

“LIKE A BIRD WITH BROKEN WINGS”

Afghan Women Oral History, 1978-2008

UN WOMEN

AFGHANISTAN COUNTRY OFFICE

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I INTRODUCTION

We are not happy with any of them. Anybody coming into power did wrong to us, and inflicted any kind of injury and oppression... They looted and burned people's houses and they did shameful things to our people, disgraced them and captured their lands and brought foreigners into the country, and none of them did any good or offered any service to the people.

A woman from Kandahar city reflects upon those who have held power in Afghanistan over the past three decades.¹

Afghanistan has been at war for over thirty years. From the communist coup of Saur 1357 / April 1978 through a decade long occupation by the Soviets, the post-Soviet administration of Najibullah, civil war and Taliban rule to the Karzai period of today, Afghans have experienced and witnessed unspeakable violence and upheaval.² Enforced disappearance, summary execution, torture, rape, indiscriminate bombardment and wanton destruction have been a daily reality for the people of Afghanistan for decades.³

Today the culture of impunity remains as pervasive as ever, with many individuals accused of bearing responsibility for war crimes, crimes against humanity and human rights abuses occupying senior positions in the Afghan government. Some have been implicated in ongoing abuses. The presence of so many individuals with 'blood stained hands' in positions of power across the country fuels public sentiment that the Karzai administration is weak, corrupt and illegitimate. Correlations between the commission of past and present crime

¹ KDR32.

² The term 'Karzai period' is used to describe the period from the Bonn Conference of December 2001 until the present. Many Afghans when speaking of the conflict in Afghanistan refer to it in terms of the phases distinguished above, for instance they will speak of *daure mujahedin* (the mujahedin period) or *daure Najibullah* (the Najibullah period). The same kind of classification is to be found in existing documentation efforts.

³ See, for example, Afghanistan Justice Project *Casting Shadows: War Crimes and Crimes Against Humanity 1978-2001* (2005) <<http://www.afghanistanjusticeproject.org>>; Human Rights Stained Hands: Past Atrocities in Kabul and Afghanistan's Legacy of Impunity (2005) <<http://www.hrw.org/sites/default/files/reports/afghanistan0605.pdf>>; Human Rights Watch, *Killing You is a Very Easy Thing for Us: Human Rights Abuses in Southeast Afghanistan* (2003) <<http://www.hrw.org/sites/default/files/reports/afghanistan0703.pdf>>; Human Rights Watch, *Paying for the Taliban's Crimes: Abuses against Ethnic Pashtuns in Northern Afghanistan* (2002) <<http://www.hrw.org/reports/2002/afghan2/afghan0402.pdf>>; Human Rights Watch, *Massacres of Hazaras in Afghanistan* (2001) <<http://www.hrw.org/reports/2001/afghanistan/>>; Helsinki Watch, *Tears, Blood and Cries: Human Rights in Afghanistan since the Invasion, 1979-1984*, (1984) <<http://www.hrw.org/legacy/reports/1984/afghan1284.pdf>>.

and the need for justice and accountability as prerequisites for a lasting peace have been ignored. Nothing has been done to hold perpetrators to account or foster a culture of accountability. Afghanistan continues to rank at the bottom of global indicators on the rule of law and corruption.⁴

With the international military presence seeking to scale down and withdraw from the country by 2014 / 1393, the future of Afghanistan remains uncertain. This is especially so for Afghan women, who for so long have been denied a voice in their country's turbulent history.

Since the fall of the Taliban in 1380 / 2001 there have been a number of legal advances for Afghan women and girls. The Constitution of Afghanistan provides for equal rights and duties before the law for both men and women;⁵ the right to education;⁶ the right to work;⁷ and guarantees a quota of female parliamentarians in both the lower and upper houses of parliament.⁸ In 1390 / 2011, 28% of parliamentarians were female.⁹ Article 7 the Constitution expressly states that the State will abide by the Universal Declaration of Human Rights and international treaties that it has signed. These include the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).¹⁰ A Ministry

⁴ See Worldwide Governance Indicators (2013)

<<http://info.worldbank.org/governance/wgi/index.aspx#reports>>.

⁵ Art 22.

⁶ Art 43 and 44.

⁷ Art 48.

⁸ Art 83 for the lower house/*wolesijirga* and Article 84 for the upper house/*meshranojirga*.

⁹ UN Women, *Progress of the World's Women 2011-2012: In Pursuit of Justice* (2011)

<<http://progress.unwomen.org>>.

¹⁰ *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 Dec 1979, 1249 UNTS 13 (entered into force 3 September 1981)('CEDAW'). Afghanistan is also party to the following core human rights treaties: *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976)('ICESCR'); *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976)('ICCPR'); *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 4 February 1985, 1465 UNTS 85 (entered into force 26 June 1987)('CAT'); and the *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969)('ICEAFRD') and the *on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into 2 September 1990)('CROC'). Afghanistan is also a State Party to the *Convention on the Prevention and Punishment of the Crime of Genocide*, opened for signature 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951)('Genocide Convention'); the *Rome Statute of the International Criminal Court*, opened for signature 17 July 1998, 2187 UNTS 3 (entered into force 1 July 2002)('Rome Statute') and the *Geneva Conventions* and their additional protocols: *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, opened for signature 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) ('Geneva Convention I'); *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, opened for signature 12 August 1949, 75 85 (entered into force 21 October 1950)('Geneva Convention II'); *Geneva Convention Relative to the*

of Women's Affairs (MoWA) has been established. Civil society organisations and networks are active in advocating for greater promotion and protection of women's rights. In 1388 / 2009, the Elimination of Violence Against Women (EVAW) law was enacted by presidential decree,¹¹ criminalizing a range of acts and harmful practices including inter alia rape;¹² forced prostitution;¹³ burning or poisoning a woman;¹⁴ engaging in violent behavior which causes a women to commit suicide or self-harm;¹⁵ causing injury or disability;¹⁶ battery;¹⁷ selling women for the purpose of marriage;¹⁸ *baad*;¹⁹ forced marriage;²⁰ and underage marriage.²¹ Although some of these acts and practices were crimes under existing laws, there were considerable gaps. EVAW sought to address these gaps and better protect women from violence.

The National Action Plan for the Women of Afghanistan (NAPWA) 2007-2017²² provides a framework for the implementation of women's constitutional rights, the CEDAW and the Beijing Platform for Action.²³ The NAPWA aims to establish greater gender equality through the elimination of discrimination against women and girls, the building of women and girls' human capital, and through the promotion of their participation in Afghan society and in leadership roles. It has been endorsed in the Afghan National

Treatment of Prisoners of War, opened for signature 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950) ('*Geneva Convention III*'); *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, opened for signature 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) ('*Geneva Convention IV*'); *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts*, opened for signature 8 June 1977, 1125 UNTS 3 (entered into force 7 December 1978) ('*Protocol I*'); and *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts*, opened for signature 8 June 1977 1125 UNTS 609 (entered into force 7 December 1978) ('*Protocol II*').

¹¹Gazette 989, 10 Asad 1388 (1 August 2009)

<http://moj.gov.af/content/files/OfficialGazette/0901/OG_0989.pdf>.

¹²Art 17.

¹³Art 18.

¹⁴Art 20.

¹⁵Art 21.

¹⁶Art 22.

¹⁷Art 23.

¹⁸Art 24.

¹⁹Art 25. *Baad*s a traditional practice among some groups which involves the giving away of a women or girl in marriage to settle disputes.

²⁰Art 26.

²¹ Art 28. Although some of the acts listed above were prohibited under existing laws, there were many gaps. The EVAW Law sought to address this.

²²Government of Afghanistan, *National Action Plan for the Women of Afghanistan* (2007)

<<http://sgdatabse.unwomen.org/uploads/National%20Action%20Plan%20for%20the%20Women%20of%20Afghanistan%202007%20to%202017.pdf>>.

²³ See *Report of the Fourth World Conference on Women*, Beijing, 4-15 September 1995, UN Doc A/CONF.177/20/Rev.1 (15 September 1995)

<<http://www.un.org/womenwatch/daw/beijing/fwcwn.html>>.

Development Strategy (ANDS) 2008-2013, which identifies the pursuit of gender as one of its crosscutting issues.²⁴

Yet despite this progress on women's rights and their increased public participation over the past twelve years, violence remains an inextricable part of the lives of many Afghan women and girls. Forced marriage, including child marriage, remains prevalent. According to Human Rights Watch, an estimated 87 percent of women face at least one form of physical, sexual or psychological violence or forced marriage in their lifetimes.²⁵ Mental health can be greatly affected by violence. In 1998 the Journal of the American Medical Association published a study that assessed health and human rights concerns and conditions of women living in Kabul under the Taliban regime. A total of 160 women participated, half of who were living in Kabul under Taliban rule at the time, the other half having recently migrated to Pakistan. The study found that 97 per cent of participants demonstrated evidence of major depression and that 86 per cent had significant anxiety symptoms.²⁶ Another study of the mental health of Afghan women subject to Taliban rule published in 2003 found 'extraordinarily high' rates of depression among Afghan women.²⁷

Afghan women and girls continue to face considerable barriers to exercising their rights. The EVAW law has proved difficult to enforce, and its future remains precarious after a recent attempt to have it approved by the parliament was cut short by the speaker due to the vocal opposition of some MPs.²⁸ The Shia Personal Status Law, the draft of which prompted international outrage in 1388 / 2009, contains many provisions that curtail the rights of women and girls in Shia communities.²⁹ The Civil Code, which applies to women in Sunni communities, also contains provisions that discriminate against women and girls.³⁰ A 'National Reconciliation, General Amnesty and National Stability Law' purportedly grants a blanket amnesty for perpetrators of conflict-related crimes over the

²⁴Government of Afghanistan, *Afghanistan National Development Strategy* (2008)
<http://www.undp.org.af/publications/KeyDocuments/ANDS_Full_Eng.pdf>.

²⁵Human Rights Watch, *World Report 2012* (2012)
<<http://www.hrw.org/sites/default/files/reports/wr2012.pdf>> 292.

²⁶Zohra Rasekh, Heidi M. Bauer, M. Michele Manos, Vincent Iacopino, 'Women's Health and Human Rights in Afghanistan', (1998) 280(5) *Journal of the American Medical Association*, 449.

²⁷Amowitz LL, Heisler M and Iacopino V, 'A population-based assessment of women's mental health and attitudes toward women's human rights in Afghanistan' (2003) 12(6) *Journal Women's Health (Larchmt)* 577. The study found that major depression was prevalent in 73-78 per cent of women living under Taliban rule, and that many of these expressed suicidal ideation at the time of the study.

²⁸The argument advanced by those tabling the EVAW Law is that it would have greater legitimacy as a law with parliamentary approval, as opposed to in its current form as a presidential decree.

²⁹Gazette No. 988, 05/05/1388 (29 July 2009)
<http://moj.gov.af/content/files/OfficialGazette/0901/OG_0988.pdf>.

³⁰*Civil Code*, 15 Jaddi 1355 (5 January 1977) / 15 Jaddi 1355.

past three decades, including gender-based crimes.³¹ This not only adds to the already considerable barriers to women accessing justice but also denies them formal acknowledgment of the widespread abuses committed against women during the conflict. In the informal justice sector, women continue to be given away to settle disputes.³² Instead of protection and support, women and girls who flee situations of abuse are condemned by their families, communities and the State, with some being imprisoned for their actions.³³ The culture of impunity in the country not only prevents access to justice but also perpetuates the ongoing commission of violent crimes against women and girls.

Despite improvement in the status of women during the past decade, incidents involving horrific violence against Afghan women and girls still make national and international news headlines and serve as a reminder that there is still along way to go to ensuring basic women's rights protection in Afghanistan.³⁴

³¹ Gazette No. 965, 13 Qaus 1387 (3 December 2008)

<http://moj.gov.af/content/files/officialgazette/0901/og_0965.pdf>. For further discussion of the Amnesty Law see AIHRC/ICTJ, *Discussion Paper on the Legality of Amnesties* (2010) <http://www.aihrc.org.af/media/files/Reports/Thematic%20reports/Amnesties_paper_23_Feb_2010.pdf>.

³² Although it is beyond the scope of this report it should be noted that the majority of disputes in Afghanistan are settled outside the formal legal system, according to local tribal or customary practices.

³³ Women and girls who flee such situations can be subject to imprisonment for *zena* (adultery) under Article 427 of the Penal Code or *faraarazkhana* (running away from home) for which there is no provision in the Penal Code. For an English translation of the Afghan Penal Code see <<http://alep.stanford.edu/wp-content/uploads/2011/02/ALEP-CRIMINAL-STATUTORY-SUPPLEMENT-1ST-EDITION.pdf>>.

³⁴ For human rights reports on violence against women in Afghanistan see AIHRC, *Violence Against Women in Afghanistan* (1391) <http://www.aihrc.org.af/media/files/VAW_Final%20Draft-20.12.pdf>; UNAMA, *Still a Long Way to Go: Implementation of the Law on Elimination of Violence Against Women in Afghanistan* (2012) <<http://unama.unmissions.org/LinkClick.aspx?fileticket=Qy9mDiEa5Rw%3d&tabid=12254&language=en-US>>; UNAMA, *A Long Way to Go: Implementation of the Elimination of Violence against Women Law in Afghanistan* (2011) <http://unama.unmissions.org/Portals/UNAMA/human%20rights/November%2023_UNAMA-Joint-Report-on-Implementation-of-EVAW-law_ENG.pdf>; UNAMA, *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan* (2010) <http://unama.unmissions.org/Portals/UNAMA/Publication/HTP%20REPORT_ENG.pdf>; Human Rights Watch, *The "Ten-dollar Talib" and Women's Rights* (2010) <<http://www.hrw.org/reports/2010/07/13/ten-dollar-talib-and-women-s-rights-0>>; UNAMA, *Silence is Violence: End the Abuse of Women in Afghanistan* (2009) <http://www.ohchr.org/Documents/Press/VAW_Report_7July09.pdf>; Human Rights Watch, "We have the promises of the World": *Women's Rights in Afghanistan* (2009) <<http://www.hrw.org/reports/2009/12/03/we-have-promises-world-0>>; Human Rights Watch, "We Want to Live as Humans": *Repression of Women and Girls in Western Afghanistan* (2002) <<http://www.hrw.org/reports/2002/afghnwmn1202/>>.

This report aims to document Afghan women's experiences of violence over thirty years of conflict from 1978 to 2008 / 1357-1387 through 'oral history'. Oral history involves the collection of memories and personal histories of historical significance through recorded interviews.³⁵ Due to its dynamic and evolving nature, there is no one single correct way of doing oral history. Oral history projects can play a particularly important role in providing a voice to those denied a place in official history, such as those in societies that have experienced conflict, dictatorship and the marginalisation of minorities.

Previous efforts to document the conflict in Afghanistan have largely focused on individual incidents, patterns of violations, a particular perpetrator group/regime or a given temporal frame. There have been few attempts to focus solely on the experiences of Afghan women, and women's experiences have not been prominent in existing documentation efforts. One of the reasons for this relates to difficulties in accessing female witnesses. Due to cultural sensitivities regarding women's interaction with men from outside their immediate family, it can be difficult to obtain testimonies from women unless female researchers conduct the interviews. Even when female interviewers are used, accessing women in an environment in which they are afforded privacy and have the ability to discuss issues such as gender-based violence can still be a challenge. Some women are unwilling to discuss their experiences due to the perception that they are shameful or believe that this is their private domain and therefore difficulties within the family should stay within the family. Some women may not feel entitled to discuss their experiences with anyone. Others may fear the repercussions of doing so, either from their family or those in power. As one woman from Kandahar explained:

*My heart is full of pain, but it is hard to explain all of these stories. There isn't a safe environment to share your sorrow with someone because there are warlords and gunmen everywhere.*³⁶

Even within the supposed sanctity of the home, women are often precluded from discussing their experiences. A woman from Herat who was forced into marriage with a mujahedin commander at the age of 14 said:

*I am not only the victim of this situation; there are many young women who were put in the same situation as me. They do not dare to explain their memories because of their cruel husbands.*³⁷

The testimonies contained in this report were collected from Qaus 1386 until Saratan 1387 / December 2007 until June 2008 as part of a pilot oral history project in seven

³⁵ Donald A. Ritchie, *Doing Oral History: A Practical Guide* (Oxford University Press, 2nded, 2003) 19. For some excellent discussion on oral history, see Donald A. Ritchie (ed) *The Oxford Handbook of Oral History* (Oxford University Press, 2011).

³⁶ KDR14.

³⁷ HRT16.

provinces: Kabul, Kandahar, Jowzjan, Balkh, Bamyan, Daikundi and Herat.³⁸ They tell an unequivocal tale of violence and suffering over the past three decades regardless of geography, ethnicity, or socio-economic status. In the words of one woman: “we have all suffered”.³⁹

II CONTEXT

A *The Conflict in Afghanistan*

1 *The Afghan PDPA Regime (Saur 1357-Jaddi 1358 / April 1978 – December 1979)*

The communist coup d'état of 7 Saur 1357 / 27 April 1978 brought to power the Democratic Party of Afghanistan (PDPA). The PDPA, under the leadership of Taraki and Amin, both from the party's dominant *khalq*⁴⁰ faction, 'embarked on an ambitious and ruthless campaign to transform Afghanistan into a modern socialist state'.⁴¹ Between Saur 1357 / April 1978 and Jaddi 1358 / December 1979, tens of thousands of Afghans were subjected to arbitrary arrest, imprisonment, torture and death at the hands of the State, primarily through the State intelligence Service, AGSA (*da Afghanistan gatosatonkiidara*, or Department for Safeguarding the Interests of Afghanistan), renamed KAM (*kargariistikhbaratimuassisa*, or Workers' Intelligence Department) under Amin. As mutinies in the army and public revolt became increasingly widespread, the PDPA responded with arrests, disappearances and killings of prominent religious, tribal and minority leaders. Massacres of civilians also prompted the flight of much of Afghanistan's educated class. Fearing the growing sophistication of opposition movements, the Soviet politburo decided to intervene, invading the country on 6 Jaddi 1358 / 27 December 1979.

2 *The Soviet Occupation (Jaddi 1358 / December 1979 – Dalwa 1367 / February 1989)*

The Soviet backed PDPA regime under Babrak Karmal, from the PDPA's *parcham*⁴² faction, continued the pattern of mass human rights abuses of its predecessor. A highly repressive regime operated in Kabul and other cities whilst engaging in scorched earth and depopulation tactics in the countryside. One of the new regime's first actions was the remodeling of the intelligence services into the notorious *khedamat-e etelaat-e dawlati* (KhAD), a secret police force inspired by the Soviet KGB, a brutal successor to its predecessor. Arbitrary detention, torture and summary executions were widespread in the cities. In the countryside Soviet and Afghan government forces would frequently massacre civilians. Relentless aerial bombardment resulted in countless civilian deaths

³⁸ Three interviews were also conducted in Faryab in relation to incidents occurring in Jowzjan.

³⁹ HRT11.

⁴⁰ Masses (of people).

⁴¹ Afghanistan Justice Project, above n 3, 10.

⁴² Flag/banner.

and the widespread destruction of villages, farmland, irrigation systems and resources. In some cases this mass bombardment resulted in the destruction and de-population of entire districts where dozens of villages were burnt to the ground. An unknown number of children, including orphans, were sent to the Soviet Union for education – often by force – and some were never seen or heard from again. Some six million people, accounting for approximately one third of Afghanistan's estimated population at the time, fled the country. In its 1984 report, Helsinki Watch stated that 'just about every conceivable human rights violation is occurring in Afghanistan and on an enormous scale'.⁴³

Much less has been reported about the many crimes committed by the various mujahedin factions throughout the duration of the PDPA regime. The narrative has always been one of the mujahedin fighting a legitimate *jihad*⁴⁴ against the brutal Soviet occupiers who would destroy their people, culture and country. As some of the testimonies in this report show, the mujahedin also bear responsibility for crimes perpetrated during this period.

3 *The Post-Soviet PDPA / Watan Government of Dr Najibullah (Dalwa 1367 / February 1989 – Saur 1371 / April 1992)*

In 1375 / 1986 Najibullah, the head of KhaD, replaced Karmal as head of state. The reformist agenda of President Gorbachev in the USSR eventually led to the signing of the Geneva Accords on 25 Hamal 1367 / 14 April 1988. The Accords facilitated a Soviet withdrawal but made no provision for a transition process. After the Soviet departure of Dalwa 1367 / February 1989, Najibullah found himself relying upon regional militia to keep order. These militia enjoyed autonomy in their respective regions, and it was not long before ethnic and tribal bonds replaced ideological loyalties. The PDPA was renamed the *watan*⁴⁵ party in a bid for wider appeal but to no avail. A UN-formulated transition plan developed in the wake of the collapse of the Soviet Union resulted in a power vacuum, the defection of militias, the breakdown of the armed forces and a battle amongst mujahedin factions for the capital. The process was repeated across the country with groups claiming their own constituencies, predominantly based on ethnic allegiances.

4 *The Islamic State of Afghanistan / Mujahedin Period (Saur 1371 – Mezan 1375 / April 1992 – September 1996)*

Each of the mujahedin factions vying for control of the capital used its stockpile of weaponry to attack opponents and predictably, in a densely populated area like Kabul, the result was massive civilian casualties and the reduction of much of the city to ruins. The Peshawar Accords of Saur 1371 / April 1992 facilitated the establishment of an interim administration and power-sharing arrangements but these were largely

⁴³Helsinki Watch, above n 3, 4.

⁴⁴*Jihad* is derived from the Arabic word *al-Jahd* meaning a struggle or striving. It does not necessarily mean a resort to violence. In the Afghan context it is frequently used to describe mujahedin resistance to the communist regime and Soviet occupation.

⁴⁵Homeland.

ineffective. By the time they became operative, the various mujahedin groups had already carved up Kabul and its surrounding areas. The city was rocketed relentlessly causing thousands of civilian deaths. Inter-factional fighting served as a pretext for widespread abuses of the civilian population by all factions, often taking on the dimensions of ethnic cleansing. Abduction, torture, rape, mutilation, murder and disappearance were common practices.

The anarchy that prevailed in Kabul throughout this period was replicated in other areas of the country, not least Kandahar, where a movement promising an end to the lawlessness, a return to the traditional order and the implementation of Islamic law, emerged. Within the space of a year they controlled much of southeastern Afghanistan.

Several rounds of negotiations failed to broker a peace deal. As the factions in Kabul continued to attack each other, the Taliban continued its advances on various fronts around the country, taking the western city of Herat and the eastern city of Jalalabad. On the evening of 5 Mezan 1375 / 26 September 1996 the Taliban entered Kabul.

5 *The Taliban Period (Mezan 1375 – Qaus 1380 / September 1996 – December 2001)*

The Taliban issued strict edicts banning women from education, work, leaving the home unaccompanied by *mahram*⁴⁶ and from appearing in public without the all-covering *chaadari*.⁴⁷ The Taliban also decreed that all pictures of women should be banned, windows be painted so that women could not be seen from outside their homes, and that women could not use public baths, wash clothes in rivers or public places, use balconies in their own home, have a tailor take their measurements, or gather for recreational purposes. Women were forbidden from being treated by male doctors, and although a small number of women doctors were allowed to continue working, this policy had a severe impact upon maternal and child health. These edicts were ruthlessly enforced by a specially created Ministry for the Promotion of Virtue and Prevention of Vice (*amr bi al-ma'rufwa al-nahi'an al-munkir*). Music, television, the keeping of birds and kite flying were banned, as was the traditional *nawruz* celebration.⁴⁸ Men were forced to grow beards and wear caps in public. Failure to conform resulted in public floggings. The Taliban's imposition of Sharia law gave rise to a host of inhumane punishments such as the amputation of hands or feet for alleged theft and stoning to death for accused adulterers, including rape victims.

In northern and central Afghanistan the Taliban massacred civilians belonging to ethnic minorities and engaged in scorched earth tactics. The pattern of arbitrary arrest of male civilians, followed by their summary execution and the burning down of entire villages is well known. Much less documented are the experiences of the many women who were subjected to rape, sexual slavery and forced marriage at the hands of Taliban soldiers and commanders, some of which are detailed in this report.

⁴⁶ Male guardian.

⁴⁷ Commonly referred to in the West as the 'burka'.

⁴⁸ Afghan New Year.

6 *The Karzai Government Period (Qaus 1380 – 1387-present / December 2001 – 2008- present)*

The events of 11 September 2001 / 20 Sunbola 1380 prompted the US military intervention, the fall of the Taliban and the Bonn Agreement, which saw an interim administration established under President Hamid Karzai. A new constitution was drafted and implemented. Presidential elections were held in 1383 / 2004 and 1388 / 2009, and parliamentary elections in 1384/ 2005 .and 1389 / 2010.

Yet the conflict continues. UNAMA reported 2754 civilian deaths in 2012⁴⁹, down from the 3021 civilian deaths recorded in 2011 / 1389-1390⁵⁰. However, the first six months 2013 have seen civilian deaths increase 14 per cent compared with the same period in 2012.⁵¹ In all reporting periods, the majority of civilian casualties were attributed to anti-government elements, including the Taliban. Many Afghans fear that the current policy of 'reconciliation' with the Taliban may lead to a political settlement that threatens the rights of women and ethnic minorities, freedom of speech, education and other hard fought rights and freedoms. At the same time, government agencies, particularly the successor to KhAD, the National Directorate of Security (NDS), continued to engage in arbitrary arrests and torture of detainees.⁵²

The impact of the conflict is evidenced by the number of interviewees in this project – almost half - who experienced the death of at least one immediate family member in conflict-related violence throughout the period. The highest figures were recorded in Daikundi province where approximately 76 percent of interviewees reported at least one immediate family member killed in conflict-related violence. Similarly high figures were recorded in Herat (67 percent) and in Bamyan (61 percent). In other provinces, 40 percent of interviewees in Kandahar, 26 per cent of interviewees in Kabul, 20 per cent

⁴⁹UNAMA, *Afghanistan Annual Report 2012 – Protection of Civilians in Armed Conflict* (2013) 1 http://www.ohchr.org/Documents/Countries/AF/UNAMA_POC_armed_conflict.pdf. Despite the overall drop in civilian casualties from 2011, the number of Afghan women and girls killed or injured increased by 20 percent compared to 2011: 11.

⁵⁰ UNAMA, *Afghanistan Annual Report 2011: Protection of Civilians in Armed Conflict* (2012) 1 <http://www.ohchr.org/Documents/Countries/AF/UNAMA_Feb2012.pdf>. Women and children accounted for 30 per cent of all civilian deaths between July and December 2011: 5.

⁵¹UNAMA, *Afghanistan Mid-Year Report 2013: Protection of Civilians in Armed Conflict* (2013) 1 http://reliefweb.int/sites/reliefweb.int/files/resources/UNAMA%202013%20Midyear%20Report%20on%20Protection%20of%20Civilians_30%20July%202013.pdf.

⁵² See UNAMA, *Treatment of Conflict-related detainees in Afghan Custody: One Year On* (2013) <<http://unama.unmissions.org/LinkClick.aspx?fileticket=VsBL0S5b37o%3d&tabid=12254&language=en-US>>; AIHRC, *Torture, Transfers and Denial of Due Process: The Treatment of Conflict-Related Detainees in Afghanistan* (2012) <<http://www.aihrc.org.af/media/files/AIHRC%20OSF%20Detentions%20Report%20English%2017-3-2012%20%28Final%29%20.pdf>>; UNAMA, *Treatment of Conflict-Related Detainees in Afghan Custody* (2011) <<http://unama.unmissions.org/Default.aspx?ctl=Details&tabid=1741&mid=1882&ItemID=15279>>.

interviewees in Jowzjan and 19 percent of interviewees in Balkh reported that at least one immediate family member had been killed in conflict-related violence.⁵³

B *Transitional Justice in Afghanistan*

Although it provided for the establishment of the Afghanistan Independent Human Rights Commission (AIHRC), the Bonn Conference of December 2001 / Qaus 1380 failed to address the issue of transitional justice and allowed many warlords back into the political fold.⁵⁴ As a result, many of those who have been implicated in the commission of war crimes, crimes against humanity and serious human rights abuses continue to hold positions of power and influence today. This early failure to demand accountability or, at the very least, a marginalisation of ‘the bad guys’ has facilitated to various degrees the entrenchment of a culture of impunity, resulting in corruption, bad governance, deteriorating security and the continued widespread abuse of human rights.⁵⁵

Mandated under Article 58 of the Constitution to monitor, foster and protect human rights, in 2004 / 1382-1383 the AIHRC conducted a national consultation on the issue of past human rights abuses. The findings of the consultation were published in Dalwa 1383 / January 2005 in the AIHRC’s *A Call for Justice* report. *A Call for Justice* represents one of the first concrete attempts to address the issue of past crimes and their legacy. The AIHRC report found that 69 percent of 4051 respondents identified themselves or their immediate families as victims of human rights violations during the 1357-1380 / 1978-2001 period.⁵⁶ It also found that the overwhelming majority of surveyed wanted to see perpetrators of war crimes and human rights violations held accountable. In addition, 76.4 per cent of respondents felt that bringing war criminals to justice would increase stability and bring security. Less than ten per cent felt that peace and security would decrease as a result.⁵⁷ This was in stark contrast to the policies favoured by the Afghan government and the international community. The Afghanistan Research and Evaluation Unit’s (AREU) more recent research project *Legacies of Conflict: Justice, Reconciliation and Ways Forward* found the desire for criminal prosecutions remains strong, however what is apparent is the need for formal

⁵³ In this report all figures are approximate.

⁵⁴ The Civil-Military Fusion Centre has compiled a useful document containing the Bonn Agreement and other key texts from official international conferences on Afghanistan, accessible at https://www.cimicweb.org/cmo/afg/Documents/Governance/CFC_Afghanistan_Agreements_June2012.pdf.

⁵⁵ For a comprehensive account of transitional justice in Afghanistan, see Patricia Gossman and Sari Kouvo, *Tell Us How This Ends: Transitional Justice and Prospects for Peace in Afghanistan* (Afghanistan Analysts Network, (2013) <http://www.afghanistan-analysts.org/wp-content/uploads/2013/06/2013-06_AAN_TransitionalJustice2.pdf>.

⁵⁶ AIHRC, *A Call for Justice: A National Consultation on Past Human Rights Violations in Afghanistan* (2005), 8 <<http://www.aihrc.org.af/en/research-reports/752/a-call-for-justice.html>>.

⁵⁷ Ibid 17.

acknowledgment of the criminal past, with the ends more important than the means used to achieve it.⁵⁸

In response to the AIHRC report, the Afghan Government commissioned the drafting of a transitional justice action plan to implement its findings.⁵⁹ The Action Plan on Peace, Reconciliation and Justice contains five key actions: 1) acknowledging the suffering of the Afghan people; 2) ensuring credible and accountable state institutions; 3) truth-seeking and documentation; 4) promoting reconciliation and the improvement of national unity; and 5) establishing effective and reasonable accountability mechanisms. There is express provision for the documentation of past crimes, including gender-based violence, in Key Action 3, while Key Actions 4 and 5 provide that there should be no amnesty for war crimes, crimes against humanity and other gross violations of human rights. Unfortunately, the Action Plan was largely ignored by the Afghan government and at its expiration remained almost entirely unimplemented.⁶⁰

What little political will there was for transitional justice disintegrated with the passing of an amnesty resolution by the parliament and a subsequent show of force by the warlords it sought to protect in early 2007 / late 1385. After President Karzai brought amendments centered on upholding the rights of victims to bring individual complaints, the resolution was returned to the parliament, where again it was passed, however in unclear circumstances. The consensus among civil society organisations, human rights activists, the AIHRC and UNAMA was that the resolution had effectively lapsed. That was until December 2009 / Qaus 1388 when an official gazette dated December 2008 / Qaus 1388 containing the 'National Reconciliation, General Amnesty and National Stability Law' was found on the Ministry of Justice website. The Amnesty Law purportedly grants a blanket amnesty in respect not only of crimes committed but also of those that have yet to occur, provided that the perpetrator joins the peace process and accepts the Constitution.⁶¹ It can only be viewed as a green light for impunity.⁶²

⁵⁸ See Emily Winterbotham, *Healing the Legacies of Conflict in Afghanistan: Community Voices on Justice, Peace and Reconciliation* (AREU, 2012). This is the project's synthesis report. A number of other publications from the project are also accessible at <<http://www.areu.org.af/>>.

⁵⁹ The government's drafting of the Action Plan was undertaken in collaboration with the AIHRC and UNAMA.

⁶⁰ In fact, aside from announcing a National Day for Victims to coincide with International Human Rights Day on 10th December, and the much-delayed establishment of the Advisory Panel on Appointments, government attention to the Action Plan has been extremely minimal. The AIHRC's Conflict Mapping Report documenting war crimes and crimes against humanity 1978-2001 (Key Action 3) has yet to be made public. For further information on the Action Plan see Sari Kouvo, 'A Plan without Action: The Afghan Government's Action Plan for Peace, Justice and Reconciliation', in Van Bijlert and Kouvo (eds), *Snapshot of an Intervention: The Unlearned Lessons of Afghanistan's Decade of Intervention 2001-2011*, (Afghanistan Analysts Network, 2012) <http://www.aan-afghanistan.org/uploads/2012_AAN_E-book_Snapshots_of_an_Intervention.pdf>.

⁶¹ *National Reconciliation, General Amnesty and National Stability Law*, art 3(2). This would appear be incompatible with Afghanistan's obligations under the *Convention on the Non-Applicability of Statutes of Limitation to War Crimes and Crimes Against Humanity*, opened for signature 16 December 1968, 754 UNTS 73 (entered into force 11 November 1970) which in art 4 calls for States

The Afghanistan Peace and Reintegration Program (APRP) was officially launched at the Kabul Conference on 20 July 2010 / 29 Saratan 1389 following its discussion at National Consultative Peace Jirga the month before. The stated aim of the APRP is to provide means for Anti-Government Elements to renounce violence, reintegrate and become a productive part of Afghan society. The composition of the High Peace Council established to oversee its implementation has been heavily criticized by civil society organisations, as it includes numerous individuals who have been linked to the commission of atrocities during the conflict. As with previous efforts at reintegration⁶³ there have been serious questions about who exactly is being reintegrated. A study of almost 5000 Afghans undertaken by the Peace Training and Research Organisation (PTRO) found that 50 percent of respondents saw the reintegration program as benefitting criminals.⁶⁴ Criticisms have also centered around the perceived lack of transparency of the entire process; the lack of definitions of key terms such as 'political amnesty' or clear policy in relation to the granting of amnesty; and the inability of the grievance resolution process to adequately facilitate reconciliation at the local level, or where the reintegree has been active in areas outside their local area.⁶⁵ The PTRO study found that although people are generally supportive of a political settlement, 40 per cent fear that it will result in a loss of rights.⁶⁶

Parties to undertake to adopt, in accordance with their respective constitutional processes, any legislative or other measures necessary to ensure that statutory or other limitations shall not apply to such crimes and that, where they exist, such limitations shall be abolished.

⁶² It should be noted that amnesties are often employed as a tool of restorative justice where it may not be possible or practical to undertake prosecutions in respect of alleged crimes committed during a conflict or repressive rule. Amnesties are generally not prohibited under international law although States have obligations to prosecute serious international crimes. Afghanistan has such obligations in respect of torture under the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*; genocide under the *Genocide Convention*; for grave breaches of the *Geneva Conventions*; and for international crimes more generally under the *Rome Statute of the International Criminal Court*. Afghanistan has been under preliminary examination at the ICC since 2007. Article 11 of UN Security Council Resolution 1325 also emphasizes State responsibility in ending impunity for international crimes involving sexual violence, and stresses the need to exclude such crimes, where feasible, from amnesty provisions. For a more detailed discussion of the legality of amnesties, with special reference to the National Reconciliation, General Amnesty and National Stability Law, see AIHRC/ICTJ, *Discussion Paper on the Legality of Amnesties* (2010) <http://www.aihrc.org.af/media/files/Reports/Thematic%20reports/Amnesties_paper_23_Feb_2010.pdf>. See also Mark Freeman, *Necessary Evils: Amnesties and the Search for Justice* (Cambridge University Press 2009).

⁶³ The now defunct Disarmament, Demobilisation and Reintegration (DDR) and *tahkim-e solh* (Strengthening Peace) programs.

⁶⁴ Peace Training and Research Organisation, *Unheard Voices: Afghan Views on the Challenges of the Peace Process* (2012) 50 <<http://www.ptro.org.af/en/unheardvoices.html>>. 61 per cent of respondents doubted that the Taliban leadership was even interested in reconciliation.

⁶⁵ See for example Patricia Gossman, 'Afghan High Peace Council Fails to Reflect Civil Society' (USIP 2011) 74 *Peacebrief* 1 <http://www.usip.org/files/resources/PB74-Afghan_High_Peace_Council_Fails_to_Reflect_Afghan_Civil_Society.pdf>.

⁶⁶ PTRO, above n 67, 50. Women were even more fearful, in Marjah district 90 percent of women feared a loss of rights. See also the recent report of the Afghanistan Human Rights and Democracy

The publication on 27 Sunbola 1392 / 18 September 2013 by the daily *8 Sobh* of a list' of 4782 names of those executed by the Taraki and Amin regimes appears to have re-ignited discussion of transitional justice issues, but it remains to be seen whether this will lead to a renewed transitional justice agenda in the country.⁶⁷

C *Afghanistan's Culture of Impunity*

The UN Special Rapporteur on Impunity has defined impunity as:

The impossibility, de jure or de facto, of bringing the perpetrators of human rights violations to account - whether in criminal, civil, administrative or disciplinary proceedings - since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.⁶⁸

A culture of impunity exists where impunity is so entrenched and widespread that it becomes part of the 'culture' or the norm. Perpetrators can do whatever they want in the knowledge that they will not face consequences for their actions, with the result that violence and atrocity continue unabated and justice is denied. Impunity is therefore the antithesis of the rule of law. Afghanistan's culture of impunity is a legacy of over three decades of conflict and the ongoing systematic failure to hold perpetrators of serious crimes and human rights violations to account. Instead of accountability, those accused of bearing responsibility for the commission of atrocities, past and present, have been rewarded with positions of power, enabling them to continue to commit crimes with impunity.

For Afghan women, the discriminatory application of laws also contributes to the culture of impunity. Women and girls who flee or report violence are frequently subject to prosecution for adultery or running away from home while laws which offer protection for women and criminalize violence against them remain largely unimplemented. This has the effect of normalizing violence against women and reinforcing the systematic inequality that Afghan women and girls experience on a daily basis.

D *The Role of UN Women in Afghanistan*

Originally established in Afghanistan as UNIFEM in 2002, UN Women was created in 2010 globally, with the Afghanistan Country Office (ACO) the largest country office. It works within the frameworks of its global strategic priorities as well as the Afghanistan

Organisation (AHRDO), *Afghan Women After the Taliban: Will History Repeat Itself?* Kabul, February 2012.

⁶⁷ See <http://8am.af/1392/06/27/revealed-agsa-mass-killing-names/>. The list is available in Dari at <http://www.8am.af/Files/Death_List_Internetversion_Original_Dari.pdf>. For an English translation see [http://www.om.nl/onderwerpen/internationale/morotai-\(english\)/](http://www.om.nl/onderwerpen/internationale/morotai-(english)/)

⁶⁸ Louis Joinet, *The Administration of Justice and the Human Rights of Detainees*, UN Doc E/CN.4/Sub.2/1997/20/Rev.1 (2 October 1997).

UN Development Assistance Framework (UNDAF) and the national frameworks of the Afghanistan National Development Strategy (ANDS), the National Priority Programmes (NPPs), and the National Action Plan for the Women of Afghanistan (NAPWA), complemented by the Tokyo Mutual Accountability Framework (T-MAF).

UN Women (starting as UNIFEM) has from the outset worked closely with the government, civil society, other UN agencies and donors on gender equality and women's empowerment and supported the development, monitoring and implementation of policies that both protect and promote the rights of women. These include, but are not limited to, the development of the NAPWA, the adoption of a quota in the national Constitution; laws and policies to combat violence against women and girls at the national and local level; and mainstreaming gender in the ANDS.

Despite these frameworks for women's rights, the majority of women in Afghanistan are unable to exercise basic rights or have access to the most basic of services. Afghanistan's development proceeds in a climate of uncertainty due to a fragile security situation. As violence continues throughout much of the country, and increasingly in areas previously considered secure, UN Women and its partners face challenges that include political transition, weak government institutions and political will to implement existing laws to protect women's rights, an absence of the rule of law, poverty deep-rooted discriminatory practices against women and girls, and weak human capital. In light of these factors, promoting women's rights, however challenging, is vital; situating women's rights as a core pre-requisite to sustainable peace and human development in Afghanistan is imperative.

III OBJECTIVES OF THE ORAL HISTORY REPORT

The original objective of the Oral History Project was to collect, document and publish a report of women's testimonies reflecting the scope and nature of violence during the three decades of conflict in Afghanistan. The focus was to be on 'wartime violations' meaning violations of international humanitarian law (IHL) and also international human rights law (IHRL). It was initially designed as a large-scale documentation project that would cover most of Afghanistan. Due to the complexities involved in such a project, it was decided to first run a pilot phase in a limited number of provinces to assess the viability of a larger scale project. At the conclusion of the pilot phase an external assessment was conducted and following this a decision was made to discontinue plans for a national, large-scale project. This decision was influenced by a combination of capacity restraints, deteriorating security across the country in 2008 / 1387, and difficulties in finding adequate translation capacity to translate such a huge amount of documents to enable their assessment by international staff, something considered a prerequisite to moving forward with the full project. Although the full-scale project originally intended did not come to fruition, the testimonies collected during the pilot phase offer a valuable insight into women's experiences of violence during the conflict

and contribute to the historical narrative of the conflict in Afghanistan from an unsought perspective - that of Afghan women.

Due to difficulties involved in documenting IHL violations, for the purposes of this report it was necessary to broaden the primary objective to include documentation of women's experiences of violence during the conflict in Afghanistan. These have been recorded in their own words, in order to contribute to a better understanding of this frequently ignored aspect of Afghan history. In compiling this report the data was used not only to provide evidence of the *violations* that were documented, but also to convey women's *experiences of violence* more broadly throughout the period. These include forms of gender-based violence which may not amount to conflict-related violence but the occurrence of which was exacerbated and intensified by the conflict situation. It also includes other experiences stemming from conflict-related violence, such as the impact of the killing of male family members upon women and girls.

The project fits within Key Action Three of the Afghan Government's Action Plan for Peace, Reconciliation and Justice, which called for organizations to 'increase and accelerate efforts to document past human rights abuses during the conflict in Afghanistan, including on gender-based violence, to complement and enrich the existing work'.⁶⁹ There is certainly a need for greater understanding of Afghan women's experiences of the conflict and its impact upon them. War is a traumatic experience for all humans but it is experienced differently depending on gender.⁷⁰ This is especially pronounced in a country like Afghanistan where gender roles are traditionally more defined than in many countries and conservative cultural practices often have a detrimental impact upon women.

Documenting women's experiences gives a voice to their experiences, validates them, and fills what has been a considerable gap in Afghanistan's recent history. It is hoped that the collection of these testimonies will contribute to an alternative discourse and understanding of Afghanistan's recent past which will acknowledge not only the

⁶⁹ *Peace, Reconciliation and Justice in Afghanistan Action Plan of the Government of the Islamic Republic of Afghanistan*, 6-7 June 2005, available at http://www.aihrc.org.af/tj_actionplan_19_dec_05.htm. The Action Plan was included in the governance cluster at the Kabul Conference in 2010 and set to be re-launched, however, more than three years on, this has yet to occur.

⁷⁰ Para 141 of the Beijing Platform of Action (1995) states: 'In addressing armed conflict and other conflicts, an active and visible policy of mainstreaming a gender perspective into all policies and programmes should be promoted so that before decisions are taken, an analysis is made of the effects on women and men, respectively'. See <http://www.unhcr.org/refworld/docid/4a24ed5b2.html>. A focus on gender mainstreaming in conflict and post-conflict situations involves recognizing that women, girls and boys participate in and experience conflict, peace processes and post-conflict recovery differently.

suffering of Afghan women but also the resilience and bravery shown by them throughout the conflict. They deserve a place in their country's history.

IV METHODOLOGY

The interviews which form the basis of this report were collected as part of a pilot project from Qaus 1386 until Saratan 1387 / December 2007 until June 2008 in seven provinces: Kabul, Balkh, Jowzjan, Herat, Daikundi, Bamyān and Kandahar. A map showing the location of these provinces is included at the end of this section.

These provinces were selected in order to document experiences in different regions affecting diverse populations. The presence of active AIHRC offices that could provide support was also a factor in the selection.

In Qaus 1386 / December 2007 a four-day training was provided to UNIFEM staff by the International Center for Transitional Justice (ICTJ). Researchers were recruited specifically for the project and all had prior experience in interviewing and a background in gender issues. The training included an outline of the legal framework of IHL and IHRL; the Geneva Conventions and jurisprudence on conflict-related sexual violence; interview techniques; gender-sensitive research approaches; and data analysis. In addition to the training, researchers were provided with a comprehensive training manual covering all of these areas in some detail. At the conclusion of the training, researchers were deployed to the field and were based within the Transitional Justice Unit of the AIHRC's regional and provincial offices in Balkh, Bamyān, Herat, Kandahar and Daikundi.⁷¹ The Kabul team was based in the UNIFEM office in Kabul. Fieldwork commenced immediately and continued until June 2008. A memorandum of understanding was signed with AIHRC to enable the researchers to consult with AIHRC TJ staff on experiences of conflict in their respective regions and how to go about the work.

Researchers exercised a high degree of autonomy concerning their work schedule, location coverage and the content of their interviews with limited oversight from head office. As a result, there are some differences in the methods employed by each team, which are outlined in the limitations section below. There was no physical supervision of researchers in the field by UNIFEM due to limited staff at head office, however, through phone and email exchanges a level of support and advice was provided. None

⁷¹ The mandate of the AIHRC Transitional Justice unit is to promote human rights and reconciliation through developing strategies and policies to confront past human rights abuses, war crimes and crimes against humanity, and documentation of the nature, causes and perpetrators of these crimes in Afghanistan.

of the material was reviewed during the pilot phase itself, something that, if undertaken earlier on, could have allowed for gaps and limitations to be addressed.

Each field team contained two researchers, with the exception of the team in Balkh which contained three. All researchers were female. Before beginning interviews in a community, teams would meet with the relevant district administrator and provide a briefing. At the community level, the team first introduced themselves to village elders and *wakil*⁷² and provided them with a briefing. Following the briefing, the elders and *wakil* facilitated meetings with groups of women and this served to identify potential interviewees for individual interviews, and/or directly introduced to them families known by them to have experienced wartime violations. This staged approach was followed in order to build trust and acceptance among the communities and ensure compliance with the researchers' code of ethics, in particular to seek to ensure that nobody was put at risk. Once they had access to affected families and potential interviewees the researchers made several visits to them before taking the interview.

Interviewees were informed of the purpose of the research and that their identity would be kept confidential. They were told that the intention of the project was to document their experiences in order to better understand how to support victims of gender-based violence in the future. The main method of data collection was semi-structured interviews. Interviews were recorded in notebooks and then later transferred to standardized semi-structured forms. These were later typed and saved in MS Word format. Prior to commencing fieldwork, all researchers signed an 'oath of confidentiality' in which they undertook to maintain confidentiality of all information arising from the project, as well as to refrain from any action which might compromise the safety of interviewees, victims and colleagues. The code of ethics outlined the ethical standards to be followed in respect to confidentiality, informed consent, risk assessment, promises/benefits of the project to the interviewees, special issues regarding minors, and evaluating responses to gender-based violence. Although not all statements were read back to participants verbatim, researchers did repeat their words and paraphrase what they had said to make sure they had understood the information accurately.

A total of 730 interviews were conducted as part of the pilot with the following breakdown per province:

Bamyan: 77
Daikundi: 21
Herat: 58

⁷² The term *wakil* is used to describe various types of representatives. The term can be used to describe lawyers, agents, parliamentary representatives or, as is the case here, an urban local area representative: *wakil-e gozar*. Representatives in rural areas are usually elders or influential local citizens.

Kabul 70
Kandahar: 50
Balkh 385⁷³
Jowzjan: 69

Research was conducted in 34 districts as follows:

Kandahar province: Kandahar City, Arghandab.

Herat province: Herat City, Farsi, Kohistan, Enjil, Karokh, Gozar, Ghorian, Kushkak, Kashak Rabat Sangi.

Kabul province: Kabul City.

Bamyan province: Bamyan, Shebar, Yakawlang, Saighan, Panjab.

Daikundi: Nili, Shahristan, Miramor, Khadir.

Balkh: Mazar-e Sharif, Kaldar, Nahirshai, Charbolak, Dawlad Abad, Balkh, Dehdadi, Shor Tapa, Chaharkint, Zareh.

Jowzjan: Shiberghan.⁷⁴

⁷³The discrepancy in the number of interviews conducted in Balkh compared to the other provinces is explained in the Challenges and Limitations section below.

⁷⁴ Three interviews were also conducted in Faryab, in Maymana and Andkhoy districts, however these were included in Jowzjan.

V CHALLENGES AND LIMITATIONS

As previously mentioned, the original intent of the project was to document 'wartime violations' perpetrated against women. Such violations are documented in this report, however, in presenting this report a broader approach to women's experiences of violence during the conflict has been taken to better reflect the nature of the information actually gathered. There are several reasons why this approach has been taken.

Firstly, the researchers were not trained expert investigators with a thorough understanding of international humanitarian law and the elements required to establish violations of it. This means that researchers did not always know which questions to ask in order to obtain the necessary information that would allow them to conclude that violations of IHL took place. It also shows the potential difficulties in attempting to combine oral history methods of data collection with documentation of violations recognized in international law. Oral history interviews traditionally focus on the individual's experience in its entirety, whereas documentation of violations focuses on particular elements or conduct and the context in which it occurs.

Secondly, the limited oversight and management of the project meant that the prevalence of information relating to violence not amounting to 'wartime violations' being collected was never addressed, in the sense that teams continued to collect this information even though it was not one of the original objectives. For example, a considerable amount of the data relates to domestic violence as opposed to conflict-related violence. In an effort to incorporate this information attempts have been made to demonstrate how the conflict exacerbated domestic violence, in particular early forced marriage.

Thirdly, staff felt they had to record testimonies whenever they met with an interviewee, regardless of whether the experiences contained in the testimony met the objective of documenting specific wartime violations or not. Given the absence of formal acknowledgement of past crimes and of women's experience of violence over the past thirty years, many women were eager to discuss their experiences, and researchers gave them this opportunity.

These limitations however should not be read as negating the importance of the research. A legal lens is but one way of viewing experiences. The incidents documented as part of this research all involve human tragedy and have had a significant and detrimental impact upon individuals, communities and the country as a whole.

Many of the testimonies do not contain a large amount of information or key details. The focus on violations means that in many cases, the overall context is not clear. The 'before and after' is often missing. For example, the researchers obtained information about a particular act or incident but nothing about the situation leading up to that

incident or the impact of that incident upon the interviewee after its occurrence. This limits an analysis of conditions precedent and subsequent and the overall *why*.

The pro forma used for obtaining key information such as personal characteristics, place, date, type of violations and perpetrator affiliation was not followed in a considerable number of interviews. This limits the depth of comparative analysis that can be undertaken in terms of factors such as age, ethnicity, conflict phase, etc. In some cases, the interviewees themselves withheld such details due to fears of repercussions for speaking about their experiences. In other cases the researchers faced difficulties in asking direct questions of emotional interviewees recalling traumatic and horrific experiences. Dates are not afforded the same level of importance in Afghanistan as they are in many other countries and often interviewees do not recall dates. Rates of illiteracy are high. Victims do not always know how to identify perpetrators. Some involved with the project ultimately felt that the structured part of the pro forma had been designed based on experiences in other contexts that were not directly applicable to fieldwork in Afghanistan where researchers face a multitude of challenges in accessing women in the first place.

As the project was qualitative in nature, any quantitative analysis is not definitive as it has been made based solely upon information that was volunteered, not standard questioning of all interviewees. Despite this considerable limitation, some limited quantitative analysis has been included where it was felt it could demonstrate the scale of violations.

There were also many women who declined to be interviewed. The primary reasons identified for this were a lack of trust in the justice system, fear of reprisal (from those involved in the commission of crimes or from their own family), concerns that the researchers may actually be spies, and not wanting to recall bad experiences in their lives. In some cases interviewees withheld information due to these kinds of fears. Due to the complete absence of witness protection in Afghanistan, researchers were extremely limited in what security or protection measures they could afford interviewees. Participants were provided with the contact numbers of UNIFEM and AIHRC staff and were told that they could call to discuss any security concerns. Thankfully, no security incidents were recorded against researchers or participants during the project.

In some cases, researchers did not have the ability to meet with women to discuss participation as they were prevented from entering the area by the local *wakil*. This occurred in some parts of Kabul city, where in one district out of 22 *wakil* approached, seven declined to facilitate entry to their areas. Several reasons were given for refusing access. The lack of any system to implement any form of justice in respect of the testimonies given was one reason. Recalling people's pain of past experiences without providing any other means of support or result was another. In some cases,

communities had previous experiences with researchers who had promised them certain things and then never returned.

Ideally interviews of this kind should be conducted individually and in private so as to afford full confidentiality but also to encourage full disclosure of experiences. In the Afghan context, obtaining private access to female interviewees is extremely difficult. Requests for privacy may be viewed with great distrust and suspicion. For this reason, some interviews were conducted in the presence of family members, which may have prevented full disclosure.

There are some differences in methods across the teams that are worth noting. Firstly, the geographical spread of interviews varied between offices. As an example, the Herat team covered nine districts with respect to 58 interviews, whereas the Kabul team only conducted interviews in Kabul city with respect to its 70 interviews. This may mean that the diversity of population and experiences is not as great as it could have been. Security limited access in some provinces to certain districts or the cities, for example in Kandahar. Some teams were simply more proactive in terms of geographical representation. The team in Mazar-e Sharif had been instructed to cover Balkh province but on their own initiative conducted many interviews in Jowzjan. Thirdly, the team in Balkh filled out one pro forma per *victim* as opposed to per *interviewee* resulting in duplication of some interviews. These were identified and have not been included in the analysis. The considerably higher number of interviews recorded by the team in Mazar (covering Balkh and Jowzjan) is not attributable to this error however. The team in Mazar was the only team with three researchers and so was able to cover more areas and conduct more interviews.

Finally, a word on perpetrators. Often there are expectations that reports of this nature will name the individuals alleged to have committed the violations detailed. In the incidents documented in this report it is not always clear who the perpetrators are. Sometimes they are identified solely as armed men. In many cases involving violations committed by the different mujahedin factions the perpetrators were identified as mujahedin without reference to the particular faction. Some individuals were named in the testimonies although it is not clear on what basis. Decisions to name individuals accused of violations are not to be taken lightly and such decisions should only be made after thorough investigation and corroboration, which did not occur here. For these reasons, individuals are not named in this report and there is no discussion of individual or command responsibility. Further investigation of this would be necessary.

Despite these limitations, the testimonies collected as part of the project provide a snapshot of the lives and experiences of Afghan women through three decades of conflict and make a contribution to our understanding of how conflict-related violence and violence exacerbated by conflict has impacted upon their lives.

VI STRUCTURE OF THE REPORT

Due to the large number of interviews and volume of information collected, it was not possible to include all interviews in this report. Selection of testimonies for inclusion in the report involved the weighing up of several criteria. These criteria included:

1. The level of detail or quality of the testimony. As it was not possible to include all of the testimonies in this report, testimonies which provide a higher level of detail of a particular type of violation or experience were generally given preference;
2. Geographical balance, to ensure that all seven provinces were represented in the report;
3. Temporal balance, to ensure that all conflict phases of the 1978-2008 timeframe were represented;
4. The kind of testimony provided. Generally eyewitnesses, victims/survivors and their immediate family members were given preference over more general hearsay accounts; and
5. The kind of incident described. Preference was given to specific incidents of gender-based violence, such as rape and forced marriage, over incidents that are experienced more generally, such as aerial bombardments.

The report is arranged thematically by category of violation or by a specific experience that was commonly encountered across the testimonies. This was felt to be the best way of presenting the material, given the limitations outlined above. The report does not therefore offer a comprehensive, chronological account of the conflict in Afghanistan with an assessment of who bears greatest responsibility for the commission of violations throughout. That exercise has been undertaken by the AIHRC. What it does offer is a valuable collection of predominantly firsthand accounts of women's experiences of different forms of violence from 1978-2008, a perspective that until now has been a considerable gap in the documentation library on Afghanistan.

VII CONFLICT-RELATED SEXUAL VIOLENCE

Conflict-related sexual violence is a crime that causes significant trauma to victims, their families and entire communities. In Afghanistan, the trauma suffered by victims of sexual violence is compounded by a cultural propensity to penalize victims for their perceived loss of 'honour'.

The UN system uses an agreed working definition of conflict-related sexual violence as follows:

Conflict-related sexual violence refers to incidents or patterns (for the purposes of listing in accordance with Security Council resolution 1960 (2010)) of sexual violence, that is rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity against women, men or children. Such incidents or patterns occur in conflict or post-conflict settings or other situations of concern (e.g. political strife). They also have a direct or indirect nexus with the conflict or political strife itself, that is, a temporal, geographical and/or causal link. In addition to the international character of the suspected crimes (which can, depending on the circumstances, constitute war crimes, crimes against humanity, acts of genocide or other gross violations of human rights), the link with conflict may be evident in the profile and motivations of the perpetrator(s), the profile of the victim(s), the climate of impunity/State collapse, cross-border dimensions and/or the fact that they violate the terms of a ceasefire agreement.⁷⁵

Rape and other forms of sexual violence have long been viewed as an unfortunate but inevitable part of the 'spoils' of war. It is only relatively recently that genuine efforts have been made to prosecute conflict-related sexual violence. The Lieber Code of 1863, commissioned during the American Civil War and widely regarded as the first attempt at codification of the laws of war, contained an express prohibition on rape.⁷⁶ The 1899 1907 Hague Conventions did not explicitly list rape and other forms of sexual violence as war crimes. However, Article 46 of the Regulations annexed to Convention IV respecting Laws and Customs of War on Land, applying to inhabitants of occupied

⁷⁵*Conflict-related Sexual Violence: Report of the Secretary General*, UN GAOR, 66th sess, Agenda Item 34, UN Doc A/66/657-S/2012/33 (13 January 2012), para 3.

⁷⁶*General Orders No. 100, Instructions for the Government of Armies of the United States in the Field (the Lieber Code)* 24 April 1863 <<http://www.icrc.org/ihi/INTRO/110>>. Art 44 states: 'All wanton violence committed against persons in the invaded country, all destruction of property not commanded by the authorized officer, all robbery, all pillage or sacking, even after taking a place by main force, all rape, wounding, maiming, or killing of such inhabitants, are prohibited under the penalty of death, or such other severe punishment as may seem adequate for the gravity of the offense. A soldier, officer or private, in the act of committing such violence, and disobeying a superior ordering him to abstain from it, may be lawfully killed on the spot by such superior.' See also art 47.

territory, states that ‘family honour and rights’ must be respected.⁷⁷ This encompasses a prohibition of rape and sexual assault.⁷⁸ After the First World War, rape was expressly included on the 1919 list of Violations of the Laws and Customs of War in the Report of the Commission of Responsibilities.⁷⁹ Despite its widespread occurrence during the Second World War, crimes of sexual violence were not tried at Nuremburg. However, the International Military Tribunal for the Far East and the United States Military Commission did prosecute violations of the laws or customs of war, including rape. Control Council Law No. 10, adopted by the Allies as the basis for the trial of senior Nazis who were not tried at Nuremburg, expressly included rape as a crime against humanity, however, it was never used on an indictment.⁸⁰

Article 27 of the 1949 Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War contains an express prohibition on rape, stating that: ‘Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault’. Similar provisions are found in both of the additional protocols.⁸¹ Common Article 3, applicable to internal armed conflicts contains no mention of rape or other forms of sexual violence; instead it falls under the rubric of ‘outrages upon personal dignity’.

Over the course of the past two decades there have been considerable advancements in the recognition of conflict-related sexual violence as an international crime. The scale of sexual violence perpetrated during the conflict in the Former Yugoslavia and the genocide in Rwanda prompted a change in the way in which conflict-related sexual violence was prosecuted under international law. The statutes of both the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) expressly include rape as a crime against humanity.⁸² Jurisprudence from both of these tribunals has further defined and expanded

⁷⁷ *Hague Convention (IV) Respecting the Laws and Customs of War on Land*, opened for signature 18 October 1907, (1910) UNTS 9 (entered into force 26 January 1910).

⁷⁸ M. Cherif Bassiouni, *Crimes Against Humanity: Historical Evolution and Contemporary Application* (Cambridge University Press, 2011) 428.

⁷⁹ Reproduced in Watkins and Weber, *War Crimes and War Crime Trials: From Leipzig to the ICC and Beyond* (Carolina Academic Press, 2006) 32.

⁸⁰ *Control Council Law No. 10, Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity*, 20 December 1945, 3 Official Gazette Control Council for Germany 50-55 (1946), art II(1)(c).

⁸¹ *Protocol I* art 76(1), which states: ‘women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault’; *Protocol II* art 4(2)(e), which states that: ‘outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault’.

⁸² SC Res 827, UN SCOR, 48th sess, 3217th mtg, UN Doc S/RES/827 (25 May 1993) (*Statute of the International Criminal Tribunal for the Former Yugoslavia*) art 5(g); SC Res 955, UN SCOR, 49th sess, 3454th mtg, UN Doc S/RES/955 (8 November 1994) (*Statute of the International Criminal Tribunal for Rwanda*) art 3(g). Note that under art 4(e) of the ICTR Statute, violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II, including rape, enforced

the scope of liability for conflict-related rape and other forms of sexual violence, recognizing that they can form the underlying acts of genocide, torture and other inhumane acts.

In its groundbreaking judgment in *Prosecutor v Jean Paul Akayesu* the ICTR provided the first definition of rape under international law.⁸³ It also found that rape and sexual violence can amount to genocide when committed with the requisite intent.⁸⁴ In *Prosecutor v Anto Furundžija*⁸⁵ the ICTY Trial Chamber held that universally accepted norms of international law prohibiting rape as well as other serious sexual assault are applicable in any armed conflict, and that 'it is indisputable that rape and other serious sexual assaults in armed conflict entail the criminal liability of the perpetrator'.⁸⁶ It found that rape can amount to torture and 'may also amount to a grave breach of the Geneva Conventions, a violation of the laws or customs of war or an act of genocide if the requisite elements are met, and may be prosecuted accordingly'.⁸⁷ The court also held that while rape or other serious sexual assaults are not specifically prohibited in international human rights instruments, they are 'implicitly prohibited by provisions safeguarding physical integrity, which are contained in all of the relevant international

prostitution and any form of incident assault are included under 'outrages upon personal dignity' Rape has also been tried under the equivalent provision in the ICTY statute although it is not expressly mentioned.

⁸³ 'The Chamber considers that rape is a form of aggression and that the central elements of the crime of rape cannot be captured in a mechanical description of object and body parts. The Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment does not catalogue specific acts in its definition of torture, focusing rather on the conceptual framework of state sanctioned violence. This approach is more useful in international law. Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when inflicted by or at the instigation or with the consent or acquiescence of a public official or other person acting in an official capacity. The Chamber defines rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. Sexual violence which includes rape, is considered to be any act of a sexual nature which is committed on a person under circumstances which are coercive.' *The Prosecutor v Jean-Paul Akayesu (Trial Judgment)*, ICTR-96-4-T (2 September 1998) [597]-[598] <<http://www.unict.org/Portals/0/Case/English/Akayesu/judgement/akay001.pdf>>.

⁸⁴ *Akayesu* [731].

⁸⁵ *Prosecutor v Anto Furundžija (Trial Judgment)*, ICTY, Case No.: IT-95-17/1-T, 10 December 1998, <<http://www.icty.org/x/cases/furundzija/tjug/en/fur-tj981210e.pdf>>.

⁸⁶ *Furundžija* [168]-[169]. For an interesting resource on jurisprudence of the ICTY, ICTR and the Special Court for Sierra Leone (SCSL) on sexual violence, see United Nations, Department of Peacekeeping Operations, *Review of the Sexual Violence Elements of the Judgments of the International Criminal Tribunal for the Former Yugoslavia, International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone in the light of Security Council Resolution 1820 (2009)* <http://www.icty.org/x/file/Outreach/sv_files/DPKO_report_sexual_violence.pdf>.

⁸⁷ *Furundžija* [171]-[172].

treaties. The right to physical integrity is a fundamental one and is undeniably part of customary international law'.⁸⁸

The Rome Statute of the International Criminal Court goes further than the statutes of the ad hoc tribunals, criminalizing a range of conflict-related sexual violence offences as both war crimes and crimes against humanity.⁸⁹

UN Security Council Resolution 1820 (2008) stresses the need for sexual violence crimes to be excluded from amnesty provisions and calls upon Member States to comply with their obligations for prosecuting those responsible.⁹⁰

Under the Afghan Penal Code⁹¹ there is no specific provision for the crime of rape. Instead, rape is often tried as *zina* – adultery - under Article 427 of the Penal Code with the result that both perpetrator and victim face criminal sanctions. In some cases, rape victims are encouraged to marry the rapist as a way of maintaining 'honour'. In others they find themselves victims of honour killings. Article 17 of the EVAW does criminalise rape, however it has proved difficult to enforce. Cases of rape and other forms of sexual violence are also dealt with outside the formal legal system, according to local tribal and customary practices.⁹² Under Taliban rule, adultery (including rape) was punishable by stoning to death.

Overall approximately ten per cent of testimonies related to the conflict-related sexual violence. At least 14 interviews related to the interviewee's own experience of rape. The remaining interviews related to the rape of the interviewee's family member, relative or neighbor, but in the overwhelming majority of cases it isn't clear whether the interviewee has witnessed the event or heard about it later. In Kabul and Daikundi provinces

⁸⁸ *Furundžija* [170].

⁸⁹ Art 7(1) of the Rome Statute provides that a crime against humanity 'means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (g): rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity. Art 8(2)(b) lists 'other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law' amount to war crimes. Under (xxii) 'committing rape, sexual slavery, enforced prostitution, forced pregnancy... enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions'. Art 8(2)(e)(vi) applies to armed conflicts not of an international character in respect of 'committing rape, sexual slavery, enforced prostitution, forced pregnancy... enforced sterilization, or any other form of sexual violence also constituting a serious violation of Article 3 Common to the four Geneva Conventions'.

⁹⁰ S/RES/1820 (19 June 2008) <http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1820> (2008).

⁹¹ *Penal Code*, 15 Mezan 1355 (7 October 1976), <http://moj.gov.af/content/files/OfficialGazette/0301/OG_0347.pdf>.

⁹² See The International Legal Foundation, *The Customary Laws of Afghanistan* (2004) <http://www.usip.org/files/file/ilf_customary_law_afghanistan.pdf>.

approximately 29 per cent of testimonies related to conflict-related sexual violence.⁹³ Four testimonies detailed how women and girls were detained for lengthy periods of time and subjected to what may amount to sexual slavery. Given the stigma associated with sexual violence in Afghanistan, it is likely to have been underreported.

Where interviewees have identified perpetrators by group, in the northern provinces they were most often Taliban and the sexual violence occurred predominantly during the Taliban's initial takeover of the area. In Kandahar and Kabul perpetrators were overwhelmingly affiliated to mujahedin groups and the sexual violence occurred predominantly during their control of the area.

An interviewee in Kandahar described life under mujahedin rule in Kandahar city as such:

It was the second year of mujahedin power. They had created a situation of fear for people in Kandahar. During these two years they offended and oppressed people a lot. The mujahedin even used to rape young boys, kill innocent people and marry young girls by force too.

She provided a particularly graphic eyewitness account of one girl's plight at the hands of the mujahedin. She was returning home after visiting her sister when she was stopped by a mujahed gunman outside the military division:

He came very close to me and asked me to go with him because he had some work for me. I was very frightened and stressed; I told him that I was running late so I should go. That gunman shouted at me and asked me whether I would go voluntarily or by force. There was no choice... I went inside the military division. There was a room near the entrance; they guided me into that room. When I entered there were 10 mujahedin gunmen. A girl about 16 years old was in the corner of the room. When the mujahedin saw me they told me that the girl is sick, you should help her without asking anything... The girl was pregnant and was in labor. According to their warning I couldn't ask her anything. She was suffering from bad pain and it was my first time to act as a midwife... She had a successful birth. The newborn was a son. I was in a hurry to present the mujahedin with the good news for the father of the newborn. When I came out of the room they were standing in front of the door. I called out: "Who is the baby's father?" They laughed loudly and told me that all of them were the baby's father.

Then I realized that the girl had been abducted and raped and she was being detained by them. I prayed to God that it would have been better if she had died

⁹³ Other provinces: Kandahar: 22 per cent; Balkh 7 per cent; Jowzjan 6 per cent; Herat 2 per cent and Bamyan 1 per cent.

during childbirth so that she could become free of their brutal hand. The mujahedin asked me outside and presented me with 50 000 Afghani.⁹⁴ They recommended keeping this event secret to myself... They were brutal and inhumane. When I got home I prayed to God for the girl; I begged God to save her from their hand.⁹⁵

The situation in Kandahar during the mujahedin period was one of wanton violence, anarchy and impunity. Abduction and rape were common occurrences. Even in their own homes, the people of Kandahar were not safe from the brutality of the armed gunmen from the various factions that had carved up the city. The researchers interviewed three sisters who recalled their own brutal rapes by armed men during the first months of mujahedin rule in Kandahar city. According to the sisters, who independently corroborated each other's account of the incident, a large number of armed men entered the girls' home looking for money. The first sister recalled:

One night a lot of strangers entered my home and asked my father to give them money... they beat my father severely and also my neighbors. They raped me and my two sisters, using the excuse of money. They took me to the kitchen and tied my mouth with a scarf. I tried to resist them a lot and cried for them to release me. They didn't accept and told me, "your father and your cousin must pay us money, if there is no money, so you are OK for us and we are your guest tonight; please be a good host for us and show us hospitality". Finally they took my clothes off and raped me. At first there was one person to rape me and then two others raped me. I became unconscious and don't know what happened afterwards. When I regained consciousness I opened my eyes and felt my body was tired and bruised. God will punish them.⁹⁶

The second sister provided her own account of the incident and the impact it has had upon her life:

Two of them raped me; they had civilian clothes and they were all adults. They treated me very cruelly. As a result of what they did to me, I am still at home and will never marry. I was sixteen when they raped me. My sister, who was two years younger than me, was also raped by them. My sister has six children now; she married a vague person that has no family members, but my sister lives with him and life goes better for her than me. At least she is not ill fated; she has a husband. But I will have to spend my entire life at my father's home. I have no future; therefore I have no hope to live. My brother's wife sometimes fights with

⁹⁴There is an Afghan tradition known as *shirney* in which a person who brings others news of the birth of a child is given money. 50 000 Afghani was a very small amount at the time.

⁹⁵ KDR53.

⁹⁶ KDR14.

me and ridicules me. She says: "you must be bad as you failed to marry someone, if you were a good person someone surely would have married you".⁹⁷

The third sister, who is married, corroborated her sisters' accounts and stated that she is now content with her life:

I have six children, five sons and a daughter. My husband never asks me about my past. He treats me in a good manner and I am happy with him. Things are going well for me.⁹⁸

A woman from Daikundi province related her experience of rape by armed gunmen of local commanders in 1377 / 1998-1999. Like many local men, her husband had fled the village, leaving women and children defenseless against armed groups.

One night while I was sleeping with my three children they entered our house and my children woke up and started screaming. They took my children to another room and shut their mouths and came back and tied my hands. I tried a lot to defend myself but I couldn't because they were six people. One by one they raped me. When they finished their inhumane action they went. I was under mental pressure and was praying to die after that night.⁹⁹

Another woman from Daikundi provided a similar account of her rape at the hands of armed gunmen, after they had killed her husband in 1378 / 1999-2000. At the time she was the sole caregiver of 15 children:

Every day they were coming to our house with new excuses, stealing our possessions and asking: "Where are your husband's weapons? Where have you hidden his gun?" I told them repeatedly that I hadn't seen it and he never kept his gun at home, but they never accepted it. They were ten people and their faces were covered. They locked my children in one room and took me to another room. They asked me to show them where the guns were hidden. I was afraid of what they intended to do to me. I heard one of them say: "Take this indecent woman's shalwar¹⁰⁰ off!" I was shocked by these words and tried to stand against them and fight for my dignity and family reputation but I couldn't. I was weak and sick and there were ten of them. They tied my hands and one by one they raped me until those wild people got full of doing wild actions with me then they left.¹⁰¹

⁹⁷ KDR15.

⁹⁸ KDR16.

⁹⁹ DKN21.

¹⁰⁰ Pants.

¹⁰¹ DKN5.

The Taliban's takeover and control of Northern Afghanistan resulted in widespread abuses. Whilst their pattern of arbitrary arrest, detention and summary execution of male civilians is well documented, the rape of local women by Taliban forces is less well known.

One woman described how she was raped by three Taliban soldiers in her home after the Taliban attack on Sheberghan, Jowzjan province, on 15 Sunbola 1376 / 6 September 1997:

I was at home with my children. Taliban asked me where my husband was and I told them that my husband had gone with his brother to a funeral ceremony in Sheberghan city. Taliban didn't believe me and they beat me severely. They had beaten my brother-in-law's wife also and I heard her screams. My children and I were crying and pleading with them.... One of the Taliban slapped me hard and blood came out of my nose and my mouth. They beat me by lash and gunstock to my waist. My children were crying and yelling. I had two sons and my children were crying and begging them to stop beating their mother... Then one of the Taliban took my two children out of the house. When I tried to prevent them, one of the Taliban punched me and grabbed my hair and pulled me back. I was alone at home. They wanted to rape me, but I resisted them as much as I could. I screamed and broke the glass of the window, but they beat me severely and closed my mouth. All of my clothes were torn off. My face and my hands were injured. Because of heavy bleeding from my nose, all of my clothes became bloody. Inevitably all three of them raped me and then they left the house. After the rapes I faced a long-term menstruation. I couldn't sit for about two months. The next day, the Taliban retreated from Sheberghan.

Aside from the physical injuries and trauma she sustained, the interviewee suffered the stigma associated with having been raped. She told the researchers of her husband and brother-in-law's reaction when they became aware of what had happened:

My husband and his brother were deeply unhappy. They felt neither the earth nor the sky had a place for them. They were really angry.... After that my husband avoided having sexual intercourse with me. I was ashamed. I used to sit in the corner and cry. After a long time my husband realized my difficult situation and continued his married life with me.¹⁰²

The above interviewee's sister-in-law provided a strikingly similar account of the incident. A mother of four, she was living in a different house but in the same compound at the time. Taliban soldiers also raped her. After becoming aware of the rapes, her husband "was no longer interested" in her and after several months he married for a

¹⁰² BLK148.

second time.¹⁰³ Her fate is by no means unique among rape victims in Afghanistan, where the task of upholding the family name and ‘honour’ rests upon women. In most cases, there is little to no consideration of rape as a violent crime. Instead, victims are punished for their perceived loss of ‘honour’.

With news of a Taliban advance, local men and boys would typically flee their village to avoid capture by the Taliban. This left women, children and those men who were incapacitated or too old to flee vulnerable to Taliban abuses. In some cases, failure to produce the men and boys of the house for arrest resulted in the punishment of women and girls through beating and rape.

One woman told of how she, her daughter and daughter-in-law were raped by Taliban at their home in Balkh province in Jowza 1380 / May-June 2001:

Six armed Taliban entered our house to search for our young sons. My husband and I were in the same room. Taliban beat my husband severely to make him tell them the whereabouts of his sons and weapons. However, we had no weapons and our sons were not at home. We insisted that our sons were not at home, but they never accepted this. Taliban took my husband out of the house and they were beating his head with sticks. His head was injured due to the beating and blood was flowing from his head. Four Taliban stayed at our house, but two Taliban took my husband to their military base. We continued to cry and scream for them to release my husband... the remaining four raped us... When Taliban decided to rape us, my daughter and my daughter-in-law shouted and screamed. Taliban beat them so much that blood was flowing from their bodies. Their clothes were torn and their faces became dusty. Finally Taliban raped them. I was watching the scene as the Taliban raped them and I was shouting and crying. Two Taliban beat me hard and tore my clothes; they pulled my hair out and both of them raped me as well. I resisted them because of my honour and reputation, but they beat me so severely that I was unable to move. There was no one to hear us and Taliban did everything they wanted to us.¹⁰⁴

The woman’s husband was released by the Taliban and returned home the next day. None of the women who were raped ever told him or anyone else about what happened, due to fear that he may leave home out of shame if he ever found out. The woman’s daughter and daughter-in-law also spoke to the researchers and corroborated her account of what happened.¹⁰⁵

¹⁰³ BLK149.

¹⁰⁴ BLK608.

¹⁰⁵ Recorded in BLK608.

VIII ABDUCTION AND DISAPPEARANCE OF WOMEN AND GIRLS

Researchers collected at least 18 testimonies related to the abduction and disappearance of women and girls by armed men during all phases of the conflict.¹⁰⁶ Whilst in some cases, the abducted women and girls eventually found their way home, many disappeared never to be seen or heard from again. Typically those abducted were forced into marriage or used to provide sexual and domestic services to armed groups.

A woman from Kandahar told the researchers what happened in the second year of Babrak Karmal's rule after Soviet forces came through her area looking for mujahedin and then left:

*All the streets became full of mujahedin taking all the houses under their rule and doing wrong to people. They killed some people in their houses. They disgraced some women and burned the houses. In our house they shot my husband and took my young girl away with them. They left all the people shocked and saddened with the grief of their loved ones. My dear girl is still disappeared and we don't know if she is alive or dead. My husband got ill, TB, because of what happened to his daughter and the stigma of it and passed away after two years. I, with my three remaining girls, am still alive, but the pain of my missing daughter is still tearing at my heart... the people of Kandahar witnessed all of this with their own eyes.*¹⁰⁷

Two interviewees in Balkh province described the abduction and two month detention of a ten year old girl from their village by the Taliban in Jowza 1377 / May-June 1998. The first interviewee stated that after the Taliban came to their village, life became very difficult for women, as they weren't allowed out without *mahram*.¹⁰⁸ In many households, the men were out working in the fields during the day and women were unable to go out, even to bring water. Women who were pregnant or unwell were unable to visit the doctor or hospital. For one family, the decision to send their young daughter out to bring groceries had tragic consequences. As the first interviewee recalled:

One day Shakila¹⁰⁹ who was a 10 year old girl went to the bazaar to bring some groceries because it was urgent and no one was at home. She went and then

¹⁰⁶Of these, seven occurred during the mujahedin period, six during the Taliban period, two during the Karmal period, one during the Najibullah period, one during the Karzai period, and one kidnapping occurred at an unspecified time. Perpetrator affiliation as described by the interviewees was eight mujahedin, six Taliban, one by relatives and three cases where perpetrators were identified as armed men with no further affiliation.

¹⁰⁷ KDR 23.

¹⁰⁸ Male guardian.

¹⁰⁹ An alias has been used to protect the identity of the victim.

she disappeared. Her family looked everywhere for her. They asked the shopkeeper whether he had seen their daughter but he told him she had not come to his shop. She was missing for two months. Then one day she came back home. Her condition was really bad, she was sick and she was crying. Eventually she told her mother: "After I left home some Taliban soldiers abducted me and for two months they were using me for their sexual needs and today they brought me back to village". This incident devastated her family and they lost their dignity in the village. Her father was saying: "We had hoped to find your dead body instead of seeing you alive" but her mother was happy that she got her daughter back alive.¹¹⁰

In Jowzjan province researchers spoke to a woman who witnessed her sister's abduction by the Taliban after they entered Shiberghan for the first time in 1377 / 1998-1999. She recalled the incident as follows:

About ten Taliban had entered our courtyard... They started to beat my father ... They beat my father by lash so much that he was unable to move. First they asked my father to give up his weapons and to show them the commanders' houses. When my father told them that he had no weapon and didn't know about any others they would beat him harder. At that time I was also living with my father at the same house. The Taliban abducted my sister and took her with them. My mother tried to prevent them, but they warned her and fired a gun to intimidate her. My father was unable to move and if he tried to move, he fell back down. My father was begging them in the name of Allah not to take his daughter. My father asked them to kill him instead of abducting his daughter. He begged them to release his daughter because of Allah, but they didn't listen to his appeal. My mother was panicked and scared; she followed Taliban and used bitter words. One of the Taliban came back and beat my mother on her head with the gunstock. My mother fell down on the ground. The Taliban, who had black turbans, took my sister.¹¹¹

The woman stated that since that day her mother suffers from mental health problems and that if family members do not watch over her, she leaves home and wanders off. The victim's aunt was also at the house that day and corroborated the above account. She added:

Suddenly they saw my young brother's daughter, who was 17 years old. They pulled her away from us. We tried to convince them to release her, but they didn't consider our appeal. They took her. It is nine years now that we have heard

¹¹⁰ BLK429.

¹¹¹ BLK145.

*nothing about my brother's daughter. We don't even know if she is alive or dead.*¹¹²

IX FORCED MARRIAGE OF WOMEN AND GIRLS

Forced marriage can be defined as any marriage in which a party does not freely consent to the marriage, and where coercion is involved to ensure that the marriage takes place. Forced marriage is a human rights violation. Under Article 16(2) of the Universal Declaration of Human Rights, 'marriage shall be entered into only with the free and full consent of the intending spouses'. This same right is also found in Article 16(1)(b) of the CEDAW, under which States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage; in the ICCPR;¹¹³ and the ICESCR.¹¹⁴ In a 2009 judgment, the Special Court for Sierra Leone handed down the first ever verdict of forced marriage as a crime against humanity (other inhumane acts) by an international criminal tribunal.¹¹⁵

It should be emphasized that forced marriage is not allowed in Islam as 'marriage in Islam can only be contracted with the free consent of both parties'.¹¹⁶ In his text on Shari'ah law, Professor Abdur Rahman I. Doi points to the words of the Prophet Muhammad himself that 'the widow and the divorced woman shall not be married until her order or ordained, and the virgin shall not be married until her consent is obtained'.¹¹⁷ There are *hadith*¹¹⁸ relating to the Prophet Muhammad's granting of a right to repudiate marriage where a woman had been married against her wishes.¹¹⁹

In Afghanistan, the forced marriage of women over the age of 18 and widows is criminalized by Article 517 of the Penal Code, which states:

- (1) A person who gives in marriage a widow, or a girl who is eighteen years or older, contrary to her will or consent, shall be sentenced in view of the circumstances to short imprisonment.¹²⁰

¹¹² BLK145.

¹¹³ Art 23(3).

¹¹⁴ Art 10.

¹¹⁵ See *Prosecutor v Sesay, Kallon and Gbao (RUF Case) (Trial Judgement) (Case No. SCSL-04-T)*, 2009 <<http://www.sc-sl.org/CASES/ProsecutorvsSesayKallonandGbaoRUFCase/tabid/105/Default.aspx>>.

¹¹⁶ AbdurRahman I. Doi, *Shari'ah: The Islamic Law* (A.S. Noordeen, 6th ed, 2002) 123.

¹¹⁷ Ibid 123 (Bukhari 67:42)..

¹¹⁸ A narration recording the saying, action, tacit approval, habit, or physical description of the Prophet Muhammad.

¹¹⁹ Ibid (Bukhari 67:43).

¹²⁰ Art 102(2) of the Penal Code provides that the duration of short imprisonment is 'not less than twenty four hours and more than one year'.

- (2) If commitment of the crime specified under the above paragraph is for the purpose of “*Bud dadan*” (as a compensation for a wrongdoing), the offender shall be sentenced to medium imprisonment not exceeding two years.

Forced marriage includes child marriage, as children are considered incapable of giving consent. Article 16(2) of the CEDAW states that the betrothal and marriage of a child shall have no legal effect. In Afghanistan the legal age for marriage is 18 for men and 16 for women under both the Civil Code and the Shia Personal Status Law.¹²¹ The Civil Code also provides that where a girl has not reached this age, she can only enter into marriage if her father or a competent court allows the marriage.¹²² Under Article 94 of the Shia Personal Status Law, where a girl’s guardian believes she has reached puberty and is fit to marry below the marriageable age, a court can determine whether this is so. Given that the overwhelming majority of marriages in Afghanistan take place well outside the legal system, these provisions have virtually no effect upon marriage practices. Another issue is the lack of formal documentation that proves age, such as birth certificates and *taskera*.¹²³ It is very difficult to negate claims that a girl is of legal marriageable age in the absence of such records. As a result, many Afghan girls are married below the legal age.

Overall approximately 11 per cent of interviewees reported that either they or an immediate female family member had been a victim of forced marriage. The highest figures were recorded in Kabul and Herat provinces at approximately 23 and 22 per cent respectively.¹²⁴ It should be noted that forced marriage is not to be equated with arranged marriage, even though what constitutes ‘forced’ as opposed to ‘arranged’ can sometimes be difficult to distinguish. Family and *qawm*¹²⁵ dynamics often mean that there is some level of pressure involved even in arranged marriages.¹²⁶ For the purposes of this report, marriages were deemed to be forced where the interviewee herself expressly described it as forced, or where it involved the marriage of a child. Circumstances are also indicative of forced marriage, either because the girl has effectively been ‘sold’ into marriage at a very young age, or because she has been removed from her family through the use of violence or threat of violence.

¹²¹ *Civil Code*, 15 Jaddi 1355 (5 January 1977) / 15 Jaddi 1355, Art 70
<http://moj.gov.af/content/files/OfficialGazette/0301/OG_0353-1.pdf>; Shia Personal Status Law, Art 94.

¹²² Art 71(1).

¹²³ National Identity Document.

¹²⁴ Other provinces were approximately as follows; Bamyān 16 per cent; Kandahar 12 per cent; Jowzjan 11 per cent; and in Balkh, 7 percent.

¹²⁵ *Qawmis* a flexible term applied to a group of people bound by commonality such as tribe, ethnic group or being from the same village or locality.

¹²⁶ For a detailed discussion of Afghan marriage practices see Deborah J. Smith, *Decisions, Desires and Diversity: Marriage Practices in Afghanistan* (AREU 2009)

<<http://areu.org.af/Uploads/EditionPdfs/905E-Marriage%20Practices-IP-web.pdf>>.

The actual number of forced marriages is likely to be much higher for several reasons. Firstly as the project was not quantitative, researchers did not routinely ask interviewees whether their own marriage or those of their immediate family members were forced, so only information that was volunteered can be considered. Secondly, many women may not conceive of their marriage as being 'forced' as they believe that the way in which they were married is standard marriage practice in Afghan culture, in their *qawm* or in their community. They may define 'forced' marriage as marriage involving physical violence or abduction and consider some level of coercion normal. Finally, some interviewees who had been subject to forced marriage may not have been able to speak about it, due to the presence of family members. All of these factors are likely to have contributed lower than expected figures on forced marriage.

The forced marriages described in this report can be roughly divided into two types. The first type is where the girl or woman is taken by force from her family, typically by armed men, either for themselves or for their commander. In such cases violence may be used or the family may be coerced into agreeing to the marriage under the threat of violence. The second type is where the girl or woman's father or male guardian consents to the marriage and marries her against her will. In both cases, poverty exacerbated by the conflict situation, appears to have been a primary factor. Fear of rape, abduction and the loss of family 'honour' were mentioned by numerous interviewees as factors that motivated them to marry their daughters off at an early age.

A *Forced marriage with armed men/commanders*

In approximately 29 per cent of cases of forced marriage families were powerless to stand against armed intruders' and commanders' requests to marry their daughter. These requests were not so much requests as demands and always involved violence or the threat of violence.

One woman provided a detailed account of the forced marriage of her two young daughters, neither of which was of the age to attend primary school in Afghanistan. Her husband was arrested during Najibullah's presidency and detained for over two weeks by government militia. When he eventually returned home, he described how he had been tortured and how his captors had demanded he hand over his daughters or they would kill him and his family.

Her husband's captors came to take the girls and invited her and her husband to attend the wedding party, to which they reluctantly agreed. She recalled:

We didn't know the name of the area. Finally we reached their home. They were shepherds in a village and their women were also guarding the herd. They were dirty people. My daughters used to play with each other for entertainment. They didn't know about their future. After khoftan prayer at night, my daughters slept,

one of them on my right side and the other one on my left side. Those ruthless people urged us to pronounce the nekah. As usual a sixty year old man married one of my daughters and a 35 five year old man married my other daughter. Each of them took the girls with them to their rooms. I cried as much as I could and I urged them that my daughters are only children. They didn't accept my pleas. The old man was a cruel and ruthless man. At first when my daughter entered his room, she didn't know what would happen to her, so she started crying for her mother. The old man slapped her harshly to stop her crying. I heard the cries and screams of my daughters until midnight... I cried the entire night and then told my husband that I can't tolerate violence against my daughters so it would be better for us to leave here early morning...

*Now if you were a judge, would you find me entitled to be mad, or not?*¹²⁷

A victim of forced marriage to a Taliban commander¹²⁸ shared her story. In 1378 / 1999-2000 some Taliban came to her home and asked for her hand in marriage on behalf of one of their commanders. Her father refused, so they took her by force. She recalled:

My fiancé was about 50-years old. When I married him, he already had another wife. On my wedding day three Taliban military vehicles came to my house and Taliban militants got off the vehicles and surrounded our house. They brought along a veil and a set of dresses. They took me with them without previous matrimony. My husband was from Kandahar... He forced me to have sexual relations with him as a forced marriage. This situation continued for four years. After the collapse of the Tailban he took me to Pakistan....

The victim's father travelled to Pakistan and found her, and eventually succeeded in obtaining permission to bring her back to Afghanistan.

After ten days he [the husband] came to Afghanistan and asked me to go with him to Pakistan. I refused and he threatened to take me by force. But my aunt's husband warned him that now there is no Taliban rule, so you can't do that.

The interviewee is currently living with her family. She stated that her husband had been arrested by police but was subsequently released. The son she bore as a result of the forced marriage remains with her husband. She stated:

I am in an uncertain situation. My unlawful husband regularly calls to threaten me that if the Taliban come to power again, he will kill me and my family. I filed complaints with AIHRC and the Ministry of Women's Affairs but they didn't help me yet... I need help. I want a divorce, even if it costs me my son... because I

¹²⁷ HRT53.

¹²⁸ KBL31.

believe that our marriage was illegal. Whenever my husband wanted to have sexual intercourse with me, I used to tremble and he would beat me... I do not need money, but I want to be rid of this uncertainty. I want to be safe from that cruel man.

A man from Kabul¹²⁹ told of how his daughter, who had been a second year medical student, was a victim of forced marriage in 1377 / 1998 during the Taliban regime. He and his wife had eight daughters and no son and were powerless to defend their daughter against armed Taliban when they entered their home and threatened to burn the entire family alive if they didn't hand over the daughter:

In order to save our lives, she sacrificed herself... She has had five children since her marriage. Once they brought her to our home for ten days. She told us about her life and how they would beat and torture her. She was having lots of problems in her husband's family. I told her: "I won't let you go back, stay with us!" But she said: "No father! We don't have a brother to stand with you against them and if they find you they will kill you. I don't want to put you and my seven sisters in danger. We have to think of them too". And then she went... Now it is five years that we haven't seen her. Only once I went to her home. She was living in a dark house in a remote area. Since I came back I can't sleep. Every time I talk with her sisters about her way of living and the problems she had in her life we all cry because we can't do anything for her.¹³⁰

One of the victim's sisters was also interviewed and corroborated her father's account.¹³¹

BLawlessness and fears of sexual violence as an instigator of forced marriage

Reports of sexual violence by armed men from the earliest days of the conflict instilled great fear into entire communities. It appears that families were worried about how they would protect their 'honour' in the event of armed groups entering their village or local area, given the situation of conflict and lawlessness. This prompted some families to marry their daughters at a young age as a result.

A woman from Engel district in Herat province told of how her neighbor's daughters were taken by gunmen, raped, and their bodies brought back to the family during the Soviet period. She recalled that: "people lived in horror after that. I remember that

¹²⁹ The research methodology envisaged interviews with women only, however, in this case the family preferred that the father of the victim be interviewed along with one of the victim's sisters.

¹³⁰ KBL72.

¹³¹ KBL73.

everyone was eager to impose early marriage for their girls, due to fear of abduction by militias".¹³² The interviewee did not know what happened to the family after the incident.

Another woman from Herat province shared the pain of her daughter being forced into marriage as a child due to community fear of militias during the same period:

*I made my two daughters marry early. One of my daughters was 12 years old when she married. She married an old man... due to fear of her father. I was against this marriage, but her father reasoned with me that he had not been able to stand against militias. He advised me to get rid of them [the daughters]. Now she is 30 years old and she damns us, because of forced marriage. But what choice did we have?*¹³³

An interviewee from Jowzjan province provided a similar account of her daughter's forced marriage during the Taliban period:

My daughter was 14 years old when her father made her to marry a 65 year old man because of fear that the Taliban may abduct her. Her father forced her to marry the old man regardless of either her own consent or my consent - I am her mother! My daughter used to cry and scream to show her unhappiness about her father's decision. Her father forced her to marry the old man. Her father used to argue with her that if you don't marry, Taliban will abduct you. She was forced to marry. After her marriage she gave birth to one daughter and one son and her old husband died five years later. Now my daughter with her two children and her two sisters-in-law who are also widows live in the same house and provide their livelihood by weaving carpets.

*She says to me that her father has destroyed her future. If someone advises her to re-marry she refuses such suggestions. She says that she hates the name of 'marriage' and she hates the name of 'husband' and what was the benefit of her first marriage? She is concerned about her children. She says her parents ignored her and we thought that she was a burden on our shoulders.*¹³⁴

The testimonies indicate that the forced marriage of girls due to fear of abduction and sexual violence has occurred throughout all phase of the conflict.

C Poverty as an instigator of forced marriage

Approximately 13 per cent of interviewees described how they were 'sold' or married off for money in an attempt to alleviate poverty within their family. This appears to have

¹³² HRT27.

¹³³ HRT26.

¹³⁴ BLK143.

been particularly so where girls were orphaned at a young age and raised by paternal relatives, many of whom no doubt were already struggling to feed their own children in a situation of conflict, lawlessness and poverty with little opportunity for employment.

A woman from Kandahar province told of how in 1359 / 1980-1981 she was 'sold' at the age of 13 to satisfy her father's debt:

Since my father was injured and his horse had been killed, we had no resources for our livelihood. Also he had no equipment to run any occupation. My father was forced to borrow an amount (30000 Afg) from his close friend. Within a year my father's friend asked him to return the money, but my father had nothing to pay him. My father's close friend complained to the relevant government agency; so the officials imprisoned my father. Two months later my grandfather sold me to a strange old man because of my father's debts. The old man (my imposed husband) paid my father's debts in the presence of government officials, so they released my father from prison. Within two days of my father's freedom the old man married me.¹³⁵

One victim of forced marriage in Jowzjan province spoke of the perceived burden of daughters upon families in times of economic hardship. She believes that it was this mindset that led to her father forcibly marrying her off:

It was 1377 [1998-1999] at the time of Taliban rule... we were nine in my family... My father decided to marry me to a forty-year-old man who was his friend and his neighbor in the workshop. He was a widower and he had two sons and one daughter. When I was informed of my father's decision, I warned my father that I am not satisfied with this marriage. However, my father got angry and yelled at me. He told me that I was a rude and shameless girl. He argued with me that he had not seen any daughter challenge her father's decision. My father abused me and said insulting words to me. He told me that he had made his decision and he would arrange my marriage with that man and he would run me out of home. Of course my family's economic situation was not good and my father was thinking that it is better to arrange the marriage of his daughters. He thought by arranging our marriages, he would lessen a heavy burden from his shoulders, even though we did tailoring at home and we were able to help our family with home expenditures. My father arranged the engagement party... After several months, I found out that [my husband] is a lazy man and a gambler. I knew that he had behaved badly with his ex-wife and he had a bad life-style. My father was stubborn and selfish; he insisted upon this marriage. I had no choice, unless I killed myself. I felt so unfortunate and desperate... I was disappointed

¹³⁵ KDR3.

*with my life. Our house had a basement where my father used to store his shop goods. I went to the basement and drank some acid that my father used to use for coppering. My mother was informed and came to me. She rescued me and carried me to hospital so I survived.*¹³⁶

After she was released from hospital the interviewee married the man. She now has three children but remains desperately unhappy with her life.

One of the more disturbing aspects of the forced marriage testimonies is the age of the victims. Over half of victims – approximately 52 per cent - were between the ages of 10 to 14 when they were forcibly married. Poverty is the primary reason that families marry their daughters at a young age. The conflict and culture of impunity has allowed warlords and others who benefit financially from criminality to offer large sums of money to families for the marriage of young girls, offers which many poor families cannot refuse.¹³⁷ Girls forced into marriage at a young age are extremely vulnerable to injury and illness, as their bodies are not fully developed to cope with the demands of marital life. Afghanistan has one of the highest rates of maternal mortality in the world, something directly attributable to the frequency of marriages of girls under 15 years of age.¹³⁸

A woman from Jowzjan province told of the problems faced by her niece when she was forced into marriage at the age of 12 by her father, a man who believed that “girls are for nothing”:

Her father accepted the marriage proposal without asking anyone at home. At that time Fatana¹³⁹ was 12 years old and [her husband] was a 45-year-old man. When my sister found out about this arrangement she asked her husband: “Why have you done this injustice to your daughter? She is still a child and she does not agree!” but as her husband was a person who was taking each decision by himself he didn’t listen to his wife. Her husband took all responsibility and made all the decisions and didn’t let others interfere and he didn’t give any rights to my sister regarding her daughter. Sometimes Fatana’s father and brothers were beating her and they were insulting her, finally, Fatana was married to that that

¹³⁶ BLK156.

¹³⁷ Max Planck Institute, *Family Structures and Family Law in Afghanistan: A Report of the Fact-Finding Mission to Afghanistan January – March 2005* (2005) 18.
<http://www.mpipriv.de/shared/data/pdf/mpi-report_on_family_structures_and_family_law_in_afghanistan.pdf>.

¹³⁸ A survey conducted by Media Mondiale in 2007 found a strong correlation between child marriages and maternal mortality, see MedicaMondiale, *The Impact of Gender-based Violence on Females Reproductive Health*, <http://www.medicamondiale.org/fileadmin/content/07_Infothek/Afghanistan/Afghanistan_females_reproductive_health_medica_mondiale_2008_UNFPA.pdf>.

¹³⁹ An alias has been used to protect the identity of the victim.

*45-year-old man against her will and choice by force. After the marriage Fatana's health condition was not good because she was underage. That is why her womb came out and she was not able to walk properly after marriage. Her in laws were careless people and they didn't take her to the doctor. They were saying that it is shameful for us to take our women to a doctor. As Fatana was a small girl and she had newly left her family, tears were rolling from her eyes and her hands were trembling. She was helpless, just relying on Allah, nothing else.*¹⁴⁰

A woman from Bamyan told of how her family's bad economic situation precipitated her marriage at the age of 10 to a 35 year old man in 1377 / 1998-1999. Her husband was wealthy and already married but his first wife had not borne him a son. The witness endured years of domestic violence in the forms of beating and assault with stones and wood. Eventually she obtained a divorce and returned to her father's home, but without her clothes and trousseau.¹⁴¹

In some cases, daughters are simply treated as chattels to be sold, bought or traded. A woman from Jowzjan related the experience of a girl she knew in 1379 / 2000-2001:

*Ziagul's¹⁴² father is an irresponsible person. He is always gambling and selling his possessions to satisfy his gambling debts. He even lost his house, but he kept gambling. He lost his seven-year-old daughter in gambling... Now Ziagul is 14 years old and the man to whom she was lost in gambling sold her to a shepherd. One day that shepherd came to her house and told her father: "I have bought your daughter from the person you lost to in gambling and now you don't have the right to stop me from taking her". Ziagul cried a lot and she begged her father to take some time and pay the money back. Her father told her: "I am not going to take time or pay his money. Whenever he pays money to the person from whom he bought you then I am going to give you to him, because I don't have any rights over you. You're just like the other possessions that I lost".*¹⁴³

A woman from Kaldar district, Balkh province, related her experience of forced marriage in 1372 / 1993-1994 during the Islamic State of Afghanistan period. She described how she was forced to work constantly weaving carpets in order to pay back the family for the large amount of money spent on her dowry:

My father married me with a person without my agreement for a huge dowry. That is why after my marriage my husband was scoffing at me: "I have spent lots

¹⁴⁰ BLK192.

¹⁴¹ BMN35.

¹⁴² An alias has been used to protect the identity of the victim.

¹⁴³ BLK173.

of money on you, now you have to work for me as I want to get back the money that your father took from me for your dowry". I was weaving carpets day and night because that was my husband's decision. Whenever I was telling him that I am tired or I need to sleep he was warning me "if you talk a lot I will tie you to the carpet pole and will make you into carpet weaving thread". When I was pregnant I was begging him that I am pregnant and I need to rest, but he was telling me: "If you stop working I will bury both of you in the cemetery".... When he comes home we are not talking with each other and since our marriage I can't remember even one day that we laughed together or had a happy moment.¹⁴⁴

D *The impact of forced marriage upon victims*

Interviewees told the researchers of their distress at being forced into marriage. The testimonies which provide some insight into the mental state of women and girls faced with the prospect of forced marriage repeatedly mention feelings of depression, stress, anxiety and consideration of self-harm and suicide as a better alternative. For those women and girls who raised their opposition to their forced marriage with their families, the reaction was often one of violence. The callous indifference shown to these women and girls by those who are supposed to be their guardians can only have a detrimental effect on their mental health and in particular their self-esteem. High levels of stress, low self-esteem and lack of support from their own family can increase the vulnerability of women and girls to abuse in their married life and limit their options for escaping abusive situations.

One woman from Balkh province who was engaged by force in 1380 / 2001-2002 at the age of 15 to a 45 year old man and who at the time of the research was still engaged, told of her distress and fear of being married against her will:

I was against this decision... [My fiancé] is ignorant, jobless and a gambler and I don't like him because there is a big difference in our ages. I didn't choose to get married. I want to continue my education and have a highly respected family and future. Since I got engaged with that old person I suffer from headaches, weakness and low blood pressure. My mother says it is a defect in the Turkmen tribe that "if you leave your fiancé no one will marry you in the future and this will destroy our family name and reputation. Now it is too late you don't have any other choice so accept your father's decision and marry that person". I would prefer to die instead of marrying that old man. I hate this so much that sometimes I decide to fall in well in order to kill myself, but later I think of my mother and my small brother and what would happen to them if I die. My father would kill my mother and my small brother would be alone. Now I am confused about what to

¹⁴⁴ BLK117.

*do and there is no one to help me. I am sure that I won't have a good life after marriage because they are poor... their women weave carpets and then sell them and the money which comes from the carpet goes to men's pockets. They don't buy clothes for women, they are not allowed to go to a doctor and if a stranger sees their face they divorce that woman. This makes me so stressed about what will happen to my life if I marry this person.*¹⁴⁵

One eyewitness told the researchers about an incident which she witnessed under mujahedin rule in Jowzjan in 1374 / 1995-1996. According to the witness, a girl had forcibly engaged to a friend of her father "for a huge amount of money". The girl expressed her opposition to this engagement and her father responded by beating her. She later ran away with a young man whom the witness described as the girl's boyfriend. Upon hearing of this, the fiancé came to the girl's home with two policemen and took her 15-year-old sister Zahra¹⁴⁶ in her place by force.¹⁴⁷

A second interviewee familiar with the incident told of how Zahra suffered for her sister's 'crime' of running away:

*Zahra was 15 years old but the man was 43 years old. She was desperately unhappy. She left for her unwanted husband's house in her working clothes. When she went to her husband's home, she was imprisoned. She lost all of her dreams in life. The conditions of her life there were unendurable. Everything ended for her and she realized that she was not able to feel free as she was at her father's home. Sometimes Zahra was beaten by her husband. Her husband's family used to dishonor her. She was not allowed to go to her father's house... She experienced a bitter life and had no value to her husband's family because [her sister] had run away from home.*¹⁴⁸

The researchers also collected eight testimonies describing the suicide of women and girls who had been victims of forced marriage or forced engagement. Another seven testimonies related to attempted suicide or suicidal ideation due to forced marriage or forced engagement. Another woman from Jowzjan province told of how her cousin Banin¹⁴⁹ committed suicide after being forced into marriage due to her family's bad financial situation:

It was 1377 [1998-1999] during the Taliban period and the country was in a really bad economic and security situation. People were suffering a lot due to problems such as poverty and unemployment. They were barely surviving. One of my

¹⁴⁵ BLK50.

¹⁴⁶ An alias has been used to protect the identity of the victim.

¹⁴⁷ BLK157.

¹⁴⁸ BLK158.

¹⁴⁹ An alias has been used to protect the identity of the victim.

aunts had five children and her husband was a shopkeeper. They were not in a good financial situation. All members of their family were uneducated and due to the war they were living in poverty. Men were the decision makers in their family, so one day without asking Banin's decision her father engaged her to one of his relatives who was 45 years old for a lesser amount of money. Even though she was against this marriage her family forced and beat her and they did her nekah¹⁵⁰ Her husband was seeking a pretext to beat his wife such as food not being prepared on time and the house not having been cleaned and so on. This was his second marriage and there was big difference of age between him and Banin. After three months of her marriage... she poured petrol on herself and burned herself and she died after two hours in hospital.¹⁵¹

Women who fled situations of domestic violence after forced marriage told of how they were shunned by their families upon return to their father's home. A woman from Bamyan told of how she was forced into marriage with a relative at the age of 15 during the Karzai government period in 1381 / 2002-2003. "My father told me that he will keep you happy in life, if you marry him he is our close relative and you won't be far from us". She was not in agreement about the marriage but was forced to go through with it. After the marriage she experienced domestic violence and psychological abuse by her husband:

When I was five months pregnant he was beating so much that my entire body especially my back was all black. Even with that much torture I had to work at home because my mother-in-law was sick and my sister-in-law and brother-in-law were small kids and I was the one to take care of everything at home. My husband was not letting me to go to my father's home... my husband was always torturing me... This torture and beating continued even after my son was born. One day my son got seriously sick and my husband didn't even take him to hospital... [another time] he started beating me with a sickle demanding to know why I hadn't brought him food.¹⁵²

The woman stated that her father and brothers complained many times to her husband and his family about the way they were treating her. Eventually her elder brother took her and her son back to her father's home against her husband's family's wishes. Her husband and his relatives demanded that she be returned to their home, however, the woman's father told them he would not return her until they provided him with an explanation of what she had done wrong and why they were treating her like this. Fearing violent reprisals from her husband and his brothers, the woman sent her son

¹⁵⁰ Marriage contract.

¹⁵¹ BLK165.

¹⁵² BMN11.

back to her husband's home after two months. At the time of the interview she was still living at her father's home. "Many times my father told me to go back for the sake of your child" she said, "but I reject this and I told them that if you send me back by force I will eat rat poison and kill myself".

One woman suffered horrific domestic violence at the hands of her husband after their marriage in 1376 / 1997-1998, resulting in the loss of one of her eyes. Her husband was in love with another woman and been forced into the marriage. Eventually he abandoned her. She recalled the stigma and difficulties she faced upon return to her own family:

My husband returned me to my father's home after one year of marriage. I was childless. I joined my father and brothers. My father and my brothers criticized me as to why I had come back to their home. They said to me that I had to be at my husband's home. They reminded me that people would think badly about me, stigmatise me and speculate as to why I was returned to my father's home after a year of marriage. This made me so stressed. I had lost one of my eyes and was suffering from severe mental problems as well. I tried hard to find a job for myself, but I didn't succeed. I was abused and ridiculed just for eating a spoonful of food.

This was my dejected life. I think most women in a male dominated society like Afghanistan are in the same situation. No one considers women's voices. Even women are considered at fault in most family disputes and blamed for everything by their family members.¹⁵³

For women trapped in unhappy and abusive forced marriages, there is also the issue of perceived family 'honour' and their father's reputation in the community to consider. One woman from Bamyan told of how her father arranged for her marriage to a cousin at the age of 13, during the government of Najibullah. She was left at her father-in-law's home where she was subject to beatings by her parents-in-law and brothers-in-law while her husband lived in Kabul and took another wife there. After her father-in-law and three brothers-in-law were killed by the Taliban, her husband returned to Bamyan with his second wife and their children. She is concerned about the future of her two children and her own situation but says: "I have kept quiet because my husband is my uncle's son and my father is a respected person in the village, so I have to suffer all of this torture and poverty".¹⁵⁴

For women seeking to escape forced marriages and domestic violence the law of custody of children is an area that has a profound impact. Under Article 178(3) of the

¹⁵³ BLK185.

¹⁵⁴ BMN60.

Shia Personal Status Law, the mother has priority of custody for a girl until the age of 9 and for a boy until the age of 7. After this, custody vests in the father. A court may overrule this provision where it is in the best interests of the child. Similarly, under Article 236 of the Civil Code the mother is given priority for custody, but only until the age of 7 for boys and 9 for girls under Article 249.¹⁵⁵ Although there is nothing express about custody reverting to the father after this age, under Article 1(2) of the Civil Code, the principles of Hanafi law operate in the absence of an express provision in the law, which results in the father having custody.¹⁵⁶ In reality, very few family law cases come before the Afghan courts. There appears to be a cultural presumption that children belong with their father and paternal relatives. The result is that divorce or separation usually results in an Afghan woman losing her children permanently. She may never see them again. This operates as a major disincentive for women to leave situations of domestic violence and forced marriage. It also has implications for widows who may seek to leave their family-in-law's home to return to their father's home or re-marry. In the majority of these cases, women are forced to leave their children with the father's family.¹⁵⁷

X THE STATUS OF WOMEN AS A RESULT OF MALE FAMILY MEMBERS BEING KILLED

During the conflict women were often eyewitnesses to the killing of their husbands, fathers, brothers or sons. Such experiences have left many women traumatised, and the testimonies repeatedly make reference to how women 'went mad' as a result. Aside from the trauma of having a family member killed, for women in conservative Afghanistan the killing of male relatives increases their vulnerability to conflict-related violence, potentially harmful marriage and re-marriage practices, being 'sold' by impoverished relatives and family breakdown.

¹⁵⁵ Other relevant provisions in the Civil Code include art 248, which provides that once a child has obtained 5 years of age, the child can be given in custody to any parent if it is in the best interests of the child; art 51 under which a court can award custody to a person 'second in charge', even against the father and art 125 which allows for the set custody period (7 for a boy and 9 for a girl) to be extended by up to two years.

¹⁵⁶ Article 130 of the Constitution also provides that where there is no legal provision on a matter, 'the courts shall, in pursuance of Hanafi jurisprudence, and, within the limits set by the Constitution, rule in a way that attains justice in the best manner'. However, this does not apply to the Shia community for whom Shia jurisprudence will be applied under Article 131.

¹⁵⁷ For a good overview of Family Law in Afghanistan see *Max Planck Manual on Family Law in Afghanistan* (Amended 2nd edition, 2011)

<[http://www.mpipriv.de/shared/data/pdf/max_planck_manual_on_afghan_family_law_\(english\).pdf](http://www.mpipriv.de/shared/data/pdf/max_planck_manual_on_afghan_family_law_(english).pdf)>;
<[http://www.mpipriv.de/shared/data/pdf/max_planck_manual_on_afghan_family_law_\(dari\).pdf](http://www.mpipriv.de/shared/data/pdf/max_planck_manual_on_afghan_family_law_(dari).pdf)>.

A Witnessing killings

An interviewee from Herat province provided the following eyewitness account of her brother's murder by Soviet soldiers:

My eldest brother was a Mullah. He was respected by all the villagers and had a reputation as a very kind man. During the Soviet blockade, we concealed him in a shelf in my room. Soviet soldiers entered the house to search it and when they found him in the shelf they quickly shot him with artillery fire so that his brain was scattered on the floor. My brother's head was split open. My brother was killed before my eyes. I was paralyzed for two years after the murder of my brother.¹⁵⁸

A woman from Bamyan province told of how her male family members were massacred outside the family home after the Taliban takeover of Bamyan in Sunbola 1377 / September 1998:

My husband, my sons and my cousins were reading Qur'an and my third son was giving grass to the cows in their stall. At 8am I went to lock the gate of our house. I saw that Taliban had blocked our house and while I was locking the door some of them entered our yard. My son came out of the stall and they started beating him and they were asking in Pashto: "Where is the money and weapons? Where did you hide them? Show us!" I begged each of them not to beat my son but they didn't accept and one told the others to go and check inside. As they entered the room my daughter-in-law brought her 10-day-old son and begged them "please for sake of this child don't hurt us!" but they didn't care... Taliban soldiers rushed in and my grandson died there when as he was knocked to the ground. When Taliban arrested the men I was in yard. They tied their hands with turbans. My other daughter-in-law brought her 7-year-old child and she begged Taliban to leave them, but they fired a rocket and killed her son. When they took all the men out of the yard near the well they locked us inside... we just heard firing as they killed all of them. An hour later we got out and brought their dead bodies inside the yard on blankets... the dead bodies were in the yard for 40 days because there was no man to bury them... finally we just put all the bodies in a trench and covered it with a carpet and we fled.¹⁵⁹

A woman who lost her husband and son-in-law in the Yakawlang massacre¹⁶⁰ in Jaddi 1379 / January 2001 provided the following account:

¹⁵⁸ HRT49.

¹⁵⁹ BMN63.

¹⁶⁰ On 19 Jaddi 1379/8 January 2001 the Taliban entered Nayak, the district capital of Yakawlang district in Bamyan province, and arbitrarily arrested hundreds of civilian men, many of whom were

As Taliban rushed into the yard those who couldn't hide themselves were arrested. They tied their hands behind their backs with turbans and pushed them out of house. They were Pashto speakers and wearing different coloured clothes. We saw there were about 70 people in the lane, they were pushing them by gunstock and firing into the air... they beat them with cables. We were chasing them. We were watching from the mountain, as they reached the hospital in the bazaar they separated them into two groups - youth and elders. After two days they released the elders and they came back to the village, but we remained unaware about the others.¹⁶¹

The witness was later informed of the mass killings that had taken place and went to find her husband's body amongst the piles of bodies behind the Oxfam office and at QalaEsa Khan. A group of elders implored her to return home and that they would bring the bodies.

They brought the bodies by car in the morning. We took the bodies to our village. They had shot my husband in the chest, knee, neck and ear. The body of my son-in-law was in pieces... we buried them both next to each other.

For women whose family members were arrested and disappeared, there is the pain of not knowing what happened to them. A woman from Daikundi provides an example of her husband's disappearance by mujahedin in 1363 / 1984-1985 and how the culture of impunity in Afghanistan today prevents them from being held to account:

My husband was one of the wealthiest people [chief] in the village and he was well known amongst the people... one day a group of 20 people came to our home and told my husband that we have come from far away and we are travellers and tired and in need food. My husband slaughtered sheep for them and we cooked food for them. After they had finished eating they arrested my son and my husband. My husband was asking them: "What wrong did we do to you?" They told him: "we have orders to take you with us". One of them told my husband: "your crime is that you're a wealthy person". Then they took them. One month later they came to our home and beat us badly, they took all our possessions and our dairy animals and then they burned our house down. It is now 20 years that we have no news from my son and husband... We complained to every government authority but no one came to help us because those criminals are in parliament and are powerful commanders.¹⁶²

reportedly then executed by firing squad. See, Afghanistan Justice Project, *Casting Shadows: War Crimes and Crimes Against Humanity 1978-2001*, 131-147

¹⁶¹ BMN13.

¹⁶² DKN15.

In a socially and culturally conservative country like Afghanistan, the killing of a male guardian can have a devastating impact upon a woman's life and future, as will be seen in the following sections.

B *Forced early marriage of orphans*

For unmarried women, the death of a father can increase the risk of being forced into an early marriage. It appears that girls were at increased risk of being 'sold' into a forced child marriage where they had been orphaned and were living with relatives, many of whom undoubtedly struggled to feed and provide the basic necessities of life to their own children.

One woman provided the following account of how she was 'sold' after having been orphaned at the age of eight in 1362 / 1983-1984:

My father was a commander... My father was killed in fighting between mujahedin and the communist regime. Five months after the killing of my father, my mother also died. I was 8 years old at that time and my brother was 6 years old. I had a married sister. After the death of my father and my mother we had no head of family. Both of us had to live with my married sister's family. My sister's husband was not in a good financial situation. He was also a member of the mujahedin network. He had no money for survival. He was not satisfied with us in his home... several times he made us leave his home... He was always arguing with my sister. He would beat her... My sister and her husband were not able to accommodate us. So they sold me to one of his friends... He sold us for the price of three thousand Afghanis... I was crying a lot. I insisted on being taken back to my family. However, [the friend] and his family used to tell me that I belonged to their family. They told me that I was sold for the price of three thousand Afghanis. I became sad by hearing this news. I felt alone in this world. After one year [the friend] by cooperation of his family married me. Now it is twenty-three years since my marriage and I have four sons and one daughter. I live like a bird with broken wings in Balkh province far from my family.¹⁶³

A woman from Kandahar provided an account of how in 1373 / 1994-1995 at the age of 14 she was 'sold' by her cousin after she was orphaned when her father was killed by mujahedin:

When my father was killed he [my cousin] sold me to a gunman and received money for the wedding of his son. The gunman... was cruel and pitiless and he had another wife with eight children. I was forced to serve them all day. His first wife was also a cruel woman and she beat me regularly... [He] sold me to a

¹⁶³ BLK239.

strange man after two years of marriage. The strange man... took me to Iran. He made me do prostitution and if I resisted him he beat me... [He] used to not give me any food for days. After five years I came back to Kandahar. It was during Taliban rule and I couldn't go to my relatives' homes because I was frightened that they may sell me again, so I was forced to go to the marastoon.¹⁶⁴ When I told my story to the head of the marastoon, she allowed me to be there with the other women. She was an old woman... one day she asked me to marry her brother-in-law. I accepted her decision and married him. Now I am satisfied completely and have a good life with my spouse.¹⁶⁵

C Vulnerability of female-headed households

For married women, the death of a husband can render the rest of the family vulnerable to violence and poverty. A woman from Daikundi province told of her husband's murder and subsequent abduction of her daughter by a local commander in 1375 / 1996-1997:

One day two unknown people came to our house and told my husband that the commander wanted to have a meeting with him about land issues... he went with them but he never came home. We found his dead body near our home. When I saw his body, I lost consciousness. Our neighbours came and buried him... One week later nine people came to our home and they beat me. After they grew tired of beating me they kidnapped my daughter. I tried a lot but I couldn't rescue her. After that I had no news of my daughter and day by day our economic situation was deteriorating. We had nothing to eat. I started begging during the night just to feed my children. One night they put my daughter outside our front door. She was in a bad condition. I took her inside the house, and after she regained consciousness I asked her what happened. She told me: "mother they took me for the commander's son but I got sick and I was always telling them I was sick but they didn't accept it, finally today they brought me back here". Our economic situation was so bad that I couldn't take her to the doctor and she had no treatment, so she died. Her death made me forget my husband's murder. Then I was alone with a lot of problems but I couldn't complain because they still have power.¹⁶⁶

Many testimonies obtained by UN Women show the intense pressure that widows are under to re-marry after the death of their husband. The following section details the particular experiences of widows.

¹⁶⁴ A marastoon is a shelter that typically functions as an orphanage and refuge for the destitute such as the homeless, mentally ill and women with nowhere else to go.

¹⁶⁵ KDR43.

¹⁶⁶ DKN17.

XI WIDOWS' EXPERIENCES AND THE IMPACT OF RE-MARRIAGE

It is estimated that over half a million Afghan women have been widowed over the past three decades.¹⁶⁷ Many Afghan widows are faced with difficult choices after the death of their husbands, not the least the question of whether they should re-marry. In some cases, women choose to re-marry. Many feel pressured to do so due to family, *qawm* or societal expectations, financial necessity or the need for a *mahram*. Others however are forced to do so. From the testimonies collected it is clear that whenever a woman re-marries, forced or otherwise, there is a major impact upon her life, the lives of her children and her family.

Overall approximately 13 per cent of interviewees stated they had been widowed as a result of conflict-related violence. The highest figures were recorded in Daikundi (38 per cent), Bamyan (36 per cent) and Herat (31 per cent).¹⁶⁸ Although it is not always clear how their husbands died, it appears that most of them were civilians.

A woman from Herat province who was widowed during the presidency of Hafizullah Amin provided an example of the issues confronting widows:

We were fleeing the village. Suddenly we saw a plane flying over us... we concealed ourselves beside a wall. But my husband went to bring water for my children. He was close to us when a plane approached and threw a bomb on him. He was killed in front of my eyes.

Sometime later, the village elders came together and asked me to re-marry with someone, because I was still very young. I had only had about three years of marriage with my husband. I was unwilling to marry again, because I loved my murdered husband a lot. We had a happy life together. On the one hand, my mother lived in the city so I was eager to go there. On the other hand, my husband's relatives reminded me that if I go to the city, they would not allow me to take my children with me. My husband's relatives argued that if I went to the city, I would marry someone; so they would not give the children to me. Of course I was also worried that if I go to the city, militias would harass me because they would know that I am widowed.

¹⁶⁷ *National Risk and Vulnerability Assessment 2007/8: A Profile of Afghanistan*, <<http://documents.wfp.org/stellent/groups/public/documents/ena/wfp213398.pdf>> 14.

¹⁶⁸ Other provinces: Kabul (14 per cent); Jowzjan (13 per cent); Kandahar (7 per cent) and Balkh (3 per cent). All figures are approximate.

*Finally all the tribal leaders decided to make me marry someone. So I was forced to marry my ex-husband's brother-in-law (his sister's husband), because my ex-husband's sister was sterile.*¹⁶⁹

Although she was forced into the marriage, she expressed happiness with her life today. She has a good relationship with her second husband and she and her husband's first wife have raised her four children from her second marriage together.

In some cases women re-marry within their husband's family by marrying one of their husband's brothers. This is seen as a way of keeping the woman and her children within the family and on the surface would appear to be a better option for the woman involved. However, problems arise where the woman's brother-in-law does not agree and is himself forced into the marriage in a bid by parents to keep the woman and her children inside the family. Often the woman is marrying a younger brother-in-law who may resent the imposition of the marriage. In some cases, women have experienced domestic violence within the family-in-law and this not only continues but can also intensify where the family takes the view of the widow's function of being akin to that of a servant.

A widow from Bamyan told of how she and her brother-in-law were forced to marry after the death of her husband. Neither party was in agreement with the arrangement. At the time of the interview, her husband had been in Iran for four years and "calls only to talk to his parents and tell them that he won't come back [to Afghanistan] unless they arrange a second marriage for him as he is not happy with his first marriage".¹⁷⁰

In other cases, the woman's brother-in-law may feel that he has an automatic right to marry the woman, regardless of her opinion. One young widow¹⁷¹ was faced with the prospect of being forced to marry her brother-in-law, a mujahedin commander, after the death of her husband. He already had three wives, two of which were his brothers' widows. The young widow complained to her father-in-law that she did not want to marry him and her father-in-law accepted her decision. Her brother-in-law however did not, and tried to kill her. She managed to escape, sustaining knife wounds. After the incident her brother convened local elders and influential citizens and obtained a decision that she be allowed to return to her father's home, which she did.

For women who re-marry outside of the family there is the painful decision of what becomes of their children. As has been discussed above, in Afghanistan custody ultimately vests in the father and paternal relatives. Where a woman leaves her husband's home in the overwhelming majority of cases she is forced to leave her

¹⁶⁹ HRT18.

¹⁷⁰ BMN34.

¹⁷¹ KDR3.

children behind. This is devastating for the woman, her children and their maternal relatives.

Another woman from Bamyan told of the pain of having to leave her young son behind when she left her family-in-law after her husband, a *mujahid*, was killed in a PDPA air attack during the presidency of Najibullah:

At the time of my husband's death I was five months pregnant. After four months I gave birth to a baby son. My husband had a stepmother and a brother and they tortured me a lot. I was obliged to suffer all their beatings and torture because of my son, as he was small. For three years I was with them. Many times they kicked me out of their home. Finally after three years I went to my father's house. They didn't give me my son. They kept him with themselves even though they didn't even give [him] a pair of clothes to wear.¹⁷²

She was later severely injured when she tried to stop mujahedin soldiers from arresting her father and brother and lost her sight as a result. She was displaced with her family during the Taliban regime and when they returned home, their house had been burned down and completely destroyed and all their possessions were gone.

A widow from Kandahar told of how her children were taken from her years after her husband was caught in artillery cross fire and killed:

I became a widow. I was forced to go to my father's home with my one-year-old baby and a three-year-old. Life was hated and bitter for me; there was no one to help me and encourage me. I lived for five years at my father's house, and then my father left and moved to another house and treated me in a bad manner. Therefore I was forced to move to my uncle's home with my two children. I had spent a little time at my uncle's house, but he requested that I marry his son. So I accepted and married his son. After my second marriage my ex-brother-in-law took my two children to their home and criticized me for marrying another. My two sons were not happy to go to their home but they were compelled. I couldn't do anything to keep them with me.¹⁷³

In these situations, the burden of child rearing typically falls on paternal grandmothers. In many cases maternal grandmothers lose all contact with their grandchildren and are denied access to them.

¹⁷² BMN72.

¹⁷³ KDR22.

A widow from Herat told of how she raised her son's children after he was killed and her daughter-in-law remarried:

*Years after the murder of my husband chaos came into existence under DrNajibullah's presidency. One night, many unknown people attacked my home and arrested my son on accusation of affiliation with the mujahedin. They accused him because his father was a mujahed, therefore he must be a mujahed too. They took my eldest son... When many days had passed, they didn't say anything regarding my son. Finally, after twelve days, I recovered his dead body from the land. So I lost my beloved son, who I had raised by working as a clothes washer and baker. He was killed five years after his marriage... His last son was less than forty-days old when we found his dead body. After the funeral ceremony his wife left us and gave up her children for me. She didn't wait for forty days and re-married before forty days of my son's death had passed. I took care of her children. Unfortunately her last child died at six months of age. I raised the three other children. Happily, the eldest son has now become an adult and he is in the National Army. I am not happy with him being in the National Army, but he doesn't accept my advice and acts by his own decision.*¹⁷⁴

The same woman told of her despair of having lost contact with her daughter's children:

*One of my daughters was widowed during the war. She had three children. I was raising her children, but the children's [paternal] grandmother and uncles took them away from me when they grew up.... I have no information about them anymore.*¹⁷⁵

One teenage widow from Bamyan felt compelled to re-marry due to the "rude behavior and bad words of other villagers" after her husband disappeared during the communist period. She had married at the age of thirteen and had "a really happy life" with her first husband and young son. Her new husband already had a wife but took her as his second wife in order to produce a male heir. She described her situation:

*I have had a bad time because his first wife was fighting with me and life became even worse for me when I bore three daughters, but no son. So my husband married for a third time and again he had daughters but no son. My husband says that after my death no one will remember me because I have no son. He intended to marry for a fourth time, but he can't afford to.*¹⁷⁶

¹⁷⁴ HRT39.

¹⁷⁵ HRT39.

¹⁷⁶ BMN52.

A widow from Kabul told of how under Taliban rule in 1377 / 1998-1999 she forced her 15-year-old daughter to marry a middle aged relative as “I was widow and didn’t have any supporter and no house to live in. He showed me his own house and told me I could live there in his house. So I gave him my daughter.”¹⁷⁷

Widows faced particular difficulties under Taliban rule as women were prohibited from leaving their homes without *mahram*. One woman from Kandahar provided a graphic account of the difficulties faced by widows under Taliban rule, but also into the resilience of women to survive in the most oppressive of conditions. She told the researchers of an incident which occurred in 1376 in Kandahar city:

I had five children, three daughters and two sons. My youngest child was six months old. I had nothing to sell in order to buy food... A man by the name of Sultan¹⁷⁸ was my neighbor... he was a good and kind man, as was his family. They were always bringing food and clothes for my family... they helped us a lot during my husband’s funeral ceremony. Five months after my husband’s death the Taliban invaded Kandahar city... they grew bad day by day. Taliban had to punish people because of shaving beards, high hair and not praying. Taliban banned women from visiting a doctor or travelling alone. Women were forced to travel with a mahram. In the early stages of Taliban rule women [widows] had to present a petition to the police station for finding a livelihood. Taliban helped them and guided them to marustoon and they gave widows a card so that they could receive aid by presenting that card. When women used to present this card Taliban give them oil, wheat flour, cloth, sugar, and blankets. After seven months they made this assistance card for widows invalid. They told women that you should marry someone; it is not possible to assist you for a long time. Within one and half years of Taliban rule, they began to oppress people. According to people’s saying, when Taliban captured several provinces in Afghanistan they became sure they will capture all of Afghanistan, so they started to increase their cruelty.

Because of this situation I was compelled to start begging beside the roads. I used to go to indoor markets and shops asking for money. I also regularly used to stand in front of hotels and restaurants and ask for money from travellers to Kabul or Herat. They were kind and gave money to all beggars. One day I entered a 303 Bus in order to beg. Suddenly I saw a Talib who was standing at the end of the bus. The Talib came toward me and beat me with a stick. I told him that I am a widow and I am responsible for providing food for five orphaned children. The Talib beat me twice with the stick again because I said this. No

¹⁷⁷ KBL51.

¹⁷⁸ An alias has been used to protect this individual’s identity.

one said anything to him due to fear, so he continued to beat me a lot. I got off the bus and started to go home. I cried a lot on the way home. When I got home I found that my children had slept hungry. Then I went to Sultan's home. His wife was a kind and good woman... She treated my injured shoulder and she cried with me because of her pity for me and my bad luck. [She] recommended that I not go outside after this and she said she would convince her husband and her family to give me food all the time. I kept myself at home for a week, then I realized that there is nothing for cooking and feeding. After one week I once again went outside in order to beg. When I was on the way to the city, I felt a bad headache and I sat down. During this time an old man wanted to pass me. He put a can of oil in front of me and told that he was giving it to me as zakat (religious tax). The man left me. When I saw this can of oil I became infinitely glad. When I picked the can of oil up to go home, suddenly I felt heavy pain. While I was crossing the road a car had been driven toward me... When I regained consciousness I was at hospital and one of my legs and my hand had been broken. A Talib was standing next to me and gazed at me. The responsible physician bandaged my leg and my hand. The Talib asked me where my home and husband were. I told him my entire story but he didn't accept it and then I gave him my home address. When he went to my home and visited my children he also asked all my neighbors, particularly Sultan, about my family. They told him that this woman is widow and has nobody to support her to ensure her livelihood. Finally the Talib left me and Sultan came to the hospital and took me home. Sultan's family and the other neighbours' families used to help me during this time. After three months I went to live at Sultan's home. I was there until my son grew up and was able to work.¹⁷⁹

In one incident in 1362 / 1983-1984 during Babrak Karmal's rule in Chaharkent district, Balkh province, a widow was reportedly stoned to death after re-marrying. For five years after her husband's death she remained at her in-law's home, effectively as a domestic servant. She then returned to her father's home and subsequently re-married. When her family-in-law found out, interviewees allege that they informed the head of the local mujahedin committee that their daughter-in-law had re-married and that their son was still alive.

One interviewee recalled:

The head of the mujahedin committee decided she should be stoned based on law. He informed the villagers and they dug a ditch and buried her in that ditch up

¹⁷⁹ KDR35.

*to her waist and then they put a bag on her head and they started throwing stones at her until she died. They buried her there.*¹⁸⁰

A second interviewee added that the victim was 28 years old when she died and “until today nobody has seen her [first] husband. He died a long time ago and they killed that innocent woman for nothing, just a false allegation from her in laws”.¹⁸¹

XII ATTACKS ON WOMEN AND GIRLS

Throughout all phases of the conflict, women and girls have been subjected to violent attacks and even murdered in situations where they have been viewed as violating a moral code. Such attacks have occurred since the very early years of the conflict and continue unabated today.

In the early years of the conflict, girls who defied mujahedin orders not to attend schools teaching the PDPA curriculum were at risk of being attacked and/or killed. One woman told the researchers in Balkh province that her stepdaughter was killed by mujahedin in Mezan 1359 / September-October 1980 for disobeying their order not to attend school work outside the home.¹⁸²

During periods of mujahedin rule, women who violated the mujahedin ‘moral code’ were at risk of violent repercussions. One woman from Kandahar told the researchers about her experience of mujahedin rule in Kandahar city. With a disabled husband and four children, she was the breadwinner of the family, working in people’s homes as a domestic helper washing clothes, baking and cleaning. Through this work she was financially supporting her family. As her daughter had recently become engaged, she wanted to purchase gifts for her daughter for her married life. She had heard reports that *mujahedin* had poured acid on women travelling without *mahram* into Kandahar city but believed the practice had stopped. She recalled what happened on that day in 1372 / 1993-1994:

It was 12:00. I was going to Shah Bazaar to buy sugar and tea. I was going ahead, suddenly I felt like I was burning, particularly my left side, and my veil uncovered. I quickly turned my head and with a loud shouting I saw three heavily armed gunmen. A bottle of acid was in the hand of a man with a big turban and tall clothes. I lost consciousness... Since that day I have hated mujahedin. I feel so much anxiety when I hear the name of ‘mujahed’ because they destroyed my

¹⁸⁰ BLK423.

¹⁸¹ BLK423.

¹⁸² BLK16.

*life. They turned my life upside down. I lost my sight; I lost my beauty and my health... May God punish them!*¹⁸³

A woman from Kabul told of how she was beaten by mujahedin when she tried to prevent them from abducting her teenage son in 1372 / 1993-1994, during the civil war:

*I had a 15-year-old son and three daughters. I was six months pregnant. One armed people rushed into our house and wanted to kidnap my son but I didn't let them. I struggled a lot even though they hit me with their gun and beat my abdomen. My baby died but I didn't let them kidnap my son. I had hidden my three daughters on the roof.*¹⁸⁴

The family fled the area the following day.

The Taliban, with their long list of rules and regulations and dedicated government ministry to enforce them, were notorious for their public floggings of women for conduct such as appearing in public without *mahram* or disobeying Taliban orders prohibiting the education of girls.

One woman¹⁸⁵ told the researchers that in the third year of their rule, the Taliban destroyed a house with a girl inside as punishment for her defying a ban on teaching women and girls. In the first instance, a local mullah summoned the girl's father to the mosque and issued him with a warning that his daughter should stop teaching women and girls at home. For one month she stopped teaching, however, due to pressure from her students she re-commenced. Within ten days, the Taliban summoned the girl's father to the mosque again and reportedly told him that he had been warned once before about educating women, and that as his daughter was educated she would commit actions contrary to Islam for which she must be punished. The next day the Taliban came to the family's street and gathered the people, announcing words to the effect of: "We want to implement Islamic law and prevent illegal actions". They destroyed the family's home with the daughter inside and she died under the collapsed rubble.

A woman from Kabul recalled an incident she witnessed in the city during Taliban rule:

One day I was on the way to one of our relative's house... a boy and a girl who were engaged were walking together in a laneway. Those cruel people asked that boy: "What are you doing with this girl?" He told them she was his fiancée. Then they started beating that boy until he became unconscious and they took that girl up to an apartment. I don't know if it was their home or their base. With

¹⁸³ KDR51.

¹⁸⁴ KBL77.

¹⁸⁵ KDR44.

*lots of effort to save herself, finally she threw herself out of the apartment window. Her eyes came out and her head was split apart. I can't forget this incident. Every time I think of it, it disturbs me. I don't know the name of that wild animal commander.*¹⁸⁶

A woman from Kandahar city told the researchers of her encounter with the Taliban within the first three months of their rule in the city. Her husband was taking her from their home in the fifth district to a relative's home in the third district. On their way they were stopped outside the *munkarat* office, where the Taliban detained those who were deemed to have breached vice and virtue rules. The woman recalled:

*They were beating my husband severely, so I left our motorcycle and jumped over my husband. I demanded that they release my husband and explain why they were doing this, what was my husband's wrong? During the time I was crying they told me: "What is your relationship to this man?" I told them: "He is my husband, not any stranger to me! He is taking me to my father-in-law's brother's home!" They didn't hear me and continued to beat my husband. I was crying and insisting that they leave my husband. After a few moments my husband became unconscious and the Taliban walked away... I tried to pick up my husband and take him to a safe place; suddenly a stick or baton came down on my back. When I tried to turn my face and see what was going on, another stick hit my back and the third hit my shoulder. I don't know what happened after that because I lost consciousness. When I regained consciousness I saw that my husband and I were next to the *munkarat* office, but my husband was still unconscious and the motorcycle had fallen down upon his legs. I went across the road to ask for help but due to fear of Taliban nobody wanted to help us. Finally two old men accompanied me and together we pulled my husband into a coach and came back home. It was early afternoon that my husband regained consciousness. My husband's body had been bruised entirely and he was bloody... He was in hospital for four months. After that we left Kandahar.*¹⁸⁷

Another woman from Kandahar told of how she was beaten and arrested for taking a neighbour's critically ill infant daughter to a doctor without a *mahram* during Taliban rule in 1376 / 1997-1998. She stated that neither had a *mahram* at home at the time and although they knew that if they were caught the Taliban punishment would be harsh, the child was in a critical condition and in urgent need of medical attention, so they took the risk. Initially they could not find anyone willing to talk to them, let alone drive them, due to fear of Taliban reprisal. Eventually, one driver reluctantly agreed to take them. She described what happened next:

¹⁸⁶ KBL82.

¹⁸⁷ KDR8.

When we arrived at Kabul Darwaza cross road, traffic police were stationed there with many Taliban to monitor coaches and cars... Taliban shouted at him [the driver] to stop and demanded: "What is your relationship with these women?" The coachman with a trembling voice explained, "They have a sick child and want to go Aid GaDarwaza to visit a doctor".

Taliban beat him by dora¹⁸⁸ and addressed him by these words, "Shameless man! Haven't you any discipline to observe others of close relationship?" A Talib sat next to the coachman to direct him toward Kariz Bazaar. There was a women's detention facility in Kariz Bazaar; all of the women that had been arrested by the Taliban were imprisoned there. These women had been arrested because of pretenses such as walking without mahram and other things. Taliban took us to that detention centre despite our crying, insisting and explanation of the facts. As we cried the Taliban beat us with dora.

I was in prison for 5 months with [my neighbour]... [myneighbour's] daughter who had been sick died.¹⁸⁹

More recently, during the Karzai period, assassinations of high profile women such as parliamentarians, police officers and media personalities have occurred.¹⁹⁰ Attacks on schoolgirls through the use of acid or other chemical or poisonous substances have also been reported. Such attacks are designed to instill fear and prevent women from participating in public life.

XIII KILLING OF CHILDREN

Interviewees recalled the devastation of having lost children during the conflict.

One woman from Herat province told the researchers of how her five daughters were killed when a rocket hit their home during fighting between the PDPA and mujahedin during the Soviet period:

I had six daughters and one son. Five of my daughters were shelling pistachios... when a rocket landed in the midst of the plate... I am unable to explain that shocking moment for my family. I lost my five daughters at once. I collected the scattered parts of their bodies for burial. I could not identify which of the body parts belonged to each of them. My sixth daughter was disabled and my son too.

¹⁸⁸ A special stick used by the Taliban to beat individuals perceived as having violated their vice and virtue code.

¹⁸⁹ KDR28.

¹⁹⁰ See for example, Orzala Ashraf Nemat, 'Afghanistan must stop the murder of its female leaders', *The Guardian* (online), 17 July 2012, <http://www.guardian.co.uk/commentisfree/2012/jul/17/afghanistan-murder-female-leaders?CMP=tw_t_gu>.

*My son had lost his legs. I raised five daughters by a lot of suffering, but I lost them within the blink of an eye. I wonder if there have ever been mothers like me to face such a shocking happening.*¹⁹¹

Another woman from Herat told of how her son, a medical student at Kabul University, was disappeared by the PDPA regime following the 24 Hoot uprising in Herat in 1357 / 15 March 1979.¹⁹² She stated:

*My son is missing and I never saw him again, but I have never forgotten him. I have wonderful memories of my son. Often he used to say that when he got his MD Certificate, he would take his mother everywhere he would work. He used to say that if he got money, he would buy a car for his mother, because his mother was old enough and walking was not good for his mother. Unfortunately, he never managed to achieve his dream. Ruthless people ended my son's life.*¹⁹³

The woman stated that two of her sons were later tortured by the Taliban and fled to Iran where they remain to this day. "My other sons say that they will never come back to Afghanistan, because they have never experienced a peaceful situation in Afghanistan".

A widow from Herat province lost five of her ten children, four of them in conflict-related violence. The first, her son, disappeared during the PDPA regime:

*My son was 25 years old. He disappeared four months after his wedding. His wife was pregnant. His wife gave birth to the child six months after his disappearance. His child is a boy. My bride remarried after giving birth. I raised her son. This son has become young and he has married. My grandson lives with his father-in-law. His father-in-law's family are very good people; they treat my grandson well. My grandson is a good boy too; he honors all people, particularly their relatives. I love my grandson; when I look at his face, I remember my son. I am still waiting for my son.*¹⁹⁴

Not long after the disappearance of her son, her son-in-law was killed during Soviet bombardment. Two years later, her daughter and three members of her daughter's family-in-law were killed during another incident of Soviet bombardment. She raised her five orphaned grandchildren until their paternal uncle took them. Another daughter and son were also killed in conflict-related violence. A fifth child, a teenage son, was killed in a workplace accident during the period of the Karzai government. The woman's

¹⁹¹ HRT54.

¹⁹² A people's uprising against the PDPA regime in Herat on 24 Hoot 1357 / 15 March 1979 was brutally crushed by the regime, resulting in the killing and/or disappearance of thousands of people.

¹⁹³ HRT15.

¹⁹⁴ HRT9.

husband died six months before the interview in a car accident. She described how difficult it was in her older years having lost so many children:

I am alone with no protector. I had two sisters, but both of them have died... My brother is my only relative in this world. I really feel loneliness. After the death of my husband I am really overwhelmed. I can't do anything. Although my two sons live in this house, they provide a livelihood for themselves. Also I have three daughters, but they live with their husbands. I feel alone in my old age. I am waiting for death, I am eager to leave here for heaven...

*I am not able to explain my painful stories, my sorrow. No one realizes my sadness. It is unendurable for a mother to experience the death of her children. I know that my children are in the trust of God, they are for Allah... I wish to die but for belief in Allah. I will wait for my missing son until the end.*¹⁹⁵

XIV WOMEN'S PERCEPTIONS OF THEIR CURRENT SITUATION

They widowed my mother and now I am the same like my mother. Currently, I have nothing. No mother, no brother, no father, no sister and no husband. Just I have one paternal uncle that he is my father-in-law too. I have a miserable life with my uncle. God did not offer me a child during my married life, now I live without children. My life went bad and will continue to be bad. I was an orphan and now I am widow... God bless me and repay me in heaven.

*A woman from Herat province.*¹⁹⁶

Only approximately 2 per cent of the testimonies obtained relate to incidents of violence occurring during the Karzai period and the ongoing culture of impunity in the country. Although not many testimonies expressly referred to the Karzai period, it is clear from those that did that insecurity, injustice and the denial of basic human rights remain a serious concern for Afghan women.

One woman from Engel district in Herat province, whose brother disappeared during the communist regime, provided the following account of the situation today:

When we saw the Russians we used to be afraid of them. Because of that fear we left this country and for 12 years we lived in Iran. We came back home in 1372 [1993]. Now we live in our own village. The situation is better in our country these years. Life goes well for us but people have big concerns because of their children. The rate of child abduction has increased dramatically. It is a new phenomenon; we didn't see this phenomenon during jihad and war. Children are

¹⁹⁵ HRT9.

¹⁹⁶ HRT13.

*abducted during the daytime and people kill each other without any fear of the government. Even the government doesn't prevent such actions. If someone is arrested because they have committed a crime, they will be released by paying a bribe. Security is getting worse and worse. Sometimes, if my son is late, I get overwhelmed and worried. I am afraid of abduction. I am concerned about my son, because we don't have a responsive government.*¹⁹⁷

Those interviewees who attempted to access justice for crimes committed during the Karzai period expressed immense dissatisfaction with the outcome of their efforts. One woman told the researchers that her husband had been murdered during the Karzai period. She opined that robbery was the motive. Her attempts to access justice have failed dismally. She said:

*The worst thing is that we couldn't do anything. They [the perpetrators] are wealthy and they can do everything by their money, even they can impose anything on government officials. The government officials released them because they received money. There was no one to hear my voice, because we had no money. Other people preferred to be silent in this case, because they were frightened of the murderers.*¹⁹⁸

A woman from Daikundi provided an account that is indicative of the culture of impunity that continues in the country today:

*Seven years ago after the collapse of the Taliban regime... a commander in our village kidnapped my daughter. She was 15 years old... for 20 days we had no news from her... then we found her body behind our house. She had been badly beaten and shot dead. My husband went to Kabul and made an application to every government body and even announced this through Azadi radio but nothing happened. So we are disappointed with this government. They help those who have power, not the poor like us. [This commander] is still a powerful person and he has links at the provincial level.*¹⁹⁹

Despite the progress made in girls' education over the past ten years, many Afghan girls continue to face immense challenges in exercising their basic right to education. A mother from Kaldar district, Balkh province told the researchers of the difficulties faced by her daughter:

Nasreen²⁰⁰ is a really intelligent girl and her only wish is to study and complete her education. But her father doesn't let her go to school. He believes and says

¹⁹⁷ HRT14.

¹⁹⁸ HRT46.

¹⁹⁹ DKN20.

²⁰⁰ An alias has been used to protect the victim's identity.

that going to school and getting an education is shameful and that: “if Nasreen gets an education she will know about her rights and then she can marry whoever she wants, not the one which her parents select for her. Then what will I do with this bad name and where will I go if she does this?” There are thousands of girls in Kaldar district like Nasreen who are not able to study and they are at home and busy weaving carpets... they have grown up illiterate, unaware of their rights, and their parents marry them with whoever they want and no one asks them where did that girl go or what happened to her? In Kaldar district no one thinks of girls’ rights and my daughter’s only wish is to study and complete her education. She wants to serve her country and people. She says: “if I complete my education then die, I won’t have any more wishes”.²⁰¹

A woman who was a victim of forced marriage to a mujahedin commander at the age of 14, expressed satisfaction with her life today as a mother of five children:

Now I am a contracted teacher with my village school. I teach the students those subjects that I can. I have adjusted myself according to the situation. I am satisfied with my life... My husband has treated me well since I had children. Of course at first I hated him and treated him badly. Therefore he beat me. Now we respect each other. One of my co-wives has died, but one of them lives with me in the same home. We work together and raise children. There is no tension between us.²⁰²

²⁰¹ BLK115.

²⁰² HRT16.

XV CONCLUSION

This report documents women's experiences of violence in Afghanistan and its effect on their lives throughout thirty years of conflict from 1978-2008. It clearly demonstrates that Afghan women and girls in all seven provinces have experienced and witnessed endemic violence throughout all phases of the conflict, at the hands of different perpetrators. The fall of the Taliban in late 2001 heralded an unprecedented opportunity to address a dark chapter in Afghanistan's history, including the widespread violations of international humanitarian law and international human rights law that occurred. The failure of the Government of Afghanistan and the international community to seize that opportunity allowed many individuals with 'blood-stained hands' back into positions of power. This has facilitated the entrenchment of a culture of impunity that needs to end if the country is to have any hope of a peaceful and prosperous future.

Rape and other forms of sexual violence have been used as a weapon of war and been a consequence of conflict throughout history. Afghanistan is no exception. Despite the difficulties inherent in documenting conflict-related sexual violence in Afghanistan, this report contains testimonies from rape victims and their immediate family members. These testimonies show that victims of conflict-related sexual violence suffered not only the physical and psychological trauma of rape, but also the social stigma arising from a cultural propensity to punish victims of sexual violence for their perceived 'dishonour'.

Women and girls were abducted and disappeared by armed groups and forced into marriage with commanders, raped or detained for longer periods in conditions that could be described as sexual slavery. Some of these women and girls eventually made their way home, but had to carry the stigma of rape throughout their lives, being seen as having dishonored their families and not being able to marry. Others were unable to escape their predicament but were at least able to maintain some form of contact with their families. Some were never seen or heard from again, leaving behind families who live with the daily agony of not knowing whether their daughters, sisters and wives are alive or dead.

The conflict situation exacerbated forced marriage in several respects that are emphasized in this report. Firstly, it provided a lawlessness in which warlords and armed men could act with impunity, taking women and girls by force, despite the protests of their families. Secondly, this lawlessness itself prompted many families to marry their daughters at a younger age, due to fears of sexual violence and a perceived loss of 'honour'. Thirdly, poverty, which many Afghans experienced as a result of the conflict, also acted as an instigator of forced marriage.

For many Afghan women and girls, the killing of male family members had a very negative impact upon their lives and futures. Aside from the trauma of witnessing the

killings of fathers, husbands, brothers and other family members, the killing of male family members often resulted in increased vulnerability for Afghan women and girls. Girls who were orphaned during the conflict were at increased risk of early forced marriage due to the extra burden placed upon paternal relatives and caregivers, many of whom were already struggling to provide for their own children. Widows came under immense pressure to re-marry and many were forced to do so. Those who did so outside of their deceased husband's family were usually forced to leave their children behind. The extreme vulnerability of female-headed households came to a crescendo under the Taliban regime, when women were not even allowed to leave their homes without a male guardian.

From the earliest days of the conflict, Afghan women and girls were subject to physical attack and even murder for the perceived violation of a ruling group's moral code or for simply exercising their most basic rights, such as seeking to be educated or to educate others.

The report also documented the devastating effect of the killing of children.

Whilst the overall picture may be depressing, this report also contains glimpses of hope in the form of acts of kindness, loyalty and bravery by ordinary Afghans. The neighbors who took a widow and her son into their home after seeing the difficulties they faced on a daily basis. The driver who agreed to take two women and a sick child to seek medical attention, knowing that by doing so he was putting himself at great risk of punishment, which he suffered in the form of a public beating. The father who travelled to Pakistan to rescue his daughter, a victim of forced marriage to a commander, and who found her and brought her home. The many family members that risked their lives to stand up to violence against their loved ones.

Unfortunately, these experiences are not confined to the past. It is clear from the testimonies related to the current period that many Afghan women and girls still live in a climate of fear due to ongoing insecurity and uncertainty about their and their country's future. As one woman from Herat put it:

I wish for a peaceful country and I praise Allah to bring peace in my country in order to have a peaceful generation for the future of Afghanistan. The situation is still not good here in Afghanistan. I am really afraid of this situation. I lose my consciousness when my only son goes to city. I count the minutes until he comes back to the village. The situation is bad in the city. I pray to Allah to bring peace to this country. We have all suffered a lot.²⁰³

²⁰³ HRT11, a woman from Herat who raised four grandchildren after two of her sons were killed and her daughters-in-law remarried.

In the four years since the above testimony was recorded, there have been some steps forward for Afghan women, most notably the enactment of the ERAW law. However, there has also been a continued deterioration of security in the country with devastating consequences for all Afghans. Women continue to suffer from harmful cultural practices, endemic violence and the effects of past conflict, amidst the day-to-day realities of ongoing conflict. Many Afghan women and girls remain unable to exercise even the most basic of rights enshrined in the Constitution of Afghanistan and the CEDAW. This has much to do with the failure of the Government of Afghanistan and the international community to address the country's culture of impunity.

In 2011, the Government of Afghanistan submitted its first report to the CEDAW Committee, as required under Article 18 of the CEDAW. The combined first and second periodic report details Afghanistan's progress towards implementation of the CEDAW. Much of the report is dedicated to the increased representation of women in various units, ministries and other bodies, participation in education, employment, health, and other fields of public life.

In its report, the Government of Afghanistan states that upholding of the Constitution of Afghanistan, and women's rights contained therein, is a condition of any peace deal with insurgents.²⁰⁴ It must be held to this. The CEDAW report also outlines reported improvements in the number of women accessing the courts to uphold their rights. This has been attributed to joint activities of government and NGOs in increasing public awareness, literacy, the establishment of more judicial institutions and increasing the awareness of judges and authorities on women's rights in recent years.²⁰⁵ There is acknowledgment of the need for registration of marriages and divorces, currently voluntary, in order to prevent forced and early marriages. Whilst the government should be commended for efforts to increase the number of places where registrations can occur, there does not appear to be any plans to make registration compulsory.²⁰⁶

UN Women urges the Government of Afghanistan to act immediately to end the culture of impunity in Afghanistan and ensure that those responsible for crimes of violence and human rights violations against women and girls are held accountable for their actions. In the absence of accountability the situation in the country will continue to be defined by Insecurity, violence and human rights violations. Whilst some steps have been taken, it must be emphasized that all of the gains for women's rights in the past decade risk remaining far from the reality of daily life for many women if nothing is done to end the culture of impunity that remains so pervasive across the country.

²⁰⁴ *Initial and Second Periodic Report of the Islamic Republic of Afghanistan to The Committee on the Elimination of Discrimination Against Women (CEDAW)*, (2011) 38.

²⁰⁵ *Ibid* 86.

²⁰⁶ *Ibid* 87.

This testimonies included in this report tell an unequivocal tale of suffering and make it clear that violence against women and girls in Afghanistan has gone unpunished for too long. If fears of increased instability following the international troop withdrawal are realized, there is a very real possibility that cases such as those documented in this report will increase. This must not be allowed to happen.

XVI RECOMMENDATIONS

A *To the Government of Afghanistan:*

I *To the Office of the President*

Formally acknowledge the commission of wartime atrocities, including gender-based violence, and the suffering that all Afghans have endured as a result of decades of conflict and human rights abuses, and encourage and promote truth seeking and dialogue about past violations at all levels in Afghan society;

Recognize that sustainable peace cannot be built on a foundation of impunity and initiate a review of the National Reconciliation, General Amnesty and National Stability Law for consistency with the Constitution and Afghanistan's international obligations; and

Ensure that the AIHRC's independent status and constitutional mandate are respected so that it can continue to effectively monitor, promote and protect human rights in Afghanistan. This includes the appointment of commissioners with a demonstrated commitment to human rights.

Support the promotion of the AIHRC Conflict Mapping Report as a foundational tool for acknowledging victims' suffering and beginning the journey towards real national reconciliation. This process should include a focus on women's suffering and experiences as well as their contribution to the country.

II *To the High Peace Council*

In line with UNSC Resolution 1325, ensure that women play important roles in conflict resolution and peace negotiations by actively participating in all HPC processes at the local, regional and national level. This should include their presence at any negotiating table with the Taliban and other armed groups;

In line with UNSC Resolution 1820, ensure that ‘political amnesty’ under the APRP is not granted in respect of crimes of sexual violence in the context of conflict resolution processes and that alleged perpetrators of such crimes are referred to prosecuting authorities;

Ensure that women’s constitutional rights are protected, promoted and in no way compromised as part of any political settlement to the conflict; and

Ensure greater transparency and accountability in the reintegration and reconciliation process through public reporting on individual reintegration outcomes and the active participation of victims of conflict-related violence in these processes.

III *To the Government of Afghanistan*

Increase efforts to uphold the rights of women and girls according to the Constitution of Afghanistan, Afghan law and international law;

In line with UNSC Resolution 1820, ensure that those responsible for conflict-related crimes of sexual violence are prosecuted, and that victims of sexual violence have equal protection under the law and access to justice;

Develop protection programs and support services for victims and witnesses of attacks against women, including witness protection measures and the provision of legal aid (in partnership with MoWA);

Provide long-term support to Women’s Protection Centers, monitoring of mediated solutions in cases of violence, and alternatives for those women who cannot return to their families; and

Continuously review all laws and practices for consistency with Afghanistan’s obligations under international law.

IV *To the Supreme Court*

Ensure that women who have been widowed, abandoned by their husbands, or whose husbands have been disappeared, are able to access their legal rights through the justice system;

Foster an institutional culture in which women's participation in the justice system, whether professionally or personally, is promoted and encouraged; and

Work towards full implementation of the Elimination of Violence Against Women (EVAW) law, including the elimination of possible remaining conflicts of laws hampering the full realization of its objectives (in partnership with MoWA).

V Ministry of Education; Ministry of Information and Culture

Consider ways in which the important role played by Afghan women in family and community life might be memorialized through media initiatives, school and university curriculums, monuments or an official holiday (in partnership with MoWA).

B To the International Community

Demand full and meaningful participation of women in reintegration and reconciliation processes at the community, provincial and national level, whilst also taking the situation of the families of former combatants into account. This includes the upholding of commitments under UNSC Resolutions 1325 and 1820;

Make government aid conditional upon demonstrated respect for human rights;

Support government and civil society initiatives that promote an end to violence against women and cultural practices that have a detrimental effect upon women and girls such as child/forced marriage;

Support civil society initiatives with promote transitional justice and conflict resolution at the community level. Such initiatives might include supporting the work of victims' groups, memorialization, and initiatives which promote an exchange of conflict experiences across regional and other divides; and

Demand implementation of the EVAW law and the upholding of women's rights as granted by the Constitution of Afghanistan, Afghan law and international law.

C To Civil Society:

Continue to document, raise awareness and speak out about past and present human rights violations, including gender-based violence;

Establish dialogues with community elders, *ulema* and men at the community level around women's rights. Identify individuals within communities who could assist with cases of violence against women through monitoring, mediation and supporting referral to the authorities;

Create spaces for women to talk openly about past experiences of violence, including conflict-related violations, and have those experiences validated; and

Continue to lobby for a more transparent, inclusive and accountable peace process in which victims of conflict-related violence can actively and genuinely participate.