

In Search of Justice for Crimes of Violence Against Women and Girls



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I. EXECUTIVE SUMMARY

Afghanistan's Elimination of Violence Against Women Law, 2009 (EVAW Law), was hailed as a significant step forward in efforts to strengthen legislative protections for women and girls. Monitoring conducted by the Human Rights Service of the United Nations Mission in Afghanistan (UNAMA) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) from September 2018 to February 2020 indicates that while the response by the justice sector to violence against women and girls criminalized under the EVAW Law continues to improve, the system also fails women and girls in a number of respects.

Over an 18-month period, UNAMA documented 303 reports of crimes of violence against women and girls. The purpose of the documentation was to monitor the judicial processing of reported crimes and to understand what redress was provided by the justice system to women and girls, specifically by three State institutions mandated to ensure women's access to justice in relation to such crimes: Departments of Women's Affairs, special prosecution units of the Attorney General's Office (EVAW prosecutors), and the Family Response Units of the Afghanistan National Police (ANP) (collectively, EVAW institutions). UNAMA also monitored the volume of crimes of violence against women and girls reported to these institutions to understand more broadly what types of crimes were being reported and how they were acted upon. Due to certain limitations on information-gathering, this report does not purport to provide a comprehensive overview of the justice response to crimes of violence against women and girls across the country.

Of the 303 cases documented by UNAMA, only half (49 per cent) progressed through the full justice chain to adjudication by a primary court.¹ Notably, some 17 per cent of documented cases were not pursued by EVAW institutions either because the survivor did not file a complaint or later withdrew it. This is largely permissible under the EVAW Law as it provides that prosecution of 17 of the 22 crimes must be based on a complaint filed by the victim or her attorney, and such prosecution stops altogether if a complainant withdraws her complaint. However, this places an enormous burden on individual women to make the justice system work for them, rather than the system working on their behalf. The failure to fully investigate and prosecute a crime due to the absence of the survivor is particularly egregious in cases of child marriage, as the victims are unlikely to have the ability to seek recourse from the justice system independently.

While the response of the justice sector to crimes of violence against women and girls continues to improve, the system also fails women and girls in a number of respects.

Out of the 303 cases, 31 per cent were not resolved by the justice system for a variety of other reasons, such as failure to arrest the alleged perpetrator

¹ The judiciary in Afghanistan is composed of the primary court, Courts of Appeal (also known as secondary courts), and the Supreme Court. Article 116, Constitution of the Islamic Republic of Afghanistan.

within three months² or closure of the case after resolution by informal mechanisms such as mediation. Otherwise, a detailed examination of a sub-set of documented cases revealed that they were largely processed according to timelines provided in the Criminal Procedure Code, 2014, and generally did not experience undue delay in investigation, prosecution or adjudication.

UNAMA also identified evident failures in the justice response to crimes of violence against women and girls. For instance, UNAMA found that EAW institutions registered so-called “moral crimes” such as “running away” from home or attempted *zina*,³ despite the former not being a codified crime. UNAMA also documented 40 cases of women being forced into suicide or self-immolation due to violence. In many of these cases, women had sought, but failed, to receive assistance from their families or communities. The fact that women feel they have no choice but to engage in such extreme acts to escape violence testifies to a profound distrust of the justice system and women’s perceived or actual experience of a lack of support to extricate themselves from violence.

While information collected by UNAMA indicates that conviction rates for cases of murder of women and girls have increased from past monitoring,⁴ cases of so-called “honour killings”⁵ continue to occur and result in a much lower rate of conviction. Such cases indicate a persistent belief that women may be subjected to punishment to restore the

“moral integrity” of the family based on cultural, traditional, or religious norms.

The investigation and prosecution of rape cases also raises serious concerns about justice actors’ approach to the crime. Information collected by UNAMA suggests that medical examinations are unduly relied upon to provide evidence of sexual violence and that women may be expected to endure these examinations without providing fully informed consent. Of equal concern is that a number of reported rape cases were assessed by justice actors as being cases of consensual extramarital sexual relations (*zina*), a crime under the Penal Code, which undoubtedly has a chilling effect on women’s willingness to report a rape.

The first cases of COVID-19 were detected in Afghanistan in February 2020. Since that time, ongoing monitoring conducted by UNAMA suggests that cases of violence against women and girls have increased, as have difficulties in reporting cases and accessing safety. Particularly in this context, it is of crucial importance that the Government of the Islamic Republic of Afghanistan continue to prioritize efforts to protect women and girls from violence, ensure they can access justice, and hold perpetrators to account. Progress has been too slow, but it has been real. It is critical that it continue apace.

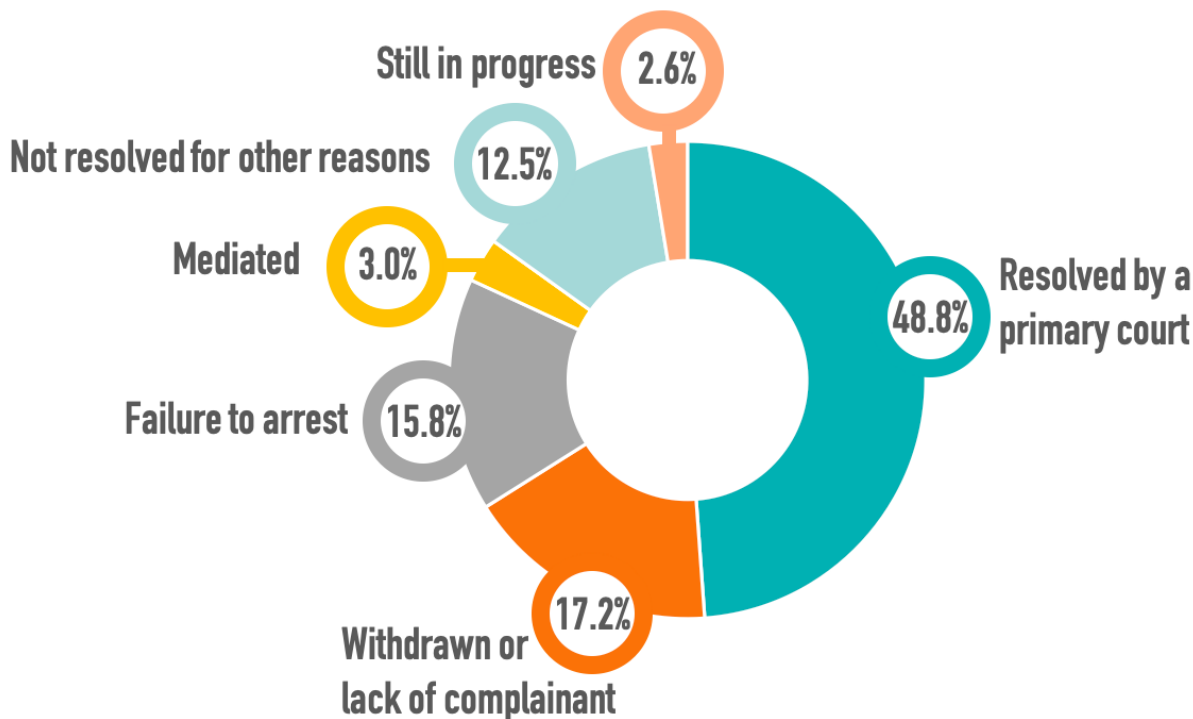
² Due to limited resources, UNAMA did not further follow up cases where an arrest had not been made after this period.

³ *Zina* is an Arabic term used to describe the prohibition under Shari’a law of the act of fornication (engaging in sexual intercourse) outside of marriage. *Zina* is a *Hudood* crime under Shari’a law, or a crime regarded as being against God’s commands for which punishment is obligatory.

⁴ Since 2010, UNAMA has been documenting incidents of violence against women and girls throughout Afghanistan and monitoring the Government’s efforts to address such incidents, particularly through the implementation of the EAW Law. See, in particular, UNAMA/OHCHR, *Justice Through the Eyes of Afghan Women: Cases of Violence Against Women Addressed through Mediation and Court Adjudication*, 2015; UNAMA/OHCHR, *Injustice and Impunity: Mediation of Criminal Offences of Violence Against Women*, May 2018. Available at: <https://unama.unmissions.org/women%27s-rights-reports>.

⁵ For the purpose of this report, UNAMA has categorized murders as so-called “honour killings” when information indicates that the alleged perpetrator killed his wife or a female relative in order to defend his honour, the characterization provided in Afghanistan’s 1976 Penal Code. The 2018 Penal Code no longer includes “honour” as a legitimate defence to murder.

Resolution of Reported Crimes of Violence Against Women and Girls



II. METHODOLOGY

This report is based on country-wide monitoring carried out by UNAMA from September 2018 to February 2020. UNAMA monitored EAW institutions' response to crimes reported under the EAW Law as well as murder, which is criminalized in the Penal Code, 2018.⁶

UNAMA regularly visited EAW institutions in provincial centres across the country to monitor how many crimes of violence against women and girls had been reported to them each calendar month. UNAMA also gathered detailed case information regarding 12 select acts of violence against women

⁶ The EAW Law criminalizes 22 acts of violence against women and girls. For a detailed overview of the legal framework for the elimination of violence against women and girls in Afghanistan, see UNAMA, *Still a Long Way to Go: Implementation of the Law on Elimination of Violence against Women in Afghanistan*, 2012; UNAMA/OHCHR, *A Way to Go: An Update on the Implementation of the Law on Elimination of Violence against Women in Afghanistan*, 2013; UNAMA/OHCHR, *Justice Through the Eyes of Afghan Women: Cases of Violence Against Women Addressed through Mediation and Court Adjudication*, 2015; UNAMA/OHCHR, *Injustice and Impunity: Mediation of Criminal Offences of Violence Against Women*, May 2018. Available at: <https://unama.unmissions.org/women%27s-rights-reports>.

and girls⁷ to better understand the treatment of those crimes in the formal justice system, with the result that 303 cases in total were documented. Of the total cases documented, UNAMA analyzed in greater depth 78 cases that were resolved by the formal justice system up to the primary court level to assess if crimes of violence against women and girls were processed according to timelines provided in the Criminal Procedure Code.

Although UNAMA focused on gathering information from EAW institutions to understand outcomes in the justice system, in some instances, it also documented crimes of violence against women and girls that were not reported to the justice system, such as when a survivor reported the incident directly to UNAMA or when such crimes were connected to the ongoing armed conflict.

Despite continued engagement with Afghan authorities, EAW institutions were sometimes unwilling

or unable to share information with UNAMA. Information-gathering was particularly hampered by a lack of proper record-keeping and poor coordination and information-sharing between EAW institutions. Frequently, UNAMA was unable to follow up on a case after initial information was documented either due to an EAW institution's failure to register the case or because the institution could no longer find the file. More broadly, insecurity and limited resources posed challenges for UNAMA, and as such it generally did not gather information from district-level EAW institutions. As a result, this report does not contain, nor attempt to make, a comprehensive review of reporting and justice responses to crimes of violence against women and girls across the country.

Throughout its information-gathering, UNAMA observed the principles of confidentiality, non-interference and non-intervention and, above-all, abided by the principle of "do no harm".

III. PROCESSING OF CRIMES OF VIOLENCE AGAINST WOMEN AND GIRLS

From September 2018 to February 2020, UNAMA documented a total of 303 crimes of violence against women and girls across 29 provinces of Afghanistan⁸ and followed their progression through the justice system until the cases were adjudicated

by the primary court or resolved in some other way.⁹ The crimes consisted of: 96 cases of rape, including eight cases of attempted rape; 73 cases of murder, including 22 murders perpetrated for reasons of so-called "honour"; 41 cases of causing

⁷ Namely: murder; rape; forcing into prostitution; recording and publishing the identity of a victim; burning or use of chemicals or other dangerous substances; forcing into self-immolation or suicide or using poison or other dangerous substances; causing injury or disability; selling and buying for the purpose, or on the pretext, of marriage; *ba'ad*; forced marriage; child marriage; forced isolation.

⁸ Specifically: Badakhshan (12); Badghis (12); Baghlan (15); Balkh (11); Bamyán (35); Daykundi (1); Faryab (20); Ghazni (7); Ghor (7); Herat (69); Helmand (1); Jawzjan (10); Kabul (2); Kandahar (2); Kapisa (9); Khost (2); Kunar (11); Kunduz (6); Laghman (4); Maidan Wardak (1); Nangarhar (23); Paktika (5); Paktya (7); Panjsher (2); Parwan (7); Samangan (6); Takhar (10); Uruzgan (3); Zabul (3). The number of cases documented in each province was largely driven by the volume and kinds of crimes reported. UNAMA sought to document as many of the 12 select crimes (listed above) reported to EAW institutions as resources and access allowed.

⁹ Cases were generally not followed to the appeal or Supreme Court.

injury or disability; 40 cases of forcing into self-immolation or suicide; 18 cases of forced marriage; 16 cases of child marriage; six cases of forced prostitution; five cases of burning or use of chemicals or

other dangerous substances; four cases of *ba'ad*;¹⁰ two cases of buying or selling for or under pretext of marriage; and two cases of forced isolation.¹¹

A. Profile of survivors

From information gathered by UNAMA, at least 37.3 per cent of the survivors of violence were girls under the age of 18 years old (the age of 8.6 per cent of survivors was not known). A further 54.8 per cent of survivors were married, 29.4 were single, and 4.3 per cent were widows, while the marital status of 11.6 per cent of survivors was not known. Just under 10 per cent of survivors were married girls under the age of 18.

37.3 per cent of survivors of crimes documented by UNAMA were girls under the age of 18 years old. The perpetrator in about half of documented cases was reportedly a close male relative.

Only 19.8 per cent of survivors were reportedly literate, while 40.6 per cent were illiterate; the literacy of 39.6 per cent of the survivors was not known. Notably, the literacy of the survivors of violence does not appear to have had a significant impact on the outcomes of cases. Perpetrators were convicted in 41.7 per cent of cases where the survivor was literate, and in 44.7 per cent of cases where the survivor was illiterate.

B. Profile of alleged perpetrators

In about half of the cases documented, the alleged perpetrator was reported to be a close male relative of the survivor. Husbands were alleged to be the primary perpetrator of violence in 33.3 per cent of cases, followed by fathers (8.9 per cent). Brothers, fiancés, and brothers-in-law accounted for 7.6 per cent of primary alleged perpetrators. The relationship between the survivor and the alleged perpetrator was unknown in 25.7 per cent of cases.¹²

In 66.3 per cent of cases documented, the alleged primary perpetrator was arrested.

C. Resolution of cases

UNAMA monitored the progress of reported crimes of violence against women and girls until closure by EAW institutions due to adjudication by the primary court, withdrawal by the complainant, or absence of resolution, such as for failure to arrest the alleged perpetrator in a reasonable time.

Finalization by the justice system (primary court)

Of the 303 cases documented by UNAMA, about half – 48.8 per cent – were adjudicated by the primary court, with alleged perpetrators convicted in 41.3 per cent of cases and acquitted in 7.6 per cent of cases.

¹⁰ *Ba'ad* is the practice of “giving” a woman or girl as restitution for murder, rape, or another crime to resolve a dispute between families.

¹¹ No cases of recording and publishing the identity of a victim were documented by UNAMA.

¹² This does not necessarily mean that the perpetrator was unknown to the survivor, but rather that the EAW institution was unable to provide information on this point to UNAMA in some cases.

Under the EVAW Law, prosecution of 17 of the 22 crimes included therein must be based on a complaint filed by the victim or her attorney, and such prosecution stops altogether if a complainant withdraws the complaint.¹³ The exceptions are commonly referred to as the five “serious” crimes – rape; forcing into prostitution; recording and publicizing the identity of the victim; burning or use of chemicals or other dangerous substances; and forcing into self-immolation or suicide. Similarly, the investigation and prosecution of murder under the Penal Code does not depend on a complaint being filed. With respect to cases of these “serious” crimes and murder documented by UNAMA, alleged perpetrators were convicted in 48.2 per cent of cases and acquitted in 9.1 per cent of cases.

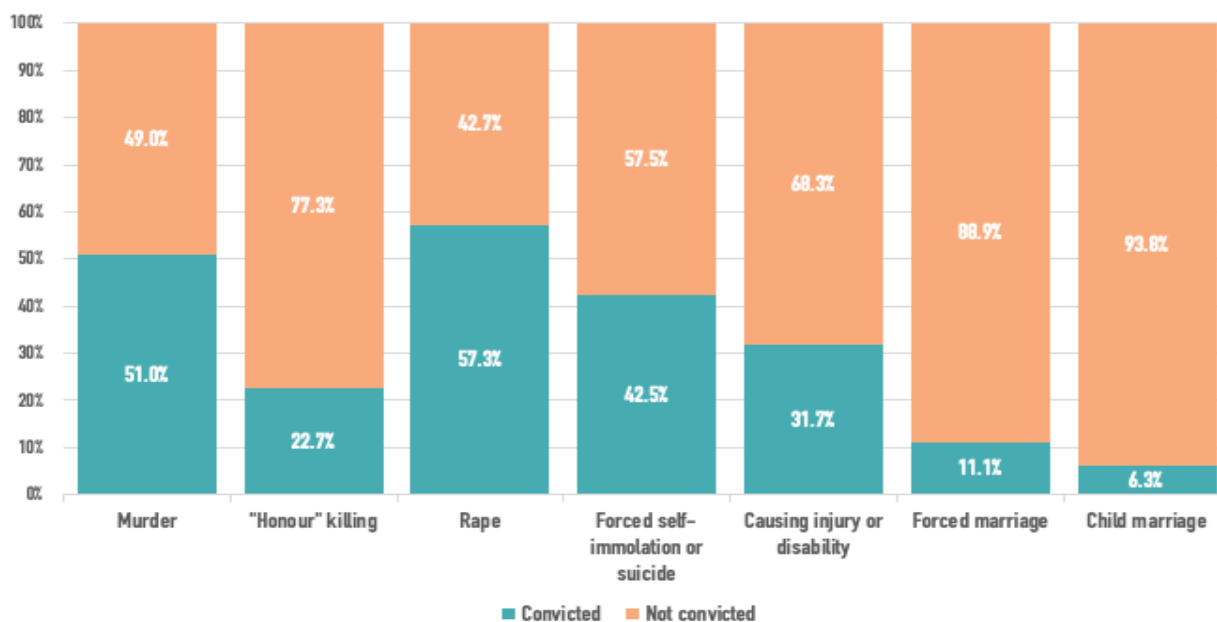
With respect to the 73 cases of murder documented by UNAMA, alleged perpetrators were convicted in 42.5 per cent of cases, with a 6.8 per cent acquittal rate. However, when murders perpetrated for

reasons of so-called “honour” (22 cases) were considered separately, the conviction rate dropped to 22.7 per cent - compared to a 51 per cent conviction rate for murders unrelated to “honour” (51 cases).

Of the 303 cases documented by UNAMA, only half progressed through the full justice chain to adjudication by a court.

Regarding the 96 cases of rape and attempted rape documented by UNAMA, alleged perpetrators were convicted in 57.3 per cent of cases and acquitted in 9.4 per cent of cases. Concerning the 40 cases of forcing into self-immolation or suicide, 42.5 per cent of cases resulted in a conviction and 7.5 per cent of cases resulted in acquittal.¹⁴

Conviction Rates for Documented Crimes



¹³ Article 39, EVAW Law.

¹⁴ UNAMA documented a total of 11 cases of burning or use of chemicals or other dangerous substance (5) and forcing into prostitution (6), a sample size too small to draw any meaningful conclusions. As noted above, no cases of recording and publishing the identity of a victim were documented by UNAMA. Similarly, UNAMA documented too few cases of *ba'ad* (4), selling and buying for the purpose, or on the pretext, of marriage (2), and forced isolation (2), to draw conclusions about conviction rates.

When compared to past monitoring conducted by UNAMA, it appears that conviction rates for crimes of violence against women and girls are increasing.¹⁵ This may be attributed to a steady albeit slow expansion of EAW institutions throughout Afghanistan,¹⁶ as well as improved attention to these crimes and enhanced coordination among Government actors, including regular meetings of the Commission for the Elimination of Violence Against Women in many provinces, as stipulated by the EAW Law. Sustained and concerted awareness-raising and capacity building by civil society is also a possible factor of this evolution.

While these improvements are welcome, much more needs to be done to ensure that women and girls see justice for crimes of violence. For example, monitoring by UNAMA indicates that crimes of violence against women and girls which are seen to be less serious socially and by EAW institutions have lower rates of conviction as they are more likely to be dropped by the justice system altogether due to a variety of reasons explained below. For instance, convictions rates for documented cases of causing injury or disability and forced marriage were 31.7 per cent and 11.1 per cent, respectively.

Absence of or withdrawal of reported case by complainant

As noted above, pursuant to Article 39 of the EAW Law, the investigation and prosecution of 17 of the 22 crimes included in the Law depend on a complaint being filed by the victim or her attorney.

Perpetrators were arrested in only 31.8% of documented “honour killings”, as compared to a 60.8% arrest rate for murders unrelated to “honour”.

Of the total cases documented by UNAMA, 17.2 per cent of crimes were either not pursued or stopped due to Article 39 of the EAW Law. In 12.9 per cent of total cases, the complainant withdrew the complaint and in 4.3 per cent of total cases, the case was not pursued due to the absence of the survivor.

For instance, in September 2019, two men reportedly exchanged their 13 and 14-year old daughters as wives. Ten days later, the girls lodged a complaint to the local ANP and the alleged perpetrators were arrested on the same day. In mid-October, the prosecution closed the case because the girls, along with their mothers, withdrew the complaint. The alleged perpetrators were released.

In January 2019, reportedly drug-addicted parents sold their 12-year-old daughter to a man who intended to marry her, for 50,000 Afghanis and a cow. About 10 days after the sale, ANP arrested the girl’s father and the man who paid for the girl. In mid-February, the primary court dismissed the case on the basis that neither the girl, nor her lawyer, had submitted a complaint. The girl reportedly told the court that she did not want to file a complaint but

¹⁵ Between August 2014 and February 2015, UNAMA documented 110 crimes of violence against women and girls and found that only 10 cases resulted in convictions. Between August 2015 and December 2017, UNAMA documented 280 murder and “honour killing” cases reported to EAW institutions. Only 18 per cent resulted in the conviction of the perpetrator. See UNAMA/OHCHR, *Justice Through the Eyes of Afghan Women: Cases of Violence Against Women Addressed through Mediation and Court Adjudication*, 2015; UNAMA/OHCHR, *Injustice and Impunity: Mediation of Criminal Offences of Violence Against Women*, May 2018. Available at: <https://unama.unmissions.org/women%27s-rights-reports>.

¹⁶ As at 20 September 2020, EAW prosecution offices are operational in all 34 provinces of Afghanistan, at both primary and appellate levels. At the primary level, 32 of these offices are headed by women. ANP Family Response Units are also operational in all 34 provinces, with 178 female staff out of a total of 442 personnel. EAW courts have been established in all provinces of Afghanistan, at the primary and appellate levels.

only wanted her marriage annulled. The alleged perpetrators were released.

Notably, ERAW institutions did not pursue some cases due to the absence of the complainant or because the complaint was withdrawn, even though the crime at issue was one of the crimes subject to *ex officio* prosecution under the ERAW Law. For instance, 33.3 per cent of cases of forcing into prostitution, 4.2 per cent of rape cases, and 12.5 per cent of cases of forcing into self-immolation or suicide were not prosecuted because the complainant withdrew her complaint.

Similarly, 16.7 per cent of cases of forcing into prostitution, 2.1 per cent of rape cases, and five per cent of cases of forcing into suicide or self-immolation were not prosecuted due to the absence of the complainant, despite the fact that investigation and prosecution do not require the existence of a complaint.

For instance, in late July 2019, a 25-year-old woman poured fuel on her body and tried to burn herself alive allegedly due to years of violence at the hands of her mother-in-law. She was taken to the hospital four to five days after the incident, with burns to her throat, chest, back, arms, and legs. In September, the survivor indicated to the prosecution that she did not wish to proceed with the case as she was fearful that her husband would divorce her and, as her parents were no longer alive, she would have nowhere to go. The case was stopped by the prosecution on that basis.

Failure to arrest or finalize

In 15.8 per cent of cases, ANP had not made an arrest three months after a complaint was first

registered.¹⁷ In cases of murder, ANP failed to arrest the alleged perpetrator in 39.7 per cent of cases. When so-called “honour killings” were considered on their own, ANP failed to arrest the alleged perpetrator in 63.6 per cent of the cases. It is noteworthy that the alleged perpetrator was a close male relative in 68.2 per cent of documented “honour killings”.

Information collected by UNAMA indicates that reasons for failure to arrest were varied but were often purportedly because the alleged perpetrator absconded to territory controlled by anti-government elements.

Otherwise, 12.5 per cent of cases were not finalized for a variety of other reasons, such as justice actors losing the case file, the alleged perpetrator dying, or for reasons unclear to UNAMA.¹⁸

Informal resolution

Notably, only three per cent of documented cases were resolved outside of the formal justice system, by traditional dispute resolution mechanisms or mediation by ERAW institutions.¹⁹ Of the nine cases that were resolved in this manner, five were cases of forced marriage, two were cases of child marriage, one was a case of *ba’ad*, and one was a case of causing injury or disability. Two cases were mediated by ANP; two by the Department of Women’s Affairs; two were sent to the Department of Huqooq in the Ministry of Justice²⁰ and mediated; one was mediated by the prosecution; and two were mediated outside of the formal justice system by community elders and then no longer pursued by the survivors.

¹⁷ Due to limited resources, UNAMA did not further follow up cases where an arrest had not been made after this period.

¹⁸ At the end of the monitoring period, 2.6 per cent of crimes of violence against women and girls documented by UNAMA were still under process by the justice system.

¹⁹ There is no explicit provision in Afghan law that defines, permits, or prohibits mediation in criminal cases, including in the ERAW Law.

²⁰ The Department of Huqooq sits in Kabul and settles disputes arising out of debts, properties, and family of real and legal persons pursuant to the Civil Procedure Code and the Law on the Acquisition of Rights. Provincial Departments of Huqooq exist in all of Afghanistan’s 34 provinces.

In February 2019, a 25-year-old woman approached ANP to report that she had been beaten by her husband throughout the course of their 11-year marriage. Before visiting the police, she was treated at the hospital, which confirmed signs of beating on her body. When the police later tried to follow up on the case of “causing injury or disability”, the survivor informed them that she no longer wished to pursue her complaint because her husband had committed to family elders that he would no longer beat her.

In April 2019, a 35-year-old woman complained to Department of Women’s Affairs that her uncle had married her to her cousin without her consent in order to obtain ownership of her father’s property, who had disappeared long ago. The case was referred to the Department of Huqooq, who mediated an agreement between the woman and her husband and uncle, under which the husband would grant her a divorce as long as she did not claim her inheritance.

In July 2019, a 15-year-old girl ran away from home in a district and walked to the capital city. She was stopped by ANP at a check-point who found that her feet were injured as she was not wearing proper footwear. She explained that her father wanted to marry her to a man in the district and she felt that she had no choice but to run away to avoid the marriage. The girl was taken to the ANP station, where she stayed for 16 days, until her mother, sister, and brother came to get her. The family signed an agreement, in the presence of ANP and a representative of Department of Women’s Affairs, to consider the girl’s opinion on her marriage and the girl left with her family.

Past monitoring by UNAMA indicated that a significant proportion of crimes of violence against women and girls are mediated by the informal justice system.²¹ The low rate of mediation of cases documented under this methodology may indicate that crimes of violence against women and girls which are

understood by EVAW institutions to be more serious, such as felony crimes like murder and rape, are more likely to be registered and processed by the justice system. Through its monitoring, UNAMA found that cases seen as less serious, such as misdemeanour crimes like beating or harassment, are much more likely to be mediated by EVAW institutions or not registered at all.

As UNAMA gathered information almost exclusively from formal justice system actors to better understand the functioning of that system, it is possible, even likely, that these actors did not inform UNAMA about cases that were mediated.

D. Case processing timelines

UNAMA conducted a closer analysis of 78 crimes of violence against women and girls that were finalized by the justice system to assess whether they were processed according to relevant legislative timelines.

On average, 34.4 days elapsed between the occurrence of the violence and the first report to an EVAW institution. However, nine cases had particularly long reporting times, of over 25 days; when those were excluded, the average time to report dropped to 2.3 days. Crimes of violence against women and girls were nearly always initially reported to ANP Family Response Units, in 79.5 per cent of cases. Otherwise, cases were reported directly to the prosecution in 7.7 per cent of cases and to Department of Women’s Affairs in 5.1 per cent of cases.

It took the ANP Family Response Units an average of 7.3 days after registering the crime to arrest the alleged perpetrator. Pursuant to Article 87 of the Criminal Procedure Code, the ANP is required to hand over the suspect and provide the case file to the prosecution within 72 hours (three days) of

²¹ See, for instance, UNAMA/OHCHR, *Injustice and Impunity: Mediation of Criminal Offences of Violence Against Women*, May 2018. Available at: <https://unama.unmissions.org/women%27s-rights-reports>.

arrest. In cases documented by UNAMA, from the date of arrest, it took the ANP an average of six days to refer the case to the EAW Prosecution – double the time prescribed in the Criminal Procedure Code. On occasion, delay was created because the ANP referred the case to the wrong institution in the justice chain, for instance to a district prosecutor, which subsequently referred it to the EAW prosecution.

Pursuant to Article 100 of the Criminal Procedure Code, the Prosecution can keep an accused in pre-trial detention for seven days for misdemeanour crimes, and for 15 days for felony crimes, in order to complete its investigation and prepare the indictment. The pre-trial detention period can be extended to a maximum of 20 days for misdemeanour crimes and 60 days for felony crimes with the permission of the primary court. With respect to six felony crimes documented by UNAMA, it took EAW

Prosecutors an average of 36.2 days to refer the case to the primary court.²²

Pursuant to Article 101 of the Criminal Procedure Code, the primary court can keep the accused in detention for a maximum of 30 days. The primary court took an average of 26.2 days from referral by the Prosecution to issue a verdict in cases documented by UNAMA.

Overall, the 78 crimes of violence against women and girls assessed by UNAMA were processed – from initial complaint to a court decision – in an average of 76 days. While case processing times largely abided by the Criminal Procedure Code, EAW institutions must endeavour to ensure that justice is delivered without delay to all parties concerned.

IV. SPECIFIC ISSUES OF CONCERN

Through the course of its monitoring, UNAMA noted specific issues of concern regarding how reported cases are handled by EAW actors and women's access to justice for crimes of violence more broadly. While progress has been made with respect to some of these issues, most are long-standing and have been raised repeatedly by UNAMA and other actors as requiring urgent and immediate redress.²³

A. Arbitrary detention of women: “running away” and attempted *zina*

In addition to monitoring how many crimes of violence against women and girls were registered by EAW institutions, UNAMA also gathered information about whether so-called “moral crimes” allegedly committed by women were registered by these actors.

²² Felony crimes of violence against women and girls analyzed by UNAMA were: murder, rape, forcing into prostitution, burning or use of chemicals or other dangerous substances, selling or buying for the purpose of or on the pretext of marriage, and *ba'ad*. UNAMA also analyzed two misdemeanour crimes of violence against women and girls, namely, forced marriage and child marriage. The sample size of cases was too small to draw any meaningful conclusions. UNAMA also documented cases of forcing into self-immolation or suicide or using poison or other dangerous substances and causing injury or disability. These can be charged as either felony or misdemeanour crimes depending on the factual circumstances of the case; UNAMA did not have sufficient information to make this determination in each case and therefore did not analyze these cases on this metric. The crime of forced isolation is punishable by less than three months of imprisonment pursuant to Article 31 of the EAW Law. As this term of imprisonment not contemplated in the Penal Code (see Articles 28-31, 146, and 147), its categorization is unclear.

²³ See, e.g., Committee on the Elimination of Discrimination Against Women, *Concluding observations on the third periodic report of Afghanistan*, CEDAW/C/AFG/CO/3, 2 March 2020; Report of the Special Rapporteur of the Commission on Human Rights on violence against women, its causes and consequences, on the situation of women and girls in Afghanistan, A/58/421, 6 October 2003.

Notably, the three EAW institutions each reported registering cases against women for “running away”: 159 such cases were registered by Department of Women’s Affairs, 128 by ANP Family Response Units, and nine by EAW prosecutors. Cases of extramarital sexual relations (*zina*), criminalized under Article 643(1) of the Penal Code, and “attempted *zina*” were also registered. Department of Women’s Affairs reported registering 15 cases of *zina* or attempted *zina*, ANP Family Response Units registered 35, and EAW prosecutors registered six cases of *zina* or attempted *zina*.

So-called “running away” is not a crime in Afghanistan. However, when women and girls leave their homes without permission from their *mahram*,²⁴ or without providing information to their families about their whereabouts, they are sometimes arrested for “running away” from home and charged with attempted *zina*. Attempt to commit *zina* is not a codified crime in the Penal Code but is likely charged through a combination of Article 643(1) and Article 47, which proscribes attempts to commit crimes.

A number of instructions have been issued by judicial institutions regarding the practice of charging women with “running away”. In April 2012, the Attorney General’s Office issued a directive to prosecutors that women should not be charged with “running away” as this is not a codified crime under any Afghan law. However, the directive further stated that running away for the purpose of committing a crime was an exception. This vague distinction leaves open the possibility of

charging women with attempted *zina* when they leave home without a *mahram*.²⁵

The Supreme Court has been similarly ambiguous in several statements on the matter. In December 2012, for instance, the Supreme Court stated in a letter to the Attorney General’s Office that running away from home to escape domestic violence and seeking assistance from justice institutions, legal aid organizations, or relatives is not a crime. However, the letter also stated that “running away” from home for any reason other than to escape violence should be treated differently and should be prosecuted.²⁶

UNAMA reiterates that detaining or prosecuting women for “running away” or attempted *zina* is inconsistent with Afghanistan’s international human rights obligations. This practice discriminates against women particularly and is a serious violation of their rights to freedom of movement, privacy, and equality before the law.²⁷

Detaining or prosecuting women for “running away” or attempted *zina* is a serious violation of women’s human rights.

B. Forcing into self-immolation or suicide

UNAMA documented 40 cases of women being forced into suicide or self-immolation due to violence.

²⁴ A women’s husband, or her immediate male relative (i.e., father, brother, paternal and maternal uncles and her nephews) with whom marriage is proscribed for her under Shari’a law.

²⁵ Attorney General’s Office urgent communication No. 92/202, 11 April 2012. On file with the UNAMA Human Rights Service.

²⁶ Supreme Court letter No. 820/327, 31 December 2012. On file with the UNAMA Human Rights Service. For a more detailed discussion of this issue, see: UNAMA/OHCHR, *A Way to Go: An Update on the Implementation of the Law on Elimination of Violence Against Women in Afghanistan*, 2013. Available at: <https://unama.unmissions.org/women%27s-rights-reports>.

²⁷ Articles 2(f), 15(1) and 15(4), Convention on the Elimination of all Forms of Discrimination Against Women; Articles 2, 3, 12, 14, 17, International Covenant on Political and Civil Rights; United Nations Human Rights Committee, *General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women)*, CCPR/C/21/Rev.1/Add.10, 29 March 2009, paras. 14, 16. See also UNAMA/OHCHR, *A Way to Go: An Update on the Implementation of the Law on Elimination of Violence Against Women in Afghanistan*, 2013; UNAMA/OHCHR, *Justice Through the Eyes of Afghan Women: Cases of Violence Against Women Addressed through Mediation and Court Adjudication*, 2015. Available at: <https://unama.unmissions.org/women%27s-rights-reports>.

As noted above, 42.5 per cent of these cases resulted in a conviction. However, in many instances, these women had reportedly been subjected to years of violence before harming themselves or taking their lives. Justice for these women should have come much earlier.

In October 2018, a woman killed herself with a gun in her home. Relatives of the victim reported that, five years prior, she had been given in an exchange marriage and was thereafter frequently beaten by her husband. At one point, her family took her back to their home due to the violence. Her husband then came with tribal elders and promised to stop the violence and the woman went back to his home. Due to lack of evidence, the primary court acquitted the husband. On appeal, the secondary court entered a conviction and sentenced him to six years of imprisonment.

In April 2019, a 24-year-old woman shot herself in the stomach and died. Reportedly, she was the subject of an exchange marriage two years earlier and had been suffering ongoing violence by her parents-in-law. Before the incident, the woman left her husband's house for her parents' house. Her husband, who was working in Iran, then called her, threatened her, and told her he would be returning as soon as possible. She then killed herself. Upon follow up, the ANP Family Response Unit reported to UNAMA that they could not find the case file.

In June 2019, a 20-year-old mother ended her life reportedly due to enduring years of serious violence at the hands of her husband and parents-in-law. On one occasion, her legs were broken as a result of being beaten. The woman lived in an area under Taliban control and, despite appealing for help from local Taliban leaders, she was sent back to her husband's house.

These and other similar cases documented by UNAMA raise serious concerns about women's access to safety and justice for violence. It is clear that many women feel they have no viable option to escape violence other than by extreme acts of self-harm or suicide. It is of particular concern that in some cases, family or community members are aware of the violence but do not offer adequate assistance, likely compounding women's sense of having nowhere to turn. These incidents testify to a profound distrust of the formal justice system.

C. "Honour killings"

UNAMA documented 22 cases of murder perpetrated for reasons of so-called "honour". In 15 of these cases, the alleged perpetrator was a close male family member. Honour is no longer a mitigating factor for murder cases under the Penal Code,²⁸ which is a welcome development. However, the continuing practice indicates a persistent belief among some members of the community that women may be subjected to punishment in order to preserve or restore the integrity of cultural, traditional, or religious norms and social mores. As noted above, documented "honour killings" resulted in a much lower rate of conviction (22.7 per cent) than murders unrelated to "honour" (51 per cent).

In March 2018, a 17-year-old girl was arrested by the ANP for running away and was sentenced to nine months of imprisonment. Upon release, she was sent to a Women's Protection Centre and then released to her parents. Her brother allegedly killed her the day following her release. The ANP was unable to arrest the alleged perpetrator.

In October 2019, a 16-year-old girl ran away from home due to violence and because her family had engaged her to be married without her consent. The

²⁸ Article 398 of the 1976 Penal Code stipulated that a person who kills or injures his wife or a relative in order to defend his honour will not be subject to the punishment for murder or laceration, but instead shall be imprisoned for a period of no more than two years. While the 2018 Penal Code includes honour as a "legitimate" defence in Articles 125 and 126, Article 129 specifies that legitimate defences are not applicable in cases of murder, except in defence of certain enumerated acts which do not include preservation or restoration of honour.

girl was stopped at an Afghan Local Police checkpoint and subsequently returned to her family. The next day, her father allegedly shot and killed her. ANP reported to UNAMA that it was not able to arrest the alleged perpetrator.

In April 2019, a 28-year-old woman was allegedly murdered by her brother and male cousin. The two men had reportedly seen her sitting in a car with her boyfriend. That evening, they allegedly suffocated her to death in her father's house. They subsequently absconded from the area and ANP were not able to arrest them. The boyfriend of the victim was temporarily detained but not charged.

In January 2020, a man killed his 14-year-old daughter and a 16-year-old boy for purportedly having a sexual relationship. The man, a well-known local warlord, went to the boy's parents' home and demanded money and that one of their daughters be given in *ba'ad* as restitution for the alleged relationship. The boy's parents denied the relationship and said they had no money to give but would give a daughter in *ba'ad*. The man did not accept this and took the boy back to his house where he allegedly killed him and his daughter, using a firearm and an axe. The man was arrested by ANP but subsequently released, reportedly due to mediation between the district ANP Chief and the district Governor.

D. Child marriage

UNAMA documented 16 cases of child marriage.²⁹ Only one case resulted in a conviction of the perpetrator. Six cases were withdrawn by the complainant and three did not proceed due to the absence of the complainant, as permitted under the EAW Law. Otherwise, one alleged perpetrator was acquitted, two cases were mediated, in two cases the alleged perpetrator was not arrested within three months of the complaint, and one case was closed for other reasons.

Given the severe physical and psychological harm of child marriage, this crime should be subject to *ex officio* prosecution.

UNAMA also found that the vast majority of child marriages are arranged or condoned by the girls' families. It is unrealistic to expect that the girls themselves, who are generally vulnerable and without resources, will be in a position to register a complaint with justice authorities or to withstand familial and societal pressure to maintain a complaint throughout the full course of the criminal justice chain. Given the severe physical and psychological harm of child marriage,³⁰ this crime should be subject to *ex officio* prosecution.

²⁹ Article 28 of the EAW Law prohibits the marriage of a woman who has not reached the legal age of marriage without considering the provisions of Article 71 of the Civil Code, 1977. The EAW Law does not define the legal age of marriage. However, Article 70(1) of the Civil Code provides that girls have the legal capacity to marry once they attain 16 years of age; article 71(1) provides that a girl who has not reached 16 years old may be married by her father or a competent court; and article 71(2) prohibits the marriage of a girl under 15 years old. For the purpose of this report, UNAMA has classified cases as child marriages when they are reported as such to the EAW institutions and the girl has not yet reached 18 years of age, pursuant to Article 1 of the Convention of the Rights of the Child. Eleven of the 16 cases of child marriage documented by UNAMA concerned girls aged 15 years or younger.

³⁰ Committee on the Elimination of Discrimination Against Women and Committee on the Rights of the Child, *Joint General Recommendation No. 31 and No. 18 on Harmful Practices*, CEDAW/C/GC/31-CRC/C/GC/18, 14 November 2014, paras. 20-24; UN General Assembly, Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights, *Preventing and eliminating child, early and forced marriage*, A/HRC/26/22, 2 April 2014, para. 10.

In October 2019, a 16-year-old girl was allegedly forcibly married to a 28-year-old man by her uncle, her guardian. Due to violence at the hands of her husband, she ran away from home. In November 2019, her husband lodged a complaint against her (for running away) at the Department of Huqooq, which referred the case to the district court. The court dissolved the marriage, on the condition that the girl pay financial compensation to her husband. No charges were brought in relation to the crime of child marriage, reportedly because of the failure of the girl to formally register a complaint.

In October 2018, a 10-year-old girl was given in an exchange marriage by her father to a 20-year-old man. The day after her wedding, she was taken to the provincial hospital due to serious bleeding, reportedly as a result of sexual intercourse, and died from her injuries. As the family lived in a Taliban-controlled area, ANP reported that they were not able to pursue the case.

E. Treatment of rape cases

Conduct of medical examinations

In many rape cases documented by UNAMA, the survivors were sent for a medical examination after reporting the crime to an ERAW institution. Such examinations – conducted in order to document injuries, gather medico-legal evidence, and provide treatment and care as appropriate – should be

conducted according to the Ministry of Public Health's *Gender-Based Violence Treatment Protocol*.³¹

However, several cases documented by UNAMA raise serious concerns about justice actors' understanding of both survivor's rights in relation to these examinations and their purpose. It appears that women are often expected to undergo these examinations after reporting sexual violence, without providing fully informed consent.³² Women were also occasionally subjected to these examinations multiple times, despite best practice dictating that the number of invasive physical examinations should be minimized. Moreover, ANP and prosecutors often appear to rely on the examination alone to determine whether sexual violence took place, seemingly based on physical indications such as identifiable injuries. However, it is not the role of the healthcare provider to make any interpretation about whether sexual violence took place, and identifiable injuries may not be evident in many cases of sexual violence.³³

Anecdotal information collected by UNAMA in the course of its monitoring also suggests that some women and girls who report sexual violence are subjected to a medical examination to determine their virginity. Such tests have no medical or

³¹ Ministry of Public Health of the Islamic Republic of Afghanistan, World Health Organization Afghanistan Country Office, and United Nations Entity for Gender Equality and the Empowerment of Women, *Gender-Based Violence Treatment Protocol for Healthcare Providers in Afghanistan*, 2014, p. 16. Available at: <https://reliefweb.int/report/afghanistan/gender-based-violence-treatment-protocol-healthcare-providers-afghanistan>.

³² *Gender-Based Violence Treatment Protocol*, pp. 16-17, stating that women need to be fully informed regarding the purpose of the examination, how it will be conducted, and about the confidentiality of the information collected. Consent should be obtained separately for each part of the examination and women can refuse to consent to any specific part of the examination that they are not comfortable with.

³³ *Gender-Based Violence Treatment Protocol*, pp. 16-17, 21, 63-65, noting that when an examination is performed in the context of a sexual assault case, it should not be with the aim of obtaining any information about the victim's virginity or sexual history and that it is not the role of the health care provider to make any interpretations about whether or not gender-based violence took place. Medical and forensic services should be offered in such a way as to minimize the number of invasive physical examinations and interviews the patient is required to undergo. Further, following a rape, identifiable damage exists in less than 50 per cent of cases.

scientific basis and, as a form of sexual violence, are a serious violation of human rights.³⁴

In November 2018, after being accused by her husband of not being a virgin on the night of their wedding, a 16-year-old girl stated that she had been raped the year before. She was sent for a medical examination, apparently by the EAW prosecution, which reportedly confirmed that the girl had been raped.

In January 2019, a 14-year-old girl reported to the ANP that she was being repeatedly raped by her 40-year-old uncle. The EAW prosecution sent the survivor to the provincial hospital twice for a medical examination, which reportedly did not show evidence of sexual assault. The survivor was then sent to Kabul for another examination, which reportedly also did not confirm that she had been raped. In July, the prosecution submitted the indictment to the primary court, which returned the case to the prosecution, requesting more information from the examinations. The trial then took place in August and the perpetrator was convicted.

In July 2019, a man complained to the ANP that his daughter, a widow, had been repeatedly raped by her brother-in-law for nearly a year before she escaped and returned to his house. The survivor was sent for a medical examination, which reportedly concluded that she had not been raped but had engaged in consensual sexual intercourse. The ANP referred the case to the provincial Department of Huqooq, reportedly so that the woman could be married to her brother-in-law, who then disappeared.

In April 2019, a 12-year-old girl approached the Department of Women's Affairs and reported that she was being raped repeatedly by a male relative. The Department of Women's Affairs assisted her in reporting the case to the ANP and she was sent for a medical examination, which reportedly did not show any evidence of sexual assault. The prosecution later closed the case due to lack of evidence.

In mid-November 2019, the parents of a 15-year-old girl reported to ANP that she had been raped by a man she was introduced to by a friend. After the case was referred to the EAW prosecution, the survivor was sent for a medical examination which reportedly indicated that she had not been raped. The case was stopped on that basis. Reportedly, the survivor then married the alleged perpetrator.

Rape charged as extramarital relations

In at least eight cases of rape documented by UNAMA, the survivor's report of rape was assessed by the prosecution or primary court as being a case of consensual extramarital sexual relations (*zina*). In many of these cases, the survivors were then prosecuted pursuant to Article 643(1) of the Penal Code.

In April 2019, a woman reported to ANP that a 22-year-old man had raped her 17-year-old daughter. Although the EAW prosecutor indicted the alleged perpetrator on charges of rape, the primary court changed the charge to *zina* and convicted the survivor. It should be noted that pursuant to Article 638 of the Penal Code, sexual intercourse with a person

³⁴ While so-called "virginity tests" are prohibited by Article 640(2) of the Penal Code, there is an exception when conducted pursuant to consent of the woman and an order of a competent court. The Committee on the Elimination of Discrimination Against Women has repeatedly called on Afghanistan to fully prohibit so-called "virginity testing". Committee on the Elimination of Discrimination Against Women, *Concluding observations on the third periodic report of Afghanistan*, CEDAW/C/AFG/CO/3, 2 March 2020, para. 24(h). See further, World Health Organization, Office of the United Nations High Commissioner for Human Rights, and UN Women, *Eliminating Virginity Testing: An Interagency Statement*, 2018. Available at: <https://apps.who.int/iris/bitstream/handle/10665/275451/WHO-RHR-18.15-eng.pdf?ua=1>. Physicians for Human Rights, *Virginity and Hymen Testing: No Factual, Scientific, or Medical Basis*, May 2015. Available at: <https://phr.org/our-work/resources/virginity-and-hymen-testing-no-factual-scientific-or-medical-basis/>. *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, United Nations Human Rights Council, Seventh session, A/HRC/7/3, 7 January 2008, para. 34.

under the legal age³⁵ is considered to be an act of rape and any purported consent provided by the child is invalid.

The very possibility of being charged with a crime is likely to have a chilling effect on survivors' willingness to report sexual violence.³⁶ When combined with a context in which a woman's report of sexual violence is often not believed unless she is able to point to physical indications of such violence, women's safe and realistic ability to access justice for crimes of sexual violence is severely diminished.

V. CONCLUSION

Afghanistan has made incremental progress in efforts to ensure women and girls' access to justice for crimes of violence. The landmark EAW Law has been followed by a decade of assiduous institution building and efforts to change attitudes regarding women and girls' right to be free from all forms of violence. The reporting of crimes of violence appears to be slowly increasing, as are convictions rates, while resort to informal mediation to resolve such crimes may be slowly decreasing.

Challenges, however, remain. Women and girls' improved access to justice appears to be mostly related to crimes that are seen to be particularly serious, such as murder and rape, while crimes which are considered as less serious are treated accordingly by the justice system. This stems from, and reinforces, a view that most violence against women and girls is not a concern for the State, but a private family matter.

The very possibility of being charged with a crime is likely to have a chilling effect on survivors' willingness to report sexual violence.

It is a serious concern that many crimes under the EAW Law are not pursued on the basis that the survivor has not filed or maintained her complaint, especially for crimes subject to *ex officio* prosecution. The State should not place this burden on survivors, especially in a context where reporting such a crime may place her at odds with her family and community, and imperil her safety. This obligation is particularly egregious in cases of child marriage. UNAMA monitoring underscores how many women still resort to self-immolation or suicide

UNAMA monitoring underscores how many women still resort to self-immolation or suicide when they are subjected to violence and feel they have no realistic path to escape.

³⁵ Article 95 of the Penal Code defines a child as a person who has not reached the age of 18 years old. It is therefore presumed that "legal age" in Article 638 should be understood accordingly.

³⁶ United Nations Special Procedures, Working Group on the issue of discrimination in law and practice, *Adultery as a criminal offence violates women's human rights*, October 2012. In its 2020 Concluding Observations on Afghanistan's third periodic report under the Convention on the Elimination of all forms of Discrimination against Women, the Committee on the Elimination of Discrimination against Women noted its deep concern about re-victimization faced by women and girl survivors of rape who are charged with *zina*. It recommended that Afghanistan revise the Penal Code to decriminalize "moral crimes" including *zina*. See CEDAW/C/AFG/CO/3, 2 March 2020, paras. 23-24.

when they are subjected to violence and feel they have no realistic path to escape.

Rather than protecting and supporting women, the formal justice system often re-victimizes them.

Moreover, the criminal justice system continues to detain women and girls for so-called “moral crimes”, notably by prosecuting them for leaving their homes independently. Similarly, the prosecution of rape cases is problematic, particularly the conduct of medical examinations and the possibility confronting survivors that they will be charged with the crime of *zina* if they choose to report. Improper and forced medical examinations may themselves amount to acts of sexual violence and should be prosecuted as such. These

concerns point to a system which is not victim-oriented; rather than protecting and supporting women, the formal justice system often re-victimizes them.

As the monitoring period for the purposes of this report ended, the first cases of COVID-19 were detected in Afghanistan, in February 2020. Since that time, ongoing monitoring conducted by UNAMA suggests that cases of violence against women and girls have increased, as have difficulties in reporting cases and accessing safety, mirroring worldwide trends in the context of the pandemic.³⁷ Particularly in this context, and indeed as the Afghanistan peace negotiation gathers momentum, it is of crucial importance that the Government of the Islamic Republic of Afghanistan continue to prioritize efforts to protect women and girls from violence, ensure they can access justice, and hold perpetrators to account. Progress has been too slow, but it has been real. It is critical that it continue apace.

VI. RECOMMENDATIONS

Amendments to the legislative framework

- Amend the EVAW Law to expand authorities’ *ex officio* powers to investigate and prosecute all offences in the Law, rather than relying on an initial complaint by a survivor and irrespective of whether the survivor withdraws her complaint.
- Strengthen measures to ensure that women and girls are not arbitrarily detained for “running away”.
- Amend Article 640(2) of the Penal Code to ensure that so-called “virginity tests” are criminalized, without exception; ensure the results of such “tests” are not used as evidence in criminal proceedings, as recommended by the Committee on the Elimination of Discrimination Against Women; prosecute those who conduct such “tests” in violation of the Penal Code.

Strengthen institutional responses to violence against women and girls

- Increase resources for ANP Family Response Units, particularly by increasing the number of female police officers, as recommended by the Committee on the Elimination of Discrimination Against Women; establish safe and confidential spaces to ensure survivors of violence can report crimes in safety and dignity; ensure Family Response Units have separate workspaces and office equipment.
- Train all ANP officers and EVAW prosecutors on Afghanistan’s *Gender-Based Violence Treatment Protocol*.
- Expand support and coverage of Women Protection Centres, including by providing funds from the regular State budget, to ensure survivors of

³⁷ See, e.g., United Nations, Policy Brief: The Impact of COVID-19 on Women, 9 April 2020.

violence are able to access shelter and safety after experiencing violence.

- Expand support to defence counsel, paralegals, and legal aid networks to ensure survivors of violence – particularly in remote and rural areas – can access free information about their rights and assistance in accessing justice for crimes of violence, including representation.
- Strengthen institutional coordination and public reporting on crimes of violence against women and girls and the implementation of the EAW Law, including establishing a functioning case management system and uniform criteria for categorizing and reporting such crimes. As recommended by the Committee on the Elimination of Discrimination Against Women, ensure reporting is disaggregated by sex, age, ethnic group, disability and relationship between the victim and the perpetrator.

