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## Justice fails Afghan women

By Aunohita Mojumdar in Kabul

Afghanistan is building new jails for women. Though there are only 300 female prisoners now, that number is expected to grow.

While there are no signs of a crime wave, one of the reasons for the increase is an unlikely one.

Lacking in transitional houses for released prisoners, a suggested solution includes using jails as secure places where women can stay until they are reintegrated into society.



**Many female prisoners face rejection by their families after their release [File: EPA]**

By some strange logic, funding for building jails is much easier to come by. But again, half of the women in jail should not be there at all.

Imprisoned for what are loosely described as "moral crimes", these women would qualify as victims rather than criminals under any interpretation of international human rights laws, including those to which Afghanistan is a signatory.

A report by the UN Office on Drugs and Crime (UNODC) on Afghanistan's female prisoners and their social reintegration drew attention to their dismal condition in a country where women face acute discrimination.

Not only are an estimated half victims themselves, but they are further victimised by the criminal justice process.

And on release from prison, they face victimisation for a third time. This can take the form of, at best, the family leaving the woman to fend for herself, and at worst, a so-called honour killing.

Released in Kabul on Sunday, the UNODC report recommended laws changes, better facilities and improved legal aid to address some of the issues facing female prisoners. These suggestions were debated with representatives of the ministry of justice, the supreme court and other Afghan departments.

## Forced marriages

The UN women's fund (Unifem) found that 80 per cent of the violence perpetrated against women in Afghanistan originated in their homes.

According to the Afghan Independent Human Rights Commission (AIHRC), 60 to 80 per cent of marriages in Afghanistan are forced, some of them involving girls as young as six years old.

Subjected to sexual and psychological abuse along with violence in their marital home, many girls run away. And when they come in contact with Afghanistan's criminal justice system, instead of receiving any protection, they are seen as offenders and convicted.

Opening a seminar organised jointly with the ministry of justice, Christina Orguz, UNODC country office representative, said that many people do not want to talk about the issue of female inmates.

Many are "in prison for things that would make them victims not perpetrators", she said.

## Increased awareness

Anou Borrey, a gender and justice consultant with Unifem, said: "There is a need to increase the awareness of women about their rights so they don't end up in prison".

She said simple measures like registering marriages and the birth of a child could prevent adultery charges and stop child marriages.

"Currently the majority of the female prisoners are being held for violating social, behavioural and religious norms," UNODC said.

The reason is the lack of a robust formal criminal justice system.

An estimated 80 per cent of all legal cases are dealt with by the traditional justice system, based on customary laws that vary from region to region and tribe to tribe.

Documentation of the customary laws by the International Legal Foundation showed that the laws are at their most discriminatory towards women.

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UN Office on  
Drugs and Crime

Not only are women penalised disproportionately for crimes, but they are punished on evidentiary standards that discriminate against them. Moreover, some of the customary laws also allow for them to be used as barter for settling other disputes, debts and feuds.

"In the restorative practice of the justice in Afghanistan, women who are regarded as the property of men, are often used as valuable commodities in the settlement of crimes and disputes" UNODC said.

"Rape may be treated as adultery and punished accordingly if a settlement cannot be reached between the two families concerned."

## Unclear definition

Even Afghanistan's formal justice system does not clearly define rape as a separate crime, including it under the offence of "zina" or adultery, pederasty and violation of honour.

In practice, a woman often has to prove her lack of consent in a rape case in order to avoid being punished for it.

Although there is no distinct penalty for rape, there is a distinction - the so-called honour crimes. Those who commit them are exempt from the charge of murder, the conviction is discretionary and imprisonment is for a maximum of two years.

A 30-year-old woman serving a six year sentence in Pul-e-Charkhi jail became the victim of this clause of the law.

When her husband killed his neighbour during a dispute, he claimed he had been driven to murder by the man committing adultery with his "property". He received leniency from the court and his wife was jailed for committing adultery.

### **Mercenary reasons**

Several women who were interviewed by UNODC were verbally divorced and had married again, but were later "reported" by their first husbands and jailed. In one case the woman had been in her second marriage for 10 years and had given birth to five children.

The reason is not necessarily malignancy but often mercenary. If a man can prove his "property" has been seized by another, he can claim compensation using the threat of the criminal justice system.

But, as the UNODC report says, being in prison for moral crimes is only part of the problem.

Other women are dealt with outside the formal justice system, a threat that still awaits the prisoners when they step out of jail.

Shukria Noori, the national project co-ordinator for social reintegration of prisoners, says that women may be "threatened, violated and even killed".

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Shelters for women do not have the capacity to absorb the large numbers of victims and are reluctant to accept inmates from prison, she said.

Borrey said there is a lack of support from the government, non-governmental organisations and the community to ensure that the women are reintegrated.

Even if she does not become the victim of a so-called honour crime, a female prisoner's chance of survival after her release is very low.

### **Social mores**

In a substantial number of cases, her family refuses to take her back. She has few marketable skills and Afghanistan's social mores make it extremely

difficult for a single woman to survive on her own.

"A lot of women in prison are not criminals according to international standards" Dorothea Grieger, a criminal justice programme assistant with UNODC, said.

"But the underlying principles of minimum standard rules apply to them as well. Improvement should be used to help them to lead self-supporting lives after release."

This is something that UN bodies and women's organisations like Medica Mondiale are trying to address.

Legal aid as well as literacy, education and vocational training inside the prisons would empower the women prisoners with some marketable skills that could help them survive.

But most important of all perhaps is preparing them for release.

Mediation with the family, local elders or religious leaders enhances the chances of her acceptance. Sudden releases, like during Id al-Fitr, can actually harm the women more, leaving them on the streets.

Source: Al Jazeera