

AFGHANISTAN

Afghanistan has long suffered from chronic instability and conflict. The Taliban's oppression of women in Afghanistan during their rule from 1996 through 2001 is well documented and included restricting movement, the denial of the right to work, beatings and other physical abuse, arbitrary detention, a near ban on girls' access to education and restricted access to health services.¹

Following the fall of the Taliban, a new window of opportunity for women has opened thanks to the 2001 Bonn Agreement, a new constitution and increased emphasis on gender mainstreaming.² The Bonn Agreement called for specific attention to the role of women and established a dedicated government structure for this purpose, the Ministry of Women's Affairs.³

Article 22 of the 2004 Constitution of the Islamic Republic of Afghanistan provides that the citizens of Afghanistan have equal rights and duties before the law. In 2003, Afghanistan ratified the United Nations Convention on the Elimination of All Forms of Discrimination against Women.

The legal system of Afghanistan combines Islamic, statutory and customary rules.⁴ The supreme law of the land is the Constitution of the Islamic Republic Afghanistan of 2004. Additionally, there is complex legislation which stems from different historical periods. Legislation promulgated before 2004 is valid only as far as it is in compliance with the principles and provisions of the Constitution.⁵ Article 130 of the Constitution establishes that judges must apply the Constitution and statutory legislation, and may only resort to Hanafi fiqh (i.e. one of the Schools of Islamic Law) if a necessary legal rule cannot be found in the written laws.⁶

1. Discriminatory family code

The Afghan legal system applicable to family law consists of Islamic law (Sharia), regional customary laws, traditional ethnic rules and state law.⁷ The 1977 Afghan Civil Code states that statutory law prevails, but where statutory law is silent, religious law applies, and where religious law is silent, customs may be referred to with certain restrictions.⁸ In legal practice, however, this hierarchy is not strictly adhered to, and customary law is mainly applied when dealing with matters of family law⁹. Following the fall of the Taliban regime, in 2004 a new Afghan Constitution was adopted, stipulating that the former statutory laws, including the 1977 Civil Code, are valid until the adoption of new legislations, provided they are not contrary to the new constitution.¹⁰

¹ Human Rights Watch (2010), p. 16

² Women for Women International (2009), p. 6

³ World Bank (2005)

⁴ Canadian Women for Women in Afghanistan (n.d.)

⁵ Canadian Women for Women in Afghanistan (n.d.)

⁶ Afghan Ministry of Justice

⁷ Max Planck Manual on Family Law in Afghanistan (2012), p. 3

⁸ Civil Code 1977, Articles 1, 2

⁹ Max Planck Manual on Family Law in Afghanistan (2012), p. 6

¹⁰ Max Planck Manual on Family Law in Afghanistan (2012), p. 13

The Civil Code sets the **minimum legal age of marriage** at 16 for girls and 18 for boys, allowing for the marriage of a girl aged between 15 and 16 provided that there is consent from either the child's father or the competent court.¹¹ The Civil Code has prohibited the marriage of a child younger than 15 in all circumstances. Under Sharia law, there is no minimum age for marriage. However, it is generally held that a person may be ready to enter into marriage at the transition into puberty.¹²

Marriage without the consent of both parties (forced marriage) is not valid under Sharia law and the Afghan Penal Code. These hold that marriage should be entered into with total commitment and full knowledge of what it involves.¹³ Pertaining to widows and women younger than 18 years of age, the Penal Code imposes a prison sentence for leading a woman into marriage against her will or without her consent.¹⁴ Despite these provisions, coerced **early marriage** persists. According to the Afghanistan Independent Human Rights Commission (AIHRC), between 60-80% of all marriages in Afghanistan are forced, most of these occurring in early years.¹⁵ 2010 Data from the UN shows that 17.3% of women between the ages of 15-19 years of age were married^{16 17} Similarly, the 2010-11 Afghanistan Multiple Indicator Cluster Survey (MICS) found that 1 in 5 young women aged 15-19 years is currently married and about 15% of women aged 15-49 years were married before the age of 15. Around 1 in 4 women aged 20-24 years had already had a live birth before 18 years.¹⁸

The United Nations Assistance Mission in Afghanistan (UNAMA) conducted a number of focus groups with the general population which reveal that early marriage is generally viewed as a 'harmful traditional practice', although considered as somewhat inevitable and deeply ingrained as a tradition.¹⁹ While some members of the community justified the practice on the basis of tradition, others justified the practice pragmatically to protect daughters from possible kidnapping, rape and forced marriage to local commanders and members of illegal armed groups. Some held the view that men prefer to marry young girls because it is easier for a husband and in-laws to establish and maintain control over them. Forced marriage in Afghanistan encompasses *baad* (exchange of girls for dispute resolution), *baadal* (exchange marriages), early marriage and coercion on widows to marry a relative of a deceased husband. The Women and Children Legal Research Foundation (WCLRF) points out that *baadal* marriages often involve minors. According to a study of marriages conducted by WCLRF, a total of 30% of the early marriages studied in Balkh, Nangarhar, Kabul and Parwan were *baadal* marriages.²⁰ Poverty and destitution are frequently the causes for *baadal* agreements, because these agreements reduce or eliminate the costs associated with weddings. This tradition contradicts with Afghan legislation and the Sharia law with regards to consent of the partners.²¹

With respect to **parental authority**, according to the Afghan Civil Code, custody, defined as care for an infant in his/her early years of life, is in the hands of the mother or, if the woman dies or becomes

¹¹ Civil Code 1977, Section 70 - UNSTAT (2013)

¹² UNAMA (2010), p. 2

¹³ UNFPA (2012)

¹⁴ Penal Code 1976, Section 517

¹⁵ Max Planck Manual on Family Law in Afghanistan (2012), p. 32

¹⁶ United Nations 2012 World Marriage Data

¹⁷ UNFPA (2013)

¹⁸ CSO - Afghanistan Multiple Indicator Cluster Survey (2010-2011)

¹⁹ UNAMA (2010), p. 20-25

²⁰ WCLRF (2008)

²¹ Section 26 of the Law on Elimination of Violence Against Women in Afghanistan

incapable of looking after the child, of her own relatives.²² Instead guardianship, defined as the obligation of the legal guardian to provide for education, upbringing, development, health and security of the child, is with the father, or in case of death of the father or **divorce**, with the family of the father.²³ Guardianship replaces custody once children have reached a certain age, usually nine for girls and seven for boys.²⁴ In terms of guardianship of property, it is first of all the father as the legal guardian who is obliged to administer the property of the child.²⁵ According to the Code of Personal Status of Shiite Afghans (applicable to Shiite Afghans only), entered into force in 2009, the husband is the head of the family and the wife can be appointed as head of the household only if it is established that the husband is intellectually unable to assume this position.²⁶

Women's right to **inheritance** in Afghanistan may vary, depending on whether they are determined by religious, statutory or customary law. Based on Islamic jurisprudence and Sharia law, women have the right to inherit both as daughters, and widows. However, divorced women have no right to their husband's property.²⁷ According to Sharia Law, a daughter inherits half of a son's share.²⁸ The inheritance rights of the spouses are determined in detail in the Civil Code.²⁹ Where the deceased wife has no descendants or male descendants of the son, the husband receives half of her estate. If the deceased wife has descendants or male descendants of her son, the husband receives one-fourth of the estate. On the contrary, the wife receives one-fourth of the estate if the husband leaves no descendants or male descendants of his son, otherwise she is entitled to one-eighth of it. If the wife is irrevocably repudiated and the husband dies during her waiting period, she has the same claim to inheritance as in a valid marriage.³⁰

Under customary law, a wife generally does not inherit.³¹ The United Nations Mission in Afghanistan reports that widows are particularly poorly treated with respect to inheritance rights, and commonly forced to marry another male in the family to keep their inheritance in the family. Often, if a widow does not remarry into the same family she risks losing her children.³²

More

In matters related to **divorce**, a man can easily divorce his wife without due process of law. But women face very difficult circumstances to get a divorce. The Civil Code³³ only gives husbands the right to dissolve a marriage without giving any reason. A couple is considered to be divorced if the husband declares that he wants a divorce (*talaq*). At the outset, women also have a partial right to dissolve the marriage (*khul'*) according to Sections 156 to 175 of the Civil Code, although *khul'* requires the husband's consent and imposes the condition that she returns the bride price to the husband. According to the Civil Code³⁴, women can demand separation under four circumstances: (1) separation due to defect, (2) separation due to harm, (3) separation due to lack of

²² Civil Code 1977, Article 236

²³ UNAMA (2010), p. 27

²⁴ UNAMA (2010), p. 27

²⁵ Max Planck Manual on Family Law in Afghanistan (2012), p. 103

²⁶ Code of Personal Status of Shiite Afghans, Article 123

²⁷ WCLRF, UN Women (2011), p. 7

²⁸ World Bank (2005), p. 89

²⁹ Civil Code 1977, Article 2007

³⁰ Max Planck Manual on Family Law in Afghanistan (2012), p. 70

³¹ RDI (2009), p. 16

³² UNAMA (2010), p. 27

³³ Civil Code 1977, Section 135

³⁴ Civil Code 1977, Articles 176, 183, 191, and 194

alimony/maintenance, and (4) separation due to unjustifiable absence. The Shia Personal Status Law contains similar provisions in this respect.³⁵ Hence, women who are forced to demand separation as a result of continued family violence and other problems face serious obstacles to prove the above conditions. The World Bank reports that divorce is not common in Afghanistan, as it is associated with loss of esteem. In general, the stigma is greater for the woman, but even men lose status as a consequence of divorce.³⁶

Article 7 of the 1926 Marriage Law provides for the **widow's** right to remarriage.³⁷ Accordingly, it is not permitted to force a widow or divorced woman to refrain from a second marriage. The most common form of widow abuse is to have a widow marry her brother-in-law, even if he is already married. The widow, who is usually considered as the property of her husband's family, is forced to accept this customary option.³⁸ If a male relative is not available, the widow is nevertheless barred from marrying outside the husband's tribe. Besides being forced to levirate, widows often turn to begging or even prostitution to provide for themselves and their children. In addition to economic difficulties, widows are victims of social exclusion.³⁹

Being an Islamic Republic under Sharia Law, Afghanistan allows for **polygamy**. The Civil Code mentions polygamy, though it is silent about the number of wives a man may marry.⁴⁰ However, according to all schools of Islamic law, permanent marriage to more than four wives is prohibited.⁴¹ Certain conditions apply to polygamous marriages, such as the equal treatment of all wives or financial sufficiency, but these are not always observed. Moreover, a polygamous marriage concluded against these conditions is not considered invalid. Ignoring these conditions only provides the first wife with a ground for divorce.⁴² A report by the Max Planck Institute reveals that the social prestige of divorced women is so low in Afghanistan that many divorcees will agree to be a second or third wife rather than remain single, even if they are treated unfairly by the husband.⁴³ A survey of 1400 people conducted by the Women and Children Legal Research Foundation found that the large majority of respondents (87%) disagreed that having more than one wife was a "must" for Afghan society. Only 13% agreed on polygamy as a "must".⁴⁴

2. Restricted physical integrity

In 2009, the government enacted the End Violence Against Women Law (EVAW) which criminalises 22 acts as violence against women. These include: rape, forced prostitution, publicising the identity of a victim in a damaging way, forcing a woman to commit self-immolation, causing injury or disability, beating, selling and buying women for the purpose of or under pretext of marriage, *baad* (retribution of a woman to settle a dispute), forced marriage, prohibiting the choice of a husband, marriage before the legal age, abuse, humiliation or intimidation, harassment or persecution, forced isolation, forced drug addiction, denial of inheritance rights, denying the right to education, work and access to health services, forced labour and marrying more than one wife without observing

³⁵ AIHRC, Fifth Report Situation of Economic and Social Rights in Afghanistan (2011), p. 49

³⁶ LandInfo (2011), p. 20

³⁷ Max Planck Manual on Family Law in Afghanistan (2012), p. 9

³⁸ Max Planck Manual on Family Law in Afghanistan (2012), p. 32

³⁹ Pashtun Women (n.d.)

⁴⁰ Civil Code 1977, Article 86

⁴¹ Max Planck Manual on Family Law in Afghanistan (2012), p. 46

⁴² Max Planck Manual on Family Law in Afghanistan (2012), p. 46

⁴³ Max Planck Institute for Foreign Private Law and Private International Law (2005)

⁴⁴ WCLRF (2006)

Article 86 of the Civil Code.⁴⁵ Most of the aforementioned forms of violence against women have been enshrined in Article 5 of the Law, which obliges the government and respective institutions to act based upon provisions of the law taking protective and preventive measures in favour of the victim. Penalties include prison terms of less than six months to the death penalty. Victims have the right to prosecute abusers, seek shelter in a safe house and receive medical and legal aid.⁴⁶ Violence is defined in the 2009 law as ‘committing those acts (...) which cause damage to the personality, body, property, and spirit of a woman’, therefore including the psychological dimension of violence.⁴⁷

In 2014, there were concerns over article 26 of the criminal procedure code, as approved by the National Assembly, which barred the questioning of family members of the accused as witnesses, thus preventing the effective prosecution of many cases of violence against women. However on 23 February, after a successful women’s lobbying movement, President Karzai endorsed the code and amended the language in article 26 allowing the testimony of relatives, through legislative decree.⁴⁸

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Most recent data gathered by the Afghanistan Independent Human Rights Commission (AIHRC) and women’s rights organizations indicate that violence against women was widespread and severe in the period of March-October 2012. The AIHRC documented around 3331 instances of violence against women from 21 March to 21 October 2012 – a rise of 28% compared with the same period for 2011, reportedly due to increased public awareness.⁵¹ Most violence and abuse have been so grave that have led to women’s suicide, self-immolation, and escape from home.⁵² While 1544 women have undergone different types of violence in 2011/2012, already 1051 women experienced 3331 instances in the first six months of 2012.⁵³ The gap between the number of victims and instances is related to the fact that many women experienced more than one particular type of violence.

Sexual violence is a common but hidden form of violence against women. Talking about sexual violence is a taboo in Afghan traditional societies. However, an increase in reported cases was observed over the last years. The recorded data by AIHRC show that, out of 3331 instances of violence recorded in 2012, 256 instances included sexual violence. Sexual violence was experienced in many ways, such as forced sexual violence (71), demand for illegal sex / anal sex (62) and acts of sexual insult / humiliation (50), forced prostitution (18), extramarital affair (27), forced abortion (8), forced to watch pornographic movies (1) and other ways of sexual violence (16) are other kinds of violence perpetrated against women.⁵⁴

According to the 1976 Afghan Penal Code⁵⁵, **rape** is a crime which can be legally prosecuted, but in practice it is very rarely reported, because of the risks that women face if they report it. Under the

⁴⁵ UNAMA (2010), p. 3

⁴⁶ US Department of State (2010)

⁴⁷ Ministry of Justice (2009), p. 5

⁴⁸ UN (2014),

⁴⁹ Amnesty International (2014)

⁵⁰ Feminist (2014)

⁵¹ AIHRC, (2012), p. 13

⁵² AIHRC, (2011), p. 55

⁵³ AIHRC, (2012), p. 25

⁵⁴ AIHRC, (2012), p. 15

⁵⁵ Penal Code 1976, Articles 422-433

law rape does not include spousal rape.⁵⁶ In 2012, Afghanistan recorded 160 cases of rape, but the number is estimated to be much higher.⁵⁷ In Afghanistan, crimes such as adultery, rape and trafficking are often conflated with each other, and it is generally not acceptable for a woman and a man to be alone together (unless married or related), and if this happens the response can be very violent. Recently, the security forces have been also alleged to rape female detainees and children in the country.⁵⁸ The Penal Code prescribes 7-15 years of jail for rapists depending on their marital status, age and other circumstance.⁵⁹ The EAW law punishes rape with “continued imprisonment”, widely interpreted to mean life imprisonment although not always implemented as such. If the act results in the death of the victim, the law provides for the death sentence of the perpetrator.

Although the Law on the Prohibition of Violence against Women is an effective step forward in the fight against and the elimination of violence against women in Afghanistan, there are lacunae that perpetuate violence against women and require the review and amendment of the Law. For instance, Article 39 states that cases will be addressed and the perpetrators of the crimes will be prosecuted based on complaints lodged by victims or their representatives, and the victims can withdraw their complaints during any stage of prosecution. However, the victims of these crimes are often women or girls under the legal age, who are neither able themselves to complain nor are able to hire legal representatives.⁶⁰ In many cases of violence recorded by the AIHRC, the alleged victims have faced constraints, therefore being unable to complain to competent authorities, and have been forced to withdraw their complaints under duress.

Though the EAW Law has been in effect since 2009, awareness of the specific provisions remains low even among those responsible for enforcing it. A report conducted by UNAMA and the UN Office of the High Commissioner for Human Rights (OHCHR) based on data collected in 2010 and 2011, found that "the Government's implementation of the law, in particular by police and prosecutors, was limited and that much greater efforts were needed to improve enforcement" and "comprehensive official statistics on the number of complaints of violence against women in Afghanistan are not available and most incidents are unreported". They found that cases were opened for only 26% of reported VAW incidents, indictments were filed in only 7% of cases, and the EAW law was used as the basis of judgment in only 4% of cases. Prosecution of cases under the Penal Code instead of the EAW Law often led to the acquittal of accused perpetrators. Customary law and tribal "justice" remained often relied-upon means of 'resolving' VAW cases, and rarely serve the interest of female victims.⁶¹

Furthermore, the Human Rights Watch recently pointed out that the EAW law—and rights protections for women and girls—is under threat. During a parliamentary debate in May 2013, a number of members of Afghanistan’s lower house, the ‘Wolesi Jirga’, spoke out against the EAW law. Several called for the law to be examined article by article. In July 2013, the lower house of the Afghan Parliament approved a new Afghan criminal procedure code that includes a provision banning all relatives from testifying against a criminal defendant, thus preventing wives from

⁵⁶ US Department of State (2012), p. 33

⁵⁷ AIHRC (2013)

⁵⁸ US Department of State, Country Report on Human Rights Practices for 2012, (2012), p. 4

⁵⁹ Penal Code 1976, Article 427

⁶⁰ AIHRC (2012), p. 11

⁶¹ WCLRF (2013), p. 14

testifying against abusive husbands or daughters from testifying about forced or early marriage.⁶² This was later rejected under international pressure by President Karzai in 2014.

There is no law specifically prohibiting **sexual harassment**.⁶³

More

The 1976 Afghanistan Criminal Code stipulates that the performance of an **abortion** is a criminal offense except to save the life of the mother. A person performing an illegal abortion is subject to imprisonment or payment of a fine.⁶⁴

3. Son bias

In the Afghan society, there is a widely held belief that girls are not as valuable as boys.⁶⁵ This is for a variety of reasons: sons are seen as future breadwinners; the continuation of a family's lineage; the inheritors of the estate. Many Afghans interviewed by the United Nations Assistance Mission in Afghanistan (UNAMA) cited “preference for sons” as a cultural tradition with negative consequences for women. The preference is based partly on the custom that a girl marries and becomes the “property” of someone else, where a son brings a bride to serve and work for the family.⁶⁶

The male/female **sex ratio** at birth is 1.05 and for the working age population (15-64 years old) is 0.87.⁶⁷ There is evidence to suggest that Afghanistan is a country of high concern in relation to **missing women**; however the situation is improving. In 2003, Klasen and Wink estimated that around 1 million Afghan women were “missing”, thereby concluding that Afghanistan has the highest share of missing women than anywhere in the world at that time.⁶⁸

More

In terms of education, in the past decade there has been a considerable increase in school enrolment, with approximately 7 million children now in school, including around 2.5 million girls; compared to 2001, there were only around 5,000 girls in school.⁶⁹ However, a 2012 UNESCO report estimated that boys outnumbered girls by a ratio of two to one at the secondary level and four to one at the tertiary level.⁷⁰ Overall literacy rates remain low at just under 25% of the total population aged 15 years and older, but only 13% of women are estimated to be literate compared to 32% of men.⁷¹

In a 2013 survey, 83% of Afghans agreed that women should have the same opportunities as men in education, and expressed their view that access to education was constrained by cultural norms, among other reasons.⁷² In addition, a 2013 report indicates that while the majority of elders and religious leaders promote girls' access to education, there is evidence that some girls in Nangarhar

⁶² Human Rights Watch, Ending Child Marriage and Domestic Violence (2013)

⁶³ US Department of State (2012), p. 38

⁶⁴ United Nations Population Division, Department of Economic and Social Affairs (2002)

⁶⁵ Women and Children Legal Research Foundation (2006)

⁶⁶ UNAMA (2011), p. 5

⁶⁷ Central Intelligence Agency (2013)

⁶⁸ Klasen and Wink (2003)

⁶⁹ Building Markets (2013), p. 26

⁷⁰ US Department of State (2012), p. 4; UNICEF 2013

⁷¹ Building Markets (2013), p. 26

⁷² The Asia Foundation (2013)

are being deprived of education as a result of perceived increase of insecurity. In particular, there is increased fear of suicide attacks and kidnappings.⁷³

4. Restricted resources and assets

Women in Afghanistan greatly contribute to the economy; for instance, 2008 data reveal that women represent 65% of the agricultural workforce and play a significant role in the non-agricultural exports of the country, primarily carpets.⁷⁴ However, very few women own land or livestock, and when they do own land and livestock in rural areas, their level of control over their property/assets varies markedly.⁷⁵

The 2004 Constitution provides that women cannot be precluded **from owning or acquiring land or non-land assets**.⁷⁶ Land rights are jointly governed by customary law, religious law and state law. Customary law (*rawaj*) governs how land is owned and transacted as established through community practice and adherence by members to group norms. Sharia and customs often conjoin on land matters, except with respect to usury, women's land rights and common property rights, where the latter prevails.⁷⁷ Land cases are officially dealt with in civil courts, which rule on the basis of state, civil and religious law. Afghan women are practically denied their legal rights to inheritance and ownership over land or any other immoveable property by culture, traditional, and societal pressure.⁷⁸ Widows, particularly those living in separate households (i.e. not with other related families), more readily receive their share of the land. Still, these widows often transfer the land into their sons' names to avoid any confusion later on, although they do retain some control over the land. Sons may still consider the land to belong to their mother. In contrast, widows living in joint households often do not inherit their share of land because all land is shared in the family.⁷⁹

In practice women's **access to financial services** is limited. Many women require the permission from their husbands or in-laws to apply for loans.⁸⁰ However, the findings from a study conducted in Parwarn reveal that the few women who are able to take a loan have self-confidence and are proactive. The loan gives them "courage", the chance to meet other women and the opportunity to learn about other women's experiences and how they are using their loans. From the analysis it appears that male's support of their women is a necessary condition for the success of women's economic activities and their increased self-confidence and decision power.⁸¹

Women who want to start a business face hardships related to lack of security and access to both credit and other resources. The *de facto* inability to own property is also a major constraint for aspiring entrepreneur women or those already in the market. The problem that businesswomen voiced most vocally was their lack of access to credit, capital and property.⁸² Without access to property, women are often unable to present collateral for credit. Access to loans and other forms of financial support from extended family and friends is also difficult for women due to their inability

⁷³ APPRO (2013)

⁷⁴ UNIFEM, (2008b)

⁷⁵ UNIFEM (2008b)

⁷⁶ USAID (2010)

⁷⁷ RDI (2009), p. 26

⁷⁸ WCLRF (2011), p. 27

⁷⁹ RDI (2009), p. 28

⁸⁰ WCLRF(2011), p. 7

⁸¹ Zand, Sogol, 2010.

⁸² QARA Consulting (2011), p. 10

to use traditional male social networks.⁸³ Data from the 2012 World Bank Financial Inclusion Data Portal reveal that 15.42% of males had an account at a formal financial institution, compared to only 2.62% of females.⁸⁴ Foreign aid has helped to establish several micro-finance institutions in the country, which are available to both women and men.

5. Restricted civil liberties

Prior to the fall of the Taliban in 2001, women's **access to public space** was severely restricted by the Taliban's policies of not allowing women to leave the home without a male chaperone and not allowing women to work outside the home.⁸⁵ Women who did not abide by these discriminatory practices were subjected to public beatings, threats and imprisonment. There were no reported legal restrictions on women's access to public space at the time of drafting. Human Rights Watch reports that women who are students, teachers or associated with the government continue to be threatened, particularly through the delivery of 'night letters', which are threatening letters left at the door by insurgent groups.⁸⁶ Further, social custom continues to limit many women's freedom of movement without male consent or chaperone.⁸⁷ In 2009, legislation passed derogating many constitutional rights for women belonging to the Shiite Muslim minority, leaving questions of inheritance, marriage, and personal freedoms to be determined by conservative Shiite religious authorities.⁸⁸

A 2013 report indicates some level of restricted mobility for women: an increased number of threats against and assassinations of women with public profiles means that women felt more insecure when going to work. Yet, women continued to work and decided to not withdraw from public life.⁸⁹

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In terms of **political voice**, the Afghan constitution provides for seats for women and minorities in both houses of parliament. The constitution requires at least 68 female delegates in the lower house of the national assembly (the 249-seat 'Wolesi Jirga'), while 10 seats are reserved for the Kuchi ethnic minority. According to the constitution, the president should appoint one-third of the members of the upper house, including two members with physical disabilities and two Kuchis. 50% of the president's appointees to the upper house must be women.⁹¹

The implementation of the constitutionally mandated **quota** system provided for women to constitute more than 25% of parliament and more than 30% of provincial council members. However, traditional societal practices, including the need for male escorts or permission to work, that limit women's participation in politics and activities outside the home community likely continued to influence the central government's male-dominated composition. In the 2010 elections, 68 women were elected to the seats reserved under the Constitution, which corresponds

⁸³ QARA Consulting (2011), p. 10

⁸⁴ World Bank Financial Inclusion Data Portal (2013)

⁸⁵ Human Rights Watch (2010), p. 16

⁸⁶ Human Rights Watch (2010), p. 5

⁸⁷ Freedom House (2013)

⁸⁸ US Department of State (2012), p. 25

⁸⁹ APPRO (2013)

⁹⁰ APPRO (2013)

⁹¹ Quota Project

to 27.7% of all seats.⁹² According to Article 84 of the Constitution, two-thirds of the total number of the members of the upper house of the national assembly ('Meshrano Jirga') are indirectly elected and one-third is appointed by the president of the country. In addition, 50% of the individuals appointed by the president must be women.⁹³

A 2013 survey indicates that 44% of Afghans support equal representation of men and women in elected government positions. It is worth noting that there has been a slight decline in support for equality in leadership positions, down from a high of 50-51% in the years 2006-2008. At the same time, 42% of Afghans say that elected government positions should be only for men. In addition, 60% of women support equal representation, compared with only 35% of men.⁹⁴

Women active in public life continue to face levels of threats and violence and are often the target of attacks by the Taliban and other insurgent groups. Most female MPs reportedly experienced some kind of threat or intimidation; many believed that the state could not or would not protect them. In 2012, women filled nine of the 70 seats on the High Peace Council. However, they were marginalized by their male counterparts, prohibited from participating in initial contacts with representatives from the Taliban or other insurgent groups, and largely excluded from pertinent decision-making processes. There were three women in cabinet-level positions (Public Health, Social Affairs, and Women's Affairs).⁹⁵

More

Concerning **workplace rights**, article 48 of the Afghan Constitution guarantees the same rights to work to both men and women.⁹⁶ Furthermore, Article 54 of Afghanistan's Labour Law, adopted in 2007, recognizes the right to **maternity leave**. According to the Law, employed women are entitled to a paid maternity leave of 90 days, 30 days before childbirth and 60 days after. In case of unnatural childbirth or birth of twins or more, the employed mother is entitled to 15 more days in her maternity leave.⁹⁷ Article 120 of the Labour Law also states that it shall not be permissible for women and youth to be engaged in types of work that are physically arduous, harmful to health or carried out in underground sites.⁹⁸ According to Article 31, pregnant women's working hours are reduced from 40 to 35.⁹⁹ Data from 2013 reveal that, among working age women (typically 15 to 64 years old), under half are active in the labour market in either formal or informal paid jobs.¹⁰⁰

In a 2013 survey, 36% of Afghans agreed that women should be allowed to work outside the home, while 36% said they should not be allowed to work outside the home. Also, women are more likely to be of the opinion that they should have the right to work outside the home (82%, compared with 51% of men).¹⁰¹

⁹² World Bank Data Portal (2010)

⁹³ Quota Project

⁹⁴ The Asia Foundation (2013)

⁹⁵ US Department of State (2012), p. 25

⁹⁶ Building Markets (2013), p. 26

⁹⁷ AIHRC (2011), p. 46

⁹⁸ Afghanistan Investment Support Society (Labour Law, article 120, p. 34)

⁹⁹ Afghanistan Investment Support Society (Labour Law, article 31, p. 10)

¹⁰⁰ Building Markets (2013), p. 26

¹⁰¹ The Asia Foundation (2013)

According to the Freedom in the World 2013 ranking, Afghanistan scores 6 out of 7 (1 = best, 7 = worst) under both items “Civil Liberties” and “Political Rights”.¹⁰²

¹⁰² Freedom House (2013)

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