

AFGHANISTAN

Addressing the needs of women in prison

Afghanistan's prison population has exploded since 2001. In 2001 there were only 600 prisoners; by March 2005, there were 5,500 recorded prisoners; by March 2007, 10,400.

Afghan law provides that each provincial centre should have a prison and a detention centre, with prisons under the jurisdiction of the Ministry of Justice and detention centres under the Ministry of Interior. Currently, there are 34 provincial prisons, in addition to Pul-e-Charkhi in Kabul. Many are in deplorable condition and do not respect international standards for the treatment of prisoners. In addition, there are 242 district detention centres.¹

Many people are detained illegally and the lack of an independent bar or state-subsidised legal aid system impedes their access to justice. Individuals, adult and child, are often held in prison for months before having the legality of their detention determined by a judge.

At the same time, informal, traditional justice mechanisms, which are the de facto legal system throughout most of Afghanistan, are frequently discriminatory towards women and children.² In this traditional justice system, disputes and crimes are tried and resolved by a council of elders (*jirgas* or *shuras*). These councils are composed exclusively of men. Women are unable to approach the informal justice mechanisms without the assistance of a male relative, limiting their ability to raise certain issues even if they wish to do so.³ In addition, a number of matters relating to marriage, abduction and adultery may be dealt with by the *jirgas* in a discriminatory way. It can be difficult to differentiate between rape and consensual sex as dealt with in the *jirgas* because all sexual relationships outside of marriage are referred to as *zina*. 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.⁴ If she accepts, the dowry is paid and she is married. While in some cases acts of abduction may be consensual, in others, the girl, having been shamed by the abduction and possible rape ("adultery"), has little choice but to marry her abductor. Any other future for her would be bleak, with little or no prospect of marriage to someone else. Thus, the settlements concluded by the *jirgas* in such cases of "abduction" or "adultery" often amount to forcing a girl to marry her rapist.⁵

The female prison population

As with the male prison population, the number of female prisoners has increased over the last five years. Female prisoners rose from 86 in December 2004 to 275 in 2008, imprisoned along with 175 of their children.⁶ The majority of women prisoners are from 18 to 25 years of age.⁷ The number of female prisoners is expected to grow even further as the capacity of the formal justice system is developed and begins to prevail over traditional justice mechanisms.

The majority of female prisoners are being held for violating social, behavioural and religious norms, so-called "moral crimes". These crimes of morality are considered crimes against the dignity of the family, and include adultery, running away from a husband after abuse, having a relationship without being married and refusal to marry. There are also cases of women being imprisoned for having publicly reported rape, and who have been placed in

1 Christine C. Fair and Seth G. Jones, *Securing Afghanistan: Getting on Track* (United States Institute for Peace, January 23, 2009).

2 Jill McGiverin, "Rough justice for Afghan women inmates," *BBC News*, November 12, 2008, http://news.bbc.co.uk/2/hi/south_asia/7719686.stm (accessed February 8, 2010); Fair and Jones, *Securing Afghanistan: Getting on Track*.

3 United Nations Office on Drugs and Crime (UNODC), *Afghanistan: Female prisoners and their social reintegration*, March 2007.

4 International Legal Foundation, *The Customary Laws of Afghanistan*, 2004, 43.

5 UNODC, *Afghanistan: Female prisoners and their social reintegration*.

6 Reuters AlertNet, "Afghanistan sets up a prison for women," January 24, 2008, <http://www.alertnet.org/thenews/newsdesk/ISL294947.htm> (accessed February 5, 2010).

7 Jill McGiverin, "Rough justice for Afghan women inmates."

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the same detention facility as their rapist.⁸ (However, it should be remembered that women in Afghan prisons represent only a very small percentage of women who are being punished for violating such codes: most of them are tried in the traditional justice system.)

Conditions in women's prisons

In 2008, the first women's prison, with a capacity of 330 prisoners, was established in Kabul.⁹ Although the government plans to build 15 such facilities, as of March 2009 this was the only dedicated women's prison and was holding about 90 prisoners with their children. In the rest of the country men and women are incarcerated in one detention facility. According to the project manager for prisons working for the United Nations Office on Drugs and Crime, the female prison is built up to international standards and is considered the best ever built in Kabul.¹⁰ The women share rooms of three to four bunk beds and undertake different educational classes, such as learning the local Dari language as well as taking classes in geography, English, sewing and computer technology.

However, not all women prisoners in the country are incarcerated under conditions that meet international standards. Between 2007 and 2009, the Corrections Advisor for the United Nations Assistance Mission to Afghanistan (UNAMA) visited a number of prisons in different parts of the country, including the ones in Bamyan, Daikundi, Khost, Gardez, Balkh/Mazar-e-Sharif, Maimana, Jawzjan, Samangan, Takhar and Pul-Khombri. These prison visits revealed the following problems:¹¹

- In some prisons security is poor, and there are insufficient numbers of female prison guards.
- In some prisons the conditions for women are poor, with lack of water and poor sanitary facilities which may cause considerable health risks.
- Supplies of medicine and female hygiene/sanitation products are generally inadequate. In some female prisons, stocks of drugs and medicines are expired.

Furthermore, the Ministry of Women's Affairs and NGOs have reported cases of rape of female detainees by police.¹²

The UNAMA Corrections Advisor also visited a number of juvenile detention centres (Bamyan, Kabul, Jawzjan, Samangan, Takhar, Pul-Khombri and Kunduz) and rehabilitation facilities (Balkh/Mazar-e-Sharif and Maimana). His visits revealed that:¹³

- Structures are often in a derelict state, and prisoners are held in inhumane conditions with no water, electricity or sewage system (e.g. in Pul-Khombri).
- Girls and boys are generally detained together in the same building, often without adequate medical supplies or facilities for fresh air, exercise, sport or education and training (e.g. in Junduz, Takhar and Balkh/Mazar e-Sharif juvenile facilities).
- Overcrowding can be a major issue for both girls and boys. Classes are often held within cells. In summer, overcrowding poses serious health risks (e.g. in Kabul).
- Rape of both female and male detainees has occurred (e.g. in Bamyan).

On release, female prisoners also face significant difficulties. Their full reintegration into the community may be hampered by prejudice and rejection from their family and society, especially in the case of those detained for 'moral crimes'. In these cases, women find themselves completely isolated once out of prison, lacking any form of economic support and housing and excluded from their families and villages. This has meant that in some

8 Lys Anzia, "Women's Prisons – A Global State of Crisis," Women News Network (WNN), September 9, 2008, <http://womennewsnetwork.net/2008/09/09/prisoncrisiswomen8005/> (accessed November 26, 2009).

9 Reuters AlertNet, "Afghanistan sets up a prison for women."

10 Ibid.

11 Personal communication with Paul Biddle (former UNAMA Corrections Advisor), December 2, 2009.

12 US Department of State, "2008 Human Rights Report: Afghanistan," February 25, 2009, <http://www.state.gov/g/drl/rls/hrrpt/2008/sca/119131.htm> (accessed November 26, 2009).

13 Personal communication with Paul Biddle, 2009.

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cases female prisoners are kept in prison even after 'release', as they have nowhere else to go. In 2006, the authorities initiated the development of a policy to guide the establishment and implementation of transitional houses for released female prisoners in need of protection and assistance.¹⁴

NGO support for women prisoners

The interaction between civil society organisations and female prisoners in Afghanistan provides much needed services to prisoners, as well as contact with the outside world. The Afghan Women's Education Centre (AWEC), for example, has been working with women prisoners in different detention centres in Kabul since 2004. AWEC's doctors regularly visit prison facilities. AWEC also provides social workers to support women inside the Kabul and Mazaar prisons and facilitate their re-entry into society on their release. These social workers facilitate awareness-raising workshops within the prisons on issues such as prisoners' rights, human rights, civil rights, women's rights and Islam, gender, violence against women, peace and conflict resolution, health and HIV/AIDS prevention measures. Classes are held five days a week and include basic health education, literacy, first aid, handicrafts and tailoring. 146 female prisoners and their children took part in AWEC's education and vocational training in the Kabul prisons between August 2007 and July 2008.¹⁵ Since most of the women in prison cannot afford to hire a lawyer for the follow-up of their cases, AWEC provides a legal assistant to look over their cases and assist them.¹⁶ AWEC's social workers also visit prisoners' family members and arrange family visits with the women, helping women to be reaccepted into their families after release.

Other civil society organisations striving towards prison reform in Afghanistan include Medica Mondiale, Voice of Women and the Afghan Women's Organisation. They provide social, medical and legal assistance to women in prison; organise drama and art workshops, and handicrafts and tailoring classes that teach detainees a profession to continue after release; and conduct training for women on various issues. With support from the United Nations, some of these organisations are working on the reconstruction of some prison facilities, improving the rooms where women live and establishing child care facilities.

Diverting women from prison

In an attempt to address the problem at its roots, given that most women are imprisoned for "moral crimes", organisations such as Women Living Under Muslim Laws and Rights & Democracy are working to support initiatives for the adoption of a separate family code.¹⁷ The Ministry of Women's Affairs has also, in partnership with UNIFEM, established referral centres in Jalalabad and Parwan to try to divert cases relating to women and girls "running away from home" from the police and subsequent imprisonment. Although running away from home is not an offence according to Afghan law, a woman who runs away is often detained during the period in which the prosecution determines whether or not she has committed *zina*, and in practice women are often detained for long periods and sometimes sentenced to imprisonment for running away from home. Since the establishment of the first referral centre in Jalalabad only one case relating to elopement that was dealt with by the police resulted in detention. The referral centre also has a shelter capacity for victims of violence, which allows for a woman to be accommodated for 72 hours during the investigation of her case. It is envisaged that referral centres will be established in all 34 provinces.¹⁸ These referral centres work in collaboration with the six Family Response Units that have been

14 UNODC, *Afghanistan: Female prisoners and their social reintegration*.

15 See Afghan Women's Education Centre, Annual Report 2007, http://www.awec.info/index.php?option=com_content&view=article&id=56&Itemid=78 (accessed February 4, 2010).

16 See Afghan Women's Education Centre's web-page: http://www.awec.info/index.php?option=com_content&view=category&layout=blog&id=41&Itemid=64.

17 Women Living Under Muslim Laws, "Afghanistan: Afghan Women and Children in Prison," June 25, 2004, <http://www.wluml.org/node/1521> (accessed November 26, 2009). For a brief historical overview of the changes in the family law in Afghanistan, see For Equality in the Family web-page: http://www.musawah.org/np_afghanistan.asp (accessed February 8, 2010).

18 United Nations Office on Drugs and Crime, *Implementing Alternatives to Imprisonment, in line with International Standards and National Legislation*, May 2008, 69-70.

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established in police stations since 2006, dealing with cases of family violence, children in trouble and female victims of crime.

Ongoing justice and penal reform

While a process of restructuring of the prison administration has been underway since 2004, it was only in January 2006, with the endorsement of the Afghanistan Compact (a political agreement between the international community and the Government of Afghanistan), that the formal criminal justice system of Afghanistan was submitted to a process of extensive reform. With the support of the United Nations, 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 is being developed.¹⁹

- ▶ The importance of integrating gender in penal reform processes is discussed in section 3 of the *Penal Reform and Gender Tool*.
- ▶ The importance of ensuring that prison treatment is appropriate to the particular needs of men and women is discussed in section 4.4 of the *Penal Reform and Gender Tool*.
- ▶ The ways in which the needs of pregnant women and mothers of young children can be met in prisons is discussed in section 4.7 of the *Penal Reform and Gender Tool*.
- ▶ The importance of engaging civil society organisations in penal reform is discussed in section 4.9 of the *Penal Reform and Gender Tool*.
- ▶ The specific challenges of integrating gender into penal reform in post-conflict countries are discussed in section 5.1 of the *Penal Reform and Gender Tool*.

19 United Nations Assistance Mission in Afghanistan, *Afghanistan's Justice Sector Overview*, November 2006, 1.