a divorce, but he refused. She struggled for a divorce for three years before finally leaving him and returning to her parents' home. Life in her parents' home was not the same as before. Her family insulted her continuously and forced her to reconcile with her husband. Her husband made her return to Afghanistan, where her life became worse. Eventually, her father's relatives held meetings with her husband to discuss the couple's problems and it was decided that Farida and her husband would return to Iran. Once in Iran, Farida found the courage to go to the court and file for a divorce. Her husband promised to seek revenge, leaving Farida no option but to return to Afghanistan with her family. In Afghanistan, Farida found a job and began supporting her family. Despite this, her brothers insulted and beat her regularly, blaming all their problems on her divorce, claiming that it had dishonored them. The only male relative who supported her was a cousin. Due to his defense of her, Farida's brothers accused her of having a sexual relationship with him. Her brothers told her uncle to marry his son to Farida though neither she nor her cousin wanted this. When her uncle refused, Farida's brothers decided to kill her. Her mother warned her of this and helped her escape to Kabul. She eventually contacted the HAWCA Safe House where she lived for over two and half years.

Case Study provided by: Humanitarian Assistance for the Women and Children of Afghanistan (HAWCA)

**Names have been changed*

G. PERCEPTIONS OF GENDER ROLES AND SATISFACTION WITH GENDER RELATIONSHIPS AND HUSBANDS

Women who believed that men should not share in household tasks because this is a woman's job were more likely to experience violence than women who believed that men should share in household tasks. This finding held for every category of violence, including forced marriage, and suggests that women with rigid conceptions of gender roles may be more likely to be in violent relationships. This survey did not determine whether adherence to rigid gender roles occurred before or after violence took place. Indeed, women might have adopted traditional gender roles as a way to placate their husbands and try to diminish the likelihood of violence occurring. The finding points to the way attitudes and manifestations of gender roles both impact upon violence against women, and are impacted by violence against women. Traditional gender roles may be used to condone the violence, and may also be perpetuated in an effort to curb the violence. As mentioned earlier, interventions such as public awareness campaigns that educate women and men about women's rights and challenge traditional gender roles may thus serve as a protective factor against domestic violence.

Those who claimed that relations between men and women in the home in Afghan society were not satisfactory were more likely to experience violence in every category, including forced marriage, than women who claimed that relations were completely satisfactory. When a question about male and female relationships was asked on a more personal level, namely, whether women were satisfied with their husband, those who were more satisfied were also less likely to experience violence than women who were less satisfied. Interventions that encourage more satisfactory gender relations in the home, such as educating men and women about women's rights, including Islamic principles that promote gender equality, and empowering women to claim their rights, may serve to reduce incidences of domestic violence (assuming that satisfactory gender relationships involve greater equality of men and women and respect for women's rights.)

Despite lower incidences of violence amongst those who were satisfied with gender relationships in Afghan homes, many who declared that they were completely satisfied had experienced high incidences of violence of all forms. Similarly, many women who claimed they were completely satisfied with their husband also experienced violence of all forms. This finding points to the normalization of violence amongst many Afghan women and the belief that violence in the home is acceptable and does not signify problematic relationships between men and women. Nonetheless, it is important to note that almost one quarter of the women surveyed stated that the relationship between men and women in the home in Afghan society is not satisfactory. This indicates that there are a large number of Afghan women who do not accept patriarchal power structures within the home and are seeking change in the status quo. It is critical that civil society and the government support and mobilize these women to act to combat unequal gender relationships within their families and within Afghan society more generally. Only by ensuring the participation of women in the process of protecting their rights will the type of societal change needed to end domestic violence in Afghanistan be possible.

H. REPORTING INCIDENTS OF VIOLENCE TO OTHER WOMEN

The finding that less than a fifth of the women surveyed knew another woman whose husband had beaten her, despite at least half the women reporting physical abuse, suggests that women are isolated in their experiences of violence and suffer in silence, believing that they are the only ones enduring such violence. This highlights the need to provide women with safe spaces where they can talk about their experiences of violence. Naming the violence is the first step in bringing it to the attention of communities and authorities and demanding that it be addressed.

VIII. EXAMINATION OF THE AFGHAN STATE’S RESPONSES TO DOMESTIC VIOLENCE

A. THE PROVISION OF SERVICES TO VICTIMS OF DOMESTIC VIOLENCE

For the vast majority of victims of domestic abuse in Afghanistan, their only option is to endure the violence. Stigma and the inevitable resulting isolation from family, friends and their communities deter many women from even considering leaving an abusive relationship. However, for those who see no other option than to try to leave a violent home, the near complete lack of services usually renders such a decision impossible. In addition, women who leave their homes are often accused of committing the “crime” of running away from home, although it is unclear whether such a crime actually exists under Afghan law though most police believe it does. Indeed, statistics from Pul-e-charki jail in Kabul cited from medica mondiale in May 2006 found that of the 80 women incarcerated, 20 were accused or convicted of escaping from their home and, of these, 11 were sentenced to terms ranging from six months to 14 years incarceration.²¹

Salma, an Afghan born in Tehran, was a teenager when her father died and she came under the care of her five brothers and a sister. Her brothers beat her severely and planned to sell her as a bride to a man 20 years her elder. By age 14, she could no longer sustain the violence or the thought of being forcefully married, and ran away from home. After several days, she was arrested by the police and brought to the court for the “offence” of running away from home. She remained in police custody for some days before being transferred to an independently-run orphanage. From there she was transferred to the Sang-e-Safid refugee camp before being deported to Herat. After 18 months she was transferred to another orphanage, this time in Ghazni province. Today she is 18 years old living in a shelter. Salma is now safe from violence, but she has few options when she must eventually leave the shelter. She dreams of attending high school and of going on to higher education.

Case Study provided by: Shuhada Organization

**Names have been changed*

1. Women’s Shelters and Options for Independent Living

There are fewer than ten women’s shelters in the country, most with limited space and capacity, and few with even minimally acceptable international standards around the reception and treatment of victims of domestic violence. There are four known women’s shelters in Kabul operated by independent women’s organizations, such as Humanitarian Assistance for the Women and Children of Afghanistan (HAWCA), Women for Afghan Women and Afghan Women’s Social and Cultural Development (AWSCD); one in Herat, the Gorzargah Transit Centre; one in Mazar-i-sharif operated by the Cooperation Centre for Afghanistan; and one in Bamiyan operated by the Shuhada Organization. There are no known shelters in Kandahar or Jalalabad, despite the relatively large populations of these cities and the high rates of violence found in each from this research.

In some cases, police may detain women victims of sexual violence or rape, or women who have left their homes, for their own protection. As there are so few shelters operating in Afghanistan, there is a risk that women will be found by their family members and murdered for bringing them dishonor. Women also frequently choose to remain in prison after their sentence is complete, as they fear returning to their

²¹ International Development Law Organization (IDLO), Technical Workshop: Gender and Criminal Justice in Afghanistan, May 2006, p. 14.

household, or being found by their husband. A system in which women feel safer in prison than in their home is indicative of the unequivocal failure of the state to protect women from harm.

Beyond the need for more shelters, there is also a need to provide longer-term spaces and livelihood options for women who have left situations of domestic violence. In Afghanistan, it is unheard of for a woman to live alone. Women live with their parents until marriage, when they move in with their husband and usually, with his extended family. Even in Kabul, it is considered socially unacceptable and insecure for women to live alone. In some cases, single women may live with relatives, but never independently. The lack of an alternative living arrangement to family life or temporary accommodation in a women's shelter is a major barrier to assisting victims: uncertainty about where they will live after their stay in a shelter can discourage them from leaving an abusive relationship or force them to return to one.

2. Police Services

Police in Afghanistan systematically fail to respond to cases of domestic violence, which denies justice to victims and forces them to remain in danger and, in some cases, at risk of serious injury and death. There are no protocols in place to guide police in responding to victims' reports of abuse by defining the roles and responsibilities of police; for making referrals to shelters, medical facilities, legal aid, or psychological assistance; or for guiding the collaboration between prosecutors and police in investigating domestic violence cases. Unlike other crime investigations, police do not collect biological samples in cases of domestic abuse or carry out any sort of forensic analysis. Police do not have camera equipment and therefore do not visually document injuries in abuse cases; critical evidence needed by the prosecution should a case go to court.

The recent introduction of the Family Response Unit (FRU) model to police stations in Kabul is a much-needed development. The FRUs are staffed exclusively by female police officers, and receive and investigate cases of domestic abuse. Similar units (with investigative responsibility) must be created in police stations throughout the country. Further, police stations urgently need to have access to forensic medical facilities and police officers trained in forensic analysis.

Despite the existence of FRUs, the lack of trained female police officers and medical personnel is also a serious hindrance to victims reporting their abuse, and frequently contributes to further traumatize those women who do. The almost exclusively male police force in Afghanistan is insensitive to the trauma that many female victims of domestic abuse have faced, and subsequently, "women view the police as a threat rather than an impartial, professional law enforcement agency."²² Further, corruption is endemic within the police, who are poorly paid, and it is easy for perpetrators of domestic abuse to escape punishment, or even investigation, through bribery.

3. Health Services

Hospitals and medical facilities are also devoid of any standard procedures for responding to cases of domestic violence; for example, they are not required to report a suspected or confirmed case of domestic violence to the police when treating a victim for injuries. The health system is also insensitive to properly diagnosing and treating mental health conditions, including those caused or exacerbated by abuse such as anxiety, depression or post-traumatic stress disorder. Attempted suicide, sometimes by self-immolation, is not an uncommon response to domestic violence by women. The near absence of mental health interventions ranging from crisis lines and counseling to psychiatric treatment, lead women to believe they have no alternative to such deadly and desperate measures. There is also anecdotal evidence from

²² Amnesty International (May 2005), "Afghanistan: Women still under attack – A systematic failure to protect", p.31.

women's organizations that some women turn to opium or other substance abuse to treat both their physical and emotional pain. Few, if any, detoxification or treatment facilities for drug abuse (for men or for women) exist in Afghanistan, and there is little open acknowledgement of opium addiction among women.

The lack of female medical personnel in Afghanistan is a serious deterrent to victims coming forward to report abuse. Dr. Soraya Sobrangh, a forensic doctor and Commissioner with the Afghan Independent Human Rights Commission, has noted that women's assumption that the examiner will be male prevents women from reporting abuse and rape²³. Both male and female medical personnel throughout the country are reported to be insensitive to victims of abuse and rape, and may end up re-victimizing women by humiliating them or making them feel ashamed for seeking assistance or for revealing their abuse. Overall, the health system has little capacity and insufficient infrastructure to respond to the huge need to treat and assist women who have experienced violence in their families. Primary health care is inaccessible in many parts of the country and women are rarely permitted to travel alone to hospitals and clinics far away from their home village. The few hospitals and clinics that are operational often lack proper equipment, are short on required medicines, and have insufficient beds for the volume of patients needing treatment. Reconstructing the health care system and ensuring it reaches all districts of the country is a daunting but urgent task facing the Afghan Government, and essential for protecting women from abuse.

Fatima is a 14-year-old studying in Class 7. Sharifa, a classmate and friend of Fatima's, noticed her depressed state and constant silence. One day Fatima told Sharifa that she needed to purchase some medicine for her mother. In the store together, Sharifa noticed Fatima was buying an unusual amount of strong drugs. Sharifa asked the reason and Fatima insisted that her mother was very ill and required such a dosage. Sharifa was suspicious and continued to press Fatima for the reason for all the drugs. Fatima finally divulged that her father had arranged her engagement and was forcefully marrying her to an elderly man in exchange for 400,000 Afghanis. Fatima had decided to commit suicide. Sharifa brought Fatima to the Noor Education Centre, which convened a meeting of local elders. They talked to her father and explained how a marriage without his daughter's consent was against shari'a. Fatima's father cancelled the engagement and Fatima was able to continue her studies for the time being.

Case study provided by: Noor Education Centre (NEC)

**Names have been changed*

B. THE OFFICIAL RESPONSE TO DOMESTIC VIOLENCE

Gender equity, which includes protecting women from violence, is a pillar of the Afghanistan National Development Strategy (ANDS), the Government's blueprint for its development objectives over the next decade and the outline of Afghanistan's plans for meeting the Millennium Development Goals. Improving gender equity is addressed in the policies and goals for education, maternal health, women's livelihoods and other sectors, but there are limited plans for addressing violence against women specifically, for instance, through the construction of shelters or independent living facilities. Nonetheless, the rhetoric of gender equity, women's rights and condemnations of violence against women appear in the public pronouncements of the Afghan Government. There have also been some commendable efforts by the Afghan Independent Human Rights Commission and the Ministry of Women's Affairs, in particular, to prevent, investigate and punish domestic violence.

²³ IDLO Report (2006), p. 29.

1. The Afghan Independent Human Rights Commission (AIHRC)

The AIHRC has, in its short existence, played a pivotal role in tackling the epidemic of domestic abuse in Afghanistan. The Commission is one of the only institutions with a process in place to receive women's reports of violence, refer them to protective services for victims, and seek justice on their behalf. The AIHRC has also been maintaining statistics on reported abuse, setting an important precedent by beginning to document the scale and form that violence takes. The AIHRC has included violence against women as one of its priority human rights concerns in its programming, its documentation efforts by its Women's Rights Department, and its advocacy work for legal reform.

2. The Ministry of Women's Affairs (MOWA)

The Legal Department of the Ministry of Women's Affairs is responsible for receiving and documenting cases of domestic violence. The vast majority of cases reported since the opening of the department, over 2,000 to date, have been cases of physical abuse. Victims or their families normally file a written complaint. MOWA then contacts the police department to summon the perpetrator. A committee is then appointed to attempt to reconcile the two parties, as per *shari'a* law. If the parties are unable to reach reconciliation, the case is referred to the court system and MOWA will assign the victim a lawyer if she is unable to afford one herself.

An inter-ministerial task force to combat violence against women was created in 2003 under the leadership of MOWA and also consisting of the Ministries of Justice, Foreign Affairs, Interior, Information and Culture, Public Health, and Islamic Affairs, but it is unknown how active this task force remains today. MOWA has senior-level legal representatives working in each ministry who meet monthly to report on their respective activities. In 2006-2007, MOWA worked with the Family Guidance Association to train 1,500 mullahs, police, doctors, teachers, district heads, and members of women's *shuras* to sensitize them in being responsive to domestic violence in their respective professions.

MOWA has initiated the drafting of a law on domestic violence, following discussions with a variety of national and international NGOs to gather their recommendations on the formulation of the new proposed law. The proposed law is currently under review by the Legislation Department of the Ministry of Justice before proceeding to the parliament for ratification. This potential law is a critical step towards definitively criminalizing domestic violence; however, for the law to have impact in protecting victims and seeking justice on their behalf, it must be widely publicized and systematically enforced by police and prosecutors throughout the country.²⁴

Despite these positive initiatives, the official response of the government has fallen far short of what is required to impact the pervasiveness of domestic violence in Afghanistan, and to meet its constitutional, national and international law obligations.

C. THE AFGHAN LEGAL SYSTEM'S RESPONSE TO DOMESTIC VIOLENCE

1. The Constitution

In 2004, Afghanistan adopted a new Constitution drafted by a Constitutional Commission of representatives from both *shari'a* and secular legal traditions. Article 3 of the Constitution states that "In Afghanistan, no law can be contrary to the sacred religion of Islam and the values of this Constitution."

²⁴ Global Rights was unable to obtain information on the content of this draft legislation despite repeated attempts to do so.

Article 7 of the Constitution states, “The state shall abide by the UN charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights.” The Constitution does not stipulate which interpretation should take precedence when *shari’a* and international conventions come into conflict, creating a high degree of ambiguity in the legal system.

Article 22 of the Afghan Constitution guarantees equality for men and women by stating, “Any discrimination between and privilege among the citizens of Afghanistan is prohibited. The citizens of Afghanistan have equal rights and duties before the law.” Article 45 claims “the state shall devise and implement effective programs for balancing and promoting education for women...” Article 54 asserts “The family is the fundamental unit of society and is protected by the state. The state shall adopt necessary measures to ensure the physical and psychological well being of the family, especially of the child and the mother, the upbringing of children and the elimination of traditions contrary to the provisions of the sacred religion of Islam.”

Despite these provisions in the Constitution, women are not effectively protected from domestic violence in Afghanistan. This lack of protection stems from a scarcity of provisions within statutory law to prosecute domestic violence, a severe absence of knowledge about the provisions that do exist among the judiciary, the police, and the public, as well as interpretive practices that not only exclude victims of domestic violence from provisions that might protect them, but often criminalize victims and routinely re-victimize them. In addition, judges have a limited grasp of statutory law. A recent survey of 157 randomly selected judges found that 44% had obtained university degrees from an Islamic law faculty while only 11.5% obtained a degree from a law faculty. 20.5% did not have any university education.²⁵ Judges tend to by-pass statutory law and apply the law they are more familiar with, typically, misinterpretations of *shari’a*.²⁶ Meanwhile, the formal justice sector is non-functioning in the majority of the country, forcing people to resort to customary law, which is based on tribal practices that people mistakenly confuse with *shari’a*, and which is highly oppressive to women.

2. Statutory Law and its Compliance with International Human Rights Law

It should be emphasized that all the practices that violate provisions of CEDAW described below also violate Article 22 of the Afghan Constitution. To give effect to Article 22 of the Constitution as well as to take all effective measures to eliminate discrimination against women, as demanded by CEDAW Article 2, the State not only has a responsibility to adopt legislation that punishes acts of domestic violence but also to enforce this legislation. As Article 2(c) of CEDAW states, States Parties agree “to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions, the effective protection of women against any kind of discrimination.”

a) Prosecution of Beating, Laceration and Murder

Afghan criminal law does not contain specific offences referring to domestic violence. Nonetheless, domestic violence can be criminally prosecuted as constituting a beating or laceration, offences under Chapter 5, Book II, Section 2 of the Penal Code, or murder under Chapter 2. In practice, however, both the police and courts routinely defer to Article 53 of the Penal Code which states, “Commitment of a criminal act with good will for the purpose of exercising a right, which is granted to a person by the way of religious or other laws, shall not be considered a crime.” Verses in *shari’a* are interpreted by some as granting men permission to beat their wives when they have been “disobedient.” The police and the courts thus seek to determine whether the cause of the violence was the wife’s disobedience, in which

²⁵ UNDP and Center for Policy and Human Development, (2007) Afghanistan Human Development Report 2007: Bridging Modernity and Tradition: Rule of Law and the Search for Justice. Army Press, Islamabad, p70.

²⁶ Max Planck Institute (2005), p8.

case they refer to Article 53 and conclude that the husband's acts of violence do not constitute an offence. Numerous Islamic scholars using Hanafi jurisprudence and legal experts have asserted that *shari'a* does not give men the right to beat their wives, even if the women disobey their husbands and it is widely held that the "beating" referred to in the particular verse used to justify wife abuse has only symbolic meaning.

Article 2 of CEDAW states that "States Parties condemn discrimination against women in all its forms...and, to this end, undertake: (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women ; (g) to repeal all national penal provisions which discriminate against women."

Furthermore, Article 5 of CEDAW states that: "States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."

The Afghan State is breaching Articles 2(f) and (g) and 5(a) of CEDAW (amongst others) by failing to prevent Article 53 of the Penal Code being used to discriminate against women and to condone violence being perpetrated against them by their husband.

b) The Defense of Committing a Crime of Honor

Article 398 of the Penal Code states that "A person defending his honor who sees his spouse or another of his close relations in the act of committing adultery or being in the same bed with another and immediately kills or injures one or both of them shall be exempted from punishment for laceration and murder but shall be imprisoned for a period not exceeding two years as a *tazeeri*²⁷ punishment."

In its General Recommendation No. 19, the CEDAW Committee states that "(r) measures that are necessary to overcome family violence include: (ii) Legislation to remove the defence of honor in regard to the assault or murder of a female family member."²⁸ Although Article 398 of the Penal Code does not refer to the defence of honor being specific to crimes committed against women, in practice, the defence is used overwhelmingly for offences against women.

c) Prosecution of Rape and Other Sexual Offences

There is no specific offence of rape under Afghan law. However, rape can constitute the *zina* offence of having sexual relations outside marriage under *shari'a* law. *Zina* is a form of *hudood* crime or crime that has been specified by God and for which God has also specified punishments. The punishment for *zina* for an unmarried person is whipping and for a married person is stoning. The condition for proving the offence of *zina* is a confession by the perpetrator or the evidence of four male witnesses. If *zina* is committed under duress, such as in the case of a woman being raped, only the perpetrator will be punished, not the victim. Nonetheless, victims of rape risk being detained by police when it is suspected that the sexual relations were consensual and rape victims are sometimes even prosecuted for *zina* offences and imprisoned.

Article 1 of the Penal Code states that the Code applies to *tazeeri* crimes and penalties: those committing crimes of *hudood* shall be punished in accordance with the provisions of Islamic religious law, namely Hanafi jurisprudence. Hence, the Penal Code accommodates the onerous evidence requirements, which discriminate against women, as well as the harsh punishments for *zina* offences. Article 426 of the Penal Code states "If in the crime of adultery the conditions of *had* (*hudood*) are not fulfilled or the charge of *had* is dropped, because of doubt or other reasons, the offender shall be punished in accordance with the

²⁷ A *tazeeri* punishment is specified in statutory law rather than by *shari'a*.

²⁸ CEDAW Committee General Recommendation No. 19, para. 24 (r) (ii).

provisions of this Chapter.” The Chapter includes Article 427, which states, “(1) a person who commits adultery or pederasty shall be sentenced to long imprisonment.” It lists aggravating circumstances that serve to extend the sentence for committing adultery and includes the victim being under 18 years of age, and the victim being a relative of the offender. Prosecution for rape under Article 427 of the Penal Code does not discriminate between the evidence of men and women as, under Afghan law, the evidence of men and women is equal, though in practice this may not be the case, as discussed below.

Sexual violence including, but not limited to, rape can constitute an offence under Article 429 (1) of the Penal Code which states “A person who, through violence, threat or deceit, violates the chastity of another, or initiates the act, shall be sentenced to long imprisonment, not exceeding seven years.” It should be noted that the concept of marital rape is generally not recognized by the courts, and it is rarely reported by victims. The Penal Code assumes that all sexual activity is illegal unless it occurs within a marriage. Marriage, in turn, is defined in Article 60 of the Civil Code as a “contract which legalizes intercourse between a man and a woman...” Hence, the concept of consent, an imperative element of establishing the crime of rape in most modern legal systems, is noticeably absent. Outside of marriage all sex is punishable regardless of consent; similarly, within marriage, all sex is permissible regardless of consent.²⁹

The stoning of a person to death for committing a *zina* offence violates Articles 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR), to which Afghanistan is a signatory. Article 6 states, “in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes.” Adultery is clearly not one of the most serious crimes. Article 7 states that, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Stoning, whether or not to death, constitutes torture as defined in the Convention against Torture (CAT), which Afghanistan is a signatory to, and which prohibits torture.³⁰ Whipping can also constitute torture. The Afghan State’s recognition of the *hudood* punishment of *zina* by stoning or whipping therefore also violates Article 2 and 4 of the CAT³¹.

Article 15 of CEDAW states: “(1) States parties shall accord to women equality with men before the law.” The CEDAW Committee’s General Recommendation No. 21 explains this article further stating that in some countries a woman’s “status as a witness or her evidence is accorded less respect or weight than that of a man. Such laws or customs...diminish her standing as an independent, responsible and valued member of her community. When countries limit a woman’s legal capacity by their laws, or permit individuals or institutions to do the same, they are denying women their rights to be equal with men...”³² The Afghan State’s failure to ensure that women’s evidence is accorded the same weight as men’s in establishing *zina* offences is a violation of Article 15 of CEDAW.

²⁹ Stop Violence Against Women: A Project by Minnesota Advocates for Human Rights.
<http://www.stopvaw.org/Afghanistan.html>.

³⁰ Article 1 (1) of the Convention against Torture defines torture as states “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

³¹ Article 2 of CAT states “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.” Article 4 states, “Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.”

³² CEDAW Committee General Recommendation No. 21 para. 8.

d) Prosecution of Forced Marriage

Article 517 of the Penal Code states, “(1) A person who gives in marriage a widow, or a girl who is eighteen years of older, contrary to her will or consent, shall be sentenced in view of the circumstances to short imprisonment. 2) If commitment of the crime specified under the above paragraph is for the purpose of *bud dadan* (as a compensation for a wrongdoing), the offender shall be sentenced to medium imprisonment not exceeding two years.” Hence, forced marriage, including the customary law practice of *bad*, or marrying a girl to another family to settle a dispute, is a criminal offence. However, the law only applies to women over 18 years of age, which is a serious weakness considering that the majority of women marry when they are children. There is little enforcement of this law and even if it were enforced, the sentence for those convicted is not commensurate with the severity of the harm caused.

Article 16(1) of CEDAW states that: “States parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on the basis of equality of men and women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent.” The Afghan State’s failure to enforce its prohibition against forced marriage, or to include girls aged under 18 in the prohibition, is a violation of Article 16 (1) of CEDAW. The exclusion of girls under 18 in the provision is also a violation of Article 16(2) of CEDAW as described below.

e) Child Marriage

Child Marriage is not considered an offence under criminal law but is prohibited under the Civil Code. Article 70 of the Civil Code states, “Marriage shall not be considered adequate until the male completes the age of 18 and the female the age of 16.” Article 71 states, “(1) Where the girl does not complete the age provided under Article 70 of this law, the marriage may be concluded only through her father or the competent court. (2) The marriage of a minor girl whose age is less than 15 shall never be permissible.” Despite the existence of these laws, the lack of marriage and birth registration systems in each district render them ineffective. Moreover, as there are no criminal penalties for child marriage, there is no serious deterrent to continuing the practice.

Article 16(2) of CEDAW states that: “The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.” The Convention on the Rights of the Child, which Afghanistan is a signatory to, defines a child as everyone “below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier”.³³ In General Recommendation No. 21, the CEDAW Committee considers that “the minimum age for marriage should be 18 years of age for both man and woman.”³⁴ The CEDAW Committee goes on to state that provisions that provide different ages for marriage for men and women should be abolished.³⁵

By stipulating that the minimum age for marriage for girls is under age 18, when Afghan law does not define the age of majority, and by specifying different ages of marriage for males and females, the Afghan State is violating Article 16(2) of CEDAW. It is also violating this provision by failing to enforce

³³ UN Convention on the Rights of the Child, Article 1.

³⁴ CEDAW Committee General Recommendation No. 21, para 36. The Committee states, “When men and women marry they assume important responsibilities. Consequently, marriage should not be permitted before they have attained full maturity and capacity to act. According to the World Health Organization, when minors, particularly girls, marry and have children, their health can be adversely affected and their education is impeded.” In Afghanistan, where the maternal mortality rates are amongst the highest in the world, the need to prevent marriage and child bearing by girls is even more acute.

³⁵ CEDAW Committee General Recommendation No. 21 para. 30.

Article 61 of the Civil Code, which requires a marriage contract to be registered and brought to the notice of the registration office.

f) Polygamy

Polygamy is not illegal under Afghan law; however, strict conditions must be met in order for it to be permitted. Under Article 86 of the Afghan Civil Code, polygamy can take place when the following conditions are fulfilled, a) there is no fear of injustice between the wives, b) the husband is financially capable of supporting his wives, and can provide sufficient food, clothes, shelter and medical care, and c) there is a legal expediency, for example, the first wife is childless or suffers from a disease that is difficult to treat. It is commonly argued that it is practically impossible for these three criteria to be met as no man will be able to treat each of his wives exactly equally and fairly. There are some provisions where a wife is permitted to divorce her husband if he takes other wives contrary to Article 86.³⁶ Despite these provisions, divorce is rarely an option for women due to the stigma associated with it and the prejudice accorded divorcees, as well as the economic burdens it places on women.

In its General Recommendation No. 21, the CEDAW Committee comments on Article 16 of CEDAW referred to above and states: “Polygamous marriage contravenes a woman’s right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited. The Committee notes with concern that some State parties, whose constitutions guarantee equal rights, permit polygamous marriage in accordance with personal or customary law. This violates the constitutional rights of women, and breaches the provisions of article 5(a) of the [CEDAW] Convention.”³⁷ By permitting polygamy to take place in Afghanistan under law, even in limited circumstances, the Afghan State is violating Article 16(1) of CEDAW as well as Article 5(a), which is cited above.

g) Criminal Procedure

Procedurally, a major barrier to the prosecution of domestic abuse and forced marriages is the requirement that the victim make a criminal complaint. Under Afghan law, the prosecutor must generally initiate criminal proceedings when there is “grounded evidence” of a crime having been committed³⁸. However, for certain crimes, the prosecutor cannot bring a case to court unless the victim has made a complaint. These certain crimes include the following: domestic violence where the perpetrator is the husband of the victim, or one of the victims “roots or branches”³⁹; for *qazf*, which is an unsubstantiated claim that *zina* has been committed by someone⁴⁰; and forced marriage⁴¹. Women will very rarely make a complaint against their husband or other family member due to their lack of power within the family, their fear of violent reprisal, and the risk that they will be forced to leave the relationship, which is typically their only source of economic support.

An additional procedural challenge to prosecution of domestic violence is the fact that women victims’ testimonies tend to carry little weight although Afghan law says nothing about discounting the evidence of women except in the case of certain *hudood* crimes such as *zina* described above. Further, the overall experience of coming to court presents little which would encourage victims to proceed with lodging a

³⁶ According to Article 87 of the Civil Code, when a man has married contrary to the conditions, his wife can demand a divorce from the court. Similarly, Article 88 states that a woman can protect her marriage from becoming polygamous by inserting a condition into her marriage contract stating that if her husband takes another wife contrary to the provisions of article 86, she is authorized to seek a divorce. Finally, Article 89 states that when a person conceals his previous marriage from his new wife, and has not secured his new wife’s consent, the new wife can seek a divorce from her husband.

³⁷ CEDAW Committee General Recommendation No. 21, para. 14.

³⁸ Afghan Interim Procedure Code, 2004, Articles 22 and 39.

³⁹ Afghan Penal Code, 1976, Article 476.

⁴⁰ Afghan Penal Code, 1976, Article 440.

⁴¹ Afghan Penal Code, 1976, Article 517(3).

complaint leading to criminal charges. There is no protection for victims, no explanation of court procedures offered, no private waiting areas for witnesses and no privacy or confidentiality for victims and any other witnesses. Finally, the absence of a functioning legal aid system and the lack of legal awareness among the vast majority of Afghans prevent the reporting of domestic violence, despite the fact that these crimes can be prosecuted by law.

As discussed earlier, the State's failure to ensure that women and men are accorded equality before the law, including in terms of ensuring that their evidence is weighed evenly, is a violation of Article 15 of the CEDAW convention. Similarly, creating different evidentiary rules for crimes that are overwhelming committed against women, and which serve to prevent prosecutions of these crimes committed against women, is a form of gender based discrimination and contrary to Article 2 (f) and (g) of CEDAW described above.

h) Divorce

Article 135 of the Afghan Civil Code permits a husband the unilateral right to divorce his wife for any reason at any time. A woman has the right to divorce or separate from her husband in only a few circumstances. Situations of divorce or separation are usually permitted only in circumstances where the sexual relationship cannot be continued. The most relevant provision in a situation of domestic violence is Article 183 of the Civil Code, which states, "when the wife receives any harm from intercourse with her husband and if this makes the continuation of intercourse between the couple impossible, she can demand the court to grant her an order of separation." Despite the reference to intercourse, any form of harm, whether psychological, physical or sexual can be interpreted as grounds for the separation or divorce. In practice, the burden of proof falls on the women and courts are frequently unsympathetic to them, accusing them of lying or exaggerating any harm.⁴²

Article 16 of CEDAW, discussed above, requires States to ensure "(c) the same rights and responsibilities during marriage and at its dissolution." The Afghan State's failure to provide women with the same rights to divorce as their husbands violates this provision.

i) Economic Support to Divorced or Separated Women

The Civil Code provides economic benefit to married women in the form of a "marriage portion" or "*mahr*". Upon marriage a woman is eligible for immediate *mahr* and deferred *mahr*. Immediate *mahr* includes the provision of jewelry, money, as well as possibly other valuable items at the time of marriage. Deferred *mahr* is an amount of money that a woman will be paid at a specified period in the future, including at the time of divorce.⁴³ If the *mahr* is not negotiated into the marriage contract, the wife still has a right to it at the time of divorce according to Article 99 of the Civil Code. The courts will look to custom to determine the amount of the *mahr*, taking into account the financial resources of the husband. There are some circumstances in which the wife will not be entitled to the *mahr*.⁴⁴

Wives also have a right to *nafaqa* (economic support). Article 118 of the Civil Code states, "the *nafaqa* of the wife shall consist of food, clothes, residence and medical treatment in proportion to the financial power of the husband." Article 212 stipulates that the husband must continue paying the *nafaqa* after the

⁴² Other situations where a woman can demand a separation include when the husband has a defect, namely a disease from which his recovery is improbable or will take a very long time "and when intercourse with him is completely harmful" (Article 176); when there has been non-payment of *nafaqa* (economic support) to the wife (Article 191); as a result of the prolonged absence of a husband (Article 194); and when a husband is condemned to imprisonment for ten years or more by the court (Article 196).

⁴³ Max Planck Institute (2005) p.12.

⁴⁴ Article 106 of the Civil Code states, "If separation takes place by the wife prior to copulation...her marriage portion shall be completely abolished."

marriage ends in certain circumstances, including when certain types of divorce or separation have occurred. However, the payment need only continue during the period of *haddat*. Article 211 explains that the period of *haddat* “shall start after divorce, death of the husband, annulment, separation or abandonment.” The Civil Code sets out the length of the period of *haddat* based on the circumstances of the women. These periods last only a few months.⁴⁵ There are some circumstances in which the husband is not required to pay the *nafaqa* during the *haddat* period. For example, Article 214 states, “any separation caused by reasons of the fault or demand of the wife, shall cause the *nafaqa* to be abolished.”

The majority of women are unaware of their right to *mahr*. The ability to demand payment of *mahr* at the time of divorce would provide them with some degree of economic security that may encourage them to leave a violent relationship. Similarly, although the period for which a woman may be eligible for *nafaqa* is very short, it too can provide some economic security to women needing to leave their marriages.

Under Article 16 (1) (h) of CEDAW the State must ensure “The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.” In General Recommendation No. 21, the CEDAW Committee comments on this provision stating: “any law or custom that grants men a right to a greater share of property at the end of a marriage... is discriminatory and will have a serious impact on a woman’s practical ability to divorce her husband, to support herself of her family and to live in dignity as an independent person.”⁴⁶

The Afghan State’s failure to enforce legal provisions and mechanisms that will provide women with economic support after their separation or divorce is a violation of Article 16(1) (h) of CEDAW.

j) Prosecution of Women Running Away From Home

Running away from home is not a crime under Afghan law. However, the act is prosecuted and punished in Afghanistan ostensibly in pursuit of Article 130 of the Constitution, which states “When there is no provision in the Constitution or other laws regarding ruling on an issue, the courts’ decision shall be within the limits of the Constitution in accord with the Hanafi jurisprudence and in a way to serve justice in the best possible manner.” While scholars argue about whether the crime of running away from home exists under Hanafi jurisprudence, the IDLO concludes that “Article 130 of the Constitution does not allow arrest for, or criminal conviction or prosecution of, acts not criminalized by legislation.”⁴⁷ The risk of being detained or prosecuted for running away from home acts as one more barrier preventing women from leaving violent circumstances in their families.

The ICCPR contains several provisions that prohibit the punishing of running away from home as a criminal offence. Article 12 states that “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.” Article 15 (1) states that “No one shall be held guilty of an offence, on account of an act or omission which did not constitute a criminal offence, under national or international law, at the time it was committed.” Article 9 (1) states, “Everyone has the right to liberty and security of the person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on grounds and in accordance with such procedures as are established by law.”

The Afghan State is in violation of all these provisions by permitting women to be detained for a crime that does not exist in the law. As the practice targets women, it also constitutes a form of gender

⁴⁵ Article 202 of the Civil Code, for example, states that *haddat* shall last three months if the woman is infertile or has attained her majority age but is not menstruating.

⁴⁶ CEDAW Committee General Recommendation No. 21, para. 28.

⁴⁷ IDLO Report (2006), p 15.

discrimination and thus violates Article 2 of CEDAW. Moreover, it is a violation of Article 27 of the Afghan Constitution.⁴⁸

3. *Shari'a Law*

As highlighted earlier, *shari'a* law has primacy in the Afghan legal system, both through constitutional provisions, the first provision in the Penal Code, as well as through practice as judges are more comfortable applying their own interpretations of *shari'a* law than they are applying statutory law. It is therefore of utmost importance to recognize that domestic violence runs contrary to many interpretations of Islamic *shari'a* law. Unfortunately, in Afghanistan, Islamic perspectives on domestic violence which emphasize equality between the sexes and the protections afforded to women⁴⁹ by Islamic tenets have been silenced to a great extent, or ignored. Yet, the Qur'an contains numerous verses implying that domestic abuse is unacceptable⁵⁰ in the eyes of the Prophet and that non-violence, joint decision-making and peace within the household are central to a full embracing of Islam. A growing body of literature has demonstrated how the principles of Islam run contrary to abuse, and rather, emphasize the principles of justice, lifting oppression, forgiveness, respect and peace⁵¹. Among perhaps the most seminal messages of the Qur'an; however, is the value for human life⁵². The sanctity of human life in the eyes of Islam should also be taken in the context of the Prophet Mohammad's urging for equality between the sexes⁵³ and his condemnation of men's maltreatment of women.

Further, as many scholars of Islamic law point out, Islamic tradition and *shari'a* are derived from a multitude of sources. Reliance on this diversity of sources is what will give laws and traditions based in Islam their legitimacy, and exposes law-makers to a variety of different interpretations to draw upon. These sources include the Qur'an, the *Sunnah*, the *Hadith*, *Fiqh* (jurisprudence) and *madahib* (schools of law), and various interpretations of *shari'a* (Islamic law). The Qur'an, considered to carry the most weight as the authoritative source on normative Islam, makes rights central to being a good Muslim and considers human rights to be inherent and natural rights, or bestowed on humans from the dawn of Islam. Much of the text in the Qur'an is concerned with freeing "human beings from the bondage of traditionalism, authoritarianism (religious, political, economic or any other), tribalism, racism, sexism, slavery or anything else"⁵⁴. The protections to women's rights and to their bodily integrity offered by the Qur'an, the *Hadiths* and progressive interpretations of Islamic tradition must be brought to the fore in responses to domestic violence in Afghanistan.

4. *Customary Law*

While it is important to assess the weaknesses in Afghan statutory law with regard to domestic violence, what has far more immediate relevance for the lives of the vast majority of women and girls is customary law, the de facto legal system for the most part in Afghanistan. Over 80% of cases settled in Afghanistan are estimated to have occurred through the traditional dispute resolution system rather than through formal justice mechanisms.⁵⁵ Throughout Afghanistan's long series of conflicts over the past thirty years,

⁴⁸ Article 27 of the Afghan Constitution states, "No act is considered a crime, unless determined by a law adopted prior to the date the act was committed. No person can be pursued, arrested or detained except in accordance with the provision of law. No person can be punished except in accordance with the decision of an authorized court and in conformity with the law adopted before the date of the act."

⁴⁹ See for instance, Qur'anic verses 4:19-21 condemning forced marriage and requiring the return of dowry for abandoned wives; 24:2 on the punishment for those making false charges against women; and 65:6 calling for joint decision-making between husbands and wives.

⁵⁰ See for instance, Qur'anic verses 3:159 and 30:21.

⁵¹ See for instance Alwani & Abugideiri (2003), *Sisters in Islam, Women Living Under Muslim Laws*, Masud (1996), or http://www.irfi.org/articles/articles_101_150/are_human_rights_compatible_with.htm.

⁵² Surah 5: Al-Ma'idah:32.

⁵³ See for instance Qur'anic verses 4:1; 49:13; 30:21; 4:19-21; 4:32; and 65:6.

⁵⁴ Hassan, in http://www.irfi.org/articles/articles_101_150/are_human_rights_compatible_with.htm.

⁵⁵ Afghanistan Human Development Report 2007, p9.

the legal system and the reach of any central government in general gradually eroded to the point of being non-existent in many areas. This environment has been slow to change as the legacy of war and instability has strengthened local mechanisms of conflict resolution. It is this informal legal system, in most cases, which largely regulates how domestic abuse is addressed and to which options women have recourse.

Afghan customary law is diverse in its form and procedure, varying from province to province. However, it commonly fails to treat domestic abuse as a crime; and in many cases compounds the injustice by turning victims into criminals. For example, as discussed earlier, if a woman has been raped, she may be judged for the “crime” of *zina*, or sexual intercourse outside of marriage.

The primary institutions of Afghanistan’s informal justice systems are generally the *jirga* or *maraca* for Pashtuns and its approximate equivalent for non-Pashtun ethnic groups, the *shura*, local tribal institutions tasked with resolving disputes. Decisions made by a *jirga* or *shura* are usually based on a combination of local tradition, tribal codes (for example, as derived from the Pashtunwali), *shari’a* law, and personal authority and opinion. *Shura* members are usually powerful, influential elders from the community, and are usually exclusively male. Some communities have female counterpart *shuras*, but decisions made by female *shuras* are often treated as token contributions and do not carry the same weight as the “real” male *shura*.

Domestic violence and other family-related disputes are usually first addressed through the extended family network before being referred to tribal or informal justice institutions, and as a last resort, to the state. Customary law has filled the void of a functioning justice system for a prolonged period and has in some cases been found to be effective in securing reconciliation among disputing parties, imparting forgiveness and identifying compromise arrangements in disputes⁵⁶. It is, however, extremely problematic in its relationship to condoning and perpetuating domestic abuse. As discussed earlier, a punishment sometimes applied in murder cases is the marriage of a girl or woman from the offending family to the victim’s male relative, (the practice known as *bad*). In addition to meting out punishments which make women vulnerable to hostile marriages often leading to abuse⁵⁷, customary law generally does not contain any protective provisions for victims of domestic abuse.

Afghan statutory law does not comment on how customary law interacts with *shari’a* or legislation. Generally, if the other two forms of law are silent about an issue, customary law is followed. However, customary law is often mistakenly understood to reflect *shari’a*, giving it a degree of legitimacy and status that is not warranted within the official hierarchy of laws in Afghanistan. Moreover, customary law and the rulings of informal justice mechanisms should be subject to constitutional provisions, including those relating to equality between men and women as well as due process protections. In reality, most customary law rulings are contrary to both Islamic law and Afghan statutory law.⁵⁸ Ensuring that informal justice mechanisms serve to protect against domestic violence rather than perpetuate it, is of paramount importance in a country where customary law and institutions constitute the only legal recourse that most women and girls have access to.

IX. CONCLUSIONS

A. IMPLICATIONS OF THE RESEARCH FINDINGS FOR THE DESIGN OF INTERVENTIONS TO END DOMESTIC VIOLENCE

This Report has underscored the extreme prevalence of violence amongst Afghan women, noting that 87.2% of women experience at least one form of domestic violence. Of equal importance has been the

⁵⁶ Wardak (2004), *Building a Post-War justice System in Afghanistan* *Journal of Crime, Law and Social Change*, Vol. 41p. 10.

⁵⁷ Ertürk, Yakin, *Mission to Afghanistan, (9 to 19 July 2005)*. Report of the Special Rapporteur on violence against women, its causes and consequences E/CN.4/2006/61/Add.5 p.7.

⁵⁸ Max Planck Institute (2005), p 10.

identification of certain factors that serve to accentuate the risk of violence and others that tend to protect against violence, at least relatively speaking. These risk and protective factors are summarized in the tables below along with other factors that civil society, the Afghan government and international organizations and donors should consider when designing interventions to prevent and protect against domestic violence in the country.

RISK FACTORS

- The experience of one form of violence as it increases the likelihood of women experiencing other forms of violence
- Being in a forced marriage
- Being single through divorce or widowhood violence
- Being in a polygamous marriage
- Being under 15 years of age and married
- Having rigid perceptions of gender roles
- Living in rural communities
- Living in the southern and eastern border provinces

PROTECTIVE FACTORS

- Employment of both women and men (at least in impacting upon forced marriage and physical violence)
- Consenting to marriage
- Literacy of both women and men
- Knowing a husband prior to marriage
- Enjoying a higher household income (at least when measured by proxy indicators of income)
- Perceiving satisfactory gender relations in the home in Afghan society and being satisfied with one's husband
- Living in urban communities
- Living in the northern and western provinces

OTHER FACTORS TO CONSIDER

- Husbands are not the sole abusers in families: mother-in-laws were identified as the main abuser by almost a quarter of the women surveyed.
- Domestic violence is highly normalized in Afghan society: many women noted satisfactory marital relationships while simultaneously reporting experiences of violence in the home
- Almost a quarter of women were dissatisfied with relationships between men and women in the home in Afghan society. These women represent a force for change that can lead efforts to end domestic violence in the country if mobilized.
- Only 18% of women knew other women who had been beaten by their husbands, suggesting that most women are isolated in their experiences of violence.
- The lower likelihood of women experiencing violence in urban settings and in certain provinces may be associated with a stronger government presence and rule of law compared to rural communities and other provinces.
- The higher likelihood of women experiencing violence in provinces where there is greater Taliban control suggests that oppressive ideology towards women may contribute to increased domestic violence.
- The regions where women have a greater likelihood of experiencing violence are those with greater levels of armed conflict, suggesting linkages between community violence and violence in the family. Further research is needed to substantiate this observation.
- Domestic violence is a rights violation in itself but also prevents women from exercising their civil, political, social, economic and cultural rights.

Based on the risk, protective, and other factors summarized above, Global Rights suggests that civil society organizations particularly, but also government and international organizations, consider developing the following types of interventions to contribute towards preventing domestic violence:

- Advocating for the State's realization of the Constitutional protections to the Right to Education, particularly Article 44, which commits the State to providing programs to eliminate illiteracy;
- Providing basic literacy training to both men and women as components of activities to reduce domestic violence in communities;
- Increasing employment opportunities for men and women through vocational training programs or micro-credit schemes to enable men and women to better generate income;
- Providing opportunities for women to challenge rigid gender roles by learning how Islam, Afghan law and international human rights law safeguard gender equality and other women's rights;
- Targeting training and support services to divorced, widowed and other single women, with a focus on services to protect them from sexual violence;
- Raising awareness about the frequency with which women are perpetrators of domestic violence and highlighting to women as well as men that such behavior constitutes a crime under Afghan law and under Islam;
- Facilitating opportunities for women to talk about domestic violence so as to break the sense of many women that they are isolated in their experience of it;
- Sending strong messages through public service announcements that violence is a crime under Afghan law and under Islam so as to challenge the normalization of violence;
- Raising awareness about relationships between violence and a woman's lack of knowledge of her husband before marriage to encourage families to allow their daughters to become better acquainted with their husbands prior to marriage, even if such marriages are arranged;
- Advocating for an end to forced marriage, child marriage, and polygamy and the traditional practices that encourage them;
- Ensuring that efforts to address domestic violence are not limited to urban centers but extend to rural regions and to provinces in the south-eastern border zones where the likelihood of violence tends to be higher than in other provinces;
- Ensuring that any efforts to prevent, protect against, and punish violence against women involve women themselves in the design and implementation of activities so as to draw on their lived experiences and ensure effectiveness, but also to serve as a means of empowering women to take action to make positive changes in their lives; and
- Advocating for the expansion and enforcement of the rule of law throughout the country to increase provision of formal justice mechanisms, monitoring of informal justice mechanisms, provision of health and education and other government services.

B. THE FAILURE OF THE STATE TO MEET ITS DUE DILIGENCE OBLIGATIONS TO PREVENT, INVESTIGATE AND PUNISH DOMESTIC VIOLENCE

1. The Duty to Prevent Domestic Violence

The State has ratified all the principle international human rights conventions and even included protections for women's rights within the Constitution, thereby setting the foundations for a legal system

in which violations of women's rights can be addressed effectively. Unfortunately, the legislation to give effect to these international and constitutional law protections has not been enacted, resulting in a very weak legislative framework with which to prevent domestic violence and deter perpetrators from committing acts of violence. In addition, despite some promising initiatives, the State has not embarked upon the type of massive public awareness campaigns and gender sensitivity training of government officials necessary to begin to challenge the deeply imbedded patriarchal norms and values that pervade Afghan society and perpetuate domestic violence. Neither has the state introduced even the most minimal support services necessary to enable women to take the first step and inform someone of the abuse they are suffering. The State has failed to provide sufficient counseling services, shelters and independent living options for women that would allow them to leave situations of violence and reduce the likelihood of them being subject to further violence in the future. Moreover, the arduous provisions for obtaining a divorce and the lack of economic support available for women who do so, leave women little option but to continue enduring violence in their homes.

2. The Duty to Investigate Domestic Violence

In terms of investigating domestic violence, the State has failed to deliver a police force or formal legal system that has effective jurisdiction or functionality throughout the country. As a result, the majority of Afghan women must resort to informal or customary law mechanisms to resolve disputes including domestic violence, and are at the mercy of commanders or war lords who exercise power within their communities. In such an environment, the idea of establishing fair mechanisms for reporting and investigating domestic violence that are respectful of victims rights and gender sensitive is simply risible. This is particularly so as customary law mechanisms often serve to perpetuate violence against women rather than offer a remedy to it. The State has utterly failed to monitor these mechanisms and to hold them accountable to Afghan law. Even in the cities where the police and formal justice system are more functional, police officers and court officials do not provide women with equal protection under the law and fail to respond to cases of domestic violence.

3. The Duty to Punish Domestic Violence

The absence of the rule of law in the vast majority of the country has meant that domestic violence largely goes unpunished. In the cities, where the formal courts and the police system are more functional, ignorance of the law, by women, prosecutors and the police force, prevent prosecutions from occurring, as do inaccurate and oppressive interpretations of *shari'a* that nullify provisions in the law that could be used to prosecute domestic violence. Deficiencies in the Penal Code also mean that certain forms of domestic violence cannot be prosecuted, or if they are, the sentences permissible for commission of the crime are much less than the severity of the crime warrants. Indeed, many of the Penal Code provisions violate not only international law, but also Afghan constitutional law. At present, it is often the victims of domestic violence who face punishment rather than the perpetrators.

C. ACTIONS OF THE AFGHAN STATE NECESSARY TO MEET ITS DUE DILIGENCE OBLIGATIONS: PRIORITIZING LEGISLATIVE REFORM

In the section below, Global Rights provides recommendations on how the Afghan State can begin to meet its due diligence obligations. These recommendations are drawn from recommendations in existing research and reports on the topic of domestic violence in Afghanistan,⁵⁹ as well as contributions from local women's organizations in the country. They do not constitute a comprehensive list of what needs to be done but, rather, specific actions which are strategic and which call for their urgent application.

⁵⁹ The recommendations for legislative reform are drawn particularly from the IDLO Report (2006).

Global Rights urges prioritization of the items in the recommendations that pertain to legislative reform. This is not to discount the other recommendations but to emphasize that legislative reform is critical to clearly identify domestic violence as a human rights violation, an offence under Islam, and a crime under national law. We believe that such identification is essential to remove domestic violence from the private realm of the home, where it is considered beyond the purview of the state apparatus, and to place it firmly at the centre of the public realm, the legal system, where it can be treated as the crime that it is. Moreover, the research identified forced marriage, child marriage and polygamy as increasing the risk of all forms of violence. Legal reform, as well as enforcement of current laws, has a central role to play in ending these three practices. As a result, we advise that the legislative reform items contained in the first 15 recommendations, which are directed to the Ministry of Justice, be prioritized and treated as the minimum action required to clearly establish domestic violence as a crime and to remove legal barriers to women leaving violent relationships or being able to prosecute perpetrators of the violence.

As part of the process of advocating for legislative reform, Global Rights recommends that public awareness campaigns be implemented to ensure that women, perpetrators of violence, the police, and prosecutors are made fully aware of the legal provisions that criminalize domestic violence, as well as provisions that support women in leaving abusive relationships, such as divorce and financial support for women. Global Rights urges that advocacy be conducted to ensure that currently existing provisions, as well as the new provisions or amendments that we are proposing are strictly enforced. Of particular concern is the enforcement of provisions that criminalize forced marriage, including *bad*.

Although it is true that only a small proportion of women have access to the formal justice system where their legal rights can be protected, the legal system and laws also have both a persuasive and moral effect in changing people's attitudes and perceptions. While domestic violence will only be eliminated when there is widespread, societal change in women's status, the existence of strong laws that condemn domestic violence can be used as a tool for advocating for these societal changes. Moreover, the State's due diligence obligations to prevent, investigate and punish domestic violence cannot be fulfilled without an effective set of laws in place to address domestic violence as a crime. It is for this reason that Global Rights prioritizes legislative reform as the first step in holding the government to its legal obligations to address the pervasiveness of domestic violence in Afghanistan that this research has documented.

X. RECOMMENDATIONS

A. SPECIFIC RECOMMENDATIONS TO THE AFGHAN STATE TO MEET ITS DUE DILIGENCE OBLIGATIONS TO PREVENT, INVESTIGATE AND PUNISH DOMESTIC VIOLENCE⁶⁰

To the Ministry of Justice and the National Assembly:

1. *Create a specific criminal offence of rape and specify that marital rape is included in the definition of rape.*
2. *Amend Article 53 of the Penal Code to state that disobedience on the part of a wife in no way absolves the husband of criminal responsibility for acts of violence towards his wife.*
3. *Introduce protective measures for women from “honor” crimes and treat “honor” crimes as serious criminal offences.*
4. *Create a criminal provision prohibiting child marriage and applying meaningful sentences to those who facilitate child marriage.*
5. *Amend Article 517 of the Penal Code to apply to all girls and women, not only those over 18 years of age; significantly increase the sentences for forced marriage; and implement enforcement mechanisms for prosecution of forced marriages.*
6. *Specify in legislation that all members of shuras or jirgas will be prosecuted if they are found to have ordered the death of women, rape, bad or any other illegal act.*
7. *Provide protections for victims of rape being prosecuted for crimes such as zina.*
8. *Clarify that running away from home is not a crime and cannot be prosecuted as such, and introduce sanctions for police or prosecutors who do not abide by this law as well as compensation for those who have been unjustly detained or prosecuted for running away from home⁶¹.*
9. *Amend legislation to allow for the criminal prosecution of domestic violence without the requirement of a complaint being issued by the victim.*
10. *Enact legislation stating specifically that the testimony of a woman on specific cases may alone be sufficient to criminally convict a perpetrator.*
11. *Ensure that polygamous marriages do not occur without the permission of the courts, and that permission is contingent upon all requirements being met as stipulated in Article 86 of the Civil Law. Criminalize polygamy that occurs in contravention of the conditions set out in Article 86.⁶²*
12. *Add a provision to the Civil Code to make it clear that divorce and separation are available to women in situations of domestic violence and develop expedited procedures for obtaining the divorce or separation.*

⁶⁰ Global Rights prioritizes recommendations 1-16, which pertain to legislative reform.

⁶¹ IDLO Report (2006) p. 5

⁶² Global Rights advocates prohibiting polygamy in all cases but offers the recommendation to enforce compliance with Article 86 as the next best option.

13. *Specify in the Civil Code that in situations of domestic violence, husbands are required to pay their wives mahr (the marriage portion) and develop expedited procedures and enforcement mechanisms for women to obtain these funds.*
14. *Amend the Civil Code to state that nafaqa (economic support) must be paid to women who have separated or divorced their husbands due to domestic violence and extend the period when the woman is eligible to continue receiving the nafaqa, to beyond a few months and to a period in the future when the woman has attained some level of self sufficiency.*⁶³
15. *Prioritize the establishment of family courts in all major cities initially, and ensure a planning process is in place for family courts to eventually be operational in at least every province.*⁶⁴
16. Adopt, implement and strictly enforce procedures that a) provide secure protection for victims of domestic violence making a complaint against their abuser; b) consistently explain court procedures to victims and all witnesses; c) provide private waiting areas for witnesses; and d) ensure confidentiality for victims and any other witnesses cooperating in the prosecution of a domestic abuse case.
17. Create special units in all prosecutors' offices to respond to cases of domestic violence.
18. Enforce requirements to register all births and marriages and establish systems to facilitate a central registration procedure.
19. Create mechanisms to provide compensation to victims of domestic violence when the State has failed to act to protect them from violence.
20. Undertake a comprehensive review of customary and informal justice systems in Afghanistan and target resources to areas where the rule of law is found to be particularly weak.
21. Implement the recommendations made in "Justice for All"⁶⁵ by the Afghan Ministry of the Interior.

To the Ministry of Information and Culture:

22. Launch, in collaboration with the Ministries of Justice, the Interior, Public Health and Women, an awareness-raising campaign to prevent domestic abuse making explicit that domestic violence is a crime under international, Afghan and Shari'a law.

To the Ministry of Women's Affairs:

23. In cooperation with women's organizations, construct more shelters for women and establish safe, secured complexes where women can reside together on a longer term basis. Ideally, such complexes should include access to job skills training, literacy classes, counseling and other services that will allow them the option of living independently if they are unable to live with their birth or marriage families.
24. Create, in cooperation with local and international experts, a training program for judges of family law courts aimed at their sensitization to all forms of domestic violence and awareness of

⁶³ Global Rights recommends that the family law system be reformed more broadly to ensure that women are able to share in the property of their husband at the time of divorce.

⁶⁴ The Afghan Code of Civil Procedure already specifies that a branch for family matters should be established in every district court, but these branches have not yet been established.

⁶⁵ Government of Afghanistan – Ministry of Justice. Justice for All: A Comprehensive Needs Analysis for Justice in Afghanistan (May 2005).

international standards of women's human rights as related to legal obligations to provide protection from domestic abuse.

25. Undertake a mass information campaign to inform women in all provinces where they can go to report crimes of domestic violence, such as the location of the provincial offices of the Afghan Independent Human Rights Commission, the Departments of Women's Affairs, and any independent organizations which can provide relevant assistance such as legal aid clinics. Such a campaign should utilize as many forms of media as possible, including radio, billboards, television advertisements and leaflets.
26. Establish a national legal aid program that will reach out to, and provide free legal advice and representation to women victims of domestic violence, as well as connect them to protective shelters.
27. Continue to improve capacity to keep systematic and detailed records of each reported case of domestic violence and to document follow-up action, including that of other agencies.

To the Ministry of Public Health:

28. As per the recommendation of the Legal Department of the Ministry of Women's Affairs, post legal officers in all major hospitals to respond to and to provide information to women requesting medical treatment for injuries caused by abuse.
29. Provide standard forms to all hospitals and establish a protocol to assist doctors and nurses in properly collecting necessary information when receiving a patient who has experienced any form of domestic abuse.
30. Train primary health care workers to diagnose and treat mental illness in men, women and children, including post-traumatic stress disorder, anxiety, depression and substance abuse, with a focus on treating the mental health consequences of domestic violence.

To the Ministry of the Interior:

31. Provide all police stations with reliable camera equipment so that police officers are able to visually document injuries in reported cases of domestic abuse. Cameras should also be made available to hospitals.
32. Establish Family Response Units (FRUs) at police stations in all major cities as a first priority, and plan for the expansion of FRUs to all provinces.
33. Prioritize the recruitment and training of female police officers in all provinces and particularly in provinces where there are currently no female personnel on staff.
34. Establish a protocol for receiving cases of domestic violence and ensure all new recruits and in-service police officers are trained in following this protocol. Ensure all police stations have a list of contact information for referrals, including hospitals, legal aid clinics, counseling services, Departments of Women's Affairs, the Afghan Independent Human Rights Commission, and women's organizations.
35. Launch a public information campaign that all suspicious deaths, including suicides, self-immolation cases and other deaths, will be fully investigated by police as a matter of routine.

To the Ministry of Education:

36. Integrate human rights education into the social studies curriculum at both the elementary and secondary levels, and include instruction on the rights of women and children and violence prevention.
37. Prioritize programming to realize Article 44 of the Afghan Constitution which commits the State to promoting education for women and eliminating illiteracy.

To the President of the Islamic Republic of Afghanistan:

38. At every occasion possible, publicly condemn violence against women, articulating the contrariness of violence against women to the fundamental principles of Islam and its violation of national laws and Afghanistan's obligations under international human rights law.

XI. ANNEX

A. THE EXISTING BODY OF RESEARCH ON DOMESTIC VIOLENCE IN AFGHANISTAN

In 2005, the United Nations Special Rapporteur on Violence Against Women, Its Causes and Consequences, Dr. Yakin Ertürk, carried out a mission to Afghanistan and reported her findings in a report published in February 2006. The report is based on visits to Kabul, Kandahar and Herat, and meetings with a wide variety of stakeholders including government ministers, United Nations agencies and civil society representatives. The report noted the pervasiveness and normalization of violence against women, the systemic and institutionalized practices which sustain the extremity that violence has reached, and the critical shortage of services for victims. Much of the Special Rapporteur's report concentrated on the causes of violence against women in Afghanistan and concluded that "four factors underlie women's vulnerability and the perpetuation of violence today: the traditional patriarchal gender order; the erosion of protective social mechanisms; the lack of the rule of law; and poverty and insecurity in the country."⁶⁶

Also in 2005, Amnesty International published a report called "Afghanistan: Women Still Under Attack – A Systematic Failure to Protect" describing in detail and with many documented examples the various forms of violence women face, the failure of the state to respond to violence, and the lack of services available to victims. The report made explicit that violence against women is unequivocally a human rights violation and called on the Government of Afghanistan to take action to begin to address it.⁶⁷

In 2006, UNIFEM conducted a study based on data collected by 17 organizations working throughout the country between January 1, 2003 and June 30, 2005. The report looked at 1,327 reported cases of violence against women from 818 respondents. This is perhaps the first statistical analysis of violence against women in Afghanistan using a significant sample size, though it represents only recorded cases in a country where the vast majority of violence goes unreported. The UNIFEM report helped initiate a move towards standardized and systematic recording of domestic violence cases. It identified, in particular, the need for additional research and improved collection of data to determine the causes of violence against women, the health, social, security and economic consequences of this violence, and the need to obtain more knowledge about men's and women's perceptions of violence.⁶⁸

Currently, the Afghan Research and Evaluation Unit (AREU) is implementing a long-term research agenda around family dynamics, family violence and community-based justice systems, as part of its research unit focused on gender. This research will make an important contribution to understanding contributing factors to violence and how local justice systems respond to family level disputes.

Different branches of the Afghan government are also collecting data on violence against women. For example, the Afghan Independent Human Rights Commission (AIHRC) has collected data on domestic violence from the provincial Departments of Women's Affairs and from hospitals and combined it with data from reports of violence against women it has received through its Women's Rights Department. As the newly established Family Response Units (FRUs) within police stations expand to locations beyond Kabul, they too will be important sources of data on domestic violence. Hopefully this data will be utilized in future research to further inform our understanding of domestic violence in the country.

⁶⁶ Ertürk (2006), E/CN.4/2006/61/Add.5 p.1.

⁶⁷ Amnesty International (May 2005). Afghanistan: Women Still Under Attack – A Systematic Failure to Protect London: Amnesty International.

⁶⁸ UNIFEM. (May 2006). Uncounted and Discounted: A Secondary Data Research Project on Violence Against Women in Afghanistan Kabul: UNIFEM.

B. GLOBAL RIGHTS' RESEARCH METHODOLOGY

1. The Data Collection Process

Global Rights partnered with the Kabul-based Social Research Institution (SRI) and four local women's organizations: Cooperation Center for Afghanistan (CCA); the Training and Human Rights Association for Women (THRA); Afghan Women's Peacemaking Center (AWPC); and Shahrestan Reconstruction and Cultural Services Organization to design a closed-answer survey soliciting women's responses regarding their experience of domestic violence. Our partners collaborated with us in identifying women working at community-based organizations from areas where the survey would be carried out, to be responsible for interviewing women in households within their allotted areas. These women were trained by researchers from SRI, the AREU and other experts on interview and survey techniques. They then returned to their communities to conduct the research under the supervision of SRI researchers, who provided guidance in the interview process and also played a monitoring role.

Throughout 2006, the survey was conducted in 16 of Afghanistan's 34 provinces specifically selected to be representative of Afghanistan's ethnic and linguistic demographics and covered 4,700 households. For example, since the Pashtun population comprises the majority of the population, more Pashtun dominated provinces were represented in the research than other provinces. Measures were also taken to represent ethnic composition within cities and districts, and several locations were chosen with mixed ethnic compositions (Kabul, Herat, Balkh and Ghazni, for instance). The researchers administered the survey to women members of households sampled on a random basis in each district where the survey was conducted. The sampling ensured an even distribution between urban and rural areas and selected up to four houses per street, and up to 20 households per area. The number of areas differed depending on the size of the district. Kabul, for example, had 25 areas.

SRI then entered the data into an SPSS database. Statistical analyses were conducted by Brett Stoudt, a US-based statistician from the Graduate Center of the City University of New York. Conceptual and statistical emphasis was placed on five variables: physical violence, sexual violence, psychological violence, total violence (physical, sexual and psychological) and forced marriage. Cross tabulations were examined between these five variables and all other appropriate variables in the dataset. The frequencies from these analyses were interpreted and reported.

In order to complement the quantitative data obtained from the surveys, Global Rights met with the researchers after they completed their research to discuss their experiences in conducting the interviews. In addition, Global Rights held several workshops with a cross-section of local women's organizations to share the survey findings, elicit their responses, and understand whether the findings were consistent with their own knowledge as frontline organizations serving victims of domestic abuse. Global Rights also conducted interviews with a small sampling of Kabul-based women's organizations to obtain more in-depth information on what they have found to characterize domestic violence in Afghanistan. The information obtained has been drawn upon in the interpretation of the research data. Case studies from victims who received support from organizations were also collected and reviewed and some have been included in this report.

2. Limitations of the Research Methodology

Domestic violence is extremely challenging to research.⁶⁹ In Afghanistan, it is particularly difficult due to many factors, including the high degree of segregation between men and women, stigma surrounding the

⁶⁹ Hajjar, Lisa (2004). *Domestic Violence and Shari'a in Women's Rights and Islamic Family Law: Perspectives on Reform* (ed. Lynn Welchman), London: Zed Books, 233-272, p.238.

subject, conservative patriarchal norms that relegate women to a status inferior to men, and a lack of support services to women survivors of violence, the existence of which might create more openness about domestic violence and provide women with a compelling reason to report their abuse. Many women also fear reprisals or further violence for telling of their abuse, from their husbands or from other family members. Many of our respondents prefaced their responses with “please do not tell my husband” or “please do not tell anyone”. There is a dense atmosphere of fear among women experiencing violence who, with much justification, feel pressure to keep their abuse a secret. Stigma and sensitivity to the topics will have affected the results of this survey, particularly with regard to sexual violence. It should be assumed, therefore, that all forms of violence covered in this research, but particularly sexual violence, are significantly under-reported.

In addition to women’s reluctance to report violence, some deficiencies in the formulation of survey questions and the collection and recording of the data from the surveys has served to reduce the scope of information that the research had the potential to capture. In administering the surveys, women were asked to select one of the responses in the question instead of all those that applied to them. For example, if a woman was both slapped and beaten with a stick, she could only select one of these two manifestations of physical violence. The result is that the incidences of different forms of each category of violence are widely under-reported.

Problems were also experienced at the data inputting stage. The age of each woman interviewed was specifically recorded to examine the experiences of child brides, namely girls under the age of 18. Unfortunately, when the data was input into the data analysis software, it was collapsed into age ranges that made it impossible to create a variable for all girls under the age of 18. Instead, a variable could only be constructed for girls aged 14 and under. Another error was that the written responses to open-ended questions in the survey were not recorded. As a result, rich qualitative data was lost, and options other than those listed in the survey were not captured. Due to circumstances beyond our control, Global Rights was unable to re-enter this data and include it in the analysis. Despite the existence of some deficiencies in the formulation of survey questions and in the data inputting process, the value of the research results should not be discounted. The missed opportunity to capture all the rich detail that can be harvested from the survey data does not detract from the valuable information that was successfully obtained. Global Rights urges other organizations and the State to build on our efforts and to conduct further research into the different dimensions of domestic violence so as to better understand its causes and consequences and to design more efficacious interventions at the legal, political, economic and societal level to end this violence.

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Cooperation Centre for Afghanistan
(CCA)



Afghanistan Peace Seeker
Woman Council
(APWC)



د افغانستان د پښو سوله
غوښتونکی ټولنه



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