

Breaking Barriers

Challenges to Implementing Laws on Violence
Against Women in Afghanistan and Tajikistan

with special consideration of displaced women

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Executive Summary

In the Islamic Republic of Afghanistan and the Republic of Tajikistan, sexual and gender-based violence (SGBV) against women persists and is widespread.¹ Deeply entrenched patriarchal attitudes viewing women as subservient and the property of men permeate both societies. Females have less access to education than their male counterparts and limited opportunities for employment; face forced and often early marriages; and are vulnerable to violence, particularly from family members. These limitations and vulnerabilities are compounded for refugees and displaced women in each country who, according to the President of the United Nations (UN) Security Council, “are at heightened risk of being subject to various forms of human rights violations and abuses, including sexual and gender-based violence, and discrimination, which can occur during the various stages of the displacement cycle.”²

The heightened risks and limits on access to justice for displaced women are of particular concern in the region. As of June 2015, there were nearly one million internally displaced persons (IDPs) living in Afghanistan as a result of conflict and violence. Tajikistan hosts approximately 4,000 asylum seekers and refugees, the largest number in Central Asia, approximately 97 percent of whom are Afghan nationals predominantly of Tajik ethnicity.³ Afghan women flee to Tajikistan due to political and ethnic conflict as well as to escape forced marriage, honor killings, and other forms of gender-based violence.

Both Afghanistan and Tajikistan are party to the major international human rights instruments, including the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Moreover, the constitutions of both Afghanistan and Tajikistan guarantee the equality of women and men. In 2009, former Afghan president Hamid Karzai issued an executive order decreeing into law the End Violence Against Women (EVAW) Law that criminalizes twenty-two crimes of violence against women. In 2013, the Tajik parliament passed the Law on the Prevention of Family Violence (Family Violence Law), an effectively declaratory document that focuses on preventing violence as reflected in the law’s title. The EVAW Law and the Family Violence Law were enacted in response to the efforts of women’s rights advocates in both countries who recognized the disproportionate levels of violence against women in their societies and the need for formal legal protection for women. Subsequently, both Afghanistan and Tajikistan have created state programs to prevent violence against women aimed at implementation of their respective laws. While enactment of the laws and establishment of state programs are positive first steps by both countries, there continue to be significant gaps between the implementation of the laws and the effective protection of women.

¹ The use of the term “women” in this report refers to all females regardless of age including females under the age of majority.

² UN President of the S.C., Statement by the President of the Security Council (Oct. 28, 2014), http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_prst_2014_21.pdf.

³ HCR, Tajikistan: 2015 UNHCR subregional operations profile – Central Asia, <http://www.unhcr.org/pages/49e4872e6.html> (last visited Feb. 11, 2016).

With support from the UN Trust Fund to End Violence Against Women, the Center for Gender and Refugee Studies (CGRS) and the Danish Refugee Council (DRC) launched in 2013 a two-year project, *Women’s Empowerment in Afghanistan and Tajikistan for Displaced Persons through Legal Aid and Training to Combat Violence against Women*. The project—carried out with local partners Women for Afghan Women (WAW) in Afghanistan and Right & Prosperity (R&P) in Tajikistan—included two principal components: trainings of lawyers and law students in Afghanistan and Tajikistan and other efforts to increase legal aid capacity and access to justice for displaced and refugee women at risk of SGBV; and original research analyzing the laws enacted to protect women from violence, the implementation of such laws, and the challenges in protecting women and girls from violence, particularly those in displacement.

While there has been considerable international attention and publication of studies examining violence against women in Afghanistan, there has been less attention paid to implementation of the EAW Law as applied to displaced women and the specific challenges displaced women face in exercising their right to be free from violence. Moreover, there are no in-depth studies examining implementation of Tajikistan’s Family Violence Law and much less attention paid to the particular circumstances of refugee women, who are predominately Afghan, in the country. This report seeks to address these holes. The findings and recommendations of this report were prepared by CGRS, based on original and secondary research (see methodology), with substantial input from DRC and contributions from local project partners R&P and WAW.

Methodology

The Center for Gender & Refugee Studies conducted original research for this report in Afghanistan and Tajikistan as well as desk-based research and consultations with the project coordinator, the Danish Refugee Council in both countries, and project partners Women for Afghan Women (Afghanistan) and Right & Prosperity (Tajikistan).

Primary sources include Afghan and Tajik legislation relevant to women’s rights and violence against women issues including, in particular, Afghanistan’s 2009 EAW Law and Tajikistan’s 2013 Family Violence Law. In addition, CGRS conducted in-person or video-conference interviews with representatives from government agencies, non-profit organizations, international organizations and the United Nations, and independent experts in Afghanistan and Tajikistan between April 2014 and July 2015.⁴

⁴ CGRS did not conduct individual interviews with women or girl survivors of gender-based violence for this report to avoid unnecessary re-traumatization. To include the voice of Afghan and Tajik women and to adhere to do-no-harm principles of protecting survivors of violence, CGRS interviewed services providers working with survivors in Afghanistan and Tajikistan, and relied on baseline surveys conducted by DRC-Tajikistan and DRC-Afghanistan of gender-based violence survivors, which included interviews with women and girls in both countries. See DANISH REFUGEE COUNCIL, *BASLINE SURVEY 2014, SEXUAL AND GENDER-BASED VIOLENCE AMONG AFGHAN REFUGEES IN TAJIKISTAN AND AMONG DISPLACEMENT AND RETURNEES IN AFGHANISTAN* (Oct. 26, 2014) (on file with DRC).

The report also draws on commentaries made by government and civil society actors during the May 29, 2015 national consultative meeting in Dushanbe, Tajikistan, *Towards Effective Implementation and Reporting on the CEDAW Concluding Observations* as well as discussions with law student and attorney training participants, which operated similar to group interviews or focus groups.⁵

CGRS reviewed existing literature on gender-based violence and relevant legal frameworks in Afghanistan and Tajikistan. Further, CGRS considered relevant submissions to UN treaty bodies by the governments of Afghanistan and Tajikistan and public and civil society organizations; studies and reports by human rights organizations, scholars, the governments of Afghanistan and Tajikistan; and other media sources. Where possible, CGRS obtained and reviewed statistical data for this report.⁶

Report Overview

While women in both Afghanistan and Tajikistan experience SGBV in its various manifestations, this report focuses specifically (though not exclusively) on whether the laws in both countries have effectively protected women in domestic violence situations. The report examines the challenges for women experiencing domestic and other forms of gender-based violence. Special attention is paid to women in situations of displacement, a subject that has received little attention in the literature on violence against women in the region to date.

Chapter 1 of the report discusses CGRS's key findings regarding the context for violence against women in Afghanistan and the implementation of the EVAW Law. Six years after the enactment of the EVAW Law, levels of violence against women continue to increase. An alarming 87.2% of Afghan women, according to UN Women, have experienced some form of physical, psychological, sexual, or economic violence perpetrated predominately by family members. Forced and early marriage, domestic violence, and sexual harassment are endemic in Afghanistan. Women leaving the family home to escape violent situations are presumed to have engaged in unlawful sexual intercourse, and face prosecution for running away from home or allegedly committing "moral" crimes such as *zina* (sex outside of marriage). By bringing perceived shame and dishonor to their families, rape victims and women fleeing violence often face double victimization through honor killings. Returnee and internally displaced women are

⁵ The multi-day training workshops conducted by CGRS, *Empowering Displaced Women in Afghanistan and Tajikistan through Legal Aid and Training to Combat Gender-Based Violence*, took place in Dushanbe, Tajikistan and Kabul, Afghanistan in 2014 and 2015.

⁶ The report considers statistics publicly available through the Statistical Agency under the President of the Republic of Tajikistan, statistics provided by the Tajik Committee on Women and Family Affairs at the May 29, 2015 national consultative meeting, "Towards Effective Implementation and Reporting on the CEDAW Concluding Observations," as well as statistical data maintained by organizations interviewed for this report. Statistics for Afghanistan include information provided from DRC and WAW and secondary sources reviewed for this project.

particularly vulnerable to violence as they lose traditional support mechanisms and face discrimination and social isolation in their new communities. The degradation of socio-economic conditions in displacement places IDP women at greater risk of early and forced marriage and domestic violence.

Based upon provisions supporting human rights and women’s rights in the Afghan Constitution and Islamic *Sharia* Law, the EAW Law criminalizes twenty-two acts of violence against women and its enactment signifies the need to protect women against high levels of violence. However, even though Afghanistan is party to CEDAW and other key international human rights treaties, antiquated civil and criminal codes that disproportionately discriminate against women remain in force, countering the EAW Law’s advancement. Criminal prosecution for violent crimes committed against women remain low with few cases proceeding through the formal judicial system. Resolving cases through the informal justice system or some other form of dispute mediation, particularly in cases of intra-familial violence, are preferred. Awareness of women’s rights and SGBV as well as available services to women experiencing violence is low among displaced men and women in Afghanistan, and cases of violence against displaced women remain underreported.

Negative perceptions of the EAW Law—from conservative lawmakers to prosecutors, police, and judges with responsibilities under the law—based upon pervasive bias and discrimination against women impede its implementation. Fear of increased violence and stigmatization as well as police bias steeped in entrenched patriarchal norms deter women from reporting violence, thereby preventing enforcement of the EAW Law. Furthermore, lack of access to shelters forces women to remain in precarious situations and contributes to the EAW Law’s inability to protect women from violence. Displaced women are at increased vulnerability to violence due to loss of traditional support mechanisms, limitations on mobility, and degradation of socio-economic conditions that prevent them from accessing food, shelter, health, education, and employment opportunities.

Chapter 2 of the report discusses CGRS’s key findings regarding the context for domestic and other sexual and gender-based violence in Tajikistan and the implementation of the Family Violence Law. Lack of available data and underreporting make it difficult to determine the exact figures for violence against women in Tajikistan. According to the U.S. Department of State, spousal abuse is “so commonplace” that often it is not recognized as a problem.⁷ Tajik women face multiple types of violence from their partners—physical, psychological, economic, sexual, and social. In-laws also commonly inflict violence against women in Tajikistan, which is exacerbated by male labor migration overseas due to scarce domestic employment opportunities. While their husbands are abroad, women typically live with their in-laws, who treat them as household slaves and inflict psychological and physical abuse. Labor migration

⁷ U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, H.R. AND LAB., TAJIKISTAN 2014 HUMAN RIGHTS REPORT (2014); AZITA RANJBAR, EURASIA FOUND., INFORMAL JUSTICE IN TAJIKISTAN: THE ROLE OF INFORMAL LEADERS IN PROVIDING AND PREVENTING ACCESS TO JUSTICE 35 (2012); *see also* INFORMATION FROM TAJIK NGOs FOR THE ADOPTION OF A LIST OF ISSUES FOR THE REVIEW OF TAJIKISTAN’S SECOND AND THIRD PERIODIC REPORTS ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS ¶ 37 (Nigina Bakhrieva ed., 2014).

has also reduced the male population, and contributed to increasing numbers of women in polygamous and forced marriages. Poverty compels some parents to marry their daughters off at any early age, and an estimated 10-20% of all marriages involve underage girls. As both early and polygamous marriages are illegal under the Tajik Criminal Code, these marriages are typically not registered with the civil registry, leaving many of these women without legal protection when faced with violence.

Although few Afghan asylum-seeker and refugee women report violence in Tajikistan, legal service providers and the UN High Commissioner for Refugees (UNHCR) believe domestic violence is widespread among the population. The social-economic vulnerabilities of living in displacement coupled with gender dynamics within the Afghan family structure fuel violence against asylum seeker and refugee women.

Focusing primarily on prevention, the Family Violence Law recognizes the rights of victims to legal, medical, and psycho-social assistance and individual remedies, including registering a case of violence and obtaining protection orders. The Family Violence Law provides only for administrative liability; the law does not criminalize domestic violence and victims seeking prosecution and punishment of the abuser must bring claims under the Tajik Criminal Code. The Family Violence Law does not define the term “family” and, by the interpretation of many, leaves unprotected women who are in polygamous, early and unregistered marriages as well as women who were previously married.

In spite of Tajik legislation providing men and women with equal rights, women continue to face violence and lack effective mechanisms to live a life free from violence, particularly in their own homes. An absence of clear instructions to processes provided for under the Family Violence Law, such as filing a complaint and obtaining a protection order, has impeded its implementation. Moreover, due to patriarchal norms, economic dependence, and social stigma, Tajik women are reluctant to report domestic violence. Police mandated to protect women under the Family Violence Law often lack gender-sensitivity, are biased and sometimes manipulate women victims of violence into reconciling with their abusers, further discouraging women from reporting. A scarcity of shelters also prevents effective implementation of the Family Violence Law as women have no safe place to go to be free from violence. High levels of judicial corruption and lack of sensitivity towards women prevent women from pursuing cases of domestic violence in the criminal justice system, and result in very low prosecution and conviction rates and a preference for mediation.

Afghan asylum-seeker and refugee women face additional challenges obtaining protection under the Family Violence Law depending on their legal status in Tajikistan. Typically accompanied and financially supported by males, Afghan women in Tajikistan lack their own identity documents. Tajikistan’s restrictions on where asylum seekers and refugees may reside and transportation costs to access legal advice and crisis centers present further barriers to Afghan women seeking protection from domestic violence.

General Recommendations

The report concludes with extensive recommendations for stakeholders in each country for how to strengthen protection mechanisms for women and girls at risk of SGBV, and reduce impunity for crimes committed against them, with a special focus on displaced and refugee women. The recommendations—directed at the governments of Afghanistan and Tajikistan as well as civil society and international organizations and donors—center on several themes, including: improving clarity of roles and obligations in the law; reforming laws to ensure adequate protection; training relevant government actors charged with implementing the laws; providing adequate temporary and long-term shelter options for women; allocating adequate budget for implementation; putting in place mechanisms for collecting and analyzing data on violence against women; and addressing the unique protection needs of displaced and refugee women. Some of the most critical recommendations are included here; the full, detailed, and comprehensive recommendations are available at the conclusion of this report.

<p>Definitions</p>	<p>Successful implementation of the laws aimed at preventing and punishing SGBV require clarity around definitions regarding scope of the laws as well clarity around agency functions. The governments of Afghanistan and Tajikistan must improve clarity of definitions and agency functions provided for by the relevant laws in several ways. For example, the Afghan government should develop a protocol for implementing the EAW Law and identifying cases for criminal prosecution, including clearly defining the elements for the crime of <i>zina</i>. The Tajik government should expand coverage of the Family Violence Law by providing a broad definition of “family” and it should clarify confusion around issuance and scope of protective orders.</p>
<p>Legal Reforms</p>	<p>The laws in both Afghanistan and Tajikistan, while welcomed advancements, leave many critical issues uncovered. The governments should amend the laws to ensure prosecution of SGBV by, for example, amending the EAW Law in Afghanistan to increase protection for women faced with violence by honor killings and amending Tajik law to explicitly criminalize domestic violence.</p>
<p>Training</p>	<p>A key barrier to implementation of the laws on violence against women is lack of awareness of the laws and women’s rights among government actors with mandates to prevent, investigate, and punish acts of violence. The governments of Afghanistan and Tajikistan, with the support of civil society, must make efforts to raise awareness, train, and sensitize government actors, including creating specialized bodies to</p>

	<p>attend to cases of violence against women in an effective manner that does not re-victimize survivors. Civil society organizations must also work with international organizations, donors, and the governments of each country to adopt a survivor-centered approach to providing comprehensive services for women.</p>
Shelter	<p>A root cause of the cycle of domestic violence includes women’s economic dependence on men, a result of deeply entrenched patriarchy and norms subordinating women in Afghan and Tajik society. To stop the cycle of violence and provide long-term solutions for women to live a life free of violence, the governments of Afghanistan and Tajikistan—in coordination with civil society and international donors—must provide shelter options, in the short- and long-term, and opportunities for women to achieve independence such as education, vocational training, and small business and employment opportunities.</p>
Budget	<p>Allocation of an adequate budget to all government agencies tasked with implementing the relevant laws is essential for ensuring public actors comply with their mandates under the laws. Both countries must allocate adequate budget for programs aimed at violence against women under the EAW Law in Afghanistan, the Family Violence Law in Tajikistan, and related initiatives.</p>
Data and Monitoring	<p>Collection of data and otherwise monitoring and evaluating the implementation of the law is essential for reducing violence and impunity. The governments of Afghanistan and Tajikistan must implement effective data collecting mechanisms to gather information on the number of cases involving violence against women, including displaced women, and mechanisms to analyze the statistics and set benchmarks and priorities.</p>
Displaced Populations	<p>Recognition of the need for enhanced protections for IDPs, asylum seekers, refugees, and returnees is essential for ensuring safety of women in these populations. This includes the need for Tajikistan to repeal or amend laws that violate international refugee law by restricting freedom of movement of asylum seekers and refugees and ensure that displaced women in both Afghanistan and Tajikistan are aware of their rights and have access to legal, medical, psycho-social, and vocational services to prevent further violence.</p>