The Collateral Imprisonment of Afghan Children: An Obstacle to Building the Afghan State

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The Collateral Imprisonment\textsuperscript{1} of Afghan Children: An Obstacle to Building the Afghan State

Malalai Farooqi\textsuperscript{*}

"I want to be free to see outside, to study in school to play with other children, inside prison it's very difficult, my mother is sick, everyone in here has an illness and sorrow."

- Malina, an eight-year old girl from eastern Afghanistan, born in Badam Bagh Prison.\textsuperscript{2}

\textsuperscript{1} For the purposes of this comment, the terms “collateral imprisonment” \& “collateral incarceration” will be used interchangeably.
\textsuperscript{*} J.D. expected May 2012, University of La Verne College of Law. I want to thank my uncle, Dr. Aziz Lodin, for instilling in me the importance of culture. I would also like to thank my advisor, Professor Teri McMurtry-Chubb, for assisting in the editing of this piece.
Introduction

The day begins with children playing in an overcrowded room. The children range from age, the youngest just a few months old. They are given tattered, dusty educational materials and the only teacher, in care of seventy boys and girls begins to teach the day’s lesson. However, this is not an ordinary school, this is Badam Bagh prison. Badam Bagh is an all women’s prison located in Kabul, Afghanistan. It is home to roughly ninety inmates who are incarcerated for a variety of crimes ranging from kidnapping to “moral offenses.” Many of the inmates, some as young as sixteen, are mothers and due to lack of any alternatives, are forced to bring their children with them to prison. This is the reality of the female prison system in Afghanistan. Badam Bagh accounts for only ninety women. Pul-e-Charkh prison, which is not all female, also highlights the severity of the issue. It is located in eastern Kabul, housing 346 female prisoners and sixty children as of 2007. Pul-e-Charkh prison often houses up to twenty mothers and their children in one cell due to a lack of space and resources.

The United Nations office of Drug and Crime [UNODC] conducted a survey of female prisoners in both prisons and asked a variety of questions. The survey conducted by the UNODC states that the rate of children in prison is on the rise and is so high that is nearly equal

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4 Id.
5 See id. Moral offenses are not necessarily crimes that are listed in the penal code of Afghanistan nor in the Islamic code but crimes that are considered taboo or not acceptable for women, such as running away from home.
6 Id.
8 Id.
to the amount of female inmates.\(^\text{10}\) While Afghanistan has ratified the Convention on the Elimination of Discrimination Against Women [CEDAW], enacted by the Division for the Advancement of Women, a United Nations Charter, the Convention has not been followed. CEDAW outlines the international human rights guidelines for women all over the world, yet the discrimination against women in the prison system continues.\(^\text{11}\) Specifically, the lack of amenities, poor access to the judicial system, and unjustified and sporadic prison sentencing has resulted in gender-based discrimination in the female prison system.\(^\text{12}\) The international agreement outlines forms of discrimination and an international agenda for attacking the problems of discrimination in the countries that have signed the convention.\(^\text{13}\)

Afghanistan has also ratified the United Nations Convention on the Rights of the Child [UNCRC], monitored by the Committee on the Rights of the Child.\(^\text{14}\) Afghanistan has also violated the guidelines set by the United Nations committee in order to prevent discrimination against children based on parental status.\(^\text{15}\) Allowing mothers to take their children with them to prison without ensuring habitable and humane living conditions within prison walls is a direct violation of the UNCRC as well as CEDAW. The Afghan government has failed to properly address the issue. Several Non-Governmental Organizations (hereinafter “NGOs”) as well as

\(^{10}\) \textit{Id.} at 89.


\(^{13}\) UN Office on Drugs and Crime, \textit{supra} note 9.


\(^{15}\) \textit{Id.}\n
Afghan organizations have also attempted to address the problem but due to lack of resources, have been unable to make a solid change.\textsuperscript{16}

This comment addresses the issue of female prisoners in Afghanistan and the “collateral incarceration”\textsuperscript{17} of their children. Generations of women and children are forced to live in a prison system without proper access to education, health necessities and nutrition, violating several United Nations human rights conventions. The human rights violations occurring in the prison system lead to children who are unable to integrate into normal Afghan society.

Simultaneously, Afghan female prisoners are deprived of their basic rights to live a life free of gender-based discrimination. These conditions lead to the prisoners' inevitable inability to reintegrate back into Afghan society. The current system in place for female prisoners in Afghanistan is an impediment to the efforts of Afghan reconstruction and a functioning rule of law based Afghan society.\textsuperscript{18}

A report conducted by Amnesty International outlines the importance of improving the prison system for both the children and their mothers, stating:

Achieving political and economic stability is vital in creating a stable and safe environment throughout Afghanistan. However, it cannot be accomplished by ignoring the equal need for a comprehensive strategy that addresses violence against women as a rights and development priority for the nation. The full

\textsuperscript{16} Golnar Motevalli and Hamid Shalizi, \textit{supra} note 2.

\textsuperscript{17} “Collateral Incarceration” is the term used to describe female prisoners who have taken their children with them to prison. The children in turn are now incarcerated along with their mothers. When using collateral incarceration, the term is to be applied to the present conditions currently in existence in Afghanistan.

\textsuperscript{18} The reconstruction process can be best understood by an article by Peter Marsden who states: “The UN, International Committee of the Red Cross (ICRC) and NGOs have been operating on a reasonable scale in Afghanistan since the fall of the Soviet-backed government in April 1992, although their effectiveness has inevitably been reduced by the vagaries of the conflict within the country. However, long periods of relative stability in one area or another have made it possible for solid progress to be made over the years in the restoration of irrigation systems and flood protection structures, the repair of minor roads, the provision of wells, the supply of improved seeds, the establishment of water supply, sanitation and refuse collection systems in the cities, and the creation of a network of health and education facilities.” Peter Marsden, \textit{Afghanistan: The Reconstruction Process}, 79 \textit{ROYAL INST. of INT’L AFF.} 91-105 (2003), \textit{available at} http://www.jstor.org/stable/3095543?seq=2 (last visited Nov. 20, 2010).
enjoyment women and girls of their human rights of is essential to the future peace and security of Afghanistan.\textsuperscript{19}

Section I will discuss the current state of Afghanistan and its effects on the problem of collateral imprisonment of children. Section II of this comment will discuss how the moral codes and influence of Islamic Shariah law, customary law, and the penal code affect the issue.

Section III of this comment will discuss women in the prison system and the mental, economic, and psychological effects of imprisonment. Female prisoners and their children who have been raised in the prison system lack the reintegration skills necessary to become a contributing member of Afghan society. An assessment of statistics, surveys, interviews and, exchanges will demonstrate the severity of the condition of female prisoners in a flawed system and the repercussions of a lack of opportunity and reintegration.

Section IV of this comment will discuss the effects of the imprisonment on the Afghan children. Data will provide the background for discussing the psychological effects the imprisonment has on the children. This is especially important due to the fact that the children are the next generation of Afghan citizens who will have a direct impact on the future of the country. The current adult generation of Afghanistan has been taken into a whirlwind of war and civil strife creating a lack of infrastructure and necessary resources. Schools, universities and other educational facilities were shut down during most of the Taliban regime; as a result, many adults in Afghanistan are severely undereducated and illiterate.\textsuperscript{20} For this reason, the future of Afghanistan is directly tied to the capable hands of the children. Without the proper resources required to educate them, they cannot assist in the Afghan progress towards stability.

\textsuperscript{19} Afghanistan Women Still Under Attack- A Systematic Failure to Protect, supra note 12, at 43.
Lastly, Section V will present a series of solutions to address the collateral imprisonment of children in Afghanistan. The solutions will provide for a reformed prison system within Afghanistan as well as address the basic needs of the children within the prison. The solutions will also address the imprisonment of women and the revised requirements for the method in which women are imprisoned. Furthermore, an analysis of the role of NGOs and local Afghan organizations in the reformation process, namely the installation of democratic values and solid infrastructure, will be revised. The importance of providing a series of solutions rather than a single solution is that a holistic approach is required to assess the several contributing factors of collateral incarceration. Addressing the issue of collateral incarceration cannot be discussed unless an analysis is given of how the issue became such a significant impediment to Afghanistan’s efforts of stability and security.

I. Afghanistan’s Effort on Reconstruction

Afghanistan is a country marked by over twenty-five years of war and destruction. This turbulent history has left modern Afghanistan in disrepair. As a result of the Soviet invasion, Taliban takeover and inter-communal fighting21, the Afghanistan is ill equipped to provide social services to its people. The lack of social services, namely healthcare, nutrition and security, creates an unstable foundation for the people. As a result, the citizens have taken social services into their own hands, resulting in uneven and discriminately distributed services.22 This has resulted in a very individualistic type of governance, with each village and town governing

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21 Inter-communal fighting is reflected in the distrust and competition for power between particular ethnic groups in Afghanistan’s rural villages. The inter-communal fighting may also be region based, creating a competitive and sometimes violent relationship between villages in different areas. See Richard F. Nyrop & Donald Seekins, Afghanistan-A Country Study (Claitor’s Publishing Division) (2001).

22 Richard Barajas et al., Nation Building in Afghanistan: A Role for NGOs, PUB. AFF. 860, Spring 2006.
themselves according to particular rule of law deemed sufficient by village elders. Influenced by Taliban and warlord infiltration, rural villages have succumbed to an extremist and skewed view of law. Several human rights violations occurred, including the imprisonment of women for crimes deemed moral offenses, crimes that are not listed in any set penal code but are considered criminal activity under the local village law. Afghanistan had been plunged following the end of the Soviet Invasion, in what appeared to be a civil war between opposing factions. In 1998, the Taliban controlled nearly 90% of the country, and it was not until the U.S. invasion of Afghanistan, which began on October 7, 2001, that the country began its present day efforts at reconstruction.

Nearly three years following the initial invasion, Afghanistan held its first democratic elections, electing Hamid Karzai as its President. While the country is attempting to initiate a process of reconstruction and aim at democratization, a weak infrastructure and economy have prevented it from providing social services to the public. Afghanistan remains largely dependent on outside sources, including U.S. aid, to deliver these necessary services. Such social services are required to maintain the progress and building of a stable state. Furthermore, social services are a vital component of overall national security, a main component of

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24 The Taliban have been known for their destabilizing version of an extremist radical Islam that spread throughout Afghanistan. The group consisted of several ethnic factions that introduced a radical form of religious persecution in the country. See Ahmed Rashid, The Taliban- Exporting Extremism, FOREIGN AFF., Dec. 1999, available at http://www.foreignaffairs.com/articles/55600/ahmed-rashid/the-taliban-exporting-extremism.
25 These factions consisted of the Taliban, The United National Islamic Front for the Salvation of Afghanistan, military Northern Alliance leader Ahmad Shah Masood and Hizb-i-Islami to name a few. See Nyrop & Seekins, supra note 21.
27 Social services are in reference to health, education, security, and job opportunities.
Afghanistan’s reformation process.\textsuperscript{29} The process for reformation in Afghanistan will be a lengthy one; years of war and civil strife have ravaged the country. The international community has pledged ongoing assistance to Afghanistan but this has not proven to be a valid solution to the lack of social services and stability. International aid and assistance, whether it be in the form of NGOs or United Nations resolutions must be reevaluated with respect to the current infrastructure\textsuperscript{30} of the country. A study conducted by the UNODC in September of 2006 addressed the rising drug industry, crime and international terrorism. The study stated that:

Despite years of internationally backed reconstruction efforts, the destabilizing effects of the growing insurgency, cum opium cultivation, became very forceful during 2006. In fact, the cocktail of illicit economy, chronic weak governance, corruption as a major lubricant for the opium industry, external interference and cross border flows of opium and traffickers, insurgency, weapons, and illicit funds lead the country in a “state of siege”. The deteriorating security situation may bring Afghanistan to collapse again into a "failed state.”\textsuperscript{31}

The capacity for governance, as the report states, is nearly non-existent:

The Government is faced with the challenge of establishing a comprehensive legal framework for the functioning of the state and other social relations, forming and training all components of the judiciary system (law enforcement included), and bringing justice for all Afghan citizens. Reforms in the area of justice are critical for security, respect of human rights and fundamental freedoms, economic growth, social stability, and state building. However, the further away from Kabul the more visible the traditional and informal system (jirga/shuras) intervening in or determining judicial matters. Cases are considered and adjudicated with orally transmitted, traditional and religious injunctions, oftentimes leading to arbitrary [judgments].\textsuperscript{32}

This in turn leads us to the current problem with respect to the prison system. The U.N. report highlights, among many other points, that the lack of a stable and functional judicial system has

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\textsuperscript{29} UNODC, supra note 9, at 11.
\textsuperscript{30} See Afghanistan: Developments in Infrastructure, (Civil-Military Fusion Centre, Afghanistan) Sep.18, 2009) available at https://www.cimicweb.org/.../CFC%20AFG%20Infrastructure%20Archive/Afghanistan%20Infrastructure%20News
ter%2001-31%20August.pdf.
\textsuperscript{31} Strategic Programme Framework, supra note 23.
\textsuperscript{32} Id.
led to many arbitrary judgments and inefficient sentencing.\textsuperscript{33} As a result, many are sentenced without sufficient due process, having their rights ignored due to lack of representation, notice and lack of knowledge regarding the crime with which they have been charged.\textsuperscript{34} The collateral imprisonment of children is directly related to the growing need for a more democratic and stable Afghan society. Every child raised in the prison system is one less child that receives an adequate education and in turn fails to contribute to the reconstruction of the country as a whole. The issue of collateral imprisonment is one that must be addressed before the country can continue with its development.

II: The Influence of Shariah & Customary Law on Afghan Society

In order to assess the problem of collateral incarceration, a discussion of the laws under which women may be sent to prison is required. Afghanistan is 99.7\% Muslim.\textsuperscript{35} This surely has an astounding effect on the population, specifically with respect to local and national laws. Muslims believe that Shariah law, the sacred law of Islam, is derived from the Quran, the Muslim holy book, and the teachings of the Prophet.\textsuperscript{36} Shariah law can be considered the Islamic legal law that governs the majority of Muslim states. Although some countries choose to not implement Shariah law altogether, other countries implement a mixture. This can consist of law that is composed of modern penal codes and Shariah law or in this case, a penal code based on a

\textsuperscript{33} Id.
\textsuperscript{34} Id.
modern Afghan constitution or rule of law.\textsuperscript{37} Within Shariah law, there are rules of evidence and guidelines outlined for legal proceedings on a variety of legal topics.\textsuperscript{38} This includes the legal rules for divorce, custodial rights and crimes of moral offenses for which both men and women can be imprisoned and the punishments accompanying such crimes.\textsuperscript{39}

Afghanistan has seen a fluctuation of Shariah law as well as fluctuation in the modern penal and civil code law.\textsuperscript{40} While Shariah and penal codes are utilized in some cities, many rural villages and isolated areas continue to retain a separate group of law, specifically, a blend of Shariah and customary law that has resulted in a combination of Islamic law and traditional Afghan views on the role of women.\textsuperscript{41} These views include a range of crimes that require punishment, and the rights available to women if convicted.\textsuperscript{42} Shariah law is not to be confused with customary law. As noted by Jan Michaeil Otto, author of Shariah and National Law in Muslim Countries: Tensions and Opportunities for Dutch and EU Foreign Policy, who states:

\begin{quote}
Anthropological research shows that people in local communities often do not distinguish clearly whether and to what extent their norms and practices are based on local tradition, tribal custom, or religion. Those who adhere to a confrontational view of Shariah tend to ascribe many undesirable practices to Shariah and religion overlooking custom and culture, even if high-ranking religious authorities have stated the opposite.\textsuperscript{43}
\end{quote}

\textsuperscript{38} Toni Johnson, supra note 36.
\textsuperscript{39} Id.
\textsuperscript{40} Lina Abifareh, Gender and International Aid in Afghanistan: The Politics and Effects of Intervention (McFarland & Company, Inc., 2009).
\textsuperscript{41} Id.
\textsuperscript{42} Id.
\textsuperscript{43} Jan Michiel Otto, Sharia and National Law in Muslim Countries: Tensions and Opportunities for Dutch and EU Foreign Policy 30 (Amsterdam University Press, 2008).
Another issue that contributes to the lack of fundamental understanding of Shariah law is the illiteracy rate and lack of access to educational materials.\textsuperscript{44} Many of the offenses for which women have been convicted and punished for have derived from hundreds of years of cultural custom and tradition, created to best suit the needs of the local community or city at that point in time.\textsuperscript{45} For example, running away from home can be considered a punishable offense under moral codes in many rural villages in Afghanistan.\textsuperscript{46} Contrarily, running away is not listed as a crime in Shariah law or in any modern penal code.\textsuperscript{47} The crime of running away was created to ensure that women would remain at home, preventing any escape route for the woman if her husband or extended family mistreats her.\textsuperscript{48} The majority of Afghan women are sent to prison based on charges of rape, adultery, and moral offenses such as those discussed previously, which include disobedience and running away.\textsuperscript{49} Moral offenses as well as other crimes for which women can be imprisoned can only be understood when discussing Shariah law and customary law with respect to legal codes and rulings on punishable crimes in Afghanistan. These bodies of law include guidelines for custodial rights, which are required to analyze why the child inevitably remains with the mother.\textsuperscript{50} Shariah law has strict guidelines on which parent is granted custody of the child.\textsuperscript{51} Often, these guidelines are ignored and the child is left with the mother, despite her impending incarceration.\textsuperscript{52}

\begin{thebibliography}{9}
\item \textsuperscript{44} See Lina Abifareh, \textit{supra} note 40, at 21.
\item \textsuperscript{45} Jan Michiel Otto, \textit{Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present} 302 (Leiden University Press, 2010).
\item \textsuperscript{46} King, \textit{supra} note 3
\item \textsuperscript{47} \textit{Id.}
\item \textsuperscript{48} UNODC, \textit{supra} note 9, at 20.
\item \textsuperscript{49} \textit{See id.}
\item \textsuperscript{50} See Lina Abifareh, \textit{supra} note 40; See also Otto, \textit{supra} note 45.
\item \textsuperscript{52} \textit{Id.}
\end{thebibliography}
Shariah law has outlined several guidelines for the transfer of custodial rights from parent to parent. It is crucial to explain the lack of extended family presence and the mentality in many rural villages all over Afghanistan.

To begin, generally speaking the mother in Islam has the superior right to custody\textsuperscript{53} although there are several qualifications.\textsuperscript{54} The qualifications state that the parent in custody must be free, i.e. not in captivity, which may include imprisonment, mental institutions and forced house arrest.\textsuperscript{55} Another qualification is that if there is an impediment such as the insanity of a parent or incarceration, the mother can forfeit her right and have the father take the child.\textsuperscript{56} The parent with custody must also be able to fulfill the obligations of the child.\textsuperscript{57} These obligations include providing the child with the necessities required to mature into adulthood,\textsuperscript{58} which include but are not limited to adequate education, basic nutrition, healthcare, and emotional and physical support. The decision to take the child to prison is based on several factors that are not mandated by Shariah law but may exist in the norms and customary traditions of the area.

In many local villages and sometimes even in bigger cities such as Kabul, many extended families and husbands will abandon a wife and her children if she has been raped.\textsuperscript{59} While nothing in Shariah law prevents the father from taking custody, a woman being raped is considered a punishable offense and is viewed as a taboo subject, with blame attributed to the woman.\textsuperscript{60} Thus, many families will often abandon the rape victim’s child and the father will

\textsuperscript{53} Id.
\textsuperscript{54} Id.
\textsuperscript{55} Id.
\textsuperscript{56} Id.
\textsuperscript{57} Id.
\textsuperscript{58} Id.
\textsuperscript{59} Islamic Perspective on Child Custody After Divorce, \textit{supra} note 51.
\textsuperscript{60} Id.
\textsuperscript{7} Children’s Share Deprivations of Imprisoned Mothers in Afghanistan Prisons, \textit{supra} note 7.
subsequently remarry without remorse.\textsuperscript{61} Due to the fear of potential abandonment, the mother will then take her child to prison rather then leave her child in an orphanage or, alternatively, with relatives who fear the stigma of caring for a rape victim’s child. Additionally, a mother will be motivated to act in this manner due to the reality that young girls are often used as trade for money or promises of security from local warlords or criminal factions.\textsuperscript{62} To elaborate, villages are often plagued by violence and a family can gain protection by promising their daughter for marriage to these local warlords. With no reasonable alternatives available, a mother will be forced to take her daughter to prison with her.\textsuperscript{63} Finally, Afghanistan is founded on traditional values of the nuclear family, with the husband being the provider and the mother being the primary caretaker.\textsuperscript{64} Consequently, collateral incarceration occurs due to these traditional values, regardless of whether the mother can provide a sound environment for the child.\textsuperscript{65}

Continuing, it is a fair assessment to state that Afghanistan’s legal and customary systems perpetuate the problem of collateral incarceration. Under Shariah law, a woman can be imprisoned for adultery, a crime requiring witnesses for a conviction.\textsuperscript{66} Theft, murder, and other criminal offenses typically found in other nations’ laws also exist in Shariah.\textsuperscript{67} Conversely, criminal charges based on customary law can be substantially more complex due to the fact that what constitutes moral offenses are often ambiguous with no procedures or guidelines involved. These offenses are determined by the local custom of the particular rural area, \textsuperscript{68} further blurring the lines between permissible and prohibited conduct. This lack of consistency leaves

\textsuperscript{61} Id.  
\textsuperscript{62} UNODC, supra note 9, at 19.  
\textsuperscript{63} See id.  
\textsuperscript{65} Children’s Share Deprivations of Imprisoned Mothers in Afghanistan Prisons, supra note 7.  
\textsuperscript{67} Id.  
\textsuperscript{68} See UNODC, supra note 9, at 16.
susceptible to an extremely dangerous environment where imprisonment can happen for any arbitrary reason. Consequentially, women are prevented from fully understanding the laws for which they could be persecuted.\textsuperscript{69}

Although legal and social safeguards are included for women in Afghanistan’s penal code and Shariah law, such as the right to counsel and the availability of educational facilities for children incarcerated with their mothers, the adherence to customary law negates these safeguards.\textsuperscript{70} Ultimately, customary law in rural villages creates an environment allowing for the unjustifiable imprisonment of women creating an inconsistent judicial system in Afghanistan.

III: Women in the Prison System

Afghan prison facilities are far from ideal. The prisoners are deprived of the most basic necessities from working toilets to food portions in accordance with basic nutritional requirements for an adult female.\textsuperscript{71} Currently, two female prisons exist in Afghanistan, Pul-e-Charkhi prison, which is located in Eastern Kabul, and Badam Bagh prison also located in Kabul.\textsuperscript{72} The living conditions in Pul-e-Charkhi prison have been highly criticized by several United Nations organizations, even prompting an investigation by a parliamentary committee of Afghanistan.\textsuperscript{73} According to a study conducted in 2007, the overcrowding of the prison system is an issue, with 346 female prisoners and sixty children currently living in Pul-e-Charkhi prison.\textsuperscript{74} This is mostly a male prison facility with one or two buildings separated and secured for the

\textsuperscript{69} \textit{Id.} at 18.
\textsuperscript{70} \textit{See id.}
\textsuperscript{71} \textit{See UNODC, supra note 9; See also Adult Nutrition, http://www.faqs.org/nutrition/A-Ap/Adult-Nutrition.html (last visited Nov. 18, 2010).}
\textsuperscript{72} \textit{King, supra note 3.}
\textsuperscript{73} Children’s Share Deprivations of Imprisoned Mothers in Afghanistan Prisons, \textit{supra} note 7.
\textsuperscript{74} \textit{Id.}
female prisoners and their children. Lack of space is an important issue, resulting in twenty people being held in one cell. Most importantly, due to a lack of resources, this particular prison does not offer any educational programs for the children.

Badam Bagh prison is the only all female prison in Afghanistan, recently built by funding from an Italian NGO. It is home to ninety inmates, not including children. Children under three years of age are required to stay with their mothers while older children must live in facilities adjacent to the prison. Due to a lack of resources and space, building or using current adjacent facilities is not an option. According to a study conducted by the UNODC, the rate of children in prison is so high that it has nearly equaled the rate of mothers in prison. The lack of essential amenities and inadequate facilities required to raise a child in the prison system constitutes discrimination under CEDAW. Additionally, a lack of diligent due process and fluctuation in crimes resulting in imprisonment also constitute discrimination under CEDAW.

The discrimination in this particular instance is based on the distinction, exclusion and restriction on the basis of sex which results in the impairing or nullifying of the enjoyment of women with respect to human rights and fundamental freedoms, whether economic, political, social, cultural or any other field. Afghanistan and its government are obligated under CEDAW to assist in the elimination of discrimination against these female prisoners. Afghanistan ratified CEDAW on

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75 Id.
76 Id.
77 King, supra note 3.
78 Id.
79 Id.
80 Id.
81 UNODC, supra note 9.
82 “Such improvisation in the construction of crimes constitutes a breach of freedom of expression and association.” See Afghanistan Women Still Under Attack- A Systematic Failure to Protect, supra note 12; See also UNODC, supra note 9.
83 CEDAW, supra note 11.
December 18, 1979 and is currently in direct violation of the international agreement.\textsuperscript{84}

Discrimination under CEDAW is defined as:

\ldots any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.\textsuperscript{85}

The absence of basic necessities and inhumane prison conditions constitute discrimination under CEDAW because such conditions impair the fundamental freedoms and human rights of the women prisoners.

The lack of education and other reintegration courses available to the women prevents them from enabling themselves with the skills necessary to reintegrate into society upon completion of their sentence.\textsuperscript{86} This can be labeled as a form of economic discrimination. The absence of these skills creates a spectrum of ways in which these women have been discriminated against. This includes preventing access to wide variety of jobs due to lack of skill and education. The women, upon completion of their sentence, are skilled for only certain jobs due to the lack of courses available at the prison.\textsuperscript{87} A form of cultural discrimination also exists, further exacerbating the female prisoners ability to find a job.

This is evidenced by the stigma in Afghan culture that is associated with women in prison.\textsuperscript{88} The stigma of imprisonment for crimes such as rape is highly prevalent and further limits the access to jobs. Had the female prisoners been given access to tools which would provide them with a skill set, perhaps a wider range of jobs would be made available, thereby allowing them the opportunity to support themselves and their child. The Afghan economy

\textsuperscript{84} \textit{Id.}.
\textsuperscript{85} \textit{Id.}.
\textsuperscript{86} UNODC, \textit{supra} note 9, at 82.
\textsuperscript{87} See \textit{id.}.
\textsuperscript{88} \textit{Id.} at 17.
provides women with limited economic opportunities, as a result, women in Afghan society need sufficient education and skill training in order to become competitive in the job market. This is simply not the case with respect to the courses and training available at the prison facilities. Additionally, lack of basic healthcare deprives the women of the fundamental freedom to live life by placing them at higher risk of illness and death. Lastly, the female prisoner is subject to discrimination by lack of representation and notice. Neglecting to provide proper counsel representation to the defendant hinders the right to a just, speedy and accurate trial. Sentences are given arbitrarily, resulting in a disparate range of sentencing for similar crimes, with women being the only group convicted of adultery. Furthermore, lack of notice regarding a set guideline of rules for women due to the moral offense catch all prevents the prisoner from knowing what acts result in crimes. Crimes listed as a moral offense are not statutorily based nor codified in any rule section. This is an issue particular to women, as they are the group most affected by the category of moral offenses. As a result, a woman may be sentenced to prison for a variety of reasons. This is a direct impairment of a woman’s freedom in all fields, including social, civil, economic or other.

89 Id. at 14.
91 Afghanistan Women Still Under Attack - A Systematic Failure to Protect, supra note 12, at 32.
92 Id. at 31-32.
93 See id.
94 Id. at 31.
95 See id.
IV. Children in the Prison System

A: Lack of Data Creates Inconsistent Policy

The amount of data and studies collectively done on the issue of collateral imprisonment are minimal.96 At a meeting for the Human Rights Council in conjunction with the Bureau International Catholique de L’Enfance (BICE)97 and the Quaker United Nations Office,98 a report was issued concluding collateral incarceration has not been addressed by the Human Rights Council nor anyone else.99 The particularities of the imprisonment of children have been neglected and as a result, the problem has grown exponentially in Afghanistan. Although U.N. guidelines require that studies be kept on women in prison, data has not been maintained on children who accompany their mothers or are born in prison.100 As a result, the total number of children affected is unknown. The Human Rights Council meeting addressed several other countries with similar issues of collateral imprisonment, citing Togo, a country in West Africa as an example.101 While Togo has made collateral incarceration of children illegal, it is still a prevalent issue due to lack of prison regulation and procedure.102 The Human Rights Council meeting drew attention to a Supreme Court ruling in India, which stated that if a defendant in

97 BICE is an NGO organized under French law, which promotes the rights of children against all forms of violations. See Bureau International Catholique de L’Enfance (BICE), http://www.bice.org/ (last visited Nov. 20, 2010).
99 Children of Prisoners: Informal Meeting, supra note 96.
100 Id.
101 Id.
102 Id.
pretrial detention is a mother, precautions should be taken by judges, including an expedited trial and the option to post bail.\textsuperscript{103} The Council also discussed the comparison to Germany, a country that has also addressed the problem.\textsuperscript{104} It has built mini-houses within the prison so that when the mother and child leave the prison, the impact of the shock is minimized due to them living in a house rather than a prison cell.\textsuperscript{105} The general consensus of the report focused on the lack of knowledge regarding the issue and an ultimate neglect of collecting information.\textsuperscript{106}

While there seems to be some inconsistent policies implemented by countries such as Togo, several other countries such as Germany and Kyrgyzstan have taken into consideration the imprisonment of a mother and made appropriate accommodations.\textsuperscript{107} Kyrgyzstan has implemented a law stating that if a defendant-mother is sentenced to less than five years in prison at the conclusion of her trial, she will be pardoned from such sentence on the condition that she take sufficient care of her child.\textsuperscript{108} While the monitoring of this law may prove difficult, Kyrgyzstan and others have taken proactive steps to address the issue and focus on the children. Nevertheless, the conditions with which the mother is sent to prison are not the only factors affecting the child.

B: Inhumane Prison Conditions

In Afghanistan, article fifty-six of the Afghan penal code allows women to keep the children in prison with them until the age of three years old upon which they are moved into an

\textsuperscript{103} Id.
\textsuperscript{104} Id.
\textsuperscript{105} Children of Prisoners: Informal Meeting, supra note 96.
\textsuperscript{106} Id.
\textsuperscript{107} Id.
\textsuperscript{108} Id.
adjacent facility. However, the funding does not exist to operate and build adjacent facilities.\textsuperscript{109} According to several sections of the penal code, children may be placed into an orphanage but the rate of children being orphaned has grown significantly, as a result, orphanages have been limited in space.\textsuperscript{110} Although Badam Bagh prison does have a day center where the children can have the space for activities, it is uninhabitable during the winter months due to a lack of heating.\textsuperscript{111} NGOs and local Afghan organizations have attempted to improve the quality of the facilities for the children but they have not had adequate access and funding.\textsuperscript{112} Although some organizations like the Afghan Women’s Educational Center [AWEC]\textsuperscript{113} have attempted to provide specialists to care for the children, the service is typically unavailable and limited. Uninhabitable facilities and lack of activities to keep the children preoccupied can result in detrimental psychological effects.

C: Psychological Effects of Incarceration

Studies have shown that the effects of collateral incarceration have damaging repercussions.\textsuperscript{114} The psychological effects range in kind and can hinder the child’s ability to develop. Furthermore, the separation of mother and child due to imprisonment has a traumatic effect on both involved, resulting in the punishment of the child as well as the mother.\textsuperscript{115} Children who are incarcerated with their mothers also may be at greater risk for

\textsuperscript{109} \textit{Id.}
\textsuperscript{110} UNODC, \textit{supra} note 9, at 40.
\textsuperscript{111} \textit{Id.}
\textsuperscript{112} \textit{Id.}
\textsuperscript{113} The Afghan Women’s Educational Center is an all female-headed NGO dedicated but not limited to the advancement of Afghan refugee rights. \textit{See} Afghan Women’s Educational Center, http://www.awec.info/ (last visited Nov. 19, 2010).
\textsuperscript{114} UNODC, \textit{supra} note 9, at 89.
\textsuperscript{115} \textit{Id.} at 57.
incarceration themselves.\textsuperscript{116} The imprisonment of these children may affect their educational, social, emotional, and health development,\textsuperscript{117} thereby preventing the child from maturing into a normal, well adjusted, and contributing member of Afghan society.

An article by Joseph Murray and David P. Farrington outlines the effects of parental imprisonment on children in western society. The article refers to children of prisoners as the “forgotten victims” of crime.\textsuperscript{118} The authors argue that parental imprisonment places the children at risk for a various number of negative outcomes\textsuperscript{119} that can include antisocial behavior, criminal offending, mental health problems, drug abuse, school failure and, unemployment.\textsuperscript{120} The negative outcomes can occur due to a variety of reasons, including the separation of the parent from the child, stigma of the imprisonment, lack of ability to provide for the child and, inability to maintain proper child rearing.\textsuperscript{121} A parallel can be drawn from the negative outcomes resulting from parental imprisonment to the outcomes of collateral imprisonment.

Specifically, the stigma of imprisonment, lack of ability to provide for the child and the issue of maintaining proper child rearing can be attributed to collateral incarceration in a similar fashion. More importantly, the child may slightly more affected by the parental imprisonment if it is the mother who is the parent incarcerated.\textsuperscript{122} This is due to the fact that in Afghanistan the father is typically the working parent while the mother may be the caretaker of the children, exceptions do exist however.\textsuperscript{123} Equally important, the article states that the rate of children experiencing some sort of parental imprisonment is also on the rise in the United States and

\textsuperscript{116} David P. Farrington & Joseph Murray, \textit{The Effects of Parental Imprisonment on Children}, 37 \textit{CRIMEJ} 133 (2008).
\textsuperscript{117} \textit{Id.} at 180.
\textsuperscript{118} \textit{Id}.
\textsuperscript{119} \textit{Id.} at 166.
\textsuperscript{120} \textit{Id}.
\textsuperscript{121} \textit{Id.} at 187.
\textsuperscript{122} Farrington & Murray, \textit{supra} note 116, at 179.
\textsuperscript{123} Blood, \textit{supra} note 64.
European countries. Similarly, the rate of collateral incarceration is also on the rise in Afghanistan, with the imprisonment of children and their mothers at an all time high. A child experiencing parental imprisonment, with one parent in prison, can be analogous to collateral incarceration, where both the child and the parent are in prison. The author discusses the side effects of parental imprisonment from a disassociated standpoint of the child, while collateral incarceration exposes the child to the issues directly, thereby exacerbating the negative outcomes. One such outcome discussed in the article is the antisocial behavior of the child that results from parental imprisonment, which can adversely affect the child in many ways.

Children of parents in prison are three times as likely as other children to be convicted or imprisoned. Parental imprisonment indicated a higher occurrence of delinquency of the child throughout childhood. The article by Joseph Murray and David P. Farrington concluded “parental imprisonment during childhood significantly predicted poor life success in adulthood.” The correlation between parental imprisonment and later success in a child’s adult life can be comparable to that of collateral incarceration. Studies have concluded that collateral incarceration also places children at a higher risk of imprisonment, making it more likely that a child will become a repeat offender.

The article further discussed the impact of collateral incarceration, citing a study done by Liza Catan, which compares the development of seventy-four babies living with their mothers in prison and thirty-three controls that were living outside, resulting in similar developmental

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124 Farrington & Murray, supra note 116, at 136.
125 Children’s Share Deprivations of Imprisoned Mothers in Afghanistan Prisons, supra note 7.
126 Farrington & Murray, supra note 116, at 186.
127 Id. at 140.
128 Id. at 168.
129 Id. at 161.
130 UNODC, supra note 9, at 89.
progress in both groups.\textsuperscript{132} Though the prison term was a factor, indicating that the longer the babies were in the prison atmosphere, the slower the development and the appearance of a slight decline in cognitive development.\textsuperscript{133} Moreover, the study was conducted in the United States, where a more developed prison system exists, as opposed to Afghanistan in where a fully functioning prison is lacking. The study did however conclude that collateral incarceration may reduce the trauma of separation and, therefore, the adverse effects associated with separation of a child from his mother.\textsuperscript{134} Notwithstanding the benefits collateral incarceration may have in terms of reducing separation trauma, one of the main issues is that it “contribute[s] to the intergenerational transmission of offending.”\textsuperscript{135} Intergenerational transmission of offending occurs when the child is affected by the imprisonment of the parent and is discriminated against based on the status of the parent as a prisoner.\textsuperscript{136} The UNCRC was enacted in order to prevent such forms of discrimination from occurring.

D: Violation of United Nations Guidelines

The UNCRC states that children must be protected from all forms of discrimination resulting from parental status and activity.\textsuperscript{137} For example, a child who is given a lesser quality of education based on the parents’ socio-economic status might constitute discrimination under the convention. The convention further states that the child’s best interest must be kept in mind.\textsuperscript{138} With the current status of collateral incarceration, the children’s best interest has been

\textsuperscript{132} Id.
\textsuperscript{133} Id.
\textsuperscript{134} Id.
\textsuperscript{135} Farrington & Murray, supra note 116, at 187.
\textsuperscript{136} See id.
\textsuperscript{137} UNCRC, supra note 14.
\textsuperscript{138} Id; See also Farrington & Murray, supra note 116.
neglected. Afghanistan ratified the UNCRC on November 1989.\textsuperscript{139} Allowing the children to occupy such prison conditions is in direct violation of the convention decreed by the United Nations.\textsuperscript{140} Additionally, the convention outlines that children must not be discriminated against based on parental status.\textsuperscript{141} Collateral incarceration results in a child being deprived of the basic necessities of living, such as healthcare, food, unsanitary and crowded living quarters, and free will.\textsuperscript{142} In addition to deprivation of basic necessities, the inadequate education provided at the prison for the children places them in a disadvantageous position. The children are deprived of the right to gain satisfactory education, which would equip them with the knowledge to continue on to higher education. The prison system simply does not provide this.\textsuperscript{143} Accordingly, these living conditions are not in any child’s best interest, therefore a holistic approach must be designed in order to address the issues with respect to collateral incarceration.

V. Solutions

The issue of collateral incarceration occurs due to a wide range of defects that exist in the prison system and outside of the prison system. Several solutions have been designed in order to cover each area that has contributed to the issue. The importance of a holistic approach is central to the issue of collateral imprisonment. The Afghanistan infrastructure and weak foundation have created a plethora of problems. Several of the problems discussed throughout this comment require a unique solution to address the specific issue itself. A single, all encompassing issue

\begin{flushleft}
\textsuperscript{139} UNCRC, supra note 14. \\
\textsuperscript{140} Id. \\
\textsuperscript{141} Id. See also Children’s Share Deprivations of Imprisoned Mothers in Afghanistan Prisons, supra note 7. \\
\textsuperscript{142} See King, supra note 3. \\
\textsuperscript{143} Id.
\end{flushleft}
ignores the complexity of collateral incarceration. Therefore, a series of solutions has been presented in an attempt to satisfy the issue of collateral incarceration.

A: Awareness

Lack of awareness with respect to collateral imprisonment in both Afghanistan and the international community has proved to be a challenge. Judicial and prison building reform has been placed on a low priority and as a result, has suffered several setbacks, including lack of funding and assistance from NGOs as well as local organizations. Finding a balanced judicial system that incorporates the several bodies of law in Afghanistan, a necessary task to address the issue of collateral imprisonment, may be a discouraging task. The complexities of customary law, Shariah law, and the modern Afghan penal code have led to confused judicial personnel incapable of implementing justice. This confusion had led to women and children, living in inhumane conditions due to absence of education, health services, and proper food and water. One of the most important solutions with respect to collateral incarceration is awareness of the issue on a local and international level. The solutions that follow cannot be successfully achieved unless the public is aware of the issue and takes proactive measures to address it.

In order to achieve such awareness, access to information must be provided at a local level to educate the local Afghan community about the law, the protections afforded from the law, the rights of prisoners, and the rights of the children. This can be achieved on a grassroots community level, with the assistance of NGOs and local Afghan organizations such as

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144 Barajas et al., supra note 22, at 24.
145 See id. at 25.
146 See id.
147 Id.
148 Id. at 44.
the United Nations Assistance Mission in Afghanistan [UNAMA], an organization set up as a connector between the United Nations and Afghanistan. The NGOs and local groups can take measures to provide the local community with information required to become educated about the issues involved in the prison system. Furthermore, the local community Jirgas, which are composed of male community members who make rulings on village issues, must be utilized to spread awareness about collateral imprisonment. Jirgas have a stronghold in many rural villages and are the community’s central focal point. Jirgas are often used for a variety of reasons, including seeking advice and making judgments with regard to local law. Due to the geographic location of Afghanistan and its size, many villages are isolated and do not have access to courts and other judicial buildings, thus, the Jirga is the only access to a central body of law. The importance of gaining assistance from the Jirgas is directly in relation to the issue of collateral imprisonment. While Afghan’s utilize the Jirga system for many reasons, they are ill equipped to handle issues with regard to imprisonment, the penal code, and the legal system as a whole, largely contributing to discrimination against women. Therefore, the grassroots campaign must begin with educating the Jirgas regarding these issues and creating a union with the leaders in order to train them with the knowledge required to make informed legal decisions. The Jirgas are a vital part of the process of the judicial reformation that is needed to resolve collateral imprisonment.

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149 Id.
150 Barajas et al., supra note 22.
151 Jirga is made up of prominent male members of the community who convene to resolve community problems, including those related to land, property, the family, and crime. In making decisions, the jirga and shura apply different sources of law, including Shari’a law and Afghan custom. See Id. at 32.
152 See id. at 64.
153 Id at 31.
154 Id.
155 Id.
156 See Barajas et al., supra note 22, at 25.
157 See id.
Awareness of collateral imprisonment is fundamental. The children who are the victims in this process cannot benefit from any solutions until the community is put on notice. The use of a grassroots informational campaign coupled with the focus on Jirgas and the role of NGOs can help to alleviate the lack of information on this topic.

B: Building Prisons

More all female prisons need to be built in order to ensure that prisoners will not be subjected to violence, rape and other forms of such behavior from male prisoners or male prison staff. A study conducted by a parliamentary group commissioned by the Afghan government found that many female prisoners had become pregnant as a result of being raped by male staff. A dangerous environment is created where the female prisoners are as unsafe within prison walls as they are out in the rural village areas. An all female staff, including female prison guards and female administrative staff, would address the problem of rape and violence committed by male staff members.

In conjunction with the building of more all female prisons, the prison structure on a broader level must be assessed. As a result of the injustices occurring in female prisons, such as overcrowding and unsanitary conditions, Afghanistan must make an effort to build or renovate prisons. While several countries such as Italy and the United States have donated money to building new prisons, such as Badam Bagh—which was funded through an Italian NGO—there

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158 King, supra note 3. See also UNODC, supra note 9.
159 King, supra note 3.
161 Id. at 33.
is still a need for more prisons.\footnote{162} Overcrowding and dilapidated cells have contributed to the harsh standards of living for the children and their mothers.\footnote{163} In order to provide for a better environment for the children, bigger prisons and better amenities must be available. The U.N. Development Program has taken proactive steps in rehabilitating several provincial justice buildings.\footnote{164} The UNODC has also been working in accordance with the Ministry of Justice in Afghanistan to create a legal code of standards for prison living conditions.\footnote{165} While certain measures have been taken to address the issue, quite a number of challenges currently exist with respect to the prison infrastructure. An Amnesty International Report states:

Prisons, an essential component of [the criminal justice] system, are crumbling after years of neglect and lack trained and qualified staff ... Prisoners are being held for months in overcrowded cells, some of them shackled, with inadequate bedding and food. Staff has received no training and has not been paid for months. Prisoners and detainees are not being held in safety, some are suffering ill-treatment or even torture.\footnote{166}

Collateral incarceration cannot be eradicated until the inhumane conditions of the prison system have been corrected. Furthermore, guidelines must be set in order to ensure that the female prisoner is in good health before the commencement of her sentence.

C: Pregnant Female Prisoners

The sentencing of pregnant women must be addressed,\footnote{167} as these women inevitably give birth within prison walls, in unsanitary and dangerous conditions. Women who are over six

\begin{footnotes}
\footnote{162} King, supra note 3.
\footnote{163} Id.
\footnote{164} Barajas et al., supra note 22, at 28.
\footnote{165} Id.
\footnote{166} Id.
\footnote{167} King, supra note 3.
\end{footnotes}
months pregnant should be placed under watch or house arrest until they have given birth.\textsuperscript{168} Sentencing can resume once the child has reached a certain age and is reviewed for medical attention before accompanying the mother.\textsuperscript{169} This will help to ensure that both newborn and mother are given proper healthcare.\textsuperscript{170}

Next, adjacent buildings to the prison must be built in order for the children to have access to education and other amenities that are located outside the prison.\textsuperscript{171} Building the facility adjacent to the prison will allow the mothers to interact with their children while maintaining a normalized environment.\textsuperscript{172} The buildings can be used for permanent living quarters or for education and activity purposes. With the help of NGOs and Afghan governmental organizations such as AWEC, specialists and teachers can be employed, salaried or voluntary, to provide the children with supervision and education.\textsuperscript{173} Additionally, mothers should be given visitation rights with the children to avoid the psychological effect of separation.\textsuperscript{174} The facilities should be equipped to provide onsite medical access to the children in order to ensure that proper medical attention is given. Furthermore, the facilities can monitor the nutritional intake of the children to ensure that the daily diet is based on normal nutritional guidelines for that of a young child. While the Afghan criminal code makes no specific mention on the requirement of nutritionally satisfying foods for younger children, the UNODC has released data stating that the food provided in Afghan prisons is not sufficient for a young child to develop normally as other children within the same age group.\textsuperscript{175} Nutritional requirements for children and infants are typically ignored evidenced by prison authorities that implement a

\textsuperscript{168} UNODC, \textit{supra} note 9.
\textsuperscript{169} \textit{Id.} at 87.
\textsuperscript{170} \textit{Id.} at 89.
\textsuperscript{171} \textit{Id.}
\textsuperscript{172} \textit{See} King, \textit{supra} note 3.
\textsuperscript{173} \textit{Id.}
\textsuperscript{174} \textit{See} Farrington & Murray, \textit{supra} note 116.
\textsuperscript{175} UNODC, \textit{supra} note 9, at 89.
blanket dietary plan, which fails to take into account the wide array of prisoner age and condition.\textsuperscript{176} Moreover, since prison cells carry upward of twenty inmates including children, prison guards will serve the food in a group portion, minimizing the amount of food each inmate and her child will receive.\textsuperscript{177} Issues such as those listed can be addressed with the intervention of NGO and local organizations.

**D: The Role of NGOs and the Judicial System**

Often, during a time of crisis, NGOs emerge as providers of vital services no longer accessible to the people.\textsuperscript{178} In such circumstances, the NGOs often settle in and channel resources into providing such public services as education, health and food.\textsuperscript{179} As a result, NGOs have become a vital part of the Afghan reconstruction. As of 2009, the number of registered NGOs in Kabul was about 1700.\textsuperscript{180} Despite the large NGO existence, the organizations encounter a number of obstacles when providing services such as education.\textsuperscript{181} One of the major contributors to these obstacles for NGOs is lack of funding.\textsuperscript{182} Funding for projects is limited and provided on a short-term basis, leaving the NGOs desperate to seek more funds in order to continue their services.\textsuperscript{183} Additionally, the lack of an infrastructure, lack of

\begin{footnotes}
\textsuperscript{176} Id.
\textsuperscript{177} Id.
\textsuperscript{179} See id.
\textsuperscript{182} Id.
\textsuperscript{183} Id.
\end{footnotes}
human resources available, and absence of basic services in Afghanistan make it difficult for the NGOs to function as efficiently as possible.\textsuperscript{184}

Consequently, the role of NGOs and the Ministry of Justice [MOJ] must be reevaluated in order to rework the monetary, physical and, legal contributions made by these organizations to the female prisoners and their children.\textsuperscript{185} Decades of war have led to the destruction of an existing judicial system, leaving a void that can be filled by NGOs and local Afghan organizations in conjunction with the MOJ, Afghanistan’s central body branch of government responsible for upholding the rule of law.\textsuperscript{186} NGOs must continue to provide resources and assistance in the sector of prison reform. Furthermore, they must focus on the training of Afghan personnel and creating grassroots campaigns to provide access to information where Afghan’s villages are most isolated.\textsuperscript{187} Indeed, it is in the isolated and rural areas of Afghanistan that the issue of collateral imprisonment is heightened.

The NGOs present in Afghanistan play a large role in providing the people with access to many activities, facilities, and amenities not normally available.\textsuperscript{188} Due to the large population and array of problems plaguing the country, the issue of collateral incarceration is often ignored.\textsuperscript{189} The MOJ, while it has conducted studies, has not actively worked to address the problems they observed while at Pul-e-Charkhi prison.\textsuperscript{190} The Ministry must make stronger efforts to ensure safeguards in place that prevent women from being imprisoned arbitrarily, without access to counsel and due process.\textsuperscript{191} More responsive action by the Ministry will subsequently benefit both imprisoned mothers and their children who currently have no access to

\begin{footnotesize}
\begin{enumerate}
\item[184] Id.
\item[185] See Barajas et al., supra note 22.
\item[186] See id.
\item[187] See id.
\item[189] See Afghanistan Women Still Under Attack- A Systematic Failure to Protect, supra note 12.
\item[190] Children’s Share Deprivations of Imprisoned Mothers in Afghanistan Prisons, supra note 7.
\item[191] Id. See also Barajas et al., supra note 22.
\end{enumerate}
\end{footnotesize}
protections found in the available legal and social services. The NGOs along with the MOJ must provide the financial assistance and support in facilitating resources for the prison system but cannot do so until an overhaul occurs.

To illustrate, a U.N. published report on nation building stated that the judicial sector of Afghanistan has been the area that has seen the least amount of improvement. UNAMA as well as several other NGO organizations have neglected to focus on the issue of judicial reform. Strategies, funding and efforts remain unripe for launching, leaving the judicial system and Afghan prisons in the hands of weak leadership and abandoned by the international community. The judicial system in Afghanistan is composed of three sections, the Supreme Court, the Attorney General’s office and the Ministry of Justice. Several flaws exist within these three bodies of offices that lead to an underdeveloped and ignored prison system and underdeveloped body of law. Among these flaws are low salaries, poor court infrastructures, untrained judges and attorneys, lack of support through funding, and unavailable legal education needed for those practicing law. The arrests of citizens are hampered, often times being influenced by bribery and nepotism. This directly affects the issue of collateral imprisonment by stripping the mothers of a fully functioning legal system that can provide them with the justice and legal safeguards required.

A solution to the flawed judicial system is to provide training to all judicial personnel. Reports conducted by the U.N. rallied for the further training of personnel to improve the quality of the judicial system. They further stated that NGOs could be an integral part of the training

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192 See id.
193 See id.
194 Id. at 62.
195 Id. at 62-64.
196 See id. at 24.
197 See Barajas et al., supra note 22.
198 See id.
process. The MOJ and NGOs present in Afghanistan can work together to provide a training program for judicial personnel addressing the issues and solutions involved with the implementation of Shariah Law, Afghan penal code, and customary law.\textsuperscript{199} For this reason, long-term investments must be made in order to produce a generation of Afghan legal professionals. With respect to the issue of bribery and corruption, an anti bribery committee may be enacted as a watchdog in order to prevent corruption in the judicial system.\textsuperscript{200} The committee can enact certain laws such as the criminalization of bribery and corruption, the prevention of nepotism, and accountability of funding through reports and finance logs.\textsuperscript{201}

Training of judicial officers, such as judges, and availability of legal education for attorneys, can enable female defendants to have access to the avenues needed to combat faulty convictions, excessive sentencing, and arbitrary prosecution. The solutions for collateral incarceration lie not only with the improvement of conditions for those currently in the prison system but also with strengthening the legal and social framework for the betterment of the Afghan citizenry.

\section*{VI. Conclusion}

The issue of collateral incarceration has become more prominent today than throughout the history of Afghanistan.\textsuperscript{202} The staggering number of women in prison with their children presents an impediment to Afghanistan’s attempt at reconstruction.\textsuperscript{203} The movement toward a

\begin{footnotesize}
\begin{enumerate}[\textsuperscript{199}]
\item See id.
\item See id. at 31.
\item See id.
\item King, supra note 3.
\end{enumerate}
\end{footnotesize}
democratic and solid foundational system cannot occur without an analysis of the problem of collateral incarceration. The number of children currently in prison has become a roadblock to Afghanistan’s progress. While the government has attempted to better the life of children within the country, the attempts will prove futile while collateral incarceration exists in such circumstances.204

The matter cannot be resolved by a singular plan. A multitude of factors have contributed to collateral incarceration and these factors must be addressed individually. The problem stems beyond a single faction of government. The assistance of such governmental entities and organizations such as the judicial system, the health ministry, the education ministry, the U.N., and NGOs is needed to assess the problem. For example, the reformation of the judicial system is required in order to provide the female prisoners with access to such rights as notice and due process. Additionally, the health ministry and education ministry must work together to provide inmates and their children with proper access to health and education. The collective efforts of these governmental sectors and NGOs can significantly contribute to alleviating the problem.

Collateral incarceration has become a crippling phenomenon on Afghan advancement. The country simply cannot move forward into an era of progress while a significant amount of its population is exposed to collateral incarceration. Hence, the solutions outlined must be effectuated into a cohesive plan, implemented over time, to eradicate collateral incarceration, as it currently exists.