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UNODC Project: AFG/S47 - Developing Post-Release Opportunities for Women and Girl Prisoners



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NOTE: The draft prison regulations referred to in this report are dated December 2006. New prison regulations reflecting some of the recommendations of this assessment have since been drafted, and at the time of publication, were being circulated for commentary.

The views expressed in this study do not necessarily reflect the policies or positions of the United Nations Office on Drugs and Crime.

UNODC Project: AFG/S47 - Developing Post-Release Opportunities For Women and Girl Prisoners

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LIST OF ACRONYMS

AIHRC	Afghanistan Independent Human Rights Commission
AREU	Afghanistan Research and Evaluation Unit
AWEC	Afghan Women’s Educational Centre
AWJA	Afghan Women Judges Association
CANADEM	Canadian International Development Agency
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CPC	Criminal Procedure Code
CPD	Central Prison Department
CRC	Convention on the Rights of the Child
CSSP	US Corrections Sector Support Program
DOWA	Department of Women’s Affairs
GDI	Gender Development Index
HAWCA	Humanitarian Assistance for Women and Children in Afghanistan
ICCPR	International Covenant on Civil and Political Rights
ICESR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Commission of Jurists
IDLO	International Development Law Organisation
ILF	International Legal Foundation
ILO	International Labour Organisation
MOI	Ministry of Interior
MOJ	Ministry of Justice
MOLSA	Ministry of Labour and Social Affairs
MOPH	Ministry of Public Health
MOWA	Ministry of Women’s Affairs
SMR	United Nations Standard Minimum Rules for the Treatment of Prisoners
UNAMA	United Nations Assistance Mission in Afghanistan
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNICEF	United Nations Children’s Fund
UNIFEM	United Nations Development Fund for Women
UNODC	United Nations Office on Drugs and Crime
UNOPS	United Nations Office of Project Services
WHO	World Health Organisation

PART I: THE STATUS OF WOMEN AND THE CRIMINAL JUSTICE SYSTEM

1. INTRODUCTION

In 2006 the United Nations Office on Drugs and Crime (UNODC) launched a project, "Developing post-release opportunities for women and girl prisoners in Afghanistan". The project aims to establish a rehabilitation programme for female offenders and to develop a national policy addressing the social reintegration needs of women prisoners during their imprisonment and following release. The project forms part of UNODC's criminal justice reform programme, ongoing in Afghanistan since 2003. The programme consists of three interrelated components which address the long term normative and operational aspects of criminal justice:

- (1) Penitentiary Reform Project, which includes the reform of laws and regulations relating to prisons, rehabilitation of the prison infrastructure and training of penitentiary staff;
- (2) Criminal Justice Capacity Building, which aims to strengthen the capacity of key justice institutions, law reform, training of judges and prosecutors, and development of a legal aid programme;
- (3) Reform of the Juvenile Justice System, which aims to strengthen juvenile justice administration in Afghanistan.

All projects combine the objective of capacity building (e.g. law reform, training of trainers and training activities) with the provision of buildings, equipment and infrastructure, in order to increase effectiveness and achieve sustainability.

The penitentiary reform project, referred to above, was launched in May 2003 with the signing of an agreement with the Ministry of Justice of Afghanistan. It is funded by Italy, Austria, Canada and the United Kingdom. The project includes the following components: (1) revising national legislation and regulations relating to prisons; (2) establishing the Central Prison Department of the Ministry of Justice as focal point for all matters pertaining to penitentiaries, including a national policy for detained women; (3) rehabilitating prison capacity in Kabul; (4) improving conditions in the detention centre in Kabul; (5) setting up a special detention centre for women, with due attention to the needs of women with small children.

The project "Developing post-release opportunities for women and girl prisoners" will build on and expand assistance already being provided to the rehabilitation of female offenders within the framework of this programme, with a focus on women's post-release support needs. It is funded by the Austrian Development Agency.

As a first activity of the project UNODC commissioned an overall assessment of the situation of women prisoners in Afghanistan. The current document, which is based on the results of this research, aims to add to the existing knowledge on reasons for women's imprisonment, types of crimes they commit, their treatment in the criminal justice system, their social backgrounds, education, job skills and prospects of return to their families on release, in order to determine the most appropriate way forward. The focus of the document is the social reintegration of female offenders, comprising rehabilitation during imprisonment and post-release support. However, it has been written with the understanding that prison based and post-release support activities need to be regarded as part of a comprehensive package of measures to address the issue of social reintegration in a holistic and sustainable manner. It therefore covers many areas which may affect the success of social reintegration measures, directly or indirectly, from the moment women come in contact with the criminal justice system.

The main part of the document is based on interviews conducted in Pul-e Charki Prison, Kabul, during November and December 2006. A total of 56 prisoners were interviewed, representing 22 per cent of all adult female prisoners in Afghanistan. Thus the information gathered helps reach some general conclusions, with a small margin of error. Nevertheless, since the study includes only a limited number of cases referred from provincial prisons, further research is needed to determine any variations between the types of crimes for which women are detained and imprisoned beyond Kabul, their access to legal assistance, their treatment by local criminal justice agencies, as well as their social and economic backgrounds.

Since the situation of women prisoners in Afghanistan and the challenges they face on release from prison cannot be fully understood without reference to their social and economic status in Afghan society and the provisions of legislation and practices that lead to their imprisonment, an overview of these topics is provided. This section of the report is based on a review of existing literature and interviews conducted with a range of stakeholders in Kabul in December 2006.

Based on the findings of the research and international experience in the field, the report makes recommendations for practical interventions for the short term, to address the social reintegration needs of women in prison. It also puts forward suggestions for the development of a national policy and strategy for the effective resettlement of female offenders for implementation in the long-term.

It is hoped that, by providing information on the social, economic and educational backgrounds of female offenders, the findings of this research may add to existing studies about women and criminality in Afghanistan, which have so far concentrated on the legal aspects of cases. Such knowledge may form the basis for future research, documenting trends over the coming years and enabling a review of social reintegration policies in light of developments in this area.

2. CONTEXT

The Afghanistan Compact, endorsed in London in January 2006, established the framework for continued international engagement with Afghanistan over the next five years (2006-2010). The Afghan Compact document identifies three interdependent areas of activity that need to be tackled in that period: 1) Security; 2) Governance, Rule of Law and Human Rights; 3) Economic and Social Development.¹ The Compact states that reforming the justice system will be a key issue for the Afghan Government and the international community, and that priority will be given to the coordinated establishment in each province of functional institutions - including civil administrations, police, prisons and judiciary.²

In particular, among its benchmarks, it includes:

- Rehabilitation of justice infrastructure and creation of prisons with separate facilities for women and juveniles (by end-2010);
- Elaboration and related implementation of the National Action Plan for Women in Afghanistan (by end-2010).

The formal criminal justice system of Afghanistan is currently undergoing extensive reforms. With the support of UN, other international agencies and donor nations, penal legislation is being reviewed and revised, judges and prosecutors are receiving training, detainees' access to legal counsel is improving, courthouses and prisons are being constructed and the capacity of justice institutions are being

¹ Building on Success, The London Conference on Afghanistan, The Afghan Compact, London 31 January-1 February 2006, p. 2

² *ibid*, p. 3

developed.³ Varying degrees of progress has been made in all these areas, though much remains to be done.

With the establishment of rule of law and criminal justice institutions in Afghanistan the prison population is increasing. The total number of prisoners was estimated to be over 6000 in January 2006, compared to 600 in 2001,⁴ which represents a 10-fold increase in five years. The number of female prisoners, 250 at the time of writing⁵, remains relatively small, representing 4 per cent of the total prison population.⁶ But the number of women in prison has also increased over the past three years, from 86 in December 2004⁷ to the current figure, which constitutes a three-fold rise. The numbers are expected to grow further, as the capacity of the formal justice system is developed and the rule of law prevails over traditional justice mechanisms. Currently the majority of female prisoners are being held for violating social, behavioural and religious norms. However, they represent a very small part of women who have violated such codes. Most are dealt with in the informal, "traditional justice" system, the de facto legal system in most of the country, covering approximately 80 per cent of all legal cases.⁸

The overriding aim both in Afghanistan, and worldwide, should be to use prisons as a last resort, and especially for non-violent offenders and vulnerable groups, such as women and children. Research has shown that imprisonment has a particularly harmful effect on women, and that the social reintegration of most can be much better achieved with community sanctions and measures. It is additionally recognised that in Afghanistan, many women who find themselves in the criminal justice system, cannot be defined as criminals in the international definition of the word, most having been imprisoned for "moral crimes". Moreover, as described in more detail below, women are discriminated against in all spheres of life in Afghanistan. Those that are imprisoned are not only victims of their social and economic circumstances, but also of an unfair criminal justice system, where males and patriarchal principles dominate.

Thus there is a need to develop a comprehensive policy and strategy covering the treatment of female offenders (and victims of violence) from the moment they come in contact with the criminal justice system. In parallel to efforts to ensure that women are not imprisoned unnecessarily and unfairly, mechanisms to implement alternative measures and sanctions need to be put in place, to deal with those who have committed non-violent offences in the community, rather than in the closed environment of prisons.⁹

The need to protect the rights of women, by reforming legislation and providing them with legal assistance, to ensure fair criminal procedures, is a priority recognised by the UN and other international agencies. Work is underway in some of these areas, both within UNODC's criminal justice programme, and with projects being developed by the United Nations Assistance Mission in Afghanistan (UNAMA) and the United Nations Development Fund for Women (UNIFEM) in cooperation with the Ministry of Women's Affairs, the Ministry of Justice, the Ministry of Interior, the

³UNAMA, Afghanistan's Justice Sector Overview, November 2006,, p. 1.

⁴ Ibid., p. 19

⁵ Official figure obtained by UNODC.

⁶ Worldwide women constitute between 2% and 9% of countries' total prison populations, although exceptionally the percentage may be higher. See Walmsley, R., World Female Imprisonment List 2006, International Centre for Prison Studies, www.prisonstudies.org.

⁷ Official figure obtained by UNODC.

⁸ UNODC, AFG/S47-Developing post-release opportunities for women and girl prisoners, Project Document, p. 3

⁹ Alternatives to prison are provided in Afghan legislation, though currently limited to supervision by the police and payment of fines in the Interim Criminal Procedure Code, Articles 86.3, 87 and 88. The Penal Code, to be revised, currently includes fines as an alternative to imprisonment for a number of offences.

Supreme Court and other state and non-state bodies. These include: (1) a review of Afghanistan's civil and criminal legislation, with recommendations to bring legislation in line with the provisions of the Afghan Constitution, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), other international instruments to which Afghanistan is a state party and progressive interpretations of Islamic Law (*Shari'a*); (2) support for legal aid services to women in the criminal justice system, and the development of a paralegal programme to increase the legal information and support available to women in remote areas of Afghanistan.¹⁰ Activities aiming to assist victims of violence include the development of Family Response Units in police stations, in collaboration with the Ministry of Interior, which started with District 10 in Kabul¹¹, and referral centres planned by UNIFEM, in cooperation with the Ministry of Women's Affairs and UNAMA, aiming to improve and coordinate legal, medical and psycho-social assistance provided to women in a number of pilot provinces.¹²

Nevertheless, unless there is a failure to ensure that formal justice mechanisms, rather than traditional justice system, take increasing responsibility for dealing with the "criminal" activities of women, the female prison population is likely to continue rising in the coming years. This is an unfortunate reality, but the alternative of meting out justice to women in the traditional justice system, as it currently operates, is a much less desirable prospect.

To date, donor support by the international community to prison reform activities has been limited, though some significant achievements in this area have been made.¹³ The responsibility for the Central Prison Department was transferred from the Ministry of Interior to the Ministry of Justice in 2003, which allows for the separation of powers between those investigating crimes and those responsible for the supervision and care of prisoners. UNODC assisted with the development of a new law on Prisons and Detention Centres, which was adopted in May 2005. It formally recognised the Central Prison Department as part of the Ministry of Justice. Currently new prison regulations are being developed with the support of UNODC. With UNODC assistance, efforts are underway to establish a new organisational structure for the Central Prison Department. UNODC provided support to the training centre for penitentiary staff in Kabul, where training on prison management and international standards was undertaken. UNODC, with financial support from the Italian Government, undertook the rehabilitation of a number of prison facilities, including Welayat Detention Centre in Kabul, as well as parts of Pul-e Charki Prison. Construction of a new prison for women, women with children, together with a juvenile reformatory is being undertaken in Kabul at the time of writing, by UNODC and United Nations Office of Project Services (UNOPS). The United Nations Children's Fund (UNICEF) is constructing a new open facility on the same site for juveniles.

Within its "Prison System Reform: Extension to Provinces" programme, UNODC has delivered regional training for penitentiary staff on the implementation of the new Law on Prisons and Detention Houses. Project targets include the elaboration of training programmes for social workers, the development of vocational and educational programmes for prisoners and alternatives to imprisonment programmes. UNODC is currently constructing two new prison facilities in Mazar-e

¹⁰ UNIFEM, Paralegal Program Proposal, 2006.

¹¹ Supported by the Canadian International Development Agency (CANADEM), UNAMA and United Nations Population Fund (UNFPA), and assisted by US police advisors. (See Murray, T., Police Gender Advisor, Ministry of Interior Affairs, Afghanistan, "Evaluation of the Family Response Unit District 10 Police Station Kabul", CANADEM, Kabul, Spring 2006, p. 7

¹² UNIFEM, Referral Centres Concept Note, November 2006.

¹³ UNAMA, November 2006, p. 19

Sharif and Gardez, both including separate accommodation for women.¹⁴ Work is in progress for the establishment of a central database, in cooperation with US Corrections Sector Support Program (CSSP) at the Central Prison Department (CPD) aimed at recording all detainees housed in 34 provincial penitentiary facilities.

The US Corrections Sector Support Program (CSSP) has helped redesign a national training programme for prison staff and is undertaking training of trainers and training of officers and low level staff at the Central Training Facility in Pul-e Charki, which will build on support already provided by UNODC. These activities are to be expanded to other provinces, and another training unit to be established in Gardez.¹⁵

The Afghanistan Independent Human Rights Commission (AIHRC), supported by UNAMA, is conducting monthly visits to all prisons in Afghanistan, gathering complaints, monitoring conditions and taking up individual cases of prisoners. AIHRC is also a member of the Supreme Council of Prisons, which has responsibility for leading all affairs of detention centres and prisons throughout the country.¹⁶

The International Covenant on Civil and Political Rights (ICCPR), to which Afghanistan is state party, states that the essential principle of the treatment of prisoners shall be their reformation and social rehabilitation (Art 10, 3). The UN Standard Minimum Rules for the Treatment of Prisoners (SMR), of which UNODC is considered to be the custodian, set out the principles of how this can be achieved. These are standard principles, which need to be adapted to the existing realities of each country, not losing sight of the circumstances and needs of the prisoners targeted. As regards women prisoners in Afghanistan, there are complex social and cultural realities which need to be taken into account. There is an urgent need to ensure that women who are imprisoned are provided with the education, skills and confidence building measures to assist them in their social reintegration during their imprisonment, and support is available to them after release, recognising the myriad of problems they face in the context of Afghanistan. However, to date, little attention has been given to the issue of female prisoners and their resettlement. Such efforts are not part of national strategies, nor are prison administrations equipped to deal with issues of reintegration.¹⁷

The construction of a new prison for women and juveniles by UNODC provides a valuable opportunity to offer a rehabilitative prison environment for female prisoners, currently housed in Pul-e Charki prison, and to put in place practical mechanisms to assist with the social reintegration of women, taking into account their individual circumstances and length of sentence. The outcomes of short-term interventions in the new Kabul prison, together with the findings and recommendations included in this document, may inform the development of a national policy for the rehabilitation of female prisoners, including their preparation for release and post-release support. The moment is right for the elaboration of such a policy, with the transfer of the prison system to the Ministry of Justice, the planned restructuring of the prison administration and other efforts being made to implement comprehensive reforms in the penal system.

¹⁴ UNODC, Prison and detention centre rehabilitation and construction programme, August 2005-2008, Afghanistan

¹⁵ Interview with Mr Robert Gibson, Director, Advisor to the Ministry of Justice, CSSP Afghanistan, CSSP US Department of State/ INL Program, 16 December 2006.

¹⁶ Law on Prisons and Detention Centres, 31 May 2005, Articles 13 and 14.

¹⁷ UNODC, Project Document, p. 3

3. THE STATUS OF WOMEN IN AFGHANISTAN

Despite progress made in improving the status of women in political, legal and educational fields, since the fall of the Taliban in 2001, women continue to face enormous social, economic, security and human rights challenges in Afghanistan. Afghanistan's first human development report, *Security with a Human Face*, launched by the United Nations Development Programme (UNDP) in February 2005, shows that Afghan women have one of the lowest Gender Development Index (GDI)¹⁸ indicators in the world. Most women and girls face poverty, illiteracy limited access to healthcare and continued and widespread gender violence. Their mode of upbringing, education, work and marriage is determined by customary practices, depriving them of control over all these areas and in general placing them within the domestic sphere of the household under the supervision of their fathers, husbands and brothers.

3.1 SOCIAL STATUS

In the social order of Afghanistan, organised around the patrilineal and patriarchal family, women are regarded as the property of the husband's extended family.¹⁹ Women have very little decision making power. They are subject to male authority and protection, irrespective of age.²⁰ Afghan traditions (similar to others in the region) dictate that women are the bearers of the family honour, which is measured by the chastity of the female gender. Consequently, women's contact with life outside the domestic sphere is severely restricted and strict rules apply particularly to relationships with men. A bride's virginity is absolutely essential. Therefore marrying girls off at a very young age constitutes a measure to prevent girls' loss of virginity prior to marriage.²¹ All extra-marital sex is defined as adultery (*zina*) and is prohibited both by customary and statutory laws. Marriages are arranged between families, rather than individuals. A bride price is paid by the groom's family to the father of the bride, which enables the transfer of responsibility of the women from one family to the other.²² The bride, who moves in with her husband's family, may face ill-treatment and abuse in her new household, particularly if she is very young. Men are allowed to marry more than one wife, which can lead to additional tension and problems. The mobility of women remains severely restricted in large parts of Afghanistan. A single woman without male protection is likely to face many challenges in access to accommodation and services, as well as social stigmatisation.

3.2 ECONOMIC STATUS

The National Reconstruction and Poverty Reduction report published by the World Bank in 2005, reports that: "*women's labor force participation rates in Afghanistan are comparable to the rest of the region at 35.8 % - lower than in Bangladesh (42.5%), Nepal (40.5%) and Sri Lanka (36.9%), but higher than in India (32.5%) and Pakistan (29.5%). While gender disaggregated data are not available by sector of employment, the likelihood is that this relatively high level of female labor force participation is due to the needs of an agrarian and pastoral economy. Second, poverty drives women's employment in Afghanistan, as it does in other South Asian*

¹⁸ GDI combines life expectancy, educational achievements and standard of living indicators. (See UN Economic and Social Council, Commission on the Status of Women, "The situation of women and girls in Afghanistan", E/CN.6/2006/5, 30 December 2005, p. 3).

¹⁹ Afghanistan, National Reconstruction and Poverty Reduction – the Role of Women in Afghanistan's Future, The World Bank, March 2005, p. 77

²⁰ The World Bank, 2005, p. 77

²¹ The World Bank, 2005, p. 79

²² The World Bank, 2005, p. 77

*countries, and high poverty rates are no doubt responsible for high female labor force participation".*²³

However, the traditional role of women in Afghanistan hinders their equitable participation in economic activities. According to a survey conducted in 2003, 55 per cent of women in the agricultural sector undertake at least one income generating activity,²⁴ however, in most cases women's labour is not remunerated²⁵ and very few own land or livestock themselves.²⁶ When paid, their wages are about half of that of men (and sometimes even lower than that of children)²⁷ and few women have control over their earnings. Often women's products may be bartered rather than sold, since selling them would be considered shameful.²⁸

There are enormous regional disparities in women's contribution to economic activities, and the type of work undertaken by the female gender. The South represents the tradition where women remain at home, while in the North, North-East and West they play a much larger part in a variety of gainful activities.²⁹ However, control over the money earned and responsibility for the marketing of products produced by women belong to male members of the household, in the large majority of cases. According to research conducted in 2003, 6.2 per cent of women were found to contribute to harvesting, 11.9 per cent to other farm work, 9.3 per cent undertook embroidery, 13 per cent handicrafts, 17.8 per cent weaving, 20.8 per cent tailoring, 11.7 per cent domestic service and 9.1 per cent gathered wood. These percentages show significant regional variations, for example, with only 13.7 per cent of women participating in gainful activities in the South, compared to 90.2 per cent in the North and 80.9 per cent in the North-East.³⁰

Poverty has increased women's contribution to agricultural work, as most families find it increasingly difficult to use hired labour. Both the World Bank and AREU studies show that women and children are the main tenders of animals, with women often playing a critical role in diagnosing and tending sick animals.³¹

The study undertaken by AREU found that land and livestock ownership increased women's decision-making power and that women could often control the income gained from the sale of livestock produce inside the village.³² The study recommended incorporating women in agricultural training, training more women as veterinary workers and exploring possibilities of providing credit to groups of landless women to enable them to buy land, among others.³³

In urban areas women's employment outside the home is limited, due to strict cultural norms, low literacy and skills, limited opportunities, sex segregation and the unavailability of childcare.³⁴ According to data from the Central Statistics Office, 21 per cent of all permanent government employees were women in 2003.³⁵ Other work undertaken by women in urban areas includes sewing, embroidering and laundering.³⁶ Rents in Kabul are extremely high and beyond the means of many

²³ The World Bank, 2005, p. 54.

²⁴ The World Bank, 2005, p. 62

²⁵ The World Bank, 2005, p. 54

²⁶ AREAU Working Paper Series, "Who Owns the Farm? Rural Women's Access to Land and Livestock", February 2005, Jo Grace, pp. 4-8

²⁷ The World Bank, 2005, pp. 64, 65.

²⁸ The World Bank, 2005, p. 55.

²⁹ The World Bank, 2005, pp. 57, 58

³⁰ The World Bank, 2005, p. 58, Table 12.

³¹ The World Bank, 2005, p. 61; AREU, 2005, pp. 6,7.

³² AREU, 2005, p. ii

³³ AREU,2005, p. iii

³⁴ The World Bank, 2005, p. 68.

³⁵ The World Bank, 2005, pp. 67,68

³⁶ The World Bank, 2005, p. 68

Afghan citizens.³⁷ The approximately 50,000 widows living in Kabul face barriers to employment and services, and are often forced into begging.³⁸ Poor women in low income positions, such as domestic workers, are at risk of sexual exploitation.³⁹

There are also some encouraging findings and efforts are being made to improve women's participation in the economy. For example, a market survey undertaken in 2002 in Mazar-i Sharif, Pul-i Khumri, Bamiyan, Herat and Kandahar revealed that the participation of women in services and production in the informal sector was higher than that of men, including running beauty parlours, tailoring and carpet weaving. In almost all cases the home was used as the workplace.⁴⁰ International agencies such as the International Labour Organisation (ILO), United Nations Development Fund (UNDP), World Health Organisation (WHO) and UNIFEM, as well as local NGOs, are targeting women, within the framework of projects, aiming to improve women's job skills and assisting them to enter the labour market.⁴¹ The Afghan Women's Business Council, which is supported by UNIFEM, is helping women market their products.⁴² The Ministry of Commerce set up a department in 2003, to assist women establish businesses.⁴³ It offers small loans, teaches women basic skills and enables women to exhibit their handicrafts. The Micro-Finance and Investment Support Facility (MIFSA), a nationwide micro-credit scheme is in operation and was reported to be successful in 2006.⁴⁴

3.3. EDUCATION

The current literacy rate among women in Afghanistan is reported to be 21%.⁴⁵ It has also been estimated that 86 per cent of women between the ages of 15 and 49 are illiterate, compared to 57 per cent of men.⁴⁶ Although enrolment rates in schools has risen every year since 2002⁴⁷, overall school enrolment among girls in Afghanistan is among the lowest in the world with less than 10 per cent of girls enrolled in secondary school.⁴⁸ Barriers to girls' education include lack of girls' schools, with significant regional and urban/rural disparities; lack of sufficient female teachers; poverty, which affects the enrolment of both boys and girls, though more the latter, due to the higher value placed on male members of the family and the potential loss of girls' domestic labour and income earning activities which form a disincentive to enrolment.⁴⁹ Security is a major concern as well, with political opponents of the present government attacking girls' schools and campaigning against female education. It is reported that from January 2005 to June 2006, 204 such attacks took place, with the murder of 17 educators.⁵⁰ Despite some positive developments, perhaps the most pervasive of all impediments to female education, is the traditions of Afghan society, which place women firmly in the home. The "career" of women is limited to their marriage and position as good wives. Girls are married off at an early age and formal schooling for girls is perceived to be irrelevant, given their gender role.⁵¹ Often when girls do start

³⁷ Taking Stock Update: Afghan Woman and Girls Five Years On, *Womankind Worldwide*, October 2006, p. 26

³⁸ *ibid.*, p. 26

³⁹ *ibid.* pp. 26, 27

⁴⁰ The World Bank, 2005, p. 69

⁴¹ UN Doc. E/CN.6/2006/5, p. 14

⁴² *ibid.*

⁴³ *Womankind Worldwide*, p. 26

⁴⁴ *Womankind Worldwide*, p. 26

⁴⁵ Afghan Institute of Learning: www.learningpartnership.org/partners/afghanistan

⁴⁶ UN Doc. E/CN.6/2006/5, p. 13.

⁴⁷ *Womankind Worldwide*, 2006, p. 24

⁴⁸ UN Doc. E/CN.6/2006/5, p. 13.

⁴⁹ The World Bank, 2005, p. 48

⁵⁰ *Womankind Worldwide*, 2006, p. 24

⁵¹ The World Bank report, p. 44

primary education they drop out at puberty to prepare for marriage. Social and family pressures also prevent women from seeking higher education.⁵²

3.4 VIOLENCE AGAINST WOMEN

Violence against women remains pervasive Afghan society, both in the public and private spheres of life. Research has identified forced and child marriages, domestic violence, sexual harassment, trafficking, forced prostitution and honour killings as the main types of violence committed against women and girls.⁵³ Forms of psychological violence, also covered in a recent research conducted by UNIFEM, include denial of food or basic needs, refusal of husband to communicate, prevention of mother from contact with her children, physical threats, verbal insulting and threats to kill.⁵⁴ The study by UNIFEM indicates that in 82 per cent of cases perpetrators are family members, followed by the community with 9 per cent, the state with 1.7 per cent, with an additional 7.3 per cent being unknown.⁵⁵

There are multiple reasons for the scale and intensity of violence against women in Afghanistan, noted by the UN Special Rapporteur of the Commission of Human Rights on violence against women, after her mission to Afghanistan in July 2005:

"[t]he current trends in violence against women in Afghanistan cannot be solely reduced to culture and tradition without consideration of the conflict and post-conflict situation. Four factors underlie women's vulnerability and the perpetuation of violence today: the traditional patriarchal gender order; the erosion of protective social mechanisms; the lack of the rule of law; and poverty and insecurity in the country. Reports of domestic violence, rape, trafficking, among others, are said to have escalated with the war and post-war conflicts. Prevailing power blocks tend to legitimize much of the transgression of women's rights, by referring to the sharia. The diverse and contradictory interpretations in this regard undermine the establishment of any universal code of conduct."⁵⁶

Forced marriages have been identified by all literature on the subject as the most pervasive of all discriminatory practices applied to women in Afghanistan, constituting the root cause of many forms of violence to which women are subjected. The AIHRC estimates that 60 to 80 per cent of all marriages in Afghanistan are forced.⁵⁷ UNICEF estimates that 57 per cent of girls are married before the age of sixteen.⁵⁸ Some are married as young as 6 years old. Many girls are betrothed without their knowledge during childhood.⁵⁹ Children and girls given away in forced marriages frequently become victims of domestic violence and sexual exploitation by their husbands, other male members of their husbands' families, and sometimes also by the female members of the family. (For more on forced marriages, see **Part I, Sections 4.1.1 and 4.2.3 (e)** below).

Forced marriages have led to young girls running away from home and their imprisonment (see **Part II, Sections 3.2 and 4.1**), though imprisonment occurs

⁵² Womankind Worldwide, p. 25

⁵³ UNIFEM "Uncounted and Discounted", study by UNIFEM on domestic violence in Afghanistan, 2006, p. 6

⁵⁴ UNIFEM, "Uncounted and Discounted", 2006, p. 19

⁵⁵ UNIFEM "Uncounted and Discounted", 2006, p. 17

⁵⁶ Report of the Special Rapporteur on violence against women, its cause and consequences, Yakin Ertürk, Mission to Afghanistan (9-19 July 2005), UN Doc. E/CN.4/2006/61/Add.5, 15 February 2006, para. 20.

⁵⁷ UN Doc: E/CN.4/2006/61/Add.5, p. 7.

⁵⁸ AIHRC, "Evaluation report on General Situation of Women in Afghanistan", p. 6

⁵⁹ Womankind Worldwide, 2006, pp. 13, 14

only when the girls have contact with the formal legal system. Others may be killed by male members of their families to restore the family honour.

Honour crimes, which are committed by male family members to “cleanse” the honour of the family, continue to be committed with impunity, with 47 recorded cases in 2005 and 45 in 2006⁶⁰. Estimates of unreported cases are as high as 5000⁶¹.

Cases of self-immolation are high and attempted suicides on the rise, with 119 reported cases of self-immolation in 2005, and 98 in 2006; 29 reported cases of attempted suicide in 2005 and 103 such cases in 2006.⁶² The number of recorded suicides was 39 in 2005 and 14 in 2006.⁶³ According to the report by the World Bank, published in 2005, over a hundred young women in Herat province reportedly set themselves on fire, dozens in Badakhshan province jumped into the Kokcha river and drowned themselves to escape forced marriages.⁶⁴ Further, the governor of Herat and high-level government officials reportedly condemned women who committed self-immolation to avoid forced marriages as those who dishonour traditions.⁶⁵ A government fact-finding mission conducted in 2004 concluded that “*forced marriages, lack of education and unacceptable customs are the main reasons for the suicides*”.⁶⁶

The practice of husbands selling their young wives’ sexual services has been documented in a number of reports.⁶⁷ For example, the drug dependent husband of a prisoner interviewed in Pul-e Charki prison in December 2006 had tried to force his wife to prostitution, perhaps to finance his drug requirements. This woman has been sentenced to imprisonment for running away from home and committing a moral crime. (See **Part II, Section 4.1.1, Case 2**).

The extent and prevalence of rape in Afghan society is unknown, due to lack of access and information relating to large parts of the country, together with the taboo surrounding the subject of rape and sexual abuse. However, research conducted by Amnesty International, among others, has found that rape by local armed groups still appears to be widespread and that courts and police are powerless and reluctant to bring perpetrators to justice.⁶⁸ In interviews Amnesty International conducted with victims of rape and sexual violence in 2005, victims cited the lack of security, widespread circulation of arms and the power still enjoyed by local armed groups as reasons for continued sexual violence.⁶⁹

Women rarely report violence, and particularly sexual abuse or rape, to the authorities, due to the social stigma associated with such acts and the risks involved. In the vast majority of cases the state fails to provide justice to victims, due to ineffective and unfair investigation mechanisms and deeply engrained attitudes that regard domestic violence as a private matter and victims of sexual abuse as perpetrators of adultery. Often victims are re-victimised, by the nature and methods of investigations, sometimes leading to their imprisonment.

⁶⁰ AIHRC statistic, provided at interview, 16 December 2006

⁶¹ Womankind Worldwide, 2006, p. 11

⁶² AIHRC statistics, provided at interview, 16 December 2006

⁶³ *ibid.*

⁶⁴ The World Bank, 2005, p. 86, citing information from AIHRC

⁶⁵ World Bank, 2005, p. 87

⁶⁶ UN Doc: E/CN.4/2006/61/Add.5, p.9

⁶⁷ e.g. UNIFEM, *Uncounted and Discounted*, 2006, p. 2

⁶⁸ Amnesty International, *Afghanistan, Women still under attack – a systematic failure to protect*, AI Index: ASA 11/007/2005, p. 21

⁶⁹ *ibid.*

4. WOMEN AND CRIMINAL JUSTICE

4.1 CUSTOMARY LAWS AND WOMEN

Despite progress towards establishing a functioning formal legal system in Afghanistan, currently the central government has minimal authority in many parts of the country. The lives of the vast majority of Afghans are ruled by customary law, which has survived for centuries, regardless of, and to a large extent due to, the country's violent political and military history. In all regions of Afghanistan disputes and crimes are tried and resolved by a council of elders (*jirgas* or *shuras*). Afghans regard *jirga* decisions as the law and condemn those who refuse to accept these decisions.⁷⁰ Such councils are made up exclusively of men. Women are unable to approach the informal justice mechanisms, without the assistance of a male relative, which severely limits their ability to raise certain issues with the local *jirgas*,⁷¹ even if they would so wish.

In many parts of the country, informal links between district authorities and informal justice mechanisms appear to exist. Reports indicate that the former do not interfere in the decisions taken by local *jirgas* and themselves prefer to settle disputes with the assistance of *jirgas* rather than the formal justice system, due to the weakness of the latter and lack of security of the judiciary.⁷² *Jirgas* may include members of local government, as well as members of armed groups, further increasing their power⁷³ and blurring the lines between the authority of the formal and informal justice mechanisms, and the power of force.

The customary laws of Afghanistan vary among different regions and sometimes among different tribes in each region. Generally speaking they consist of a blend of custom, practice and Islamic laws; the latter interpreted in various ways. They are based on the notion of restorative justice rather than retribution, although retribution does also have a role, for example, in the practice of *Qissas*⁷⁴. According to most customary law in Afghanistan the right to seek justice lies with the victim or the family of the victim.⁷⁵ Justice for a wrong can be pursued through a blood feud, which can be averted by payment of blood money (*Diyat*)⁷⁶. Blood money typically comprises valuable commodities or cash.

Although the restorative aspect is a positive concept in itself, the way crimes and disputes are settled has an extremely harmful impact on the lives of women. Women, who are regarded as the property of men, are often used as "valuable commodities" in the settlement of crimes and disputes; while the traditional concept of "honour" puts immense restrictions on women's sexuality, leading to severe punishments for acts such as extra-marital sex. Rape may be treated as adultery and punished according to the *Shari'a* laws, if a settlement cannot be reached between the two families concerned.

A brief examination of how specific customary practices affect women is useful to shed light on the situation of the vast majority of women and girls in Afghanistan,

⁷⁰ The Customary Laws of Afghanistan, A Report by the International Legal Foundation (ILF), September 2004, p. 8

⁷¹ Amnesty International, 2005, p. 36

⁷² Interview with Dr. Soraya Sobhrang, Head of Women's Rights Unit, AIHRC, 16 December 2006. See also ILF, p. 57.

⁷³ Amnesty International, 2005, p. 36

⁷⁴ *Qissas* refers to retribution and is applicable to physical injury, manslaughter and murder.

⁷⁵ ILF, 2004

⁷⁶ *Diyat* refers to compensation and together with *qissas* is applicable to cases of physical injury, manslaughter and murder. The law of *qissas* and *diyat* provides that the punishment must be commensurate with the offence committed. (Amnesty International, AI Index: ASA 11/007/2005, p. 31, note 101).

who have little knowledge about their constitutional rights, no access to justice and no power to change their lives.

Customary laws that affect women, in particular, are those that relate to marriages, abduction and adultery and the practice of exchange of girls or women in marriage as restitution for a crime or dispute between households, communities or tribes.

4.1.1 Forced Marriages

Forced marriages occur for the settlements of feuds (*badal*), restitution for a crime, by giving a young girl to the victim's family (*bad*) and forcing widows to remarry someone from her deceased husband's family.⁷⁷ Reports published in 2002 and 2003, noted that widespread poverty "*had increased the practice of the sale by parents of their young daughters, putatively as brides but in practice as prostitutes, thereby contributing to global patterns of sex trafficking*".⁷⁸ Abject poverty, armed conflict and draught are cited as reasons for the increasing practice of marrying girls at pre-puberty level, to reduce the number of dependents within a household, and to raise cash through the receipt of bride price.⁷⁹ There is a lack of statistics on the practice of "*bad*", but reports indicate that it is widespread in some form in most parts of Afghanistan.

Examples of forced marriages:

According to a study conducted by the International Legal Foundation (ILF) in 2004, in the largest Pashtun tribe, the blood money for intentional murder "*requires the perpetrators family to give two fair and virgin girls*" to be wedded to a member of the victim's family.⁸⁰ In some cases, an additional sum of money must be made to the victim's family, but "*generally, girls are preferred to money, because when girls are wedded to the victim's family, kinship and blood sharing will transform the severe enmity into friendship*".⁸¹

Again among the Pashtun tribes in Southern and Eastern Afghanistan, the murder and abduction of a married woman requires the giving of four copies of the Holy Koran, four women, and a fat sheep to the victim's family.⁸² The exchange of women to settle murder is practiced among other tribes and in other regions as well⁸³, but according to ILF researchers, appears to be particularly widespread in the Southern and Eastern Regions. In some places the researchers of ILF were told that exchange of girls was not practiced, though evidence suggested, that this was not the case.⁸⁴ In Southern and Eastern Regions, the settlement of an assault may also involve the exchange of girls, depending on the type of injury.⁸⁵

Women may also be forced to marry their "abductors" or men who have raped them. Since all sexual relationships outside marriage are referred to as "*zina*", it is difficult to differentiate between rape and consensual sex, therefore the settlements concluded by the *jirgas*, in the cases of "abduction" or "adultery" may in many cases amount to forcing a girl to marry her rapist – a practice which is not unique to Afghanistan.

⁷⁷ UNIFEM, "Uncounted and Discounted", p. 11

⁷⁸ Drumbl, M. A., "Rights, Culture, and Crime: The Role of Rule of Law for the Women of Afghanistan", HeinOnline 42 Colum. J. Transnat'l L. 349 20032004, p. 359.

⁷⁹ The World Bank Report, p. 85.

⁸⁰ ILF, 2004, p. 10.

⁸¹ ILF, 2004, p. 11

⁸² ILF, 2004, p. 10

⁸³ For example, in some communities in the Northern Region of Afghanistan. (ILF 2004, p. 57)

⁸⁴ For example, in Nuristan Region (ILF 2004, p. 38)

⁸⁵ ILF, 2004, p. 13

For example, in Nuristan region when a girl is taken by force, the *jirga* puts pressure on the family of the man to bring the woman back and then “asks” the girl to marry the man. If she accepts, the dowry is paid and she is married.⁸⁶ Although in some cases such acts of abduction may be consensual, in other cases, the girl, having been shamed by the abduction and possible “adultery” or rape, would have little choice but to marry her abductor, since, otherwise, her future would be extremely bleak, with little or no prospect of marriage to someone else. A similar settlement is reported in the Tajik and Pashtun communities in certain provinces of Northern Afghanistan where the family of the abducted girl may ask in turn to be given a girl from the family of the abductor. The family may also accept payment, or *Diyat*, for the wrong committed against them.⁸⁷ So, not only is the girl who has been abducted forced to marry her abductor, but a young girl from the family of the perpetrator is also victimised by being forced to marry a man from the family of the first victim.

Other forms of forced marriages include the obligation of widows to marry the brother or cousin of their dead husbands. According to Pashtun tradition, “widows can only marry the brother or the cousin of the deceased husband. If no such person exists, the whole tribe shares the widow. No other tribe is allowed to marry her”.⁸⁸ So even after the death of a husband, women cannot escape being the property of other men in their tribe.⁸⁹

4.1.2 Running Away / Elopement

Young girls and boys who elope risk being killed by their families. For example, in the Tajik and Pashtun communities of certain provinces in Northern Afghanistan, “if a boy or a girl leaves his or her house voluntarily and moves to the house of another family, his or her own family may consider killing their “guilty” child”.⁹⁰ This presumably applies to both if they run away together, but it is reasonable to assume that the person most harshly punished would be the girl, especially if extra-marital sex has occurred, since her loss of virginity would bring great shame to the family. The customary penalisation of elopement or running away is currently reflected in the detention and sometimes imprisonment of such girls and boys, although such an act is not defined as a crime in the Penal Code (see, **Part I, Section 4.2.3 (d)** below).

Customary laws close all escape routes to women. For example, among the Pashtun tribes, if a woman seeks asylum in someone else’s house, and if the owner gives her shelter, he is considered a kidnapper and punished accordingly. But if he informs her husband and relatives, he will escape punishment.⁹¹ It seems that the way in which police and courts persuade victims of violence to return to their husbands, in the rare cases when the women apply to the police, represents a deeply embedded custom, perpetuating the violence against women, and closing down their avenues of escape, when they seek help.

4.1.3 Zina (Extra-marital sex)

According to the research of ILF, sexual relations between a married man and woman receive the harshest punishments. Although in some cases, the crime may

⁸⁶ ILF, 2004, p. 43

⁸⁷ ILF, 2004, p. 62

⁸⁸ ILF, 2004, p. 16

⁸⁹ The forced marriage of widows is a crime according to Article 517 of the Penal Code, as well as Article 24 of the Law of Marriage, currently in force

⁹⁰ ILF, 2004, p. 62

⁹¹ ILF, 2004, p. 15

be kept secret by the husband of the woman, to avoid shame⁹², in other cases, the punishment will be meted out according to *Shari'a*. This was found to be the case among the Pashtun, in Southern and Eastern Afghanistan,⁹³ in Nuristan Region⁹⁴ and in parts of Northern Afghanistan⁹⁵. The punishment for adultery, if proven according to the requirements of *Shari'a*, is for the couple to be stoned to death. It should be borne in mind that many of these cases may in fact involve rape rather than adultery, due to the undefined lines between the two acts and the virtual impossibility to prove rape. Since the fall of the Taliban in 2001, there has been only one reported case of death by stoning in April 2005, when the sentence was passed by the local *ulema* (religious council) and the young woman was taken out of her parent's house by her husband and local officials before being publicly stoned to death.⁹⁶ The man accused of committing adultery with the woman is alleged to have been whipped a hundred times and freed.⁹⁷ This report shows that despite the accepted guilt of both man and woman, the man may escape death, while the woman receives the harshest punishment. It is impossible to know how widespread the practice is, due to the lack of information from rural areas and difficulties in accessing many parts of Afghanistan.

Among the Hazaras of Central Afghanistan, adultery between a married man and a married woman may be resolved in an alternative way. Here *"the husband of the accused woman is entitled to get a divorce and the guilty man will be asked to marry the woman. The daughter or the sister of the perpetrator will be given in marriage to the divorced husband. If the perpetrator has no sister or daughter, he will be asked to pay for the marriage of the divorced husband to another woman."*⁹⁸ In other words, if we assume that in many cases "adultery" would in fact involve the rape of a married woman, what takes place is the forcing of a rape victim to marry her rapist, after having been divorced from her husband, and the forcing of the daughter or sister of the rapist to marry the former husband of the original rape victim, as compensation. The same kind of settlement has been reported among the Pashtun of Southern and Eastern Afghanistan, and in other countries of the region.

4.1.4 Rape

There are very few references to the punishment meted out for actual "rape" in the research conducted by ILF, presumably because of the taboo surrounding the subject and the preference of referring to rape as adultery. Where separate punishments are provided for rape, they may involve the penalisation of the victim by whipping and the stoning to death of the rapist⁹⁹ or the same act being performed on the rapist.¹⁰⁰

In general terms it is safe to say that in many parts of Afghanistan, but particularly in the Southern and Eastern provinces, women who have been victims of rape or sexual abuse, risk being killed by their brothers, fathers or husbands to restore the honour of the family. Honour crimes are accepted as legitimate by the formal legal system of Afghanistan. According to Article 398 of the Penal Code, men who kill their wives or another of their close relatives, having seen them in the act of adultery, are considered to have committed honour crimes, and are exempted from

⁹² ILF, 2004, p. 41

⁹³ ILF, 2004, p. 14

⁹⁴ ILF, 2004, p. 42

⁹⁵ ILF, 2004, pp. 57, 58

⁹⁶ Amnesty International, 2005, p. 36 and Amnesty International: Stoning to death –human rights' scandal, AI Index: ASA 11/005/2005, 26 April 2005.

⁹⁷ AI Index: ASA 11/005/2005, 26 April 2005

⁹⁸ ILF, 2004, pp. 25, 26

⁹⁹ ILF, 2004, p. 26

¹⁰⁰ ILF, 2004, p. 63

punishment for murder. Instead, they are imprisoned for a period not exceeding two years as a "*Ta'zir*"¹⁰¹ punishment.

4.1.5 Domestic violence

Domestic violence against women is not referred to specifically in the research conducted by ILF, presumably because violence in the family is not considered to be a subject to be discussed in public. However, reference is made to violence by the husband, among the Pashtun tribes of Southern and Eastern Afghanistan, where, when a woman marries "*she becomes his Namos (pride, property and responsibility). If her husband beats her, breaks a bone, injures a body part or kills her, her father may claim Poar. If the father does not consent to the Poar, he can perform Qesas and kill her murderer*".¹⁰² So the settlement is between the two men – the former owner of the woman, her father, and the current owner, her husband.

4.2 STATUTORY LAW AND WOMEN

Afghanistan has ratified the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention of the Rights of the Child (CRC), the Convention on the Political Rights of Women, the Convention Concerning the Equal Remuneration of Men and Women Workers for Work of Equal Value and the convention Concerning Discrimination in respect of Employment and Occupation.¹⁰³

Article 22 of the Constitution of 2003 prohibits "any kind of discrimination and privilege between the citizens of Afghanistan" and provides for equality before the law to all citizens, whether man or woman. Article 54 obliges the state to adopt "necessary measures to ensure physical and psychological well being of the family, especially of child and mother, upbringing of children and the elimination of traditions contrary to the principles of the sacred religion of Islam".

Extensive work is ongoing to put in place implementing legislation, by reforming existing laws in line with the Constitution, Afghanistan's international human rights obligations and Islamic law. The technical Law Reform Working Group, of the Rule of Law Working Group, chaired by the Ministry of Justice (MOJ), with United Nations Assistance Mission in Afghanistan (UNAMA) as lead international support, is currently reviewing, revising and drafting legislation, in line with the strategy set out in *Justice for All, A Ten-Year Strategy for Justice Reform in Afghanistan (2005)*. The Ministry of Women's Affairs (MOWA) is in the process of drafting a new law on Violence Against Women.¹⁰⁴ Some essential legislation has already been passed, including the Law on the Organisation of the Courts, Juvenile Justice Code, and the Law on Prisons and Detention Houses.¹⁰⁵

While these activities are ongoing, the equal rights of women, enshrined in the Constitution and international conventions signed by the government of Afghanistan are not yet reflected in legislation. A number of laws discriminate against women in

¹⁰¹ *Ta'zir* refers to discretionary punishments, which have been set out in the Penal Code.

¹⁰² ILF, 2004, pp. 15,16 (*Poar* refers to blood money among the Pashtun. *Qesas* refers to retribution and is a different spelling for *Qissas*. See footnote 74).

¹⁰³ Amnesty International, Afghanistan. Re-establishing the Rule of Law, AI Index: ASA11/021/2003, 14 August 2003, p. 18; Human Rights Watch, 2001, Afghanistan. Humanity denied. Systematic Violence of Women's Rights in Afghanistan, vol. 13, No. 5 (c), Washington D.C, note 32.

¹⁰⁴ UNAMA, November 2006, p. 7, note 9.

¹⁰⁵ UNAMA, November 2006, p. 6.

a range of aspects, while their interpretation varies according to different judges, prosecutors and legal experts. Access to laws has also been cited as a critical problem, with many judges making decisions without reference to legal codes.¹⁰⁶ The personal opinions of judges at district levels particularly are regarded as the primary source of law.¹⁰⁷ Lack of reference to legal codes and the dominance of personal opinions over statutory law, clearly imply great risks for women, whose traditional position in society is defined and controlled by men. In fact, as explained above, customary rather than statutory laws, often contrary to the principles of Islam, continue to rule the lives of most Afghan citizens, to the detriment of the large majority of young girls and women.

UNIFEM with the cooperation of the Ministry of Women's Affairs, input from national consultants and experts from UNAMA has recently completed a law-mapping exercise conducted from a gender perspective. The aim is to provide legal practitioners, law makers, parliamentarians and civil society actors with information regarding the gaps in the law regarding gender equality as granted in the Constitution of Afghanistan, with comparisons with CEDAW, to which Afghanistan is a state party, and Islamic Law from other Muslim countries. This is seen as an essential step towards revising legislation, in line with the Afghan Constitution and the Afghanistan's international obligations, from a gender perspective.

An overview of legislation that particularly affects the lives of women is given below. The information aims to provide an understanding of the unequal way in which women are currently treated by the legal system, their minimal decision making power, the difficulties women encounter when trying to end abusive marriages and why they may find themselves behind bars for trying to escape, as well as reasons why they may commit other acts defined as crimes by the current Afghan legislation. Some of the information given below is informed by UNIFEM's study referred to above.

4.2.1 The Civil Code of 1977

Civil Code of 1977, currently in force, discriminates against women particularly in the areas of marriage, divorce and inheritance.

(a) Marriage and Divorce

The legal age for marriage is set out as 18 years for boys and 16 years for girls, though girls may marry at the age of 15 if the marriage is completed by her father or a competent court. (Articles 70 and 71).

Men have the right to marry more than one wife, though some conditions must be fulfilled in order for polygamy to be valid (Article 86). The law allows a woman to stipulate a right to divorce should her husband take a second wife in contravention of the conditions set out in Article 86, but this right is valid only when written down in the marriage contract (Article 88).

A Muslim woman cannot marry a non-Muslim man, whereas a Muslim man may marry a non-Muslim woman "who believes in the divine books". (Article 92).

A husband can divorce his wife orally or in writing (Article 139). Women have the right to judicial divorce only, which they can claim if their husband suffers from an incurable disease, if he fails to provide for his wife, is absent from home without

¹⁰⁶ UNAMA, November 2006, p. 7

¹⁰⁷ UNAMA, November 2006, p. 7

reason for over three years or is imprisoned for ten years or more.¹⁰⁸ In the latter case the wife can ask for a divorce after the first five years of imprisonment.¹⁰⁹ Failure to prove divorce from the first husband may lead to the imprisonment of women for running away and adultery, if they marry a second time, even when the second marriage is legal (See case examples under **Part II, Section 4.1.1**)

(b) Inheritance

According to the Civil Code, daughters and widows have rights to inherit property. Divorced women have no rights to inheritance unless the death of the husband occurs during the “divorce period” of three months (Article 2007).

Article 2006 of the Civil Code, referring to paternal offspring, states that “[m]ale and female offspring shall receive equal proportions”. Article 2050 states that “[i]n getting inheritance by maternal offspring, the principal rule that male receives twice as much as the female shall be observed”. However, according to the *Koran*, daughters are entitled to half of their brothers’ share of the parental property in all cases,¹¹⁰ and this appears to be the practiced rule in Afghanistan, regardless whether the offspring are paternal or maternal.

Widows with children are entitled to one-eighth of the property and one-fourth if they have no children.¹¹¹ Divorced women can receive maintenance for one year, but not property.¹¹²

In fact, in reality women rarely exercise their right to property. Daughters typically surrender the land inherited from the father to their brothers, while widows often transfer the land into their sons’ names.¹¹³

(c) Mobility of Women

The mobility of a married woman is subject to the permission of her husband and she is obliged to have sexual intercourse with her husband, according to Article 122 of the Civil Code, which states that a married woman is not entitled to alimony or maintenance when she leaves the house without the permission of her husband or for “illegal purposes”, “when she does not subject to conjugal affairs” or when there is an obstacle for the wife to move in with her husband.

4.2.2 The Law on Marriage of 1971

The Law on Marriage of 1971 (1350) discriminates against women in marriage and divorce. In relation to a girl’s legal age of marriage in particular, it includes provisions that are vague and open to interpretation. Article 3, states that “[t]he marriage of a bride and groom who have not reached the age of maturity cannot be considered a matured marriage. The age of the groom is fixed by his identity card. For the age of the bride, the court will take into account the information given by the bride or her parents”. Article 19 provides that “a marriage contract for a minor, in the absence of the permission of a *Sharia wali* (custodian) or a legal marriage certificate is not valid”. The fact that a precise minimum legal age is not defined in the law, the establishment of the bride’s age left to the word of the parents, and permission given for a custodian to authorize a marriage contract of a minor,

¹⁰⁸International Commission of Jurists, *Afghanistan’s Legal System and its Compatibility with International Human Rights Standards*, Dr Martin Lau, p. 25

¹⁰⁹*ibid*, p. 25

¹¹⁰AREAU, 2005, p.17

¹¹¹AREAU, 2005, p. 19

¹¹²AREAU, 2005, p. 19

¹¹³The World Bank, 2005, p. 66; AREAU, 2005, p. 17.

renders it possible for girls' minimum legal age of marriage to be ignored in practice. Similar to the Civil Code, a Moslem woman cannot marry a non-Moslem man (Article 22) and divorce is the right of the husband, according to Shari'a. A woman may seek divorce in court only, in accordance with the provisions of Shari'a, which are not defined. (Articles 32-35).

4.2.3 The Penal Code of 1976

Under the Penal Code of 1976 which is currently in force, women are frequently penalized for offences defined as moral crimes.

Of the 21 detainees held in Welayat detention centre in Kabul in December 2006, around 10 were accused of moral crimes. 50% of the 56 women interviewed in Kabul in December 2006 were imprisoned for moral crimes, mainly adultery and running away from home, combined with adultery. The current study did not cover provincial prisons, though figures from 2004 showed that 78% of women imprisoned in Herat were charged with moral crimes.¹¹⁴

(a) Zina (Extra-marital sex)

The offence of *zina* refers to any sexual intercourse outside of a valid marriage, which is covered by Articles 426-428 of the Penal Code. *Zina* carries "a long prison sentence" (Article 427), the duration of which cannot be less than five years and more than fifteen years. (Article 100 (1)).

The offence of *zina* is penalised as a *ta'zir*¹¹⁵ offence, according to the Penal Code, only when *Hudood*¹¹⁶ cannot be applied. (Article 426). If the evidentiary requirements for *Hudood* are met¹¹⁷, the imposition of a *hadd* punishment applies, which may constitute lashings and/or death by stoning, depending on the offence and marital status of the offender.

(b) Offence of rape

Rape as a crime is not clearly defined within the Penal Code of Afghanistan. Arguably, it is covered under the crime of *zina*, pederasty and violation of honour (Articles 427 to 429). Aggravating conditions which apply to *zina* are set out in Article 427, paragraph 2, which include the crime having been committed against a person who is not yet eighteen, against a married woman, the deflowering of a maiden, or the crime having been committed by two or more persons, among others - all of which would imply rape, though referred to as *zina*. More specifically, Article 429 provides that 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*". If the age of the person against whom the crime is committed is below eighteen, or is one of the persons defined under Article 427, paragraph 2, the offender shall be sentenced to a long prison term, not exceeding ten years.

¹¹⁴ Medical Mondiale "Legal Aid Program, Facts and Figures", July 2004, Dr Anou Borrey, p. 26

¹¹⁵ *Ta'zir* refers to discretionary punishment, applied when evidence is insufficient to impose a *hadd* punishment (see footnote below). *Ta'zir* punishments are set out in the Penal Code.

¹¹⁶ The *Hudood* establish the conditions under which Islamic Law can be applied for certain crimes. *Hudood* (singular: "*hadd*" meaning limit) punishments carry mandatory sentences, unlike the *ta'zir* punishments. When the particular conditions cannot be fulfilled then the *ta'zir* punishments defined by the Penal Code are applied. The *Hudood* punishments cover *zina*, murder, theft and robbery.

¹¹⁷ In the case of *zina*, the main requirement for a *hadd* punishment to be applied is that there must have been at least four pious Muslim men of impeccable character who had witnessed the act of sexual intercourse.

In practice victims of rape are treated as persons having committed the crime of *zina* until proven innocent.¹¹⁸ Since the lines between rape and *zina* are unclear, and the proof of rape therefore extremely difficult, victims of rape may be penalized and imprisoned themselves for adultery, and, as a result, be shamed and stigmatised by their families and communities. Consequently, it is not surprising that victims of sexual violence are reluctant to report such crimes.

(c) Domestic violence

Domestic violence is not explicitly a crime in the Penal Code, though it may constitute beating and laceration under Articles 407 and 408.¹¹⁹ However, it has been noted that those investigating criminal cases of domestic violence, and criminal and family courts facing such cases, regularly consider whether the violence was a response to a woman's disobedience, and in criminal cases, this is said to frequently lead to a decision not to prosecute a case of beating, or to the reduction of the sentence of the accused.¹²⁰ Courts routinely return women to abusive spouses.¹²¹

During discussions by experts in *Shari'a* law, at an IDLO technical workshop referred to above, there was agreement that a husband does not have a right under *Shari'a* to beat his wife, even if she disobeys him. Therefore, a husband could not benefit from a defence to domestic violence under Article 53 of the Penal Code, 1976 if his wife has been disobedient.¹²²

(d) Running Away from Home or Elopement

Women are detained and prosecuted for running away from home, although this is not a crime in the Penal Code. If the woman or girl escapes with a man she will be accused of *zina* until proven that she had no intercourse with the man with whom she ran away. The proof of innocence is dependent on virginity tests (See **Part I, Section 4.4.3**). It has been noted that if the woman has not committed adultery, she may then be accused of *Khelwat-e-sahiha*,¹²³ which is not considered a crime within the Penal Code but is defined as a crime within the *Hanafi* jurisprudence.¹²⁴

By penalizing women for running away from home, judicial professionals claim to be acting in accordance with Article 130 of the *Constitution of Afghanistan*, which provides:¹²⁵

While processing the cases, the courts apply the provisions of this Constitution and other laws.

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

¹¹⁸ Medical Mondiale, 2004, p. 14

¹¹⁹ International Development Law Organisation (IDLO) Technical Workshop: Gender and Criminal Justice in Afghanistan, 15-16 May 2006, Safi Landmark Hotel, Kabul, Afghanistan, Recommendations and Summary of Discussions, p. 9

¹²⁰ IDLO Technical Workshop, p. 9

¹²¹ The World bank report, p. 83, citing information from Amnesty International.

¹²² IDLO Workshop, p.10 (Article 53 of the Penal Code states: "Commitment of a criminal act with good will for the purpose of exercising a right, which is granted to a person by the way of religious or other laws, shall not be considered a crime).

¹²³ Medica Mondiale, July 2004, p. 16 and note 5. (*Khelwat-e-sahiha* refers to a situation where a male and female are together in a place without the presence of others).

¹²⁴ Medica Mondiale, July 2004, p.16

¹²⁵ IDLO Technical Workshop, p. 14

In the IDLO workshop, referred to above there was agreement that no offence of running away existed in Hanafi jurisprudence.¹²⁶

In fact, a large number of women accused of running away from home get released after the hearing at the primary court.¹²⁷ But sometimes they do get sentenced.¹²⁸ Currently, among the ten women who are imprisoned in Pul-e Charki for running away, one is imprisoned for running away only, and to date, she has received a sentence of 5 months at the primary court (see **Part II, Section 3.3**). Figures may be higher in provincial prisons.

The detention and imprisonment of women who run away from home appears to depend on whether the family has lodged a complaint with the police. In cases where women apply directly to MOWA or AIHRC, arrest and imprisonment does not take place, and they are referred to shelters run by NGOs.¹²⁹ (See **Part II, Section 1.5** for information on shelters). There are also encouraging reports of at least one shelter having received girls who had run away, referred to MOWA by the police.¹³⁰

(e) Forced Marriages

While the Civil Code prohibits the marriage of girls below the age of 15, in the Penal Code, the crime relating to forced marriage is limited to the marriage of women of 18 years or more (Article 517):

(1) A person who gives in marriage a widow, or a girl who is eighteen years or older, contrary to her will or consent, shall be sentenced in view of the circumstances to short imprisonment.

(2) If commitment of the crime specified under the above paragraph is for the purpose of "Buddadan" (as a compensation for a wrongdoing), the offender shall be sentenced to medium imprisonment not exceeding two years.

But, although forced and child marriages violate Afghan national law, they are widely practiced in a variety of forms and circumstances, as described under **Part I, Section 4.1.1** above, comprising a key component of customary law.

The failure of the judiciary, the police and the wider society to treat forced marriage as a criminal offence, appears to stem from the deep-seated acceptance of the validity of customary over statutory law, ensuring a consistent failure by the state to initiate criminal proceedings against perpetrators.

4.3 CRIMINAL PROCEDURE: LEGISLATION

Officially, criminal procedure is governed by the interim Criminal Procedure Code of 2004 (CPC), which was written to address the needs of the immediate post-conflict period. The drafting of a new CPC is currently in progress.

¹²⁶ IDLO Technical Workshop, p. 16

¹²⁷ Medical Mondiale, 2004, p. 18; interview with Ms Freshta Karimi, Director and Mr Najibullah Aziz, Da Qanoon Ghush-tonky, 12 December 2006

¹²⁸ Medica Mondiale, 2004, p. 18.

¹²⁹ Interview with Ms Orzala Ashraf, Director of Humanitarian Assistance for Women and Children in Afghanistan (HAWCA), 9 December 2006

¹³⁰ Interview with Ms Orzala Ashraf, Director, HAWCA, 9 December 2006

Timelines set by the interim CPC are regarded as unrealistic by many, in the current circumstances of Afghanistan, and the need for improved oversight mechanisms to ensure fair and effective investigations, prosecutions and trials is recognized.¹³¹

According to the CPC, a person can be arrested either by the judicial police (under conditions set out under Article 30 of the CPC), or by the public prosecutor. If the police performs the arrest, they must complete the interrogation of the suspect within a maximum of 72 hours¹³² and submit the report to the public prosecutor. The prosecutor can investigate the crime for 15 days, if the suspect was not detained by the police, or 15 days minus the number of days the suspect was held by the police. The prosecutor can extend this period for another 15 days. If the investigation is not completed in 1 month, then the detainee must be released. Thus, the indictment must be submitted to the court within a maximum of 30 days from arrest (Article 36).¹³³

The court, immediately after receiving the indictment must fix a trial date and notify all parties (Article 42). During the trial at the primary level the court can extend the detention for 2 additional months (Article 6.2).

Following the sentence of the primary court, the sentenced person (or his/her lawyer) can appeal the sentence within 20 days of the decision (Article 63). At the appeal level the court can extend the period of detention for another 2 months (Article 6.2). The appeal is heard by the provincial court. Article 69 of the interim CPC sets out the trial procedure at appeal stage.

The sentenced person can apply to the Supreme Court within 30 days of the verdict of the appeals court (Article 72). During the trial at the Supreme Court level, the court can extend the detention period for an additional 5 months (Article 6.2). Article 75 sets out the trial procedure at the Supreme Court.

A provision to release the detainee is included both in the interim CPC and in the Law on Prisons and Detention Centres (2005) if no decision has been taken within the maximum term of detention prescribed by law. The interim CPC states that if the related terms expire without a decision, then the arrested person shall be released (Article 6.3). This applies to the periods set for each stage of detention. The Law on Prisons and Detention Centres, provides that if the file of an accused person is not completed within 9 months (i.e. the period after police and prosecutor investigation), the prison administration must notify the relevant court or public prosecutor in writing 15 days before the expiry of the term. If there is no reply, then the accused person shall be released from prison.

Thus, according to law, a person can spend a maximum of 10 months in detention, from the moment of arrest to the end of the period in prison before a final sentence is passed.

The interim CPC refers also to cases where a person may be sentenced to an alternative to imprisonment (Article 86). The alternative available is supervision by the police, as well as fines or confiscation of property, which are explained in Articles 87 and 88.

¹³¹ UNAMA, November 2006, p. 6

¹³² Originally the period set for police investigation was 24 hours, but was extended to 72 hours in the new Law on Police, which came into force in 2005 (1384). (UNAMA, 2006, p. 6).

¹³³ Interview with Prosecutor Abdul Qayoom "Nezami" Director of Legal Services of the Ministry of Defence.

A special provision, which applies to women, is that if a prison sentence is passed on a woman who is six months' pregnant, the prosecutor can postpone the imprisonment until four months after the delivery of the child. (Article 89)

4.4. CRIMINAL PROCEDURE: PRACTICE

4.4.1 Case Overload

In practice time limits for detention and other fundamental safeguards are rarely applied,¹³⁴ male and female detainees may be detained for months without charge or being brought before a judge due to the lack of capacity of the prosecutors and courts. The one Supreme Court in Kabul, which covers the whole country, is responsible for thousands of cases referred to them from secondary courts of 34 provinces of Afghanistan. Due to this overload, time limits cannot be met particularly at the Supreme Court stage of proceedings.¹³⁵ When time limits expire detainees are not released, as provided by legislation. Lawyers say that they submit requests to prosecutors for the release of their clients based on the expiry of time limits, without any results.¹³⁶ Nevertheless, lawyers interviewed stated that the application of the law was much improved compared to three years ago.¹³⁷

4.4.2 Legal Representation

The Constitution and the Interim Criminal Procedure Code provide for legal assistance to indigent defendants. In practice, detainees in most parts of the country rarely have access to legal representation.¹³⁸ There are said to be 250 lawyers registered with the Ministry of Justice, who are responsible for providing free legal aid, covering the whole country.¹³⁹ The legal aid provided by the Legal Aid Department of the Supreme Court lacks capacity, with only around 4-5 attorneys. In practice the number of lawyers providing free legal counsel is much lower, estimated to be around 59¹⁴⁰. NGOs providing legal aid to female prisoners include those registered with Medica Mondiale, Da Qanoon Ghushtonky, International Legal Foundation and Afghan Women Judges Association.¹⁴¹ Around 8-10 provinces are said to be covered by the lawyers of these organisations. With a total of 34 provinces in Afghanistan, there are many provinces where detainees have no access to free legal counsel at all. In contrast, there are police and prosecutors in all provinces, thus arrests and investigations can go ahead, in the absence of lawyers.¹⁴² Referring to female prisoners in Kandahar, Amnesty International reported in 2005, that "[n]ot a single prisoner had been provided with legal representation".¹⁴³

There are also some encouraging developments. Interviews in December 2006, found that the level of access to legal counsel among female prisoners in Kabul was much improved in comparison to 2002 when none of the 30 women imprisoned in

¹³⁴ UNAMA, November, 2006, p. 6

¹³⁵ Interview with Ms Freshta Karimi, Director and Mr Najibullah Aziz, Da Qanoon Ghushtonky, 12 December 2006

¹³⁶ *ibid*

¹³⁷ *ibid*

¹³⁸ UNAMA, 2006, p. 6

¹³⁹ Interview with Ms Freshta Karimi, Director, and Mr Najibullah Aziz, Da Qanoon Ghushtonky, 12 December 2006

¹⁴⁰ *ibid*.

¹⁴¹ *ibid*. and UNAMA, November, 2006, p. 17.

¹⁴² Interview with Mr Freshta Karimi, Director, and Mr Najibullah Aziz, Da Qanoon Ghushtonky, 12 December 2006

¹⁴³ Amnesty International, 2005, p. 33

Kabul had access to lawyers.¹⁴⁴ Of the 56 prisoners interviewed in December 2006, 38 (68%) had lawyers, most registered either with Medica Mondiale or with Da Qanoon Ghushtonky. The latter reports that overall, 50% of their clients have been released (male and female), with 30% having received fair trials. Both Da Qanoon Ghushtonky and Medica Mondiale are extending their legal aid activities to new provinces. UNIFEM is currently developing a paralegal programme, in partnership with MOWA, MOJ, Ministry of Interior (MOI), Afghan Women's Network and Kabul University, to increase the legal information and support available to women in more remote areas of Afghanistan.¹⁴⁵ Da Qanoon Ghushtonky has been conducting paralegal trainings in cooperation with Departments of Women's Affairs (DOWA) and other women's organisations.¹⁴⁶

However, even when detainees are represented by defence counsel, lawyers are often not able to be present during investigation. Women very rarely have access to lawyers at the police station during their first interrogation, despite efforts made by organisations providing legal aid to ensure that they are contacted when a person is arrested.¹⁴⁷ Medica Mondiale, has conducted trainings for police in 17 districts of Kabul, as well as in Herat, which has improved the situation to some degree. Medica Mondiale had received 5-6 calls from police stations requesting lawyers, while Da Qanoon Ghushtonky reports having received 2 calls at the time of writing.¹⁴⁸

Although the interim CPC provides that the prosecutor must inform the defence attorney, to ensure his/her presence during the investigations, this does not happen either in many cases. Sometimes lawyers see a client being interrogated by chance on their regular prison visits.¹⁴⁹ For example, one female detainee interviewed in Welayat pre-trial detention centre in December 2006, said that her lawyer had never been present during her interrogation. On occasions when she asked her lawyer to be informed, the prosecutor declined on the basis of time restraints and despite her requests never informed her in advance of the dates of interrogation.

NGOs providing legal aid have asked prison staff to inform lawyers when a detainee is to be taken to investigation and this has improved the situation to some extent,¹⁵⁰ but presumably particular difficulties arise when the interrogation is undertaken in the prison, without prior notice.

By law judges should inform lawyers five days prior to a trial, but they often phone only on the day of the trial¹⁵¹, which leaves lawyers little time to prepare and/or be available to attend trial, given their heavy caseloads.

Interviews conducted in Pul-e Charki prison in December 2006 revealed that lawyers were rarely present during interrogations and trials, due to the above mentioned difficulties. (See **Part II, Section 3.6**)

4.4.3 Virginity Tests

Virginity tests are routinely used in cases of rape and where women are suspected of having consensual extra-marital sex. Rape victims, who undergo virginity tests,

¹⁴⁴ International Commission of Jurists, p. 25

¹⁴⁵ UNIFEM Paralegal Program Proposal, November 2006

¹⁴⁶ Interview with Ms Freshta Karimi, Director, and Mr Najibullah Aziz Da Qanoon Ghushtonky, 12 December 2006

¹⁴⁷ *ibid.* and interview with Ms Angeles Martinez, Head of Mission, Ms Massouda Nawabi, Legal Aid Fund Project Coordinator, Medical Mondiale, 11 December 2006.

¹⁴⁸ *Ibid.*

¹⁴⁹ Interview with Ms Freshta Karimi and Mr Najibullah Aziz, Da Qanoon Ghushtonky, 12 December 2006

¹⁵⁰ Interview with Ms Freshta Karimi and Mr Najibullah Aziz, Da Qanoon Ghushtonky, 12 December 2006; Ms Angeles Martinez and Ms Massouda Nawabi, Medical Mondiale, 11 December 2006.

¹⁵¹ Interview with Ms Freshta Karimi and Mr Najibullah Aziz, Da Qanoon Ghushtonky, 12 December 2006

which establish sexual intercourse, may be convicted of adultery, if they cannot prove that the act was not consensual. In order to prove that the act was forced, women may have to undergo forensic examinations to identify evidence of self-defense on the body.¹⁵² In the cases of elopement, the release of the detainee often depends on the result of the virginity test proving that the woman/girl did not have sexual intercourse with the man accompanying her. If not proven, the woman is usually accused of running away and adultery (*zina*) and sentenced to imprisonment.

When detainees have access to legal counsel, their lawyers may accompany them to hospitals for virginity tests.¹⁵³ Reports have also been received of female prison staff having accompanied defendants to hospital, where the test was conducted by a female doctor. However, in many cases, in particular where the women do not have lawyers, such tests can be conducted with no sensitivity accorded to the victim. For instance, the head of the Women's Right Unit of AIHRC described a hospital scene where a rape victim was examined in the presence of a multitude of personnel (men and women), all passing judgment on her morality. Following this incident the victim set fire to herself.¹⁵⁴ There has also been at least one report of male prison staff having sexually abused women while accompanying them to hospital for a virginity test.

4.4.4 Risk of sexual abuse

Reports indicate that rape victims who report their case to the police may risk sexual abuse by the police,¹⁵⁵ a situation which is not unique to Afghanistan. In a number of countries in the region, women who have been raped are considered to be shamed and immoral themselves, and therefore their re-victimisation is perceived to be justified. Another report relates to the rape of a young girl who had run away from home in search of AIHRC, by four police officers, whom she asked for help in 2005. She later identified the police, who were arrested.¹⁵⁶ In 2005 Amnesty International reported unconfirmed reports of women being sexually abused in Kabul prison, by police officers, with the alleged collusion of certain prison guards.¹⁵⁷ One female prisoner was rumoured to have disappeared.¹⁵⁸ Persistent reports continued in 2006 of the rape of women held in Welayat Kabul Detention Centre by police officers, though detainees are reluctant to report such cases, due to the shame and possible retaliation.

It is obvious that such unacceptable practices constitute powerful disincentives for women in Afghanistan to seek the help of the police in cases of violence and rape, given that they are extremely reluctant, in any event, to make their situation public, due to the shame and stigma associated with such acts.

Rape and other forms of sexual violence have devastating effects on the victims. Under international law, the rape of a woman in custody by an agent of the State always constitutes torture for which the State is directly responsible. States have the duty to protect women from all forms of sexual abuse and violence in detention, and ensure that perpetrators of such acts are brought to justice.

¹⁵² *ibid*

¹⁵³ *ibid*

¹⁵⁴ Interview with Dr. S. Sobhrang, Head of Women's Rights Unit, AIHRC, 16 December 2006.

¹⁵⁵ Such a case, involving rape, is currently being handled by the AIHRC. (Interview with AIHRC, 16 December 2006)

¹⁵⁶ Interview with Ms Orzala Ashraf, Director, HAWCA, 9 December 2006.

¹⁵⁷ Amnesty International, 2005, p. 33

¹⁵⁸ *ibid*.

4.4.5 Body Searches

The lack of sensitivity accorded to rape victims or those suspected of adultery during virginity tests, extends to body searches undertaken for those suspected, for example, of drug trafficking. Reports indicate that prisoners charged with drug trafficking undergo intimate searches on arrest carried out by male personnel in the presence of male and female onlookers, and that women are humiliated by male police staff during the process.

According to international law, intimate body searches should only be carried out by a medical practitioner (a female practitioner, if preferred by the prisoner) in a private room. A female member of staff should supervise the process. No prisoner/detainee –regardless of gender- should be humiliated and be required to strip completely during a search. Special sensitivity should be demonstrated in the case of women, however, since they are likely to feel the humiliation of undergoing intimate searches particularly. The experience may be extremely distressing if they have been victims of sexual abuse in the past. Internal searches of women should only be undertaken if there is a genuine justification.

Interpreting the right to privacy set out at Article 17 of the *International Covenant on Civil and Political Rights*, the Human Rights Committee has stated:

So far as personal and body search is concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched. Persons being subjected to body search by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the same sex. (General Comment No. 16: "The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Article 17)", Thirty-second session, 1988.)

4.4.6 Confessions

Interviews in Pol-e Charkhi prison revealed that women were often made to sign confessions at police stations or in pre-trial detention. Most women were illiterate and did not know what they were signing. The signature constituted a finger print. Sometimes they were promised release upon signing the confession, but subsequently sentenced. Signing confessions at the police station or prosecutors' investigation has no value according to law.¹⁵⁹ However, if detainees do not have a defence lawyer, do not know their rights and are illiterate, their confession can easily be used against them during trial.¹⁶⁰ As mentioned under **Section 4.2**, above, the lack of reference to legal codes and the dominance of the personal opinions over statutory law is a continuing problem in Afghanistan, and thus, the extracting of confessions prior to trial and the way in which these confessions may be utilised by criminal justice agencies should be seen within this context. (See, for example, **Part II, Section 4.3, Case 13**)

4.4.7 Testimony of Women

Courts are said to impose steep evidentiary requirements in cases of violence against women, with the testimony of the victim herself not being considered as evidence. When abuse is perpetrated by the husband, the testimony of the woman's family members are given little or no weight.¹⁶¹ According to experts,

¹⁵⁹ Interview with Ms Freshta Karimi and Mr Najibullah Aziz, Da Qanoon Ghushtonky, 12 December 2006

¹⁶⁰ Interview with Ms Freshta Karimi and Mr Najibullah Aziz, Da Qanoon Ghushtonky, 12 December 2006

¹⁶¹ IDLO Technical Workshop, p. 19

there is no basis for this in legislation.¹⁶² This situation gives rise to particular concern, when considered in the context of risks women face in reporting violence against them, especially sexual abuse or rape, in which case they may face murder in the name of honour.

Usually the testimony of a woman has half the value of that of men during trial, based on *Shari'a* principles.¹⁶³ Female defendants may therefore face problems in defending their cases and proving their innocence.

4.4.8 Corruption

Many of the female prisoners interviewed in Pul-e Charki prison claimed that they were imprisoned since they had not been able to pay bribes to criminal justice agencies. Others alleged that the male members of their families, responsible for their arrest, had bribed criminal justice officials to remove certain documents from their files (e.g. certificate of divorce) or simply to keep the women in jail. Others had used bribes to ensure their own release, in cases where they were also under suspicion of the crime committed. These allegations correspond to AIHRC reports that: *"...the deposition of cases often is decided by bribes. Those who pay the bribes are released, those who do not remain in prison. The Commission has documented cases where murderers are released because they paid money. Innocent people with no money, power or access to influential people remain in prison while those who are guilty of crimes are set free."*¹⁶⁴

It is evident that, illiterate women, with no power, connections or independent economic means suffer particularly in a criminal justice system where corruption is rife.

¹⁶² *ibid*, p. 19

¹⁶³ The value of the evidence of a woman depends on the issue and crime involved, and is not always half of the value of that of a man. (Comment, Dr Martin Lau, 8 February 2007).

¹⁶⁴ Monitoring Human Rights, AIHRC (www.aihrc.org.af)

PART II: THE PRISON SYSTEM AND FEMALE PRISONERS

1. OVERVIEW

1.1 MANAGEMENT STRUCTURE

The prison system of Afghanistan is undergoing comprehensive structural reforms, though at a relatively slow pace due to endemic resource problems. The responsibility for the Central Prison Department (CPD) was transferred from the Ministry of Interior to the Ministry of Justice in 2003, and a new Law on Prisons and Detention Centres was adopted in May 2005. Currently new prison regulations are being prepared with the assistance of UNODC. The new Law on Prisons and Detention Centres gives responsibility for the management of prisons and detention centres to a Supreme Council of Prisons, chaired by the Minister of Justice. The membership of the council comprises the Deputy Attorney General (Deputy Chairman), a representative of the Supreme Court, Deputy Interior Minister, Deputy Public Health Minister, Deputy Education Minister, Deputy Minister of Labour and Social Affairs, Deputy Minister of Women's Affairs, Deputy Head of National Security Department, representative from the AIHRC, representative from civil society and Director General of Prisons. According to the Law, the Supreme Council should meet once every three months, under normal circumstances and it is said that these meetings are currently taking place.¹⁶⁵ Article 19 of the new Law places responsibility on the Ministries of Education, Labour and Social Affairs, Public Health and Women's Affairs to cooperate with the Ministry of Justice in relation to the assignment of civil service employees to the penal system, such as social workers. The collaboration foreseen among the ministries and organisations mentioned above provides a valuable opportunity to put in place a national prisoner rehabilitation policy and a programme of activities in prisons, with shared responsibility among relevant bodies – ministries and organisations of civil society. However, at the present time, all the ministries involved lack resources and capacity to implement the provisions of the Law. The priority for all is no doubt development in the civil sector, where much needs to be done in areas of health, education, employment and social welfare.

The restructuring of the prison administration is currently underway. The new structure drafted by the Administrative Reforms Sub-Working Group, of the Consultative Working Group on Prisons and Detention Centres, proposes that the Central Prison Department be headed by a Commissioner General of Prisons reporting directly to the Deputy Minister of Justice responsible for prison matters. It also proposes that the CPD operate under three levels of management: Central, Regional and Institutional (Prisons and Detention Centres including facilities for women offenders). The CPD Central Headquarters in Kabul would perform overall planning and policy development for the Service, while each of the seven regional offices implements CPD activities in all its facilities.¹⁶⁶

In the context of the current document, it is important to note that the new structure would include a Central Prison Department for Women Offender Facilities, with a Deputy Commissioner for Women supporting the Commissioner General of Prisons, among others. The Deputy Commissioner for Women Offenders would be responsible for policy and program development, implementation, and ongoing program delivery for all women offenders nationally.¹⁶⁷ The establishment of a special department dealing with women offenders, which is quite unusual and progressive, provides an extremely valuable opportunity to address the social

¹⁶⁵ Interview with Ms Mazeri Safa, Deputy Minister of Women's Affairs, 6 December 2006.

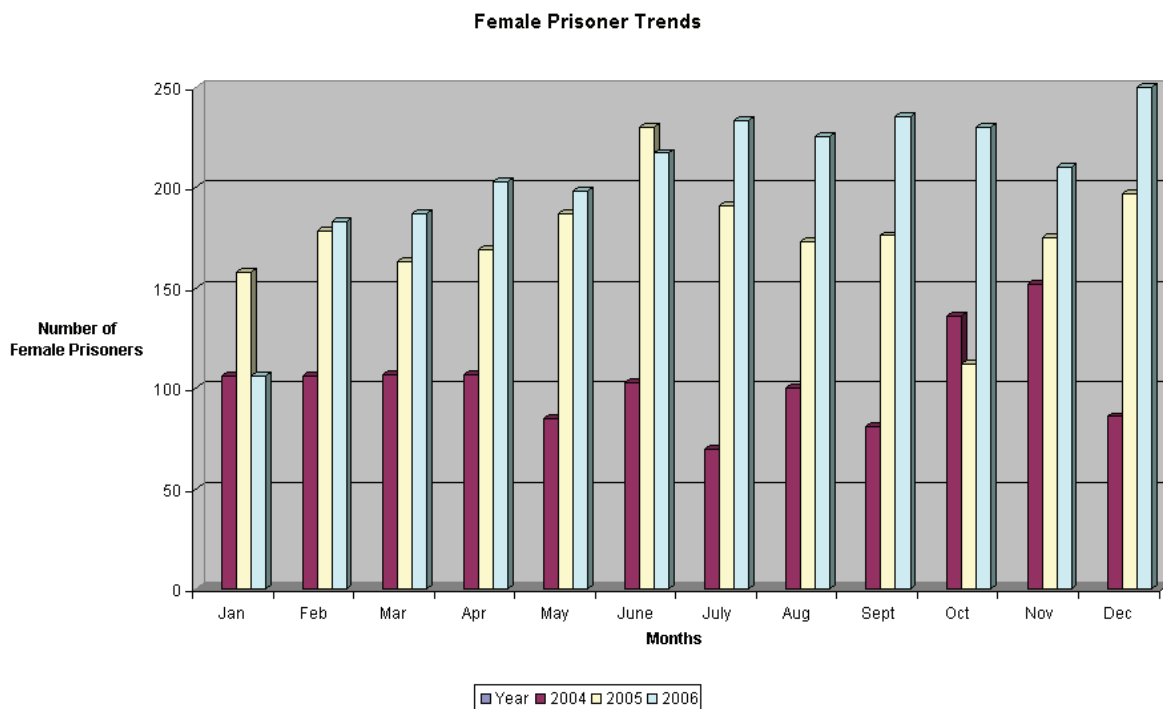
¹⁶⁶ Proposed Organisation and Operation of CPD (Draft April 8, 2006), provided by UNODC.

¹⁶⁷ Proposed Organisation and Operation of CPD (Draft April 8, 2006), provided by UNODC.

reintegration and post-release support needs of female offenders in a comprehensive and sustainable manner.

1.2. FEMALE PRISONER TRENDS

According to official information there were 250 female prisoners held countrywide in December 2006.



Year	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec
2004	106	106	107	107	85	103	70	100	81	136	152	86
2005	158	178	163	169	187	230	191	173	176	112	175	197
2006	106	183	187	203	198	217	233	225	235	230	210	250

Table 1: Female Prisoner Trends¹⁶⁸

Figures for the past three years indicate a gradual increase, with significant fluctuations at certain times, perhaps connected to presidential pardons. Comparing figures for December 2004 and December 2006 an almost three-fold increase is noted. Due to the changing dates of Eid and presidential pardons, perhaps a more accurate measure would be a comparison of the average number of women held in prison each year, which is 103 prisoners for 2004, 175 for 2005, and 206 for 2006. Thus, it can be safely said that the number of female prisoners has doubled over the past three years. This has happened despite the improved access female detainees have to legal counsel and the success rate of NGOs providing legal aid to indigent prisoners.

Sixty-nine of these prisoners were held in Pul-e Charki prison in Kabul at the time of writing. An overview of conditions and facilities in Pul-e Charki prison is given under **Section 2**. The current research did not involve a study of conditions in other prisons, but according to existing literature, in the majority of provincial

¹⁶⁸ Information from CPD, provided by UNODC

prisons, women are held in a compound within the main prison complex.¹⁶⁹ In others there are no facilities for the detention of women at all, where up to 20 women may be detained in a room with no water or electricity, held in the house of an elder or mullah, or transferred to the nearest provincial prison.¹⁷⁰ In most prisons conditions are extremely poor, with lack of water, electricity, heating and sanitation facilities, in many.¹⁷¹

1.3. PRISON STAFF

The number of female staff is inadequate and their training currently lacking. The salaries of prison staff are very low. The recruitment procedure for female staff is unclear, though staff are said to be required to have completed the military university or police academy to qualify for selection.¹⁷²

Eight female staff were participating in the training conducted by CSSP in Kabul, at the time of writing. CSSP is currently working on an additional training programme for female staff, which will include gender specific training, though the content of the proposed curriculum for female staff was not finalised at the time of writing. The women staff themselves had apparently suggested receiving training on basic and mental health issues for dealing with female detainees.¹⁷³ A needs assessment to determine the training requirements of women staff had been planned.¹⁷⁴

Currently there are no social workers, educators or psychologists working in the prison system.

1.4. PRISONER PROGRAMMES

At the present time all activities in women's prisons in Kabul are organised by NGOs, funded by international donors, with some supported by UNODC. Free legal aid is provided by Medica Mondiale and Da Qanoun Goshtunky; education and vocational training by Afghan Women's Education Centre (AWEC), which also organises family visits and monitors the situation of prisoner children placed in orphanages or with relatives. Medica Mondiale has been providing psycho-social counselling to women in Welayat detention centre and Pul-e Charki. The NGO, Emergency, provides medical care to female prisoners in Pul-e Charki and supplements the diet of pregnant and breast feeding women in this prison. Cooperation among NGOs and UN agencies involved in the prison sector is remarkable, with coordination meetings taking place each month under normal circumstances.¹⁷⁵ In other countries, such cooperation has often been lacking, leading to duplication of projects and waste of resources.

Although the interaction between organisations of civil society and prisoners is an extremely positive aspect of the current situation in terms of providing much needed services to prisoners, as well as contact with the outside world, NGOs lack resources to cover the needs of all prisoners and sustainability is difficult to achieve, with NGO dependency on donor funding. The director of AWEC, for example, was concerned about their current way of working on short-term projects,

¹⁶⁹ Afghanistan: Crumbling prison system desperately in need of repair, Amnesty International, July 2003, AI Index: ASA 11/017/2003, p. 22 and interview with AIHRC, 16 December 2006.

¹⁷⁰ Amnesty International, 2003, p. 22

¹⁷¹ AIHRC, Monitoring Human Rights, (www.aihrc.org.af)

¹⁷² Interview at the Pol-Charki training center, 13 December 2006.

¹⁷³ Notes of meeting, UNIFEM, CSSP, 10 October 2006.

¹⁷⁴ Notes of meeting, UNIFEM, CSSP, 10 October 2006.

¹⁷⁵ Participants of the most recent coordination meeting, held on 17 December 2006, included Medica Mondiale, AWEC, Emergency, Da Qanoun Ghush-tonky, Afghan Family Guidance Association (AFGA), UNAMA and UNODC. A decision was taken to invite AIHRC and a representative from the Ministry of Women's Affairs to future meetings.

relying on the success of funding applications to various donors, in order to be able to continue with their activities in prisons.¹⁷⁶ These concerns need to be taken into account when devising long-term sustainable strategies for the social reintegration of female prisoners.

1.5. POST-RELEASE SUPPORT

Post release support to women prisoners is problematic. Women in Afghanistan face enormous barriers, social and economical, to leading independent and self-supporting lives. Even the first step of renting property, without a man to sign the contract, presents a legal problem¹⁷⁷, which is followed by the religious and customary norms restricting women's mobility and access to services, unless accompanied by a man and limited employment opportunities for the female gender. Although interviews conducted in Pul-e Charki show that a considerable number of women were undertaking some kind of gainful activity at the time of their arrest, most of the work will have been performed in the safety of the home. Even when not, women would have had a male partner or relative to accompany and protect them in public. Thus, it is not at all surprising that most women interviewed would prefer to return to their families, even when the families may be responsible for negligence or worse.

However, some women are not able to return to their homes, as they are rejected due to the shame they have brought on their family members according to the social and cultural norms in Afghan society. The shame may firstly be related to a moral crime committed by the women, and secondly to their criminal record. Some are at risk of honour killings following release.

Mediation conducted by the lawyers of Medica Mondiale and social workers of AWEC has been successful in many cases, allowing women to return to their families. Some shelters also use mediation as a means to help victims of violence or those who have run away from home. Humanitarian Assistance for Women and Children in Afghanistan (HAWCA), has reported a case where a girl who had been suffering beatings and sexual abuse from her mother and step-father, ran away and came to the HAWCA run shelter.¹⁷⁸ The family found out where she was. In order to resolve the case HAWCA organised a "jirga" – they arranged for elders from the local community to come to Kabul and organised a meeting with MOWA and the HAWCA legal advisor. The girl spoke out before the *jirga*, declaring that she wanted to marry one of her cousins. The agreement of the jirga was received and an agreement was signed. The girl returned to her community and no problems were encountered. Although this case does not relate to a former prisoner, it illustrates alternative ways in which "running away" cases can be resolved, without having to resort to imprisonment.

In general, monitoring of the situation of women who return to their families following mediation appears to be very difficult. Regular visits by lawyers or social workers exacerbate the shame felt by the former prisoner and her family, a constant reminder of her imprisonment.¹⁷⁹ In 2004 Medica Mondiale reported that in many cases their lawyers lost track of the women, especially those who had been sentenced for premarital sex. In most circumstances the family would move house upon release of the prisoner in order to avoid further shaming and to increase the

¹⁷⁶ Interview with Ms Najia Haneefi, Director, Afghan Women's Educational Centre, Kabul, 10 December 2006.

¹⁷⁷ Interview with Ms Meryem Aslan, Programme Director and Dr Anou Borrey, Gender and Justice Consultant, UNIFEM, 9 December 2006 and Ms Orzala Ashraf, Director, HAWCA, 9 December 2006.

¹⁷⁸ Interview with Ms Orzala Ashraf, Director, HAWCA, 9 December 2006.

¹⁷⁹ Interview with Ms Meryem Aslan, Programme Director and Dr Anou Borrey, Gender and Justice Consultant, UNIFEM, 9 December 2006

chance for their daughter to marry.¹⁸⁰ However, by 2006, the lawyers were having more success both in following up cases of women who had been released and in mediation conducted between the women and their families.¹⁸¹

Officially post release support for women prisoners in need of shelter is the responsibility of MOWA.¹⁸² MOWA, on the other hand, lacks resources to provide for all former prisoners in need. There are currently four shelters in Kabul, one in Mazar-e Sharif and one in Herat, all run by NGOs, in cooperation with MOWA and AIHRC. The capacity of each safe house is for around 20 women. Although some former prisoners have been placed in these safe houses, it is reported that in general those running the shelters do not prefer to house former prisoners, due to the perceived criminal influence such women may have on other residents. In an interview conducted in December 2006, the director of the NGO, HAWCA, which manages one of the shelters, noted that they had no objection to receiving former prisoners. However, according to their agreement with MOWA an assessment of all applicants needed to be undertaken by MOWA prior to referral to shelters. Risk of violent or criminal behaviour had to be determined at this time. Due to inadequate resources MOWA appears unable to fulfil this requirement and therefore problems have been encountered with clients referred to shelters by MOWA.¹⁸³ At the time of the interview the shelter housed one former prisoner. AWEC social workers have also successfully introduced four former prisoners to shelters during the period April-June 2006.¹⁸⁴

MOWA has faced problems during *Eid*, in particular, when many women prisoners are pardoned by the President and released, without any prior notice or preparation.¹⁸⁵ Some of these women cannot return to their homes due to security reasons. MOWA, which is not in a position to help all of them due to the limited capacity of shelters, has asked UNIFEM to look into the issue of transitional houses to cater for those women who are released, but cannot return immediately to their families. At the time of writing a proposal had been prepared by MOWA, with support from UNIFEM. The proposal suggests that MOWA, MOJ and Ministry of Labour and Social Affairs (MOLSA) be involved in the management, initially of the one transitional house to be established in Kabul. As an interim measure the proposal suggests that a policy be put in place to secure the safety of women in need of protection, based on Article 53 of the Law on Prisons and Detention Centres, which allows prisons to be used as shelters for the protection of those whose lives have been threatened and whose safety is at serious risk.¹⁸⁶ UNIFEM, UNODC, CSSP and UNAMA are currently developing a policy to guide the establishment and implementation of transitional houses.¹⁸⁷ The establishment of transit houses for released prisoners had been recommended by the UN Special Rapporteur on violence against women, following her mission to Afghanistan in July 2005.¹⁸⁸

¹⁸⁰ Medica Mondiale, 2004, p. 21

¹⁸¹ Interview with Ms Angeles Martinez, Head of Mission and Ms Massouda Nawabi, Legal Aid Fund, Project Coordinator, Medica Mondiale, 11 December 2006.

¹⁸² Meeting with Mr Sarwar Danish, Minister of Justice, 6 December 2006

¹⁸³ Interview with Ms Orzala Ashraf, Director, HAWCA, 9 December 2006.

¹⁸⁴ AWEC Progress Report, Support for Women in Kabul Detention Centre, April-June 2006, p. 1

¹⁸⁵ Minutes of Meeting, UNODC, UNAMA, UNIFEM, 22 January 2006

¹⁸⁶ Transitional Houses, Proposal prepared by MOWA with the support of UNIFEM.

¹⁸⁷ UNAMA, 2006, p. 23

¹⁸⁸ Report of the Special Rapporteur on violence against women, its cause and consequences, Yakin Ertürk, Mission to Afghanistan (9-19 July 2005), UN Doc. E/CN.4/2006/61/Add.5, 15 February 2006, para. 86.

2. PUL-E CHARKI PRISON FOR FEMALE OFFENDERS

Pul-e Charki prison for women comprises one of the blocks of the prison complex housing male and female prisoners in Kabul. Accommodation is provided in nine rooms, holding 4 to 15 prisoners each and their children. There were 69 women prisoners in the prison in December 2006, with 43 children. Twelve of the children were born in prison. There are fifteen members of staff. All working in the prison are female, though external security is provided by male staff.

Food is delivered to the women's dormitories. Most women interviewed complained of the lack of adequate and good quality food. Some women also receive food from their families, depending on whether they have visits, which often is not the case.

Healthcare is inadequate. A prison doctor is said to visit on a regular basis, but interviews suggested that visits take place only on request and that treatment provided typically consists of pain killers only. A female gynaecologist working for AWEC has been visiting prisoners in Pul-e Charki once a month. The NGO, Emergency, also provides medical care to male and female prisoners in Pul-e Charki, with a 24-hour medical service available to prisoners. AWEC and Emergency supplement the diet of pregnant women and breast feeding mothers. Prisoners were not satisfied with the medical service and complained of various health conditions, including Hepatitis B and especially psychological problems. AIHRC expressed concern regarding the arrangements for childbirth. Hospitals apparently do not send doctors to prisons for delivery (and in any case there are no proper facilities for women to deliver in prisons), and they do not always accept women from prison for childbirth in hospitals. AIHRC had raised this concern with the Ministry of Public Health, though with no outcome at the time of writing.¹⁸⁹

Toilet and washing facilities are located outside the prison and hygiene is poor. There was no heating at the time of the interviews in December and many women complained about the lack of a heating system.

There are three rooms which are used for vocational training and education classes, provided by AWEC (Basic Health Education, Literacy Classes, First Aid, Handicrafts and Tailoring). Classes are held five days a week, between 8.30 and 12.00. Carpet weaving classes were discontinued due to funding problems. AWEC also conducts monthly workshops on a variety of subjects, such as gender issues, human rights, violence against women, women's rights and Islam, civil rights of women, HIV/AIDS prevention measures.¹⁹⁰ Medica Mondiale has been providing psychological counselling in groups of 15-16, though these had been temporarily discontinued due to a recent riot and security concerns in the prison. If necessary, individual counselling was also on offer from Medica Mondiale.

At the time of writing six female lawyers of Medica Mondiale were dealing with the cases of 45 women in Welayat Detention Centre and Pul-e Charki.¹⁹¹ Da Qanoon Ghushtonky also provides legal aid to prisoners, with its eight lawyers dealing with the cases of women in Welayat Detention Centre and Pul-e Charki. At the time of writing they were covering 74 cases from these two facilities.¹⁹²

¹⁸⁹ Interview with Dr Suraya Sobhrang, Head of Women's Rights Unit, AIHRC and Ms Hangama Anwari, Director, AIHRC, 16 December 2006.

¹⁹⁰ Information about AWEC's activities, based on interview with Ms Najia Haneefi, AWEC's Director, Project Manager and Social Worker on 10 December 2006 and interviews with AWEC staff conducting trainings in prison during visits to Pul-e Charki in December 2006.

¹⁹¹ Interview with Ms Angeles Martinez, Head of Mission and Ms Massouda Nawabi, Legal Aid Fund Project Coordinator, 11 December 2006.

¹⁹² Prison Coordination meeting, 17 December 2006.

Despite poor material conditions and inadequate services, Pul-e Charki women's prison has a positive atmosphere. Prisoners are allowed to intermingle and the doors to the courtyard/garden appear to be open most of the day. In good weather the prisoners spend a lot of time out of doors. The relationship between female staff and prisoners appeared to be good.

Article 56 of the Law on Prisons and Detention Centres allows mothers to keep their children with them in prison up to the age of three, and the prison administration is obliged to provide such children with adequate facilities. The government undertakes the establishment of nurseries for children over the age of three, adjacent to the prison. However, as such nurseries are not available at the current time, most women prefer to keep their children with them beyond the age of three. The mothers state that relatives of most are unable or unwilling to care for the children; some children's security would be at risk if separated from their mothers, due to family disputes, and placement in orphanages poses other problems. AWEC had had some discussions with MOLSA to arrange for the children living with their mothers to be placed in orphanages, but the Ministry could not comply due to the limit of space in the institutions.¹⁹³ The Deputy Minister of Labour and Social Affairs, expressed concern about the fate of these children, including their accommodation and in particular their education, but lamented the Ministry's lack of resources to provide for them.¹⁹⁴

There is a day centre for children, though it did not appear to be in use at the time of visits conducted in December 2006, due to the lack of heating. At other times AWEC facilitates a child specialist to take care of the children in this day centre and teaches them the basics of the alphabet, numbers and Islam. The children are said to be given toys to play with and taught to draw. They are also provided with supplementary food by AWEC.

AWEC also monitors the situation of prisoners' children placed in orphanages and arranges visits by the children to their mothers in prison, where the children can stay for a week and then be transported back to the orphanage by AWEC staff.¹⁹⁵

Although the prison environment is not suited for the upbringing of children, this arrangement appears to be in the best interest of most of the children and their mothers at the current time. However, a strategy will need to be developed and resources allocated to dealing with the developmental, emotional and educational needs of children in a more satisfactory manner in future, which will impact on the social reintegration of their mothers, whose main worry is the future of their children. The new facilities for women and women with children being constructed in Kabul by UNODC will provide a valuable opportunity to address this issue.

¹⁹³ Interview, Ms Najia Haneefi, Director, AWEC, 10 December 2006.

¹⁹⁴ Interview, Mr Wasil Noor Momand, Deputy Minister of Labour and Social Affairs, 13 December 2006.

¹⁹⁵ AWEC Progress Report, Support for Women in Kabul Detention Centre, April-June 2006, p. 4

3. PUL-E CHARKI PRISON: INTERVIEW OUTCOMES

3.1 METHODOLOGY

At the time of the research there were 69 women prisoners in Pul-e Charki Prison. Interviews were conducted with 56, representing over one fifth of the Afghan female prisoner population at the time. The interviews were based on questionnaires, were held in a relaxed atmosphere, with no interference from staff. The prisoners interviewed were willing to talk about their situation. This was possible due to the trust which had been developed between the prisoners, prison staff and the UNODC project coordinator, during her regular visits to Pul-e Charki prison over the past months.

The questionnaires used for the interviews were developed in stages. Originally they were prepared to facilitate the registration of female prisoners on a computer database, referred to under **Part I, Section 2**, a project which is ongoing. This slightly shorter questionnaire had been used to interview the first group of 18 prisoners. Later questions were added and the new questionnaires were used for the remaining women. The number and percentage of women interviewed are given below in relation to each topic reviewed. (See **Appendix 1, Sample Questionnaire**)

It must be stressed that the case files of the prisoners were not accessible at the time of the interviews, so the stories related by the prisoners could not be checked against the information in their files. In selected cases information was requested and received from the lawyers of individual prisoners.¹⁹⁶ In almost all cases the lawyers confirmed that information given by the prisoners coincided with that in their files. These have been noted against relevant case examples cited below.

3.2 CRIMES

The breakdown of crimes with which the 56 interviewed prisoners were charged is as follows:

Moral crimes: 28 (50%), including:

- Running away: 1
- Running away and adultery: 8
- Adultery¹⁹⁷: 12
- Facilitating/supporting adultery: 4
- Attempted adultery: 1
- Moral crime (undefined): 1
- Running away and theft: 1

Murder: 16 (28.5%)

Murder /adultery: 1¹⁹⁸

Murder charge revised as child neglect: 1

Kidnapping: 7 (12.5%)

Kidnapping/robbery: 1

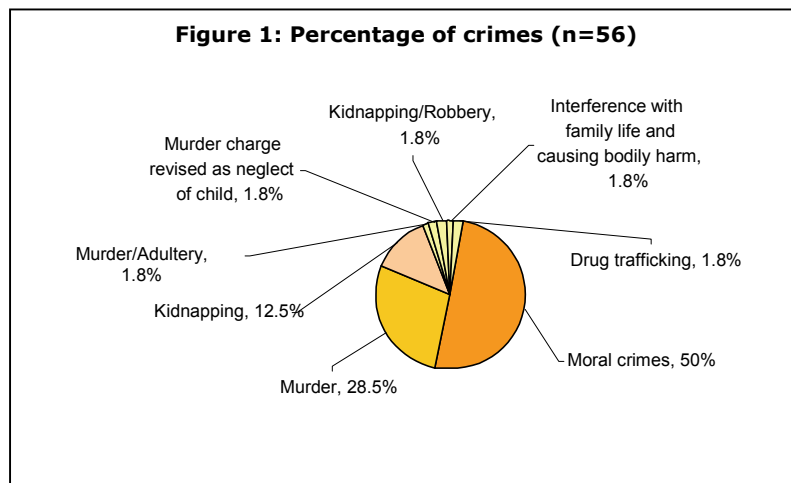
Interference with family life and causing bodily harm: 1

Drug trafficking: 1

¹⁹⁶ All such information was received from lawyers of Medica Mondiale.

¹⁹⁷ The term adultery refers to *zina*, throughout this section, although it should be understood that *zina* covers more than adultery.

¹⁹⁸ This case appears unclear. The prisoner says she is charged with murder, together with her husband, but her account of the crime suggests that she is charged with adultery. (See Part II, Section, 4.3, Case 16)



Comparison with previous studies:

- The ratio of moral crimes appears to be relatively similar, with 43% of cases reported among the 21 clients of Medica Mondiale in June 2004¹⁹⁹, and 54% of cases reported by the Afghan Women Judges Association in 2003, in relation to 31 female prisoners held in Welayat Detention Centre (where all women prisoners in Kabul were held at the time).²⁰⁰
- A significant decrease in the percentage of murder charges is noted in comparison to both previous studies, with 47.6% murder cases reported among the clients of Medica Mondiale in June 2004²⁰¹ and 38% charges of murder in 2003.²⁰²
- In 2003 one woman was charged with kidnapping (3%). Medica Mondiale reported 3 cases of kidnapping, where the clients were released at the primary court level by June 2004. No cases were in progress at the end of June 2004. Thus a significant rise is reflected in the cases of women accused of "kidnapping", from 3 per cent in 2003 to 12.5 per cent in 2006.

It is noteworthy that not one of the charges, neither in 2006 nor in 2003, relates exclusively to what are referred to as crimes of poverty: theft or robbery. Only two cases relating to theft was reported in 2004, by Medica Mondiale, one released by June and the other's case still in progress by the end of that month.²⁰³

In other countries worldwide, and particularly in low-income countries, property crimes, such as theft and fraud, are among the most common types of crimes committed by women. In 2003, the Afghan Women Judges Association, referring to the statistical data they had gathered in Welayat Kabul prison, noted that "*the cases of pick pocketing and theft were some common cases among women in the past year, but now there is zero*".²⁰⁴ More research may establish the reason for this remarkable situation in Afghanistan. It could be assumed that such offences are generally resolved by the informal justice system, rather than being referred to the police, but this argument would suggest that the informal justice system had strengthened since 2002, which is not justified in view of the increase in the female

¹⁹⁹ Medica Mondiale, July 2004, p. 9

²⁰⁰ Data Collected from Kabul Detention Centre Women's Section, Afghan Women Judges Association, (AWJA), 25 July 2003.

²⁰¹ Medica Mondiale, July 2004, p.9

²⁰² Afghan Women Judges Association, (AWJA), 25 July 2003.

²⁰³ Medica Mondiale, July 2004, pp. 6,9

²⁰⁴ Afghan Women Judges Association, (AWJA), 25 July 2003.

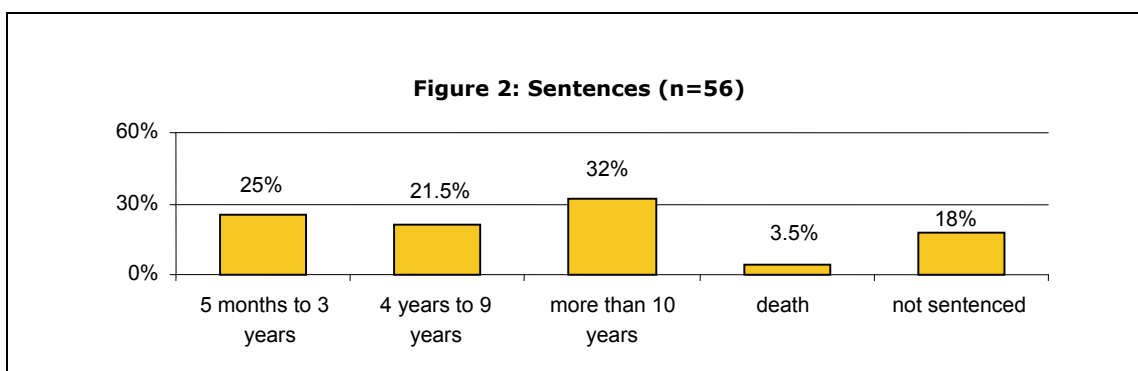
prison population. Perhaps acquiring release with bribes has become more common in the cases of theft, in view of the widespread reports of corruption.

3.3. SENTENCES

The following figures show the number of prisoners, divided into three main categories by length of sentence:

- Prisoners sentenced to 5 months to 3 years, inclusive: 14
- Prisoners sentenced to between 4 and 9 years inclusive: 12
- Prisoners sentenced to 10 years and over: 18
- Prisoners sentenced to death: 2²⁰⁵

Ten prisoners had not received any sentences at the time of writing.



Of the 9 women charged with running away from home, 8 were also charged with or suspected of adultery. Sentences for running away and adultery, ranged from 1 to 12 years. With the exception of one case, none of the sentences had yet been confirmed by the Supreme Court. In the one case, the final decision passed by the Supreme Court was 6 years' imprisonment.

In the one case where the charge appeared only to involve "running away from home", the detainee was sentenced to 5 months' imprisonment at the primary court. The secondary court process was underway at the time of writing.

Sentences for adultery ranged from 8 months to 6 years. In the one case which had been confirmed by the Supreme Court, the sentence was 8 months' imprisonment, though the case, as related by the prisoner, is unclear, appearing perhaps to involve attempted adultery, rather than adultery.

Two cases of attempted adultery and facilitating adultery were still at the primary court level and the prisoners did not know what sentence had been passed. In one case, the primary court had passed a sentence of 3 years' imprisonment, in one the secondary court had passed a sentence of 8 months and in one case the Supreme Court had passed a sentence of 8 months.

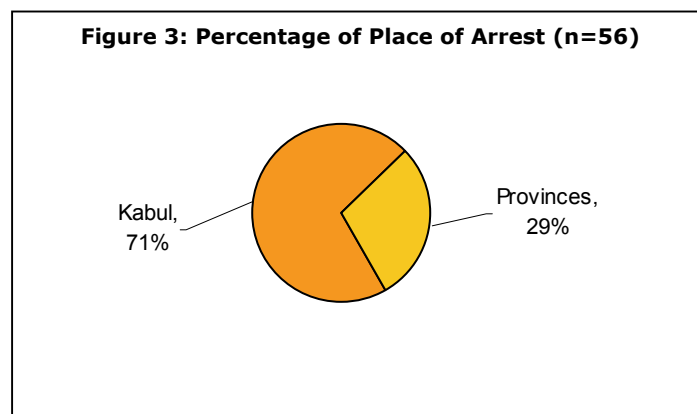
Sentences passed for murder cases ranged from 7 to 20 years of imprisonment, and in 2 cases the death penalty. One death penalty case was at secondary court level at the time of writing, the other had been confirmed by the secondary court as well. (In other cases death penalty sentences passed by the primary court had been reduced to imprisonment later on). In 4 cases, sentences were final: one of 7 years' and three of 10 years' imprisonment.

²⁰⁵ Almost certain to be reduced to life imprisonment or long prison terms, according to lawyers consulted. (Medica Mondiale, e-mail, 2 January 2007).

Sentences for kidnapping ranged from 2 to 16 years. Of these, two sentences of 10 and 11 years had been passed by the Supreme Court. The one kidnapping and robbery case had received a sentence of 7 years, passed by the Supreme Court.

3.4 PLACES OF ARREST

71% (40) of the 56 prisoners were arrested in Kabul, 29% in other provinces. Arrests in other provinces were as follows: 1 in Shabergahan, 1 in Kunduz, 1 in Bamyan, 1 in Mazar-e Sharif, 3 in Wardak, 1 in Kandahar, 4 in Parwan, 1 in Badakhshan, 2 in Ningarhar and 1 in Nimroz.



3.5 TREATMENT BY POLICE AND INVESTIGATORS

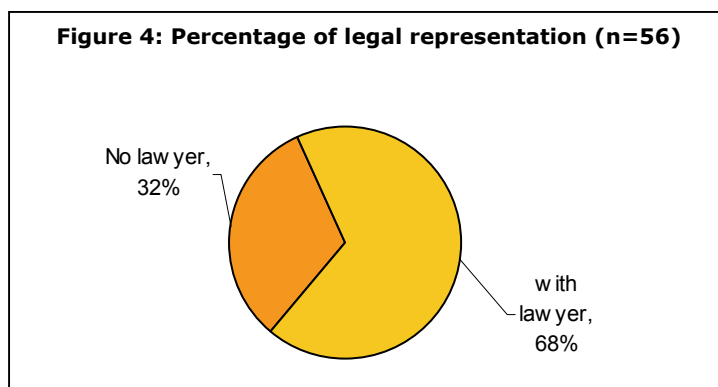
Of the 18 women who responded to the question regarding their length of stay in the police station before transfer to pre-trial detention in Welayat Kabul, 15 (83%) replied that the period had been less than 24 hours. One claimed to have been held for 3 days and two for 4 days.

A specific question regarding the treatment by police and investigators was not asked. 8 of the 56 prisoners (14%) interviewed volunteered information that they were beaten by the police and/or investigator after their arrest. Two claimed to have been beaten in provincial or district prisons, five in police stations in Kabul.²⁰⁶ One prisoner alleged sexual abuse by the police during transfer to Welayat Kabul detention centre.

²⁰⁶ The exact locations are being withheld to protect the identity of the victims.

3.6 LEGAL REPRESENTATION

Eighteen out of 56 prisoners (32%) did not have lawyers. In 2002 none of the prisoners in Kabul were represented by lawyers, as mentioned under **Part I, Section 4.4.2.**



Twenty-two of the 38 prisoners who were represented by legal counsel responded to the question as to whether their lawyers were present during their interrogation and at their trials. Two replied that their lawyers had been present during interrogation; one said that her lawyer was sometimes present, with 18 (82%) stating that their lawyers were never present. Only 4 out of the 22 (18%) replied that their lawyers attended their trials.

The absence of lawyers at most investigations and trials confirm the difficulties lawyers face in defending the cases of their clients, while demonstrating the lack of respect by prosecutors and judges, to the legal requirement for defendants to have access to legal representation during investigations and court hearings.

3.7 CONFESSIONS

Fifteen of the women interviewed in Pul-e Charki were asked whether they had signed confessions before or during the trial. Ten (66.6%) replied that they had, the others did not respond. Five of the women had signed confessions before a judge, though the judge had not read out to them the contents of their confession. Seven of the ten women were illiterate.

A number of other prisoners, who were not specifically asked in the questionnaires, said that they had signed confessions during the investigation period, with their fingerprints. One prisoner said that she was promised that she would be released if she confessed – a promise which was not fulfilled.

3.8 TIME LIMITS

As mentioned under **Part I, Section 4.3** above, the maximum legal time detainees can spend in detention before the final decision by the Supreme Court, is 10 months; maximum legal time in detention is 5 months at the secondary (appeals) court level, and 3 months at the primary court level, including the maximum period allowed in the police station and pre-trial detention.

Supreme Court level: 25 of the 56 prisoners (44%) had been sentenced by the secondary court and were awaiting the Supreme Court decision in December.

In 18 of these cases (72%) the time limit of 10 months had been exceeded by months and sometimes years. Time spent in detention ranged from 11 months to 4 years and 5 months.

Seven (28%) had spent over 2 years in detention. Five of them were charged with murder, one with kidnapping and one with running away and adultery. It is noteworthy that 6 had been referred to Pul-e Charki from provincial prisons and that 4 (57%) did not have lawyers. A woman charged with running away and adultery was among those who had spent the longest period in prison (3 years and 7 months). The fact that she did not have a lawyer is likely to have affected the length of detention for a non-violent crime.

Secondary Court level: 11 out of 56 (20%) prisoners had received a sentence at the primary court and were awaiting their secondary court decision.

In 5 cases (45%) the time limit of 5 months had been exceeded. In one case the detainee had spent 6 months in prison, in two cases 7 months, in one case 2 years and in the fifth case, 3 years and 4 months.

Of the latter two cases one had received the death penalty for murder, and the other 20 years for murder at the primary court level. The woman who received a death penalty had spent one year of her detention in a provincial prison and had no lawyer.²⁰⁷

Primary Court level: 10 prisoners (18%) were awaiting the decision of the primary court. It was not clear how much time had passed between arrest and appearance before a judge, but of the 27 prisoners arrested in Kabul and who responded to the question regarding length of stay in Welayat Kabul detention centre, most said they had spent between 1-2 months. One person had spent 8 months, another 10 months, and one person, 1.5 years.

According to this information, the further a detainee's case progresses through the criminal justice system, the more frequently are time limits exceeded and for longer periods, confirming information given by lawyers that the backlog of cases relates mostly to the situation at the Supreme Court level (see **Part I, Section 4.4.2**).

3.9 ETHNICITY

13 of the 56 prisoners (23%) were of Pashtun, 1 (2%) of Sharee, 10 (18%) of Hazara and 32 (57%) of Tajik ethnicity.

Comparing to the general population, the Pashtun are significantly underrepresented. (Pashtun comprise 42% of the general population²⁰⁸).

The Tajik and Hazara are overrepresented. (Tajik comprise 27% of the general population and the Hazara 9%²⁰⁹).

There are no Uzbeks, Aimaks or Turkmens among prisoners, which comprise 9%, 4% and 3% of the general population respectively²¹⁰.

It is difficult to reach firm conclusions from this information, without additional data, such as figures from provincial and district prisons. However, given the large representation this study involves, quite safe assumptions may be made, for

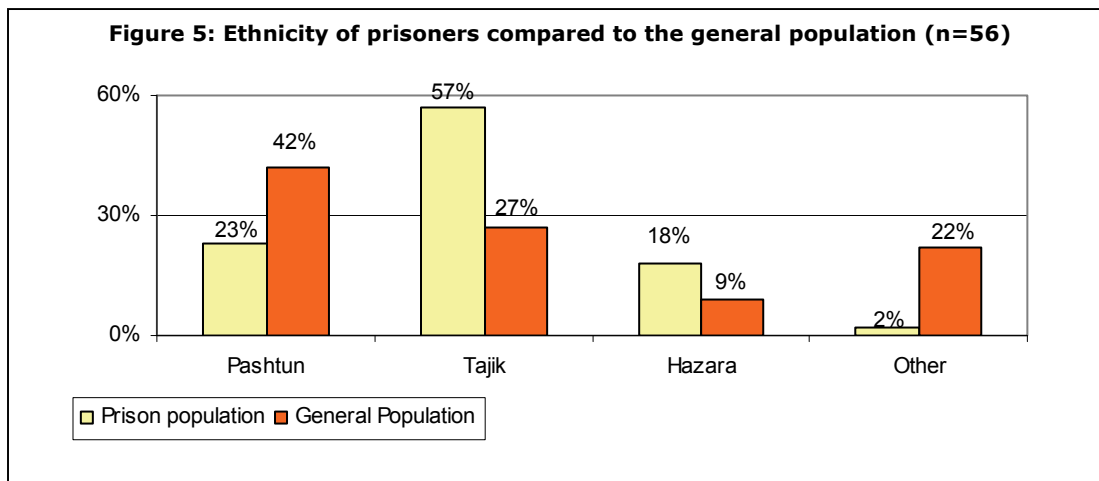
²⁰⁷ Contact with Medica Mondiale has been facilitated. Medica Mondiale Project Coordinator for legal aid noted that a sentence by the secondary court must also have been passed for the prisoner to have been transferred to Kabul, which only takes place once the primary and secondary court decisions have been taken. The sentence passed by the secondary court was not known at the time of writing. (E-mail correspondence, Massouda Nawabi, Legal Aid Fund, Project Coordinator, Medica Mondiale, 2 January 2007).

²⁰⁸ Afghan Institute of Learning: www.learningpartnership.org/partners/afghanistan

²⁰⁹ *ibid.*

²¹⁰ *ibid.*

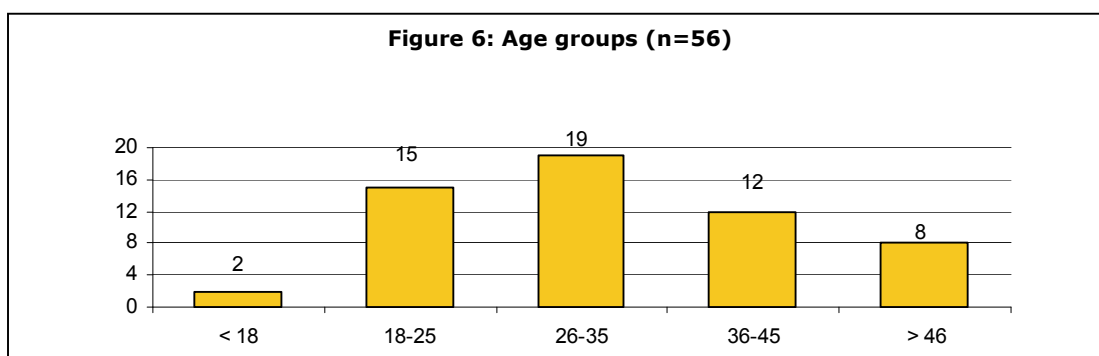
example that more Pashtun women who commit crimes are penalised by the traditional justice system, compared to other ethnic groups, therefore they are underrepresented in the formal justice system. Given the volume of information regarding the particular prevalence of traditional justice among the Pashtun, there is a strong probability that this assumption is justified.



3.10 AGE

The age groups of the 56 prisoners are as follows:

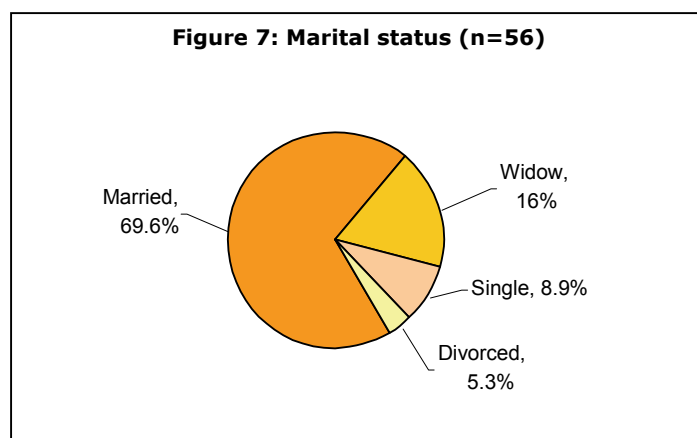
- Under the age of 18: 2²¹¹ (3.5%)
- Between the ages of 18 and 25: 15 (26.8%)
- Between the ages of 26 and 35: 19 (33.9%)
- Between the ages of 36 and 45: 12 (21.4%)
- Over 46: 8 (14.2%)



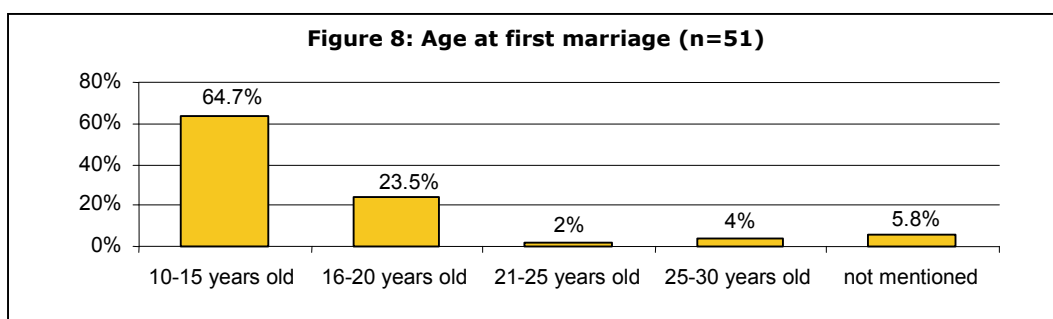
²¹¹ They should officially be held in the rehabilitation centre for juvenile prisoners.

3.11 MARITAL STATUS

69.6% (39) of the 56 women were married at the time of the crime. 10 of them were in their second marriages²¹². 16% (9) of the 56 were widows; 5.3% (3) were divorced and 8.9% (5) were single.



Of the 51 women who were or had been married, 64.7% (33) had married between the ages of 10 and 15 (including 3 cases referred to as “very young”). This reflects a high rate of child marriages among women prisoners, when compared to the UNICEF estimation of 57% of marriages below the age of 16 in the general female population in Afghanistan. Two of these women were married at 10, one at 11, five at 12, eight at 13, eleven at 14, three at 15 and three married “very young”.

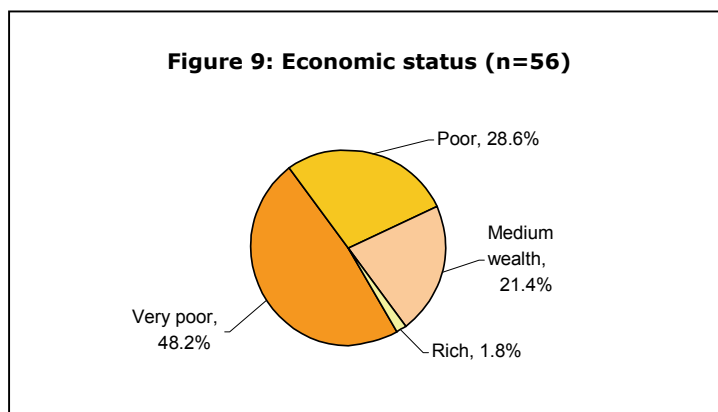


Although all child marriages involve force, particular mention of “bad” was made in one case (married at 11 to settle a dispute by the decision of the *jirga*), mention of “forced” was made in two cases (both married at 13); mention of having been exchanged was made in two of the child marriages (one married at 10 and the other “very young”) and one marriage that took place when the girl was 19.

²¹² This figure includes a girl who was forced to engage at 12 and then ran away and married someone else. The engagement was seen as a marriage contract by her family.

3.12 ECONOMIC STATUS

48.2% of the women (27) described themselves as very poor; 28.6% (16) as poor; 21.4% (12) as of medium wealth and 1.8% (1) as rich.

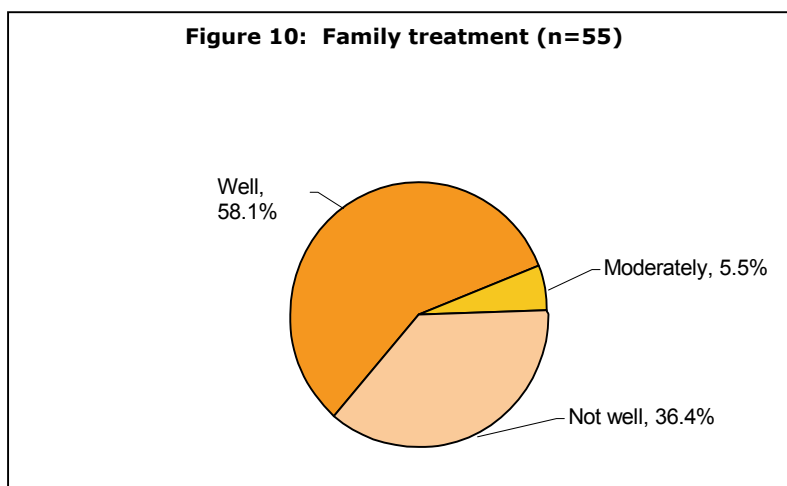


Thus a significant majority, comprising 76.8% (43) of the women, are economically disadvantaged, similar to the situation among prisoners worldwide. Again, similar to their counterparts in many other countries, their imprisonment is likely to worsen their situation and that of their children, due to their exclusion from income generating activities, loss of family support in many cases, and the criminal record acquired by their imprisonment.

3.13 TREATMENT BY FAMILY

The question relating to treatment by family members related to the women's current circumstances – that is, if they were married a second time, it related to their current husband and in-laws. Thus, in most cases the responses do not shed light on how women were treated in their first marriages. In addition, a number of replies were contradictory, stating good treatment by the family, but then referring to many problems with family members in the account of personal histories. Nevertheless the information provided is sufficient to draw some conclusions.

55 of the 56 women responded to the question relating to family treatment.



58.1% of the women (32) said they were treated well and 5.5% (3) moderately well. 48.5% (17) of this group were still living with their first husbands, 22.8% (8) were in their second marriages; 20% (7) were widows and the husbands of 8.5% (3) were missing.

36.4% of the women (20) said that they were not treated well by their families. Of this group 55% (11) were married to their first husbands, 20% (4) were married a second time, 10% (2) were single, 10% (2) were divorced, and 5% (1) was a widow.

Thus, 50% of all women interviewed (28) were living with their first husbands at the time of the crime. 39% of them were not treated well by their families, 61% were treated well or moderately well.

Domestic violence was not a focus of this research and therefore a question relating to domestic violence was not asked specifically. Some of the women volunteered this information. 21.4% (12) of the 56 women said that they had been subjected to domestic violence. 3 of them had been beaten by their in-laws, 6 by their husbands (in one case the husband also sexually abused the children and in one case he tried to force his wife into prostitution), 3 were beaten by their fathers.

It can be fairly safely assumed that many of those who reported not to have been treated well by their families are likely to have been subjected to some form of domestic violence (including psychological) even if not specifically mentioned. With the limited expectations of women from marriage in Afghanistan, it would be unusual for a woman to complain about her treatment, unless some kind of domestic violence was experienced.

It is difficult to make comparisons with other countries, where statistics generally relate to experience of domestic violence at some time in the life of female prisoners, rather than to current circumstances only. If a comparison were to be made between this information and such statistics, the approximately 36% of negligent treatment/assumed domestic violence is seen to be below the level recorded among female prisoners in some Western countries – for example, 50% of female prisoners in UK²¹³ and between 43%²¹⁴, and 85%²¹⁵ in USA depending on various sources. However, this comparison is unsound, as stated. In light of existing knowledge relating to the extraordinary level of violence suffered by Afghan women, it is impossible to assume that the female prisoners in Afghanistan are less likely to have been victims of violence, compared to their counterparts in Western societies, while other factors cast doubt on the reliability of the information and perhaps underline the difficulties in making comparisons. The contradictions between the stories told in personal histories and responses given to the question of family treatment constitute one difficulty. In addition, these women, all of whom claim their innocence, and who are charged with crimes such as adultery or murder of their husbands, may feel that admitting ill-treatment by their husbands would establish a motive for their “crime”. More generally, the understanding of what comprises being well or moderately well treated in comparison to being “treated with negligence” in Afghanistan may be very different to the internationally

²¹³ Prison Reform Trust Bromley Briefings Prison Factfile, April 2006, p. 16 (reporting prison service figures relating to 2004).

²¹⁴ The US Bureau of Justice Statistics survey of State prison inmates for 1991, in National Institute of Justice Research in Brief, August 1998, p. 1.

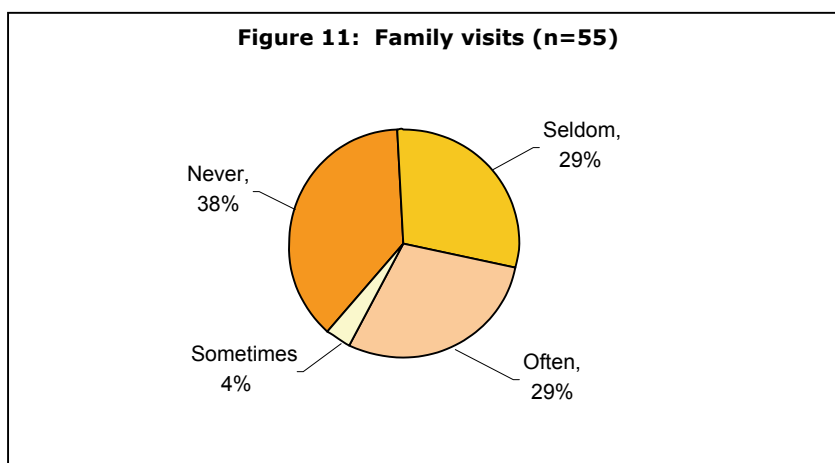
²¹⁵ Information from New York State Governor’s Office, cited in Report of the Special Rapporteur on violence against women, its causes and consequences, Ms Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1997/44, Addendum, Report of the mission to the United States of America on the issue of violence against women in state and federal prisons, UN Document, E/CN.4/1999/68/Add.2, 4 January 1999, para. 16.

accepted understanding of the terms. More focused research and data is needed, if more accurate conclusions are to be reached with regard to the history of domestic violence among women prisoners in Afghanistan.

3.14 FAMILY VISITS

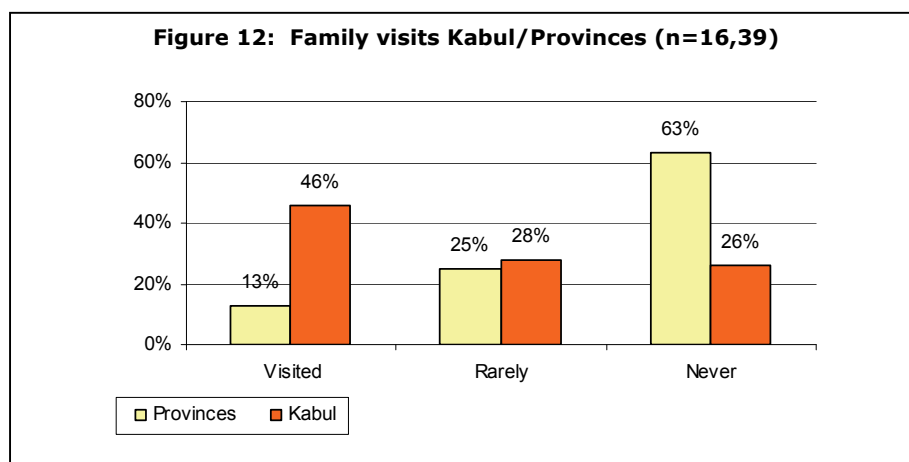
55 prisoners responded clearly to the question relating to the frequency of family visits. One response was unclear, so it has not been included in the figures below.

38% of the prisoners (21) said that their families never visited them; 29% (16) said that their families seldom visited them and 29% (16) said that their families visited them often. 4% (2) said that their families visited them sometimes. Thus the level of little or no family support is 67% (37 prisoners).



Not surprisingly, the distance from place of residence affects the number of visits, with 10 of the total of 16 arrested in the provinces never receiving visits and 4 rarely receiving visits. Thus, the percentage indicating minimal or no family support in the case of prisoners from the provinces, is 88%.

Of those arrested in Kabul, (39²¹⁶), 10 said that their families never visited them and 11 said that their families rarely visited them. The percentage indicating minimal or no family support in the case of prisoners arrested in Kabul is 54%.



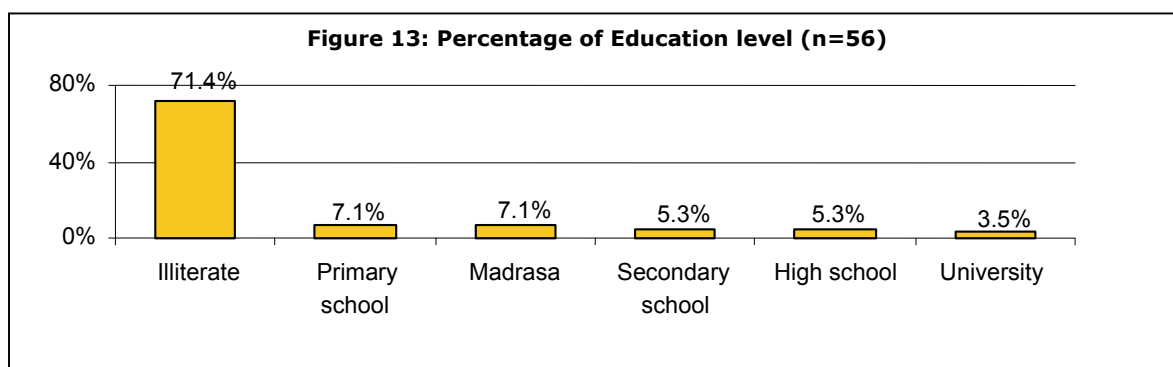
Research worldwide has shown that the lack of adequate communication with family members and children has a detrimental effect on the social reintegration of

²¹⁶ The one unclear response related to an arrest in Kabul and has not been included.

female offenders. If the women have children outside prison they suffer both from the separation itself and fear that the child will be taken away from them. The low level of support provided to female prisoners in Afghanistan, many of whom have more than one child outside prison, is very likely to affect their psychological and mental wellbeing.

3.15 EDUCATION

Of the 56 prisoners interviewed 71.4% (40) were illiterate, 4 had completed primary school, 6 had completed informal/religious education in a madrasa (though two of them said they were illiterate and have therefore been included in the figure for illiterate women), 3 had completed secondary school, 3 high school and 2 were university graduates.

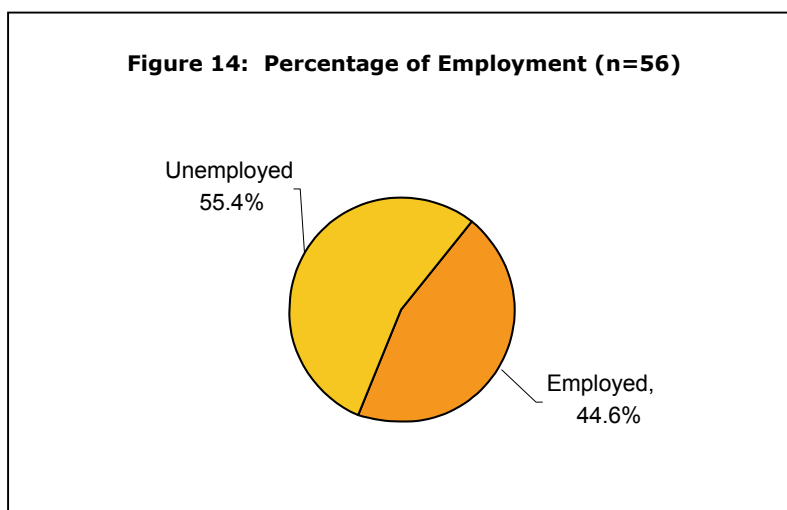


Thus, 28.6% of prisoners interviewed were literate, which is relatively high compared to the general female population of Afghanistan, which has a literacy rate of 21%.

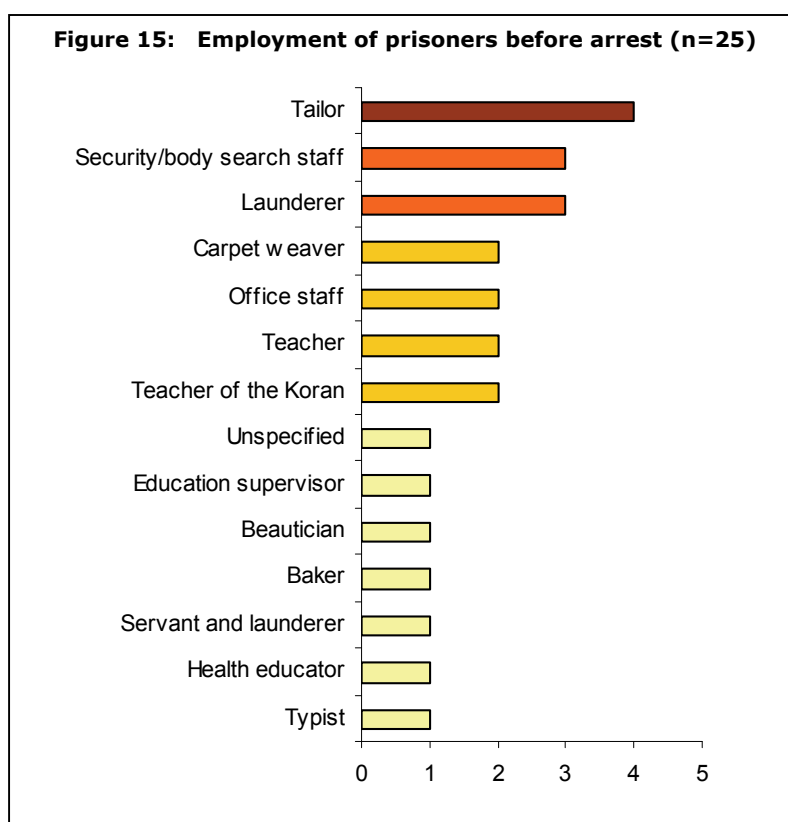
This is a very interesting and unusual situation. In most countries the level of education among prisoners is low, in comparison to the general population. However the information should be considered in light of the fact that the women included in this study generally represent those resident in an urban setting in the capital. 71% were arrested in Kabul. Among others, only 10% come from distant provinces, with only two of the women from the South. Thus, they are not representative of a large majority of Afghan women living in rural areas, and who also presumably commit "offences". However, at the same time, the women interviewed comprise more than one fifth of the total female prison population of Afghanistan, which is a large sample. The combination of these factors may indicate that generally those who find themselves in the formal legal system are those who come from urban settings, with a relatively higher level of education, whereas in rural areas where education levels are much lower, women will be penalised according to traditional, rather than statutory legal norms. It should however be noted that the relatively high literacy rate is mainly due to the higher rate among those charged with murder, representing 28.5% of the female prison population (See **Part II, Section 4.3 (e)**), so perhaps a generalisation should not be made. Further data from prisons in provinces and recording of trends over the coming years are required to take assumptions any further.

3.16 EMPLOYMENT AND JOB SKILLS

25 of the 56 prisoners were employed at the time of their arrest, or prior to that, which comprise 44.6% of those interviewed.



Those working were employed as teachers of the Koran (2), typist (1), health educator (1), teacher (2), tailor (4), office staff (2), servant and launderer (1), launderer (3), baker (1), carpet weaver (2), beautician (1), security/body search staff (3), education supervisor (1), with one unspecified. Others were unemployed. One person was begging.



38 prisoners were asked whether they had job skills. 42% (16) said that they had job skills other than domestic work.

Although the first group of 18 prisoners were not asked specifically what job skills they had, the professions of some, at the time of arrest indicate that at least 8 of them had job skills other than domestic work.

With some prisoners having more than one skill, the range of job skills covered are: typing (1), basic office skills (2), teaching (5), healthcare (2), tailoring (13), baking (1), embroidering (2) carpet weaving (3), crochet making (1), quilt making (1); bead work (1) and beauty treatment (1).

The 44.6% employment rate is high in relation to the employment rate of women in the general population which has been reported as 35.8% (see **Part I, Section 3.2** above). In comparison to other countries, this situation is again unusual, since research elsewhere has demonstrated that women are more likely to be unemployed at the time of their arrest, compared to the general female population. However, in Afghanistan, where the traditional role model for women comprises attending to the domestic needs of the house, rather than participating in the labour force, "*[t]here is an inverse relationship between wealth and work, i.e. the frequency of work increases as wealth decreases*".²¹⁷ 60 per cent of poor and very poor women are reported to undertake some income generating activity, compared to 46% of better-off women.²¹⁸ Further, as mentioned earlier, there are enormous regional disparities among women's participation in various gainful activities, with 81 to 90% of women in the North and North-East undertaking some kind of work, compared to very low levels in the southern, central and eastern regions. In light of this information, the 44.6% employment rate among the prisoners, mostly from Kabul and provinces close to Kabul, is not surprising. One could further argue that the percentage shows rather a low level of employment, when considered in light of the fact that 76.8% of the women are poor or very poor.

The percentage of prisoners with skills is also high, and the range significantly varied.

3.17. PRISONER ACTIVITIES

In order to assess the rehabilitation needs and interests of prisoners, all 56 prisoners interviewed were asked which classes they attended in prison.

38 prisoners were also asked what other classes they would like to be offered.

(a) Classes attended

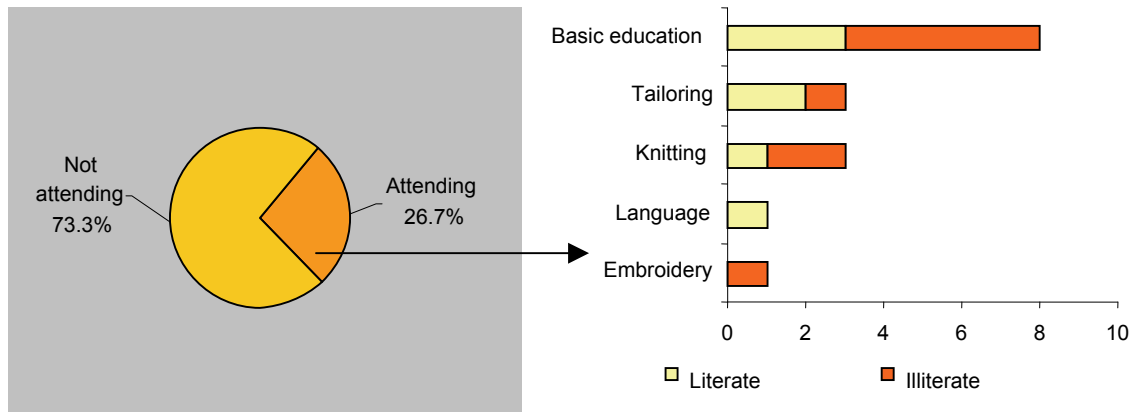
26.7% (15 of the 56 prisoners) were attending classes at the time of the interviews, including one who was attending two classes. 14% of those interviewed (8 prisoners) were attending basic education classes; 5.3% (3 prisoners) were attending knitting classes; 5.3% (3 prisoners) tailoring, 1.7% (1 prisoner) embroidery and 1.7% (1 prisoner) language classes²¹⁹.

²¹⁷ The World Bank, 2005, p. 57 The situation in India, appears to be similar to Afghanistan. Research conducted among women prisoners in Andhra Pradesh in 2000-2001 revealed that over 66% of the women were employed at the time of their arrest, which compares to a 42.5% average employment rate among women in India in 2002. A large majority of the women were employed as labourers. Thus the higher employment rate among poor women is also evident in this country. (See Shankardass, R. D., "Where the Mind is Without Fear and the Head is Held High", Mental Health and Care of Women and Children in Prison in Andhra Pradesh, Penal Reform and Justice Association (PRAJA), Penal Reform International (PRI) 2001; and www.educationforallindia.com)

²¹⁸ The World Bank, 2005, p. 57

²¹⁹ The prisoner attending language classes was also attending tailoring classes – she has been included in both figures.

Figure 16: Class attendance and literacy level (n=56,15)



Only 8 of the 40 illiterate prisoners (20%) compared to 7 of the literate prisoners (44%) were attending any classes. The latter figure includes the one prisoner who was attending two classes and is a university graduate.

The relatively low level of class attendance, and the particularly low level among illiterate prisoners, is not very surprising. It is likely that all prisoners need to be encouraged to take part in activities, and particularly those with no education, who may have less self confidence and feel they have less prospects of utilising any of the knowledge acquired. In addition, educational and skills training activities need to be part of a sentence plan determined according to each prisoner's needs on admission to prison, which may provide a further incentive.

(b) Classes requested

33 of the 38 prisoners (86.8%) who were asked what other classes they would like to have on offer, responded that they would like "tailoring" classes. This response is interesting, in light of the fact that tailoring classes are already offered to prisoners by AWEC trainers, and that none of the prisoners who requested tailoring classes were participating. Perhaps the demand is too high and more trainers and classes are needed. The high rate of requests for tailoring classes does indicate that dressmaking is one of the skills which provide women, illiterate or otherwise, with real prospects of gaining an income. This conclusion would correspond to information given under **Part I, Section 3.2**, which indicates that one fifth of women undertaking gainful employment work as tailors.

Five of the prisoners (13% of those asked) who requested tailoring classes also said that they would like to be taught any other skills that are on demand on the market.

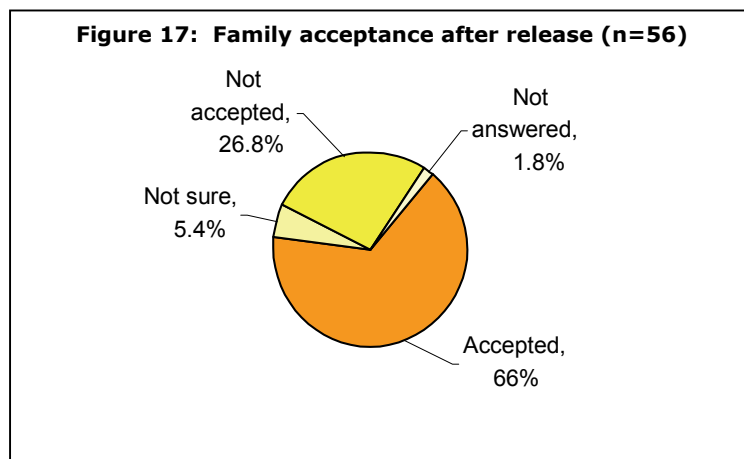
Two prisoners (3.5%) requested training in skills that would help illiterate women gain employment.

One prisoner requested a school for children. In fact the majority of women interviewed have concerns about their children's education and future, but it appears that one prisoner only used the opportunity to make a request in this respect.

Unfortunately, none of the 38 prisoners interviewed had participated in the psychological counselling offered by Medica Mondiale, so the women's views about the counselling could not be received.

3.18 POST RELEASE EXPECTATIONS

56 prisoners were asked whether their families would accept them back after their release. 66% (37) responded that they would, 5.4% (3) were not sure, 26.8% (15) said they would not and one did not respond.



38 prisoners were asked what they would like to do after their release.

76.3% (29) wanted to return to their families. 26 of the 29 believed that their families would accept them.

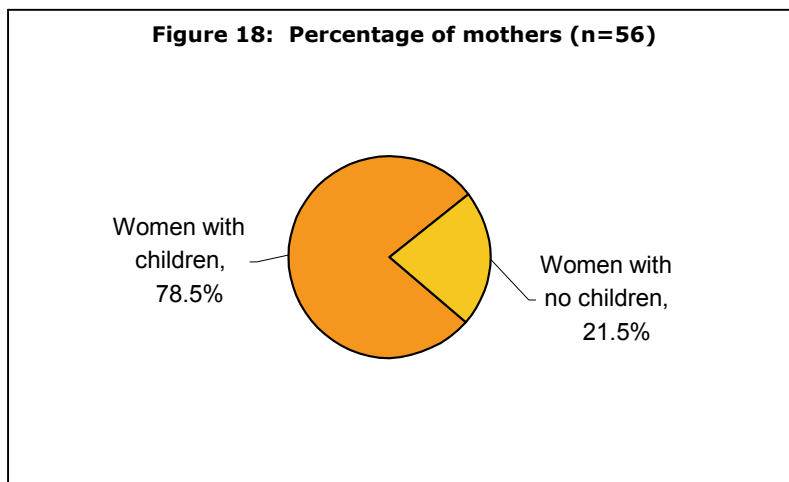
Of the 9 who did not want to or could not return to their families 3 wanted to lead self-supporting lives on their own; 2 were not sure what they would do; 2 were planning to apply to the Ministry of Women's Affairs to be placed in a safehouse, one would either marry the boy with whom she eloped or go to a safehouse²²⁰ and one whose husband would not accept her, would return to her parents.

The question of whether the prisoners felt to be at risk of murder (honour killings) after release was not specifically asked. Three out of 56 volunteered the information themselves. One woman said that her brother had threatened to kill her after release and another said that her husband would kill her. The first is charged with running away and adultery and the second with adultery. They are both of Pashtun ethnic origin. One woman said that she would return to her husband, but her uncle had threatened to kill her. She is also charged with running away and adultery, having eloped with and married a person against the wishes of her uncle. She is of Tajik ethnic origin.

²²⁰ It should be noted that there were only three cases of running away and adultery among those questioned.

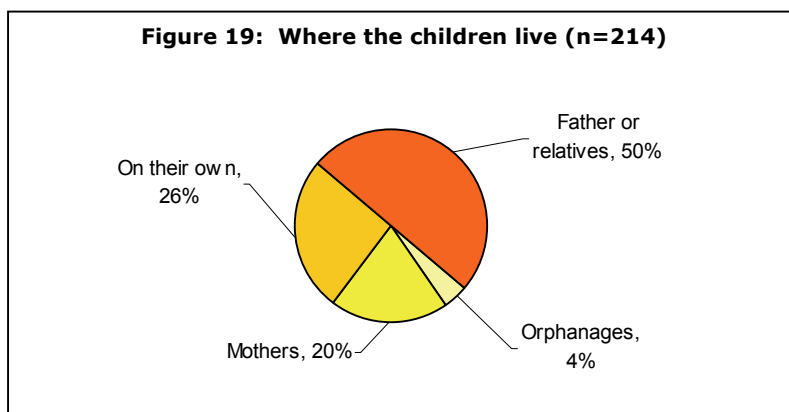
3.19 WOMEN WITH CHILDREN

78.5% (44) of the 56 women interviewed are mothers. Many of them have one or more of their children in prison with them, the others mainly staying with relatives or the father. A very few are in orphanages and the children of those who are older are married and/or living on their own.



All 56 women were asked about the situation of their children, if they had any.

There were 43 children living with their mothers in December 2006. Another 107 children living with fathers or relatives, 9 children were in orphanages and 55 children were grown up and living on their own, many of them married.



Research worldwide has shown that both the imprisonment of children with their mothers and their separation from them at an early age, have extremely harmful effects on the children. Thus, the imprisonment of the mother entails punishment for their children as well. The figures from Pul-e Charki illustrate, very clearly, the high number of children who are affected by the imprisonment of mothers.

4. PUL-E CHARKI PRISON: CASE ANALYSIS

4.1 MORAL CRIMES

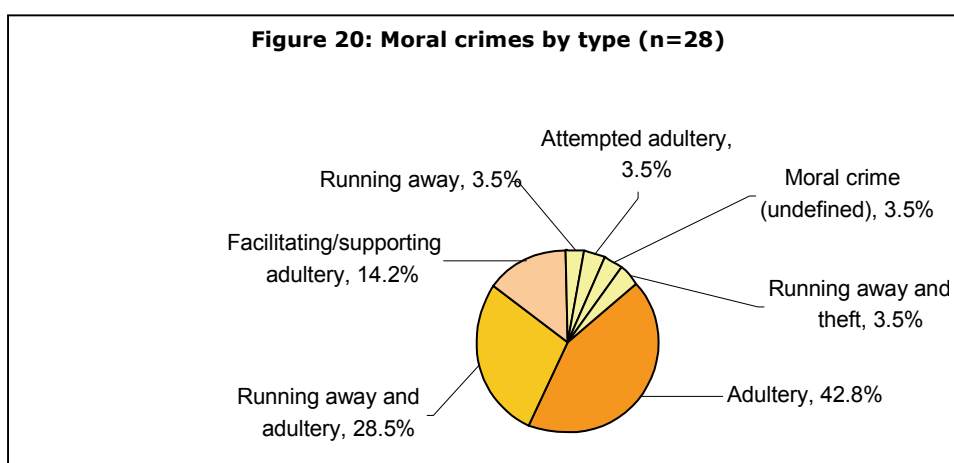
Crime	Family treatment	Economic situation	Education	Age at 1 st marriage	Will family accept her back	Ethnicity	Place of arrest
R.A.+zina	Moderate	Very poor	Illiterate	10	yes	Tajik	Shaber-gahan
R.A.+zina	With negligence	Medium	Illiterate	single	brother will kill	Pashtun	Kabul
Zina	Good	Poor	Illiterate	15	yes/not sure	Tajik	Kabul
R.A.+zina	Good 1st husband beat her	Poor	Illiterate	13 (forced)	yes	Tajik	Kabul
R.A.+zina	Moderate	Very poor	Primary	12 (engaged)	yes (uncle will kill)	Tajik	Kabul
Zina	Good	Very poor	Illiterate	14	yes	Tajik	Kabul
Zina	With negligence	Poor	Illiterate	20	husband will kill	Pashtun	Wardak
R.A.+zina	With negligence	Very poor	Illiterate	single	no	Hazara	Kabul
Facilitating zina	Good	Very poor	Illiterate	14	yes	Hazara	Kabul
Zina	With negligence	Poor	Illiterate	14	no	Hazara	Kabul
Zina	With negligence	Poor	Illiterate	not mentioned	yes	Tajik	Kabul
Zina	Good	Poor	Illiterate	14	yes	Tajik	Kabul
Moral crime	With negligence	Poor	Illiterate	14	no	Hazara	Kabul
Zina	With negligence	Poor	Illiterate	14	no	Hazara	Kabul
Zina	Good	Poor	Illiterate	around 18	yes	Tajik	Kabul
Zina	Father beat her	Very poor	Illiterate	single	yes	Hazara	Kabul
Attempted zina	Good	Very poor	Illiterate	not mentioned	yes	Tajik	Kabul
R.A. + Zina	With negligence	Very poor	Illiterate	19	yes	Tajik	Ningarhar
Supporting zina	Good	Very poor	Illiterate	10	yes	Pashtun	Parwan
R.A. + zina	With negligence problems.	Very poor	Illiterate	19 (exch)	yes (parents)	Hazara	Kabul
Zina	Good	Poor	Secondary	18	yes	Tajik	Kabul
Running away	Good Problems with husband.	Very poor	Illiterate	13 (forced)	Yes	Pashtun	Kabul
R.A. + zina	With negligence	Very poor	Illiterate	single	no	Tajik	Kabul
Supporting zina	Good Probs. w. 1st wife + children	Very poor	Secondary	12	yes	Tajik	Parwan
R.A + theft	Good 1st husband beat her	Medium	High school	14	yes	Tajik	Kabul

Crime	Family treatment	Economic situation	Education	Age at 1 st marriage	Will family accept her back	Ethnicity	Place of arrest
Supporting zina	Good	Very poor	Illiterate	24	No (husband)	Hazara	Kabul
Zina	Good	Very poor	Illiterate	17	Yes	Tajik	Kabul
Zina	Good	Very poor	Illiterate	single	Yes	Hazara	Kabul

R.A.: Running Away

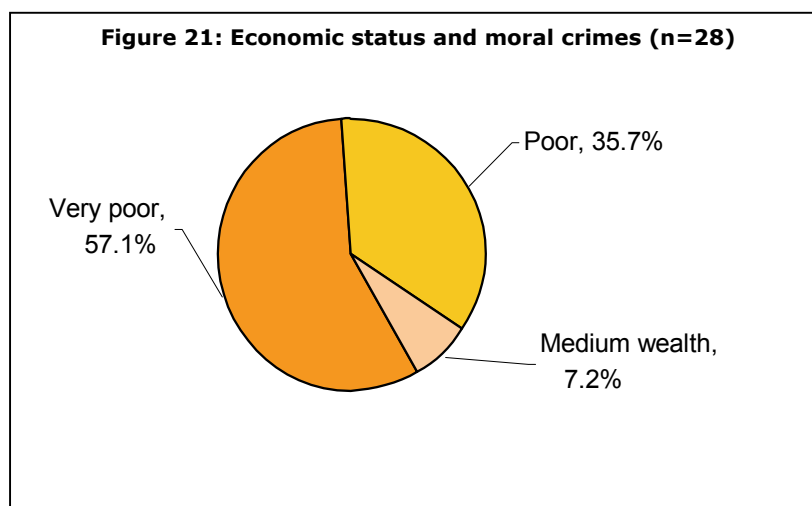
Table 2: Moral Crimes Analysis

50% of the prisoners (28) are charged with or convicted of moral crimes. The majority, comprising over 70% have been charged with either “zina” or “running away from home and zina”. The rest involve running away or zina in some form – either in combination with another crime or supporting/facilitating the zina of another woman and in one case “attempted zina”.



(a) Economic status

92.8% (26) of prisoners who committed moral crimes are poor or very poor, compared to 76.8% of the general female prison population and 43.8% of those charged with murder. (See **Part II, Section 4.3 (b)** below).



(b) Education

85.7% (24) of the 28 prisoners charged with or convicted of moral crimes were illiterate. One had finished primary school, 2 had completed secondary school and 1 was a high school graduate.

The 14.3% literacy rate of those who are charged with moral crimes is low compared both to the general female population (21%), to the literacy rate of the prisoners in Pul-e Charki at the time of interviews (28.6%) and very low compared to those charged with murder (56.2%). (See **Part II, Section 4.3 (c)**)

(c) Child marriages

In the cases of 14 of the 21 married or engaged women (66.6%), where the age of marriage was given, the prisoners had married at or below the age of 15. Thus, the ratio of child marriages among those charged with moral crimes is high, compared to the general female population (57%) and marginally higher than the rate of child marriages among the prisoners in Pul-e Charki at the time of the interviews (64.7%).

(d) Will their families accept them?

67.8% (19 of the 28 prisoners) said that their families would accept them after release, including one case, where the husband would accept his wife, but the uncle had threatened to kill her. One was not sure. In 8 cases (28.5%) the families would not accept the women after release, with 2 of them stating that their relatives would kill them.

The fact that the only two women who were of Pashtun ethnicity were expressly threatened with honour killings after release adds weight to the assumption under **Part II, Section 3.9**, that Pashtun women who commit moral crimes would generally be punished by their families and communities, rather than being referred to the formal legal system.

(e) Place of Arrest

82 per cent of the women who had committed moral crimes were arrested in Kabul. This may indicate that those who commit moral crimes in rural areas are more often dealt with in the informal legal system. It could also be connected to the number of moral crime cases being referred to the Supreme Court from provinces and the transfer of defendants to Kabul during this process. Figures from provincial prisons are required to understand the situation better.

(f) Commentary

The figures show severe economic and educational disadvantage among the prisoners who are imprisoned for moral crimes, the difference between them and those convicted of murder being particularly noteworthy. It is difficult to draw conclusions, but one reason may be that the higher the level of education and economic situation, the less are women likely to be accused of moral crimes by their husbands or other relatives, who are also likely to be more educated and perhaps less conservative. It could also be that the more educated the women, the less likely are their husbands or relatives able to use them as scapegoats for their own purposes.

Additional data from provincial prisons is needed to take these arguments any further.

ZINA: CASE EXAMPLE

Case 1: Involves a woman in her thirties. She has been sentenced to six years imprisonment for adultery and at the time of writing was awaiting the decision of the Supreme Court. She has already served almost two years of her sentence. She has one child, who is with her in prison. She belongs to very poor family of the Pashtun ethnic group. She is illiterate. Her father died when she was very young. She got married at 20 and moved in with her in-laws. She says that she experienced many difficulties in her new home and was subjected to beatings by her husband on a regular basis. One day, her husband killed a man due to a land dispute and was accused of murder. Her husband claimed that he had committed the murder because his wife had committed adultery with the victim. She and her husband both attended the trial; they were asked many questions. The woman had no witnesses to prove that she had not committed adultery. The judge believed the husband's version. She was sentenced to one year imprisonment at the primary court, which was increased to six years at the secondary court. She says that she asked for a divorce from her husband during the secondary court hearing, which influenced the sentence, leading to a significant increase. Her lawyers have confirmed that her story reflects the version on her file.

The prisoner says that after release she cannot go back to her family. Her husband will kill her. Her mother is very poor and her brother too poor to support her. She asked assistance to find an organisation for which she could work, adding that she had tailoring skills.

The case example above illustrates the way in which women can easily be made scapegoats by their husbands, particularly to cover up their own offence or to reduce the severity of the sentence they may receive for their own crime. This latter is made possible by the existence in the Penal Code of an article which exempts men from punishment for laceration and murder, when they kill their spouses or relatives in the name of honour. The prison sentence for honour crimes cannot exceed two years as a "*Ta'z'ir*" punishment. (Penal Code, Article 398)

Honour killings are not unique to Afghanistan. They are widespread in many countries of the Middle East. In Turkey, where men could also receive reductions in their prison terms, when the murders they committed constituted "honour killings", an amendment was made to the Penal Code in 2004 to remove this right. The justification of the article relating to "unjust provocation", now states that the article cannot be applied to honour killings (Article 29).²²¹ But this is not seen as sufficient. Women's organisations are campaigning to include "honour killings" in an article which already defines murders committed as blood feuds as aggravated crimes (Article 82, relating to "Aggravated Homicide").²²² The reforms in 2004, added the term "customary killings" to this article, which is associated with the practices in Eastern Regions of Turkey where a death warrant is passed on the female member of the family, by an extended "family assembly", if she dishonours the family with "inappropriate conduct". The Shadow NGO Report on Turkey's Fourth and Fifth combined Periodic Report to CEDAW notes: "*Honour killings*,

²²¹ Shadow NGO Report on Turkey's Fourth and Fifth combined Periodic Report to the Committee on the Elimination of Discrimination against Women, for submission to the CEDAW 32nd Session, January 2005, prepared by Women's Human Rights (WWHR) – New Ways, endorsed by the Women's Platform on the Turkish Penal Code, p. 6

²²² *ibid.*

however, is a more inclusive term that entails not only "customary killings", but also any individual acts of murder of women by men which are motivated through the perception that a man's personal understanding of "honour" has been blemished"²²³, and therefore calls for the change of term from "customary killings" to "honour killings" in Article 82.

It seems that an amendment to Article 398 of the Afghan Penal Code would also help reduce murders committed in the name of honour, as well as preventing women being used as scapegoats by their husbands, as in Case 1, above.

4.1.1 RUNNING AWAY / ELOPEMENT

A total of 10 cases involve running away.

(a) Family treatment

An analysis of "running away" cases as a separate category, demonstrates that only 3 out of the 8 women charged with "running away and adultery" said that they were treated well or moderately well by their families, and all of these referred to second marriages. Their crime constituted running away and committing adultery with their current, 2nd husbands. The one woman who is charged with "running away" only, said that her family treated her well, but she ran away with her children, due to many problems with her husband. The one woman who is charged with "running away and theft" is treated well in her second marriage, but was subjected to domestic violence by her first husband. In the other case where domestic violence by the first husband was mentioned, it involved severe beatings.

(b) Child and/or forced marriages

Of the 10 women imprisoned for charges involving running away, one was married at 10, one was forced to engagement at 12, two were married at 13 (both mentioned being forced), one was married at 14, two were married at 19 and three were single. The ratio of those who were married or engaged at or before 15 is thus 71.4% (5 of the 7 married women). The husband of one of the women, who married at 19, already had a wife, could not provide for his second wife and did not treat her well. The other woman who married at 19 was exchanged against her will with her brother's wife and was not happy in her marriage.

(c) Commentary

Although the sample of ten cases is quite small to reach general conclusions, these figures demonstrate a clear link between low literacy rates, early and forced marriages, unkind treatment/domestic violence and running away from home. The report published by Medica Mondiale in 2004, also came to this conclusion as a result of the analysis of cases relating to elopement, noting that: "*[t]he majority of elopement cases are an outcome of forced marriage or violence inflicted upon the girl. If the law on marriage was applied accurately, then the majority of the women/girls would not end up in prison. As these cases often involve uneducated and young girls, the process for reducing the number of cases will be slow.*"²²⁴

The cases below illustrate these points well. They also demonstrate how the unequal treatment of men and women in the case of divorce tends to expose women, unable to divorce their husbands easily or at all, to the risk of *zina* prosecutions, since their second marriage will be invalid in the face of the existing

²²³ *ibid.*

²²⁴ Medica Mondiale, 2004, p. 13

first marriage. The position of men is much better since they can marry more than one woman and can repudiate their wives without much difficulty or procedure.²²⁵

RUNNING AWAY AND ZINA: CASE EXAMPLES

Case 2: The prisoner is in her twenties and has been sentenced to six years imprisonment, for running away from home and adultery. Her sentence has been confirmed by the Supreme Court. She has already served two years of her sentence. She comes from a poor family and is illiterate. Three of her five children are with her in prison.

Her father was killed in a blood feud when she was very young. Her mother was forced by an elder relative to marry her daughter off (the prisoner), when she was only 13 to a man much older than herself. She moved in with her in laws. Her husband used to beat her violently on a regular basis. He was addicted to drugs and tried to force his wife into prostitution. She spent 11 years with her husband, when finally he gave her a divorce. After two months she married a second time and was happy in her second marriage. However, following two years into her second marriage, her first husband accused her of running away from home. She, together with her second husband were arrested and taken to Welayat Kabul. She claims that during the investigation period her first husband bribed the criminal police to destroy the divorce certificate relating to her first marriage and her second marriage certificate. She claims that during her trial her first husband accepted that he had given her a verbal divorce in the presence of the family elders and that this fact was noted in her file. However, this was not enough to prove that she was divorced from her first husband and she was therefore convicted of running away and adultery. She was sentenced to 10 years imprisonment at the Primary Court, reduced to two years by the Secondary Court and increased to six years by the Supreme Court.

Her lawyer has confirmed that the story told by the prisoner reflects the version on her file.

The prisoner's family visits her very rarely. Her mother has not visited her for almost a year and a half. She is attending basic education classes in prison, run by AWEC.

Case 3: The prisoner is in her thirties. She has been sentenced to 12 years' imprisonment for running away from home and adultery. At the time of writing she was awaiting the decision of the Supreme Court. She has already served three years and eight months of her sentence, three years in a district jail and eight months in Pul-e Charki. She has five children. Two of them are with her in prison.

The young woman belonged to a very poor farmers' family. She is illiterate. When she was only 10 years' old she was forced to marry a man much older than herself. After living with her husband for seven months, he verbally divorced her. She returned to her parents and lived with them for some years. Later, she married her neighbour and spent ten years with him. She was happy in her new marriage. One day, when she had gone to visit her father, he called her first husband and together they accused her of running away from home. Her father insisted that she leave her current husband and return to her first husband. She told her father that she could not do that, that she had spent ten years with her husband and had five children from him. Then the second husband arrived with the police and they were all taken to the police station. At the police station the first husband accused his former wife of running away from home, although she was legally married to her second

²²⁵ Commentary from Dr Martin Lau, 8 February 2007.

husband. She has no lawyer. Her father-in-law is following her case. Lawyers consulted say that she was most likely to have been sentenced because she could not prove her divorce, which was only a verbal divorce.²²⁶

The prisoner says that after release she will return to her second husband. She is attending tailoring classes run by AWEC in prison.

Case 4: The prisoner is in her early twenties. She has been sentenced to five years' imprisonment for running away from home and adultery by the Primary Court. At the time of writing she was awaiting the decision of the Secondary Court.

The young woman belongs to a very poor family. She has primary school education. Her father died some years ago. Her mother worked as a cleaner to feed her three children. They lived with her maternal uncle. She was subjected to domestic violence in her uncle's house. Her uncle, who provided them shelter, forced her to get engaged with his son when she was only 12, although neither the girl nor the boy were willing. Later she fell in love with another boy and ran away with him to another city. They got married and received all documents registering their marriage. Her uncle, however, complained to the police and they were arrested when she was already nine months' pregnant. She is accused of having extra-marital sex, with her current husband, prior to marriage.

Her uncle's family are not prepared to forgive her and in the meantime have requested another girl from the prisoner's family to marry their son.

The prisoner's husband has also been sentenced to 5 years' imprisonment. She says that she will go to her husband after release, but her uncle's family has threatened to kill her.

Her lawyer has confirmed that the story related in the interview reflects the case in her file.

4.2 KIDNAPPING

7 of the 56 women interviewed are held on charges of kidnapping. As mentioned earlier, the 12.5% ratio reflects a significant increase when compared to the figures in 2003, when "kidnapping" accounted for 3% of the cases of women held in Kabul.

An analysis of the information provided by women interviewed suggests that the charge/conviction may be unsound in most cases. It must be stressed that, except for one, the stories are those of the prisoners and have not been checked with lawyers. In the one case where the lawyer's version was requested, the woman's innocence was said to have been confirmed and she was later released on the kidnapping charge (Case 5).

In only one case, in which two women are involved, does the charge appear to be clearly valid. In fact, this case may be a positive example of punishment for attempted forced marriage.

Commentary

The information about the cases given below, which are all cases except for the case of forced marriage referred to above, suggests that in three cases, the men who accused the women of kidnapping had particular motives to have them

²²⁶ Meeting with Angeles Martinez, Head of Mission and Massouda Nawabi, Legal Aid Fund Project Coordinator, Medica Mondiale, 11 December 2006

imprisoned (cases 5, 7 and 8); in one case the woman accused of kidnapping claims that she was attempting to run away from home (case 6) and in one case the girl and boy may be victims of someone else's crime or overstepping of moral codes (case 9).

KIDNAPPING: CASE EXAMPLES

Case 5: Involves a woman who gave accommodation to a young girl who had run away from home. The girl spent one month and ten days with the woman, whose son married the girl during this period. The woman's brother-in-law, who allegedly had a family dispute with the woman, informed the police and the woman, her son and the girl who had run away were arrested on charges of kidnapping. The primary court convicted the woman to three years', her son to one year and the daughter-in-law to one year of imprisonment. The daughter-in-law was in the juvenile prison²²⁷, due to her young age. It is not clear what the daughter-in-law was charged with, though it can be assumed that she was charged with running away and possibly adultery. Since the interview, the woman's lawyer informed that the woman was released on charges of kidnapping, but is now in detention based on two additional disputes with the family of her husband which involves civil accusations about land. This information appears to confirm the woman's allegation regarding the reason why her brother-in-law reported her to the police in the first place.

Case 6: Involves a woman who was married in exchange with her uncle's wife at the age of 10. Her husband was 13. She was subjected to domestic violence by her mother-in-law on a regular basis. The woman, now 22, decided to run away from home to her uncle's house. Since it would be strange/unacceptable for her to leave the house on her own, she took her young brother-in-law with her on the pretext of taking him to the doctor in hospital. She was planning to run away from the hospital. She was discovered by her husband on the street near the hospital and was arrested on charges of kidnapping. The first and secondary courts sentenced her to two years' imprisonment.

Case 7: Involves an elderly widow who has been convicted to 11 years' imprisonment by the Supreme Court for kidnapping her daughter. The woman had been living in Pakistan for many years with her son. She had not seen her daughter since the daughter's marriage, and she decided to come to Afghanistan to visit her. On her return to Afghanistan, her son-in-law could not give her any information about her daughter's whereabouts and accused the mother of having kidnapped her. According to the prisoner, the daughter was still missing at the time of the interview. The woman claims that her son-in-law bribed the police to have her imprisoned. She also claims that she was beaten by the police to confess to the crime. She did not have a lawyer at any stage of the proceedings.

Case 8: Involves a young girl, who is charged with kidnapping her brother-in-law's 3 year old daughter. The girl was forced to marry at the age of 11, by the decision of a *jirga*, to settle a family dispute. She was subjected to domestic violence by her in-laws. She claims that she had gone to visit her uncle and her husband punished her for undertaking this visit without his permission and arranged for her arrest at the time of her visit. At first she did not know the pretext for her arrest, but during her investigation she found out that she was charged with kidnapping her brother-in-law's daughter, whose photographs were in her investigation file. She says that the photos were taken by her brother-in-law, during her visit to her uncle, who handed his daughter to her in order to take the photos. She claims to have been

²²⁷ Those below the age of 18 are held in juvenile prisons according to the new Juvenile Code of Afghanistan.

beaten by the investigator and forced by her brother-in-law during her interrogation to confess to kidnapping, and she signed the confession with her thumb during the interrogation. She has been sentenced to 16 years' imprisonment by the secondary court and is currently awaiting the decision of the Supreme Court. Her case was processed while she was in a provincial prison and she had no lawyer representing her during the proceedings.

It should also be mentioned that this illiterate girl said that she had no interest in attending any of the education or skills training classes in prison, commenting that there was no point. She wants protection in a safe house after release.

Case 9: Involves a girl of 16, who should be in the juvenile prison, due to her young age.²²⁸ She, together with her 12 year old brother-in-law, has been charged with the kidnapping of a baby. She was married very young – exchanged with her uncle's wife – and lived with her in-laws' family. Both she and her husband came from very poor families and survived by begging. She claims that, when she was begging with her 12 year-old brother-in-law one day a car stopped by them and a baby was thrown from the car in front of them. The car disappeared; they were arrested by the police on charges of kidnapping. She said she had no information about the child's identity. Her case it at primary court level.

4.3 MURDER

28% of cases (16) of the 56 prisoners interviewed relate to murder charges. Sentences ranged from 7 years' imprisonment to the death penalty. Four sentences had been confirmed at the time of writing. Three women had been sentenced to 10 years' imprisonment and one to 7 years.

Sentence	Victim	Economic Circumstance	Education	Place of Arrest
7 yrs (final)	step-daughter	Medium	Secondary	Kabul
18 yrs (2nd)	husband	Poor	Madrassa	Kabul
16 yrs (2nd)	father-in-law	Poor	Illiterate	Bamyan
10 yrs (final)	husband	Medium	High school	Kabul
12 yrs (2nd)	husband	Medium	University	Kabul
20 yrs (2nd)	first husband	Rich	University	Mazar
Doesn't know	not mentioned	Medium	Primary	Kabul
10 yrs (final)	husband	Very poor	Illiterate	Badakhshan
16 yrs (2nd)	husband	Very poor	Illiterate	Wardak
DP (1st)	father	Poor	Illiterate	Nimroz
20 yrs (1st)	multiple	Medium	Illiterate	Kabul
12 yrs (2nd)	sister-in-law	Very poor	Madrassa	Parwan
18 yrs (2nd)	sister-in-law	Medium	Madrassa	Kabul
10 yrs (final)	thief/rapist	medium	Illiterate	Kabul
10 yrs (2nd)	husband	Poor	Illiterate	Kabul
DP (2nd)	husband	Medium	High school	Kabul

Table 3: Murder cases analysis

(a) Victims

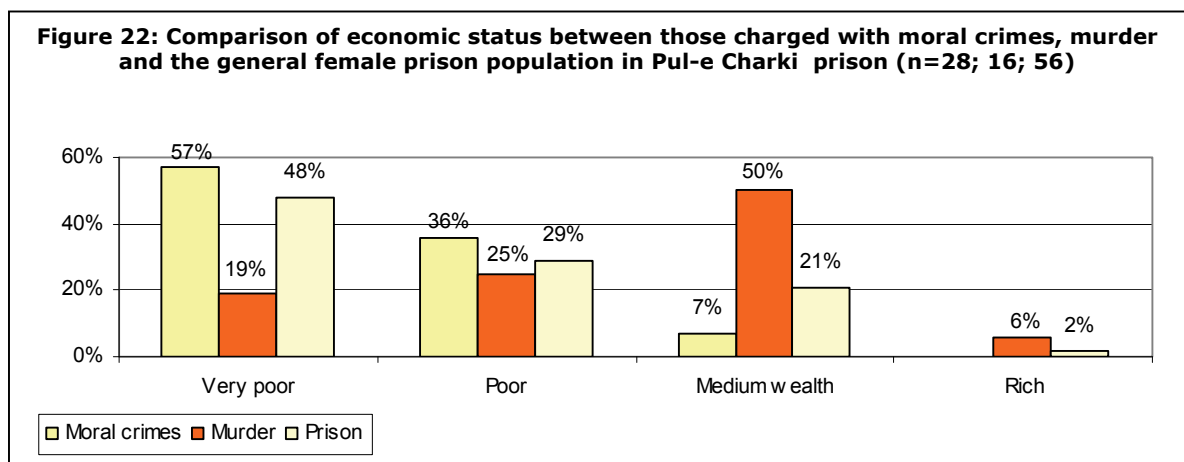
In 50% of cases (8) the victims of murder were the husband or first husband of the women charged with murder. In all except one of the other cases, the victims were

²²⁸ Juvenile Code of the Islamic Republic of Afghanistan, 23 March 2004, Article 4.

someone close to the defendant, either her father or a member of her in-laws' family. This corresponds to worldwide statistics, where victims of women, who are convicted of murder, are their male partners in the majority of cases, and if not, someone else who is close to them. The murder is often a reaction to violence and abuse perpetrated by the murder victim. However, since the fact whether these women are really guilty of the crime with which they are charged appears unclear in many cases, the comparison is not entirely sound.

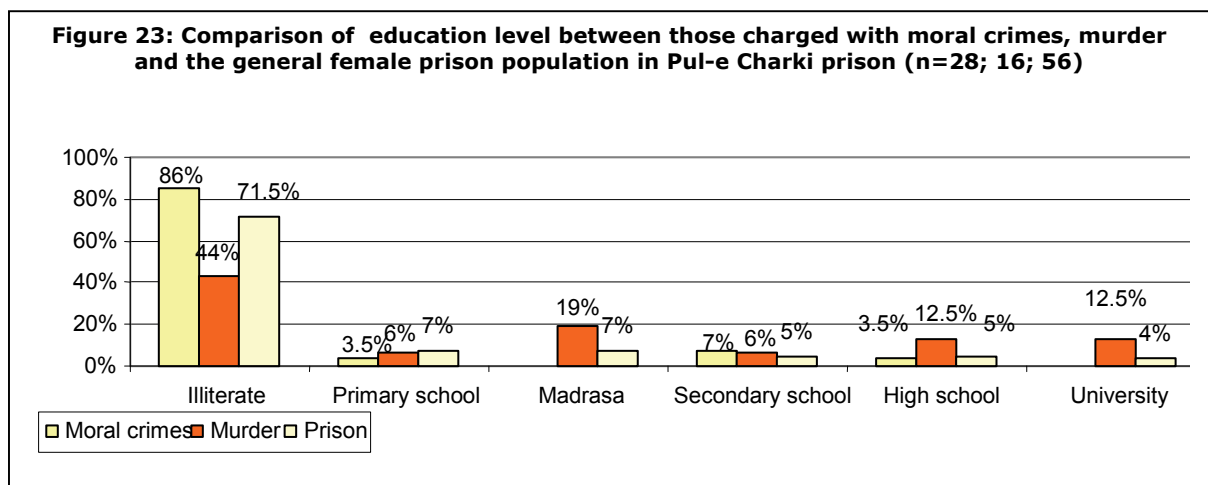
(b) Economic Status

50% of the prisoners (8) said they had medium level wealth. 43.8% (7) said they were poor or very poor. One prisoner (6.2%) described herself as rich. Thus, the wealth level of prisoners charged with murder is high in comparison to the general female prison population in Pul-e Charki, with a 76.8% poverty rate, and very high compared to those charged with moral crimes, with a 92.8% poverty rate.



(c) Education

The literacy rate among women charged with murder is also very high, at 56.2%, both compared to the general female population rate of 21% and the female prison population in Pul-e Charki, where the literacy rate is 28.6%.



The relatively high economic status and literacy rate among those charged with murder is noteworthy. It is very difficult to draw conclusions from this information. Further data and research is needed to establish any patterns, if they exist.

(d) Place of Arrest

62.5% (10 of the 16 prisoners) were arrested in Kabul, compared to 71% of the general prison population and 82% of those arrested for moral crimes.

(e) Commentary

The women all claim to be innocent. It is impossible to offer entirely reliable commentary with regard to the murder cases, based on the stories related by the women, without additional information from their lawyers and without access to their case files. In one case where the story of the woman concerned was checked with her lawyer, it was established that the crime was proven.²²⁹ Her case is not included in the examples given below.

Some common elements that emerge from the account of incidents leading to the arrest of the women concerned, are that:

1. A number of women are co-accused of murder together with a male member of their families, including two cases of apparent self-defence by the husband/fiancée;
2. The majority of cases involve some land dispute and/or inheritance issue and in most of these cases the imprisonment of the women, allows for another, male member of the family, to gain access to the property;
3. In a number of cases the crime was reported by a male member of the extended family, with accusations against the women, giving the distinct impression that women are being framed for various reasons, including the reason referred to in point 2 above.

MURDER: CASE EXAMPLES

Case 10: Involves a woman who was sentenced to 16 years by the secondary court, convicted of the murder of her father-in-law, together with her husband. She comes from a poor family and is illiterate. According to the prisoner, the father-in-law had land disputes with his brothers and a long time ago had killed a relative due to a land issue. The father-in-law apparently has a lot of property in Bamyan. She recounts a story in which the father-in-law was killed by his nephew, and the nephew put the blame on the woman and her husband, so that he could acquire the property. She and her husband were arrested. She has had access to a lawyer.

Case 11: Involves a woman who has been sentenced to 12 years by the secondary court, for the murder of her husband. She says that during a visit to her brother-in-law with her husband, her brother-in-law shot her husband due to family disputes. She and her sister-in-law were present during the incident. She claims that her brother-in-law sent her with her children to the provinces and did not allow her to report the murder. She returned after one year to ask about her husband's properties. Allegedly, her brother-in-law then accused her of the murder of her husband and reported her to the police, so that he, rather than she could keep her husband's property. She says that she was beaten by her brother-in-law and had physical evidence on her body which was noted in her file during the first court hearing, but had disappeared from her file during the second court hearing. She

²²⁹ Meeting with Ms Angeles Martinez, Head of Mission and Ms Massouda Nawabi, Legal Aid Fund Project Coordinator, Medica Mondiale, 11 December 2006

claims that her brother-in-law was never investigated about the crime. The prisoner did not have access to legal counsel at any stage of the proceedings.

Case 12: Involves a woman who been sentenced to 20 years, by the secondary court, convicted of the murder of her first husband. During the incident she was in her first husband's house, where she was visiting her children. Her second husband called and asked her to come back, but the first husband would not let her go, trying to persuade her to stay with him. The second husband came to the house and, following an argument with the first husband, killed her first husband with a knife. Both she and her second husband were arrested and both convicted of her first husband's murder. She has had access to legal counsel.

Case 13: Involves a woman who has been sentenced to 10 years by the Supreme Court, convicted of the murder of her husband. She is illiterate. She says that her husband was killed due to political reasons. Her cousin was arrested 20 days after her husband's death. Her brother-in-law claimed that she had instigated the murder and arranged for her arrest 50 days after her husband's murder. She did not have a lawyer and the trial took place in her absence. She claims that, during the secondary court period her brother-in-law asked her to marry him, promising that he would ask for her forgiveness if she accepted. She refused. She spent a total of 3 years in provincial prisons, before her case was transferred to Kabul, where a sentence of 10 years' imprisonment was passed. During her investigation, the prosecutor asked her to press her thumb as signature on three documents. At the trial at the secondary court the judge said that she had already confessed to her crime and made her sign another paper, with her finger print. She alleges that her brother-in-law took all her properties. The prisoner had no lawyer.

Case 14: Involves a young woman of 19 convicted, together with her fiancée, of her father's murder. At the time of writing the case was at the secondary court level. The woman was married at 14. Her husband divorced her after some time due to family problems. Her parents provided her shelter and financial support after her divorce. She then got engaged with someone else. She claims that her father tried to sexually abuse her fiancée, and that her fiancée attacked her father and killed him in self-defence. She ran away with her fiancée, but they were both arrested. During the trial at the primary court, her fiancée confessed to the crime. But both were sentenced to death. The young woman had no access to defence council at any stage of the proceedings.

Case 15: Involves a woman who was charged with murder, together with her disabled husband. The woman claims that a thief entered their house in Kabul during the night and tried to rape her. Her husband killed the thief with a hatchet to defend her. The next door neighbour informed the police and both husband and wife were arrested on murder charges. The woman has been sentenced to 10 years' and her husband to 6 years' imprisonment due to his disability. The detainee had no lawyer. This case is the only case where the victim is someone other than the husband or relative of the accused woman.

ADULTERY / MURDER: CASE EXAMPLE

Case 16: The one unclear case which involves both adultery and murder is interesting in terms of demonstrating the way in which prisons can be perceived as places of protection for women caught up in blood feuds (and in other cases at risk of honour killings).²³⁰ In this case the husband of the woman prisoner, who himself was imprisoned for murder, purposefully claimed that his wife had committed adultery with the man whom he had killed, to ensure that she would

²³⁰ Details of this case have been withheld to protect the identity of the prisoner.

also be imprisoned, in order to protect her from being killed as part of a continuing blood feud. The wife who received a long prison term confessed to the crime on this basis – though it seems unclear what she has confessed to. She may have confessed to being an accessory to murder, rather than only adultery, according to the story related. The prisoner does not have a lawyer; therefore the information could not be verified. Information on whether the husband's sentence was reduced in light of his declaration that his murder constituted an honour crime was not available at the time of writing.

5. THE SOCIAL REINTEGRATION OF FEMALE PRISONERS: GENERAL CONCLUSIONS

The focus of this document is the social reintegration of female offenders, comprising rehabilitation during imprisonment and post-release support. However, strategies to address the social reintegration needs of female offenders in Afghanistan cannot be implemented in a vacuum, without reference to a wide range of issues that directly or indirectly contribute to their success and sustainability. In the long term, there is a need to develop a policy covering the treatment of female offenders in Afghanistan from the moment they come in contact with the criminal justice system. The aim should be to prevent women being imprisoned unnecessarily and unfairly. Measures should be put in place to divert non-violent offenders from prosecution, to provide a range of alternatives to pre-trial detention, to refer victims of violence to appropriate support agencies, relevant NGOs, MOWA and safe houses, in order to prevent re-victimisation, and to provide legal aid to those in need, in order to ensure fair trials. Thus, the investment in additional shelters, recommended by the UN Special Rapporteur on violence against women²³¹, the expansion of legal aid and paralegal aid services, the establishment of Family Response Units in police stations, and the setting up of referral centres planned by UNIFEM are essential elements of such a strategy.

There also seems to be a need for an independent body with jurisdiction to review cases of alleged miscarriage of justice. Such an authority has been created in the UK, for example, after a number of convictions were overturned by the Court of Appeal as unsafe, only after the defendants had spent many years in prison, protesting their innocence. Afghanistan could benefit from some form of further review of convictions, especially with the Supreme Court being completely overburdened with cases.²³²

In parallel, mechanisms to implement alternative sanctions may be put in place to deal with those who have committed non-violent offences. However, the current priority appears to be the prevention of wrongful imprisonment of women, according to existing laws, rather than more sophisticated measures. Restorative justice programmes may be possible in the long-term for some offences, given the inherently reconciliatory nature of customary law. In any event, if alternatives are introduced they will need to take into account the protection requirements of women who have committed moral offences and may be at risk of retaliation by their family members.

Developing a national policy for the social reintegration of women prisoners during their imprisonment and post-release should complement these protection measures.

²³¹ UN Doc. E/CN.4/2006/61/Add.5, 15 February 2006, para. 86.

²³² Commentary by Dr Martin Lau, 8 February 2007.

UN Standard Minimum Rules

Rule 58. The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

Rule 59. To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.

This study clearly demonstrates that the situation of women prisoners in Afghanistan poses a particular dilemma, in that half of them cannot be described as "criminals" in the international understanding of the term. A considerable number of the other half may not be guilty, having been imprisoned either because they have had no legal assistance, have been used/framed by male relatives, forced to confess, or because they were with their husbands or fiancées when the crime was committed. Thus, "offending behaviour programmes" which aim to address the underlying causes leading to crime, are not particularly relevant to a large number of female prisoners in Afghanistan. In fact, on the contrary, in many cases they are themselves victims and have entirely different needs.

On the other hand, the underlying principles expressed by SMR are certainly valid for Afghan women as well: that is, that imprisonment should be used to bring benefits to them, helping them lead self-supporting lives after release, or where this is not realistic, assisting with developing their self-confidence and life skills so that they are able to cope with the realities of their situation in a positive and constructive manner. The principle that they should receive treatment according to their individual needs is key, as it is with all prisoners worldwide.

The contemporary understanding of social reintegration and post-release support entails preparations for release from the moment a person is admitted to prison, as reflected in SMR (e.g. Rule 80), and is dependent on a very wide range of aspects relating to life in prison. Although prison regime and activities are key elements of success, reintegration also encompasses physical conditions in prison, the prison environment, staff attitudes, measures taken to encourage and promote contact with the family and the community.

In very general terms the main elements of successful prisoner rehabilitation depends on the following key areas:

- ⇒ Management approach and style;
- ⇒ Quality of prison staff;
- ⇒ Humane prison conditions (including all aspects of accommodation, nutrition and healthcare, among others);
- ⇒ Safety in prison;
- ⇒ Individualisation;
- ⇒ The availability of activities which are relevant to the needs of the prisoners concerned;
- ⇒ Adequate contact with the outside world;
- ⇒ In the case of women with children: proper facilities for children to receive developmental support and education, and availability of specialist staff. For pregnant women: specialist medical care and nutritional support;
- ⇒ Preparation for release linked to post-release support.

The following are the corresponding challenges faced in the prison system of Afghanistan, in relation to women prisoners:

- ⇒ The need to reform management structures in general, but also the need for a change in approach from punishment to rehabilitation. In the case of female prisoners, a need for the development of a gender sensitive style which takes into account women's specific social reintegration needs;
- ⇒ Inadequate training and low salaries of staff, most likely leading to acute job dissatisfaction. Lack of specialist prison staff, such as social workers, teachers or psychologists.
- ⇒ Poor prison conditions
- ⇒ Lack of adequate safety for women prisoners
- ⇒ No individualization
- ⇒ Activities provided purely by the commendable efforts of NGOs, supported by UNODC and international grants;
- ⇒ Limited facilities, education and activities provided to children in prison with their mothers by NGOs. No specialist staff to care for children with their mothers. No special dietary or medical support provided to pregnant women, apart for the limited contribution NGOs are able to make;
- ⇒ No programmes to prepare prisoners for release, except for assistance provided by NGOs to mediate between the prisoners and their families. Very limited post-release support provided by MOWA and some NGOs.

There are also many opportunities:

- ⇒ The establishment of a department responsible for women prisoners in the central prison administration will facilitate policy development and formulation of strategies for effective, gender sensitive intervention programmes, targeting female prisoners and their social reintegration needs specifically;
- ⇒ The range of NGOs providing support services in Pul-e Charki prison, their level of cooperation and the variety of needs they cover provides a good opportunity to continue and expand civil society support and to establish lasting cooperation mechanisms between civil society and prison authorities, aiming to improve the social reintegration of women prisoners and providing them with support on release;
- ⇒ The construction of a new prison for women and women with children in Kabul followed by prisons being constructed in Mazar-e Sharif and Gardez, will resolve some of the key challenges relating to accommodation and care of children, which will provide an environment conducive to social reintegration activities;
- ⇒ Prisons can be harmful, but they also provide a chance for awareness building and skills development, if used constructively and sensitively;
- ⇒ Prisons provide an opportunity for developing peer support and peer networks, which has shown to be important for the social reintegration of female prisoners;²³³

²³³ For example, see Morash, M, Bynum, T.S, Koons, B.A., 'Women Offenders: Programming Needs and Promising Approaches', National Institute of Justice Research Brief, US Department of Justice, August 1998, p. 9

- ⇒ This research has shown that the literacy level and employment skills among female prisoners in Pul-e Charki are relatively high. This unusual situation provides an extremely valuable opportunity for training of trainers and peer group training to be conducted, which will not only increase the self-confidence of those undertaking the training, but will also strengthen peer group networking and support opportunities;
- ⇒ Positive experiences with the mediation conducted by NGO lawyers and social workers, enabling many former women prisoners to return to their families.
- ⇒ MOWA commitment to establish a transitional house for former women prisoners in need of protection, supported by UNIFEM, UNAMA and UNODC.

6. RECOMMENDATIONS: SHORT-TERM INTERVENTIONS AND LONG-TERM POLICIES

Some of the challenges mentioned above are being addressed at the current time with the support of UNODC and others. A building programme for new prisons is ongoing, which will improve the living conditions of women prisoners. The establishment of effective management mechanisms and the restructuring of the prison administration, both of which will affect female, as well as male prisoners, are also underway. Prison staff training is being undertaken to improve the qualifications of male and female staff, with a supplementary curriculum for female staff being discussed. Suggestions made below relate to those areas where more can be done for women specifically, both in the short and long-term, to improve their prospects for re-entry into society, starting from the moment of their imprisonment.

There are a number of challenges relating to the implementation of the recommendations set out below. The lack of financial resources, the inadequate knowledge and capacity within Afghan institutions, as a result of years of conflict and Taliban policies, the difficulties associated with establishing collaboration between Afghan institutions, due to low capacity and human resources, limited public awareness and interest in the criminal justice sector constitute significant constraints in the rebuilding process. The security situation in the country remains critical, which hinders the concentration of efforts on rebuilding and the expansion of reforms to all regions of Afghanistan. Most international funds are channelled to improve security, with a relatively small portion targeting institutional capacity building and especially the improvement of the situation of vulnerable groups. Institutional capacity building is essential, on the other hand, to complement efforts to establish security, in order to ensure the sustainability of the rule of law and democracy in Afghanistan. The implementation of recommendations made below, therefore, call for a long-term commitment by the UN, other international agencies and donors.

6.1 MANAGEMENT

The Law on Prisons and Detention Centres, 31 May 2005

The Supreme Council of Prisons

Article 13

In order to effectively organize the activities of detention centres and prisons, lead their related affairs and coordinate the activities of the concerned ministries and offices, the Supreme Council of prisons and detention centres having the following composition shall be formed:

- Minister of Justice as the Chairman of the Council
- Deputy Attorney General as the Deputy Chairman
- An authorized representative of the Supreme Court as a member
- Technical Deputy Interior Minister as a member
- Technical Deputy Public Health Minister as a member
- Technical Deputy Education Minister as a member
- Deputy Minister of Work and Social Affairs as a member
- Deputy Minister of Women's Affairs as a member
- Deputy National Security Department as member
- Representative of the Independent Human Rights Commission as a member
- Representative of the Civil Society (Selected by the Civil Society) as a member
- The Director-General of prisons as a secretary

Article 14

- (1)** The Supreme Council of prisons and detention centres shall be responsible for leading all affairs of detention centres and prisons all over the country.

The membership of the Supreme Council of Prisons and Detention Centres provides a rare opportunity for establishing effective and sustainable cooperation mechanisms between all these bodies to assist with the social reintegration of prisoners, including post-release support, in a comprehensive manner.

As members of the Supreme Council, the Ministry of Public Health (MOPH), the Ministry of Education (MOE), MOLSA, MOWA and AIHRC can provide key support to the Ministry of Justice in the social rehabilitation of prisoners. The membership of a representative from civil society organization will enable coordination between the state bodies and NGOs.

The establishment of a department responsible for women prisoners, headed by a Deputy Commissioner for Women Offenders, is an extremely important step towards facilitating policy development and formulation of strategies for effective, gender sensitive intervention programmes targeting the social reintegration needs of female prisoners.

However, none of the ministries listed above have resources to allocate to prisons. In the short and medium term it is likely that their contribution will be dependent on international support. Donors assisting these ministries, however, with their mandate to support development in the civil sector, may not be able or willing to fund activities related to prisons, while donors supporting criminal justice reform may not be prepared to allocate funding to the capacity building of ministries responsible predominantly for the civil sector. It seems important that this challenge is addressed.

Long-term recommendations:

1. The planned coordination between the ministries should be matched with coordination between international agencies and donors, to assist with the capacity building of the above ministries, in relation to their responsibilities for prisoners and former prisoners, in order to address the issue of social reintegration in a comprehensive and effective manner. Capacity building of MOLSA is especially crucial, due to the many responsibilities this ministry should take on with respect to the social reintegration of women prisoners and the care of their children.
2. As imprisonment leads to the further impoverishment of the economically disadvantaged group of women in prison, as well as their children, consideration should be given to taking account of the support needs of this vulnerable group in the framework of national poverty reduction programmes. International agencies providing support to such programmes should specifically include former women prisoners in income-generation, employment and skills development projects, currently being run in the civil sector. (See **Part I, Section 3.2**)
3. Consideration should be given to including the Deputy Commissioner for Women Offenders, planned in the new structure, on the Supreme Council of Prisons. Her responsibility for program development, implementation, and ongoing program delivery for all women offenders nationally, would imply that her membership would be extremely relevant.
4. The above mentioned ministries need to formulate an agreement, with a clear division of responsibilities to support the corresponding prison departments or officers responsible for medical care, offender rehabilitation and welfare programmes, prison industries and community reintegration and transitional housing.²³⁴
5. A formal agreement should be reached with the civil society representative on the Supreme Council, determining civil society contribution to the social reintegration of female offenders in the long-term. It would be desirable and expected that this NGO would be a participant of the prison coordination meetings currently taking place among all agencies offering support to women in prison (See **Part II, Section 1.4**). Thus, a link can be established between these NGOs and the Supreme Council of Prisons and Detention Centres, ensuring systematic collaboration.
6. AIHRC, as a member of the Supreme Council, should be given a clear mandate to monitor and record information relating to social reintegration of women offenders, such as: activities offered and attendance levels; psycho-social care provided; situation of pregnant women and women with children; support provided in preparation for release and cooperation between the prison administration, MOWA and other agencies, on post-release support, among others. AIHRC monitoring reports should be available to all members of the Supreme Council and to international agencies providing support to the prison system, especially to UNODC as agency leading the social reintegration programme for women prisoners, in order to assess improvements and address challenges,

²³⁴ Departments as per draft CPD Central Headquarters Structure, 8 April 2006

Short-term recommendation:

7. Bearing in mind that until the capacity of governmental bodies are sufficiently developed and resource challenges addressed, civil society will continue to have a key role to play in providing support to female prisoners and former prisoners, continued financial support and capacity building for NGOs providing services in prisons should be made available by international agencies and donors. Support to NGOs providing services in prisons and post-release should not cease in the long-term (See Recommendation 5 above). It is important that NGO input continues to complement activities undertaken by governmental bodies, given the resource limitations in Afghanistan. The contact NGOs provide between prisoners and civil society is an additionally valuable factor enhancing the success of reintegration. (See SMR, Rule 81 (2) and (3)).
8. UNODC should facilitate periodic monitoring and evaluations to identify difficulties and good practice and revise strategy as necessary.

6.2 STAFF

The Law on Prisons and Detention Centres

Article 19:

- (1) Civil servants, monitors and social services workers of detention centres and prisons shall perform their duties in line with their relevant job descriptions.
- (2) Ministries of Education, Work and Social Affairs, Public Health, Women's Affairs each is required to cooperate with the Ministry of Justice in relation with the assignment of employees mentioned in clause (1) of this article.

The Law on Prisons and Detention Centres, Article 19, puts responsibility on MOE, MOLSA, MOPH and MOWA to provide staff for the prison service. This would imply that social workers, health specialists, teachers and trainers are to be made available by these ministries. This provision is important, since the involvement of civil agencies in the prison service provides a link between prisons and the outside world, lays the basis for the continuation of any support to be provided to prisoners post-release and is therefore recommended by international instruments, such as SMR, Rule 80.

Access to adequately trained social workers is a priority, since, in addition to their main responsibility to coordinate prisoner rehabilitation programmes, they also have a key role to play in preparation for release. In the Afghan context this will involve conducting mediation between the families and prisoners prior to release, perhaps allowing many of them to return to their homes. In addition social workers may provide links between the women and their families during the imprisonment period, helping to resolve the problem of limited family support to prisoners.

However, there are no specialist staff responsible for women prisoners at the present time and in the short-term the implementation of the above cited provision is not realistic, due to resource challenges mentioned under **Section 6.1**, above.

Medium and long-term recommendations:

1. An agreement should be signed between MOLSA and MOJ with division of responsibilities for social work in prisons and post-release. MOLSA social workers should have regular access to prisons, providing a link between prisons and civil agencies which can support women prisoners after release. (See also **Section 6.8**);
2. Resources and technical support should be provided to MOLSA training department for social workers, in order to: (1) add specialised courses on prisoner rehabilitation and post-release support; (2) attract new candidates for training;
3. Support should be provided for the University of Kabul to establish a Department of Social Work. The programme should include courses relating to the specifics of social work in prisons;
4. Recruitment of full-time social workers in prisons: In the long-term, graduates from Kabul University; and in the medium term social workers from MOLSA training department.

Short-term recommendations:

5. MOLSA social workers and NGOs should train the existing staff of female detention centres and prisons over a period of several months, to provide the much needed social support to female prisoners in the short-term. This should be followed up by on-the-job supervision and support. An additional benefit of this training would be the more active engagement of existing prison staff in social reintegration programmes, generating, perhaps, increased motivation and job satisfaction;
6. NGO social workers should continue supporting prison staff, after the training has been completed. A division of responsibilities may be established, for example, with NGOs maintaining links between prisoners and their families and conducting mediation on behalf of those who are expected to be released, while prison staff focusing on the organisation of activities in prisons, in cooperation with NGOs.
7. Though it is assumed that a consultation process will take place between CSSP, UNODC and UNIFEM before the training curriculum for female prison staff is finalised, the need for such consultation must be reiterated, since the content of the training is of particular importance given the conventionally low status of female staff in the prison service, their small numbers and the different needs of Afghan women prisoners, in comparison to women in other countries, which will benefit from UNIFEM and UNODC commentary, given their experience of working with women/female offenders in Afghanistan.

For other specialist staff, see **Sections 6.5 and 6.6**.

6.3 SAFETY

Law on Prisons and Detention Centres

Article 9:

- (1) Men's and women's detention centres and prisons shall be separated.
- (2) In case, it is not possible to have separate detention centres and prisons for men and women, they shall be held in separate sections of detention centres and prisons.

Article 41:

- (1) Prisons and detention centres authorities are authorized to frisk detainees and prisoners in such a manner not to damage their dignity and honor.
- (2) A male staff shall carry out the body search of a man and a female staff shall carry that of a woman out.

Article 47:

- (2) Male Prison officers and Protectors shall transfer male detainees and female Prison Officers and Protectors shall transfer prisoners and female detainees.

Research indicates that a safe environment in prison is critical for the social reintegration of women with histories of abuse. In light of the widespread violence perpetrated against women in Afghanistan, reports of beatings and sexual abuse in police stations, and unconfirmed, though persistent, reports of sexual abuse by police officers in Welayat Kabul pre-trial detention centre, effective measures should be put in place to prevent the further victimization of women in criminal justice institutions. This is an urgent and serious matter, which should be addressed as a priority, in the context both of international law and the social reintegration of female prisoners. As long as such risks continue to exist, women are re-victimized and/or do not feel safe, all social reintegration efforts may be undermined.

Legislative recommendations:

1. It is recommended that articles reflecting UN SMR 53 (2) and (3) be introduced into the new law on prisons and detention centres. Members of male staff should not be permitted to enter places where women are detained, unless they are accompanied by female staff, and only when such entry is justified. (Ideally, records of such entries should be kept).
2. It is also recommended that Article 41 (1) of the Prison Act, cited above clearly states that the frisk searching of female detainees and prisoners may be undertaken only by female staff. In other countries where male staff are allowed to conduct such searches, there have been widespread reports of the sexual humiliation and abuse of women, by improper touching and groping. Given allegations of searching methods currently used in Afghanistan on arrest, mentioned under **Part I, Section 4.4.5**, such a risk clearly exists in this country as well.

Short and long term recommendations:

3. Mechanisms of cooperation should be established between MOJ, Attorney General's Office, Ministry of Interior (MOI), MOWA and AIHRC, to ensure the effective protection of women from violence and sexual abuse in police stations, pre-trial detention centres and prisons, taking into account prisoners' particularly vulnerable status in the former two locations.
4. Cooperation should cover issues of staff training, the establishment of accessible complaints procedures for victims and the prosecution of perpetrators.
5. There should be a clear policy and guidelines in place relating to the use of force and sexual misconduct by staff in places of detention, aiming to provide maximum protection for women prisoners.
6. The training curriculum of female prison staff should include instruction relating to their responsibility to ensure the safety of the women under their care.

6.4 ASSESSMENT AND INDIVIDUALISATION

Law on Prisons and Detention Centres

Article 29:

Files shall be created for detainees and prisoners and the information about their background, medical check-up, legal status and any other relevant information shall be registered in their respective files.

- (1) Prisons and detention centre staff are required to interview the accused and the prisoner for preliminary assessment of his personality, attitude and problems at the time of his entry to the detention centre or prison.
- (2) In accordance with the assessment mentioned in clause (1) of this article, the group of the accused or prisoner shall be determined and all the obtained facts shall be registered in his file.

Currently there are no prisoner assessments or individualisation of prisoner programmes taking place. At the time of writing the personal and crime histories relating to all female prisoners is being entered into a computer database system (by UNODC and CSSP) which is a first step towards individualising the treatment of each prisoner according to her needs.

The planned establishment of a central prison department responsible for women prisoners and the involvement of MOWA in the management of prisons, as member of the Supreme Council on Prisons and Detention Centres, provide a valuable opportunity to develop gender sensitive classification instruments for women prisoners in Afghanistan, from the very start. Research on women prisoners in other countries has noted that, despite women's different needs, circumstances and risk profiles, the same classification instruments are used for women and men in the vast majority of prisons worldwide. Information about a history of domestic violence, sexual abuse, and parental responsibility are areas in which screening is lacking for women. As a result classification and screening procedures do not provide essential information about the women and reduce possibilities of matching

appropriate prisoner programmes with the needs of the women, reducing their chances of successful re-entry into society. In Afghanistan, where discrimination and violence against women is so widespread, their status so low compared to that of men, and their parental responsibilities so difficult to fulfill due to poverty and rejection by families, among others, the need to develop special classification instruments for female prisoners is particularly relevant. The gender sensitive risk assessment of prisoners should also take into account the very low risk most women offenders pose to others and the particularly harmful effects of high security measures and increased levels of isolation can have on female prisoners.

Legislative Recommendation:

1. To define the composition of the assessment team (see 2 below) either in a clause to be added to Article 29 of the Law on Prisons and Detention Centres, cited above, or to the Prison Regulations, currently in draft form.

Long-term recommendations:

2. To establish a prisoner assessment team, comprising a social worker, medical doctor, psychologist, teacher and another selected member of prison staff, perhaps attached to the planned department for Women Offender Policy and Program Development²³⁵, to interview prisoners on admittance, to determine their possible security risk and rehabilitation needs. This suggestion is based on the assumption that social workers and psychologists will be recruited to work in women's prisons on a full-time basis in the long-term. (See **Section 6.6** on psychologists). However, the prison administration may need to conclude an agreement with relevant NGOs to provide a psychologist and the Ministry of Education to provide teachers for the assessment team. The medical doctor on the team should be a specialist in female healthcare needs, provided either by the Ministry of Public Health or the prison medical department.
3. To develop gender sensitive classification and assessment methods for women prisoners in Afghanistan, taking into account the need to determine any history of domestic violence and sexual abuse, their mental condition, need for psychological support, as well as their parental responsibilities. Other factors, such as their educational and training needs should naturally comprise an essential element of determining individual programmes.
4. The assessment should take note of the risk the women may face following release and ensure that appropriate measures are put in place prior to release, including when such prisoners are pardoned on the occasion of *Eid* or if they are granted early conditional release (See **Section 6.7**).
5. The assessment should take into account the advantage of identifying prisoners with suitable qualifications to teach or train other prisoners, as per Article 36.8 of the draft Prison Regulations.
6. To formulate a programme for each prisoner, according to the length of sentence and individual requirements and review this programme at regular intervals.

²³⁵ Draft CPD Central Headquarters Structure, 8 April 2006.

Short-term recommendations:

7. As the assessment team suggested above cannot be established in the immediate future, to formulate an agreement among AIHRC, appropriate NGOs and the prison administration to assist with the assessment of prisoner needs on admittance (e.g. social workers from AWEC, psychologist from Medica Mondiale, medical doctor from AWEC or Emergency, teacher and trainer from AWEC, etc).
8. To develop basic prisoner programmes for groups of prisoners based on length of sentence, age, educational and psychological support needs. (**Part II, Sections 3.3 and 3.10** may provide a starting point for groupings by sentence and age. This differentiation should ideally be further developed taking into account individual needs).

6.5 WORK, VOCATIONAL TRAINING AND EDUCATION

Law on Prisons and Detention Centres

Article 28:

(1) The administrations of detention centres and prisons are required to set up well equipped libraries, pave the ground for detainees' and prisoners' study, worship, education, vocational training, recreational and cultural activities and provide them with the needed facilities.

Article 32

The prison administrations are required to open and organize educational and vocational training centres at primary and high levels in line with the educational programs approved by the Ministry of Education.

Article 33

- (1) Prison administrations can arrange for industrial handcraft workmanship and agricultural activities in their respective prisons through private companies. Non working, working hours and holidays shall be fixed in accordance with the provision of the labor law.
- (2) Skilled prisoners (having agricultural, art and industrial skills) are exempt from other ordinary work and shall be involved in their own fields.
- (3) Prisoners and detainees have the right to be remunerated for their work. The Supreme Council of prisons and detention centres shall fix the amount of remuneration.

See also **draft Prison Regulations, Article 36** on education, including:

36.4 The combating illiteracy phase shall be conducted in two years, the first is a beginner's year, and the second is an advanced year. The general education phase will be one year. Those who are serving sentences less than 3 months are not eligible for the education project.

36.5 There should be a test at the end of each year where the students receive certificates for successfully completing the year.

36.8 The prison administration can use a number of prisoners who have appropriate academic or teaching qualifications in the teaching process after obtaining the approval of the CPD.

36.12 The above mentioned committee in *para.* 36.1 shall be responsible for preparing the end year exams, while the ministry of education (El Ma'aref) will supervise the exams.

Education is an important means of helping women gain self-confidence and life skills. For many female prisoners in Afghanistan, prison may be the first chance to gain literacy skills or to receive basic education. Currently basic education classes are provided by the NGO, AWEC.

Vocational training and work experience are also key for the social reintegration of women in Afghanistan, whether or not they are able to return to their families. Learning a new skill and engaging in income generating activities will increase the economic independence and self-confidence of women, while helping those who cannot return to their families to provide for themselves and their children after release. It is important that the training and work provided should correspond to market demands and aim to increase women's real chances of earning a living wage after release. Currently vocational training is being provided by AWEC in Pul-e Charki. There were no workshops or industries in the women's prison at the time of writing, though CSSP had plans to introduce prison industries.²³⁶

The study has demonstrated that a large number of women in need of education and skills training appear not to be participating in these activities currently on offer. This could be due to a range of factors, such as lack of interest, depression, lack of any conviction that education or skills' training is going to make a difference to their lives, among others. There is, therefore a need to put in place measures to encourage women to participate in classes and other activities, and education and skills training should comprise an element of each prisoner's sentence plan, to monitor progress and to provide a further incentive to participate. (As recommended under **Section 6.4** above)

Long-term recommendations:

1. CPD needs to establish mechanisms of cooperation with the MOE to ensure that prisoners have access to the educational programmes of MOE, and that they receive certificates after successful completion of the requisite courses, as required by Article 32 of the Law on Prisons and Detention Centres and corresponding draft regulations cited above.
2. A policy should be developed and a strategic plan formulated to introduce workshops and prison industries to women's prisons, where prisoners can gain working experience and save some of their earnings while in prison. Work undertaken by women in prison can provide for certain needs of the prison system as well as other governmental bodies (e.g. sewing clothes and uniforms). Work opportunities should be linked to vocational training, the main aim being to develop the earning capacities of women.
3. The Ministry of Justice should cooperate with MOLSA for the latter to provide vocational training courses in prisons, which take into account the requirements of the prisoners and demands on the job market. Women should receive certificates on the successful completion of courses.
4. Consideration should be given to expanding the range of vocational training provided, taking into account the place to which the women will return. Although the current study relates mostly to women who were resident in Kabul at the time of their arrest, in provincial prisons especially, vocational training for women returning to rural settings may include training in skills

²³⁶ Interview with Robert Gibson, Director, CSSP Afghanistan, Correction System Support Program, U.S. Department of State/ INL Program, 16 December 2006.

such as basic veterinary training and horticulture, representing two areas where women involved in agriculture are particularly active.

5. Tailoring is clearly a skill which is in demand and courses offered should perhaps be increased or diversified. Other training offered could include: (1) administrative skills; (2) basic numeracy and accounting skills; (3) micro credit management; (4) small business management (5) women's health; (6) childcare. Cooperation with outside agencies, to provide training should be developed. For example, collaboration with the department of the Ministry of Commerce, currently offering training to women in basic business skills, could be considered. (See **Part I, Section 3.2**)
6. To introduce a system of rewards to those who complete educational and skills training courses, based on Article 42 of the Law on Prisons and Detention Centres. The reduction of prison terms before early conditional release can be considered could be one of the main rewards offered. (See **Section 6.7** on Early Conditional Release).

Short and long-term recommendations:

7. NGOs should continue providing education and vocational training, with international support. When the prison administration's capacity is sufficiently developed and management and coordination mechanism between the Ministry of Justice and other ministries established to deliver education, skills training and work in prisons, NGOs will continue to have an important role to play in providing civil society support to fill the gaps.
8. There are a number of highly educated prisoners in Pul-e Charki prison, with long prison sentences. Article 36.8 of the prison regulations provides a basis on which to engage them in educational activities. Selected prisoners with the requisite level of education could start supporting the education programmes implemented by NGOs without delay, both for women prisoners and for children in prisons. The benefits of this collaboration can be immense. It would provide the educator prisoners with constructive and fulfilling activities for the duration of their prison term, build their self-confidence and address the needs of many illiterate prisoners and their children. Such prisoners can also provide positive role models to other women.
9. The educational courses provided by NGOs and selected prisoners should correspond to the curriculum of MOE and therefore an agreement needs to be signed between NGOs, MOE and MOJ. All prisoners who successfully complete education courses should receive certificates approved by the Ministry of Education. Teachers from the Ministry of Education may need to be provided to conduct examinations at the end of each course.
10. In view of the fact that there are a considerable number of prisoners with a range of income generating skills, consideration should be given for NGOs to conduct "training of trainers" for a selected group of prisoners, to run skills training programmes, such as tailoring, embroidery, knitting, carpet weaving and beauticians' skills. This activity will: (1) provide more women prisoners with job skills; (2) improve the confidence of those who are trained as trainers and undertake the training; (3) Develop peer group support among prisoners.

11. All prisoners who successfully complete vocational training courses should receive certificates approved by the MOLSA. An agreement will need to be reached between the NGOs, MOLSA and MOJ.

6.6 OTHER REHABILITATION PROGRAMMES

Draft Prison Regulations, Article 30

5. There should be in every prison, if possible, social and psychiatric specialist to prepare studies about the prisoners, their intellect, capabilities, and tendencies in order to formulate a treatment and a therapist strategy for the prisoners

In addition to vocational training, work and education, women in all prisons worldwide have special needs that should be addressed during their imprisonment. In general terms, female prisoners are more likely to suffer from mental and psychological problems, compared to men. In a number of countries women admitted to prison tend to have a history of drug abuse (more so than men); studies worldwide show that female prisoners are likely to have been victims of domestic violence, sometimes including sexual abuse. The distress caused by separation from children and worry about their future is a universal problem for mothers. The needs of women in Afghanistan are no different, only significantly more acute in some specific areas, relating to violence and discrimination. It is noteworthy that the women staff who were consulted with regard to the subjects they wanted offered on their training curriculum identified training in mental health care as one of the main topics required. There are reports suggesting drug addiction among women in Afghanistan²³⁷ though there appears to be limited statistics or studies in this area. A study among women prisoners may be beneficial to determine whether any need support in dealing with addictions, while in prison. The subject of domestic violence is a key area of focus.

It is clear that programmes addressing the mental and psychological needs of women require the engagement of specialist staff, such as psychologists. In the long-term such staff should be recruited on a full-time basis, though ongoing cooperation on a formal basis with selected NGOs and any other civil agencies providing psychological care in the community is suggested in both the short and long-term, to cover the wide ranging needs of female prisoners both in group work and individual consultancy, as required.

Long-term recommendations:

1. To recruit at least one psychologist per prison to participate in the initial assessment of female prisoners, to be available for consultation on an ongoing basis and to coordinate the activities of organisations of civil society providing psychological support to female prisoners.

Short and long-term recommendations:

2. CPD should conclude a formal agreement with selected NGOs or other civil specialists to provide psychological support to women in prison, including group work and individual sessions.
3. Prior to the starting of the programme, a needs assessment should be undertaken by the NGO or specialist agency concerned.

²³⁷ Womankind Worldwide, 2006, p. 28

6.7 EARLY CONDITIONAL RELEASE (PAROLE)

Early conditional release (parole) is considered to be one of the most effective ways of contributing to the social reintegration of prisoners by enabling a planned, gradual return to society. However, in order for parole to fulfil its intended aim of reintegration, it must be accompanied by adequate support by institutions responsible for the post-release care of ex-prisoners, the family of the offender and the community.

The establishment of transitional houses, planned to house female prisoners in need of protection following release (See **Part II, Section 1.5**), may effectively be used as a base for those who gain a right to early conditional release, in certain cases. Women can, for example, be accommodated in transitional houses while support is provided to find suitable accommodation and employment, while any legal assistance can also be offered at this time.

Currently the right to early conditional release is mentioned in the Law on Prisons and Detention Houses, Article 50, but the conditions of release are not set out (e.g. the portion of the prison term which needs to be served before being eligible and other criteria, such as good behaviour, successful completion of educational and vocational courses etc). The right to early conditional release should perhaps be made more explicit.

Legislative recommendations:

1. Either to add a clause to Article 50 of the Law on Prisons and Detention Centres, setting out the conditions which apply for eligibility or to make reference here to the prison regulations, where the conditions may be outlined.

Long-term recommendations:

2. To formulate a policy and mechanisms for the early conditional release of female offenders, enabling their gradual return to society with the assistance of specialist staff, making use of the planned transitional houses, and engaging the active participation of their staff in this process.

6.8 PREPARATION FOR RELEASE AND POST-RELEASE SUPPORT

Law on Prisons and Detention Centres

Article 53

- (1) Heads of detention centres and prisons by the distinction of attorney general office after the permission of Ministry of Justice and written demand by the individual can provide temporary shelter and protection in detention centres and prisons to those who have been seriously threatened and their safety are at serious risk.

See also **Draft Prison Regulations, Article 56**, including:

56.5 The concerned person can request to leave the prison at any time, but the relevant authorities should be notified before letting him/her out, if 24 hours elapse and no reply was received, he/she must be let out immediately. This request to leave must be written and signed by the concerned person and registered in the relevant registry.

56.6 There should be separate accommodation for these persons. They should abide as much as possible with the prison system in general, and in particular in regard of contacting the outside at anytime. They can have food brought to them or they can accept the prison meals.

Preparation for release and post-release support are essential components of social reintegration. Activities undertaken in prison need to be linked to services outside prison to ensure continuum of care and monitoring of released female offenders. In the context of low income countries, such as Afghanistan, the role of civil society and efficient coordination among all agencies involved in social support is paramount to ensure the efficient use of scarce resources.

At the current time, and taking into account the findings of this study, the preferred option for women prisoners is to return to their families after release, if they so wish and if they face no risk of harm. The alternative option of living alone and providing for oneself and children is a difficult choice to make for many, given the social and economic status of women in Afghanistan and the barriers they face in accessing employment, housing and other services. Nevertheless, the study revealed that 32% of women interviewed are not able/do not want to return to their families or they are not sure if this would be possible. (See **Part II, Section 3.18**)

As mentioned earlier, mediation conducted by lawyers and social workers of NGOs has proven to be successful in many cases, in enabling released women prisoners to return to their families. Such efforts need to be systemised and expanded, and social workers recruited and trained to assist in the process.

Others, who cannot or will not return to their families, will have different needs, such as assistance with employment and housing, as well as legal assistance in some cases (e.g. to gain custody of their children, to divorce etc).

Transitional Houses

Transitional houses for released prisoners, currently being planned, deserve support as they will not only provide safe accommodation for those in need of protection, but also to those who are not immediately able to find accommodation or employment and are therefore in need of shelter until they can provide for themselves. The establishment of transitional houses for former women prisoners who need protection is a relatively new innovation. It combines the concept of half-way houses established in some countries of the West, to help the re-entry to society of male and female former prisoners, with the concept of shelters or transitional houses for women (generally victims of violence) in need of shelter and protection, in existence in many countries. It seems important that the policy and rules relating to transitional houses in Afghanistan derive from the experiences of national NGOs currently managing shelters, in consultation with stakeholders with experience of and responsibility for protecting women's rights, women prisoners and their social reintegration, including MOJ, MOWA, MOLSA, UNIFEM and UNODC. The most significant risk involved is that transitional houses may acquire the characteristics of prisons, if policies and management arrangements are not carefully developed.²³⁸

²³⁸ See for example Human Rights Watch, *Libya: A Threat to Society? The Arbitrary Detention of Women and Girls for "Social Rehabilitation"*, February 2006, Volume 18, No. 2 (E), for possible risks involved. Though in the case of Libya, the social rehabilitation facilities are not designed for released prisoners, but solely for women and girls in need of protection, the document demonstrates the way in which the concept of protection may be abused.

Long-term recommendations:

Preparation for release:

1. To develop a "preparation for release programme", supervised by the Director of Community Reintegration and Transitional Housing,²³⁹ to include: ensuring that all prisoners' documents, such as identity papers, are in order, provision of contact details of organisations that assist women in need (e.g. referral centres, when they are established, MOWA, legal aid services, AIHRC, other relevant NGOs); assistance with establishing contact with organisations that provide post-release support, as necessary, and mediation with the families of the prisoners, if required. For those being transferred to transitional houses, coordination will need to take place between the prison administration and the transitional house to ensure that information relating to the prisoner is passed on to the latter, to ensure continuum of support/care.
2. To include training in mediation skills in the curriculum of social workers being trained for employment in prison – both in the training department of MOLSA and the programme in Kabul University, recommended above.

Post-release support:

3. To establish transitional houses for released women prisoners in need of protection, including those on early conditional release.
 - a. Care needs to be taken that transitional houses do not acquire the characteristics of prisons themselves or become substitute prisons.
 - b. Residency should depend completely on voluntary consent and specific requests.
 - c. The management of transitional houses should be shared between government institutions and NGOs. Consultation and collaboration with NGOs currently running shelters for victims of violence should take place, to benefit from their experiences in the management of safehouses for women.
 - d. Social services, vocational training, psychological counselling and legal assistance should be offered in transitional houses to continue the process of preparation for release, with the active engagement of civil society organisations.
 - e. Women should be free to leave the transitional house when they wish, following consultation and a risk assessment with the lawyers, social workers and psychologists involved in supporting the programme.
 - f. Follow-up support and monitoring should take place, depending on the case.
4. To develop a mechanism of coordination between CPD, MOWA, MOLSA, UN bodies such as ILO, UNDP and UNIFEM, other international bodies and national organisations, such as the Afghan Women's Business Council, to assist women released from prison to enter the labour market. (See **Part I, Section 3.2**)

²³⁹ As per draft CPD Central Headquarters Structure (Proposal 1, Chart 3), 8 April 2006

5. Despite the difficulties associated with monitoring the situation of women released from prison, described under **Part II, Section 1.5**, it is recommended that discussion takes place, perhaps between AIHRC, MOWA, UNODC and UNIFEM, to identify ways in which monitoring and data collection relating to the post-release situation of female prisoners can be conducted, without causing harm or shame to the women concerned. The information would be invaluable in evaluating the success rate of social reintegration measures, and especially the fate of those who are returned to their families following mediation.

Short-term recommendations:

6. To establish a policy and mechanisms for coordination between MOJ, MOWA, MOLSA to ensure that the post-release support requirements of female prisoners are met, to the maximum extent currently possible, including assistance with employment, housing and safety.
7. To develop a policy and appropriate separate facilities to provide protection to women who cannot return to their families, in prisons, as provided by Article 53 of the Law on Prisons and Detention Houses. To ensure that accommodation in prison is based entirely on voluntary consent or requests by the prisoners themselves, taking into account the risks involved in the concept of protection being transformed into continued imprisonment in practice.
8. To invite NGOs running safe houses to the prison coordination meetings currently undertaken by NGOs and UN agencies on a monthly basis, in order to keep them informed of the situation of women expecting release from prison and to explore ways in which the accommodation of former prisoners in safe houses may be increased in the short-term, while implementation of longer term plans are underway. Women in need of protection, who do not want to be housed in the prison should be assisted by MOWA and NGOs to be accommodated in a safe house. This will require additional resources for shelters, to MOWA and to NGOs running the shelters.

6.9 PREGNANT WOMEN AND WOMEN WITH CHILDREN

Law on Prisons and Detention Centres

Article 56

The government shall provide facilities to the children up to the age of three years that are living with their parents in the prisons.

The children above the age of three shall be transferred to the nursery established by the government adjacent to the prison.

The parents shall be allowed to visit their children on daily bases.

Children above the age of seven shall be transferred to the nurseries established by the government in the cities.

Children can stay with their father in the prison when their father is the only caretaker of his children.

The separation of women from their children due to imprisonment has a traumatic and long term effect on the mothers and their children. On the other hand the prison environment is not suitable for the upbringing of children, affecting their health, social, educational and emotional development. Research has also indicated that the children of imprisoned mothers may be at greater risk of future incarceration themselves.²⁴⁰ Addressing the needs of children in prison is important in the context of their mothers' social reintegration, since their main worry relates to the future of their children.

As this study has shown, the number of children staying with their mothers in Afghan prisons is extremely high, almost equal to the number of their mothers. Currently their nutritional requirements cannot be met by the prison authorities. They can receive no specialist healthcare or education, due to acute resource problems. NGOs support children with some additional food and informal classes in prison, but they themselves are dependent on donor funds. Orphanages do not have the capacity to accommodate all the children of mothers in prison.

Pregnant women rarely receive the care they need in prisons worldwide, including their nutritional and healthcare needs. Afghanistan, with its extreme resource problems, is no exception. As described under Sections **Part II, Section 2** above, challenges include not only the special nutrition and healthcare needs of pregnant women, but also the delivery of babies. Hospitals are not always willing or able to admit prisoners for delivery, nor can they always provide the requisite medical staff to conduct the delivery in prisons, which, in any event, do not have adequate facilities for childbirth.

The European Council has recommended its member states, which do not have the severe economical disadvantages of Afghanistan, *"to recognise that custody for pregnant women and mothers of young children should only ever be used as a last resort for those women convicted of the most serious offences and who represent a danger to the community"*, and *"to develop appropriate guidelines for courts whereby they would only consider custodial sentences for pregnant women and nursing mothers when the offence was serious and violent and the woman represented a continuing danger"*.²⁴¹

The principle of preventing the imprisonment of pregnant women and women with children, unless absolutely necessary has been reflected in the first recommendation below, which will necessitate revising legislation.

Legislative recommendations:

1. Pregnant women and women with young children should not be imprisoned unless absolutely necessary. When the offence is committed by a pregnant woman or a mother with a baby, sentences may be deferred, for example, until the child reaches a certain age and reviewed at that time. Currently the CPC provides that if a prison sentence is passed on a woman who is six months pregnant, the prosecutor can postpone the imprisonment until four months after the delivery of the child. (Article 89). It is recommended that the Penal Code be revised to postpone the execution of the sentence of pregnant women and women with small children, to be reflected in a

²⁴⁰ Submission by Friends World Committee for Consultation (Quakers) Committee on the Rights of the Child Day of Discussion 2005, Children Deprived of Parental Care, Quaker United Nations Office, 2005, p.3, citing Human Rights Watch, *All Too Familiar: Sexual Abuse of Women in U.S. State Prisons* (1996), p. 20.

²⁴¹ Council of Europe, Parliamentary Assembly Recommendation 1469 (2000), on Mothers and babies in prison, adopted on 30 June 2000, iv and viii.

revision in the CPC. Such legislation is in place in Russia and Kazakhstan, for example, where the execution of a sentence may be postponed and then reduced or cancelled for pregnant women or women who have children under 14 years of age, with the exception of those sentenced to imprisonment for terms longer than five years for grave and specially grave crimes.²⁴² In Turkey, the execution of sentence is postponed in the case of pregnant women and mothers who have not completed a six month period after delivery.²⁴³

2. When pregnant women are imprisoned the state should guarantee that the delivery of the baby is undertaken by specialist staff, if practicable, in a hospital outside the institution equipped for this purpose (SMR Rule 23 (1)). It is, therefore, recommended that an article reflecting this obligation should either be introduced into the Law on Prisons and Detention Centres (added, perhaps to Health Services, Article 27) or into the prison regulations, currently being drafted.

Long-term recommendations:

3. Bearing in mind that the lack of childcare represents a barrier to the employment of women in Afghanistan (see **Part I, Section 3.2** above), resources could be allocated by international agencies and donors, which support programmes to improve women's participation in the labour force, to the establishment of nurseries for employed women. The children of prisoners, aged above 7, may be accommodated in these nurseries together with other children, thereby enabling their reintegration into life outside prison, without being segregated as the offspring of prisoners;
4. Resources should be allocated to the establishment of nurseries for children above the age of 3, as provided for in the Law on Prisons and Detention Centres. Specialist staff should be made available by MOLSA and MOPH to take care of the child while separated from his or her mother. A protocol will need to be signed with clear division of responsibilities between these ministries.
5. Arrangements should be made to ensure that the cognitive skills of babies held in prison develop normally. They should have adequate play and exercise facilities. Mothers should be provided with the maximum possible opportunities to spend time with their children.
6. A protocol should be concluded between the MOPH and CPD, to ensure that pregnant women are transferred to civilian hospitals for childbirth. If there are difficulties involved in transferring the prisoners, MOPH should provide a specialist doctor to undertake the delivery in prison. If the baby is born in prison, this should not be mentioned on his or her birth certificate. (SMR, R. 23(1)).

Short-term recommendations:

7. Until appropriately equipped and staffed nurseries attached to prisons are established, it is suggested that children are not separated from their mothers at the age of 3, if there is no relative to take care of them (which is in fact the current situation). Separating the children from their mothers at

²⁴² Criminal Code of the Republic of Kazakhstan, Article 72; Criminal Code of the Russian Federation, Article 82

²⁴³ Criminal Execution Code of the Republic of Turkey, Article 16 (4).

such an early age, with the very limited prospects of proper care outside prison, could have detrimental effects both on the prisoner and the child. In the short-term the aim should be to try to provide for the needs of children in prison, while nurseries are established and mechanisms put in place to facilitate the children's participation in life outside prison, such as attending schools. This may be possible in the new prison facility being constructed by UNODC for women and women with children in Kabul.

8. To formalize collaboration between NGOs and CPD, to provide for the needs of children in prison, including educational, nutritional, medical and psychological.
9. To establish mechanisms of collaboration with MOE to ensure that the curriculum for children over 7 in prison follows the curriculum taught in schools.
10. To support child visitation programmes, organised by NGOs, bringing together children currently housed in orphanages and their mothers in prisons.

7. SUMMARY RECOMMENDATIONS

SUMMARY RECOMMENDATIONS			
	LEGISLATIVE CHANGES	LONG TERM STRATEGY	SHORT TERM STRATEGY
GENERAL: FUNDING AND COORDINATION		<p>Planned coordination between the ministries represented on the Supreme Council of Prisons to be matched with coordination between international agencies and donors, to assist with the capacity building of these ministries in relation to their responsibilities for female prisoners and former prisoners.</p> <p>In parallel, continued international donor support to NGOs providing services in prisons and post-release.</p> <p>Inclusion of the support needs of female offenders within the framework of national poverty reduction programmes.</p> <p>International agencies and donors supporting such programmes to include former women prisoners in income generation, employment and skills development projects.</p>	<p>International agencies and donors to support NGOs providing services in prisons and post-release.</p>

SUMMARY RECOMMENDATIONS			
	LEGISLATIVE CHANGES	LONG TERM STRATEGY	SHORT TERM STRATEGY
MANAGEMENT		<p>Inclusion of Deputy Commissioner for Women Offenders on the Supreme Council of Prisons and Detention Centres.</p> <p>Formulation of agreement between ministries represented on the Supreme Council of Prisons to support the corresponding departments and officers of the prison system.</p> <p>Formulation of an agreement between the NGO on the Supreme Council and CPD, determining civil society contribution to the social reintegration of female offenders.</p>	<p>Start work on reaching long-term objectives.</p>
MONITORING		<p>AIHRC mandate to include the monitoring and recording of information relating to social reintegration of women prisoners. Reports should be made available to members of the Supreme Council and international agencies supporting the programme, especially UNODC as lead agency.</p>	<p>UNODC to facilitate periodic monitoring and evaluation to identify difficulties and good practice and revise strategy as necessary.</p>

SUMMARY RECOMMENDATIONS			
	LEGISLATIVE CHANGES	LONG TERM STRATEGY	SHORT TERM STRATEGY
STAFF		<p>Agreement to be signed between MOLSA and MOJ with division of responsibilities for social work in prisons and post-release.</p> <p>Resources and technical support to MOLSA training department.</p> <p>Support to the University of Kabul to establish a Department for Social Work.</p> <p>Recruitment of full-time social workers in prisons: in the long-term, graduates from Kabul University; and in the medium term, social workers from MOLSA.</p>	<p>MOLSA social workers and NGOs to train existing staff of female detention centres and prisons and to provide follow up supervision and support.</p> <p>Division of responsibilities between female staff and NGOs.</p> <p>Consultation between CSSP, UNODC and UNIFEM on training curriculum for female prison staff.</p>
SAFETY	<p>Articles reflecting UN SMR 53 (2) and (3) to be introduced into the new Law on Prisons and Detention Centres, prohibiting the entry of male staff to female sections of prisons, unless accompanied by female staff and only when genuinely justified.</p> <p>Article 41 (1) of the Law on Prisons and Detention Centres to clearly state that the frisk searching of female detainees and prisoners may be undertaken only by female staff.</p>	<p>Mechanisms of cooperation to be established between MOJ, Attorney General's Office, MOI, MOWA and AIHRC to ensure the effective protection of women from violence and sexual abuse in detention.</p> <p>Cooperation to cover staff training, establishment of accessible complaints procedures for victims and prosecution of perpetrators.</p> <p>There should be a clear policy and guidelines in place relating to the use of force and sexual misconduct by staff in places of detention, aiming to provide maximum protection for women prisoners.</p>	<p>Start work on legislative changes and on achieving long-term objectives.</p>

SUMMARY RECOMMENDATIONS			
	LEGISLATIVE CHANGES	LONG TERM STRATEGY	SHORT TERM STRATEGY
ASSESSMENT AND INDIVIDUALISATION	To define the composition of an assessment team either in a clause to be added to Article 29 of the Law on Prisons and Detention Centres or to the Prison Regulations.	<p>Establish a prisoner assessment team, comprising a social worker, medical doctor, psychologist, teacher and another selected member of prison staff.</p> <p>Develop gender sensitive classification and assessment methods.</p> <p>Assessment to include the risk each women faces on release and note to be made in file, to ensure that appropriate measures are taken prior to release.</p> <p>Assessment to include identification of prisoners suitable to conduct training and education activities.</p> <p>Formulate an individual programme for each prisoner and review at regular intervals.</p>	<p>Formulate an agreement between CPD, AIHRC and selected NGOs to undertake the assessment of each prisoner's needs. (e.g. social workers and teachers from AWEC, medical doctor from Emergency, psychologist from Medica Mondiale, womens rights specialist from AIHRC etc).</p> <p>Develop basic prisoner programmes for groups of prisoners based on length of sentence and age, as well as individual educational, vocational and psychological support needs.</p>

SUMMARY RECOMMENDATIONS			
	LEGISLATIVE CHANGES	LONG TERM STRATEGY	SHORT TERM STRATEGY
WORK, VOCATIONAL TRAINING AND EDUCATION		<p>CPD to establish mechanisms of cooperation with the MOE, to ensure that prisoners have access to the educational programmes of MOE and that they receive certificates after successful completion of the requisite courses.</p> <p>Development of a policy and strategic plan to introduce workshops and prison industries to women's prisons.</p> <p>Cooperation between MOJ and MOLSA for the latter to provide vocational training courses in prisons. Women to receive certificates.</p> <p>Expanding the current vocational training delivered.</p> <p>Introduction of a system of rewards to those who complete educational and skills training courses, based on Article 42 of the Law on Prisons and Detention Centres. Early conditional release can be considered as one of the main rewards offered.</p>	<p>NGOs to continue providing education and vocational training, with international support. Education programmes should correspond to the curriculum of MOE and prisoners who successfully complete the programme should receive certificates from MOE.</p> <p>Selected prisoners, with the requisite skills, to support education programmes for women and their children.</p> <p>Training of trainers for prisoners with job skills, to enable them to conduct vocational training of other prisoners.</p> <p>Prisoners who successfully complete vocational training programmes to receive certificates approved by MOLSA.</p>

SUMMARY RECOMMENDATIONS			
	LEGISLATIVE CHANGES	LONG TERM STRATEGY	SHORT TERM STRATEGY
OTHER REHABILITATION PROGRAMMES		<p>To recruit at least one psychologist per prison to participate in the initial assessment of female offenders, to provide consultation and to coordinate the activities of NGOs providing psychological support to female offenders.</p> <p>CPD to conclude a formal agreement with selected NGOs or other civil specialists to provide psychological support to women in prison.</p>	Psychological support to female offenders to be undertaken by NGOs and formalized, as recommended under long term strategy.
EARLY CONDITIONAL RELEASE	Either to add a clause to Article 50 of the Law on Prisons and Detention Centres, setting out the conditions which apply for eligibility or to make reference here to the prison regulations, where the conditions may be outlined.	To formulate a policy and mechanisms for the early conditional release of female offenders.	Start work to lay the basis for long term strategy.
PREPARATION FOR RELEASE		<p>Development of a preparation for release programme supervised by the Director of Community Reintegration and Transitional Housing.</p> <p>To include training in mediation skills in the curriculum of social workers being trained for employment in prison.</p>	Start work to lay the basis for long term strategy.

SUMMARY RECOMMENDATIONS			
	LEGISLATIVE CHANGES	LONG TERM STRATEGY	SHORT TERM STRATEGY
POST RELEASE SUPPORT		<p>To establish transitional houses for released women prisoners in need of protection.</p> <p>To develop the policy and management mechanisms of transitional houses in consultation with NGOs currently providing shelter for women, UNODC, UNIFEM, MOWA, MOJ and MOLSA.</p> <p>To develop a mechanism of coordination between CPD, MOWA, MOLSA, UN bodies such as ILO, UNDP and UNIFEM, other international and national organisations, such as the Afghan Women’s Business Council, to assist women released from prison to enter the labour market.</p> <p>Discussion between AIHRC, MOWA, UNODC and UNIFEM to identify ways in which monitoring and data collection relating to the post-release situation of female prisoners can be conducted, to evaluate the success rate of social reintegration measures.</p>	<p>Establishment of a policy and mechanisms for coordination between MOJ, MOWA and MOLSA to ensure that the post-release support requirements of female prisoners are met.</p> <p>The development of a policy and appropriate separate facilities to provide protection to women in need, in prisons, based on Article 53 of the Law on Prisons and Detention Houses.</p> <p>To invite NGOs currently running safe houses to the prison coordination meetings to explore ways in which the accommodation of former prisoners in safe houses may be increased in the short term. Women at risk, who do not want to be housed in prison, should be assisted by MOWA and NGOs to be accommodated in safe houses.</p>

SUMMARY RECOMMENDATIONS			
	LEGISLATIVE CHANGES	LONG TERM STRATEGY	SHORT TERM STRATEGY
PREGNANT WOMEN AND WOMEN WITH CHILDREN	<p>Revision of Penal Code to postpone the imprisonment of pregnant women or women with small children (age limit to be determined), for a certain period at which time the sentence should be reviewed and may be cancelled, depending on the circumstances. The revision may apply to women who have committed non-violent crimes. Revision to be reflected in the CPC.</p> <p>To add an article either to the Law on Prisons and Detention Centres or to the prison regulations, reflecting UN SMR Rule 23 (1) obliging prison authorities to facilitate the transfer of pregnant women to hospitals outside prison for delivery, where practicable.</p>	<p>Allocation of resources by donors and international agencies supporting programmes to improve women's participation in the labour force to the establishment of nurseries for employed mothers, where the children of women prisoners could also be accommodated, after the age of 7.</p> <p>Establishment of nurseries within prisons for children above the age of 3, with specialist staff from MOLSA and MOPH. A protocol to be signed between MOLSA, MOPH and MOJ.</p> <p>Protocol to be concluded between MOPH and CPD for the transfer of pregnant women to civilian hospitals for the delivery of babies. In cases where this is not possible MOPH to provide a specialist doctor to undertake the delivery in prison.</p>	<p>In the short term children should not be separated from their mothers at the age of 3, unless proper care outside prison can be guaranteed (e.g. by a relative).</p> <p>To formalize collaboration between NGOs and CPD to provide the needs of children in prison, including educational, nutritional, medical and psychological.</p> <p>To establish mechanisms of collaboration with MOE to ensure that the curriculum for children over 7 in prison follows the curriculum taught in schools.</p> <p>To support child visitation programmes, organised by NGOs, bringing together children currently housed in orphanages and their mothers in prisons.</p>

APPENDIX I: SAMPLE QUESTIONNAIRE



UNITED NATIONS
Office on Drugs and Crime

Country Office for Afghanistan

House 49/51, Lane 4, Street 15
Wazir Akbarkhan
Kabul, Afghanistan

**Questionnaire for prisoner women and detained at Pul-e-Charki
Female section**

Interview Date & Time:

Interviewer:

Province:

- The personal details of the interviewee will be kept confidential and their names will not be publicized in any case.
- This questionnaire aims to study the situation of women detained in the prison.
- This interview may last for an hour. The interviewee is free to maintain silence in any of the questions of this questionnaire.

A. – PERSONAL DETAILS

1. Full Name of the interviewee:

2. Father Name:

Occupation:

Age:

3. DOB:

(DD/MM/YY)

Don't know

4. Age:

5. province:

6. Ethnic Group:

Pashton

Uzbek

Tajek

Hazara

other, please specify:

7. Which language you speak?

Dari

Pashtu

Others

8. Education:

Literate

Illiterate

a. If literate, level of education:

- Primary school Secondary school High School
- University Informal education (Madrasa)

9. Were you working at the time of arrest or before it?

- Yes No

a. If yes, what sort of work?

b. What else were you doing?

.....

10. Marital status:

- Single Married Separated
- Divorced Widow

11. Husband Name: _____ **Occupation:** _____ **Age:**

12. Number of children?

13. Number of children along with you?

14. Where the other children are living?

- Father grandparent's relative
- orphanage
- other (Please specify) ?

B. -PERSONAL BACKGROUND

C. -ECONOMIC – SOCIAL AND FAMILY BACKGROUND

15. How do you assess your family economically?

Very Poor Poor Medium
Rich

16. How did your family members treat you?

Good Moderate With negligence

17. Were any of your family members arrested in the past for any reason?

Yes No

a. If yes, for what type of act?

Political activity Criminal activity Others

18. What is the relation with you?

Father Brother husband Other (Please specify)

19. How often your family visits you?

Often Sometimes Seldom Never

20. Do you think the family will accept you after you're released from jail?

Yes No

If No, why?

D. – CASE DETAILS

21. Do you know which offence you are charged with?

Yes No

If yes, which offence are you charged with?

Murder
crime Robbery Theft Moral

Assault Drug trafficking Others...

.....

22. Place of arrest:

23. Date of arrest:

24. For how long have you been in this prison?

25. Name of the Court/ Judicial Authority that sent you to this prison:

26. Crime History:

27. Why were you brought in this prison?

- For trial (sentenced) For serving imprisonment
 For not being able to pay the bail fine For not being able to pay the fine
 Other reasons [.....]

28. Have you been trialed or sentenced?

- Trialed Sentenced

29. If you have a lawyer, how long after arrest did you first meet her/him?

- a. If brought for the trial, Have you hired a lawyer?** Yes
 No

b. name of the lawyer?

c. If you have a lawyer, do you know which organization provided her/him?

- Medica Mondiale Da Qanoon Ghushtonky
 My family hired the lawyer Other

30. Was your lawyer present during prosecutor interrogation?

- Yes No Sometime

31. Did you attend the trial personally?

- Yes No

32. Did your lawyer attend the trial?

- Yes No

33. Did you stay in the local police station after arrest, and if yes, how long?

- less than 24 hours 24 hours 48 hours
 72 hours Longer, If longer, how long?

34. How long did you spend in pre-trial detention (Wolayat Kabul or district prison) before being transferred to Pol-e Charki?

Under 30 days Over 30 days, If over 30 days, how long?

35. Did you sign a confession before your trial?

Yes No

If yes, what were the circumstances relating to the signing of the confession?

E. – COURT DECISIONS

36. Primary Court decision

37. Secondary Court decision

38. Supreme Court decision

F. – THE SITUATION INSIDE THE PRISON

FACILITIES

39. Accommodation

Satisfactory not satisfactory

a. If not why?

40. Health

Satisfactory not satisfactory

a. If not why?.....

41. Food

Satisfactory not satisfactory

a. If not why?

General living condition

Satisfactory not satisfactory

a. If not why?.

42. Are you aware of any activities in the center which was carried out by local or international NGOs?

Yes No

a. If yes please named? Afghan Women Education Center (AWEC)

Do you have any skill?

Yes No

43. What are they?

- Tailoring Embroidery Crochet
 Teaching Office work Healthcare
 Carpet weaving Domestic work Other

If other, what job skills do you have?

44. What other skills training would you like to have in prison?

45. Are you attending any kind of activities?

Yes No

a. If yes please name of activities?

- Skill training
 Tailoring Embroidery Making lace (crochet)
 knitting
 Education, basic education
 Language
 Counseling

46. If you have received psychological counseling, did you find it helped you?

Very much somewhat Not much Not at all

If not, why not?

G. POST- RELEASE:

47. What would you like to do after release?

- Go back to my family, if they will accept me
 Find a safe house
 Work and earn a living on my own

Other. If other, what?

48. Additional information?

H. – QUESTION TO PENITENTIARY STAFF

- Name of staff member:

.....

- Position:

.....

.....

49. How is the behavior of the detained woman in the center?

Satisfactory

not satisfactory

If not

why?.....

50. Case history?

.....
.....
.....
.....
.....
.....



UNITED NATIONS
Office on Drugs and Crime

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