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# “I HAD TO RUN AWAY”

The Imprisonment of Women and Girls for “Moral Crimes” in Afghanistan



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**The Imprisonment of Women and Girls for “Moral Crimes”  
in Afghanistan**

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## The Imprisonment of Women and Girls for “Moral Crimes” in Afghanistan

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# Map of Afghanistan



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## Glossary of Acronyms and Terms

**AGO:** Attorney General's Office, responsible for prosecuting crimes.

**AIHRC:** Afghan Independent Human Rights Commission, an independent government body responsible for monitoring and protecting human rights.

***Baad:*** Traditional practice involving giving a girl to another family to resolve a dispute.

***Baadal:*** The exchange of daughters between two families for marriage.

**Badam Bagh:** Afghanistan's largest women's prison, located in Kabul.

**CEDAW:** Convention on the Elimination of all Forms of Discrimination against Women.

**Civil Code:** Afghan law containing provisions regarding divorce and child custody.

**CPD:** Central Prison Directorate, responsible for running adult prisons.

**CRC:** Convention on the Rights of the Child.

**DoWA:** Department of Women's Affairs, provincial offices representing the Ministry of Women's Affairs.

**Dowry:** Money given by a groom's family to a bride as part of a marriage agreement.

**Escape from home:** Alternative translation of "running away," treated as a crime under article 130 of the Afghan Constitution.

**EVAW:** Law on the Elimination of Violence Against Women, adopted by presidential decree in 2009.

**FRU:** Family Response Units, units within the police designed to provide specialized assistance to women.

***Hanafi:*** School of Islamic law interpretation.

**ICPC:** Interim Criminal Procedure Code of Afghanistan.

**ICCPR:** International Covenant on Civil and Political Rights.

***Jirga:*** Traditional gathering of community elders to, among other things, resolve community disputes.

**Juvenile Code:** Afghan law regarding juvenile justice.

**Juvenile Rehabilitation Center:** Detention facilities for children.

***Mahram:*** A male family member who chaperones a woman.

**Ministry of Interior:** Responsibilities include deploying and supervising police.

**Ministry of Justice:** Responsibilities include legislative drafting, providing legal aid, and promoting legal awareness.

**MoLSAMD:** Ministry of Labor, Social Affairs, Martyrs and Disabled. Responsibilities include providing social work assessments in juvenile justice cases.

**MoWA:** Ministry of Women’s Affairs. Responsibilities include overseeing the provision of shelter for women fleeing abuse and providing direct assistance to such women.

**Running Away:** Refers to women and girls who have left homes without permission of their husband or male relatives, which is charged as a crime under article 130 of the Afghan Constitution.

***Saranwal:*** Prosecutor.

**Sharia:** Islamic law.

***Shura:*** Traditional gathering of community elders for various purposes, including resolving community disputes.

**UNAMA:** United Nations Assistance Mission in Afghanistan.

**Underage Marriage:** Under international law, marriage before age 18; in Afghanistan, marriage before the age permissible under Afghan law—16 for a girl (or 15 with approval of her father or a relevant court) and 18 for a boy.

**UNODC:** United Nations Office on Drugs and Crime.

**UN Women:** United Nations Entity for Gender Equality and the Empowerment of Women.

***Zina:*** Sexual intercourse by two individuals who are not married to each other.





## Summary

I just want a divorce. I can't go back to my father because he will kill me. All my family has left me behind.

—Aisha H., 20, sentenced to three years in prison for “running away” from a physically abusive man whom her father forced her to marry as a second wife

The government should see that girls like me are innocent. It doesn't see that we are children, and our hearts become very closed in this environment.

—Gulpari M., 16, arrested for *zina* after being kidnapped on her wedding day

I hope you can help these women. Cases of “running away” should be solved in the community, not in prison. Even in more complicated cases, the government can do something better, like keeping women in shelters or giving them a job ...

—Administrator of women's prison (name withheld to protect identity)

Homa K. was just 12-years-old when she was forced to marry a man 10 years her senior. He drank, used opium, routinely beat her and their two daughters, and failed to support the family financially. One day in 2009 her husband beat one daughter so badly that her teeth shattered. Homa fled with her children to another province with the help of her grandfather and cousin. After about a year of hiding in another region of Afghanistan, she went back to the region near where her parents live. But after a few months the authorities arrested and charged her with the “moral crimes” of “running away” and *zina* (sexual intercourse by two individuals not married to one another) after her husband alleged she had sex with the cousin who helped her flee. Homa was sentenced to seven years in prison, where she is now incarcerated with her children. She is 22.

Since the overthrow of Taliban rule in 2001, there have been major improvements in the rights of women and girls in Afghanistan. In parts of the country under government control, severe restrictions on access to education, work, and health care have been lifted. Many women have assumed government posts, run for office, and reengaged with Afghan society. In 2004 a new constitution was adopted guaranteeing women equal rights, and in

2009 the Law on the Elimination of Violence Against Women banned and set new penalties for underage and forced marriage, domestic violence, rape, forced prostitution, and other abuses against women.

President Hamid Karzai has also made some efforts to support women's rights, including pardoning women and girls for "moral crimes" with increasing frequency, either on his own initiative or after petitioning from civil society groups. In his most recent pardon on March 8, 2012, he ordered that "convicted women... if they ran away from their parents' house in order to marry their ideal person or if they married their ideal person shall be forgiven unconditionally."

But these changes belie a darker reality facing women in Afghanistan, where discrimination is rampant and appalling abuses, such as the forced and underage marriage and domestic violence experienced by Homa, are rarely prosecuted. Rather than finding support from police, judicial institutions, and government officials, women who try to flee abusive situations often face apathy, derision, and criminal sanctions for committing "moral crimes."

This report is based on extensive interviews in Afghanistan with 58 women and girls in three women's prisons and three juvenile rehabilitation centers, as well as with civil society members, prison wardens, prosecutors, government officials, shelter providers, women's rights activists, government advisors, and legal and women's rights experts. It focuses on the plight of women and girls charged with the moral crimes of "running away" and *zina*. The crime of "running away" is nowhere to be found in the Afghan Penal Code. The crime of *zina* under Afghan law is contrary to Afghanistan's international legal obligations. Criminal cases are often brought on dubious accusations, determined by problematic confessions, and often result in long prison terms for women and girls. The report highlights almost three dozen cases of women punished for these "crimes," and examines the frequently negative role that police, prosecutors, and judges have played in punishing women and girls perceived to have committed them.

In doing so, the report demonstrates twin injustices in the Afghan legal system: the often vigorous enforcement of vaguely defined or undefined "moral crimes," and the correspondingly anemic enforcement of the Law on the Elimination of Violence Against Women. While the women and girls who flee abuse often end up incarcerated, the men

responsible for the domestic violence and forced marriages causing flight almost always enjoy impunity from prosecution.

The obstacles to fulfillment of the rights of women and girls in Afghanistan are many. Prior Human Rights Watch reports have addressed a range of them, including Taliban attacks on women and girls, severe restrictions on education, sexual violence, forced and child marriage, lack of access to justice, the targeting of women in public life, and barriers to employment.<sup>1</sup> We have focused this report on the criminalization of “moral crimes” because they are particularly egregious examples of mistreatment of and discrimination against women and girls in law and practice, and because we believe they are areas where concrete reforms that improve the lives of Afghan women and girls are feasible even in the current, very difficult environment for women’s rights.

While accurate statistics do not appear to be publicly available, Human Rights Watch estimates based on prior studies and our work in three prisons in late 2011, that in January 2012 there were approximately 400 women and girls imprisoned in Afghanistan for “moral crimes.” These consist of about half of all women (non-juveniles) in Afghanistan’s prisons and virtually all teenage girls in its juvenile detention facilities.

Abuses against women and girls accused of “moral crimes” affect not only the hundreds of women and girls arrested each year, but also every woman and girl in Afghanistan who faces forced or underage marriage, domestic violence, or other abuse. Imprisoning women and girls for trying to escape abuse sends a clear message to others: do not flee a dangerous home life or look for help outside the home, because when you seek protection or justice you may well face punishment instead.



Afghan women, especially those living outside major urban centers, are obliged to live according to strict unwritten rules of conduct. When travelling outside the home or between villages or cities, they need to be escorted by a male relative or husband or risk being labeled as “immoral.” While education is far more accessible than under the

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<sup>1</sup> For example, Human Rights Watch, *We Have the Promises of the World: Women’s Rights in Afghanistan*, December 2009, <http://www.hrw.org/reports/2009/12/03/we-have-promises-world-0>; and Human Rights Watch, *Afghanistan – The “Ten-Dollar Talib and Women’s Rights*, July 2010, <http://www.hrw.org/reports/2010/07/13/ten-dollar-talib-and-women-s-rights-0>.

Taliban, more than half of all girls still do not attend school. Every two hours an Afghan woman or girl dies of pregnancy-related causes, in part because girls are often forced to marry immediately after puberty and give birth before their bodies have fully developed.

Afghan women have some of the worst literacy, poverty, and life expectancy rates in the world. Many women and girls interviewed for this report had endured additional challenges, including physically abusive environments and forced marriage (often at a young age and to a much older man), factors that often directly related to their fleeing and being arrested.

When women and girls decide to leave because of abusive relationships or unhappiness, enraged parents, brothers, fiancés, and husbands frequently track them down and accuse them of running away or of *zina*. Male family members, comfortable in the knowledge that their own criminal behavior will not be subject to scrutiny, can easily use such accusations as a weapon. Aided by authorities too willing to accept their allegations at face value, they can accuse a woman of *zina*, knowing that she is likely to be arrested. When this happens, women often suffer an invasive medical examination and severe damage to their credibility and reputation, even if charges are never proven. Even the threat of an accusation can be used to control women and cover up or justify crimes, including forced and underage marriage, rape, assault, and forced prostitution.

Women and girls are not always without help. Some family members, such as Homa's grandfather, offer shelter and protection, while some Afghan officials act courageously to protect women. With donor funding and government support, a small number of private shelters have been set up in about half the regions of the country to protect women fleeing violence and forced marriage.

However, such measures are for the most part inadequate. Women and girls are often not aware that shelters exist, and those that do operate are too few in number and cannot protect a woman who has been accused of a crime. Moreover, bias is rife against women and girls at every stage of the justice system, with many officials enforcing unwritten social norms, rather than protecting women from abuse. All too often, police comply with fathers or husbands, like Homa's, who contact police to have fleeing wives or daughters arrested, assuming that if a man complains about a woman or she is outside the home without permission, she is "bad" and guilty of immorality. In some alleged "moral crimes" cases, police have arrested women or girls while they took refuge in shelters.

After an arrest, police typically collect statements from women in intimidating circumstances and without legal counsel or even a friend present. Women and girls are instructed to sign with thumbprints confessions they cannot read and that have not been read to them. These “confessions” are often the sole evidence presented in court, and routinely result in convictions and long sentences.

With only rare exceptions, prosecutors and police decline to investigate claims of abuse that women cite as the reason they left their homes. Judges issue decisions citing irrelevant information, such as a letter from a woman’s husband complaining of her disobedience and asking that she be punished, while offering no legal analysis or reasoning.

During our research, we found no evidence that anyone in the justice process had asked meaningful questions about whether women believed to have engaged in sexual intercourse did so willingly or were raped. For example, in one court record that Human Rights Watch reviewed, Tahmina J., 18, said she was raped. Instead of pursuing her allegations, the court’s decision warned that women should know that it is unsafe for them to go out at night, and said the victim must not have screamed very much or someone would have heard her. The court concluded that two men took Tahmina J. to an abandoned building and “sexually assaulted” her, yet convicted her of *zina* and sentenced her to two-and-a-half years in prison, where she remains today.

The Supreme Court of Afghanistan has formally endorsed this discrimination by publicly instructing the country’s judges to treat “running away” as a crime, despite the absence of this offense in Afghan statutory law. The court states that rather than running away if they have problems at home, women and girls should seek government help. As this report shows, this is an unsafe and unfeasible option for most women and girls: they have no reason to be confident that police, judicial institutions, and government agencies will come to their assistance if they seek help. On the contrary, many women and girls we interviewed were further victimized after seeking help from these institutions.

When Human Rights Watch asked prosecutors why they prosecuted women and girls for “moral crimes” while failing to make basic inquiries about the crimes that women and girls alleged were committed against them, the typical response was laughter. Prosecutors explained that the women and girls detained for “moral crimes” were of bad moral character and must therefore have fabricated stories of abuse. Others suggested that the

abuse was not severe enough to warrant punishing the husband. One prosecutor even made this argument in a case where a woman had fled her home after being stabbed repeatedly in the head, chest, and arms with a screwdriver.

For some women whom Human Rights Watch interviewed, prison time is not even the worst consequence of their being charged with “moral crimes.” Many women and girls who left their homes said they fear their husbands or family members will kill them for having “shamed” their families when they eventually are released from prison, a fear justified by the frequency with which “honor killings” occur in Afghanistan. Guarded shelters, operated by brave Afghan nongovernmental organizations, are the only option for some of these women and girls to stay alive, but such shelters exist only in less conservative parts of the country and face threats from opponents who describe them as “brothels” and seek to have them closed.

Other women told Human Rights Watch that they have to choose between a life of abuse and a life without their children. Some said they plan to return to the home they fled, where abuse inevitably awaits them, because they know that if they do not return their husbands will keep their children.

Sadly, many of the women and girls we interviewed blamed themselves for crimes committed against them. Many seemed to regard consent as irrelevant to their story, an indication that the introduction of the criminal offense of rape under the Law on Elimination of Violence Against Women has yet to translate into public awareness or change perceptions. “I was ashamed of all the things I did [running away] and I was responsible for everything that happened,” said Fawzia S., describing how she was sexually assaulted after she ran away from home, and then was arrested when went to the police to report the abuse. “My father came here and said he forgives me and that I can go home. It is a big shame for me as I am his daughter. Even I can’t forgive myself.”

This situation has been further undermined by President Karzai’s frequently changing position on women’s rights. Unwilling or unable to take a consistent line against conservative forces within the country, he has often made compromises that have negatively impacted women’s rights. These include appointing staunch conservatives to the Supreme Court, and in 2009 supporting passage of the blatantly discriminatory Shia Personal Status Law.

In March 2012 Karzai publicly supported a statement by Afghanistan's Ulema Shura, a government-sponsored council of religious leaders, that said women are secondary to men, should not travel without a male chaperone, and should not mix with men in public or while working or studying. The Ulema Shura statement also implied that under some circumstances violence against women was acceptable. Karzai later explained his position by saying, "The clerics' council of Afghanistan did not put any limitations on women. It is the *sharia* law of all Muslims and all Afghans."

As the United States and other participating governments prepare to radically reduce their military and other commitments to Afghanistan (US combat troops are currently slated to withdraw by the end of 2014), they and the Afghan government need to refocus their attention on establishing stronger foundations for protecting women's rights. Ten years after the fall of Taliban rule, abuses against women and girls are widespread, and redress limited or non-existent. It is a sad irony that Afghanistan's relatively scarce resources for criminal justice are being used to prosecute and incarcerate women and girls for actions that should never be crimes, while impunity reigns for most perpetrators of serious human rights violations and violence against women and girls.



## Key Recommendations

Human Rights Watch calls on the Afghan government and its international partners to act decisively to end the abuses described in this report.

The treatment of women and girls accused of “moral crimes” is a black eye on the face of the post-Taliban Afghan government and its international backers, all of whom promised that respect for women’s rights would distinguish the new government from the Taliban. That such abuses persist after more than 10 years of intensive international engagement with and assistance to Afghanistan indicates a need for Afghanistan’s international partners to make women’s rights a higher priority in both their political engagement and aid efforts. How these cases are handled will be a measure of the success or failure of both the Afghan government and the international community in the coming years.

The UN special rapporteur on violence against women has called on Afghanistan to “abolish laws, including those related to *zina*, that discriminate against women and girls and lead to their imprisonment and cruel, inhuman and degrading punishment.”<sup>2</sup> The UN Committee on the Rights of the Child has urged Afghanistan to “[r]emove so-called moral offences as a crime and release children detained on this basis.”<sup>3</sup>

An immediate first step is for Afghan and international actors to implement two basic principles to better safeguard the rights of women and girls in such cases (a full set of recommendations is set forth at the end of this report).

First, the mere act of fleeing one’s home, whether to escape abuse or for any other reason, should never be a crime. To that end:

- The Afghan Supreme Court should withdraw the 2010 and 2011 guidance on criminalization of “running away” and replace it with new guidance that clarifies

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<sup>2</sup> Report of the Special Rapporteur of the Commission on Human Rights on violence against women, its causes and consequences, on the situation of women and girls in Afghanistan, UN Doc. A/58/421, October 6, 2003, [http://www.unhchr.ch/huridocda/huridoca.nsf/o/4d099bc67f0526edc1256dd700503b65/\\$FILE/No355646.pdf](http://www.unhchr.ch/huridocda/huridoca.nsf/o/4d099bc67f0526edc1256dd700503b65/$FILE/No355646.pdf), para. 31.

<sup>3</sup> CRC concluding observations on Afghanistan, CRC/C/AFG/CO/1, 4 February 2011, para.75(c).

that “running away” is not a crime and cannot be prosecuted under article 130 of the Constitution.

- President Karzai should issue an administrative decree that “running away” should not be treated as a crime under Afghan law and that everyone convicted for “running away” will be pardoned.
- International donors should make implementation of the EVAW Law, abolition of the crime of “running away,” revisions to the zina and family laws, and reforms to other laws that discriminate against women key issues in political engagement with the Afghan government.

Second, women and girls suffering from forced marriage, domestic violence, sexual abuse, and other crimes should be better protected, and the perpetrators of such crimes more systematically investigated and prosecuted. To that end:

- The Attorney General should issue instructions requiring prosecutors to formally investigate all allegations of crimes against women under the EVAW Law or any other law, bring charges as the evidence warrants, and fully investigate whether women accused of crimes were acting in response to abuse.
- The Minister of Interior should instruct all police that they are obliged to convey information pertaining to all incidents of violence against women or possible crimes under the EVAW Law to the prosecutor immediately.

International donors should provide stable, predictable, long-term assistance for shelters, including for expanding the current capacity of the shelter system and developing “open” shelters, safe housing for women leaving prison, and long-term support for women permanently unable to reunite with their families.

## Methodology

In October and November 2011 Human Rights Watch interviewed 58 women and girls—34 women in prisons and 24 girls in juvenile rehabilitation centers—who were at that time imprisoned for “moral crimes” in Afghanistan. Interviews were conducted in the interviewee’s native language (Dari or Pashtu) by a female interviewer and with the aid of a female interpreter. Each interview lasted between 15 and 90 minutes.

Interviewees were told at the start of each interview that Human Rights Watch could not provide them with individual assistance, and it was made clear to potential interviewees that it was entirely up to them whether they wished to speak with us or not. A significant number of women and girls then refused to be interviewed, and are not included among the 58 interviews. Human Rights Watch also explained that they could stop or decline to answer questions at any time in the interview and made an effort, where appropriate, to inform women about, and connect them to, services such as legal assistance and shelters.

Interviews took place in three women’s prisons and three juvenile rehabilitation centers for girls, which at the time were all operated by the Ministry of Justice.<sup>4</sup> The ministry granted Human Rights Watch permission to enter these prisons and juvenile rehabilitation centers and interview any woman or girl who consented to be interviewed. Prison staff confirmed that every woman and girl whose story is referenced in this report was imprisoned for a “moral crime,” and in the overwhelming majority of cases for “running away,” *zina*, or both.

In most cases, Human Rights Watch was not permitted to interview women and girls privately, despite consistently requesting to do so. Many of the interviews were conducted in rooms with other prisoners and guards frequently passing through, or in a prisoner’s

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<sup>4</sup> In 2011 the government made a decision, opposed by local human rights activists and many intergovernmental agencies and international organizations in Afghanistan, to transfer responsibility for operation of prisons for adults from the Ministry of Justice to the Ministry of Interior. The actual transfer took place in January 2012. Responsibility for operation of juvenile rehabilitation centers remains with the Ministry of Justice. The decision to make this transfer was taken as a result of the escape of nearly 500 prisoners from Kandahar prison in 2011. International best practice provides that interrogation functions (police) and custodial functions (prisons) always be separate to reduce the risk of torture and abusive interrogation. This is a particularly urgent issue in Afghanistan. A 2011 UN report found widespread and systematic torture in Afghan jails. See generally, “Treatment of Conflict-Related Detainees in Afghan Custody,” United Nations Assistance Mission in Afghanistan and UN Office of the High Commissioner for Human Rights, October 2011, [http://unama.unmissions.org/Portals/UNAMA/Documents/October10\\_%202011\\_UNAMA\\_Detention\\_Full-Report\\_ENG.pdf](http://unama.unmissions.org/Portals/UNAMA/Documents/October10_%202011_UNAMA_Detention_Full-Report_ENG.pdf).

dormitory room where roommates often gathered around. In such cases, we asked the interviewee whether she wanted to continue. We did not ask questions about treatment in custody and current prison conditions. In two women's prisons, the prison directors insisted on observing the interviews and were present for most of the interviews, though not always listening. In these cases, Human Rights Watch confirmed women's willingness to continue the interview, and adjusted the interviews as necessary. In a number of cases, the prison directors assisted in identifying women imprisoned for "moral crimes," provided access to the facility's records, and added corroboration to the women's accounts of the reasons for their imprisonment.

Following the interviews conducted in prisons and juvenile rehabilitation centers, Human Rights Watch sought to verify the information provided by the women and girls who had been interviewed. In Kabul we were able to check with the file rooms ("regime departments" at the prison and juvenile rehabilitation center) to verify the charges and sentences for each case.<sup>5</sup>

The most comprehensive files on criminal prosecutions in Afghanistan are maintained by the Attorney General's Office (AGO). Human Rights Watch requested access to AGO files on all of the women and girls interviewed, but the AGO granted us permission to review case files only where the woman or girl was imprisoned in Kabul, and a final judgment had been issued in the case. These criteria applied to 13 of the 58 women and girls interviewed. The AGO was unable to locate three of these 13 files. Human Rights Watch reviewed the 10 that were found.

In addition to interviewing women and girls in prison, Human Rights Watch also interviewed officials and others with knowledge of the systems and structures applicable to "moral crimes" cases. These sources included Afghan government officials, Afghan civil society organizations, the United Nations, international aid and contractor organizations, and foreign military officials.

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<sup>5</sup> Human Rights Watch also inquired about what had happened to the men charged or otherwise involved in these cases. Except where we had the opportunity to review the file, the woman or girl interviewed was usually our only source of information about what had happened to any man or men involved in the case. In many cases, the woman or girl knew what happened to the men, because they had joint court dates, but in some cases she did not know.

Many of the women and girls we interviewed are in danger of being killed or otherwise harmed by family members after they are released from prison. They courageously shared their stories with us, often enthusiastically, saying they wanted the world to know their stories, but many requested that we recount their stories in a manner that fully concealed their identity. For this reason, all names used to identify girls and women imprisoned for “moral crimes” throughout the report are pseudonyms. We have also omitted locations mentioned in their accounts. In Afghanistan, an individual’s ethnicity and religion are often evident from their name. In selecting pseudonyms, we have intentionally not matched pseudonyms to the ethnicity or religion of the person thus named.<sup>6</sup> We have also not disclosed the location of interviews with women in prisons and girls in juvenile detention. Many other individuals we interviewed also requested confidentiality in order to be able to speak freely and often critically about programs and institutions relevant to this report. We have also shielded their identity.

Finally, a key issue in this report is access to shelter for women fleeing abuse and violence. The mere existence of shelters in Afghanistan is extremely controversial, as evidenced by a concerted campaign by an Afghan television channel to have the shelters closed, and by the total absence of shelters from the more conservative southern half of the country. Because of the well-founded fear shelter providers have of being targeted, perhaps violently, by individual family members and people deliberately seeking to destroy all shelters in Afghanistan, we have been intentionally vague regarding some details of the shelter system so this report does not provide information that could be used to endanger shelters and the women and girls who use them.

## Terminology

In this report “child” or “girl” is used to refer to anyone under the age of 18, consistent with usage under international law.<sup>7</sup> Afghanistan has no consistent system for registering births or issuing birth certificates, and some Afghans do not know their exact ages.

Under Afghan law, those convicted of criminal offenses who are under age 19 are held in juvenile rehabilitation centers, while those 19 and older are held in prisons. Where age is

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<sup>6</sup> All of the women and girls interviewed were Muslims, either Sunni or Shia.

<sup>7</sup> Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990, art. 1.

in question, the government uses medical examinations of dubious accuracy to assess age. We encountered a number of women and girls who reported that they were too old to be in a juvenile rehabilitation center, or too young to be in prison. In these instances we relied on the age told to us by the individual, regardless of where she was detained.





Afghan female prisoners in the prison yard, which serves as the only outdoor space for them to use, December 2010.

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A prisoner covers her face while sitting outside a room that she shares with 15 other women prisoners in March 2010. Women in Afghanistan face serious barriers to obtaining custody of their children in the event of a divorce. Several women told Human Rights Watch that when they left prison they would have to choose between returning to an abusive husband with custody of their children or never seeing their children again. Most planned to return to their husbands. © 2010 Farzana Wahidy



A child studies while two women prisoners sew, March 2010. Several hundred children in Afghanistan live in prisons and juvenile detention facilities. Serious efforts in some facilities to provide education for children and vocational programs for prisoners have not taken root system-wide. Some women and girls interviewed said that they were attending school for the first time through classes in the prison or juvenile rehabilitation center.

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از زن به تو از قفسه دیگری خطاب است  
از زن تویی زبانت زن خط میباید است



(Above) Kabul's Badam Bagh, meaning "Almond Garden," is the largest women's prison in Afghanistan. About 70 women were being held there for "moral crimes" when Human Rights Watch visited in October and November 2011.

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(Left) Inmates sit and stand on the steps of the women's prison in Kabul. There is very little to do in most women's prisons and girls' detention facilities in Afghanistan. One prison warden told Human Rights Watch: "I hate it. We have no space. There is nothing for these women to do."

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A woman sits in a room that she shares with six other inmates in an Afghan prison. Women and girls share cramped dormitory-style rooms, which sometimes house more than a dozen inmates and their children.

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A prisoner, serving a five-year sentence for *zina* (sex outside marriage), prepares lunch for the other inmates at a women's prison. While it is easy for a man to divorce his wife in Afghanistan, it is much more difficult for a woman to do so. A woman unable to divorce her husband is more vulnerable to charges of *zina*.  
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A kitchen used to prepare all the food for both the men's and women's sides of the prison at Parwan, north of Kabul. Giant cauldrons are used to cook the staple of rice. Prison meals are basic, but some women and girls whom Human Rights Watch interviewed are from such poor backgrounds that they were grateful for their regular prison meals. © 2011 Leslie Knott







An 18-year-old girl who was raped and sentenced to four years in prison for *zina*. While her attacker has been released, she still has another year-and-half to serve. © 2011 Lalage Snow



(Right) A girl, convicted of *zina*, stands in a prison yard. Girls interviewed by Human Rights Watch commonly said that they left their homes, sometimes with a boy they wanted to marry, to avoid forced marriage. Women often said they fled because they had been forced to marry someone against their will and were abused by their husband or in-laws. © 2011 Lalage Snow

(Below) A lock on a prison gate. A significant percentage of the women and girls interviewed by Human Rights Watch said that they believed they were in danger of being murdered by their families or husbands when they left prison. Such “honor killings” are not unusual in Afghanistan. © 2011 Lalage Snow





## I. Women's Rights since the End of Taliban Rule

Afghan women, from uneducated villagers to long-time rights activists, greeted the fall of the Taliban government in 2001 with joy and optimism. Across the country, women looked for ways to seize new opportunities for themselves and their daughters and recover from the losses of the Taliban years.

Some improvements came quickly. Several million girls went to school for the first time, and women became more visible in public life, with many returning to work. In December 2001, a month after the fall of the Taliban, Dr. Sima Samar became the deputy prime minister and Afghanistan's first minister of women's affairs.

A constitution adopted in 2004, though stating that all laws should be compatible with Islamic law, guarantees women equal rights. Constitutional and governmental changes resulted in some dramatic improvements in women's political participation, with approximately a quarter of seats in parliament reserved for women.<sup>8</sup> International aid flowed in, funding education, healthcare, and other services for women and girls. The government acceded to the Convention on the Elimination of All Forms of Discrimination against Women.<sup>9</sup> The country's new president, Hamid Karzai, assured Afghanistan's women that he believed in equal rights, and a future where they would emerge from their houses and help rebuild the country.<sup>10</sup>

While the years that followed did not live up to the heady optimism of late 2001, they brought real progress. Maternal mortality consistently declined in many parts of the country,<sup>11</sup> the number of girls enrolled in school soared from around 5,000 in 2001 to 2.4 million by 2010,<sup>12</sup> and shelters were established to assist women fleeing domestic violence.

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<sup>8</sup> Constitution of the Islamic Republic of Afghanistan, ratified January 26, 2004, <http://moj.gov.af/en/page/1684> (accessed March 10, 2012), arts. 83-84.

<sup>9</sup> Afghanistan acceded to the Convention on the Elimination of All Forms of Discrimination against Women on March 5, 2003 without reservations.

<sup>10</sup> For example, in January 2002 Karzai, as head of the Interim Administration, demonstrated his support for women's rights by signing the "Declaration of the Essential Rights of Afghan Women", which affirmed the right to equality between men and women. United Nations Commission on the Status of Women, "Discrimination against women and girls in Afghanistan: Report of the Secretary-General," January 28, 2002, <http://www.un.org/events/women/2002/ecn620025eng.pdf> (accessed March 16, 2012).

<sup>11</sup> Afghanistan Mortality Survey 2010, Afghan Public Health Institute, Ministry of Public Health, November 2011.

<sup>12</sup> Ashley Jackson, "High Stakes: Girls Education in Afghanistan," Oxfam, February 24, 2011, p. 4.

Women have assumed leadership roles including as parliamentarians, civil servants, judges, prosecutors, defense attorneys, soldiers, and civil society activists. The first female provincial governor was appointed in 2005. By 2011 there were about 1,195 women police officers.<sup>13</sup> The Afghan government now includes two female ministers, in the ministries of Public Health and Women's Affairs, and 69 women serve in the elected house of parliament.

The adoption of the Law on the Elimination of Violence against Women by presidential decree in 2009 was also a major landmark in advancing women's rights.<sup>14</sup> While there are important gaps, the law created and strengthened protections for women against a broad range of abuses, including rape, underage marriage, forced marriage, domestic violence, and denial of education.<sup>15</sup>

However, Afghan women and girls continue to face numerous obstacles to realizing their basic rights. The urgency of removing those obstacles is only heightened by the impending withdrawal of international military forces and the likely corresponding decrease in international attention and pressure on women's rights.

Gains in the areas of women's and girls' literacy, maternal mortality reduction, female participation in the workforce and in public life have been far more modest than hoped: for example, more than half of all girls are still not in school. Advances have also often come at great cost to many Afghan women and girls: those who have stepped into public life, the workforce, and schools have faced threats, harassment, physical attack, and sometimes murder.

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<sup>13</sup> UNAMA, "A Long Way to Go: Implementation of the Elimination of Violence against Women Law in Afghanistan," November 2011, p. 20.

<sup>14</sup> A frequently used and controversial article of the Afghan Constitution permits the enactment of laws by presidential decree. Article 79 states: During the recess of the House of Representatives, the Government shall, in case of an immediate need, issue legislative decrees, except in matters related to budget and financial affairs. Legislative decrees, after endorsement by the President, shall acquire the force of law. Legislative decrees shall be presented to the National Assembly within thirty days of convening its first session, and if rejected by the National Assembly, they become void.

<sup>15</sup> One significant gap in the EAW Law is that it places pressure on victims by permitting them to withdraw charges and end the prosecution at any point. Law on the Elimination of Violence Against Women, August 2009, art. 40(2). Another is the failure to provide clear definitions of crimes, including the elements of each offense.

Promoting women's rights was not the primary reason for the US invasion of Afghanistan in October 2001. But the horrors of women's lives under the Taliban played a key role in strengthening support for military intervention. The following statements reflect how women's rights were used as a secondary justification for intervention:

**The mistreatment of women in Afghanistan was like an early warning signal of the kind of terrorism that culminated in the attacks of September 11....By empowering women with the freedom to choose their own future... America can do more than rid the world of an international terrorist network. It can promote the kind of values that will act like antibodies against the virus of evil that exists in too many hearts around the planet.**

—Then-US Senator Hillary Clinton, days after the start of the US invasion in October 2001<sup>16</sup>

**Afghan women know, through hard experience, what the rest of the world is discovering: The brutal oppression of women is a central goal of the terrorists... Only the terrorists and the Taliban forbid education to women. Only the terrorists and the Taliban threaten to pull out women's fingernails for wearing nail polish... Because of our recent military gains in much of Afghanistan, women are no longer imprisoned in their homes...The fight against terrorism is also a fight for the rights and dignity of women.**

—Laura Bush, wife of then-US President George W. Bush, weeks after the US attack, giving her first presidential radio address in place of her husband<sup>17</sup>

**[T]he women of Afghanistan still have a spirit that belies their unfair, downtrodden image. We need to help them free that spirit and give them their voice back, so they can create the better Afghanistan we all want to see.**

—Cherie Blair, wife of then-UK Prime Minister Tony Blair<sup>18</sup>

**France, as a permanent member of the UN Security Council, is present in Afghanistan alongside 40 nations including 25 of the 27 European Union countries at the behest of Afghan authorities and under a UN mandate. It thus contributes, in accordance with its principles and values, to defending human rights and improving the position of women in society.**

—French government statement<sup>19</sup>

**I would like to take this opportunity to say to all Afghans: there cannot be true peace and recovery in Afghanistan without a restoration of the rights of women.**

—Then-UN Secretary-General Kofi Annan<sup>20</sup>

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<sup>16</sup> Hillary Clinton, "New Hope For Afghanistan's Women," *Time Magazine*, Nov. 24, 2001.

<sup>17</sup> Laura Bush, presidential radio address, November 17, 2001, <http://www.presidency.ucsb.edu/ws/index.php?pid=24992#axzz1ngoOpGHL> (accessed February 28, 2012).

<sup>18</sup> "Afghan women looking for a voice," CNN, November 23, 2001.

<sup>19</sup> "France's Commitment in Afghanistan: A synergy of civilian and military actions," France at the United Nations, <http://www.franceonu.org/spip.php?article4042> (accessed February 26, 2012).

Segregation of the sexes is extreme. The concept of men and women working in an office together is sufficiently controversial that many families prevent women from working for this reason. In some communities and families, women are simply not permitted to leave the home. In addition, the Taliban now controls large parts of the country, particularly in the south and southeast, bringing with them the same attitudes and policies towards women that characterized their years in power from 1996 to 2001.

Discussions of women's rights in Afghanistan often entail assertions that restrictions on movement, access to education, political participation, and privacy, including choosing whether to wear a *burqa*, are cultural or reflect Afghan tribal codes or religious traditions. But while cultural codes can be a powerful force in Afghanistan, such codes are not comprehensive, unchanging, or monolithic. Afghanistan's many diverse cultures have varying attitudes and different histories of treatment of women and girls. More importantly, when laws criminalize women and girls fleeing abuse, when soldiers and police abduct and rape women and girls with impunity, and when the government does not address restrictions resulting in discriminatory denial of education, health care, employment, and political participation, women and girls are not experiencing "culture"—they are experiencing human rights violations.

## Violence against Women and Girls

Threats and attacks against women and girls in Afghanistan are common, including against high-ranking government officials, parliamentarians, human rights activists, schoolgirls, and teachers.<sup>21</sup> Although comprehensive government statistics on the prevalence of violence against women in Afghanistan do not exist,<sup>22</sup> a 2008 report on

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<sup>20</sup> UN Secretary-General Kofi Annan in his statement to the Afghan Women's Summit for Democracy, Brussels, 4 December 2001, <http://www.un.org/events/women/2002/sit.htm> (accessed March 16, 2012).

<sup>21</sup> Afghanistan's state justice system functions alongside a parallel traditional justice system, through which community elders convene in meetings known as *jirgas* or *shuras* to consider issues including disputes within their community. These traditional justice mechanisms are often involved in resolving problems within families, including cases of "running away" and *zina*, as well as divorce and child custody issues. A number of women and girls interviewed for this report discussed ways in which their situation had led them to deal with community elders and the traditional justice system as well as the state justice system. While some of the women and girls described good experiences with traditional justice mechanisms, others had negative experiences. A general concern about the traditional justice system is that it discriminates against women and at times uses abusive practices, such as *baad* and even execution by stoning. For example, UNDP Human Development Report, "Bridging modernity and tradition: The rule of law and the search for justice," 2007, <http://hdr.undp.org/en/reports/nationalreports/asiathepacific/afghanistan/nhdr2007.pdf> (accessed March 16, 2012).

<sup>22</sup> UNAMA, "Afghanistan has 'long way to go' in protecting women from violence – UN report," November 23, 2011, <http://www.un.org/apps/news/story.asp?NewsID=40491&Cr=violence&Cr1=women> (accessed February 22, 2012).

domestic violence presenting survey findings covering 4,700 households across 16 out of Afghanistan's 34 provinces, found that 87 percent of women reported that they had at some point experienced at least one form of sexual, physical, or psychological abuse, and 62 percent reported more than one form of abuse at home.<sup>23</sup> Over half of the women interviewed (52 percent) said that they had experienced physical violence, and 39 percent said that their husbands had hit them in the past year.<sup>24</sup>

This violence is exacerbated by the absence of places for women to turn for help when their safety and lives are threatened by abuse. Many women who experience violence in their homes suffer in silence, hoping the violence will end.

Some are murdered by family members or in-laws. "Honor killings" are a frequent occurrence in Afghanistan, and many women and girls interviewed for this report told Human Rights Watch they had been threatened with, or believed they were at risk of being killed by members of their families or in-laws.<sup>25</sup>

## Prevalence of Forced and Underage Marriage

According to the UN, as of 2008, 70 to 80 percent of marriages in Afghanistan were forced, taking place without full and free consent or under duress.<sup>26</sup> Another study found that 59 percent of women had experienced forced marriage.<sup>27</sup> Not surprisingly, the overwhelming majority of married women and girls interviewed for this report say that they did not marry by choice.<sup>28</sup>

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<sup>23</sup> Global Rights: Partners for Justice, "Living with Violence: A National Report on Domestic Abuse in Afghanistan," March 2008, p. 13.

<sup>24</sup> *Ibid.*, p. 14.

<sup>25</sup> For more on "honor killings," see UNAMA and OHCHR, "Silence is Violence: End the Abuse of Women in Afghanistan," July 8, 2009, <http://unama.unmissions.org/Portals/UNAMA/vaw-english.pdf> (accessed March 18, 2012).

<sup>26</sup> UNIFEM, "UNIFEM Afghanistan Fact Sheet," 2008, [http://www.wunrn.com/news/2009/08\\_09/08\\_17\\_09/081709\\_afghanistan.htm](http://www.wunrn.com/news/2009/08_09/08_17_09/081709_afghanistan.htm) (accessed February 22, 2012).

<sup>27</sup> Global Rights: Partners for Justice, "Living with Violence: A National Report on Domestic Abuse in Afghanistan," March 2008, p. 14.

<sup>28</sup> A paper by the Afghanistan Research and Evaluation Unit makes the point that it is not entirely accurate to view marriages in Afghanistan through a dichotomy of forced versus not forced and that a more realistic perspective is to see marriages as falling at different points along a continuum from choice to force. This point was reflected in many of the accounts Human Rights Watch obtained while preparing this report, as many of the married women and girls interviewed exercised little or no choice in the arrangement of their marriage. See also, Deborah J. Smith, "Decisions, Desires and Diversity: Marriage Practices in Afghanistan," Afghanistan Research and Evaluation Unit Issues Paper Series, February 2009, <http://www.aren.org.af/Uploads/EditionPdfs/905E-Marriage%20Practices-IP-web.pdf> (accessed February 22, 2012).

Many unmarried women and girls said they ran away from their families in order to avoid imminent forced marriage. Only 5 of the 31 married women we interviewed in prisons described their marriages as having been by choice. While 6 of the 11 married girls we interviewed in juvenile rehabilitation centers said they had married a person of their choosing, their having done so was often the reason for their arrest.

Marriage arrangements are made by the families involved and the girls typically are given no chance to object or refuse. Often they meet their husband on their wedding day and then immediately move to his household, where hostility and physical and emotional abuse from the husband, his other wives, or his family are common.<sup>29</sup> Lacking any alternative, most girls in this situation accept their lot and survive as best they can.

The legal age for marriage under Afghan law is 16 for girls and 18 for boys.<sup>30</sup> A girl who is 15-years-old can be married with the consent of her father or a court.<sup>31</sup> The law prohibits, under all circumstances, the marriage of a girl who is younger than 15.<sup>32</sup> The UN Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women have concluded that 18 should be the minimum age for marriage for both sexes.<sup>33</sup>

Nonetheless, underage marriage is commonplace in Afghanistan, with 17.3 percent of 15 to 19-year-old girls married.<sup>34</sup> UN statistics from 2008 showed that 57 percent of marriages involved at least one party under the age of 16.<sup>35</sup> Most married women and girls interviewed for this report were married before the age of 18. Among the women interviewed, the youngest reported age of marriage was 10-years-old and the oldest age of marriage was 20.

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<sup>29</sup> Afghan law permits a man to have more than one wife. A number of women interviewed for this report married men who already had wives, thus becoming second or third wives. Tensions over the husband taking another wife and poor relations between a new wife and an existing wife and her children were sometimes a cause of abuse and unhappiness.

<sup>30</sup> Civil Law art. 70.

<sup>31</sup> Civil Law art.71(1).

<sup>32</sup> Civil Law art.71(2).

<sup>33</sup> CEDAW, "General Recommendation No. 21, Equality in Marriage and Family Relations," (Thirteenth Session, 1994), para. 36; UN Committee on the Rights of the Child, "General Comment No. 4, Adolescent Health and Development in the Context of the Convention on the Rights of the Child," (Thirty-third session, 2003), para. 20.

<sup>34</sup> Afghan Public Health Institute, Ministry of Public Health, "Afghanistan Mortality Survey 2010," November 2011, pp. 51. This study includes some hopeful signs that the average age of marriage for young women is increasing. *Ibid.*, pp. 51-53.

<sup>35</sup> UNIFEM, "UNIFEM Afghanistan Fact Sheet," 2008,

[http://www.wunrn.com/news/2009/08\\_09/08\\_17\\_09/081709\\_afghanistan.htm](http://www.wunrn.com/news/2009/08_09/08_17_09/081709_afghanistan.htm) (accessed February 22, 2012).



Only four of the married women said that they had married at the age of 18 or older. Of married girls interviewed in juvenile rehabilitation centers, seven said they had married before the age of 16; the youngest age of marriage reported was 12. Many of the women and girls reported being engaged to be married at birth or at a very young age, usually through the types of *baadal* arrangements described below. Afghanistan’s exceptionally high rate of maternal mortality—every two hours an Afghan woman dies of pregnancy-related causes—is partly related to girls giving birth before their bodies have developed fully.<sup>36</sup>

Under the Law on the Elimination of Violence Against Women, both forced and underage marriage are illegal and parents, relatives, or others who arrange forced or underage marriages are subject to prosecution and imprisonment.<sup>37</sup> Underage marriage is prohibited by the EAW law and is punishable by two to five years of imprisonment.<sup>38</sup> Forced marriage is a crime under the EAW law and punishable by one to two years of imprisonment.<sup>39</sup>

### Traditional Practices of *Baad* and *Baadal*

Incidents of *baad* and *baadal* came up numerous times in research conducted for this report. In *baad* and *baadal*, practices traditional in some parts of Afghanistan, unmarried girls are given or exchanged to resolve disputes or stand in place of a dowry.<sup>40</sup>

*Baad* typically occurs in the context of a past crime or local conflict: the family of the wrongdoing party resolves the matter by giving an unmarried girl or girls to the family that has been wronged. Girls given as *baad* frequently face serious abuse in the receiving family since they are perceived as atoning for the wrong committed by their family member

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<sup>36</sup> See, for example, CeShena and John B. Williamson, “Maternal mortality, women’s status, and economic dependency in less developed countries: a cross-national analysis,” *Social Science & Medicine* 49 (1999), pp. 197-214.

<sup>37</sup> Because EAW was adopted only in late 2009, forced marriage and underage marriage that occurred before this date were not prohibited under Afghan law. However, many of the women and girls interviewed for this report provided accounts of forced or underage marriages that occurred after the adoption of the EAW law.

<sup>38</sup> EAW Law, art. 28. The EAW Law frequently refers back to the criminal sentences already set forth in the Penal Code, 1976. Most offenses prohibited by the Penal Code are punishable by “short,” “medium”, or “long imprisonment.” Under Penal Code articles 100-102, short imprisonment is less than one year; medium imprisonment is between one and five years; long imprisonment is 5 to 15 years. Within these ranges, the law may provide further specificity in regard to a specific offense. For example, the provision of the EAW Law that prohibits underage marriages specifies that a person who commits this crime “be sentenced to medium imprisonment not less than 2 years.”

<sup>39</sup> EAW Law, art. 26.

<sup>40</sup> In Afghanistan, while there is variety in dowry practices, a groom’s family is usually obliged to give a dowry to the bride’s family.

(who is almost always a male).<sup>41</sup> *Baadal*, by contrast, is an exchange of girls between families, each married to a male member of the other family, and often agreed on when the girls in question are very young. One purpose of *baadal* is to remove the obligation of both families to pay a dowry to facilitate marriage for their child.<sup>42</sup>

Both *baad* and *baadal* frequently lead to forced and child marriages, which are prohibited under the EAW law.<sup>43</sup> *Baad* is also specifically prohibited by the EAW Law, and is punishable by 5 to 10 years of imprisonment.<sup>44</sup> *Baadal* is a crime under provisions of the EAW Law that criminalizes underage marriage and forced marriage in cases where it involves a girl under 16 (or 15 if her father or a court have given consent), or occurs without her consent.<sup>45</sup>

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<sup>41</sup> For more information about baad, see “Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan,” UNAMA, December 9, 2010, and “Afghanistan: Stop Women Being Given as Compensation, Implement Elimination of Violence Against Women Law,” Human Rights Watch news release, March 8, 2011, <http://www.hrw.org/news/2011/03/08/afghanistan-stop-women-being-given-compensation> (accessed March 3, 2012).

<sup>42</sup> For a more detailed explanation of the practice of baadal, see UNAMA, “Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan,” December 9, 2010, pp. 15-18.

<sup>43</sup> EAW Law, art.28.

<sup>44</sup> EAW Law, art. 25.

<sup>45</sup> EAW Law, arts. 26 and 28.

## II. The Crimes of “Running Away” and *Zina*

This report focuses on women and girls charged with the crimes of “running away” and *zina*. These charges may be brought independently but are often filed in tandem. Human Rights Watch also encountered a number of cases in which women or girls were charged with “attempted *zina*,” “moral crime,” or sodomy, as well as isolated charges of “facilitating *zina*” and “assisting in running away.”

### “Running Away”

“Running away” is not an offense found in the Afghan Penal Code. However, women and girls in Afghanistan have long faced punishment from family and local governing bodies for leaving home without permission.

In response to challenges to the practice of charging women and girls with the crime of “running away,” in 2010 and 2011 the Afghan Supreme Court issued an instruction to courts that “running away” is a crime. The supposed offense has been criticized by local human rights activists<sup>46</sup> and by international observers, including the UN mission to Afghanistan.<sup>47</sup>

The authorities typically bring “running away” charges when family members file a complaint after women or girls have fled from spouses and family, often in the context of domestic abuse or forced marriage. There is no prohibition on men leaving their homes without permission. When men face charges related to “running away” it is due to their having assisted a woman in doing so.

In 2010 and 2011 the Supreme Court issued statements that “running away” should be treated as a crime whenever a woman flees to a “stranger” as opposed to a “relative” or “legal intimate.” In the 2010 statement, the court stated that running away from family or spouses, even in cases of abuse, “could cause crimes like adultery and prostitution and is against *Sharia* principles” and determined that the act is “prohibited and prosecutable based on discretionary punishment.”<sup>48</sup> This has been widely understood as a reference to

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<sup>46</sup> For example, Bahman Boman, Afghan women face abuse for fleeing forced marriages, IWPR, December 13, 2010.

<sup>47</sup> For example, UNAMA “Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan,” December 9, 2010.

<sup>48</sup> Letter from the General Administration Directorate of the Judiciary, Secretariat of High Council, Supreme Court of the Islamic Republic of Afghanistan, to the Judicial Research and Studies Department, Supreme Court of the Islamic Republic of Afghanistan,

article 130 of the constitution, which permits courts ruling on cases where there are gaps in the law to rule in a manner that best obtains justice.<sup>49</sup>

According to the court, “running away” requires:

...Punishment to prevent the probability of harm or damage [based on] a Sharia and legal rule. Based on this rule, many permissible (*Mubah*) acts are considered as crimes and there are punishments anticipated for such actions. For example in traffic offences, “driving at high speed and driving without a license” is prohibited.<sup>50</sup>

The court called for women and girls facing abuse to “refer their cases to judicial institutions and to the government...and solve their problems via government channels rather than resorting to personal actions” such as running away. The Supreme Court concluded that “running away” is not a legitimate response to abuse: “For resorting to personal actions may create various crimes and violence rather than eliminating the violence.”<sup>51</sup>

The Supreme Court statement relies on the assumption that women who run from home put themselves at unacceptably high risk of engaging in *zina* because they become vulnerable and unsupervised away from the family home. Because this assumption is not applied to men and boys who leave home, it is on its face discriminatory and prejudiced against women. As such, it violates fundamental tenets against non-discrimination and equal protection of the law found in international law.<sup>52</sup> The criminalization of “running

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in reply to: Document number (799) 1389/5/10 (01/08/2010), August 1, 2010 (first opinion generated in response to a request for clarification from an international organization implementing legal training programs in Afghanistan).

<sup>49</sup> Article 130 states: “In cases under consideration, the courts shall apply provisions of this Constitution as well as other laws. If there is no provision in the Constitution or other laws about a case, the courts shall, in pursuance of *Hanafi* jurisprudence, and, within the limits set by this Constitution, rule in a way that attains justice in the best manner.”

<sup>50</sup> Letter no. 1005/656, from the General Administration Directorate of the Judiciary, Secretariat of High Council, Supreme Court of the Islamic Republic of Afghanistan, to UNAMA, September 5, 2011.

<sup>51</sup> Letter no. 1005/656, from the General Administration Directorate of the Judiciary, Secretariat of High Council, Supreme Court of the Islamic Republic of Afghanistan, to UNAMA, September 5, 2011 (second opinion, expanding on the first and written to respond to and rebut an interpretation of the law in this area published in a report by UNAMA).

<sup>52</sup> See ICCPR, art.3 (“ensur[ing] the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant”) and art. 14 (“All persons shall be equal before the courts and tribunals”); CEDAW, art. 1 (“discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”).

away” would also appear to violate international legal prohibitions against prosecution for acts not criminalized by law.<sup>53</sup>

In addition, treating “running away” as a crime under Afghan law may violate a range of fundamental rights protected under international law, including rights to the security of the person, freedom of movement, the right to health, and arbitrary or unlawful interference with privacy, family, or home.<sup>54</sup>

## *Zina*

The criminal offense of *zina* concerns sexual intercourse by two individuals who are not married to each other. The word *zina* itself is Arabic and appears in the Quran as a prohibited act. *Zina* is widely outlawed in Islamic jurisprudence.<sup>55</sup>

*Zina* is a crime under article 426-7 of the 1976 Afghan Penal Code, which does not define it or its elements. These articles are the only provisions of Afghan law that prohibit *zina*.<sup>56</sup>

*Zina* is specifically mentioned as follows:

If in the crime of *zina* the conditions of “*Hadd*” are not fulfilled or the charge of “*Hadd*” is dropped because of doubt or other reasons, the offender shall be punished in accordance with the provisions of this Chapter.... A person who commits *zina* or pederasty shall be sentenced to long imprisonment.<sup>57</sup>

Afghan law making *zina* a crime lacks any definition or explanation of the elements of the offense, or even what *zina* is. This vagueness makes it easy for a husband or father angered by a woman or girl fleeing from home to allege, if she has spent any time in the

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<sup>53</sup> For example, article 15 of the International Covenant on Civil and Political Rights states, “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.”

<sup>54</sup> See section on international law.

<sup>55</sup> Ziba Mir-Hosseini and Vanja Hamzić, *Control and Sexuality: The Revival of Zina Laws in Muslim Contexts* (London: Women Living Under Muslim Laws, 2010).

<sup>56</sup> *Zina* is mentioned in four other articles of the penal code (arts. 61, 398, 424, and 437), but is referred to in these articles as an aggravating factor in relation to, or as a defense from, other crimes.

<sup>57</sup> *Hadd* or *hodud* (pl.) refers to a series of crimes for which Islamic law assigns fixed and specific punishments. The *hadd* requirements for proving the crime of *zina* include the testimony of several eyewitnesses to the act itself, or the repeated confession of the alleged perpetrator before a judge.

company of a man after having fled, that *zina* has occurred. While both men and women face arrest and prosecution for *zina*, women who seek to escape forced marriage or domestic abuse are likely to be accused of *zina* as a result. This does not happen to men.

The crime of *zina* violates international law by criminalizing consensual sexual relations between adults.<sup>58</sup>

The law on *zina* is a significant barrier to justice for women who experience sexual violence. As this report describes, police often treat a report of rape as an admission of *zina*, arresting the victim along with the perpetrator. Many police officers, prosecutors, and judges accept a mere counter-allegation of consensual sex to trump a complaint of rape and transform it into a complaint of *zina*, instead of treating consent as a defence that can be pleaded by a person accused of rape during a criminal investigation or trial. In this way many complaints of rape are never even investigated. The result is the double victimization of a complainant. And this makes the process so traumatic that it is even more unlikely that women and girls who have been raped will seek justice by informing the authorities.<sup>59</sup>

A related problem with *zina* laws, illustrated by some of the cases below, is the opportunity they create for men to use accusations of *zina*, or even just the threat of such an accusation, as a form of intimidation against women. Such an accusation can also be levelled by a man who seeks to protect himself from prosecution after assaulting a woman or forcing her into prostitution.

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<sup>58</sup> Criminalization of consensual adult sexual relationships conflicts with international human rights law in several respects. Where such criminal penalties are disproportionately applied against women, it constitutes a form of discrimination. The ICCPR, CEDAW, and other treaties guarantee equality before the law and prohibit all forms of discrimination. Laws criminalizing adult consensual sex also violate the right to privacy under article 17 of the ICCPR, which provides, “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.” See UN Human Rights Committee, *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (1994). Children under age 18 also enjoy rights to privacy and nondiscrimination (CRC, arts. 16 and 2). States are obliged to protect children from all forms of sexual exploitation and abuse (CRC, art. 34), and in all actions concerning children, their best interests must be a primary consideration (CRC, art. 3).

<sup>59</sup> The lack of clarity within Afghanistan’s ERAW Law on what constitutes rape and its elements adds to the practical difficulties that women who have endured sexual violence face. The ERAW law does not define rape. It does not explain which sexual acts are criminalized when committed against the will of the other person. It contains no definition of full and free consent, and does not identify coercive circumstances under there could be no full and free informed consent. This vagueness leaves all of these issues to be determined through the discretion of police, prosecutors, and judges in a justice system that is overwhelmingly male and biased against women.

### III. Case Studies of “Running Away” and *Zina*

Under the laws of Afghanistan, all violence is criminal, whether against a man or a woman, a child or an adult, at home or in public.

—Attorney General Mohammad Ishaq Aloko<sup>60</sup>

The way he beat her wasn’t bad enough to keep him in jail. She wasn’t near death, so he didn’t need to be in prison.

—Prosecutor on why he had not pursued charges against the husband of Nilofar M., who had stabbed her repeatedly<sup>61</sup>

Women and girls in Afghanistan often have little freedom of movement and face many risks when they leave their families. As a result, a woman or girl who chooses to leave home usually does it as a desperate measure to escape an unbearable situation.

A small proportion of women and girls will seek at great personal risk to extricate themselves from forced marriage or a life of abuse. They try to escape, at times by running away, by asking authorities to intervene, or by going to the police to report the abuse committed against them.

What happens next to many of them is as horrific as what came before.

While some officials make great efforts to help, many others compound the abuse the women have already experienced. Police often arrest women and girls who flee abuse by simply accepting the statements of their male accusers. Prosecutors bring charges of “running away” on the basis of purported confessions signed by women who cannot read, who have no legal counsel, and have not been fully informed of the contents. Judges convict women without any regard that they are victims of crimes, not perpetrators. As a result, women who are victimized by forced marriage and violence in the home are victimized again by a justice system that is cruelly discriminatory as a matter of law and in practice.

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<sup>60</sup> Forward to International Development Law Organization, “Know Your Rights and Duties: The Law on the Elimination of Violence against Women,” undated brochure, <http://www.idlo.int/Publications/EVAW%20ENGLISH.pdf> (accessed February 22, 2012).

<sup>61</sup> Human Rights Watch interview with prosecutor (name withheld), Kabul, January 16, 2012.

Enforcing the crimes of “running away” and *zina* not only puts women and girls unfairly behind bars, but has also been used to punish those who assist women to safety. Human Rights Watch learned that in a number of instances police had arrested family members and friends, male and female, who had helped protect women and girls. The fact that such a wide net is cast by law enforcement authorities in pursuing “moral crimes” creates an additional barrier for women and girls fleeing abuse, as it discourages others from helping them to escape.

Domestic abuse emerged as a common theme in the lives of most of the women and girls Human Rights Watch interviewed for this report. In a significant number of cases, accounts of how women or girls ended up in prison began with an effort to escape violence or threatened violence. Of the 42 married women and girls interviewed for this report, 22 were arrested as a direct result of having run away in order to flee abuse by their husband or family members of their husband. The most common reported abuse was beatings in the home of in-laws, inflicted not only by husbands but also by fathers-in-law, mothers-in-law, brothers-in-law, sisters-in-law, and other wives and their children.

Forced marriage, often also at an unlawfully early age, was another common cause of “running away” among the girls and young women interviewed. Faced with imminent marriage to someone they did not wish to marry, girls interviewed typically said they had tried to reason with their parents and then, when these efforts failed, they fled, sometimes with a boy who they liked and preferred to marry. Some girls explained that they would have preferred not to marry at all. One girl talked about how she had tried to delay marrying anyone because she hoped to be able to finish school, but found herself in a situation where she thought the only way to avoid a forced marriage was to marry someone else instead.<sup>62</sup>

A few women and girls interviewed gave accounts of men forcing them to work as prostitutes to raise money. Several girls described being kidnapped and then accused of *zina* as a result.

Discriminatory family laws and the difficulty women face in obtaining a divorce also plays a key role in many of the accounts Human Rights Watch heard. A number of women and girls had tried to obtain a divorce from their husbands and then fled when they were unable to

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<sup>62</sup> Human Rights Watch interview with Khalida P., November 22, 2011.



do so. Others, accused of *zina*, said that they were innocent by virtue of the fact that they had married the person they ran away with, or their husband had orally divorced them before they married another man.<sup>63</sup> However, in both situations they lacked documentation of marriage or divorce that could protect them from accusations of *zina*.

Family disputes over the behavior of women and girls sometimes end in murder. Women who family members viewed as disobedient or bringing shame upon the family have been targeted in so-called honor killings. The threat of murder by honor killing was a common feature in the accounts of the women and girls interviewed for this report: many women fled their families believing that if they were caught by them, they might be killed. A significant proportion of the women and girls interviewed said that after their arrest they received death threats from their male family members, including fathers, husbands, uncles, and brothers.

Many of the detained women and girls we interviewed came from particularly disadvantaged backgrounds, from poor families and without significant education. A significant number were orphans—a common occurrence in conflict-torn Afghanistan—and raised by extended family, sometimes in cruel circumstances. More than half of the detained women and girls interviewed by Human Rights Watch said they had no formal education at all. This proportion was particularly high among women in adult facilities, where over two-thirds interviewed had never been to school. None of the detainees had attended university. Extreme poverty was also common among detainees, in some cases a factor leading to forced prostitution. As one girl, Amina R., 17, said: “From the first time I came to this world my destiny was destroyed.”<sup>64</sup>

Another common theme among imprisoned women is abandonment or the failure of husbands or families to provide financial support, which meant the women had struggled to feed their families. The reasons for this failure varied: some husbands had left to seek work in other regions or neighboring countries, some were addicted to opium, and some devoted their resources to another wife or woman.

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<sup>63</sup> Afghan law permits a husband to divorce his wife simply by telling her that he has done so. Civil Law of the Republic of Afghanistan, published in Official Gazette no. 353, January 5, 1977, art. 139.

<sup>64</sup> Human Rights Watch interview with Amina R., November 2, 2011.

## Women Imprisoned or Arrested for “Running Away”

This section contains accounts from women and girls who were prosecuted for “running away” (and occasionally *zina* as well) after fleeing their homes, often due to abuse. As these cases illustrate, women and girls run away for a variety of reasons, in a variety of circumstances, and sometimes face accusations of “running away” even in situations where they say they had no actual intention of doing so.

### *Case of Shayla P.*

Shayla P., 25, told Human Rights Watch that she ran away from her husband in 2011.

My husband loved another girl. He came to me and he said, “I never want to divorce you, but I want to marry another girl.”

Shayla said she refused, telling him: “No, I don’t agree with your decision, because what will be the situation of my children if you marry with another woman?”<sup>65</sup>

According to Shayla, her husband became abusive and started beating her. Shayla fled. She says she wanted to reach her father’s house but that her husband caught up with her, took her to a police station, and accused her of running away. The police arrested her and her husband, presumably for his actions leading to her “crime.” As Shayla said: “They arrested me for ‘moral crimes,’ and for him they said he prepared these things for me. So they arrested both of us.”

Both Shayla and her husband were sentenced to one year in prison in 2011, and remain incarcerated. According to Shayla, the court imposed the sentence as a lesson to the couple, saying: “It should be an experience for you that you never do such things again.” Shayla says that her husband still refuses to divorce her, and her parents have told her to go back to him, arguing that he has “learned his lesson.” But Shayla believes her

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<sup>65</sup> Under Afghan law, Shayla P. arguably had a right to object to her husband taking a second wife, if his doing so was not in accordance with the requirements of the law. The Civil Law provides that:

Article 86: Polygamy can take place after the following conditions are fulfilled: 1) When there is no fear of injustice between the wives; 2) When the person has financial sufficiency to sustain the wives. That is, when he can provide food, clothes, suitable house, and medical treatment. 3) When there is legal expediency, that is when the first wife is childless or when she suffers from diseases which are hard to be treated.

husband's behavior will be worse after his release, that he will blame her for being imprisoned. She said she wants help to get a divorce, but also says:

I change my mind sometimes. Sometimes I think I will get a divorce, but sometimes I think about my son. My son is with my mother-in-law. If I get divorced, they will keep my son.

She told Human Rights Watch that she does not believe she can live with her parents, as her father has refused to visit her. She suspects he does not believe that she was fleeing to his house when she was arrested, but that she was running away with a man. When Human Rights Watch discussed with Shayla the existence of shelters for victims of domestic abuse, she indicated that she did not know they existed: "I never heard of this before. If I knew before maybe I could have gone there and requested for my divorce from there."<sup>66</sup>

### *Case of Souriya Y.*

Souriya Y. was given in *baad* at age 12 to marry into a family to whom her family owed compensation because Souriya's brother had run away with one of the family's daughters. Souriya says she was beaten and abused by her new husband. When she went to her father for help, he told her she should be patient.

After nine years and three children, the first of whom was born when she was 13, Souriya claims her husband accused her of running away with an enemy of his, a man with whom her husband had a long-running dispute but whom Souriya says she had not met until the first time they appeared in court together after their arrest. She was charged with "running away" and *zina*. She told Human Rights Watch, "My husband made this story up to get rid of me and hurt this man. He married another woman two days after I was arrested."

Souriya was convicted and sentenced to five-and-a-half years in prison. The man with whom she was accused of running away and committing *zina* was sentenced to six-and-a-half years in prison.

Souriya told Human Rights Watch that she was pregnant when she arrested and gave birth in the prison to a baby boy, who died after three weeks. On the issue of *baad*, Souriya said:

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<sup>66</sup>Human Rights Watch interview with Shayla P., November 2, 2011.

Baad is a bad way. If [some people] fall in love, they should be allowed to marry. Why I should be the victim of them? If such a thing is happening, [at least there] should be an agreement that the girl is treated well, that my husband will love me and will treat me well.<sup>67</sup>

### *Case of Saida T.*

Saida T., 16, began serving three years in a juvenile detention facility in 2011. She told Human Rights Watch that her ordeal began when she was on a long distance journey to visit extended family, escorted by her brother, when the two of them became separated as they changed taxis in a city along the way. Unfamiliar with her surroundings, with no way to find her brother and no phone to call relatives, she began to panic. She told Human Rights Watch: “I saw a mother and father with their son. They seemed like good people. They said come with us and stay with us until you find your brother.”

Saida says she stayed two nights with the couple. When she could not find her brother, told them she wanted to go home: “They said ‘You can’t go alone.’ The mother called her brother and she said, ‘He will escort you.’”

Soon after starting out, the woman’s brother began harassing her.

He asked me to marry him. I said no, I have a fiancé at home. He said, “You have to, you spent two nights at my house, your parents will think bad things [about you].” I refused. Then instead of [redacted] taxi stop, he took me to [redacted] taxi stop. At the taxi stop, two Criminal Investigation Division police officers asked who I was. He said, “She is my wife.” They asked me his father’s name. I said, “I don’t know, because I don’t know him.” They arrested us both.

Saida said that the man told the police that the two had been lovers for six months and had had sex together. Saida added that his relatives later came and told her that she should say the same thing, suggesting that it would lead to her being released. “So I did at first, but then the medical test showed that I was a virgin,” she said.

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<sup>67</sup> Human Rights Watch interview with Souriya Y., November 1, 2012.

Nevertheless, Saida was sentenced to three years in juvenile detention for “running away,” but says that her family and her fiancé believe her and will take her back once she is released.<sup>68</sup>

### *Case of Farah G.*

Farah G., 16, told Human Rights Watch that she fell in love with a friend’s brother:

I knew his sister. She was my school friend. [He and I] knew each other but there was nothing between us. Then we got a little close and he asked my family if they would agree for us to marry. My family said no. I said okay, I will do whatever my father says, but still he was my neighbor.

According to Farah, the boy’s mother suggested to them that they should run away together and that this would force her father to agree to the marriage. Farah says she did not agree, but said she would think about it for two weeks.

In that time some other families asked for me. My father picked one, but I didn’t like that family and I didn’t want to marry [into it]. So I told the boy, “Okay, I will go with you but you have to promise to be good and honest our whole lives.”

In 2011, Farah and the boy ran away to his cousin’s house in a different region. After fleeing, Farah called her brother to tell him she had run away. Her brother told her to return and said that her family would allow her to marry her friend if they came back. They decided to return, but at a checkpoint the police realized that they were not married and arrested them both. Farah was convicted for running away and sentenced to two years in a juvenile facility. The boy was released, she said, because his family paid a bribe and “knew someone in the police.” Farah remains imprisoned.<sup>69</sup>

### *Case of Rokhsana F.*

Rokhsana F., 16, told Human Rights Watch that she ran away with a neighborhood boy with whom she had fallen in love. Her family, Rokhsana said, refused to let her marry because

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<sup>68</sup> Human Rights Watch interview with Saida T., November 22, 2011.

<sup>69</sup> Human Rights Watch interview with Farah G., November 28, 2011.

his family was poor. The two ran away and married before fleeing to another city where they stayed for almost a year, until they learned that the boy's father, brother, and sister had been arrested—her family, she said, had accused them of kidnapping her.

Rokhsana says that she and her husband returned to their village and went to the local police to explain that his family members were innocent. The boy's family members were released, but he and Rokhsana were both sentenced to five years of imprisonment for “running away.” Rokhsana said she was pregnant when they were arrested and gave birth in prison to a daughter, who was with her during our interview.<sup>70</sup>

### *Case of Parween D. and Roya S.*

Parween D., 21, and Roya S., age unknown, were close friends. According to the court file, Parween and Roya spoke on the phone one day, and Roya confided that she was having serious problems with her husband, and asked if she could bring her children and come to stay with Parween and her husband. Parween, according to her statement to the police, told Roya that she was very welcome if her husband wanted to come with her or gave her permission, but she should not leave without his permission, since this would bring trouble.<sup>71</sup>

Nevertheless, sometime later, Roya and her four children arrived at Parween's house. Parween and her husband realized after a day or two that Roya had, in fact, run away from her husband, and he did not know where she was. Concerned about bringing trouble on themselves, they called Roya's husband and told him that his wife and children were with them. Roya's oldest child overheard the phone call and, according to the court file, told his mother. The next morning, Roya and her youngest child had disappeared.

Roya's husband arrived to collect his other three children. He and the children travelled back to his home city with Parween and her husband. As they reached the city, Roya's husband told police at a checkpoint that Parween and her husband had helped his wife escape from him. They were both arrested, and charged under article 130 of the constitution with assisting Roya in “escaping from home.”

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<sup>70</sup> Human Rights Watch interview with Rokhsana F., November 21, 2012.

<sup>71</sup> Statement of Parween D. to the police, AGO court file, case of Parween D., reviewed by Human Rights Watch on January 23, 2012.

The primary court convicted them and sentenced each to three years of imprisonment. The appeal court confirmed their conviction, but reduced each of their sentences to one year. In reaching its decision, the appeal court wrote:

If the accused [Parween and her husband] had really had good intention they would have informed the husband of [Roya] in a way that she did not know about it so that the opportunity for her second escape would not have been created. Therefore the liability of the accused people in assisting [Roya] to escape is proved and justified and the accused are found guilty in accordance with article 130 of constitution. But since the accused people committed such action unknowingly and with goodwill the judicial board sees it necessary to modify the decision.<sup>72</sup>

### *Case of Asma W.*

Asma W., 36, told Human Rights Watch of a long history of trouble and abuse at the hands of her husband. At one point, he fled their home to avoid prosecution for a crime, leaving Asma and her four children without financial support. At another point she learned he had been cheating on her with another woman. Already overwhelmed by trying to support her children alone, Asma was so distressed by this news that she attempted suicide by self-immolation, leaving her with burn scars down one side of her body which she showed to Human Rights Watch. The two fought constantly over his infidelity and a sexually transmitted disease which she said she contracted from him. He was also physically abusive and threatening, at one point pouring boiling water on her, ripping her clothes, and at another point threatening to pour acid on her face. Seeking help, Asma went to the Afghan Independent Human Rights Commission (AIHRC), which put her in a shelter—but only for a few days. She told Human Rights Watch:

The AIHRC had my husband come to the shelter. He cried and said, “I never divorced her, I love her.” He took me home. After he dried his tears and said, “You see, I can take you out from this place.”

Asma ran away in 2011 and says that her husband had in fact divorced her orally several times, but she did not have any documents to prove this when she fled. A male friend, a

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<sup>72</sup> Human Rights Watch interview with Parween D., October 31, 2011.

former colleague, helped her escape. Believing herself divorced, she married him to enable her to stay with him: “Not because I wanted to. I just wanted to get away from my husband and I couldn’t survive on my own so I didn’t know what else to do.”

But her husband found her, denied that they were divorced, and accused her of “running away,” *zina*, and stealing money. Asma was arrested and put in prison. When Human Rights Watch interviewed Asma, she had been in prison for several weeks and her case had not yet been decided. Her second husband was also arrested and is facing charges. She told Human Rights Watch:

The government should either help me get a divorce or hang me. I don’t want my first husband or my second husband. I just want a divorce and to live with my children. Why they don’t give the rights of a woman when she is suffering with so many things?<sup>73</sup>

## Women Imprisoned or Arrested for “Running Away” Following Forced Marriage

After being married against their will, some of the women and girls interviewed for this report found life intolerable. Suffering unhappiness or unkindness, but usually also serious physical abuse, they decided they had no choice but to try to escape. Some had tolerated many years of unhappiness and abuse before reaching a breaking point. As the director a women’s prison told Human Rights Watch, “The root of all of these problems [for women in prison] is forced marriage. The women are not involved in any of the decisions by [their] family members.”<sup>74</sup>

### *Case of Bashira S.*

Bashira S., 14, told Human Rights Watch that at the age of 12 her father arranged to have her marry her uncle’s son, an older boy in the household in which she had grown up: “I was not happy with this engagement and getting married to him. I was 12-years-old [when] I got married to my cousin.”

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<sup>73</sup> Human Rights Watch interview with Asma W., November 1, 2011.

<sup>74</sup> Human Rights Watch interview with director of women’s prison (name withheld), November 28, 2011.



Bashira was soon pregnant. But the marriage went badly. “He was fighting with me, he was beating me. He said, ‘You don’t love me. You didn’t want to marry me.’”

In 2011 she fled to an aunt’s house and stayed there for 10 days. Bashira found a phone number for the Criminal Investigations Department and called their office, saying that she fled her marital house “because of so much fighting and beating.” The police put her in a shelter for 15 days, but she said that the investigators also called her in-laws, and they accused her of running away to see the son of the aunt to whom she had fled. She denied this:

I just wanted to inform them, to get my divorce, and get released from that man.... I said, “No, it is not the case, I don’t love him [the aunt’s son] and I didn’t love him. I only came here because I cannot go to any stranger, somebody whom I don’t know.... [So] that is why I came here.” But then they put me here [juvenile detention center].

Bashira was arrested and then convicted of “running away” and sentenced to two years in juvenile detention. Her aunt’s son was not arrested. When asked what the government could do differently to help girls in her situation, she said:

I don’t know. I went to the government to ask for help and they brought me here [the juvenile rehabilitation center]. We don’t have any problem here. It is better than home. We have food and clothes and medical care.

When she is released, Bashira plans to go back to the shelter.

She [my stepmother] is the only one who comes. She says go back to your husband and live with him. I say, “No, I can’t after all this.” They will beat me more. I want a divorce. My husband said [in court], “I will take you home and then I will give you a divorce.” I said, “No, you will kill me.”

Bashira’s son is with her husband.<sup>75</sup>

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<sup>75</sup> Human Rights Watch interview with Bashira S., November 28, 2011.

### *Case of Jawana S.*

Jawana S. does not know her age, but thinks she might be in her 40s. She told Human Rights Watch that she was given in marriage to a man from a family linked with the Taliban. The family was powerful and feared in the community. Her father tried to resist giving her in marriage but the groom's father threatened to kill him if he did not cooperate and offered 120 sheep and approximately US\$4,000 as dowry. Jawana's father agreed.

After Jawana was married, she said, her father-in-law returned and demanded her sister as a bride for another son. Jawana says that one of her brothers tried to resist these demands and that her husband's family killed him.

Jawana said that her father-in-law asked her to live with him and then tried to sleep with her. According to Jawana, her husband knew about this, but could not do anything. She told Human Rights Watch that she went to village elders and asked for help, but one of her brothers-in-law threatened to kill her because she had embarrassed his father. "The mullahs defended me [from him]," she said. "Then I asked for a divorce."

Jawana said her husband agreed, but her surviving brother was afraid of what would occur if she left, telling her: "We have already lost our brother, and your in-laws are in touch with the Taliban. They will kill all of us. Go home to your children."

Jawana became convinced that if she stayed in their house, her male in-laws would kill her. She ran away to a nearby city where she said she met a younger man who agreed to marry her just to help her. She says that she called her first husband, who had initially allowed her to flee, to explain the situation. She said that he told her, "Do whatever you want." She married the second man and lived in his house, but after a year her first husband accused her of "running away" and stealing money. Jawana and her second husband were both arrested. She was sentenced to three years in prison. Her second husband received the same sentence.

"I'm happy in here," she told Human Rights Watch. "I am not afraid. I know no one is coming in the night to kill me."<sup>76</sup>

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<sup>76</sup> Human Rights Watch interview with Jawana S., November 29, 2011.

### *Case of Fatema A.*

Fatema A., 18, was subjected to a forced marriage at 15 and says she was unhappy from the start. She was a second wife, and her husband and his first wife were a “love match.” But life was tolerable until a few months into the marriage when her father-in-law became sexually abusive:

My father-in-law asked for me to have sex with him. Once I did. And the next time when he asked again, then I said I’m going to tell to the police or I’m going to tell anyone who can help me.

Fatema said she raised her plight with her husband and her brother-in-law, but no one in the family believed her, or cared.

Nobody accepted my words and nobody trusted me. They said, “No, you are lying, you are just saying lies about our father.” The only one who accepted my words and believed me was my mother-in-law. She said, “Yes, he is a really bad person and he is the kind of person who can ask you such things.”

Fatema fled. She stayed in several different relatives’ houses and then travelled to another city where her sister lived. When she arrived, she called a man who lived there whom she had been in touch with by phone for several months. She said that he had helped her, at her request, by passing messages back and forth to her mother for her. He came to meet her after she called, but they were arrested almost immediately, Fatema says, because he was wanted by the police for a previous crime that had nothing to do with her. Fatema was charged with “running away.”

When Human Rights Watch interviewed Fatema, she had been in the juvenile detention facility for a month and had not yet been charged in court. She said she hoped to get a divorce and said that her husband had agreed to divorce her, but has begged her not to accuse his father of rape or *zina*. “Whatever god brings to me, I will do,” she said. The man who was arrested with Fatema is also in jail, but she does not know whether he has been sentenced.<sup>77</sup>

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<sup>77</sup> Human Rights Watch interview with Fatema A., November 28, 2011.

### *Case of Gulara J.*

Gulara J., 22, told Human Rights Watch that she was married against her will at age 15. Her husband had been promised to another girl when he was born but his father, for reasons unknown to Gulara, decided to break the engagement and marry his son to her instead. She said this caused disagreements within her husband's family, but her family was unaware of this when they agreed to the marriage. She told Human Rights Watch:

I had so many problems with domestic violence. Everyone in my husband's family was treating me in a really bad way. When we got engaged, it was my father-in-law who came to our house and asked for me for his son. But the father-in-law himself was beating me a lot from just the time I got married.

She said she was also beaten by her brother-in-law. Gulara went to a shelter to try to get help with these problems and asked them to help her obtain a divorce. Instead, Gulara says that the shelter returned her to her husband after he promised not to repeat his prior actions. However, the situation worsened.

My husband said, "Now you have found the ways and the places where you can go and complain about us." My situation day-by-day got worse and then I was forced to run away.

Gulara says she called a female friend and said she was going to run away to a neighboring country where she could rejoin her family. Her friend arranged for her brother to drive Gulara, but while they were waiting to cross the border the police found them and they were arrested.

Gulara was sentenced to seven years in prison for running away with her friend's brother, and had served two years of her sentence when Human Rights Watch spoke to her. She says her friend's brother was just helping, that there was no sexual relationship between them, and that she doesn't know what happened to him.

She has one son who is with her in prison. Her husband has agreed to give her a divorce, but she says he will take the son from her when they divorce. "The government should decrease forced marriages. That should not happen," she said.<sup>78</sup>

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<sup>78</sup> Human Rights Watch interview with Gulara J., November 29, 2011.

### *Case of Parwana S.*

Parwana S., 19, was given in a *baadal* arrangement when she was 16. Her husband's family was supposed to give a daughter from its side to one of Parwana's brothers. Parwana said, "In our village they don't ask [permission] from a girl, they just decide for her [that she will] get married to a boy."

The agreement broke down when her husband's family reneged, and soon her husband turned on her and began beating her. "First he was good with me," she said. "But after one month he had [the problem] with my father and then he started beating me."

Parwana said her mother-in-law also engaged in beatings. Parwana said eventually she ran to the police, knowing that she would be put in jail for running away. "I told [the police officer], 'Take me to jail.'"

Parwana was sentenced to six months in prison for running away from home. When she is released she plans to go home to her father's family, where she believes she will be accepted and treated well:

I will try to become independent and divorce him [her husband]. I hate the word "husband." My liver is totally black from my husband. ... If I knew about prison and everything [that would happen to me] I would have just jumped into the river and committed suicide.<sup>79</sup>

### *Case of Marjan W.*

Marjan W., 20, told Human Rights Watch that she had recently been given to a man in an arranged marriage: "I never saw him before the [ceremony]." She said her husband was abusive and that the marriage lasted 10 months.

Always I had a bad time. All the time he was beating me and he had bad behavior with me. One night he beat me very badly. He threw a mirror at me. I was injured in my hand and in my head.

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<sup>79</sup> Human Rights Watch interview with Parwana S., November 23, 2011.

Marjan said she fled the house around 6 p.m. that same evening.

I left the house in a very bad condition and situation. My mind was really not working and I was in bad pain.

Marjan knocked on several doors in her community, but she said neighbors were afraid to help her, and would say things like, “No, you are a young woman,” “We cannot give you any help,” “Maybe, tomorrow there will be a case [against us] and any kind of thing [might] happen with us.”

Marjan said she spent the night in an empty building. In the morning, crying, she started walking on the streets. She said a woman took her to a police station and the police took her to the AIHRC, which arranged to have her placed in a shelter. But Marjan claims the AIHRC also contacted her husband, who went to a police station and accused her of “running away” and stealing jewelry and money. Police took her from the shelter and arrested her for “running away” and stealing.

When Human Rights Watch interviewed Marjan in custody, she had not yet been to court. At the time of writing, she had spent approximately four months in jail.<sup>80</sup>

### *Case of Aisha H.*

Aisha H., 20, told Human Rights Watch that she was engaged to a cousin when she was 10-years-old. Her fiancé was killed in an accident before they married. Her fiancé’s much older brother, who has children in their twenties with his first wife, then asked her father to give her in marriage to him as a second wife. She said:

My father said, “No, if you want my daughter to get married to your son it’s okay, I will give her to your son.” But then he forced and he pushed that, “No, I don’t want her for my son, I want her for me.” So then by force he got married to me. He said to my father, “I will kill you, but I will get married to your daughter.”

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<sup>80</sup> Human Rights Watch interview with Marjan W., November 2, 2011.

Aisha was 16 or 17 when she married. Aisha said her situation was good for several months. But over time, her husband's first wife became increasingly hostile, and Aisha believes that the first wife cast a spell on their husband to make him cruel to Aisha.

My husband's behavior completely changed with me. My husband's son beat me many times and also my husband beat me many times because his behavior changed because of the spell. My husband's son was beating me and saying, "Why did you get married to my father? Why did you come to my house?" He didn't want his father to take a second wife.

Aisha says the family made her work constantly with no rest and regularly denied her food and clothing. She also says that her husband also had sex with young men in their house, and that when she opposed this, he beat her. She says it was at this point that she decided to run away. A neighbor's son helped Aisha to escape, but police stopped them at a checkpoint and took her to a shelter when she explained her situation. When her husband filed a complaint against her for "running away," she was arrested, prosecuted, and sentenced to three years in prison.<sup>81</sup>

### *Case of Mezghan A.*

Mezghan A., 16, is an orphan. She said that after her parents died she lived at her uncle's house. Her uncle, she said, often beat her and gave her in marriage when she was 14, to a nephew of his who she says was about 45. After six months her husband left, leaving her with a brother-in-law and his wife.

One day, after Mezghan and her brother-in-law's wife had a fight, her brother-in-law beat her. She ran away the same day in 2011, and tried to find a nearby cousin's house but got lost. The police found her wandering and asked if she was okay. When she explained that she was lost, they took her to a shelter. But three weeks later they came back and arrested her for "running away" from her husband, who himself had left her.

When Human Rights Watch interviewed Mezghan she had been in detention for several weeks, but believed she would be acquitted. She said she does not want to go back to her

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<sup>81</sup> Human Rights Watch interview with Aisha H., October 31, 2011.

husband, but hopes her uncle will take her back. "My uncle was always beating me," she said. "But I don't have anywhere else. Where should I go?"<sup>82</sup>

## Women Imprisoned or Arrested for "Running Away" from Impending Forced Marriage

A number of women and girls interviewed for this report said they fled after being threatened with violence after resisting a planned forced marriage, including underage forced marriage. Others fled because they saw it as the only way to avoid forced marriage.

### *Case of Wajma J.*

Wajma J., 20, told Human Rights Watch that five years earlier, at 15, she was given in *baad* to a male cousin in her family, after her brother had run away with the man's wife. "My brother ran away with my uncle's son's wife," she said. "My father gave me as a *baad* to our cousin, the one whose wife my brother stole."

Wajma said her new husband was about 20 years older than she was:

As he was a very old man I didn't want to get married. I just talked with my father. I said, "Your son did a kind of wrong thing, and now you are going to give me to your cousin, this very old man. So I am not going to live in this situation, I cannot live." But still my father would not hear me, and without saying [anything] to me, gave me to him.

To avoid the marriage, Wajma fled and went to stay with another uncle. Wajma's maternal uncle arranged for her to marry his son instead. They spent several years together and had a child, who later died.

Eventually, Wajma's father found them, told the police, and the two were arrested. After a trial, Wajma was sentenced to six years for running away from her father. Her husband was also convicted and given the same sentence. Wajma, who was pregnant at the time of her arrest, has since had a second child in prison. The baby has stayed with her in prison.

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<sup>82</sup> Human Rights Watch interview with Mezghan A., November 28, 2011.



Her father has told her that he wants her to come home and live with him, but he says he does not want to have her child in his house and does not want the father to have the child. Wajma says he has told her she should sell her son.

Wajma says that when she and her husband finish their sentences they hope to be able to live in peace together, but she fears that her father plans to kill her.<sup>83</sup>

### *Case of Storai T.*

Storai T., 17, told Human Rights Watch that she was 12 when her father had her engaged to a man she had never met. She told Human Rights Watch:

From other people I heard he [the groom] is good, he is bad, different things... sometimes I was hearing he was not a good person. My cousin [who had met him] said, "He's not the kind of person that you should go and get married to ... and also the age difference, you are 13 and he is 32, he is like your father and you will not have a good life, you will not have good future with him." I said I don't care about the ages, if he is a good person, if he is treating me well, if he is a good man, then it is no problem about the age.

However, when Storai met the proposed groom, she said her cousin's concerns were validated. Storai said he was an opium addict and drank alcohol: "I sat with my father and I said I am not going to marry this person. He is addicted, he is drinking alcohol, he is not a good person."

Storai's father asked the groom in front of her whether Storai's allegations were true. The man denied it, saying there was "no proof" of Storai's allegations. "Then my father said, 'He is your fiancé, why are you saying these bad words about him?'"

Storai said she asked her parents if she could marry someone else, such as a man she liked who taught her computer class. Storai said her mother said, "That will never happen in a hundred years." Desperate, Storai told her father that if he insisted that she marry the

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<sup>83</sup>Human Rights Watch interview with Wajma J., November 1, 2011.

man he had chosen, she would kill herself. She said he replied: “Then go and kill yourself.”

Storai decided to run away with her teacher. But they were caught after they were in a car accident. Storai was sentenced to one-and-a-half years in prison. The teacher was arrested but released after two months.

Storai said the man her father wants her to marry has agreed that their engagement can be cancelled if her father gives back the US\$6,000 dowry he already delivered. But if Storai’s father refuses, he continues to insist that she marry him.<sup>84</sup>

### *Case of Zargona F.*

Zargona F., 14, was essentially orphaned after her father died when she was five, and her mother left her with relatives.

The relatives who took in Zargona were neglectful and abusive. Zargona described being excluded from family events, isolated, locked in her room, and simply not loved:

I didn’t have a good time with my uncle and with my uncle’s wife. But still I suffered and I passed all this. But the last thing that happened is my uncle’s wife wanted me to get married to her sister’s son. In an accident he lost his two legs. She wanted me to get married to him. Then I escaped from home.

Zargona said she managed to sneak out of her relatives’ house at 4a.m. one day and ran away alone to a nearby city, but she did not know anyone there. She was found by the police and arrested for running away. Speaking of her life today in a juvenile detention facility, she said:

I am happy with everything here, happier than I was at home, except for thinking about why I can’t see my mother. But maybe in time I will forget about my mother as well.

Zargona was convicted of “running away” and sentenced to six months.<sup>85</sup>

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<sup>84</sup> Human Rights Watch interview with Storai T., November 28, 2011.

<sup>85</sup> Human Rights Watch interview with Zargona F., November 28, 2011.

*Case of Khalida P.*

Khalida P., 17, fell in love with a boy she met who was a tailor for her family. She told Human Rights Watch:

He said he would send his family to ask for me, but I said I have to finish school first, so wait. My family knew that I liked this boy and my mother was always saying, “I will not let you marry him.”

Khalida said the reason for her family’s opposition to her marrying the boy was that he had already been engaged to someone else as a baby, and that he was a “stranger” not related to their family. Meanwhile, one of Khalida’s cousins wanted to marry her.

I refused many times and I told my mother I don’t like him. The boy I love called me and I gave the phone to my mother. He told her, “I will send my family. I love her and I want to marry her.” My mother took away my phone and said I could not have any more contact with him. Then they engaged me to my cousin.

Khalida said a week later she called the boy she loved and asked him to come and get her so they could run away. He came to pick her up from school and she fled with just the clothes she was wearing. Khalida said they married before a mullah the same day. They then hid in another city for two-and-a-half months. When they ran away, the family of the boy had fled as well out of fear of Khalida’s father, leaving behind only the boy’s father.

My father took his [the husband’s] father to jail. [When we learned this] my husband asked his brother to come to [name of town redacted] for a Jirga. We were in [that town] for 15 days. My brothers were looking everywhere. They finally found us.

Khalida said a powerful commander from her area came to take the couple to his house, promising to solve the problems between the two families.

I didn't know the commander had called my family to come there too. My whole family came. My grandmother and my father's sister told me, "Say that the boy kidnapped you, otherwise your uncles will kill you."

She said that her husband was able to call to get the police to come to the house and this saved them, but that they were then both arrested for running away. She was sentenced to one year in juvenile detention for "running away," but her husband was sentenced to 10 years, a result, she said, of bribes paid by her uncle. Her family is unappealed.

My uncles say, "When you are free you will come to my house. And then we will kill the whole family of the boy that you ran away with." They say, "Even if he passes 10 years in jail we will kill him finally, we will not let him live." Also, they will kill me when I go to my mother's house, so my life is in danger.<sup>86</sup>

### *Case of Bahar Q.*

Bahar Q., 18, was sentenced to three years for "running away" from a forced marriage set up by her father to a man she did not want as a husband. She told Human Rights Watch:

I was seven-years-old when my father engaged me. As I got older, I kept telling my family, especially my mother, I'm not marrying him. I told my father, "This is not the hope I have. This is not the dream of a girl." My father beat me very badly. Even two of my fingers were broken. He said, "You have to marry him. "

Meanwhile, over a number of years Bahar got to know a male cousin who was in business with her father. He began sending her messages and asking for photos of her.

He asked me to run away with him. He said that if I didn't he would show my family the photos I had sent him. I was afraid my family would kill me. I had no choice but to go with him. I was completely against my fiancé and I also liked this guy so it was a good opportunity to go away. I knew he had

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<sup>86</sup> Human Rights Watch interview with Khalida P., November 24, 2011.

another wife, but he told one of my cousins, “I don’t love my wife, I want to marry [Bahar].” He said that he would divorce his first wife.

When she was 17, Bahar fled her home, and she and the man spent a month together. He did not divorce his first wife or marry Bahar. She told us they had sex: “I said to him this is against the law. He made a fake letter to say that we were married.”

After one month, Bahar’s father found out where they were and had them arrested. Bahar was sentenced to three years of imprisonment for “running away” and *zina*. She says the man she ran away with was sentenced to six years.

Bahar still hoped that the man she ran away with will marry her. “I have to go and get married to that guy,” she said. “I lost my good name so even if he has another wife, I have to marry him.”<sup>87</sup>

## **Women Imprisoned or Arrested for *Zina***

This section contains accounts of women accused of *zina*. Like those accused of “running away,” many had fled their homes due to domestic violence and threats.

## **Women Imprisoned or Arrested for *Zina* Following Child Marriage**

For a number of the women and girls interviewed, their problems began with a very early marriage. Married at an age far too young to have had any say in the matter, and with a child’s inability to negotiate the terms of their marriage, they sometimes spent many years enduring abuse and neglect before a breakdown led to an accusation of *zina*.

### ***Case of Roqia D.***

Roqia D., 23, was married when she was 12-years-old. She told Human Rights Watch:

My husband is an opium addict. He used drugs in front of me. When I asked him why he did this, he said he needed them for a pain in his leg. I told him to stop using it, but he said that was impossible.

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<sup>87</sup> Human Rights Watch interview with Bahar Q., November 28, 2011.

Roqia said her husband often left their home for six months to a year at a time.

I had to support the family myself because my husband couldn't work, although my father-in-law and brother-in-law helped sometimes. Everyone helped us because they knew about my husband's addiction. Everyone tried to get him to stop.

Finally Roqia asked her husband for a divorce. He had started stealing to pay for drugs.

He refused. He said, "Who will take care of the children if you go? Besides, I won't be able to find another wife since I am an addict. So you will have to stay."

Soon after this, he left the house again for several months. While he was away one of Roqia's sons was seriously injured in an accident, and Roqia had to ask for help from neighbors to pay for medical care. Roqia called her husband and told him that the boy had died, because she thought that would make him more likely to come home and help. He just said, "That's okay that your son died. It's one less to take care of, only two now."

Unable to obtain a divorce, abandoned, and almost helpless to support her children, Roqia eventually married another man who was willing to take care of her and her children. But when her first husband discovered this he reported her to police. Both Roqia and her second husband were arrested and convicted of *zina*. Roqia was sentenced to five years in prison. Her second husband received the same sentence.

Roqia had three children with her first husband and one with her second husband. The first husband took custody of his children. Her youngest, fathered by her second husband, was in prison with her and was present when Human Rights Watch interviewed her.<sup>88</sup>

### *Case of Farozan A.*

Farozan A.,<sup>27</sup> said that when she was 11 her family married her to a neighbor. She told Human Rights Watch, "Our life was good for seven years and we were happy. But after

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<sup>88</sup> Human Rights Watch interview with Roqia D., November 29, 2011.

seven years he got addicted to opium and other drugs.” Farozan said she and her husband lived outside Afghanistan in a neighboring country and had three children and supporting them was a struggle.

My husband became lazy and quit working. I had to work then, so I got a job as a home attendant. They paid me US\$40 a month. My husband was jealous about where I was all day. He started beating me in front of the neighbors and our children.

Farozan said she suffered beatings for four years. Eventually she left her husband and travelled back to Afghanistan without him, leaving their children with him, with the help of a man she met along the way. She says there was nothing romantic or sexual about their relationship, but they remained in touch.

Farozan said that soon after she returned to Afghanistan, her husband brought their children and followed her. She said that her husband began demanding that she sign over to him the deed for property in Afghanistan that belonged to her. After she refused, she said her husband went to a police station and accused her of running away with the man who had helped her travel to Afghanistan, attempted *zina*, stealing money from him, and stealing their daughters.

Farozan was tried and sentenced to six years in prison. She said that after she was arrested, her husband managed to sell her property and collect the proceeds even though she never gave him the deed.

If the husband was good, why would the girl escape from home? It is because the man is not good. There should be punishment that both sides receive. For women of this country there should be something to help them rather than destroy them.<sup>89</sup>

### *Case of Rabia T.*

Rabia T., 20, told Human Rights Watch that she was married at age 14, and had four children with her husband (one of whom was present with her in prison during the

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<sup>89</sup> Human Rights Watch interview with Farozan A., November 29, 2011.

interview). Rabia said she was from a very conservative family. In 2011, she went to visit her family while her husband remained at their marital home in a different city. During this visit, a male cousin who is the brother of Rabia's sister-in-law was also in the home.

According to Rabia:

I went in a room and said hello to my [male] cousin. My brother shouted at me. He said, "You have no permission to talk with him." He kicked our cousin out of the house and he said he would kill me. The same day, my brother kept saying he would kill me.

Rabia explained that both she and her cousin, fearing they might be killed, fled that night around 9 o'clock. She said she took her brother's threats seriously because their mother was killed seven years before by another brother who thought she was talking to men on the telephone.

Rabia said she and the cousin hid in another city in a friend's house. There was no romantic or sexual relationship between them, she said, and that they just fled together because they both needed to escape her brother's rage. After several weeks, Rabia's brother found the male cousin and had him arrested. After this, Rabia said she turned herself in to the police because she believed that her family and her husband's family would all be against her and thought that was the only safe thing she could do: "I was very scared that I would be killed. I believed that the whole world is my enemy and I chose this [prison] as my safe place."

Rabia said that she was arrested for *zina*. She was convicted and sentenced to seven years in prison.<sup>90</sup>

### *Case of Durukhshan W.*

Durukhshan W., about 30, said was married against her will a year after she began to menstruate:

After one year [of marriage], my husband gave me a divorce. He said, "You are free. I won't kill you, I won't even ask about you." I told him I will get

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<sup>90</sup> Human Rights Watch interview with Rabia T., November 23, 2011.



married with someone in the village. My husband gave a divorce just by telling me, not in writing.

Durkhshan went back to her family for help, but found none. She was able to find another man to marry her, a relative of her first husband. She became his second wife and says life was better. The family remained in the same community and her second husband had contact with her first husband.

Durukhshan said that 12 years after marrying her second husband, after they had had two children in addition to the daughter from her first marriage, her second husband was on his way to the mosque when he was shot and wounded by the brother of her first husband. The police came and asked about the dispute and then arrested both Durukhshan and her second husband, accusing them both of *zina*, because her first husband now denied they divorced and wanted her back. She told Human Rights Watch:

Everyone knows that I was married to my second husband. I don't know why [her first husband made these accusations after so many years]. Satan came and asked him to do this.

Durukhshan said that the court demanded proof of her divorce. She was unable to provide it and was sentenced to 16 years in prison. Her second husband was also arrested and accused of *zina*. He was also sentenced to 16 years in prison.<sup>91</sup>

## Women Imprisoned or Arrested for *Zina* after Being Raped

A longstanding and deeply disturbing practice in Afghanistan has been the criminal prosecution of women for *zina* after they have been raped.

Rape is a crime under Afghanistan's 2009 EAW Law and is punishable by a minimum of five years in prison and a maximum sentence of death in cases where the victim dies from the rape.<sup>92</sup> Although the EAW Law is the first Afghan law to use the term "rape," a crime of a "violation of honor" that includes certain elements of rape, does exist under the 1976 Penal Code, which provides in article 429:

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<sup>91</sup> Human Rights Watch interview with Durukhshan W., November 23, 2011.

<sup>92</sup> EAW Law, art. 17.

(1) A person who, through violence, threat, or deceit, violates the chastity of another (whether male or female), or initiates the act, shall be sentenced to long imprisonment, not exceeding seven years. (2) In the case where the person against whom the crime is committed is not eighteen years old, or the person who commits the crime is one of the persons specified under paragraph 2 of Article 427 of this Law, the offender shall be sentenced to long imprisonment, not exceeding ten years.<sup>93</sup>

It is not clear if the explicit crime of rape under the 2009 EAW law has yet been prosecuted. Government data from October 2011 on the number of people in prison for different charges showed that of 20,901 male and female prisoners, 993 were in prison for *zina*, and 414 for pederast.<sup>94</sup> Rape was not even recorded as a category, nor was “violation of honor.”<sup>95</sup> It is likely that to the extent that rape ever has been prosecuted, it was prosecuted under the penal code provisions regarding *zina*, not under the section of the new EAW Law that specifically criminalizes rape.

Rape of women, girls, and boys is almost certainly chronically underreported in Afghanistan. Rape victims are often stigmatized and persecuted, as the accounts below show. In Afghanistan women who report a rape to the police are more likely to be prosecuted themselves, than to obtain justice.

In Afghanistan, as in many other countries, documenting sexual violence is a challenge in part because of women’s subordinate status, family concern with “honor” and “dishonor,” cultural taboos about discussing sex, and the understandable reluctance of women and girls to share or relive details of a traumatic assault. Afghan women often symbolize their families’ and societies’ honor, particularly within Pashtun communities.<sup>96</sup>

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<sup>93</sup> Penal Code of October 7, 1976, available at <http://webappso1.un.org/vawdatabase/uploads/Penal%20Code%201976.pdf>. Art. 427(2) contains a list of aggravating factors relating to cases of *zina* and pederasty.

<sup>94</sup> Pederasty means sexual activity involving a man and a boy. Oxford Dictionary online, <http://oxforddictionaries.com/definition/pederasty?region=us> (accessed March 10, 2012).

<sup>95</sup> CPD Inmate Crime Categories, Central Prison Directorate, Ministry of Justice, October 22, 2011 (on file with Human Rights Watch).

<sup>96</sup> Palwasha Kakar, “Tribal Law of Pashtunwali and Women’s Legislative Authority,” <http://www.law.harvard.edu/programs/ilsp/research/kakar.pdf> (accessed March 1, 2012).

Historically, some communities have sanctioned “honor” killings in which a woman could be killed by her own relatives for bringing “dishonor” upon the family by conduct perceived as breaching community norms of sexual behavior—including being a victim of sexual violence.<sup>97</sup> At a minimum, a girl or woman who has been raped may be considered unmarriageable or may be cast out by her husband. Boys who are raped can also face discrimination, but the social penalties are not nearly as harsh. In many areas, social penalties are meted out even for the perception that a marriageable girl or woman is at risk, both on the woman or girl and on her family, who may be perceived as having failed to protect her adequately.<sup>98</sup>

Accordingly, it is likely that the women and girls Human Rights Watch interviewed underreported their experiences of sexual violence. In conducting interviews in the prisons and juvenile rehabilitation centers, Human Rights Watch did not systematically ask women and girls about their experiences of sexual assault. Accounts of sexual assault came up only if women or girls raised them. Yet 11 of the 58 women and girls interviewed described accounts of being raped, and several others described attempted rapes committed against them.

The stories of the women and girls interviewed for this report illustrate how frequently women and girls who have survived the trauma of a sexual assault are prejudged by a justice system that seems to view women as themselves culpable in any situation where their “honor” has been “stained” by sexual assault.

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<sup>97</sup> “Afghanistan: Rights Watchdog Alarmed At Continuing ‘Honor Killings,’” *Radio Free Europe/Radio Liberty*, September 20, 2006.

<sup>98</sup> For example, see Deborah J. Smith, “Decisions, Desires and Diversity: Marriage Practices in Afghanistan,” *Afghanistan Research and Evaluation Unit Issues Paper Series*, February 2009, <http://www.areu.org.af/Uploads/EditionPdfs/905E-Marriage%20Practices-IP-web.pdf> (accessed February 22, 2012), p. 1 and 37-38. See also Tarek Fatah, “‘A Man’s Honour Lies Between the Legs of a Woman,’” *Huffington Post*, December 7, 2011, [http://www.huffingtonpost.ca/tarek-fatah/honour-killing\\_b\\_1133349.html](http://www.huffingtonpost.ca/tarek-fatah/honour-killing_b_1133349.html) (accessed March 16, 2012).

## Gulnaz

A widely publicized case from November 2011 demonstrates how rape victims in Afghanistan have been persecuted when they seek justice.

Gulnaz, a young woman from Kabul, was raped in 2009 by the husband of a relative, and became pregnant. When the police learned of the case, they arrested both Gulnaz and the man who allegedly raped her. Either disbelieving or disregarding Gulnaz's accusation of rape, prosecutors instead charged both Gulnaz and her attacker with *zina*. Both were convicted. Gulnaz was sentenced to 12 years in prison for *zina*, and gave birth to her daughter on the floor of Badam Bagh prison.<sup>99</sup> The man who raped her was also sentenced to 12 years in prison, but his sentence was reduced to 7 years on appeal.<sup>100</sup>

The case received international attention after the European Union blocked the release of a film about her case and other women in prison in Afghanistan because of concerns about the safety of the women depicted.<sup>101</sup>

The publicity led to President Karzai pardoning Gulnaz in December 2011. But the case continued to capture attention when Gulnaz, in an interview, explained that she planned to marry the man who raped her, becoming his second wife, because it was the only way that her daughter could be spared the stigma of being illegitimate. Gulnaz also told reporters that her situation might require a girl from the family of the rapist being given in marriage to her family, along with a large dowry, as a means to bring peace between the families.<sup>102</sup>

The Gulnaz case illustrates a theme that arose repeatedly in Human Rights Watch's research: the failure of authorities to investigate allegations of rape properly, and their readiness to assume that women consented to having sex and to instead charge both parties with *zina*. In repeated accounts, women and girls provided examples of being convicted for *zina* despite making allegations of being raped.

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<sup>99</sup> Quil Lawrence, "For Afghan Women, Rape Law Offers Little Protection," *NPR*, December 2, 2011, <http://www.npr.org/2011/12/02/143057341/for-afghan-women-rape-law-offers-little-protection> (accessed February 26, 2012).

<sup>100</sup> "Freed Afghan rape victim Gulnaz 'may marry' attacker," *BBC*, December 15, 2011, <http://www.bbc.co.uk/news/world-asia-16201956> (accessed March 18, 2012).

<sup>101</sup> Orla Guerin, "EU censors own film on Afghan women prisoners," *BBC*, 10 November 2011, <http://www.bbc.co.uk/news/world-asia-15678935> (accessed February 26, 2012).

<sup>102</sup> Alissa J. Rubin, "For Afghan Woman, Justice Runs Into Unforgiving Wall of Custom," December 1, 2011; "Freed Afghan rape victim Gulnaz 'may marry' attacker," *BBC*, December 15, 2011.

### *Case of Marya K.*

Marya K, 15, was taking a taxi to visit her mother in a hospital. In Afghanistan, taxis often pick up multiple passengers, so Marya got into a taxi in which a man was already a passenger. Marya told Human Rights Watch that the driver and the other man abducted her, took her to the house of one of their sisters in the same city, and raped her. Marya said she was released the next day and went straight to see her mother in the hospital. She told Human Rights Watch:

All day I was not feeling good and all day I was not good. Then my father and my family got to know about it and they came to see me and they asked me different questions. They asked me if I knew them [the men] and if I knew the place they took me.

Marya was able to show her family the house. One of the men's sister was there, but the two men were not. The sister told them to stay away. Marya says her family took her to the police to report the rape, and she showed the police the location of the house. The police arrested the men, but they then brought accusations against her. "They put all the blame on me," Marya said. "They said, 'She herself wanted to go with us and she herself wanted to be with us.'"

Marya was prosecuted and sentenced to a year in juvenile detention. She said that one of the men was convicted and sentenced to two years in prison, but she did not know the other's sentence. "I don't know why the court has decided such things about me. It's a government decision. I don't know why."<sup>103</sup>

### *Case of Tahmina J.*

Tahmina J., 18, fled her home in 2011 to escape domestic abuse and forced marriage to a cousin. She told Human Rights Watch:

My mother was always beating me and fighting with me. I always said to her, "I will escape from you one day." I was engaged to someone, but I loved [a

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<sup>103</sup> Human Rights Watch interview with Marya K., November 28, 2011.

male friend]. . . . My mother's brother had made the arrangement [for a marriage]. They didn't tell me.

Tahmina fled her house to go in search of the boy she liked. According to court records, Tahmina went without permission from her parents' home to the home of her aunt, who lived in the same neighborhood of the boy. She did not know where he lived, but hoped to find him. That night, she left her aunt's house without permission to go to look for him. Without finding him, she encountered two men in the street who she said abducted her by force and raped her.

In her statement to the police, Tahmina stated:

They took me to an abandoned house. I tried to resist them doing *zina* with me, but they were two people so I couldn't and they did the bad act. They attacked my reputation and did *zina* with me. Then they handed me to the *wakili guzar* [neighborhood elder]. He took me to the police station.

According to the police report, the two men were brought to the police station in 2011. "I identified them as the two people who by force assaulted me and did *zina* with me," her statement says.

Police records noted that a medical exam of Tahmina indicated recent and past sexual activity.<sup>104</sup> The file then claims that Tahmina gave conflicting accounts about her earlier

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<sup>104</sup> Many of the women and girls interviewed for this report described being subjected to gynecological examinations, and court files also indicated the routine use of and reliance upon such examinations for the purpose of determining virginity and whether a woman or girl had engaged in recent sexual intercourse. Use of such examinations was not limited to rape cases, and examinations did not focus on whether forced intercourse had taken place. Although medical examinations can be a legitimate form of investigation in a case of alleged sexual assault, gynecological examinations that purport to determine virginity have no medical accuracy. As party to the International Covenant on Civil and Political Rights, Afghanistan is obliged to protect women from cruel and inhuman treatment and discrimination, and to ensure their right to privacy. Coercive virginity tests violate all three of those obligations. Virginity tests also violate guarantees of freedom from discrimination in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The CEDAW Committee has stated that it views with the "gravest concern the practice of forced gynecological examinations of women ... including of women prisoners while in custody." The committee "emphasized that such coercive practices were degrading, discriminatory and unsafe and constituted a violation by state authorities of the bodily integrity, person and dignity of women." Committee on the Elimination of Discrimination against Women (CEDAW Committee), "Concluding comment: Turkey," A/52/38/Rev.1 part I, January 31, 1997, para. 178. Conducting virginity tests without the informed consent of the girl or woman violates her right to bodily integrity, dignity, privacy, and equality before the law, and would amount to a sexual assault. Such assaults cannot be justified, being based on an intrinsically discriminatory presumption that an examination of female virginity can be a

sexual activity, saying initially that she had once had sex with a cousin at an earlier point, at another point saying she had had sex with her friend. There is no indication in the court file that the police inquired about whether this prior sex was consensual. In the end, the police accused her of two instances of *zina*, one with the two men she accused of raping her, and another with the friend.

A prosecutor in the case told Human Rights Watch that he was skeptical of Tahmina's allegations of rape because no witnesses had reported hearing screams when she was raped, and because of conflicts in her account relating to her earlier sexual activity. According to the prosecutor:

She said they took her to an abandoned house and raped her....What she is saying is not completely true or certain because she said she had sex with her cousin [at an earlier point] but then later denied this. There must have been consent [with the two men] because she didn't scream or say anything until she was handed to the *wakili guzar* [neighborhood elder].

When asked whether they had investigated the allegations of forced marriage Tahmina made against her mother, the prosecutor said there were "contradictions" in her statement, including that "she had *zina* with her cousin but later said it was with someone else."

The court, in considering Tahmina's case, wrote, "A woman going out, especially at night, is followed by certain dangers." The court described the two men as having "sexually assaulted" Tahmina, but then notes that she had "gone with these men of her own intention and she didn't make any screaming." The court found Tahmina guilty of two counts of *zina* (once with the two men and once previously with the man she liked) plus "running away."

She was sentenced to one-and-a-half-years for having sex with her friend, two-and-a-half years for the incident with the two men in the abandoned building, and one year for "running away" from home, for a total of five years. The sentence was then reduced by half because of her status as a juvenile under Afghan law.<sup>105</sup>

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legitimate interest of the state. Under international law virginity tests committed in custody constitute cruel and inhuman treatment. These exams are painful, degrading, and frightening.

<sup>105</sup> Human Rights Watch interview with Tahmina J., November 21, 2011.

### *Case of Malalai H.*

Malalai H., 18, told Human Rights Watch that one day she received a love letter from a neighbor named Ahmed. He soon sent more. Later he sent Malalai a cell phone and started calling her. “One day he came to my school and introduced himself and I saw that he was handsome,” she said. “We started a relationship and saw each other all the time.”

Malalai said that at one point in 2011, Ahmed traveled out of town for work for several months, and when he returned, Malalai invited him to her house when she was home alone. It proved to be a mistake. “He wanted to have sex with me. I refused. He did sex with me from the backside by force.” Malalai said she thought her family “will kill me if they know,” and fled her home.

I ran away because my family is very serious and I knew they would kill me so I thought it is better to commit suicide. I tried to die by jumping in front of a car but the car stopped.

Malalai said she called a friend named Sidiq for advice. He told her she should go home. She went home, but her parents had reported her missing and took her to the police and accused her of “running away” with Sidiq. Malalai and Sidiq were both arrested. Malalai says no one believes that Sidiq is entirely innocent and that she was raped by Ahmed.

When Human Rights Watch interviewed Malalai, she and Sidiq had been imprisoned for several months but had not yet had a trial. She hopes the court will find them not guilty. She has not heard from Ahmed since the rape and she does not know where he is, but she still hopes to marry him: “I have to marry Ahmed or go and die, because my life is damaged. I still love him. He said I will marry you.”<sup>106</sup>

### *Case of Gul Chehrah M.*

Gul Chehrah M., 17, was engaged to be married to a male cousin at the age of 13, a forced marriage arranged by a grandfather. She told Human Rights Watch that she ran away from home with another male cousin when she was 13, married him, and the two made a new

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<sup>106</sup> Human Rights Watch interview with Malalai H., November 21, 2011.



life together. Four years later, in 2011, she said six men came to their home at night when she and her husband were sleeping. She said:

They beat my husband a lot and told him, “We want to take your wife.” My husband said, “As much you want to beat me, beat me, but I will not let my wife go with you.”

Gul Chehrah said that she knew two of the six men. One was the cousin to whom she was to be given in the forced marriage. The other was a cousin of her father.

That night they killed my husband. They raped me. There was some money in the house and I had some bracelets that they took.

She said that they tried to abduct her, but she screamed for help and neighbors called the police. The police arrested her and took her to a juvenile detention facility. Gul Chehrah told Human Rights Watch that the police were suspicious of her description of events, even accusing her of being complicit in the murder of her own husband. She said the police told her:

In one way, maybe you have a hand in all these things which have happened. In another way, maybe if you don’t have a hand in these things that happened, you will get protection in this way [in prison]. Maybe if you are free, then these people will do something with you.

At the time of her interview with Human Rights Watch, Gul Chehrah had been in the detention facility for several weeks and had not yet been charged in court. She said that a defense lawyer appointed for her told her she would be released without charges once the attackers were caught, as only one of the six had been arrested.<sup>107</sup>

## **Women Imprisoned or Arrested for *Zina* after Being Kidnapped**

The kidnapping of a woman or girl is a crime under the Afghan Penal Code of 1976, and is punishable by a sentence of imprisonment of 5 to 15 years.<sup>108</sup> The accounts below show that female kidnapping victims sometimes end up in prison.

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<sup>107</sup> Human Rights Watch interview with Gul Chehrah, November 28, 2011.

<sup>108</sup> Penal Code, arts. 418-425.

### *Case of Gulpari M.*

On the day of her wedding at age 16, Gulpari M. was abducted as she walked alone in the afternoon to her uncle's house to have her hands painted with henna for the wedding ceremony, a traditional practice in Afghanistan. Her kidnapper, she said, was a boy who had repeatedly tried to woo her, and whom she had rejected, along with two of his friends.

Gulpari said she learned later that they had been waiting across the road for her to come outside for three days. She described them telling her to get in the car and when she refused, putting a cloth over her nose and mouth and forcing her into their car. When Gulpari began screaming as they drove away, she says that the boy she had refused to marry threatened her with a gun and told her that they would rape her and then kill her if she were not quiet.

They were heading to the border with [redacted] and when they came to a police checkpoint, the boy who wanted to marry Gulpari told her that she had to tell the police that everything was fine and she was with the boys by choice. She was frightened enough to do so, but the police were suspicious because of her shaken demeanor and arrested all of them.

Gulpari said that when she was separated from the kidnappers, she immediately explained that she had been taken by force. But the police arrested Gulpari and prosecutors soon charged her with *zina*. The boys told the police that they were helping her escape at her request.

When interviewed by Human Rights Watch, Gulpari had been in a juvenile rehabilitation center for several months, awaiting trial, and said that she hoped to be acquitted and allowed to go home, but that her marriage to her former fiancé will not go forward. Her kidnapper's family, Gulpari told Human Rights Watch, gave one of the kidnapper's sisters to her fiancé's family as *baad* to compensate them for having lost a bride. Gulpari's former fiancé married her instead.<sup>109</sup>

### *Case of Jeena R.*

Jeena R., 14 told Human Rights Watch that as she walked to school one morning in 2011, two men accosted her and threw her into a car. She believes she was then drugged. The

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<sup>109</sup> Human Rights Watch interview with Gulpari M., November 24, 2011.

men then drove to another city. After four days in which she says she was mostly unconscious, she woke up and escaped. She jumped into a motor rickshaw and asked to be taken into the city. As soon as she saw some traffic police, she stopped to tell them what had happened. They radioed for the Criminal Investigation Division police, who took her to a police station where she was arrested and charged with *zina*.

Jeena said that the kidnappers were also arrested and the main kidnapper's family warned her against testifying against him, telling her that she would be sentenced to prison herself if she did so. She said that she testified against him anyway. The court convicted her of *zina* and sentenced her to one year in a juvenile detention facility. She said that the main kidnapper paid bribes and had been released.<sup>110</sup>

### **Women Imprisoned or Arrested for *Zina* Resulting from Forced Prostitution**

“Forcing [a person] into prostitution” is a crime under the EAW Law and is punishable by a minimum of seven years in prison. If the person forced into prostitution is not yet an adult woman, the minimum sentence is 10 years’ imprisonment.

In December 2011 the issue of forced prostitution received attention in the Afghan and international media as a result of the case of Sahar Gul. Married at around age 14, Sahar Gul within months faced attempts by her husband and his family to force her into prostitution. When she refused to cooperate, they locked her in a basement with little food or water where she remained for five months until neighbors told her uncle that the family was hiding her and he brought the police, who broke down the door to the basement. The family had also beaten Sahar Gul, ripped out some of her fingernails, broken her fingers, pulled out chunks of skin from her chest and other parts of her body with pliers and burned her with a hot poker.<sup>111</sup>

Some of the 58 detained women and girls interviewed described being forced into prostitution, yet they are the ones in prison. Some examples are provided below.

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<sup>110</sup> Human Rights Watch interview with Jeena R., November 24, 2011.

<sup>111</sup> Graham Bowley, “In one girl's story, a test of women's rights in Afghanistan,” *New York Times*, January 11, 2012, <http://atwar.blogs.nytimes.com/2012/01/10/in-one-girls-story-a-test-of-womens-rights-in-afghanistan/> (accessed February 22, 2012).

### *Case of Najiba F.*

Najiba F, 18, told Human Rights Watch that she was an orphan who lived with her uncle after her mother and father died. Her uncle, she said, forced her to marry when she was 17. Her husband was abusive from the beginning, and after a few months Najiba says that his sister suggested that he could make money by sending her to a brothel:

My husband sent me to a place. They did bad things to me. It was a place with drugs and alcohol. The people from there came to take me from my husband's house. They paid money to my husband. They asked me to dance with them and [have] sex with them, and when I refused they forced me.

Najiba was arrested in 2011. She told Human Rights Watch that in the police station she was raped again by a police officer. She was convicted of *zina* in 2011 and sentenced to four years of imprisonment. Najiba's uncle moved to the United States soon after she was married, so she says that there was no one to help her deal with the problems with her husband, nor is there anywhere safe for her to go after she gets out of prison.<sup>112</sup>

### *Case of Amina R.*

Amina R., 17, told Human Rights Watch that she was scheduled to be married to a man she did not want to marry. She was also unhappy at home because her mother was beating her, including in front of her future in-laws. She fled in 2011 with the help of an aunt. "My aunt gave me a phone number," she said. "She told me to call and escape with that man [whose phone number it was] and marry him instead."

Amina did as her aunt told her, only to discover that the man she had escaped with, though she was told he was not married, lived with his wife and did not actually want to marry Amina. Instead he kept her in his house, with his wife, for six months, using her as a concubine and forcing her into prostitution. She told Human Rights Watch:

We were not married, and we did *zina*. I had sex with him and with other men.... First they gave me alcohol and made me unconscious, then they did this [sex] to me.

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<sup>112</sup> Human Rights Watch interview with Najiba F., November 2, 2011.

After six months, Amina said, the man “sold” her to another man. The second man wanted to take her to another city but they were stopped at a police checkpoint. The police realized that they were not married and arrested them in 2011.

When Human Rights Watch interviewed Amina she had been in detention for several months, but there had not yet been a decision in her case. She said she believed that her father plans to kill her when she is released.<sup>113</sup>

### *Case of Fawzia S.*

Fawzia S., 15, was unhappy at home. She told Human Rights Watch that she felt unloved and neglected among numerous other sisters and brothers and tried on three occasions to kill herself. A teenage friend of hers who Fawzia later discovered was pregnant was planning to run away from her family and convinced Fawzia to come with her.

Fawzia said she stole several hundred dollars from her father and the two girls used the money to buy plane tickets to another city. They spent the first two nights in a hotel, but Fawzia’s friend then found a family for them to stay with. “They were not a good family. They were stealing things,” Fawzia said. Worse, Fawzia said her friend turned on her, and made her have sex with men for money. “She drugged my food to make me unconscious. Then they did all the bad things with me. I’m not sure how many times.”

Fawzia described these events as happening in the family house. She fought with her friend and ran away a month after they had gone to stay with the family. She went to the police and told them what had happened. She said the police arrested the family and her friend, but also arrested her and accused her of *zina* and “running away.” Fawzia had been in detention for several months when we interviewed her, but had not yet been tried.<sup>114</sup>

### *Case of Gul Jan D.*

Gul Jan D., around 35-years-old, told Human Rights Watch that she was married through a *baadal* arrangement five years ago:

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<sup>113</sup> Human Rights Watch interview with Amina R., November 21, 2011.

<sup>114</sup> Human Rights Watch interview with Fawzia S., 21 November 2011.

My husband was smuggling powder opium and drinking wine. He was a bad man. He was bringing other men to have sex with me for money. I became very sad. I went to the police to complain about him. I had witnesses so the police arrested him. All the village was witness.

After her husband was arrested, convicted and sentenced to three years in prison, Gul Jan struggled to survive. “I was not a snake to eat sand,” she said, explaining that her in-laws did not support her and she had no way to feed herself. She managed to find a job as a domestic servant to a rich family, but they left to go overseas and she was on her own again. She was travelling back to her family and night fell while she was on the road. A man invited her to stay at his house and she went and stayed at the home where he lived with his two wives. The next morning, as she was about to leave, Gul Jan says that the second wife brought police to the house, complaining that her husband intended to take Gul Jan as a third wife. Gul Jan says that she and the man were both taken to police who alleged that he had brought her to his home for prostitution and that the two of them had had sex, which Gul Jan denies.

Both Gul Jan and the man were arrested. Gul Jan has one daughter, who is in prison with her. She says that her husband, who is out of prison now, has divorced her and plans, with community support, to take her daughter from her when she gets out of prison. Gul Jan said:

All the white beards [elders] in the village took a decision that they will take my daughter from me and give her to my husband’s family. There is a poem that says, “Nobody likes to leave their husband truly, unless they go because of poverty or bad times.” I go because of bad times.<sup>115</sup>

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<sup>115</sup> Human Rights Watch interview with Gul Jan D., November 23, 2011.

## IV. Injustice at Every Stage: The Role of Judges, Prosecutors, Police

The dire cases discussed above not only implicate problems in Afghan criminal law but also the role of police, prosecutors, and judges in a dysfunctional criminal justice system. Add to this the particular problems faced by women in Afghan society, and the magnitude of the problem expands exponentially. Whereas the justice system could be playing a role in reducing the harm caused by the language of existing laws, such as *zina*, and discriminatory social practices, such as complaints filed against women for “running away,” the police and courts have instead made the situation worse. Police and prosecutors routinely treat women and girls who are victims as criminal offenders, while the courts have turned “running away,” a measure of self-protection, into a criminal offense. Instead of being part of the solution, the courts have been a part—a large part—of the problem.

Compounding these problems are Afghan authorities who routinely fail to arrest, investigate, and prosecute crimes against women, including those laid out in the EVAW law.<sup>116</sup> A lack of knowledge about the law, combined with bias and weak training, and educational backgrounds among justice officials, creates a situation where women consistently find themselves at great disadvantage.<sup>117</sup> As the accounts above demonstrate, the results are stark injustices: rape victims arrested and prosecuted as adulterers,

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<sup>116</sup> In the Afghan criminal justice process, police are responsible for detecting crimes, meaning identifying circumstances where there is reason to think that a crime may have been committed. Constitution, art. 134. If the police believe a crime has been committed, they refer the case to a prosecutor who then begins investigation of the case, to attempt to confirm whether or not a crime was in fact committed and should be prosecuted. Interim Criminal Procedure Code of Afghanistan (ICPC), arts.21, 23. At the conclusion of the investigation phase, unless the prosecutor finds that there is no grounded evidence, and as a result dismisses the case, the prosecutor shall submit to the court an indictment. ICPC, art.39. Cases, once indicted, are heard at trial before a primary court. Following a decision by the primary court, either side (defense or prosecution) may appeal the decision of the primary court to an appellate court. After the appellate court decides, a final appeal may be taken by either party to the Supreme Court. At the appellate level and the Supreme Court level, sentences may be increased or decreased. Many women and girls interviewed for this report had their sentences increased or decreased upon appeal.

<sup>117</sup> The overall quality of judicial professionalism in Afghanistan is low. For example, a 2006 study found that only 12 percent of sampled judges had completed a university degree in law, while 37 percent of judges in the same study had not completed university at all. Ian S. Livingston and Michael O’Hanlon, “Afghanistan Index: Tracking Variables of Reconstruction & Security in Post-9/11 Afghanistan,” Brookings, January 30, 2012, <http://www.brookings.edu/~media/Files/Programs/FP/afghanistan%20index/index.pdf> (accessed March 1, 2012). For a detailed overview of the problems facing the Afghan justice system, see International Crisis Group, “Reforming Afghanistan’s Broken Judiciary,” Asia Report N°195, November 17, 2010.

domestic violence victims prosecuted for seeking safety, and married couples prosecuted for seeking peace from their families.

The following discussion is based on court records in the case files made available to us by the Attorney General's Office as well as extensive conversations with prosecutors in those cases, the women and girls convicted, local rights activists, and various representatives of UN and other international agencies involved in criminal justice issues.

## Judges

The lack of professional standards affecting all court proceedings in Afghanistan is very much in evident in “moral crimes” cases before the courts. Judges sometimes demonstrated no understanding of procedures for collecting, recording, and admitting evidence.<sup>118</sup> The court decisions in the case records reviewed by Human Rights Watch typically contain minimal judicial reasoning or explanation. Judges often do not explain how they weighed evidence, what evidence they found credible or not, and what factual findings regarding the elements of the crime led to their decision to convict or acquit. Sentences were often set forth without any explanation of how aggravating or mitigating factors had been considered in arriving at the sentence imposed.<sup>119</sup>

And while defense counsel had submitted written arguments to the court in most of the case files reviewed, the written judicial decisions without exception gave no indication that judges gave any consideration whatsoever to the defense pleadings. This includes

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<sup>118</sup> The Afghan ICPC provides, in regard to evidence: Article 37, Collection of Evidence: 1. During the investigations phase the Primary Saranwal shall collect all relevant evidence which can substantiate a decision pro or cons the suspect. 2. The collection of evidence is not restricted to particular forms or matters. The Primary Saranwal is free in selecting tools and modalities of proof. 3. The following shall be considered as key tools: a. Witnesses; b. Confrontations; c. Line up procedures; d. Inspections; e. Searches; f. Seizure; g. Expert exams and evaluations; h. Interrogations. Article 38, Defense Counsel Presence: 1. The defense counsel has the right to be present at all times during the interrogation of the suspect. 2. The suspect and the defense counsel have the right to be present during searches, confrontations, line-up procedures and expert examinations as well as during the trial. 3. In the investigation phase the Saranwal and the judicial police shall notify the suspect and his defense counsel of searches, confrontations, line-up procedures and expert examinations in order to allow them to be present. This duty can be waived only when there is an urgent need to conduct the said operations, which is defined as when it is a flagrante delicto crime or there is a fear of the loss of evidential facts.

<sup>119</sup> Afghan law provides for discretion in sentencing; all prison sentences provided for in the Penal Code are ranges, not set terms. The Penal Code does not provide guidance for how judges should determine the duration, within the specified range, of a sentence of imprisonment, but it does provide the following guidance in regard to cash fines:

Article 108: The court shall observe the following situations and conditions in the determination of cash punishment within the anticipated range of minimum and maximum: 1. Securing the penal objectives; 2. Personal, social and economic conditions of the person who has committed the crime; 3. The magnitude of benefit derived from the crime or was expected to be derived; 4. the kind of right or interest which has been offended.



cases where the defense attorney had specifically alleged that confessions or statements presented as having been given by their clients were untrue.

The court decisions made available to Human Rights Watch also displayed considerable sexism by the judges in addition to a lack of professionalism, which fostered outcomes particularly harmful to women. Judges often made statements indicating bias against women and gave significant weight to information not relevant to the elements of the crime or of no confirmed veracity.

For example, in the case of Seema M., 25, her husband sent a letter to the prosecutor stating, “My wife is not accepting my orders and she is going out of the house without my permission, so I request that she be arrested and punished.” The letter was accepted as evidence and cited in the court’s decision sentencing Seema to three years of imprisonment for “attempted *zina*.”<sup>120</sup>

Another problem is the failure of courts to take steps to remedy problematic practices by police and prosecutors in “moral crime” cases. Afghan judges are often overly willing to rely on “confessions” from women and girls obtained by police, without any consideration of the circumstances under which these statements were taken, typically without a defense attorney present and signed without having been read to a defendant who cannot read or write.

The judges also make ungrounded assumptions about women’s consent in cases of alleged *zina*, assuming that sexual acts took place simply because a man and woman were alone together. They also fail to consider mitigating information about domestic abuse when provided by defense attorneys or by government social workers.<sup>121</sup> We also found that judges frequently fail to discriminate between what is and what is not valid evidence, and display blatantly prejudicial attitudes toward women. For example, judges have made

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<sup>120</sup> Primary court decision in the case of Seema M., 4/2/1390 (in Afghanistan, at the time of writing it is the year 1390).

<sup>121</sup> Afghan law provides for discretion in sentencing; all prison sentences provided for in the Penal Code are ranges, not set terms. The Penal Code does not provide guidance for how judges should determine the duration, within the specified range, of a sentence of imprisonment, but it does provide the following guidance in regard to cash fines: Article 108: The court shall observe the following situations and conditions in the determination of cash punishment within the anticipated range of minimum and maximum: 1. Securing the penal objectives; 2. Personal, social and economic conditions of the person who has committed the crime; 3. The magnitude of benefit derived from the crime or was expected to be derived; 4. the kind of right or interest which has been offended.

assumptions that if there was evidence that a boy and girl had been alone together, then sex must have occurred, punished those who simply assisted a fleeing woman, and treated opinions of an angry husband as having evidentiary value.<sup>122</sup>

Human Rights Watch reviewed one court report where the judge used his judicial discretion to reduce a sentence for “running away” and *zina*, yet made clear in his ruling that the defendant should not have been found guilty at all. In the case of Arezoo W., age 15, who was arrested in 2011 after running away to escape a forced marriage and physical abuse at her parent’s home, the judge handed down a reduced sentence of one year, noting: “Because she is a child and was in a way forced to do this, because of so many problems, and because both families agree for [Arezoo and the boy she was accused of running away and committing *zina* with] to marry, for them to have a good future, we would like to forgive them in a way.”<sup>123</sup>

## Prosecutors and Police

Police and prosecutors also display discriminatory attitudes towards women and girls in cases involving “moral crimes.” This includes presumptions about women’s consent in cases of alleged *zina*, and failure to appreciate or understand domestic violence and the threats posed by forced marriage.

One of the most serious and overarching problems in “moral crimes” cases is the failure of police and prosecutors to investigate crimes committed against women, which so often lie at the foundation of the alleged “moral crimes.” As this report shows, most cases of “moral crimes” begin in the context of domestic abuse or forced marriage, yet police and prosecutors rarely investigate those illegal acts, instead focusing myopically on the issue of “moral crimes.”

One Kabul prosecutor who handled “moral crimes” cases demonstrated his biases to a Human Rights Watch researcher, explaining that in his view only “serious” violence should be prosecuted under the EAW Law. “If I only punched you,” he told her, “should I be in prison?”

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<sup>122</sup> Primary Court decision in the case of Arezoo, 1/6/1390; Primary Court decision in the case of Parween D., 4/5/1390; Primary Court decision in the case of Seema M., 4/2/1390.

<sup>123</sup> Primary Court decision in the case of Arezoo W, 1/6/1390.

In the case of Arezoo W., noted above, a report by a social worker from the Ministry of Labor and Social Affairs confirmed that Arezoo was beaten in her home and was being forced into a marriage against her will. Yet when asked about these crimes by Human Rights Watch, the prosecutor explained why he had not pursued an investigation of those crimes: “She didn’t leave the house because of beating or forced marriage. Her letter [a romantic letter to the boy with whom she ran away] proves that she left because she loved this boy, not because of being oppressed. She just said this [about being abused] to justify herself.”<sup>124</sup>

In the case of Nilofar M., in which a prosecutor confirmed that Nilofar’s husband had been released even though he had stabbed Nilofar repeatedly with a screwdriver in 2011, this prosecutor justified the release by saying, “The way he beat her wasn’t bad enough to keep him in jail. She wasn’t near death, so he didn’t need to be in prison.”<sup>125</sup>

In the case files examined by Human Rights Watch, police and prosecutors were often uninterested in pursuing allegations of forced marriage or violence committed against women by men. In many cases, police and prosecutors seemed to interpret independent acts by women as “immoral,” assuming, for example, that teenage girls fleeing marriage to elderly men are motivated by “immoral relationships” with other men, or assuming that when married women flee home their flight can only be because of an adulterous relationship, even when there is evidence of domestic violence.

For example, in the case of Asma W., the prosecutor acknowledged that Asma had said that her husband was abusing her, but the prosecutor discounted this, saying Asma had just wanted to run away with another man.<sup>126</sup> In the case of Souriya Y., when asked whether the Attorney General’s Office had investigated abuses committed against Souriya by her in-laws prior to her husband accusing her of *zina*, the prosecutor said, “Probably not. Probably it was not proved. Probably she lied, otherwise it would have been done. Indeed it is shown from this case that she had bad behavior, and this is against the culture here so probably her husband didn’t trust her.”<sup>127</sup>

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<sup>124</sup> Human Rights Watch interview with prosecutor (name withheld), Kabul, January 15, 2012.

<sup>125</sup> Human Rights Watch interview with prosecutor (name withheld), Kabul, January 16, 2012.

<sup>126</sup> Human Rights Watch interview with prosecutor (name withheld), Kabul, January 16, 2012.

<sup>127</sup> Human Rights Watch interview with prosecutor (name withheld), Kabul, January 24, 2012.

In interviews with prosecutors, Human Rights Watch found that they often perpetuate damaging stereotypes about women's behavior and "morality." For example, prosecutors treated the mere fact that a man and woman acknowledge knowing each other as evidence of *zina*, and assumed that running away from home is motivated by a desire to engage in *zina*, as opposed to abuse or trouble in the home.

Another crucial issue not adequately handled in police inquiries and prosecutors' investigations is questions of consent, including consent to engage in sexual activity. In *zina* cases, police are quite zealous in seeking confessions that women engaged in sexual activity, but the issue of whether these women did so consensually is often not pursued.

Indeed, prosecutors often assume consent in cases of rape. Evaluation of consent rarely takes into account whether physical force or forms of coercion were used, such as threats or manipulation by the men involved. Prosecutors sometimes use allegations of "running away" or being alone in the presence of a man who is not a relative as shortcuts for alleging that a woman must have consented. For example, a prosecutor told Human Rights Watch that Nilofar M. had "confessed" to *zina*. After reviewing the file and finding no such confession, Human Rights Watch asked the prosecutor to point it out. He explained, "She said she knew him and she invited him to the house. This is a confession of attempted *zina*."

When Human Rights Watch asked prosecutors about the case of Tahmina J., and why she had been prosecuted after claiming two men had raped her in an abandoned building, the prosecutor replied that, "Whatever she is saying is not completely true or certain. There must have been consent because she didn't scream or say anything."<sup>128</sup>

Conducting inquiries in "moral crimes" cases is made more difficult by the lack of female police officers and prosecutors and cultural squeamishness about discussing sexual matters. In many of the cases researched for this report, Human Rights Watch found that male police and prosecutors appeared to have assumed the truth of a man's version of an incident, been dismissive of contradictory claims by a woman, and demonstrated great reluctance to investigate claims by women of domestic abuse, forced marriage, or rape.

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<sup>128</sup> Human Rights Watch interview with prosecutor (name withheld), Kabul, January 24, 2012.

## Family Response Units and Women Police Officers

In 2007, the Ministry of Interior Affairs created a program of Family Response Units within police stations.<sup>129</sup> Family Response Units (FRUs) are meant to serve as dedicated teams, housed in a separate area of the police station with its own entrance, to provide women with specialized assistance.<sup>130</sup> Their mandate is to “help address violence against women and provide a space for civilian women to complain or register their concerns.”<sup>131</sup>

There are reportedly 83 FRUs set up across Afghanistan, but it is not clear how many of them are operating effectively. The original intent was for FRUs to be staffed solely by women,<sup>132</sup> but a lack of female police officers appears to have led to rethinking and newer plans to staff each FRU with a team of three police officers, two female and one male.<sup>133</sup> In practice, however, FRUs are often staffed solely by men.<sup>134</sup> Women’s rights and civil society groups state that FRUs staffed solely by male police officers cannot adequately achieve their objective of assisting women.

Currently, only one percent of all police officers in Afghanistan are women, although the number of women police officers has increased from 180 in 2005 (representing 0.3 percent of a force of 53,400) to 1,195 by September 2011 (1 percent of a force of 112,000).<sup>135</sup> However, 84 percent of women officers in Afghanistan are based in four major cities (almost half are in Kabul alone and one fifth are in Mazar-e Sharif),<sup>136</sup> meaning that women in smaller cities and rural areas are very unlikely to encounter a female police officer, whether in an FRU or not.

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<sup>129</sup> Afghanistan Public Policy Research Organization, *Growing Pains—Women in the Afghan National Police*, December 2010 (unpublished), p. 13.

<sup>130</sup> Human Rights Watch interview with Major A. Heather Coyne, NGO/International Organizations Liaison, NATO Training Mission/CSTC-A, Kabul, December 11, 2011.

<sup>131</sup> Afghanistan Public Policy Research Organization, *Growing Pains—Women in the Afghan National Police*, December 2010 (unpublished), p. 15.

<sup>132</sup> *Ibid.*, p. 14.

<sup>133</sup> Human Rights Watch interview with Major A. Heather Coyne, NGO/International Organizations Liaison, NATO Training Mission/CSTC-A, Kabul, December 11, 2011.

<sup>134</sup> Afghanistan Public Policy Research Organization, *Growing Pains—Women in the Afghan National Police*, December 2010 (unpublished), p. 14.

<sup>135</sup> *Ibid.*, p. 10; Lianne Gutscher, “Fighting is cultural, criminal for Afghan policewomen,” *USA TODAY*, September 19, 2011, <http://www.usatoday.com/news/world/story/2011-09-19/Afghan-National-Police-force-women-Islam/50471816/1> (accessed February 22, 2012).

<sup>136</sup> Afghanistan Public Policy Research Organization, *Growing Pains—Women in the Afghan National Police*, December 2010 (unpublished), p. 7.

Cultural values, security considerations for women, high levels of sexual harassment at the workplace, and the absence of women-friendly police stations make the recruitment of female police challenging. Many families do not permit women to work, and policing is seen as a particularly unacceptable profession for women. Women who join the police frequently endure threats, including threats of murder and beheading, and allegations that they are prostitutes.<sup>137</sup> One study found that female police officers in one-third of police stations reported having been approached for sex by their colleagues or superiors.<sup>138</sup> Recruitment and retention of female police is also made more difficult by a range of other types of ill-treatment that female police endure, from limited opportunities for advancement, to lack of child care, to such basic issues such as the absence of female-only or locking toilets in police stations.<sup>139</sup> There are also problems with the professionalism of female police officers related to lack of mentoring and career progression, lack of accountability, and underutilization (many female police officers find their functions limited to serving male police officers tea or searching women).<sup>140</sup>

Increasing the number of women police officers could improve FRU effectiveness and reduce many of the problems addressed in this report.<sup>141</sup> Many policing tasks are culturally unacceptable for male officers to conduct with women, as in many parts of Afghanistan it is seen as improper for women to speak to a man, let alone discuss personal matters such as forced marriage, sexual acts, rape, or physical abuse. The fact that many Afghans would consider it improper for a woman to sit alone in a room with a man or multiple men creates another barrier to women reporting crimes against them in the absence of female police officers. Increasing the number of women police officers and female prosecutors in the Attorney General's Office might help to decrease gender-based bias in cases of "moral crimes."

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<sup>137</sup> Lianne Gutcher, "Fighting is cultural, criminal for Afghan policewomen," *USA TODAY*, September 19, 2011, <http://www.usatoday.com/news/world/story/2011-09-19/Afghan-National-Police-force-women-Islam/50471816/1> (accessed February 22, 2012).

<sup>138</sup> Afghanistan Public Policy Research Organization, *Growing Pains—Women in the Afghan National Police*, December 2010 (unpublished), p. 18.

<sup>139</sup> *Ibid.*, p. 9.

<sup>140</sup> *Ibid.*

<sup>141</sup> *Ibid.*, p. 3.

### **Corruption and Moral Crimes**

Corruption poses serious problems to Afghanistan’s justice system—in particular, payment of bribes by the accused and other interested parties to police, prosecutors, and judges to influence the outcome of criminal cases.<sup>142</sup> While we did not inquire specifically about bribery in our interviews, most interviewees brought it up, many saying that they knew or believed that bribes were paid in their cases. For instance, in cases of *zina* where men were arrested along with women or girls, men were sometimes released or not charged while the women and girls were convicted and sentenced. Without exception, the women and girls ascribed this to corruption or personal connections. They explained that while the men went free, they remained in detention because of their inability to pay bribes or their family’s inability or unwillingness to pay bribes on their behalf. Claims of this sort are difficult to verify in individual cases, but the consistency with which these issues were raised, especially taken in conjunction with research findings about the prevalence of corruption in the Afghan justice system, means that further investigation needs to be conducted to determine the extent to which corruption comes into play in “moral crime” cases.

### **Failure to Investigate and Prosecute Violence against Women**

The failure of authorities to adequately pursue crimes under the EAW Law is demonstrated by UN research, which found that in the first year the EAW Law was in force prosecutors only opened cases in about one-quarter of alleged EAW crimes reported to the AIHRC.<sup>143</sup> That is, of the 2,299 cases of alleged crimes under the EAW Law reported to

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<sup>142</sup> A 2010 study by UNODC surveyed Afghans to learn how frequently they paid bribes and to which types of government officials. The study found that the type of government official most frequently demanding—and receiving—bribes was police officers. Over 25 percent of people surveyed reported that they had paid a bribe to a police officer on at least one occasion in the last 12 months. Judges and prosecutors were also among the officials named as most frequently demanding bribes. Out of 14 categories of officials, judges were third and prosecutors were fourth highest in terms of bribes demanded and received. About 18 percent of people surveyed reported that they had paid a bribe to a judge in the last 12 months, and 14 percent had paid a bribe to a prosecutor. UNODC, “Corruption in Afghanistan: Bribery as Reported by the Victims,” January 2010, <http://www.unodc.org/documents/data-and-analysis/Afghanistan/Afghanistan-corruption-survey2010-Eng.pdf> (accessed March 18, 2012).

<sup>143</sup> UNAMA, “A Long Way to Go: Implementation of the Elimination of Violence against Women Law in Afghanistan,” November 2011, p. 10, [http://unama.unmissions.org/Portals/UNAMA/human%20rights/November%2023\\_UNAMA-OHCHR-Joint-Report-on-Implementation-of-EAW-law\\_ENG.pdf](http://unama.unmissions.org/Portals/UNAMA/human%20rights/November%2023_UNAMA-OHCHR-Joint-Report-on-Implementation-of-EAW-law_ENG.pdf) (accessed March 18, 2012).

the AIHRC during that period, only 594 cases were opened by prosecutors, or 26 percent.<sup>144</sup> Of the 594 cases, 155, or less than 7 percent of the cases reported to the AIHRC, led to the filing of an indictment by the prosecutor.<sup>145</sup> More importantly, in 17 of Afghanistan’s 34 provinces, not a single indictment was filed under the EAW Law during the first year the law was in force.<sup>146</sup>

Among prosecutors, Human Rights Watch observed a consistent unwillingness to pursue prosecution of crimes under the EAW Law and misunderstandings about the interplay between EAW and the provisions of the Penal Code that permit mitigation and excuse.

For instance, the prosecutor in the Nilofar M. case (above) told Human Rights Watch that one reason he did not pursue the case against Nilofar’s husband was that “EAW is for when the violence was unjustified, but her husband was justified [he alleged that he had seen her committing *zina*]. If a man sees a woman doing *zina* he can even kill them both.”<sup>147</sup> This view mistakes the law.<sup>148</sup> The presence of potentially mitigating circumstances does not justify a prosecutor failing to proceed with the case. Whether such mitigating circumstances exist, and what impact they should have on conviction or sentencing, is a matter for a court to decide, not a prosecutor.

In cases where excuse or extenuating circumstances are specifically provided in the law for a particular offense, the Afghan Penal Code allows for judicial, not prosecutorial, discretion, stating that, “judicially extenuating conditions are those instances where the crime is committed on the basis of honorable motives or that the criminal has acted because of unlawful incitement.”<sup>149</sup>

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<sup>144</sup> *Ibid.*, p. 10.

<sup>145</sup> *Ibid.*, p. 9.

<sup>146</sup> UNAMA, “A Long Way to Go: Implementation of the Elimination of Violence against Women Law in Afghanistan,” November 2011, p. 9, [http://unama.unmissions.org/Portals/UNAMA/human%20rights/November%2023\\_UNAMA-OHCHR-Joint-Report-on-Implementation-of-EVAW-law\\_ENG.pdf](http://unama.unmissions.org/Portals/UNAMA/human%20rights/November%2023_UNAMA-OHCHR-Joint-Report-on-Implementation-of-EVAW-law_ENG.pdf) (accessed March 18, 2012).

<sup>147</sup> Human Rights Watch interview with prosecutor (name withheld), Kabul, January 16, 2012.

<sup>148</sup> The provision of the law this prosecutor was referring to is Penal Code, article 398, which states: A person, defending his honor, who sees his spouse, or another of his close relations, in the act of committing adultery or being in the same bed with another and immediately kills or injures one or both of them shall be exempted from punishment for laceration and murder but shall be imprisoned for a period of not exceeding two years, as a “Tazeer” punishment. This provision of the law, like Penal Code, art. 141(1) discussed below, should be applied through a judicial determination, not a determination by the prosecutor.

<sup>149</sup> Penal Code, art. 141(1).



The Attorney General’s Office has made some steps towards implementing the EVAW Law, with the creation of specialized units responsible for bringing prosecutions under the law. The first of these units was established in Kabul in March 2010.<sup>150</sup> Another four were opened in 2011 and three more are expected to be opened by mid-2012.<sup>151</sup> The specialized unit in Kabul registered 285 cases in the first year of the EVAW Law being in force, yet filed indictments in only 21 cases.<sup>152</sup> The United Nations has found that the specialized unit relied heavily on mediation to resolve cases and suggested that the Attorney General’s Office undertake an assessment, with international assistance if requested, of the work of the specialized units, to determine whether changes are needed in its handling of complaints.<sup>153</sup>

### **Expanding the Role of Social Workers**

The Ministry of Labor, Social Affairs, Martyrs, and Disabled assigns social workers to investigate cases where children are charged with crimes, including “moral crimes.” Social workers prepare reports containing an assessment of the context in which the alleged criminal behavior occurred as well as recommendations for the prosecutor and court on how and whether the case should be pursued.

The government should consider extending this practice to all “moral crimes” cases, including those that involve adult women. Because the number of women arrested for all crimes is so low compared to the number of men arrested, providing such assistance should not be onerous. An assessment from a MoLSAMD social worker in every case where a woman is accused of a moral crime could help inform prosecutors, defense attorneys, and judges identifying issues that might show innocence, mitigating factors, or the need for criminal investigation of other family members.

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<sup>150</sup> Human Rights Watch interview with Sandy Feinzig, International Development Law Organization, Kabul, February 2, 2012.

<sup>151</sup> Human Rights Watch interview with Vonda Walcott, US Department of State Bureau of International Narcotics and Law Enforcement, Kabul, January 18, 2012.

<sup>152</sup> UNAMA, “A Long Way to Go: Implementation of the Elimination of Violence against Women Law in Afghanistan,” November 2011, p. 13, [http://unama.unmissions.org/Portals/UNAMA/human%20rights/November%2023\\_UNAMA-OHCHR-Joint-Report-on-Implementation-of-EVAW-law\\_ENG.pdf](http://unama.unmissions.org/Portals/UNAMA/human%20rights/November%2023_UNAMA-OHCHR-Joint-Report-on-Implementation-of-EVAW-law_ENG.pdf), (accessed March 18, 2012).

<sup>153</sup> *Ibid.*, p. 14.

The creation of specialized ERAW prosecution units should not become another excuse for regular prosecutors not to pursue crimes under the ERAW Law. When Human Rights Watch asked prosecutors whether they had pursued allegations of crimes under the ERAW Law that arose in “moral crimes” cases, the response was sometimes that they did not do so because there is a specialized unit responsible for this, but there was no indication that they had referred the allegations to the specialized unit.<sup>154</sup> Specialized ERAW prosecution units have the potential to be an important tool in enforcing the ERAW law, but their work needs to be accompanied by rigorous oversight and broader institutional reform to ensure that they have the intended impact.

## “Confessions”

As the cases detailed in this report demonstrate, there are often basic legal problems with how police and prosecutors handle witness and defendant statements in cases of alleged moral crimes. In “moral crimes” cases, prosecutors often rely on confessions. These confessions, which were present in all 10 case files reviewed by Human Rights Watch, are statements collected by the police immediately after arrest, typically taken by male police officers with no defense counsel present, and signed with a thumbprint by women who usually cannot read or write with no evidence that the statement was understood. The absence of defense counsel and other circumstances regarding these statements raise serious concerns about the legal validity of such “confessions” under Afghanistan’s criminal procedure code and the Afghan Constitution.<sup>155</sup> Yet in case after case, they were

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<sup>154</sup> For example, Human Rights Watch interview with prosecutor (name withheld), January 15, 2012.

<sup>155</sup> The Afghan legal framework in regard to criminal procedure consists of two laws. The Afghan Criminal Procedure Code (CPC) was adopted in 1965. It was supplemented by the Interim Criminal Procedure Code (ICPC) which was drafted with international assistance and adopted in 2004. ICPC, art. 5(7) states: “The police, the Saranwal and the Court are duty bound to clearly inform the suspect and the accused before interrogation and at the time of arrest about his or her right to remain silent, right to representation at all times by defense counsel, and right to be present during searches, line-ups, expert examinations and trial.” Article 32(3) of the ICPC provides that “Defense Counsel of suspect and accused has the right to be present in investigation and interrogation phases.” Article 38 of the ICPC states that “The defense counsel has the right to be present at all times during the interrogation of the suspect; The suspect and the defense counsel have the right to be present during searches, confrontations, line-up procedures and expert examinations as well as during the trial; In the investigation phase the Saranwal and the judicial police shall notify the suspect and his defense counsel of searches, confrontations, line-up procedures and expert examinations in order to allow them to be present.” Confessions taken by compulsion are invalid under article 30 of the Afghan Constitution. Article 31 of the Constitution provides for a right to counsel in criminal cases. Under article 55 of the ICPC, statements may be treated as evidence only if the “accused and/or his defense counsel were present during the operations and were in a position to raise questions and make objections.” See also, ICCPR, art. 14(3) (In the determination of any criminal charge, “everyone shall be entitled to the following minimum guarantees, in full equality: ... (g) Not to be compelled ... to confess guilt”).

duly presented as evidence by prosecutors and accepted by the court. Moreover, the court decisions often indicated that confessions served as the sole basis for conviction.

There are numerous reasons for the prohibition on courts considering confessions or statements under these circumstances. First, they may easily be fabricated or manipulated by police seeking to quickly resolve a case. They create a serious risk of corruption (see box above), as bribes may be paid in return for statements that determine the outcome of a case. When statements are taken by male police officers, there is little chance that a woman or girl will be comfortable discussing sexual acts, and her consent or lack thereof. In addition, because most Afghan women and girls cannot read and write, they cannot be sure what the statement says, even if it is supposedly read to them. These problems could best be addressed by ensuring that no statements are taken of criminal suspects except in the presence of defense counsel, and that in the case of female suspects, statements are, whenever possible, taken only by female police officers.<sup>156</sup>

## Presidential Pardons

Women and girls who have been imprisoned for moral crimes have one route for the commutation of their sentence: a presidential pardon. President Hamid Karzai in recent years has routinely issued decrees on major Afghan holidays releasing or reducing the sentences of certain categories of prisoners, including imprisoned women and girls.<sup>157</sup> It is difficult to obtain data on the number of women and girls released as a result of these decrees, but Human Rights Watch was told by a prison official that in August 2011 at Badam Bagh prison in Kabul alone, 60 women had been released from the prison following a presidential decree issued for the holiday of Eid-al-Adha.<sup>158</sup>

The head of a juvenile rehabilitation center visited by Human Rights Watch had posted in her office a total of 14 recent amnesty decrees from President Karzai, releasing and reducing sentences for categories of prisoners. For example, one ordered the release of

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<sup>156</sup> It should be possible, in the vast majority of cases, to ensure that statements by female suspects are taken only by female police officers. Although there are few women police officers, and their presence is concentrated in cities, the majority of arrests of women probably also take place in cities. In situations where a woman has been arrested in an area where there are no female police officers, MoI policy should encourage or require police to immediately transfer the woman to a place where there are female police. Holding female suspects only in police stations where women police are present will not only permit interrogation by female police, but will also improve the safety of female suspects.

<sup>157</sup> Copies of some of these decrees are on file with Human Rights Watch.

<sup>158</sup> Human Rights Watch Interview with Anisa Dastagir, deputy director of Badam Bagh Prison, November 2, 2011.

female prisoners sentenced to one year or less, female prisoners sentenced to 1-5 years' imprisonment whose sentences had been confirmed at all three levels of the court system, and women sentenced to 5-10 years' imprisonment who had completed at least half of their sentences. Women prisoners not covered by these categories and sentenced to 10-20 years of imprisonment were to be given a two-month reduction of their sentence.

A number of the women and girls interviewed for this report expressed hope that they would be released early through a future presidential decree. The most recent such decree was on the occasion of International Women's Day on March 8, 2012, when Karzai ordered that, "convicted women... if they ran away from their parents' house in order to marry their ideal person or if they married their ideal person shall be forgiven unconditionally." The process of identifying and releasing the women and girls eligible under the decree is ongoing.

Pardons, however, are not acts of due process and cannot adequately remedy violations of the rights of women and girls. Pardons do not address the underlying injustices that lead to unwarranted convictions on either a systemic or an individual level. Pardons have done nothing to address the abusive practices in the justice system that lead to continued prosecutions for "moral crimes." Nor can a pardon give back lost months or years spent in prison, or repair the damage to family relations or a woman's reputation as a result of having been arrested and imprisoned. Women who have been convicted of moral crimes may continue to face ill-treatment or even killing as a result.

## Shelters: Help for Some

One potential mechanism for decreasing the number of "moral crimes" cases is the expansion of Afghanistan's system of shelters: safe havens for women and girls where they can obtain protection and legal assistance. As demonstrated in many of the cases outlined above, flight is a common theme in moral crimes cases. Most women and girls who are detained for *zina* or "running away" are in the process of fleeing abusive husbands or forced marriages. In the absence of a safe haven to which to flee, women and girls often end up in circumstances that make their arrest more likely. Today there are only about a dozen shelters across the whole of Afghanistan.<sup>159</sup>

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<sup>159</sup> Prior to the fall of the Taliban government in 2001, Afghanistan had no shelters for women, although informal networks existed within Afghan society to assist some women fleeing violence. Today there are 14 official shelters registered with MoWA. None of these shelters are located in the more conservative southern region of the country. Human Rights Watch

In each of the regions we visited, a number of women and girls described having been referred by police to shelters, including in situations where the women or girls involved had no idea that shelters existed. It is clear that in at least some areas there has been good training of the police about the function of shelters and the role they need to play in providing safety to women and girls.<sup>160</sup> Shelter providers interviewed for this report also recognized some significant improvements in how police handle cases of violence against women.

“We have to not just criticize government,” said Mary Akrami, director of the Afghan Women’s Skills Development Center. “We also have to acknowledge good things, for example times when the police are good.” She described a case where a woman had been referred to a shelter in the middle of the night by police. “She couldn’t believe how the police respected her. They gave her tea. They protected her. ‘I used to be afraid of police,’ she told me.”

Unfortunately in a number of cases, police later returned to the shelter to arrest the same woman or girl. Police appear to use shelters sometimes as a place to put a woman or girl while they seek to determine whether a crime has been committed. In that process, they typically contact the woman or girl’s family and if the family alleges that the woman or girl committed a crime, police take her from the shelter and put her in jail. Shelters have no ability to prevent such arrests, although many do provide legal assistance for women.

There is an urgent need for more shelters, although there are varying opinions about the feasibility of establishing shelters in the more conservative southern half of the country.<sup>161</sup> Creating more shelters, however, can be a complex issue as the mere existence of shelters offering refuge for women and girls is controversial in Afghanistan. Various religious and political leaders, journalists, and government officials have made critical and uninformed statements about shelters, alleging that the facilities promote “immoral” behavior, or that

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interview with Vonda Walcott, US Department of State, Bureau of International Narcotics and Law Enforcement, Kabul, December 1, 2011.

<sup>160</sup> This is likely a result of outreach by shelter providers who typically do outreach to police and community leaders and organizations when they establish a shelter. Human Rights Watch interviews with shelter providers (names withheld), Kabul, December 7 and December 11, 2011.

<sup>161</sup> In the absence of shelters, many women from the south who need shelter flee to Kabul or other places in the north where shelters exist, but structures to help women in the south access shelter in the north are ad hoc, and many women who need shelter suffer the sometimes lethal consequences of it not being locally available.

they are brothels. Some shelters face chronic security threats and all must maintain a low profile.<sup>162</sup>

Existing shelters in Afghanistan are very restrictive. Typically women and girls in shelters are not permitted to leave the shelter, due to concerns about their individual safety and about the security of the shelter, which to a great extent relies on secrecy regarding its location. These precautions are understandable from a security perspective, but they prevent women in the longer term from accessing education and employment opportunities that would permit them to move toward independent lives, in the event that they are not able or do not wish to reunite with their families.

Needed services could be divided into two categories: providing immediate safety from the violence of family or spouses, and addressing long-term solutions for women and girls who cannot return to their families, including programming for women and girls who have already served a prison term for “running away” or *zina*. The United Nations Office on Drugs and Crime in 2011 funded the establishment of two homes specifically for women and girls being released from prison. This new model differs from shelters in that it emphasizes residents becoming self-sufficient and facilitates this by permitting them to come and go from the house in order to seek educational and employment opportunities. The Ministry of Women’s Affairs has discussed plans to open eight large (50-person) shelters in each of Afghanistan’s eight zones where women living in the shelters would be permitted and assisted to find employment, but these shelters are not yet funded.<sup>163</sup>

Since the mere existence of shelters is so controversial, and the general budgeting of the Afghan government so uncertain, it is likely that donor assistance will be essential to ensuring the continued existence of shelters. Long-term international donor commitments are needed to ensure that new women’s shelters can be built and existing ones can continue operations.

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<sup>162</sup> UNIFEM, “Extracts from an Assessment of Shelter Homes in Afghanistan,” *Afghanistan Ending Violence against Women Special Funds Unit*, June–December 2010.

<sup>163</sup> Human Rights Watch interview with Mojgan Mostafavi, Technical and Policy Deputy Minister, MoWA, December 4, 2011.

## Dangers after Release

As severe and prevalent as abuse was in the lives of the women and girls interviewed for this report prior to their arrest, the situation for them upon release is often even more perilous. A majority of the women and girls interviewed had been imprisoned for “running away” or *zina*. In most cases they had defied the wishes or orders of male family members or their husbands, putting them at risk of retaliation. In Afghanistan this can often be in the form of “honor” killings.

At least 22 of the 58 women and girls interviewed for this report said they believed they would face dangers following release. These dangers range from continued beatings and domestic abuse to homelessness to murder by a husband or family member. Many described specific threats and warnings they had received from family members who visited them in prison. Two women told Human Rights Watch that they believed male family members had tried to kill them while they were in prison by bringing them poisoned food, although these claims were impossible to verify.

“I chose this prison as my safe place,” said Rabia T., 24. She was sentenced to seven years in prison after she ran away to escape her brother, who had decided to murder her for speaking to a man without his permission.

*“I am happy in here. Here I am not afraid because I know no one is coming in the night to kill me,”* said Jawana S., 40, sentenced to three years in prison after fleeing a father-in-law who raped her and had her brother murdered.

*“My parents come every week on visiting day. Every time they tell me that very soon they will pay the prison staff to give me to them, and then they will kill me,”* said Khalida P., 17, imprisoned for running away with a boy that her parents forbade her to marry.

## Defense Representation

Almost all of the women and girls we interviewed said they were represented by defense attorneys.<sup>164</sup> This consistency of access to counsel, at least in urban areas, represents significant progress over the recent past in Afghanistan and is an indication of the effectiveness of recent efforts to expand access to legal aid.<sup>165</sup>

The unfortunate reality, however, is that the quality and effectiveness of the defense representation appeared to be quite poor. A large proportion of women and girls interviewed reported seeing their lawyer only once or twice and many said their lawyer did not show up for scheduled court hearings. A review by Human Rights Watch of court submissions filed in “moral crimes” cases shows that many of the filings inadequately raised factual issues, and often focused myopically on minor procedural issues that were not likely to prevent conviction. Generally, defense attorneys failed to rigorously and zealously challenge issues connected to the legitimacy of “confessions,” or the supposed voluntariness or consent in cases of *zina*. They consistently failed to request bail, did not appear to have conducted investigations or outreach to identify witnesses.

Compounding these problems is the possibility that the legal aid that currently exists may not continue into the future. While some legal aid lawyers work for the Ministry of Justice, a large proportion of legal aid is provided through nongovernmental organizations funded solely through international donors. The reliance on relatively short-term international funding means that these services could disappear in coming years as international aid commitments decrease.

## Assistance from the Ministry of Women’s Affairs

The Ministry of Women’s Affairs, through its local Departments of Women’s Affairs (DoWAs), also provides assistance to individual women, reportedly having handled 18,000 cases of women seeking help over the last four years.<sup>166</sup> In the course of this research, Human Rights Watch heard a number of stories from shelter providers and others of

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<sup>164</sup> One woman reported that she did not have a defense attorney and a second woman reported that she had refused a legal aid lawyer because she did not believe that a free lawyer would help her. All other 56 women and girls interviewed reported that they had defense attorneys.

<sup>165</sup> The Afghan constitution provides a right to counsel: “Upon arrest, or to prove truth, every individual can appoint a defense attorney... In criminal cases, the state shall appoint a defense attorney for the indigent.” Constitution, art. 31.

<sup>166</sup> Human Rights Watch interview with Mojgan Mostafavi, technical and policy deputy minister, MoWA, December 4, 2011.



DoWAs allowing women to sleep in their offices in emergency situations, or DoWA staff taking women in crisis to stay at their houses. The effectiveness of a local DoWA office seemed to depend a great deal on the personalities and level of commitment of the staff of the individual DoWA, and some seemed to be deeply committed and effective.

The larger problem is that many women and girls in Afghanistan are unaware of the assistance they can obtain from MoWA or DoWA offices. Certainly many of the women and girls interviewed for this report were unaware. Had they known of the assistance they might have avoided ending up in detention.

### **Afghanistan Independent Human Rights Commission**

The Afghanistan Independent Human Rights Commission (AIHRC) runs a Women’s Rights Program with a mandate to assist women and girls, including in cases of domestic violence. This unit, which has staff in all of the AIHRC’s 14 offices, recorded 2,433 cases in the first six months of 2011, more than 90 percent of which related to domestic violence.<sup>167</sup> In working on these cases, the AIHRC emphasizes mediation, trying to talk with women’s families to resolve problems such as forced marriage or abuse, although in “critical” cases, the AIHRC refers women to shelters.<sup>168</sup>

In practice, AIHRC’s work leads to mixed outcomes. Some of the women and girls interviewed who had sought help from the AIHRC were grateful for the assistance they had received. Others, however, expressed frustrations. As noted above, the AIHRC, like MoWA and shelters themselves, relies heavily on mediation as a response to women seeking help. This is understandable given the difficulties women face trying to survive in Afghan society without family support, the shortage of shelters, and the lack of other options, but it is often not a real solution.

Some women said that the AIHRC had sent them home to their families based on family member promises that they would behave better toward the women in the future. In some cases, abuse subsequently escalated. A number of women and girls interviewed by Human Rights Watch went home as a result of mediation and then ran away when difficulties continued, this time declining to seek help. In several situations, women or girls

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<sup>167</sup> Human Rights Watch interview with Latifa Sultani, Director of Women’s Rights Program, AIHRC, Kabul, December 12, 2011.

<sup>168</sup> Ibid.

interviewed said that the AIHRC had called local police and the women or girls had subsequently been arrested. AIHRC officials, for their part, confirmed to Human Rights Watch that they sometimes contact police in cases where they feel that an arrest of a person who has abused the woman is warranted,<sup>169</sup> and acknowledged that there are cases where a woman who is a victim of abuse is arrested instead of the abuser. AIHRC officials said they attributed this outcome to men or family members obtaining that outcome through bribery.<sup>170</sup>

## Marriage, Divorce, and Child Custody

Laws governing divorce in Afghanistan are discriminatory against women. The Afghan Civil Code of 1977, the key source of statutory family law in Afghanistan, allows men to divorce women very easily.

Article 139 of the Afghan Civil Code states that:

- (1) A husband can divorce his wife orally or in writing. When a husband lacks these two means, divorce can happen by usual gestures which clearly implies divorce.
- (2) Divorce happens with clear wordings which, in customs, convey the meaning of divorce without intention.<sup>171</sup>

Women, however, face far greater obstacles in obtaining a divorce. Absent consent from their husband, women can only obtain a divorce through a court and must show cause on the grounds of 1) defect, for example because of illness; 2) harm; 3) non-payment of alimony; or 4) absence.<sup>172</sup>

Obtaining a “for cause” divorce for women in Afghanistan is not easy, legally or practically.<sup>173</sup> “Harm” has been interpreted to mean inhumane treatment, which includes

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<sup>169</sup> Ibid.

<sup>170</sup> Ibid.

<sup>171</sup> Civil Law of the Republic of Afghanistan (Civil Code), Official Gazette No. 353, published 1977/01/05 (1355/10/15), art. 139.

<sup>172</sup> Civil Code arts.176-187.

<sup>173</sup> Landinfo, *Report—Afghanistan: Marriage*, May 19, 2011, [http://www.landinfo.no/asset/1852/1/1852\\_1.pdf](http://www.landinfo.no/asset/1852/1/1852_1.pdf) (accessed March 10, 2012), p. 20-23.

physical abuse, but includes a requirement that such abuse occur “without cause” leaving a door open for judges to rule against women subjected even to serious violence.<sup>174</sup>

Making a case for divorce, finding a court in which to make such a case, or even knowing that one has the right to make such case is difficult and even inconceivable for many Afghan women and girls. For women and girls who cannot read or write, have no money, or who may not be able to leave the house without permission, going through this process is virtually impossible.

Compounding these problems, many judges do not even apply the provisions of the Civil Code, but instead invoke their own interpretation of Islamic law, with some judges not even admitting that women are entitled to seek divorce.<sup>175</sup>

Child custody is another legal issue of overwhelming importance to many of the women and girls interviewed for this report. Afghan law provides that before the age of 9 for a girl and 7 for a boy, children should remain with their mother in the event of a separation between the child’s parents.<sup>176</sup> This period may be extended by the court for no more than two additional years.<sup>177</sup> After that age, although the law contains language regarding the best interests of the child, in practice the courts automatically assign custody to the father.<sup>178</sup> The understanding of the women and girls interviewed for this report was, without exception, that if they obtained a divorce their husbands would keep their children unless for some reason the husband did not want them. This fear of losing their children led many of the women and girls interviewed for this report to decide to return to abusive husbands.

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<sup>174</sup> Suhaila Muhseni, “Divorce—Afghan Style: Although the numbers are still small, women are increasingly turning to the courts to end their marriages,” ARR Issue 131, May 5, 2005, <http://iwpr.net/report-news/divorce-%E2%80%93afghan-style> (accessed February 22, 2012).

<sup>175</sup> “Report on Family Structures and Family Law in Afghanistan, Max Planck Institute for Foreign Private Law and Private International Law: A Report of the Fact-Finding Mission to Afghanistan, 2005,” p. 8, [http://www.mpipriv.de/shared/data/pdf/mpi-report\\_on\\_family\\_structures\\_and\\_family\\_law\\_in\\_afghanistan.pdf](http://www.mpipriv.de/shared/data/pdf/mpi-report_on_family_structures_and_family_law_in_afghanistan.pdf) (accessed February 28, 2012); Abdulwahed Zia Moballegh (Senior Family Law Officer, Rights & Democracy), “Family law in Afghanistan: past experiences and future landscape,” 2008, <http://www.musawah.org/docs/research/country-reports/Afghanistan-report.pdf> (accessed February 28, 2012).

<sup>176</sup> Civil Code, art.249; Human Rights Watch interview with Abdulwahed Zia Moballegh, Senior Family Law Officer, Rights & Democracy, Kabul, January 31, 2012.

<sup>177</sup> Civil Code, art. 250.

<sup>178</sup> Civil Code, art. 151; Human Rights Watch interview with Abdulwahed Zia Moballegh, Senior Family Law Officer, Rights & Democracy, Kabul, January 31, 2012.

A number of Afghan and international nongovernmental organizations provide legal assistance to women, often including assistance in family law matters, including divorce. These organizations, some of which are the same organizations providing shelters, are able to help some women and girls successfully seek a safe divorce. However, these organizations generally provide services through offices located in Afghanistan's major cities. There is little or no access to this type of assistance for women and girls in smaller cities or rural areas. In general, international funding and assistance to justice system reform in Afghanistan has focused much more on criminal justice issues than on civil law issues, including family law, with the consequence that legal assistance and systemic reform in the area of family law has been very limited.

## V. Relevant Afghan and International Law

### Afghanistan's Constitution

Adopted in 2004, the Afghan constitution represented a crucial development in post-Taliban Afghanistan. Developed through a consultative process mandated by the 2001 Bonn Conference, the constitution represented compromises between opposing interest groups in Afghanistan on contentious issues, none more so than the rights of women. The final version of the constitution, which contains provisions strongly supportive of human rights and women's rights, also contains language that could be used to undermine rights protections.

The Constitution begins with a commitment in the preamble to observe the Universal Declaration of Human Rights and to “[f]orm a civil society void of oppression, atrocity, discrimination as well as violence, based on rule of law, social justice, protecting integrity and human rights, and attaining peoples’ freedoms and fundamental rights.”

The Constitution also provides for compliance with international human rights treaties to which Afghanistan is a party and recognizes fundamental rights of equality. Article 7 states that Afghanistan “shall observe ... international treaties to which Afghanistan has joined, and the Universal Declaration of Human Rights,” thereby enshrining the gender equality embedded in these instruments. Article 22 states that “Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man and woman, have equal rights and duties before the law.”

The Constitution also recognizes the rights of children, stating, “Family is the fundamental pillar of the society, and shall be protected by the state. The state shall adopt necessary measures to attain the physical and spiritual health of the family, especially of the child and mother, upbringing of children, as well as the elimination of related traditions contrary to the principles of the sacred religion of Islam.”<sup>179</sup>

At the same time, other provisions of the Constitution could be interpreted as conflicting with the rights protected in articles 7 and 22. These include article 3, which reads: “No law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan”;

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<sup>179</sup> Constitution, art. 54.

and article 130, which states that, “In cases under consideration, the courts shall apply provisions of this Constitution as well as other laws. If there is no provision in the Constitution or other laws about a case, the courts shall, in pursuance of *Hanafi* jurisprudence, and, within the limits set by this Constitution, rule in a way that attains justice in the best manner.”

As noted in sections above, judges and prosecutors in Afghanistan have applied articles 3 and 130 to make decisions based not on Afghanistan’s civil or criminal codes but on varying interpretations of the tenets of Islam and provisions of Islamic law. Since there is no central authority in Afghanistan for the application of particular provisions of Islamic law, interpretations vary significantly and can appear incompatible with articles 7 and 22.

### Offenses of *Zina* and “Running Away”

As noted above, many of the women interviewed for this report were accused of “running away” and *zina*. *Zina* is a crime under the Afghan Penal Code, though “running away” is not.<sup>180</sup> *Zina* is the crime of sexual intercourse by two individuals who are not married to each other. The sentence of “long imprisonment” for *zina* constitutes 5-15 years of imprisonment under Afghan law.<sup>181</sup> Children 18 years of age and younger are entitled to significantly shorter sentences under the 2005 Juvenile Code.<sup>182</sup>

In 2010 the Supreme Court, in response to a request from an international organization for clarification regarding whether “running away” is a crime, issued a short memo setting forth its views on this issue.<sup>183</sup> The memo, issued on behalf of the Secretariat of the Director of the High Council of the Supreme Court, listed three factors it said should be considered in adjudicating these cases. The three factors were: 1) the age and marital

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<sup>180</sup> Although the criminalization of *zina* has its origin in Islamic law, the Penal Code applies to everyone in Afghanistan, regardless of religion. Although Human Rights Watch did not encounter any non-Muslim women or girls in the prisons or juvenile rehabilitation centers, it is possible that non-Muslim Afghans or foreigners could be subject to prosecution for *zina* under the Penal Code. Afghanistan has a small community of non-Muslim religious minorities.

<sup>181</sup> Penal Code, art. 100(1).

<sup>182</sup> Juvenile Code, art. 39, which provides that children’s sentences should be one-third or one-half that of adults, depending on the child’s age. The Juvenile Code also sets out special procedures for processing criminal charges against children.

<sup>183</sup> Prior to this memo, judges were treating “running away” as a crime, which prompted the request for Supreme Court clarification. Under the constitution, the Supreme Court has the power to propose the drafting of laws related to the regulation of the judiciary (art. 95) and shall, “at the request of government, or courts... review the laws, legislative decrees, international treaties as well as international covenants for their compliance with the Constitution and their interpretation in accordance with the law” (art. 121). The Supreme Court does not have the power to create laws; “Ratification, modification or abrogation of laws” is the responsibility of the National Assembly (art. 90).

status of the girls or woman involved; 2) the reason for running away; and 3) where the woman or girl has run away to (whether it was to a relative's house or a stranger's house). The memo goes on to explain:

The act of running away to a relative and or legal intimate's house due to being subjected to violence by one of the family members, is not religiously considered as a crime, because it is the right of each person to be free from any types of oppressions and tortures. [However] if someone as a result of being subjected to violence runs away from home to a stranger's house, instead of running away to a relative or legal intimate's house or to security and justice departments...since this act could causes crimes like adultery and prostitutions and is against *Sharia* principles, her act of running away is prohibited and prosecutable based on discretionary punishment.

In September 2011 in response to a discussion of the criminalization of "running away" in a UN report on harmful traditional practices, the Supreme Court again took up this issue, and did so at greater length, sending to the UN a document titled, "Study-based Opinion of Department of Scrutiny and Study of Supreme Court of the Islamic Republic of Afghanistan Regarding the Issue of Running Away from Home." This document essentially restated the views expressed in the 2010 memo, with added details, including stating that, "All individuals, including men and women, should refer their cases to judicial institutions and to the government if they are tortured and subject to violence, and solve their problems via government channels rather than resorting to personal actions. For resorting to personal actions may create various crimes and violence rather than eliminating the violence."

The Supreme Court's instruction that all problems should be solved through judicial and government institutions fails to recognize that this is not a safe option for most women and girls. The research conducted for this report shows that women and girls experiencing abuses such as forced or early marriage, physical abuse, or forced prostitution cannot be at all confident that police, judicial institutions, and the government will come to their assistance if they seek help. Worse, many women and girls interviewed by Human Rights Watch were only further victimized after seeking help from these institutions.

The arrest of women and girls for “running away” is often rationalized by judges and prosecutors who explain that simply by being outside the supervision of her family, a girl puts herself at risk for *zina* and deserves to be sentenced to prison for this alone. The Supreme Court also endorsed this approach in its letter to the UN, where it argued against the UN’s view that a woman should not be arrested based merely because she exposed herself to the possibility that *zina* could occur.<sup>184</sup> The Supreme Court told the UN that, “[P]unishment to prevent the probability of harm or damage has a Sharia and legal rule. Based on this rule, many permissible (*Mubah*) acts are considered as crimes and there are punishments anticipated for such actions. For example in traffic offences, ‘driving at high speed and driving without a license’ is prohibited.”

The Supreme Court’s instructions raise important and deeply concerning issues of Afghan constitutional law, particularly regarding the protection of basic rights and the enactment of criminal law. The focus of the crime of “running away” on the acts of women and girls appears contrary to equality under law for men and women under article 22 (men are largely prosecuted under the law for assisting women who “run away”). The Supreme Court’s instructions would appear to open the door to using article 130, which courts cite as the basis for the crime, not to assist in the interpretation of statutory law consistent with justice, but to act outside of it in a manner that violates basic rights.

Issues are also raised with respect to the promulgation of criminal law in Afghanistan. Article 27 states that, “No act is considered a crime, unless determined by law adopted prior to the date the offense is committed,” and “No person can be punished but... in conformity with the law adopted before the date of the offense.” Article 94 provides that “[l]aw is what both Houses of the National Assembly approve and the President endorses, unless this Constitution states otherwise.” Chapter seven of the Constitution discusses the role of the judiciary, and article 121 grants the Supreme Court a role in reviewing laws, “on the request of the Government or the Courts” but no authority is granted to the Courts to draft or enact laws.

As discussed below, the Supreme Court’s instructions on “running away” and the law on *zina* are contrary to international human rights treaties that Afghanistan has ratified,

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<sup>184</sup> UNAMA, “Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan,” December 9, 2010, p. 39.



including the International Covenant on Civil and Political Rights, the Convention on Elimination of Violence against Women, and the Convention on the Rights of the Child.

## Law on the Elimination of Violence Against Women (EVAW)

In August 2009 President Hamid Karzai, by decree,<sup>185</sup> passed the Law on the Elimination of Violence against Women (EVAW). EVAW criminalizes 23 acts of abuse toward women, including rape, forced prostitution, battery, *baad*, forced marriage, underage marriage, abusing/humiliating/intimidating, harassment/persecution, prevention from acquisition of property, and prohibiting a woman or girl from accessing education or work.<sup>186</sup>

As noted above, the majority of the women and girls interviewed by Human Rights Watch for this report appear to have been victims of acts criminalized under the EVAW law, although those who had committed these crimes were rarely arrested, prosecuted, or convicted.

In addition to finding serious problems with lack of enforcement of the EVAW law, a November 2011 UNAMA report also highlighted some areas where the EVAW law should be stronger in its ability to protect women's rights. Among these was the following which matches the findings of Human Rights Watch's research:

The law does not address how authorities should treat a woman who runs away to escape any of the offences the law criminalizes. In monitoring individual cases, UNAMA/OHCHR encountered numerous instances of girls and women who fled their home to avoid forced marriage or domestic violence and who were arrested, usually charged and convicted including by the Supreme Court, with "intent to commit *zina*." While the EVAW law

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<sup>185</sup> Article 79 of the Constitution allows for the president to enact decrees that have the force of law: "During the recess of the House of Representatives, the Government shall, in case of an immediate need, issue legislative decrees, except in matters related to budget and financial affairs. Legislative decrees, after endorsement by the President, shall acquire the force of law."

<sup>186</sup> The full list of acts criminalized under EVAW is: rape; forcing into compulsory prostitution; recording the identity of the victim and publicizing the identity of the victim; burning or spraying chemical substances; self-torture; causing injury or disability; battery and laceration; selling of women for the purpose of marriage; *baad*; forced marriage; prohibiting from the right of marriage; underage marriage; abusing, humiliating, intimidating; harassment/ persecution; forced isolation (segregation); not feeding; prevention from acquisition of inheritance; refusing to pay the dowry; prevention from acquisition of property (includes taking over a woman's property without her consent); prohibiting from education and work; forced labor; marriage with more than one woman (when not in compliance with provisions of the Civil Law that require that the husband be able to financially support more than one wife and that the first wife be childless or have a difficult to treat illness); denial of relationship. The sentences for these crimes range from one month (for not feeding, prevention from acquisition of inheritance, and refusing to pay dowry to execution (for rape that causes the death of the victim).

penalizes the perpetrators of such offences, it offers no protection for the woman or girl who runs to escape these crimes. This situation is demonstrated by the large number of women detained in Afghan prisons for so-called “moral crimes.”<sup>187</sup>

## Afghanistan’s Obligations under International Law

Afghanistan has ratified major international human right treaties including the International Covenant on Civil and Political Rights (ICCPR),<sup>188</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>189</sup> the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>190</sup> and the Convention on the Rights of the Child (CRC).<sup>191</sup> Unfortunately, Afghanistan has yet to effectively comply with many of its obligations under these conventions. The abuses detailed in this report demonstrate in various ways Afghanistan’s failure to meet its international obligations under these conventions.

The crime of zina violates international law by criminalizing consensual sexual relations between adults. International human rights law requires decriminalization of consensual adult sexual relationships to protect a variety of human rights, including the rights to nondiscrimination, physical autonomy, health, privacy, and liberty.<sup>192</sup> United Nations expert bodies and special rapporteurs have called for the repeal of Afghanistan’s *zina* law. For example, the UN special rapporteur on violence against women has called on Afghanistan to “abolish laws, including those related to *zina*, that discriminate against women and girls and lead to their imprisonment and cruel, inhuman and degrading punishment.”<sup>193</sup> The UN

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<sup>187</sup> UNAMA, “A Long Way to Go: Implementation of the Elimination of Violence against Women Law in Afghanistan,” November 2011, p. 7-8.

<sup>188</sup> International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976. Afghanistan ratified the ICCPR in 1983.

<sup>189</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, Afghanistan ratified the ICESCR in 1983; U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976.

<sup>190</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981. Afghanistan ratified CEDAW in 2003.

<sup>191</sup> Convention on the Rights of the Child (CRC), G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990. Afghanistan ratified the CRC in 1994.

<sup>192</sup> See footnote 51 above.

<sup>193</sup> Report of the Special Rapporteur of the Commission on Human Rights on violence against women, its causes and consequences, on the situation of women and girls in Afghanistan, UN Doc. A/58/421, October 6, 2003, [http://www.unhcr.ch/huridocda/huridoca.nsf/o/4d099bc67f0526edc1256dd700503b65/\\$FILE/No355646.pdf](http://www.unhcr.ch/huridocda/huridoca.nsf/o/4d099bc67f0526edc1256dd700503b65/$FILE/No355646.pdf), para. 31.

Committee on the Rights of the Child has urged Afghanistan to “[r]emove so-called moral offences as a crime and release children detained on this basis.”<sup>194</sup>

Legal practices in “moral crimes” cases violate the rights to nondiscrimination and equal protection of the law of those accused of a crime. Afghanistan is in violation of its international legal obligations by tolerating widespread forced marriage and underage marriage. Afghanistan also violates international law by the existence of parallel and unequal divorce and child custody systems for men and women, severely obstructing women’s access to divorce compared to those of men. In addition to discriminatory laws, traditional practices tolerated by the government expressly discriminate against women within marriage and upon divorce, codifying their second-class status in the family and society, encouraging violence against women, and, in many of the cases discussed in this report, leading to women’s arrests and prosecution.

The government has done little to bring Afghan law and practices into compliance with its international obligations. Officials condone laws and practices that discriminate against women in the family. The government’s acquiescence to social and cultural patterns of conduct that harm women’s rights to equality violates the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

International human rights law recognizes state accountability for abuses by private actors and requires states to show due diligence in preventing and responding to human rights violations. In its General Recommendation 19, the CEDAW Committee stated: “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence.”<sup>195</sup> A state’s consistent failure to do so when women are disproportionately the victims amounts to unequal and discriminatory treatment, and constitutes a violation of the state’s obligation to guarantee women equal protection of the law.<sup>196</sup>

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<sup>194</sup> Report of the Special Rapporteur of the Commission on Human Rights on violence against women, its causes and consequences, on the situation of women and girls in Afghanistan, UN Doc. A/58/421, October 6, 2003, [http://www.unhcr.ch/huridocda/huridoca.nsf/o/4d099bc67f0526edc1256dd700503b65/\\$FILE/No355646.pdf](http://www.unhcr.ch/huridocda/huridoca.nsf/o/4d099bc67f0526edc1256dd700503b65/$FILE/No355646.pdf), para. 31. CRC concluding observations on Afghanistan, CRC/C/AFG/CO/1, 4 February 2011, para.75(c).

<sup>195</sup> Committee on the Elimination of Discrimination against Women (CEDAW Committee), General Recommendation 19, Violence against women, U.N. Doc.A/47/38 (1992) para. 9.

<sup>196</sup> See CEDAW, art. 15, and ICCPR, article 26. For further discussions of international obligations with respect to violence against women by private actors, see Dorothy Q. Thomas and Michele Beasley, “Domestic Violence as a Human Rights Issue,” *Human Rights Quarterly*, vol. 15, no. 1 (February 1993); Human Rights Watch, *Global Report on Women's Human*

## ICCPR

Under the International Covenant on Civil and Political Rights (ICCPR), Afghanistan is required to protect basic rights relating to fair trial and wrongful imprisonment.<sup>197</sup> As documented in detail elsewhere in this report, rights include access to legal counsel<sup>198</sup> and the right to not be compelled to incriminate oneself,<sup>199</sup> which are contained in the ICCPR but are frequently violated in moral crimes cases. The ostensible offense of “running away” violates the ICCPR’s requirements against depriving someone of their liberty “except on such grounds and in accordance with such procedure as are established by law”<sup>200</sup> and prosecuting them for an offense that “did not constitute a criminal offence, under national or international law, at the time when it was committed.”<sup>201</sup>

## CEDAW

The rights to non-discrimination and equality between men and women are enshrined in numerous human rights treaties. CEDAW addresses the right to non-discrimination in all spheres. Article 1 of CEDAW defines “discrimination against women” as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women.<sup>202</sup>

Afghanistan’s laws and legal practices discriminate against women in areas including prosecution for “moral crimes,” marriage, divorce, and child custody, as well as failure to prosecute violence against women. This violates the rights of women to equality before the law, nondiscrimination,<sup>203</sup> and equality in marriage and divorce enshrined in a number of international treaties that Afghanistan has ratified. The Afghan government has a positive

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*Rights*, (New York: Human Rights Watch, 1995), pp. 39-44, and Ken Roth, “Domestic Violence as an International Human Rights Issue,” in Rebecca J. Cook, ed., *Human Rights of Women: National and International Perspectives*, (Philadelphia: University of Pennsylvania Press, 1994), p. 326.

<sup>197</sup> ICCPR, Chaps. 9-10, 14-15.

<sup>198</sup> ICCPR 14(3)(d).

<sup>199</sup> ICCPR 14(3)(g).

<sup>200</sup> ICCPR 9(1).

<sup>201</sup> ICCPR 15(1).

<sup>202</sup> CEDAW, art. 1.

<sup>203</sup> The principles of nondiscrimination and equality are central to human rights. Article 1 of CEDAW defines discrimination against women as: any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

obligation to remedy abuses that emanate from social and cultural practices. CEDAW requires that states “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs, and practices which constitute discrimination against women.”<sup>204</sup> It obliges states to “refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation,” and to “take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.”

CEDAW requires governments:

To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.<sup>205</sup>

Human rights law also calls upon governments address the legal and social subordination women face in their families and marriages, provisions violated by Afghanistan’s tolerance of widespread forced marriage and underage marriage, as well as formalized legal discrimination against women in regard to the right to divorce and child custody. Many of the women and girls interviewed for this report were arrested because of events resulting from discriminatory laws and practices toward women in regard to marriage and divorce. Under article 16 of CEDAW, states are obligated to:

[T]ake all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

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<sup>204</sup> CEDAW art. 2.

<sup>205</sup> CEDAW art. 5(a).

(c) The same rights and responsibilities during marriage and at its dissolution...

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

By denying women the right to equality in divorce, essentially condemning many women to violent marriages, the Afghan government is failing to act with due diligence to prevent, investigate, and punish violence against women putting women's health and lives in jeopardy. Domestic violence prevents women from exercising a host of other rights. The CEDAW Committee noted that "gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men," including the right to the highest attainable standard of physical and mental health.<sup>206</sup>

The issue of how to determine whether sexual assault has occurred, a critical area almost ignored by the Afghan justice system, was discussed by a UN expert group report on "Good Practices in Legislation on Violence Against Women." The report instructs that legislation on sexual violence should replace the concept of "consent" with an examination of whether the act took place under "coercive circumstances," an approach that is particularly applicable in Afghanistan where so many women find themselves in situations of severely limited agency.<sup>207</sup>

## ICESCR

Afghanistan's failure to effectively combat violence against women, as illustrated by the experiences of the women and girls interviewed for this report, violates the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Article 12 of the ICESCR provides for the right of everyone to the enjoyment of "the highest attainable standard of physical and mental health."<sup>208</sup> This includes an obligation to protect women and girls from violence. Violations of the ICESCR include, "the failure to regulate the activities of

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<sup>206</sup> CEDAW Committee, General Recommendation 19, paras.1, 7.

<sup>207</sup> United Nations Expert Group, "Good Practices in Legislation on Violence against Women," United Nations Office in Vienna, May 2008  
[http://www.un.org/womenwatch/daw/egm/vaw\\_legislation\\_2008/Report%20EGMGPLVAW%20\(final%2011.11.08\).pdf](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/Report%20EGMGPLVAW%20(final%2011.11.08).pdf) (accessed February 22, 2012), p. 28.

<sup>208</sup> ICESCR art. 12(1).

individuals, groups or corporations so as to prevent them from violating the right to health of others” and “the failure to protect women against violence or to prosecute perpetrators.”<sup>209</sup>

## CRC

The abuses that were detailed in this report committed against girls subjected to early marriage, including physical and emotional abuse, neglect, and child-bearing at a dangerously early age, violate Afghanistan’s obligations under the Convention on the Rights of the Child (CRC) to protect children from physical, mental, and sexual abuse or exploitation through legislation and other social and educational measures. The obligation to protect children from violence includes protection from parents or other caregivers.<sup>210</sup>

The government’s failure to take effective steps to address the prevalence of forced marriage also violates Afghanistan’s obligations under international law. The ICCPR and the ICESCR recognizes the right to marriage based on “full and free consent” of the spouses.<sup>211</sup> CEDAW sets out the equal right of men and women to enter into marriage and to freely choose a spouse.<sup>212</sup>

Child marriage is also recognized under international law as a human rights violation. Since the vast majority of those subjected to child marriage are girls, it is considered a form of gender-based discrimination, and it violates other human rights principles. The CRC does not explicitly address child marriage. However, child marriage is viewed as incompatible with a number of the articles in the convention. CEDAW states explicitly that the marriage or betrothal of child should have no legal effect.<sup>213</sup>

There is an evolving consensus in international law that 18 should be the minimum age for marriage. The committees that interpret the CRC and CEDAW have each recommended that 18 be the minimum age for marriage for boys and girls, regardless of parental consent.<sup>214</sup>

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<sup>209</sup> Committee on Economic, Social and Cultural Rights (ESCR Committee), “General Comment 14, The right to the highest attainable standard of health,” U.N. Doc. E/C.12/2000/4 (2000), para. 51.

<sup>210</sup> CRC, art. 19.

<sup>211</sup> ICCPR, art.3, and ICESCR, art. 10.

<sup>212</sup> CEDAW, art.16.

<sup>213</sup> CEDAW, art.16 (2).

<sup>214</sup> CEDAW Committee, “General Recommendation No. 21, Equality in Marriage and Family Relations,” (Thirteenth Session, 1994), para. 36; UN Committee on the Rights of the Child, “General Comment No. 4, Adolescent Health and Development in the Context of the Convention on the Rights of the Child,” (Thirty-third session, 2003), para. 20.

These committees have pointed to the importance of delaying marriage to protect young girls from the negative health implications of early marriage such as early pregnancy and childbirth and to ensure that girls complete their education.<sup>215</sup>

Underage marriage has serious health consequences for girls and contributes to Afghanistan's extremely high maternal mortality and infant mortality rates. The CEDAW committee has noted the link between high rates of maternal mortality and child marriage in numerous countries.<sup>216</sup> The Committee on the Rights of the Child in 2003 urged governments to take "preventive, promotive and remedial action" to safeguard women from harmful traditional practices, including child marriage, that deprive girls and women their right to adequate reproductive or sexual health.<sup>217</sup>

Underage marriage is also a major contributor to Afghanistan's extremely low rates of school enrollment, particularly at the secondary level, among girls and literacy among women. The right to education without discrimination is enshrined in the ICESCR and the CRC.<sup>218</sup> The CEDAW committee has noted that child marriage and early pregnancy impede girls' rights to education, and are a primary cause of school drop-out for girls.<sup>219</sup>

A number of women and girls interviewed for this report faced prison because of problems they said were related to their inability to provide documentation regarding their marriage or divorce status. The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages states that all marriages should be registered by a competent authority.<sup>220</sup> The CEDAW and CRC committees have also addressed the obligation of

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<sup>215</sup> Ibid.

<sup>216</sup> See for example CEDAW Committee, "Concluding Observations of the Committee to End All Forms of Discrimination against Women, Nigeria," July 8, 2008, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-NGA-CO-6.pdf> para.336. "The Committee is especially concerned at the very high maternal mortality rate, the second highest in the world....The Committee notes the various contributing factors such as...early and child marriages, early pregnancies, high fertility rates and inadequate family planning services, the low rates of contraceptive usage, leading to unwanted and unplanned pregnancies, and the lack of sex education, especially in rural areas. The Committee expresses concern about the lack of access by women and girls to adequate health-care services, including prenatal and postnatal care, obstetric services and family planning information, particularly in rural areas."

<sup>217</sup> CRC, General Comment No. 4, para. 21.

<sup>218</sup> ICESCR, art.13; CRC, art. 28.

<sup>219</sup> See, for example, CEDAW Committee, "Concluding Observations of the Committee to End All Forms of Discrimination against Women, Uganda," October 22, 2010, para.31, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-UGA-CO-7.pdf> (accessed March 18, 2012).

<sup>220</sup> Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 521 U.N.T.S. 231, /entered into force/ Dec 9, 1964, art. 3. Afghanistan is not a party to the convention.



governments to make the registration of all births and marriages compulsory and to put in place measures to enforce implementation.<sup>221</sup> The CEDAW committee has argued that “the persistence of the practice of early marriage [...] may be perpetuated further by the non-registration of births.”<sup>222</sup>

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<sup>221</sup> See for example: CEDAW Committee, “Concluding Observations of the Committee to End All Forms of Discrimination against Women, Papua New Guinea,” July 30, 2010, <http://www.universalhumanrightsindex.org/documents/826/1865/document/en/pdf/text.pdf> (accessed March 4, 2012), paras. 49 and 50.

<sup>222</sup> CEDAW Committee, “Concluding Observations of the Committee on the Elimination of All Forms of Discrimination against Women, Ethiopia,” CEDAW/C/ETH/4-5, January 2004, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/EthiopiaCO30.pdf> (accessed March 8, 2012), para.253.

## VI. Recommendations

### To the President of Afghanistan

- Issue an administrative decree that “running away” should not be treated as a crime under Afghan law and that everyone convicted for “running away,” now and in the future, will be pardoned.
- Instruct the Ministry of Justice to revise Afghanistan’s *zina* laws to harmonize them with Afghanistan’s international legal obligations. Work with the parliament to have these revisions passed.
- The President should send parliament the new draft family law, ensuring that it removes any discriminatory provisions in existing Afghan family law, and work with parliament to promptly enact the draft family law so long as it is in conformity with international law and norms.

### To the Supreme Court

- Withdraw the 2010 and 2011 guidance on criminalization of “running away” and replace it with new guidance that clarifies that “running away” is not a crime and cannot be prosecuted under article 130 of the Constitution.
- Until Afghan law is reformed, investigate all convictions for “moral crimes” for procedural lapses, including convictions in the absence of evidence, with inadequate consideration of defense arguments, or based on coerced or forced confessions, and overturn all that did not meet due process and fair trial standards in accordance with international human rights law. Undertake this review for all individuals detained or imprisoned for “moral crimes,” but prioritize cases of detainees or prisoners who are children (under age 18) or who have alleged abuse in connection with the act that led to their arrest (e.g., domestic violence, sexual violence, or forced or underage marriage). Complete the full review of all cases by the end of 2012.
- Issue guidance that courts may not hear cases of “moral crimes” or any other criminal cases without defense attorneys present and that courts must report absent or unprepared defense attorneys to the Bar Association Monitoring Board.

- Issue guidance for all judges explaining their obligations under articles 7, 32, 38, 51, and 55 of the Interim Criminal Procedure Code (ICPC) specifying that information can only be considered by the court and cited in a court decision if it has been collected in compliance with those articles. “Confessions” should be analyzed for genuine voluntariness and may be considered only if the defense attorney was present during the interrogation. Similarly, other forms of evidence can be considered only if the defense attorney was notified and permitted to be present at the time of collection. The only information admitted into evidence aside from that collected in accordance with ICPC articles 38 and 55 should be in-person testimony of witnesses and experts provided in accordance with article 51 of the ICPC. Mere allegations that cannot be subjected to cross-examination should not be admissible.
- Vigorously apply the provisions of the juvenile code that make the “best interests of the child” the determining factors in criminal proceedings against children.
- Detain children under age 18 only as a measure of last resort and for the shortest appropriate period of time.

## To the Attorney General

- Issue instructions to prosecutors not to charge individuals with criminal offenses under article 130 of the Constitution.
- Issue instructions that all criminal suspects should only be questioned in the presence of a defense attorney.
- Issue instructions that female prosecutors should be used to the extent possible when questioning women.
- Issue instructions requiring prosecutors to formally investigate all allegations of crimes against women under the EAW Law or any other law to bring charges as the evidence warrants. Fully investigate whether women accused of crimes were acting to protect themselves from or in response to abuse.
- Until Afghan law is reformed, in consideration of the many due process violations that occur in “moral crimes” cases and their incompatibility with international human rights law, impose an immediate moratorium on prosecutions for “moral crimes.” In the absence of a moratorium, refrain from prosecuting “moral crimes” cases against children (under age 18), women and girls alleging abuse (e.g., domestic violence,

sexual violence, or forced or underage marriage), or where a social worker has recommended against prosecution.

- Vigorously apply the provisions of the juvenile code that make the “best interests of the child,” the guiding principle in criminal proceedings against children.
- Detain children under age 18 only as a measure of last resort and for the shortest appropriate period of time.
- Issue instructions that prosecutors must obtain approval from the attorney general before they can disregard a recommendation against prosecution by a Ministry of Labor, Social Affairs, Martyrs, and Disabled social worker.

### **To the Minister of Interior**

- Until Afghan law is reformed, in consideration of the many due process violations that occur in “moral crimes” cases and their incompatibility with international human rights law, instruct police to refrain from active investigation or pursuit of charges for “moral crimes,” especially for children (under age 18), women and girls alleging abuse, where a social worker has recommended against criminal charges, or where a person who has reported a woman or girl missing has withdrawn the report.
- Instruct all police that they are obliged to convey information pertaining to all incidents of violence against women or possible crimes under the EVAW Law to the prosecutor immediately.
- Issue guidance to police officials that gender bias must not influence police decisions regarding when and with what level of commitment they pursue cases, including “moral crimes.”
- Promulgate written protocols for police that would require female police officers to be used to question women suspects and that all criminal suspects may only be questioned in presence of a defense attorney.
- Increase efforts to recruit and retain female police officers by an aggressive recruitment campaign and improved conditions of employment.
- Staff Family Response Units with female police officers.
- Develop and implement a training program for police, with a priority on female police officers, regarding sexual violence, including questioning victims in a sensitive manner

and assessing and documenting whether the sexual intercourse under investigation was consensual.

- Detain children under age 18 only as a measure of last resort and for the shortest appropriate period of time.

### **To the Minister of Women’s Affairs**

- Support and work for the expansion of Afghanistan’s shelter system, including ensuring protection of shelters. If shelters cannot be established in certain provinces, develop mechanisms to permit women in those provinces who require protection to reach shelters in other regions safely.
- Support outreach programs into the prison system that advise women as soon as they enter the prison about the existence of shelters, and how they can access shelters if they cannot safely rejoin their families after release.
- Support the development of more transition centers specifically for women and girls coming out of prison.
- Support the development of services specifically for women and girls who are permanently unable to return home to their families, including safe housing with freedom to come and go to seek educational and employment opportunities, and assistance obtaining such opportunities.

### **To the Ministry of Labor, Social Affairs, Martyrs, and Disabled**

- Expand the ministry’s capacity to prepare social inquiry reports in criminal cases.
- Provide such reports in all cases involving “moral crimes” charges against women and girls.

### **To the Afghan Independent Human Rights Commission (AIHRC)**

- Strengthen and significantly expand the AIHRC’s capacity to provide assistance to individual women and girls experiencing abuse by their families or in-laws.
- Launch a large-scale national ongoing public information campaign with the following messages:

- Forced marriage, underage marriage, physical abuse, and forced prostitution are crimes, and anyone who is a victim of one of these crimes can get help from the AIHRC;
  - Women and girls can contact the AIHRC for help, including referral to a shelter where appropriate;
  - Women and girls have a right to go to court to request a divorce and a right to keep their children if they are girls under 9, boys under 7, or older when it is in the child's best interest,
  - Women and girls can access legal assistance to protect their rights, and the AIHRC can provide information on how to do so.
- When family laws are amended to remove discriminatory provisions, launch a public information campaign to provide updated information on women's rights.

### **To the Afghan Independent Bar Association**

- Develop detailed standards on providing adequate representation for defense lawyers. These guidelines should include the requirement that lawyers attend and prepare for court dates.
- Develop an outreach program that provides posters and materials for distribution in prisons that explain for prisoners what they can expect of their defense lawyers. These materials should also explain that prisoners should make a report to the Bar Association Monitoring Board if they feel that the representation they are receiving does not comport with the standards.
- Develop a simple process that makes it possible for prisoners to make complaints against attorneys who do not behave professionally.
- Develop specific guidance for lawyers representing women and girls facing criminal charges, including information on sexual violence, how to question victims in a sensitive manner, and how to assess and document issues of consent.

### **To the United Nations and International Donors**

- Make implementation of the EVAW Law, abolition of the crime of "running away," revisions to the *zina* and family laws, and reforms to other laws that discriminate against women key issues in political engagement with the Afghan government.

- Make a new, long-term, substantial, and tangible commitment to supporting women’s rights in Afghanistan, through political, technical, and economic support. Priorities under such a commitment should include:
  - Stable, predictable, long-term assistance for shelters, including for expanding the current capacity of the shelter system and developing “open” shelters, safe housing for women leaving prison, and long-term support for women permanently unable to reunite with their families.
  - Legal assistance for women and girls on family law issues.
  - A large-scale national ongoing information campaign advising women and girls about their rights under the EVAW Law and family law, and explaining how anyone can get help with these issues. Support programs providing such help.
  - Social services and counseling for all women in prison so that every woman and girl knows she does not have to go home to abuse or death.
- Continue support for the Family Response Units and specialized Violence Against Women prosecution units, but link support with independent evaluations to ensure that these mechanisms are achieving their goals.
- Develop a coordinated mechanism for different countries to take steps to protect, including by accepting for relocation, a small number of women and girls who cannot safely remain in Afghanistan.

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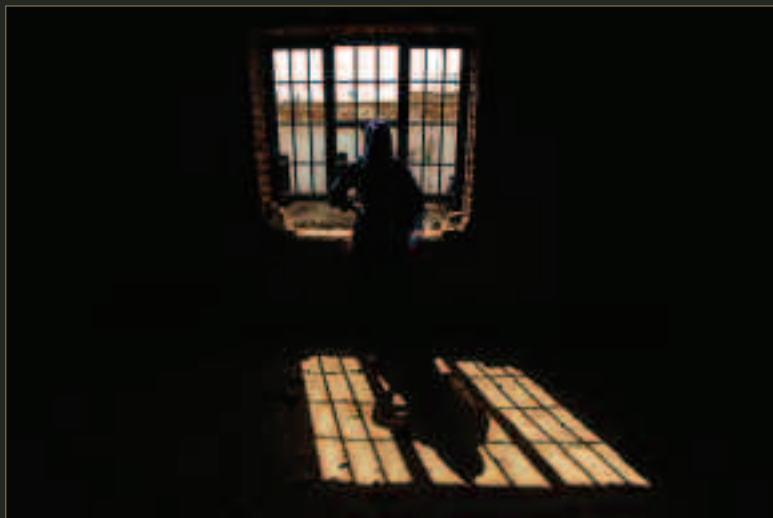
# “I HAD TO RUN AWAY”

## The Imprisonment of Women and Girls for “Moral Crimes” in Afghanistan

The fall of the Taliban government promised a new era for women’s rights in Afghanistan. Ten years later there have been many improvements, but Afghan women are often still denied their basic human rights. One example is the plight of an estimated 400 women and girls imprisoned for the “moral crimes” of “running away” (fleeing home without permission) and zina (sex outside marriage). While Afghan law does not prohibit “running away,” the Afghan government and courts treat women and girls who do so as criminals. *Zina* is a crime in Afghanistan, punishable by up to 15 years in prison.

*“I Had To Run Away,”* based on 58 prison interviews, tells the stories behind “moral crimes” arrests. It shows that these “crimes” usually involve flight from abuse, including forced and underage marriage, domestic violence, rape, forced prostitution, kidnapping, and murder threats. Women and girls accused of “moral crimes” encounter a justice system that is biased against them at every stage. Many receive long prison sentences while their abusers walk free, despite a 2009 law making violence against women a crime. Prosecuting “moral crimes” harms not only the hundreds of women and girls imprisoned, but sends a message to others enduring abuse that they risk both reprisals from their abusers and punishment from a government that should protect them.

As the international community winds down its involvement in Afghanistan, Afghan women face an uncertain fate. The imprisonment of women and girls for “moral crimes” is one sign of the difficult present and the frightening future they face. Afghanistan’s international partners should act quickly to ensure that part of their legacy is greater physical and legal protection for women and girls.



*A woman prisoner looks out a window in Parwan prison north of Kabul, Afghanistan, in February 2011. The woman was convicted of moral crimes after a man from her neighborhood raped her. She later gave birth in prison.*

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