

Gender Dynamics in Access to Justice in Afghanistan

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ABBREVIATIONS AND ACRONYMS

AGO	Attorney General's Office
AIHRC	Afghan Independent Human Rights Commission
AJSRP	Afghanistan Justice Sector Reform Project
ANP	Afghan National Police
CDC	Community Development Council
CSO	Central Statistics Office
DoJ	Department of Justice
DoWA	Department of Women's Affairs
EVAW	Elimination of Violence against Women
FGD	Focus group discussion
FRU	Family Response Unit
JSDP	Justice Service Delivery Project
KII	Key informant interview
km	Kilometer
MoJ	Ministry of Justice
MoWA	Ministry of Women's Affairs
NGO	Non-governmental organization
NRVA	National Risk and Vulnerability Assessment
PSU	Primary Sampling Unit
SC	Supreme Court
UNHCR	United Nations High Commissioner for Refugees
USAID	United States Agency for International Development
USIP	United States Institute of Peace

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Contents

ACKNOWLEDGEMENTS	I
ABBREVIATIONS AND ACRONYMS.....	II
EXECUTIVE SUMMARY	VI
1. STUDY CONTEXT AND METHODOLOGY	1
1.1 BACKGROUND	1
1.2 STUDY OBJECTIVES AND ANALYTICAL FRAMEWORK	2
1.3 LEGAL FRAMEWORK	3
1.4 JUSTICE INSTITUTIONS	3
1.5 STUDY METHODOLOGY.....	7
1.6 ORGANIZATION OF THIS REPORT	10
2. FINDINGS.....	11
2.1 INTRODUCTION.....	11
2.2 PROFILE OF HOUSEHOLD SURVEY RESPONDENTS AND USERS	11
2.3 DISPUTES	12
2.4 DISPUTE RESOLUTION	15
2.5 LEVEL OF SATISFACTION WITH PROCESS AND OUTCOMES	24
2.6 BARRIERS TO ACCESSING JUSTICE SERVICES	27
2.7 CONCLUSION.....	40
3. CONCLUSIONS AND IMPLICATIONS	43
3.1 EXPERIENCE IN NON-STATE JUSTICE INSTITUTIONS	43
3.2 ACCESS TO STATE JUSTICE INSTITUTIONS	44
3.3 IMPROVING THE EXPERIENCE IN STATE JUSTICE INSTITUTIONS	44
3.4 WORKING THROUGH OTHER SECTORS	45
4. BIBLIOGRAPHY.....	46
ANNEX 1. METHODOLOGY	49
ANNEX 2. ADDITIONAL FIGURES AND TABLES	58
ANNEX 3. GLOSSARY	61
ANNEX 4. SURVEY QUESTIONNAIRES (SAMPLE)	63
ANNEX 5. OVERVIEW OF LAWS AND NORMS REGULATING MATTERS AFFECTING WOMEN’S STATUS IN AFGHANISTAN	103

TABLES

TABLE 1.1 EXAMPLES OF THE APPLICATION OF STATE LAW, SHARI’A, AND CUSTOMARY RULES	4
TABLE 1.2 TOOLS USED IN THE STUDY	8
TABLE 1.3 SURVEY PROVINCE PROFILE.....	10
TABLE 2.1 DIFFERENCES BETWEEN THE HOUSEHOLD AND USER SURVEY RESPONDENTS (%)	12
TABLE 2.2 PERCENTAGE OF USERS WHO HAD TO PAY BRIBES.....	24

TABLE 2.3 NUMBER OF USERS WHO HAD OUTCOMES ON THEIR CASES	27
TABLE 2.4 AVERAGE DISTANCE OF JUSTICE INSTITUTION FROM THE SURVEYED VILLAGES (KM).....	29
TABLE 2.5 AWARENESS OF THE ROLE OF STATE JUSTICE INSTITUTIONS (HOUSEHOLD SURVEY) (%).....	29
TABLE 2.6 AVAILABILITY OF STATE JUSTICE INSTITUTIONS AT DISTRICT AND PROVINCIAL LEVELS.....	37
TABLE 2.7 WOMEN STAFF IN STATE JUSTICE INSTITUTIONS.....	38
TABLE 2.8 NUMBER OF WOMEN LEGAL WORKERS IN SURVEYED PROVINCES	38
TABLE 2.9 NUMBER OF STATE INSTITUTION USERS BY TYPE OF DISPUTE.....	40
TABLE A2.1 OVERVIEW OF QUANTITATIVE AND QUALITATIVE TOOLS USED IN THE STUDY	49
TABLE A2.2 NUMBER OF PSUs BY DISTRICT AND PROVINCE	51
TABLE A2.3 NUMBER OF RESPONDENTS OF HOUSEHOLD SURVEY BY PROVINCE AND GENDER.....	52
TABLE A2.4 PERCENTAGE OF RURAL HOUSEHOLDS IN HOUSEHOLD SURVEY BY PROVINCE	52
TABLE A2.5 NUMBER OF RESPONDENTS IN USER SURVEY BY PROVINCE AND GENDER.....	53
TABLE A2.6 INSTITUTIONS WHERE THE USERS WERE FOUND (%).....	53
TABLE A2.7 JUSTICE SERVICE PROVIDER SURVEYED BY PROVINCE.....	55
TABLE A2.8 FOCUS GROUP DISCUSSIONS BY PROVINCE	56
TABLE A2.9 KEY INFORMANTS INTERVIEWED BY PROVINCE	57

FIGURES

FIGURE 1.1 STATE JUSTICE INSTITUTIONS IN AFGHANISTAN	5
FIGURE 2.1 PREVALENT DISPUTES: WOMEN.....	13
FIGURE 2.2 PREVALENT DISPUTES: MEN	13
FIGURE 2.3 WOMEN’S MOST PREVALENT DISPUTES BY PROVINCE.....	14
FIGURE 2.4 HYPOTHETICAL CHOICE OF INSTITUTION FOR DISPUTE RESOLUTION: WOMEN. 16	
FIGURE 2.5 HYPOTHETICAL CHOICE OF INSTITUTION FOR DISPUTE RESOLUTION: MEN	16
FIGURE 2.6 WOMEN’S HYPOTHETICAL CHOICE OF INSTITUTIONS TO ADDRESS DIVORCE, BY PROVINCE.....	17
FIGURE 2.7 WOMEN’S HYPOTHETICAL CHOICE OF INSTITUTIONS FOR ADDRESSING VIOLENCE AGAINST WOMEN, BY PROVINCE.....	18
FIGURE 2.8 REASONS FOR NOT TAKING ACTION IN HYPOTHETICAL CASES OF INHERITANCE AND VIOLENCE AGAINST WOMEN	18
FIGURE 2.9 ACTUAL CHOICE OF INSTITUTION FOR RESOLVING DISPUTES	19
FIGURE 2.10 ACTUAL CHOICE OF INSTITUTION FOR RESOLVING DISPUTES, BY PROVINCE ..	20
FIGURE 2.11 CHOICE OF INSTITUTION FOR RESOLVING CASES OF VIOLENCE AGAINST WOMEN	21
FIGURE 2.12 CHOICE OF INSTITUTION FOR RESOLVING DISPUTES RELATED TO DIVORCE....	21
FIGURE 2.13 CHOICE OF INSTITUTION FOR RESOLVING LAND DISPUTES	22
FIGURE 2.14 CHOICE OF INSTITUTION FOR RESOLVING INHERITANCE DISPUTES.....	22
FIGURE 2.15 REASONS FOR GOING TO THE STATE JUSTICE INSTITUTIONS (MULTIPLE CHOICES).....	23

FIGURE 2.16 REASONS FOR GOING TO THE NON-STATE JUSTICE INSTITUTIONS (MULTIPLE CHOICES).....	23
FIGURE 2.17 WOMEN’S AND MEN’S LEVELS OF SATISFACTION AT DIFFERENT STAGES OF THE JUDICIAL PROCESS IN STATE AND NON-STATE INSTITUTIONS	25
FIGURE 2.18 LEVEL OF SATISFACTION WITH STATE AND NON-STATE INSTITUTIONS BY PROVINCE (FIRST STAGE).....	26
FIGURE 2.19 LEVEL OF SATISFACTION BY INSTITUTION (FIRST STAGE)	26
FIGURE 2.20 LEGAL AWARENESS AMONG WOMEN: DIVORCE (% AGREEING WITH THE STATEMENT)	30
FIGURE 2.21 LEGAL AWARENESS AMONG WOMEN: VIOLENCE AGAINST WOMEN (% AGREEING WITH THE STATEMENT)	30
FIGURE 2.22 AWARENESS OF THE RIGHT TO REPORT THAT A WOMAN HAS BEEN BEATEN (% AGREEING THAT THEY HAVE THE RIGHT).....	31
FIGURE 2.23 LEGAL BODY OF LAW REFERENCED IN DECIDING ON A CASE (MULTIPLE CHOICES).....	32
FIGURE 2.24 USERS WHO PERSONALLY ATTENDED THEIR PROCEEDINGS	34
FIGURE 2.25 PERCENTAGE OF USERS WHO HAD LEGAL REPRESENTATION BY STAGE OF PROCESS AND TYPE OF CASE.....	39
FIGURE 2.26 PERCENTAGE OF WOMEN WHO HAD LEGAL REPRESENTATION AT FIRST STAGE (BY PROVINCE).....	40
FIGURE A2.1 SELECTION PROCESS (HOUSEHOLD SURVEY).....	50
FIGURE A3.1 REPORTING VIOLENCE AGAINST WOMEN BY LITERACY (%).....	58
FIGURE A3.2 REPORTING VIOLENCE AGAINST WOMEN BY EDUCATION LEVEL (%)	58
FIGURE A3.3 WOMEN’S POTENTIAL DISPUTE RESOLUTION BY PROVINCE: VIOLENCE AGAINST WOMEN.....	59
FIGURE A3.4 WOMEN’S POTENTIAL DISPUTE RESOLUTION: DIVORCE	59
FIGURE A3.5 WOMEN’S POTENTIAL DISPUTE RESOLUTION: LAND.....	60
FIGURE A3.6 WOMEN’S POTENTIAL DISPUTE RESOLUTION: INHERITANCE	60

BOX

BOX 2.1 THE ROLE OF ECONOMIC STATUS AND EDUCATION IN REPORTING VIOLENCE AGAINST WOMEN.....	15
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Executive Summary

1. Afghanistan has a multitude of complementary, competing, and at times conflicting spaces for rule-setting and dispute resolution; state laws, Shari'a, and customary practices and norms are applied and enforced in varying situations, by state as well as non-state justice institutions. State justice institutions are those which represent the central government and the formal legal system. Non-state justice institutions include a range of both traditional and new community organizations, such as shuras (local councils), among others. Even significant individual positions in communities can represent non-state justice institutions, as can be the case for mullahs.

2. Non-state justice institutions are believed to resolve up to 80 percent of disputes (disagreements between individuals or groups) in rural communities, where insecurity, inaccessibility, and the generally weak presence of the state, along with the persistence of strongly held traditions, make outreach by state justice institutions difficult. For those reasons, most of the disputes that women seek to resolve are brought to non-state institutions. Non-state justice institutions can be distinguished from state institutions based on their approach to resolving disputes: While the principles of state justice tend toward retributive justice (upholding the rights of the wronged individual and punishing the guilty individual), principles of non-state justice tend toward restorative justice (restoring social stability after a dispute and ensuring that community, household, or family relationships remain intact).

3. This study looks at the gender dynamics of access to justice services in Afghanistan. It examines the intersecting spaces of state and non-state institutions and their respective bodies of law and norms to gain a better understanding of how they affect the choices that women make in resolving disputes through those institutions. By investigating barriers hindering women's access to justice services, identifying the most common disputes or cases that women and men bring before justice institutions, examining justice-seeking behaviors of women and men, and documenting levels of satisfaction with the process and its outcomes, the study aims to provide Afghan and international policy makers and program designers with quantitative evidence to devise approaches that address gender-based inequities in women's access to justice and justice outcomes. Another contribution of this study is to inform the World Bank-financed Justice Service Delivery Project (JSDP), which is aimed at improving access to justice by supporting both state and non-state justice institutions.

4. The field research for the study relied on quantitative and qualitative instruments. The quantitative instruments included a survey of individuals who *might use* justice-related services (household survey respondents or potential users), as well as individuals who *had already used* justice-related services (users). Individuals in institutions that *supply* justice services were also surveyed, with a view to understanding the most prevalent disputes, the barriers to accessing justice, the manner in which disputes were resolved, and the level of satisfaction with the process and outcomes, for women and men. These aspects of the justice system are examined in central (Kabul), central highland (Bamyan), western (Herat), and eastern (Nangarhar/Logar) provinces of

Afghanistan. All of the provinces except Nangarhar are pilot provinces of the JSDP. In the eastern provinces, household and user data were collected mostly in Nangarhar due to security concerns in Logar.

5. All told, the surveys covered 5,098 individuals (47 percent were women), including actual users of state or non-state justice institutions (760 persons, or 15 percent), as well as a range of state and non-state justice service providers (283 persons, or 6 percent), including judges, prosecutors, lawyers and legal aid providers, *hoqooq* representatives, and community leaders. (Afghanistan's Hoqooq Departments register and manage cases related to family, land, property, debt recovery, and business and refer parties to non-state institutions or primary courts.) The remaining 4,055 individuals were household survey respondents—citizens who have been or could become users of justice institutions. To complement these quantitative surveys, the qualitative instruments (focus group discussions and key informant interviews) were used to obtain a deeper understanding of sensitive issues and triangulate findings based on the quantitative data.

Summary of Findings

6. **Afghan women and men face different sets of justiciable disputes (problems or issues that *might* be resolved through legal means).** Women's disputes are predominantly related to family and domestic issues, such as divorce, domestic and sexual violence, and inheritance, reflecting their social positioning primarily in the private sphere. Men's disputes are largely related to the public sphere and concern financial issues related to land, property, and business.

7. **Women's access to justice is hindered by social and cultural norms that limit their mobility as well as their awareness of rights, laws, and state justice institutions. Distance, inaccessibility, insecurity, high cost, and low numbers of female professionals in the justice sector also impede women's access.** In a rural province like Bamyan, state justice institutions can be up to 86 kilometers away—a lengthy distance for individuals without access to a car or public transportation. Women legal professionals are few. On average, in the four surveyed provinces about 20 percent of lawyers are female. Because few legal aid providers are available, legal representation in the first stage (the first attempt to resolve or report a dispute by having it prosecuted at a state or non-state justice institution) is low for both women and men. Women were substantially less aware of state institutions than men (40 percent of women compared to 77 percent of men). Female household survey respondents are the most disadvantaged of all groups surveyed, because they are the most likely to be rural and poor, to have less or no education than other respondents, and to have the least access to government offices. Female household survey respondents were less aware of the right to divorce (62 percent) than female users of justice services (85 percent); they were also less aware of their right to report domestic violence (70 percent of survey respondents versus 88 percent of users). Even so, the data show that rural women's awareness of their rights is higher than generally perceived. Rural women may in fact have greater awareness of their rights, but they may still be reluctant to report disputes because other factors—such as women's

lack of mobility and the cultural unacceptability of reporting family or community matters to state or non-state institutions—have not substantially changed.

8. **Demand-side constraints influence women's preference for non-state institutions, where customary laws are more frequently applied.** Women are substantially less likely to attend the proceedings personally than men. Although the gender gap is smaller in state institutions, women are still less likely to attend proceedings than men.

9. **Among women, the prevalence of reporting varies based on place of residence (urban or rural) and prevailing social and cultural norms at the community level, among other factors.** The surveys of female users of justice systems in Kabul and Herat (both provincial samples with significant urban populations) found that divorce and violence against women were the most commonly reported cases (divorce was reported by 23 percent of users in Kabul and 46 percent in Herat; violence against women was reported by 26 percent of users in Kabul and 32 percent in Herat). Divorce also accounted for most of the cases pursued by women using justice systems in Nangarhar (32 percent), but only 8 percent of cases were related to violence against women, perhaps because Nangarhar is more conservative than the other study sites. In Bamyan, the most rural study site, the fieldwork revealed that women use justice services mostly to resolve land disputes (42 percent of respondents), followed by violence against women and inheritance cases (both at 19 percent). Land and inheritance disputes are also prevalent in Nangarhar (making up 17 and 18 percent of female users' cases, respectively).

10. **The data available suggest that respondents to the household survey, especially the women, significantly under-report disputes.** Based on the household survey data, it would seem that only 1.2 percent of women and 2.4 percent of men had sought to resolve disputes through non-state or state justice institutions. For just one type of dispute—cases of violence against women—this study found that 25 percent of women would take no action, and almost 50 percent would seek to resolve their problems through family, friends, or direct negotiations. Yet national surveys (summarized by Global Rights in 2008) indicate that more than 80 percent of women experience some form of violent abuse (physical and sexual, domestic and otherwise) in their lifetimes. The discrepancy between the prevalence of disputes reported in the household survey and the prevalence of violence against women documented nationally highlights two prevailing challenges: first, the challenge for women to recognize that the issues they face are justiciable disputes, and second, the challenge posed by widespread unwillingness to report such disputes.

11. **Provincial differences, as well as the type of dispute involved, are influential in determining whether individuals chose state or non-state institutions to resolve their disputes.** To handle divorce proceedings or land and inheritance disputes, both women and men responding to the household survey in Bamyan, Herat, and Nangarhar preferred non-state justice institutions. Overall, women in Bamyan and Herat would strongly prefer non-state institutions to handle such cases. The pattern is similar in

Nangarhar but less prominent. On the other hand, women in Kabul prefer state institutions for handling these types of cases.

12. Among the actual users of justice institutions, substantially more women went to state justice institutions in their initial attempts to resolve cases of divorce and violence against women. On the other hand, they exhibited a slightly stronger preference for non-state institutions for handling land and inheritance issues. (Note that 60–70 percent of the users were located in state justice institutions, so these responses are likely to be positively biased.) In Kabul and Herat, where cases of divorce and violence against women were most prevalent among the users interviewed, substantially more women went to state institutions. In Bamyan and Nangarhar, on the other hand, slightly more women went to non-state institutions. Men who used justice institutions preferred state institutions to handle all four types of disputes, especially divorce. The divergent preferences shown by household survey respondents and users could be explained by differences in access to state institutions and awareness of state institutions. As noted, household survey respondents, especially in Bamyan, were more likely to reside in rural areas and have difficulty accessing district or provincial centers. In contrast, non-state institutions are available at the village or sub-district level. Users of justice institutions, especially state institutions, are likely to have better access and awareness.

13. For both women and men, the most important factor influencing their decision to choose a state institution was authority, while the most important factor influencing them to choose a non-state institution was ease of access. For state institutions, authority was a more important factor for men (60 percent) than for women (50 percent), while ease of access to the state institution was a more critical factor for women (33 percent) than for men (29 percent). In choosing non-state institutions, ease of access was more important for men (71 percent, versus 57 percent for women), as was cost (free/cheap) (56 percent of men versus 40 percent of women). Advice from family was substantially more important for women (38 percent) than men (7 percent). The emphasis on cost may reflect the general perception that less or no bribery is required at non-state institutions, a message that came across strongly in every focus group discussion, regardless of gender. Less than 1 percent of users had to pay bribes to non-state institutions, while 14 percent of male users paid bribes to state institutions. Only 5 percent of female users paid bribes.

14. Among users of justice institutions, men are significantly more likely to be satisfied with the outcome of their cases than women are. Just 37 percent of women (23 female users) said they were satisfied with the outcome, against 61 percent of men (53 male users).

15. Women were more satisfied with the justice process and experience at state institutions than at non-state institutions, whereas men were more satisfied with non-state institutions. Across the range of state justice institutions, women were most satisfied with courts (60 percent) and least satisfied with the police (3 percent). Women in Herat were more satisfied with state institutions (55 percent) compared to women in

other provinces. A variety of factors could explain this response, some of which are findings of this report: Women in Herat are more likely to have legal representation at the first stage in a judicial process (37 percent in Herat, versus 30 percent in Nangarhar and 19 percent in Kabul), and Herat has more female legal professionals than the other provinces surveyed (30 percent in Herat, versus 20 percent in Kabul). Other sources have found that Herat has a better track record in implementing the EVAW Law, which could be an additional factor behind women's high level of satisfaction with state institutions.

Implications for Policy and the JSDP

16. The findings of this report can be grouped into four main categories. First, given the depth and complexity of legal and institutional pluralism in Afghanistan, and considering the large share of disputes handled in non-state institutions, recommendations for improving women's access to justice must *seriously consider practical means for women to engage with non-state systems*. Second, *the justice issues that most strongly affect the lives of women and men tend to differ*. Men's disputes are related largely to the economic sphere, whereas women's are related predominantly to the family and domestic spheres. These differences mean that women and men require varying kinds of support, and legal professionals need to target the different challenges involved in addressing women's and men's needs. Third, women and men tend to *engage in different justice-seeking behaviors*, based on their varying circumstances. It is critical that interventions take a closer look at these variations in behavior and develop specific policies to address the challenges that they pose. Fourth, women and men *experience uneven levels of satisfaction with justice system outcomes*.

17. A number of specific recommendations may help to address these issues. First, enhance women's experience in non-state justice institutions by having other respected women (such as members of a women's shura) facilitate cases in which women are the victims or accused, by helping them to liaise with non-state institutions. Second, provide legal training to non-state justice service providers, such as training in mediation and legal awareness, including training on Shari'a. Third, improve access to state justice institutions by developing extension models. For example, create a network of community resource persons, and provide information through mobile applications and media information campaigns. Fourth, improve women's experience in state institutions by increasing the number of female legal professionals and legal aid providers in general, developing special programs to enhance the geographical distribution of professionals, and improving the distribution and outreach of state institutions (particularly in rural areas). Finally, work through other sectors that already engage in extensive rural outreach, such as health and education, to refer cases and provide information.

1. Study Context and Methodology

1.1 Background

1. A multitude of complementary, competing, and at times conflicting spaces for setting rules and resolving disputes coexist in Afghanistan. State and non-state justice institutions apply and enforce overlapping bodies of state law, Shari'a law (both Hanafi and Jafari jurisprudence, sometimes with separate statutory laws emanating from them), and customary rules.¹ Non-state justice institutions or community organizations, such as *shuras*, *jirgas*, and other significant individuals, resolve up to 80 percent of disputes—defined here as disagreements between individuals or groups. These organizations are the primary source of societal order in rural areas, which make up 85 percent of the country.²

2. As posited in the *World Development Report 2011: Conflict, Security, and Development*, the existence of, and access to, effective justice institutions is central in maintaining and increasing state legitimacy in fragile countries.³ Afghanistan's new constitution, drafted in 2004, reestablished central justice institutions, including the Ministry of Justice (MoJ), Supreme Court (SC), and Attorney General's Office (AGO). The World Bank supported capacity building within justice institutions through the Afghanistan Justice Sector Reform Project (AJSRP). The subsequent Justice Service Delivery Project (JSDP) builds on the AJSRP to improve access to justice through synergies between state and non-state justice institutions.⁴

3. A recent World Bank report on the status of women in Afghanistan⁵ indicates that criminal cases involving women or against women in Afghanistan typically center on acts of violence (including rape, immolation, beating, honor killing, or some other kind of abuse) or *zina* (adultery) or alleged adultery. Civil cases typically are related to forced marriage (including the practices of *ba'ad* or *ba'adal*—giving a woman to settle a dispute, or exchanging brides between families), underage marriage, bride price, divorce, child custody, and inheritance. To ensure the protection of women's rights, the Elimination of Violence Against Women (EVAW) Law was enacted by presidential decree in 2009.⁶ The EVAW Law prohibits child marriage, forced marriage, the buying and selling of women for the purpose (or under the pretext) of marriage, *ba'ad*, immolation, forced self-immolation, and 16 other acts of violence, including rape and beating. Many of these acts were explicitly criminalized for the first time under the EVAW Law. Its enactment was one of the most notable reforms for women in

¹ Legal and local terms are defined in the glossary (Annex 3).

² World Bank (2012a).

³ World Bank (2010).

⁴ AJSRP was implemented from 2008 to 2011. The JSDP started in 2012 and will close in 2017. Both projects are financed by the Afghanistan Reconstruction Trust Fund.

⁵ World Bank (2013).

⁶ The parliament was reviewing and revisiting the EVAW Law as of this writing.

Afghanistan, where an estimated 62 percent of women experience some form of violence at home.⁷

4. The *World Development Report 2012: Gender Equality and Development* emphasizes that access to justice is a developmental goal in its own right, as well as an instrument for the proper enjoyment of other rights, such as the rights to health and safety, education, reproductive choice, and access to assets and economic opportunities.⁸ Both that report and the World Bank's 2005 report on the status of women in Afghanistan⁹ recognize that little knowledge exists about women's needs and challenges related to accessing justice. Acknowledging that "improving women's access to justice requires collection and publication of gender disaggregated data on access and use" of justice institutions for the resolution of disputes, this study seeks to develop a more comprehensive and nuanced understanding of gender and justice in Afghanistan.¹⁰

1.2 Study Objectives and Analytical Framework

5. More specifically, this gender and justice study in Afghanistan aims to provide policy makers with quantitative evidence and better qualitative knowledge to devise and implement policies that address gender-based inequities in women's access to justice and justice outcomes. The study team undertook household, user, and justice service provider surveys in central (Kabul), central highland (Bamyan), western (Herat), and eastern (Nangarhar/Logar) provinces of Afghanistan to investigate barriers to accessing justice; the most common cases or disputes; justice-seeking behaviors; and satisfaction with the process and outcomes.¹¹ Wherever possible, the discussion highlights variations in the findings, not only by gender but by region, economic status, and other variables.

6. The analytical framework selected for the study reflects the focus on collecting data and information about the demand side of justice (by surveying actual and potential users of courts and other justice institutions) as well as the supply side (by tapping into the knowledge and perspectives of justice service providers). The study's design and approach reflect several assumptions on the nature of justice and access to justice:

- Justice and the mechanisms presiding over dispute resolution are context-specific, and their forms and processes reflect an idiosyncratic value system.
- Legitimacy and trust are central elements of effective justice institutions.

⁷ Global Rights (2008). This percentage is substantially higher than the World Health Organization's global estimate (reported in UNDP 2013) that 35 percent of women worldwide are victims of violence, largely from an intimate partner.

⁸ World Bank (2011).

⁹ World Bank (2005).

¹⁰ World Bank (2011:367).

¹¹ The analytical framework for this study is based on the work on public attitudes toward the civil justice system in the United Kingdom conducted by Hazel Genn and illustrated in her 1999 book *Paths to Justice: What People Do and Think About Going to Law*. The framework used here also draws on the Rule of Law and Access to Justice (ROLAX) framework, which maps "in a systematized way how a potential justice seeker finds his or her way through the legal repertoire—or drops out of it for various reasons" (Bedner and Vel 2010).

- Any effective and sustainable intervention aimed at broadening access to justice needs to be built upon firsthand knowledge of the dynamics underlying people's position in relation to justice.

1.3 Legal Framework

7. Afghanistan is divided among a number of different normative systems, while the state holds the monopoly as the maker of laws and the provider of justice. Customs, often mixed with Shari'a or idiosyncratic interpretations of Shari'a, regulate the life of the majority of the population. The country is governed by a Shari'a-based constitution and emanating state laws, which are intended to complement and integrate Shari'a principles. Shari'a principles are based largely on Hanafi jurisprudence; however, state law also includes the 2009 Shia Personal Status Law that creates specific conditions within Family Law for Shias (see Annex 5 for details on these variations in Shari'a). If the law is silent on a particular matter, the statutory legal system provides for the direct application of Shari'a. In so doing, it leaves an opening for other norms, such as other relevant jurisprudence of Shari'a, or for potential misinterpretations of Shari'a, to be applied in cases within state legal institutions. In addition, state law itself has not always been rationalized and harmonized over time, so contradictions exist. Table 1.1 compares the application of three bodies of law (state, Shari'a, and customary) pertaining to divorce, domestic violence, inheritance, and land, demonstrating the variations that could apply to cases in Afghanistan.¹²

8. The application of state law, Shari'a, and/or customary rules by state and non-state justice institutions is nuanced. The state justice institutions are likely to apply state law, including the EVAW Law, and Shari'a. On the other hand, the non-state institutions tend to apply Shari'a and customary rules.

1.4 Justice Institutions

9. As noted, Afghanistan is characterized by the coexistence of state and non-state justice institutions that make up competing and overlapping justice systems.

10. **State justice institutions.** These institutions are present at the central and provincial levels and limited at the district level. For Afghan women and men, the entry points into the state justice system are the Hoqooq Departments or primary courts at provincial and district levels. The *hoqooqs*—a unique state institution in the Afghan judiciary system—register and manage non-criminal cases related to family, land and property, debt recovery, and business. They mediate between parties and also refer parties to primary courts or non-state institutions. Figure 1.1 provides an overview of state justice institutions in Afghanistan.

¹² There are no discrepancies between state law and Shari'a in these instances. In other instances, such as women's age of marriage, the two sources of law contain different provisions. See Annex 5.

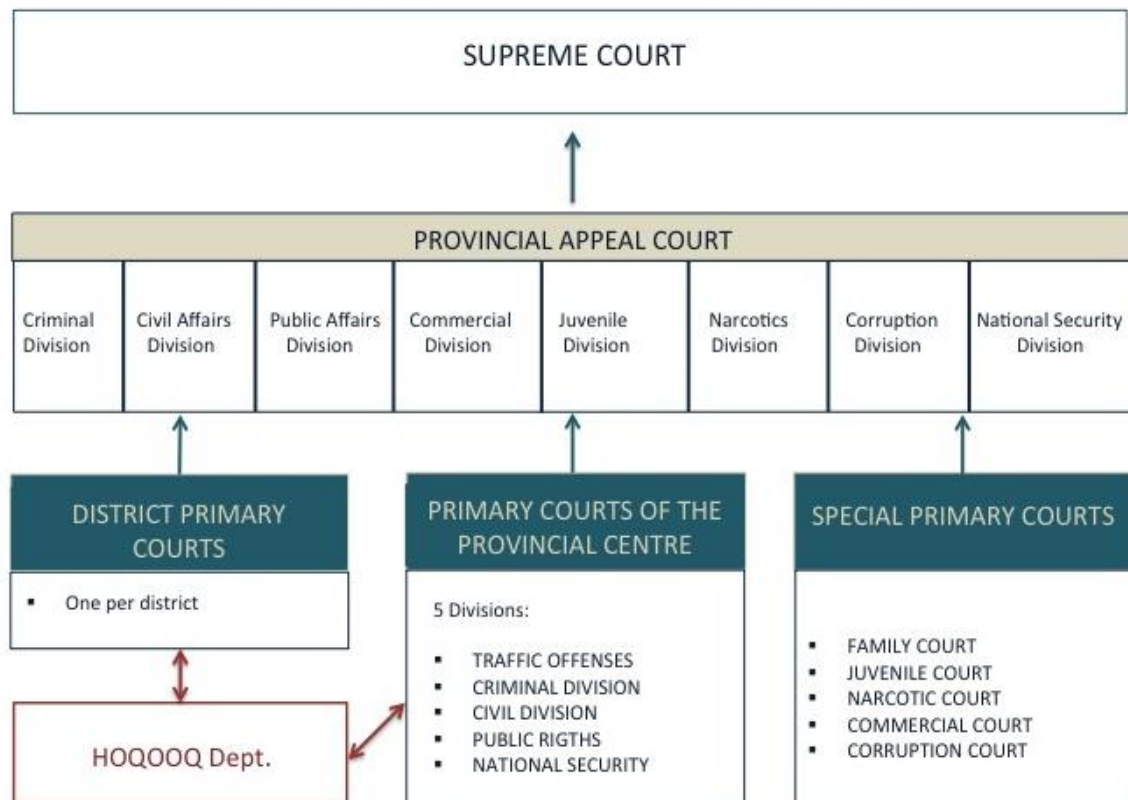
Table 1.1 Examples of the application of state law, Shari'a, and customary rules

	State law	Shari'a ^a	Customary rules ^b
Divorce	A man can divorce his wife by repudiating her orally. A woman can ask the court for separation on legal grounds with reasons such as harm, absence, no payment of alimony, imprisonment, or impotency. If a woman asks for separation without due cause, she will need the approval of her husband and must pay compensation. This largely follows Shari'a.	Divorce is primarily the right of the husband. A man can divorce his wife by repudiating her orally 3 times. A woman can get a separation based on specific circumstances. or a woman can compensate her husband to get his approval for divorce by paying money or her <i>mahr</i> . ^c However, the husband needs to consent to divorce.	Divorce is usually initiated by the husband. The main conditions recognized under which a woman can ask for a divorce are impotency and the inability to pay for alimony.
Domestic violence (crime or not?)	Yes. If violence does not cause injury, it can be punished by short term imprisonment (no more than a month). If it did cause injury, medium-term imprisonment is applicable (no less than 3 years).	No, but principles exist to curb the more extreme cases.	No, but in some areas, elders demonstrate disapproval for more extreme cases and have stepped in to stop them.
Inheritance by sons and daughters	Sons inherit twice as much as daughters.	Sons inherit twice as much as daughters.	Often, daughters do not inherit property when they have brothers. They give up or are denied their rights in favor of their brothers.
Land ownership by women	Yes	Yes	Many community leaders recognize women's right to own land. Women own land most often when they are the sole heir to the land, and often their rights to land are denied.

Based on Hanafi jurisprudence, which is more commonly used in Afghanistan when state law is silent. These entries were compiled through interviews with community leaders, NGOs, and other justice sector stakeholders.

^c *Mahr* is money or property given by the husband upon marriage.

Figure 1.1 State justice institutions in Afghanistan



11. To protect women's rights, particularly in cases of violence against women (physical, sexual, and domestic violence), three state institutions are active: the Ministry of Women's Affairs (MoWA) and its provincial departments (DoWAs), the Afghan Independent Human Rights Commission (AIHRC), and the Family Response Units (FRUs) under the Afghan National Police (ANP). MoWA is ultimately responsible for implementing the EVAW Law. The DoWAs lead provincial EVAW Commissions (where these have been established), registering cases of violence against women when they receive them, providing legal assistance to victims, and raising awareness. Eight EVAW units currently operate in eight provinces of Afghanistan, including Kabul, Herat, Nangarhar, and Balkh. The units are accountable to the AGO, which controls their financing and operations.¹³

12. The AIHRC supports female victims of domestic violence, dispossession of assets and inheritance, and denial of the right to education and freedom of movement. In theory FRUs enable women to bring their cases to the attention of the police, such as cases of domestic violence. In practice, the FRUs' role is limited, and violence against women is reported at myriad locations, including police stations without FRUs, prosecutors' offices, legal aid providers, courts, health clinics, and others. These institutions have no

¹³ UNDP (2013).

unified system to collect data and do not refer women through the system in identical ways, so cases of violence against women are extremely hard to count and track.

13. **Non-state justice institutions.** Non-state justice institutions are community-based organizations or individuals acting at the sub-district or village level to resolve disputes arising in the community, among other functions. Across regions, these institutions vary in their form, function, outreach, relative influence, and hierarchical position in the community.

14. The main non-state deliberative bodies are groups of community elders (shuras or jirgas). Shuras are standing councils of elders, sometime traditional or sometimes more newly elected or selected by their communities. Jirgas are ad hoc councils of elders and respected community members, who are called upon to resolve specific issues. Shuras are most common to Tajik regions in northern Afghanistan. Among the five provinces where the study was carried out, shuras appeared more often in Herat, while jirgas were found predominantly in Pashtun areas, mainly in Nangarhar and Logar.

15. Certain individuals (such as *mullahs*, *arbabs*, and *maliks*) may also have authority within the community to resolve disputes. As the religious authority at the community level, the mullah may be a key actor in resolving disputes by applying religious jurisprudence. Shuras or jirgas may sometimes consult mullahs to resolve disputes, because of their Shari'a-based legal awareness (although in practice, their level of scholarship varies). In addition to mullahs, elite individuals in the community, such as maliks and arbabs, may also play a role in dispute resolution.¹⁴

16. One key difference between state and non-state institutions is their underlying approach to resolving disputes. While the principles of state justice tend toward retributive justice (upholding the rights of the wronged individual and punishing the guilty individual), principles of non-state justice tend toward restorative justice (restoring social stability after a dispute and ensuring that community, household, or family relationships remain intact). In general, principles of restorative justice can be problematic for women, as many of the crimes against them take place within the family or the community, and restorative justice mechanisms aim to maintain social relations with the individuals involved.¹⁵ In practical terms, however, women have very limited options in Afghanistan outside of familial relationships.

17. It is important to note that this dichotomy between Afghanistan's state and non-state justice systems is *theoretical*, existing more clearly in the respective bodies of law than it does in practice. In practice, non-state institutions (even Taliban institutions)

¹⁴ The community position of malik or arbab is sometimes hereditary, stemming from family wealth and lineage. Among Pashtuns, "malik" designates someone who is a community leader. Arbabs were present in the communities surveyed in Herat. These positions are not essential to or identical in traditional community structures in Afghanistan, however. Not all Pashtun communities have a malik, and not all Tajik communities have an arbab. The existence of these positions may also relate to the level of influence of the central government in a particular rural area, where single liaisons were often delegated to link a community to the state.

¹⁵ World Bank (2013).

sometimes act to protect individual rights or enact retributive justice, whereas state institutions often mediate cases and restore victims to their preexisting familial relationships—especially the police, the first point of entry into the state system for many cases.

18. Despite their differences, state and non-state justice institutions interact in providing services to the population. The Hoqooq Departments refer some types of cases, such as land disputes, to non-state institutions, and refer others, often those deemed criminal in nature, to state institutions. Various survey respondents believed that community leaders were better equipped to resolve some types of cases because they could facilitate agreement between parties from the same community and had more local knowledge of the situation. Judges and prosecutors themselves at times call upon elders and other non-state justice service providers to help resolve cases because they are more familiar with the disputants and their backgrounds. Likewise, non-state justice institutions refer some cases to state institutions, such as criminal cases or long-standing land disputes involving different villages or tribes, because they have not been resolved over time through non-state structures. In the five surveyed provinces, this division of labor seems more prevalent in Kabul and Bamyan, whereas in Nangarhar, Logar, and Herat, community leaders tend to keep even serious disputes outside the purview of state justice institutions.

1.5 Study Methodology

19. The study used quantitative and qualitative methods to collect data. The four quantitative tools included surveys of households, justice service users, and justice service providers, as well as mapping of institutions in the justice system. These tools were designed to obtain data from the demand side (households and users) and supply side (justice service providers) of justice provision, to enhance the analysis. For the household survey, female enumerators interviewed female respondents in a safe and secure environment. The tools were developed in consultation with individuals from JSDP, SC, AGO, and MoJ. Qualitative tools such as focus group discussions (FGDs) and key informant interviews (KIIs) were also developed to gain a deeper understanding of issues, particularly those of a sensitive nature, and to help triangulate the quantitative findings. Some limitations in data collection were expected, given that respondents may have been reluctant to share sensitive information about disputes and personal issues. Table 1.2 summarizes the quantitative and qualitative tools used in the study, which are presented in greater detail in the sections that follow, along with information on the provinces selected.

20. A literature review was done at the beginning of the work to contextualize the research and its findings. The review compiled further detailed information about laws and norms regulating matters affecting women's status and highlighted the differences among Afghanistan's various legal regimes (Annex 5).

1.5.1 Quantitative Tools

21. **Representative household survey.** The household survey, administered to a sample of 4,055 individuals in five provinces, gathered information about actual disputes and their resolution mechanisms, awareness of the existence and role of justice institutions, mechanisms that individuals would adopt to resolve hypothetical cases, and household demographic and socioeconomic information. To ensure sufficient responses from men and women, approximately 50 percent of the surveys from each primary sampling unit (PSU) were administered to a responsible female member of the randomly selected household.

Table 1.2 Tools used in the study

Quantitative tools	Qualitative tools
Demand side	Focus group discussions (37 meetings)
Representative household survey (4,055 individuals were interviewed in five provinces; 48 percent were women)	
User survey (760 individuals were interviewed in five provinces; 41 percent were women)	Key informant interviews (88 interviews)
Supply side	
Survey of justice providers (283 state and non-state justice service providers were interviewed in five provinces)	
Mapping of justice institutions (151 villages, about 80 villages where household survey was conducted)	

22. In Kabul, Bamyan, Herat, and Nangarhar, household survey respondents were identified randomly in selected districts to ensure that the sample was representative at the level of the target province. In Herat, more remote districts could be included in the sample because security was relatively better; in Nangarhar, districts near the more secure provincial center were selected. Worsening security in Logar caused interviews to be conducted with a randomly selected sample of individuals at the market in the provincial capital; for that reason, justice institutions in Logar were not mapped. Likewise, the household survey data presented here do not include data collected in Logar, so the sample analyzed in this report consists of 3,856 individuals (50 percent women) in four provinces.

23. **User survey.** It was anticipated that only a limited number of household survey respondents would have used justice institutions to resolve a dispute or would be willing to talk about their experience. For that reason, 760 users of justice institutions (310 female and 450 male users), spread across the five selected provinces, were also surveyed. The user survey collected the same information as the household survey, although the selection of respondents was undertaken purposively. Although 7 male users of justice institutions (no female users) were identified and interviewed in Logar, to be consistent with the approach used for the household survey, the Logar data were not analyzed. In sum, the user data cover 753 individuals (310 women and 443 men) in four provinces.

24. Given the difficulty of finding equal proportions of users of each type of state and non-state institution, the sample simply reflects users' availability. About 60 percent of women and 70 percent of men in the sample were selected randomly at state justice institutions. Users of non-state institutions were identified by community leaders. The proportion of women and men in the user sample is not representative of the proportion of women and men who use Afghanistan's justice institutions; instead, it reflects a purposive effort to ensure gender balance among the interviewees. Interviews were conducted at the village, district, and provincial levels.

25. **Justice service provider survey.** To complement the demand-side data collected through the household and user surveys, 283 state and non-state justice service providers were surveyed, 48 percent of whom were non-state providers (community elders). Interviews of state justice providers included 47 judges, 38 prosecutors, 20 Hoqooq Department members, and 42 lawyers and legal aids. The survey gathered data on the most common disputes dealt with by providers, information on judicial processes, and women's and men's experiences of justice. The survey instruments were developed to enable comparisons across groups of providers and were administered in five provinces. All data, including data for Logar, are included in the analysis.

26. **Mapping of justice institutions.** Justice institutions at the village, district, and provincial levels for the 151 surveyed villages were mapped, and information on distance and travel time to each institution was collected. Mapping makes it possible to determine the extent to which various institutions are available to the survey population and to understand how their relative availability affects individuals' reporting of disputes, awareness of justice institutions, and use of those institutions.

1.5.2 Qualitative Tools

27. **Focus group discussions.** Given the sensitive nature of most civil and criminal disputes, as well as the limitations of quantitative tools in a context where it is often inappropriate for women to talk to strangers, the study introduced a number of FGDs to clarify and complement findings from the quantitative analysis. Facilitated group discussions were expected to elicit greater engagement and openness among the participants than a survey. In the targeted provinces, 19 FGDs were conducted with women, including 1 discussion in a shelter, and 18 with men. The structured discussions focused on experiences and perceptions of justice, as well as awareness of rights.

28. **Key informant interviews.** Eighty-eight interviews with key stakeholders helped to develop a better understanding of the legal and institutional framework as well as women's legal needs, challenges, and attitudes towards justice. Informants included government officials, justice service providers, and representatives of civil society and the international community.

1.5.3 Selection of Provinces

24. The five provinces selected for the surveys were chosen in light of regional differences, security concerns, and rural access. As mentioned, fieldwork was undertaken in the provinces of Kabul, Bamyan, Herat, Nangarhar, and Logar; with the exception of Nangarhar, these are all JSDP pilot provinces. Nangarhar was selected to complement information from Logar, where access to rural households was limited by deteriorating security. Table 1.7 summarizes key demographic and development data on the provinces and country as a whole.

Table 1.3 Survey province profile

	Kabul	Bamyan	Herat	Nangarhar	Logar	National^c
Population	4,243,000	426,000	1,871,000	1,738,000	458,000	26,955,000
Literacy^a (Men)	68	52	29	53	45	45
Literacy^a (Women)	35	18	19	11	9	17
Poverty headcount	23	56	39	60	75	36
Urban	84	3	28	15	3	23**
Land Access^b	16	87	42	57	58	
Access to safe drinking water	78	21	53	46	46	46
Any source of electricity	88	96	72	41	99	69
Drivable road within 2 km	95	79	90	85	95	80

Source: National Risk and Vulnerability Assessment (NRVA) 2011/12 (population; literacy; access to water, electricity, drivable roads); NRVA 2007/08 (poverty headcount); Samuel Hall Consulting, Inception Report (% urban and land access).

a Literacy rate of population aged 15 years or older.

b Land access is defined as either owning land or farming land based on renting, sharecropping, or mortgaging arrangements. Data from NRVA 2007/2008 (pp. 41–42).

c National data is from the NRVA 2011/12.

1.6 Organization of This Report

25. This initial chapter has described the rationale for the study, its methodology, and legal and institutional pluralism in Afghanistan. Chapter 2 discusses the quantitative and qualitative findings of the surveys, FGDs, and KIIs. Chapter 3 presents the conclusions, followed by recommendations for policy makers and the JSDP. The annexes provide further information on the methodology (Annex 1), additional data (Annex 2), a glossary of terms used in the report (Annex 3), sample survey questionnaires (Annex 4), and an overview of laws and norms regulating matters affecting women's status in Afghanistan (Annex 5).

2. Findings

2.1 Introduction

26. This chapter highlights the main results of the three quantitative surveys (of households and of justice service users and providers). It profiles the households and users surveyed, identifies the barriers faced by women in resolving disputes through institutional means, compares the types of disputes encountered by women and men, describes justice-seeking behaviors undertaken in response to those disputes, and assesses users' satisfaction with the outcome of their experiences in navigating state and/or non-state justice institutions.

27. In focusing on the variation between gender groups and regions, the study largely draws on the demand-side data collected through the household and user surveys, complemented by the supply-side data collected through justice provider surveys and the qualitative data obtained through FGDs and KIIs. Barriers in accessing and providing justice are investigated based on demand- and supply-side data from the three survey tools. To learn about the kinds of disputes that most concern women and men, data from the user survey are combined with data from household survey respondents who reported experiencing actual disputes in the last five years. On the other hand, the household and user data are used separately to understand potential (for household respondents) and actual (for user survey respondents) actions (or lack of action) taken to resolve disputes, and the reasons for those choices. The assessment of the level of satisfaction draws on the user data only.

2.2 Profile of Household Survey Respondents and Users

28. As discussed, household survey respondents are a representative sample of the population in each target province, whereas the users are a sample of female and male users of justice services. The two samples differ, particularly with regard to socio-economic status (Table 2.1). For example, compared to female respondents in the household survey, female users of justice services are more likely to reside in urban areas¹⁶ with much easier access to district or other government institutions. They are also more likely to be literate and less poor,¹⁷ with better access to media. Substantially more female heads of households are found among the female users compared to the female household survey respondents. Similar trends emerge for the men in each sample, but the gaps between male household survey respondents and users are less wide, in some cases much less, than they are for the women. Men—regardless of whether they belong to the household or user survey samples—are significantly more literate overall and have better access to government offices and mobile phones than women. For most indicators, men who use justice institutions do not have substantially better access to those institutions

¹⁶ These users are in Bamyan, Herat, and Nangarhar only. The Kabul users are not included, as information on residence was not collected in Kabul. Should the Kabul users be included, the urban ratio would be much higher.

¹⁷ “Poor” includes those who are categorized in the first and second quintiles of the asset index. “Non-poor,” on the other hand, includes those who are in the third, fourth, and fifth quintiles of the asset index.

than the men who discuss their hypothetical use of justice institutions in the household survey. For women, the obstacles to access are clearly much greater.

Table 2.1 Differences between the household and user survey respondents (%)

	Men		Women	
	Household (n=1,926)	User (n=443)	Household (n=1,930)	User (n=310)
Dispute prevalence/ reporting	2.4	100	1.2	100
Rural ^a	70	53	70	45
Access to district or other government offices (within an hour's travel)	46	58	18	44
Poor	37	28	47	33
Literacy	55	50	19	34
Access to media (TV or radio)	86	86	71	84
Access to mobile phone	89	97	75	85
Heads of household	78	89	3	16

Source: Household and user surveys (Logar not included).

^a Excludes Kabul users (location of residence not recorded).

2.3 Disputes

29. To understand the most prevalent types of disputes in which women and men were involved, the analysis included responses from female and male users as well as from household survey respondents reporting direct involvement in the last five years in a justiciable dispute (a problem or issue that *might* be resolved through legal means). There were 78 such household survey respondents (27 women and 51 men). Thus, the prevalence or reporting rate for disputes among the household survey respondents was 1.2 percent among women and 2.4 percent among men (Table 2.1). These rates appear substantially lower than the 19 percent observed in a 2013 survey by the Asia Foundation.¹⁸ The difference might be due to the variation in the methodologies, including respondents' gender ratio, area coverage, and questionnaires.¹⁹

30. Figures 2.1 and 2.2 illustrate the prominent disputes reported by women and men in the household and user surveys. The most prevalent disputes are related to divorce (including separation), violence against women (both domestic and sexual violence), land, business issues, and inheritance. The difference between the most common types of

¹⁸ The Asia Foundation 2013 survey asked 9,260 men and women across all 34 provinces if in the past two years they had been involved in a dispute or a formal case that they could not settle with the other party and had to go to the hoqooq department or village/neighborhood shura/jirga to resolve. See Asia Foundation (2013).

¹⁹ The household survey could have covered more women than the Asia Foundation survey; 48 percent of the household survey respondents were women. On the other hand, based on the share of female enumerators, it appears that about 38 percent of the Asia Foundation survey respondents were women. While the household survey targeted only 4 provinces (Kabul, Bamyan, Herat, and Nangarhar), the Asia Foundation survey covered all 34 provinces. In addition, the translated household survey questionnaire might have given the impression to the respondents that this study was seeking disputes reported only to the state institutions.

disputes for women and men is marked. Among women, the two most frequent types of disputes reported were divorce (30 percent of actual disputes found), followed by violence against women (23 percent of actual disputes). Divorce disputes include the question of whether the woman has to repay mahr.²⁰ On the other hand, men's most prominent disputes involved land (28 percent of actual disputes found), followed by business issues (20 percent).²¹

Figure 2.1 Prevalent disputes: Women

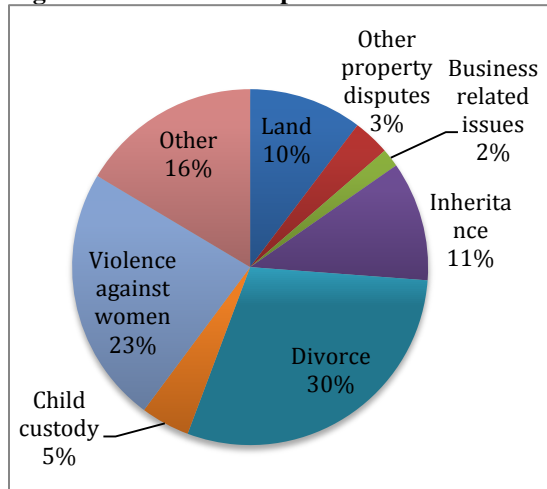
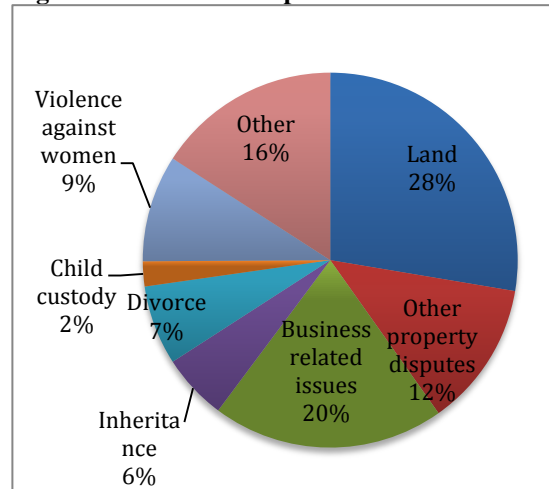


Figure 2.2 Prevalent disputes: Men



Source: User and household surveys (users and those household survey respondents who experienced disputes in the last five years; Logar not included).

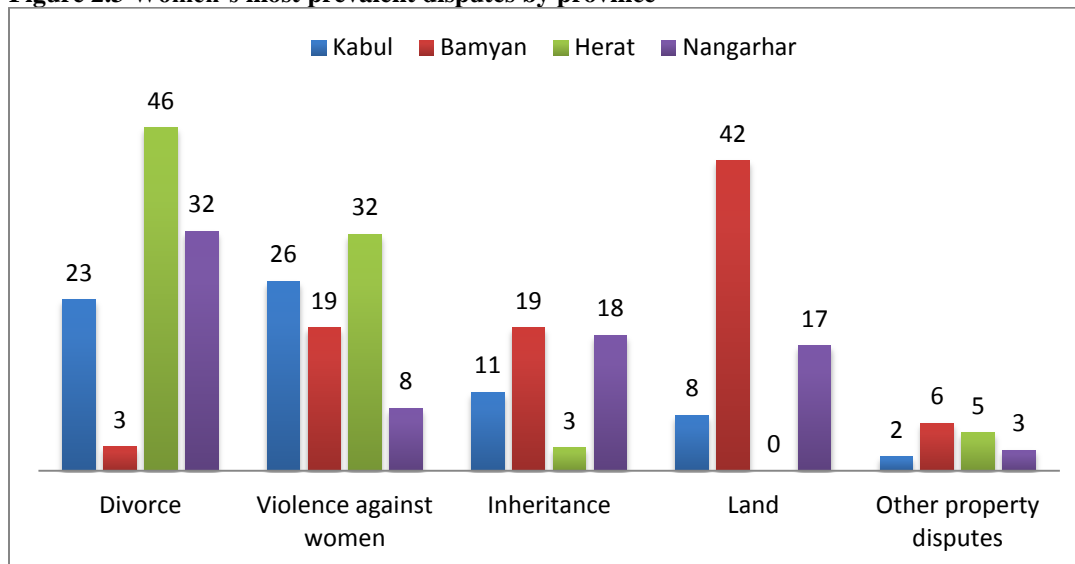
31. The most prevalent types of disputes reported by women differ by province. In Kabul, Herat, and Nangarhar, divorce is most prominent, particularly in Herat, where about 50 percent of the women interviewed were using a justice institution to report such cases. In Bamyan, almost 50 percent of cases related to women pertain to land and property disputes, as the province is predominantly rural (97 percent of respondents were rural), and land access is the highest (87 percent of respondents cited having some kind of access to land) among the five provinces surveyed (Table 1.3). Violence against women is prominently reported in Kabul and Herat (around 25–30 percent of disputes in the sample), while it is least likely to be reported as a justiciable issue in Nangarhar (8 percent of cases in the sample). Considering a recent estimate that about 60 percent of all Afghan women experience some form of violence at home, and closer to 80 percent of Afghan women experience some form of abuse (domestic or otherwise) in their lifetimes,²² the low prevalence rates in the survey data are an indication of reporting bias rather than prevalence, where reporting is more frequent in Kabul and Herat, less in Bamyan, and lowest in Nangarhar.

²⁰ Money or property given by the husband upon marriage; see Table 1.1.

²¹ Findings from the Asia Foundation survey are not disaggregated by gender. Among the 19 percent of respondents who experienced disputes, however, the most prevalent type of dispute was related to land (41 percent), followed by family (18 percent) and business and other property disputes (12 percent).

²² Global Rights (2008).

Figure 2.3 Women's most prevalent disputes by province



Source: User and household surveys (female users and those female household survey respondents who experienced disputes; Logar not included).

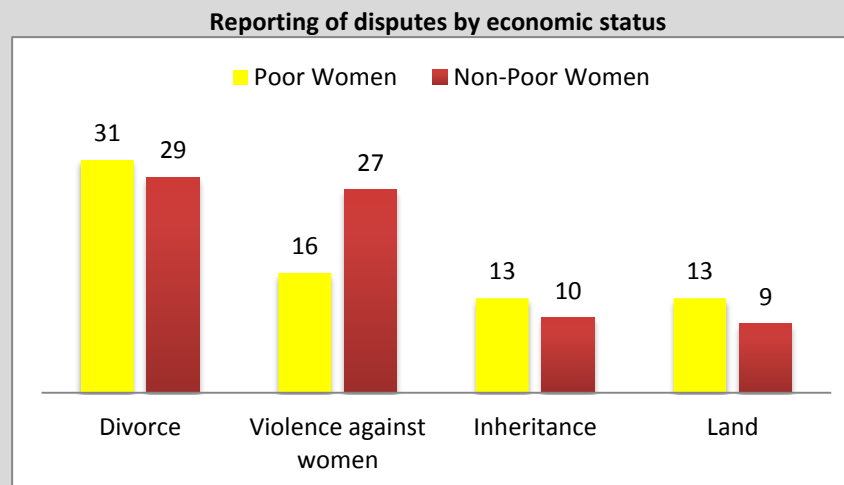
32. Divorce and violence against women are sensitive issues, and they tend to be reported more in Kabul and Herat, where the EVAW Law has been more intensively implemented.²³ Implementation of that law, along with the establishment of support institutions such as the AIHRC, public prosecutors, and family and state courts, may have increased women's awareness of justice services and encouraged them to report sensitive issues at a higher rate. In addition, Kabul and Herat have the highest urban shares in the targeted provinces (84 and 28 percent of respondents, respectively), and women in Kabul and Herat generally are more literate, have better access to communications (mobile phones, radio, and TV), and are more mobile than women in other provinces, as seen in the demographic data. In other words, where women have greater awareness of and access to state justice institutions, demands for those institutions to respond to divorce and domestic violence appear to be greater. Economic status may also play a role in reporting incidents of violence against women; see Box 2.1.

²³ UNAMA (2013).

Box 2.1 The role of economic status and education in reporting violence against women

Among the user survey respondents and those household survey respondents who experienced disputes, the poor are less likely to report cases of violence against women, compared to the relatively richer economic groups (see figure). One reason for this difference might be that women belonging to better-off households have more financial resources to fall back on. A woman from a wealthier household may be more confident that she can keep the respect of the community, maintain her standard of living even if her husband is incarcerated, or return to her family of origin. Better-off women may also be in a better position to pay the costs related to judicial processes (transportation, legal fees, bribes, and others).

Literacy and education also make a difference. Literate women are more likely to report cases of violence against women than illiterate women (31 percent versus 20 percent). Likewise, female users of justice services who have primary school education are more likely to report such cases than females with no education (39 percent versus 21 percent) (Annex 2).^a



Source: User and household surveys (female users and those female household survey respondents who experienced disputes; Logar not included).

a Beyond primary school education, however, no clear pattern emerges between level of education and willingness to report cases of violence against women: 36 percent of respondents with secondary school education reported violence; 26 percent with high school education; 25 percent who had attended teacher's college; and 27 percent who held a university degree. It may be that more educated women have more favorable marriage conditions (they may come from more liberal families, marry later, have better financial circumstances, and so forth) and are therefore less likely to experience violence.

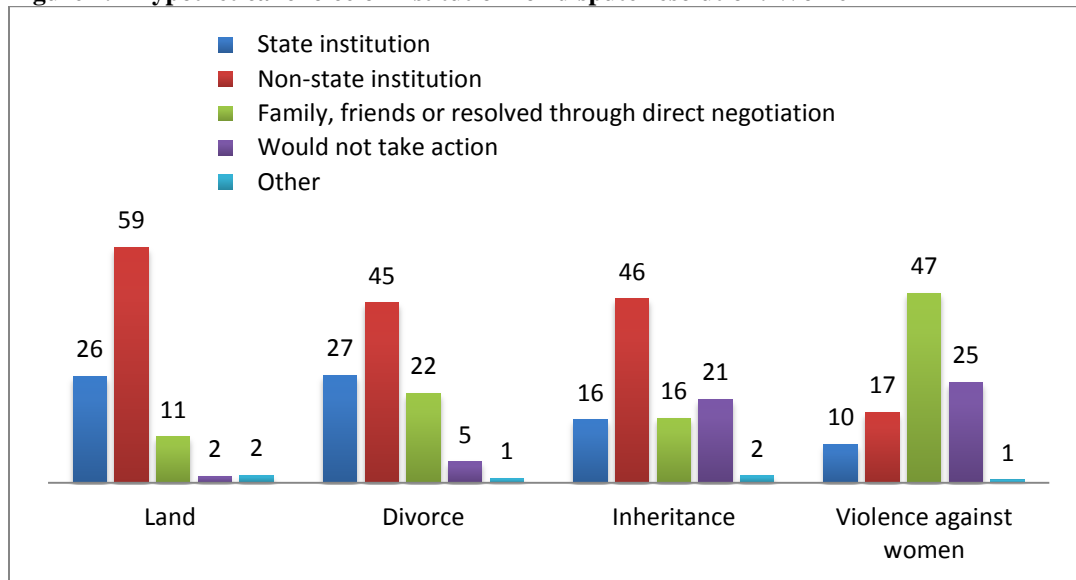
2.4 Dispute Resolution

33. This section investigates strategies for dispute resolution, focusing on women's most prevalent justice issues—divorce, violence against women, inheritance, and land. In the household survey, both women and men were asked what actions they might possibly take to address these four types of disputes. In the user survey, as noted, the users described the actual course of action they had taken.

2.4.1 Possible dispute resolution mechanisms (hypothetical)

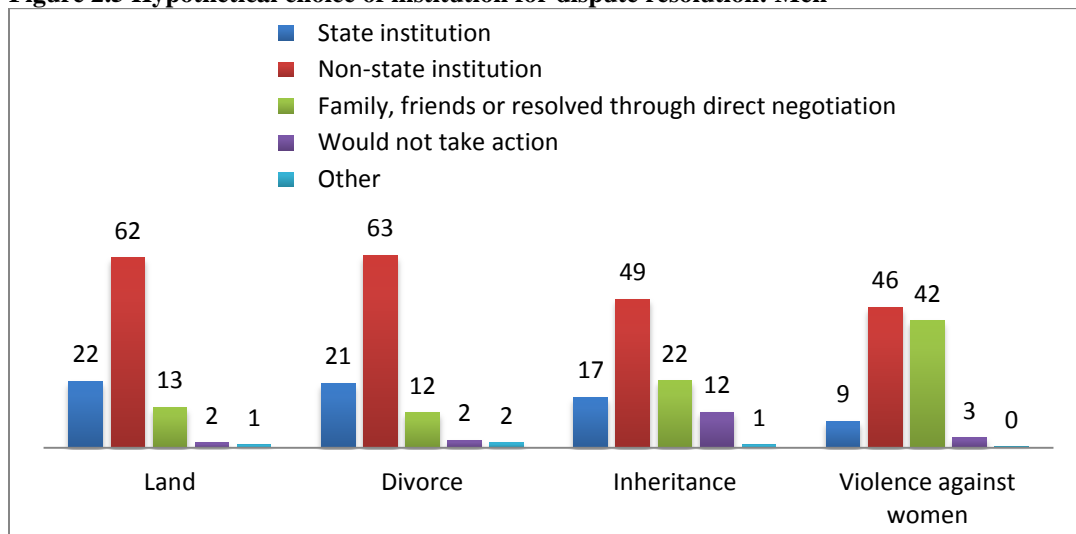
34. Figures 2.4 and 2.5 compare how male and female survey respondents proposed to resolve the four key types of disputes. The most substantial difference between women and men is that about 50 percent of women would resolve a case of violence against women through family, friends, or direct negotiation, and almost the same percentage of men would approach non-state justice institutions. Twenty-five percent of women would not take any action. On the other hand, on inheritance, land, and divorce, women and men are consistent in their overall preference for non-state institutions. For land-related disputes, around 60 percent of women and men would approach non-state institutions for redress.

Figure 2.4 Hypothetical choice of institution for dispute resolution: Women



Source: Household survey (Logar not included).

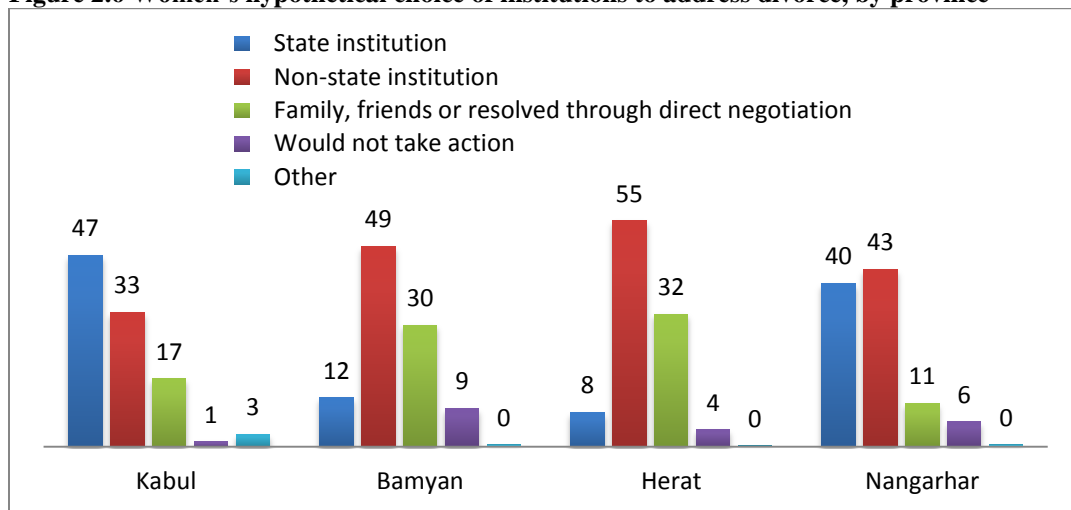
Figure 2.5 Hypothetical choice of institution for dispute resolution: Men



Source: Household survey (Logar not included).

35. **Regional differences in women’s preferred institutions.** Although women exhibited a marked preference for approaching non-state institutions to resolve disputes, their preferred institutions vary by province. For example, Figure 2.6 indicates how women would potentially address divorce, which is the most prominent dispute in Herat, Nangarhar, and Kabul. Among the female household survey respondents, the preference for non-state institutions was as much as five times greater in Herat and three times greater in Bamyan than in the other two provinces surveyed. In contrast, respondents in Nangarhar expressed a nearly equal preference for state and non-state institutions, whereas respondents in Kabul preferred the state institutions. These preferences are consistent across all four types of disputes (see the details in Annex 2).

Figure 2.6 Women’s hypothetical choice of institutions to address divorce, by province



Source: Household survey (Logar not included).

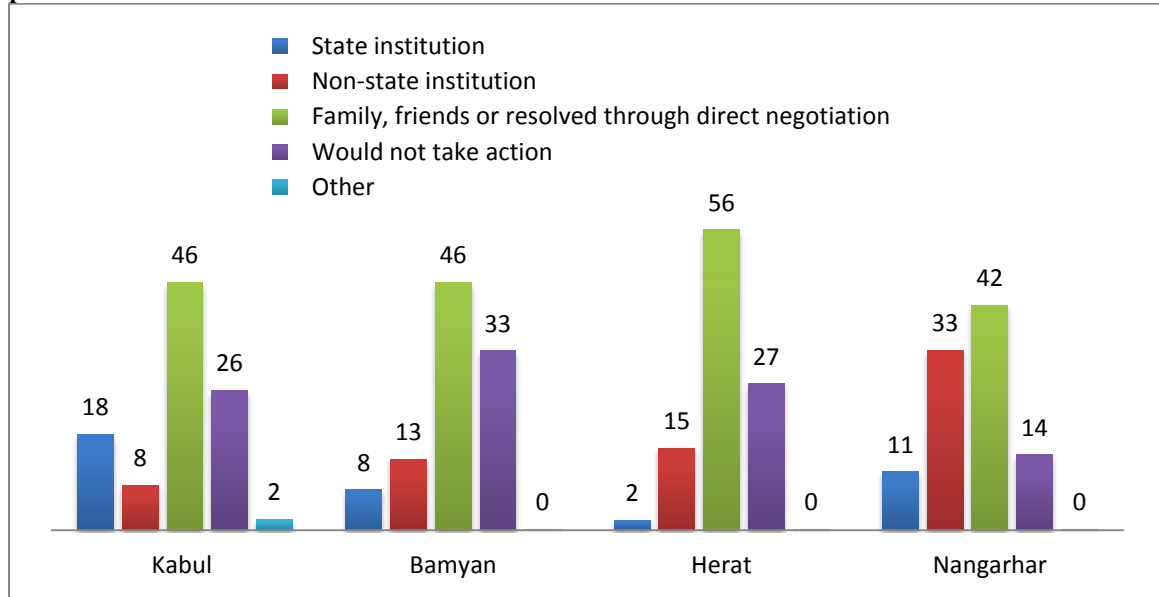
36. **Not taking action.** Figure 2.7 shows that some 25–30 percent of women responding to the household survey in Kabul, Herat, and Bamyan would take no action in a case of violence against women. On the other hand, only 14 percent of women in Nangarhar said they would take no action, and 44 percent would report to non-state or state justice institutions. Note that this hypothetical willingness to report was contradicted by actual users of the justice system; as shown in Figure 2.3, only 8 percent of them were processing cases of violence.

37. When household survey respondents were asked why they would take no action on a case, their primary reason was that “[the issue is] not important enough” (Figure 2.8). This reason was cited most frequently for cases of violence against women. Fear of retaliation also deters women from taking action in cases of violence. Women noted that they were reluctant to create problems with their families, or in cases involving inheritance issues, to damage relations with close relatives.

2.4.2 Actual dispute resolution mechanisms

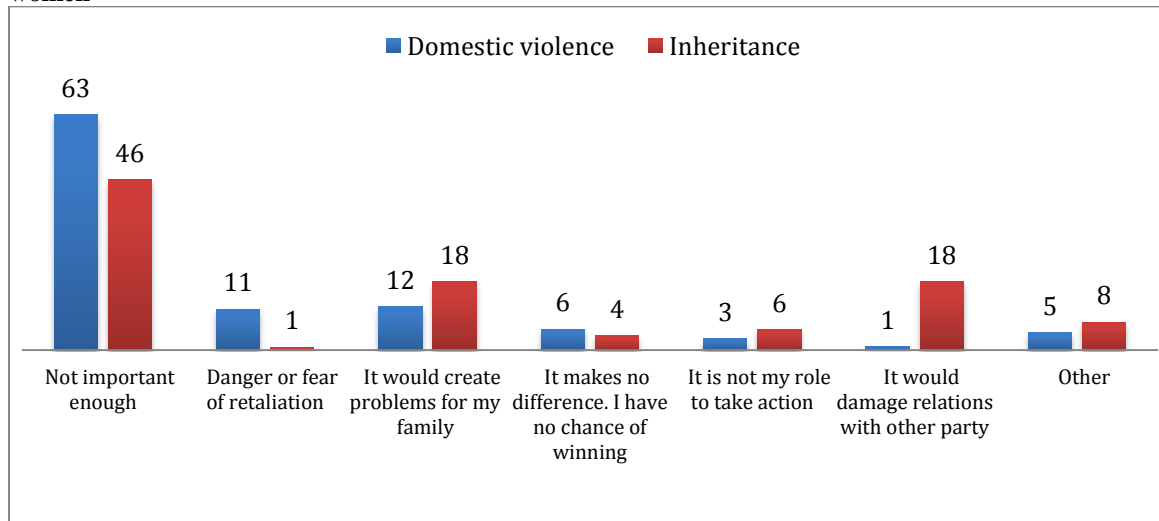
38. **Choice of justice institution by gender, province, and type of dispute.** Figure 2.9 indicates that both men and women users are more likely go to the state justice institutions first, especially in cases of violence against women and divorce. For cases involving land and inheritance, on the other hand, women and men both tend to approach non-state institutions first.

Figure 2.7 Women's hypothetical choice of institutions for addressing violence against women, by province



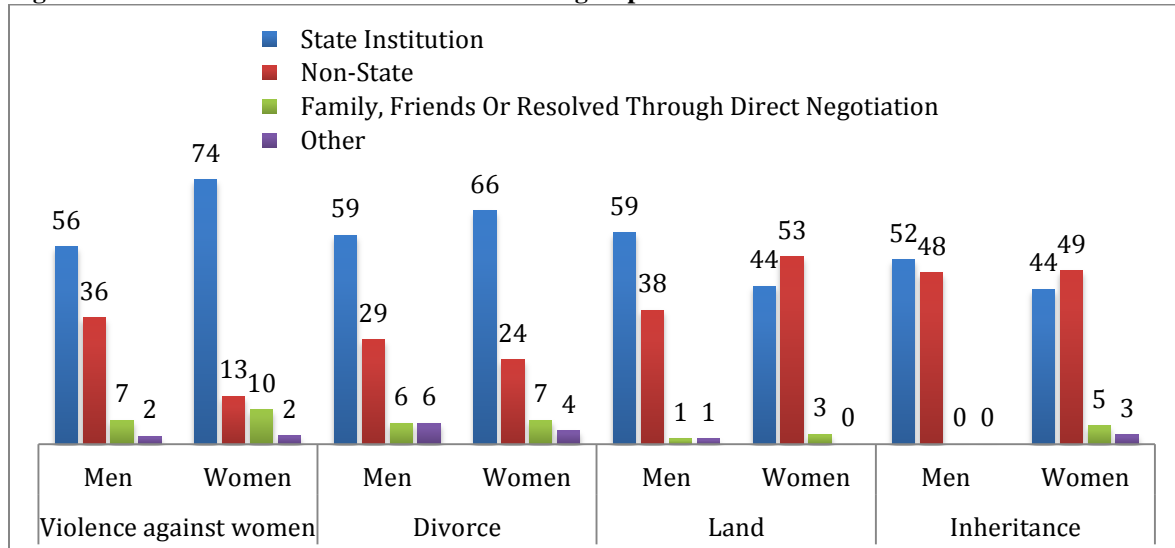
Source: Household survey (Logar not included).

Figure 2.8 Reasons for not taking action in hypothetical cases of inheritance and violence against women



Source: Household survey (Logar not included).

Figure 2.9 Actual choice of institution for resolving disputes



Source: User and household surveys (users and those household survey respondents who experienced disputes; Logar not included).

39. The 2013 Asia Foundation survey also found that state institutions were preferred over non-state institutions to handle divorce cases. Both state and non-state institutions were equally preferred for resolving land cases, which is somewhat consistent with Figure 2.9. In cases related to inheritance, respondents in the Asia Foundation survey exhibited a substantial preference for state institutions. Note that the 19 percent of Asia Foundation survey respondents who experienced disputes related to inheritance may have been more likely to reside in urban areas, compared to the overall sample for that survey.²⁴

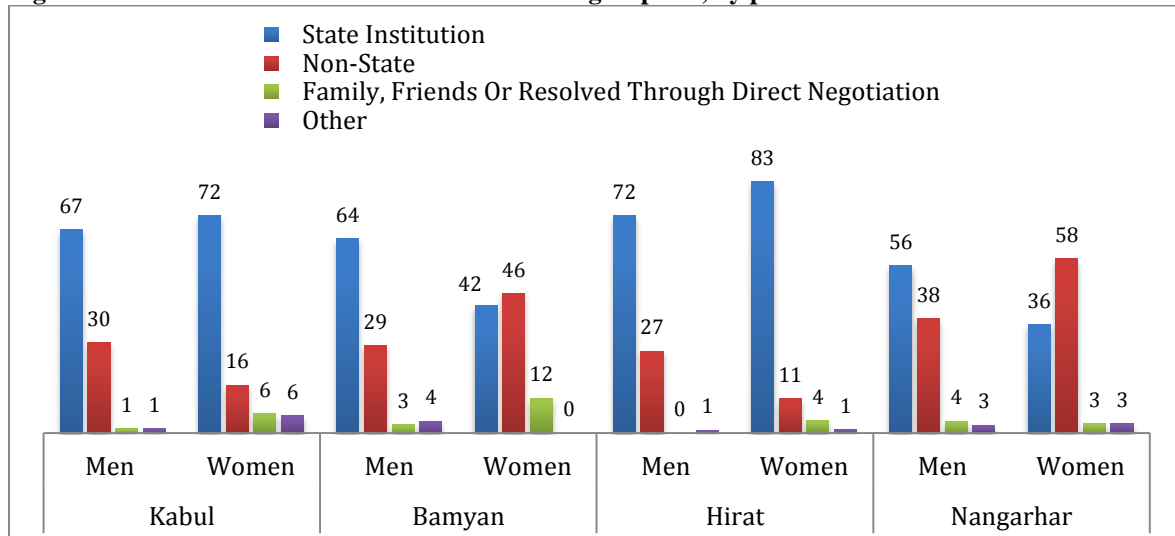
40. Among the users surveyed for this study, women as well as men in Kabul and Herat went to state institutions in the first instance to resolve disputes (Figure 2.10). The preference for state institutions over non-state institutions was greater among women than men, and it was 3.5 times greater in Kabul and 6.5 times greater in Herat than in the other provinces. In Bamyan, men showed a clear preference toward state institutions, while nearly equal numbers of women chose state and non-state institutions. In Nangarhar, more men went to state institutions, and more women resorted to non-state institutions.

41. Note that the preferences of justice service users differ from those of household survey respondents who reported experience with disputes in the justice system, partly because 88 percent of female and 85 percent of male users were sampled at state justice institutions. In the case of Herat, the difference in preferences between the household survey respondents and justice service users could be explained by household survey

²⁴ The users in this study are more likely to reside in an urban area (47–55 percent). In the Asia Foundation survey (Asia Foundation 2013), 14 percent of the overall sample population resided in urban areas. For that reason, it is assumed that the 19 percent of respondents who had disputes in the last two years were more likely to reside in urban areas, compared to those who did not experience any dispute.

sampling in remote districts, chosen because of their relative security. The preference of justice service users for state institutions may also be attributable to the characteristics of the users themselves; they are more urban and literate, have better access to government offices and media, and are more likely to belong to households with a higher economic status than the general population.

Figure 2.10 Actual choice of institution for resolving disputes, by province



Source: User and household surveys (users and those household survey respondents who experienced disputes; Logar not included).

42. The courts (provincial or family), Hoqooq Departments, and community elders tend to be women's and men's preferred institutions.²⁵ The choice of institution at first instance varies by type of dispute and gender, as indicated in Figures 2.11–2.14.²⁶

43. To resolve disputes related to violence against women, both women and men resorted to courts, with men showing a higher preference for courts than women (31 percent versus 26 percent). Women's second choice was the prosecutor, closely followed by the police. On the other hand, the men's second choice was the Hoqooq Department.

44. In disputes related to divorce, women (22 percent) as well as men (32 percent) mostly sought resolution through the courts, followed by the community elders. Women's third choice varied (the DoWA, Human Rights Commission, or Hoqooq Departments), while men preferred Hoqooq Departments.

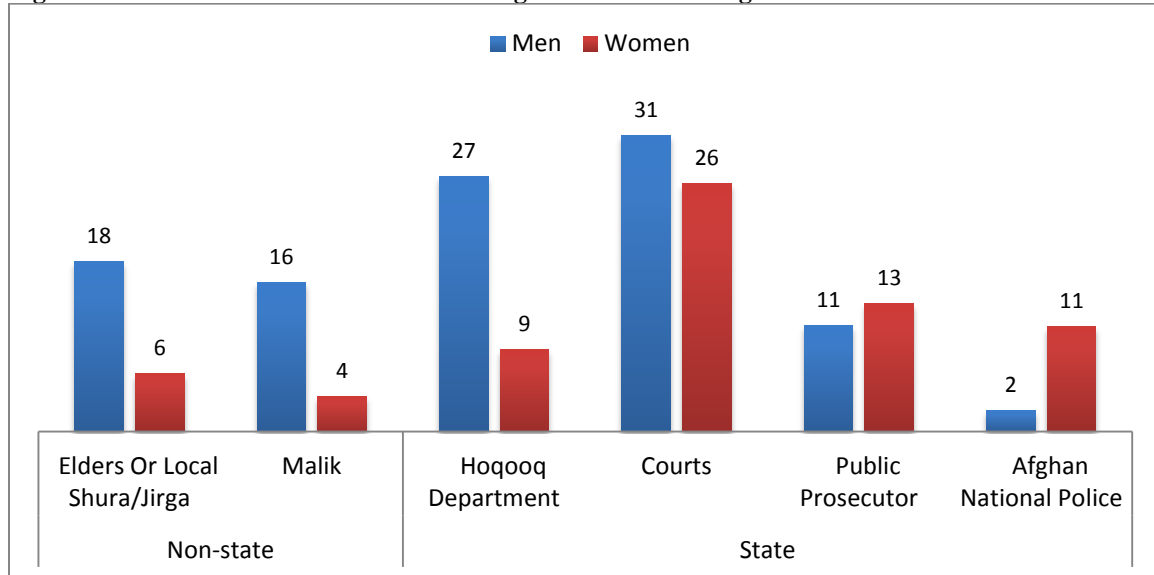
45. To resolve land disputes, women's preferred institution by far was the community elders (36 percent of women versus 28 percent of men), followed by mullahs and Hoqooq Departments. These preferences may reflect the fact that land disputes tend to be related to inheritance and could be better resolved through non-state institutions, which are more aware of the litigants and their backgrounds. Moreover, land issues are more prominent

²⁵ Note however that 45 percent of female users were sampled while visiting courts, whereas 37 percent of male users were sampled at hoqooq offices.

²⁶ State and non-state justice institutions listed in the figures were the top 6 of a list of 30 institutions.

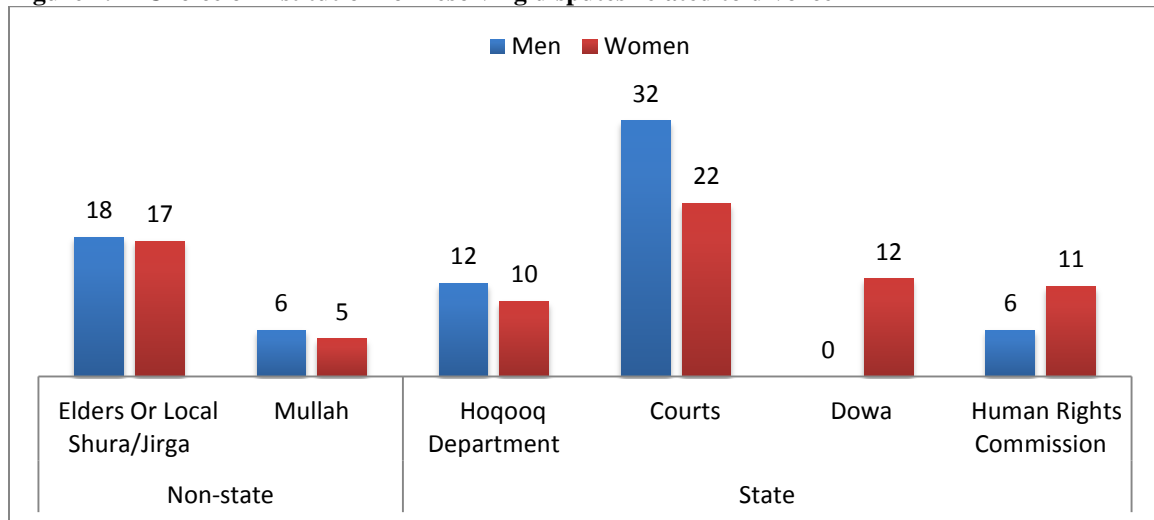
in Bamyan, where non-state institutions would be more available as the province is predominantly rural. Men, on the other hand, relied on Hoqooq Departments (29 percent) and community elders (28 percent), followed by the District Governor's Office (14 percent).

Figure 2.11 Choice of institution for resolving cases of violence against women



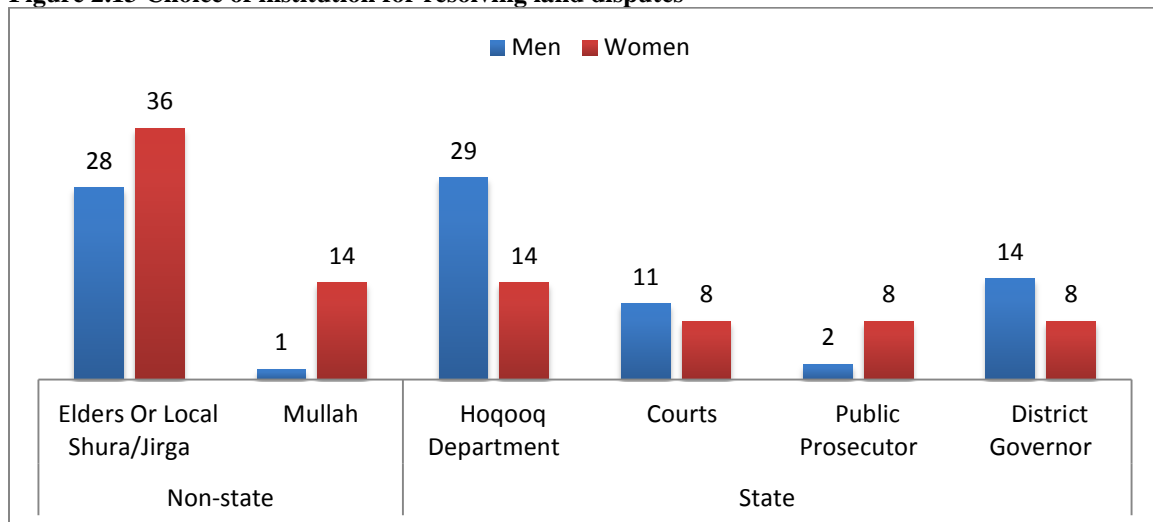
Source: User and household surveys (users and those household survey respondents who experienced disputes; Logar not included).

Figure 2.12 Choice of institution for resolving disputes related to divorce



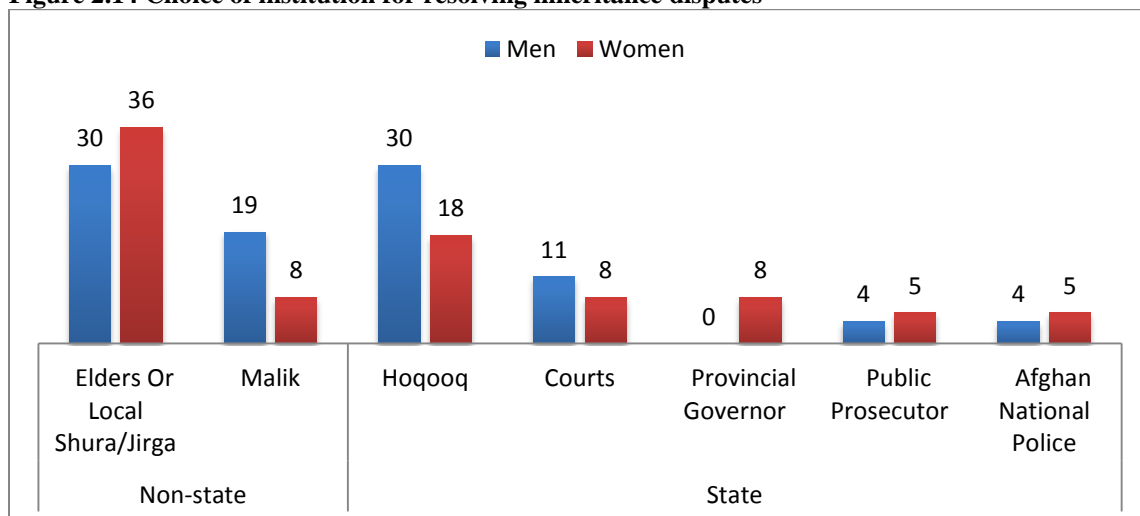
Source: User and household surveys (users and those household survey respondents who experienced disputes; Logar not included).

Figure 2.13 Choice of institution for resolving land disputes



Source: User and household surveys (users and those household survey respondents who experienced disputes; Logar not included).

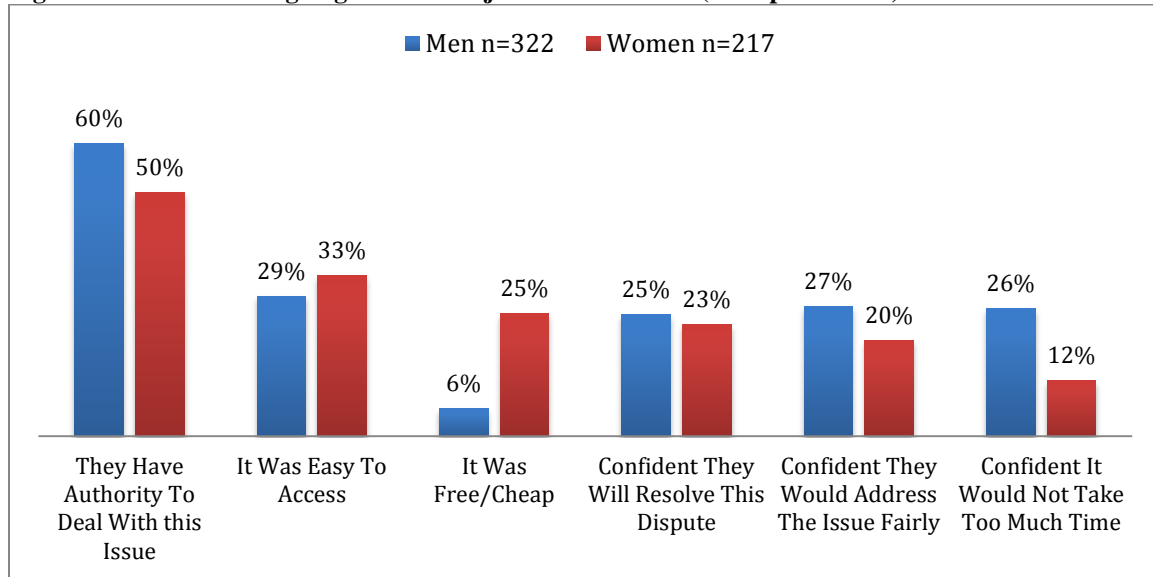
Figure 2.14 Choice of institution for resolving inheritance disputes



Source: User and household surveys (users and those household survey respondents who experienced disputes; Logar not included).

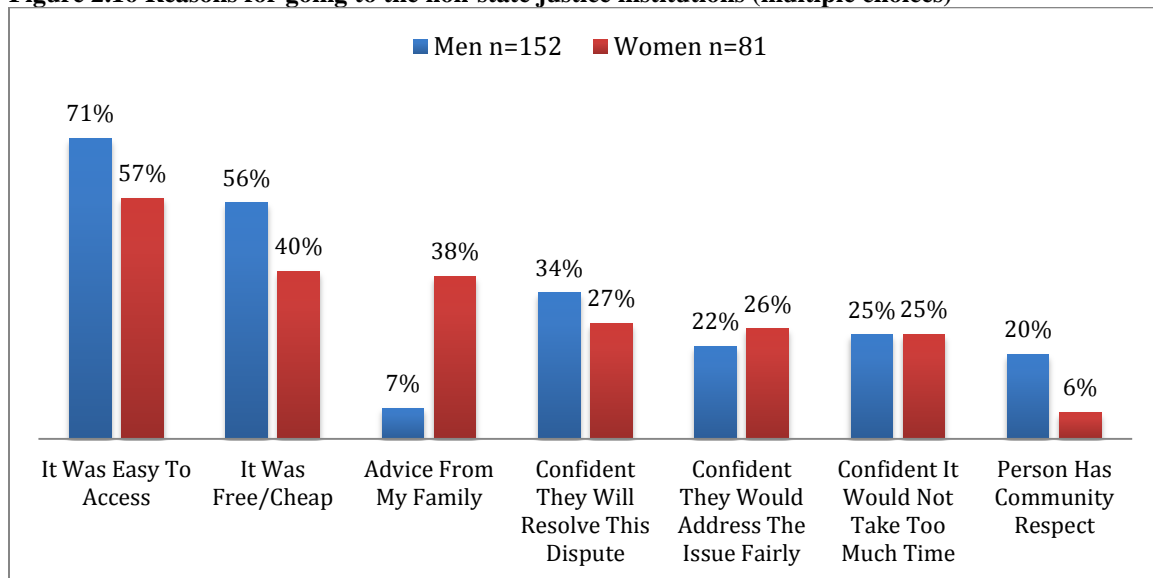
46. **Reasons for choosing a state or non-state institution.** In choosing state institutions, state authority was the most important factor for both women and men (50 percent and 60 percent), followed by the ease of access (33 percent and 29 percent) (Figure 2.15). On the other hand, in choosing non-state institutions, access was the most important factor for both women and men (57 percent and 71 percent), followed by cost (56 percent and 40 percent) (Figure 2.16). For women, the choice of non-state institutions is motivated to a large extent by advice from family (cited by 38 percent for women versus 7 percent of men), which highlights the greater social acceptability of women approaching non-state justice institutions compared to state institutions.

Figure 2.15 Reasons for going to the state justice institutions (multiple choices)



Source: User and household surveys (users and those household survey respondents who experienced disputes; Logar not included).

Figure 2.16 Reasons for going to the non-state justice institutions (multiple choices)



Source: User and household surveys (users and those household survey respondents who experienced disputes; Logar not included).

47. In every FGD, men as well as women raised the issue of bribery at state institutions. The Asia Foundation survey indicates that 33 percent of respondents had to pay bribes at state justice institutions, which places them among the government service providers that most often demand bribes.²⁷ In the user survey, 10 percent of users had to

²⁷ The worst is public healthcare services (38 percent), followed by state justice institutions (33 percent), Afghan National Police (31 percent), and employment (31 percent).

pay bribes at state institutions, and men paid bribes more often than women (14 percent versus 5 percent). This difference was particularly marked for the police (10 percent versus 1 percent) and prosecutors (5 percent versus 2 percent). On the other hand, at non-state institutions, less than 1 percent of users paid bribes. The relative absence of bribery may explain why cost (free/cheap) was the second most important factor in choosing non-state justice institutions, and why it was cited more often by men than women (56 percent versus 40 percent) (Figure 2.16). Another reason why more men than women pay bribes may be that fewer women can afford them. The FGDs included women in prison, who confirmed that police and prosecutors asked them to pay bribes, but they could not pay. The inability to pay adequate bribes clearly can have serious and negative effects on an individual's outcomes in the justice system.

Table 2.2 Percentage of users who had to pay bribes

	Women	Men	Total
	(n=217)	(n=322)	(n=539)
State institutions			
Police	1.3%	9.5%	6.1%
Public prosecutor	2.3%	5.2%	4.0%
Local courts	0.6%	4.1%	2.7%
Hoqooq	1.3%	3.9%	2.8%
Governor's Office	0.6%	0.7%	0.7%
Family Response Units	0.3%	0.2%	0.3%
Family court	0.0%	0.3%	0.2%
DoWA	0.0%	0.0%	0.0%
EVAW Prosecution Unit	0.0%	0.0%	0.0%
Human Rights Commissions	0.0%	0.0%	0.0%
Sub-total	4.5%	14.2%	10.2%
Non-state institutions	(n=81)	(n=152)	(n=233)
Women's shura	0.6%	0.0%	0.2%
Tribal leaders/malik	0.3%	0.9%	0.7%
Elders of local shura/jirga	0.0%	0.0%	0.0%
Mullah Saleb	0.3%	0.0%	0.1%
Sub-total	1.0%	0.9%	0.9%
Total	(n=298)	(n=474)	(n=772)
State and non-state	5.2%	14.4%	10.6%

Source: User survey (Logar not included).

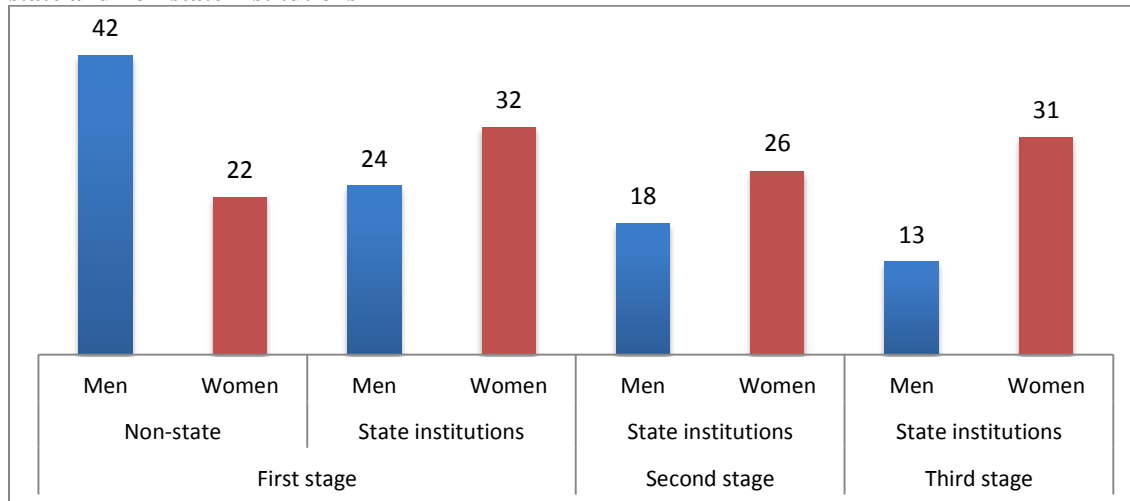
Note: The sub-total indicates the percentage of users who paid bribes at any state or non-state institution, respectively. The grand total is the percentage of users who paid bribes at any state or non-state institutions.

2.5 Level of Satisfaction with Process and Outcomes

48. **Process.** Figure 2.17 indicates the level of satisfaction with the process or experience among female and male users by type of justice institution and stage of the judicial process (The “stage” means the first, second, or third attempt to resolve or report

a dispute by having it prosecuted at state or non-state justice institutions; see Annex 4). Satisfaction was rather low among female and male users, regardless of whether they went to state or non-state justice institutions. Men were significantly more satisfied with non-state institutions than women, however (42 percent versus 22 percent), whereas women tended to be more satisfied than men with state institutions (32 percent versus 24 percent).²⁸ As cases progress through the system, women remain relatively more satisfied with state institutions than men, while men's satisfaction level progressively declines.

Figure 2.17 Women's and men's levels of satisfaction at different stages of the judicial process in state and non-state institutions



Source: User and household surveys (users and those household survey respondents who had disputes in the last five years; Logar not included).

Note: The “stage” means first, second, or third attempt to resolve or report a dispute by having it prosecuted at state or non-state justice institutions (see Annex 4).

49. Users' satisfaction with the judicial process varies by province. Female users of state institutions in Herat (more than 50 percent),²⁹ followed by male users of non-state institutions in Nangarhar and Herat, expressed the greatest satisfaction (Figure 2.18). On the other hand, female users of state institutions in Nangarhar were the least satisfied with the process (less than 10 percent). Women were more satisfied with state institutions than men in Herat (more than double) and Bamyan (by 33 percent). In Nangarhar and Kabul, women as well as men were more satisfied with non-state institutions. In Nangarhar, women's level of satisfaction was generally lower than men's (50 percent versus 22 percent for the non-state institutions, and 18 percent versus 9 percent for state institutions).

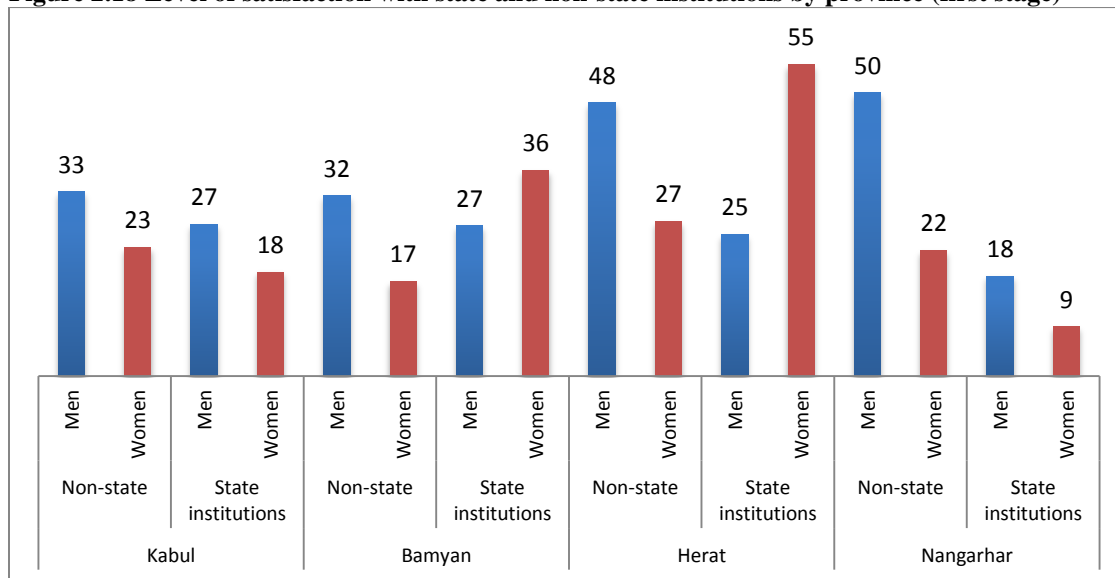
50. When the level of satisfaction is examined by institution, the most satisfied group appears to be female court users, followed by male users who requested community

²⁸ Findings from the 2013 USAID survey on users' satisfaction with state courts show a similar trend; female users were more satisfied with court (state institution) performance (51 percent) than male users (47 percent). USAID (2013:6).

²⁹ This finding is also in line with the 2013 USAID survey on satisfaction with the courts, which found that users in Herat expressed a higher level of satisfaction with justice institutions (USAID 2013).

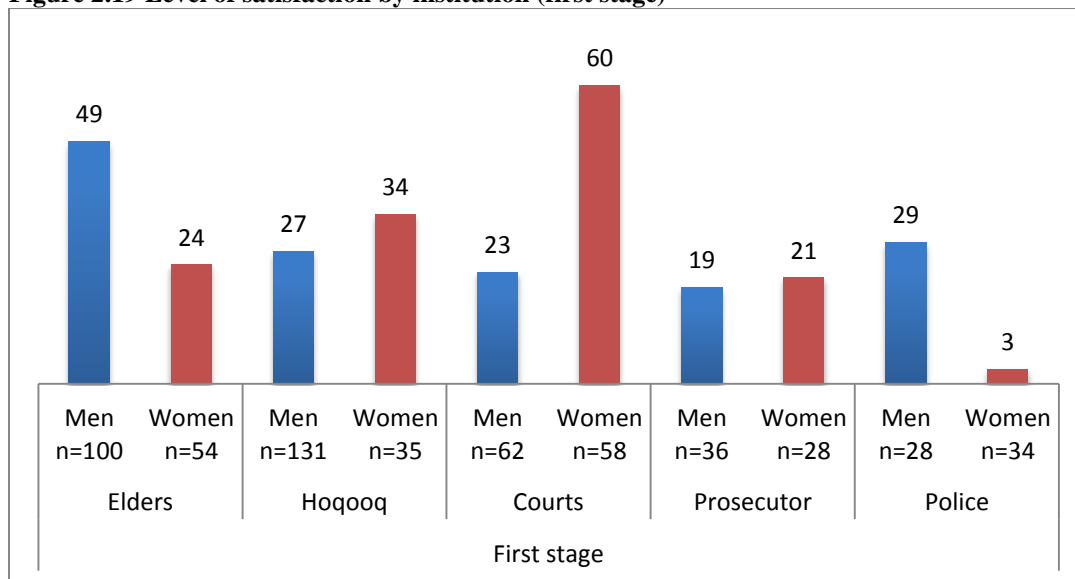
elders to resolve their dispute. The least satisfied group was female users who approached the police to resolve a dispute.

Figure 2.18 Level of satisfaction with state and non-state institutions by province (first stage)



Source: User and household surveys (users and those household survey respondents who experienced disputes in the last five years; Logar not included).

Figure 2.19 Level of satisfaction by institution (first stage)



Source: User and household surveys (users and those household survey respondents who experienced disputes in the last five years; Logar not included).

51. **Outcomes.** Because users were sampled at justice institutions, the majority had ongoing cases, but the cases of 149 users (20 percent) had already been decided by state or non-state institutions (Table 2.3). Among men, 61 percent were satisfied with the outcome (the decision had been in their favor), compared to 37 percent of women. Further analysis is not possible, however, because the sample is too small, and non-state

users are disproportionately represented (the cases of 74 percent of all non-state users versus 6 percent of all state users had been decided).³⁰

Table 2.3 Number of users who had outcomes on their cases

	Women	Men	Total	% of all users
State institution	43	28	71	6
Non-state institution	19	59	78	74
Total	62	87	149	20

Source: User and household surveys (users and those household survey respondents who experienced disputes in the last five years; Logar not included).

2.6 Barriers to accessing justice services

52. This section uses the data on disputes, mechanisms of dispute resolution, and satisfaction with the process and outcomes to analyze the barriers that women face in accessing justice services. The barriers can be divided into demand-side barriers, which hinder women from seeking to resolve disputes through justice institutions, and supply-side barriers, which reduce the availability of justice institutions to women.

2.6.1 Demand-side barriers

53. Three interrelated demand-side barriers prevent women from accessing justice institutions: (i) prevailing social and cultural norms, (ii) limited mobility, and (iii) limited awareness of rights, laws, and the role of state justice institutions. These three barriers interact to reduce women's demand for justice institutions to resolve their justiciable problems.

54. **Social and cultural norms.** Prevailing patriarchal social and cultural norms put a high premium on women's discretion and modesty and do not approve of women accessing the public sphere without the support and accompaniment of male guardians. Seeking help outside the family to redress personal grievances, particularly if those grievances relate to matters considered private (such as relationship dynamics between a husband and a wife) is often frowned upon. Attempts to address a dispute outside the family are often perceived as shameful and socially unacceptable, and family members often try to prevent women from dealing with family matters through outsiders. Community leaders may prevent women from accessing state institutions, believing that disputes, especially those related to family issues and thus considered private, should be dealt with from within the community.³¹ Responses from FGDs provide ample testimony of the role of social and cultural norms in restricting women's access to justice institutions:

³⁰ Because users were sampled randomly at state justice institutions, they most likely had ongoing cases that remained to be decided, or they were escalating cases that had not been decided satisfactorily. On the other hand, non-state users were referred by community leaders and other non-state institutions. The referrals could have been biased toward individuals whose cases had closed, most likely with satisfactory outcomes.

³¹ These findings are in line with a recent study carried out by the United States Institute of Peace (see USIP, forthcoming).

In our village no one is in favor of the idea of women going to the district center. Everybody wants the women to solve their issues inside the village and with the shura and elders. It is a disgrace for the villagers if a woman from our village refers to the district center.

If the village arbab finds out that a woman wants to go to the court, he will stop her and won't let her do that.

FGD (women), Mangoran Village, Ghoryan District, Herat Province

If women want to refer to district authorities, people will prevent them from doing so.

FGD (men), Shikhi Village, Waras District, Bamyan Province

55. Concepts of family honor, reputation, and shame are paramount in women's lives:

Domestic violence is a serious problem in our village and it is because of poverty and illiteracy. If women face issues like that, they don't refer to any institution because of their honor.... Yet women always try to stay calm and bear all domestic violence.

FGD (women), Sar Pilu Village, Waras District, Bamyan Province

56. **Mobility.** Ease of access is a key factor in women's choice of a justice institution (see Section 2.4.2). Women, particularly in rural communities, are often not allowed to travel alone. Social and cultural norms of female respectability often dictate that a woman must be accompanied by a *mahram*, generally her husband, brother, or father. This requirement presents a particular challenge, given that her dispute could well be with one of these individuals. Under such circumstances, she is likely to struggle to find a mahram willing to escort her to a justice institution. Insecurity and poor access to transport in rural areas hinder women as well as men from traveling to district or provincial centers, where state justice institutions are generally located. A drivable road is located within 2 kilometers for 79 percent of the population in Bamyan, compared to 85–95 percent in the other four provinces (Table 1.3), but access to a vehicle is a much larger challenge. In the absence of appropriate transport facilities, travelling longer distances tends to be difficult for everyone, but especially for women.

57. Given the limitations on women's mobility, the location and distance of justice institutions have a strong effect on the likelihood that a woman will choose a non-state institution to resolve her justiciable issue. In fact, women responding to the household survey in Bamyan and Herat expressed a strong preference for non-state justice institutions (Section 2.4.1). These are the two provinces with the greatest distances between communities and state institutions compared to community and non-state institutions (Table 2.4).

Table 2.4 Average distance of justice institution from the surveyed villages (km)

	Kabul	Bamyan	Herat	Nangarhar	Logar ^a
District centers	1.9	27.6	8.7	4.8	4.1
Provincial centers	8.6	161.6	29.9	14.5	9.8
State institutions	6.4	85.9	16.3	9.1	-
Non-state institutions	2.9	6.4	1.7	1.0	-

Source: Institution mapping.

a Because the household survey was conducted in the market in Logar, data on the distance to state and non-state institutions were not collected.

58. **Limited awareness of rights, laws, and state justice institutions.** The household survey indicates that women generally have limited awareness of the role of state justice institutions. On average women are less aware of the role of state justice institutions than men, and the difference between the two groups is substantial (Table 2.5). Because of women's low literacy, limited ability to travel to district or provincial centers and obtain information, and limited access to media, women were 136 percent less aware of family courts than men. Among household survey respondents, the number of literate men was almost double that of women, and 21 percent more men had access to media than women (Section 2.2).

59. Despite significant gaps, rural women's awareness of state justice institutions was higher than expected. The implication of this finding is that the lack of awareness may be less of a barrier to accessing state justice services than women's limited mobility or the fact that it is socially unacceptable for them to approach state institutions.

Table 2.5 Awareness of the role of state justice institutions (household survey) (%)

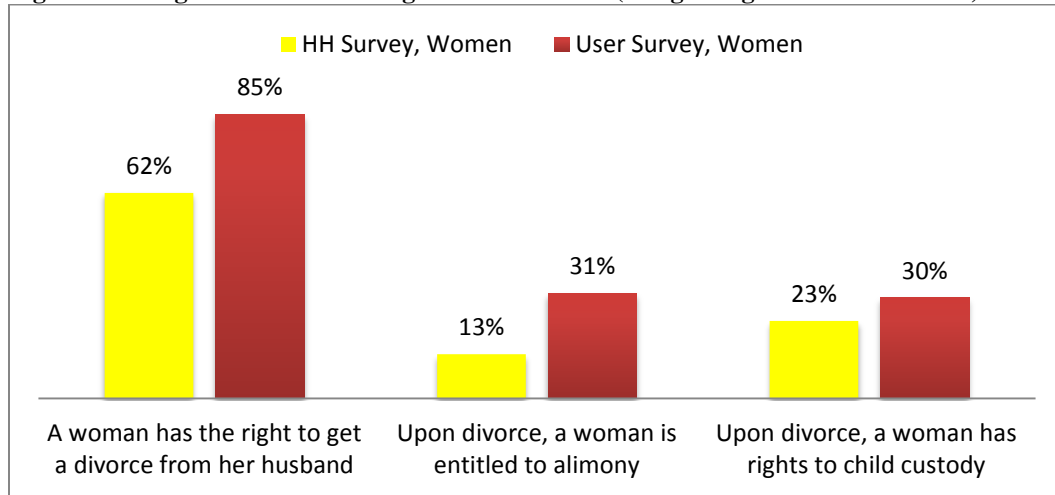
	Men	Women
Hoqooq	80	43
Local courts	82	41
Public prosecutor	85	52
Family Response Units (with the ANP)	66	32
DoWA^a	78	39
EVAW Prosecution Unit^a	73	38
Family court^a	71	30
AIHRC^a	82	49
Average	77	40

Source: Household survey, excluding Logar

a Figures exclude Kabul for DoWA, EVAW Prosecution Unit, family court and AIHRC.

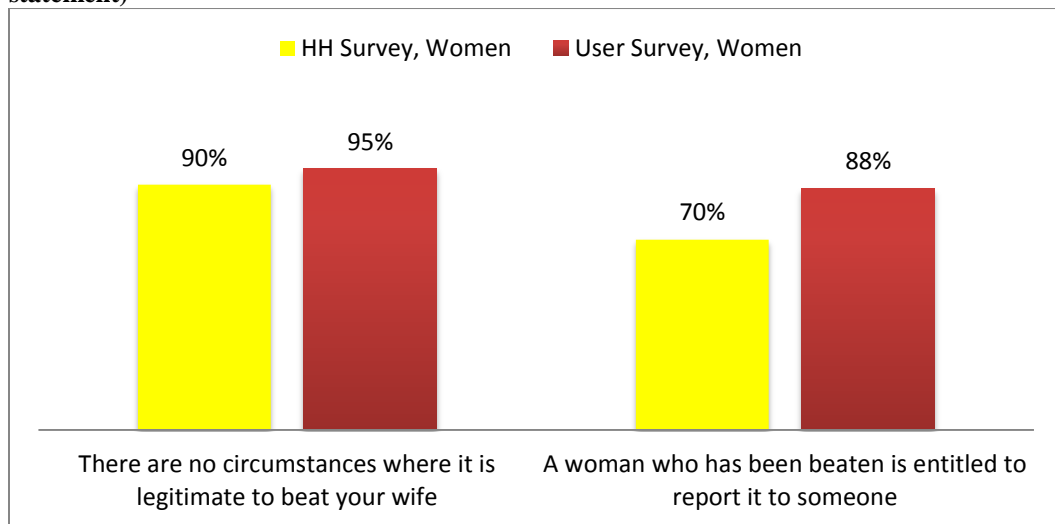
60. Female users of justice institutions were more likely to be aware of rights and laws, particularly rights related to the EVAW Law (Figures 2.20 and 2.21). Female users' greater level of awareness is probably results from better access to provincial centers (female users were more common in urban areas), higher literacy, and better access to media than female household survey respondents. Greater awareness could also be related to the particular experiences of these women as users—they may have learned as they went along.

Figure 2.20 Legal awareness among women: Divorce (% agreeing with the statement)



Source: User and household surveys (Logar not included).

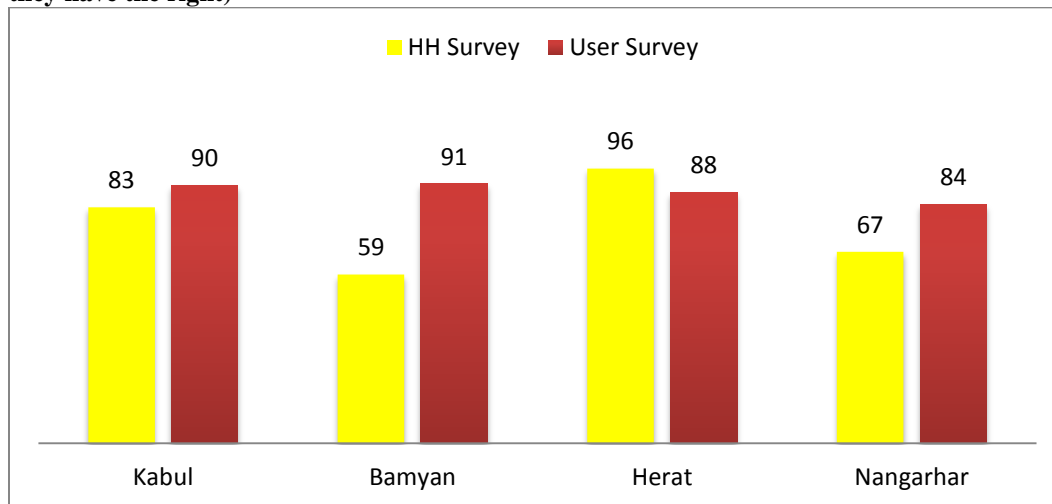
Figure 2.21 Legal awareness among women: Violence against women (% agreeing with the statement)



Source: User and household surveys (Logar not included).

61. Figure 2.22 indicates that female users are more aware that they have a right to report a beating, except for users in Herat. Household survey respondents in Bamyan are least aware of this right, followed by those in Nangarhar.

Figure 2.22 Awareness of the right to report that a woman has been beaten (% agreeing that they have the right)



Source: User and household surveys (Logar not included).

62. Overall, women’s awareness of rights and entitlements was higher than expected. This finding challenges the common assumption that lack of legal awareness is one of the main barriers to women’s access to justice. When these data are examined alongside data on women’s willingness to take action through justice institutions to protect their rights, a more nuanced picture emerges. For example, in Herat, while awareness of the right to report domestic violence is high among female household survey respondents—96 percent of women agree that they have a right to report if a woman is beaten (Figure 2.22)—27 percent would take no action (Figure 2.7).

63. The implication is that although awareness—and acceptance—of women’s rights is rising, violations of those rights often go unchallenged and remain outside the purview of justice institutions. Data from the 2013 Asia Foundation survey³² confirm and complement these findings. Indeed, they show that an overwhelming majority of Afghans agree that women and men should have equal rights under the law. Among respondents, 62 percent disagree with the practices of ba’ad (blood money or honor killings) and ba’adal (the exchange of brides), and 74 percent agree that a girl’s guardian should wait until she becomes an adult before arranging her marriage, and should always consult her first. On the other hand, respondents cited rights-related issues, such as forced and early marriage, domestic violence, limited mobility, and being under the control of men, as the main problems facing women in Afghanistan—confirming that, notwithstanding the support shown by respondents for gender equality and women’s rights, inequality and rights violations are still very common.

2.6.2 Supply-side barriers

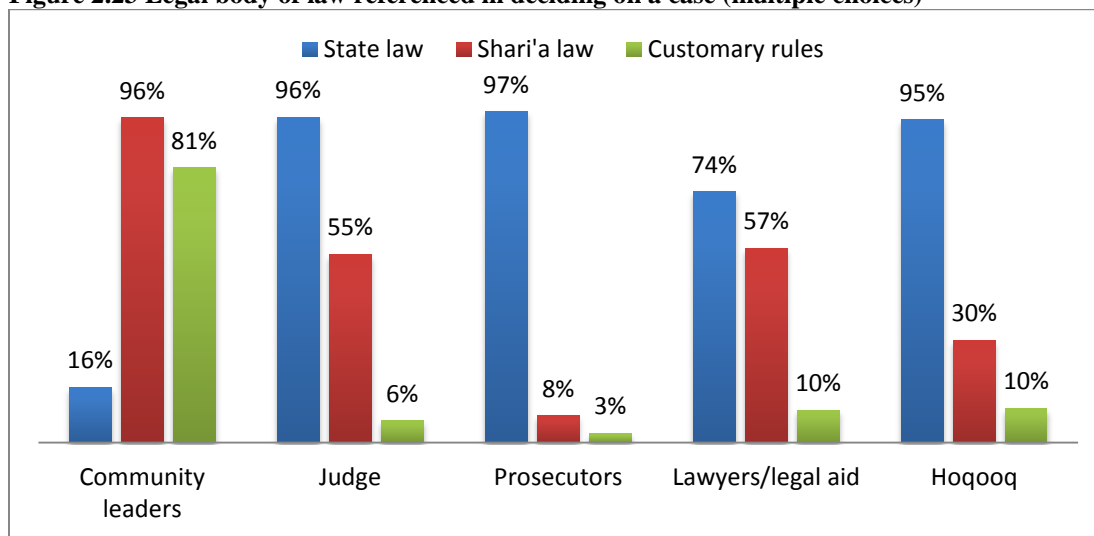
64. Women’s generally lower satisfaction with justice institutions, non-state justice institutions in particular, reflects specific issues—often linked to discriminatory practices and social and cultural norms related to gender roles—that prevent them from enjoying a

³² The Asia Foundation (2013), cit., p. 106 ff.

fair judicial process. In navigating justice institutions, women face six key barriers: (i) application of a multitude of laws and legal practices in ways that at times do not provide women with the maximum protection to which they are entitled under the law; (ii) low personal attendance at judicial proceedings; (iii) the use of mediation, which may prevent women from filing and pursuing a case; (iv) limited availability of state justice institutions at the district level; (v) the limited number of women providing legal services; and (vi) the scarcity of legal aid providers. This section draws on data from the surveys of justice service providers, which are complemented by the findings from household and user surveys, to analyze each of these barriers.

65. **Application of a multitude of laws and legal practices.** Afghanistan uses three normative and overlapping sources of law, which are state law, Shari’a, and customary rules (see Section 1.3). State justice service providers perceive that state law is applied more frequently than Shari’a by judges, lawyers and legal aid providers, and Hoqooq Departments. On the other hand, among non-state justice service providers, the application of Shari’a and customary rules predominated.³³

Figure 2.23 Legal body of law referenced in deciding on a case (multiple choices)



Source: Justice service provider survey

66. Non-state institutions tend to base their decisions on a combination of customary principles and their own interpretation of religious norms, resulting in a potentially idiosyncratic set of rules. Discussants in focus groups provided examples of this practice, citing the instance of divorce:

If a woman wants to divorce her husband, the elders investigate the issue and the reasons why she is asking for divorce. A woman can divorce her husband, according to the shura, if the husband is impotent or can't earn money for his family. Otherwise, the shura doesn't let the women divorce their husbands

³³ State and non-state justice service providers were asked which set of rules they refer to in order to judge a case. The answer is based on their perception of these three laws and rules, thus, it does not necessarily reflect a correct understanding of these laws.

because it causes problems for the community. If the shura does not make proper decisions, women will refer to shura to divorce their husbands without any reasons.

FGD (men), Khaja Roshnayee Village, Bamyan District, Bamyan Province

67. Out of the five instances in which Shari'a recognizes women's rights to seek divorce (see Table 1.1), the village shura recognizes only two, which limits women's ability to end a marriage.

68. In Nangarhar, Logar, and rural districts in Herat, civil society actors as well as focus group participants pointed to the resilience of discriminatory customary practices. Although qualitative evidence shows that customs such as ba'ad and honor killings take place outside the purview of community justice actors, there are also cases where the shura sanctions them as a means to resolve controversy:

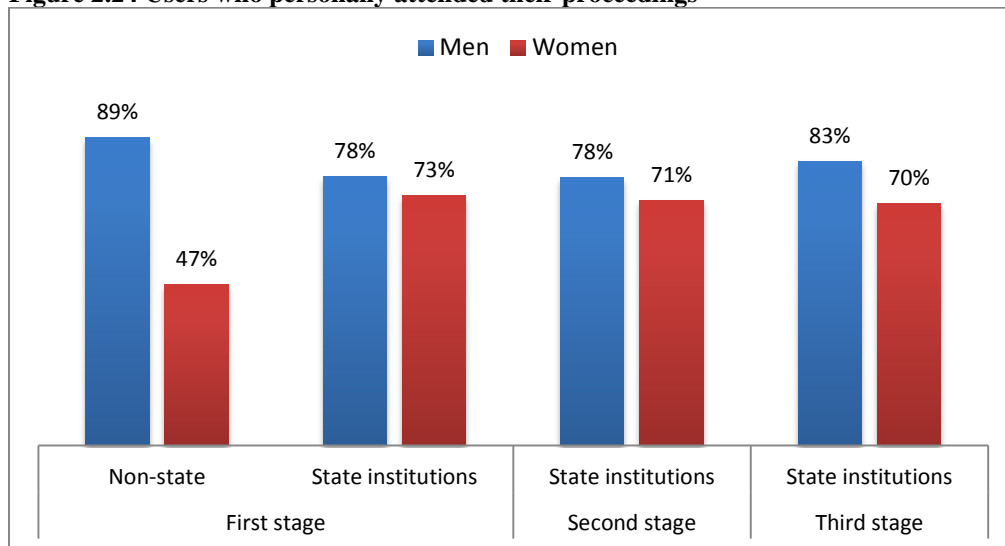
If a young girl runs away with a boy, she won't be killed. She will be married to the boy after some meetings taken by the shura and the boy will give a girl as "ba'ad." The girl can be his sister or cousin or he might have to pay to the girl's family.

FGD (women), Bazarak Village, Kuz Kunar District, Nangarhar Province

69. It is important to emphasize that state justice institutions do not always apply state laws, and key informants in this study often noted that officials in the state justice system were not always as well informed about the content of state laws as they should be. Sometimes officials in state justice systems apply informal laws or rules (for example, arresting women for "running away," which is not a crime under state law but is not permitted under customary rules). State officials confuse their perceptions of Shari'a principles with actually encoded laws, creating an idiosyncratic mix in the state system as well.

70. **Low personal attendance at judicial proceedings.** Women attend proceedings in non-state justice institutions much less often than men (47 percent versus 89 percent) (Figure 2.24). On the other hand, in state justice institutions, the differences are rather small. This finding suggests that in non-state justice institutions, women are unlikely to be heard directly, because of social and cultural norms. NGOs, AIHRC, and private lawyers alike say that women's participation in proceedings of traditional justice institutions is very rare, and almost impossible in the eastern areas.

Figure 2.24 Users who personally attended their proceedings



Source: User and household surveys (users and those household survey respondents who had disputes in the last five years; Logar not included).

71. **Use of mediation.** Mediation is a main feature of traditional dispute resolution mechanisms (non-state institutions). State institutions also commonly use mediation as the first phase in any proceedings; the Hoqooq Department is mandated to mediate disputes between parties before referring them to the appropriate justice institution, and the police often use mediation methods as well. For women, whose bargaining power is disproportionately lower than men's and whose ability to gain a hearing is limited by culture and social pressures, mediation may often result in an unfair justice process or the denial of justice.

72. This possibility is especially strong in cases involving marital issues, child custody, alimony, and, most of all, domestic violence, where mediation can prevent cases from reaching the prosecutorial or adversarial stage. Interviews with stakeholders indicate that this outcome is common. For example, interviewees in Bamyan highlighted how a number of cases referred to the EVAW Prosecution Unit were mediated, noting that, of the cases referred to the unit, only a few were prosecuted under the law.³⁴ Similarly, a legal aid provider in Kabul recalled facilitating the mediation of a rape case. The victim agreed to marry the perpetrator, which the legal aid provider regarded as the most preferable outcome for the victim, who would otherwise have no chance to marry and would become an outcast in the community. This interview demonstrates how justice and fairness are perceived when achieving social and communal wellbeing takes priority over upholding individual rights.

73. It also demonstrates the clear limitations in the genuine options available to women when their family and communal relationships break down. Women have extremely restricted economic options and are very unlikely to be able to live alone (even if they can afford to do so). Women who cannot return to their family relationships often

³⁴ See UNAMA (2013).

end up living perpetually in shelters, since leaving the shelter and becoming independent as a single woman is very rare in Afghanistan. Given women's limited long-term options, many actors believe that mediation is the lesser of two evils.

74. **Limited availability of state justice institutions at the district level.** Table 2.6 summarizes the availability of key primary state justice institutions, such as Hoqooq Departments, courts, and AGOs at the district level. These institutions were not present in every district where the household survey was carried out. Institutions that support implementation of the EVAW Law, such as the FRUs, DoWAs, and AIHRC offices, are present only at the provincial level. As a result, women were less aware of those institutions than of Hoqooq Departments, courts, or prosecutors (Table 2.5). Legal aid providers and private lawyers also tend to be represented only at the provincial level. Given deteriorating security, many institutions that had a presence at the district level in some areas are retreating to provincial centers.

75. **Fewer women legal professionals.** The dearth of women justice professionals affects the capability of the very institutions established to protect and enforce women's rights, such as the EVAW Prosecution Unit and the FRUs.³⁵ Nationally, women accounted for 4.7 percent of sitting judges, 6.4 percent of prosecutors, and 6.1 percent of attorneys in 2007.³⁶ According to the SC and AGO, as of November 2013, women are approximately 10 percent of staff, including administrative staff in managerial positions (Table 2.7).

76. The surveyed provinces have only a few women legal workers (Table 2.8). In Herat, however, about 30 percent of lawyers are women, as opposed to about 20 percent in Kabul, 14 percent in Bamyan, and 11 percent in Nangarhar. This difference may explain the high level of satisfaction expressed by women in Herat with state justice institutions (Section 2.4).

77. Stakeholders mentioned the lack of women justice providers as one of the main obstacles hindering women's right to due process. Women discussants in focus groups repeatedly said that they would feel more comfortable interacting with women judges, pointing to feelings of shame and shyness should they have to discuss their issues with male justice providers.

³⁵ In Bamyan, for example, only one woman works in the EVAW prosecution unit, and, although she has no legal background, she is tasked with interviewing women victims, as well as the accused individuals and witnesses, and must perform the difficult duty of distinguishing cases of zina from those of rape (Source: key informant interview).

³⁶ World Bank (2013). The data are from MoWA (2008).

Table 2.6 Availability of state justice institutions at district and provincial levels

	KABUL		BAMYAN		HERAT		NANGARHAR		LOGAR	
	District level	Provincial level	District level	Provincial level	District level	Provincial level	District level	Provincial level	District level	Provincial level
Primary Court	√	√	√	√	All except Shindand, Kushki Kuhna, Gulran and Farsi	√	All except Shizar and Hisarak	√	4 active from Puli Alam	√
Appeal Court		√		√		√		√		√
Family Court		√				√		√		
Primary AGO	√		√		Not in every district		√		All but one	
Appeal AGO		√		√		√		√		√
Governor's Office	√	√	√	√	√	√	√	√	√	√
Hoqooq Dept.	√	√	√	√	√	√	All except Shizar and Hisarak	√		
Legal Aid Dept.		√		√		√		√		√ (1 staff)
EVAW Prosecution Unit		√		√		√		√		
Family Response Unit		√		√		√		√		
AIHRC		√		√		√		√		
Legal Aid NGOs	++	++++		+	Only in 3 districts	+++		+++		
Private Lawyers		1,000-1,200		1		250-300		165		1
Shelter		√		√		√		√		

Source: Institution mapping.

Table 2.7 Women staff in state justice institutions

	SC-Judges	SC-Civil servants	AGO-Prosecutors	AGO-employees in managerial positions	EVAW Directorate
Total	1,826	1,820	1,987	952	22
Women	180	207	174	87	10 (4 managerial positions)

Source: SC and AGO.

Table 2.8 Number of women legal workers in surveyed provinces

	Kabul	Bamyan	Herat	Nangarhar	Logar
Judges		0	10	0	0
Prosecutors		1 support staff	8	0	0
Hoqooq		0	1	0	0
Private lawyers	200-250/ 1000-1200	1/7	100/259-300	18/165	0/1

Source: KIIs with the heads of provincial appeal courts, heads of provincial appeal AGOs, heads of DoJ, and head of Afghanistan Independent Bar Association in each province.

78. An interview with the EVAW Prosecution Unit in Bamyan, pertaining to a case of alleged attempted rape, is particularly telling. After recalling how he had asked the woman reporting the crime to undergo a medical check to determine whether the rape had taken place, and the woman's ensuing reaction, the prosecutor concluded:

If I had women staff, she would not have the impression that I [...] insulted her. When she was crying, I felt that it was because she was being investigated by a man.

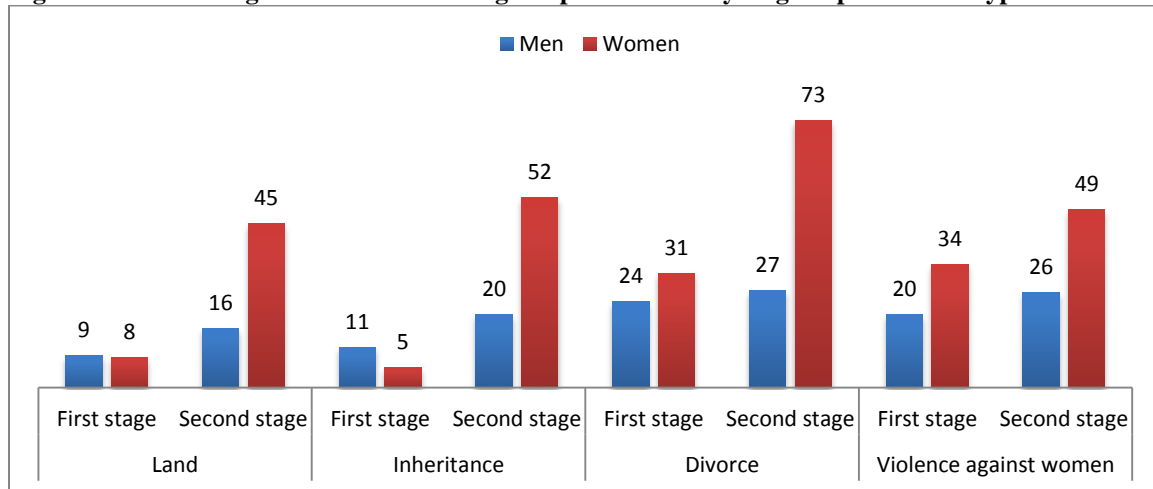
79. On the other hand, few women are found in non-state justice institutions. In some of the provinces surveyed, elder women, referred to as “white hairs,” have traditionally had a role in resolving small disputes between women or children. In Bamyan, elder women would reportedly intervene in “women issues” and try to mediate cases, including cases of domestic violence. Cases that cannot be mediated easily, such as divorce, are always referred to shuras or other male justice actors. Women observed that it would be easier for them to report their issues to women and saw the advantages of having women participate to the shura, yet they rarely mentioned them as decision makers. Women elders often seem to act as intermediaries between women claimants and male elders, but they do not participate in the judicial process as such.

80. **Scarcity of legal aid providers.** The scarcity and unreliability of legal aid severely undermines the legitimacy of the judicial process. Although this issue affects both women and men, women are more likely to suffer from the lack of legal representation because of the barriers created by their lower literacy, education, and awareness of institutions, which make it difficult for them to navigate the system and

effectively defend their position. The high cost of private lawyers³⁷ is an additional and more severe obstacle for women than for men, given women's limited financial independence.

81. In the first stage of the judicial process, both women and men had less legal representation than they did when pursuing their cases in subsequent stages (Figure 2.25). Implementation of the EVAW Law has increased the likelihood that more women than men will have legal representation in initial cases of violence against women and divorce, but even so, only 20–25 percent of women have representation. Representation increased substantially for women in second-stage divorce cases.

Figure 2.25 Percentage of users who had legal representation by stage of process and type of case



Source: User and household surveys (users and those household survey respondents who had disputes in the last five years; Logar not included).

82. Figure 2.25 should be interpreted carefully, however, as the sample size varies by dispute and gender. Table 2.9 indicates that substantially fewer women and men used state institutions to resolve inheritance disputes compared other kinds of disputes. In the first and second stages, fewer women went to state institutions to resolve land cases, and fewer men resorted to those institutions for cases of divorce and violence against women. The sample of women who have escalated land and inheritance disputes to the second stage is slightly larger. These women went to non-state institutions in the first stage and approached state institutions in the second stage.

83. Compared to other provinces, in Herat, where divorce was the most prominent kind of dispute (Figure 2.3), 37 percent of women had legal representation at the first stage (Figure 2.26). Although Kabul has the largest pool of private lawyers in Afghanistan (Table 2.8), women's legal representation was lower there than in Nangarhar. Whether a woman has legal representation also appears to be related to the type of dispute. While divorce was the most common type of dispute in Nangarhar,

³⁷ According to data collected through the user survey, the average cost of legal representation for a male user in the first stage of the process is around Af 38,401 (about US\$ 770).

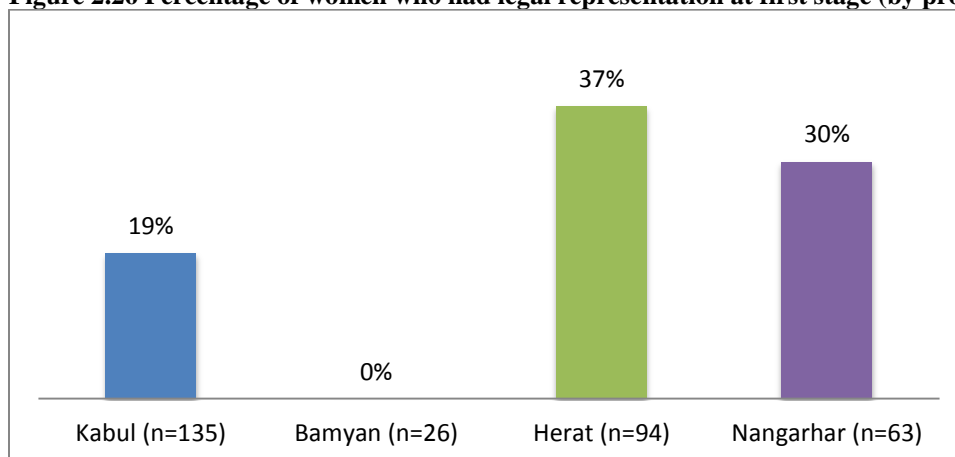
violence against women and divorce were most common in Kabul. Women in Bamyan, where land disputes were the most prominent type of dispute, had no legal representation.

Table 2.9 Number of state institution users by type of dispute

	Land		Inheritance		Divorce		Violence against women	
	1 st stage	2 nd stage	1 st stage	2 nd stage	1 st stage	2 nd stage	1 st stage	2 nd stage
Women	16	20	17	23	69	63	61	36
Men	82	63	14	14	20	14	25	20
Total	98	83	31	37	89	77	86	56

Source: User and household surveys (users and those household survey respondents who had disputes in the last five years; Logar not included).

Figure 2.26 Percentage of women who had legal representation at first stage (by province)



Source: User and household surveys (users and those household survey respondents who had disputes in the last five years; Logar not included).

84. The overall difficulty of securing legal representation (through legal aid or otherwise) as a first step in accessing justice services suggests that faults in the system hinder both the demand and supply of legal services. This supposition is reinforced by the observations of stakeholders who mentioned that lawyers, who are required to take on a minimum number of legal aid cases each year, cannot find clients requiring assistance unless they go to the courts to look for them.³⁸ In this way, lawyers may miss opportunities to assist claimants or victims whose cases never reach the courts, because at the police station or prosecutor's office, for example, they may have been convinced or intimidated into withdrawing their cases or led to commit to damaging statements that they cannot disavow later in the process.

2.7 Conclusion

85. This chapter has investigated the types of disputes, their resolution, levels of satisfaction with the outcomes, and barriers encountered by women and men in the selected four provinces when they attempt to access justice services. As mentioned, the analysis relies on data from household and user surveys (representing the demand for

³⁸ Key informant interviews.

services) and a survey of justice service providers (representing the supply of services). That information was enhanced by information from FGDs and KIIs.

86. Women and men face different justiciable issues. The kinds of disputes that women seek to resolve are predominantly family and domestic, while men's disputes are largely financial. The most prevalent or reported disputes among women involved divorce, violence against women, inheritance, and land, while men's were related to land and business, followed by violence against women. In Herat, Nangarhar, and Kabul, divorce was one of the most prevalent disputes among women—particularly in Herat (almost 50 percent)—but it was the least prominent in Bamyan. Violence against women was also reported quite frequently in Herat and Kabul but less in Nangarhar. Land was most frequently a cause for reported disputes in Bamyan, but substantially less in Kabul and not at all in Herat.

87. Both female and male household survey respondents said that they would prefer to use non-state justice institutions to resolve their disputes, and some female respondents said that they would take no action at all to resolve cases of violence against women and inheritance (20–25 percent of female respondents). Among actual users of the justice system, women preferred state institutions to handle cases of divorce and violence against women and preferred non-state justice institutions to handle issues involving land and inheritance. More male users went to state justice institutions to resolve all four types of disputes. Although the choice of state or non-state justice institution appears to depend on the type of dispute, household survey respondents' overall preference for non-state institutions may be explained by the limited availability of and access to state institutions at the district level. For both women and men, state authority was the most important factor in choosing state institutions. In using non-state institutions, on the other hand, ease of access was the most important factor, followed by the cost (free/cheap). The importance of cost may reflect the perception that bribery is much less common at non-state institutions, where only 1 percent of users had to pay bribes, compared to 14 percent of male users and 5 percent of female users at state institutions.

88. Women who had actually used justice institutions were more satisfied with state institutions (courts and Hoqooq Departments), while men were more satisfied with non-state institutions. Across provinces, female users of state institutions in Herat were most satisfied. This finding may reflect the higher likelihood of having legal representation at the first stage (37 percent in Herat, versus 30 percent in Nangarhar and 19 percent in Kabul) and the higher number of female legal professionals (30 percent in Herat, versus 20 percent in Kabul). The least satisfied group was female users of state institutions in Nangarhar. Among the men, 61 percent (53 male users) were satisfied with the outcomes of their cases, compared to 37 percent of the women (23 female users).

89. The three major barriers to women's demand for justice are social and cultural norms, limited mobility and poor rural access to state justice institutions, and limited awareness of rights, laws, and state justice institutions. On the supply side, the barriers include the inconsistent application of three sets of interconnected laws by state (most often state law and Shari'a) and non-state (most often Shari'a and customary rules)

justice service providers, with the result that women may not receive the optimal rights to which they are entitled under the law; women's low personal attendance at proceedings; the frequent use of mediation by state and non-state institutions, which can deter women's pursuit of justice; limited availability of state justice institutions at the district level; the small number of female legal service providers; and the scarcity of legal aid providers.

3. Conclusions and Implications

90. The findings of this report can be grouped into four main categories. First, given the depth and complexity of legal and institutional pluralism in Afghanistan, and considering the large share of disputes handled in non-state institutions, recommendations for improving women's access to justice must *seriously consider practical means for women to engage with non-state systems*. Second, *the justice issues that most strongly affect the lives of women and men tend to differ*. Men's disputes are related largely to the economic sphere, whereas women's are related predominantly to the family and domestic spheres. These differences mean that women and men require varying kinds of support, and legal professionals need to target the different challenges involved in addressing women's and men's needs. Third, women and men tend to *engage in different justice-seeking behaviors*, based on their varying circumstances. It is critical that interventions take a closer look at these variations in behavior and develop specific policies to address the challenges that they pose. Fourth, women and men *experience uneven levels of satisfaction with justice system outcomes*.

3.1 Experience in non-state justice institutions

91. Women continue to face enormous barriers to reporting crimes or seeking justice, whether through state or non-state institutions. Cultural norms of privacy and family honor, as well as issues of mobility, legal awareness, and rural access, all play a large role in sustaining those barriers. To circumvent them, women often choose non-state justice institutions. They may also choose non-state institutions simply because the consequences of approaching state institutions are too severe in terms of their alienation from family or physical risk.

92. For these important reasons, interventions to help women access justice services need to engage with state as well as non-state institutions. Women view greater activity by women within non-state justice institutions (in women's shuras, for example) as helpful, even if those women act only as liaisons or facilitators who help women gain a hearing from male-dominated shuras, mullahs, or other non-state institutions. Women's shuras could be given basic training in women's rights, state justice institutions, and their functions. Paralegals or community paralegals trained in women's rights could facilitate women's access to justice where multiple state and non-state systems are active.³⁹ On a pilot basis, some women shura members could receive additional legal training related to state justice institutions and then act as community resource persons who can offer advice based on a good understanding of the local social and legal context and perhaps also act as a bridge between state and non-state systems.

93. Outreach training for non-state providers of justice services in the principles of good mediation could be useful as well, along with training in general legal awareness, given that the vast majority of cases involving women entail mediation in the informal sector. Training in Shari'a law is also useful. Many Shari'a principles, if implemented correctly and consistently, would significantly improve women's options for justice

³⁹ As suggested in the United Nations report on women and justice (UN Women 2011).

within non-state institutions. In Papua New Guinea's hybrid village courts, which have been given jurisdictional powers by the state, village leaders resolve disputes according to local custom. UNICEF supported human rights training for village leaders as well as women's groups and youths. This arrangement improved women's acceptance of village leaders as court officials and facilitated an active role for women in monitoring court decisions.⁴⁰ Community-level rights training, provided to community elders, other non-state justice service providers, and women's shuras, would help them to understand and claim women's rights. Other community-based groups formed by various development projects, such as school management shuras⁴¹ and women's savings and credit groups,⁴² could also be trained in women's rights and could facilitate the monitoring of decisions taken by non-state justice institutions.

3.2 Access to state justice institutions

94. Where demand for state justice services is unmet, the situation is likely to get worse rather than to improve in the near term, given that state justice institutions are retreating from insecure areas. Developing extension and outreach models for legal services is an important strategy; indeed, other public services have also had to grapple seriously with extension models, understanding that it will be a long time before physical state institutions cover many areas. Extension based on mobile service models, with telecommunications and media components (such as radio or mobile phone-based information provision), is a critical means of bridging the gap between the average woman and the point of service delivery in the state justice sector, which largely reflects the rural/urban divide.

3.3 Improving the experience in state justice institutions

95. For women who do choose state justice institutions, the absence of female legal professionals and legal aid in general are large hindrances to pursuing justice in the system. Women are not often represented and run the risk of being exploited at the police station or manipulated throughout the legal process. In the qualitative interviews, lawyers complained primarily about a lack of cooperation between police, prosecutors, and legal aid, claiming that police and prosecutors do not tell women about their rights to representation or inform legal aid of new cases. On the other hand, police and prosecutors generally complain about legal aid being in short supply. Legal aid and consistent representation can help women gain a more favorable experience in the legal system and improve the system's general reputation, reliability, and (conceivably) transparency. It is critical that the supply of legal aid not only increases but is distributed more equally, especially in rural areas. Support for organizations and providers who are specifically embedded in rural districts and provide legal aid is important. Finally, more systematic

⁴⁰ UN Women (2011).

⁴¹ School management shuras were formed by the Education Quality Improvement Program financed by the World Bank. School and community representatives, including women, participated in the shuras to support school management and increase awareness of the importance of girls' education.

⁴² Women's savings and credit groups are formed under the Afghanistan Rural Enterprise Development Project (financed by the World Bank) and other donor-funded projects.

coordination between key actors (especially early in the judicial process for a given case) is critical to avoid many of the pitfalls experienced by women in state institutions.

96. Women's satisfaction with state institutions seems to correlate especially strongly with the presence of female legal professionals. Herat has the highest number of female legal professionals of any surveyed province, and as this study demonstrates, it has the highest approval ratings from women who have relied on state justice institutions.

97. Although this correlation is indicative, it is instructive. It would be valuable to learn more from the experience in Herat and determine the extent to which different variables matter. For example, is legal aid simply more widely available in Herat? Is it the presence of female professionals that makes the biggest difference for women? What factors cause the EVAW Law to be more consistently implemented in Herat than elsewhere? A case study focusing on these questions would be helpful.

98. More generally, it appears critical to improve the supply of legal aid providers and female legal professionals. Other service delivery sectors have tackled this issue through systematic recruitment practices and incentives that aim to address spatial inequality, affirmative action measures to place promising students from underserved areas into specific degree programs (with the requirement that they practice in their home region upon graduation), and the provision of shorter, paralegal-style training to help with common problems and challenges arising in the system (as opposed to focusing only on increasing the number of lawyers).

99. Of all providers of state justice services, the police are viewed as the worst by women. This finding reinforces information from other studies concluding that FRUs are largely ineffective, partly because of women's very low position in the police force. Approaches for reforming this system should be explored. One option is to pilot the removal of FRUs from the police stations to a separate location. Procedures should also be revised to ensure that all cases of violence against women go through FRUs if they are brought to the police. At the moment, it would appear that serious cases of violence against women, such as rape, still go through the criminal investigation departments, whereas FRUs handle only cases of "minor" domestic violence.

3.4 Working through other sectors

100. Because poor access to all state justice institutions remains a serious problem, the justice sector should seek closer links with the health and education sectors for case referrals, especially in cases of violence against women. These sectors have wider coverage in rural areas, are more socially acceptable for women to access, and have more female staff.

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Annex 1. Methodology

This study was based on a mixed methods strategy, composed of qualitative and quantitative tools summarized in the table below.

Table A2.1: Overview of quantitative and qualitative tools used in the study

Quantitative tools	Qualitative tools
Demand side <ul style="list-style-type: none"> • Representative Household Survey (4,055 individuals: 1,954 women and 2,101 men) • User survey (users of justice system) (760 individuals: 310 women and 450 men) 	Key informants' interviews (88 interviews)
Supply side <ul style="list-style-type: none"> • Justice Providers' Survey (283 individuals) • Mapping of justice and government institutions (159 locations) 	Focus Group discussions (37 meetings)

The variety of methods used in the study has the following advantages:

- The findings from the study can be validated by different sources of data.
- Given Afghanistan's sociocultural context, a number of limitations in data collection were anticipated, including the reluctance of respondents to share information about disputes they experienced, and security concerns. The user survey was specifically designed to overcome such limitations and collect statistically significant information about individuals' use of the justice system.
- Having different tools targeting the demand side of justice allows capturing data from different angles: for example, the household survey, which is representative of population in the provinces surveyed, can provide valuable data on women's as well as men's perceptions of the justice system, while the user survey can offer insights on women's and men's experience with non-state and state justice systems. By interviewing both women and men, the surveys can identify the issues specific to women.
- Conflicting results from different sources help highlight areas where there are differences in perceptions, expectations and experiences between women users, women potential users and justice providers.
- Qualitative tools such as FGDs can provide insights and deepen our understanding of the findings from quantitative data in the household and user surveys or justice providers' survey.

The following sections describe (1) household and user surveys, focusing on sampling methodology, (2) justice service provider survey, in particular on the design and implementation, (3) institution mapping, and (4) qualitative tools.

1. Household and User Survey (demand side)

This section describes in details on sampling, questionnaires, and field work.

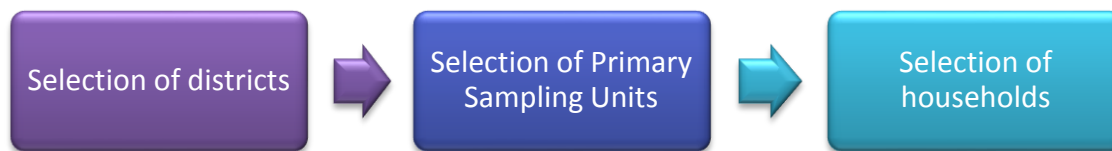
1.1. Sampling Design

(a) Representative Household Survey.

The household survey was administered to a sample of 4,055 individuals in the targeted five provinces. Respondents were randomly selected in Kabul, Bamyan, Herat, and Nangarhar. However, in Logar, due to security concerns, enumerators interviewed randomly selected individuals at the market in Puli Alam, the provincial capital.

The household survey was to interview 490 women and 490 men from each of the four provinces, using the stratified random sampling strategy discussed in sections.⁴³ During the analysis, the data was weighed to make those proportionate to the size of the population per province (see the provincial profile above). The following steps were taken to identify the households to be interviewed for the household survey.

Figure A2.1 Selection process (household survey)



Selection of Districts and Primary Sampling Units (PSUs). The selection of districts in each province was based on the following principles:

- 1) Exclude all districts inaccessible due to security restrictions.
- 2) Include the provincial center in every province to have a sufficient urban sample.
- 3) Randomly select districts within the remaining group of districts.

Within each district, the Primary Sampling Units (PSUs) for the study were selected. The following two steps were used to identify the PSUs:

- 1) For each of the four provinces, the Central Statistics Office (CSO) provided the location maps of the 60 PSUs that were surveyed for the National Risk and Vulnerability Assessment (NRVA) 2011-2012. However, a number of these locations had to be excluded, because of the poor quality of the maps and security restrictions. Some PSUs were either not found or inaccessible. The number of PSUs surveyed in each province using this method varied between 20 and 30.
- 2) Due to the limited number of PSUs selected in step 1, an additional 10-20 PSUs had to be included in the sample based on a random selection from the master list of enumeration areas provided by the CSO.

⁴³ A target of 200 women and men was set for Logar but was not possible due to security reasons.

These two steps resulted in the selection of between 29 and 48 PSUs in each province as shown in Table 2.

Table A2.2: Number of PSUs by district and province

Province	Districts	Number of PSUs by district	Total number of PSUs by province
KABUL	Kabul City	22	
	Bagrami	2	
	Kalakan	2	
	Mirbacha kot	2	
	Qarabagh	2	30
BAMYAN	Bamyan District	4	
	Markaz	8	
	Panjab	8	
	Shebar	4	
	Waras	12	36
HERAT	Enjil	8	
	Ghoryan	8	
	Gozara	4	
	Markaz	12	
	Karukh	4	
NANGARHAR	Zinda Jan	4	40
	Jalalabad City	12	
	Beshood	8	
	Kama	8	
	Koz Kunar	8	
	Sorkhroad	12	48
TOTAL	22 districts	154	154

There were a few biases in the selection of PSUs that should be noted. Firstly, all the PSUs in Bamyan on the CSO list were rural and did not include the town of Bamyan. As a result, the urban areas were underrepresented in the household survey. Secondly, due to security restrictions and difficulty in accessing parts of Herat and Nangarhar, some of the PSUs had to be excluded. This resulted in the selection of remote districts in Herat and more accessible districts in Nangarhar. Thus, there potentially is a bias in awareness of rights and state institutions and institution mapping.

Selection of households. In each PSU, between 20 and 35 households located at fixed intervals from a random-start point were selected as follows:

- 1) The study: a) estimated the size of the PSUs; b) mapped the PSU to identify the area of population within each PSU; and c) geographically covered the PSU by sending several teams of 2 interviewers (one woman and one man) to the neighborhoods or villages in the PSU.

- 2) Each team of two interviewers starts from a random starting point, such as the mosque, and then chooses the household that is located every third door starting from the mosque. This process continues until the target number of households in each PSU is reached.

Only one respondent (female or male) was interviewed in each household (in other words, no men and women were interviewed from the same household). The breakdown of respondents by gender and province is as follows:

Table A2.3: Number of respondents of household Survey by province and gender

Household Survey	Kabul*	Bamyan	Herat	Nangarhar	Logar	All
Men	485	480	480	481	175	2,101
Women	490	480	480	480	24	1,954
Total	975	960	960	961	199	4,055

Source: Household survey

*In Kabul, the enumerators went over the target.

In Logar, because of security, all the respondents were randomly selected in the market, which reduced the data reliability. Firstly, there was not enough privacy for respondents to answer sensitive questions, such as whether they experienced a dispute or whether they would go to certain justice institutions to help solve a dispute. Perhaps for this reason, the response rate of individuals who reported to have faced a dispute is very low (with no woman and two male respondents in the household survey) confirming to have experienced a dispute in the last five years. Secondly, only 24 women were interviewed in the province, which is too small a sample to be representative of the province. Thirdly, given that respondents were found in the markets, there may be an overrepresentation of women who are less conservative. For these reasons, the data from Logar cannot be considered representative of the province, hence, most of the quantitative analysis of the household survey in the main report excludes Logar.

The table below indicates the percentage of rural households among the survey respondents. The rural/urban ratio of the selected households is in line with the provincial profile.

Table A2.4: Percentage of rural households in Household Survey by province

Household Survey					
Province	Kabul	Bamyan	Herat	Nangarhar	Logar
% Rural	28%	100%	71%	81%	30%

Source: Household survey

(b) Purposive User Survey

The user survey was administered to 760 users of state and non-state justice institutions: 450 men and 310 women. The table below provides a breakdown by gender and province. This reflects an effort to reach gender balance among the respondents, which does not necessarily reflect prevalence of disputes by these groups.

Table A2.5: Number of respondents in user survey by province and gender

User Survey	Kabul	Bamyan	Herat	Nangarhar	Logar	All
Men	140	69	106	128	7	450
Women	135	22	91	62	0	310

Source: User survey

In sampling between state and non-state institutions, the initial intention was to find an equal number of users between the two, with provincial samples proportional to the population size of each province. However, the survey team had difficulty finding users, especially at the community level, possibly due to reluctance among the community leaders to disclose those who have had disputes. Further, even at the state justice institutions, the users in Kabul, in particular, were often unwilling to answer questions, because of time constraints. Therefore, the sampling reflects the availability of users at certain institutions, with a majority of them (88 percent of female and 85 percent of male users) found at state justice institutions, such as courts and hoqooqs (see the figure below).

Table A2.6 Institutions where the users were found (%)

	Women (n=310)	Men (n=450)
State justice institutions		
Court	45	35
Hoqooq	14	37
Provincial Governor's Office	10	8
AGO	5	5
EVAW Prosecution Unit	2	-
Other state institutions		
Women's jail or shelter	13	-
Non-state justice institutions		
Community leaders	10	15
NGO	1	-

Source: User survey

The sample likely over-represented the state justice institution users, as it is estimated that at least 80 percent of disputes in Afghanistan are resolved by the non-state justice institutions.⁴⁴ There may also be bias among non-state institution users, as community leaders could well have chosen not to mention certain sensitive disputes to surveyors.

⁴⁴ See Sinha (2011:1).

1.2 Questionnaire Design

The same questionnaire was administered to the household and the user survey respondents. The questionnaire consists of the following four sections: 1) Household identification; 2) Socio-Economic Profile (including a household roster); 3) Legal Awareness and Perception of Justice; and 4) Disputes.

The Socio-Economic Profile section asks questions ranging from the respondent and the household members' age, marital status, education, migration status, and labor force status. Information regarding the household's assets, livestock and housing material and access to facilities are also collected. As much as feasible, many of the questions in this section, particularly on household materials, assets and livestock, are consistent with the NRVA Household Questionnaire 2005 to ensure comparability between the household survey and NRVA.

The section on Legal Awareness and Perception of Justice Institutions attempts to gather information about the respondents' level of awareness of rights and regulations, covering a range of topics, such as the legal age of marriage, women's inheritance's rights and domestic violence. This section also includes questions on respondents' awareness of the role of non-state and state justice institutions, and whether they would turn to them to solve a dispute. In addition, given that the response rate on individuals who faced a dispute was expected to be low, it was decided to administer questions on what respondents would do if they faced hypothetical disputes, including which dispute resolution mechanism they would turn to. The hypothetical disputes covered the topics on domestic violence, inheritance, land dispute, divorce and separation and child marriage.

Lastly, the section on Disputes includes questions about the way respondents dealt with disputes they faced, which was more for the users. First, respondents were asked whether they or members of their household experienced a dispute in the past five years. If they did, follow up questions were asked regarding what they did, which dispute resolution mechanism they turned to, what determined their decision to turn such person/institution, the trajectory of dispute resolution and their experience with the justice system.

The survey questionnaire was translated into Dari and was first piloted in a community in Kabul before the fieldwork began. Changes to the wording and content were made after the pilot. Further changes to the questionnaire were made after the fieldwork in Kabul was conducted. The resulting questionnaire is attached as an annex to the report (Annex 5).

1.3 Fieldwork

For the household survey, individuals were interviewed, to the extent possible, in an isolated and quiet environment. This was easily achieved for male respondents who could use their garden, the main room of their house or the street. However, a complete isolation was sometimes less feasible for female respondents because the number of rooms in houses did not always allow women to be interviewed in a separate room from their children or women relatives. It should be mentioned that men were almost never

present during the interviews because they were conducted by female interviewers. If any, most interference would come from sisters, sisters-in-law, mothers-in-law and children.

2. Justice Service Provider Survey (Supply Side)

The justice service provider survey was administered to a sample of state (judges, prosecutors, hoqooq officials, and attorneys/legal aids) and non-state (community elders) justice providers. In each province, the survey interviewed justice providers working in the provincial and at the district capitals. Given the low concentration of justice service providers in each district capital, there is an over-representation of the providers at the provincial level. Table 7 shows the distribution of justice providers by type and province.

Table A2.7: Justice service provider surveyed by province

	Kabul	Bamyan	Herat	Nangarhar	Logar	Total
State Institutions						
Judges	11	8	9	10	9	47
Prosecutors	9	6	8	9	6	38
Hoqooq	7	2	6	4	1	20
Lawyers/legal aid	19	3	9	10	1	42
Sub-total (state)	46	19	32	33	17	147
Non-state Institution						
Community elders	20	27	37	48	4	136
Grand total (State and non-state)	66	46	69	81	21	283

Survey of Justice Providers (judges, elders, hoqooqs, prosecutors, lawyers)

For each category of justice providers, a specific questionnaire was produced. The main sections include (a) access to justice, (b) judicial processes, (c) practice, (d) legal awareness, and (e) hypothetical disputes. The section on access to justice asked questions on most common civil and criminal cases that involved women, and their perceptions about women's and men's main barriers to accessing justice. The section on processes explored whether women and men had access to legal representation (in the cases justice providers' handled), whether justice providers refer cases to other institutions, and which set of rules justice providers use to instruct a case. The section on practice had, *inter alia*, questions about whether there are women in their offices and in what capacity. The section on legal awareness assessed the respondents' legal knowledge, such as women's rights as to inheritance and divorce, and the EVAW law. Lastly, a series of hypothetical disputes were presented to respondents in order to learn how justice providers would handle cases that involve divorce, inheritance, sexual violence, zina, mahr, domestic violence and a girl running away from her husband. The questionnaire administered to judges is included in Annex 4.

3. Institution mapping

An institution mapping was conducted at the village level in order to assess the availability of justice and governmental institutions, and to measure the level of accessibility of institutions not immediately available at the village level from each of the villages where the household survey was conducted.⁴⁵ Accessibility to institutions is viewed as an important factor affecting women's access to justice and their knowledge about the existence and role of justice and government institutions.

4. Qualitative tools

4.1. Focus Group Discussions

Thirty-seven FGDs were conducted to complement quantitative findings. Due to the sensitivity of gender and justice issues and the limitations of quantitative tools in a context where it is inappropriate for women to talk to strangers, the facilitated group discussions were designed to elicit engagement and openness of participants on their experience in solving a dispute, accessing justice institutions and to assess their level of legal awareness. In addition, one focus group was held with women in prison and one with women in a shelter to gather information on their specific experiences.

Facilitators conducted 8 to 10 FGDs per province, except in Logar, where only 1 men's FGD could be held (detailed in the table below). Men and women participated in discussions in separate groups. Each of them included about 6 participants and was led by a male moderator for men's groups and a female moderator for women's groups.

Table A2.8 Focus group discussions by province

PROVINCE	Women FGD	Shelters/Prisons	Men FGD	Total
Kabul	4	2	4	10
Bamyan	5	-	5	10
Herat	4	-	4	8
Nangarhar	4	-	4	8
Logar	-	-	1	1
Total	17	2	18	37

The questions posed in the FGDs deliberately mirrored the questions in the household and user survey questionnaire so that the FGDs can provide insights and more detailed information that may not be fully articulated in the household and user surveys. Additionally, there were questions raised in FGDs that were not included in the quantitative surveys, such as consequences of legal procedures on people's lives (including family and social relations). For the women in prison and shelter, the FGDs

⁴⁵ Institutional mapping was not conducted for respondents in the user survey.

asked how they were treated there and what they thought their life would be like after they leave.

4.2. Key informant interviews

Eighty-one interviews were conducted with the justice sector stakeholders in order to gain a better understanding of the legal and institutional framework as well as women's legal needs, challenges, and attitudes towards justice (detailed in the table below).⁴⁶

Table A2.9 Key informants interviewed by province

	Donors	NGOs	Justice service provider	Central government	Provincial government	Total
Kabul	14	14	2	6	2	38
Bamyan	1	3	4	0	8	16
Herat	0	3	3	0	7	13
Nangarhar	2	5	2	0	5	14
Logar	0	0	0	0	0	0
Total	17	25	11	6	22	81

KIIs included questions concerning interviewees' knowledge of women's rights and entitlements with regard to inheritance, property and marriage, and their understanding of moral crimes (zina or running away), domestic violence, early marriage and baad as criminal acts.

⁴⁶ It was not possible to conduct a KII in Logar due to security reasons.

Annex 2. Additional Figures and Tables

1. Reporting violence against women

Figure A3.1 Reporting violence against women by literacy (%)

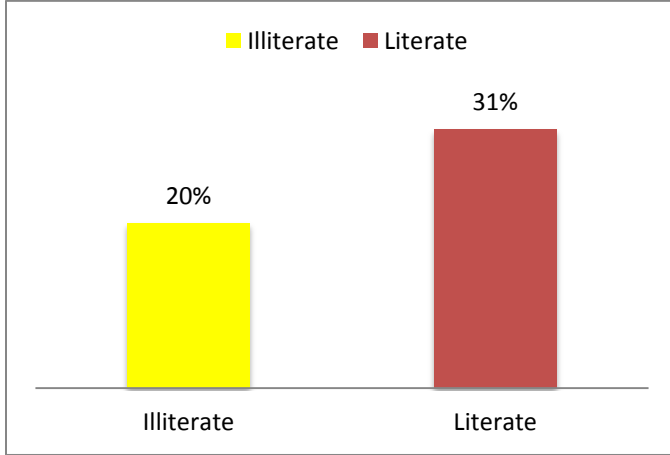
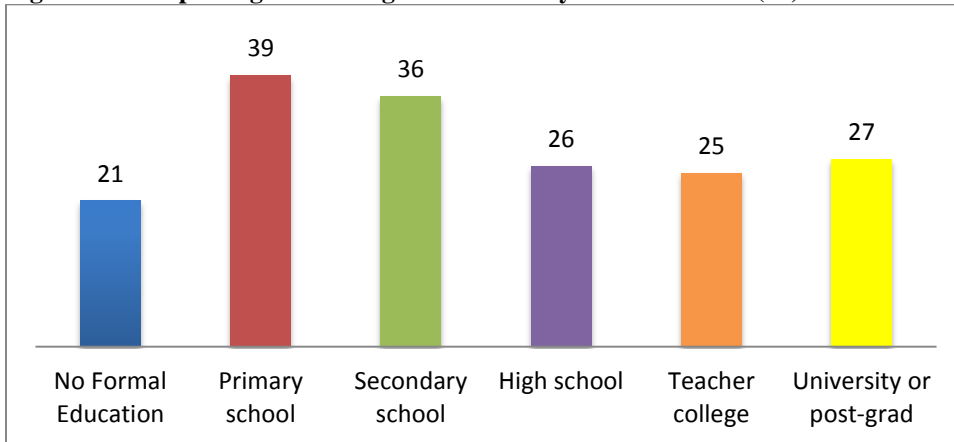


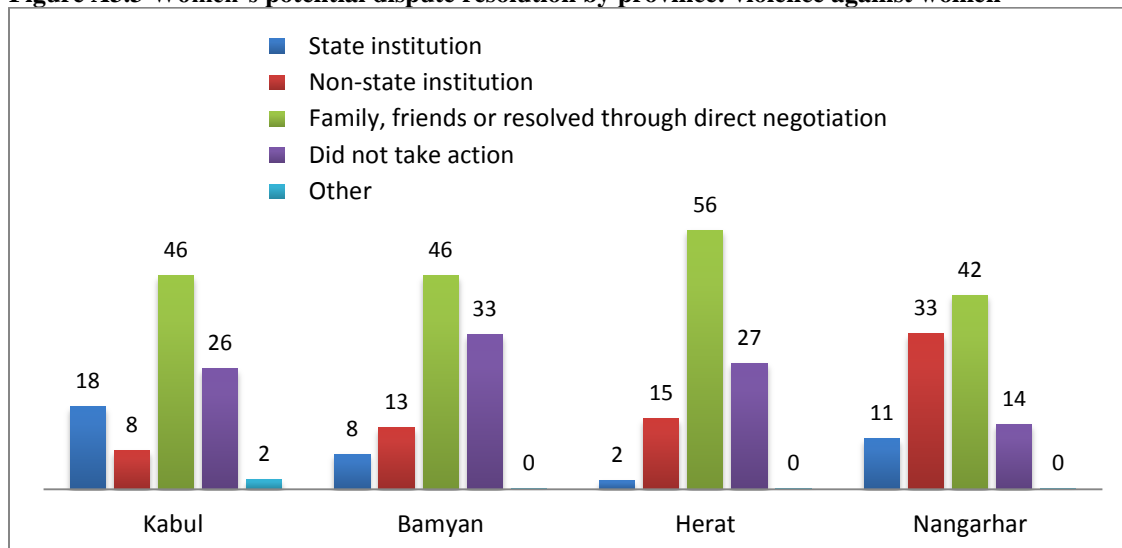
Figure A3.2 Reporting violence against women by education level (%)



2. Potential Dispute Resolution by the Female Household Survey Respondents

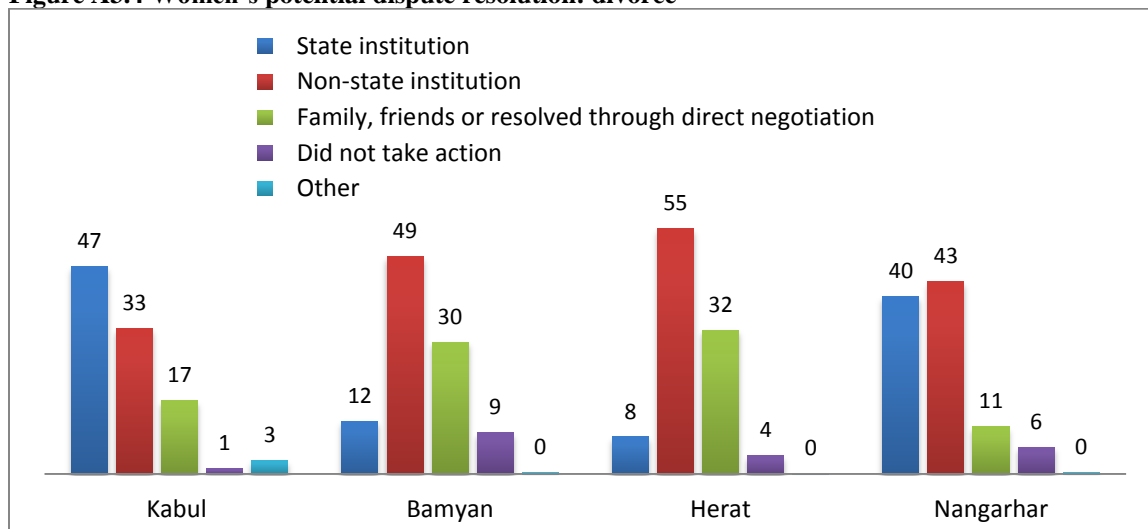
Addressing violence against women. Around 25 to 30 percent of women would not take any action in Kabul, Herat, and Bamyan. The women in Nangarhar are more likely to take action and would go to justice institutions (44 percent).

Figure A3.3 Women's potential dispute resolution by province: violence against women



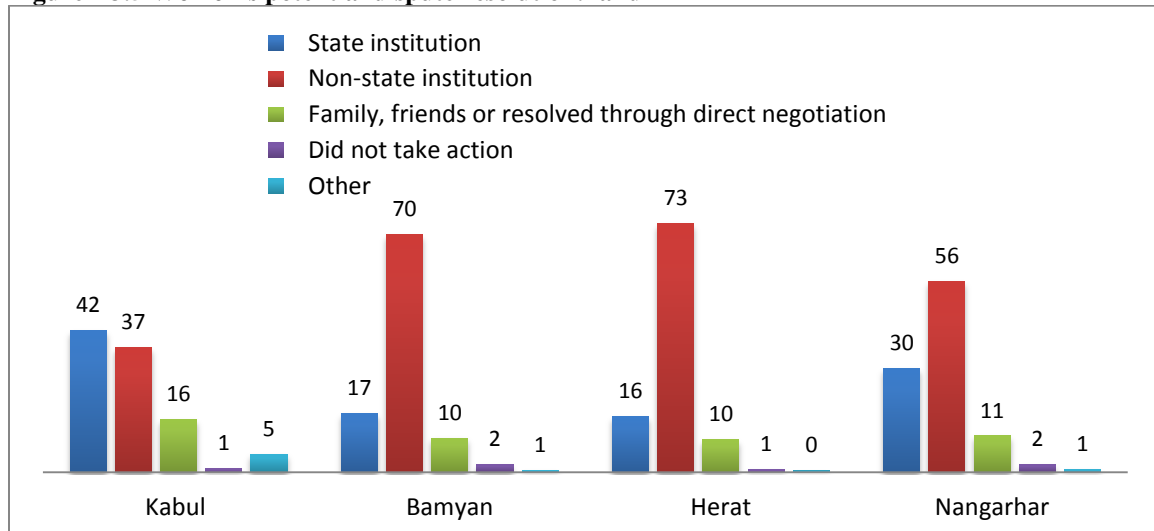
Women's potential dispute resolution: divorce. This is the most prevalent dispute in Herat and Nangarhar. Non-state institutions would be preferred substantially by those women interviewed in Herat (by even five times more) and Bamyan (by three times more). However, in Nangarhar, it was almost the same between state and non-state institutions. In Kabul, the women interviewed would prefer state institutions (by 42 percent).

Figure A3.4 Women's potential dispute resolution: divorce



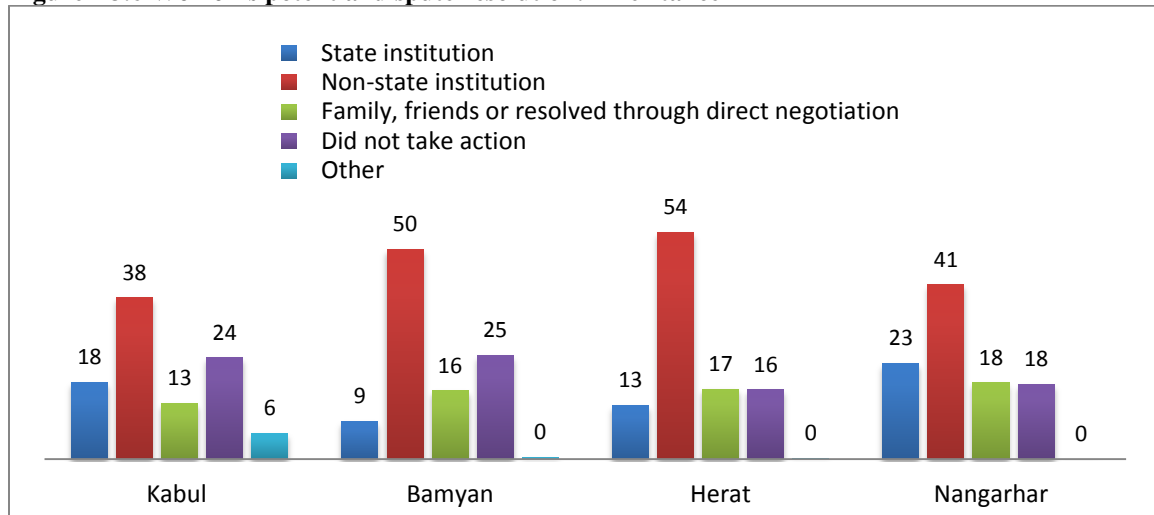
Women's potential dispute resolution: land. Land is the most prominent issue in Bamyan. The women interviewed in Bamyan and Herat would by far prefer to access non-state institutions. The trend is the same in Nangarhar. However, compared to these two provinces, more women would prefer state institutions (by more than 40 percent).

Figure A3.5 Women's potential dispute resolution: land



Women's potential choice of institutions: inheritance. On inheritance, non-state institutions would be preferred than state institutions across the four provinces. This is substantially so in Bamyan and Herat (both by 41 percent points), while it is less so in Nangarhar (by 18 percent points) and Kabul (by 20 percent points). Compared to land and divorce, a larger percentage of the women, which is 15 to 25 percent, would not take any action. This is more so in Kabul and Bamyan.

Figure A3.6 Women's potential dispute resolution: inheritance



Annex 3. Glossary

Arbab	Tribal leader, often a powerful landlord, community leader
Ba’ad	Traditional Pashtun practice in which one or several girls are given to settle a dispute between families
Ba’adal	The exchange of brides, often in order to avoid or cancel out bride price requirements. Ba’adal often takes the forms of marrying off pairs of brothers and sisters between families
Blood money	Amount of money paid to settle a dispute, especially in case of murder
Bride price	Sum of money paid by the groom’s family to the bride’s family upon marriage
Dispute	A disagreement between individuals or groups. Respondents to household and user surveys were asked whether they or a member of their household experienced a dispute about a number of specific issues, such as land, water, inheritance, forced and early marriage, and divorce
Hoqooq	Can designate the hoqooq department specifically or legal institutions more generally. The hoqooq department is responsible for registering, advising and mediating between parties for civil cases of 5 types: family cases, land & property cases, commercial cases, debt recovery, and juvenile cases. If the hoqooq department does not succeed in settling a dispute, it refers the case to the primary civil court. The hoqooq department is also responsible for the enforcement of the decisions taken by the civil court
Jirga	Traditional conflict-resolution and decision making mechanism typical of Pashtun areas. It is usually a council of male elders convened on an ad-hoc basis to solve a specific issue and restore peace within the community
Justice institutions	There are state and non-state justice institutions in Afghanistan. State justice institutions include state and family courts, hoqooq department, prosecutors, police, provincial and district governors, Department of Women’s Affairs (DoWA), Afghan Independent Human Rights Commission (AIHRC), ERAW prosecution unit, and family response unit. On the other hand, non-state justice institutions are community elders (mostly men), Shura/Jirga, individual community leaders, mullah, and malik.
Justiciable problem or issue	A problem or issue that <i>might</i> be resolved through legal means – regardless to whether or not it was in fact resolved through legal means
Khul	Separation obtained by women in exchange of money paid to their husband
Mahr	Sum of money to be paid by the husband to the wife upon marriage (on the night of the marriage or later on during the marriage), according to Islamic Law.
Malik	Community leader, similar in role to other terms found in

	Afghanistan such as arbab or qariador in certain areas of the country
Running away	Practice of running away from one's husband or father's home without his authorization. Whilst not illegal, this practice is usually punished
Shura	Standing council of representatives of the community. The shura is often the 'executive' decision-making body of the community and in modern times, is often the main channel for the implementation of humanitarian and development projects. Yet, its role, composition and authority vary greatly from one place to another
Stage of dispute resolution process	<p><i>First stage:</i> the <i>first</i> attempt at resolving a dispute or reporting a crime and have it prosecuted at non-state or state justice institutions.</p> <p><i>Second stage:</i> the <i>second</i> attempt at resolving a dispute or reporting a crime and have it prosecuted. It might be an instance of appeal of a decision of a court of first instance or a completely new procedure.</p> <p><i>Third stage:</i> the <i>third</i> attempt at resolving a dispute or reporting a crime and have it prosecuted. It might be an instance of appeal of a decision of a court of second instance or a completely new procedure.</p>
Users	Users of the state or non-state justice system. These refer to individuals who (a) have turned to non-state institutions (as defined above), or to state institutions (as defined above) – to solve a dispute or report a crime; or (b) Individuals who have been in contact with such institutions as defendants in civil cases or victims or perpetrators in criminal cases
Zina	Unlawful sexual intercourse not sanctioned by marriage. Women are also sometimes prosecuted for 'attempted zina', when the police or the prosecutors consider that a woman had the intention of committing zina (often in a case where she is running away from home), even if there is no evidence the crime was actually committed

Annex 4. Survey Questionnaires (sample)

1) Household Questionnaire

GENDER & JUSTICE STUDY – HOUSEHOLD QUESTIONNAIRE **GROUP A**

PLEASE PROVIDE THE FOLLOWING INFORMATION TO HEAD OF HOUSEHOLD

The World Bank is selecting over 4,000 households to ask them about how men and women deal and cope with problems that may arise with others and that may be resolved through legal means. The responses obtained from the households are meant to help the Government improve justice services to better respond to people's justice needs.

Your household was selected randomly to participate in this survey at this time. You were not selected for any particular reason. Your name was on a list of all the households in the area, and your name was chosen randomly. Your name, as well as the name of all other respondents, and your answers will be kept confidential.

I would like to ask the questions in this form. Before I start, do you have any questions?

SECTION 1. HOUSEHOLD IDENTIFICATION

Questionnaire Number		<div style="display: flex; justify-content: space-around; width: 100%;"> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> </div>				
Interviewer Code						
N°.	Questions	Answers				
A	PROVINCE CODE Kabul – 1 ; Logar – 5; Nangarhar – 6 ; Bamyán – 10; Hirat – 32					
B	District Name					
C	DISTRICT CODE					
D	VILLAGE CODE					
E	VILLAGE NAME					
F	VILLAGE GEO-CODE					
G	INTERVIEW DATE	<div style="display: flex; justify-content: space-around; width: 100%;"> <div style="border: 1px solid black; width: 40px; height: 20px;"></div> <div style="border: 1px solid black; width: 40px; height: 20px;"></div> <div style="border: 1px solid black; width: 40px; height: 20px;"></div> </div>				
H	TYPE OF LOCATION	1. Urban 2. Rural				

I	Group of respondents	1. Group A 2. Group B
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1	Name of the respondent	
2	Gender of the respondent	1. Male 2. Female
3	Age of the respondent	
4	Phone number of the respondent	
5	Relationship of the respondent to the head of household DO NOT PROMPT – ONE ANSWER	<div> 1. Household head 2. Husband/first wife 3. Second wife 4. Third wife 5. Fourth wife 6. Son/daughter 7. Son-in-law/daughter-in-law 8. Grandchild 9. Nephew/niece 10. Father/mother-father-in-law/mother-in-law </div> <div> 11. Grandfather/grandmother 12. Brother/sister 13. Brother-in-law/sister-in-law 14. Uncle/aunt 15. Amboq 16. Other relatives 17. Unrelated male/female 18. Stepfather/stepmother 19. Stepdaughter/stepson 20. Step-sister/step-brother </div>
6	Ethnicity of the household	<div> 1. Pashtun 2. Tajik 3. Hazara 4. Uzbek </div> <div> 5. Turkmen 6. Baluch 7. Other (specify) </div>

SECTION 2: SOCIO-ECONOMIC PROFILE

[illegible]

11							
12							
13							
14							
15							

	14	15	16	17	18	19	20
I D C O D E	Migration Status PROMPT – ONE ANSWER <ol style="list-style-type: none"> 1. Returnee (formerly legal refugee in Pakistan) 2. Returnee (formely legal refugee in Iran) 3. Returnee (formerly irregular migrant) 4. Internally displaced person 5. Deportee 6. Non-migrant 7. Other 	In the last 12 months, has [NAME] been away from the household for more than 6 months? 1. YES 2. NO SKIP TO Q. 17	Where did [NAME] live when he/she was away? PROMPT – ONE ANSWER <ol style="list-style-type: none"> 1. Same province, urban 2. Same province, rural 3. Other province, urban 4. Other province, rural 5. Pakistan 6. Iran 7. Arabian Peninsula 8. Other, specify 	Is [NAME] able to read and write? 1. Yes 2. No	What is the highest education level [NAME] has achieved? PROMPT – ONE ANSWER <ol style="list-style-type: none"> 1. No formal education 2. Madrassa 3. Primary School 4. Secondary School 5. High School 6. Teacher College 7. University 8. Post-grad 	Is [NAME] currently enrolled in school, or if school not in session, was [NAME] enrolled in the most recent session? 1. Yes 2. No NEXT PERSON	What type of school is [NAME] enrolled in? PROMPT – ONE ANSWER <ol style="list-style-type: none"> 1. Public school 2. Private school 3. Religious madrasa 4. School run by NGO
1							
2							
3							
4							
5							
6							
7							

8							
9							
10							
11							
12							
13							
14							
15							

	21	22	23	24	25
I D C O D E	Did [NAME] work in the past seven days? Work = (a) performed some work for wage or salary in cash or in kind, (b) had a formal attachment to their job but were temporarily not at work during the reference period, (c) performed some work for profit or family gain in cash or in kind, (d) were with an enterprise such as a business, farm or service but who were temporarily not at work during the reference period for any specific reason 1. Yes SKIP TO Q. 23 2. No	During the last 7 days, did [NAME] look for work? 1. Yes SKIP TO NEXT PERSON 2. No SKIP TO NEXT PERSON SKIP TO Q. 26	In what sector of the economy is [NAME]'s main job (the one he or she spent the most hours doing in the last 30 days)? PROMPT – ONE ANSWER 1. Agriculture / livestock 2. Mining and quarrying 3. Construction 4. Manufacturing 5. Mechanic services 6. Transportation/ communication 7. Wholesale trade 8. Retail trade 9. Sewing, embroidery, tailoring 10. Carpet weaving 11. Electricity/plumbing 12. Household worker 13. Health 14. Education 15. Other services 16. Public administration/ government 17. NGO/Intl. organisations	What type of job was [NAME]'s main job? PROMPT – ONE ANSWER 1. Day laborer 2. Salaried worker in private sector 3. Salaried worker in public sector 4. Self-employed (share croppers, own account farmers, independent professionals, selling handicrafts, other private) 5. Employer 6. Unpaid family worker	How much was [NAME] earning in the last 30 days from main work and other work? 1. Number In AFG 2. I don't know
1					
2					
3					
4					

5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					

26. What are your household's income generating activities in the order of importance? DO NOT PROMPT – RECORD THREE ANSWERS <i>Enter income activity codes from Table</i>		INCOME ACTIVITY CODE 1. Crop production for home consumption 2. Livestock production for home consumption 3. Production and sale of field crops 4. Production and sale of cash crops, except opium 5. Production and sale of opium 6. Production and sale of orchard products 7. Production and sales of livestock and products 8. Sales of prepared foods 9. Agricultural wage labour (non-opium) 10. Opium wage labour 11. Shepherding 12. Mille 13. Other wage labour 14. Skilled labour 15. Salary/Government job/teacher/NGO/UN 16. Small business 17. Petty trade/shopkeeping 18. Cross border trade 19. Firewood/ charcoal sales 20. Handicrafts (sewing, embroidery, etc) 21. Carpet weaving 22. Mining 23. Military service 24. Taxi/transport 25. Remittances from seasonal migrants 26. Remittances from family members permanently away from home 27. Pension 28. Other government benefits 29. Rental income 30. Sale of food aid 31. Begging 32. Borrowing 33. Other 34. I don't know
1.First		
2.Second		
3.Third		

WOMEN ONLY – MEN SKIP TO Q.30

27	Are you allowed to go out of your house?	1. Yes, I can go out on my own 2. Yes, if accompanied 3. No
28	Do you have your own mobile phone?	1. Yes 2. No
29	How often do you go and visit members of your parents' family? PROMPT – One Answer	1. Never 2. Sometimes (once or twice a year) 3. Frequently (once or twice a month) 4. Often (several times per month) 5. Very often (on a daily basis) 6. Not applicable

Section 3 – LEGAL AWARENESS & PERCEPTION OF JUSTICE INSTITUTIONS

30	From what age can a girl get married? DO NOT PROMPT – Write down age	
31	Is it important to get a marriage certificate? DO NOT PROMPT – One Answer	<ol style="list-style-type: none"> 1. I don't know what that is 2. No, it is unnecessary 3. Yes, it is important
32	Do women have the right to get an education regardless of the authorization of their husband or father?	<ol style="list-style-type: none"> 1. Yes 2. No 3. I don't know
33	Do women have the right to own land?	<ol style="list-style-type: none"> 1. Yes 2. No 3. I don't know
34	Do women have the right to keep control over their own property upon marriage?	<ol style="list-style-type: none"> 1. Yes 2. No 3. I don't know
35	Upon the death of her husband, is a woman entitled to get her <i>mahr</i> ?	<ol style="list-style-type: none"> 1. Yes 2. No 3. I don't know 4. Other (specify)
36	Upon the death of her father, what part of her father's estate is a girl entitled to? DO NOT PROMPT – One Answer	<ol style="list-style-type: none"> 1. Nothing 2. What her brothers accept to give her 3. Half the portion of her brothers 4. Other (specify) 5. I don't know
37	Upon the death of her husband, what part of her husband's estate is a widow entitled to? DO NOT PROMPT – One Answer	<ol style="list-style-type: none"> 1. Nothing 2. What her sons and brothers in law accept to give her 3. 1/8 or 1/4 of her husband's estate, depending on whether they had children or not 4. Her <i>mahr</i> 5. Other (specify) 6. I don't know
38	Does a woman have the right to get divorce from her husband?	<ol style="list-style-type: none"> 1. Yes 2. No 3. I don't know
39	Upon divorce, is a woman entitled to alimony?	<ol style="list-style-type: none"> 1. Yes 2. No 3. I don't know
40	Upon divorce, does a woman have rights to child custody?	<ol style="list-style-type: none"> 1. Yes

	DO NOT PROMPT – One Answer	2. Yes, until children are young 3. Yes, until girls turn 9 and boys 7. 4. No 5. I don't know
41	Is it important to have land certificates?	1. Yes 2. No
42	Are there circumstances when it is legitimate to beat one's wife?	1. Yes 2. No
43	Is a woman who has been beaten entitled to report it to someone?	1. Yes 2. No

PERSON/INSTITUTION	44. Do you know what is the role of the following institutions? 1. Yes GO TO 45 2. No, I do not know GO TO NEXT INSTITUTION	45. Would you ask for [PERSON/INSTITUTION]'s help if you have a dispute? 1.YES >> GO TO 46 2.NO >> GO TO 47	46. Why would you ask for this [PERSON/INSTITUTION]'s help? DO NOT PROMPT – Multiple Answers THEN GO TO Q. 48	9. Family/community relations would not be spoiled 10. It is not corrupt 11. I have influence on this institution 12. There is not much bureaucracy 13. You can make your case before the court 14. Secures secrecy/discretion 15. It is safe 16. It is Islamic 17. It applies principles that reflect my values 18. It preserves the honour of my family 19. I know I can pay to get a decision in my favour 20. Other 21. I don't know
A. Elders of local Shura/Jirga				
B. Tribal leader/Malik				

C. Mullah Saleb			
D. Hoqooq			
E. Local courts			
F. Public prosecutor			
G. Governor office			
H. Police			
I. Taliban			
J. Legal Aid/Lawyer			
K. CDC			
L. Family Response Units (with the ANP)			
M. Department of Women Affairs			
N. EVAW Prosecution Unit			
O. Family Court			
P. Afghan Independent Human Right Commissions			
Q. Women Shura			

PERSON/INSTITUTION	47. Why would you not ask for INSTITUTION's help? DO NOT PROMPT – Multiple Answer	8. There is corruption 9. Others have influence on this institution 10. There is much bureaucracy 11. Participating to the proceedings is too burdensome 12. Does not guarantee secrecy/discretion 13. It is dangerous 14. It is haram 15. It endangers the honour of my family 16. I know I cannot pay to get a decision in my favour 17. Other (specify) 18. I don't know	48. Have you ever had to bribe staff from one of the following institutions?
	1. It does/they do not have the authority 2. This is not what people do in the community 3. Disputes are resolved slowly 4. It is far 5. It is not fair/not objective 6. It is expensive 7. Family/community relations	1. Yes 2. No	

	would be spoiled	19. Decisions are not enforced 20. I cannot afford to pay the zamanat 21. There are no female officers/female staff	
A. Elders of local Shura/Jirga			
B. Tribal leader/Malik			
C. Mullah Saleb			
D. Hoqooq			
E. Local courts			
F. Public prosecutor			
G. Governor office			
H. Police			
I. Taliban			
J. Legal Aid/Lawyer			
K. CDC			
L. Family Response Units (with the ANP)			
M. Department of Women Affairs			
N. ERAW Prosecution Unit			
O. Family Court			
P. Afghan Independent Human Right Commissions			
Q. Women Shura			

I will now read a number of hypothetical disputes and will then ask a number of questions about how you might resolve these disputes

CODE FOR DISPUTE RESOLUTION 1. Through direct negotiations 2. Did not take any action	22. NGO
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3. Father's family 4. Spouse's family 5. Other party's family 6. Friends 7. Elders or local Shura/Jirga 8. Tribal leader/Malik 9. Mullah 10. Elder woman – white hairs (mui-e-safed) /Women Shura 11. District Governor 12. Provincial Governor 13. Police	14. Public Prosecutor 15. State courts 16. Local Militia 17. Taliban 18. Local commandant 19. Lawyer office 20. Legal aid office 21. Paralegal	23. Hoqooq department 24. Clinic – health centre 25. DoWA 26. Human Rights Commission 27. Other (specify) 28. ERAW Prosecution Unit 29. Family Response Unit (within police) 30. Family Court
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HYPOTHETICAL 1:

Female Respondent: You are severely beaten and injured by your husband **for no reason**. He does not stop, even if you ask him to stop.

Male Respondent: A female relative is severely beaten and injured by her husband for no reason. He does not stop, even if you ask him to stop.

49	To whom would you first request assistance to resolve this dispute? <i>Enumerator: Allow respondent to answer and then use code for dispute resolution actors.</i> <i>Enumerator: If respondent answers "2. Not do anything", go to 50.</i> <i>For all others, skip to 51</i>	
50	Why would you not take any action? DO NOT PROMPT – One answer 1. Not important enough 2. It is not my role to take action 3. It makes no difference. I have no chance of winning 4. Danger or fear of retaliation 5. Lack of evidence Did not know what to do or who to go to	7. It costs too much 8. Person who could assist is too far away 9. It would create problems for my family 10. It would damage relations with other party 11. Cannot travel by myself 12. Other, please specify

HYPOTHETICAL 2:

Female respondent: Your father has passed away. You inherited a piece of land that you want to retain as yours. Your

brothers will not let you have it. Male respondent: Your wife's father has passed away. She inherited a piece of land that she wants to retain. Her brothers will not let her have it.		
51	To whom would you first request assistance to resolve this dispute? <i>Enumerator: Allow respondent to answer and then use code for dispute resolution actors.</i> <i>Enumerator: If respondent answers "2. Not do anything", go to 52.</i> <i>For all others, skip to 53</i>	
52	Why would you not take any action? DO NOT PROMPT – One answer	
	<div> <ol style="list-style-type: none"> Not important enough It is not my role to take action It makes no difference. I have no chance of winning Danger or fear of retaliation Lack of evidence Did not know what to do or who to go to It costs too much </div> <div> <ol style="list-style-type: none"> Person who could assist is too far away It would create problems for my family It would damage relations with other party Cannot travel by myself My brothers will take care of me in return Other, please specify </div>	

HYPOTHETICAL 3: The land you (your household) have been cultivating for the past 10 years is claimed by a relative of your neighbor who just returned to the country after a long absence.		
53	To whom would you first request assistance to resolve this dispute? <i>Enumerator: Allow respondent to answer and then use code for dispute resolution actors.</i> <i>Enumerator: If respondent answers "2. Not do anything", go to 54.</i> <i>For all others, skip to 55</i>	
54	Why would you not take any action? DO NOT PROMPT – One answer	
	<div> <ol style="list-style-type: none"> Not important enough It is not my role to take action It makes no difference. I have no chance of winning Danger or fear of retaliation Lack of evidence Did not know what to do or who to go to </div> <div> <ol style="list-style-type: none"> It costs too much Person who could assist is too far away It would create problems for my family It would damage relations with other party Cannot travel by myself Other, please specify </div>	

HYPOTHETICAL 4: A woman is not happy in her marriage – where should she report this issue?		
55	<p>To whom should she first request assistance to resolve this issue?</p> <p><i>Enumerator: Allow respondent to answer and then use code for dispute resolution actors.</i></p> <p><i>Enumerator: If respondent answers "2. Not do anything", go to 56</i></p> <p><i>For all others, skip to 57</i></p>	
56	<p>Why shouldn't she take any action?</p> <p>DO NOT PROMPT – One answer</p> <ol style="list-style-type: none"> 1. Not important enough 2. It is not her role to take action 3. It makes no difference. She has no chance of winning 4. Danger or fear of retaliation 5. Lack of evidence 6. Does not know what to do or who to go to 	<ol style="list-style-type: none"> 7. It costs too much 8. Person who could assist is too far away 9. It would create problems for her family 10. It would damage relations with other party 11. Cannot travel by herself 12. It is a shameful thing to do 13. Other, please specify

HYPOTHETICAL 5: A relative of yours wants to give his 10-year old daughter in marriage against her will.		
57	<p>To whom would you first report this issue?</p> <p><i>Enumerator: Allow respondent to answer and then use code for dispute resolution actors.</i></p> <p><i>Enumerator: If respondent answers "2 Not do anything", go to 58</i></p> <p><i>For all others, skip to 59</i></p>	
58	<p>Why would you not take any action?</p> <p>DO NOT PROMPT – One answer</p> <ol style="list-style-type: none"> 1. Not important enough 2. It is not my role to intervene 3. It makes no difference. I have no chance of winning 4. Danger or fear of retaliation 5. Lack of evidence 6. Did not know what to do or who to go to 	<ol style="list-style-type: none"> 7. It costs too much 8. Person who could assist is too far away 9. It would create problems for my family 10. It would damage relations with other party 11. Cannot travel by myself 12. Other, please specify

PREVALENCE QUESTIONS

59. Can you tell me <u>how many</u> of the following four statements you regard as true? PROMPT	
A. At least one member of my household plans to open a new business in the next five years.	

B. The economic situation of my household has improved considerably since last year. C. The country is moving in the right direction. D. A woman in my household was prevented from inheriting her portion of land by her relatives.	WRITE NUMBER
60. Can you tell me <u>how many</u> of the following statements you regard as true? PROMPT A. Corruption in my country is a less serious problem than five years ago. B. A man in my household married the wife of his brother after the death of his brother. C. The quality of the diet in my household has improved since last year. D. The employment opportunities got worse in my area in the last year.	WRITE NUMBER

SECTION 3a. DISPUTES – All Respondents

		61.	62	63.
C O D E	Disputes	Have people in your village experienced any disputes related to [DISPUTE] in last 5 years? 1.YES GO TO Q. 62 2.NO GO TO NEXT ROW	Where was the first place they went to try to resolve the dispute? DO NOT PROMPT – One answer CODE FOR DISPUTE RESOLUTION 1. Direct negotiations 2. Did not take any action 3. Father's family 4. Spouse's family 5. Other party's family 6. Friends 7. Elders or local Shura/Jirga 8. Tribal leader/Malik 9. Mullah 10. Elder woman – white hairs (mui-e-safed) / Women Shura 11. District Governor 12. Provincial Governor 13. Police 14. Public Prosecutor 15. State courts 16. Local Militia 17. Taliban 18. Local commandant 19. Lawyer office 20. Legal aid office 21. Paralegal 22. NGO 23. Hoqooq department 24. Clinic – health centre 25. DoWA 26. Human Rights Commission 27. Other (specify) 28. ERAW Prosecution Unit 29. Family Response Unit (within police) 30. Family Court	Was the dispute resolved? 1. Yes 2. No 3. It is still ongoing 4. I don't know
A	Land			
B	Water			
C	Other property disputes			

D	Business, employment-related issues			
E	Inheritance			
F	Mahr			
G	Forced/Early marriage			
H	Disobedience			
I	Divorce			
J	Child Custody			
K	Domestic Violence			
L	Theft			
M	Physical assault			
N	Sexual violence			

		64	65	66	67	68	69
C O D E	Disputes/Issues	Have members of your household experienced disputes related to [DISPUTE] in last 5 years? 1.Yes GO TO Q.65 2.No GO TO NEXT ROW	What is the person ID of this household member in the roster? PERSON ID FROM ROSTER	How many disputes related to [DISPUTE] has your household experienced in the last 5 years? 1. NUMBER OF DISPUTES 2. Not applicable	Who was the dispute with? DO NOT PROMPT – Multiple ANSWERS 1. Family member living in household 2. Other relative 3. Neighbour 4. Other individual in village 5. Individual in other village 6. Group in village 7. Group in other village 8. Company 9. Government official 10. Government 11. Other	Where was the first place they went to try to resolve the dispute? REFER TO LIST OF INSTITUTIONS (Q.62)	Was the dispute resolved? 1. Yes 2. No 3. It is still ongoing
A	Land						
B	Water						
C	Other property disputes						
D	Business-related issues						

E	Inheritance						
F	Mahr						
G	Forced/Early marriage						
H	Disobedience						
I	Divorce						
J	Child Custody						
K	Domestic Violence						
L	Theft						
M	Physical assault						
N	Sexual violence						

SECTION 3b – DISPUTES (ALL RESPONDENTS)

<p>70. Did you personally experience any dispute related to the following issues or did you take care personally of a dispute for a member of your family?</p> <ol style="list-style-type: none"> Land Water Other property dispute Business, employment-related issues Inheritance Mahr Forced/Early marriage Disobedience Divorce 	<p>PROMPT – MULTIPLE ANSWERS</p> <ol style="list-style-type: none"> Child custody Domestic violence Theft Physical assault Sexual violence Other I did not experience any dispute at all nor had I to handle the dispute of a member of my household SKIP TO Q. 101
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We would like to talk about the most important dispute that you faced

71	<p>Was this dispute personally experienced by you or did you take care of it for a member of your family</p> <p>PROMPT – ONE ANSWER</p>	<ol style="list-style-type: none"> It was my own dispute It was a dispute concerning one of my relatives but I took care of it – (SPECIFY relatives): _____
72	<p>When the dispute arose, did you try to negotiate directly with other party?</p> <ol style="list-style-type: none"> Yes No 	
73	When the dispute arose, or after direct negotiations, who did you turn to resolve it?	

	DO NOT PROMPT – ONE ANSWER	
	<ol style="list-style-type: none"> 1. It was resolved through direct negotiations SKIP TO Q. 101 2. Did not take any action 3. Father's family SKIP TO Q. 75 4. Spouse's family SKIP TO Q. 75 5. Other party's family SKIP TO Q. 75 6. Friends SKIP TO Q. 75 7. Elders or local Shura/Jirga SKIP TO Q. 75 8. Tribal leader/Malik SKIP TO Q. 75 9. Mullah SKIP TO Q. 75 10. Elder woman – white hairs (mui-e-safed) /Women Shura SKIP TO Q. 75 11. District Governor SKIP TO Q. 75 12. Provincial Governor SKIP TO Q. 75 13. Police SKIP TO Q. 75 14. Public Prosecutor SKIP TO Q. 75 	<ol style="list-style-type: none"> 15. State courts SKIP TO Q. 75 16. Local Militia SKIP TO Q. 75 17. Taliban SKIP TO Q. 75 18. Local commandant SKIP TO Q. 75 19. Lawyer office SKIP TO Q. 75 20. Legal aid office SKIP TO Q. 75 21. Paralegal SKIP TO Q. 75 22. NGO SKIP TO Q. 75 23. Hoqooq department SKIP TO Q. 75 24. Clinic – health centre SKIP TO Q. 75 25. DoWA SKIP TO Q. 75 26. Human Rights Commission SKIP TO Q. 75 27. Other (specify) SKIP TO Q. 75 28. SKIP TO Q. 75 29. Family Response Unit (within police) SKIP TO Q. 75 30. Family Court SKIP TO Q. 75
74	Why did you not take any action? DO NOT PROMPT – Multiple Answers MEN - THEN GO Q.101 WOMEN – CONTINUE TO Q.74 b	
	<ol style="list-style-type: none"> 1. Not important enough 2. It made no difference, I had no chance of winning 3. Danger or fear of retaliation 4. Lack of evidence 5. Did not know what to do or who to go to 6. Too expensive 	<ol style="list-style-type: none"> 7. Too far – Not accessible 8. Did not have time to take care of this 9. No one to assist me 10. It would create problems for my family 11. I would create problems with my family 12. Other (specify)
74 b	FOR WOMEN ONLY: Would you have reported the issue to the police if female police officers were available to interview you? THEN GO Q.101	<ol style="list-style-type: none"> 1. Yes 2. No
75	Why did you choose this person/place to address your dispute? DO NOT PROMPT – Multiple answers	
	<ol style="list-style-type: none"> 1. It was free/cheap 	<ol style="list-style-type: none"> 9. They have authority or responsibility to deal with this type of

	2. It was easy to access 3. I was confident it would not take too much time 4. I was confident they would address the issue fairly 5. This person/institution has community respect 6. This person/institution has skills/Knowledge 7. I was confident that they will resolve this dispute 8. I was confident that they will resolve this in my favour	issues 10. It would cause least disruption to life 11. This is what people do in my community 12. Advice from my family 13. Advice from relatives, friends, neighbours 14. Other (Specify) 15. I don't know
76	Who assisted you in filing or reporting? DO NOT PROMPT – ONE ANSWER	
	1. It was resolved through direct negotiations 2. No one 3. Father's family 4. Spouse's family 5. Other party's family 6. Friends 7. Elders or local Shura/Jirga 8. Tribal leader/Malik 9. Mullah 10. Elder woman – white hairs (mui-e-safed) /Women Shura 11. District Governor 12. Provincial Governor 13. Police 14. Public Prosecutor	15. State courts 16. Local Militia 17. Taliban 18. Local commandant 19. Lawyer office 20. Legal aid office 21. Paralegal 22. NGO 23. Hoqooq department 24. Clinic – health centre 25. DoWA 26. Human Rights Commission 27. Other (specify) 28. EAW Prosecution Unit 29. Family Response Unit (within police) 30. Family Court
76.b	Has the necessity to pay the <i>zamanat</i> – prevented your case to be solved? DO NOT PROMPT – ONE ANSWER	1. Yes 2. No 3. I don't know what the zamanat is 4. Other (specify)

We would like to know about the different stages that your dispute went through

		A	B	C
77	To whom/which institution the dispute was taken ? Specify for each stage	First person to whom the dispute was taken <i>Enumerator: Use code from</i>	Second person to whom the dispute was taken <i>Enumerator: : Use code from</i>	Third person to whom the dispute was taken <i>Enumerator: : Use code from Institution List</i> 1. CODE – INSTITUTION/PERSON

		<i>Institution List</i> 1. CODE – INSTITUTION/PERSON <input type="text"/>	<i>Institution List</i> 1. CODE – I <input type="text"/> N STITUTION/PERSON 2. NONE, SKIP COLUMNS B & C TO Q. 94	<input type="text"/> 2. NONE, SKIP COLUMN C TO Q. 94
78	Did you have the opportunity to state their opinion at this stage of the process?	1. YES 2. NO	1. YES 2. NO	1. YES 2. NO
79	Did you attend personally the proceeding/discussion at this stage of the process?	1. YES 2. NO	1. YES 2. NO	1. YES 2. NO
80	How satisfied are you with the amount of respect you were given by the person to whom the dispute was taken? PROMPT – ONE ANSWER	1. Very satisfied 2. Satisfied 3. Neither satisfied nor dissatisfied 4. Dissatisfied 5. Very dissatisfied	1. Very satisfied 2. Satisfied 3. Neither satisfied nor dissatisfied 4. Dissatisfied 5. Very dissatisfied	1. Very satisfied 2. Satisfied 3. Neither satisfied nor dissatisfied 4. Dissatisfied 5. Very dissatisfied
81	Did you feel that the person who dealt with your case at this stage was impartial and objective? PROMPT – ONE ANSWER	1. Very much 2. Much 3. Neutral 4. Not really 5. Not at all	1. Very much 2. Much 3. Neutral 4. Not really 5. Not at all	1. Very much 2. Much 3. Neutral 4. Not really 5. Not at all
82	How long did this first/second/third stage of the process take?	<input type="text"/> days	<input type="text"/> days	<input type="text"/> days
83	How much money did it cost, if any? (In AFG) <i>Enumerator: If nothing, write 00</i>	<input type="text"/> AFG	<input type="text"/> AFG	<input type="text"/> AFG
84	Did you have a legal representative at this stage of the process?	1. Yes 2. No	1. Yes 2. No	1. Yes 2. No
85	If this problem occurred again, would you report to the same person/institution?	1. YES 2. NO SKIP TO Q. 87 3. DON'T KNOW SKIP TO Q. 88	1. YES 2. NO SKIP TO Q. 87 3. DON'T KNOW SKIP TO Q. 88	1. YES 2. NO SKIP TO Q. 87 3. DON'T KNOW SKIP TO Q. 88

86	<p>If YES, why?</p> <p>MULTIPLE ANSWERS – DO NOT PROMPT</p>	<ol style="list-style-type: none"> 1. It was cheap 2. It went fast 3. It was simple 4. It was efficient 5. It was safe 6. My voice was heard 7. It was impartial/fair 8. It was discreet 9. It minimised consequences on my family 10. It was halal 11. Other 	<ol style="list-style-type: none"> 1. It was cheap 2. It went fast 3. It was simple 4. It was efficient 5. It was safe 6. My voice was heard 7. It was impartial/fair 8. It was discreet 9. It minimised consequences on my family 10. It was halal 11. Other 	<ol style="list-style-type: none"> 1. It was cheap 2. It went fast 3. It was simple 4. It was efficient 5. It was safe 6. My voice was heard 7. It was impartial/fair 8. It was discreet 9. It minimised consequences on my family 10. It was halal 11. Other
87	<p>If NO, why not?</p> <p>MULTIPLE ANSWERS – DO NOT PROMPT</p>	<ol style="list-style-type: none"> 1. It was expensive 2. It was long 3. It was inefficient 4. It was complicated 5. It was unsafe 6. My voice was not heard 7. It was partial/unfair 8. It was not discreet 9. It had a lot of consequences on my family 10. It was haram 11. Other 	<ol style="list-style-type: none"> 1. It was expensive 2. It was long 3. It was inefficient 4. It was unsafe 5. It was complicated 6. My voice was not heard 7. It was partial/unfair 8. It was not discreet 9. It had a lot of consequences on my family 10. It was haram 11. Other 	<ol style="list-style-type: none"> 1. It was expensive 2. It was long 3. It was inefficient 4. It was unsafe 5. It was complicated 6. My voice was not heard 7. It was partial/unfair 8. It was not discreet 9. It had a lot of consequences on my family 10. It was haram 11. Other
88	<p>From the following list, chose the adjective that describes the best how you felt at each stage of the process?</p> <p>PROMPT- ONE ANSWER</p>	<ol style="list-style-type: none"> 1. Angry 2. Ashamed/ Humiliated 3. Resentful 4. Dissatisfied/Disappointed 5. Satisfied 6. Relieved 7. Proud 8. Happy 	<ol style="list-style-type: none"> 1. Angry 2. Ashamed/ Humiliated 3. Resentful 4. Dissatisfied/Disappointed 5. Satisfied 6. Relieved 7. Proud 8. Happy 	<ol style="list-style-type: none"> 1. Angry 2. Ashamed/ Humiliated 3. Resentful 4. Dissatisfied/Disappointed 5. Satisfied 6. Relieved 7. Proud 8. Happy
89	<p>How did the community react to your decision to take your dispute to this person/institution?</p>	<ol style="list-style-type: none"> 1. Very negatively 2. Negatively 3. Indifferent 	<ol style="list-style-type: none"> 1. Very negatively 2. Negatively 3. Indifferent 	<ol style="list-style-type: none"> 1. Very negatively 2. Negatively 3. Indifferent

	PROMPT- ONE ANSWER	4. Positively 5. Very positively	4. Positively 5. Very positively	4. Positively 5. Very positively
90	Was this dispute resolved during this stage of the process?	1. YES SKIP TO Q.94 2. NO	1. YES SKIP TO Q. 94 2. NO	1. YES SKIP TO Q.94 2. NO
91	Did you take the dispute to another person to solve this problem?	1. YES GO TO COLUMN B 2. NO	1. YES GO TO COLUMN C 2. NO	1. YES 2. NO
92	In the end, did you manage to solve this problem?	1. No, it is ongoing GO TO Q.98 2. No, it remains unsolved GO TO Q.98	1. No, it is ongoing GO TO Q.98 2. No, it remains unsolved GO TO Q.98	1.YES CONTINUE TO 93 2. No, it is ongoing GO TO Q. 98 3. No, it remains unsolved GO TO Q. 98
93	With whose help did you eventually solve this problem? DO NOT PROMPT- ONE ANSWER			1. It was resolved through direct negotiations 2. Did not take any action 3. Father's family 4. Spouse's family 5. Other party's family 6. Friends 7. Elders or local Shura/Jirga 8. Tribal leader/Malik 9. Mullah 10. Elder woman – white hairs (mui-e-safed) /Women Shura 11. District Governor 12. Provincial Governor 13. Police 14. Public Prosecutor 15. State courts 16. Local Militia 17. Taliban 18. Local commandant 19. Lawyer office 20. Legal aid office 21. Paralegal 22. NGO 23. Hoqooq department 24. Clinic – health centre 25. DoWA 26. Human Rights Commission

				27. Other (specify) 28. EAW Prosecution Unit 29. Family Response Unit (within police) 30. Family Court
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94	Were you satisfied with the final decision	1. YES 2. NO
95	Do you feel that decision was in your favor?	1. YES 2. NO 3. SPLIT DECISION
96	Was the decision enforced?	1. YES 2. NO
97	If you were awarded compensation, have you collected it?	1. No, I have not collected it 2. Yes, I have collected the full compensation awarded 3. Yes, I have partly collected the compensation awarded 4. Not applicable
98	IF YOUR CASE WENT THROUGH STATE COURTS please indicate your level of satisfaction for each of the following where 1=very dissatisfied, 2= satisfied; 3= neutral; 4=satisfied; 5=very satisfied and 6=not applicable – If you have not engaged with state courts SKIP to Q.99	
	1. The court's opening times	1 2 3 4 5 6
	2. Easily identifiable and available staff to deal with queries	1 2 3 4 5 6
	3. Time waited before the court or staff dealt with your case	1 2 3 4 5 6
	4. Information regarding court procedures and facilities	1 2 3 4 5 6
	5. The forms you needed being clear and easy to understand	1 2 3 4 5 6
	6. Privacy	1 2 3 4 5 6
	7. Justice fees	1 2 3 4 5 6
	8. Safety in courts	1 2 3 4 5 6
99	IF YOUR CASE WENT THROUGH A JIRGA/SHURA, please indicate your level of satisfaction for each of the following where 1=very dissatisfied, , 2= satisfied; 3= neutral; 4=satisfied; 5=very satisfied and 6=not applicable – If you have not engaged with Jirga/shura SKIP to Q.100	
	1. Time waited before the Jirga/shura dealt with your case	1 2 3 4 5 6
	2. Information regarding jirga's procedures	1 2 3 4 5 6
	3. Privacy	1 2 3 4 5 6
	4. Justice fees	1 2 3 4 5 6
	5. Safety in courts	1 2 3 4 5 6
100	IF YOUR CASE WENT THROUGH A TALIBAN COURT, please indicate your level of satisfaction for each of the following where 1=very dissatisfied, , 2= satisfied; 3=	

	<i>neutral; 4=satisfied; 5=very satisfied and 6=not applicable – If you have not engaged with Taliban courts – SKIP TO Q. 101</i>	
	1. Time waited before the Taliban court dealt with your case	1 2 3 4 5 6
	2. Information regarding Taliban court's procedures	1 2 3 4 5 6
	3. Privacy	1 2 3 4 5 6
	4. Justice fees	1 2 3 4 5 6
	5. Safety in courts	1 2 3 4 5 6

101	Which of the following does your household own? Prompt: Multiple answers		
	1. House: number of rooms..../number of houses if multiple 2. Land (cultivable/non cultivable): number of jerib ____ 3. Refrigerator 4. Stove/gas balloon 5. Sewing machine 6. Iron 7. Radio 8. TV	9. VRC/DVD 10. Mobile phone 11. Landline phone 12. Computer (working) 13. Bicycle 14. Motorcycle 15. Car	16. Tractor 17. Thresher 18. Jewelry 19. Carpets (Khalin) 20. Gilim, satrangi, namad, fash 21. Blankets 22. Kitchen utensils (dishes, pots and pans) 23. None of the above
	How many of the following animals does your household own today?		
	A. Cattle (Meat and dairy) B. Oxen, yaks C. Horses D. Donkeys E. Camels F. Goats G. Sheep H. Chicken I. Turkeys, ducks, geese		
FACILITIES		103. How long does it take to get to this [FACILITY] walking?	
		1. Less than 15 minutes 2. Between 15 to 30 minutes 3. Between 30 minutes and 1 hour 4. More than one hour 999. No access	
A. Boys' primary school			

B. Girls' primary school	
C. Market	
D. Health Center	
E. Police station	
F. Government office	
G. Hoqooq	
H. Local courts	

104	105	106	107	108	109	110
<p>What is the major construction material of the exterior walls of dwelling, in the main living area of the family?</p> <p>PROMPT- ONE ANSWER</p> <ol style="list-style-type: none"> 1. Fired brick/stone 2. Concrete 3. Wood 4. Mud bricks/mud 5. Tin/metal 6. Prefabricated 7. Other 	<p>What is the major construction material of the roof of dwelling, in the main living area of the family?</p> <p>PROMPT- ONE ANSWER</p> <ol style="list-style-type: none"> 1. Asphalt tiles 2. Concrete 3. Wood 4. Tin/metal 5. Bricks 6. Other 	<p>What is the major construction material of the floor of dwelling, in the main living area of the family?</p> <p>PROMPT- ONE ANSWER</p> <ol style="list-style-type: none"> 1. Dirt/earth 2. Concrete/tile 3. Wood 4. Other 	<p>What is the household's main source of lighting?</p> <p>PROMPT- ONE ANSWER</p> <ol style="list-style-type: none"> 1. None 2. Oil lamp 3. Candles 4. Electricity from grid 5. Generator 6. Battery 7. Gas 8. Firewood 9. Other 	<p>What is the household's main source of cooking fuel?</p> <p>PROMPT- ONE ANSWER</p> <ol style="list-style-type: none"> 1. Animal dung 2. Bushes, twigs, branches 3. Crop residues 4. Firewood 5. Charcoal/coal 6. Kerosene or oil 7. Gas 8. Electricity 9. Scavenged material/trash 10. Other 	<p>What is your household's main source of drinking water?</p> <p>PROMPT- ONE ANSWER</p> <ol style="list-style-type: none"> 1. Open public well, 2. Open well in compound 3. Public hand pump 4. Hand pump in compound 5. Bored wells 6. Unprotected spring 7. Protected spring 8. Pipe scheme 9. Piped municipal, 10. River, lake, channel, 11. Drainage, 12. Bowser/water tanker 13. Bottled water/mineral water 14. Other 	<p>Which main toilet facility does your household use?</p> <p>PROMPT- ONE ANSWER</p> <ol style="list-style-type: none"> 1. None (open field, bush) or Sahrahi 2. Dearan (area inside or outside compound but not pit) 3. Open pit 4. Traditional covered latrine 5. Improved latrine 6. Flush latrine 7. Other,

111	Does any member of your household take part in one of the following?			
	PROMPT - MULTIPLE ANSWERS			
	LIST HOUSEHOLD MEMBERS' PERSON ID CODES FROM ROSTER			
	1. Agricultural association or cooperative		7. Political Party	
	2. Health management committee		8. Youth/Student association	
	3. School management committee		9. Religious association	
	4. Community Development Council (CDC)		10. Trade unions/Professional organization	
5. Justice Shura/Jirga		11. NGO/Civil Society Organization		
6. Sports association		12. Water use association		

112	How often do you have access to the following items?				
	PROMPT - ONE ANSWER PER LINE				
	1. Never		A	Radio	
	2. Less than once every month		B	TV	
	3. At least once a month		C	Newspaper	
	4. At least once a week		D	Mobile phone	
	5. Every day		E	Land telephone	
	6. All the time		F	Internet	
		G	Imam's preaching		

END OF THE INTERVIEW

113. ENUMERATOR, PLEASE IDENTIFY RESPONDENT'S ID CODE FROM HOUSEHOLD ROSTER	
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2) Justice Service Providers Questionnaire – Judges

WB – Gender & Justice Study

Questionnaire – Justice Service Providers

JUDGES



Hello. My name is _____. I would be grateful if you could spend some time answering my questions. We are conducting a research for the World Bank, the Ministry of Justice, the Supreme Court and the Attorney General Office. The objective of this research is to help us better identify and understand the challenges that Afghan men and women encounter when trying to access justice.

This interview is anonymous and your name will not be mentioned in any report or document. You are not obliged to answer any question, and you can stop at any moment you want. I thank you for accepting to help me. Do you want to ask me anything about the interview before you decide to participate?

Questionnaire Number					
N°.	Questions	Answers			
A.	Interviewer Name				
B.	Date of interview	1. June 2013 2. July 2013			
C.	Province Name & Code	1. Kabul (1) 2. Bamyan (10) 3. Nangarhar (6) 4. Herat (32) 5. Logar (5)			
D.	District Name & Code	Name:	Code		
E.	Name of village (if rural) / neighbourhood (nahie if urban)			
F.	Type of location	3. Urban 4. Rural			
G.	Institution	1. Central Primary Court 2. District Primary Court 3. Appeal Court			
H.	Specialization: court/ Dewan within court	1) Civil Court (specify Dewan) 2) Special Court (specify) 3) Criminal Court (specify Dewan, if any)			
SECTION 1: INDIVIDUAL PROFILE					
1.	Age year old			
2.	Gender	1. Male 2. Female			

3.	Highest level of education completed DO NOT PROMPT	1. No school 2. Primary School 3. Secondary School 4. Madrassa 5. High School	6. Teacher college 7. University degree 8. Post-grad 9. Other:
4.	Details on university degree held (if applicable) DO NOT PROMPT	1. Degree from the Faculty of Law and Political Science 2. Degree from the Faculty of Shari'a 3. Other:..... 4. Not applicable	
5.	Obtained at (type of faculty; city; country)	
6.	Degree completed in (year)	
7.	Details on professional training received (source; year)		
8.	For how long have you been a judge? DO NOT PROMPT	1. Less than 3 months 2. 3 to 6 months (less than 6 months) 3. Between 6 months and a year (less than a year) 4. 1 to 2 years 5. 2 to 5 years 6. More than 5 years	

SECTION 2: ACCESS

9	Over the last 6 months, how many civil cases did you have on your docket?	1. _____ If "0" SKIP TO 16 2. Not applicable SKIP TO Q. 16
10.	Of these, what types were most common? DO NOT PROMPT – Multiple Answers	1. Land 2. Inheritance 3. Divorce 4. Child custody 5. Alimony 6. other (Specify)
11	Over the last 6 months, what percentage of civil cases on your docket would you say involved women?	1. _____ % If "0" SKIP TO 16 2. I don't know 3. Not applicable
12	Of these, what were the most common? DO NOT PROMPT – Multiple Answers	1. Land 2. Inheritance 3. Divorce 4. Child custody 5. Alimony 6. other (Specify)
13	Over the last 6 months, what percentage of civil cases on your docket would you say involved women as plaintiffs ?	1. _____ If "0" SKIP TO 15 2. I don't know
14	Of the cases involving women as plaintiffs , what types are most common? DO NOT PROMPT – Multiple Answers	1. Land 2. Inheritance 3. Divorce 4. Child custody 5. Alimony 6. other (Specify)
15	Of the civil cases involving women as defendant , what types are most common? DO NOT PROMPT – Multiple Answers	1. Land 2. Inheritance 3. Divorce 4. Child custody

		5. Alimony 6. other (Specify)
16	Over the last 6 months, how many criminal cases did you have on your docket?	1. _____ If "0" SKIP TO 22 2. Not applicable SKIP TO Q. 22
17	Of these, what types were most common? DO NOT PROMPT – Multiple Answers	1. Domestic violence 2. Theft 3. Murder 4. Sexual assault/rape 5. Zina 6. Non domestic violence 7. Running away 8. Forced/early marriage 9. Other (specify) 10. I don't know
18	Over the last 6 months, how many criminal cases on your docket involved a woman as a victim?	1. If "0" SKIP TO 20 2. I don't know
19	Of these cases involving women as victims, what types are most common? DO NOT PROMPT – Multiple Answers	1. Domestic violence 2. Theft 3. Murder 4. Sexual assault/rape 5. Zina 6. Non domestic violence 7. Running away 8. Forced/early marriage 9. Other (specify) 10. I don't know
20	Approximately how many of the criminal cases on your docket in the past 6 months involved women as perpetrators?	1. _____ If "0" SKIP TO 22 2. I don't know
21	Of these cases involving women as perpetrators, what types are most common? DO NOT PROMPT – Multiple Answers	1. Domestic violence 2. Theft 3. Murder 4. Sexual assault/rape 5. Zina 6. Non domestic violence 7. Running away 8. Forced/early marriage 9. Other (specify) 10. I don't know
22	What level of awareness do you think women have of their inheritance rights? PROMPT: One Answer	1. Non existent 2. Very low 3. Low 4. Average 5. High 6. Very high 7. Other (specify)
23	What level of awareness do you think women have of their rights related to marriage and divorce? PROMPT: One Answer	1. Non existent 2. Very low 3. Low 4. Average 5. High 6. Very high

		7. Other (specify)
24	What level of awareness do you think women have of their rights according to the Elimination of Violence Against Women (EVAW) law? PROMPT: One Answer	<ol style="list-style-type: none"> 1. Non existent 2. Very low 3. Low 4. Average 5. High 6. Very high 7. I don't know about the EVAW law 8. Other (specify)
25	Do you think women are aware of the procedures and institutions which can help/ decide about their claims?	<ol style="list-style-type: none"> 1. Yes 2. No 3. Other (specify)
26	What set of rules do women know the best? PROMPT: Multiple Answers	<ol style="list-style-type: none"> 1. None 2. Customs 3. Shari'a 4. State law 5. I don't know
27	To your knowledge do women seek legal information and/or assistance before they pursue their rights in court?	<ol style="list-style-type: none"> 1. Yes 2. No 3. I don't know
28	What is women's most frequent source of legal information? PROMPT: Multiple Answers	<ol style="list-style-type: none"> 1. Radio, TV, media 2. Family 3. Other women 4. NGO, 5. Private attorneys, 6. MoJ's legal aid office, 7. hoqooq; 8. Other sources 9. I don't know 10. None
29	Can women find relevant information about procedures, laws and rules in your court?	<ol style="list-style-type: none"> 1. Yes 2. No 3. I don't know
30	Do you provide any form of assistance to women who appear to be ill informed and/or are for different reason unable to defend their rights?	<ol style="list-style-type: none"> 1. Yes 2. No
31	What do you normally do in such situations to help women? OPEN QUESTION	
32	What would you say are the main barriers that women face when seeking to access justice through the formal (state) system? DO NOT PROMPT (Record up to 3 answers by order of importance)	
	<ol style="list-style-type: none"> 1. Inability to travel 2. Inability to leave their home 3. Costs 4. Time constraints 5. Illiteracy 6. The court is too far 7. Insecurity on the road 	1 st
		2 nd

	8. A lack of familiarity with laws and rights 9. Lack of access to a lawyer 10. Complexity of procedures 11. Fear of being chastised by the community for taking a case to the formal system of justice 12. Attitudes of police unwilling to pursue cases 13. Incompetence of officials 14. Absence of accessible justice institutions 15. Corruption 16. Other: (specify) Add any additional remarks:	3 rd
33	What would you say are the main barriers that men face when seeking to access justice through the formal (state) system? DO NOT PROMPT (Record up to 3 answers by order of importance)	
	1. Inability to travel 2. Inability to leave their home 3. Costs of legal procedures 4. Time constraints 5. Illiteracy 6. The court is too far 7. Insecurity on the road 8. A lack of familiarity with laws and their rights 9. Lack of access to a lawyer 10. Complexity of procedures 11. Fear of being chastised by the community for taking a case to the formal system of justice 12. Attitudes of police unwilling to pursue cases 13. Incompetence of officials 14. Absence of accessible justice institutions 15. Corruption 16. Other: (specify) Add any additional remarks:	1 st
		2 nd
		3 rd
34	Do you think women face higher barriers than men when trying to access justice?	1. Yes 2. No
35	In your opinion, what could be done to improve women's access to justice? Open question	
SECTION 3: PROCESS		

36	Is it common for women to come personally to court?	1. Yes SKIP TO Q. 38 2. No
37	If women do not come to court personally, who comes in their place most often? DO NOT PROMPT: Multiple Answers	1. Family member 2. Friend 3. Community member 4. Lawyer 5. Legal Aid 6. Other (Specify)
38	Is it common for men to come personally to court?	1. Yes SKIP TO Q. 40 2. No
39	If men do not come to court personally, who comes in their place most often? DO NOT PROMPT: Multiple Answers	1. Family member 2. Friend 3. Community member 4. Lawyer 5. Legal Aid 6. Other (Specify)
40	How often would you say women plaintiffs have legal representation in court? PROMPT: One Answer	1. Never 2. Sometimes 3. In about half cases 4. Most of the time 5. Always
41	How often would you say men plaintiffs have legal representation in court? PROMPT: One Answer	1. Never 2. Sometimes 3. In about half cases 4. Most of the time 5. Always
42	How often would you say women defendants have legal representation in criminal procedures? PROMPT: One Answer	1. Never 2. Sometimes 3. In about half cases 4. Most of the time 5. Always 6. Not applicable
43	How often would you say men defendants have legal representation in criminal procedures? PROMPT: One Answer	1. Never 2. Sometimes 3. About half the time 4. Often 5. All the time 6. Not applicable
44	How often would you say women defendants have legal representation in civil procedures? PROMPT: One Answer	1. Never 2. Sometimes 3. In about half cases 4. Most of the time 5. Always 7. Not applicable
45	How often would you say men defendants have legal representation in civil procedures? PROMPT: One Answer	1. Never 2. Sometimes 3. About half the time 4. Often 5. All the time

		6. Not applicable
46	To your knowledge, how common is it for women to need legal aid lawyers in civil procedures? PROMPT: One Answer	<ol style="list-style-type: none"> 1. It never happens 2. It happen rarely 3. It happens in about half cases 4. It happens often 5. It happens all the time
47	When they need it, is legal aid usually available?	<ol style="list-style-type: none"> 1. No, it is usually not available 2. Yes, it is usually available
48	In general, who provides legal aid to women who need it in civil procedures? PROMPT: One Answer	<ol style="list-style-type: none"> 1. The Legal Aid Department of the MoJ 2. National NGOs 3. International NGOs 4. Other (specify) 5. I don't know
48A	OTHER ANSWERS (MULTIPLE ANSWERS: YES OR NO) ⁱ	<ol style="list-style-type: none"> 1. The Legal Aid Department of the MoJ 2. National NGOs 3. International NGOs 4. Other (specify) 5. I don't know 6. Department of Women Affairs (DOWA)
49	How do you judge the quality of the legal aid women receive in civil procedures? Open question	
50	To your knowledge, how common is it for women to need legal aid lawyers in criminal procedures? PROMPT: One Answer	<ol style="list-style-type: none"> 1. It never happens SKIP TO Q.54 2. It happen rarely 3. It happens in about half cases 4. It happens often 5. It happens all the time
51	When they need it, is legal aid usually available?	<ol style="list-style-type: none"> 1. No, it is usually not available 2. Yes, it is usually available
52	In general, who provides legal aid to women who need it in criminal procedures? PROMPT: One Answer- MAIN PROVIDER	<ol style="list-style-type: none"> 1. The Legal Aid Department of the MoJ 2. National NGOs 3. International NGOs 4. Other (specify) 5. I don't know
52A	OTHER ANSWERS (MULTIPLE ANSWERS: YES OR NO) ⁱⁱ	<ol style="list-style-type: none"> 1. The Legal Aid Department of the MoJ 2. National NGOs 3. International NGOs 4. Other (specify) 5. I don't know 6. Department of Women Affairs (DOWA)
53	How do you judge the quality of the legal aid women receive in criminal procedures? Open question	

54	During the trial, are parties or their lawyers always allowed to present their arguments and evidence? PROMPT: One Answer	1. Yes, always 2. Yes, most of the time 3. Sometimes 4. No, most of the time they are not 5. No, never	
55	What level of awareness witnesses have of their role, rights and obligations? PROMPT: One Answer	1 Non existent 2 Very low 3 Low 4 Average 5 High 6 Very high	
56	Is there any kind of assistance available to witnesses to explain their role, rights and obligations?	1. Yes 2. No 3. I don't know	
57	Can a married woman stand before your court without a mahram? DO NOT PROMPT: One Answer	1. Yes, a woman can stand before court on her own 2. No, a woman can stand before court only if she is accompanied by a mahram 3. No, a woman cannot stand before a court 4. Other (specify): 5. I don't know	
58	How often do you refer cases to other institutions (prior to taking decision)? DO NOT PROMPT: One Answer	1. Never SKIP TO Q. 62 2. Rarely (once or twice a year) 3. Sometimes (once or twice a month) 4. Often (once or twice a week) 5. Very frequently (on a daily basis) 6. I don't know	
59	To which institution do you refer them most often?	1. Other court 2. hoqooq; 3. prosecutor, 4. Jirga/shura; 5. malik; 6. Other	
60	Which kind of cases do you refer most often? DO NOT PROMPT – Multiple Answers	1. Land issues 2. Mahr 3. Inheritance 4. Divorce 5. Domestic violence 6. Sexual harassment/rape 7. Theft	8. Non domestic violence 9. Murder 10. Forced/early marriage 11. Zina 12. Running away 13. Other (specify) 14. I don't know
61	What are the reasons you refer cases to such institutions? DO NOT PROMPT – Multiple Answers	1. They are competent 2. They are better equipped to deal with the case	

		3. We have too many cases 4. Other (Specify)
62	How often do you refer cases back to the traditional justice mechanisms (<i>jirgas, shuras</i>)? DO NOT PROMPT: One Answer	1. Never SKIP TO Q. 64 2. Rarely (once or twice a year) 3. Sometimes (once or twice a month) 4. Often (once or twice a week) 5. Very frequently (on a daily basis) 6. I don't know
63	Which type of cases do you typically refer to <i>jirgas/shuras</i> ? DO NOT PROMPT: Multiple Answers	1. Civil and Family cases: (specify):..... 2. Criminal cases 3. Commercial cases 4. Traffic violations 5. Juvenile cases 6. Other (specify):..... 7. I don't know
64	Which cases involving women you refer to other institutions most often? DO NOT PROMPT – Multiple Answers	1. Land 2. Inheritance 3. Divorce 4. Child custody 5. Alimony 6. Criminal cases 7. Traffic violations 8. Other (Specify)
65	To which institutions do you mostly refer cases involving women? DO NOT PROMPT – Multiple Answers	1. Family Court 2. Juvenile Court 3. Women Protection Centres /Shelters 4. Jirga/Shura 5. Hoqooq department 6. Other (Specify)
66	Are cases involving women referred to other institutions more often than those involving other litigants?	1. Yes 2. No 3. I don't know
67	Which set of rules do you refer to to judge a case? DO NOT PROMPT: Multiple Answers	1. Statutory Laws 2. Islamic law 3. Local customs and traditions 4. Other: (Specify) 5. I don't know
68	How do you access the laws, jurisprudence and legal texts that you need? DO NOT PROMPT – MAIN Answer	1. I have personal copies 2. I have access to them at the library 3. I have access to them at government office 4. I have access to them at local courts

		<p>5. I have partial access to them, I lack (specify):_____</p> <p>6. I have no access</p>
68b	OTHER REASONS (MULTIPLE ANSWERS: YES OR NO) ⁱⁱⁱ	<p>1. I have personal copies</p> <p>2. I have access to them at the library</p> <p>3. I have access to them at government office</p> <p>4. I have access to them at local courts</p> <p>5. I have partial access to them, I lack (specify):_____</p> <p>6. I have no access</p>
69	Do you have files for each case?	<p>1. Yes</p> <p>2. No</p>
70	Can parties and/or their lawyer access the file you prepared for each case?	<p>1. Yes</p> <p>2. No</p>
71	<p>Who can access the case file?</p> <p>DO NOT PROMPT - Multiple Answers</p>	<p>1. Only you</p> <p>2. The defendant and his/her lawyer</p> <p>3. All employees</p> <p>4. Only Authorised employees</p> <p>5. Everybody</p> <p>6. I don' know</p> <p>7. Plaintiff</p> <p>8. Accused</p> <p>9. Lawyers</p> <p>10. Other (specify)^{iv}</p>
72	<p>Are there challenges in enforcing your decisions?</p> <p>PROMPT - One Answer</p>	<p>1. Yes</p> <p>2. No</p>
73	<p>How are court decisions usually enforced?</p> <p>DO NOT PROMPT - Multiple Answers</p>	<p>1. Through police</p> <p>2. Through Hoqooq</p> <p>3. Through illegal means</p> <p>4. Parties usually enforce decisions voluntarily</p> <p>5. Other (Specify)</p>
74	<p>What are the main reasons for the lack of enforcement of court decisions?</p> <p>DO NOT PROMPT multiple answers</p>	
	<p>1. Unclear rules</p> <p>2. Complex procedures</p> <p>3. A lack of legal awareness</p> <p>4. Unwillingness of litigants to comply with rulings</p> <p>5. Lack of staff/ financial resources of enforcement agencies (police and hoqooqs)</p> <p>6. Difficult collaboration with the police</p>	

	7. Inefficiencies in court proceedings 8. Corruption 9. Insecurity/Fear of threats/retaliation 10. Influence of powerful actors in the province 11. Other (specify): Add any additional remarks:	
75	Do you think evidence collected during Shuras/Jirgas and their decisions should be used in court.	1. Yes 2. No
76	What are the main challenges you face in your work? DO NOT PROMPT multiple answers	
	1. Lack of staff 2. Lack of economic resources 3. Lack of logistical and administrative supplies 4. Limited access to technical resources (previous court decisions, laws and regulations, international treaties and other instruments) 5. Low capacity of justice institutions 6. Complexity of procedures 7. Lack of institutional legitimacy 8. Difficult coordination with the police 9. Inefficiencies in court proceedings 10. Corruption 11. Insecurity/Fear of threats/retaliation 12. Influence of powerful actors in the province 13. Other (specify): Add any additional remarks:	
SECTION 4: Practice		
77	How do you normally arrive to your decision? DO NOT PROMPT - Multiple Answers possible	1. Evidence; 2. The law; 3. Consultation with your colleagues 4. Consultation with your superior 5. Other - specify
78	Are there women working in this court?	1. Yes 2. No SKIP TO Q80
79	In which functions? DO NOT PROMPT - Multiple Answers possible	1. Cleaner - Cook 2. Administrative support staff 3. Judge 4. Other (specify)

80	Do you agree with the following statement: "It is my experience that female parties/witness are more open with female prosecutors/lawyers/judges" ?	1. Yes 2. No
81	Are there dedicated spaces (separate rooms) to take the testimony of/interrogate women?	1. Yes 2. No
SECTION 5: CASES <i>We would like to present to you a series of cases and would like to know what you would do in each case and why.</i>		
82	<p>Case 1. A man has divorced his wife. Their two young children are 2 and 4 year old, and they are living with their father. You have to decide on the case brought by the woman who is asking for custody of her children</p> <p>DO NOT PROMPT – Multiple Answers possible</p> <ol style="list-style-type: none"> 1. You dismiss the case, as there is no legal ground for the women's request 2. You refer the case back to the community for mediation 3. You decide in favour of the woman 4. You refer the case to the hoqooq department 5. You refer the case to another court (specify) 6. Other (specify) 7. Not applicable <p>Why? On which legal grounds?</p>	
83	<p>Case 2 – A husband found his wife in the company of a man. The prosecutor brings a case of zina against the woman. A female relative corroborates the wife's allegation that nothing happened between her and the man.</p> <p>DO NOT PROMPT – Multiple Answers possible</p> <ol style="list-style-type: none"> 1. You dismiss the case because there is no evidence of adultery 2. You convict the woman for attempted adultery 3. You convict the woman for zina 4. You convict the man for complicity in a case of run away 5. You ask for a mediation between the woman and her husband 6. Other (specify): 7. Not applicable <p>Why? On which legal grounds?</p>	
84	<p>Case 3 - Upon the death of her husband, after the period prescribed by the law, a woman remarries. She brings a case claiming her <i>mahr</i> from her late husband's relatives, who have not yet given it to her.</p> <p>DO NOT PROMPT – Multiple Answers possible</p>	

	<ol style="list-style-type: none"> 1. You dismiss the case, as there is no legal ground for the woman's request 2. You refer the case back to the community for mediation 3. You decide in favour of the woman 4. You refer the case to the hoqooq department 5. You refer the case to another court (specify) 6. Other (specify) 7. Not applicable <p>Why? On which legal grounds?</p>
85	<p>Case 4 – You have to decide on the case of a woman severely beaten by her husband. Witnesses confirm the violent behaviour of the husband.</p> <p>DO NOT PROMPT – Multiple Answers possible</p> <ol style="list-style-type: none"> 1. You dismiss the case as domestic violence is a family issue and the court is not required to get involved 2. You refer the case back to the hoqooq department for a mediation between the wife and the husband 3. You appoint 2 arbitrators to act as mediators between the wife and the husband 4. You suggest the parties to take the issue to community elder 5. You convict the husband based on the Penal Code 6. You convict the husband based on EVAW law 7. Other (Specify): 8. Not applicable <p>Why? On which legal grounds?</p>
86	<p>Case 5 – A 14 years old girl has been married by her family to a man to pay for their debts. One year into the marriage she leaves her husband. The prosecutor indicted the girl for running away.</p> <p>DO NOT PROMPT – Multiple Answers possible</p> <ol style="list-style-type: none"> 1. You dismiss the case as running away is not crime under Afghan law 2. You dismiss the case as the marriage is invalid 3. You convict the girl for the 'crime' of running away 4. You convict the father and/or the husband of the girl for child & forced marriage 5. You ask for a mediation to take place between the girl and her husband 6. You suggest the party to take the issue to community elders 7. Other: (Specify) 8. Not applicable <p>Why? On which legal grounds?</p>

87	<p>Case 6 – The prosecutor brings to you a case where a woman claims she has been married to a man who she did not want to marry.</p> <p>DO NOT PROMPT – Multiple Answers possible</p> <ol style="list-style-type: none"> 1. You dismiss the case, it is a family affair 2. You refer the case back to the Jirga/Shura 3. You refer parties to the hoqooq department for mediation 4. You convict the father and/or the husband of the woman for forced marriage 5. Other: (Specify) 6. Not applicable <p>Why? On which legal grounds?</p>
88	<p>Case 7 – A woman claims that her two brothers have grabbed the piece of land that she was to inherit from her father, claiming that women should not own land.</p> <p>DO NOT PROMPT – Multiple Answers possible</p> <ol style="list-style-type: none"> 1. You dismiss the case – women should not own land 2. You send the case back to the hoqooq department to act as a mediator in this family business 3. You suggest the party to take the issue to community elders for mediation 4. You give a verdict in favour of the woman; she is entitled to get the portion of her inheritance 5. You convict the brothers based on the EVAW law 6. Other: (specify) <p>Why? On which legal grounds?</p>
89	<p>Can you tell us about the most difficult case that you had to deal with? (Circumstances of the case and what you did)</p>

Annex 5. Overview of Laws and Norms Regulating Matters Affecting Women's Status in Afghanistan

COMPARATIVE OVERVIEW OF LAWS AND NORMS REGULATING MATTERS AFFECTING WOMEN'S STATUS IN AFGHANISTAN						
CIVIL LAW						
LEGAL ISSUES		STATE LAW		SHARIA		CUSTOMARY LAW
		NATIONAL LAWS	SHI'A PERSONAL STATUS LAW	OFFICIAL INTERPRETATION (HANAFI JURISPRUDENCE)	OFFICIAL INTERPRETATION (JAFARI JURISPRUDENCE)	ILLUSTRATE CUSTOMARY PRACTICE, PROVIDING RELEVANT EXAMPLES SPECIFYING REGIONAL/ ETHNIC GROUP/ URBAN-RURAL VARIATIONS
LEGAL CAPACITY AND CITIZENSHIP	Do women have majority status (legal capacity)?	Yes ^v	Yes	Yes ^{vi}	Yes ^{vii}	NA
	What is the legal age of maturity for women?	18 years old ^{viii}	Puberty ^{ix}	Puberty ^x	Puberty ^{xi}	NA
	Do women lose their majority status upon marriage?	No ^{xii}	No ^{xiii}	No ^{xiv}	No ^{xv}	Yes ^{xvi}
	Can a woman pass her citizenship to her children?	Yes ^{xvii}				

	Can a woman pass her citizenship to her husband?	Yes ^{xviii}				
	Are conditions for loss of citizenship different for men and women?	No ^{xix}				
PERSONAL FREEDOM	Can a woman leave the house unaccompanied without her husband's permission?	Law is silent	No – except for emergency cases (e.g health issues) ^{xx}	No, she always needs permission – unless her life is in danger ^{xxi}	No, she needs her husband's permission ^{xxii}	No ^{xxiii} Data shows that it varies greatly between rural and urban areas and across province. Nangarhar and Logar rural areas: in majority no Kabul and Bamyan rural areas: yes, increasingly Herat City: increasingly Herat rural district: to a large extent, no ^{xxiv} .
	Can a woman travel unaccompanied?	Yes ^{xxv}	Law is silent but restricted by Article 133(3) ^{xxvi}	Not more than the equivalent of 48 miles (3 days and 3 nights) without a mahram ^{xxvii}	No	Generally, no. Same pattern as for question above with even more restrictions. In Bamyan people noted that old women could potentially travel further unaccompanied.
	Can a woman work outside the home?	Yes ^{xxviii}	With the permission of	Yes – with the permission of her	Yes – with the permission of her	Bamyan/Kabul City/Herat City: Yes, if

			her husband ^{xxix}	husband	husband ^{xxx}	authorized by husband or family. Nangarhar/Logar/Herat rural districts: rarely and only if authorized by husband.
	Is there a dress code for women sanctioned by law?	Law silent	Law silent	Yes - hijab ^{xxxi}	Yes - hijab ^{xxxii}	Kabul City: Hijab/Burqa. Kabul, Herat, NGR, Logar rural areas: mostly burqa ^{xxxiii} Bamyan city and rural districts: mostly hijab.
	Are women's right to education guaranteed?	Yes ^{xxxiv}	Status is silent	Yes ^{xxxv}	Yes ^{xxxvi}	Everywhere: depending on father's permission ^{xxxvii} . Right increasingly recognized everywhere but in most rural districts girls will lose the right to go to school after puberty. In Nangarhar, some villages where girls would not be allowed to go to school ^{xxxviii} . Bamyan is less conservative on this ^{xxxix} .

OWNERSHIP	Can women own immovable assets, such as land?	Yes ^{xl}	Yes ^{xli}	Yes ^{xlii}	Yes ^{xliii}	Everywhere community leaders recognized the right of women to own land. ^{xliv} Yet rarely the case in practice ^{xliv} . Nangarhar/Logar – seen as ‘shameful’ ^{xlvi} . In practice Women would get access to land ownership in case they are sole heir to a land ^{xlvi} .
	Is there a functioning title registration system?	Afghan Land Administration – Plus Registration Departments at the provincial level. ^{xlvi}				*See ^{xlix} In most rural districts: No
	If yes, does it require both the husband and the wife to be registered as owners (if appropriate depending on matrimonial regime)	Yes if both owners. The procedures requires to specify the shares of each party in the property ^l				NA
MARRIAGE	What is the minimum age of marriage for girls and for boys?	18 men 16 women – 15 for girls with permission of father or grand	No age limit but sexual intercourse prohibited	Puberty and pending on the approval of the girl’s guardian if	No age limit but sexual intercourse prohibited before puberty ^{lv} . A girl	Majority of community leaders in both rural and urban areas said above 16 or 18 ^{lvii} , yet

		father ^{liii}	before puberty ^{liii} .	she is a minor, freely is she is adult ^{liv}	needs the consent of her guardian if minor, free if adult ^{lvi} .	because of the bride price early marriages still very much common, especially in rural areas ^{lviii}
	What are the duties of men upon marriage?	Treat his wife with respect and consideration Pay for maintenance of his wife ^{lix} Pay or promise to pay the <i>mahr</i>	Provide for wife's maintenance ^{lx} . Spend 1 night out of 4 with his wife ^{lxi} Pay or promise to pay the <i>mahr</i>	Alimony ^{lxii} . Mutual respect.	Alimony Not to stay away from the house more than 4 months without wife's permission ^{lxiii}	Everywhere - Alimony – Men are responsible for providing their wife with basic needs ^{lxiv} .
	What are the duties of women upon marriage?	Treat her husband with respect and consideration Obey her husband Stay in his residence Not leave the house without permission ^{lxv}	Obey her husband Stay in his residence Not leave the house without permission Husband's sexual enjoyment ^{lxvi}	Obedience ^{lxvii} Mutual respect Sexual duties	Obey her husband Stay in his residence Not leave the house without permission Husband's sexual enjoyment.	Everywhere - Obeying their husbands ^{lxviii} . Nangarhar 'obeying and serving her husband' ^{lxix}
	Can marriage be imposed on a woman?	No ^{lxx}	No ^{lxxi}	No ^{lxxii}	No ^{lxxiii}	Yes ^{lxxiv}
	Can a woman break an engagement to marry?	Yes ^{lxxv}	Yes ^{lxxvi}	No data	No data	Urban areas: yes Rural districts: Rarely.
	Is the husband	Yes ^{lxxvii}	Yes ^{lxxviii}	Yes ^{lxxix}	Yes ^{lxxx}	Everywhere: Yes ^{lxxxi}

	recognized as head of household?					
	Does the husband have the ability to decide unilaterally on childbearing, wife's and children's health and children's education?	Law is silent	Child support is the duty of both parents but father is the head of household ^{lxxxii}	NA	NA	The husband is head of household and has the authority in everything (see above).
	Does the husband have the ability to interfere with his wife's professional choices or to prevent her from working outside the house?	Not according to the EAW law ^{lxxxiii} but article 122 of the civil code may be interpreted as a restriction to women's liberty of movement.	Yes ^{lxxxiv}	Yes ^{lxxxv}	Yes ^{lxxxvi}	Everywhere: yes, a woman has to obey her husband on all these questions ^{lxxxvii} .
	What are the rights of women related to their <i>mahr</i> upon marriage?	Sole & exclusive ownership ^{lxxxviii}	Sole & exclusive ownership ^{lxxxix}	Sole & exclusive ownership ^{xc}	Sole & exclusive ownership	In most cases, the mahr is not paid at all. When the <i>mahr</i> is paid, it is more likely to be paid to the bride's family rather than to her directly ^{xc} In most cases – urban & rural – women give up on their right to the <i>mahr</i> upon marriage. Only rarely women have marriage certificate

					stipulating the <i>mahr</i> .
What is the matrimonial property regime? (communal or separate property)	Law is silent ^{xcii} - Hanafi jurisprudence prevails and recognizes separate regime of property	Separate ^{xciii}	Separation of property ^{xciv}	Separation of property ^{xcv}	NA
Do married women retain property rights to personal assets:					
1) Land	Yes	Yes	Yes	Yes	No
2) Cattle	Yes	Yes	Yes	Yes	No data
3) Poultry	Yes	Yes	Yes	Yes	No data
4) Jewelry	Yes	Yes ^{xcvi}	Yes	Yes	No data
5) Income	Yes	Yes ^{xcvii}	Yes	Yes ^{xcviii}	No
Does the husband have the right to unilaterally dispose of his wife's personal assets?	No ^{xcix}	No - with some exceptions ^c	No ^{ci}	No ^{cii}	No data
Do women and men enjoy equal rights to seek a divorce?	No ^{ciii}	No ^{civ}	No ^{cv}	No – she can get <i>khul</i> (that is obtaining the approval of her husband through a compensation (money, <i>mahr</i>)). Or she can get separation based	No Rural districts: Very rarely may women ask for separation. More frequent in Kabul, Bamyan and Herat provinces. Increasingly women can seek separation if the

					on one of the 4 conditions. Divorce is the privilege of the man ^{cvi} .	husband cannot provide for their basic needs. Nangarhar and Logar: a woman might not ask for separation or may be killed. Separation is not an option ^{cvii} . Urban districts: Increasingly women can seek separation based on the 4 legal conditions.
	How does the procedure to seek divorce differ depending on whether the wife or the husband initiates it? child	A man can divorce his wife by repudiating her orally ^{cviii} . A woman can ask the court for separation on legal grounds (<i>tafriq</i>): a) harm; b) absence; c) non payment of alimony; d) imprisonment; e) impotency ^{cix} . If a woman ask for separation without due cause, she will need the approval of her husband and to pay a compensation ^{cx} .	Divorce depends upon man's approval ^{cx} <i>Khul</i> is also possible and leads to an irrevocable divorce ^{cxii}	A man can divorce his wife by repudiating her orally 3 times. A woman can get separation based on specific circumstances or a woman can compensate her husband to get his approval by paying money or her mahr (<i>khul</i>).	Divorce depends upon man's approval ^{cxiii}	Everywhere: main conditions recognized as valid for women to ask divorce were impotency and inability to pay for the alimony, similar results for urban and rural areas. Divorce mainly on men's insitiation. ^{cxiv} . Increasing recognition of right of women to divorce in case their husband is addicted in the West ^{cxv} .
	What is the default custody regime?	Mother gets the custody of boys until 7	Mother gets custody of girls	Mother gets the custody of boys	Mother gets custody of girls	Bamyan: When the children are small (age

		and the custody of girls until 9. The court can extend the period of custody for 2 years. After that, the father gets the custody ^{cxvi}	until the age of 9 and that of sons until age 7. After that the child's custody belongs to the father ^{cxvii}	until the age of 7 and the custody of girls until the age of 9.	until the age of 7 and that of sons until age 2. After that the child's custody belongs to the father ^{cxviii}	where mother should be breastfeeding them) the woman keeps custody, then it to the husband. Herat: Children remain with the father Nangarhar: children remain with their father ^{cxix}
	Whose responsibility is it to pay for the fosterage and alimony for the child upon separation?	Father ^{cxx} Until 18 for boys Until marriage for girls	Father ^{cxxi}	No info	No info	NA
	How is property divided upon divorce?	In case of divorce, women get her <i>mahr</i> ^{cxxii} and her own properties. In case of <i>khul</i> , she has to give a part of her property to the husband ^{cxxiii} .		In case of divorce, a woman is entitled to her <i>mahr</i> and her own properties ^{cxxiv} .	In case of divorce, a woman is entitled to her <i>mahr</i> and her own properties ^{cxxv} .	Women sometimes get their <i>mahr</i> but not the properties. Nangarhar – 'nothing will be given to the woman' ^{cxxvi} Bamyan – <i>mahr</i>
	Is there an obligation on the husband to pay alimony to his wife?	Yes: during marriage ^{cxxvii} . Yes: upon divorce & separation: alimony for the mother for three months ^{cxxviii}	Yes ^{cxxix}	Yes ^{cxxx}	Yes ^{cxxxi}	Everywhere – during marriage: Yes, it is the main duty of the man, seen as the head of household. Only in Bamyan was

						mentioned the fact that a woman may receive alimony upon divorce ^{cxxxii} .
	What are the consequences of remarriage in terms of alimony and child custody?	Not clear in civil law for child custody ^{cxxxiii} . Alimony only lasts for 3 months, during which the woman cannot remarry.	Loss of child custody ^{cxxxiv}	If woman remarries with someone with whom there is no marriage impediment (<i>mahram</i>), she may keep the custody of her boy(s) but has to give her girl(s) to her closest female relative ^{cxxxv} .	No data.	NA
	Do male and female children have equal rights to inherit from their parents?	No: male children inherit twice as much as female children ^{cxxxvi}	No: male children inherit twice as much as female children ^{cxxxvii}	No: male children inherit twice as much as female children ^{cxxxviii}	No: male children inherit twice as much as female children ^{cxxxix}	No: often girls get no property at all where there are male children as sisters would give up their rights to inherit in favour of their brothers. ^{cxl} Kabul: Rural & Urban: male children get twice as much as female children. ^{cxli}
	Do women have the right to dispose of	Yes ^{cxlii}	Yes ^{cxliii}	Yes ^{cxliv}	No info.	Rural Herat: no Nangarhar: no, or only

	their belongings by will?					with the permission and with consultation with the husband ^{cxlv}
	What rights does a widow have on her deceased husband patrimony?	¼ of her husband's property if no children 1/8 of her husband's property if children ^{cxlvi}	¼ of the estate if the decease has not children 1/8 th if children ^{cxlvii}	¼ of her husband's property if no children; 1/8 th of her husband's property if children ^{cxlviii}	¼ of her husband's movable property if no children; 1/8 th of her husband's movable property if children ^{cxlix}	Rights denied Nangarhar: No rights. Widows' access to inheritance varied a lot depending on family situation. May be forced to marry a relative of her husband to keep the land in the family.
C O INHERITANCE	Does a woman lose her inheritance rights upon re-marriage?	Yes – women lose their inheritance rights after the 'divorce period' during which she cannot re-marry ^{cl}	Refers to Islamic jurisprudence ^{cli} .	No ^{clii}	No info.	No data.
	Can widows remarry freely, or do they have to marry within the late husband's family (levirate marriage)?	Yes, she has the right to remarry freely ^{cliii}	Yes, right to remarry freely ^{cliv}	Yes, right to remarry freely ^{clv}	Yes, right to remarry freely ^{clvi}	No, customs want widows to remarry with a relative of her late husband ^{clvii} Nangarhar No, she must select a new husband in her deceased husband family or not marrying ^{clviii} .
C O	Can a woman open	Yes	No ^{clix}	No – Needs her	No – Needs her	No – See above

	a business without husband's/guardian's consent?			husband's permission (see above)	husband's permission ^{clx}	
	Can a woman enter a contract without husband's/guardian's consent?	Yes	No ^{clxi}	No – Needs her husband's permission (see above)	No – Needs her husband's permission (see above)	No – See above
CRIMINAL LAW						
MORAL CRIMES	Is zina (adultery) a crime?	Yes ^{clxii}		Yes ^{clxiii}	Yes ^{clxiv}	Everywhere: Yes, and amongst the most serious possible. ^{clxv}
	If yes, what is the punishment for zina?	If the crime involves married people and is proved beyond doubt, Shari'a punishment is applied: stoning. If doubt or not all the circumstances to qualify it as a hudud then penal code applies: long imprisonment ^{clxvi}		between non-married individuals: flogging If individuals are married: death penalty (stoning) but strict condition to prove the crime. ^{clxvii}	between non-married individuals: flogging If individuals are married: death penalty (stoning) but strict conditions to prove the crime. ^{clxviii}	Nangarhar, Logar, Herat: for married women, in general death. If the girl is not married she faces death penalty as well but sometimes community leaders may try to marry her to the boy. The boy's family may have to pay blood money or accept a baad.
	Is running away a crime?	No but ambiguous instructions of the Supreme Court ^{clxix}		Yes ^{clxx}	Yes ^{clxxi}	Everywhere: yes, seen as extremely shameful for the family ^{clxxii} .
	If yes, what is the punishment for	Frequent imprisonment for		No info	No info	Everywhere: punishment may go

	running away?	'moral crime or attempted zina' ^{clxxiii}				from beating, ostracism from the community and/or the family to murder of the girl and the boy. Bamyān – between boys and girls – increasingly being married. ^{clxxiv}
	Is disobedience a crime?	No		Yes ^{clxxv}	Yes ^{clxxvi}	Yes – see above.
	If yes, what is the punishment for disobedience?			1 st : admonishment 2 nd : refuse to share their beds 3 rd : beat them lightly ^{clxxvii}	1 st : admonishment 2 nd : refuse to share their beds 3 rd : beat them lightly ^{clxxviii}	Beating
CRIMES AGAINST WOMEN	Is violence against women a crime?	Yes ^{clxxix}		No information	No information	
	If yes, what is the punishment for acts of violence	If did not cause injury, short term imprisonment not				

	against women?	more than one month ^{clxxx} If caused injury, medium term imprisonment of not less than 3 years ^{clxxxi}				
	Is domestic violence a crime?	Yes ^{clxxxii}		No ^{clxxxiii}	No ^{clxxxiv}	Widespread practice everywhere ^{clxxxv}
	If so, what is the punishment for acts of domestic violence?	If did not cause injury, short term imprisonment not more than one month ^{clxxxvi} If caused injury, medium term imprisonment of not less than 3 years ^{clxxxvii}		NA	NA	Not applicable
	Is rape a crime?	Yes ^{clxxxviii}		Yes	Yes	Yes
	If yes, what is the punishment for rape?	16 to 20 years of prison ^{clxxxix} . If victim dies, death penalty ^{cxc}		Same punishment as for zina for the perpetrator – death penalty ^{cxc} .	Same punishment as for zina for the perpetrator – death penalty	Women often have to marry the rapist. Further punishment includes Baad, blood money or sometimes killings of the perpetrators and/or the victim.
	Is marital rape a crime?	Law is silent	No ^{cxcii}	No ^{cxciii}	No	No
	Is forced marriage a crime?	Yes ^{cxcivcxcv}		It is prohibited for adult women ^{cxcvi} .	It is prohibited for adult women.	No, still a widespread practice everywhere -

				Young girls may be married by their guardian ^{cxcvii} .	Young girls may be married by their guardian ^{cxcviii} .	According to AIHRC, 60 to 80% of marriages in Afghanistan are concluded without the consent or against the will of one of the spouses ^{cxcix}
	If yes, what is the punishment for forcing a man and a woman to marry?	Criminal code: short-term prison sentence ^{cc} EVAW: Medium Term imprisonment not less than 2 years ^{cci}		Not applicable	Not applicable	Not applicable
	Is criminal liability personal?	Yes ^{ccii}		Yes ^{cciii}	Yes ^{cciv}	Not always – ex: in case of Baad. The practice of baad is more frequent in Pashtun areas (in our case in Logar, Nangarhar and rural parts of Herat) and relatively absent (but not completely) from Bamyān, Herat City or Kabul city ^{ccv} .
	Is Baad (i.e., the giving of a girl of the perpetrator's family to the victim's family as restoration for the	Yes ^{ccvi}		Yes ^{ccvii}	Yes – it is <i>haram</i> ^{ccviii}	No ^{ccix} Most community leaders declared the baad to be unlawful but the practice still exists and it would not be considered a

	crime) a crime?					crime in Pashtun areas ^{ccx} .
	If yes, what is the punishment?	Penal code: prison sentence of no more than 2 years (article?) EVAW: Prison sentence up to ten years ^{ccxi}		NA	NA	NA
	Is honour killing a crime?	Yes – But sentence for murder is significantly reduced if ‘honour killing’ ^{ccxii}		Yes ^{ccxiii}	Yes ^{ccxiv}	The practice of honour killing still exists in rural districts in particular . The practice was reported in particular in Nangarhar. ^{ccxv}
PROCEDURAL LAW						
PROCEDURES	Are procedural rules concerning testimony different for female and male witnesses?	Yes – the testimony of a man is worth twice that of a woman ^{ccxvi}		Yes - the testimony of a man is worth twice that of a woman ^{ccxvii}	Yes - the testimony of a man is worth twice that of a woman ^{ccxviii}	Kabul – 60% of community leaders said that men’s testimony was worth more than women’s testimony. In Nangarhar : 44 community leaders out of 48 declared that the testimony of a man was worth twice that of a woman; in Herat , the

						majority of elders said that it was worth 'more'. In Bamyan , half of them thought that it was worth half that of a man; and a quarter that it was worth less than that of a man. ^{ccxix} .
	Can women file a claim and stand in court without consent/representation of husband/guardian?	Yes ^{ccxx}		Women would	Yes ^{ccxxi}	<p>Kabul – 85% of community leaders said that women could stand alone before their Shura^{ccxxii}.</p> <p>Nangarhar & Logar – Key informants said that they had never seen a woman attending a jirga</p> <p>Bamyan & Herat city– increasingly, women can stand in front of shura</p> <p>Herat rural districts.</p>

ⁱ This question was not asked for respondents in Kabul.

ⁱⁱ This question was not asked for respondents in Kabul.

ⁱⁱⁱ This question was not asked for respondents in Kabul.

^v Afghanistan's Civil Code 1977. Art. 39 : "The age of majority is 18 solar years. Person attaining majority age shall be recognized as having full legal personality in business transactions."

^{vi} 'Within the Islamic framework, a Muslim woman possesses independent legal, economic and spiritual identity.' *Land, Law and Islam : Property and Human Rights in the Muslim World*, Sait, S. & Lim, H. 2006. A hadith also confirms equality between men and women : 'All people are equal as the teeth of a comb. Only God-fearing people merit preference with God. Thus men and women are equal'.

^{vii} Shiite Personal Status Law. USAID. April 2009.

^{viii} Afghanistan's Civil Code 1977. Art. 39 : "The age of majority is 18 solar years. Person attaining majority age shall be recognized as having full legal personality in business transactions."

^{ix} Shi'a Personal Status – Article 26 states the grounds for legal incompetence : 1) being a minor ; 2) Insanity ; 3) Imbecility ; 4) Drug Addiction ; 5) Mental Illness. Art. 27 (Maturity) When a boy reaches the age of 15 or ejaculates and a girl sees the blood of her menstruation, they are considered to have reached puberty.

^x Based on KII with Ustad Fayez.

^{xi} 'Once a person reaches the age of Taklif (estimated at completion of 15 years for boys and 9 years for girls) he is called a MUKKALAF. This means that that individual has reached a point where he has become answerable to Allah (S.W.T.) for all the obligatory actions and duties prescribed by Him.' *Islamic Culture and Religious Studies Book – Vol.1, lesson 18: Taklif and Taqleed*. http://en.rafed.net/index.php?option=com_content&view=article&id=3755%3Aislamic-culture-and-religious-studies-book-volume-1&catid=182&Itemid=966&limitstart=19

^{xii} However, articles 70 and 103 of the Afghan Civil Code provide for exceptions.

^{xiii} Shi'a Personal Status, article 26 stipulates the grounds for legal incompetency. Neither gender nor marriage are listed.

^{xiv} 'None of the legal disabilities of married women, which were a feature in the past of Anglo-American law are not found in Islamic law'. *Land, Law and Islam*, Sait, S & Lim H.

^{xv} Idem

^{xvi} "When a woman marries and goes to her husband's house, she becomes his Namos (pride, property and responsibility)". ILF, 2004, *Customary Laws of Afghanistan*, p.15

^{xvii} Law on Citizenship of the Islamic Emirate of Afghanistan.

^{xviii} Afghan Law on Citizenship, Article 18 is not gender-specific : 'If an alien marries a citizen of the IEA in accordance with the Islamic Shari'a Law, after forwarding application for Afghan citizenship in black and white considering the 7th article of this law, his/her Afghan citizenship can be approved with no consideration to the period mentioned in the 3rd part of the 15th article of this statute'.

^{xix} Articles 23 to 35, Chapter 3 of the law on Citizenship 'Granting, Abandoning, Forfeiting and Restoring the nationality of the IEA' are not gender-specific.

^{xx} Personal Shi'a Status, Article 133 : 'A wife cannot leave the house without her husband's permission unless she has urgent cause, or is in extreme difficulty, in this event, she may leave the house. In case of dispute, the issue shall be resolved by a court.'

^{xxi} Based on KII with Ustad Fayez.

^{xxii} Based on KII with Ayatollah Mohsini

^{xxiii} UNAMA, 2010, *Harmful Traditional Practices and Implementation of the Law EVAW in Afghanistan*, p. 30 : 'UNAMA HR found from discussions with Afghan men and women that women's participation in public life is constrained due to restrictions on freedom of movement (...) In some Afghan communities, women who transgress accepted norms bring dishonour on the entire family or even the community'.

^{xxiv} Field observations & Household survey.

^{xxv} Art. 39 of the Constitution

^{xxvi} Personal Shi'a Status, Article 133(3) : 'A husband can prevent his wife from any unnecessary action or actions, which are not according to her duties as specified by Shar'ia law and are contrary to the local customs and the husband's benefits.

^{xxvii} 'According to the Hanafi Ijtihad, the distance that is considered here is three days and three nights, for the narrations mentioning three days & three nights, for the narrations mentioning three days and three nights have reached the level of certainty. (...) Hence the Hanafi School considers the narrations that mention three days & three nights as the basis of prohibition. (Zafar Ahmad al-Tahanawi. Al Sunan, V.10, p.11). http://qa.sunnipath.com/issue_view.asp?HD=1&ID=1993&CATE=143

^{xxviii} Art. 48 of the Constitution states that 'Work is the right of every Afghan'. Art. 5 & Art.36 of the ERAW Law provides that ' a person who prohibits a woman from the right of education, work and exercising her other rights as provided by the law, considering the circumstance the offender shall be convicted to short term imprisonment not more than 6 months.

^{xxix} Personal Shi'a Status, Article 133(3) : 'A husband can prevent his wife from any unnecessary action or actions, which are not according to her duties as specified by Shar'ia law and are contrary to the local customs and the husband's benefits.

^{xxx} KII with ayatollah.

^{xxxi} Surah an Nur, Verse 30 & 31 'And Say to the believing women to lower their gaze (from looking at forbidden things), and protect their private parts (from illegal sexual acts) and not to show off their adornment except only that which is apparent (see the explanation below), and to draw their veils all over Juyubihinna" (Surah An-Nur, Verses #30 and #31)'

^{xxxii} Surah an Nur, Verse 30 & 31 'And Say to the believing women to lower their gaze (from looking at forbidden things), and protect their private parts (from illegal sexual acts) and not to show off their adornment except only that which is apparent (see the explanation below), and to draw their veils all over Juyubihinna" (Surah An-Nur, Verses #30 and #31)'

^{xxxiii} Field Observations.

^{xxxiv} ERAW Law, Article 36: 'if a person prohibits a woman from the right of education, work and exercising her other rights as provided by law, considering the circumstances, the offender shall be convicted to short term imprisonment, not more than 6 months.

^{xxxv} Surah al-Alaq (Surah e iqra) tells every human to get education and is not gender-specific : 96.1 « Read ! In the Name of your Lord, who has created all that exists, Has created man from a clot. Read ! And your Lord is the Most Generous, who has taught the writing by the pen, has taught man that which he knew not.

^{xxxvi} Surah al-Alaq (Surah e iqra) tells every human to get education and is not gender-specific : 96.1 « Read ! In the Name of your Lord, who has created all that exists, Has created man from a clot. Read ! And your Lord is the Most Generous, who has taught the writing by the pen, has taught man that which he knew not.

^{xxxvii} 82.9% of respondents in Kabul said no to the

^{xxxviii} FGDs.

^{xxxix} Field observations & qualitative interviews with community leaders.

^{xl} Art. 40 of the Constitution: 'Property shall be safe from violation. No one shall be forbidden from owning property and acquiring it, unless limited by the provisions of law. No one's property shall be confiscated without the order of the law and decision of an authoritative court.'

^{xli} Not explicit in the Shi'a Personal Status but no specific articles against it, especially in the chapter about inheritance, which does protect women's rights to inherit part of the estate. E.g Article 219 : ' Mother is entitled to one third of the estate (...) ; wife is entitled to one fourth if the deceased has no children and one eighth if the deceased has children'.

^{xlii} A Muslim woman possesses independent legal, economic and spiritual identity, and independence. The Qur'an notes that women "shall be legally entitled to their share" (Qur'an 4:7) and that "to men is allotted what they earn, and to women what they earn" (Qur'an 4:32). Only if women choose to transfer their property can men regard it as lawfully theirs (Qur'an 4:4). The Islamic laws supporting property rights of women are drawn from a variety of fields such as family law (marriage/dower, inheritance, and guardianship), property law (gifts, endowments/trusts (awaqf), sale and hire) and economic law (right to work, income) as well as public law. Islam unequivocally allows both single and married women to own property in their own right. (Horrie, Chris; Chippindale, Peter. What is Islam? A Comprehensive Introduction (1991). p.49

^{xlili} Idem.

^{xliv} See Community Leader Survey, Q. 58 and Focus Group Discussions.

^{xlvi} See FGDs.

^{xlvi} 'Reportedly, under Afghan customary law, women are denied the right to own land. While ownership may exist for widows, daughters are deemed to surrender ownership to their brothers, often when they marry. The objective of this practice is less to deprive a woman from owning land than to prevent losing land to another family through her'. LARA, 2012, *Gender and Dispute Resolution Assessment*, p.13

^{xlvi} FGDs & KII with community leaders.

^{xlvi} Currently, all land Administration and registration (rural and urban) is the responsibility of the Department of Land (Amlak), which is part of the new Afghanistan Land Authority (ALA). Afghanistan has a deed registration system. See:

<http://www.landgovernance.org/system/files/Afghanistan%20Factsheet%20landac%20april%202011.pdf>.

'Many Afghans prefer to rely on customary law to register property transactions (...) as a means of avoiding paying tax or due to the general distrust of the official court system. It is estimated that only a small minority of land and property transactions are currently officially recognized.' *Manual of Property Law in Afghanistan*, NRC & UNHCR, p.70.

^{xliv} customary law is important and has social legitimacy, it remains poorly integrated with formal law and policy (Alden Wiley 2003; Allan 2001; Gebremedhin 2007). Customary tenure systems, partly based on religious law, are the most relevant in rural areas. Protection of rights is weak. The skewed distribution of land and the impunity of land grabbing by the local elite are sources of frustration. See: <http://www.landgovernance.org/system/files/Afghanistan%20Factsheet%20landac%20april%202011.pdf>

ⁱ Based on KIIs – to be double checked

^{li} Article 70 of the Afghan Civil Code provides that "Legal capacity for marriage is accepted for boys when they have completed 18

years and for girls when they have completed 16 years". However, Article 71, Subsection 1 sanctions the validity of underage marriage "When a girl has not reached the age written in article 70 of this law, marriage can be completed only through her father or the competent court".

Subsection 2 however limits the exception as follows: "The marriage of a minor girl whose age is less than 15 shall never be permissible"

^{lii} Article 99 of the Shia Personal law. However, article 99 section (2) provides that "[a]pproval of adolescence and legal capacity for marriage prior to the mentioned ages, by guardian before the court is possible [valid]".

^{liii} Shi'a Personal Status, Article 99 (1) 'the marriage of an underage (male/female), insane (male/female) is permissible through a natural guardian, who is not *musfada* (devious), authorized guardian or a court, completed by Article 100 : 'Intercourse with the wife before she has reached puberty is prohibited.'

^{liv} Age is not specified. However guardians may promise their children in marriage in their infancy.

^{lv} KII with ayatollah.

^{lvi} Cornell, V (ed), *Voices of Islam, voices of life*, Vol.III, Praeger Publishers, Westport, p.65

^{lvii} See 'Community Leader Survey' – Q.55.

^{lviii} UNIFEM estimated that 57% of marriages in Afghanistan involved a party who was less than 16, UNIFEM, *Fact Sheet 2008 Afghanistan* ; the Women and Children Legal Research Foundation surveyed 200 girls who had been married and found that '40% of them had been married between the age of 10 and 13 years.' *Early Marriage in Afghanistan*, WCLRF, 2008, quoted in UNAMA, 2010, *Harmful traditional practices and Implementation of EAW Law*, p.19.

^{lix} Article 117(1) of the Civil Code.

^{lx} Shi'a Personal Status, Article 130 : 'In accordance with the provisions of this law, the wife's maintenance shall be undertaken by the husband.

^{lxi} Shi'a Personal Status, Article 132(4) : The husband is bound to spend at least one out of four nights with his wife when he is not travelling (...).'

^{lxii} Verse 4 :34. 'Men are the protectors and maintainers of women, because God has given the one more (strength) than the other, and because they support them from their means (...).'

^{lxiii} KII Ayatollah Mohsini

^{lxiv} KIIs with community leaders.

^{lxv} “These obligations of the wife are derived from the concept of Article 122 of the Civil Code, in accordance with which her right to maintenance will lapse if she does not fulfill her marital duties’. *Manual on Afghan Family Law*, Max Planck Institute, p.55.

^{lxvi} Article 177 (4) : *tamkeen* is the readiness of the wife to her husband’s reasonable sexual enjoyment, and her prohibition from going out of the house, except in extreme circumstances, without her husband’s permission. If any of the above provisions are not followed by the wife, she is considered disobedient.

^{lxvii} Verse 4:34 of the Quran states: Men are the protectors and maintainers of women, because God has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women devoutly obedient, and guard in (the husband’s) absence what God would have them guard. As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (next) refuse to share their beds, (and last) beat them lightly but if they return to obedience, seek not against them means (of annoyance), for God is Most-High Great (above you all).

^{lxviii} KII with community leaders.

^{lxix} Community leader, Nangarhar.

^{lxx} EVAW Law, article 26 : ‘if a person engages a woman who has reached her legal age or marries her without her consent, in accordance to the law, the engagement shall be cancelled and nullified, and, considering the circumstances, the offender shall be sentenced to medium term imprisonment, not less than 2 years’.

^{lxxi} Article 105(1) of the Shi’a Personal Status : ‘Intention and consent of the parties are prerequisite to the marriage contract and it is required to be obtained explicitly by words, action or writing’.

^{lxxii} Al Nisa, Verse 18 & Hadith Al Bukhari 9/194, quoted by UNAMA in *Harmful traditional Practices and the implementation of EVAW Law in Afghanistan*, p.8.

^{lxxiii} Idem.

^{lxxiv} UNIFEM estimates that 70 to 80% of marriages are forced in Afghanistan. In UNIFEM, *Factsheet Afghanistan, 2008*

^{lxxv} Article 64 of the Civil Code : ‘Engagement is a promise of marriage and each party may break it’.

^{lxxvi} Article 80 of the Shi’a Personal Status

^{lxxvii} Upon marriage it is a man’s duty to provide residence (Suptopic 3, art.115 Civil Code) and alimony (Suptopic 4, art. 117).

^{lxxviii} Shi’a Personal Status, Article 133(1) : ‘The household’s supervision is the right of the husband, unless based on the husband’s mental deficiency, and by order of the court, it is given to the wife’.

^{lxxix} Verse 4 :34 of the Qur’an : ‘Men are the protectors and maintainers of women because God has given the one more strength than the other and because they support them from their means.’

^{lxxx} Idem.

^{lxxxi} Qualitative fieldwork : Interviews with community leaders.

^{lxxxii} Shi’a Personal Status, Article 133(1) the household’s supervision is the right of the husband (...)

^{lxxxiii} Article 36 of the EVAW Law.

^{lxxxiv} Shi’a Personal Status, Article 133(3) : A husband can prevent his wife from any unnecessary action, which are not according to her duties as specified by Shari’a Law and contrary to the local customs and the husband’s benefits. Article 133(4) A wife cannot leave the house without her husband’s permission (...)

^{lxxxv} Consequence of the man being the head of household.

^{lxxxvi} KII Shi’a Ayatollah : ‘A wife can go to work outside, can go to teach or to study at school, or at the university, but with the permission of her husband.’

^{lxxxvii} Interviews with community leaders – Field observations.

^{lxxxviii} Article 110 of the Civil Code : ‘*Mahr* shall be considered the property of the wife. She can exercise any ownership power over her marriage-portion’. Completed by articles 14 to 17 of the Family Law.

^{lxxxix} Shi’a Personal Status, Article 114(1), ‘After the mahr has been specified in the marriage contract, and the woman submits to the husband is obligated to pay the specified *mahr*. Where the wife is divorced prior to sexual penetration, she shall be entitled to half of the specified *mahr*.’

^{xc} Quran 4:5.

^{xci} LARA, 2012, *Gender and Dispute Resolution Assessment*, p.17.

^{xcii} ‘The marital property regime is not explicitly regulated in the Afghan Civil Code. However all schools of Islamic law have recognised the principle of separation of property’. *Manual on Afghan Family Law*, Max Planck Institute – 2012, p.68

^{xciii} Shi'a Personal Status, Article 133(5) : 'A wife is the owner of her own assets and can possess it in any form without her husband's permission'.

^{xciv} However all schools of Islamic law have recognised the principle of separation of property'. *Manual on Afghan Family Law*, Max Planck Institute – 2012, p.68

^{xcv} Idem.

^{xcvi} Shi'a Personal Status, Article 131(1) : Dowry : Household goods, clothes or things brought to the house by the wife from her own assets or her father's. 131(2) The husband is not entitled to ownership or use of the wife's dowry, except if the wife consents to the husband's use or control of the content of the dowry, or if local custom otherwise allows.

^{xcvii} Shi'a Personal Status, Article 180 : the income derived from wife's occupation is hers, if she works, unless she pays some part of the home expenses with the permission of her husband.'

^{xcviii} 'According to the Hanafi School of law, the woman can dispose of her property as she pleases, without being obliged to obtain her husband's permission.' *Manual on Afghan Family Law*, Max Planck Institute – 2012, p.68. Qur'anic verse 4:32 : 'To the man is allowed what they earn and to women what they earn'. Qur'anic verse 4:4 : 'Only if women choose to transfer their property can men regard it as lawfully theirs.

^{xcix} Article 40 of the Constitution : 'Property shall be safe from violation. No one shall be forbidden from owning property and acquiring it, unless limited by the provisions of law. No one's property shall be confiscated without the order of the law and decision of an authoritative court.'

^c Shi'a Personal Status, Article 131(1) & (2) : Dowry : Household goods, clothes or things brought to the house by the wife from her own assets or her father's. 131(2) The husband is not entitled to ownership or use of the wife's dowry, except if the wife consents to the husband's use or control of the content of the dowry, or if local custom otherwise allow.

^{ci} Verse 4 :32 Surah an-Nisa : 'To the man is allowed what they earn and to women what they earn'

^{cii} Idem

^{ciii} Articles 132 to 197 of the Civil Code regulates the various types of separation available to men and women. A marriage can be annulled (*faskh*), the man can repudiate his wife (*talaq*), they can divorce by 'mutual consent' (*khul*), or there can be a judicial divorce (*tafriq*).

^{civ} Shi'a Personal Law – Article 155(2) & (3).

^{cv} 'Sharia divorce is the right of the husband. He may surrender the power of divorce to his wife by a Sharia document' LARA, 2012, Gender and Dispute Resolution Mechanisms, p.18

^{cvi} KII with ayatollah.

^{cvi} FGDs with women.

^{cvi} Article 135 of the Civil Code. It must be noted that the repudiation is revocable, according to Article 136. According to Article 144, the man has the right to repudiate his wife three times.

^{cix} Article 176 of the Civil Code (defect) ; Article 183 of the Civil Code (harm) ; Article 191 (non payment of maintenance) ; Article 194 (absence for three years or more).

^{cx} Art. 135 grants the man with the right to divorce his wife. Subtopic 5 'Separation' of the Civil Code. Separation due to harm (Art.183) ; due to nonpayment of alimony (Art.191) ; due to absence (Art. 194) ; due to defect (Art.176). The separation with no due cause is called *khul* and is regulated by Subtopic 4 of the Civil Code, as Art. 156 stipulates that 'deposal is the dissolution of the marriage contract in return to the property that the wife may offer to the husband'.

^{cx} Shi'a Personal Status, Article 155(3) If the husband has granted his wife the right to divorce, the wife can divorce. In this case the husband is required to perform all the commitments mentioned in §2 (*mahri* and maintenance of the wife).

^{cxii} Shi'a Personal Status, Article 164(1) : Whenever the wife hates living with the husband, and both parties fear acting contrary to Sharia provisions, then the wife or her guardian may pay compensation to the husband and convince him to agree to a *khul* divorce.

^{cxiii} Based on KII with Ayatollah Mohsini

^{cxiv} See Community Leader Survey – Q.

^{cxv} Interviews of community leaders / FGD Men in Herat.

^{cxvi} Based on Article 249 of the Civil Code : 'The care period of a male child shall be ended when he attains the age of seven and the care period of a female child shall be ended when she reaches the age of 9'. Art 250

stipulates that the court can extend this fosterage period described in Article 249 for a period that does not exceed two years.

^{cxvii} Shi'a Personal Status Law : Article 194(3). This article was amended. The original version stipulated that a mother gets custody of her daughter until age 7 and that of her sons until age 2.

^{cxviii} KII Ayatollah Mohsini

^{cxix} Interviews with community leaders.

^{cxx} Article 244 of the Civil Code : the child care charges are different from the fosterage charges and alimony and the child's father is bound to pay them. Father is bound to pay for children's maintenance based on Articles 256 and 257 of the Civil Code.

^{cxxi} Shi'a Personal Status Article 194(4) : the mother can demand expenses of child support from the father, unless the child has assets.

^{cxxii} Article 105 of the Civil Code.

^{cxxiii} Article 156 of the Civil Code : Deposal (*khul*) is the dissolution of the marriage contract in return to the property that the wife may offer to the husband.

^{cxxiv} Quran 2:229. Surat al-Baqarah. Divorce is twice. Then, either keep [her] in an acceptable manner or release [her] with good treatment. And it is not lawful for you to take anything of what you have given them unless both fear that they will not be able to keep [within] the limits of Allah . But if you fear that they will not keep [within] the limits of Allah , then there is no blame upon either of them concerning that by which she ransoms herself. These are the limits of Allah , so do not transgress them. And whoever transgresses the limits of Allah - it is those who are the wrongdoers. (<http://quran.com/2/229>)

^{cxv} Idem

^{cxvi} Interview with community leaders, Nangarhar.

^{cxvii} Article 117 of the Civil Code.

^{cxviii} Article 201 of the Civil Code stipulates that the 'divorce period' or *Heddat* (i.e. period during which neither spouse can remarry) is of three months. Alimony must be paid during this period based on the Art. 212 & 214, regardless of the reason for the separation.

^{cxix} Shi'a Personal Status – Article 130.

^{cxx} Quran, 2 :241 & Quran, 2 :231.

^{cxxi} KII Ayatollah, 'it is the responsibility of the man to pay for everything for his wife'.

^{cxxii} KII community leader – Bamyan province.

^{cxxiii} Article 238 of the Civil Code lays out the conditions for a mother's custody over her child, she has to be sane, of full age, and 'reliable to ensure that the well-being of the child is not compromised'. The Hanafi jurisprudence applies.

^{cxxiv} Shi'a Personal Status, Article 195 (1) : Barriers to child support are as follows : (...) 3) marriage of a child's mother to someone other than child's father, unless it is in the best interest of the child, or if the child's father is dead.

^{cxxv} *Manual on Afghan Family Law*, Max Planck Institute, p. 105: 'A woman who cares for the female child, regardless of whether it is the mother or another woman, will lose the right to custody according to Hanafi law if she marries or is married to a man between whom and the female child no marriage impediment exists'.

^{cxxvi} Article 2019(2) of the Civil Code stipulates that male children will inherit twice as much as female children from a deceased parent.

^{cxxvii} Shi'a Personal Status, Article 222(8) : If heirs of the deceased from the first class are confined to children, male and female, the entire estate shall be distributed among them based on the principle of one man equals two women.

^{cxxviii} Surah al Nisa, 11: 'God (thus) directs you as regards your children's inheritance: to the male, a portion equal to that of two females (...)

^{cxxix} KII, Ayatollah Mohsini

^{cxl} 'Afghan customary practices rarely recognise the right of women to inherit any property when there is a male heir' *Manual of Property Law in Afghanistan*, NRC & UNHCR, p.74

^{cxli} See Community Leader Survey – Kabul : 19 out of 20 community leaders answered that female children were entitled to half what male children would get.

cxlii According to Article 2108, the conditions for someone to make a will are not gender-specific. Article 2108 says that 'the maker of the will should legally be in a position to bequeath and must be of majority age.' A will can only cover 1/3rd of someone's property.

cxliii Shi'a Personal Status, Article 199(1) – Conditions to validate a will : 'The testator must be sane, not acting under duress, and own the goods or financial rights that are the subject of the will. An executor or guardian of a ward cannot make a will on behalf of the ward.

cxliv Personal Status, Art. 197 to 199.

cxlv KII community leaders.

cxlvi Article 2007(2) of the Civil Code : Wife (...) or wives, when lacking children or male offspring even though of descending order, shall receive one fourth of the patrimony, and in case children or male offspring, even though of descending order, exist, shall be entitled to one eighth of the patrimony.

cxlvii Shi'a Personal Status, Article 219.

cxlviii Qu'ran, Verse 4 :12.

cxlix KII Ayatollah Mohsini, 'the wife cannot get the house or the land, just the price of the land'.

cl Article 2007 (2) & (3) : wife, even though conditionally divorced, when the husband dies prior to the expiration of the divorce period, or wives, when lacking children or male offspring even though of descending order, shall receive one fourth of his patrimony, and in case children, or male offspring, even though of descending order, exist shall be entitled to one eighth of the patrimony.

cli Shia Personal Status, Art. 175.

clii Based on KII with Ustad Fayez, Prof. Of Sharia

cliii A woman cannot be forced into any form of marriage, based on Article 77 of the Civil Code, which stipulates that for a marriage to be valid 'the offer and the acceptance must be expressed either by the contracting parties or their legal guardians or proxies. Also protected by article 24 of the Law of Marriage.

cliv Article 105(1) of the Shi'a Personal Status : 'Intention and consent of the parties are prerequisite to the marriage contract and it is required to be obtained explicitly by words, action or writing'.

clv 'In Islam, only one kind of marriage – involving consent of both parties – is accepted.' UNAMA, 2010, p. 17.

clvi KII Ayatollah.

clvii 'Widows can only marry the brother or cousin of their deceased husband', in IFL, *Customary Laws of Afghanistan*, p. 16

clviii Interviews with community leaders.

clix Shi'a Personal Status, Article 133(3) : A husband can prevent his wife from any unnecessary action, which are not according to her duties as specified by Shari'a Law and contrary to the local customs and the husband's benefits. Article 133(4) A wife cannot leave the house without her husband's permission (...)

clx KII Ayatollah Mohsini

clxi Shi'a Personal Status, Article 133(3)

clxii Article 426 of the Penal Code

clxiii 'Hudud crimes are the most serious crimes in Islamic penal law (...) Muslim jurists and Islamic scholars agree on 5 *hudud* crimes : (1) theft ; (2) ; **adultery** ; (3) highway robbery ; (4) drinking alcohol, and (5) defamation'. ALEP , 2008-09, *An Introduction to the Criminal Law of Afghanistan*, p.88.

clxiv Confirmed by Ayatollah Mohsini. Based on Qur'an – Verse 24:2

clxv Field observations. IFL, 2004, *Customary Laws of Afghanistan*, p.14

clxvi Articles 426 of the Penal Code : If in the crime of adultery the conditions of "Had" are not fulfilled or the charge of "Had" is dropped, because of double or other reasons, the offender shall be punished in accordance with the provisions of this Chapter.

clxvii ALEP , 2008-09, *An Introduction to the Criminal Law of Afghanistan*, p.90. Yet 'the execution of the punishment is condition upon fulfillment of a number of rigorous conditions that are difficult to meet. If these strict conditions are not met, the punishment ought to be commuted to a lesser punishment.' Idem, p.100. Punishment for zina are based on the Verse 24 :2 for flogging and derived from the Sunna for stoning (not present in the Qur'an). The question of stoning is yet debated among Islamic scholars. See for example : Mir-Hosseini, Z. & Hamzic, V. 'Control and Sexuality ; the revival of Zina laws in Muslim contexts' published by WLUML, 2010.

clxviii Idem

clxix 'Running away is not an offense in the Afghan Penal Code. (...) In 2010 and 2011 the Afghan Supreme Court issued an instruction to courts that running away is a crime', *I had to run away*, Human Rights Watch Report, 2012, p.34

clxx No permission to leave the house without husband's permission.

clxxi Idem.

clxxii FGDs and KIIs.

clxxiii Cf. *I had to run away*, Human Rights Watch Report, 2012.

clxxiv Cf. Focus Group Discussions

clxxv Verse 4:34 of the Quran states: Men are the protectors and maintainers of women, because God has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women devoutly obedient, and guard in (the husband's) absence what God would have them guard. As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (next) refuse to share their beds, (and last) beat them lightly but if they return to obedience, seek not against them means (of annoyance), for God is Most-High Great (above you all).

clxxvi Idem

clxxvii Idem ; verse 4 :34 – It must be noted that there are some debates within Islam on the exact translation of the arabic word 'zar' used in the Quran and usually translated as 'beating'.

clxxviii Idem ; verse 4 :34 – It must be noted that there are some debates within Islam on the exact translation of the arabic word 'zar' used in the Quran and usually translated as 'beating'.

clxxix Article 5 of the EAW law.

clxxx Article 23 of the EAW law : 'if a person beats a woman which does not result in damages or injury, the offender in view of the circumstances shall be sentenced to short term imprisonment, of no more than a month.'

clxxxi Article 407(1) of the Penal Code : A person who intentionally beats and lacerates another such that some bodily member of the latter is cut, injured or defected, or that the person permanently becomes handicapped or that the latter is deprived of one of his senses, in addition to compensation, shall be sentenced to medium imprisonment of not less than three years.

clxxxii EAW Law.

clxxxiii Verse 4 :34 of the Qur'an. The interpretation of this verse is controversial but a conservative interpretation says that women could be beaten in case of disobedience.

clxxxiv Idem.

clxxxv See FGDs with women.

clxxxvi Article 23 of the EAW law : 'if a person beats a woman which does not result in damages or injury, the offender in view of the circumstances shall be sentenced to short term imprisonment, of no more than a month.'

clxxxvii Article 407(1) of the Penal Code : A person who intentionally beats and lacerates another such that some bodily member of the latter is cut, injured or defected, or that the person permanently becomes handicapped or that the latter is deprived of one of his senses, in addition to compensation, shall be sentenced to medium imprisonment of not less than three years.

clxxxviii The EAW law is the first law that clearly defined and criminalized rape. Rape is defined through Article 3 : 'Perpetrating adultery and pederasty on adult women with force or perpetrating taht with unerage even if the victim gives consent, or attack to the chastity and honour of a woman'. It is a crime based on Article 17

clxxxix Maximum continued imprisonment based on Art.426 of the PC.

cxc EAW LAW, Article 17.

cxci Quran Verse 24 :2.

cxcii Shia Personal Status, Article 177(4) : *Tamkeen* is the readiness of the wife to submit to her husband's reasonable sexual enjoyment, and her prohibition from going out of the house, except in extreme circumstances

cxciii KII with prof. Of Shari'a indicated that the sexual enjoyment of her husband was part of a woman's responsibility upon marriage.

cxciv See article 517 of the Afghan Penal Code (<http://aceproject.org/ero-en/regions/asia/AF/Penal%20Code%20Eng.pdf/view>). The article, however, covers only widows and girls under the age of 18.

^{ccxcv} Article 26 of the law on the Elimination of Violence Against Women complements the provision of the penal code, providing that “If a person gets a woman engaged or married who has reached the legal marriage age without her consent, the perpetrator shall, depending on the circumstances, be sentenced to medium-term imprisonment, not less than 2 year, and the engagement and marriage is invalid, according to the provision of the law.

^{ccxcvi} *Kitab al Nikah* Book 8, Hadith 3033: ‘Abu Huraira (Allah be pleased with him) reported Allah’s Messenger (may peace be upon him) as having said: a woman without a husband (or divorced or a widow) must not be married until she is consulted, and a virgin must not be married until her permission is sought. They asked the Prophet of Allah (may peace be upon him): How her (virgin’s) consent can be solicited? He (the Holy Prophet) said: that she keeps silence.’ See also Book 8, n° 3305 and n°3306. See also Narrated Abu Huraira: The Prophet said, “A virgin should not be married till she is asked for her consent; and the matron should not be married till she is asked whether she agrees to marry or not.” It was asked, “O Allah’s Apostle! How will she (the virgin) express her consent?” He said, “By keeping silent.” (Bukhari Volume 9, Book 86, Number 98).

^{ccxcvii} Equitas, *Women’s rights in Muslim Communities : A resource guide for Human Rights educators*, p. 43

^{ccxcviii} Equitas, *Women’s rights in Muslim Communities : A resource guide for Human Rights educators*, p. 43

^{ccxcix} Manual on Afghan Family Law, *Max Planck Institute*, p.32

^{cc} The duration of the prison sentence is not specified by article 517 of the Afghan Penal Code, but it is unlikely to be more than one year (see HRW 2009 “We Have the Promises of the World”, p. 58)

^{ccci} Article 26 of the law on the Elimination of Violence Against Women

^{cccii} Article 26 of the Constitution : ‘Crime is a personal act. Investigation, arrest and detention of an accused as well as penalty execution shall not incriminate another person.’

^{ccciiii} Personal responsibility is one of the principle of ethics based on the belief that men will appear in the court of the Hereafter. Based on Verse 75:14-15.

^{ccclv} Idem

^{cccv} Based on KIIs and qualitative data from the field.

^{cccv} Article 25 of the ERAW Law.

^{cccvii} Islamic law is very clear on the fact that a marriage must be based on the consent of both parties (based on Al Nisa Verse 18), which the practice of Baad contradicts.

^{cccviii} Interview with the ayatollah Mohseni.

^{cccx} IFL, 2004, *Customary Law of Afghanistan*, p.11, 12, 13.

^{cccx} Cf. Community Leader Survey –Q. 59.

^{cccx} Article 25 of the law on the Elimination of Violence Against Women: 1. If a person gives or takes a woman for marriage in retribution for a baad, the perpetrator shall, depending on the circumstances, be sentenced to a medium term imprisonment not exceeding 10 years. 2. In such case under paragraph (1) of this article, the involved persons (witnesses, counsel, mediator and solemnizer of marriage) shall, depending on the circumstance, be sentenced to a medium-term imprisonment, and the marriage contract shall be considered invalid at the request of the woman, according to the provisions of law.

Article 517(2) of the Penal Code specifies that a forced marriage for the purpose of *Baad* should be sentenced to medium imprisonment (2 years).

^{cccxii} Article 398 of the Penal Code : ‘A person, defending his honour, who sees his spouse, or another of his close relations, in the act of committing adultery or being in the same bed with another and immediately kills or injures one or both of them, shall be exempted from punishment for laceration and murder but shall be imprisoned for a period not exceeding two years’.

^{cccxiii} If adultery is indeed a severe crime, Islamic law requires very strict justice procedures to punish perpetrators of zina, including 4 witnesses and does not allow individuals to carry out punishment. UNAMA, 2010, *Harmful traditional practices and implementation of the law ERAW*, p.34

^{cccxiv} If adultery is indeed a severe crime, Islamic law requires very strict justice procedures to punish perpetrators of zina, including 4 witnesses and does not allow individuals to carry out punishment. UNAMA, 2010, *Harmful traditional practices and implementation of the law ERAW*, p.34

^{cccxv} ‘See AIHRC National Inquiry on Honour killings, 2013. Confirmed by FGDs on the question of running away.

^{cccxvi} Article 321 of the Afghan Civil Procedure Code.

^{ccxvii} Verse of debt (*ayat al dayn*), Qur'an 2 :282. 'and call upon two of your men to act as witnesses ; and if two men are not available, then a man and two women from among such as are acceptable to you as witnesses so that if one of them should make a mistake, the other could remind her.'

^{ccxviii} *Idem*.

^{ccxix} Cf. Community leader Survey, Q. 47.

^{ccxx} Article 22 of the Constitution : 'Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man and woman, have equal rights and duties before the law'.

^{ccxxi} Kii Ayatollah – the visit of the Ayatollah office showed that a lot of women had come to plead their case before the ayatollah.

^{ccxxii} Cf. Community Leader Survey, Q. 48.