

## Annex I: EVAW Law 2009

In the name of Allah the most compassionate the most merciful

Law on Elimination of Violence against Women (EVAW)

### Chapter One

#### General Provisions

##### **Basis:**

###### Article 1

This law has been enacted in light of Articles 24 and 54 of Constitution of Afghanistan.

##### **Objectives:**

###### Article 2

This law has the following objectives:

1. Safeguarding the religious and legal rights and protecting the human dignity of women.
2. Protecting well being of family and fighting against customs, traditions and practices that cause violence against women contrary to the provisions of religion of Islam.
3. Protecting the victim of violence (affected woman) or exposed to violence.
4. Preventing violence against women.
5. Ensuring public awareness and education on violence against women.
6. Prosecuting perpetrators of violence against women.

##### **Terms:**

###### Article 3

The following terms in this law have the following meanings:

1. Woman: An adult or underage female.
2. Violence: committing those acts mentioned in Article 5 of this law that causes damage to the personality, body, property or soul of woman.
3. Rape: Perpetrating adultery and pederasty with an adult or under age woman under duress or attack to the chastity and honor of a woman.
4. *Baad*: Marrying a woman to someone as blood price or to achieve peace linked to murder, sexual violence or other circumstances to observe indecent customs and traditions.

5. Contempt: Committing acts, gestures or using words that result in degrading the personality of woman.
6. Intimidation: performance of acts or gestures or using words that result in fear and intimidation of woman.
7. Annoyance: use of words or committing acts by any means or manner that cause damage to the personality, body and soul of woman.
8. Forced isolation: Deterring a woman from visiting her close relatives (legal mahrams).
9. Preventive measures: Practical measures that are put in place to eliminate the causes of violence and prevent them from happening.
10. Supportive measures: Practical measures that are put in place to protect the victim of violence.

### **Prevention of violence:**

#### Article 4

Violence is crime and no body has the right to commit it at the place of residence, government or non-government offices, institutions, public places, means of transport or other areas. If committed, the person shall be punished according to the provisions of this law.

### **Instances of violence:**

#### Article 5

Commission of the following acts shall be deemed as violence against women:

1. Rape
2. Forcing into prostitution
3. Recording the identity of victim and publicizing it in a manner that damage the personality of victim.
4. Setting into flames, using chemicals or other dangerous substances
5. Forcing into self-immolation or suicide or using poisonous or other dangerous substances
6. Causing injury or disability
7. Battery and laceration
8. Selling and buying women for the purpose or under pretext of marriage
9. *Baad* (retribution of a woman for a murder, to restore peace etc...)
10. Force marriage
11. Prohibiting from right of marriage or choosing husband.
12. Marriage before the legal age
13. Abusing, humiliating, intimidating
14. Harassment/ persecution
15. Forced isolation
16. Forcing woman to drug addiction
17. Depriving from inheritance
18. preventing from possession of personal property
19. Deterring from right to education, work and access to health services
20. Forced labor
21. Marrying more than one wife without observing the provision of Article 86 of Civil Code
22. Denial of relationship.

## **The Rights of Victim:**

### Article 6

The victim of violence has the following rights:

1. Prosecution of the offender according to the provisions of law.
2. Access to protective center or safe home or other secure places in agreement with the victim.
3. Free access to emergency health services.
4. Having advocate or legal aid provider.
5. Compensation resulted from the act of violence.
6. Confidentiality related to the matter.
7. Other rights provided in the legislative documents.

## **Approach to the Authorities:**

### Article 7

1. The victim of violence or her relatives may file a complaint at the police, *Huqooq offices*, courts or other relevant offices.
2. The offices under paragraph (1) of this Article are bound to register and take appropriate action and inform the Ministry of Women Affairs in writing.
3. Ministry of Women Affairs is bound to take necessary measures for maintaining contacts after receipt of written notice or direct complaint from the victim or her relatives.
4. Prosecutor's office and court are bound to place the case of violence in priority and act on it expeditiously.
5. The responsible offices under paragraph (1) of this Article are bound to observe in their investigation the code of conduct adopted by the Special Commission against Violence.

## **Chapter Two**

### **Protective and Supportive Measures**

#### **Obligation of Ministry of Women Affairs:**

### Article 8

In order to prevent the violence, the Ministry of Women Affairs shall, in cooperation with other Ministries, governmental and non governmental agencies and relevant organizations, adopt the following protective and supportive measures:

1. Coordinating the activities of government and non governmental agencies and providers of protection services engaged in preventing violence.

2. Increasing the awareness of both men and women regarding their legal and religious rights and obligations..
3. Paving the ground for protection and safe keeping of the victims of violence or exposed to violence at the protective centers or in case no shelter is available, in other save places for control and supervision.
4. Holding seminars, workshops, conferences and other training programs for the staff of government, nongovernmental institutions, residents of rural areas for raising the public knowledge and acquaint them with instances of violence, their consequences and finding solutions.
5. Explaining the causes of violence and its results based on provisions of religious and codified Laws through publication.
6. Assuring the implementation of training and capacity building programs for Non-governmental organization and related institutions.

#### **Obligation of Ministry of Hajj and Pilgrimage:**

##### Article 9

Ministry of Hajj and Pilgrimage is bound to take the following preventive measure in order to prevent violence:

1. Developing regular programs for delivering speeches by Mullahs, Emams and preachers of the mosques regarding the legal and religious rights and obligations of men and women and ensuring their implementation.
2. Holding seminars, workshops and conferences for the mullahs, preachers and orators of Mosques.
3. Explaining and describing the factors causing violence and their consequences through publications, based on the provisions of Islamic Sharia and law.

#### **Obligation of Ministries of Education and Higher Education:**

##### Article 10

Ministries of Education and Higher Education are bound to take the following preventive measure in order to prevent violence:

1. Inclusion of topics related to violence and its consequences, and how to prevent violence in the related educational curriculum.
2. Conducting seminars, workshops and conferences for the related staff and students.
3. Taking appropriate measures for the purpose of prohibiting the occurrence of violence in the respective educational environment.
4. Explaining and describing the factors causing violence and their consequences through the related publications, based on the provisions of the Islamic Sharia and law.

### **Obligation of Ministry of Information and Culture:**

#### Article 11

Ministry of Information and Culture is bound to take the following protective measure in order to prevent violence:

1. Preparing and broadcasting radio and television programs regarding the factors causing violence and consequences of violence and publication of the relevant matters in newspapers and magazines.
2. Paving the way for other ministries and governmental agencies and real and legal individuals to publish and broadcast the matters related to prohibition of violence through their owned mass media.
3. Prohibiting broadcast of programs through public media which causes violence.

### **Obligation of Ministry of Justice:**

#### Article 12

Ministry of Justice is bound to take the following protective measures in order to prevent violence:

1. Raising the awareness level of men and women regarding their legal and religious rights and obligations.
2. Paving the ground for explaining and describing matters regarding the factors causing violence and its consequences for the women and men under detention and custody or imprisoned through the relevant authorities and related social organizations.
3. Conducting seminars and workshops for awareness of the Hoquq offices and legal aid providers regarding the provision and better implementation of this law.
4. Assigning legal aid provider in case requested by the victim of violence.

### **Obligation of Ministry of Interior Affairs:**

#### Article 13

Ministry of Interior Affairs is bound to take protective and supportive measures in order to prevent violence in public places.

### **Obligation of Ministry of Public Health**

#### Article 14

Ministry of Public Health is bound to take effective and practical measures for free and immediate treatment of the victims of violence, and report on it to the Ministry of Women Affairs.

### **High Commission for Prevention of Violence:**

#### Article 15

In order to effectively combat against violence and establish coordination among the government, non governmental institutions and related organizations, the **Commission for Prevention of Violence shall comprise the following members and** established under the chairmanship Ministry of Women Affairs:

1. Deputy Attorney General
2. Deputy Interior Minister
3. Deputy Justice Minister
4. Deputy Minister of Public Health
5. Deputy Minister of Information and Culture
6. Deputy Minister of Education
7. Deputy Minister of Higher Education
8. Deputy Minister of Labor, Social Affairs, Martyrs and Disabled
9. Deputy Minister of Hajj and Religious Affairs
10. Member of the Afghan Independent Human Rights Commission.
11. Head of Special Family Court Kabul
12. Head of Afghanistan Independent Bar Association.

### **Duties and Responsibilities of the Commission:**

#### Article 16

(1) The **Commission for Prevention of Violence** shall have the following duties and responsibilities:

1. Studying and evaluating the causes of violence in the country and taking appropriate preventive measures in this regard.
2. Designing publicity and public awareness programs for the purpose of preventing the commission of violence.
3. Coordinating the activities of relevant government and non governmental agencies for combating violence.
4. Collecting statistics and figures related to violent crimes.
5. Providing suggestions regarding amendment to the provisions of this law.
6. Proposing regulations and adopting relevant procedures for better implementation of this law.
7. Requesting information regarding the cases of violence from the police, prosecutor office and Courts.
8. Preparing annual activity report on violence to the Council of Ministers.

9. Other duties assigned by the government.
- (2) Activities of the Commission shall be regulated by a separate bill to be approved by the commission.

## **Chapter three**

### **Criminal Provisions**

#### **Rape:**

##### Article 17

- (1) If a person commits rape on an adult woman he shall be sentenced to life imprisonment in accordance with the provision of Article (426) of Penal Code, and if the act results in death of the victim, the perpetrator shall be sentenced to death penalty.
- (2) If a person commits rape on an underage woman, he shall be sentenced to life imprisonment according to the provision of Article (426) of Penal Code, and if the act results in death of the victim, the perpetrator shall be sentenced to death penalty.
- (3) In the above two cases under paragraphs (1, 2) of this Article, the perpetrator shall be convicted to pay the equivalent amount of dowry as compensation to the victim.
- (4) If a person violates chastity of a woman, but his violation does not result in adultery or pederasty (committing touching etc...), he shall, depending on the circumstance, be sentenced to long term imprisonment of not more than 7 years.
- (5) If the victim under paragraph 4 of this Article has not reached age 18 or the perpetrator of the crime is a close relative up to third degree, teacher, employee, or physician of the victim or the perpetrator has influence and authority over the victim, the perpetrator shall be sentenced to long term imprisonment of not more than 10 years considering the circumstances.

#### **Forcing into Prostitution:**

##### Article 18

1. If a person forces an adult woman into prostitution, he shall be sentenced to long term imprisonment of not less than 7 years.
2. If the victim under paragraph 1 of this Article is an underage woman, the perpetrator shall, depending on the circumstances, be sentenced to long term imprisonment not less than 10 years.

#### **Recording and publicizing the identity of Victim**

##### Article 19

A person who records the identity of the raped and forced prostitution victims and disclose and publicize it against the law that damage the personality of the victim, shall, depending on the circumstances, be sentenced to medium-term imprisonment not less than 3 years.

### **Burning or Use of Chemical Substances:**

#### Article 20

1. If a person burns a woman or use chemical or other poisonous substances on her body that cause injury, or feed her poisonous substance or injects it into her body, the offender shall, depending on circumstance, shall be sentenced to long- term imprisonment not less than 10 years.
2. If the commission of acts, included in paragraph (1) of this Article, is to create fear for the purpose of depriving women from their civil rights in society, or it results in the death of victim, the offender shall, depending on the circumstances, be sentenced to life imprisonment or death penalty.

### **Self-Immolation and Committing Suicide:**

#### Article 21

If a woman is forced to self-immolation or committing suicide or use of poisonous chemicals, the perpetrator shall, in case of injury or infirmity, be sentenced to medium-term imprisonment, or long-term imprisonment not exceeding 10 years, in case of death of the victim.

### **Injury or Disability**

#### Article 22

1. If a person beats a woman, the offender shall, depending on the circumstances, be punished according to Article 407 – 410 of the Penal Code, considering the mitigating and aggravating conditions of the crime.
2. If the acts under paragraph (1) of this Article results in the death of victim, the offender shall, depending on the circumstance, be sentenced according to Article 395 – 399 of the Penal Code.

### **Battery and laceration:**

#### Article 23

If a person beats a woman, which does not result in damage and injury, the offender shall, depending on the circumstance, be sentenced to short- term imprisonment not exceeding 3 months.

### **Selling and buying women for Purpose or under the pretext of marriage**



#### Article 24

A person who sells a woman for the purpose or under the pretext of marriage, or purchases a woman or act as intermediary in the process, the perpetrators shall, depending on the circumstance, be sentenced to long- term imprisonment not exceeding 10 years.

#### **Baad (Retribution of woman for a murder, blood money etc):**

#### Article 25

1. If a person gives or takes a woman for marriage in retribution for a Baad, the perpetrator shall, depending on the circumstances, be sentenced to long- term imprisonment not exceeding 10 years.
2. In such case under paragraph (1) of this Article, the involved persons (witnesses, counsel, mediator and solemnizer of marriage) shall, depending on the circumstance, be sentenced to a medium-term imprisonment, and the marriage contract shall be considered invalid at the request of the woman, according to the provisions of law.

#### **Forced Marriage:**

#### Article 26

If a person gets a woman engaged or married who has reached the legal marriage age without her consent, the perpetrator shall, depending on the circumstances, be sentenced to medium-term imprisonment not less than 2 year, and the engagement and marriage is invalid, according to the provision of the law.

#### **Prohibition of Marriage Right:**

#### Article 27

If a person prohibits marriage of a woman, the offender shall, depending on the circumstances, be convicted to short- term imprisonment.

#### **Underage Marriage:**

#### Article 28

If a person marries a woman who has not reached the legal marriage age, without considering the provision of Article 71 of Civil Code, the offender shall, depending on the circumstances, be sentenced

to mid- term imprisonment of not less than 2 years and the marriage contract shall be cancelled at the request of the woman.

**Abuse, Humiliation and Intimidation:**

Article 29

If a person curses, intimidates or degrades a woman, the offender shall, depending on the circumstance, be sentenced to short- term imprisonment of not less than 3 months.

**Harassment and Annoyance:**

Article 30

1. If a person harasses and annoys a woman, he shall, depending on the circumstances, be sentenced to short- term imprisonment of not less than 3 months.
2. If the crime in paragraph 1 of this Article is committed based on misuse of status and position, the offender shall, depending on the circumstance, be imprisoned to medium-term imprisonment of not less than 6 months.

**Forced Isolation:**

Article 31

If a person forces a woman to isolation, he shall, depending on the circumstances, be convicted to short-term imprisonment of not more than 3 months.

**Forcing Woman to Drug Addiction:**

Article 32

If a person forces a woman to drug addiction, he shall be sentenced to short-term imprisonment not exceeding 3 months.

**Prevention from Inheritance:**

Article 33

If a person prevents a woman to take possession of inheritance from the legator, he shall in addition to transfer of her inherited legal share be sentenced to short- term imprisonment of not more than one month.

#### **Prevention from Acquiring Property:**

##### Article 34

If a person takes the inherited goods of a woman, or prevents her from acquiring it, he shall, depending on the circumstance, be sentenced to short-term imprisonment of not more than 3 months, and the goods shall be vested to her.

#### **Prohibition from Education, Work and Access to Medical Services:**

##### Article 35

If a person prohibits a woman from the right to education, work and access to medical services or use of other rights stipulated in the law, he shall, depending on the circumstance, be convicted to short- term imprisonment not exceeding 6 months.

#### **Forced Labor:**

##### Article 36

A person who forces a woman to forced labor, the offender shall, in addition to paying compensation, be sentenced to short- term imprisonment not exceeding 6 months.

#### **Marriage with more than one woman:**

##### Article 37

If a person marries more than one woman without observing the provisions of Articles 86 and 89 of the Civil Code, he shall be sentenced to short- term imprisonment not less 3 months.

#### **Denial of Relationship:**

##### Article 38

A person, who denies a relationship with a woman in order to deprive her of inheritance or other legal rights, and her relationship is proven by verdict of the court, the offender shall, depending on the circumstances, be sentenced to short- term imprisonment not exceeding 6 months.

### **Prosecution:**

#### Article 39

1. Adjudication of law suits and prosecution of perpetrators of crimes stipulated in Articles 22 - 39 of this law shall be done based on the complaint filed by the victim or her attorney.
2. The victim may withdraw her case at any stage of judicial proceedings (detection, investigation, trial or conviction) in circumstances mentioned in paragraph 1 of this Article. In this case, the adjudication process and punishment shall be stopped.

### **Complicity**

#### Article 40

The abettor of a crime stipulated under this chapter, shall be punished according to the provisions of Article 39, 41 and 48 of the Penal Code.

### **Compensation**

#### Article 41

Perpetrators of crimes of this law shall, beside the prescribed punishments, be sentenced to payment of compensation.

## **Chapter Four**

### **Final Provisions**

#### **Suspending, Pardoning and Mitigating of Punishment:**

#### Article 42

The punishments of crimes by offenders of violence shall not be postponed, pardoned or mitigated.

#### **Prevalence:**

#### Article 43

The provisions of this law shall prevail if they contradict the provisions of other enforced laws.

**Enforcement:**

Article 45

This law shall be enforced from the date of publication in the official gazette.

## **Annex II: Legal Framework for Tackling Violence against Women**

### **Legal Framework**

The cornerstone of the Afghan legal framework is the 2004 Constitution, the statutory principles of which are based primarily on principles of Islam (*Shari'a*). Article 3 of the Constitution underscores this by stating “[n]o law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan.” Article 22 of the Constitution guarantees and protects rights and emphasizes equality for men and women, stating that “[a]ny kind of discrimination and distinction between the citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man and woman, have equal rights and duties before the law.” Other laws that promote gender equality and women’s rights include the 1977 Afghan Civil Code, the 2009 Law on Elimination of Violence against Women (EVAW law), as well as international laws to which Afghanistan is a State party.

#### **The Constitution (2004)**

Five constitutional provisions are most relevant to governing women’s rights in Afghanistan. They are:

**Article 7**

The state shall abide by the UN charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights...

**Article 3**

In Afghanistan, no law can be contrary to the beliefs and provisions of the sacred religion of Islam.

**Article 22**

Any kind of discrimination and privilege between the citizens of Afghanistan are prohibited. The citizens of Afghanistan – whether man or woman – have equal rights and duties before the law.

**Article 54**

The state adopts necessary measures to ensure physical and psychological well being of family, especially of child and mother, upbringing of children and the elimination of traditions contrary to the principles of sacred religion of Islam.

**Article 130**

When there is no provision in the Constitution or other laws regarding ruling on an issue, the courts’ decisions shall be within the limits of this Constitution in accord with the Hanafi jurisprudence and in a way to serve justice in the best possible manner.

#### **Law on Elimination of Violence against Women (2009)**