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"Good Women Have No Need for This Law"

The Battles over the Law on Elimination of Violence against Women

On July 19, 2009, President Karzai signed two laws. One was a revised version of the Shia Personal Status Law, which had created an uproar both in Afghanistan and abroad for its conservative articles on gender relations.[1] Despite having undergone a review triggered by the protests of women's rights activists and international donors, the Shia law, as it was usually called, still contained a number of articles that these groups considered problematic. This final version appeared to sanction underage marriage, made women's right to marry dependent on their fathers' or grandfathers' permission, and constructed a marital relation in which wives were supposed to submit to sexual relations on demand—or risk forfeiting claims of maintenance from their husbands.[2] The other law signed that day, however, was considered a triumph by many women's rights activists. It was the Law on the Elimination of Violence against Women, *(Qanon-e maneh khoshonat alie zan),* normally referred to as the EVAW law in English. Four years had been spent drafting it. It was unprecedented in Afghan history, listing twenty-two acts as violence against women and mandating punishments for them. It also obliged the government to take specific actions to prevent violence and to support victims.

The EVAW law was regarded as important because, unlike the existing Penal Code, it designated rape *(tajavoz-e jinsi)* as a crime distinct from consensual adultery, provided considerably stricter punishments for forced and underage marriage, and criminalized a number of violations of women's civil rights, such as the deprivation of inheritance or preventing a woman from pursuing work or an education. In general, the law was regarded by many as an important tool of advocacy, signaling that women were independent holders of rights and that the

Afghan state had an obligation to protect them from abuses at the hands of their families. Although the existing Penal Code covered crimes such as beating and murder, those who supported the new law argued that there was a tendency in legal practice and more broadly in Afghan society to view such acts as crimes only when they were committed by people outside the family. For its advocates, the new law was important because it explicitly stated that these acts were also punishable crimes when they took place within the family.[3]

In this chapter, I explore the significance of the EVAW law. I ask whether and to what extent the law challenged prevailing gender relations by making the state responsible for enforcing a new set of standards for women's rights. Did the EVAW law signal a transformation whereby women were constituted as legal persons in their own right, under state protection, and where family sovereignty over women was replaced—or at least modified—by that of the state? As my analysis will make clear, these questions cannot be answered unequivocally, and this ambiguity is an essential part of the story of the EVAW law.

After explaining the complicated history of the EVAW law, the chapter explores the substantive debates about the law, its actual text, and its proposed and accepted revisions. However the key to understanding the significance of the law is in the *processes* through which it was promoted and implemented. These processes demonstrate how meaningless it is to talk about a singular state authority in contemporary Afghanistan. In turn, this point carries important implications for the impact of both local and donor-driven women's rights activism in the country. The fact that the EVAW law was contradicted on several points by the Shia law, and yet President Karzai signed them both on the same day and at the same gathering was an indication of this. That the president should almost simultaneously sign two laws in direct contradiction with each other was remarkable. It was one sign that, even if ratified, the EVAW law would only serve as a partial and ambiguous framework for the public regulation of gender violence in Afghanistan.

I show why and how this was the case by tracing how the EVAW law was conceived, promoted, contested, revised, and implemented. Important aspects of women's rights activism, the logics of legal reform, and the political landscape in Afghanistan are revealed by chronicling and disentangling these processes. I find that the particular dynamics of these fields and their contingent interactions gave form to a partial "EVAW law assemblage". In the context of a polarized political climate, the intimidating ascendancy of jihadi leaders who were able to dominate broader public debate (empowered, to a great extent, by the international intervention *and* the resentment against it), external dependence, the precedent of getting laws passed through informal political pressure instead of consensus and debate, the importance of claiming personal credit, and the need to produce "output," the law's supporters eventually chose a discreet and top-down strategy. The supporters of the law abandoned their earlier attempts

to get parliamentary approval and to rectify technical limitations in the text. Instead, the EVAW law was kept as a presidential decree and its technical weaknesses ignored for the moment. The mechanisms that were involved in the push for implementation of the law similarly revealed a top-down, discreet mode of action in which external support to some degree compensated for the lack of broader national anchoring.

THE TRAJECTORY OF THE EVAW LAW

At the time that the EVAW law was drafted, Afghanistan still had the civil and criminal codes dating from the late 1970s in place. The 1976 Penal Code included general provisions for murder, beating, and injury. These provisions did not differentiate between men and women, although in practice, intra-familial violence was normally regarded as less serious, if considered a crime at all. However, the 1976 Penal Code did include some provisions explicitly related to gender violence. Among these were an article significantly reducing punishment for "honor killings," some rather unclear provisions on the punishments for rape and adultery, and articles criminalizing the forced marriage of an adult woman. Article 398, for example, stipulated a significant reduction of the punishment in cases of murder if the victim was a relative or spouse caught in the act of adultery: "A person, defending his[4] honor *(namus),* who sees his spouse, or another of his close relations, in the act of committing adultery or being in the same bed as another and immediately kills or injures one or both of them, shall be exempted from punishment for laceration and murder but shall be imprisoned or punished for a period not exceeding two years, as a *Taziri* punishment."

Section 2, chapter 8: "Adultery, Sodomy, and Violation of Honor"[5] contained provisions regarding rape and adultery. First of all, article 426 provided for *hadd* punishments (stoning or lashing) of adultery, stating that if in the crime of adultery "the conditions for *hadd* are not fulfilled[6] or the charge of *hadd* is dropped, . . . the offender shall be punished according to the provisions of this article." Articles 427–28 went on to set out the *tazir* punishments for "adultery and sodomy" (long-term imprisonment, i.e., no less than five years and no more than fifteen)[7] and various aggravating conditions. The use of the term *zina* (adultery) to seemingly include both rape and consensual sex outside of marriage (both premarital and extramarital sex), means that there was effectively no legal distinction between consensual adultery and rape in the code. In addition, article 429, perhaps referring to attempted rape or sexual assault, stated that a person who, "through violence, threat or deceit, violates the chastity *(namus)* of another or initiates the act" shall be sentenced to long-term imprisonment, not exceeding seven years. Finally, article 517 criminalized forced marriage (but only when the woman involved was of majority age). It also provided for stricter punishments if forced marriage happened under the pretext of *baad.*

Rather than amending this existing legal framework, a group of women's rights advocates, Afghan bureaucrats, and U.N. officials came to the conclusion that the most effective way to address the issue of violence against women would be to create a new law altogether, one that would directly criminalize a number of forms of violence and abuse. Most of my informants traced the first conceptions of the law to meetings in a commission established in 2005 by the Ministry of Women's Affairs (MOWA) and UNIFEM to coordinate government responses to violence against women. The EVAW Commission, as it was called, was modeled on U.N.-directed efforts to combat violence against women elsewhere, which was, in turn, part of a broader global campaign against gender violence. Along with members from MOWA and UNIFEM, the commission also included members from other government officials, including female judges and prosecutors, representatives of different U.N. agencies, and various staff working at NGOs that focused on women's rights and the justice system. The commission often discussed reprehensible individual cases, and soon a consensus emerged that a new law that explicitly criminalized violence and abuses against women was needed.

Subsequently, and rather swiftly, the first version of the EVAW law was drafted by the legal department of MOWA. MOWA then officially submitted the draft to the *Taqnin* ("legislation"[8]) department in the Ministry of Justice on the International Women's Day in 2006. UNIFEM (who had a large program on gender-based violence and also worked closely with MOWA on various issues) and many of the civil society organizations in Kabul had not been included in the drafting process, something that they viewed as an attempt by MOWA to retain control over the law as its own initiative. This was to be one of several incidents where MOWA's complicated relationship with NGOs and women's rights activists, often one of mistrust and sometimes competition, manifested itself.

Mandated in the 2001 Bonn peace agreement, MOWA was charged with mainstreaming gender into the policies and programs of other government ministries and quickly became a focal point for gender targeted donor assistance. The ministry, which had no core budget, was filled with a number of foreign advisors and Afghan "embeds" (Afghan staff from international organizations who were on assignment at the ministry), and its achievements would prove modest. It suffered from what was probably a deliberate strategy of ministerial appointments from President Karzai, who did not want a strong minister in a controversial field, and it was completely dependent on donor funding.[9]

The bulk of the implementation of the gender interventions was subcontracted to a myriad of international and national NGOs and private contracting companies. Some of these were staffed or led by Afghanistan's fragmented local women's rights activists, many of whom had recently returned to the country after living as refugees in neighboring countries, especially Pakistan. Staff at MOWA accused foreign-funded NGOs of resisting government coordination and operating

according to their own whims. The latter contended that MOWA attempted to monopolize the gender field and did little to solicit the opinions and skills of civil society. The tensions between MOWA and the NGOs would culminate in a 2011 standoff over the status of the women's shelters (detailed in chapter 4), but they also played a role in the development of the EVAW law. The fact that MOWA had drafted and submitted the EVAW law without including NGO staff, many of whom worked with shelters or provided legal aid to abused women, had upset members of this community. One of the Afghan activists later told me, "In 2005, MOWA started to draft a law. They invited the Supreme Court, Kabul University, people from the Ministry of Justice. This law was more like a code of ethics, very vague, a very weak law. They were hiding it from civil society. Actually civil society only got a copy of it around [International] Women's Day, when the draft was presented to the media."[10]

In a bid to create a stronger law, a group of civil society activists—the Afghan Women's Network, the Afghan Independent Human Rights Commission, Rights and Democracy, Humanitarian Assistance for the Women and Children of Afghanistan—together with UNIFEM, started to work on a revised draft, reluctantly presented by MOWA to the *Taqnin* in late 2007.[11] Shortly thereafter, however, yet another draft was submitted, this one by the Women's Affairs Commission of Parliament. This draft, no more than four pages long, was perceived by other participants in the process as a blatant attempt by the female MP chairing the commission, Qadria Yazanpardast, to counter criticism that she could point to no tangible achievements so far in her role as chair. She denied this, stating that she had been unaware of the drafts others had produced and merely had wanted to give Afghan women "a gift on Women's Day."[12]

The *Taqnin* set out to create a single version from the three competing drafts, effectively discarding the third, short draft from the Women's Affairs Commission. In early 2009, as the *Taqnin* was nearing the completion of its work on the EVAW law, concern over the Shia Personal Status Law was deepening and women's rights activists and donors started to look to the EVAW law as a possible counterbalance. The Shia law had created a storm in Afghanistan and abroad when details about it leaked to the international press. The law had its origin in the Constitution's article 131, which recognized the right of Shias to apply their own jurisprudence in matters of family law. This was a breakup of the monopoly that Sunni jurisprudence had hitherto maintained in official Afghanistan, and to many Shias, it represented a historic recognition of their existence. Predictably, when an initiative to codify a personal status law based on Shia (Jafari) jurisprudence got underway, it quickly became entangled in identity politics (Oates 2009; Chaudhary, Nemat, and Suhrke 2011). Drafted under the supervision of prominent Shia cleric Asif Mohseni, seemingly on his own initiative, the law was an excessively detailed and conservative codification of Jafari *fiqh*. Among its contentious articles were

provisions compelling wives to sleep with their husbands every fourth night and to apply makeup on their husbands' request, articles stating that women could not leave the house without their husbands' permission and that obedience and sexual submission were obligatory in order to receive maintenance, and a number of articles permitting marriage with underage girls.

The Shia law passed through Parliament in obscure circumstances, prevented from proper distribution and discussion. Many Shia MPs were told that the important thing was to get a separate family law for Shias and that questioning the content of the law should be avoided, because it would risk derailing the entire process. Conservative Sunni MPs argued that, as Sunnis, it was not right for them to debate the law, and MPs with a more secular outlook struggled to obtain copies of the draft and to find out when and where debates about it were taking place (Chaudhary, Nemat, and Suhrke 2011). As the law was quickly passed in both houses of Parliament and was signed into force by the president, details about it eventually appeared in the international press, creating outrage in Western countries (Boone 2009; Gall and Rahimi 2009). At this point, human rights networks in Kabul, who had been trying to mobilize attention to the Shia law, received a sudden explosion of international support. However, by then, these networks had experienced much difficulty in accessing the process around the Shia law—obtaining the current version of it, finding out where in the parliamentary system it was, and even engaging with the text, which was complicated and full of Arabic legal terminology. Given the difficulties they had faced in attempting to revise the Shia law, the networks had started to think of the EVAW law as a counterpoise to the Shia law. This line of reasoning was made possible by the fact that the EVAW law, like many laws promulgated at the time, contained an article stating, "The provisions of this law, if contradicted with provisions of other laws, shall prevail" (article 43).

That the EVAW law could prevail over the Shia law was evidently also an idea that President Karzai and the minister of justice found convenient. They were keen to placate the constituencies who had promoted the Shia law, but at the same time, they needed to address the anger of women's rights activists and the donor community. Signing the EVAW law instead of revising the Shia law meant that they would stay clear of accusations of giving in to Western pressure. Thus the logic presented at the gathering on July 19, when the president had assembled a handful of female politicians and officials, was that the Shia law would be invalidated by the EVAW law. One of those present, a female MP, later told me that when she pointed out that the Shia law still contained problematic articles, they tried to "bribe" her with the EVAW law. Finding little support from the others present, she eventually endorsed the signing of both laws.

> When I was in the office of the president, he asked me if I was happy with the [Shia] law. I said, "We are very happy, Mr. President, but there are some articles that we

would still like to change." The Shia law had an article about orphans that seemed to permit child marriage, and I had suggested that to avoid this, there should be a minimum age of marriage at sixteen, or at least fifteen. I also raised the article that linked maintenance with obedience, the right of the husband to not give food if the woman is not obedient. [I said,] "In Iran, this article has proved difficult, because what exactly does it mean to be disobedient, and who can prove it? So, in the end, they removed the article. We should do the same in Afghanistan. Also, polygamy should not be unconditional, but by permission of the court."

I spoke about these things, and the president said, Okay, I will send it back one more time to the [Shia] ulema. [Another woman present] then said, "No, it's okay. Don't send it back; Mosheni will be upset." The minister of justice was saying, "Look, you have the EVAW law." They were trying to bribe me with the EVAW law. All of them were saying that the Shia law is okay. What could I do? And [the minister in charge of] MOWA was there, but she did not say anything."[13]

The Shia Personal Status Law had already been ratified by Parliament, but the signing of the EVAW law was based on article 79 of the Constitution, which allowed room for the president to adopt legislation during parliamentary recess in "emergency situations." Decrees signed by the president in this vein became laws upon signing but were to be submitted to Parliament within thirty days of the first session of the National Assembly, who would then have the power to reject the laws. Whether the circumstances at this time qualified as an "emergency situation" was perhaps debatable. The main motivation of the president was perceived as the need to placate constituencies who had protested the Shia law, and they, in turn, tended to see the signing of the EVAW law to be more important than procedural issues.

The EVAW law was then duly sent to the Parliament for review and ratification. Supporters of the law became increasingly worried that it would suffer significant revisions at the hands of conservative MPs that would dilute the value of the law or even turn it into an instrument of repression of women. Some people suggested that it would be better to withdraw it from Parliament and keep it as a presidential decree for the time being—or to arrange a deal with the speaker to quickly introduce it to the plenary on a day when important conservative MPs were absent. But the Women's Affairs Commission in the Lower House, tasked with preparing the law for plenary debate, instead sought to follow due process. Its chair, Fawzia Koofi, distributed the law to all the eighteen parliamentary commissions, which would send representatives to the Joint Commission, where the law would be discussed before it was brought to general debate.

The parliamentary proceedings were also a final opening for international legal professionals from the Criminal Law Reform Working Group (CLRWG) to improve the EVAW law in technical terms. This was a joint Afghan and international group, chaired by the United Nations Office for Drugs and Crime (UNODC) and mandated to ensure consistency and coherence in the field of Afghan criminal law,

where a number of standalone pieces of legislation were being introduced. The group had already submitted comments on the EVAW law earlier, when *Taqnin* had forwarded them a draft, but their comments had been mostly ignored. Now, having—in their words—"intercepted the law" in its new version, when it had been discussed at one of the regular gender coordination meetings for donors and aid agencies in Kabul, they were unsettled when they discovered that the law still contained technical flaws.[14] However, among the Afghan women's rights activists and MPs who had supported the law from its inception, there was little interest in introducing revisions at this point. They argued that the chief purpose of the law was to make a political statement: to create awareness of the problem of violence and abuses against women and to make a stand against impunity for such acts. Introducing changes now—especially if they appeared to come from foreign quarters—was too risky and could play into the hands of conservative opponents.

After the individual committees had submitted their proposed amendments, the law was discussed in Joint Commission meetings. Early on, a dividing line between the liberal and mainly female MPs and a smaller group of conservative male MPs, led by Qazi Nazir Hanafi from Herat, who mostly had jihadi backgrounds, became evident. As will be described in more detail below, discussions crystallized around three issues: the question of beating, which some claimed was sanctioned, up to a point, by the Quran and was therefore beyond discussion; the right of fathers to marry off their underage daughters; and conditions for polygamy. The atmosphere in the meetings became increasingly aggressive as a larger number of conservative MPs started to attend. In the end, the meetings were suspended, after a verbal fight between a representative from the Ministry of Women's Affairs, brought in by the Committee on Women's Affairs, and a male MP belonging to the jihadi group. Following an exchange of insults, the conservative MPs all walked out, declaring that an affront to one of them was an insult to them all. They refused to return to discussions until a personal apology was offered and until their remaining demands were met. These demands centered on waiving the need for a husband to get the permission of his first wife for polygamous marriages, amending provisions that could be interpreted as limiting a husband's prerogative in terms of sexual access to his wife, an exemption for fathers regarding imprisonment in cases of underage marriage, and the use of fines as punishments, which they argued was un-Islamic.[15]

The clashes in the Joint Commission gave ammunition to those who had suggested that the law was better left as a presidential decree and that the parliamentary process should be abandoned. They argued that the law risked being rejected outright, which would mean that the presidential decree that had enacted the EVAW law would become null and void. Even if this did not happen, the revisions demanded by conservative MPs could result in a much weaker law than what had been secured through the presidential decree. Key female MPs in the

Women's Affairs Committee, who insisted that the law should remain on Parliament's agenda, such as Fawzia Koofi and Sabrina Saqeb, were accused of using the parliamentary ratification process to put their stamp on the law and to claim credit for delivering it, even if this could mean losing the EVAW law altogether.

Western embassies were becoming similarly frustrated over the parliamentary process. They had lobbied parliamentarian powerbrokers such as speaker Yunus Qanooni to get the law approved in Parliament, but to no avail, and several members of the diplomatic community in Kabul told me that it might perhaps be preferable to leave it as a presidential decree for the time being.[16] By early 2010, the original supporters the EVAW law had succeeded in removing it from the parliamentary agenda. At this point, supportive government officials, women's organizations, and donors were already working to support the implementation of the law as it had been decreed, and reports of prosecutions based on the law were starting to trickle in.

Yet this was not the end of the parliamentary tussles over the EVAW law. In 2011, following the 2010 parliamentary elections, Fawzia Koofi reintroduced the law to the Joint Commission—many of the members of which were now newly elected MPs. Several of the questions over which there had been disagreement were reopened, such as polygamy and forced and underage marriage. As before, Qazi Hanafi and his legislation commission in Parliament[17] were the law's most ardent critics, and on some issues, fronts had hardened. Meetings were often conducted solely between Fawzia Koofi and Qazi Hanafi, with other MPs unclear about the exact process being made. When, in the spring of 2013, Fawzia Koofi stated her intention to introduce the EVAW law to a plenary vote, other MPs and civil society groups protested that they had little sense of whether the law would pass or be rejected. Despite their campaign to make Fawzia Koofi change her mind—or in other ways remove the law from the parliamentary agenda—Fawzia Koofi proceeded to introduce the law to the plenary on May 18, 2013. She had claimed in advance that she had persuaded Qazi Hanafi to be absent,[18] but if that was the case, she had miscalculated badly. Hanafi and like-minded MPs were there and made several inflammatory remarks, calling the law contrary to Islam and suggesting that its ratification would lead to revolution on the streets. After only fifteen minutes, speaker Abdul Raof Ibrahimi declared the debate over, saying that a special commission should be formed in order to investigate whether the law was in accordance with Islam.

Fawzia Koofi, badly discredited by the failed initiative, made no further attempts to introduce the law for ratification. Internationally, the truncated debate was reported as a sign that Afghan women's rights were in the process of backsliding (Sethna 2013; Arghandiwal and Aziz 2013). This was because the EVAW law—despite never having been approved in Parliament, had gradually come to gain the status, both internationally and nationally, as the singular most important

achievement of the Afghan women's rights community. Significant funds had been allocated toward the dissemination of, training for, and monitoring of the law. It had featured prominently in Afghanistan's first CEDAW report, submitted in 2011, and its implementation was a high-up item in donor assessments of overall progress in the country. The fifteen-minute debate in Parliament was thus perceived by many as a massive setback. This was the case even if, technically, the debate had actually done nothing to change the status of the law one way or the other.

"WHAT IS THE BASIS FOR THIS LAW?" DISCURSIVE STRATEGIES AND HIERARCHIES

Having sketched the trajectory of the EVAW law from its initial conception to its possible demise, I now turn to the debates over its content. Below I explore which articles proved most contentious, the discursive parameters of the various forums where the law was discussed, and what this says about the intersections of gender and broader fields of power.

The Text of the EVAW Law

The law that was enacted as a decree in July 2009 and served as the basis of the discussions in Parliament consisted of forty-four articles. It enumerated twenty-two forms of violence against women and provided punishments for them, which ranged from fines and various lengths of imprisonment to the death penalty, the latter in cases where the victim was killed as a result of a sexual assault.

Forms of Violence Listed in the EVAW Law

1. Rape
2. Forced prostitution
3. Publicizing the identity of a victim in a damaging way
4. Burning or use of chemical substances
5. Forcing a woman to commit suicide or to self-immolate
6. Causing injury or disability
7. Beating
8. Selling and buying women for the purpose of or under pretext of marriage
9. *Baad* (giving away a woman or girl to settle a dispute)
10. Forced marriage
11. Preventing the choice of husband
12. Marriage before the legal age
13. Cursing, humiliation, or intimidation
14. Harassment or persecution
15. Forced isolation
16. Forced drug consumption

17. Denial of inheritance rights
18. Denial of the right to property
19. Denial of the right to education, work, and access to health services and other rights provided by law
20. Forced labor
21. Marrying more than one wife without observing Article 86 of the Civil Code
22. Denial of relationship

Of physical acts, the EVAW law named rape, statutory rape, immolation and acid attacks, beating, and violence leading to injury or disability as acts of violence against women. The punishments for these crimes were stipulated mostly by reiterating the punishments already provided in the Penal Code. However, whereas the Penal Code had been unclear about whether rape was a crime distinguishable from adultery (i.e., if one of the parties could be considered an innocent and violated victim of the act), the EVAW law differentiated between rape and adultery by using the term *tajavoz-e jinsi* (literally, "sexual violation") to refer to rape. Unlike *zina, tajavoz-e jinsi* was not a term originating in Islamic *fiqh* (on *fiqh,* see chap. 1, n. 2); it was a newer term in Afghanistan, used mainly in colloquial and media discourse to refer to rape.[19]

The EVAW law stated that if a person commits rape *(tajavoz-e jinsi)* of an adult woman, the offender "shall be sentenced to continued imprisonment in accordance with the provision of article 426 of the Penal Code," and if it results in the death of the victim, the perpetrator "shall be sentenced to the death penalty" (article 17).[20] It also stated that consensual sexual relations with an underage girl should be punished in the same way as rape. The law was therefore significant in making rape a crime distinguishable from adultery and in making statutory rape (sexual relations with a minor girl) a crime on par with rape.

As for punishments for causing injury and disability, the EVAW law merely reiterated specific articles in the Penal Code. In the view of some, simply referring to the Penal Code made parts of the EVAW law superfluous, since it was repeating punishments already provided in existing laws. However, many civil society supporters of the EVAW law argued that it was nevertheless important to have a law that specifically stated that punishments would apply equally if the victim of violence was female. In existing legal practice, this was often not the case, they argued, especially when a woman was abused by a family member.

In addition to the forms of physical violence already mentioned in the Penal Code, the EVAW law, more controversially, made a number of more minor offenses punishable. A person who beats a woman but causes no damages or injury was to be imprisoned for no more than three months (article 23), harassment or persecution of a woman was to be punishment by a prison sentence of no less than three months (article 30), and the same punishment was provided for those guilty of verbal abuse, degradation, and even cursing a woman (article 29).

As with the existing legal framework, forced marriage and *baad* (giving away a woman or girl in marriage as compensation or as a conciliatory gesture) were deemed punishable offenses. However, the punishments provided for these crimes in the EVAW law were considerably stricter, a minimum of two years imprisonment for forced marriage and up to ten year for the act of *baad.* Moreover, the EVAW law also criminalized underage marriage, selling a woman for the purpose of marriage, and preventing a woman from marrying according to her choice. The law also specified numerous other violations of the Civil Code and civil matters as punishable offenses. Polygamy in breach of the conditions set out in the 1977 Civil Code[21] was to be punished by a short-term imprisonment of no less than three months. Depriving a woman of her inheritance or property, denial of an actual familial or marital relationship to a woman (for whatever purpose), prohibiting a woman from pursuing an education or work, forcing her into isolation (for instance, by stopping her from seeing her parents), and forcing her to use narcotics were all to be punished with short prison sentences of one to six months. In addition, forced labor was to be punished with a six-month imprisonment, and forcing a woman into prostitution or to commit suicide was to be punished with prison for up to ten years.

Debates Prior to the Final Decree of the Law

Before the EVAW law was decreed in July 2009, it went through a number of changes.[22] For instance, the draft that had been prepared by civil society activists and UNIFEM, which had been handed over to the *Taqnin,* contained elaborate and quite radical provisions, such as protective rulings and restraining orders and the suggestion that domestic violence could be prosecuted without a complaint from the victim.[23] This draft also went much further in attempting to diminish the power of husbands over their wives. Article 53 made marital rape a crime, stating that "any intercourse with a wife without her consent is considered rape." It said that polygamy was to be subject to the approval of the courts, who would seek the first wife's approval, and in any case, a second marriage could be approved only if the first wife was barren, insane, or seriously ill. Violations would be punishable with up to five years in prison. The draft stated that rape victims could not be detained or tried for *zina,* and that husbands accusing their wives of not having been virgins when they married could be punished for the *hadd* crime of *qazf* (slander, false accusation of *zina*).[24] The draft also abrogated article 398 of the Penal Code, which made the killing of adulterous female relatives a minor crime.

MOWA was uncomfortable with many of these provisions. In interviews with me, MOWA staff recalled the civil society draft as being too far removed from Islamic law. The head of MOWA's legal department—one of the main initiators of the law—told me that she thought that the civil society draft had been influenced by foreigners (i.e., Westerners) and, as a result, did not sufficiently incorporate

sharia. This, she felt, would reflect badly upon MOWA, who had officially submitted the law, and could put her ministry in conflict with the Supreme Court and the ulema council.

> Civil society made their own draft. They had included some input from foreigners and, as a result, the draft was not based on sharia. . . . Seeing that there was no reference to sharia, I refused to present this draft as a MOWA draft. . . . If we had accepted that, it could have created some problems for MOWA. What I suggested was that—okay, as we had already sent the MOWA draft [to *Taqnin*], I can help civil society to send a copy of their draft to *Taqnin* as well, [and] as [a] result, the final law will be even more enriched, as material from this draft could also be used.[25]

In the end, the law that was finalized by *Taqnin* in early 2009 was a much shorter and simplified version, and it did not include the more radical provisions from civil society. It also had some technical shortcomings, which was what most international agencies focused on in their subsequent work with the law. Representatives of UNIFEM, UNAMA, and UNODC protested what they argued was excessive and unenforceable criminalization, such as the inclusion of verbal degradation and cursing as crimes and up to twenty years imprisonment for sexual harassment like groping.[26] Some of the language in the law was impossible to work with, they said, such as the terms "forced prostitution" or "forced suicide."[27] They also wanted the EVAW law to explicitly amend existing provisions in the Penal Code when the two laws differed, arguing that not doing so would lead to a contradictory legal framework causing confusion for judges and prosecutors. Moreover, since the law focused only on crimes against women, U.N. legal advisors argued that it created a loophole in which sexual violence and assault against boys and men were effectively decriminalized. They suggested that the law be renamed the Law on Elimination of Violence against Women and Sexual Violence.[28] Additionally, they proposed that the law define rape in specific terms: "the penetration of the vagina, anus or mouth with an object or body part, accompanied by violence, threat or deceit."[29]

These suggestions were mainly rejected by the *Taqnin* and the Afghan women's rights activists who had been promoting the law. The head of the *Taqnin,*[30] an experienced and generally respected official who had worked in the Ministry of Justice for decades, explained to me that he had thought the suggestions to amend the Penal Code was unrealistic and would complicate matters, when there was an imminent need for the EVAW law due to the suffering of Afghan women. He also thought that the suggestion to include a physical definition of rape would have pushed the sensitivities of Afghan society too far. It would have been very embarrassing for the *Taqnin,* he argued, to present such phrases to, for instance, the Supreme Court.[31] Moreover, according to the view of the *Taqnin,* the EVAW law did not decriminalize sexual violence against boys and men, as this was already included in the Penal Code and still valid.

The Afghan women's rights activists who discussed the international inputs also objected to many of the suggestions. They argued that to specifically repeal or amend other laws would not be accepted by the *Taqnin* or the legislators and, as a result, the law would be rejected in its totality. For instance, one senior Afghan staff member at an international women's rights organization stated that the judges who had implemented the Penal and Civil Codes for years (and sometimes decades) believed that these laws "were written in stone" and would revolt against open attempts to amend them. He reasoned it would be unwise for the activist organizations to "make [their] intentions clear" by explicitly announcing that some of the articles in the EVAW law were, in fact, different from those of the existing laws. It was better to simply refer to the Penal Code—or, in the cases where the EVAW law differed from the Penal Code, to make separate provisions without specifically amending the latter. And since the EVAW law contained an article stating that it overrode all other laws, this would not be a problem.[32]

The disagreements between the international legal experts and the Afghan officials and activists reflected a different understanding of the purpose of the law. Whereas the former emphasized the need for a technically sound law and one that was in line with other laws in terms of punishments, the latter were focused on the symbolic and political impact of the law. They argued that given the widespread discrimination against women in Afghanistan, a law that was solely for them and that provided harsh punishments would go some way in rebalancing their position in society and the legal system, even if it could not be implemented in full.[33] This line of argument also testified to a top-down way of thinking about political change, a point to which I will return below.

"Good Women Do Not Need This Law": Discussions in Parliament

Many of the people who had supported the EVAW law were worried that it would meet with considerable resistance in Parliament, and as it turned out, their fears proved justified. During the autumn of 2009, seven meetings were held in the Joint Commission debating the law.[34] The Women's Commission, tasked with chairing the meetings and functioning as a secretariat for the revisions in Parliament, had added their own revisions to the law. These were minor and without consequences for the overall protection and rights afforded to women in the version that had been decreed that summer. Indeed, one of the members of the commission confided that some of revisions were silly and had been put there simply so that they could be easily removed in order to show flexibility to their adversaries.[35] In addition, the other commissions had reviewed the law, and some—three in total—had submitted proposed amendments in writing. Of these, the amendments submitted by the Legislation Commission of Parliament were the most comprehensive. Its representative in the joint discussions, Qazi Nazir Ahmed Hanafi—a former *mujahed* from Herat—emerged as the leader of the conservative MPs who sought

to block the law or amend it significantly.[36] The proposed amendments by the Legislation Commission, which would be the focal points of discussions in the Joint Commission, centered around reinstating in the EVAW law the prerogatives of husbands and fathers over their wives and daughters, justified by references to the Quran and Islamic jurisprudence. They included objections to a set minimum age for marriage, as it was argued that sharia law permits marriage of a girl when she has reached maturity (i.e., puberty); the right of a father to marry off his underage daughter without her consent; the right of a husband to demand that his wife not leave the house without his permission; the right of a husband to beat his wife under certain conditions, as stipulated by sharia; and the right of a husband to marry several wives, provided he observes justice between them.[37] The amendments also took issue with the tendency in the law to impose prison sentences for actions such as cursing or preventing a marriage, arguing that these matters should not be criminalized and that, in general, the law risked "breaking up the family" through excessive use of imprisonment.

The first item of controversy that arose in the discussions was the question of beating or battery *(lat-e kop).* Arguing that the Holy Quran prescribes beating as a last resort in cases where the wife disobeys her husband, several MPs claimed that article 5(7), which listed beating as a form of violence, was therefore contrary to the Quran.[38] Although everyone present agreed that beating resulting in visible injury was not permissible, the head of the Legislation Commission and others contended that it was unclear whether or not the article also prohibited what they saw as quranically prescribed beating, and, therefore, the article was problematic. Going against the Holy Quran simply based on the wishes of a few random women was unacceptable, the Legislation Commission stated in their submitted amendments.[39] While some protested this literal reading of the Quran and argued that it was outdated, it was agreed that *beating* should be defined in such a way that it was clear that it did not refer to the quranically prescribed disciplinary action. However, at a later meeting, when the head of the Legislation Commission was absent, the article was quickly approved in its original form.

Another controversy in the discussions was over the marriage of underage girls and the prerogative of fathers to arrange marriages for their daughters against their will, an issue that resurfaced several times. With reference to the rights of guardianship in Hanafi *fiqh,* it was suggested, first, that setting a minimum age for marriage was against sharia and, second, that in cases in which girls were young and wanted to marry "inappropriately," fathers were better positioned to make decisions about their marriage and hence should be permitted to override their daughters' choices and force them to marry someone more appropriate—(one MP offered the example of a daughter wanting to marry a man of a lower class: "Do you want to marry your daughter to someone smelly and dirty, someone who cleans toilets?").[40] The amendment submitted by the Legislation Commission read: "If

the father is fully authorized [competent] and considers all aspects of the marriage and gives the dowry to his daughter, the girl's refusal shall not be accepted, as her foresight about the future is much less than her father's."[41] This text was not incorporated, but the Joint Commission agreed that "kind fathers and grandfathers" should be exempted for punishments for arranging an underage marriage.[42]

The question of the extent to which polygamy should be regulated—and to what extent breaches of such regulations punished—was another matter where the women MPs met with vehement opposition from the conservatives. In its written amendments, the Legislation Commission had stated, "Marrying more than more wife is not violence, it is a [natural] sexual drive *(khast-e jinsi)*. Considering marrying more than one wife violence is contrary to the provisions of the Holy Quran."[43] Female MPs argued that the conditions under which polygamy could be permitted were not stricter than what was already stated in the Civil Code, though they conceded that two years' imprisonment for breaches—a suggestion they had themselves made—was perhaps somewhat excessive. At the time that discussions in Parliament broke down later that autumn, there was still no agreement on the article on polygamy.

Article 17, on rape, was contested by some of the conservative MPs, who argued that the punishment was too strict. In particular, they protested that the law undermined a husband's right to intercourse with his wife, even if there was no explicit mention of rape within marriage in the law. In general, the conservative male MPs questioned the need for stricter and better-specified punishments for rape (including a ban on presidential pardons on rapes and some other crimes). The background to the proposed ban on presidential pardons was a series of high-profile rape cases in which the convicted perpetrators had been set free by pardons issued by President Karzai or the opaque workings of the Supreme Court, after serving only a brief period of their sentence. Many of the women in the Joint Commission wanted to keep this ban in the EVAW law (and, in private, some even proposed the death penalty for rape). But the male conservative MPs argued that such a ban was unconstitutional. They also worried that because the law dealt only with rape and did not mention consensual *zina*, it suggested that the latter was not an offense at all.

As the discussions proceeded, different female MPs suggested some additional acts that should be added to the twenty-two forms of violence against women that the decree had listed. Two of these were readily accepted in the Joint Commission: the nonpayment of maintenance (*nafaqa*, a wife's allowance, normally to cover necessities such as food, clothes, and medicine) and preventing a woman from exercising her political rights.[44] A third suggestion, however, proved more controversial: honor killing *(qatl-e namus)*. In fact, it was to be the issue over which discussions broke down. The *Taqnin* department in the Ministry of Justice had removed honor killing from an earlier draft, arguing that the crime of murder was

already covered in the Penal Code. In Parliament, there were no suggestions to amend article 398 of the Penal Code, which reduced punishment for the killing of female family members and their lovers caught in flagrante delicto to a maximum of two years imprisonment. Everyone was apparently in agreement that there was such a thing as "real" or legitimate honor killing when a man discovered his wife or female relative in the act of adultery. Rather, the problem was over a man who killed his wife or female family member and then falsely or casually claimed that she had been engaged in an adulterous act. The representative of the *Taqnin* and the conservative male MPs contended that this act simply amounted to murder and was already covered in the Penal Code. To single it out as a special category of crime in the EVAW law was unprecedented in Afghan legislation and, moreover, actually amounted to eroding women's legal protection. Female parliamentarians and representatives of MOWA argued that because this kind of murder was so common, it should be included in the EVAW law so that the difference between legitimate and illegitimate honor killings could be explained, and the latter punished appropriately. As one female MP stated, "In so many cases, there was no [sexual] relation—there was no bed—but the woman was killed. This is a problem, and we should not ignore it. What is the punishment for those who kill their innocent daughter?"[45]

Eventually, in the last meeting, most participants agreed that in cases of honor killing, the EVAW law would state that if article 398 of the Penal Code was not applicable (i.e., if the woman was not directly caught in the act of adultery), the perpetrator should be punished for the crime of murder. This was a remarkable concession from the women's side—an agreement that men could take the law into their own hands when "real" honor was at stake. But before they could proceed further, one of the conservative male MPs declared that he did not agree with the proposed solution. Why this was the case never became clear, because the discussion suddenly escalated. A representative of MOWA quickly retorted that his agreement or disagreement did not matter, as the majority was in concord. The MP, infuriated, started insulting the MOWA representative: "You are a prostitute! You have given money to get this position. Unlike you, I am a representative of the people!" To which she responded, "You are the one who gave money to get your position! You gave banquets to get votes. I am a professor, a teacher. I do not care for illiterate men like you."[46] In a show of loyalty to a fellow *mujahed*, [47] the conservative male MPs all got up and left the room, stating, as they departed, "We shall see how you will be able to pass this law in the plenary." Bewildered, the female MPs apologized to the MOWA representative, but they asked her not to attend any further meetings. "These men are used to us," they said. "We know how to deal with them, but they do not accept outsiders."

In 2011, a year and a half later, when the discussions were reopened, many of the MPs were new, and the original decree from 2009 was used as the starting

point.[48] It was the same issues that caused debate: underage and forced marriage, polygamy, and the question of "permissible" beating. In addition, following the 2011 controversy over the women's shelters (see chapter 4), the shelters had now become one of the issues where Hanafi's commission refused to compromise. Rather than by shelters, the commission proposed that victims of violence should be protected by parents or other *mahram* individuals,[49] under the supervision of a judge.[50] Although Fawzia Koofi later claimed that the Joint Commission, through personal meetings between herself and Hanafi, had reached agreement on everything but a minimum age of marriage, most of these issues resurfaced during the plenary debate in May 2013, where several conservative MPs protested the law's restrictions on polygamy, permissible beating, and forced marriage, as well as its references to women's shelters.

The discussions over the EVAW law had revealed particular discursive hierarchies and strategies. Occupying absolute authority in the discussion were references to the Quran and sharia. The female MPs made systematic attempts to ground their arguments in sharia, often emphasizing that they had sharia-based reasons for their claims. This was only partially successful, as none of them could speak Arabic or was thoroughly conversant in Islamic law, and the conservative MPs often outmaneuvered them. In the Joint Commission, the head of the Legislation Commission was often the only person present who was able to quote at length in Arabic and who claimed detailed knowledge of Hanafi *fiqh*. This put him in a unique position, and others frequently deferred to him because of it.

The frequent references to sharia effectively also undermined the authority of Shias. Many of the more liberal Islamic scholars in Kabul were Shia, often having studied in a more pluralistic scholarly environment in Iran, but their readings of *fiqh* were rejected by the Sunni MPs. When a Shia scholar was trying to make an argument about what Islamic law said about underage marriage, a Sunni MP responded condescendingly, effectively rendering him irrelevant to the debate: "My dear, you are Jafari. I care only for Hanafi and Maliki *fiqh*."[51] This was a barely concealed reminder to the scholar that, as a Shia, his historical place in the religious hierarchy of Afghanistan was one of insignificance.

During the plenary debate in May 2013, religious arguments were particularly pronounced. Many of the conservative MPs angrily spoke against the EVAW on religious grounds. One asked, "God *[Khudawand]* says that you can marry up to four wives. . . . What should we do—change God's law?"[52] Another, Mullah Torakheil, argued, "Mr. Speaker, This law is in contradiction with several aspects of the verses of the Quran. Article 3 of the Constitution explicitly states that those laws that are contrary to sharia and the sacred religion of Islam have no validity whatsoever!" Abdul Satar Khawasi even questioned President Karzai's judgment, given that he had signed a law so obviously in contradiction with Islam: "I am surprised. . . . Yet again, I am asking the presidential palace—how was possible that

the president approved such a decree that contravenes sharia and religion? He has himself promulgated the Constitution, signed it into law, article 3 of the Constitution says that nothing can be contrary to the beliefs of the sacred religion of Islam. But even so, five or six of the provisions of the decree that the president signed are explicitly in contradiction and opposed to the word of God *[Kalamullah]!*"

The 2004 Constitution was another joint reference point for the discussions, and throughout the debates on the EVAW law none of the participants openly challenged the Constitution or any of its provisions. Indeed, as shown above, in the plenary debate, in particular, several of the opponents of the law invoked article 3 of the Constitution, which states that "no law shall be contrary to the beliefs of the sacred religion of Islam." Afghan laws written after 2004 normally started with a reference to specific articles in the Constitution as reasons for their enactment, and the EVAW law presented to Parliament did so as well. It referred to article 24, which stipulated the state's duty to upheld the liberty and dignity of human beings, and article 54, which obligated the state to protect the well-being of the family, the fundamental unit of society, and to eliminate traditions contrary to the provisions of Islam. Earlier, there had been suggestions to also refer to article 22, on gender equality, and article 7, on the state's obligation to abide by international treaties and conventions it had signed, as well as the U.N. Declaration on Human Rights. This had been rejected by the head of the *Taqnin,* probably to avoid making the law more controversial than it already was to the conservatives in the Parliament. Article 22 was, however, invoked by one of the conservative MPs when he protested the EVAW law's blanket ban on pardons for crimes covered by the EVAW law—he argued that this ban infringed on the rights of men.[53]

The 1976 Penal Code was also often defended by the conservative men. Some of them stated that the Penal Code provided a sufficient framework for violence against women, making most of the provisions of the EVAW law, if not the law itself, unnecessary. The 1977 Civil Code, on the other hand, proved less unassailable. When it seemed to contradict their interpretations of sharia, the conservative MPs declared that the Civil Code was of little importance to them. For instance, when many other participants in the discussions protested that the Civil Code prohibited underage marriage, one of the conservative male MPs retorted, "The Civil Code is not the book of Allah. The father has the right to marry off a girl whether she is young or old."[54] Some of the supporters of the EVAW law started to worry that, as a consequence of the parliamentary process, they might end up not only with a significantly weakened version of the EVAW law but also with an invalidated Civil Code, which, in many respects, provided women with rights in relation to marriage (see chapter 1). This, they argued, was a sign that the very idea of putting the EVAW law through Parliament had been a mistake from the outset.[55]

The women MPs were careful not to make references to human rights as a justification for the EVAW law. Likewise, the accusation that the law was in essence

a foreign invention—"a gift from the foreigners" as one legal scholar had contemptuously called it[56]—was never openly stated in the debates. Yet the possibility of such charges being raised—and the risk of their ramifications—existed as an underlying threat, of which all parties were well aware. There was a sense among some of the civil society activists who attended the discussions that the conservative men were trying to tease out an explicit admission that the EVAW law was indeed "foreign" in origin when they repeatedly asked, "What is the basis of this law?" *(Mabna-ye in qanon chi ast?)*. If such a trap was laid, the women MPs successfully avoided it. Instead of referring to human rights or international conventions, they appealed to the importance of nurturing the health of the family, eradicating traditions contrary to Islam, and giving women the rights they were afforded according to sharia, in particular in relation to inheritance, the choice of a marriage partner, and education. The conservative men, in turn, built many of their arguments on claims that the law would "destroy the basis of the family," in particular, by putting fathers and husbands in prison. Some of them also expressed the sentiment, although less openly, that only immoral women were in need of the law: the kind of protection it provided was illegitimate and suspect. In one of the discussions, one of the conservative male MPs rather loudly muttered, "This law is, anyway, for the women of the street [i.e., prostitutes]. Good women living under the protection of Islam have no need for this law."[57] The statement reflected a commonly made assertion that women who left the house on their own were transgressors undeserving of protection or recognition. To feminist Afghans, both male and female, such sentiments were deeply offensive. As a female shelter manager stated to me in an interview: "In Afghanistan, what kind of woman is regarded as deserving of their male relatives' protection and support? A woman who is obedient, loyal, always thinks about the name of her male relatives, one who is silent and tolerates everything. Not one who goes to court to complain, who goes public, who goes outside."[58]

Some hoped that the EVAW law could go some way in challenging the notion that women who ventured into public places without male escorts were forfeiting their rights to safety: "It's important that the EVAW law states explicitly that the government has an obligation to protect women in public places. Because there are these ideas in Afghan culture that good Afghan women are those who tolerate, who suffer, who stay at home and do not open their mouth. And that those who leave the house are not good women."[59]

The strategies at work in the negotiations over the EVAW law in Parliament had revealed a discursive field structured by Islamic terms. Justifying arguments by reference to the provisions of Islam was paramount. But the two sides approached their references to Islam in different ways. The supporters of the law argued that threats to the realization of "true Islam" were Afghanistan's internal conditions and harmful and ignorant traditions (or, occasionally, male power and patriarchy).

For the conservatives, on the other hand, the threat was cast in the form of foreign influence, which could undermine the otherwise strong Islamic foundations of Afghan society. Traditionally, it was alleged, Afghan women sensibly preferred to stay at home under the protection of fathers and husbands. The specter of women's increased visibility, promiscuity, mobility, and subversion of male authority was presented as a novel and dangerous break with these foundations, an unnatural development that could be explained only by atheism and by foreign contamination.

In any case, it was not as if the conservative MPs "won" the debate solely based on the merits of their argumentation. Underpinning the rhetoric of the conservative MPs were more subtle dynamics that made most of the female MPs unwilling to risk a full-on public confrontation and, in the end, led the supporters of the EVAW law to choose a more discreet way of promoting the law and supporting its implementation. In order to fully appreciate the power relations at work—and to assess the strategies that the supporters of the law employed—I turn from substantive debates to the processes through which the EVAW law was conceived, promoted, contested, and (in parts) implemented.

POLITICAL AMBIGUITY AND DISCREET LOBBYING

The process of drafting and advocating for the EVAW law revealed the constraints under which Afghan women's rights activists worked and the strategies they adopted as a result. MOWA existed in an increasingly tense relationship with the assertive and often more radical "civil society activists"—mainly staff in internationally funded aid organizations, along with a small group of government legal officials. Staff at MOWA had been unwilling to share the draft of the EVAW law with them until the day it was handed over to the Ministry of Justice. This upset many of the civil society activists and confirmed their opinion of MOWA as a nontransparent institution that would rather produce substandard work than consult others for help. More dramatic, however, was the sudden presentation of the third draft of the EVAW law, the one written by the then head of the Women's Commission in Parliament, Qadria Yazanpardast. As stated above, Yazanpardast claimed to me and to others that she had been unaware of the existence of the two drafts already produced and merely wanted to present Afghan women with a "gift" on International Women's Day, an occasion widely celebrated among urban groups in the country.[60] Others contested this, however, saying that her draft carried exactly the same title as the other drafts and was clearly an attempt to improve her meager record of achievements by appropriating the whole idea.

Divisions also appeared once the EVAW law reached Parliament. At that point, Qadria Yazanpardast, a Tajik MP and self-declared supporter of the jihad, had been displaced as the leader of the Women's Commission in an acrimonious leadership contest. In her place were two younger, more savvy female MPs, Fawzia

Koofi and Sabrina Saqeb, who played the lead role in attempting to steer the law through Parliament and defend it against conservative assaults. Like Yazanpardast before them, they had links to the opposition group in Parliament, but they were also perceived as being personally beholden to the powerful parliamentary speaker, Yunus Qanooni. They did not succeed in gaining the trust of other female or progressive MPs, who questioned Koofi's and Saqeb's personal commitment to women's rights and accused them of pushing through with a counterproductive process in order to be able to claim the EVAW law as their own legacy.

The competition, at times bitter, that existed between the various actors promoting the EVAW law reflected a broader set of dynamics in Afghan politics: personalization and individual competition.[61] Of this, more will be said shortly, but here I would like to suggest that the international aid given to women's activism was operating in such a way as to reinforce such dynamics. Jad points to the contradictions between NGOs and social movements and the way in which "the NGO structure creates actors with parallel power based on their recognition at the international level, and easy access to important national and international figures" (Jad 2004: 39; also see Jad 2007). Her analysis can be extended to any entity whose existence is largely dependent on international funding. International aid, as a bureaucratic practice, rewards time-limited achievements that can be formulated as the realization of objectives, targets, and benchmarks. Continued existence is dependent on the ability to "deliver" concrete "outputs" presentable in technocratic templates rather than the mobilization of large constituencies and coalitions. To some extent, this could explain the appearance of the three competing drafts and the seeming prioritization of personal aggrandizement and people trying to take credit for the law over the actual quality of the law being passed. For instance, MOWA—which, since its establishment, had been dependent on international funding and which recently had been under fire from both donors and civil society for a lack of tangible accomplishments—was understandably keen to protect the EVAW law as its own achievement and to see it realized sooner rather than later. This was presumably an important reason why, rather than going through a long process of carefully revising the law and anchoring it more broadly within the women's movement, MOWA was anxious to see the law ratified and implemented without delay. The third draft, the one submitted by the head of the Women's Commission in Parliament, was interpreted, similarly, as a strategy to demonstrate her individual achievement—even if it was at the cost of quality and collective gains.

The subsequent promotion of the EVAW law, once a single draft had been consolidated, took place through a small constellation of women's rights activists and diplomats. Rather than seeking broader alliances, in civil society or in Parliament, the law was fast-tracked through a presidential decree in a manner that reflected a small, externally dependent, and top-down women's rights movement more generally. When made aware of the technical weaknesses in the law—how

it contradicted existing laws—the civil society activists and MOWA protested that such issues were of secondary importance. The most important objective was to get the law approved and to start implementing it, thus sending a signal that impunity for violence against women could not be tolerated.

This approach must be situated within the larger practices of lawmaking by decree referred to in chapter 1—devising and promoting a law in relative isolation and as a stand-alone piece of legislation was by no means particular to Afghan actors. As Hartmann and Klonowiecka-Milart (2011) point out, lawmaking by decree had become a standard practice among international consultants and aid workers in Afghanistan, who were often even more oriented toward the technocratic (and political) demands of demonstrable outputs than Afghan women's rights activists were. As reforms in the area of "rule of law" had gathered pace and large donor-funded programs were established in the country, international consultants and aid workers often became involved in what Hartmann and Klonowiecka-Milart fittingly term "résumé law reform" (2011: 282). In the field of justice sector reform in Afghanistan, as with the aid industry more generally, tangible results was what mattered—both in reports sent to headquarters and funders and on the résumés of staff and consultants, who typically were on short contracts. Drafting laws was an appealing activity in such a context. Laws were relatively straightforward to produce for expat staff, and they represented a concrete achievement. It was such rationales, rather than coherent efforts to improve the Afghan legal framework overall, that often drove the production of new laws. At other times, they originated in the specific preoccupations of small groups of Westerners or Afghans, resulting in stand-alone laws on issues such as money laundering, terrorism, anticorruption, and antinarcotics.

Many of these stand-alone laws had been conceived and drafted in their entirety by actors outside of the Afghan government. And then, through political pressure and informal lobbying, laws were typically enacted by presidential decree (Chaudhary, Nemat, and Suhrke 2011). In fact, I was told that the U.S. embassy had, one summer, sent an email out to various international aid organizations and actors in the field of the rule of law, wondering if anyone had suggestions for laws that they wished to see enacted as presidential decrees before the Parliament was due to return from their recess. (Once Parliament was in session, laws could not be enacted by decree but had to be presented to Parliament before coming into force.)[62] The drafters of such laws often did not amend or even consult the existing legal framework, instead merely "using as an transitional provision an omnibus clause that declared as abrogated any laws that were contrary without listing the laws and provisions that it abrogated" (Hartmann and Klonowiecka-Milart 2011)—a habit that produced incoherence and inconsistency in the legal corpus as a whole. Such practices also reinforced the opaque dynamics of legislative processes, where informal connections to the president and access to his gatekeepers were key determinants (Chaudhary, Nemat, and Suhrke 2011).

In the case of the EVAW law, these kinds of dynamics were particularly evident in the period leading up to its presidential ratification in July 2009. After the fiasco of the Shia Personal Status Law, which had embarrassed all NATO governments vis-à-vis their home constituencies by making it obvious that claims to liberate Afghan women could not be sustained, diplomats—particularly U.S. diplomats—took a strong interest in the EVAW law.[63] They thought that the EVAW law, which at that point was being reviewed in the Ministry of Justice, could to some extent neutralize the Shia law. This was also what many Afghan MPs, human rights officials, and, indeed, the minister of justice himself argued. As is evident from embassy cables, the U.S. embassy had repeatedly discussed the law with Minster of Justice Sarwar Danesh. A cable from May 2009 read: "[The political consular] told Danesh the Embassy had studied the EVAW bill and found it to be a strong piece of legislation. We were disappointed it was not moving through the Administration as quickly as we expected. We informed Danesh that [U.S. Ambassador-at-Large for Global Women's Issues] Verveer planned to visit Kabul in late June. We would welcome cabinet approval prior to her arrival. . . . Danesh pledged to work on getting the bill through Cabinet approval prior to the end of June" (Embassy of the United States Kabul 2009b).

Therefore, although the U.S. government did not want to take public credit for the EVAW law, as this would certainly have harmed its status by giving ammunition to those who sought to frame the law as a "foreign gift"—it also participated in (and reinforced) the kind of law reform where isolated, symbolic, and sometimes hollow achievements obtained through informal pressure and negotiations was pursued over more anchored, long-term gains requiring broader coalitions.

There were, however, other important reasons why such strategies prevailed. Chief among these was the dynamics in Parliament, described by Larson (2009) as a "culture of political ambiguity." This political ambiguity—or "a reluctance to disclose political allegiances" (12)—in turn hindered the formation of blocs and the articulation of platforms and made the development of a pro-women alliance that could secure legislation such as the EVAW law in Parliament difficult. It had several causes. Political parties and issue-based politics never had a strong position in Afghanistan. The electoral system after 2001 also discouraged the formation of political parties through the obscure system called the Single Non-Transferable Vote (SNTV), which recognized only individuals and not political parties (Reynolds 2006). President Karzai and many in his circle who had put forward this system argued that political parties and their divisive ways were to blame for the violence that had plagued Afghanistan since the 1978 coup (Humayoon 2010), a particular historical narrative that—incidentally—also favored executive power. Larson also argues that the importance of patronage politics served to discourage open and committed political allegiances, since this kind of politics depends on the possibility of shifting loyalties.

However, the most important reason for this political ambiguity, Larson suggests, was the lack of security. As she points out, Afghanistan had little history of political pluralism and tolerance of opposition (2009: 13), and the widespread caution about expressing political positions and allegiances should therefore be unsurprising. The members of the former jihadi parties[64]—who also dominated Parliament (Ruttig 2006)—had a comparative advantage in such a climate. Their leaders were widely believed to be able to exert intimidation and coercion. Even if such assumptions were often based on rumors, they nonetheless served to keep opponents in check.

For women, there were additional elements to these dynamics. Women were invested with particular importance when it came to assessing Afghanistan's observance of Islam. To the mujahedin, having been rehabilitated to power as partners to the U.S. invasion that overthrew the Taliban government, presenting themselves as the guardians of Islam was often a powerful way of demonstrating nationalist credentials and distancing themselves from the infidel military and diplomatic presence. Paradoxically, despite having returned to power through Western military force, they managed to boost their influence by tapping into popular resentment *against* the Western military operations. Positioning themselves as the authorities on Islam was useful to ward off other forms of opposition. When defending a controversial law that provided a blanket amnesty for the considerable abuses committed during the civil war (see chapter 1), the former mujahedin commander Abdul Rasool Sayyaf had notoriously stated, "Whoever is against mujahideen is against Islam and they are the enemies of this country" (BBC 2007). This ability to effectively to invoke Islam in confrontations with adversaries, combined with actual or rumored powers of coercion and violence, gave many conservative and mujahedin parliamentarians significant advantage. And, as elsewhere, women's appearance and conduct was an appealing measurement of religious adherence. Women who were seen to challenge the authority of conservative actors, whether directly or by defying gender norms, could find themselves the target of a particularly potent denunciation, one in which female and religious transgression was conflated.

I experienced these dynamics for myself when going to the house of the head of the Legislation Commission to interview him about the law and his views of it. At the end of the interview, the conversation turned to my own marital status, and there were some probing questions about my religious identity. As I was cast as a lapsed Muslim and unfit wife who had left behind my husband (of Pakistani origin) to pursue research in a foreign country, I suddenly found myself uncomfortably trying to pull down my long coat to conceal my legs completely. I recalled rumors that this man, during his time as a judge for the mujahedin, had ordered a number of executions based on religious non-adherence, and I started to feel uneasy—it was getting dark, and we were in the outskirts of Kabul. Although my

sense of unease was passing and completely unfounded, it provided me with some insight into the powers of intimidation facing local women's rights activists.[65]

This sense of insecurity and intimidation was an often unstated yet obvious factor in the calculations and conduct of the Afghan promoters of the EVAW law. Many women MPs and women's rights activists were conscious of the risk of being labeled "anti-mujahedin" or being seen to openly challenge their authority. Some of the activists had suggested that in order to get the EVAW law through Parliament, it would be best to introduce it furtively and quickly on a day when the main jihadi and mullah MPs were not present, possibly through some kind of prior deal with the speaker, which pressure from the foreign embassies could bring about.[66] They were reluctant to meet the conservative MPs in open debate and felt that it was better to quickly and discreetly get a parliamentary ratification without drawing too much attention to the law or to themselves. The fear of arousing jihadi wrath also manifested itself in the actual debates in Parliament. Some of the women advocates of the law were careful not to appear too provocative or assertive, and it seems safe to assume that it was sometimes such concerns that provided their adversaries with much of their power, rather than the strength of their arguments. Compare the ways in which the two key MPs formulated themselves in the plenary debate over the EVAW law in May 2013. Fawzia Koofi, her voice somewhat hesitant, pleaded with her male colleagues to approve the law as a favor to their female counterparts: "Today I request the people's honorable representatives to view this law as a national need and vote for it . . . as a token of cooperation and friendship with their sisters who, shoulder by shoulder [for many years], have cooperated with them on so many issues." Qazi Hanafi, on the other hand, thundered that the approval of the EVAW law would be comparable to the aftermath of the communist coup of 1978, normally referred to by its Afghan date, the 8th of Saur: "If you ratify this law, which will make the shelters legal and permissible, you should expect similar outcomes to that of Hasht-e Saur,"—here he paused for dramatic effect—"and the [consequent Islamic] Revolution. . . . And millions more shall be martyred."

It was the anticipation of statements such as these that had made women MPs approach the speaker of the Parliament, Abdul Raof Ibrahimi, prior to the debate, in order to extract a promise that he would stop the debate if the tone became to inflammatory or if it looked like the law was in danger of being repealed. Ibrahimi kept his promise. He halted the debate, thereby returning the EVAW law to the same ambiguous status that it had held prior to the plenary debate.[67]

A LAW OF ONE'S OWN?

But in mid-2015 came what might prove to be the final blow to a separate EVAW law. It arrived not from Parliament, but from the new president, Ashraf Ghani.

A few years earlier, President Karzai had agreed that work would start on a comprehensive penal code that would incorporate the criminal provisions from approximately fifty different freestanding laws. As the drafting of the new code gathered pace, supporters of the EVAW law, such as prominent members of the Afghan Women's Network, started to advocate for the EVAW law to be kept as a separate piece of legislation. They argued that the EVAW law was a unique achievement and that to integrate its provisions into a general code would dilute protection for women. Like before, they contended that having a special law for women would send important political signals and be a tool of advocacy. Others, such as Ministry of Justice officials and U.N. staff, were somewhat baffled by this line of reasoning.[68] They countered that the EVAW contained significant technical weaknesses that made it problematic to implement, that it was unrealistic to expect prosecutors and judges to be able to refer to some fifty different criminal laws, and that there was no reason why the EVAW law's provisions could not be incorporated into a comprehensive penal code. Besides, the EVAW law remained a mere decree, and integrating its provisions into a penal code that would be presented for approval in Parliament would strengthen women's protection. The women's rights activists were not convinced. They lobbied the Ministry of Justice, the new vice president, the First Lady, and finally President Ashraf Ghani himself, who refused to commit himself to maintaining the EVAW law as a separate code.[69] To some of the advocates of a comprehensive penal code, the arguments in favor of separate EVAW law were so weak that they could not fully explain the women's rights activists' stance. They speculated that the considerable funds that had been distributed to aid projects devoted to the implementation of the law was an additional, if unspoken, consideration.[70]

Even if this was a rather sinister reading, it was true that the EVAW law had become central to the large aid programs dedicated to women's rights in post-2001 Afghanistan.[71] After the EVAW law was signed as a presidential decree in July 2009, it had quickly became the focus of the parts of the international aid apparatus that was orientated toward women's rights and legal reform. Donors funded the establishment of a special unit at the attorney general's office in Kabul, to be emulated in other provinces. These units, called the Special Units on Violence against Women, were specifically to investigate and prosecute cases of violence against women, and the unit in Kabul came to have more than half a dozen of dedicated prosecutors, who received top-up salaries through donor funds.[72] In addition, donor funds paid for training sessions on the EVAW law for judges, prosecutors, and other government officials; booklets that were produced and disseminated; and various conferences and meetings that were organized to discuss and promote the law.

Despite this, the impact of the law was uneven and difficult to ascertain. Some judges in Kabul stated that they were not applying the law, as they had heard it was under review in Parliament, and they were therefore unsure of its status.[73] During

2011, as various aid agencies conducted more training sessions, the law seemed to gain some level of traction. International donors were keenly tracing prosecutions and conviction numbers. A U.N. 2012 survey of twenty-two of Afghanistan's thirty-four provinces found that 1,538 cases of violence against women were registered with prosecution offices over a twelve-month period and that 225 of them resulted in convictions (UNAMA 2012). For sixteen provinces where more detailed information was available, it was found that 44 percent of the cases in which indictments filed were based on the EVAW law, meaning that the other 56 percent were indicted under the Penal Code.

The implementation of the EVAW law gradually became the focus of donor and international engagement with women's rights in Afghanistan. The law constituted a central issue during Afghanistan first CEDAW hearing in July 2013, with most member countries present urging the Afghan government to accelerate its implementation. In another indication of the central position the law had obtained, donors made a government report about progress in its implementation one of a key set of aid conditionalities ("hard deliverables").[74] When, in 2013, the Afghan government failed to produce the report, the government of Norway cited this failure as one of two reasons for why it would cut development aid to Afghanistan by almost 10 percent. Finally, in March 2014, the long-awaited report was published, covering the status of 4,505 cases that had been registered with either the police, the Ministry of Women's Affairs, or the prosecution over a one-year period.[75] The data suggested that at least 40 percent of the registered cases had been "solved" either through mediation or by the withdrawal of the case by the victim.[76] Only 361 cases (8 percent) resulted in some kind of criminal conviction, and a further 40 cases resulted in acquittals. (However, almost two-thirds of these 361 convictions came from a single province, Herat. Out of Afghanistan's 34 provinces, Herat was known for having a competent court system and a committed female chief prosecutor.) The rest of the total caseload, 2,129 cases, was still under processing.

CONCLUSIONS

In the next chapter, I delve into the background to this data, disaggregating both the statistics and the stories behind them. Here, I want to offer some initial reflections on the following questions: To what extent did the EVAW law challenge established gender orders and domains of governance? Did it entail a transformation whereby women were constituted as citizens under state protection and where family authority over women was supplanted by, or at least modified by, that of the state? As this chapter has sought to demonstrate, there can be no straightforward answers to these questions. The EVAW law as it was decreed did represent a potential reorganization of both women's subject position and the reach of state

realms versus that of kinship. Had the decree been enforced in full by the courts, the result would have been a significant increase in the power of the government in overseeing and regulating sexual and gender relations, in underwriting women's protection and equal rights in marriage, and in punishing transgressions. As we have seen, however, as the law was reviewed in Parliament, attempts were made to amend it in a direction that would safeguard fathers' and husbands' prerogatives over women—by allowing fathers to marry off minor daughters and by establishing husbands' rights to beating and polygamy. Women were also afforded their part of the "patriarchal bargain" (Kandiyoti 1988); it was to be a crime for husbands not to provide maintenance for their wives.

But regardless of the final the text of the law, an equally important point is this—unlike the not too dissimilar legislation introduced by kings like Abdul Rahman Khan or Amanullah (see chapter 1), the EVAW law did not in any way represent the attempts of a ruler to curtail the power of kinship groups. This was not an attempt by the country's ruler to "modernize" society by emancipating its women from family control. Evident in the attempts to promote and implement the law were instead a constellation of foreign diplomats, activists, and pro-women justice officials, their efforts underwritten by the funds and infrastructure of aid agencies. While this constellation worked, in parts, through Afghan state institutions, this did not mean that there was a single, unambiguous, sovereign national power ruling over a single "public domain." Both the status of the law and its implementation was partial and tenuous. The legal status of the law was uncertain. It had neither been approved nor rejected by the Parliament, and it appeared to be in contradiction to other laws. Its presidential endorsement was offered up as a bargain. The minister of justice and the president had effectively offered to let two constituencies each have its own law—the progressive EVAW law for Afghan feminists and their allies and the Shia personal status law (which was, in many cases, in direct contradiction to the EVAW law) to the Shia clergy. Some of the supporters of the EVAW law appeared to endorse this—rather than engaging with the entire legal framework (and their political adversaries), they were content to be granted a law of their own.

In many respects, the EVAW law appears as a textbook case of Saskia Sassen's "neither global nor national" assemblage. As she states, "these assemblages cut across the binary of the national versus global. They continue to inhabit national institutional and territorial settings but are no longer part of the national as historically constructed" (2008: 61). In many ways, the promotion and implementation of the EVAW law was a case of the global working through the national. The law was drafted and promulgated through national institutions, submitted by the Ministry of Women's Affairs to the Ministry of Justice, and revised there before eventually being decreed by the president. Similarly, the implementation of the law happened through Afghan justice institutions—the prosecutors and the courts.

At the same time, as this chapter has demonstrated, these processes were to a large externally driven. The EVAW law, adopted partly due to Western pressure and enforced partly due to strong international involvement in monitoring and funding, in many ways brought Afghan women into a global protection order, where the guarantors were international organizations such as the United Nations. But if there was a global EVAW law assemblage working through national institutions, it should also be said that this assemblage was in no sense a totalizing, unidirectional force. Global templates intersected with local dynamics, dynamics that amounted to more than simply the formal procedures of national institutions seamlessly facilitating a global order. The processes traced in this chapter show that rather than being two contradictory forces, personalized politics and external reform attempts often worked together. Executive power was strengthened, because Western diplomats preferred to work with the cabinet and the president rather than the cumbersome and unpredictable Parliament when they wanted something done. This also gave President Karzai an opportunity to strengthen his power base through the granting of favors in an exchange of offerings and loyalty. The EVAW law was a gift to two of his constituencies—women's rights activists and Western supporters. At the same time, he also bestowed other gifts, such as the Shia law. Similarly, the emphasis placed on output and fundraising by the "NGO-ization" of women's activism also fed into personalized and patron-client politics. As I detail in the next chapter, the way in which the EVAW law was implemented also constituted justice officials as the patrons and benefactors of the victims of violence.

What clearly lost out in the EVAW law assemblage were the possibilities for more robust practices of democratic participation and collective mobilization. Supporters of the EVAW law decided that the price for parliamentary ratification of the law was too high. As we have seen, there were several aspects to this price. The conservatives in Parliament demanded significant concessions, which would have reinstated some of the authority of fathers and husbands over daughters and wives. But there was also a more general sense of uncertainty among women's rights activists about the prospect of confronting a political field that was stacked against them. They were well aware of sentiments—among certain male MPs and beyond—that the EVAW law represented an illegitimate protection claim: good and respectable women could rely on male relatives to shelter them from outside predations and for the same relatives not to subject them to violence. By implication, it was immoral women who were in need of the EVAW law. The category of "immoral women" was frequently also subtly stretched to include all Afghan women who questioned male authority in one way or another. This kind of gendered denunciation, infused with implications of religious and national betrayal, constituted a key political weapon in the hands of the jihadis and added to women's sense of vulnerability when operating in public debate and national politics. Instead of risking this hazardous terrain, the supporters of the law decided to fall

back on more discreet strategies and on the support they had among sympathetic government officials and Western donors.

By virtue of it operating through transnational funding and pressure, the EVAW law assemblage was, in many ways, part of a technocratic global discourse about violence against women, one in which violence against Afghan women was rendered a global concern subject to the expert interventions of transnational actors and institutions (see introduction). At the same time, however, there was more to the composition and workings of the EVAW law assemblage than just another manifestation of a transnational governmental practice, underlining the point made in the introduction of this book that global power does not work in a singular direction. As we have seen, local politics shaped the framing and promotion of the EVAW law in particular ways, enabling and reinforcing personalized politics.

The international aid interventions in Afghanistan were also imbricated with broader geopolitical relations. The aid agencies involved in drafting, funding, and monitoring the EVAW law had proliferated on the back of a military invasion that had produced much starker international hierarchies than what could have been immediately visible through looking at the practices of organizations such as the United Nations and IDLO in isolation. In the processes examined in chapter 4, the controversies around women's shelters and the geopolitical dimension of external guarantees are brought into much sharper relief.