

Afghanistan: situation des femmes « fugitives »

Recherche rapide de l'analyse-pays

Berne, 1er octobre 2018

Impressum

Editeur

Organisation suisse d'aide aux réfugiés OSAR
Case postale, 3001 Berne
Tél. 031 370 75 75
Fax 031 370 75 00
E-mail: info@osar.ch
Internet: www.osar.ch
CCP dons: 10-10000-5

Versions

français, allemand

COPYRIGHT

© 2018 Organisation suisse d'aide aux réfugiés OSAR, Berne
Copies et impressions autorisées sous réserve de la mention de la source.

1 Introduction

Le présent document a été rédigé par l'analyse-pays de l'Organisation suisse d'aide aux réfugiés (OSAR) à la suite d'une demande qui lui a été adressée. Il se penche sur les questions suivantes:

1. Quelles sont les sanctions légales et/ou sociales pour une femme afghane qui a quitté son mari sans son autorisation et est partie vivre dans un autre pays ?
2. Dans quelle mesure les femmes afghanes ont-elles accès au divorce ?
3. Dans quelle situation se retrouverait une femme afghane qui retournerait seule en Afghanistan (province de Ghazni) et ne retournerait pas auprès de son mari légal ou de sa famille ? (Quelle protection, quel accès à un emploi, à un logement, à des aides ?)

Pour répondre à ces questions, l'analyse-pays de l'OSAR s'est fondée sur des sources accessibles publiquement et disponibles dans les délais impartis (recherche rapide) ainsi que sur des renseignements d'expert-e-s.

2 Violences contre les femmes en Afghanistan

Plus de 4 000 incidents de violence contre les femmes rapportés en 2017, dont un tiers concernaient la violence physique, y compris les « crimes d'honneur ». Les crimes sont la deuxième forme de violence envers les femmes la plus répandue dans le pays. En mars 2018, la *Commission indépendante des droits de l'homme d'Afghanistan* (AIHCR) a désigné dans son rapport annuel la violence contre les femmes comme « un des plus sérieux défis posés aux droits de la personne en Afghanistan ». Cette violence comprend les « crimes d'honneur », les enlèvements, les viols, le harcèlement sexuel, les avortements forcés et la violence domestique. L'AIHCR relève que 4 340 incidents de violence contre les femmes ont été rapportés en 2017. Sur ce total, 1 420 (33 pourcents) incidents concernaient de la violence physique, 1 317 (30 pourcents) concernaient la violence verbale et psychologique, 749 concernaient la violence économique (17 pourcents), 228 concernaient la violence sexuelle (5 pourcents) et finalement 626 incidents concernaient d'autres formes de violence (AIHCR, 11 mars 2018). Selon un rapport de la *Mission de l'ONU pour l'Afghanistan* (UNAMA) et du *Haut-Commissariat des Nations unies pour les droits de l'homme* (OHCHR), publié en mai 2018, les meurtres de femmes représentent la deuxième forme de violence envers les femmes la plus répandue en Afghanistan, la première étant les coups volontaires et les lacérations. Dans la version récemment mise à jour des *Directives d'éligibilité sur l'évaluation des besoins de protection des demandeurs d'asile d'Afghanistan*, l'*Agence des Nations unies pour les réfugiés* (HCR) note que les dépressions causées par la violence domestique et autres violations des droits humains sont en augmentation parmi les femmes afghanes et expliqueraient 80 pourcents des suicides dans le pays. Certaines femmes choisissent de s'immoler par le feu.

Les femmes sont encore davantage vulnérables à la violence et aux violations des droits humains dans les régions rurales et les zones contrôlées par les forces anti-gouvernementales, y compris les talibans. Citant l'AIHCR, le HCR note que la violence

contre les femmes est « généralisée, courante et une réalité indéniable ». Dans les provinces affectées par l'insécurité et dans les zones rurales, les femmes sont particulièrement vulnérables à la violence et aux abus. Le harcèlement sexuel et une discrimination profonde à l'encontre des femmes restent des problèmes endémiques. En dépit des efforts du gouvernement pour promouvoir l'égalité des genres, les femmes continuent de faire face à des fortes discriminations sociales, politiques et économiques dues notamment à la persistance de stéréotypes et de pratiques coutumières qui les marginalisent. Les femmes qui sont perçues comme transgressant les normes sociales font face à une stigmatisation sociale et des menaces à leur intégrité physique, en particulier dans les régions sous contrôle des forces non-gouvernementales. Dans ces régions, la situation des femmes est particulièrement problématique car les forces anti-gouvernementales imposent de sévères restrictions aux droits fondamentaux des femmes, y compris en ce qui concerne la liberté de mouvement, la participation politique, l'accès aux soins de santé et l'accès à l'éducation. De plus, les femmes vivant dans ces zones n'ont que peu de chances d'obtenir justice ou réparation pour la violation de leurs droits, notamment du fait de l'existence de structures judiciaires parallèles, opérées par les forces anti-gouvernementales, qui violent régulièrement les droits des femmes (UNHCR, 30 août 2018).

3 Accès au divorce, situation des femmes divorcées

Discrimination des femmes par la loi en ce qui concerne l'accès au divorce. Selon la journaliste *Fariba Nawa*, l'interprétation actuelle de la loi afghane islamique ne met pas les hommes et les femmes sur un pied d'égalité en matière de divorce. *Heather Barr*, une chercheuse de *Human Rights Watch* (HRW) spécialisée dans les droits des femmes citée par *Fariba Nawa*, note que le code civil afghan permet à un homme de divorcer de sa femme à n'importe quel moment et pour n'importe quelle raison. Une femme, par contre, se doit de donner un certain nombre de justifications et de les prouver et doit aller jusqu'au tribunal. Dans la pratique, la plupart des femmes ne peuvent simplement pas divorcer car elles sont souvent pauvres, illettrées et n'ont pas accès à un avocat (*Fariba Nawa*, 22 mars 2017). Selon HRW, les lois sur le divorce sont archaïques et contribuent à aggraver la situation des femmes victimes de violence domestique. Alors qu'il est extrêmement difficile pour une femme d'obtenir un divorce, pour un homme il suffit qu'il se déclare lui-même divorcé. En 2007, le gouvernement afghan a promis de réformer la loi sur le divorce et a entrepris de rédiger une nouvelle loi. Cependant, depuis 2010, il n'y a eu aucun progrès dans l'avancement de l'adoption de cette loi et les femmes afghanes continuent d'être considérées par la loi comme des citoyennes de seconde catégorie (HRW, 9 janvier 2018).

Conditions très restrictives pour permettre à une femme de divorcer. D'après *Imamuddin Musaheb*, un avocat afghan cité par l'*Institute for War and Peace Reporting* (IWPR), selon les lois civiles afghanes, une femme ne peut divorcer de son mari que si celui-ci souffre d'une maladie chronique incurable, s'il est incapable de nourrir sa femme ou s'il est absent depuis plus de trois ans pour des raisons inconnues. Selon *Maulavi Keramatullah Sedigi*, directeur d'études islamiques au *Ministère du Hadj et des affaires religieuses*, cité par IWPR, une femme peut obtenir le divorce si son mari est d'accord, si le mari est incapable de nourrir sa femme ou souffre d'une maladie incurable, si le mari force la femme à s'adonner à des actes immoraux, si le mari s'absente pour un long voyage contre l'avis de

sa femme, ou sans l'en informer, s'il ne la soutient pas financièrement pendant son absence, ou s'il refuse de dormir avec sa femme pendant quatre mois. Si aucune de ces conditions n'est remplie, la femme ne peut pas divorcer. En pratique, même si une de ces conditions est remplie, le divorce n'est souvent pas garanti (IWPR, 15 septembre 2015). Selon un renseignement envoyé par courriel à l'OSAR le 20 septembre 2018 par *Torunn Wimpelmann*, chercheuse spécialisée dans les questions de politiques de genre en Afghanistan, les femmes ont en principe également le droit de divorcer en cas de préjudice (« *harm* »), comme par exemple la violence.

Forte stigmatisation mais aussi marginalisation des femmes divorcées. Selon le HCR, les femmes qui n'ont pas le soutien et la protection des hommes, y compris les veuves et les femmes divorcées, sont particulièrement vulnérables. Elles n'ont souvent pas de moyens de subsistance, du fait que les normes sociales imposent des restrictions aux femmes vivant seules, y compris en ce qui concerne leur liberté de mouvement et leur capacité à gagner leur vie (UNHCR, 30 août 2018). Selon *Torunn Wimpelmann* (20 septembre 2018), une femme divorcée ou accusée d'avoir quitté son mari, et qui ne peut donc pas se reposer sur le soutien d'un réseau familial, a beaucoup de chance de finir dans un refuge pour femmes sans autres perspectives que de se prostituer pour gagner sa vie. Trouver un appartement ou une maison sera en effet très difficile car peu de propriétaires seraient d'accord de louer à une femme seule, à moins que celle-ci ait des moyens financiers très importants. Selon le *New York Times* (NYT), malgré certains progrès, la situation des femmes divorcées reste très difficile en Afghanistan, notamment à cause de la forte stigmatisation sociale dont elles font l'objet. Il est par exemple très difficile de louer un appartement, le bail devant en général être signé par un homme. Les femmes divorcées sont considérées comme des femmes « faciles » ou débauchées et elles sont souvent la cible de harcèlement par les hommes (NYT, 17 avril 2017). Selon *Fariba Nawa*, les femmes qui ont recours au divorce font face à une forte stigmatisation sociale, y compris sur les réseaux sociaux (*Fariba Nawa*, 22 mars 2017).

Divorces en augmentation en Afghanistan, la plupart du temps pour échapper à la violence domestique, malgré des obstacles souvent insurmontables pour les femmes. Selon *Fariba Nawa*, le divorce est souvent pour les femmes le dernier recours possible pour tenter d'échapper et de survivre à la violence domestique, la polygamie et la négligence. En dépit de l'absence de statistiques fiables, il y aurait des indications que le nombre de divorces serait en augmentation ces dernières années en Afghanistan, aussi bien dans les zones rurales que dans les villes, et ceci malgré les obstacles quasi-insurmontables cités plus haut (*Fariba Nawa*, 22 mars 2017). Selon le NYT, le nombre de demandes de divorces aurait été multiplié par cinq au cours de la dernière décennie (NYT, 17 avril 2017).

4 Capacité de protection de l'État

Large impunité pour les auteurs de violences contre les femmes, y compris les « crimes d'honneur ». D'après le HCR, la mise en œuvre des lois visant à protéger les femmes reste très lente, en particulier la *Loi sur l'élimination de la violence à l'encontre des femmes* (EVAW). Adoptée en 2009, celle-ci a criminalisé 22 actes de violence et des pratiques traditionnelles préjudiciables aux femmes, comme le mariage forcé, y compris des enfants, et les actes de violence contre les femmes comme le viol et la violence domes-

tique. Cette loi précise également les punitions pour les auteurs de ces actes. Cet arsenal législatif n'est toutefois que rarement utilisé par les autorités ou alors très partiellement, surtout dans les zones rurales (UNHCR, 30 août 2018). En 2016 et 2017, UNAMA a trouvé que les auteurs de « crimes d'honneur » restaient largement impunis. Cette impunité était facilitée par le fait que ces cas étaient souvent résolus par la médiation et du fait du pouvoir discrétionnaire de l'autorité judiciaire en matière de « crimes d'honneur » donné par le code pénal de 1976, en place pendant cette période. Différents organes des Nations unies ont déjà documenté sur la question dans le passé et se sont inquiétés du fait que la plupart des « crimes d'honneur » ne sont pas rapportés, font rarement l'objet d'une enquête et souvent restent impunis. Quand des sentences sont prononcées, celles-ci sont généralement moindres que pour un crime similaire qui n'est pas commis pour des raisons « d'honneur ». Entre janvier 2016 et décembre 2017, UNAMA a documenté 280 cas de meurtres et de « crimes d'honneur » de femmes. Dans seulement 50 cas, ou 18 pourcents, les auteurs des meurtres ont été condamnés et emprisonnés. Comme dans les années précédentes, la grande majorité des cas n'ont pas fait l'objet de poursuites (UNAMA & OHCHR, mai 2018).

Accès à la justice très limité pour les femmes. Les cas de violence contre les femmes, y compris les meurtres, sont souvent résolus à travers des mécanismes traditionnels de règlement des différends qui violent souvent les droits de femmes. Selon le HCR, peu de femmes ont accès à la justice et dans la majorité des cas, même lors de crimes sérieux, ceux-ci sont « résolus » à travers des mécanismes traditionnels de règlement des différends plutôt qu'à travers le système judiciaire formel. Bon nombre de cas sont référés, par la police ou par les procureurs, à des assemblées tribales (*jirgas*) ou des conseils tribaux (*shuras*) pour avis ou pour résolution, ce qui a pour effet de saper la mise en œuvre de la loi EVAW et renforce les pratiques traditionnelles préjudiciables aux femmes. Ces décisions augmentent les risques de victimisation et d'ostracisation des femmes et des filles (UNHCR, 30 août 2018). Selon UNAMA, dans près d'un tiers des 280 cas de meurtres de femmes enregistrés en 2016 et 2017, la police n'a pas daigné contacter les procureurs, et bon nombre de cas ont été « résolus » par la médiation. Celle-ci vise surtout à restaurer l'harmonie entre familles en fournissant une fille ou une femme en dédommagement, ce qui constitue une violation des droits humains (UNAMA & OHCHR, mai 2018).

La mise en œuvre des standards de protection internationaux pour les femmes reste très lente, notamment à cause de l'opposition des conservateurs. Le nouveau code pénal, entré en vigueur en 2018, doit en principe permettre de mieux punir les « crimes d'honneur ». Selon le HCR, les efforts de ces dernières années pour incorporer des standards de protection internationaux pour les femmes dans la législation nationale afghane continuent de se heurter à des difficultés. La loi EVAW de 2009 continue d'être opposée par les membres conservatifs du parlement et d'autres activistes conservatifs. La révision du code pénal, adopté en mars 2017, par décret présidentiel, incluait initialement toutes les dispositions de la loi EVAW et renforçait également la définition du viol. Toutefois, sous pression des conservateurs, le président *Ashraf Ghani* ordonnait, en août 2017, la suppression du chapitre EVAW du code pénal. L'entrée en vigueur du code pénal révisé, en février 2018, a été suivie le mois suivant par un décret présidentiel qui stipule que la loi EVAW reste en vigueur en tant que loi distincte (UNHCR, 30 août 2018). Alors que le code pénal de 1976 permettait aux auteurs de « meurtres d'honneur » d'obtenir des circonstances atténuantes et souvent d'échapper à toute condamnation ou de voir celle-ci réduite, l'adoption par l'Afghanistan d'un code pénal révisé en 2018 qui ne contient plus cette référence et représente, selon UNAMA et OHCHR, la première étape pour mettre un terme à

cette impunité. Ces meurtres devraient faire l'objet d'une enquête, de poursuites et d'un jugement sur la base de l'article 512 du code pénal (UNAMA & OHCHR, mai 2018).

Des dispositions légales sur les questions de droits de la famille encore plus restrictives pour les femmes hazaras. Selon le HCR, la *Shiite Personal Status Law*, qui régit les questions relevant du droit de la famille comme le mariage, le divorce et les droits d'héritage, inclut un certain nombre de dispositions qui sont discriminatoires envers les femmes, notamment en regard du droit de garde, du droit d'héritage et de la liberté de mouvements en dehors de la maison (UNHCR, 30 août 2018). Selon *Robert Mackey*, en juillet 2009 le gouvernement afghan aurait discrètement mis en vigueur une version révisée de la *Shiite Personal Status Law* qui donne le droit aux hommes, membres de la communauté chiite, d'affamer leurs femmes si celles-ci ne répondent pas positivement à leurs demandes sexuelles. De plus, les femmes doivent demander la permission de leurs maris pour sortir de la maison, « sauf dans des circonstances extrêmes ». Selon HRW, cité par *Robert Mackey*, cette loi confie également la garde des enfants exclusivement aux maris ou aux grands-pères. De plus, elle permet à un violeur d'échapper à toute poursuite simplement en échange du paiement d'une somme d'argent à sa victime. Cette loi, signée par le président *Hamid Karzai*, ne s'applique qu'aux membres de la communauté chiite, dont la majorité en Afghanistan appartiennent au groupe ethnique des Hazaras (*Franck Mackey*, 15 août 2009).

5 Sanctions légales à l'encontre des femmes accusées de quitter leurs maris, d'adultère et d'autres « crimes moraux »

Malgré l'absence de base légale, les femmes « fugitives » qui fuient un mariage forcé ou la violence domestique continuent d'être poursuivies et condamnées. Selon le *Chr. Michelsen Institute* (CMI), le cadre légal afghan ainsi que l'application des lois sont caractérisés par un haut niveau d'ambiguïté et d'imprévisibilité qui trouve ses racines dans un corpus juridique afghan compliqué et contradictoire, ainsi que dans l'extrême hétérodoxie de son personnel légal. La pratique d'incarcérer des femmes accusées d'avoir quitté leurs maris ou d'avoir commis l'adultère peut, selon le CMI, être interprété comme une tentative de renforcer un système où les femmes « normales » se doivent d'être surveillées par leurs familles qui peuvent ainsi mieux contrôler leurs corps (CMI, décembre 2017). Selon IWPR, la loi afghane permet aux autorités de condamner une femme qui s'enfuit de chez elle, par exemple pour échapper à un mariage forcé, à une peine de prison pouvant aller jusqu'à un an. Les cas de « fugitives » sont en principe pris en charge par les institutions judiciaires, via le *département des affaires féminines*, mais de nombreux autres cas sont résolus de manière informelle à travers le conseil des aînés. Selon *Abdul Ahad Farzam*, représentant à Kaboul de l'AICHR, cité par IWPR, il y a eu 108 cas de « fugitives » en 2017 dans les provinces de *Kapisa*, *Parwan*, *Panjshir*, *Logar*, *Maidan Wardak* et *Ghazni*, mais le chiffre réel est certainement beaucoup plus élevé (IWPR, 12 juillet 2018). Selon l'*Afghanistan Legal Education Project* (ALEP), en Afghanistan, le fait de quitter son mari et s'enfuir n'est pas en soi une infraction criminelle, mais celles qui le font sont quand même poursuivies et souvent condamnées (ALEP, 2015).

Des poursuites envers les femmes « fugitives » justifiées par le « zina tenté » (l'intention de commettre un adultère), un acte considéré comme criminel. Selon *Ghazi Hashimi*, chercheur à l'université de Kaboul, l'islam n'interdit pas formellement de fuir la maison, mais cet acte est considéré comme contraire aux principes islamiques. La fuite serait ainsi indicative de crimes comme l'adultère et la prostitution. Même si la fuite en soi ne constitue pas formellement un crime, il est courant que la police arrête, emprisonne et poursuive les femmes qui s'enfuient de chez elles. Cela est souvent fait en liant cet acte de fuite à une « intention » de commettre un adultère (« zina »), ce que le code pénal considère comme un crime. En 2010 et 2011, la Cour suprême afghane a confirmé que la fuite de la maison, même en cas d'abus et de violence domestique, « peut mener à des crimes comme l'adultère et la prostitution et est contraire aux principes de la Sharia » et que cet acte est donc punissable par la loi. Sous pression des défenseuses-eurs des droits humains, aussi bien en Afghanistan qu'à l'étranger, pour mettre fin à cette pratique, le bureau du procureur général a émis une directive en avril 2012, stipulant que s'enfuir de la maison n'était pas un crime et ne devrait pas faire l'objet de poursuites pénales. Cette directive a été suivie par un décret de la Cour suprême qui stipule qu'il existe une différence entre s'enfuir de la maison et commettre un crime. Ainsi, les femmes qui fuient la violence domestique pour trouver refuge dans des centres d'accueil ne devraient pas être poursuivies. Par contre, les femmes qui fuient avec l'intention de commettre des « crimes moraux » doivent être poursuivies. Dans ces cas-là, la police devrait éviter d'utiliser le terme de « fugitive », mais le remplacer par un terme qui décrive de manière appropriée le crime commis. Ce décret est entré en vigueur en janvier 2013. En dépit de ce décret, les femmes ayant fui leurs foyers pour échapper à la violence conjugale ont continué à être poursuivies, toujours sur la base de l'article 130 de la Constitution afghane (*Ghazi Hashimi*, 2017).

Le nouveau code pénal considère l'adultère (« zina ») comme un crime passible de cinq ans de prison. En prison, les femmes sont fréquemment victimes de violences et d'abus. Dans un rapport de 2012, HRW a documenté la situation de nombreuses femmes accusées de « crimes moraux », tels que fuir un mariage forcé ou la violence domestique. D'autres femmes ont été reconnues coupables de « zina », ou relations sexuelles en dehors du mariage, alors qu'elles ont été violées ou forcées à se prostituer. Selon la loi afghane en vigueur à ce moment-là, une femme reconnue coupable de *zina* encourait une peine pouvant aller jusqu'à 15 ans de prison. Il est fréquent que les procureurs ignorent les preuves d'innocence des femmes et que celles-ci soient condamnées sur la base de supposées « confessions » (HRW, 28 mars 2012). Selon le HCR, le nouveau code pénal, adopté en février 2018, considère les relations sexuelles hors mariage (*zina*) comme un acte criminel. L'article 636 contient également une définition plus claire du viol qui ne relève pas du *zina* (UNHCR, 30 août 2018). Selon un renseignement envoyé par courriel à l'OSAR le 20 septembre 2018 par *Torunn Wimpelmann*, alors que sous l'ancien code pénal les femmes coupables de « zina » risquaient quinze ans de prison, cette sentence a été ramenée à cinq ans dans le nouveau code pénal. Selon le HCR, les punitions pour des violations de la Charia affectent les femmes de manière disproportionnée et incluent des détentions sur la base de supposés « crimes moraux », comme d'être mal accompagné, de refuser un mariage ou de s'enfuir de la maison (y compris pour fuir la violence domestique). Une forte proportion des femmes détenues en Afghanistan le sont pour des « crimes moraux ». En détention, ces femmes subissent souvent des violences physiques, du harcèlement sexuel et des abus. Les autorités justifient parfois ces détentions en arguant que les femmes sont ainsi protégées des « crimes d'honneur » (UNHCR, 30 août 2018).

Sanctions et risques encourus par des femmes accusées de « crimes moraux » dans les régions contrôlées par les talibans et les forces anti-gouvernementales. Selon le HCR, dans les régions sous contrôle des talibans et des forces gouvernementales, les hommes et les femmes accusés de comportements « immoraux » risquent d'être jugé-e-s par des structures judiciaires parallèles et de se voir infliger de lourdes sentences, y compris des coups de fouet ou même la peine de mort (UNHCR, 30 août 2018).

Sanctions sociales encourues par une femme ayant quitté son mari ou commis un adultère. Selon un renseignement envoyé par courriel à l'OSAR le 12 septembre 2018 par *Fariba Nawa*, si la famille de la femme qui s'est enfuie ou qui a trompé son mari est plutôt conservatrice, il y a un réel risque que la femme soit victime d'un « crime d'honneur ». Selon *Torunn Wimpelmann* (20 septembre 2018), il est effectivement possible que dans le cas d'une femme qui s'est enfuie de la maison, la famille choisisse des formes de punitions violentes, y compris l'assassinat. Elle peut également être retournée de force chez son mari et forcée de vivre comme une prisonnière. Dans un cas d'adultère, les risques d'un « crime d'honneur » sont encore plus élevés car c'est une punition que la communauté locale considérera comme normale.

6 La situation dans la province de Ghazni

Les talibans dominant militairement la province de Ghazni et contrôlent la grande majorité des districts. En août 2018, les talibans ont temporairement pris le contrôle de la ville de Ghazni. Selon *l'Afghanistan Analysts Network* (AAN), les talibans exercent depuis un certain temps déjà une influence majeure dans la province de *Ghazni*. Alors que le gouvernement contrôle la capitale provinciale, *Ghazni city*, la plupart des centres de districts et certaines larges zones dans les trois districts de *Nawur*, *Malestan* et *Jaghori*, les talibans contrôlent le reste de la province. Pendant le printemps 2018, les talibans ont encore renforcé leur domination militaire (AAN, 25 juillet 2018). En août 2018, les médias ont rapporté que les talibans avaient réussi à temporairement prendre le contrôle de *Ghazni city* avant d'en être délogés quelques jours plus tard par les forces gouvernementales afghanes, soutenues par les forces américaines. Les talibans avaient également pris le contrôle de plusieurs districts de la province. Dans les mois qui ont précédé la prise de *Ghazni city* par les talibans, ceux-ci avaient graduellement pris le contrôle des zones périphériques, prélevant même des taxes dans certaines zones. Selon des sources militaires américaines, citées par le NYT, les forces gouvernementales contrôlent 400 districts, ou 56 pourcents du total, tandis que les talibans contrôlent 14 pourcents. Les 30 pourcents restants des districts sont considérés comme « contestés » (*The Atlantic*, 15 août 2018 ; NYT, 13 août 2018).

Pas de foyer pour femmes en province de Ghazni. Selon un renseignement d'une *personne activiste pour les droits des femmes en Afghanistan* envoyé à l'OSAR le 9 août 2018, il n'existe pas de foyer pour femmes en province de *Ghazni*, car le gouverneur de la province n'a pas autorisé la construction d'un foyer pour femmes par les organisations non-gouvernementales (ONG).

7 Sources

AAN, 25 juillet 2018:

« Ghazni is one province where the Taleban have long-established significant influence. Actually, they dominate it militarily, with the exception of the provincial capital, all but one of the 18 district centres and some larger areas in three districts. Over the spring of 2018, the Taleban – although not capturing more territory –, have significantly expanded their threat to so far secure districts and other areas. AAN's Ehsan Qaane looks at the reasons and assessed the overall security situation of Ghazni with its significant shifts in this last spring.

Spring 2018 ended with three days of a genuine ceasefire between Afghan government and the Taleban forces. From 15 to 17 June, over the Islamic festival of Eid al-Fitr, the two sides' independent and different long truces overlapped. Over the three Eid days, Ghazni city hosted dozens of Taleban militants who entered the city to celebrate the holiday with their families. They freely walked in public places and fraternised with members of Afghan National Security Forces (ANSF) (AAN reporting here).

This was a positive, but short exception from their usual behaviour. Before the ceasefire, the Taleban had carried out a whole series of large attacks in 14 of the 18 districts of the province and in villages nearby its capital. The attacks started on 12 April 2018 in the district centre of Khwaja Omari. Apart from this, Muqur, Jaghatu, Andar, Deh Yak, Ajrestan, Gilan, Waghaz, Khugyani, Ab Band, Giro, Qarabagh and Rashidan, as well as the villages of Spandi, Shahbaz, Qala-ye Qazi and Arzo that belong to the provincial capital's district, were also assaulted. The New York Times reported in May "the central government in Kabul expressed fear that the Taliban had made it a priority to overrun Ghazni [city]."

Taleban attacks on Afghan National Security Forces (ANSF) checkpoints or district centres are not new with a long list of attacks with a growing number in 2017. In September 2014, the Taleban almost captured of Ajrestan (a media report here and AAN reporting here), which is far from the provincial capital and badly staffed. In 2017, there were near falls of Waghaz, Giro and Gilan; a series of attacks in Deh Yak in the same year and various sieges of Andar, just outside Ghazni city, the last time in autumn 2017; see also AAN reporting about the failure of local uprising forces here).

This year the Taleban, for the first time in 17 years, managed to seize centres of relatively safe districts close to the provincial capital. This occurred in Khwaja Omari and Jaghatu on 12 April and 21 May 2018. In both cases, the Taleban left these centres within hours following their capture. This retreat was without any further clashes with the ANSF so as to keep their casualty figures low.

On 3 May, they also blocked the Ghazni-Paktika highway to civilian and military traffic for more than two months. This was a unique development since the Tal-

eban's re-emerged as an insurgent group in south-eastern Afghanistan. This highway is crucial for Ghazni's defence, as it connects the city to the base of the Tandar Corps, the Afghan National Army Corps 203 based in Gardez in Paktia, further east of Paktika. This corps is the command centre of the Afghan National Army for south-eastern Afghanistan, ie the three provinces of Loya Paktia, Logar and Ghazni.

In addition to their attacks, the Taleban have created problems for the residents of Ghazni city by carrying out assassinations and collecting taxes. The residents of the three secure districts, particularly Jaghori, have suffered after mines were planted and temporary checkpoints were erected on the roads that connect them to Ghazni city. Previously, the Taleban occasionally had blocked this road and the Kabul-Ghazni highway, but only for a few hours each time.

In April and May 2018 alone, the Taleban killed at least four high-ranking local officials, including Ali Dost Shams, the district governor of Khwaja Omari, Faiz Muhammad Tufan, the chief of police of Deh Yak, Haji Barakatullah Rasuli, the commander of the reserve police unit of Ghazni province and Baryalai Rezai, the district head of the National Directorate of Security (NDS) of Khwaja Omari.

It looks as though the Taleban new military strategy for Ghazni is to expand their threat to secure districts, while the closure of the Ghazni-Paktika highway is a further step to put pressure on the provincial capital.

The Taleban's Ghazni surge

*The new surge of insecurity in Ghazni started at the beginning of 2015. This followed the withdrawal by mid-2013, first of the Polish troops who had provided the majority of the local Provincial Reconstruction Team (PRT), and then, by the end of 2014, also the US troops. **This left the war against the Taleban in this large, multi-ethnic province – the population of which has been estimated at 1.3 million in 2018 by the Afghan Central Statistic Organization; more data here) – on the shoulders of the ANSF. However, the ANSF's tashkil(number of personnel allocated) has been too small to cope, at least in the eyes of local officials. The current tashkil for Ghazni is 2,500 ANP and 4,200 ANA, according to provincial council member Hamidullah, talking to AAN. This has opened space for the Taleban since to expand their territory and power in the province.***

Currently, a number of US troops have returned to the provinces, according to provincial officials quoted in Afghan media. However, their number – as with the overall number of extra troops sent to Afghanistan under the Trump strategy – has not been made public.

Even by 2015, the Taleban controlled more of Ghazni province than the Afghan government (see this map). This equation has since further changed in their favour. This trend did not continue in 2018 but, as the result of their spring offensive, the local the government's grip on the so far relatively secure areas, such as Jaghatu and Khwaja Omari has become shaky. Since April 2018, control over some of their areas, including their centres, has changed hands be-

tween the ANSF and the Taleban – Jaghatu twice and Khwaja Omari once. Across the province, the government currently only controls the city of Ghazni, the three Hazara-dominated districts of Nawur, Malestan and Jaghori, and the district centres of the remaining districts, except Nawa where, except for one week in May 2015, had been under Taleban control ever since 2001.[...]

Although Ghazni city and some districts are considered part of government-controlled territory, the Taleban are exercising sovereignty by collecting taxes there. It looks as if the government cannot stop the Taleban. Its resources seem too weak, and there are grave shortcomings in coordination and general governance.

The Taleban may not want, or may be unable, to extend their territorial grip in Ghazni in the near future. Already, they have control over those parts of the province where they can recruit militants among the locals most easily. This is mainly in the Pashtun areas (although not all locals support them). The Hazara majority areas – often isolated from the Ring Road – are under pressure by the Taleban dominance and their frequently closing the roads connecting them with Ghazni city. Therefore, the Taleban occasionally are able to coerce local communities into mutual non-aggression deals.

In the current situation, the Taleban would only be able to capture the remaining parts of Ghazni, including Ghazni city, if at all, for a short time. The Taleban do not have much local support in the three Hazara districts and in Hazara-dominated areas in mixed ones, such as Jaghatu, Khwaja Omari and Qarabagh. In Ghazni city, the government is still much stronger than the Taleban, despite the Taleban's ability to threaten and pressure its residents by assassinations and taxation. The Taleban presence in districts nearby, however, keeps up a serious threat for Ghazni's centre and its residents. Militarily, the initiative remains on their side, while the government forces often only can react.

Due to this constellation of factors, the areas under Taleban control even appear more secure when compared to those in government-controlled territory. The local populations in the territory of the Taleban may not be happy with their rule, but at least they enjoy a degree of security. It looks like the situation favours the Taleban, until such time that the government can increase its military personnel (which seems to be the case with the expansion of the ANA 'territorial' forces, see AAN analysis here) and increase its offensive position operations after which territory can be held.

The Taleban's approach and the government's shortcoming – although they might differ in detail and due to different geographic circumstances – echo those reported by AAN from Helmand, Kunduz, Baghlan, Jowzjan and Farah. » Source: Afghanistan Analysts Network (AAN), The Insecure Spring of Ghazni: Results of third-grade treatment by the centre?, 25 juillet 2018: www.afghanistan-analysts.org/the-insecure-spring-of-ghazni-results-of-third-grade-treatment-by-the-centre/.

AIHCR, mars 2018:

« Violence against women is one of the most serious human rights challenges in Afghanistan. Violence is practiced in various forms against women; the most common of

which are physical, sexual, economic, verbal and psychological violence, and violence that is connected to unacceptable custom and tradition.

Cases of violence in fiscal year 1396

The present report shows that during fiscal year, 1396, 4,340 cases of violence against women have been registered, involving 2,286 people. So this year, 1396 more than 2,286 women in Afghanistan suffered from at least one type of violence against women. But in fiscal year 1395, about 2,046 cases of violence against women were recorded in the AIHRC's database. The statistics show that the number of complainants and victims of violence, referring to relevant authorities is rising.

The number of registered cases of violence against women increased by 11.7% in fiscal year 1396 compared to fiscal year 1395

Type of violence

Of the total violence against women, 4,340 cases registered in fiscal year 1396, 1,420 cases (32.7%), relates to physical violence, 228 cases (5.3%), to sexual violence, 1317 cases (30.3%), to verbal and psychological violence, 749 cases (17.3%), to economic violence, and 626 cases (14.4%) relate to other types of violence against women, which largely relates to unacceptable customs and traditions.

Physical violence;

Physical violence takes place in various forms. In many cases, these violent acts are very severe and often result in the murder of women. Of the 1,420 cases of physical violence, 1,213 of them include beating and battering, and this makes up 27.9% of the physical violence against women, which takes the form of acute and merciless violence. About 24 of these cases are burning. In 40 cases recorded in the AIHRC's database women were killed through male violence. 85 cases of injuries. 30 cases of forced labor have been reported. In 5 other cases, the victim's limb was cut, and 23 cases include other types of violence.

Killing of Women

One of the shocking types of physical violence that leads to the murder of women is honor killings, which take place based on dignity and honor justifications. In the meantime, the AIHRC has documented approximately 277 cases of female murder, of which there were personal complements only in 40 cases registered in the AIHRC's databank. The rest of the cases of women's murder have been documented by the AIHRC, the complainants have not referred to the AIHRC, this represents an increase of 8% compared to last year, because last year 234 cases of women's murder were recorded in the same period of time. Most of these cases have occurred in the northern, southern and eastern parts of Afghanistan. Of the total of 277 murder cases, 136 are honor killing cases. Of the total number of cases mentioned above, the perpetrators of 142 cases of women's murder are fugitive perpetrators.

Extrajudicial killing

During this period of time, the AIHRC has documented eight extrajudicial courts in the country that had led to the killing of 12 people (men and women), and beating and injury of 3 people (one man and two women). It should be noted that the perpetrators of all the cases of extrajudicial trial, except some people arrested in the ChaaAab of Takhar Province, are fugitives. These cases have occurred in the Kohestan area of Herat, Badghis, Faryab and Takhar provinces.

Sexual violence

Sexual violence is one of the most serious problems of women and a taboo issue in Afghan society traditions, thus people are attempting to conceal sexual violence. However, in the fiscal year 1396, approximately 228 cases of sexual violence were recorded in the AIHRC's database, accounting for 5.3% of all cases of violence against women. Of the total statistics on sexual violence, about 40 cases of rape, 41 cases of sexual harassment, 6 cases of forced pornography, 27 forced marriages, 34 forced prostitutions, 26 cases of forced sodomy, 35 cases of husband relationship with others, 4 forced pregnancies, 9 abortions, and 6 other cases were reported.

Verbal violence

Linguistic and verbal violence is also one of the prevalent cases of violence against women, which is rarely considered as violence. This kind of violence is usually occurring within the family and in public places in the form of street harassment. In fiscal year 1396, about 1,317 linguistic and verbal violence were recorded in the AIHRC's database, accounting for 30.3% of all cases of violence against women. Of the total statistics on linguistic and verbal violence, approximately 127 cases of accusation, 98 cases of forced isolation, 99 cases of divorce and ousting from home, 223 cases of threat with murder, 6 cases of threat due to deformity, 25 cases of humiliation due to lack of children, 5 cases of insults due to lack of male children, 714 cases of insult, humiliation and intimidation, and, 20 other cases were reported.

Economical violence

Economic violence is another type of violence against women. This violence also occurs in different ways. In fiscal year 1396, approximately 749 cases of economic violence were recorded in the AIHRC's database, accounting for 17.3% of all cases of violence against women. Of the total economic violence statistics, about 576 cases relate to non-payment of alimony, 20 cases of denial of the right to work, 53 cases of prevention of inheritance rights, 55 cases of prevention of private property, 26 cases of non-payment of dowry, 19 other cases have been reported.

Other cases of violence against women

AIHRC investigations show that violence against women is not limited to the abovementioned violence. Based on the AIHRC's database, in addition to the previous categories of violence against women, approximately 626 other cases, accounting for 14.4% of all cases of violence against women, have been included in the AIHRC's database. Out of the total of 749 cases, 79 cases related to denial of the right to choose spouses, 100 cases related to forced engagement, 88 cases were prohibition of visiting relatives, 46 cases were polygamy of hus-

bands, 45 cases were denial of the right to education, 37 cases were denial of access to health services, 10 cases of selling and buying of women under the pretext of marriage, 14 cases of negation of relationship, 7 cases of Bad, 15 cases of denial of civil and political rights, 6 cases of drug addiction, 7 cases related to trafficking and 174 cases related to category of other cases. [...]

Violence against women, however, is a social phenomenon with deep root in the culture and traditions of society. But AIHRC's review shows that violence against women within families is one of the most common forms of violence. Out of the statistics of fiscal year 1396, 4,118 cases, accounting for 94% of all cases of violence against women, occurred in the home. This figure indicates that the home environment is the most insecure place for women in Afghanistan. Of the remaining cases, 79 were in the street or on the roads, 29 cases in the workplace, in the offices or in the hospitals, 16 cases in the training center, school or university, 10 cases in the detention facility or in the prison. 34 other cases are not specified. » Source: Afghanistan Independent human Rights Commission (AIHRC), Summary of the Report on Violence Against Women, 11 mars 2018: www.refworld.org/country/.AIHRC..AFG..5ab132774.0.html.

ALEP, 2015:

« In practise, instances of violating the principle of "no punishment without law" do take place. For example, reports have come to the attention of the Legal Observation Project (LSOP) regarding runaway girls and women being prosecuted for leaving home despite the fact that such family or social issues are not criminal offences" » Source: Afghanistan Legal Education Project (ALEP), An introduction to the constitutional law of Afghanistan, 2015, p.246 : www.afghandata.org:8080/xmlui/bitstream/handle/azu/17475/azu_acku_knf2050_e454_2015_w.pdf?sequence=1&isAllowed=y.

CMI, décembre 2017:

« This paper has undertaken a preliminary survey of the relationship between the criminalization of consensual sexual crimes and women's protection against sexual violence in Afghanistan, as it has evolved in recent history. Given the centrality of the relationship between zina and rape in discussions about women's protection against sexual violence in Sharia-derived legal settings such as Afghanistan, it has attempted to explore provisions in Afghan law relevant to these two offenses, as well as how rape claimants may become vulnerable to charges of zina. Both Afghan's legal framework and its actual legal practices have been characterized by high levels of ambiguity and unpredictability, rooted both in Afghanistan's complicated and contradictory legal corpus and in the extreme heterodoxy of its legal personnel.

However, in Afghanistan the impact of criminalization of female sexuality on women's ability to protect themselves from sexual violence extends beyond the zina-rape nexus. An issue of equal, if not greater, importance is the practice of imprisoning women who run away from their homes, often from coerced marital unions. The effect of the practice of incarnating (sic) women for "attempted adultery or running away" is to essentially close off many women's possibilities of escaping the sexual violence of a forced marriage.

The logic espoused in this practice relies on castigating women outside of family or government supervision as sexual transgressors. Furthermore, the government has proved reluctant to intervene in rape cases, instead upholding a system where women's bodies are managed by their families. The Afghan government does not seek to use the punishment of adulterous or otherwise "immoral" women as public spectacles or in other ways to demonstrate its power over society. Unlike in contemporary Sudan or Iran, government lashings of women is unheard of (apart from a few renegade provincial officials in rural areas), and the thought of outsiders such as the government inflicting physical punishment on women would likely offend the sensibilities of most Afghans. Instead, **the state's routine detainment of women suspected of zina or who have escaped from home can be interpreted as an attempt to shore up a system where "normal" women belong under family surveillance. The government's reluctance to intervene in rape cases also suggests a sentiment that sexual transgressions by or against women only occasionally belong in the public domain. These attitudes make Afghan women dependent on their families, which is of little help when sexual violations originate there—often in the form of coerced marriage.** » Source: Chr. Michelsen Institute (CMI), Adultery, rape, and escaping the house: The protection and policing of female sexuality in Afghanistan, décembre 2017, p. 13: www.cmi.no/publications/file/6404-adultery-rape-and-escaping-the-house.pdf.

Fariba Nawa, 22 mars 2017:

« Afsawna's husband returned to Herat, Afghanistan, after seven years in Iran. He morphed into a heroin addict and began beating her in front of their five children and neighbors. He demanded the wages she earned from carpet weaving so he could buy drugs.

Another woman, Tanya, had to move after her wedding from the Afghan capital Kabul to Peshawar, Pakistan, to live with and serve her in-laws. Her husband remained in Kabul to work. Tanya, a former flight attendant, begged her in-laws to allow her to return to Kabul and live with her husband. The couple had two children in Afghanistan after the family agreed, but Tanya's husband eventually fled to Europe without her or their kids.

Basira, a law student, was forced by her grandparents to marry a cousin she didn't love. He accused her of having affairs, then raped and bit her during sex. They had a daughter, but he wed another wife while still married to Basira.

The women recount their stories with vivid details and emotion. Their voices begin with a high-pitched anger and ends with quiet uncertainty. At the end of the conversation is a plea: Please don't publish my name. It could hurt me.

*These are the divorcees of Afghanistan, women who risk shame, dishonor and in some cases death in a country consistently rated as one of the worst places to be a woman by international indexes. **A 2008 report by Global Rights found that 87 percent of Afghan women surveyed had suffered some type of domestic violence in their lives, including physical, sexual or psychological violence or forced marriage.***

National statistics on divorce aren't accurate in Afghanistan because municipalities don't consistently report their data to ministries, but there is evidence that the divorce rate is rising across the country, in cities and rural areas alike.

In Kabul last year, some 600 divorces were granted out of 800 that were filed there, according to the Afghan Independent Human Rights Commission. But the commission's highest number of divorces in last five years was in 2012 with 1341 cases. It's not clear why.

In Nimroz province, in 2014, there were only three divorces registered but a year later grew to nine, according to Pajhwok Afghan news service.

In Herat, 300 cases were filed last year, and while the courts there said they don't have comparative numbers, legal aides said there has been a consistent rise in the last decade.

For the majority, divorce is the last resort but a necessary survival tactic to escape physical abuse, neglect and polygamy.

These women aren't willing to suffer for the sake of maintaining a good reputation. Shaming women — especially divorcees — is rampant on Afghan social media.

Twitter and Facebook are filled with falsehoods about Afghan women getting divorces because they were influenced by Western feminists or "immoral" foreign films.

But now, even some of the judges who issue divorces admit that Afghan women are usually desperate for a way out when they come to the courts.

"Afghan women don't divorce for shallow reasons," said one Afghan family court judge, who declined to give his name because he is not authorized to speak to the media.

However, the majority of women abused by their husbands still choose to stay married, the judge said.

"You'll actually see a jump in divorce cases when the worst victims of violence come out of their corners in remote villages," he said.

The judge said drug addiction, absentee husbands who flee Afghanistan due to finances and security, and violence are the main factors bringing women to officially file for divorce. Afghanistan is the globe's biggest producer of opium and heroin, and now Afghans, many who become addicted in neighboring countries as laborers, consume the addictive illicit narcotic.

Afghanistan's growing divorce rate in the last decade is congruent with other Muslim countries such as Turkey, Egypt, Indonesia and Iran. The rise in divorce might be attributed to increased access to technology and information, growing rates of literacy or state institutions that have begun to allow and process the complaints.

In Afghanistan, divorce wasn't an option for most women under the hardline Islamist Taliban in the 1990s. Women were even forbidden from going to school and working. But human rights activists say if there's a success story on women's rights after the American intervention and billions of tax dollars spent in Afghanistan, it's access to education, technology and the continued resistance of these women.

Legal discrimination

The current interpretation of Afghan Islamic law doesn't treat men and women equally. Afghan Parliament is due to debate a draft of a bill on family law that would reform divorce laws and give women equal rights.

Heather Barr, senior researcher for women's rights and Afghanistan for Human Rights Watch, said that discrimination against women is "stark and brutal" under Afghan law. "Under the civil code, a man can divorce his wife at any time for any reason, simply by announcing that he has done so," Barr said. "A woman, on the other hand, can divorce only if she can prove one of a number of justifications, and must go to court to do so. In reality, this makes seeking a divorce impossible for the majority of women, due to lack of access to a lawyer, not to mention poverty, illiteracy and restrictions imposed by family." [...] » Source: Fariba Nawa, Divorce cases show Afghan women know their rights, but stigma remains, 22 mars 2017: www.rightsuniversal.org/divorce-cases-show-afghan-women-know-their-rights/.

Ghazi Hashimi, 2017:

« Despite the fact that delegates of the Lawyers' Union of Afghanistan have criticized practice of sentencing women to imprisonment in runaway cases, further instances in which Afghan courts have relied on Article 130 of the Constitution to prosecute young women and girls for having run away persists.

There are many reasons why a young person might run away from home, including leaving the family to seek marriage on one's own terms or escaping from domestic violence. According to the 2012 Human Rights Watch report, up to 70 percent of the approximately 700 female prisoners in Afghanistan have been imprisoned for running away, most of who fled because of forced marriage or domestic violence. In Pul-Charkhi prison, 20 out of 80 women in detention were convicted, with sentences of up to 14 years imprisonment, for running away from home.

While Islam may not expressly prohibit running away from home, it is considered to run counter to Islamic principles. This is so because, in Afghanistan, running away is presupposed to indicate crimes like adultery and prostitution. Neither is "running away" a crime under the Afghan Penal Code. Yet, law enforcement authorities often arrest, jail, and even prosecute girls for running away, usually qualifying the charge as "intention" to commit adultery (zina) which is a crime under the Penal Code as well.

Afghan courts have justified conviction and punishment for running away based on a determination that runaway cases are classifiable as Tazir under Hanafi jurisprudence. In 2010 and 2011 the Supreme Court of Afghanistan issued guidance about runaway cases to the criminal courts. The Supreme Court confirmed that running away, even in cases of abuse, "could cause crimes like adultery and prostitution and is against Sharia principles." The Court determined that the act is "prohibited and prosecutable based on discretionary punishment" because the behavior could be classified as Tazir. The following are examples of how the courts use the language of Article 130 to convict individuals of crimes that are not codified.

In one case, a man from Logar province of Afghanistan married his 16-year-old daughter to an elderly man. Because of this situation, the daughter ran away with a boy to another prov-

ince of Afghanistan. The primary court sentenced her to seven years imprisonment and transferred her to a juvenile correction center in Kabul.

In another case, as reported by Human Rights Watch, a 16-year-old girl fell in love with a school friend's brother. The boy asked her family if they would allow him to marry their daughter; however, her family refused. The boy's mother suggested that the girl run away with the boy, which would force her father to agree to the marriage. She did not agree to run away at the time, but later her father arranged to marry her with another boy. Because of her father's decision, she decided to run away with her lover.

In 2011, they ran away to the boy's cousin's house in a different region. After fleeing, she called her brother to tell her father that she ran away. Her brother told her to return and said that her family would finally let her to marry the boy. They decided to return, but at a checkpoint the police realized that they were not married and arrested them both. The girl was convicted for running away and sentenced to two years in a juvenile facility. The boy was released, she said, because his family paid a bribe and "knew someone in the police." She stayed in prison for the duration of her sentence.

Because of growing criticism regarding charging women and girls with running away, despite an abiding disdain in the culture for the conduct, the way of charging these women has shifted toward attempted zina. The assumption and justification for this classification is that women who run away without their male relatives must have attempted to have sex. Accordingly, when a young woman has been arrested in a runaway case, the police sometimes order virginity tests to determine whether the girl was engaged in recent sexual intercourse. The court then relies on the results of those tests as evidence. These exams are ordered as a matter of course, without the consent of girls, and some girls are subjected to multiple gynecological exams.

Prosecution of runaway cases has been criticized by local human rights activists and by international observers, including the UN mission to Afghanistan. UNAMA and the civil societies recommend that the president of Afghanistan and the Supreme Court issue a decree to stop prosecution of these cases. As a result, on April 11, 2012, the Attorney Generals' Office issued a directive stating that "running away" is not a crime under penal statutes and should not be prosecuted. The directive states that:

A circulation must be prepared and shared with all relevant prosecution offices in the center and provinces and the prosecutors should be instructed not to prepare unjustifiable case files regarding running away cases that have not been criminalized under Afghanistan laws and cannot be heard by courts and refrain from conducting baseless investigations. Other circumstances where people run away to commit any other crime are not covered by this instruction. The issue is being communicated to you so that you can take action in accordance with instruction of the High Council of Attorney General Office of the Islamic Republic of Afghanistan.

This text clarifies that running away must not be prosecuted, but still it leaves the gap for misuses with the inclusion of the exception: "Other circumstances where people runaway to commit any other crime are not covered."

In addition, the international interveners also asked the Supreme Court of Afghanistan to clarify whether running away because of domestic violence would constitute a crime. As a result, the high council of Supreme Court issued a decree that states:

There is a difference between being a runaway and committing a crime. The action of those who leave home because of family violation and go to judiciary, law enforcement organizations, legal aid organizations, or their relatives' home does not constitute crime. A large number of girls because of family violation are living in shelters; therefore, running away in this situation must not be prosecuted. However, running away for the purposes of moral crimes or other purposes considered crime shall be prosecuted. In this case the law enforcement agencies must not use the term "runaway." Rather, they must find the description for the committed act form in the statutory laws. Courts and the attorney general office shall use the specific term for the committed crime and avoid the term "runaway."

This decree was sent to all lower level courts, which were directed to apply it by January 13, 2013.

Despite these decrees, individuals are still prosecuted for running away from home. Just recently in 2015, four girls--two sisters, their relative, and a friend, all decided to run away from home together because of domestic violence. They bought airline tickets and spent the night at their friend's home. The next day, police arrested them at the Kabul National airport, where they were trying to fly to another province of Afghanistan.

The prosecutor accused two of the girls for "running away" and "zina." In that case, virginity tests were done, and the prosecutor filed a separate case for one of the girls because she alleged zina by force. However, for the others, the prosecutor recommended that the primary court punish the girls for "running away" based on Article 130 of the Constitution.

*In the end, the primary courts did not charge them for attempted zina because of a lack of evidence for the elements of the crime; however, the courts convicted them of running away from home based on Article 130 and decided that the time they spent in the detention center was sufficient and they should be released. The prosecutor appealed against this decision, but the appellate court affirmed the decision of primary court. Source: Ghazi Hashimi, *Defending the Principle of Legality in Afghanistan: Toward a Unified Interpretation of Article 130 to the Afghan Constitution*, 2017, p.211-218: <https://law.uoregon.edu/images/uploads/entries/Hashimi.pdf>.*

HRW, 9 janvier 2018:

*« On March 12, the Attorney General's Office issued a report on prosecutions under the Elimination of Violence against Women (EVAW) law revealing that **mediation remains the preferred route for most prosecutors, which women are often compelled to accept due to pressure from family and justice officials. Registered cases represent only a fraction of the actual crimes of violence against women.** In late 2016, the Afghanistan Independent Human Rights Commission (AIHRC) investigated 5,575 cases, noting that most cases of vio-*

lence against women go unreported. **A long-standing effort to reform family law, including divorce provisions, remained stalled.**

On March 4, the revised penal code was adopted by presidential decree. It incorporated all the provisions of the ERAW law, while strengthening the definition of rape. However, because a number of conservative members of parliament have opposed the ERAW law, some activists campaigned to preserve the law in its stand-alone form decreed in 2009. In response to their efforts, in August President Ghani ordered the Ministry of Justice to remove the ERAW chapter from the new penal code. The controversial reversal has left the status of the law in limbo.

A long-promised plan by the Afghan government to implement UN Security Council Resolution 1325, which calls for women's equal participation in issues surrounding peace and security, was further delayed during the year. The Kabul Process peace talks in June included only two women among 47 government and international representatives.

Deaths and injuries among women in the conflict increased sharply in 2017, with 298 deaths and 709 injured in the first nine months of the year. Most occurred as a result of suicide bombings and aerial attacks. » Source: Human Rights Watch (HRW), World report 2018 - Afghanistan, 9 janvier 2018: www.hrw.org/world-report/2018/country-chapters/afghanistan.

HRW, 28 mars 2012:

« The 120-page report, “‘I Had to Run Away’: Women and Girls Imprisoned for ‘Moral Crimes’ in Afghanistan,” is based on 58 interviews conducted in three prisons and three juvenile detention facilities with women and girls accused of “moral crimes.” Almost all girls in juvenile detention in Afghanistan had been arrested for “**moral crimes**,” while about half of women in Afghan prisons were arrested on these charges. **These “crimes” usually involve flight from unlawful forced marriage or domestic violence. Some women and girls have been convicted of zina, sex outside of marriage, after being raped or forced into prostitution.**

“It is shocking that 10 years after the overthrow of the Taliban, women and girls are still imprisoned for running away from domestic violence or forced marriage,” said Kenneth Roth, executive director of Human Rights Watch. “No one should be locked up for fleeing a dangerous situation even if it’s at home. President Karzai and Afghanistan’s allies should act decisively to end this abusive and discriminatory practice.”

The fall of the Taliban government in 2001 promised a new era of women’s rights. Significant improvements have occurred in education, maternal mortality, employment, and the role of women in public life and governance. Yet the imprisonment of women and girls for “moral crimes” is just one sign of the difficult present and worrying future faced by Afghan women and girls as the international community moves to decrease substantially its commitments in Afghanistan.

Human Rights Watch interviewed many girls who had been arrested after they fled a forced marriage and women who had fled abusive husbands and relatives. **Some women interviewed by Human Rights Watch had gone to the police in dire need of help, only to be arrested instead.**

“Running away,” or fleeing home without permission, is not a crime under the Afghan criminal code, but the Afghan Supreme Court has instructed its judges to treat women and girls who flee as criminals. Zina is a crime under Afghan law, punishable by up to 15 years in prison.

Women and girls interviewed by Human Rights Watch described abuses including forced and underage marriage, beatings, stabbings, burnings, rapes, forced prostitution, kidnapping, and murder threats. Virtually none of the cases had led even to an investigation of the abuse, let alone prosecution or punishment.

One woman, Parwana S. (not her real name), 19, told Human Rights Watch how she was convicted of “running away” after fleeing a husband and mother-in-law who beat her: “I will try to become independent and divorce him. I hate the word ‘husband.’ My liver is totally black from my husband... If I knew about prison and everything [that would happen to me] I would have just jumped into the river and committed suicide.”

Human Rights Watch said that women and girls accused of “moral crimes” face a justice system stacked against them at every stage. Police arrest them solely on a complaint of a husband or relative. Prosecutors ignore evidence that supports women’s assertions of innocence. Judges often convict solely on the basis of “confessions” given in the absence of lawyers and “signed” without having been read to women who cannot read or write. After conviction, women routinely face long prison sentences, in some cases more than 10 years.

Afghanistan’s 2009 Law on the Elimination of Violence Against Women makes violence against women a criminal offense. But the same police, prosecutors, and judges who work zealously to lock up women accused of “moral crimes” often ignore evidence of abuse against the accused women, Human Rights Watch said.

“Courts send women to prison for dubious ‘crimes’ while the real criminals – their abusers – walk free,” Roth said. “Even the most horrific abuses suffered by women seem to elicit nothing more than a shrug from prosecutors, despite laws criminalizing violence against women.”

Abusive prosecution of “moral crimes” is important to far more than the approximately 400 women and girls in prison or pretrial detention, Human Rights Watch said. Every time a woman or girl flees a forced marriage or domestic violence only to end up behind bars, it sends a clear message to others enduring abuse that seeking help from the government is likely to result in punishment, not rescue.

The plight of women facing domestic violence is made still worse by archaic divorce laws that permit a man simply to declare himself divorced, while making it extremely difficult for a woman to obtain a divorce, Human Rights Watch said. The Afghan government made a commitment to reform these laws in 2007 under its National Action Plan for Women in Afghanistan, and a committee of experts drafted a new Family Law that would improve the rights of women. This new law, however, has been on hold with the government since 2010, with no sign of movement toward passage.

"It is long past time for Afghanistan to act on its promises to overhaul laws that make Afghan women second-class citizens," Roth said. "Laws that force women to endure abuse by denying them the right to divorce are not only outdated but cruel."

By maintaining discriminatory laws on the books, and by failing to address due process and fair trial violations in "moral crimes" cases, Afghanistan is in violation of its obligations under international human rights law. United Nations expert bodies and special rapporteurs have called for the repeal of Afghanistan's "moral crimes" laws. 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." 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."

"The Afghan government and its international partners should act urgently to protect women's rights and to ensure there is no backsliding," Roth said. "President Karzai, the United States, and others should finally make good on the bold promises they made to Afghan women a decade ago by ending imprisonment for 'moral crimes,' and actually implementing their stated commitment to support women's rights." » Source: Human Rights Watch (HRW), Afghanistan: Hundreds of Women, Girls Jailed for 'Moral Crimes', 28 mars 2012: www.hrw.org/news/2012/03/28/afghanistan-hundreds-women-girls-jailed-moral-crimes.

IWPR, 12 juillet 2018:

« Officials in the northeastern Afghan province of Panjshir are warning that the number of girls and young women running away from home, often to escape forced marriage, is on the rise.

Tahmina Rezayee, legal officer at Panjshir's department of women's affairs, said that her office had logged 21 instances of women running away from home in the first five months of 2018. In the same period last year, they had recorded only seven such cases.

"When parents force their daughters to marry someone whom they don't like, this makes the girl run away," she said, warning that the number of runaways would only increase if such marriage practices continued.

Under Afghan law, women and girls who run away from home can be put in prison for up to a year, and the shame associated with such cases means their families sometimes refuse to take them back.

In conservative Afghan society, many decisions about a woman's future are taken by male family members. But sometimes young couples fall in love and try to run away together.

Panjshir resident Ahmad Jawad, 23, told IWPR that he had been courting a girl from the same village for the last year. Matters came to a head in January, when her family tried to marry her off to someone else.

"The girl also loved me and said to her family that she wanted to get engaged, to me but her family did not agree. When her family wanted to betroth her to someone else, she ran away with me," he said.

Jawad said that they had been prevented from performing the nikah, the Islamic marriage ceremony, from fear of creating a feud between the two families.

"The girl is being hosted by a local elder, and elders are negotiating to try and convince her family to allow our betrothal."

Sometimes mediation leads to a positive resolution. Shamsia, a 20-year-old from Logar province, met Jamshid when they were both studying law and political science at Kabul University.

"My family wanted to marry me to an old man; this made me run away from home in 2017," she said, explaining that the couple had fled to Panjshir. "After two months, once my family agreed, I married him [Jamshid], and we now live a happy life."

Provincial spokesman Abdul Wadod Alimardan confirmed that the number of female runaways had increased, adding, "Their cases are settled by the judicial institutions, through the department of women's affairs."

Dozens of other cases were resolved informally through local elders, he continued.

Rezayee also said that female runaways were usually hosted by tribal elders until their cases were resolved through traditional justice procedures, but said that the government should also provide refuges for vulnerable women and girls.

Despite several requests to the ministry of women's affairs, she said that no action had been taken to provide safe houses.

Abdul Ahad Farzam is the head of the Kabul regional office of the Afghanistan Independent Human Rights Commission (AIHRC), covering seven provinces including Kapisa, Parwan, Panjshir, Logar, Maidan Wardak and Ghazni.

He said that his department had registered 108 cases of women or girls running away from home last year, but said the true number was likely to be far higher.

"Insecurity, problematic social traditions and the intervention of powerful individuals meant that many cases are resolved unofficially," he said, adding that running away from home was "a serious social issue and can have immense consequences both for the female runaways and their families".

Islamic law gives women the right to choose their own husband and forbids forced marriage. But in practice, customary law often takes precedence.

Legal expert Abdul Mujeeb Fana explained that the issue of runaways could even lead to the practice of "baad" a traditional means of settling disputes in Afghanistan which involves giving a young girl to the family of the perceived victim of a crime.

“In some cases, running away from home causes social issues that leads to feuds between families, and such antagonism eventually leads to providing the boy’s family with a bride, a baad marriage, which is haram [forbidden] in Islam.”

“In cases where a young man and woman decided to run away together,” he continued, “They bring their case to a court for the purpose of marriage. The court gives them a three-day time period so that they can also bring their families. If they fail to do so, then the judge, subject to their mutual agreement, will perform their nikah.” » Source: Institute for War and Peace Reporting (IWPR), Female Runaways on the Rise in Afghan Province, 12 juillet 2018: <https://iwpr.net/global-voices/female-runaways-rise-afghan-province>.

IWPR, 15 septembre 2015 :

« Lailuma waited to speak to an advisor in the Kabul offices of the Afghanistan Independent Human Rights Commission (AIHRC). She had tears in her eyes, and bruises from a recent beating were clearly visible on her face.

She had come to seek advice on how she could divorce her husband, whom she was forced to marry four years ago, when she was 16 and he was 45. He now beat her daily, and Lailuma said that family life had become unbearable.

“As well as taking drugs, my husband also has affairs with other women and spends his monthly income on them. When I try to stop him from doing things like that, he beats me. I can’t stand this cruelty anymore. I want to get a divorce from my husband, but nobody wants to help me.”

Although it is easy for men to initiate divorce under both Islamic and civil law systems, there are numerous obstacles for women seeking a separation. Conservative social attitudes mean that divorce is seen as profoundly shameful. Nevertheless, advances in rights since the fall of the Taleban government in 2001 mean that women now have greater recourse when it comes to seeking a divorce.

Observers say the situation is slowly changing, particularly in urban areas. Parwin Rahimi, who works on women’s rights at the AIHRC, says the number of recorded cases is on the increase. She argues that domestic violence, aggravated by poverty, is a major factor in marital breakdown.

“Arguments start when a family is in a fragile economic position and the man is unable to provide for his family’s needs and meet his wife’s requirements. This can lead to violence and cause family disintegration,” she said.

Fahim Sultani, legal adviser at the ministry for women’s affairs, said that while poverty and unemployment did contribute to domestic abuse, there were also other deep-rooted social causes for violence against women.

“Unless society is reformed, more attention is paid to people’s livelihoods, and the law is applied fairly to everyone, violence against women is not going to decrease,” he said. “It is violence that causes the disintegration of family life.”

Rahima Rezai, a judge at Kabul province's family court, sees the increase in divorce cases as a sign that women are more and more aware of their rights, and that public institutions are supporting them.

Imamuddin Musaheb, a lawyer, explained the circumstances under which Afghan civil law allows a divorce application.

"If the husband is suffering from a chronic, incurable disease, if he is unable to feed his wife or if he is absent for over three years for reasons unknown, a woman can then get a divorce," he said. "Otherwise she can't."

Islamic law also sets out many constraints. Maulavi Keramatullah Sediqi, head of Islamic studies at the ministry of hajj and religious affairs, listed the circumstances in which a woman could get divorced.

"From the perspective of shariah, a woman can get a divorce if her husband agrees to it; if the husband is unable to feed his wife or has a long-term, incurable disease; if the husband forces the woman to perform immoral acts; if the husband takes a lengthy trip against his wife's will or without her knowledge and does not support her financially in his absence; and if a husband refuses to sleep with his wife for four months. Then she has the right to divorce him," he said.

Sediqi emphasised that while divorce was permitted by Islam, it was very much frowned on. He blamed rising rates of divorce on the influence of popular culture.

"The broadcast of vulgar foreign serials on private television channels has had unpleasant impact on Afghan social attitudes. People consume these soap operas unthinkingly," he said. "The messages they send go against the culture and tradition of our society, and this leads to family breakdown."

This view was dismissed by Masuda Karukhi, a member of parliament from Herat in the west of the country. She says misogyny is deeply-rooted in Afghanistan, and point to a law on the elimination of violence against women that was passed by presidential decree in 2009, but was then rejected by parliament in May 2013. It has been shelved ever since, with conservative parliamentarians claiming that it contradicts sharia law. (See *Tackling Gender-Based Violence in Afghanistan*.)

"A hatred of women is still part of the male belief-system," she said. "Since politicians opposed the law on eradicating violence against women and wouldn't allow it to be passed by parliament, how can we complain about [external influence from] others? That was an example of home-grown Afghan misogyny."

Azita Rafat, deputy chair of the Truth and Justice Party, argues that both the making and implementation of laws in Afghanistan have been dominated by men for decades.

"Women demanding divorce is, in a way, a way of fighting for human rights," she said, contrasting this with the default position of "putting up with psychological pressure, behaving as slaves, being seen as second-class, being insulted and ultimately remaining silent".

"The violence used against women in various areas of life is proof that our laws on women's rights need reform," she added.

Some complain that even the limited divorce rights that women are allowed under civil and religious law are not upheld.

Nasrin, 17, a resident of the Jaghori district in Ghazni province, came to Kabul to file for divorce. She said that as her husband was impotent, she had the right under both civil and Islamic law to demand a divorce. So far, he had not agreed.

"Although I have a legal right to a divorce, the courts and women's rights institutions in Jaghori district would not help me. I came to the AIHRC to get help from them, but it seems that no one here is going to help me, either," she said.

Family court judge Rezai said that women frustrated by the lack of action on their cases often did not realise that the courts might be powerless to act.

"The law does not allow us to fulfill these women's demands; we are unable to go beyond the limits of the law," she said.

Musaheb, the lawyer, said the legislation governing divorce for women needed a major overhaul, although he too advises women to seek legal advice before going to court.

Meanwhile, many women remain in a kind of limbo, unable to resolve their situation.

Nahid, 29, said her husband used to hit her on a regular basis, but one day she was beaten so badly that she lost consciousness and relatives had to take her to hospital. After that, she said, "My husband took my four children to his mother's home. He has been missing for the past two years. When I approached legal institutions to file for divorce, they told me I could not do so unless my husband was found."

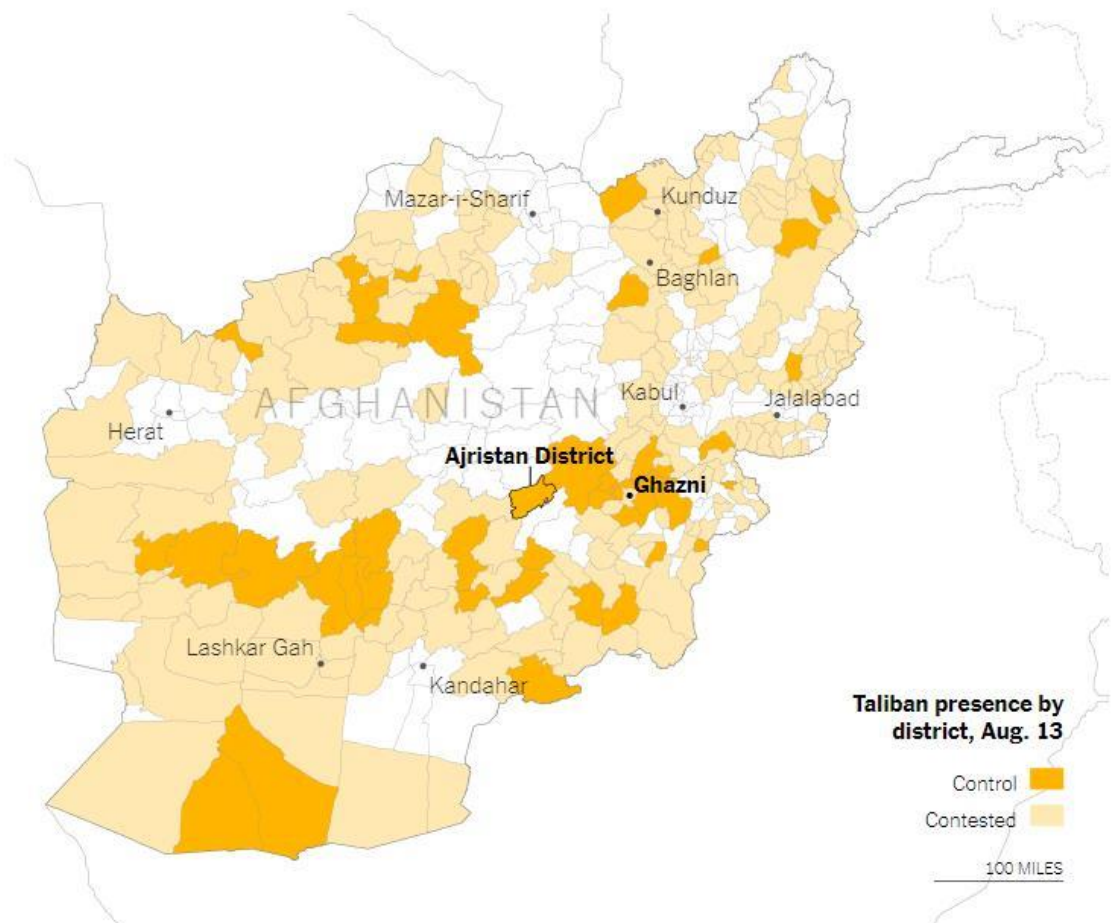
Complaining that women's rights groups had been no help to her, she asked, "How long must I remain without a future? If this counts as law and justice, then to hell with it." » Source: Institute for War and Peace Reporting (IWPR), Divorce Rights Still Elusive for Afghan Women, 15 septembre 2015: <https://iwpr.net/global-voices/divorce-rights-still-elusive-afghan-women>.

NYT, 13 août 2018:

« The American-led invasion of Afghanistan routed Taliban extremists from power after the terrorist attacks of Sept. 11, 2001. Nearly 17 years later, after tens of thousands of deaths, hundreds of billions of dollars spent and two White House administrations come and gone, those extremists are not only undefeated but seem as strong as ever.

Since Friday, Taliban fighters have roamed the streets of Ghazni City, a strategic urban center less than 100 miles from the capital, Kabul, killing dozens of Afghan soldiers and police officers, cutting communications and severing the main highway from Kabul to the south and beyond.

The Ghazni assault has demonstrated a stunning display of Taliban tenacity that belies the official Afghan and American narrative of progress in the war and the possibility for peace talks. It also has revealed remarkable bumbling by the Afghan military, including the wrong kind of ammunition sent to besieged police officers. Moreover, the siege has raised basic questions about what conditions the Taliban might accept for peace talks.



By The New York Times | Source: FDD's Long War Journal. Note: District boundaries as of 2014.

What is happening in Ghazni?

For months, residents and local officials in Ghazni, a city of about 280,000 people, had warned that the Taliban was surrounding the city and making inroads of control. Taliban fighters were even collecting taxes in some areas. On a visit in June, I found the city in fear — people avoided large gatherings. Assassinations were more frequent.

On Aug. 10, more than 1,000 Taliban fighters stormed the city in a predawn assault. Officials claim the Taliban were aided by foreign fighters, including Pakistanis and Chechens, and even some Al Qaeda affiliates

The police were forced to retreat and protect the main government facilities — the governor's office, the Police Headquarters, the intelligence compound, the main prison — leaving the Taliban assailants to entrench themselves elsewhere. The Afghan minister of defense on Monday said that about 100 police officers and army soldiers and more 20 civilians had been killed. He put the number of dead Taliban fighters at about 200.

Why does it matter?

The siege of Ghazni is perhaps the most audacious example of a Taliban resurgence that has whittled the gains made after tens of thousands of American troops launched a campaign to oust them from power.

While not the first time Taliban fighters have invaded a major Afghan city in recent years, Ghazni's strategic location is important. Its proximity to Kabul and location on the major highway connecting the capital to the south makes it a vital lifeline.

Rahmatullah Nabil, a former Afghan intelligence chief, said Ghazni also was important because some of its neighboring provinces border the tribal areas of northern Pakistan, where militants have long moved with impunity. Who controls Ghazni also impacts how freely the insurgents can move into other parts of the country, Mr. Nabil said. Taliban control of Ghazni also raises the possibility that Taliban eventually could surround Kabul itself.

Is this a sign of Taliban strength or government weakness?

In recent years, as Afghan forces have largely taken ownership of the war from American forces, the Taliban have continued to gain territory. In some areas, they have struggled to hold a district or city that they briefly entered, but in others they are firmly embedded.

According to the United States military, the Afghan government controls just over half of the country's nearly 400 districts — about 56 percent. Taliban insurgents control 14 percent, and the rest of the country is contested.

A major deterrent to further Taliban gains has been American and Afghan airstrikes. The United States military alone has dropped about 3,000 bombs in the first six months of this year. But air power alone is insufficient.

Mr. Nabil said the internal political struggles of the Afghan government and its inability to outthink the Taliban's moves before insurgents invaded a city were underlying problems. He likened the Ghazni battle to the 2015 siege of Kunduz, when it took more than two weeks for government-backed forces to retake the city.

"It was like this in Kunduz also — they first went after the outlying districts, then military bases, and eventually they made it to the city," Mr. Nabil said. "Once the city is totally surrounded, entering inside the city becomes easy." » Source: New York Times, Why the Taliban's Assault on Ghazni Matters, 13 août 2018: www.nytimes.com/2018/08/13/world/asia/why-the-talibans-assault-on-ghazni-matters-for-afghanistan-and-the-us.html.

NYT, 17 avril 2017:

« To escape an abusive marriage, Wida Saghari struggled for five years to finalize a divorce. When it was done, she thought, finally, she could get some peace. Instead, she had stepped into a different kind of hell.

Ms. Saghari, 31, a mother of two who has worked for years as a television host, found that neither Afghan society nor the government sees young divorced women as adults who can function independently of men.

And women also confront persistent harassment, much of it insinuating or sexual, beginning even during the divorce proceedings.

“You are like a piece of china that everyone, every minute, can hit to the ground to break you,” Ms. Saghari said.

When she needed government identifications for her children, the clerk never asked about her relationship to them but kept inquiring, “Where is their father?”

When she wanted to rent an apartment, Ms. Saghari had to lie about being divorced, say that her husband was away and take her brother to sign the lease. Many times, landlords refused to rent to her, fearing that the apartment would become, as Ms. Saghari put it, “a brothel.”

Her story is not unique. As women in Afghanistan, particularly in urban centers, have increasingly asserted their rights over the past 15 years, many husbands have not caught up or never get on board with the changes. The slow pace of shedding entrenched misogyny has led to a clash of values at home. And women often realize there is no option but to part ways.

Afghan officials could not provide exact numbers on divorces initiated by women, as is the case with most statistics in the country. Most marriages are traditional and not registered in courts. But some officials suggested that the increase in the number of women who formally initiate divorce could be as high as fivefold over the past decade.

“Earlier, when I started at the family court, we would receive seven to eight divorce and separation cases per week,” said Rahima Rezaee, a senior Afghan judge who led the family court from 2006 to 2016. Since she has left, Judge Rezaee said, “we’ve received seven to eight cases per day.”

“We are optimistic because now women have come out from behind the house walls and ask their rights, and now they know how to ask their rights and from where,” Judge Rezaee said.

Since 2009, one nongovernmental organization, Justice for All, has provided legal advice to about 1,250 women seeking divorce across seven provinces, according to its executive director, Mahfuza Folad.

In 2016 alone, another organization, Medica Afghanistan, provided legal help to about 215 women seeking divorce in western Herat Province, according to its provincial director, Jamila Naseri.

Men, Ms. Folad said, “are used to the old lifestyle, so now they cannot tolerate that women can stand against them.”

If women “stand and ask their rights,” she added, “men think it is shamelessness and think that they do not have authority on women, and there the problem starts.”

The most dangerous time for women may be when they seek to leave, but they also face a pervasive and persistent social struggle after divorce: The most mundane activities become daunting obstacles. Often, the easiest way is to hide the fact that they are divorced.

“I did not tell anyone about my status — sometimes, I told them my husband is in Iran,” said Zahra Yaganah, 32, an activist and writer who published her first novel last year. A mother of two teenagers, she has been divorced for about a decade. “But when people find out that I am divorced — I feel like a divorced woman is up for grabs for the men around her.”

Much of the harassment begins in government offices. One woman who turned to the government after exhausting traditional means to separate from her husband said the government lawyers became one of her biggest headaches.

She was being abused by her husband, and she had the physical wounds to show it. At first, the government lawyer assigned to her, a man in his 60s, asked for a bribe. She decided to pay for his phone credit and gas for his car. Then, even after she got her divorce and her husband was sentenced to three years in prison, the lawyer would not stop calling.

“Sometimes, he would call me at 1 a.m. or 3 a.m. and say, ‘You forgot how good I was to you,’” recalled the woman, who spoke on the condition of anonymity because she has since remarried and fears the public stigma that could come from revealing what she went through.

“Other times, he would call and say, ‘The weather is good; let’s go out,’ or he would give me the address of his house and say he had a big house and he was alone.”

The predatory behavior became so overbearing that as soon as her case was settled, she quickly got married again.

Ms. Yaganah recalled that in 2013, she had to go to the police to report a man who was harassing her and blocking her way at night.

“Then the police station deputy became my problem,” she said. “He called me every week and asked: ‘Where are you? Are you at home? I want to come to your home to have tea together.’ Sometimes at midnight, he would call me and say: ‘Is there any problem? If there is anything, I will come.’”

She changed both her cellphone and house numbers.

Ms. Yaganah said her divorced status followed her everywhere, from the office to her apartment block, with men thinking that she was an easy target.

“As a divorced woman,” she said, “to them you are a thing — like a pot without a cover.”

Men have approached her privately. Married senior officials have invited her on foreign trips. Two years ago, after a celebration for International Women's Day at her office, a male colleague she had worked with for only three days started sending her text messages.

"He told me that: 'Your dress was beautiful. Let's we two have a celebration together tonight, and be with me all the night,'" Ms. Yaganah said. "I was in shock for three days."

At public social gatherings, however, her closest male friends keep their distance.

"Sometimes when they see me, they ignore me or just say hi from afar," she said. "Then they write me that we did not come to you because people will start rumors because you are a divorced woman and people will think that we have a relationship."

Ms. Saghari, the television anchor, was harassed often — by her apartment building attendant, colleagues, social media users. When she turned down the men, they quickly made up their own reasons.

"They would say, 'She is a lesbian,' or that 'she is feminist; all feminists are like this — they do not have sexual needs,'" Ms. Saghari said.

Perhaps the biggest challenge for divorced women like Ms. Yaganah and Ms. Saghari is navigating the neighborhoods they live in. They have to constantly find a balance: fend off advances from male neighbors, yet go out of their way to declare their male visitors to avoid rumors.

When Ms. Yaganah has male guests over, she feels obliged to knock on neighbors' doors with some excuse — to borrow additional teacups, for instance — to be transparent about her visitors. When her brother or other close relatives visit with their children, she shows them off to signal, she says, that she is a decent family woman.

Even though renting a home remains a major hurdle because landlords require a man to sign, Ms. Yaganah has had a breakthrough.

"This year, I have an achievement: I signed the lease myself for the first time," she said. "But I told the owner of the house that my husband went to Germany as refugee — I did not tell him that I was divorced." » Source: New York Times (NYT), In Afghanistan, 'I Feel Like a Divorced Woman Is Up for Grabs', 17 avril 2017: www.nytimes.com/2017/04/17/world/asia/afghan-women-divorce.html.

Robert Mackey, 15 août 2009:

« Bowing to international pressure and unprecedented protests by hundreds of women on the streets of Kabul, the Afghan government promised in April to review a new law imposing severe restrictions on women in Shiite Muslim families.

Last week, though, Human Rights Watch discovered that a revised version of the Shiite Personal Status Law had been quietly put into effect at the end of July — meaning that Shiite men in Afghanistan now have the legal right to starve their wives if their sexual

demands are not met and that Shiite women must obtain permission from their husbands to even leave their houses, “except in extreme circumstances.”

The new law was signed by President Hamid Karzai, who is depending on support from Sheik Muhammad Asif Mohseni, the country’s most powerful Shiite cleric, in this week’s presidential election. Shiites, who were oppressed by the Sunni-led Taliban government, are believed to make up between 10 and 20 percent of Afghanistan’s population. Sheik Mohseni and scholars close to him were allowed to write the first draft of the new law, and he was reportedly unhappy that Parliament had introduced a provision that banned men from marrying girls under the age of 16.

When the law was first approved, President Barack Obama called it “abhorrent,” but has not yet responded to reports that it has now been revised and put into effect, perhaps because Afghanistan’s election is just days away. [...]

*Although the law applies only to Shiites, Soraya Sobhrang, commissioner for women’s rights at the Afghan Independent Human Rights Commission, said in April that it could influence a proposed family law for the Sunni majority and a draft law on violence against women. She told *The Times* in April, “This opens the way for more discrimination.”*

According to Human Rights Watch, the new law also “grants guardianship of children exclusively to their fathers and grandfathers” and “effectively allows a rapist to avoid prosecution by paying ‘blood money’ to a girl who was injured when he raped her.” Brad Adams, the Asia director for the human rights group, said that President Karzai “has made an unthinkable deal to sell Afghan women out in return for the support of fundamentalists in the August 20 election.” On Saturday, the Afghan Independent Human Rights Commission in Kabul took a less dim view, calling the fact that the law was amended at all, “a step forward.”[...]

Most of Afghanistan’s Shias are ethnic Hazaras. They are Afghanistan’s third largest ethnic group, with about six million people, and like most Afghans, they vote according to orders from community leaders. With a roughly 50-50 split between Afghanistan’s southern Pashtuns and the rest of the country, the Hazaras are seen as the kingmakers. » Source: Robert Mackey, Afghan Husbands Win Right to Starve Wives, 17 août 2009: <https://thelede.blogs.nytimes.com/2009/08/17/afghan-husbands-win-right-to-starve-wives/>.

The Atlantic, 15 août 2018:

*« The latest headlines from Afghanistan are much like the old headlines from Afghanistan. **This week, U.S.-backed Afghan troops forced the Taliban out of Ghazni city, only after dozens of people had already been killed by the militant group.** Afghan forces could do little as Taliban fighters seized Camp Chinaya, a military outpost in the north, killing 17 soldiers. And on Wednesday, the militants killed more than 40 troops and policemen in Baghlan province, also in the north.*

Taken individually, each development is an embarrassing defeat for the Afghan government and its Western supporters; taken together, the setbacks, especially the events in Ghazni, challenge the U.S. and Afghan government’s narrative of progress in the conflict. “The Tali-

ban was able to mass, plan, and execute an offensive under the noses of the Afghan government, military, police, as well as [nato's] Resolute Support. They did this undetected," Bill Roggio, a senior fellow at the Foundation for Defense of Democracies, told me. "Even if the Taliban is not able to take control of the city, or hold it ... they've really struck a blow to the Afghan government and Afghan security forces, and Resolute Support as well."

After five days of fighting, Afghan forces, with U.S. support, eventually pushed the Taliban out of Ghazni on Tuesday. But the group's performance on the battlefield, where it also seized control of several districts in Ghazni province, was, Roggio said, reminiscent of 2015, when its fighters seized the northern city of Kunduz. Although the Taliban controls large parts of rural Afghanistan, Kunduz was the first time the militants had captured a major Afghan city since they were driven from power by the U.S.-led invasion in 2001. Victories have been all too common since 2015 for the militants, who have shown an uncanny ability to strike almost at will across Afghanistan.

What the Taliban hasn't managed to do is hold that territory for any meaningful length of time—almost certainly because of the U.S. military support for the Afghan government and its forces. About 15,000 U.S. military personnel are still in Afghanistan serving in advisory roles. That's significantly less than the 100,000 who were in the country in 2010, at the height of the U.S. presence, but more than enough to wear down the Taliban. Indeed, if there is a consensus over what is happening in Afghanistan, it is that as long as the United States remains in the country, the Taliban cannot win. "The Taliban will have made the point they sought to make," Johnny Walsh, a senior expert on Afghanistan at the United States Institute of Peace, told me about the fighting in Ghazni. "The tragedy of it is that so many people died or were wounded for an incident that ultimately is not likely at all to move the needle in the larger military conflict." [...]

"Until the Afghan military develops a will to fight just like the Taliban, we're going to see security continue to deteriorate," he said. "Everybody says, 'The Taliban is tired. That's why they want to talk.' I don't see it. I see a tired Afghan government, a tired Afghan military, and a tired nato that just wants this war to end." » Source: The Atlantic, Talking to the Taliban While Still Fighting the Taliban, 15 août 2018: www.theatlantic.com/international/archive/2018/08/afghanistan-taliban/567437/.

Torunn Wimpelmann, 2017:

« **The trajectories of the cases discussed in this chapter suggest that as cases of gender violence became public matters, they were predominantly articulated as violations of family and male "honor." The gender relations that the Afghan government and other public institutions were called upon to sanction were often of a kind where kinship has recognized authority over women and, in particular, female sexuality.** At the same time, public acknowledgment of these claims was by no means guaranteed, and individual cases often took the form of a tug of war, with highly unpredictable outcomes. The government might routinely arrest runaway women at the behest of their families, but it did not necessarily pay heed to family claims over women in court. What these micro-struggles over the definitions of gender violence and over the right (or obligation) to adjudicate and avenge these incidents tell us is that **legal regimes are highly context specific. Although such regimes are cloaked in assertions of indisputable and unambiguous truth, they emerge out of temporal alliances and accommodations and are embedded in political relations.** For

instance, the case in Kunduz reminds us of the importance of Dina Siddiqi's warning against "timeless, decontextualized Islam" that "does not bring into view the complex and historically specific ways in which national and international vectors of Islamization articulate with politically economy and rural structures of power" (Siddiqi 2011: 82). As the events surrounding the stoning suggested, local patriarchs might find an ally in military actors contending for territorial control, whereas to the latter, the spectacular and brutal public display of "Islamic justice" was part of an active project to demonstrate power. At the same time, religion could be invoked very differently, to limit the power of families and husbands over women by appealing to the need to eradicate harmful traditions contrary to Islam. Objections to forced marriages like Fereshta's were also framed in this way. In other words, even if gender violence was often defined in ways that subordinated women to male guardians, this must be considered an active accomplishment that needed maintenance and reinforcement through the forging of new articulations and the upholding of old ones. As the discussion in previous chapters shows, the idea that the state should be obligated to reinforce families' authority over women by apprehending runaway women as criminals was contested and tenuous, having surfaced as part of the political projects of the Taliban and the mujahedin.

On the other hand, even if women were not returned to their families by the direct order of courts, legal and social practices nonetheless often combined to produce this effect anyway. As the case of Fereshta showed, there was a stigma linked to women traveling and living independently. This made it possible for authorities to arrest Fereshta at her family's request and later to broker an agreement to send her to live with her family. **The problematization of female autonomy through both state and non-state mechanisms worked against these three women from the outset.** To Nafisa and Siddiqa, the most obvious—and perhaps the only—option they could see was to escape with another man. They both lived in conservative, insecure provinces where it would have been difficult for them to travel unnoticed on their own. Siddiqa and Nafisa might both have been truly in love with the men they escaped with, but it is easy to imagine that, in general, when the only option to escape abuse is to elope with a man, women are extremely vulnerable to exploitation. **Yet regardless of the women's situations, many authorities were unforgiving about the fact that the women had run away or committed zina. Neither in these nor in other cases did the authorities or the courts see their circumstances as mitigating factors.** As the local representative of AIHRC said about Siddiqa: "This girl was the granddaughter of Mulla Quli, yet she did not respect her grandfather's honor? Even if the Taliban was not right, she should have been punished in some way, by the courts." Nafisa also met widespread condemnation, although one young justice official was more sympathetic: "I asked her if she had sexual intercourse with her fiancé, and she said 'Yes, one or two times. And two or three times with Amin.' Then she started to cry, and I realized she was just a child, and it was because of her age that she made those mistakes." Through a combination of luck and strategy, Fereshta was able to stay clear of such pitfalls. Having gone straight to a shelter, admitting to no physical relations with her boyfriend, and being fortunate enough to have a committed lawyer and to encounter a sympathetic judge, she was released from prison.

The stories of these three women also provide an important additional indicator as to why the EAW law was so sketchily implemented and why so many cases that should have led to criminal convictions (according to the law) instead resulted in mediated solutions or withdrawal. **The social and official landscape was stacked against female autonomy, reinforcing the idea that only under exceptional circumstances could women be permitted to live outside of family settings, and if so, they were mostly confined to shelters. A**

woman living on her own remained generally unheard-of in Afghanistan and normally invited rumors of her being of “questionable character” to the extent that her safety could be at risk. This left women with little bargaining power in cases of abuse, and it certainly discouraged them from pursuing claims against their families. » Source: To-runn Wimpelmann, *The Pitfalls of Protection*, 2017, p. 150-151: www.open.org/download?type=document&docid=631933.

UNAMA & OHCHR, mai 2018:

« According to Government reports, murder of women represents the second most prevalent form of violence against women in Afghanistan (with the first being battery and laceration). UNAMA found a de facto impunity for murder and “honour killings” of women in cases monitored in 2016 and 2017. UNAMA noted the judicial discretionary authority concerning “honour killings” provided for under the 1976 Penal Code, which was in place during this period, as a contributing factor to impunity, as well as the resolution of murder cases by mediation. The resolution of such cases by mediation must never occur; and cases should be prosecuted under the applicable general murder articles in order to end impunity.

Murder and “honour killings” of women are acts of extreme violence and constitute a serious violation of human rights. Any act of violence against women perpetrated in the private or public sphere, whether by State or non-State actors, invokes the due diligence obligation of the State to prevent, investigate, punish and provide compensation for all acts of violence.

*As noted by the UN Secretary General, when the State fails to hold the perpetrators accountable, impunity not only intensifies the subordination and powerlessness of the targets of violence, but also sends a message to society that male violence against women is both acceptable and inevitable. As a result, **patterns of violent behaviour are normalised.***

United Nations treaty bodies have expressed concerns that honour-related crimes often go unreported, are rarely investigated and usually go unpunished. Where the courts hand down guilty convictions, the sentences are far less than those handed down for equally violent crimes without the ‘honour’ dimension. Afghanistan’s recent promulgation of the revised Penal Code, which abolished previous discriminatory provisions in relation to “honour killing” cases, is in line with international treaty body recommendations, and is encouraging in this regard. However, this is only the first step in ending impunity for such crimes.

*UNAMA documented 280 cases of murder and “honour killings” of women from January 2016 to December 2017. Of these, 50 cases resulted in the conviction and imprisonment of the perpetrator, representing 18 per cent of the cases documented. As in previous years, the vast majority of murder and “honour killing” cases involving women did not reach prosecution and the perpetrators are still at large. UNAMA found that in more than one third of cases documented over the two-year period, the police did not forward the cases to prosecutors. UNAMA’s interviews with traditional mediators suggest **informal mediators resolved some of these cases.** The documented circumstances for the dismissal of cases ranged from perpetrators fleeing to areas controlled by Anti-Government Elements, perpetrators not being apprehended for other reasons, and dismissal of cases due to lack of evidence.*

In relation to deficiencies in apprehending perpetrators, UNAMA notes that Article 209 of the Criminal Procedure Code allows trials to be held in absentia for misdemeanour and felony crimes, and strongly recommends that such trials must be utilised in murder and “honour killing” cases where the apprehension of perpetrators may not be possible.

UNAMA’s interviews with mediators found that mediators in nine provinces have adjudicated murder cases. Further, UNAMA observes that such practices were carried out almost exclusively by traditional dispute resolution mechanisms rather than by ERAW institutions. Mediation of murder cases by traditional dispute resolution mechanisms often aims to restore harmony between the families by giving a woman or girl in restitution (baad), a practice that is a criminal offence under the ERAW Law and which constitutes a serious violation of human rights.

UNAMA notes that deficiencies in Afghanistan’s applicable legislative framework for prosecuting “honour killings” may have contributed to impunity during the period covered in this report. The 1976 Penal Code allowed “honour killings” as a mitigating circumstance in murder cases. The 2018 Penal Code, however, does not contain this reference and the justification of “honour killing” cannot now serve as a mitigating factor in murder trials. Justice sector officials should investigate, prosecute and adjudicate “honour killings” under the general murder provision in Article 512, and sentence convicted persons accordingly. » Source: United Nations Assistance Mission in Afghanistan (UNAMA) et United Nations Office of the High Commissioner for Human Rights (OHCHR), Injustice and Impunity: Mediation of Criminal Offences of Violence against Women, mai 2018, p.8-9:

www.ohchr.org/Documents/Countries/AF/UNAMA_OHCHR_ERAW_Report2018_InjusticeImpunity29May2018.pdf.

UNHCR, 30 août 2018:

« Since 2001, the Government has taken a number of steps to improve the situation of women in the country, including the adoption of measures to increase women’s political participation and the establishment of a Ministry for Women’s Affairs. However, the incorporation of international standards for the protection of women’s rights into national legislation has run into recurrent difficulties. The Law on Elimination of Violence against Women (ERAW law) was approved by presidential decree in 2009, but continued to be opposed by conservative Members of Parliament and other conservative activists. The revised Penal Code of Afghanistan, which was adopted by presidential decree on 4 March 2017, initially incorporated all the provisions of the ERAW law, and strengthened the definition of rape. However, in response to opposition from conservatives, in August 2017 President Ghani ordered the Ministry of Justice to remove the ERAW chapter from the new Penal Code. While the new Penal Code entered into force in February 2018, a presidential decree dated 3 March 2018 clarified that the 2009 ERAW law continued to remain in force as a stand-alone law.

Overall, improvements in the situation of women and girls have reportedly remained marginal.

According to the Asia Foundation “limited access to education and health care, restrictions on freedom of movement, unjust punishment for ‘crimes of morality’, unequal participation in

government, forced marriage, and violence” remain major challenges for women and girls in Afghanistan. **Rates of depression due to domestic violence and other human rights violations are reportedly on the rise among Afghan women, with women reportedly committing 80 per cent of suicides in Afghanistan, while other women resort to self-immolations.**

The AIHRC noted that violence against women remains a “widespread, common and undeniable reality”, with women in insecure provinces as well as in the rural areas of Afghanistan especially vulnerable to violence and abuse. Impunity in relation to such violence is reportedly common. Sexual harassment and deep-rooted discrimination against women is reported to remain endemic.

Women are said to continue to face serious challenges to the full enjoyment of their economic, social and cultural rights. Despite advances, poverty, illiteracy, and poor health care reportedly continue to affect women disproportionately.

Observers have noted that **the implementation of legislation to protect women’s rights remains slow, including in particular the implementation of the EAW law. The law criminalizes 22 acts of violence and harmful traditional practices against women, including child marriage, forced marriage and acts of violence against women such as rape and domestic violence; it also specifies punishments for perpetrators. However, the authorities are reported to lack the will to implement the law, and reportedly do not enforce it in full, particularly in the rural areas. Access to justice for women reportedly remains low. The vast majority of cases, including instances of serious crimes against women, are still being mediated by traditional dispute resolution mechanisms rather than prosecuted as required by the law. Reportedly, the ANP, prosecutors’ offices as well as EAW Law institutions refer numerous cases, including serious crimes, to jirgas and shuras for advice or resolution, thereby undermining the implementation of the EAW law and reinforcing harmful traditional practices. Decisions of these mechanisms place women and girls at risk of further victimization and ostracism.**

The Shi’ite Personal Status Law, which regulates family law matters such as marriage, divorce and inheritance rights for members of the Shi’ite community, includes a number of provisions that discriminate against women, notably in relation to guardianship, inheritance, under-age marriages, and limitations on movements outside the home. While the human rights concerns identified in this section affect women and girls across the country, the situation in areas under the effective control of AGEs is reported to be of particular concern. In areas under their control, AGEs are reported to continue to impose severe restrictions on women’s fundamental rights, including freedom of movement, political participation, access to healthcare and access to education. Moreover, in areas under the effective control of AGEs women are likely to face particular difficulties in accessing justice and obtaining effective remedies for any violations of their rights, with the parallel justice structures operated by AGEs in areas under their control reportedly routinely violating women’s rights.

a) Sexual and Gender-Based Violence

Sexual and gender-based violence against women in Afghanistan remains widespread: the number of reported cases is on the rise, but the actual number of cases is thought to be far higher than the number of reported cases. **In March 2018, the AIHRC named violence**

against women as “one of the most serious human rights challenges in Afghanistan.” Such violence includes “honour killings”, abductions, rape, sexual harassment, forced abortions and domestic violence.

As sexual acts committed outside marriage are widely seen in Afghan society to dishonour families, victims of rape outside marriage are at risk of ostracism, forced abortions, imprisonment, or even death. Societal taboos and fear of stigmatization and reprisals, including at the hands of their own community and family members, have been found to deter survivors from reporting sexual and gender-based violence.

The new Penal Code of Afghanistan, which entered into force in February 2018, criminalizes nonconsensual “virginity tests”. However, despite the criminalization, the practice of “virginity testing” women who are accused of adultery or who are victims of sexual crimes, including victims of rape and sexual assault, reportedly remains prevalent in Afghanistan. The practice has been described as “sexual assault and torture”. The new Penal Code also criminalizes zina (sexual intercourse between an unmarried couple). Article 636 of the new Penal Code also contains a “clearer and more comprehensive definition of rape, which does not proceed from zina”.

Men responsible for domestic violence or forced marriages reportedly almost always enjoy impunity. In addition, since women are usually economically dependent on the perpetrators of domestic violence, many women are effectively prevented from raising complaints; they have few options but to continue to live in abusive situations.

Access to justice for women seeking to report violence is further hampered by the fact that women police officers constitute less than two per cent of all police officers in the country, due to widespread stigmatization of women joining the police force. Additionally, women police officers are reportedly themselves at risk of sexual harassment and assault in the workplace, including rape by male colleagues. They are also reported to be at risk of violent attacks by AGEs.

Impunity for acts of sexual violence is further reported to persist due to the fact that in some areas of the country, alleged rapists are powerful commanders or members of armed groups or criminal gangs, or have links to such groups or influential individuals who protect them from arrest and prosecution.

b) Harmful Traditional Practices

Harmful traditional practices continue to be pervasive in Afghanistan, occurring in varying degrees in both rural and urban communities throughout the country, and among all ethnic groups. **Rooted in discriminatory views about the role and position of women in Afghan society, harmful traditional practices disproportionately affect women and girls. Such practices include various forms of forced marriages, including child marriages; forced isolation in the home; and “honour killings”.** Coerced forms of marriage in Afghanistan include:

- (i) “sale” marriage, where women and girls are sold for a fixed quantity of goods or cash, or to settle a family debt;
- (ii) baad, a tribal form of dispute-settling in which the offending family offers a girl for marriage

into the “wronged” family, for instance to settle a blood debt;

(iii) *baadal*, an agreement between two families on “exchanging” daughters through marriage, often with a view to minimize marriage costs;

(iv) the coercion of widows into marrying a man from their deceased husband’s family.

Economic insecurity and ongoing conflict, related displacement, loss of assets and the impoverishment of the family perpetuate the problem of child and forced marriages, with the practice often seen as the only means of survival for the girl and her family.

The EVAW law criminalizes several harmful traditional practices, including the buying and selling of women for marriage, offering women for dispute resolution under *baad*, and child and forced marriages.

Despite Government efforts to promote gender equality, women continue to face pervasive social, political and economic discrimination due to persistent stereotypes and customary practices that marginalize them. Women who are perceived as transgressing social norms continue to face social stigma, general discrimination and threats to their safety, particularly in rural areas and in areas under the control of AGEs. Such norms include strict dress code, as well as requirements that restrict women’s freedom of movement, such as the requirement to be accompanied by a male relative chaperone when appearing in public.

Women without male support and protection, including widows and divorced women, are at particular risk. They generally lack the means of survival, given existing social norms imposing restrictions on women living alone, including limitations on their freedom of movement and on their ability to earn a living.

Punishment for breaches of customary or Sharia law is reported to disproportionately affect women and girls, including detention on the ground of perceived “moral crimes”, such as being improperly unaccompanied, refusing marriage, or “running away from home” (including in situations of domestic violence). A significant proportion of the girls and women detained in the country have been charged with “moral crimes”. Female prisoners are reportedly often subjected to physical violence as well as and sexual harassment and abuse. Since accusations of adultery and other “moral crimes” may elicit violence or “honour killings”, in some instances the authorities are reported to have sought to justify the detention of women accused of such acts as a protective measure.

Men who are perceived to be acting contrary to prevailing customs may also be at risk of ill-treatment, particularly in situations of accusations of adultery and sexual relations outside of marriage. **In areas under the effective control of the Taliban and other AGEs, women and men accused of immoral behaviour risk being tried by these AGEs’ parallel justice structures and being given harsh sentences, including lashings and death.** » Source: UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-seekers from Afghanistan, 30 août 2018, p.66-79: www.refworld.org/pdfid/5b8900109.pdf.