



NANSEN PROFIEL 20-2

Nood aan bescherming voor Afghaanse verwesterde vrouw

Het NANSEN Profiel is een thematische tool die zich richt tot praktijkjuristen en advocaten die asielzoekers bijstaan. Het NANSEN profiel analyseert een specifiek profiel van een persoon die nood heeft aan internationale bescherming en brengt actuele jurisprudentie en landeninformatie samen

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Inhoud

Inhoud	1
Samenvatting/Summary	2
Deel 1. Algemene situatie	3
1.1 Veiligheidssituatie voor vrouwen in Afghanistan	3
1.2 Vrouwen als sociale groep	5
1.3 Mensenrechtenschendingen als vervolging	6
Deel 2. Risico op vervolging	6
2.1 Vervolging omwille van verwestering	7
2.2 Gedwongen huwelijk	12
2.3 Misdaad van running away/maagdelijkheidstesten	16
Deel 3. Conclusie	19

Samenvatting/Summary

In addition to the general violence in Afghanistan caused by the ongoing armed conflict, a general culture of violence against women exists. Women's honour and chastity are inextricably linked to their economic value and thus their ability to survive. They find themselves in a patriarchal society where they have little or no opportunity to build an independent life. For westernized women who have lived abroad for long periods of time, this entails serious risks in various areas.

First, their long stay in the West will be considered to have 'infected' them. This has as a consequence that they risk being socially and economically expelled from Afghan society, it also leads to them being regarded as unchaste and unclean. As a result, they are no longer regarded as fit or eligible to marry, which puts them in a very precarious position since marriage is elementary to survival in Afghan society. This also means that they are even more at risk of a forced marriage: since she is no longer an attractive candidate for marriage, she will no longer have a free choice of partner. Moreover, it is impossible for a woman in Afghanistan to escape forced marriage. Not only can violence within the marriage not be reported, divorce is virtually impossible and if she runs away to protect herself she risks being prosecuted.

A woman who has lived a long time in the West runs a high risk of being prosecuted because having spent a long time abroad without male supervision: She is *ipso facto* considered a perpetrator of *the crime called zina* (running away). In addition, criminal prosecution against *zina* perpetrator includes proceedings if she does not consent to a forced marriage in Afghanistan or tries to escape from it. *Zina* crimes entail a violation of human rights, not only because of the criminal prosecution, but also because of the methods (virginity tests) used in the investigation.

A westernized Afghan woman who thus stays abroad for a long period of time runs a very high risk to be prosecuted in the sense of the UN Refugee Convention. The cumulation of the different prosecution grounds leads to the fact that she must be recognised a refugee in the sense of the UN Refugee Convention.

Dit NANSEN Profiel onderzoekt de nood aan internationale bescherming van een Afghaanse verwesterde vrouw. NANSEN is van mening dat deze vrouwen een specifieke sociale groep vormen en dat zij omwille van specifieke, persoonlijke redenen risico lopen op vervolging indien ze gedwongen moeten terugkeren naar Afghanistan.

Deel 1. Algemene situatie

1.1 Veiligheidssituatie voor vrouwen in Afghanistan

Afghanistan bevindt zich nog steeds in een situatie van gewapend conflict.

Fighting between the Afghan government and the Taleban has continued to escalate. More people have been killed due to fighting during the first ten months of 2019, than during the whole of 2018. In 2019, the conflict with the Taleban resulted in almost 23 000 fatalities. So far this year, UCDP has recorded more than 24 000 battle-related deaths and this conflict is expected to be the deadliest conflict in the world in 2019. The Afghan government receives warring support from the USA, including airstrikes as well as joint ground operations. US airstrikes have increased in intensity in 2019, and civilians have been accidentally killed several times. In addition to the conflict between the Taleban and the Afghan government, UCDP has also recorded conflicts between the Afghan government and the Islamic State (IS), inter-rebel fighting, as well as both Taleban and IS targeting civilians. In total, UCDP has recorded at least 25 500 fatalities in Afghanistan during the first ten months of the year.¹

Dit conflict treft vrouwen disproportioneel hard.

Women are also disproportionately affected by the broader effects of conflict, which negatively impacts their enjoyment of a range of fundamental rights, including freedom of movement and access to education, healthcare, and justice. The loss of male family members also exposes women to discrimination, poverty, and violence, as men are critical to the socio-economic survival and security of the family unit in Afghanistan. Women victims in particular have acute protection and assistance needs arising from the conflict, forced displacement, loss of livelihoods and limited access to basic services.²

Naast het voortdurende gewapend conflict is Afghanistan één van de gevaarlijkste landen ter wereld voor vrouwen.³ Er bestaat een klimaat van extreem geweld tegen hen. Het VN-Comité voor de afschaffing van discriminatie tegen de vrouw (*UN Committee on the Elimination of Discrimination Against Women*, hierna: CEDAW) stelt zo:

*The Committee is fully aware of the State party's important efforts to enact and implement, during the last decade, a legal framework protecting and promoting women's rights. **However, it considers that the climate of persisting and extreme***

¹ UCPD Bulletin, Afghanistan – Deadliest conflict in the world, Upsala Universiteit 2019, beschikbaar op: https://www.pcr.uu.se/digitalAssets/806/c_806526-l_1-k_ucdp-bulletin---afghanistan.pdf

² UNAMA, Afghanistan – Protection of civilians in armed conflict 2019, februari 2020, pg. 18-19, beschikbaar op: https://unama.unmissions.org/sites/default/files/afghanistan_protection_of_civilians_annual_report_2019_-_22_february.pdf

³ T. Askeer, Z. Warren en J. Rieger (eds.), *A survey of the Afghan People – Afghanistan in 2017*, The Asia foundation 2017, p 137.

violence, in particular against women, the on-going political process and the security forces transition, places the State party in a challenging position⁴

Amnesty International stelt zo:

Amnesty International elaborates that the violence suffered during the years of conflict under various regimes was an extreme manifestation of the discrimination and abuses they suffered before the conflict began, as well as the unequal power relations between Afghan men and women (Amnesty International 2005). Violence against women in Afghanistan must first be viewed as part of a larger landscape that has been shaped by Afghan history.⁵

Bovendien wordt het geweld dat vrouwen dagelijks ondergaan, nauwelijks bestraft.

*The Committee [CEDAW] remains deeply concerned, however, about the **extremely high levels of gender-based violence against women and girls, including conflict-related sexual violence, and the lack of protection for victims and impunity enjoyed by perpetrators of such acts.**⁶*

Amnesty International verduidelijkt de bijzonder gevaarlijke situatie voor vrouwen:

Afghan women and girls continued to face gender-based violence throughout the country, especially in areas under Taliban control. Incidents of violence against women are believed to be significantly underreported. Where they have been reported, there has often been a failure to investigate these attacks, or pressure has been applied on the victims to withdraw their complaints, or mediation has been used to resolve complaints outside of the legal framework and without human rights protections. The perpetrators of the attacks, which included beatings and killings, torture or other ill-treatment, corporal punishments against women for having sex outside marriage, continued to enjoy impunity.

*In areas under its control, the Taliban **continued implementing medieval punishment** of women and girls that **included stoning to death and shot dead women and girls**. On the other hand, the government is failing to establish Elimination of Violence Against Women courts and prosecution units in all 34 provinces.⁷*

CEDAW somt in een recent rapport van maart 2020 verschillende, veel voorkomende misdrijven tegen vrouwen op die een bijzonder grim beeld schetsen van de mensenrechtelijke situatie:

The Committee remains deeply concerned about the:

*a) Persistence of so called **honour killings** and the underreporting of such crimes;*

⁴ Committee on the Elimination of Discrimination against Women, Concluding observations on the combined initial and second periodic reports of Afghanistan, 23 juli 2013, CEDAW/C/AFG/CO/1-2, § 7.

⁵ L. Abirafeh, Freedom is only won from the inside: Domestic Violence in Post-Conflict Afghanistan, The Peaceful Family Project 2006, pg. 3.

⁶ Committee on the Elimination of Discrimination against Women, Concluding observations on the third periodic report of Afghanistan, 2 maart 2020, CEDAW/C/AFG/CO/3, §25.

⁷ Amnesty International, *Human Rights in Asia-Pacific – Review of 2019, - Afghanistan*, beschikbaar op: <https://www.ecoi.net/en/document/2023861.html>

b) **Criminalization of so called “moral crimes”** in the Penal Code (promulgated by presidential decree in 2017), including adultery or **running away from home**;

c) Persistence of child and/or **forced marriage**, baad (settlement of disputes by “giving away” girls), badal (exchange marriages), and impunity enjoyed by perpetrators of such crimes;

d) **Re-victimization faced by women and girls who try to escape from child and/or forced marriage or domestic violence**, as well as women and girls victims of rape who are often charged with extramarital relations (**zina**);

[...]

g) The continued performance of **so-called “virginity tests”**, and the use of the results of such tests to discredit women in criminal proceedings.⁸

Recente rapporten van lokale Afghaanse organisaties bevestigen de ernstige toestand:

Afghan women face a host of threats daily, from insurgent violence, **attacks on schoolgirls and working women for daring to venture out into the public sphere, high levels of rape and domestic violence, as well as widespread physical and sexual abuse** by State security forces, forced and child marriage, **and honor killings**. 84% of Afghan women are illiterate, **while 70-80% face forced marriages**, many before the age of 16. Government statistics from 2014 show that 80% of suicides are committed by women, making Afghanistan one of the few places in the world where rates are higher among women. Psychologists attribute this anomaly to an endless cycle of domestic violence and poverty. According to the new announcement of Ministry of Women Affairs in 2019 there has been an 20% increase in cases of domestic violence. Cases of femicides such as that of a woman who was killed inside a court by her husband in front of police officers and of Mena Mangal, a prominent female journalist and womens rights’ activist who was allegedly killed by her in-laws and ex-husband continue with impunity.⁹

Despite huge improvements since the end of the Taliban regime, **women still face widespread discrimination and human rights abuses**. Women are largely restricted to low-paid, unregulated employment, harassment is widespread, political participation and educational opportunities are limited, and women face numerous obstacles to getting fair treatment from the justice system.¹⁰

1.2 Vrouwen als sociale groep

Vrouwen kunnen beschouwd worden als een specifieke sociale groep die vervolgd wordt volgens de VN-Vluchtelingenconventie.¹¹

It follows that sex can properly be within the ambit of the social group category, with women being a clear example of a social subset defined by innate and immutable characteristics,

⁸ Committee on the Elimination of Discrimination against Women, *Concluding observations on the third periodic report of Afghanistan*, 2 maart 2020, CEDAW/C/AFG/CO/3, §23.

⁹ Women’s International League for Peace & Freedom Afghanistan, *Submission to the UN Committee on the Elimination of Discrimination against Women, 75th session, review of Afghanistan*, 10-28 February 2020, pg. 10.

¹⁰ Afghan Women’s Rights Organization (AWRO), *CEDAW Shadow Report*, januari 2020, pg. 6.

¹¹ Zie ook overweging 30 en artikel 10 d van de EU Kwalificatierichtlijn.

*and who are frequently treated differently than men. Their characteristics also identify them as a group in society, subjecting them to different treatment and standards in some countries.*¹²

1.3 Mensenrechtenschendingen als vervolging

NANSEN stelt vast dat het vaak erg moeilijk is voor Afghaanse vrouwen om een specifieke vervolging te bewijzen. Enerzijds is de vervolging vaak niet persoonlijk te staven, omdat de vervolgingsfeiten zitten ingebed in de manier waarop de Afghaanse samenleving hen behandelt in het algemeen, en aldus geen specifiek persoonlijk bewijs voorhanden is. Anderzijds is het vaak ook zo dat het voor vrouwen die zijn teruggekeerd uit het Westen gaat om toekomstige vermoedelijke vervolging wegens hun verwestering, en opnieuw geen bewijs uit het verleden voorhanden is.

NANSEN wijst er echter op dat vervolging in de zin van de VN-Vluchtelingenconventie niet alleen wijst op vervolging die reeds in het verleden plaatsvond, maar ook naar potentiële vervolging die in de toekomst redelijk waarschijnlijk is. Vervolging in het verleden kan bijdragen aan een omkering van de bewijslast. Bovendien zal de vervolging niet beperkt zijn tot specifieke daden, maar in het algemeen vaak een samenloop zijn van verschillende elementen die bijdragen tot vervolging. Dit is voldoende om de drempel van vervolging te bereiken:

In addition, an applicant may have been subjected to various measures not in themselves amounting to persecution (e.g. discrimination in different forms), in some cases combined with other adverse factors (e.g. general atmosphere of insecurity in the country of origin). In such situations, the various elements involved may, if taken together, produce an effect on the mind of the applicant that can reasonably justify a claim to well-founded fear of persecution on “cumulative grounds”¹³

Severe discrimination or the cumulative effect of various measures not in themselves alone amounting to persecution, as well as their combination with other adverse factors, can give rise to a wellfounded fear of persecution or, otherwise said: make life in the country of origin so insecure from many perspectives for the individual concerned, that the only way out of this predicament is to leave the country of origin.¹⁴

Deel 2. Risico op vervolging

Uit bovenstaand onderzoek mag blijken dat Afghaanse vrouwen zich in het algemeen in een erg kwetsbare positie bevinden. Hieronder zal worden uiteengezet waarom vrouwen die gedurende langdurige tijd in het Westen verbleven specifiek risico lopen op vervolging. Zij

¹² UNHCR, *GUIDELINES ON INTERNATIONAL PROTECTION: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, beschikbaar op: <https://www.unhcr.org/publications/legal/3d58ddef4/guidelines-international-protection-1-gender-related-persecution-context.html>

¹³ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, HCR/IP/4/Eng/REV.1, Reedited, Geneva, January 1992, UNHCR 1979, § 53.

¹⁴ UNHCR, Statement by Ms. Erika Feller, Director, Department of International Protection, UNHCR, SCIFA, 6 November 2002, beschikbaar op: <https://www.unhcr.org/admin/dipstatements/42bab1b52/statement-ms-erika-feller-director-department-international-protection.html>

lopen risico omwille van hun verwestering, omdat zij extra doelwit worden voor een gedwongen huwelijk en omdat zij dreigen vervolgd te worden voor *zina*-misdrijven.

2.1 Vervolging omwille van verwestering

De impact van een langdurig verblijf in het buitenland op een Afghaanse vrouw is erg groot. Enerzijds loopt zij bij terugkeer het risico intern ontheemd te worden, anderzijds loopt zij een groot risico omwille van haar terugkeer **an sich**. Het is immers zo dat vrouwen die terugkeren, terugkeren naar een zeer patriarchale maatschappij waarbij gepercipieerde kuisheid/reinheid hun volledige toekomst zal bepalen.

The patriarchal frameworks in Afghanistan paradoxically designate women (rather than men themselves) as the vessels of familial and communal honor. Gender segregation (which predates the Taliban) is a direct consequence of the need to protect women's honor from other men. Notions of honor, however, do not exist for their own sake; again, they are intimately tied to a girl's economic value. Girls who are not virgins, for example, are devalued and not eligible for marriage, even if they were victims of rape. Girls and women who flee their homes because they are subject to violence or domestic abuse are seen as equally tainted; no one can answer for a girl's honor if she was unsupervised outside the reach of her male family members. Indeed, women are frequently imprisoned for leaving their homes, even though it is not actually a crime.¹⁵

De geïnstitutionaliseerde ongelijkheid tussen mannen en vrouwen in Afghanistan moet hier worden benadrukt.

At the root of such practices lies the belief among a majority within Afghan society that girls are not as valuable as boys. Many Afghans interviewed by UNAMA HR cited "preference for sons" as a cultural tradition with negative consequences for women. The preference is based partly on the custom that a girl marries and becomes the "property" of someone else, where a son brings a bride to serve and work for the family.¹⁶

Vrouwen bevinden zich dus in een uiterst kwetsbare positie in de Afghaanse samenleving, waarbij zij afhankelijk zijn van de patriarchale structuur, die hun waarde laat afhangen van concepten zoals 'honor en dignity'. Dit wil vooral zeggen dat vrouwen, willen zij overleven in de Afghaanse samenleving, moeten kunnen beschouwd worden als vroom en kuis.¹⁷

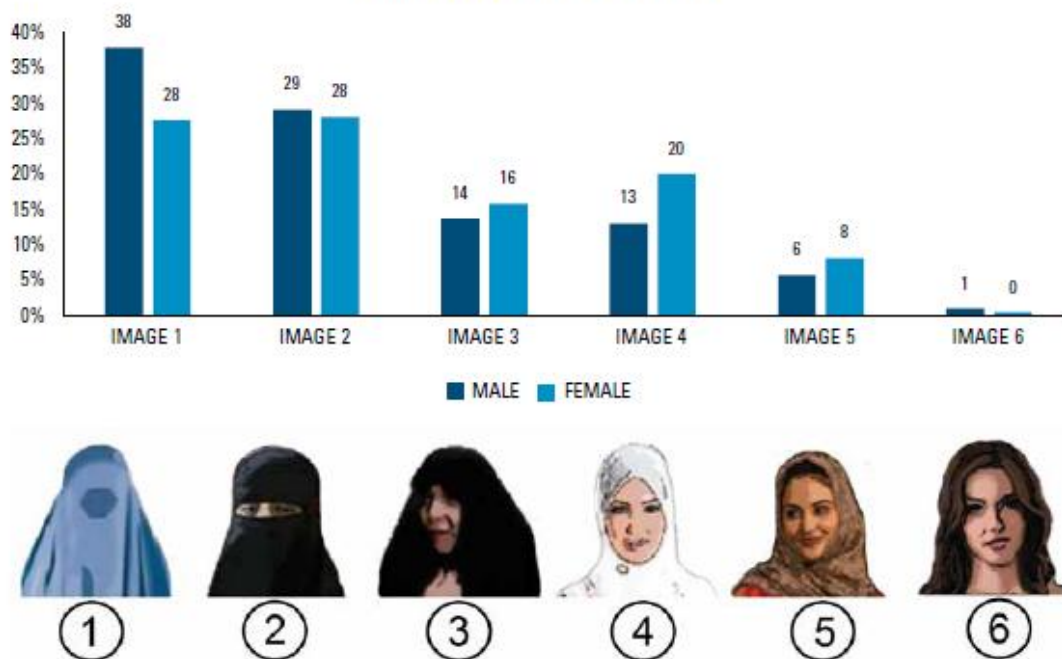
Dit kan bijvoorbeeld geïllustreerd worden met de zeer conservatieve visie op hoe vrouwen zich moeten kleden in de openbare ruimte.

¹⁵ International Centre for Transitional Justice, *Addressing Gender-specific violations in Afghanistan*, februari 2009, pg. 13.

¹⁶ UNAMA en OHCHR, *Harmful traditional practices and implementation of the law on elimination of violence against women in Afghanistan*, 9 december 2010, pg. 5.

¹⁷ International Centre for Transitional Justice, *Addressing Gender-specific violations in Afghanistan*, februari 2009, pg. 12.

**APPROPRIATE DRESS FOR WOMEN IN PUBLIC:
PERCEPTIONS OF MEN VS. WOMEN**



Dit wil zeggen dat meer dan 61% nog steeds de gehele gezichtsbedekking (figuur 1 en 2) beschouwt als enige geschikte klederdracht voor een vrouw buitenshuis.¹⁸

Wanneer een vrouw zich niet aan deze klederdracht houdt, of heeft gehouden – zoals kan vermoed worden na een lang verblijf in het Westen – loopt zij meteen het risico als onkuis of als ingaande tegen de heersende mores beschouwd te worden. Dit heeft verregaande gevolgen in de Afghaanse samenleving, in die zin dat herintegreren onmogelijk gemaakt wordt.

Het is belangrijk te benadrukken dat ook na het vertrek van de Taliban de houding tegenover vrouwen niet verbeterd is:

Since the US toppled the extremist Taliban regime in October 2001, misogynist ideologies, views, and attitudes have not improved. For example, Jaleb Mubin Zarifi, a Northern Alliance member, is quoted on a National Public Radio (NPR) broadcast as saying, “Democracy is un-Islamic,” and immoral behavior by women causes cancer and AIDS: “We know now that the women are not wearing the hijab (headscarf), and looks what’s happening – there’s cancer and AIDS everywhere in Afghanistan.”¹⁹

Het enorme belang van gepercipieerde kuisheid voor Afghaanse vrouwen moet worden benadrukt:

*These episodes illustrate the continued operation of a **distinction between chaste and non-chaste women**. Although in Afghan criminal law such a distinction only applies to women committing actual adultery or engaging in pre-marital sex (which can be sentenced to imprisonment or killed by male relatives with comparative impunity),*

¹⁸ The Asia Foundation, A survey of the Afghan People – Afghanistan in 2017, pg. 143.

¹⁹ H. Alvi, *Women in Afghanistan: A human tragedy ten years after 9/11*, Human rights and human welfare working papers, 2011, pg. 4.

*as we have seen, **in practice the category of immoral women were often stretched to include all women whose virtue could not be positively verified by authorized institutions, whether the government or her family.** As a result, female autonomy was deemed suspicious and transgressive.*²⁰

Een louter vermoeden van onkuisheid is aldus voldoende om de ernstige gevolgen hiervan te dragen. De gevolgen zijn uiterst verregaand en kunnen ertoe leiden dat een vrouw strafrechtelijk vervolgd wordt, omdat een periode doorgebracht zonder supervisie van een mannelijk familielid automatisch tot gevolg heeft dat zij verdacht wordt van overspel, wat bevestigd werd door de Supreme Court van Afghanistan.

*What clearly was at stake was the regulation of female mobility and sexuality; **women who eluded familial or government supervision were considered adulteresses by default.** That this was the case was confirmed by a formal statement by the Supreme Court on the issue in 2010. The statement declared that women were free to escape to their relatives' houses. **However, if a woman, married or single, ran away to 'a stranger's house' rather than to relatives or to state authorities, even if she ran away due to family violence, this act was considered to be prohibited and prosecutable for punishment since, according to the Court's reasoning, it could result in crimes such as adultery or prostitution.***²¹

Een vrouw die lange tijd heeft doorgebracht in het buitenland, een Westers land bovendien, waar geen supervisie was van mannelijke gezinsleden, kan worden geacht overspelig te zijn, aldus onkuis, en is zodoende ook strafrechtelijk vervolgbaar voor zina-misdrijven.

Los van eventuele strafrechtelijke vervolging, is het ook duidelijk dat niet voldoen aan Afghaanse traditionele normen/een verwestering wordt gezien als een besmetting op maatschappelijk niveau wat naast eventuele strafrechtelijke vervolging ook vervolging op sociaal-economisch vlak met zich zal meebrengen.

The teenagers and young adults who left for Europe at a young age and returned with visible and invisible signs of their cultural change (clothing, behaviour, accent etc.) are sometimes seen by family and or the community as 'contaminated'.** [...] "They all bother me because I went to the UK. They say I lost my culture, became a kafir ... all sorts of insults." **In this case the stigma has to do with the time spent abroad, rather than the simple fact of having been returned against one's will. Deportation exposes and compounds the stigma of contamination, particularly for those without economic or social power.²²

Dat jonge mannen in een verstedelijkte omgeving zoals Kabul reeds een stigma toegedicht krijgen vanwege hun lang verblijf in het buitenland kan enkel betekenen dat, voor jonge vrouwen aan wie nog bijzonder veel striktere culturele gedragsregels worden opgelegd, dit stigma ook bestaande is. Vanwege hun vrouw zijn, heeft dit stigma echter veel verregaandere gevolgen, omdat blijkt dat ook hun directe economische waarde geraakt wordt.

²⁰ T. Wimpelmann, One step forward and many to the side: Combating gender violence in Afghanistan, 2001–2014, Women's Studies International Forum (2014), pg 7.

²¹ T. Wimpelmann, One step forward and many to the side: Combating gender violence in Afghanistan, 2001–2014, Women's Studies International Forum (2014), pg 7.

²² Asylos, Afghanistan: Situation of young male 'Westernised' returnees to Kabul, Augustus 2017, pg. 34

Notions of honor, however, do not exist for their own sake; again, they are intimately tied to a girl's economic value. Girls who are not virgins, for example, are devalued and not eligible for marriage²³

Bovendien is het beschikken over sociale en familiale netwerken essentieel om te overleven in de Afghaanse samenleving. Voor het grote merendeel van de vrouwen, bestaan deze netwerken enkel wanneer zij kunnen trouwen. Voor iemand die “besmet” is, door verwestering, is dit echter zeer moeilijk. Doordat zij niet meer aanvaard worden door hun samenleving, die erg strikte voorwaarden oplegt om als geschikt voor het huwelijk te worden beschouwd, dreigen zij enerzijds niet te kunnen trouwen, en anderzijds dreigen zij het slachtoffer te worden van gedwongen huwelijken. Hierop wordt later dieper ingegaan.

*The research highlighted a range of interconnected challenges facing former child asylum seekers after forced removal to Afghanistan. **These include: - the impact of weakened or disappeared family and social networks - fear of stigma and discrimination impeding the formation of new social networks, leading in turn to increased isolation - challenges in accessing institutional support and reliance on ad hoc assistance from people in the UK - generalised insecurity and victimization due to issues related to the original asylum claim or to their identity as a returnee [...]** (p.79)” (Source: Bowerman, E., *Risks encountered after forced removal: the return experiences of young Afghans*, February 2017).²⁴*

Dat ‘besmetting’ door het Westen verregaande economische en sociale gevolgen heeft, is goed gedocumenteerd:

*shame of failure and **the perceptions of “contamination” in the West are clear among those forced to return from the West**, as analysed in an article published in the *Journal of Ethnic and Migration Studies* (Schuster and Majidi, 2015). The concept of stigma and contamination applies to the experiences of deported Afghans. **This is particularly true for deportees from Europe who fall on the margins of their society: they are looked at differently and treated differently.** A recent study on urban displaced youth (Samuel Hall, 2016a) goes a step further and shows the mental health needs among all youth, and specifically among deportees. According to the Health Index developed for this study, deportees remain more than 50 per cent more likely to be deprived from basic access to health care and have fewer socioeconomic ties to the local communities than other returnees. **The difficulties of deportees upon return go beyond the economic and financial aspects, to include the importance of stigma, contamination and rejection upon return. The biggest impediment remains the lack of attractiveness and of suitability of the assistance packages to the profiles of these deportees.**” [p.39] (Source: Majidi, N. and Hart, L. *Return and reintegration to Afghanistan: Policy implications: Migration Policy Practice*, June-September 2016).²⁵*

²³ International Centre for Transitional Justice, *Addressing Gender-specific violations in Afghanistan*, februari 2009, pg. 13

²⁴ Asylos, Afghanistan: Situation of young male ‘Westernised’ returnees to Kabul, Augustus 2017, pg. 40

²⁵ Asylos, Afghanistan: Situation of young male ‘Westernised’ returnees to Kabul, Augustus 2017, pg. 36.

Verwesterde vrouwen die moeten terugkeren naar Afghanistan dreigen dus vervolgd te worden om verschillende redenen. Zij worden gezien als besmet door het Westen, wat maakt dat hun 'waarde/eer' intrinsiek is aangetast. Dit heeft tot gevolg dat zij risico lopen op een strafrechtelijke vervolging. Daarnaast heeft dit ook tot gevolg dat hun economische waarde, en aldus hun overlevingskansen sterk worden aangetast, door enerzijds een verzwakking van hun familiaal netwerk en anderzijds het onvermogen om een nieuw eigen familiaal netwerk op te starten, aangezien zij er niet meer in zullen slagen een partner te vinden om te trouwen.

Zelfstandig in hun eigen levensonderhoud voorzien zonder familiaal netwerk buiten het huwelijk is zo goed als onmogelijk op de arbeidsmarkt voor vrouwen in Afghanistan. Zo merkt CEDAW op dat:

*The Committee is concerned that women's participation in the labour market remains low and that women are concentrated in the informal economy, in particular in the agriculture sector, domestic work and unpaid care work, without access to social protection.*²⁶

*Low labour force participation characterizes the labour market of Afghanistan. With men having higher participation, at 80.5%, women show very low engagement in economic activity at 26.7%.*²⁷

Vrouwen in rurale gebieden bevinden zich ook wat dit betreft in een zeer kwetsbare positie:

*The Committee is concerned that **rural women and girls are disproportionately affected by poverty, have limited access to education, health care and water and sanitation.** The Committee notes with concern the lack of initiatives to expand the scope and scale of rural women's entrepreneurship, which mainly focus on traditional micro-level and home based activities. **The Committee is further concerned that rural women have limited access to land, productive resources, agricultural equipment, markets, finances and technologies, all of which limits their ability to invest and accumulate assets.** It is also concerned that rural women are not able to participate fully and meaningfully in the decision making on all issues affecting their lives, despite the established 50 per cent quota for women's participation in Community Development Councils. The Committee notes with concern the high prevalence of gender based violence against rural women and girls and their limited access to formal justice mechanisms.*²⁸

Ook het feit dat personen die terugkeren naar Afghanistan intern ontheemd zullen worden heeft een erg grote impact op hun levenssituatie. Niet alleen kunnen zij niet of nauwelijks voorzien in onderdak, eten en water, zij hebben ook bijzonder moeilijk toegang tot gezondheidsvoorzieningen, scholing en werkgelegenheid. Bovendien zijn intern ontheemde vrouwen erg kwetsbaar voor seksueel en fysiek geweld, en mensenhandel.

In just three years, the number of IDPs has increased to 1.2 million. AWN notes that, due to a lack of capacity and expertise within the MORR, the Ministry has not effectively implemented the new National IDP Policy that was launched in 2014. According to

²⁶ Committee on the Elimination of Discrimination against Women, Concluding observations on the third periodic report of Afghanistan, 2 maart 2020, CEDAW/C/AFG/CO/3, §42.

²⁷ Afghan Women's Network, Afghanistan third CEDAW shadow NGO report, oktober 2018, pg. 12.

²⁸ Committee on the Elimination of Discrimination against Women, Concluding observations on the third periodic report of Afghanistan, 2 maart 2020, CEDAW/C/AFG/CO/3, §50.

Amnesty International, Afghan IDPs continue to lack adequate shelter, food, water, health care and opportunities to pursue education and employment. As noted above, women and girls who are displaced from their homes are often vulnerable to sexual and physical violence and to exploitation by human traffickers.²⁹

Een vrouw terugsturen naar een land waar zij niet kan voorzien in haar eigen levensonderhoud, gecombineerd met de wijdverspreide discriminatie en het hevige geweld tegen vrouwen dat hierna nog zal worden uiteengezet, zal de VN-Vluchtelingenconventie schenden. Het is duidelijk dat vrouwen die de culturele en sociale normen hebben overschreden, eveneens risico lopen op vervolging.

2.2 Gedwongen huwelijk

Uit het voorgaande blijkt dat het enerzijds noodzakelijk is om te beschikken over een familiaal en sociaal netwerk om te overleven in de Afghaanse samenleving. Anderzijds werd ook duidelijk dat vrouwen die niet meer als rein of kuis beschouwd worden, geen mogelijkheid meer hebben dit netwerk op te bouwen, omdat zij niet meer gezien worden als huwbaar.

Notions of honor, however, do not exist for their own sake; again, they are intimately tied to a girl's economic value. Girls who are not virgins, for example, are devalued and not eligible for marriage³⁰

Hieruit volgt dat vrouwen die toch willen trouwen, willen zij hun overlevingskansen veilig stellen, een erg groot risico lopen dat zij geen vrije keuze van huwelijkspartner hebben en aldus een gedwongen huwelijk zullen moeten ondergaan.

*Women are especially vulnerable in times of economic precarity since they rely heavily on their spouse for their material survival. As one study puts it: According to the head of the Department of Women's Affairs in Kandahar, women usually want to marry to have a better life. Since most of them don't work (only a very small number have employment in government offices), **they believe that marriage is the only option to have financial security** and an opportunity to live with less stress from their family. Traditionally they have depended and still depend on their husbands who have to provide for their maintenance.*³¹

Vrouwen lopen in Afghanistan altijd een groot risico om gedwongen uitgetrouwd te worden:

*Violence against women in Afghanistan is widespread and ranges from deprivation of education to economic opportunities, through verbal and psychological violence, beatings, sexual violence and killings. Many acts of violence involve traditional practices including the betrothal of young girls in infancy, early marriage and crimes of "honor", where a female is punished for having offended custom, tradition or honor.*³²

²⁹ Afghan Women's Network, Afghanistan third CEDAW shadow NGO report, oktober 2018, pg. 14

³⁰ International Centre for Transitional Justice, *Addressing Gender-specific violations in Afghanistan*, februari 2009, pg. 13.

³¹ Women Living Under Muslim Laws, *Child, Early and Forced Marriage: A multi-country study – A submission to the UN Office of the High Commissioner on Human Rights*, 2013, pg. 24, beschikbaar op: <http://esem.org.mk/en/pdf/Najznachajni%20vesti/2013/3/UN%20report%20final.pdf>

³² L. Abirafeh, *Freedom is only won from the inside: Domestic Violence in Post-Conflict Afghanistan*, The Peaceful Family Project 2006, pg. 6.

Gedwongen huwelijken komen zeer veel voor, onder andere door de ondergeschikte rol die vrouwen hebben in de Afghaanse samenleving.

*The Committee expresses its deep concern at the high prevalence of violence against women in the State party, in particular domestic violence, rape, battery and laceration. It is also concerned at cases of stoning of women. It is deeply concerned at the persistence of adverse cultural norms, practices and traditions which are harmful to women such as child marriage, baad (settlement of disputes by giving away girls), badal (exchange marriages), **and forced marriages**, including forced marriages of widows. It is further concerned at cases of self-immolation and running away from home, as a response to harmful practices and violence against women. It is concerned that despite the concrete efforts to implement the Law on the Elimination of Violence against Women, incidents of violence and harmful practices remain under-reported **due to the subordinate role of women in Afghan society**, cultural beliefs and the victims' fear of retaliation by their family and of being stigmatized by their communities.*

33

Het huwelijk is zelden vrij in Afghanistan. De Afghanistan Independent Human Rights Commission schat dat 60 tot 80% van alle huwelijken gedwongen zijn.³⁴ Ook Human Rights Watch sluit zich bij die bevindingen aan, en stelt dat 70 tot 80% van alle vrouwen in Afghanistan gedwongen huwen.³⁵

The marriage contract is thus an agreement between two families and not a confirmation of an emotional relationship between two individuals. In Afghanistan, arranged marriages are part of a complex set of traditions, loyalties and authorities. The marriage institution plays a key role in the establishment of alliances between families or in strengthening pre-existing networks. Marriage agreements have strong political and economic aspects.³⁶

Once married, a bride immediately moves into her husband's household, where hostility and physical and emotional abuse from the husband, his other wives, or his family are common.³⁷

Een gedwongen huwelijk wordt beschouwd als gender-gerelateerde vervolging, zoals bevestigd door het CGVS.³⁸

Huwelijken, en gedwongen huwelijken brengen in Afghanistan veel geweld met zich mee.

In Afghanistan, many refuse to acknowledge violence against women as an issue. In addition, women – and men - have different definitions of what constitutes violence.

³³ Committee on the Elimination of Discrimination against Women, Concluding observations on the thirds periodic report of Afghanistan, 2 maart 2020, CEDAW/C/AFG/CO/3, §50.

³⁴ Afghan Independent Human Rights Commission, Annual Report (2006).

³⁵ Women Living Under Muslim Laws, *Child, Early and Forced Marriage: A multi-country study – A submission to the UN Office of the High Commissioner on Human Rights*, 2013, pg. 21, beschikbaar op: <http://esem.org.mk/en/pdf/Najznachajni%20vesti/2013/3/UN%20report%20final.pdf>

³⁶ Norway: Landinfo - Country of Origin Information Centre, Afghanistan: Marriage, 2011, beschikbaar op: <https://www.refworld.org/docid/56cd58a74.html>

³⁷ Women Living Under Muslim Laws, *Child, Early and Forced Marriage: A multi-country study – A submission to the UN Office of the High Commissioner on Human Rights*, 2013, pg. 22, beschikbaar op: <http://esem.org.mk/en/pdf/Najznachajni%20vesti/2013/3/UN%20report%20final.pdf>

³⁸ <https://www.cgvs.be/nl/gendergerelateerde-vervolging>

*Violence against women in the context of intimacy is often not recognized and labelled as such. **Domestic violence is viewed by women as being within the realm of normal gender relations and not assumed to be an abuse of women's human rights.** In fact, Amnesty International reports a general perception among women that violence was to be expected in their lives (Amnesty International 2005).³⁹*

Bovendien vindt domestic violence meer plaats in gebieden die als vredevol of veilig worden beschouwd.

Domestic violence seems to be higher in considered 'peaceful areas' where laws are imposed by former commanders and where 'the pressures of the nation's double digit unemployment rate are more easily felt' (Latifi, 2013). Violence perpetrated by family members still constitutes a high risk for women: in 2011–2012, '243 cases of honour killings had been registered in human rights commission offices' (Shayegan, 2014, p. 28). The high rates of sexual violence within the household derives from the labellisation of women as socially deviant and further exposes them to social exclusion, depression, suicide or prostitution (Shayegan, 2014).⁴⁰

Geweld binnen het huwelijk wordt ook niet gerapporteerd, niet vervolgd, en er zijn geen shelters voor vrouwen om te ontsnappen aan het geweld.

It is concerned at the sustainability of the shelters for women victims of violence as well as about the need to increase their number.⁴¹

Women who recognize violence against them are still not likely to change or address it. Such women recognize the added challenge this presents to gender relations, which could in turn provoke additional violence. Women may be reluctant to speak publicly about the violence they have feared, witnessed, or experienced for fear of being stigmatized. **In addition, there is a perception that violence against women in the domestic sphere is a private affair that should be addressed within families and not revealed to outsiders.** The concern is that such public admissions will bring shame to the family. Violence against women is often disguised and denied within the family to retain honor and standing within the community. It is difficult to measure rates of violence accurately, particularly when there is a social stigma attached. In addition to the fear of social stigma and the blame they may receive, women are reluctant to report violence because existing institutions are not equipped to take action and protect them. **Reporting the crime may place the woman at greater risk.** The crime itself may not be recorded or classified as a crime by the institution. In Afghanistan, women's complaints are often disregarded. Amnesty International reports that "complaints from victims of domestic violence are widely dismissed by the police as a private matter and victims are often advised, and sometimes pressured into returning to their abusive spouses and family" (Amnesty

³⁹ L. Abirafeh, Freedom is only won from the inside: Domestic Violence in Post-Conflict Afghanistan, The Peaceful Family Project 2006, pg. 6.

⁴⁰ L. Ahmad en P. A. Avoine, "Misogyny in 'post-war' Afghanistan: the changing frames of sexual and gender-based violence", *Journal of Gender Studies* 2016, pg. 10.

⁴¹ Committee on the Elimination of Discrimination against Women, Concluding observations on the combined initial and second periodic reports of Afghanistan, 23 juli 2013, CEDAW/C/AFG/CO/1-2, § 22.

*International 2005). Thus, women run the risk of exposing themselves domestic violence)*⁴²

Scheiden is bijzonder moeilijk, wat ertoe leidt dat vrouwen die slachtoffer zijn van een gedwongen huwelijk geen manier hebben om hieraan te ontsnappen.

*Articles 135 to 155 of the Civil Code of Afghanistan have enshrined the right to divorce in favor of men. According to Article 135, divorce can only be initiated by a man or a legitimate and recognized court. Women are only able to initiate a divorce if she has obtained the agreement of her husband prior to formally initiating the process. In addition to this, Afghan women are permitted to initiate separation under four contexts which are: if her husband abandons her, if she experiences extreme abuse and/or violence, he cannot provide for her basic necessities, and if he has series health complicates. Although the four instances are clearly stipulated, the process remains highly complex and lengthy for Afghan women.*⁴³

Vrouwen kunnen vaak niet zelfstandig leven.

*According to Afghan tradition, females in the family are under the authority of the father or husband. They suffer restricted freedom of movement and nearly no control over the choices that govern their lives. Most women will not have the opportunity to assert economic and social independence, nor to enjoy their human rights. Girls are not given say over choice of husbands and find that they are abused and mistreated in the husband's home. Those who try to escape the abuse are stigmatized, isolated, and possibly imprisoned.*⁴⁴

Ook wordt vrouwen de toegang tot essentiële documenten onzegd.

*Many men do not allow female family members to obtain identity documentation. In more remote areas, men find it shameful for female family members to obtain these documents. And some women also lack knowledge of the existence of and their right to a national identity card. One recent study found that, "Afghan women are often unable to obtain basic legal documents such as national ID cards and marriage certificates, which makes it difficult to seek help from the courts when they are in trouble.*⁴⁵

Viewing young girls as economic burdens (and also as financial leverage) effectively means they are ultimately no more than saleable, tradable property. Indeed, young and single women are frequently used to settle internecine conflict between families or tribes in a practice known as baad (literally, to trade). Blood disputes, financial agreements, debts and almost any other kind of exchange can be transacted with women as currency. Because girls and women frequently have no means of securing financial independence, marriage is the safest bid for a stable future, though by no

⁴² L. Abirafeh, Freedom is only won from the inside: Domestic Violence in Post-Conflict Afghanistan, The Peaceful Family Project 2006, pg. 6.

⁴³ Afghanistan Independent Human Rights Commission (AIHRC), AIHRC specific information on the issues relevant to the implementation of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) to be conveyed in february 2020, januari 2020, pg. 2

⁴⁴ L. Abirafeh, Freedom is only won from the inside: Domestic Violence in Post-Conflict Afghanistan, The Peaceful Family Project 2006, pg. 6.

⁴⁵ Afghan Women's Network, Afghanistan thrid CEDAW shadow NGO report, oktober 2018, pg. 11.

*means a guarantee of it. Prioritizing male children within families, coupled with early marriages, high maternal mortality rates, low life expectancy, limited access to education and ongoing poverty ensures that from one generation to the next, women are not able improve their quality of life.*⁴⁶

Vrouwen hebben dus enerzijds het huwelijk nodig om te overleven in de Afghaanse samenleving. Wanneer zij worden beschouwd als onkuis of onrein door een lang verblijf in het Westen, lopen zij het risico als niet meer huwbaar te worden beschouwd. Dit plaatst hen in een erg precare situatie, waarbij zij nog meer risico lopen op een gedwongen huwelijk, wat kan gekwalificeerd worden als een vervolging in de zin van de VN-Vluchtelingenconventie.

2.3 Misdadaad van running away/maagdelijkheidstesten

Verwesterde vrouwen lopen een groot risico op strafrechtelijke vervolging omwille van hun lang verblijf in het Westen. Zij worden hierdoor beschouwd als besmet. Omdat zij lang niet onder toezicht van een mannelijk familielid stonden kunnen zij beschouwd worden als overspelig.

Vrouwen lopen echter ook risico op vervolging omwille van andere misdaden, meer bepaald de misdaad van 'weglopen' (running away) wat wordt gekwalificeerd als een zina-misdrijven, een verzamelbegrip voor verschillende misdrijven die de kuisheid van vrouwen aantasten.

*According to Human Rights Watch, many unmarried women and girls run away from their families in order to avoid imminent forced marriage.⁸ These women often end up in prison, charged with so-called "moral crimes" such as "running away" or "attempting zina." Although "running away" is not an offence found in the Afghan Penal Code, in 2010 and 2011 **the Afghan Supreme Court issued an instruction to courts that "running away" is a crime.***⁴⁷

De zina-misdaden waarvoor vrouwen vervolgd worden omdat zij de kuisheid van een vrouw aantasten zijn erg ruim en niet nauw te interpreteren tot effectief overspel:

*Not only does Afghan law define pre and extramarital intercourse (zina) as a punishable crime for both sexes, when it comes to women, government practices have applied a much more encompassing definition of transgression. Over more than a decade, human rights workers and women's activists have engaged in a tug of war with government officials over whether women merely 'escaping from the house' (farar az manzel) are committing a criminal offense.*⁴⁸

Zelfstandig leven voor Afghaanse vrouwen wordt gezien als een misdaad: een Afghaanse vrouw die terugkeert uit het Westen waar zij lange tijd zelfstandig heeft verbleven heeft deze misdaad dus al begaan. Bovendien kan zij haar zelfstandige leven in Afghanistan niet verderzetten of zij loopt opnieuw het risico om vervolgd te worden: dit kan eveneens gelinkt

⁴⁶ International Centre for Transitional Justice, Addressing Gender Specific Violations in Afghanistan, 2009, pg 13, beschikbaar op: <https://ictj.org/sites/default/files/ICTJ-Afghanistan-Gender-Violations-2009-English.pdf>

⁴⁷ Women Living Under Muslim Laws, *Child, Early and Forced Marriage: A multi-country study* – A submission to the UN Office of the High Commissioner on Human Rights, 2013, pg. 23, beschikbaar op: <http://esem.org.mk/en/pdf/Najznachajni%20vesti/2013/3/UN%20report%20final.pdf>

⁴⁸ T. Wimpelmann, One step forward and many to the side: Combating gender violence in Afghanistan, 2001–2014, Women's Studies International Forum (2014), pg 7.

worden aan een erg groot risico op een gedwongen huwelijk om strafrechtelijke vervolging te ontlopen.

*The Supreme Court directive illustrated that what was problematic was the prospect of women outside family or government surveillance. This hinged on a strong connection being made between women's mobility and freedom and their sexual availability. Women were rendered incapable of being entrusted with their own virtue—and therefore, escaping the supervision of designated guardians was made into a crime in itself. **A woman living on her own remains generally unheard of in Afghanistan and normally invites rumors of her being of 'questionable character' to the extent that her safety could be at risk.*** ⁴⁹

Vrouwen hebben zo geen enkele manier om zichzelf in veiligheid te brengen: zij kan niet zelfstandig leven, loopt het risico op een gedwongen huwelijk, en kan zichzelf in dat huwelijk niet beschermen want ze dreigt strafrechtelijk vervolgd te worden indien ze dit wel doet.

*At the same time, many, if not the majority, of women who run away from home are fleeing unwanted marriages. Often, women or young girls who face marriages against their will see no other option than to run away. Whilst some (usually educated women living in urban areas) are more likely to know about shelters or petitioning government offices as a possibility, others (particularly younger girls in remote and conservative areas where it is difficult to travel alone as woman) more often seek out a male co-elooper (typically by mobile phone). In order to escape an abusive situation, they effectively face no real alternatives other than to become criminals in the eyes of their communities and the law.*⁵⁰

Dat vrouwen effectief strafrechtelijk vervolgd worden voor deze zina-misdaden staat vast:

Upon arriving in Kabul after the overthrow of the Taliban government, human rights organizations such as Amnesty International found that the majority of female prisoners were incarcerated for various 'moral crimes': adultery, consensual sex outside of marriage (both acts of zina), and 'running away from home'. The latter simply applied to girls and women who had left home without family permission. When UN officials and others pointed out that 'running away from home' was no crime under any Afghan law, some justice officials would respond by referring to a much-debated article in the Afghan Constitution, which called for the application of sharia in 'situations where no other laws apply'. Others simply replaced the charge of running away with the charge of 'intended zina'. ⁵¹

De Women's International League for Peace & Freedom Afghanistan stelt dat:

Women and girls are also prevented from reporting violence due to stigma, discrimination, fear of reprisals, as well as due to the treatment of victims of sexual abuse who seek help as perpetrators of zina (i.e. sexual intercourse outside of

⁴⁹ T. Wimpelmann, One step forward and many to the side: Combating gender violence in Afghanistan, 2001–2014, Women's Studies International Forum (2014), pg 7.

⁵⁰ T. Wimpelmann, Adultery, Rape, and Escaping the House: The Protection and Policing of Female Sexuality in Afghanistan, CMI Working Paper 2017, pg. 12.

⁵¹ T. Wimpelmann, One step forward and many to the side: Combating gender violence in Afghanistan, 2001–2014, Women's Studies International Forum (2014), pg 7.

marriage) or “attempted zina.” Women and girls are indeed sometimes charged with the “intention” of committing zina when they run away from abuse and seek help.⁵²

Het loutere vermoeden dat een vrouw weggelopen is van huis stelt haar niet alleen bloot aan een strafrechtelijke vervolging, maar ook aan een onderzoek naar haar maagdelijkheid. Dit onderzoek kan als een schending van haar mensenrechten worden beschouwd.

*At any time during the Karzai government, several hundred women lingered in jail for moral crimes. Many of them had been detained or sentenced for zina, but a considerable number were incarcerated for running away from home. The practice of incarcerating women for running away had its roots in the Mujahedin government and was accelerated by the Taliban. As pointed out by activists and human rights officials, the practice had no grounding in codified law. In some parts of the country, a woman who appeared to be travelling alone or in the company of an unrelated male could be apprehended by the police and arrested. **Typically, she would be subject to a forced “virginity” test. If she was unmarried and failed the test, she would be charged with zina as well as with running away.** In other scenarios, women were tracked down and arrested at the behest of families after they ran away from home, typically to escape unwanted or violent marriages and sometimes in the company of a lover, self-chosen fiancé, or male friend.⁵³*

Human Rights Watch rapporteert dat deze maagdelijkheidstesten worden gebruikt in de strafrechtelijke procedures in Afghanistan.

Virginity examinations” are a routine part of criminal proceedings in Afghanistan. When women or girls are accused of “moral crimes” such as sex outside of marriage, police, prosecutors, and judges regularly send them to government doctors who conduct examinations of the genitals that purport to provide information about the individual’s sexual history. The reports from these examinations are treated as fact by courts and used at times to justify long prison sentences under Afghanistan’s harsh law against sex outside of marriage.

These examinations are invasive, scientifically invalid and conducted without meaningful – or sometimes any – consent. Ending “virginity exams” should be part of broader reform regarding the treatment of women in the justice system.⁵⁴

CEDAW stelde eveneens:

The Committee deplores the practice of arresting and prosecuting run away women and girls for “moral crimes” and charging them with the aggravating intention to commit zina (sexual intercourse outside of wedlock) or pre-emptive zina, despite the fact that running away is not a crime under Afghan law. It also regrets that

⁵² Women’s International League for Peace & Freedom Afghanistan, Submission to the UN Committee on the Elimination of Discrimination against Women, 75th session, review of Afghanistan, 10-28 february 2020, pg. 13.

⁵³ T. Wimpelmann, Adultery, Rape, and Escaping the House: The Protection and Policing of Female Sexuality in Afghanistan, CMI Working Paper 2017, pg. 8.

⁵⁴ Human Rights Watch, Submission to the Committee on the Elimination of Discrimination against Women Review of Afghanistan 75th Session, 23 december 2019, beschikbaar op: <https://www.hrw.org/news/2019/12/23/submission-committee-elimination-discrimination-against-women-review-afghanistan>

*due to the lack of a definition of rape in the Penal Code, rape victims are charged with zina and are further revictimized as some of them are forced to get married to their rapists. **It is deeply concerned that rape and run away victims are forced to undergo virginity tests.** It is equally concerned at the increase of so-called honour killings and at the discriminatory provision in the Penal CEDAW/C/AFG/CO/1-2 7 Code which allows presenting the defence of honour as a mitigating circumstance for perpetrators of such crimes (art. 398).⁵⁵*

Deel 3. Conclusie

Naast het algemene geweld in Afghanistan door het voortdurende gewapend conflict, bestaat er ook een cultuur van geweld tegen vrouwen. Hun reinheid en kuisheid zijn gelinkt aan hun economische waarde en hun mogelijkheid om te overleven. Zij bevinden zich in een patriarchale samenleving waar zij weinig tot geen kansen hebben om een zelfstandig leven op te bouwen. Voor verwesterde vrouwen die gedurende lang tijd in het buitenland verbleven brengt dit ernstige risico's mee op verschillende vlakken.

Zo zal vooreerst hun lang verblijf in het Westen worden gezien als een besmetting. Dit heeft niet alleen als gevolg dat zij sociaal- en economisch gezien dreigen verstoten te worden uit de Afghaanse samenleving, het leidt er ook toe dat zij als onkuis en onrein worden beschouwd. Dit heeft tot gevolg dat zij niet meer geschikt zijn om te huwen, wat hen in een erg precare positie brengt aangezien een huwelijk elementair is om te overleven in de Afghaanse samenleving. Dit heeft ook tot gevolg dat zij nog meer risico lopen op een gedwongen huwelijk: aangezien zij geen aantrekkelijke huwelijkskandidaat meer is zal zij geen vrije keuze meer hebben van partner.

Voor een vrouw in Afghanistan is het onmogelijk te ontsnappen aan een gedwongen huwelijk. Niet alleen kan geweld binnen het huwelijk niet gerapporteerd worden, scheiden is ook quasi onmogelijk en als zij wegloopt riskeert zij strafrechtelijk vervolgd te worden.

De misdaden die zina genoemd worden (running away) zorgen ervoor dat zij eerst al een groot risico lopen op vervolging omdat zij lange tijd zonder mannelijke supervisie hebben doorgebracht in het buitenland, dus ipso facto beschouwd worden als een dader van zina. Daarnaast riskeert zij ook een strafrechtelijke vervolging als zij in Afghanistan zelf niet toestemt met een gedwongen huwelijk of hieraan probeert te ontsnappen. Beide zina-misdaden vormen een mensenrechtenschending, niet enkel omwille van de strafrechtelijke vervolging, maar ook omwille van de methodes (maagdelijkheidstesten) die gebruikt worden bij het onderzoek.

Een verwesterde Afghaanse vrouw die aldus gedurende lange tijd in het buitenland verblijft loopt een erg groot risico. De cumulatie van de verschillende vervolgingsdaden leiden ertoe dat zij moet worden beschouwd als een vluchteling in de zin van de VN Vluchtelingenconventie.

⁵⁵ Committee on the Elimination of Discrimination against Women, Concluding observations on the combined initial and second periodic reports of Afghanistan, 23 juli 2013, CEDAW/C/AFG/CO/1-2, § 24.