

# Afghanistan Public Policy Research Organization



## New Penal Code and ERAW Law: To Incorporate or Not to Incorporate?

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Research Report

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### About NAP 1325 Monitor

NAP 1325 Monitor is a research, monitoring, and training project designed to conduct a full implementation analysis of Afghanistan’s NAP 1325 at the national level. The research component identifies challenges and opportunities for implementing NAP 1325, the monitoring component documents and reports changes relevant to the implementation of NAP 1325, and the training component is aimed at facilitating closer interface between state authorities and civil society on moving toward meeting NAP 1325 objectives. The focus of NAP 1325 Monitor is the national policy making process while the scope for the research and monitoring components consists of Kabul, Bamyan, Daikundi, Balkh, Kunduz, Samangan, Nangarhar, Laghman, Khost, Kandahar, Nimruz, and Herat provinces.

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## Introduction

Afghanistan's Penal Code was revised and officially Gazetted in an extraordinary issue (1260) on May 15, 2017 by the Presidential Decree No. 256, pursuant to Article 79 of the Constitution. Nine months after its promulgation, during which judges and attorneys had an opportunity to become acquainted with the new provisions, the Penal Code came into force on February 14, 2018. Apart from incorporating new laws and provisions such as crimes against humanity and war crimes, the revised Penal Code has also attempted to incorporate all criminal laws and decrees of Afghanistan into one Penal Code (in almost 800 pages in Dari and Pashto languages).

One of the most controversial aspects in the process of revision and reform was the incorporation of the Elimination of Violence Against Women (EVAW) Law into the new Penal Code, with strong opponents and proponents. At present the EVAW law will continue to be implemented on an *ad hoc* basis as a separate and special law, only with a few of its provisions, including provisions on rape, which is also included in the new Penal Code.

This paper examines the decision-making process of the incorporation of the EVAW Law provisions, into the revised Penal Code, highlighting the merits and drawbacks of the EVAW Law implementation on an *ad hoc* basis, given the realities of Afghanistan. In particular, considering that many controversies surrounded the process and the general lack of clarity that prevails around the issue, this paper aims to investigate the rationale for the non-incorporation of the EVAW Law into the Penal Code. The paper also examines the impact of this decision on the implementation of Afghanistan's National Action Plan for the implementation of the United Nations Security Council Resolution 1325 (NAP 1325), which came into effect in June 2015.

The research also examined the institutional practices of Afghanistan in law making and the manner in which various actors such as legislatures, civil society, and policy makers interact. This aspect of the process is particularly significant given its impact on and implications for governance. To this end, this paper attempts to identify the main actors, institutions and other factors that have collectively been in motion in the process of revising the Penal Code.

## Objectives and Methodology

The main purpose of this research is to contribute to a more in-depth understanding of the institutional process of law making in Afghanistan with a focus on the process to revise the Penal Code. This research sought to:

- Synthesize existing information on the legislative processes and laws with direct impacts on women
- Gain in-depth insights on the stakeholders and their interactions in the process to revise the Penal Code
- Establish the current status vis-à-vis the EVAW Law and new Penal Code and implications for the implementation of NAP 1325, in particular through the lenses of the Protection and Prevention pillars of NAP 1325.
- Generate recommendations, given the regulatory and legislative environment, on protection and promotion of women's rights in Afghanistan.

The desk research entailed an extensive review of the relevant literature such as policy documents, legal provisions, evaluative reports, other official documents such as decrees, and position and research papers by non-government organizations.

Interviews with key informants were conducted with legal experts, civil society women's rights activists, and the international donor community with presence and mandates in Afghanistan. The semi-structured interviews were carried out using guiding questions, to allow for additional probing as and when necessary and appropriate. Seventeen key informants were interviewed in two phases. Eleven interviews were carried out between December 15, 2017 and January 7, 2018. The additional seven interviews were carried out between March 27, 2018 and April 3, 2018.

See Appendix 1 for the coding system used for the key informants. See Appendix 2 for the guiding questions used in the interviews with key informants.

## **Limitations**

Given the sensitivity of the subject it was extraordinarily difficult to secure interviews with the key informants with many potential key informants not willing to engage or canceling appointments after agreeing to meet.

## **Women's Rights in Afghanistan: An Overview**

Women's presence in society and their role in social, political, and economic spheres remain low in Afghanistan. Absence in political and economic activity contributes directly to the low social status assumed for and imposed on women. Lack of engagement in societal activities has served as a crucial factor in maintaining the unequal and inequitable gender status quo in Afghanistan, unchanged for generations and considered as one of the bottommost in the world.<sup>1</sup> The multi-layered oppression continues to prevail in social, political, cultural and economic spheres of life for many women, particularly in the rural areas.

After decades of violent conflict and the misogynistic regimes in power in the 1990s, the year 2001 began to mark a different era for women's rights. One of the cornerstones of the international community's intervention in Afghanistan after the fall of the Taliban in late 2001 was the so-called liberation of Afghan women. The military occupation was coupled with billions of dollars in humanitarian and development aid, of which a substantial portion was allocated to gender equality and women's empowerment. The disbursement of aid by the international donor community was explicitly conditioned on allocating a substantial part of the promised aid to projects related to gender mainstreaming and women's empowerment or, at least, for all projects and programs to contain a "gender component". As a result, notwithstanding the many challenges that remain, the situation of Afghan women has changed dramatically compared to the 1990s. This is evident in a number of laws, decrees and documents and an active community of non-government human and women's rights organizations and activists.

Article 22 of the Afghan constitution (2004) declares: "Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man and woman,

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<sup>1</sup> Islamic Republic of Afghanistan, 'National Action Plan for the Women of Afghanistan (NAPWA) 2007-2017' (Islamic Republic of Afghanistan, 2007), available from: [http://www.aidsdatahub.org/sites/default/files/documents/National\\_Action\\_Plan\\_for\\_the\\_Women\\_of\\_Afghanistan\\_2007\\_to\\_2017.pdf](http://www.aidsdatahub.org/sites/default/files/documents/National_Action_Plan_for_the_Women_of_Afghanistan_2007_to_2017.pdf) [accessed 1 August 2018].

have equal rights and duties before the law.”<sup>2</sup> Similarly, Articles 83 and 84 of the Constitution emphasize women’s participation in the upper and lower houses, including placing a mandate on the President who ought to ensure that 50% of the one third of appointees of the Mishrano Jirga (Upper House) are women.

Beyond the constitution, in terms of policy documents and action, the Afghan government and the international community made various commitments to women’s rights and gender equality in the Afghanistan Compact (2006) and the Afghanistan National Development Strategy (ANDS, 2008-2013) in support of human development goals. ANDS provides an analysis of the priority problems that affect Afghan men and women and sets out policies, programs and benchmarks to measure progress. Although ANDS’s main focus area was improving security, governance, rule of law and the socio-economic situation, one of its stated aims was mainstreaming gender and women’s empowerment in various governmental bodies as well as the society at large. As a result of such developments, the Afghan government drafted the National Action Plan for the Women of Afghanistan (NAPWA, 2008-2018) with the sole aim of improving women’s lives in Afghanistan through a multi-sectorial plan in the area of education, health, economic security and political participation.

In a subsequent step, the EVAW law was adopted in August 2009 in a Presidential Decree based on Article 79 of the Afghan Constitution.<sup>3</sup> EVAW is the first law in Afghanistan to specifically address violence against women. Formulated in 44 Articles, Article 2 of the EVAW Law states its overall aim as follows:

- Legal and Sharia based protection of women
- Family protection and fight against misogynist traditions and customs that are un-Islamic
- Provision of support to women who have been harmed
- Prevention of violence against women
- Raising awareness about violence against women and women’s legal protection
- Judicial follow up of criminal cases

The EVAW Law is considered a very progressive law within the context of Afghanistan.<sup>4</sup> As such the EVAW Law covers a wide range of issues affecting women, from violence against women (physical and verbal) to legal, medical and social protection, to provision of reparation to the harmed party, and protective and supportive measures. The law criminalizes 23 acts of violence against women such as forced and child marriage, rape, beating and forced self-immolation. The law also specifies punishments for perpetrators and criminalizes the customs, traditions and practices that lead to violence against women and which are against Sharia. The institutional responsibility for the EVAW Law is with Afghan Ministry of Women’s Affairs and juridical bodies (courts and attorneys) in not only providing support to the harmed women, but also prioritizing cases of violence against women and taking active preventive measures.<sup>5</sup>

To implement the EVAW Law each province was mandated to establish a Commission on Elimination of Violence Against Women in order to “coordinate, plan and measure the implementation of the

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<sup>2</sup> President Office | CONSTITUTION’, 2010 <[http://www.president.gov.af/sroot\\_eng.aspx?id=68](http://www.president.gov.af/sroot_eng.aspx?id=68)> [accessed 22 April 2010].

<sup>3</sup> See: Official Gazette (No. 989) of the Ministry of Justice.

<sup>4</sup> Qaane, Ehsan (2 April 2017). Harassment of Women in Afghanistan: A hidden phenomenon addressed in too many laws. Afghanistan Analyst Network. Retrieved from: <https://www.afghanistan-analysts.org/harassment-of-women-in-afghanistan-a-hidden-phenomenon-addressed-in-too-many-laws/>

<sup>5</sup> Islamic Republic of Afghanistan, Ministry of Justice (2009). Elimination of Violence Against Women. Retrieved from: [http://moj.gov.af/content/files/OfficialGazette/0901/OG\\_0989.pdf](http://moj.gov.af/content/files/OfficialGazette/0901/OG_0989.pdf)

[EVAW] law.” Furthermore, the Attorney General’s Office established specialized EVAW Law units in eight provinces, to facilitate better reporting and registration of cases of violence against women and the speedy resolution of the cases. Other governmental institutions such the Ministry of Interior, have also initiated projects based on the EVAW Law. The issues of gender and human rights have been incorporated in the Police Academy curriculum, for example.<sup>6</sup>

The EVAW Law has generated many debates and controversies, in particular among the conservative Parliamentarians. Three years after being enforced per presidential decree, on 18 May 2013 the EVAW Law went on the Parliament’s agenda for debate. The parliamentarian head of the Parliamentary Commission on Women’s Affairs, Civil Society and Human Rights, was primarily the driving force behind this initiative. The initiative upset women’s rights and civil society activists who feared that the law would not hold up in a Parliament where conservative members constituted a majority.<sup>7</sup> This fear became a reality on the day of the parliamentary debate when a core group of conservative parliamentarians called for that prohibition of certain provisions in the law, such as forced marriage, child marriage, and access to women’s shelters, all deemed as “un-Islamic”. After a frustrated debate, the Parliament Speaker put an end to the discussion and sent the EVAW Law to the Joint Commission of the Parliament, responsible for preparing draft laws, for further contemplation.<sup>8</sup> A UNAMA report states:

The parliamentary debate around the EVAW law negatively impacted what was already weak implementation of the law in certain parts of the country and highlighted the fragile nature of legislative gains made for women’s rights to date in Afghanistan. Uncertainty remains around the future of the EVAW law, ..., and around several of its key provisions that protect women’s rights.<sup>9</sup>

As regards to Afghanistan’s international obligations in relation to improving women’s status, the Afghan government has ratified the Convention on the Elimination of All Forms of Discrimination against Women on March 5, 2003 without any reservations.<sup>10</sup> Considering that many other Islamic countries, such as Algeria, had introduced a number of reservations about the inconsistencies between certain articles of their constitutions and the CEDAW provisions, the question remains as to how the Afghan government ratified the CEDAW convention without any reservations. In July 2013 Afghanistan appeared for the first time before the United Nations Committee on CEDAW to present its State report on women’s progress in Afghanistan. The Committee, among its recommendations, urged the Afghan government to make the implementation of the EVAW Law a priority.<sup>11</sup>

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<sup>6</sup> Islamic Republic of Afghanistan, Ministry of Women’s Affairs (2014). First Report on the Implementation of the Elimination of Violence against Women (EVAW) Law in Afghanistan.

<sup>7</sup> Roehrs, Christine and Kouvo, Sari (16 May 2013). On a Knife’s Edge: The looming parliamentary debate about the Elimination of Violence against Women law. Afghanistan Analyst Network. Retrieved from: <http://www.afghanistan-analysts.org/on-a-knifes-edge-the-looming-parliamentary-debate-about-the-elimination-of-violence-against-women-law/>

<sup>8</sup> Roehrs, Christine (18 May 2013). Damage Avoided, for Now? The very short debate about the EVAW law. Afghanistan Analyst Network. Retrieved from: <https://www.afghanistan-analysts.org/damage-avoided-for-now-the-very-short-debate-about-the-evaw-law/>

<sup>9</sup> UNAMA and OHCHR (December 2013). A Way to Go: An Update on Implementation of the Law on Elimination of Violence against Women in Afghanistan. [https://unama.unmissions.org/sites/default/files/unama\\_evaw\\_law\\_report\\_2013\\_revised\\_on\\_16\\_dec\\_2013.pdf](https://unama.unmissions.org/sites/default/files/unama_evaw_law_report_2013_revised_on_16_dec_2013.pdf)

<sup>10</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-8&chapter=4&lang=en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&lang=en#EndDec)

<sup>11</sup> UNAMA and OHCHR (December 2013). A Way to Go: An Update on Implementation of the Law on Elimination of Violence against Women in Afghanistan. [https://unama.unmissions.org/sites/default/files/unama\\_evaw\\_law\\_report\\_2013\\_revised\\_on\\_16\\_dec\\_2013.pdf](https://unama.unmissions.org/sites/default/files/unama_evaw_law_report_2013_revised_on_16_dec_2013.pdf)



A second major international commitment of the Afghan government toward improving women's conditions is the adoption of Afghanistan's National Action Plan for the implementation of UNSCR 1325 on Women, Peace and Security (2015-2022). In the year 2000, the United Nations Security Council adopted resolution 1325 (UNSCR 1325) on Women, Peace and Security following two decades of advocacy by women's rights and peace activists who emphasized that women should actively participate in decision making processes related to peace building and conflict resolution.

As a member state of the United Nations, Afghanistan developed its own national action plan for implementing UNSCR 1325 (NAP 1325) in June 2015 to "increase women's participation in peace processes and the security sector as well as address issues around protection and relief and recovery services for women."<sup>12</sup> NAP 1325 highlights its strategic priorities and objectives under four main pillars of Participation, Protection, Prevention, and Relief and Recovery – divided into 39 indicators and 25 strategic objectives.<sup>13</sup>

As to the implementation of NAP 1325, the document states that it is necessary to develop a separate and detailed implementation plan that would identify the roles and responsibilities of each responsible government and non-government entities and the specific activities to be carried out in two phases: 2015-2018 and 2019-2022. With the Ministry of Foreign Affairs (MoFA) as the coordinating body, the implementing agencies have been divided into lead implementing agencies and supporting agencies. Considering that NAP 1325 is a government policy document, lead agencies are government structures and institutions while supporting agencies include civil society, media, and the private sector.

MoFA, in collaboration with UN Women Afghanistan and the Afghan Women's Network (AWN), is charged with the responsibility to play a leading role in the implementation of NAP 1325, awareness raising and follow up. All lead implementing bodies are required to submit annual progress reports to MoFA, which in turn bears the responsibility to inform the international community on progress in implementing Afghanistan's NAP 1325.<sup>14</sup>

## Revision of Penal Code

Led by the Ministry of Justice (MoJ), and supported by the international community, in 2012 the Afghan government embarked on revising the 1976 Penal Code. The revision process was deemed necessary for meeting three key objectives: 1) codify all crimes and punishments in one document, 2) modernize the "Code-modern" definitions and concepts, and 3) ensure Afghanistan's compliance with international commitments.<sup>15</sup>

The Criminal Law Reform Working Group was formed in 2012 to manage the revision of the Afghan Criminal Procedure Code (2010) that restructured criminal case processes in the country. Chaired by MoJ, the working group members consisted of around 40 individuals drawn from the Ministry of Justice, Supreme Court, Attorney General's Office, Ministry of Women's Affairs, Ministry of Interior,

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<sup>12</sup> Islamic Republic of Afghanistan (2015). Afghanistan's National Action Plan on UNSCR 1325 Women, Peace and Security. Retrieved from: [http://mfa.gov.af/Content/files/English%20NAP%206\(1\).pdf](http://mfa.gov.af/Content/files/English%20NAP%206(1).pdf)

<sup>13</sup> See Appendix 3 for a summary of Afghanistan's NAP 1325.

<sup>14</sup> Islamic Republic of Afghanistan (2016). Progress Report on Women's Status and Empowerment and National Action Plan (NAP 1325). Retrieved from: [http://mfa.gov.af/Content/Media/Documents/Progress\\_Report\\_on\\_Women\\_Rights1610201610265714553325325.pdf](http://mfa.gov.af/Content/Media/Documents/Progress_Report_on_Women_Rights1610201610265714553325325.pdf)

<sup>15</sup> UNAMA (11 December 2017). The Revised Penal Code and ERAW Provisions. UNAMA-Rule of Law presentation on the Penal Code.

Afghanistan Bar Association, Afghanistan Independent Human Rights Commission, academic experts, UNDP, UN Women, UNHCR, UNODC, UNAMA, JSSP, and Canadian, US, French, Italian and Turkish embassies.<sup>16</sup> During the process of revision, correction and unification the working group had a number of consultative meetings with the President.<sup>17</sup> While some members of the working group met on regular weekly basis, such as the main line ministries, others, such as civil society groups, participated on an *ad hoc* basis.

## Main Actors and Processes

Three groups of actors were involved in the revision process of the new Penal Code: the Afghan government, international donor community and the civil society. The governmental entities were the Ministry of Justice (taking the lead role), Ministry of Women's Affairs, Office of the First Lady, Office of the President, and Office of the Second Vice President. The engagement of the international community was mainly coordinated through the Justice Board of Donors under the leadership of UNAMA. The two most involved civil society organizations were the Afghan Women's Network (AWN) and Medica Afghanistan. On *ad hoc* basis, the working group also consulted other NGOs and civil society actors, as well as representatives of Afghanistan Independent Human Rights Commission (AIHRC), UN Women, and Director of Parliamentary Affairs on Women and Human Rights.<sup>18</sup> However, on occasions, civil society actors appeared to have been left out of the process:

We had been notified that an agreement had been reached between the government of Afghanistan and the European Union and its member states that some provisions of the EVAW law would be incorporated into the Penal Code. We must mention that civil society was not included in this agreement.<sup>19</sup>

While the working group mainly engaged in compiling, scrutinizing and approving the Penal Code, advocacy campaigns were led by the civil society organizations and women's rights activists. The non-incorporation of the EVAW Law into the revised Penal Code is seen as a clear victory by both organizations.<sup>20</sup> However, this outcome is viewed as unfavorable by a number of women's rights activists, including some members of AWN.<sup>21</sup>

One of the main actors, which had divided the opponents and proponents of incorporation, was the Parliament. The parliamentarians were minimally engaged in this process, if at all. There is an apparent, unofficial boycott of the Parliament by civil society organizations due to the overwhelming influence of the traditionally conservative, particularly on gender related issues. There is a strong sentiment among rights-based civil society organizations and activists that, as long as the current composition of the parliament remains, their approach to deal with such issues as the EVAW Law would be to avoid the Parliament and the parliamentarians.<sup>22</sup>

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<sup>16</sup> KI-M-KAB-GO-1, KI-M-KAB-NG-5, KI-M-KAB-NG-4, KI-F-KAB-PI-1, KI-F-KAB-NG-2, KI-F-KAB-NG-3

<sup>17</sup> KI-M-KAB-GO-1, KI-F-KAB-PI-1

<sup>18</sup> KI-F-KAB-NG-1, KI-F-KAB-NG-2

<sup>19</sup> Medica Afghanistan (July 13, 2016). Position Paper: Bifurcation of the EVAW Decree and Incorporation into the Penal Code. Kabul, Afghanistan.

<sup>20</sup> KI-F-KAB-NG-6

<sup>21</sup> KI-F-KAB-NG-6

<sup>22</sup> KI-F-KAB-NG-6, KI-F-KAB-NG-3

## Institutional Challenges

As early as November 2014, a number of women's rights organizations and activists had expressed their "official" skepticism of and opposition to the incorporation of the ERAW Law into the Penal Code. A position document issued by Medica Afghanistan on November 16, 2014 requested the Afghan government not to "compromise provisions that prosecute acts of violence against women" during the Penal Code consolidation. The sentiment for non-incorporation appears to have been widespread in any event.<sup>23</sup>

Such expressions of opposition, evidently, did not register with the working group since the amendments provided by the women's groups to the draft Penal Code went largely unnoticed and by December 2016, the revised Penal Code had incorporated the penal provisions of the ERAW Law. At the same time, it was decided that the preventive measures of the ERAW law would still be implemented as a decree.<sup>24</sup>

At this juncture, the women's rights groups and activists opposed to the incorporation, recognized the need for a more unified and synchronized effort to lobby the government on removing such provisions from the Penal Code. On July 13, 2016 Medica Afghanistan issued a position paper on the bifurcation of the ERAW Law, where it stated that the civil society was not a party to the consensus reached on the revised Penal Code between the EU member states and the Afghan government. They demanded that the international community and the Afghan government reconsider this decision.<sup>25</sup> In another instance, in a letter of appeal addressed to the First Lady, it was stated:

[...W]e oppose the bifurcation of the ERAW Decree and the incorporation of its punitive parts into the Penal Code. Instead, we propose that: a) The punitive and preventive parts of the ERAW Decree should be amended and passed as a standalone law; and b) That the Penal Code should make explicit reference to the ERAW Decree and state that all crimes against women and children shall be strictly governed by the ERAW Decree.<sup>26</sup>

In response, the Office of the First Lady facilitated a meeting between President Ghani and the women's rights activists opposed to the incorporation in February 2017. A delegation of around 500 women attended this meeting, where the President discussed the matter in detail with the delegation. While praising the advocacy campaigns of the women's groups, President Ghani apparently also expressed his concern about the fact that AWN and Medica Afghanistan dominated the anti-incorporation voices and that their concerns could not represent the entire female population in Afghanistan. He thus asked the Ministry of Women's Affairs to seek opinions in the provinces on the matter through MoWA's directorates.<sup>27</sup>

The result of this meeting and subsequent consultations in the provinces resulted in the decision by the President to request MoJ to remove the ERAW Law's punitive provisions from the Penal Code. Subsequently, on August 13, 2017 MoJ published a press release stating that the punitive provisions of the ERAW Law would be removed from the Penal Code and the law would remain intact.<sup>28</sup>

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<sup>23</sup> KI-F-KAB-NG-6

<sup>24</sup> Medica Afghanistan (1 February 2017). Letter of Appeal: The Draft Penal Code of the Islamic Republic of Afghanistan.

<sup>25</sup> Medica Afghanistan (13 July 2016). Position Paper: Bifurcation of the ERAW Decree and Incorporation into the Penal Code. Kabul, Afghanistan.

<sup>26</sup> Medica Afghanistan (1 February 2017). Letter of Appeal: The Draft Penal Code of the Islamic Republic of Afghanistan.

<sup>27</sup> KI-F-KAB-NG-7

<sup>28</sup> Ministry of Justice of the Islamic Republic of Afghanistan (13 August 2017). Urgent: Press Release. Kabul-Afghanistan.

While the decision to leave the EVAW Law intact was welcomed by the non-incorporation proponents, they remained concerned with Articles 7, 8, 27, 32 and 916 of the new Penal Code, the essence of which is that no crime outside the codifications of the Penal Code could be considered a crime and thus subject to punishment. To address this, women's rights activists mobilized their efforts to amend or remove these articles as a means to ensure the sanctity of the EVAW Law.

On January 1, 2018 AWN issued a statement to MoWA, with copies sent to the Office of the President, Office of the First Lady, MoJ, Office of the Second Vice President, Office of the Chief Executive and AIHRC, where it expressed concern about Articles 7, 8, 27, 32, and 916 and demanding that the EVAW Law remains independent of the Penal Code.<sup>29</sup> This was followed by a joint petition by the AWN and Medica Afghansitan, sent to the Office of the President, with a copy to the First Lady, to express their position and request a follow up meeting with the President.<sup>30</sup> In response, in an official letter the President's Office asked the Office of the Second Vice President, Mr. Danish, and MoJ to take the necessary measures to ensure the independence of the EVAW Law. The letter states that according to the guidance of Mr. President and based on the suggestions proposed by the AWN and Medica Afghanistan in a meeting with the Second Vice President, the MoJ should consider revising the second clause of Articles 7, 8 and 916. Following this, on March 3, 2018 a Presidential Decree was issued, where among other provisions, it stated that the second clause of Articles 7, 8 and 32 on crime codifications do not apply to the EVAW Law.

It has to be noted that throughout the process of deliberation and discourses on incorporation, a number of actors changed their positions. For example, the Office of the Second Vice President, which leads the Legal Committee in the Presidential Palace, initially was in favor of incorporation, but under the guidance by the President's Office, eventually agreed with the demands of the non-incorporation camp.<sup>31</sup> Similarly, MoWA and AIHRC initially supported incorporation but changed their positions later in the process.<sup>32</sup> The changing of positions appears to be the product of tactical considerations (rather than personal conviction), pressure from the international donor actors and, possibly, learning throughout the process.<sup>33</sup>

A key feature of the process to revise the Penal Code was the relative inclusiveness, allocating space and voice to women's rights organizations and activists and supported by the Office of the President and Office of the First Lady. Another significant feature of the process is the insistence by the international donor community, particularly the EU, for the incorporation of the EVAW Law into the Penal Code and as part of the broader strategy for peace.<sup>34</sup> This is evidenced in a letter sent by the European Union in September 2017 to MoJ with a copy to the Office of the President, expressing concern over the removal of the EVAW Law provisions from the Penal Code.<sup>35</sup> Similarly, the US Embassy had asked one prominent woman's rights organization to work with others on the incorporation of the EVAW law.

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<sup>29</sup> Afghan Women's Network (1 January 2018). To the Honorable Ministry of Women's Affairs of the Islamic Republic of Afghanistan. Series No. 95. Kabul, Afghanistan.

<sup>30</sup> On 14 January 2018, a document containing the same content was sent to the Office of the Second Vice President, addressed to Mr. Sarwar Danish.

<sup>31</sup> KI-F-KAB-NG-6

<sup>32</sup> KI-F-KAB-NG-6

<sup>33</sup> KI-F-KAB-NG-7

<sup>34</sup> KI-F-KAB-NG-3, KI-F-KAB-NG-6

<sup>35</sup> UNAMA (11 December 2017). The Revised Penal Code and EVAW Provisions. UNAMA-Rule of Law presentation on the Penal Code.

The international experts interviewed for this research also expressed discontent and concern over the decision for non-incorporation. One respondent expressed concern about the lack of dialogue and negotiation between women's rights organizations and conservative parliamentarians in this process. Dialogue and negotiation would have strengthened the position of the women, increased the legitimacy of the entire process, and made women more than merely victims.<sup>36</sup>

In general, an air of ambivalence and skepticism seems to reign among the international actors as regards to the future of the ERAW law, its implementation and impact on women, including the process for implementing NAP 1325:

We have landed in a situation, also as donors, that we don't know what to do. We think that the women's situation could be much worse as a result of this.<sup>37</sup>

Outside the donor community, other entities have also expressed strong opposition to the position of women's groups and their lobbying efforts that led to the non-incorporation of the ERAW Law. As an example, in a meeting held at the Ministry of Women's Affairs on January 1, 2018 on the future of the ERAW Law, a number of prominent women's rights activists expressed their opposition to this decision. The arguments included entitling the approach as "project based" and based on "emotional grounds".<sup>38</sup> Women's groups and activists themselves were quick to concede the many oppositions and contests they faced in the process, as noted by one respondent:

We were facing many challenges. Donors were against us, including the US embassy; a substantial part in the government did not support us; we were labeled as groups with Western approaches, but we overcame all such challenges. We were even asked to censure ourselves, but we did not do it.<sup>39</sup>

## **Incorporation Vs. Non-incorporation**

While many experts believe that the revised Penal Code has been a milestone achievement, they also admit that the debate on incorporating ERAW Law provisions into the new Penal Code turned into a major controversy with strong opponents and proponents of the incorporation. A number of those interviewed stated that members of the working group, led by the Ministry of Justice, agreed that all criminal law provisions, including the ERAW law, should be compiled into one document as the new Penal Code. To this end, 23 criminal provisions from the ERAW law were incorporated into the Penal Code, without any major opposition. The prevailed logic correlated with the fact that just as other criminal law provisions were incorporated into a single document so should follow the ERAW Law. Each incorporated provision of the ERAW law was first reviewed and scrutinized by the working group to ensure its compliance with modern standards. As such, a number of its provisions were markedly revised and updated, while ensuring not to change the substance.

As an example, rape in the ERAW Law was the subject of Article 17 with five provisions in half a page. The revised version in the Penal Code presents rape and punitive provisions related to it in Articles 636-641 in one and half pages. The ERAW Law does not specifically define rape while the Penal Code provides a clear definition of what constitutes rape in Article 636 (1).<sup>40</sup> One key difference in comparing the ERAW Law provisions and the revised version in the Penal Code relates

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<sup>36</sup> KI-F-KAB-IC-2

<sup>37</sup> KI-F-KAB-IC-2

<sup>38</sup> KI-F-KAB-PI-1, KI-F-KAB-GO-3

<sup>39</sup> KI-F-KAB-NG-3

<sup>40</sup> UNAMA (September 2017). Comparison of Articles from ERAW law decree with the Penal Code. UNAMA- Rule of Law. Kabul, Afghanistan.

to the provisions on punishment. The ERAW Law provisions state the exact number of years in its penal clauses whereas the new Penal Code refers to “sentenced to medium imprisonment” or “continued imprisonment.”<sup>41</sup>

The process of revision, authentication and scrutiny included a large body of stakeholders as regular members of the working group or as *ad hoc* participants. The stakeholder included religious authorities and experts from both Shia and Sunni denominations. Also, the revised Penal Code was drafted considering the penal codes and laws of other countries, such as Egypt, Malaysia, Jordan, Moldavia, France, Germany as well as all international treaties, conventions and resolutions.<sup>42</sup>

In essence, there were three positions regarding corporation / non-incorporation: those for incorporation, those against incorporation and those for incorporation but maintaining a separate ERAW Law.

## Incorporation

The rationale for the proponents of incorporating the ERAW Law provisions into the Penal Code consists of the following key elements:

**All Laws in a Single Document:** The proponents suggested that one advantage of incorporating the ERAW Law provisions into the Penal Code would have been a dissuasion for having diffused laws.<sup>43</sup> An international justice expert who had been engaged in this process called it a “legislative cleanup technology.”<sup>44</sup> Another respondent remarked:

We wanted to incorporate the ERAW Law provisions into the Penal Code because when we talk about a Penal Code, it should integrate all of them, the ERAW Law included. We wanted to have one comprehensive and complete Penal Code instead of ten.<sup>45</sup>

**Chances of Ratification:** The attempt in 2013 to ratify the ERAW Law in the Parliament was unsuccessful and ran the risk of the law being overturned altogether. Proponents thus argued that if the ERAW Law were incorporated into the Penal Code, its chance of ratification in the Parliament would be augmented.<sup>46</sup> The proponents argue that a law ratified in the Parliament, as opposed to a decree, bears more weight. As such, without changing the substance, incorporated ERAW Law provisions in the body of a unified Penal Code would have meant a stronger tool for the protection of women and prevention of violence.<sup>47</sup> One respondent compared the ERAW Law with the “sixth finger”, stating that a comprehensive Penal Code would be a much more powerful legal instrument than a standalone law.<sup>48</sup>

**Better and Clearer Provisions:** The proponents argued that some ERAW Law provisions, such as sexual harassment, were not defined clearly and accurately. The working group, during its scrutiny procedure, had introduced changes to make the text clearer and more accurate.<sup>49</sup>

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<sup>41</sup> *Ibid.*

<sup>42</sup> KI-M-KAB-GO-1, KI-M-KAB-NG-5, KI-M-KAB-NG-4, KI-M-KAB-GO-5

<sup>43</sup> KI-M-KAB-GO-1, KI-M-KAB-NG-5, KI-M-KAB-NG-4, KI-F-KAB-PI-1, KI-M-KAB-GO-5

<sup>44</sup> KI-M-KAB-IC-1

<sup>45</sup> KI-M-KAB-GO2

<sup>46</sup> KI-M-KAB-GO-1

<sup>47</sup> KI-F-KAB-PI-1, KI-M-KAB-NG-5, KI-M-KAB-NG-4, KI-M-KAB-GO-2, KI-M-KAB-GO-4

<sup>48</sup> KI-M-KAB-GO-2

<sup>49</sup> KI-F-KAB-NG2

## Non-incorporation

The key elements of the opponent's position against the incorporation can be summarized as follows.

**Need for a Separate Law to Combat Violence Against Women:** Given the current situation of women in Afghanistan, despite the many gains made since 2001, and the prevalence of violence against women, it is necessary to have a specific and dedicated law to combat violence against women.<sup>50</sup> In support of this position, references are made to special laws and legal provisions in other countries such as Pakistan, Malaysia, Indonesia and India.<sup>51</sup>

**Existence of Dedicated Entities to Implement EAW Law:** Soon after the issuance of the decree on the enactment of the EAW Law a number of special attorney offices were established across Afghanistan with the sole aim of addressing cases of violence against women. Although initially only women in a handful of provinces could benefit from this provision, by 2016 twenty-four provinces had established special attorney offices.<sup>52</sup> According to the opponents, special attorney offices have proven their effectiveness through success in resolving cases of violence against women.<sup>53</sup> The risk carried with the incorporation is the loss of entities with dedicated mandates on combatting violence against women.

**Prevention and Protection Under EAW Law:** The EAW Law contains provisions for punishment of crime as well as preventive and protective measures to combat violence against women. Women's rights activists are concerned that in case of incorporation, only 23 criminal provisions of the EAW law would have been included in the Penal Code and the rest of the articles, namely those referring to preventive and protective measures, would have been left out. An official communiqué sent out by Medica Afghanistan to the Ministry of Women's Affairs states:

Various reasons exist as to why some countries adopt a special law to combat violence against women. One important difference between a conventional Penal Code and a special law to eliminate violence against women is this: Penal Codes often address two issues: a) punishment and b) individual responsibility of various people. This means assigning punishment to specific individuals who commit crime. A law to eliminate violence against women, on the other hand, contains a number of issues [such as ...: a) preventative, penal and protective measures and b) establishing responsibility of individuals but also the state. This distinction is important for, to combat violence against women, we must cast our net wider beyond merely individual punishment.<sup>54</sup>

A key element in this statement is the attribution of responsibility to the state, presumably for combating violence against women given its role and obligations.

**Current Awareness of EAW Law:** Another concern is the loss of the momentum created through many awareness raising activities and campaigns in support of the EAW Law, and wastage of the dedication, time, and resources that went into these activities.<sup>55</sup>

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<sup>50</sup> KI-F-KAB-NG-1

<sup>51</sup> KI-F-KAB-NG-6, KI-F-KAB-NG-3

<sup>52</sup> Medica Afghanistan (13 July 2016). Position Paper: Kabul, Afghanistan. Bifurcation of the EAW Decree and Incorporation into the Penal Code

<sup>53</sup> KI-F-KAB-NG-1

<sup>54</sup> Medica Afghanistan (n.d.). An appeal to protect and maintain the Violence Against Women law as a distinct law. Kabul, Afghanistan.

<sup>55</sup> KI-KAB-NG-1

**Apprehensiveness About the Parliament:** Considering the controversies and complications preceding the inauguration of the EVAW Law in the Parliament, many women's rights activists worry that the full incorporation would have eliminated the standalone EVAW Law and carried a very high risk of being rejected by the overwhelming conservative majority within the Parliament.<sup>56</sup>

## **Incorporation and Keeping EVAW Law**

This third view stressed that the existence of the EVAW Law as a separate law and the provisions for protection of women and prevention of violence against women in the revised Penal Code could complement each other, thereby leading to better protection and prevention of women at large.<sup>57</sup> For example:

In my opinion, it is good [to have provisions in both laws] because we can scrutinize an issue twice, from two sources. If one time the issue is overlooked, it can have a chance to be examined a second time. ... But there is a catch 22: having two sets of provisions may confuse the judges regarding which law to apply for adjudication.<sup>58</sup>

A flipside of having two separate provisions is, of course, that appeal can be initiated by both sides, the victims of violence and the perpetrators of violence.

## **EVAW Law / Penal Code Debate: Implications for NAP 1325**

Given the incorporation / non-incorporation debate on the need for preventive and protective measures in combatting violence against women, and given the emphasis placed on NAP 1325 with clear provisions on protection and prevention, there are natural links that could, and arguably should be made, between the Protection and Prevention pillars of NAP 1325 and other laws and provisions.

In attempting to examine these links, it appears that there is uneven awareness about NAP 1325 or its provisions for prevention and protection. NAP 1325 remains, primarily, a policy document without active implementation of its various provisions. As one international expert observed, policy documents are not always on top of the national agenda.<sup>59</sup>

Some respondents attributed this to a "lack of financial resources", which, while used – by government authorities and civil society organizations alike – as the usual justification for inaction, at the time of writing has not yet been fully addressed.<sup>60</sup> Also, the NAP 1325 annual report by MoFA for 2016 does not make reference to the EVAW Law.

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<sup>56</sup> KI-F-KAB-NG-2. See, also, Medica Afghanistan (13 July 2016). Position Paper: Bifurcation of the EVAW Decree and Incorporation into the Penal Code. Kabul, Afghanistan.

<sup>57</sup> KI\_F-KAB-NG-2, KI-F, KAB-NG-1, KI-KAB-GO-2

<sup>58</sup> KI-M-KAB-GO-2

<sup>59</sup> KI-M-KAB-IC-1

<sup>60</sup> For the background on budgeting for NAP 1325, see: APPRO (2018), Afghanistan's NAP 1325 (2015-2018): A Critical Assessment, available from: <http://appro.org.af/publication/afghanistans-nap-1325-2015-2018-a-critical-assessment/>



## The New Penal Code

The new Penal Code has compiled 33 different laws and criminal provisions into a single document after a careful scrutiny of each law to ensure that unnecessary offenses are removed and new ones are added or merged, thereby “increasing the effectiveness of the code in preventing, reducing, deterring, and fairly punishing criminal behavior.”<sup>61</sup> Drafted in 916 Articles, the Code consists of provisions on general criminal law and special criminal law. The revision was to ensure conformity with the standards and norms of international treaties and conventions to which Afghanistan is a signatory. On March 4, 2018 the Cabinet endorsed the new Penal Code, which was then decreed by the President. Already in effect and pursuant to the law, the new Penal Code has been submitted to the National Assembly for review the outcomes of which may be full approval, approval with amendments, or rejection.

There are significant improvements in the new Penal Code as it attempts to account for modern day human rights standards and obligations to international obligations, including the Rome Statute of the International Criminal Court, the UN Convention against Torture, and the UN Convention against Transnational Crimes, amongst others. Furthermore, the Penal Code has been modernized by reducing the crimes whose punishment is death penalty, refining the definition of rape based on more modern consent requirements, better protection for children by introducing a new chapter on Bacha Bazi, reducing penalty for consensual adult zina (relationship outside marriage), and removing justification of homicide as honor killing.<sup>62</sup> The new Penal Code also has provisions for addressing rape, sexual harassment and abortion.

## Current Status of EVAW Law

The decision not to include the EVAW Law into the Penal Code in August 2017 was followed by a period of uncertainty as to the status of the EVAW Law, until March 2018. Two concerns in particular prevailed among women’s groups and legal practitioners. The first related to Articles 7 (2), 8 (2) and 32 (1) of the newly promulgated Penal Code, with important implications for the EVAW Law. The essence of these articles alludes to the fact that no act is considered a crime, and thus permissible for punishment, if it is not mentioned in the Penal Code. This concern was addressed in a Presidential decree issued on March 3, 2018, giving assurances judgments based on the EVAW Law would hold.

A second uncertainty was around the EVAW Law provisions whose clauses on punishment were referred to the Penal Code of 1976, which had just been replaced by the revised version of the Penal Code. To address this, MoJ has started work on amending of the EVAW Law. The amendment has been endorsed and ready for incorporation into the EVAW Law. There are three references in the current EVAW Law to the old Penal Code, all of which are now referred to the clauses and articles of the revised Penal Code. For example, items 1 and 2 of Article 17 of the EVAW Law now refer to item 2 of the Article 643 of the new Penal Code.<sup>63</sup>

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<sup>61</sup> UNODC (n.d.). New Penal Code adopted in Afghanistan. Retrieved from: <https://www.unodc.org/afghanistan/en/frontpage/2015/new-penal-code-adopted-in-afghanistan.html>

<sup>62</sup> UNAMA (11 December 2017). The Revised Penal Code and EVAW Provisions. UNAMA-Rule of Law presentation on the Penal Code.

<sup>63</sup> KI-F-KAB-NG-3

## Conclusion

Lawmaking in a democracy is a complex, and messy, process at all stages of preparation, consultation with various stakeholders, drafting, enactment, publication and communication to the public, as well as implementation and oversight. The process often entails interaction among actors with competing priorities and opposing views to find common ground. In fragile and conflict-ridden societies lawmaking is burdened with further contests based on deeply rooted differences in beliefs, values, and perspectives coupled with weak governance and rule of law, institutional deficiency and incompetence, and a disinterested, introverted general public. These parameters particularly affect minorities or otherwise disadvantaged groups based on their ethnicity, religion, and gender. The EVAW Law/Penal Code debate, and its ultimate impact on the NAP 1325 implementation, was shaped, to one degree or another, by all these parameters.

Regardless of the outcome and the decision to leave the EVAW Law as a standalone legislation, the significant role played by women's rights organizations and activists in this process constitutes a historic landmark. This process is arguably the first time in the history of Afghanistan where women's concerted efforts and lobbying has led to such an important decision. Many of the opponents of incorporation consider the outcome of their lobbying and advocacy efforts as an outright victory based on a united and strong movement with effective mobilization and learning from the experiences of other countries faced with similar challenges. There is also recognition of the significant role played in support of the efforts by women's rights organizations and activists to oppose incorporation.

At the same time, the existence of a vested and functioning Office of the First Lady and a President sympathetic to women's rights played key roles in the outcome to exclude EVAW Law from the new Penal Code. It is doubtful that the opponents of incorporation would have succeeded in their efforts without this significant political support. Without this support, it is likely that the opponents would have faced a much tougher confrontation and struggle that might have made the path of victory more difficult but it could also have resulted in more a fundamental change in the mindset of the more conservative elements. In other words, a landmark decision such as this was the result of political discussions at higher levels rather than a process that engaged changing worldviews of those who were feared as hostile toward the EVAW law in the first place, i.e., the conservative Parliamentarians.

This situation poses two important questions regarding the safeguarding of women's rights in volatile environments. First, is it better to follow a "short cut" and bypass the parliamentary deliberation process, or to pursue a broader agenda of democratic discourse and debate by engaging with all key structures of the state? Second, since Afghanistan can be classified as both post-conflict and in-conflict, and where many women still remember the oppression they endured in the 1990s and have legitimate fear of a return to those conditions, does it make sense to safeguard the gains achieved in relation to women's rights by any means possible, regardless of the outcomes in the long run?

Certainly, the decision made for non-incorporation has not ended the two dilemmas posed in these two questions, both of which are likely to resurface in similar future debates, particularly on gender related issues and on such fundamental issues as peace and rapprochement with the Taliban. At the same time, it is important to note that the Penal Code of 1976 remained in force for over forty years based on a Presidential Decree.

The EVAW Law remains based on a Presidential decree and, as such, does not enjoy the same status and legitimacy of a law that has been discussed in a democratic process and ratified in the

Parliament. It is possible, however, that an ERAW law chapter will be added to the revised Penal Code through another Presidential Decree or by the National Assembly during its review of the revised Penal Code. For the moment, while the proponents of incorporation argue that the ERAW Law status has been weakened, the opponents of incorporation argue that the impact of non-incorporation, including implications for NAP 1325, remains to be seen.

The ERAW Law / Penal Code debate has been unique for Afghanistan in many ways, particularly given the wide range of stakeholder involved – though not the Parliament, the degree to which civil society organizations were empowered by the highest level of authority to make their mark on the process, and a set of dynamics that saw power plays and changes of position among both opponents and proponents. In many ways, this debate is far from over and the outcome far from conclusive, which will continue to place an even heavier weight on the shoulders of the women's rights organizations and activists and formal state authorities – as long as there is a democratic decision / law making process.

## **Recommendations**

### **Government of Afghanistan**

- Continue to raise awareness of public officials by mainstreaming the EVAW Law through direct official communication to all line ministries and justice authorities to take cases of violence against women seriously and refer such cases to the EVAW Law provisions and special prosecution offices.
- Develop and implement recording and monitoring of cases of violence against women and evaluate performance of authorities in the application of EVAW Law.
- Establish follow up mechanisms to act more seriously and consistently regarding the perpetrators of violence against women by, for example, preventing early and arbitrary release on bail of offenders.
- Intensify efforts to implement the EVAW Law at the provincial level through establishing the EVAW Law attorney offices and courts in all provinces.
- Train and appoint female judges to adjudicate using the EVAW Law over cases related to women and gender based violence.
- Mainstream NAP 1325 in conjunction with the EVAW Law, to provide more legitimacy for both the EVAW Law and NAP 1325 by, for example, training NAP 1325 focal points on the provisions of the EVAW Law at government ministries.
- Launch a strategic, national awareness campaign to raise public awareness on the EVAW Law, NAP 1325, and issues related to prevention of violence against women and protection of women victims of violence through the local government departments, media, and religious leaders.

### **Non-governmental Organizations and Donors**

- Continue drawing on experiences, including legislative processes, of other contexts similar to Afghanistan for addressing violence against women and organize exposure visits for the judiciary officials, and women's rights organizations and activists.
- Encourage and support dialogue between civil society organizations and the Parliament for longer term benefit to democratic decision / law making.
- Support efforts to raise awareness on the provisions of EVAW Law and NAP 1325 through conducting public campaigns across the country.
- Organize efforts to enhance monitoring and evaluation mechanisms for the implementation of the EVAW Law and NAP 1325.

## Appendix 1: Coding System for Key Informants

Each code consists of four units of information, the table below shows the types of the interview and interviewee as well as the province in which the interview has taken place. The affiliation of the interviewees is described in a separate table.

Unit within the code	Description of the abbreviation
KI	Key Informant Interviewee
F/M	Female or Male interviewee
KAB	First three letters of the name of the province
Affiliation	Indicates affiliation of the interviewee in two letters, e.g., GO (government) and NG (non-government)
Number	Sequential number of the interview

### Affiliation of the interviewees

Number	Affiliation of the Interviewee
1	Afghanistan Independent Human Rights Organization (AIHRC)
2	Department of Justice (DoJ)
3	Department of Education (DoE)
4	Department of Public Health (DoH)
5	Focus Group with Department of Women's Affairs (DoWA)
6	Provincial Council Member (PC)
7	Provincial Peace Council Member (PPC)
8	Family Response Unit/ Afghan National Police
9	Department of Work and Social Affairs, Martyred and Disabled (DoLSAMD)

## Appendix 2: Guiding Questions for Interviews

### Main research question

What are the likely benefits and drawbacks of the incorporation of the EAW law into the new Penal Code, given the conflict context of Afghanistan?

### Guiding Questions

1. What circumstances shaped the decision process that led to the non-incorporation of the EAW law into the new Penal Code?
  - a. Which stakeholders were involved in the process?
  - b. Who was consulted?
  - c. What is the logic of incorporation for the proponents?
  - d. What is the logic of non-incorporation for the opponents?
  - e. What are the benefits of not incorporating the EAW law into the Penal Code?
2. Both EAW law and the new Penal Code are practiced based on the presidential decrees, and not ratified by the Parliament. What is the likelihood of the Penal Code being more successful in terms of impact than the EAW law?
  - a. What are the risks that undermine the implementation of the new Penal Code's provisions to protect women from violence?
  - b. What does this tell us about the political processes of decision-making at this level?
  - c. Would this hinder or facilitate implementation?
  - d. If both the new Penal Code and the EAW law are problematic as regards to the ratification process in the Parliament, does it help to have the EAW law provisions separately from the Penal Code?
3. How does the decision-making approach regarding the new Penal Code affect women and their legal protection against violence?
  - a. Does it enhance or hinder their legal rights and status? How?
4. Is there the need to have both the EAW law and the Penal Code with specific provisions for women? Why?
5. Which aspects of the EAW law have been incorporated into the new Penal Code and which aspects have not been? Why?
  - a. As an example, why EAW law crimes, such as domestic violence, have not been incorporated into the new Penal Code?
6. Some provisions, such as abortion, have not been addressed in the EAW law. What circumstances led to their inclusion in the new Penal Code?
7. Does the incorporation of the provision of the EAW law into the new Penal Code support better implementation of provisions to protect women against violence?
8. In the EAW law, provisions on punishment, i.e. in the case of rape, refer to the old Penal Code. Considering that the EAW law will remain as an ad hoc legal provision, how will it reconcile with the provisions in the new Penal Code?
9. What are the implications of the decision making process in relation to the new Penal Code for the implementation of NAP 1325?
  - a. Does the ad hoc practice of the EAW law enhance or undermine the implementation of NAP 1325? How?

## Appendix 3: Summary of Afghanistan's NAP 1325

To implement UNSCR 1325, the Government of Afghanistan has developed this National Action Plan to achieve the following:

- Participation of women in the decision making and executive levels of the Civil Service, Security and Peace and Reintegration;
- Women's active participation in national and provincial elections;
- Women's access to effective, active and accountable justice system;
- Health and psychosocial support for survivors of sexual and domestic violence throughout Afghanistan;
- Protection of women from all types of violence and discrimination;
- Provision of financial resources for activities related to women in emergency;
- Implementation of IDPs policy provisions related to UNSCR 1325;
- Put an end to impunity for violence against women (VAW) and related crimes;
- Engage boys and men in fighting Violence Against Women;
- Support and provide capacity building for civil society (particularly women's organizations) on UNSCR 1325 and women, peace, and security;
- Increase economic security for vulnerable women through increased employment opportunities;
- Increase access to education and higher education for girls and women, particularly for the internally displaced persons and returnees;

Due to more than 3 decades of war, the following major areas require focused attention:

- Women are vulnerable to sexual violence, including: rape, sexual harassment, trafficking, forced prostitution, and forced marriages
- In remote areas, women lack access to justices
- As a result of the armed conflict and the marginalization of women in society at large, women lack proper access to healthcare services, education, and employment opportunities.
- As a result, illiteracy and unemployment rates are highest among women, and Afghanistan suffers from a significant maternal mortality rate. Internally displaced women and women living in conflict-affected communities are particularly vulnerable to insecurity.

### Constitutional Provisions

According to Article 22 of the Afghan Constitution, "[a]ny kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man and woman, have equal rights and duties before the law." This Article is the foundation for incorporating principles of gender equality and non-discrimination in government policies and initiatives. Women's right to vote and representation in the National Assembly is enshrined in the 1964 Constitution. These rights were strengthened in 2004 with the new Constitution that set the 26 percent quota of seats for women in the Lower House (Wolesi Jirga) and 17 percent in the Upper House (Meshrano Jirga). Following the 2010 elections, Afghan women represented 27.7% of the Wolesi Jirga.

Articles No 43, 44, 53, and 54 of the Afghan Constitution articulate provisions on education, healthcare, welfare, and employment services for women. These articles ensure women's access to education, healthcare, and employment in Afghanistan, which are pre-conditions for their meaningful political participation as well as an important component of the relief and recovery.

## Legal Provisions

The laws of Afghanistan guarantee the protection of women's right and freedom. The government is legally bound to protect women against violence. In 2009 the Elimination of Violence against Women (EVAW) Law was adopted, which lists 22 offences including forced marriage and rape. In an attempt to strengthen the legal provisions and structures to eliminate violence against women and increase women's participation, the government has taken the following significant steps:

- Adoption of the EVAW Law
- Amendment of some of the provisions in the Civil Servants Law to promote women's rights
- Development of the Family Law
- Development of procedures to prevent discrimination
- Development of Shelter Regulations, and
- Presidential Decree No 45 (Paragraph 32) on Elimination of Violence against Women.

## NAP 1325 Pillars

### – Participation

- Increase effective participation of women in the decision-making and executive levels of the civil service
- Ensure women's active and effective participation in leadership positions of security agencies
- Ensure women's effective participation in the peace process
- Encourage women's meaningful participation in the drafting of strategies and policies on peace and security
- Strengthen women's active participation in politics

### – Protection

- Protect women from all forms of violence and discrimination through the enforcement, monitoring and amendment of existing laws and development of new laws and policies.
- Promote women's human rights gender mainstreaming of laws, policies, and institutional reforms.
- Create an enabling environment for women to have access to justice through women's effective participation in the judiciary.
- Protect women from all forms of violence through awareness raising and public outreach.
- Provide health, psychological, and social services for women survivors of violence throughout Afghanistan.
- Effect special measures to ensure women's protection from sexual violence.

### – Prevention

- Prevent violence against women.
- Eliminate culture of impunity in violence against women.
- Strengthen the role of women in the security sector and judicial structures.
- Effect gender-related reforms in the security and justice sectors.
- Involve men and boys in the fight against all forms of violence against women.
- Increase awareness among women of their rights and their role in preventing violence and resolving conflict.



## – Relief and Recovery

- Provide relief and recovery services for women affected by conflict, internal displacement and women survivors of violence.
- Increase rural women's economic security through increased employment opportunities.
- Consider women's social and economic needs in the design, implementation, and evaluation of relief and recovery programs.
- Implement the policy provisions of UNSCR 1325 for the internally displaced persons (IDPs).

## Implementation

The implementation occurs in two phases of four years each: 2015-2018 and 2018-2022.

The implementing agencies have been divided into two categories lead (governmental) and support (civil society).

## Reporting and Accountability

All lead and supporting implementing agencies will be responsible for reporting on their assigned activities on an annual basis to the DHRWIA-MoFA. The DHRWIA will compile the reports and submit them to the Steering Committee for approval. After approving the report, the Steering Committee will submit the final report to the President Office, the National Assembly and the international community. The annual reporting will address: the extent of activities implemented, financing allocated, disbursed and spent, progress made, challenges encountered, and suggestions to improve the implementation.

**1 – Steering Committee:** The Steering Committee was established on April 14, 2012, under Presidential Order No 434, and is an overarching body to advise and direct the NAP development process. The Steering Committee is comprised of relevant government agencies as well as a representative from civil society. Following the adoption of the NAP, the Steering Committee will continue to have a central role in the implementation, monitoring and evaluation of the NAP.

### Steering Committee Members

Institution	NAP Role
1. Minister of Foreign Affairs	Chairperson
2. Deputy Minister (Policy) of MoD	Member
3. Deputy Minister (Security) of the MoIA	Member
4. Deputy Minister of Public Health (Healthcare Services)	Member
5. Deputy Minister (Admin and Finance) of MoRR	Member
6. Deputy Minister (Technical and Policy) of MoWA	Member
7. Senior Advisor of MoJ	Member
8. Director of DHRWIA of MoFA	Member
9. Deputy Director of NDS	Member
10. Women's Rights Commissioner of the AIHRC	Member
11. Representative of Civil Society	Member
12. Director of International Relations of the Office of Administrative Affairs and Secretariat of Ministers' Council	Member

**2 – Technical Working Group:** In order to ensure effective implementation and reporting of the NAP, the annual reports as well as the midterm review and final review will be published on MoFA's website.

## **Monitoring and Evaluation**

A Monitoring and Evaluation (M&E) Plan is designed, which includes annual, mid-term (after two years) and final review in the fourth year. The M&E Plan includes tracking and monitoring of financing for the NAP to ensure transparent and effective implementation, for which the Steering Committee is responsible. The GIRoA recognizes the important role of civil society as an independent oversight body for the successful implementation of the NAP.