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IN BRIEF

GENDER ALERT — Decree No. 18 – Code of Principles on Separation of Spouses

On 14 May 2026, Decree No. 18, the Code on Judicial Separation of Spouses (*Usulnama-ye Tafriq-e Zawjayn*), was published by the de facto authorities (DFA) of Afghanistan in Gazette No. 1489.[1] Consisting of 31 articles across 12 chapters, Decree No. 18 regulates the conditions under which a marriage can be annulled or judicially dissolved. The decree has drawn criticism from national and international stakeholders, with the Committee on the Rights of the Child condemning it as a grave and systematic violation of international human rights law, calling for its repeal and the unequivocal prohibition of child marriage.[2] The DFA has maintained that its framework is derived from Sharīʿa and Ḥanafī jurisprudence and serves only as judicial guidance rather than introducing new social practices.[3]

Decree No. 18 regulates judicial separation through avenues that are disproportionally complex and restrictive for women and girls; while leaving men with an unhindered unilateral right to divorce. Under several of its provisions, a woman cannot obtain separation without the consent of her husband, and the decree has been interpreted as implicitly permitting marriage of prepubescent children. Appearing in a context characterized by widespread hardship and where access to protection and resolution mechanisms for women and girls experiencing violence have been substantially decreased, such provisions effectively bind many Afghan women and girls tightly into marriages without their free and full consent.

This Gender Alert reviews the key provisions of Decree No. 18 and explores how they may be interpreted, applied, and enforced in practice. The Alert also examines the short- and long-term implications of the decree for the rights of women and girls in Afghanistan, their access to justice, and equality before the law. The analysis draws upon a legal review of the decree alongside inputs from Islamic law experts. The legal review is further contextualized by primary quantitative and qualitative data from countrywide

1. The decree, dated 8 April 2026, was disseminated to all courts per Circular No. 27 of the de facto Supreme Court, dated 19/8/1447 Hijir (7 February 2026).

2. OHCHR. 2026. Afghanistan: Silence is not consent to child marriage, UN committee condemns; UNAMA. 2026. Statement on Afghanistan's de facto authorities' Decree No. 18 "Code on Judicial Separation of Spouses."; UK Minister for the Middle East, North Africa, Afghanistan, and Pakistan [@HFalconerMP]. (2026, May 25). X Post. https://x.com/HFalconerMP/status/2058865499161637255

3. While many of its provisions do have a basis in Ḥanafī jurisprudence, the decree appears to draw selectively from that tradition – codifying narrower positions while omitting more protective ones available within the same school – with the cumulative effect of reducing safeguards for women and girls: Consultation with Afghan Islamic law expert.

telesurveys and consultations conducted in October and November 2024.[4]

Decree No. 18 in context

The procedural framing of Decree No. 18 emerges in a legal and social landscape profoundly reshaped since the Taliban seized power in August 2021, and in a context of a high prevalence of gender-based violence and historically high rates of forced marriage and child marriage.[5]

Decree No. 18 is the latest in a series of instruments related to family law introduced by the DFA since 2021, alongside Special Decree No. 395 by the Taliban Leader on Women's Rights (December 2021) and Decree No. 17 Regarding Prevention of Improper Customs during Weddings, Calamities and upon Return from Hajj and Umrah (March 2025).[6] Sitting within a vast patchwork of DFA decrees, these three instruments largely set out provisions that are narrower and more uneven in scope than those in place before August 2021. The framework details procedures in some areas, including separation and annulment, yet core aspects of family law remain absent such as minimum age of marriage, child custody, and criminal liability for forced marriage. Under Afghan customary practice, family law disputes are frequently addressed in the first instance through family elders or religious mediators before reaching the formal courts; the provisions set out in these instruments may therefore apply only where informal dispute-resolution mechanisms have failed to produce a resolution. Since 2021, the formal infrastructure that supported women's access to justice has been systematically dismantled, despite the DFA's own early pledges to uphold women's rights. The now dissolved 1977 Civil Code had set a standard minimum age of marriage at 18 for men and 16 for women. It also regulated marriage registration and polygyny,[7] and governed divorce, custody, and marital property division, while the 2009 Law on the Elimination of Violence Against Women (EVAW) criminalized domestic violence, forced marriage, and sexual assault.

In parallel, protection services addressing gender-based violence have become increasingly limited. Women's shelters have closed and women-led legal aid has largely ceased. Female judges, prosecutors, and lawyers have largely been removed from the formal justice system, with those remaining facing challenges in practices, creating a situation in which women seeking legal redress are likely to have their cases decided solely by male judicial decision-makers. Moreover, restrictions on women's freedom of movement – mainly the requirement to be accompanied by a *mahram*[8] and broader constraints on public participation – create additional barriers between women and the Afghan courts they may seek to petition.

The DFA present these instruments related to family law as giving effect to women's rights within an Islamic framework. Yet, consultations with Afghan women point to two widening gaps: first, between the protections available to women under Ḥanafī jurisprudence and those actually codified in official decrees; and second, between the rights formally articulated through DFA decrees and women's ability to exercise such rights.[9] These gaps are borne out

4. Telesurveys conducted in October and November 2024 reached 3,022 women and 867 men across all 34 Afghan provinces (42.9 per cent urban, 13.9 per cent peri-urban, 43.2 per cent rural). The random stratified sample achieved a 95 per cent confidence level and 10 per cent margin of error at the regional level for both female and male populations: UN Women (United Nations Entity for Gender Equality and the Empowerment of Women). 2024. Monitoring of Status of Women and Girls: Round 2. Unpublished. From 13–23 October 2024, UN Women and the United Nations Assistance Mission in Afghanistan (UNAMA) conducted countrywide qualitative data collection through in-person and online group consultations and telephone interviews, reaching 961 women across all 34 provinces and 112 men across 12 provinces. Participants were selected using purposive snowball sampling to mitigate security risks and foster open discussion of sensitive issues: UN Women and UNAMA. 2024. Consultations on the December 2021 Special Decree on Women's Rights. Unpublished.

5. In 2015, an estimated 50.8 per cent of Afghan women between the ages of 15 and 49 indicated having experienced intimate partner physical and/or sexual violence at least once in their lifetime. In the provinces of Ghor and Herat, this figure was as high as 92 per cent: Central Statistics Organization of Afghanistan. 2015. Afghanistan Demographic and Health Survey. Kabul: Ministry of Public Health.

6. For analysis of these two decrees in respect to Afghanistan's ongoing obligations under the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), see: OHCHR (Office of the United Nations High Commissioner for Human Rights); UNAMA and UN Women. 2025. Convention on the Elimination Of All Forms of Discrimination Against Women (CEDAW): Legal Review of Measures Introduced by Afghanistan's De Facto Authorities That Impact Women and Girls.

7. Polygyny refers to a man having multiple wives – a form of polygamy.

8. A *mahram* is a male relative whom a woman is permanently forbidden from marrying – whether by blood (such as a father, brother, son, grandfather, uncle, nephew) or by marriage (such as father-in-law, son-in-law, stepfather, stepson) – and who may therefore act as her chaperone.

9. Even where rights are formally retained – such as the inheritance rights set out in the 2021 Special Decree on Women's Rights – restrictions on women's movement and presence in public spaces prevent many women from accessing them independently.

in observable trends. Notably, according to telesurveys conducted with 3,022 women and 867 men in October 2024, women's influence over marriage-related decisions had declined relative to pre-August 2021 levels, with 19 per cent of women reporting that women now have less say.[10] Rising incidence of child marriage and forced marriage – already common prior to August 2021[11] – has also been widely observed in Afghanistan since then, as families turn to marriage as a negative coping strategy amid economic collapse and the closure of girls' education.[12] The social and economic pressures driving these practices are likely to intensify under the conditions prevailing in Afghanistan, amid ongoing bans on girls' education and poverty linked to the widespread exclusion of women from the formal workforce.[13]

Impact of Decree No. 18 on the rights of women and girls

Rather than easing the pressures described above, Decree No. 18 deepens them. By giving legal effect to marriages contracted on behalf of (prepubescent) children, and limiting the ways in which a wife can leave an abusive marriage, the decree entrenches the very conditions that the rights to full and free consent in marriage are intended to prevent. In doing so, the decree runs contrary to international obligations by which Afghanistan remains bound,[14] including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which guarantees women equality before the law and equality in marriage and family relations; the Convention on the Rights of the Child, which defines the child as a person under 18 years of age, requires protection from violence, and obliges States to abolish harmful traditional practices.

The analysis that follows examines **four areas** of Decree No. 18 that raise particular concern regarding the rights of women and girls and the fulfilment of international obligations to which Afghanistan remains a state party.

1. The decree implicitly permits **child marriage**[15] by regulating when a marriage contracted before puberty may be annulled or considered invalid rather than prohibiting such marriages, and upon reaching puberty, treats a girl's silence as expression of consent to continuation of the marriage (Articles 5–10).
2. Remedies for resolving situations stemming from **violence within marriage** are strongly oriented toward reconciliation over prioritizing the safety of the woman, who must obtain her husband's consent for separation to occur (Article 22).
3. The provision pertaining to **abandonment within marriage** deny a woman the right to separate from a husband who is no longer present (Article 19).
4. **Cross-cutting procedural concerns** compound the effect of these provisions, with evidentiary, interpretive, and access barriers consistently to the detriment of the woman who is seeking to separate.

10. Only 20 per cent of women reported having "a lot of influence" in marriage-related decisions before August 2021, while 24 per cent reported "little influence", and a further 24 per cent "no influence". Women surveyed in rural areas indicated lower influence than the average for women across all settlement types, with 23 per cent reporting "little influence" and 35 per cent "no influence". Perceived influence was lowest in the southern and south-eastern Afghanistan, where 45 per cent and 38 per cent of women respectively reported having "no influence": UN Women. 2024. Monitoring Status of Women and Girls.

11. In 2023, 28.7 per cent of girls under 18 years of age were already married, with 9.6 per cent married before age 15: UNICEF (United Nations Children's Fund). 2023. Afghanistan MICS: Multiple Indicators Cluster Survey 2022–2023. Summary Findings Report.

12. Some 30 per cent of women telesurveyed reported perceiving an increase in child marriage since August 2021: UN Women. 2024. Monitoring of Status of Women and Girls. Women and men consulted in October 2024 described marriages of girls as young as 11 years – with ages 13 to 14 common – and age gaps often exceeding 15 years, including one case of a 13-year-old married to a 75-year-old man: UN Women and UNAMA. 2024. Consultations on the December 2021 Special Decree on Women's Rights.

13. In 2024, 77.6 per cent of Afghan women were not in education, employment or training compared to 20.2 per cent Afghan men. UN Women. 2025. Afghanistan Gender Index 2024. Restrictions on women's and girls' education and employment have continued and, in some cases, deepened since then – most notably the December 2024 ban on women attending nursing and midwifery institutes, which closed one of the last remaining avenues for women to pursue education and skilled employment beyond grade six.

14. Afghanistan ratified the Convention on the Rights of the Child (CRC) in 1994 and CEDAW in 2003; these obligations attach to the State and are unaffected by changes in government.

15. "Child marriage" is a marriage in which at least one party is a child, defined as a person under 18 unless majority is attained earlier under applicable law. "Early marriage" overlaps with child marriage but can also cover unions where both spouses are 18 or older yet unready to consent. "Forced marriage" is any marriage entered into without the full and free consent of one or both parties, and/or which one or both cannot end or leave. See OHCHR. 2014. Preventing and eliminating child, early and forced marriage: Report of the Office of the United Nations High Commissioner for Human Rights. A/HRC/26/22.

1. Marriage of prepubescent children is implicitly permitted

Similar to the way in which the 2021 Special Decree on Women's Rights prohibits forced marriage only of "adult women" without defining "adult", Decree No.18 does not set a minimum age for marriage.[16] While several of its provisions implicitly acknowledge that a (prepubescent) child cannot meaningfully consent to a marriage contract, Decree No. 18 nonetheless gives such contracts legal effect by regulating the narrow pathways through which they can be ended.

The two main mechanisms of judicial separation that Decree No. 18 sets out – annulment of a validly contracted marriage (Article 5 and Article 8(1)), and the treatment of a marriage as invalid (Article 6 and Article 8(2)) – both operate in practice as a remedy against a marriage that has already been contracted rather than as a constraint on formation. The absence of a minimum age of marriage and the framing of remedies as available only once a valid contract exists reflect violations of international law and basic children's rights.

Within this diminished framework, Decree No. 18 provides specific and narrow conditions that allow girls and boys upon reaching puberty to annul a marriage through the 'option of puberty' (*khiyār al-bulūgh*).[17] Under this option, minors have a broad right to annul a marriage arranged by a relative (other than their father or paternal grandfather) upon reaching puberty.

In marriages arranged by the father or paternal grandfather, however, this right is only available in cases where the girl can show that her guardian failed to "act with due care and compassion",[18] making what is likely to be the most commonly arranged form of marriage the most difficult to leave.[19] The burden then falls upon the daughter to prove that she has been harmed by her guardian by openly contradicting his decisions – an almost impossible threshold for most girls and women in a context where they are socially, and legally, required to be subject to the authority of their *mahrams*.[20] These barriers compound the challenges faced by women and girls, who are forced to navigate a justice system marked by long-standing gender discrimination and now further constrained by the closure of institutional channels on which they have historically relied.

Moreover, the timing of exercising the 'option of puberty' requires a girl to declare her annulment at the very moment she reaches puberty – understood either as the moment she learns of her first menstruation or pregnancy.[21] A restrictive reading of this provision could require the girl to declare her wish to annul (in front of witnesses[22]) before

16. Article 16(2) of CEDAW requires betrothal and marriage of a child to have no legal effect and that States specify a minimum age for marriage (understood as 18 years, with a narrow exception permitting 16 years). Failure to set a minimum age is a violation of Article 16(2), as is Decree No. 18's treatment of such marriages as valid contracts to be regulated rather than as unions without legal effect: Committee on the Elimination of Discrimination against Women & Committee on the Rights of the Child. 2014. Joint general recommendation No. 31/general comment No. 18 on harmful practices. CEDAW/C/GC/31-CRC/C/GC/18.

17. International standards fix a minimum age of marriage by reference to the cognitive and emotional maturity required to give free, full and informed consent to a marriage contract rather than physical development. Physical puberty is not a reliable marker of the capacity to marry: it occurs at widely varying ages, is not externally verifiable, and bears no necessary relationship to capacity.

18. Marriages arranged by the father or paternal grandfather can be annulled (as distinct from being treated as invalid) only where he failed "to act with due care and compassion" in the particular instance, while not being generally known to abuse his authority (Article 8(1)). This reflects a presumption in Ḥanafī jurisprudence that a father or grandfather acts in the child's best interests, with a degree of affection and concern greater than that attributed to other guardians – and so is afforded broader latitude in arranging the marriage.

19. Under Article 8(1), in applying for an annulment the girl must argue that her father or paternal grandfather failed her in this particular instance while affirming that he is not generally the kind of father or grandfather who would do so. To challenge a marriage arranged by a father or paternal grandfather, the girl must characterize her own guardian negatively, in court, with evidence, before a male judge. Similarly, under Article 8(2), she must establish both that her father or paternal grandfather is publicly known for immorality or insanity and that the marriage was either to an unsuitable husband or occurred with a grossly inadequate *mahr* – only if she can prove both elements can the invalidity finding follow.

20. Decree No. 18 does not explicitly grant any other adult (related to the girl/woman or otherwise) the right to petition the court on her behalf. The extent of a father's authority over his daughter is illustrated by Decree No. 12, which grants fathers penal authority to administer certain punishments against their children: UN Women. 2026. GENDER ALERT – Afghan women and girls' rights under Decree No. 12 on Criminal Rules of Courts.

21. This understanding of the moment of "reaching puberty" is based on interviews with an expert in Islamic jurisprudence and was subsequently discussed and validated during the expert review process. Note that interpretations of this concept may differ across legal traditions.

22. Indicated consistently across Decree No. 18, a woman requires either two male witnesses or one male and two female witnesses. In this instance, if no witnesses are present, she may, upon obtaining access to witnesses or the court, declare that she has just attained puberty and repudiate the marriage, as reflected under Article 9(1) and Article 9(3).

leaving the place in which she is sitting (*majlis al-bulūgh*) – with failure to speak on the matter at that moment treated as a forfeiture of the right.[23] **A girl living in a marital household, without independent legal knowledge, without access to suitable witnesses, and dependent upon a *mahram* (who may be the husband she wishes to separate from) may thus in practice prove unable to exercise her right to annul**.

Decree No. 18 sets out a second mechanism for separation which allows a marriage to be declared invalid where two conditions are met: first the guardian was a relative other than the father or paternal grandfather, or a father or paternal grandfather was disqualified by character ("known for immorality or insanity"); and second the marriage itself was considered flawed (unsuitable husband or grossly inadequate *mahr*[24]).[25] The decree frames these provisions as protective of women and girls. In practice, however, the cumulative threshold is narrow. For the most common arrangement – where the guardian is the father or grandfather – the first condition is met only if he was "known for immorality or insanity" – an extreme and undefined standard that the girl must herself establish against the very guardian to whom she is socially and legally subject. Where the route does apply, the girl must also establish the subjective question of whether a husband is 'unsuitable' or a dowry 'grossly inadequate'. Together with the procedural obstacles discussed below, these requirements operate as a strong deterrent to girls seeking to exercise these provisions in practice.

A girl's silence is treated as consent

Decree No. 18 addresses how a girl must make it known that she wishes to annul a marriage on reaching puberty. Under Article 7, a girl who has not previously been married (described in the decree as a "virgin") and who remains silent about continuing the marriage on reaching puberty is treated as having accepted the marriage and, effectively, as having waived the option to annul it.[26] A different rule applies to boys and previously married women, who must give an "explicit or implicit expression of consent" for having waived the option and thus accepted the marriage.[27] For them, silence is understood as a wish to annul the marriage – the opposite of how silence is treated for a previously unmarried girl.[28] International law and human rights principles expressly prohibit child marriage and confirm that child marriage is *by definition* a marriage involving a minor in which at least one party has not (and cannot) be given full and free consent to the marriage.[29]

The silence-as-consent rule established by Ḥanafī jurisprudence originally rests on a presumption of modesty (*ḥayā'*): that, as a previously unmarried girl, modesty may prevent her from openly expressing positive agreement to a marriage she favours, while she remains free to refuse directly if she does not favour it.[30] Some classical Ḥanafī jurists set out conditions accordingly – that the suitor be identified by name, that the consultation between the guardian or relative arranging the marriage and the girl take place privately rather than in a gathering, to ensure

23. Decree No. 18 neither expressly adopts nor rejects this position, leaving its application to judicial interpretation. The most restrictive interpretation under Ḥanafī jurisprudence was outlined by an Afghan Islamic law expert consulted for this Alert.

24. *Mahr* is the mandatory payment, also known as dower, the groom gives the bride as part of the marriage contract.

25. Marriages are considered invalid in any case where: 1) a relative other than the father or paternal grandfather arranged the marriage and the husband was unsuitable (non-kafu) or the dowry grossly inadequate or involving a disparity due to deception, fraud, false pretences (*fāḥish ghabn*) (Article 6); or 2) if the father or paternal grandfather "is known for immorality or insanity" and, in exercising his authority, arranges a bad marriage (to an unsuitable husband or with a grossly inadequate *mahr*) (Article 8(2)).

26. This runs contrary to the definition of consent set out in Article 1(1) of the 1962 Convention on Consent to Marriage and incorporated into CEDAW Article 16(1)(b), where consent must be full, free, expressed personally by the spouses, and given at the formation of the marriage before a competent authority and witnesses.

27. Article 7 provides that "[t]he choice upon maturity (*khiyār al-bulūgh*) of a virgin girl is invalidated by being silent, whereas the choice upon obtaining puberty of a boy and of a previously married woman (*thayyiba*) is not invalidated by silence; however, it is invalidated upon an explicit or implicit expression of consent." The decree does not define "implicit consent", leaving open the possibility that a girl who conducts herself as might be expected of a married woman could have her conduct construed as "implicit" consent, and thereby lost the option to annul.

28. However, since "implicit expression of consent" is not defined within Decree No. 18, the rule may differ little in practice from the silence-as-consent standard previously applied to unmarried girls – particularly if routine compliance with marital duties is read as implicit consent: Consultation with Islamic law experts..

29. Committee on the Elimination of Discrimination against Women & Committee on the Rights of the Child. 2019. Joint general recommendation No. 31 / general comment No. 18 on harmful practices (CEDAW/C/GC/31/Rev.1–CRC/C/GC/18/Rev.1).

30. Consultation with Afghan Islamic law expert.

that the girl is in a position where she can directly express refusal if she wishes.[31]

Decree No. 18 imports this silence-as-consent rule into a fundamentally different question. A marriage has already been contracted, and the 'option of puberty' is itself an implicit acknowledgement that a minor cannot consent to entering a marriage contract before puberty. The mechanism exists precisely because a marriage contracted on a minor's behalf by a guardian by default occurs without the minor's own legal consent. The guardian's authority is considered sufficient to validate the contract, which in practice allows for scenarios in which the minor is not in a position to refuse the proposition, or where their refusal is not taken seriously. Previous DFA decrees have also not addressed the matter of consent of a minor girl or the minimum legal age for marriage, despite both the December 2021 Special Decree on Women's Rights and the March 2025 Decree No. 17 prohibiting forced marriage of "adult women".

The requirement for the girl to speak out and affirmatively reject the marriage she is already in represents a substantial demand in any setting, and, particularly, in the current Afghan context. Strong social norms and de facto laws already enforce the silence of Afghan women and girls – including the 2024 Law on Propagation of Virtue and Prevention of Vice banning women's voices in public[32] – and exclude this group from marriage-related and wider household and community decision-making. In such a setting, a girl's silence cannot be clearly and comprehensively interpreted as agreement. Instead, such silence may reflect an absence of safe channels through which the girl can voice her opposition to the marriage.

2. Remedies for an abusive marriage are oriented toward reconciliation over women's safety

Decree No. 18 provides a means for a woman to petition a judge in the case that she is experiencing violence within her marriage. At each stage, however, the procedure is oriented toward reconciliation rather than relief, with the outcome resting on the husband's choice. On its face, Article 22 provides a route for a woman or girl to access relief in a situation where her husband "oppresses [her], does not fulfil her rights, or there is discord between [the spouses]." In this case, a judge may rule compelling the husband to either halt the oppressive actions or divorce the wife.[33] Yet, the process leaves little room for the woman's own choice, with the judge's ruling aimed at compelling the husband to act, not at giving the wife a choice and route to leave.

Defining what constitutes oppression is also left at the discretion of relatives of the spouses acting as arbitrators (*ḥakamayn*), and for a (male) judge to determine. The arbitrators are responsible for reconciling the spouses and identifying who is at fault (Article 22(2)(1)). Drawn from the families directly involved in the dispute, they may have their own stake have their own stake in the outcome, potentially shaping how they relate the dispute during the judicial process. If the arbitrators determine that the husband has been oppressive or obstinate, the court can compel him to either stop his oppression and obstinacy or to divorce the petitioning wife.

Compounding this, the decree codifies separation as a last resort by treating oppression as a matter that can ordinarily be addressed through "other means" rather than separation. The decree does not specify how "other means" is assessed, leaving the arbitrators or male judge to determine this as well. Given the general orientation toward reconciliation and family preservation within Afghan formal and informal justice, "other means" is

31. Classical Ḥanafī jurisprudence sets out specific conditions under which silence may be construed as consent, designed to ensure the position reflects modesty rather than fear or coercion. Consent must be sought privately rather than in a public gathering so the girl may speak freely, and the suitor must be identified by name: "If a guardian tells his daughter, 'I will marry you to a man', without identifying that man, and she remains silent, such silence does not indicate consent.": ibn Ali al-Zayla'i, U. *Tabyin al-Haqa'iq Sharh Kanz al-Daqa'iq*. 1314 AH. Vol. 2 (1st ed.). p. 118. Cairo: Al-Matba'ah al-Kubra al-Amiriyyah; al-Zuhayli, W. *Al-Fiqh al-Islami wa Adillatuhu*. Vol. 9. p. 6818; Interview with Afghan Islamic law expert.

32. UNAMA. 2025. Report on the Implementation, Enforcement and Impact of the Law on the Propagation of Virtue and Prevention of Vice in Afghanistan.

33. Neither oppression (*ẓulm*) nor oppressor (*ẓālim*) is defined anywhere in Decree No. 18. Article 22 also uses the term 'obstinate' (*muta'annit*) – defined as "a person who does not pay maintenance (*nafaqa*) and does not fulfil marriage-related rights of his wife, while having the capacity to do so" in Article 2(7). This is a markedly narrower formulation than the classical meaning of obstinate, which extends to imposing burdens, causing harm, and exercising lawful rights with the intention of causing harm to others. See: Manzūr al-Ifrīqī, I. 1414 AH. *Lisān al-'Arab*. Vol. 2 (3rd ed.). Beirut: Dār Ṣādir. p. 62; Consultation with Afghan Islamic law expert.

likely to be construed expansively and may include religious counselling, family-based intervention, a vow of cessation of violence by the husband, or other measures deemed appropriate.[34] By these means, **the basic logic of a mechanism aimed at protecting from oppression is inverted: the person most often identified as the oppressor must themselves consent before the wife can leave the marriage**.

The structural effects extend beyond those cases that reach the court and may deter women from initiating the procedure at all – particularly where they anticipate that the dispute will be conveyed as a marital problem to be repaired rather than as grounds for separation. By embedding mediation and reconciliation as the default response to oppression, **Decree No. 18 prioritizes preservation of the marriage over the safety of the woman within it, and risks treating serious violence as a condition susceptible to family-based intervention rather than as conduct requiring protection and exit.** This mirrors DFA provision under Decree No. 12 (disseminated in January 2026 and gazetted in March 2026), which prohibits women from returning to their natal families without their husband's permission.[35]

3. Abandonment within marriage

A wife whose husband is absent cannot end the marriage

Decree No. 18 leaves a woman whose husband has abandoned her without a legal exit from the marriage – a gap that, in Afghanistan, risks trapping women as heads of households in marriages already ended in practice and without a much-needed *mahram* to facilitate their access to life's essentials. Under Article 19, a woman whose husband is absent (*ghayr mafqūd ghā'ib*) – be it due to labour migration, displacement, desertion, or otherwise (but not officially declared as missing) – or where the husband has failed to pay maintenance (*nafaqa*), cannot obtain a separation order.[36] In practice, this means that **a woman whose husband has left her without support does not have recourse to leave the marriage**. In such a scenario, the provision effectively renders the wife unable to remarry or otherwise move on with her life, leaving her bound to a marriage that may have ended in fact but cannot be ended in law. Where she also lacks a *mahram,* she may face prolonged vulnerability with her movement and access to support curtailed.

A significant share of Afghan households already fall within in these circumstances. Decades of conflict, widowhood, displacement, and male labour migration have left many women running households alone, often with a husband absent or gone but not legally 'missing' – precisely the situation Article 19 leaves without remedy.[37] Shaped by cultural norms and systemic discrimination, and further constrained by restrictions on work, education, and movement, women-headed households are among the most economically and socially precarious groups in Afghan society.

Compounding this gap, Article 19(2) defers the questions of a wife's maintenance, accommodation, and other related matters to procedural regulations the DFA has yet to issue. A woman in this situation is thus left without the ability to separate and without confirmed entitlement to provision of their essential living costs, leaving many women at real risk of destitution.

Even in cases where the husband can be qualified as legally "missing" (*mafqūd*), dissolution of the marriage may be rendered procedurally unavailable to the wife. Under Article 16, following a wife's petition for dissolution, **the case must pass through three levels of judicial review, including the Supreme Court, and the final decision must be personally approved by the DFA leader** – creating

34. This is consistent with the documented operation of mediation in violence cases under previous legal frameworks in Afghanistan. See: UNAMA and OHCHR. 2020. In Search of Justice for Crimes of Violence Against Women and Girls and UNAMA and OHCHR. 2018. and Impunity: Mediation of Criminal Offences of Violence against Women. Both reports found that mediation under the 2009 EVAW Law systematically prioritized family preservation over women's protection, which in many cases resulted in the wife returning to a home where the husband has perpetrated abuse against her, despite the criminal nature of the underlying offences.

35. UN Women. 2026. GENDER ALERT – Afghan women and girls' rights under Decree No. 12 on Criminal Rules of Courts.

36. *Nafaqa* typically refers to the husband's obligation to provide for his wife's essential living costs – including food, clothing, and housing – during the marriage and, in the case of divorce, throughout the subsequent *'idda* (waiting period). It is narrower than alimony in the common-law sense, which may continue well beyond this period.

37. For example, among women returnees from Iran and Pakistan surveyed in November 2025, approximately 18 per cent headed their own households – reflecting decades of conflict, widowhood, male labour migration, and displacement that have left a substantial share of Afghan households without an adult male: UN Women. 2026. After Return: Rebuilding Livelihoods for Afghan Women.

delay, uncertainty, and a centralized bottleneck for case resolution. Any wife seeking to invoke this route would thus need the legal awareness to know it exists, the means to navigate three levels of court review, a *mahram* willing to accompany her through the process, and the time required to wait for a decision that rests upon the personal authorization of the de facto head of state.

4. Cross-cutting procedural concerns

The husband holds an effective veto

Throughout the provisions of Decree No. 18, the **evidentiary paths assume either the husband's cooperation or a type of public visibility that intra-household events rarely possess**. A girl exercising the 'option of puberty' in a marriage arranged by a relative must have witnesses observe her declaration to annul the marriage in the moment she reaches puberty, and where the husband disputes her claim and she has no witnesses, his word is believed over hers.[38] Similarly, under Article 14 on separation in the case where a wife has been sexually assaulted by a male ascendant or descendant of her husband, if the husband does not acknowledge the assault, the wife must provide witnesses to the assault.[39]

Further, under Article 11 and Article 12, on milk kinship (*raḍāʿat*),[40] a husband can dissolve the marriage on his sole acknowledgement that he and his wife were breastfed by the same woman as infants, while a wife making the same claim must obtain the husband's acknowledgement or witnesses to that private childhood event. In the absence of the husband's consent, each event the woman must evidence is one that, by its nature, tends to take place beyond the view of multiple witnesses – a girl's verbal annulment of her marriage during her first menstruation, a sexual assault by a wife's husband's father or son, breastfeeding that occurred when both spouses were infants.

The same dynamic appears elsewhere in Decree No. 18, where decisive power over whether a marriage ends is placed in the husband's hands. A wife cannot easily separate from a husband that has subjected her to abuse without his consent;[41] and, under Article 20, where a "missing" first husband returns after the wife has obtained dissolution and remarried in good faith, the second marriage is dissolved and "the wife belongs to the first husband", who may then choose for her to remain as his wife, divorce her, or enter into *khulʿ*[42] treating her as the object of his prior claim rather than as a party with distinct standing of her own.

Moreover, prohibitive economic inequality runs through the one self-initiated route to a wife obtaining dissolution of a marriage under Decree No. 18. Under Article 18, a wife can end the marriage by mutual dissolution (*khulʿ*) only with her husband's consent and by providing compensation in return – conventionally, the forfeiture of her *mahr* and of maintenance (*nafaqa*).[43] The *mahr* is intended to financially support a woman when a marriage ends, and is ordinarily payable to her in the case that she is divorced by her husband. *Khulʿ* inverts that protection: where the wife is the one who decides to leave, she surrenders the entitlement meant to cushion the loss of the household's main earner. This mechanism places a high cost on leaving, putting separation via this route out of reach for many women.

Terms left undefined risk discretion in favour of men

In theory, Decree No. 18 gives girls a way out of marriages they did not choose to enter into. In practice, the decree's silences convert that right into discretion,

38. The girl may declare the annulment directly to the judge "at the moment of reaching puberty" (Article 9(3)) – the most protective route, as it requires no witnesses and is not affected by the husband's wishes. Alternatively, she can declare in front of witnesses (two men, or one man and two women), and subsequently obtain a court order with the original witnesses' testimonies. However, if there are no witnesses, the husband's oath shall be considered valid.

39. For their respective reasons, the three available paths – the husband acknowledges the assault; witnesses (two men, or one man and two women) testify to seeing the assault; the husband refuses to swear an oath denying the assault occurred – are not sufficient to provide protection nor appropriate recourse, with sexual assault by a family member typically occurring in private and without witnesses, and the other two paths controlled by the person whose family is implicated.

40. Milk kinship refers to an established Islamic legal and social familial bond created between a woman and a non-biological infant she breastfeeds.

41. As discussed in regard to Article 22 above, as Decree No. 18 treats oppression as ordinarily addressable through "other means", the wife cannot obtain judicial separation without her husband's consent.

42. *Khulʿ* is a form of divorce where the wife pays compensation in exchange for ending the marriage.

43. Consultation with Afghan Islamic law expert.

largely exercised by men. The decree is built upon Ḥanafī jurisprudence (*fiqh*), a body of doctrine developed over centuries and subject to divergent readings by different classical jurists – thus even where the decree appears to settle a question, the underlying rule it rests upon may allow for several authoritative interpretations.[44] The points left open are not minor technicalities, they extend to matters as fundamental as the age of puberty and consent required for a valid marriage to occur. In a justice system long overwhelmingly oriented toward ensuring marriages once established are not dissolved (often at the expense of women's safety)[45] and now exclusively male in its formal staffing and operating within social norms that strongly discourage women from seeking separation, every undefined term becomes an opening for discretion exercised against the parties the provisions have ostensibly been set out to protect.

Although Decree No. 18 provides two distinct paths to ending a marriage – annulment (the marriage was valid but is ended by court order) and invalidity (the marriage is treated as invalid and having not existed), it does not set out any procedure for invoking the latter path. Invalidity can carry materially different implications for *mahr*, the legitimacy of children, and the woman's status. However, by providing no associated procedural framework for invoking invalidity, the decree channels women in practice toward annulment.[46]

Decree No. 18 does not provide a means by which a woman can petition the court on matters related to separation, such as matrimonial property settlement, alimony, and child custody. In a social and legal context that already entrenches women's dependence upon husbands and male guardians, this marked absence of provisions leaves the consequences of separation to be determined without rules to protect a wife's interests or provide economic justice.

Procedures presuppose freedoms systematically denied to women

Throughout its proposed remedies, Decree No. 18 builds upon (and implicitly asserts) a rights basis that is not freely and fully enjoyed by women and girls; for example, a girl seeking an annulment must appear before a judge and produce witnesses, yet both requirements assume a freedom of movement and an independence she does not have. She would likely live with her husband and his family, and, under DFA-imposed restrictions, her access to de facto government buildings is dependent upon accompaniment by a *mahram*, a role most often played by one's husband,[47] reaching the court therefore requires the acquiescence and accompaniment of the very person she is seeking to leave. The witnesses, in turn, would be drawn largely from that same household and the family network around it, leaving her little prospect of independent corroboration to support a petition for separation. Strong social norms against speaking publicly about family matters or contradicting family decisions raise the threshold further.[48]

In regard to the 'option of puberty' mechanism, a girl cannot meaningfully waive a right (to annul the marriage) she does not know she possesses. While Decree No. 18 extends the duration of this right in a scenario where the girl is

44. Interview with Afghan Islamic law expert.

45. See footnote 34.

46. Decree No. 18 does not specify the consequences attaching to either category, leaving the matter to background Ḥanafī doctrine. A valid (*ṣaḥīḥ*) marriage annulled through the option of puberty produces full legal effects up to annulment: the full specified dower (*mahr musammā*), established lineage of any children (*thubūt al-nasab*), and *'idda*, after which, the wife is classified as a previously married woman (*thayyiba*). An invalid (*fāsid*) marriage produces no consequences before consummation; after consummation, the wife receives the lesser of the specified or customary dower (*mahr al-mithl*), lineage is established, and *'idda* must be observed. The "not valid" scenarios of Article 3 and Article 6 involve defects in the conditions of validity (the guardian's permission, compatibility, fair *mahr*) rather than the absence of essential elements, and so fall within the *fāsid* category rather than the distinct category of void (*bāṭil*) marriages – such as those within prohibited degrees of kinship, or involving a child without their guardian (*walī*) – which produce no legal consequences (*ka al-'adam*). See: al-Zuhayli, W. Al-Fiqh al-Islami wa Adillatuhu. Vol. 9. p. 6602-6605; Consultation with Islamic law experts.

47. A girl's biological male family members cannot readily take on this role, since assisting her may run foul of Decree No. 12's prohibition on a girl leaving her husband's home for her natal family without her husband's permission. See footnote 39 above.

48. Social norms of this kind operate well beyond annulment procedures. In eastern and southern Afghanistan, for example, women's access to inheritance rights is often conditional upon marrying within the extended family; women who married outside the extended family and then claim inheritance may face ostracization from their natal family. The legal right exists in principle, but cannot easily be exercised in practice without conformity to social rules attached to it: UN Women and UNAMA. 2024. Consultations on the December 2021 Special Decree on Women's Rights.

not aware of the marriage,[49] it does not do so to account for a scenario where she is not aware of possessing the right. Barriers to accessing information in Afghanistan are especially pronounced among women, who are restricted from accessing public space, and have lower phone and internet access, as well as literacy levels, than men.[50] While there appear to be some efforts by the de facto Ministry of Communications and Information Technology to increase awareness of the existing prohibition on forced marriage of adults, these efforts do not extend to the matters targeted by the DFA in Decree No. 18.[51]

Together, these patterns produce a framework oriented toward keeping women inside marriages established, including in situations where harm is occurring. **Judicial separation under Decree No. 18 is now the last remaining lawful route out of marriage for a wife experiencing domestic violence at the hands of her husband**. The informal channels that historically offered some recourse – natal family intervention, mediation by community or religious figures – have either been narrowed since 2021 or criminalized. The cumulative effect is a legal architecture that fails to protect women in harmful marriages and, indeed, serves to actively bind them to such situations.

Recommendations

UN Women calls upon the DFA to:

Address core gaps in the de facto legal framework

- **Adhere to the internationally recognized definition of a child** as anyone under 18 years of age, consistent with the Convention on the Rights of the Child, and **prohibit the registration or judicial validation of any marriage below that age.**
- **Establish a standalone, unconditional right for women to judicial separation** in cases of violence or abuse, without requiring the husband's consent and without requiring arbitration first, so that survivor safety takes precedence over preservation of marriage.
- **Require free, full and affirmatively expressed consent to marriage from both parties** on equal terms, and **remove evidentiary asymmetries** that credit a husband's assertion while requiring the wife to produce witnesses or his acknowledgement, adopting standards of proof suited to events that occur in private.
- **Provide a route to judicial dissolution where a husband has abandoned the wife, is absent, or fails to provide maintenance**, triggered by a defined period of absence or non-support rather than requiring the wife prove he is legally 'missing'.
- **Recognize judicial dissolution of marriage for a missing spouse as final and binding**, and any subsequent good-faith remarriage as valid, with a returning husband's case heard through separate proceedings that leave the woman's new marital status and rights intact and require her informed consent to any change.
- **Ensure that women can leave a marriage without having to give up *mahr* or maintenance**, so that a woman's economic means do not determine whether she can leave her husband.
- **Restore the specific protections lost through the dissolution of the 1977 Civil Code and the 2009 EVAW Law**, including mandatory marriage registration, marital property rights, custody provisions, enforceable maintenance orders, and criminal liability for forced marriage and child marriage.

Restore conditions for women's rights and access to justice

- **Re-establish survivor-centred protection mechanisms for sexual and domestic violence** – including functioning shelters, free legal aid, and psychosocial support, and survivor-centred referral pathways, proactively ensuring that these avenues are accessible to women.

49. Article 9(5) indicated that if any relative other than the father or paternal grandfather marries off a virgin minor to a person without her knowledge before she attains puberty, then upon becoming aware of her marriage after reaching puberty, she shall have the choice upon obtaining puberty (*khiyār al-bulūgh*), even if a considerable amount of time has passed since attaining puberty.

50. Even on the most generous available proxy, the reach of such broadcasts is limited: the UN Women-produced Afghanistan Gender Index 2024 records women's personal phone ownership at 60 per cent nationally (54.6 per cent in rural areas) against 90.8 per cent for men, a figure that does not capture independent use, the placing of outgoing calls (during which call-back tones play), or the male gatekeeping of household phones frequently reported by women in Afghanistan.

51. The spokesperson of the de facto Ministry of Communications and Information Technology announced on 15 May 2026 that telecommunications networks would broadcast messaging on the Taliban leader's earlier decrees on forced marriage during telephone call waiting periods, referencing only the December 2021 Special Decree on Women's Rights and the March 2025 Decree No. 17; no reference was made to Decree No. 18, nor to the option of puberty (the decree was published the day prior to this announcement).

- **Ensure *mahram* requirements do not obstruct women's independent access to courts, police, and other locations** essential to exercising their rights, including by permitting women to travel to and enter such locations unaccompanied.
- **Rescind DFA-imposed restrictions preventing women from leaving the marital home** to seek safety or shelter.
- **Restore women's access to the formal justice system** by permitting female judges, prosecutors, lawyers, and witnesses to participate in family law proceedings unhampered – and **reopen women's shelters and women-led legal aid**, without which the procedural remedies of Decree No. 18 cannot in practice function for wives.

UN Women calls upon the international community to:

Undertake sustained, specific advocacy

- **Make Decree No. 18 and the broader pattern of restrictions related to family law a standing priority in all engagement with the DFA**, raising the rights violations in the decree's legal language and omissions (including the absence of minimum age of marriage, and provisions on polygyny, marital property, registration, and maintenance).
- **Convene Muslim-majority states and Islamic scholars to present and promote good practices and protective jurisprudence in relation to family law** from Muslim-majority jurisdictions.
- **Consider the impacts of Decree No. 18 in treaty reporting and in accountability mechanisms** investigating institutionalized gender persecution.
- **Condition any engagement with the DFA on demonstrable, verifiable progress** on a minimum marriage age of 18 years, and equal procedural access to separation, particularly in cases of domestic abuse.

Provide programmatic support

- **Restore and expand multi-year funding for key supports for women's rights and protection** – women-led legal aid, women's organizations, and women-only service and protection hubs/Multi-Purpose Women's Centres (MPWCs) delivering psychosocial support, gender-based violence response and referral, literacy and livelihoods support .
- **Fund documentation and monitoring of how Decree No. 18 is applied in the de facto justice system**, with data disaggregated by gender, region, and economic status, to build an evidence base for advocacy and accountability.
- **Sustain programming that addresses the economic drivers of child, early and forced marriage**, recognizing that legal reform alone cannot ease the household economic pressures that make these marriages a coping strategy for struggling households.
- **Fund accessible, women-led awareness-raising** so that women and girls understand the legal framework – including the limited provisions intended to safeguard aspects of their rights, and the narrow avenues open to them – recognizing that they remain bound by these provisions whether or not they are aware of them, and that barriers to information fall on women far more heavily than men.
- **Fund and expand** women-led legal aid, including legal representation and accompaniment to court where possible, so women can reach and use what judicial avenues exist.