

Breaking Barriers

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

with special consideration of displaced women

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CENTER FOR
Gender & Refugee
STUDIES



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Recommendations

The Center for Gender and Refugee Studies (CGRS) at the University of California Hastings College of the Law developed these recommendations in coordination and collaboration with the Danish Refugee Council (DRC), and local partners Women for Afghan Women in Afghanistan and Right and Prosperity in Tajikistan. They flow from research conducted by CGRS on violence against women, with a focus on displaced and refugee women, in Afghanistan and Tajikistan in 2014 and 2015, including: interviews with representatives of government and civil society organizations as well as other independent experts; documents and statistics produced and compiled by governmental and inter-governmental organizations as well as civil society organizations and research centers; recommendations made by international human rights institutions and other stakeholders; and existing national and international norms and laws.¹

In particular, the recommendations focus on strategies for improving implementation of Afghanistan's 2009 End Violence Against Women Law (EVAW Law) and Tajikistan's 2013 Law on the Prevention of Family Violence (Family Violence Law) and for addressing the shortcomings of these laws as written for preventing and punishing domestic violence and other sexual and gender-based violence (SGBV) against women.

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¹ The term "civil society" is used here to refer to non-governmental organizations and may be used interchangeably with the term "public organization," which is commonly used for such organizations in Tajikistan.

² For more information regarding the project and the full report and findings associated with these recommendations, please visit <http://cgrs.uchastings.edu/Breaking-Barriers>.

I. Recommendations for Afghanistan

A. To the Afghan Government

Inter-Institutional Coordination

1. Ensure delineation of clear responsibilities, cooperation, and accountability between agencies responsible for implementation of the EVAW Law including, among others, the Ministry of Women Affairs (MoWA), Ministry of Social Affairs (MoSA), Ministry of Justice (MoJ), Ministry of Interior (Mol), Ministry of Public Health (MoPH), and Ministry of Refugees and Repatriation (MoRR).

Expansion of Coverage of Legal Protections and Clarification of State Obligations

2. Develop and provide instructions to state institutions responsible for implementing the EVAW Law, clarifying appropriate identification of cases requiring criminal prosecution.
3. Develop and implement guidelines or regulations for determining the limited circumstances in which mediation of cases of violence against women may be appropriate and include provisions to ensure enforcement of settlements and follow-up mechanisms to monitor enforcement.
4. Amend the EVAW Law to include civil remedies such as protection orders for women facing violence and provisions that address the custody of children, right to maintenance, and property rights.
5. Amend the EVAW Law to include honor killings and otherwise ensure that perpetrators of honor killings are not granted legal concessions.
6. Amend the EVAW Law to allow prosecution to go forward for a crime recognized under the EVAW Law even if the victim does not or is unable to file a complaint, for example, in cases of honor killing, self-immolation, or induced suicide.
7. Eliminate the requirement derived from Article 44 of the Criminal Procedure Code that the Attorney General's Office, court, or other relevant office must issue a letter to refer women to medical forensics and ensure that women victims of violence have immediate access to obtain medical forensics examinations to document injuries related to violence and access to appropriate treatment.
8. Amend family and criminal laws that discriminate against women, in line with recommendations of the UN Special Rapporteur on violence against women, its causes and consequences, to: (1) ensure the obligation to register all marriages and divorces; (2) establish criminal liability for all parties involved in the organization of child and forced marriage; (3) incorporate clearly defined gender-specific offenses into the Penal Code, including rape, and specify that they should be treated with the same degree of gravity as gender-neutral crimes; (4) prohibit degrading practices, including virginity testing; and (5) eliminate the use of "moral" crimes as a pretext for prosecuting women, in particular those related to *zina*.
9. Secure parliamentary approval of the EVAW Law.

10. Include enhanced protection mechanisms against violence for internally displaced and other vulnerable women and girls in the National Policy on Internally Displaced Persons (IDP Policy).

Training and Creation of Specialized Units and Personnel

11. Recruit women to institutions responsible for enforcement and implementation of the EAW Law, including the Afghan National Police (ANP), Attorney General's Office, and Family Response Unit (FRU), to increase female staff in offices where women report violence, and ensure women police officers have appropriate changing and bathroom facilities and are treated equally as male officers with effective complaint mechanisms to report incidents of harassment.
12. Train personnel in the police and Attorney General's Office to fully investigate and assess moral crimes brought against women.
13. Train judges, prosecutors, police, and legal and medical services providers on the EAW Law and its application and on gender-sensitivity and working with survivors of trauma.
14. Train personnel in all relevant government offices—including the police, *huquq*, MoWA, MoSA, Mol, MoJ, MoPH, and Attorney General's Office—to identify IDP, returnee, and other vulnerable women and girls who are at heightened risk of abuse and exploitation for violence and to develop referral networks for medical, psycho-social, and legal services.
15. Create specialized EAW prosecution units within the Attorney General's Office in all provinces by amending relevant legislation, including the EAW Law, and ensuring sufficient budget allocation.
16. Create specialized EAW courts for adjudication of cases related to violence against women by amending relevant legislation, including the EAW Law.

Awareness and Prevention of SGBV, Promotion of Gender Equality, and Comprehensive Services for Survivors

17. Promote nationwide awareness raising campaigns on the EAW Law with a focus on men and the general community, in particular in rural areas, mosques, schools, and hospitals on: (1) women's rights and gender equality; (2) women's right to be free from violence under domestic, Islamic, and international law and how the laws do not conflict; (3) criminal nature of acts of violence against women; and (4) protections available to women under the EAW Law and complaint procedures.
18. Expand access to free legal aid for women victims of violence, in particular in rural areas.
19. Establish at least one women's shelter in each province that has: (1) adequate bed space to accommodate the numbers of women and children facing violence; (2) appropriate legal, medical, psychosocial, and vocational services; and (3) long-term solutions for women who cannot return to their homes. Create public awareness campaigns to disseminate information so women and girls understand how to access available services.
20. Ensure that women, especially displaced, returnee, and other vulnerable populations, have opportunities for education and vocational training and involve displaced, returnee, and other vulnerable women in the development of violence prevention programs.

21. Ensure women human rights defenders receive adequate protection from security threats.
22. Increase the number of women at all levels of Afghanistan's legislative, judicial, and law enforcement institutions, including nominating women to the Supreme Court.

Data Collection and Monitoring Compliance

23. Ensure that police, prosecutors, judges, and other relevant authorities investigate and prosecute acts of violence against women criminalized under the EAW Law and related Afghan laws and provide a mechanism to sanction public officials who do not comply with their obligations.
24. Implement effective monitoring mechanisms to assess the number of cases of violence against women reported, investigated, and prosecuted through the judicial process, as well as gather data on cases resolved outside the judicial process by collecting information from legal aid organizations and other community leaders as well as MoWA, *huquq*, police, and other offices.
25. Adopt implementation mechanisms for the IDP Policy that details concrete steps, specifies indicators to measure progress, and requires annual reports with data on displaced women and girls.
26. Include gender mainstreaming into assessments and response strategies for displaced and vulnerable women and girls living in both formal and informal settlements.
27. Improve existing methods for data collection of cases involving the EAW Law, including: (1) adding the ability to record cases electronically; (2) providing support to provinces where data collection has been particularly difficult; and (3) expanding the database fields to capture the full process of an EAW case from initial registration to final result.

Provision of Adequate Budget

28. Prioritize state budget allocation to all government agencies charged with implementing the EAW Law to effectively realize their mandates under the Law and implement recommendations set forth here.

B. To Civil Society Organizations in Afghanistan

Collaboration with Government

29. Engage in a multi-sectoral approach with the Afghan government and international organizations to end violence against women, including promoting the understanding of women's right to be free from violence under domestic, Islamic, and international law and how the laws do not conflict.
30. Collaborate with prosecutors to ensure relevant provisions of the EAW Law and the Penal Code are used as the basis for prosecution, indictment, and adjudication of cases involving violence against women.

Advocacy Priorities

31. Collaborate with international non-governmental organizations on advocacy efforts and awareness raising in mosques, communities, schools, and hospitals regarding women's rights under the EVAW Law, what conduct is criminalized under the EVAW Law, protections available to women under the EVAW Law, and the complaint filing process, including: (1) engaging women and girls in developing programs to eliminate violence against women; and (2) involving religious and community leaders in awareness raising around the EVAW Law, including training community elders, *shuras* (local women committees), and religious leaders on national and international legal protections for Afghan women so they can serve as a resource to women experiencing violence.
32. Continue advocating for the EVAW Law to exist as a separate law not to be integrated into the Penal Code and for the National Assembly to pass the EVAW Law.

Training and Comprehensive Services for Survivors

33. Work with international organizations, donors, and the Afghan government to adopt a survivor-centered approach to increasing access to legal, medical, psychological, educational, and vocational services for women facing violence.
34. Increase the number of mobile clinics, particularly to rural areas, to provide greater access to services for women.
35. Work to develop mediation processes and procedures that take a survivor-centered approach, including referencing the EVAW Law in family law cases and mediation agreements to highlight any relevant violations, protections for women, and consequences for perpetrators under the EVAW Law.
36. Establish and strengthen existing *shuras* in urban and rural areas by training them on the EVAW Law and access to justice mechanisms for women, including advocating for the *shuras* to be registered with MoWA and MoJ, which will be responsible for monitoring their progress and issuing regulations on the registration of *shuras*.
37. Train personnel in civil society organizations, including the Afghan Women's Network to identify IDP, returnee, and other vulnerable women and girls who are at heightened risk of abuse and exploitation for violence and to develop referral networks for medical, psycho-social, and legal services.

C. To International Organizations and Donors

Funding Priorities

38. Continue providing technical expertise and funding to projects to protect women in Afghanistan from violence that are rooted in community-based solutions and perspectives.
39. Work with the Afghan government and civil society organizations to increase access—including by providing funding—to shelters, family guidance centers, and legal, medical, psychological, education, and vocational services for women facing violence.

40. Urge the Afghan government to increase the number of women in legislative, judicial, and law enforcement positions.

Advocacy Priorities

41. Engage in a multi-sectoral approach with the Afghan government and civil society organizations, including religious institutions and other community leaders, to end violence against women by raising awareness of the EVAW Law and women's right to be free from violence under domestic, Islamic, and international law.
42. Work with civil society organizations on advocacy efforts with the Afghan government and parliamentarians to urge the National Assembly to pass the EVAW Law.

Trainings, SGBV Prevention, and Comprehensive Services for Survivors

43. Establish a network of organizations working with survivors of trauma to identify best practices and challenges facing women survivors of violence.
44. Work with civil society organizations to increase the number of mobile clinics, particularly in rural areas, to provide greater access to services for women.
45. Conduct trainings to build the capacity of legal and social services providers on the following: (1) working with survivors of trauma; (2) the EVAW Law and process; (3) mediation; (4) identification of IDP, returnee, and other vulnerable women and girls who are at heightened risk for abuse and exploitation for violence; and (5) development of referral networks for medical, psycho-social, and legal services.

Monitoring Compliance

46. Monitor the Afghan government's compliance with international human rights treaties relevant to women's rights to be free from violence, including recommendations from the Committee on the Elimination of Discrimination Against Women (CEDAW).
47. Condition aid to the Afghan government on measured progress on women's rights by creating benchmarks for projects and tie on-going funding to achievement of indicated benchmarks during the life of the project.

II. Recommendations for Tajikistan

A. To the Tajik Government

Inter-Governmental Coordination

1. Increase information sharing and communication between the relevant government agencies by ensuring the Inter-Agency Steering Committee schedules regular meetings to provide updates on the progress of carrying out the State Program on Prevention of Domestic Violence and the recommendations made by the CEDAW Committee.
2. Include a representative from the Ministry of Finance in the inter-ministerial working group on the implementation of the Family Violence Law to discuss budget allocation for implementation of the Family Violence Law and the State Program and National Action Plan on Prevention of Domestic Violence.

Expansion of Coverage of Legal Protections and Clarification of State Obligations

3. Issue regulations and clear instructions for responsibilities of each government agency involved in implementing the Family Violence Law and the State Program on Prevention of Domestic Violence.
4. Amend existing legislation to include a definition of “family” that protects women in unregistered and polygamous marriages and also includes other relationships such as other members of a household (e.g., in-laws and immediate and extended family members), one’s nuclear family, blood relatives, and former family members (e.g., former husband).
5. Introduce comprehensive legislation to protect women survivors of violence, including those in unregistered and polygamous marriages, and in matters regulating the custody of children, right to maintenance, and property rights.
6. Develop a unified anti-discrimination plan for vulnerable populations, including asylum seekers, refugees, stateless persons, disabled individuals, and persons with HIV/AIDS to protect economic, social, and cultural rights in compliance with international human rights norms and standards to prevent stigmatization of these populations.

Improvement of Availability and Effectiveness of Protection Orders

7. Amend and clarify provisions of the Family Violence Law related to protection orders, including: (1) issue clear instructions on the definition and purpose of protection orders; (2) adopt a standard form for protection orders; (3) clarify the process for obtaining protection orders, including whether someone other than the victim may assist the victim in obtaining a protection order and where to obtain a protection order; (4) designate the entities with authority to issue protection orders by providing law enforcement the authority to issue emergency protection orders and placing authority for issuing longer term protection orders with judicial rather than law enforcement authorities; (5) clarify the elements and factors considered for determining whether the issuance of a protection order is warranted;

- (6) provide authority to judicial authorities to extend protection orders; and (7) allow designated authorities to include no-contact provisions in protection orders—which restrict an abuser’s access to the victim, shared home, family members, and property—as well as order counseling for abusers, such as anger management or substance abuse programs.
8. Establish clear procedures for receiving complaints in the event aggressors violate the terms of protection orders, steps for enforcing the orders, and applicable fines and/or penalties for violating a protection order.
9. Train police and relevant authorities on the use of protection orders.
10. Train legal advocates how to assist clients with obtaining protection orders.
11. Require police to inform victims of available protective measures.

Training, SGBV Awareness and Prevention, and Comprehensive Services for Survivors

12. Develop long-term, holistic solutions for women survivors of violence to rehabilitate and become self-reliant, including activities—within the shelter system and outside of shelters—focused on psychological rehabilitation, economic independence, and empowerment such as education, vocational training, and small business and employment opportunities.
13. Broaden the availability and access of free legal aid to survivors of violence in rural and under-served areas, including conducting outreach through mobile legal clinics or other means.
14. Coordinate with relevant governmental and civil society organizations to provide a 24-hour emergency domestic violence hotline operated by the Ministry of Justice and train hotline workers to assist callers facing emergency situations.
15. Provide immediate access to healthcare and develop the capacity for psychological and mental health support services to women victims of violence, including recruitment of professionals, training, and provision of services.
16. Collaborate with civil society and international organizations to train legal and social services providers working with trauma survivors on: confidentiality and legal ethics; identifying victims of SGBV and understanding their vulnerabilities; and domestic and international legislation related to violence against women.
17. Develop a comprehensive training program for advocates on mediation of domestic violence cases that incorporates best practices for ensuring the safety, security, and best interests of the victim.
18. Develop a comprehensive referral network for legal, medical, psycho-social, and vocational services.
19. Provide support for the Committee on Women and Family Affairs (CWFA) to work with civil society and international organizations on awareness-raising campaigns, including: (1) know your rights presentations for women on the Family Violence Law and women’s rights; (2) education of youth in primary and secondary school on women’s rights; (3) education of men and other family members including in-laws on the Family Violence Law and women’s rights; (4) public programs on prevention of violence through radio, television, newspapers, and other media; and (5) awareness on HIV/AIDS and prevention.
20. Continue trainings of religious leaders and develop materials on violence against women with theologians and experts on Islamic law.

21. Work with the media on responsible reporting and the breaking down of gender stereotypes.
22. Work with *hukumats* to fund additional shelters and other service centers for women.
23. Establish rehabilitation centers for abusers.
24. Increase the capacity to achieve long-term sustainability of legal aid and social services for women survivors of violence without international donor support.

Training and Creation of Specialized Units and Personnel

25. Increase staffing of CWFA, especially at the *hukumat* level, and build capacity of staff to effectively implement the Family Violence Law.
26. Train healthcare workers staffing Crisis Centers and Victim Support Units on: (1) the Family Violence Law; (2) gender-sensitivity and special needs of female victims of violence; and (3) referrals to legal aid organizations and law enforcement as necessary.
27. Increase recruitment and training of female police officers, prosecutors, and judges and conduct gender-sensitivity trainings on the Family Violence Law and special needs of women victims of violence as well as ensure female officers are treated equally and with dignity and respect by their male colleagues.
28. Require introductory and ongoing professional training of all police officers to include sessions on violence against women, such as training on responding to and processing complaints of violence against women and issuance of protection orders.
29. Create additional gender-sensitive police units nationwide with designated female specialists dedicated to providing support to women victims of violence.
30. Establish a forensics unit independent from law enforcement.
31. Establish specialized courts to hear cases involving domestic violence.

Data Collection and Monitoring Compliance

32. Ensure the Inter-Agency Steering Committee on Implementation of the Family Violence Law sets benchmarks to assess progress, including a centralized database to track statistics and outcomes.
33. Monitor the progress of the State Program on the Prevention of Domestic Violence and Action Plan and the implementation of the Family Violence Law through: (1) creating a centralized database that collects comprehensive statistics including the indicators enumerated in the State Program ¶ 7; the number of cases registered at relevant government offices and Crisis Centers, national Consultation Centers, Victim Support Units, Women's Resource Centers, gender-sensitive police units, shelters, and the hotline; information on the number, type, and outcome of crimes of violence committed against women, including profiles of and relationship between perpetrators and victims; number of protection orders requested and issued for domestic violence cases; and suicide rates; (2) requiring all agencies implementing the Family Violence Law to cooperate with the Tajik National Statistical Agency to provide updated information on gender data to the public; and (3) consulting with relevant international and civil society organizations.

34. Coordinate with Helvetas Swiss Intercooperation and other governmental and non-governmental implementing partners to track statistics on domestic violence cases reported to the 3040 hotline and the legal aid centers.
35. Conduct assessments of the medical, psychological, and social needs of women in domestic violence situations and identify gaps in services through the monitoring of national Consultations Centers, Crisis Centers, Women's Resource Centers, and Victim Support Units.
36. Monitor the effectiveness of protection orders by collecting comprehensive data and statistics from across the country on requests for protection orders, the circumstances under which protection orders are issued, the length of time specified by the orders, the measures stipulated by the orders, violations of the protection orders and any follow up measures or recorded violence.
37. Collaborate with civil society organizations and international organizations working on violence against women issues to increase transparency.

Provision of Adequate Budget

38. Prioritize state budget allocation to all government agencies charged with implementing the Family Violence Law and activities in the State Program on the Prevention of Domestic Violence and Action Plan to effectively realize their mandates under the laws and programs and implement recommendations set forth here.
39. Earmark administrative fines collected from violations of the Family Violence Law for a victim support fund to assist victims of violence.

Criminalization of Domestic Violence

40. Amend the Tajik criminal code to criminalize domestic violence in Tajik legislation, including the ability to prosecute violators of the Family Violence Law.
41. Ensure perpetrators of violence against women are held accountable and punished appropriately by: (1) collecting best practices from other countries on the implementation of laws that prevent, protect, and criminalize violence against women; (2) strengthening the capacity of the criminal justice system to protect women from violence by increasing training of police, prosecutors, and judges on gender-sensitivity and the Family Violence Law; and (3) taking measures to achieve judicial independence.
42. Eliminate requirements for medical and police report documentation for the prosecution in domestic violence cases and ensure cases of physical and sexual violence are prosecuted even when medical certificates are absent or do not have indicators of physical violence.

B. To Civil Society Organizations in Tajikistan

Government and Inter-Agency Collaboration

43. Continue working with the Tajik government and international organizations to train police, judges, prosecutors, and religious leaders.
44. Collaborate and engage in information-sharing with other civil society organizations to pool resources available to support women survivors of violence.
45. Partner with other civil society organizations to apply together for grants from international donors, explaining how each public organization partner adds value to the goal of providing protection to and advocating on behalf of women survivors of violence.

Advocacy Priorities

46. Urge parliamentarians and the Tajik government to amend the Family Violence Law and/or Tajik Family Code to provide an expansive definition for the term “family” that includes women in de facto polygamous relationships, unregistered marriages, members of a household, one’s nuclear family, blood relatives, in-laws, and other parties that may be deemed family.
47. Advocate for clear instructions and use of protection orders to protect victims of violence in accordance with the Family Violence Law.
48. Urge the Office of the President, Parliament, Ministry of Justice, Ministry of Interior, and General Prosecutor’s Office to amend the Criminal Code to make domestic violence a crime and require enhanced penalties for crimes involving domestic violence.
49. Advocate that the Ministry of Labour, Migration and Employment of Population, including the State Agency on Social Protection, Employment and Migration, ensure that women victims be examined by forensics immediately so that injuries can be timely and properly documented.

Training, SGBV Awareness, and Comprehensive Services for Survivors

50. Increase the capacity of mobile legal clinics to bring services to rural, displaced, and disadvantaged women, including women asylum seekers and refugees, as a target group in projects involving national Consultation Centers, Crisis Centers, Victim Support Units, Women’s Resource Centers, shelters, and legal aid centers.
51. Raise awareness relating to women’s rights and violence against women issues by involving men as well as asylum seekers, refugees, stateless, disabled, and other vulnerable populations in trainings and awareness raising activities.

C. To International Organizations and Donors

Funding Priorities

52. Continue providing financial resources and technical expertise required to implement the Family Violence Law.
53. Prioritize funding for shelters to house women victims of violence.
54. Include women asylum seekers and refugees as a beneficiary group in projects involving crisis centers, shelters, and legal aid centers.
55. Encourage civil society organizations to partner for grant applications to assist women survivors of violence.

Advocacy Priorities

56. Work with civil society organizations in advocacy efforts urging the government to: (1) expansively define the term “family;” (2) criminalize domestic violence; and (3) clarify the purpose, process, and use of protection orders.
57. Advocate for clear instructions for the use of protection orders to protect victims of violence in accordance with the Family Violence Law, collect best practices for the use of protection orders, and train legal advocates on how to help clients with obtaining protection orders.
58. Advocate with UNHCR to urge the Tajik government to comply with international law and provide equal access to courts for all refugees.

Trainings, SGBV Prevention, and Comprehensive Services for Survivors

59. Work with civil society organizations on awareness campaigns to increase knowledge of the Family Violence Law and involve the male population in combatting domestic violence.
60. Work with legal aid organizations to understand how to use the Family Violence Law in court and to effectively incorporate it into mediation agreements between parties.
61. Work with civil society organizations to develop the capacity for mobile legal clinics to bring services to rural, refugees, and disadvantaged women.
62. Continue working with the Tajik government and international organizations to train police, judges, prosecutors, and religious leaders.
63. Expand One Stop Shop Programs, as piloted by UN Women, to include domestic violence as well as increase the capacity of such programs, particularly in rural areas and communities where asylum seekers and refugees reside.

D. To the United Nations High Commissioner for Refugees

64. Urge the Tajik government to comply with international law and provide equal access to courts for both “mandate refugees” determined by UNHCR and “Convention refugees” determined by the Refugee Coordination Unit.
65. Urge the government to repeal or amend Resolutions 325 and 328 which violate international refugee law by placing residential restrictions on asylum seekers and refugees, and to ensure freedom of movement.
66. Continue to raise awareness among asylum seekers and refugees regarding women's rights and violence against women issues.