



# ASSESSMENT OF THE PRACTICES OF BAD AND ITS ADVERSE SOCIAL IMPACTS IN AFGHANISTAN

CONTRIBUTION TO PROGRAMING FOR SOCIAL DEVELOPMENT IN THE PROVINCES OF KABUL,  
PARWAN AND PANJSHER, AFGHANISTAN

CIVIL AND LIBERAL INITIATIVE FOR PEACE

KABUL, AFGHANISTAN  
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# Assessment of Practice of *BAD* and its Negative Social Implication in Afghanistan

Contribution to programming for social development in the provinces of Kabul, Parwan,  
Panjsher, Afghanistan

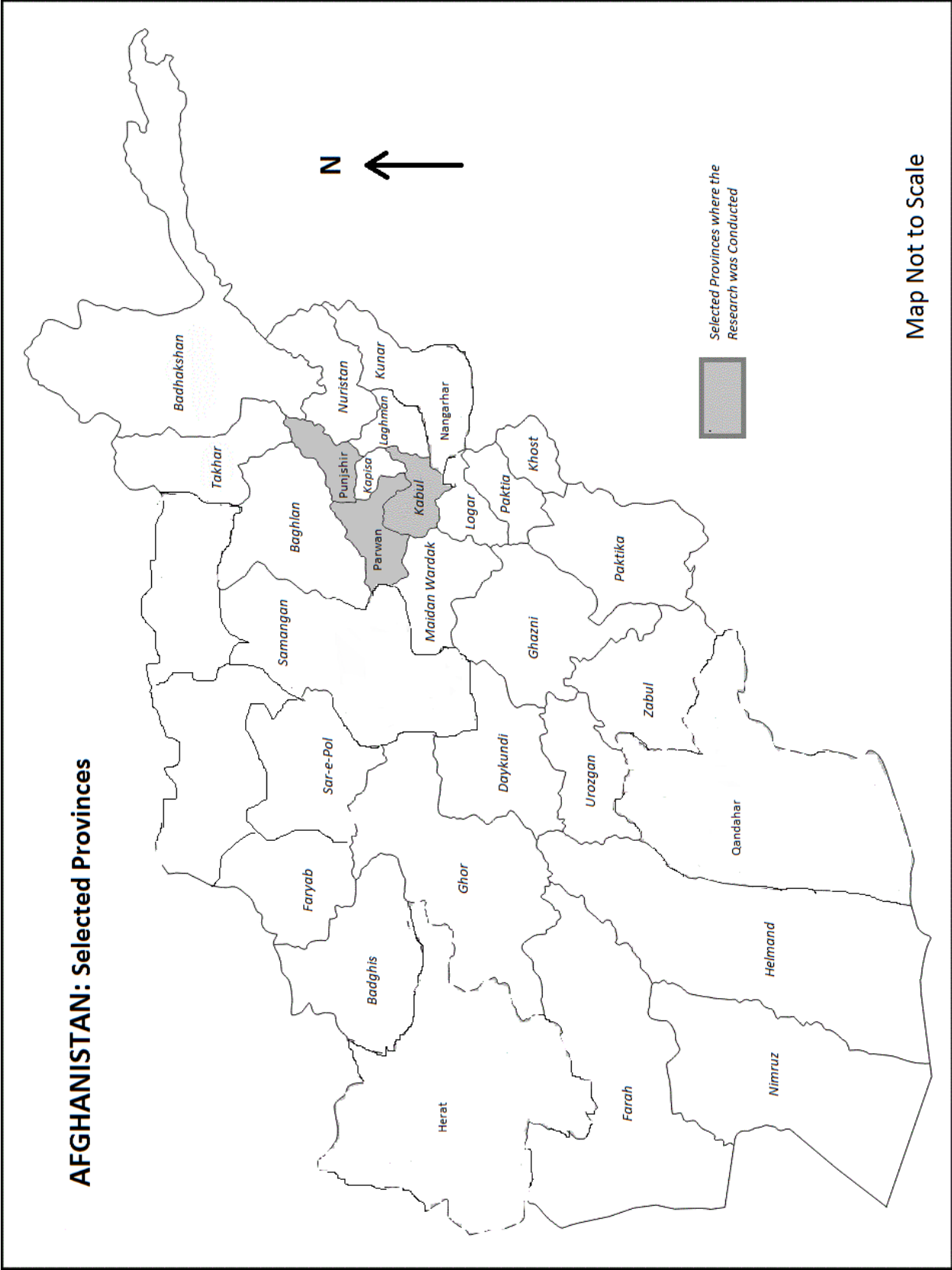
A Project by Civil and Liberal Initiative for Peace (CLIP)

Funded by: Tawanmandi

CLIP 2014

Kabul/Afghanistan

# AFGHANISTAN: Selected Provinces



Map Not to Scale

## **About the Civil & Liberal Initiative for Peace (CLIP)**

Established in 2012, the organization of Civil and Liberal Initiative for Peace (CLIP) is a non-profit, non-political and independent social entity. Dedicated in socio-economic growth, CLIP provides awareness and capacity building opportunities in different areas such as political participation, women and youth empowerment, good governance, rule of law and human rights.

CLIP has gradually developed remarkable capabilities in implementing projects in relevant areas that put the organization in a unique position. The organization recognizes the importance of vibrant and viable civil society in democratic systems. As a trusted organization, CLIP contributes in strengthening civil liberty by supporting social activities such as improving citizens' livelihoods, boosting services delivery, advancing human rights, creating learning opportunities for youth, and eliminating gender disparity in all levels of society.

CLIP's core competencies and professionalisms are in the areas of civic education, community mobilization, active citizenship, democracy, good governance, rule of law and institutional development. The qualified staff serving in CLIP has well-positioned the organization in providing technical and advisory support to local civil society organizations (CSOs), Non-governmental Organization (NGOs), Associations, Provincial and District Councils. It has also helped the organization to engage with the project stakeholders in a fair and parallel manner.

The organization has extensive experience in networking, management and training provision. CLIP has a good understanding of advocacy, policymaking processes, leadership, changes and civic activism. Adhering to participatory approach during implementation phase, CLIP often works with provincial line ministries, development councils, provincial governors, provincial councilors, community elders, and councils of the villages, CSOs, and other NGOs throughout its project management cycle.

## **About Tawanmandi**

Tawanmandi or Strengthening Civil Society in Afghanistan has been developed by the Nordic + donors to strengthen the capacity of Afghan civil society organizations for improved advocacy and engagement with the government and Afghan communities. It achieves this objective by providing grants and capacity development support.

The aim of the programme is to work with selected CSOs, especially in the provinces outside of Kabul, in order to improve government's accountability, responsiveness and respect for human rights. Tawanmandi also emphasis to strengthen the advocacy work of Afghan civil society in the sectors of Human Right, access to justice, peace-building and conflict resolution, media and anti-corruption. Gender, youth and disability are cross-cutting themes.

## **Acknowledgement**

CLIP is grateful to Tawanmandi for their financial and logistical support for the study respectively. The study would not have been possible without the cooperation of all local government authorities in the research sites. Special thanks are also due to our field researcher's tireless contributions in the field. Special thanks from Mr. Abdul Ahad Mohammadi for writing the final report and Mr. Jawid Muhtat, for the management of the study project.

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## **Acronyms:**

<b>AIHRC</b>	Afghan Independent Human Right Commission
<b>ANA</b>	Afghan National Army
<b>ANP</b>	Afghan National Police
<b>CLIP</b>	Civil & Liberal Initiative for Peace
<b>MoWA</b>	Ministry of Women's Affairs
<b>MOJ</b>	Ministry of Justice
<b>NSP</b>	National Solidarity Program
<b>NGO</b>	Non-Governmental Organization
<b>UNAMA HR</b>	United Nations Assistance Mission in Afghanistan, Human Rights

## **Glossary:**

**BAD:** Giving away a girl or woman in marriage as blood price to settle a conflict over murder or a perceived affront to honor

**Badal:** Exchange of daughters between families for marriage

**Hadith:** Record of the sayings or actions of the Prophet Muhammad

**Haram:** Illegitimate or forbidden under Sharia considered obligatory rather than discretionary.

**Imam:** Religious scholar who leads prayers

**Jirga:** Gathering of elders

**Shura:** Local council

**Malik:** Leading elder in a village or community

**Nikah Shighar:** Exchange of women without their consent

**Sharia:** The code of law derived from the Holy Koran and the teachings of the Prophet Mohammed

**Ulema:** Religious scholars

**Zina:** Sexual intercourse outside of marriage, fornication

## **Executive Summary:**

Despite modern state building and good governance efforts began in 2001 in Afghanistan, traditional ways of conflict resolution, particularly those related to social issues are widely being practiced in the country. Some of these practices have positive impacts and are effective in finding solution to social disputes. However, number of them are harmful traditions in practice that are thought to be significantly resistant to the social development of the country. One of such harmful traditions is the practice of *BAD* that takes place in some parts of Afghanistan.

*BAD* is the practice of trading a female member in marriage as means towards peaceful resolution of conflicts in cases that are involved with murder or any form of perceived affront to one's honor a form of blood price. The practice of *BAD* forms one of the most egregious categories of violence against women in Afghanistan. *BAD* allows communities or families to settle crimes such as murder, in theory to restore peace and order between the conflicting parties, by transferring punishment for the crime to a woman or girl. The "honor" of the aggrieved family is "restored" through punishing the woman for a crime she did not commit.<sup>1</sup> This tradition is a clear indicator of strong patriarchal settings in parts of Afghanistan where it is practiced. It adds significantly to the very many challenges the Afghan women face.

As Afghanistan enters a new phase in its governance and state-building endeavors, a focus on effective dealing and struggle against such negative social traditions can help the government tackle the issue rather effectively. CSOs and NGOs could further deploy their resources and capacities towards eradication of such harmful traditions and making them part of history. For tracking some harmful and fierce disputes, there is an urgent need of orchestration among Afghan National Security Forces (ANSF) and department of justice and judiciaries to track such cases.

This study examines the extent of *BAD* practice, historical changes, and the root causes of its presence across Afghanistan, while its main focus remain on some districts of Kabul, Parwan and Panjsher provinces. It includes the views of social experts, local formal and informal officials, main village gatekeepers and ordinary people. The study reveals the existence of the aforesaid

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<sup>1</sup> UNAMA, OHCHR, Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan, Kabul, Afghanistan, 9 December 2010, p 11.

practice in covered areas but with significant reduction in their frequency. Second, though majority of the local Shuras and Jirgas disagree with practice of *BAD*; however, merely one third of them strongly disagree with such practice and call it Haram, while the rest are suspicious of their judgment about the negative perception of the *BAD* practice. The absolute majority of ordinary people surveyed however consider the practice of *BAD* as illegitimate and contradicting with the Islamic Sharia.

In addition, the study found that there are some existing set of advocacy programs by the justice departments of Afghan government and some civil society intuitions that aims to straggle against harmful traditions including, *BAD*. In such programs, they invite local religious preachers and head of Shuras to speak about the negative impacts of harmful traditions including *BAD* and explain that such traditions are in contradiction with the Islamic values and the Afghan constitutions. They publicize voices via local radios or conduction of joint meeting with the local Shuras; however, the scope of such programs is very limited.

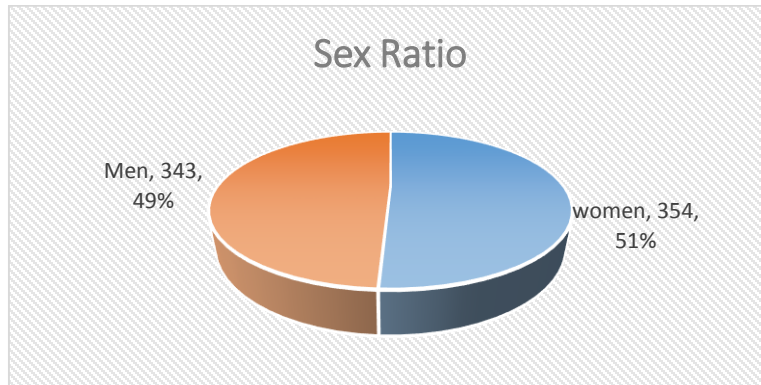
Finally, there is a total agreement among key informants of the study that the most prominent factors of *BAD* revival, underlined by poverty, lack of active governmental institutions and the people's low literacy level and superficial religious information.

## Background of the Research:

Although *BAD* is illegal under both the Afghan law and the Islamic law according to various religious scholars, taking girls as payment for misdeeds committed by their elders yet appears to be flourishing<sup>2</sup>. This study examines the practice of *BAD* in Afghanistan. Based on district-level case studies conducted in 10 districts of Kabul, Parwan and Panjsher provinces, the findings of the study could help government social policy makers, CSOs, local and international NGOs in Afghanistan to understand the harmful practice of *BAD* and establish effective social policies and programs in order to reduce and eliminate such illegal tradition in the longer term.

## Research Approach:

Given the nature of study, it includes both qualitative and quantities methods. In order to get public attitude on the topic, around 1000 people had been covered for the study, of which 800 of them were ordinary people who were surveyed in 10 districts of Kabul, Panjsher and Parwan provinces. As women had key part in our study, sex ratio considered in the survey with more than 50% women participation in the survey.



Along with the survey, two focus groups discussions (FGD) were conducted in each districts. In order to seek the historical changes in the practice of *BAD* and the root causes of it, the semi structured interviews were conducted with main village gatekeepers, local governmental and nongovernmental officials including the organizations that are directly or indirectly involved in women issues. Quota and Snowball sampling methods were used for the selection of individual

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<sup>2</sup>[http://www.nytimes.com/2012/02/17/world/asia/in-baad-afghan-girls-are-penalized-for-elders-crimes.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2012/02/17/world/asia/in-baad-afghan-girls-are-penalized-for-elders-crimes.html?pagewanted=all&_r=0)

interviewees to maintain a balance for quality of the qualitative part of the study. Apart from the provincial and district organizations, the research team met with relevant officials from the Ministry of Women Affairs (MoWA), CSOs and NGOs involved in human and women rights activities in Kabul. The final parts of the interviews took place with a number of social experts in the country.

### **Main themes of the survey and qualitative questionnaire:**

- Obtain public views toward practice of *BAD*
- Seek historical changes in the trend
- Find current state of *BAD* practicing
- Discover the root causes of the custom's fluctuation and revival
- Find ways of solving the issues for CLIP's advocacy and awareness activities to decrease the practice of *BAD* in target areas

MS Excel Software were used for the analysis of the quantitative data. To analyze the qualitative information, CLIP used coding of the data in order to discover the main patterns in the study.

The finding of the current study indicate considerable similarities in the characteristics, root causes and public attitudes toward the practice of *BAD* in the entire areas the research conducted. Such similarities, can make it possible to generalize, the scope and reliability of the study findings nationwide or at least in those areas and provinces where *BAD* has been practiced.

### **Research problems:**

With respect to the dominant social values and codes in target areas, the study topic seemed sensitive to the people and it was somehow difficult for them to answer to some parts of our questions freely and without being bias. The issues had made it a difficult in some ways to find those families who were directly affected the practice of *BAD*. Despite a full description and explanation of the project's academic aims to some interviewees, and the promise that their name would not be mentioned in the final report of the study, it was hard for some of them to believe in honesty of the project aims. Hence some were trying to be politically correct while giving answers to the study questions.

In addition, the prolonged electoral crisis along with some social and religious events such as the holy month of Ramadan affected the pace of the study, the organization however managed to complete it within the agreed upon timeframe.

Furthermore, refusal of local judicial departments, and offices in supporting us to get relevant data about the practice of *BAD* was another impediment for the research. The issue created problem in understanding the nature of governmental attempts against the practice of *BAD* and compare it with those of efforts done by local Shura.

Finally, the chronic process of the 2014 Afghanistan's Presidential and Provincial Council Election that took more than five months, was also a huge barrier against conduction of the study, since most of the local officials were busy either directly or indirectly with the election-related issues.

### **Main findings of the study:**

- There is a total agreement between representatives of more than 50 Shura and Jirga and also local key informants in the areas covered under this study that there has been huge reduction in practice of *BAD* since 2001. Around 50% of Shura and Jirga representatives claimed that they were unaware of the practice of *BAD* in their communities. However, the study found that *BAD* is yet practiced in some of the districts the research conducted. The survey data supports the statements made by representatives of local Shura and Jirga. As more than 60% of the people surveyed report that they have not heard of a *BAD* case in their areas; whereas, only below 5% of the respondents report that annually around 10 cases of *BAD* have been practiced in their areas.
- The practice of *BAD* has a kind of psychological impact and contributes to a sense of pride in the family that takes the girl. Many respondents claimed that money or other such compensation do not have a similar effect.
- There is some correlation between religious conservatisms in communities, lack of literacy and the prevalence of *BAD*. As a supportive evidence, more than 70% of the people surveyed report that there is a reduction in practice of *BAD* in their areas and considerable number of them think that improvement of education and increase in literacy rate has led to such reduction.
- Due to the weakness of governmental institutions, the parties involved bring serious family disputes to the attention of local Shuras and Jirgas. In adjudicating these cases, many Shuras or Jirgas use *BAD* to resolve familial disputes. In connection to the statement when asked from survey respondents about the main reasons girls given to *BAD*, around half of them believe it is a kind of convenient way of dispute solution.
- *BAD* is used as a conflict resolution mechanism in cases involving murder, illegitimate sexual intercourse, and elopement. High poverty rates contribute to increase in the practice of *BAD*.
- Local Mullahs can play the most significant role in terms of changing people's attitudes towards *BAD*.

## **Recommendations:**

Some of the following recommendations are based on the suggestions of key informants and local government authorities, while others are based on a survey of local people.

- The Ministry of Justice (MOJ) should work directly with informal power holders and local mullahs and start advocacy and awareness programs under the aegis of local mosques. As it would be difficult to convince local people about the ill effects of *BAD* by talking from a modern human rights perspective, the emphasis should be on its incompatibility with religious principles.
- Judicial departments should register cases of *BAD* through local Shuras and Jirgas. Registration and documentation of such cases will help in the identification of its social causes and in the design of preventive mechanisms.
- If necessary, the option of penalizing people who have participated in *BAD* should be explored. Monetary fines can be most effective as poverty rates in rural Afghanistan are high, and as they would steer clear of hurting religious or local sensitivities.
- The Ministry of Haj and Endowment (MoHE) could be another key player in canvassing against *BAD*. They can help by inviting local mullahs and finding ways to engage them in advocacy programs.
- There is a need for harmonizing informal dispute solution mechanism with methods used by local government institutions. Such harmonization in the long run will aid in making informal conflict resolution techniques consistent with Afghan civil laws and the constitution.
- *BAD* is used as a conflict resolution at the local level as most local Shuras and Jirgas are exclusively male dominated. In recent years, many women have become members of local councils under the National Solidarity Programme (NSP). These women should act as advocates against *BAD* by raising their voices against instances of social injustice.

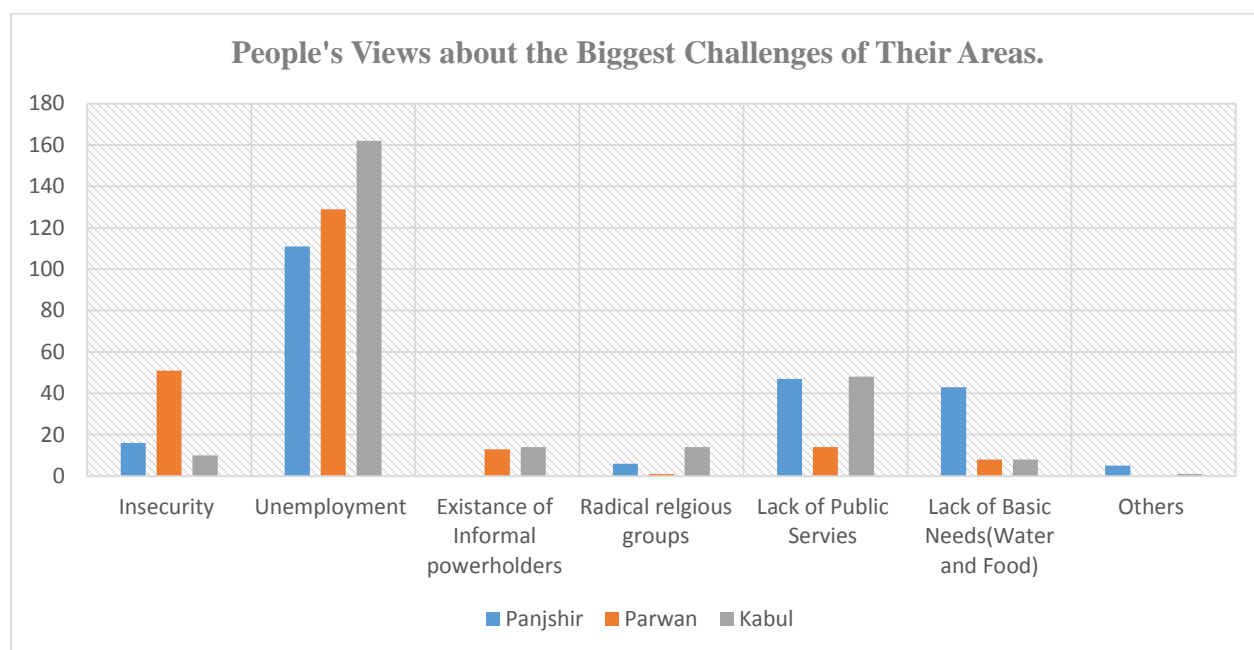


**Recommendations for CLIP to design its advocacy and awareness programs against the practice of *BAD*:**

- CLIP should prioritize advocacy programs in areas that have high prevalence of *BAD*.
- CLIP should strive to orchestrate its programs with local Afghan justice delivery organizations to get them involved with on the ground realities in respect to the practice of *BAD*.
- CLIP should coordinate its programs with direct or indirect involvement of local Shuras and respected local leaders like mullahs, Maliks, Arbabs, and by motivating its local level employees through the provision of financial remuneration.
- CLIP should consider employing members of local Shuras in advocacy programs, as they are best placed to perform such activities. Most members of local Shuras are very knowledgeable about local circumstances and will be pleased to offer their services in exchange for financial rewards.
- CLIP should plan joint programs with Ministries of Justice and Hajj, as without their consent and approval, NGOs and CSOs cannot function properly.
- CLIP should involve youth and women in their awareness and advocacy activities so that they pass the inconsistency of *BAD* practice with Islamic, national and international laws with their peer groups. This could be done through social events such as sports and other special events such as international women day, international peace day and so on.
- CLIP should focus on providing expanded ways of interaction among women and youth from nearby districts and provinces in order to further open their vision on women and youth rights.

## A brief Introduction to the Culture and Background of *BAD* in Afghanistan:

Long term civil conflicts in Afghanistan had demolished the economic, social and cultural infrastructures, and the newly established democratic government in 2001 to rebuild them. The findings of this study shows that the majority of people yet suffers from unemployment, lack of public amenities, insecurity, lack of basic needs of life and so forth.



A country facing problems with the basic amenities of life, expecting social development is not impractical but a little too much at this stage. In the presence of various social issues in Afghan social context, there is an urgent need for social reforms, particularly of those old traditions which are considered as the impediments to social development in the country. Since Afghanistan is a patriarchal society, many of the existing traditions target women and make them vulnerable. These harmful traditional practices include female genital mutilation (FGM), forced feeding of women, early marriage, and other malpractices that prevent women from controlling their own fertility, nutritional taboos and traditional birth practices; son preference and its implications for the status of the infant girl; female infanticide; early pregnancy; and dowry price.<sup>3</sup> There are many countries in the world which suffer from such kinds of harmful traditions.

<sup>3</sup>Fact Sheet No. 23, Harmful Traditional Practices Affecting the Health of Women and Children: [<http://www.ohchr.org/Documents/Publications/FactSheet23en.pdf>]

Afghanistan is not an exceptions in this respect. The majority of such harmful traditions lay deep in the patriarchal system in Afghanistan. Due to long term civil wars in the country, Afghanistan could not modernize itself as far as global socio-economic development is concerned and such harmful traditions remained yet alive. The system of marriage in Afghanistan is one of such harmful traditions in which women is considered as a form of secret property in the hand of men in different social dealings. The marriage system in Afghanistan is mainly arranged in nature and there are less instances of loved marriage, or the marriages that take place by the consent of the partners. The most notorious types of arranged marriages is called forced marriages. It is estimated that between 60-80% of marriages in Afghanistan are arranged or forced in some way. Arranged marriages are culturally acceptable, and women are rarely given the choice to decline an arranged marriage.<sup>4</sup> It has occurred in different types and one of such types is forced one which describes a marriage that takes place without the consent of the partners and involves either physical or emotional duress.<sup>5</sup> After ousting of the Taliban Regime and establishment of a democratic political system in 2001, Afghanistan achieved considerable improvements in women condition in the country. Particularly, The Bonn Agreement led to the establishment of the first Ministry of Women's Affairs (MoWA) and the Afghan Independent Human Rights Commission. In 2003, Afghanistan acceded to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) without reservations. Largely thanks to campaigning by Afghan women, supported by international allies, the country's 2004 constitution guaranteed a number of important rights for women, including the right to equality before the law (Article 22), the right to an education (Articles 43 and 44), and the right to work (Article 48). The government also developed a ten-year National Action Plan for Women (NAPWA), launched in 2008, it outlined plans to realize women's rights under the twin goals of 'women's empowerment' and 'gender equality'.<sup>6</sup> But some recent studies show that forced marriages and practice of *BAD* are pervasive, though occurring in varying degrees in all communities, urban and rural and among all ethnic groups in Afghanistan.<sup>7</sup>

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<sup>4</sup> <http://www.larsonjewelers.com/culture-and-history-of-arranged-marriages.aspx>

<sup>5</sup> Thomas, Cheryl. FORCED AND EARLY MARRIAGE: A FOCUS ON CENTRAL AND EASTERN EUROPE AND FORMER SOVIET UNION COUNTRIES WITH SELECTED LAWS FROM OTHER COUNTRIES, United Nations Minnesota, USA, p 2.

<sup>6</sup> A Place at the Table: Safeguarding Women's rights in Afghanistan. Oxfam, 2011, p 7

<sup>7</sup> UNAMA, OHCHR, Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against

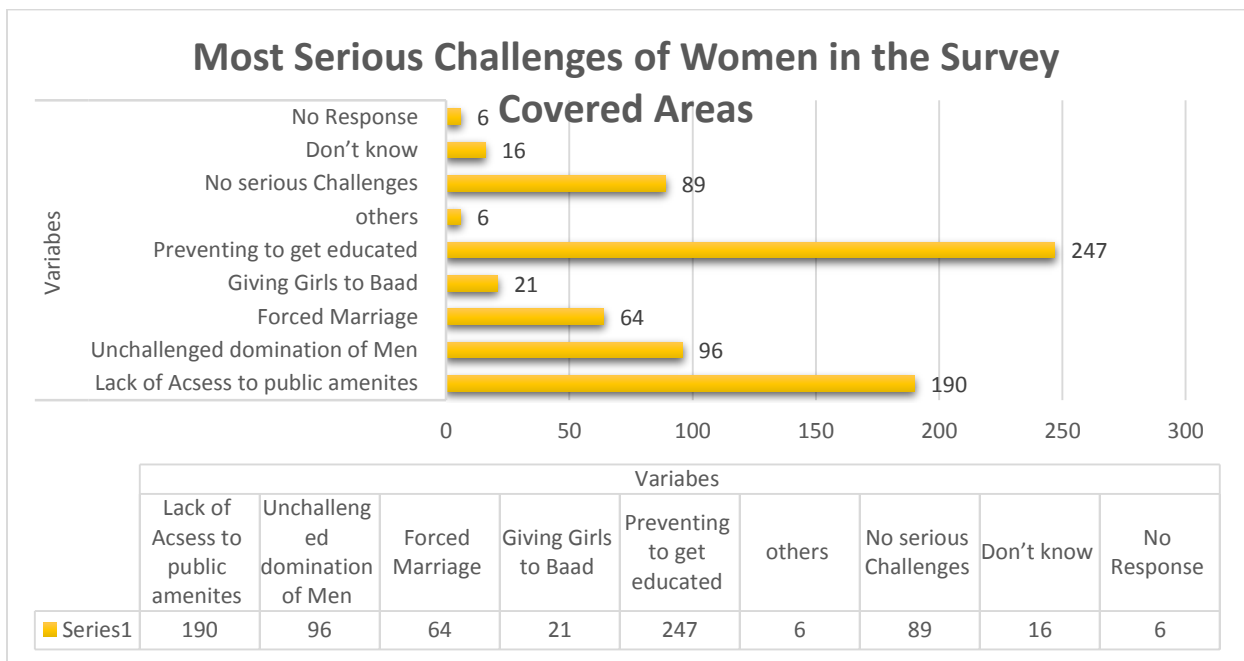
This study examines the practice of *BAD* in an academic manner, in some parts of the country with mainly two broad aims. Its first aim is to help Civil and Liberal Initiative for Peace (CLIP) to conduct its advocacy and awareness activities efficiently and effectively in order to decrease the practice of *BAD*, since CLIP plans to immediately start its program in target areas after completion of the current study. The second goal of the study is to come up with some important policy recommendations for the main stakeholders of the study to design their policies for social development programs in Afghanistan, particularly the policies for improvement of women condition and violence against women in the country.

## Analysis of the Study Findings

### Extend of BAD and Institutional Efforts against the Tradition

A large majority of Afghans have little or no awareness of legal issues and do not enjoy their constitutionally guaranteed rights. Many people especially in remote areas do not yet have fair and proper access to justice. They do not know the procedures for obtaining their fundamental, civil, and criminal rights, or other legal human rights technically guaranteed by the Afghan laws. Women in these respects are more vulnerable.

According to the findings of this study, lack of educational opportunities, unchallenged domination of men and lack of access to some other public amenities are considered to be the most serious challenges women face in target areas where the study was conducted. The following chart shows the women challenges in quantitative form.



These issues make women feel vulnerable toward different types of ancient harmful traditions such as *BAD*. One of the drawbacks of the mentioned issue on the women in particular and entire community in general is that they have very little chances of getting legal awareness and know about some of the universally accepted human rights.

Since its establishment in 2001, the Government of the Islamic Republic of Afghanistan has been aware of the necessity of legal awareness throughout the country and appreciates its importance.

For this reason, one of the main tasks of Ministry of Justice is to provide legal awareness to citizens across the country.<sup>8</sup> As it's found in the study, along with the particular programs provided by the line ministries of justice, from the 10 districts and provincial centers covered by the study, 6 other public organizations reported having various programs in order to promote public awareness about different social issues including the practice of *BAD*.

There are more government-led advocacy programs against the practice of *BAD* in Punisher and Charikar than other areas covered by this study. Line Ministry of Justice (MOJ) and Ministry of Women's Affairs (MoWA) are more active in this respect. Their advocacy and public awareness strategies include radio and TV programs, as well as conducting meetings with village elders, mullahs and ordinary citizens.

In some cases, programs have been successful not only in raising awareness but also preventing *BAD* from happening. For instance in Panjsher the line ministry of MoWA protected three girls, while they were about to be sacrificed as a result of *BAD* practice.<sup>9</sup> There is a person who mainly is in charge of public awareness from the line department of justice. He sometimes goes to district schools to provide social awareness speeches on negative aspect of *BAD* practice to the children and youth<sup>10</sup>.

As the current study shows, awareness programs may have contributed to the considerable reduction in practice of *BAD* in the areas covered. The following statistical data from the areas surveyed supports this idea. The following graph shows the respondents' perception about the time-based changes in the practice of *BAD*.

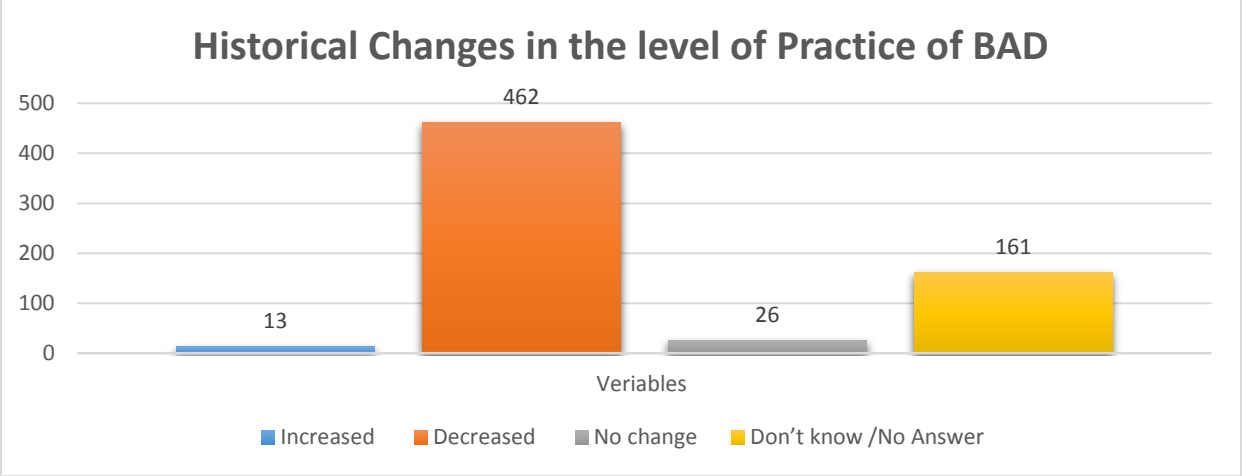
The data shows that about 70% of the people surveyed said that practice of *BAD* has decreased in their areas in the recent years. Whereas merely 0.01% or in the other words 13 out of 662 respondents said that there is an increase in Practice of *BAD*.

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<sup>8</sup> NATIONAL LEGAL AWARENESS STRATEGY, NATIONAL LEGAL AWARENESS STRATEGY, Afghan Ministry of Justice, 2011, p5.

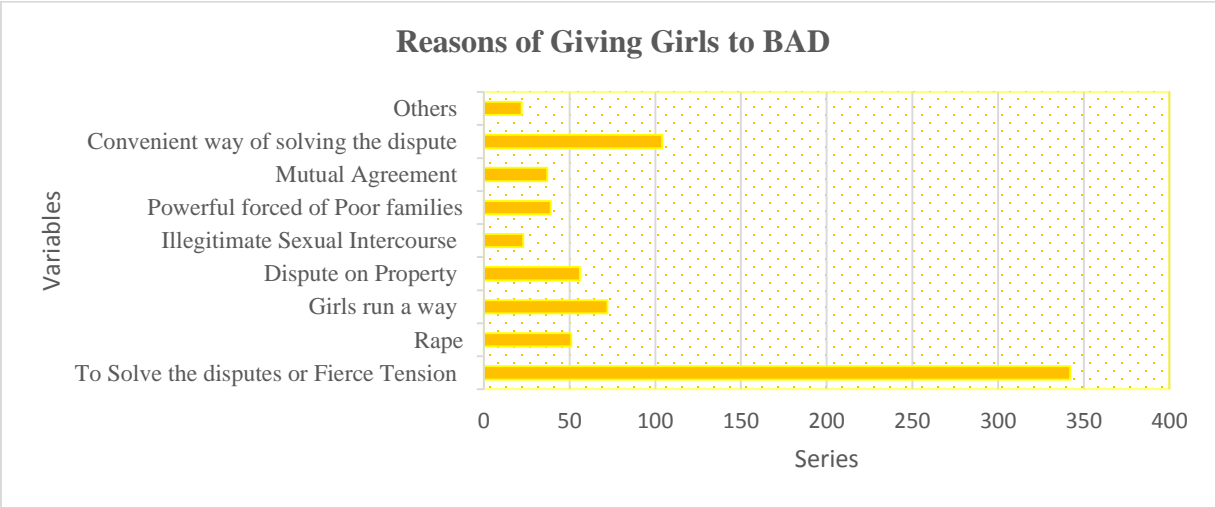
<sup>9</sup> head of MoWA line ministry Punisher, a women

<sup>10</sup> Personal interview with the head of law line department, Bagram District, 5/6/2014



**Root causes of BAD**

When asked about the major reasons of giving girls as *BAD*, 44% of the respondents said they practice it when there is a fierce dispute among two families, as one of the effective solutions. And 13% said that it might even be a convenient way of solving the dispute. The rest of the people consider other factors such as rape, illegitimate sexual intercourse, dispute on property and so forth.



Backed by the survey findings, according to the key informants and members of Shura studied, a number of reasons may have led to the practice of *BAD* being revived in Afghanistan. The major causes of *BAD* are reported to be issues such as elimination of chronic enmity and disputes

among communities, a convenient dispute resolution mechanism, to prevent further bloodshed among two sides of a dispute, rape cases, and ultimately when a girl runs away from her home. The low societal value accorded to girls, tribal enmities, and lack of awareness about the civil and religious laws also contribute to the perpetuation of the practice of *BAD*. As one key informant states, “there are two broad reasons for giving girls as *BAD*. The first approach is chosen as effective solution when it comes to a murder cases – that is, when a member of one family is killed by the member of another, then they refer to *BAD* as a solution. The second one underlies to low level of public literacy rate and underestimation of women values in the community.”<sup>11</sup>

The similar findings came out after the survey of this study. More than half of the ordinary people believe that convenient ways of solving fierce disputes is one of the factors that has resulted in *BAD* practice in their communities. As the current study indicates, in addition to the direct governmental and civil society efforts for social development in Afghanistan, the latent influence of different developmental programs like improvement of education and public media in Afghanistan have had their own impacts on reduction of harmful traditions like *BAD*. For instance, in this survey, more than 60% of the population reports massive reduction in the practice of *BAD*, and around 70% believe that the reasons of such reduction is the overall knowledge and literacy, particularly those of girls.

### **Extent of *BAD* Practice in Target Areas**

Obtaining an accurate estimation of the extent to which *BAD* is practiced is difficult in Afghanistan, since there is no official registration of such cases by governmental office, NGOs or civil society institutions. Likewise, local Jirgas and Shuras do not keep records of the disputes they have resolved. However, based on information and estimation given by local officials, representatives of CSOs in the covered areas and representatives of local Jirga and social commentators, there has been around 80% reduction in practice of *BAD* in the country in the last two decades. As the head of Justice line department in Istalef district of Kabul says, “I live here for many years now, but never encountered *BAD* cases.”<sup>12</sup>

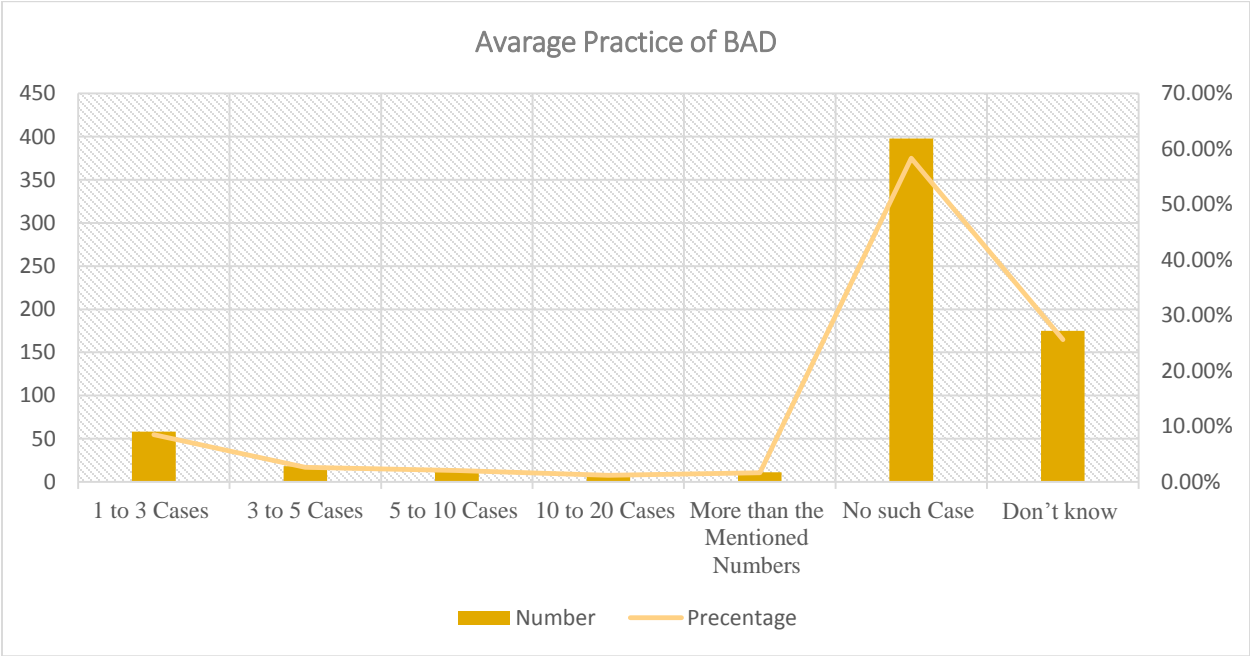
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<sup>11</sup> Personal Interview with head of line ministry of MoWA, Punisher, 2/8/2014

<sup>12</sup> Personal interview with, 26/7/2014



Even among ordinary people in the studied areas, there is a strong similarity with the views of CSO representatives, members of Shuras and Jirgas and also social commentators. Among the respondents, more than 60% reports that they have not heard even a single case of *BAD* in their areas. Around 50% say that they merely heard 1 to 3 cases of *BAD* in their areas.



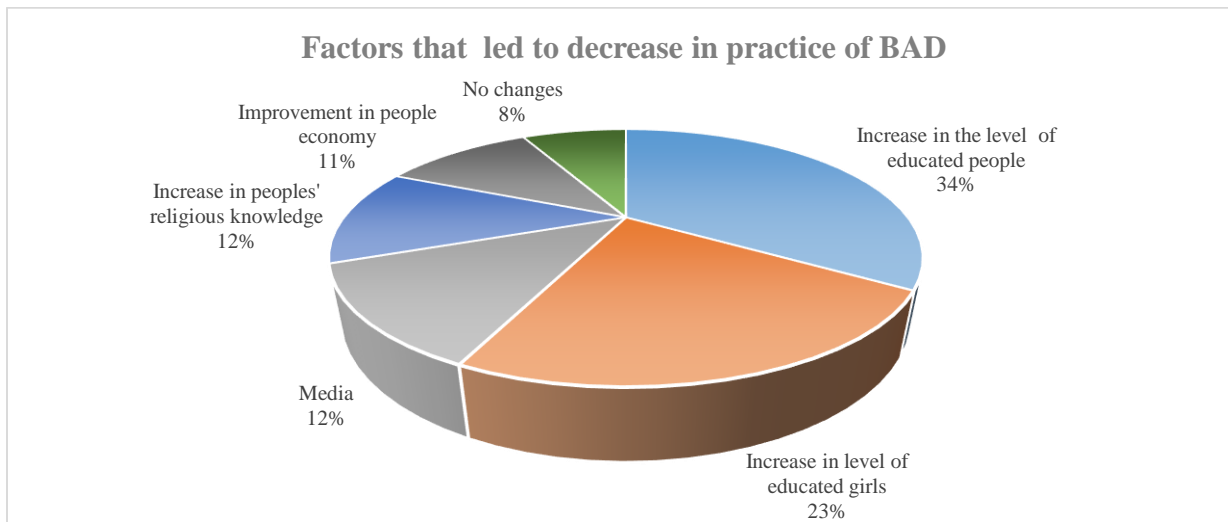
With regards to the above mentioned data, this study theorizes that reports of considerable reduction in the practice of *BAD* is derived from the following factors. First, the sensitivity and negative image of *BAD* forces two sides of a dispute to hide the case from being publicly known and acknowledged. The head of Guldarah Justice Department states that he was informed about two cases of *BAD* in Ghurband district of Parwan, but not directly from the disputed sides, rather some fellow villagers of those families reported about the cases. He then thought the situation might be worse and many cases of *BAD* will happen, but people, particularly the disputed sides deliberately do not report the case of *BAD* to the governmental departments or other non-governmental organizations involved with the social and human rights issues, because they think it shameful for their families if others know about it.<sup>13</sup>

Nevertheless, around 30% of members of Shuras and Jirgas in the areas studied believe that *BAD* was common in the past, but in recent years no cases of *BAD* have been reported to the Shuras. In fact, more than 50% say that from the time they are aware of the social issues in their areas,

<sup>13</sup> Personal interview with. 28/7/2014

there were no cases of *BAD*. Only three out of 50 studied Shuras reported instances of *BAD* in the last two decades in their areas. For example, the head of Guldara village from Kabul province stated that “during more than three decades that I live in this village, and around 12 years that I am the head of village (Malik) we did not have a case of *BAD*”<sup>14</sup>

According to the respondent views, there are some certain factors that can be considered as the main factors of reduction in practice of *BAD*. Such factors are classified in the chart below.



### **Underlining factors of *BAD* Revival**

Similar to several other studies on practice of *BAD*, this study found that one of the most significant causes of the continuation of *BAD* practice in target areas is the weakness of relevant governmental organizations to seriously investigate people who break the official civil laws of the country. According to the head of DoWA in Parwan, unfortunately, the governmental organizations do not track the law breakers and the families who give their girls as *BAD*. Hence, the weakness of governmental organizations is the strong cause in reviving *BAD* practice in this province.<sup>15</sup>

The existence of usual murder crimes is another factor leading to the survival of practice of *BAD*. According to the study, majority of the social experts interviewed, including heads of local Shuras and Jirgas as well as representatives of relevant governmental organizations, cases of

<sup>14</sup> Personal interview with. 26/7/2014/ Guldarah, Parwan

<sup>15</sup> Ibid

murder represent the most prominent disputes that in many instances are only solved by giving a girl from the murderer's family to the family of the victim.

Another significant instance leading to the practice of *BAD* is illegitimate sexual intercourse between a boy and a girl. Based on the study findings, around 30% of *BAD* practice happens because of the mentioned reasons. When a girl and a boy engage in illicit sexual intercourse, the family of the male perpetrator, whether he is a single or married, must give a girl to the family of the female. Otherwise, the dispute among two families will be prolonged and will lead to even fiercer enmity and crimes including murder.<sup>16</sup>

Similarly, when a girl falls in love with a boy or is forcibly taken, the practice of *BAD* is the most likely way of resolving the issue. If the girl runs away with a boy, then the girl's family will never allow her come back home, and eventually the boy will have to marry her. But the story does not stop with marriage of the girl who fled. The boy's family should pay in a manner that satisfies the family of the girl. Some families may be able to compensate financially, but when the family of the girl is rich and powerful, then the likelihood of taking a girl from the boy's family (*BAD*) is high.

Disparities in families' power relations in some areas is another reason leading to the continuation of the practice of *BAD*. Some families are vulnerable and find themselves under tremendous pressure and exploitation by powerful families. Disputes like those just mentioned between powerful and powerless families are more likely to be resolved through *BAD*. The underlying factor here, as well, derives from the weakness of governmental institutions and their inability to maintain security and provide adequate access to justice in the country.

From 2001 onwards, some Afghan government ministries (MOJ, MoWA etc.) have had official public legal and human rights awareness programs; nonetheless, the social experts and other key interviewees in the study think that another significant contributing factor to the practice of *BAD* remains the lack of sufficient public awareness of basic rights. In particular, women who are illiterate, isolated, and are not allowed to participate in social, educational and cultural programs, may have been socialized to think that *BAD* is their fate or that their male family members have the right to make decisions about their lives as if they were animals or property, even using them as a form of social currency.

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<sup>16</sup> Personal interview with General head of law department, Salang District, Parwan, 4/7/2014

According to majority of the respondents, improvement in education, particularly those of girl play a considerable role in reeducation of *BAD*. However the study also found that one of the major challenges of girls in the study are still the different social, cultural and traditional impediments toward their education.

### **Local Views on the Preference of *BAD* to Alternative Dispute Resolution Mechanisms**

Several reasons contribute to localized preferences of *BAD* over alternative dispute resolution mechanisms. Some heads of villages and Shuras members say that getting a girl in compensation for serious disputes like murder or the fleeing of girl, psychologically satisfies people because they think it is the most precious and suitable revenge they can take. Money or other financial retribution cannot have the same effect as getting a girl of the family of the perpetrator of the crime.

Another reason *BAD* is preferred over other mechanisms is due to the high level of illiteracy and lack of understanding of religious laws. Many mullahs interviewed state that if people understood the way *BAD* contradicts with the core religious values, people would be less likely to resort to it as a solution. Additionally, many interviewees consider that the excessive financial repercussions of serious cases which lead to *BAD* drives from poor rural families to resolve disputes by giving up a girl from their family instead of an impossible sum of money.

The strong influence and informal authority of local Jirgas and Shuras in some areas also increase the likelihood of the use of *BAD*. Since some Shuras have limited resources for dispute resolution, they are likely to resort to *BAD* in the absence of other options. As per a Shura member from Panjshir: “The power of local informal officials like mullahs, Arbabs and Shuras to decide is very high, hence if they cannot find other ways to solve a dispute, then they might adhere to *BAD* as a solution, and due to their power most family cannot protest their decision.”<sup>17</sup>

### **Local Shuras and Practice of *BAD***

Historically, local Shuras and Jirgas have been the main institutions for implementing customary law in Afghanistan. With respect to *BAD*, the practice is facilitated almost exclusively by the

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<sup>17</sup> Personal interview with a Member of Shura from Bazarak, Panjsher, 3/8/2014

Shuras. This study explored the logic behind their social authority and their views on the practice of *BAD*.

Shuras are effective and remain viable local institutions because they are capable of rapidly solving community issues without a heavy financial cost. Around 70% of interviewed Shura members stated that the judicial departments of the government were unable to solve people's problems because of corruption and bribery, as well as (relatedly) widespread fear and lack of trust in the government. According to a Mullah from Charikar, the capital of Parwan: "People have trust in Shuras, while they don't trust in judicial department of government. In some cases, the government departments even deliver cases for Shuras to solve them, because they don't know how to deal with certain complicated disputes in the rural communities."<sup>18</sup> One factor mentioned by number of Shura members and many influential figures, is the perception of the honesty of Shuras and their consideration of equality among the two side of dispute.

The findings of the study show that the most common issues referred to the local Jirga's are those of family issues like divorce, conflicts over land and water, and issues of lending and borrowing among community members. Less than 10% of cases referred to local Shuras involve serious cases like killing or murder. Findings also indicate that there is a kind of direct link among local Jirga and Shuras. Almost 70% of the member of studied Shuras mentioned that if they cannot satisfy both side to the way they solved the problem, and as they have no executive power to impose their decision, then such cases are delivered to the judicial and executive departments of government. Only about 30% say that whatever Shuras decide about the dispute solution is final and there is no need to refer to the governmental organizations for further process. The serious cases are reported to government through a local representative of people, Wakil Gozar to the government, since some issues require a stronger executive power to intervene when a Shura decision seems partial or unduly punishing.<sup>19</sup>

### **Principles of Shuras for Solving Disputes**

The study found out that majority of Shura and Jirga included in the study base their decisions on Sharia (religious laws) and on traditional values that have strong implications for social

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<sup>18</sup> Personal interview with. Punisher, 3/8/2014

<sup>19</sup> Personal Interview with a religious scholar and local people representative(Wakil Gozar), Charikar, Parwan, 3/8/2014

reconciliation. Only 10% of Shura representatives reported that one of the main foundations for their judgments were official Afghan Civil Laws.

### **Disputes Solved by BAD**

The major issues perceived to be solved by practice of *BAD* according to the majorities of Shura and Jirga representatives, are murder case, girls run away from home, illegitimate sexual intercourse and finally when a girl is taken by force. But about the practicality of this mechanism, members of Shura have different views. Around one fourth of the studied Shuras think that *BAD* not only solve the disputes, but deepen and prolong such disputes that will continue for generations among the local people. Representative of Mir Bacha-Kut local Bazar located in Kabul states that he knows some cases which had happened many years ago where the practice of *BAD* deepens and prolong the disputes.<sup>20</sup>

### **Unsustainability of Dispute Solution via BAD**

Though *BAD* is conceived to be one of the most effective solutions to disputes in some areas, practical cases of the current study show that the tradition is actually very unlikely to solve the root issues. Some cases play out in vicious cycle, with *BAD* ending one disputes but simultaneously creating another one. Ultimately, neither side is happy with the fact that a girl is forced to enter another household, creating a host of internal family issues. The accompanying sense of shame remains, even in some cases until a girl dies or one party migrates to another region. In general, both sides of the dispute continue to live in one community or village, meaning they must continually encounter each other at many social and religious gatherings, prolonging and perpetuating the tension and irritation. According to the head of DoWA from Panjshir province, *BAD* will never solve the dispute from the root, it only silences it for a short period of time, while the real enmity continues even for two or three generations among the families.<sup>21</sup>

### **Practice of BAD and Islamic Sharia**

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<sup>20</sup> Personal interview with. 22/7/2014/ Mirbacha Kut/Kabul

<sup>21</sup> Personal Interview with the Head of MoWA, Punisher, 3/8/2014

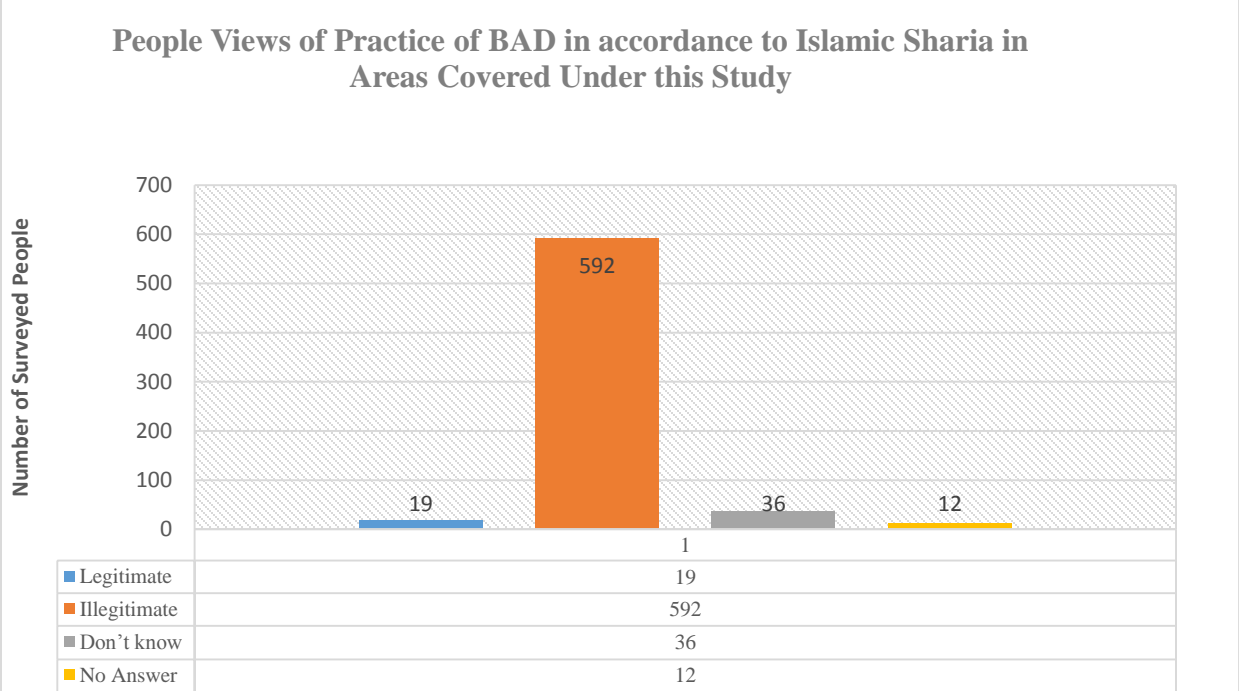
The study found out that merely 13 out of the entire interviewed Shuras strongly rejected the practice of BAD. The main reason of their rejection was that *BAD* contrast with Islamic values and Sharia. They consider it “haram” or prohibited by Sharia.

Another 10 interviewed Shuras had slightly softer views toward practice of *BAD* while comparing it with the Sharia laws, using the concept “JayeZ Nest” which means it is not allowed in Islam. The views of this category indicate the fact that in spite of their negative attitudes toward the practice of BAD, yet there is low level doubt in their mind to strongly reject the practice of *BAD* like what the first category did.

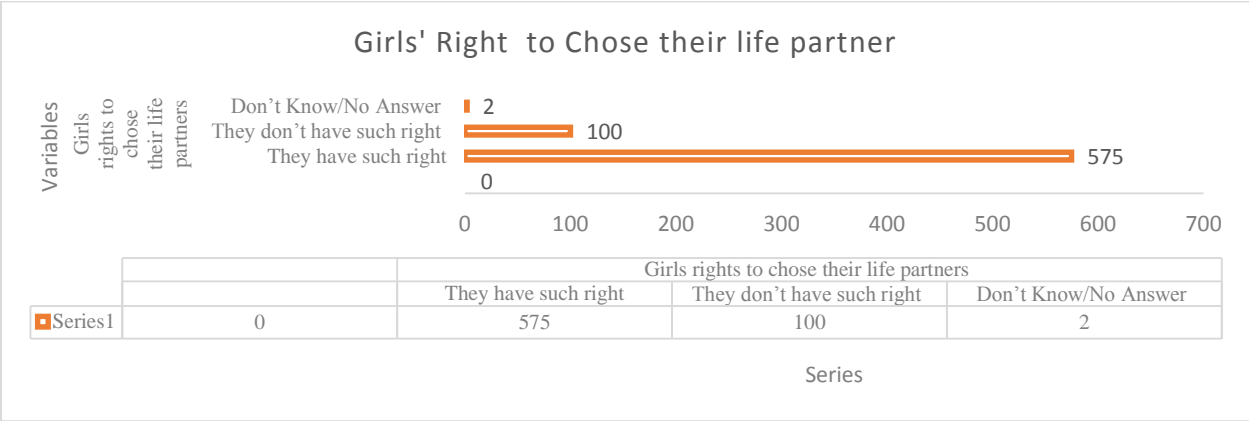
The rest (27 interviewees) rejected the practice of *BAD* with somewhat ambiguous answers like that of the mullah from Salang district of Parwan province, who said: “I think it is not good based on Islamic law.”<sup>22</sup> However, there is some level of suspicion and difference in rejection of *BAD* by Islamic Sharia, almost the absolute majority of the people studied agreed with the fact that the practice of *BAD* is prohibited in the Afghan Civil Laws and Constitutions. The level of suspicion in the rejection of *BAD* have the potential for some members to think of *BAD* as a dispute resolution in some particular cases. The same views are strongly supported by the survey respondents. When asked about the practice of *BAD* is in accordance to Islamic Sharia, more than 85% say it is illegitimate in Islam and less than 1% of the respondent see the practice of *BAD* as legitimate in Islamic Sharia.

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<sup>22</sup> Personal interview with. 20/7/2014/ Salang, Parwan



At the same time, about 85% of the survey respondents agree that girls have the right to be consulted while choosing their life partners.

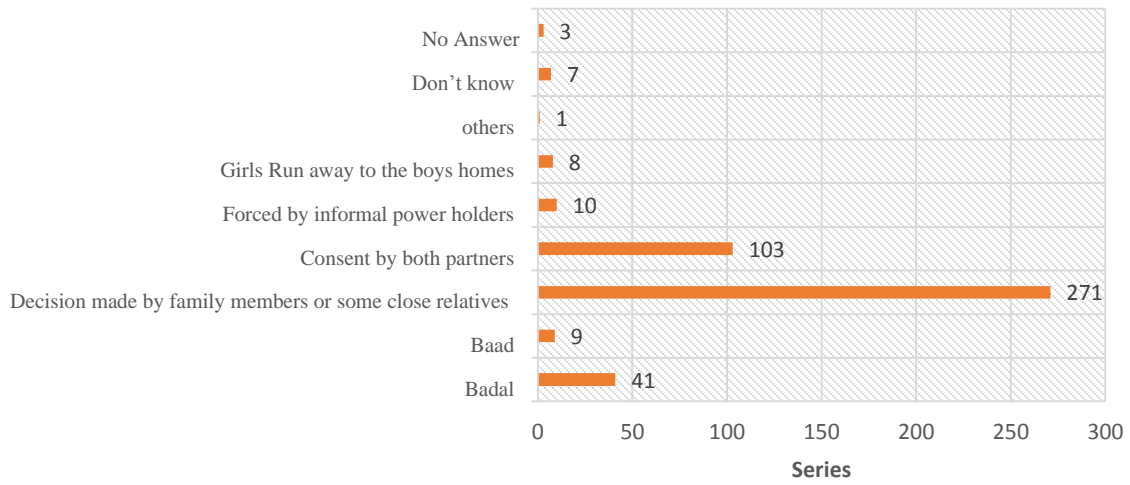


Such widespread notion of giving rights to the girls in the people's mind however is in contrast to the realities on the ground. According to the respondents, more than 50% of marriages were arranged by the family members and other close relatives and only 20% of marriages took place based on the full consent and decision of one or both of life partners.

The following chart shows the most common ways of marriage arrangement in the surveyed areas.



## Common Ways of Marriage Arrangement



**Concluding remarks:**

In the Afghan society where strong traditional norms, values and codes dominate the nature of social interactions and dealings, it is very grim and time consuming to bring social reforms and development. Some of these norms and codes are either supported by the dominant social class or attached to holy and supernatural entails. However, findings of the current study gives a turning point about positive changes to the nature of some harmful traditions like the practice of *BAD*.

Our study points towards a positive trend of reduction in absolute numbers of *BAD*. Although the specific causes for this reduction are not yet clear, it can be speculated that some of the main factors have been improvement in the condition of women, and increase in general literacy levels. There are many critics of the current government and political system of Afghanistan; however, Afghanistan has also witnessed improvements in various sectors in the last decade. It is hoped that improvements in the social sector will have a ripple effect and lead to further reduction in instances of *BAD* in the coming years. For this, it is important that government institutions continue to invest in social development, literacy generation and women's welfare and awareness programs.

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