

## AFGHANISTAN<sup>1</sup>

### OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES (Updated as at 31 May 2022)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p><b>Equality of spouses in marriage</b></p> <p><i>Is there a Constitutional provision on equality and are there exceptions? Are there specific laws that recognise marriage as a partnership of equals i.e. are family laws and/or other laws relating to marriage and family relations codified or uncodified? If codified, what are the titles of all the</i></p>	<p>Prior to the fall of Afghanistan to the Taliban, the 2004 Constitution of the Islamic Republic of Afghanistan provided for gender equality and family welfare in Articles 22 and 54.<sup>2</sup> The Constitution was abolished by the Taliban after the fall of Afghanistan and these provisions are no longer applicable.</p> <p>On 9 September 2021, Abdul Hakeem Shararee, the Taliban's Acting Minister of Justice</p>		<p>The Islamic Republic of Afghanistan ratified CEDAW without reservations in 2003. Since the fall of Afghanistan in August 2021, a legitimate government has not been formed and as such, the ratification stands valid, as of 30 May 2022.<sup>8</sup></p> <p>The UN Secretary General reported in January 2022: "The applicable legal framework remains unclear, although a review of the compliance of</p>		<p>The justice system built over the last two decades, including the women specialist courts, prosecution units and family response units - has totally collapsed. Former leadership in the judiciary, prosecution and police, no longer serve these units. They have been targeted by the Taliban and are in hiding, self-isolation or have fled Afghanistan.</p> <p>Of a minority of former cadre of human rights/defence lawyers of</p>

<sup>1</sup> This Musawah project to map Muslim Family Laws globally was led by Zainah Anwar and coordinated by Lead Researcher Sharmila Sharma, with substantive support from Salma Waheedi and students at the International Human Rights Clinic, Harvard Law School. For this Afghanistan country table, we would also like to thank Humaira Rasuli, Natasha Latiff and Mohamad Afzali.

<sup>2</sup> Article 22 of the 2004 Constitution guarantees men and women equal rights and duties before the law. It also forbids any discrimination and distinction between Afghans. Article 54 of the Constitution states that the family is the fundamental pillar of the society, and shall be protected by the state. It commits the State to adopt necessary measures to attain the physical and spiritual health of the family, especially of the child and mother, upbringing of children, as well as the elimination of related traditions contrary to the principles of the sacred religion of Islam. Link: [https://www.constituteproject.org/constitution/Afghanistan\\_2004.pdf?lang=en](https://www.constituteproject.org/constitution/Afghanistan_2004.pdf?lang=en)

<sup>8</sup> United Nations Treaty Collection Website. Link: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en)

<p><i>applicable laws? If codified, do these laws apply to all citizens irrespective of religion? If not, do these laws apply to all Muslims or are there different codified laws for different sects within Islam? If uncoded, or if codified laws do not sufficiently address a particular issue, how is the issue addressed e.g. what Muslim school of law is applicable? Do these laws explicitly state gender-stereotypical roles between husbands and wives e.g. the husband is the head of the household or the wife is the primary caregiver?</i></p>	<p>announced that the Islamic Emirate would adopt the Afghanistan Constitution of 1964 (during the reign of King Zahir Shah) save for the provisions which not compliant with Islam.<sup>3</sup></p> <p>The adoption of the 1964 Constitution was not officially gazetted by the Taliban, and it is not clear if its contents have been amended, or repealed. The said constitution (in its original form) is referred to as the current constitution in the Taliban’s Ministry of Justice website, however on another page on the website, the 2004 Constitution is also listed as law.</p> <p>The 1964 Constitution is regarded as one of the most</p>		<p>existing legislation with Islamic law is ongoing. (...) “the de facto authorities suspended the constitution of 2004, creating a legal vacuum, pending the announced review of the compliance of existing laws with sharia. Only a few decrees and general guidance notes have been issued.”<sup>9</sup></p> <p>As regard the status of the 2004 Constitution, on 9 September 2021, Abdul Hakeem Sharaee, the Taliban’s acting minister of justice said: “The Islamic Emirate will implement the constitution of the era of former King Mohammad Zahir Shah for the interim period without any content that is in conflict with Islamic Sharia and the principles</p>	<p>Afghanistan, a few have returned to court to pursue their clients’ cases.</p> <p>Based on their experience of the Taliban courts, it can be concluded that under Taliban rule, marriage is not based on ‘equality’ or even ‘reciprocity’ or ‘complementarity’. It is instead based on ‘dominion’ and ‘servitude’. The husband’s right over his wife is almost absolute, based on the framework of obedience in exchange of maintenance/protection, as well as, ethno-social and cultural stereotypes of the role of men and women in society. Those stereotypes have revived and emboldened as a result of the Taliban’s military triumph over the</p>
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<sup>3</sup> Voice of America, ‘Taliban Say They Will Use Parts of Monarchy Constitution to Run Afghanistan for Now’ 28 September 2021. Link: <https://www.voanews.com/a/taliban-say-they-will-use-parts-of-monarchy-constitution-to-run-afghanistan-for-now/6248880.html>

Reported by several media outlets, as follows:

Tolo News, ‘Ministry of Justice: Constitution of the Zahir Shah period is temporarily in force,’ 28 September 2021.

Link: <https://tOLONews.com/fa/afghanistan-174827>

BBC Persian, ‘The Taliban Ministry of Justice announced the implementation of the constitution of Zahir Shah’s time,’ 28 September 2021.

Link: <https://www.bbc.com/persian/afghanistan-58718599>

Jurist ‘The Lawless Land: How Does the Taliban’s Abolishing of Afghan Laws Affect Citizens’ Security?’ 10 January 2022.

Link: <https://www.jurist.org/commentary/2022/01/maryam-jami-lawlessness-taliban-afghan-laws-citizens-security/>

<sup>9</sup> United Nations General Assembly, “The situation in Afghanistan and its implications for international peace and security. Report of the Secretary-General,” 28 January 2022 A/76/667–S/2022/64, para 6. Link: [https://unama.unmissions.org/sites/default/files/sg\\_report\\_on\\_afghanistan\\_january\\_2022.pdf](https://unama.unmissions.org/sites/default/files/sg_report_on_afghanistan_january_2022.pdf)

<p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 54-55 GR29</p>	<p>ambitious and progressive constitutions in Afghanistan's history. It was however likely chosen by the Taliban over other alternatives as it predicated a country ruled by a supreme leader (Haibatullah Akhonzada) unmitigated by checks and balances based on separation of powers.</p> <p>The Taliban has recruited its leadership from its militant-movement, to the exclusion of ethnic, religious minority groups and women, in an attempt to set up an authoritarian rule by a singular group over all of Afghanistan's diverse groups. It is unlikely that any future legislative and adjudicative processes will allow for the inclusion of gender-equal, inclusive and diverse of interpretations of Islam.</p> <p>As it relates to matters of the family, prior to the fall of Afghanistan to the Taliban,</p>		<p>of the Islamic Emirate."<sup>10</sup> The statement was made in a meeting with China's Ambassador to Kabul Wang Yu, according to a statement on the Facebook page of the Justice Ministry.</p> <p>On 1 March 2022, Mufti Mohammad Bashar, a spokesman for the Ministry of Justice said: "[The Taliban] have used all the laws of the last 20 years that did not contradict the rules of Sharia, and now work is underway to amend the laws." The paper reports further, "But lawyers say the Taliban do not follow any law to govern and do not believe in any law."<sup>11</sup></p> <p>Mufti Abdul Manan, the Head of the General Court of Appeal in Herat province said: "The laws that we are currently working on in the courts of the Islamic Emirate, and we are currently acting in the courts, is the jurisprudence of the religion of</p>	<p>west. The erasure of women's rights and public participation was always at the heart of the Taliban's military and political campaign against two decades of western occupation in Afghanistan.</p> <p>After the Taliban's triumph over the west, they have made it their project to "rehabilitate" Afghanistan from corruption of Islamic values, of which at the heart of is, the erasure of women in public life.</p> <p>The words of Taliban leader, General Mubin, who is now in charge of Kabul security exemplifies this perspective: "There are people living here (Afghanistan) who brought the Americans to their knees. We are the people who defeated 52 countries here. (...) I told them that if all countries stand by them (women) or we lose even if we starve to death, we cannot ignore our Islamic values. (...)</p>
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<sup>10</sup> Voice of America, 'Taliban Say They Will Use Parts of Monarchy Constitution to Run Afghanistan for Now' 28 September 2022. Link: <https://www.voanews.com/a/taliban-say-they-will-use-parts-of-monarchy-constitution-to-run-afghanistan-for-now/6248880.html>

<sup>11</sup> Etilaat Roz, 'Confusion in law enforcement: What law does the Taliban implement?' 1 March 2022. Link: <https://www.etilaatroz.com/137333/confusion-in-law-enforcement-which-law-does-the-taliban-implement/>

	<p>matters regarding marriage and family relations were codified under the Civil Code (for Sunnis) and Shitte Personal Status Law (SPSL) (for Shittes).</p> <p>Under Taliban rule, it is not clear if those laws have been repealed, amended or if parts of them are applicable. Certain progressive provisions can be presumed repealed, given the Taliban’s radical stand against women’s rights in Islam. As the Taliban have abolished many of the structures of the former regime, there is an absence of continuity of structures (and to that regard, laws, policies, national strategies and plans) that commonly occurs during peaceful transfer of power (some structures are still used, though not for the advancement and protection of women).</p> <p>Further, transitional measures have not been enacted which would suggest continuity of those structures and laws in the</p>		<p>Imam Abu Hanifa (AS). From the religion of Imam Abu Hanifa (RA), we act on the word (...) We give a fatwa based on the Holy Qur’an and the hadiths of the Holy Prophet (PBUH) and consensus and analogy (...) It is compiled in one volume and the administrative and legal work of the courts is regulated accordingly.”<sup>12</sup></p>	<p>Just for recognizing us (the Taliban) as an official government, we will not allow anyone to insult our Islamic values. Do not test these heroes (Taliban) anymore (...)</p> <p>To the people of Democracy and Republicans (followers), it is not [for you to say] (I will wear the hijab as I wish). No, you cannot. You have to do what we say (wear this type of Hijab).<sup>13</sup></p> <p>In a focus group discussion with lawyers currently in practise, the Taliban have, in some cases, referred to the Civil Code without citing them by article name or number. In many other cases, judgments have been passed without citing a provision of law, or text from jurisprudence.<sup>14</sup></p> <p>In a report by a local paper, one lawyer stated: “The use of laws and resources still depends on</p>
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<sup>12</sup> Radio Azadi, ‘ What principles and laws do the Afghan courts operate under the Taliban regime?’ 11 Nov 2021.

Link: <https://www.etilaatroz.com/137333/confusion-in-law-enforcement-which-law-does-the-taliban-implement/>

<sup>13</sup> Unofficial translation of a speech made by General Mubin at a Twitter Spaces meeting between General Mobin and others sometime around 18 January 2022. Link:

<https://twitter.com/womenaidafghan1/status/1483240131867914240?s=20>

<sup>14</sup> Interviewee in a focus group discussion conducted by [redacted] in May 2022.

	<p>interim. Human rights/defence lawyers who have since returned to further their clients' cases in Kabul before Taliban courts, state that litigants and Taliban judges cite a haphazard mix of laws and pronouncements (including the laws of the former regime) but that essentially, 'there is no law.'<sup>4</sup></p> <p>They identified that the Taliban rely on the following sources:</p> <ol style="list-style-type: none"> <li>1- Al Rad ul Mukhtar (الرد المختار)</li> <li>2- Alfotawi Altanqih al hamidia (الفتاوى التفتيح الحامديه)</li> <li>3- Alfotawi Alhindia (الفتاوى الهندية)</li> <li>4- Alfotawi Alkamilia (الفتاوى الكاملة)</li> <li>5- Al Bahr ul Raheq (البحر الرائق)</li> <li>6- Mujalatul Ahkam (مجلة الاحكام)</li> <li>7- Al-Ahkam Magazine</li> <li>9- The book of Hanafi jurisprudence of Imam Alwaldin Kasani</li> <li>10- The book of Sham (no further details provided)</li> <li>11- Hedayeh.</li> </ol>			<p>the tastes of Taliban muftis and judges."<sup>15</sup></p> <p>"Unfortunately, there were many problems in the courts and prosecutors' offices in the previous government," said a resident of Parwan province, who declined to be named because of the sensitivity of the issue and went to a Taliban court to resolve a legal case. (...) Now that I say that the situation has returned to a system of government, this has not been done, but what has been relatively reduced is corruption. But even now, fewer cases are handled (...) We went to court a few days ago for a case, one referring the case to the other and there was no investigation."<sup>16</sup></p> <p>The local paper also interviewed Zarrin Stanikzai, a lawyer and advocate in Afghanistan, as follows: "Their citation is based on Hanafi jurisprudence, and in Hanafi jurisprudence, there are</p>
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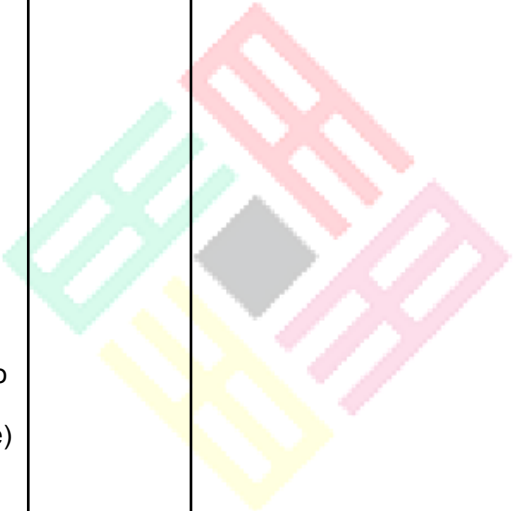
<sup>4</sup> On 17 May 2022, the authors organized a focus group discussion with 9 women and men human rights and defense lawyers in Kabul to obtain their insight on the practices of Taliban courts.

<sup>15</sup> Etilaat Roz, 'Confusion in law enforcement: What law does the Taliban implement?' 1 March 2022.

Link: <https://www.etilaatroz.com/137333/confusion-in-law-enforcement-which-law-does-the-taliban-implement/>

<sup>16</sup> Radio Azadi, 'What principles and laws do the Afghan courts operate under the Taliban regime?' 11 Nov 2021.

Link: <https://da.azadiradio.com/a/31604705.html>

	<p>The Taliban courts also use administrative and legal principles in the following books: Administrative Principles of the Courts of Justice of the Islamic Emirate of Afghanistan (2014) and Principles of Execution of Judicial Legal Trials (2014). These books describe how and when cases are handled.</p> <p>The above sources have not been officially gazetted by the Taliban.</p> <p>As regard the Shiite Personal Status Law (SPSL), according to a statement from the Shiite Ulema Council, the Jafari (Shiite) religion is not recognized in the Taliban regime, and the law on</p>			<p>many sources. This, in itself, confuses the courts and the litigants. He sees the verdict in his favor and invokes it (...) If the verdict is appealed, in the second court it is possible that the judge's verdict will be something else. It is not clear to the judge which verdict and opinion to follow (...) [so] this violate their own decisions."<sup>17</sup></p> <p>"Jurists claim that the Taliban, in order to deceive the public, have enacted the constitution of the last king of the country with the exception of laws which are against Shariah (...)"<sup>18</sup></p> <p>"Not only is the structure of the Taliban government not in accordance with the law of the last king of Afghanistan, but also</p>
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<sup>17</sup> Radio Azadi, 'What principles and laws do the Afghan courts operate under the Taliban regime?' 11 Nov 2021.

Link: <https://da.azadiradio.com/a/31604705.html>

<sup>18</sup> Etilaat Roz, 'Confusion in law enforcement: What law does the Taliban implement?' 1 March 2022.

Link: <https://www.etilaatroz.com/137333/confusion-in-law-enforcement-which-law-does-the-taliban-implement/>

	<p>personal status is not applicable.<sup>5</sup></p> <p>As regard laws governing non-Muslim minority communities, in the previous regime, family matters in non-Muslim communities were governed by their respective religions.<sup>6</sup> However, under Taliban rule, there is no clarity on whether religious minorities will be allowed to practise or codify their family law. Afghanistan's</p>			<p>the provisions of the 1964 constitution have not affected the Taliban. They have been acting since they came to power."<sup>19</sup></p> <p>According to the 2016 UNDP Human Development Report, Afghanistan ranked 169 on the UNDP Human Development Index (out of 189 countries and territories) and 157 out of 162 countries on the UNDP Gender Inequality Index.<sup>20</sup></p>
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<sup>5</sup> Tasnim News, 'The resolution of Afghan Shia scholars: The Jafari religion should be included in the constitution,' September 2021.

Link:

<https://www.tasnimnews.com/fa/news/1400/06/16/2567717/%D9%82%D8%B7%D8%B9%D9%86%D8%A7%D9%85%D9%87-%D8%B9%D9%84%D9%85%D8%A7%DB%8C-%D8%B4%DB%8C%D8%B9%D9%87-%D8%A7%D9%81%D8%BA%D8%A7%D9%86%D8%B3%D8%AA%D8%A7%D9%86-%D9%85%D8%B0%D9%87%D8%A8-%D8%AC%D8%B9%D9%81%D8%B1%DB%8C-%D8%AF%D8%B1-%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D8%B3%D8%A7%D8%B3%DB%8C-%D8%AF%D8%B1%D8%AC-%D8%B4%D9%88%D8%AF-%D9%85%D8%AA%D9%86>

See also: <https://newsmedia.tasnimnews.com/Tasnim/Uploaded/Document/1400/06/16/140006161709218802354866.pdf>

Other news sources:

8am Newspaper, 'The Taliban violently disrupted a meeting of the Shiite Ulema Council and threatened to kill them' 23 May 2022, Link:

<https://8am.af/the-taliban-violently-disrupted-a-meeting-of-the-shiite-ulema-council-and-threatened-to-kill-them/>

"On May 13, 2022, when the fifth round of the Council of Shiite Ulema was held in the presence of (...) (t)he Taliban armed men entered the meeting (...) and violently disrupted the entire meeting, tearing down banners containing Quranic verses and threatening participants with death. (They) also disrespected and insulted the ulema and expelled everyone, including senior council members. Following the incident, a number of Taliban intelligence officials visited the venue in western Kabul and stressed that the matter should not be reported in the media."

<sup>6</sup> Islamic Republic of Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), para. 354.

Link: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&CountryID=1&DocTypeID=29](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&CountryID=1&DocTypeID=29)

<sup>19</sup> Etilaat Roz, 'Confusion in law enforcement: What law does the Taliban implement?' 1 March 2022.

Link: <https://www.etilaatroz.com/137333/confusion-in-law-enforcement-which-law-does-the-taliban-implement/>

<sup>20</sup> United National Development Program, 'The Next Frontier: Human Development and the Anthropocene Briefing Note for Human Development Report 2020 (Afghanistan),' (undated), pp. 2 and 5 respectively. Link: <https://hdr.undp.org/sites/default/files/Country-Profiles/AFG.pdf>

	Hindu and Sikh minorities were attacked and harassed by the Taliban after its conquest in Afghanistan and remains at risk of being targeted and displaced. <sup>7</sup>				According to the Afghanistan Health Survey of 2019, 4% of households are headed by women. <sup>21</sup>
<b>Minimum and equal legal age for marriage</b>  <i>Is there a minimum age of marriage? Are there exceptions to the minimum age (e.g. min. age at 18, with exceptions to 16)? Is</i>	Prior to the fall of Afghanistan to the Taliban, the minimum legal age for marriage was 16 for females and 18 for males for both Shias and Sunnis per Article 70 of the Civil Code and Article 91(1) of the SPSL, respectively. <sup>22</sup> Marriages below		On 24 May 2022, that the spokesman for the Taliban's Ministry of Promotion of Virtue and Prevention of Vice, Sadiq Akif, said: "When a girl reaches puberty, she can be given to marriage", referring to Islamic jurisprudence. <sup>25</sup>		UNICEF reported on 12 November 2021: "We have received credible reports of families offering daughters as young as 20 days old up for future marriage in return for a dowry."

<sup>7</sup> DW, 'Hindus and Sikhs; A minority that is about to leave Afghanistan forever' 28 October 2021. Link: <https://www.dw.com/fa-af/%D9%87%D9%86%D8%AF%D9%88%D9%87%D8%A7-%D9%88-%D8%B3%DB%8C%DA%A9%D9%87%D8%A7-%D8%A7%D9%82%D9%84%DB%8C%D8%AA%DB%8C-%DA%A9%D9%87-%D9%82%D8%B1%D8%A7%D8%B1-%D8%A7%D8%B3%D8%AA-%D8%A7%D9%81%D8%BA%D8%A7%D9%86%D8%B3%D8%AA%D8%A7%D9%86-%D8%B1%D8%A7-%D8%A8%D8%B1%D8%A7%DB%8C-%D9%87%D9%85%DB%8C%D8%B4%D9%87-%D8%AA%D8%B1%DA%A9-%DA%A9%D9%86%D9%86%D8%AF/a-59637556>

"After the Taliban invaded Kabul, the Hindu Dramsal was attacked twice by the Taliban and they were harassed. "A group called the Taliban entered Godwara and harassed the Hindu people," Ms. Singh said. "When we talked to the emirates, they said that the attackers were not Taliban." He added that as insecurity escalated, families living in Ghazni and Nangarhar moved to Kabul and, due to lack of a place to live, lived indoors, which was also attacked. According to this Hindu citizen, the Taliban have ordered that it be closed: "Where should we raise our voices? Who hears our voice? "The situation is very difficult. "Bilal Karimi, the Taliban's deputy spokesman, rejected the blockade of Dramsal. "We do not confirm that they are under threat," he told Deutsche Welle DW. "The Islamic Emirate defends their rights and privacy, and their lives and property are safe, and there is nothing to worry about." The Hindu citizen added that those who attacked the shrine were carrying Taliban flags and riding in Taliban vehicles, but Taliban officials denied that the Taliban were involved in the attacks. "They do, but another group says the attackers were not Taliban.

<sup>21</sup> KIT Royal Tropical Institute, 'Afghanistan Health Survey 2018,' April 2019, p. 6, Table 1. Link: <https://www.kit.nl/wp-content/uploads/2019/07/AHS-2018-report-FINAL-15-4-2019.pdf>

<sup>22</sup> Article 70 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/slspublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>; Article 91(1) of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

<sup>25</sup> Voice of America, 'Afghanistan Poverty Bears More Child Brides', 4 May 2022. Link: <https://www.voanews.com/a/afghanistan-poverty-bears-more-child-brides/6556599.html>



<p><i>there an absolute minimum age without exceptions? Is there equality in the minimum age of marriage? Does the minimum age of marriage match the age of majority? Is there a minimum age verification process before the marriage is concluded?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(2) Paras. 36-39 GR21</p>	<p>the minimum legal age for marriage were permissible in limited circumstances. Further, Article 28 of the Law on the Elimination of Violence against Women (EVAW law) prohibited marriage of a girl under the age of 15 years.<sup>23</sup></p> <p>After the Taliban took over Afghanistan, Supreme Leader of the Taliban, Mullah Hebatullah Akhundzadeh issued a decree on 3 December 2021 which amongst other things, stated that “the consent of an adult girl is required during the marriage, of course, a marriage in which there is no sedition and corruption. No one has the right to force a woman to marry.”<sup>24</sup></p> <p>To the extent that this decree reveals the age of marriage, the term only refers to consent of an “adult girl”. It also states no one</p>			<p>Even before the latest political instability, UNICEF’s partners registered 183 child marriages and 10 cases of selling of children over 2018 and 2019 in Herat and Baghdis provinces alone. The children were between 6 months and 17 years of age. UNICEF estimates that 28 percent of Afghan women aged 15–49 years were married before the age of 18.<sup>26</sup></p> <p>The practice of early and child marriage has also worsened with the humanitarian catastrophe. With the Taliban stepping in as the defacto authority of Afghanistan, global financial sanctions kicked in, the banking system was effectively frozen and Afghanistan had no liquidity or even sufficient physical cash supply. Afghanistan descended into a catastrophic humanitarian crisis, one that is unprecedented</p>
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<sup>23</sup> Article 28 of the Law on the Elimination of the Violence against Women (2009). Link: <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=5486d1a34&skip=0&query=law%20of%20elimination%20of%20violence%20against%20women&coi=AFG>

<sup>24</sup> Tolo News, Mullah Haibatullah Akhunzada’s decree on women’s rights,” 4 December 2021. Link: <https://tolonews.com/fa/afghanistan-175725>

<sup>26</sup> UNICEF Executive Director Henrietta Fore, ‘Girls increasingly at risk of child marriage in Afghanistan,’ 12 November 2021. Link: <https://www.unicef.org/press-releases/girls-increasingly-risk-child-marriage-afghanistan>

	<p>has the right to force “a woman” to marry. Those terms in Dari and Pashto are specific to mean adult females and not girl child. As such, whilst the decree safeguards women’s consent in marriage, the decree does not establish a minimum age of marriage. It also does not explicitly prohibit child marriage.</p>			<p>in the history of the modern times.</p> <p>An updated Integrated Food Security Phase Classification (IPC) analysis shows that in the first quarter of 2022, a staggering 23 million people, or 55 per cent of the population, are expected to be in crisis or emergency levels of food insecurity (IPC 3 and 4).<sup>27</sup> This has direct consequences to families’ ability to feed their children.</p> <p>On 4 May 2022, Voice of America reported: “as hunger grows deeper in war-ravaged Afghanistan, which has the world’s highest number of people in need of emergency food assistance, an increasing number of Afghan families are <b>offering their underage girls in exchange for dowry, debt relief, and other social and economic incentives (...)</b> In the eight months since the Taliban took control of the country, more than 120,000 children are feared to have been bartered for some sort of financial</p>
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<sup>27</sup> UN Office for the Coordination of Humanitarian Affairs (OCHR), ‘Afghanistan Humanitarian Needs Overview 2022 (January 2022),’ 8 January 2022  
Link: <https://reliefweb.int/report/afghanistan/afghanistan-humanitarian-needs-overview-2022-january-2022>

				<p><b>incentive, according to an analysis made by several aid agencies.<sup>28</sup></b></p> <p>With the closure of girls schools, restrictions on women’s movement and work, heightened political insecurity, it is likely that families will resort to early and child marriage as a coping and survival mechanism.</p> <p>According to UNICEF, out of 4.2 million Afghan children already out of school, 60% are girls. The decline in girls’ secondary school attendance has been marked, even in provinces where the Taliban have permitted girls to attend school. This is in part due to the absence of women teachers since, in several locations, such as Bamyán, girls may now only be taught by women. A further 8.8 million children are at risk of being deprived of education amid the non-payment of teacher salaries and continuing school closures.<sup>29</sup></p>
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<sup>28</sup> VOA, ‘Afghanistan poverty bears more child brides,’ 4 March 2022.

Link: <https://www.voanews.com/a/afghanistan-poverty-bears-more-child-brides/6556599.html>

<sup>29</sup> Nada Al-Nashif, UN Deputy High Commissioner for Human Rights (OHCHR), ‘Oral Update on Situation of Human Rights in Afghanistan’ 14 December 2021. Link: <https://www.ohchr.org/en/statements/2021/12/oral-update-situation-human-rights-afghanistan>

				<p><b>Statistics prior to the fall of Afghanistan to the Taliban</b> According to UNICEF’s State of the World’s Children 2016 report, 33% of women aged 20- 24 in Afghanistan were first married by 18 and according to the Afghan government, women who marry below 15 make up 3% of married women.<sup>30</sup></p> <p>42% of households across the 5 surveyed provinces indicated that at least one member of their household had been married before the age of 18,<sup>31</sup> based on a study commissioned by the former Ministry of Labour, Social Affairs, Martyrs and the Disabled (MoLSAMD) with the support of UNICEF Afghanistan.</p> <p>According to Afghanistan’s 2015 Demographic and Health Survey, marriage is universal in the country; only 1% of women and men have never married. The median age at first marriage for</p>
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<sup>30</sup> UNICEF, “The State of the World’s Children 2016”, Table 9, pp. 150-153, <https://reliefweb.int/report/world/state-world-s-children-2016-fair-chance-every-child>; Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), para. 359, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>31</sup> UNICEF, “Child Marriage in Afghanistan Changing the narrative,” 29 July 2018, page 21. Link: <https://reliefweb.int/report/afghanistan/child-marriage-afghanistan-changing-narrative>

					women is 18.5 and men is 22.9. <sup>32</sup>  According to Girls Not Bride, factors that contribute to the high prevalence of child marriage in Afghanistan include poverty, poor access to education and strong patriarchal values that have given rise to cultural practices that assign a low value to girls “such as bride price, child engagement (where children are engaged before birth), exchange marriages (between girls from two separate families) and giving girls in <i>baad</i> (to solve a community dispute).” <sup>33</sup>
<b>Women’s consent to marriage</b>  <i>Is a marriage valid without the woman’s consent? Is the practice of forcing</i>	Under the former regime, women’s consent in marriage was required under Article 77 <sup>34</sup> and 505 <sup>35</sup> of the Civil Code (for Sunnis) and Articles 102 <sup>36</sup> and 105 for Shias <sup>37</sup> . Further, forced				Commenting on the 3 December 2021 Decree on consent in marriage, the UN Secretary General said: “While welcomed by some, the decree was criticized for failing to address the

<sup>32</sup> Afghan Central Statistics Organisation, Afghan Ministry of Public Health and the DHS Program, “Afghanistan Demographic and Health Survey 2015”, p. 61. Link: [https://www.rhsupplies.org/uploads/tx\\_rhscpublications/Afghanistan\\_-\\_2017.pdf](https://www.rhsupplies.org/uploads/tx_rhscpublications/Afghanistan_-_2017.pdf)

<sup>33</sup> Girls Not Brides, “Afghanistan”, *Child marriages around the world*, <http://www.girlsnotbrides.org/child-marriage/afghanistan/>

<sup>34</sup> Article 77 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>

<sup>35</sup> Article 505 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>

<sup>36</sup> Article 105 of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

<sup>37</sup> Article 102 of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

<p>women to marry against their will (<i>ijbar</i>) prohibited? Is there a standard marriage contract? If so, what are its broad provisions and is there anything particular in the contract that ought to be highlighted on the basis that it advances women's rights or otherwise? Is it mandatory to register a marriage?</p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(b) Paras. 15-16 GR21 Paras. 25-26, 33-34 GR29</p>	<p>marriage was prohibited under Articles 26<sup>38</sup> and 28<sup>39</sup> of EAW and Article 571<sup>40</sup> of the Penal Code.</p> <p>Further, a 15-page standardised marriage contract known as the <i>nikahnamah</i> was approved by the Afghan Supreme Court in 2007 with the aim of curbing child and forced marriages.<sup>41</sup></p> <p>Under Taliban rule, use of <i>nikahnamah</i> may likely continue, when a person requests it from the court. In Kabul, due to lack of a state budget, there are no more physical <i>nikahnamah</i> copies available in court.</p> <p>Under Taliban rule, forced marriage has been prohibited. On 3 December 2021, Taliban</p>				<p>full spectrum of women's rights."<sup>45</sup></p> <p>In a focus group discussion, human rights/defence lawyers shared that in a handful of cases where women who were betrothed to marriage were forced by the Taliban courts to honour their engagements to their fiancé. Though the lawyers argued before Taliban judges that marriage and engagement are not legally equivalent under Islam, and, women's consent to marriage is required under the same, their arguments were dismissed, without reason.</p> <p>Various sources suggest a relatively high prevalence of forced marriages in Afghanistan: According to the Afghanistan</p>
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<sup>38</sup> Article 26 of the Law on the Elimination of the Violence against Women (2009). Link: <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=5486d1a34&skip=0&query=law%20of%20elimination%20of%20violence%20against%20women&coi=AFG>

<sup>39</sup> Article 28 of the Law on the Elimination of the Violence against Women (2009). Link: <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=5486d1a34&skip=0&query=law%20of%20elimination%20of%20violence%20against%20women&coi=AFG>

<sup>40</sup> Article 517 of the Penal Code (1976). Link: [https://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Afghanistan\\_Penal%20Code\\_1976\\_en.pdf](https://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Afghanistan_Penal%20Code_1976_en.pdf)

<sup>41</sup> Landinfo, "Afghanistan: Marriages", 2011, p. 23, [http://www.landinfo.no/asset/1852/1/1852\\_1.pdf](http://www.landinfo.no/asset/1852/1/1852_1.pdf); Women Reclaiming and Redefining Culture, "Afghanistan: Marriage contract approved by the Supreme Court of Afghanistan", 2007, <http://wrrc.wluml.org/node/3528>

<sup>45</sup> United Nations General Assembly, "The situation in Afghanistan and its implications for international peace and security. Report of the Secretary-General," 28 January 2022 A/76/667–S/2022/64, para 6. Link: [https://unama.unmissions.org/sites/default/files/sq\\_report\\_on\\_afghanistan\\_january\\_2022.pdf](https://unama.unmissions.org/sites/default/files/sq_report_on_afghanistan_january_2022.pdf)

	<p>leader Mullah Hebatullah Akhundzadeh issued a decree which amongst other points, stated that “the consent of an adult girl is required during the marriage, of course, a marriage in which there is no sedition and corruption. No one has the right to force a woman to marry.”<sup>42</sup></p> <p>Further, <i>baad</i>, a customary practice in Afghanistan, where girls or women are given to an aggrieved family to “compensate” for a crime – has also been prohibited by the Taliban. Paragraph 2 of the same states: “A woman is not property but is free and noble,</p>			<p>Independent Human Rights Commission (AIHRC) (now abolished) about 6.7% of marriages are forced marriages;<sup>46</sup></p> <p>According to a Human Rights Watch study, about 70% to 80% of marriages are forced marriages;<sup>47</sup></p> <p>According to a Global Rights study, about 59% of marriages are forced marriages.<sup>48</sup></p> <p>According to reports by the Afghan government, UN agencies and civil society, as with the case of child marriages, the practice of forced marriages is deeply rooted in patriarchal</p>
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<sup>42</sup> Tolo News, Mullah Haibatullah Akhundzada’s decree on women’s rights,” 4 December 2021.  
Link: <https://tolonews.com/fa/afghanistan-175725>

<sup>46</sup> Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), para. 54,  
[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&CountryID=1&DocTypeID=29](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&CountryID=1&DocTypeID=29)

<sup>47</sup> Women Living Under Muslim Laws, “Child. Early and Forced Marriage: A Multi-Country Study”, *Submission to the UN Office of the High Commissioner on Human Rights (OHCHR)*, 2013, p. 21, <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/ForcedMarriage/NGO/WLUML2.pdf>

<sup>48</sup> Women Living Under Muslim Laws, “Child. Early and Forced Marriage: A Multi-Country Study”, *Submission to the UN Office of the High Commissioner on Human Rights (OHCHR)*, 2013, p. 21, <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/ForcedMarriage/NGO/WLUML2.pdf>

	<p>and no one can give it to (evil) in exchange for making peace.”<sup>43</sup></p> <p>Further, forced marriage on widows have been prohibited. Paragraph 3 of the decree states that: "After the death of the husband, whenever a religious period (four months and ten days or childbirth) passes, neither the husband's brother nor anyone else can force the widow to marry. The widow has the right to marry and determine her own destiny (provided that the principle of Kufu (compatibility) and the prevention of sedition and corruption are considered)."<sup>44</sup></p>			<p>values and has given rise to widespread cultural practices that subordinate women to the will of men, thereby contributing to the high prevalence of force marriage in Afghanistan. Such practices include:<sup>49</sup></p> <ul style="list-style-type: none"> <li>• <i>Baad</i>: The giving of unmarried girls as a means to resolve a dispute;</li> <li>• <i>Baadal</i>: The marriage of one boy and one girl from one family with another girl and boy from another family to remove the obligation of both families to pay the dower (<i>mahr</i>);</li> </ul>
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<sup>43</sup> Tolo News, Mullah Haibatullah Akhonzada's decree on women's rights," 4 December 2021.  
Link: <https://tolonews.com/afghanistan-175725>

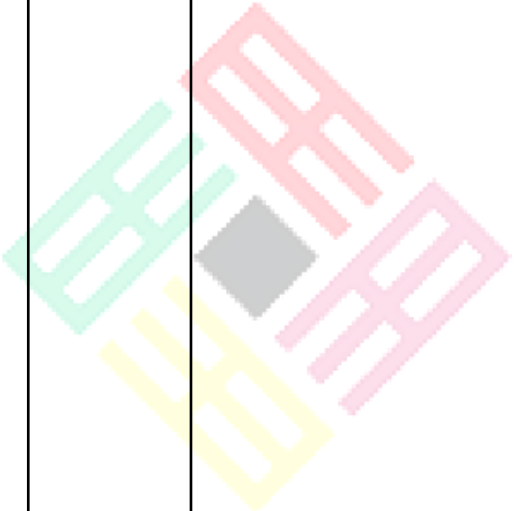
<sup>44</sup> Tolo News, Mullah Haibatullah Akhonzada's decree on women's rights," 4 December 2021.  
Link: <https://tolonews.com/afghanistan-175725>

<sup>49</sup> Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), paras. 54-55, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&CountryID=1&DocTypeID=29](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&CountryID=1&DocTypeID=29); UNAMA and OHCHR, "Harmful Traditional Practices and Implementation of the Law on Elimination of Violence Against Women in Afghanistan", 2010, [http://www.afghan-web.com/woman/harmful\\_traditions.pdf](http://www.afghan-web.com/woman/harmful_traditions.pdf); Women Living Under Muslim Laws, "Child. Early and Forced Marriage: A Multi-Country Study", *Submission to the UN Office of the High Commissioner on Human Rights (OHCHR)*, 2013, p. 23, <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/ForcedMarriage/NGO/WLUML2.pdf>; Nadjma Yassari and Mohammad Hamid Saboory, "Sharia and national law in Afghanistan", in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), p. 303, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>



	<p>The decree does not state the consequences / punishment for violating the decree.</p>			<ul style="list-style-type: none"> <li>• <i>Walwar</i>: Payment of a sum of money or commodity as a “bride price” to the head of the bride’s household by the groom or his family supposedly to reimburse the parents of the bride for the financial loss they suffered while raising their daughter;</li> <li>• Exchange of girls for money, property, loans and more; and</li> <li>• Coercion of widows to marry a relation of a deceased husband.</li> </ul> <p>Various sources suggest a relatively low rate of officially registered marriages in Afghanistan:</p> <ul style="list-style-type: none"> <li>• According to the AIHRC, about 80% of couples in Afghanistan have traditional marriage certificates (<i>Nikkah Khat</i>) and are not officially registered;<sup>50</sup></li> <li>• According to the Max Planck Institute, only about 5% of marriages in Afghanistan are</li> </ul>
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<sup>50</sup> Wadsam, “80% of marriages in Afghanistan are not legally registered”, *Wadsam*, 10 December 2012, <http://wadsam.com/arts-culture/80-of-marriages-in-afghanistan-are-not-legally-registered-2342/>

				<p>officially registered.<sup>51</sup></p> <ul style="list-style-type: none"> <li>• According to both former government and social society reports the contributing factors for the low rate of officially registered marriage include:<sup>52</sup></li> <li>• Cultural inhibitions such as the belief that “it is against the Afghans’ way of thinking, habits and traditions to begin their marital life by going to a court, even if it is only in order to register the marriage”;</li> <li>• The apparent lack of need for an official marriage certificate affects the daily lives of Afghans because “[p]resenting certified documents is rarely necessary in Afghanistan.”</li> </ul>
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<sup>51</sup> Kabeh Rastin-Tehrani and Nadjma Yassari, “Max Planck Manual on Family Law in Afghanistan”, (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), p. 52, [https://www.mpipriv.de/1187062/max\\_planck\\_manual\\_on\\_afghan\\_family\\_law\\_english.pdf](https://www.mpipriv.de/1187062/max_planck_manual_on_afghan_family_law_english.pdf)

<sup>52</sup> Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), para. 355, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&CountryID=1&DocTypeID=29](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&CountryID=1&DocTypeID=29); Kabeh Rastin-Tehrani and Nadjma Yassari, “Max Planck Manual on Family Law in Afghanistan”, (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), p. 52, [https://www.mpipriv.de/1187062/max\\_planck\\_manual\\_on\\_afghan\\_family\\_law\\_english.pdf](https://www.mpipriv.de/1187062/max_planck_manual_on_afghan_family_law_english.pdf); Anastasiya Hozyainova, “The Marriage Contract: Process and Recommendations for its Implementation”, in *A Woman’s Place: Perspective on Afghanistan’s Evolving Legal Framework*, ed. Alexandra Gilbert, (Quebec, Canada.: International Centre for Human Rights and Democratic Development, 2011), pp. 31-35 <https://www.boell.de/en/navigation/asia-womens-place-perspectives-afghanistans-evolving-legal-framework-publication-rights-democracy-12101.html>

<p><b>Women’s capacity to enter into marriage</b></p> <p><i>Is consent of a marital guardian (wali) required? If so, can a woman choose her own wali? Can a woman go before a court or other competent authority to seek permission to marry if her wali refuses to consent to her marriage? Can a woman negotiate her marital rights prior to marriage and can these rights be changed during marriage? If so, who can change these rights and under what circumstances e.g. mutual consent?</i></p>	<p>Under the former regime, a prospective bride over 18 years did not require consent of guardian to enter into marriage based on Article 80 of the vivid Code (for Sunnis)<sup>53</sup> and a prospective bride over 16 and who has attained maturity or puberty does not require the consent of a guardian to enter into marriage under Article 102 of the SPSL (for Shias).<sup>54</sup></p> <p>On 3 December 2021, Taliban leader Mullah Hebatullah Akhundzadeh issued a decree which amongst other points, stated that “the consent of an adult girl is required during the marriage, of course, a marriage in which there is no sedition and</p>				<p>In the city, women can choose her wali (father or in the absence of, her uncle, brother or others) and the wali’s consent (or otherwise approval) is necessary. In some cases and in the rural areas, the woman does not choose her wali.</p>
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<sup>53</sup> Articles 71, 78, 246, 544 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/slspublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20S%20ept%202014.pdf>; Kabeh Rastin-Tehrani and Nadjma Yassari, “Max Planck Manual on Family Law in Afghanistan”, (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), p. 35, [https://www.mpipriv.de/1187062/max\\_planck\\_manual\\_on\\_afghan\\_family\\_law\\_english.pdf](https://www.mpipriv.de/1187062/max_planck_manual_on_afghan_family_law_english.pdf)

<sup>54</sup> Article 99 of the Shiite Personal Status Law (2009) requires the permission of a guardian appearing before the court for females and males below 16 and 18, respectively, to marry, <http://www.refworld.org/pdfid/4a24ed5b2.pdf>; Andrea Buchler and Christina Schlatter, “Marriage Age in Islamic and Contemporary Muslim Family Law: A Comparative Survey, (Electronic Journal of Islamic and Middle Eastern Law, 1, 2013), pp. 69-70, [http://www.zora.uzh.ch/78204/1/Beitrag\\_Buechler\\_Schlatter\\_final.pdf](http://www.zora.uzh.ch/78204/1/Beitrag_Buechler_Schlatter_final.pdf) and Article 102 of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>; Andrea Buchler and Christina Schlatter, “Marriage Age in Islamic and Contemporary Muslim Family Law: A Comparative Survey, (Electronic Journal of Islamic and Middle Eastern Law, 1, 2013), p. 70, [http://www.zora.uzh.ch/78204/1/Beitrag\\_Buechler\\_Schlatter\\_final.pdf](http://www.zora.uzh.ch/78204/1/Beitrag_Buechler_Schlatter_final.pdf)

<p><u>Applicable CEDAW Provision</u> Articles 16(1)(a), 16(1)(b) Paras. 15-16 GR21 Para. 34 GR29</p>	<p>corruption. No one has the right to force a woman to marry.”<sup>55</sup> The decree does not state whether the consent of a wali is additionally required, if a woman can choose her own wali, seek court approval of marriage in the absence of the wali’s consent, or negotiate her marriage rights in contract.</p>				
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<sup>55</sup> Tolo News, Mullah Haibatullah Akhunzada’s decree on women’s rights,” 4 December 2021.  
Link: <https://tolonews.com/fa/afghanistan-175725>

<p><b>Polygamous marriages</b> <i>Does the law prohibit polygamy or impose strict conditions on such practice? Is the permission of the court required for a polygamous marriage? Is the permission of an existing wife required for a polygamous marriage? Is it necessary to inform an existing wife of the polygamous marriage? Are temporary marriages such as traveler's marriages (misyar) recognised? Is it necessary to register a polygamous marriage? Can a woman stipulate in the marriage contract that her intended husband cannot enter into a polygamous marriage?</i> <u>Applicable CEDAW</u></p>	<p>Under the former regime, both Sunni and Shia men were entitled to marry up to four wives at one time under Articles 86 - 89 of the Civil Code and Article 91 of SPSL<sup>56</sup>, with certain conditions.<sup>57</sup> Further, Article 37 of the EVAW attracted short-term imprisonment if the said conditions were not observed.<sup>58</sup></p> <p>Under the Taliban rule, the law on polygamy is not clear. As it concerns polygamy amongst Taliban members, the Taliban ruled in Letter No. 2241 dated May 6, 2022, in accordance with Decree No. 2075 dated May 5, 2022 that the Taliban should respect the values of jihad and prevent corruption (...).</p> <p>They forbade unnecessary marriages (polygamy). The head of the office of the Islamic</p>				<p>According to Afghanistan's 2015 Demographic and Health Survey, 6% of marriages in Afghanistan are polygamous. The survey also found that:<sup>60</sup></p> <ul style="list-style-type: none"> <li>• Older women were more likely than younger women to have co-wives. For instance, 11% of married women aged 45-49 reported having co-wives, as compared with 3% of women aged 20-24;</li> <li>• Rural women were more likely to report having co-wives than urban women (7% versus 5%);</li> <li>• Women living in poorer households were more likely than women living in richer households to have co-wives. For instance, 8% of women living in households in the</li> </ul>
<p><sup>56</sup> Article 91 of the Shiite Personal Status Law (2009), <a href="http://www.refworld.org/pdfid/4a24ed5b2.pdf">http://www.refworld.org/pdfid/4a24ed5b2.pdf</a></p>					
<p><sup>57</sup> Article 86 of the Civil Code (1977), <a href="http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/slspublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf">http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/slspublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf</a></p>					
<p><sup>58</sup> Article 37 of the Law on the Elimination of the Violence against Women (2009), <a href="http://mowa.gov.af/Content/files/EVAW%20Law%20Report_Final_English_17%20%20March%202014.PDF">http://mowa.gov.af/Content/files/EVAW%20Law%20Report_Final_English_17%20%20March%202014.PDF</a></p>					
<p><sup>60</sup> Afghan Central Statistics Organisation, Afghan Ministry of Public Health and the DHS Program, "Afghanistan Demographic and Health Survey 2015", Table 4.2.1, p. 67, <a href="https://dhsprogram.com/pubs/pdf/FR323/FR323.pdf">https://dhsprogram.com/pubs/pdf/FR323/FR323.pdf</a></p>					

<p><u>Provision</u> Para. 14 GR21 Para. 34 GR29</p>	<p>Emirate has entrusted the task to the Ministry for the Propagation of Virtue and the Prevention of Vice to identify the violator of the decree and submit a report to the officials of the Emirate.</p> <p>The letter states that polygamous marriages are permitted to members of the Taliban in the following situations:</p> <ol style="list-style-type: none"> <li>a) If the couple has no male child;</li> <li>b) If the husband marries a widow;</li> <li>c) If the husband is financially sound, to have wedding expenses from their personal possessions, and permission from the Emirate have also been taken.</li> </ol> <p>Further, paragraph 6 of the decree states: "A person who has several wives is obliged to give the rights of all women</p>			<p>lowest wealth quintile reported having co-wives, as compared with 5% of women living in households in the highest quintile; and</p> <ul style="list-style-type: none"> <li>• Lower educated women were slightly more likely to report having co-wives than higher educated women. For instance, 7% of married women with no education reported having co-wives, as compared with 6% of women who has attained secondary or higher education.</li> </ul> <p>According to research compiled by the Ireland Refugee Documentation Centre reasons for polygamous marriages include:<sup>61</sup></p> <ul style="list-style-type: none"> <li>• The very poor social status of divorcees which pressurises wives to agree to become a second or third wife to avoid being single;</li> <li>• The view among men that the ability to enter into a polygamous marriage is an indication of material and</li> </ul>
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<sup>61</sup> Refugee Documentation Centre (Ireland), "Information on Polygamous Marriages in Afghanistan", 2011, [https://www.justice.gov/sites/default/files/eoir/legacy/2013/06/11/polygamous\\_marriages.pdf](https://www.justice.gov/sites/default/files/eoir/legacy/2013/06/11/polygamous_marriages.pdf)

	<p>according to the Shari'a ruling and to establish justice between them.</p> <p>Note that the abovesaid decree was addressed the members of the Taliban and appears to be a response to practice of polygamy by the Taliban. For example, in recent months the Head of Logistics Department of the Ministry of Interior married for the second time in Baghlan province and his Deputy Director in Takhar province did the same.<sup>59</sup></p>			<p>social prestige;</p> <ul style="list-style-type: none"> <li>• The failure of the existing wife to produce a male child; and</li> <li>• The wife as an incurable disease.</li> </ul> <p>According to the Immigration and Refugee Board of Canada, information on the ground suggest that temporary marriages are not very common in Afghanistan.<sup>62</sup></p>
<p><b>Divorce rights</b></p> <p><i>Is there equal right to divorce between women and men? Can the husband divorce without reason and without having to go to court? What are the main forms of divorce? Can all forms of divorce be</i></p>	<p>Under the former regime, the Civil Code and the SPSL provided for three different mechanisms for divorce: (i) unilateral repudiation (<i>talāq</i>); (ii) judicial divorce; and (iii) redemptive divorce (<i>khul'</i>). The marriage may also be annulled<sup>63</sup> and husbands could delegate their unilateral right to divorce to</p>			<p>One lawyer from the focus group discussion shared: "The head of the fourth district court of Kabul stated that women do not have the right to ask for separation based on the Hanafi jurisprudence."</p> <p>In other cases where a final judgment had already been given</p>

<sup>59</sup> Based on focus group

<sup>62</sup> Immigration and Refugee Board of Canada, "Responses to Information Requests", 2012, para 1, [https://www.justice.gov/sites/default/files/eoir/legacy/2014/01/16/AFG104238\\_E.pdf](https://www.justice.gov/sites/default/files/eoir/legacy/2014/01/16/AFG104238_E.pdf)

<sup>63</sup> Article 131 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/slspublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Spt%202014.pdf>; Article 140 of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>; Kabeh Rastin-Tehrani and Nadjma Yassari, "Max Planck Manual on Family Law in Afghanistan", (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), p. 71, [https://www.mpipriv.de/1187062/max\\_planck\\_manual\\_on\\_afghan\\_family\\_law\\_english.pdf](https://www.mpipriv.de/1187062/max_planck_manual_on_afghan_family_law_english.pdf)

<p><i>sought only through the courts? Are the grounds for divorce the same for the husband and wife? Is unilateral divorce by repudiation (talāq) prohibited? If unilateral divorce is not prohibited, what is the procedure i.e. is the presence of the spouse to be divorced required, are witnesses required, does the spouse seeking divorce need to go to court, is the divorced spouse informed of the divorce? Is the unilateral right to divorce delegated to the wife? If so, is it by law or through the marriage contract? Is it mandatory to register a divorce?</i></p> <p><u>Applicable CEDAW Provision</u></p>	<p>their wives (<i>isma</i>) through a stipulation in the marriage contract,<sup>64</sup> thus permitting her to pronounce <i>talāq</i> upon herself (<i>talāq-i-tafwid</i>).<sup>65</sup></p> <p>Under Taliban rule, one order regarding divorce was made by the Taliban, in relation to the legal status of final judgments on divorced rendered by the former regime's courts. The order came as an answer to a query issued to the Taliban Supreme Court. The query states: "In the previous corrupt administration, the judiciary has divorced husband and wife. Now the previous husband wants [to restore his marriage] with his previous wife whereas the wife got married with another person and has many children. In this situation what should the court do?".</p>			<p>for divorce due to harm by a judge from the former regime, the Taliban reversed the judgment as unIslamic and ordered the case to be retried.</p> <p>Dozens of upset ex-husbands are now using the Taliban courts to force their ex-wives to return to them. In some cases where their ex-wives have gone to remarry and have children, this questions the legitimacy of their remarriage and children. The women also risk being accused of adultery. As such, the Taliban's decision to reverse final judgments by the former regime have significant social consequences on families and those social consequences are not being adequately addressed.</p> <p>This emphasises that even in cases where women were given a final divorce judgement on</p>
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<sup>64</sup> Article 142 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/slspublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20SEP%202014.pdf>; Article 155(3) of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>; Kabeh Rastin-Tehrani and Nadjma Yassari, "Max Planck Manual on Family Law in Afghanistan", (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), p. 73, [https://www.mpipriv.de/1187062/max\\_planck\\_manual\\_on\\_afghan\\_family\\_law\\_english.pdf](https://www.mpipriv.de/1187062/max_planck_manual_on_afghan_family_law_english.pdf)

<sup>65</sup> Article 135(2) of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/slspublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20SEP%202014.pdf>; Article 155(1) of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>; Kabeh Rastin-Tehrani and Nadjma Yassari, "Max Planck Manual on Family Law in Afghanistan", (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), p. 73, [https://www.mpipriv.de/1187062/max\\_planck\\_manual\\_on\\_afghan\\_family\\_law\\_english.pdf](https://www.mpipriv.de/1187062/max_planck_manual_on_afghan_family_law_english.pdf)



<p>Article 16(1)(c) Paras. 17-18 GR21 Paras. 34, 39-40 GR29</p>	<p>On 17 Feb 2022, the Taliban Supreme Court answered the query and stated as follows: “if the decision [for divorce] is against sharia law the case should start from the first step again [retried]. But, if it is not against sharia law the decision will be implemented.”</p>				<p>grounds of harm or absence, the ex husband’s right over her was prioritised.</p> <p>One lawyer shared: “One of my clients asked for separation from her husband because of harm. But the Taliban judge said it was not permissible in Islam and you could not file for separation.”</p>
<p><b>Women’s financial rights after divorce</b></p> <p><i>Is there a legal concept of matrimonial assets? Is there equal division of marital property upon dissolution of the marriage? Is the woman’s role as wife and mother recognised as contribution to the acquisition of assets? What spousal maintenance are available to the wife after a divorce? Is she entitled to maintenance during the waiting period after the divorce (iddah)? Is she entitled to a consolatory gift or compensation upon divorce (mut’ah)? Who is responsible for the financial maintenance of children following a</i></p>	<p>During the former regime, generally, upon divorce, a Sunni and Shia woman were entitled to: (i) financial maintenance during the waiting period after the divorce (<i>iddah</i>); and (ii) a consolatory gift or compensation (<i>mut’ah</i>), under certain conditions.</p> <p>Under Taliban rule, no pronouncements have been raised regarding women’s financial rights after divorce.</p>				

<p><i>divorce? Can the couple agree to the division of assets acquired during marriage in the marriage contract? Can this stipulation be amended? If so, by who and on what basis e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(c), 16(1)(h) Paras. 30-33 GR21 Paras. 34-35, 43-48 GR29</p>					
<p><b>Custody of Children</b></p> <p><i>Do parents have equal rights over the custody of their children? If no, who has priority right over the custody of the child? Is custody decided based on the best interest of the child? Do mothers automatically lose custody upon remarriage or if she is deemed disobedient or when the child reaches a designated age when custody goes to father?</i></p>	<p>Under the former regime, both Sunni and Shia mothers had a right over the custody of their daughters until they reach the age of nine and their sons until they reach the age of seven. Thereafter, the father would take custody of the children.<sup>66</sup></p> <p>Under the Taliban rule, no law or pronouncements have been made regarding the guardianship or custody of children.</p>				

<sup>66</sup> Articles 71(1), 252 and 256, 268 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/slspublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20SEPT%202014.pdf>

<p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>					
<p><b>Guardianship of Children</b></p> <p><i>Do parents have equal rights over the guardianship of their children? If no, who has priority right over the guardianship of the child? Is guardianship decided based on the best interest of the child?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>Under the former regime, both Sunni and Shia fathers had priority right over the guardianship of their children under Articles 71(1), 252 and 256, 268 of the Civil Code<sup>67</sup> and Article 45 and 47(2) of the SPSL<sup>68</sup>.</p> <p>Under the Taliban rule, no law or pronouncements have been made regarding the guardianship of children.</p>				
<p><b>Family Planning</b></p> <p><i>Do women require the consent of the husband to practise family planning, including abortions and sterilisation in law or in</i></p>	<p>Under the former regime, Article 5 of the EAW law guaranteed women's access to health services, including contraceptives. It also made the prohibition against women from accessing health services an act</p>				<p>With the collapse of the health system, women's maternal health has been severely affected. In a BBC article, a new mother said: "It was one of the worst experiences I've ever had in my job. It was too painful. But this is</p>

<sup>67</sup> Articles 71(1), 252, 256, 268 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/slspublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20SEPT%202014.pdf>

<sup>68</sup> Article 45 and Article 47() of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

<p><i>practice?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(e), 12 Paras. 21-23 GR21</p>	<p>of violence against women.<sup>69</sup></p> <p>Abortion was also generally prohibited under Article 402 of the Penal Code save for exceptions in Article 404.<sup>70</sup></p> <p>Under the Taliban rule, no law or pronouncements have been made regarding the guardianship of children.</p>			<p>our story every night and every day in the hospital since the Taliban took over."<sup>71</sup></p> <p>Afghanistan has 4.6 medical doctors, nurses, and midwives per 10,000 people, far below the threshold for critical shortage of 23 healthcare professionals per 10,000 people as defined by the World Health Organization. Women often struggle to access care due to costs, including for transportation to a health facility, and for medications and supplies for which patients are obliged to pay.<sup>72</sup></p> <p>Afghanistan's population is estimated to be 41.7m in 2021, of whom 51 per cent are men and 49 per cent are women. A staggering 47 per cent of the population are under 15 years old, giving Afghanistan one of the</p>
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<sup>69</sup> Article 5 of the Law on the Elimination of the Violence against Women (2009), <https://www.refworld.org/cgi-bin/telex/vtx/rwmain?page=search&docid=5486d1a34&skip=0&query=law%20of%20elimination%20of%20violence%20against%20women&coi=AFG>  
<http://law.acku.edu.af/fa/download/file/fa/38516/49766>

<sup>70</sup> Articles 402, 404, Penal Code (1976), Link: [http://old.moj.gov.af/Content/files/OfficialGazette/01201/OG\\_01260.pdf](http://old.moj.gov.af/Content/files/OfficialGazette/01201/OG_01260.pdf)

<sup>71</sup> BBC, 'Giving birth under the Taliban,' 20 September 2021. Link: <https://www.bbc.com/news/world-asia-58585323>

<sup>72</sup> Human Rights Watch, 'I Would Like Four Kids — If We Stay Alive. Women's Access to Health Care in Afghanistan,' 6 May 2021. Link: <https://www.hrw.org/report/2021/05/06/i-would-four-kids-if-we-stay-alive/womens-access-health-care-afghanistan>

				<p>highest youth populations in the world. With a projected population growth rate of 2.3 per cent per annum, one of the steepest in the region, the country's financially-dependent youth population is set to grow even further.<sup>73</sup></p> <p>According to World Bank data, the total fertility rate decreased from 7.5 children per woman in 1960 to 4.7 in 2015.<sup>74</sup></p> <p>According to Afghanistan's 2015 Demographic and Health Survey:<sup>75</sup></p> <p>The median birth interval in Afghanistan is 28.4 months, with 32% of children being born less than 24 months after their siblings;</p> <p>25% of married women have an unmet need for family planning services, with 18% having an</p>
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<sup>73</sup> UN Office for the Coordination of Humanitarian Affairs (OCHR), 'Afghanistan Humanitarian Needs Overview 2022 (January 2022),' 8 January 2022  
Link: <https://reliefweb.int/report/afghanistan/afghanistan-humanitarian-needs-overview-2022-january-2022>

<sup>74</sup> World Bank, "Fertility rates, total (births per woman)", <http://data.worldbank.org/indicator/SP.DYN.TFRT.IN>

<sup>75</sup> Afghan Central Statistics Organisation, Afghan Ministry of Public Health and the DHS Program, "Afghanistan Demographic and Health Survey 2015", Tables 5.5, 7.1, 7.3, 7.12.1, pp. 86, 112, 114, 120, [https://www.rhsupplies.org/uploads/tx\\_rhscpublications/Afghanistan\\_-\\_2017.pdf](https://www.rhsupplies.org/uploads/tx_rhscpublications/Afghanistan_-_2017.pdf)

					<p>unmet need for spacing and 7% an unmet need for limiting of children;</p> <ul style="list-style-type: none"> <li>• 23% of married women are using a method of contraception, with 20% of women using a modern method; and</li> <li>• Knowledge of at least one method of family planning is high (95%) among married women in Afghanistan.</li> </ul> <p>According to reports by the UNFPA as well as the media, while there is increasing acceptance of family planning within Afghan society, obstacles still exist. Such obstacles include: (i) family planning still being viewed as taboo; and (ii) scepticism regarding modern methods of contraceptives.<sup>76</sup></p>
<b>Personal rights of spouses</b>	Under the former regime, Articles 22, 24, 39 48 of the 2004 Constitution guaranteed		“Women travelling for more than 72km (45 miles) should not be offered a ride if they are not		Under Taliban rule, women, except for some teachers, health and NGO workers, are largely

<sup>76</sup> UNFPA, “Acceptance of family planning grows in Afghanistan, but myths linger”, 2015, <http://www.unfpa.org/news/acceptance-family-planning-grows-afghanistan-myths-linger>; Waslat Hasrat-Nazami, “Afghan women use abortion as a way out”, *DW*, 5 May 2014, <http://www.dw.com/en/afghan-women-use-abortion-as-a-way-out/a-17612865>

<p><i>Does a woman need the consent of her spouse or guardian to work, choose a profession, leave the house, travel, drive, receive various health services, study, etc. on her behalf? Does a woman have the right to retain her birth name upon marriage or to choose her family name? Can a woman protect her personal rights through her marriage contract?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(g) Para. 24 GR21 Para. 34 GR29</p>	<p>gender equality, liberty, right to travel outside Afghanistan and return, right to settle in any part of the country, and, the right of work.<sup>77</sup> Further, Article 5 of the ERAW law prohibited the denial of women's work outside the house as an act of violence against women.<sup>78</sup></p> <p>Under Taliban rule, these rights have been curtailed.</p> <p><b>Short explanatory and executive plan for religious hijab</b> In the name of God, Most Gracious, Most Merciful Although there have been regular and continuous programs to make women unveiled in the country for a long time, fortunately, 99% of the zealous women of the Mujahideen nation observe the</p>		<p>accompanied by a close family member," ministry spokesman Sadeq Akif Muhajir said, specifying that the companion must be male.<sup>80</sup></p> <p>Khalid Hanafi, acting head of the Taliban's Ministry of Promoting Virtue and Prohibiting Virtue, told a meeting on Saturday (7 May 2022) to implement the hijab that they were trying to do what Islam had said.</p> <p>"For us, Islamic principles and Islamic theory are more important than anything else. We can be shot at anything, but we cannot ignore an Islamic ruling." Mohammad Sharif, the head of the Supreme Court, said at the meeting that observing the hijab is not a matter for the Islamic Emirate, but a divine matter that they must implement.</p>	<p>prohibited from working.<sup>81</sup> On 14 December 2021, Nada Al-Nashif, UN Deputy High Commissioner for Human Rights addressed the UN on the situation of Afghanistan. She stated:</p> <p>"Women and girls in particular face great uncertainty with respect to the rights to education, to livelihoods and to participation, in which they had made important gains in the past two decades.</p> <p>The decree on women's rights issued by the de facto authorities on 3 December represents an important signal but leaves many questions unanswered. (...) [it does not] refer to any wider women and girls' rights to education, to work, to freedom of movement, or to participate in public life.</p>
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<sup>77</sup> Afghanistan's Constitution (2004), [https://www.constituteproject.org/constitution/Afghanistan\\_2004.pdf?lang=en](https://www.constituteproject.org/constitution/Afghanistan_2004.pdf?lang=en)

<sup>78</sup> Law on the Elimination of the Violence against Women (2009), [http://mowa.gov.af/Content/files/EVAW%20Law%20Report\\_Final\\_English\\_17%20%20March%202014.PDF](http://mowa.gov.af/Content/files/EVAW%20Law%20Report_Final_English_17%20%20March%202014.PDF)  
<http://law.acku.edu.af/fa/download/file/fa/38516/49766>  
<https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=5486d1a34&skip=0&query=law%20of%20elimination%20of%20violence%20against%20women&coi=AFG>

<sup>80</sup> Al Jazeera, 'No long-distance travel for women without male relative: Taliban,' 26 December 2021.

Link: <https://www.aljazeera.com/news/2021/12/26/afghanistan-long-distance-travel-women-without-male-escort-taliban>

<sup>81</sup> Nada Al-Nashif, UN Deputy High Commissioner for Human Rights (OHCHR), 'Oral Update on Situation of Human Rights in Afghanistan' 14 December 2021. Link: <https://www.ohchr.org/en/statements/2021/12/oral-update-situation-human-rights-afghanistan>

	<p>hijab in accordance with the principles of Islamic law and tradition. For others, since there are no excuses or obstacles, they must abide by this obligatory Shari'a ruling. The ruling on hijab is obligatory for adult and noble Muslim women to observe the religious hijab.</p> <p>The definition of hijab: Any clothing that covers the body is considered hijab, but this clothing should not be as thin as the body can be seen from it or it is not so narrow as to show the protrusions of the body organs.</p> <p>The Hijab, chadri, or burqa, which has been a part of Afghan dignified culture in the country for centuries, is the best type of religious hijab.</p> <p>A black dress and chador called hijab is also a religious hijab, but it should not be tight.</p> <p>T</p>			<p>Women, except for some teachers, health and NGO workers, are largely prohibited from working — and may not take products to market due to the local de facto authorities' closure of women-operated bazaars. Many Afghan women and girls now have to be accompanied by a male relative, whenever they leave their residence. These are strictly enforced in some places, but not all.<sup>82</sup></p> <p>According to Afghanistan's 2015 Demographic and Health Survey:<sup>83</sup></p> <ul style="list-style-type: none"> <li>● Only 13% of married Afghan women were employed at the time of the survey;</li> <li>● 41% of married women earning cash made independent decisions on how to spend their earnings;</li> <li>● 61% of married women aged 15-49 do not own a house while 74% do not own land;</li> </ul>
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<sup>82</sup> Nada Al-Nashif, UN Deputy High Commissioner for Human Rights (OHCHR), 'Oral Update on Situation of Human Rights in Afghanistan' 14 December 2021. Link: <https://www.ohchr.org/en/statements/2021/12/oral-update-situation-human-rights-afghanistan>

<sup>83</sup> Afghan Central Statistics Organisation, Afghan Ministry of Public Health and the DHS Program, "Afghanistan Demographic and Health Survey 2015", Tables 15.1, 15.2.1, 15.4.1, 15.6.1, 15.7.1, pp. 257, 258, 261, 264, 266-267, [https://www.rhsupplies.org/uploads/tx\\_rhscpublications/Afghanistan\\_-\\_2017.pdf](https://www.rhsupplies.org/uploads/tx_rhscpublications/Afghanistan_-_2017.pdf)



	<p>he first and best sign of observing the hijab is not to leave the house.</p> <p>In cases of observance of hijab, women who are not old or young in terms of life, should definitely cover their faces when facing a non-mahram man due to the possibility of seduction (sedition) according to the Shari'a, except for their eyes.</p> <p>The benefits of observing the hijab are the religious hijab of God Almighty, and observing it is an obedience to His commands. Hijab is the privilege of Muslims and noblewomen. They are safe from the veil of disobedience and sin. They have dignity. They are safe from the evil and corruption of the oppressors. They are not hunted by seditionists and conspiracy theorists.</p> <p>Methods and steps of applying hijab:</p>			<p>among women who do own assets, 17% and 10% of women own a house and land by themselves, respectively;</p> <ul style="list-style-type: none"> <li>• 33% of married women participate either alone or jointly with their husband in making decisions pertaining to their own healthcare, major household purchases, and visits to their family or relatives; and</li> <li>• 80% of married women accept at least one reason as a justification for wife beating. Women are most likely to agree that if a wife goes out without telling her husband, it justifies wife beating (67%).</li> </ul> <p>According to World Bank data, female labour force participation increased from 16% in 1990 to 19% in 2016.<sup>84</sup> During the same period, male labour force participation remained stable at 84%.<sup>85</sup></p>
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<sup>84</sup> World Bank, "Labour force participation rate, female (% of female population ages 15+) (modelled ILO estimate)", <http://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS>

<sup>85</sup> World Bank, "Labour force participation rate, male (% of male population ages 15+) (modelled ILO estimate)", <http://data.worldbank.org/indicator/SL.TLF.CACT.MA.ZS>

	<p>1- Encouraging, and propagating the ruling on the importance and benefits of hijab and the harms of not wearing hijab through the media and pulpits. Writing persuasive sentences and installing billboards about hijab in markets, parks, and other public places.</p> <p>2- Punishment and intimidation, if the hijab is not observed, it will be addressed to the house of a woman without a hijab and her guardian (Muharram man) will be advised and punished.</p> <p>If it is repeated a second time, Vali (Muharram man) will be summoned to the relevant department.</p> <p>If it is repeated for the third time, Vali (the Muharram man) will be imprisoned for three days. If it is repeated for the fourth time, the guardian (Muharram man) will be introduced to the court and will be sentenced to punishment. Those women who work in the institutions of the Islamic Emirate and do not wear the hijab should be fired.</p>				<p>According to the 2016 UNDP Human Development Report:<sup>86</sup></p> <ul style="list-style-type: none"> <li>● 9% of women over 25 have at least some secondary education as compared to 35% of men of the same age group;</li> <li>● 46% of females aged 15-24 are able to read and write a short simple sentence as compared to 70% of males in the same age group; and</li> <li>● 45% of women are satisfied with their freedom of choice as compared to 51% of men.</li> </ul>
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<sup>86</sup> UNDP, "Human Development Report 2016", Tables 5, 9, 14, pp. 214-217, 230-233, 250-253, <https://www.un-ilibrary.org/content/books/9789210600361>

	<p>If the wives (women) and daughters of government officials do not observe the hijab, their work should be suspended.</p> <p>Assigned staff</p> <p>1- Sheikh Mawlawi Mohammad Khalid Hanafi, Chairman of the Board</p> <p>2- Sheikh Mawlawi Abdul Hakim Sahib - Member of the Board</p> <p>3- Sheikh Molavi Noor Mohammad Saqib - Member of the Board</p> <p>4- Sheikh Mawlawi Shahabuddin Delavar-Member of the Board</p> <p>5- Sheikh Mawlawi Farid al-Din Mahmoud, member</p> <p>6- Sheikh Rumi Noorullah Munir - Membership</p> <p>7- Sheikh Mawlawi Noorulhaq Anwar – Membership</p> <p>On 26 September 2021, Taliban's Ministry of Promotion of Virtue and Prevention of Vice, said women travelling for more than 45 miles (72km) should be accompanied by a close male family member. The document calls on vehicle owners to refuse rides to women not wearing Islamic head or face coverings, although it does not say which type of covering to use. Most</p>				
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	Afghan women already wear headscarves. <sup>79</sup>				
<p><b>Inheritance rights</b></p> <p><i>Are women and men in the same degree of relationship to a deceased entitled to equal shares in the estate and to equal rank in the order of succession? Are there procedures to address any inequalities in inheritance between women and men e.g. can a will be written, can beneficiaries agree to inherit equal shares of the estate or can the children agree to forgo their inheritance in favour of their mother upon the death of their father?</i></p> <p><u>Applicable CEDAW Provision</u></p>	<p>Under the former regime, inheritance rights between women and men are generally unequal for both Sunnis and Shia under Article 2007 of the Civil Code and Article 219 of the SPSL (although there are exceptions to the general rule.) Under Taliban rule, no law on inheritance has been announced, save for a 3 December 2021 Decree in which paragraph 4 states: “Receiving dowry from the new husband is the religious right of a widow” and paragraph 5 states: The wife has the right to inherit and a fixed share in the property of the deceased husband, children, father, and other relatives, and no one can deprive her of her right.”</p>				<p>Sometime late May 2022, 8am Newspaper reported: “A woman in Helmand was killed by her brothers after claiming inheritance.”<sup>87</sup></p> <p>In practice, it is difficult for a woman to exercise her inheritance rights because:<sup>88</sup></p> <ul style="list-style-type: none"> <li>• Men often deprive women of their inheritance rights;</li> <li>• Women in turn do not ask for their inheritance because such requests are deemed dishonourable and not socially acceptable; and</li> <li>• In instances where women are courageous enough to ask for their inheritance, their access to justice is limited because</li> </ul>

<sup>79</sup> BBC, ‘Afghanistan’s Taliban ban long-distance road trips for solo women,’ 27 December 2021. Link: <https://www.bbc.com/news/world-asia-59800113>

<sup>87</sup> 8 am, ‘A woman in Helmand was killed by her brothers after claiming inheritance’, 27 May 2022. Link: [https://8am.af/a-woman-in-helmand-was-killed-by-her-brothers-after-claiming-inheritance/?fbclid=IwAR0rM1GgDEAtsVJzxiHB4S\\_PJnqzHS-i5p0kqoFR2GvIxn-sUj30FNeIze4](https://8am.af/a-woman-in-helmand-was-killed-by-her-brothers-after-claiming-inheritance/?fbclid=IwAR0rM1GgDEAtsVJzxiHB4S_PJnqzHS-i5p0kqoFR2GvIxn-sUj30FNeIze4)

<sup>88</sup> Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), para. 299. Link: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&CountryID=1&DocTypeID=29](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&CountryID=1&DocTypeID=29)

<p>Paras. 34-35 GR21 Paras. 49-53 GR29</p>					<p>women's issues are not frequently considered by the competent authorities.</p>
<p><b>Violence against women in the family</b></p> <p><i>Are there laws that define what constitute domestic violence such as battery, female circumcision, marital rape and other forms of sexual assault and violence that affect a woman's mental health which are perpetuated by traditional attitudes? Is there specific legislation that recognises domestic violence as a crime? Is the husband allowed to discipline his wife? Can a suspected perpetrator marry his alleged abused victim to avoid punishment? Are there</i></p>	<p>Under the former regime, Article 6 of the Constitution protected the liberty and human dignity of a person<sup>89</sup> and all forms of violence were criminalised under ERAW Law.<sup>90</sup></p> <p>Under Taliban rule, no law on violence against women have been made, save for the decrees aforementioned.</p>				<p>On 26 May 2022, referring to the above-mentioned policies and practices of Taliban, Richard Bennett, UN special rapporteur on human rights in Afghanistan informed reporters: "These policies show a "pattern of absolute gender segregation and are aimed at making women invisible in the society".<sup>91</sup></p> <p>Bennett's statement comes after several high-level statements made in respect to the widespread and systematic violence committed by the Taliban, or otherwise encouraged as a result of their policies.</p> <p>In an Oral update on the situation of human rights in Afghanistan, Nada Al-Nashif, UN Deputy High</p>

<sup>89</sup> Article 48 of the Afghanistan's Constitution (2004), [https://www.constituteproject.org/constitution/Afghanistan\\_2004.pdf?lang=en](https://www.constituteproject.org/constitution/Afghanistan_2004.pdf?lang=en)

<sup>90</sup> Article 5 of the Law on the Elimination of the Violence against Women (2009), <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=5486d1a34&skip=0&query=law%20of%20elimination%20of%20violence%20against%20women&coi=AFG>

<sup>91</sup> France 24, 'Taliban 'making women invisible' in Afghanistan: UN expert' 26 May 2022.  
Link: <https://www.france24.com/en/live-news/20220526-taliban-making-women-invisible-in-afghanistan-un-expert>

<p><i>support services for women who are the victims of aggression or abuses?</i></p> <p><u>Applicable CEDAW Provision</u> GRs 12 &amp; 19 Para. 40 GR21</p>				<p>Commissioner for Human Rights cited: “increased reports that we receive of women victims of violence who are unable to seek safety and justice. Women's protection shelters in Afghanistan have been closed, and most incidents of violence and harmful practices against women and girls will increasingly go unreported or left to be resolved through traditional dispute resolution mechanisms.</p> <p>Afghanistan's burgeoning civil society has also been uprooted and attacked. Since August, (...) civil society activists and (...) journalists have been killed, with others injured in attacks by unidentified armed men.</p> <p>By December 2021, the United Nations Assistance Mission in Afghanistan (UNAMA) documented 59 apparently arbitrary detentions, beatings, and threats of civil society activists, journalists, and staff of the Afghanistan Independent Human Rights Commission.</p> <p>Several women's rights defenders have been threatened, and there is widespread fear of</p>
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				<p>reprisals since the violent crackdown (...)</p> <p>Meanwhile critical aspects of the criminal justice system remain unclear, including the roles of prosecutors and defence lawyers, as well as the applicability of the criminal procedure code.”</p> <p>With the clamp down on WHRDs and civil society who once used to serve survivors of violence, it is likely that survivors have nowhere else to turn to.</p> <p>On 4 November 2021, the UN Special Rapporteur on Violence Against Women, Ms. Reem Alsalem, sent a communication to the Taliban citing the institutionalization of large-scale, systematic gender-based discrimination, violence against women in Afghanistan.</p> <p>In January 2022, 25 UN experts came together to state “Today, we are witnessing the attempt to steadily erase women and girls from public life in Afghanistan, including in institutions and mechanisms previously set up to assist and protect those women and girls who are most at risk.”</p>
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				<p>they take refuge in protection centres?”<sup>92</sup></p> <p>In an opinion piece on Oxford Human Rights Hub, it was stated: “While previously the EAW Law provided crucial support for Afghan women, under the current regime there is no similar law or court. The lack of a provision to prosecute crimes committed against women has created an environment of impunity for the perpetrators, making violence normal and acceptable. (...) in one case a woman went to court to file a claim against her husband. A decision was made by the person in charge of security at the gates of the court that the woman must either live with her husband with dignity or be sent to prison.”</p> <p>Violence in Afghanistan is rife. According to the most recent <a href="#">evaluation</a> by the former regime Ministry of Women’s Affairs (before the fall of Afghanistan), more than half of all Afghan</p>
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<sup>92</sup> Geneva Solutions, ‘No safety under Taliban for Afghan women fleeing domestic violence,’ (undated). Link: <https://genevasolutions.news/explorations/dispatches-from-women-in-afghanistan/no-safety-under-taliban-for-afghan-women-fleeing-domestic-violence>

Amnesty International, ‘Afghanistan survivors of gender-based violence abandoned following Taliban takeover,’ 6 December 2021. Link: [www.amnesty.org/en/latest/news/2021/12/afghanistan-survivors-of-gender-based-violence-abandoned-following-taliban-takeover-new-research/](http://www.amnesty.org/en/latest/news/2021/12/afghanistan-survivors-of-gender-based-violence-abandoned-following-taliban-takeover-new-research/)

				<p>women reported experiencing at least one type of physical, sexual or psychological violence between 2016-2020, and more than 60 per cent were married without their consent.<sup>93</sup></p> <p>According to Afghanistan's 2015 Demographic and Health Survey:<sup>94</sup></p> <ul style="list-style-type: none"> <li>• Overall, 56% of married women aged 15-49 reported having experienced emotional, physical and/or sexual violence from their spouse at least once, and 52% reported having experienced one or more of these forms of violence in the past 12 months;</li> <li>• 37% of married women aged 15-49 reported having experienced emotional violence from their spouse at least once, and 34% reported having experienced such violence within the 12 months prior to</li> </ul>
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<sup>93</sup> Islamic Republic of Afghanistan, 'Strategy and National Action Plan 2016 – 2020,' (undated). Link: [https://www2.unwomen.org/-/media/field%20office%20eseasia/docs/publications/2017/01/aco\\_evawstrategy\\_jan17\\_email-r2.pdf?vs=1821](https://www2.unwomen.org/-/media/field%20office%20eseasia/docs/publications/2017/01/aco_evawstrategy_jan17_email-r2.pdf?vs=1821)

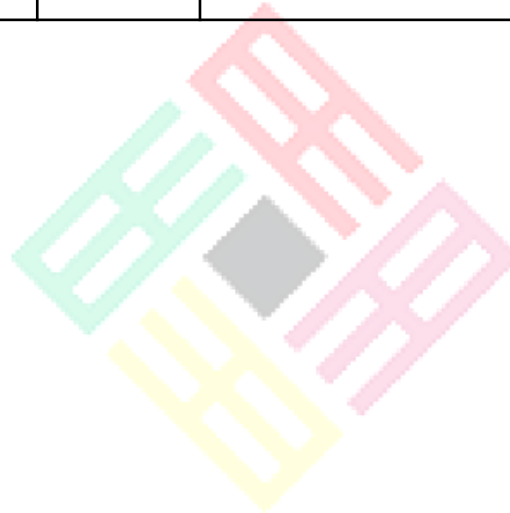
<sup>94</sup> Afghan Central Statistics Organisation, Afghan Ministry of Public Health and the DHS Program, "Afghanistan Demographic and Health Survey 2015", Tables 16.5, 16.10, 16.13, pp. 282, 293, 296-297, [https://www.rhsupplies.org/uploads/tx\\_rhscpublications/Afghanistan\\_-\\_2017.pdf](https://www.rhsupplies.org/uploads/tx_rhscpublications/Afghanistan_-_2017.pdf)

				<p>the survey;</p> <ul style="list-style-type: none"> <li>• 51% of married women aged 15-49 reported having experienced physical violence from their spouse at least once, and 46% reported having experienced such violence within the 12 months prior to the survey;</li> <li>• 7% of married women aged 15-49 reported having experienced sexual violence from their spouse at least once, and 6% reported having experienced such violence within the 12 months prior to the survey;</li> <li>• Among married women who had experienced spousal violence (physical or sexual) in the past 12 months, 26% reported experiencing physical injuries; and</li> <li>• It is not common for women in Afghanistan to seek assistance from any source for violence they have experienced. 61% of women never sought help and never told anyone about the violence they have</li> </ul>
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					<p>experienced.</p> <p>According to the former Afghan government report, before the fall of Afghanistan:<sup>95</sup></p> <ul style="list-style-type: none"> <li>• The influence of the Taliban has led to the increase of violence in certain areas, which adversely affects women. Women in more volatile areas such as the southern and eastern provinces do not have as much access to legal remedies, NGO assistance or health and educational services.</li> </ul>
<p><b>Nationality rights</b></p> <p><i>Does a wife have the right to confer her citizenship on foreign husbands and children? Can the nationality of an adult woman be arbitrarily removed because of marriage or dissolution of marriage or because her</i></p>	<p>Under the former regime, an Afghan woman or man could pass their nationality to their non-Afghan spouses provided: (i) they are married in accordance with <i>Shari'ah</i>; (ii) an application in writing for the non-Afghan spouse to obtain Afghan nationality is made and approved; and (iii) the foreign spouse does not hold dual</p>				

<sup>95</sup> Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), paras. 44, 52-53, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&CountryID=1&DocTypeID=29](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&CountryID=1&DocTypeID=29)

<p><i>husband or father changes his nationality?</i> <u>Applicable CEDAW Provision</u> Article 9 Para. 6 GR21</p>	<p>citizenship.<sup>96</sup>  Under Taliban rule, no law or pronouncements has been made with regard to nationality rights.</p>				
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<sup>96</sup> Article 18 of the Law on Citizenship of the Islamic Emirate of Afghanistan (2000), <http://www.refworld.org/docid/404c988d4.html>

**ACCESS TO JUSTICE (please include sources to information as much as possible)**

SYSTEM	PROCEDURES	CHALLENGES FOR WOMEN	GOOD PRACTICES IN COURT SYSTEM
<p><i>How are Muslim family law (i.e. marriage and family related) cases administered in your country? (E.g. Do you have a Qazi/Kadhi court system, family courts or civil courts?)</i></p> <p>As the justice system has collapsed, and, for several months, lawyers were in fear of returning to court, only a handful of human rights lawyers have been able to share their personal experience of the cases which they followed in the Taliban courts, primarily in Kabul. Based on a focus group discussion with 9 human rights/defence lawyers held on 17 May 2022 in Kabul, family courts are closed throughout Afghanistan, but family cases are being heard by civil courts. In the primary courts, the Taliban judges receive the litigants' petitions and write an order. Proper trial processes and processes leading to the drafting of a judgment is not applied.</p> <p><i>How many courthouses/court rooms around the country that administer Muslim family law cases?</i></p> <p>This data is not available.</p> <p><i>If civil or Kadhi courts - what cases are handled by what courts?</i></p> <p>This data is not available.</p> <p><i>How many Muslim family law-related judges? Are there women working within the court system as judges/marriage registrars e.t.c?</i></p> <p>Based on the said focus group discussion, there are no female judges left in the courts of</p>	<p><i>Are the procedures pertaining to family matters (e.g. divorce, maintenance etc) are defined in the family law and/or are there guidelines/policies available for judges/Kadhis?</i></p> <p>Taliban courts are using a varied mix of laws from the following sources:</p> <ol style="list-style-type: none"> <li>1- Al Rad ul Mukhtar (الرد المختار)</li> <li>2- Alfotawi Altanqih al hamidia (الفتاوى التنقيح الحامديه)</li> <li>3- Alfotawi Alhindia (الفتاوى الهنديية)</li> <li>4- Alfotawi Alkamilia (الفتاوى الكاملية)</li> <li>5- Al Bahr ul Raheq (البحر الرائق)</li> <li>6- Mujalatul Ahkam (مجلة الاحكام)</li> <li>7- Al-Ahkam Magazine</li> <li>9- The book of Hanafi jurisprudence of Imam Alwadin Kasani</li> <li>10- The book of Sham (no further details provided)</li> <li>11- Hedayeh.</li> </ol>	<p><i>What are some key challenges that Muslim women face in accessing justice on family law matters? (E.g. lack of accessibility, costly, bad procedures, delayed processes, gender insensitive judges, etc?)</i></p> <p>In Kabul, women lawyers can still practise law and represent their clients in court. However, women (especially ethnic minorities) and their lawyers face discrimination and hostility in the courts. Women and their lawyers are also scrutinised, reprimanded and degraded for the appropriateness of their clothes, colour of their clothes, inability to speak Pashto and for pursuing their rights in family courts. Women lawyers are also often accused of being agents of the west, for promoting promiscuity and devaluing Islam and Afghan culture. Some have also been accused for prostituting their clients. One lawyer from the focus group discussion said: I was helping my client divorce due to absence. The judge asked me: "how much did you get paid to deal with this case?". He also accused me of trying to prostitute my client."</p>	<p><i>Are there any good practices, procedures or policies that you would like to share pertaining to how courts in your country deal with family law cases?</i></p> <p>No. (E.g. prioritising certain types of cases, timely delivery of decisions, clear procedure, etc)</p> <p>No.</p>

<p>Afghanistan. Instead, <a href="#">after the fall of Afghanistan, women judges were persecuted by the Taliban and other criminals, and, forced into hiding</a>. Many have since fled Afghanistan. <i>Do lawyers represent clients?</i> Based on the said focus group discussion, lawyers can access the courts to represent their clients but are often disrespected by Taliban judges and other staff of the courts.</p>	<p>The Taliban courts also use administrative and legal principles in the following books: Administrative Principles of the Courts of Justice of the Islamic Emirate of Afghanistan (2014) and Principles of Execution of Judicial Legal Trials (2014). These books describe how and when cases are handled. None of the abovementioned sources have been officially gazetted by the Taliban. <i>In general practice do judges/Kadhis follow procedures?</i> <i>As above.</i> <i>How much judicial discretion do judges/Kadhis have over marriage and family matters?</i></p> <p>They exercise full discretion.</p> <p><i>Are there appeal processes?</i> <i>Yes there are appeal processes to the secondary court and Supreme Court.</i></p>	<p>Some women lawyers had to appear in court with their own <i>mahram</i> and in one case, the <i>mahram</i> had to wear the Pashtun traditional headgear. One of the lawyers from the focus group discussion said: “There is racial, gender, and ethnic discrimination in the Taliban's behavior in the courts. Judges and court officials do not treat people, lawyers, and prosecutors well. They even treat women insultingly.”</p> <p>Another said: “Recently, one of the judges told my client not to bring her lawyer to court because she read an offensive law.”</p> <p>The courts have become a site of violence against women (both women seeking justice and their lawyers). One lawyer said: “Judges behave in such a way that citizens refuse to refer cases to court. I will not continue my work as a defense lawyer.”</p> <p>In most cases, women are not represented or even present in court. In those cases, they are represented by their husbands (even if they are defendants in the case) or their fathers/brothers. The overall lawlessness and absence of the rule of law makes the Taliban justice system unreliable, inconsistent and unpredictable. “The jurisdiction of</p>	
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		<p>the courts is not defined by the Supreme Court. Judges come with no to low educational backgrounds and they have little experience adjudicating people's challenges."</p> <p>With the fall of the previous regime, safe houses were closed for the victims. Some women who have been imprisoned for prostitution are being held in Pul-e-Charkhi prison, the largest prison facility in Afghanistan. The prison was historically used to hold highly dangerous criminals. One lawyer said: "Some health workers told us that women in prison are being sexually abused by the Taliban prison guards."</p>	
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