

AFGHANISTAN¹

OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES

(Updated as at 31 May 2017)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p>Equality of spouses in marriage</p> <p><i>Is there a Constitutional provision on equality and are there exceptions? Are there specific laws that recognise marriage as a partnership of equals i.e. are family laws and/or other laws relating to marriage and family relations codified or uncoded? If codified, what are the titles of all the applicable laws? If codified, do these laws apply to all citizens irrespective of religion? If not, do these laws apply to all Muslims or are there different codified laws for different sects within Islam? If uncoded, or if codified laws do not sufficiently address a particular issue, how is the issue addressed e.g.</i></p>	<p>Article 22 of the Constitution guarantees men and women equal rights and duties before the law. It also forbids any discrimination and distinction between Afghans.²</p> <p>Article 54 of the Constitution states that the family is the fundamental pillar of the society, and shall be protected by the state. It commits the State to adopt necessary measures to attain the physical and spiritual health of the family, especially of the child and mother, upbringing of children, as well as the elimination of related traditions contrary to the principles of the sacred religion of Islam.³</p>		<p>Afghanistan ratified CEDAW without reservations.¹¹</p> <p>The Government of Afghanistan in its 2011 report to the CEDAW Committee explained that:¹²</p> <ul style="list-style-type: none"> Family relationships are governed by laws and regulations that derive from <i>Shari'ah</i>, customs, acceptable social traditions and formal regulations; 		<p>According to the 2016 UNDP Human Development Report, Afghanistan ranked 169 on the UNDP Human Development Index and 154 on the UNDP Gender Inequality Index.¹⁶</p> <p>According to Afghanistan's 2015 Demographic and Health Survey, about 2% of households in Afghanistan are headed by women.¹⁷</p>

¹ This Musawah project to map Muslim Family Laws globally was led by Zainah Anwar and coordinated by Lead Researcher Sharmila Sharma, with substantive support from Salma Waheedi and students at the International Human Rights Clinic, Harvard Law School. For this Afghanistan country table, we would also like to thank Darshana Prakasam from Harvard Law School, and Qasim Rahmani and Naira Amin from Open Society Foundation, Afghanistan for their inputs in its preparation.

² Article 22 of Afghanistan's Constitution (2004), https://www.constituteproject.org/constitution/Afghanistan_2004.pdf?lang=en

³ Article 54 of Afghanistan's Constitution (2004), https://www.constituteproject.org/constitution/Afghanistan_2004.pdf?lang=en

¹¹ United Nations Treaty Collection Website, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en

¹² Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), paras. 34, 350, 352, 357, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

¹⁶ UNDP, "Human Development Report 2016", Table 5, pp. 214-217, http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf

¹⁷ Afghan Central Statistics Organisation, Afghan Ministry of Public Health and the DHS Program, "Afghanistan Demographic and Health Survey 2015", Table 2.8, p. 21, <https://dhsprogram.com/pubs/pdf/FR323/FR323.pdf>

<p><i>what Muslim school of law is applicable? Do these laws explicitly state gender-stereotypical roles between husbands and wives e.g. the husband is the head of the household or the wife is the primary caregiver?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 54-55 GR29</p>	<p>Matters regarding marriage and family relations of the predominantly Muslim population in Afghanistan are mainly governed by the following codified laws:</p> <ul style="list-style-type: none"> • For the Sunni majority: The Civil Code is the main codified law that governs matters relating to marriage and family relations.⁴ Based on Article 1(2) of the Civil Code, in the absence of codified laws that sufficiently address a particular matter of personal status of Sunnis, generally, the rules of Hanafi jurisprudence (<i>fiqh</i>) apply,⁵ and • For the Shia minority: The Shiite Personal Status Law (SPSL) is the main codified law that governs matters relating to marriage and family relations.⁶ Based on Article 2(3) of the SPSL, in the absence of codified laws that 		<ul style="list-style-type: none"> • Under <i>Shari'ah</i> and Afghan law, marriage legitimises the association of a woman and man to establish a family and gives rise to certain rights and duties between the spouses; and • The original text of the SPSL had contained “some discriminatory issues and some deficiencies” but “more than 70 points were amended” after objections from many women activists. <p>The Afghan government further explained that:¹³</p>		
---	--	--	---	--	--

⁴ Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>

⁵ Article 1(2) of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>; Article

⁶ Shiite Personal Status Law (2009), <https://www.refworld.org/pdfid/4a24ed5b2.pdf>; Article 131 of Afghanistan's Constitution (2004), https://www.constituteproject.org/constitution/Afghanistan_2004.pdf?lang=en

	<p>sufficiently address a particular matter of personal status of Shias, generally, the rules of Jafari <i>fiqh</i> apply.⁷</p> <p>Despite the equality guarantee under Article 22 of the Constitution, the Civil Code and the SPSL provide for a marital framework based on ‘reciprocal’ or ‘complementary’ rights (as opposed to ‘equal’ rights) between the two spouses, whereby in return for maintenance and protection from her husband, a wife is expected to obey him. Thus:</p> <ul style="list-style-type: none"> • For Sunnis: (i) Article 60 of the Civil Code defines marriage as “a contract that legalises relationship between man and woman with the aim of forming a family, and establishes rights and duties of the parties.”; (ii) Articles 99, 115, 117 entitle a wife to a dower (<i>mahr</i>), a suitable place of residence and financial maintenance from her husband; (iii) Article 155 provides that a wife risks losing her financial maintenance if she refuses to live in the marital home, 		<ul style="list-style-type: none"> • Although supervising the family is the husband’s right, he does not have the right to prevent the wife from going out of the home marital; rather the wife can go out for legitimate and common purposes; • Based on Article 122 of the SPSL, the wife is only obliged to do the household chores that she has agreed to at the time of marriage; otherwise, she is not obligated to do household chores. <p>The Government of Afghanistan also said that a 10-year plan spanning from 2008 to 2018 that seeks to endorse women and promote gender</p>		
--	---	--	---	--	--

¹³ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), paras. 366-367, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁷ Article 2(3) of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

	<p>leaves the marital home without the permission of her husband or does not fulfil her marital duties.⁸</p> <ul style="list-style-type: none"> • For Shias: (i) Article 74 defines “relationship by marriage” as “a relationship of relatives of both parties as a result of the marriage contract of couples”; (ii) Article 133 of the SPSL provides that the household’s supervision is the right of the husband unless based on the husband’s mental deficiency and by order of the court, supervision is given to the wife; (iii) Article 155(2) provides that the husband is required to perform all the commitments or obligations resulting from the marriage contract such as dower (<i>mahr</i>) and maintenance of the wife; (iv) Article 132(7) states that the wife is obligated to maintain the marriage home and to do household chores but only if it is specified by the husband as a condition in the marriage contract; and (v) Article 133(3) provides that a husband can 		<p>equality in the country, known as the National Action Plan for Women of Afghanistan (NAPWA) has been developed.¹⁴</p> <p>NAPWA does not specify the promotion of gender equality in marriage and family relations as part of its goals and objectives but includes certain actions intended to advance women’s rights in marriage and family relations such as the criminalisation and prosecution of “traditional practices harmful to women’s emotional, social, and economic wellbeing, and reducing the occurrence of such activities, including early and forced marriages.”¹⁵</p>		
--	--	--	--	--	--

⁸ Articles 60, 99, 115, 117, 155 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>

¹⁴ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), para. 34, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

¹⁵ Islamic Republic of Afghanistan, “National Action Plan for Women of Afghanistan 2007-2017”, pp. 13-17, 39, <http://ago.gov.af/Content/files/NAPWA.pdf>

	<p>prevent his wife from any unnecessary actions which are not her duties specified by <i>Shari'ah</i> and also which are contrary to local customs as well as the husband's benefits.⁹</p> <p>Marriage and family relations of Afghanistan's non-Muslim minority communities are governed by the principles of their respective religions.¹⁰</p>				
<p>Minimum and equal legal age for marriage</p> <p><i>Is there a minimum age of marriage? Are there exceptions to the minimum age (e.g. min. age at 18, with exceptions to 16)? Is there an absolute minimum age without exceptions? Is there equality in the minimum age of marriage? Does the minimum age of marriage match the age of majority? Is there a minimum age verification process before the marriage is concluded?</i></p>	<p>For both Sunnis and Shias, the minimum legal age for marriage is 16 for females and 18 for males as per Article 70 of the Civil Code and Article 99(1) of the SPSL, respectively.¹⁸ However, marriages below the minimum legal age for marriage are permissible for both sects:</p> <ul style="list-style-type: none"> • For Sunnis: Article 71(1) of the Civil Code provides that either a competent father or competent court may permit girls below 16 to marry.¹⁹ 		<p>The Government of Afghanistan in its 2011 report to the CEDAW Committee acknowledged that while the Civil Code and the SPSL provide for minimum legal ages for marriage, the rate at which girls and boys below these ages are made to marry by their parents or relatives is very high.²⁷</p>	<p>The Afghan standard marriage contract (<i>nikahnama</i>) requires a man to verify that his prospective wife is at least 16.³¹</p>	<p>According to UNICEF's State of the World's Children 2016 report, 33% of women aged 20- 24 in Afghanistan were first married by 18 and according to the Afghan government, women who marry below 15 make up 3% of married women.³²</p> <p>According to Afghanistan's 2015 Demographic and Health Survey, marriage is universal in the country;</p>

⁹ Articles 74, 132, 133, 155 of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>
¹⁰ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), para. 354, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

¹⁸ Article 70 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>; Article 91(1) of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

¹⁹ Article 71(1) of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>

<p>Applicable CEDAW Provision Article 16(2) Paras. 36-39 GR21</p>	<p>Article 71(2) of the Civil Code absolutely prohibits the marriage of girls below 15.²⁰</p> <ul style="list-style-type: none"> • For Shias: Articles 99(2) and 99(3) of the SPSL provide that a guardian appearing before the court may permit girls and boys below 16 and 18, respectively, to marry if the marriage is considered necessary and in their best interest.²¹ <p>The SPSL does not stipulate an absolute minimum age below which a marriage may not be authorised.</p> <p>On the consequences of unlawful marriages below the legal minimum age for marriage:</p> <ul style="list-style-type: none"> • Article 28 of the Law on the Elimination of Violence against Women (EVAW law) provides that a person who marries a 		<p>The Afghan government is developing a National Action Plan for Elimination of Early and Child Marriage.²⁸ In September 2016, the Deputy Ministry of Youth Affairs and Ministry of Women Affairs with the technical support of the UNFPA, organised a consensus-building workshop between key players to finalise the plan.²⁹</p> <p>Afghanistan is a part of the South Asian Initiative to End Violence Against Children (SAIEVAC) which has a regional action plan to end</p>	<p>only 1% of women and men have never married. The median age at first marriage for women is 18.5 and men is 22.9.³³</p> <p>According to Girls Not Bride, factors that contribute to the high prevalence of child marriage in Afghanistan include poverty, poor access to education and strong patriarchal values that have given rise to cultural practices that assign a low value to girls “such as bride price, child engagement (where children are engaged before birth), exchange marriages (between girls from two separate families) and giving girls in <i>baad</i> (to solve a community dispute).”³⁴</p>
---	--	--	---	---

²⁷ Afghanistan State party report, U.N. Doc. CEDAW/AFG/1-2 (2011), para. 359, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

³¹ Women Reclaiming and Redefining Culture, “Afghanistan: Marriage contract approved by the Supreme Court of Afghanistan”, 2007, <http://wrrc.wluml.org/node/3528>

³² UNICEF, “The State of the World’s Children 2016”, Table 9, pp. 150-153, https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf; Afghanistan State party report, U.N. Doc. CEDAW/AFG/1-2 (2011), para. 359, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

²⁰ Article 71(2) of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/slspublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>

²¹ Articles 99(1)-99(3) of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

²⁸ Girls Not Brides, “Afghanistan”, *Child marriages around the world*, <http://www.girlsnotbrides.org/child-marriage/afghanistan/>

²⁹ UNFPA Afghanistan, “Consensus Conference for the National Action Plan for prevention of early and child marriage”, 2016, <http://afghanistan.unfpa.org/news/consensus-conference-national-action-plan-prevention-early-and-child-marriage>

	<p>girl without considering the provisions of Article 71 of Civil Code, depending on the circumstances, can be sentenced to imprisonment of at least two years and the marriage can be cancelled at the woman's request;²²</p> <ul style="list-style-type: none"> Article 99(4) of the SPSL allows a girl or boy to revoke a marriage contract concluded under Article 99 upon reaching legal adolescence.²³ <p>There is divergence in the law for Sunnis and Shias regarding the comparison between the minimum legal age for marriage and the legal age of civil majority:</p> <ul style="list-style-type: none"> For Sunnis: The female minimum legal age for marriage is below the legal age of civil majority. Under 39 of the Civil Code, the legal age of civil majority is 18 for both females and males.²⁴ 		<p>child marriage to be implemented between 2015 and 2018.³⁰</p>		
--	---	--	---	--	--

³³ Afghan Central Statistics Organisation, Afghan Ministry of Public Health and the DHS Program, "Afghanistan Demographic and Health Survey 2015", p. 61, <https://dhsprogram.com/pubs/pdf/FR323/FR323.pdf>

³⁴ Girls Not Brides, "Afghanistan", *Child marriages around the world*, <http://www.girlsnotbrides.org/child-marriage/afghanistan/>

²² Article 28 of the Law on the Elimination of the Violence against Women (2009), http://mowa.gov.af/Content/files/EVAW%20Law%20Report_Final_English_17%20%20March%202014.PDF

²³ Article 99 of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

²⁴ Article 39 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/slpublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>

	<p>Therefore, males become marriageable and acquire full legal capacity at the same time, while females are marriageable at 16, but only acquire full legal capacity at 18,²⁵</p> <ul style="list-style-type: none"> • For Shias: The SPSL does not specify a definitive age upon which a girl or boy attains the legal age of civil majority. Instead, the 'maturity' of a girl or boy is a matter for the court to decide, although the SPSL does provide some form of guidance as follows: Article 26 list being a minor as a ground for 'legal incompetence', which in turn is defined as "the inability or deficiency in the capacity of a person to exercise financial rights or to utilise property or assets". Similarly, Article 7 defines 'maturity' as "the mental ability of a person to deal with financial transactions in a way that avoids unfairness or injustice to him/herself" and asserts that 'maturity' of a person is to be determined by the court. 				
--	---	--	--	--	--

³⁰ SAIEVAC, "Regional Action Plan to End Child Marriage in South Asia (2015-2018)", http://www.saievac.org/download/Thematic%20Area%20Resources/Child%20Marriage/RAP_Child_Marriage.pdf

²⁵ Kabeh Rastin-Tehrani and Nadjma Yassari, "Max Planck Manual on Family Law in Afghanistan", (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), pp. 33-34, http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf

	Article 27 provides that a boy exhibits signs of maturity or attains puberty at the age of 15 or at the time of first ejaculation while a girl exhibits signs of maturity or attains puberty at the onset of her menstruation. ²⁶				
<p>Women’s consent to marriage</p> <p><i>Is a marriage valid without the woman’s consent? Is the practice of forcing women to marry against their will (ijbar) prohibited? Is there a standard marriage contract? If so, what are its broad provisions and is there anything particular in the contract that ought to be highlighted on the basis that it advances women’s rights or otherwise? Is it mandatory to register a marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(b) Paras. 15-16 GR21 Paras. 25-26, 33-34 GR29</p>	<p>There is divergence in the law for Sunnis and Shias regarding the requirement for a woman’s consent to marriage:</p> <ul style="list-style-type: none"> • For Sunnis: A prospective bride who has reached the minimum age for marriage must consent to her marriage. Consequently, <i>ijbar</i> marriages are prohibited among Sunni females over 16. However, there appears to be ambiguity in the law as to whether a girl aged 15-16 may be married off by her guardian without her consent and by force.³⁵ <p>Article 77 of the Civil Code</p>		<p>The Government of Afghanistan in its 2011 report to the CEDAW Committee asserted that:⁴⁴</p> <ul style="list-style-type: none"> • Family relationship is a holy relationship and Islam encourages Muslims to establish a family through legitimate marriages; and • The consent of the marrying couple “is the basis for 	<p>There is a standardised marriage contract. Known as the <i>nikahnama</i>, it is 15 pages long and was approved by the Afghan Supreme Court in 2007 with the aim of curbing child and forced marriages.⁴⁷</p> <p>Registration of marriages may be undertaken</p>	<p>Various sources suggest a relatively high prevalence of forced marriages in Afghanistan:</p> <ul style="list-style-type: none"> • According to the Afghanistan Independent Human Rights Commission (AIHRC) about 6.7% of marriages are forced marriages;⁵⁰ • According to a Human Rights Watch study, about 70% to 80% of marriages are forced marriages;⁵¹

²⁶ Articles 7, 26-27 of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

³⁵ Kabeh Rastin-Tehrani and Nadjma Yassari, “Max Planck Manual on Family Law in Afghanistan”, (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), p. 38, http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf

⁴⁴ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), paras. 350, 354, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁴⁷ Landinfo, “Afghanistan: Marriages”, 2011, p. 23, http://www.landinfo.no/asset/1852/1/1852_1.pdf; Women Reclaiming and Redefining Culture, “Afghanistan: Marriage contract approved by the Supreme Court of Afghanistan”, 2007, <http://wrrc.wluml.org/node/3528>

⁵⁰ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), para. 54, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁵¹ Women Living Under Muslim Laws, “Child, Early and Forced Marriage: A Multi-Country Study”, *Submission to the UN Office of the High Commissioner on Human Rights (OHCHR)*, 2013, p. 21, <http://www.wluml.org/sites/wluml.org/files/UN%20report%20final.pdf>

	<p>states that a marriage is valid if: (i) there is a performance of correct offer and acceptance by the parties, their guardians or their agents; (ii) the marriage is concluded in the presence of two competent witnesses; and (iii) there is an absence of permanent or temporary legal impediment between the prospective bride and groom.³⁶</p> <p>Article 505 of the Civil Code subjects the validity of a contract to the mutual consent of the contracting parties. Consent is to be expressed without any duress or coercion.³⁷</p> <ul style="list-style-type: none"> • For Shias: Regardless of their age, both prospective brides and grooms must consent to the marriage. Consequently <i>ijbar</i> marriages are prohibited among Shias. <p>Article 105 details the</p>		<p>marriage. Unfortunately, traditions and customs in the society have profound roots in people's thoughts and the mentioned issue is barely respected. In most of families, parents or daughter's close relatives decide on her marriage";</p> <ul style="list-style-type: none"> • It is working together with civil society to raise awareness of the right of women to freely choose their husband.⁴⁵ <p>In addition, the Afghan government explained that the official registration of marriages is.⁴⁶</p>	<p>either traditionally by the person performing the ceremony or officially through the Records and Registration Court, before or after the ceremony:⁴⁸</p> <ul style="list-style-type: none"> • Couples who register their marriages traditionally are issued with traditional marriage certificates (<i>Nikah Khat</i>); • Couples who register their marriages officially are issued with two forms of 	<ul style="list-style-type: none"> • According to a Global Rights study, about 59% of marriages are forced marriages.⁵² <p>According to reports by the Afghan government, UN agencies and civil society, as with the case of child marriages, the practice of forced marriages is deeply rooted in patriarchal values and has given rise to widespread cultural practices that subordinate women to the will of men, thereby contributing to the high prevalence of force marriage in Afghanistan. Such practices include:⁵³</p> <ul style="list-style-type: none"> • <i>Baad</i>: The giving of unmarried girls as a means to resolve a dispute;
--	--	--	--	--	---

³⁶ Article 77 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>

³⁷ Article 505 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>

⁴⁵ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), paras. 43, 354, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁴⁶ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), para. 355, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁴⁸ Landinfo, "Afghanistan: Marriages", 2011, p. 23, http://www.landinfo.no/asset/1852/1/1852_1.pdf; International Foundation for Electoral System, "Handbook for Women's Rights Advocates", 2011, p. 41, https://www.ifes.org/sites/default/files/afghan_handbook_1.pdf;

	<p>conditions for a valid marriage as follows: (i) Article 105(1) states the intention and consent of the parties, which have to be obtained explicitly by words, action or writing, as prerequisites to the marriage contract; (ii) Article 105(3) provides that a marriage is concluded by verbal offer of a party and verbal acceptance of the other party with the explicit intention to marry one another.³⁸</p> <p>Article 102 of the SPSL provides that a marriage of a virgin girl is subject to her own consent as well as that of her guardian.³⁹</p> <p>Article 105(2) of the SPSL provides that whenever a contract of marriage is carried out without the consent of the parties, or a party, it can be</p>		<ul style="list-style-type: none"> • Voluntary but couples are encouraged to officially register their marriages in order to prevent forced marriages; • Complicated and time consuming but the government is working to make official registration of marriages easier through various means, including increasing the number of registering organisations. 	<p>documentation - the <i>nikahnama</i> and a one-page registration certificate containing key information found in the registry book.</p> <p>While traditional registration of marriages is permissible, it is important to officially register marriages. The <i>nikahnama</i> offers both parties, especially women, legal protection with regard to proof</p>	<ul style="list-style-type: none"> • <i>Baadal</i>: The marriage of one boy and one girl from one family with another girl and boy from another family to remove the obligation of both families to pay the dower (<i>mahr</i>); • <i>Walwar</i>: Payment of a sum of money or commodity as a “bride price” to the head of the bride’s household by the groom or his family supposedly to reimburse the parents of the bride for the financial loss they suffered while raising their daughter; • Exchange of girls for money, property, loans and more; and
--	--	--	--	---	---

⁵² Women Living Under Muslim Laws, “Child. Early and Forced Marriage: A Multi-Country Study”, *Submission to the UN Office of the High Commissioner on Human Rights (OHCHR)*, 2013, p. 21, <http://www.wluml.org/sites/wluml.org/files/UN%20report%20final.pdf>

⁵³ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), paras. 54-55, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>; UNAMA and OHCHR, “Harmful Traditional Practices and Implementation of the Law on Elimination of Violence Against Women in Afghanistan”, 2010, http://www.afghan-web.com/woman/harmful_traditions.pdf; Women Living Under Muslim Laws, “Child. Early and Forced Marriage: A Multi-Country Study”, *Submission to the UN Office of the High Commissioner on Human Rights (OHCHR)*, 2013, p. 23, <http://www.wluml.org/sites/wluml.org/files/UN%20report%20final.pdf>; Nadjma Yassari and Mohammad Hamid Saboor, “Sharia and national law in Afghanistan”, in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), p. 303, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>

³⁸ Article 105 of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

³⁹ Article 102 of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

	<p>subsequently validated by later consent.⁴⁰</p> <p>On the consequences of forced marriages:</p> <ul style="list-style-type: none"> Article 26 of the EAW law provides that a person who gets a woman who has attained the legal age for marriage engaged or married without her consent can be sentenced to imprisonment of at least two years and the engagement or marriage is invalid;⁴¹ Article 28 of the EAW law provides that a person who marries a woman who has not reached the legal marriage for age, without considering the provision of Article 71 of the Civil Code shall, depending on the circumstances, be sentenced to mid- term imprisonment of not less than two years and the marriage contract may be cancelled at the request of the woman;⁴² Article 517 of the Penal Code, 			<p>of marriage, dower (<i>mahr</i>), financial maintenance, proof of children's paternity and harmful marriage related traditions such as forced marriages.⁴⁹</p>	<ul style="list-style-type: none"> Coercion of widows to marry a relation of a deceased husband. <p>Various sources suggest a relatively low rate of officially registered marriages in Afghanistan:</p> <ul style="list-style-type: none"> According to the AIHRC, about 80% of couples in Afghanistan have traditional marriage certificates (<i>Nik-kah Khat</i>) and are not officially registered;⁵⁴ According to the Max Planck Institute, only about 5% of marriages in Afghanistan are officially registered.⁵⁵ <p>According to both government and social society reports the contributing factors for the low rate of officially registered marriage include:⁵⁶</p>
--	--	--	--	--	---

⁴⁰ Articles 105(2) of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

⁴¹ Article 26 of the Law on the Elimination of the Violence against Women (2009), http://mowa.gov.af/Content/files/EVAW%20Law%20Report_Final_English_17%20%20March%202014.PDF

⁴² Law on the Elimination of the Violence against Women (2009), Article 28, http://mowa.gov.af/Content/files/EVAW%20Law%20Report_Final_English_17%20%20March%202014.PDF

	<p>provides that a person who makes a widow or an adult woman marry against their will can be sentenced up to one year in prison.⁴³</p>			<ul style="list-style-type: none"> • A process for registration of marriage that is complicated and time consuming, thus giving rise to people's reluctance to do so; • Cultural inhibitions such as the belief that "it is against the Afghans' way of thinking, habits and traditions to begin their marital life by going to a court, even if it is only in order to register the marriage"; • The apparent lack of need for an official marriage certificate the daily lives of Afghans because "[p]resenting certified documents is rarely necessary in Afghanistan."
--	--	--	--	---

⁴⁹ International Foundation for Electoral System, "Handbook for Women's Rights Advocates", 2011, p. 41, https://www.ifes.org/sites/default/files/afghan_handbook_1.pdf
⁵⁴ Wadsam, "80% of marriages in Afghanistan are not legally registered", *Wadsam*, 10 December 2012, <http://wadsam.com/arts-culture/80-of-marriages-in-afghanistan-are-not-legally-registered-2342/>
⁵⁵ Kabeh Rastin-Tehrani and Nadjma Yassari, "Max Planck Manual on Family Law in Afghanistan", (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), p. 52, http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf
⁵⁶ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), para. 355, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>; Kabeh Rastin-Tehrani and Nadjma Yassari, "Max Planck Manual on Family Law in Afghanistan", (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), p. 52, http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf; Anastasiya Hozyainova, "The Marriage Contract: Process and Recommendations for its Implementation", in *A Woman's Place: Perspective on Afghanistan's Evolving Legal Framework*, ed. Alexandra Gilbert, (Quebec, Canada, : International Centre for Human Rights and Democratic Development, 2011), pp. 31-35, http://publications.gc.ca/collections/collection_2012/dd-rd/E84-29-2011-eng.pdf
⁴³ Article 517 of the Penal Code (1976), https://www.unodc.org/tldb/pdf/afghanistan_penal_code.pdf

<p>Women’s capacity to enter into marriage</p> <p><i>Is consent of a marital guardian (wali) required? If so, can a woman choose her own wali? Can a woman go before a court or other competent authority to seek permission to marry if her wali refuses to consent to her marriage? Can a woman negotiate her marital rights prior to marriage and can these rights be changed during marriage? If so, who can change these rights and under what circumstances e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(a), 16(1)(b) Paras. 15-16 GR21 Para. 34 GR29</p>	<p>There is a slight divergence in the law for Sunnis and Shias regarding the requirement for consent of a marital guardian (wali):</p> <ul style="list-style-type: none"> • For Sunnis: A prospective bride over 18 does not require the consent of a guardian to enter into marriage. Article 80 of the Civil Code deems the marriage contract of a female who has reached the age of civil majority as effective and binding even without the agreement of her guardian.⁵⁷ A prospective bride below 18 requires the consent of her guardian or judge to enter into marriage. The guardian must be her father or in his absence or incapacity, her father’s male ascendants.⁵⁸ • For Shias: A prospective bride over 16 and who has attained maturity or puberty does not require the consent of a guardian to enter into marriage. A prospective bride below 16 or who has not attained maturity or puberty requires the permission 				
--	---	--	--	--	--

⁵⁷ Article 80 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/slspublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>

⁵⁸ Articles 71, 78, 246, 544 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/slspublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>; Kabeh Rastin-Tehrani and Nadjma Yassari, “Max Planck Manual on Family Law in Afghanistan”, (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), p. 35, http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf

	<p>of her guardian or judge to enter into marriage.⁵⁹</p> <p>Article 102 of the SPSL provides that the marriage of a virgin girl is subject to her own consent as well as that of her guardian. If her guardian refuses consent, she may seek the authorisation of a judge to get married.⁶⁰</p> <p>Article 107 of the SPSL requires both prospective spouses to appoint an agent to represent him/her in arranging and facilitating the execution of the marriage contract. The agent must be “be mature, sane, willing, competent and Muslim.”⁶¹</p> <p>Article 27 of the EAW law states that a person who prohibits a woman from marriage can be sentenced to short term imprisonment.⁶²</p>				
--	---	--	--	--	--

⁵⁹ Article 99 of the Shiite Personal Status Law (2009) requires the permission of a guardian appearing before the court for females and males below 16 and 18, respectively, to marry, <http://www.refworld.org/pdfid/4a24ed5b2.pdf>; Andrea Buchler and Christina Schlatter, “Marriage Age in Islamic and Contemporary Muslim Family Law: A Comparative Survey, (Electronic Journal of Islamic and Middle Eastern Law, 1, 2013), pp. 69-70,

⁶⁰ http://www.zora.uzh.ch/78204/1/Beitrag_Buechler_Schlatter_final.pdf
⁶¹ Article 102 of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>; Andrea Buchler and Christina Schlatter, “Marriage Age in Islamic and Contemporary Muslim Family Law: A Comparative Survey, (Electronic Journal of Islamic and Middle Eastern Law, 1, 2013), p. 70,

⁶² http://www.zora.uzh.ch/78204/1/Beitrag_Buechler_Schlatter_final.pdf
 Article 107 of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

Article 27 of the Law on the Elimination of the Violence against Women (2009), http://mowa.gov.af/Content/files/EVAW%20Law%20Report_Final_English_17%20%20March%202014.PDF

	<p>Pursuant to Article 68 of the Civil Code and Article 134 of the SPSL, both Sunni and Shia spouses may stipulate any condition in their marriage contract so long as they are not contrary to the purposes of marriage and against <i>Shari'ah</i> or the law.⁶³</p> <p>Articles 141 and 145 of the SPSL provide that a breach of a condition in the marriage contract allows the aggrieved spouse to seek divorce “without other procedures and required conditions of divorce.”⁶⁴</p> <p>Article 134 of the SPSL details examples of valid conditions that a wife may include in the marriage contract. These include conditions: (i) preventing the husband from entering into another marriage; (ii) allowing the wife to choose of place of residence; (iii) granting the wife the unconditional right to divorce on the basis of the non-payment of financial maintenance by the husband that results in hardship for the wife,</p>				
--	---	--	--	--	--

⁶³ Article 68 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/slspublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>; Article 134 of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>; Kabeh Rastin-Tehrani and Nadjma Yassari, “Max Planck Manual on Family Law in Afghanistan”, (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), p. 48, http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf

⁶⁴ Articles 141, 145 of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

	the imprisonment of the husband for a long period, the husband's affliction with an incurable disease; and the husband's long absence from the marriage of more than two to three years. ⁶⁵				
<p>Polygamous marriages <i>Does the law prohibit polygamy or impose strict conditions on such practice? Is the permission of the court required for a polygamous marriage? Is the permission of an existing wife required for a polygamous marriage? Is it necessary to inform an existing wife of the polygamous marriage? Are temporary marriages such as traveler's marriages (misyar) recognised? Is it necessary to register a polygamous marriage? Can a woman stipulate in the marriage contract that her intended husband cannot enter into a polygamous marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Para. 14 GR21 Para. 34 GR29</p>	<p>Both Sunni and Shia men may marry up to four wives at one time.</p> <p>For Sunnis:</p> <p>Article 86 of the Civil Code stipulates that marriage with more than one woman is permissible under the following circumstances: (i) there is no fear of injustice between wives; (ii) the person has financial sufficiency to sustain the wives; and (iii) there is legal expediency such as the first wife is childless.⁶⁶ The Civil Code is silent on the maximum number of wives that a Sunni man may marry but all Muslim schools of law prohibit the permanent marriage to more than four wives.⁶⁷</p>		<p>The Government of Afghanistan in its 2011 report to the CEDAW Committee confirmed that:⁷⁹</p> <ul style="list-style-type: none"> • Sunni and Shia men may marry up to four wives at the same time but only if they: (i) they have the financial means to provide their wives and children with maintenance; (ii) there is a legal basis for them to marry more than one wife; and (iii) there is not a fear of violation of 	<p>According to Afghanistan's 2015 Demographic and Health Survey, 6% of marriages in Afghanistan are polygamous. The survey also found that:⁸²</p> <ul style="list-style-type: none"> • Older women were more likely than younger women to have co-wives. For instance, 11% of married women aged 45-49 reported having co-wives, as compared with 3% of women aged 20-24; • Rural women were more likely to report having co-wives than 	

⁶⁵ Articles 134 of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

⁶⁶ Article 86 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>

⁶⁷ Kabeh Rastin-Tehrani and Nadjma Yassari, "Max Planck Manual on Family Law in Afghanistan", (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), pp. 45-46, http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf

⁷⁹ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), para 369, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>.

⁸² Afghan Central Statistics Organisation, Afghan Ministry of Public Health and the DHS Program, "Afghanistan Demographic and Health Survey 2015", Table 4.2.1, p. 67, <https://dhsprogram.com/pubs/pdf/FR323/FR323.pdf>

	<p>Article 87 of the Civil Code permits an existing wife to seek divorce on the basis of harm if her husband marries another woman without meeting the conditions stipulated in Article 86.⁶⁸</p> <p>Article 89 of the Civil Code permits a new wife in a polygamous marriage to seek divorce on the basis of harm if: (i) her husband had concealed the fact that he was already married from her; (ii) had not acquired her explicit agreement to enter into a polygamous marriage; and (iii) she does not consent to continue living with her husband.⁶⁹</p> <p>Article 88 of the Civil Code permits a woman to stipulate in her marriage contract that if her husband marries another woman contrary to Article 86 of the Civil Code, the power to divorce (<i>isma</i>) will be transferred to her.⁷⁰ In this instance, the wife does not need</p>		<p>justice;</p> <ul style="list-style-type: none"> If the husband fails to meet the conditions for polygamous marriages and if the existing wife has stated in her marriage contract that her husband should not marry another women, she can ask the court for divorce when her husband marries a new wife. <p>However, due to lack of official registration of marriages through the courts, the conditions for polygamy (financial ability, lawful excuse, and justice) are rarely considered.⁸⁰</p>		<p>urban women (7% versus 5%);</p> <ul style="list-style-type: none"> Women living in poorer households were more likely than women living in richer households to have co-wives. For instance, 8% of women living in households in the lowest wealth quintile reported having co-wives, as compared with 5% of women living in households in the highest quintile; and Lower educated women were slightly more likely to report having co-wives than higher educated women. For instance, 7% of married women with no education reported having co-wives, as compared with 6% of women who
--	--	--	---	--	---

⁶⁸ Article 87 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/slspublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>

⁶⁹ Article 89 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/slspublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>

⁷⁰ Article 88 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/slspublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>

	<p>to prove that she has suffered harm when seeking divorce.⁷¹</p> <p>Article 116 of the Civil Code prohibits a husband from forcing his multiple wives to force his wives to live in the same house.⁷²</p> <p>Article 37 of the EVAW law states that if a husband marries more than one woman without observing the provisions of Articles 86 and 89 of the Civil Code, he shall be sentenced to short-term imprisonment not less than three months.⁷³</p> <p>For Shias:</p> <p>Article 91 of the SPSL permits a Shia man to establish marriage contracts with up to a maximum of four women at a time provided he is able to justiciably meet his obligations to his wives and family.⁷⁴ Under the SPSL, among</p>		<p>In addition, the Afghan government appears to suggest that temporary marriages are implicitly not accepted for both Sunnis and Shias because according to <i>Shari'ah</i> and Afghan law, "marriage is a permanent contract."⁸¹</p>	<p>has attained secondary or higher education.</p> <p>According to research compiled by the Ireland Refugee Documentation Centre reasons for polygamous marriages include:⁸³</p> <ul style="list-style-type: none"> • The very poor social status of divorcees which pressurises wives to agree to become a second or third wife to avoid being single; • The view among men that the ability to enter into a polygamous marriage is an indication of material and social prestige; • The failure of the
--	---	--	---	--

⁸⁰ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), para 369, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>.

⁷¹ Kabeh Rastin-Tehrani and Nadjma Yassari, "Max Planck Manual on Family Law in Afghanistan", (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), p. 46, http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf

⁷² Article 116 of the Civil Code, <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>

⁷³ Article 37 of the Law on the Elimination of the Violence against Women (2009), http://mowa.gov.af/Content/files/EVAW%20Law%20Report_Final_English_17%20%20March%202014.PDF

⁷⁴ Article 91 of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

⁸¹ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), para. 357, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>.

⁸³ Refugee Documentation Centre (Ireland), "Information on Polygamous Marriages in Afghanistan", 2011, https://www.justice.gov/sites/default/files/eoir/legacy/2013/06/11/polygamous_marriages.pdf

	<p>the general obligations of the husband include, maintaining his wife, getting along with her as well as her parents and relatives, assist and cooperate with his wife to maintain a stable family and raising their children, and when he has more than one wife, he is obliged to allocate at least one night out of every four nights for each wife.⁷⁵</p> <p>Article 134(4) of the SPSL permits a woman to stipulate in her marriage contract that her husband cannot enter into another marriage contract, whether permanent or temporary, with another woman. If her husband does enter into a polygamous marriage, a wife may seek a divorce “without other procedures and required conditions of divorce.”⁷⁶</p> <p>Both the Civil Code and SPSL are silent on the prohibition or otherwise of temporary marriages.⁷⁷</p>				<p>existing wife to produce a male child; and</p> <ul style="list-style-type: none"> • The wife as an incurable disease. <p>According to the Immigration and Refugee Board of Canada, information on the ground suggest that temporary marriages are not very common in Afghanistan.⁸⁴</p>
--	--	--	--	--	--

⁷⁵ Articles 130, 132 of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

⁷⁶ Articles 134(4) of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

⁷⁷ Immigration and Refugee Board of Canada, “Responses to Information Requests”, 2012, para 1, <https://www.justice.gov/sites/default/files/eoir/legacy/2014/01/16/AFG104238.E.pdf>

⁸⁴ Immigration and Refugee Board of Canada, “Responses to Information Requests”, 2012, para 1, <https://www.justice.gov/sites/default/files/eoir/legacy/2014/01/16/AFG104238.E.pdf>

	With regard to Shias, however, it is noteworthy that the original text of the SPSL contained a chapter (Chapter 6) which explicitly permitted temporary marriages and detailed the requirements for such marriages. The chapter was deleted in its entirety in the final text of the SPSL. ⁷⁸				
<p>Divorce rights</p> <p><i>Is there equal right to divorce between women and men? Can the husband divorce without reason and without having to go to court? What are the main forms of divorce? Can all forms of divorce be sought only through the courts? Are the grounds for divorce the same for the husband and wife? Is unilateral divorce by repudiation (talāq) prohibited? If unilateral divorce is not prohibited, what is the procedure i.e. is the presence of the spouse to be divorced required, are witnesses required, does the spouse seeking divorce</i></p>	<p>Both the Civil Code and the SPSL provide for three different mechanisms for divorce: (i) unilateral repudiation (<i>talāq</i>); (ii) judicial divorce; and (iii) redemptive divorce (<i>khu'</i>). The marriage may also be annulled.⁸⁵</p> <p>Under both the Civil Code and SPSL, the husband may unilaterally repudiate a marriage, which may be effectuated without much restrictions. While the Civil Code is silent on the requirement for witnesses to the repudiation, the SPSL specifically requires the presence of two male witnesses who must be Muslims.⁸⁶</p>	For a Sunni wife, where her husband has delegated the right to divorce to his wife without restrictions, the court will issue a divorce whenever and wherever the wife wishes. However, if the delegation of the right is restricted to a specific time and place or other conditions, the wife will be	The Government of Afghanistan in its 2011 report to the CEDAW Committee explained that: ⁹⁸	The registration of divorce is voluntary for Sunnis but mandatory for Shias. ¹⁰⁰	<p>According to reports by the Afghan government as well as civil society, several factors restrict a wife's right to divorce:¹⁰¹</p> <ul style="list-style-type: none"> • Many women are not aware of their right to seek judicial divorce. This is largely because divorce is culturally unfavourable; • The lack of registration of marriages imposes difficulties on women

⁷⁸ Shiite Personal Status Law (2009), p. 4, <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

⁸⁵ Article 131 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>; Article 140 of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>; Kabeh Rastin-Tehrani and Nadjma Yassari, "Max Planck Manual on Family Law in Afghanistan", (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), p. 71, http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf

⁸⁶ Articles 135-145 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>; Articles 158-161 of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>; Kabeh Rastin-Tehrani and Nadjma Yassari, "Max Planck Manual on

<p><i>need to go to court, is the divorced spouse informed of the divorce? Is the unilateral right to divorce delegated to the wife? If so, is it by law or through the marriage contract? Is it mandatory to register a divorce?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 34, 39-40 GR29</p>	<p>Both Sunni and Shia husbands may delegate their unilateral right to divorce to their wives (<i>isma</i>) through a stipulation in the marriage contract,⁸⁷ thus permitting her to pronounce <i>talāq</i> upon herself (<i>talāq-i-tafwid</i>).⁸⁸</p> <p>Article 143 of the Civil Code prohibits a Sunni husband from revoking the delegation of the right to divorce to his wife.⁸⁹</p> <p>A Sunni wife has broader grounds to seek judicial divorce when compared to a Shia wife:</p>	<p>granted divorce only when all conditions are met.⁹⁷</p>	<p>is “deemed unfavourable in the Afghan culture”;</p> <ul style="list-style-type: none"> • When women refer to courts for divorce, the government provides services such as legal consultations and legal aid, reference of cases to concerning organisations and provision of 	<p>with regard to their right to seek divorce in addition to their right to a dower (<i>mahr</i>), maintenance and child custody;</p> <ul style="list-style-type: none"> • The lack of access to legal representation for women in family matters; and • The fear of losing custody of her children.
---	--	---	--	--

Family Law in Afghanistan”, (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), pp. 73, 77,

http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf

⁹⁸ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), paras. 372, 373, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>.

¹⁰⁰ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), paras. 370, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>.

¹⁰¹ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), paras. 356, 372, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>; Human Rights Watch, “Afghanistan” *Submission to the CEDAW Committee for the 55th Session*, 2013, <https://www.hrw.org/news/2013/07/04/submission-combined-initial-and-second-periodic-report-afghanistan-united-nations>

⁸⁷ Article 142 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>; Article 155(3) of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>; Kabeh Rastin-Tehrani and Nadjma Yassari, “Max Planck Manual on Family Law in Afghanistan”, (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), p. 73,

http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf

⁸⁸ Article 135(2) of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>; Article 155(1) of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>; Kabeh Rastin-Tehrani and Nadjma Yassari, “Max Planck Manual on Family Law in Afghanistan”, (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), p. 73,

http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf

⁸⁹ Articles 143 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>

⁹⁷ Kabeh Rastin-Tehrani and Nadjma Yassari, “Max Planck Manual on Family Law in Afghanistan”, (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), pp. 76-77, http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf

	<ul style="list-style-type: none"> • For Sunnis: Valid grounds for seeking a judicial divorce by a wife include a husband's: (i) failure or inability to provide maintenance; (ii) incurable or severe illness of which the wife was not aware at the time the marriage was concluded; (iii) prolonged absence of more than three years without reasonable excuse; or (iv) imprisonment of more than 10 years (wife may seek divorce after five years). In addition, a wife may seek divorce on the basis of harm that makes common life between spouses impossible.⁹⁰ <p>In the case of a divorce petition based on harm, if the claim of harm is proven and reconciliation between the spouses is impossible, the judge will grant a divorce and decide on the amount of compensation due to the wife. If the claim of harm is not proven and the wife insists on her claim, the judge must appoint two arbitrators (one from the husband's family and one from the wife's family)</p>		<p>shelters for them. However, after the divorce, the divorced woman is responsible to make her living.</p> <p>The Afghan government also explained that:⁹⁹</p> <ul style="list-style-type: none"> • For Sunnis, the official registration of divorce in the court is voluntary as the Civil Code is silent on the matter. However, for Shias, the SPSL has made it mandatory to register a divorce; • As with the official registration of marriages, the official registration divorce not taken "very seriously" by Afghans. 		
--	---	--	--	--	--

⁹⁰ Articles 176-197 Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>;

⁹⁹ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), paras. 355, 370, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>.

	<p>who will attempt to reconcile the couple. If reconciliation is impossible and the arbitrators find that the source of the dispute is:⁹¹</p> <ul style="list-style-type: none"> - The husband, both spouses or cannot be determined, the judge will grant the divorce and decide on any compensation due following the divorce; - The wife, the arbitrators will decide in favour of a divorce in exchange for compensation to be paid to the husband that is equivalent to or less than the dower (<i>mahr</i>). The judge then reviews and ratifies the decision. <p>Where the arbitrators differ in their opinions, the judge will request that they review their decision. If they fail to overcome their differences, the court will appoint new arbitrators. Article 111 of the Code of Civil Procedure provides that in a divorce</p>				
--	---	--	--	--	--

⁹¹ Articles 184-188, 190 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>; Kabeh Rastin-Tehrani and Nadjma Yassari, "Max Planck Manual on Family Law in Afghanistan", (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), pp. 83-84, http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf

	<p>action on the grounds of harm, arbitrators cannot be appointed more than twice.⁹²</p> <ul style="list-style-type: none"> • For Shias: A wife may seek judicial divorce for her husband's failure or inability to provide financial maintenance.⁹³ <p>Under both the Civil Code and the SPSL, Sunni and Shia wives may seek redemptive divorce (<i>khul'</i>), whereby the wife is granted a divorce in exchange for a mutually-agreed compensation to be paid to the husband:⁹⁴</p> <ul style="list-style-type: none"> • For Sunnis: The wife may agree to compensate the husband by: (i) returning the dower (<i>mahr</i>) either partially or fully; (ii) giving him property other than the <i>mahr</i>; (iii) waiving her financial maintenance during the 				
--	--	--	--	--	--

⁹² Articles 189-190 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>; Article 111 of the Civil Procedure Code (1990), <http://www.asianlii.org/af/legis/laws/cpc1990169/>; Kabeh Rastin-Tehrani and Nadjma Yassari, "Max Planck Manual on Family Law in Afghanistan", (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), pp. 83-84,

⁹³ http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf
Article 156 of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

⁹⁴ Articles 156-175 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>; Articles 165-166 of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>; Kabeh Rastin-Tehrani and Nadjma Yassari, "Max Planck Manual on Family Law in Afghanistan", (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), pp. 79-82, http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf

	<p>waiting period after the divorce (<i>iddah</i>); or (iv) providing services regarding their children such as breastfeeding them up to a certain period, assuming their care but only if the child is female and paying for their maintenance (but the father remains ultimately responsible for the financial maintenance of the children);</p> <ul style="list-style-type: none"> • For Shias: The wife may agree to compensate the husband by: (i) returning the dower (<i>mahr</i>) either partially or fully; or (ii) giving him property other than the <i>mahr</i>. <p>For both Sunnis and Shias, a <i>khul'</i> divorce requires the consent of both parties. A Sunni and Shia wife's entitlement to financial maintenance during the waiting period after the divorce (<i>iddah</i>) is not forfeited unless the <i>khul'</i> agreement clearly states so.⁹⁵ In addition, Article 173 of the Civil Code provides that a Sunni mother keeps her custodial rights and the Sunni father remains ultimately responsible for child maintenance regardless of any agreement between them stating</p>				
--	--	--	--	--	--

⁹⁵ Article 168 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/slspublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>; Articles 163(5), 164(5), 167(2), 178(3) of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

	otherwise as part of the <i>khul'</i> divorce. ⁹⁶				
<p>Women's financial rights after divorce</p> <p><i>Is there a legal concept of matrimonial assets? Is there equal division of marital property upon dissolution of the marriage? Is the woman's role as wife and mother recognised as contribution to the acquisition of assets? What spousal maintenance are available to the wife after a divorce? Is she entitled to maintenance during the waiting period after the divorce (iddah)? Is she entitled to a consolatory gift or compensation upon divorce (mut'ah)? Who is responsible for the financial maintenance of children following a divorce? Can the couple agree to the division of assets acquired during marriage in the marriage contract? Can this stipulation be amended? If so, by who and on what basis e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(c), 16(1)(h) Paras. 30-33 GR21 Paras. 34-35, 43-48 GR29</p>	<p>Generally, upon divorce, a Sunni and Shia woman may be entitled to: (i) financial maintenance during the waiting period after the divorce (<i>iddah</i>); and (ii) a consolatory gift or compensation (<i>mut'ah</i>). There is no legal concept of matrimonial assets for both Sunnis and Shias. However, for Shias, a woman may claim that she is entitled to a share of her former husband's property because the household chores she conducted while married to her former husband were not for free but instead, she had desired the wages for them.</p> <p>Under both the Civil Code and the SPSL, both Sunni and Shia wives may be entitled to financial maintenance during the waiting period after the divorce (<i>iddah</i>):</p> <ul style="list-style-type: none"> • For Sunnis: A woman is entitled to financial maintenance during the waiting period (<i>iddah</i>) in any divorce that has been initiated by the husband regardless of whether the husband is at fault 		<p>The Government of Afghanistan in its 2011 report to the CEDAW Committee reiterated that, in case of divorce, the husband has to pay his wife maintenance for a period of three months and 10 days after the divorce. If the divorced wife is responsible for child fosterage, the husband is liable for payment of fostering wage. The husband is not liable for financial maintenance of the wife after completion of the <i>iddah</i> period.¹⁰⁹</p>		

⁹⁶ Article 173 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/slspublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>

¹⁰⁹ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), paras. 365, 374, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>.

	<p>or not. The maintenance amount is dependent on the husband's financial capacity. The <i>iddah</i> period depends on the woman's situation e.g. whether she is menstruating or pregnant and generally ranges from three months to one year;¹⁰²</p> <ul style="list-style-type: none"> • For Shias: A woman is entitled to financial maintenance during the <i>iddah</i> period. The maintenance amount is dependent on the husband's financial capacity as well as the wife's status. The <i>iddah</i> period depends on the woman's situation e.g. whether she is menstruating or pregnant and ranges from three months to one year.¹⁰³ <p>Both Sunni and Shia wives risk losing their financial maintenance during the <i>iddah</i> period under certain conditions:</p> <ul style="list-style-type: none"> • For Sunnis: A woman loses her right to financial maintenance during the <i>iddah</i> period if she initiates the 				
--	--	--	--	--	--

¹⁰² Articles 201-210 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>; Kabeh Rastin-Tehrani and Nadjma Yassari, "Max Planck Manual on Family Law in Afghanistan", (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), pp. 88-89, http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf

¹⁰³ Articles 167, 171, 178(3), 183 of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

	<p>divorce and is found to be at fault;¹⁰⁴</p> <ul style="list-style-type: none"> • For Shias: A woman loses her right to financial maintenance during the <i>iddah</i> period if she is found to be disobedient during the <i>iddah</i> period, unless she is pregnant, in which case the man and woman will compromise on the amount of her maintenance.¹⁰⁵ <p>Both Sunni and Shia men are not legally obliged to pay his former wife <i>mut'ah</i> compensation in the event of a divorce but may do so.¹⁰⁶</p> <p>For Shias, Article 175 of the SPSL provides that where upon divorce, a former wife claims that she had a share in her former husband's property, or claims that the household chores she conducted during the marriage was not for free and she had desired wages for them, the court must consider</p>				
--	--	--	--	--	--

¹⁰⁴ Article 214 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/slspublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>

¹⁰⁵ Article 178(4) of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

¹⁰⁶ Article 108(2) of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/slspublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>; Kabeh Rastin-Tehrani and Nadjma Yassari, "Max Planck Manual on Family Law in Afghanistan", (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), p. 91, http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf

	<p>her claims according to provisions of Islamic jurisprudence (<i>fiqh</i>).¹⁰⁷ The Civil Code does not contain a corresponding provision for Sunnis.</p> <p>Following a divorce, Sunni and Shia fathers are ultimately responsible for the financial maintenance of their children, and if the mother is the custodian, they are obligated to pay her maintenance to cover the expenses of their children.¹⁰⁸</p>				
<p>Custody of Children</p> <p><i>Do parents have equal rights over the custody of their children? If no, who has priority right over the custody of the child? Is custody decided based on the best interest of the child? Do mothers automatically lose custody upon re-marriage or if she is deemed disobedient or when the child reaches a designated age when custody goes to father?</i></p>	<p>Both Sunni and Shia mothers have priority right over the custody of their daughters until they reach the age of nine and their sons until they reach the age of seven. Thereafter, the father has custody of the children.¹¹⁰ However, for Sunnis:</p> <ul style="list-style-type: none"> • Under Article 250 of the Civil Code, a mother's priority right over the custody of her daughter or son who has 		<p>The Government of Afghanistan in its 2011 report to the CEDAW Committee reiterated that under the Civil Code:¹¹⁵</p> <ul style="list-style-type: none"> • As long as she is deemed as a competent custodian, the mother has the priority right to 		

¹⁰⁷ Article 175 of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

¹⁰⁸ Article 245 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>; Article 194(4) of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>; Kabeh Rastin-Tehrani and Nadjma Yassari, "Max Planck Manual on Family Law in Afghanistan", (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), p. 106, http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf

¹¹⁰ Articles 237, 249 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>; Article 194(3) of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

<p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>turned nine or seven, respectively, may be extended by a maximum of two years by a court;¹¹¹ and</p> <ul style="list-style-type: none"> Despite a mother's priority right over the custody of her children, courts have to decide custody cases based on the interest of the child: (i) Article 242 of the Civil Code provides that if there is more than one person with the right of custody, the court may choose the one who is considered to better serve the interest of the child; and (ii) Article 251 provides that if there is proof that the person who has custody of the child, even if he is the child's father, does not serve the interest of the child, the court may grant custody of the child to the person who has the next priority right to custody of the child.¹¹² <p>Both Sunni and Shia mothers lose custody of their children on similar grounds such as: insanity, immaturity, untrustworthiness or</p>		<p>custody of her daughter until she turns nine and her son until he turns seven during marriage and after a divorce. Thereafter, custody belongs to the father; and</p> <ul style="list-style-type: none"> A mother risks losing custody if: she is: (i) not an adult; (ii) considered as unreliable; (iii) remarried to a man who is not a close relative of her former husband (e.g. her former husband's uncle or cousin). <p>In addition, the Afghan government explained that after a divorce:¹¹⁶</p> <ul style="list-style-type: none"> The father is 		
--	--	--	---	--	--

¹¹⁵ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), paras. 361-362, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>.

¹¹¹ Articles 250 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>

¹¹² Articles 242, 251 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>

¹¹⁶ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), paras. 361-362, 364, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>.

	<p>inability to care and nurture the child pursuant, a contagious disease which puts the health of the child at risk. They also risk losing custody of their children if they remarry.¹¹³</p> <p>While their children are under the custody of one parent, generally, both Sunni and Shia parents are prohibited from taking their children on a trip without the permission of the other.¹¹⁴</p>		<p>obligated to pay all expenses of his children (daughters until they marry and sons until they start work), including their maintenance, education, treatment and physical and mental training; and</p> <ul style="list-style-type: none"> • Both mothers and fathers have the right to have frequent visits with their children and no one can prevent the parents from visiting their children. 		
<p>Guardianship of Children</p> <p><i>Do parents have equal rights over the guardianship of their children? If no, who has priority right over</i></p>	<p>Both Sunni and Shia fathers have priority right over the guardianship of their children.</p>				

¹¹³ Articles 238, 248 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>; Article 195 of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

¹¹⁴ Articles 252-254 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>; Article 194(9) of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

<p><i>the guardianship of the child? Is guardianship decided based on the best interest of the child?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>For Sunnis</p> <p>The Civil Code is silent on the person with the priority right over the guardianship of the children in a marriage. Nevertheless, it is implied in the Civil Code that the priority right over the guardianship of the children belongs to father through various provisions as follows: (i) Under Article 71(1) of the Civil Code, the father may conclude the marriage of girls between 15 and 16 years of age; (ii) Under Article 252, as long as the mother is married, she cannot take the child on a journey without the permission of the father; (iii)</p> <p>Under Article 256, the father shall provide maintenance to his son until the son has the power to work and his daughter until she gets married; and (iv) Under Article 268, a father has priority guardianship over the property of his children.¹¹⁷ In addition, according to all Sunni schools of law, the father is obliged to provide for education, upbringing, development, health and security of the minor child.¹¹⁸</p>				
--	--	--	--	--	--

¹¹⁷ Articles 71(1), 252, 256, 268 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>

¹¹⁸ Kabeh Rastin-Tehrani and Nadjma Yassari, "Max Planck Manual on Family Law in Afghanistan", (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), pp. 106-107, http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf

	<p>For Shias</p> <p>Article 45 of the SPSL specifies that a father and paternal grandfathers have priority right over the guardianship of his children. The exercise of the guardianship rights of the father and grandfather does not require the authorisation of the court.¹¹⁹</p> <p>A minor's father or paternal grandfather may appoint an alternative guardian to manage the affairs of minors.¹²⁰</p>				
<p>Family Planning</p> <p><i>Do women require the consent of the husband to practise family planning, including abortions and sterilisation in law or in practice?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(e), 12 Paras. 21-23 GR21</p>	<p>Article 5 of the EVAW law guarantees women's access to health services, including contraceptives. It provides that prohibiting women from accessing health services is an act of violence against women.¹²¹</p> <p>Article 402 of the Penal Code generally prohibits abortion. However, Article 404 of the Penal Code permits an abortion by a doctor, surgeon, pharmacist or</p>		<p>The Government of Afghanistan in its 2011 report to the CEDAW Committee explained that:¹²³</p> <ul style="list-style-type: none"> The aim of family planning in Afghanistan is not to control the population of the county but to increase the 		<p>According to World Bank data, the total fertility rate decreased from 7.5 children per woman in 1960 to 4.7 in 2015.¹²⁶</p> <p>According to Afghanistan's 2015 Demographic and Health Survey:¹²⁷</p> <ul style="list-style-type: none"> The median birth interval in Afghanistan

¹¹⁹ Article 45 of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>
¹²⁰ Article 47(2) of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>
¹²¹ Article 5 of the Law on the Elimination of the Violence against Women (2009), http://mowa.gov.af/Content/files/EVAW%20Law%20Report_Final_English_17%20%20March%202014.PDF

	<p>midwife to save the life of the mother.¹²²</p>		<p>spacing between pregnancies;</p> <ul style="list-style-type: none"> • A wife may prevent childbirth either temporarily or permanently under exceptional circumstances provided she has obtained the consent of her husband; • Permitted methods of preventing childbirth include: (i) tablets to increase the spacing between childbirths (ii) injections to increase the spacing between childbirths; and (iii) use of a lope or intra uterus devices; (iv) a condom; or (v) other conventional 		<p>is 28.4 months, with 32% of children being born less than 24 months after their siblings;</p> <ul style="list-style-type: none"> • 25% of married women have an unmet need for family planning services, with 18% having an unmet need for spacing and 7% an unmet need for limiting of children; • 23% of married women are using a method of contraception, with 20% of women using a modern method; and • Knowledge of at least one method of family planning is high (95%) among married women in Afghanistan. <p>According reports by the UNFPA as well as the media, while there is increasing acceptance of</p>
--	--	--	---	--	--

¹²³ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), para. 270-271, 376, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

¹²⁶ World Bank, "Fertility rates, total (births per woman)", <http://data.worldbank.org/indicator/SP.DYN.TFRT.IN>

¹²⁷ Afghan Central Statistics Organisation, Afghan Ministry of Public Health and the DHS Program, "Afghanistan Demographic and Health Survey 2015", Tables 5.5, 7.1, 7.3, 7.12.1, pp. 86, 112, 114, 120, <https://dhsprogram.com/pubs/pdf/FR323/FR323.pdf>

¹²² Articles 402, 404, Penal Code (1976), [http://www.iec.org.af/public_html/About%20JEMB/Legal%20Framework/Legislation%20of%20Reference/Penal%20Code/Penal%20Code%20\(English\).pdf](http://www.iec.org.af/public_html/About%20JEMB/Legal%20Framework/Legislation%20of%20Reference/Penal%20Code/Penal%20Code%20(English).pdf)

			<p>and natural methods such as the calendar method are allowed;</p> <ul style="list-style-type: none"> • Permanent methods of preventing child birth such as closing of women uterus ducts, vasectomy or closing of men seminal ducts are generally prohibited except with the permission of a physician. <p>In addition, the Afghan government informed that:¹²⁴</p> <ul style="list-style-type: none"> • An action plan called Immune Tools for Healthy Maternity focuses on distribution of pregnancy control methods and other family 	<p>family planning within Afghan society, obstacles still exist. Such obstacles include: (i) family planning still being viewed as taboo; and (ii) scepticism regarding modern methods of contraceptives.¹²⁸</p>
--	--	--	--	---

¹²⁴ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), para. 270-271, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

¹²⁸ UNFPA, "Acceptance of family planning grows in Afghanistan, but myths linger", 2015, <http://www.unfpa.org/news/acceptance-family-planning-grows-afghanistan-myths-linger>; Waslat Hasrat-Nazami, "Afghan women use abortion as a way out", *DW*, 5 May 2014, <http://www.dw.com/en/afghan-women-use-abortion-as-a-way-out/a-17612865>

			<p>planning methods. Services include distribution of religious booklets that address family planning in light of Islamic traditions;</p> <ul style="list-style-type: none"> The National Health Strategy is also taking family planning services into consideration. <p>The Government of Afghanistan also explained that abortion is prohibited in order to protect pregnant women and to save the lives of the children and mothers.¹²⁵</p>		
<p>Personal rights of spouses</p> <p><i>Does a woman need the consent of her spouse or guardian to work, choose a profession, leave the house, travel, drive, receive various health services, study, etc. on her behalf? Does a woman have the right to retain her birth name</i></p>	<p>Article 24 of the Constitution states liberty as “the natural right of human beings” which must not be limited unless in the public interest and is regulated by law.¹²⁹</p> <p>Article 39 of the Constitution guarantees the right of every Afghan to travel and settle in any</p>		<p>The Government of Afghanistan explained in its 2011 report to the CEDAW Committee that:¹⁴¹</p> <ul style="list-style-type: none"> Both <i>Shari’ah</i> and Afghan laws recognise the 	<p>A wife may stipulate in the marriage contract that she has the right to work, travel, study, etc. If the marriage contract is explicit in this</p>	<p>According to Afghanistan’s 2015 Demographic and Health Survey:¹⁴⁴</p> <ul style="list-style-type: none"> Only 13% of married Afghan women were employed at the time of the survey;

¹²⁵ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), para. 79, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

¹²⁹ Article 24 of Afghanistan’s Constitution (2004), https://www.constituteproject.org/constitution/Afghanistan_2004.pdf?lang=en

<p><i>upon marriage or to choose her family name? Can a woman protect her personal rights through her marriage contract?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(g) Para. 24 GR21 Para. 34 GR29</p>	<p>part of the country, as well as the right to travel outside Afghanistan and return.¹³⁰</p> <p>Article 48 of the Constitution states that work is the right of every Afghan.¹³¹</p> <p>Article 5 of the ERAW law provides that prohibiting women's work outside the house is an act of violence against women.¹³²</p> <p>Despite the constitutional provisions and the ERAW law stating otherwise, both the Civil Code and the SPSL potentially restrict the personal rights of Sunni and Shia married women, respectively, as a result of the maintenance-for-obedience legal framework provided for under both laws. Thus:</p> <p>For Sunnis:</p> <p>Article 117 of the Civil Code provides that if a wife "unreasonably" refuses to dwell in husband's home, her husband will</p>		<p>financial independence of women and men and women who work, receive income and are financially independent;</p> <ul style="list-style-type: none"> • Under both the Civil Code and the SPSL, a wife has the option to work or not to work. Income earned by her remains with her and she may spend the money in any form she wants without the permission of the husband; and • Despite a wife's right to work, there are not many women who are financially because most of women do not have a 	<p>manner, her husband cannot legally stop her from exercising the stipulated rights.¹⁴²</p> <p>The Marriage Certificate Guidelines state that the couple commits to allow each other to continue their studies to any level they want.¹⁴³</p>	<ul style="list-style-type: none"> • 41% of married women earning cash made independent decisions on how to spend their earnings; • 61% of married women aged 15-49 do not own a house while 74% do not own land; among women who do own assets, 17% and 10% of women own a house and land by themselves, respectively; • 33% of married women participate either alone or jointly with their husband in making decisions pertaining to their own healthcare, major household purchases, and visits to their family or relatives; and
--	--	--	---	--	--

¹⁴¹ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), paras. 366-367, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

¹⁴⁴ Afghan Central Statistics Organisation, Afghan Ministry of Public Health and the DHS Program, "Afghanistan Demographic and Health Survey 2015", Tables 15.1, 15.2.1, 15.4.1, 15.6.1, 15.7.1, pp. 257, 258, 261, 264, 266-267, <https://dhsprogram.com/pubs/pdf/FR323/FR323.pdf>

¹³⁰ Article 39 of Afghanistan's Constitution (2004), https://www.constituteproject.org/constitution/Afghanistan_2004.pdf?lang=en

¹³¹ Article 48 of Afghanistan's Constitution (2004), https://www.constituteproject.org/constitution/Afghanistan_2004.pdf?lang=en

¹³² Law on the Elimination of the Violence against Women (2009), http://mowa.gov.af/Content/files/EVAW%20Law%20Report_Final_English_17%20%20March%202014.PDF

	<p>not be obligated to pay for her maintenance.¹³³</p> <p>Article 122 of the Civil Code provides that a wife is not entitled to maintenance if: (i) she leaves the marital home without the permission of her husband or for a non-permitted purposes; (ii) she does not fulfil her marital duties; and (iii) there is an impediment for her to live in husband's residence.¹³⁴</p> <p>For Shias:</p> <p>Article 132(3) of the SPSL states that if a husband demands that his wife apply makeup, she is obliged to do so.¹³⁵</p> <p>Article 132(4) provides that it is the wife's duty to defer to her husband's inclination for sexual enjoyment. The man is not expected to postpone sexual</p>		<p>professional occupation upon which they derive an income. In contrast, women are dependent on the maintenance provided by their husbands and this issue has affected the decision making in most families and the society.</p>	<ul style="list-style-type: none"> • 80% of married women accept at least one reason as a justification for wife beating. Women are most likely to agree that if a wife goes out without telling her husband, it justifies wife beating (67%). <p>According to World Bank data, female labour force participation increased from 16% in 1990 to 19% in 2016.¹⁴⁵ During the same period, male labour force participation remained stable at 84%.¹⁴⁶</p> <p>According to the 2016 UNDP Human Development Report:¹⁴⁷</p> <ul style="list-style-type: none"> • 9% of women over 25 have at least some secondary education
--	---	--	---	--

¹⁴² Article 68 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>; Article 134 of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>; Kabeh Rastin-Tehrani and Nadjma Yassari, "Max Planck Manual on Family Law in Afghanistan", (Hamburg, Germany: Max Planck Institute, Amended Second Edition, 2012), p. 48, http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf

¹⁴³ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), para. 367, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

¹³³ Article 117 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>

¹³⁴ Article 122 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>

¹³⁵ Article 132(3) of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

	<p>intercourse with his wife for more than 4 months.¹³⁶</p> <p>Article 133(2) states that while a husband cannot oppose a wife's employment after marriage if she was already in employment before marriage and the continuation of her job is a condition in the marriage contract, he may do so if such employment is against the interest of the family or of himself.¹³⁷</p> <p>Article 133(3) states that a husband can prevent his wife from any unnecessary action or actions that are contrary to <i>Shari'ah</i>, local customs or the husband's benefits.¹³⁸</p> <p>Although Article 133(5) states that a wife may leave her marital home for legal purposes but this right is confined to the limits set by local customs. Article 133(4) states that a wife cannot leave the house without her husband's permission unless she has urgent</p>				<p>as compared to 35% of men of the same age group;</p> <ul style="list-style-type: none"> • 46% of females aged 15-24 are able to read and write a short simple sentence as compared to 70% of males in the same age group; and • 45% of women are satisfied with their freedom of choice as compared to 51% of men. <p>According to the Afghan government, the following are examples of obstacles faced by wives when exercising their personal rights:¹⁴⁸</p> <ul style="list-style-type: none"> • Working outside the home can be considered a dishonour to the
--	--	--	--	--	--

¹⁴⁵ World Bank, "Labour force participation rate, female (% of female population ages 15+) (modelled ILO estimate)", <http://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS>

¹⁴⁶ World Bank, "Labour force participation rate, male (% of male population ages 15+) (modelled ILO estimate)", <http://data.worldbank.org/indicator/SL.TLF.CACT.MA.ZS>
¹⁴⁷ UNDP, "Human Development Report 2016", Tables 5, 9, 14, pp. 214-217, 230-233, 250-253, http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf

¹³⁶ Article 132(4) of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

¹³⁷ Article 133(2) of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

¹³⁸ Article 133(3) of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

	<p>cause, or is in extreme difficulty.¹³⁹</p> <p>Article 133(5) also provides that a husband may prevent a wife from any action that is against <i>Shari'ah</i> or the law. This right is also conferred upon the wife.¹⁴⁰</p>				<p>family; and</p> <ul style="list-style-type: none"> • Though women have the right to drive, the number of women who actually drive is low because of traditional beliefs.
<p>Inheritance rights</p> <p><i>Are women and men in the same degree of relationship to a deceased entitled to equal shares in the estate and to equal rank in the order of succession? Are there procedures to address any inequalities in inheritance between women and men e.g. can a will be written, can beneficiaries agree to inherit equal shares of the estate or can the children agree to forgo their inheritance in favour of their mother upon the death of their father?</i></p> <p><u>Applicable CEDAW Provision</u> Paras. 34-35 GR21 Paras. 49-53 GR29</p>	<p>Generally, inheritance rights between women and men are unequal for both Sunnis and Shia, although there are exceptions to the general rule.</p> <p>The Civil Code and the SPSL details the inheritance shares of beneficiaries. In many instances, women are entitled to half the share of the estate as compared to man. For instance:¹⁴⁹</p> <ul style="list-style-type: none"> • Under Article 2007 of the Civil Code as well as Article 219 of the SPSL, upon the death of his wife, a husband shall inherit 1/2 of her estate unless there are children, in which case he will receive 1/4. A 		<p>The Government of Afghanistan in its 2011 report to the CEDAW Committee explained that women are entitled to inheritance rights according to <i>Shari'ah</i> and Afghan laws. In the event a woman is deprived of her inheritance rights, she may seek recourse in the appropriate court.¹⁵¹</p>		<p>According to the Afghan government, it is relatively difficult for a woman to exercise her inheritance rights because:¹⁵²</p> <ul style="list-style-type: none"> • Men often deprive women of their inheritance rights; • Women in turn do not ask for their inheritance because such requests are deemed dishonourable and not socially acceptable; and

¹⁴⁸ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), para. 110, 368, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

¹³⁹ Articles 133(4), 133(5) of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

¹⁴⁰ Article 133(5) of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

¹⁴⁹ Articles 2007, 2019 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>; Articles 219, 222 of the Shiite Personal Status Law (2009), <http://www.refworld.org/pdfid/4a24ed5b2.pdf>

¹⁵¹ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), para. 347, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

¹⁵² Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), para. 299, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

	<p>wife, on the other hand, is entitled to 1/4 of his estate upon the death of her husband if there are no children and 1/8 if there are children;</p> <ul style="list-style-type: none"> Where a parent leaves behind both sons and daughters, Article 2019 of the Civil Code and Article 222 of the SPSL, provides for the sons to inherit twice as much as the daughters. <p>For Sunnis, the exception to the general include Article 2006 of the Civil Code which provides that brothers and sisters from the same mother inherit equally from their mother's estate.¹⁵⁰</p>				<ul style="list-style-type: none"> In instances where women are courageous enough to ask for their inheritance, their access to justice is limited because women's issues are not frequently considered by the competent authorities.
<p>Violence against women in the family</p> <p><i>Are there laws that define what constitute domestic violence such as battery, female circumcision, marital rape and other forms of sexual assault and violence that affect a woman's mental health which are perpetuated by traditional attitudes? Is there specific legislation that recognises domes-</i></p>	<p>Article 6 of the Constitution commits the State to respect and protect the liberty and human dignity of a person.¹⁵³</p> <p>The EAW law criminalises a significant number of acts as violence against women. Article 5 lists 22 separate offences that constitute an act of violence, including, but not limited to, sexual assault, giving <i>baad</i> to</p>	<p>According to the Afghan government, the EAW law has been cited in the courts regularly since the enacted of the law.¹⁵⁹</p> <p>According to media reports, in 2013, the appeals</p>	<p>The Government of Afghanistan in its 2011 report to the CEDAW Committee explained that:¹⁶¹</p> <ul style="list-style-type: none"> Violence against women is the largest cause of self-immolation; The Prosecution 		<p>According to Afghanistan's 2015 Demographic and Health Survey:¹⁶²</p> <ul style="list-style-type: none"> Overall, 56% of married women aged 15-49 reported having experienced emotional, physical and/or sexual violence from their spouse at least once,

¹⁵⁰ Article 2006 of the Civil Code (1977), <http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/737834/doc/sispublic/Afghan%20Civil%20Code%20%20English%20translation%20ALEP%20Sept%202014.pdf>

¹⁵³ Article 48 of the Afghanistan's Constitution (2004), https://www.constituteproject.org/constitution/Afghanistan_2004.pdf?lang=en

<p><i>tic violence as a crime? Is the husband allowed to discipline his wife? Can a suspected perpetrator marry his alleged abused victim to avoid punishment? Are there support services for women who are the victims of aggression or abuses?</i></p> <p><u>Applicable CEDAW Provision</u> GRs 12 & 19 Para. 40 GR21</p>	<p>forced marriage, and depriving inheritance.¹⁵⁴</p> <p>Article 6 of the EAW law grants certain rights to the victim of violence, including, access to protective center or safe home or other secure places in agreement with the victim; and free access to emergency health services.¹⁵⁵</p> <p>Article 7 of the EAW law obliges the prosecutors' offices and courts to take violence case as a priority and process it as expeditiously as possible.¹⁵⁶</p> <p>Article 14 of the EAW law provides that the Ministry of Public Health shall promptly provide free and urgent treatment services to the victims of violence in the health centers and report accordingly to the Ministry of Women Affairs.¹⁵⁷</p>	<p>court reversed the convictions of three Afghans for torturing Sahar Gul, a girl who was sold into marriage by her stepbrother at 13 or 14 for 5,000 US dollars. She was locked in a basement and tortured by her mother-in-law, father-in-law, sister-in-law and husband for refusing to consummate the marriage. The executive director of the NGO, Women for Afghan Women, was reported to have said that the</p>	<p>Office on Elimination of Violence against Women supports activities related to investigation, prosecution and conviction of perpetrators of crimes against women;</p> <ul style="list-style-type: none"> The High Commission on Elimination of Violence against Women is a coordinating organisation that works towards eliminating all forms of violence against women with the support of relevant organisation; 	<p>and 52% reported having experienced one or more of these forms of violence in the past 12 months;</p> <ul style="list-style-type: none"> 37% of married women aged 15-49 reported having experienced emotional violence from their spouse at least once, and 34% reported having experienced such violence within the 12 months prior to the survey; 51% of married women aged 15-49 reported having experienced physical violence from their spouse at least once, and 46% reported having
---	--	--	--	--

¹⁵⁹ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), para. 26, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

¹⁶¹ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), paras. 42-44, Table 5, p. 22, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

¹⁶² Afghan Central Statistics Organisation, Afghan Ministry of Public Health and the DHS Program, "Afghanistan Demographic and Health Survey 2015", Tables 16.5, 16.10, 16.13, pp. 282, 293, 296-297, <https://dhsprogram.com/pubs/pdf/FR323/FR323.pdf>

¹⁵⁴ Article 5 of the Law on the Elimination of the Violence against Women (2009), http://mowa.gov.af/Content/files/EVAW%20Law%20Report_Final_English_17%20%20March%202014.PDF

¹⁵⁵ Article 6 of the Law on the Elimination of the Violence against Women (2009), http://mowa.gov.af/Content/files/EVAW%20Law%20Report_Final_English_17%20%20March%202014.PDF

¹⁵⁶ Article 7 of the Law on the Elimination of the Violence against Women (2009), http://mowa.gov.af/Content/files/EVAW%20Law%20Report_Final_English_17%20%20March%202014.PDF

¹⁵⁷ Article 17 of the Law on the Elimination of the Violence against Women (2009), http://mowa.gov.af/Content/files/EVAW%20Law%20Report_Final_English_17%20%20March%202014.PDF

	<p>Article 17 of EAW law states that the punishment for rape of an adult woman or minor girl is life imprisonment and if the victim dies due to rape, the perpetrator shall be sentenced to the death penalty.¹⁵⁸</p>	<p>decision “make a statement that violence against women is not that important, that Afghanistan is becoming more conservative.”¹⁶⁰</p>	<ul style="list-style-type: none"> • There are Family Case Units in provincial police stations that are authorised to register and discuss family violence cases, including child and forced marriages. 	<p>experienced such violence within the 12 months prior to the survey;</p> <ul style="list-style-type: none"> • 7% of married women aged 15-49 reported having experienced sexual violence from their spouse at least once, and 6% reported having experienced such violence within the 12 months prior to the survey; • Among married women who had experienced spousal violence (physical or sexual) in the past 12 months, 26% reported experiencing physical injuries; and • It is not common for women in Afghanistan to seek assistance from any source for violence they have experienced. 61% of women never sought help and never
--	--	---	--	---

¹⁵⁸ Article 17 of the Law on the Elimination of the Violence against Women (2009), http://mowa.gov.af/Content/files/EVAW%20Law%20Report_Final_English_17%20%20March%202014.PDF

¹⁶⁰ Sanjoy Majumder, “Sahar Gul: The fears of a tortured Afghan girl bride”, *BBC News*, 15 July 2013, <http://www.bbc.com/news/world-asia-23311414>; Matthew Rosenberg and Jawad Sukhanyar, “Afghan Court Reverses Conviction in Torture of Girl”, *The New York Times*, 3 July 2013, <http://www.nytimes.com/2013/07/04/world/asia/afghan-court-reverses-conviction-in-torture-of-young-woman.html>

					<p>told anyone about the violence they have experienced.</p> <p>According to the Afghan government:¹⁶³</p> <ul style="list-style-type: none"> • While there are a wide variety of organisations that register cases of violence against women, due to sensitivity of the issue, a large number of women victims of violence do not wish to register their cases; • The influence of the Taliban has led to the increase of violence in certain areas, which adversely affects women. Women in more volatile areas such as the southern and eastern provinces do not have as much access to legal remedies, NGO assistance or health and educational services; • There are indications
--	--	--	--	--	---

¹⁶³ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), paras. 44, 52-53, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

					<p>that Family Case Units are having a positive impact on cases of violence against women. However, their full effectiveness are impeded by several factors including: (i) shortage of policewomen and other trained personnel; (ii) shortage of appropriate spaces to house the units; and (iii) the lack of awareness of the existence of the units.</p> <p>According to reports by United Nations Afghanistan Mission in Afghanistan (UNAMA) and civil society, the EAW law has been largely under-enforced.¹⁶⁴</p>
<p>Nationality rights</p> <p><i>Does a wife have the right to confer her citizenship on foreign husbands and children? Can the nationality of an adult woman be arbitrarily removed because of marriage or dissolution of mar-</i></p>	<p>An Afghan woman or man may pass their nationality to their non-Afghan spouses provided: (i) they are married in accordance with <i>Shari'ah</i>; (ii) an application in writing for the non-Afghan spouse to obtain Afghan nationality is made and approved; and (iii) the</p>		<p>The Government of Afghanistan in its 2011 report to the CEDAW Committee asserted that there is no discrimination in the ability of a woman or man to obtain</p>		

¹⁶⁴ UNAMA, "Mixed results on Implementation of the EAW law over past year", 2013, <https://unama.unmissions.org/mixed-results-implementation-evaw-law-over-past-year>; Human Rights Watch, "World Report 2013", p. 270, https://www.hrw.org/sites/default/files/wr2013_web.pdf

<p><i>riage or because her husband or father changes his nationality?</i></p> <p><u>Applicable CEDAW Provision</u> Article 9 Para. 6 GR21</p>	<p>foreign spouse does not hold dual citizenship.¹⁶⁵</p> <p>An Afghan mother or father may pass their citizenship to their children provided the following conditions are met: (i) the child is born in Afghanistan; (ii) if the child is born abroad, but one of his or her parents permanently resides in Afghanistan; (iii) if the child is born abroad and both parents also live abroad, the parents by mutual consent select the Afghan citizenship for the child.¹⁶⁶</p>		<p>Afghan citizenship:¹⁶⁷</p> <ul style="list-style-type: none"> • Article 14 of the Nationality Law provides that foreign nationals can be granted Afghan nationality without any racial, linguistic, sexual or educational discrimination; • Article 22 provides that Afghan nationality may be granted based on the principles as provided for international treaties unless they contradict <i>Shari'ah</i>. • Article 41 states that in case of contradiction between the Nationality Law and international treaties or bilateral agreements between the 		
---	---	--	---	--	--

¹⁶⁵ Article 18 of the Law on Citizenship of the Islamic Emirate of Afghanistan (2000), <http://www.refworld.org/docid/404c988d4.html>

¹⁶⁶ Articles 9 and 10 of the Law on Citizenship of the Islamic Emirate of Afghanistan (2000), <http://www.refworld.org/docid/404c988d4.html>

¹⁶⁷ Afghanistan State party report, U.N. Doc. CEDAW/C/AFG/1-2 (2011), para. 153, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

			Afghan government and a foreign country, preference is given to the treaty or the bilateral agreement, again provided they are not in contradiction with <i>Shari'ah</i> .		
--	--	--	--	--	--

