

"Running away" is nowhere defined in the Afghanistan legal code. But a new Human Rights Watch report highlights cases amongst some 400 hundred women imprisoned for "moral crimes" after being forced to marry, abused, kidnapped or raped . Below is a summary and key recommendations.

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

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

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

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

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

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

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

Since the overthrow of Taliban rule in 2001, there have been major improvements in the rights of women and girls in Afghanistan. In parts of the country under government control, severe restrictions on access to education, work, and health care have been lifted. Many women have assumed government posts, run for office, and reengaged with Afghan society. In 2004 a new constitution was adopted guaranteeing women equal rights, and in 2009 the Law on the Elimination of Violence Against Women banned and set new penalties for underage and forced marriage, domestic violence, rape, forced prostitution, and other abuses against women.

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

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

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

In doing so, the report demonstrates twin injustices in the Afghan legal system: the often vigorous enforcement of vaguely defined or undefined "moral crimes," and the correspondingly anemic enforcement of the Law on the Elimination of Violence Against Women. While the women and girls who flee abuse often end up incarcerated, the men responsible for the domestic violence and forced marriages causing flight almost always enjoy impunity from prosecution.

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

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

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

Afghan women, especially those living outside major urban centres, are obliged to live according to strict unwritten rules of conduct. When travelling outside the home or between villages or cities, they need to be escorted by a male relative or husband or risk being labeled as "immoral." While education is far more accessible than under the Taliban, more than half of all girls still do not attend school. Every two hours an Afghan woman or girl dies of pregnancy-related causes, in part because girls are often forced to marry immediately after puberty and give birth before their bodies have fully developed.

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

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

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

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

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

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

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

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

When Human Rights Watch asked prosecutors why they prosecuted women and girls for "moral crimes" while failing to make basic inquiries about the crimes that women and girls alleged were committed against them, the typical response was laughter. Prosecutors explained that the women and girls detained for "moral crimes" were of bad moral character and must therefore have fabricated stories of abuse. Others suggested that the abuse was not severe enough to warrant punishing the husband. One prosecutor even made this argument in a case where a woman had fled her home after being stabbed repeatedly in the head, chest, and arms with a screwdriver.

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

opponents who describe them as "brothels" and seek to have them closed.

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

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

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

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

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

Key Recommendations

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

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

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

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

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

- The Afghan Supreme Court should withdraw the 2010 and 2011 guidance on criminalization of "running away" and replace it with new guidance that clarifies that "running away" is not a crime and cannot be prosecuted under article 130 of the Constitution.
 - President Karzai should issue an administrative decree that "running away" should not be treated as a crime under Afghan law and that everyone convicted for "running away" will be pardoned.
 - International donors should make implementation of the ERAW Law, abolition of the crime of "running away," revisions to the zina and family laws, and reforms to other laws that discriminate against women key issues in political engagement with the Afghan government. Second, women and girls suffering from forced marriage, domestic violence, sexual abuse, and other crimes should be better protected, and the perpetrators of such crimes more systematically investigated and prosecuted. To that end:
 - The Attorney General should issue instructions requiring prosecutors to formally investigate all allegations of crimes against women under the ERAW Law or any other law, bring charges as the evidence warrants, and fully investigate whether women accused of crimes were acting in response to abuse.
 - The Minister of Interior should instruct all police that they are obliged to convey information pertaining to all incidents of violence against women or possible crimes under the ERAW Law to the prosecutor immediately.
- International donors should provide stable, predictable, long-term assistance for shelters, including for expanding the current capacity of the shelter system and developing "open" shelters, safe housing for women leaving prison, and long-term support for women permanently unable to reunite with their families.

The complete report can be downloaded from this link.

<http://hrw.org/reports/2012/03/29/i-had-run-away-0>